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**THE MODERN FEATURE OF GURAGHE
CUSTOMARY LAW (KICHA) AND ITS
CONTRIBUTION FOR JUSTICE SYSTEM**

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**ADDIS ABABA
ETHIOPIA
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CONTRIBUTION FOR JUSTICE SYSTEM***

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Declaration

I hereby declare that this paper is my original work and I take full responsibility for any failure to observe the conventional rules of citation

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INTRODUCTION

The study of this paper is based on to criticize a written already written literature are review, religious view and on Ethiopian criminal context of capital punishment.

It is also try to support capital punishment. Because as we all knows in our country all aspect of life was corrupted and need strong adjustment.

The first chapter of this paper is more focus on the History of capital punishment. The second chapter is also the History off Ethiopian capital punishment and the context under Ethiopian criminal law and religion and capital punishment.

The third chapter of this paper is discussed conclusion and recommendation.

Finally I have tried in my conclusion and recommendation to summarize and to give some comment.

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Table of content

	Page
CHAPTER ONE	
PROPOSAL OF THE STUDY	1
1. Background of the study.....	1
2. Statement of the problem.....	2
3. Objective of the study.....	3
4. Specific Objective of the study	3
5. Significant of the study.....	3
6. Delimitation and scope of the study.....	3
7. Research methodology.....	4
8 Method of data analysis.....	4
CHAPTER TWO	
CUSTOMARY LAW IN GENERAL	
2.1. Introduction.....	5
2.2. Custom defined	6
2.3. Some of the different customary law in Ethiopia.....	7
CHAPTER THREE	
GENERAL FEATURES OF GURAGHE CUSTOMARY LAW.....	
3.2. Yedem Kicha.....	12
3.2. Yenkit kicha.....	14
3.3. Yekeye kicha.....	14
3.4. Yegeforew kicha.....	15
3.5. Yegurda kicha.....	15
3.6. Economical and social affair.....	15
3.7. Cultural Affair.....	16
CHAPTER FOUR	
THE PRACTICABILITY OF THE CUSTOMARY LAW OF GURAGHE (KICHA).....	
4.1. The practicability of the customary law in general.....	17
4.2. The practicability of the newly emerged part of the customary law.....	21
4.3. Awareness of the society	24
4.4. The effect of putting the customary law in written form on the practicability.....	25
4.5. Commitment of the society to enforce the customary law.....	27
CONCLUSION AND RECOMMENDATION	
Conclusion	30
Recommendation	31

CHAPTER ONE

PROPOSAL OF THE STUDY

1. BACKGROUND OF THE STUDY

Customary law is a law that considered as a culture of the society which they use it as dispute resolution means and a means to protect the right of weak individuals from violation. Because of customary law was started before long time ago, it has its own historical back ground depending on when it started and the culture of the society. In most areas of Ethiopia customary law is a means to dispute resolution up to the present time.

In Ethiopia, there are lots of customary laws. Some of them are not such active they are just historical part of the society, previous time dispute resolution means and a means to protect the right of weak individuals. Their contribution for the justice system in the present society is less because they can not go together with the present time. Even some kinds of customary laws are non active, there are active customary laws which are serving the society yet as an alternative dispute resolution means. They are respected by the society. Guraghe customary law (kitcha) is one of customary laws which are actively contributing for the justice system as an alternative dispute resolution means.

As other customary laws Guraghe customary law (kitcha) has its own historical background. It started before long time ago. According to the book written by Tekle w/Giyorgiss, in the middle of 17 century central government of Ethiopia was not strong. The government could not control most areas of the country and ensured order, peace and the security of the society. Due to the society need to ensure peace, order and the security of the society they establish rule and regulation (kitcha). But elder members of the society explain the history relating it with realign. According to their explanation in the middle of 17 century violation of the right of weak individuals was expanded. To stop the violation of the right of weak individuals the (wake)*of (cheha)* order the traditional administer of (cheha] area. The administer of (cheha) established rule and regulation which expand to other areas. .

Wake is a person that the society believes who has spiritual power
Cheha is one of Sebat Bet guraghe member areas
.....? /..... 1997 ..

Sine then kitcha is serving the society as a way of dispute resolution and means to protect weak Individuals from violation. In September 1990 Guraghe self development association which perform developmental work in the zone organize man power and this man power put it in written form in September 1998 including some articles which where not part of it. Again in September 2007 they revised it including other articles which considered as they are good articles for the development of the society by the drafters.

In the present time some of the old part of the customary law and most of the newly emerged part of the law are not practicable even they are considered as they can contribute for the development of the society and for the justice system. In addition to the non practicability of the newly merged articles, the old part of the law is losing its practicability gradually.

2. STATEMENT OF THE PROBLEM

The customary law of Guraghe (kitcha) which is in written form, the previous one and the revised include some articles which were not part of the customary law before they put it in written form. Some of these newly emerged articles have a sanction for whom violatation of them and some of them do not have a sanction for who violate them. Both kinds of articles are being violated widely by the society in the present time. The customary law is losing its practicability and its contribution for the justice system as an alternative dispute resolutions means. This study tried to identify what the reasons are for non practicability, what future consequent the non practicability has and the awareness of the society.

3. OBJECTIVE OF THE STUDY

The general objectives of the study are to assess the specified problems of the customary law and identify what are the sources of the problem and it tried to propose possible solution. At the same time this study may pave the way to do better on this issue by others.

4 SPECIFIC OBJECTIVE OF THE STUDY

- A. TO identify non practicable article of the law
- B. To identify reason for non practicability
- D. To identify what weakness that the enforcement system have.

5 SIGNIFICANT OF THE STUDY

The significant of this study is to make the customary law practicable and to make it a better alternative dispute resolution means and acceptable customary law in the society.

6 DELIMITATION AND SCOPE OF THE STUDY

In the zone there are other kinds of customary laws but this study was focus on only Sebat Bet Guraghe customary law (kitcha) .

The customary law has other problem than the problems that stated in the proposal but this study tried to see only the stated problem because of time and budget shortage.

When questionnaire was administered, due to the reason that many society members who were targeted for the questionnaire are illiterate they need some one who can help them filling up the questionnaire. Even if when I start my research I had plane to distribute 300 questionnaires I distribute only half of it because it was difficult to help filling up the questionnaire for 300 respondents.

7 RESEARCH METHODOLOGIES

Data was collected using both primary and secondary sources. The major data gathering tools were observation, questionnaire and interview. With regard to questionnaire concerned, Among Guragh zone specifically Sebat Bet Guragh which uses kitcha as their customary law are divided among 9 sections of people. Out of these sections of people more than 30 % of it, 3 sections of people were taken as a sample to represent other sections of people. From one section of people 50 member of society were selected randomly for each section because 50people are convenient to represent the other members of the section of the people which is equivalent to woreda. Interview was conduct to many of society elders and individual who were member of the drafters.

8. METHOD OF DATA ANALYSIS

With regard to the method of data analysis is concerned, all the information whether it is primary or secondary sources, was analyzed in both qualitative and /or quantitative techniques and mainly presented in percentages.

CHAPTER TWO

CUSTOMARY LAW IN GENERAL

2.1. INTRODUCTION

In the world there are lots of kinds of customary laws which are the results of cultural development of determined society. Still now customary law is one of the sources to state law. “The first and the oldest source of law is custom”¹. Custom is part of the culture of a determined society. “Custom can be defined as a practice frequently repeated in a determined locality”². Except in exceptional cases and in some modern features of customary law; in the present time customary laws do not have formal way of drafting and way of heralding; “their acceptance is expressed by the free consent of the people”³.

The features of customary laws differ from society to society depending on their difference in cultures. Even if they have difference to each other they have similarity to each other like customary laws have strong bondage with the morality and religion of the society; they are historical and they are the first kinds of law after natural law because custom emerged earlier than state law. “In the paradoxical relation of primitive people observed in the deep ancient time, there was no custom, no moral rule, no law, no state, no family. Most probably, custom as a rule of conduct was emerged after family was emerged”⁴.

In fact, customary laws are ancient and they are serving the society still now as a source of state law and as alternative dispute resolution means, however, various juries do not have the same Attitude about customary law. They defined it variously depending on their point of view.

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1. Girma Gezew The world History of law and Legal institution: Ancient, Modern – marc 2007 P.4.
 2. Oxford Dictionary of Law, Oxford University press 1997, P.347.
 3. Supra No. 1 P. 4 - 5
 4. Ibid, P. 5

2.2. CUSTOM DEFINED

The following are definitions give for custom by various juries

- a) Austin suggests that “custom is a rule of conduct which the governed observe spontaneously and not in pursuance of law settled by the political superior”⁵.
- b) Prof. Keeton defines “custom as those rules of human action, established by usage and regarded as legally binding by those to whom the rules are applicable, which are adopted by court and applied as a source of law because they are generally followed by the political society as a whole or by some part of it”⁶.
- c) Dr. Allen defines custom as the uniformity of habits or conduct of people under like circumstances. When the people find any act to be good and beneficial and apt and agreeable to their nature and disposition, they use and practice it from time to time and it is by frequent use and multiplication of this act that the custom is made⁷.
- d) Custom is to society as law is to the state. Custom is more natural than law since it is approved and acknowledged by the public opinion of the society at large unlike the law which is acknowledged and approved by the state. When the state starts to emerge from the society, its law should be coincident with and modeled up on the custom of the society. Due to its close link with religion and taboo, Custom is stronger than law which depend and partly on voluntary submission during the beginnings of the legal system than of its mature growth.⁸

5. Austin The Province of Jurisprudence (1954:P.165)

6. Dr. N.V. Paranuape Jurisprudence and legal Theory Jun 4, 2001 P.191

7. Allen,c.k:law in the making. 2006 P. 87

8. Fitzperald. PJ: Salmond on Jurisprudence. (12th ed). P. 191.

Among the above definitions give for custom by various juries the definition of Dr. Allen is more acceptable in Ethiopia context because in Ethiopia customary law is a common behavior of a society and agreeable as it is good for the benefit of the society and practicable for long time.

2.3. SOME OF THE DIFFERENT CUSTOMARY LAWS IN ETHIOPIA

In Ethiopia there are lots of kinds of customary laws. They vary as the number of ethnic groups. Even the number of customary laws is a lot, except few of them, most of them are transfer from generation to generation orally. They are not well known by other parts of the people who are outside to the determined society; except by the member of the ethnic group concerned. Among the customary laws which are well known relatively to others are⁹.

1. **Amhara** ethnic group customary law
2. **Tigrrian** ethnic group customary law
3. **Oromo** ethnic group customary law
4. **Guraghe** ethnic group customary law

2.3.1. AMHARA CUSTOMARY LAW

In **Amhara** ethnic group customary law for different kinds of dispute there were /are various kinds of traditional institutions. The most prominent traditional institutions of **Amhara** are “**Abat, yegobez Alequ, Chiqua Shum and yezemed Dagna**”¹⁰.

The dictionary meaning of “**Abat**” is father but according to Abera Gembere beside The dictionary meaning “**Abats**” are group of person who are known for their intelligence and they are elder person were respected and feared in the community.¹¹ This institution was established to decide criminal as well as civil cases on the basis of customary law¹².

9. Abera Jembere Legal History of Ethiopia 1434 – 1974 1998 P. 40.

10. Ibid P. 47

11. Ibid P.47.

12. Ibid P.47.

“The institution of “**yegobez Alequa**” was created by the member of a community wherever there was a cause to revolt because the burden in posed by governors had become unbearable. The “**Gobez Alequa**” was empowered to lead all able-bodied men in the community”¹³.

“**Chiqua Shum**” was another well established administrative institution in the **Amhara** comminute besides administrating the locality the “**chiqu shum**” was also empowered to adjudicate case involving divorce, battering, tress pass, and other Mainer cases¹⁴.

“**Yezemed Dagna**” is/are person/group of person who was/were elected among family members whenever there were conflicts among family names members. The function of “yezemed dagna” was to bring the conflicting party two a solution before they going to regular courts because if they go to regular courts the decision of regular courts may damaged there family relation ship.¹⁵.

2.3.2. THE CUSTOMARY LAW OF TIGRAY

In “**Tigray**” there are various traditional institutions for dispute resolution. According to Giday Degefu the following are traditional institutions¹⁶.

1. Family or close relative arbitration- members of the immediate or extended family try to intervene and settle their dispute.

13. Ibid P.47.

14. Ibid P.48.

15. Ibid P.48 - 49.

16. Giday Degefu Koraro Traditional mechanisms of conflict resolution in Ethiopia- 2000 P.116.

2. Community elders- here members are elders, usually Christians, who have good reputations in the community. A churchman is usually the fourth member of the community elders. The churchman has indeed, as “**Abbat-Nebissi**”/ religious father, a great role in the Tegrean followers of the Catholic Church.
3. Local rulers- a given locality usually has “**Atbiya-Dagna**” or/and “**chicka-shum**” a local ruler. The local central government ruler can sometimes mediate.

2.3.3. THE CUSTOMARY LAW OF OROMO

In the **Oromo** ethnic group there was well known democratic system which is called “**Gedaa**” system. “**Gedaa**” system traditional institutions/individuals are more of administrative/political organs than dispute resolution institutions. “**Gedaa**” system organizes its officials based on age wise and nomination. According to Gidy Degefu the following are the “**Gedaa**” officials and their duties in “**Tulluma Gedaa**” practice¹⁷.

1. Abba Bokku: President
2. Abba Bokuu: First vice-president
3. Abba Bokku: Second vice-president
4. Abba Chaffee: Chairman of the Assembly (Chaffee)
5. Abba Dubbi: Speakert who presents the decisions of the presidium to the Assembly
6. Abba Seera: Memorizes the laws and the results of the Assembly’s deliberations
7. Abba Alanga: Judge who executes the decisions
8. Abba Duula: In charge of the army
9. Abba Saa: In charge of the economy.

17. Ibid P.63 -64.

2.3.4. THE CUSTOMARY LAW OF GURAGHE

Guraghe Zone is one of Ethiopia’s southern nations and nationalities administration eleven zones and five special woredas. The neighboring woredas to the zone are west showa of Oromiya Region at north, east showa of Oromiya Region at east, south Ethiopia Nations Yeyem special woreda at west, Kembata (*Alaba Tembaro*) at south¹⁸.

Guraghe Zone comprises more than two ethnic groups. Even if the ethnic groups have similarities to some extent, they have their own distinct language, culture, value, social identities. Many of the society follow Orthodox Christian or Muslim Religion; there are few follows of Protestant and Catholic Christian religion.

The density of “**Guraghe**” Zone population is high. Even many members of the society who live in the zone are farmers; they do not have sufficient land to farm. “Over 98% of “**Guraghe**” youth who constitute a majority of the population migrate to other parts of Ethiopia and the rest of the world in search of work and education”¹⁹.

“**Guraghe**” Ethnic group members are well now for their being sociable, hard workers, interprueners and Business minded people. Many members of the society who live out side the zone are not employees of governmental institutions or non governmental institutions. Many of them run their own Business what ever its status and income is.

18. /..... .. ./.....
... 1988 ..5

19. Yirga Gebre Making peace in Ethiopia: Five Cases of Traditional Mechanisms for Conflict Resolution 2007 P. 123

“Guraghe land proper is basically divided in to west Guraghe and East Guraghe”.²⁰ The west Guraghe (sebatbet) which use kicha as a customary law comprise A) Cheha B) Geta C) Inemor & Aner D) Eza E) Gomare F) Abeshgie G) Moher & Aklil H) Endigan which have a little difference than others in naming of the traditional dispute resolution institutions. The Traditional institutions of the west Guraghe (Sebatbet) are:

- A) **Jefore Dagne**: it is institution which makes discussion and gives decision at “**weker**” time among two or more family members who have blood relationship.
- B) **Yesera Dagne**: it is institution which see cases which are relate to “**eder**” and similar things.
- C) “**Tebe Dagne**”: it is wider than “**jefore Dagne**”.
- D) “**muragene Dagne**”: it is institution which see cases among individuals even who are not in the same “**Tebe**”*. It is wider than “**Tebedagne**”.
- E) “**Yekefle Hizbe Shengo**”: it is institution which is highest than the others and it can see murder cases among any one except if the case is between members of two woredas.
- F) “**Yegeweka Shengo**”: it is institution which is an appeal court and it is also law making organ.
- G) “**Yegurda Dagne**”: It is institutions which see cases relate to promises. In a simplified comparison to the formal judicial system, “**Yesera Dagne**” “**muragene Dagne**”, could be regarded as examples of first instance courts; “while “**yekefle-Hizbe Shongo**” maybe considered as high courts. Finally, ex. “**Sebat Bet/yejewoka Shengo**” could be considered as Supreme Court of cassation”²¹.

20. Ibid P. 123

21. Ibid P. 131

* weker is a meeting time after elders completing their day duty.

*Ider is a traditional institution which used to help each other.

* Tebe is a group of people who have cloths blood relation ship.

CHAPTER THREE

GENERAL FEATURES OF GURAGHE CUSTOMARY LAW (KICHA)

As it was discussed in chapter one the customer law of **Guraghe** has various traditional institutions for dispute resolution. This traditional dispute resolution institution gives their decision depending on their customary law which is called “Kicha” which literarily mean rule and regulation.

A book which was written in Amharic language with a title of “•••” Gogot published in 1989 E.C before the customary law of “**Guraghe**” was organized and put in written form; the book divide the customary law of **Guraghe**” among five parts are Yedem Kicha, Enket Kicha, Yekye kicha, Yegegore kicha, Yegurdakicha¹.

Although this five parts of the customary law and the present written form of the customary law are not comprise every part of the customary law, culture and its detail the presents written form of the law besides the five parts comprise of two parts which deals about 1. Economic and social affairs 2. Cultural affairs.

3.1. “YEDEM KICHA”

“**Yedem Kicha**” literally it mean rule in relation to blood. it is part of the law which deals about criminal cases like murder and physical damage. Some one who violates this part of the law is expected to pay compensation for the family of the deceased or for who got physical damaged. The amount of the compensation varies from case to case depending on the type of crime he committed and the extent of the damage. Any punishment of compensation payment in relation to this part of the law Are practicable in addition to regular court punishment according to criminal law.

1. DenberuAlemu, Mengistu Hailemariam, fiukre Hailemariam (•••) Gogot Page 128:1987 E.C

In the customary law **Guraghe** murder divided among three parts depending on the intension of the convict; these are “**Muradum**” “**Mudera**” and “**Yemedera Medema**”

- A. “**Muradum**”:- according to article 43.1 of the customary law If some one murdered some body intentionally, he will be considered as he committed “**muradum**” murder for this kind of crime the customary law put a compensation payment 30,000 Birr for a family of the deceased.
- B. “**Mudera**”:- according to article 43.2 of the customary law If someone Kill somebody negligently he will be considered as he committed “**mudera**” murder. For this kind of crime the customary law put a compensations payment of 15,000 Birr for a family of the deceased.
- C. “**Yemedera Medera**”:- according to article 43.3 of the customary law If someone kill somebody without intention and if is there no negligent on him this kind of killing a person called “**Yemedera Medera**”. A person who is liable for “**yemedera medera**” is expected to pay 7,500 Birr for the family of the deceased as compensation.

Besides the compensation payment by the customary law the convict need to perform what a “**wege**”^{*} order him to do as a punishment to wash his hand from the blood. There is a strong believes in the society; even if the compensation paid for the family of the deceased unless the convict asks the “**Wege**” what to perform as a punishment and perform accordingly there will be a disaster on his descendants in the future.

* Wege:- for all Guraghe there is only one woge some society members believe that this person and his descendents have natural intellectuality but other group of society members argue that they have spiritually power.
The Modern Feature of Guraghe Customary Law (Kicha) and its contribution for Justice System

If is there murder case and someone convicted of; he will not pay the whole amount of the money by him self what ever his economical status is. Every relatives of the convict have a duty to contribute as much as they can. if one of the relative of the convict person for a murder case dose not contributes as much he can there is a strong believe that there will be a disaster on his descendant in a future because he did not clear his bloody hand due to his relative.

3.2. “YENKIT KICHA”

According to article 4 of the customary law “Yenkit Kicha” is part of the law which deals about marriage and family maters. This part of the law has details of the way of weeding ceremony, requirement of engagement for marriage and its effects and effect of divorce. The interesting part of this part of the law is it puts HIV AIDS test as requirement before marriage at a stage of engagement. it is mandatory and practicable in the society.

3.3. “YEKEYE KICAH”

According to article 33.2 of the customary law “Yekeye Kicha” is part of the law which deals about a border of land among them self. Neighboring land owners erect stones at there border as a symbol of there border. According to the culture and the customary law no one can erect the stone by him self without the presence of society elders and ‘gurada dagna’. If erecting bordering stone is needed selected elders should be present. In front of the selected elders and the ”Gurda Dagna” the neighboring land owners promise to each other to do not touch the bordering stone without.

the presences of elders and “Gurda Dagna” .In the culture there is a strong believe that if some one touch this stone without the presences of elders and “Gurda Dagna”, he will be cursed and his descendant will not have successes in their future life and there will be a disaster on them in the future.

3.4. **“YEGEFURE KICHA”**

According to article 33.3 of the customary law “Yegefore Kicha” is part of the law which deals about roads. Except few houses in front of many houses there are main roads. The width of this road is twelve “zeng”^{*} or more. No one can farm or build on this land, the society will destroy what he build and farm.

3.5. **“YEGURDA KICHA”**

According to article 48.2 of the customary law **“Gurda Kicah”** is part of the law which deals about contractual cases. In the culture of **Guraghe** society if individuals need to engage in a contract they promise to each other to perform accordingly. Where ever they made there contract they make their promise to act according to their contract in front of society elders and a person who be selected by parties as **“Gurada Dagna”**. The **“Gurda dagna”** will be judge for the future if is there dispute among the contracting parties.

3.6. **ECONOMIC AND SOCIAL AFFAIR FROM ARTICLE 13-22**

In this part of the law specially the written one deals about the economical and social afire of the society. In the society there are cultures which are related to sorrow when some one passes way among them and memorial ceremony about the deceased. In the society if some one pass away female married relatives of the person who passed away are expected to bring oxen and other consumable goods to the ceremony. Now a day this culture is believed

^{*} Zeng:- is a traditional distance measurement instrument which is equivalent to 1.5 meter
The Modern Feature of Guraghe Customary Law (Kicha) and its contribution for Justice System

to be reason for economical problem of the society. To avoid this economical problem of the society the revised customary law of Guraghe “kicha” article 13.2 say that if some one who do not have sufficient bring oxen for sorrow ceremony it will be a reason for being cursed by society elders, if some one pass away there is culture of traveling for burring the corpse from city to ruler zone, from ruler zones to cities this practice is prohibited by article 13.4 of “Kicha”, to have sorrow ceremony more than three days is prohibited by article 13.7, putting flower on a tomb is prohibited by article 13.8, to build sculpture on a tomb is prohibited act by article 13.9 except for memorial ceremony which is related to religion memorial ceremony is prohibited , who violate this will be punished 2000 Birr in accordance to article 14.1 and 14.2, every members of the society have a duty to late their children to go to school by article 23. The interesting part of the law is it prohibits a marriage for a girl who do not complete grade 12 unless the man who going to marred her promises to late her to complete her education after marriage. In the society there is a culture of helping each other which they called it “wekya”. According to the culture one who have a lot of cows distribute his cows to others, not as a gift but to let them consume the product of the cow and to give him one if the cow get birth to two bulls according to “kicha” one who give “Wekya” unless he pay compensation he can not take back his cow before the receiver person consume the product of the cow for a year.

3.7. CULTURAL AFFAIR

This part of the law deals about cultural affair of the society it declare holidays like mothers day article 32.2.1, girls day article 32.2.1 and it deals about the specific architecture of cottage building roads and about traditional medication.

CHAPTER FOUR

THE PRACTICABILITY OF THE CUSTOMARY LAW

OF GURAGHE (KICHA)

This chapter is concerned with the Practicability of the Customary Law and analysis of data. The basis of data gathered through questionnaires and personal observation. Interviewee was made for people who were the drafter of the written form of the customary law as it was planed in the proposal. Due to the reason that it was not satisfactory, interviewee was made to other society elders. The questionnaires comprise of 7 close ended question 6 open ended questions and 3 personal questions. The questionnaires were distributed among three randomly selected woredas, 50 questionnaires for each. Due to the reason that the questionnaires were filled up with the help of the three volunteer students I could collect all the questionnaires.

In the questionnaires the respondent were asked to mention their sex, age and educational background to evaluate the reliability of their respond and as long as the research is socio legal, I tray my best to include all kind of society members except who are under age because they are not such knowledgeable about their customary law.

Personal data about the respondent of the questionnaires

No	Item	Respondent							
		M				F			
1	Sex								
2	Age	≤ 35	>35 & ≤ 50	>50	Total	≤ 35	> 35 & ≤ 50	>50	Total
		14	29	32	75	57	11	7	57
		18%	39%	43%	100 %	76%	17%	9%	100%
3	Educational Background	Illiterates	Literates	> grade 6	Total	Illiterates	Literates	> grade 6	Total
		40	27	8	75	73	2	0	75
		53%	36%	11%	100 %	98%	3%	0%	100%

As it can be seen in the above table there are 75 female respondents and 75 male respondents. The number of female respondents and Male respondents is equal. This equality is not due to female and male population is equal in the society. It is because I distribute the questionnaires equally for each Gender according to my observation many of the society members are female elders. To know the reason why the number of male youngsters is less a question was asked for some member of the society. They respond that it is due to many male youngster member of the society migrate to the capital city looking for a job. They get back to their village when there is holiday. Some respondents respond that even if in the present time the number of male youngsters is less now a days the number of female migrants is increasing due to the Arab countries.

As it can be seen in the above table Item number 2 male respondents older than 50 year are 32 but the numbers of female respondents who are older than 50 year are 7 this difference was due to many female members of the society had not the commitment to respond the questionnaires because they believe that they are not knowledgeable as male member of the society.

4.1. THE PRACTICABILITY OF THE CUSTOMARY LAW IN GENERAL

The main purpose of law is to secure and maintain peace and security in the society. To bring this purpose to reality whatever the law in kind it needs to be practicable. The practicability of the law is important. Unless it is practicable law by it self is meaningless; we can consider it as it is a fiction or what the author wishes to the society. In every kinds of law even in federal stage there is problem of practicability even the extents of the problem vary from law to law. Now a day relatively customary laws have problem of practicability than state law among the costmary laws which have a problem in practicability Guraghe Customary law “Kicha” is one of them. To know the extent of it non practicability and reasons for its non practicability respondents were asked questions in questionnaire form and interview. They respond as follow.

The following table is the respond of respondents for the question with what rate is the written form of the customary law (Kicha) is practicable.

Table 1

No	Item	Male		Female		Total	
		No	%	No	%	No	%
1	Too practicable	10	7%	8	5%	19	12%
2	Practicable	16	11%	15	10%	31	21%
3	Less Practicable	33	26%	40	23%	73	49%
4	Non Practicable	10	7%	17	12%	27	19%

As it can be seen in table 1 among the respondents 19 (12%) of them respond that the written form of the customary law (Kicha) is too practicable. 27(19%) of the respondent respond that it is non practical, 31 (21%) of them respond that It is practicable and 73(49%) of the respondent respond that it is less practicable.

Due to the reason that the majority of the respondents respond that the customary law is less practicable and non practicable it mean that the customary law is almost non practical.

Besides the close ended question respondents were asked to mention what are the reasons for the non-practicability of the customary law (kicha). all respondents mentioned that it is due to lack of enforcement system, 79 (53%) of the respondent mention that it is due to the modernization the society is disregarding culture, 27(18%) of the respondents mentioned that it due to lack of awareness and other varies reasons.

In the interview one of the drafter of the written form of the customary law were asked the rate of the practicability of the written form of the customary law and to mention its reason. He said that the customary law is not practicable as such but it is not due to the customary law it self. It is due to the influence of the political organ. Many society members do not like to participate in political matter. For that reason unless it is mandatory in some reason they do not like to go to Kebeles and they do not like to contact Kebele Officials. To avoid these problems the Government nominates respected and feared elders of the society and makes them its member. Due to this many society members give up respecting for those elders and considering the customary law as it is a state law.

As long as they consider the customary law as it is a state law they prefer to go to formal courts or police stations than to the traditional dispute resolution institutions. Besides the above respondent other drafter of the customary law was asked the same question. When he responds for the question he said that it is not such Practical. it is due to we didn't introduce the newly emerged part of the law as it is needed and in some case it is due to the influence of the society members who are living in Addis Ababa; because of they do not have respect for the customary law as the society members who live in the Guraghe Zone and they have money to afforded the punishment.

4.2. THE PRACTICABILITY OF THE NEWLY EMERGED PART OF THE CUSTOMARY LAW

One of the good Features of Guraghe customary law “kicha” is it try to up grade it self by including new articles and changing the old part to make it up date. For example the customary law have newly emerged articles which deals about HIV AIDS. The written form of the customary law emerged a lot of articles which were not part of the previous customary law of the society. Due to the reason that these newly emerged articles are new for the society they have their own impacts on the practicability of the law. Most probably the practicability of newly emerged articles are not equal to the previous one; for many reasons. This newly emerged part of the law comprise articles like a prohibition on chewing chat, sending under age children for a job out side their village, marriage before completing high school education etc... which can be consider as they are good for the good being of the society development if they are practicable. To evaluate practicability of specific articles in the newly emerged part of the customary law (Kicha) respondents were asked the rate of the practicality of the prohibition on Chewing Chat & Drinking “Areki” (Alcohol) in sorrow and engagement ceremonies.

The Modern Feature of Guraghe Customary Law (Kcha) and its Contribution for justice system

Table 2

No	Item	Male		Female		Total	
		No	%	No	%	No	%
1	Too practicable	0	0%	0	0%	0	0%
2	Practicable	0	0%	0	0%	0	0%
3	Less Practicable	66	44%	62	41%	128	85%
4	Non Practicable	9	6%	13	9%	22	15%

As it can be seen in table 2 none of the respondent responded that the prohibition on checking chat and drinking “araki” (alcohol) is too practicable and practicable. 22(15%) of the respondent respond that it is not practicable and 128 (85%) of the respondents respond that it is less practicable.

Due to the reason that the majority of the respondents respond that it is less practicable and the remaining respondents respond it is non practicable. This show that generally the newly emerged articles are almost non practicable.

Besides the above close ended question respondent were asked to mention other none practicable part of the customary law and what are the reasons. 89(59%) of them mentioned Articles which are related to wedding and deceased memorial ceremony.

About the reasons for none practicability of the customary law all of the respondents mentioned that it is due to lack of enforcement system, 18(12%) of the respondents mentioned that it is due to the law is in violation of the culture of the society and some other varies reasons.

Besides the above open ended question respondent were asked the rate of the practicability of the prohibition on sending under age children out side their village for a job.

Table 3

No	Item	Male		Female		Total	
		No	%	No	%	No	%
1	Too practicable	0	0%	0	0%	0	0%
2	Practicable	0	0%	0	0%	0	0%
3	Less Practicable	52	35%	58	39%	110	74%
4	Non Practicable	23	15%	17	11%	40	26%

As it can be seen in table 3 none of the respondents respond that the prohibition on sending under age children out side their village for a job is too practicable and none practicable, 40(26%) of respondent respond that it is none practicable and 110(74%) of the respondent respond that it is less practicable.

Due to the reason that the majority of the respondents respond that it is less practicable and the remaining respondents respond it is non practicable. This show that generally the newly emerged articles are almost non practicable

Besides the close ended questions respondents were asked to mention what are the reasons to none practicability of the prohibition. All respondents mention that it is due to lack of enforcement system 103 (69%) of the respondent respond it is due to the economical problem of the society and some other varies reasons.

In the interview one of the drafter Of the written form of the customary law were asked in what rate does the newly emerged part of the law like chewing Chat, drinking alcohol and sending under age children outside there village for a job is practical and what are the reasons for the non practicability. He said that relatively the newly emerged part of the law is not practicable as the privies one. It is due to they are not well known by the society members and the society member did not practice them for a long time as the privies part of the law. If we can introduce the customary law to the society in the future it will be practicable.

4.3. AWARENESS OF THE SOCIETY

Every society member is expected to be aware of rule and regulation which is mandatory for him to act accordingly. Unless the society members are aware of their rule and regulation (customary law) it will be difficult for them to act according to it. Awareness of the society about the customary law is important for the practicability of it. To evaluate the awareness of the society about the customary law of Guraghe (Kicah) respondents were asked the extent of the awareness of the society about the customary law (Kicha).

Table 4

No	Item	Male		Female		Total	
		%	No	No	%	No	%
1	Too Aware	4%	3	3	2%	7	5%
2	Aware	21%	14	18	12%	39	26%
3	Less aware	44%	29	47	31%	91	60%
4	None aware	6%	4	7	5%	13	9%

As it can be seen in table 4, 7 (5%) of the respondents respond that the society is too aware about the customary law (Kcha), 13(9%) of the respondents respond that it is none aware, 39(26%) of the respondents respond it is aware and 91(60%) of the respondents respond that it is less aware.

Due to the reason that the majority respondents respond the society is less aware the above table can show us that the society is less aware of the customary law.

In the interview one of the society elders were asked about the awareness of the society about the customary law. He said that the society is aware in general but many members are not aware for the newly emerged part of the law.

4.4. THE EFFECT OF PUTTING THE CUSTOMARY LAW IN WRITTEN FORM ON THE PRACTICABILITY

Putting an oral customary law of the society in written form is a development. the Customary law can be accessible for the society, for one who need to see it and in a future even if is their any change it will be good reference for who study the customary law; it can show him its evolution. Besides as it shown previously awareness of the society is important part of the customary law for its practicability; due to the reason that putting the customary law in the written form has its own impact on the awareness of the society; it has impact on the practicability of the law too. To identify the difference of practicability of the customary law before it was presented in written form and after its presentation respondents were asked a close ended question relatively which one of the customary law before it was presented in written form and after is practicable.

Table 5

No	Item	Male		Female		Total	
		No	%	No	%	No	%
1	Too practicable	10	6%	6	4%	16	10%
2	Practicable	60	40%	64	43%	124	83%
3	Less Practicable	1	1%	3	2%	4	3%
4	Non Practicable	4	3%	2	1%	6	4%

As it can be seen in table 5, 4 (3%) of the respondents respond that they don't know if the customary law (kicha) was practicable before it was presented in written form or after, 6(4%) of the respondents respond that the practicability of the customary law is the same after it presented in written form and before, 16(10%) of them respond that it is more practicable after the presentation of the customary law in written form and 124(82%) of the respondent respond that the customary law was practicable before it was presented in written form.

In the interview one of the society elders were asked the deferens of the practicability of the customary law after it was presented in written form. He said that the customary law was practicable before it was presented in written form. Now a day society members do not respect elders as they respect before

As it shown in the above table and interpretation the customary law was more practicable before they put it in written form. This is not due to the effect of putting the customary law and written form. It is due to other reasons.

4.5. COMMITMENT OF THE SOCIETY TO ENFORCE THE CUSTOMARY LAW

Mostly customary law do not have executive organ the executive organ is society it self. To enforce the customary law and make it practicable the commitment of the society to enforce it is important fact.

To evaluate the rate of victims taking their case to traditional dispute resolution institution when some one violate their right respondents were asked with what rate victims take their case to traditional dispute resolution institution when some one violate their right.

Table 6

No	Item	Male		Female		Total	
		No	%	No	%	No	%
1	Very high	37	22%	31	23%	68	45%
2	High	35	23%	29	20%	64	43%
3	Low	5	3%	6	4%	11	7%
4	Very low	2	2%	5	3%	7	5%

As it can be seen in table 6,7 (5%) of the respondents respond that the extent of victims taking their case to traditional dispute resolution institutions is very low, 11(7%) of the respondents respond that it is low, 64(42%) of the respondents respond that it is high and 68(45%) of them respond it is very high.

Due to the reason that the majority the respondent respond very high and high the above table can show us the society members have the commitment to take their case to traditional institution when some one violate their right.

Besides the close ended question respondents were asked to mention what are the reasons that why victims do not take their case to traditional dispute resolution institutions when some one violate their right, 76, (51%) of them mentioned that it is due to mostly conflicting parties negotiate each other with out going to the traditional institutions and 16 (10%) of the respondent mentioned that it is due parties give pardon to each other

To evaluate the extent of the society commitment to take action or take the case to traditional dispute resolution institution when some one violet the customary law which do not have relation with individual right. Respondents were asked the extent of taking case if some one violates the customary laws which not have relation with individuals' right.

Table 7

No	Item	Male		Female		Total	
		No	%	No	%	No	%
1	Very high	0	0%	0	0%	0	0%
2	High	0	0%	0	0%	0	0%
3	Low	52	35	46	31	98	66%
4	Very low	23	15	29	19	52	34%

As it can be seen in table 7 none of the respondents respond that extent of taking the case when there is violation of the customary law which is not related to individuals right is very high and high, 52(34%) of the respondents respond it is very low and 98(66%) of the respondents respond that it is low.

According to the above tables data unless the violation of the customary law is related to individual's right many of the society members do not have the commitment to take the case to traditional dispute resolution institutions. This lack of commitment may have impact on the practicality of articles like prohibition on Chewing chat and others.

CONCLUSION AND RECOMMENDATION

CONCLUSION

As it revealed in the research finding, the customary law of Guragehe (kicha) is not such practicable. The customary law was more practicable before they put it in written form than after they put it in written form. The newly emerged part of the customary law is non practicable relatively to the privies part of the customary law. Society members do not respect society elders as they respect them before and many society members do not have the commitment to enforce the customary law.

According to the research finding the reasons to the non practicability of the customary law are due to lack of enforcement system, non awareness of the society to the customary law, lack of commitment to enforce the customary law and the influence of the government by nominating society elders as politicians.

RECOMMENDATIONS

If a customary law is practicable it can contribute a lot to the justice system. Unless it is practicable the law by it self is meaningless. To make it practicable the society members should be aware of it. For awareness of the society about the customary law concerned groups or organizations should orient the society about the customary law and make the written form customary law available simply.

Besides awareness of the customary law for its practicability society elders should be respected because the present time the only executing organ to the customary law are society elders. To make the society elders respected by society the government should give up nominating society elders as politician in order to make the society members participant in political matter.

Customary laws do not have an executive organ like what state law has and traditional intuitions for customary law do not have legal power to enforce their decision. Due to this the customary laws have problem of enforcing the decision of traditional dispute resolution institution (society elders). To enhance the enforcement system the government should give recognition for customary laws and give the access to use the state executive organ.

Questionnaire on customary law of Guraghe
(Kicha)

1. Gender Male Female
2. Age ≤ 35 > 35 ≤ 50 > 50
3. Educational Background Illiterate reiterate above grade 6

4. With what rate is the written form of the customary law (kicha) is practicable?

- A. Too practicable B. Practicable
- C. Less practicable le D. Non practicable

5. What are the reasons for the non-practicability?

6. With what rate the prohibition on chewing chat and drinking “Araki” in sorrow and engagement ceremonies is practicable?

- A. Too practicable B. Practicable
- C. Less practicable le D. Non practicable

7. Mention other non practicable articles?

8. What are the reasons for the non-practicability?

9. With what rate the prohibition on sending under age children out side their village for a job is practicable?

- A. Too practicable
- B. Practicable
- C. Less practicable le
- D. Non practicable

10. what are the reasons for the non-practicability?

11. With what rate do the society members are aware of their customary law (kicha)?

- A. too aware
- B. aware
- C. Less aware
- D. none aware

12. Relatively which part of the customary law before it was presented in written form and after presentation is /was practicable?

- A. After presentation
- B. Before Presentation
- C. I don't know
- D. It is the same

13. With what rate victims take their case to traditional dispute resolution institution when some one violates their right.

- A. Very high
- B. High
- C. Low
- D. Very low

14. What are the reasons?

15. With what rate do the society members take the case to traditional institutions when some one violate the customary law which do not have relation with individual right?

- A. Very high
- B. High
- C. Low
- D. Very low

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