OLD WINE IN NEW BOTTLES: BRIDGING THE PERIPHERAL GADAA RULE TO THE MAINSTREAM CONSTITUTIONAL ORDER OF THE 21ST C. ETHIOPIA

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ABSTRACT

In sub-Saharan African countries where democracy and rule of law are proclaimed but in several circumstances not translated into practice, it appears vital to look into alternatives that can fill governance deficits. It is against this backdrop that ''Old Wine in New Bottles: Bridging the Peripheral Gadaa Rule to the Mainstream Constitutional Order of the 21st Century Ethiopia" came into focus. The main objective of this article is, therefore, to respond to the search of alternative solution to hurdles democratization process, Africa as a region as well as Ethiopia as a country faces, through African indigenous knowledge of governance, namely the Gadaa System. Accordingly, institutional and fundamental principles analyzed in this article clearly indicate that indigenous system of governance such as the Gadaa System embraces indigenous democratic values that are useful in 21st century Ethiopia. In sum, three main reasons support this article: first, in Africa no system of governance is perfectly divorced from its indigenous institutions of governance; second, indigenous knowledge of governance as a resource that could enhance democratization in Ethiopia should not be left at peripheries; and third, an inclusive policy that accommodates diversity and ensures the advancement of human culture appeals.

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1. INTRODUCTION

The question of rule of law and democracy across sub-Saharan African countries has led several scholars in recent time to search for the relevance of African indigenous institutions of governance as alternative solutions to leadership crises. Broadly speaking, in several respects, most of the indigenous peoples' indigenous institutions of governance across African states are more democratic and more egalitarian than the borrowed Western democratic principles. Moreover, although indigenous peoples of Africa are the ones who had established leadership system long before the formation of modern African states, following European colonial rule, their rights of self-determination continued to be undermined by the modern African states. The modern political history of Ethiopia has witnessed monarchical system, unitary state and now federalism which were not reinforcing and every regime started over from the scratch.

To this date, how constitutionalism and the rule of law should take root in Ethiopia is a challenging question. Although most of sub-Saharan African states adopted Western models of democracy, i.e. multi-party politics and parliamentary system as a guarantee to democracy, it did not guarantee rule of law and the good governance aimed for. Even worse one party rule could also flourish beneath the façade of multi-party politics and parliamentary system.[1] This indicates that though Western political values are philosophically sophisticated and transplanted to developing countries like Ethiopia, they are not translated into practice. Hence, at the heart of this article is the question of whether there is a way out to such leadership deficit through indigenous system of governance, a broad-based democratization, that permit a greater degree of popular participation.

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[1] Bahru Zewde, Historical legacy and the democratization process in Ethiopia (1994), in Africa Zamani: *An Annual Journal of African History*, Vol. 2, p. 7.

The general objective of this article attempts to link the two systems of constitutional governance systems: indigenous (the Gadaa democracy) [2] and modern constitutional principles. The specific objectives are to introduce the main features of Gadaa system as an indigenous knowledge of constitutional governance system[3]; to unveil the importance of Gadaa system in 21st century Ethiopia; and to analyze the concordance of Gadaa principles and institutions of the Borana people to contemporary FDRE and Oromia National Regional State constitution. Gadaa System, being an indigenous system of governance, how far is it compatible and viable in the face of the modern legal institutions and vice versa? Is there incompatibility between indigenous and modern virtues and institutions of governance? If so, is it possible and necessary to accommodate traditional values into modern system of governance?

Having said so, this article signifies that we need to study indigenous people's culture so that they may live and grow to become the enduring foundation of distinctive civilization for it has a lot to offer to human kind for the simple fact that ''man's wider cultural identities must be allowed to grow, not by predatory expansion of one civilization but by the complementary integration of many diverse cultures.''[4] Therefore, this article opens a discourse on traditional versus modern governance systems and thus it presents an indigenous knowledge of governance as a complementary tool not only for the interests of indigenous peoples themselves but also for the peaceful co-existence of human organism in harmony and to add values in the spectrum of democracy as opposed to a monopoly of a single political culture, especially the Western.

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[2] The Gadaa System has been studied by several expatriate scholars such as Baxter 1978; Bassi 1996; Nikolas 2010; Leus 2006 and by native researchers like Asmarom 1973; 2006; Lemmu 1971; Dinsa 1975, and others. All have approached the study of Gadaa System with different academic backgrounds and cultural orientations, as a result, diverse interpretation of Gadaa institutions and its values could flourish. Despite this fact, this article has benefited from their works.

[3] It aims to make contribution to the field of what came to be conceptualized as Indigenous Knowledge (IK). Dozens of scholars (for example Agrawal 1995; Flavier, J.M. et el. 1995; Bentley, K.A. 2005) have conducted researches on the traditional ecological knowledge and natural resource conservation system.

[4] Asmarom Legesse, Oromo Democracy: An Indigenous African Political System (First full ed., Red Sea Press Inc., 2006), p. 236.

1.1. METHODS USED

This article used qualitative research method. It is found on the assumption that Indigenous Knowledge of Governance (IKG) could be utilized to complement the democratization process in Ethiopia. It is based on the Borana[5] people traditional governance experience. Where the primary sources were gathered through interviews, secondary sources were collected from literary works of domestic and expatriate scholars. However, when it comes to data gathering through observation, I was not lucky enough to observe ritual ceremonies and Gadaa Assemblies that often traditionally take place in the Borana Zone, since there were no ceremonies and/or assemblies conducted when the researcher was in the field in July 2012. To complement this limitation reliance on written sources were very crucial. Moreover, the diversity of research methods used allows ''to triangulate, or cross-check, the accuracy of collected data and analytic statements.''[6]

In addition, research method variables such as: language (communication), status of informants, literacy, gender, age and personal experience of informants and the experience of field assistants, getting behind the masks or "gate keepers" were considered.[7] I had no language barrier since I was native speaker of the Oromo language. The Borana are a patriarchal society, it was the accounts from skilled men with knowledge of Gadaa System and Gadaa practitioners were relatively authoritative as well as authentic. Nevertheless, it has been addressed in the analysis part of this article that one of the drawbacks of the Gadaa political system is exclusion of women from political sphere.

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[5] The researcher could also conduct interviews and Focus Group Discussions (FGD) with elders from the Guji-Oromo of South Ethiopia. However, for the purpose of this article, the case of the Borana people experience is used.

[6] Riemer, F.,Addressing Ethnographic Inquiry (in S. Lapan & M. Quarteroli (eds.), Research essentials. Jossey Bass Publishers, 2008), p. 207.

[7] Berrman Gerrald D, Behind Many Masks: Ethnography and Impression management, 2007 [1963],in Robben and Sluka (eds.), Ethnographic Fieldwork, Blackwell publishing.

1.2. CONCEPTUAL AND THEORETICAL OVERVIEW
1.2.1. Conceptualizing Indigenous Knowledge of Governance

Since 1980s several scholars[8] and international institutions such as the World Bank have characterized indigenous knowledge as significant resources for sustainable development. However, a few scholars have considered the importance of indigenous knowledge of governance in enhancing public participation, good governance; and constitute pluralistic society. As currently conceived, the term indigenous knowledge is interchangeably used with terms like local knowledge and/or traditional knowledge[9].

When it comes to the definition of Indigenous Knowledge (IK) there is no unanimously attributed definition to either indigenous knowledge or indigenous knowledge of governance. However, there are attempts made by different scholars to define it. For instance Indigenous Knowledge (IK) may be characterized as: ''the information base for a society, which facilitates communication and decision making.''[10] Whereas Warren, D., M., et al. characterize it as ''local knowledge that is unique to a given culture or society. [. . .]. It is the basis of local-level decision-making in agriculture, health care, passed down from generation to generation by words of mouth''[11]. Thus, IK may be conceived as knowledge found on

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[8] For example: Watson, E., Examining the Potential of Indigenous Institutions for Development: A perspective from Borana, Ethiopia, *Development and Change* Vol. 34 No. 2, 2003, pp. 287-309; Agrawal, Arun, Dismantling the Divide Between Indigenous and Scientific Knowledge, *Development and Change (1995)*, Vol. No. 26, pp. 413-439; and Gauri, Varun, ''How Do Local-level Legal Institutions promote Development? An Exploratory Essay'', (Justice and Development Paper Series, Legal vice Presidency;The World Bank, 2009).

[9] As opposed to individual knowledge, indigenous knowledge presupposes collective knowledge, common knowledge of the people about means of subsistence, conflict resolution, leadership and others. Hence it could be regarded as a common resource. Among others, knowledge of governance is the prominent one.

[10] Flavier, J.M., et. al.., The regional programme for promotion of indigenous knowledge in Asia, 1995 in Warren, D., M., L.J. Slikerveer and D. Brokensha (eds.) in: The Cultural dimension of development: Indigenous knowledge system; London, Intermediate Technology Publications.

[11] Warren, D. M.,Linking Scientific and Indigenous Agricultural Systems, 1989 in: J. Lin Compton (ed.), *The Transformation of International Agricultural Research and Development* (Boulder, CO: Lynne Rienner) p. 1.

bonds between local communities and its knowledge. It is also described as cost effective and participatory, scattered but connected to rural life and passed down orally from generation to generations[12]. It is vital to note here that the scope of IK is not limited to agricultural or health practices only. Rather it is a very broad and dynamic concept that can be used in other studies such as governance, astronomy, ethics, and etcetera.

The concept of Indigenous Knowledge of Governance (IKG) is the derivative and extensive family of indigenous knowledge. For the purpose of this article, IKG represents an indigenous political system of governance that passed from generation to generation and functions distinctively parallel to the modern political institutions. To complement this operational definition, the UNDP definition of governance reads that it is:

> ''*the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences''[13]*.

By analogy, IKG can be regarded as a system of governance that possesses traditional institutions designed for socio-political and economic purposes. Therefore, the subject matter of the study, the Gadaa System, properly fits into the concept of IKG since it embraces governance values and institutions that allow the people to enact laws, interpret and implement it for the best interest (social, political or cultural) of the society.

In relation to the importance of IKG there are two contradicting thoughts, viz.: the neo-traditional and neo-liberal views. Under the following sub-sections these two arguments are dealt with.

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[12] Ibid.

[13]UNDP (United Nations Development Programme), Governance for sustainable Human development (UNDP Policy Document, New York., 1997), p. 17.

a. The School of Organic Democracy or Neo-Traditionalist Position

In positioning indigenous system of governance in modern political systems neo traditionalists[14] are committed to pull the peripheral social organizations of indigenous peoples to the centre. This school holds that traditional leadership has unique features and capacity to build democracy from below.[15] Precisely, this school does not consider traditional institutions of governance as threat to democracy or human rights but as compatible, in principle, with modern governance. Moreover, they consider it as a legitimate organs and valid mode of governance and it facilitates for consensual democracy.[16] This school considers that indigenous governance is linked to the life and the spirit of the people; as it is woven to socio-cultural traits, and tools of communication by which they conduct their daily business. As such, they conceive indigenous governance as a means of manifestation of destitution for proper governance.[17]

To understand the causes of this school, it is necessary to consider the premises the proponents of indigenous system of governance relies on: *Firstly*, traditional institutions of governance are indigenous or native to the land and to the people. Hence, it enabled the people to live in harmony long before the birth of modern African states and before introduction of multi-party political system. Accordingly, indigenous leadership had served as the "custodians of ancestral and community land; the custodians of culture, customary laws and traditions including history; the initiators and champions of development activities in their

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[14] Sklar, Richard,The Significance of Mixed Government in Southern African Studies, 1999 in Jonathan Hyslop (ed.); Bentley, K.A., Are Powers of Traditional Leaders in South Africa Compatible with Women's Equal Rights? Three Conceptual Arguments in: Human Rights Review, 2005 pp. 48-68; Kidane Mengisteab, African Traditional Institutions of Governance: The Case of Eritrea's Village Baito, 2003 in Olufemi Vaughan, (ed.) in Indigenous Political Structures and Governance in Africa (Ibadan: Sefer), pp. 208-223.

[15] Sithole, Pearl and Thamsanqa Mbele, Fifteen years Review on Traditional Leadership (A Research Paper, Human Science Research Council, 2008), p. 10.

[16] *Ibid.*

[17] *Ibid.*

respective areas of jurisdiction; and their role in the maintenance of law and order including presiding over and settling non-criminal civil disputes"[18].   *Secondly*, they underscore the fact that indigenous governance has unique attributes of leadership that fulfils specific social needs of a community unlike modern political institutions. Besides, people also value different qualities in the leadership.   In this line, the values indigenous leadership has both socially and culturally makes it vital to supplement the inadequacies and deficiency of local government for which nowadays local administration choose to rely on traditional leaders to reach the local people. Therefore, traditional leaders owe "pragmatic social responsibilities towards their citizens with the notion of identity and social responsibilities" [19.]   *Thirdly*, they reiterate that traditional governance is based on the custom and practice of the people since the time immemorial and case-by-case governance which in effect necessitated the regulation of human behavior and rendition of justice based on moral values and customary laws than envisaged laws enacted by a parliament. Moreover, this school asserts that traditional governance is akin to consensual (deliberative) democracy where people actually determine who will hold power as opposed to the rule/decision by single (elected) politician[20].   In deliberative democratic society, therefore, minority rights are not vetoed by majority instead they are accommodated. *Fourthly,* they sum their arguments that African communities are ''communitarian''[21] than individual[22]. The society that

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[18]ECA,(Economic commission for Africa), Relevance of African Traditional Institutions of Governance, (Economic Commission for Africa, Publications and Conference Management Section (PCMS), Addis Ababa, Ethiopia,2007) p. 19.

[19] *Id.,* p.12. In places where state authority is weak or distant, people tend to prefer local-level legal institutions over official channels; and use them to address most day-to-day conflicts such as: disputes related to land, inheritance, domestic and family issues.

[20] Koelble, T., Democracy, Traditional Leadership and the International Economy in South Africa(CSSR Working Paper No.114, 2005), pp. 14-15.

[21] Communitarianism is a social philosophy that maintains that society should articulate what is good - that such articulations are both needed and legitimate. It is often contrasted with classical liberalism. Communitarians examine the ways shared conceptions of the good (values) are formed, transmitted, justified, and enforced. In other words, it is a theory or system of social organization based on self-governing communities (See: Christensen Karen and David Levinson (eds.), "Encyclopedia of

have numerous trait of commonness and built on inherent-collective interest shall be promoted on their own values instead of introducing alien values to the local communities. It is argued that for the continent to emerge out of the vicious cycle of military dictatorship and corrupt civilian regimes it has to re-examine its indigenous political system[23].

b. Neo-liberal Approach or Democratic Pragmatism

The opponents[24] of the school of organic democracy firmly argue against the proponents of indigenous governance claiming that it is inherently defective and they cast doubts as to their compatibility with democratic values and fundamental human rights principles. Moreover, the neo-liberalists (pro-state involvement) advocates for prioritization of individual rights in a sense that letting individuals to choose any institutions of his/her own plays a crucial role in democratization process. Besides, the proponents of this school ground their arguments on the following themes:

Firstly, this school argues that the principles of democracy demand state nations that "ensure access to democracy as a commodity to which all humans are entitled"[25]. In addition, they hold the view that the infiltration of democratic values through globalization and economic integration is inevitable and so that the modern institutions will sooner or later replace undemocratic institutions such as the traditional system of governance[26]. Therefore, they clearly argue that it would be futile for a government to continue to support indigenous political system[27]. *Secondly*, the

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Community: From the Village to the Virtual World," Vol 1, (A-D, Sage Publications. 2003), pp. 224-228.

[22] Individualism is often seen as a problem in what it presupposes a false social ontology, by rationally atomizing society and dissolving a social bonds. What liberals do claim is that no constitutive attachment, either to state, nation, family or cultural group, must trump the claims of individuals and their basic rights.

[23] Bahru, *Supra note 1.*

[24] Ntsebeza, Luugisile, Democracy Compromised: Chiefs and the Politics of the Land in South Africa.(Leiden and Boston: Brill, 2005) .

[25] Karen & Levinson, *Supra note* 21, p30

[26] *Ibid.*

[27] Basically such argument goes against the traditional leadership abused by colonizers (for example: the British indirect rule policy and chieftaincy in South Africa) and of

proponents of neo-liberalists presuppose that "rural citizens under traditional authorities are not true citizens"[28]. This argument holds that rural people are subjects of undemocratic authorities that do not have system of accountability to the people. However, this argument emerges from the kinship based traditional leadership where traditional leaders do not "give everyone a chance to be elected and the system does not appear to have systems for recourse against unfair exercise of power"[29]. Moreover, this argument also relies on the gender inequality where the traditional political system favors male generation. Therefore, since traditional system excludes women from political right indiscriminately, in effect, it denies their citizenship rights and detrimental to women's right to equality. *Thirdly,* in decentralized form of traditional leadership, the assemblies and councils gather for long period of time to dispose socio-political and therefore, it is labor and time intensive. Moreover, direct participation of local people in decision-making would not be possible in broader context, especially in current world, where indirect democracy is efficient and cost effective. Thus, they argue that deliberative or consensual democracy model's practicality is next to impossible[30].

In conclusion, it is necessary to link the dividing line between the two thoughts. At least in abstract sense, the debate about relevance of indigenous governance revolves around the objective and universal democratic based thesis vis-à-vis the cultural relativism synthesis to democracy. In this respect, one may argue that, "in the absence of objective method or scale for weighing these two core values against another [. . .] the choice between the two is entirely in the moral eye of the holder"[31]. Clearly, neo-liberalist follows color-blind approach, as a

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course it does concern not all modes of African traditional leadership. For example, as there is a mechanism through which traditional governance under Gadaa system holds traditional leaders' accountable; arguments of neo-liberalists, in this respect,cannot be the reflection of all types of traditional system of governance in Africa.

[28] Mahmood Mamdani, 1996, p30.

[29] Ibid.

[30] ECA, *Supra* note 18.

[31] Bentley, K.A., Are Powers of Traditional Leaders in South Africa Compatible with Women's Equal Rights? Three Conceptual Arguments,2005 in Human Rights Review.

result, it would mean denial to group rights and ultimately it advances the cultural supremacy and/or imperialism at the expense of multiculturalism and legal pluralism. In this respect, the custom to which indigenous governance is aligned with is hastily assumed as "hindrances to universal democratisation without differentiation"[32].

That is, like the modern political systems, indigenous system of governance has its own drawbacks and it has to be approached cautiously instead of categorically capitalizing on its limitations such as patriarchy and lack of gender equality. To this criticism, proponent of traditional governance, accepting the critic in principle, alternatively defend that such drawbacks need to be solved by "progressive and negotiated" means than punitive legislations[33]. Therefore, the drawbacks of traditional governance should not be over emphasized to the extent that it veils the importance of traditional institutions have, at least, to the people concerned[34].

2. INTRODUCING OROMIA NATIONAL REGIONAL STATE AND THE BORANA PEOPLE

The formation of Oromia National Regional State (ONRS)[35] is the product of ethnic federalism Ethiopia adopted in early 1990s. It was following the 1992 Proclamation of the Transitional Government of Ethiopia that the Oromia regional state was established in July 1992. In this regard, Article 2(b) of the charter reads that ''the rights of Nations, Nationalities, and Peoples to administer its own affairs within its own defined territory and effectively participate in the central government on

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[32] *Id, P*12.

[33] *Ibid*.

[34] For example, it is undeniable fact that Gadaa system has incredible values that can enhance equal representation, equitable distribution of resources and division of labour across generations and allow men and women of all ages play a crucial role in social life (Asmarom, *supra* note 4, p 285).

[35] Currently ONRS comprises of 34.5% (almost 35 mil.) of the country's total population, and the Oromo language covers 31.6% of total language coverage following the Amharic language which is 32.7% (CIA, the World fact book). http://www.cia.gov ./library/publications/the-world-factbook/goes/et/html

the basis of freedom, and fair and proper representation. It was based on this provision that all regional states including ORNS were constituted.

Following regional states formation, ONRS adopted its first constitution in 2001 and revised twice (in 2005 and 2006). ONRS Constitution is meant to be the reflection of plurality of state constitutions which is replica of self-rule inherent in the federal system. That is, the federal system is the cause for the multiplication of formal legal rules and among others the existence of a number of regional constitutions is an indication. Furthermore, Article 52(2) (b) of the FDRE Constitution recognizes that national regional states can enact their own constitutions. However, in its entirety ONRS constitution is similar to the FDRE constitution. The ONRS Constitution, like the FDRE Constitution, reifies the fundamental principles of human rights in its entirety. Moreover, it describes the vertical distribution of powers among the four administrative levels of ONRS, viz., the regional government, *zonal* administration, *Woreda* administration, and *Kebele* administration[36].At all these levels, administrative and judicial institutions are established being a supreme legislative power vested in the ONRS Council, the *Caffe*. Comparable to the HoPR of Ethiopia, the ONRS Council is constitutionally recognized as the highest political authority over matters concerning to the region.

The ONRS *Caffe* has 537 seats and its members are elected by the people directly for a five years term office; and as a result they are accountable collectively to the people of the ONRS (Article 46(1), 48 (1), 48(6), 51(1) of ONRS Constitution). The adoption of the ONRS constitution did not pass through the traditional constitution adopting stages such as: drafting stage by constitutional drafts men, deliberation stage open to public discussion, and the adoption stage upon the decision of the constitutional assembly[37]. Rather it was adopted by simple majority vote of ORNS Council. This might have happen for two reasons: that ONRS

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[36] Berhanu Gutema, Restructuring State and Society: Ethnic Federalism in Ethiopia (SPIRIT, Doctoral Programme, Aalborg University, Denmark SPIRIT PhD Series, Thesis no. 8, 2007) P. 225.

[37] Tsegaye Regassa, Sub-national Constitutions in Ethiopia: Towards Entrenching Constitutionalism at State Level, *Mizan Law Review (2009),* Vol. 3 No.1, pp. 33-69.

Constitution was largely a direct copy of the already adopted federal Constitution both in its form and in its substance; and ONRS Constitution did not introduce unique institutions of governance susceptible to public deliberation (e.g. constitution embracing the Gadaa institutions). But, isn't it appropriate and possible for ONRS to introduce a unique and valid regional constitution based on constitutional Gadaa principles? This question is at the heart of this article.

While the FDRE Constitution is the supreme law of the country, ONRS is supreme law of the region (Article 9 (1) of FDRE Constitution and Article 9 (1) of ONRS Constitution). The supremacy of ONRS Constitution over regional laws is believed to be an indication of the self-rule. However, since all essential powers are given for the federal government and the residual power left for the regional states including ONRS, the latter's constitution lack potential legislative and executive power and its supremacy is symbolic, except on its respective competences. Whether other federal laws are also superior to the ONRS Constitution is not clearly addressed in the federal constitution. However, to argue that all federal laws are superior to the regional constitution negates at least the fundamental principle of federalism and it nullifies the purpose of adopting regional constitution.[38]

2.1. THE BORANA

The Borana people are part of the Oromo language speaking people[39] and belong to the East-Cushitic family in the Horn of Africa. The Borana live to the South of Ethiopia as well as in the Northern part of Kenya, ''straddling the borders between the two countries''[40]. In the Southern

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[38] The cumulative reading of Article 39 (3), (4) of FDRE Constitution and Article 39 (4), (5) of ONRS Constitution indicates that where regional self-rule is transgressed and could not be rectified the right to secession can be sought as a last resort. But one has to be cautious not to take the right of self-rule and right to secession as easily pragmatic.

[39] The Oromo people who inhabit in Ethiopia predominantly are considered among the largest and the most widespread ethnic groups in Africa and are estimated to number between 35-40 million people (See also: Asmarom, *supra* note 4; Bassi 2005).

[40] Fayo, Godana, Coping with Scarcity in Northern Kenya: The Role of Pastoralist Borana Gada Indigenous Justice Institutions in Conflicts Prevention and Resolutions for Range Resources Managements (The Hague, The Netherlands, 2011), p. 24.

Ethiopia, the Borana number well around 1 million[41] while in Kenya they are over 300,000 people[42]. The general community unity and pattern of life is ordered along the rules and regulations of the Gada system of administration, which has a structured chain of command with Abba Gadaa *fite* (at apex)[43]. What perhaps surprises most scholars is how Gadaa System could be maintained among the Borana-Oromo without losing its originality. The plain reason is the fact that it was not discontinued by colonial rulers given the geographical location and the socio-economic activities of the people. Hence, they could maintain an indigenous administrative system.

What is peculiar among the Oromo people in general and the Borana in particular is an entrenched trend of dividing people into moieties and sub-moieties, clans and kinships and organizes it for the purpose of administration. Along the division of the society into sub-clans the powers and functions are also shared among the groups accordingly. Besides, the Borana social structure is made of different families, lineages, and kin that operated in a structured manner through different governments, and were visibly seen as political systems that, in turn, were also reinforced and given authority through organized systems[44]. The Borana are divided and organized into two macro-levels (moieties) known as Sabbo and Gona and the former has three sub-moieties and the latter has two sub moieties. The Borana co-exists peacefully as a unit irrespective of whether a person is from Sabbo or Gona. However, restriction is placed on endogamous marriage, i.e., a person from Sabbo marries only from Gona and vice versa; exogamous marriage is the rule.

Under the current federal structure, the Borana zone is located in the Southern part of ONRS. The Borana of Ethiopia is bordered by Nations

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[41] Ethiopian Central Statistical Agency Report, 2007.

[42] Ibid.

[43] *Supra note 39.*

[44] Aguilar, Mario I., Reinventing Gadaa: Generational Knowledge in Boorana (Mario I. Aguilar (ed.), 1998) in: *The Politics of Age and Gerontocracy in Africa: Ethnographies of Past & Memories of the Present (*Trenton, NJ and Asmara: Africa World Press, Inc.) pp. 257-279.

and Nationalities and Peoples of South Ethiopia in the North; by two Oromo tribes in the North east, i.e. the Guji-Oromo and the Arsi-Oromo; by Somali people in the South-East, and by the Konso in the West. The Ethiopia Borana, under the current regional state structure is one of the nineteen[45] zones recognized by the ONRS. It encompasses thirteen districts and one town viz.; Abaya, Bule Hora, Dawa, Dhaas, Dillo, Dire, Gelana, Moyale, Malka Soda, Miyo, Teltele, Yabello, and Yabello town.[46] In contrast, the Kenya Borana currently occupies the upper part of the Eastern Province to the North of the country. It encompasses three districts namely; Isiolo, Marsabit and Moyale[47].

2.1.1.   General Overview of the Gadaa System of Governance

Gadaa System[48] embraces four basic indigenous[49] governance institutions, namely: Age-sets (H*ariyya*), Gadaa Council (A*dula*); Gadaa General Assembly (*Gumigayo*); and the religious institution (*Qallu*). The Borana age-set (*hariyya*) is an institution organized based on age and generational relationships. That is, a son gets introduced to a specific Gadaa grade, which correlates to the Gadaa council of his father, and subsequently changes his grade every eight years as a member of his cohort.

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[45] See: West Arsi, Arsi, Finfine special zone, West Wollega, East Wollega, Kellem Wollega, Horo-Gududru Wollega, East Showa, South-East Showa, North Showa, West Hararghe, East Hararghe, Borana, Guji, Ilu-Ababora, Jimma and Bale (Source: Oromiyaa.com).

[46] See http://oromiyaa.com/index.php? option=com content&view=category&layout= blog&id=108&Itemid=607 visited on February 10, 2012.

[47]*Supra note 39*. Moyale is like a "rendezvous" for Kenya Oromo and Ethiopia Oromo. It is a district partitioned between Ethiopian regional states (Somale and Oromia) and Kenyan state where you can see governors from both countries are lined in one town.

[48] Structurally speaking, the term Gadaa has been defined in different disciplines in several ways. For instance, Gadaa is considered by social-anthropologists as "an age grade that divides the stage of lives of individuals from childhood to old age into a series of formal stages." Tadesse referring to the Gadaa System among the Guji stated that there are thirteen stages and transition ceremonies to mark the passage from one stage to the next. However, the formal Gadaa stage among the Borana does not exceed eleven Gadaa grades. Moreover, Gadaa divides powers and functions, accords rights and responsibilities along the age-sets.

[49] Gadaa was developed over five centuries with purpose to foster social, political, economic and military matters collectively. Structurally speaking, it is age and genealogical based grouping of male generation and division of labor among the classes.

There are eleven age-sets in Borana, viz. *Daballe*, *Gaamme-didiqqa*, *Gaammee-gugudda*, *Kuusa*, *Raaba*, *Gadaa*, *Yuba I*, *Yuba II*, *Yuuba III*, *Yuuba IV*, and *Gadamoojji*.

Whereas Qallu is non-secular institution interconnected with other Gadaa institutions and its role in the Gadaa system cannot be undermined, it is at the moral side of public administration. However, for the purpose of this work, age-sets and Qallu institutions are not discussed. Rather the two pivotal governance institutions: the Gadaa council (executive) and Gadaa General Assembly (legislative) are discussed and analogized to the modern government organs.

a) The Gadaa Council (*Adula*) and Gadaa General Assembly (*Gumigayo*)

Gadaa council is executive body of Gadaa government and it consists of six members. They are: a President (Abba Gadaa *fite* also known as Abba Gadaa arbora);[50] two vice-presidents (Abba Gadaa *knontoma*); and three senior councilors (H*ayyuu Adula*). The president and the two vice presidents form the Gadaa triumvirate or it may be considered as government by committee[51]. The three presidents are the most senior officers of the Gadaa Council.[52] And additional three senior advisors are available to both offices of the presidents (Abba Gadaa *arbora* and *kontoma*). Furthermore, all members of the Gadaa Council are regarded

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[50] Dialectically speaking, the nomenclatures of Gadaa leaders, among the central-Oromo, was slightly different from the Borana's experience: for example, Abba Bokku (father of scepter) used widely instead of Abba Gadaa. Hence, where Abba Gadaa is common among the Borana, Abba Boku is common to the central Oromo society. In substance, however, there was no substantial difference. Today, where the Borana could maintain their system, Gadaa System among Wollaga and other parts of Oromo groups was severely diminished, if not entirely abolished.

[51] Asmarom, *Supra* note 4, p63.

[52] Gadaa Council is an entity. As an entity, the concept of legal person and natural person applies to the Gadaa Council. That is, where a member of Gadaa Council acts in official capacity, it is regarded as if it were conducted by the Gadaa Council. Hence, while the members of Gadaa Council are mere agents, Gadaa Council is a separate body of Gadaa government. Accordingly, if a member commits a crime, he shall personally be responsible. However, for any activities carried out within the scope of their authority, it will be regarded as if it were conducted by the Gadaa Council and therefore, the responsibility goes to the Gadaa Council, not to the councilor(s).

as equals despite the fact that they exercise different functions and play different roles (Informant A). According to the Borana customary law, all the members of the Gadaa Council are required to live together from the moment of their election upto coming to power. In addition, after taking power, the three Abbaa Gadaas shall be constituted into two bands: *Olla Arbora* (neighbor of *arbora*) and *Olla Kontoma* (neighbor of *kontoma*).[53]

Besides, the Gadaa Council has assistants commonly known as *Jaldhaba* (executive officers) (Informant B). The executive officers (not less than six) are appointed by joint decision of clan elders and the Gadaa Council. Their appointment procedure is as follows: each clan presents candidates. Then, the clan leaders will have discussion with clan elders on the capacity and diligence of the candidate. In addition to the executive officers, the Gadaa executive body also embraces junior Gadaa councilors (*Hayyuu Garba*) (Informant A & B). Junior councilors are different from senior councilors in the following ways: while junior councilors are selected just before the power transfer ceremony, the senior councilors are elected at the *Kuusa* Gada grade along with the Abba Gadaa. Second, selected junior councilors are representatives of the five Gadaa classes (i.e, including the Abba Gadaa apex, junior councilors consists six members). Moreover, unlike the senior councilors, they are recruited by the outgoing Gadaa Council, but they serve with the incoming Gadaa class (Asmarom 2006).

Gadaa General Assembly (*Gumigayo*) [54] is the legislative body of Gadaa government. The Borana themselves perceive the function of the *Gumigayo* and describes it as *dubbii aadaa* (custom-talk) and *dubbii*

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[53] Asmarom, *Supra note 4*, p64

[54] The nomenclatures of Gadaa General Assembly across Oromo land were derived from the names of places where the assembly is regularly held. For instance, among the Borana *Gumigayo* is derivative of the names of two places, i.e. *Gumigayo* which refers to water well and *gumi* means assembly. However, among the central Oromo it is called *Chaffe* since the general assembly used to take place under highly respected Oda (sycamore) tree on the edge of prairie grass (*Chaffe*). It is from such meeting places that the term Cha_e is given to the assembly. In this respect, De Salviac had to say ''it is by virtue of such a metonym (use of the name of one thing for that of another) we designate the legislative corps [...]'' (De Salviac2008 (1901): 211).

seeraa (law-talk)[55]. That is, the Gadaa General Assembly is committed to discuss and deliberate on customary laws and norms of the Borana as a whole. Therefore, it is not for the sake of analogy that one has to consider Gadaa General Assembly[56] as a legislative organ of Gadaa government; rather it is one of the well functioning Gadaa systems of governance among the Borana people. In principle, every Borana is allowed to convene to the Gadaa General Assembly. Differences in terms of age or status may not bar a person from attending it. However, convening individuals should have the capacity to deliberate on issues and/or they shall have vested interest in it. Most scholars consider it as the most inclusive political discussion and decision-making scene. It is considered so as it gives structural subsistence to the notion that in a democracy, power rests ultimately with the people so that they exercise by direct participation or by delegating power to some leaders of their choosing[57]. However, others argue that we cannot say it is representative since women do not participate directly in the Gadaa General Assembly and in any other political activities along side of the men. Generally speaking, the latter is one of the drawbacks of the Gadaa System.

When it comes to the powers and functions of the Gadaa General Assembly, it is discernible that it exercises supreme legislative[58] authority in Borana. The Borana strongly believe that the Gadaa General Assembly has the highest political authority as compared to the powers and functions of Gadaa Council and other Gadaa institutions (Informant C & D). Moreover, what makes it more interesting is not only the fact that the Gadaa General Assembly exercises ultimate authority but also

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[55] Asmarom,*Supra* note 4, p97

[56] The Gadaa General Assembly meeting takes place once in the middle of the term office (eight years) of the Gadaa class in power. It is mandatory for all living Abba Gadaas, Gadaa Council (inclusive of junior and senior councils), age-set councilors, clan elders and Abba Qallus to convene to the assembly.

[57] Asafa Jalata, Oromo Peoplehood: Historical and Cultural Overview (Sociology Publications and Other Works, 2010) available at (http://trace. tennessee.edu/utk soco pubs/6); Dirribi Demissie, Oromo Wisdom in Black Civilization (Finfinne, Ethiopia,2011).

[58] Broadly speaking, its function include (but not limited) to review laws, to proclaim new laws, to evaluate the men in power and settle major disputes that could not have been resolved at the lower possible levels of its judicial organ(s).

the fact that its supremacy is deeply rooted principle. Another peculiar feature of the Gadaa General Assembly is its impartiality and transparency. For example, where the discussion and deliberation is to be taken on issues that concerns Abba Gadaa in power, he has to withdraw from the assembly and will be replaced by another *Abba* Gadaa. Furthermore, all presidents (i.e. *Abba* Gadaa *fite* (apex) or *Abba* Gadaa *kontoma* (vices) and hayyuu *adula* (senior councilors) have to be excluded from leading deliberations that is concerned with amendment of the Gadaa constitution (i.e., laws dealing with powers and functions of Gadaa councilors, powers and privileges of *Abba* Gadaas and his assistants, and others). The reason for exclusion of *Abba* Gadaas is to avoid conflict of interests and to amend it impartially. Except on legislations that may raise conflict of interests, all presidents are not required to abstain from influencing the members of Gadaa General Assembly's decisions and they can even propose new laws for its adoption.

3. BRIDGING GADAA PRINCIPLES TO CONSTITUTIONAL FUNDAMENTAL PRINCIPLES

One of the tasks of this article is to uncover the fundamental principles and morals upon which the Gadaa leadership is established. In order to know Gadaa principles, the researcher used to ask questions based on the common fundamental principles most democratic constitutions embrace. Among others, fundamental principles such as rule of law, accountability of state officials, transparency of government businesses, principles of equality, sovereignty of the people and supremacy of the constitution are the most notable ones. Based on the findings and the constitutional principles enshrined both in the FDRE Constitution and ONRS Constitution, a precise analysis is provided as follows:

i. Rule of Law: Conceptually, rule of law suggests that the law itself is the sovereign in a society. As an idea, the rule of law stands for the proposition that no person or particular branch of government may rise above rules made by fairly and freely elected political representatives. These laws mirror the morals of a society, and in a Western Democracy

they are supposed to be pre-established, formalized, neutral, and objective. Everyone is subject to their dictates in the same way. The rule of law, therefore, is supposed to promote equality under the law. Thus, rule of law should be clearly differentiated from rule by law; i.e. the latter does not necessarily mean that the law is legitimate for it might not satisfy most of the desideratum[59].

However, the perception of rule of law among the Borana is a bit different. According to one of my informants, rule of law signifies not only liability of individuals rather it also means that everything and all beings have rules. That is the law stands not only for the benefit of individuals or to discipline officials but it also extends to animals. In this respect, the Borana say that *seerri muummee, seera saree!* Literally it may mean as, *"a law for a minister is a law for a dog".* The implicit meaning of this statement is noted by Asmarom as follows: in principle, people are not required to raise dogs, some do; some do not, but those who do have an obligation to feed them irrespective of the fact that there are leftover foods or not. That is why the Borana states that there are laws for everything, even for the dog[60]. In a nutshell, the idea here is that the concept of rule of law is perceived not only as the law is superior to any person but it also extends to natural world (animals). Hence, it considers natural being not mere object of law but as subject of law. The principle of rule of law is at the heart of the Gadaa democracy. According to one of my informants the rule of law is entrenched value among the Borana society to the extent that the *Abba* Gadaa himself is subject of the same laws as ordinary Borana. For example, the *Abba* Gadaa and his cabinet are answerable to the Gadaa General Assembly in the mid of his term office. That is, politically speaking, the supervision of the conduct of *Abba* Gadaa by Gadaa General Assembly is the principle than exception. And legally speaking, where the Gadaa leaders commit serious offences they will be punished and can eventually be upr

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[59] Leon Louw, What is the Rule of Law?(African Regional Meeting of the Mont Pelerin Society Nairobi, Kenya,2007).

[60] Asmarom, *Supra note 4*, p201.

ooted from the office. This is a clear indication of genuine rule of law as opposed to rule of men.

Obviously, the FDRE Constitution stipulates that the Prime Minister and the Council of Ministers are answerable to the House of Peoples Representatives (HoPR).[61] Likewise, the ONRS constitution states that the president is answerable to the the Council of State (*Chaffe*) (Article 72(2) of FDRE Constitution and Article 57(2) of ONRS Constitution). However, to the question how and when the leaders of the country and the regional state can be impeached by the parliament and regional state council respectively is not clear. Even the term impeachment is not provided in the DRE Constitution: it is ambiguously stated as, ''[. . .] responsible to the House of Peoples' Representatives.''[62] In this respect, one may consider the Ethiopian House of Peoples' Representatives as a 'rubber stamp'.

ii. Principle of Single Term Office: When it comes to the term office of the *Abba* Gadaa, the Gadaa constitution is straight forward. It is not ambiguous as the incumbent FDRE or ONRS Constitutions. As discussed elsewhere the term of office of the *Abbaa* Gadaa is limited to a single term office for eight years. It is one of the most fundamental and well observed principles across the Oromo land historically and currently at work among the Borana people[63]. Hence, an elected *Abbaa* Gadaa and his cabinet shall only serve one term office. There is no history in the Gadaa democracy where this principle has been transgressed among the Borana. However, from the focus group discussion held with the elders from the Guji reveals that this principle is not observed among the Guji people (members of the discussion were A, B, C, D, E and F). An *Abba* Gadaa may stay on power for even thirty years. This fact was also supported by one of my informants from Guji society.

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[61] The 1995 Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/ 1995, Art.72(2) *Federal Negarit Gazeta*, Year 1, No.1.
[62] *Ibid*: Article 72(2).
[63] The Borana people's experience indicates that the place and the date of transfer of power are fixed so that even a single day to stay in power after the end of the term office may not be tolerated.

Every Gadaa leaders remain in office for a formal eight years after which they have to hand over to the incoming Gadaa officials through a formal handing over ritual ceremony. Instead of re-electing the same person to the same office, like for instance the case of USA where a president can be re-elected and serve two terms (eight years), the Gadaa version of government provides a single term office of eight years with the mandatory requirement of checking the *Abba* Gadaa in power in the middle of his term office. The principles of accountability and impeachment of the Gadaa leaders, as discussed below, also supplements the absence of re-election of the leaders. One can imagine the cost of election campaigns different political parties make every five years in Ethiopia. Even in the US, for example, the fourth year of the first term office of the US president is occupied with re-election campaigns, fund raising and other similar activities. Under Gadaa system, the General Assembly serves this purpose (assessing the performance of leaders' in the first-half of the term office); it may endorse the presidents' continuation or uproot a leader before completion of his term. .

Unlike the presidents and premiers across sub-Saharan African countries, where they stay on power for unlimited period of time, the single term office principle under the Gadaa leadership reveals an incredible value of democracy. It is evident to see the price Africa pays often for the longevity of the term of office of its leaders. Consider the following comparative chronological term office among the US, Ethiopia and the Borana leaders:

US Presidents	Term Offices	Political Parties	Ethiopian Leaders	Borana Leaders	Term Office	Borana Moeity
Herbert Hoover	1929-33	Republican	H/Sellasie I	Bule Dabbasa	1929-36	Sabbo
Franklin D. Roosevelt	1933-45	Democrat	H/Sellasie I	Aga Adi	1936-44	Sabbo
Harry S. Truman	1945-53	Democrat	H/Sellasie I	Guyyo Boru	1944-52	Gona
Dwight D. Eisenhower	1953-61	Republican	H/Sellasie I	Madha Galma	1952-60	Gona
John F. Kennedy	1961-63	Democrat	H/Sellasie I	Jaldessa Liban	1960-68	Gona
Lyndon B. Johnson	1963-69	Democrat	H/Sellasie I	Gobba Bulee	1968-76	Sabbo
Richard Nixon	1969-74	Democrat	H/Sellasie I	Gobba Bulee	1968-76	Sabbo
Geral Ford	1974-77	Republican	Col. Mengistu	Jiloo Aagaa	1976-84	Sabbo
Jimmy Carter	1977-81	Democrat	Col. Mengistu	Jiloo Aagaa	1976-84	Sabbo
Ronald Reagan	1981-89	Republican	Col. Mengistu	Boruu Guyyo	1984-92	Gona
George H. W. Bush	1989-93	Republican	Ato Meles Zenawi	Boruu Guyyo	1984-92	Gona
Bill Clinton	1993-2001	Democrat	Ato Meles Zenawi	Boruu Madha	1992-2000	Gona
George W. Bush	2001-2009	Republican	Ato Meles Zenawi	Liiban Jaldeessaa	2000-2008	Gona
Barack Obama	2009-present	Democrat	Ato H/M Dessalegn	Guyyoo Gobba	2008-present	Sabbo

Table   1: *Comparative   leadership chronology of the United States of America, Ethiopia and the Borana.*

The term office of the FDRE Prime Minister and the term office of the ONRS President are ambiguously provided in the FDRE Constitution and ONRS Constitution. Article 72(3) of the FDRE Constitution reads:

> ''*Unless otherwise provided by this constitution the term office of the Prime Minister is for the duration of the mandate of the House of Peoples' Representatives*''

This provision with slight distinction is also provided under Article 56(2) of ONRS constitution as, the term office of the president is for the duration of the mandate of the Oromia State Council. These provisions are ambiguous, indirect and implicit. That is, since the term office of the HoPR and the State Council is five years one could say that the term office of the heads of governments is also five years (See: Article 54(1) of the FDRE Constitution). Besides, Article 56 of the FDRE constitution allows the formation of executive power by a political party that has got greatest number of seats. By implication, as long as one party could repetitiously win elections and inevitably endures the mandate of HoPR irrespective of the change of its members, the term office of the premier will also sustain for indefinite period of time. Which means, if a political party could win for a half of a century to come then the term office of the premier may remain so. If so, the demarcation of term office would be at the personal decision of a leader than constitutional limitation. Nevertheless, unlike the premier of the FDRE, the ONRS have experienced six[64] presidents over the last two decades.

iii. Minority Rights in Majority Rule or Consensual Democracy: Unlike any modern democracy where minority rights are not given voice, the Gadaa System embraces the minorities' views through its General Assembly meetings. For example, a single opponent is sufficient to stop the most serious measures. Hence, in Gadaa democracy, what matters is not only overwhelming majority decisions but also minorities' views

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[64] Hassan Ali (1992-1995), Kuma Demeksa (1995-2001), Junedin Sado (2001-2005), Abba Dula Gemeda (2005-2010),Alemayehu Atomsa (2010-2014) and Muktar Kedir (2014 – present) (Source: World Statesmen.Org).

have to be convinced to be part of the majority vote. As soon as the *Abba* Gadaa hears the view of an opponent, he says the word of custom: *qabadhe* (stop the discussion). The chair person solemnly postpones the session to another day until consensus is reached. In this regard, Gadaa System potentially relies on deliberative system and there must be 'full' consent to pass any binding laws. Therefore, any laws passed by Gadaa General Assembly would not have serious deficit in its application since it is unanimously agreed law than imposed one. The concept of majority rule and quorum does not exist in Gadaa democracy. One of the drawbacks of the Gadaa General Assembly is that it is time consuming as compared to modern parliamentary system where majority vote fastens the decision to be passed. The principle leading the Gadaa General Assembly is not majority vote, but consensus.

Building consensus requires members of the *Gumigayo* convincing every deviating member and consequently it consumes time. Despite its limitations, consensual or deliberative democracy is far better than majoritarian democracy, especially in relation to protection of minority[65] rights.[66] In contemporary political system, establishing deliberative parliament is challenging given the diversity of minorities interests especially in multi-ethnic country like Ethiopia. However, at a regional state level consisting homogeneous society, ORNS for example, viable

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[65] The term minority is used in UN Human Rights system refers to national or ethnic, religious and linguistic minorities. It seems that recognition of minority status, be it national or ethnic, should be based on: objective criteria such as: non-dominance in terms of numbers or political power and possessing distinct ethnic, religious or linguistic characteristics and as well as on the subjective criteria of self-identification, i.e., a will on the part of the members of the group in question to preserve distinct characteristics. However, it require caution that sometimes indigenous peoples large in number but lack power and marginalised by small groups holding the power. Therefore, minority need not be only in terms of number but also of power. See: UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities Adopted by General Assembly resolution 47/135 of 18 December 1992

[66] Wheatley, Steven, Deliberative Democracy and Minorities, *European Journal of International Law(2003)*, Vol. 14, No. 3, pp. 507-527. See also: Noel Alain, Democratic deliberation in Multinational Federation; *Critical review of International Social and Political Philosophy(2006)*", Vol. 9 No. 3 pp. 419-444.

(i.e., time efficient and representative) deliberative democracy can be sought.

iv. The Principle of Accountability: All Borana are equal before the Gadaa laws irrespective of their social status in the community. Gadaa laws are above all. Even the *Abba* Gadaa himself is subject to the same punishment as all other Borana if he violates the laws; same laws, same punishments. This is the evidence that shows us that the law is above everybody including the *Abba* Gadaa[67]. Gadaa leaders who engage in malpractices such as miscarriage of justice and fall short of their mandates may be removed from the office through the rule known as uprooting (*mura harkaa fuuchu* or *Buqqisu*). Once a leader is uprooted, he will automatically lose official capacity and he can no longer decide over any public cases. According to Borana the term uproot (*buqqisi*) covers not only the impeachment and removal of a Gadaa leader from holding any public office but it also extends to his offspring. Although an uprooted Gadaa leader may exceptionally be forgiven and reinstated to his previous position, it is not always the case. For instance, where the degree of the wrong committed by a Gadaa leader is such serious as to against humanities and national security, then there would not be a space for forgiveness. According to the oral tradition of the Borana *Abba* Gadaa Wale Wachu (1722-1730) first, he ordered an un-winnable war in which the incoming (*de facto*) *Abba* Gadaa was killed for nothing. As a consequence the national security and peace was put to jeopardy. Second, he ordered to prohibit a pregnant woman from using water for domestic consumption and for her domestic animals. Considering the gravity of the case the Gadaa General Assembly *(Gumigayo)* did not only uproot him and his council but also punished him to exile from the Borana land. The Borana saying in this regard reads: ``*Wale Wachu warri chuf sitti orme*!" which means, Wale Wachu, all the people have estranged you.

In every mid-term of *Abba* Gadaa's office (i.e. in fourth year) the Gadaa Council convene to the whole society where each of them begins to

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[67] Bassi, Marco, Decisions in the Shade: Political and Juridical Processes Among the Oromo-Borana (Red Sea Press,2005), P. 200.

confess publicly and in detail the faults which inexperience and lust for wealth have rendered him culpable, and promises to forget them, by virtue of equity and moderation, during the second half of the administration period[68]. This is clearly where the *Abba* Gadaa and his cabinet are held accountable in a transparent and where people can check up on his performances for the last four year and his determination to perform better in the remaining four year term office. Thus, instead of electing *Abba* Gadaa every four years they have devised a system where he can be checked and finish the single term office. Six points can be noted from this principle: transparency, rule by people, serious offense by Gadaa officials is no excuse and faults due to lack of experience may be forgiven, single term with mid-term supervision[69].

v. Period of Testing and Different Electoral View: The most common understanding of election in West political culture as well as in academia is that any citizen can compete to be a leader and can win an election based on his charismatic, skill of speech and personal experiences. This is completely different from the principle of election under Gadaa System. What matters according to Gadaa is not only a personal look or skills but more attention is given to the pragmatic nature of a leader. In short, the people have to know him not in theory but in practice. As several literatures on the Gadaa system indicate, the time of election of a Gadaa leader takes place at the fourth Gadaa grade commonly known as *Kuusa* Gadaa grade. However, it is only at the sixth Gadaa grade known as the *Gadaa* that the *de facto Abba* Gadaa can take power through power transfer ceremony. That is, their service at the fourth (*Kuusa*) and fifth (*Raaba*) Gadaa grades is a testimony to be honorably inaugurated to the office or banned from coming to power. One could imagine if the modern

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[68] Asmarom, *Supra note 4*, PP214 -215.

[69] It is vital to note here that; first, the procedure of removing a Gadaa leader from the power is transparent function of the Gadaa General Assembly. Second, the purpose of removing an official through public process is "to ensure that morally upright elders and officials are the ones who adjudicate cases as they set a good example and represent the ideals of virtue that uphold the aspirations of all Borana to be at peace in a just and secure environment." Third, the idea of uprooting is not based on firing or dismissing a leader from the office. It is rather devised in such a way that such a leader loses power to decide on natural resources, human relations, political, and legal matters.

nation states adopt this value in a sense that a *de facto* leader elected five or ten years ago could only come to power based on his achievements. The Borana describes giving a political power to a leader without pre-testing him as: "electing a man after hearing him give self-praising speeches is no wiser than marrying a woman after watching her sing and dance in the company of a crowd of admiring warriors"[70].

Vi. Principle of Division and Separation of Power: Division of power and separation of power are two distinct concepts under the study of constitutional law. The former represents the power distribution between a central organ and its constituents. Hence, it is a vertical relation which may also extends to division of power. In case of the current Ethiopian federal system separation of power refers to a horizontal sharing of power among the government bodies (i.e. legislative, executive, and judiciary) at the federal and regional states level; whereas division of power refers to the vertical constitutional power-sharing between the federal and regional states.

Nevertheless, does the concept of division of power in its strict sense exist in Gadaa governance system? The answer to this question is positive, however qualified. That is, the concept of the division of power (vertical) between the centre and regional states follows a different approach as compared to modern system. Unlike the division of powers between the federal and the states, the Gadaa System of division of power follows generation and age-group based power division. It is the type of division of power in which every citizen involves actively in political and legal affairs of their country. One of the advantages of division of power across the generation has great value in creating egalitarian society. That is, all inclusive political system in which all citizens (can shoulder responsibilities and bear rights) are stratified and powers distributed to them. This is the main quality of the Gadaa

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[70] See *Supra note 55*. Once Gadaa leaders are elected at the fourth Gadaa grade they had to serve the people and could build trustworthiness, accountability, diligence and above all exhibit their capacity to defend the Gadaa constitution. Hence, the six months or more election campaign which might work in modern political system is not adequate under the Gadaa leadership to entrust a highest executive authority to a politician.

democracy. In developed and developing countries, the system of governance, the issue of inter-generational inequality are incumbent puzzle to the extent that redressing the inequality is almost impossible.[71]

Vii. Presidential-Parliamentarian Form of Government: Gadaa System of governance can be considered as polysepalous, that is, governance by more than one head as opposed to monosepalous (i.e. single head) led system of governance. Asmarom notes that "in polysepalous democracy one cannot find a monolithic `state' which crushes all power that is hierarchically subordinate to it"[72]. Put it differently, it is distinct power division (vertical: between the center and constituencies, in our case, between moieties) and separation of power (horizontal: among the bodies of the government) is highly respected. All the constituencies (the moieties) and clans' representatives and all bodies of Gadaa assemblies (senior council and junior councils), the office of *Abba* Gada *fite* (a president at apex), and the Gadaa General Assembly follows functions interdependently. However, *Abba* Gadaa has no authority to crush all the authorities of the clan councilors and Gadaa councilors to undertake whatever he feels right. To control all powers to the extent that all other Gadaa organs and institutions could not perform independently for the good of their clans and moiety is not the nature of Gadaa democracy at all. Unlike the direct election of Gadaa leaders by the people, the current Ethiopian premier is elected indirectly, that is conducted through the HoPR. In the same token, the ONRS President is nominated and elected by the State Council[73]. This is perhaps typical nature of parliamentary form of government. In presidential form of government, a directly elected president will be the head of state as well as head of government. Both the presidential system and the parliamentary system, have their own pitfalls and limitations. Among other things, parliamentary form of government is advantageous to a country ethnically divided and it is efficient in terms of legislative action

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[71] Asmarom,*Supra note* 4.
[72] *Id.,* p196.
[73] See: Article 73(1) of the FDRE Constitution and Article 56(1) of the ONRS Revised Constitution.

since the executive body is entirely based on the parliament. However, its main disadvantage is that the election of the premier is indirect so that its direct responsibility to the people is loose as compared to presidential system[74]. In contrast, in presidential system[75] the president is mostly elected by direct or direct-like popular support and directly responsible to the people. However, unlike parliamentary system, it is less efficient in speedy legislation and less accountable to the congress[76]. The nature of Gadaa System resembles to both presidential and parliamentary form of government. That is, it may be likened to presidential system especially in a relation to the direct election of its leaders (*Abbaa* Gadaa and the two vices) by the people for a fixed term office. However, when it comes to the responsibility of Gadaa leaders to the General Assembly and their membership of the Gadaa Assembly it exhibits the feature of distinct parliamentary system. In this sense, the Gadaa government can be regarded as presidential-parliamentary system[77].

Now, the point is whether ONRS could adopt the Gadaa governance system which has presidential-parliamentary nature unique to the federal government. Academically speaking, as far as the regional state forms of

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[74] One of the advantages of the presidential form of government is the fact that the executive is stable by virtue of a fixed term policy. Since the existence of the executive does not depend on the congress's power, it is more stable than the parliamentary form of government where as a premier can be dismissed at any time. As the president is directly chosen by the people, it is argued by the proponents of this system that there is a high tendency for the system to be more democratic than a leadership chosen by a legislative body, even if the legislative body was itself elected, to rule.

[75] In presidential system the president enjoys ultimate power. S/he owes a complete political responsibility for all executive actions. The president appoints secretaries who are heads of his executive departments. Members of the cabinet and they serve at the pleasure of the president and must carry out the policies of the executive and legislative branches. However, the presidential systems frequently require legislative approval of presidential nominations to the cabinet as well as various governmental posts such as judges.

[76] Arend Lijphart, Parliamentary versus Presidential Government (Oxford University Press, USA, 1992).

[77] In a presidential-parliamentary system, the mode of the presidential election is identical. The president gains office via a direct or direct-like popular election. The term of incumbency is fixed. The president can dissolve the parliament, or has some legislative powers or both (Aurel Croissant/Wolfgang Merkel See:http://library.fes.de/ les/bueros/philippinen/50072.pdf., Accessed April 4, 2012).

government do not contravene with the federal constitution, there is nothing wrong to form distinct form of government. It is not up to the FDRE Constitution to decide whether the ONRS president has to be elected by the Oromo people directly or by ONRS Council though the latter's constitution provides for election of the president by the State Council. Moreover, it is justifiable for ONRS to trace the system of governance to the Gadaa government and the reconstitution of this system as part of revitalization of political heritage and eventually supplementing the essence of federalism, i.e. preservation of diversity in the federation. In particular, it would constitute proper state constitutionalism where diverse regional constitutions gears towards betterment of the federal constitution and it may ensure the autonomy of ONRS as opposed to incumbent federal structure.

4. FORESEEABLE PROSPECTS AND PITFALLS OF ACCOMMODATING GADAA SYSTEM OF GOVERNANCE

4.1. WHETHER DEMOCRATIC RIGHTS OF OROMO-WOMEN BE IN JEOPARDY

The Gadaa System of governance has been criticized for gender insensitivity and it is a common critique against it. This critique is commonly backed by western political culture and liberal democracy. However, women's social reality among indigenous peoples needs to be approached cautiously. The reason is that democratic rights of indigenous women are intertwined with the beliefs and different world views which differ from the West. Hence, the danger of interpreting certain norm through the lens of one's own norm (for example through Western values) has its own contribution to such criticism.

The Gadaa leaders in Borana are well aware of this common criticism. One of my informants (informant R) stated that women are source of everything! Even the *Abba* Gadaa, the great leaders of the Borana, were given birth by women. He concludes that women owe special place in the Borana society. To the question I raised to these informants that whether

a woman may be elected to the office of Abba Gadaa (*father* of Gadaa), they reply that, they do not have *Haadha* Gadaa meaning mother of Gadaa in Gadaa system (Informants R and S). But one of the informant (informant R) substantiated his view that the wife of elected Abba Gadaa is equally treated like the Abba Gadaa himself.

My informants while answering to the question why women are excluded from Gadaa System, they state that the reasons are embedded in cultural, socio-economic, and biological factors. In particular, the Borana are semi-nomadic people surrounded by different ethnic groups where strong leadership needs to be in place, in the face of clashes and wars against intruding neighboring groups. In this regard, male generations' role is always at fore front. Furthermore, Gadaa system age-grading by itself is barrier to women participation: women need to give birth to children and to look after them which will not be respected if they had to pass through all Gadaa grades like the men do. Nevertheless, among the Borana women do participate in political activities indirectly through their song called *karile*. In their song, they use to criticize the poor decisions made by men. By doing so, they can force Gadaa leaders to alter any honorable decisions. Among other Oromo groups women are also represented independently through a tradition of *siqqe*[78] through that they may influence the Gadaa Assemblies. However, are these sufficing systems to guarantee Oromo-women political rights? Obviously, they are not adequate. Thus exclusion of women from Gadaa political system is clearly a weakness that cannot be undermined.

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[78] *Siqqe* (a stick) not merely is a term for material symbol; it rather refers to an institution, to women's organizations excluding men, which has both religious and political functions (Ostebo 2009: 1053). Ostebo presents the role of *Siqqe* given to a woman married through *Siqqe* marriage; it represents respect, special rights of women, and women married by *Siqqe* forms a separate category (institution) so that their rights are respected both individually as well as collectively. Kuwee Kumsa also states that "married women have the right to organize and form the *Siqqe* sisterhood and solidarity. Because women as a group are considered 'non-relatives' (*halagaa*) and excluded from the Gadaa grades, they stick together and count on one another through the Siqqee" (Kumsa 1991).

4.2.   WHETHER GADAA SYSTEM WORK ONLY IN SMALL COMMUNITY

Another critic against Gadaa democracy is related to its scope of applicability. This argument holds that Gadaa System best works in small community than at country or even regional level. The proponents of this view erroneously conclude that Gadaa is meant for local people. Among others, Hassan Mohammed argues that ''. . . the system seems to have worked ideally for small groups whose members knew each other and met face to face when the situation demanded. With a large group spread over a wide territory the system did not work effectively. Instead of having one supreme assembly, several competing assemblies sprang up in different areas. That is why, although the Oromo nation was under a single Gadaa System, they did not have a common government; instead they had what became the confederacy governments'' (Hassan Mohammed 1990: 12). Basically, Hassan is not denying the fact that the Oromo people were ruled under one Gadaa System rather he argues that the system had confederacy than centralized form of government. This argument, however, is defective due to the following reasons:

First, the existence of several autonomous assemblies across the Oromo land, historically, signifies its nature than its limitation. Hence the absence of strong central institution that pulls all autonomous Gadaa Assemblies across Oromo land under one umbrella was not due to the fact that Gadaa only works in small community rather it was for historical and political reasons. *Second*, Gadaa, as a system represents knowledge of governance that can be used in small or large community; a profound knowledge or idea has no boundary whether it is evolved in US by political scientists or by semi-nomadic people of East Africa. Hence, as far as the values and principles the Gadaa System embrace is universal democratic traits, it can not only be meant for small scale community. In this respect, Asmarom rightly asserted that one can even think of the Magna Carta in England or the Athenian direct democracy limited to a single city state were all small scale societies and thus justifying small

scale par excellence[79]. As that did not prevent modern nation states to borrow principles of democracy from Greek, so what does prevent us to borrow the principles of Gadaa democracy today?

4.3. EMBRACING POSSIBILITIES AND OVERCOMING TENSIONS THROUGH FEDERALISM

Contemporarily, institutional transformation and application of Gadaa governance system at regional state level seems workable idea in light of ethnic federalism prevalent in Ethiopia. In principle, federalism is about self-rule and accommodation of diversity in unity; that is, diversity in systems of governance and plurality in laws and the adoption of distinct constitutions in a federation. When it comes to cultural rights, the feature of federalism Ethiopia exhibits today is multicultural federalism or what Lawrence Friedman calls ''cultural pluralism'' where local states are given mandate to promote their own language and heritage[80]. However, federalism in contemporary Ethiopian constitutional system is characterized by power centralization in some cases[81]. In this regard, it would be challenging to institutionalize genuinely plural legal systems. Keller puts this fact as follows: ''[. . .] with the exception of linguistic and cultural autonomy, so far the constituent members of the ethnic federation cannot exercise administrative and political autonomy [. . .] an asymmetrical form of federalism that was overly centralized and operated almost like a unitary centralized state"[82].

Having said so, there are possibilities for regional states, for example ONRS, to enact its own constitutions different from the federal constitution both in its form and substance without breaching the federal

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[79] *Ibid.*

[80] Friedman, Lawrence M., The Legal System: A Social Science Perspective (New York: Russell Sage Foundation, 1975).

[81] Obviously the 1995 FDRE constitution declares the federal system. As such, states are given different areas competences (See Art.52 of the same constitution). However, the constitution assigned some important powers like major revenue sources to the federal government.

[82] Keller, Edmond, Understanding Conflicts in the Horn of Africa (in Chandra Lakha Sriram and Zoe Nielsen, Exploring Sub-regional Conflict: Opportunities for Conflict Prevention. Boulder, Colorado: Lynne Rienner Publishers, 2004), p. 38.

constitution. Furthermore, the plurality of state constitutions, for instance, is very essential for the enrichment of the fundamental principles of the federal constitution itself. It also helps the constituents of the federation to exercise their power on matters that are specific to their region. And as a result, it could have eventually facilitated an environment of self-reliance and effective self-governing regional states. According to John Rawls, pluralism of laws is advantageous ''for policies and courses of action likely to be effective and politically possible as well as morally permissible for that purpose''[83]. Therefore through legal pluralism, a subsidiary to federalism,[84] accommodating Gadaa principles is justifiable for efficiency and legitimacy purpose.

4.4.   THE PRINCIPLE OF GREATER PROTECTION: GADAA DEMOCRACY AS GREATER PROTECTOR OF A DEMOCRATIC CONSTITUTION

A great lesson can be learnt from the U.S. experience of federalism especially when it comes to constitutional pluralism. The state constitutionalism in the U.S. is found on the principle of greater protection; that is, in the adoption and interpretation of the states constitutions, the guiding principle is the greater protection of the US federal constitution. For instance, where the principles a state followed is fundamentally sound and more progressive than the federal constitution is, then it is justifiable to adopt it even if a state's constitutional principles are different from the federal constitution. While dealing with dual constitutionalism Judith S. Kaye states that state courts in the U.S. have always tended to read their constitutions in order to provide greater protection than found under analogous provisions of the federal

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[83] Rawls, John, The Law of Peoples (Shute Stephen and Susane Hurley (eds.), On Human Rights : Oxford: Basic Books,1993), P. 68

[84] Federalism and legal pluralism are inextricably linked concepts. That is, where there is division of powers between the federal government and its constituents the existence of plural legal systems is inevitable. Obviously, constituents of the federation could have different laws which inherently follows from the powers and functions allotted to them in the federal constitution. For example, the division of legislative power between the federal government and the constituents inevitably allows states to enact their own laws. This, in effect, results in formal legal pluralism.

Constitution[85]. In this regard, the principle of greater protection quite works in case of US since the common law legal system allows the state courts to adopt liberal constitutional interpretation. However, when it comes to the case of Ethiopia, the power to interpret the federal constitution belongs to the House of Federation as provided under Article 62(1) of FDRE constitution. In the same way, the power to interpret the ONRS constitution belongs to Constitutional Interpretation Commission as provided under Article 67(1) of ONRS Constitution. Hence, the means through which state constitutionalism may stand for the greater protection of the federal constitutional principles is not through regional state courts, instead it is through Constitutional Interpretation Commission.

The fundamental principles Gadaa system embrace can be regarded as it stands for the greater protection of a democratic constitution. For example, one could think of the principle of eight years single term office of the leaders (see *table 1*); the principle of pre-testing an individual before being elected to the office, the principle of impeachment of leaders and others. Hence, as any indigenous values in contravention with universal principles of human and political rights cannot be relied on, indigenous principles that can enhance good governance and democracy cannot be relegated. Therefore, as indigenous institutions of governance inform modern governance system, the later also does: both driving towards the greater protection of democratic human values.

5. CONCLUDING REMARKS

Throughout this article, I have attempted to discuss the tension between two systems of governance: indigenous versus modern institutions of governance. Gadaa System embraces fundamental democratic principles such as rule of law, principle of single term office, principle of impeachment of leaders, pre-testing future leaders and others. However, Gadaa system has limitations such as the exclusion of women from direct political decision-making process. Given the ramifications to the

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[85] Kaye, Judith S., Dual Constitutionalism in Practice and Principle, *St.John's Law Review*,1987, pp.399-429.

drawbacks, I have argued that, there is no reason why Gadaa system could not be a viable constitutional model in 21st century Ethiopia. In particular, as ethnic federalism recognizes distinctiveness of peoples' culture, language and historical background, for strong reason, indigenous peoples' institutions such as Gadaa system has to be allowed to function 'formally' along side of modern constitutions, or embraced by modern constitutions pragmatically for there are spaces to incorporate it under the context of constitutional pluralism.

Therefore, under the incumbent federal system of Ethiopia a pragmatic policy that accommodates Gadaa system of governance and a serious action that constitutes government bodies built on Gadaa principles are essential for full-fledged and inclusive democracy. However, until today, indigenous knowledge of governance is relegated, perhaps because of a prevailed fallacious impression that indigenous peoples' values are stumble to democracy and/or development. However, this article indicated that it is quintessential to revitalize Gadaa democracy leaving behind hastily generalizing it as contrary to democracy, or as if only meant for small community. Thus, I argued that, a federal system has to accommodate Gadaa rule into the 21st Ethiopian constitutional order. To materialize this, the federal as well as ONRS governments shall be committed to that end and looking beyond maintenance of the status quo for the best interests of today's people and generations to come.