MIZAN-TEPI UNIVERSITY

SCHOOL OF LAW

TITLE: THE IMPACT OF LEGAL PLURALISM IN ENFORCING WOMEN'S PROPERTY RIGHTS; THE CASE OF BENCH MAJI ZONE, SHAKO WORED IN SOUTHERN REGIONAL STATE

A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR THE REQUIREMENTS OF LLB DEGREE IN LAWS

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Declaration

I, Teferi Tafesse Tanto, hereby declare at the title "***The impact of legal pluralism, particularly customary practice, in enforcing women's property rights, in case of Bench –maji zone,Shako woreda''*** is my own original work which has not been offered for any degree in any university and the sources used have been appropriately acknowledged and I confidently declare that this thesis has not been submitted to any institution anywhere for the award of any academic degree, diploma or certificate.

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June, 2018

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Above all, I thank God for allowing this to happen…!!!

List of acronyms

- → DEVAW……..Declaration on the Elimination of Violence against Women
- →ACHP……..African Charter on Human and Peoples' Rights
- →AU……..African Union
- →AUW…….Africa Union Women's Committee
- →AWCP……..African Women Committee on Peace and Development
- →BDPA……Beijing Plat form for Action
- →CEDAW Committee……..Convention on Elimination of Discrimination against Women Committee
- →CEDAW……..Convention on Elimination of Discrimination against Women
- →EWLA……..Ethiopian Women's Lawyers Association
- →FDREC……..Federal Democratic Republic of Ethiopian Constitution
- →FRLAUP……..Federal Rural Land Administration and Use Proclamation
- →ICCPR……..International Convention on Civil and Political Rights
- →ICESCR…..International Convention on Economic Social and Cultural Rights
- →ICCPD……..International Conference on Population Development
- →ILO……..International Labor Organization
- →LA……..Land Administration Committee
- →MDGs……Millennium Development Goals
- →NEWA……Network of Ethiopian Women's Association
- →NGOs……Non-Governmental Organizations
- →OAU……..Organization of African Union

- →RFC……Revised Family Code
- →SDGEA……Solemn Declaration on Gender Equality in Africa
- →SNNPR……Southern Nations, Nationalities and Peoples Region
- →SNNPRR……Southern Nations Nationalities Peoples' Regional Revised Family Code
- →UN Charter……Unite Nations Charter

Abstract

This thesis dealt with the main impact of legal pluralism in implementing women's property rights including land in Ethiopia in general and in Shako community in particular, southern Ethiopia by taking the case of rural women in Shako District. Three questions were thus, posed in order to solve the problem: What are the basic effects of legal pluralism on the enforcement of women's property rights? Do women in Shako community properly exercise their basic property rights guaranteed under different instruments? What are the remedies provided by the government and other stake holders for the violation of women's rights. In order to answer these questions, data was collected from oral and written sources.

Study findings reveal that women's access rights to land and property is less equal than legally provided. It also evidences gaps between policy and implementation. Customary laws and traditional practices generally have a great impacts on rights of single/unmarried, divorced and widowed women and on access rights of women in polygamous marriages.

In general, the study is meant to show the readers the prevalence of deep-rooted customary practices and discrimination against women in property administration, control, inheritance and use as well as to show gaps on the administrative and legal measures taken by relevant actors to tackle the

problems in light of the international, regional and national women's human right standards. To fulfill the obligations envisaged under international human right instruments, the study recommends the state and the relevant actors to take legislative and administrative and other measures to tackle the problem from its grass roots.

CHAPTER ONE

INTRODUCTION

1.1. Background of the study

Legal pluralism is an empirical reality in various parts of the world especially in Africa (Sezgin, 2010). Most African states recognize the parallel application of customary and religious laws with statutory laws

(Kyed, 2009; Frémont, 2009; Sage, 2005; Nina and *Schwikkard*, 1996). However, some of the customary and religious laws are incompatible with women's rights. For instance, the rights of women in marriage, inheritance and property administration are jeopardized under the customary and religious laws.[1] Due to the clash of African culture and traditions with human women's rights, African women constantly face challenges resulting from restrictions under customary laws of property rights such as succession and inheritance, witchcraft violence, degrading treatment, domestic violence and rape (*Ozoemena, 2006; Manjoo*, 2007).

In Ethiopia, prior to the codification of the 1960_s laws, the country has been governed by different instruments of laws like *Kibre Negest, Fetha Negest* and other written legal instruments which were used in the areas under the monarchical administration and therefore covered limited areas of the country among Christians and people living in other areas had their cases adjudicated and disputes settled through customary institutions (Krzeczunowicz, 1965). In the same token, the religious rule and custom has been taken for long period of time as a major source of Ethiopia laws. For instance, for the family issues, successions, priority right over property are based on the custom and religious thoughts. The period of Imperial reign from 1931-1955 was the policy of political centralism as well legal unification. Their concern was to avert political disintegration in the country. So at this time, customary laws were given little room at official level at the time[2].

In 1960_s, the Ethiopian central government came up with the idea of legal centralism which is related to the concept that there should be a comprehensive one code in order to govern the issues in the country. This legal centralism was raised as a theoretical debate and not actively raised in Ethiopia because lack of adequate number of legal professionals at the time but such theoretical debate was raised elsewhere based on custom theory/ instrumentalist theory. It seems the Ethiopian codification process adopted primary o instrumentalist theory. This means customary laws were used certain extent as material source of Ethiopian laws[3]. The civil code repealed the customary rules concerning matters provided for in the code whether they are consistent with the code or not.[4] Despite the position of the civil code, some of the customary laws remained operative on certain issues. The drafters of

[1] . Centre on Housing Rights and Evictions, 2005; Fluet and Calaguas, 2006; ICRW, 2007; SIHA, 2011).

[2] . Ministry of Justice and legal research institute of Ethiopia, Teaching material of customary Law,P-56

[3]

. Ibid, P-70

the code in fact made an attempt to include some elements of the customary rules in to the civil code in areas of civil matters. There are in fact, certain examples of inclusion of the pre-existing customs of the Ethiopian peoples in, for example, family matters (concerning betrothal, moral prejudice, kinds of marriage, and intestate succession), contracts, property law(about the principle of us caption), servitude and torts(in fixing the amount of fair compensation).

When we come to the 1995 Constitution of FDRE, it embodied a clear recognition of the jurisdiction of customary and religious laws and courts in family and personal matters among the disputants that consent to such a jurisdiction. It states that at least in those areas, the customary dispute resolution systems can exist separately from and parallel with the state sponsored legal- judicial system. In effect, family law and the law of succession are therefore now potentially within the competence of the member states (Art. 55) (Scholler, 2003. 751). It seems that the FDRE Constitution incorporates the plural legal forms by permitting the regional states to produce their own local order. This means the regional states are legally empowered to incorporate local customs in to state formal laws. This implies that the concept of legal pluralism de jurely exists in the current FDRE Constitution.

In general, about ¾ of the FDRE constitution deals with human rights in general and women's rights in particular including their property rights which is the part and parcel of it. It further recognizes the pluralistic features of the Ethiopian society by allowing the parallel application of customary and religious laws on personal and family issues. In contrast, it also states that the customary laws or norms which are inconsistent with the constitution are null and void.[5] However, it should be noted that the application of customary and religious laws are limited to personal and family matters based on the consent of parties[6]. It is evident that most customary and religious laws place women in an inferior position as the laws are constructed based on a patriarchal society. In this regard, Okin (1999) notes that multiculturalism will not advance the rights of women, as the system are dominated by men. From this, it is possible to conclude that the recognition of these plural laws by the constitution created some bafflement and which affects the fundamental women's human rights

[4] . The Civil Code of Ethiopia, Negarit Gazette, Extra Ordinary issue, Proc. No.165/1960, Year No.2, Art.3347 (1). [Herein after the civil code].

[5] . Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta, Extra ordinary Issue, Proclamation No. 1/1995, Year 1, No.1*, Art 9(1). [Herein after the Constitution].

[6] . Ibid, art 34(5).

especially in terms of acquiring, using, managing and transferring of property.

1.2. Statement of the problem;

Though the FDRE constitution restricts the application of customary laws to family and personal matters, the empirical reality shows that they govern a lot of matters (Assefa, 2011). Studies have confirmed that customary laws exist in full force and society uses them to settle disputes in their day-to-day lives. By doing so, they are violating the basic principles of women's property rights such as the principle of gender equality, universality and non-discrimination. The jurisdictions of the traditional courts transcend family and personal matters. Customary laws in Ethiopia treat women differently and unequally with men[7]. They place women in an inferior position both in the family and society. For instance, the various customary laws discriminate against women in marriage, inheritance and property administration, especially in land and thereby violate women's rights (Østebø, 2009; Flintan et al, 2008; SIHA, 2012; Debsu, 2009; Asfaw and Satterfield, 2010; Haile, 2005). With regard to religious law, though the FDRE constitution says religious law can be applicable to govern personal and family matters of individuals based on their consent, there is no religious law which is given state recognition other than sharia law[8].

In general, the FDRE Constitution recognized customary laws under arts 9(1), 34(5), 35(4) and 78(5) whose application is confined only to personal status and family matters. Besides, given the absence of elaboration and indication, the Constitution simply includes the type of customary laws, which had recognition before its promulgation.

Despite such a firm commitment of the government in recognizing a woman's right to own, dispose property as well as to possess and use rural lands, the customary laws and practices, which deny women's equality, are still persistent in the Shako community. Women generally lack legal awareness regarding their right to and control over property before, during and after marriage as well as in the case of inheritance.

Thus, although there is a strong statutory recognition of a women's right to property, this study shows that much remained untouched on the implementation of law. Therefore, the present study critically assessed the law and practice on women's right to and control over land and other properties with specific reference to case study in Shako community. It also

[7]. Centre on Housing Rights and Evictions, 2005.

[8] . See Proclamation No. 188/1999, A Proclamation to Consolidate Federal Courts of Sharia, *Federal Negarit Gazzeta*.

focused on assessing gender inequity in the area with legal perspective, with a focus on property rights and customary practice. Here, its main intention is not to discuss these laws in great depth but instead explore the practices which have an impact on women's property right as it is the central point of the study.

The study also shows how deeply rooted traditional and cultural practices and attitudes are affecting the key women's property rights and finally, it also shows the measures taken by the government and other stake holders to combat the customary practices and gaps within the laws and enforcement of the rights. By doing so, it is intended to critically examine these laws in light of women's property rights recognized under the international, regional, FDRE and the SNNPR constitutions and other laws which have relevancy to the issue at hand.

1.3. Objectives of the Study

1.3.1. General Objectives

This study in general was aimed at analyzing the impact of the existence and parallel application of different laws, especially customary practices on the enforcement of women's property rights in Ethiopia in general and in Bench Maji Zone, Shako woreda in particular; the legal guarantees of its implementation and enforcement, its practical application which is affected by the existence of legal pluralism like customary practice and statutory laws.

Furthermore, the study would also provide methods and legal frameworks to be adopted by the government for the effective protection of women's property rights in general and property rights in particular as recommendations.

1.3.2. Specific objectives of the study

In addition to the above mentioned general objectives, the research would also have the following specific objectives;

√examining the position of the current Constitution on issues of customary laws and women's property rights.

√critically analyzing the practical challenges that women face in exercising their property rights.

√Critically describing and analyzing different legal remedies for the violation of basic women's property rights.

√ Most importantly, directing the attention of the government and other concerned organs to mitigate and where possible to avoid the grave violation of women's property rights by different customary and religious laws.

1.4. Research Questions

1.4.1. General Research Questions

Do the parallel applications of plural laws, especially customary practices affect the proper enforcement of women's property rights?

1.4.2 Specific Research Questions

The following specific questions were addressed in order to answer the problems stated above;

- Which type of law or practice has the main impacts on the enforcement of women's property rights in the study area?
- Do women in Shako community properly exercise their basic property rights guaranteed under different instruments?
- What are the remedies provided by the government and other stake holders for the violation of women's property rights?

1.5 Significance of the Study

I hope the completion of this research would have a tremendous importance in solving the problem at hand as well as to everyone who search for it for whatever purpose in the area. Among them, some of the importance shall include the following;

- In the first place, this research is the novel one to study areas on the subject matter it is dealing with. This means that it will pave the way for future researchers and shall be served as a reference thereof.
- Next, examining and evaluating the main effects of different laws, especially customary practices on the enforcement of women's property rights will instigate the government, particularly the enforcing and implementing bodies of women rights to open their eyes as to considering their contribution on the protection of women's rights in general.

•Thirdly, describing and assessing the practical hindrances will help the stake holders to update their practices so as to accommodate the real problems.

•Lastly, the study is believed to contribute to various actors who take part in the protection and enforcement of women's property rights by creating better awareness concerning legal pluralism and its effects on women's property rights.

1.6. Research Methodology

1.6.1. Research design;

This research employed survey research design to collect and analyze data since it seems more of descriptive in nature.

1.6.2. Research method;

The research applied both quantitative and qualitative methods to clarify concepts, characteristics, descriptions and measures to demonstrate implications of the issue under question.

1.6.3. Area of the study;

Shako *woreda* in *Bench –Maji* Zone is chosen by the researcher among 11 *woredas* found in the zone by ensuring that there are considerable challenges faced by women with regard to access to and control over property and rural land. Here, my motivation to conduct research in Bench-maji zone, (particularly in Shako community), came as a result of a long discussion with a friend of mine who is from the community. His explanations about the tradition, property issue, land holding and women's position in the area made me curious to know more. The other reason which encouraged me to do research in Shako district is the seemingly limited research done in the area with regard to property issues and women's land rights. Based on this, four *kebeles* are chosen from Shako *woreda* depending on the criteria of;

a) magnitude of the problem faced by women
b) remoteness of the areas from town administration
c) closeness to town administration
d) the number of population

Region	Zone	Woreda	Kebele(s)
SNNPR	Bench-Maji	Shako	*-Shashaka* *-Bonki*

	zone		*-Worbo* *-Boyta*

1.6.4. Sources of data; Data presented in this paper is obtained from both primary and secondary sources. Primary sources include legal documents (international, regional and national as well as local legal documents) and interviews, observations and focus group discussions. Secondary Sources includes text books, journal articles and reports.

The first data source I used was secondary sources mainly for two purposes: One was to gather data that were unavailable from the foregoing primary data sources and the other was to *corroborate* the data collected through primary sources. In this regard, secondary sources from libraries and the Internet were consulted. Library sources included theses, books, reports, and conference papers.

1.6.5. Research sample determination

1.6.5.1. Sample type; *in order to* collect the quantitative data for this research, I selected both *purposive sampling* and *stratified sampling* techniques. I selected the purposive sampling techniques because it may satisfy my specific needs in this research project. This type of sampling was selected for government officials like land administration expert, women's and children's affairs and judge. I selected the stratified sampling technique (which is the combination of both random sampling and purposive selection) for women because they share similar characteristics. To this end, I have tried to classify my respondents in to four groups depending on their status. These include women, government officials (Land administration expert and women's and children affairs of the *woreda)*, men and lawyers (judge).

1.6.5.2. Sample size; the population for quantitative data collection for this research was women from rural households in four purposefully selected *kebeles* of the study area in which a total of *7765* peoples live and from which about 4363 are females .

Demographic characteristics of survey respondents

Quantitative data was collected and analyzed on demographic and social characteristics of survey respondents. Respondents were asked about their

age, marital status and their means of acquiring rural land and other properties.

1. → Distribution of respondents by age

Total respondents	Percentage (%)	Age group
36	16.5 %	18-30
	30 %	31-42
	27.5%	43-55
	26 %	Above 55

Source: Own survey, June 2018

2. → Distribution of respondents by marital stat

Percentage (%)	Marital status
68%	Married
1.5%	Single
20.5%	Divorced
10%	Widowed

Source; Own survey, June 2018

3.→Distribution of respondents by means of land acquisition

Percentage (%)	Means of Land acquisition
16.5%	Inheritance
59.5%	Marriage
12%	Land distribution
12%	Lease from other persons

Source: Own survey, June 2018

1.6.6. Development of tools;

In addition to secondary sources, the second data collection tool I developed was interviewing. In so doing, I further broke down the chief research questions into specific questions constituting open-ended questions for facilitating responsive interviewing in the qualitatively sampled *kebeles*. In such a way, I would get to the depth of the issues through probing technique and follow up questions on new concepts and themes introduced by interviewees.

In this regard, I carried out in-depth interviews through face-to-face. The face-to-face interviews were conducted in Shako community at *woreda* and *kebele* levels with *woreda's* land administration expert (man) and women's and children affairs (woman). In addition to these, I also interviewed a judge at *woreda's* court (man), with regard to deciding and solving of issues related to property rights and successions to which women are a party. Furthermore, I also interviewed men from the community with regard to the status of women in the area and the attitude of the community towards women's property rights.

The third tool I employed was participant observation. As a participant observer, I was very carefully observing the relationship between women and land and other properties as well as the gender relations of men and women in the area for three days by taking part in the daily activities of the community.

1.6.7. Data collection;

The process I used to collect data during this study was through getting prior permission from some institutions and individuals as well as through creating suitable environments for my respondents.

1.7. Scope of the study

The scope of the present study focused on the impact of different laws especially customary practices in the enforcement of women's property rights in Bench Maji Zone, Shako community, in southern Ethiopia regional state.

1.8. Limitations and Challenges Faced During the study

While conducting this study, I faced a number of challenges. Some of them include the following;

- Firstly, the study site was totally new for me and far away from where I used to live and thus I had difficulty in fostering quick communication with my informants. I, therefore, was forced to depend on my research assistant.
- Secondly, I was on the field for a very short period of time to collect data as a result of which I had no more time and opportunity to discuss with and consult more relevant human sources for the study. I, thus, relied heavily on secondary sources.
- Thirdly, some of my respondents were full of fear and suspicious about my intentions because I was a stranger researching a very sensitive issue – women's land and property rights. I, thus, did a lot of explanation about who I was, what my intentions were, and how I would use the information they gave me in the research. I also took notes during interview sessions and focus group discussions.
- Finally, inaccessibility of adequate data, lack of internet access, lack of resource and lack of sufficient time in account of exit exam are the basic ones.

1.9. Outlines of the paper

In order to conduct the work in preferable and desirable manner as well as to achieve the designed objectives, the present research is organized being classified in to five separate chapters. The first chapter is all about the general overview of the study which includes introduction, background of the study, problem statement, research methodology and significance of the study, some of the challenges of the study and finally, organization of the paper.

The second chapter deals with the literature review, the definition and the theoretical frame works including the definition and the conceptual framework.

The third chapter is all about the legal, policy and the institutional frame works of women's property rights at international level like the UN Charter, UDHR, CEDAW and the fourth international conferences held in the years 1995 on gender issues and other international programs 0f actions; at regional instruments like ACHPR and programs; at national level the FDRE

Constitution and other instruments dealing with women's rights as well as local policies and programs.

The fourth chapter deals with the customary practices and women's property rights in *Bench Maji* Zone, Shako community. Under this chapter, the issues discussed are customary laws versus women's right to acquire , use, dispose, administer and transfer their properties, inheritance and their rights before, during and after marriage, their responsibilities in family and soon.

The last chapter is all about conclusion and recommendations to the problems of legal pluralism on protection and enforcement of women's property rights especially in customary practices as rules and references.

CHAPTER TWO

LITERATURE REVIEW, DEFINITION AND THEORETICAL FRAMEWORKS

Literature Review; what we know, what we seek to understand:

Gender related human rights advancement is initiated through various venues, some are at the grassroots level of society; others are imposed from above. Some scholars have identified political and social revolutions as catalysts both for women's empowerment and for their oppression (Golden stone; *Moghadam*; *Tucker*; *Tetreault*; *Chinchillia*; *Farhi*; and *Moadded*); economic development and access to resources, the first as a means of both ameliorating and worsening and the second as a means of improving the status and economic independence and proper exercising property rights of women in the world in general and particularly in Ethiopia.

Despite the multi- sided debates on gender issues and women's property rights in Ethiopia and other parts of the world, the reality on the ground points to the fact that, in addition to strong theocratic values, even in the most developed countries across the world, they seem to remain trapped under and misrepresented in one particular domain- the law, both written and practiced. More specifically, women are least represented by family law, which includes the areas of property control, administration and transfer, marriage, divorce, custody and nationality through marriage (*Hussein; Mokbel-Wensley; Hamada; Connors).*

Women's access to policy making and their participation in the economies of relatively modernized cultures in Ethiopia seems to surpass their regional traditional neighbors. In the same token, we find that the legal representation of women (in family law especially) is also repressive at varying degrees across the country.

Different types of legal systems may potentially yield undiscovered insight on how legal code correlates to the human rights of women in a given country or region based on the power allocation between the state and various courts. As discussed with Sezgin , studying legal systems per legal pluralism poses particular challenges as many systems are complex combinations of different codes and levels and degrees of state- court

jurisdiction powers are particularly challenging to quantify . Hence, for this particular analysis to probe the preliminary quantifications of legal religious plurality, a number of available indicators will be examined to assess the relationship between religion, law and the economic and political rights of women in Ethiopia. The other study conducted by *Berihun Adugna Gebeye*, reveals that the notion of legal pluralism introduced by the FDRE constitution and mainstreamed into regional constitutions recognizes the pluralistic features of the Ethiopian society but also has the effect of endangering women's rights and contravening the constitution itself.[9]

The present study is therefore, different from the above reviewed literatures since it addresses the shortcomings of these literatures by limiting the scope of the study 0nly to women's property rights. More specifically, the study would focus on the law in personal and family matters such as marriage, divorce and inheritance (Hussein; Mokbel- Mosley; Yamani). For instance, is family law governed by national secular courts applicable and accessible to every individual regardless of class, race, gender and religion etc or is it under the jurisdiction of religious or customary courts? The study would also take in to consideration of a number of variables with a strong focus on testing customary practices governing property rights, family matters and land holding and using rights of women recognized under different legal instruments.

2.1. Definition and the conceptual frameworks

2.1.1. Legal Pluralism;

As I said earlier, the concept of legal pluralism refers to the existence of different legal systems, networks or order co-existing within the same geographical space or jurisdiction. It can also be defined as an empirical reality in various parts of the world especially in Africa (Sezgin, 2010). It is also a given concept of two or more legal system co- existence in some social field ,interacting ,interpenetrating mixed or over- lapping and sometimes even superior imposed up on another .It is understood as simultaneous existence of plurality of norm having status of law in a given space and time . In philosophy and ethics, value (moral) pluralism implies the existence of diversity of conflicting moral and value, social pluralism means also existence of different religious, cultural ethnic or other groups living together.[10] According to twinning (2010), the concept of legal pluralism refers to the existence of different legal systems, networks or

[9] . Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State, Jigjiga University, School of Law, 2013

order co-existing within the same geographical space or jurisdiction. According to poplin, every functioning of sub groups in society have its own legal system which is necessary different in some respects from those other sub groups such as family hierarchy and essentially similar in rules and procedures. Legal pluralism can also be defined as an intersection of different legal orders that means inter legality. Inter legality is a phenomena logical counter parts of legal pluralism on clear recognition of communal identity and custom formalism.

These networks can be classified in to two as to Professor Andrew hoekema. According to him formal legal pluralism is an official legal pluralism or state legal pluralism. There is a need to be aware of provision of the Ethiopian present constitution and the Ethiopian civil code that recognizes the role of customary practice to certain extent. Such type of recognition may give a sense of legitimacy to official legal pluralism which opens door to the application of customary rules and religious laws. The one most official recognition of these customary practice and religious rule is adopted after the down fall of dergue regime and at the advent of FDRE constitution of 1995. According to art 78(5) of FDRE constitution states that state council can establish or give official recognition to religious and customary courts[11.] Religious and customary courts that had state recognition and functioned prior to adoption of this constitution shall be organized on the bases of recognition accorded to them by this constitution[12.] Thus, the present Ethiopian constitution provides that any law or customary rule which contradicts the constitution is invalid [13]

The other type of legal pluralism is non- formal legal pluralism .This type of legal pluralism is un official or informal number of institutions, practices ,customary rules and religious rules governing the society ,but they are not disclosed to state and the state haven't given recognition to this institution ,practices and customary rules ,in many occasions. Those non recognized customary practices controls the behavior of membership of given community ,means legal pluralism in informal scene covers any situation in which within jurisdiction of state variety of different organized system of norms and patterns of population. This concept is informal legal pluralism on factual situation of social practice.[14]

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[10]. Abera Degefa; Legal pluralism in multi- cultural setting, Legal appraisal of Ethiopians monist criminal justice system

[11] . Supra note at 5,art 78(5)

[12] . Ibid

[13] . Ibid, Art 9(1)

[14] . Www. Etch s & g/ oba politics net volume 8(2015)- Croce (instanced 25/11/2016

2.1.2. Property rights

Property rights are often viewed in the narrow sense of ownership – the right to completely and exclusively control a resource. However, as Meinzen-Dick et al (2005) explain, property rights are better understood as overlapping 'bundles' of rights, which can be grouped simply as:

● usus (use rights); ● abusus right; and ●fructus right

Rights may be conditioned by the amount, timing and other aspects of resource use and management. They are flexible and dynamic depending on factors such as social relations, the weather conditions (drought or non-drought) and the resource/property concerned. Several individuals or groups may have different kinds of rights over the same resource. There are multiple sources of property rights given by international treaties and law; state (or statutory) law; religious law and accepted religious practices; customary law, which can be formal written custom or living interpretations of custom; project (or donor) law, including project or program regulations; and organizational law such as rules made by user groups. People draw upon a range of strategies for claiming and obtaining resources, depending on their knowledge and assessment of which best suit their situation.

Women's property rights can also be defined in similar manner which enables them to equally exercise their right with men. Women's property rights include the right of women to acquire, manage and dispose of any movable or immovable property obtained either through self-acquired means or inheritance. They have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land and other properties. Women shall also enjoy equal treatment in the inheritance of property

2.3. Theoretical Fframeworks

This section tries to show the theoretical frame works with regard to women's property rights, which is a part and parcel of human rights in general and women's human right in particular. It is a situation which creates a long-standing dilemma and debate between and among the world community with regard to the application of women's rights. Thus, with regard to the application of human rights in general and women's property rights in particular, there are two theories which includes;

1. Theory of relativity; this theory asserts that human values, far from being universal, vary a great deal according to different cultural perspectives. Some would apply this relativism to the promotion, protection, interpretation and application of women's rights which could be interpreted differently within different cultural, ethnic and religious traditions. In other words, according to this view, women rights are culturally relative rather than universal. This relativism would pose a dangerous threat to the effectiveness of international law and the international system of human rights in general and women's rights in particular[15]. Our constitution recognized this theory for the sake of multiculturalism (based on the consent of the parties)[16] i.e. it applies the same law for the same persons on the same issue.

2. Theory of Universality; According to this view, human rights are universal which is proclaimed by the UN under its charter as human rights are "for all without distinction". The charter further commits the United Nations and all member states to action promoting "universal respect for, and observance of, human rights and fundamental freedoms".

In general, it seems as if the constitution entertains the concept of cultural relativism based on the consent of persons and advocates universalism by subjecting the interpretation of human rights to universal human rights instruments. On the one hand, this constitutional design of legal pluralism has the effect of eroding the guarantees the constitution confers for women rights and thereby put the constitutional supremacy in comma. On the other hand, it poses a challenge in upholding constitutional commitments of pluralistic regime of law for a pluralistic society as promised. It can be fair to hold that the mere fact of recognizing women's rights in the constitutions will not serve any purpose unless implemented. By the same token, recognizing the pluralistic features of the diversified ethnic groups by adopting legal pluralism will not advance the interests of different groups such as women unless properly monitored[17]. Feminists support this theory

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[15] . Ministry of justice and Legal Research Institute, Teaching material of Human Rights Law, 2009, p-105-106

[16] . Supra note at 9, *Articles34(5)*

[17] . Berihun Adugna Gebeye, Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State, Jigjiga University

because it avoids where possible and mitigates the precise resource deprivation and violation of women's human rights committed against girls and women worldwide including the exercising and enjoyment of their property rights.

CHAPTER THREE

LEGAL, POLICY AND INSTITUTIONAL FRAMEWORKS ON WOMEN'S PROPERTY RIGHTS

This section of the study presents the way in which the question of customary laws and women's property rights has been addressed in national (Ethiopian) and international as well as regional instruments. Women's property rights include the right of women to acquire, manage and dispose of any movable or immovable property obtained either through self-acquired means or inheritance[18]. As my case studies focus on the application of customary laws in relation to property rights and marital

[18] . International Journal of Gender and Women's Studies, Vol. 2(2), June 2014

relationships and the representation of women in traditional institutions, the discussion answers the questions on how these issues are depicted in regional, national and international legal instruments.

3.1. Legal Frameworks at International level

I. The UN Charter;

The UN commitment towards the realization of equality of men and women starts from the very foundation of the organization itself. The 1945 of the UN charter under its preamble stated that it is determined to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."[19] From this preamble one can understand that one of the UN commitments is to realize the equal rights of women around the globe. On the other hand, article 1 of the charter establishes the main purpose and objective of the UN. Article 1(3) provides that "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."[20] i.e. the promotion and respect of human rights of both men and women around the globe is one of the main goals of the UN. The main message here is that the UN is under obligation for the human rights of women without discrimination based on sex.[21] Similar contents are also envisages under the mandate of the UN general assembly. In this regard, article 13(1)(b) is worth mentioning, which provides that "the General Assembly shall initiate studies and make recommendations for the purpose of: promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."[22] This is also an indication of the fact that the General Assembly mandate is to be free from discrimination on the basis of sex and the studies and recommendations undertaken by the GA should be on the basis of equality of men and women. Similar wording can also be found under article 55(c) which provides that UN should promote the

[19]. Preamble of the charter of the United Nations, United nations conference on International Organization, San Francisco, 26 June 1945.

[20] . Ibid, article 1 (3).

[21]. Sandip B.Satbhai, 'Protection of human rights of women', international and national perspective, Gokhale Education societies.

[22] . Charter of the United Nations, see article 13(1)(b).

universal implementation of fundamental human rights and freedoms without discrimination on the basis of sex.[23]

All the above provisions of the charter are an indication of states' commitment to promote and respect the human rights of women equally with men including their property rights.

II. The UDHR;

The preamble of the 1948 UDHR begins with its recognition of human rights without any distinction to gender. It is provided that " the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."[24]The wording of the "human family" is an indication of nondiscrimination based on sex. The preamble also recalled the UN objectives stated under the charter on the promotion and enforcement of human right on the basis of equality of men and women.[25] In this regard, article 2 of the declaration provides that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[26] That is, the rights and freedoms enshrined under the declaration can equally be claimed by both men and women. The declaration further provides equality of men and women before the law[27]. That is, women cannot be accorded lesser right protection of the law than men. Article 7(1) of the declaration further stipulated that "all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."[33]In relation to the right to form and dissolve a family, a provision of the declaration stated that "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage during marriage and at its dissolution." The expression of "men and women of full age", has two connotations. First, not only men have the right to form and dissolve a family but also women have the same right. The aim here is that to provide equal rights in the formation as well as in the dissolution process of marriage. Second, the spouses should attain the marriageable age (at least both of them should be 18 years old). The purpose here is to prevent early marriage, which is a major problem particularly in most developing

[23] . Ibid, article 55(c).

[24] . Preamble of Universal Declaration of Human Rights, Adopted by the General Assembly of the United Nations, 10 December 1948.

[25] . Ibid.

[26] . Ibid, article 2.

[27]. Ibid, article 7.

countries. The declaration further provides that the formation of family should be on the basis of the free will and agreement of the spouses. This is also meant to protect formation of a family through an agreement other than the spouses themselves. Certain provisions of the convention provide special treatment for a certain category of people because of their vulnerability. Article 25(3) of the declaration is one of such provisions that children and women who gave birth are entitled to special care and support. The declaration in its provisions embodied words free from gender indications such as "all human beings", "everyone" and human family".[28]In fact during the draft of the declaration there was a discussion whether the word "all men" should be used. However, the declaration adopted using gender neutral words while referring the right holders[29].

III. ICCPR;

Art. 26, on the other hand, recognize the equality of all people before the law and acknowledge the right to equal protection. In general, the convention imposes on states to take all the necessary measures to protect and ensure all the rights of women in all dimensions including their property rights.

IV. ICESCR;

The ICESCR obligates states to which Ethiopia is not an exception, to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural as well as property rights set forth in the convention. It recognizes the right to work , which includes the right of everyone to the opportunity to gain his or her living by work which he/she freely chooses or accepts and requires states parties to take all the appropriate steps to safeguard these and other rights of women.

V. DEVAW;

Before the adoption of CEDAW, DEVAW was adopted in 1967 by the General Assembly. It is based on the principle of equality built up on the

[28] . Ibid, article 16(1).

[29] . United Nations Human Rights, Office of the high Commissioner, 'Women rights are human rights', New York and Geneva, (2014), P.3.

previous international human right instruments such as the international bill of rights.[30] By describing discrimination against women as a crime against human dignity, it urged state parties to eradicate laws, customary norms and traditions and regulations that promote discrimination of women by providing adequate protection for the rights of men and women without discrimination.[31]

VI. CEDAW;

Art.1 of the CEDAW Convention talks about or restriction of women which reads as 'Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women (……) on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Furthermore, art. 25(e) states that parties or states are obliged to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. To put it in simple term, the CEDAW convention imposes an obligation on states to eliminate all types of discrimination against women and then applies this general principle to all areas in which women can take part.

In addition to this, art.15 of the convention affirms the general principle that states shall accord to women's equality with men before the law. This means that not only does a state has an obligation to protect women against the violation of the basic women's right and fundamental freedoms. CEDAW Article 16(1) stipulates that: "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations…." This Article lists eight sub-articles covering women's rights, on an equal basis with men, in all aspects of marriage. These include the right to freely choose a spouse, rights during marriage and at its dissolution, rights and responsibilities for children and guardianship, personal rights including choice of family name and profession and rights with respect to property ownership and administration

VII. ILO Discrimination (Employment and Occupation convention)

The above convention, which was adopted in 1958, determines discrimination as 'any distinction, exclusion or preference on the basis of

[30] . Preamble of Declaration on the Elimination of Violence against Women, Proclaimed by the United nations General Assembly Resolution,2263(XXII) of 7 Nov.1967.

[31] . Ibid, article 1, 2 &7

sex which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation'. It requires states party to implement a national policy to eliminate all forms of employment discrimination. Even though the convention doesn't specifically address the issue of sexual harassment, the fact that women are disproportionately affected by such behavior brings it with the convention's definition of employment discrimination.

Thus, states that are party to the treaty are obligated to declare and implement a national policy to combat discrimination against women by employing measures that are appropriate to the local context.

3.1.2. Policy frameworks at international level

i) VIENNA DECLARATION AND PROGRAMME OF ACTION[32];

In 1993, the World Conference on Human Rights was held in Vienna. It sought to review the status of the human rights machinery in place at the time. Women's rights activists mobilized to ensure that woman's human rights were fully on the agenda of the international community under the rallying cry "Women's Rights are Human Rights." Particularly around the issue of violence against women, civil society activists organized tribunals to put the spotlight on violations of women's rights, previously unaddressed because they were considered part of the private sphere, taboo or simply accepted as an inevitable part of women's lives. The Conference was successful in adopting the Vienna Declaration and Program of Action, which stated that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" (Para. 18) and placed particularly heavy emphasis on eliminating all forms of gender-based violence. Importantly, the Program of Action also called for "the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism" (Para. 38).

ii) INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT (ICPD);

The International Conference on Population and Development, which was held in 1994, represented a milestone for women's rights. While the Conference was focused on population issues, the delegates meeting in

[32]. A/CONF. 157/24 (Part I), chap. III

Cairo agreed that population was not only about demographics but, more importantly, about people. The issues taken up in its Program of Action[33] are fundamentally related to women's human rights, including gender equality, the family, reproductive health, birth control and family planning, women's health, as well as immigration and education of women. Importantly, the Program of Action is explicitly grounded in human rights and proclaims that "advancing gender equality and equity and the empowerment of women, and the elimination of all kinds of violence against women, and ensuring women's ability to control their own fertility, are cornerstones of population and development-related program including property rights of women."

iii) The Beijing Declaration and the Beijing Platform for Action

The UN Fourth world conference of women in 1995 produced two important documents: the Beijing declaration and the Beijing Platform for Action. The former reaffirms an international commitment to the principle of human rights and dignity enshrined in the UN charter, the UDHR, the declaration on violence against women and the CEDAW convention. It professes a determination by member states to take all necessary measures to eliminate all forms of discrimination against women and remove all obstacles to gender equality and the advancement and empowerment of women to prevent and eliminate all forms of violence against women and girls and to ensure women's equal access to economic resources as well as proper exercising of their property rights.

iii) The Millennium Development Goals;

The United Nations Millennium Declaration (2000)[34] identifies good governance and rule of law as the bases for the achievement of the MDGs. Although the MDGs do not include a specific justice-oriented goal, ensuring women's inheritance and property rights provides an example of how a democratic governance intervention in the field of rule of law and justice can be a crucial instrument to enable and support the achievement of multiple MDGs. Although not an official MDG target, in 2005 the United Nations Millennium Taskforce identified the guarantee of women's inheritance and property rights as a strategic priority toward the achievement of MDG 3. Its proposed indicators to monitor progress toward this priority[35] relate to land ownership and housing title, disaggregated according to gender or jointly held. Moreover, women's right to own and

[33]. Report of the International Conference on Population and Development, Cairo, 5–13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

[34] . TheUnited Nations Millennium Declaration of September 8, 2000 (A/res/55/2).

inherit property is also closely linked to MDGs 1, 6, and 7, as described below.

a) *MDG 1: Eradicating extreme poverty and hunger*;

Women's poverty is directly related to the absence of legal and economic independence and autonomy. Lack of opportunities and effective access to economic and natural resources, including rights over land, is compounded by normative and legislative frameworks that only provide women with subsidiary inheritance and property rights.[36] This situation limits women's options to enter into production on their own terms; it consequently limits their indirect opportunities to access credit, microfinance and employment. Women's contribution to the household through farming, work in the informal sector, caretaking and other activities is indispensable to reduce extreme poverty and hunger, and to ensure the well-being of their dependents and families. But their legal and socio-economic dependency reinforces the status quo without tapping the potential for socio-economic development underlying women's full participation in the human development process.

This untapped potential is further illustrated in the evidence that within their limited possibilities, women allocate their money more judiciously than men and spend more of their incomes on the health and nutrition of their family members and schooling of their children. This has a positive impact on human poverty[37] and further contributes to the achievement of MDG 2: Achieve universal primary education, MDG 4: Reduce child mortality and MDG 5: Improve maternal health.

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b) MDG 6: Combating HIV/AIDS, malaria and other diseases

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36. Beijing Platform for Action, A/CONF.177/20, 17 October 1995, Ch. IV (A)(51).

37. Ibid

There are strong links between the spread of HIV and women's right to own and inherit property. Women with secure property rights are better able to cope with and mitigate the impact of HIV and AIDS, such as illness or widowhood, on themselves and their children.[38] With a legally secure resource base that can generate income, women are empowered to maintain their family's income and thus better able to bear the economic burden associated with AIDS. Upon widowhood, they are in a stronger position to retain their inheritance and property rights, and prevent having their property or land taken from them as a result of the stigma often associated with HIV and AIDS. Second, obtaining full inheritance and property rights also helps to prevent women from contracting the disease, by increasing their independence and bargaining power within the household, including their power to negotiate safe sex. Third, women who hold property in their own right are less likely to turn to transactional sex to support their families.[39]

b) *MDG 7: Ensuring environmental sustainability;*

In their role as caretakers, women in much of the developing world have primary responsibility to obtain food, water, fuel wood and other basic necessities for their families. The environment has a direct impact on the subsistence economy and women's livelihoods. Consequences of climate change such as increased periods of drought, flooding and other environmental factors such as forest degradation make it increasingly difficult for women to obtain these necessities for their families. Women are also responsible for saving seeds for the planting season and seed management is of great significance to biodiversity.[40]

Women thus, have a special role and stake in ensuring environmental sustainability; hence, it is crucial to include them in environmental management and decision making, and to utilize their knowledge of the local environment. One way of doing this is to grant them full and equal inheritance and property rights with men. In turn, this will increase their

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[38]. International Center for Research on Women, Women's Property Rights, HIV and AIDS and Domestic Violence: Research Findings from Two Districts in South Africa and Uganda (2007).

[39].R Strickland, To Have and To Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in property rights in greater detail. sub-Saharan Africa, International Center for Research on Women-Information Brief (2004) available at <www.icrw.org/docs/2004_info_haveandhold.pdf> at 8 December 2009

[40]. P. Kameri-Mbote, 'Women, Land Rights and the Environment: The Kenyan Experience' (2006) 49(3)

vested interests and influence in ensuring the sustainable use of land that directly impacts on their possibilities to protect and govern their economic interest and livelihoods, and to provide for their families. Increasing this potential would likely have spin-off effects in terms of possibilities to increase women's income generation and accelerate their entry and participation in the cash economy.

v) UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT

.The United Nations Conference on Sustainable Development ("Rio+20") brought Heads of State and Government to Brazil in 2012, to appraise progress in the implementation of agreements struck since the land mark 1992 United Nations Conference on the Environment and Development in Rio de Janeiro. At "Rio+20", countries renewed their political commitment to sustainable development, agreed to establish a set of sustainable development goals and established a high-level political forum on sustainable development. Importantly, the outcome document, entitled "The future we want",[41] also reaffirms the commitments of States to "women's equal rights, access and opportunities for participation and leadership in the economy, society and political decision-making" and includes explicit references to accelerating the implementation of commitments in the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Platform for Action and the Millennium Declaration. The outcome document also states that "gender equality and the effective participation of women are important for effective action on all aspects of sustainable development" and calls for the repeal of discriminatory laws and for ensuring women's equal access to justice and enjoying their property rights.

***vi) International Conference on Population and Development:* -**

In 1994, an international conference on population and development were held in Cairo which was said to be an important step towards on women's and youth rights.[42]Hence the conference particularly focuses on the issue of population, states agreed to focus on individuals or peoples rather than

[41]. General Assembly resolution 66/288, annex1.

[42] . 'International Instruments on the Rights of Women and Indigenous Peoples,' UN Women, Second edition, September (2014), P.4.

mere statistics or numbers.[43]The conference further recognized the role of women in shaping and development of peoples and their right to determine their life style, sexuality and reproduction.[44] Moreover, several women right issues were part of the program Action. Such rights include gender equality, family rights, reproductive health cares, birth control and family planning, immigration and education of women.[45]

The program action clearly dealt with equality and issues of discrimination on the basis of sex. Principle 4 of the program action clearly stated that "Advancing gender equality and equity and the empowerment of women and the elimination of all kinds of violence against women and ensuring women's ability to control their own fertility, are cornerstones of population and development related program, the human rights of women and the girl are an inalienable, integrated and indivisible part of universal human rights. The full social life at the national, regional and international levels and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community."[46] The declaration further recognize reproductive health rights such as couple and individual rights to decide method of their family planning, receive the highest standard of sexual and reproductive health care[47]. Universal education, reduction of infant mortality and ensuring access to reproduction health care were the goals intended to be achieved by 2015. However, as it is revealed during the follow up process, several challenges were recognized as hindrance to achieve the goals set up during the conference. Lack of accountability and inequality are recognized as the main challenges.[48]

3.1.3. Institutional Frameworks at international level

One of the international institutions empowered to implement women's rights is the Committee on the elimination of Discrimination against Women, which was established by CEDAW to oversee the proper

[43] . United Nations Human Rights, P. 12-13

[44] . Supra note at 42.

[45]. Supra note at 43, P.13.

[46] . Report of the International Conference on Population and Development, Cairo 5-13, United Nations, New York, (1995).

[47]. Ibid

[48] . United Nations Human Rights commission, .

implementation of the rights it guarantees. The committee acts as a monitoring system to follow the implementation of the convention.

In addition to this, the other institution empowered to implement the rights of women is the UN Commission on the status of women, which has a mandate to consider confidential and public communications on the status of women. The UN Commission also proposes the issues which needs the enacting of laws or policies by the concerned body.

3.2 At regional level

3.2.1. Legal frameworks at regional level

1. The Constitutive Act of the AU;

The Organization of African Unity (OAU) was created in 1963 to celebrate African independence from colonial rule and to foster regional integration among African countries. Subsequently, the OAU established the Women's Division within its Community Affairs Department with the objective of mainstreaming gender in all actions. However, the division lacked the backing of a legal framework, financial and human resources, and gender mainstreaming did not take place. In 1995, the OAU committed itself to the African Platform for Action on Women, signed in Addis Ababa. Member states made efforts to formulate policies and programs to translate the Dakar and Beijing platforms into action.

2. ACHPR and its Protocol;

The ACHPR was adopted in July 2003 in Mozambique and came in to effect in 2005 after being ratified by the requisite 15 AU member states. It was criticized , however, for the omission of women's rights from its provisions despite the fact that women brought issues on gender inequalities to the African agenda through their participation in liberation struggles and also for the emphasis given to cultural values, which appeared to create a dualism of norms regarding Women's Rights Protocol sought to address these omissions.

The target of the protocol is achieved full enforcement and ratification by 2015 and domestication by 2020. In addition to this, In April 1999, the African commission adopted a resolution on the appointment of a special reporter on the rights of women in Africa in recognition of the need to place particular emphasis on the problems and rights specific to women in Africa. The mandate was renewed four times and provides as follows: to serve as a focal point for the promotion protection of the rights of women in Africa; to assist African governments in the development and implementation of their policies for promotion and protection of women's right in Africa; to undertake promotional and fact-finding missions in African countries that are members of AU in order to disseminate the human rights instruments of the AU and to investigate the situations of women's rights in the countries visited(since 2000 about 10 missions have been held); to follow up on the implementation of the African charter and its protocol by state parties. It was also aimed at collaborating with relevant actors responsible for the implementation of protection of the rights of women internationally, regionally and nationally.

In addition to this, the Maputo Protocol was the one adopted by the African Union in the form of a protocol to the African Charter on Human and Peoples' Rights on 11 July 2003 at the second summit of the African Union in Maputo, Mozambique. The main aim of the protocol is for the better protection and enforcement of women's right in Africa.

3. The Solemn Declaration on Gender Equality in Africa (SDGEA)

This declaration was by AU heads of state and governments at their July summit, which is divided in to six thematic areas of action: health, peace and security; governance, human rights, education and women's empowerment. The heads of state and government reaffirmed their commitment to the principle of gender equality as enshrined in Art. 4 of the constructive act of the AU as other existing commitments set out at regional, continental and international levels and committed themselves to report annually on their progress in gender mainstreaming.

3.2.2. The policy frameworks at regional level:

The AU Gender Policy and Action Plan;

These were approved in 2009 and adopted in 2010. The gender policy provides the basis for the elimination of barriers to gender equality and fosters the reorientation of existing institutions by making use of gender-disaggregated data and performance indicators. It also establishes measures to hold managers accountable for policy implementation.

The policy has commitments in some areas of target. One of the commitments is the creation of an enabling and stable environment to ensure that all political declarations and decisions are geared towards the elimination of persisting barriers that militate against gender equality and women's empowerment. The other commitments are the development of policies that support gender mainstreaming.

The other policies with regard to implementing and enforcing women's right in Africa includes The right to land and Justice to women in Africa, Improving access to land and strengthening women's land right in Africa, Implementing the protocol on the rights of women in Africa… etc.

3.2.3. Institutional Frameworks at regional level

A) The African women's Decade;

The declaration of the women's decade (201o-2020) provides a road map for the realization of the objectives for the decade and is intended to strength the directorate through the funding of initiatives planned for the decade and the women. The theme of the decade is 'Grass- roots Approach to Gender Equality and Women's Empowerment' emphasizing the bottom- up approach to the development of women in all dimensions.

B) The Fund for African Women;

The Fund for African Women was created as a single mechanism to ensure policy implementation as well the effective mainstreaming of gender in policies, institutions and programs at regional at regional, national and local levels. The AU organs and member states in this regard are committed to allocate a budget for the implementation of policy (member states are requested to devote 1 percent of the assessed contribution to the fund); (some member states have contributed more) and since the funds mobilized through this means for the empowerment of women.

C) The Africa Union Women's Committee (AUWC;

It was established in 2003 following a decision by the Executive Council of the AU to transform the African Women Committee on Peace and Development (AWCPD) into the AUWC, an advisory body to the Chairperson on gender and development.

Among its functions is to watch over progress towards gender equality on the continent, working with government and civil society within the framework of the SDGEA and the Women's Rights Protocol.

In addition to the above institutions, the AU has provided guidance to the RECs at sub-regional level in complementing and harmonizing global and regional frameworks by integrating and translating various resolutions and commitments into their policies and plans of action.

The RECs have already started implementing some coordination and harmonization mechanisms, which will certainly help eliminate discrepancies; and the establishment of priority areas of focus will assist in producing results.

But bolder action is still needed. The RECs are expected to monitor the implementation of integration-related policies and programs, to mobilize the necessary resources to support such policies and programs, and to report on progress.

3.3. At National level

3.3.1. Legal Frameworks at national level

i) The FDRE Constitution;

Ethiopia adopted laws and policies to ensure gender equality since 1991. Taking the historical legacy of women's discrimination in the country and with a view to remedying the historical gender inequality, the FDRE Constitution separately provides for women's rights under Articles 34 and 35. Under Article 34, the Constitution explicitly stipulates that: Men and women, without any distinction as to race, nation, nationality or religion, who have attained marriageable age as defined by law, have the right to marry and find a family. They have equal rights while entering into, during marriage and at the time of divorce. Furthermore, it also stipulates that "Women shall, in the enjoyment of rights and protections provided for by

this Constitution, have equal right with men" (FDRE Constitution, Art. 35 (1)).

The same provision also prescribes that "the historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions" (Ibid, Art. 35 (3)). The State is duty bound to 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 (Ibid, Art. 35 (4)). The Constitution further stipulates that: Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land and its products. Women shall also enjoy equal treatment in the inheritance of property[49].

As can be discerned from these constitutional provisions, Ethiopia showed its commitment to protect women's rights in general and their right to use and control land fruits on equal footing with men. As the problem of gender inequality is rooted in both attitudes and practice of the community, the State entitles women to affirmative action in which women may be afforded with special and differential treatment in enjoying some rights. The Constitution also tries to give special emphasis to the protection of women's property rights including acquisition, administration, control, use and transfer. Particular emphasis is also given to the importance of land to the empowerment of women. The law signifies the recognition and enforcement of women's right to use, transfer, administration and control of land. In cognizant of gender inequality and discrimination in the country with respect to property inheritance, the law again stresses the recognition and enforcement of the principle of equality with respect to the inheritance of property. In addition, the Constitution lays down a duty of the Ethiopian government to enforce the right of women to eliminate the influences of harmful customs.

It is worth noting that verbatim copies of Article 34 and 35 of the FDRE Constitution are adopted in the constitutions of all regional States. Furthermore, Art. 9 (4) of the FDRE Constitution stipulates that

[49] . Supra note at 5, Art 35 (7).

international treaties ratified by Ethiopia are the part and parcel of the law of the land.

ii) The Revised Family Code (RFC);

Ethiopia has also given a due attention to the women's equality with men in all aspects in its family laws. The revised family codes of the federal and state governments, which are updated in line with the FDRE Constitution, recognize the pecuniary effects of marriage whose primary aim is to protect the women's right to property before marriage, during marriage and upon its dissolution. Above all, it talks about the equality of the spouses under its preamble as; "*….it is necessary to provide the legal basis which guarantees the equality of the spouses during the conclusion, duration and dissolution of marriage;"*

Spouses have a right to own personal property in addition to their common property which they own jointly.

iii) Land Laws; The necessity of protecting women's right to and control over rural land in Ethiopia is also reaffirmed in federal land proclamations, regulations and directives. The Federal Rural Land Administration and Utilization Proclamation No 456/2005 (which declares the possibility that communal rural land holdings will be converted to private holdings Art 5(3).

Equal access, use, transfer, administration and control to/over land are provided for in the Constitution[50]. Persons who wish to earn their living by farming have the right to use land freely. This right includes the right to alienate, to bequeath, and where the right of land use expires, to remove property, transfer title or claim compensation for it.

iv. The civil code (Law of Succession);

The Civil Code governs matters related to inheritance. They grant full testamentary rights to women however it limits the right of a spouse to transfer personal property by testament to the other spouse. Following traditional practices, the Civil Code maintains that property must pass to blood relatives and a man or woman cannot inherit the property of his or her spouse. The children of the deceased are the first to be called to succession. If the children themselves are deceased, the deceased person's

[50] .Ibid

descendants inherit the shares. In general, the children of the deceased have equal right in case of succession irrespective their sex or age[51].

v. *Labor and the civil servant proclamations;* these are the two independent areas of laws which the former governs the relationship between the private employer and employee whereas the later deals with the relationship between the government and an individual. By doing so, both the proclamations ensure the equal rights of women with men at employment opportunity, payment and other related rights of women recognized by the ILO and under the constitution of Ethiopia.

3.3.2. The policy framework at national level

i) National Policy on Ethiopian Women;

The primary objective of the National Policy on Ethiopian Women (1993) is:

• Facilitating conditions conducive to the speeding of equality between men and women so that women can participate in the political, social and economic life of their country on equal terms with men and ensuring that their right to own property as well as their other human rights are respected and that they are not excluded from the enjoyment of the fruits of their labor or from performing public functions and being decision makers (pp 25)

ii) Other policies; In addition to the above policy, there are also certain policies which play a vital role in implementing and enforcing women's rights in Ethiopia. Some of them include Ethiopia's frameworks on domestic violence against women, Policy reform towards gender equality in Ethiopia, Ethiopia's joint program on gender equality and women's rights, policy frameworks for the protection and promotion of women's rights, Environmental policy of Ethiopia and Cultural policy of Ethiopia, which try to avoid gender discrimination (they are gender sensitive).

3.3.3. Institutional frameworks at national level

1. Ministry of women's and children's affairs;

[51] . supra note at 4, art 937

This is an institutional organ which is mandated with ensuring the high premium on policies that will enhance the living standards and welfare of women and children throughout the country. The main function if the ministry is to strength the capacity of women, ensuring the participation of women in politics, initiating policies that promote the economic empowerment of women, formulating and propagate moral values within the family units and in the public generally and to establish programs with institutions and organizations to inculcate moral education in women and children…etc.

2. Courts; Even though court is part of the judiciary organ whose function is interpretation of laws, it does not mean that it has no role in the enforcement of women's right. Thus, while interpreting the law, it is enforcing the rights of women therefore; courts play a vital role in enforcement and implementation of women's rights in general and their property rights in particular in all levels of the country. Other institutions empowered with enforcement and implementation of women's right in Ethiopia include Women's health association, Addis Ababa women's right association, Ethiopian women rights association and other civil societies as well as NGOs… etc.

3.4. At Local level

3.4.1. Legal frameworks at national level

I) the SNNPR Constitution;

Like that of the Federal constitution, the constitution of the SNNPR recognizes equal rights of women with men in acquiring, using and controlling of land. It particularly provides that "Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and

control of land. Women shall also enjoy equal treatment in the inheritance of property[52].

II) Land laws;

This section briefly reviews the relevant provisions governing women's equal right to acquire, use, control and administer property including rural land particularly in the SNNPR, which is relevant to the case study area (i.e. *Bench Maji zone, Shako woreda*). The relevant land legislation, SNNP Land Administration and Use Proclamation No.110/2007, which was enacted in accordance with the constitution and other federal laws, recognizes women's right to acquire rural land and the income generated from it equally with men. This law specifically stipulates that "Women who want to engage in agriculture shall have the right to get and use rural land".[53] The law seems to protect women from the administrative discriminations with respect to rural land acquisition. Moreover, it stresses that "a husband and wife have equal use right on their common land holdings".

III) Family law;

The revised family code of the SNNPR, which was updated in line with the FDRE constitution other laws, also recognizes the equality of women in marriage in acquiring, using, disposing and transferring of their personal and common properties (Arts71& ff).

3.4.2. Policy frameworks at local level

There are certain policy frameworks in SNNPR in the implementation of women's rights in general and their property rights in particular. Some of them includes policy frameworks for the promotion and protection of women's rights, the cultural rights which prohibits the cultural practices which goes against the equal rights of women and other related policies.

3.4.3. The institutional frameworks at regional level

[52] . The Revised Constitution of the Southern Nation, Nationalities and Peoples' Regional State, Year 2001 , Art 35(8).

[53] . Southern, Nations, Nationalities and Peoples Land Administration and Use Proclamation, *Debub Negarit Gazeta*, Proclamation No.110/2007, 13th Year, No. 10,Art.5

One of the prominent institution at local level which is empowered with the implementation and following up of women's right is the Bureau of women and children's affairs which is available at regional, zonal and woreda levels.

CHAPTER FOUR

CUSTOMARY PRACTICE AND WIMEN'S PROPERTY RIGHTS

4.1. General Overview of the Study area

Bench Maji is one of the Zones of the Ethiopian Southern Nations, Nationalities, and Peoples' Region (SNNPR), which is bordered on the south by the Ilemi Triangle, on the west by South Sudan, on the northwest by the *Gambela* Region, on the north by *Sheka* Zone, on the northeast by *Keffa*, and on the east by *Debub Omo*. The *Omo* River defines much of its eastern border with *Debub Omo.* The administrative center of *Bench Maji is Mizan Teferi*; other towns include *Maji.*

4.2. Challenges in enforcing women's Property Rights in Shako Community;

Women are the most marginalized group of the society in relation to accessing and controlling rural land and other properties in Ethiopia in general and in *Shak*o community in particular. The main challenge for an effective implementation of women's right to property and rural land in the country is largely attributable to the negative attitudes and harmful practices which are the base for gender based discrimination and deny a woman's right to own, administer property and control the rural land. Thus, there exists a deep-rooted attitude and perception of the community towards women with regard to administration and holding of rural land, inheritance as well as during and after marriage. Now, we are going to see the impact of customary practice on each of these issues in the study area;

4.2.1. Customary practice vs. Women's land holding rights in Shako community

Though the FDRE constitution and other land laws as well as regulations provide equal rights for men and women with regard to land holding and use right, the existing customary practice shows that holding and using of the rural land is dominated by the men. Despite such a firm commitment of the government in recognizing a woman's right to possess and use rural lands, the customary laws and practices, which deny women's equality, are still persistent in the Shako community. Women generally lack legal awareness regarding their right to and control over household lands and fruits generated therefrom. The government authorities at *Kebele* (*lowest administrative unit*) level are also very much hesitant to enforce the legal rights of women. Instead of the modern laws, the customary practices of dispute resolution are still prevailing in the community. Thus, although there is strong statutory recognition of a woman's right to rural land and

properties, this study shows that much remain untouched on implementation of the law among Shako community.

As I interviewed certain men farmers in the study area,[54] they stated that land is not considered as goods that can be bought or sold, but is managed according to family and lineage structures, marriage practices and religion. Generally, men control land as well as incomes generated and women gain access mostly through their relationship with male relative. The customary practice limits women's rights on land and other properties and this law underpins patriarchal system of traditional authority to reinforce patriarchal values which disadvantage women and place them to subordinate position in society. Customary land right of women is based on social relations between men and women. According to the Shako customary law, women do not have right to land possession and property ownership.

Survey findings on means of land acquisition in the study area revealed that some respondents (12%) acquired land through state land distribution carried out by the Derg before 38 years. However, most respondents (56%) are in 18-42 age group and not be able to be of age to acquire land through the Derg land distribution. This study shows that marriage has impact on women's access rights to land. Most women get access to land through marriage as most survey respondents were married women who get access to their husbands' land and widowed women who get access to their deceased husbands' land. Literatures reveal that women's access to their husbands' land offers them secondary rights and this right is seriously constrained in reality because women's rights to their

Qualitative information obtained from interviews with woreda land administration committee (LAC) members[55] and focus group discussions with rural women on ownership and control of assets indicates that women own, use and sell hens, eggs and animal products like milk, butter and cheese. It is also disclosed that cattle, sheep, goats and pack animals like donkeys and horses belong to men and using pack animals is difficult for women because of culture.

4.2.2. Customary practice vs. Women's inheritance in Shako community

There are different customary arrangements for inheritance depending on the property, but in general property is handed down through men. The

[54] . Interview with Gedion Tadesse, Teklu Gashaw, Teketel Biru and other farmers from Shashaka and Boyta kebele in Shako community, May 19 , 2010

[55] . Interview with Ato Adem Ambo, Land administration expert at Shako woreda, May 19,2010

amount of property available for inheritance will depend on the wealth and status of the family. Men tend to inherit the major properties. Women do not benefit from inheritance as do men. They cannot share and inherit the property and land from their parents. Women only eat and dress for their lifelong period. Beyond this, they have no any say on their properties. Male and female children are not treated equally for inheritance right. Land is given to male children. The laws had been discriminatory towards women for long time and remain obstacle to women's attempt to ensure their right, enjoy the fruits of their labor and participation.

Survey findings generally show a prevalence of gender biases in asset ownership and control. Women in the study area own and manage properties that have less value. Women mostly own poultry and manage animal products. Findings further reveal biases not only in asset ownership but also cultural constraints on women's using household assets as well as inheritance of their parents. The case story below explains this fact.

*Meklit and Zinash are living in Shako community, Shashaka kebele. They have 5 brothers who are born from 3 different mothers. They survived their father who died in 2007 and owned a lot of assets including 2 hectares of coffee farm. Meklit and Zinash raised the issue of property inheritance as well as acquisition and administration of land on the focus group discussion. Their tears drop as they tell the multiple problems they faced in their life since they have been denied their right to inheritance of the assets and the coffee farm of their father. They repeatedly asked their brothers in order to exercise their property rights with them who refused by giving them a little amount of money from such huge assets assuming that these two females should use and control the properties of their husbands. After a long debate and struggle with their brothers, they approached and brought their grievance to the local elders who decided in favor of the brothers thinking that a female only control and administer the property of her husband. They didn't know that the law provides equal rights to them and simply left the issue without further struggle for their rights. A*s I interviewed the woreda's land administration expert*, Ato Adem Ambo*, they try to improve and ensure the rights of women and create awareness among the community, but still there exists a gap. Most women don't understand even the extent of their rights.

The tradition in the study area gives inheritance right to male descents (grandsons) denying inheritance right to daughters of their deceased parents' land and property. Information obtained from focus group discussions with rural women on land access right of widows confirm that widows' access to deceased husbands' assets and land is attached to fertility. These informants further disclosed that brother in-law would not

allow a widow to live on their deceased relative's land if a widow is childless from that marriage.

Widows traditionally have rights to inherit their deceased husband's land and other property which they later on pass to sons in the study area. However, this right is conditional to having a child from the deceased husband. Widows with children are relatively secure to use their deceased husbands' land than widows without children. Widows with children usually continue farming their deceased husbands' lands as they continue to raise their children.

4.2.3. Customary practice vs. Women's property rights before, during and after marriage in Shako community;

As I stated earlier, the FDRE Constitution as well as family laws recognize the equality of the spouses with regard to property rights before, during and after marriage. However, the empirical reality in the study area shows the existence of gap as to this issue, which is the result of the lower position given by the community. Thus, unmarried women have little access to administer land and other resources because they have no property right to inherit in most patriarchal societies including shako community (Nizoki, 2002). The customary practice directly discriminates against women and provides them with few rights of control and use over land and the incomes thereon. The control of assets/properties during marriage falls chiefly under the control of their husband. Besides, a woman cannot control the fruits of the land as she does not successfully involve in household decision making. Worst of all, after divorce, a woman has to leave her husband's home and look for another marriage without claiming her share of the matrimonial property.

On the other hand, the Federal Democratic Republic of Ethiopia (FDRE) Constitution recognizes gender equality (FDRE Constitution, Arts. 25, 34, 35 and 40). The revised family laws, which were adopted following this Constitution, also recognize the equality of men and women in all aspects particularly regarding the ownership, control and transfer of personal and common property.

In addition to these problems, traditional divorce practices impede women's rights to secure matrimonial property incl. Traditional dispute settlement means used by communities hardly ensures women's marital property rights since patriarchal attitudes and practices bias against women. Women also lack legal awareness and capacity to access justice. Thus, divorced women

bear the burden of single motherhood without getting their share from their matrimonial land and other assets.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

→Both the FDRE and SNNPR constitutions limit the application of customary and religious laws to family and personal matters based on the consent of parties. However, this study shows that some customary practices and rules apply to all cases in some areas.

→Even by setting aside the constitutionality issue, the practice of some custom is in contradiction with women's rights; for instance the right to equality, the right to property, marital, personal and family rights and the right of participation of women are compromised.

→Knowledge and awareness on women's equal land holding and other property rights is critical to all concerned bodies including women themselves to realize women's rights. Knowledge and information on the regional land administration and use of relevant legislations is limited among women in the study area. Knowledge and information is essential for women because most women hold secondary rights. They have to be aware of the rules and their legal rights to raise claims and to challenge denial of opportunities and rights. As reflected in the case stories, women's awareness on their property rights plays vital role in breaking traditional barriers to women's access to and control over property.

→Literature reviewed in this study reflected women's access to land and control over property has positive impacts on household food supply, household income and family welfare. Above all women's equal access to and control over land enable them to gain higher status in households and in communities. In spite of substantial global advancements and policy considerations in women's equal rights, their equal right to land and other asset is not ensured in most settings. Achievement is even less in ensuring women's control over land and property.

5.2. Recommendations

Based on the above conclusions, the following points are forwarded as recommendations in order to minimize and where possible to eradicate the existing gaps and problems between the law and the practice.

→Lack of adequate awareness about the existing laws protecting women's rights by women's themselves is one important factor for the weak enforcement of the law. Creating extensive community awareness through programs becomes important.

→Capacity limitation of law enforcement is the other key factor for the weak enforcement of the laws on women's rights. Building the capacity of the law enforcement organs could alleviate the problem. Extensive gender sensitive trainings could enhance capacity and mitigate the attitudinal problems on the part of law enforcement bodies. Such trainings should also target women themselves with a view to make them aware of their rights.

→Women face challenges in enforcing their rights through the lengthy trial procedure from *Kebele* (the lowest administrative unit) to the Federal Court

of Cassation due to resource limitation and lack of an effective legal aid system to women. Thus, there should be organized state funded legal aid scheme which exclusively aims at the women's empowerment and enforcement of their rights to property including rural land.

→In addition to the practical problems, the law also has a gap with respect to women in polygamous marriage. It does not specify how they can get their share from the matrimonial property. This legal gap could be filled by amending the relevant law.

→ In order to fill the lack of researches and to understand the real problem behind gender based discrimination against women within the country, government institutions as well as NGOs including educational institutions should give particular attention for conducting depth research in the area.

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