

# **The Implementation of Marital Rights of Women: The Case of Gambella Regional State**

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A Thesis Submitted to School of Law of Addis Ababa University in Partial Fulfillment of the  
Requirements for the Degree of Masters of Law

(In Human Rights Law)

Addis Ababa University

Addis Ababa, Ethiopia

2018

**Addis Ababa University**

**Graduate School of Law and Governance Studies**

This is to certify that the thesis prepared by Gatkek Kuajien Chuol, entitled: The Implementation of Marital Rights of Women: the Case of Gambella Regional State submitted to Addis Ababa University School of Law and Governance Studies in partial fulfillment for the requirements of Master of Law in Human Rights Laws, complied with the regulations of the Addis Ababa University and meet the accepted standards with respect to originality and quality.

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## **Acronyms and Abbreviations**

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms against Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
NGOs	Non-Governmental Organizations
UNDP	United Nations Development Programme
ENDA	Ethiopian Nuer Development Association
WHO	World Health Organization
UDHR	Universal Declaration of Human Rights
CAT	Convention against Torture
ICRW	International Centre for Research on Women
OAU	Organization of African Unity
AU	African Union
NHRAP	National Human Rights Action Plan
GTP	Growth and Transformation Plan
UNHCR	United Nation High Commissioner for Refugees

UNICEF

United Nation Children and Education Fund

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## **Abstract**

*Implementation of rights in general is the basic tenet of any entitlement and also for human rights. Though human rights is always seen as less enforceable entitlement due to reluctance of many states worldwide, their implementation is important to bring social, economic and political change within the country.*

*Now a day, since human rights are part of our national laws, their enforcements is also part of the authority entrusted to our government, states and federal administration alike and that the government has legislated laws and established institutions to carry out the implementation on those laws.*

*For women as vulnerable groups in our country that bear the brunt of the ineffectiveness of laws and institutions, lack of implementation of their rights is one aspect that is holding them behind in state building and that, swift attention and action is needed to address the issues that should bring to an end about the continuous existences to their past injustices and for them to compete with men in equal footing in this vibrant state building.*

*With the problem existing nationwide, the more you go to the peripheries is the more the matter become worst. With scant educations from those women located in the less developed regions like Gambella and the continues existences of customs and traditions that still look down on the achievement and practices that strives to bring about gender equality between men and women, it's debatable to say that, their rights are being implemented.*

**Keywords:** *Implementation, Rights, Women, Marriage, Traditions, Ethiopia*



## **Acknowledgement**

*Firstly, my heartfelt appreciation goes to my Professor, Dr. Mizanie Abate for his strong supports and guidance in the process of doing this Research.*

*Secondly, all the praise to my wife Nyagaoa Puoch Biliew for all the support she had giving me since day one and couldn't find better words to describe her help and loves she been giving me and finally, I would extend my dearest appreciation to my family for always being there when feeling down as they help in lifting me along the way.*

*Finally, I dedicated this achievement to my late father who taught me to be always responsible in little thing and it's very unfortunate and with big heart that, he is not here to witness this achievement with me.*

## Chapter One

### 1. Background of the Study

Women make half of the people throughout the world,<sup>1</sup> whereas, women make up 49.5% of population in our country Ethiopia.<sup>2</sup> In Gambella Regional State, women constitute 49.9% of the total population.<sup>3</sup> Despite this high number, most women are not economically active like their male counterparts and often they are assigned to perform activities at the domestic spheres and ‘unpaid family care and responsibilities’.<sup>4</sup> In circumstance where women are engaged in the public spheres, they earn lower salary compared to men in most countries.<sup>5</sup>

In addition, in male dominated societies like ours, some people believe that women’s participation in the public spheres may bring infidelity.<sup>6</sup> As such, the vast majority of women are denied their fundamental rights among others; the right to equal marriage, political participation, decision-making rights, economic rights and others related to land ownership because of their low status in the societal structure.<sup>7</sup> All this disparity existing between the two sex have resulted in creating tremendous effects in the enjoyment of right equally. Whereas it is the societies’ cultures and social norms that produce the notion of gender, which is different from the biological sense of sex,<sup>8</sup> gender differentiation resulted in creating certain roles and behaviour in a society. Accordingly, men often get such rights of being

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<sup>1</sup> “Women, Work and the Economy: Macroeconomic Gains from Gender Equity”; Strategy, Policy and Review Department and Fiscal Affairs Department IMF (2013) 4, available at <<https://www.imf.org/external/pubs/ft/sdn/2013/sdn1310.pdf>> Feb 28, 2018.

<sup>2</sup> FDRE Population Census Commission Summary and Statistical Report of the 2007 Population and Housing Census: Population Size by Age and Sex; (Addis Ababa 2008) 22.

<sup>3</sup> Ibid.

<sup>4</sup> “Global Employment Trends for Women: March 2009” (Geneva, Switzerland ILO 2009) 10, available at <[http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_103456.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_103456.pdf)> Feb 28, 2018.

<sup>5</sup> The World’s Women 2010: Trends and Statistics; Department of Economic and Social Affairs (New York, UN 2010) 96.

<sup>6</sup> East Asia and Pacific Regional Report: Toward Gender Equality in East Asia and the Pacific; A Companion to the World Development Report (Washington DC World Bank 2012) 1.

<sup>7</sup> Ibid.

<sup>8</sup> Ruth A. Wienclaw, “Gender Difference: Biology and Culture” (in Salem Press (ed) (2011)): Gender Roles and Equality: Sociology Reference Guide: Published by Salem Press, First edition, California and New Jersey 2011)15-16.

aggressive, hard hitting, risk taker and having multiple sexual partners. On the other hand, women are often expected to be submissive, soft and emotional.<sup>9</sup>

Though laws been in place since the Emperor era which recognised the protection of family by including one chapter in the Civil Code to deal with family issues, now a day, there still exist gender disparity as to the protection accorded to women in general not only in marital relationship. Not to play down the achievement of such law at the time, it is without doubt that, those laws are losing their currency to measure the change in the enjoyment of human rights and protection globally. As one of its obligation, Ethiopia had entered into major human rights conventions<sup>10</sup> and has come to change her constitution by including many rights enjoyed equally by both sex and have legislated laws like Revised Family Code to fulfil her obligation.

The same laws to further the protection accorded to women are legislated in many of the regional states as part of their mandate to administer their states since, they are under duty to do so as a part of our federal setup and so far, many state have come up with family code with exception of few.

Though there is an improvement in providing protection to her citizens by enacting majors laws, the facts that some state are still using the out-dated civil code enacted nearly Seventy years ago and the continues existences of harmful or in-discriminates customs and traditional practices show that, our governments, Federal/States, are not doing a great job in furthering the protection to all her citizens alike as it should be. Therefore, these non-actions by the

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<sup>9</sup> “Promoting Gender Equality to Prevent Violence against Women” (Genève, Switzerland WHO 2009) 3, available at <[http://www.who.int/violence\\_injury\\_prevention/violence/gender.pdf](http://www.who.int/violence_injury_prevention/violence/gender.pdf)> Feb 2. 2018.

<sup>10</sup> International Convention on Civil and Political Rights, 19966 (hereinafter) ICCPR, International Covenant on Economic and Social Rights, 1966 (hereinafter) ICESR, African Charter on Human and People’s Rights, 1983 (hereinafter) ACHPR, Covenant on Elimination of Discrimination against Women, 1983 (hereinafter) CEDAW etc.

states government show the glimpse of non-implementation of women rights which among many include marital rights.

### **1.1. Statement of the Research problem**

Ethiopia has enacted a law to further the protection of women for the very first time in her legal system when it included a book regulating family issues in its civil code in 1960.<sup>11</sup> And these laws have continued to exist until today despite the facts that there been several changes in the country with regard to rights enjoyed individually.

With the coming to power of the FDRE gov't since 1991, major change has taken place in the country through the introduction of Federal form of government<sup>12</sup> much established on Ethnic based administration which entitle and empower the previously marginalized ethnicities to administer themselves without involvement of the federal government.<sup>13</sup>

Also, the government has included a Chapter in the Constitution dealing with the rights individual expected to enjoy and also ratified major human rights conventions to guarantee a better protection of the people.<sup>14</sup> As one of the obligation when state entered into international obligation, enforcement of the laws ratified is mandatory and that should be done through different means which among many, include legislating and applying the same laws to enforce the rights enshrined in that document.<sup>15</sup>

Though the legislators has included in the constitution rights that women should enjoy equally with men and also ratified international human rights laws like that of CEDAW to further the protection of women as vulnerable part of society, there still continued violations of women's rights which is the persistence of discriminatory laws, discrimination within the

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<sup>11</sup> Civil Code of the Empire of Ethiopia, 1960.

<sup>12</sup> Constitution of the Federal Democratic Republic of Ethiopia, (hereinafter) FDRE Constitution, Proc, No 1, Year 1, 1995, Article 1.

<sup>13</sup> Ibid, Article 39 (3)

<sup>14</sup> Ibid, Chapter Three: Human and Democratic Rights.

<sup>15</sup> International Covenant in Civil and Political Rights, 1966, Article 2.

family, persistence and strong adherence to discriminatory traditions and customs that condone violence against women, and limited access to education, property, health care and justice.<sup>16</sup> It should be noted, Ethiopian gov't did not ratify the optional protocol to CEDAW for women to launch a complaints before the CEDAW committee in case of violations of the obligations enshrined in the document by the state. Ethiopia did not also ratify the regional document for the protection of women in Africa (Maputo Protocol) though it first signed the document but failed to ratify it, which is among many signs that show the lack of protection that is warranted to women in the country at large.

Though some positive development have taken place for the past years which among many include the adoption to family code in 2008 which raised the minimum legal age of marriage to 18 for both male and female and abolished the provisions conferring marital power on the husband as the head of the family; and added additional grounds for divorce by mutual consent of the spouses plus the criminalization of many harmful practices against women by the Criminal Law of 2004, still there is gaps in term of putting those laws into an actual practices and there are reason for non-implementation among which, lack of economic, political and social development, continues practices to discriminatory customary practices have contributed.

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<sup>16</sup> <[www.africa4womensrights.org](http://www.africa4womensrights.org)> Feb 29. 2018.

## **1.2. Objectives of the Study**

### **1.2.1. General Objective**

The Objective of the thesis is to explore whether marital Rights of women as one of the basic human rights recognised by international human rights laws and as well as Federal and Regional Constitutions are implemented in Gambella Region.

### **1.2.2. Specific Objectives**

The specific objectives of the research were to:

- Examine the nature and context of marriage inequality in the study area and then explore the root-causes for its endurance and its social acceptance;
- To analyse laws put in place to implement and protects the women's marital related rights by regional government;
- Examine the institutional framework in addressing and implementing women's marital rights and redresses in case of violations.
- Suggest a locally appropriate strategy for implementing the rights and how the redress can be made in case of violations.

## **1.3. Research Questions**

The study has attempted to answer the following basic questions developed in line with the research objectives.

### **1.3.1. General Research Question**

- To what extent are marital rights of women implemented in the region?

### **1.3.2. Specific Research Questions**

- What are the factors that resulted to non-implementation of marital rights of women in the Region?
- What are the laws made available by the government for the implementation of the rights?

- How the practice of dowry marriage (bride price) and other related customs/traditions impact the decision making by the couple and how does it bring inequality among the marriage partners?
- What are the institutions mandated for the implementation and promotion of women's marital Rights?

## **1.4. Methodology**

This part has discussed the methodology in which the research was conducted. In relation to this, research design is one of the contents that highlight on how the study was carried out. Study population, sampling techniques, data collection tools, data analysis, data trustworthiness, ethical consideration and the overview of the chapters are briefly discussed as part of the methodology.

### **1.4.1. Research Design**

A qualitative approach of research design is employed by the researcher. The approach employed has generated an in-depth description and understanding of human experiences, behaviour and social dynamics. As a result, qualitative studies have addressed how marital rights are implemented and the consequences of their non-implementation and the reason behind it.

### **1.4.2. Sampling Techniques**

Purposive sampling method is used in this study for identification and selection of information-rich cases related to the phenomenon under study.<sup>17</sup> This involves identifying and selecting individuals or groups of individuals that are especially knowledgeable about or experienced with a phenomenon of interest, homogeneity and snow ball type of purposive random sampling as the specific method of identifying the participant for interviews.<sup>18</sup>

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<sup>17</sup> M. Q. Patton: Qualitative research and evaluation methods (3rd ed, Thousand Oaks, CA: Sage 2002) 24.

<sup>18</sup> J. W. Cresswell, & V. L. Plano Clark: Designing and conducting mixed method research (2nd ed, Thousand Oaks, CA: Sage 2011) 15.

Despite the above, the availability and willingness to participate, and the ability to communicate experiences and opinions in an articulate, expressive, and reflective manner is also important.<sup>19</sup> And as a result, an interview is conducted to gather the data needed. Two interview with different offices within the state council, Women Unit and Women and Children Affair Standing Committee, one interview with Women and Children Affair Bureau, one interview with first instance court judge in the main town of Gambella, one interview with the 01 Kebele Social Court judge, one interview with the office of the Human Rights Commission, regional branch and another interview with local NGOs working on the promotion of the children, and women's rights, also another interview with a community association, Nuer for Development Association and one focus group discussion having the participants of eight women was carried out during the data collection.

### **1.5. Data Collection Tools**

Data collection tools comprise of tools that are used by the researcher to collect the data for the study. As revealed by Yin, "in qualitative research, (Empirical) the relevant data are derived from four field-based activities: interviewing, observing, collecting and examining (materials), and feeling".<sup>20</sup> This study specifically focused on both primary and secondary sources as mean of data collection tools.

### **1.6. Data Analysis**

The researcher has used the general qualitative analysis principles that fit for any qualitative approach. For instance, it is stated that, qualitative analysis consists of reducing text into sizeable themes through coding in order to reach an amicable discussion. Meanwhile, the researcher has put all related words into thematic concept in order to avoid data

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<sup>19</sup> Bernard, H. R. Research methods in anthropology: Qualitative and quantitative approaches (3rd ed.)Walnut Creek, CA: Alta Mira Press 2002) 10.

<sup>20</sup> Yin R. K, *Qualitative Research: From Start to Finish* (The Guilford Press 2011) 129.



redundancy.<sup>21</sup> Smith explains four possible descriptions of stages in analyzing [the] qualitative data. These stages are: multiple reading, transforming notes into emergent themes, seeking relationships and clustering themes and writing up an Interpretive Phenomenological Analysis study.<sup>22</sup>

### **1.7. Literature surveys**

This study reviews scholarly literature on marital rights, specifically in Ethiopia. The studies conducted by researchers such as Eleni Tekalign,<sup>23</sup> Yemane Berhane,<sup>24</sup> and Meron Girma.<sup>25</sup>

It has been argued that culture has a tremendous role in determining the dynamics of the societal structure in recognizing or violating the various rights of individuals, be it, those stated in the International human right documents or local and national laws.<sup>26</sup> There is an assumption that women are less in power and subjected to sub-ordination in every societal realm and the issue is deep rooted in sub-Saharan Africa where men are given due privileges by the communities than their female counterpart.<sup>27</sup> As of today, there are still practices that belittle the role of women in societies and despite the continuous effort by the government and different organizations working in the area to bring to an end the practices; still, women are subjugated in a very alarming rate. One of the traditions that have a dire effect in the

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<sup>21</sup> Jonathan A. Smith, Glynis M. Breakwell and Daniel B. wright, *Research Methods in Psychology* (Sage 2012) 6.

<sup>22</sup> Ibid.

<sup>23</sup> Eleni Tekalign, "The nexus between culture and women's human rights: the case of 'ABUSMA' marriage in Afar". MA thesis submitted in partial fulfilment of the requirements for the degree of Master of Arts in human rights, Center for human rights, AAU, June 2013.

<sup>24</sup> Yemane Berhane, 'Ending Domestic violence against women in Ethiopia,' (*Ethiopian Journal of health Development*, January 2004).

<sup>25</sup> Meron Girma: *The Role of Ethiopian Women Lawyer's Association (Ewla) In The Implementation of The Revised Family Law, and Protection of The Rights of Women and Children*; (MA Thesis, Indrah Ghandi National Open University 2013)

<sup>26</sup> Ibid (n 23) above.

<sup>27</sup> Valentine M. Moghadam and Manilee Bagheritari, *cultures, conventions, and the human rights of women: examining the convention for safeguarding intangible cultural heritage, and the declaration on cultural diversity*, SHS papers in women's studies / gender research No. 1, gender equality and development on cultural section, division of human rights, social and human science sector, (UNESCO, France march 2005) 4.

institution of marriage throughout many African societies not just ours is the dowry marriage or bride price. Without detailing on its conception and the justification behind it, it is considered to cement the relationship between the families concerned and providing stabilities to the marriage, the customary payment of bride wealth now gives the husband a proprietary right over his wife, allowing him to treat her more or less like a chattel. This is especially so because it equates a woman's status in marriage with the amount of bride wealth exchanged and not with the skill and abilities and as a result, the continued bride price practices has resulted in gross violation of women's human rights.<sup>28</sup> Laws have explicitly outlined the illegality of these practices not by way of references but in its substantive form. One good example is the Supplementary Convention on the Abolition of Slavery which stated that, "each of the State to the convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition of ... any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment or consideration in money or any kind to her parents, guardian, family or any other person or group; (iii) a woman on the death of her husband is liable to be inherited by another person."<sup>29</sup> The same is also elucidated under ICCPR's article 8, sub. (1) And (2) where, no one shall be held in slavery and servitude.

Despite the fact that Ethiopia has taken various forms of legislative measures, as elucidated above, the practical situation of the country indicated that, violence against women is still continuing to be a huge problem and it is becoming beyond the expectation of the 21st century.<sup>30</sup>

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<sup>28</sup> Bride Price and Domestic Violence, Briefing Paper by Kulsum Wakabi, 2000, The Mifumi Project in partnership with Prompt, available at <<https://mifumi.org/wp-content/uploads/2017/02/Wakabi-K.-2000-Bride-Price-and-Domestic-Violence.pdf>> Accessed, May/24/2018.

<sup>29</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Resolution 608 (XXI) of 30 April, 1956, Article 1.

<sup>30</sup> Ibid (n 24) above 131.

In country like Ethiopia which is striving for development, be it social, economic or political, women had an important role to play in the life of families and country at large.<sup>31</sup> And there for, guaranteeing their protection is as important as their contribution to national development.

### **1.8. Ethical Consideration**

To address ethical consideration, the researcher has designed an informed consent form that has helped the participants to be confident enough about the identity of the researcher and where the researcher comes from. This form has also indicated the institution that should be contacted in case unethical issues arise during the study. “Informed consent considered as critical concept in ethical considerations”.<sup>32</sup> Meanwhile, identity of the participants during the data analysis is kept confidential by assigning fictitious name to prevent the stigma the research subject may face from the community due to sensitiveness of the matter.

### **1.9. Significance of the study**

Among the plethora of useful research conducted on the area of family laws, the researcher believes that there was no specific research done on the implementation of marital rights of women especially in Gambella Regional State. The researcher also acknowledges the usefulness of the research conducted on the area of family issues, especially on affirmative actions, equality aspects of both gender, etc., but feels unsatisfied because most of the research conducted focus on solving the problem of in-equality women face nationwide and mostly on federal administrations which is much different in circumstances with the study area provided that, other states and federal administration are better off in terms of the level of development, socially and economically compared to the Place where the researcher

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<sup>31</sup> Ibid (n 25) above 24.

<sup>32</sup> Robin Legard, Jil Keegan In-depth Interviews In Jane Richie and Jane Lewis (Eds), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (SAGE 2003) 138-169.

carried out the research. Therefore, this researcher has strong conviction that, the research conducted in other places do not answer the problems this research intend to address and for that, this research is importance to bring to forefront the problems and gaps existing with regard to implementation of marriage related rights taking into consideration the customs/traditional practices that are still in place in the region. Therefore this research is important due to following reason:

- It will highlight and offer knowledge on the implementation of marriage related rights in the region and the factors that led to its non-implementation.
- It will help in widening the gap that been existing in regards to women's rights enjoyments and implementation in the region.
- The findings may shed light for policy makers and other human rights activists, governmental and non-governmental organs working on related theme and may in some sense would encourages them to accord a better protection to women in the region.

#### **1.10. Scope and Limitation of the Study**

The scope of the study was to examine the nature of the implementation of women's marital rights in Gambella Regional State and the subject of the study, were all women and men inhabiting the region and the main town of Gambella town was selected due to the availability of most of the institutions working with the implementation of the laws.

The research embarks upon a relatively recent issues and also, there is scants research work being done in the area and that, the research have used electronic as well as primary data sources he can find to show glimpse on the issue. Another problem the researcher encountered while carrying out this research is lack of cooperation from the government

bureaus the researcher selected to collect data from provided that, with many not attending their offices as they should, other are not just willing to give the information the researcher needed out of fear that, by doing so, it may have political repercussions on them.

### **1.11. Overview of Chapters**

This research paper has five chapters. Chapter one introduces the research. The second chapter highlights the available legal protection for marital rights under international and regional human rights laws. Chapter three deals with national laws and policies pertaining to marital rights of women. Chapter four presented the status of implementation of the women's marital rights in the region and the roles of the institutions. Finally, the last chapter deals with conclusion and recommendations to the study.

## **Chapter Two**

### **Protection of Marital Rights of Women in International Human Rights Instruments**

#### **2. The Meaning of Marriage**

Black Law Dictionary Defined Marriage as “The Legal Union of a couple as spouses, where the essentials of a valid marriage are parties legally capable of contracting to marry through mutual consent or agreement.<sup>33</sup>” The definition highlights the important of capacity and consent in every marital relationship be it, religious, customary or legal marriage.

CEDAW under Article 16(1) stipulates that: “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations....” This Article lists eight sub-articles covering women’s rights, on an equal basis with men, in all aspects of marriage. These include the right to freely choose a spouse, rights during marriage and at its dissolution, rights and responsibilities for children and guardianship, personal rights including choice of family name and profession and rights with respect to property. These notion of marriage as a voluntary union is particularly well established under international human rights law. Several United Nations instruments recognize the validity of a marriage on the premises that it is a union between parties that are of a sufficiently mature age to enter into marriage, and are in a position to choose to enter into the marriage freely and voluntarily without coercion.<sup>34</sup>

#### **2.1. Marital Rights of Women**

Marital rights is every one’s rights whether male or female but with the male counterpart accorded a better protection compared to female either through laws, e.g., the Gambella family code that is silent on the issues of bigamy. The subsequent section will elaborate more on the marital rights enjoyed by women.

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<sup>33</sup> Bryan A. Garner (Eds.); Black’s Law Dictionary, Deluxe Ninth Edition (West 2009) 1059.

<sup>34</sup> The Universal Declaration of Human Rights, 1946 (hereinafter) UDHR, Art.16

## **2.2. Marital Rights of women before entering into marriage**

With many traditions, customs and cultures throughout the world that allow the marriage to be entered whether the girl child is still at her teen years or before reaching the full age of majority as prescribed by different laws of the state concerned since they are allowed to specify the age to whom legal marriage can be entered, below are the rights that is entitled to them.

### **2.2.1. Rights to freely choose Spouse while entering Marriage**

No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.<sup>35</sup>

According to the UDHR, Marriage shall be entered into only with the free and full consent of the intending spouses.<sup>36</sup> The same rights is granted to women under CEDAW and it stated; States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women and both shall have the same right freely to choose a spouse and to enter into marriage only with their free and full consent.<sup>37</sup> According to ICCPR, No marriage shall be entered into without the free and full consent of the intending spouses.<sup>38</sup>

The wording of the above human rights documents is more or less the same but the African charter granted the rights by cross reference to the above conventions. It stated, the State to the African charter shall ensure the elimination of every form of discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated

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<sup>35</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, General Assembly resolution 1763 A (XVII) of 7 November 1962, Entry into force: 9 December 1964, Article 1 (1).

<sup>36</sup> Ibid (n 34) UDHR, Article 16 (2).

<sup>37</sup> Ibid (n 10) CEDAW Article 16 (1) (b).

<sup>38</sup> Ibid (n 10) ICCPR Article 23(3).

in international declarations and conventions.<sup>39</sup> This is so because the Charter allows the Commission to refer to other international human rights through the wording of Charter's Article 60 and 61 respectively. The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.<sup>40</sup>

### **2.2.2. The right to minimum marriageable age**

Another important right before entering marriage beside that of making an informed consent is the right to reach certain minimum age. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.<sup>41</sup> The same is mentioned under UDHR where it stated that, men and women of full age without any limitation due to race, nationality or religion have the rights to marry and to found a family.<sup>42</sup> The same wording can be found from the ICCPR.

States are under duty to take legislative action to specify a minimum age for marriage and that, no marriage shall be legally entered into by any person under the age it prescribed except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses. Historically, the age of consent for a sexual union was

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<sup>39</sup> Ibid (n 10) ACHPR Article 18 (3).

<sup>40</sup> Ibid Article 60.

<sup>41</sup> Ibid (n 10) CEDAW Article 16 (2).

<sup>42</sup> Ibid (n 34) UDHR Article 16 (1).



determined by tribal custom, or was a matter for families to decide. In most cases, this coincided with signs of puberty: such as menstruation for a girl and pubic hair for a boy.<sup>43</sup>

In the majority of countries the marriageable age *as a right* is 18. However, most of these countries have exceptions for minors, usually requiring parental or judicial authorization. In 2010, 158 countries reported that 18 years was the minimum legal age for marriage for women without parental consent or approval by a pertinent authority. However, in 146 countries, state or customary law allows girls younger than 18 to marry with the consent of parents or other authorities; in 52 countries, girls under age 15 can marry with parental consent. In contrast, 18 is the legal age for marriage without consent among males in 180 countries. Additionally, in 105 countries, boys can marry with the consent of a parent or a pertinent authority, and in 23 countries, boys under age 15 can marry with parental consent.<sup>44</sup>

What is staggering about is, the age limitation to whom both male and female could enter in to marriage is that majority of country lower the age for girl compared to the boy. It shows the manifest discrimination in domestic sphere existing between both sex even though laws strive to bring the practice to end through legislation and that is why, obligating states to prescribe the minimum marriageable age is important because it deter the customary and religious justification behind letting children get marriage while still very young.

### **2.3. Marital Rights during marriage**

Another aspect of the rights enjoyed by women in a marital relationship is those related with decision making and not to be subjugated. One of the problem in marital relationship is the existence of domestic violence and among the rights that women enjoys during marriage include but not limited to the rights of bodily integrity, sexual and reproductive rights, rights

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<sup>43</sup> Encyclopaedia of Children and Childhood in History and Society, *available at* <<http://www.faqs.org/childhood/A-Ar/Age-of-Consent.html>> May 21. 2018.

<sup>44</sup> “Marrying Too Young: UNFPA Report” (PFD) *available at* <<http://www.right-to-education.org/resource/marrying-too-young-end-child-marriage>> May 21. 2018.

to health, property ownership and administration, the right to equally determine the common resident of the spouses.

### **2.3.1. Right to Bodily Integrity of women**

Bodily integrity is the inviolability of the physical body and emphasizes the importance of personal autonomy and the self-determination of human beings over their own bodies.<sup>45</sup>

Though bodily integrity right is afforded to every human being, women are more often affected through gender-based violence. These include sexual assault, unwanted pregnancy, domestic abuse, and limited access to contraception. These principles were addressed in the Irish Council for Civil Liberties Working Conference on Women's Rights as Human Rights.

The conference defined bodily integrity as a right deserved by all women:

*"Bodily integrity unifies women and that no woman can say that it does not apply to them".<sup>46</sup>*

Domestic violence is a phenomenon experienced by many women irrespective of the communities, or religions that they belong to. It is a global reality.<sup>47</sup> While some countries recognise it, others either refuse to acknowledge it or acknowledge only a limited part of it.<sup>48</sup>

South Africa, for example, has framed a holistic Domestic Violence Act. India has recognised dowry as a cause of domestic violence against the bride but has failed to recognise spousal abuse or domestic violence without the demands for dowry.<sup>49</sup> These are the direct violation of the right to bodily integrity and security of person which intervened with the very human rights protection internationally.

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<sup>45</sup> Ruth A. Miller; *The Limits of Bodily Integrity: Abortion, Adultery, and Rape Legislation in Comparative Perspective* (Ashgate Pub. 2007) 114.

<sup>46</sup> Niamh Reilly (Eds) "Bodily Integrity and Security of Person." Women's Human Rights Campaign Ireland 2011, available at <<http://whr1998.tripod.com/documents/icclbodily.htm>> May 15. 2018.

<sup>47</sup> A conference organised by Oxfam in Sarajevo on Violence against Women, in November, 1998, had participants from nearly 50 countries, who narrated instances and presented papers on prevalence of domestic violence in their country, available at <<https://www.scribd.com/document/42176340/Ending-Violence-Against-Women>> May 14. 2018.

<sup>48</sup> Ibid.

<sup>49</sup> Baseline Report on Rights of Women in Relation to Marriage in India Prepared by AALI and coordinated by IWRAW Asia Pacific Advanced Unedited Version 32.

Another aspect that would let the situation clearer is the prohibition of marital rape since it has bearing on the bodily integrity right which is made illegal by some states where the majority did not though it's against the enjoyment of the rights<sup>50</sup> as enshrined in many human rights documents. This article warrant protection to women whether the actions would happen in private or public life as its enshrined under article 3 of the CAT. It requires that public authorities should take steps to prevent torture and ill-treatment.<sup>51</sup> The fact that marital rape can qualify as an act of torture or cruel, degrading, and inhuman treatment is further evident from the definition derived by other human rights bodies and courts.<sup>52</sup> The prohibition of torture relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim. Psychological trauma from marital rape can lead to anxiety, shock, intense fear, depression, suicidal ideation, and long lasting post-traumatic stress.<sup>53</sup> This requires laws in place to adequately protect vulnerable groups from ill-treatment and for public officials to act to protect vulnerable people from harm inflicted on them by others.

The same is also enshrined in the African Women protocol and it read:

*“Every woman shall be entitled to respect for her life and the integrity and security of her person and all forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited and that, the state shall enact and enforce laws to prohibit all form of violence against women including unwanted or forced sex whether the violence takes*

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<sup>50</sup> Ibid (n 10) ICCPR Article 7.

<sup>51</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter) (CAT) Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, *entry into force* 26 June 1987, Article 3.

<sup>52</sup> *Opuz v. Turkey*, Eur. Ct. H. R. App. No. 33401/02 (2009) (ruling that state failure to protect against physical and psychological violence in domestic relationships amounted to a violation of Article 3 of the European Convention of Human Rights) *available at* <http://opil.ouplaw.com/view/10.1093/law:ihrl/3618echr09.case.1/law-ihrl-3618echr09> June 14. 2018.

<sup>53</sup> Saurabh Mishra & Sarvesh Singh, *Marital Rape-Myth, Reality, and Need for Criminalization* (Prac. Law. Web J., no. 12, 2003) *available at* <http://www.ebc-india.com/lawyer/articles/645.htm> June 13. 2018.

*place in private or public*".<sup>54</sup> The same also define violence against women as including: *"all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts ... in private or public life."*<sup>55</sup>

According to a 2011 UN report, while two thirds of countries in the world have laws in place against domestic violence, many countries still have not enacted legislation explicitly criminalizing marital rape. According to the report, as of April 2011, only 52 countries had amended their legislation to explicitly make marital rape a criminal offence (including, for example Canada, Australia, Denmark, Turkey, Brazil, South Africa, and Rwanda); 127 countries have not yet taken this step.<sup>56</sup>

Some would argue that criminalizing marital rape will not guarantee lower rates of violence against women. While it is true that there can be no such guarantee, the state nonetheless has a duty to ensure that women are granted legal protection from this violence, which is a necessary first step towards addressing it. One of the fear is that, the failure to criminalize marital rape fosters a culture of impunity in which violence against women is state endorsed and socially accepted, and serves to maintain women's inequality both within marriage and in the broader society. The explicit criminalization of marital rape is a critical step towards promoting women's rights and safety within marital/spousal relationships. The non-prohibition of this practice as a result breed more violence to go unpunished and the survey done by WHO reveal that, 35% of women worldwide have experienced either physical and/or sexual violence; and most of this violence is intimate partner violence.<sup>57</sup> The same Study

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<sup>54</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Thirty-first Ordinary Session, Addis Ababa, Ethiopia, June. 1995, endorsed by resolution AHG/Res.240 (XXXI), Article 4 (1) (2) (a).

<sup>55</sup> Ibid Article 1 (j).

<sup>56</sup> Sasha Hart; Rape, marriage, and rights (June 2014) available at <<https://www.opendemocracy.net/5050/sasha-hart/rape-marriage-and-rights>> May 14. 2018

<sup>57</sup> Ibid.

found that, nearly a third of all women who have been in a relationship has experienced physical and/or sexual violence by their intimate partner.

The statistics above shows the seriousness that the lack of regulating have dire consequence in the enjoyment of rights by women in marital relationship. It means that marriage can provide a *de facto* license to rape with impunity denying women equal protection of the law, and sustaining a culture of impunity which only serves to make women vulnerable to further violence.<sup>58</sup> Contemporary, there is a broad international consensus over the State legal obligations towards the problem of violence against women; a consensus that extends to the problem of domestic violence. This consensus is a reflection of the international community's growing recognition of violence against women as a human rights problem requiring State action.<sup>59</sup>

### **2.3.2 Sexual and Reproductive Rights**

Reproductive rights rest on the recognition of the basic right of all women and all marriage couples to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion, and violence.

With the two international human rights documents before, e.g. UN and UDHR failing to mention the rights, the reproductive rights began to appear as a subset of human rights in the 1968 Proclamation of Teheran, which states: "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children".<sup>60</sup> The sexual autonomy of women stated under different human rights instruments is to improve the health of women. For instance, the Beijing Declaration underlined the sexual rights of women in its Platform.

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<sup>58</sup> Ibid.

<sup>59</sup> Jessica Lenahan (Gonzales) et al v United States, *Case 12.626, Report No. 80/11 (Inter-American Commission on Human Rights, August 17, 2011)* available at [oas.org/en/iachr/decisions/2011/USPU12626EN.doc](https://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc) June 11, 2018.

<sup>60</sup> Teheran Proclamation on International Conference for Human Rights May 1968.

In this respect, both men and women have the right to make safe sexual relations. It implies that, women have freedom to freely decide on sexual matters, when and how to have sexual intercourse.<sup>61</sup>

Gender and Reproductive Rights (GRR) aims to promote and protect human rights and gender equality as they relate to sexual and reproductive health by developing strategies and mechanisms for promoting gender equity and equality and human rights in the departments of global and national activities, as well as within the functioning and priority-setting of the department itself. Violence against women violates women's rights to life, physical and mental integrity, to the highest attainable standard of health, to freedom from torture and it violates their sexual and reproductive rights.<sup>62</sup> According to Amnesty International, reproductive and sexual rights amount for women to take their own decision concerning their body and among many include, to get an accurate information about the issues, access to sexual and reproductive health services including contraception, choose when and who to marry and decide if they want to have children and how many of them to have and their lives should be free from all forms of sexual violence, including rape, female genital mutilation, forced pregnancy, forced abortion and forced sterilization.<sup>63</sup>

### **2.3.3. Rights to Health and movement**

The right to health is fundamental and universal for the wellbeing of all women. First articulated in the preamble to the WHO Constitution<sup>64</sup> in 1946, the right to health was soon after assured internationally through the Universal Declaration of Human Rights and later recognized as a distinct human right in the International Covenant on Economic, Social and

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<sup>61</sup> The Beijing Declaration and Platform for Action, paragraph 94, *available at* <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>> May 21. 2018.

<sup>62</sup> Amnesty International; Sexual and Reproductive Rights, *available at* <<https://www.amnesty.org/en/what-we-do/sexual-and-reproductive-rights/>>

<sup>63</sup> Ibid

<sup>64</sup> See Preamble of the WHO constitution, *Available at* <[http://www.who.int/governance/eb/who\\_constitution\\_en.pdf](http://www.who.int/governance/eb/who_constitution_en.pdf)> May 15. 2018.

Cultural Rights.<sup>65</sup> Understanding health as a human right creates a legal obligation on states to ensure access to timely, acceptable, and affordable health care of appropriate quality as well as to providing for the underlying determinants of health, such as safe and potable water, sanitation, food, housing, health-related information and education, and gender equality.

In a world where there still tremendous maternal death, there need for increased effort to ensure everyone provided with the health they could get and that is why the right to health must be enjoyed without discrimination on the grounds of race, age, ethnicity sex or any other status. The right to health, as with other rights, includes both freedoms and entitlements; Freedoms include the right to control one's health and body (for example, sexual and reproductive rights) and to be free from interference (for example, free from torture and non-consensual medical treatment and experimentation).<sup>66</sup>

General Comment 14, adopted by the UN Committee on Economic, Social, and Cultural Rights provides an authoritative interpretation of Article 12, and it acknowledges that, the right to health cannot be fully achieved overnight but is in fact subject to progressive realization and resource availability.<sup>67</sup> However, also the same stipulates that State parties have “a core obligation to ensure the satisfaction of [...] essential primary health care which consists of the duty to ensure the right to non-discriminatory access to health facilities, goods, and services, minimum essential food, basic shelter, essential drugs as well as ensuring the equitable distribution of all health facilities and the adoption and implementation of a national public health strategy.<sup>68</sup> Even though the threshold of the obligation encumbered up on state is somehow not clear, the Governments have the duty to fulfil these core obligations.

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<sup>65</sup> Ibid (n 10) ICESR article 12 (1).

<sup>66</sup> Ibid

<sup>67</sup> Ibid (n 10) ICESR Article 2.

<sup>68</sup> See General Comment 14, paragraph 43. Available at <<http://www.refworld.org/docid/4538838d0.html>> May 17. 2018.

In addition they have a “continuing obligation to expeditiously and effectively” move towards the full realization of the right to health.<sup>69</sup>

#### **2.3.4. Rights to Property Ownership and Administration**

Spouse shall have the same rights in respect of ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for valuable consideration.<sup>70</sup> It's not only during the course of marriage that women as wives may encounter problem with their husbands over provision for support or management of property, such problem may also arise on divorce and termination of marriage.<sup>71</sup> Furthermore, women's equal ownership, access to and control over land, and the equal right to own property and to adequate housing contribute to the full realisation of human rights.<sup>72</sup>

Despite the acknowledgement of the rights through laws, African woman has especially been deprived of a number of these rights, merely because she is a woman. Women's dependence on their fathers or husbands has always been greatly exploited by violating their right to own real property such as land and buildings.<sup>73</sup> Violation of women's property rights usually begins in the family, which is a reflection of the larger society. From the time of birth through adolescence and married life to widowhood, it is usually the closest relatives, the father, brothers, husband and brothers in-law who easily violate women's rights. Many men have used the financial dependence of women as a tool to abuse their wives. There is a direct link between lack of property rights and domestic violence.<sup>74</sup>

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<sup>69</sup> Ibid Para 31.

<sup>70</sup> Ibid (n 10) CEDAW Article 16 (1) (h).

<sup>71</sup> Annem O. Griffiths. *In the Shadow of Marriage: Gender and Justice in an African Community* (University of Chicago Press 1997)158.

<sup>72</sup> Right to the Truth; Human Rights Resolution 2005/66, Preamble Para 3, available at <http://www.refworld.org/docid/45377c7d0.html> > May 15. 2018

<sup>73</sup> Mary Adebola Ajayi & Dr Abiodun Olukayode Olotuah (Eds) *Violation of women's property rights within the family*, (Routledge 2005) 58.

<sup>74</sup> Meitzen-Dick R.S. 'Property rights for empowering low-income women' (2001) available at <https://www.ifpri.org/publication/property-rights-empowering-low-income-women> > May 15. 2018.



Thus, the International Centre for Research on Women (ICRW) argues: Women's lack of property ownership is important because it contributes to women's low social status and their vulnerability to poverty. It also is increasingly linked to development related problems, including HIV and AIDS, hunger, urbanization, migration, and domestic violence. Women who do not own property are less likely to take economic risks and realize their full economic potential and for international development efforts to succeed, be they focused on reducing poverty broadly or empowering women purposely, women need effective land and housing rights as well as access to credit, technical information and other inputs.<sup>75</sup> Non observance of those rights and low economic status of women in the continent have created certain kind of thinking on the mind of men for certain traditions and practices like that of commercialisation of dowry as it contributes to the treatment of women as men's property, who cannot therefore own property in their own right.<sup>76</sup>

#### **2.4. Women's Marital Rights at the Dissolution of Marriage**

Marriages can end in many ways and among include, through death or divorce. The rights the divorcee have after dissolution include, but not limited to, rights to life with dignity, rights to freedom of movement, rights to equality before the law, rights to property and rights to custody and guardianship of children. Divorce is an initiated action, wherein either the husband or the wife makes a conscious decision to end the marriage. The personal laws governing the different communities have provisions for initiation of divorce proceedings by women. However, the related rights of guardianship and custody, of maintenance and control of property, which are critical for a woman to be able to divorce, act as barriers as they are in favour of the husband. Social attitudes and absence of support systems further limit a

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<sup>75</sup> ICRW Property Ownership for Women Enriches, Empowers and Protects; Toward Achieving the Third Millennium Development Goal to Promote Gender Equality and Empower Women (2005) 1, available at <<https://www.ponline.org/node/263719>> May 15. 2018.

<sup>76</sup> Rosemary Okello. 'Men's property: Why East African women have no land rights' (2003) available at <[www.caledonia.org.uk/land/documents/Men's\\_Property.doc](http://www.caledonia.org.uk/land/documents/Men's_Property.doc)> May 15. 2018.

woman's options to exercise her right to divorce.<sup>77</sup> The plurality of personal laws add to the complexity of the situation, as the provisions for access to the same right differs, being based on the religions and traditions of which the woman belong.

Among many issues that bring dispute during divorce or after divorces include child custody. Child custody is a term used in family law courts to define legal guardianship of a child under the age of 18. During divorce or marriage annulment proceedings, the issue of child custody often becomes a matter for the court to determine. In most cases, both parents continue to share legal child custody but one parent gains physical child custody. Family law courts generally base decisions on the best interests of the child or children.<sup>78</sup> In the past, many courts favoured mothers when awarding child custody. However, as gender roles have changed and more women work outside of the home, these assumptions no longer apply. Today, most custody laws are gender neutral (and do not favour mothers over fathers). Instead, courts must consider the child's best interests when awarding custody.<sup>79</sup>

What is important in having the custody of the child is that, both parent as of rights should continue to make influential decision concerning the welfare of the child/children in equal manner. The word 'welfare' has to be taken in its widest sense, and must include the child's, moral as well as physical well-being, and also have regard to the ties of affection.<sup>80</sup>

In many African countries, the custody is assumed by the father after divorces without due consideration of the child's best interest due to strong attachment of the African to their

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<sup>77</sup> Ibid (n 68) 46.

<sup>78</sup> Convention on the Rights of the Child, (hereinafter) CRC, General Assembly resolution 44/25 of 20 November 1989, *entry into force* 2 September 1990, Article 3 (1).

<sup>79</sup> Mother's Rights in Child Custody, *available at* <<https://www.legalmatch.com/law-library/article/mothers-rights-in-child-custody.html>> May 17. 2018.

<sup>80</sup> Custody under Hindu, Muslim, Christian and Parsi Law, *available at* <<http://www.legalserviceindia.com/article/134-Custody-Laws.html>> May 17. 2018.

patrilineal customary system<sup>81</sup> and this is against the very law to which many African states have ratified especially CRC and it's one of the documents ratified by almost all states worldwide.<sup>82</sup> Women have the right to full and equal protection by the law and also have the right not to be discriminated against on the basis of their gender or marital status which includes the right to be accorded the same rights as men in civil law, including equal capacity to acquire and retain custody, guardianship and care of children and to have an equal right in the making of decisions that affect their upbringing.<sup>83</sup>

## **2.5. Obligation of States in the Implementation of International Human Rights Instruments on Women's Marital Rights**

It's true under international human rights law that, where rights are legally guaranteed, the state must exercise "due diligence" to ensure their fulfilment and protection. This can be understood from the one ruling by the Inter American court of human rights which stated, "if the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights individual have within her jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention."<sup>84</sup> What is to be made clear is that, under international law, the due diligence standard establishes that a state is obliged to prevent, investigate, punish, and provide remedies for violations of human

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<sup>81</sup> Lea Mwambene; Custody Disputes under African Customary Family Law in Malawi: Adaptability to Change? Volume 26, Issue 2, (*International Journal of Law, Policy and the Family*, 2012) 1, Available at <<https://academic.oup.com/lawfam/article/26/2/127/1051793>> May 17. 2018.

<sup>82</sup> Of the 195 sovereign and independent states represented by the United Nations, 192 member nations (the Cook Islands, Niue Island and the Vatican are not members) signed the Convention and only three states have not ratified it. Available at <<https://www.humanium.org/en/convention/signatory-states/>> May 17. 2018.

<sup>83</sup> Ibid (n 47)

<sup>84</sup> Velasquez Rodriguez v. Honduras, Compensation, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, (July 29, 1988) Para 176, available at <[http://hrlibrary.umn.edu/iachr/b\\_11\\_12d.htm](http://hrlibrary.umn.edu/iachr/b_11_12d.htm)> June 6. 2018.

rights, regardless of whether the acts are committed by state or non-state actors.<sup>85</sup> The same is invoked by other international human rights instruments.<sup>86</sup>

### **2.5.1. State's Obligation on the Implementation of the Rights under CEDAW**

The rights of women are incorporated under different international human rights instruments as a human right after an extensive struggle made by human rights advocates.<sup>87</sup> CEDAW is one of the major human rights instruments which recognizes and protects the rights of women in the global arena. It is vigorous struggle against all forms of discrimination against women in the social, political and economic aspects of life.<sup>88</sup>

States are also expected to take positive steps to avoid discrimination against women. Likewise, CEDAW obliges the international community to eliminate all forms of marginalization and suppression of women in all aspects of life throughout the world.<sup>89</sup> As per CEDAW, discrimination against women violates the dignity, equality, development and well-being of women.<sup>90</sup> It also violates the equal participation of women with men in the social, political, economic, cultural and family life.<sup>91</sup> The document is important due to the facts that, it gives protection to women rights compared to any other human rights document in explicit manner. As mentioned above, different international instruments have guaranteed women the rights to marriage the same as that of men. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality between men and women which among many include rights to enter into marriage through their free and full consent.<sup>92</sup>

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<sup>85</sup> Ibid Para 166.

<sup>86</sup> U.N. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104, art. 1 (Dec. 20, 1993) [hereinafter DEVAW] Article 4 (c).

<sup>87</sup> Geraldine Terry: Women's Rights: Small Guide to Big Issue: (Pluto Press, London 2007) 24.

<sup>88</sup> Ibid.

<sup>89</sup> UNDP: Compendium of Key Documents Relating to Human Rights and HIV in Eastern and Southern Africa: (Pretoria University Law Press, Johannesburg 2008) 10, available at <<http://www.pulp.up.ac.za/>> May 9, 2018.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid (n 10) CEDAW, Article 16 (1) (a).

Also the Covenant mandated the state to reports on the progress they made which is among many include reporting on the legislations, administrative or other measure which they have adopted to give effect to the provisions of the covenant by reporting every four years and that, the state shall indicate factors and difficulties affecting the degree of fulfilment of obligations under the covenant.<sup>93</sup> On the basis of the article 16 of the Covenant, the committee have given this comment, historically; human activity in public and private life has been viewed differently and regulated accordingly. In all societies women who have traditionally performed their roles in the private or domestic sphere have long had those activities treated as inferior.<sup>94</sup> The committees continue to elaborate by saying, “As such activities are invaluable for the survival of society; there can be no justification for applying different and discriminatory laws or customs to them. Reports of States parties disclose that there are still countries where *de jure* equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society.<sup>95</sup> Other problems for the enforcement of the CEDAW convention by the members state is that, it does not provide for individual complaint mechanism though it’s allowed under protocol. However, article 2 of its Protocol recognizes individual complaint mechanism thereby enabling any woman who claims that her marital rights is violated to approach the CEDAW Committee. The CEDAW Committee will then make recommendations in the form of remedies, on the possible measures to be taken to comply with the CEDAW and communicate it to the state concerned.<sup>96</sup> However, these recommendations cannot apply to Ethiopia right now because Ethiopia has not ratified the Protocol but through the committee’s interpretation of the Convention’s articles, States that are parties to the CEDAW Convention

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<sup>93</sup> Ibid Article 18 (1) and (2).

<sup>94</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation 21, Equality in Marriage and Family Relations, (Thirteenth Session, 1992), U.N. Doc. A/49/38 at 1 (1994), Reprinted In Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. Hri/Gen/1/Rev.6 At 250 (2003) Para 11.

<sup>95</sup> Ibid Para 13.

<sup>96</sup> The Protocol to the CEDAW Articles 7-9

are obligated to adopt the principles of the CEDAW Committee's General Recommendation 19 on Violence against Women. They thereby have directly undertaken obligations of "due diligence" to combat violence against women.<sup>97</sup>

### **2.5.2. State's Obligation under African Human Rights System concerning the protection of Women's Marital Rights**

One of the major points of departure on the establishment of the AU from the OAU was predicated on that it should represent a qualitatively higher form of unity and integration for the African Continent. Thus, the fundamental objective is to put in place an efficient and effective AU to deliver a better Africa and that it should have a capacity and commitment to meet the aspirations of the African people in their desire for participatory and efficient governance systems, human rights, peace and security, development, social justice and integration. The establishment of the AU was hailed as a welcome opportunity to put human rights firmly on the African agenda. The AU's Constitutive Act adopted in 2000 marks a major departure from the OAU Charter in the following respects: Moving from non-interference to non-indifference, including the right of the AU to intervene in any member state's affairs, explicit recognition of human rights, Promotion of social, economic and cultural development, an approach based on human-centred development, and Gender equality.<sup>98</sup>

In line with the above, the institutions for which human rights complaints can be brought to are: Pan African Parliament (PAP), the Economic, Social and Cultural Council (ECOSOC), the Peace and Security Council (PSC), the African Peer Review Mechanism (APRM) and the

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<sup>97</sup> Comm. on the Elimination of Discrimination Against Women, General Recommendation 19 of the 11th Session, Para. 7, U.N. Doc. A/47/38 (1992) article 9.

<sup>98</sup> Bience Gawanas, *The African Union: Concepts and implementation mechanisms relating to human rights, available at* [http://www.kas.de/upload/auslandshomepages/namibia/Human\\_Rights\\_in\\_Africa/6\\_Gawanas.pdf](http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/6_Gawanas.pdf) May 16, 2018.

African Court. Unlike the OAU, where human rights remained the preserve of the African Commission, The AU has expressly ensured that human rights are mainstreamed through its organs, activities and programs.

The enforcement of human right requires states to engage in different types of conducts (negative and positive). The African Commission explained these conducts, in the SERAC case, as follows:

*"...internationally accepted ideas of the various obligations engendered by human rights indicate that all rights-both civil and political rights and social and economic generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights."*<sup>99</sup>

The Commission also defined the obligation to respect as the obligation to refrain from interfering in the enjoyment of all fundamental rights, the obligation to protect as the obligation to protect right holders against other subjects by legislation and provision of effective remedies, the obligation to promote as the obligation to make sure that individuals are able to exercise their rights and freedoms, for example, by promoting tolerance, raising awareness, and even building infrastructures, and the obligation to fulfil as the obligation to directly provide the basic needs such as food or resources that can be used for food (direct food aid or social security).<sup>100</sup> As to the case of the women's rights, respecting alone is not enough because it is not the culture that the country had experienced before and it's a positives obligation that would warrant in bringing the change needed by educating and creating awareness through different mean and mechanisms which among many include new legislations and constant implementation throughout.

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<sup>99</sup> The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, Communication No.155/96, African Commission Human and Peoples' Rights, 2001, Paragraph 62.

<sup>100</sup> Ibid

As to the obligation that is encumbered up on state, they are under duty to legislate laws for especial implementation of this protocol and shall indicate other measure taken in implementing the protocol as per Article 62 of the ACHPR.<sup>101</sup> Though African Human Rights Committee has the power to interpret it, still, the change brought about by the protocol is minimal provided that, even though good number of African countries has ratified the said document, there still a lot of the countries who did not ratify it yet because it's subjected to different ratification to that of ACHPR.<sup>102</sup> Among the 54 countries in Africa, 36 have ratified and 18 did not and Ethiopia is among those countries that did not ratify the Protocol.<sup>103</sup> The introduction of the Protocol was intended to articulate a gender framework on women's rights since it was lacking under the African Human Rights Charter.

Another challenge for effective working of the human rights mechanism is lack of necessary resources and political backing to make a difference by compelling respect for human rights not to mention the constant failing of the implementation and enforcement mechanism where many countries do not comply with the requirement to report on the domestic implementation of the ratified instruments. These are the sign that show much more is needed to be done at the regional level to promote human rights culture and respect for human rights in general because the recognition of the rights in international or regional instrument without adequate monitoring and enforcement mechanism does not augur well for the protection of human rights in Africa.<sup>104</sup> With the two main mechanism provided under the Charter being complaints and state reporting procedures where the former deal with the interstate and individual complaints procedures, individual complaints work best under the Charter provided that almost every state in Africa are member to it and there is no additional

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<sup>101</sup> Ibid Article 26.

<sup>102</sup> Ratification Table: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Available at <[www.achpr.org/instruments/women-protocol/ratification/](http://www.achpr.org/instruments/women-protocol/ratification/)> May 8. 2018.

<sup>103</sup> Ibid

<sup>104</sup> Takele Soboka Bulto. Beyond the Promise: Resuscitating the State Reporting Procedure under the African Charter on Human and Peoples' Rights, V. 12 (Buffalo Human Rights Law Review 2006) 57



mechanism for complaints procedure. The same cannot be said for the Women Protocol which has minimum ratification though it's the document that provided a comprehensive protection to women in Africa compared to the African Human Rights Charter as mentioned above. Though the aim of complaints system is confined in addressing the violation complained of in the case, and as such, the system cannot ensure full overview and control of the implementation of the Charter's provisions and it cannot give a true picture of the human rights records of a given state, the state reporting procedure is important since it can be used to gauge general compliance with the gamut of rights, freedoms and duties guaranteed under the Charter and also is aimed at cultivating a domestic human rights culture.<sup>105</sup>

Another Procedure mandated with the protection of women's rights is the Special Rapporteur on the Rights of Women in Africa. Its purpose is to serve as a focal point for the promotion and protection of the rights of women in Africa and also to assist African governments in the development and implementation of their policies on promotion and protection of women's in Africa, particularly in line with the domestication of the newly entered into force *Protocol to the African Charter on Human and Peoples' rights, relative to the Rights of Women in Africa* and the general harmonization of national legislation to the rights guaranteed in the Protocol and not least but to follow up on the implementation of the *African Charter on Human and Peoples' Rights* and its *Protocol relative to the Rights of Women in Africa* by State Parties, notably by preparing reports on the situation of women rights in Africa and propose recommendations to be adopted by the Commission.<sup>106</sup>

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<sup>105</sup> Ibid 58.

<sup>106</sup> Resolution on ACHPR/res.38 (XXV) 99 on the appointment of a Special Rapporteur on the Rights of Women in Africa, available at <<http://www.achpr.org/mechanisms/rights-of-women/about/>> May 16, 2018.

## Chapter Three

### Ethiopian Legal and Policy Framework for the protection of marital rights of women

#### Introduction

Marriage is one of the most important social institutions in every community; it is bedrock for society in general and family in particular.<sup>107</sup> It is a voluntary legal union founded on the free and full consent of the spouses. Once such a legal union is created, the union gives rise to the various legal effects, which are generally the derivatives of personal and pecuniary relations established between the spouses. The latter category in turn is mainly constituted of personal and common property of the spouses.<sup>108</sup> Also the Federal Family Code stated, the family being the natural basis of the society and the state and one of the mean of preserving it is by regulating and governing the family relation through law.<sup>109</sup>

Gender inequality is entrenched in social, economic, cultural and political structures and thus closely intertwined with every development challenge ranging from the elimination of poverty to the promotion of peace and democracy.<sup>110</sup> More than cementing sacred relation and status between the spouses, marriage creates ‘an institution’ where mutual relation and bonds among the vast members of the spouses’ family emerges.<sup>111</sup>

Though Ethiopia has registered a transformation since the coming in to force of the current regime, the society still strongly maintains the powerlessness of women in the social interactions due to cultural settings.<sup>112</sup> In a patriarchal social structure like our, women are expected to be submissive, lenient and obedient to male, since, the system stands to foster the

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<sup>107</sup> Silashi Bedasie: Determination Of Personal And Common Property During Dissolution of Marriage under Ethiopian Law: An Overview Of The Law And Practice; Oromia Law Journal [Vol 2, No.2]

<sup>108</sup> Ibid

<sup>109</sup> The Revised Family Code of Ethiopia, Proclamation No. 2013/2000, Preamble Para 1.

<sup>110</sup> National Action Plan for Gender Equality, 2006, Federal Ministry of Women and Children Affair.

<sup>111</sup> Jonathan Herring (Ed.), *Family Law: Issues, Debates, Policies* (Willian Publishing, UK) (2001) 3.

<sup>112</sup> Estelle Disch: *Reconstructing Gender: A Multi-Cultural Anthology*: (Mayfield Publishing Company, Toronto 1997) 11.

interest of male and the hierarchical relationship between men and women.<sup>113</sup> That is why at a constitutional symposium that was held at Debre- Zeit in 1998, Ato Mehari Redai, called for an intensification of efforts both at the central and regional government levels to formulate and put into effect a new family law for Ethiopia.

Mr. Redai underscored the fact that family rights guaranteed by Ethiopia's present constitution cannot be effectively exercised under the family law currently in force, which has not been made consistent with the provisions of the new national constitution. He also stressed the point that the future family law in Ethiopia should take into account regional cultural and religious diversities. He pointed out that Ethiopia's new constitution lays down the basic principles aimed at eradicating past inequalities in the family emanating both from an unjust legal framework and from misguided cultural malpractices.<sup>114</sup> We cannot doubt the validity of this assertion because there still exist discriminatory traditions and customs in the country if not the less developed regions like Gambella despite the intensified legislation of laws since then and also, the resemblance of almost all the family laws the states come up with so far with that of federal family laws and not taking the regional peculiarity in to considerations.

Legal equality of human being is embedded in every societal realm and the same goes for our country Ethiopia. It started with the wording of the constitutional Article 7 which made the assurance that, "Provisions of this Constitution set out in the masculine gender shall also apply to the feminine gender". And that, the Constitution is the supreme laws of the land and any laws or religious, customary practices or the decisions of the organs of the states or public official which contravene it shall be of no effect.<sup>115</sup>

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<sup>113</sup> Ibid

<sup>114</sup> Ethiopia: Scholar Presses for Enactment of New Family Law in Ethiopia (Addis Tribune, Addis Ababa; Ethiopia) available at <<http://allafrica.com/stories/199810300072.html>> March 11. 2018.

<sup>115</sup> Ibid FDRE Constitution above Article 9 (1).

Having said this, it goes without saying that, “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law and that, there shall be no discrimination on the ground of sex, etc.”<sup>116</sup> This principle can be found in every human rights documents to which our country Ethiopia is a members to. It’s the very tenet of the human rights protection where it’s said, we have this rights by the very facts that we are born human and no other condition else.

Eleanor Roosevelt once said:

*“after all, universal human rights begin in small places, close to home - so close and so small that they cannot be seen on any maps of the world ... Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere”.*

The saying cannot be disregarded as of today provided that, it is the effort and emphasis put forwards by the local communities and their local government that amount to awarding equal protection domestically.

### **3. FDRE Constitution**

Ethiopia has had three written constitutions (in 1931, 1955 and 1987) before the 1995 FDRE Constitution. And all the three previous constitution have no significance bearing in the term of the rights protection because they were more of legalising the power the elites were exercising at the time.<sup>117</sup> With that being said, the research will only make discussion based on the protection accorded to women under 1995 Ethiopian constitution.

Since its adoption in 1995, the FDRE Constitution comprehensively included in it different regional as well as international human rights instruments. The major ratified human rights instruments are the integral parts of the constitution such as ICERD, ICCPR, ICESCR,

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<sup>116</sup> Ibid Article 25.

<sup>117</sup> Fasil Nahum ; *A Constitution for a Nation of Nations: The Ethiopian Prospect* (Red Sea Press 1997) 21.

CEDAW, CAT, CRC, CRPD and ACHPR.<sup>118</sup> Principally, chapter three of the constitution stipulated two categories of rights such as human and democratic rights. It also provided limitation and derogation amongst the given rights.<sup>119</sup> As well, the national constitution recognized the human rights of women in line with the international legal documents. In line with this assertion, article 34 of the FDRE constitution clearly articulated the rights of women with in the family. In this regard:

“Men and women, without any distinction as to race, nation, nationality or religion, who have attained the marriageable age as defined by the law, have the right to marry and found a family. Based on this, marriageable age is prescribed by the Federal revised family code and the respective state laws. They shall have equal rights while entering into, during marriage and at the time of divorce and laws shall be enacted to ensure the protection of the rights and the interests of children at the time of divorces”.<sup>120</sup>

In other words, rights within family are equally guaranteed for both women and men in the marriage life since, the couples are equal partners in the peace building, development and healthy life of the family. So, both genders should equally participate in the exercise of their marital rights within the household for the betterment of their lives and children. Besides, article 35 stated the equal rights of women with their male counterparts. Under sub article 2, it mentioned that, women have equal rights with men in marriage as prescribed by this constitution.<sup>121</sup> Also, international conventions to which Ethiopia is a party are part of our laws provide that as per the wording of the constitutional article 9 (4) once ratified and published under the official laws reporter (Negarite Gazzeta) though the publication should

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<sup>118</sup> Girmachew Alemu, et.al Ethiopian Human Rights Handbook: (Addis Ababa University, School of Law, Center for Human Rights 2013) 28 *also see*, FDRE Constitution, Article 9 (4). Available at <https://resourcecentre.savethechildren.net/sites/default/files/documents/6630.pdf> March 14. 2018.

<sup>119</sup> Ibid, FDRE Constitution (n 12).

<sup>120</sup> Ibid article 34.

<sup>121</sup> Ibid, article 35

not affect the enforcement of the ratified laws since the reason for it is to give a judicial notice of the concerned beneficiary ad the enforcing officials and institutions.

### **3.1. The Gambella Region Constitution**

Under the current Ethiopian federal form of government, there is a two tier of government as enshrined under the federal constitution.<sup>122</sup> The first one is the federal administration which is Addis Ababa<sup>123</sup> and Dire Dawa City Administration<sup>124</sup> and the second tier of Administration is the nine regional states.<sup>125</sup> Both the power entrusted to these two administrations are elucidated under the federal constitution and elaborated under states' constitution. Though the federal constitution have overriding power over other laws within the country,<sup>126</sup> it's not clear in hierarchical relation for subsequence laws like that of proclamations whether the federal laws can take precedent over the regional constitution and other laws in case there is conflict among the two laws.<sup>127</sup> In Ethiopian legal system, under the constitution's supremacy clauses, there is a lack of doctrine of pre-emption which would basically make it clear that, the federal law should be given a precedent in case the two conflict.<sup>128</sup> But there is a contention among scholars that, since both the laws prescribed the rights to be enjoyed by individual in the areas they are living, the one that give a better protection can be enforced for the benefits of the people especially under the realm of Human Rights.

Both the federal and Gambella Constitution have similar wording to the chapter three that prescribed the human rights to be enjoyed by individual in term of substances and the only differences is the ordering because the state included other related provisions in regards to her self-administered zones, weredas and kebeles. But the states' constitution seems to provide a

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<sup>122</sup> Ibid, article 46 (1).

<sup>123</sup> Ibid Article 49 (3).

<sup>124</sup> Dire Dawa City Council Establishment Proclamation No. 416/2004.

<sup>125</sup> Ibid (n 12) FDRE Constitution, Article 49 (1).

<sup>126</sup> Tsegaye Regassa, State Constitutions in Federal Ethiopia: A Preliminary Observation (A Summary for the Bellagio Conference, March 22-27, 2004).

<sup>127</sup> Ibid.

<sup>128</sup> The Constitution of the United State of America, Article 6.

better protection to rights at least during the time of state of emergency.<sup>129</sup> The numbers of rights that are made non-derogable under the Gambella state constitution are more elaborate compared to the federal constitution. Among many include the nomenclature of the State though not a typical right, the Rights to life, Right to security of person, Prohibition against inhuman treatment, right of person held in custody and convicted prisoner, right to honour and reputation, equality right, freedom of religion and belief and structure of the organ of the state.<sup>130</sup> The protection of these rights have a great bearing on women as they are vulnerable part of the society and as their situation demand swift attention especially during the time of the state of lawlessness and that they deserve a better protection from the government.

### **3.2. The Criminal Code of Ethiopia**

Ethiopia have operated under the 1957 Penal code and it was until 2004 that it have repealed the laws to include the change that came through time and to realize the protection by the laws that the country had entered into internationally.<sup>131</sup> And specifically, the coming in to force of the code among many is to acknowledge the suffering inflicted to women in the form of harmful traditional practices. Despite the fact that the criminal law respects the cultures of the Ethiopian diversity, it does not buttress on practices that are proven harmful through sciences.<sup>132</sup>

The Current Criminal Code of Ethiopia, enacted in 2004, has brought about some positive changes with regard to the protection of the rights of women.<sup>133</sup>

The 2004 criminal code of Ethiopia have criminalized some traditional practices which have been the major bottlenecks in the exercise of women's human rights. Accordingly, the law criminalizes harmful traditional practices including early marriage (Art. 648), abduction (Arts. 586, 587), female genital mutilation (Art. 565), and infibulation of the female genitalia

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<sup>129</sup> Gambella State Constitution Article 119 (4).

<sup>130</sup> Ibid

<sup>131</sup> Criminal Code of Ethiopia, Proclamation No. 414/2004, Prefaces

<sup>132</sup> Ibid Para 3.

<sup>133</sup> Tsehai Wada "Rethinking the Ethiopian Rape Law" 2012(XXV) Journal of Ethiopian Law p.15.

(Art.566). It also criminalizes rape (Arts.620-628) and violence within marriage or irregular union (Art.564). Besides, women's trafficking is also criminalized under the criminal law of Ethiopia (See arts. 597, 598). However, the Current Criminal Code failed to incorporate new elements into the definition of rape, as provided under the 1957 Penal Code.<sup>134</sup> Thus, the normative prescriptions of the criminal law of Ethiopia have a paramount importance in the effort to protect women from various harms and acts which hinder the exercise of their human rights. Being the only laws that have universal application through the country due to the facts that, no states have had come up with her own criminal laws so far,<sup>135</sup> it is without doubt that, it have a much influences in how the rights are protected by punishing the offender that are furthering the practices which are against the women's human rights enjoyment.

The criminalisation of these practices that are against the enjoyment of women's rights has a tremendous important and that women recognized the necessity of making these acts illegal and subjected to punishment, both to signal the social wrong and to deter this kind of gender based violence.<sup>136</sup> Criminalization of harmful practices both codifies rights and creates a potential source of power for victims to get access to legal remedies when the rights are violated. In this way, the law's power is both symbolic and practical. Criminalization of sexual assault in marriage can and should operate on both levels.<sup>137</sup>

Despite the positive change that is brought by the criminal laws, the same law fail to regulate the issues of marital rape. Like the 1930 Penal Code and the 1957 Penal Code, the 2004 Criminal Code has failed to recognise rape committed within wedlock as a crime punishable

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<sup>134</sup> Ibid 16.

<sup>135</sup> FDRE Constitution Article 55 (5), it read, the house of people's representative shall enact a penal code. The States may, however, enact penal laws on matters that are not specifically covered by the Federal Penal legislation.

<sup>136</sup> Amnesty Int'l, Afghanistan: "No-One Listens to Us and No-One Treats Us as Human Beings," Justice Denied to Women, AI Index ASA 11/023/2003 (Oct. 5, 2003).

<sup>137</sup> Melanie Randall; Vasanthi Venkatesh, The Right to No: The Crime of Marital Rape, Women's Human Rights, and International Law (41 Brook. J. Int'l L. 2015) 170.



by law. Article 620 of the Criminal Code reads as follows: “whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance is punishable with rigorous imprisonment to fifteen years”. From this provision, it can be inferred that husbands who force their lawful wives to have sexual intercourse are exempted from punishment, despite the physical and psychological trauma suffered by women as a result of their actions. Some argue that, article 620 of the Criminal Code indicates that compelling a woman to submit to sexual intercourse through the use of violence or grave intimidation, or after rendering her unconscious or incapable of resistance, is not a crime if the act is committed by her husband.<sup>138</sup> To justify such action solely on marriage results in “absurdity”, since raping women violates a chain of human rights of these women, such as the right to human dignity and bodily integrity, whether committed in or outside of wedlock.

### **3.3. The Family Code of Gambella Region**

Despite the tremendous achievement the law of Civil Code bring at the time of its enactment, it’s true that, it lost its worth taking into consideration the change that have come through time and a cursory reading of the book three of the civil code show that, a lot of provisions cannot answer the complexities of our today’s problems and issues. Among many provisions that warrant mentioning is article 560 which talk about betrothal where a marriage can be arranged by the families of the future spouse before reaching the maturity age and that leave the future spouse to have no say to whether they agree to marriage arranged before they are just kids and this provision is against the very equality aspect of human rights instruments and it take away the right to choose who to marry and form family with as stipulated by our FDRE Constitution Article 34 (1). Even though the same law mentioned that the agreement

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<sup>138</sup> Gelaw KS Marital rape as a human rights violation of women in Ethiopia: A case study of Alumni association of the faculty of law of Addis Ababa University and Ethiopian Women Lawyers Association (EWLA) (Master of Arts Thesis Addis Ababa University) p.41.

can be validated through the agreement by the future spouse after they have grown up,<sup>139</sup> the practice in our country show otherwise provided that, there is always pressure from the families who agreed to the arrangement before the couple come of age and all in all contradict the free will of the party to the marriage.

Another discrepancy existing within the civil code is the discrimination based on age. The age limit for which both party can enter into marriage is 15 for female and 18 for male.<sup>140</sup> It is now legally recognized that, unless otherwise a person reached 18 years of age that he/she cannot make a sound decision in every aspect of life and that age limit is for both gender. The law allows the contract of marriage to be entered and all needed for the agreement to go ahead is the consent of minor plus tutor<sup>141</sup> who may be so desperate for the said minor to get marriage through the influence of financial capacity of an individual seeking marriage. This is a direct violation of the minor's rights as protected by our current constitution and other international human rights conventions.<sup>142</sup>

The patriarchal nature of the civil code can be understood from the wording of the same document that has given the administration of the family only to the male couple and where the female counterpart should just obey without questioning since this would be against, not just the laws but the societal setup.<sup>143</sup> These ideas are an age old Fetha Negest laws that obliges the wife to submit herself to the husband as if he were her lord, for the husband was considered to be the head of the family. She was expected to fear and obey him; the husband was taken to be the highest in authority for the wife only next to the lords. She was told to use her hands to do every useful thing so as to please him and there was no corresponding duty on the part of the husband even though one of the major purposes of marriage according to

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<sup>139</sup> Ibid Article 565.

<sup>140</sup> Civil Code of the Empire of Ethiopia, 1960, Article 581 (1).

<sup>141</sup> Ibid Article 628 (1).

<sup>142</sup> Ibid (n 11 above) Article 36 (1) (D) and (2), *see also*, CRC, Article 3.

<sup>143</sup> Ibid (n 128 above) Article 635.

Feta Negest said to be the cooperation which takes place between the married couple to alleviate the burdens of life.<sup>144</sup> Even though the cooperation of the parties to marriage is allowed in the administration of the family, it only should be done through the guidance of the husband to ensure the moral and material directions of the family.<sup>145</sup> The same is true also in choosing the family abode where it's the husband as considered the head of the family to choose where the family should live and the female partner is left with no much choice to object instead to obey even though that may not be for the best interest of the family.<sup>146</sup>

The list of the provisions that contradict our today's human rights understanding and enjoyment goes on in the Civil code and it's a surprise for certain states in our current setup of government are still using the document<sup>147</sup> while it contradicts to the very tenet our constitution was set up for and the values our government aspire to achieve. With the protection accorded by the Civil code as such, many provisions fall short of protecting the women whether in general or in marriage, there come for the need of the laws to be revised and now there is a family laws in the regional state of Gambella though it came in to force just a year back. But still the law does not answer all the problems that needed to be addressed instead kept silent and does not mention anything about the way they can be regulated.

One of the reasons for the change to the laws is to bring change to the patriarchal nature of the previous laws and that is spearheaded by the ideas of equality which is one of the basic principles of the constitution both federal and regional one. With that being observed through

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<sup>144</sup> Meron Girma: The Role of Ethiopian Women Lawyer's Association (Ewla) In The Implementation of The Revised Family Law, and Protection of The Rights of Women and Children; (MA Thesis, Indrah Ghandi National Open University 2013) 39.

<sup>145</sup> Ibid (n 128) Article 637 (1).

<sup>146</sup> Ibid Article 641 (1).

<sup>147</sup> Mulugeta Getu Sisay; Departure of Ethiopian Family Laws: The Need to Redefine the Place Of Societal Norms in Family Matters, V. 2 (Haramaya Law Review 2015) 89, *available at* [https://www.academia.edu/30064022/DEPARTURE\\_OF\\_ETHIOPIAN\\_FAMILY\\_LAWS\\_THE\\_NEED\\_TO\\_REDEFINE\\_THE\\_PLACE\\_OF\\_SOCIETAL\\_NORMS\\_IN\\_FAMILY\\_MATTERS](https://www.academia.edu/30064022/DEPARTURE_OF_ETHIOPIAN_FAMILY_LAWS_THE_NEED_TO_REDEFINE_THE_PLACE_OF_SOCIETAL_NORMS_IN_FAMILY_MATTERS)> May 13, 2018

the preamble of the code and most of its provisions, but going through the document, you can see, that enough is not being done since some of the provisions are still not swaying away from the general attitude of the community. The state family code has prescribed the age an individual should enter marriage and that both partner entering marriage should at least attain eighteen years<sup>148</sup> as a principle and not less than sixteen as an exception.<sup>149</sup> This is a big break away from the previous laws that allow female child to get marriage before eighteen compared to male counterpart.

One shortcoming to the Regional Family code is related to condition for the partner to make divorce which is no fault divorce for the federal one and it seem, the regional family laws have parted away from the federal stipulation and is more in resemblance to the civil code that only allowed divorce when there is a good reason for it (fault divorce). The State family code only allows the party in marriage to divorce only when the court found a reasonable ground for their application to divorce.<sup>150</sup> This show the patriarchal nature of the Gambella Regional State as reflected in laws in regards to women's rights enjoyment and that, the State Legislature should have had allowed it as no faults divorces for the general maximizations of the rights by the women provided that, they are the general marginalized part of the state's populations.

The family code had made a positive change comparatively to the Civil Code and though it's more of a copy of Federal Family Code, still the change it had brought recognized the women's rights in line with the state's constitution based on equality between both gender.

The frequent mentioning of equality of men and women in all family relations arises, according to Fassil Nahom, "from the need to combat traditional practices based on

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<sup>148</sup> The Family Law of the Gambella Peoples' National Regional State, Proc, NO. 27/2008, 1<sup>st</sup> Year No.1, Article 10 (1).

<sup>149</sup> Ibid Article 10 (2).

<sup>150</sup> Ibid Article 80 (1).

customary or religious notions prevalent in segments of the society, whereby women are systematically discriminated against.”<sup>151</sup>

### **3.4. The Policy Framework for the Protection of Marital Rights of Women**

Ethiopia has enacted laws and policies for the common protection of rights and many on the vulnerable group of the societies. One of the policies it enacted, the National Human Rights Action Plan start with this statement, “The main reason for the preparation of human rights Action Plan is to ensure the full implementation of fundamental and democratic rights guaranteed under the Constitution the primary beneficiaries being the Ethiopian people.”<sup>152</sup> It continues to mention in the same vein by saying, The Plan, is to be implemented in tandem with the Growth and Transformation Plan and is prepared for a better realization of human rights in a comprehensive and structured manner and to accelerate the process of building good governance and democracy, and to ensure the sustainability of economic development.

It was introduced with the intention of helping and enabling the Nation to conduct human rights protection and promotion activities in a coordinated and effective manner.<sup>153</sup> The policy enshrine that, it is with the purpose of enforcing those rights given by the constitution to women which include, non-discrimination on the ground of sex, rights of women to equal marriage, rights to marriage and found a family on free and informed consent and being equal while entering, during and at the time of divorce and also, women should have the rights to acquire, administer, control, use and transfer the property.

Not only that the plan acknowledged the enforcement of rights but also requires the elimination of the influences of harmful customs to enforce the right of women. It prohibits

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<sup>151</sup> Fassil Nahom. *Constitution for a Nation of Nations: The Ethiopian Prospect*, (New Jersey and Asmara: The Red Sea Press, Inc 1997), at 137.

<sup>152</sup> The Federal Democratic Republic of Ethiopia; National Human Rights Actions Plan, Para 2 (2013-2015) 1.

<sup>153</sup> Ibid Para 3.

laws, customs and practices that oppress or cause bodily or mental harm to women.<sup>154</sup>

Furthermore, since women make a major contribution to the welfare of society, they are in a better position to promote and/or eliminate harmful traditional customs and practices of their localities.<sup>155</sup>

The NHRAP has mandated every government institution in federal and regional administrations to include in management and administer issues related with the rights of women in sustainable and participatory frame and also ministries are required by laws to mainstream women's affairs in all their policies and laws and development programs and projects. Despite the efforts being made currently, women are, as a whole, still viewed as a personification of weakness and who do their duties if and only told to and for those living in remote areas are usually forced to marry before they reach puberty the marriage being either per-arranged by their parents or forced upon them through kidnapping.<sup>156</sup>

Like that of NHRAP, the objective of the National Policy on Ethiopia Women is, facilitating conditions to the speeding of equality between men and women so that women can participate in the political, social and economic life of the country on equal terms with men and ensuring that their right to own property as well as their other human right are respected and that they are not excluded from the enjoyment of the fruits of their labour or from performing public functions and being decision makers and to eliminate, step by step, prejudices as well as customary and other practices that are based on the idea of male supremacy and enabling women to hold public office and to participate in the decision making process..<sup>157</sup>

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<sup>154</sup> Ibid 138.

<sup>155</sup> National Policy on Ethiopian Women, Addis Ababa, Sept. 1993, Available at <[www.abbyssinialaw.com](http://www.abbyssinialaw.com)> May 14. 2018.

<sup>156</sup> Ibid 8.

<sup>157</sup> Ibid 9.

One that is worth mentioning is that, the GTP II envisages the establishment of a transparent accountability mechanism of the mainstreaming and implementation processes of women and youth agendas.<sup>158</sup> Also strengthening women and youth associations through enhancing women and youth empowerment as well as eliminating violence against women and children and harmful traditional practices through ensuring women's and child rights and wellbeing; creating an enabling environment for the establishment of women's clubs/forums in all universities to enhance female participation and success in higher education are the focus areas of the plan.<sup>159</sup> As regards to the women's reproductive and health rights, improvement in maternal and child mortality rate through promoting family planning services, *ante* and *post-natal* care services, raising the awareness of mothers on delivery by skilled personnel are to be made a priority.<sup>160</sup> This is because maternal mortality rate is a major concern in Ethiopia with the number of death as high as 1,250 in 1990 and decreased to 353 in 2015.<sup>161</sup> Even though there been a major improvement in the elevation of the number of death at birth but comparatively, still the number is staggering and needed a further improvement.

So the GTP II promised to further the GTP I by ensuring gender equality at all educational levels, creating conducive environment for female students, increasing number of female teachers, increasing gender equality in employment, ownership of land and other fixed resources, eradicating harmful traditional practices, and increasing women's equal participation in political and decision making processes will be given due attention.<sup>162</sup> The GTP II is intended to increase women ownership especially in land and headed household

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<sup>158</sup> Growth and Transformation Plan II (GTP II) (2015/16-2019/20) GTP II, 208.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid 209.

<sup>161</sup> Maternal mortality ratio (modelled estimate, per 100,000 live births) *available at* <<https://data.worldbank.org/indicator/SH.STA.MMRT?namedesc=true>> June 4. 2018.

<sup>162</sup> Ibid (n 150) GTP II 209.

through resource mobilization for the development of the sector by designing different climate change and gender related programs and projects.<sup>163</sup>

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<sup>163</sup> Ibid 2010.



## **Chapter Four**

### **Implementation of Women's Marital Rights in The Region, The Roles and Performances of the Institutions working in the Area**

#### **Introduction**

As one of the main objectives of this study is to assess the implementation of the marital rights of women in the region in line with the existing International, federal and state laws in the area of women's marital rights, the proceeding sections comprise of information gathered from community members, state council officials, courts judges and experts in women related bureaus through In-depth Interview and Focus Group Discussion, also, documents are used as a material sources for this part. In addition, the experiences of the researcher also serve as an important identifier for the existence of various forms of offences. To this effect, the data are presented in two sub-sections under the headings; Implementation of the marital rights and the role played by institutions working for the implementation of women's rights in the region.

#### **4. Conceptual Understanding of Women's Marital Rights by the expert on the area of family in the Region**

According to the expert interviewed by the researcher, he underscore that, the fact remains that the practical achievement of gender equality and full realization of the rights of women has not been made as the law prescribed and as women naturally deserve by the mere fact of being human. In other words, the changes being brought about are not adequate. Women are not equally enjoying as men of their rights in the political, economic, and social affair of the

country.<sup>164</sup> Women still suffer from violation of human rights though the government strives to maintain gender equality and to achieve the implementation of women's rights. They are still encountering violence in their private as well as public life.<sup>165</sup>

According to an expert the researcher interviewed in Women and Children Affair office in the region, he understand the marital rights of women as they started with equality between both genders because it allow women to choose when and for who to enter marital relationship with.<sup>166</sup> With that freedom of choice in mind, it allow women to make an honest and mature decision to choose as to whom they can spend the rest of their life with after they attained the age of 18 as enshrined in the state family code<sup>167</sup> With the equality rights assured, that is what can lead their voice to be heard in their marital relationship. Having given the rights to choose their fate can as well allow them to make decision in their marital relationship that would result to the general wellbeing of their family at large especially their children. He continues to narrate that, if we cannot worry about the achievement of equality rights at first, it's hard to think of other rights being fulfilled.<sup>168</sup>

Another important right within marriage is for both families to have a say in their daily family affairs. This would lead both the couple to cooperate in making decision be it for their children or their common abode or related to their financial regulation, etc.

Another expert claimed, with all the rights recognized in the state family code in play, she feel marriage related rights does not stop only when both parties are in marriage relationship

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<sup>164</sup> Gemechu Shale Ogato, The Quest for Gender Equality and Women's Empowerment in Least Developed Countries: Policy and Strategy Implications for Achieving Millennium Development Goals in Ethiopia (Vol. 9 (3) Int. J. Social Anthropology 2013) 358, available at <<http://www.academicjournals.org/IJSA>> May 18. 2018.

<sup>165</sup> Yemane Berhane: Ending Domestic Violence against Women in Ethiopia. Volume 18 (3): (Ethiopian Journal of Health Development 2004) 131-132, available at <<https://www.ajol.info/index.php/ejhd/issue/view/1263>> May 18. 2018.

<sup>166</sup> Interview with Women and Children Affair office, Chief Inspector for Women and Children Complaints Officer, Mr. Okello Obang, April 4. 2018.

<sup>167</sup> Ibid Family code of the Regional state, Article 10 (1).

<sup>168</sup> Ibid (n 107).

but also after divorce. She claims the joint decision making for the upbringing of the children is tremendous and both parents should have a say in decisions that should have unbearable or tremendous effects in their children's future life. With region like Gambella where men's voice are giving due much consideration, the facts that mothers are always staying closer to their children after divorces cannot be over looked.<sup>169</sup>

Marriage should be entered with only full and informed consent and that; the couple should at least attain the full of age of eighteen before marrying.<sup>170</sup> Also, with regards to decision making, the couple should have a joint and unanimous decisions in their daily family affair with no one's decision given more weight over the other provided that they are equal partner in marriage no matter who make the most in term of economic subsistence and in divorces.<sup>171</sup>

#### **4.1. Implementation of Women's Marital Rights**

Under various circumstances or throughout many legal systems, having the laws is one thing and actually implementing them is another thing and that should be considered as the same for our case here. The question that we should be asking is whether there is in fact real implementation of the rights by the mere fact that the laws exist. The existence of the State Constitution and the family code that have elaborated on the number of rights to be enjoyed by women in their marriage relationship is something that should be applauded but cannot be said as it's enough as of itself. In the recent comment by the CCPR on the Ethiopia during the reporting stage, the committee raised their concern by saying, *"While welcoming the efforts of the State party towards establishing equality between men and women, including through the inclusion of the principle in the constitution and the adoption of the National Action Plan*

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<sup>169</sup> An expert interview with Mrs Ariet Okew, Women, Children and Vulnerable people complaints and protection Director Directorate with The Human Rights Commission, regional office, April 5. 2018.

<sup>169</sup> Ibid (n 79)

<sup>170</sup> Ibid State Family Laws (n 79)

<sup>171</sup> Ibid Article 52 (1)

on Gender Equality, the Committee notes with concern that there are significant discrepancies in the improvement of the situation of women in the different regions.”<sup>172</sup> And that the State party should continue its efforts to increase the practices that allow the access of women to employment, public life, education, housing and health, in all the regions of the country.

Despite the clear acquisition by the laws and institutions working in the areas, still there is a lack of real implementation on the ground and as one participant in focus group have put it:

*“The practice of in-equality in the region is so deep and everything that involve decision making in the family is made by the husband and she feel her decision does not count if the husband do not want it to be put in place. She continues by saying, “Not only that the husband make decision that concern their children’s wellbeing but also herself and her life. For instance, she mentioned that, after getting marriage, she did not have enough education due to the facts that, women are not being encouraged enough by the community and the community see them being put in school is just a waste of time because they are being considered as a failure due to the fact that, their educational endeavour is being cut short by early marriage and after marriage, their husband feel reluctance for them to continue their education and that decision to continue and not to continue is up to their husband and its final without contest by the wife because you can’t defy your husband’s decision since he is considered as the head of the family and whatever he said goes.”<sup>173</sup>*

Also another participant raised her concern by saying:

*“As much as she agrees with the above participants; she feels the dominion of men over women in marriage is so deep to the extent that men considered the children as their*

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<sup>172</sup> Concluding observations of the Human Rights Committee on Ethiopia, CCPR/C/ETH/CO/1, 25 July 2011, Para 7, available at <<https://hornaffairs.com/2011/08/04/ethiopia-recommendations-of-un-human-rights-committee-full-text/>> April 18. 2018.

<sup>173</sup> Nyayual Chol, Focus group discussion participant, April 14. 2018.

*own. She raised this because in some culture like that of Nuer and Anwuak tribe, after divorce, the children's custody is assumed to be taken by their father even if he is not in better positions in providing them with the need their children may want. This is all because of the dowry marriage or bride price and all the husband needed to do is to not claim back the dowry (bride price) he had given to the bride's family during the celebration of the marriage and if those given are not enough to warrant him the custody of children, he should provide an additional dowry to fulfil the gaps existing and he can take the full custody of the children and practically will be his alone after the divorce. ”<sup>174</sup>*

As the existence of laws and institutions stand as one achievement to the recognition of the women's rights in general, still there lack the implementation of the rights as we aspired for and the actual implementation on the ground is so important for the general good of the other half of state's citizens. That is why the committee to the ICCPR has stated under its general comment by saying:

*“Ensuring the protection provided for under article 23 of the Covenant requires that States parties should adopt legislative, administrative or other measures. States parties should provide detailed information concerning the nature of such measures and the means whereby their effective implementation is assured. In fact, since the Covenant also recognizes the right of the family to protection by society, States parties' reports should indicate how the necessary protection is granted to the family by the State and other social institutions, whether and to what extent the State gives financial or other support to the activities of such institutions, and how it ensures that these activities are compatible with the Covenant. ”<sup>175</sup>*

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<sup>174</sup> Nyajabe Gach, Focus group discussion participant, April 14. 2018.

<sup>175</sup> General Comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23) 27/07/90. CCPR General Comment No. 19, Para 3, *available at* <http://www.equalrightstrust.org/ertdocumentbank/general%20comment%2019.pdf> April 22. 2018.

In fact, the above comment is something that is being shared by other treaties bodies and always echoed every time Ethiopia presented their report to such organs under international setting.

The facts that, the Women and children's affair bureau is underfunded resulted for us not to have a clear record of the implementation of the rights. It's true that, domestic violence is rampant in the region especially, the main town of Gambella where men beat their wife and that we only intervene in rare cases if it's reported but not always that women being abused in their marital relationship reported their case and also the authorities like the police are reluctant to intervene either and even if they intervened, they only encouraged the couple to settle their differences through local elders and families which always condone abuses like that of domestic violence.<sup>176</sup>

One of the hotly debated topics in International human Rights law is whether there need to be universality to what we called human rights to all alike without the cultural distinction to places. The attempts to define, categorize and group human rights have been less successful at achieving consensus than they have been at unearthing the Western philosophy at the core of the exercise.<sup>177</sup> And many authors and scholars on human rights have agreed that, Common values within contrary terms and tenets must be recognized. All voices within a cultural group deserve to be heard.<sup>178</sup> But irrespective of the cultures and their differences, even though there seem to be believe from different scholars about the hierarchy of the rights,

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<sup>176</sup> Ibid (107)

<sup>177</sup> Stephen J. Toope: Cultural Diversity and Human Rights, (42 McGill L.L 169, McGill Law Journal 1997) 169.

<sup>178</sup> Ibid 170.

still many contemporary scholars would argue that all human rights are important and that they are mutually reinforcing.<sup>179</sup>

With distinction being made in our Federal and State's Constitution about Human and democratic rights, the debate about whether they are equally important should be answered in affirmative because disregarding the important of some of the rights would not only be in contradiction to the Constitution itself but also international obligation to which the country pledge to adhere to. Based on this conception, it is true that, culture is recognized so long as it does not contradict with the basic tenet of the protection brought by the human rights and that it does not create harm to the people practicing it.<sup>180</sup>

One of the problems that hamper the implementation of human rights not just women's rights in the region is that, people have strong attachment to their customs and traditions and those traditions are not always compatible with human rights. They are backwards and male oriented and do not answer the question of our time especially the idea of equality between both genders.

In Gambella Regional state, there are some traditions and customs that are still much in use as of today and every ethnic have their own traditions and customs that we would say is against what we call human rights protection. For example, the nuer ethnic practices dowry giving (bride prices) during marriage. To have the ideas of what that customs mean, it's a practice to which every man when through during marriage by giving certain amount of cattle to the bride's family in exchange for her. And the amount given range from thirty to fifty head of cows or even more depending on the capacity and the wealth the bridegroom have and in recent time, up on the educational level the bride reached and the amount paid increase

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<sup>179</sup> J. Humphrey, "International Bill of Rights: Scope and Implementation" (17 Wm. & Mary L. Rev. 1976) 527, *see also*, Vienna Convention and Program of Action, Para 5. 1995.

<sup>180</sup> FDRE Constitution, Article 91 (1).

with level of education the bride attained with those holding a degree level of educations can reach up to seventy or sometime hundred. Other four ethnic groups follow the same practices but different in the number of cattle being paid due to the facts the rest does not rear cattle as nuer ethnic do. In the nuer culture, having a lots of cattle is a form of wealth and they are respected among community. There is also husband beating from both the anwuak and nuer ethnic where the brother of the girl to be married beat the bridegroom of the new bride and the justification behind it is to scare him off if the family didn't like him and serve as a sign of warning for him not to keep with the attempt to marry the girl and for him to respect the bride's family after the marriage when through and how this affect women is that, it show how women are subjected to a decision through pressure and in a circumstance like, woman would not be able to marry the man of the choice due to the repercussion that may follow had the man continue to insists in marrying the same woman.<sup>181</sup> In one case, man was beaten to death for impregnating a woman out of wedlock by the woman's brothers<sup>182</sup> and in a situation like this, it's clear that, women are denied their right of freely choosing as to whom they can spend the rest of their life with as husband or partner. Also Oppo ethnic practiced, wife swapping where, small girl can be picked by adults four or five times their ages and without objection, their families would agree to it by the name of cultures.<sup>183</sup>

*“As to the practices like that of dowry giving and husband beating, etc. they have influences in the implementation of the rights and as bad as they are, there is some custom beside this two instances that are not all negative and do not create concern to the enjoyment*

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<sup>181</sup> Interview with Ding Gach Gor, Executive Director of the Ethiopian Nuer for Development Association (ENDA) July 10. 2018.

<sup>182</sup> Ibid.

<sup>183</sup> Interview with Ariet Ojjulo, Judge with State High Court, July 12. 2018.



*of human Rights and for that, their practices cannot be prevented so long as people does not felt victims to those practices.*”<sup>184</sup>

Another participant has narrated that:

*“The cultures like that of dowry giving (bride price) have so much influence in the region and that it’s one of the reasons for husband to be more controlling and protective over their wives. Among, the five ethnicities, all of them practice it one way or another and they may differ only on how much dowry is enough to be given to the bride’s family. It gives men the ego and assumption that they have bought us and they can do whatever they wanted to us to the extent that they can lay their hand on us (beating) claiming they are disciplining us when they feel like we are not taking their demand. Another side effect of the dowry marriage is that, your family feel like they have nothing to do with you and all the responsibility is taken up by your husband and that leave them not to intervene in your family’s decision and disputes because that would be against the norm of not intervening in another man’s family affair.” She continues to assert, practice like that, gives much room for a lot of bad thing to happen without being questioned, e.g., domestic violence. In case you are unlucky enough and marriage an abusive and violent husband, it took you quit sometime to actually get help both from your family or the rest of the community even the government of the state and that is all because you’re his wife and he has all the right over you.*”<sup>185</sup>

This practice of bride price brings dire effect in the life of women. It reduces women to the status of chattel or property and exposes them to all sort of abuse, like that of widow inheritance and the risk of HIV infection through forcing the sexual intercourse on the partner. Indeed bride price relegates women to ‘an article of trade to be bought or sold’ because in many instances, it implies that the man has purchased the wife to provide labour,

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<sup>184</sup> Ibid (n 111).

<sup>185</sup> Ibid (115)

he can demand sex at any time and has a control over the reproductive capacity of his wife among others. This puts the women into a vulnerable position where they can be subjected to abuse, making it difficult for her to leave, especially where her family cannot afford to return the bride price or are unwilling to do so and that as the participant to the group discussion has mentioned it above, the bride price has contributed to domestic violence and the spread of HIV/AIDS because women are subjugated under such circumstances.

Another cultural practice having impact on the enjoyment of rights is wife inheritance or widow inheritance. Widow inheritance refers to conditions whereby husband's wife is obliged to marry her brother-in-law upon death. This marriage arrangement has its roots in the traditional marriage practices and the fact that bride wealth payment upon marriage was the responsibility of husbands' family or kin family.<sup>186</sup> They further revealed that the payment of bride wealth guaranteed children and their mothers the right to resources within the kin group and a place within the kinship structure.<sup>187</sup> One participant has shared her experiences on this:

*“Even though it was my will to enter into my first marriage with my late husband, after his unfortunate passing away, my husband's family decided to give me to his brother and have children with. My husband's cattle become his by the mere fact I am given to him and had I rejected him, the entire family would have disowned me and send me away with nothing and leave my children behind because I don't have any entitlement to the cattle my husband left to us and it's only when I agreed to their demand by accepting my in-law's proposal and stay*

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<sup>186</sup> Nyambedha Erick Otieno, “Change and Continuity in Kin-Based Support Systems for Widows and Orphans among the Luo in Western Kenya”, (Review 8 (1) African Sociological 2004) available at [www.codesria.org/IMG/pdf/08\\_nyambedha.pdf](http://www.codesria.org/IMG/pdf/08_nyambedha.pdf) May 22, 2018

<sup>187</sup> Ibid.

*with my children instead for them to be raised by another women provided that, my husband's brother to whom i am given to has already three wives.*”<sup>188</sup>

As to the experience above, Women's economic capacity is a critical factor in their decision to enter or leave marriage, if they are allowed to decide at all, and in their ability to leave violent relationships.<sup>189</sup> An examination of the Committee's record and the reports of States parties indicates that laws relating to women's ownership and management of property, at all stages of marriage and at its dissolution, have changed very slowly.<sup>190</sup> Some of the states with the greatest inequality have not addressed property ownership, management, and inheritance issues for decades. Others have addressed the issues only formally, without examination of women's de facto economic situation. Even though the countries have acknowledged the rights *de jure*, their family laws are bound to ethnic, indigenous, and religious communities. Many recognize multiple family law systems, and some of them do not provide for civil marriage.<sup>191</sup>

In light of the discriminatory nature of traditions and culture like dowry giving and wife inheriting, international mechanism has acknowledged that, *“A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for*

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<sup>188</sup> Nyakoang Biel, focus group participant, April 14. 2018.

<sup>189</sup> CEDAW General recommendation No. 29 -- fifty-fourth session, 2013 - Article 16 - Economic consequences of marriage, family relations and their dissolution, Resolution 217 A (III) Para 8.

<sup>190</sup> Ibid, Para 13.

<sup>191</sup> Ibid, Para 14.

*example on a woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.*"<sup>192</sup>

Also the Special Rapporteur on violence against women, had emphasized the universality of violence against women, the multiplicity of its forms and the inter-sectionalism of diverse kinds of discrimination against women rooted in other systems of subordination and inequality. Thus, while recognizing positive developments, it must also be noted that great divisions among humankind were increasingly articulated along cultural lines and that the management of conflict based on cultural and religious specificities often resulted in the justification of violence against women both within and between conflicting groups.<sup>193</sup>

The family code of the regional state is not helping as it is only a copy paste of the federal family code. It should reflect on the regional custom to bring real change on the society instead, it leave many of the issues un-answered. For example, to leave the dowry marriage aside un regulated though practiced by all the inhabitant of the region except the highlander and its tremendous effects in equality aspects of the rights, the practice of polygamy and wife inheriting cannot be disregarded though the law seem to be silent in prohibiting it, the culture and the people's attachment to it make it easy for men to continue with the practices.

A member from the focus group raised her concern on polygamy marriage by saying:

*"This practice gives too much room for men to think they don't need their wife's approval to marry another wife so long as it's the community's custom that allowed them to do so. She mentioned, the problem is that, you can see those who are in the heart of these practices are the top states official who instead can set an example of ending this backwards customs for the other state's citizens to follow suit instead, they chose the opposite and it*

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<sup>192</sup> Ibid CEDAW GC 19, Para 16

<sup>193</sup> Special Rapporteur on violence against women, 2004, available at <https://www.un.org/press/en/2004/hrcn1074.doc.htm> May 22. 2018.

*make it difficult for the others to break away from it so long as those in the government positions are still practicing it. She suggested that, for the laws to bring real change in the communities, those legislating and enforcing them should show willingness to obey and adhere to them and they need to create and awareness and educate the mass populous about the benefits they bring and by doing that, better protection would be accorded to the needy and attitudinal change would follow.”<sup>194</sup>*

This is in a direct contradiction not only with state’s constitution but also federal constitution that stated that, all citizens, organs of the state, political organizations other associations as well as their officials have the duties to ensure the observance of the constitution and to obey it.<sup>195</sup> As a result, the state is under duty to enforce the rights of women and to eliminate the influences of harmful customs, laws and practices that oppress or cause bodily or mental harm to women as prohibited.<sup>196</sup>

It is also a concern because it’s against the obligation Ethiopia had entered and since polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitution guarantee equal rights permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention.<sup>197</sup> It can be noted that, the illegally of practice through laws is not a recent introduction in Ethiopia legal system. It was included in the Civil Code of the Empire of Ethiopia that bigamy is not allowed by law but almost sixty years later, the practice is very much at large. These show the importance and the

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<sup>194</sup> Nyabiel Law, focus group discussion participant, April 14, 2018.

<sup>195</sup> FRDE Constitution Article 9 (2).

<sup>196</sup> Ibid Article 35 (4).

<sup>197</sup> Ibid CEDAW GC 19, Para 14.

recessive nature of local's customs, traditions and cultures had in overriding the legal aspect of protection.

As to the factors that hamper the implementation of the rights of women, expert from the State Council Women's Unit office have this to say,

*“There are many challenges. Not only that, some culture and custom are more against what we called human rights, but an economic challenge is the main threat. Marital rights or women's rights in general are more implemented when people are in a position of knowing their rights which is not the case here in the region and therefore, the state is under burden to educate and create an awareness to its very vulnerable population like women who have been subjected to customs that do not allow them to realise their full potential. Another challenge for the realisation of the rights is the communities' attachment to their local customs which are more against the ideas of equality between both genders. With this attitude in mind of the most educated population in the region especially those who are at the very top of the state administration, it's not hard to assume that, there would be no real equality or equal enjoyment of the rights as mentioned in the state constitution. As to my conviction and understanding, with the availability of budgets, we can educate through the expansion of schools and adult educations and reach to grassroots level to create awareness about the important of equal treatment and therefore a lot of females would know their rights and claim it when possible through any mean at their disposal.”<sup>198</sup>*

For this state official to acknowledge the economic hardship women are compared to male counterpart, women facing economic hardship after the dissolution of marriage or similar partnerships is also tremendous.

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<sup>198</sup> An expert Interview with Ojullu Nyikuar, State Council Women Unit head. April 6. 2018.

Knowing the effect it create on the enjoyment of the rights as the participant raised above, one author on human rights have this to say, “he is reminding us that tradition is a thing “made” and “remade” based on generational will and “critical evaluations.” Tradition is not an automatic or natural, inherent progression; it lives only through the deliberate considerations of proceeding generations.<sup>199</sup> Meaning, the customs and traditions that are discriminatory to women in the region can be changed through the work of the government and in collaboration with the communities to realise the enjoyment of the rights in the constitution and family law.

#### **4.2. Institutional Roles in Implementing the Rights**

Among the institution that work with women rights implementation which include marital rights are; Women and Children Affair Office, Sub office under Human Rights Commission, special unit like that of Women Unit and Women and Children Affair Standing Committee under the Regional Council and some local NGOs working in collaboration with these Institutions.

##### **4.2.1. Women and Children Affair Bureau**

Among many roles entrusted to their office is to deal with the implementation of women’s rights in general. About marital rights, an expert from the office narrated that, this is the area where the important of their work come into play provided that, many of the help and advices they give are being thought by those in marital relationship and during divorces. He continues to say, their work is wider by also proving protections to those women in refugee camps through the collaboration with NGOs like UNHCR and others working in the area.<sup>200</sup> The facts that they extend the protections to refugee women can be understandable provided;

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<sup>199</sup> D. Soyin Madison: Act of Activism; Human Rights as a Radical Performance, (Cambridge University Press, New York 2010) 41.

<sup>200</sup> Ibid (n 172) Interview with Mr. Okello,

many of the rights in our constitutions are not just for citizens to enjoy but also foreigners. It's true that the FDRE Constitution tried to make a distinction about the rights that should be enjoyed by our citizens and those together with foreigner but that division of human and democratic rights never holds water provided that, those found under the second category of rights are also human rights and are enjoyed irrespective of any distinction.

For example, the wording of the Constitution's article 34 read; men and women, without any distinction as to race, nation, nationality and religions ... have equal rights while entering into, during marriage and at the time of divorce and that, laws shall be enacted to ensure the protection of the rights and interest of the children at the time of divorces. The wording of this provision is also echoed by the State Constitution's article 35 (1) without making any change to it. That is why, state family code have acknowledge that, it should be applicable to the marriage celebrated outside the states' jurisdiction so long as they did not contradict our Ethiopian values and customs and that the regional courts should have power to adjudicate on the disputes by applying the laws where the marriage was entered in case the parties to the marriage have made an agreement prior to their marriage.<sup>201</sup> One State Prosecutor that the researcher interviewed has acknowledged that, they have a mandate to prosecute once the case reach them either through the NGOs working in the Camps or the State's Police investigation and they treated the case that come out of the camps setting like any other normal citizens and persecute depending on the level of crime whether it's a petty offence or it's related with domestic violence against women to the serious murder cases.<sup>202</sup>

Having this noble task to spearhead the enjoyment of the rights irrespective of their background, the established women's rights-oriented institutions such as the Women's Affairs Office and the Women's Affairs Departments have suffered from lack of capacity

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<sup>201</sup> The Family Code of the Gambella peoples' National Regional State, Proc. No 68/2000, Article 8 (3).

<sup>202</sup> Interview with, Mr. GatLuak Chuol, Prosecutor with the State's Justice Bureau, now office of the States' Attorney General, May 22. 2018.



notably human and financial resource.<sup>203</sup> An in support of this, despite the facts that there are policies, strategies and laws that are designed by the federal as well as the regional family law though not translated to the local languages, the bureaus' capacity to reach out to the needy like those in rural areas is limited due to economic financial constraints. It's hard to reach to the grassroot to implement these laws and strategies and that created a gap in implementing the marital rights.<sup>204</sup>

One instance that show the collaboration of the Bureau with other NGOs for the protection of the women in general regionally is the establishment of some sub offices outside the main town of Gambella to fast track the resolution of the disputes happening to women in marriage and also in general, women's rights enforcement and more on violence against women and cross border child abduction. The same officer I interviewed from the office have this to say,

*He acknowledged the contribution from the Federal's Ministry of Women and Children Affair, he have the conviction that, they are in a good relationship and they always give training to the regional office's staffs and they always made a proposal for special training and asking for extra help in relation to the lack of budget and with the help of the Ministry, Some Zonal Administrators are trained so that they would carry out the same messages to their respective administrations and also, the Ministry in collaboration with women and children affair have established a one stop Centre in the Region last two year and it deal with domestic violence and other related women rights and that stop Centre work in a broad based manner to which they included the complains that are faced by the refugee women and the office have been worked with certain organisation like that of UNICEF and UNHCR.*

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<sup>203</sup> Ibid (n 93) 360.

<sup>204</sup> Ibid (n 172) interview with Mr. Okello.

Much of the work the Women affair is doing is providing material help to women by giving food related assistants to the families who are in dire need of it and it's women that needed the help themselves who apply for the program having made clear the circumstances they are in especially those single mother who are in charge of raising their children alone without the help of the fathers after the divorces. It's true that, some father after divorces may be willing to give part of their salary to maintain the children but with other families they have being taken into consideration, the amount given for child maintenances is not enough to provide them with the subsistence need and that is why the Office have used this program to help the women going through that circumstances.<sup>205</sup>

#### **4.2.2. The Role of the Human Rights Commission and Regional Office in the Implementation of the Rights**

Its head office is located in Addis Ababa and now it expands and established a sub office in Gambella Regional State and is working as a federal institution though located in the region.

Human rights commission is established to spearhead the implementation of human rights in general without regards to any distinction. *“The goal is to jointly build one political community founded on the rule of law, as one of the basic objectives of the nations, nationalities and peoples of Ethiopia and this objective is to be achieved by guaranteeing respect for the fundamental rights and freedoms of the individual and of nations/nationalities and peoples”.*<sup>206</sup> *“And that the Constitution of the Federal Democratic Republic of Ethiopia guarantees respect for peoples' rights and freedoms and provides that Federal and Regional government organs, at all levels, and their respective officials shall have the responsibility and duty to respect and enforce said rights and freedoms.”*<sup>207</sup>

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<sup>205</sup> Ibid

<sup>206</sup> Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, Preamble Para 1.

<sup>207</sup> Ibid Para 3.

The objective of the Commission shall be to educate the public be aware of human rights see to it that human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated.<sup>208</sup> As mentioned above, the main purpose to the establishment of the Commission is to further the democratic practice and protection of human rights and that all the officials irrespective of their ranks should therefore observe the laws and make sure everyone get the protection they deserve.

Among many duties entrusted to the Commission, educating the public, using the mass media and other means, with a view to enhancing its tradition of respect for, and demand for enforcement of rights upon acquiring sufficient awareness regarding human rights is one way in which implementation of the rights should be made<sup>209</sup> and this aspect of their duty is very important provided that, we are living in a societies where mass number of the population is illiterate and human rights work best in community that have better educational level.

The Officer from the Commission that headed the women and children affair directorate narrated that, *With the issues of caring out the training or awareness creation to the women about their rights, she elucidated that, though some of the zones and weredas maybe far away and difficult to access due to lacks of roads and insecurity, they tried to reach to the grass root through their administrators. The office gives training to the concerned officials and those officials will in turn carryout the training in their local woredas/kebeles administrations.*<sup>210</sup> But she acknowledged that, *they do not have any reliable information as to the feedback whether the training they had given is making any real impacts in creating awareness to the community.*<sup>211</sup>

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<sup>208</sup> Ibid Article 5.

<sup>209</sup> Ibid Article 6 (3)

<sup>210</sup> Ibid (n 173) Interview with Mrs Ariet

<sup>211</sup> Ibid.

Having acknowledged the facts that, a lot of women in the region don't know what their rights are and whether they can have recourse as to the violation happening to them, the Women Unit office has try to keep in touch with the relevance bureaus and local NGOs to create enough awareness and sometime to brought an actions to the accused if it's in their power to do so. But the legal knowledge is very slow in penetrating in to the local customs people have and therefore, a lots of violations of the rights are considered as within the realm of family domains.<sup>212</sup>

Concerning the issues of standing and how they intervened in case there is a violation of women's marital rights like those of domestic violence, *"she acknowledged the low economic status and lack of education that the women are in and since there is a reluctance on the part of women to report their grievances to the concerning officials and institutions, she said, that is where their Bureau intervene when the information reached them and with collaborations with the women and children affair bureau, they would try to negotiate between both couple and if the case cannot be resolved or if the husband does not cooperate in their procedure, they would bring the case before the court and make sure the wife get the decision depending up on the evidence they have so that, the vulnerable party like women and children can get the protection they needed."*<sup>213</sup>

The establishment proclamation to the Commission gives a wider standing to the official working with the commission and also third party who wish to bring the case to the attention of the court and other laws enforcement institution. A complaint may be lodged by a person claiming that his/her rights are violated or, by his Spouse, family member, representative or by a third party.<sup>214</sup> This wider standing entrusted by the proclamation is good to expand the

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<sup>212</sup> Ibid (211)

<sup>213</sup> Ibid.

<sup>214</sup> Ibid, Human Rights Commission, Article 22 (1).

protections to those who may not have the means to reach the concerning authority and that the institution brought complaints on their behalf.

#### **4.2.3. The Role of Courts**

Courts' role in the implementation of any rights is very important not just women's rights but all human rights.<sup>215</sup> Working towards the protection of human rights ought to be the paramount goal of any Court of the country.<sup>216</sup> The fact that there is a law on paper does not guarantee the enjoyment and implementation of rights. One of the duties of the State when entering an international treaty is a duty to enforce and that is being done through different mechanism which among include, the legislation of the laws, establishment and strengthening of institutions to enforce them on the ground. That is how an institutions like Human Rights Commission, Ombudsman and the legislations like that of family code in federal and State, modern criminal laws that prohibited sex related crimes come into force. With this action taken by our government and state's counterpart being recognized, it's not without critic that some state felt short in giving protection to the concerned individual like women through the laws and institution they created. That is why the researcher felt it's important to highlight on the role of courts.

Through the carrying out of this research, it comes to the attention of the researcher to analyze the laws that give power to the State courts and that there are two state courts establishment proclamations. One is for the normal state courts which among many include, the Wereda court which stand as First Instance Court, State high Court and State Supreme Court.<sup>217</sup> The other is for the establishment of the Customary Court or Kebeles Court.<sup>218</sup> With

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<sup>215</sup> Role of Courts in Protection of Human Rights, (Special Address by Hon'ble Mr. Justice P.Sathasivam, Judge, Supreme Court of India, 2012) 1, *available at* <http://tnsja.tn.nic.in/article/Role%20of%20Crts%20in%20Prot%20of%20HR%20PSJ.pdf> > May 22, 2018.

<sup>216</sup> Ibid 2.

<sup>217</sup> Gambella National Regional State Courts Establishment Proclamation, Proc, NO. 7/1999.

both tier of courts having power to interpret the laws and expands the dispensation of justices to the general populous of the state. As to the latter court which is the kebele court, there is need for access and expediency of justices and that, the state regional constitution encourages the establishment of customary courts or local kebele administration courts where the rural population who are sparsely located and have accessibility difficulties due to distances and lack of roads that connects rural areas with town, the State Council established this proclamation to legitimize the power that should be exercised by the kebeles judges and how the courts should be run.

Having agreed with the establishment of the courts due to the existing economic conditions and lack of man power in the region, the proclamations lack in-depth on how their establishment should contribute to the bringing of the democracy and human rights protection that the state is yearning for as mentioned in its provision number 4 subs 1, which; read, “The reason for the making of this proclamation is for the implementation of the interest and benefits of the recognised human and democratic rights by the FDRE Constitution and Gambella peoples National Regional State Constitution.” And continues in sub 2 to say, the reason for the establishment is to bring understanding and peaceful co-existences among the residences living with the kebele administration.

What interested the researcher to deal with this proclamation is the broad function granted to the local kebele courts. According to the preamble of the said proclamation, it granted the court adjudicatory power on criminal and civil issues and the kebele administration nominate and elect the judges and those elected judges precise on locals social courts. In state like Gambella where the mass population are illiterate, leave alone legal knowledge, it's with no surprise that, lot of family issues and disputes are regulated through this courts and almost all marriage related issues especially, entering of marriage and divorces related issues are

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<sup>218</sup> Gambella Regional State, Kebeles, Administration court establishment proclamation, Proc, No. 19/2001

regulated by the kebele courts. And within disputes like this, there is a need for judges which are acquainted with not just Ethiopia laws but also international human rights laws provided child related rights are also in questions and should be handled with knowledge to enforce both constitutions and other laws like family laws that enshrined that, the best interest of the child can be always put into consideration. Having mentioned that the child related issues are at stake, one instance that is very striking in term of the protection to children is how the Kebeles Social court can decide to give the child to the mother in case the father refuse and acknowledged with signature that he the father has nothing to do with the child even in the future when the child become of age. We can say that, it resemble disowning in the normal family code but in a strange way because in term of disowning, the father may proof through evidence that he is not in fact the father, but here, where the father does not dispute the legitimacy of him being the father but on the sense of not wanting to marry the mother and that decision should also apply to the child because those ascertaining the disputes insist in asking whether he, the man will have nothing to do with both the mother and the child and that, his reply when negative will be recorded.

The power and influences the courts like this have may be overlooked but are very important because they are in fact the one that are in contacts and regulates issues relating to families disputes, domestic violence and with its judges are elected based on their communal knowledge and their ages (being elders), it's true that, traditions and cultures may sway their thought and may lead them to lean in the directions of customs which are always male chauvinistic on giving decisions. A judge with 01 kebele have narrated that, they are in charge of every family issues being brought by the resident of their kebele and they handle the case from the celebrations of marriages up to divorces and child custody dispute though

he acknowledged he does not have legal knowledge since he only finished primary education certificates.<sup>219</sup>

Also the power of normal court especially Wereda Court that have power to hear families disputes, it is clear that, they apply the existing family laws and comparatively to the Kebeles courts, they are acquainted with the necessary knowledge of laws having taking the status of the region in to consideration. As to what laws they apply, First Instance Court Judge has narrated to me that:

*“Previously, they had been applying the old Civil Code that deals with family issues regulation until recently after coming to force of the regional family code. He have said that, though there been discrepancy between the State Constitution with some of the provisions in the civil court, they use to try aligning the laws with the constitution to meet the better protection of the family and it was an arduous task provided that, it give them extra burden on their work force. So now with the existence of modern family law, the court use the law to determine the issues related to marriage and child custody and also related to property divisions.”<sup>220</sup> But on the custody of the child, the same judge acknowledged that that, instead, they only give order for the share allotted to the child or children be deducted from the salaries of one the family with job.<sup>221</sup>*

It’s not always that women brought cases before court dues to lack of awareness about their rights. Instead some of women’s family cases reach the court through other bureaus and some NGOs working with women rights promotion. If its domestic violence, the case maybe a criminal one and it’s the regional or kebele police that handle the issues and that will be a criminal proceeding and should be deal with through criminal bench and if its related to civil

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<sup>219</sup> Interview with Biel Jang, a judge with 01 Kebele, Gambella Town, April 7. 2018.

<sup>220</sup> Interview with the President of the First Instance Court Judge, Ujulu Olok Alang, April 4. 2018.

<sup>221</sup> Ibid.



issues like violations of the basic elements to conclude marriages, especially legal ages, third parties like government prosecutor should bring the case before the court and the court is entitled to make the marriage illegal since it's against the laws but he acknowledges the fact that, though the law does not allow it, people do not bring the issues before the court and that make it hard for the laws to bring real change in the community. With regards to the customs, even though the laws does not allow to marry not more than one wife, it's happening and it's not often that the wife bring the issues to the attention of the court or laws enforcement organs since the issues are tried upon complaints and with the party having interest to the case not raising the issues, the court or other party cannot substitute them.<sup>222</sup>

As to the assertion mentioned here about whether the laws do not allow marrying more than one wife, the Family laws is not clear because it did not mention it anywhere in the code that bigamy is not allowed rather, it make it as one condition for the oppositions to marriage and the person whose interest is affected can bring the issues before the official in charge of the celebration of marriage claiming that an individual is bound by the bond of the previous marriage.<sup>223</sup> The omission is made intentional because the regional family code is more of a copy pastes of the federal family laws which is clear about the issues of bigamy and with a lots of provisions being more of the same and for that specific article being left out show that, the state is in the favour of polygamy and they, [the legislators] know that, it is not a lots of women who would objects to the second marriage knowing the influences the local customs has on them and lack of education and rights awareness.

It is true that, a lot of Bureaus are working in the area of gender and vulnerable people like children and with their contribution not to go unnoticed, but, it's the court that have a final

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<sup>222</sup> Ibid.

say in actual implementation of the rights by giving decisions and those offices will serve as an enforcing organs by making sure the decisions given by the courts are implemented.

Judge Ujullu has this to say about the power other institutions have in regards to women's' rights implementation:

*“Though the institution like women and children affair try to bring together the couple in case they are in disputes, since they don't have power to make a decision instead of reconciling them, they forwards the case to the court so that the court can make a decision and if its child maintenances, a decision is given so long as the parents have job or one of them have job and the amount to be paid in maintenance of the child/children is determined based on the amount of the salary he/she earn and the number of the family members depending upon him/her but the problem is that, father does not feel to disclose the job they haves unless the couple claiming knows it. Concerning the division of common property, the couple are not always cooperative and men have resistance claiming the payment they have made to the family of the wife during marriage and they are not entitled to any share after divorces.”<sup>224</sup>*

As a result of the resistance especially in shared responsibility and property ownership, Organization like that of ENDA have try to come up with proposal on a way the rights of women can be respected by trying to regulate starting with the amount of dowry to be paid to the bride's families and have staged constant dialogue with the communities leaders and church elders.<sup>225</sup> The same Organization has tried to educate the mass about the benefit of education for girl child and women in general and the effect of gender based violence and FGM.<sup>226</sup> What the researcher find really interested is that, the same organization had given

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<sup>224</sup> Ibid

<sup>225</sup> ENDA Three Years Strategic Plan, August 2016-2018.

<sup>226</sup> Ibid.

training for those judges working in locals kebele courts and to enforce their proposal by distributing the memos on the amounts of dowries (bride price) to be paid and what kind marriage celebration to be encouraged. Their proposal is that, twenty five head of cattle for every type of marriage be it civil, religious or customary and with other illegal marriage like early impregnating and through abduction to be allotted with higher amount of cattle to be paid so that people will be forced to resort to legal marriage supported by the communities.<sup>227</sup>

The message an organization trying to pass may have more penetration on the communities comparatively to the force of laws enforced through court. The reason is that, they have large audience at local churches and they made it a routine awareness creation through faith based study and understanding and also, as a part of their church policies and that, it should be observed through every marriage that is celebrated through church procedures.<sup>228</sup> That is why, their work is important in decision making by courts that are based in rural areas and influenced by the local customs and traditions like that of local kebele courts and that, more protection would be granted to women's rights especially, observing concern to enter into marriage and distributions of properties.

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<sup>227</sup> Ibid (n 182) Interview with Mr. Ding.

<sup>228</sup> Ibid.

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5. Conclusion**

Marital rights are those rights that are enjoyed when one entered into marriage life. They can be found from the international treaties obligations like UDHR, ICCPR, CEDAW, ACHPR, etc. to which Ethiopia is a party to and are also incorporated into our national laws by the wording of our constitutions both federal and regional one. It start with the rights to make an informed consent freely when entering into marriage once he/she reached the full legal age of entering marriage as prescribed by the federal and state's family code. The reaching of that age is so important because it allowed an individual to make a decision knowing the consequences that may follows.

With that allowed, it therefore show that, both the parties to the marriage are equal in marriage and that both their decision should have equal weight irrespective of their gender or economic independence so long as they are marriage couple. As of laws, they have rights to decide on where they can live or to decide on their abode, decision concerning their children or the financial aspect in their family.

With the existence of laws and institutions that is enforcing those laws, it can be said, that the state is trying to carry out her obligation and that, enforcement and full implementation of rights is not an overnight job. But the challenges posed by the people's close attachments to their traditions and customs cannot be disregarded since, those that are in charge of enforcing the laws regionally are the one the customs have too much influence on and that, their actions of bringing the actual change to the practices cannot be achieved.

In a State like Gambella which is less developed compared to the rest of Ethiopian regions and still have low illiteracy rate, public infrastructures at their minimal level with vast amount of its populous living in rural areas and sparsely populated and difficult to connect with the main town due to lack of roads. Situation like this make it difficult for implementation of the rights to reach to the people that needed the protection most.

With lack of education, it's hard to think about real implementation of the rights when the people having the rights don't even have an ideas of what the rights is actually is. The institutions that are working in the areas to educate on the rights and demanding the implementation cannot reach to those on the grass roots unless there are roads and enough budgets to expand their work to the areas. Also the impacts of traditions and culture practiced in the region that are against equal enjoyment of rights should be considered with care and to give deaf hear to the effects they create in the implementation of the rights amount to ignorant and therefore tremendously does not allow the purpose the laws strive for to be achieved. Local governments tolerates the traditions that are bottleneck to the very change and despites the facts that some laws are legislated for equal protection of both men and women, still, lack of awareness and education and non-action of states have continue to acerbate the issues and that, much is needed to be done to bring the practices to bed and for women to exercises their rights in equal manner with men.

### **5.1. Recommendations**

- The government should expand rural and urban education and that adults education should also be encouraged so that, elderly part of the state population who have less illiteracy rate and that they should be keep informed about their rights and where they should address their complains to. Women's education at all levels should be

promoted as that will ultimately lead to better representation and social status, resulting in greater contribution by women to national economic development.

- Institution like women and children affairs bureau in the region need strengthening and for their work to reach to the grass roots level and that they should educate women about their rights and what amount to domestic violence and encouraging them to reports to authority about the abuses happening within their domestic home.
- Regional state legislature need to regulate practices that have effects on rights enjoyment in equal footing and that, practices like dowry marriage which is common among all the state ethnicities that encourage men to be over controlling on their wives should be regulated to the minimum level where it would not amount to the violations of laws and rights.
- Practices like dowry (bride price), polygamy, wife swapping needed to be regulated by the state laws maker provided that, it disregard the equality aspects guaranteed to both gender by the laws. The facts that the states' family code is silent about the status of the bigamy is concerning and in a pressing situation like this, laws needed to be clear as possible to make sure that a gap like this is not exploited.
- State Council which is in charge of the administration of the state and the release and allocation of the budgets need to allocate enough budgets to women's issues. Without enough financial prowess, it will be difficult to realise the rights of women even though there are enough laws and policies for the implementation of women's rights provided that, they just be on papers without anyone knowing about their existence.
- The state practices of not making enough publications to the laws and policies concerning women's issues should change and that, enough copies needed to be made, especially the existing family code which is literally un-available to an important bureaus and offices like Women and Children Affair bureau, human rights

commission, school of laws and other institutions and NGOs that are working in the areas. These practices of keeping the legislations a mystery in the region should change and the laws needed to reach the people who can make the most use out of it.

- Power and function of the court like that of local court in the kebeles (social court) needed to be revisited and equipped with people who have legal knowledge provided that, they deal with the enforcement of human rights in a daily basis and that it impacted on people like women whom their case are mostly heard in Kebeles level.
- Federal Government should ratify both CEDAW Protocol that allow launching individual complaints before the committee and ACHPR Protocol on Women to show her willingness in spearheading women issues.

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## **Appendix I:**

### **Informed Consent Form**

My name is **Gatkek Kuajien Chuol**, a Masters of Law Student from Addis Ababa University - School of Law. I am undertaking my research on assessing “*The Implementation of the Marital Rights of Women in the Region*”, for the purpose of graduation requirement. Participation in this research process depends on your written informed consent. The respondent is free to skip any question or withdraw from the entire process as he/she feels at any time. Your willingness to provide answers to these questions will enhance the researcher to understand the roles played by the State government, The State Council, Women and Children Affair Bureau, Courts and NGOs working in the area. I would like to assure you that any information you share with me will be kept confidential and will only be used for academic purpose in line with research ethics. Your chance to sign on this consent form declare your understanding to the purpose of the research as stated above and acceptance to take part in this process.

**Thank you for your cordial cooperation and being a part of this research!!**

**(1) Participant**

**2) Researcher**

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**Appendix II:**

**In-depth Interview Guide for State Council Officials**

1. Name: \_\_\_\_\_

2. Position \_\_\_\_\_

**1. Factors affecting the Implementation of the Marital Rights of Women in the Region**

1. May you please tell me what the state have done for the realization of women rights in marital relationship?
2. May you please tell me what laws are legislated for the protection of women in marital relationship having regards to cultures of the region that look down on women?
3. May you please highlight the factors that hamper the implementation of the rights as a laws maker?
4. In case of violation of rights, what remedies do women have as part of the government policy?

5. May you please tell me whether it is the lack of financial capacity that resulted to lack of protection of Women rights in the region? If so, what is the state's plan to protect the women in marital relationship?
6. Does the practice of dowry marriage have effect on the power balance between the couple in marriage? If so, what should the state do to make sure that it does not affect the enjoyment of rights by women?
7. What would you suggest for the better protection of marriage women in near future as part of State responsibility?
8. Is there anything else you consider important and would like to share with me about?

**Appendix II:**

**In-depth Interview Guide for NGOs**

1. Name: \_\_\_\_\_
2. Sex: \_\_\_\_\_
3. Age: \_\_\_\_\_

**1. General Questions**

1. What is the policy in your organization/Community for the equality between both Sexes?
2. May you please share your experiences concerning the challenges affecting the implementation of marital relationship that are brought before the institution/Community leadership?
3. Have you been giving any training concerning the equal treatment about the families in their domestic home?
4. How often do family issues are brought before your office?

5. How do you address the issues and in case you are not able to address it, what does your authority suggest to the couple?
6. Do you feel the government isn't doing enough in protecting women in the region?

**Thank you so much for your time please!**

### **Appendix III:**

#### **In-depth Interview Guide for Women and Children Affair Bureau Officials**

1. Name: \_\_\_\_\_
2. Position: \_\_\_\_\_

#### **2. General Questions for Participant**

1. As an office specifically working for the special protection of women, what are the policies put in place to protect women in marriage relationship?
2. May you please share your experiences concerning the challenges you face in furthering the protection to women?
3. What is your institution doing to bring the practice of in-quality between men and women to an end especially marital in-equality?
4. Have you been giving special training to women in order to realize their rights having regard to the lack of education of much of the female population in the region?
5. Who do you address your complaints to in case your office feel the State government isn't doing enough to protect women in marital relationship?
6. What can you recommend to the State and Federal government for the further Protection of women in general in case you feel its lacking now?

**Thank you so much for your time please!**



## **Appendix IV:**

### **In-depth Interview Guide for Experts**

1. Name: \_\_\_\_\_
2. Sex: \_\_\_\_\_
3. Occupation/Title: \_\_\_\_\_
4. Organization/Institution: \_\_\_\_\_

#### **1. General Questions**

1. May you please tell me how you understand/define marital rights of women?
2. Is there any framework and policy or guideline on the implementation of the women marital rights in the region?
3. Based on your experiences, can you please tell me what challenges usually is faced in the implementation of the rights?
4. What can you tell me about protecting the best interest of family at large as it can contribute to the economic, social and political transformation of the region?
5. As an expert, can you please tell me how the protection of marriage women would be improved in the near future?
6. What can you suggest as an individual with special knowledge/expertise in this area for the protection accorded to women in marital relationship to be realized in the region?

## **Appendix V:**

### **In-depth Interview Guide for Court Judges**

1. Name: \_\_\_\_\_
  2. Bench: \_\_\_\_\_
- 
1. What law does the court apply in case of family disputes?

2. Is it often the family brought their issues to court or other organization brought family complaints before the court?
3. Does the court refer to federal family code in interpreting the laws on family dispute or which law does the court apply in making decisions?
4. Does the court work in collaborations with other gov't institution and NGOs in relations to women related disputes, e.g. domestic violence?
5. How does the court reconcile the local customs with laws in-case of contradiction?
6. What would you suggest for the state government to do to provide a better protection of women in marital relationship in the region?

## **Appendix VI:**

### **Focus Group Discussion**

#### **General Questions for the Participants**

1. Do you think your marital rights are respected and fulfilled in the region?
  1. In your marriage relationship, who is making the most decision?
  2. Do your husband approve for you to continue with your education in case you wanted to further it?
  3. Are the husband controlling because of the customs/traditions or is it because they are the providers of the families?
  4. Do you think the practice of dowry marriage has much influence in the decision making in your family? If so, what do you suggest for the practice to change?
  5. Do you think enough progress is being made for the past years in term of enjoyment of the rights?