

BEYOND UNIVERSALISM-CULTURAL RELATIVISM DEBATE: POTENTIALS OF THE GADA SYSTEM FOR LEGITIMIZING HUMAN RIGHTS OF WOMEN*

By Bona Legesse Geshe **

1. Introduction

The notion of human rights was not a common topic until the 1940s. It was only with the conclusion of World War II that human rights took shape as a distinct and coherent set of ideas and eventually found expression within the legal and institutional framework of the United Nations.¹ The holocaust of the World War II resulted in the incorporation of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”² as one of the major aims of the United Nations (UN) within its Charter. Accordingly, the UN organized a working commission to prepare what came to be the Universal Declaration of Human Rights (UDHR) and adopted in 1948 by the General Assembly of the UN.³ After this, a number of human rights documents have been adopted under the auspices of the UN.⁴

*This Piece was initially submitted in January 2012 as a partial fulfillment of the Masters of Arts in Human Rights to the Center for Human Rights of Addis Ababa University. I would like to acknowledge Mr. Aberra Dagafa for his critical comments and supervision as well as Obbo Jatani for his cooperation in coordinating key informants and providing me with vital information. I owe a heartfelt acknowledgement to all the authors on *Gada* system and my Key Informants in Borana zone. I am also grateful for Dr. Mamo Hebo and Kalkidan Negash whose comments helped me improve this work. Last but not least, my gratitude goes to Wondemagegn Tadesse for his support in the preparation of this piece and the anonymous reviewers for their critical reviews.

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¹Roger Normand and Sarah Zaidi (2008), *Human Rights at the UN: The Political History of Universal Justice*. Bloomington: Indiana University Press. p. 27

² Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945. Art 3(3)

³ In 1966 the UN adopted the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), which came to constitute, together with the UDHR, the International Bill of Human Rights.

⁴ Six human rights documents, i.e. the Covenant on Economic, Cultural, and Social Rights (ICESCR), the Covenant on Civil and Political Rights (ICCPR), the Covenant against Racial Discrimination, the Convention against Torture, the Convention on the Rights of the Child (CRC) and Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), are the most widely ratified documents and make up the core of the UN human rights system.

International Human Rights so adopted at the UN level claim to have a universal application. This has been met with challenges since the Draft of the Universal Declaration of Human Rights. It has been claimed that the documents are of 'western' origin and grounded on a liberal philosophy which puts the individual at the center of human rights protection. This debate of the universality or cultural relativity has persisted to this day. The debate has usually involved the role of 'culture' in the protection of individual rights. There is an argument that international human rights documents and considering the debate of universalism and cultural relativism debate as antagonistic positions has resulted in demonization of culture. The positive role of culture in the advancement of human rights through the search for cross-cultural universals has been overlooked.

The human rights of women make the central issue of the debate of universalism and cultural relativism. This is because of the general claim that violation of the human rights of women are embedded in cultural practices which resulted in the consideration of culture as an obstacle for the enjoyment of the human rights of women. Human rights documents recognizing the human rights of women seem to take this approach. They usually talk of culture from the perspective of the harm they pose on women. The African Charter on Human and People's Rights, however, seems to have taken a distinct approach in this regard from the UN human rights documents and the European and Inter-American Human Rights Systems through the imposition of duties on individuals and protecting collective human rights. Ethiopia being home for a diverse population mostly leading a traditional life requires the examination of how we shall employ the already established cultural values and institutions for better protection and creating local legitimacy of international human rights norms. In this article, the author attempts to explore the values and customary norms of Gada system that have the potential to advance the human rights of women.*

1. Universalism-Cultural Relativism Debate

Human Rights norms incorporated within international human rights documents are, *inter alia*, characterized as inalienable, indivisible and universal by nature.⁵ Among these features of human rights this article is based on the

* With an attempt to examine whether *Gada* system has potentials for the protection of the human rights of women and whether it could help to advance better protection of the human rights of women and create a cultural legitimacy of norms of international human rights within the Oromo people, triangulation of research methods was used with the purpose of

'universality' feature and the discussion that follows will also be based on the debate surrounding it. Indicating their universal nature enumerations of rights within international human rights documents typically begin with phrases like "every human being ..., everyone has the right ..., no one shall be ..., or everyone is entitled to ..." etc. Of course, the international human rights documents and the United Nations Charter (UN Charter) claim to base the protection they give and the purpose of their establishment on "the dignity and worth of the human person"⁶ or in the words of the Universal Declaration of Human Rights "the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" implying the application of the norms incorporated in the documents to every human being.⁷

strengthening the findings obtained from a qualitative inquiry by cross-checking information. First, various published and unpublished documents have been analyzed. Especially, the *Gada* system of Arsi Oromo is almost totally based on such written accounts because of a better written account on women under *Gada* system of the Arsi Oromo. Secondly, observation method has been adopted in which the author employed an active observer technique. The author have spent about a month in *Ya'aballo*, *Dire* and *Arero* Districts of *Borana Zone* of Oromia Regional State where *Gada* system is still active, observing the way women are generally treated under *Gada* system. Thirdly, an interview method has also been employed in which the informants, from both men and women, were selected purposively based on their knowledge of *Gada* system. As such, one former *Abba Gada*, two women known for their knowledge of *Gada* system, three persons known as *Argaa Dhageettii* (persons who had served as experts in keeping the knowledge, decisions, etc. of the System), as well as former head of Borana Zone Culture and Tourism Bureau who has worked on the system for several years, and one person from Borana Zone Women and Children Affairs, totally seven individuals took part in the interview. Semi-structured interview technique was employed in which the informants replied to open ended list of questions on the subject area.

⁵Vienna Declaration and Programme of Action, United Nations World Conference on Human Rights, 25 June 1993, UN Doc A/CONF 157/23. Para 5 of the Vienna Declaration reads in full: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.'

⁶ UN Charter, *Supra* note 2. Preamble, Para. 2.

⁷ Universal Declaration of Human Rights (UDHR), G.A. res 217A (III), U.N. Doc A/810 at 71 1948, Preamble, Para.1

However, the 'universal' character of the rights declared in the major international human rights instruments has been a source of debate from the start of the human rights movement.⁸ For instance, the American Anthropological Association (AAA) had submitted a statement opposing the proposed UDHR to the United Nations.⁹ The statement asked how the proposed Declaration be applicable to all human beings, and not be a statement of right conceived only in terms of the values prevalent in countries of western Europe and America.¹⁰ The basic problem raised by that AAA statement is that approaches to determining the content of human rights norms, or selecting the most effective ways of implementing them, necessarily reflect specific cultural, philosophical, or ideological perspectives.¹¹ Of course, this argument has been at the centre of the debate of whether universal human rights are universally applicable to all human beings or are enforced in a culturally relative manner.

The generally antagonistic positions of universalism and cultural relativism debate have borne a number of descriptions. While universalism is described as 'absolute rights and/or imperialism in imposing rights', cultural relativism has been described as 'contingent rights and/or self - determination of peoples'.¹² These understandings of the character of human rights have sometimes been casted as alternatives, as polar visions with no neutral ground between them, and sometimes as allowing for a more complex view that understands some norms as universal, some as relative to context and culture.

2.1. Universalism

As stated above, international human rights documents are framed in a way to show their universal nature. Everyone is entitled to these rights for the sheer fact of being human, without distinction as to race, religion, language, etc. Universalists emphasize in the fact that human rights are special entitlements of all persons and are grounded in human nature which makes them inalienable and universal by application. To have human rights, one does not

⁸ Steiner et al, (2007) *International Human Rights in Context: Law, Politics, Morals*. New York: Oxford University Press, pp.517-518

⁹ American Anthropological Association (1947), *Statement on Human Rights*.

¹⁰ Ibid.

¹¹ Abdullahi A. An-Na'im. "Area Expressions" and the Universality of Human Rights: Mediating a Contingent Relationship. In David P. Forsythe and Patrice C. McMahon. (eds.) (2003) *Human Rights and Diversity: Area Studies Revisited*. University of Nebraska Press/Lincoln. p.4

¹² Steiner et al, *Supra* note 8. p. 517

have to be anything other than a human being nor must one do anything than being born as a human being. Jack Donnelly makes a distinction between conceptual and substantive universality of human rights.¹³ Conceptual universality of human rights means that they are by definition, equal and inalienable. Human rights are held equally or universally by all for the mere fact of being human. Whereas, the substantive universality of human rights is concerned with the universality of norms incorporated within international human rights, which make it the central theme of the relativism-universalism debate of human rights.¹⁴

1.2. Cultural Relativism

Cultural relativism basically considers international human rights to be of a western origin which makes its application relative to the culture of the society to whom it alleges to apply. Cultural relativists see human rights norms incorporated in international human rights documents as enumerating rights and freedoms which are culturally, ideologically and politically non-universal. The norms of the Universal Declaration and other international human rights instruments are presented as having no normative force in the face of divergent cultural traditions. Cultural relativism seems to have developed because of the problem of finding valid cross-cultural norms. According to Elvin Hatch, in every case where criteria to evaluate the ways of different people have been proposed, in no matter what aspect of culture, the question has at once posed itself: 'Whose standards?'.¹⁵ Practice is to be evaluated entirely by the standards of the culture in question.¹⁶

As the Statement on Human Rights of the American Anthropological Association puts it, 'man is free only when he lives as his society defines

¹³ Jack Donnelly. (2008) Human Rights: Both Universal and Relative. *Human Rights Quarterly*, Volume 30, Number 1. pp. 194-204. Jack Donnelly discusses the universality of human rights by classifying it into conceptual and substantive universality; universal possession vis-à-vis universal enforcement; historical vis-à-vis anthropological universality; functional universality; international legal universality; etc. Also See, Jack Donnelly. (2006) The Relative Universality of Human Rights. (working paper no. 33) (<http://www.du.edu/gsis/hrhw/working>)_ Accessed on November 1, 2011.

¹⁴ Jack Donnelly. (2006) The Relative Universality of Human Rights. (working paper no. 33) (<http://www.du.edu/gsis/hrhw/working>). Accessed on November 1, 2011. Pp.2-3.

¹⁵ Elvin Hatch. (1981) *Culture and Morality: The Relativity of Values in Anthropology*. New York/Columbia University Press. P.8

¹⁶ Donnelly, *Supra* note 14. P.17

freedom'.¹⁷ Cultural relativism denies the possibility of truth in ethics by relativizing all moral judgments about social behavior to each culture's prevailing beliefs about them. Cultural relativists accordingly reason that all assessments of the conduct of others could only be tied to idiosyncratic standards of measurement.¹⁸

The debate for the cultural relativity of international human rights comes from different sources. Some even depend on the level of relevance of norms incorporated in the international human rights documents for the right holders. For instance, most developing states have argued that the focus on civil and political rights has created a hierarchy of human rights that prioritizes civil and political rights over more pressing concerns such as the right to food, and therefore is less relevant to the vast majority of persons in the south who suffer from poverty and underdevelopment.¹⁹ But now there seems to be a general consensus among the international community on the interdependence and indivisibility of all human rights as it is made clear by the Vienna Declaration on the program of Action.²⁰ The main sources, however, are based on the very foundation and development of international human rights. These later arguments are also based on the role of 'culture' in formulating the international human rights norms and as such seek a brief discussion here.

1.2.1. Western Origin of Human Rights Movement

The first argument is based on claim that human rights movement started in the West and as such is the reflection of the western culture. Human rights are seen as irretrievably part of Western triumphalism that reached its apogee in colonial ideology.²¹ They argue that current human rights norms possess a distinctively western or Judeo-Christian bias, and hence are ethnocentric construct with limited applicability.²² These allegations of ethnocentrism are sometimes bundled with a denunciation of the colonial syndrome, or the continued measurement of all cultures and civilizations against the standards,

¹⁷ American Anthropological Association. *Supra* note 8. P.543

¹⁸ Grace Y. Kao. (2011) *Grounding Human Rights in a Pluralist World*. Washington, D.C.: Georgetown University Press. Pp.11-12

¹⁹ Fareda Benda. (2005) *Women, law and Human Rights: An African Perspective*. Hart Publishing: Oxford. P.41

²⁰ Vienna Declaration and Programme of Action. *Supra* note 5.

²¹ Helen M. Stacy. (2009) *Human Rights for the 21st C: Sovereignty, Civil Society, Culture*. Stanford University Press: Stanford. P.11

²² Ann-Bellinda S. Preisz (1996), *Human Rights as Cultural Practices: An Anthropological Critique*. The John Hopkins University Press: Baltimore. p.288

achievements, and theoretical constructs of the West.²³ The fear is that the legal framework and conceptual apparatus of human rights will continue to intrude hegemonically, whether by intent or inevitable consequence, upon all the peoples of the world.

The argument that human rights are western can be understood from two perspectives.²⁴ The first is through narrative, or by locating the genesis and development of the idea of human rights within and among Western soil. It is argued that the socio philosophical precursors of human rights are to be found in Western natural rights doctrines of the seventeenth and eighteenth centuries or even earlier, in the christianized and classical theories of natural law that preceded them.²⁵ The international human rights instruments resemble the natural law and natural rights talk of the Enlightenment and earlier periods in their stipulation of humanity-at-large as the relevant moral community, placement of normative constraints upon the workings of positive law, and use of analogous language.²⁶ Mutua also asserts that the fundamental texts of the international human rights law are derived from bodies of domestic jurisprudence developed over several centuries in Western Europe and United States.²⁷ According to him, the dominant influence of the western liberal thought and philosophies are unmistakable. Its emphasis on the individual egoist as the center of the moral universe underlines its European orientation.

²³ Kao, *Supra* note 18. pp.18-19

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ In illustrating this view with respect to UDHR Kao discusses some similarities with western rights tradition. The first clause of the preamble recognizes the "inherent dignity" and "equal and inalienable rights" of all members of the human family as the "foundation of freedom, justice and peace in the world," and the third clause contains a submerged right of rebellion - a right demanded and historically won by various Europeans and North Americans when attempting to overthrow their non representative forms of government. Article 1 of the UDHR also echoes the U.S. Declaration of Independence and the French declarations of the *Droits de l'Homme et du Citoyen* in its assertion that humans are "born free and equal in dignity and rights," and Article 16 conceives of the family as the "natural" unit in society. That the UDHR intentionally as opposed to coincidentally contains these traces of Western philosophy is supported further by the fact that many African and Asian nations did not have a voice in the drafting period of 1946-48 because they had yet to win their independence from their Western colonizers. See, Kao, *Supra* note 18

²⁷ Makau Mutua. *The Complexity of Universalism in Human Rights*. In Andras Sajó (ed), (2004) *Human Rights with Modest: The Problem of Universalism*. Koninklijke Brill NV: Netherlands. P.61

The basic human rights texts drew heavily from the American Bill of Rights²⁸ and the French Declaration of the Rights of Man.²⁹ But for Jack Donnelly, human rights ideas and practices arose not from any deep Western cultural roots but from the social, economic, and political transformations of modernity.³⁰ Thus, they have relevance wherever those transformations have occurred, irrespective of the pre-existing culture of the place. The second is through content, or by identifying Western bias in contemporary human rights formulations or standards. The rights incorporated under most international human rights instruments are coined in liberal tones protecting individual rights. Collective rights are not generally considered to fall within the ambit of human rights within the West tradition. On the contrary most non-west societies consider collective rights as the most important right to protect. Mutua argues that even if he doesn't think the human rights movement is a western conspiracy to deepen its cultural stranglehold over the globe, its abstraction and apoliticization obscure the political character of the norms that it seeks to universalize since the 'universal' is at its core and in many of its details, liberal and European.³¹

1.2.1. Multiculturalism and Protection of Individual and Collective Human Rights

Besides the origin of international human rights movement, the challenge to the concept of universality of human rights usually has to do with the debate over collective and individual human rights. The western world's concept of human rights surrounds the rights of individuals, which is, of course, at the heart of Liberalism.³² The liberal ideology/culture of Western countries tends to hold that economic, social, and cultural benefits or services should be provided for through the normal political process. Because of its emphasis on individual autonomy and privacy, liberal ideology/culture finds it difficult to

²⁸ The American Bill of Rights is the collective name given for the first Ten Amendments to the 1789 Constitution of the United States of America.

²⁹ The French Declaration of the Rights of Man and the Citizen is the result of the French Revolution which was adopted by the National Constituent Assembly in 1789 and has its foundation on the thoughts of the enlightenment age such as individualism, social contract, etc.

³⁰ Donnelly, *Supra* note 14. p.7

³¹ Mutua, *Supra* note 27. P.54

³² Will Kymlicka (1995), *Multi-Cultural Citizenship: A Liberal Theory Of Minority Right*. Clarendon Press: Oxford. Pp.34-35

conceive of collective entities or groups as bearers of rights.³³ The basic principles of liberalism, of course, are principles of individual freedom. Liberals can only endorse 'collective rights' in so far as they are consistent with respect for the freedom or autonomy of individuals.³⁴ International human rights instruments are drafted in an individualistic tone, reflecting their endorsement of liberal ideology. Individuals are the main subjects of international bill of human rights. Pointing out individual members and not minorities are the main subjects of Art 27 of the ICCPR; Jack Donnelly also argues that, groups do not appear as right holders in international human rights instruments even where one might expect them to.³⁵

The relevance of liberal theory, however, is generally criticized as inefficient in most multicultural societies.³⁶ Liberalism, so the claim goes, does not grant enough attention to phenomena such as multiculturalism and nationalism, and thus it downplays the problem of how belonging to identity groups affects individual autonomy and equality. For instance, discriminations perpetrated against individuals on the ground of their group identity usually target the group rather than the individual person. Such technical violation of rights is common in plural societies necessitating protection of collective rights for the sake of both individual members and solidarity of the group.

According to Mutua, as a philosophy that seeks the diffusion of liberalism and its primacy around the globe, the human rights corpus can be said to be favorable to political and cultural homogenization while hostile to diversity.³⁷ He continues, strangely many human rights instruments explicitly encourage diversity through the norm of equal protection. According to him, the paradox of the corpus is that it seeks to foster diversity and difference and does so only under the rubric of Western political democracy. In other words, it says that diversity is good so long as it is exercised within the liberal paradigm, a

³³An-Na'im. *Supra* note 11. p.7

³⁴Kymlicka, *Supra* note 32, P.75

³⁵ Jack Donnelly. In *Defense of the Universal Declaration Model*. In Gene M. Lyons and James Mayall (eds) (2003), *International Human Rights in the 21st Century: Protecting the Rights of Groups*. Maryland: Rowman & Littlefield Publishers Inc. P.21

³⁶ Neus Torbisco Casals (2006), *Group rights as human rights: A Liberal Approach to Multiculturalism*. Dordrecht: Springer.

³⁷ Mutua, *Supra* note 27. P.54

construct that for the purposes of the corpus is not negotiable. The door to difference appears to be open while in reality it is closed shut.³⁸

Unlike western culture, in most multicultural societies, individual's rights are usually seen from the perspectives of the community at large. In states with high levels of cultural pluralism group rights are generally seen as an instrument of legitimizing wide range of claims.³⁹ Individuals have duties towards the community besides their individual rights. Taking Africa as an example, Cobbah asserts that as a people Africans emphasize groupness, sameness, and commonality,⁴⁰ rather than the survival of the fittest and control over nature, the African worldview is tempered with the general guiding principle of the survival of the entire community and a sense of cooperation, interdependence, and collective responsibility. The African Charter on Human and Peoples' Right⁴¹ (also known as African Charter or Banjul Charter) seems to be informed by this view when it captures peoples' rights and emphasized duties one owes to communities.⁴² The African Charter takes the view that individual rights cannot make sense in a social and political vacuum, unless they are coupled with duties on individuals.⁴³

Considering groups/collectivities as human rights holders, however, is usually criticized as an obstacle to the enjoyment of individual human rights, the traditionally main subjects of human rights. The concern is individuals could be trapped within the group and may become unable to exercise their rights since the conflict of individual and group rights is inevitable. The main critics come from the stand point of the human rights of women. The critics tend to dismiss multiculturalism as bad for women or as an excuse for bad behavior.⁴⁴

³⁸ Ibid. Pp.54-55

³⁹ Casals, *Supra* note 36. P.1

⁴⁰ Josiah A. M. Cobbah (1987) *African Values and the Human Rights Debate: An African Perspective*. Baltimore: The John Hopkins University Press. P.320

⁴¹ The African Charter on Human and Peoples' Right, June 27, 1981, OAU Doc. CAB/LEG/67/3/Rev. 5 (1981), reprinted in I.L.M. 59 (1982). The Charter entered into force on October 21, 1986, upon ratification by a simple majority of member states of the Organization of African Unity (OAU).

⁴² According to Art 27 (1) of the African Charter, individuals owe duties to the family and society, the state and other legally recognized communities.

⁴³ Makau Mutua (2000), *The African Human Rights System: A Critical Evaluation*. New York: United Nations Development Programme. P.8

⁴⁴ Siobhán Mullally. *Gender Equality and Group Rights: Negotiating Just Multicultural Arrangements*. In Koen De Feyter and George Pavlakos (eds), (2008) *The Tension*

The fear is that multicultural policies might shore up the power base of the older men within the community and encourage the public authorities to tolerate practices that undermine women's equality.⁴⁵

Protecting group rights, however, is not necessarily incompatible with individual rights. According to Kymlicka, collective rights involve two basic claims made by the group: internal restrictions and external protections.⁴⁶ The former claim is intended to protect the group from the impact of internal individual choices, whereas the latter is intended to protect the group from the impact of external decisions. Internal restrictions may raise the question of individual oppression since they have the potential of restricting individual liberty in the name of protecting group solidarity. In this case while protecting the collective right to keep their internal solidarity, it would be necessary to protect individual's liberty where they choose to act otherwise. However, external protection of the group also protects individual rights since the human rights of members of a certain ethnic or religious group is usually violated on the ground of their group identity. Protection of individual rights only is not adequate to protect the individual where the violation is based on such grounds.⁴⁷ Moreover, most group differentiated rights are in fact exercised by individuals.⁴⁸ Therefore, dismissing multiculturalism as an oppositional force denies the possibility of arriving at just multicultural arrangements that both define the limits of reasonable pluralism and recognize the significance of cultural differences.

Generally, the way international human rights instruments are crafted focusing on the protection of the individual has served as one reason to advance the debate of cultural relativism. The inadequacy of liberal tradition to protect collective human rights and individuals in plural societies has been reiterated.

1.2. Cross-Cultural Universals

Critics of the Cultural Relativism debate maintain that through endorsement of international human rights instruments, States have accepted the universality

between Group Rights and Human Rights: A Multidisciplinary Approach to human Rights law. Hart Publishing: Oxford and Portland P.107

⁴⁵ Anne Phillips (2007), *Multiculturalism without Culture*. Princeton University Press: Princeton and Oxford. P.12

⁴⁶ Kymlicka, *Supra* note 32. pp.35-44

⁴⁷ Donnelly, *Supra* note 35. P.3

⁴⁸ Kymlicka, *Supra* note 32. p.45

of the norms incorporated in it which renders the debate irrelevant. The conception of human rights, as proclaimed in the Universal Declaration of 1948 and developed in subsequent treaties and institutions, was undoubtedly Western in its initial formulation. But, according to the critics, that does not necessarily mean that it is alien or irrelevant to non-Western societies.⁴⁹ The frequent endorsement of norms of international human rights documents in regional human rights treaties and national constitutions indicates the fact that the human rights concept has transcended and needs to transcend further the limitation of its initial western formulation. However, Mutua argues that the fact that human rights became the central norm of civilization does not vindicate their universality.⁵⁰ This is rather a telling testament to the conceptual, cultural, economic, military and philosophical domination of the European peoples and traditions. Therefore, in line of this later argument the political consensus over international human rights does not entail a global cultural consensus.⁵¹ Like Jack Donnelly rightly stated, 'the claim of 'universal' human rights is that all human beings ought to be treated equally in the enjoyment of human rights, not that they are or have been or these norms are accepted everywhere'.⁵² Moreover, such universal endorsement was not without cost since most States have made reservations on grounds such as culture and religion while ratifying the international human rights documents which has a significant impact on the universal application of human rights. Another formulation, which is more progressive than the above assertion to disregard the existence of the problem, is an attempt made to negotiate for cross-cultural universals across various societies of our world

The universalism-cultural relativism debate is usually depicted as antagonistic ideologies, as if one has to either fully accept or completely reject the universality of certain rights for all human beings. On one end of this purported dichotomy are said to be countries that claim cultural/religious relativity or contextual specificity to justify rejecting or qualifying certain universal human rights norms, and on the other side are those that are supposed to fully accept the universality of all human rights. This binary view is misleading in assuming either that human rights can be culturally and contextually neutral or that a conception of human rights emerging within one

⁴⁹ An-Na'im, *Supra* note 11. P.3

⁵⁰ Mutua, in Sajo (ed) *Supra* note 27. Pp.60-61

⁵¹Xiaorong Li. (2006), *Ethics, Human Rights and Culture: Beyond Relativism and Universalism*. Palgrave macmillan : New York. P.6

⁵² Donnelly, *Supra* note 35, P.21

culture or context can be accepted by other cultures for application in their context.⁵³

According to Mutua, although cultural relativism in human rights as an anti-imperial device is admirable, it is a misunderstanding inspired by cultural nationalism.⁵⁴ What its proponents see as radically distinctive, irreconcilable traditions also possess ideals which are universal. He also notes that most critiques of cultural relativism are ethnocentric and symptomatic of the moral imperialism of the West.⁵⁵ Both extremes only serve to detain the development of a universal jurisprudence of human rights. Proponents of the need to come up with cross-cultural universal human rights norms through constant negotiations argue that the core of the relativist argument ought to be whether or not it is possible to establish cross-cultural universals. Consensus-based approaches to human rights more commonly refer to Rawls's idea of obtaining an "overlapping consensus"⁵⁶ on political principles of justice.⁵⁷ Just as Rawls argued for the legitimacy of liberal democratic values in a modern constitutional democracy in spite of the diverse and even mutually incompatible beliefs about them among its citizenry, so consensus-seekers defend the universal validity of human rights even in the absence of global agreement on their theoretical foundations by those who would nonetheless be bound by them.⁵⁸ Rawls developed the notion to understand how there can be a stable and just society whose free and equal citizens are deeply divided by conflicting and even incommensurable religious, philosophical, and moral doctrines. According to Jack Donnelly, the idea has obvious extensions to a culturally and politically diverse international society.⁵⁹

⁵³ An-Na'im, *Supra* note 11. p.3

⁵⁴ Makau Mutua. (1995), *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*. 35 *Va. J. Int'l L.* 339. P.1

⁵⁵ Although taking a strict Universalism approach in a way that seems to generally disregard even the valid claims asserted by cultural relativists Mizanie discusses the possible challenges of cultural relativism by pointing out how it exposes women's vulnerability to HIV/AIDS. See, Mizanie Abate, *The Human Rights Discourse in Perspective: Cultural Relativism and Women's Vulnerability to HIV/AIDS*. Jimma University Law Journal

⁵⁶ John Rawls (1996). *Political Liberalism*. Columbia University Press: New York

⁵⁷ See, Charles Taylor, *Conditions of an Unforced Consensus on Human Rights*. In Joanne R. Bauer and Daniel A. Bell (eds) (1999), *The East Asian Challenge for Human Rights*; and, Kao, *Supra* note 18

⁵⁸ Kao, *Supra* note 18, pp.77-78

⁵⁹ Donnelly, *Supra* note 14. p.11

Accordingly, the aim of cross-cultural approach is to enhance the credibility of national and international standards by developing more effective approaches of promoting and implementing those rights.⁶⁰ In illustrating how the lack of cultural legitimacy of international human rights norms in non-western cultures might affect the protection and promotion of human rights, An-Na'im asserts that:

... human rights violations reflect the lack or weakness of cultural legitimacy of international standards in a society. In so far as these standards are perceived to be alien to or at variance with the values and institutions of a people, they are unlikely to elicit commitment or compliance. While cultural legitimacy might not be the sole or primary determinant of compliance with human right standards, it is ... an extremely significant one. Thus the underlying causes of any lack or weakness of legitimacy of human rights standards must be addressed in order to enhance the promotion and protection of human rights in that society.⁶¹

If meaningful and lasting changes in attitudes and practices are to be achieved, the proposed reinterpretation has to be undertaken from within the culture by those who, while promoting universal norms, are sensitive to the integrity and authenticity of the local cultures.⁶²

Richard Shwartz affirms this point of view by reiterating the necessity of a cross fertilization of cultures if a universal human rights corpus is to emerge.⁶³ According to him every culture will have its distinctive ways of formulating and supporting human rights. While honoring the diversity of cultures, we can also build toward common principles that all can support. As agreement is reached on the substance, we may begin to trust international law to provide a salutary and acceptable safeguard to ensure that all people can count on a minimum standard of human rights.

⁶⁰ Steiner, *supra* note 8, p.532.

⁶¹ *Ibid.*

⁶² Francis Deng; In William Twining (ed) (2009), *Human Rights: Southern Voices*. Cambridge University Press: Cambridge. P.37

⁶³ Richard D. Schwartz, "Human Rights in an Evolving Culture," in Abdullahi Ahmed An-Na'im and M. Deng, (eds) (1990), *Human Rights In Africa: Cross-Cultural Perspectives*. Brookings Institution: Washington, D.C. Pp.368-382

The universality of human rights is to be realized through the confluence of internal societal responses to injustice and oppression, instead of attempting to transplant a fully developed and conclusive concept and its implementation mechanisms from one society to another.⁶⁴ The way to get universal idea accepted locally is to present it in local terms, which can best be done by local people. Conversely local acceptance enriches the universal idea by giving it meaning and relevance to people's lives. In other words, all countries need to engage in constant negotiation about which claims to accept as human rights and how they can be implemented in practice.

This negotiation should, by definition, include the widest possible range of perspectives and priorities of different human societies for the outcome to be accepted as truly universal. Different groups, countries, religious communities, and civilizations, although holding incompatible fundamental views on theology, metaphysics, human nature, and so on, would come to an agreement on certain norms that ought to govern human behavior.⁶⁵ Therefore, each would have its own way of justifying this from out of its profound background conception. We would agree on the norms while disagreeing on why they were the right norms, and we would be content to live in this consensus, undisturbed by the differences of profound underlying belief.

Human rights are not a static concept. Our understanding of human rights is constantly evolving as we come to know more about the human condition. The quest for universality must continue because that is in the immediate self-interest of all human societies under present conditions of global interdependence as well as the moral imperative for the protection of universal standards of human rights everywhere.⁶⁶ Universality of human rights is crucial since they are necessary for securing freedom and social justice for all individual persons and communities against the excess or abuse of power by the state. Besides the legitimate question of non-representativeness of the values of international human rights norms claimed by relativists, some states only raise relativity questions only to shield their own human rights violations.

⁶⁴ Abdulahi An-Na'im (ed) (2002), *Cultural Transformation and Human Rights in Africa*. Zed Books Ltd: London. p.16

⁶⁵ Charles Taylor, *Conditions of an Unforced Consensus on Human Rights*. In Joanne R. Bauer and Daniel A. Bell (eds) (1999), *The East Asian Challenge for Human Rights* P.124

⁶⁶An-Na'Im, *Supra* note 11. p.9

This makes the universality of international human rights crucial to protect individuals and communities from excesses of government power.

As such it would be necessary to deliberate strategies to mediate the apparent conflict or tension between the cultural and contextual specificity of human rights norms and claims that certain norms have universal validity regardless of culture or context. An-Na'im suggests that this mediation is critically important because universality of human rights is both imperative and difficult to achieve out of genuine consensus throughout the world.⁶⁷ Since the inherent and permanent diversity of the world precludes founding the universality of human rights on the normative claims of any single tradition or context, it is necessary to explore which possible foundation or justification is more likely to work in different settings and under which circumstances. Mutua also asserts that the human rights movement must not be closed to the idea of change.⁶⁸ Because, considering those who reopen or continue the debate about the cultural nature of the human rights regime as outsiders or even enemies of the movement is the greatest obstacle to the efforts to bring about true universal human rights.

The apparently antagonistic positions taken by the universalism and cultural relativism debate has also reflected negatively on 'culture' which resulted in its consideration as an obstacle for the protection of human rights in general and the human rights of women in particular. Merry argues that we need to consider the universalism and cultural relativism debate as part of the continuous process of negotiating ever-changing and interrelated global and local human rights norms instead of choosing one side.⁶⁹ Culture in this sense does not serve as a barrier to human rights mobilization but as a context that defines relationships and meanings and constructs the possibilities of action. Seeing culture as open to change emphasizes struggles over cultural values within local communities and encourages attention to local cultural practices as resources for change.

⁶⁷ Ibid

⁶⁸ Mutua, *Supra* note 27. Pp.53-54

⁶⁹ Sally Engle Merry (2006), *Human Rights and Gender Violence: Translating International Law into Local Justice*. The University of Chicago Press: Chicago and London. P.9

1.2. The Centrality of 'Culture' within the Universalism-Cultural Relativism Debate and Its Impact on the Application of Human Rights

The universalism-cultural relativism debate is based on various grounds as discussed above. The core of the debate, however, is the difference in the 'culture' of generally the west and non-western societies. The term 'culture' has many meanings in the contemporary world.⁷⁰ It is often seen as the basis of national, ethnic, or religious identities. Culture is sometimes romanticized as the opposite of globalization, resolutely local and distinct.⁷¹ The less controversial textbook definition of culture is probably which defines 'culture' as 'an inherited body of informal knowledge embodied in traditions, transmitted through social learning in a community, and incorporated in practices'.⁷²

For the purpose of this Article, however, 'culture' is understood as, what Kymlicka calls 'societal culture', i.e. a culture which provides for its members meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres.⁷³ These cultures tend to be territorially concentrated, and based on a shared language. Yet, it would be important to note that 'culture' as used in the universalism-cultural relativism debate of human rights is criticized for presenting culture as an almost physically concrete, quantitatively measurable entity. Culture is implicitly defined as a homogenous bounded unit almost as if it was a 'thing'.⁷⁴ Moreover, some argue that 'culture' as used in the debate and defending multiculturalism exaggerates the internal unity of cultures, solidifies differences that are currently more fluid, and makes people from other cultures seem more exotic and distinct than they really are.⁷⁵

Relativists mainly base their argument on the fact that international human rights are traced back to liberal ideologies and Christianity which of course is

⁷⁰ See, Merry, *Supra* note 69; Li, *Supra* note 51; Kymlicka, *Supra* note 32; and, Yvonne M. Donders (2002), *Towards a Right to Cultural Identity*. Intersentia: Antwerpen

⁷¹ Merry, *Supra* note 69.

⁷² Li, *Supra* note 51.

⁷³ Kymlicka, *Supra* note 32. p.76

⁷⁴ Preis, *Supra* note 22. 293-294)

⁷⁵ Phillips. *Supra* note 45. P.14

not representative of the diverse culture of most non-western societies.⁷⁶ The centrality of culture within the debate, therefore, could be seen in two ways. First, the origin and development of international human rights norms is traced to western cultures, which is at the center of arguments forwarded by relativists. Secondly, culture is vital in the understanding and practice of human rights by the right holders as such. Not only the groups but individuals freedom will also be enlarged through protection of group rights because 'freedom is intimately related and dependent on culture'.⁷⁷

As a normative system that seeks to influence people's behavior and the political and social institutions that regulate their lives, human rights could only be the product of culture, to be interpreted for practical application in a specific context.⁷⁸ The idea of human rights is founded on the belief in the possibility of universal rights due to all human beings everywhere to ensure equal respect for human dignity throughout the world. But such norms can neither be imagined nor understood in the abstract, without reference to the concrete daily experience of the people who are supposed to implement them. Since any conception of human rights as a normative system is the product of some culture(s), a given set of these rights can be perceived as alien or unacceptable to other cultures. In order for human rights ideas to be effective, however, they need to be translated into local terms and situated within local contexts of power and meaning. They need, as Merry puts it, to be remade in the vernacular.⁷⁹

Culture plays a vital role in understanding and enjoyment of human rights. Ali Mazrui identifies various functions of culture which includes the following.⁸⁰ First, it helps to provide lenses of perception and cognition. How people view the world is greatly conditioned by one or more cultural paradigms to which they have been exposed. Second, it motivates human behavior, whereby people tend to respond behaviorally in a particular manner. Third, culture provides criteria of evaluation of what is deemed better or worse, ugly or beautiful, moral or immoral, attractive or repulsive. Fourth, it is the basis of people's identity, as can be seen from how religion and race are often a basis for solidarity or a cause of hostility. Culture gives individuals and the community

⁷⁶ Preis, *Supra* note 22. pp. 293-294

⁷⁷ Kymlicka, *Supra* note 32.p.75

⁷⁸ An-Na'Im, *Supra* note 11.

⁷⁹ Merry, *Supra* note 69.

⁸⁰Ali A. Mazrui, (1990), *Cultural Forces in World Politics*. Heinemann: Portsmouth. P.7

with a particular cultural identity a lens through which to define a 'dignified life' which is, of course, the basic foundation of human rights. As Kymlicka puts it, people make choices about the social practices around them, based on their beliefs about the value of these practices. And to have a belief about the value of a practice is, in the first instance, a matter of understanding the meanings attached to it by our culture. Our societal culture not only provides options but also makes them meaningful to us.⁸¹

Despite the relevance of culture in the making and understanding of human rights, however, it is usually depicted as a challenge to the exercise of individual human rights which is partly attributed to the debate of universalism and cultural relativism of human rights. Recognizing the universality of human rights was seen to entail a denial, rejection or overriding of culture; conversely, recognizing culture was seen to prohibit, at least potentially and in some cases, the pursuit of universal individual rights.⁸² For instance, critics forwarded against cultures as the main reason for the violation of the human rights of women is the common one.⁸³ This discourse is animated by a fundamental tension between, on the one hand, the desire to establish universal rights and, on the other, the awareness of cultural differences, which seems to negate the possibility of finding common ground on which to base such rights.

Misreading of culture as totally antagonistic to human rights hinders the global spread and local appropriation of human rights concepts. International human right norms can build upon culture rather than only resist it and this would foster its expansion and use by local activities.⁸⁴ When culture is thus viewed as an externalized impediment to the struggle towards human rights, rather than as an integral part of the struggle itself, we are prevented from seeing the various inbuilt potentials of the culture for application of fundamental human rights in general and the human rights of women in particular.⁸⁵ Rather than rejecting cultural values as obstacles to the enjoyment of individual human rights it would be important to look for potentials within the culture which

⁸¹ Kymlicka, *Supra* note 32. pp.82-84

⁸²Jane K. Cowan, et al. (eds) (2001), *Culture and Rights: Anthropological Perspectives*. Cambridge University Press: Cambridge. P.4

⁸³ Sally Engle Merry (2003) *Human Rights Law and Demonization of Culture*. American Anthropological Association: Wellesley.

⁸⁴ Merry, *Supra* Note 83

⁸⁵ Preis, *Supra* note 22. pp.295-296

might be helpful to promote fundamental human rights. Established cultural values and institutions of a given society could effectively be used to create local cultural legitimacy of the rights which could have been resisted as outside norms. Rather than resisting them as alien norms, they will embrace them as part of their culture. Taking these premises as a basis, in the following sections whether the Universalism-Cultural Relativism debate is relevant for discussion of the human rights of women in Ethiopia, and whether the Gada system provides values and norms which have a potential for the better protection of human rights of women in the Oromo peoples' context will be discussed.

3. The Relevance of Universalism-Cultural Relativism Debate for Protection of the Human Rights of Women in Ethiopia

Ethiopia is a plural society home for more than eighty ethnic groups. These highly diverse ethnic groups of the country have been denied recognition of their diversity by the Imperial and the Derg regimes, which were committed to create a nation state.⁸⁶ This had served as one of the causes for the long civil war that resulted in a paradigm shift from these assimilationist regimes and adoption of the 1995 Constitution of the Federal Democratic Republic of the Ethiopia (FDRE Constitution) that gave recognition, *inter alia*, for the diversity of the various ethnic groups found in the Country.⁸⁷ In this context examination of the debate of universalism- cultural relativism from the perspective of the human rights of women in the current federal Ethiopia becomes relevant for various reasons among which are the following.

Firstly, the FDRE Constitution has dedicated various provisions for the recognition of human rights. Besides its Chapter Three which exclusively deal with fundamental human and democratic rights,⁸⁸ the constitution also makes 'International Treaties ratified by the country an integral part of the law of the land'.⁸⁹ Ethiopia has ratified most of international human rights instruments relevant for the protection of the human rights of women, including CEDAW.

⁸⁶ See, Assefa Fiseha (2007), *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study*. Wolf Legal Publishers: Netherlands.

⁸⁷ Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution), Federal Negarit Gazeta, Proclamation No. 1/1995, August 1995.

⁸⁸ The FDRE constitution classifies Chapter Three, entitled 'fundamental rights and freedoms', into two parts: 'human rights' and 'democratic rights'. Looking at the norms under the chapter and the effects of the provisions, the division doesn't seem to make any difference.

⁸⁹ FDRE Constitution, *Supra* note 87. Art 9(4)

It has also signed, but did not ratify it yet, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Therefore, one may be eager to know how these instruments are applied domestically in protecting the human rights of women.

Secondly, Ethiopia is a multicultural country and the FDRE constitution declares that the Nation, Nationalities and Peoples (NNPs) of the country are the sovereign power holders of government power and the constitution is an expression of their sovereignty.⁹⁰ Constitutionally speaking, this power extends from making the government to breaking it which includes the right to self-determination up to secession.⁹¹ As an expression of this power, therefore, the constitution has recognized the collective right of each NNPs to 'express, to develop and to promote its culture and to preserve its history'.⁹² Recognition of customary and religious laws as a legitimate ways of dispute resolution in personal law areas is also one of the manifestation of the right to self determination of the NNPs of the country. To this effect, Art 34(5) of the FDRE Constitution states that the "Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute". Hence, it will be the duty of the State to make sure that the NNPs right to the exercise of this right is guaranteed while at the same time ensuring the fundamental human rights of individual members of the society is guaranteed against possible infringements.⁹³

Considering the above factors, therefore, the apparently conflicting interest of protecting the cultural integrity of groups, in this case the NNPs of Ethiopia, and protecting the human rights of individual women from possible human rights violation embedded within cultural practices of the people needs to be

⁹⁰ FDRE Constitution, Supra note 87. Art 8(1) cum (2)

⁹¹ FDRE Constitution, Supra note 87. Art 39(1)

⁹² FDRE Constitution, Supra note 87. Art 39(2)

⁹³ While assessing the settlement of homicide cases through customary practices among the Shawa Amhara, Somali and Gumuz people Donovan and Getachew discuss the challenges of legal pluralism in the protection of the fundamental human rights of individual members of these societies. They, *inter alia*, question whether the difference of treatment of the crime of homicide among various NNPs of the Country could be at odds with the right to equal protection of law and the duty of the State in guaranteeing fundamental human right to life. See, Dolores A. Donovan and Getachew Assefa, Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism. The American Journal of Comparative Law, Vol. 51, No. 3 (Summer, 2003), pp. 507-508 and 532-533

examined. Whether the universalist approach of ‘demonizing the role of culture’⁹⁴ in advancing and protecting the human rights of women has to be the rule or whether we need to consider approaches that try to accommodate cultural values and norms in the protection of the human rights of women in Ethiopia should be addressed.

The FDRE constitution has given a wider recognition for the human rights of women. Besides incorporating international human rights protecting women as an integral part of the law of the land,⁹⁵ the Constitution itself has dedicated certain provisions for guaranteeing the fundamental rights of women.⁹⁶ Especially, Art 35 deals with the human rights of women in a detailed manner. Concerning the status of culture the FDRE Constitution under Art 35(4) states that: “[t]he State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited”.⁹⁷ However, this provision also seems to reiterate the individualistic international human rights instruments approach of considering ‘culture’ solely from the perspective of being an obstacle for the enjoyment of the human rights of women by harboring ‘harmful customs’. It doesn’t consider the possibility that culture could also be a better starting point for the better protection of the human rights of women.

Although diversity is celebrated in Ethiopia because of the status accorded to the NNPs by the Constitution, when it comes to the right of women the culture of the NNPs is usually depicted as an impediment.⁹⁸ Rather than searching for possible cultural values of the NNPs that could better be exploited to advance the human rights of women and protect them from harmful cultural practices, policies and literatures on the area focus on the challenges they pose on the rights of women. One of such cultures of the NNPs of Ethiopia includes the *Gada* System of the Oromo people. The theme of the next chapter, therefore,

⁹⁴ Merry, Supra note 69

⁹⁵ FDRE Constitution, Supra note 87. Art 9(4) cum 13(2)

⁹⁶ FDRE Constitution, Supra note 87. Art 34 and 35

⁹⁷ Based on this constitutional provision various legislations both at the federal and regional levels, mainly in criminal and family laws, have been adopted. For more discussion on this matter see: Mizanie, Supra note 55.

⁹⁸ For instance, the theme of most researches sponsored by the Ethiopian Women Lawyers Association or EWLA (a domestic Non-Governmental Organization engaged generally in the protection of the human rights of women in the country), is harmful traditional practices embedded within the culture of the NNPs of the country.

will be examining whether the Gada system has potentials that positively contribute for the advancement of the human rights of women within the Oromo people.

4. Potentials of the Gada System for Legitimizing the Human Rights of Women

4.1. The Gada System: A Brief Introduction

Gada system⁹⁹ is a system of classes (*luba*) that succeed each other every eight years in assuming military, economic, political, and ritual responsibilities.¹⁰⁰ It is a system of social organization based on age-grade classes of the 'male' population.¹⁰¹ The male members of the society pass from one stage of development to the other assuming different rights and responsibilities from birth to death. The members belong to five different parties (*misseensa*) which assume power in turn every eight years.¹⁰² Jatani and Dire¹⁰³ describe *Gada*

⁹⁹ Some writers consider Gada system as one form of a republican government. See, Baissa Lemu (1994), *Gada values: The Building Blocks of a Democratic Polity*, The Journal of Oromo Studies, Vol. 1 no. 2. Tennessee: Tennessee University. P.48. Herbert S. Lewis (1994), *Aspects of Oromo Political Culture*, The Journal of Oromo Studies, Vol. 1 no. 2. Tennessee: Tennessee University. P.53

¹⁰⁰ See, Asmarom Legesse (2006), *Oromo Democracy: An Indigenous African Political System*. Trenton/Asmara: The Red Sea Press, Inc. p.8; and, Alemayehu Haile (2009), *Gada System: The Politics of Tulama Oromo*. Finfinnee: Oromiya Culture and Tourism Bureau. Pp.48-50

¹⁰¹ B. van Koppen, M. Giordano and J. Butterworth, (eds), (2007), *Indigenous Systems of Conflict Resolution in Oromiya*. Butterworth: CAB International. P. 149

¹⁰² Gada system divided the society into five parties (*misseensa*) and each of these *misseensa* has different roles to function in five stages of eight years until power is transferred from one *misseensa* to the other. The stages are *itimako* (*ilma gaammee*) which is an initiation stage, *daballee* in which the socialization continues and military training begins, *follee* (*kuussa*) which conducts a military service, *qondaalla* or *raabaa* stage which has a dual task of military service and preparation for leadership and the fifth stage is *lubba* which assumes a full political leadership for the next eight years. See, Baissa, *Supra* note 99, p.48. The five parties are known by different names. According to Haile; *Birmajjii*, *Horata*, *Duullo*, *Michillee* and *Rooballee* are fathers' parties whereas *Halchisa*, *Bahara*, *Kiilolee*, *Biifollee* and *Meelbaa* are son's Gada parties in Tulama Oromo. Among the Borana Oromo (*Sabbo* and *Goona*) the parties are known as *Fullas*, *Daraara*, *Makuula*, *Sabbooqa* and *Moggisa*. See, Haile, *Supra* note 100, Pp.52-53

¹⁰³ Jatani Dida, Borana Zone Culture and Tourism Bureau, Interview conducted on December 12, 2011. Dire Guyo, Borana Zone, Yabalo District, Interview conducted on December 14, 2011.

system as a comprehensive system which tends to govern economic, political, religious and other social relationships of the society. Discussing the complexity of *Gada* system, Legesse asserts:

The *Gada* system is an institution that represents an extreme development of a type of social structure known to anthropologists as age-sets. ... it is one of the most astonishing and instructive turns the evolution of human evolution has taken. Historically the *Gada* system probably started out of a system of age-sets.¹⁰⁴ Today it is organized along radically different lines: it is a system of temporal differentiation of society having little to do with ages. Among the [Oromo] of Ethiopia the institution has reached a most remarkable level of complexity. ... here we find a society that is stratified into two distinct but cross-cutting systems of peer group structures. One is a system in which the members of each class are recruited strictly on the basis of chronological age. The other is a system in which the members are recruited equally strictly on the basis of genealogical generations. The first has nothing to do with genealogical ties. The second has nothing to do with age. Both types of social groups are formed every eight years. Both sets of groups pass from one stage of development to the next every eight years. All [Oromo] males have a position in both systems.¹⁰⁵

The foundation of the *Gada* system is rooted in the informal or customary Oromo institutions of *aadaa* (custom and tradition), *seera* (laws), *safuu* (the oromo concept of ethics) and *heera* (justice).¹⁰⁶ The *Gada* system organized the Oromo social life around series of generation grades that assign obligations

¹⁰⁴ According to Borbor Gada system is first started by a man called *Alii Gurraacha Yaayyaa Muunyoo*. Borbor Bullee, Borana Zone, Diree District, Interview on December 15, 2011. Whereas according to Haile, Gada laws were passed down from prior Oromo generations by Makko Billi who was a *raji* (people who know the future and help others to abide by *waaqa's* laws). Haile, *Supra* note 100, p.157 On the other hand Demissei notes that Gada was not started at one time by one person. Rather it developed through the cumulative experiences gained from experiments, practices and lessons of many generations of the Oromo people. See, Diribi Demisse (2011), *Oromo Wisdom in Black Civilization*. Finfinnee: Finfinne Printing and Publishing S.C. pp. 207-208

¹⁰⁵ Asmarom Legesse (1973), *Gada: Three Approaches to the Study of African Society*. New York: The Free Press. Pp. 50-51

¹⁰⁶ Koppen et al (eds), *Supra* note 101, p.152.

and as well as rights to all the males in the society. Each man born to or adopted by Oromo parents is automatically placed for life into a readymade pattern of positions and moved through it, performing various services for the public and also receiving certain privileges.¹⁰⁷

This indigenous institution is an egalitarian institution embracing most of the principles of modern democratic polity. One of the basic values of *Gada* system is the principle of 'kite' or equality which is a notion that all participants in a group are to be considered and treated as equals.¹⁰⁸ The participation and input of all are permitted and expected. Everyone involved have equal responsibilities to the group. Baissa and Lewis, list various values of *Gada* system which, *inter alia*, includes: establishment of institutions for self rule at central or regional and local levels; the right to participate in democratic self rule at all levels; the respect for basic rights and liberties including freedom of speech, the right to own private property, and the right to debate public issues and reach compromise issues; the procedures for selection and peaceful change of leaders of rulers every eight years; the accountability of leaders and the right to recall (*buqqisuu*)¹⁰⁹ those who fail to discharge their responsibilities; the concept of rule of law (*seera tumma Caffee*), a balanced representation of clans and lineages in *Gada* offices; the right to make laws and regulations through their own elected officials; the settlement of disputes according to the law through neutral and impartial bodies; and, the concept of pluralism in participating in public affairs through five parties called *miseenssa*.¹¹⁰ The system was based on elaborate institutional checks and balances to safeguard the liberty of the people.¹¹¹

The *Gada* system tries to strike balance between members of the society through various values and principles stated above. Yet, various features of the

¹⁰⁷ Koppen et al (eds), Supra note 101, p.150

¹⁰⁸ Lewis, Supra note 99, p.54

¹⁰⁹ *Buqqisuu* literally means 'to uproot'. As Legesse described it 'at no point does the Oromo people under *Gada* system wholly transfers authority to any group of people on power. The society delegates limited kinds of powers to the leaders of a *luba*, for a limited period of time, but that power is always subject to the higher authority of the *Gumi* (Assembly of multitudes) which is the multitude of all the *Gada* councils and Assemblies. See, Legesse, Supra note 100, pp. 125-126.

¹¹⁰ Lemu, Supra note 99, P.50; Lewis, Supra note 99, p.54; Legesse, Supra note 100, pp.197-238

¹¹¹ Legesse, Supra note 105, P.68

system are criticized as limiting the role of women in the political, social and cultural relationships of the people. According to Legesse, the major weakness of *Gada* system as a political democratic institution is the fact that it excludes women from formal political participation and leadership.¹¹² These critics, however, fail to see other aspects of the System which accommodate women within the political, socio-economic and spiritual life of the people which are significant to understand how the system operates. In the following sections, therefore, how women are perceived under *Gada* system, whether they have any role within the system and whether there are any mechanisms integrated within the system to protect women from the triumph of male members of the society will be discussed.

4.2. Women under *Gada* System

As briefly discussed above, *Gada* is a male oriented socio-political and cultural system. As such women are not integrated in the age-set classification of the system which gives the members the right to political participation. This excluded Oromo women from the formal politico-military structures.¹¹³ The exclusion of Oromo women from formal politico-military structures of *Gada* system, however, has been wrongly interpreted to designate the system as highly patriarchal and male exclusive.¹¹⁴ As it will be shortly discussed, such arrangements have their own justifications and the system is inherently an egalitarian system with various integrated customary laws, values and women centered institutions meant to protect women from male centered politico-military structure. Most of the critics against *Gada* system in connection with the human rights of women are concerned about political participation, property ownership and inheritance. Hence, it will be appropriate to discuss these criticisms in order to point out the justifications given by the system and

¹¹² Legesse lists exclusion of women from political participation, rigidity of its political structures, possibility of corruption in its electoral process and the fear that it might not efficiently serve the large Oromo population as it is today since it was developed at times where the Oromo people were less populated and dispersed as the weaknesses of *Gada* system as a democratic political institution. See, Legesse Supra note 100, Pp.255-259.

¹¹³ See, Legesse Supra note 100, p.19; Demisse, Supra note 104, pp.344-345; and, Kuwe Kumsa (1997), *The Siiqee Institution of the Oromo Women*, *The Journal of Oromo Studies*, vol. 4, no 1 and 2. Tennessee: Tennessee University. P.119. Demissei notes that there was a time when women used to control the political power before men took over political power and excluded women. See, Demisse, Supra note 104, pp. 197-206

¹¹⁴ Yohannes Dibaba (2005), *Cultural Responses to Violence against Women: the Role of the Siiqee Institution of Arsi Oromo Women*. Jimma University: OSSREA. P.31

tackle them where necessary before considering potentials of the *Gada* system for better protection and entrenchment of the human rights of women.

4.2.1. Political Participation

The age-set structure only includes the male members of the society. Only male Children of the society are initiated to the *Gada* system, which is called '*itti makkoo*', and join the *Gada* cycle which gives them the right to take part in the political life of the people.¹¹⁵ Only men are entitled to engage in warfare and take part in the election of leaders of camps or of age-sets and *Gada* classes.¹¹⁶ According to Borbor, in the old days of *Gada* system where the Oromo people were mostly pastoralists the exclusion of women from the political structure was necessitated on the one hand by natural attributes of women which required protecting them from the responsibilities of taking part in the politics of the system and on the other hand by the belief related with life giving role of women.¹¹⁷ Among other things, when a person participates in *Gada* cycle there was a responsibility of taking part in a military service. However, the very old, the very young and all women, in the *Gada* system are considered innocent and peace-loving.¹¹⁸ Women were considered sources of life and for them taking life were considered a taboo.¹¹⁹ As such Borbor notes that, for reasons that do not hold true anymore, women were not integrated in the political structure basically for their own protection from the hardships of the responsibilities attached with the power.

According to Jatani the status of women as 'an outsider' and their role of tying different clans (*gosa*) of the people through marriage is also another reason relied on to exclude women from holding political power.¹²⁰ Under *Gada* system marriage could only be conducted between members of different clans. Women as such are given a peculiar role of bonding families and different clans of the society. They are considered as belonging to a clan (moiety) to which their husband to be belongs to which is referred to as *soda* (in-laws).¹²¹ Women are considered as 'outsiders' (*halagaa*) and are never considered within

¹¹⁵ Borbor, Supra note 104

¹¹⁶ Legesse, Supra note 105, p.19

¹¹⁷ Borbor, Supra note 103

¹¹⁸ Kumsa, Supra note 113, p.113

¹¹⁹ Kumsa, Supra note 113, p.113

¹²⁰ Jatani, Supra note 103

¹²¹ Legesse, Supra note 105, pp. 22-24

the family.¹²² They rather serve as a bridge through whom they are linked with other families and groups. Once they are married and gave birth to or adopted a 'male' child they will assume the clan of their husband.¹²³ Accordingly, a woman is married to a different clan and the idea is if she is allowed to hold political power she will take it with her to her new clan which would contradict the whole idea behind power sharing principle of *Gada* system. This is because one of the main purposes of *Gada* system is striking balance among various clans and lineages of the people through a balanced representation of the clans as a collectivity in *Gada* offices.¹²⁴

Despite the apparent exclusion of women from the formal political power my informants noted that women have a crucial role within the politics of *Gada* system both directly and indirectly. First, women usually have the power to oppose decisions passed by various *Gada* assemblies where it is against their interest.¹²⁵ Secondly, the wives of the men with power also have the same status as their husbands. For instance, the wife of *Abba Gada* is also considered as having the powers of her husband. In the absence of her husband, the wife represents and acts on his behalf.¹²⁶ If they appear on their own behalf, however, they take part as witnesses and not as participants.¹²⁷ Legesse also notes that, in case the meeting is conducted indoors, the participation of women will be more active even if the men are still in control.¹²⁸ Thirdly, according to Dire, the *Gada* system is not complete without women. Among the

¹²² Kumsa, Supra note 113, p.126

¹²³ Dima Arero, Borana Zone, Arero District, December 13, 2011; and, Borbor, Supra note 18

¹²⁴ Lemu, Supra note 99, P.50

¹²⁵ Jatani, Supra note 103. Endessa, in his Masters Thesis, notes that *Gada* Council in Arsi Oromo used to include women members who represent interests of women members of the society. These representatives include *Urjii Dubartii* (which literally means 'star of women') who represents the interest of every female members of the Arsi Oromo; *Haadha Siiqee* (which literally means mother of *Siiqee*) who represents interests of married women; and, *Haadha Nagayyaa* (which literally means mother of peace) who served in making sure that parties to a dispute adhere to decisions passed by *Gada* council mainly because of the respect involved with being women. See, Hussein Endessa (2011), *Gada System among the Arsi Oromo: Continuities and Changes*. MA Thesis Submitted to College of Social Science of Addis Ababa University. Pp. 48-56

¹²⁶ Borbor, Supra note 104

¹²⁷ Legesse, Supra note 105, p. 21

¹²⁸ Legesse, Supra note 105, p. 21

various roles of women within the *Gada* system the first and basic requirement for a man to hold political power is to conclude marriage.¹²⁹ Fourthly, *Gada* relies on the knowledge of laws and decisions passed down orally from generation to generation. Knowledge of *Gada* history is essential for political activity.¹³⁰ Legesse notes that a considerable amount of ritual and historical knowledge is invoked in the course of the men's daily deliberations. Even if such knowledge is generally possessed by men who serve as ritual experts and advisors to the councils, women usually have a crucial role in this regard.¹³¹

4.2.2. Ownership of Property and the Right to Inheritance

Before the 16th C, the Oromos were mixed agriculturalists practicing both farming and herding.¹³² Land was a communal property whereas other properties were owned at an individual or family level.¹³³ For pastoralist Oromos, community livestock and grazing land for their livestock are still the most important properties.¹³⁴ For instance, in Borana Oromo, land is still commonly owned by clans (*gosa*) and livestock is owned by individual families.¹³⁵ Matters concerning land ownership are dealt with at clan level whereas decisions concerning family properties are done by the participation and consent of the family members, especially the *abbaa warraa* and *the haadha*

¹²⁹ Dire notes that, sometimes the marriage is conducted just for the sake of fulfilling the formality requirement even if the spouses are not mature enough to conclude marriage. Dire, Supra note 103

¹³⁰ Legesse, Supra note 105, p.21

¹³¹ Explaining the crucial role played by women Borbor cited a popular practice in Borana Oromo of adjourning decisions where the power holder fails to remember previous decisions, laws, order of ritual practices, etc to enable him discuss with his wife. It is generally believed that women partners of the office holder usually know crucial information like decisions, laws, order of ritual practices, etc. Borbor, Supra note 104. See also, Legesse, Supra note 105, p.21

¹³² The Oromo people primarily reared cattle and sheep and grew barley and used this production for economic and ritualistic purposes. After they expanded and settled, most Oromos continued their practices of cultivating barley and other crops on the highlands and herding cattle on the lowlands. Asafa Jalata (1993), *Oromia and Ethiopia: State Formation and Ethno-national Conflict, 1868-1992*. Boulder & London: Lynne Rienner Publishers. Pp.18-19

¹³³Jalata, Supra note 132, pp.18-19; and, Haile, Supra note 100, pp. 54-55

¹³⁴ Borbor, Supra note 104

¹³⁵ Borbor, Supra note 104; and, Jatani, Supra note 103

warraa (the husband and the wife). Individual decisions on family property are not common for both the husband and the wife.¹³⁶

Gada system prescribes different roles of men and women which have to be followed strictly since there are powerful taboos to keep the roles distinct. Even if men are in control of military and political activities, women have *de facto* control over domestic scene and important resources.¹³⁷ According to Legesse, the most important of these prerogatives is the exclusive right and duty of married women to build huts. They not only build huts but also own them and are largely in control of the activities that go on inside them.¹³⁸ Women also individually own properties, for instance, livestock they get as a gift from their parents, husband and relatives when they get married or give birth to a child, etc. On such properties, women have exclusive ownership rights and could demand non-interference in the exercise of this right.

As regards inheritance rights, *Gada* system prescribes the right to be exercised only by the male descendants of the parents. Two basic reasons seem to underlie the exclusion of women from exercising the right to inherit. The first reason is connected with the collective ownership rights both at *gosa* and family level described above. Women are regarded as '*halagaa*' and function as bridges among different families. Accordingly, if the right to inherit is given for women they will take the property of their parents to the *gosa* of their husband which might result in unnecessary conflict.¹³⁹ Secondly, the inheritance right doesn't result in an immediate liquidation of the estate. The eldest son will assume the responsibility of administering the property on behalf of the inheriting sons and gives them their share when they get married.

Examining the underlying justifications of *Gada* system provided for the limited political participation and inheritance rights of women reveals that such treatment emanated from the collective nature of ownership rights and at times for the sake of protecting women from hardships. As such these factors are not attributed, as some writers argue, to the inherent patriarchal nature of the system. Whatever the justifications are exclusion of women from

¹³⁶ Mrs. Hinsene Gufu and Mrs. Godana Doyo, Borana Zone, Yabalo District, Interview conducted on December 13.

¹³⁷ Legesse, *Supra* note 105, p.20

¹³⁸ Legesse, *Supra* note 105, p.20

¹³⁹ Borbor, *Supra* note 104; and, Jatani, *Supra* note 103

participation might result in violations of the rights of women by male members of the society. Fortunately, this vulnerability of women to abuse by men members of the community seems to have been perceived by the system. Dibaba notes that *Gada* system is a uniquely egalitarian institution since the two sex domains had a strong functional interdependence and one was not valued any less than the other.¹⁴⁰ As such various mechanisms were designed as a check and balance to the power of men under the *Gada* system. For instance, *siiqee* institution, which will be discussed in the following section, is such mechanism meant to balance the power of men and protect women.

4.3. *Gada* Laws, Values and Institutions with a potential to Protect the Human Rights of Women

Being an egalitarian and democratic institution, *Gada* system has various principles and values to offer for the protection of the rights of women. *Gada* system is not just a political institution. It is rather a comprehensive system governing the social, economic, religious and other aspects of the Oromo people. This requires examining these aspects to identify possible potentials of the system that could help in protecting women members of the society from violation and at the same time creating local cultural legitimacy of human rights of women as recognized under international human rights instruments. Hence, in the following sub-sections, the customary laws, values and inbuilt women centered institutions of *Gada* system relevant for the purpose of this aim will be discussed.

4.3.1. *Waaqeeffannaa*

Gada system has a spiritual aspect which has helped the system to keep its integrity for centuries until the spread of other religions, i.e. Christianity and Islam, have endangered its existence.¹⁴¹ The religious and political institutions within the *Gada* system are interwoven and usually implementation of one of the laws is at the same time implementation of the other.¹⁴² The traditional Oromo religion (*waaqeeffannaa*), which means the way of *waaqa*,¹⁴³ dictates that

¹⁴⁰ Dibaba, Supra note 114, p.32

¹⁴¹ Gadaa Melbaa (1988) Oromia: An Introduction, Khartoum, Sudan. Pp.19-22. Jalata, Supra note 132

¹⁴² Haile, Supra note 100, P.108

¹⁴³ Thomas ZITelmann (2005), Oromo Religion, Ayyaana and the Possibility of a Sufi Legacy. The Journal of Oromo Studies, Vol. 12 No. 1 and 2. Michigan: University of Michigan. Pp.80-99

'waaqa'¹⁴⁴ (God) is the one Supreme Being which exists in everybody and everything in the Universe.¹⁴⁵ *Waaqa* is both the creator and the creation. Its existence is confirmed by the very existence of heaven and earth and by the orderly movement that takes place within them.¹⁴⁶ The Oromo world-view, as Megerssa calls it,¹⁴⁷ could be understood by examining *ayyaana*,¹⁴⁸ *uummaa*¹⁴⁹ and *saffuu*.¹⁵⁰ According to him these three concepts are interrelated aspects of the whole through which the Oromo perceives the Universe. *Saffuu* penetrates all actions as it sets the measure of what constitutes an appropriate act.¹⁵¹

¹⁴⁴ *Waaqa* is commonly known as '*waaqa gurraacha*' in the Oromo people. While *waaqa* is an old Cushitic name for 'God', '*gurraacha*' is an Oromo term for black, which represents the notions of purity, truth, originality and divine mystery. See, Mohammed Hassen (2005), Pilgrimage to the Abbaa Muudaa. The Journal of Oromo Studies, Vol. 12 no. 1 and 2. Michigan: University of Michigan. P.142. According to Bartels, however, '*waaqa*' represents more than 'God' as understood in the 'West' as the 'supreme being, creator and ruler of the universe'. It rather comprises more, since it includes countless particular manifestations of *waaqa* in this world, particularizations of his creative work which are conceived as beings. Hence, the word 'divinity' will often be a better translation than 'God'. See, Lambert Bartels (1990), Oromo Religion: Myths and Rites of the Western Oromo of Ethiopia - An Attempt to Understand. Berlin: Dietrich Reimer Verlag. P.89

¹⁴⁵ Borbor, Supra note 104

¹⁴⁶ Gemechu Megerssa, (2005), The Oromo World-View. The Journal of Oromo Studies, Vol. 12 no. 1 and 2. Michigan: University of Michigan. P.74

¹⁴⁷ Megerssa, Supra note 146, p.69

¹⁴⁸ The core meaning of *ayyaana* refers to that by and through which *Waaqa* creates anything and everything. *Ayyaana* is in fact both that which causes something to come into being and becomes that which it has caused. *Ayyaana* is, therefore, that which exists before and after, that which it causes to come into existence. Megerssa, Supra note 146, p.69 Hence, every creature, people, animals and plants, have their own *ayyaana*. Bartels, Supra note 144, Pp.112-123

¹⁴⁹ *Uumaa* refers to the entire physical world and the living things and divine beings contained within it. The nominal form of *uumaa*, therefore, refers to everything that is created. in short, God's creation. Megerssa, Supra note 146, p.70

¹⁵⁰ *Saffuu* is a moral category which constitutes the ethical basis upon which all human action should be founded; it is that which directs one on the right path; it shows the way in which life can be best lived within the context of Oromo world. Megerssa, Supra note 146, p.70. The Borana Oromo refers to this concept of *saffuu* as *ceerra fokoo*. Despite the difference in naming the concept of both *saffuu* and *ceerra fokoo* is similar. Jatani, Supra note 103; and, Dima, Supra note 123

¹⁵¹ Megerssa, Supra note 146, pp.70-71

Saffuu refers to the knowledge of natural laws as recognized by the ancestors of the Oromo which has to be observed to keep the cosmic order.¹⁵²

Accordingly, *waaqa* created and regulates the existence of all animate and inanimate as well as material and non-material nature placing them in a well balanced cosmic order.¹⁵³ As an extension of this phenomenon, the Oromo believed under *waaqeefannaa* that society collapses unless a balance is struck between the power of male and female and everything that surrounds them in the cosmic order of *waaqa*.¹⁵⁴ The Oromo usually say '*saffuun kan waaqaaf lafaatti*' which literally means *safuu* comes from *waaqa* and earth. The interdependence of men and women is considered a precondition for peace and prosperity in the metaphysical as well as the practical sense.¹⁵⁵ The concept of this peace and order of *Waaqa (safuu)* is extremely important in Oromo religious and political thought. If the balance is disturbed, it is said that *safuu* is lost and the loss of *safuu* is the loss of *Seera Waaqa (Waaqa's law and order)* which signals the reign of chaos and disaster.¹⁵⁶ Because, when *safuu* disappears nothing is left.¹⁵⁷

The need to keep the balance of nature, therefore, requires members of the society to be aware of *saffuu* and respect them. Men and women are part of *uumaa* (nature) and have to respect the balance of nature. Megerssa asserts that in the Oromo world-view, *saffuu* provides the moral and ethical code according to which events, whether at personal, social or cosmic level takes place. It is by living in harmony with these laws, following the path of *waaqa* that a full and happy life can be achieved.¹⁵⁸ It is to keep this balance that woman exclusive solidarity institutions like '*siiqee*', which will be discussed in the following section, were designed to serve as a check and balance to the male exclusive political aspect of *Gada* system.

¹⁵²The laws of the ancestors are divided into two categories. The first consists of the laws given by *waaqa*. These laws are the laws of nature. The second comprises of the laws made by man. See, Megerssa, Supra note 146; and, Demisse, Supra note 104, p.75

¹⁵³ Bartels, Supra note 144, Pp.330-341. Kumsa, Supra note 113, p.120

¹⁵⁴ Kumsa, Supra note 113, p.120

¹⁵⁵ Kumsa, Supra note 113, p.120

¹⁵⁶ Kumsa, Supra note 113, p.120

¹⁵⁷ Bartels, Supra note 144, p.333

¹⁵⁸ Megerssa, Supra note 146, p.76

4.3.2. *Muka Laaftuu*

Women hold a peculiar position within the Oromo people under *Gada* system. They have respect (*ulfinna*) and this respect is manifested in various ways. *Gada* system considers women as *muka laaftuu* (which literary means 'soft wood') showing their vulnerability to violations and the need to give them a priority to address their case where their rights are violated.¹⁵⁹ Moreover, where a woman alleged that her rights have been violated, her case will be settled without the need for additional evidence. Her words are taken as a conclusive proof of the commission of the alleged transgression of her rights.¹⁶⁰ Especially, where the violence is a sexual violence committed against a girl who is not married yet (*durba*),¹⁶¹ the punishment is severe. The transgressor is considered as if he had committed a murder and is referred to as *caphana* (an outcast) and will be punished accordingly.¹⁶²

Gada laws could be broadly categorized into cardinal and supplementary laws.¹⁶³ One of the cardinal laws of *Gada* system is *seera haadhaa* (the laws of the mother), which provides that mothers and generally females have a special place in the society and they have to be respected, protected and served.¹⁶⁴ *Gada* system also provides for laws of marriage known as *seera rakoo*¹⁶⁵. These laws determine the relationship that has to exist between the married couples and the social, economic and other rights of children. The logic behind these laws is that a person who is able to respect *seera rakoo* could also respect and protect *Gada* laws in the society. Therefore, failure to respect *seera rakoo* might

¹⁵⁹ Hinsene Supra note 136; Borbor, Supra note 104; and, Jatani, Supra note 103

¹⁶⁰ Borbor, Supra note 104; and, Dire, Supra note 103

¹⁶¹ Under *Gada* system unmarried women are called *durba* inferring their purity since they have never involved in a sexual intercourse. They are only allowed to do so when they are married. Destroying the virginity of unmarried women, therefore, is considered as a serious crime resulting in the outcast of the offender from the society.

¹⁶² Borbor, Supra note 104; and, Jatani, Supra note 103

¹⁶³ Cardinal laws are fundamental laws which are not susceptible to amendment or annulment. The major cardinal laws include *seera waaqa* (the law of God), *seera laffaa* (the law of the earth), *seera abbaa* (the law of the father), and *seera haadhaa* (the law of the mother). On the other hand, supplementary laws were enacted as a response to new changes in social, economic and political life of the people every eight years. Haile, Supra note 100, pp.109-110

¹⁶⁴ Haile, Supra Note 100, p.111

¹⁶⁵ The word *rakoo* refers to promise between husband and wife that occurred during marriage. Haile, Supra note 100, p.112

result in losing the right to take part in *Gada* social, religious, political and economic roles.¹⁶⁶

4.3.3. *Siiqee*

Siiqee is a stick (*ulee*)¹⁶⁷ symbolizing a socially sanctioned set of rights exercised by married Oromo women.¹⁶⁸ The two types of *ulee* that are cut and fashioned for marriage sticks are called *siiqee* and *horooroo*.¹⁶⁹ *Siiqee* is given for the bride and *horooroo* for the bridegroom on the day of their marriage, which they will hold for the rest of their life. Upon the death of the owners the function of both *siiqee* and *horooroo* also come to an end when they are broken into halves and placed on the graves of the deceased.¹⁷⁰ For an observer *siiqee* might seem just a stick symbolizing the married status of Oromo women and used only for ritual purposes. According to Kumsa and my informants,¹⁷¹ however, *siiqee* is not just a stick symbolizing the married status of women and is not only used for ritual purposes. Rather it is used to represent far richer values.

According to Kumsa, *Siiqee* was a weapon by which Oromo women fought for their rights. The *siiqee* institution functioned hand in hand with *Gada* system as one of its inbuilt mechanism of check and balances. *Gada* customary laws provided for them and society honored it.¹⁷² *Siiqee* was recognized as a peaceful way through which married Oromo women defended their rights. The foundation of the *siiqee* institution is the ideology behind the traditional

¹⁶⁶ Haile, Supra note 100, pp. 111-114

¹⁶⁷ *Ulee* is a collective term the Oromo used to refer to those sticks that are purposely cut and fashioned for specific social, cultural and religious functions. Gemechu Megerssa (1993), Knowledge, Identity and the Colonizing Structure: The Case of the Oromo in the East and North East Africa. PhD Thesis Submitted to the Department of Anthropology, University of London, School of Oriental and African Studies.

¹⁶⁸ See, Kumsa, Supra note 113, p.115; and, Demisse, Supra note 146, p.173

¹⁶⁹ Borbor, Supra note 104; and, Jatani, Supra note 103. Both types of *ulee* are made out of a tree called *harooressa*. The name of this tree is a compound noun made of '*hara*' and '*horeessa*'. *Hara* means a body of water. In Oromo society water is symbolically regarded as the source of all life. A human being deprived of *hara* is deprived of all the basic rights including the right to his/her life. Therefore, *harooressa* signifies the basic rights to which an individual is entitled for as long as he/she lives. See, Kumsa, Supra note 113; and, Dibaba, Supra note 114, pp.61-62

¹⁷⁰ Kumsa, Supra note 113, pp.120-121

¹⁷¹ Kumsa, Supra note 113; Borbor, Supra note 103; and, Jatani, Supra note 103

¹⁷² Kumsa, Supra note 113, p.119

belief of the Oromo people, *waaqefannaa*, which is an integral part of the *Gada* system. According to *waaqefannaa*, *waaqa* created and regulates the existence of all animate and inanimate as well as material and non material nature placing them in a well balanced cosmic order. However, *Gada* system is a male exclusive institution and there is a possibility of distortion of this cosmic order by men who might abuse their power in the institution. *Siiqee* institution, therefore, is meant to keep the natural balance between men and women by serving women as a means to defend their rights.

Among the various uses of *Siiqee*, the first is its role in signifying the property of a married woman. Under the *Gada* system, women are generally excluded from holding a political post and their property rights including their rights to inheritance are limited. Even if women lack the right to inheritance under *Gada* system, they do have various ways of securing properties from their parents and relatives. One of these instances is at the time of their marriage. The parents and relatives of the bride give her various properties called *siiqee*.¹⁷³ The bride have the right to dispose these gifts as she deems fit.¹⁷⁴ Kumsa also asserts that in former times women used to touch the properties they acquire through raids by the tips of their *siiqee* to signify their ownership right.¹⁷⁵

Secondly, as an extension of the right to own the huts they built, women also have control over what is going on under the hut.¹⁷⁶ Women under *Gada* system had, therefore, control over their sexuality.¹⁷⁷ Affirming this situation, Legesse states that, in *Gada* system, marriage is indissoluble once it is concluded. *Gada* has no laws or institution to deal with separation.¹⁷⁸ Marriage is a social pact, the purpose of which is to raise children and maintain the

¹⁷³ Borbor, Supra note 104; Jatani, Supra note 103; Hinsene Supra note 136; and Godana, Supra note 136. In this case *siiqee* is used to refer to the property given for the bride at the time of her marriage as a gift to enable her to be independent in her new life as a married woman.

¹⁷⁴ Kumsa, Supra note 113

¹⁷⁵ Under Gadaa system, War is conducted only by male members of the society. Women cannot take part in war since it is believed that they have the role of giving life and cannot take it by killing. They instead fight in peace using their *siiqee*. Kumsa, Supra note 113, pp.123-124

¹⁷⁶ Legesse, Supra note 105, p.20

¹⁷⁷ Kumsa, Supra note 113, p.125

¹⁷⁸ Borbor, Supra note 104

continuity of society.¹⁷⁹ Sexual gratification is, however, regarded as an individual matter and society allows mechanisms of maintaining extramarital sexual relationships through maintaining a lover (*garayu* or *sanyo*).¹⁸⁰ The control of the wife over her sexuality is not limited to the right to maintain extra-marital sexual relationship. She rather has the right to refuse to have a sexual intercourse with her own husband without her consent, which protects married women from 'marital rape'. Failure to respect this right of married women over her sexuality was considered as contradicting the balance of the cosmic order and the loss of *saffuu* giving rise for *iyya siiqee* (siiqee scream).¹⁸¹

Thirdly, *siiqee* also serves as a weapon to protect the right of married Oromo women to organize and take part in women exclusive meetings (*walargee*) and take part in *siiqee* solidarity.¹⁸² According to Kumsa, the fact that women are considered as *halagaa* (outsiders) and not considered as part of the family to which they are married to make cooperation with other fellow women crucial. They get together to pray, discuss their problems and deliberate on measures that have to be taken. Similar to other violations, intervening in the right of women to take part in the meeting gives rise for its restoration through *siiqee* scream.

Another crucial role of *siiqee* in the protection of the rights of women is its potential in protecting women from violence. The *Gada* system regards women as vulnerable members of the society and requiring protection by the community at large. Therefore, it provides for laws of *muka laaftuu* which have the purpose of protecting vulnerable groups of the society including women.¹⁸³ The *Gada* system, therefore, takes violence against women seriously. Beating a

¹⁷⁹ Legesse, Supra note 105, pp.18-32

¹⁸⁰ Legesse, Supra note 105, pp.18-32; Kumsa, Supra note 113, p.124; and, Dibaba, Supra note 114, pp.67-91. The practice of maintaining a lover (*garayu*) doesn't exist anymore in Borana Oromo, because of its danger in exposing the society to various sexually transmitted diseases including HIV/AIDS. Jatani, Supra note 103

¹⁸¹ *Iyya siiqee* is a way of communication through which a woman whose rights are violated calls for a cooperation of other women members of the community in a quest to restore lost *saffuu*. Restoration of *saffuu* is a collective matter and other women members of the society respond by grabbing their *siiqee* and joining the victim. See, Kumsa, Supra note 113, pp.128-129, Megerssa, Supra note 167

¹⁸² Kumsa, Supra note 113, p.126

¹⁸³ Kumsa, Supra note 113, pp.126-127; Megerssa Supra note 166; Hinsene Supra note 135; and, Borbor, Supra note 103

women holding *siiqee* is considered as beating the *ayyaana*¹⁸⁴ of fertility and prosperity.¹⁸⁵ When a woman is a victim of violence, she will take up her *siiqee* and march on *iyya siiqee* (*siiqee* scream). If the violation is serious, the measure will also be severe. The women members of the society will leave their home and assemble under a big tree (*kiltu*)¹⁸⁶ which is termed as *godaansa siiqee* (*siiqee* trek). According to Megerssa, the women will not return home until the verdict they pass as a punishment is executed and *saffuu waaqa* is restored.¹⁸⁷ In Arsi Oromo, when the violence involves a mother who have recently gave birth, the measures taken are more severe. A woman who gave birth for a child wears a small diabolic shaped bead on her forehead called *qanafa* for about six months after delivery which represents the highest dignity they have assumed.¹⁸⁸ The *qanafa* serves as a symbol of motherhood and designed to protect a new mother from physical or psychological abuse.¹⁸⁹ *Qanafa*, therefore, underlines the care that has to be taken while dealing with women wearing it and, as such, supplements the role of *siiqee*.

4.3.4. *Ateetee*

Baxter describes *ateetee* as a festival held by women of a neighborhood in which the celebration of a specific womanliness of a woman is a major theme.¹⁹⁰ Among the various *ayyaanas* in the traditional Oromo religion of *waaqefanaa*, *ateetee* is celebrated (which is called '*ateetee facaafachuu*') to honor *ayyaana dubartii* (*ayyaana* of a woman).¹⁹¹ Basically, therefore, *ateetee* was celebrated to honor the fertility of women. As such, *ateetee* was performed by every woman

¹⁸⁴ See, Supra Note 148

¹⁸⁵ Haile, Supra Note 100, p.199

¹⁸⁶ Kiltu is a big tree chosen by Oromo people mainly for its shade to conduct assemblies.

¹⁸⁷ Kumsa, Supra note 113, pp.129-131

¹⁸⁸ See, Dibaba, Supra note 114, p.65; and, Demisse, Supra note 104, pp.176-180

¹⁸⁹ Culture and Change: Ethiopian Women Challenging the Future. (2003) Nairobi: IIRR.

¹⁹⁰ Baxter, P.T.W. (1979), Atete in a highland Arsi Neighborhood. North East African Studies. Pp.1-22. Describing how *ateetee* festivity is celebrated Dibaba asserts that women dress in their traditional dresses, hold a luxuriant wet grass called *coqorsa* and their *siiqee* to come to the ceremony. Then there will be song, dance, prayer, blessing and sacrifice in honor of the sanctity of the women deity (*ayyaana dubartii*). See, Dibaba, Supra note 114, p.57

¹⁹¹ *Tamaam Haaji-Aadam* (2011), *Ateetee: Sirna Adunyaaratti Addaa, Tan Mirga Dubartoota Oromoo Eegduu fi Eegsiftu. Dirree Dawaa: Mana Maxxansaa Kalaaf. P.1*

who wished to be pregnant.¹⁹² It was used for various purposes concerning female members of the society.¹⁹³ It served as women's religious institution within *waaqefanaa*. It is believed that *ateetee* practice by women is one part of a belief in which women are intermediary figures between *waaqa* and the physical world, since they are closer to nature in their nurturing and life sustaining activities.¹⁹⁴ It is an exclusively women ritual. According to Bartels, in former times *ateetee* was performed every year by all women who were not beyond childbearing according to their age. But later, under the influence of Christianity and Islam, it was more generally performed by women who feared they would have no more children and who wish to have a further child.¹⁹⁵

Ateetee also have a social and political purpose in which Oromo women employed to counter male atrocities and to enforce sanctions against related behaviors. Such measures are taken especially where the violence has to do with endangering the fertility of women.¹⁹⁶ *Ateetee*, in this case, is an event in which women assemble in order to discipline an erring male or female neighbor and later to celebrate their success in doing so by song, dance, prayer, blessing and sacrifice. Oromo women used to practice *ateetee* as a way of strengthening their solidarity and as a tool to counter atrocities staged against them by men.¹⁹⁷ Just like *siiqee*, *ateetee* is a women exclusive institution where they decide on issues affecting their lives in the society and strengthen their solidarity.¹⁹⁸

4.3.5. *Gummii/Caffee/*

Among the fascinating aspects of *Gada* system one has to do with the principle that most of the laws of *Gada* system, except the cardinal laws¹⁹⁹, are subject to amendment in order to fit them to the changes in the society. According to Borbor, the Oromo people under *Gada* have a principle which says "*waaqqi dhugaa tolche, namni aaddaa tolche*", which literally means 'Waaqa created truth whereas man created culture'.²⁰⁰ From this basic principle follows that, the

¹⁹² Bartels, Supra note 144, P.124

¹⁹³ Dibaba, Supra note 114, pp.54-58

¹⁹⁴ Legesse, Supra note 105; and Bartels, Supra note 144

¹⁹⁵ Bartels, Supra note 144, P.321

¹⁹⁶ Dibaba, Supra note 114, p.57

¹⁹⁷ Koppen et al (eds), Supra note 101, p.152; and, Aadam, Supra note 191, Pp.17-22

¹⁹⁸ Dibaba, Supra note 114, p.58

¹⁹⁹ Haile, Supra Note 100, pp.109-110

²⁰⁰ Borbor, Supra note 104

laws of *Gada* system which are regarded as manmade are subject to amendment and/or repeal.

Gummii (*Caffee*) to which Legesse refers as 'Assembly of the Multitudes' is a kind of a national assembly which is made up of all the assemblies and councils of the *Gada* system who meet in the middle of the *Gada* period once every eight years to review existing laws, to make new laws, to evaluate the men in power and to resolve major conflicts that could not be resolved at lower levels of their judicial organizations.²⁰¹ In Borana, this *Gummii* is called *Gummii Gaayyoo*.²⁰² *Gummii* is an assembly with the highest degree of political authority constituting the assembled representatives of the entire society in conjunction with any individual who have the initiative to come to the ceremonial grounds.²⁰³ Therefore, decisions passed by the *Gummii* are binding on every one under *Gada* system.

Being the ultimate power holder of the *Gada* system, laws and customs that affect the rights of women could be brought to the attention of the *Gummii*. As the Borana Oromo says, 'what the *Gummii* decides cannot be reversed by any other assembly' and everyone has to adhere to them.²⁰⁴ If the *Gummii* is convinced about the changes that have to be done to protect women members of the society, it could modify prior laws and/or come up with new laws to meet the needs of the society and get rid of practices that limit the rights of women. Earlier records state that among the central Oromo, all the laws of the land were abolished by the great Assembly and each law is then reiterated and reinstated when power is transferred from one *luba* to the other (*baallii* ceremony).²⁰⁵ Hinsene and Godana claim that the rights of women could be better protected by *Gada* system if the *Gummii* amends its laws which limit the rights of women, such as inheritance rights.²⁰⁶ The fact that the system is an all

²⁰¹ Haile, Supra Note 100, p.53

²⁰² The Pan-Borana meeting at the well of *Gayo* is an event that brings together almost every important leader. Legesse describes Gumi Gayo as by far the most inclusive event in Borana political life. See Legesse, Supra note 105, pp.93-99

²⁰³ Legesse, Supra note 105, p.93

²⁰⁴ Borbor, Supra note 104; Jatani, Supra note 102; and, Legesse, Supra note 105, p.93

²⁰⁵ Legesse, Supra note 105, p.96

²⁰⁶ Hinsene and Godana, Supra note 136

inclusive system and its laws and values are adhered to by everyone under the system could protect and promote the rights of women.²⁰⁷

4.4. Challenges to the *Gada* System as a Cultural Institution for the Protection of the Human Rights of Women

Culture has a significant role in the understanding and exercise of human rights. Every society has its own understanding of human rights defined by its specific cultural values and norms since what is a dignified life in one society might not be true for the other. This is at the heart of the universalism-cultural relativism debate of human rights. Despite the continuous changes that could be observed within the Oromo people, the *Gada* system is the cradle of understanding the world around them and construing what a dignified life means. Understanding *Gada* system could, therefore, be used to promote and protect the human rights of women within the Oromo people.

At the time when the *Gada* system was fully active, the Oromo people also respected the various features of the *Gada* system including those that give high regard for women members of the people. Together with the decline of the system, the efficiency of the laws, values and institutions of *Gada* also decreased. Identifying and nurturing these potentials of the system should be the starting point for protecting the human rights of Oromo women. It is obvious that this premise better works for the part of the people where the system is still active. However, the same could be true for other parts of the people where the system is no more active since the legacy of this egalitarian institution shapes the philosophy of life of most Oromo people. Hence, it would be wise to examine various factors that are forcing *Gada* system to decline since this negatively affects its potentials for the advancement of the human rights of women and creating cultural legitimacy of international human rights norms protecting women.

The starting point of the decline of *Gada* system could be traced far back to the great expansion of the Oromo people and most recently to the conquest of King Menilik II of Shoa (1889-1913), in the formation of Ethiopia as it stands today,

²⁰⁷ Hinsene and Godana, *Supra* note 136. In line with this thought, for instance, the Borana Zone Women and Children Affairs was planning to present concerns of the rights of women and children to the attention of the *Gummii Gaayyoo* assembly at the time of the preparation of this piece. Boru Boba, Borana Zone Women and Children Affairs, Interview conducted on December 14, 2011

which started in the last decades of the 19th C.²⁰⁸ Be that as it may, I would like to focus on some basic factors under the current Federal Democratic Republic of Ethiopia that are facilitating the decline of *Gada* system.

The first challenge to *Gada* system is attributed to the inefficient legal protection accorded to cultural institutions in Ethiopia. This factor could be seen by classifying it into two: constitutional recognition, both at federal and regional level; and, inefficient legal pluralism. The Constitution of the Federal Democratic Republic Ethiopia has given recognition for the individual as well as collective rights of the Nation Nationalities and Peoples of Ethiopia (NNPs) to promote their culture and preserve their history.²⁰⁹ The Constitution has also established a federal state structure.²¹⁰ One of the effective ways of promoting and protecting the right to culture of the NNP of the country is, therefore, through recognition and expression of the same right in the constitutions of the regional governments so established. However, the Constitution of Oromiya National Regional State doesn't mention *Gada*, or other cultural institutions of other NNPs within the region for that matter, as its core foundation within its regional constitution.²¹¹ It rather replicates the FDRE constitution in almost all of its provisions. This clearly raises the question 'what other identities of the Oromo people the regional constitution protects within the federal setup if it failed to rely on *Gada* system' which is, as Jalata calls it, 'the pillar of the Oromo culture and civilization'.²¹² The start point for exercising the right incorporated under Art 39(2) of the FDRE constitution would have been to start with constitutional recognition at regional level and working to foster it and protect it from decline. This way the values and principles of the *Gada* system that could be used to further protect the human rights of women could also be protected and exploited accordingly for extending the horizons of protection for women members of the Oromo people. On the other hand, the FDRE constitution also created a legal pluralism by conferring judicial power on cultural and religious institutions for cases involving personal matters²¹³ in addition to the formal Court structures where the state and federal judicial powers normally reside according to Art 79(1) of the FDRE Constitution. The absence of effective coordination between formal judicial organs and

²⁰⁸ See, Legesse, Supra note 105 and Jalata, Supra note 132

²⁰⁹ FDRE Constitution, Supra Note 87, Art 39(2)

²¹⁰ FDRE Constitution, Supra note 87. Art 1

²¹¹ The Revised Constitution of Oromiya National Regional State, Magalata Oromiya, Proc. No. 46/2002

²¹² Jalata, Supra note 132, p.20

²¹³ FDRE Constitution, Supra Note 87, Art 34(5) cum 78(5)

traditional institutions including *Gada* system, however, has created a favorable condition for some individuals to escape justice.²¹⁴ This has a damaging impact on the traditional institutions such as *Gada* system since the society loses confidence on their effectiveness.

Secondly, the challenge comes from the current government holding political power itself. Most of my informants²¹⁵ asserted that *Gada* system by nature requires the strict adherence to the principles and requirements of the system. For instance, the *Abba Gada* and his *luba* has to be physically present within the community and need to learn from their predecessors (*Abboottii Gadaa*).²¹⁶ The *Abboottii Gadaa* serves as advisors of the ruling *Gada* officials (*luba*). However, the government is considering the *Abba Gadaas* as its own political officials which is isolating them from the culture and creating confusion as to whom they have to be accountable.²¹⁷ My informants asserted that *Gada* system used to have a principle in which the people might recall (*buqqissuu*) officials who failed to carry out their responsibilities. But this right might not be exercised if the *Abbaa Gadaas* are shielded under the formal state structure having the blessing of the government affecting the adherence of the ordinary people to the decisions adopted and laws passed by the ruling *luba*. Moreover, another informant asserted that even if the initiative of the government to foster the system as one cultural heritage is a good thing, the approach being followed by the government doesn't serve this purpose. Rather than supporting the *Abboottii Gadaa*, the *luba* and other parts of the society running the system, the government targeted only the *Abbaa Gadaa*. According to my informant, if the government really wanted to preserve the system, the emphasis has to be on these groups and not on an individual *Abbaa gadaa*. This approach which is helpful to minimize the danger of co-opting the traditional leaders with formal

²¹⁴ To escape justice some individuals flee to other areas where traditional institutions could not reach them usually to urban areas. The formal judicial institutions don't also prosecute them since the victims usually do not follow them once they leave their community. See, Israel Itansa (2009), *Gada System Conflict Resolution Mechanisms and the Quest for Survival*. MA thesis submitted to Institute of Peace and Security Studies of Addis Ababa University, pp.41-42

²¹⁵ Because of the sensitive nature of this particular subject and protection of my informants I have chosen to keep the identity of my informants not to expose the names of my informants for the sake of their protection.

²¹⁶ Those who have served as *Abba Gada* and worked in *Gada* Assemblies before are commonly referred to as '*Abboottii Gadaa*'.

²¹⁷ The effect of this consideration on the behavior of *Abbaa Gadaa*'s is described in detail by Itansa. Itansa cited an incident in which conflict of personal interest resulted in a fight between the current *Abba Gada* and Arero District Governor; the last thing expected from *Abba Gada*. See, Itansa, *Supra* note 214, p.36-41

government officials and restore the trust of the ordinary people on the *Gada* system.

The other major threat comes from the most widely followed religions in Ethiopia and the regional government of Oromiya, i.e. Christianity and Islam. The traditional Oromo religion, *waaqeefannaa*, is at the core of the *Gada* system. Most of the laws, values and institutions of the system such as the principle of *muka laaftuu*, *siiqee* and *ateetee* are founded on the natural laws of *waaqa*. The strength of the system is partly attributed to this traditional religion.²¹⁸ Thus, while keeping the principles of *waaqeefannaa*, the society is at the same time respecting most of the laws and principles of the *Gada* system. However, most of the philosophies underlying *waaqeefannaa* are in sharp contrast to the philosophies of Christianity and Islam. As such, these two major religions wrongly consider most of the ritual practices of *waaqeefannaa* as worshipping what they call 'evil'. When one *waaqeefattaa* family converts to either of these religions, therefore, it will be forced to relinquish most of the philosophies of *Gada* system based on the laws of *waaqa*.

²¹⁸ Of course, there is a principle of separation of political power and religion in *Gada* system. This is why *Qaalluu*, which is hereditary, has no political power. The only point the institution of *qaalluu* and *Gada* intersect is at the *baallii* (*Gada* power transfer) in the occasion of *muda* ceremony. Keeping the cosmic balance of nature is the foundation of most of the principles of *Gada* system.