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Major Gaps on the Rights of Women in Ethiopia

JAMM04 Master Thesis

International Human Rights Law

30 higher education credits

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Term: Spring 2016

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Acknowledgments

First and for most I would like to thank God who is there for me every time and whose blessings have made me who I am today.

None of this would have been possible without the love and patience of my parents and siblings. They have been a constant source of love, support, concern and strength all these years. Thank you for never give up on me.

I would like to express my deepest gratitude to my supervisor Prof. Göran Melander for his patience, invaluable advices and suggestions. Without his supervision, this thesis wouldn't have been possible.

Special thanks to the Swedish Institute for the scholarship offer throughout my study period here at Lund University.

I would like to express my heartfelt thanks to judge Nuredin Kedir and judge Mulusew Deres for provision of the necessary materials relevant to complete this thesis and cooperation for interviews.

Most importantly, I am deeply indebted to my best friend Zene who has been exerting a lot of efforts to collect the materials and data that I needed from my country Ethiopia. Zene, I deeply appreciate your belief on me.

I am very much grateful and indebted to Biruke Mesfin, who introduced me Lund University for the first time, encouraged and helped me throughout my study period in Sweden. Your kind and sincere support is truly appreciated.

I would like to extend my deepest gratitude to Samson Tesfaye for his support and continuous encouragement throughout writing my thesis. Thank you for your wise council and sympathetic ear.

I am grateful to all of my friends especially Zene, Selamye, Tsdie, Tize and Konjit whose encouraging words kept me when the tea had lost its stimulating effect. They have been providing me with material and moral support throughout writing my thesis. Thank you dears, I greatly value our long friendship.

Last but not the least, I would like to express my gratitude to all my friends that I met here in Lund who helped me to adopt and adjust with the new environment.

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CEDAW	Convention on Elimination of All forms of Discrimination against Women
CEDAW Committee	Committee on Elimination of Discrimination against Women
DEVAW	Declaration on the Elimination of Violence against Women
FDRE	Federal Democratic Republic of Ethiopia
EWLA	Ethiopian Women Lawyers Association
FGM	Female genital mutilation
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESR Committee	Committee on Economic, Social and Cultural Rights
ICPD	International Conference on Population development.
NGO	Non-governmental Organization
UDHR	Universal Declaration of Human Rights
UN	United Nations.
UNFPA	United Nations Population Fund.
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organization.

Abstract

Several international instruments including CEDAW have recognized every human being to be free from any form of violence including being free from inhuman and degrading treatment. Equality of men and women is also recognized starting from the establishment of UN in 1945 under its charter.

UDHR, ICCPR and ICSECR are the major international human right instruments which recognized the application of the rights without discrimination based on sex. CEDAW is an important instrument meant to avoid any forms of discrimination against women including gender based violence against women. The ACHPR and the protocol to the right of women in Africa are also crucial regional instruments in the human right field to ensure the right of women within the region. Moreover, Harmful traditional practices and violence against women are recognized as violation of the human rights of women by the treaty bodies established to ensure implementation of the respected international and regional instruments.

Ethiopia, after ratification of several international human right instruments took legislative and other important measures to respect the rights of women in general. However, such measures are remained to be insufficient. Abuses of women rights continued to persist, perpetrators remained unpunished or punished with fines or quiet few years of imprisonment for gross violations of Women's rights. Particularly, the situation of domestic violence including intimate partner violence, as some scholars rightly put it, is beyond the expectation of the 21st century. The constitution of Ethiopia entitled women several rights though it is not still perfect. The revised family code of Ethiopia also recognized several rights which were not included in the civil code of Ethiopia. The criminal code of Ethiopia has also criminalized several harmful traditional practices such as FGM, abduction, and rape. Despite all these legislative measures, violation of the fundamental women's right still continue to exist.

The thesis is meant to show the readers the prevalence of violence against women and harmful traditional practices including domestic violence, sexual violence, FGM and early marriage as well as to show gaps on the administrative and legal measures taken by relevant actors to tackle the problems in light of the international human right standards. To fulfill the obligations envisaged under international human right instruments, the study recommends the state and the relevant actors to take legislative and administrative measures to tackle the problem from its grass roots and increase protection for victims of harmful traditional practices and gender based violence.

"Regardless of a universal sex-equality norm,
Women's reality is one of gross inequality."

B.E. Hernandez-Truyol¹

¹ 'Out of the shadows; traversing the imaginary of sameness, differences and relationalism, a human right proposal', California Law Review, (2000), P.52.

1. Introduction

1.1 Back ground of the study

It has been repeatedly stated that women rights are human rights.²It can be said that women rights are not totally excluded from the protection of human rights concept. The 1945 UN charter for instance recognized equal rights on the cultural, social, economic, civil and political rights.³ However, hence women were traditionally under the control of men, they were excluded from the definition and interpretation of human rights principles and standards. For that reason, a number of violations of human rights of women have remained unchallenged until sometime now.⁴

UDHR is equally applicable to all individuals without any discrimination based on sex, race, language and etc. CEDAW and DEVAW could be regarded as the basic foundations for human rights of women under international law.⁵DEVAW was adopted in 1993 in order for states to prevent abuse of women's right through effective investigation and bringing the perpetrators before justice in accordance with the national legislation of the state.⁶CEDAW can also be regarded as the basic international instrument that comprehensively addresses women's right in the political, social, economic and cultural domains.

Despite the existence of these and other international agreements on women's right, violations of basic women's human right continued to exist. Couple of examples can be cited in this regard. More than 500,000 women are dying every year because of pregnancy and child birth issues. Because women are leading economically lower standard of living as well as their cultural vulnerability, HIV infection of women continue to persist.⁷In addition, several women around the world is continued to die and sustaining physical and mental injury because of gender based violence and the perpetrators more often left unpunished.⁸Worse, those countries that has ratified the major international instruments dealing with women rights enforces national discriminatory legislation on marriage, property and inheritance cases.⁹In order to minimize if not possible to eradicate the violation of women's right, state has various obligations imposed by the different international human right instruments as well as international standards and principles. State has

²Amnesty International, 'Foundations of women's right under international law,' U.S.A, available at www.amnestyusa.org/women, (July 20, 2005).

³ Ibid.

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ United Nations Population Fund, 'the human rights of women,' available at <http://www.unfpa.org/?page=0%2C0%2C1>, 2006.

⁸ Ibid

⁹ Ibid

to take legislative and executive measures including awareness measures in order to effectively implement the key human rights of women.

Ethiopia has ratified several human right instruments including instruments specifically dealing with the rights of women such as CEDAW. Ethiopia is also a signatory but not ratified the Protocol for the African Human and Peoples right on the rights of women.

The Ethiopian Society is quiet conservative and traditional society. For this reason, several women's right violations such as FGM, rape, abduction and early marriage are quiet common particularly in the rural areas. FGM for instance has been widely practiced for the last several decades and still continued to be practiced.¹⁰It has affected 80% of the country's women out of which most of them are endorsed by women themselves.¹¹Violence against in Ethiopia is also quiet common despite the fact that it is criminalized and recognized as women's human right violations under the national legislations of the country. Recently, we are hearing several shocking cases dealing with physical and mental violence against women in Ethiopia. This is has a connotation of either the problem get worse every day or violence against women these days are getting attention and publicized because of governmental and nongovernmental actors. Child marriage is also another women rights abuse where most Ethiopian rural women are facing some time now. Researches indicated that two in every five girls are married before they attained the age of 18 and one in five girls married before they attain the age of 15.¹²Abduction and rape are also the major challenges that Ethiopia is facing in implementation of women's right in the country. Deep rooted traditions and cultures are usually cited as main reasons for such extensive violation of women's right.

Ethiopia, after ratification of several international human right instruments took legislative and other important measures in order to respect the rights of women in general. However, such measure are remained to be insufficient. Several women rights abuses continued to persist, perpetrators remained unpunished or punished with fines or quiet few years of imprisonment for gross violations of Women's rights. Fundamental rights of women are recognized under the constitution and family code of Ethiopia. The revised criminal code, on the other hand, criminalized several harmful traditional practices such as abduction, FGM and rape. The study will show the various legislative measures taken by Ethiopia to prevent violation of women's right and assess whether such measures are effective enough to combat abuses of women's right.

1.2 Statement of the Problem

The major human rights of women are recognized under the various international and regional human right instruments. Particularly, violence against women, female genital mutilation, early

¹⁰ Medhanit Adamu and Sofanit Mekonen, 'Historical perspectives on the legal status of women,' available at <http://www.abysinnialaw.com/research>, (04 September 2014).

¹¹ Ibid

¹² Girls not brides, 'Child marriage around the world: Ethiopia,' available at <http://www.girlsnotbrides.org/child-marriage/ethiopia/>.

marriage and abduction are recognized as abuses of women's right under such human right instruments. The general comments given by the UN human rights treaty bodies also recognized such practices as violation of women's right.

Ethiopia has ratified the major international human right instruments adopted by UN including CEDAW. Ethiopia is also a signatory of the Protocol of the African Charter on human and people's right on the right of women in Africa. By ratification of these international and regional human right instruments, the country assumed obligation to eradicate the various harmful traditional practices including violence against women by taking several measures. One of such measures is coming up with new legislations or amend the existing legislation in conformity with the international human right standards.

Despite the legislative and other measures taken by Ethiopia, the harmful traditional practices still persist. Violence against women happened to be the day to day experiences of women including those who live in town. The study shows how deeply rooted traditional and cultural practices are affecting the key women's rights. The study also shows the measures taken by the government to combat the harmful traditional practices and gaps within the law and enforcement of the rights.

The study focus on the main problems of women rights in Ethiopia, namely stereotypical attitudes, FGM, early marriage, domestic violence, intimate partner violence, sexual violence and abduction as well as sexual and reproductive health rights .

1.3 Research questions

Based on the above background, the research primarily seeks answers to the following basic questions presented below:-

- What are the major harmful traditional practices and violence against women in Ethiopia that violate the human rights of women?
- What are the legal protection put in place by Ethiopia to eradicate the harmful traditional practices and violence against women?
- What are the major gaps on the laws aimed at tackling harmful traditional practices and violence against women as well as gaps on enforcements of the rights?

1.4 Theoretical considerations

Feminism theory is the major theory the writer of this paper uses as analytical method. Feminism theory is a theory that argue for the equality of men and women on economical, political social and cultural spheres.¹³This theory believes that oppression of women solely due

¹³ Feminist theory, Examining Branches of feminism, available at <http://www.amazoncastle.com/feminism/ecocult.shtml>, 2004.

to their sex is the result of dominant ideas and concepts of patriarchy.¹⁴Patriarchy is defined as *"the system which oppresses women through its social, economic and political institutions."*¹⁵During the previous centuries men control the political, social and economic as well as cultural spheres within the community and to maintain the existing powers, various obstacles and barriers are put in place against women.¹⁶Currently, feminist ideology takes various forms depending on several factors such as one's own beliefs, history, culture and attitudes. The major feminist ideologies are radical feminism, Liberal feminism, Socialist feminism and cultural feminism. Radical feminism promotes the basic ideas and concepts of feminism. They argue that oppression of women is the cruelest oppression around the world without distinction to race, culture, tradition and religion. They also argue that there is a need for societal change hence legislation measure is not enough by itself to eradicate patriarchy. They completely reject societal roles and patriarchy to the extent of forming distinct groups of women excluding men.¹⁷On the other hand, liberal feminism was most popular during the civil right movement in the 1950's and the 1960's.¹⁸They argue that both men and women are equally created by God and they deserve equal protection of their rights. According to this theory, Patriarchy and oppression of women existed because of the socialization of men not because there is a mental capacity difference between men and women.¹⁹ Supporters of this theory argue that women should live a life they choose not a life chosen by others and women should be accorded equal political, economic, social and cultural opportunities with men. In addition, they support acts of legislation and legal reforms meant to eradicate oppression of women as well as legislation designed to create equal opportunities.²⁰Social feminism believes that there is a direct relationship between class structure and patriarchy.²¹They argue that men usually rewarded because they produce products that have monetary value compare to women who tend to spend their time and energy in the house hold activities that most of the time do not generate monetary income. Social feminist believe that social roles are neither natural nor inherent to the human nature. According to them, class and gender should be eradicated to overcome oppression of women and also women should equally participate in the public sphere along with men. Unlike the liberal feminism that focuses on the individual oppression, social feminism focus on the societal relations among the community such race, ethnics and the like.²²Cultural feminism, on the other hand argue that there is a significant biological difference between men and women and women should be happy about it because women by nature are more kind and gentle compare to men. As a result of this, cultural feminist argue that our world would have been a better place

¹⁴ Different types of feminist theory, available at <http://www.caragillis.com/LBCC/Different%20Types%20of%20Femini.htm>.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

and peaceful if it has been ruled by women.²³ There are several feminist ideologies that are not discussed in this paper. However, the writer believed that the above four ideology is important and related to the purpose of the study. In most parts of the discussion liberal feminism and socialist feminism ideologies of feminism theory are employed in order to deal with the various women right abuses. The patriarchy system that existed around the world is the result of how boys and girls are socialized within the society. Therefore, gender roles ascribed to men and women are not inherent. In order to transform the status of women not only legislation should be enacted, but also societal and community attitude change is needed. For these reasons these theories are selected to be applied in most of the discussions throughout the thesis.

1.5 Significance of the Study

Key women's human rights issues such as domestic violence, sexual and reproductive health rights and harmful traditional practices are these days began to discuss under international law. However, it is quiet difficult to conclude that it is adequately discussed. Particularly harmful traditional practices which are prevalent among developing countries in most African countries such as FGM, abduction, rape and violence against women are rarely being subjects of discussions with in the international context. This study shows how such harmful traditional practices including domestic violence affect the lives of women in Ethiopia. The study primary focus on the Ethiopian situation, however it incite further studies on the topic in general.

The writer of this paper decided to conduct a study on such issues mainly because harmful traditional practices and violence against women continued to persist because of the fact that patriarchy is deeply rooted to the country's traditional and cultural attitudes developed for several decades within the society.

The study further will be useful for the government of Ethiopia, international and local NGOs hence it provide a comprehensive study on the issue within the national context in light of the international human right instruments as well as international standards and principles.

1.6 Methodology

The present study is a theoretical and practical analysis of international human rights law in light of harmful traditional practices and violence against women. International and regional instruments ratified by Ethiopia as well as legislations adopted by the Ethiopian government is employed as primary sources. Interview is also employed as a primary source. General recommendations and concluding observations by treaty bodies, various cases on the issue of women rights as well as literature review are also employed as a secondary source to conduct this study.

²³ Ibid.

The result of the analysis are applied to the specific country situation such as Ethiopia by bringing the international and regional instruments on women's right. The study is meant to achieve practical goals particularly in relation to how Ethiopia should comply with its obligations specified under the various international and regional instruments to realize the rights of women within the country.

1.7 Delimitation of the study

The study is limited to Ethiopia's obligations regarding the various human right instruments including CEDAW regarding the eradication of harmful traditional practices and ending violence and doesn't provide a comprehensive analysis of women's right and its definition.

In most parts of the study, it focus on the obligation and practice of Ethiopia and fail to provide neither the global nor the regional picture. The thesis also focus on the major area of problems related to women's right for the state in question in light of the international principles and standards so that it doesn't deal with the international legal obligations of other states on the realization of women's right.

In spite of the fact that the paper claim to be dealt with women's right, the research focus on the key areas of women's human right abuses and does not deal with all of the women's right abuses within the country despite the fact that it was also important to discuss about them. This mainly because of time and space constraints.

Lastly, certain practices may or might not be violation of women's human right. The paper doesn't go deep into the analysis of what constitute abuse of women's human right and what does not. Rather, the thesis focus on the key women's human right violations as it is defined and understood in the international human right instruments particularly in CEDAW.

1.8 Structure

The thesis is divided into three main parts:

Part II first, analyses the various international and regional instruments on the rights of women. The different provisions dealing with women's right is outlined. The meaning, concept and status of such abuse of women's right will be discusses in light of the international standards. The legal status of international instruments in Ethiopia is also part of the discussion.

Part III brings the theoretical analysis applied in part II into practice and shows how Ethiopian government tried to fulfill its international obligations through adoption of the legislation. First, the major problems related to Key women's right within the country are discussed. Second, it provides the protection mechanism provided under the constitution and family code of Ethiopia. Then it goes to dealing with the criminal code of Ethiopia that criminalized the various harmful traditional practices. The focus is on the key women right issues such as violence against women

(including intimate partner violence and sexual violence, female genital mutilation, early marriage as well as sexual and reproductive health rights).

The fourth and the final part of the thesis focus on the enforcement of the rights of women enshrined under the international human right instruments and national legislation. Whether the legislation measures taken by the state deter further abuse of women's right or not is discussed under this chapter. Major gaps within the enforcement organs of the government is also discussed through analysis of cases related to abuses of women's rights in Ethiopia and interview with judges to provide a better picture about the issue. Accessibility of justice is another area of discussion. The role of judiciary machinery including the role of police investigators and public prosecutors is the focal point of discussion. The recommendations as well as the concluding observation provided by CEDAW committee against Ethiopia are applied to indicate the critical gaps on the ground.

2. International human right instruments

2.1 International instruments on Women's right

Various human right instruments is adopted by the UN which are directly or indirectly related to the rights of women. Treaty bodies are also established as a follow up mechanism to make sure that states are complied with their treaty obligations. The UN charter, UDHR, ICCPR, ICESR and CEDAW are the main international instruments adopted by UN that embodied provisions related to the human rights of women. Let us proceed looking at the specific provisions dealing with women's human right.

A. UN charter: - The UN commitment towards the realization of equality of men and women starts from the very foundation of the organization itself. The 145 of the UN charter under its preamble stated that it is determined to *"reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."*²⁴ From this preamble one can understand that one of the UN commitments is to realize the equal rights of women around the globe. On the other hand article 1 of the charter establishes the main purpose and objective of the UN. Article 1(3) provides that *"To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."*²⁵ I.e. the promotion and respect of human rights of both men and women around the globe is one of the main goals of the UN. The main message here is that the UN is under obligation for the human rights of women without discrimination based on sex.²⁶ Similar contents are also envisages under the mandate of the UN general assembly. In this regard article 13(1)(b) is worth mentioning, which provides that *"the General Assembly shall initiate studies and make recommendations for the purpose of: promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."*²⁷ This is also an indication of the fact that the General Assembly mandate is to be free from discrimination on the basis of sex and the studies and recommendations undertaken by the GA should be on the basis of equality of men and women. Similar wording can also be found under article 55(c) which provides that UN should promote the universal implementation of fundamental human rights and freedoms without discrimination on the basis of sex.²⁸

²⁴ Preamble of the charter of the United Nations, United nations conference on International Organization, San Francisco, 26 June 1945.

²⁵ I'd, article 1 (3).

²⁶ Sandip B.Satbhai, 'Protection of human rights of women', *international and national perspective*, Gokhale Education society's.

²⁷ Charter of the United Nations, Cited above at note 24, see article 13(1)(b).

²⁸ I'd, article 55(c).

All the above provisions of the charter is an indication of states' commitment to promote and respect the human rights of women equally with men.

B. UDHR: - The preamble of the 1948 UDHR begins with its recognition of human rights without any distinction to gender. It is provided that "*the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.*"²⁹The wording of the "human family" is an indication of non discrimination based on sex. The preamble also recalled the UN objectives stated under the charter on the promotion and enforcement of human right on the basis of equality of men and women.³⁰In this regard, article 2 of the declaration provides that "*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*"³¹That is, the rights and freedoms enshrined under the declaration can equally be claimed by both men and women. The declaration further provides equality of men and women before the law.³²That is, women cannot be accorded lesser right protection of the law than men. Article 7(1) of the declaration further stipulated that "*all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*"³³In relation to the right to form and dissolve a family, a provision of the declaration stated that "*Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage during marriage and at its dissolution.*"³⁴The expression of "men and women of full age", has two connotations. First, not only men have the right to form and dissolve a family but also women have the same right. The aim here is that to provide equal rights in the formation as well as in the dissolution process of marriage. Second, the spouses should attain the marriageable age (at least both of them should be 18 years old). The purpose here is to prevent early marriage, which is a major problem particularly in most developing countries. The declaration further provides that the formation of family should be on the basis of the free will and agreement of the spouses. This is also meant to protect formation of a family through an agreement other than the spouses themselves. Certain provisions of the convention provides special treatment for a certain category of people because of their vulnerability. Article 25(3) of the declaration is one of such provisions that children and women who gave birth are entitled to special care and support. The declaration in its provisions embodied words free from gender indications such as "all human beings", "everyone" and human family".³⁵In fact during the draft

²⁹ Preamble of Universal Declaration of Human Rights, Adopted by the General Assembly of the United Nations, 10 December 1948.

³⁰ Ibid.

³¹ I'd, article 2.

³² I'd, article 7.

³³ Ibid.

³⁴ I'd, article 16(1).

³⁵ United Nations Human Rights, Office of the high Commissioner, 'Women rights are human rights', New York and Geneva, (2014), P.3.

of the declaration there was a discussion whether the word "all men" should be used. However, the declaration adopted using gender neutral words while referring the right holders.³⁶

C. ICCPR and ICESCR: - After the adoption of UDHR, the two covenants (ICCPR and ICESCR) were adopted in 1966 which forms part of the international bill of rights with UDHR.³⁷ These instruments unlike UDHR are binding to states that ratified the covenants. According to the covenants, states are obliged to report periodically about the measures they are taking in order to fulfill their obligations under the convention.³⁸ The authoritative treaty bodies interpret the text of the covenants as well as receive individual complaints when state parties gave their consent about it.³⁹

Article 2 of ICCPR provides that *"Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, politics or other opinion, national or social origin property, birth or other status."*⁴⁰ It is an indication of the fact that states are under obligation to respect and implement the rights and freedoms enshrined under the covenant without discrimination on the basis of sex. State parties should also undertake measures in order to ensure the enjoyment of the civil and political rights enshrined under the covenant.⁴¹ Article 14 and 16 talks about the equal application of due process of law without discrimination based on sex. In this regard article 14 stated that *"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....."*⁴² The wording of "all persons" and "everyone" in the above provision is meant to protect the due process right of both men and women. Similarly, article 16 of the convention enshrined the right to be considered equality before rule of law. This provision also important to avoid circumstances where women not to be considered equal before rule of law. Article 23 dealt with family related matters such as marriageable age and the right of the spouses during the formation and dissolution of the union. It gave the state parties the right to fix the appropriate marriageable age.⁴³ However, the covenant prohibits the formation of a family without the free and full consent of the spouses.⁴⁴ This has an advantage of prohibiting conclusion of marriage between the parents of the spouses which is often a practice in many sub

³⁶ I'd, P.3- 4.

³⁷ I'd, P.4.

³⁸ Ibid.

³⁹ The United Nations on the human rights treaty system and OHCHR, fact sheet No.7:' Individual complaint procedure under the United Nations Human right treaties'.

⁴⁰ International Covenant on Civil and Political Rights, Adopted by the General Assembly of the United Nations, 16 December 1966, Article 2.

⁴¹ I'd, article 3.

⁴² I'd, article 14.

⁴³ I'd, article 23(2).

⁴⁴ I'd, article 23(3).

Sahara African countries. In relation to dissolution of marriage, it is provided under the covenant that "*States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during marriage and at its dissolution.....*"⁴⁵ That is, according to this covenant women shouldn't be granted lesser protection in the national legislations during dissolution of a marriage. Equal protections of the law as well as effective protection from discrimination on the basis of sex are accorded under the convention.⁴⁶ This is intended to make sure that laws are meant to protect equally the rights of men and women.

Similar provisions are embodied under the ICESCR. It obliges state parties to promote and enforce the rights provided under the covenant without discrimination on the basis of sex.⁴⁷ It requires states to ensure the enjoyment of the economic, social and cultural rights equally both for men and women.⁴⁸ In addition, similar to ICCPR, ICESCR requires marriage to be concluded on the basis of the free and full consent of the spouses.⁴⁹ It also obliges state parties to provide adequate maternity leave with payment or social security for women during pregnancy and after delivery.⁵⁰ In relation to health right issues, the right to get the highest attainable standard of health including mental health is accorded to everyone (both men and women).⁵¹

D. DEVAW: - Before the adoption of CEDAW, DEVAW was adopted in 1967 by the General Assembly. It is based on the principle of equality built up on the previous international human right instruments such as the international bill of rights.⁵² By describing discrimination against women as a crime against human dignity, it urged state parties to eradicate laws, customary norms and traditions and regulations that promote discrimination of women by providing adequate protection for the rights of men and women without discrimination.⁵³

E. CEDAW and its Additional Protocol: - Almost a year after the adoption of DEDAW, a proposal for having a binding international instrument on the human rights of women was made. CEDAW was adopted in 1979 by the UN general assembly.⁵⁴ 189 states have ratified the convention until May 2015.⁵⁵ It is said to be the first universally internationally comprehensive

⁴⁵ I'd, article 23(4).

⁴⁶ I'd, article 26.

⁴⁷ International Covenant on Economic, Social and Cultural Rights, Adopted by the General Assembly of the United Nations on 16 December 1966, article 2.

⁴⁸ I'd, article 3.

⁴⁹ I'd, article 10(1).

⁵⁰ I'd article 10(2).

⁵¹ I'd, article 12(1).

⁵² Preamble of Declaration on the Elimination of Violence against Women, Proclaimed by the United Nations General Assembly Resolution, 2263(XXII) of 7 Nov. 1967.

⁵³ I'd, article 1, 2 & 7.

⁵⁴ United Nations Human Rights, Cited above at note 38, P.5.

⁵⁵ United Nations Human Rights, Convention on the Elimination of All forms of Discrimination against Women, Office of the High Commissioner, 1 May 2015, available on http://www.ohchr.org/Documents/HRBodies/CEDAW/OHCHR_Map_CEDAW.pdf.

instrument on women's right.⁵⁶The convention primarily addresses the issue of women discrimination in every aspect of life such as on the social, economic, cultural and political spheres.⁵⁷It requires state parties to abolish and modify particularly social and cultural structures that promote stereotypes that have an effect of leading women to acquire an inferior position within the society. In addition, provisions of the convention oblige state parties to ensure women's equal right in education, information, healthcare and family relation matters.⁵⁸

The convention deal with civil and political rights such as the right to vote and participation in public life, change one's nationality as well as equality before the law and freedom of movement. It also deal with socio- economic and cultural rights such as the right to education, the right to work, the right to health and etc.⁵⁹The convention also gave particular attention on certain actions that affect the right and well being of women such as trafficking, specific groups of women such as rural women as well as acquiring equal status in marriage and family relation matters.⁶⁰

The convention provide the meaning of discrimination under article 1 as "*.....any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*"⁶¹According to this provision, several actions and omission regarding the treatment of women could be amount to discrimination. It includes differential treatment on the basis of sex which could be done intentionally or not that could possibly result the disadvantage of women and obstacle to recognize the human rights of women both in private and public domain. It also includes an act that has an effect of preventing women to exercise their basic human rights and fundamental freedoms.⁶²

On the other hand, the convention provides mechanisms by which states can achieve their goals to eliminate discrimination against women. Enacting new legislations, omission from discriminatory actions, amending the existing legislations including provisions of criminal code and protection of women from discrimination from third parties individuals or organizations are such mechanism put in place in the convention.⁶³ The question in relation to the implementation of the rights enshrined under CEDAW is another important issue. The extent by which

⁵⁶ Amnesty International, Cited above at note 6.

⁵⁷ Nafis Sadik, 'Men and women in a time of change,' the state of world population, lives together, world apart, United Nations Population Fund, (2000), P.48.

⁵⁸ Ibid.

⁵⁹ United Nations Human Rights, Cited above at note 35.

⁶⁰ Ibid.

⁶¹ Convention on the Elimination of All forms of discrimination against women, adopted by the General Assembly of the United Nations on 18 December 1979, art 1.

⁶² United Nations Human Rights, Cited above at note 59, P.6.

⁶³ Ibid.

international human rights law can impose effective obligation on states on the eradication of gender based stereotypes and patriarchy within a given society is the issue at stake here.⁶⁴The fulfillment of state's obligation within the convention is very much dependent on state willingness to waive their sovereignty and commitment towards eliminating gender based stereotypes and harmful traditional practices.⁶⁵Experiences show that states are unwilling to fulfill their obligations in accordance with international law. Worse, states tend to openly question the legality of an instrument(such as CEDAW) particularly when they assumed that it is very much connected to their identity.⁶⁶

Generally, the interpretation on the scope, meaning of the convention is based on the text of the convention itself, analysis and general recommendations, concluding observation of CEDAW committee and also decisions on the basis of the optional protocol of CEDAW.⁶⁷The convention sets mechanisms to follow up state's implementation of their obligation in accordance with provisions of CEDAW. There existed member states reporting procedure mechanism which requires member state to submit report regarding measures taken by them to implement provisions of CEDAW.⁶⁸After the report, the committee prepare a concluding observation that contain the evaluation of the committee regarding the adequacy of the measures taken by the state in question as well as a recommendation regarding the gaps that need to be fulfilled to give effect to CEDAW provisions.⁶⁹

Although the above procedural mechanism can play a significant role on the enhancement and protection of women rights, they are unable to provide individual compliant mechanism that could enable individual women to communicate to CEDAW committee about violation of their right enshrined under the convention.⁷⁰In 1999, the UN General Assembly adopted an optional protocol to CEDAW to supplement the two procedural mechanisms as well as to open a door for individual complaint by women or groups of women whose rights are violated. The optional protocol introduced two new procedural mechanisms namely, the communication procedure and inquiry procedure.⁷¹The communication procedure is introduced in order to receive complaints from individual women, groups or organization actors on behalf of women about violation of their rights against member states. It is meant to provide international protection for women whose right is violated and unable to get domestic remedies.⁷²When the committee believed that there existed a violation, it recommends compensation to be paid for the victim or measures to be

⁶⁴ Anne Hellum, Henriett Sinding Aasen, 'CEDAW in International, Regional and National law', Cambridge Book Online, *Women 's Human Rights*, (Cambridge University press), P. 97.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid, P.96.

⁶⁸ 'Mechanisms for advancing women's human rights,' a guide to using the optional protocol to CEDAW and other international compliant mechanism, Australian Human Rights commission, (2011), P.4.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

taken by member state.⁷³The inquiry procedure is the second mechanism put in place during the introduction of the optional protocol to CEDAW. This is meant to initiate confidential investigation against a member state when the committee received gross violations of provisions of CEDAW or when it is believed that there are systematic violations of CEDAW provisions by a member states.⁷⁴The investigation includes visiting of the territory of member state in question upon receiving the consent of the member state for such visit. Finally, the findings and the recommendations of the committee will be communicated to the state in question and the state can submit its response on the findings and recommendations of the committee within 6 months.⁷⁵

2.2 Other International Commitments

In addition to the above international instruments, several world conferences were held that results the adoptions of declarations and set minimum goals for the realization of women's human rights. The major conferences are discussed below.

A. Vienna Declaration and Program of Action: - The world conference on Human Rights was conducted in 1993 in Vienna for the purpose of receiving the machinery of human rights at that specific point in time. Women right activist has put pressure to make sure that the right of women to be part of the discussion by arguing that "women rights are human rights." Civil society organizations also establish a tribunal to address the issue of gender based violence previously which were not given so much attention mainly because it was left to the private sphere and used to be considered as part of the life of women and it is a taboo to speak about it publicly. Women's rights activists and civil society organizations were successful and the rights of women were addressed and included on the declaration.⁷⁶

The declaration focus on the international legal measure that should be taken by states to eliminate violence against women. Under the declaration it is stated that "*The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.*"⁷⁷This provision indicates the international community's intention and willingness to recognize the rights of women as human rights.⁷⁸The declaration also dealt with the issue of gender based

⁷³ Jim Murdoch, 'Unfulfilled expectations,' the optional Protocol to the convention on the Elimination of All forms of Discrimination against Women, *European Human Rights Law Review*, (2010).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ United Nations Human Rights, Cited above at note 61, P.13.

⁷⁷ Vienna Declaration and program of Action, Adopted by the world conference on Human rights in Vienna on 25 June 1993, the world conference on human rights, Section 1, Paragraph 18.

⁷⁸ Surya P. Subedi, 'Protection of women against domestic violence,' the response of international law, *European Human rights Law Review*, (1997), P.9.

violence and exploitation which provides that "*Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.*"⁷⁹

That is, it urges states to take legislative measures including engaging in national and international cooperation to fulfill the rights of women in the social and economic areas in order to eradicate violence and exploitation of women. The issue of equality of women was the main part of the declaration. Women's right to receive the highest standard of mental and psychological health is also recognized under the declaration.⁸⁰ It is based on these concepts and with the intention to adopt international human right instrument which should be applicable to all members of UN that the Declaration on the Elimination of Violence against Women was adopted in 1993 by the General Assembly.⁸¹

B. International Conference on Population and Development: - in 1994, an international conference on population and development were held in Cairo which was said to be an important step towards on women's and youth rights.⁸² Hence the conference particularly focuses on the issue of population, states agreed to focus on individuals or peoples rather than mere statistics or numbers.⁸³ The conference further recognized the role of women in shaping and development of peoples and their right to determine their life style, sexuality and reproduction.⁸⁴ Moreover, several women right issues were part of the program Action. Such rights include gender equality, family rights, reproductive health cares, birth control and family planning, immigration and education of women.⁸⁵

The program action clearly dealt with equality and issues of discrimination on the basis of sex. Principle 4 of the program action clearly stated that "*Advancing gender equality and equity and the empowerment of women and the elimination of all kinds of violence against women and ensuring women's ability to control their own fertility, are cornerstones of population and development related program, the human rights of women and the girl are an inalienable, integrated and indivisible part of universal human rights. The full social life at the national, regional and international levels and the eradication of all forms of discrimination on grounds of*

⁷⁹ Vienna Declaration and program of Action, Cited above at note 77.

⁸⁰ B.Satbhai, Cited above at note 26, P. 7.

⁸¹ Murdoch, Cited above at note 73, P. 10.

⁸² 'International Instruments on the Rights of Women and Indigenous Peoples,' UN Women, Second edition, September (2014), P.4.

⁸³ United Nations Human Rights, Cited above at note 76, P. 12-13.

⁸⁴ International Instruments on the Rights of Women and Indigenous Peoples, Cited above at note 82.

⁸⁵ United Nations Human Rights, Cited above at note 83, P.13.

sex are priority objectives of the international community."⁸⁶The declaration further recognize reproductive health rights such as couple and individual rights to decide method of their family planning, receive the highest standard of sexual and reproductive health care.⁸⁷Universal education, reduction of infant mortality and ensuring access to reproduction health care were the goals intended to be achieved by 2015. However, as it is raveled during the follow up process, several challenges were recognized as hindrance to achieve the goals set up during the conference. Lack of accountability and inequality are recognized as the main challenges.⁸⁸

C. Beijing Declaration and Platform for Action: - The forth conference on the rights of women came up with a great vision of change, the Beijing Platform of Action on September, 1995. Twelve areas were identified as area of focus and strategic objectives were also put in place to achieve equality of men and women and end discrimination against women.⁸⁹Elimination of hindrances to achieve gender equality including empowerment of women, elimination of gender based violence, health care for women were the major agenda's of the declaration.⁹⁰The platform for action based itself on Convention on Elimination of All forms of Discrimination Against Women as well as conferences such as the 1975 Mexico conference, the 1985 conference, the 1993 Vienna conference to take actions with the aim of achieving equality by ending gender based discrimination.⁹¹

The platform for action came up with clear strategy goals in order to end gender based discrimination. It provides political and legislative methods to achieve the said goals. Review on the implementation of the platform action was made in 2005 and 2010. The findings show that there is an improvement on the rights of women.⁹²However, it is far from achieving the goals specified under the various human right instruments hence harmful traditional practices and gender based stereotypes continue to persist in the national laws including on the family, labour, penal and civil laws and under administrative rules and regulations. Furthermore, the findings during the review, indicated that gender based equality had not yet been achieved in any state including those countries where effective legal measures were taken mainly because of enforcement related problems.⁹³

D. Millennium Development Goals: - The Millennium Declaration was signed by 147 representatives of states by 2000 during the millennium submit of United Nations.⁹⁴It is an

⁸⁶ Report of the International Conference on Population and Development, Cairo 5-13, United Nations, New York, (1995).

⁸⁷ Ibid.

⁸⁸United Nations Human Rights, Cited above at note 85.

⁸⁹ John Wiley& Sons Ltd, 'Introduction: Beijing +20 where now for Gender equality?' Institute of development studies, IDS Bulletin, Volume 46, November 4, July (2015), P.1.

⁹⁰ B.Satbhai, Cited above at note 80, P.7.

⁹¹ John Wiley& Sons Ltd, Cited above at note 89.

⁹² International Instruments on the Rights of Women and Indigenous Peoples, Cited above at note 84, P.14.

⁹³ Ibid.

⁹⁴ International Instruments on the Rights of Women and Indigenous Peoples, Cited above at note 92, P.6.

indication of global commitment to improve the economic and health situation of developing states.⁹⁵The development goals set 8 major objectives to be achieved until 2015. These development goals are; 1. Eradicate extreme poverty and hunger, 2. Achieve universal primary education, 3. Promote gender equality and empowerment of women, 4. Reduce child mortality. 5. Improve maternal health, 6. Combat HIV AIDS, Marilia and other disease, 7. Ensure environmental sustainability and, 8. Develop global partnership of development.⁹⁶

When we look at the said development goal in relation to women rights, the development goal number 3 is related equality and empowerment of women though the objective here is to fill the gap of less number of women in primary education. The time bound as well as the target focus only on primary education could be considered as delimitation of the development goals and may not effectively address women empowerment and equality.⁹⁷Moreover, important issues related to women's rights such as gender based violence and laws that promote harmful traditional practices were left uncovered on the development goals. Regarding reduction of maternal mortality which is specified under goal 5, the General Assembly by 2015 indicated that it was not properly implemented despite the availability of knowledge and material regarding child birth and safe delivery. Inclusion of issues of gender based equality and the millennium development goals in the post 2015 development goals could be considered as the steps that should be taken to bring the intended result regarding protection of women's human right.⁹⁸

E. United Nations Conference on Sustainable Development: - Heads of state around the world were gathered in Brazil by 2012 to review the implementation of the 1992 UN conference on environment and development which was held in Redo de Janeiro. The conference came up with a document called "the future we want". This document indicated states' obligation towards equality of men and women in the areas of leadership in the social, economic and political decision making process. The document makes a direct reference to CEDAW, Beijing platform of Action as well as the Millennium development goals in order to urge states to enforce their obligations under international law. The document further stated that gender based equality and ensuring women participation in all aspects of life strengthen sustainable development. In the document, states also requested to ensure equal access to justice for women and repealing the existing laws that promote gender based negative stereotypes.⁹⁹

⁹⁵ Geordan D. Shannon, Dana D, Leah Katzelnick, 'Gender equity and health;' *evaluating the impact of Millennium Development Goal Three on women's health in South Asia*, Department of Public Health and Primary care, (University of Cambridge, UK, Jan 31, 2013), P.218.

⁹⁶ 'The millennium Development Goals,' We can end Poverty 2015, Millennium development goals, issued by UN department of public information, available on <http://WWW.Un.Org>.

⁹⁷ United Nations Human Rights, Cited above at note 88, P.15.

⁹⁸ Ibid.

⁹⁹ Ibid.

2.3 Regional Instruments on Women's Right

Apart from the international conventions, regional commitments are also made to protect the rights of women to be applicable in their respective regions. Though, the application of these instruments are limited to the respective regions, the instruments themselves are influenced by other international human right instruments. Interpretation methods and principles of these instruments by regional human right bodies also have a wide implication on the application of human right principle and standards within the international sphere. Though there are other important regional human right instruments dealing with the rights of women, hence the focus of this study is on the state of Ethiopia, the writer chose to give a general overview on the African human right instruments on the protection of women's right.

2.3.1 The African Human Right system on the Rights of Women: - There was no major commitment regarding the protection of Human Rights and achievement of gender equality under the charter of OAU. The charter rather gave particular attention to the sovereignty, territorial integrity of states and non interference of the internal affairs of states.¹⁰⁰ The two major instruments that embodied the rights of women with in the African human right system are the African Charter on the Human and Peoples' Right and the Protocol to the African Charter on the Human and Peoples' Right on the Right of Women's' in Africa.¹⁰¹

The ACHPR contains general as well as specific provisions dealing with the rights of women in Africa. Article 2 contains a general clause dealing with the issue of discrimination which provides that " *Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex, language, political or any other opinion.....*"¹⁰² The Charter further ensure equality before the law as well as equal protection of the law.¹⁰³ Moreover, the convention dealt with prohibition of inhuman and degrading treatment which provides that "*Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*"¹⁰⁴ The African Commission on the Human and Peoples' Rights on its recommendation about article 5 (the right to be free from torture, inhuman and degrading treatment) stated that "*Article 5 prohibits not only torture but also cruel, inhuman and degrading treatment. This includes not only actions which cause serious physical and psychological*

¹⁰⁰ Ntombizozuko, Dyani, 'Sexual violence, armed conflict and international law in Africa,' African Journal of International and Comparative Law, Edinburgh University press, (2016), P.9.

¹⁰¹ Manisuli Ssenyonjo, 'Culture and the human rights of women in Africa: Between light and shadows,' Journal of African Law, Cambridge University Press, (2016), P.3.

¹⁰² African Charter on Human and Peoples' Rights, Adopted by the Assembly of Heads of states and Government of the Organization of African Unity, at Nairobi on 27 June 1981, article 2.

¹⁰³ I'd, Article 3.

¹⁰⁴ I'd, Article 5.

*suffering but which humiliate the individual or force him or her act against his act to against his will or conscience."*¹⁰⁵

Article 18(3) of the charter dealt with family protection by making reference to the international conventions and declarations. Article 60 of the convention on the other hand requires the commission to give particular attention to the international human right instruments including CEDAW.¹⁰⁶ However, the Charter failed to take into account the key human right issues of women within the continent. Article 18 could be the typical example in this regard. Under this article, gender based discrimination is prohibited only in the context of family protection. Even in the family protection, the charter failed to address main women right issues such as the free and full consent of the spouses and equality of men and women during the formation and dissolution of marriage. Moreover, the charter paid particular attention to the values and tradition of the continent without addressing the harmful traditional practices that are a threat to women's human rights such as forced marriage, discrimination of women during inheritance, FGM and etc.¹⁰⁷

The Protocol to the African Charter on the Rights of Women in Africa was adopted in Maputo on July 11, 2003. It came into enforce on November 25, 2005 after getting the required 15 ratification. Out of 53 member states of the AU, only 36 countries ratified the convention which has a huge implication on the situation of the human rights of women in Africa.¹⁰⁸ The protocol includes key human rights of women such as equal rights during the formation and dissolution of marriage (article 6&7), equality before the law and access to justice (article 8), health and reproductive health rights including the right to have medical abortion in certain situations (article 14).¹⁰⁹

The adoption of the protocol has a huge impact on the development of women human rights in general. For the first time in the international human right instrument, it explicitly recognized the right to have abortion which resulted from sexual assault, rape and when the pregnancy becomes a threat to the life and well being of the mother. The prohibition of harmful traditional practices such as FGM which has been a treat for several young women in Africa is the other major contribution of the protocol.¹¹⁰ With the aim of securing large number of ratification, the convention failed to prohibit reservation and declaration on provisions of the convention. It is not

¹⁰⁵ International pen, Constitutional Rights Project, *Intersights on behalf of Ken Saro-Wlwa Jr and Civil Liberties Organization V. Nigeria*, Communication 137/97, 139/94,154/96 and 161/97, Twelfth Activity Report 1998-1999, Annex V, Para 79-80.

¹⁰⁶ Ssenyonjo, Cited above at note 101, P. 4.

¹⁰⁷ Ibid.

¹⁰⁸ I'd, P.5.

¹⁰⁹ Ibid.

¹¹⁰ Center for Reproductive Rights, 'The Protocol on the Rights of Women In Africa,' An instrument for advancing reproductive and Sexual Rights, February (2006), P.1

that difficult to predict that states will come up with reservations as it was evidenced during the ratification process of CEDAW.¹¹¹

In general, all the above international instruments is meant to acknowledge equality between men and women as well as the international commitment towards ending discrimination based on sex. However, despite all of the above commitments, the enforcement of the rights enshrined under these instruments is far from fulfilled mainly because of the deep rooted traditional and religious stereotypical attitudes towards women accompanied by lack of political commitment from authorities of member states.

2.4 The Legal Status of International Instruments in Ethiopia

The incorporation of international human rights into the domestic laws has a vital importance on the implementation of international instruments within the domestic jurisdiction. The practice of states indicate that dualist or monist approach are used to incorporate international human right instruments within the domestic legislation. The monist approach basically based its principle that there is no need to have further procedure or domestic legislation for the direct application of international instruments. Accordingly, courts can directly apply provisions of international instruments just like any provisions from the domestic legislations. The dualist approach, on the other hand, based on a principle that domestic laws and international instruments have two distinct features, therefore it requires domestic version of the provisions of international instruments either through "enabling legislation" or rewriting it.¹¹²

The FDRE constitution provides that "*All international agreements ratified by Ethiopia are an integral part of the law of the land.*"¹¹³ On the other hand, the Ethiopian legal system requires all legislation to be published on the official legal Gazette. Judges are obliged to take judicial notice of laws that are published under the official legal gazette.¹¹⁴ Based on these provisions, some scholars argue that publication of the international instruments under the official legal gazette is a requirement for the incorporation of international instruments. However, the constitution has not provided that it is a requirement to do so. The issue of publication of the international instruments on an official legal gazette is an issue of practicability and has nothing to do with legality. In fact, the publication and translation of the instruments into the working national language of the country facilitate courts to apply the provisions of the international instruments

¹¹¹ Ssenyonjo, Cited above at note, Cited above at note 106, P.6.

¹¹² Ghetnet Metiku Woldegiorgis, The power of courts in Ethiopia in the Interpretation and Application of International Human Rights provisions, p.6 available at <http://www.slideshare.net/gmgiorgis/the-powers-of-courts-in-ethiopia-in-the-interpretation-and-application-of-international-human-rights-provisions>, Accessed on 12 April, 2016.

¹¹³ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, proclamation No. 1/1995, 1st year No.1, Addis Ababa, 21st August 1995, art 9(4).

¹¹⁴ I'd article 71(2)& see also Proclamation to provide for the establishment of the Federal Negarit Gazette, Proclamation No 3/1995, 22nd day of August (1995), Article 2(3).

easily.¹¹⁵ However, the non translation and publications of important international instruments including CEDAW, has created confusion among courts and parties during a trial proceeding.

Though it is clear that international human right instruments are integral part of the law the land, their status is not yet clearly known and is subjected to academic debate. Some scholars argue that international instruments are superior or at least parallel to the international law by citing article 13(2) of the EFDRE constitution. This article provides that "*The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.*"¹¹⁶ Other scholars argue that the constitution is superior to any law by referring article 9(1) of the constitution which provides that the constitution is supreme law of the land and any law which contravenes with provisions of the constitution is null and void.¹¹⁷ Legal scholars such as Adem Kassie argue that article 13(2) requires specific reference only to the international human right principles such as the principle of universality, indivisibility and interdependency of human rights. According to him, the provision is not meant to refer provisions of human right instruments to interpret provisions within the constitution. Accordingly, the constitution is superior to international instruments ratified by Ethiopia whenever there existed clash between provisions of the constitution and a given international human right instrument.¹¹⁸ However, placing the international human rights subordinate to the constitution has the potential to lead unjust violation of fundamental human right violations enshrined under the international human right instruments by using supremacy of the constitution as a justification.¹¹⁹ Moreover, the international law principles such as the principles of "good faith" and "Pacta Sunt servanda" do not allow states to escape from their international obligation by citing domestic legislation as a justification.¹²⁰ Otherwise, ratification of international instruments do not have valuable meaning if states can easily evade them and unwilling to adjust their national legislation in accordance with provisions of international human right instruments.

With regard to interpretation of the rights recognized under international instruments ratified by Ethiopia, nothing has stated except the recognition by the constitution that interpretation of provisions of the constitutions dealing with human rights should be made in accordance with international human right instruments ratified by Ethiopia. However, the power to interpret the

¹¹⁵ Chi Mgbako, Sarah Braasch, Aron Degol, Melsion Morgan, Felice Segura and Teramed Tezera, 'Silencing the Ethiopian Courts;' *Non-Judicial constitutional review and its impact on human Rights*, (Fordham International law Journal, Volume 32, issue1, 2008), Article 15, P. 270-271.

¹¹⁶ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, Cited above at note 113, article 13(2).

¹¹⁷ Sisay Alemahu Yeshanew, 'The justicibility of human rights in the federal democratic republic of Ethiopia,' *African Human Rights law Journal*, Vol 8, No 2, (2008), P. 285.

¹¹⁸ Adem Kassie Abebe, "Human rights under the Ethiopian Constitution;" *A descriptive overview*, *Mizan Law Review*, Vol.5, No 1, Spring (2011), P 48.

¹¹⁹ Mgbako, Braasch, Degol, Morgan, Segura and Tezera, Cited above at note 115, P.274.

¹²⁰ Woldegiorgis, Cited above at note 112, P. 5.

constitution is designated to the House of Federation.¹²¹The House of Federation is a legislative wing along with the House of Peoples' Representative meant to represent the nation, nationalities and peoples of Ethiopia. Along with other responsibilities, its main responsibilities are to settle constitutional disputes as well as interpretation of the constitution.¹²²The final decision of the house of federation is applicable to similar future disputes.¹²³The house of federation is also responsible to set up a Council of Constitutional Inquiry to advise the House of Federation on issues related to constitutional interpretation.¹²⁴ Accordingly, whenever dispute arises in relation to provisions of the constitution, courts do not have the power to interpret and settle the issue . Rather they are expected to refer the matter to the council of the constitutional inquiry.¹²⁵The council refers the case to the house of federation along with its recommendation if the council believes that there is a need for constitutional interpretation in relation to the matter.¹²⁶The house of federation during interpretation of the constitution in relation to human right issues, it is expected to resolve the dispute in accordance with international human right instruments ratified by Ethiopia.¹²⁷

It has to be noted here that designation of interpretation of constitutional dispute on the house of federation, does not preclude courts to apply and enforce the human right provisions under the constitution. It is only when disputes or when a certain provisions of the constitution is contested or when the court thinks that the issue needed constitutional interpretation that the courts are required to refer the matter to the council of the constitutional inquiry.¹²⁸Practically judges tend to avoid cases related to constitutional provisions including provisions dealing with human rights issues. Most of the time they referred cases to the council even when a given constitutional provisions is not contested or disputed by the other party.¹²⁹

Generally, the unknown status of international human right instruments along with absence of official publication of international instruments and the non existence of translation of the international instruments into the domestic legislation are some of the major challenges regarding the enforcement of the international human rights within the country. In addition, since

¹²¹ Samrawit Tadesse, 'The power of courts in Ethiopia in the interpretation and application of international human right provisions,' P.9.

¹²² Proclamation of the constitution of the Federal Democratic republic of Ethiopia, Cited above at note 116, article 83(1)& art 62(1).

¹²³ A proclamation to consolidate the house of federation of the Federal Democratic Republic of Ethiopia and to define its powers and responsibilities, Proclamation No 251/2001, 7th year, No .1, Addis Ababa-6th July 2001, Article 11(1).

¹²⁴ I'd article 3(2)& art 5(1).

¹²⁵ Tadesse, Cited above at note 121, P. 10.

¹²⁶ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, Cited above at note 122, article 84(1).

¹²⁷ It requires interpretation of human right issues to be made in conformity with both soft law (such as UDHR) and hard laws(such as ICCPR and ICESCR). See a proclamation to consolidate the house of federation of the Federal Democratic Republic of Ethiopia and to define its powers and responsibilities, Cited above at note 123, article 7(2).

¹²⁸ Yeshanew, Cited above at note 117, P. 278-279.

¹²⁹ I'd, P. 279.

the power to interpret the constitution is vested on an organ other than the courts, it has contributed for creating confusion and complexity among courts while entertaining constitutional issues including those provisions dealing with human rights issues.¹³⁰

3. Major Women's Rights Issues and Protection of the Law in Ethiopia

3.1 Stereotypical Attitudes

Harmful stereotypical attitudes against women are a huge problem in Ethiopia. The United Nations Human Rights Office of High Commissioner defined gender stereotype defined as "*a generalized view or preconception about attributes, or characteristics that are or ought to be possessed by women and men or the roles that are or should be performed by men and women.*"¹³¹ On the other hand, Gender stereotyping is defined as "*the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men.*"¹³² From the above definitions, we understand that gender stereotype is mainly about expectation from the society about how one should act or behave depending on his or her sex. On the other hand, Stereotyping is about the application of such societal expectation on a given person.¹³³

In Ethiopia, the status of women in every aspect of life is low. This is manifested by their lower economic position than men mainly because they earn less; they have attained lesser educational level; they are becoming heads of households with their dependants without having sufficient financial support; they have deprived their labour contribution particularly in agriculture and most importantly their participation in decision making power even on matters that can affect their life is quite low.¹³⁴ Ethiopia is also a country where lowest performance is recorded in terms of gender equality compare to other Sub-Saharan African countries. Despite there existed improvements regarding millennium development goals, still the country is left behind with regard to the Millennium Development goal no 3. This is further evidenced by the global gender gap report 2010 where Ethiopia is ranked 121 from 134 states on the level and magnitude of gender inequalities. In Ethiopia, women and girls are found to be in a strong disadvantage position in their livelihoods and respect of their human rights accompanied by lower status and lack of support within the society.¹³⁵

¹³⁰ Woldegiorgis, Cited above at note 120, P. 9.

¹³¹ United Nations Human Rights Office of High Commissioner, 'Gender stereotypes and stereotyping and Women's right,' CH-1211 Geneva 10, Switzerland September (2014), P.1.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Haregewoin Cherinet and Emebet Mulugeta, 'Towards Gender equality in Ethiopia,' A profile on Gender relations, Sida, February (2003), P.10.

¹³⁵ UNFPA, WFP, Ministry of Women Affairs, Bureaus of women Affairs, Regional state governments of Amhara and Tigray; 'Leave no Women behind, Ethiopia;' Thematic Window; Gender equality and Women's Empowerment, P. 98.

Traditional values, norms and beliefs that gave effect to harmful gender based stereotypes contributed for the lack of women participation in the social, economic and political development of the country.¹³⁶ Tradition gives meaning to life and ensures continuity and conformity of ancestor's norms. It signifies aspect of culture which indicates way of thinking accompanied by its implementation. Most harmful traditional practices that violate the right of women in Ethiopia are widely accepted. Such harmful traditional practices include but not limited to FGM, early marriage and abduction. Such traditions are practiced to ensure the existence and continuity of lower status of women within the society. In addition, there are harmful traditional practices that existed almost in all ethnic groups which affect the health and equality of women.¹³⁷ This is evidenced in Somali region where women cannot own a property without a male guardian irrespective of a national legislation that gave right to women to own property.¹³⁸

Stereotypes on gender roles starts from the very beginning of birth. A mother who gave a baby boy congratulated by the community and her husband. If she gave a baby girl, it is unwelcomed by the society including her family and her husband. A girl, during her child hood are not allowed to go outside and play with boys. If she is allowed to play, she is expected to play soft games, stay clean and tidy. While boys are told to go to school and be competitive, girls are expected to help their mother at home in household activities. Girls are also expected to get married at the earliest age as possible.¹³⁹

Both within and outside the class room , there existed gender biased roles. Inside class room girls are expected to be shy and quiet. They taught to accept the idea that boys out smart girls and strong enough to talk about their problems. This is usually accompanied by fear of making mistakes and being laughed at by boys. During class room discussions, boys often times took the role of leading the group and the girls' role is following the idea of boys.¹⁴⁰

In the text books even if there is no major discrepancies on the number of men and women representation, there is fundamental gender role differences in the occupational and family roles. Women in the text book often time represented as caring babies, preparing foods where as men represented as doing fancy sports or performing heavy tasks. Text books also do not use gender free words such as "human being" or "mankind" rather "he" regularly used to refer professional men such as police investigator, farmer, soldier, father of history and etc. Men often times associated with courageous and strong. Certain portion of the society such as children, elderly individuals, and women are regarded as weak and do not have any significance for the society in general. Moreover, men are also represented in text books as criminals to show hard working

¹³⁶ Ibid.

¹³⁷ Cherinet and Mulugeta, Cited above at note 134, P.25-26.

¹³⁸ Unicef, 'Gender Equality,' P. 20, available at [http://www.unicef.org/ethiopia/Chapter_3_\(72dpi\).pdf](http://www.unicef.org/ethiopia/Chapter_3_(72dpi).pdf).

¹³⁹ Yelfign Worku, 'Ethiopia; From Bottom to Top in Higher Education,' Gender Role problems, International Journal of Sociology and Social Policy, Volume 21, Number 1/2, (2001), P. 98.

¹⁴⁰ I'd, P 98-99.

and prison life. In most text books their representation is made to glorify their physical strength compare to women.¹⁴¹ In addition, there is constant representation of men and women performing a specific task as man or as a woman. Men often times represented as police investigator, farmer, thief, football player, driver, horse rider, doctor, engineer and pilot. On the contrary, women are associated with care giving and involving on household activities such as taking care of their children and shopping in a market. Men usually associated with doing higher professional jobs getting assistance from women. This usually done by using representations such as a male medical doctor with a female nurse or a male judge with a female typist and etc.¹⁴²

These gendered based stereotypes has a consequence in the sense that men tend not to be bothered about social acceptance compare to women who are vulnerable to societal rejection mainly because they are expected to confirm and pursue societal norms and traditions. Because of society, women tend to give lesser attention to their academic potentials and achievements as well as carriers outside their home. The biased educational system and lack of parental support towards investing on girls' education have played a vital role for the huge discrepancy on the number of male and female students particularly in higher educational institutions.¹⁴³ Long distance from their home to school, lack of awareness from parents on the advantage of girls' education, engagement in household activities, abduction and early marriage are also the main reasons that prevent girls from going to school. Even after enrolment in school, the number of drop out of girls outweigh the number of drop out of boys mainly because of unwanted pregnancy, marriage, work load at home as well as uncomfortable atmosphere within school. The number of girls who has completed primary education by 2009 was only 41 percent and only 30 percent of them were enrolled to secondary education.¹⁴⁴

With regard to the participation of women in the economic life, women representation in the labour market is low. Women, most of the time involved in unpaid house hold activities as well as in other informal sectors. Women also faces difficulties in getting agricultural credit because of lack of education and financial capacity to cover the initial payment as well as lack of Education.¹⁴⁵ Similar with other African countries, since rural women in Ethiopia has various burdens both in and outside home such as in the production and preparing of food as well as care taking activities accompanied by poor infrastructure leave them to sustain a marginalized life. Economic perspectives and ideologies give little or no attention about the contribution of unpaid economic activities. It is an indication of lack of policy measures on gender roles in household

¹⁴¹ Eva Poluha, 'The world of Girls and Boys in Rural and urban Ethiopia,' Forum of Social Studies in association with save children, Addis Ababa, (2007), P.164.

¹⁴² I'd, P165.

¹⁴³ Cherinet and Mulugeta, Cited above at note 137, P.28.

¹⁴⁴ Worku, Cited above at note 139, P. 100, See also UNESCO global partnership for girls' and women's education, 'better life, better future, education,' statistics annual abstract (2009/2010).

¹⁴⁵ UNFPA, WFP, Ministry of Women Affairs, Bureaus of women Affairs, Regional state governments of Amhara and Tigray, Cited above at note 135, P. 98.

activities and its contribution on the development of a given country.¹⁴⁶ Moreover, despite high level of participation of women in agricultural activities there is a strong perception among the society that women do not and cannot farm which in away is a denial of women contributions in the agricultural and economic sector of the country.¹⁴⁷ On the other hand, Female headed house holds are increasing from time to time particularly in urban areas. Armed conflicts, migration, death due to sexually transmitted diseases and divorce are the main reasons for the increasing number of female headed households. The high level of women headed house hold also contributed to their vulnerability to poverty and forced them to lead a marginalized life. Researches indicated that most female headed households who are living in Addis Ababa fall within the ambit of low income category. Often times they engage in the informal sectors and generate an income which only helps them to survive. This is because of the economic, social as well as cultural impediments that prevented women from access to education and economic resources. Therefore, their income and level of employment is less compare to men. The situation is more difficult when a woman is getting divorced unlike to a man where his income goes up during divorce. Particularly when there are children out of marriage, women would be in a disadvantage position mainly because children often times stay with their mothers.¹⁴⁸ At the country level, because of lack of gender mainstreaming in the different policies and strategies, the need for women participation in the economic activities starting from planning to implementation of developmental programs is highly ignored.¹⁴⁹

The political participation of women and girls are low though there is encouraging indicators such as the increasing number of women in the federal parliament and cabinet ministers.¹⁵⁰ Women participation both in NGOs and governmental organizations holding decision making position is increasing from time to time. Particularly their participations on matters that promote the right of women is high. However, in economic fields, women participation and holding a decision making position such as in banks and insurance companies is low. Currently, the number of women holding ministerial positions are less. It is rare to find women as head of departments except in departments concentrate on gender and women's right issues. This is because the formal sector of the economy requires relevant educational and work experiences to acquire higher positions which in most cases women cannot fulfill. Both men and women do not encourage the idea that women should assume such positions. In rare cases, when they assume such higher position, the burden of work they are expected to perform would be higher because of family and social responsibilities.¹⁵¹

¹⁴⁶ Diksha Arora and Codrina Rada, 'gender differences in time and resource allocation in rural households in Ethiopia,' December 19, (2013), P.1.

¹⁴⁷ UNFPA, WFP, Ministry of Women Affairs, Bureaus of women Affairs, Regional state governments of Amhara and Tigray, Cited above at note 145.

¹⁴⁸ Cherinet and Mulugeta, Cited above at note 143, P.23-24.

¹⁴⁹ I'd, P.24.

¹⁵⁰ Unicef, cited above 138, P. 23.

¹⁵¹ Worku, Cited above at note 144, P. 99.

When we come to participation of women in the media, the number of women shown on TV in general is less compare to men. Women on TVs usually are seen while confirming traditional role as a house wife, taking care of children and as a secretary. Whereas men usually represent a father and a husband reflecting active and physically strong behaviors. TV dramas depict a type of family where the father worked outside home to support the lively hood of the children and his wife, where as the mother is assumed a character taking care of house hold activities and their children. With regard to emotions and feelings, TV dramas represent mothers showing their feelings and love to their children while men are hiding their emotions and feelings towards their children. Gender dependent relations which shows father-son and mother-daughter relationship is also part of the scene. In addition, women also represented in a stereotypical behavior showing them crying and unable to eat when they are angry. In most dramas where the leading character is a female, her dream and purpose it to become beautiful and attractive rather than focusing on her destiny and future life. On the other hand, male characters are represented readers, innovators, football players, heroes and braves.¹⁵²

Utilization of information technologies such as radio and television by women is also limited in Ethiopia. Even educated women do not utilize such technologies as often as men because they are busy with taking care of their children and the hose hold activities. When women get the chance to watch a television or listen a radio, the type of channel is usually decided by men. In rural areas utilization of radio is only limited to men. When men go outside of home, they usually take out the radio batteries which in away prevent women from receiving information. As a result, most women do not get information from Medias which in away limited their production, access to health cares services and educational levels.¹⁵³In addition, there is a huge discrepancy on the number of women who use information communication technologies compare to men. This is because of low literacy, access to resources such as having the necessary computer or mobiles, lack of infrastructure and time. As a result women in Ethiopia face difficulties to receive the benefits that information communication technology has in empowering and human development.¹⁵⁴

The impact of gender based stereotypes take various forms and most of them have a negative influence for the achievement of gender equality within a given society. The differential treatment and attitudes resulting from stereotype can be considered as discrimination. In this regard, the UN special rapporteur on the right to food stated that stereotypes towards women has resulted gender role and division of lbour which lead women to take care of the house hold activities that lead them to be dependent, poor and achieve lesser educational status. The CEDAW committee also stated that the role of traditional values and norms that have gender based violence and women subordination result should not be underestimated.¹⁵⁵Gender based

¹⁵² Poluha, Cited above at note 141, P. 171.

¹⁵³ Cherinet and Mulugeta, Cited above at note 148, P.27.

¹⁵⁴ I'd, P.28.

¹⁵⁵ United Nations Human Rights Office of High Commissioner, Cited above at note 131.

stereotypes generally encourage and justify gender based violence and its impact on the continual existence of traditional as well as historical patterns that promote gender inequality is huge.¹⁵⁶ Stereotypical attitudes therefore become harmful when it limits one's ability to use his or her potential including pursuing one's professional carrier and choosing one's way of life.¹⁵⁷ On the other hand, Stereotypical attitudes also has a negative impact on men hence there are certain roles ascribed to them by the society such as to become masculine and competitive which has an effect of putting unnecessary pressure on themselves. The joy that they could have got from parenting and intimate relationship is also limited hence the parental care as a whole most of the time is given to women in most cases.¹⁵⁸

With regard to states obligation, article 5 of CEDAW obliges state parties to engage in modification of social and cultural patterns that promote gender inequality. In doing so, states are required to amend legislations, customs, regulations and practices that promote inequality between men and women. CEDAW committee on the other hand, in its recommendation indicated that state should transform gender "stereotypes" and eradicate "stereotyping". The committee come to an understanding that it is quiet difficult to eradicate stereotypical attitudes though it is possible to transform them through time. However, the eradication of stereotyping is related to states obligation not to apply stereotypes that can affect the rights of both men and women.¹⁵⁹ On the other hand, article 10 of CEDAW puts obligation on state to eliminate stereotypical attitudes through education by providing that " *state parties shall take all the appropriate measures to eliminate discrimination against women in order to ensure them equal rights with men in the field of education and in particular to ensure, on the basis of equality of men and women....* "¹⁶⁰

Ethiopia took legislative measure in order to tackle the harmful stereotypical attitudes that promote inequality between men and women. Article 35 of the constitution specifically dealt with women's right. Article 35(1) provides the equality of men and women towards the enjoyment of all rights guaranteed by the constitution. On the other hand, in order to compensate the previous practices and wide discrepancy between men and women involvement in the social, economic and political spheres, the constitution gave women the right to benefit from affirmative action which read as; "*the historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them compete and participate on the basis of equality with men in political, social and*

¹⁵⁶ UN Women, 'Countering gender Discrimination and Negative Gender Stereotypes;' Effective Policy Responses, 13 July (2011).

¹⁵⁷ United Nations Human Rights Office of High Commissioner, Cited above at note 155.

¹⁵⁸ UN Women, 'Countering gender Discrimination and Negative Gender Stereotypes;' Effective Policy Responses, 13 July(2011).

¹⁵⁹ United Nations Human Rights Office of High Commissioner, Cited above at 157.

¹⁶⁰ Convention on the Elimination of All forms of Discrimination against Women, Cited above at note 61, and Article 10.

economic life as well as in public and private institutions."¹⁶¹Despite such legislative measures stereotypical attitudes against women is still affecting to use their potential and contribute in the social, economical and cultural development of the country. This is mainly because Ethiopian society has been enforcing patriarchal ideologies for centuries using culture and religion as an instrument for justification.¹⁶²Effective actions to eradicate harmful stereotypes requires policy measures such as application of quotas, ensure appropriate representation of women in the Media, ensure participation of women in the leadership positions, enactment of laws that can change the mindset of the society, ensure property rights of women, encourage shared responsibility in household activities and other policy measures.¹⁶³

3.2. Violence against Women

Violence against Women is defined as "*any act of gender based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*"¹⁶⁴The impact of gender based violence is not only limited to the fundamental freedoms and rights of women, it is has also the potential of limiting their capacity to use their potential.¹⁶⁵The above definition of violence against women indicated that the act must cause or has the potential to cause physical or mental harm which emanated from sex inequality.

The CEDAW committee on its general recommendation addresses the issue of violence. The committee indicated that violence against women is discrimination within the meaning of article 1 of the convention by stating that "*Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention.*"¹⁶⁶This is an indication of the fact that gender violence against women is a violation of the human rights of women. The committee further strength its comments to show that gender based violence is one form of discrimination by stating that "*The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether*

¹⁶¹ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, proclamation No. 1/1995, 1st year No.1, Addis Ababa, 21st August 1995, art 35(3).

¹⁶² Cherinet and Mulugeta, Cited above at note 152, P.10.

¹⁶³ UN Women, Cited above at note 158.

¹⁶⁴ Declaration on the Elimination of Violence Against Women, United Nations General Assembly Resolution 48/104, December 1993, Article 1.

¹⁶⁵ Cheryl Thomas, Rosalyn Park, Marry Ellingen, Marry C. Ellison, Beatriz Menanteau, Laura Young, 'Developing Legislation on Violence Against Women and Girls,' *The advocates for Human Rights*, (May 2011), P.3.

¹⁶⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), 'CEDAW General Recommendation No. 19: Violence against women, (1992), Paragraph 7, available at: <http://www.refworld.org/docid/52d920c54.html> accessed 14 March 2016.

those provisions expressly mention violence."¹⁶⁷The method of interpretation for Gender based violence adopted by the committee as a form of discrimination and as a violation of the human rights of women is also followed by other regional human right bodies such as the European court of human rights.¹⁶⁸

Gender based violence is not only an indication of inequality status between men and women but also the intention to keep the unbalanced power that existed between the two sexes hence in some cases violence against women is made to ensure their subordination. Intimate partner violence could be a typical example in this regard. The CEDAW committee further indicated that traditional gender based stereotypical attitudes that promote the superiority of men and the subordination of women and involves control and coercion such as FGM, forced marriage and acid attacks in away justify violence against women. The consequence of such harmful traditional practices prevent women from exercising their fundamental rights and freedoms.¹⁶⁹

Researches indicated that violence against women is increased from time to time. The most common and sever forms of gender based violence include intimate partner violence, Sexual violence, female genital mutilation and early Marriage. Let us discuss each of them individually within the context of Ethiopia.

3.2.1 Domestic Violence

Domestic violence against women is defined as "*any act of gender based violence that results in or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life.*"¹⁷⁰

Similar to most countries located in sub-Saharan Africa, in Ethiopia, there is lack of available data on domestic violence against women which contributed for the level of the problem not to be unknown largely. As a result the impact violence against women on the life of women has been underestimated.¹⁷¹Ethiopia belongs to a patriarchal society where rural and urban women being subjected to various forms of domestic violence. It is accepted as a legitimate norm that men should control their wives or partners. Researches indicated that men who are living in the patriarchal society tend to be more violent than those who are living in a non patriarchal community. Women who are living in a patriarchal society tends to accept and being passive to resist the male dominant behavior. That is why in most rural parts of the country women goes to

¹⁶⁷ I'd, Para, 7.

¹⁶⁸ *Opuz V. Turkey*, European Court of Human Rights, Application no. 33401/02, Strasbourg, 9 June 2009, Para 74-75& Para 184-188.

¹⁶⁹ I'd Para 11.

¹⁷⁰ Seleshi G Abeya, Mesganaw F. Afework and Alemayehu W Ayalew, 'Intimate partner violence against women in western Ethiopia;' *Prevalence, Patterns and associated factors*, (BMC public health, 2011), P. 1.

¹⁷¹ Yemane Berhane, 'Ending Domestic violence against women in Ethiopia,' *Ethiopian Journal of health Development*, January (2004), P.131.

the extent to believe that if their husband do not beat them it means that they don't love their wives. Other similar believes are still persisting largely among the society.¹⁷² Domestic violence against women is quiet common in Ethiopia which takes various forms including physical, sexual and emotional forms. Studies shows that women who are subjected to domestic violence reach up to 50 to 60 percent. This means one out of three women face domestic violence in their life time.¹⁷³ Most women accept such actions of their husband including wife beating particularly if he has the reason to do so as prescribed within the societal norm. Worse 88 percent of rural and 69 percent of urban women believe that husbands have the right to beat their wives.¹⁷⁴

Similar to the situation of violence against women around the world, in Ethiopia, the perpetrators are usually known to the victim. Despite the adoption of various international instruments on the rights of women, out of three women one woman still experience physical or mental violence. However, some domestic surveys indicated that up to 70 of women violence are committed by their intimate partner or husband.¹⁷⁵ Accordingly, intimate partner or violence against women by their husband is the most common forms of gender based violence around the world. Intimate partner violence against women is the most dangerous and abusive form of human rights violation though its impact on the health and well being of women is underestimated. Its negative impact is also comparable with those diseases that cause serious health problem such as cancer, cardiovascular disease, HIV, malaria and traffic accident.¹⁷⁶ Recently, it became part of the health and human rights agenda mainly because of its impact on women's right to enjoy their fundamental rights and freedoms as well as on the development of states. Researches on the area shows that from 10 to 70 percent of married women have experienced intimate partner violence in their life time.¹⁷⁷

Intimate partner violence can take different forms that can result the physical or psychological harm against a woman. The physical violence include any form of violence that can affect the physical integrity and well being of a woman ranging from slap to homicide.¹⁷⁸ In Ethiopia out of 10 women, one woman is likely to experience gender based violence such as abduction, early marriage, rape including marital rape. Marital rape is not a crime under the new criminal code which was revised in 2004.¹⁷⁹ It is a widely accepted norm among the Ethiopian society that there cannot be a rape within marriage. It is considered as a private matter that only concern the

¹⁷² Seleshi Garoma Abeya, Mesganaw Fantahun Afework and Alemayehu Worku Yalew, 'Intimate Partner Violence against Women in West Ethiopia;' a qualitative study on attitudes, Woman's response and suggested measures as perceived by community member, *Reproductive health Journal*,(2012), P.2.

¹⁷³ Berhane, Cited above at note 171.

¹⁷⁴ Agumasie Semahegn and Bezatu Mengistie, 'Domestic violence against women and associated factors in Ethiopia;' *systematic Review*, (*Reproductive health*, 2015), P.2.

¹⁷⁵ UN Women, cited above at note 163.

¹⁷⁶ G. Abeya, F. Afework and W Ayalew, Cited above at note 170.

¹⁷⁷ I'd, P.2.

¹⁷⁸ Charlotte Watts, Cathy Zimmerman, 'Violence against Women:' *Global scope and Magnitude*, Vol. 359, Lancet publishing group, P. 1233.

¹⁷⁹ Agumasie Semahegn and Bezatu Mengistie, Cited above at note 174.

husband and the wife. Married women particularly in rural communities believe that it is a responsibility of wives to satisfy the sexual need of their husband.¹⁸⁰ This situation goes to the extent that husbands have the right to force his wife to have sexual intercourse soon after she gave birth. According to a study conducted in the northern parts of Ethiopia, married women stated that their husbands do not need the consent of their wives to have a sexual intercourse hence sex should be taken place whenever the husband demand it. In case a woman refuses to have sex, force and other forms of violence used as a means by the husband in order to get what he need. Such situations lead women to believe that they don't have the right to control the number of children they want to have.¹⁸¹

The psychological violence include any form mental violence that can harm the mindset of a woman. These include humiliation or intimidation, economic restrictions such as preventing a woman from work, taking away all of her earnings and earning sources as well as other forms of controlling behaviors.¹⁸² A study conducted in the Northern parts of Ethiopia indicated that a number of women has experienced emotional abuse by their intimate partner. Such emotional abuse include denigrated, blamed unfairly, disrespect and humiliation. Such emotional abuse extends to the extent of controlling and limiting the women's right to visit and be visited by their family members, friends, working outside home and having financial contribution to the family.¹⁸³ Women in Ethiopia are also subjected to other forms of emotional abuse such as in the form of blaming. It is common in Ethiopia women to be blamed for problems and difficulties happened within the family such as when illness or death of a child occur or when a teen daughter is unwilling to follow the norms of the society and began to behave inappropriately as it is perceived by the community. Intimidation and threat are also part of the life of many rural women in the country particularly if they fail to follow the rules given by the husband or when they are unable to live in accordance with the wish and expectation of a husband. Such controlling behavior of men goes to the extent that not to put their wives name on property documents, refuse to provide money even for house hold expenses, selling the family property without consulting their wife, and want to control the movement of their wives even when they are far away or out of the country.¹⁸⁴

The root causes of intimate partner violence against women are many and it is difficult to single out one factor that explain why in some parts of the community it is more prevalent than other parts of the country. A number of complex social, cultural and interdependent factors played a significant role for its prevalence. In fact, all of the factors indicate the existence of gender inequality in terms of power that promote the superiority of men. Despite the existence of varies customs, culture and traditions, studies conducted on intimate partner violence against women in

¹⁸⁰ Mary Allen and Muireann Ni Raghallaigh, 'Domestic violence in a developing context;' The perspectives of women in Northern Ethiopia, *Affilia: Journal of Women and Social work*, (2013), P.258

¹⁸¹ I'd, P.259.

¹⁸² Watts, Zimmerman, Cited above at note 178.

¹⁸³ Allen and Ni Raghallaigh, Cited above at note 180, P.260.

¹⁸⁴ I'd, P. 261.

Ethiopia is quiet limited.¹⁸⁵ In Ethiopia, the causes of domestic violence are most of the time related to addictive behavior such as alcohol consumption and chewing chat. It is also related to family history of violence, the level of education and decision making power of the partner. Place of the residence also plays a vital role hence women living in rural area are more likely to be subjected to gender based violence. The age and level of education of the woman also another factor that can possibly trigger violence. Married women below the age of 18 is more likely to face gender based violence than adult women. In rare situations religion could also be a factor to promote gender based violence.¹⁸⁶ The level of education as well as having ones' own financial means also plays a vital role on women's choice to report about intimate partner violence. Researches indicated that house wives are a way less likely to report domestic violence than women working outside their home. In addition to the level of education of married women, the society encourages women to keep quiet about domestic violence because it is believed that it is a way of showing love and respect to their husbands. It is also considered as a private family matter so that is inappropriate to speak about it outside home. The economical dependency of the woman also plays a vital role in decision of women to report about the violence against their partner or husband.¹⁸⁷ At society level, gender roles and attitudes that promote women subordination, inadequacy of laws, policies for the protection, prevention and punishment of domestic violence, lack of awareness by the law enforcement officials, courts as well as other social service providers are factors that promote domestic violence within the country.¹⁸⁸

Researches shows that, women in Ethiopia uses various methods to protect themselves from domestic violence. Such methods include tolerance, temporary separation (sometimes they can go to the extent of leaving their home permanently when the violence reached at maximum level and beyond their level of tolerance), seeking help from people outside home or self defense to protect themselves from a violent partner.¹⁸⁹

The negative impact of gender based violence on the health and well being of a woman is numerous. Researches on epidemiological and clinical studies indicated that the physical and sexual violence against women has a negative effect on their health including gynecological disorder, difficulty during labor and pregnancy, gastrointestinal disorder and chronic pain syndromes as well as ongoing mental and emotional disorders. The negative consequence of domestic violence is not only limited to women, it has also the potential to lead cognitive, emotional, behavioral and social problems. Furthermore, experiencing and witnessing gender based violence promote the continual existence of violence hence it can lead to the greater tolerance or use of violence.¹⁹⁰

¹⁸⁵ G Abeya, F. Afeework and W. Ayalew, Cited above at note 176, P.2.

¹⁸⁶ Agumasie Semahegn and Bezatu Mengistie, Cited above at note 179, P.4.

¹⁸⁷ I'd, P.9.

¹⁸⁸ Garoma Abeya, Fantahun Afeework and Worku Yalew, Cited above at note 172.

¹⁸⁹ Ibid.

¹⁹⁰ Allen and Ni Raghallaigh, Cited above at note 172, P.257.

Ethiopia took various legislative measures in order to combat domestic violence against women. The Constitution of the country in this regard stated that "*the State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.*"¹⁹¹This provision not only meant to fight the custom and traditions that promote gender based violence but also put obligation on the state to protect and enforce the right of women to be free from violence. The 2004 revised criminal code of Ethiopia amended specific provisions to comply with provisions of the constitution. The provisions related to women's right and domestic violence was part of the amendment procedure. The code while addressing the issue of domestic violence, it employed various mechanisms such as providing a clear terms for existing vague provisions, by incorporating new offences, by clarifying elements of a specific offences and also by putting aggravated circumstances.¹⁹²Accordingly, various forms of violence against women are criminalized. In this regard, Article 553(1) of the criminal code provides that "*Whoever intentionally or by negligence causes bodily injury to another or impairs his health, by whatever means or in any manner, is punishable in accordance with the provisions of this Chapter. These provisions embrace all manner of bodily assaults, blows, wounds, maiming, injuries or harm, and all damage to the physical or mental health of an individual.*"¹⁹³This provision is generally dealt with physical or mental injury perpetrated against the victim applicable to both men and women. However, article 564 of the code clearly stated that the above provision is also applicable to violence against women committed with in marriage or irregular union.

3.2.2 Sexual Violence

Sexual violence against women is one of the brutal ways of denial of the human rights of women which indicate male dominance. Sexual violence committed when a woman is physically or mentally coerced to engage in a sexual intercourse. Sexual violence include situations where the woman is willingly having a relationship with a man but coerced to have sex with him such as forcing a woman to have sexual intercourse during dating, engagement or marriage, unwilling exposure to pornography, denial of using condom and etc.¹⁹⁴

Researches indicated that in Ethiopia, sexual violence is usually greater in number than physical violence. The perpetrators are most of the time are known to the victims. They usually are either family members or an intimate partner of the victim.¹⁹⁵Sexual harassment against women

¹⁹¹ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, Cited above at note 161, Art 35(4).

¹⁹² Megersa Dugasa Fite, 'The Ethiopia's Legal frame work on Domestic Violence against Women;' a critical perspective, International Journal of Gender and Women's Studies, March (2014), Vol .2, No 1, P 55

¹⁹³ The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Proclamation no 414/2004, Federal Negarit Gazeta, 9th of May 2005.

¹⁹⁴ Cristiane Lopes Amarijo, Daniel Ferreira Acosta, Camila Daiane Silva, Vera Lucia de Oliveria Gomes, 'Factors Associated with Sexual Violence Against Women,' *Analysis of Police Reports*, Universidade Federal do Rio Grande, 27/10/2014, P.702.

¹⁹⁵ Berhane, Cited above at note 173, P.131.

including against young girls and small babies are quiet common and it has been a serious concern for family and parents of the girls. The kind of sexual violence in Ethiopia includes sexual harassment, intimidation, rape and abduction.¹⁹⁶

Regarding the prevalence of rape, researches conducted on the central part of the country indicated that 3 women in each werdas among the 24 werdas, are raped and every year the number of women who victims of rape are increased up to 30660. Worse, greater number of women are also living in a greater fear of being raped because of repeated threat. Moreover, studies also indicated that more than 74 percent of girls face sexual harassment daily and one third of rape victims raped more than once.¹⁹⁷ On the other hand, a study conducted in the northern parts of the country shows that out of 60 percent of documented rape cases, more than one third of them were raped before. The same study indicated that out of the number of women who are victims of rape, more than 70 percent of them were students and more than 90 percent of the perpetrators were identified by the victims and only few of perpetrators were arrested and punished for their actions. Rape against female students in high school is also highly prevalent. Studies shows that more than three fourth of female high school students has experienced sexual harassment. More than three fourth of reported rape among high school students were under the age of 18. Among the students who has reported that they were victims of rape, 24 percent of them face vaginal discharge problem and 17 percent of them has become pregnant. Women are also forced to have sex by their intimate partner most of the time. The prevalence of rape against women with in the country generally undermine their ability to protect themselves from HIV.¹⁹⁸

The situation of the victims after they were raped also the other huge problem with in the country. Women who are victims of rape are usually blamed and stigmatized by family members, by the community and through endorsement of public Medias. However, the perpetrators usually do not get punished for their action which in away motivate other members of the community to engage in the same violent behavior. Larger parts of the society reinforce attitudes that directly or indirectly encourage and legitimize sexual aggression of men. This is done through treating women who are victims of rape as trash and blaming them by their behavior or the way they dressed as a justification for the violent behavior of men. Shifting the blame to the rapist and punishing for his actions has never been the issue with in the country. Rather his wrong actions are usually justified and legitimized by blaming the victim and stating that "she asked for it." The culture of rape is the real problem within the country. Blaming and stigmatization of the victim, marriage through abduction, objectifying women, legitimatization of sexual aggression of women and other similar situation has contributed the continual existence sexual violence and put women in a disadvantaged and marginalized group. The society totally forgot its duty to discipline men to control their emotions and parts of their bodies to stop treating women as an object to have control over them and do whatever they wish. The society

¹⁹⁶ Cherinet and Mulugeta, Cited above at note 162, P.29.

¹⁹⁷ Ibid.

¹⁹⁸ Berhane, Cited above at note 195.

often times focus how women should behave in order to minimize potential risk of sexual violence.¹⁹⁹

The other issue related to sexual violence which is causing various long term physical and psychological impact on women in Ethiopia is the practice of abduction. Abduction is a widely accepted culture in the rural parts of the country.²⁰⁰ It is a long time practice that encourages men to chose and has a wife using force. This is done through abducting a young woman from her parents' house by a group of young men and raped by a man who wants to take her as a wife. The abducted girl may or may not know the abductor. Respected elders from the community then would go to the abducted parent's house to convince them to give their daughter to the abductor. Most of the time, the parents of the victim tend to give their consent because they believe that no one will be willing to marry their young daughter in the future since she is raped and lost her virginity. Sometimes the abductor goes to the extent of hiding the abducted girl for a long period of time and rape her for several times until she become pregnant so that her parents would not have any other option other than allowing the abductor to take their daughter as a wife. Despite the fact that it is quiet difficult for the victim to give her consent to marry the abductor, because of social and cultural pressure from the community, family as well as the continual threat of the abductor, would choose to marry the abductor.²⁰¹

The problem lays on the fact that rape and abduction do not considered as a problem in Ethiopia, Particularly in the rural parts of the country, it is considered as normal and must mainly because it is deeply rooted within the norms, traditions and culture of the society. Southern parts of the country could be the typical example in this regard where more than 80 percent of marriages are the result of abduction. The problem goes to the extent of forcing the abducted and raped girl to stay with the abductor and live with him as a wife without her consent.²⁰²

The negative impact of abduction on the health and well being of young girls living in the rural parts of the country is numerous. In addition to the physical injury that she could sustain, leaving the abductor will bring her panic and fear because of the possible threat of the abductor as well as it is more likely that she would face societal rejection. On the other hand, living with the abductor without her willingness lead her emotional problem as a result of the feeling of helplessness. Moreover, the continual of her education would be in a greater risk as a result of early pregnancy or house hold burdens as a wife. Such situation in turn contributed a lot for many women in the rural parts of the country to live under poverty and confirm the power based behavior of men in general.

¹⁹⁹ Rediet Yebekal, Violence Against Women in Ethiopia; [The case of #Justice for Hanna, Kweschn Media, December 9, 2014, available at http://kweschn.com/2014/11/25/violence-against-women-in-ethiopia-the-case-of-justiceforhanna/#comment-7564](http://kweschn.com/2014/11/25/violence-against-women-in-ethiopia-the-case-of-justiceforhanna/#comment-7564) , accessed on 22 March, 2016.

²⁰⁰ Cherinet and Mulugeta, Cited above at note 196.

²⁰¹ Equality now, spot light on: Violence against Girls in Ethiopia; Marriage by abduction and rape, May 2002, available at <http://www.feminist.com/violence/spot/ethiop.html>, accessed on 22 March 2016.

²⁰² Tewedaj Kebede, The plight of women-A call for a change; 'The reporter: All Africa.com, Addis Ababa, 8 December 1999, available at <http://www.hartford-hwp.com/archives/33/083.html> , accessed on March 2016.

Generally, the negative impact of sexual violence includes social isolation, fear and phobia to social circles, feeling helpless, losing hope as well as suicide commitment.²⁰³ In Addition, to the physical and mental harm that sexual violence can cause to the woman, it has also serious reproductive health consequence including unwanted pregnancies, complication of pregnancies, sexually transmitted infections as well as complication of pregnancy.²⁰⁴

The government of Ethiopia took a serious of legal measures to combat sexual violence against women. The penal code of Ethiopia dealt with the issue of rape, sexual assault and abduction as a part of such measure. Depending on the circumstances of the case, rape is punishable from five years to life imprisonment. Art 620 of the criminal code provide detail circumstances where rape perpetrated against a woman can lead to rigorous imprisonment. Such provision provided that:

*" (1) Whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years. (2) Where the crime is committed: a) on a young woman between thirteen and eighteen years of age; or b) on an inmate of an alms-house or asylum or any establishment of health, education, correction, detention or internment which is under the direction, supervision or authority of the accused person, or on anyone who is under the supervision or control of or dependent upon him; or c) on a woman incapable of understanding the nature or consequences of the act, or of resisting the act, due to old age, physical or mental illness, depression or any other reason; or d) by a number of men acting in concert, or by subjecting the victim to act of cruelty or sadism, the punishment shall be rigorous imprisonment from five years to twenty years. (3) Where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment. (4) Where the rape is related to illegal restraint or abduction of the victim, or where communicable disease has been transmitted to her, the relevant provisions of this Code shall apply concurrently."*²⁰⁵

The penal code also makes sexual assault punishable with starting from simple fines up to simple imprisonment not exceeding three months.²⁰⁶ On the other hand, sexual outrage accompanied by violence is another offence regarded as punishable ranging from one year up to ten years.²⁰⁷ In such kinds offences the law increased its protection to persons who are unconscious, deluded or persons incapable of resisting by stating that *"Whoever, knowing of his victim's incapacity, but without using violence or intimidation, performs sexual intercourse, or commits a like or any other indecent act, with an idiot, with a feeble-minded or retarded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature or consequences of the act, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen*

²⁰³ Berhane, cited above at note 198.

²⁰⁴ Sadik, Cited above at note 57, P.5.

²⁰⁵ The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Cited above at note 193, article 620.

²⁰⁶ I'd, Article 560.

²⁰⁷ I'd, Article 622.

years."²⁰⁸ Despite the non existence of violence or intimidation by the perpetrator, the law takes into account the vulnerability of the victims to increase its protection.

Abduction is also a criminal offence under the penal code of Ethiopia. In this regard, the provision dealing with offences of abduction and subsequent rape provide that

*" (1) Whoever with intent to marry a woman abducts her by violence, or commits such an act after having obtained her consent by intimidation, threat, trickery or deceit, is punishable with rigorous imprisonment from three years to ten years. (2) Where the act of abduction is accompanied by rape, the perpetrator shall be liable to the punishment prescribed for rape in this Code. (3) The conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability. (4) Nothing shall affect the right of the victim to claim compensation under civil law for the moral and material damage she may have sustained as a result of the abduction."*²⁰⁹ According to this provision, abduction of a woman itself is a criminal offence irrespective of whether rape is committed or not. If the abduction is accompanied by rape of the victim, the perpetrator will be punishable for two offences, i.e. for the abduction and for the rape. Furthermore, despite the fact that the victim gave her consent to marry the abductor, this circumstance will not discharge the abductor from criminal responsibility. Such position taken by the penal code has a particular importance in a country where victims of abduction is under social, family as well as on the abductor pressure are more likely to give their consent to marry the abductor. In addition, the continual threat of the abductor and his accomplice would not give the victim the choice of refusing to marry the abductor.

In this regard, the 2004 revised penal code of Ethiopia has made important amendments compare to the 1957 in relation to subsequent marriage as a result of abduction or rape or both. Article 558 and 599 of the 1957 Ethiopian penal code provided that the perpetrator will be discharged from criminal liability in the event of subsequent marriage after abduction or rape.²¹⁰ The above provision of the 2004 penal code is meant to tackle such problem to comply with the constitution as well as Ethiopia's international obligations.

The penal code also extends its protection to minors, individuals who are mentally ill, individuals who are incapable of defending themselves by making abduction against these individuals punishable with from seven years to twenty years of imprisonment depending on the circumstances of the case. Abduction and rape against these individuals are still punishable despite the existence of prior consent given by such individuals if the consent acquired by the abductor is as a result of intimidation, threat, trickery or deceit.²¹¹

²⁰⁸ I'd, article 623.

²⁰⁹ I'd, Article 587.

²¹⁰ Equality now, Ethiopia; Abduction and Rape law reform and the case of Woinshet Zebene Negash,' 1 June 2005, available at <http://www.equalitynow.org/node/267>, accessed on March 23, 2016.

²¹¹ The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Cited above at note 205, article 587.

3.2.3 Female Genital Mutilation

FGM is defined by WHO as "all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons."²¹² It is usually practiced because of customary and traditional reasons. The main justifications for the practice of mutilation of sexual organs are to control the sexual behavior of the girl and controlling and ensuring virginity before marriage.²¹³ Hygiene is also another reason for the practice of FGM. In most communities where FGM is widely practiced believe that uncut woman is not clean even not to handle foods and waters. Mothers allowed their daughters to be mutilated not because they hate their daughters rather it because they want their daughter to have acceptance within the community and believe that the justifications are true. In communities where FGM is widely practiced, women has to get married in order to get acceptance and honor within the community and women who didn't mutilated most of the time do not get husbands because of the above justifications.²¹⁴

Ethiopian health survey conducted in 2005, indicated that more than 74 percent of women between the age of 15 and 49 has experienced FGM.²¹⁵ The prevalence of FGM within the country varies from one region to the other. Ethiopia has 82 ethnic groups where 66 of them are the largest ethnic groups. Out of the largest groups, studies indicated that over half of them practice FGM. In some regions such as the Somali region, the prevalence rate reach from 97 percent up to 100 percent. Out of the largest ethnic groups within the country, the Oromo, Amhara, Somali and Tigray regions are the major ethnic groups that FGM is widely practiced.²¹⁶

In Ethiopia, the role of religion regarding the practice of FGM is complex and most of the time are assimilated to ethnicity. FGM is widely practiced by both followers of the two major religions, i.e. Christianity and Islam. Studies shows that the Muslim community tend to practice FGM more than the Christian community where it is indicated the prevalence rate among followers of Islam is 65.1 percent and 45 percent is recorded among followers of Christianity.²¹⁷

FGM, usually performed by women though men sometimes can also participate in female circumcision. The Women who carried out the circumcision are usually traditional birth attendant who has acquired experiences from other women. The instruments often times employed for mutilation is unclean, non sterilized and backward. Materials such as kitchen knife,

²¹² The guardian, 'what is Female Genital Mutilation', End FGM, Guardian Global Campaign, February 6, 2014, 07.00 GMT, available at <http://www.theguardian.com/society/2014/feb/06/what-is-female-genital-mutilation-where-happen>.

²¹³ Harmful traditional practices affecting the health of women and children, fact sheet No 23, P.3.

²¹⁴ Susan Bufon, 'Child abuse; *female genital mutilation acts of violence done to young girls for sexual control*, Crim. Law, (2009), Bloomsbury Professional Ltd, P.1.

²¹⁵ Indris Getachew, 'Battling an ancient tradition;' Female genital mutilation in Ethiopia, Unicef, 10 July (2006), available on http://www.unicef.org/protection/ethiopia_34881.html, accessed on 24 march 2016.

²¹⁶ 28 too many, 'Country profile: FGM in Ethiopia', FGM let us end it, October (2013), P.39 & see also Getachew, cited above at note 208.

²¹⁷ I'd, P. 45.

razor-blade, a piece of glass are the instrument often employed which increase the vulnerability of the girl for various blood transmitted diseases such as HIV.²¹⁸

Although in Ethiopia, FGM is largely carried out by traditional health attendants, according a survey conducted within the capital city of the country (Addis Ababa), southern and eastern parts of the country by 2011, indicated that more than 20 percent of girls who were under gone through FGM were carried out by health workers. 10 percent of women who has experienced FGM both in southern and eastern parts of the country was performed by health workers. Despite the carrying out of FGM by professional health workers decreases the negative impact of it, it has the potential to give a message for the society that it is acceptable traditional practice and put a hurdle against the efforts towards the eradication of FGM. In addition, the fact that FGM is carried out by health workers does not in any way prevent the long lasting consequences of FGM.²¹⁹

FGM has the potential to cause the physical and Psychological well being of the girls/women which may stay for short or longer period of time. Hemorrhage infection and acute pain are the short term impact of FGM. Infertility as a result of infection, difficulty during child delivery and other similar effects are the long term impact of FGM. The life loss of the girl might occur as a result of deep cut or other complication because the circumcision was performed by untrained personnel. Using the traditional medicine may also cause other infections which might result to tetanus and septicemia.²²⁰ The long term psychological and emotional harm that FGM can cause on the victim shouldn't be underestimated. It has the possibility to affect future relationships and motherhood in general.²²¹

Regarding the implication of FGM, as WHO rightly put it, "*it reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. It is nearly always carried out on minors and is a violation of the rights of children. The practice also violates a person's rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death.*"²²² With regard to state's obligation on FGM, CEDAW committee on its recommendation no 14 recommended state parties to take all effective measures to eradicate female circumcision including framing appropriate health policy strategies to abolish FGM in health care services such as by providing training to medical personnel and traditional birth attendants about the impact of female circumcision.²²³ On the other hand, the UN committee on Economic, Social and Cultural Rights while interpreting article 12 of ICESR(The right to the

²¹⁸ Harmful traditional practices affecting the health of women and children, Cited above at note 213, P.4.

²¹⁹ 28 too many, Cited above at note 217, P.28.

²²⁰ I'd, P.5.

²²¹ Jameela Munner, Katy Macfarlane, 'Female Genital Mutilation-be FGM aware', Family Bulletin 2014, Sweet and Max well Contributors, P.1.

²²² The guardian, Cited above at note 212.

²²³ CEDAW Committee, 'General Recommendation No14'; Female Circumcision, Adopted at the ninth Session of the committee on the Elimination of Discrimination Against Women in (1990), Para a&b.

highest attainable standard of health) indicated that states have an obligation to take effective measures to abolish harmful traditional practices such as FGM that affect the health and well being of children and girls. Moreover, the committee indicated that state has a duty to protect women from individuals that put pressure and force women to participate in such harmful traditional practices.²²⁴The UN general assembly as well as the commission on the status of women in their respective resolution urged state parties to take meaningful and effective measures towards the eradication of female circumcision.²²⁵Furthermore, the protocol to the African charter on human and people's right on the right of women in Africa specifically prohibits the practice of FGM by stating that "*States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices.*"²²⁶The protocol to the African charter on the rights and welfare of the child also put obligation on state parties to eradicate the harmful traditional practices that can hinder the welfare, dignity, normal growth and development of the child. The protocol further stressed on states' responsibility to exert an effort towards the eradication of traditional and customary practices that promote discrimination against children on the basis of gender.²²⁷

The previous penal code of Ethiopia which was adopted in 1960 has not specifically prohibited FGM though there was a provision dealing with the prohibition of torture and cutting of the body parts of a human being. The 1995 of the FDRE constitution on the other hand, under article 35 incorporated the protection of women from harmful traditional practices that has a consequence of body and mental harm against women.²²⁸The 224 criminal code of Ethiopia which was adopted in 2004 specifically dealt with bodily harm caused by harmful traditional practices by stating that "*Whoever, apart from the circumstances specified in this Chapter, inflicts upon another bodily injury or mental impairment through a harmful traditional practice known for its inhumanity and ascertained to be harmful by the medical profession, shall, according to the circumstances of the case, be liable to one of the penalties prescribed under the provisions*"²²⁹The commission of such harm to a body of an individual is punishable from 3 months

²²⁴ Committee on Economic, Social and Cultural Rights , 'General Comment 14, the right to the highest attainable standard of health' (Twenty second session, 2000), UN. DOC. E/C.12/2000/4(2000), reprinted in compilation of General Comments and General Recommendation adopted by Human Rights Treaty Bodies, UN. Doc. HRI/GEN/1/Rev, 2003, Para 22&35.

²²⁵ See U.N, G.A, RES, 67/167, 'intensifying global effort to elimination of female genital mutilation,' UN doc. A/RES/67/146, 20 December (2012); Commission on the status of women, 'ending female genital mutilation,' UN Doc. E/ CN.6/2008/L.2/Rev.1, (2008).

²²⁶ Protocol to the African Charter on Human and Peoples' right on the right of women in Africa, Adopted by the 2nd of Ordinary session of the Assembly of the union, Maputo, 11 July 2003, Article 5.

²²⁷ African Charter on the Right and Welfare of the Child, OAU Doc, CAB/LEG/24.9/49 (1990), entered into force on Nov.29, 1999, Article 3, 21(1).

²²⁸ 28 too many, Cited above at note 220, P.54.

²²⁹The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Cited above at note 210, Article 567.

up to 5 years depending on the circumstances of the case.²³⁰In cases where the harmful traditional practice causes serious physical as well as other types of health injury, the penal code makes it punishable with rigorous imprisonment from 5 to 10 years.²³¹

3.3 Early Marriage

Early marriage is referred to as “*any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.*”²³²The CEDAW committee while addressing the issue of equality of marriage under its general recommendation number 21 prohibits marriage between spouses below the age of 18. The prohibition is for both male and female. It is considered that the age of 18 as the least age for young people to have full maturity and capacity to act. Although a girl might be sexually mature at early age, she might not be physically and mentally ready to conceive and give birth to a child. Moreover, a child girl cannot be psychologically ready to take responsibilities as a wife and as well as being a mother.²³³Early marriage is considered as forced marriage or as a violation of the right of the girl mainly because the girl because of her early age and maturity cannot give full and free consent. The influence of family, culture and lack of knowledge on the effect of the marriage might have greater impact on her decisions in addition to her age.²³⁴

Ethiopia is considered as a country where child marriage crises is prevalent in recent world. A study conducted by a national committee on harmful traditional practices of Ethiopia indicated that the average percent of girls who marry before they attain the age of 18 reach up to 57 percent. Even though the practice is common in many parts of the country, studies shows that the situation is worse in the northern parts of the country where the minimum marriageable age of a girl goes down as lowest as the age of eight or nine. Sometimes parents promise to give their daughter to a man as soon as they gave birth to a baby girl. The highest percentage of early marriage is recorded in Amhara and Tigray region where it reach up to 82 and 79 percent respectively. The prevalence rate is also quiet high in Benishangul, Gambella, and Afar regions of the country where more than 50 percent of marriage is concluded at early age. A study conducted by population Council in two werdas with in the Amhara region indicated that 14 percent of women were married before they attain the age of 10 and 39 percent of them were married before they attain the age of 15. And more than 50 percent of them were married before the age of 18.²³⁵In the same part of the country, the situation even goes to the extent that a one

²³⁰ I'd, Article 568.

²³¹ I'd, article 569.

²³² Sileshi Workineh, Getiye Dejen Kibretb, Genet Degu, 'Determinants of Early Marriage among Female Children in Sinan District, North West Ethiopia,' Health Science Journal, vol.9, No 6;1, (2015), P.1.

²³³ International Planned Parenthood Federation, 'the forum on marriage and the rights of women and girls,' Ending child marriage, guide for global policy action, P.8.

²³⁴ United Nations Population Fund, 'Marrying too young,' End Child Marriage, UNFPA, New York,(2012), P.11.

²³⁵ Path finder International/Ethiopia, 'report on causes and consequences of early marriage in the Amhara region', Addis Ababa, Ethiopia, July (2006), P.2.

year baby girl can get engaged to be married. In general, child marriage is quite common in the country that a hospital is built up in the capital city, Addis Ababa to treat patients with the health problem of "obstetric fistula."²³⁶

The type of early marriage in Ethiopia can take various forms. This includes promissory marriage where the parents of the young girl promise to give their daughter to a man to marry her. This is done while the girl is still at the stage of infancy or immediately after her birth date. The other type of marriage is a child marriage where child girls under the age of 10 are given to a man for marriage. Adolescent marriage also existed where the girl with the age of 10 to 15 are wedded. Often times the girl will be taken to her family in laws house immediately after the wedding while in some other cases the girl will stay until she is mature enough to live with her husband. All most in all cases there is a wide age gap between the husband and his young wife.²³⁷ Among from the child girls who has married at their early age, most of them are forced to get into the union, others are not mature enough to give free and informed consent. Most of the time the consent is given by some other people on behalf of the young girl. For this reason, child marriage can be considered as forced marriage since it has the potential to deny the girls right to choose their future husbands. Most of the time the girls are under pressure to marry a man much older than them by their parents, relatives, friends and local elders.²³⁸ Researches indicated that more than 50 percent of married women were forced into marriage. Parents are found to choose the husband and arrange the marriage by 88 percent. More than half of the married women didn't informed about their wedding until the decision is made and more than 72 percent of them were not asked their consent. Worse, more than 75 percent of women didn't know the groom before the wedding date.²³⁹

In addition to the existence of national laws that reflect gender inequality and social norms, there are several reasons for the practice of child marriage. First, even if there are laws that prohibit the practice of early marriage, the practice of exercising and power control of men in the day to day life limit the right of women to control and lead their own life. It also limit women's participation in the community and household activities. In most societies, norms and traditions give higher values for boys than girls. The lesser attitudes towards girls by a community prevent parents from providing equal attention and invest in their daughters equally with their sons. Moreover, the value and the attention would shift when the girl reach the age of puberty. Child marriage usually considered as a practice to protect the girl from sexual intercourse before

²³⁶ Guday Emirie, 'Early Marriage and its Effects on Girls' Education in Rural Ethiopia:' The case of Mecha Wreda in West Gojjam, North Western Ethiopia, Doctorial Dissertation, Faculty of Social Sciences, George-August, University of Goettingen, June (2005), P 45.

²³⁷ Bogalech Alemu, 'Early marriage in Ethiopia;' causes and health consequences, Gender technical Advisor, Pathfinder International Ethiopia, (2006), P.4.

²³⁸ Path finder International/Ethiopia, Cited above at note 235, P.30.

²³⁹ Alemu, Cited above at note 237.

marriage and as a mechanism to protect her from sexual harassment and violence. In such instances, the duty to protect the girl would be transferred to the husband.²⁴⁰

Secondly, strengthening family ties is the other reason for the practice of early marriage. In most African countries child marriage is meant to strengthen family ties, ethnic and community relationship as well as to protect transfer properties and lands. Sometimes it is even made to settle disputes. In such kind of situations, the girls' interest wouldn't be a point of discussion at all hence they are viewed as properties or commodities. In most communities, the husband is supposed to wait until the girl reaches the age of adolescence. However, in reality, most husbands convince or force girls to have sexual intercourse without waiting for her adolescence.²⁴¹

Third, poverty is also the reason for early marriage. Many parents believe that it is for the best interest of their daughter at the earliest age possible. However, economic reason is also the other reason where parents choose to give their daughter for marriage at her early age. Studies show that in communities where child marriage is widely practiced, there is a chance that girls are viewed as a burden to the family and society as well as a commodity meant to secure future wealth or as a means of settling debts or strengthening social and economic ties.²⁴² In sub-Saharan African countries, parents choose to give away their daughters for marriage to get bridal prices or financial help from the family of the husband. Men who don't have the financial means to pay the bridal prices, choose to abduct and rape the girl in order to ensure that the girl belongs to him. The main policy challenges for state authorities in such situations are to create economic opportunities for members of the communities so that they don't depend on the practice of early marriage as a means of survival.

Fourth, cultural norms and traditions also play a significant role for the practice of early marriage. Parents are expected to follow the rules of the custom and confirm traditional norms where child marriage is a norm. Otherwise, it is very likely that there will be disregard and disapproval including shame from members of the community. The community perception about the ideal age of marriage, the desire and positive attitudes about submissive wives or bridal price also has huge places in local customs and religious norms. Child marriage most of the time ensures the continual existence of patriarchy and men's power based control over family structures through the transfer of protecting the girl from her father to her husband. The life of rural women are most of the time controlled and ruled by customary norms rather than existing national legislations. That is why using religious norms and traditions as a justification for early marriage need urgent political commitment and strategies in collaboration with cultural and religious institutions.²⁴³ Fifth, child marriage could be practiced as a means of security. Young girls' vulnerability would increase during humanitarian crises such as famine and conflicts where society disrupts and appropriate state machineries are not fully functional. In such situations,

²⁴⁰ United Nations Population Fund, cited above at note 234, P.9.

²⁴¹ International Planned Parenthood Federation, Cited above at note 233, p. 17-18.

²⁴² United Nations Population Fund, cited above at note 240, P.12.

²⁴³ International Planned Parenthood Federation, Cited above at note 241, P.19-20.

family of the girl would choose for marriage arrangements as a protective mechanism or as a means of financial support.²⁴⁴

Early marriage has various impacts on the development and well being of the girl. It brings the girl childhood and adolescence to an end in unnatural and unhealthy way. The role of a wife and a motherhood, unwilling separation of her from family and friends would also have a psychological impact.²⁴⁵ Early marriage also has its own various negative impacts on the physical health and well being of the girl child. The majority of girls do not have information about reproductive health services and most of time they would be exposed to sexual intercourse. Such situation leads them to get pregnant before they are physically and mentally ready for it which would possibly increase their vulnerability for fistula. Worse, early pregnancy increases the rate of mortality of young women. Researches indicated that mortality rate of young pregnant girls below the age of 15 is five times higher than those pregnant women beyond the age of 20.²⁴⁶ The mortality of younger mothers' babies is also twice higher than the normal women. The other side effect of early marriage is that, it increases vulnerability to HIV. Once a girl is married, it is unlikely to refuse safe sexual intercourse mainly because most of the time the husbands are older and have the power to influence and coerce the girl to have unsafe intercourse. The girl might lack knowledge about the advantage of having a safe intercourse. Even though the girl has the knowledge, because of traditional norms and customs, she may not have equal power to decide about it. Moreover, pressure from the community to get pregnant and have children increase the vulnerability of the girl towards sexually transmitted diseases.²⁴⁷

The continual education of the girl would also be at risk when a girl is married at the early age. Recent researches indicated that dropping out of young girls from school because of early marriage outweigh the number of girls drop out because of poverty.²⁴⁸ In most rural communities, activities outside home such as education and employment considered as irrelevant and undesirable mainly because the role of women is attached to house hold activities as a mother and a wife. Such kinds of attitudes towards women are more prevalent in rural communities where most of them received little or no education at all. Moreover, women who received little or no education have the tendency to bear children at their early age. This in return has the impact on the way their children would be raised. The children who is raised by their younger and uneducated mother are less likely to attain higher educational level and widen their life opportunities. Studies also revealed that educated women are more likely to use reproductive health services than uneducated women.

Generally, it can be said that early marriage has huge impact on women academic and economic contribution towards the society. Several international human right bodies indicated that child

²⁴⁴ United Nations Population Fund, cited above at note 242, P.12.

²⁴⁵ I'd, P.11.

²⁴⁶ International Planned Parenthood Federation, Cited above at note 243, P.11.

²⁴⁷ I'd, P.12.

²⁴⁸ United Nations Population Fund, cited above at note 244.

marriage and pregnancy prevent women from going to school. It is obvious that early marriage because of its impact on the education of women drags the aim to achieve gender equality in the domestic and international level.²⁴⁹

Various international instruments prohibit child marriage directly and indirectly. The Universal Declaration of Human Rights under article 16 require marriage to be entered based on the free and full consent of spouses. Similar requirement is also envisaged under article 16 of CEDAW which provides that "*States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent.*"²⁵⁰ CEDAW not only requires marriage to be entered based on the free and full consent of spouses, but also child marriage not to have any kind of legal effect by requiring states to amend their legislations by setting minimum age for marriage and issuance of marriage registrations and certificates.²⁵¹ On the other hand, the Convention on the Right of a child lists down important children rights including their right to participate in the social and economic life as well as the right to be free from harmful traditional practices such as FGM and early marriage.²⁵² The African charter on the rights and welfare of the child is also prohibit marriage below the age of 18 by stating that "*Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.*"²⁵³ The protocol on the rights of women in Africa also acknowledged the minimum age for marriage able age to be 18.²⁵⁴

The revised family code of Ethiopia specifically prohibited marriage between spouses below the age of 18.²⁵⁵ However, an exception to such prohibition can also be found in the family code which reduced the age of marriageable age from 18 to 16. In this regard, the code provides that "*... the Minister of Justice may, on the application of the future spouses, or the parents or guardian of one of them, for serious cause, grant dispensation of not more than two years.*"²⁵⁶ The family code also provided that consent of the spouses is an essential condition for marriage

²⁴⁹ International Planned Parenthood Federation, Cited above at note 246, P.14.

²⁵⁰ The Convention on the Elimination of all forms of Discrimination against Women, Cited above at note 159, Article 16(1), a & b.

²⁵¹ I'd, Article 16(2).

²⁵² United Nations Population Fund, cited above at note 248, P.10.

²⁵³ African Charter on the Right and Welfare of the Child, Cited above at note 227, article 21(2).

²⁵⁴ Protocol to the African Charter on Human and Peoples' right on the right of women in Africa, Cited above at note 226, article 6.

²⁵⁵ The revised family code , Proclamation no 213/2000, Federal Negarit Gazetta of the federal democratic republic of Ethiopia, 6year extra ordinary issue No.1/2000, Addis Ababa, 4thday of July 2000, Article 7(1).

²⁵⁶ I'd, Article7(2).

by stating that "A valid marriage shall take place only when the spouses have given their free and full consent."²⁵⁷

The legal effect of conclusion of marriage below the age of 18 is also included under the family code. It is clearly stated that the marriage is voidable and shall be dissolved on the application of interested person or a public prosecutor.²⁵⁸ However, it is also provided that the marriage shall not be dissolved if the required minimum age is satisfied during the application of invalidation.²⁵⁹

Conclusion of child marriage also entail criminal liability in accordance with the revised penal code of Ethiopia. In this regard, under the penal code, it is provided that "Whoever concludes marriage with a minor apart from circumstances permitted by relevant Family Code is punishable with: a) rigorous imprisonment not exceeding three years, where the age of the victim is thirteen years or above; or b) rigorous imprisonment not exceeding seven years, where the age of the victim is below thirteen years."²⁶⁰ It is an important step that the revised penal code made child marriage punishable and provide more severe punishment for conclusion of child marriage with a minor below the age of 13. This provision protect girls who even gave their consent to marry since because of their age it is believed that they cannot give their full consent with an understanding of the meaning and concept of marriage.

3.4 Sexual and Reproductive Health Rights

Reproductive health right is defined by WHO as "the basic rights of all couples and individuals to decide freely and responsibility the number, spacing and timing of their children and to have the information and means to do so and the right to attain the highest standard of sexual and reproductive health."²⁶¹ As it is expressed in the international conference on population and development (ICPD) in 1994, the right also include decision in relation to reproduction based on non discrimination and not using various forms of forces.²⁶² The major achievements of ICPD is that it recognized the importance of reproductive health services for all individuals including married, unmarried, youth and adolescents. ICPD on its program of action urges primary health services to include family planning, Prevention and appropriate treatment of infertility, antenatal, safe delivery and post natal care, prevention of abortion and management of the consequences of abortion, treatment of reproductive tract infections, information, education and counseling as appropriate on human sexuality and reproductive health, Prevention, care and treatment of sexuality transmitted diseases and HIV AIDS, prevention and Surveillance of violence against women, care for survivors of violence and other actions to eliminate traditional harmful practices

²⁵⁷ I'd, Article 6.

²⁵⁸ I'd, Article 31(1).

²⁵⁹ I'd, Article 31(2).

²⁶⁰ The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Cited above at note 229, Article 648.

²⁶¹ Johan C. Chrisler, 'A Reproductive Justice Approach to Women's health,' *Analyses of Social issues and Public Policy*, (Connecticut College Vol.14, No.1, 2014), P.205.

²⁶² Ibid.

including FGM.²⁶³ In addition, the 1995 Beijing conference recognized that apart from the lack of information and health services, discriminatory social and cultural structures within the societies are the major reasons that hinder people from having reproductive and sexual health services. For this reason, efforts in providing sexual and health services should be accompanied by tackling the social and cultural structures built on gender inequality and discrimination.²⁶⁴ The right to access information also helps individuals to reach at a free and informed decision regarding their sexual and reproductive health issues.²⁶⁵

Though Ethiopia has made improvements in the area of women's health, lack of reproductive and maternal health cares, continued to ruin the life of young women by causing maternal injury and death. The causes of maternal injury and death are usually associated with child birth without the assistance of professional health assistant, unsafe abortion, and gender inequality as a result of harmful traditional practices such as FGM and child marriage.²⁶⁶ Researches indicated that there is high fertility rate in Ethiopia as a result of exposure to first intercourse during early age particularly those who live in the rural parts of the country. In general, studies shows that women experience first intercourse at a much younger age compare to men. The use of contraceptive methods by women particularly who lives in the rural parts of the country is critically low. Factors such as women's self image empowerment played a significant role on the use of modern contraceptive methods and on the decision of the number of children they want to have.²⁶⁷

Though studies indicated that the maternal mortality is decreasing from time to time, the maternal death rate is still considerably very high. The maternal death recorded in 2013 is 420 per 100,000 which makes the country one of the highest maternal mortality state within the continent. Mother's delays in emergency obstetric care, lack of health facilities, unable to use family planning, closely spaced births, shortage of birth attendants and poor postnatal care are regarded as the main factors for such high level of mortality rate within the country.²⁶⁸ In addition to these factors, abortion and HIV infection are other major causes for the high rate of maternal death. Abortion in Ethiopia is a criminal offence save in cases where the continual existence of the fetus affect the physical and mental health of the mother. As a result, women choose to undergo through illegal and unsafe abortion. HIV infections is also affecting more women than men. The prevalence rate of HIV infection among married women is also twice higher than those who are unmarried.²⁶⁹ Furthermore, as we have seen in earlier headings, continual existence of

²⁶³ United nations Population Fund, 'Making Reproductive Rights and Sexual and Reproductive health,' A reality for all, Reproductive Rights and Sexual and Reproductive health frame work, May (2008), P.5-6.

²⁶⁴ I'd, P.6.

²⁶⁵ Organization of the American States, 'Access of Information on Reproductive health from a Human Rights perspective,' Annual Report of the Inter American Commission on Human Rights, November 22, (2011), P.2.

²⁶⁶ Mimi Melles, 'Reproductive and sexual health among Ethiopian youth,' Advocates for youth, Rights, respect and responsibility, (2008), P.1.

²⁶⁷ UN women, 'Preliminary Gender Profile of Ethiopia,' Addis Ababa, Ethiopia, November (2014), P.32.

²⁶⁸ I'd, P.32-33.

²⁶⁹ Melles, Cited above at note 266, P. 2.

harmful traditional practices such as child marriage and FGM has contributed the maternal injury and death within the country.²⁷⁰

Under international law, states have a duty to provide appropriate sexual and reproductive health care to its citizens. The CEDAW convention in this regard provide that " *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.*"²⁷¹The convention further put obligation on states to provide the necessary health care for women during pregnancy, delivery and postnatal time.²⁷² CEDAW committee on its general recommendation no 14 regarding article 12 of the convention, indicated that access to health care including reproductive and sexual health care are the basic rights enshrined under CEDAW.²⁷³The committee further stated that states have an obligation to eradicate gender based discrimination against women in health care services including reproductive health care such as family planning, pregnancy, confinement and during the postnatal period.²⁷⁴ Along with the biological health status difference between men and women, the committee recognized that there are social factors that lead to the health status difference between men and women sometimes even among women themselves. For this reason, the committee recognized state parties to give particular attention to the health care of vulnerable and disadvantage group of women such as migrant women, refugee and displaced women, child girls, older women, sex workers, as well as women with physical and mental health problems.²⁷⁵ According to the committee, states have obligation to eliminate barriers that hinder women from accessing health services such as distance of the health care services, available means of public transportation and affordability of fees to access the health care services.²⁷⁶The committee also noted that the full realization of the right of women can only be achieved when states fulfilled their international obligation to respect, protect and promote the fundamental human rights of women.²⁷⁷

On the other hand, the committee on social, economic and cultural rights on its general recommendation regarding the right to maternal, child and reproductive health rights enshrined under article 12.2 of the convention stated that "*The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child (art. 12.2 (a)) may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.*"²⁷⁸The committee also indicated that state should apply gender

²⁷⁰ I'd, P. 2-3.

²⁷¹ The Convention on the Elimination of all forms of Discrimination against Women, Cited above at note 250, article 12(1.)

²⁷² I'd, article 12(2)

²⁷³ The committee on the Convention on Elimination of all forms of Discrimination Against Women, 'General recommendation no 24,' 20th session, (1999), Paragraph 1.

²⁷⁴ I'd, Para 2.

²⁷⁵ I'd, Para 6.

²⁷⁶ I'd, Para 21.

²⁷⁷ I'd, Para7.

²⁷⁸ Committee on Economic, Social and Cultural Rights, 'General Comment 14,' Cited above at note 224, Para 14.

mainstreaming in the planning and implementation of the various health program and policies in order to fully promote the health and well being of both men and women.²⁷⁹ In addition, the committee noted that in order to address discrimination of women in the area of health, there is a need for national mechanisms that promote the health rights of women including ensuring highest standard of health care including sexual and reproductive health areas. In this regard, the committee recommends specific areas that need particular attention. Protection of women from domestic violence as well as lowering mortality rate should be given priority and specific attention. Similar to CEDAW committee, the committee of the CESCRC indicated that without tackling barriers of women rights to access health care services, their right to health cannot be fully achieved. Such measures include education and information in all areas of health care services including sexual and reproductive health. The committee further request state parties to eradicate harmful traditional practices and norms that hold women from exercising their sexual and reproductive health rights.²⁸⁰ On the other hand, the UN human right committee addresses sexual rights of women in its general recommendation dealing with equality of men and women enshrined under article 3 of ICCPR. The committee stated that laws that impose greater penalty against women than men in offences such as adultery and other related offences is a violation of article 3 of the covenant.²⁸¹

During the ICPD conference states agreed to ensure sexual and reproductive health care universally until 2015. States also reached at consensus that sexually reproductive health rights are human rights which is part of the international commitment towards sustainable development, gender equality and women's empowerment. Despite the fact that universal sexual and reproductive health rights is not expressly dealt in the millennium development goals, there is an agreement between members of the international community that the goals cannot be achieved without ensuring such right. There is also an understanding that poverty reduction, gender equality and reproductive health rights are supplement and interrelated to each other which have long lasting positive contribution to the development of states.²⁸²

Ethiopia has endorsed the minimum development goals which was enacted in 2000 that states committed to take actions in accordance with specific targets. Increasing the number of girls in education and reducing maternal mortality ratio was part of such commitment.²⁸³ In order to fulfill its international obligations, the government of Ethiopia took various legislative measures to ensure sexual and reproductive health rights of women. In this regard, the constitution of Ethiopia provides that "*To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.*"²⁸⁴ The constitution further entitled women to have maternity leave with pay

²⁷⁹ I'd, Para 20.

²⁸⁰ I'd, para21.

²⁸¹ Human Rights Committee, 'General Comment No 28, Article 3'(The equality of rights between men and women), Office of the High Commissioner for Human Rights, Sixty Eighth Session, Adopted 29 march (2000), Para31.

²⁸² Melles, Cited above at note 269, P33-34.

²⁸³ UN women, Cited above at note 267, P. 19.

²⁸⁴ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, Cited above at note 191, Article 35(9).

(including paternity leave) to protect the health and well being of both the mother and the child.²⁸⁵

On the other hand, abortion is a criminal offence in Ethiopia. The revised penal code of Ethiopia in this regard provided that "*The intentional termination of a pregnancy, at whatever stage or however effected, is punishable according to the following provisions.....*"²⁸⁶The law makes it punishable both the mother who intentionally terminated the pregnancy as well as the person who has assisted her to terminate the pregnancy.²⁸⁷ However, abortion is allowed in exceptional circumstances such as if the pregnancy is because of rape or incest, the continuity of the fetus is dangerous for the life of the mother, the fetus has incurable and serious deformity as well as when the mother is physically or mentally unfit to carry the fetus.²⁸⁸ Several arguments can be raised in relation to making abortion illegal, particularly the unsettled issue of whether or not a fetus should have a human right or not as well as the issue of when life begins. Since the issue is outside the scope this paper, the writer of this paper chose not to deal with such issue. However, making abortion illegal is the cause for the death of several young women in the country mainly because they choose to undergo through unsafe abortion hence they can no longer get access to the legal and safest option of abortion save in exceptional circumstances as we saw earlier.

Gaps related to the legislations and judiciary system as well as practical problems related to enforcement of the rights will be discussed on the next chapter.

²⁸⁵ I'd, Article 35(5).

²⁸⁶ The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Cited above at note 260, Article, 545(1).

²⁸⁷ I'd, see article 545-548.

²⁸⁸ I'd, Article 551.

4. Enforcement of the Rights

4.1 Major gaps on the National Law and Enforcement of the Rights

Despite the fact that Ethiopia took various forms of legislative measures, as we have seen earlier, the practical situation of Ethiopia indicated that violence against women is still continue to be a huge problem and it is becoming beyond the expectation of the 21st century.²⁸⁹The case of Kamilat Medhi²⁹⁰(who was a victim of acid attack on her face and neck on March 2007, as a result her face is disfigured and currently undergoing through several surgery in pairs) and Aberash Hailay²⁹¹(A flight attendant who lost her eyes because they are stabbed with a sharp knife by her ex husband in 2011), are good examples out of the various domestic violence against women cases which indicate the horrifying experience that numbers of women in the country are going through. Women were and still are being subjected to various forms of physical as well as emotional violence without their voice are being heard and getting the necessary protection as a valuable and important citizens of the country.²⁹²

Even the Legislative measure is far from being perfect. Absence of civil remedies for victims of domestic violence is the major gap within the legal frame work. There is no specific provision that provide women who are victims of domestic violence such as the right to obtain protection order, monetary compensation, custody order, residence order as well as benefits including shelter and medical benefits. In addition, the revised penal code of 2004 has critical short comings such as failure to provide comprehensive definition and scope of domestic violence as it is prescribed under CEDAW and the protocol on the right of women in Africa. The provisions dealing with domestic violence narrowed since it is meant to be applied within the context of marriage and irregular union. The cross reference provisions made to ordinary crimes committed against the physical and psychological well being of individuals in general to determine the offence and its punishment has the effect of complicating things during the production of evidence mainly because it failed to take the unique nature of the crime of domestic violence against women. Furthermore, the acts that constitute domestic violence failed to encompass all forms of domestic violence such as economic abuse or deprivation. Failure to provide institutional mechanism for protection, report and control of domestic violence is the other major gap within the legal frame work.²⁹³

The CEDAW committee on its concluding observation on Ethiopia stated that Violence against women including sexual violence are under reported because of lack of awareness about the

²⁸⁹ Berhane, Cited above at note 203, P.132.

²⁹⁰ Ethiopian Review, Acid attacker received 20 years in Jail, available on <http://www.ethiopianreview.com/index/6412#comments>, Accessed on 15 April 2016.

²⁹¹ Billene, Purple and White Ribbons-" Ahun Beayne Meta" Campaign Launch, African Feminism, September 25, (2011), available on <https://africanfeminism.com/2011/09/25/purple-white-ribbons-ahun-beayne-meta-campaign-launch/?blogsub=confirming#subscribe-blog> , Accessed on 15 April 2016.

²⁹² Berhane, Cited above at note 289.

²⁹³ Dugasa Fite, Cited above at note 192.

existing laws, victim's lack of trust against the legal system and cultural taboos.²⁹⁴The unique nature of domestic violence which is usually committed within the context of relationship, the victim is most of the time vulnerable for further attack and dependent on the perpetrator requires more than a mere recognition of the right and providing lists of domestic violence.²⁹⁵

With regard to sexual violence against women, non criminalization of marital rape is the major gap within the 2004 penal code. In this regard, the CEDAW committee on its concluding observation expresses its concern and recommends the state to amend its criminal code and make marital rape punishable.²⁹⁶Despite the legal measures taken by Ethiopian government, sexual violence against women including rape, abduction and sexual violence has still persisted in a horrifying manner. The case of Hanna Langano,²⁹⁷ a 16 years old girl, who was abducted while she is coming from school, gang raped and left for dead in 1stNovember 2014 could be atypical example in this regard which can represent the untold stories of several young girls who were abducted, raped or sexual abused.

The problem of putting the law into practice is regarded as the major problem and kept the function of the law only to be "a tiger on a paper." criminalizing sexual violence is not enough by itself though it is regarded as the first step to eradicate the problem. In fact the role that can be played by NGOs and religious institutions on raising awareness and enforcement of the law cannot be undermined.²⁹⁸In addition, taking a longer period of time to adopt a national strategy to combat violence against women by the government, failure to provide rehabilitation assistance and absence of aggregated data regarding the prosecution and conviction of offences committed in relation to violence against women are also identified as the major problems towards the implementation of the rights in accordance with international standards.²⁹⁹

In addition to the problem of law enforcement, blaming the victim or the perpetrator do not bring a long lasting solution. Rather it requires understanding of the problem and understanding that the solution is within the society itself. Investing on girls to empower them and involving them in every aspect of decision making process could be one important solution. Government should also give the necessary attention on empowerment of women and gender equality in its social,

²⁹⁴ 'Concluding observations of the committee on the Elimination of Discrimination against women, Ethiopia,' Forty ninth session, 11-29 July (2011), Para 20.

²⁹⁵ Dugasa Fite, Cited above at note 293.

²⁹⁶ Concluding observations of the committee on the Elimination of Discrimination against women, Cited above at note 293, Paragraph 21(a).

²⁹⁷ Rediet Wegayehu, Kidnapped, raped and left for dead; who will protect Ethiopian girls? The guardian, 11 December 2014, available at <http://www.theguardian.com/global-development-professionals-network/2014/dec/11/violence-ethiopia-girls-justice-for-hanna>, Accessed on 15 April, 2016.

²⁹⁸ Kebede, Cited above at note 202.

²⁹⁹ Concluding observations of the committee on the Elimination of Discrimination Against women, Cited above at note 296, Para 20.

political and economical policies. Parent should also teach their sons not to be violent as they exert an effort on teaching their daughters about safety.³⁰⁰

In general, Eradication of violence against women requires understanding of the real problem. There are only few researches conducted on the situation of violence against women in Ethiopia (which some of them lacks depth). The root causes and consequences of violence against women should be critically examined and studied. Research institutions, government and non government organizations including civil societies need to exert their maximum effort in order to come up with appropriate and long lasting solution.³⁰¹

With regard to FGM, the punishment for the commission provided under the penal code is not enough compare to the negative impact that can potentially cause to young girls within the country. As we have seen in chapter three, the punishment provided under the penal code is 3 months to five years of imprisonment. It is only when the act cause serious health injury against the girl that the punishment goes from 5 years to 10 years of imprisonment. In this regard the CEDAW committee on its concluding observation indicated that " *....the penalties for female genital mutilation stipulated in articles 561-563, 567,569 and 570 of the criminal code are too lenient.*"³⁰²

Despite the existence of a law that punish the practice of FGM, the level of law enforcement is far way from being strong enough to protect the interest of the victim and ensure the punishment of perpetrators as it is prescribed by the law. For this reason, the law lost its sense its function of deterrence for the commission of further similar harmful traditional practice. The CEDAW committee also expressed its concern by stating that "*.....However, while nothing that female genital mutilation is declining among younger women and in urban areas, the committee notes with concern that it remains highly prevalent in rural and pastoralist areas with the highest rates in Afar 91.6 percent and Somali 97 percent...*"³⁰³

The main reason is that the practice of FGM in Ethiopia is deeply rooted in the culture, tradition and custom of the society and made it difficult to bring the intended attitudinal change. Despite the knowledge of the adverse effect of FGM by some of the community members in certain parts of the country, due to the social and peer pressure among girls and women, the practice is still persisted.³⁰⁴ In order to fight such challenge, a strategy to abandon FGM was employed by UNICEF through community conversation on the basis of social convention theory. The challenge here is to convince every family within the community about the adverse effect of FGM within a specific time schedule. In one of the community conversation conducted in the

³⁰⁰ Yebekal, Cited above at note 199.

³⁰¹ Berhane, Cited above at note 289.

³⁰² Concluding observations of the committee on the Elimination of Discrimination against women, Cited above at note 299.

³⁰³ Ibid.

³⁰⁴ Ministry of finance and economic development and UNICEF in Ethiopia, 'Progress in Abandoning Female Genital Mutilation/Cutting and Child marriage in self declared Werdas,' Evaluation report, November (2012), P.4.

Somali region could be a typical instance to show such challenge. During the community conversation, a girl who is 20 years old who has never experienced FGM shared her thought by stating that *"All the girls of my age are married. Only I remain single, because people say that I am open, if I ever have a daughter, I will make sure she is cut and sealed."* The attitude of another girl who is 18 years old and undergone through FGM was different. She stated that *"Since the time I was cut I kept bleeding all the time. I am afraid of getting married because I will have to be cut again."* After the girls shared their stories and attitudes towards FGM, a single man from the community declared his commitment towards the continual existence of FGM by stating that *"I do not want a wife who has not been cut at all."*³⁰⁵ Such kinds of community dialogue is quite important in order to identify the level of the problem and in away shows the challenges on the eradication of harmful traditional practices particularly when it is deeply rooted among the community.

Though there is an increasing attitudinal change among the Ethiopian community about the negative impact of FGM, It is far from reaching the intended result. Apart from ensuring the proper implementation of law, awareness creation among the community about the adverse effect of FGM in cooperation with religious and educational institutions should be given the necessary attention by the concerned governmental authorities including NGOs.³⁰⁶ Accordingly, the CEDAW committee urges the state to *"encourage women and girls to report acts of violence to the competent authorities by continuing to raise awareness about the criminal nature and harmful effects of female genital mutilation and other forms of valence on their health, eradicating the underlying cultural justifications of such violence and practices, destigmatizing victims....."*³⁰⁷

With regard to early marriage, the revised family code has the following major shortcomings. First, as we have seen earlier though marriage below the age of 18 is prohibited, under exceptional circumstance, marriage below the age of 18 is allowed under article 7(2) of the family code. Although this provision is meant to be applied in a very exceptional situation, the provision is exposed to wider interpretation and has the potential to legitimize several under age marriages. Moreover, hence the application could be made by the future spouses, because of their age it is quite difficult to say that they can come up with informed and right decision about the marriage. The provision also problematic in the sense that the parents of the future spouses can apply marriage to be concluded between minors. In doing so, the rights of the spouses to give their consent about the marriage (which is an essential condition for marriage) will be limited. The spouses may not reject the application made by their parents for various reasons such as they could be under their parents' pressure or because of their age it could be difficult for them to give their full and informed consent. Second, the provision which validate early marriage

³⁰⁵ Getachew, Cited above at note 215.

³⁰⁶ Dawit Assefa, Eshetu Wassie, Maseresha Getahun, Misganaw Berhaneselassie and Atsinaf Melaku, 'Harmful traditional practices,' For the Ethiopian Health Center Team, Ethiopian Public health training Initiative, (2005), P.19

³⁰⁷ Concluding observations of the committee on the Elimination of Discrimination against women, Cited above at note 303, Para 21(d).

if the minimum age is fulfilled at the time of application of the invalidation is also problematic. Though the family code seems want to protect the already established stable family, to some extent, this provision has the potential to encourage early marriage to be concluded hoping that it will be a legally valid marriage after wards.

On the other hand, non conformity of regional family laws in line with the federal family law and in line with international instrument is also the other major gaps identified by the CEDAW committee on its concluding observation against Ethiopia. Accordingly, the Committee recommends, not only regional family laws but also customary and religious laws to be amended in away to confirm the rights enshrined under the CEDAW convention and to enforce the revised family law to ensure the equal rights of men and women before, during and after dissolution of marriage.³⁰⁸

With regard to the measures taken by the Ethiopian government, conclusion of early marriage is usually under reported mainly because of lack of trust on government officials and institutions, cultural norms and traditions as well as lack parents' supervisions on economic and sexual matters of the youth. The defective strategies followed by the government are the other major reason for the rural community not takes the new legislation seriously. The campaign against early marriage is ambiguous and lacks clarity in the sense that proper strategies for the implementation of the new law has not put in place. Some even argue that the government took the legislative measures as result of pressure from civic and political organization and it is meant to fulfill other agendas rather than to tackle the problem of early marriage. Furthermore, the campaign against early marriage is not made through creation of awareness and convinces the rural community (particularly in Amhara region where the prevalence of early marriage is high) about the adverse effect of early marriage, as a result, it can be said that the community lost its right to decide on the issue. Furthermore, the expenses for accommodation and transportation for the age assessment is quiet high particularly for economically disadvantaged peasants and it is against the government strategy itself to reduce unnecessary wedding expenditures.³⁰⁹

Despite all the above gaps within the law and the strategies followed by the government to abolish the practice of early marriage, the campaign against early marriage has brought several positive impacts by creating awareness and debate among peasants located in various regions about important issues related to early marriage such as individual rights, sexuality, childhood and marital life.³¹⁰ Moreover, a report given by the Ethiopian government by 2005 indicated that the practice of early marriage is decreased among the younger generation and the proportion of girls who are marrying below the age of 15 is decreased by 30 percent.³¹¹ Awareness creation among the society about the harmful effect of the practice of early marriage and the legal

³⁰⁸ I'd, Para 15.

³⁰⁹ Berihun M. Mekonnen and Harald Aspen, 'Early marriage and the campaign against it in Ethiopia,' proceedings of the 16th international conference of Ethiopian studies, Trondheim (2009), P.110.

³¹⁰ Ibid.

³¹¹ Path finder International/Ethiopia, Cited above at note 238, P.1-2.

marriageable age through engaging in community discussion should be the main area of focus to tackle the problem from its grass roots.

With regard to sexual and reproductive health rights, though there is an encouraging improvement taken by the government, the high rate of maternal mortality rate and lack of access to family planning services remains to be the challenge. In this regard the CEDAW committee on its concluding observation against Ethiopia expressed its concern by stating that "*the Committee remains concerned about: (a) The high maternal mortality rate (470 per 100,000 live births) due to obstetric complications such as fistulae, early pregnancy, unsafe abortion, harmful practices and other factors; CEDAW/C/ETH/CO/6-7 11-44167 13 (b) The low rate of skilled birth attendance (18 per cent) and the shortage of emergency obstetric services, especially in rural areas; (c) Low contraceptive use, exposing women and girls who are often married to older men to risk of early pregnancy and HIV/AIDS and other sexually transmitted diseases; (d) The high number of unsafe abortions; (e) The high number of women living with HIV/AIDS, the lack of antiretroviral prophylaxis to prevent mother-to-child transmission, the absence of special prevention programs for high-risk groups such as young women, sex workers and internally displaced persons, and the lack of care and support for orphans and vulnerable girls and boys affected by HIV/AIDS.*"³¹²

Accordingly, the committee gave its recommendation that Ethiopia should continue providing training for health workers who are working in relation to maternal health care services, awareness creation about the negative effect of harmful traditional practices and early pregnancy on the health of women as well as to tackle the problem of less number of available health care workers.³¹³

4.2 Gaps within the Justice System

4.2.1 Introduction

Apart from taking appropriate legal measures as well as bringing attitudinal change within the community, the way the national justice system approach issues of violence against women is quiet important to ensure effective implementation of the law. If the justice system is strong and in a way it respond to victim's demand and there would be a high possibility that perpetrators got the appropriate punishment.

The government of Ethiopia is taking various measures to combat violence against women within the country such as through economic empowerment of girls and eradication of harmful traditional practices such as FGM. However, there are several measures that has to be taken regarding how law enforcement institutions such as police departments and the judiciary machineries should handle violence against women cases. Such institutions do not take violence

³¹² Concluding observations of the committee on the Elimination of Discrimination Against women, Cited above at note 308, Para 34.

³¹³ I'd, Paragraph 35.

against women such as rape cases as serious as other dangerous crimes.³¹⁴ A discussion on the major gaps within the justice system is made below through analysis of selected cases.

4.2.2 Selected Cases

When we look at the major gaps during police investigation, apart from the fact that most women who are victims of violence (particularly those who are living in the rural parts of the country) do not know which specific police station is responsible to receive a report in relation to violence against women cases, unnecessary, repeated and longer adjournments for investigation of the cases as well as interrogations by the police officers about the private and personal issues of the victims which are not relevant to the cases are found to be the major problems.³¹⁵ Moreover, the fact that victims are usually requested to produce evidences is also problematic in the sense that some kinds of violence against women such as sexual violence are most of the time committed in the absence of witness and obtaining written documents about the act is quiet difficult. In addition, lack of effective strategy to collected evidences has it is own contribution for evidences produced by police investigators to be weak.³¹⁶ In such situation the public prosecutor might decide not to take the cases before a court of law. Even though he or she took it to court, there is a huge probability of losing the case. Finally, the perpetrators will be left unpunished. The following case law could be a very good instance in this regard.

The case of Federal Public Prosecutor Vs Abdisa Alemu,³¹⁷

Facts of the case

The defendant is accused of abducting and raping a young girl by violating the penal code provisions of article 587(1) and article 620(1). The crime is allegedly committed against a 19 years old girl on 24 February 2013 evening while she went out from home to fetch water with her brothers. The defendant is accused of abducting her by threatening and with the intention of marrying her. After her abduction, he took her to another person's place and raped her repeatedly. The victim further stated that he tried to convince her to sign a paper which stated that she wants to marry him.

The defendant in his statement of defense argued that he admitted that he had sexual intercourse with the victim however, he argued that she had intercourse with him with her own free will. The defendant also produced an evidence of traditional marriage certificate concluded between the applicant and the accused.

³¹⁴ Eshete Bekele, Ethiopia's women vow to turn tide violence, Rape and murder, Sheger Tribune, Jan 28, 2015, available at <http://shegertribune.blogspot.se/2015/01/ethiopias-women-vow-to-turn-tide-of.html>, accessed on 22 March, 2016.

³¹⁵ *Interview with Mulusew Deres*, Judge at the Federal First Instance Court, Women and Children Criminal bench , On Feb 12, (2016).

³¹⁶ *Ibid.*

³¹⁷ *Federal Public Prosecutor Vs Abdisa Alemu*, Federal democratic republic of Ethiopia, Lideta criminal branch, File no 214343, December 26, 2008.

Decision and reasoning of the Court

The court dismissed the case presented against the defendant for lack of evidences for the commission of the crime by the defendant. The court on its reasoning stated that statements of the applicant and the witness presented on behalf of the victim indicated that the applicant went with the accused by her own free will and there is no evidence produced by the public prosecutor that the defendant abducted the applicant. With regard to the alleged rape, the court stated that the evidence produced by the public prosecutor and the medical proof shows only the applicant had sexual intercourse and the defendant already accepted that he had intercourse with the applicant. However, according to the court, there is no evidence produced by the public prosecutor that the sexual intercourse is made against the free will of the applicant. In fact the court found the marriage certificate presented by the defendant inadmissible since the marriage is concluded after the commission of the act. As a result, since the public prosecutor unable to proof the commission of the alleged abduction and rape by the defendant beyond reasonable doubt, the court held the accused not guilty of the crimes he was accused of.

This case is a perfect example of how it is difficult to proof commission of a crime related to sexual violence against women. From the circumstances of the case, it is difficult for the court to pass verdict without the production of sufficient evidence by the public prosecutor and police investigators. However, it has to be emphasized that such loopholes open the door for perpetrators not to be punished for their criminal acts. In addition, the fact that most sexual violence against women are usually committed behind the curtain, it has the potential to destroy the whole concept of punishing perpetrators for lack of evidence and the law lose its concept of deterrence. A different approach during police investigation as well as during collection of evidences by the public prosecutor is needed in order to fill such gaps.

The other problem is related to the prosecutor failure to charge the perpetrator with the appropriate offence as it is stated under the penal code. This is usually done as result of negligence or lack of awareness from the part of the prosecutor. This has negative connotation on the final result when the courts give the final judgment on the issue particularly if the perpetrator is charged with a lesser criminal offence than he or she was supposed to be charged with.

The case of Federal Public Prosecutor Vs Kassa Tassew³¹⁸ is a good example to show such scenario

Facts of the case

The defendant is accused of commission of rape against a 14 years child girl on 24 July, 2013. The accused brought the victim from Amahara region (Northern part of the country) through

³¹⁸The case of *Federal Public Prosecutor Vs Kassa Tassew*, Federal Democratic Republic of Ethiopia, First instance court, Lideta criminal bench, File no 208493, 29 Nov 2015.

marriage and by promising to her parents that he will educate her and take care of her until she attain the age of 18 years. However, he is accused of having sexual intercourse with the victim immediately after he brought her from her parents' house.

The defendant in his statement of defense during police investigation stated that he has married her and had sexual intercourse with her at his house. However, in his statement of defense that he gave before the court denied that he had sexual intercourse with the victim.

Decision and reasoning of the court

The court after listening arguments and evidences produced by both parties, held that the defendant is found to be in violation of article 626(1) (Performing sexual intercourse with a minor). The court didn't accept the public prosecutor allegation that the defendant action should fall within the ambit of article 625(4)(the victim is dependant or subordinate to the defendant) on the ground that the relationship the victim had with the accused is a spousal relationship than a tutor-minor relationship. Accordingly, the court decided the defendant to be punished for 2 years and 9 months rigorous imprisonment.

When we look at the case, it is difficult to conclude that justice is served to the defendant and the law is applied to deter the commission of similar crimes against young girls. Basically, two critical problems are apparent in relation to charges presented against the perpetrator as well as on the decision of the court itself. Firstly, the public prosecutor could have charged the defendant for conclusion of a marriage with a minor in addition to rape. The medical examination result presented to the court indicated that the victim is 14 years old. The conclusion of marriage has not denied by both parties and such action is clearly prohibited under the criminal code. The prosecutor failure to charge the defendant for conclusion of early marriage with a minor, left the perpetrator not to be punished for his action. Secondly, the court reasoning for the criminal charge not to fall within the ambit of article 626(4) of the criminal code seems unreasonable. Article 626(4) of the criminal code provides that "*Where the victim is the pupil, apprentice, domestic servant or ward of the criminal, or a child entrusted to his custody or care, or in any other way directly dependent upon or subordinate to him, the punishment shall be: a) with rigorous imprisonment from five years to twenty years in respect of the crime specified in sub-article.*"³¹⁹The court on its reasoning stated that the relationship between the victim and the defendant cannot be said that the victim is dependent on the accused mainly because they have spousal relationship. However, from the facts of the case it is understandable that her parents gave him to take care of her and provide her custody until she reaches at the age of 18. Moreover, whether it was her interest to enter to spousal relationship or not was not raised by the prosecutor as well as by the court. Besides, even if it is said to be that she gave her consent to enter to a marriage, as far as the law is concerned, because of her age it cannot be said that she was in spousal relationship with the accused. Most importantly, the phrase "or in any other way

³¹⁹ The Penal code of Ethiopia, Cited above at note 286, article 626(4).

directly dependent upon or subordinate" under article 626(4) is an indication of the legislature intention of allowing courts to follow a wider method of interpretation depending on the circumstances of the case. On the case at hand, the victim is clearly dependent on the accused not only financially but also physically and emotionally because of her age. In this regard, the court could have followed a wider interpretation approach and there was a possibility that the violation could have fall within the ambit of article 626(4) and the years of rigorous imprisonment could have been between five to twenty years.

Apart from the problem arises from police investigators and public prosecutors, because of lack of awareness about the causes and consequences of sexual violence, parents and families of the victim woman tend to hid or punish their daughters mainly because they want to avoid shame and social isolation from the community. Even if most of the time it is very difficult to come across with important evidences in rape cases, when there happens to be found concrete evidences, the family members of the victim do not want the perpetrators to be punished to protect their social standing. This shows how the society is weak to face the problem of sexual violence and fight for it until it is eradicated.³²⁰ Most of the time, the victims also lose the confidence or would be shy to give there statement to police investigators about the violent act commit against themselves. This is mainly as a result of the social and cultural attitudes towards the victims as well as the psychological and emotional problem that they encountered as a result of the violent act.³²¹

When we see the major gaps within the judiciary system, there are instances where courts release the perpetrators while sufficient evidences are presented to them or punish them with the lesser degree of punishment provided under the law. This is mainly as a result of ignorance or failure to follow gender sensitive approach while dealing with the cases.

The case of Federal Public Prosecutor Vs Andinet Alemayhu,³²² could be cited as a very good instance in this regard.

Facts of the case

The defendant is accused of having a sexual intercourse with a minor girl and incest. The accused is allegedly committed the crime on his 14 years younger sister for the first time on July, 2013 and continued to have sexual intercourse with her repeatedly. As a result, the victim is found to be pregnant.

The defendant denied that he committed the crime though while he was giving his statement during the police investigation admitted that he used to have sexual intercourse with the victim

³²⁰ Bekele, Cited above at note 314.

³²¹ *Interview with Mulusew Deres*, Cited above at note 316.

³²² *Federal Public Prosecutor Vs Andinet Alemayhu*, Federal democratic republic of Ethiopia, Lideta criminal bench, file no 215826, 5th December, 2015.

repeatedly and he didn't told her to undergone through abortion because it could be dangerous for her well being.

Evidences produced from Gandhi memorial hospital indicated that the victim is pregnant. Moreover, DNA medical laboratory result presented from Aresho Medical Laboratory indicated that the accused is the father of the newly born child.

Decision and reasoning of the Court

The court on its previous session, dismissed the crime of incest presented against the accused by stating that punishing the accused alone for such crime is against article 25 of the constitution (right to equality) and article 4 criminal code of Ethiopia (Equality before the law). Regarding the first crime that the defendant is accused of (having sexual intercourse with a minor), the court on 5th December 2015, found the defendant guilty as indicated under article 626(1) in conjunction with article 628(a). Accordingly, the court held the defendant to be punished for eleven years of rigorous imprisonment.

This case is an indication of the fact that how women in Ethiopia particularly young girls are living in a great risk. As we have seen in the case, the situation sometimes goes to the extent that a girl cannot even trust her brother and count on him that he can be there to protect her in patriarchal society.

When we look at the decision of the court, the reason given by the court to dismiss the prosecutor allegation against the defendant for the crime of incest seems not convincing. The court tried to link its reasoning with the concept of "equality before the law" as it is stated under the constitution and penal code of Ethiopia. In fact, the case has nothing to do with discrimination and equality before the law for the following main reasons. First, the court forgot the fact of the case where the crime is committed against a minor who do not understand the cause and the consequence of the act. The law always put higher obligations on an adult than a minor. That is why the law expressly forbids engaging in a sexual intercourse with a minor even when consent is given by the minor. Second, as far as the writer of this paper acknowledge, there is no law which prohibit punishing a perpetrator for the crime of incest unless all participants of the crime is convicted. Third, the court confused a procedural law concept(due process of the law) with a substantive law (whether or not the accused violate a provision under the penal code which is a crime of incest on the case at hand).

Regarding the punishment for having sexual intercourse with a minor, article 626(1)of the criminal code provides that having sexual intercourse with a young girl with the age of between thirteen and eighteen, is punishable with three years to fifteen years of rigorous imprisonment. On the other hand, when the victims became pregnant, article 628(a) stipulates that the rigorous imprisonment should be five years to twenty five years. Thus, the case at hand, the minimum years of imprisonment is five years and the maximum years of imprisonment is twenty five years. The court in this case as well didn't provide the maximum years of imprisonment though

punishing the perpetrator for more than 10 years has the capacity to send a message to the society in general that perpetrators could also be punished for their wrong action against violation of the rights of women. There were also several instances where the courts let perpetrators free after they have committed violence against women. The recent famous case of Woinshet Zebene Negash, who was abducted and raped by a man who wants to marry her with his collaborators could be a good example in this regard. The courts including the Supreme Court let the perpetrators to be released by stating that the victim gave her consent to marry the abductor though the victim repeatedly stated that she gave her consent to him because she was abducted and threatened by the abductor. Finally, with the help of international NGOs she took the case to the African Human right commission and the commission decided the Ethiopian government found to be in violation of the African charter on human and peoples' rights on the ground that the government is failed to provide a "decent system of justice" and decided to pay 150,000 USD. The commission further urges the country to take appropriate measures to tackle the problem of marriage by abduction and rape.³²³

The victim received justice after 15 years of the commission of the offence. Had it not been the victim's strength and the effort made by her representative NGO, there was a huge probability that the victim might decide to drop out the case as a result of the unnecessary adjournments provided by courts and the threat from the abductor. Moreover, because of repeated threat she flees out of her country.³²⁴ Her story is an indication of the fact that enforcement of one's right is quiet difficult (even when there existed a perfect national legislation). It requires time, energy, patience and third parties such as NGOs who are willing to support and represent the victim before a court of law.

The revised federal Supreme Court sentencing guideline number 2/2013 is also problematic in the sense that the status and level given to criminal offences related to violence against women most often do not allow courts to apply the maximum punishment provided under the criminal code of Ethiopia.³²⁵ As a result, perpetrators would be punished with a lesser number of imprisonments than they were supposed to be punished in accordance with penal code.

³²³ Faiza Jama Mohammed, African commission orders Ethiopia to compensate rape victim, 'Horn affairs, March 10, 2016, available at <http://hornaffairs.com/en/2016/03/10/african-commission-verdict-ethiopia-compensate-rape-victim/>, accessed on April 20, 2016.

³²⁴ Diane Cole, Kidnapped and raped at the age of 13, She is finally found justice, March 11, 2016, available at <http://www.npr.org/sections/goatsandsoda/2016/03/11/470075802/kidnapped-and-raped-at-age-13-shes-finally-found-justice>, Accessed on 19 April, 2016.

³²⁵ Interview with Mulusew Deres, Cited above at note 321.

The Case of Federal Public prosecutor V. Serawit Deneke³²⁶, shows one of such instances.

Facts of the case

The defendant is a married man who has two children is accused of having a sexual intercourse with a 13 years old girl on 23 September 2014 evening, by threatening and forcing her to consume traditional alcohol drink. The victim was working as a house made for the family of the accused. The public prosecutor produced witness and documented evidences in support of her allegation.

The defendant argued that he didn't commit the crime by presenting his wife as a witness. His wife gave her testimony to the court by stating that the accused was with her during the night where the alleged rape committed against the victim.

Decision and reasoning of the Court

On 31December 2015, the federal first instance court after examining all the evidences presented by the parties, came to the conclusion that at the time when the alleged crime is committed against the victim, it is only the accused and the victim where the house and all the evidence produced against the accused indicated that he forced the victim to sleep with him by threatening and intoxicating her. The court further stated that the testimony given by his wife was not convincing and found to be made on purpose to help her husband escaping from criminal prosecution. As a result, the court held the defendant is guilty of the crime he is accused of in accordance with article 620(2)(a) of the criminal code of Ethiopia and article 149(1) of the criminal procedure code of Ethiopia. Accordingly, based on the federal sentencing guide line provided for similar offences, the court decided the accused to be punished for 9 years of rigorous imprisonment.

The above case is an indication of the fact that sexual violence against women is usually committed by men who are known to the victims. It also represents one from the many cases of sexual violence committed against child girls within the country. According to article 620 (2) of the penal code of Ethiopia, rape or compelling a young woman between the age of thirteen and eighteen to have a sexual intercourse is punishable with a minimum of five years or a maximum of twenty years of rigorous imprisonment. As we have seen earlier, the court gave its decision in accordance with the federal sentencing guideline. Accordingly, the perpetrator is punished with less than half of the maximum of years of imprisonment as it is indicated under the penal code.

Despite all the above gaps, there are also improvements made by the courts regarding punishing perpetrators. The number of years that courts began to impose on the defendants(though is it far from being enough yet), can be taken as a positive step towards the deterrence of possible similar future violence against women.

³²⁶ *Federal Public Prosecutor Vs Serawit Denke*, The federal democratic republic of Ethiopia, Federal first instance court, Lideta criminal bench, File no, 218944, December 31, 2015.

To tackle the major gaps within the judiciary system tackling stereotype among the personnel working within the judiciary system is quiet important. In this regard, the UN special rapporteur on violence against women and the special rapporteur on independency of judges and lawyers indicated that effective investigation of gender based violence and punishment of perpetrators are highly dependent on the existence level of patriarchal system and stereotypes within the society.³²⁷ Studies revealed that stereotypical attitudes become challenging for women to gain the necessary justice when their right is violated. It has a negative impact on judges to become partial hence it has an influence on the judge how he or she perceives criminal offences related to the human rights of women.³²⁸ The influence could also go to the extent of questioning the creditability of witness or the victim particularly when the victim happens to violate the stereotypical values and tradition ascribed to women in that specific society. Worse, stereotypical attitudes might lead the judges not to punish the perpetrators and blame the victim for the actions of the perpetrators. In such circumstances, the law loses its meaning of protection of the victim and lead victims to be discourage to appear before a court of law and defend their rights.³²⁹ That is why the CEDAW committee on its concluding observation on Ethiopia urges the government to *"provide mandatory training to judges including local and Sharia court judges, prosecutors and the police on the strict application of relevant provisions of the criminal code."*³³⁰

4.3 Accessibility of Justice

The right to access justice entails individual rights to receive independent, just and fair trial proceedings. It also entails the availability of trial proceedings which is affordable, timely and effective means to obtain remedies.³³¹ A study conducted by Ethiopian Lawyers association indicated that provision of legal aid service within the country is quiet important in the sense that it ensure accessibility of justice particularly for vulnerable groups of the society such as the elderly, children and women. The same study further revealed that it avoids unnecessary court adjournments and delay of trial proceedings.³³²

Equality before the law and the right to obtain effective remedy during violations of fundamental rights and freedoms is recognized under article 7 and 8 of UDHR as well as under article 14 of ICCPR.³³³ Accordingly, the constitution of Ethiopia also recognized the right to access to justice by stating that *"Everyone has the right to bring a justiciable matter to, and to obtain a decision*

³²⁷ United Nations Human Rights Office of High Commissioner, Cited above at 159.

³²⁸ United Nations Human Rights, Office of the High commissioner, 'The harms of gender stereotyping,' 20 June (2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/GenderStereotyping.aspx>.

³²⁹ Ibid.

³³⁰ Concluding observations of the committee on the Elimination of Discrimination Against women, Cited above at note 312, Para 21(c).

³³¹ Ghetnet Metiku, Access to justice and Legal aid in Ethiopia, Abissinialaw information justice stability, 21 July, 2015, available on <http://www.abysinialaw.com/blog-posts/item/1448-access-to-justice-and-legal-aid-in-ethiopia>.

³³² Ethiopian Women Lawyers association, 'Needs Assessment Report on the state of legal aid service in Addis Ababa, Adama, Assosa, Bahir dar, Hawassa, Jigiga and Mekele,' August (2014), P. 2.

³³³ Metiku, Cited above at note 331.

or judgment by, a court of law or any other competent body with judicial power."³³⁴In order to obtain an effective remedy, accessibility of legal aid services played a significant role.

The provision of legal aid service in Ethiopia takes different forms. These includes (a) mandatory pro bono services provided by licensed advocates (which is administered by ministry of justice), (b) Legal aid programs launched by NGOs charity organizations and professional associations (such as Ethiopian Women Lawyers Association and Ethiopian Lawyers association) and (C) Legal aid clinics established within public universities.³³⁵

There are major gaps envisaged by studies regarding the provision of legal services in Ethiopia. First, mismatch between the extent and scope of service they provide as well as the type of cases they handle. In some parts of the country, the provision of legal aid services is available for both civil and criminal cases while in other parts of the country, provision is only limited to criminal matters. There is also discrepancy on the type of service they deliver. Some legal aid centers provide only oral advice and preparation of pleadings while other centers deliver wider forms of services ranging from oral advice up to provision of mediation and psychological social support.³³⁶Second, wide discrepancy between the demand from economically disadvantaged group of people and the existing legal aid services. In addition, since the majority of legal aid services is provided by law school students to some extent compromise the quality of service that has to be delivered. Third, due to lack finance, some legal service providers such as Bahirdar University provide the service in an irregular interval. This has the potential to hamper the quality of the service because of its unpredictability. Moreover, the fact that several universities based legal aid centers are dependent on external funding, the continual existence of such centers in the long run is very much in doubt. Fourth, lack of supervision particularly on legal aid services delivered by advocates through a pro bono service puts a huge threat on the quality of the service they delivered. Though in some legal aid centers monitoring mechanism is put in place, it is not functional as it should be because of capacity reason.³³⁷Fifth, Lack of capacity in financial and personnel terms, lack of awareness among the community on the availability of services, absence of objective criteria for provision of legal aid service and lack of coordination among legal aid centers are also identified as the major gaps.³³⁸

Apart from the existed legal aid providers to general public, legal aid centers meant to provide legal aid services to disadvantage groups of women whose human rights are violated are almost not existed. Ethiopian women lawyers association is the only and prominent association which provides legal aid service to women who are victims of gender based violence. EWLA was founded in 1995 to defend the right of women and achieve equality of men and women by using

³³⁴ Proclamation of the constitution of the Federal Democratic republic of Ethiopia, Cited above at note 284, art 37(1).

³³⁵ Metiku, Cited above at note 333.

³³⁶ Ethiopian Women Lawyers association, Cited above at note 332, P. 2-3.

³³⁷ I'd, P.3.

³³⁸ I'd, p.4.

the legal frame work as well as through awareness creation.³³⁹EWLA's major area of focus includes research and law reform advocacy, legal aid services and public education.³⁴⁰Legal aid is the central activity that EWLA has been and is delivering to disadvantaged and poor women free of charge. The provision of legal includes counseling and representation before a court of law by volunteer members of the association.³⁴¹

The adoption of the charities and societies proclamation 621/2009, narrowed the role to be played by civil societies and charity organizations. The proclamation provided that Ethiopian charities can only generate 10 percent of their income from abroad and they have to generate their 90 percent incomes from local funds. Raising 90 percent income from local funds is nearly impossible to a country where 40 percent of its population are living below poverty lines. Such measure brought a devastating consequence on local NGOs working on human right issues including EWLA (the only organization working on defending the right of women in Ethiopia) that cuts off 70 percent of its budgets. The bank account of EWLA was also frozen because the government allegedly found that it was generated from abroad.³⁴²Such kinds of measure by the government not only hampers the already existed institutions working towards realization human rights and provision of legal aid services to disadvantage women, it also puts a huge hurdle for the establishment of similar organizations aimed at improving the accessibility of justice to women as well as the whole society in general.

There are also various gaps within the administration of the judiciary system which in a way hinder the quality of service obtained by women who are victims of violence. This is manifested by the available criminal benches working in the area of violence against women are less in number compare to the number of files presented before them. Some criminal benches such as Lideta criminal bench receive several applications including applications from other sub cities within the capital. Such situations created unnecessary burden on the bench which put significant pressure throughout the trial proceeding to deliver appropriate verdict within a reasonable time. In average terms one case took two and half years at the first instance court (excluding the higher and Supreme Court). The main reasons for such major gaps includes but not limited to very few criminal benches are working on violence against women and lack of the necessary court personnel such as judges. The non implementation of modern mechanisms for the collection of evidences both at the police stations and within courts are also the key reasons for the above drawbacks.³⁴³

³³⁹ Gemma Burgess, 'A hidden history: women's activism in Ethiopia,' Journal of international women's studies, Bridgewater state university, Volume 14, Issue3, July (2013), P.102.

³⁴⁰ I'd, P. 103.

³⁴¹ I'd, P.104.

³⁴² Center for the rights of Ethiopian Women, The charities and societies proclamation and its impact on human rights and women's rights activism in Ethiopia, December 26, 2014, available on <http://centerforethiopianwomen.org/>, accessed on 21 April 2016.

³⁴³ *Interview with Mulusew Deres*, Cited above at note 325.

In fact, there are improvements made to ensure accessibility of justice for victims of gender based violence. Such measures include (1) establishment of especial benches to deal with violence against women cases,(2) the conclusion and coming to force of a memorandum of understanding between the concerned authorities such as courts, ministry of justice, Addis Ababa Police, Ghandi memorial hospital and Black lion specialized hospital, (3) establishment of specialized investigation unit within the various police stations, (4) putting in place special prosecutor personnel to deal with violence against women cases, and (5) provision of safety houses in extreme situations for victims until the cases are finalized.³⁴⁴

Though the establishment of special benches to deal with gender based violence cases has particular importance in the sense that the judges would be able to acquire specialized knowledge in the area and ensure appropriate remedies to the victim, it has the potential to create burden on such courts. The lengthy of a trial proceeding to deal with a given case would be extremely longer because of the flow of the cases particularly in current situation where there are only few specialized benches are established with in the country.³⁴⁵

The CEDAW committee on its concluding observation urges the government to "*establish special investigation and prosecution units and victim friendly benches in the federal court system, and provide some legal aid and assistance to women and children victims of violence.*"³⁴⁶In addition, entertain certain cases in a close court room to create confidence among victims of gender based violence, avoiding strict follow up of procedural rules by judges, provision of psychological support to victims of gender based violence also play a vital role towards the realization of accessibility of justice.³⁴⁷

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Concluding observations of the committee on the Elimination of Discrimination against women, Cited above at note 330, Para 20.

³⁴⁷ *Interview with Mulusew Deres*, Cited above at note 345.

Conclusions

- Though the constitution of Ethiopia provided that the human right provisions enshrined under the constitution should be interpreted in light of the human right instruments ratified by Ethiopia, the legal status of such instruments is not clear. This is problematic particularly when there is a clash between provision of the constitution and a given international institution. Moreover, the fact that the international human right instruments including CEDAW are not translated in accordance with the working language of the country and they are not published under the official legal gazette has created uncertainty and ambiguity on the direct application of such instruments by the national courts.
- In Ethiopia, traditional values, cultures, norms and beliefs played a significant role for the continual existence of gender based stereotypes which in a way drags the social, economic, political and cultural participation and contribution of women within the country. The status of women in every aspect of life is critically low. This is manifested by the lower economic status of women mainly because they earn less, have acquired lesser educational status, deprivation of recognition for their contribution in the labour economy such as in agricultural field and little or no participation in the decision making process even on matters that can directly affect them.
- Harmful traditional practices particularly violence against women such as intimate partner violence against women, sexual violence, marriage by abduction and rape as well as early marriage are widely accepted norms within the different parts of the country. Such traditional practices ensure the continual existence of the lower status of women within the society. The Constitution of Ethiopia under article 35(1) ensures gender equality in every aspect of life and in order to compensate the historical legacy of gender inequality within the country, it entitled women to benefit from affirmative action.
- Ethiopian society is a patriarchal one where women living both in rural and urban areas are subjected to various forms of violence. A number of complex social, cultural and independent factors has contributed for its prevalence. The causes are usually related to addictive behavior to alcohols and drugs, family history of violence, the level of education and decision making power of the partner. Most factors indicated gender inequality in terms of power that promote superiority of men. The constitution of Ethiopia put obligation on the state to eliminate harmful traditional practices that oppress or cause bodily harm to women. Article 564 in conjunction with article 553(1) of the 2004 revised penal code criminalized violence against women committed with in marriage or irregular union.
- In Ethiopia, sexual violence is greater in number than physical violence against women and the perpetrators are usually known to the victims. Sexual violence including intimidation, rape and abduction on young girls and even on small babies are quiet common. Victims of rape are usually blamed and stigmatized by family members including the community and through endorsement of public Medias. The perpetrators most often do not get punished for their wrong behaviors.

- Abduction is also the other violent action perpetrated against women within the country particularly in the rural parts of country. The problem lies on the fact that marriage by rape and abduction is not considered as a real problem rather it is considered as extremely normal mainly because the practice is deeply rooted within the tradition and norms of the society.
- The penal code of Ethiopia criminalized sexual violence against women including rape and abduction. Article 620 of the criminal stipulated that rape is punishable with an imprisonment ranging from five years to life imprisonment. Abduction is also criminalized under article 587 of the criminal code and is punishable from three to ten years of imprisonment.
- According to the health survey conducted in 2005, more than 70 percent of women undergone through the practice of FGM. The prevalence rate varies from one region to the others. In some regions such as in Somali regions the prevalence rate is extremely high ranging from 97 percent up to 100 percent. The major justifications for the practice of FGM are to control the sexual behavior of the woman and to ensure virginity before marriage. Although FGM is usually carried out by traditional health attendants, more than 20 percent girls who are living in the capital, southern and eastern parts of the country were undergone through FGM by professional health workers. Article 224 of the 2004 revised penal code of Ethiopia specifically prohibited traditional practices that causes bodily injury. According to article 568 and 569 of the criminal code, the punishment ranges from 3 months up to 10 years of rigorous imprisonment.
- Ethiopia is considered as a country where child marriage crises is prevalent up to recent years. The average percent of girls who marry before they attain the age of 18 reach up to 57 percent. The main justifications for such practice are to protect the girl from sexual violence and harassment, to strength family ties, to protect and transfer of properties and even to settle disputes. The revised family code prohibits marriage below the age of 18 though in exceptional circumstances the marriageable age might lower to the age of 16. The practice of early marriage is also criminalized within the revised penal code which made it punishable up to seven year of rigorous imprisonment.
- In Ethiopia, maternal mortality is most often associated with child birth without professional health workers, unsafe abortion, HIV infections and gender inequality because of harmful traditional practices including FGM and early marriage. The less number of women using modern contraceptive methods particularly in the rural parts of the country resulted many women not to limit the number of children they intended to have. Ethiopia has endorsed the minimum development goals. Accordingly the constitution of Ethiopia entitled women the right to access family planning education, information and capacity. The constitution further entitled women to have maternity leave with pay.
- Abortion is a criminal offence prohibited under the penal code of Ethiopia save in a very exceptional circumstance where the life of the mother is at risk or when the pregnancy is

as a result of rape or incest and etc. As a result of such prohibition, several women undergone through unsafe abortion which contributed the high rate rate of several young girls with in the country.

- Despite the legal measures taken by Ethiopia to tackle the problem of violence against women in accordance with international human right instruments, it has still persisted and goes beyond the expectation of the 21st century. Absence of civil remedies for victims of domestic violence, lack of protection such as protections of order for victims, monetary compensation and safe house are the major gaps within the legal frame work. In addition, the act that constitute domestic violence under the penal code failed to include all forms of domestic violence such as economic abuse and deprivation. Moreover, the provision of domestic violence is narrowed and meant to be applied within the context of marriage. Non criminalization of marital rape within the revised family code is also a major gap within the law as it is expressed by CEDAW committee on its concluding observation against Ethiopia.
- In addition to the law, the state failure to adopt a strategy to combat violence against women on time, failure to provide rehabilitation assistance and lack of aggregated data on the prosecution and conviction of offences are also identified as the major gaps on the enforcement of the rights.
- The punishment for FGM provided under the penal code of Ethiopia is too lenient as it is expressed by the CEDAW committee on its concluding observations against the country. Though there is a positive attitudinal change on the harmful effect of FGM, because of deep rotted traditions, social and peer pressure among girls and women, the practice has still persisted.
- In relation to early marriage, non conformity of regional family laws in line with the federal family law, under report because of lack of trust on government officials and institutions, deep rooted cultural norms and traditions, lack of clarity on the campaign against early marriage launched by the government are the major gaps envisaged on the law and its enforcement.
- With regard to sexual and reproductive health rights, though there are positive measures taken by the government, the high rate of maternal mortality and lack of access to family planning service remains to be challenging.
- Unnecessary, repeated and longer adjournments for investigation as well as integration about private and personal life of the victims that are unnecessary for the cases by the police officers are considered as the major gaps envisaged during police investigations. In addition, lack of effective strategy to collect and produce evidences by the police officers and public prosecutors, prosecutor's ignorance to prosecute the perpetrators based on appropriate provisions of the criminal code are also the main problems within the justice system.
- Court's failure to punish the perpetrators or punish them with a lesser degree of punishments even when sufficient evidences are presented to them are the major gaps

within the judiciary system. The federal supreme courts sentencing guideline number 2/2013 is found to be problematic since judges can not punish the perpetrator beyond what is stipulated under the guideline even when higher punishment is provided under the penal code.

- Regarding accessibility of justice, there are certain gaps revealed on the provision of legal aid service. Such gaps include but not limited to mismatch between the extent and the scope of the service they provide, wide discrepancy between the demand from economically disadvantaged group of people and legal aid services, provision of the services at irregular intervals as a result of lack of financial capacity and lack of appropriate, regular and functional supervision on legal aid service providers.
- Among the limited legal aid service providers to the general public, Ethiopian Women Lawyers Association is the only prominent association that provide legal aid services to disadvantaged and poor women free of charge.
- The charities and societies proclamation number 621/2009 which prevent charitable organizations working on human right issues to receive more than 10 percent of their income from abroad brought a devastating consequence on local NGOs working in the area of human rights including EWLA.
- There are also administrative problems within the judiciary system. The number of available benches working in the area of violence against women is less in number as a result of lack of budget and the necessary personnel including judges.

Recommendations

Based on the above conclusions, the following points are forwarded as recommendations in order to minimize if not possible to eradicate the existing gap between the law and the practice.

- There is a need for constitutional amendment particularly to regulate the status of international human right instrument. This has the advantage for courts to take the appropriate steps particularly when there existed conflict among the provision of the constitution and provision of a given international human right instrument. Moreover the attachment of the treaty provisions translated on the working language of the country is also the other step that the country should take in order to make easier for the right holders as well as courts to make a cross reference of such instruments easily.
- It is advisable for the government of Ethiopia to publish the human right instruments on the official legal gazette in order to avoid further confusion among judges that whether they have a duty to take judicial notice of those instruments in the absence of such measure.
- Revision of the penal code is needed in order to combat harmful traditional practices and violence against women in general. The cross reference made to the general articles to stipulate punishment of domestic violence under the criminal code should be amended to avoid confusion and a clear provision for the punishment of domestic violence shall be

incorporated. The application the penal code domestic violence should also be widen to include other domestic violence committed outside of marriage or irregular union. In addition, a new provision to criminalize marital rape should be incorporated under the penal code in order to meet the international standards as it explained by CEDAW committee on its concluding observation against Ethiopia.

- The provisions that punishes the practice of FGM and child marriage should be amended in away to punish and correct the behaviors of the perpetrators as well as to deter the commission of further similar offences. The government should also make sure those regional and religious family laws to be amended in accordance with the federal family code.
- Decisions given by the courts should give the necessary lesson to the perpetrators as well as the society that gender based violence against women is unacceptable. Necessary attention should be given to benches working on violence against women by increasing their capacity by putting in place the necessary budget, increasing the number of benches and judges working in the area. In addition, courts should be under pressure by the government to provide decision within a reasonable time. Disclosure of decisions of the court to the society using various Medias would also have a particular importance on the creation of awareness.³⁴⁸
- As it is indicated by CEDAW committee, provisions of mandatory education and training to organs of the justice system including judges about the strict application of the law and enforcement of the law is necessary to ensure the enforcement of the law and promote report commission of an offence by victims. Moreover, personnel of the justice system particularly police officers, public prosecutors and judges should be trained and advised to take cases of harmful traditional practices and violence against women seriously.
- To minimize the problem of high maternal mortality rate within the country, there is a need to increase the accessibility of sexual and reproductive health care services by increasing the number of health care services including health workers. There is also a need for creation of awareness about the use of modern contraceptive methods and the importance of using family planning.
- Necessary attention should be given to girl's empowerment. Hence schools are an important places to shape the mind sets of the younger generation, government should also put pressure on educational institutions to stop using educational materials that promotes harmful stereotypical attitudes and encourage them to give lessons to their students about the harmful effects of gender based violence including the harmful traditional practices.
- Apart from implementation of the law, in order to tackle the problem from its grass root, there is a need to conduct community discussion and conversation about the negative impact of harmful traditional practices and gender based violence. Once the community aware of the side effects of such practices, there will be a gradual attitudinal change

³⁴⁸ Ibid.

among the community. The society would feel that they are part of the solution and it would avoid the risk of the community to feel that it is imposed against them and chose not to be abide by the formal rules.

- Condemn harmful traditional practices and violence against women publicly and awareness creation about the right of women should be widely undertaken by government institutions in collaboration with NGOs, civil societies and religious institutions. Women should also be involved in community discussions and awareness creation process in order to receive lessons about their rights and encourage them to defend and report whenever their rights are violated.³⁴⁹
- Establish safe houses and permanent rehabilitations centers for victims of harmful traditional practices and violence by government and other concerned authorities is needed in order to ensure protection for victims.
- In order to fill the lack of researches and to understand the real problem behind gender based violence against women within the country, government institutions as well as NGOs including educational institutions should give particular attention for conducting depth research in area.
- By using the working language of the country, detail and readable draft document of the concluding observations of CEDAW committee regarding the measures that should be taken by Ethiopia should be publish by NGOs. This has a particular importance in creation of awareness among the general public about the works of the committee and the international obligations that the country assumed to tackle harmful traditional practices and violence against women.
- Public and private Medias such as television and radio programs, scholarly articles on news papers and magazines should play a significant role in creation of awareness to the general public. Particularly to address the rural population at large, radio stations should launch various informative programs about the laws and the negative impacts of harmful traditional practices and violence against women.
- Increase the number and capacity of legal aid centers including those centers working in the area of gender based violence and harmful traditional practices. There is also a need to amend the charities and societies proclamation number 621/2009 in order to increase the financial capacity of the already existed legal aid service providers on the right of women such as EWLA and to promote the establishment of further legal aid service providers.

³⁴⁹ Ibid.

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