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Pastoralism and the Statutory Law of Ethiopia in South Omo

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ABSTRACT : *This article discusses the pastoralism in the view of statutory law of Ethiopia in varying degree of inclusion of pastoralists in the legal frameworks and the negotiated constellation of law in the lowlands areas, specifically in South Omo. Primarily, this study remarks the legal frameworks that have described the conditions of pastoralists across time and space. Secondly, it indicates the peculiarities of the legal constellation in the lowlands that are dominantly inhabited by pastoralists and agro-pastoralists in South Omo, Ethiopia. It is found that pastoralists and resources in their areas are scarcely mentioned in the state laws so that they rely heavily on the customary institutions of justice. Nevertheless, due to the growing presence of the state in recent years, the justice process in these areas turned to the mediated status of both the customary and statutory orders at a time.*
KEY WORDS: *Pastoralism, Statutory Law, South Omo, Ethiopia*

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I. INTRODUCTION

Any state and statutory law are closely connected to sedentarized societies (Scott 1998: 2). The settled communities of the north Ethiopia are considered as pioneers for state building, and hence, they are considered as originators of written law and makers of the nation. The theocratic administration of the "north" whose origin is traced back to the Axumite period is taken as the legitimate source of both the law and political system (Muzrui 2001: 158). The two legal documents of the medieval period, the *Fitha Negest*(literally translated as Law or Justice of the King) and *Kibre Negest*(literally translated as Glory of the King)along with the moral teachings of the Ethiopian Orthodox Church, were said to have been the main sources of jurisdiction until Ethiopia adopts the first modern constitution in 1931. In these theocratic laws of the aristocratic elites, supported by the church claimed divine rule over its people who had been at the adjacent areas in the margin of its territory and pastoral communities in relatively faraway places. The northern Ethiopian ruling elites and political claim considered lowlanders pastorialists as unfamiliar to the above theocratic legal codes and related standards.

The emergence of state institutions of northern Ethiopians like law in the lowland areas of the country goes back to the incorporation of the close of nineteenth century (Almagor2002). The lowlands, which constitute about 61% of the total areas of the country, are sparsely populated and largely inhabited by nomadic and semi-nomadic groups. About 10.3% pastoralists are expected to live in them (Workneh 2011:1-2). Both the lowlands and the pastoralists remain peripheral to the political and legal structures of the country. Hence, the influence of pastoralists and the non-Semitic farming communities on the institutionalization of social and legal order in the country have not been adequately represented. It seems a deliberate and mutual exclusion of these groups from the national affairs since their incorporation to Ethiopia. While the pastoralists and semi-pastoralists have used mobility as a strategy to avoid the ideological and institutional domination of the non-pastoral groups (Girke 2015) the state has abandoned the lowlands due to economic and security reasons. The situation offered the pastoralists the chance to live outside state in similar way to that of the anarchic history of the upland regions of Southeast Asia (Scott1987) where, among others, mobility is employed by people as a strategy to escape control and taxation by the valley states. The political history of the lowlands is dominated by the history of resistance. This has been listed in the works of, among others, Almagor (2002), Tsega-ab (2005), Strecker (2013) and Girke (2015).

Hence, in the absence of functioning state for long time, the lowlands and border areas remain frontiers with microcosmic structures of self-rule and customary normswhich has largely contrasted the legal and administrative institutions of the country. Among more than 80 ethno-linguistic groups across the country, the SouthRegional state constitute 56 different ethnic polities, with almost half of them being pastoralists, and South Omo Administrative Unit with geographical area of 23,000sq.km (Markakis 2011: 338) has sixteen different ethnic groups.Each of these ethnic groups autonomous polities and developed (and up to present maintains) their own system of governance that draws legitimacy from tradition, some it stand in contrast to the modern legal system and remain vibrant.

Four different modernconstitutions are formulated in Ethiopia for the last seven decades of the twenty-first century. The primary aim of adopting each of these constitutions varied with time and interest of the regimes and it definitely designed for the consumption of national image. The first constitution was proclaimed in 1931 with the aim of replacing the aged *Fitha Negest* (literally translated as Justice of the King). This constitution was targeted to show the world that the country is following a modern system of governance (Steen: 1936). This constitution was revised in 1955 for a similar intent and to ally the federated constitution (1952) of Eritrean which was modern and democratic in its content. The 1955 legitimacy of this constitutions was also drawn from the divine origin. The constitutions offer an un-alienated right to king over people. The 1987 constitution of the *Derg* regime based its source from the Marxist-Leninist ideology. This constitution was not properly implemented because of civil war. Finally, another constitution that incorporates a variant of the Marxist-Leninist political ideology, a "revolutionary democracy", was introduced in August 1995. This constitution differs from the previous three in that it has replaced a unitary state structure by a federal state structure on the bases of ethno-linguistic criteria.

Thus, the aspects of pastoralists or other oppressed groups are addressed with varying degree of emphasis in the legal framework of Ethiopia. For this reason, except northern part of the country, the rest groups are overlooked in legal frameworks. This paper argues that the places of pastoralists and their land in the legal framework of Ethiopia is less likely known to academia and practitioners. Therefore, this paper discusses this gloomy picture of the legal inclusion and exclusion of pastoralists across time. Hence, the paper is aimed at (1) putting together the legal provisions (international, national and regional) that deal with various aspects of pastoralists and their lands and (2) discusses the peculiarity of the legal constellation across the lowlands. The paper is a review of the different set of legal documents (constitution, proclamation, and agreements) and primary data fromobservation of the situation of social order across the South Omo. For this reason the paper is organized into five sections. Each of the sections focuses on particular aspect of pastoralism, purposely chosen for the sake of arguing pastoralism in statutory law of Ethiopia. The first section states pastoralists in the constitutional framework of the country. The second section discusses legal provisions to pastoral land related resources. The third section deals with the legal constellation taking into account the nature of conflict resolution, and finally, the paper discusses legal provisions that are related to the wellbeing of pastoralists labelled as harmful and traditional in national policy discourses and international legal frameworks.

Pastoralism in the Constitutional Framework

The first established constitution of 1931 and the revised constitution of 1955 concerning pastoralistswere not treated uniquely despite their spatial and socio-political peculiarities. The later labelled grazing right of pastoralists The regime of *Derg (*Provisional Military Administrative Council) in 1974has administered the country with various decrees untill the constitutional development. For instance, the Proclamation No. 31/1975 (A Proclamation to provide for the Public Ownership of Rural Lands)treated the conditions of pastoralists across the country in a couple of articles, from articles 24-27, and the Proclamation No. 223/1982 (A Proclamation to Provide for the Consolidation of a Peasant Associations)totally excluded the pastoralists and their land which was the most incomplete and controversial legal framework of its time. The 1987 constitution of the same regime after thirteen years put the issue of pastoralists as vague and avoided the details in the proclamation, article 13 (2) by declaring that "all kind of resources, including land, minerals, water and forest, belong to the state."

The 1995 Federal constitution introduced ethnicity and regionalism in the official discourse, and pastoralism was offered a focus but still a marginal one. Article 40 (5) of the constitution states that "Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law." The implementation strategy isn't specified in additional legal documents at national or regional levels. However, it has led to the establishment of a "Pastoral Affairs Standing Committee" in the House of Federation of the parliament for the first time in Proclamation No. 271/2002 with the objective to follow up development practices and human conditions in pastoral areas. The major roles of this standing committee include legislation, oversight, and representation (Mohammed 2004). The legislative roles include the following: ensure that pastoral issues are included when national policies are formulated; ensure that subsidiary budgets are allocated for various pastoral activities as a form of affirmative action; influence the poverty reduction strategy of the country in the direction of improving the livelihood of pastoralists, and encourage a higher level of pastoralists' participation and responsibilities. It was for this reason that Mohammed states the other duty of members of the standing committee is to review the works of different ministries, commissions, and authorities. The committee also representing pastoralists in various forums organized by governmental or non-governmental institutions and influencing their plan and decision (Ibid).

Article 40 (5) and 41 (8) of the constitutions of all regional states including Southern Nations Nationalities Peoples Region (SNNPR) endorsed the right of pastoralists to access land and other related

resources in their respective areas. The SNNPR had incorporated about pastoralists in its regional constitution. For instance, Article 2 sub-article 10 and 11 of the SNNPR constitution identify two types of pastoralism. The first of these defines that “"Pastoralist" means a member of a rural community that raises livestocks by holding range-land and moving from one place to other and the livelihood of himself and his family is based mainly on the produce from livestocks.” The other specifies that “Semi pastoralist" means a member of a rural community whose livelihood is based mainly on livestocks rising and to some extent on crop-farming.” The sub-articles differentiated between pastoralists and semi-pastoralists on the basis of economic and livelihood frameworks.Another provision found in article 9 (1-3), of the SNNPR constitution specifies the condition of accessing farmlands in times when it is available and needed.It indicates the condition of their access to farmland and government-constructed irrigation schemes and another provision specifies the condition of pastoralists to receive fair compensation for the land when it is taken for irrigation schemes.

The legal recognition of pastoralism in the post-1991 period is accompanied by policy changes and reforms. As a result, institutions that offer particular emphasis to the conditions of pastoralists were introduced. Pastoralists are for the first time organized in associations and forums that give them some sort of opportunities to speak out their heart regarding policies and institutions which affect their life. In some places like Oromia, an independent Oromia Pastoral Development Association was established at regional level. In SNNPR state, a Pastoral Development bureau was established to support the development processes in areas which are dominantly inhabited by pastoralists such as South Omo and adjacent areas. The bureau heads a pastoral community development project which invests on the conditions of improving the provision of social services, including water supply, health-care and sanitation, veterinary services, education and irrigation projects (Pastoralist Forum Ethiopia2005; Peter D. Little and et’al 2010). Similar structures and organizations are also established in Afar, Somali and Benishangul-Gumuz regional states to help support the condition of pastoralists and agro-pastoralists. After a decade of the coming of power, Ethiopian Peoples Democratic Revolutionary Front (EPDRF) celebrated what has been called a “Pastoralist Day,” an annual event, was initiated in 1996. The prime aim of this gathering was planned to resolve a conflict between Borana and Somali Pastoralists in the town of Filtu, Liben Zone of the Somali regional state was up-scaled to a national event by the help of Pastoralists Concern Association Ethiopia, a non-governmental organizations working in the areas. The organization handed over the event to Pastoralists Forum Ethiopia, a national forum collaborating 10 international and 18 NGOs. The forum collaborates also with regional states and the then Ministry of Federal Affairs since 2010 Ministry of Federal and Pastoral Development Affairs and is now aspiring to take the event to continental and international forums. The national event is aimed at recognizing the sector and rewarding pastoralists who are said to have shown progress in endorsing state policies and modern technologies of production. Regions with relatively large number of the pastoral population such as Oromia, Somali, Afar, SNNPR, Gambella and Benishangul-Gumuz have hosted the event one after the other in the past sixteen years. Hence,such a prominence of pastoralists in the region is said to have resulted from a combination of the economic importance of their lands and pastoral production to the state and opposition groups.

Pastoral Lands and Related Resources in the Law

Article 130 of the revised constitution of 1955 states that “[a]ll natural resources, including the grazing lands, belong to the state.” However, it is not clearly specified whether the grazing lands mentioned in the article refer only to the pastoral lands or include the communal grazing lands that are also available among the farming communities. The student movement of the 1960s that rallied along the popular slogan “land to tiller” resulted in the collapse of imperial regime in 1974, and gave rise of the Provisional Military Administrative Council.However, it governed the country through a series of decrees and proclamations for the coming thirteen years until 1987 constitution. In the first of the decrees made in 1975, the council abolished the traditional landholding system and announced the reorganization of households into rural cooperatives and urban dwellers associations.

The Proclamation No. 31 of 1975 (A Proclamation to Provide for the Public Ownership of Rural Lands) provides a qualitatively elaborate provisions regarding the condition of land resources in the pastoral areas. Article 24 of the proclamation recognizes the nomadic peoples “possessory rights over the lands they customarily use for grazing or other purposes related to agriculture” in a way that it does not “affect international agreements relating to nomadic lands.” Article 25, abolishes all kinds of obligations of the nomadic people, for example, paying dues to local chiefs or any other persons and Article 26 of the proclamation recognizes the pastoralists right to the association to cooperate in development and conditions of resource sharing. In the last of Articles, 27, addressing the conditions of pastoralists, the responsibilities of government in improving the conditions of grazing areas, digging water wells and settling of pastoralists for agriculture are mentioned. With the adoption of the 1987 constitution, the Provisional Military Administrative Council was changed into the People’s Democratic Republic of Ethiopia. Article 13(2) of the 1987 constitution of the new government declared that the “natural resources, in particular land, minerals, water, and forest, are state

property." This constitution remains silent about unlike the 1995 constitution that openly renounces the sale of lands.

Even though article 40 (5) grantees the land to pastoralists, and article 40 (3) of the 1995 constitution states that "Land is a common property of the Nations, Nationalities, and Peoples of Ethiopia shall not be subject to sale or to other means of exchange," it changed ownership and access right specified in the 1975 proclamation. It also followed a similar track mentioned in Article 13(2) of the 1987 constitution. The constitution states the access right to lands in the pastoral areas remain communal, meaning particular clans are entitled to access particular chunk of land which they distribute to others (use in common) on the base of particular benefit and kinship ties. South Omo residents are exclusively owned by fathers of the Turignerim, Fargaro and Galbur clans who distribute them to fellow Daasanech. While access rights to all kinds of land among farming and urban communities are recognized through registration and certification of individual households in Ethiopia. These requirements are limited only to irrigation plots and farmlands of inter-regional settlements in the lowlands. Otherwise, the grazing lands and watering points in the pastoral areas are accessed through collective claim based on historical ties to the resources.

Legal provisions on the condition of natural resources management in the peripheries of the country also include particular proclamations and bilateral agreements that formalized and facilitated nationalization of pastoral resources such as land, water, and wildlife. The first of these legal framework deals with the management of Omo National Park, established in 1978 and wildlife sanctuaries (Turton2011). In the case of South Omo, an agreement was made between the Ethiopian government and the Netherlands-based African Parks Foundation. The former has handed over the Omo National Park to the latter in 2005 "for better management of the park" (Agreement 2005). In 2007, Ethiopia has adopted a Proclamation No.541-a Proclamation to Provide for the Development Conservation and Utilization of Wildlife- to better protect the national parks, wildlife, and forests in the country. These include legal frameworks that endorse the administration of wildlife and forests. The same year the African Parks Foundation was preparing to terminate its agreement of managing the Omo National Park, for reasons it has mentioned to be the challenge of one or more ethnic groups to the sustainability of the park. In fact, the foundation was severely criticized for the "National Parks Theorem" (Girma and Stellmacher 2012), a model that excludes the role of local peoples and their right to land and resources in the park. The approach encountered pressure from international human rights organizations, for example, survival international, which repeatedly requested the foundation to respect the rights of pastoralists around the park and wildlife sanctuaries (Letter to 2007). The establishment of Omo National Park was based on an old view that enclosure of such sparsely populated and inaccessible areas with poorly developed infrastructure would better conserve natural resources and wildlife, hence, better protect the areas. The Omo and Mago national parks, the Chelbi and Tama wildlife and the Walishet and Sala controlled hunting areas in South Omo administrative unite are among those protected altogether constituting 14394sq.km in SNNPRthat were assumed to be conserved following the same model. The proclamation recognizes several components of protected areas. These protected areas in the region are identified to serve as national parks, wildlife reserves and controlled hunting areas (Young 2012:7).

The pastoral areas and borderlands in the country have attracted a renewed attention of governmental and private investors by the turn of the present century, largely due to their economic importance. The fertile lands of Omo river basin, the hydro-electric energy potentials of major rivers, the mineral deposits of Oromia, Afar, Gambella and Somali regions were among the resource potentials that intensified interaction between agencies and institutions of the centre and that of peripheries over the condition of accessing important resources. In 2002, a federal investment proclamation was adopted to orchestrate the conditions of natural resources expropriation across the lowlands in Ethiopia. This was soon followed by the adoption of regional proclamations. The federal investment law of the country shoulders a responsibility to regional states to prepare the vacant land and all other relevant facilities for people who want to invest on land and other related resources. The proclamation allows the regional states to lease the land which does not exceed 5000 hectares.

Following the increasing interest and flocking of land and water related investments into pastoral areas; the government revisited the security architecture and infrastructure to tackle the likelihood of resource related conflict among local people on the one hand and between the local people and others like investors and labour migrants. With the emergence of Intergovernmental Authority on Development, a regional organization comprising of eight countries working to facilitate socio-economic and political cooperation in east Africa, and emergence of the Ministry of Federal Affairs, the ideas and practices of securing peace and bringing stability in the pastoral areas have become one of the targets to attract new investment projects and sustaining existing ones. In 2005, Ethiopia adopted Rural Land Administration and Use Proclamation Number 456/2005. The proclamation plainly adopts the definition of pastoralism and agro-pastoralism mentioned in the investment proclamation No. 280/2002. Duration of the rural land use rights is among the topics mentioned in the proclamation and article 7(1) states that the "rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit" and sub-article 2 of the same proclamation grants the regional states to

have their own rural land administration and use laws to determine the "duration of rural land use right of other holders" in the country. From 2003-2010, the regional states of Amhara, Oromia, SNNP and Tigray, Benishangul-Gumuz,and Gambella have consecutively enacted their land administration and use right proclamations (Desalegn2011).

The land became the main input resource to the development plans of Ethiopia. A significant portion of the lands identified and handed over to investors in the country are located in the lowlands which are said to be sparsely populated and predominantly inhabited by pastoralists and shifting cultivators. The increasingly flowing investment caused an accelerated dispossession of a huge tract of land from the pastoralists and shifting cultivators, alienating their indigenous right to land and related resources. Large-scale land acquisition by the so-called investors and the government agencies have raised questions about the socio-economic returns of the development practices and the violations of human and minority rights across the lowlands. NGOs and Civil Societies were the forerunners of these critics against the nature of development interventions and narratives. After the election of 2005, the government suspected these institutions and tried to limit their operation by law via the Societies and Charities Proclamation of August 2009. Following the weakening ofthese institutions, the government solely controlled the situation across the lowlands with the adoption of a ten-years Growth and Transformation Plans (GTP I and II) in 2010 to become a middle-income country by 2025. In this regard, the natural resources of the lowlands obtained prime importance and the national narratives.

A couple of old and newly signed interstate boundary agreements are among the useful legal instruments which could also be used to understand the nature and distribution of land and related resources in the pastoral areas. However, except in the case of the special protocol attached to the 1970 agreement between Ethiopia and Kenya where the pastoralists in either side of the border are allowed to use the water well on the other side of the demarcation line, almost all of the earlier trans-border agreements signed between Ethiopia and their neighbours have been discriminatory from the point of view of pastoralists. They are believed to go against the interests of pastoralists in one way or another, some dispersing them into different countries, others leaving resources out of control and banning exchange and movement. For instance, Boran, Gabra, and Daasanech pastoralists and their grazing lands were divided between Ethiopia and Kenya, the Nuer and Anua are between Ethiopia and Sudan, the Afar between Ethiopia, Eritrea and Djibouti and the Somali between Ethiopia and the Somali republic. Nonetheless, due to lack of clearly demarcated lines, these earlier agreements did not have totally excluded mutual exchange and mobility between pastoralists and another group of people in one area to the other but were varyingly used by them to fight against each other. Demarcation of the uncompleted parts of the border between Ethiopia and Kenya restarted in the last two years, almost half a century after the signing of 1970 agreement between the two countries (UN Treaties Collection 1989: 36).

In 2015, the governments of Ethiopia and Kenya signed a new UN-blocked trade deal at Moyale. The purpose of the trade deal mentioned by the officials was to tackle youth unemployment, creating job to them in the energy, mining and livestock production. The renewed approach to boundary making in the pastoral areas in such ways have in some instances created new lines of competition and in another consolidated the existing views on territory and resource claims. However, critics draw attention that this kind of cross-border agreement is among the many strategies that the incumbent governments use to quell the growing allegations of opposition groups against existing governments.

Pastoral Conflict Resolution and Law

The pastoral areas of Ethiopia constitute one of the most conflict-ridden parts in eastern Africa. Competitions to access pasture, water and other related resources are traditionally known to be the main reasons behind these conflicts despite the nature of conflict and the parties to conflict in these areas change in form in the course of time. Such kinds of conflict were said to have been handled by self-initiated customary institutions, for example, arra-the council of elders among Daasanech (Almagor 1978; Houtteman 2011), Bitta and Donza among the Hamar (Strecker 2013) and Gada councils among the Borana-Oromo (Asmerom 1994) in the past. The institutions were (and still are) used not only to settle internal but also inter-group conflicts that arise between neighbouring pastoral and non-pastoral groups. The diversification of actors and perceived and actual scarcity of resources, the customary context of understanding offenses and offering justice among all of the pastoral groups have recently been changed. The diverging interest, it is vital to apply a new approach in the area., thus, the power and responsibilities of these customary authorities and their relation with modern institutions of legal enforcement such as the court and police are undergoing transformations. The unilineal approach of the state in which justice over pastoral matters is thought to be reached only by formal legal institutions in the past has now become less attractive and the relevance of customary norms is becoming equally important in the process of conflict management. Such an approach has obtained incentives from various institutions of which the Ministry of Federal Affairs and aftermath of 2015 election, it became Ministry of Federal and Pastoral Development Affairs) is one to mention. It took the responsible for financing conflict resolution and peace-building efforts and events that are evident particularly along regional and national

boundaries. At country level, the national strategic plan of conflict management is adopted that recognizes the role of religious organizations in conflict management. The regional states' security and administration bureaus collaborated with the Federal government to utilize such strategic plan.The SNNPR state has adopted what is called "The Strategy to Resolve Conflict" in 2011 to frame conflict management efforts in the area (Council of Nationalities2011) which was adopted by the administrative unites of its regional state.

One of the most important contributions of Ministry of Federal and Pastoral Development Affairs is the introduction of a joint-peace committee. It has come out of the recent institutional restructuring intended to handle conflict in the country by way of up-scaling the extent of participation of the local people and institutions in conflict management processes. In the case of South Omo Zone, what is called Pastoral Modality Agreement, a kind of local level agreement among pastoralists and between them and the government is adopted in 2013. As stated in the document prepared by the security department, the agreement is intended to serve two purposes;one to regulate the use and proliferation of firearms and the other is to resolve inter-group conflict between and among pastoralists and farming communities in the zone. This administrative unite identified potential areas of conflict and established village peace committees to cooperate with the police and militia. The component of the agreement that deals with arms control requires registration and certification of the firearms and ammunition in the area and set particular conditions of using them like keeping livestock. Some of the terms of the modality agreement identify charges against illegal use of guns and ammunition. The preconditions and conditions of using them are listed in several provisions. Similarly mentioned are the conditions of maintaining peaceful relations with neighbouring pastoral groups and punishing those who violate these terms of the agreement. The sharing of resources, punishing homicide and livestock raids, restitution of the victims and punishment of the perpetrators are among the main focus of the second component of the agreement. In addition to imprisonment, the one committed such crime was obliged to heads of cattle depending on the level of the action of the crime.

Even though it seems that implementation of the law is a negotiated field between the state and customary authorities, the enforcement of it is largely dominated by the former. In the new context, the rule is that an offender is punished both by the laws of the community and the state. Despite the implementation of terms of the agreement, the new regulation is not yet fully recognized and accepted by the majority of pastoralists due to its distance from the long-established customs of pastoralism. For instance, upon receiving 23 heads of cattle as compensation for the death of his own son from a Hamar, may host refused to mix these cattle with his own stock and used it in the form of dowry, gift, and exchange for cash. In a similar way, those who released from jail after finishing terms of their sentence are still going through the customary cleansing rituals. The former case indicates that there are cultural elements and interests of pastoralists that are dropped in the course of interaction between the two systems of law and hence, now managed personally. The second case shows the persistent loyalty of pastoralists to their cultural practices than the growing influence of modern legal practices in the area. Therefore, implementation of the statutory laws in the pastoral context necessitates recognition of the particularities of pastoral contexts that often reflects the role of culture in conflict management.

Marriage, Divorce and Law

There is diversity of rules in Ethiopia that establish the legitimacy of marriage and divorce. Polygamous and early marriage practices, which look characteristic of the pastoral communities, are outlawed by the civil code of 1960, which is still in use in the country. The civil code sets the minimum age at marriage to be 18 for male and 15 for female. Article 37 of the *Derg* regime and Article 34 and 35 of the current constitution describes the conditions of marriage and securing the rights of partners forming the bond. While early marriage is totally banned in both constitutions, polygamy and divorce are left to the interests and rights of both partners but should be confirmed by elders or religious leaders, with their rights guaranteed in the latter constitution. However, the minimum age limit for marriage and conditions of having multiple wives are revisited in the revised family law of 2005. Article 7 of the revised family law of the country states that the minimum age at marriage should be 18 years for both sexes and the conditions of marriage should consider the continuation of the partnership and wellbeing of their children, a standard which is often promoted by the family planning policy of the country. A rape or abduction leads to seven to 15 years of imprisonment (article 620 of Penal code of 2005) and if it causes grave mental and physical harm or even death "the punishment shall be life imprisonment" (Article 620 (4)). Despite the prohibitions, early marriage is still practiced all across the pastoral areas and other parts of the country.

The civil code of 1960 and the revised family code of 2005 discourage divorce due to the negative impact of it, especially on young siblings. Article 76 (1 and 2) of the revised family law 2005 suggests two possibilities of triggering divorce. The first is called divorce by mutual consent of both spouses and second by petition of any one of the spouses despite the disagreement of the other. In addition to the arbitrary role, the revised family law of Ethiopia grants the court the duty to persuade the spouses to renounce their decision for divorce. But the spouses are given a cooling period of three months to rethink over their decision before they

trigger the provision for the final term. If they fail to agree over divorce, it is decided by family arbitrators (Article 82 (6)). Despite a higher percentage of prevalence among the pastoral communities in the country, issues of divorce, abduction, and elopement are not however, so often taken to the court. They still fall under the jurisdiction of the customary law. The modern court in the administrative towns and police officers in rural villages across pastoral areas had never received a significantapplications for divorce from the rural communities. The modern court gives back the issues to the elders for settlement. The community believed that taking the decision of the state institutions and modern legal instruments are considered as loss of their identity. However they have now learned that it is more difficult for them to lock the door to the statutory legal practices.

Polygamous marriage seems to have been tolerated in practice among the pastoralists in general, but it is still illegal to state-bureaucrats, including those in the state administration in pastoral areas. This was stated in Article 611 (1) of the civil code of 1960. The sub-article states that "An officer of civil status or authority having celebrated the marriage of a person bound by the bonds of a previous marriage, shall be liable to the punishments provided in the Penal Code if he knew or should have known of such circumstance. In Article 650, this is called bigamy and can cause the following series of punishments:(1) Whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment, or, in grave cases, and especially where the criminal has knowingly misled his partner in the second union as to his true state, with rigorous imprisonment not exceeding five years. (2) Any unmarried person who marries another he knows to be tied by the bond of an existing marriage is punishable with simple imprisonment. (3) Limitation of criminal proceedings is suspended until such time as one of the two marriages shall have been dissolved or annulled. The criminal code provides an exceptional condition in which multiple marriages is allowed, including bureaucrats. As indicated in Article 65, bigamy can happen in conditions where it conforms to the religious or traditional practices.Limiting themselves to a single partner, such bureaucrats are expected to light up the candles of modernization in the "darks of pastoral backwardness", establishing a successful model of family. In times when polygamous marriage happens, the case is invoked during internal appraisals and used to step down officials from their post. Monogamous marriage is considered a feature of modern, urban and civilized household and government officials are expected to show this in practice to the pastoralists who are always presented to be 'primitive.'

Pastoral Wellbeing, Policy and Law

Wellbeing is a widely debated topic and ss such it is broader and elusive. But for the sake of convenience, the meaning offered by Prilleltensky (2005) is used here. He states that "[w]ell-being is a positive state of affairs, brought about by the simultaneous satisfaction of personal, relational, and collective needs of individuals and communities." The Stanford Encyclopaedia (2001) equates well-being to the notion of being healthier all in psychological, physical and social aspects. The human well-being in Ethiopia is often found to be in a state of danger. This has been the concern for the country and UN organizations that strive to tackle the practice and reduce its effects. In one of the UN-initiated conferences in 1984 on the wellbeing of women and children, held in Dakar (Senegal) identified Ethiopia was to be one of the 28 African countries where the human well-being is significantly endangered the 'Harmful Traditional Practices.' Hence, three years later, the National Committee on Harmful Traditional Practice, consisting of 20 representatives, including a UN delegate to the country, was established to coordinate various institutions that were working to tackle the problems induced by the practices. The committee has identified more than 25 pieces of practices which it has grouped under three rubrics- those that affect women, those that affect children and those that affect the general community (Misganaw 2013:1-2). Female Genital Mutilation, early marriage, abduction, and rape are among practices that are identified to be the most evident ones that affected people particularly children and women.

The pastoral areas in remote parts of the country become the prime targets of anti-HTP committee. The committee, which emerged at the beginning as non-governmental organization and placed under the auspices of Ministry of Health, was supported by UN and various other groups of NGOs in the country. These include the Norwegian Church Aids (NCA) and Deutshe Geschelschaft für Internationale Zusammenarbeit (GIZ). The two objectives that the committee has been working to discourage HTP that affect the health of women and children and encourage useful practices. The Ministry of Children, Youth and Women at the federal level also takes part in supporting the campaigns against HTPs. Each bureau of the regional states including SNNPR on children, youth, and women's affairs has adapted the list of harmful traditional practices identified at national level to their respective areas of administration and joined the national campaign to stop the practices. In South Omo zone, in addition to those in the national and regional list, practices such as chest incisions, livestock raiding, expensive ritual practices, and war songs are included. The children and women's affairs bureaus, aimed at reducing the prevalence rate of these practices in their respective areas was established all across administrative layers up to grassroots to take the responsibility of coordinating and supporting actions.

FGM, early marriage, rape, and abduction are among the top lists of HTP all across pastoral areas in the country. The civil code of the country states that taking of a minor girl for marriage or sexually related

practices results in severe punishments depending on the results of victims. Similarly, abduction and elopement by violence result in imprisonment of at least five years and a moral compensation of the victim in some ways. If livestock raiding is considered equivalent to stealing of properties, then it is a criminal activity that shall result in simple imprisonment up to five years as per terms of the punishment indicated in article 665 of the penal code of 2004. However, it is often the case that only some portion of the stolen cattle is returned to the owners. Even after the adoption of the pastoralists modality agreement of the recent years, elders of the corresponding groups are often negotiated by state officials only to return the lost livestock, when possible the whole, otherwise only some of them and make reconciliation. The scarification practice which is made after a homicide in order to release a “bad feeling” through bleeding is now banned by local laws, which means that perpetrators are arrested and fined if they are found with a fresh chest incision. Also activities and songs that provoke conflict are declared to be criminal even though they are still existent in every village. But for such kind of deeply rooted everyday practices, the local regulation begs further qualification despite the fact that it is not easy to go against it. Despite the labelling and legal charge associated with it, implementation of these laws has always been a matter of negotiation between the state officials and customary authorities at the local level. To this end he government structure and non-governmental organizations in charge are still preoccupied with “awareness creation” rather than bringing the desired result in practice.

In the case of Female Genital Mutilation, instead of totally banning it for once and all, the ritual leaders were told to resort to the less severe ways of doing it. Early marriage is still present in the lowlands with stumpy consideration from the law enforcement agents and institutions. A large number of girls who have married even old people but such a marriage are not extensively dealt in practical terms. Unmarried girls hold a special place in the society particularly due to fertility and bride wealth connected to them, different from earlier marriage, rape is less likely tolerated by both customary and modern legal institutions. In addition to the court trial, which often results in imprisonment of at least five years as stated in Article 620 of criminal code of 2004, perpetrators are fined in the customary legal procedures according to which they pay some cattle to the victim’s families and expected to compensate the council of elders who handles the matter and such negotiation is respectively enforced by the customary institutions and tolerated by the court. Leaping over cattle is a practice that is widely known among the Hamar of southern Ethiopia. It is among practices that could be included in the list of cultural rights of Nations, Nationalities, and Peoples of Ethiopia guaranteed in Article 39 (2) of the 1995 FDRE constitution. The practice is accompanied by the beating of women in the scene, which is now listed as a harmful practice and hence specified illegitimate in the recent years. Where beating happens against such a prohibition, those who tolerated the practice such as the initiates, their parents and the community leaders as a whole are arrested and put in some sort of trials. Gender affairs office established at all levels of administration and in all offices campaigns against such kind of practices which is often described as a violation of the right of women and children. However, there are still growing and fresh resistance against such a prohibition and campaign, for the fact that the ritual would not be complete if beating does not occur. This is clearly discerned from the feelings of women on the scene who are in most cases flooded with tears when the bundles of partially dried sticks that they brought for the purpose are not used.

The cultures of so many groups in the South Omoincluded whipping as an important means of social control in the past. However, the practice is banned in the recent years due to the assumption that it accelerates violence in the area. Appearing with sticks and sharp objects in the towns on the daylight is similarly banned by local regulations which allow the confiscation of it from those who violate the rule. The practice is endorsed in the local administrative regulations for the fact that it is thought to be closely connected to intimidation and violence. Milk teeth extraction is another widely shared cultural practice listed in the category of harmful traditional practices the execution of which is punishable by local regulations. It is among practices that express their notion of being pastoral, for example, being Daasanech, Hamar, Kara, Nyangatom, or Mursi. Among Hamar, children grew up with milk teeth or born outside a wedlock or fail to fit into particular ritual procedures are categorized as*mingi* (impure or incomplete social beings) and are, therefore, thrown away in the bush. Such a practice is now punishable by local regulation but the practice is yet to wan. In recent years, a local NGO was established to take care of such children and negotiate the two positions of legal implementation. Those who throw away children are identified and put on trial but such a measure of the government is not plainly accepted by the pastoralists. In recent years, fresh chest incisions, which is said to be made to “release bad feelings” after killing an enemy, are used by the state bureaucrats as an evidence to identify people who have recently committed homicide. But their cultural values is so high still today so that those who have committed homicide like to have them, even long after finishing imprisonment. Practices like “war songs” are among those that are identified harmful and hence are urged to be replaced by “peace and development songs”. They still exist in large scale and that is quite tempting for the government and NGOs to regulate such kind of practices in the rural villages.

II. CONCLUSION

The primary aim of this paper is to bring together the legal frameworks that influenced the conditions of pastoralists across time and space. The modern legal documentsscarcely mentioned or indirectly addressed the pastoralists and their way of life. The first constitution of 1931 associatedpastoralists to the farming communities, and the revised constitution of 1955 described them in terms of their right to access grazing lands in a way that it does not violate terms of international agreements, like the boundary agreement. The decrees of the *Derg* regime since 1974 put them in the rural cooperatives just like that of the farming communities. However, the *Derg*constitution of 1987 relatively better recognized them. The EPDRF regime since 1991 put pastoralistsin the ethnolinguistic category which confers them a status of "nationalities." The question is which way of inclusion, pastoralists as nomadic people or ethnic groups or even "nationalities", better defines them or serves their interest or remain consistent is open for the judgment. The inclusion of pastoralists in the modern law is closely connected to the socio-economic and cultural policy reforms and the general political environment in the non-pastoral areas in Ethiopia and neighbouring countries.

The legal documents of various regimes implicitly mentioned or carelessly consideredpastoralists. Different from their image portrayed in these laws, they tend to appear more dynamic and uniquely exposed to and largely shaped by international boundary agreements, as well as socio-economic and political reforms of the national border. Despite the inherent tendency of relying heavily on their own custom and means of social control, the pastoralists are aware of the multiplicity of the legal environment along the border and skilfully exploit it for their reason. The social order in the pastoral areas is an indication of the recent dynamics of conflict management in the pastoral community of Ethiopia. The source of such dynamics is closely connected to the political and administrative reforms of post 1991 period. Thus, an increasing degree of legal recognition of pastoralism is accompanied by policy reforms that have led to mutual recognition of the statutory and customary practices. However, the state is criticized for its intention to utilize the resource in the area. The negotiated status of the state in the implementation of laws and policies related to some cultural practices could be considered another aspect of mutual inclusion of the two frameworks. Finally, this study confirms the customary law remains to be the general guideline for everyday life in the lowlands of South Omo and counterparts nowadays.

BIBLIOGRAPHY

[1]. Agreement between the Government of the Federal Democratic Republic of Ethiopia (Ministry Of Agriculture and Rural Development) and the Southern Nations, Nationalities and Peoples Regional State and African Parks(Ethiopia) Concerning the Management of the Omo National Park, November 2005

[2]. Asmarom Legesse. 1973. Gada. Three Approaches to the Study of African Society. New York: Free Press

[3]. Azarya, Victor. 'Pastoralism and the State in Africa: Marginality or Incorporation?' NomadicPeoples, No.38, 1990

[4]. Constitutional Commission. 1955. The Revised Constitution of Ethiopia. Addis Ababa

[5]. Constitutional Commission. 1995. The Constitution of the People's Democratic Republic of Ethiopia. Addis Ababa

[6]. Central Statistics Authority. 2008. Summary and Statistical Report of the 2007 Population and Housing Census: Addis Ababa: CSA

[7]. Dessalegn Rahmato. 2011. Land to Investors: Large-Scale Land Transfers in Ethiopia. Addis Ababa. Forum for Social Studies

[8]. Girke Felix.2015. 'The Uncertainty of Power and the Certainty of Irony: Encountering the State in Kara, Southern Ethiopia. In Culture, Catastrophe and Rhetoric: The Texture of Political Action. Studies in Rhetoric and Culture (eds. Hariman, Robert et al) New York. Berghahn.

[9]. Girma Kelboro and Stellmacher, Till. 2012. Contesting the National Park theorem? Governance and Land Use in Nech Sar National Park, Ethiopia. ZEF Working paper 104

[10]. House of Peoples Representatives. 1995. Constitution of the Federal Democratic Republic of Ethiopia. Addis Ababa: Negarit Gazeta

[11]. House of Peoples Representatives. 1997. Federal Proclamation on Rural Land Administration. Addis Ababa: Negarit Gazeta

[12]. House of Peoples Representatives. 2002. Proclamation No. 280/2002: Re-Enactment of the Investment Proclamation: Addis Ababa

[13]. Houtteman, Yvan. 2011. Living in the Naval of Waag: The Ritual Tradition of the Daasanech, Southwestern Ethiopia. Ghent

[14]. Little, Peter D. and et'al . 2010). "Retrospective Assessment of Pastoral Policies in Ethiopia, 1991-2008: Pastoral Economic Growth and Development Policy Assessment, Ethiopia,"

[15]. Markakis, John. 2011. The Last Two Frontiers. New York: James Currey

[16]. Misganaw Brehanesellasie. 2013. Harmful Traditional Practices in Ethiopia. Hawassa University

[17]. Mohammed, Mussa. 2004. A Comparative Study of Pastoralist Parliamentary Groups: Case Study on the Pastoral Affairs Standing Committee of Ethiopia. Addis Ababa

[18]. Mazrui, Ali. 2001. 'Shifting African Identities: The Boundaries of Ethnicity and Religion in Africa's Experience.' In Shifting African Identities: Vol. II in the Series: Identity? Theory, Politics and History (eds Simon Bakker, Martine Dods and Meshak Khosa). Pretoria: Human Science Council

[19]. Pastoralist Forum Ethiopia. 2005. The Seventh Ethiopian Pastoralist Day (EPD) "Good Governance for Sustainable Pastoral Development" Jointly organized by The Ministry of Federal Affairs and the Pastoralist Forum Ethiopia January 25th 2005 in Dire Dawa

[20]. Pastoralist Forum Ethiopia. Report on 15th Ethiopian Pastoralist Day (EPD) Celebration (23rd – 25th January 2015, Samara/Afar Regional State)

[21]. Prilleltensky, Isaac. 2005. "In Pursuit of Justice and Well-Being: Critical Approaches to Physical and Mental Health." (http://www.uib.no/isf/people/ doc/prilleltensky/part1/prilleltensky1.ppt. Accessed on 28 Oct 2007)

[22]. Provisional Military Administrative Council. 1975. Proclamation No. 31/75: A Proclamation to Provide for the Public Ownership of Rural Lands. Addis Ababa: Negarit Gazeta

[23]. Provisional Military Administrative Council. Proclamation No 223/1982: A Proclamation to Provide for the Consolidation of Peasant Associations. Addis Ababa
[24]. Scott, James. 1998. Seeing Like the State: How Certain Schemes to Improve the Human Condition Have Failed. New Haven and London: Yale University Press
[25]. _______ . 1987. The Art of Being not Governed: Anarchic History of the Upland Southeast Asia. New Haven and London: Yale University Press
[26]. Southern Nations, Nationalities and Peoples Regional State Council of Nationalities. 1995. Southern Nations, Nationalities and Peoples Regional State Constitution. Hawassa
[27]. Southern Nations, Nationalities and Peoples Regional State Council of Nationalities. 1999. Southern Nations, Nationalities and Peoples Regional State Rural Land Administration and Utilization Proclamation No.110/1999. Hawassa
[28]. Southern Nations, Nationalities and Peoples Regional State Council of Nationalities. 2005. Proclamation No.22/1998: Southern Nations Nationalities Peoples Regional State Investment Administration. Hawassa: Debub Negarit Gazeta
[29]. Steen, William. 1936. The Ethiopian Constitution of 1931. Washington D.C: The Ethiopian Research Council
[30]. Strecker, Ivo. 'Political Discourse in an Egalitarian Society: The Hamar of Ethiopia.' African Yearbook of Rhetoric. Vol 4, No.1 (2013), pp.98-105
[31]. United Nations. 1989. 'Treaty between the Republic of Kenya and the Empire of Ethiopia Respecting the Boundary between the two Countries.' Treaty Series. Vol. 1528, 1-26507
[32]. Uri, Almagor. 2002. 'Institutionalizing a Fringe Territory: The Amhara-Daasanech Relations.' In Southern Marches of Imperial Ethiopia (eds. Donald Donham and Wendy James) Addis Ababa: Addis Ababa University Press
[33]. Workneh Negatu.2011. Economic Interaction of Pastoral Lowlands and Highland Systems and Implications for Northeastern Ethiopia: A Case Study in Northeastern Ethiopia. Forum on Social Studies Report No. 7 Addis Ababa

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