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Enforcement of CEDAW in  
Ethiopia, in light of state  
obligations

Master thesis

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# Abbreviations

UN	United Nations
CEDAW	The Convention on the Elimination of All forms of Discrimination against Women
DEDAW	Declaration on the Elimination of Discrimination Against Women
CCPR	Convention on Civil and Political Rights
CESCR	Convention on Economic, Social and Cultural Rights
UDHR	Universal Declaration of Human Rights
CSW	Commission on the Status of Women
ILO	International Labour Organization
WAD	Women's Affairs Department
WAO	Women's Affairs Office
WAS	Women's Affairs Sector

# 1 Introduction

In the old times, the treatment of Citizens in individual states was outside the reach of international law. However, this is no more so. International law has now extended to govern the conduct of states in relation to the human rights of their own citizens. Different human rights instruments have been adopted with the aim of setting the obligations of states and the minimum standards to be complied with.

The CEDAW is one such instrument providing minimum standards for the human rights of women. The motto of ensuring equal rights for women and eliminating discrimination against women has long been on the agenda of the international community. This vision has been reflected in different general and specific instruments adopted at different levels. The international human rights instruments, which entered in to force prior to CDAW, suffered from different shortcomings and were not found to be sufficient to ensure the human rights of women. Hence, CEDAW was adopted in 1979 forming the most comprehensive international instrument on the human rights of women.

The adoption of international or regional human rights instruments is of little value unless accompanied by enforcement. The enforcement of human rights instruments is the primary responsibility of states. Therefore, following the ratification or accession of human rights treaties, states are duty bound to take different measures towards implementation. The particular obligations of states arising from international human rights instruments depend on the provisions and objectives of the instruments.

The CEDAW imposes different obligations on the states parties to ensure the equal enjoyment of human rights and the elimination of discrimination against

women. States parties to CEDAW should take the measures required by the convention to discharge their obligations.

Ethiopia is one of the states parties to CEDAW and is under an obligation to take the measures required by the convention to eliminate discrimination and ensure the equal enjoyment of human rights by women. Though there are different agents and factors contributing to the enforcement of human rights, the role played by the government is pivotal. Therefore, this paper shall attempt to examine the enforcement of the rights protected by CEDAW in Ethiopia in light of the measures taken by the government.

Hence, the first chapter shall give insight on the developments towards CEDAW there by providing the background for the discussions in the subsequent chapters. In the next chapter, the specific obligations arising from CEDAW are discussed. The third chapter presents the legislative and policy measures taken by the government of Ethiopia with the aim of implementing the convention. The fourth chapter closely examines the specific situation of certain rights in Ethiopia. Then in the sixth chapter, the avenues available to ensure the enforcement of human rights of women in Ethiopia will be dealt with. Finally, conclusions and recommendations are forwarded based on the observations made.

For the purpose of this writing reference was had to the relevant literature in the area. The different policies and legislations in Ethiopia were also referred to. In addition, assessments and surveys made by different national and international organizations were used to indicate the actual situation in Ethiopia. Furthermore, an interview was held with an official from the Women's Affairs Office regarding the implementation of the National Women's Policy.

## 2 DEVELOPMENTS TOWARDS CEDAW

The need to ensure the equality of men and women was recognized long before the introduction of CEDAW in 1979. The charter of the United Nations, which was adopted in 1945, has laid down under its preamble equal rights for men and women as one of its basic principles. The charter further provides under article one that one of the purposes of the UN is ‘promoting and encouraging respect for human rights for all with out distinction as to race, sex, language, or religion.’ The duty of the UN ‘to promote universal respect for and observance of human rights for all with out distinction’ on the ground of sex among others is again reinstated under article 55 of the Charter.

The Universal Declaration of Human Rights, which was adopted three years later, reaffirmed UN’s principle of equality by declaring in its first article that ‘all human beings are born free and equal in dignity and rights.’ The UDHR further states that the rights and freedoms set forth in it are to be enjoyed by all with out any distinction on grounds including sex. The UDHR marks a significant achievement in the history of human rights, as it ‘constitutes the core of universal human rights guarantees.’<sup>1</sup> The explicit indication in such an instrument that all rights and freedoms are to be enjoyed by all, irrespective of sex, hence provides a firm basis for the quest for the equal enjoyment of human rights by women.

Since a declaration does not have a legally binding power, the need to strengthen the norms contained in the UDHR by a legally binding treaty was felt. Thus, the process of developing a binding treaty began there after.

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<sup>1</sup> Katarina Tomasevski, Women and Human Rights, 1993, p.1



However, the desired end did not materialize before the lapse of many years and even then the division of the rights in to two separate covenants was necessitated mainly because of the cold war.

The two covenants, which were adopted in 1966 as a result of this long process, contain provisions aimed at guaranteeing equal rights for men and women. The common articles 2 and 3 of CCPR and CESCR obligate states to ensure the exercise of the rights under the covenants with out distinction on the basis of sex. Article 26 of CCPR further provides that everyone is entitled to the equal protection of the law from discrimination on different grounds one of which is sex. The equal right of men and women in relation to marriage is provided under article 23 of the CCPR. Articles 7 and 10 of the CESCR, on the other hand obligate states to provide equal working conditions and protect motherhood respectively.

Alongside the bill of rights, which stress equality, a number of specialized conventions aimed at ensuring equality between the sexes were adopted. The Convention on the Political Rights of Women (1952), the Convention on the Nationality of Married Women (1957), ILO convention No. 100 concerning equal remuneration for men and women workers for work of equal value (1951), and Convention against Discrimination on Education, UNESCO (1960) could be mentioned among the specialized conventions adopted.

The prohibition of discrimination in the two covenants though reaffirms the prohibition of discrimination ‘contributes little to the articulation of the specific issues affecting women.’<sup>2</sup> Therefore, the need to afford additional means of protection to human rights of women from different forms of discrimination became inevitable since the generic form of protection of the covenants has not proved to be sufficient.<sup>3</sup>

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<sup>2</sup> Ibid

In like manner, the attempt to deal with specific problems such as political participation, employment and education through different instruments did not stop the various forms of discrimination against women. Despite the already existing instruments there continued to exist considerable discrimination against women.<sup>4</sup> It was then realized by the commission on the status of women that there is a need to have a comprehensive approach.

Based on this realization and the proposal made by developing and Eastern European countries, the Declaration on the Elimination of Discrimination against Women was adopted by the General Assembly in 1967.<sup>5</sup> The declaration contained provisions providing for women's rights to equality and non-discrimination in many areas of life. However it was merely a declaration with out a legally binding power and could not effectively tackle the problems it aims to address.

Hence, after six years a working group was appointed by the Economic and Social Council to consider the elaboration of such a convention to transform the declaration in to a binding treaty. Then, in the year after, the CSW began drafting a convention on the elimination of discrimination against women. The work of the commission was further encouraged by the results of the World Conference of the International women's year, held in 1975 which called for a 'convention on the elimination of discrimination against women with effective procedures for its implementation.'<sup>6</sup>

Finally, the General Assembly adopted the Convention on the Elimination of All forms of Discrimination against Women in 1979. Having received the necessary number of ratifications it entered into force in 1981.

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<sup>3</sup> United Nations Human Rights Fact Sheet, No. 22, p.437.

<sup>4</sup> DEDAW, preamble

<sup>5</sup> Katarina Tomasevski, A Hand Book on CEDAW, 1999, p.9.

To date there are 170 states parties to CEDAW making it the second widely ratified international convention next to the Convention on the Rights of the Child. CEDAW differs from the instruments, which tried to address issues of gender equality before it and its adoption marks a turning point in the history of the human rights of women.

‘...The adoption of CEDAW represents the firm commitment of the international community....both as a means of identifying persistent forms of inequality affecting women and discrimination against women and as a guide to steps designed to abolishing practices and traditions detrimental to the enjoyment of their rights. Its legally binding and internationally accepted character renders the convention the basic legal framework for a strategy to protect and promote the fundamental human rights of women and to eradicate inequality and discrimination. Essentially, the convention is an international bill of rights for women; and it brings together in a single treaty a mixture of non-discriminatory, corrective and protective provisions.’<sup>7</sup>

The special features of the convention that account for its significance for the human rights of women could be summarized as follows.

### 1 Comprehensive Gender Specific, Legally Binding Instrument

Even though the prevalence of discrimination against women was felt long before its adoption none of the attempts resulted in providing a legally binding comprehensive instrument. Rather, they either tended to address specific problems or dealt with the issue in a general way like the two covenants. The DEDAW which is more comprehensive than the other instruments could not bring about the desired result for it lacked a legally binding effect. The

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<sup>6</sup> United Nations Human Rights Fact Sheet, No. 22, p.438.

<sup>7</sup> Marilou McPhedran, Susana Bazilli, Moana Erickson, and Andrew Byrnes, The First CEDAW impact Study, 2000, p. 12.

CEDAW presents a comprehensive approach to the problem of discrimination and inequality faced by women as it aims to eliminate discrimination in all aspects of life. The comprehensive nature of the convention is further marked by the fact that it codifies existing principles contained in general and gender specific human rights instruments while at the same time introduces new provisions.<sup>8</sup>

## 2 Combined Approach

CEDAW strives to eliminate all forms of discrimination against women. To this effect it incorporates different approaches. As was contained in the other instruments before it, it has prohibitive provisions which prohibit discrimination against women in different aspects of life. It also introduces corrective measures which are aimed at remedying the harms caused by series of discrimination through out history. At the same time, CEDAW enshrines protective provisions which are meant to protect maternity. The combination of all these approaches to address the problem of discrimination and inequality faced by women promises a better result than an effort to address the problem by a single approach.<sup>9</sup>

## 3 Contains the 'generations' of Human Rights

The classification of human rights in to generations which puts civil and political rights in the first and economic, social and cultural rights in the second generation, is not reflected in CEDAW. The rights and protections afforded in the CEDAW cut across both covenants stressing the indivisibility of human rights. The inclusion of all rights in CEDAW clearly proclaims the right of women to equal enjoyment of all rights.

## 4 Elimination of both de jure and de facto discrimination

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<sup>8</sup> Andrew Byrnes, Jane Connors and Lum Bik (eds.), *Advancing The Human Rights of Women: Using International Human Rights Standards in Domestic Litigation*, 1997, p.43

The CEDAW envisions the elimination of formal discrimination as well as that of de facto. It strives to eliminate discrimination both from the law and reality. Thus, it obligates states not only to provide legal guarantees of equality but also to ensure the enjoyment of those formally guaranteed rights by women.<sup>10</sup> In other words the obligation of states is not limited to providing legislations proclaiming the equal rights of women, but they are also expected to take a combination of different measures to ensure the elimination of discrimination against women and the actual realization of the rights guaranteed.

### 5 Introduces Temporary Special Measures

The introduction of temporary special measures or reverse discrimination is one demonstration of the fact that CEDAW strives to bring about equality in practice. As was elaborated in the preceding feature, in addition to guaranteeing equal rights for women it is also important to get rid of the obstacles that bar women from enjoying the rights guaranteed. One major obstacle is the heritage of gender discrimination world wide. The fact that discrimination against women has been practiced for generations in many parts of the world indicates that the problem is deeply rooted and is of structural nature requiring structural solutions.

It is not practical to expect the effects of a long period of discrimination and inequality die away immediately just because equality has been proclaimed. It is therefore necessary to take measures that will neutralize the effects of discrimination and inequality in the past so that women could be able to enjoy their human rights equally. CEDAW under article four recognizes that the adoption of temporary special measures aimed at bringing defacto equality will not amount to discrimination. The introduction of positive discrimination, due

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<sup>9</sup> Id., pp.40-41

<sup>10</sup> Katarina Tomasevski, A Hand Book on CEDAW, 1999, p.12.

to its very nature is to last only until equality in the enjoyment of all rights is realized.

Due to the above listed features the CEDAW is the best international instrument to date to ensure the equal enjoyment of human rights by women. The task of following up the implementation of the convention is entrusted to a committee established under article 17 of the convention. The committee, which has 23 members serving in their individual capacity though are nominated by their states, considers individual reports submitted to it by states pursuant to article 18. It also issues suggestions and general recommendations according to article 21. The committee, in addition, examines individual complaints made under the Optional Protocol to CEDAW, which provides for a communication procedure where by individuals or groups of individuals could present their complaints before the committee.

The fact that CEDAW is considered to be the ‘bill of rights’ for the human rights of women does not make it free from some shortcomings. The broad formulation of its provisions and the large number of reservations filed by states on its provisions could be mentioned as its major defects.

The CEDAW contains many provisions, which are general principles and guidelines rather than specific obligations of states. Many provisions contain the duty of states to act ‘by all appropriate means’ or ‘to take all appropriate measures’ to achieve a specified objective. Such a formulation leaves a greater margin of discretion for the states applying them. The Committee on CEDAW has tried to solve this problem using its power of formulating suggestions and general comments under article 21.<sup>11</sup>

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<sup>11</sup> Merja Pentikänen, ‘The Prohibition of Discrimination and the 1979 UN Convention on the Elimination of All Forms of Discrimination Against Women,’ in Lauri Hannikainen and eeva

The other shortcoming of CEDAW is the large number of reservations filed by its states parties. Many states have entered ‘broadly worded’ reservations on the provisions of CEDAW.<sup>12</sup> The reservations pertain both to substantive provisions and to the dispute settlement mechanism provided under the convention. States have argued that they have entered the reservations on the substantive provisions because they go against their religious and customary laws. The Committee on CEDAW, though to no avail, has repeatedly urged states to withdraw their reservations.

Irrespective of its shortcomings, CEDAW still forms the most comprehensive, legally binding, and gender specific international instrument. Thus, any attempt to bring about equality between men and women in the enjoyment of human rights need to rely on its provisions. For this reason, this writing shall rely on CEDAW to examine the situation of the human rights of women in Ethiopia.

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nykänen (ed.), *New trends in discrimination law-international perspectives*, Vol. 3, NO. 1, 1999, p.74

<sup>12</sup> *Id.*, p.77

# 3 OBLIGATION OF STATES UNDER CEDAW

Human rights conventions give rise to different obligations on the part of states depending on the type of the rights guaranteed and the problem it was meant to address<sup>13</sup>. The duties of states arising from human rights treaties could be classified in different ways depending on the basis of classification.

The distinction between positive and negative duties is one of such categorizations. Negative duties impose an obligation on the part of states not to interfere in the enjoyment of the rights. Thus, all the state is required to do is refrain from interfering. Positive duties, on the other hand, impose on states the duty of taking positive measures to ensure the realization of the rights. Non-interference in the enjoyment of rights, thus, does not suffice to discharge the obligation of a state. The state is required to take specific measures to ensure the enjoyment of the rights. It is questionable, however, which of the rights involve just negative duties due to the fact that most rights, which initially were assumed to entail only negative duties, have come to be understood as requiring positive measures through time.<sup>14</sup>

The other way of categorizing obligations of states under human rights treaties is between that of conduct and result. Obligation of conduct requires states to act in a certain manner with the aim of achieving a certain end. However, such an obligation does not strictly obligate states to bring about a certain result. So long as the state is acting diligently in the manner requested by the convention, it will be

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<sup>13</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals*, second ed., 2000, p.181.

<sup>14</sup> *Ibid.*



considered, as having discharged its obligations despite the end the treaty aspires to achieve has not been realized. On the contrary, obligation of result gives states the liberty to choose the manner of achieving a certain end. But, it requires states to achieve a specified result.<sup>15</sup>

Yet another type of distinction on the obligations arising from treaties is between immediate and progressive duties. States have to ensure the immediate observance of certain rights in the former case, while in the latter one; they are expected to be taking measures towards the progressive realization of the rights. Therefore, immediate duties are those, which cannot be deviated from under any circumstances.

The obligations of states under human rights conventions could be generally summarised, as obligation to respect, protect, fulfil and promote. The obligation to respect relates to rights, which require nothing but the non-interference (like negative duties above) of states in the enjoyment of the rights. The obligation to protect relates to the duty of states to ensure the enjoyment of the rights by providing protection against possible interference both on the vertical and horizontal level. The vertical level implies the relationship between the state and the individual and the horizontal one connotes that between private parties. Therefore, under the duty to protect, the state provides protection against right violations by individuals and its own organs. 'The duty to fulfil refers to the obligation of states to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of such rights.'<sup>16</sup> The economic and social rights under ICESCR are typical examples of such rights.

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<sup>15</sup> Martin Scheinin, 'women's Economic and Social Rights as Human Rights,' in Lauri Hannikainen and Eeva Nykänen (ed.), *New trends in discrimination law-international perspectives*, Vol. 3, NO. 1, 1999, p.13

<sup>16</sup> Id p.15

Lastly, the duty of states to promote requires the states to involve in promotional activities to raise the awareness level of its people to ensure the observance of human rights.<sup>17</sup> It should be noted that the demarcation between the different types of state obligations is not clear-cut and certain obligations may imply more than one of such categorizations.

In addition to the different types of obligations that generally apply to human rights treaties, it is important to have regard to the provisions of the specific convention to determine the obligations of a state under a human rights convention like CEDAW. The purpose of the convention should also be kept in mind to get a clearer picture of what states are expected to do. Having regard to these factors an attempt shall be made to elaborate on the obligation of states under CEDAW.

The obligation of states under CEDAW is indicated under the convention both in general and specific terms. Articles 2, 3, 4, and 5 provide the general obligations of states, which could be applied in relation to the entire rights protected by the convention. The specific provisions of the convention, articles 6-16, on the other hand provide the specific duties corresponding the rights in each provision.

CEDAW aims to eliminate all forms of discrimination against women so as to ensure the equal enjoyment of human rights by women and the equal participation of women in all aspects of life. For the realization of this goal, article 2 begins by obligating states to condemn discrimination in all its forms and to take measures towards the elimination of discrimination against women. The article enumerates the specific measures states should take for the purpose. Accordingly, states are required to incorporate a principle of equality in their constitution and to ensure its implementation. They are also expected to prohibit discrimination against women, provide legal protection for the equal rights of women and to ensure the

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<sup>17</sup> Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics and Morals*, second ed., 2000, pp.182-184.

effectiveness of such protection through national tribunals and other public institutions. Article 2, in addition obligates states not only to refrain from discriminating against women but also to take appropriate measures to eliminate discrimination against women by non-state agents. The obligation of states to take appropriate measures to modify or abolish existing laws, customs and practices, which constitute discrimination against women, is also contained under the article. This obligation is further strengthened by article 5 of the convention. Article 5 of the convention hence, obligates states parties to eliminate cultural and other practices based on the prejudice of the stereotyped roles for men and women.

The obligation of states under article 3 is not confined to prohibiting discriminatory laws and practices. Rather, it goes ahead and requires states to ensure the full development and advancement of women so as to guarantee the equal enjoyment of human rights. The states have to make sure that there is no obstacle barring women from enjoying their rights. This in turn entails an obligation of changing or modifying laws and practices that are overtly discriminatory as well as those that are neutral on their face and have discriminatory effect. Therefore this article will catch discriminatory practices that may not be covered by the definition under article one.<sup>18</sup> In addition to the changing or modification of discriminatory laws and practices, states are to take measures aimed at the full development and advancement of women.

One possible way of bringing about the full development and advancement of women to enable them enjoy their human rights equally is the taking of temporary special measures under article 4 of CEDAW. The provision further indicates that such measures aimed at accelerating the de facto equality of women are to be discontinued when equality is attained.

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<sup>18</sup> Rebecca J. Cook, 'State Accountability under the Women's Convention', Rebecca J. Cook (ed.), in *Human Rights of Women: National and International perspectives*, 1994, p.236

The specific provisions of CEDAW, which deal with certain rights, reiterate the general obligations elaborated above. The provisions obligate states to recognize the equal rights of women indifferent areas and to ensure the equality of women before the law.<sup>19</sup> Thus, states are expected ‘to take all appropriate measures’ to ensure the equal rights of women in political and public life, education, health care, employment, marriage and family relations, economic and social life and to pay special attention to the situation of rural women.<sup>20</sup> Article 24 reinforces the obligation of states contained in the general and specific provisions by calling up on states to take all necessary measures towards the realization of the rights recognized by the convention.

The obligations of states under CEDAW touch up on the different categories of duties discussed earlier. Hence, the obligation of states to respect, protect, fulfil and promote are incorporated.

### **Obligations to respect, protect, provide and promote under CEDAW**

The obligation to respect is reflected in the CEDAW by the prohibition of all forms of discrimination against women. Through this obligation states are required to respect the equal rights of women by refraining from discriminating against them both formally and in practice. Hence, states are obligated to abolish discriminatory laws if any. They are also required to ensure that their organs do not discriminate against women in any way.

The duty to take measures to protect women against discrimination constitutes the obligation to protect. Since the obligation to respect affords protection against discrimination by state organs, it could be said that this duty implies the obligation of states to afford protection on the horizontal level. Therefore states in addition to their obligations not to discriminate against women should protect them against

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<sup>19</sup> Articles 9 and 15 of CEDAW

<sup>20</sup> Articles 7,8,10,11,12,13,14, and 16 of CEDAW

discrimination by private parties. This could be achieved through the enactment of laws and the provision of appropriate implementation machinery.

The obligation to provide or fulfil, on the other hand, obligates states to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of the rights protected by the convention. In other words states should take a variety of measures aimed at ensuring the elimination of discrimination against women, the equal participation of women in different aspects of life and the equal enjoyment of human rights by them.

The duty to promote finally obligates states to undertake promotional activities to modify customs and practices that constitute discrimination against women and are obstacles to the equal enjoyment of human rights by women.

The obligations of states to respect, protect, provide and promote extend to all the rights recognized by the convention. It is indicated under article one that the convention's goal of eliminating discrimination against women extends to all human rights and freedoms in political, economic, social, cultural or any other field. This indicates that the convention is not limited to the rights reiterated in its provisions and resort should be had to other instruments dealing with the specific rights such as CCPR and CESCR to give content to the protection it affords. Therefore, CEDAW aims to ensure the equal enjoyment of the rights guaranteed by other human rights instruments while at the same time singles out issues that have proved to be problematic in most parts of the world.

The committee established under article 17, as was indicated earlier, has the task of following up the implementation of the convention by states parties. The committee discharges its task by reviewing state reports which are submitted to it according to article 18. States parties, therefore, have an additional obligation to submit reports to the committee on the measures they have taken to implement

the convention. The committee after reviewing the reports submitted issues recommendations. State parties, then are expected to take measures in compliance with the recommendations of the committee.

The following chapters will attempt to review the measures taken by the Ethiopian government in light of the obligations elaborated in this chapter. To this end legislations and policies shall be examined together with the implementation mechanisms.

## 4 Government Measures to Enforce CEDAW in Ethiopia

Before attempting to review the situation of human rights of women in Ethiopia it is important to have some background information on the country's social, economic, and legal environment. Ethiopia is a country comprising different ethnic groups with varying language, religion and culture. According to the projection made for the year 2002 based on the 1994 census, it has a population of 67.7 million of which 50.2% and 49.8% are represented by men and women respectively.<sup>21</sup>

Monarchical kings have ruled Ethiopia for generations until the last emperor Hailesilassie, who was overthrown in 1974 by a revolutionary movement, which was followed by the Marxist Military reign of Mengistu Hailemariam. After staying in power for 17 years Mengistu lost power to the EPRDF (Ethiopian people Revolutionary Democratic Front) in 1991. This led to the establishment of the Transitional government of Ethiopia, which lasted until the adoption of the constitution. In December 1994, the constitution of the Federal Democratic Republic of Ethiopia was adopted replacing the 1987 constitution. The constitution proclaims that the system of government is parliamentary composed of two houses: the House of People's Representatives and the House of Federation. The FDRE is composed of nine states. The respective division of power between the regional states and the federal government is indicated in the constitution.

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<sup>21</sup> Haregewoin Cherinet and Emebet Mulugeta, Country Gender Profile Ethiopia, 2002, p.10

The constitution devotes a chapter to fundamental rights and freedoms. This chapter, which is further divided into two parts, lists all 'generations' of rights. The subdivision into human rights and democratic rights however is confusing in that the aim and ground of the division is unclear. The first part, which has the title of human rights, is composed of provisions dealing with the right to life, liberty, and security of persons, freedom from torture, cruel, inhuman and degrading treatment, freedom of opinion, religion and belief, rights of arrested, convicted and accused persons, the right to privacy, honour and reputation, and the right to equality. The second part of the third chapter of the constitution entitled democratic rights incorporates rights of thought, opinion and expression, right to assembly, demonstration and petition, freedom of association and movement, right to nationality, marriage and family life, rights of women and children, right of access to justice, the right to elect and be elected, the rights of nations, nationalities and peoples, the right to property, economic, social and cultural rights, labour rights, the right to development, and environmental rights.

The constitution under article 13 imposes the duty of respecting the rights and freedoms contained on all state organs. It further provides a principle of interpretation that all the rights are to be interpreted in conformity with the human rights instruments adopted by Ethiopia. The place of international instruments to which Ethiopia is party is further dealt with under article 9 sub paragraph 4 which provides that such instruments shall form part of the law of the land.

Ethiopia is party to most international human rights instruments. The ICCPR, ICESCR, and CEDAW are amongst the international human rights instruments adopted by Ethiopia. The Optional Protocol to CEDAW, which provides for complaint mechanisms however, is not adopted by Ethiopia. Being a state party to CEDAW Ethiopia has undertaken the duty of ensuring the elimination of all forms of discrimination against women and the equal enjoyment of civil, cultural, economic, political, social or any other right by women. It also has accepted the



obligation of presenting state report to the committee according to article 18 of the convention on the measures that have been taken to give effect to the provisions of the convention.

Ethiopia has submitted the initial, second and third reports so far and has received the suggestions of the committee. The committee after considering the reports submitted by Ethiopia in its 15<sup>th</sup> session expressed its appreciation for the political will demonstrated by the government to ensure the human rights of women by the adoption of the women's policy and the establishment of gender focal points at different levels. The committee further commended the government's affirmative action efforts for women at university level. In addition, the committee forwarded recommendations on the measures that need be taken in the future. The recommendations and specific concerns expressed by the committee will be discussed in the relevant sections of this writing.

As was discussed earlier CEDAW does not enumerate all the rights however it deals with specific issues which are found to make women susceptible to discrimination. Therefore, resort should be had to other instruments to give content to the protection afforded by CEDAW.

Different measures have been taken by the Ethiopian government to ensure compliance with its duties under CEDAW. The measures could be generally categorized as legislative, policy measures and other measures aimed at ensuring the implementation of legislative and policy measures. Legislative measures include any law passed by both federal and regional states including federal and regional constitutions. Policy measures on the other hand include different policies formulated by different government offices with the objective of achieving their respective goals. The implementation measures refer to mechanisms devised by both federal and regional governments to ensure the enforcement of legislations and policies, which include the judiciary and other independent offices established

for the purpose such as the human rights commission and the Women's Affairs Office.

## **4.1 POLICY MEASURES**

Both the Transitional government and the Federal government of Ethiopia have formulated several policies in different areas. The National Policy on Ethiopian Women, the Education and Training Policy, and the Health Policy could be mentioned among such policies. As the name of each implies the policies are meant to address different socio economic issues. However, gender concerns being cross cutting, all have gender elements. Therefore, this paper will deal with the relevance of the policies passed to the realization of the human rights of women in Ethiopia. For the sake of convenience and clarity, the National Policy on Ethiopian Women will be dealt with separately in this section and the other policies will be discussed in the next chapter under the subsections dealing with the rights related to the issue addressed by them.

### **4.1.1 The National Policy on Ethiopian Women**

The Transitional Government of Ethiopia formulated the National Policy on Ethiopian Women in 1993. The policy takes as its basis the existing situation of Ethiopian women with respect to the enjoyment of their human rights and their participation in the effort towards sustainable development. The document indicates that Ethiopian women though labour for long hours to sustain their family their contribution to the society has not been acknowledged. It further notes that women form one of the major victims of poverty and natural and man-made disasters. They are deprived of equal opportunities and lag behind their male counterparts in all fields. It is also stated in the policy document that the condition of Ethiopian women is further exasperated by the prevalent gender bias of the society, which is demonstrated in many forms hindering their full development and

advancement. The policy further holds that sustainable development and democratic process could not be realized without the full participation of women.

The National Policy indicates that there has been no organized effort to address the problem before it. It states, the efforts to improve the conditions of women have been disorganized and fragmented in that there was neither a government policy nor responsible authority for the purpose. As a result, it notes, the efforts till then were suffering from duplication and lack of coordination.

The National Policy clearly indicates that it is based on the principle of respect for human rights without distinction as proclaimed in the UN charter and other international instruments to which Ethiopia is a party including CEDAW. Having regard to the problems faced by Ethiopian women and the principle of equal rights for all, the policy adopts the following objectives.

1. Facilitating conditions to enable women enjoy their human rights on equal basis with men and to ensure their equal participation in political, social and economic life.
2. Facilitating conditions for rural women to have access to basic social services and to find ways of lightening their workload.
3. Eliminating prejudices, customs and practices that are based on male supremacy and enable women take part in decision-making processes at all levels.

The policy lists down the following eight specific contents to lead to the accomplishment of the above objectives.

1. Ensure the full development and advancement of women and guarantee them the enjoyment of their human rights.

2. Modifying or abolishing discriminatory laws, practices and customs and ensuring the equal participation of women in economic, social and political life as well as in decision making processes at all levels.
3. Creating awareness to change the discriminatory attitudes towards women.
4. Ensuring the participation of women in the formulation and implementation of laws, policies, projects and programs that concern and benefit them.
5. Encouraging research on the ways of lightening the workload of women and increasing their income.
6. Coordinating and following up the implementation of all government programs concerning women to avoid duplication.
7. Incorporating women's affairs in to the government structure and establishing branches in all ministries and government organs.
8. Ensuring that all government laws and policies are not discriminatory, afford protection to the rights of women, give special attention to the conditions of rural women and make sure that women participate in and enjoy the fruits of development activities on equal basis with men.

The policy further contains a more detailed strategy for the implementation of the objectives and specifies the organs responsible for the implementation of the policy.

#### **4.1.2 Implementation of the Policy**

The task of implementing the policy is entrusted to three organs. The Women's Affairs Office in the Prime Minister's Office, the regional Women's Affairs Sectors and the Women's Affairs Departments in ministries and public organizations.

##### **a. The Women's Affairs Office**

The Women's Affairs Office (here in after WAO) at the national level works under and is accountable to the Prime Minister's Office. The duties of the WAO are stipulated in the policy. Accordingly, the WAO has the duty of coordinating, facilitating and monitoring women's affairs activities at the national level. It is expected to take and initiate the taking of necessary measures including the issuance of laws and policies to attain the policy objectives. It is the duty of WAO to create favourable atmosphere for the implementation of the policy and to arrange information exchange forum between governmental and non-governmental women's organizations. It also has the responsibility of encouraging women to struggle for their rights by organizing them based on their needs, interests and nature of their problems. The WAO, by and large is expected to encourage the establishment of women's affairs organs in the regions and in different government organizations as well as the formation of voluntary women's organizations and establish a close working relationship with them. It also has the task of undertaking and encouraging the undertaking of studies focusing on the problems of Ethiopian women with the view of finding practical solutions.

#### **b. The Regional Women's Affairs Sector**

The regional Women's Affairs sector (here in after WAS) is accountable to the Regional Administrative council and has the duty of facilitating and coordinating activities related to women's affairs in the regions. It is also expected to organize women's affairs bureaus with in the region in line with the organizational system of implementation introduced by the policy. The WAS has the duty of devising ways and creating conducive atmosphere for the effective implementation of the women's policy in the respective region. When deemed necessary, the WAS further has the duty of initiating the formulation of new policies. It is also to make every effort to ensure the active participation of women in various activities in the region. The WAS, in addition has the duty of making sure that gender concerns

are reflected in the preparation of plans, researches and projects in the region. The duty of creating a forum where by different organizations could exchange experience is also attributed to the WAS in each region.

### **c. The Women's Affairs Department in Ministries and Public Organizations**

The Women's Affairs department in Ministries and public organizations (here in after WAD) is the third organ with the responsibility of implementing the national women's policy. This organ is accountable to the Ministry or public organization under which it is established and has the same power as the other departments. It should be noted here that such a department is foreseen by the policy in the regional Ministries and public organizations. The policy stipulates that the WAD has the duty of monitoring, following up and designing ways of implementing the policy in line with the powers and duties of the organizations in which it is based. It has also the task of presenting policy proposals for higher authorities by closely monitoring women's activities. It is further expected to encourage, assist and monitor the active participation of women in different activities and ensure that women are afforded equal opportunities. In addition, this organ monitors and assesses the proper treatment of gender considerations in relation to policies, plans, studies and researches.

#### **4.1.3 Assessment of the Policy and its implementation**

The National Policy on Ethiopian women manifests the commitment of the Ethiopian government to up hold the human rights of women. The fact that the policy entrusts the task of implementing the policy to specified organs further indicates the effort to improve not only the de jure situation but also that of de facto.

The responsible organs have undertaken different activities towards the implementation of the policy. Different workshops aimed at bringing about attitudinal changes have been organized at national, regional and organizational levels. There have been educational activities aimed at educating the public at large through mass media. Efforts to put an end to discriminatory and harmful practices against women have been made. Attempts have also been made to ensure the incorporation of gender concerns in policies and plans formulated at different levels. The WAO has organized a national workshop twice in which many governmental and non-governmental organizations participated and shared experience. Similarly, at regional levels attempts have been made to create a forum whereby governmental and non-governmental organizations working on women's affairs could exchange information. There have also been different discussions organized by WAS in the regions on the incorporation of the new family law adopted by the federal government abolishing the discriminatory provisions of the old family law, which is still applicable in the regions. By and large, different trainings have been undertaken with the objective of building the capacity of the implementing organs.<sup>22</sup>

The policy and its implementation, however, were not free from limitations. The relationship between the different implementation organs is one of the major constraints to the effective implementation of the policy. The organizational system for the implementation of the policy indicates that there is no direct relationship between the responsible organs. The system indicates that they only have working relations. Thus, the WAO having a working relationship with the other organs which can not go beyond providing advise when asked can not effectively monitor and coordinate the tasks of different WASs and WADs. The regional WAS, in like manner, though is entrusted with the task of coordinating and facilitating the activities of women's bureaus and organizations in the regions, it only has a working relationship with them. More over, the WADs in the Ministries of the

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<sup>22</sup> Report presented by the different organs at a meeting organized by the WAO, July 2002.

Federal government do not have a direct relation with the women's affairs departments in sectoral regional bureaus. The absence of a direct relationship between the responsible organs for the implementation of the policy makes the coordinated and organized effort, which the policy aims to bring unlikely.

The other shortcoming in relation to the implementation system of the policy is that it does not get down to the grass roots level. The fact that the organizational system of implementation does not go under the district level detaches the policy from its main beneficiaries. Lack of clarity on the duties and roles of the respective implementing organs is another weakness spotted by an assessment made on the implementation of the policy.<sup>23</sup> The committee on the CEDAW has also expressed its concern on this matter that areas of competence of the different organs working on gender issues were not clearly defined.<sup>24</sup> Due to this problem all the responsible organs have to develop their own roles. Such an approach though provides flexibility marginalizes many of the entities which do not have the expertise or experience for the purpose.<sup>25</sup>

Apart from the obstacles to the implementation of the policy arising from the nature of the policy and its implementation system, problems of qualified human resource and adequate capital budget have also been faced.<sup>26</sup> Assessments made over the years further indicate that the implementing organs are not performing effectively due to lack of human and material resource. The implementing organs to a large extent depend on donors to cover their project costs since the available resource allotted to them cannot do more than covering recurrent running costs. The committee again has indicated that the organs should be financed properly.<sup>27</sup> The problem of qualified human resource especially in the regions was reflected in

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<sup>23</sup> Implementing the Ethiopian National Policy for Women, Institutional and Regulatory Issues, The WAO and The World Bank, 1998, p.3.

<sup>24</sup> [www.un.org/womenwatch/daw/cedaw](http://www.un.org/womenwatch/daw/cedaw), 15<sup>th</sup> session of the CEDAW,

<sup>25</sup> Implementing the Ethiopian National Policy for Women, Institutional and Regulatory Issues, The WAO and The World Bank, 1998, p.3.

<sup>26</sup> Report presented by the different organs at a meeting organized by the WAO, July 2002.

<sup>27</sup> See above at 25.



the fact that most of regional development plans developed by those organs were found to be gender neutral.<sup>28</sup>

The WADs, in addition to the above-mentioned problems, are highly marginalized in their organizations and have not succeeded in ensuring gender mainstreaming in the different activities of their organizations.<sup>29</sup> Besides, since they have an equal position with other departments they cannot directly influence the plans and activities of the other departments. As a result their duty of ensuring gender mainstreaming in the activities of their organizations has been undermined. It has also been observed that there is lack of gender awareness even the among officers of women's affairs departments.<sup>30</sup>

The effort to ensure the human rights of women should not be limited to written policies, rather it should also be realized. The women's Policy adopted by FDRE government is a good move towards the equal enjoyment of human rights by women. However, a lot remains to be done to ensure the achievement of its implementation. Based on lessons acquired from experience, attempts should be made to keep on revising and up dating the policy. Now that the policy has been in place for almost a decade it is high time that its strategies and contents be revised in line with the weaknesses and strengths observed. To this effect, assessment should be made on the effectiveness of the policy.

Ensuring the effective implementation of the policy to a large extent depends on the efficiency and coordination of the organs entrusted with the task. Therefore, attempts should be made to build the capacity of the organs as well as to establish networking among the organs. It is also important to make assessment on the effectiveness of implementation machinery to make necessary adjustments.

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<sup>28</sup> Hadera Tesfay, Country Gender Profile: Ethiopia, 1999, p.29

<sup>29</sup> Haregewoin Cherinet and Emebet Mulugeta, Country Gender Profile Ethiopia, 2002, p.36

The implementing organs should be provided with more specific tasks so that the objectives of the policy could be realized thorough out the country. It is also important to make sure that necessary financial and qualified human resource is allotted to the organs implementing the policy. The need to create a direct relationship between the different organs implementing the policy is the other issue that needs to be paid attention. To ensure the effective of the policy, it is necessary to come up with some kind of arrangement where by all the organs working on it could be organized and coordinated.

## **4.2 LEGISLATIVE MEASURES**

States parties to CEDAW are obligated to ensure that their constitution incorporates a principle of equality between men and women. It further obligates states to take all the necessary measures including legislations to eliminate discrimination against women and to ensure the realization of the principle of equality and the enjoyment of human rights by women on equal basis with their male counterparts.

Following the Federal system of government, the regional states have adopted their own constitutions. The regional constitutions are hardly different from the federal one. They only differ in that they leave out provisions that relate to matters corresponding to the jurisdiction of the federal government. Therefore, for the sake of convenience reference shall be had only to the national constitution and it should be understood that the same holds for the regional constitutions too. It should also be noted that the laws in force until the adoption of the constitution apply for both the federal and regional states.

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<sup>30</sup> Abraham Hussian, Ayalew Zegeye and Paulos Chanie, *Women Organizations in Ethiopia: Performance, problems and prospects*, 1997, pp. 28-29.

The FDRE constitution under article 35(1) guarantees that women shall have equal right in the enjoyment and protection of the rights recognized in the constitution. The provision further provides specific guarantees to the equal rights of women in relation to marriage, employment, and property. It is indicated under article 35 that women have a right to participate in the formulation and implementation of policies and projects. The duty of the state to eliminate laws, customs and practices that oppress or cause bodily or mental harm to women is contained under this provision. It is also under article 35 of the constitution that temporary special measures with the aim of accelerating the de facto equality of women are recognized. Furthermore, the constitution under article 25 stipulates the right to equality before the law and the right to equal protection of the law without discrimination on different grounds including sex.

It is provided under article 9 that the constitution is the supreme law of the land and any law, customary practice or decision of an organ of state or a public official cannot contravene it. It further imposes the duty of ensuring the observance of the supremacy of the constitution on all citizens, organs of state, political organizations or other associations and officials. On the basis of this provision no custom, practice, law or decision could go against the equal rights guaranteed under the constitution for women. Furthermore, citizens and different organs and associations have the duty of ensuring the observance of such guarantees of equal rights.

The constitution though is said to be the supreme law of the land is hardly cited either in arguments before or decisions of courts of law in Ethiopia. Therefore, the constitutional guarantee is not sufficient to ensure the realization of the rights therein. Hence, it is important to ensure the inclusion of such provisions in different laws and regulations in a manner they could be enforced.

Most of the laws in force in Ethiopia were legislated during the emperor's era (prior to 1974), even though amendments have been made up on them at different times. The major change in the law was marked by the adoption of the revised family law by the federal government in 2000. This law, which is at the moment effective only at the federal level, replaced the discriminatory provisions of the 1960 Civil Code. With the exception of this law, no significant revision has been so far made with the objective of keeping national legislations in pace with international standards. As a result, even though, the constitution declares all laws in contradiction with it to be of no effect, many discriminatory provisions are found in the legal system. Therefore, the government should take all the necessary measures to discharge its obligation under CEDAW to abolish or modify discriminatory laws.

The specific contents of the different legislations in force will be discussed in the following chapter in light of the rights guaranteed by CEDAW. In like manner, in the discussion of the rights guaranteed by CEDAW reference shall also be made to the relevant policies.

## 5 Specific Right Situations

The proper enforcement of the rights protected by the CEDAW is more manifest in the actual situation of the rights. Hence, in this chapter the enforcement of CEDAW in Ethiopia will be discussed with reference to specific rights.

### 5.1.1 Nationality

The constitution provides under article 6 that any person born of an Ethiopian parent will have an Ethiopian Nationality. It also provides that foreign nationals may acquire an Ethiopian nationality. The provision does not make any distinction between the sexes on the acquisition and transfer of nationality. Article 33 of the constitution provides further guarantee in relation to the right to nationality and stipulates that Ethiopians of either sex are not to be deprived of their nationality due to marriage to a foreign national. Moreover, the article contains the right of any Ethiopian national to change their nationality. Both articles state that the particulars are to be governed by specific laws.

The nationality law of Ethiopia in force is that enacted in 1930 as amended by the 1933 proclamation. According to article 2 of this law a man of Ethiopian national married to a foreign women entitles the wife to an automatic Ethiopian nationality. This is not true when an Ethiopian woman gets married to a foreign national. Rather, article 4 of this law provides that an Ethiopian woman married to a foreign national will lose her Ethiopian nationality up on marriage provided that the law of the husband's nationality grants her his nationality. Article 11 further strengthens this provision by noting that one ground for losing nationality is marriage to a foreigner. According to article 4 only women nationals are deprived of their Ethiopian nationality up on marriage.

In addition, article 6 reads that a child born in a lawful mixed marriage will take the nationality of the father. Pursuant to this law an Ethiopian man married to a foreigner will be able to transfer an Ethiopian nationality to his child unlike the mother, who will be deprived of her nationality upon her marriage to a foreign national let alone transfer it to her child. In relation to a child born out of wedlock, the law under article 8 provides that the child shall retain his/her Ethiopian nationality after paternity is established on condition that the father's national law does not confer the child with all inherent rights. Otherwise, if the father's national law confers the child with all the rights, the child will lose its Ethiopian nationality. Therefore, an Ethiopian mother can transfer her nationality to her child only if her child was illegitimate and paternity has not been established.

The above-discussed provisions of the nationality law indicate the existence of a double standard in the law amounting to discrimination against women. The constitutional provision, which renders all laws, practices and customs conflicting with the constitution of no effect, could be cited to argue that these provisions are no more effective. However, to meet the commitment made under CEDAW, it is important that such a discriminatory law be repealed and replaced by a non-discriminatory nationality law.

### **5.1.2 Marriage and Family Life**

The constitution treats marital, personal and family rights under article 34. It is proclaimed under this provision that men and women have equal rights while entering in to, during and upon termination of marriage. The 1960 Civil Code of Ethiopia has been the only law governing marriage and family life in Ethiopia until very recently. In July 2000, the federal government with the objective of ensuring that the family law goes along with socio economic developments and the constitution has proclaimed a revised family law. It is noted in the preamble of the revised family law that it aims to provide a guarantee to the equality of the

spouses in the formation, during and up on dissolution of marriage. The revised family law is applicable in the territories administered by the federal government. Hence, in the regional states the 1960 Civil Code is the only law governing marriage and family life.

The 1960 Civil Code contains many discriminatory provisions, which have caused women many sufferings. Governmental and non-governmental organizations working on gender issues have been pushing for the abolishment of the discriminatory provisions. Nevertheless, so far their effort has succeeded only at the federal level.

Three types of marriages are recognized under both laws, civil, religious and customary marriages. Both laws provide that the same rights and duties shall ensue from either forms of marriage. It is also provided by the civil code and the revised family law that all types of marriages should meet certain basic conditions. The conditions relate to the minimum age for marriage, the consent of the spouses and the number of spouses.

#### **5.1.2.1 Minimum age**

The revised family law establishes the minimum age of marriage for both spouses to be 18, which can in exceptional cases be reduced to 16.<sup>31</sup> The Civil Code, on the other hand, under article 581 provides that the minimum age for marriage, which could in exceptional cases be lowered by two years, is 15 and 18 for the wife and the husband respectively. The distinction made in the civil code by providing different minimum age requirements for the spouses conflicts with the constitution and CEDAW which provide equal right guarantees to enter in to marriage. By and large, considering the traditional outlook in Ethiopia that considers men as bread winners and women as child bearers, this distinction

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<sup>31</sup> Article 7

seems to allow the continued dependence of women on men as women get married at an earlier age without pursuing their education and gaining their independence. Recognizing the discriminatory nature of this provision the CEDAW committee in its recommendation has called for the adoption of the same minimum age for both spouses. The revised family law which sets the same minimum age for both spouses though is commendable has limited effects in that it can only be applied in areas under the jurisdiction of the federal government. Therefore, the government has to see to it that the same minimum age is set in the regional states as well.

The other problem in relation to the minimum age requirement is wide spread practice of early marriage for girls. In most rural areas girls marry before reaching the legal age for marriage. Early marriage exposes girls to different harms. They are exposed to different health problems and complications at birth contributing to the inflated maternal mortality rate. They also suffer from psychological and emotional problems, which are, manifested by their running away from their husbands to cities. As a result, women are being made more prone to prostitution. A survey conducted on women working in drinking houses in Addis Ababa has indicated that 70 percent were married before attaining the legal age of marriage under the civil code i.e. 15.<sup>32</sup> The Committee on CEDAW has also expressed its concern on the practice of early marriage in Ethiopia. The government, therefore, should not only ensure the setting of equal minimum ages for the spouses it should also see to it that such laws are observed.

### **5.1.2.2 Consent**

The requirement of consent is the other condition governing all types of marriages. Both the civil code and the revised family law require the full and free consent of the intending spouses.<sup>33</sup> In practice however, arranged marriage is exercised.

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<sup>32</sup> Daniel Haile, *Law and the status of women in Ethiopia*, 1980, p.5.

<sup>33</sup> Articles 586 and 6 respectively.



Arranged marriages though affect both spouses, because women are not consulted in such arrangements and are not usually in a position to give their full and free consent due to their age and lack of experience they stand to suffer more.<sup>34</sup> This necessitates the taking of measures to ensure the enjoyment of the protection afforded by the law against entering in to marriage with out their full and free consent.

Abduction is the other practice forcing women in to marital ties with out their consent. Abduction is practiced through out the country though is very common in two regions; Oromiya and Southern Nations, Nationalities and Peoples Regional state<sup>35</sup>. Article 538 of the 1957 penal code of Ethiopia, which is still in force, provides that abduction is a crime punishable with a maximum of three years of imprisonment. The law further provides that when the abducted woman gives her free consent to marriage following the abduction no proceeding shall be instituted. The practice of making peace between her family and the abductor through negotiation and the paying of certain amount of compensation facilitates for the escape of the abductors from criminal proceedings.

Pressurized by the community and their parents who have negotiated with the abductor, the victims usually consent to marriage. In addition the fact that abduction usually entails cohabitation with the abductor implying sexual experience, leaves the woman with no prospect of future marriage and would have no option other than agreeing to the marriage. This practice goes against the provisions of the Constitution and CEDAW, which guarantee the right to marry with free and full consent, since a consent secured after abduction could in no way be considered as free. Therefore, to ensure the equal right of women in entering in to marriage, the government has to take strong measures than the loose stipulation of the penal code to eliminate the practice of abduction.

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<sup>34</sup> See above at 33.

### **5.1.2.3 Monogamy**

The other common condition for all types of marriage is prohibition of bigamy. The civil code and the revised family law under articles 585 and 11 respectively provide that a person already bound by a marriage cannot enter in to another. This is further strengthened by the provision of the penal law, article 611, which penalizes bigamy. Despite such a prohibition polygamy is common among both Muslim and Christian men in Ethiopia.<sup>36</sup> The practice of polygamy, which is a manifestation of the society's attitude towards women and questions the dignity of women, has to be eliminated to ensure the equal rights of women in marriage. The prohibition of polygamy under the law has not stopped the practice so far. Being a party to CEDAW the government is under an obligation to take a combination of other measures to eliminate this discriminatory practice.

These three conditions apply equally to civil, religious and customary marriages. There is no organ, however, to check the fulfilment of the conditions of marriage since there is no office of civil status or notoriety in Ethiopia to register birth, death and marriage. The absence of an organ to check the fulfilment of these conditions coupled with the legality of customary and religious marriages makes women susceptible to discriminatory practices in contravention with the law. Therefore, to give effect to the protections afforded by the law it is important to ensure the establishment of such an organ to check the fulfilment of the conditions.

### **5.1.2.4 Rights and Obligations During Marriage**

The equal right of spouses during marriage is guaranteed under CEDAW and the constitution. An overview of the provisions of the Civil Code reveals a fact to the contrary. Under article 635 of the civil code the husband is stated to be the head of the family owing the obedience of his wife in all the lawful things he orders her. The family is also put under the guidance of the husband in relation to moral and

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<sup>35</sup> Hadera Tesfay, Country Gender Profile: Ethiopia, 1999, p.26

<sup>36</sup> Daniel Haile, Law and the status of women in Ethiopia, 1980, p.6.

material direction and the upbringing of children by article 637. By the same token, article 656 provides that the common property is to be administered by the husband. The common residence of the spouses is also to be chosen by the husband, article 641. Article 644 goes much further and provides that the husband is to protect, watch over and guide his wife in her relations and conduct. In addition, article 646 obligates the wife to attend to the household duty when the husband is not in a position to provide her with servants. These provisions, which treat women like minors could not be tolerated in light of the equal right guarantees under CEDAW and the constitution.

The revised family law is free from such discriminatory provisions. It clearly indicates that marriage is to be based on mutual respect, support and assistance. It also recognizes that both spouses should administer and direct the family including the upbringing of children. The law also leave the determination of the common residence to the two spouses jointly. Furthermore, unless the parties agree otherwise, the common property is to be administered jointly.<sup>37</sup>

As was indicated earlier, the limited application of the revised family law leaves most parts of the country under the 1960 civil law. Therefore, efforts should continue to ensure the revision of the discriminatory provisions in the 1960 Civil Code.

#### **5.1.2.5 Dissolution of Marriage**

The causes and effects of dissolution of marriage are the same for the three types of marriage. Both the civil code and the revised family law stipulate that marriage could be terminated either by death, court order as a sanction for failing to fulfil the conditions of marriage or by divorce. It is provided under the civil code that serious and non-serious grounds could cause

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<sup>37</sup> Articles 40, 49, 50, 54 and 66 of the Revised Family code.

divorce. The civil code enumerates adultery, desertion of the marital residence, confinement to a mental institution, judicial declaration of absence, or annulment of a religious marriage by a religious authority as the serious grounds of divorce.<sup>38</sup> It should be noted at this point that domestic violence is not considered as a serious cause of divorce. When a serious ground imputable to a spouse causes dissolution, the spouse at fault is to be penalized up on property partition following the divorce. In like manner the spouse petitioning for divorce in the absence of a serious ground is to be penalized.<sup>39</sup> Since battery is not one of the serious grounds of divorce, a wife petitioning for divorce on this ground according to this law may be subject to this penalty, which may entail a maximum loss of a third of her personal property plus her share of the communal property.

The revised family law relieves women seeking divorce on the grounds of domestic violence from such a penalty since it makes no distinction between serious and non-serious grounds. It rather provides under article 84 that when the cause of the divorce is imputable to one of the spouses and when justice so requires the court may order such spouse to make good the damage sustained by the other.

The other issue, which has been a point of debate during the revision of the family law, is the involvement of the institution of family arbitrators. Family arbitrators could be either chosen by the spouses or appointed by a court. Under the civil code family arbitrators are given the power to receive petitions for divorce and to try to reconcile the spouses. If reconciliation is not possible, the family arbitrators are given the power to declare divorce and decide about the partition of property and custody of children following the divorce.<sup>40</sup> This institution has been highly criticized by women's groups on the ground that the arbitrators deliberately delay the proceeding with the

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<sup>38</sup> Articles 667 and 669

<sup>39</sup> Articles 692, 693, and 694

<sup>40</sup> Articles 666, 676, 677 and 725 of the Civil Code.

aim of obtaining high remuneration from the spouses, are corrupt and incapable of reconciling the spouses. The long duration taken in the process of divorce was said to have caused hardship to the women who usually have no source of income and are most likely out of her home. In addition, it was noted that there is high probability of family arbitrators to be bribed by the husband and come up with decisions to the disadvantage of the wife.<sup>41</sup>

The revised family law tries to avoid the shortcomings of the institution by limiting its power and setting the maximum duration to be spent on a case. Accordingly, the resort to the institution is made optional in that petition for divorce is made to a court of law, which may refer the case to family arbitrators if the spouses opt to do so. The law also tries to avoid the hardship faced by women in the process of divorce by giving courts the power to decide on matters relating to the maintenance of spouses and custody and maintenance of children. The determination of the conditions of divorce is also given to courts under the law, which depending on the choice of the spouses could refer the case to family arbitrators.<sup>42</sup>

The revised family law promises a better protection for women in relation to the proceedings and effects of divorce. However, close attention need be paid to the putting of this law in to practice. It is also important to ensure that the provisions of the civil code, which have detrimental effects to women, are revised in the regions as well.

#### **5.1.2.6 Irregular Union**

The other form of family life between a man and a woman recognized by the law is irregular union. It connotes the cohabitation of a man and a woman as husband and wife with out contracting marriage. According to the Civil Code, irregular

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<sup>41</sup> Hadera Tesfay, Country Gender Profile: Ethiopia, 1999, pp.19-20.

<sup>42</sup> Articles 80,81,82 and 83 of the Revised Family code.

union does not give rise to community of property. Hence, upon termination of the relationship there would be no property partition. Only in cases when the husband made the termination, the woman if equity so requires may be awarded maintenance for maximum of six months.<sup>43</sup> Most women in Ethiopia being economically dependent on the man suffer a great disadvantage by virtue of this law since no consideration is made to the contribution they made through their labour. Therefore, according to this law the maximum a woman would get is a six-month allowance. This however, has been changed by the revised family code in that it provides for community of property on condition that the union has lasted for a certain minimum period. Therefore property shall be partitioned in the same way as the case of divorce so long as the minimum time limit is met.<sup>44</sup> The applicable law in the regions being that of the Civil Code, efforts should be made to ensure the incorporation of such a provision by the regional states.

### **5.1.3 Violence Against Women**

Violence against women is not as such referred to in CEDAW. Nevertheless, since CEDAW guarantees civil, economic, political and social and other rights its application extends to the elimination of gender based violence which violates the right of women to physical integrity and is based on a discriminatory act specifically targeting women. The committee on CEDAW has expressed its concern that sufficient measures have not been taken by the Ethiopian government to fight violence against women.

Female Genital Mutilation (FGM) is one of the wide spread violence committed on the girl child in Ethiopia. 80% of the total population of women and in some areas up to 100% are victimized by FGM.<sup>45</sup> The efforts of the government to eliminate this hazardous practice leading to the death of women due to infections

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<sup>43</sup> Articles 708, 712, and 717 of the Civil Code.

<sup>44</sup> Articles 102 and 103 of the Revised Family Law.

<sup>45</sup> Haregewoin Cherinet and Emebet Mulugeta, Country Gender Profile Ethiopia, 2002, p.26

(since the mutilation is conducted with minimum sanitary condition) and complication related to birth have very much been limited to awareness raising activities. Therefore, as the

CEDAW committee pointed out rightly the government should accompany its awareness raising activities with legal measures. Presently the general provision of article 538 of the Penal Code dealing with grave wilful injury could be used to prosecute perpetrators of FGM. However, considering the gravity of its consequences and its wide spread practice, it is necessary to have a special provision on FGM. Alongside the taking of legal measures the government should adopt different measures to ensure the elimination of FGM and other customary practices and stereotypes in accordance with its obligation under article 5 of the CEDAW.

Similar to FGM, domestic violence is an area not specifically covered by the Penal Code. It is generally covered by the provisions of the penal code dealing with offences against the person and health.<sup>46</sup> These provisions contain general prohibitions against any injury of a person caused intentionally or negligently. The absence of a specific provision coupled with the tradition of non-interference in domestic violence has aggravated the problem. Hence, law enforcement officials as well as the public should be made aware of the need to tackle the problem of domestic violence, by bringing it out in the open, rather than putting it behind locked doors.<sup>47</sup> It is also necessary to have a specific prohibition of domestic violence. In addition, attempts should be made to provide protection against domestic violence by affording protection to the victims in a manner compatible with the socio economic conditions.

Abduction is the other form of violence committed against women. This act, which reflects, the superior position claimed by the abductors over women, in addition to threatening the dignity and integrity of women has limited women's

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<sup>46</sup> Articles 537-544 of the Penal Code.

access to education to a large extent. Fearing abduction on the way between their home and the schools, which usually is very far and has to be covered on foot many female students drop out of school.<sup>48</sup> The government has to take all necessary measures to ensure the elimination of this harmful practice. It is also necessary to strengthen the legal prohibition which is now conditioned on the absence of subsequent marriage and which even then cannot exceed a maximum of 3 years of imprisonment.

The commission of rape and other sexual offences against women is the other form of violence against women in Ethiopia. The 1957 Penal Code outlaws rape and other sexual offences including trafficking in of women for prostitution.<sup>49</sup> It should be noted here that there is no protection by the law against sexual harassment. Despite the legal prohibition afforded for rape and other sexual offences violations are observed daily. A study conducted in Addis Ababa, the capital, indicates 3 women are raped per day in each of the 28 districts of the city.<sup>50</sup> In addition 26% of girls in schools were raped while 78% expressed their fear of rape for they have been repeatedly threatened.<sup>51</sup> More over, 74% of the girls reported harassment.<sup>52</sup>

The government should adopt strong measures to address the problem of rape, sexual abuse and harassment. To this effect, it should legislate laws to address the problem in schools and in work places. It should also create awareness amongst the law enforcement officials so that they would give it a more serious attention realizing the severity of the problem. Furthermore a culture of bringing out such violations in to the open rather than keeping them, as secrets should be encouraged.

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<sup>47</sup> Hillina Tadesse, *The rights of women under the Penal Code of Ethiopia*, 1997, p.48.

<sup>48</sup> Haregewoin Cherinet and Emebet Mulugeta, *Country Gender Profile Ethiopia*, 2002, p.24

<sup>49</sup> Articles 589-613 of the Penal Code.

<sup>50</sup> Haregewoin Cherinet and Emebet Mulugeta, *Country Gender Profile Ethiopia*, 2002, p.24

<sup>51</sup> *Ibid*

<sup>52</sup> *Ibid*



Over all, the government should take all the necessary measures to ensure the elimination of all forms of violence against women for they question the very humanity and dignity of women. Hence, legislative protections coupled with awareness raising measures, aiming both the public and law enforcement officials should be provided.

#### **5.1.4 Participation in Public and Political life**

CEDAW under articles 7 and 8 obligates states to take all the necessary measure to ensure the equal participation of women in public and political life. The 1993 Electoral Law issued by the transitional government provides that any Ethiopian above the age of eighteen and who has been residing in the constituency for some years is eligible to elect and be elected. This is further strengthened under article 38 of the constitution, which provides that every Ethiopian national has a right to take part in the conduct of public life.

Despite the guarantee of the constitution and the electoral law, the percentage of women in public and political life is very low. However, a slight improvement is being made over the recent years. Unlike the previous election in which women took only 2.38% of the seats in parliament, currently women take 7.68% of the seats.<sup>53</sup>The slight improvement does not in any way imply that the end has been attained rather the government will have to take all the necessary measures to ensure the equal participation of women in political life. The CEDAW committee in its recommendations has indicated the need to increase the number of women in decision-making positions and the need to develop programs aimed at encouraging women to take decision-making positions.

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<sup>53</sup> Haregewoin Cherinet and Emebet Mulugeta, Country Gender Profile Ethiopia, 2002, p.34

### **5.1.5 Employment Rights**

The CEDAW under article 11 recognizes the equal right of women in the field of employment. This right is incorporated under article 35 of the constitution, which recognizes the right to equality of women in employment, promotion and payment. The right of women to maternity leave with full pay is also provided under the constitution. In Ethiopia employment conditions are governed by four types of laws depending on the place of work and the position of the employee. The Labour proclamation of 1993 governs the employment conditions in commercial, industrial or public enterprises as well as other lawful activities. Employees of Federal state administration, on the other hand are governed by the Civil Service proclamation of 2002, which replaced the Public Service regulation of 1962, while the later remains in force for employees of regional state administration. Finally, provisions of the 1960 civil code govern individuals in managerial positions in commercial and industrial entities.

The 1993 Labour proclamation contains provisions consistent with the guarantees of equal rights under CEDAW and the constitution. The prohibition of discrimination on the ground of sex in employment and payment is expressly outlawed. It also affords protection against harmful working conditions for the health of women. There is also a provision under this law protecting pregnant women from assignments hazardous to their conditions and from dismissal during pregnancy and until four months after giving birth. The proclamation states that women shall be the last to be affected in case of reduction in the work place. Further more, the proclamation guarantees pregnant workers with the right to a paid leave up on a recommendation of a medical doctor and to 30 and 60 days paid pre and postnatal leaves respectively.<sup>54</sup>

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<sup>54</sup> Articles 25, 87, and 88 of Labour Proclamation No. 42, 1993.

The Civil Service Proclamation of 2002 in like manner provides equivalent protection to that under the Labour proclamation. It further notes that preference is to be given to women candidates when the need to choose between men and women with the same qualifications arises.

The 1962 Public service regulation, which is applicable in the regions, provides equal right for men and women workers. However, it differs from the Labour Proclamation and the Civil Service Proclamation in relation to maternity leave in that it provides a maximum of six weeks maternity leave.<sup>55</sup> The Civil code similarly though has no discriminatory provisions provides a one-month maternity leave with half salary under article 2566.

The law governing the employment rights of women in Ethiopia is in line with the standards of CEDAW. However, the laws providing different durations of maternity leave for women working in different conditions need to be revised. Considering the fact that the laws which provide lesser duration are the old ones article 11(3) of CEDAW which requires the frequent up dating of such laws comes in to play. Therefore the government should bring the old laws, which provide lesser protection by making them cope with the Labour and the Civil Service proclamations. It is also the task of the government to ensure the implementation of the law in practice.

### **5.1.6 Pension Right**

State's duty to take all measures to eliminate discrimination against women in relation to the right to social security is articulated under CEDAW. In Ethiopia, pension is the most common form of social security. The law governing the administration of pension is contained in the 1963 public servant's proclamation, which is later amended in 1974. Furthermore, proclamation no. 49 of 1975 has

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<sup>55</sup> Article 38 of Public Service Regulation No. 1, 1962

extended the application of this proclamation to employees of undertakings, which are fully or partly owned by the government. This law does not discriminate women in relation to the age of retirement. It however, contains discriminatory provisions concerning the transfer of this benefit. Article 21 of the proclamation indicates that remarriage of a widow but not of a widower will terminate survivors pension. The right of widows to receive gratuity when the deceased was not entitled to pension at the time of death does not apply to widowers. In addition, unlike a widow a widower has to prove that he was mainly or totally dependent on his wife to collect his wife's pension.<sup>56</sup>

These provisions, which employ different standards of treatment for the sexes, reflect the society's stereotype. It has as its basis the assumption that men are breadwinners and women are dependant up on them. As part of its duty to eliminate gender stereotype and ensure equal treatment with respect to social security the government needs to abolish these provisions. In addition, the government has to provide a law regulating equal treatment in private undertakings, since the existing law covers only employees of government undertakings and public servants.

### **5.1.7 Access to Land**

Access to land is a very decisive in a society like Ethiopia where around 85% of the population depends on agriculture. CEDAW, in addition to the general prohibition of discrimination against women in all fields imposes an obligation on states to ensure the equal treatment of women in land and agrarian reforms and resettlements. The Ethiopian Constitution under article 40(3) provides that land and natural recourses are to be owned only by the state. It is also provided under 40(4) that any Ethiopian who wants to make a living by farming has a right to obtain the use of land for free. The stipulation of article 35(7) which recognizes

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<sup>56</sup> Articles 22 and 24 of the 1975 Public Servant's Proclamation.

the equal right of women with respect to the use, transfer, administration and control of land further emphasizes the equal right of women to have access to land.

The FDRE constitution under article 51 provides that utilization and conservation of land is to be under the power of the Federal government. Using this power the FDRE passed the Rural land Administration Proclamation of 1997. This proclamation gives power to regional councils to enact laws to administer land. It also requires the councils to ensure the distribution of land with out distinction on the basis of sex and provide security against eviction and displacement from holdings except for the purpose of land redistribution. The proclamation, hence, in addition to ensuring the equal access to land of women provides assurance against eviction, which in most regions used to happen to women following divorce or marriage.<sup>57</sup>

The constitution and the proclamation enacted to give effect to women's equal right to access land go along with the guarantees of CEDAW. Considering the deep-rooted tradition of the Ethiopian society the translation of such legal guarantees in to practice cannot be realized with out awareness raising efforts. In addition, it is also necessary to follow up the measures taken by the regional councils and the changes brought about as a result.

### **5.1.8 Inheritance**

Inheritance is one area in which even the old laws afford equal protection for men and women. The 1960 Civil Code under article 837 notes that sex among other factors shall not affect the ascertainment of the right to succession. The 1994 Constitution reaffirms this right under article 35(7) by requiring equal treatment for women in inheritance. The recognition of the equal right to inheritance in the Civil

Code does not necessarily imply equal enjoyment in practice. Hence attempts should be made to ensure compliance with the law.

### **5.1.9 Education**

Education is a key factor to the realization of the equal enjoyment of the human rights of women. Realizing the crucial role of education, CEDAW guarantees the equal right of women in the field of education under article 10. The joint reading of articles 41 and 35 of the constitution, likewise, establishes the right of women to have equal access to education. The recognition of temporary special measures under article 35 further indicates that differential treatments could be adopted to neutralize the effects of the historical legacy of discrimination against women.

The 1994 Education and Training Policy which has as one of its objectives the making of education accessible to all by the year 2015, gives due emphasis to the education of women. Accordingly, it aims to recruit more female teachers, give priority to female students and provide financial assistance to female student's to raise the participation of women in education. The Ministry of Education together with regional education bureaus with the aim of translating the policy in to practice launched the Education Sector Development Programme in 1997. According to this program efforts shall be made to improve the accessibility education to children, especially girls in rural areas.

The Women's Affairs Department in the Ministry of Education has also adopted a program, which targets five regions where the number of female enrolments is very low and the drop out rate is high. This program, which is implemented through Women's Affairs Department's in regional bureaus with the support of the WAD under the Ministry of Education, involves a combination of measures aimed at increasing the number of female students. Hence, capacity building for

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<sup>57</sup> Zenebework Tadesse and Yared Amare, 'Women's Land Rights in Ethiopia', in BERCHI,

female teachers, guidance and counselling for female students and awareness raising activities targeting the community are underway. In addition, temporary special measure are being taken by the government at university level in that the entrance requirement for female students is less than that for male students.

Despite these promising initiatives on the part of the government the result of a survey conducted in 2000 indicates that a lot remains to be done. According to the survey, the illiteracy rate for women is 74% while that of men is 54%. It also indicates that 47 and 67.3 percent of school age girls and boys respectively have been enrolled for the 1999/2000 academic years. The survey indicates in the same year the enrolment of girls represented 41.5% of the total enrolment in high school, 24.4% in colleges at diploma level and 13.2% in education institutions with degree programs.<sup>58</sup>

The committee on CEDAW, which expressed its appreciation for the affirmative action efforts for women at University level, expressed its concern about the high illiteracy and drop out rates. The committee has suggested the taking of measures including temporary special measures to ensure equal access of girls and women to education. Therefore, in accordance with the recommendation of the committee efforts should continue to ensure the equal rights of women and girls to education. The strengthening of the Women's Affairs Departments in the Ministry of Education and in regional Education Bureaus needs also special attention to ensure the success of the program, which is being jointly implemented.

### **5.1.10 Health**

One of the suggestions forwarded by the committee on CEDAW relate to women's right to have equal access to health care facilities. Accordingly, it noted

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The Journal of Ethiopian Women Lawyers' Association, Volume 1, no. 1, p.47.

<sup>58</sup> Haregewoin Cherinet and Emebet Mulugeta, Country Gender Profile Ethiopia, 2002, p.26-27.

that the government should ensure women's access to health services especially reproductive health and family planning services. CEDAW under article 12 obligates states to eliminate discrimination against women in the provision of health services including those related to family planning. The FDRE constitution proclaims the state's duty to allocate increasing resources for health, education and other services. Women's right to have equal access to the available health facilities is there by guaranteed since all the rights in the constitution are to be availed to all. In addition, the constitution provides a further guarantee for women to have access to family planning under article 35(8).

The National Health Policy of 1993 accords special attention to the health needs of women among other groups. To implement this policy the Ministry of Health has formulated a Health Sector Development Program in 1996. The National Program of action for children and women for the period between the years 1996 and 2000 is the other program drawn by the Ministry of Health dealing with the health situation of women. The program indicates that the health problems of women are strongly tied with the socio economic and cultural environment. Hence, the program notes their life in impoverishment, early marriage and conception of many children with out family planning services, has caused women a multitude of health hazards.

The guidelines for Family Planning services prepared by the Ministry of Health in 1996 incorporate ways of improving the quality and expansion of reproductive health care facilities. The other policy relevant to the health condition of women in Ethiopia is the 1998 National Policy on the Prevention and Control of HIV/AIDS. One of the specific objectives of the policy is to empower women to enable them protect themselves against the deadly disease.

The National Population Policy also has a significant bearing on women's health. Giving a central position to the empowerment of women, the policy has among its



objectives the reduction of fertility rate, maternal and infant morbidity as well as mortality rates.

The issue of health being an inter sectoral matter; it involves the application of other policies in addition to those listed above. Despite the inclusion of provisions in favour of women's health conditions and access to health care facilities, statistics depicts a very poor situation. The information availed by the Ministry of Health in 1998 on the national indicators for the years 1995 to 2000 shows a fertility rate of 6.1%, infant mortality rate of 105 children per 1000 and the maternal mortality rate of 560-850 per 100,000.<sup>59</sup>

Advertisement of contraceptives, despite the provision of the constitution and different policies in favour, is still punishable under the penal code.<sup>60</sup>In line with the principle of constitutional supremacy recognized by the constitution the prohibition of the advertisement of contraceptives by the Penal Code is of no effect. However, there is a need to explicitly repeal such laws, which go against constitutional guarantees. In addition it is also important to ensure the proper implementation of the different policies together with the undertaking of awareness raising activities aimed at eliminating customs and practices detrimental to women's health such as FGM.

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<sup>59</sup> Hadera Tesfay, Country Gender Profile: Ethiopia, 1999, p.14.

<sup>60</sup> Article 528 of the Penal Code

## **6 State Organs responsible for the enforcement of the human rights of Women in Ethiopia**

CEDAW strives to achieve not only formal equality but also equality in practice. To fulfil the duty of ensuring actual equality states are under obligation to provide avenues whereby women could seek the enforcement of their rights or remedy in cases of violation. Article 2(c) of CEDAW clearly obligates states to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

The FDRE constitution imposes the duty to respect and enforce the rights protected by the constitution on all state organs i.e. legislative, judiciary and executive. The legislature hence has an obligation of issuing laws that ensure the realization of the rights. It is also the legislature's duty to abolish laws that conflict with human rights and freedoms enshrined in the constitution and international agreements such as CEDAW. As was discussed earlier, laws have been issued with the aim of ensuring the respect and protection of human rights. However, a lot remain to be done both by the federal and regional legislative organs with respect to the repealing of old laws and enactment of new ones to effectively discharge their duty of respecting and enforcing human rights. In addition, to ensure the incorporation of gender elements in all the laws and policies issued by the legislative organ, awareness raising programs targeting the members of the legislative organs should be launched.

One of the legislative measures of the FDRE parliament, house of peoples' representatives was the issuance of the proclamation establishing the human rights commission. The proclamation affirms the responsibility of Federal and regional state organs to enforce human rights and recognizes the need to have a human

rights commission, which has a major responsibility of enforcing human rights. In line with this need, the human rights commission has been established with the objectives of:

1. Educating the public about human rights,
2. Ensuring the respect and protection of human rights and
3. Ensuring the availability of remedies when human rights are violated.

To achieve these objectives the committee shall:

1. Ensure that human rights are respected both by individuals and state organs,
2. Ensure that regulations, laws and directives issued by both regional and federal governments do not contravene human rights guarantees,
3. Educate the public through different means including the translation and dissemination of international human rights instruments with the aim of enhancing the tradition of enforcing and demanding the enforcement of human rights and
4. Undertake investigation up on complaint or of its own motion in relation to particular human rights situations.<sup>61</sup>

The proclamation empowers the commission to receive and investigate all complaints except those already under the consideration of the federal or regional parliaments or courts of law at any level. The proclamation also provides that the commission may as it deems necessary establish branch offices in the regional states. It further elaborates on the manner of appointment, term and removal of the commissioner and deputy commissioners.

A complaint could be lodged to the commission in any manner (oral, written or any other way) by the person claiming the violation, close relatives or a third party. The commission receives and investigates complaints free of charge. After

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<sup>61</sup> Proclamation no. 29, 2000.

conducting the investigation, the commission is expected to make efforts to settle the case amicably. It is also to inform both parties about its findings. The proclamation provides that the commission is to arrive at a final proposal in a short time. The remedy proposed by the commission should indicate the specific measures that should be taken to settle the case. It is possible to appeal to a higher official of the commission on a remedy proposed by a subordinate one.

The provisions of the proclamation, which were briefly reviewed above, are promising in that efforts have been made to ensure the independence of the commission and simplicity of procedure. Especially, the fact that the commission is accessible to every one with out any formality and charge makes it a very useful avenue to address violations of human rights of women. However, the limited power of the commission, which does not go beyond making recommendations, makes its effectiveness very doubtful. So far the commission is in the process of establishment and has not started its formal function. The contribution of the commission for the enforcement of human rights of women remains to be seen in the future.

The executive branch of the state is responsible to implement the laws and policies issued by the legislature. Included under this branch are the ministries and bureaus on the federal and regional levels. As was discussed initially in relation to the performance of Women's Affairs Departments in Ministries and regional bureaus, there is lack of awareness on the human rights of women, which is manifested by the marginalization of women's departments.

The passing of laws would be devoid of any effect unless the executive implements it properly. In addition, the fact that most human rights violations are committed by this state organ in the process of implementing the law shows the greater role played by this organ in the enforcement of human rights. Therefore, both high and subordinate officials in the executive should be made aware of

human rights, more particularly human rights of women, to ensure the enforcement of human rights of women in Ethiopia.

The FDRE constitution establishes an independent judiciary both at federal and regional levels. Courts, which are vested with judicial power to interpret and apply laws, issued by the legislature play a significant role in the realization of human rights. The constitution under article 13(2) provides that the fundamental rights and freedoms contained in it are to be interpreted in conformity with international instruments adopted by Ethiopia. However, a survey indicates that the reference at courts level to international human rights instruments like CEDAW and provisions of the constitution dealing with human rights is very minimal.<sup>62</sup>

Given the fact that there are laws conflicting with provisions of CEDAW and the constitution, the realization of human rights is beyond reach unless aided by a progressive interpretation. Therefore, there is an imminent need to develop the culture of referring to human rights principles contained in the constitution and international instruments. Furthermore, like the members of the two organs of the state, judges should also be targets of gender sensitisation programs to ensure the enforcement of human rights of women.

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<sup>62</sup> Rakeb Messele, Enforcement of Human Rights in Ethiopia, A Research Sponsored by Action Professionals' Association for the People, 2002.

# 7 CONCLUSIONS AND RECOMMENDATIONS

Human rights of women have been recognized in different international and regional human rights instruments. The CEDAW, which is the most comprehensive instrument on the human rights of women, provides minimum standards that need to be met by every state party to it. The convention strives to ensure the elimination of all forms of discrimination against women there by ensuring the equal enjoyment of human rights by women. The convention obligates states parties to take all the necessary measures including legislative ones to achieve this end.

The state obligations emanating from the convention could be generally categorized as obligations to respect, protect, fulfil and promote. Hence, to meet the first obligation a state should ensure that all its organs do not discriminate against women. The state should provide effective protection against discriminations by private as well as state organs according to its duty to protect. The duty to fulfil, on the other hand, obligates states to provide what is necessary for the effective realization of the rights, which includes the provision of effective avenues to ensure the observance of the rights. The fourth type of obligation, duty to promote, imposes an obligation on states to disseminate information about the rights with the aim of avoiding right violations emanating from lack of awareness and modifying customs and practices detrimental to the realization of the rights.

The Ethiopian government being a state party to CEDAW has undertaken to meet these obligations. The major action taken by the government towards the fulfilment of these obligations is represented by the formulation of the National Women's Policy and the establishment of women's focal points at different levels

to ensure the effective implementation of the policy. The policy and its implementation avenue have to overcome their shortcomings to serve as effective tools of eliminating discrimination and bringing about actual equality.

The policy, though provides the duties of the different organs responsible for its implementation, it does not specify the particular roles to be played by each. The implementation structure set by the policy, in addition, has not enabled the different organs function in a coordinated and effective manner. The budgetary and qualified human resource constraints, furthermore, have proved to be major obstacles for the effective functioning of the responsible organs. Lack of gender sensitivity even among those in high government offices has put the organs in a marginalized position significantly affecting the discharge of their duties.

The other attempt made in this paper to assess the meeting of the obligations under CEDAW was by looking in to the actual conditions of women with respect to the enjoyment of particular rights vis a vis policies and legislations in force. In this regard, it has been observed that even though, the constitution provides a guarantee to the rights protected by CEDAW and declares all laws conflicting with it of no effect, there are discriminatory laws in the legal system. This fails to meet the requirement under CEDAW to abolish or modify discriminatory laws. The result of different assessments made over the years, further shows that even the laws that provide protection are not effectively implemented for different reasons, amongst which are lack of the necessary office /like the case of the office of civil status or notoriety/ or lack of awareness among the public at large and law enforcement officials in particular.

The organs responsible for the implementation of the rights have significant roles to play in ensuring the effective implementation of CEDAW. The constitution entrusts the task of respecting and enforcing the human rights contained in it, to the legislative, executive and judicial organs both at the federal and regional levels.

To enable these organs discharge their duties effectively, it is important to ensure that their members are aware about and sensitive to gender issues. The exclusive reliance by the judiciary on the substantive laws of the country excluding the human rights provisions of the constitution and international instruments has to be corrected to provide effective protection for the rights. In addition, the establishment of a national human rights commission though marks a significant move towards the enforcement of human rights requires further measures in the future based on the problems and shortcomings observed in its functioning.

By becoming a party to international human rights instruments like CEDAW states are subjecting themselves to international scrutiny with respect to their obligations under the instruments. Such a scrutiny is made in most instruments, like in the case of CEDAW, through the submission of state reports. Therefore, in addition to meeting the other obligations the Ethiopian government has to submit timely reports to the committee on CEDAW.

In light of these observations the following specific measures are recommended to ensure the effective enforcement of CEDAW in Ethiopia.

1. The women's policy should be revised from time to time to address its shortcomings. In this connection it should provide the specific roles to be played by the implementing organs.
2. The implementing organs of the policy should be given the power and capacity necessary to discharge their duties. Therefore, immediate measures should be taken to address their budgetary and human resource constraints.
3. The implementation structure of the policy should be revised in a manner that facilitates the coordinated functioning of the different implementing organs.



4. Legislations should be enacted both at federal and regional levels modifying and abolishing discriminatory laws and practices. In this respect particular attention need be paid to the prohibition of harmful practices against women.
5. The public as well as the members of the different state organs should be aware of the human rights of women to ensure the effective enforcement of the law. Therefore, a series of educational programs should be undertaken at all levels.
6. Attempts should be made to develop a culture of referring to international human rights instruments in courts.
7. Efforts should continue to ensure the proper functioning of the newly established human rights commission.
8. Timely report should be submitted to the Committee on CEDAW.

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4. **Convention on the Political Rights of women, 1952**
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7. **International covenant on Civil and Political Rights, 1966**
8. **International Covenant on Economic, Social and Cultural Rights, 1966**
9. **Declaration on the Elimination of Discrimination against Women, 1967.**
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5. Labour Proclamation, 45/1993.
6. The Civil Service Proclamation, 2002
7. Public Service Regulation, 1962
8. Public Servants proclamation. 1963
9. The Nationality Law of Ethiopia, 1930
10. Electoral Law of Ethiopia, 1993
11. Rural Land Administration Proclamation, 1997
12. Proclamation establishing the Human rights commission in Ethiopia, 2002.
13. National Policy on Ethiopian Women, 1993.
14. The Education and Training Policy, 1994
15. National Health policy, 1993