

# **Women's Rights and Ethiopia's Future Social Contract: The Need to Adopt an Intersectional Approach**

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## **Abstract**

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE), adopted in 1994, establishes the equal rights of women and men across economic, social, and political spheres, including education, employment, and access to and management of resources. Ethiopia is also a party to various international human rights instruments. However, despite these various measures, women continue to be amongst the most marginalized and vulnerable groups in all aspects compared to men. These facts are indicative of how women's rights are a secondary concern to the state. It is through this observation that this paper questions the FDRE constitutional design, which is based on and demands what we call practices of *phased liberation approach*, which prioritizes and seems to focus exclusively on the politics of nationality/ethnicity as the primary point of struggle of the nation. We argue that, for over 30 years, ethnic identity politics have taken up the national interest at the expense of the structural, developmental, and other human rights struggles that the country faces. As a result, other forms of social, cultural, and political injustice are positioned in the back seat of the government agenda and the overall justice system. To this end, this paper proposes an *intersectional approach* as a potential instrument for shifting to the *phased liberation approach* and creates an opportunity to address the other forms of injustice faced by diverse segments of the society. An *intersectional approach* to Ethiopia's national interests creates a common ground, across diverse human right issues, for political negotiations and designing the new social contract. We argue that there has to be willingness to forgo a phase-by-phase exclusivist approach to reconcile historical grievances; instead, we propose an expansive and inclusive understanding of the multi-layered social and political realities that deeply affect citizenship rights. As such, any debate on the need to reform the existing social contract and the actual reform process of the Constitution, if and when it takes place, needs to be guided by the *intersectional approach*.

## Introduction

In Ethiopia, the ongoing and extremely polarized movements and debates regarding the need to revise the current constitution are entirely centered around nationalist and ethnonationalist politics. Both standpoints, those who advocate for a radical support for ethnic-federalism and those who advocate for dismantling ethnic-federalism believe that the rationale behind their cause is to address the historical and present grievances of Ethiopian people and secure a future that genuinely affords equal citizenship rights. In this context, conversations about alternative solutions for observed gaps in the Constitution often receive no attention, and there is not sufficient knowledge of other socio-political matters that need urgent attention in relation to the revision of the Constitution as well. The issue of women's rights is one such urgent matter that needs to be included in the advocacy and movement to revise the Constitution. Yet the gaps in constitutional rights and the impact that is expressed by many feminist thinkers and human rights advocates in Ethiopia continue to be sidelined.<sup>1</sup>

In this paper, we seek to propose an intersectional approach to explore and rationalize the motive behind the need for revision of the current constitution. As feminists, we attempt to show how the constitutional politics, practice, and experience are entangled with the identity politics that limits the expansiveness of the Constitution to answering the nationalist question. This is demonstrated in scholarship, activism, and advocacy that prioritizes fixing the nationalist question. The obliviousness of such nationalist views and dynamics is indicative of a power structure that is deeply patriarchal in nature.<sup>2</sup> Whether the Constitution needs to

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<sup>1</sup> Teguadda Alebachew, "How and Why Constitutions Are Important for Gender Equality," paper presented at the conference: Re-politicizing the Gender Equality Question (September 30, 2021, Addis Ababa, Ethiopia); Sisay Kinfu, "Cultural Legitimation of Human Rights: The Case of the Gurage Ethno-Cultural Community in Ethiopia" in Tadesse Kassa Woldetsadik, Tesfaye Abate Abebe, & Wolfgang Benedek (eds.), *Implementation of International Human Rights Commitments and the Impact on Ongoing Legal Reforms in Ethiopia* 140 (2020); Tigist S. Hussen, Rahel S. Hassen, & Lidet T. Shiferaw, *The origins of the original sins of federalism: A feminist perspective*, 1 Setawet Journal 65 (2020).

<sup>2</sup> Tigist S. Hussen, "War in the home: marriage and mediation among the Gurage in Ethiopia" (MA thesis, University of the Western Cape, 2011).

be revised or not continues to be a debatable issue, but taking an intersectional approach and inviting different stakeholders and experts on diverse social, political, and economic issues to explore the shortcomings of the Constitution would provide an opportunity to strengthen calls for the revision of the Constitution.

Intersectional feminist thinking and approach, as developed by Kimberlé Crenshaw,<sup>3</sup> helps to analyze intersecting power dynamics that affect individuals and groups in our society. The core principle of intersectionality centers around the idea that the experiences of women and marginalized communities can be better understood through critical observation of the interactions of multiple structural power dynamics.<sup>4</sup> The framework is rooted in the politics of identities of individuals and groups, and how categorizations such as gender, class, religion, ethnicity, sexuality, and race (among others) become enmeshed at different historical moments to form identities that cannot be neatly reduced to separate parts and therefore cannot be solely measured to be in violation of particular human rights.<sup>5</sup> Intersectionality provides an insight on the expansiveness of identity beyond ethnicity, which seems to be the major concern of the elites who promote critical views of the Constitution.

Hill-Collins argues that “one can use the framework of intersectionality to think through social institutions, organizational structures, patterns of social interactions, and other social practices on all levels of social organization.”<sup>6</sup> Thus, intersectionality stresses how the multiple factors mutually construct one another and elaborates to deeply illuminate how different social groups are positioned in unequal power relations. Using this logic, we argue that women’s everyday

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<sup>3</sup> Kimberlé Crenshaw, *Mapping the margins: Intersectionality, identity politics, and violence against women of colour*, 43 Stan. L. Rev., 1241 (1990).

<sup>4</sup> P. Hill-Collins, “Some Group Matters: Intersectionality, Situated Standpoints, and Black Feminist Thought” in L. Richardson, V. Taylor, & N. Whittier (eds.), *Feminist Frontiers* 66 (6<sup>th</sup> ed. 2004).

<sup>5</sup> N. Yuval-Davis, *Intersectionality and feminist politics*, 13.3 European Journal of Women’s Studies 193 (2006).

<sup>6</sup> Hill-Collins, *supra* note 4.

experience should be explored (especially in the context of the current war,<sup>7</sup> violence against women, and political instability in many parts of the country) in terms of the challenges of gender identity construction, cultural or ethnic identity, class, and legal human rights that women face within their families and their communities. One needs to examine these intersecting layers and explore how responsive the Constitution is in its current form and how such gaps function to limit women's choices and scope for agency and resistance and prevent them from defining their experiences as women.<sup>8</sup>

In the following sections, we attempt to show the shortcomings of the constitutional framework in Ethiopia. We argue that while, the quest for the opportunity to revisit and reimagine the Constitution is very important, there has to be a willingness to forgo a phase-by-phase exclusivist approach to reconcile historical grievances; instead, we propose an expansive and inclusive understanding of the multilayered social and political realities that deeply affect citizenship rights. This paper primarily focuses on the women's rights issue, but we strongly believe that the framework can be applicable to other human rights discourses.

## **1. A Phased Liberation Approach: The Current Ethiopian Social Contract and Women**

A *phased liberation approach* with a primary goal of answering the national political questions in Ethiopia, as opposed to an intersectional take on tackling the shortcomings of the Constitution as we know it, remains a deep-rooted misgiving in Ethiopian politics. The essentialization of nationalist issues has been framed as the primary existential threat since the Student Movement in the 1960s. This was later formalized following the regime change in 1991. Following the toppling of

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<sup>7</sup> Since 4 November 2020, Ethiopia has been at war with itself, particularly in the Tigray, Afar, and Amhara regions. The Ethiopia Human Right Council, Amnesty International, and Human Rights Watch have been extensively reporting on war crimes, particularly violence against women, in these regions.

<sup>8</sup> Tigist S. Hussen, *Empowering the nation, disempowering women: The case of Kitcha Customary Law in Ethiopia*, 23.82 Agenda 94 (2009).

the military regime of the Derg in 1991, Ethiopia's government formally transformed into a new political structure based on ethnicity which, according to some commentators, was "radical and pioneering."<sup>9</sup> Many argue that it has been radical because it has introduced territorial autonomy to the federated units in what was previously a highly centralized and unitary state.<sup>10</sup> It has also been pioneering because no other state in Africa or (nearly) around the world uses ethnicity as the center of the state and government structure.<sup>11</sup> The adoption of the Constitution in 1994 formalized the unprecedented structure of the Ethiopian state, enshrining ethnicity as the edifice of the state and the government. Making ethnicity the single most important marker of the state and government was based on a framing of past historical injustices in Ethiopia as "ethnic oppression" and it therefore aimed to empower all ethnic groups. The framing of Ethiopia's past as one of ethnic-based oppression was argued to have been championed by TPLF, the dominant political group on the political scene during the adoption of the FDRE Constitution.<sup>12</sup> In relation to this, many argued that the making of the FDRE Constitution did not fulfil the procedural legitimacy of a social contract since the interests of many sections of the society were not represented.<sup>13</sup> The making of the Constitution mainly involved groups with similar or identical goals and articulation of Ethiopia's historical past.<sup>14</sup> Several other questions related to political, economic, social, and cultural issues were not thus duly tabled and articulated in the constitutional deliberations.

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<sup>9</sup> David Turton, Introduction to *Ethnic Federalism: The Ethiopian Experience in Comparative Perspective* 1 (2006).

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> Bekalu Atenafu Taye, *Ethnic Federalism and Conflict in Ethiopia*, 17.2 AJCR 41 (2017). Also see John Young, *Peasant Revolution in Ethiopia* (2006).

<sup>13</sup> Bekalu Atenafu Taye, *supra* note 12, 41.

<sup>14</sup> Theodore M. Vestal, *An analysis of the new constitution of Ethiopia and the process of its adoption*, 3.2 Northeast African Studies, 21 (1996); Also see Tsegaye Regassa, *The making and legitimacy of the Ethiopian constitution: towards bridging the gap between constitutional design and constitutional practice*, 23.1 Afrika focus 85 (2010); Teguadda Alebachew, "When Constitution Lacks Legitimacy in The Making: The Case of Ethiopia" (LLM Thesis, Addis Ababa University, 2011).

Many argue that “the nationality question”<sup>15</sup> was not the only question that was raised during the Student Movement<sup>16</sup> that shaped the current Ethiopian political structure. There were also claims that Ethiopia’s problem was a result of deeply-seated class hierarchies that created bourgeoisie who capitalize on the marginalization of the poor and drive the nationality question towards addressing their self-interest.<sup>17</sup> Among groups who claimed this view was the All-Ethiopia Socialist Movement (AESM, better known by its Amharic acronym መኢሶን (*Me’ison*)) and the Ethiopian People’s Revolutionary Party (EPRP).<sup>18</sup> Some also cite the peasant revolt against the state from 1941-1970 as evidence that Ethiopia’s problem was class oppression, than ethnic.<sup>19</sup>

Besides the questions of nationality and class, the Student Movement also raised and articulated the oppression of women on the basis of sex and gender. Oppression of women as articulated during the Student Movement was multiple, stemming from different identities: sex, gender, class, and nationality.<sup>20</sup> Some also add violations of individual rights to the list of injustices experienced by the

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<sup>15</sup> A nationality question was framed by the 1960’s Student Movement and specifically articulated by Walleign Mekonnen in an article he published in the HSIU students’ newspaper *Struggle* in November 1969. Walleign Mekonnen argued that Ethiopia was not yet a nation, but a country where there was Amhara and, to a certain extent, Amhara-Tigray supremacy. He argued that, in a country of many nationalities with a varying cultures and styles of dressing, it is only an Amhara and to a certain extent Amhara-Tigray culture or language which characterized the Ethiopian nation. He, accordingly, suggested a system that he called a “genuine national-state,” which is a state in which all nationalities participate equally in state affairs, to preserve and develop its language, its music, and its history, and where no nationality dominates another, be it economically or culturally. See Walleign Mekonnen, *On the questions of nationalities in Ethiopia*, Arts IV, HSIU, Nov. 17, 1969, available at: <https://www.marxists.org/history/erol/ethiopia/nationalities.pdf>.

<sup>16</sup> The Student Movement was a movement for the rejection of oppression in all its forms. It started with a demonstration in 1965, with a slogan of “Land to the Tiller.” Demonstrations continued in the subsequent years with different slogans against the dominant social ward, one of the preeminent concerns being the “nationality question”. See Bahru Zewde, *The Quest for Socialist Utopia: The Ethiopian Student Movement, c. 1960-1974* 229-262 (2014).

<sup>17</sup> Bekalu Atenafu Taye, *supra* note 12.

<sup>18</sup> Lovise Aalen, *Ethnic Federalism in Dominant Party State: The Ethiopian Experience 1991-2000* 4 (2002).

<sup>19</sup> Gebru Tareke, “Rural Protest in Ethiopia, 1941-1970: A study of the three rebellions” 215 (Ph.D. dissertation, Syracuse University, 1977).

<sup>20</sup> Bahru Zewde, *supra* note 16, 225.

Ethiopian people. However, women's rights were never given an equal footing to the nationalist political questions. Naturally, women's struggle for equal rights was put in the back seat to the national question and eventually got erased. Women, yet again, find themselves advocating for their rights with little support in their marginalized position at the periphery. It is important to acknowledge that the differentiation and prioritization of social and political issues is indicative of a particular set of power dynamics. As such, the *phased liberation process* that the nationalist camp has been using, by insisting on first solving the "question of nationality," for a very long time in different historical periods, seems to produce a grievance for different groups in our society.

Despite the articulation of several forms of injustice, including injustices based on gender and sex during the Student Movement, the current constitution adopted a political structure based on the nationality question. As such, ethnicity and ethnic groups is the central theme of the existing Ethiopian social contract. Ethnic groups and their interests make the frame and content of the FDRE Constitution. The Constitution established a state and government structure which is exclusively based on ethnic groups and their interests. As can be seen from the preamble, the Constitution considers itself as a social contract between Nations, Nationalities and Peoples (NNPs).<sup>21</sup> It also deems NNPs sovereign; the ultimate source of power (Art 8); owners of land (Art 40(3)); bestowed with a right to claim territorial autonomy (Art 39); constitutional interpreters (Art, 62(1) cum 61(1&2)) and those who decide on constitutional amendments (Art 105(1)).

The entire constitutional system is all about promoting and protecting ethnic identities. Other identities are, hence, forced to be condensed under ethnic identities. Citizenship is conditioned upon membership to the NNPs. A citizen's relation to the state is thus an indirect one, i.e., mediated by their membership to an ethnic group. The way the Constitution acknowledges ethnic identity accordingly makes other identities politically insignificant. The Constitution lacks a frame to address other experiences of historical injustice on the basis of other

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<sup>21</sup> NNP's, even if they appear in the Constitution as if they meant different things, they essentially refer to the same thing—ethnic groups.

grounds, such as class or gender. The emphasis given to ethnicity made women's issues politically irrelevant even if they were also victims of historical injustice. The same is true as regards injustice done to individuals of other identities.

At another level, the Constitution lists internationally acclaimed individual rights—but they are subordinate to group or ethnic rights. That is because the Constitution is the contract between NNPs and, hence, is their own document. The preamble mentions individuals only in reference to their role as a means to advance the goals and objectives of NNPs.<sup>22</sup> This can be seen in the third paragraph of the preamble, which reads: “Firmly convinced that the fulfilment of this objective [the objective for NNPs coming together, stated in the preceding paragraphs of the preamble] requires the full respect of individual and people's fundamental freedoms and rights, to live together on the basis of equality and without any sexual, religious or cultural discrimination.” Individuals are given the right to vote in periodic elections, but the Constitution regard assemblies to be the expressions of the sovereign power of the NNPs rather than the individual voters.<sup>23</sup>

However, beyond listing the internationally acknowledged rights of the individual, the Constitution does not provide a frame to solve the potential conflict between individual rights and the rights of NNPs, the owners of the Constitution. The practice, however, shows that it is the rights of the ethnic groups which prevail. The massive scale of internal displacements of individual citizens and the destruction of property is a manifestation of the fact that group rights are considered superior over individual rights. Also, the House of Federation (HoF), in its interpretation of the Constitution in the *Benishangul-Gumuz case*, implied that it is the right of NNPs to self-administer that prevails over individual right to be elected protected under Article 38 of the Constitution.<sup>24</sup> The same is true with

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<sup>22</sup> Berihun Adugna Gebeye, *Toward Making a Proper Space for the Individual in the Ethiopian Constitution*, 18 Human Rights Review 439 (2017).

<sup>23</sup> The Constitution of the Federal Democratic Republic of Ethiopia (FDRE), Proclamation No 1/1995, Article 8(3).

<sup>24</sup> The *Benshangul-Gumuz case* was a case involving the tension in the region between the indigenous groups (Berta, Gumuz, Shinasha, Komo, and Mao) and “the highlanders” (Amhara,



regards to the fate of women's human rights, which are guaranteed under chapter three of the Constitution. Based on our observations, with the exception of Article 35 that acknowledges women's rights, the Constitution lacks a frame as to how these rights of women can be realized in a system where ethnicity is the central organizing factor for the structure of the state and institutions of government. It also lacks a system to resolve potential conflicts that may arise between the rights of women and the rights of ethnic groups. This is especially true when the customs and cultural practices of an ethnic group is not in alignment with the rights of women as enshrined in the Constitution.

It has to be recognized that Ethiopia has more than 83 ethnic groups with different cultures; it is practically impossible to unify or reform every culture in accordance with the Constitution. Therefore, the drawback of the preamble of the Constitution, with its notion of "ethnic reformation"—besides the resistance from those who are affected by its current structure—concerns its applicability. On the same note, even though the problem might be how to reconcile the group rights with individual rights (and particularly women's rights), it is impossible to simply carry on denying or ignoring the effects of having to live with incompatible regulations that do not pay attention to the other variables influencing the social contract in each society. Overall, then, from a feminist perspective, depoliticization of other social issues and concerns has a direct impact on

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Oromo, and Tigray nationalities). Candidates from non-territorial political minorities (Amhara, Oromo, and Tigray nationalities) were prevented from running for the Regional Council in the 2000 election on the basis that they were not able to speak any one of the five languages of the region, namely Berta, Gumuz, Shinasha, Komo, and Mao. The Berta in particular insisted that the candidates should not be allowed to run for office if none of them are versed in Berta language. They, accordingly, submitted petition to the Election Board, which decided to bar the candidates from running based on the electoral proclamation which requires for individuals running as candidates for regional council be conversant in the local language. Applicants petitioned to the Council of Constitutional Inquiry (CCI)/HoF claiming that the decision of the Board violated their constitutional right to be elected under article 38 of the Constitution. Finally, the HoF affirmed that candidates must speak the local language to be able to run for regional councils. However, in that particular case, the House decided in favor of the applicants, allowing them to run for election since the working language of the region was Amharic. See Assefa Fiseha, *Constitutional Adjudication in Ethiopia: Exploring the Experience of The House of Federation (HOF)*, 1.1 Mizan Law Review 23, 23-25 (2007).

women's concerns with locating how intersecting social and cultural practices can enable or impede women's independence.

## 2. Women and Ethiopia's Future Social Contract: The Need to Adopt an Intersectional Approach

Feminist scholars emphasize that the problem with the Ethiopian constitutional design is its preference to primarily recognize ethnic pluralism and groups with shared histories and political experiences.<sup>25</sup> Often, these recognitions are given a priority by dismissing or paying little attention to the importance of individual experience in favor of an analysis of what is considered to be a group-based experience. The urgent need to reshape our social contract from an intersectional approach is best explained in Hussen's thesis; she argues that "despite the hierarchies within the group, intersectionality works better as a substantive theory when applied to an individual-level experience than when documenting group experiences and commitment concerning the effectiveness of (re)production of group identities."<sup>26</sup> Such knowledge-making draws critical attention to the interpretation of gender inequalities, discrimination, and exploitation by using an intersectional feminist framework, and addresses both patriarchal structures and the multi-layered complexities of gender, class, ethnicity, and religion in Ethiopia.

In addition, when institutional arrangements are organized on the basis of ethnocultural groups and the promotion of their identity, it clearly poses a danger to women's rights.<sup>27</sup> This is because, in a patriarchal and conservative society, ethno-cultural groups succeed in preserving discriminatory patriarchal beliefs, practices and structures. In such cases, since the Constitution allows ethnic identities to be an organizing factor for the regional states, it will result in

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<sup>25</sup> Teguadda Alebachew, *supra* note 1; Sisay Kinfe, *supra* note 1. Lahra Smith, *Making citizens in Africa: Ethnicity, gender, and national identity in Ethiopia* (2013); Tigist S. Hussen, Rahel S. Hassen, Lidet T. Shiferaw, *supra* note 1.

<sup>26</sup> Tigist S. Hussen, *supra* note 2, 30.

<sup>27</sup> Sisay Kinfe, "Federalism, Women, and Politics" in Adem Kassie Abebe and Amen Taye (eds.), *Reimagining Ethiopian Federalism, Ethiopian Constitutional and Public Law Series, Volume X*, 234, 248 (2019).

institutionalization and entrenchment of the discriminatory patriarchal practices that are embedded in the cultures of the groups.<sup>28</sup> This, in turn, advocates for the radicalization of patriarchal systems that prohibit women, as members of the ethnocultural groups, from critically engaging and challenging their communities' discriminatory practices. It further weakens women's ability to assert their rights and emancipate themselves from any sort of inequalities and discrimination.<sup>29</sup>

In such a system, it is also difficult for women to exit the group; since the Constitution primarily recognizes the individual through their ethnic-group identity, exiting their community would mean becoming stateless and endanger their belonging. Thus, while women are fully aware of their rights and the layers of obstacles that prohibit them from exercising them, they are forced to choose to comply with the patriarchal structures.<sup>30</sup> Among the impediments are the material and socio-psychological factors.<sup>31</sup> Materially, women are often dependent on men and, hence, they are unlikely to object and exit their group. Even when they are financially independent, they are unlikely to try to exit due to the psychosocial costs of exit, such as social stigma.

Furthermore, the Constitution allows for the adjudication of family and personal matters on the basis of religious and customary laws where discriminatory practices are usually embedded (FDRE Constitution, Art. 34(5)). Although the Constitution states that this will be done on the basis of the consent of the parties to the dispute, it is unlikely that customary and cultural institutions will ensure the consent of women. The *Kadijah case* is an example of this insofar as, even if Kadijah did not consent to the Sharia Court, she was forced to have her case to be decided by the Sharia Court.<sup>32</sup> That case had to go through the Council of

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<sup>28</sup> *Ibid.*

<sup>29</sup> Tigist S. Hussen, *supra* note 8.

<sup>30</sup> Reitman Oonagh, "On Exit," in Avigail Elsenberg & Jeff Spinner-Haley (eds.), *Minorities within Minorities: Equality, Rights and Diversity*, 189 (2004).

<sup>31</sup> *Ibid.*

<sup>32</sup> This concerns a case which originally started at the Sharia Court. The heirs of Kadijah's former husband claimed a share of a house which Kadijah acquired after the death of her husband. However, Khadija presented a preliminary objection to the court, expressing her dissent to the jurisdiction of the Court based on Article 34(5) of the FDRE Constitution. However, the court

Constitutional Inquiry/House of Federation to be deemed as unconstitutional. Yet, as Hussen argues the “majority of women may not even have the courage to oppose their case to be mediated on the basis of religious or customary laws for fear of stigmatization, economical dependency and other socio-cultural and religious factors.”<sup>33</sup>

In their recent publication, Hussen, Hassen, and Shiferaw also provide us another layer of the problem, one that is connected to the question of women under the ethnic federalism system in Ethiopia.<sup>34</sup> Their research shows how ethnicity and ethnic groups are primarily defined on the basis of paternal lineage and how ethnic federalism is being practiced and understood in terms of male-centered identity formation and bloodline. They argue that women and their ancestry do not have a role in establishing identity for political purpose or otherwise. While men are considered to be givers of identity, women remain to be receivers of identity; their blood line is not considered as an agent in the definition of an individual's or a group's identity. Here, the Constitution again failed to stipulate how ethnic federalism will be implemented in a gender responsive way. Hence, the Constitution directly or indirectly allows patriarchal norms to guide and dominate the functioning of Ethiopian ethnic federalism. As a result, women by and large are recipients, rather than key players, in the present political structure in Ethiopia.

All these complexities indicate that power and social inequalities do not exist separately; instead, they construct and shape one another. It is logical, therefore, to think about the impact of social inequality as an intersectional power dynamic embedded in the social fabrics of a society. Accordingly, any analysis of social

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proceeded with the case and finally decided on the claim filed by the heirs despite Kadijah's unequivocal objection to the court's jurisdiction. Finally, Kadijah, with the help of Ethiopian Women Lawyers Association, submitted a constitutional complaint to the CCI/HoF. Accordingly, the HoF held the decision to be unconstitutional and ruled that sharia courts can assume jurisdiction only based on the consent of the parties pursuant to Article 34(5) of the Constitution. See the *Kadijah Bashir Case*, Journal of Constitutional Decision, House of Federation, Volume 1 (2008).

<sup>33</sup> Tigist S. Hussen, *supra* note 2, 98-99.

<sup>34</sup> Tigist S. Hussen, Rahel S. Hassen, Lidet T. Shiferaw, *supra* note 1.

inequalities should be cognizant of non-linear complexities. In other words, gender-only, class-only, or ethnicity-only analyses of social inequalities will not capture the complex socioeconomic and political problems of a society. In addition, any policy intervention strategies based on such analyses may not successfully address the problem. More importantly, such analyses may keep some section of the society out of the frame of the policy intervention.

We argue that the analysis of the social injustices in Ethiopia's past as being rooted only ethnicity or nationality is the beginning of the failure to address women's issues in Ethiopia. Even if women are members of an ethnic group, their membership to the group cannot independently explain the injustices they have experienced. Women certainly experience other forms of injustice besides the injustice resulting from their ethnic identity. The framing of ethnicity as a single yardstick for justice, therefore, cannot be adequate to address injustices women face. The Ethiopian Constitution, therefore, by assuming ethnicity as the only ground of social inequality and as a yardstick for consideration of justice, has perpetuated the disadvantaged position of women in Ethiopian society. Furthermore, it indirectly gives permission to other power structures that are instrumental for sustaining and strengthening women's oppression to continue without being challenged.

This has resulted in women's demands for equality and redress for past injustices being disregarded and depoliticized. Put differently, it has prevented the woman question from being a constitutional issue or an issue that needs structural response. Thus, any future endeavor to reconstruct the Ethiopian social contract needs to be based on or guided by this broader intersectional approach to social inequalities. That way, woman question would be able to receive the appropriate attention and response at a structural level. That said, an independent analysis of social inequalities—on the basis of ethnicity or class or gender—cannot present us with an enduring solution for our problems as a nation. Our experience of the last three decades has sufficiently proved that such analyses cannot take us far. Rather, a solution can be achieved through a deliberation on the notion that social injustices and inequality can construct and reshape the Constitution by putting

pressure on the politicians and the elites to find a middle ground as they negotiate a political settlement.

## **Conclusion and the Way Forward**

We wish to stress that a critical legal analysis that focuses exclusively on ethnicity issues produces linear and simplistic arguments. Such approaches have continually proven that there are remaining grievances and resistance from individuals and groups who feel marginalized because of their ethnicity, class, gender, and sexuality. At the same time, such independent analysis of ethnic identity politics assumes (even if implicitly) that individuals in a specific ethnically-identified group are loyal to their social contracts without challenge. Thus, it does not leave adequate room for envisioning the transformation of the social contract, such as by securing women's equal right and safety in a society. Regardless of these controversies, it is still important for feminists to identify systems that are potentially both barriers to, and enablers of, women's rights.

The contemporary Ethiopian constitutional mandate, rooted in the globalized democratic practices, has taken modern rights discourses as part of its own development. However, provisions and policies surrounding women's rights still reveal contradictions regarding which rights should be prioritized over others' and by whom. In other words, the ongoing deployment of "ethnicity", "culture", and "tradition" is often used by male elites, and serves others' political purposes rather than attending to women's rights. This creates a gap between the state and women since such reductive views of identities inhibit the possibilities of allowing for women's rights provisions and gender equality. There has to be a space in which feminists or women's rights activists critique, analyze, and expose the contradictions of having an exclusivist and separate constitutional design process that imagines systems that are expected to work together by some magic to grant women equality and dignity.

Therefore, while the advocacy for revision of the Constitution in the interest of women's rights is necessary and should be continued, it would be naive to believe

that changes in the Constitution will guarantee change in our society. There is still feminist work to be done to provide a critical analysis and assessment of the extent to which the existing constitutional and legal framework have changed the rights and realities of women in their everyday lives. From a feminist perspective this is a crucial task because, based on women's lived experience, the practices and accessibility of this legislation at a societal and communal level often clashes with social and cultural practices that are primarily patriarchal in nature. Such complexities should be explored more to make the legal framework work for women without threatening their everyday life and belonging within their community.

Ultimately, such feminist intervention can only be envisioned and put into practice when women's rights advocates and feminist activists are allowed to engage meaningfully and participate in writing women's rights into the Constitution during the anticipated constitutional reform process by reflecting on problems and proposing solutions that center women's interest, etc. We argue that the reform processes are not always a guarantee for better protection of rights. It is thus important to critically examine how and on what condition would the anticipated constitutional reform process become an opportunity for progress in women's rights. It is also necessary to discern ahead of time the potential enabling and disabling factors that would determine the success of the process in terms of guaranteeing women better protection of their rights.

## DISCUSSIONS

*Dr. Adem Kassie Abebe*

I appreciate this outline of the fundamentals and the observations you made of the system as a whole. I always encourage women scholars to look at each design option in any constitution, rather than simply looking for provisions on women's representation, etc. The question should be how does the system as a whole (be it

federal, unitary, presidential, or parliamentary), with all its systematically designed and implemented decisions, implicates women, rather than looking at representation of women and analysis of provision.

***Melhik Abebe***

I want to add about “intersectionality”. In my understanding the word originated with the best of intentions, but the way it is being deployed, especially in Ethiopia over the past few years, seems to emphasize an attempt to silence women’s involvement in grassroots-level politics that is animated by the things that they consider important to both their locality and their own lived experiences. This definitely includes the nationality question or ethnicity. This term has been thrown around frequently by alleged women's organizations or supposed feminists, and this is very evident in how such groups or institutions have dealt with what is going on in the northern part of Ethiopia in the name of intersectionality. I want to underline that it is possible for one to be more than one thing at a time; it is possible to be a woman, as well as Oromo, as well as part of the middle or working class, etc. We should also keep in mind that it is realistic that, depending on the situation, one particular aspect of your identity would be more visible and consequential than the other.

My other point is, if we take the criticism of the federal system that we have now, which is along the lines of the settlement patterns of different ethnic groups, or the assertion that the primary concern or primary organizational principle behind the Constitution does not consider women's interests to its logical conclusion or its logical utopian end, will the goal then become to organize government and political parties along gender lines, hence will we have governments for women, by women? I believe that the reason that constitutions, including the current Ethiopian Constitution, focus on settlement patterns that are along ethnic or linguistic lines is that it is easier to govern people that live in the same area. This is not the case for women as they do not live in only one part of the country and men live in the other. So, we have to think about these things as well. Although this might sound elementary and come off as somewhat dismissive of women’s



voices, I am actually a feminist that believes women's voices should be heard and women in different localities have different concerns, all of which are legitimate.

*Prof. Adeno Addis*

Which women's issues would be left unaddressed if women are included in the nation as a member of that nationhood? I think this: Normally, membership of women to a nationhood and their interests would be presented, discussed, and acted upon. So, women can be members of a nation and can participate; that is true. But what the paper by Tigist and Teguada asserts, I think, is that when women's concerns are being discussed, when the idea of the nation within which everything is understood seem to be threatened by other nations or other groups, then all these other issues have to take second place. We are not talking about citizens not having rights but rather about the priority entrenched within the nations that makes it incredibly difficult for other issues that are experienced from surfacing because there is an experience of people saying, "this is not the time to talk about such issues."

*Dr. Abadir M. Ibrahim*

First, what sort of amendments would you recommend to improve the current Constitution? I am asking this because I pose the same question to everyone attending this conference in our public and private conversations since we want to talk about solutions as well. Second, as a critique, I would like to point out that there is an unstated premise of your paper. There is an erasure of one of the identity markers of women which is not stated in an outright manner. Women can be members of different linguistic and cultural groups in addition to being women and citizens. To approach this from a different angle, let me highlight what Professor Adeno said about your presentation in a positive light, but I will raise it as a critique. Although this is not immediately apparent from the title of your paper, it is clear that you are trying to critique the nations, nationalities and peoples approach, as opposed to that of citizenship. But your topic is about women's rights and intersectionality which would have led one to think that you would be concerned about the layers of injustice faced by women who belong to

marginalized ethnic and linguistic groups. What you are proposing, however, is an erasure of one of the identity layers of women who identify in a certain way. By ignoring the intersectional injustice these women face, it feels like non-identity-specified citizenship would entail supporting the opposite of what intersectionality implies.

I also do not see the “phased approach” that you are referring to in the Constitution. I am not aware if that is reflected in human rights policies or if it is part of the women’s rights literature. If that is the case maybe what you need to say is that there is a phased approach policy or practice and not a constitution. If you remove that unstated premise, if women can validly be members of ethnolinguistic groups, and be ethnolinguistic activists and nationalists while being women, then what I see in the Constitution is a balancing and hierarchy of rights issue rather than a process of phased liberation. For instance, if there is a conflict between women's rights and ethnolinguistic and cultural group rights, then the ethnolinguistic issue may trump women's rights. The Constitution explicitly recognizes women’s rights, it explicitly states that they have faced historical injustice, it explicitly recognizes gender-based affirmative action as a remedy, recognizes that women face workplace issues especially because they bear children, etc. Women are portrayed and recognized by the Constitution as laborers with unique needs, as child bearers, as victims of harmful traditional practices, as having equal rights to property, etcetera. It does the same, though in different contexts and ways, for the rights of nations and nationalities as well. This tells me that the Constitution is already in support of, or at least not opposed to, intersectionality.

I wonder if you may be better off critiquing the Constitution’s privileging, or even over-privileging, of peoples’ rights over other rights including women’s rights. I have previously made this argument as well. You will find out that you will face challenges in making even the hierarchy of rights argument as the Constitution does have provisions about protecting women from harmful traditional practices. In practice, there was at least one constitutional case in which women’s rights prevailed and I am not aware of ones in which peoples’ rights trumped women’s

rights. So, though an argument can be made against how there is a risk of prioritizing peoples' over women's rights, you should be open to the possibility that the phased approach might not even be in the Constitution in the first place.

**Reply: *Dr. Tigist Shewarega***

Regarding the question on the topic of intersectionality, I understand the popularity of the concept, specifically because of online movements that have been made by certain feminists; it ended up becoming an identity issue as opposed to what it was meant to be, which is about looking at different institutions and structures and how they operate upon each other or how they apply to and influence one another. Considering intersectionality simply from the perspective of identity is the result of on-the-surface analysis that diminishes its true sense.

In our paper we are trying to compare the phased approach observed in the Ethiopian context, since in our observation over the last 30 years the utmost attention is given to the nationality question rather than any other issue in the country. Whenever we have a historical moment where there seems to be an opportunity for addressing other issues, somehow the ethnic issues end up dominating the others. And mostly our academic writing, reading, and thinking exercises are actually more focused on ethnic identity issues, which is why we are stuck on the gender issue. The groups being threatened by the potential addressing of the issues that have taken secondary places—such as gender issues, class, and individual rights issues—have blocked revision of the Constitution to change these circumstances. The question we are trying to address is can we move away from the ethnic aspect of the Constitution and create space where we can address the gender, class, individual, and group rights issues as well as other issues. “Let us first sort out the national crisis that is based on ethnic issues and then we’ll come to your issues” kind of conversation should stop.

Considering it from the perspective of marginalized communities, when a woman wants to share a conversation about her concerns, she finds herself in a difficult position because she must first abide by the ideals of the group identity as opposed to their own individual suffering or oppression as a woman. Hence, we should

have a space for these kinds of conversations; this does not imply that women should have government separate from men. For example, consider customary law; if a woman decides that her culture is not treating her as an equal or giving place to her voice and thus wishes to consult a court for divorce, the woman is not permitted to do so and must go back and abide by the customary law. Such kinds of conversations need to be cognizant of how women in such situations are not talking about their ethnicity but also about the social injustices in other aspects. So having this kind of approach will allow us to see where such types of oppressive systems are intersecting and how they impact one's life or a group's life.

Regarding Abadir's question, our paper is about citizenship, although it has not gone into the depth that Prof. Adeno's paper went into; what we are trying to say is: can we have a place for issues other than ethnic issues, such as women's issues? The fact of the matter is women are not holders of identity, or they have been given a secondary citizenship status, because it is this half of the population that does not have a say in the constitutional conversations or even on ethnic issues. For instance, the identity of mothers is erased and has no impact on their children's identities because it is always based on the man. In the wider sense, men have the agency to discuss issues that will determine the trajectory of the nation, whereas women don't. This is the reality in Ethiopia. Therefore, if we do not expand the concept of identity, and especially ethnic identity (as it has a higher weight for citizenship), women will continue to be secondary subjects in the country and will also continuously be rejected in their quest for the social justice they rightfully deserve.