



Between Modernism and Heritage

**The application of the parallel legal system to
the Oromo Women of Ethiopia**

SIHA

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Foreword

It has been a long and fascinating journey to prepare and compile this paper. It was, simultaneously, an important learning process for the SIHA team. The privilege of gaining insight into the social functioning of the Oromo in Ethiopia, one of the biggest nations living in north and eastern Africa, and to be introduced to their intriguingly complex cultural system is without question worth all the hard work and effort.

Based on SIHA's work experience in the Horn of Africa, the fundamental hypothesis of this paper is that, violence against women is generated and processed through deeply entrenched societal behaviors and attitudes.

Lately, the notions of relativism and cultural specificity have become tools in the arguments used by many actors to fight against concepts of both individual and civil & political rights. While these arguments proclaim the respect of others culture, from our perspective as a coalition working for women's human rights, this notion implicitly undermines and subordinates repressed people living under discriminatory cultural laws and practices. Women constitute one of the key groups of such repressed people. That said, we are aware that the dynamic of social change in Africa, like in any other part of the world, is driven by the continual resistance by women, ethnically and culturally alienated groups, and the poor, which speaks clearly to the universality of human rights.

Both formal and traditional social and political systems in the Horn of Africa are to a large extent denying women equality and entitlement to fair treatment and access to the resources of their communities. At the same time, those systems are increasingly adding to the workloads and the economic responsibilities of women. The promotion of parallel legal systems as a means to enhance women's access to justice intentionally turns a blind eye to the subordination and exploitation of women within traditional institutions. Both formal and customary systems are responding to the global economic changes, which are placing women progressively at the center of productivity and economic development processes. This also serves to deny women equal access to justice by insisting that their legal existence should be governed by traditional institutions that have not developed the necessary tools to address the evolution of gender roles and women's human rights, and which still operate from discriminatory principles.

Ethiopia as a country has one of the most comprehensive and equitable criminal codes in terms of addressing violence against women, and the country's family laws are very much up to international standards, especially when compared to other countries in the region. However Ethiopia is also one of the most culturally diverse countries and one of the few ancient nation states in Africa, meaning that it is prone to the development of parallel legal systems as individual cultures within Ethiopia promote their own customary practices.

In this study we have chosen to look at the application of parallel legal systems in terms of dealing with violence against women in just a limited number of communities, within the massive Oromo region, was mainly due to restricted resources and the obstacles of communication with field researchers. SIHA has, more specifically, tried to consider the application of different local justice systems operating within Oromo communities and how these systems address violations of women's human rights. Although the field researcher did not originally look at the religious diversity of the Oromo people thus omitting the role of Islamic Sharia courts, we at SIHA felt that it is vitally important to highlight this aspect. In particular, the growth of Salafi Islam across the Horn of Africa and the impact of Sharia courts are essential considerations when confronting the challenges faced by Muslim women.

Furthermore, this paper highlights the different forms of violence against women in Oromia, the formal legal framework in Ethiopia in general and the different local legal systems that exist in Oromia. It discusses the role and functionality of traditional institutions in relation to violence against women and, finally, it will consider women's opportunities for fair and reliable recourse to both traditional and formal systems of justice in Oromia.



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SIHA Secretariat

Glossary

<i>Abba Gadaa</i>	Male elder who is chief of the executive in the Gadaa system (see below)
<i>Derg</i>	Military regime that ruled from 1974 to 1991 following the end of the rule of Haile Selassie I
<i>Fira</i>	Sub-clan members
<i>Gadaa</i>	Unique socio-political structure of the Oromo people that also plays the role of a customary legal institution
<i>Gumii/GumiiGayoo</i>	Legislative organ of the Gadaa, acting as a 'parliament' to the executive. Every eight years the GumiiGaayoo sits to revise and formulate new laws.
<i>Hiba, Wakf</i>	Inheritance/gifts under Sharia law
<i>JaarsaBiyjaa</i>	Group of respected male elders who arbitrate in disputes. Literally translates as 'elders of the soil'
<i>Qaallu/Qaalltti</i>	Male/female mediators who maintain the relationships between saint-like divinities and the Oromo people
<i>Salafism</i>	Form of Islam where the earliest Muslims are seen as true models of Islamic practice. Nowadays associated with a particularly strict and dogmatic practice of Islam.
<i>Shemageles</i>	The JaarsaBiyjaa (see above)
<i>Waageffannaa</i>	Traditional Oromo religion
<i>Waaqayoo</i>	God
<i>Wahabism</i>	Strand of Sunni Islam, related to/a part of (but not synonymous with) Salafism (see above)
<i>Warra</i>	Family members
<i>Woreda</i>	District
<i>Yaa'a</i>	The Abba Gadaa's (see above) senior councillors in the Gadaa (see above) executive

Abbreviations

<i>CEDAW</i>	The Convention on the Elimination of All forms of Discrimination against Women
<i>DHS</i>	Demographic and Health Survey
<i>EPRDF</i>	Ethiopian People's Revolutionary Democratic Front
<i>EWLA</i>	Ethiopian Women Lawyers Association
<i>FDRE</i>	Federal Democratic Republic of Ethiopia
<i>FGD</i>	Focus Group Discussion
<i>FGM</i>	Female Genital Mutilation
<i>ICHRP</i>	International Council on Human Rights Policy
<i>NGO</i>	Non-Governmental Organisation
<i>SIHA</i>	Strategic Initiative for women in the Horn of Africa
<i>UNICEF</i>	United Nations Children's Fund
<i>VAW</i>	Violence against Women



1.1 Introduction

Ethiopia's long, rich history entered a new phase in 1995 when the Federal Democratic Republic of Ethiopia was officially established by law as the current constitution was enacted. As is common with many traditional communities in Africa where the emergence of the modern state is a relatively new phenomenon, the people of Ethiopia now find themselves in a world governed by three forms of law: the institutions of the state, of religion and of traditional culture. On the one hand, the state's formal legal system is in place, with the introduction of the 1995 constitution and subsequent revised legal codes. On the other hand, customary laws based on centuries-old customs and traditions are still significant and relevant in the everyday lives of Ethiopia's diverse populations. As the constitution allows and even promotes the use of customary laws, this parallel legal system creates confusion and friction between the formal and customary systems that manifest themselves in several forms. One of the most common instances of such friction is found in the way in which women's equality and rights are protected.

In a society where patriarchy underscores the relationships, roles, and attitudes of women and men, the formal legal system is crucial because, as we see in Ethiopia, it upholds the rights and equal status of women. A parallel legal system of the type that exists in Ethiopia creates confusion and uncertainty for women seeking justice. Customary legal systems and formal legal systems provide different definitions of the rights and equal status of women; the protection of women's rights is therefore uneven and unclear. Customary laws and institutions in strongly patriarchal societies are naturally weighted in favour of men. The lack of coherent regulation of such biases by the formal legal system means that it is highly likely that women may be subjected to unfair and unjust legal decisions under customary law. These decisions can have powerful, negative repercussions on their lives and sometimes those of their children and family. Furthermore, cultural views that historically position women's and family issues as private matters make the need for objective and equitable public legal institutions even greater. If women are to be able to seek justice, the legal system must be consistent, accountable, and accessible to the public, whether that is with regards state or customary laws. The existence of an ambiguous parallel legal system is anathema to these goals.

In order to explore the implications of this parallel legal system, the researchers selected the Oromia region of Ethiopia, in which the Oromo people reside, as a case study. Ethiopia was chosen because it presents an ideal case study to analyse parallel legal systems: the Ethiopian constitution fully protects the rights of individuals, and specifically women, but also condones the use of customary law systems that do not uphold the principles of individual and women's rights as enshrined in the constitution.

The Oromo people were chosen for three primary reasons. First, the Oromo make up the largest ethnic group in Ethiopia. Secondly, in our consultations with SIHA members, they suggested this location for the research because the conclusions would have an impact on a broader segment of the population. Lastly, Oromo customary law is employed, albeit to

varying degrees, throughout the Oromia region. The research focuses specifically on the *Gadaa* system, the customary law institution that is most prominent among the Oromo. Within the region, data was gathered and analysed in the geographical areas of Adama, Jimma, Ambo, Bishoftu, Wolliso and Arsi, which are composed of people from the Tulema and Macca clans of the Boorana confederacy and the Arsi clan of the Barentuma confederacy.

The researchers undertook a literature review to provide guidance, insight and background to the themes raised by this discussion. Topics that were reviewed through existing literature include: generalised information on Ethiopia and its political history; ethnographies on the Oromo people written over the past 40 years; formal legal systems in Ethiopia; customary legal systems in Oromo; parallel legal systems in Africa; human, women's, and indigenous rights and the tensions/spaces that arise between them; violence against women in Ethiopia and across Africa; domestic abuse in Ethiopia and Africa; and arguments for/against universalism and cultural relativism. Although some of the literature touches on elements of customary law and women's rights, there is no literature that directly addresses these two issues within the framework of parallel legal systems in Ethiopia. It is hoped that this report will fill that gap.

1.2 Objective and Intended Outcomes of the Study

This study is part of a larger, regional project that is seeking to engage in a capacity building, multi-country research and advocacy programme intent on improving human rights protection for women who are directly influenced by traditional and customary laws in the Horn of Africa sub-region.

The research objective is to identify the implications of customary laws, within the context of the existence of a parallel legal system, which limit the protection of women's rights in relation to problems associated with violence against women (VAW) in the Oromo community of Ethiopia. The discussion seeks to unpack the challenges that confront people, in this case women, when dual legal systems exist. We wish to address the problematic nature of having two legal authorities; that of the state and that of traditional culture. Specifically, we are interested in investigating how these systems impact on women and instances of VAW. As VAW is a known problem in Ethiopia, and is often confined to the family or private domain, we wish to understand how and why it is handled through customary law institutions. We also want to assess what are the differences in how customary and state laws perceive VAW, and how women's rights are compromised by simultaneously operating legal systems and their conflicting interpretations of justice and law? Specifically, what are the implications of customary law for incidents of domestic violence, abduction, forced and early marriage, and rape? Which factors influence a woman's decision to use customary or formal law?

The outcomes that the research seeks to achieve are as follows:

1. To develop an understanding of the complexity and the implications of a parallel legal system and the contradictions that exist between formal and customary laws.
2. To document and share knowledge of the experiences of women both individually and collectively at the grassroots level, to enhance understanding

- and awareness of VAW and of women's relationships within dual legal systems.
3. To bridge the gap between academic research and advocacy campaigns on the ground.
 4. To identify the effects of customary law on formal legal systems and the implications of those effects, and to bring about changes to national legal frameworks in order to prevent specific instances of gender based discrimination in customary law and practices.
 5. To enhance the capacity of women human rights defenders and campaigners to advocate regarding the impact of customary laws and practices, so that their views can influence policy agendas as well as governments and non-state actors at regional, national and local levels.
 6. To alert networks and civil society and human rights groups to these issues and engage them in lobbying relevant governments

The targets of advocacy campaigns will be governments, parallel authorities, tribal councils and other forms of traditional leadership and international and local civil society organisations.

1.3 Methodology

The methodology and research framework that guides this research emerged from a consultative workshop that took place with experts from the region in parallel legal systems, human rights discourse, and women's rights. The research was undertaken in two phases, the first taking place in February 2010. In order for a substantial analysis to take place, a second phase of research was conducted in February 2011.

Qualitative research methods were used because they enabled the researchers to understand the complexity of the dual legal system and how this takes shape within the culture of the Oromo tradition. As women's stories and relationships are deeply personal, employing qualitative research was instrumental to learning about the assumptions and perspectives of the community. As a result, researchers were able to gain access to detailed narrative accounts where themes and patterns of the Oromo tradition illuminated a particular socio-cultural and legal milieu that these women live in.

The qualitative research tools and methods that were engaged were in-depth interviews, Focus Group Discussions (FGDs) and observations. As part of the data collection process, note takings and audiotape recordings were also employed.

An accumulative 'snowball'¹ technique² of deliberate contact with potential sources of information was used. Interviewees and FGD participants were carefully selected using both calculated and 'snowball' sampling techniques. The people that took part in the qualitative research included local elders, government officials, community leaders, researchers, traditional counsellors and their clients, and women at the grassroots level. The researchers purposely recruited these key informants to gain adequate data relevant to the objectives of the research. The researchers tried to take maximum care to involve appropriate tribal and community leaders who are well versed in the Oromo tradition.

¹'Snowball' sampling is a non-probability sampling technique that is used by researchers to identify potential subjects in studies where subjects can be hard to locate, interview, etc. It is usually used in the instance that the study is concentrating on a sub-group of the population. Similar to a chain-referral, after interviewing the initial subject the researcher asks the interviewee for assistance in identifying people with similar traits of interest.

²'Snowball Sampling: AKA Chain-Referral Sampling.' Expert-resources.com.(2008-2012) Retrieved from <http://www.experiment-resources.com/snowball-sampling.html>

The practical data gathering was done at six different sites of the Oromia region: Jimma, Nazareth, Ambo, Bishoftu, Wolliso and Arsi areas. This was arranged to ensure that each of the five sites represented Christian, Muslim and traditional Oromo religion (*Waageffannaa*) adherents.

A total of seven FGDs were conducted, with an average of 8-9 people participating in each FGD. A total of 29 individuals were interviewed independently. Appropriate care was taken in the process to include women, community elders, administrators and other knowledgeable individuals in the FGDs and interviews and to discuss with them in a manner that was sensitive to the information that they were sharing.

Lastly, case studies were gathered and included in order to give a detailed insiders' perspective of real life experiences of women in the region.

1.4 Limitations of the Study

This attempt to understand Oromo cultural systems and institutions – and through them Oromo identity – presented a number of difficulties in the course of the research. These cultural and institutional systems are not static; in fact they are highly dynamic, which creates a number of challenges when attempting to understand cultural systems as they exist today. Moreover, the Oromo people have diverse cultural identities, which mean that they do not perceive and employ customary and formal legal systems in uniformity. This is due to numerous influences, including access to education, access to formal state legal systems, whether one lives in an urban or rural area, which religion one practises, and how geographically isolated the person's home is. The highly diversified nature of the region has therefore limited the researchers' ability to make observations of Oromia as a whole. Instead, the research captures experiences of women who endure varied degrees of inequality throughout the region.

Another limitation of the study is that it focuses on the two forms of customary law in the region, which are the *Gadaa* system (the *JaarsaBiyyaa* and the *Gadaa Assembly* under the *Abba Gadaa*) and highlighted some of the religious laws (the *Qaalluu* spiritual leaders and Sharia law). Limited geographic area and financial and logistical constraints also influenced the capacity of the field researchers. Accordingly, the report focuses mainly on customary laws under the *Gadaa* system. Furthermore, the research was not conducted in the Gujii and Borena regions where customary law is strong, due to additional financial and logistical constraints.

The sensitivity and complexity of debating the issue of customary law posed additional limitations regarding the extent to which women felt comfortable sharing their experiences with us. As we were investigating deeply personal topics, women may not have fully shared all aspects of their experiences. Furthermore, in FGDs, although researchers took every precaution to make sure women felt comfortable when speaking about their experiences, there is a danger that, as in any group setting, power dynamics may have an effect on one's trust and comfort level when sharing and speaking freely.

Existing quantitative data was employed where appropriate, however this study did not undertake its own quantitative analysis. This limits the scope of the study particularly with regards the numbers and percentages of women who use formal versus customary courts in Oromia.

Finally the recently enacted Civil Society Law³ in Ethiopia has severely limited the work of rights-based NGOs and organisations. The problems and even fear that this law has created amongst NGOs working with women and women's rights may have influenced the responses we received during interviews



³ The Proclamation to Provide for the Regulation and Registration of Charities and Societies, No. 621/2009, was enacted on January 6, 2009. A review of the law by the Center for International Human Rights at Northwestern University School of Law (2009) has described it in the following terms: "Key provisions of the proclamation will severely weaken the work of independent civil society organizations, particularly human rights defenders and advocates of democratic governance. One particularly damaging provision of the CSO law prohibits foreign non-governmental organizations (NGOs) from engaging in activities pertaining to human rights, women's rights, children's rights, disability rights, citizenship rights, conflict resolution or democratic governance. Even local NGOs that receive more than ten percent of their funding from foreign sources are considered "foreign" for the purposes of the proclamation. Since the vast majority of domestic human rights NGOs in Ethiopia receive the bulk of their funds from foreign sources, the new CSO law will force them to either close their doors or drastically alter the scope of their work."

2.1 Background to the Oromo



Map of Oromia Region, Ethiopia

The Oromia region in Ethiopia is the largest in terms of both geographic area and population. In fact, the Oromo people constitute one of the biggest ethnic groups in Sub-Saharan Africa. Located in Ethiopia and northern Kenya, they are the most demographically dominant groups in all of Ethiopia, with a population of 27,158,471 (36.7% of the total population)

⁴ Literacy rates are low in the region, with 33.1% of females and 52.6% of males able to read.⁵

The various Oromo institutions are informed by the three main religions; Islam, Christianity and the traditional religion, *Waageffannaa*. Before the introduction of Christianity and Islam, the Oromo solely practiced their traditional religion which involves a belief in one God (*Waaqayoo*). Like many other traditional cultures throughout Africa that have been exposed to Christianity and Islam, “religious and cultural syncretism” has resulted in Oromo’s mixing formal Christian and Muslim religious systems with the traditional beliefs of *Waaqayoo*.⁶

We will also look at the importance of Islamic Sharia law later in the report. Islamic customs and laws play an important role in Oromo – and Ethiopian – society. Ethiopia was the first country to accept the followers of Prophet Mohammed, who fled from the Arabian Peninsula

⁴ Federal Democratic Republic of Ethiopia, *Summary and Statistical Report of the 2007 Population and Housing Census*, Central Statistics Agency: Addis Ababa, December 2008.

⁵ Federal Democratic Republic of Ethiopia *2007 Census Summary Final Report*, Central Statistics Agency of Ethiopia: Addis Ababa, (2010)

⁶ Hussein. J ‘A Cultural Representation of Women in the Oromo Society’, *African Study Monographs*, Vol. 25, Issue 3, (2004) p104-105.

as a result of persecution against them. At that time Ethiopia was largely Christian, but Islam spread widely in Ethiopia during the 16th-17th Century religious wars between the Christian kingdom and the Caliphate of Harrar/Somali, popularly known as Gragn Mohammed. Gragn invaded Ethiopia in its entirety but his advance was halted when he was shot dead by a Portuguese sniper⁷ at a famous battle where his forces fled. In the meantime, however, Gragn's invasion had already turned many parts of Ethiopia, Muslim. It is possible that this occurred when Islam was spreading among the Oromo, particularly in Bale, which is adjacent to the Harrar and Somali regions. Islam's long presence in Oromia means that Sharia law has further complicated the spectrum of competing legal systems in Oromo society.

2.2 Violence against Women in Oromia

Before considering the difficulties that an incoherent parallel legal system poses to women seeking justice, it is important to have an understanding of the problems women face in Oromo society. In particular, this report will focus on incidents of VAW. The definition for VAW used here is: any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁸

VAW is entangled in the context of power relations; in a society where male power dominates, "hierarchical power relations give legitimacy to violence against women"⁹. When women find themselves dependant on men, both financially and emotionally (as they tend to be in Ethiopian/Oromo society), they often are seen as the property of a "male protector."¹⁰ In Oromia, VAW cuts across lines of age, tradition and social status. Its impact is also beyond measure in terms of the disorder it causes in the family, in society and in the economy. Violence has come to be seen as "unfortunate but normal"¹¹ which perpetuates an entrenched culture of silence (from both victim and the community) and the denial of the extent of that violence. Social perceptions indicate that it is the responsibility of women and girls to take precautions to avoid VAW.¹²

Oromo women informants revealed that their childhood experiences have had a great and lasting impact on their adult lives.¹³ Girls encounter life-threatening challenges at an early age, including harmful traditional practices such as female genital mutilation, parental preference for sons, abduction and early marriage. Research conducted on violence against school girls in Ethiopia pinpointed that the violence and abuse girls encounter, whether in or on the way to school or in their homes, affects their school attendance, concentration, participation in class and academic performance.¹⁴

In almost all the FGDs most women said that VAW is related to their socioeconomic conditions. Most participants regret that they had little opportunity to pursue modern education, which they think would have given them better status in society. Consequently, Oromo women, especially those who live in rural areas, have a shallow understanding of VAW and their rights. VAW springs from the social reality that a woman is not considered to exist as an independent human being, but as the property first of her parents and then of her

⁷ There was a Portuguese contingent to help the Christian empire against the Muslim invasion.

⁸ United Nations, Declaration of the Elimination of Violence against Women (resolution 48/104 of December 1993). United Nations General Assembly: New York. (1993)

⁹ Weldegeorgis, et al. 'Violence Against Women in Addis Ababa', *Berchi*, Issue 5, 2004 p105

¹⁰ Weldegeorgis et al. (2004) *Op Cit*

¹¹ Habtu A 'Themes on Violence Against Women and Related Issues in Ethiopia', *Berchi*, Issue 5, (2004) p2

¹² Habtu, A. (2004) *Op Cit*

¹³ Multiple in-depth interviews and FGDs.

¹⁴ Save the Children Denmark, Ethiopia Ministry of Education and Ethiopia Ministry of Women's Affairs. *A Study on Violence against Girls in Primary Schools and its Impact on Girls Education*. Addis Ababa, 2008.

husband. This notion of ownership is one of the major problems that exacerbates VAW and makes the path of finding justice a precarious one for women victims of violence. In this society, any harm done by men, even beating, will not be considered a serious issue unless it causes permanent disability or a serious illness. The following section will highlight the kinds of VAW taking place in Oromia.

Domestic Violence

Domestic violence can be physical, sexual, psychological, or economic. Specifically, domestic violence can mean beatings, sexual harassment, eviction from home, denial of food and rest, intimidation, and withholding of the use of common property.¹⁵ There was a general agreement among female informants in FGDs that domestic violence is a major form of violence encountered by many Oromo women in the course of their lives.

In Ethiopian society, domestic violence is widespread and is often taken for granted. Unfortunately, it is a “communal phenomenon observed everyday” for Ethiopians¹⁶. A women’s lawyer in Addis Ababa illustrated a man’s perspective on wife battery, helping to elucidate why domestic violence is so widespread:

Domestic violence is very common here. Once when talking to a man about the laws, he said “wife battery has always been here, a man beats his wife and she goes into the house...she runs into the house, and he comes in the night and they reconcile because he buys her something. Now you women came in and talked and talked about rights and now when a man beats his wife she runs outside and people hear about it and they [the couple] will not reconcile and they will separate.” He went on to ask me, “please, please don’t talk about wife battery again!” And I said, “but why do you need to beat your wife in the first place, I don’t know why you worry whether she is running into the house or outside the house,” and he said “who do you expect me to beat, the wall? Or my wife, when she is there to beat?”¹⁷

This story summarises the unfortunate position that women are put in when it comes to domestic violence. The Demographic and Health Survey (2005) found that 81% of all women surveyed found that there were “justifiable reasons for a husband to beat his wife.”¹⁸ Justifications for abuse stem from the male belief that women are a man’s property and it is the man’s right to beat his wife.¹⁹ Table 1 summarises the main justifications for beating, given by Oromo women to the DHS:

¹⁵ Areda, A. and Weldegiorgis O., ‘Nationwide Survey on Domestic Violence’, *Berchi*, Issue 7, (2008)

¹⁶ Areda, (2008) *Op Cit* p51

¹⁷ Interview with female advocate, Addis Ababa: February 2011.

¹⁸ Central Statistical Agency [Ethiopia] & ORC Macro *Demographic and Health Survey 2005* Addis Ababa, Ethiopia (2006)

¹⁹ Habtu, A. (2004) *Op Cit*

Table 1: Reasons for Beating One's Wife in Oromia:

Reason	% of women who said this was an appropriate reason for beating
Burning the food	65.1%
Argues with her husband	60.6%
Goes out without telling her husband	65%
Neglects the children	63%
Refuses sex	48.2%

Source: DHS, 2005, Federal Democratic Republic of Ethiopia.²⁰

According to a nationwide survey, Oromo women were subjected to physical abuse by their husbands an average of 9.39 times in the past six months.²¹ The Oromia results of a 2008 study on domestic violence in Ethiopia are shown in Table 2 below:

Table 2: Types of Domestic Violence in Oromia:

Type of Domestic Violence	% of community members who said it was taking place
Wife battery	92%
Forced displacement from home	85%
Insult & show of disrespect	85%
Prevention from meeting others	65%
Denying use of common property	63%

Source: Areda, Dr.Alemayehu, W/ro Original W/ Giorgis, 2008. *Nationwide Survey on Domestic Violence*, Berchi.

The reasons why women tolerate these forms of domestic violence are complex and culturally embedded. Protecting the family's honour, and pressure from the family itself, can be very strong reasons for remaining in violent marriages.²² Moreover, women often do not want their domestic troubles to be a matter of public knowledge. FGDs and interviews revealed that women often used the word 'tolerance' when describing their positions in relation to domestic violence. An Ethiopian Women Lawyers Association (EWLA) women's advocate commented, "There are multiple cases of domestic abuse. The husbands beat-up their wives but this is not seen as a crime of violence here. *Women are told that these issues*

²⁰ 5,010 women were surveyed.

²¹ Areda, (2008) *Op Cit*

²² Habtu, A. (2004) *Op Cit*

are normal and they must live by tolerating them for the sake of their children. When this happens repeatedly, the woman flees her home.”²³

Early Marriage and Abduction

Virginity is highly regarded in Oromo culture. Girls are expected to remain virgins until they are married, as virginity symbolically represents purity and strength.²⁴ In other words, virginity signifies “women’s respect”²⁵. If girls lose their virginity before marriage, whether by choice or from rape, they are considered to have brought shame on their families.

Many families feel that early marriage is the best option for protecting daughters from sexual advances and any chance of becoming pregnant out of wedlock.²⁶ The national minimum age for marriage is now 18 years, however marrying young girls from the age of 13 is not an uncommon practice. In Ethiopia, the national rate for early marriage is 54%, despite it being a punishable act under Article 648 of the Ethiopian Criminal Code.²⁷

In addition to early marriage, a major concern for young Oromo women is abduction. Abduction in Oromo refers to when a girl is kidnapped, often raped and then married against her will. A study carried out in 1998 found that marriage by abduction in Oromia was as high as 80%.²⁸ ²⁹ The reason for abduction seems to be that dowries are too expensive for the parents of some boys,³⁰ so instead they abduct a girl and ‘convince’ or force her into a marriage.

Girls are usually snatched away from their villages while going to school or fetching water, which is typically be followed by a bizarre arbitration process carried out by village elders, who often encourage the girl’s side to accept their fate, resist pressing charges and taking their abductors to court.³¹ By settling the issue through this arbitration the end result is most often that the girl will stay with the man. Some form of bride-price is usually negotiated between the families; common payment is around 50 USD and some livestock after which the girl and her family usually reach an agreement for her to stay with the man who abducted her. With that, the girl and her abductor-turned-husband will be accepted into the community as a wedded couple. Once abducted it is very hard for a girl to return to her original village as she would unlikely be able to find a husband since her virginity would be questioned.³²

Many young wives are subjected to sexual violence and thus exposed to sexually-transmitted infections. Pregnancy is an obvious risk and is dangerous for young wives: when not fully mature, a young girl’s body may be unable to support pregnancy or successful delivery. In addition, once a girl gets married she has very little or no chance of going back to

²³ EWLA Advocate –Interview (February 2011).

²⁴ Miz-Hasab Research Centre, Hiv/Aids and Gender In Ethiopia: Focusing on Selected Weredas In Oromia And SNNPR. Miz-Hasab Research Centre, (2004)

²⁵ Østebø, Marit Tolo, “Wayyuu – Women’s Respect and Rights among the Arsi-Oromo” In: *Proceedings of the 16th International Conference of Ethiopian Studies*, ed. by Svein Ege, Harald Aspen, Birhanu Teferra and Shiferaw Bekele, Trondheim (2009) p1056.

²⁶ Pathfinder, *Women’s Empowerment in Ethiopia: New Solution to Ancient Problems*. Pathfinder International Ethiopia: Addis Ababa, (2007)

²⁷ Federal Democratic Republic of Ethiopia, Report Of The Federal Democratic Republic Of Ethiopia On The Implementation Of The AU Solemn Declaration On Gender Equality In Africa. FDRE: Addis Ababa, (2006)

²⁸ UNICEF, ‘UNICEF Supports Fight to End marriage by Abduction in Ethiopia’, UNICEF Communications Section, (2004)

²⁹ This figure is estimated to have reduced since 1998 as several advocacy and sensitization campaigns about the harmful nature of abduction and early marriage have since taken place. 1998 is the latest statistic that could be found.

³⁰ Miz-Hasab Research Centre, (2004) *Op Cit*.

³¹ UNICEF, “UNICEF Supports Fight...” (2004) *Op Cit*

³² Miz-Hasab Research Centre, (2004) *Op Cit*.

school. Studies show that less than 10% of married women (15-24 years) will attend school while girls in the same age group who remain unmarried have attendance rates as high as 78%.³³

Rape and Marital Rape

Rape and marital rape are issues that are still very problematic in Oromo society. In 2000, 991 cases of rape were reported to law enforcement bodies in Oromia.³⁴ Although this number is high, it is estimated that it does not reflect the true number of rapes that took place that year, which is likely to be much greater. As one author states, "Female silence is also prescribed culturally in Ethiopian society in the face of sexual abuse or rape as the price for family name and honour."³⁵ Women are not always willing to come forward and report incidents of rape, for reasons we will consider later in the report. However, if they do decide to come forward, encouraging women to report rape must be a priority, as it is a huge problem that Oromo women need to expose and society as a whole needs to combat.

Marital rape barely even exists as a concept in Ethiopia, and is certainly not acknowledged as a criminal act. Whatever happens between a man and a wife is considered strictly domestic. The prevailing gender norms in society take men's aggressiveness and women's passiveness for granted, including in sexual relationships and it are these sorts of gender norms that make marital rape tolerable.³⁶ It is also generally accepted by women that they cannot question their husbands on sexual matters as it is the husband's 'traditional right'. Women cannot even discuss sex since sexual discourse is considered taboo.³⁷ Legally, marital rape is not a criminal act: there are no laws to protect women from it. Advocates of women's rights fought unsuccessfully to have marital rape criminalized when the draft family law as well as the revised Penal Code were made public, before they were enacted as law.

The above section summarises the various forms of VAW that Oromo women are subjected to. Many of these acts are entrenched and accepted in the prevailing customs and traditions, norms and behaviour of Oromo society. It is important, in this context, for the state to intervene and to provide independent and accountable paths to justice for female victims of such violence. The following section will assess the capacity of Ethiopia's formal legal system to provide redress to victims of VAW.

³³ Pathfinder International Report on the Causes and Consequences of Early Marriage in Amhara Region Pathfinder International/Ethiopia (2006)

³⁴ Woldegeorgis, (2004) *Op Cit*.

³⁵ Habtu (2004) *Op Cit* p3

³⁶ Miz-Hasab Research Centre, (2004) *Op Cit*

³⁷ Bowman, C., 'Theories of Domestic Violence in the African Context', *Journal of Gender, Social Policy & the Law*, Vol11, Issue 2, (2002) in Pankhurst, A. and Assefa, G., eds., *Grass Roots Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Centre Francais d'Etudes Ethiopiennes: Addis Ababa, (2008)
Legesse, A., *GADA: Three Approaches to the Study of African Society*. New York: The Free Press, (1973)

Mekonen, K. 'Women's Vulnerability to HIV/AIDS: The Need for Legislation', *Berchi*, Issue 5, (2004).



3.1 Formal Legal Framework in Ethiopia and the Oromia Region

The Federal Democratic Republic of Ethiopia was officially established by law when the current constitution was enacted in 1995. The ruling group, the Ethiopian People's Revolutionary Democratic Front (EPRDF), governs the country under this constitution. The government is federal in nature, with nine regional states that are supposed to have regional autonomy with the right to craft some of their own laws and codes, for example those that have to do with the Family Code. However, the Criminal Code, Labour Code & Commercial Code fall under federal jurisdiction.

Ethiopia's Formal Legal System

The drafting and enacting of the various constitutions in Ethiopia's contemporary history has been driven by political motives and considerations. The first constitution enacted in 1931 was prompted by the emperor's ambition to imitate the institutions of governance that he saw in Europe during an earlier visit there as viceroy. The invasion of Ethiopia by Italy followed by Italian occupation and the patriotic war of resistance for five years brought a new dynamism to Ethiopian politics by shaking the ruling class. The defeat of Italy in Ethiopia in 1941 and the end of the Second World War that ushered in new international standards in global politics with the creation of the United Nations prompted the revision of the first constitution. Thus, a revised constitution was made in 1955. With the overthrow of Emperor Haile Selassie in 1974, after more than 40 years in power, a new era began for Ethiopia with the introduction of new policies such as the law on land. The new military government that replaced the imperial regime opted for a new constitution in 1987 that corresponded with the system of governance it introduced. When the military government was overthrown in 1991, the ruling EPRDF again introduced a new constitution in 1995. Haile Selassie's constitutions said nothing on the rights of the Oromo people and the military's version was no more than a general reference to regional autonomies in the abstract. The 1995 constitution on the other hand proclaimed the right to self-determination of all ethnic groups in Ethiopia.

Ethiopia's formal legal order is based on the codification process that took place in the 1950s and '60s creating six modern legal codes (many of which have since been revised) and the constitution that was made effective in 1995. As in many African states, Ethiopian federal law has been based on international legal standards, especially Anglo-American models.³⁸ In

³⁸Pankhurst, A. and Assefa, G., 'Understanding Customary Dispute Resolution in Ethiopia', in Pankhurst, A. and Assefa, G., eds., *Grass Roots Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Centre Francais d'Etudes Ethiopiennes: Addis Ababa, 2008. Kohlhagen, D. 'State Law and Local Law in Sub-Saharan Africa', in Pankhurst, A. and Assefa, G., eds., *Grass Roots Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Centre Francais d'Etudes Ethiopiennes: Addis Ababa, 2008.

addition, Ethiopia has signed up to several international conventions and declarations that have had an impact on its constitution and codes, such as the Family and Penal Codes. Most notably, the 1945 Universal Declaration on Human Rights is said to have influenced the 1995 constitution, which many informants said has provided adequate provisions for women, children and minority rights.³⁹

The Family Law and Penal Code

Since the revision of the Family Code in 2000 and the Penal Code in 2004, legal protection for women's rights has significantly increased. The revised Family Code of the Federal Government applies only in the administrations that are directly accountable to the federal government: in the capital city Addis Ababa and in Dire Dawa. On the other hand, the 2004 Penal Code applies in all the federal administrations and all the regional states. Most of these regional states' has power to adopt its own family law/ personal status law in situations where cultural provisions can be catered for; however, they must be in line with the principles of the constitution. Along these lines, Oromia enacted its own Family Code in 2003.

Ethiopian and International Laws/Policies Affecting Women

Ethiopia has signed several International Declarations and Conventions that relate to women and their rights, and voted in favour of the Universal Declaration on Human Rights in Paris in 1948. Some of these international instruments protecting women's rights have been incorporated into the domestic constitution and the national policies listed in Table 4 below. Table 3 provides a list of all International Declarations and Conventions that Ethiopia has ratified or acceded to.

Table 3: International Declarations and Conventions Ethiopia has ratified

International Declarations/Conventions	Year signed, acceded to or ratified by Ethiopia
International Covenant on Civil and Political Rights	1993
International Covenant on Economic, Social and Cultural Rights	1993
Anti-Slavery Convention	1969
The Trafficking Convention	1981
The Convention on the Elimination of All Forms of Discrimination Against Women	1981
Convention on the Rights of the Child	1991
Convention on the Elimination of All Violence Against Women	1981
African Charter on Human and People's Rights	1998
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa	1993
African Charter on the Rights and Welfare of the Child	2002

³⁹ Interview with Female Lawyer, Addis Ababa (February 2011) and Interview with Network of Ethiopian Women's Associations (February 2011)

The following table lists the Ethiopian National policies that affect women:

Table 4: Ethiopian Policies that Affect Women:

Policy and year put in place	Summary of articles that affect women
<i>The Federal Democratic Republic of Ethiopia Constitution (1994)</i>	
	<ul style="list-style-type: none"> a. Article 9 – provides that the constitution is the supreme law of the land and any law, customary practice or decision of an organ of state or of a public official cannot contravene it. It further imposes the duty of ensuring the observance of the supremacy of the constitution on all citizens, organs of state, political organizations or other associations and officials. On the basis of this provision no custom, practice, law or decision could go against the constitutional guarantee of equal rights for women. b. Article 25 – stipulates the right to equality before the law and the right to equal protection under law without discrimination on different grounds, including sex. c. Article 34 (1) – guarantees women and men equal rights in the process of contracting marriage and the duration and dissolution of a marriage. d. Article 35 – guarantees that women shall have equal right in the enjoyment and protection of the rights recognized in the constitution; provides specific guarantees of the equal rights of women in relation to marriage, employment, and property; guarantees that women have a right to participate in the formulation and implementation of policies and projects; provides that it is the duty of the state to eliminate laws, customs and practices that oppress or cause bodily or mental harm to women.
<i>The Revised Family Law (2000)</i>	
	<ul style="list-style-type: none"> a. raises the minimum legal age for marriage to 18 for both men and women; b. abolishes the provision conferring marital power on the husband as the head of the family; c. adds additional grounds for divorce by mutual consent of the spouses; d. indicates that marriage is to be based on mutual respect, support and assistance; e. recognizes the responsibility of both spouses to administer and direct the family including the upbringing of children; f. leaves the determination of the common residence to the two spouses jointly.
<i>The Revised Penal (Criminal) Law (2004)</i>	
	<ul style="list-style-type: none"> a. criminalizes several harmful traditional practices, such as abduction, female circumcision, infibulations and other harmful

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	practices, early and forced marriage, polygamy and domestic violence; b. imposes severe penalties compared to the previous penal laws.
<i>Labour / Employment Law(1993)</i>	
	<ul style="list-style-type: none"> a. contains provisions consistent with the guarantees of equal rights under CEDAW (The Convention on the Elimination of All forms of Discrimination against Women) and the constitution; b. prohibits discrimination by gender in employment; c. provides protection against working conditions that are harmful for women's health; d. provides for the protection of pregnant women from assignments hazardous to their conditions and from dismissal during pregnancy and until four months after giving birth; e. guarantees pregnant workers the right to paid leave upon the recommendation of a doctor and to 30 and 60 days paid pre- and post-natal leave respectively.
<i>National Policy on Ethiopian Women (1993)</i>	
	<p>The policy takes as its basis the existing situation of Ethiopian women with respect to the enjoyment of their human rights and their participation in the effort towards sustainable development. In regard to the problems faced by Ethiopian women and within the context of the principles of equal rights for all, the policy adopted the following objectives:</p> <ul style="list-style-type: none"> a. Facilitating conditions to enable women to enjoy their human rights on an equal basis with men and to ensure their equal participation in political, social and economic life. b. Facilitating conditions for rural women to have access to basic social services and to find ways of lightening their work load. c. Eliminating prejudices, customs and practices that are based on male supremacy. d. Enabling women to take part in decision-making processes at all levels.

In addition to the laws and policies that have been put in place, federal, regional and *Woreda* (district) level governance structures have been created to focus on women's issues. The Ministry of Women's Affairs sits at the federal level, while regional and *Woreda* Women's Affairs Bureaus implement the Women's National Policy produced at the Ministerial level. In doing this, the government is supposed to mainstream gender awareness into the various levels of governance structures so that empowerment of women in political, economic and social matters is made possible.⁴⁰ It was evident in Oromia that the regional Women's Affairs Bureaus were resources for women seeking advice or support on domestic issues. However, a government Women's Affairs Officer and NGOs working in the region commented on the low capacity (both human and financial) of these offices which are most often working with limited or zero budgetary support within their areas of jurisdiction.⁴¹ In turn, their effectiveness, impact and capacity to take on work are substantially lower than what is needed.

⁴⁰ Federal Democratic Republic of Ethiopia, (2006) *Op Cit*.

⁴¹ Interview with Government Women's Affairs Bureau Officer, Wolliso: (February 2011); Interview with Network of Ethiopian Women's Associations (February 2011)

3.2 Formal legal protection of women's rights: effectiveness on the ground

It is clear, then, that laws do exist in Ethiopia's federal legal structure that can serve to protect women's rights. In a number of areas, however, there is a big difference between what the laws say and what is being enforced on the ground.

With regards to domestic violence, Article 16 of the constitution declares that everyone has the right to protection against bodily harm and the Penal Code protects women from domestic abuse in marriage. This provision, therefore, would seem to protect women from acts of battery committed by their husbands, boyfriends or any other person. However, the shortcomings of Ethiopian law with regard to domestic violence stem from the law's fixation on the sphere in which the violence has taken place; Ethiopian law will only deal with acts of domestic violence that are committed in public, or have some public evidence. As a result, unless the battery resulted in severe physical injury, there is a tendency among law enforcement officers not to look at the act as an offence. Moreover, only 28% of women respondents to a survey said they knew of government legal structures through which they could report incidents of domestic violence, an issue that will be discussed later in this paper.⁴²

In Ethiopia, the national rate for early marriage is 54% despite it being a punishable act under Article 648 of the Criminal Code: Article 7 states that "Neither a man, nor a woman who has not attained the full age of 18 years shall conclude marriage."⁴³ Moreover, according to the family law of Ethiopia, no marriage shall be legally entered into without the full and free consent of both parties. As Article 6 states, "A valid marriage shall take place only when the spouses have given their free and full consent." Nonetheless, women are still victims of harmful traditional practices such as early and arranged marriages and abduction. Clearly, again, the state laws that have been put in place are having little impact on the ground.

Rape is a crime under Ethiopian law and rapists are subject to punishment. However the victims, women and girls alike, often do not come forward due to a number of social pressures and the fear of social stigma. The official institutions of the constitutional laws are also often no more than bystanders: police take little or no interest in registering these cases, the courts advise the complainant to settle the issue through traditional methods and even if the complainant takes the case to court the sentence the culprit receives is so minimal that other victims are discouraged from doing the same. As mentioned above, marital rape is not even illegal according to Ethiopian law.

A lawyer and SIHA member said that she had come across numerous cases where police were reluctant to start investigations into incidents of VAW. In one instance, for example, "a woman had gone to the police to lodge a complaint but the investigating officer was not willing to start the investigation and instead advised her to go to organisations working on women's rights."

⁴² Miz-Hasab Research Centre, (2004) *Op Cit*.

⁴³ Federal NegaritGazetta of the Federal Democratic Republic of Ethiopia, *The Revised Family Code* (July 2000)

⁴⁴ Federal Democratic Republic of Ethiopia, (2006) *Op Cit*.

At a basic level, the revised Family code for Addis Ababa and Dire Dawa has made improvements in terms of recognition of women's rights by the law. This is significant as it provided guidance to the other regional codes; Oromia's Family Law is ostensibly based on it. The revised law makes provisions for equality between husband and wife by no longer designating only the husband as the head of the household, and ensuring that common property can be administered jointly by the spouses.⁴⁵ Furthermore, the revision made the minimum legal marriage age the same for men and women (18 years), recognised common law marriages, made divorce easier, limited the role of family arbitrators in divorce cases, and made it law that marriage had to be based on the consent of both parties.⁴⁶ Despite these important revisions, however, one informant explained that, "on paper, the family law has significantly rejected customary law but custom on the ground has rejected the family law."⁴⁷

A similar pattern can be seen in the changes made to the Criminal Code (formally the Penal Code), which have increased the penalties for rape and criminalised domestic abuse and have made female genital mutilation (FGM) illegal.⁴⁸ Despite these provisions, there are clear gaps between policy and practice on the ground. For instance, the Penal Code may criminalise domestic violence, but "its implementation is entrenched in the cultural belief that classifies domestic violence as a family matter"⁴⁹. As a criminal act, domestic abuse cases should be seen by criminal courts, but as they are often perceived as family issues they are often dealt with at the customary law level.

Indeed, the constitution officially recognises the authority of customary laws and courts. The uneven application and integration of these legal systems has led to confusion and male bias which allows VAW to continue to go unpunished in Ethiopia generally and the Oromo community specifically.

3.3 Inclusion of Customary Law in the Constitution

As mentioned above, previous Ethiopian constitutions, such as those enacted during the 40-year rule of Haile Selassie, said nothing on the rights of the Oromo people and the 1987 constitution enacted by a military government was no more than a general reference to regional autonomies in the abstract. The 1995 constitution on the other hand, proclaimed the right to self-determination of all cultural groups in Ethiopia. Underlying the various constitutions and enactments of laws in Ethiopia's long history is the fact that Ethiopian society, being predominantly traditional, is in most cases used to customary laws and customary courts. Understanding of statutory law and access to formal courts is limited. This is why the 1995 constitution included recognition of customary laws taking a "turn to ethnic federalism" as there was a "shift in paradigms of approaches to the complex nature of Ethiopian society and its problems"⁵⁰. As customary courts were still in use anyway, the 1995 constitution made specific provisions for their inclusion. By doing so, the government was attempting to integrate these systems but in a way that defined and regulated their use. The following constitutional articles directly address the jurisdiction of customary laws:

Article 34 (5)

This constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or

⁴⁵Pankhurst, A. and Assefa, G.(2008) *Op Cit*.

⁴⁶ Federal Democratic Republic of Ethiopia, (2006) *Op Cit*. p.8

⁴⁷ Interview with Muradu Abdo, Lecturer at Addis Ababa University, Faculty of Law (February 2011)

⁴⁸ Pankhurst, A. and Assefa, G. (2008). *Op Cit*

⁴⁹ Areda, (2008) *Op Cit* p8

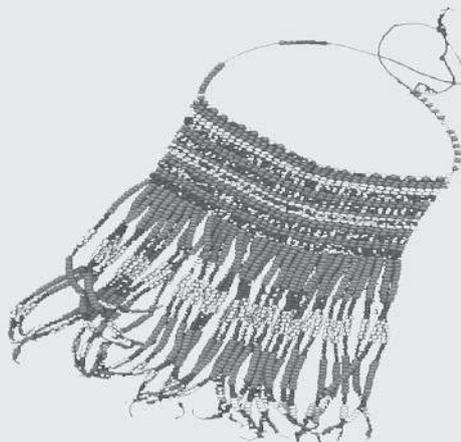
⁵⁰ Pankhurst, A. and Assefa, G.(2008) *Op Cit*.p6

customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

Article 78 (5)

Pursuant to Sub Article 5 of Article 34 the House of People's Representatives and State Councils can establish or give official recognition to the religious and customary courts. Religious and customary courts that had state recognition and functioned prior to the adaptation of the Constitution shall be organized on the basis of recognition accorded to them by this Constitution.

The impact of these Articles means that the Ethiopian constitution condones – in fact creates – a parallel legal system, allowing customary law to be used in personal and family matters, with the consent of both parties. It is important that the Article demands that both parties consent to using customary law. However “consent” is often a contested term, as we saw above in the discussion on early marriage and abduction. Family code is singled out in these articles as being under the authority of customary law. In fact, some argue that this may “immunise [customary law institutions] from the central legal system” and thus the rights of women enshrined in the constitution and Family codes⁵¹. Although the constitution states that customary law can be used for family matters, it does not definitively state that this is the only arena in which customary law has jurisdiction.⁵² Moreover, some scholars argue that the constitution is not clear in the validity of customary courts in addressing family matters. Article 78 (5) states that official recognition can be given to customary courts that had state recognition and functioned prior to the adoption of the constitution. However, as one scholar argues, there were no customary systems recognised by the state prior to the most recent constitution.⁵³ Nevertheless, customary law is in use throughout Oromia, albeit to varying degrees. It is this complicated and confusing division of jurisdictions between the formal and customary legal systems, which is preventing women from obtaining justice. The following section will give an overview of the workings of customary law in Oromia.



⁵¹ Bowman, C. (2002) *Op Cit* p 861

⁵² Pankhurst, A. and Assefa, G. (2008) *Op Cit*

⁵³ Van Doren, John W. “Positivism and the Rule of Law, Formal Systems or Concealed Values: A Case Study of the Ethiopian Legal System.” *Journal of Transnational Law and Policy*. (1994)



4.1 Oromo customary laws and alternative legal systems

In Oromia there are two customary law institutions: the *Gadaa* system and the *Qalluu*. The former is a political-administrative institution while the latter is religious in nature, using religion and spirituality as a form of customary legal authority. The *Qalluu* is not much used for the kinds of cases we are focusing on in this report, so attention will instead be paid to the *Gadaa* system. However, it will also be important to look at the influence of Islamic Sharia law in Oromo culture.

Customary laws spring from a specific culture of a given traditional community. Customary laws are based on local customs that guide, control or regulate acceptable behaviour of members of a group. Therefore, it can be inferred that “customary law is made by the people and not the state and derives its legitimacy from the participation and consensus of the community and its recognition of the same by the government”⁵⁴. In the absence of formal state justice systems, customary law has regulated people’s behaviour for several centuries.⁵⁵

Conceptions of justice under customary law vary greatly from those in formal state law. In customary systems of law, justice is viewed through the lens of reconciliation and restitution, which are sought through mediation and arbitration in an effort to maintain social harmony and avoid conflict.⁵⁶ Unlike in the formal system, where crimes are punished through prison time or fines payable to the state, part of the reconciliation process in customary law involves restitution given to the victim. Often this is done in the form of payment, such as heads of cattle. In this scenario, the offender is not punished with a prison sentence but rather by having to compensate the victim. In formal court sentencing, the victim does not receive any compensation, which may result in them harbouring resentment and seeking revenge once the offender is released from his sentence. Customary law seeks to address this desire for revenge through compensation and mediation. One author states that, in Oromia, customary law “plays a key role in integrating clans, promoting peace, and mediating between human and divine worlds.” This is a vital aspect of how customary law differs from the formal system which depends on a strategy of punishment and imprisonment.⁵⁷

Another facet of justice in customary law pertains to how the rights of the individual and those of the collective are prioritised. The essence of justice in Oromo customary law is not to punish the culprit but to reconcile the complainant with the defendant; it seeks reconciliation among parties with the goal of restoring peace between individuals, families, clans etc. In doing so, there may be instances where a victim’s rights or justice owed to the victim are sacrificed to the larger goal of reconciliation and moving forward. This point was illustrated by an informant who described how punishment is waived in customary law:

⁵⁴ Aberra, 2003:839 cited in Pankhurst, A. and Assefa, G, 2008 *Op Cit* p1

⁵⁵ Pankhurst, A. and Assefa, G. (2008) *Op Cit*

⁵⁶ *Ibid*

⁵⁷ *Ibid.* p29

“When there are issues between a husband and wife, the family or the local *JaarsaBiyyaa*[elders] will try to settle the dispute by giving them advice and will try to make them agree with each other even if the woman is suffering. For example, if you and I got into a conflict, the *JaarsaBiyyaa* will only try to make us agree with each other no matter who is responsible for the dispute. They will not give any punishment and try to avoid the conflict ever happening again.”⁵⁸

In this instance, the *JaarsaBiyyaa* provided advice that sought to settle the dispute peacefully. However, this effort to ensure social cohesion does not particularly uphold the interests of the individual.

We notice a similar pattern in individual and collective rights. The place collective and individual rights occupy in Oromo customary law is also different from that upheld in formal justice systems. Customary law systems often place the interests of the collective over the rights or interests of the individual.⁵⁹ For women, this means that their individual rights are relegated below those of their families, communities, clan etc. This can in turn further reinforce women’s subordination to men by upholding hierarchical structures of power.⁶⁰ In addition, as Oromo society is traditionally patriarchal, customary laws can institutionalise gender inequality and lead to judgements that are discriminatory towards women⁶¹. This is also related to the fact that when a person’s case is seen by the customary court, that case is not just about the person as an individual but, by extension, it is also about his/her family or clan. This is especially the case when women are involved because, in traditional societies, women are supposed to be the “bearers of culture and tradition”.

Oromo customary legal systems are dynamic and evolving, adding another layer to their complexity. In some areas of Oromia customary law may be carried out under the traditional systems. However, it is apparent in many areas that customary law systems are resilient and adapting to current circumstances. The reason for this is that these systems do not exist in isolation but are affected by “cultural and political preferences” and are “subject to contemporary influences”⁶². Evidence of this was found among the Macca Oromo who had involved women in various levels of decision-making processes due to an increasing awareness of women’s issues and rights.⁶³ These systems are thus extremely complex; they are based on centuries-old traditional institutions that are now colliding with modern systems of thought. Likewise, the people who use these systems are also multi-faceted, living in a world that is steeped in tradition but also one that is exposed to contemporary forms of decision-making.

Before a detailed consideration of the *Gadaa* system and its implications for justice for women, we will first look at the role of Sharia law in the region and its effect on women seeking justice

⁵⁸ FGD, Bishoftu, (February 2011)

⁵⁹ International Council on Human Rights Policy, *When Legal Worlds Overlap: Human Rights, State and Non-State Law*. ICHRP: Versoix, Switzerland (2009)

⁵⁹ Interview with Female Lawyer, Addis Ababa, (February 2011)

⁶⁰ Miz-Hasab Research Centre, (2004) *Op Cit*

⁶¹ Bowman, C. (2002) *Op Cit*.

⁶² International Council on Human Rights Policy (2009) *Op Cit pvi*

⁶³ An interview with a EWLA women’s officer in Ambo (February 2011) uncovered that in at least one case in the town, a woman acted as a *Jaarsa Biyyaa*, representing a fellow woman in a domestic violence/divorce case. In an interview with the *Abba Gadaa* in Bishoftu (February 2011) he informed us that women were now sitting on *Gadaa*’s ‘parliamentary’ committee in order to assist with decision-making on women’s issues.

4.2 Shari'a Law and Women's Rights

This parallel legal structure becomes even more complex when considered in light of a third and competing legal system, Islamic Sharia law. As such, this section will briefly highlight the impact of Sharia law on women's quest for justice in Ethiopia and Oromia.

The influence of the Islamic Arab peninsula across the narrow rift valley of the Red Sea has ensured that Islam has long been present in Ethiopia. Indeed, Muslims represent approximately 47.5% of the Oromo population.⁶⁴ This paper, given its objectives, will focus on the spread of militant Islam among Oromo Muslims, their gender relations and the escalation of VAW that is often connected to the dogmatic application of militant Islam.

From the 1970s the WahabiSalafi⁶⁵ Islamic faction gained ground in different parts of the Horn of Africa, including the Oromo regions. Migrant workers and traders who worked in and out of Saudi Arabia and other gulf countries played the biggest role in adopting and disseminating WahabiSalafism into Ethiopia and the Oromo region. The WahabiSalafists are mainly driven by their leader Mohamed Ben Abdul-Wahab.⁶⁶ Wahabism emerged during the 16th century and is thought to purify Islam by returning to what the Wahabi believed to be the original principles of the religion. Many of the Wahabi interpretations of Islam entail alienating women from society and restricting them to their homes. The WahabiSalafists played a central role in promoting the veil/hijab as a condition for women's presence in the public sphere. It is also responsible for reviving corporeal (*hudud*) punishments, such as stoning, slashing and the cutting of limbs for offences like adultery (*Zina*).

The discovery of vast oil reserves in their territories helped to strengthen the influence of the Wahabists. Saudi Arabia in particular, has become a destination for migrant workers and traders from the impoverished countries of the Horn of Africa. Immigrant returnees reinforced the already-existing traditional values and customs that tend to exclude women. Some of these returnees consider their old beliefs about Islam to have been inaccurate and that the true teaching of Islam only comes from the Salafists. The effect of this growing influence of WahabiSalafism has been to reinforce and add to the already exclusionary practices in the Oromo region.

For centuries Muslims in Ethiopia had been excluded from participating in political institutions and their rights were ignored. This changed following the 1974 Revolution where in which Muslims demanded recognition of their rights. The 1995 constitution acknowledges the Ethiopian Muslims' full rights and recognises their cultural practices and it provides the framework for the independent validity of non-state or unofficial laws such as customary and religious laws in some areas of social activity. Article 34 (5) of the constitution of the Federal Democratic Republic of Ethiopia (FDRE) states that: "This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious and customary laws, with the consent of those party to the dispute."

To date, Sharia courts that apply Islamic law are the only religious courts that have been officially established both at the federal and state levels in Ethiopia. The Sharia Courts at the federal level have been reconstituted into a trilateral judicial structure, distinct from the regular federal system. These are:

⁶⁴ Federal Democratic Republic of Ethiopia (2008) *Op Cit* p110

⁶⁵ Salafi means the followers of ancestors

⁶⁶ Muhammed bin 'Abd Al Wahhab considered his movement an effort to purify Islam by returning Muslims to what he believed were the original principles of Islam, as typified by the Salafe and rejecting what he regarded as corruptions introduced by Bid'ah and Shirk.

1. Federal First Instance Court of Sharia
2. Federal High Court of Sharia
3. The Federal Supreme Court of Sharia

Like the federal state judicial organs, all the federal Sharia courts have been made accountable to the Federal Judicial Administration Commission. All of the State Councils have also given official recognition to Sharia Courts within their respective jurisdictions. Sharia courts apply only Islamic law and have their own appellate system. Article 4(1) of Proclamation No. 188/1999 stipulates that Federal Courts of Sharia have common jurisdiction over the following matters:

- Any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships, provided that the marriage to which the question relates was concluded or the parties have consented to be adjudicated in accordance with Islamic law;
- Any question regarding inheritance (*Wakf, Hiba*) in Islamic Sharia, provided that the endower or donor is a Muslim or the deceased was a Muslim at the time of his death;
- Any question regarding payment of costs incurred in any suit relating to the aforementioned matters.

The jurisdiction of Sharia courts includes the domestic affairs of communities and to that effect the gender relations between men and women; marriage and the internal dynamics of marriage relationships; divorces; and inheritance.

According to Ethiopian Law there is no possibility of appealing the decisions of the Sharia courts in Ethiopia to the regular court structure. Article 5(4) of the Federal Courts of Sharia Consolidation Proclamation No.188/1999 expressly states that, "Under no circumstance shall a case brought before a Sharia court under jurisdiction which has been consented to, be transferred to a regular court, or shall a case before a regular court be transferred to a court of Sharia". This rule seems to have been designed with a view to delineating a clear line between the two different laws in anticipation of the inevitable clash between the substantive law applied by (and the decisions of) Sharia courts and formal state laws. The intention of Article 5(4), therefore, seems to be to enable the Sharia courts to operate separately from the regular courts.

The point behind highlighting this background is to add contextual detail to the fact that one of the key growing Islamic groups across the Horn and in Ethiopia among the Oromo nation is the SalafiWahabi faction. Salafism was introduced in Ethiopia during the early 1970s. The movement survived the coercive policy of the Derg (the military regime that ruled from 1974 to 1991 following the end of the rule of Haile Selassie I) and today dominates the religious picture in Bale, as well as making a clear impact in other parts of the country.⁶⁷ This fact alone is thus a strong imperative for the study of Salafism in Ethiopia to be continued⁶⁸.

The outreach of the Salafi and their economic power and ties with the Arab gulf countries have transformed Islam in Ethiopia from a spiritual practice that fits in smoothly with the country's heritage and culture into a militant ideology dominated by Muslim Ethiopian identity and ways of life. This means that there is a fundamental and regular clash between Sharia courts and the international and regional human rights principles on which Ethiopia has built its civil laws and bill of rights. This, of course, mainly affects Muslim women and men in Ethiopia, close to 50% of the overall population of Ethiopia and nearly half of the Oromo nation. Unlike customary courts, women seeking justice through the Sharia courts have no

⁶⁷ Østebø Terje Religious Change and Islam: The Emergence of the Salafi Movement in Bale, Ethiopia (2009)

⁶⁸ Østebø Terje (2009). *Op Cit*

right to proceed with other avenues of justice as they are imprisoned within the rules of the Sharia court. This means that women do not have the right to appeal Sharia court rulings.

Two trends that have been well-documented and which result from the application of militant Islamic/Wahabi rules are a limitation on and reduction of women's role in society and a growth in VAW.

The WahabiSalafi position towards women is directly influenced by the Saudi Arabian model, where women are not only subjected to extreme violence and social exclusion but are also criminalized. This criminalization is based on the belief that women are problematic objects to be controlled by the power of their male guardians – husbands, fathers, relatives – and that their existence should be confined strictly to the home; if they wish to appear in public they must be fully covered, according to these beliefs. All these elements of alienation and subjugation are reflected in the Salafi legal Sharia principles. In light of the Salafi faction's economic power, the fact that these principles so clearly make women subordinate implies that VAW could well escalate in this part of Ethiopian society, since women's rights, based on the principles of international human rights concepts, are not recognized by SalafiWahabism.

4.3 The Gadaa System

After having highlighted growing trends in militant Islam in Ethiopia, the *Gadaa* system remains the main customary legal framework in Oromia. Oromo myth tells us that before the *Gadaa* system came into existence, the Oromo people were ruled under a matriarchy led by a Queen. Following the rule of the Queen came a period of rule by Kings. The legend continues that life under both the Queen and then the Kings was 'tyrannical and chaotic' and thus was toppled and the *Gadaa* system was created as the new governance structure of the Oromo⁶⁹. What emerged in response to the tyranny under the Queen and King is frequently described as a democratic system founded on egalitarian principles.⁷⁰ Although there is debate over whether the norms and laws of the *Gadaa* are divine or secular in nature, it is safe to assume that for many, the power of the *Gadaa* laws is related to divine force, even if seen as a secular mandate.⁷¹

The *Gadaa* is a complex system of social ordering that sees various classes of Oromo pass through different *Gadaa* grades which each last eight years. Admittance to the *Gadaa* system is limited to men only; women are not a direct part of the system and its grades. Thus the sons of a particular class will be in the same *Gadaa* grade from the age of zero to eight years, before progressing to the next grade which lasts from their eighth to their sixteenth year, and so on. Each grade brings with it its own set of rights and responsibilities. There are five *Gadaa* classes and usually ten *Gadaa* grades, although the number of grades can vary from seven to eleven. Each grade has its own leadership and autonomy within the framework as a whole. As there is no direct hereditary transfer of power this is seen as another example of democratic values.⁷² Officials access power through a meritocratic

⁶⁹ Elemo, K., 'The Role of Customary Law in the Prevention of HIV/AIDS with Special Reference to Boorana *Gadaa* System'. Unpublished LL.B Thesis. Addis Ababa: Addis Ababa University, Faculty of Law, (2006) p35

⁷⁰ Pankhurst, A. and Assefa, G (2008) *Op Cit*.

⁷¹ The *Gadaa* origin myth claims that "*Gadaa* is not a product of human conscious; rather it is rule of law given by *Waaq* (God) to man to rule his fellow man under the auspices of justice" (Elemo, 2006: 36). However, Legesse (1973: 214) argues that laws are viewed as coming from the people rather than as an imposition by a "superior force such as God." It has been hypothesized that the divine characteristics that law has achieved only came after the Oromo people were exposed to Muslim civilization (Elemo, 2006:39).

⁷² For example, the son of a former *Abba Gadaa* can also become an *Abba Gadaa* (and this often happens as *Abba Gadaas* come from specific clans and respected families), however rules/convention state that there must

system of ability and achievement, with no official staying in power for longer than eight years, creating a regulated system that prevents personal accumulation of power.⁷³

Within the *Gadaa* system there are legislative, executive and judicial components creating a separation of powers and checks and balances within the governance structure. The *Gumii* is the legislative organ of the *Gadaa*, acting as a 'parliament' to the executive. Every eight years the *GumiiGaayoo* sits to revise and formulate new laws. This *GumiiGaayoo* can, in theory, be attended by anyone who wants to take part in the deliberations or bring an issue to the *Gumii's* attention, including women.⁷⁴ One academic expert points out that because the proceedings of the *GumiiGaayoo* are a "collective restatement of some rules", the process "is as much a heuristic device as it is an occasion for rethinking tradition."⁷⁵ Along these lines, the *GumiiGaayoo* has the capacity to be instrumental in rethinking norms and laws that jeopardise women's rights.

The executive is made up of the *Abba Gadaa* and his senior councillors, the *Yaa'a*. The *Abba Gadaa* plays a very important role in customary law because he controls the secular, political realm of the *Gadaa*. The person who assumes the role of the *Abba Gadaa* is chosen after deliberation by all male *Gadaa* participants, which can sometimes last up to a month. The *Abba Gadaa* must be just and dedicated to peace, he must be respected by his community and the elders (they are often chosen from a clan that is thought to be special), have no criminal record, and understand the workings of the *Gadaa* system.⁷⁶ The term of the *Abba Gadaa* lasts for eight years and he is the ultimate physical site of dispute resolution. Informants said that the *Abba Gadaa* is "feared like God" and has "a greater voice than the government"⁷⁷. The *Yaa'a* advises the *Abba Gadaa* when needed.

Legal decisions are not made unilaterally by the *Abba Gadaa*, or even by majority opinion, but rather by consensus. As a result, people respect the decisions made under the *Gadaa*, meaning that many willingly accept and comply with verdicts handed down to them.⁷⁸ Furthermore, an *Abba Gadaa* who was interviewed in Bishoftu commented that the *Abba Gadaa* takes his role seriously for fear that if he does not pass correct judgements or makes the wrong resolution intentionally, his children will be cursed⁷⁹. It seems from multiple interviews that, presently, the use of the *Abba Gadaa* in dispute resolution is restricted to complicated matters and crimes such as murder. Women interviewed generally said that they would not go to the *Abba Gadaa* with marital or family problems.⁸⁰

Lastly, there is the judicial organ of the *Gadaa* System that participates in dispute resolution. There are several different levels that are used for judicial matters within the *Gadaa*: (1) tribal, clan-based and the *JaarsaBiyyaa*; (2) the *Gadaa* and *Yaa'a*; and (3) the *Gumii*. The first level is generally where family and personal matters are taken, either to family members (*Warra*), to sub-clan members (*Fira*) or to the *JaarsaBiyyaa*, a group of respected elders. Our research found that the *JaarsaBiyyaa* are often used throughout the many areas we visited, especially for domestic issues.

The *JaarsaBiyyaa* literally translates into 'elders of the soil' and is made up of respected elders and men who are experienced in conflict resolution⁸¹. The laws that the *JaarsaBiyyaa*

be a 40 year gap between when a father and son may take the *Abba Gadaa* office. (Elemo, 2006; Legesse, 1973).

⁷³ Pankhurst, A. and Assefa, G (2008) *Op Cit*

⁷⁴ Legesse, A., (1973).

⁷⁵ *Ibid* p98

⁷⁶ Interview with the *Abba Gadaa* in Bishoftu (February 2011), FGD, Wolliso (February 2011.)

⁷⁷ FDG, Wolliso, (February 2011) interview with *Abba Gadaa*, Bishoftu, (February 2011).

⁷⁸ Elemo, K., (2006) *Op Cit*

⁷⁹ Interview in Bishoftu with *Abba Gadaa* (February 2011)

⁸⁰ FGD, Wolliso: (February 2011)

⁸¹ Pankhurst, A. and Assefa, G (2008) *Op Cit* p31

employ and the decisions they make in their dispute resolution mechanism are drawn from the laws and customs in the *Gadaa* system. Consequently, they are not setting customary laws but are rather acting as arbitrators and mediators.

The *Abba Gadaa* in Ambo described the *JaarsaBiyyaa* as people who have the blessing of the *Abba Gadaas* to carry out their work. They are granted legitimacy through the *Gadaa* system as they represent what the system stands for and implement the system's rules and laws through their dispute resolution mechanism.⁸² Another informant explained that the elders who make up the *JaarsaBiyyaa* are so prominent and respected that they "hold the communities in their hands," demonstrating that the *JaarsaBiyyaa* have the authority to speak on behalf of the whole community when it makes judgements.

If a complainant is not satisfied with the ruling at the local level through the *Warra*, *Fira* or *JaarsaBiyyaa*, then the matter can be brought to the *Abba Gadaa* and the *Yaa'a* to decide on. Lastly, if the *Gadaa* and the *Yaa'a* are not able to solve the dispute, the case can move to the *Gumii* where the validity of relevant laws may be debated, although this was found to happen mostly with large regional/clan based disputes.

Women, therefore, are faced with a choice: whether to use the formal legal system whose implementation on the ground does not necessarily correspond with the letter of the law, or to use customary laws. The following section will analyse the factors that influence women's choices in these matters.



⁸² Interview with *Abba Gadaa*, Ambo (February 2011)



5. Use of Customary and Formal Courts by Oromo Women

A number of factors influence a woman's decision when she chooses whether to go to a formal or to a customary court. These factors involve: whether they live in urban or rural areas; their degree of access to formal courts and the affordability of court fees; whether or not they are educated; their awareness of the statutory law and of their own rights; and their degree of adherence to Oromo cultural systems. Interviews and FGDs revealed that women are currently using both customary law (*Gadaa* system and *JaarsaBiyyaa*) and formal civil courts. Some women reported that they would go to customary courts first and only when this avenue had been exhausted would they go to a formal court. Other women commented that they do not go to customary courts; rather they only go to formal courts. Although no definitive trends emerged pointing to which court women use more, it is evident that there are features of each court that influence the decisions women make.⁸³ An FGD participant captured the general sense of support for and understanding of both systems:

We know that the legal courts are responsible for protecting individual rights and the *Gadaa* is about protecting the people from any unrest and conflict that might rise in the area. Even if the *Gadaa* system doesn't have any legal protection for individual rights it is not totally useless and wrong in its purpose and functioning and we accept it as our culture. The legal courts judgments are undeniable and are part of the constitution. We don't have any problems with that. We support both systems. In the past the *Gadaa* system was the only legal system (FGD February 2011, Wolliso).

It is necessary to briefly mention that the sheer act of coming forward to any court can be a monumental step for women, particularly for those who have no access to financial resources or support. As one expert argues, "A woman has much more to lose and very little to gain by reporting victimisation...only a minority of women ever tell anyone that they have been victims of rape or another form of violence." Reasons for women's silence are based on fear, self-blame, embarrassment and ignorance of their rights.⁸⁴

The following analysis will outline the challenges faced by women who do choose to pursue justice through the courts, and will also look at the associated limitations of the formal and customary legal systems with regard to women.

⁸³ It is the researchers' assumption that rural women are more likely to use customary courts and urban women more likely to use formal courts. This assumption is based on education levels, access to courts, access to finances for court cases and training and/or awareness of women's issues. However, since this research did not take a quantitative approach, we cannot definitively say this.

⁸⁴Waldegeorgis, O. (2004) *Op Cit* p251

Challenges in Choosing Courts

The types of customary law systems used in Oromia vary greatly across the region due to a multitude of factors. The influence of modern legal systems and their increased accessibility has provided people with the choice of which system to use. The region where a person resides is a determining factor over their choice of legal system. In areas such as Borana, Bale, Jimma and Arsi the use of customary law is much stronger than in areas of the region closer to Addis Ababa because of greater adherence to the Gadaa system and traditional ways of life.

There are several key factors that women need to examine before they resort to choosing a customary court: whether or not the court is part of their culture; the danger that customary law leaders or elders may be biased; the danger that a case in formal courts might result in bringing shame on her and her family; and the forms of justice available through customary law.

Many women tend to 'choose' customary courts, but, as most women respondents explained, they come under pressure from several quarters (such as the husband, extended families and members of the community) to do so. The woman's consent to use a customary court is essential as the constitution stipulates that, if a customary court is to be used, one condition is that both parties must consent. When women come under pressure from their husbands or families to make this choice, they are no longer giving willing consent but are rather being compelled to choose the customary court.⁸⁵ Women also reported a fear of being ostracized by the community if they choose a formal court;⁸⁶ many said that the shame or humiliation that their husband might feel also dissuades them from using a formal court. In addition, as a Women's Affairs Officer in Wolliso said, it is considered taboo to bring family issues into the public arena.⁸⁷ The following stories articulate feelings about pressure to use the courts and the community shame and embarrassment that could follow:

Whether the woman goes to the formal courts or to the *Gadaas* her marital issues will be known by a third party. There is therefore no point in not going to the formal courts. It is not the women's own decision that makes them not go to the formal courts, it's the influence and pressure of the culture. The women are under a lot of pressure. They just don't go to courts when they are having problems. They worry that their neighbours will find out about their problems and get very concerned for their children (FGD, February 2011, Wolliso).

The narrative below illustrates the community pressure exerted on women to make them choose customary courts, and the feelings of shame and humiliation women may feel if they use the formal system:

Women might have some kind of knowledge about the modern court system but the feeling of shame overwhelms them. The members of her family might question her upon her exposing their marriage to the general public. She might just feel like she will be humiliated by her family. I don't think that a lack of awareness about the formal court's benefits is the problem. They go to the customary courts because of fear that they will be embarrassed. Because the courts store and study the background of the woman they fear that everybody will see their case and fear that it will be public. They don't want their name to

⁸⁵ Pankhurst, A. and Assefa, G. (2008) *Op Cit*

⁸⁶ Interview with female lawyer, Addis Ababa: February (2011)

⁸⁷ Interview with government Woman's Affairs Officer, Wolliso (February 2011).

be mentioned and they want to keep everything anonymous (FGD, February 2011, Wolliso).

Embarrassment, shame and public humiliation deter women from taking their case to formal courts as evidenced by the narrative accounts above. Moreover, women who do bring their case to a formal court may later be pressured into withdrawing their case from the formal court. A 2004 report by the Miz-Hasab Research Centre found that in all the communities they surveyed in Oromia, when women brought their cases to the courts or the police, these cases were rarely followed through to their conclusion. The report explains: "The community elders, who are guardians of customary laws, pressure such women and their families to withdraw their cases through social sanctions. In most cases, the perpetrator of the crime is protected, as has been seen in relation to cases of abduction, rape and marital disputes"⁸⁸. An interview with Muradu Abdo, a lecturer in Law at Addis Ababa University, revealed that during a recent conference bringing together judges from across the country, many reported that their case load was too full, while others commented that they are not getting enough cases.⁸⁹ They hypothesised that this was because women's cases were being held at the customary level, most likely because women were being pressured by their families to use the customary legal system.⁹⁰

Our research findings also indicate that pro-male bias is an inherent part of customary law. If a woman chooses to go to see the Abba Gadaa, he is a male. If she decides to address the JaarsaBiyyaa to mediate her case, she will be pleading to a council of male elders. Moreover, in many instances, women are not allowed to approach these mechanisms alone, they must be accompanied by a male relative, as women are seen as "unfit, unknowledgeable...to stand before the public to defend or present cases"⁹¹. Traditional Oromo institutions, like all other traditional institutions, only listen to male voices. Gender bias, subjective and arbitrary decision-making, and abuse of power are all features of these processes and all stem from male-only customary dispute-resolution institutions.⁹² The following story of Deme touches on the challenges a woman faces using customary law, the forms of justice that customary law offers, and the financial hurdles one must overcome to use the formal court system:

Though Deme wants a divorce she still lives with her husband. She heatedly said, "Fear of injustice and unaffordable costs of the court kept me from getting divorced." Deme noted that she was betrayed by her husband several times and heard repeated accusations about his mischievous acts with other women. She involved the elders to mediate, and the elders asked Deme's husband to buy her clothes as a moral compensation. Deme's response was, "I didn't want the compensation. It doesn't add anything for me. I wanted his attitude to change." Soon after the mediation with the elders, Deme heard further accusations that her husband was making advances on a younger girl. Just after this incident, Deme filed for divorce and left her house and child. She noted that she did not want to take the case to the elders since all the elders and her neighbours think she lied and accused her husband on purpose. Deme regretfully said that she had to sell some of her jewellery to open her case to the court. However, due to the extended hearing appointments of the court and her work condition she dropped the case. She explains, "I could not do my job in the cafe and the owner gave me warning because I was absent from work due to the court case. Then, I

⁸⁸ Miz-Hasab Research Centre, (2004) *Op Cit.* p62

⁸⁹ Interview with Muradu Abdo, Lecturer at Addis Ababa University, Faculty of Law: (February 2011)

⁹⁰ Interview with Muradu Abdo, Lecturer at Addis Ababa University, Faculty of Law: (February 2011)

⁹¹ Abdella, A. and Amenew, B., 'Customary dispute Resolution Institutions in Oromia Region: The Case of JaarsaBiyyaa', in Pankhurst, A. and Assefa, G., eds., *Grass Roots Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Centre Francais d'Etudes Ethiopiennes: Addis Ababa, (2008) p182

⁹² Ibid

decided to return to my house and live with my husband and my child for fear of losing my property and child.” Deme explained the current situation, “My husband, all the elders in our village and his family turned against me. I don’t have money and time to file for divorce and I have lost trust in the elders to solve our problems and I don’t believe that I can get justice.”

In this example, Deme felt that she was not able to receive the justice she was seeking. At first she tried the customary law through the elders to solve the problems that she had with her husband. However, she did not feel that the compensation demanded by the court from the husband was sufficient justice. When she tried to take her divorce case to court, she was not able to afford the process or to devote the time necessary to have her case heard. In the end, she felt that customary law could not provide her with an unbiased and objective space to share her story and receive justice. She was thus left powerless; married to a husband she does not want to live with and living in a world where she has lost faith in her customary institutions.

The representative of the government’s Women’s Affairs Officer in Wolliso informed us that it was for the very same reason – male bias – that women started coming to formal courts.⁹³ She said that, in the past, women would take their cases to the JaarsaBiyyaa and, if they took them to court, the court would refer to customary laws to handle family issues. She now believes that women come to the courts and the courts make decisions based on constitutional legal practice.

However, we also found that in other areas of Oromia, such as Ambo and Jimma, the formal courts were still working with the customary systems, often recommending that customary law be employed in family matters. The government Women’s Affairs Officer in Jimma explained in the following terms:

It is preferable for family problems, such as a dispute between a husband and a wife and the like, to be dealt by the customary law. Since the government doesn’t want families to disintegrate, we encourage customary law to manage various conflicts arising in families. Customary law is more advantageous in terms of gaining trust and giving ample time for the disputants which is important to family reconciliation and forgiveness.⁹⁴

It is apparent that customary law is still affecting the formal court system, albeit to varying degrees. In some instances, the courts refer to customary law decisions when deciding a case and some formal courts go so far as to recommend that customary law institutions be used as a first step before using the formal court. In other instances, the formal courts act alone without the interaction of customary law. The differences in how customary law and formal law interact most likely have a foundation in the opinions of law enforcers and judges who may view women’s issues as private matters, to be handled through or consulted with customary systems, or as suitable for the formal system alone. This has serious implications for women’s use of formal legal mechanisms. The formal courts need to present a uniform, systematic approach to women and family issues; when there are a variety of strategies used across the region which may or may not incorporate customary legal practices, and to varying degrees, women cannot be guaranteed to receive the justice they seek in formal legal structures. This is likely to deter them from using formal legal systems.

There are still more factors that dissuade women from using formal legal institutions. For instance, limited or no knowledge of one’s rights under formal laws is an issue for many

⁹³ Interview with government Women’s Affairs officer, Wolliso (February 2011)

⁹⁴ Interview, Women’s Affairs Officer, Jimma, (February 2010).

women, especially in rural areas where provision of civil rights education is low. When women do not understand the formal court system, it remains an alien institution to them. This is a problem for women who may not even be aware that they have a choice in where to seek justice, or that a state court has binding legislative power.

Proximity to legal courts and the financial burden of a civil court case are other, related problems. Women who live far away from courts are less likely to use them, particularly as court cases take a long time. As the justice process in formal courts is often extended for an indefinite period, taking longer than customary courts do, women are not able to obtain justice quickly. Financially, the cost of litigating in a civil court can be high due to costs associated with transport, lawyers, administration etc. The longer the process, the more it costs. As such, the high costs involved are common deterrents for women trying to access formal legal systems, as we have seen above in the case of Deme. Moreover, it was noted that women in Oromia and other parts of the country do not have control over financial resources; their partner does. They thus find themselves in even worse economic conditions when they have disagreements with their partners. According to our informants, it is not uncommon for women in these situations to be unable to feed themselves and their children, let alone to pay court fees. In relation to this, the case of an interviewee in Wonji can be cited:

This woman was supporting the family income through growing and selling vegetables and doing other petty trading. Despite the fact that this woman contributed the lion's share of the household income, she did not have control over the resources and was required to hand over all her income to her husband. Moreover, her husband used most of what she earned on local alcoholic drinks, as a result of which recurrent conflict occurred between the spouses. Since the woman was not able to find a sustainable solution from the mediation process, she was forced to migrate to Wonji and work as a daily labourer there. She did not have any knowledge about the procedures and regulations in the formal court and she did not want to go there and apply for a divorce. She noted that such measures could have resulted in the disintegration of family resources (land, cattle etc) thus leaving her children financially insecure, with no tangible resources (February 2010).

This case portrays how women's financial status and their limited knowledge of formal legal procedures prevent them from pursuing divorce or separation in the formal courts. Had she known the rights and the options available to her, she might have chosen to seek justice through a formal court.

In such an instance, the availability of legal aid services would be a significant benefit for the woman. Legal aid services are critical in supporting women in their quest for formal justice as they provide both legal and financial support to women who otherwise would not know how to navigate the formal legal system. Unfortunately, the Civil Society Law has severely decreased the availability of legal aid services to women. Before the passing of the new law on NGOs, the EWLA, a major organization advocating for women rights, had centres offering legal aid services. The new law put an end to that by making EWLA defunct.

Finally, some suggest that women are also deterred from bringing their case to legal courts because formal systems and law enforcement may not be attuned to women's issues and rights. The individuals who run the court system and the police force are overwhelmingly men who "have been socialised with the same patriarchal concepts as any community members"⁹⁵. An example of this can be seen in how domestic violence is handled in formal systems. Although the Penal Code criminalises domestic violence, for many people

⁹⁵ Miz-Hasab Research Centre, (2004) *Op Cit.* p47

problems between husband and wife or incidents of violence such as rape still remain in the private sphere where it is seen as a family as opposed to a public matter.⁹⁶ In a nationwide survey conducted on domestic violence, the police stations interviewed in Oromia on domestic violence cases had only officially registered 14 cases having directly investigated just 15. However they reconciled 85 cases outside of the legal system, showing that the vast majority of reports of domestic violence went unregistered and without investigation.⁹⁷ It was evident that the police choose to reconcile couples when violence involving partners is reported, as opposed to investigating and prosecuting the offender; this supports the suggestion that domestic violence is seen as a personal issue.⁹⁸ When reconciliation instead of justice takes place, it leaves the possibility for further domestic abuse in the future. In the same police stations that provided the statistics above, it was discovered that 62.5% of the cases that were initially 'reconciled' came back to report further domestic violence.⁹⁹

In summary, this research shows that, in some instances, the police are not handling women's domestic abuse cases with the seriousness that the Penal Code demands. In addition, the sentences passed by the courts on the culprits of rape, for instance, were very lenient. Women do not, as a result, feel confident that the formal system will uphold their rights and consider their concerns as a top priority. This acts as yet another deterrent for using the formal legal system to seek redress and justice.

Jurisdiction Confusion

In the interviews undertaken with female lawyers, *Abba Gadaas*, and in FGDs, it was apparent that in different areas there are different interpretations by law enforcement bodies of how and when customary law should be employed. Although the constitution states that customary law is to be used only in family and personal matters, evidence shows that customary laws and institutions are used in criminal cases, including domestic abuse, rape and murder.¹⁰⁰ Furthermore, interviews with informants indicate that the formal courts condoned these actions, noting the importance of customary laws in reconciling grave cases and ensuring that issues are put to rest and do not contribute to further disputes. Examples were also given in Ambo of civil courts suggesting that cases be taken to the *JaarsaBiyyaa* for resolution, under the supervision of the court. Moreover, civil courts will often look at decisions made by customary courts to guide the decisions they make. It seems that an informal system has been created where customary laws and civil courts support each other in certain civil matters, family issues being one of them. There is potentially dangerous, as people choose to use civil courts because they want fair and just decisions that are not subject to the biases a customary court may produce. When a civil court uses evidence from a customary court, they may be upholding judgements that are discriminatory to women. This is because, as we have touched upon, customary courts are informed by a culture that is deeply patriarchal. The following section will expand on this theme, looking at the position of women in Oromo society.

⁹⁶ Areda, A. and Woldegiorgis (2008) *Op Cit*.

⁹⁷ *Ibid*

⁹⁸ *Ibid*

⁹⁹ *Ibid*

¹⁰⁰ Pankhurst, A. and Assefa, G. (2008) Interview with Female Lawyer, Addis Ababa: (February 2011)



6.1 The Status and Roles of Women in Oromia

Females are subject to low status in Oromo families, commanding little respect from brothers and male counterparts.¹⁰¹ The birth of a boy is celebrated more than the birth of a girl and there are also twice as many ululations for a boy as for a girl.¹⁰² As soon as a female child is considered capable of undertaking duties, she is tasked with jobs and duties that are traditionally associated with women, such as caring for her siblings, preparing food, and fetching water and firewood. Research carried out by the Miz-Hasab Research Centre found that girls are socialised to serve men through being obedient, home-oriented and submissive.¹⁰³ A Pathfinder Report noted that a daughter is taught to be subservient because “a disobedient daughter is an embarrassment to her family.”¹⁰⁴

The value that a daughter brings through marriage is important to families for economic and social reasons. When a girl reaches the age ‘suitable’ for marriage she becomes more valuable due to the bride-price that she will bring in and the important kinship bonds that a marriage will create. One expert points to the fact that women “are not structural units within the family but rather bonds between families... [T]he exchange of women between families and also between lineages is the structural basis of the wider kinship system.”¹⁰⁵¹⁰⁶ Thus, marriage can strengthen the status of a family within a community and its kinship system.¹⁰⁷

Women are also assumed to be the property first of their fathers and then their husbands. As a child, a girl ‘can cause’ a problem for her father by being raped or impregnated; this can be a source of shame to the family.¹⁰⁸ When a woman is married she then becomes the property of her husband, and she will most likely be denied an existence that is separate from his.¹⁰⁹ An informant confirmed that women are the property of their husbands, saying it was a “tradition of Ethiopia.”¹¹⁰ The 2004 Miz-Hasab Research Centre Report succinctly summarises the gender roles of women in this society: “The socialisation process of men and women puts men in a position of absolute authority over women, and women are expected to be obedient and submissive to men economically, socially and sexually. This process puts women in a situation where they cannot use their abilities and know-how to deal with impending problems.”¹¹¹

Women are expected to shoulder the burden of most domestic chores. They spend approximately 70% of their time at home and/or in their villages cooking, gardening,¹¹²

¹⁰¹ Pathfinder (2007) *Op Cit*

¹⁰² Miz-Hasab Research Centre, (2004) *Op Cit*

¹⁰³ Miz-Hasab Research Centre (2004) *Op Cit*

¹⁰⁴ Pathfinder (2007) *Op Cit* p5

¹⁰⁵ Legesse (1973) *Op Cit* pp22-23

¹⁰⁶ Legesse hypothesizes that this is the reason why women are symbolically associated with liminality (marginality) in ritual life. *Ibid*

¹⁰⁷ Pathfinder (2007) *Op Cit*

¹⁰⁸ Miz-Hasab Research Centre (2004) *Op Cit*

¹⁰⁹ Hussein, J. (2004) *Op Cit*

¹¹⁰ Interview with female lawyer, Addis Ababa: (February 2011)

¹¹¹ Miz-Hasab Research Centre, (2004) *Op Cit* p9

¹¹² In rural areas peasant families are engaged primarily in subsistence agriculture.

raising children, caring for the sick and elderly and providing other similar domestic services. As is common with women's domestic work, these services often go unrecognised by their partners and the rest of the family.

Access to education is a factor that requires analysis in the context of gender roles and ideology. A contributing factor to women's lower status and representation in Oromo society is their notable lack of access to education. As a patriarchal society, families tend to prioritise sending boys, rather than girls, to school, as was shown in the story of Aynalem. Table 3 below illustrates that females are always less well-represented than males in education, especially in the higher levels of education (above grade 8):

Table 5 Oromia Population 5 Years Old and Over Attending School

Gender	All attending	Pre-School	Grades 1-8	Grades 9-10	Above Grade 10
Male	2,437,212	58,640	1,928,551	267,402	131,066
Female	1,867,212	54,366	1,579,057	146,282	60,656

Source: 2007 Population and Housing Census: Statistical Tables (Oromia), Central Statistics Agency of Ethiopia: Addis Ababa, (2010)

The fact that males have more access to education than females gives them more skills and therefore more opportunities for positions in public office, and by extension, to make major societal decisions. This serves only to reinforce patriarchy, which continues to deny girls and women access to education. As a 2005 UNICEF report states, "educated women are less likely to die in childbirth; more likely to have healthy babies; more likely to send their children to school; are better able to protect their children and themselves from HIV/AIDS, trafficking and sexual exploitation; and are more likely to contribute fully to political, social and economic development."¹¹³ Although, Ethiopia has in recent years made education more accessible throughout the country the preference for sending boys rather than girls to school is still very much a reality in Oromia.

Education would not only allow women to sustainably improve their well-being but is also required if women are to defend and assert their rights. In other words, knowledge and skills are crucial for the empowerment of women. Firstly, educated women are more empowered as they are more able to make the decisions that directly affect their lives, for example who to marry (to know that they are not obliged to enter into an arranged or unwanted marriage) or how many children to have. Secondly, educated women are also empowered in the sense that they better know their rights, and how to have them respected, within society at large. In 'Development as Freedom', Amartya Sen describes how education improved the well-being of women in the Indian state of Kerala, helping them to assert their rights both at home and in society generally¹¹⁴. In Oromia, the exclusion of women and the fact that their rights are not respected at all can be attributed to the fact that Oromo women, like their counterparts in the country as a whole, are not educated and not knowledgeable. Traditional knowledge systems, from which customary laws are derived, largely reinforce the exclusion of women; this is precisely the case with Oromo customary laws.

Economic Exploitation

The majority of Oromo women live in a precarious economic position, characterized by economic exploitation by their families or husbands. Women are active participants in the informal workforce, earning incomes through agriculture and/or small income-generating

¹¹³ UNICEF Gender Achievements and Prospects in Education: The GAP Report Part I UNICEF (2005) p5

¹¹⁴ Sen, A. *Development as Freedom*, Oxford: Oxford University Press. 1999

activities however; this money is rarely their own as it tends to go to their husbands and the household. Women are also responsible for domestic chores, spending a large portion of their day taking care of household tasks, yet this labour goes unrecognised and lacks any financial remuneration. Women, their labour and any income they may contribute to the family, are exploited because men independently make economic decisions about where and how finances are spent, without the consent of the wife. Women are given little or no authority over income allocation, even that which concerns the household and children. As a result, women become dependent on their husbands for financial security. As some researchers have argued “Marriage and family are the livelihoods of most Ethiopian women” where they “invest their whole life, labour, and self to build that family and maintain it.”¹¹⁵ It is their marriage that they depend upon to provide for them and their family. This concept is vital to understanding VAW; if women are viewed as unable to survive independently, they most likely will question whether it is worth coming forward when they are victims of VAW. The consequences of which may be greater than simply enduring the violence from their husbands. The experience of Woizero Abebech serves as an example of women’s insecure financial position:

Abebech is now 54 years old and a mother of five children. She said that even though they could have offered better to their children, she was always giving them bread without any stew. Whenever she asked her husband for money to buy ingredients for making stew he used to beat her harshly and respond to her saying “why should you want money since we have everything from our farm? I know your evil thoughts and that you want to spoil my children. Give them what they eat from home. They are just children and why would they want a stew?” Abebech continues, “I used to cry whenever I looked at what my children eat, since I knew that they need a balanced diet to be healthy and grow properly. But the fact that I couldn’t offer them what they really wanted was the biggest pain I couldn’t bear. So, I managed to borrow 100 birr (8 USD) and started buying onion, oil and salt from another village and selling it with very little profit. As time goes by I started to get better income though it was very tiring. Finally I managed to pay my debt and now am able to provide my children with balanced diet. The problem now is that I have my workload at home and my husband is still beating me.”¹¹⁶

This story illustrates women’s financial dependence on their husbands. However, it also shows that through small income generation activities, women are able to obtain meagre financial gains and spend it on improving the family’s well-being. Providing economic opportunities to women is fundamental to empowering them and giving them more freedom to make their own decisions.

Sexuality

Perceptions of female sexuality and one’s control over one’s own sexuality dramatically influence and relate to forms of VAW. The control of women’s sexuality is a central part of gender constructs in Oromo society, contributing to the submissive role women play in Oromo culture. The 2004 Miz-Hasab Report succinctly summarises the sexual status of women and men: “a ‘typical man’ is defined to be sexually conquering, courageous, assertive and being able to give protection. He controls his wife/wives and ensures their loyalty and obedience to him by inflicting fear. A ‘typical woman’ is submissive and meets the needs of her parents at home before marriage. When she marries her main duty is to satisfy

¹¹⁵ Trask, R. and Getachew, S., ‘Post-Divorce Maintenance in Ethiopia: A Viable Option for Divorced Women’, *Berchi*, Issue 7, (2008) p90

¹¹⁶ Interview with Woizero Abebech (February 2010)

the needs of her husband. Femininity is equated to submissiveness, delicateness, seeking protection and agreeing to what a man says.”¹¹⁷

Another concept of sexuality that is true for a large part of Oromo culture, and for much of Ethiopian society at large, is the practice of female genital mutilation (FGM). Both males and females undergo circumcision, however, the main difference is that for a man it signifies maleness and domination; while for women, it reinforces subordination and control over their sexuality. The 2005 Ethiopia Demographic and Health Survey found that 87.2% of women in the country have undergone FGM and 29.8% believe that the practice should continue¹¹⁸. Despite advocacy measures to put an end to FGM, the harmful practice still continues and is part of VAW in Oromia.

Lastly, it is necessary to mention the relation of HIV to sexuality and VAW as it has been shown that women have little control over their sexuality due to strict cultural norms, which means they often have little chance to protect themselves from sexually transmitted infections and diseases such as HIV/AIDS. Customary sexual practices undertaken in Oromo such as polygamy and having sexual partners outside of marriage put women in a vulnerable position for contracting HIV. Nevertheless, it has been found that because in Oromo culture there is an inherent element of assumed trust in relationships, people do not perceive themselves to be at risk.¹¹⁹

Women’s precarious and dependent status in society manifests itself in their vulnerability when dealing with the customary justice system, as we shall see in the following analysis.

6.2 Gender Norms and Cultural Systems

The Gadaa System

The *Gadaa* system operates within defined gender roles informed by the prevailing patriarchal tradition as described above. Unless under special circumstances that deem their presence necessary, women have no formal presence or representation within the male-dominated *Gadaa* system. In the first place, the system intentionally prepares only men to be part of the succession plan within the *Gadaa* hierarchy. Therefore, within those societies where the *Gadaa* system plays a major role in governing lives, women are not represented in the political and administrative system.

Oromia is a vast region, with a huge population and a diversity of religions that inform traditional systems and customary laws in different ways. As such, the *Gadaa* is not applied throughout Oromia, and where it is present it is not applied consistently. One of the many interpretations of *Gadaa* holds that although it is a male institution, in some instances opinions of older women should be taken into consideration in very exceptional cases, such as when the *Gadaa* assembly lacks consensus. Certain informants have defended the *Gadaa* system’s protection of women’s rights. The *Abba Gadaa* in Ambo that we talked to, for instance, insisted that laws exist in *Gadaa* to protect women, but failed to mention any of these laws specifically. However, he referred to the mystical ‘Matriarchal rule’ as the “time of women” and something that the *Gadaa* is proud of and which is reflected in laws that stand for the respect of women.¹²⁰ It has been noted that among the Boorana Oromo, treating

¹¹⁷ Miz-Hasab Research Centre, (2004) *Op Cit* p61.

¹¹⁸ Central Statistical Agency Addis Ababa, (2006) *Op Cit*

¹¹⁹ Interview with female lawyer, Addis Ababa (February 2011)

¹²⁰ Interview with *Abba Gadaa*, Ambo: (February 2011)

women poorly is an offence to the whole clan. In fact, if a husband violates the respect of his wife, the clan can step in on behalf of the wife.¹²¹

However, we shall see that this kind of attitude is very much an exception rather than the rule when customary law is implemented on the ground. The following section will analyse the real problems women face when seeking justice through customary law.



¹²¹Elemo, K., (2006) *Op Cit*



7.1 Limitations of Customary Law Under the Gadaa System

A major problem within the customary legal system that was identified is the gap in elders' awareness of formal laws. According to AbebeZemedede (elder in Jire, Jimma), elders' do not have much awareness of or knowledge about the Family Law and the Criminal Code of Ethiopia.¹²² If elders are not aware of the provision for protection of women's rights under these laws, this constitutes a serious shortcoming that will compromise the elders' ability to protect Oromo women from violence and to ensure that the full rights of women are recognised, as guaranteed under the constitution. On a similar note, it was pointed out that elders need to be aware about what kinds of cases they should or should not address.

As the *Gadaa* system is only for men, its 'egalitarian' nature has clear limitations. Women are not directly a part of the *Gadaa* and they do not have a role in the *Gadaa* grade systems. Women's involvement takes shape in relation to their husband and/or through participation in rituals and ceremonies. The reason for this may relate to the *Gadaa* origin myth of mystical 'matriarchal' rule, which resulted in the marginalisation of women in politics and community assembly.¹²³ When women are excluded from decision-making structures in justice systems, opinions and rulings can fall prey to male bias.

Nonetheless, as noted above, customary law can evolve. We have seen women included in decision-making structures under the *Abba Gadaa* in Bishoftu. Here, the 'parliament,' an assembly of 120 people, has included 25 seats for women. The *Abba Gadaa* explained that, "we do this so that women have a voice to talk about women's issues and problems. We want women to be represented".¹²⁴ This is truly a positive change with respect to women's rights; however, the level of participation of women on this committee remains unclear. It is also unclear whether their 'voice' is limited to women's issues only.

As has been shown, the constitution implies that private family matters are for the customary legal system. This, however, has been done in an unclear and uneven way, and the definition of what does or does not constitute a 'private' matter has largely been left up to individual cultures to decide.

We can now turn to how customary legal systems, which as we have seen are deeply embedded in a patriarchal socio-cultural milieu, deal with cases of VAW

¹²² Interview with Abebe Zemedede, Jimma (February 2010)

¹²³ Interview with Abebe Zemedede, Jimma (February 2010)

¹²⁴ Interview with *Abba Gadaa*, Bishoftu (February 2011)

7.2 Shortcomings of Customary Law in Cases of VAW

In Article 34, sub-article 5, the Ethiopian constitution acknowledges that cases occurring in the 'private' domain come under the jurisdiction of the customary courts: "The Constitutions shall not preclude the adjudication of personal or family disputes by religious or cultural laws if all parties to the dispute agree. The law shall specify the procedures." Not only has this ruling been applied in an unclear and uneven fashion, but it has also been left up to a strongly traditional patriarchal culture to decide what is in the 'private' or 'public' domain. Crimes committed against women have largely been seen to fall in the former category, and so women's cases tend to be heard in customary courts that are dictated by, as we have seen, strongly patriarchal forces. The implications of this for cases of VAW are laid out below.

Domestic Violence

As stated above, only 28% of female victims of domestic abuse knew of formal legal channels of justice through which they could seek recourse. A much larger proportion - 76% of respondents – knew how to do so through customary courts.¹²⁵ As a result, the majority of these cases are resolved through customary procedures.

In customary legal practice, although wife battery is not seen as a legitimate act, there is a tendency to accept it as cultural behaviour and therefore not an offence. The entire community shares the damaging perception that domestic violence is normal. The socialization process in the community serves to make domestic violence a trivial and, crucially, underreported issue. Many women share the traditional perception that wife battery is a cultural behaviour and a way of expressing love. However, in the FGDs, young women in particular spoke bitterly about this offence and expressed their strong disagreement with the community stance on the issue. They also spoke of how they are offended by some proverbs that ridicule Oromo women in this regard.

If a woman approaches the *Abba Gadaa* or *JaarsaBiyyaa* for support in a domestic violence case the customary authorities will most likely make the man pay his wife some compensation. A government Women's Affairs Officer in Wolliso noted the following:

There are compensations paid to women in cases of mistreatment. Whether the compensation is fair or not is another question that needs to be raised. In the past society was solely dependent on the law of the *Shemageles [JaarsaBiyyaa]*, so women had to accept each of their judgments. For example, if the husband kicks his wife out of the house the *Shemageles* are the ones who will see her case and compensate her by giving her, or making the husband pay, cattle or money as a fine. She will then come back and live with the same husband who kicked her out. This doesn't mean that justice was served¹²⁶.

This comment shows that customary law helps to reconcile husband and wife, but the 'justice' provided is often inadequate. It may not provide the justice that the woman is seeking and it also may not stop the husband from repeating the offence. The case of Worke demonstrates how customary law may not stop repeated acts of violence:

¹²⁵ Miz-Hasab Research Centre, (2004) *Op Cit*

¹²⁶ Interview with government Women's Affairs Officer in Wolliso (February 2011).

Worke has been married for 22 years and has four children. Worke and her husband were both hard working, wealthy and respected. However, her husband started beating her soon after they got married. She said, "My husband was beating me all our married life. Most of our arguments have turned to violence." And sometimes Worke does not even know the reason why she is beaten. She recalls that one day her husband started beating her all of a sudden, and when she asked why he replied that he was hungry. What is surprising is that that her husband is a well-respected and well known person in the village and is even invited frequently to mediate conflicts in other families. More than once, according to Worke, they have had to seek the elders' mediation. She bitterly says, "My husband never did what he promised to the elders. He usually swears that he will not abuse me anymore, but he never keeps his word. I have lived with him all these years for the sake of my children". Though Worke appreciates the traditional way of solving problems, the unwillingness of her husband to abide by the resolutions given by the elders forced her to go to a Human Rights office. The officer asked Worke to give her husband another chance since he had promised not to beat her again. Worke stated, "They said that after one more such incidence they will write a supportive letter for the court. But I told the officers that I am in great pain because of his beatings and if he beats me again I may be in a life-threatening situation."

What is evident is that resolutions in customary law often compel women to agree with the terms and conditions set by the elders even when their rights are violated. The Oromo woman is always expected to be patient, forgiving and even to give up her basic rights in order to sustain her family, while such sacrifices are not expected from her male counterparts

Early Marriage and Abduction

In customary law the *JaarsaBiyyaa* will mediate between the abducted and abducting families to come to an agreement and reconcile any ill will. As abduction is now illegal in Ethiopia, this action taken by the *JaarsaBiyyaa* is also illegal. An EWLA women's advocate in Bishoftu cited at least one case where the *JaarsaBiyyaa* were arrested for attempting to arrange a forced marriage following an abduction; in this instance, the *JaarsaBiyyaa* were seen to be condoning the abduction.

Although not all cultural leaders and elders are abiding by the new laws against abduction and early marriage, it seems that custom may be slowly changing. A *Gadaa* elder in Adama (Elder Mulugeta) stated, "The *Gadaa* system has criminalized the act of abduction and early marriage. Moreover, elders of the *Gadaa* system are prohibited from arbitrating abduction and early marriage cases and are obliged to report such cases as a crime"¹²⁷. It can only be hoped that viewing this hugely damaging practice as illegal is an attitude that continues to spread throughout the Oromo community and that customary laws respect the federal laws regarding these practices.

Rape and Marital Rape

The problems that women face when they pursue justice through the formal system for suffering an act of rape are largely mirrored in the customary system. Firstly, they tend not to want to come forward due to social pressures and fear of shame and embarrassment. Second, custom takes centre stage in proceedings and prioritises 'resolving the problem',

¹²⁷ Interview with Elder Mulugeta in Adama (February 2010)

thus maintaining impunity through an arbitrated or negotiated inter-family arrangement. Thirdly, male officials tend not to take the cases seriously. Marital rape is considered a private issue and not a crime; another problem stemming from the cultural definition of the 'private' sphere.

7.3 Marriage, Divorce and Inheritance

Related to VAW is the question of ease of divorce, where it is desired, as divorce is, arguably, one the most direct routes for a woman to escape a damaging relationship. Marriage, divorce and inheritance provide a revealing case study for the complex and contradictory interactions of the formal and customary legal systems.

As this paper has shown, marriage is vital not only for a woman's survival, as it often represents her livelihood, but also for the kinship bonds between families that it serves to cement.¹²⁸ While not all marriages are forced, women are often not free to make their own decisions on who they marry when the father, brother or cousin are granted the 'right' to give away women for marriage.¹²⁹

Once married, women are expected to produce children, especially boys. If a woman is childless, which gives the husband the right to take another wife, often of a younger age. If the new wife starts giving birth, then she will automatically start to be prioritised and respected at the expense of the first wife's dignity and morale. Tsegae's story is a typical example of what can happen to a woman who cannot produce children. Moreover it provides an insight into the bias and injustice that customary courts can cause:

When Tsegae got married to her husband, they only had a monthly income of 75 birr (4.5 USD). However, they used to live happily despite their abject poverty. It was after years of marriage that her husband got a permanent job in a government office and they could afford to construct a house of their own to enjoy a better life. However, Tsegae says, peace in their home was shattered when it turned out she could not give birth. She was thrown out of the house as her husband refused to live with a barren woman. Tsegae filed her case to the court claiming her right for property. After the hearing, the court ordered the case to be heard by elders and gave a chance for both Tsegae and her husband to come up with two people they trust to act as arbitrators. Tsegae noted that she had chosen one wise woman from her village and one of her relatives to see her case. Tsegae also agreed on the selection of the middle arbitrator, who had the responsibility of making a final decision with both sets of arbitrators. Though Tsegae trusted the middle arbitrator, she regretfully said that later she found out that he had mysterious contacts with her husband and her husband bribed him. "My husband has a good income and he is capable of doing what I couldn't. The middle arbitrator then tried to convince the other elders that I should not get any property because I don't have a child and all property belongs to my husband. The arbitrators from my side didn't agree, but overriding their concern he reported to the court. One day I met him and he said, 'Don't think of reopening the case. You should know that you wouldn't get anything from your husband'". Tsegae explained that the middle arbitrator also denied her any relevant documents and when she pleaded with him he said he will give them to her for 100 birr. But after taking him the money, he did not give her the documents. Tsegae went to the court to submit a new petition, but her

¹²⁸Pathfinder, (2007) *Op Cit*; Trask, R. and Getachew, S. (2008) *Op Cit*; Elemo, K. (2006) *Op Cit*

¹²⁹Elemo, K. (2006) *Op Cit*

husband died before the court decision was made. She blamed the middle arbitrator for the injustice and poverty she endured. Not long after, she heard that her husband's son had requested his father's inheritance. Tsegae, at the age of 57, lives with bitterness and in poverty. She says, "What I have been through cost me my health, money and time."

This case is a clear indicator that using the *JaarsaBiyyaa* is not always a fair and just process. Here, Tsegae was unfairly treated due to arbitrator bias.

Divorce has become easier for women now as the family law was revised to permit divorce by mutual consent and is no longer classified as a serious case, as it was in the old family law.¹³⁰ As the EWLA women's advocate confirmed, women are becoming increasingly cognizant to their rights and if they want a divorce they are coming to the formal courts to seek one because they recognize that the customary courts often encourage them to return to their husbands.¹³¹ Nonetheless, divorce can have severe consequences for a woman who depends on her husband for economic survival. If a woman is to get divorced she has fewer education and employment opportunities, will earn a lower salary than a man and still has to keep up with her responsibilities in the household.¹³²

If a woman is to get divorced, the constitution provides for equal economic rights, acquisition and inheritance of property including land.¹³³ However, under customary law, as Tsegae's story shows, women are not provided with equitable inheritance. Women are generally allowed to take what was given to them on their marriage day, but access to land is rare. According to customary law, elder women can inherit property with their children if their husband is deceased. Even so, in 2005 the DHS found that 21% of widows were dispossessed of their property when their husband died. However, as the government Women's Affairs Head in Jimma noted, the government is making some attempts to raise awareness of issues of women's inheritance, pensions and also of polygamy. These problems are beginning to change, as women understand their rights more clearly.



¹³⁰ Federal Democratic Republic of Ethiopia, (2006) *Op Cit*

¹³¹ EWLA Advocate Interview (February 2011), Pankhurst, A. and Assefa, G. (2008) *Op Cit*

¹³² Trask, R. and Getachew, S. (2008) *Op Cit*

¹³³ Federal Democratic Republic of Ethiopia, (2006) *Op Cit*



8. Conclusion and Recommendations

In conclusion, this paper has attempted to demonstrate how parallel legal systems in the Oromia region of Ethiopia function and the various ramifications on women's rights. Most of the damaging repercussions, with regard women's rights, come as a result of the asymmetric application of formal laws and of the subsequent fall-back onto patriarchal and anachronistic customary laws that are out of step with the growth of women's rights, roles and expectations in society. On top of these structural constraints, the traditional perception of justice and the low level of education, particularly among women, have ensured that customary laws and values are respected above those of the state. The cumulative effect of these factors is reflected in how justice is sought by women and the frequency with which they encounter only injustice.

This parallel legal system has emerged in Ethiopia as a result of the government trying to introduce a progressive formal legal framework, while simultaneously preserving customary systems of justice in order to avoid upsetting or disempowering the various individual cultures that exist in the state. This in its self has critical implications for women in the region. On the one hand, there is an attempt to construct civil society that acknowledges changes in gender roles and the empowerment of women in the economic, social and political spheres, while on the other hand traditional, patriarchal structures have been further reinforced.

At a fundamental level, this patriarchy remains a foundation of Oromo culture, where most women live in the shadow of male dominance and are defined by their relationships to men. Consequently, the power relations that arise between men and women are skewed, with women having little control over their financial or sexual lives. This lack of power is also permeates the decision-making mechanisms at the community level, which are, for the most part, devoid of female participation.

Oromo women know customary law better than statutory law; customary law is part of their culture and tradition and they are brought up with it. The principle of gender equality is not a guiding principle under customary law, which has meant that women's rights are not always met or even understood, especially in cases pertaining to VAW. As we have seen, the goal of customary law in Oromo society is to maintain social harmony and bring about reconciliation, putting the needs of the collective over those of the individual. Customary law mechanisms under the *Gadaa* system are inherently male-biased as men are the only decision-makers and judges in these traditional dispute resolution systems.

In Ethiopia, customary law is sanctioned for use in personal and family disputes. However, as has been shown, customary legal systems often contradict the constitution and federal laws. As there is no basis for basic equity and due process in customary systems, they do not stand up to the basic covenants enshrined in the statutory laws. On paper, Ethiopia's constitution and Penal Code have provisions on women's rights, but on the ground there is a huge disparity between the law and the reality when it comes to its actual application. For example, law enforcement bodies do not always see domestic violence as a criminal act but rather as a private matter. Another challenge is that not all women are familiar with the formal legal system or understand the procedures and their rights. Furthermore, women

often have limited to no access to this system or are even financially able to take advantage of the services that it can potentially provide.

The parallel legal systems run alongside each other, but have diverse footings and divergent goals. As rights are inextricably linked to legal systems, it is problematic to have two conceptions of rights operating simultaneously. Moreover, as the state is the guarantor of human rights, opposing conceptions of rights emanating from customary law presents challenges to the state. Creating universality in law would mean that customary law would need to be further integrated into Ethiopia's formal legal system. So far, the constitution allows for customary law to operate in certain matters, but that is as far as federal regulation of customary legal systems goes. This creates an uncertain and ambiguous atmosphere within which customary law is able to operate.

Regardless, it is still crucial to give credit to the Ethiopian government for the remarkable efforts made in building and executing a just and progressive constitution, one that recognises all minority rights – not just women's rights. We must acknowledge the complexity of the ethnic and cultural diversity of Ethiopia, and the concomitant challenges that the Ethiopian government has faced in seeking to implement such a constitution.

However, it is equally important to emphasise that the formal statutory system created by this constitution *must* be supported and reinforced if minority rights are to be effectively protected. The danger, as we have seen in this report, is that granting too much autonomy to other authorities makes the constitution impressive in theory but irrelevant in practice. And this report has sought to highlight this very discrepancy, and in particular, the ways in which traditional customs have extremely damaging implications for women seeking redress for crimes committed against them.

Piecemeal legal reforms are therefore not enough to change how people operate within the legal system. In addition to the institutionalization and application of statutory/ federal law, campaigns to raise awareness of legal and rights-based action will help to challenge the contradictory ways in which people operate within the current legal framework. This research has found that there are many women who know very little about the formal legal system, how they can pursue justice through it, or even how to access it. In the same vein, many women do not know that their rights are protected under the constitution; that despite the oppressive structures in which they live, they have choices and options as to how to obtain and protect their full rights. It is vital to sensitise women on these topics.

In traditional societies, gender inequality is a component of most aspects of a woman's life and is embedded in culture. This state of affairs has existed for generations and will not change overnight. A significant increase in the availability and uptake of education for children, especially girls, is an essential component of the process of social change that could help to reverse this reality of injustice. Girls must be able to attend school and receive formal and civil rights education. Women's economic independence should be paramount; women's empowerment begins with creating opportunities for sustainable livelihoods, independent of their fathers or husbands. Moreover, sensitisation on gender equity and women's rights should not target only women; there must also be a focus on men and changing their understanding and perceptions of women. Change will not take place if only half of the population supports shifts in how society views gender equity.

Finally, more should be done to strengthen the powers of the progressive constitution in Ethiopia and improve women's awareness of, and access to the statutory rights that it offers. The longer that this parallel legal system exists and is empowered by the present day system, women will continue to find themselves resorting to customary processes that are not evolving at the same pace as Ethiopia's human-rights based constitutions and laws. This will make it more difficult for society as a whole to shake off the shackles of a patriarchal

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heritage and move forward to enjoy fair and equitable justice under a modern and accountable legal system.



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