

NOTE

Confronting the Sacred: Eradicating the Whipping of Women in Southwest Ethiopia

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The quest for gender equality and women's empowerment has brought a new era of equality and freedom for all women around the globe. Today, most African countries have ratified at least one human rights instrument, or at least incorporated gender equality under their constitution. Promising efforts are being made by the federal democratic republic of Ethiopia to address gender equality and women's empowerment issues. However, findings also indicate that a lot has to be done for more effective and proper implementation of the ratified international conventions on rights of women. The persistence of deep-rooted adverse patriarchal attitudes and firmly entrenched stereotypical behavior with respect to the role of women and men in the family and society limit the full implementation of the human rights of women. The prevalence of harmful traditional practices, customs, and culture leads to substantial discrimination against women, thereby preventing them from fully exercising their human rights. Above all, the culture of silence and superstition has been a hurdle for the fight against harmful traditional practices. Women ignore the pain they suffer due to harmful traditional practices because of this culture of silence and superstition. Most women who have been brought to suffer do not complain of their discomfort or pain, and they keep many hardships they suffer a secret. Because it is believed that if they don't conduct themselves in accordance with custom, evil things would happen to the community. This Note discusses the bullab tradition and the whipping of women during the bull jumping ceremony in Hamer Southwest Ethiopia. The Note tries to show a gap in the law to fully about the practice and proposes legal as well as social intervention as mechanisms to stop the practice.

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I. INTRODUCTION

A man comes into the village and reports that the “maza”¹ will be arriving soon. Momentarily, enthusiasm fills the air, but the women also seem a bit anxious and even distressed. They begin to yell insults and jeer at the “maza” and the whipping starts. Even after the women’s blood is soaking the ground, they continue to beg for more, “I want to be whipped by this *maza* until his *micer*s² have been finished off! I will finish all his *micer*s!”³ The women’s sacrifice by participating in this ceremony is intended to show love for their male relative as he makes the transition from boyhood to manhood.⁴ When the women’s suffering becomes permanent through the scars, he is forever obligated to help these women if he is called upon to do so. The price paid by the women for this assistance is almost death.⁵

The whipping of women in the Southwest Omo Zone of Ethiopia is a practice conducted among the Hamar tribe as part of a bull jumping ceremony called “bullah.”⁶ This ceremony is important in the life of a Hamar man because it symbolizes his passage from boyhood to manhood, signaling that he can own cattle, marry and have children. In Hamar tradition, it is believed that through this ceremony the boy’s bravery and his ability to overcome fear will be tested.⁷

In Hamar, the eldest son in the family must perform the rite before his siblings.⁸ Boys as young as five years of age may perform the bull jumping ceremony.⁹ The preparation for the ceremony starts when the father—or in his default or absence, the uncle—sets the date for the bull jumping.¹⁰ The boy has to visit all of his relatives and invite them with coils of rope carefully marked to show the number of days leading up to the ceremony.¹¹ The

1. The Maza refers to a group of men who have successfully completed the bull-jump but have not married. Ukuli refers to the boy jumping the bull. Tim Forssman, *Reflection on a Journey through the Southern Omo Valley, Ethiopia*, 32 DIGGING STICK 17, 18 (2015).

2. Micerers are the name of the whipping wands. They can be made out of several types of wood like the “dongo orbaraza” or dongo wood, which are from the cordial ovalis tree. See Lars Krutak, *Ethiopia’s Last Frontier: The Bloody World of The Hamar Tribe*, TATTOO ANTHROPOLOGIST (2013), <https://www.larskrutak.com/ethiopias-last-frontier-the-bloody-world-of-the-hamar-tribe/>.

3. *Id.*

4. Forssman, *supra* note 1, at 18.

5. Krutak, *supra* note 2.

6. In some instances, this ceremony is also referred to as “Ukili Bula.” Dave Burke, *The Women Who Beg to be Whipped to Show Their Love: Brutal Ethiopian Tribal Ceremony Sees Females Lashed to Demonstrate Dedication to Their Men*, DAILY MAIL (May 11, 2017), <https://tinyurl.com/ydjv44b2>.

7. Serkalem Tafesse, *A Warrior from the Hamar Tribe: Ethiopia’s Bull-Jumping Ritual Turns a Boy In-to a Man*, CULTURE TRIP (June 18, 2018), <https://tinyurl.com/yfxeh6n9>.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

relatives will cut a piece of the rope every day to keep track of the days left before the ritual ceremony.¹² Women's role in their male relative's bullah ceremony involves being whipped by the "maza," a group of men who have successfully performed the bull jumping. Women submit themselves willingly to this whipping because their participation in the ceremony is considered a means of showing love and support for the boy as he transitions to manhood.

Attempts have been made by the local authorities to stop the practice.¹³ There are instances where police tried to stop the "maza" while the whipping was taking place.¹⁴ However, elders in the community believe that such efforts to stop whipping are destroying their culture. As a result, the community has forcefully resisted police intervention.¹⁵ In addition, the bullah ceremony has been commercialized as a tourist attraction, drawing onlookers who bring economic stimulus to the region and country.¹⁶ However, for those who consider whipping of women to be abhorrent, the legal question that arises is: "How can the Hamer tribe allow the mazas to whip women?"

The Federal Democratic Republic of Ethiopia Constitution provides protection against cruel, inhuman or degrading treatment¹⁷ or bodily harm.¹⁸ The criminal code of Ethiopia also contains general prohibition and punishments for both grave and common forms of bodily injury.¹⁹ Grave willful injury can be prosecuted without the victim's complaint, but the provision requires that the victim sustain permanent damage or loss of one of her organs to bring action.²⁰ Even though women sustain serious and sometimes fatal injuries from the whipping, the intent is not to inflict harm.²¹ Rather, the women eagerly submit themselves until they have taken enough punishment to demonstrate their endurance and love as part of the bullah tradition.²² In contrast to grave willful injury, common willful injury

12. *Id.*

13. ATEM CONSULTANCY SERV., BASELINE SURV. ON THE MOST PREVALENT HTP AND SANITATION PRACTICES AMONG THE COMMUNITY OF THE HAMER, DASSENECH, AND NYANGATOM WOREDAS OF THE SOUTH OMO ZONE IN THE SNNPR 22 (2011), <https://tinyurl.com/yecnjt8b> (reporting that "57.9% of respondents consider whipping as harmful traditional practice," "57.1% support [its] eradication," and "54.6% promised not to do it in the future").

14. Adugna Eneyew et al., *Double Marginalized Livelihoods: Invisible Gender Inequalities in Pastoral Societies*, 3 J. SOCIETIES 104, 112-13 (2013).

15. *Id.*; see also Ermias Kifle et al., *Tourism as a Perpetuator of Harmful Traditional Practices in Ethiopia Hamer Community*, 17 TOURISM, CULTURE & COMM. 271, 283 (2017).

16. Kifle et al., *supra* note 15, at 281.

17. CONSTITUTION art. 18(1) (1994) (Eth.).

18. *Id.* art. 16.

19. CRIMINAL CODE [CRIM. C] art. 555-56 (Eth.).

20. *Id.* art. 556.

21. ATEM CONSULTANCY SERV., *supra* note 13, at 22.

22. *Id.*

under the criminal code is punishable only upon the victim's complaint.²³ However, women who are whipped as part of the bullah ceremony are unlikely to submit a complaint because showing any suffering or pain is considered to be culturally wrong. In the case of death, even families of the deceased who support the tradition do not file complaints.²⁴

The criminal code also has "stand-alone" laws that criminalize other harmful practices with specific provisions on abduction and female genital mutilation.²⁵ However, there are no provisions that criminalize whipping. Therefore, in order to eradicate the practice of whipping women in the Southwest Omo Zone of Ethiopia, the government must implement a stand-alone law with a provision to criminalize the practice of whipping in all instances and take measures to reform the existing social patterns to get the Hamar women meaningful equality. Equally important is preventing the commercialization of whipping to drive tourism.²⁶

To argue for the eradication of the whipping of women as part of the bullah ceremony, this Note is divided into four parts. Part I provides the legal status of pastoral women in Ethiopia and the traditional practice despite its negative effect on women's health, two conflicting sides with opposing interest in continuing or eradicating the practice of whipping in the Southwest Omo Zone. This Part also outlines the justification for the practice and its effect on the women's health. Part II analogizes the status of other customary practices under both the Federal and Regional Constitutions and the comprehensive provisions prohibiting harmful traditional practices under the criminal code of Ethiopia to build the argument that whipping women as part of the bullah ceremony is as harmful as these other traditional practices such as FGM/C,²⁷ forced marriage or marriage by abduction²⁸ and early marriage²⁹ that have been criminalized. Part III analyzes the practice of whipping under international and regional human rights instruments and the state's obligations to eradicate harmful traditional practices under these instruments. Part IV proposes key legal and social reforms.

23. CRIMINAL CODE [CRIM. C] art. 556 (Eth.).

24. Belayneh Dessiye, *The Impacts of Harmful Traditional Practices on Women's Socio-Economic and Political Activities: The Case of Pastoral Women in Hamer Woreda, South Omo Zone*, SNNPRS 56-57, 91 (2012) (M.A. dissertation, St. Mary's University) (on file with St. Mary's University), <http://repository.smuc.edu.et/handle/123456789/2941>.

25. CRIMINAL CODE [CRIM. C] art. 565 (Eth.).

26. Eneyew et al., *supra* note 14, at 113.

27. CRIMINAL CODE [CRIM. C] art. 565 (Eth.).

28. *Id.* art. 648.

29. *Id.*

II. THE TRADITIONAL PRACTICE OF WHIPPING OF WOMEN IN THE HAMER TRIBE, SOUTHWEST OMO, ETHIOPIA

A. The Status of Women in the Hamer Tribe of Southwest Ethiopia

The Hamer are a tribal people who live in the Southwest Omo Zone of South Ethiopia. The Hamer are a pastoralist society. They place momentous value on cattle rearing.³⁰ Based on the Central Statistical Authority census conducted in 2008, the Hamer population is estimated at 75,406.³¹ According to another study conducted in 2014, only six tribal members have ever completed secondary education.³²

In the Hamer tribe, women are a doubly marginalized sect of the society: First, Ethiopian women generally have limited rights to social, economic or political benefits compared with men.³³ Secondly, culture and traditions, which are justified for the protection of collective rights, coupled with a pastoralist life style imposes much burden on women.³⁴ The traditional patriarchal structure affects the social, economic, and political life of women.³⁵ In practice, Hamer men have exclusive control over agricultural resources while women own low-valued properties.³⁶ Notwithstanding the constitutional protection of equality of gender, Hamer women do not own property. There is no real property registered in their names.³⁷ Women's role in the economy is limited to household activities like rearing cattle, fetching water and collecting firewood, and they only own properties for purpose of raising chickens or vegetation plots.³⁸ This simple example from agriculture shows the hierarchal relationship between men's domain and women's subordinate sphere. There is a common understanding in the Hamer community that everything acquired before and after marriage belongs to the women's husbands. This is because during marriage a woman simply joins her husband's home.³⁹ Because of the dowry tradition, which requires that the groom and his family bequeath large numbers of properties to his

30. CENT. STAT. AUTH., OFF. OF THE CENSUS COMM'N, POPULATION AND HOUSE CENSUS OF ETH. STAT. REP. FOR SOUTHERN NATIONS, NATIONALITIES AND PEOPLES' REGION; PART I: POPULATION SIZE AND CHARACTERISTICS 2007, at 58 (2008) [hereinafter CSA Census Report].

31. AYNALAM ADUGNA, ETH. DEMOGRAPHIC & HEALTH ORG., ETHIOPIAN DEMOGRAPHY AND HEALTH: A BRIEF INTRODUCTION 7 (2018).

32. *Id.* at 4.

33. Dessiye, *supra* note 24, at 22.

34. Soyata Maiga, *Gender and Indigenous Peoples' Rights, in* INDIGENOUS PEOPLE IN AFRICA: CONTESTATION, EMPOWERMENT AND GROUP RIGHTS 64 (Ridwan Laher & Korir Sing'Oie eds., 2012).

35. ATEM CONSULTANCY SERV., *supra* note 13.

36. Dessiye, *supra* note 24, at 44, 50.

37. *Id.* at 50.

38. Eneyew et al., *supra* note 14, at 107.

39. Dessiye, *supra* note 24, at 50.

bride's family, a Hamer girl is considered an asset of her family. She begins her marriage indebted to her husband and his family because she brings no assets to the marriage and because she has drawn resources to her family as dowry since her selection as a future mate by her husband.⁴⁰ The dowry given to the bride's family also imposes obligations on the wife to serve her husband and to tolerate any act of abuse or torture within marriage.⁴¹ Therefore, the logic follows that she has no ownership rights to her husband's property, and she cannot gain any property of her own during the marriage. Consequently, the cycle of disenfranchisement continues.⁴²

Hamer women's inequality and marginalization have been also furthered due to two factors. First, many pastoral development programs only benefit men as the receivers of products or training like veterinary medicines and other benefits.⁴³ These programs teach men to manage their control and ownership of property with better expertise. Women are left to play supportive roles in livestock production and hold subordinate roles to fathers and husbands. For example, Hamer women have no power to sell livestock or agricultural products that they have grown without first consulting their husbands. If the husband is far from the village, the wife has to wait until he returns before she can initiate a sale.⁴⁴ Women can only trade low-valued products like chickens, eggs and milk.⁴⁵ Second, the internalized sense of women's inferiority in the social and economic activity of the community is embedded in Hamer culture and reinforced due to women's exclusion from decision making and social activities.⁴⁶

In Hamer culture, girls cannot choose their life partners; rather, only the men can choose their wives.⁴⁷ Men also make decisions about all important matters. Male elders play an important role not only in making decisions, but also setting rules to punish those who transgress the customs and traditions. These traditional and cultural rules are more binding and

40. *Id.*

41. *Id.* at 76-77.

42. The dowry given by a husband would entitle a wife to inheritance by his brother in case of the husband's death. Explaining the traditional assumption about dowry in Hamer, Beleyneh clearly states that "in Hamar tradition allows the marriage of a girl with a dead man. If a seven- or eight-year-old girl was selected by a man for marriage, but the man dies unfortunately before marriage, the girl is supposed to be his ideal wife and must join his families. This will happen because it is assumed that she is an asset to the deceased man as he had paid dowry to her parents. In fact, the girl cannot refuse the marriage given that male dominance over women is an accepted norm. As a result, the girl must have sexual intercourse with all adult males of his blood ties or relatives. The deceased husband is therefore considered father of all the children the woman bears." *Id.* at 58-59, 87.

43. Fiona Flintan, *Combating Marginalization of Pastoralist Women: SOS Sabel's Experience in Ethiopia*, 14 GENDER & DEV. J. 223, 226 (2006).

44. Dessiye, *supra* note 24, at 50-51.

45. NAOMI KIPURI & ANDREW RIDGEWELL, MINORITY GRP. INT'L, A DOUBLE BIND: THE EXCLUSION OF PASTORALIST WOMEN IN THE EAST AND HORN OF AFRICA 15 (2008).

46. Flintan, *supra* note 43, at 225.

47. Dessiye, *supra* note 24, at 45.

enforceable by the community than formal law.⁴⁸ For example, women are not permitted to speak in meetings where men are present.⁴⁹ Whipping serves as an act of social control to enforce these rules.⁵⁰ For example, a woman is whipped if she fails to follow her husband's instruction. Further, those who transgress the traditional rules are cursed by the local people for breaching the law of Hamer and cast out from the Hamer life.⁵¹ This prohibition on speaking in meetings makes any taboo topic discussion, such as eradicating the practice of whipping women during the bullah ceremony, even more difficult.

In the Hamer community, wife-beating is a common practice.⁵² Men are expected to beat their wives, and these beatings are made in public.⁵³ This is because, customarily, the dowry that was given to a woman's family will give the husband all rights over his wife. Traditionally, if a man does not beat his wife, he is likely to be ridiculed by men and the community.⁵⁴ In most cases, if a woman escapes her husband's beating and goes to her family, her family will have one of two options: either return her back to her husband or pay back all the properties the husband paid as dowry and allow her to stay with them.⁵⁵ Traditional sayings in Ethiopia, like "a women should shoulder many challenges upon her without complaint" and "women and donkeys never complain about burdens," reinforce the notion that women should bear violence and burden without any complaints in order to be considered a strong woman.⁵⁶ The gender inequalities remain invisible to women because they willingly submit to local custom, and to the community at large, because it is considered a way of showing love and respect for the jumper who is their close relative. Alongside custom, the continuation of these beatings is driven by a lack of awareness that these beatings are cruel and unfair, as well as the government's failure to intervene. Many of these violations are perpetuated from generation to generation due to a lack of formal education, public awareness, media attention, tourism, and absence of legal redress.⁵⁷

48. *Id.* at 22.

49. Eneyew et al., *supra* note 14, at 107.

50. Jean Lydall, *Beating Around the Bush*, 2 ETH. STUD. 1, 2 (1994).

51. Dessiye, *supra* note 24, at 55-56.

52. Lydall, *supra* note 50, at 1.

53. The term "Kana" in Hamer describes beating in general and the generic use of the word refers to a number of actions of beating as having positive outcome. All forms of beatings, including herding cattle or goats, are done with similar or same sticks. The stick used is a symbol of social control. The lines are blurred between women voluntarily participating in a cultural practice and otherwise being beaten in public as they really have the same outcome—in both cases, women are beaten. *Id.* at 2.

54. *Id.* at 8.

55. Dessiye, *supra* note 24, at 63.

56. Eneyew et al., *supra* note 14, at 105.

57. *Id.*

All in all, the Hamer community lives in a male-dominated, culturally entrenched environment where adherence to traditional norms and values is not a choice.⁵⁸ An individual's failure to comply with these norms would cause the Hamer community network to cast that individual out, as though he or she were dead. For instance, if a man didn't perform the bullah ceremony, the community would consider him a feeble child.⁵⁹ According to various studies conducted in Hamer society,⁶⁰ the majority of the people maintain an understanding that the community's traditional practices, even those that are harmful to women, are beneficial to the entire community's existence because they are considered an important component of the indigenous Hamer identity and are backed by superstitious beliefs. If a woman fails to conduct herself according to the custom and tradition of Hamer, so it goes, the bad spirits will get angry and evil things will happen to the community.⁶¹ In other words, the communal benefits of even harmful traditional practices outweigh individual pain and suffering, especially when those who are suffering are women.

B. The "Bullah" Ceremony and the Practice of Whipping Women

1. The Practice of Whipping Women in the Hamer Tribe

In the Hamer tribe, boys and girls have to pass through different rituals in order to reach adulthood. To receive recognition by the community, boys need to pass through traditional ceremonies that are considered stages of personal development from childhood to manhood. The traditional bullah, or the bull-jumping ceremony, is the most important ceremony of all because it signifies the validity of the young Hamer man's identity, masculinity, and socially-superior status over women, which are directly linked to the social cohesion of the entire community.⁶² This perceived social cohesion is rooted in patriarchal male dominance. However, this Note asserts that being able to stop whipping women would not necessarily result in the tribe perishing or otherwise losing its identity.⁶³

When a young Hamer man wants to marry, have children, and own cattle, he needs first to jump over several bulls selected by the family of his future bride.⁶⁴ He is required to jump over each bull four times, twice in each direction.⁶⁵ Usually he is assisted by friends called the "maza," who are

58. Dessiye, *supra* note 24, at 59.

59. *Id.*

60. *Id.* at 60.

61. *Id.* at 56.

62. Forssman, *supra* note 1, at 18.

63. Kifle et al., *supra* note 15, at 282.

64. Forssman, *supra* note 1, at 18.

65. *Id.* at 19.

community members who have previously and successfully performed the Bullah.⁶⁶ This is his rite of passage from boyhood to manhood, after which he can own cattle and marry. If the jumper fails, it is considered a sign that he is not ready to marry or own cattle, but he will have another chance to try again a year later.⁶⁷

Women and girls between twelve to fifty years old also have an assigned role during this ceremony: encouraging the boy while he attempts to jump over the lined-up bulls by singing, dancing, and being whipped.⁶⁸ The women prepare the whipping sticks and give them to the maza, and then provoke the maza to lash them until heavy scars appear on their bodies.⁶⁹ The girls are not allowed to show any sort of suffering or pain because it is traditionally believed that if a woman shows suffering, she will bring shame to her family and to the boy jumping the bull.⁷⁰ Therefore, to overcompensate for any fear or reticence to participate in the bullah, the young women often beg to be whipped and most of them are whipped until they bleed.⁷¹

2. *Justification for the Practice*

It is important to understand the reason why women voluntarily and enthusiastically submit to the whipping. There are four major reasons why women submit to whipping during the bullah ceremony: to display their love for the boy, to secure future assistance from the boy, and to obey the customs and traditions of the community in which they live. First, women believe that their role in the ceremony, and in their society generally, is to show their dedication to their male relatives by making sacrifices, such as enduring the physical pain of whipping.⁷² Submitting to whipping is considered a show of love and moral support for the boy who will jump over the backs of the line of bulls.⁷³ Second, there is a common understanding that the man for whom a woman gets whipped will help her if she faces any difficult situations later in her lifetime.⁷⁴ Third, there is also a common traditional belief that a woman's lingering scars from the bullah ceremony demonstrate her capacity for love, because if she was able to endure a whipping, she can endure anything else. Finally, complying with this ceremonial whipping demonstrates a woman's obedience to the cultural

66. *Id.*

67. *Id.*

68. *Id.*

69. Burke, *supra* note 6.

70. Dessiye, *supra* note 24, at 97.

71. *Id.*

72. Burke, *supra* note 6.

73. *Id.*

74. *Id.*

norms of a community that highly prizes women's subservience to men. Despite the risk of death, bodily injury, and emotional scarring, women do not speak out against the whipping because if they object, in the Hamer tradition, they will bring shame upon their family.⁷⁵

3. *Effects of Whipping on Women's Health and Well-Being*

Women in Hamer are left with no option except accepting both the physical and psychological suffering of the pain of whipping. Whipping a human body has been demonstrated to cause serious health hazards, including "wound infection, damage to the kidneys, the liver, breasts, and to a fetus when the women participating in Bullah are pregnant."⁷⁶ There is also the possibility of transmission of HIV from whipping a number of women in turn.⁷⁷ Women of all ages, from twelve-year-old girls to fifty-year-old women, can be subjected to this whipping, but the health complications they face differ based on their age, their ability to endure the suffering, and their bodies' ability to heal.⁷⁸ The stick used for a whipping can cause severe bodily damage, and the maza are usually selected purposely based on their strength and ability to cause severe physical harm.⁷⁹ Whipping can result in unconsciousness, death,⁸⁰ and at a minimum, bodily injury and emotional suffering.⁸¹

III. ETHIOPIAN DOMESTIC LAW PERTAINING TO THE TRADITIONAL PRACTICE OF WHIPPING WOMEN

A. *The Federal Democratic Republic of Ethiopia Constitution*

1. *The Supremacy Clause of the FDRE Constitution*

The Federal Democratic Republic of Ethiopia (FDRE) Constitution provides the right to equality, which entitles both men and women to benefit from the catalogue of rights it prescribes. Article 35(4) provides protection for women from any harmful custom and practice which can cause bodily or mental harm to women.⁸² Further, the "Supremacy of the Constitution" under Article 9 of the Constitution provides that any customary practice that contradicts any provision of the Constitution shall be void.⁸³ Finally, Article

75. Dessiye, *supra* note 24, at 97.

76. *Id.* at 98.

77. ATEM CONSULTANCY SERV., *supra* note 13, at 23.

78. Dessiye, *supra* note 24, at 98.

79. *Id.*

80. Kifle et al., *supra* note 15, at 280.

81. *Id.*

82. CONSTITUTION art. 35(4) (1994) (Eth.).

83. *Id.* art. 9.

18 provides that everyone shall have the right to protection against “cruel, inhuman or degrading treatment.”⁸⁴ Being whipped falls squarely under the definition of cruel, inhuman, and degrading treatment. As such, the whipping of women during the bullah ceremony is a customary practice that should be determined to be “void” under the Ethiopian Constitution. However, there is no specific provision under the FDRE criminal code that prohibits or punishes the act of whipping. Some of the provisions prohibiting infliction of intentional bodily injury lack the solid language to make whipping an illegal act.

Ethiopia is a federal state with ten federating units.⁸⁵ Each region has its own regional constitution. The Southern Nation Nationalities and People’s Region is one of the federating units.⁸⁶ The regional constitution derives its power from the FDRE Constitution. It prohibits practices contrary to the human rights of women, categorizing such practices as void and null.

2. *International Human Rights Instruments Incorporated under the FDRE Constitution*

Similar to many other African nations,⁸⁷ Article 13 of the FDRE Constitution sets forth that “the fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles” of instruments that each contain explicit and clear mention of prohibition of whipping women: the Universal Declaration of Human Rights (the UDHR),⁸⁸ The International Covenant on Civil and Political Rights (the ICCPR)⁸⁹ and all the other major international instruments adopted by Ethiopia,⁹⁰ including the International Convention on Economic, Social and Cultural Rights (the ICESCR),⁹¹ the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁹² the African Charter on Human and Peoples Rights (the Banjul Charter),⁹³ and the African Convention on the Rights of Women, commonly

84. *Id.* art. 18.

85. *Id.* art. 45-47.

86. *Id.* art. 47(1).

87. Manisuli Ssenyonjo, *Culture and the Human Rights of Women in Africa: Between Light and Shadow*, 51 AFR. L.J. 39 (2007).

88. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

89. International Covenant on Civil and Political Rights, Dec. 19, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 [hereinafter ICCPR].

90. CONSTITUTION art. 13 (1994) (Eth.).

91. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

92. Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

93. African [Banjul] Charter on Human and Peoples’ Rights, art. 5, June 27, 1981, 1520 U.N.T.S. 217; 21 I.L.M. 58 [hereinafter Banjul Charter].

known as the Maputo Protocol.⁹⁴ Each and every one of these instruments contains language that prohibits the whipping of women. For example, Article 3 of the UDHR states that, “everyone has the right to life, liberty and security of person” and Article 7 of the ICCPR provides that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Therefore, the rights, principles and standards that are incorporated under these instruments are directly applicable to the rights and freedoms incorporated under chapter three of the FDRE Constitution. These international instruments are discussed in detail in Part III.

B. *The Federal Democratic Republic of Ethiopia Criminal Code*

1. *Grave and Common Willful Bodily Injury under the FDRE Criminal Code*

The new criminal code of Ethiopia (1995) is comprehensive and progressive compared to the old Penal Code (1957), which did not consider Harmful Traditional Practices (HTP’s) as crimes against the law.⁹⁵ The current criminal code identifies and classifies certain HTP’s as crimes including abduction, early marriage, and female genital mutilation (FGM).⁹⁶ The updated criminal code of Ethiopia also provides general prohibition and punishments for both grave and common forms of willful bodily injury.⁹⁷

However, there are some *legal lacuna*, gaps in the applicable law, that do not allow the application of these provisions to prohibit or punish whipping. As an example, for whipping to be prosecuted as a crime under grave willful injury,⁹⁸ it is required that the harm be proven to have permanent health complication or at least tend to endanger life or cause permanent health challenges had antiseptic treatment not been delivered.⁹⁹ The practice of whipping women results in different level of physical suffering from grave to simple. The above provision may enable some victims to get legal redress against the practice. However, this provision will leave out many women who don’t meet the requirements because they sustained lesser physical injury from the whipping.

Further, common willful injury under the criminal code is punishable only upon the victim’s complaint. But, as demonstrated elsewhere in this

94. Protocol to the African Charter on Human and Peoples’ Rights on Rights of Women in Africa, July 11, 2003, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa> [hereinafter Maputo Protocol].

95. PENAL CODE [PENAL C] (Eth.).

96. CRIMINAL CODE [CRIM. C] art. 565-67, 586, 648 (Eth.).

97. *Id.* art. 555.

98. *Id.* art. 556.

99. Fiseha Negash, *Permanency Rule Dilemma to Designate Grave Willful Injury Crime of Ethiopian Criminal Code Of 2004: The Practice in Oromia Regional State*, ABYSINNIA L.: CRIM. L. BLOG (Nov. 19, 2020), <https://tinyurl.com/yhlmda5s>.

Note, not only are the women who are whipped unlikely to submit a complaint, they are more likely to defend the practice and submit themselves to the beatings with feelings of love and pride.¹⁰⁰ The women are admired by elders and the community and receive a social benefit in exchange for the whipping that seemingly makes it all worth it, if they survive it. The gap here between the needing to prove the extent of harm inflicted gets in the way of holding the maza criminally liable. In practice, however, all criminal acts seem to be made based on formal complaint. Unless the victim visits the police station and reports the case, justice is unlikely.

No member of the community would be willing to report the incident to the police because even though women sustain serious and sometimes fatal injuries from the whipping, the social and communal intent of the whipping is not to inflict harm on the woman or punish her, but to fulfill the requirements of the ritual ceremony. There is even an act of provocation from the women to get whipped by the maza. Furthermore, the fact that women will not come forward to file criminal complaints has ensured the continuance of the practice.

2. *Other Provisions on Harmful Traditional Practices Under the FDRE Criminal Code*

The Ethiopian Criminal Code criminalizes several harmful traditional practices in general, with specific provisions on FGM,¹⁰¹ early marriages,¹⁰² and bigamy.¹⁰³ It also criminalizes domestic violence,¹⁰⁴ early and forced marriage,¹⁰⁵ widow's lack of inheritance, polygamy,¹⁰⁶ and other harmful practices also caused by gender discrimination.¹⁰⁷ However, there is no provision under the criminal code that expressly prohibits the customary practice of whipping women. Therefore, there is a need to come up with an explicit provision in the criminal code that prohibits or punishes the practice of whipping women similarly to cases of FGM and forced marriages.

100. Lydall said that when he spoke with the girls whipped during bull jumping ceremony, they “ma[d]e patently clear . . . that girls like being whipped, and deliberately provoke young men to whip them.” Lydall, *supra* note 50, at 8-9.

101. CRIMINAL CODE [CRIM. C] art. 565 (Eth.).

102. *Id.* art. 648.

103. *Id.* art. 650.

104. *Id.* art. 564.

105. *Id.* art. 648.

106. *Id.* art. 650.

107. *Id.* art. 567-68.

IV. ANALYZING THE PRACTICE OF WHIPPING WOMEN UNDER INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

A. *International Human Rights Instruments*

Ethiopia has ratified most major international conventions, protocols and treaties related to women and gender equality.¹⁰⁸ Promising efforts are being made by the Federal Democratic Republic of Ethiopia to address gender equality and women's empowerment issues. Ethiopia has ratified major international women human right conventions and incorporated in to the domestic law.¹⁰⁹ However, to achieve meaningful gender equality and to ensure proper implementation of the ratified international conventions on gender equality, a lot more has to be done. There is a need for proper implementation of the ratified international conventions on gender equality.¹¹⁰

1. *Discrimination*

Ethiopia ratified CEDAW in 1981,¹¹¹ but it did not ratify the optional protocol to CEDAW adopted by the UN General Assembly. The CEDAW optional protocol introduced individual communication and inquiry procedures.¹¹² The communications procedure gives individual women or groups of women the right to complain to the CEDAW Committee about violations of rights contained in the Convention.¹¹³ The inquiry procedure allows the Committee to investigate serious or systematic violations of women's rights in a particular country.¹¹⁴ Communication can be made by or on behalf of individuals or group of individuals.¹¹⁵ When communication is made on behalf of individuals or group of individuals, the victim must give consent.¹¹⁶ This procedure allows individuals to bring complaint against their own government for violations of their CEDAW treaty obligations.¹¹⁷ A complaint can only made after exhaustion of all available domestic remedies.¹¹⁸

108. G.S. Ogato, *The Quest for Gender Equality and Women's Empowerment in Least Developed Countries: Policy and Strategy Implications for Achieving Millennium Development Goals in Ethiopia*, 5 INT'L J. SOC. & ANTHROPOLOGY 359, 363 (2013).

109. *Id.*

110. *Id.*

111. CEDAW, *supra* note 92.

112. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women art. 1, Oct. 6, 1999, 2131 U.N.T.S. 83 [hereinafter OP-CEDAW].

113. *Id.* art. 2.

114. *Id.* art. 8.

115. *Id.* art. 2.

116. *Id.*

117. *Id.*

118. CEDAW, *supra* note 92, art. 4.

i. CEDAW

CEDAW requires member states to take all appropriate measures to eliminate all acts of discrimination against women by persons, organizations or enterprises.¹¹⁹ The Convention defines discrimination against women as: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹²⁰ This definition includes “any prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes.”¹²¹ In the Hamer tribe, “the local customs are an invisible force that perpetuates for gender inequality. Women appear to readily submit to local customs and to the community at large due to a lack of public awareness and gender-based interventions.”¹²²

Article 2 of the CEDAW imposes obligation on States Parties to condemn discrimination against women in all its forms and calls for elimination of discrimination against women by all appropriate means.¹²³ Distinctions on the enjoyment of the rights protected based on gender roles backed by customary or cultural justification is discrimination based on sex.¹²⁴ Interpreting the meaning of this provision, the Nigerian Court of Appeal Enugu Division held that the Nrachi custom¹²⁵, which requires a female child to perform the Nrachi ceremony¹²⁶ in order to inherit her deceased father’s estate, whereas no male child is required to perform this ceremony, is discrimination based on sex.¹²⁷ The court stated that these practices are premised upon the inferiority of women, designed to perpetuate their subjugation to male supremacy, and therefore discriminatory and prohibited under Article 2 of the CEDAW.¹²⁸

For the same reason, because the attainment of gender equality cannot be realized without the modification of the existing patriarchal cultural

119. *Id.* art. 2.

120. *Id.* art. 1.

121. *Id.* art. 5(a).

122. Eneyew et al., *supra* note 14, at 104.

123. CEDAW, *supra* note 92, art. 2.

124. *Mojekwu v. Ejikeme* [1999] 5 NWLR 402 (Nigeria).

125. Nrachi custom is a customary law of succession of the Igbo tribe in Nigeria that excludes female offspring from eligibility to inherit the property of their fathers. *See id.*

126. Nrachi ceremony is a practice in which a female child of a deceased father, who died intestate, is prevented from marrying in order to inherit her father’s estate to enable her to bear male children in her father’s name. *Id.*

127. *Id.*

128. *Id.* at 2.

assumptions,¹²⁹ the practice of whipping women must be classified as discriminatory under Article 2. The traditional practice is based on unequal traditionally assigned gender roles as they play out during the Bullah ceremony. The justification of the practice is based on the erroneous assumption of women's inferiority and self-insufficiency. Given that the ceremony is understood to create a social contract between the young man jumping over the bulls and the women being whipped, it is clear that the Bullah ceremony assumes that at some point in a woman's life she will need the help of the man for whom she was whipped.¹³⁰ The government of Ethiopia has an obligation to modify the existing practice through legal and social reform so that elderly or infirm women will be taken care by their communities or country even if they were not previously whipped.

Further, CEDAW prohibits all forms of discrimination. The convention recognizes that women are subject not only to obvious inequalities but also to extensive and subtle forms of sex and gender discrimination that are intertwined into the political, cultural and religious framework of their societies.¹³¹ The CEDAW Committee on General Recommendation No. 19 elaborated that gender-based violence that is directed against a woman that affects women disproportionately is discrimination based on gender.¹³² Whipping women is against the very essence of gender equality. The practice is based on unequal traditionally assigned gender roles as they play out during the bullah ceremony. The justification of the practice is based on a false assumption of women's inferiority and self-insufficiency. The quid pro quo between the young man jumping over the bulls and the women being whipped is that at some point in her life she will need the man's help for whom she is whipped. With no other social guarantees, her fear of banishment from the community or not being cared for outweighs shorter term lashes with a stick and the after-effect from whipping. Here, whipping serves the purpose of buying her protection and security for economic challenges she may face later in her life. It follows that if there are adequate social protection and social welfare programs in place for women, they might not submit themselves for whipping.

Therefore, as a member state to the CEDAW convention, Ethiopia needs to take all necessary measures to crack down on the practice of whipping women during the bull jumping ceremony in Hamer Southwest

129. Elizabeth Sepper, *Confronting the Sacred and Unchangeable: The Obligation to Modify Cultural Patterns Under the Women's Discrimination Treaty*, 30 U. PA. J. INT'L L. 585, 592 (2014).

130. Burke, *supra* note 6.

131. *Id.*

132. Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendations Nos. 19 and 20, U.N. Doc. A/47/38 (1992) [hereinafter CEDAW General Recommendation Nos. 19 & 20].

133. *Id.* at 1.

part of the country. In the absence of any measures to stop this practice, Ethiopia will be in breach of its treaty obligation under the CEDAW.

ii. Obligation to Adopt Legislation

CEDAW Article 2(b) and (f) require member states to take all appropriate measures to prohibit any act that discriminates against women. State parties are under the obligation to adopt legislation to criminalize practices, like whipping women. There is no legislation that specifically criminalizes the whipping of women in Hamer. The obligation to adopt legislation under CEDAW includes the requirement not only to enact legislation, but also to ensure adequate implementation and monitoring of the legislation prohibiting all forms of violence against women. This obligation to adopt legislation has been explained in the case of *A.T. v. Hungary*¹³³ where the CEDAW Committee found that the lack of specific legislation to combat domestic violence constituted a violation of human rights, particularly the right to security of person.¹³⁴ Further, in *X and Y v. the Netherlands*,¹³⁵ the European Court of Human Rights stated that the failure of the government of the Netherlands to enact appropriate criminal legislation pertinent to the rape of a mentally disabled young woman had violated the human rights responsibilities of Netherlands.¹³⁶ In this case, a young mentally disabled woman was raped.¹³⁷ The criminal laws of the Netherlands explicitly punished rape, but the victim must bring the complaint.¹³⁸ The law further required the victim to be more than sixteen years of age and mentally competent to file the criminal complaint against an act of rape, and Miss Y, who was mentally handicapped, was unable to file the criminal complaint due to her mental disabilities.¹³⁹ The court concluded that the criminal law of the Netherlands failed to provide “practical and effective protection”¹⁴⁰ to the victim through the criminal legislation.¹⁴¹ Similarly, the criminal legislation of Ethiopia suffers from deficiency, as it fails to provide adequate protection to the victim of whipping during the bullah ceremony.

133. Comm. on the Elimination of Discrimination Against Women, Communication No.: 2/2003, Ms. A. T. v. Hungary, U.N. Doc. CEDAW/C/32/D/2/2003 (Oct. 10, 2003).

134. *Id.*

135. *X & Y v. Netherlands*, 91 Eur. Ct. H.R. (ser. A) (1985).

136. *Id.*

137. *Id.* at 3-4.

138. *Id.* at 4.

139. *Id.* at 3.

140. *Id.* at 9.

141. *Id.*

iii. Obligation to Social Reforms

CEDAW Article 5(a) requires states to modify the social and cultural patterns of conduct of men and women when the conduct is discriminatory based on sex.¹⁴² The modification has to be made with a view of achieving the elimination of prejudices, customs, and all other harmful practices based on the inferiority or the superiority of either sex.¹⁴³ Article 5(a) in particular imposed a specific obligation to “modify the social and cultural patterns of conduct of men and women”¹⁴⁴ by adopting immediate, effective and appropriate measures.¹⁴⁵ These measures include cultural modification and prohibition of certain discriminatory conduct.¹⁴⁶ General Recommendation No. 19 explains that these measures include state parties taking appropriate and effective measures to overcome all forms of gender-based violence either by public or private acts.¹⁴⁷ Further, the CEDAW Committee, under General Recommendation No. 35, describes that “measures must be taken to modify or eradicate customs and practices that justify or constitute discrimination against women.”¹⁴⁸

The practice of whipping women needs to be included in the national action plan to eradicate HTP’s. The national report on the implementation of the Beijing Declaration and Platform for Action published in 1995 describes the reduction of HTPs like FGM and early marriage in general throughout the country.¹⁴⁹ The report further elaborates the measures taken to restructure the gender machinery as to enable to give comprehensive protection and promotion of gender equality.¹⁵⁰ To this end, the Ministry of Women, Children and Youth Affairs has been tasked with designing and preparing new policy, law and mechanisms to respond and create various opportunities for women.¹⁵¹ In 2013, the same Ministry developed a national strategy and action plan on HTPs.¹⁵² The action plan identifies different forms of HTPs¹⁵³ however, the practice of whipping women is not

142. CEDAW, *supra* note 92, art. 5(a).

143. Sepper, *supra* note 129, at 588.

144. CEDAW, *supra* note 92, art. 5(a).

145. *Id.* art. 5.

146. *Id.* art. 2(b), (e), (f).

147. CEDAW General Recommendation Nos. 19 & 20, *supra* note 131, ¶ 9.

148. Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, U.N. Doc. CEDAW/C/GC/35, ¶ 26(b) (June 26, 2017) [hereinafter CEDAW General Recommendation No. 35].

149. FEDERAL DEMOCRATIC REPUBLIC OF ETH., NAT’L REPORT ON THE IMPLEMENTATION OF THE BEIJING DECLARATION AND PLATFORM FOR ACTION (2000).

150. *Id.*

151. *Id.*

152. ETH. MINISTRY OF WOMEN, CHILD. & YOUTH AFFS., NATIONAL STRATEGY AND ACTION PLAN ON HTPS AGAINST WOMEN AND CHILD (2013) [hereinafter MoWCYA National Strategy & Plan].

153. *Id.* at 14.

identified as one of ‘the most widely practiced or known’ form of HTP under the strategy and action plan.¹⁵⁴ The National Growth and Transformation Plan II (2016) provides specific targets to reduce HTPs like abduction, FGM/C and child marriage HTPs; nevertheless, there is no action plan or target set to reduce, criminalize or stop the practice of whipping women.¹⁵⁵ The goal of this Note is to bring whipping women into the category of HTPs and make it part of national action plans moving forward.

iv. Other International Instruments Addressing Discrimination

The practice of whipping women also violates other human rights conventions like the UDHR, ICCPR, and ICESCR. The UDHR Article 1 provides that all human beings are born free and equal in dignity and rights.¹⁵⁶ Article 7 provides equal protection of the law against any discrimination.¹⁵⁷ Article 2 prohibits discrimination based on sex.¹⁵⁸ Article 3 of the ICCPR provides for the equal right of men and women on the enjoyment of all civil and political rights.¹⁵⁹ Most importantly, Article 3 of the ICESCR declares that “the state parties of the convention must ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the convention.”¹⁶⁰ Under its General Comment No. 14, the ICESCR Committee also noted the “state obligation to undertake preventive, promotive and remedial action to shield women from the impact of harmful traditional cultural practices and norms.”¹⁶¹ Whipping women during the Bullah ceremony violates these rights protected under the international human rights instruments as discussed in Part II and the FDRE Constitution.

v. Whipping Women is a Form of Torture

The practice of whipping woman during the bull jumping ceremony violates the absolute prohibition against torture. Ethiopia has been a signatory to the Convention Against Torture (CAT) since 1994.¹⁶² The CAT

154. ETH. NATIONAL PLANNING COMM., GROWTH AND TRANSFORMATION PLAN II (GTP II) (2015/16-2019/20) (2016).

155. *Id.* at 72.

156. UDHR, *supra* note 88, art. 1.

157. *Id.* art. 7.

158. *Id.* art. 2.

159. ICCPR, *supra* note 89, art. 3.

160. ICESCR, *supra* note 91, art. 3.

161. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 14, U.N. Doc. E/C.12/2000/4, ¶ 21 (Aug. 11, 2000).

162. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, T.I.A.S. No. 94-1120.1, 1465 U.N.T.S. 85 [hereinafter CAT].

declares an absolute prohibition on any form of torture.¹⁶³ The Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for any reason based on discrimination of any kind.”¹⁶⁴ Other human rights conventions also expressly prohibit torture and protect the security, privacy, and liberty of persons. Article 3 of the UDHR states that everyone has the right to life, liberty, and security of person, and Article 5 provides no one shall be subject to torture or to cruel, inhuman, or degrading treatment or punishment. Likewise, the ICCPR protects individuals from torture or cruel, inhuman, or degrading treatment and arbitrary or unlawful interference with their privacy.¹⁶⁵ Articles 7 and 17 of the ICCPR state that everyone has the right to liberty and security of person.¹⁶⁶

vi. Elements of Torture under the CAT

The definition of torture under the CAT contains four basic elements. If one of these elements of the definition is missing, the act may not fulfill the definition of torture. However, even if the act does not fulfill the four elements of the definition of torture, that does not mean that the act is non-punishable.¹⁶⁷ Any severe form of inhuman or degrading treatment which amounts to ill-treatment is also prohibited under Article 16 of the CAT.¹⁶⁸ The four defined “elements of torture” under CAT include: first, the intentional infliction on a person; second, the severe physical or mental pain or suffering; third, that the conduct was for purposes of interrogation, punishment or for any reason based on discrimination of any kind; and fourth, perpetrated or instigated by a State official or person acting in official capacity.¹⁶⁹ The next Section demonstrates how whipping of women can amount to torture.

vii. Classifying Harmful Traditional Practices as Torture.

General Comment Number 2 of the CAT Committee defines torture under Article 1(1) as involving four elements. The comment also expanded on the last element of the definition to private acts: “when perpetrated with the consent or acquiescence of a State official or person acting in official capacity.”¹⁷⁰ State are considered as complicit to torture when they know or

163. *Id.* art. 2.

164. *Id.* art. 1.

165. ICCPR, *supra* note 89, art. 7, 17.

166. *Id.*

167. CAT, *supra* note 162, art. 16

168. *Id.*

169. *Id.*

170. Comm. Against Torture, General Comment No. 2, U.N. Doc CAT/C/GC/2, ¶ 18 (Jan. 24, 2008) [hereinafter CAT General Comment No. 2].

have reasonable grounds to know that acts of torture or ill-treatment are being committed by private actors and when they fail to prevent and prosecute the perpetrators.¹⁷¹ Therefore, a private act amounts to torture when state officials are aware of the act taking place, but have thus far failed to take action to stop the conduct. This is precisely what happens during the bullah ceremony.

States can be responsible. The Draft Articles on state responsibility¹⁷² articulate a number of rules under which state responsibility can be imputed.¹⁷³ Some of them expressly or impliedly envisage the liability of the state for the wrongful acts or omissions of private actors.¹⁷⁴ States can be responsible for acts of violence against women perpetrated by non-state actors under international human rights law.¹⁷⁵ Such responsibility arises from omissions or failure to take positive measures to protect and promote human rights.¹⁷⁶ In *Velasquez-Rodriguez v. Honduras*¹⁷⁷, the Inter-American Court of Human Rights held that a State is liable for its failure to take action to prevent, investigate and punish human rights violations committed by non-State actors.¹⁷⁸ Especially relevant to the discussion of how whipping is torture is the recognition that those private acts with the consent or acquiescence of a public official constitute torture.¹⁷⁹ Here, consent or acquiescence implies a level of awareness of public official about the acts of torture or ill treatment.¹⁸⁰ This assertion was made “to ensure that officials could not escape responsibility by claiming ignorance of violations not committed by public officials, but for which such officials should bear some responsibility.”¹⁸¹ The whipping of women and girls during the bullah ceremony in the South Omo Zone is conducted by private individuals. However, the conduct is not an isolated act, but performed with regularity to the point that tourists are able to plan their travels to witness the ceremony, and the government officials are aware of the practice and the income it generates but have done nothing to stop it.¹⁸² Further, Article 16 of the CAT provides that each State Party shall undertake to prevent in any

171. *Id.*

172. Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001).

173. *Id.* art. 2.

174. *Id.*

175. Danwood Mzikenge, *The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights*, 5 MELB. L.J. 2 (2004).

176. CEDAW Committee Joint General Recommendation no. 35, *supra* note 148, ¶ 24 (b).

177. *Velasquez Rodriguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (July 29, 1988).

178. *Id.*

179. CAT General Comment No. 2, *supra* note 170.

180. Rhonda Copelon, *Gender Violence as Torture: The Contribution of CAT General Comment No. 2*, 11 N.Y.C. L. REV. 229, 254 (2008).

181. *Id.* at 254.

182. Kifle et al., *supra* note 15, at 272.

territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishments which do not amount to torture as defined in Article 1.¹⁸³ Even when the definition of ill-treatment and torture is vague, it has been pointed out that, “conditions that give rise to ill-treatment frequently facilitate torture and therefore the effective prevention of torture requires parallel measures to prevent ill-treatment.”¹⁸⁴ Any efforts by States to justify torture and ill-treatment based on any religious or traditional justification, such as taking part of the bullah ceremony, violate this absolute prohibition of inflicting harm on women by whipping them with sticks.¹⁸⁵

The above definition and these general parameters include the whipping of women during the bullah ceremony. As described under Part I.B.2 of this Note, the main aim of this whipping during the Hamer bullah ceremony in the South Omo Zone of Ethiopia is to inflict harm on women’s bodies because of the belief that the scars show her strength, and the only way that scars can be created is by inflicting harm on her body.¹⁸⁶ However, whipping of any sort is cruel and amounts to ill-treatment. Studies indicate that women are whipped to the point of death or in most cases, until they become unconscious.¹⁸⁷ Like FGM and other HTP’s, whipping women during the bullah ceremony reveals the stereotypical perception that women could be legitimately exposed to torture in order to comply with the gender-specific community standards and norms.¹⁸⁸

The South Omo Zone is one of the very few tourist sites in Ethiopia.¹⁸⁹ The area is designated as a cultural show center by the government.¹⁹⁰ Seventy percent of tourists visiting the South Omo Zone visit the bull jumping ceremony.¹⁹¹ As a result, the local government and tourism agencies generate huge amounts of revenue from the international visitors who are cultural voyeurs of the ceremony that involves whipping women. The government has increased interest in perpetuating this horrific spectacle rather than deterring or condemning the bullah ceremony, motivated to perpetuate it through tourism campaigns.¹⁹²

The bullah ceremony is vastly entertaining to tourists who come from all parts of the world to witness it, and whipping women is part of this ceremony.¹⁹³ Obviously, the government is aware of the whipping practice

183. CAT, *supra* note 162, art. 16.

184. Copelon, *supra* note 180, at 248.

185. Kifle et al., *supra* note 15, at 272.

186. Lydall, *supra* note 50, at 8-9.

187. Kifle et al., *supra* note 15, at 280.

188. REBECCA COOK, WOMEN’S HEALTH AND HUMAN RIGHTS: THE PROMOTION AND PROTECTION OF WOMEN’S HEALTH THROUGH INTERNATIONAL HUMAN RIGHTS LAW 22 (1994).

189. Kifle et al., *supra* note 15, at 272.

190. *Id.*

191. *Id.*

192. *Id.*

193. Dessiye, *supra* note 24, at 61.

and efforts were made by the Woreda administration to create awareness about various HTP's, including whipping.¹⁹⁴ The Woreda administration tried to stop the practice of whipping using police force. These attempts resulted in a clash between the Woreda government and the Hamer elders who wanted to keep the tradition.¹⁹⁵ However, these programs are more focused on improving women's participation in political and socio-economic activities, rather than eradicating the practice of whipping women. The local government is not actively working to support efforts to eliminate HTPs in the Woreda and did not even aspire to create effective networking with NGOs and other stakeholders operating in Hamer Woreda.¹⁹⁶

Therefore, the government has failed to take proper measures to stop the practice of whipping. As demonstrated in this case, Ethiopia as a State party has failed its human rights obligations because it has been unable to extend protection against acts of private or non-state actors such as the Maza, who whip women not only as a part of cultural practice, but with the additional repugnant incentive of increased tourism income.

viii. Violence Against Women

The practice of whipping women during the bullah ceremony in Hamer amounts to violence against women. Violence against women or gender-based violence is violence as a result of existing gender inequality. The Declaration on the Elimination of Violence against Women¹⁹⁷ defines violence as “any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹⁹⁸

This definition of violence against women focuses on security against deliberately inflicted harm. Security is addressed in the first sentence of Article 7 of the ICCPR, which provides that, no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.¹⁹⁹ Insecurity in this context is not limited to lack of health care but also refers to vulnerability for violence.²⁰⁰

On the other hand, gender-based violence has been defined as “acts or threats of acts intended to hurt or make women suffer physically, sexually or psychologically, and which affect women because they are women or

194. Kifle et al., *supra* note 15, at 279.

195. Eneyew et al., *supra* note 14, at 104, 112-13.

196. Dessiye, *supra* note 24, at 61.

197. G.A. Res. 48/104, Declaration on Elimination of Violence Against Women (Dec. 20, 1993) [hereinafter DEVAW].

198. *Id.* art. 1.

199. ICCPR, *supra* note 89, art. 7.

200. *Id.*

affect women disproportionately.”²⁰¹ These acts of violence can be categorized as self-directed violence, interpersonal violence, and collective violence.²⁰² Self-directed violence includes suicidal behavior and self-abuses. In the case of the bullah ceremony, women submit themselves to whipping to demonstrate their obedience to their cultural norms of the community. Inter-personal violence is violence inflicted by another person or by a small group of people on the woman. It is also the most universal form of violence against women as obviously evident in the bullah ceremony. Collective violence, on the other hand, is violence made on the social, economic and political life of women. The bullah ceremony fits into all three categories because the nature of violence could be physical or psychological. The whipping of women in Hamer can be classified as interpersonal violence based on its nature. This kind of violence is classified as a public health concern by the World Health Organization (WHO).²⁰³ The following subsection will discuss the health consequence of whipping during bull jumping.

ix. Women’s Right to Health

During the bullah ceremony Hamer women are severely beaten.²⁰⁴ The mazas are selected based on their physical strength and ability to cause severe physical damage.²⁰⁵ The type of stick traditionally used for whipping has the power to cause harsh bodily injury.²⁰⁶ The whipping of women results in various health complications. Everyone who is subject to whipping is at high risk of health complications such as damage to the kidneys, the liver and breasts.

Major human rights instruments protect the right to health. Ethiopia ratified the ICCPR and ICESCR on June 1993. Both of these instruments impose obligation on member state to take all necessary measures for realization of all rights incorporated.²⁰⁷ ICCPR Article 6(1) provides that every human being has the inherent right to life.²⁰⁸ This right shall be protected by law.²⁰⁹ No one shall be arbitrarily deprived of life.²¹⁰ Article 12

201. Gunilla Krantz et al., *Violence Against Women*, 8 J. EPIDEMIOLOGY & CMTY. HEALTH 818, 818 (2005).

202. *Id.* at 820.

203. *Id.*

204. Dessiye, *supra* note 24, at 98.

205. *Id.*

206. *Id.*

207. ICESCR, *supra* note 91, art. 2.

208. ICCPR, *supra* note 89, art. 6.

209. *Id.* art. 17.

210. *Id.* art. 6.

of the ICESCR protects the rights of everyone to the enjoyment of the highest attainable standard of physical and mental health.²¹¹

The African Commission on Human Rights defined health as consisting of two basic components: healthy living conditions and healthcare.²¹² The African Commission explained that the enjoyment of this right is vital to all aspects of a person's life and well-being and is crucial to the realization of all other rights.²¹³

Women's right to health is one of the major components of women's human rights. These rights include women's reproductive rights. The Constitution of the WHO defines health as complete physical, mental and social well-being and not merely the absence of disease or infirmity.²¹⁴ The above definition does not limit health to physical or mental illness or mere medicalization of a particular disease, but also considers environmental and socio-economic factors. This broad concept of health recognizes that health can be risk due to the person's level of education, socio-economic status, family structure, and ethnic group. Women's health is endangered through HTPs, like being whipped, which is experience that violates their bodies' integrity and denies them their well-being and security, which in turn contributes to adverse health outcomes. Therefore, States have a duty to promote not only health, but also other related services that realize and maintain women's physical integrity, mental and social well-being.

x. Violation of the Right to Children

Whipping during the bullah ceremony is inflicted on girls of all ages, including minors. Studies show that girls twelve to eighteen years of age are most likely to be subjected to the whipping.²¹⁵ Exposure to different form of violence can begin in childhood, in sexual and non-sexual ways,²¹⁶ and the bullah ceremony is one of the extreme forms of violence that Hamer girls experience in their childhood. Ensuring girls' rights to health and protection from violence and abuse, including harmful traditional or cultural practices,²¹⁷ is the most operational way to ensure and to be fully aware of their physical and social potential.²¹⁸

211. ICESCR, *supra* note 91, art. 1.

212. Purohit & Moore v. Gambia, Judgment, Inter-Am. Ct. H.R., No. 241/2001 (May 29, 2003).

213. *Id.*

214. World Health Org. [WHO] Constitution (July 22, 1946).

215. Dessiye, *supra* note 24, at 98.

216. DAVID W. BROWN ET AL., EXPOSURE TO PHYSICAL AND SEXUAL VIOLENCE AND ADVERSE HEALTH BEHAVIORS IN AFRICAN CHILDREN: RESULTS FROM THE GLOBAL SCHOOL-BASED STUDENT HEALTH SURVEY (2009).

217. G.A. Res. 50/203, Beijing Platform for Action, at 116 (Dec. 22, 1995) [hereinafter Beijing Platform for Action].

218. *Id.* at 114.

Discrimination and acts of violence against girls are not addressed specifically under major international and regional human rights instruments. Most international human rights instruments use the generic category of “children,” “women,” or “disadvantaged groups” who suffer discrimination and no reference has been made specifically to girls except under soft laws which are non-binding under international arena. For example, Article 2 of the 1989 Convention on the Rights of the Child (CRC) sets the standard of all rights for all children “without discrimination of any kind.”²¹⁹ Further, Article 19 of the CRC protects the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.²²⁰

None of the above provisions under the CRC specifically refers to the situation of girls specifically. Instead, the provisions are gender-neutral and typically are assumed to cover both boys and girls. The principle of best interests of the child under Article 3 supports a child-centered approach and requires those in positions of authority to review programs, policies, regulations, and legislation so that they have a positive influence on promoting or fulfilling children’s rights.²²¹ The principle of the right to life, survival and development under Article 6 of the CRC indicates that children should be protected from situations, including conflict, which would place their lives in jeopardy and that countries must ensure that children do not die from malnutrition, disease or other causes.²²² On the other hand, the UN Beijing Platform for Action,²²³ including Section L, pledges to eliminate all forms of discrimination including harmful traditional or cultural practices and attitudes, and it explicitly uses the term “girls.”²²⁴

Within the Hamer community, girls are particularly vulnerable to violence because of the widespread cultural and traditional practices that expose them to intense and sometimes deadly acts of whipping causing dangerous physical and mental health consequences. These inhumane and harmful practices are tolerated because of cultural stereotypes.²²⁵ This deadly violence is viewed as being socially and culturally accepted.²²⁶ Studies conducted in African children confirms that, childhood exposure to either physical or sexual violence is associated with multiple adverse health

219. Convention on the Rights of the Child art. 2, Nov. 20, 1989, 1577 U.N.T.S. 3.

220. *Id.* art. 19.

221. *Id.*

222. *Id.* art. 6

223. The United Nation Beijing Declaration and Platform for Action is a soft document which puts targets towards achieving gender equality. More specifically, in its preamble, the Declaration emphasizes its mission to “[e]nsure the full implementation of the human rights of . . . the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms.” Beijing Platform for Action, *supra* note 217, at 2.

224. *Id.* at 109.

225. Dessiye, *supra* note 24, at 97.

226. *Id.*

outcomes and behaviors like smoking, substance abuse and physical inactivity.²²⁷

The UN Beijing declaration is a non-binding soft document, to which Ethiopia adheres. Ethiopia ratified the CRC in May 1991. The FDRE Constitution incorporates international standards in the field of human rights and a specific reference is made to the rights of child enshrined in the CRC. For example, Article 36 provides the right of child from physical and mental abuse. The Government has also taken a number of initiatives to improve the situation of children in the country. However, Ethiopia still has a long way to go to improve the situation of the children of in the country.²²⁸

B. *Regional Human Rights Instruments*

1. *The African Charter on Human and Peoples Rights*

The practice of whipping women during the bullah ceremony violates the rights protected under regional human rights instruments that Ethiopia ratified. Ethiopia is a signatory to the African Charter on Human and Peoples Rights, or the Banjul Charter, which was adopted by the OAU in 1981. Article 5 of the Banjul Charter prohibits any form of torture, cruel, inhuman or degrading punishment or treatment.²²⁹ Similarly, Article 2, 16 (1) and 18 (3) prohibit any form of discrimination based on sex. Further, Article 1 imposes obligation on member states to take legislative and other measures to ensure the realization of rights protected under the Charter. Article 18(3) further provides obligation on nation states to conform to international women's human rights instruments. There are two comprehensive continental supervisory mechanisms with the mandate to examine whether contracting parties met their human rights obligations under African human rights system, the African Human Rights Commission and the African Court of Human and Peoples Rights.

Women have standing to file communication to the Commission when their rights under the Charter are violated.²³⁰ The Communications could be individual or group complaints. If the Commission decides that the complaint is admissible, it will inform the author and the state. The state must send a reply to the Commission within four months. In its reply, the state party concerned must explain the issues and indicate any steps it has taken to remedy the situation. The Commission will then consider the merits of the complaint in light of all information submitted in writing by the

227. BROWN ET AL., *supra* note 216, at 447.

228. Comm. on the Rts. of the Child, Concluding Observations of the Committee on the Rights of the Child on Fourth and Fifth Periodic Reports of Ethiopia, U.N. Doc. CRC/C/ETH/CO/4-5, at 2, 3 (June 3, 2015).

229. Banjul Charter, *supra* note 93, art. 5.

230. *Id.*

author of the complaint and the state. It then sends its observations on the complaint to the AU Assembly. Finally, the Commission may publish its observations if the AU Assembly authorizes it to do so. Similar to international and other regional human rights monitoring bodies, to obtain standing before the Commission, petitioners must first exhaust all available local remedies.²³¹

The Commission defines the scope of Article 5 of the African Charter to include that the term cruel, inhuman or degrading treatment or punishment is to be interpreted to the widest extent possible to provide protection against abuses, whether physical or mental.²³² The Commission further recognizes that treatment prohibited under Article 5 of the African Charter is that which attends minimal level of severity and the assessment of the level of severity is made based on all circumstances of the case including its physical and mental effects, the age, sex, and state of health of the victim.²³³ In a case between *Equality Now and Ethiopian Women Lawyers Association v. the Federal Republic of Ethiopia*,²³⁴ the Commission recognized that abduction, which is one of common form of HTP in Ethiopia, violates the right to dignity,²³⁵ liberty,²³⁶ and security of person²³⁷ protected under the Banjul Charter. In its ruling, the Commission elaborated that the failure of the government to put in place mechanisms to prevent, investigate, and punish those who commit the practice of abduction amounts to violation of state obligation under the Banjul Charter.²³⁸

2. *The Protocol to the African Charter on Human and Peoples Rights on Rights of Women in Africa*

The Protocol to the African Charter on Human and Peoples Rights on Rights of Women in Africa, or the Maputo Protocol, is a supplement to the African Charter in Human and Peoples rights.²³⁹ The preamble of the protocol states that the supplement was necessary women in Africa still suffer discrimination and they continue to be victim of harmful practices.²⁴⁰ The protocol requires states to eliminate all forms of discrimination against women and girls, through appropriate legislative and institutional

231. *Id.* art. 55-56.

232. *Huri-Laws v. Nigeria* [2000] ACHPR 23, ¶ 40 (Nov. 6, 2000).

233. *Id.* ¶ 41.

234. *Equality Now & EWLA v. Ethiopia*, Rep. African Comm'n H.R., No. 341/2007, ¶¶ 100, 117 (Nov. 16, 2015).

235. Banjul Charter, *supra* note 93, art. 5.

236. *Id.* art. 6.

237. *Id.* art. 4.

238. *Equality Now & EWLA v. Ethiopia*, Rep. African Comm'n H.R., No. 341/2007, ¶¶ 125, 150 (Nov. 16, 2015).

239. Maputo Protocol, *supra* note 94, pmb., ¶ 2.

240. *Id.*

measures.²⁴¹ Article 4 extends protection for women's life and the integrity and security of her person. This provision further reassures the prohibition and condemnation of all forms of cruel, inhuman or degrading treatments against women.²⁴²

More specifically, Article 5 of the protocol prohibits all forms of harmful practices that negatively affect the human rights of women and girls. Article 5(b) requires state parties to enact legislation backed by sanction to prohibit and punish "all form of women's scarification" under the guise of culture or tradition.²⁴³ The protocol imposes an obligation on member states to create public awareness regarding harmful practices against women. The Maputo Protocol is monitored by the African Commission through states submitting periodic reports and communication procedure under the African Charter.

V. CHARTING A WAY FORWARD: MEASURES TO ERADICATE WHIPPING

The implementation of international women's human right norms and standards on HTP requires comprehensive legal, policy, and other measures at the national level, with the involvement of all stakeholders. These reforms include all levels of federal, state, provincial and local levels of government, as well as all branches of government, including the judiciary, legislature and executive. In the fight to stop the harmful practice of whipping women, the Ethiopian Ministry of Tourism also has a role to play. Primarily, there is a vital need for collaboration and coordination between the Ministry of Women, Children and Youth Affairs, the Tourism Ministry, and civil society organizations to reach an effective approach to redress the harmful practice of whipping women with the ultimate goal of eradicating it.

A. Adoption of Legislation and Enforcement

The Social Institutions and Gender Index (SIGI) focuses on the underlying factors driving gender inequalities including discriminatory social institutions. SIGI measures discrimination against women in social institutions taking into account composite measures of laws, social norms and practices. SIGI provides necessary data for transformative policy change. It is an official source that helps determine whether legal frameworks are in place to promote, enforce and monitor gender equality. According to the SIGI, an effective strategy to ensure gender equality

241. *Id.* art. 2.

242. *Id.* art. 4.

243. *Id.* art 5(b).

requires a three-pronged approach. The first prong involves legal reform, which starts with the adoption of new legislation that fully implements and guarantees protection from harmful practices and violence.²⁴⁴ This reform should be backed up by programs including the provision of judicial training, legal services and legal literacy programs. Second, there must be public awareness and community mobilization activities to tackle attitudes and shift norms.²⁴⁵ These activities include support networks and skills development to address knowledge gaps and attitudes. Finally, the third prong requires the state to provide economic support and incentives.²⁴⁶ Trainings on income-generating skills and opportunities for women could help remove economic constraints allowing women to feel empowered to resist dependency on men that requires such a high price,²⁴⁷ like whipping women in case of Hamer tradition.

Enacting laws that prohibit the whipping of women is the first important step towards eliminating the practice. The development of such laws requires consultation with civil society, victims and survivors, and practitioners who will apply and enforce the laws. The harmful practice of whipping women technically could be included under common or grave willful bodily injury but these provisions under the federal criminal code do not fully respond to whipping as discussed under Part I of this Note. Consequently, creating legislation that specially and fully addresses the traditional practice will ensure that whipping can be seen as human rights violations, like FGM, no less serious than comparable violations that are mostly encountered by men.²⁴⁸

The legislation could be adopted at the federal level or at the state level. In Ethiopia, promulgating criminal law is a power expressly given to the federal government under the constitution.²⁴⁹ However, states can also enact criminal legislation on matters that are specific to them and which are not governed under the federal criminal legislation.

One of the challenges in the fight against HTPs in most sub-Saharan African countries is a culture of silence and superstition that supports HTPs.²⁵⁰ Women ignore the pain they suffer due to HTPs because of this culture. Most women who have been brought to suffer do not complain of

244. Yvonne Rafferty, *International Dimensions of Discrimination and Violence against Girls: A Human Rights Perspective*, J. INT'L WOMEN'S STUD. 10 (2013).

245. *Id.* at 10.

246. *Id.*

247. *Id.*

248. JAY DRYDYK, *Globalization and Multi-cultural Knowledge of Human Rights*, in GLOBAL JUSTICE, GLOBAL DEMOCRACY; PROSPECTS FOR A NEW INTERNATIONALISM 159, 183 (HALIX: FERNWOOD PUBLISHING, 1997).

249. CONSTITUTION art. 55(5) (1994) (Eth.).

250. CORINNE A.A. PACKER, USING HUMAN RIGHTS TO CHANGE TRADITION: TRADITIONAL PRACTICES HARMFUL TO WOMEN'S REPRODUCTIVE HEALTH IN SUB-SAHARA AFRICA 44, 45 (2002).

their discomfort or pain; rather, they keep many hardships they suffer secret. This is because it is believed that if they do not conduct themselves as to the custom requires, evil things will happen to the community. The practice in Hamer is not different from this. Women victims do not seek justice because of cultural beliefs, feelings of shame, and fear of being outcast by the community and social network.

Therefore, to fulfill its purpose, the law must be effectively applied and enforced. Implementation of laws should be advanced through gender-sensitivity training of law enforcement officials, prosecutors, and judges. The effectiveness of the legislation depends on women's knowledge of the law and the protection and remedies it offers and women's capacity to claim these rights effectively. The government needs to establish centers that provide services to victims of whipping such as medical treatment, psychological and legal support, and shelter. The legal support division has to give legal advice and guidance on how to bring complaints against whipping or attempts of whipping.

B. *Social Interventions*

In addition to legal measures, states must also work towards an integrated approach to abolish the cultural and traditional practices that undermine the full enjoyment of human rights by women.²⁵¹ Effective elimination of HTPs requires a shift in thinking from cultural and traditional norms towards gender equality.²⁵² The international human rights norms establish women's rights to live lives free of violence, and these norms further provide that States cannot invoke any cultural, customary, traditional, or religious justification to condone any act of violence.²⁵³ In most cases, culture and tradition are used as means to promote impunity for perpetrators of "culturally legitimized violence's"²⁵⁴ and to silence dissenters of customary practices.²⁵⁵ Therefore, to end culturally justified HTP and to

251. Sepper, *supra* note 129, at 598.

252. Rafferty, *supra* note 244, at 10.

253. Rashida Manjoo (Special Rapporteur on Violence Against Women, Its Causes and Consequences), *Report of the UN Special Rapporteur on Violence Against its causes and Consequence*, at 22, U.N. Doc. A/HRC/20/16 (May 23, 2012). Further, under paragraph 87, the report explains states' obligation to "develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to victims; provide access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies; and ensure that the secondary victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions." *Id.*

254. SHAINA GREIFF, NO JUSTICE IN JUSTIFICATIONS: VIOLENCE AGAINST WOMEN IN THE NAME OF CULTURE, RELIGION, AND TRADITION 3, 4 (2010).

255. *Id.* at 4.

bring substantial change, there must be multi-pronged strategies along the legal reform stated in Part IV.A.

1. *Women's Empowerment*

Women's economic ability plays a great role in their decision-making ability. There must be social security in place for elderly women so that they are not dependent on a single man who may or may not fulfill his social obligations in the future. There is a need to develop support-networking and capacity-building systems among Hamar women. Capacity-building processes rely and build on existing abilities or capabilities within a community and on available resources.²⁵⁶ Women should stand for women to suppress the traditional assumptions of women's economic inability.

2. *Expanding Formal Education*

Major human rights instruments provide for the right to education. Article 13 of the ICESCR recognizes that everyone should have the right to education. It is strongly believed that education is a means for "full development of the human personality and the sense of its dignity."²⁵⁷ It is also agreed that education will advance the respect for human rights and fundamental freedoms. Article 10(c) of the CEDAW also prohibits discrimination against women at all levels and all forms of education.

However, according to a study conducted in 2014, only six Hamar tribal members have ever completed secondary education.²⁵⁸ There is a need to expand formal education for girls and boys. The government is under obligation to build classrooms and to provide facilities for formal education in Hamar Woreda. The education programs should sensitize and inform adults about the harmful effects of traditional or customary practices on girls and women.

In this regard, the Maputo Protocol under article 12(1)(b) requires states to sensitize the public through formal education to break down the culturally established stereotypes and to eliminate HTPs.²⁵⁹ This could be done, for example, by eliminating all stereotypes in textbooks and syllabuses.²⁶⁰ The protocol further recommends integration of gender sensitization and human rights education at all levels of education curricula.²⁶¹

256. Claudia Eger et al., *Gender and Capacity Building: A Multi-Layered Study of Empowerment*, 106 *WORLD DEV.* 207, 208 (2018). The author further explains that community capacity building usually has the following four to nine aspects, such as skills and knowledge, sense of community, social structures, resources, participation, leadership, and community awareness."

257. ICESCR, *supra* note 91, art. 13.

258. CSA Census Report, *supra* note 30, at 4.

259. Maputo Protocol art. 12(1)(c).

260. *Id.*

261. *Id.* art. 12(e).

3. *Community Conversation*

Community conversations between Hamer women, girls, boys, and men will help them understand the risks related to whipping. Consistent and uninterrupted community conversations about the resulting health risks of whipping could bring a better possibility of stopping the practice if not now, at least in the coming generation. Elimination of these practices requires modification to the culture and traditions that discriminate against women and devalue women by subjecting them to treatment that is often aligned with that of animals. The government must facilitate and support community dialogue and collective consensus-building against the practice of whipping women, girls and children. Since HTPs deal with sensitive issues and any discussion regarding it considered as taboo, community conversation would allow indirect questioning method to detect truthful answering. In this method, the facilitator plays a role of guiding the discussion among the group of community member about the effect of the HTP.²⁶² Engaging religious and clan leaders, boys and men is vital for positive results.

4. *Administering Awareness Creation Programs*

The National Strategy and Action Plan on HTP's against Women and Children's in Ethiopia (2013) provides various achievements made to reduce and stop different HTP's like FGM/C, abduction and early marriage through awareness raising and social mobilization and religious based interventions.²⁶³ The National Strategy must be expanded to encompass the problem of whipping women, which has never been given attention by either the local or national governments. However, as it is stated under this Note, whipping women is discrimination based on sex, and it violates the absolute prohibition of torture or ill-treatment. Building on successful efforts made previously to end other forms of HTP's, I recommend awareness creation programs in Hamer Woreda, like those created to raise awareness for women and girls living in the Kembataa Tembaro Zone, where changing attitudes towards FGM and working to end the practice have been successful.²⁶⁴ In the same manner, the government should pursue efforts to end the practice of whipping women during the bull jumping

262. Elisabetta de Cao et al., *Community Conversations as a Strategy to Change Harmful Traditional Practices against Women*, 24 APPLIED ECON. LETTERS 73 (2017). Community conversations are helpful tools to illicit truthful answers. Since HTP's are considered taboo, direct questioning might only lead to socially correct answers. The author further explains the advantage of community conversations aimed at creating awareness by distributing the information gained at the conversations to the larger community through the formulation of action points during the community conversations." *Id.*

263. MoWCYA National Strategy & Plan, *supra* note 152, at 24.

264. HAILE GABRIEL DAGNE, ETHIOPIA: SOCIAL DYNAMICS OF ABANDONMENT OF HARMFUL PRACTICES EXPERIENCES IN FOUR LOCATIONS 25 (2010).

ceremony in Hamer Ethiopia. Awareness programs are different from community conversations because under community conversation, the person's role is limited to facilitating the discussion among the community members.

5. *Creating Conducive Environment for Charity Organizations*

The federal and local government on their own might not be in the position to fully end whipping of women. But this goal could more easily be met by inviting and engaging international and local non-government organization (NGOs) to collaborate on efforts to stop the practice. The infrastructure in the area is crucial for active and functional charitable activities. Roads, electricity, drinking water, hotels, and other infrastructure would contribute to a great extent to the success and engagement of different local and international charity organizations. In this way, Ethiopia can achieve meaningful gender equality and eradicate the harmful tradition of whipping.

6. *Collaboration and Coordination*

There is a need for collaboration between the executive organs of the government. The Ministry of Women and Children's Affairs should collaborate with the Tourism Ministry to effectively eliminate the practice of whipping in Hamer Woreda. The bull jumping and the practice of whipping is mostly conducted during the harvest season and the number of tourists also reaches its peak during this period of the year.²⁶⁵ The two ministers could administer awareness about the practice of women in collaboration during this season. This proposed two-ministry collaboration could work together by promoting the valuable part of the bullah ceremony by distinguishing and discouraging the harmful parts of the tradition.

VI. CONCLUSION

The Hamer is a culturally-embedded society. According to the Bureau of population and statistics in SNNP, there are 30 types of HTP's that have been identified to be practiced in the South Omo Zone alone. Whipping women during bull jumping is one of the HTP. Aspects of this practice may have a life threatening effect on women and are discriminatory. The whipping of women, for example, results in different forms of psychological and physical suffering with the possibility of death. However, in Hamer, these traditional practices are considered an essential part of Hamer identity.

²⁶⁵ Kifle et al., *supra* note 15, at 283 (“the bullah ceremony which followed by wedding ceremony takes place during the harvesting period of the year and it is practiced every year when there is production - i.e., there is more practice in September–November every year”).

Superstitious and traditional beliefs lead women to readily submit themselves to the whipping. The whipping of women with the bull jumping ceremony is also a huge incentive for tourism in the area. This inequality, however, remains invisible to women and to the community at large due to a lack of public awareness and gender-based interventions. There is no law under the criminal code of Ethiopia to fully address the practice of whipping women. This Note suggests adoption of new legislation to stop the practice.

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