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Feasibility of Rule of Law: Comparative Analysis of the Federal Democratic Republic of Ethiopian Constitution and the Oromoo Gadaa Governance

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Abstract

Coming into effect as of the 21st of August 1995, the FDRE Constitution marked historical gulf between the outgoing regime and the incoming incumbent. The episode heralded new threshold and afresh popular hope for replacing military warfare by democratic welfare. The democratic guarantees (articles 27-29) and popular sovereignty prescribed in the article 8 established source of power and sketched out revolutionary political move. The articles 50 and12 avow mandate and responsibility of the government. Albeit, international credit drilled from the article 10, UDHR, into article 13, FDRE, however, many issues remained debatable and even put interpretative mandate vested in the article 62 into question. This article, therefore, firstly, addresses controversial split of the article 10 into separate sections and thereby identifies barriers bottling up the borderline between human and democratic rights. Secondly, it highlights potential misuse and quotable abuses of Human Rights which precludes rule of the law. Thirdly, it discusses the domestic standoff between the Gadaa system and the constitutional supremacy. The article finds out that the judiciary infallibility and constitutional irreversibility of the article 9 keep Gadaa system at bay (emphasis on morality consideration and Gender treatment). The Qaalluu institution in the Gadaa system indicates that God is neither neutral nor an optional but heavenly councilor and impartial involver. Hence, the Gadaa government blends political imbue of humanity with ethical gist of responsibility while the article 11 of FDRE constitution (secularism), ostensibly advocate "Politics of Human for the Humans without Divine intervention" Finally, this article calls for critical negotiation between the Gadaa system and state Constitution in order to develop holistic creed and political doctrine that has to be learned and acted upon.

Keywords: Constitution, Rule of Law, Gadaa System, Right, Gender

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Axareera

Heerrii Mootummaa Dimokraatawaa Feedeeraala Itoophiyaa (MDFI)kan Adoolessa 21ffa/1995 raggaasifame sirnoota walkuffisan jidduutti garagarummaa seenaa qabessa uume. Gochaan kun boqonnaa seenaa fi siyaasaa haarawa uumun abdii uumatni bulchiinsa afaan qawwee irra gara Sirna dimookraasitti ce'uuf qabu haaromse. Qabiyyeen Dimokraatawaa (Keeyyata 27-29)tif maddii aangoo uummata bal'aa ta'uun keeyyata 8 keessatti ibsaman gadi-fageenna warraaqsaf kallatti egeree siyaasa diriirsanii turan. Gaheef ittiwaamni Mootummaa Keeyyata 50 fi 12tin ifee ture. Heerrii kun wabii mirga namaa(Keeyyata 13) Labsii dhaabbata mirga namummaat kan UDHR article 10, bu'ura tolfate. Hata'uumalee,Heera kan keessatti dhimmotni hedduun,hiikoo heeraa kan Keeyyata 62tin ibsamellee, dabalatee falmmii hedduuf saaxilamaadha. Kanaaf barreefamni kun;1ffa, dhimma falmisiisa bakka lama baqaquu Keeyata heerichaa 10ffaa buu'ereffachuun wantoota daangaa mirgoota namummaaf kan dimookraasii hubachurratti gufuu ta'an xiinxala. 2ffaa, sababa rakkina itti fayyadamiinsa heerichaatif dhiitamuu mirga namarratti xiyyeefachuun wantoota ol-aantummaa seeraa danqan ibsa. 3ffaa, waldhabbii qabiyyee sirna Gadaatif Ol-aantummaa Heerichaaf kennamte jidduu jiru dhiheessa. Barreefamichii argannoo isaa keessatti; ol-aantummaan daangaa hinqabne kan keeyyata 9 irratti ibsamte qabiyyee Heeraf Seera Sirna Gadaa (Keesumatti dhima koorniyarratti) akka hojiin ala gootu mul'isa. Qabiyyee Sirna Gadaa Keessatti ga'ee Qaalluu yoo ilaallee, Waaqni sirna bulchiinsa Gadaarra bilisa ykn filannoo biraati jechuun akka hindanda'amne mul'isa. Gama kanaan, Qabiyyeen sirna Gadaa keeyyata Heericha 11ffaan (Siyaasan sirna namii namaaf qopheesse kan harka Waaqarra bilisaa) kan jedhu waliin akka waldha'u lafa kaa'a. Oromoon ol-aantummaa seeratif olaantumma ceeratin(safuutin) akka bulu ibsa. Dhumarratti, barreefamni kun sirnii siyaasa fayyaalessa,irra baratamuu qabnuuf itti buluu dandeennu akka uumamuuf jecha mariif qorannoon gad-fageennaf of eegannoon akka Sirna Gadaatif Heericha jiduutti adeemsifamuu qabdu heera.

Jechoota Ijoo*:* Heera, Ol-aantummaa Seeraa,Sirna Gadaa, Mirga, Koorniyaa

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1. Introduction

> "Every self-conscious nation looks back upon its past to revive former glories, to discover its origin, to relate its history to that of other parts of the world and to arrive at knowledge of the development of its political, social, economic and other systems" (Bill, 1998, p.4 in Guyo,2016, p.20)**.**

The analysis is done from perspectives which initiate fundamental questions, i.e. what necessitate the Constitution and why for, with what Values, as well as Purpose of the Constitution. The discussion addresses legal, Political and moral issues prescribed in the Ethiopian constitution and the Gadaa system. In the public space, necessities, need and interest become requirement after recognized. Accordingly, the analysis considered the importance of retracing of the concepts of law, politics, morality, government and common good in relation to the constitution and the Oromoo Gadaa system as an imperative prelude to understand range of interpretation of state legal system and the customary law. While the Gadaa system is no longer viable within the politics that have been dominated by the nation-state politics for over a century, its ideology permeates relations among the Oromoo. But when it comes to legitimate practices, politics of modern state made the Gadaa authority an arrow that has no place to rest. However, like many international institutions that deal with the human affairs, the Gadaa system may also examine questions of massive, systematic or flagrant violations of human rights resulting either from a policy contrary to human rights applied by a state or from an accumulation of individual cases forming a consistent pattern[a]. The rationality behind such a system can be seen beyond the community of practicing to wider nation and even globally.*Thus, the Gadaa system can be comparatively analyzed and*

[a] UNESCO Doc. 108 EX/CR/HR/PROC/2 Rev. (1979)

debated with contents and context of modern political issues documented on various states' constitutions.

Accordingly, this article focuses on the comparative analysis of what need to be known both in the FDRE constitution and the Oromooo Gadaa System. It's up to the audiences to judge which system is creating citizens of democracy or people capable of living fuller lives the nations deserve. But the simplest judgment I can make beforehand is that the obsession with representation, one sided grip onto power saddle or customary nostalgia can't settle human problem. Moreover, the built-in malfunctioning and continuing dilemma must be kept as subject to high debate for further realization. In this regards, **t**he article approaches the constitution from four basic dimensions (scenarios) from which the author covet readers' intake on how the comparative analysis was done and referential capacities which initially necessitated and established rational grounds for human governances.

2. Rationality behind the Necessitation

As I have said earlier, the discussion tries to addresses legal, Political and moral issues prescribed in the Ethiopian constitution and the Gadaa system in order to make clear comparative analysis of the two systems over the issues of human governance and above all, rule of law. To this, hereby, I found the importance of answering four basic questions; 1) what is the rationality behind having Morality and moral ground to build political system? 2) Why we need to instrumentalize moral ground into legal framework and lay our political system upon the Rule of Law? 3) Why we need to form a Contract (like to have a constitution)? 4) Why we need ruling agents (like to say government) and how it functions properly upon the abovementioned ingredients? The article, therefore, discusses these four questions in the following scenarios;

Senario1; the article discuses rationale behind the moral necessity of having constitution: Challenges inherent to the place of truth in politics are inescapable. Whether we should shy away from the place of truth in politic needs more debate about the connection among Truth, Politics and Morality. This has been with humanity since the dawn of civilization whereby people kept on questioning what the best regime looks like. Various "grave error" and adopted "barriers, i.e. wild guess, prejudicial beliefs and baseless forecasts could not solve this concern. Historical unrest, constant and observable degeneration and regeneration as well as shift among the systems of oligarchy, democracy, aristocracy, monarchy, despotism, dictatorship and authoritarianism came through such challenges. Many concealed malcontents and arrested experience mislead humanities. Within any nation state, there are competing conceptions about how best to live a life, about what is good, and about appropriate religious, educational, and moral values. What is learned from all pales of past mistakes and experiences is that though the regimes of power oft undermines other aspects, moral dimension of humanity cannot be ignored from human conditions.

The notion of truth which has fallen from grace in some quarters of politics of liberalism could not make the place of morality dead and buried issue. People naturally feel intensely uncomfortable, as Fukuyama put (2010, P.l397), if they live in a society that does not have moral rules. Human groups may want 'rational' persuasion, not brow-beating or force, to be used as the appropriate means of getting them to agree with others. In political participation, we live as deliberators, actors, and deciders that cannot be done without references. The references underscore the aspirations of our moral inquiries or political pursuit and thereby

enable us to see whether those aspirations can be met. The notion may not directly meet substantial view of moral content but determined by the lights of political groups. Such groups attribute moral beliefs to themselves and to others, they use such beliefs in inferences and think that they can conflict and compete with each other. For the one who think that there was no truth of the matter at stake, that there was nothing to get right or wrong, it would be impossible to reflect commitment to a political purposes.

If it is not possible to aim at making rational and true judgments about the good, then all that one can do is a plumb for one's own conception. This view reminds me excerpt taken from the book; ***Borrowing Freedom***; Dictators and their retinue are four times removed from truth and reality. The first time they lie to themselves as individuals, the second time they lie to each other as partners, the third time they lie to the people as a group, and the fourth time they expect the people to lie to them by acquiescing their lies (Zewdie 2016; back page). Thomas Jefferson asserted that with nations, as with individuals, our interest soundly calculated will ever be found inseparably from our moral duties (2010, P.487). Although we often sense an anxiety about talking of truth and place of morality in the same breath, historical realities that human came through attest to the profound inescapability of moral concern in political life. If we give up on truth[b], there seems to be nothing to stand in the way of thinking of 'us' as a narrow, homogeneous group. There seems to be nothing to stand in the way of refusing to see 'the other' or the stranger as a full participant in our moral life (Cheryl Misak, 2000, P.17). Even the most liberal politics that highly encourage individual freedom and autonomy, truth-talk encourages zeal, proselytizing, and other dangerous attitudes. No political stand deny the importance of making agreement or consent, be it at the hypothetical or ideal end of inquiry, on the base of its perceived infallible source. As Cheryl Misak put "Wanting to maintain the way we go about moral deliberation is not a recommendation of conservativism or the preservation of the status quo…but an acknowledgement of the necessary rootedness of a theory in practice,"(2000,P.3).The truth we see in the deliberative democracy and Haberma's communicative ethics that focuses on the connection is between deliberation, agreement, debate, and reflection, as well as the reasonableness and truth of judgments and the legitimacy of law, government, and policies best explain place of truth/morality in politics.

Scenario 2: the article discusses the necessity of law as an ***instrumental force of regulation***. ***Law*** establish framework for governances. The constitution, as a foundation of political order, forms a separate department of law – a law that is supreme over other laws of the land in question. It is designed to encourage order and to prevent arbitrary and unreasonable exercise of power. It serves as an important assurance of socio-political, economic and moral rights. Law direct humanities towards legal code that abide association that agree in collective things they take to be important, as matter that is not to be sneered at. It would be impossible for us to maintain something like impartiality, equality, mutual advantage, or fair reciprocity without law. Politics can't fit into our world without maintain law as law keep order and regulate social organizations. The legitimacy of political processes and outcomes lies in the heart of law.

Scenario 3: the article discusses the importance of Contract for the effectiveness of constitution: The need of contract is necessitated by the very question of human survival and

[b] If one wants to avoid such a view of political life and its consequences, then something must be said about why some views are better than others; something must be said about why one view is right and another wrong(ibid.)

continuity. As Schmitt put; "When a people no longer have the power or the will to maintain itself in the political sphere, so politics does not disappear from the world, all that disappears is a weak people," (1976,PP 53–4). Schmitt argued that political life is a struggle in which one claims some ground for oneself. Thus, contract closes the door that politicians open to crises and power struggles (in Misak, 2000, P.16). The contract, when developed into a ***sovereign decision***, would end the continual crisis of arbitrary politics. The contract is recognized as the source of political legitimacy. It is an "unforced agreement" in which we make our decisions, form our policies, and live our lives. The absence of a combining basis of contract adjudication often leads to intolerance, an intolerance which has sometimes culminated in genocide. The torture or gratuitous cruelty to children is prevented by the contract. Because, without such a contract, political arbitrariness survives only if no particular group wins the battle. It must be with a contract that we politically try to get outside of our own minds and see the world as it really is, i.e. concession compromise and tolerance are to be pursued.

Scenario 4: the article highlights the necessity of ***executive agents*** which provide ethical and legal guidelines to assist continuity of human life. All that necessitate the formation of contract are related with moral and ethical questions of the political activities and principles which are performed and followed by government, agencies, institutions and individuals (Das 2006,P.8).In our history, we have seen governments that love their people, hate their people, respect their people and that fear their people. Their constitutions also various; as savvy homes to governments, comfortable niche of ruling parties, an iron curtain veneering agencies and fearsome fort guarding politicians. In the worst form of government among these, constitutions serve as a supreme code of control whereby peoples are expected to hand over their rights to the leaders who ride their countries and their countries get nowhere. Fear but freedom reigns throughout the rest of public life under political document taken for granted. Leaders grip onto power saddles only to build themselves. They convince people the end of history so that they need not bother with alternative life exigencies, presumably nothing fundamental to change exist. Quantitative expansion of ever baby democracy binds the nation to extensive, ritualistic, fair, free and periodic election and its deadening repetitions. Participation is limited to a ritualistic acclamation of predetermined policies and goals. The nation is devoid of quality participation as customary laws and democracy are overtaken by technical administration that is emptied of all pillars of good governance. Periodic electoral campaigns sound like begging permission not to permit voters again. Politics remain the game of killing with kindness that relies on the ballot box as a secret ticket for readmission. Democratic decision making is reduced to the formal appointment of elite rulers whose rule of laws implicitly teaches the citizens to be free from freedom.

3. Federal Democratic Republic of Ethiopian Constitution and the Oromooo Gadaa System

3.1Federal Democratic Republic of Ethiopian Constitution

"*We, the Nations, Nationalities and Peoples of Ethiopia: Strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social-development;" **(PREAMBLE)***.

The Ethiopian constitution is known as the constitution of the federal Democratic Republic of Ethiopia. The constitution is a compact document with a notable degree of clarity and simplicity. It is a document of 106 articles contained in ten major chapters. Therefore, the constitution sets up a federal system by dividing powers between the federal and states

governments. It establishes a balanced federal government by separating powers among three independent branches; the executive, the legislative, and the judicial. The executive branch, the President, enforces national laws; the legislative branch, the house of people representatives, makes national laws; and the judicial branch, the Supreme Court and other federal courts, applies and interprets laws when deciding legal disputes in federal courts. Federal powers listed in the constitution include the right to collect taxes, declare war, and regulate interstate and foreign trade. In addition to these delegated, or expressed powers (those listed in the constitution), the federal government has implied powers (those reasonably implied by the delegated powers). The implied powers enable the government to respond to the changing needs of the nation. In some cases, the federal and state governments have concurred powers-that is, both levels of government may act.

However, it is not within the remit of the current review to explain all those constitutional issues, but it should be noted that the review focused on constitutional provisions and customary laws inherent to the Gadaa system. The point of departure is, hereby, to test the functionality of the Gadaa system against the Article 9(1), i.e. supremacy of the constitution,' whereby the very article states that the constitution is the supreme law of the land, of course with the specificity but too much vague, that any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

With the full consideration and meticulous use of the four scenarios, the review focuses on significant views so as to make Values and Purpose of Constitution more vivid; "Constitutions are power maps; they are, at the same time, proclamations of sovereignty, institutional guidelines for the power and staffing of government offices, and listings of limitations on government power" (Duchacek 1973)[c] . The quotation bears important elements with which one can understand the constitution. Constitution, as a foundation of political order, forms a separate department of law –a law that is supreme over other laws of the land in question. FDRE constitution can meet this aspect. It is *reasonably authoritative as stated in article 9 which highlights its very legal and political supremacy .It also* sketch the fundamental modes of legitimate governmental operations as stated in the articles 50, 51, 52. Moreover, it confers ultimate power for the people as mentioned in the article 8 which clearly indicate that constitution is not a political code of allowing a nation to hide its failures behind ideals. The 'nations, nationalities and peoples, arrogate to themselves the privilege of being markers of the constitution 'The very preamble of Ethiopian constitution explains this. It prescribes how the constitutional text may guide as well as *express hopes* for peoples themselves as a society; ***We***, the Nations, Nationalities and Peoples of Ethiopia: strongly committed, in full and free exercise of our right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development.'

Furthermore, the expression; 'rule of law,' appears crucial. *Rule of law* may be most concretely defined as a theory of governance relying upon a series of law, which may be most concretely designed to encourage order and to prevent arbitrary and unreasonable exercise of government power. Rule of law also serves as an important assurance of social rights and government accountability. The very term R*ule of Law* suggests that the law itself is the sovereign, or the ruler, in a society. To agree in their collective name to a political covenant, individuals must have already had some meaningful corporate identity as "*a"* people, i.e. "We" in the above context, presumably the Ethiopians. In its act of defining the "We," it

[c]Thomas M. Leonard, 2006

claims to serve as a binding statement of people's aspirations for themselves as a nation. It provides framework of putting all together under the "We" by limiting acts of personal deviations. It provides freedom within the limit of common aspiration. Thus the notion of constitution as a covenant should, therefore, be the one which formalizes or solidifies rather than invents an entity anew. It serves as a guardian of fundamental rights. The Articles 10, 27 and 29 clearly meet this requirement.

3.2. The Oromoo Gadaa system

> "The indigenous Oromoo governance system is one of the few remarkable and miraculous creations and contributions of the past generations not only to Oromoo of Ethiopia but also to the Africa continent. The Oromoo Democracy is one of those remarkable creations of the human mind that evolved into a full fledge system of governance. I contain genuinely African solution for some of the problems that democracies everywhere have had" (**Asmarom Legese, 2000)**

There have been several studies of the Gadaa system's potential contribution to Oromoo self-government Asmarom Legesse (1987),Lemmu Baissa (1971), Bonnie Holcomb (1993), Dinsa Lepisa(19'75), Sisay Ibsa (1992) and several others have recently examined various aspects of the Gadaa system and have reached useful conclusion. By examining the interrelationships of culture, institutional change, and development, In his article "Aspects Oromoo Cultural Endowments and Their Implications for Economic Develop ment," Professor Fayissa he finds that the democratic institution of Gadaa recog nizes the importance of cooperative work arrangements which facilitate division of labor and specialization, property rights, private ownership, and incentives that are conducive for economic growth and development in Oromia (Damie 1996,P.II).Therefore, Gadaa is an indigenous socio-political democratic system of the Oromoo people by which they regulate Political stability, economic development, social activities, cultural obligations, moral responsibility, and the philosophy of religious order of the society. The Gadaa, in its healthy condition, function according to its own logic and ideals. Substantially the system has its own democratic values, beliefs and ideology that supported popular participation, legitimate and accountable political authority, well established term of office and peaceful transfer of power. Structurally, the system is based on age-groups to run the political, social and cultural affairs of the Oromoo society. Procedurally, democratic nature of Gadaa is evidenced in its election of political leaders, every eight years, in free and democratic procedure.

The Oromoo Make decisions over key, life-giving resources through their indigenous governance, Gadaa,' which is contained in the Oromummaa-Shared-Value, Language-Afaan-Oromoo, Economy-Finfinne, System- Gadaa, Religion-Waaqefanna), Ethics-Safuu, Culture-Aadaa), Biyya-Oromiya, Government- Caffee,Tuma Seeraa-Heeraa and Seenaa ummataa-History of the nation). Accordingly, the Gadaa system addresses cores issues and concepts,as well as practices that one can at the universal level such as Human Rights, Civil and Political Rights, Economic, Social and Cultural Rights, etc. At level of universal discourses in which the concept of human rights constantly raises theoretical issues about the nature, extent, justification and requirements of legitimate government and the nature of the good life, etc. are pertinent, the Gadaa system can be critically considered and comparatively debated.

3.3 General Criticism to the Ethiopian Constitution

The review identified various critics' objections that have been partially addressed by different authorities. The first aspect of the criticism involves logical skeptic. In the above paragraph, I used the expression; 'of course too much vague.' I put my own reservation in the word vague right from my own feeling that constitutional provision, as expressed in the article 9(1), may lacks precision of application in a certain areas of customary alternatives. When I say the provision of this article tends to be vague, I am to mean that there are borderline cases in which it is impossible to tell if the provision applies or does not apply to the case arise within the range of customary practices. The second aspect of the criticism involves Conceptual issues. This aspect of the criticism directly goes to: the very preamble that start with "We, the nations, nationalities and people of Ethiopia" This can also be considered from the very provision stated in the article 1 of the constitution which demonstrates the nomenclature and form of the Ethiopian government as the EPRDF. The criticism in this regards, poses the conceptual analysis of the very "***Federalism.***" Categorically explaining **Federalism** as holding together type and putting together types, this criticism identifies Ethiopia with the latter one. In the preamble, the constitution indicates how the government is committed to build one politico-economic community which the criticism identified with a kind of federalism which essentially reflects a putting together project. Cohen, (1995, 10), considered this as what was billed as a form of devolved federalism without extensive sub-national control over technical policies, laws, regulations and taxes. The criticism reverses constitutional provisions such given in the ***articles; 1, 8, 50 and 51***. According to the criticism, the constitution involves contradiction in its asserting that states may prepare their own constitutions, decide their own official language, and develop their own administrative systems, establish separate police forces, and collect certain taxes while the imitative for such an arrangement came more from the center than from the constituent states (ibid.).

Moreover, the criticism links the content of provisions mentioned in the ***articles 51 and 52*** over the concept of ***devolution of power***. The point of objection is; devolution can often enhance the control of the center[d] rather than reducing it, especially when the regional states do not have sufficient taxing power or other means of generating their own revenue (Grindle 1999, 101). The critic notes that often "central government have abdicated their responsibility for development through allocating it to local government but without the commensurate resources" (The respected business newspaper, Capital, August 4, 2002; 13). The second aspect of the critics is an extension of the first aspect and thereby highly focuses on the practical gaps between constitutional provisions and political landscape. Young, 1997, argued; "rather than leading to political stability (i.e. what is mentioned in the very preamble in that the government aims to ensure lasting peace), within mult-ethnic states, federalism has only served to fuel inter-ethnic tensions in those states (quoted in Edmond Keller1997; 35). The criticism linked this with constitutional provision given in the article 39 and concludes that the very constitutional grant in this particular article prompted some ethnic entrepreneurs to take license to advance hard demands on behalf of their clients rather than compromise. In this regards, the constitutional provision stated in the ***article 39*** reverse its very ***preamble***, i.e. the very aim of the government to ensure lasting peace by building a political community found on the base of the rule of law. What is to be blamed here is not

[d]This criticism challenges the very aspiration stated in the preamble, i.e. the government is committed to improve socio-economic conditions of the people. It clearly put that in Ethiopia, administrative devolution would rather under the best of circumstances be risky business.

propositional contents of the provision, but rather actors/ruling agent's practical intension. This reminds me of what Socrates once equipped drawing Polemarchus view point; 'that every skill implies both the greatest capacity for good and the greatest capacity for harm…No one can poison as effectively as a doctor; no one can lead a ship off course as smoothly and as skillfully as a trained navigator,' (Barry Stocke,2006;39).

The content and major provisions of the constitution are also contestable. The preamble of the FDRE constitution clearly states that the Ethiopians are strongly committed in full and free exercise of their right to self determination, to build community founded upon the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic and social development this end, the constitution guarantees all sovereign power to the nations, nationalities and people of the country (article 8). It also confirms constitutional supremacy over any laws, customary practices or decisions of any organ of the state and public officials which contravenes the constitution (article9).The constitution indicates justifiable foundation of human and democratic rights in explaining how these rights emanate from the very nature of mankind(article 10).Though a boundary line between human and democratic rights is often unclear, the constitution guarantees these rights as stated in article 10(2).It seems that the government was politically critical, at least during the preparation, in that it highly anticipated potential misuse and misinterpretation of human rights and political provisions whereby article 13 of the constitution links scope of application and base of interpretation along fundamental guidelines of UDHR.

Moreover, extension of article 10,i.e. article 27 and 29,though placed under different chapters appear so remarkable as the provisions within the article 27 underline basic rights of freedom of religion, belief and opinion. Despite such a vague separation in its very chapter, the article shares basic things with article 29 which provides right of thought, opinion and expression. The two articles herald the beginning of basic concern about the nature, extent and justification, as well as demarcation of human and democratic rights. The basic concern leads to the inevitability f other critical issues. Firstly, given the complexity of human nature and above all limitlessness of human political interests, the government may face political problems related to moral and constitutional choices. Herein lies the question; is it politically safe to be unconditionally guided by the constitution over basic challenges? Secondly, given the universal tendencies of human rights, the government may face problem of moral choice, i.e. is it ethical rational to be guided by moral commitment expressed in the inalienability of human right when confronted by the others? This challenge goes to the global base of human right that call for the principle of universalizability which demands ethicists to recognize corresponding values among humanities. It is a matter of Ethics which in turn is significantly a matter of respecting others for what they are in themselves, apart from my self-interests and place they live. However, as I have mentioned earlier, it would be fair to admit that the political task of prioritizing moral choices over political commitment, i.e. respecting foundation of human rights and democratic guarantees over political policy implementation is extremely tempting. The act of prioritizing is tempting since some of the priorities confront the very ground of constitution despite constitution's basic nature of serving as a supreme standard for decisions .But still such worries may not limit the competing sides(ruling party) from political implementation. In the article 9 of the FDRE constitution, it is clearly stated that any act contravening the constitution is invalid. Though the very essence of the rule of law is there, the act of implementation may go against its own provision. Paradoxically, the government, regardless of the implementation, may stand against various justifiable claims from its opponents. As Foucault said of such a situation, "the validity claims of the counter-discourses count no more than those of the discourses in

power—they too are nothing else than the effects of power they unleash" (1987a,P.281).On the other hand, without explicitly rejecting the constitution, the opponents may keep on tearing government's defense down due to it's seemingly violation.

4. Discussion: Comparative Analysis of EPDRF Constitution and the Oromooo Gadaa Governance

4.1Strategic Challenges

The article outlines that there is a strong tension, if not contradiction, between the constitution and the Gadaa system. This tension reflects the conflict between customary practices and state's legal and political trends over concrete social reality under the weight of traditional forms of life. The article discussed substantive differences arising over different understandings and practices in the Oromoo Gadaa system and state's political system.

The discussion found many cases that put the mutual coexistence of the Ethiopian constitution and the Oromoo Gadaa system at stake. The point of departure appears when one tests the preamble of the constitution against what I mentioned as elements of the Oromoo governance. Here I said a point of departure to show the degree to which the two systems of human governance reflect their impossible mutual coexistence and veritably questionable functionalities. To begin, however without going to the details, the Preamble of Ethiopian constitution indicates how the government is strongly committed to grant full and free exercise of nations', nationalities' and peoples' right to self-determination, to building a political community founded on the rule of law and capable of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development.

The basic challenge to rethinking the Oromoo Gadaa system as a independent system of governance lies in the heart of constitutional provisions mentioned in the article *39/1-3*, (Rights of Nations, Nationalities, and Peoples); i.e. 1. Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession. 2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history. 3. Every Nation, Nationality and People in Ethiopia has the right to a full measure of self-government which includes the right to establish institutions of government in the territory that it inhabits and to equitable representation in state and Federal governments.

The very provisions of the constitution contain each of the above elements of the Oromoo governance in itself, i.e. the Oromoo is contained in the preamble, "We," the Language is contained in the *article 5 and abided by the article 106*.The ambiguity of article 106 when it comes to the provision of article 5 implies that the demand for equality of language is given but freedom of language is rejected. The Economy or Oromiya is contained in the article 49 and article 2, the Gadaa supremacy is superseded by the article 9, the Waaqefanna is secularized by the article 11, the Oromumma is contained in the article 6, etc. However, the Caffee, the Heera and the Seera are given conditional recognition in the article 52. I said that the status in the conditional recognition since the very provision is superseded by greater provision in the article 51 which states that the federal government shall protect and defend

the Constitution. Moreover, the Aada(Oromoo culture) and their traditions are given predicated autonomy in the articles 9, 35, 34 and 78. It's predicated and conditional in that State has power over Gadaa to the extent that it can get Gadaa system to do something that the Gadaa would not otherwise do. The overall constitutional supremacy, as mentioned in the article 9, witnesses what I referred to as conditional recognition and predicated autonomy of the Oromoo Gadaa self-governance in the provision prescribed under the article 39/4 in that all the provisions stated under the same article (39/1-3), i.e. The right to self-determination, including secession, of every Nation, Nationality and People (here I am referring to the particular case of the Oromoo) shall come into effect: (a)When a demand for secession has been approved by a two-thirds majority of the members of the Legislative Council of the Nation, Nationality or People concerned; (b)When the Federal Government has organized a referendum which must take place within three years from the time it received the concerned council's decision for secession; (c) When the demand for secession is supported by majority vote in the referendum; (d) When the Federal Government will have transferred its powers to the council of the Nation, Nationality or People who has voted to secede; and (e) When the division of assets is effected in a manner prescribed by law. This issue may call for further studies and investigation. The need to further inward state's investigation does not affect nations' sovereignty. "Every self-conscious nation looks back upon its past to revive former glories, to discover its origin, to relate its history to that of other parts of the world and to arrive at knowledge of the development of its political, social, economic and other systems" (Bill, 1998, 4). This may lead to the possibility of realizing African democracy may require the integration of indigenous methods of village-cooperation with innovative forms of government, combining the power of universal rights with the uniqueness of each districts or nations own customs and respected traditions (Owusu, 1991, 384). The point is to rethink rule of law so as to build the nations, nationalities and peoples needed to be built upon the very virtue of integrated moral and political laws.

Furthermore, the concept of rule of law presses as the tool of ensuring a lasting peace, guaranteeing a democratic order, and advancing economic and social development engulfed the same notion fully inherent to the Gadaa system. The sovereign power in the extent of Gadaa legal instrumentality is a stake. Theoretically, the Gadaa political system has in itself the essence of moral responsibility that manifests mostly itself in the rule of law. It has its own means through which the Oromoo politics exercise and experience peace and wholesomeness in their indigenous values. Beyond the generality of the preamble in its usage of the concept 'the rule of law,' the constitution specify the point of confrontation in the article 9(1) in that any law, customary practices or decision of any organ of states or public officials which contravene the supremacy of the constitution shall be of no effect. Thus when considered from the context of the scenarios I used so far, some of the factors mentioned in the very provision appear challenging. The challenges become apparent, not from the general expression of the article but from the substantial and factual contents of the provision. Despite its rigidity, the constitution may be modified or amended as stated in the article 105 of the constitution. However, so long as the government is there on power in accordance with the provision mentioned in the article 1, the aforementioned elements contained in the Gadaa provision appear of less relevant status, i.e. of no effect as determined by article 9). According to Jalata, the Gumii Gaayyo is an expression of the exemplar model of the unwritten Oromoo constitution. The actual challenge to the Gadaa system is not essential but rather state wise constitutional that one may see in the much lived actuality of the peoples.

4.2 Operational and Judiciary Challenges

The Article 25 states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status. Here comes the question; does the concept of the rule of law presuppose the role of morality in the political activities like that of indigenous Oromoo political leadership? Do those political leaders perceive lack of respect for the rule of law as the violation of morality so that public servants refrain from immoral actions? In the Gadaa system, equality can be achieved and understood solely within the paradigm of rule of law whereby each political leader and member of a society recognize the same rule and abide by it. The conception of rule of law and the moral life of Oromoo community is believed to be recognized in the light of Gadaa political system. This view takes us to consider Power and Functions of the House of Peoples' Representatives. As stated in the Article 55(5), the house has power to enact a penal code. The constitution vaguely gives power to the house to involve in the areas that are not explicitly mentioned here, i.e. the States may, however, enact penal laws on matters that are not specifically covered by Federal penal legislation. But the Gadaa system covers wide areas of legal and moral substances when the Gumii enact the laws. Gadaa laws were passed by the Chaffee or Gumii (assembly) and implemented by officials. This assembly is called Caaffee or Gumii Gayyo (multitude of assembly), and held every eight years. Representatives of different sectors of Oromoo society and interested individuals participated in this assembly (Asafa Jalata, 2011;7). Another important issue is morality and religion. In the Gadaa system political leaders believe in God's law and law of society that they establish through the Gadaa system of democracy and its rule of law to maintain Nagaa (peace) and Saffu among Waaqa, society and nature to achieve their full human destiny known as Kaayyoo" (Asafa, 1998, 12).

The Oromoo believe that God provided an unchanging, infallible foundation for political and ethical claims. God for the Oromoo is a primal unity of that is human. This point remind us constitutional provision stated in the article 11 Separation of State and Religion (State and religion are separate, There shall be no state religion and the state shall not interfere in religious matters and religion shall not interfere in state affairs).There is a clear confrontation and ambiguity on the nature and extent of political struggle both on the individual and collectively levels. As many define, struggle is the essence of spiritual existence and self enlargement to its goal which must undergo psychological characteristics, socio-political constructions, and artistic, religious and philosophical embodiments. The reason why articles 27, 28 and 29 are given must have baseline though ambiguously on this kind of thinking. The Gadaa provisions on individual rights have its basic ground on the same grounds. The differences and degree of enjoyment may lies on the categorical mistakes, systematical misleading provisions and mental conduct inability of the politicians. The Article 62(5) states Powers and Functions of the House of the Federation in that the house shall determine civil matters which require the enactment of laws by the House of Peoples' Representatives. The civil matter in the Gadaa practices cannot be stand without moral interventions. Above all this would become the clearest idea or concept from the light of moral responsibility in a Gadaa system. Such civil matters are in the hand of the Gumii that has the authority to review the activities of the Gadaa class in power and to decide whether the leaders are fit to complete their term of office, and continue to lead the Gadaa class and the nation for the rest of is active career. Their work can be evaluated on rational-legal grounds. This may not be compatible with the Powers and Functions of the Council of Ministers, as stated in the Article 77(9), i.e. it shall ensure the observance of law and order.

This point indicates clash of power and functions between the constitution and Gadaa leaders' immunity. This issue becomes apparent in the provision of the Article 37(1); everyone has the right to bring a justifiable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.

The Gumii Gaayyo assembly has a higher degree of ritual and political authority than the Gadaa class and other assemblies because it "assembles representative of the entire society in conjunction with any individual who has the initiative to the ceremonial grounds," and "what Gumii decides cannot be reversed by any other assembly" (Legesse, 1973: 93). Having Gadaa Oromoo political leaders in mind it is logical to quote Magersa" concept of African indigenous political leadership where it reads that "the most important obligation of every leader is to do whatever is in his/her power to protect and prolong the life of the clan community according to the order established by the ancestors and transmitted by tradition," (Magessa, 2002; 82).

There exist basic constitutional provisions that appear incompatible with this aspect of the Gadaa system. In the above view, the Gadaa council has full right and power to practice penal codes of correcting the wrong doers without external restrictions. Thus the Gadaa legal corrections would be confronted by the constitutional provision of the Article 23(*Prohibition of Double Jeopardy*) which states that no person shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the criminal law and procedure. The confrontation has double bear double phase of the issue. Firstly, the overlap of penal codes (Gadaa customary decision versus states' legal authority) lead to double jeopardy when considered from the personal liberty view point, the state punish the person accused of being murderer while the Gadaa customary authority impose its legal means of punishing such a person, fixed in the Gadaa law that a murderer is penalized with 30 head of cattle and released free).That is; the same person may face double punishment from two overlapping authorities which goes against the *article 23* of the constitution. Secondly, the Gadaa decision may be invalid and of no effect when considered from the provision of article 9 which disqualify all laws contravening its provision.

Generally, the rule of law is the key element of the Gadaa system; those leaders who violated the law of the land or whose families could not maintain the required standard of the system were recalled before the end of their tenure in the office(Jalata 2009;3). The article 29(7) of the constitution states that any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law. In the Gadaa system, such a law is regulated by the Gumi assembly where the governance is exercised only in accord with the rule of law. The political function of the Gumi is the authority to review the activities of the Gadaa class in power. In the Borana Oromoo community, for example, the Gumii Gaayyo (the assembly of multitudes) brings together almost important leaders, such as living Abba Gadaas (the president of the assembly), the qaallus (spiritual leaders), age-set councilors, clan leaders and Gadaa councilors, and other concerned individuals to make or amend or change laws and rules of every eight years(Assefa Jalata 2009;4). Given their evaluation, a political leader can be removed when the rational legal method of impeachment has failed, or is deemed to be less likely to succeed. The rationality behind such a system can be seen beyond the community of practicing to wider nation and even globally. The Article II, Section 4, of American constitution states that the President, Vice President and all civil Officers of the United States, shall be removed from Office on

Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.[e]

4.3. Challenges from the Gender Perspective

Both the state's laws and the Gadaa system prohibits customs and practices that oppress or cause bodily or mental harm to women. In the Gadaa system, females are linked, through men especially through Siiqee i.e. symbolizing a socially sanctioned set of rights exercised by Oromoo women or a stick signifying the honor of Oromoo women. The practice of Siiqee is not only issue confined to law but also it highly entails moral responsibilities that promote the right of females. The Article 34(1) states 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 found a family. They have equal rights while entering into, during marriage and at the time of divorce. Article 40(Every Ethiopian citizen has the right to the ownership of private property. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, to use and, in a manner compatible with the rights of other citizens, to dispose of such property by sale or bequest or to transfer it otherwise. However, I have indicated categories of challenges both at conceptual and operational levels regarding gender affairs; Conceptually, the concept gender in the Gadaa system and state constitution various both in its perception and application throughout human biological and social development.

The Oromoo don't consider unmarried girls as women. Girls and boys are considered from the masculine view point. Here, virginity plays enormous role. Anybody who abuse girls (sexually and physically) is considered as one who abuse human without gender reference. Just like sodomy (male in reference) disvirging the girls is considered unnatural. Such a violation is considered, not as gender abuse but humanly unnatural. The concept of women right is not applicable at this stage. Womanhood and manhood concepts of gender start at marriage. The entry into the notion of women right may be demarked by marriage - structured gender whereby box sex joined their socially constructed femaleness and maleness (wife-husband). Here comes the concept of Siiqee i.e. symbolizing a socially sanctioned set of rights exercised by Oromoo women or a stick signifying the honor of Oromoo women. Constitutional provision of the Article 35(4) which states that the State shall enforce the right of women to eliminate the influences of harmful customs comes after marriage in the context of Gadaa system. Accordingly, the review found conflict of the two systems which ranges from conception and operations. As a result, the following cases best indicate areas of actual conflicts.

4.4The Cases of unmarried

Although both Gadaa law and state's constitution (article 18) may agree on the plea that everyone has the right to protection against cruel, inhuman or degrading treatment or punishment, the Gadaa penal code and legal procedures contradict with the case of unmarried girls. **Firstly,** In the Gadaa provision, any person accused of any attempts related to sexual harassment will absolutely penalize and ostracize the person without any further investigation. If the accused person is charged of sexual charges the girl, he would marry her without any precondition and he would be considered as Caphana 'sexual out cast. This case may face constitutional challenges from the federal constitution provided in the articles 19, 20, and above all when seriously considered from judiciary procedures. According to the article 19/5 of the constitution, Persons arrested shall not be compelled to make confessions or admissions which could be used in evidence against them. Any evidence obtained under

[e] World Book, Inc., (www.world book.com., 2004

coercion shall not be admissible. Just like the judiciary processes do have its legal ground in that person should not be judged and penalized without sufficient evidences (i.e. Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defence, and to obtain the attendance of an examination of witnesses on their behalf before the court(article 20/4)., Gadaa customary laws build its foundation on the moral bases that people feel intensely uncomfortable if they live in a society that doesn't have moral rules.[f]

Secondly, No unmarried girl can go and sleep any places other than her parents' home except for exceptional permission granted by the parents. A girl is monitored, controlled and protected by the community, particularly by her mother(s), her age mates and her "roommates" The very restriction may face challenge from the constitutional provision mentioned in the article *32/1* which states that any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. The article 24/2 of the constitution also brings similar challenges in its very statement that everyone has the right to the free development of his personality in a manner compatible with the rights of other citizens. The provision of the article 25 states that the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.

Thirdly, Unmarried girl has no right to wear bracelet. The 40th Gumii Gaayoo of the Borana Oromoo declared this provision. *This customary restriction is Contestable when considered from federal constitution, article 28, 35/4* constitutional perspectives. On the other hand, the constitution itself faces self imposed limitation. The article 27 of the same constitution states that Parents and legal guardians have the right to bring up their children ensuring their religious and moral education in conformity with their own convictions. It seems that the constitution takes back what it gives to the parents at this point. In the view of the Borana Oromoo, the girl, regardless of her age, remains dependent and daughter of their parent until she gets married. The Gadaa restriction beyond age until marriage contradict with the provision of article 33/2 which states that Every Ethiopian national has the right to the enjoyment of all rights, protection and benefits derived from Ethiopian nationality as prescribed by law.

4.5The Case of Married women

The customary laws of the Gadaa system states in its declaration that women right to separate from her husband (hardly translated as divorce) can be justified and approved in either of the two cases. Firstly, customary laws allow husband wife separation when the newly married female couple is proved with natural problem of urinating during the night sleep. In this regards, husband has right to return her back to her family(hardly taken for divorce) on the justification that such a couple came with natural habit that she adopted at

[f]Francis Fukuyama, in Charles W.Kegley.2009.World politics: Trend and Transformation, Wadsworth.p.397.Here even we see how customary laws preceded judiciary provisions in human history. Actually, sexual harassment was not recognized as an offense by US trial courts until the late 1970s, and it was only affirmed by the US Supreme Court as an offense in the 1980s. The term "sexual harassment" was not even coined until the 1970s. So the moral problem of sexual harassment is one that many people have only recently come to recognize. The Senate Judiciary Committee hearings on Anita Hill's charge that Clarence Thomas had sexually harassed her obviously heightened people's awareness of this problem(James P.Sterba .2001p.11)

her parents' home. *This case cannot be constitutionally justified. Constitution may resist it in the name of women's psychological and moral right*.

2. Since the constitutional right of women regarding property sharing depends on the assumption about possibility and approval of divorce and the concept of divorce does not exist in the Gadaa customary laws, participants refrain from forwarding their comments about the customary laws, seemingly with the assumption that this constitutional right many work for other Ethiopian societies whose customary laws recognized the concept and applicability of divorce. Women have the right to acquire, administer, control, use and transfer property. As it hardly acknowledge the divorce, the Gadaa system may not tolerate provision about property sharing or inheritance mentioned in the article 35/5 which states that women have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.

3. Customary laws allow husband-wife separation, not necessarily in the strict since mention in the constitution, i.e. divorce, but couple's clans from both sides separate them in accordance with the clan councils' approval. No other decisions nullify final decision and approval of the councils. *This case goes against basic constitutional provision stated in article 9 when if it became serious and individuals failed to solve at the customary level. It also confront federal constitution stated in article 35 and regional family laws stated in articles 30,50 and 90 when it's very much complicated and unable to be solved with the customary laws. 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 found a family. They have equal rights while entering into, during marriage and at the time of divorce. The state Laws (as mentioned in the article 34/2 shall be enacted to ensure the protection of rights and interests of children at the time of divorce. The Gadaa system may not recognize this in the strict sense.*

4. Any woman's allegation related to sexual harassment will penalize the accused person without further inquiries for evidences. The decision and approval will be considered only from the compliant women. Thus no act of denial or further justification is needed from the accused person so long as the customary laws developed such a rigid stand right from the fact that such activities are done outside the sight of public. *This case may face constitutional challenges from the federal constitution provided in the article 19, 20, and above all when seriously considered from judiciary procedures.* The provision mentioned in the article 37/1, i.e. *everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power may be hardly admitted by the Gadaa decision.*

5. Conclusion

The proclamation no.***1/1995*** declared the coming into effect of the Constitution of the FDRE as of the ***21st*** day of august ***1995*** *and portrays it* as a power map that legitimized state sovereignty and structured government offices upon supremacy of the law. It underlined government's commitment to fix a lasting solution for various problems. Referring to article 9, it defined territorial jurisdiction through the articles ***1, 50 and 2***. Fundamental guarantees of the articles ***27*** and ***29 appeared salient features of the constitution. The article 8 reinforces this*** in conferring sovereign power to nations, nationalities and peoples of the country. The constitutional immunity goes to the federal government whose responsibility and accountability are predicated in the articles ***50*** and ***12 respectively***. Pronouncing its global legitimacy, article 13, upon article ***10*** of the UDHR, ***it*** assigns interpretative power to

the House of Federation by article 62. However, the constitution unlikely escaped waves of triangular criticisms. ***Firstly,*** global lack of clarity and coherence with international law enables the opponents suspect borderline between human and democratic rights which specifically calls articles ***27*** and ***29*** into question. Secondly, similar critics revolve around article ***39*** for which the government is suspected of preferring a 'putting together 'form of federation. **Thirdly,** indigenous institutions, particularly the Oromoo ***Gadaa*** system, confront article 9, 34, 35 and 78 over the pertinent issues involving gender cases. Bringing these gaps to controversial split of article 10 into articles 27 and 29, the author analyzed main lines of the constitution.

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