Major women’s right issues in Ethiopia: examining efficiency of the law and its enforcement

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Abstract: 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 article is meant to show the readers the existence 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.

Keywords: abduction; domestic violence; early marriage; female genital mutilation; FGM; harmful traditional practice; sexual violence.


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1 Introduction

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

UDHR, ICCPR and ICSECR are the major international human right instruments which recognised 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 recognised 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. The constitution of Ethiopia entitled women several rights though it is not still perfect. The revised family code of Ethiopia also recognised several rights which were not included in the civil code of Ethiopia. The criminal code of Ethiopia has also criminalised 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. Thus, this article shows the major gaps within the law and enforcement of the fundamental rights of women. To fulfil the obligations envisaged under international human right instruments, the article also recommends the state and the relevant actors to take legislative and administrative measures to tackle the situation and increase protection for victims of harmful traditional practices and gender-based violence.

2 Major gaps on the national law and enforcement of the rights

Despite the fact that Ethiopia took various forms of legislative measures, violence against women in the country is still a major problem and it is becoming beyond the expectation of the 21st century (Berhane, 2004). The case of Kamilat Medhi (who was a victim of acid attack on her face and neck in March 2007) and Aberash Hailay (A flight attendant who lost her eyes because of stabbing with a sharp knife by her ex husband in 2011), are good examples (Seyoum, 2011). Women were and still are being subjected to various forms of physical and emotional violence without their voice being heard and not getting the necessary protection as valuable and important citizens of the country (Berhane, 2004).

The legislative measures meant to combat violence against women have a number of deficiencies. Absence of civil remedies for victims of domestic violence is the major gap within the legal framework. 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 shortcomings 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 under the criminal code of Ethiopia dealing with domestic violence are narrow 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 wellbeing 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 fails to consider the unique nature 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 mechanisms for protection, reporting and control of domestic violence is the other major gap within the legal framework (Fite, 2014).
The CEDAW Committee on its concluding observation against Ethiopia (CEDAW Committee, 2011) stated that violence against women including sexual violence is under-reported because of lack of awareness about the existing laws, victim’s lack of trust about the legal system and cultural taboos. Domestic violence has a unique nature in that it is usually committed within the context of relationship; the victim is most of the time vulnerable for further attack and dependent on the perpetrator. Therefore combating domestic violence requires more than a mere recognition of women’s right and providing lists of domestic violence (Fite, 2014).

With regard to sexual violence against women, non-criminalisation of marital rape is the major gap within the 2004 penal code. In this regard the CEDAW Committee on its concluding observation against Ethiopia further expressed its concern and recommended the state to amend its criminal code and make marital rape punishable (CEDAW Committee, 2011). Despite the legal measures taken by Ethiopian Government, sexual violence against women including rape, abduction and sexual violence have still persisted in a horrifying manner. The case of Hanna Langano, a 16 years old girl who was abducted while she was coming from school, gang raped and left dead on 1 November 2014 could be a typical example in this regard (Yebekal, 2014). It represents the untold stories of several young girls who were abducted, raped or sexually abused.

The problem of putting the law into practice is regarded as a major problem and kept the function of the law only to be ‘a tiger on paper’. Criminalising 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 (Kebede, 1999). In addition taking a longer period of time to adopt a national strategy, failure to provide rehabilitation assistance and absence of aggregated data regarding the prosecution and conviction of offences committed in relation to violence against women were also identified as major problems towards the implementation of the rights in accordance with international standards (CEDAW Committee, 2011).

In addition to the problem of law enforcement, blaming the victim or the perpetrator cannot be a solution. Rather it requires understanding of the problem and believing 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, political and economic policies. Parents should also teach their sons not to be violent as they exert efforts on teaching their daughters about safety (Yebekal, 2014).

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 (and most of them did not explore the issue to extent they should). The root causes and consequences of violence against women should be critically examined and studied. Research institutions, government and non-government organisations including civil societies need to exert their maximum effort in order to come up with appropriate and long lasting solution (Berhane, 2004).

Coming to female genital mutilation (FGM), the punishment for the commission provided under the penal code is three months to five years of imprisonment. It is not enough compare to the negative impact that can potentially cause to young girls within the country. It is only when the act cause serious health injury against the girl that the
punishment goes from five years to ten years of imprisonment. In this regard the CEDAW Committee on its concluding observation against Ethiopia [CEDAW Committee, (2011), par. 20) indicated that “…the penalties for female genital mutilation stipulated in Articles 561–563, 567, 569 and 570 of the criminal code are too lenient”. Despite the existence of a law that punishes the practice of FGM, the level of law enforcement is far away from being strong enough to protect the interest of the victims and ensure the punishment of perpetrators as it is prescribed by the law. For this reason the law lost its function of deterring the commission of further similar harmful traditional practices. The CEDAW Committee in a similar document [CEDAW Committee, (2011), par. 20] 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…”.

The main reason why it became difficult to bring the intended attitudinal change is that the practice of FGM in Ethiopia is deeply rooted in the culture, tradition and custom of the society. Despite the knowledge about the negative consequences of FGM by some of the community members in certain parts of the country, the practice has still persisted due to the social and peer pressure among girls and women [Ministry of Finance and Economic Development and UNICEF in Ethiopia, (2012), p.4]. In order to fight the practice of FGM, a strategy is employed by UNICEF through community conversation on the basis of social convention theory. The challenge here is to convince every family in the community about the adverse effect of FGM within a specific time schedule. One of the community conversation conducted in the Somali region could be a typical instance showing this challenge. During the community conversation, a 20 years old girl who did not experience 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 had undergone FGM was different. She said 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” (Getachew, 2006). Such kinds of community dialogues are quiet important in order to identify the extent of the problem and in a way show the challenges to eradicate harmful traditional practices particularly when it is deeply rooted in 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 the law, awareness creation among the community about the adverse effects of FGM in cooperation with religious and educational institutions should be given the necessary attention by the concerned government authorities and NGOs (Assefa et al., 2005). 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 violence on their health, eradicating the underlying cultural justifications of such violence and practices, destigmatizing victims” [CEDAW Committee, (2011), par.21(d)].

With regard to early marriage, the revised family code has the following major shortcomings. First, though marriage below the age of 18 is prohibited, under exceptional
circumstances marriage at the age of 16 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 legitimise several under-age marriages. Moreover, hence the application for marriage below the age of 18 could be made by the future spouses, because of their age it is quiet difficult to say that they can come up with informed and right decision about the marriage. The provision is 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) would be limited. The spouses may not reject the application made by their parents for various reasons such as, for instance, they could be under their parents’ pressure.

Second, the provision which validates early marriage if the minimum age is fulfilled at the time of application of the invalidation is also problematic. Though the family code seems to protect the already established stable family, it has the potential to encourage early marriage to be concluded hoping that it will be a legally valid marriage afterwards.

On the other hand, non-conformity of regional family laws in line with the federal family law and international instruments is also the other major gap 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 a way to confirm the rights enshrined under the CEDAW convention. The committee’s recommendation extends to the enforcement of the revised family law to ensure the equal rights of men and women before, during and after dissolution of marriage [CEDAW Committee, (2011), par. 15].

Regarding 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’ supervision on economic and sexual matters of the youth. The defective strategies followed by the government are the other major reasons for the rural community not to take 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 been in place. Some even argue that the government took the legislative measures as a result of pressure from civic and political organisations and it is meant to fulfil 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. Moreover, the expenses for accommodation and transportation for the age assessment is quiet high particularly for economically disadvantaged peasants (Mekonnen and Aspen, 2009).

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 it has brought several positive impacts. This is made possible by creating awareness and debate among peasants about important issues related to early marriage such as individual rights, sexuality, childhood and marital life (Mekonnen and Aspen, 2009). Moreover, a report given by the Ethiopian government in 2005 indicated that the practice of early marriage has decreased among the younger generation and the proportion of girls who have been marrying below the age of 15 has decreased by 30% [Path Finder International/Ethiopia,
Awareness creation among the society about the harmful effects of early marriage and the legal marriageable age through community discussion should be the main area of focus to tackle the problem from grass root level.

2.1 Gaps within the justice system

2.1.1 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 responds to victims’ demand, 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 have 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 against women such as rape cases as serious as other dangerous crimes (Bekele, 2015). A discussion on the major gaps within the justice system is made below through analysis of selected cases.

2.1.2 Selected cases

When we look at the major gaps during police investigation, most women who are victims of violence (particularly those living in the rural parts of the country) do not know which specific police station receives reports related to violence against women cases. In addition 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 (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016). The fact that victims are usually requested to produce evidence is also a challenge. This is because some kinds of violence against women such as, for instance, 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 collect evidence has its own contribution for evidences produced by police investigators to be weak. (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016).

In such situations the public prosecutor might decide not to take the cases before a court of law. Even though he or she takes 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.

2.1.2.1 The case of Federal Public Prosecutor v. Abdisa Alemu (2015)

2.1.2.1.1 Facts of the case

The defendant is accused of abducting and raping a young girl and thus 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 defence 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 victim and the accused.

2.1.2.1.2 Decision and reasoning of the court

The court dismissed the case presented against the defendant for lack of evidence 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 showed only that 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 was 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 good 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 emphasised that such loopholes open doors 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, 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 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 a 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 judgement on the issue particularly if the perpetrator is charged with a lesser criminal offence than he or she was supposed to be charged with.
2.1.2.2 The case of Federal Public Prosecutor v. Kassa Tassew (2015) is a good example to show such scenario

2.1.2.2.1 Facts of the case

The defendant is accused of committing rape against a 14 years child girl on 24 July, 2013. The accused brought the victim from Amhara region (northern part of the country) through marriage and by promising her parents that he will educate her and take care of her until she becomes 18 years old. 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 defence during police investigation stated that he has married her and had sexual intercourse with her at his house. However, in his statement of defence that he gave before the court denied that he had sexual intercourse with the victim.

2.1.2.2.2 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 did not 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 two years and nine 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 been denied by both parties and such action is clearly prohibited under the criminal code. The prosecutor’s 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 this sub-article” (Ethiopia, 2004). The 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 in to spousal relationship or not was not raised by the prosecutor as well as by the court. Besides even if she gave her consent to enter in to a marriage, it cannot be taken as she was in spousal relationship with the accused since she is underage. Most importantly, the phrase “or in any other way directly dependent upon or subordinate”
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under Article 626(4) is an indication of the legislature’s intention of allowing courts to follow a wider method of interpretation depending on the circumstances of the case. In 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 and there have been a possibility that the violation could have fallen within the ambit of Article 626(4) and the years of rigorous imprisonment could have been five to 20 years.

Apart from the problem arising from police investigators and public prosecutors, parents and families of the victim tend to hide or punish their daughters mainly because they want to avoid shame and social isolation from the community. It is not only very difficult to find evidence in most rape cases, but also the family members of the victim do not want the perpetrators to be punished even when there are concrete evidences. This is usually because they want 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 (Bekele, 2015). Most of the time the victims lack confidence or would be shy to give their statement to police investigators about the violent act committed on them. 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 (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016).

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 a lesser degree of punishment than provided under the law. This is mainly as a result of ignorance or failure to follow gender sensitive approach while dealing with the cases.

2.1.2.3 The case of Federal Public Prosecutor v. Andinet Alemayhu (2015) could be cited as a very good instance in this regard

2.1.2.3.1 Facts of the case

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

The defendant denied committing the crime though he admitted during the police investigation that he had sexual intercourse with the victim repeatedly and he did not tell her to undergo abortion since it could be dangerous for her wellbeing. 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.

2.1.2.3.2 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 5 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 11 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 does not seem 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 article acknowledge, there is no law which prohibit punishing a perpetrator for the crime of incest unless all participants of the crime are convicted. Third, the court confused a procedural law concept (due process of the law) with a substantive law (whether or not the accused violates a provision under the penal code which is a crime of incest on the case at hand).

Article 626(1) of the criminal code provides that having sexual intercourse with a young girl, aged 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 25 years. The court did not provide the maximum years of imprisonment though punishing the perpetrator for more than ten years has the potential 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 Federal 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. The commission found the Ethiopian Government in violation of the African Charter on Human and Peoples’ Rights on the ground that the government failed to provide a ‘decent system of justice’ and decided to pay USD 150,000. The commission further urges the country to take appropriate measures to tackle the problem of marriage by abduction and rape (Mohammed, 2016).

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 possibility 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 from the abductor and government authorities she flees out of her country (Cole, 2016). Her story is an indication of the fact that enforcement of one’s right is quiet difficult (even when there existed a perfect national
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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.

On the other hand, 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 (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016). 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.

2.1.2.4 The Case of Federal Public Prosecutor v. Serawit Denke (2015) shows one of such instances

2.1.2.4.1 Facts of the case

The defendant is a married man who has two children accused of having 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 defendant argued that he did not 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.

2.1.2.4.2 Decision and reasoning of the court

On 31 December 2015 the Federal First Instance court, after examining all the evidences, came to the conclusion that at the time when the alleged crime was committed the accused and the victim were alone in the house and all the evidence 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 escape from criminal prosecution. As a result the court held the defendant guilty of the crime 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 guideline provided for similar offences, the court decided the accused to be punished for nine 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 ages of thirteen and eighteen to have a sexual intercourse is punishable with a minimum of five years up to 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 indicated in the penal code because of the federal sentencing guideline.

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 deterring possible similar future violence against women.

To tackle the major gaps within the judiciary system-tackling stereotype among the personnel working within the system is quiet important. In this regard, the United Nations (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 and level of patriarchal system and stereotypes within the society. Studies revealed that stereotypical attitudes become challenging for women to get the necessary justice when their right is violated. It has a negative impact on judges making them to become partial and thus influences how the judge perceives criminal offences related to the human rights of women (UN Human Rights Office of High Commissioner, 2014).

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 discourages victims to appear before a court of law and defend their rights (UN Human Rights Office of High Commissioner, 2014). 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” [CEDAW Committee, (2011), par. 21].

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 (Metiku, 2014). 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 improves 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 [Ethiopian Women Lawyers Association, (2014), p.2].

Equality before the law and the right to obtain effective remedy during violations of fundamental rights and freedoms is recognised under Article 7 and 8 of UDHR as well as under article 14 of ICCPR (Metiku, 2014). Accordingly, the Constitution of Ethiopia also recognised the right to access to justice by stating that “everyone has the right to bring a justifiable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power” [Ethiopia, (1995), Art 37(1)]. In 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 include:

- mandatory pro bono services provided by licensed advocates (which are administered by ministry of justice)
b legal aid programs launched by NGOs, charity organisations and professional associations (such as Ethiopian Women Lawyers Association and Ethiopian Lawyers Association)

c legal aid clinics established within public universities (Metiku, 2014).

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 a discrepancy in the type of services they deliver. Some legal aid centres provide only oral advice and preparation of pleadings while other centres deliver wider forms of services ranging from oral advice up to provision of mediation and psychological as well as social support (Ethiopian Women Lawyers Association, 2014, pp.2–3).

Second, 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 service is provided by law school students the quality of the service is compromised. Third, due to lack finance some legal service providers such as Bahir Dar University do not provide the service regularly. This has the potential to hamper the quality of the service because of its unpredictability. Moreover, since several of the university-based legal aid centres are dependent on external funding, their continued existence 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 deliver. Though in some legal aid centres monitoring mechanism is put in place, it is not functional as it should be because of capacity reason. Fifth, 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 centres are also identified as the major gaps (Ethiopian Women Lawyers Association, 2014, pp.3–4).

Apart from the existing legal aid providers to general public, legal aid centres meant to provide legal aid services to disadvantaged 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 through the legal framework and awareness creation. EWLA’s major area of focus includes research and law reform advocacy, legal aid services and public education. Legal aid is the central activity that EWLA has been and is delivering to disadvantaged and poor women free of charge. The provision of legal service includes counselling and representation before a court of law by volunteer members of the association (Burgess, 2013).

The adoption of the charities and societies proclamation 621/2009 narrowed the role to be played by civil societies and charity organisations. The proclamation provided that Ethiopian charities can only generate 10% of their income from abroad and they have to generate their 90% income from local funds. Raising 90% income from local funds is nearly impossible to a country where 40% of its population is living below poverty line. Such measure brought a devastating consequence on local NGOs working on human right issues including EWLA (the only organisation working on defending the right of women
in Ethiopia) that cut off 70% of its budgets. The bank account of EWLA was also frozen since the government; allegedly, found that it was generated from abroad (Center for the Rights of Ethiopian Women, 2014). Such kinds of measure by the government hamper the already existed institutions working towards realisation of human rights and provision of legal aid services to disadvantaged women. It also puts a huge hurdle for the establishment of similar organisations 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 lesser available criminal benches working in the area of violence against women compared to the number of files presented before them. Some criminal benches such as Lideta criminal bench receive several applications including those 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 takes two and half years at the first instance court (excluding the higher and Supreme Court). The main reasons for such major gaps include 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, is also the key reasons for the above drawbacks (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016).

In fact, there are improvements made to ensure accessibility of justice for victims of gender-based violence. Such measures include:

1. establishment of special 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 specialised hospital
3. establishment of specialised investigation unit within the various police stations
4. putting in place special prosecutor personnel to deal with violence against women cases
5. provision of safety houses in extreme situations for victims until the cases are finalised (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016).

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 specialised knowledge in the area and ensure appropriate remedies to the victim, it has the potential to create burden on such courts. The length of time a trial proceeding takes to deal with a given case would be extremely long due to the current higher number of cases and the few specialised benches that are established within the country (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016).

The CEDAW Committee on its concluding observation urges the government to “establish special investigation and prosecution units and victim friendly benches in the
Major women’s right issues in Ethiopia

4 The way forward

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 criminalise 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 punish the practice of FGM and child marriage should be amended in away to punish and correct the behaviours 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 (Interview with Judge Mulusew Deres, Federal First Instance Court, 12 February 2016).

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.

Increase the number and capacity of legal aid centres including those centres 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.
References


**Acronyms**

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<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>CEDAW</td>
<td>Convention on Elimination of All Forms of Discrimination against Women.</td>
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<td>CEDAW Committee</td>
<td>Committee on Elimination of Discrimination against Women.</td>
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<tr>
<td>FDRE</td>
<td>Federal Democratic Republic of Ethiopia.</td>
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<tr>
<td>EWLA</td>
<td>Ethiopian Women Lawyers Association.</td>
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<td>FGM</td>
<td>Female genital mutilation.</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights.</td>
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<td>ICESR Committee</td>
<td>Committee on Economic, Social and Cultural Rights.</td>
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<td>NGO</td>
<td>Non-governmental organisation.</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights.</td>
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<td>UN</td>
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