

Ethiopian Journal of Human Rights

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Articles

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Women with Disabilities, their Challenges in Laws and Administration of Justice: Cases from Addis Ababa

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TABELE OF CONTENTS

Articles	Page
Women's Property Rights and Claims in Customary Justice Systems a Case Study of Ambo and Hawassa	
Meron Zeleke, Tadesse Kassa and Berhanu Mosissa	1
The Implications of Multiple Spousal Relationships: Experience of Women in Hawassa and Adama Towns	
Fasil Mulatu Gessesse and Abdulatif Kedir Idris	38
Help Seeking Experiences of Female Victims of Intimate Partner Violence: Legal and Social Protections	
Anchinesh Shiferaw and Kuribachew Hailu	74
Rights and Reality: The working Conditions of Female Factory Workers in Selected Manufacturing Industry Sites in Ethiopia	
Kokebe Wolde, Fekade Alemayehu, Tadesse Tesfaye	108
Women with Disabilities, their Challenges in Laws and Administration of Justice: Cases from Addis Ababa	
Bezawit Bekele, Yonas Mulugeta and Hanna Girma	1

Statement by Chief Commissioner of the Ethiopian

Human Rights Commission

Almost twelve years have elapsed since the Ethiopian Human Rights Commission was established to promote and protect the human and civil rights of all Ethiopians. Since its founding, as its constitutional and statutory mandates requires of it, the Commission has sought the improvement of all human rights, irrespective of their category, collective or individual nature. In the last twelve years, the Commission has strived to identify, address, and seek redress for violations of all rights and privileges guaranteed to all Ethiopians in their Constitution. While the Commission is headquartered in Addis Ababa, it works throughout the country; eight centers in the Regional States diligently coordinate their efforts to realize the Commission's numerous goals and objectives.

The Ethiopian Human Rights Commission, as its establishment law ensures, is an independent human rights institution recognized by the Constitution of the Federal Democratic Republic of Ethiopia. It has been discharging its statutory responsibilities through its constituting Proclamation, No. 210/2000. One of its important mandates is to create awareness in the public regarding human rights instruments provided for under the Constitution as well as in international instruments ratified by Ethiopia and ensuring their implementation in the country.

The Commission's mandate also includes to undertake investigations into allegations of violations of human rights and fundamental freedoms and to the extent such violations are found, to ensure that they are properly and sufficiently addressed without impunity. It is with this fundamental conviction that the Commission, notwithstanding time constraints and potential risk to its staff, conducted several independent investigations into the disturbances in some parts of the country in the last couple of years.

The Commission's investigations made significant findings of fact, including violations of human rights, and based on those findings, made recommendations to the House of Peoples' Representatives. Some of those recommendations have included calls for accountability of officials who violated their oath to the public. The Commission's bold and independent findings has been hailed by many groups, both domestic and international, as important in the development of human rights in the country, and the

Commission as an exemplary human rights institution and watchdog. In this vein, the Commission has also actively participated in international human rights meetings and training sessions for its staff.

The Ethiopian Human Rights Commission in the last several years has also focused on monitoring and evaluating prison conditions throughout the country, reviewed allegations of police misconduct, and also given due attention to the human rights issues faced by vulnerable members of society, including women, children, the elderly, and the disabled. It has given advice to government agencies and provided legal aid services to those who could not afford to advocate for themselves. As stated above, the Commission's investigations emphasized the importance of accountability and good governance, and in some cases, has compelled changes in both public policy and the conduct of those in positions of power. We are of the belief that the realization of human rights in our nation requires persistence and unrelenting advocacy on behalf of the people.

While these successes are significant, the Commission believes there are some areas of human rights that require improvement. The relentless advocacy on behalf of our citizens cannot be fully achieved with our current capacity limitations such as the paucity of skilled manpower and resources among others.

The Ethiopian Human Rights Commission envisions having constructive engagement with policy makers, civil society organizations, international partners, and other stakeholders in various endeavours that promote human rights. For example, over the years, the Commission has had active and fruitful collaboration with the Center for Human Rights (CHR). The Ethiopian Journal of Human Rights, published by the CHR, is an example of our numerous areas of collaboration with universities. We wish to expand our collaboration with the CHR and Addis Ababa University, given our fundamental conviction that universities play crucial roles in the enhancement of human rights through teaching, research, advocacy and community services.

Ethiopia is currently in the midst of growth and reform in almost every aspect of the economy and democratic system. It is impossible to deny the tremendous challenges of good governance and accountability which

contributed to some of the disturbances I mentioned above, however, the Commission believes that such challenging moments present enormous opportunities for growth and improvement, especially in the human rights realm. Our nation of more than 100 million, the second largest in the continent, is also territorially large. The challenges it faces, especially in the area of human and civil rights, are consequently multi-dimensional. We believe, however, that such wealth in terms of human resources also allows us to seek and find solutions from diverse sources. This endeavor requires the participation of a broad and cross-section of our society to be able to successfully advance the country's human rights agenda. The Commission therefore calls upon all governmental and other stakeholders as well as students of higher learning to join us to identify, address and resolve the various human rights challenges our country faces.

The Ethiopian Human Rights Commission strongly believes that the Ethiopian Journal of Human Rights contributes immensely to initiating scholarly debate on human rights related themes and adds ultimately to the promotion of human rights and values. Finally, I would like to take this opportunity to restate the Commission's continued interest in further strengthening its relationship with the CHR and contributing towards the realization of the objectives of the journal.

Dr. Addisu Gebreigzabhier,
Chief Commissioner, the Ethiopian Human Rights
Commission,

Editor's Note

The Ethiopian Journal of Human Rights (EJHR) is a multidisciplinary journal published by the Center for Human Rights, Addis Ababa University (CHR-AAU). This third volume of the EJHR features a special issue entitled "*Women, Law and the Administration of Justice*" dedicated to findings of research project carried out by the CHR-AAU in collaboration with partners.

The five thematic areas identified within the framework of the research project are: (1) Women's Property Claims in Customary Justice Systems, (2) The Working Condition of Female Factory Workers, (3) Experiences of Female Victims of Intimate Partner Violence: Legal and Social Protections, (4) Law, the Administration of Justice and Women with Disabilities, and (5) Implications of Multiple Spousal Relationships: Experiences of Women. Accordingly, the five articles included in this special issue fall within these five general thematic areas.

This EJHR's Special Issue covers contributions based on rigorous empirical research carried out within the framework of the Access to Justice Project; which by itself is part of the CHR's wider commitment to further Women's Right Agenda through broadening of the evidence base to combat violation of rights as well as through sustained and focused advocacy practices.

The Access to Justice Project of the AAU-CHR was a scaling up of a pilot project called "Legal Literacy, Rights Advice and information for the Poor People": (2008-2012) initiated through partnership forged between Active Learning Center (the University of Glasgow, United Kingdom) and Organization for Social Justice in Ethiopia. The Access to Justice Project was implemented in partnership with the Law Schools of Adama, Ambo and Hawassa Universities, with financial assistance by the Norwegian Ministry of Foreign Affairs. The overall objective of the Project is to make a long-term difference to the lives of poor people by raising awareness of their legal rights and by providing them the means by which they can secure redress to rights and social justice. The targeted beneficiaries of the Project are poor and disadvantaged section of the society living in Addis Ababa, Adama, Hawassa, Ambo and surrounding areas of these urban centers.

I would like to thank members of the editorial committee, the external reviewers and the authors for their valuable contributions in ensuring the continuity of the EJHR. Furthermore, we would like to thank the Ethiopian Human Rights commission for sponsoring the publication of this and preceding volumes of EJHR and for the fruitful collaboration with the Center of Human Rights.

Meron Zeleke(PhD)

Editor in Chief of the Ethiopian Journal of Human Rights

Women's Property Rights and Claims in Customary Justice Systems

A Case Study of Ambo and Hawassa

Meron Zeleke, Tadesse Kassa and Berhanu Mosissa

Abstract

Drawing on ethnographic research focusing on lived experience of women in two designated areas, this study presents structural and perceptual challenges that impede women's recourse to formal legal procedures in relation to property claims. The research investigates the norms, values, procedures, institutional structures and actors involved in parallelly functioning justice systems that frame rights and address disputes relating to property rights of women. Furthermore it sheds light on the obstacles women encounter in pursuing and enforcing immovable property claims. The study also explores the potential complementary role customary justice institutions play in safeguarding the rights of women over immovable properties. Last but not least, it examines if certain aspects of institutional competition exist, ostensibly flowing from the fact that their competences coextend over similar causes of actions.

Key Words; Property Rights, Women, Customary Courts, Cultural Norms, Ethiopia.

I. Introduction And Methodological Approaches

The empirical investigation undertaken in this research draws on a cursory review of cases submitted to legal aid offices of the Center for Human Rights of Addis Ababa University in Ambo³ and Hawassa⁴ which indicated that number of claims related to immovable property rights submitted by women to the legal aid clinics were disproportionately lower than similar cases brought by men. Preliminary consultations held with the local community and legal aid staffs at both sites pointed out that in resolving property disputes, the largest majority of women in the study areas resort to customary justice institutions.

³West Shewa Administrative Zone, Oromia National Regional State, Ethiopia.

⁴Sidama Administrative Zone, Southern Nations, Nationalities and Peoples Region, Ethiopia.

This pattern triggered a research intended to understand and analyze women's experience in relation to property rights, the nature, normative structure and functioning of parallel justice systems, the different factors that inform women's decisions in using/disusing formal legal procedures when seeking redress, and the potential complementary roles of traditional justice institutions.

The spatial range of the study in West Shewa Zone is limited to Wechen village at the outskirts of Ambo town. The ethnographic research focused on the *yaa'aa-yabboo* (Yabbo-assembly). Four factors accounted for the choice of this specific customary dispute resolution institution: the first is the wider reputation of the institution of the *yaa'aa-yabboo* and broader catchment area it covers in the region where it operates. The second factor is the extensive participation of women in the *Yaa'aa-yabboo* proceedings. Third, unlike most other customary justice institutions operating on *ad-hoc* bases, the *Yaa'aa-yabboo* holds regular hearings. The last key factor is the number and type of cases handled by the institution.

The most important center in the study area identified, as focal point of the research undertaking was the *Warra-danfaa*, a *Yaa'aa-yabboo* located at Wechan, a village located fifteen kms South-East of Ambo Town. The *Warra-Danfaa* holds hearings once or twice a week, depending on the number and type of cases.

Spurred by similar considerations, the geographical focus identified for the case study in southern Ethiopia was Hawassa City and its adjacent district (*woreda*), Dore – both located within the Sidama Zone. Hawassa Zuria is one of the nineteen *woredas* administrative structures in the Sidama Zone. As in West Shewa Zone, tiers of customary dispute resolution institutions operate in the Sidama Zone – the main customary dispute resolution institution selected for the case study being the hierarchically established forum operating at the *clan* (*gosa*) level in *Dore District, Doyo Otilcho Kebele*.

As empirical investigation that endeavored to understand factors influencing women's use or non-use of formal justice institutions and grasp their lived experiences in the hands of traditional dispute resolution forums, the research capitalized on qualitative methods which are effective in identifying intangible elements such as social norms and values. This approach helped in learning perspectives and experiences of the main subjects of the study, the meanings they put to their involvements and status in different contexts, and their interpretations of the lived experiences. Furthermore, the method assisted in getting the observations of other stakeholders and participants of the research.

Ethnographic studies were conducted in both study sites by a team of three lead researchers and three assistants. During the field studies, the research team employed various data collection tools. Preliminary discussions were held with different stakeholders providing researchers the opportunity to further identify the relevant stakeholders.

The study team conducted *in-depth interviews* with a number key informants at both sites including: representatives from district and zonal police offices, women and children affairs offices, zonal and district culture and tourism offices, heads of customary justice institutions, elders, women residents in the study areas, women clients of customary justice institutions, heads of agriculture and rural development offices, judges from zonal and district courts, representatives from the SNNPR (Southern Nations, Nationalities and Peoples' Region) Regional Security Administration Bureau and informants from *Kebele* administrative functionaries. By and large, the choice of interview partners was dictated by their degree of relevance to the theme investigated. Most interviews were conducted in *Oromiffa* and *Sidamma* languages.

Focus Group Discussions were held at both study sites with the objective of acquiring valid data on issues that need group consensus and to draw diversity of opinion by eliciting internal debates. One FGD was held in each study site consisting a group of participants coming from different socio-economic background a heterogeneity the research team capitalized on to get more nuanced and diverse information. The study also employed unstructured conversations engaging a cross-section of the local communities, allowing for spontaneity of ideas and enriching the data collection undertaking by posing questions developed in the course of the interview.

Furthermore, the research team made use of non-participatory observations by immersing in live conflict resolution sessions of select customary justice institutions; these hearings provided the team the opportunity to closely detect the practices and procedures applied at various phases of the dispute settlement process. The observations offered a more nuanced and dynamic grasp of situations that could not be easily captured through interviews and focus group discussions.

II. Review Of Literature On Conceptual Framework Of Forum-Shopping And Property Rights Of Women

Forum shopping is a conceptual framework adopted in this research as the analytical and theoretical tool for understanding the phenomenon of women's decision-making processes in submitting property-related claims to specific dispute resolution platforms. However women's rights to

immovable property holding may be structured normatively, the notion of forum-shopping helped the researchers in twigging the various factors that inform women's decisions to use or refrain from using the formal legal architecture and in grasping data on alternative systems that women recourse to.

A previous study by Keebet Benda-Beckman introduced the concept of 'forum-shopping and shopping forums' based on the empirical findings of a research conducted in Indonesia. The author identified and examined both non-state and state institutions that deal with disputes in the area – including the *Adat* (the indigenous setting), mayor/village council, and office of religious affairs, formal courts, and Islamic courts.⁵ Similarly, Noyes argued the availability of different institutional settings provide a fertile ground for forum-shopping processes. In line with this, Busch asserted that the presence of alternative dispute settlement bodies gives the opportunity for forum shopping whereby parties are left with making choices as to where to present litigations.⁶

In Ethiopia, the pluralistic legal order provides a fertile ground for forum shopping.⁷ Prior investigations conducted on forum-shopping in Ethiopia found that one part of the pull-factors appealing to the conscience of the ordinary public included such institutions' focus on reconciliation and re-establishment of social harmony, their cultural involvement and procedural flexibility.⁸ Few studies also investigated how women's representation in customary justice systems affects women's property rights. Various scholars have identified gender disparity as one of the major characteristic features of local institutions of dispute settlement.⁹ In most instances, women are denied the right to partake in dispute settlement processes, to initiate cases, defend positions, or be a witness in customary justice institutions.¹⁰

⁵Keebet, Benda-Beckman v. 1984. *The Broken Stairways to Consensus: Village Justice and State Courts in Minangkabau*. Dordrecht: ICG Printing press.

⁶Busch, Marc. 2007. "Overlapping Institutions, Forum Shopping and Dispute Settlement in International Trade". *International Organization* 61(4):757.

⁷Fentaw, Alemayehu. 2007. "Legal Pluralism: Its Promises and Pitfalls for Ethiopia". *Jimma University Journal of Law*.1 (1): 35-66.

⁸Zelege, Meron. 2010. "Ye Shakoch Chilot: The Court of the Sheikhs. A Traditional Institution of Conflict Resolution in Oromia Zone of Amhara Regional State, Ethiopia". *African Journal of Conflict Resolution*.10 (1): 63-84.

⁹Pankhurst, Alula and Getachew Assefa. 2008. *Grass-root Justice in Ethiopia: The Contribution of Customary Dispute Resolution*. Addis Ababa: Centre Francis d'études éthiopiennes.

Tarekegn Adebo and Hanan Tsadik. (Eds) 2008. *Making Peace in Ethiopia: Five Cases for Traditional Mechanisms of Conflict Resolution*. Addis Ababa: Master Printing press.

¹⁰ Ibid.

In humanities, social sciences and law too, discussion on women's property rights, access to property and immovable property disputes constituted one of the most important pillars of the discourses. Ethiopia's national enterprises in relation to women, issues of discrimination, inequality and rights over immovable properties have also been treated on different levels. Various policies and strategy documents have endeavored to structure the national normative set up into more focused actions and legislative undertakings on eliminating inequalities and prejudices and ensuring women's access to property.¹¹ The formal justice chains consist of processes and institutions women have to navigate through in seeking redress. These are both complex, economically unaffordable and are characterized by pervasive gender discrimination; often, such factors leave women with a fewer options, urging them to resolve grievances outside the formal justice systems – through alternative dispute resolution systems.¹² The decisions to resort to alternative systems including those based on traditional, customary or religious laws are mostly forced upon them.¹³

On the other hand, several accounts argued that remedies availed to women through the informal justice systems are more accessible to women litigating property-related claims; they have the potential to provide quick, affordable and culturally-relevant remedies. Not a few legal resources too seem to be consistent in holding that informal justice mechanisms suffer from several faults and hence render no meaningful justice to women: they remain prejudicial to the interests of women, are typically characterized by the exclusion of women from their processes. Furthermore, they tend to be susceptible to corruption and abuse of power, require payment from claimants or impose heavy fines, likely privilege those who are well informed and wealthy, reinforce existing power structures, and promote domination and influence of men.¹⁴

¹¹A few examples include The National Policy on Women (1993); The Growth and Transformation Plan II (2015/16); Ethiopian Women's Development and Change Package (2005); The National Plan of Action for Gender Equality 2006-2010 (2006); and Ethiopia's Millennium Development Goals Report (2010)

¹²United Nations General Assembly. 2012. *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*; United Nations Committee on the Elimination of Discrimination against Women (CEDAW). 2011. *Access to Justice Concept Note for General Discussion*.

¹³Ibid.

¹⁴United Nations Committee on the Elimination of Discrimination against Women (CEDAW). 2010/2013. *Access to Justice Concept Note for General Discussion* (CEDAW); United Nations Committee on Elimination of Discrimination against Women. 2013. *General discussion on women's access to justice: economic and practical obstacles to access to justice for women living in poverty*.

On top of issues and challenges related to the structure and functioning of dispute resolution forums, several empirical studies had also reviewed another intertwined dimension of women's property right regime *the right to own, access and control immovable property*. Women's right to property has been conceived as a broad notion that includes the right to acquire and dispose any movable or immovable property – obtained directly through their own labor or indirectly through inheritance.¹⁵

In this regard, the African Gender and Development Index – collecting data from twelve African nations including Ethiopia – concluded that the average ratio of women's access to land is described as being less than half of men.¹⁶ The latest data from 2015 showed that in sub-Saharan Africa, customary land tenure systems widely exclude women from ownership or control of land, leaving women to represent a mere 15% of landholders.¹⁷ In countries such as Ethiopia with a predominately agrarian community, land remains the most valuable property.¹⁸

An array of studies have demonstrated that women in different parts of Ethiopia are denied basic rights of accessing land due to cultural norms and values relating to dominant exogamous marriage systems. Zenebework postulated that women's lack of decision making over immovable resources such as land contributes to their overall subordination in Ethiopia; for rural women, a major indicator of material deprivation could be traced to their lack of access to land.¹⁹ Likewise, Hussein submitted on the marginalization of rural women in possessing basic resources, including land.²⁰ Tamrat's historical anthology presented how women in northern and central parts of Ethiopia were deprived of the right to access and control land during the

¹⁵Benschop, Marjolein. 2002. *Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?* UN Habitat Report 76. : <https://www.un.org/ruleoflaw/files/rightandreality.pdf>. (Accessed on January 7, 2017).

¹⁶African Gender and Development Index. 2015. Accessed from; <https://www.afdb.org/en/documents/document/africa-gender-equality-index-2015-empowering-african-women-an-agenda-for-action-53123/> (. Accessed on March 7, 2016).

¹⁷ *ibid*

¹⁸Rahmato, Dessalegn (eds.) 1994. *Land Tenure and Land Policy in Ethiopia After the Derg*, Working Papers On Ethiopian Development. Center for Environment and Development. University of Trondheim.

¹⁹Tadesse, Zenebework. 2000. "Revisiting Rural Development Through a Gender Lens." in *Issues in Rural Development: Proceeding of the Inaugural workshop of the FSS*. Edited by Zenebework Tadesse. P.29. Addis Ababa

²⁰Ahmed, Hussein. 2014. "Women's Right to and Control over Rural Land in Ethiopia." *Global Journal of Current Research*. 2 (4): 81-93.

feudal epochs of the thirteenth to twentieth centuries.²¹ Meheret discussed the discriminatory practices exercised during the land distribution schemes sponsored by the state, leaving most land allotted to women that were marginal, far from homesteads, or not wholly cleared.²² Other works argued that in some places, agricultural extension services tended not to reach women at the same pace as they reached men.²³

Customary norms governing access to property and ownership rights in the Amhara Region dictate share-entitlements of property in cases of divorce, whereby, in many instances, women are granted a right of partition only in relation to movable properties.²⁴ In SNNPR among the Konso, women play crucial role in food production, but are denied the right to participate in the management and decision-making processes affecting the resource; if a husband dies without being survived by a child, the widow would have no right of retaining the husband's land.²⁵

In his study featuring the practice in Wolaita, Hussein argued quite similarly that land ownership is generally considered as the exclusive domain of men; the research established that women have no customary right to inherit land from family, and the control of land during marriage falls under the husband.²⁶ Another research highlighted the same failings of property right regimes in relation to women, and submitted that customary

²¹Haile, Tamrat. 2013. "Women's Right to Resource Access in Northern and Central Ethiopia: A Historical Survey of Land Tenure System from the 13th to 20th Century." *African Journal of History and Culture*, 5(7): 143-150.

²²Ayenew, Meheret. 1994. "The Ketto Resettlement: A Brief Comparative Survey of the Land Tenure System, 1985/86 and 1993". Proceedings of the Second Workshop of the Land Tenure Project, Working Papers on Ethiopian Development, Center for Environment and Development. University of Trondheim, Norway.

²³Aredo, Dejene. 1994. "Female-Headed Households in Two Contrasting Regions in Ethiopia: Access to and Management of Resources". *Ethiopian Journal of Development Research*.16 (1). Addis Ababa, Ethiopia.

Tiruworq, Tizazu&YigremewAdal. 2000. "Beyond Land Redistribution: Access to, Utilization of and Control over Land and other Resources by Rural Female-Headed Households: The Case of Three *Weredas* in the Amhara Region". Submitted to 12th OSSREA Gender Issues Research Competition for Eastern and Southern Africa, Addis Ababa.

²⁴Teklu, Askale. 2005. "Land Registration and Women's Land Rights in Amhara Region, Ethiopia in Securing Land Rights in Africa". *Research Report 4*. Russell Press. Nottingham, UK.

²⁵Sunta, Yilma. 2002. "The Role and Status of Women in the Food System of the Konso of Southwest Ethiopia." Unpublished MA Thesis. Addis Ababa University, Department of Social Anthropology.

²⁶Ahmed, Hussein. 2014. "Women's Right to and Control over Rural Land in Ethiopia." *Global Journal of Current Research*.2 (4):.81-93 .

laws in the Gumuz region regulate land; these laws give no recognition to women's rights to own or inherit such property.²⁷ The literature on the experiences of Oromo women in relation to property rights is not particularly different.²⁸

In contrast, few scholars argued that women are not wholly deprived of property and inheritance rights among the Oromo society. A case study on the Guji Oromo found out the *dhaala*, a widow inheritance by in-laws, ensures the continuation of property ownership right of women.²⁹ Similarly, the practice of *sororate* marriage practiced within the same community, whereby a girl inherits a sister's husband upon the death of her married sibling, is described as an aspect of ensuring women's access to property.³⁰

These series of studies demonstrate the scale of variations, preconceptions and discriminatory treatment women endure. It is argued here that in the study areas, too, women continue to hold little decision-making powers over immovable resources and enjoy limited rights to own, access or control land –despite explicit constitutional guarantees that situate them on equal footing as men in relation to land-holding rights. Gender-based discrimination continues to manifest in different forms, including in matrimonial property regimes, inheritance and in the handling of claims and disputes. However, the scale of rights women enjoy in particular settings vary from culture to culture. Furthermore, there has been a significant change over time in Ethiopian history pertaining to the degree of women's right to property which evolved from a strong patriarchal set up during the Imperial epoch (1930-1974) and Derg regime (1974-91) to a more liberal setting in post-1991 Ethiopia where due attention has been given to promoting and protecting gender equality.

III. Introducing The 'Parallel Legal Systems' Operating In The Study Areas

Legal pluralism in Ethiopia is a complex phenomenon featuring three distinctive forms. The first archetypal of legal pluralism inevitably arises

²⁷Bekele, Kalkidan. 2012. "Cultural Practices that affected the status of Women in Benishangul Gumuz, Mandura *Wereda*". Unpublished MA Thesis. Addis Ababa University, Institute of Gender studies.16.

²⁸Woldetensaye, Almaz. 2007. "Women's Access to and Control over Land in the current Land Administration System in Two Rural *Kebeles* in Ada'a *Wereda* of Oromia Region." Unpublished MA Thesis. Addis Ababa University, Institute of Gender Studies.7.

²⁹Debsu, Dejene. 2009. "Gender and Culture in Southern Ethiopia: An Ethnographic Analysis of Guji-Oromo Women's Customary Rights." *African Study Monographs*. 30(1),15-36.

³⁰Ibid.

from the country's federal system whereby judicial powers are apportioned along three-tiered structures of the federal and states' governments: the Supreme Courts, High Courts and First-Instance Courts. The second form descends from the multifarious legal traditions simultaneously operating in the country and originating from diverse sources: customary laws, religious laws and the formal legal system. The third form of legal pluralism refers to the diverse customary laws specific to the various ethnic groups in the country—each having its own distinctive system. The study verified the existence of pluralistic legal orders in both study sites. Such plurality manifests itself in different forms of inter-institutional diversity between formal and non-formal institutions and intra-institutional diversity witnessed within customary legal institutions themselves.

The ethnographic study conducted in West Shewa Zone identified the prevalence of the Regional State's formal courts structured under three tiers: the State Supreme Court, State High Court and State First Instance Courts. The ONRS Supreme Court has final judicial authority over matters of State law and jurisdiction. It sits in Addis Ababa with roving benches assuming jurisdiction throughout the various zones of the region. The State High Court operating in the study area is based at the zonal capital, Ambo, while the State First Instance Courts operate at the district levels. The State High Court in Ambo also has delegated jurisdiction over matters falling under the powers of the Federal First Instance Courts. Outside of the courts' structure also operate the *Kebele* Committees established by edict of the regional parliament, where institutions are granted extensive jurisdiction in relation to disputes involving rural land rights.³¹

The study also found the existence of intra-customary institutional plurality in both sites, demonstrating the vibrancy of deep-rooted customary forums of dispute settlement that persist to date. Such plurality unveils a great degree of diversity in terms of the positions, which each customary institution manifested in accommodating the multifaceted rights and interests of women. A few of such institutions are faith-based establishments whose legitimacy is traced to a charismatic transcendental "Being" believed to mediate disputes and set the governing norms, sanctions and procedures for reconciliation. Others draw their governing norms from cultural ethos of the communities whose normative structure is largely informal and characterized by remarkable flexibility and heterogeneity. The customary institutions operating in both sites differ across places. Hence, the terms 'customary law' and 'customary institution'

³¹Proclamation to amend the Proclamation No.56/2002, 70/2003, 103/2005 of Oromia Rural Land Use and Administration Proclamation No.130 /2007.

do not necessarily signify a uniformly structured system conventionally accepted in all settings.

The Sharia court, too, is another platform recognized under the FDRE Constitution with a three-tiered structure, operates in the West Shewa Zone. The Sharia court system functions as a distinct organ with jurisdictional functions falling outside of the regular judiciary, representing the only religious court formally established at the federal and state levels. Another notable institution operating in the West Shewa Zone is the traditional Oromo elders' council, *Jaarsummaa*, which convenes on ad-hoc basis. The *Jaarsabiyyaa*'s are individual mediators representing personalities who are conversant in tradition, norms and values of the society. The term *Jaarsa* has dual connotations: a gerontocratic authority of mediation gained with an old age and the reconciliatory skills of a person. The word *Jaarsain* the second construal symbolizes sensibleness and wisdom ascribed to mediators.

The other customary institution that operates in the same Zone is the *Gadaa* court whereby the *Aba Bokus* and *Aba Gadas* (within the *Gadaa* system) assume greater role in reconciling disputes of various types and magnitudes. The authority of the mediating elders of the *Aba Bokus* is derived from their position in the *Gadaa* system. The mediators are individuals who entered the *Gadaa* age grade (40-48 years old) and considered as repositories of customary law. The study area is one of the places where there *still* exists a strong *Gadaa-based* conflict resolution processes as opposed to other parts of the Oromia Region, where the *Gadaa* system is degenerating.

A vibrant religio-customary court of the *Qallu Yaa'aa-Yabbo* also operates in the study area serving a wider geographic scope and people from different socio-economic backgrounds. The *Galmaa-Qaalluu* (*Qaalluu's* ritual hall) is a major place for worshipping *Waaqaa* and settling disputes. In every *Qaalluu* center, a ritual known as *kudharfan* (fourteenth) is performed bi-monthly. On these occasions, many followers gather at the *galmaa* to take part in the rituals and settle disputes. Cases handled at this forum include marital disputes, paternity cases, land inheritance disputes, boundary disputes, land lease issues and a wide range of criminal cases. The most prominent center of the *Qallu* is in *Warra-danfaa*. At the *Warra- Danfaa*, there are five senior *daanyii*s (mediators) who served as mediators for over three decades. Contrary to the government's political discourse which privileges ethnicity as the major principle of social organization, the vitality of local institutions of dispute settlement such as *yaa'aa-yabbo* has been particularly evident since they cut across ethnic and religious boundaries, with clients hailing from different parts of the country.

Similarly, the study conducted in Hawassa showed the existence of a legal order characterized by inter-institutional and intra-institutional pluralities mentioned above. The formal court system in the SNNP Regional State is similarly structured along three tiers whereby the State Supreme Court sits in Hawassa, the regional capital. Hawassa's position as regional and zonal capital makes it a seat for the State Supreme Court and the Sidama Zone's High Court as well. First Instance Courts operating at the *Woreda* level are the most vibrant formal institutions in the study area, adjudicating on a range of civil proceedings involving women in immovable property claims.

But, most importantly, the National Regional State's Rural Land Administration and Use Proclamation provided for the establishment of *Kebele Land Administration Committees* with first instance adjudicatory powers over 'all disputes' involving 'land possessions'. The role of such institutions is particularly accentuated given that their jurisdiction extends to all aspects of 'land holding rights' as defined under the Proclamation. This includes 'disputes' over use rights between a husband and wife in relation to land holdings, the joint use and management of land possessions, the renting of land possessions and sharing of proceeds, the acquisition of joint land use right certificates, the leasing of land (which by law requires the agreement and signature of both spouses), and equality of rights in sharing land holdings registered in spouses' name.³²

As in West Shewa Zone, layers of customary dispute resolution institutions function in the Sidama Zone. The *Ayde* is the lowest dispute resolution forum operating at family levels of clan organization, having jurisdictional competence to deal with various types of disputes. Where a dispute is not resolved at such forum, an appeal could be lodged to a clan's leader, the most frequent and regularly operating platform for resolving disputes in the study sites. The research team interviewed two of such leaders – one representing the *Murero* clan from *Tula kebele* (Hawassa) and a second from the *Doyo Otilcho kebele* in the *Dore* district. Procedurally, a clan's leader receives an oral complaint and then gathers elders on a fixed date to examine the matter and mediate, or as appropriate, render decisions. When an allegation is disputed, the elders hear witnesses as in formal courts of law, and may further undertake field inquiries when the dispute involves a

³²Proclamation No.110/2007, The Southern Nations, Nationalities and Peoples Regional state Rural Land Administration and Utilization Proclamation, 13th Year No.10, Awassa 19 Feb.2007; The Southern Nations, Nationalities and Peoples Regional State, Rural Land Administration and Use Regulation, 13th Year No.66/2000, Awassa Dec. 24/2007.

boundary or the partition of immovable property. The elders in *Dore* sit once a week, every Tuesday.

While less complex cases may be submitted to elders and receive a final resolution on the same day they are presented, most others are concluded after 4-5 adjournments. Land related disputes are often complex, and therefore take even longer time. No codified law or a semblance of structured normative guide exists directing the elders in their routines. Instead, they employ their own 'sense of justice' held in 'conscience' as gained from 'long life, practice and tradition'. The elders' decisions are mostly delivered in 'mediating' tones – focusing on reconciliation, and the decision-making process is claimed to be 'participatory' – in the sense that it 'involves all elders presiding over a case and also heeds to the heartbeats and opinions of ordinary people gathered on the occasion'.

The clan-level institution of justice in the study area may confirm, vary or reject decisions rendered at a family level. A person not satisfied with a decision passed by clan elders may still petition before the *Baduna Badana Songo*, geographically covering the whole *Abela* area, comprising *Shebedino*, *Tula*, *Kurchi* and parts of *Leku*. Further appeals may be pursued with the *Woma*, although in practice, this rarely happens. The *Woma* is largely concerned with large-scale disputes involving communities.

The main customary institution of dispute resolution, which the study selected for holding interviews, is a hierarchically organized institution at the *clan (gosa)* level operating in *Dore* district, *Doyo Oticho kebele*. A clan leader from the adjacent *Tula kebele*, too, had been interviewed to draw parallels and contrasts between the traditional systems operating in the region.³³

³³ Interviews conducted with leaders of traditional justice institutions: Sermiso Semago, tribal chief and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*; Darimo Darusa: local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*; and Hanaqo Ebiso: local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*. August 2015.

IV. Norms And Values Governing Property Rights Of Women In Customary Justice Institutions

Norms are basic elements of culture; they represent humanly created rules designed for the purpose of regulating social behavior. Often, the construction of norms emanates from the ultimate need for orderly, stable and predictable interaction within communities. Norms are internalized through socialization as folkways, taboos, rituals etc., whereby dominant ideologies, beliefs and values are passed on to generations.

Within customary justice institutions operating in the study areas, there exist various normative orders that shape individual and social behavior and are attended by different sanctioning mechanisms. Local community norms come into operation in property disputes involving women in various cases such as inheritance, donation and divorce. When the object of possession refers to valuable assets such as land, the properties are invariably reserved for men or to their lineage; the norms in both regions are structured to maintain such status. Only in exceptional cases are women allowed to retain ownership, and even then, certain conditions apply.

In addition to the clearly defined normative stipulates of custom, there are some subtle norms related to inheritance rights founded on the primogeniture principle in which the first-born son in a family retains a privileged position in accessing, managing and inheriting property. While this is described as a phenomenon that is undergoing change, informants in both study areas emphasized the prevalence of strong gender bias in the operation of such norms defining male family members as the sole legitimate heirs.³⁴

In patriarchal social settings, local norms dictate a gendered socialization. Men are granted near-absolute powers in the administration of family properties. For example, leaders of traditional justice systems in both sites stressed that in instances where a father or husband dies, the widow may retain a right of use over an immovable property for as long as she lives, and may even lease same to a third party. But she would have to pass-over the property once a male offspring grows up and claims the property. Male children are often considered as legitimate heir, although in some occasions, land may be allotted to a female offspring giving her usufruct right until she gets married. The parental lineage of the man, alone, is associated with ownership of immovable property.

Furthermore, property that a woman acquires before or during a marriage constitutes matrimonial property over which the husband assumes strong

³⁴Mediators/judges of customary justice institutions interviewed in Ambo and Hawassa emphasize that valuable properties are mainly held in the possession of men.

power – including the right to sell the property without a wife’s consent; the legal presumption of co-ownership in matrimonial properties does not seem to have much effect in curbing a husband’s social authority.

In the study areas, local norms also define the enforcement mechanisms of customary justice institutions that would be applied in cases of non-compliance. In Ambo area, parties to dispute who fail to abide by decisions of mediators are labeled as ‘*gadidarbi*’ in Afan Oromo meaning ‘*afengachi*’ (non-compliant) in Amharic. A complicated system of sanctions applies – with varying degrees of effectiveness and follow-ups depending on whether the non-complying person is a man or a woman. Ostracization from local community’s life and participation is one of the most frequented forms of sanction.

Unlike formal courts, most customary institutions in the study areas do not have formalized enforcement mechanisms at their disposal, and hence they at times resort to spiritual sanctions. The implementation mechanism applied by many, if not all, customary institutions operating in West Shewa Zone is the ultimate fear of spiritual malediction.³⁵ In this particular context, the intensiveness and nature of spiritual punishment is poorly-defined but the punishment is generally extended in different forms such as destitution, sickness, misfortune in career, loss of property, accident, and death of a family member or self.

Among the Sidama, too, the *sera* system operates widely as an enforcement mechanism used by the customary institutions whereby a non-compliant person is subjected to different forms of punishments – including ostracization from community membership. The contents and structure of norms that apply to women in relation to immovable property disputes are briefly explained below in relation to the lived experience of women in the study areas.³⁶

It suffices to note here that today the norms and procedures operate in a steady flux and are subjected to immense political pressures of change. This story of gradual transformation and selective reform has been confirmed by detailed account of informants from both study areas.³⁷ But, it was also noted that often, elders have been reluctant to implement new approaches that undermine the traditional workings of custom in relation to women and immovable property rights. On the other hand, it appears that the

³⁵Interview with Aba Simello Ejigu Guta, (mediator at the customary court), Western Shewa, Ambo, August 12, 2015.

³⁶Refer to discussions in sections 5 and 6.

³⁷Interview with Aba Simello Ejigu Guta, (mediator at the customary court) Western Shewa, Ambo, August 2015; Interview with Darimo Darusa, local elder/judge of Sidama traditional justice forum in *Doyo Otilcho Kebele*, Hawassa, 2015.

state's sustained campaign and political drive on issues of equality and non-discrimination has 'modestly' affected how elders and customary justice forums conceive of women and their status in society in relation to the ownership and management of immovable properties. It urged some to adopt certain 'reforms' to maintain vitality and/or cope up with the new political initiatives for change. There has been a sense of recognition by customary leaders that, institutionally, customary forums could not sustain long by flouting the fundamental values of the constitution and the political order. However, this does not rule out the fact that against aspects of change, there is a great resilience and continuing influence of customary courts at grassroots level as presented in this paper.

This was evident from the data congregated from the study participants. For example, an elderly mediator with 35 years of experience at *yaa'aa-yabbo* of the *Waraa Danfaa Qaluu* and *Abba sampa'llo* at the *GadaBoku Tule* court admitted that the introduction of 'gender equality' principle in the context of inheritance is a recent phenomenon. Today, it is acknowledged that women are accorded equal rights.³⁸ Upon death of a husband, disputes between a widow and her in-laws involving matrimonial property are resolved on a basis of a norm that 'gives priority to the widow, who, in such circumstances, is considered to be a victim losing a beloved one'.³⁹

Remarkably, though, these observations on 'reform of the contents of customary norms' or the principles of 'equality' stand in stark contrast with the workings and perspectives shared by numerous *Abba Gedas* and *Abba Bokus* operating in the same district. From detailed account of three women interviewed in Ambo area, it was observed that the customary institutions operated 'fundamentally against the presumptions of equality and non-discrimination'; but, evidently, women's accounts from this region have been greatly inconsistent. Many women submitted the values and norms applied in each particular dispute ended up providing them 'fair share' in their property rights, while not so few women complained of the 'ill-workings' of customary institutions in their lives.⁴⁰ Many spoke of the institutions so highly, and confirmed that they knew of the existence of alternative forums for seeking redress, but chose to submit disputes before traditional institutions because of factors that included physical proximity,

³⁸Interview with Abetu Ejeta, Head of *Aba Gedas of BokuChitu*, Western Shewa, August 2015

³⁹ Ibid.

⁴⁰During the interview with Abeba Siesa, one of the women having experience submitting a case before traditional justice forums in Ambo, it was disclosed that she had serious reservation towards customary institutions since they suffer from nepotism.

simplicity, dependability and 'fairness and non-discrimination'.⁴¹ No doubt, the institutions have introduced new changes along the line with a view to catching up with the normative stipulates of the federal constitution, or perhaps just to remain important- as self-preservation strategy. In the Sidama region, too, the nature of norms and values implemented by customary justice institutions beg the same queries. The basic discriminatory framework of the rules remains fairly intact, mainly in the context of divorce and inheritance proceedings.

Some developments are, however, in the making. In the *Tula* area, for example, the chief of the *Murero* tribal forum acknowledged that when a dispute arises between a widow and brother in-laws involving land, the previous normative dictate that 'the in-laws shall have a right of inheriting the land if the deceased is not survived by male descendant' has now changed; 'we reformulated the norms and have introduced modifications: a brother-in-law could no longer inherit a land where a deceased person is survived by a wife and female offspring, and the widow will retain the right of use over the immovable property for as long as she lives.'⁴²

On the other hand, information obtained from elders presiding over dispute resolution forums in the *Doyo Otilcho Kebele* was not only inconsistent, it was also defensive. Two elders interviewed during the fieldwork held quite presumptuously that 'female off springs never invoke a right of share over immovable property... they know the culture and hardly dispute the fact that they have no right of partition in such cases'; but they admitted that 'until such time when a woman gets married, she retains a right of use and administration over a land'.⁴³

V. Lived Experience And Perceptions Of Women In The Study Areas

Within the broader framework of the research undertaking that endeavored to understand the handling of women's property claims in traditional justice systems, one of the main objectives identified was to document and analyze women's actual experience and attitudes in relation to forum-shopping and the normative structures and procedures that apply in disputes involving their immovable property rights.

The study found several factors that informed women's choice making. The key informants described the pluralistic nature of the justice setting in both study areas as a valuable resource that furnishes disputants with

⁴¹Interview with Gebiyanesh Mekuria and Abeba Siesa, Western Shewa, *Ambo*, August 2015.

⁴²Interview with Sermiso Semago, tribal chief and judge of Sidama traditional court in Hawassa, *Doyo Otilcho Kebele*.

⁴³Ibid.

opportunity to choose forums that best attend to their respective interests. Obviously, the very subjective, individualistic and complicated nature of the forum-shopping process compels that extreme caution should be applied in appraising the ‘representativeness’ of the informants’ accounts so as to avoid hasty generalizations and oversimplification that might potentially conceal the nuances of the choice making process.

Women interviewees referred to various factors affecting their choice making. The first is related to ‘geographical proximity’ of customary justice institutions. Litigants contended that, concentration of formal judicial functionaries mainly in urban centers affects their predisposition to recourse to these forums.⁴⁴ Unlike customary institutions, formal judicial structures are located in major urban centers – with no hierarchical presence at the village/*kebele* levels.

The second factor key informants accentuated is ‘procedural familiarity and friendliness’ as a factor affecting their decisions. This involves linguistic clarity, simplicity and approachability of customary institutions making them convenient forums; they submitted that the language used in customary tribunals is the same as the language used by the disputing parties – whereas judicial proceedings often employ language that tends to be technical and complicated. Natta Xurii, a mediator at both the *Yaa’aa-Yabbo* of the *Waraa Danfaa Qaluu* court and an *Abba sampa’llo* at the *GadaBoku Tule* court described this factor as follows:

The procedural advantage in contrast to formal courts lies mainly in the participatory nature of traditional justice forums; the mediators involved in cases and those presiding over cases have equal decision-making power.⁴⁵

The third factor raised by the key informants is the relative ‘relevance of norms and values’ applied by customary institutions, an element labeled in this work as ‘conceptual compatibility’. Customary tribunals are described as entities guided and informed by existing realities than legislative edicts that may not conform to local necessities and ways of lives. The fourth factor relates to the ‘restorative justice element’ of customary institutions, which focuses on re-establishing social harmony and operates in non-adversarial milieu.⁴⁶

⁴⁴Interview with Bontu Shiferaw, Wechan, Western Shewa, August 2015.

⁴⁵Interview with Natta Xurii, mediator at both *Yaa’aa-yabbo* of the *WaraaDanfaa Qaluu* court and *Abba sampa’llo*, Western Shewa, August 2015.

⁴⁶Interview with Berhanu Soboka, (key informant), Western Shewa, *Ambo*, August 2015.

The fifth factor is the ‘flexibility of customary forums’ which, informants described, features an aspect of change tuned to time and circumstances; the norms are characterized as not being too rigid and are predicated on local ideals of justice and equity. What is more, the greater possibility of holding negotiations in customary institutional platforms and the informal nature of the hearings that provides litigants time to present and defend accusations – are elements that appeal to litigants. The forums’ flexibility in allowing disputants ‘participate’ in the dispute settlement processes has also been highlighted by a few informants. The sixth factor is related to the issue raised in SNNPR, Sidama zone, which pointed out societal bias and cultural influence affecting the choice making processes in dealing with disputes at local levels.⁴⁷ A few informants also highlighted that they are familiar with the customary institutions, the mediators and the governing norms in communities, and consider that this features as a ‘pull factor’ affecting decisions to present cases before customary justice forums.⁴⁸

On the other hand, the study participants also identified several ‘push factors’ in relation to formal courts of law, which, they alleged, have swayed their decisions not to pursue claims before such forums. A few informants alleged that financial expenses ‘required’ for pursuing cases at *woreda* and high courts had forced them to resort to other options in comparison to the ‘inexpensive feature’ of proceedings in customary tribunals. Kuli Legese, a female key informant in Ambo, noted:

The formal courts are meant for *abbahumnass* (those who are more powerful). They serve the interests of the well educated and the wealthy men; illiterate women like me can only lose a case at formal courts, and hence, for me, the *Bokku* represents *kalachaa* (a window of hope) for the poor.⁴⁹

In the Sidama Zone, informants also complained of the prohibitive costs related to seeking professional services in court proceedings. The other push factor narrated by the informants is related to the relative expediency of pursuing cases before customary justice institutions. Such forums do not generally suffer from backlogs, an element that allows the efficient handling of cases– often in a matter of weeks, or even days.

⁴⁷Interviews with five women from different *kebeles* in Dore *Wereda*, Hawassa: Meseret Dasalo (*Bafano Kebele, Dore*); Lemlem Alemu (*Bafano Kebele, Dore*); Hansawe Kinisa (*Bafano Kebele, Dore*); Wonkitu Hariso (*Doyo Otilcho Kebele*); Lam’itu Nae (*Jara Karara Kebele*), August 2015.

⁴⁸ Focus group discussion with three judges from *kebele social courts* in Western Shewa; Degefu Duresso Elamu (*Goromot iKebele*) Tsegaye G/Medhin (*Elamu Muja kebele*) and Dhinsa Rakansaa Gosu (*Kora Kebele*).

⁴⁹ Interview with Kuli Legese, Western Shewa, *Abebe Deyo Kebele, Ambo*, August 2015.

A perceived fear of favoritism was identified as the third push factor where the informants expressed reservations in relation to corruption and nepotism. Kuli Legese, a 49 years old woman from *Abebe Deyo Kebele*, accused her husband of polygamy at the *yaa'aa-yabbo* (religio-customary court) in Wechan.

I refrained from taking my case to the formal court despite the push by friends and family members to do so because this would have given my husband a better chance of winning the case since he is conversant with the legal norms. He can easily manipulate the judges whom he knows very well – as he was himself a judge at *kebele* social courts.⁵⁰

Formalism and over-emphasis of courts on evidentiary rules has also been accounted as discouraging element. The non-existence/loose registration system of marital properties aggravates the problems in relation to women, especially married women, when they claim a share in property in the event of divorce.

In contrast, many interviewees from Sidama Zone expressed resentment towards the customary justice institutions – hinting at direct and indirect coercions applied by the community – which affected decisions with regard to forums.⁵¹ The findings of the study in relation to the Sidama Zone showed that decisions rendered by the *Chimeso* often favor men, another element affecting forum choosing. The discriminatory treatment of women in the hands of the *Chimes* reportedly prevailed both in relation to immovable and movable property disputes; female informants also identified the ineffective enforcement mechanism of customary justice systems which is yet another factor for choosing regular courts of law.⁵²

VI. The Interface And Interplay Between Customary And Formal Institutions Of Justice

In the foregoing sections, the analyses focused on factors that affect women's decisions in forum-shopping, their lived experience before formal and customary justice institutions and their perceptions of the norms that apply in the resolution of disputes. From the discussions above, while it is evident that parallel systems coexist in the designated areas of the study and assume jurisdiction over immovable property disputes involving women, the narrative on the value structures and jurisdiction of the normative orders does not wholly explain what 'complementary role' customary justice institutions play in safeguarding the fundamental rights

⁵⁰Ibid.

⁵¹Interview with Meseret Dasalo, *Bafano Kebele, Dore*, August 2015.

⁵²Interviews, Note 45.

of women over immovable properties, and if certain aspects of ‘institutional competition’ also exist, ostensibly flowing from the fact that their competences coextend over similar causes of actions.

In one of the seminal works on the subject, it was submitted that legal pluralism not only posits the existence of multiple legal spheres, but also develops hypothesis concerning the relationship between them; the existence of legal pluralism itself is of *less interest* than the *dynamics of change and transformation*.⁵³ It is this dynamics of change and influence between the two coexisting systems that needs to be understood, as the insight gained would inform the direction that should be adopted in designing appropriate interventions.

a. Overview Of The Complementary Role Of Customary Justice Institutions

No systemic study has been conducted in the past mapping out the precise physical reach of the parallel justice systems operating in Ethiopia – comparing their operational space to formal judicial structures of the state or aggregating case-flows adjudicated each year in both normative orders. In a limited context of the empirical investigation pursued in this study, it would probably be possible to conjecture on the volume of disputes involving women’s claims in immovable properties that had been litigated before the *Ambo* and *Dore woreda* courts and compare the same with the workings of local customary institutions: the elders’ council *Jaarsummaa*, the *Qallu Yaa’aa-Yabboo*, the *Bokkuu-Cittuu* and *Bokkuu-Xulee* (Western Shewa), the *Murero* tribal forum in *Tula* or the elder’s forum operating in the *Doyo Otilcho Kebele* (Hawassa).

However, such contrast will depict only a segment of the claims presented by women; a plethora of other competing institutions religious, customary, indigenous and community based dispute resolution mechanisms operate concurrently in the same areas with overlapping mandates. They ‘assume’ jurisdiction formally or without the state’s acknowledgement and endeavor to ‘deliver’ women homegrown justice in personal and public matters. Complementarity – in the sense of dispensing redress to claims in property rights by offering parties vertically and horizontally spread institutional platforms – is but certain, inevitably flowing from the multiplicity of actors involved in the parallel legal system.

Modern state institutions of justice are not only of recent creation in Ethiopia’s pluralistic legal order, the structures have not also had the

⁵³Merry, Sally Engle. 1988. ‘Legal pluralism.’ *Law & Society Review* 22(5): 879.

opportunity to exert authority beyond 'narrow' geographical confines even when, constitutionally, they retain 'near-exclusive' mandates in relation to matters adjudicated by customary justice institutions. As Assefa submitted, the informal justice structure in Ethiopia *transcends* the formation of the nation state and the introduction of formal justice mechanisms.⁵⁴

Ethiopia's Constitution provides that *no* customary laws or practices that contravene its order could create legal effects and that the basic law only 'projected' that the state may establish or extend official recognition to religious and customary courts to adjudicate disputes relating to personal and family laws. Nevertheless, customary institutions have continued to operate without receiving the state's formal recognition.⁵⁵ Again, the Civil Code of Ethiopia (1960) has proclaimed that all customary rules (or norms) previously in force in relation to matters covered in the Code should be 'repealed'; and yet, today, traditional institutions and their normative order continue to offer remedies in many parts of Ethiopia – creating 'legal situations' on nearly all the subject matters covered by the Code.

Similarly, the Criminal Code of Ethiopia (2004) was crafted in a legal centralist language to apply 'exclusively' to all persons who committed any of the crimes specified in the Code in the territory of Ethiopia, and still the parallel justice system assumes jurisdiction on petty as well as grave offences covered by the penal legislation.⁵⁶ The Revised Family Code of Ethiopia (2000) gave limited room for the workings of religious and customary norms –should they comply with certain essential conditions; more importantly, the Code decreed any laws, decisions or practices inconsistent with its contents shall 'not be applicable' on matters provided for in its dictates, which basically extends to most claims of personal nature adjudicated by traditional justice institutions.

In the contemporary context of the social and legal reality in Ethiopia, customary institutions continued to operate as fairly autonomous mechanisms with own identities and loosely organized machineries of justice. Mainly, this ensued from the evident incongruity between the state's perceived status of 'monopoly' in enforcing legal orders and its

⁵⁴Fisseha, Assefa. 2013. 'Customary Dispute Resolution Mechanisms and the Rule of Law: Areas of Convergence, Divergence and Implications.' In *Law and Development, and Legal Pluralism in Ethiopia*. Edited by Elias N. Stebek and Muradu Abdo. 118. Justice and Legal System Research Institute. Addis Ababa.

⁵⁵Art.9, 34 and 78 the Constitution of the Federal Democratic Republic of Ethiopia (1995).

⁵⁶This does not ignore new developments under the *FDRE Criminal Justice Policy*, which opened some space for the operation of alternative dispute resolution forums at the discretion of the state's law enforcement agencies.

‘limited capacity’ – opening a space to a plethora of competing institutions and preexisting normative structures regulating social conduct.

The study found that the overall organization of the normative orders in the Ambo or Hawassa areas is not any different. Within the larger frame of the legal system functioning in both localities, customary justice institutions continue to play significant roles, ‘complementing’ gaps in terms of availability, accessibility and effectiveness of the formal justice sector. In fact, in some areas, they by default constitute the most ‘important’ avenues of justice.

In this regard, it was observed that while the statistics availed during the field studies is clearly rudimentary to warrant broader generalization, it is self-revealing in terms of the continued harmonizing role of traditional forums: *each year* the *Dore woreda* court receives *only* about 30 cases submitted by women on disputes relating to immovable properties – mostly arising in the context of inheritance or divorce proceedings.⁵⁷ The *Dore woreda* Land Administration Office confirmed that on the basis of instructions issued by the *woreda* court, it annually processes and transfers land possession certificates to about 15-20 women.⁵⁸ These figures hardly compare with the average of 5-12 case transactions handled *each week* by the tribal forum operating in just one constituent of the *Dore woreda*– the *Doyo Otilcho kebele*,⁵⁹ or to the ‘too many’ similar disputes submitted *every week* to the *Marrero gosa’s* tribal forum in *Tula*,⁶⁰ or *every two weeks* to the *Yaa’aa-yabboof* of the *WaraaDanfaa Qaluu*.⁶¹

Key informants from the judiciary agree: while no systemic research had been undertaken to identify the number of cases submitted each year to both justice forums in the area and why women prefer one medium over the other, the number of charges on immovable properties presented by women before formal courts has been extremely limited. In the Sidama and Western Shewa zones, the reason for such trajectory is partly explained by

⁵⁷Interview with DankuraDelemo, Judge and Vice President, Hearing-Decisions Work Processes, *Dore Wereda Court*, August 2015.

⁵⁸ Interview with YosephChira, Land Administration Expert, *Dore Wereda*, August 2015

⁵⁹Interviews with Darimo Darusa, local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*; and Hanaqo Ebiso: local elder and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*, August 2015.

⁶⁰Interview with Sermiso Semago, tribal chief and judge of Sidama traditional court in *Hawassa, Doyo Otilcho Kebele*, August 2015.

⁶¹Interview with NataaXurii, mediator at two customary courts – the *Yaa’aa-yabboof WaraaDanfaa Qaluu* court and *Abba sampa’llo* at the *GadaBoku Tule* court, August 2015.

the strong prevalence of parallel justice systems that adjudicate on the same issues as courts of law.⁶²

Such 'standing' of traditional justice institutions, as vital mechanisms that complement dispute resolution services rendered by formal courts of law, is not necessarily attributed to failure, on the part of the state, to provide 'accessible' structures for vindicating rights at the *kebeles*. In fact, contrary to the observation by some of the informants in terms of failure to 'reach out' the lower tiers, the state's actions have been influenced by ideas tweaked along 'legal monism' and social regulation under 'one sovereign authority'; and despite the Constitution's narrow opening to a pluralistic legal order, the state has undertaken to stretch (and permeate) its dispute settlement mechanisms to the local levels of community lives. This is evident in many national legislative enterprises, and in the particular context of the issue at hand, one notes that the rural land administration and use proclamations of both regional states – Oromia and SNNPR – have clearly provided that 'all disputes' over 'land possessions' shall in the first instance be brought to the *Kebele Land Administration Committee* (SNNPR) and the *Kebele Administration* (Oromia).

From these readings, it follows that it would be wrong to assume, as convention often does, that women's recourse to traditional justice forums in both *woredas* is 'forced on them' by the absence of meaningful choice of forums. With some room for variations, data assembled from both study sites, and particularly from the lived experiences of women in the hands of the *Jaarsummaa*, the *QalluYaa'aa-Yabboo*, the *Bokkuu-Cittuu* and *Bokkuu-Xulee* (Western Shewa) confirm that an approach that generically brands customary justice systems and their redress in women's immovable property claims as inherently prejudicial is ill-founded. Such perspective undermines the strong harmonization role of the informal justice systems in providing quick and culturally relevant solutions.

While it is evident that 'many' institutions suffer from certain fault-lines such as discriminating against women, in many parts, customary institutions function as default establishments, and assume more than a 'complementary role' in resolving multifaceted problems encountered by women against the background of the state's limited resources and structural reaches. In many regions such as in Western Shewa and Sidama, they operate side by side with the state's justice infrastructure, significantly filling jurisdictional voids in relation to a significant number of women who prefer and consciously decide to pursue their claims before them.

⁶²Interviews with Dingama Digde, Vice President, *Sidama Zonal High Court*; Agegnehush Ajema, Office Head, *Western Shewa Women and Children's Affairs*, August 2015.

Inevitably, the *Jaarsummaa*, *QalluYaa'aa-Yabboo*, *Bokkuu-Cittuu*, *Bokkuu-Xulee*, *Murero* (in *Tula*) or the same tribal forum operating in *Doyo Otilcho kebeles* will continue to function as key local institutions of dispute resolution in immovable property claims – whether or not the state ventures to recognize them. Within the broader context of the pluralistic legal order, their presence and normative influence is discernibly great, and in land-related disputes, the state's institutional penetration is not even remotely close to supplanting their roles.

b. The State's Views And Actions In Relation To 'Weak' Legal Pluralism

In light of the arguments above, the next rational question one raises, informing the intervention strategy of the study in meeting with one of the research objectives, would then be how the state apparatus in the designated areas 'views' and 'values' their 'complementary' roles, and what aspect of their functions informs future actions by pertinent stakeholders in the area, including the Center for Human Rights. This is particularly relevant considering the varied degrees of discriminatory norms that customary institutions uphold in relation to disputes submitted by women in immovable property rights.

In connection with women's rights of equality and protection from discrimination, this analysis departs from the extensive account provided above on 'norms and values governing property rights of women in the study areas' which identified certain problems of the informal justice systems. Many, if not all, women in the study areas had experienced treatment that falls below the Constitution's protective regimes in relation to immovable property rights; in some cases, the institutions' mechanisms have exacted considerable harm on women's economic interests and social standing, and reinforced power structures that typically feature the influence of men. This is really a cause for concern and institutional actions.

The empirical data congregated during the fieldworks involved cross-interviewing a range of state and non-state actors comprising women who reported land-related grievances and discriminatory treatment in the hands of informal justice forums, other women who claimed to have benefited from proceedings of customary justice institutions, judges of *high* and *woreda* courts, elders (mediators) and clan leaders presiding over customary justice forums, land administration officers, heads of women and children's affairs offices, and members of *kebele* social courts. Not all share the same values, profess comparable perspectives or retain identical vested interests in relation to the status of women in society or with regard to the key question of how women's basic rights should be safeguarded or promoted. Accordingly, each stakeholder's reaction to a similarly framed set of

questions had been different and mostly inconsistent in both study areas. This generated a methodological challenge in ascertaining the typical value preference that should be adopted for purposes of the study.

As the state 'alone' wields sovereignty and the supreme power of its positive laws transcends beyond the realms of any competing normative structures (of custom, tradition or religion for example), however, it logically follows that the standard for evaluating the 'legitimacy' or 'admissibility' of value preferences adopted by any institution would be the constitutional set up which the state itself establishes. How informal justice structures conceive their legitimacy, authority or roles in relation to the rights and welfare of women would hardly matter; they have to function within the framework of a value system ordained by the constitution, and hence subscribe to the minimum substantive safeguards of rights provided to women under the basic law. The politics behind the government's disinclination in encouraging the full force of legal pluralism notwithstanding, the state apparatus assumes a constitutional duty not only to establish women's legal capacity, but also to work on all conceivable measures, including reforms, to guarantee that no 'individual' or 'institution' in the public, social or private sphere limits women's rights in its actions. No derogations could be permitted against the constitution's equality or non-discrimination principles to make way for the operation of family, tribal, religious or customary norms or institutions. This perspective is very critical; institutional complementarity should be conceived only in a context that fosters women's recognized property rights.

This argument does not necessarily refute Kyed's concept of a 'hybrid political order', which considers that justice institutions are not only pluralistic and overlapping, but also that they *influence* and *transform* each other. It is simply to assert that the Ethiopian context concurs more plausibly with the 'weak' legal pluralism, granting the state a privileged position as a political framework that provides security, welfare and representation and hence showing itself as capable of sharing authority, legitimacy and capacity with other structures (although only at *own* will and within defined parameters).⁶³

Such a view on normative supremacy highlights how customary institutions should be 'viewed' – facts of operational supremacy notwithstanding, and most importantly, what approach the state infrastructure in the study areas represented through *kebeles*, *woreda* courts and offices on women's affairs, and other stakeholders working on the causes of women, 'adopt' in relation to the complementary role of

⁶³Kyed, Helene Maria. 2011. 'Legal Pluralism and International Development Interventions.' *Journal of Legal Pluralism*. No.63.p.12

customary justice institutions. Questions of interest that require further scrutiny include: should the state (and other stakeholders) focus on educational campaigns, informing women on alternative avenues of justice availed? Should the state implicitly work on a degree of formal recognition, while engaging in their 'reforms' that perfect institutional weaknesses such as prejudices against women's recognized rights? Or, in contrast, should the state simply exert on the absorption or eventual replacement of traditional institutions through its own structures? .

Drawing on broader conceptual discourses on legal pluralism, Tamanaha contended that in some cases, coexisting sources of normative ordering may be poised to clash; while some systems try to account for this with specific legal provisions, others are simply silent about interaction with other normative systems.⁶⁴ The Ethiopian experience vaguely falls under the former, but it is noted that the state did not actively endeavor to tame diversity, nor had it worked to nurture complementarity.

With regard to how customary justice institutions handle immovable property disputes, a careful synthesizing of the data availed in Hawassa concludes that the state generally labels women's experience under such systems as 'harmful practice'; this is a view shared by all the *five* women interviewees in *Dore*. On the other hand, while many state agencies in West Shewa lamented women's experience on the subject as 'deeply discriminatory', their views had not been shared consistently by *half a dozen* of women talked to during the field studies; paradoxically, no fewer than *nine* women interviewees from the same region also confessed that if they were to institute new land related suits, they would prefer doing so before formal courts of law. Such varying accounts of women could not be explained easily and may well affect our understanding of trends and the nature of future intervention strategies proposed by the study.

During the field studies, it was observed that the state's enterprise in combating the discriminatory workings of traditions or in managing clashes between two normative orders has *merely* focused on ameliorating women's conditions through a chain of awareness-raising trainings, and even these were pursued in limited areas. There is, of course, a clear understanding that the state's obligation in ensuring compliance with human rights standards extends to the practice of 'every justice institution'. Yet, the 'awareness raising exercises' in both regions had so far concentrated on

⁶⁴Tamanaha, Brian Z. 2008. 'Understanding Legal Pluralism: Past to Present, Local to Global.' *Sydney Law Review*.30.:400.

select institutions and practices– including issues of ‘gender equality’ typically, if not exclusively, focusing on reaching out ‘women audiences’.⁶⁵

In relation to the practice in Hawassa area, the study concluded that while the influence of customs and the ill effect of cultural stereotypes were admitted, the attention of the *Dore Woreda Women and Children’s Affairs Office* – the key stakeholder in the protection of women’s rights in the district had merely been directed to certain activities. These included engaging the Women’s Development Army in each *kebele*, holding weekly meetings and discussions on gender sensitive themes – including property rights, and offering assistances to women who chose to institute legal action in relation to immovable property. Structures functioning at the *kebele* levels, including the *Committee on the Elimination of Harmful Practices*, have been deployed *only* in such limited contexts.⁶⁶ Similarly, in West Shewa, the Women and Children’s Affairs Office, in conjunction with the Zonal Communication Affairs Office, has been engaged in the use of media and grassroots and school-level awareness-raising initiatives; this was attended by educational campaigns on the region’s family laws which was undertaken in cooperation with the local police and prosecution offices.⁶⁷

However, these schemes that endeavored to instill conceptions of equality in the exercise of immovable property rights have been far from adequate or organized, and would appear to have produced little impact so far. Women’s reactions to such initiatives also varied in both study areas depending on individual perceptions, experience and education.

With regard to the state’s functionaries in the two districts, no clear indications had been proffered highlighting the views of the state in relation to the necessity or feasibility of pursuing system-wide overhaul of customary institutions or their normative orders. A blend of factors may work, no doubt, which are complex and beyond the study’s scope.

Obviously, the prevalence of organized structures at the *kebele* levels does not guarantee the state’s capacity to permeate every aspect of community life, at least in the short term. Its resources are neither adequate nor effective in contesting the parallel legal orders in both regions; what is more, complementarity is simply unavoidable. This is particularly evident in West Shewa where the customary norms and institutions are more articulated, structured and deeply entrenched in communal lives. Against such background, state-engineered transformation efforts must toil not on

⁶⁵Interviews with Melesech Bekele, Office Head, *Dore Wereda Women and Children Affairs*; Agegnehush Ajema, Office Head, *Western Shewa Women and Children’s Affairs*, August 2015.

⁶⁶Interview with Melesech Bekele, Ibid.

⁶⁷Interview with Agegnehush Ajema, Note 63.

deconstructing the systems as such, but on the gaps such structures exhibit; this should be pursued in a manner highlighting their complementary roles.

Admittedly, this spurs political ambivalence on the part of the state. It may be contended that formal (and informal) arrangements based on 'division of labor' can particularly run into problems in political settings where sovereignty is *de facto* shared.⁶⁸ However, the Ethiopian state could not be threatened by the prevalence of semi-autonomous domains of such institutions as the state still holds an overriding constitutional power. Instead, the application of such approach would correspond to reality if the state comes out of the veil of political vacillation and extends measured recognition to well-established customary institutions whose orders it can continue to influence through progressive changes. In enhancing women's rights and welfare in the study areas, the Center for Human Rights involvement and future direction must not only take into account such political trajectories, it also needs to remain proactive even when state's actions remain to be limited or deferred.

In this connection, it was found during the field studies that *sporadic trainings* have been provided to *elderly judges, mediators, Aba Geda* and *Aba semaloson* constitutional principles of gender equality, non-discrimination and property rights of women.⁶⁹ Of course, in the extreme cases of harmful practices involving rape, circumcision or abduction, the state had persistently endeavored to exert authority over all traditional institutions so that they 'relinquish' jurisdiction and 'refer' the matters to the attention of formal law enforcement agencies. However, such enterprises are *less systemic* and *very limited* in terms of their effect on the immovable property rights of women.

In short, the agenda of 'reforming' the systems so that they operate complementarily and in compliance with the constitution's principles of equality and non-discrimination is pursued less vigorously and only indirectly – through educational campaigns that target *women* themselves, and in limited geographic scales. This entailed that within social grounds in both districts, contravening customs continue to be applied and normative

⁶⁸Kyed, Helene Maria, Note 61.

⁶⁹Interviews with Darimo Darusa and Hanaqo Ebiso, local elders/judges, note 58. When asked why they don't seem to always reflect the rules of equality in decisions involving the rights of women in immovable property, they replied: 'when we have clear understanding of the laws of the state, we don't really wish to decide contrary to their contents or spirit; we try to be careful and decide on such basis'; however, several cases were adduced during the research which clearly evince that this has not been the case.

Interview with Abetu Ejeta, Head of *Aba Geda* of *BokuChitu* in *Toke Kutaye Wereda*, Western Shewa, August 2015.

conflicts remain unsolved. The key stakeholders in the study areas should therefore adopt comprehensive approaches on the subject of intervention including working with traditional institutions and their normative gaps.

Such approach would be imperative given the ‘less-promising’ methods through which the state’s functionaries in the study areas had intended to address women’s predicaments related to property rights in the hands of traditional justice institutions. A key informant at the SNNP Regional Security and Administration Bureau explains: “while the state had in the past worked hand and glove with community institutions on several themes of harmful practices such as abduction and circumcision, the regional government did not reach out customary institutions with a view to requiring them address challenges related to the implementation of women’s property rights and cultural stereotypes; the core perspective which directs the state’s actions is that problems encountered by women could be addressed through its own structures established at the *woreda* and *kebele* levels.”⁷⁰Hence, in carrying out the state’s political commitment that no cultural workings operate to erode the rights expressed in constitutional and legal frameworks, the approach adopted by local authorities has barely anticipated engagement with such institutions.

Departing from a similar set of assumptions, data availed by informants representing the *Dore* woreda court concludes similarly.⁷¹ While the complementary role of customary systems is acknowledged, the necessity of working on factors that detract women from resorting to courts of law had been highlighted.⁷²Otherwise, as there is no ‘vertical’ or ‘lateral’ relationship between the woreda court and the informal justice forums operating in the district, the court’s enterprise working on women’s ‘emancipation’ has never included ‘formally requesting’ customary institutions to construe their normative order in conformity with the constitution’s specific prescriptions. Instead, in the past, the court’s limited measures had focused on raising consciousness through collaborative works including, for example, the Access to Justice Project of the Center for Human Rights; this has been conceived as a key strategy in divesting cases on immovable property claims from being adjudicated by customary justice forums in the district.⁷³This strategy as stipulated in this paper has not paid-off well.

⁷⁰Interview with Kebede Fokoro, Officer, SNNP Regional Security and Administration Bureau, *Hawassa*, August 2015.

⁷¹Interview with Dankura Delemo, Note 55.

⁷²This mainly relates to factors such as knowledge, physical accessibility, wrong perception, cultural influence and financial/material obstacles

⁷³Interview with Dankura Delemo, Note 55.

On the other hand, while the state's practice in Western Shewa seemed to be informed by similar considerations, there is also a stronger sympathy for the workings of certain aspects of local culture in the region. This may warrant the adoption of a different approach in the region. The Women and Children's Affairs Office clearly favors that women resort to courts of law to resolve disputes; but the office also shows greater respect to the harmonizing role of customary institutions operating in the districts, a few exceptions notwithstanding.⁷⁴ Recurring problems relating to favoritism and discrimination are largely regarded as less systemic issues and are mainly accounted as problems of individual elders.⁷⁵

In this context, though, it is interesting to note the *woreda* courts' fairly established unconstitutional practice of 'referring' matters involving the partition of land and related properties to traditional systems in inheritance and divorce proceedings.⁷⁶ From institutional perspective, such exercise has been predicated on the need for creating family cohesion and social harmony through greater involvement of localized justice orders; however, the approach takes no account of the fact that very often, women are left with no meaningful options in realizing equal property rights. However, this study also accents the gender 'parity' at the contemporary customary courts which is mostly described as a recent development both by the elders of customary courts and the clients. It is said to have been influenced mainly by various affirmative actions to redress gender inequality at the national level. This is yet another instance of the mutual influence and the competitive undercurrent in the relationship between customary courts and state courts.

The discriminatory treatment was evident in the testimonials received from women living in the district, but most importantly, from the openly professed stand of the *aba gedas* and *aba bokus* interviewed during the fieldworks. They held that if a property division involves a rural land or a residential building on rural plot, male successors/husbands would invariably takeover such property for obvious cultural reasons ensuring the continuity of paternal lineage.⁷⁷ In such procedures, the complementary role of local justice systems does not on its own pose a challenge subject to considerations of reform suggested above. However, courts could not evade their responsibility of ensuring that any scheme for the partition of immovable property proposed by traditional elders or institutions is not

⁷⁴Interviews with Agegnehush Ajema, Office Head, *Western Shewa Women and Children's Affairs*; Ejigu Guta, *Aba Geda of BokuChitu and Abasemalo* at *Toke Kutaye Wereda*, Make-Dera Farmers' Association; Bekele Bayata, Local Elder in *Ambo City*, August 2015.

⁷⁵Interview with Daba Chufa, Private Legal Practice, West Shewa, *Ambo*, August 2015.

⁷⁶Interview with Agegnehush Ajema, note 72.

⁷⁷Interview with Ejigu Guta, note 72.

counter to the principles of equality and non-discrimination. Future intervention approaches must address such inadequacies of the formal system as well- which is largely prevalent in the Ambo area- through tailored training of judicial personnel at lower tiers.

c. Competition Between Formal And Informal Justice Systems

Institutional competition between formal and customary justice forums operating in Hawassa and Ambo woredas – as referring to the express or implied exertions of such systems to shop for disputes or to shine as vital mechanisms of social control – could be considered from different, often intertwined, perspectives.

Conceptually, institutional competition symbolizes different connotations in different settings. For the purpose of this study, its use twirls on the following frames: Does each institution view the other as a competitor – within which power is contested and influence is exerted in rivalry with other actors? Do forums campaign for disputes – whether actively or indirectly, for example through the application of pressures against women? And, could institutional enterprises, including reform, with a view to enhancing efficiency, accessibility and equitability to women be viewed as acts of competition? The explanations offered to each of these questions would be relevant in understanding the degree of interplay between and the approaches adopted by customary and formal justice institutions operating in the study areas.

The analyses in this section departs from Benda-Beckman's thought-provoking argument that institutions do not only shop, they may also use disputes for own local political ends – with interests different from those of the parties involved – and using the processing of disputes to pursue those interests.⁷⁸ Most similar interests have to do with issues of recognition, allocation of authority and socio-political competence. In this context, it becomes important to 'recognize that justice and security provision are fields where power is contested, authority is reconfigured and constituted, and where different actor interests are at stake over power, resources and clients'.⁷⁹ Equally, it is also important to accentuate that most analyses on legal pluralism had held that power relations between plural legal orders are 'unequal', directing attention on the 'penetration and dominance of state law and its subversion at the margins'.⁸⁰

⁷⁸Keebet, Benda-Beckman v. 1981. "Forum shopping and shopping of forums Dispute processing in a Minangkabau village in West Sumatra. *Journal of Legal Pluralism*.117.

⁷⁹Kyed, Helene Maria. 2011. Note 61.

⁸⁰Merry, Sally Engle. 1988. Note 51.

Both the formal court structures and customary justice institutions in Ambo and Hawassa operate on the basis of fairly overlapping grounds of jurisdiction. No law delineates their respective spheres or regulates issues related to jurisdictional interface by way of 'acknowledging' the existence of customary institutions. Each is aware of the power it exerts in its class of social arena. The empirical study found that none of the institutions solicited proactively to provide forum or usurp jurisdiction in relation to disputes involving women in property claims; nor did one vilify the other on any account.

Ordinarily, such a setting should have provided 'reasons for social actors to actively exploit situations of legal pluralism in the furtherance of group and individual aims'; the assumption being 'people (i.e. institutional leaders) who are truly committed to one set of norms or institutions...may undertake to defend or expand their system against others'.⁸¹ Clearly, also both mediums need to continually appraise their vitality to the community they serve, and in this context, it would be natural to expect that they would devote on organizational methods and values that appeal to their clientele.

Nevertheless, the study established that the institutions did not posture themselves in competitive stance. The choice of specific forum is generally left to women who, through the exercise of 'free will', determine where and how to litigate cases; 'shopping for disputes' has not been conceived as a plausible means of sustaining status and power at the local levels. Instead, it was observed that as the state apparatus entrenches its normative order through new structures and subsumes areas it had not penetrated before, customary institutions in the study sites, too, have gradually reshaped their orders and social field – hence ensuring their continued vitality.

Admittedly, this deduction does not necessarily apply to each traditional justice forum operating in the study areas, and certain variations are only natural. Yet, data obtained from the informants – two elderly adjudicators in *Waraa Danfa Qaluu* (Ambo) and *Tula* (Hawassa), strongly confirmed that customary institutions do not operate in competition with the *woreda* or higher courts of the state or other religious or local institutions. Nor do they harbor attitudes of neglect or relegation simply because some women choose to pick on a different forum.⁸²

The fact that neither institution openly professes of competition does not inevitably entail that they do not resort to certain mechanisms, some direct

⁸¹Tamanaha, Brian Z. 2008. Note 62.

⁸²Interview with Nataa Xurii. *Wechna*. Note 60.

and others systemic, which have the effect of influencing decisions women make with regard to forums in litigating claims related to immovable properties.

The first way for looking upon this issue would be if, in the interest of preserving institutional verve, customary institutions have engaged in any act that potentially sways women's free will. The elders and tribal leaders interviewed in both *woredas* concurred that women have 'absolute discretion' in bringing cases to whichever institutional platform they prefer. Neither the customary bodies nor local communities engage in coercing or enticing women to present cases solely to the traditional elders, nor do the institutions oblige women to present cases to courts of law *only after* they have had their day before traditional justice forums.⁸³ In fact, they argued, the institutions' working model hardly allows that they reach out to clients, whether men or women, with a view to convincing them submit disputes to their jurisdiction either exclusively or as a matter of first instance.

This extrapolation about the state of facts is generally, but not conclusively, consistent with the personal accounts of the *nine women* conversed with in both *woredas*. In their responses to the possibility of whether indirect pressures have been applied against them to submit to the jurisdiction of customary justice institutions or if they know of anything happening against women who contemplated direct action before courts of law, all the *four* interviewees in *Ambo* district made their points decidedly clear that they made an 'informed choice' in yielding to the authority of the informal justice institutions – with no role imputed to the acts of elders or the community. Another interviewee from *Dore* concurred, holding in her particular case that in fact the local elders, whose edict was not conformed to by the disputing party, had encouraged her to seek justice in a court of law.⁸⁴

However, all the *five* interviewees from *Dore* were counter-consistent with the foretasted narrative, generally stressing that they not only lacked the self-esteem needed to initiate legal proceedings and claim rights, but they also believed that seeking justice in formal avenues may result in their being viewed as challenging the prevailing social, cultural or traditional norms. In disputes related to immovable properties, each had resorted to traditional forums as first entry points to the justice system not just through the exercise of free will but under the 'impression' that they were 'duty bound to first submit claims to such forums'. They faced 'pressure from different sources to primarily handle disputes through the employment of

⁸³Interviews with Nataa Xurii.*Wechna*.Note 59; Sermiso Semago.*Hawassa, Doyo Otilcho Kebele*.Note 31;DarimoDarusa and Hanaqo Ebiso, *Dore*, Note 31.

⁸⁴Interview with Lemlem Alemu, *Bafano Kebele, Dore*. Note 45.

local elders'.⁸⁵ The information obtained from interviews held with key informants working in 'state' structures in *Hawassa* and *Ambo* districts squarely corresponded to the accounts of women hailing from *Dore*.

In conclusion, it was noted that several women in both study areas had been subjected to actual pressures – a fact which was also attended by own perceptions that the community would react negatively if they bypass local institutions of justice. Often, these facts affect their free will and shape the decisions they make. A second way to look at the concept of competition between formal and informal justice institutions could also center on the investigation of the variety of schemes which state agencies implement either as extension of their institutional mandates to wrestle with cultural stereotypes or because they have to manage local violations which, if entrenched, may threaten constitutional values and orders.

A cursory review of the intervention approaches pursued by state institutions in improving the conditions of women have revealed that while the state encourages communities to practice and develop their cultures, it also fights against societal traditions which it termed are 'harmful' to the protected rights and interests of women. This approach is inspired by the constitution and the National Culture Policy endorsed by the Council of Ministers (1997), which gave recognition to 'traditional ways of social governance' as one aspect of culture but emphasized the need for a gradual abolishment of deep-rooted causes of prejudice against women, chauvinism and 'backward traditions' that violate human rights and cause physical, psychological and moral damages. Therefore, across tiers in the study areas, state structures have been tasked with the responsibility of ensuring women's enjoyment of all rights in equality with men and without being subjected to discrimination in all walks of life.

In both districts where detailed data was availed to gauge the perception of government offices, the state's actions in relation to women, immovable property rights and the role of traditional forums depart from a very distinct stand that customary institutions are 'not immune' from the prejudicial effects of culture. As a result, it was submitted, the decisions they give are often 'unfavorable and openly discriminatory' to women in inheritance and divorce cases; such forums, wholly constituted of men, are prone to sexual prejudices.⁸⁶

From this, followed a two-thronged approach, which the lower tiers of the state structure in *Dore*, and in some measure, *Ambo* districts – the *woreda*/high courts and the women and children's offices – exerted to

⁸⁵Interviews with Meseret Dasalo *et al.* Note 45.

⁸⁶Interview with Kebede Fokoro. Hawassa. Note 68.

accomplish. The intervention schemes are set with clear objectives: to forestall/abate the suffering of women affected in immovable property claims in the hands of customary justice institutions and correspondingly augment the roles of the respective *woreda* courts. The strategy is straight forward: the first measure entails improving women's education and legal consciousness through continuous trainings offered by the *woreda*, *kebele* and other stake-holding functionaries so that women make informed decisions with regard to the forums they shop. Evidently, this intends to weaken the pull-factors that make traditional justice systems 'more attractive' to women pursuing property claims.

The second measure is more pertinent to the *Dore woreda* court; it strategized to work on institutional inefficiencies and organizational challenges that impeded women's recourse to its jurisdiction. In this context, a series of measures were adopted to make the *woreda* court more accessible to women in the 23 *kebeles* of the *woreda*, to establish one 'roving *woreda* bench' for each group of 3-4 *kebeles*, and to intensify the educational and legal aid works of the court's officers and the Access to Justice Project in the *woreda* and farthest localities. These key intervention measures had anticipated to minimize the impacts of the push factors in relation to the court.

There is little doubt that such positive measures would enhance the competitive edge of the courts in relation to customary justice institutions. Education and training provide women the tool for informed decisions; in fact, over the years, it was contended that the number of women who chose to institute actions before the women and children's offices and the *woreda* courts has increased- whether directly or after exhausting local remedies available with the traditional institutions.

On the other hand, it also appears that the state's sustained pressure and political drives on issues of equality and non-discrimination has modestly affected how customary justice forums conceive of women and their status in society in relation to the ownership and management of immovable properties. This has influenced them to adopt certain 'reforms' that in turn contributed to the continued vitality, accessibility and equitability of traditional justice forums and augmented their competitive poses in both districts.

VII. Concluding Remarks

The study on women's experience in relation to the exercise of property rights should not be contented by simply highlighting the need for instituting a national system that ensures the effective treatment of women's claims before the law. Each factor informing their choice must be investigated, but more importantly, opportunities availed to women in terms of 'actual' access to formal justice procedures should be explored. This is very fundamental to guaranteeing women's entitlements and effective remedies

If the state structures exert on the 'push factors' that undermine their usefulness, customary institutions would eventually culminate with a very limited jurisdiction, or worse, they may no longer play their conventional roles as dispensers of local justice. Reforming the normative orders of traditional justice institutions, whether imposed or self-initiated, is unavoidable. Customary norms – pervasively inconsistent with formal laws – will operate only while the state invests in resources to ensure the physical stretch of its justice infrastructure at the lowest levels of social life.

Against this background, future interventions must be directed to understanding why women made negligible uses of courts and the new institutional setups under the rural land administration and use proclamations. Such enterprises must highlight the organizational and professional inadequacies of the *kebele* structures in providing timely and effective remedies in land disputes. The vitality of the *kebele* institutions could be ensured if their processes are attended by adequate training of personnel charged with the handling of women's property claims and by the availability of legal advice, representation and assistance schemes involving clerical services. To date, no such facility extends at the *kebele* levels in both districts, except for the awareness-raising programs hurled by the women's offices; the focus of free legal aid interventions had only whirled on select woreda courts.

On the other hand, the study also noted that the *kebele*-level educational sessions had primarily focused on enhancing women's legal consciousness and the possibility of enforcing such rights through adjudicatory mechanisms. However, the programs could have been pursued in a manner which proactively involves the *kebele* administration itself and the local elders, the two key institutions often called upon to mediate on land disputes presented to the *kebele'* jurisdiction. The institution of such scheme provides multiple benefits: it helps in pulling a wider and participatory process (including elders) that enhances women's psychological clout to

resist harmful communal values. A 'localized adjudication' by 'informed mediators' also helps women to deal with stereotyped pressures from powerful actors which would otherwise require that they submit land-related disputes to traditional justice forums. This approach may also assuage women's fears of being stigmatized for defending land rights and enhance the equality of arms before *kebele* proceedings. More fundamentally, the institutional reinvigoration encourages women to make frequent use of the *kebele* forums without enduring the economic burdens of litigation elsewhere and without staying away from families – while at the same time benefiting from quick and affordable local remedies.

The Implications of Multiple Spousal Relationships: Experience of Women in Hawassa and Adama Towns

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Abstract

The case reports from the legal aid centers run by Addis Ababa University, Center for Human Rights in Hawassa and Adama towns showed that bigamy is one of the causes of divorce and legal claims raised by women. A preliminary review revealed that most of these cases do not fulfill the legal definition of bigamy and hence none of the legal consequences arising there from. This research investigates the range of multiple spousal relations existing in the study areas, documents the experience of women affected in such settings, and presents on the normative standards applicable and the challenges women encounter in seeking legal remedies. The research identified that multiple spousal relations in the study areas that range from formal polygamy to infidelity and keeping of mistresses are mainly triggered by excessive sexual desire of men, failure to get, seeking sons instead of daughters, and mobility for work and newfound wealth by men. Lack of proper public records and difficulty of access, along with the absence of culture in using such records, are also raised as factors allowing men get away with practicing multiple spousal relations with relative ease. The study found that most women view the practice as unfair and socially unacceptable and are aware of the full range of legal remedies available to them; all study participants have also the understanding that multiple spousal relationships engender negative socio-economic and psychological impact on women. Despite such awareness, women rarely pursue the 'dissolution' of the second marriage or seek for men to be punished for adultery; rather, the most frequented claim is identified to be asking maintenance for children and/or divorce. The weak economic position of women involved and lack of trust in the justice system are found to be the main reasons that deter women from seeking legal remedies.

Key Words: Multiple spousal relationships, polygamy, bigamy, *de facto* marriage, irregular union, Ethiopian matrimonial law

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I. Introduction

This research originated from a review of cases handled by the Access to Justice Project at Addis Ababa University, Center for Human Rights. A part of what the Center designed to implement through this project was a program of legal aid services that targeted vulnerable groups including women in Hawassa⁸⁸ and Adama⁸⁹ towns as well as in the adjacent rural districts. A preliminary assessment of cases handled by the legal aid centers indicated that several petitions had been submitted by women seeking divorce on the basis of allegations that their partners were involved in polygamous relations. Many of the petitions also alleged other factors – such as failure to provide maintenance and domestic abuse – as the grounds for seeking divorce, implying that at least for some women, polygamy does not stand as the sole consideration for pursuing divorce. Discussions with the project staffs stationed in the towns revealed that polygamy is practiced in both sites with increasing urbanization, cultural and religious norms, and increasing wealth, among others, cited as contributing factors.

The research was designed to primarily explore and document the experience, perception and attitudes of women who live in multiple spousal relationships. The research also aimed at identifying the norms, mechanisms, procedures as well as the level of legitimacy of multiple spousal relationships in Adama and Hawassa towns. Moreover, the study intended to identify the types of claims raised by women participating in multiple spousal relationships and how these claims were handled under the traditional and formal justice mechanisms in the study areas; it also aimed to identify the key stakeholders who shall involve in the design and carrying out of intervention measures targeting the practice and consequences that ensue from implementing the measures.

From the initial round of interviews held with women and key informants, a reading of the preliminary results indicated that in the rural areas, especially around Hawassa, the assumption that polygamy—defined as the situation where a man formally marries two or more women and regularly cohabits with them simultaneously—is factually valid. However, in urban settings—both in Hawassa and Adama, this assumption did not hold ground. Instead, it was observed that in most cases, multiple spousal relations did not meet the technical definition of polygamy under Ethiopian

⁸⁸Sidama Administrative Zone, Southern Nations, Nationalities and Peoples (SNNP) Region, Ethiopia.

⁸⁹East Shewa Administrative Zone, Oromia National Regional State, Ethiopia.

law. In both towns, the cases mostly involved that at least one of the relationships, usually the second, lacked any formal celebration of marriage that fulfills the requirements of civil, religious or traditional forms. The men usually abandon their first partners and move on with the new one without dissolving the first marriage.

Accordingly, the preliminary data gathering revealed divergent scenarios of experience practiced in rural and urban settings. Generally, the forms and mechanisms of the practice in the study areas do not conform to the conventional meaning of polygamy. Rather, the practice could best be labeled as 'multiple sexual relationships' or 'multiple spousal relationships' - with varying modalities and degree of formality.

Therefore, there was a shift in terms of the subject matter of study from polygamy *per se* to multiple spousal relationships, and in this light, the study area was refocused to the urban context - Hawassa and Adama towns. Moreover, it is acknowledged that this subject matter is a little explored area of inquiry - with a number of practical and legal gaps that protect the interest of women. While there are several works pursued in the past on polygamy, irregular unions and their effects on the rights and interests of women, there is hardly any substantive study that has investigated the legal and social issues that ensue when polygamy and irregular unions happen involving the same 'spouses' at the same time.

As sources that deal with multiple spousal relationship are lacking, literature that make reference to researches on polygamy have been used to draw lessons, and particularly, to outline justifications from cultural and religious perspectives, to understand socio-economic considerations, and highlight the normative and psychological implications on women. The literature review generally focused on exploring the extent of the practice in Ethiopia. Through normative review that makes use of doctrinal legal research, the position of international, national and sub-national norms - as relating to polygamy and its validity - have been extensively analyzed.

Based on the assumptions, the literature reviews and normative appraisals, the research team developed tools to gather empirical data based on the objectives of the research undertaking. Such tools included interview questions that are meant to gather information from women in multiple spousal relationships. It also involved questions used in in-depth interviews - with key informants including judges of both ordinary and Sharia Courts, traditional elders, police, prosecutors, and experts working in local functionalities of women and children's affairs offices.

The article starts by clarifying the concept of 'multiple spousal relationship'. This will be followed by a highlight of key researches previously conducted

on polygamy that apply to and inform multiple spousal relations, and presentations on normative standards as are relevant to the analysis of multiple spousal relations. Subsequent sections will present on findings of the empirical investigation in Hawassa and Adama. Given that the socio-cultural settings in both towns exhibit marked difference (in terms of ethnicity and dominant religion for example), the authors have presented and analyzed the two sets of data separately.

II. Conceptual Clarifications

The phrase ‘multiple spousal relationships’ is an inclusive term that may mean irregular union, extra-marital affair, *de facto* marriage and other similar relationships. Multiple spousal relationships may also entail the practice polygamy. Nonetheless, it has distinct characteristics, patterns and implications. The authors therefore choose the term as connoting a relationship that shows the existence of more than one woman, and an informal relationship in the eyes of the law but perceived to be a formal marriage in the minds of the women involved. For the purpose of presenting and analyzing the empirical data, the term used to describe the characteristics of the relationship women informants had formed with their partners is ‘multiple spousal relationships’.

The authors submit that such term best describes the relationship and is crafted based on the peculiar characters of the relationship as revealed by testimonies of female informants in the study. These particularly include the fact that the relations are perceived as formal marriage in the minds of the women who consider their partners as husbands. However, they did not celebrate the marriage in a traditional, religious or formal way and do not have any form of proof of marriage.

The duration of such relationships ranges from a few months to 30 years. In the case of women whose multiple spousal relationships last for not less than three years, it is considered as irregular union – with judicial effects as per the applicable family codes adopted at the federal and regional levels. Irregular union creates a pecuniary relationship among the parties but does not have personal effects.⁹⁰ The other feature of such relationship is that the first female partners are neither formally informed by their male partners or

⁹⁰ The personal effect of marriage generally refers to the respect, support and assistance each spouse owes the other, the duty of cohabitation, and determination of residence. Pecuniary effects, on the other hand, relate with the effects of marriage on the administration, title and acquisition of property of the spouses. See Art 49-56 and 75-73 of the Federal Negarit Gazette Extra Ordinary Issue No. 1/2000 The Revised Family Code Proclamation No. 213/2000.

through elders about the existence of the second spousal relationship. The female informants came to understand about the second relationships only from third parties, and in few cases, from the second wife or by physically going to the house of the second wife to personally verify the existence of the relationship.

With the small sample data used in the research, it is difficult to come up with a conclusive and singular pattern and characteristics of women's experiences. Although some commonalities could be drawn from the testimonies of women, all relationships demonstrate their own distinct features. Further, for conceptual clarity and pattern, at least three groups of study subjects – the men, the first women in the relationship and the third person who is labeled as the second spouse – should have been included in the study. As the main objective of the research is to document the experience of women in marriage-like relationships, the scope of the study is as such limited to the testimonies of women in such relationships.

Since polygamy is one form of multiple spousal relationship and due to the rich literature on the subject, the definition of terminologies and justifications have focused on the practice of polygamy so as to draw general trends in relation to factors and rationalizations for involvement in multiple spousal relationships and the impact of such practice on women.

III. Definition of Terminologies

One form of multiple spousal relationship is the practice of polygamy. Polygamy is practiced among many societies with different cultures around the world.⁹¹ It takes place commonly in cultures that recognize social status based on heredity and inheritance.⁹² Originally, the term polygamy is derived from the Greek word *polugamos* that literally refers to 'often marrying'.⁹³ From anthropologists' point of view, polygamy is defined as "a marital relationship involving multiple wives".⁹⁴ Sociologists understand

⁹¹Al-Krenawi, Alean.Graham, John R. & Al-Krenawi, Salem. 1997. "Social Work Practice with Polygamous Families", *Child and Adolescent Social Work Journal* 14 (6): 445-458.

⁹²Young, Manee. 2003. "A Qualitative Study Examining The Effects of Polygyny on Among Individuals Who Had Been Raised in Polygamous Households", A Research Paper Submitted in Partial Fulfillment of Requirements for the Master of Science Degree With a Major in Guidance and Counseling, The Graduate School University of Wisconsin-Stout May 10.

⁹³Jonas, Obonye. 2012. "Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: A Critical Appraisal", *Journal of African Studies and Development* 4(5): 142.

http://www.academicjournals.org/article/article1380034821_Obonye.pdf.

⁹⁴B.S. Low, Bobbie S. 1988. "Measures of polygamy in humans", *Current Anthropology* 29(1): 189

polygamy as a means that enable men to increase the number of their offspring and at the same time reduce the amount invested in each child.⁹⁵ According to Zeitzen, the term polygamy refers to a marriage where there is more than one partner.⁹⁶ A Law Reform Commission of Canada provides a more comprehensive definition for the term polygamy: it entails “the maintaining of conjugal relations with more than two persons. When the result of such relations is to form a single matrimonial or family entity with the spouses, this is regarded as polygamous marriage.”⁹⁷

IV. Justifications and Factors Behind the Practice of Multiple Spousal Relationships

i. Multiple Spousal Relations from Religious Perspective

Religion is among the main factors that shape societal values and norms that govern individual behavior. Religion also determines how societies and individuals perceive and practice spousal relationships including marriage. Religious rules determine the very definition of marriage as well as how marriage should be practiced.⁹⁸

The 2007 Population and Housing Census of Ethiopia classified Ethiopian religions into six different categories. According to the data, 43.5 percent of the total population was Orthodox Christian, 33.9 percent Muslim, 18.6 percent Protestant and 2.6 percent traditional beliefs. There are significant variations between rural and urban data – especially with Orthodox (59.1 percent living in Urban and 40.5 percent in rural) and Islam (with 29.5 in Urban and 35.4 in rural).⁹⁹ The next section focuses on Christianity – involving orthodox, protestant and catholic, and Islam, both of which are predominant religions in Ethiopia.

a. Polygamy and Christianity

In the Old Testament, there are evidences of the existences of polygamy before the time of great flood during the time of Noah and throughout the lives of prophets and after the giving of the law to Moses.¹⁰⁰ Lamech, a

⁹⁵White, D. R. (1988). “Causes of polygamy: Ecology, economy, kinship and warfare.” *American Anthropologist* 90: 871–887.

⁹⁶Zeitzen, Kottvedgaard M. 2008. *Polygamy: A Cross Cultural Analysis*. New York: New York University Press 2.

⁹⁷Obonye 2012, 142

⁹⁸Beresford, Sara. 2011 “Seeking Secularism: Resisting Religiosity in Marriage and Divorce. A comparative Study of England and America.” *Web Journal of Current legal Issues* 3, Web JCLI.<http://eprints.lancs.ac.uk/52299/1/WJCLI.pdf> 3

⁹⁹Summary and Statistical Report of the 2007 Population and Housing Census; http://ecastats.uneca.org/aicmd/Portals/0/Cen2007_firstdraft.pdf.

¹⁰⁰Meckler, Claire. (1985) “Polygamy from the Perspectives of the Old Testament, The Quran and The Current Muslim Thought.” *Journal of Frontier Missions* 2(4): 324.

lineage of Cain, was the first polygamous man with two wives.¹⁰¹ As pointed in Genesis 2:23-24, God made one wife for Adam with the command that the two should become one flesh. As contended by many Christian theologians, the phrase one flesh requires monogamy and indissolubility. Monogamy, therefore, was ordained to be God's ideal marriage, but polygamy was not explicitly forbidden especially before the giving of the Levitical law. Four centuries later, another revelation of God's will was made to Moses, which was believed to have given temporary passage to polygamy.¹⁰² Since, different scholars had provided different interpretation on these revelations in relation to polygamy. Meckler shares the argument presented by Karl Barth on the difficulty in identifying biblical verses that clearly forbid polygamy and uphold monogamy.¹⁰³

By contrast, the New Testament considers polygamous marriage as adultery.¹⁰⁴ In Christianity, marriage is considered as honorable and indissoluble union of a man and a woman. The teachings of Jesus Christ were the source of this belief and the Christian doctrine of monogamy.¹⁰⁵ There is also Paul's teaching to the Romans which reiterates the same principles applying to the wife – condemning polyandrous woman and urging church leaders to practice monogamous marriage.¹⁰⁶ Similarly, any form of sexual relationship outside of wedlock is considered as adultery. If fact, under the New Testament, even divorcing a wife, except on grounds of infidelity, is considered as adultery. Hence, it can be concluded that multiple spousal relationship of any form is against the fundamental doctrines of Christianity.¹⁰⁷

b. Polygamy and Islam

Marriage is considered to be a fundamental source of stability, growth and unity in the Muslim society. Polygamy, too, is considered as a source of constancy, advancement and harmony in the Muslim community.¹⁰⁸ It

¹⁰¹*The Holy Bible*, King James Version Genesis 4:19.

¹⁰²Exodus 21:10, Leviticus 18:18, Deut 21:15.

¹⁰³Meckler 1985,328.

¹⁰⁴Hussein Bedru, "Polygamy: an Ethical Case Study."85.

www.anabaptistwiki.org/awiki/images/5/5f/Vol.10_Hussein_Polygamy-An_Ethical_Case_Study.pdf; Meckler 1985, 329; see also *The Holy Bible*, King James Version Genesis 1:27 and 2:14 and Matt 19:1-9.

¹⁰⁵*Id.*

¹⁰⁶Phi1.3: 17; 4:9; 1 Thes.1: 6,7; 2 Thess. 3:7,9; 1 Tim.4: 12; 1 Pet. 5:3; 1 Cor. 4:6; 1 Cor. 11: 1, Tim 3:2 and Titus 1:6.

¹⁰⁷*The Holy Bible*, King James Version, Exodus 20:14, Deuteronomy 22:22, Leviticus 20:10; Matthew 19:9, Mark 10:11, Mark 10:12, Luke 16:18.

¹⁰⁸Esposito, John.1982. *Women in Muslim Family Law*.50-51 Syracuse University press.

plays a “restorative function” for the protection of orphans and widows following the end of wars and the loss of a large number of men.¹⁰⁹ That Prophet Mohammed did not marry more than one woman before he was fifty, and only took more women as wives to provide protection for widows and orphans, bears out that polygamy was in fact part of social responsibility.¹¹⁰ However, such act was not without limitation: Islam permits a maximum of four women with a precondition that the husband treats them equally in every way – including affection.¹¹¹ The Quran states: “And if ye fear that ye shall not deal justly with the orphans, marry a woman of your choice two or three or four, but if ye fear that ye shall not deal justly with them, then only one, or captive that your right hand possesses. That will be more suitable to prevent you from doing injustice.”¹¹²

With regard to sexual relationships outside of formal marriages, most mainstream schools in Islamic jurisprudence consider such acts to be adultery or fornication.¹¹³ There are, however, fringe opinions among some jurists that allow for what is known as secret marriage where the Nikah is celebrated but not in public. Here, most of the formal requirements of marriage – such as witnesses and the presence of a Qadhi will be fulfilled. However, the requirements of parental consent and publicity are omitted. In Ethiopia, most of the polygamy-like relationships among the practicing Muslims – in both rural and urban settings – happen using this “loophole” as a basis.

c. Multiple Spousal Relations from the Perspective of Some Cultures

There are different cultural factors leading to and intensifying the practice of polygamy in different societies. For instance, among many societies in Sub-Saharan Africa, polygamy has been a well established, coherent and generally accepted way of life and system since pre-colonial times. One of the factors that intensified the practice of polygamy in African societies is the need for reproduction. The history of Sub-Saharan Africa has long been associated with hostile weather conditions, non-curable diseases and warfare that have weakened the strength of the population, posing threat to

¹⁰⁹Obonye2012, 143.

¹¹⁰Meckler 1985, 330.

¹¹¹Yusuf Ali, Abdullah. 1977 “The Holy Kuran: Translation and Commentary Second Edition, American Trust Foundation” cited in Rebecca J. Cook and Lisa M. Kelly. 2006. “Polygyny and Canada’s Obligation under International Human Rights Law.” Faculty of Law, University of Toronto 8; Meckler 1985, 330.

¹¹²Quran 4:3.

¹¹³Fadel, Mohammed. 2016. “Not all marriages are Equal: Islamic Marriage, Temporary Marriage, Secret Marriage, and Polygamous Marriage.”

<http://www.altmuslimah.com/2016/03/>. Accessed 25 July 2015

the existence of the tribes. Moreover, sterility was highly abominated.¹¹⁴ The only option, therefore, was to promote polygamy so as to ensure reproduction and the continuation of the population. As a result, women married at early ages to ensure early child rearing. Men got married at older ages guaranteeing their ability to provide financial security. Women who lose husbands to death, are separated or divorced also remarried quickly making sure that their reproduction is extended.¹¹⁵

Polygamy was also considered as a means to strengthen family and patriarchy.¹¹⁶ Lineage and gerontocracy contributed in cultivating this feature of polygamy in Sub-Saharan Africa.¹¹⁷ The male dominated the family – which is believed to have correspondence with ancestral lineage, and allows men to control all matters related to descendants– including arranging marriages.¹¹⁸ The main objectives of such practice are guaranteeing the continuation of bloodlines through the creation of many descendants and creating an opportunity for the rebirth of ancestors. ¹¹⁹ Hence, polygamy played important role in ensuring the continuation of the family line, enhancing the strength of the family, keep intact the status of the old patriarchy and the extension of congeal relations with other clans.¹²⁰

A person's energy, hyper-sexuality and sex are some of the biological drives that are frequently raised as causes for polygamy.¹²¹ This so-called "libido" argument that heaves men's stronger biological urge for sexual intercourse than women is meant to highlight men's hyper-sexuality.¹²²

The other factor that contributes to polygamous marriage is wife inheritance tradition. This is a practice of communities, which obliges the brother of the deceased husband to inherit or marry the widowed wife. The rationale for wife inheritance is to keep the property of the deceased in the family and to raise children by a relative closer to the deceased. It is also

¹¹⁴ Hayasee, Yasuko and Liaw, Kao Lee, 1997. "Factors on Polygamy in Sub Saharan Africa: findings based on the demographic and health surveys, the developing economies." 293-327.

http://www.ide.go.jp/English/Publish/Periodicals/De/pdf/97_03_04.pdf. Accessed on June 5, 2015.

¹¹⁵ Id.

¹¹⁶ Hayasee, Yasuko and Liaw, Kao Lee, 1997; 295.

¹¹⁷ Caldwell Jhonand Caldwell Pat, 1987 "The cultural contextivity of high fertility in sub Saharan Africa", *Population and Development Review*. 13(3) 409- 437.

¹¹⁸ Hayasee, Yasuko and Liaw, Kao Lee, 1997; 295-296.

¹¹⁹ Hayasee, Yasuko and Liaw, Kao Lee, 1997; 296.

¹²⁰ Id.

¹²¹ Wichelen, Sonja, 2009. "Polygamy Talk and the Politics of Feminism: Contestations over Masculinity in a New Muslim Indonesia", *Journal of International Women's Studies* 11(1) 176.

¹²² Id.

motivated by the desire to keep line of lineage of the deceased in his family as well as providing social security for the widowed wife. If the widow refused to marry her brother-in-law, then she would be stripped of her marital property rights.¹²³

The other justification for polygamy is enforced abstinence of women from sexual activities after giving birth. In some societies, sexual relationship is banned while the mother is breast-feeding. Breast-feeding time can be as long as three years in certain cultures such as the aborigines in Paraguay. Thus, men get frustrated with the long period of breastfeeding with no sexual intercourse – triggering the introduction of a second wife.¹²⁴

The anthropological and religious roots of polygamy in some settings indicate that originally it was designed to serve protective or remedial purposes for women and families.¹²⁵ In some destitute societies, polygamy still serves as protective shield for impoverished women.¹²⁶ But, polygamy, as it is currently practiced, usually preserves and strengthens patriarch within the family.¹²⁷ Historically, polygamy also provided restorative function to societies when a significant proportion of the male population has been sacrificed during warfare.¹²⁸

V. Multiple Spousal Relationship from Human Rights Perspective

Normative frameworks adopted at the international and regional levels provide equality clauses for men and women. However, it should be underlined that international and regional human rights systems do not explicitly prohibit the practice of polygamous marriage.¹²⁹

A cursory review of international human rights laws reveals that polygamy is a practice that, at best, should be proscribed or discouraged by domestic laws. There are numerous provisions in the International Covenant on Civil and Political Rights (ICCPR) that are intended to establish the equality of

¹²³Bizualem, Solomon 2011, “A Sociological Study of the Practice of Polygyny and its impacts: The Case of Gena Bossa Woreda of Dawro Zone, SNNPRS” (Unpublished MA Thesis) School of Graduate Studies, Addis Ababa University 30-35.

¹²⁴Belayneh, Abebech 2005. “The Costs of Polygamy: tension between co-wives of the Hamar” (Unpublished MA thesis), College of Social Science, School of Graduate Studies, Addis Ababa University, 72.

¹²⁵Cook, Rebecca, 2006 “Polygyny and Canada’s Obligations under International Human Rights Law, Family, Children and Youth Section Research Report. “Department of Justice Canada, 7.

¹²⁶Id.

¹²⁷Id.

¹²⁸Cook, 20068.

¹²⁹Fikre, Belachew Mekuria. 2013 “Bigamy and Women’s Land Rights: The Case of Oromia and SNNP National Regional State” *Ethiopian Journal of Human Rights* 1 90-91.

men and women. Article 23 (4) of the ICCPR specifically reads that “[States Parties] shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution [...]”¹³⁰ The Human Rights Committee (HRC) in its exposition of this provision stated: “it should also be noted that equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle; polygamy violates the dignity of women. It is inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist.”¹³¹

More directly, Article 5(a) of the Convention on the Elimination of Discrimination Against Women (CEDAW) obligates States Parties to “modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”¹³²

Since usually polygamy is justified as part of customary practice, State Parties to the CEDAW, including Ethiopia, have the obligation to attempt to modify this pattern of conduct; the fact that it is rooted in the cultural and religious value systems of the country could not be presented as excuse. The CEDAW Committee, in one of its general comments, clarified that it considers polygamous marriage as not only a simple threat to equality of the sexes having serious emotional and financial repercussions on women, but also as a practice affecting the dignity of women and discriminating against them.¹³³ In the words of the Committee, “polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties whose Constitutions guarantee equal rights permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5(a) of the Convention.”¹³⁴

¹³⁰The International Covenant on Civil and Political Rights (1976), Article 23

¹³¹UN Human Rights Committee (HRC), *CCPR General Comment No. 28: on “The Equality of Rights Between Men and Women”*, March 2000, Para 24.

¹³²Convention on the Elimination of All forms of Discrimination Against Women (1979), Article 5(a).

¹³³Fikre 2013, 92.

¹³⁴UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No.21: On Equality in Marriage and Family Relations, para. 14.

On the other hand, the African Charter on Human and People's Rights (ACHPR) generally recognizes the international standards that have been discussed earlier. It stipulates that states "shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."¹³⁵ Moreover, a Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, which Ethiopia has yet to ratify, is more explicit in the condemnation of polygamy as a practice prejudicial to the rights of women. It encourages State Parties to the Protocol to enact appropriate laws to guarantee that "[...] monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships, are promoted and protected."¹³⁶ This provision is meant to promote domestic efforts by member states to discourage polygamy – while accentuating the need for protecting the rights of women who already are in polygamous marriage.

VI. Ethiopian Law on Polygamy and Multiple spousal Relationships

Coming to the domestic laws having direct or indirect bearing on the practice of polygamy in Ethiopia, it is apt to start with the FDRE Constitution. Establishing the right to equality of women in marriage, Article 34 (1) of the FDRE Constitution provides that "men and women [...] have equal rights while entering into, during marriage and at the time of divorce." The same idea has been reiterated under Article 35 (2) of the Constitution which is devoted to outlining the rights of women; it provides that "women have equal rights with men in marriage as prescribed by this Constitution."

In relation to polygamy and its possible legality under Ethiopian law, the Constitution envisages the possibility of promulgating laws giving recognition to marriage concluded under religious or customary laws.¹³⁷ This provision is often cited to argue that polygamous marriages concluded under religious or customary laws are valid as long as the specific norms under which the marriages are celebrated allow it. Nonetheless, Article 35(4) of the FDRE Constitution also imposes a clear duty on the state to enforce the rights of women to eliminate harmful customs; it declares,

¹³⁵The African Charter on Human and People's Rights (1985), Article 18(3).

¹³⁶The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa), Nov. 2005, Article 6(d).

¹³⁷Constitution of the Federal Democratic Republic of Ethiopia Proclamation 1/1995, Federal Negarit Gazeta, 1st Year No 1, Article 34 Sub Articles 4& 5.

“Laws, customs and practices that oppress women are prohibited.” Hence, to the extent that polygamy is interpreted as harmful practice, the fact that it is acceptable under religious or customary norms does not preclude the State’s obligation from abolishing it.

One of the major departures in the state regulation of family relations in Ethiopia since 1995 came with the restructuring of the previous unitary state in to a federally decentralized one. As part of the division of legislative competence, the power to promulgate family law was allocated to the states who have since adopted their respective family codes. Even though the first rounds of family codes showed some level of originality in dealing with the question of bigamy in comparison with both the Federal revised family code and the civil code before it, they have since been revised to conform to the position of monogamy as the only acceptable arrangement of marital relations.¹³⁸ Bigamy is now one of the essential conditions that need to be checked before one gets married in both Oromia and SNNP regional states. In other words, polygamy is not directly prohibited in the laws; rather, it is provided as one of the prohibitive conditions to marriage under the regional states’ family laws.¹³⁹ However, in various cases, the Federal Supreme Court’s Cassation Bench had given effect to second marriages to protect the interest of the second wives.¹⁴⁰

More importantly, it would be noted that bigamy is labeled a crime under the Revised Federal Criminal Code of 2004 – following precedent of the previous law on the subject.¹⁴¹ The relevant part states that “whoever, being tied by the bond of a valid marriage, intentionally contracts another marriage before the first union has been dissolved or annulled, is punishable with simple imprisonment.” The responsibility is not only limited to the person who is taking a second spouse, but also applies to “any unmarried person who marries another he knows to be tied by the bond of an existing marriage.”¹⁴² However, the Criminal Code provides for a possibility of escaping criminal liability under Article 651 where bigamy “is committed inconformity with religious or traditional practices recognized by law.” Accordingly, for a bigamous act to be excused under

¹³⁸See for example the repealed Tigray Family Law Proclamation 33/1998, Article 32.

¹³⁹Chewaka, Jetu 2006 “Bigamous Marriage and the division of Common Property Under the Ethiopian Law, Regulatory Challenges and Options, *Oromia Law Journal*3 (1).

¹⁴⁰*Aregawi Abache v. Mrs. Aster Abegaz et al*, Federal Supreme Court, Civ. Cassation No. 39408, Federal Supreme Court Cassation Decisions, Vol. 10, 2002.

¹⁴¹Federal Negarit Gazeta, Proclamation No.414/2004, *Federal Criminal Code*, Article 650 Sub Article 1.

¹⁴²Federal Criminal Code, Article 650 Sub Article 2.

this provision, the existence of a law acknowledging the particular religious or traditional practice must be proved.¹⁴³

With regard to protecting the interest of women in marriage, one major gap in the law is when the second relation the husband enters into does not qualify as valid marriage and hence the civil and criminal remedies available are not applicable. The only legal remedy appears to be the institution of criminal prosecution for adultery, which only requires proving sexual relationship with another woman.¹⁴⁴

In analyzing the legal status of polygamy in the Oromia and the SNNP, one major deviation from the hitherto established prohibition relates to land registration procedures practiced in the context of rural land registration and certification. In clear contradiction to the family laws and other relevant legislations that outlaw bigamy and the rural land administration proclamations in both regions that reaffirm the principle of equality of men and women,¹⁴⁵ the practice appears to extend factual recognition to polygamous marriages. In both regions, the registration documents – including the certificates – have created the possibility for people in polygamous marriages to register not only the first wife and her husband, but also the second, third and fourth as the case may be.¹⁴⁶ It is the non-state laws that usually serve as the ultimate sources of legitimacy for the practice of polygamy. Since the only legally established religious or customary court in the study areas is related to the Sharia courts, it will suffice to see the position of Islamic law in this context.

The primary source of Islamic law is the Qur'an – believed to be the direct revelation of Allah to his people through Prophet Mohammed. On the question of polygamy, the most relevant verse in the Qur'an relates to the duty of equal treatment of wives.¹⁴⁷ With many of the traditional schools of jurisprudence, this is unequivocally taken as permission of polygamy. Some of the contemporary scholars, however, have interpreted the last part of the verse that cautions about being just as indirect prohibition of polygamy since it is humanly impossible to be equally fair to two or more wives at the same time. In support of their argument, they cite another verse from the

¹⁴³Fikre 2013, 91-92.

¹⁴⁴FDRE Revised Criminal Code Article 652.

¹⁴⁵Oromia Rural Land Administration and Use Proclamation 130/2007 and SNNPR Rural Land, Administration and Use Proclamation 110/2007.

¹⁴⁶For a detailed account of the modalities of Rural land registration and how polygamous marriages are treated, *see* also Fikre 2013, 88-108.

¹⁴⁷Qur'an Chapter four, verse 3, Surat al Nisa'i.

Qur'an that reads "You are never able to be fair and just as between women even if it is your ardent desire." ¹⁴⁸

VII. The Effects of Multiple Spousal Relationships on Women

As mentioned above, multiple spousal relationships take place in varying ways – depending on the cultural and socio-economic set-ups. As a result, although there are some effects that are cross-cultural, the effects differ depending on the context and may be generally considered as negative and positive. Empirical research conducted in Sub-Saharan Africa documented that polygamy, irrespective of the status of women as second or third wife, may have advantages such as social security gained through marriage, support with workloads and household chores, child raising responsibilities, satisfying the need for more children and social stigmatization as the result of being single after a certain age. ¹⁴⁹

One striking feature of multiple spousal relationships is that there is the expectation or the prospect that there will be another partner that will be introduced into the union.¹⁵⁰ Due to such factor, negative consequences such as absence of exclusive sexual intimacy, the opportunity to build a life together, to share material and emotional attention, and the feeling of uniqueness could be witnessed.¹⁵¹ This harmful interruption primarily deteriorates the opportunity to build strong marital and familial bonds.¹⁵² The disruption of an exclusive emotional and material relationship is often aggravated by unhealthy co-spousal relationships. Anthropological literature indicates that such union is often attended by emotional feelings of jealousy, tension, strain, and competitiveness.¹⁵³ Various researches conducted in this area also suggest similar outcome.¹⁵⁴

Negative psychological impacts, which multiple spousal relationships engender, include lack of room for personal desires, the ability to express one's emotion, sense of self-will and distinctiveness. The extent of the effects ranges from moderate to extreme – depending on strength of the

¹⁴⁸Qur'an Chapter four, verse 129. Surat al Nisa'I, for more on the position of Islamic law on other forms of informal multi-spousal relation see above, Section 2.1.2.

¹⁴⁹Zeitzen, 2008, 137 and 175; see also Bizualem, 2011 30-35.

¹⁵⁰Cook, 2006 10.

¹⁵¹Id.

¹⁵²Id.

¹⁵³Altman, Irwin, and Ginat, Joseph, 1996 "Polygamous Families in Contemporary Society", 341

Cambridge: University of Cambridge Press.

¹⁵⁴Veredslonim, Nevow and Aleanal, Krenawiw, 2006 "Success and Failure Among Polygamous Families: The Experience of Wives, Husbands, and Children Family Process" 45 (3) r FPI, Inc. 312; see also Adams, B., & Mburugu, E. 1994 "Kikuyu bride wealth and polygamy today." *Journal of Comparative Family Studies* 25 159-166.

women. Due to the prevalence of such unhealthy emotions, women in such unions are relatively more prone to mental and personality disorder which increase depressive disorders, low-self-esteem, unhappiness and sense of worthlessness when compared to women in monogamous union.¹⁵⁵

VIII. The Practice of Polygamy in Ethiopia

Ethiopia comprises of a multi-ethnic, multi-cultural, multi-religious society.¹⁵⁶ This plurality is reflected in various affairs of the society – including in spousal relationships, marriage and family structures. For instance, in the northern part of the country, which is predominantly inhabited by the Amhara and Tigray ethnic groups, the dominant form of marriage is exogamy, monogamy and arranged marriage. Even in such places where monogamy is the predominant practice, there are communities that accept men that have mistress and concubines. Among some Oromo communities that are predominantly Muslim such as in Bale, Jimma and Arsi, polygamy is widely practiced. Communities in the South Omo that are mainly pastoralists such as Tsemako and Hamar also practice polygamous marriage. Polygamous marriage is also practiced in other communities in the SNNPR such as in Sidama, Gurage, Hadiya, Wolaita, Kembata and Dawro.¹⁵⁷ The Census Report of 2012 indicates that about 11% of Ethiopian women are in polygamous relationship.¹⁵⁸ Given its informal nature, however, there is no definitive data and qualitative report compiled on the number of women living under multiple spousal relationships.

IX. Multiple Spousal Relationships in Hawassa

I. Social Attitudes towards the Practice of Multiple Spousal Relationships

Data from interviews and focus group discussions showed that the practice of multiple spousal relationships seems to be tolerated among the

¹⁵⁵Al-Krenawi, Graham, & Al-Krenawi 1997, 445-458; Veredslonim and Krenawiw2006, 312.

¹⁵⁶It was reported that Ethiopia comprises of more than 80 ethnic groups with unique cultural values and traditions. The Country also comprises multiple religions, which includes Christianity, Islam, traditional and other beliefs. Summary and Statistical Report of the 2007 Population and Housing Census, 16 and 18.

http://ecastats.uneca.org/aicmd/Portals/0/Cen2007_firstdraft.pdf.

¹⁵⁷Bizualem, 2011, 1; 30-36; Ezra, Markos, 2003. "Factors Associated with Marriage and Family Formation Process in Southern Ethiopia." *Journal of Comparative Family Studies*; Belayeneh 2005, 68-73, Beyene, Gemechu and Tolera, Assefa, 2006. "Marriage Practices Among The Gidda Oromo, Northern Wollega Ethiopia", *Nordic Journal of African Studies* 15(3): 252.

¹⁵⁸Central Statistical Agency 2012. "Ethiopian Demographic and Health Survey 2011. "Calverton, Maryland: ICF International.

community. Even in Hawassa town and the surrounding woredas,¹⁵⁹ there are indications that the practices of multiple spousal relationships in general and polygamous marriages in particular are accepted within the cultural set-ups. For instance, one study participant said that she knew about her husband's first marriage and married him formally as a second wife. A 36 years old study participant stated that:

I knew that my husband already has a first wife. I agreed and accepted to be his second wife. Then he sent elders to my family. After getting permission from my parents, we formally married in front of the civil registration bureau. At the time of the marriage, he has already lived with his first wife for 15 years. He has six children from his previous marriage. [...] The reason why I married him was because I love him. [...] Our society took it as part of culture. In such polygamous marital arrangements, we live together peacefully. She owns and administers the property that she owns during her marriage with him, and I also do the same. I have six children with him.¹⁶⁰

Another key informant also supports the view and submitted that multiple spousal relationships are widely practiced in Tabor sub-city in Hawassa where he works. He confirmed that "[Multiple spousal relationships] is an issue in Tabor sub-city and even as this interview is going, there is a woman at the police station accusing a man of involvement in such act. One reason could be that the sub-city is remote and there are rural woredas around it".¹⁶¹

A third key informant explains that:

Mostly the reason for polygamy is culture; women, especially around Sidama zone, allow their husband to marry a second wife because a second wife will ease the burden of housework. It is only if he gets married without her permission or they have another cause of disagreement that the woman will complain.¹⁶²

¹⁵⁹During the Field Research Testing Conducted in Hawassa and Dore Bafano from 29 July-01 August 2015, the testimonies of women as well as key informant interviews revealed that polygamous marriages have been widely practiced in the Sidama culture.

¹⁶⁰E. M. Study participant from Hawassa City, interviewed 28/08/2015.

¹⁶¹Key Informant Interview (KII) Sergeant Alemayehu Dejene, Tabor Sub-City Police, interviewed 29/08/2015.

¹⁶²KII, W/ro Wengel Yegeletu, SNNPR Special Prosecution Unit, interviewed 29/08/2015.

While admitting the prevalence of multiple spousal relationships in the locality, a key informant from the SNNP Bureau of Women and Children Affairs (BoWCA) argued that:

In Menaheria sub-city, there are 2 Kebeles predominantly inhabited by communities with low economic status and migrants from rural area; cases of multiple spousal relationships mostly come from these kebeles. The allegations involve that men start to live with another woman without dissolving the previous marriage but the second relationship is rarely formalized.¹⁶³

Similarly, a judge at the first instance court explained that although one of the reasons submitted in divorce proceedings is multiple spousal relationship, women often tend to hide it when bringing a petition for divorce; they only mention other reasons which are considered as the effects of multiple spousal relationships such as domestic violence and refusal to provide for the family. This could be associated with the fact that such practice is considered as embedded in culture in the localities surrounding Hawassa which most women tend to accept. In his words:

As a ground for divorce, women usually mention the husbands' failure to provide adequate maintenance and involvement in domestic violence. They rarely mention the fact that their husband has married another woman as a reason for divorce; it is through fact-finding questions of the court that the issue of [multiple spousal relationship] comes out.¹⁶⁴

A key informant from the Menaheria sub-city BoWCA said "mostly women come to complain about domestic abuse when they are thrown out of their house or their husband refuses to provide maintenance. It is through discussion that they mention the problems are happening because their husband has another woman on the side."¹⁶⁵

Another informant who works for NGO and had conducted a baseline survey on harmful traditional practices in the Hawassa surrounding area explained:

The Center where I am working had conducted a baseline survey on harmful traditional practices and found that polygamy is included in the top 5 harmful traditional practices. In an area known as 'Arbegona', polygamy and its impacts are very serious. A large

¹⁶³KII, W/rt Meklit Lucas, Legal Support and Advice Officer, Menaheria Sub-city BoWCA, interviewed 29/08/2015.

¹⁶⁴KII, AtoTamirat Talo First Instance Court Judge, interviewed 29/08/2015.

¹⁶⁵KII,W/rt Meklit Lucas.

number of children living in Hawassa city had migrated from rural areas because their fathers have multiple wives and are not able to provide for their needs.¹⁶⁶

The last informant, a public prosecutor in the region, verified the stories: “there are 12 rural Kebeles in Tula sub-city – and it is in these areas that polygamy is widely prevalent as opposed to the city itself; this is mainly because the community in the rural areas doesn’t have sufficient awareness. In the city, though, there are more frequent cases of adultery.”¹⁶⁷

ii. Women’s Perception of Men’s Reasons to Engage in Multiple Spousal Relationships

The causes for involvement in multiple spousal relationships are difficult to ascertain; most of the study participants didn’t know of the factors that prompted their husbands’ desire to resort to multiple spousal relationships. Many had expressed their presumptions. In general, the major causes, as narrated by the study participants, include promiscuity, long distance relationships, and the husbands’ success and newfound desire for better wives. Others mentioned the issue of obsession for money, the desire to have sons, and illness.¹⁶⁸ In some instances, the testimonies of study participants revealed that there is more than one reason for husbands to resort to multiple spousal relationships.

Promiscuity

The testimonies of women in Hawassa town showed that one of the reasons for men’s extramarital relationship is related to infidelity. In most cases, the issue is not simply about sexual incompatibility, but also the husbands’ excessive sexual urge and promiscuity. Having multiple sexual relationships of husbands with a number of women manifests the pattern for such excessive sexual urge.

Some of the study participant women believed that their husbands started sexual relationships with other women because of their limited sexual intercourse experiences – since for most such women, their husbands were their first. One study participant from Hawassa who married her teacher when she was only 15 years old and now a mother of three said “I do not know the exact reason for my husband’s extramarital affair; I believe it is related to sex. The woman he is involved with used to work in a bar as a

¹⁶⁶KII, Ato Eyob Gode, Monitoring and Evaluation Officer, Center of Concern, interviewed 29/08/2015.

¹⁶⁷ KII, Ato Habtamu Haro, Tula Sub-City Public Prosecutor, interviewed 29/08/2015.

¹⁶⁸B. L. Study participant, Hawassa City, interviewed 27/08/2015.

prostitute and has had sexual experience with different men. Due to this, she must have created strong impression in sexual bond than I did.”¹⁶⁹

Promiscuity could also be manifested by resorting to younger women. This usually appears in relationships that spanned for a long time. One study participant who is in her 60’s said that “I was married for 30 years, and now my husband married to a young girl in my old age. Husbands treat you well until you give birth and afterwards their love fades through time”.¹⁷⁰

Long Distance Relationship

Another important reason for men to resort to multiple spousal relationships is long distance relationship after marriage. This could be associated with factors such as education in higher institutions and work far from home. With regard to the location of work being far from residence, a study participant from Hawassa who was married for 10 years stated;

I was a housewife – raising my children. My husband was working in a garage. Most of the time, he says, he has fieldworks and does not come home for days or sometimes weeks. One time, I even filed a complaint with the police because I was concerned that something bad had happened to him, as I had not heard from him for a long time. Such incident continued – with the frequency of his staying out increasing by the days. At daytime, he calls but in the evenings, his phone is always switched-off. He says his phone was off due to lack of electricity and he could not charge his phone. I started to check out the situation and heard from people that he is living with another woman in Wolayita. I went to Wolayita to see this for myself and ascertain that he is living with another woman.¹⁷¹

Husbands’ Success and Desire for a Better Wife

Some of the study participants believed that their husbands resorted to multiple spousal relationships due to their financial and career successes and the desire for better wives who matches their newfound standard. Many of the women interviewed were very young and have discontinued their education when married. For such reasons, they were either housewives or have pursued career in low-income activities. In the initial years of marriage, their husbands were also either at the beginning of their careers or still striving to advance in their education.

¹⁶⁹L. A. Study participant, Hawassa City, interviewed 26/08/2015.

¹⁷⁰A. M, Study participant, Hawassa City, interviewed 26/08/2015.

¹⁷¹Y. H. Study participant, Hawassa City, interviewed 28/08/2015.

One of the study participants explained that due to her husband's career and financial achievement in the course of their marriage, her husband chose to marry another wife. She said "we started to have a problem in our marriage 15 years ago when I had my first child. He also became financially stable due to his construction works and started looking for a younger wife".¹⁷²

The desire to marry other wives with better income or education is also associated with the obsession for financial success and higher social status, which is also cited as a reason for their husbands resorting to extramarital relationship.¹⁷³

Desire to Have a Son

In some societies, having a son is considered as one of the most important occasions in the household and the community at large. Such view that has become an important part of the priorities of societies also influences husbands to be longing for boys. In situations where a husband's desire to have a boy could not be fulfilled from a first wife, he takes it as legitimate ground for initiating another relationship. A study participant who married her husband when she was 14 years and now with 4 daughters noted: "my husband wanted to have a son but he could not get that from me. Due to this, he married another woman just for this reason. I heard about his affair from people and ascertained that he had started relationship with another woman".¹⁷⁴

iii. The Psychological and Physical Impact of Multiple Spousal Relationship

All women interviewed affirmed very unequivocally that the extramarital relationship of their husbands have adversely affected their lives. They are deeply hurt knowing that their husbands have started other relationships. They are physically, mentally and psychologically affected by such situation. Moreover, the study participants felt unwanted, worthless and inferior to others and hence became unhappy and miserable in their lives.

One study participant, who was married for 30 years, was told she was badly beaten by her husband due to their frequent quarrel concerning his extramarital affair. She noted "my husband hit me when I refused to leave the house. [...] He used a big stick to strike me hard – so much so that I was taken to a hospital by the neighbors. I was badly injured and due to this, he

¹⁷²A. M. Study participant, Hawassa City, interviewed 26/08/2015.

¹⁷³ Id.

¹⁷⁴ B. B. Study participant, Hawassa City, interviewed 27/08/2015.

was taken to custody by the police.”¹⁷⁵She further explained that she was subjected to frequent insults by an unknown woman who called her house: “I found out that he opened a shop for her. I even went to the shop and was told by the lady that she owns it and gave me his number to call. The neighbors informed me that actually he owns the shop and is living with the woman. Worse, I heard a rumor that there is also another lady for whom he bought a house”.¹⁷⁶

Since most of the women depend financially on incomes of their husbands, after separations caused by extramarital relationships, they could hardly provide for their basic provisions such as food, housing and other needs required for survival. Children in such households are also severely affected; their mental and psychological wellbeing is often at stake. One study participant who found out about her husband’s extramarital relationship from an expectant second wife who came to her house noted: “after my husband left me for another woman, I am living under a dire situation as I had no means to sustain my livelihood. I used to entirely depend on him. I already have a five year old child and am currently pregnant with his baby”.¹⁷⁷Another study participant in a similar situation decided to get back to her husband after her separation simply because she could not raise the children on her own. In her words she said:

I agreed to the elder’s mediation to get back with my husband while knowing of his relationship with another woman; I did so for my children’s sake as I could not raise them due to lack of financial means. I had also witnessed that my children’s behavior was getting depraved due to the lack of proper upbringing.¹⁷⁸

Another study participant disclosed that she became very sick when her husband, who is in a relationship with another woman, took half of her property she received from inheritance. She explained:

I married my husband in 1963 E.C through a traditional ceremony and now I have two children. Years later, I heard that he has been married to another wife. [...] following the divorce, he took half of what I inherited from my family; because of the anger, I became sick.¹⁷⁹

¹⁷⁵ A. M. Study participant, Hawassa City, interviewed 26/08/2015.

¹⁷⁶Id.

¹⁷⁷M. G. Study Participant, Hawassa City, interviewed 27/08/2015.

¹⁷⁸Y. H. Study participant, Hawassa City, interviewed 28/08/2015.

¹⁷⁹B. L. Study participant, Hawassa City, interviewed 27/08/2015.

iv. Remedies and the Responsiveness of Formal Justice Mechanisms

In considering remedies and responses offered by the formal justice system, it is imperative to consider first what the study participants have to say about bringing cases before the concerned authorities.

Most of the study participants plainly submitted that they are aware about their rights under the law and had been advised by different institutions such as the BoWCA and the police to take the matter before courts of law. One study participant who is a kindergarten teacher and a mother of three said: “I am aware of the criminal responsibility that emanates from multiple spousal relationships. However, I do not want my ex-husband to be imprisoned for his act. I believe if he does not want me, I should not force him to stay with me and he can marry anyone of his choice.”¹⁸⁰ She further explained: “when I decided to divorce him, I contracted a lawyer; following intense negotiations, my ex-husband left the house and household stuffs for me. He also agreed to pay 800 birr per month to raise the three kids. In addition, he pays 680 birr for a house rent. Since, he has regularly discharged the financial duties.”¹⁸¹

Although this could be considered as success story, others were not as fortunate as the aforementioned study participant. One study participant narrated a contrary story: “he took half of what I inherited from my family during the divorce, which he is not entitled to. Since then, I was consumed by overwhelming anger, which led to my serious sickness. Although I wanted to take the matter to court, I could not do so due to my bad health condition.”¹⁸²

While women know about their rights and also have the desire to make use of legal remedies, some failed to take cases before courts due to lack of the necessary financial means; hardly do they also have the time as they have to work all day to win daily bread. One study participant noted:

I know that I can file a complaint before the police and make him criminally liable; but I cannot do that because I work the whole day to earn money to sustain my livelihood and the needs of my children. I do not have any extra money to cover court-related expenses. However, if I had the financial means, I am absolutely willing to take the case to court.¹⁸³

¹⁸⁰L. A. Study participant, Hawassa City, interviewed 26/08/2015.

¹⁸¹Id.

¹⁸²B. L. Study participant, Hawassa City, interviewed 27/08/2015.

¹⁸³Y. H. Study participant, Hawassa City, interviewed 28/08/2015.

In other instances, while there was a desire to take the matter to courts, some women had been unable to get witnesses. This is mainly because neighbors and those who knew about the facts do not wish to be seen as going against established culture. Moreover, many of such persons don't want to disrupt their good relationships with the husband. In this regard, one study participant said:

Initially, I did not know that multiple spousal relationships or polygamous marriage is a criminal offense. I became aware after I took part in awareness-raising program at the Kebele. I wish to take the case to the court and sue my ex-husband for his deeds. I even tried to take the matter to the police, but my neighbors were unwilling to testify.¹⁸⁴

In other occasions, women took the cases before courts of law, but elders urged the women to withdraw their claims. One study participant said:

I decided to divorce him when he bit me badly with a stick. I reported the case to the BoWCA and he was caught by the police and held in custody for eight days. After this incident, I pursued the divorce process without mentioning that he has a relationship with other woman. I wanted to sue him for beating and infidelity, but the elders convinced me not to. As a result, the criminal case was dropped.¹⁸⁵

Another dimension of the remedies and responses sought in the context of multiple spousal relationships could be inferred from the testimonies of key informants. A judge at a first instance court submitted:

The issue of multiple spousal relationships is brought forward during petitions for divorce; when one woman petitions for divorce, a second or third woman may join the case arguing that they are also wives and have claim on the property. In such cases, the court devises a mechanism to fairly divide the property based on the duration each marriage has lasted for and what each of the spouses has contributed in the marriage.¹⁸⁶

Regarding the issue of reporting to the police, there were a far fewer cases in the past that had been submitted in Hawassa. Even in Tabor sub-city where, apparently, the prevalence of multiple spousal relationships is

¹⁸⁴B. B. Study participant, Hawassa City, Mehal Sub City, Leku Kebele, interviewed 27/08/2015.

¹⁸⁵A. M. Study Participant, Hawassa City, Menaheria Sub City, Millennium Kebele, interviewed 26/08/2015.

¹⁸⁶ KII, Ato Tamirat Talo, First Instance Court Judge, interviewed 29/08/2015.

prevalent, the number of cases reported to the police is very limited. According to a police officer at Tabor sub-city police station:

There are occasional complaints of [multiple spousal relationships] that are brought to the police station. Some of the women come on their own, while others are referred to the station through the BoWCA. Although a few of such women possess marriage certificates or proof of traditional ceremonies, many complainants had only lived together for a short time and do not have proof of marriage.¹⁸⁷

According to one key informant, while there is a special prosecution unit established to handle cases of violence against women and children, the unit does not admit cases involving women who are older than 18 years of age and hence issues relating to multiple spousal relationships would not be investigated. Moreover, the key informant said:

The police are not willing to investigate multiple spousal relationships and polygamy cases. They expect women to serve the summons and gather the evidence themselves because of shortage of vehicles and budget.¹⁸⁸

An expert from Menaheria sub-city BoWCA points out some of the practical challenges associated with filing a complaint in relation to multiple spousal relationships. The key informant noted:

Concerning [multiple spousal relationships], although the facts are usually there, it is difficult to come up with proof. There is a problem of finding evidence because, often, the subsequent marriages are not concluded in any of the lawfully recognized forms.¹⁸⁹

Further, the key informant pointed that the service gaps observed in the justice administration system are concerning. He noted:

There are recurring problems within justice professionals. One problem is that they just send women with any problem to the BoWCA. Even if the woman had been beaten up and was bleeding, they are very reluctant to consider the incidence as a crime. They also focus on reconciliation rather than instituting criminal cases. Some experts working in these institutions actually consider

¹⁸⁷KII, Sergeant Alemayehu Dejene, Tabor Sub-City Police, interviewed 29/08/2015.

¹⁸⁸KII, W/ro Wengel Yegeletu, SNNPR Special Prosecution Unit, interviewed 29/08/2015.

¹⁸⁹KII, W/rt Meklit Lucas, Legal Support and Advice Officer, Menaheria Sub-city BoWCA.

polygamy as a right or a cultural practice. Traditional elders could play role in renouncing the practice, but they are not willing. Mostly, they come to mediate on behalf of men with the pretext of reconciliation, but in fact, it is just so that men could escape criminal liability.¹⁹⁰

X. Multiple Spousal Relationships in Adama

i. Forms of Multiple Spousal Relationships

Considering the data collected through interviews with many of the public officials such as prosecutors, judges, police and affected women, multiple partner relationships are not technically read as constituting polygamy. In fact, during one of the focus group discussions, a participant estimated that the number of cases of multiple partnerships they encounter that qualify as polygamy in the formal sense of the term does not exceed more than 27%. In this light, an attempt will be made here to highlight as to the other forms of multiple partner relationships observed with some regularity and pattern in the study area.

***Kimit* (Mistress)**

This form of multiple partner relation is where a man is legally married to a woman and still engages in an affair with another woman on a regular basis and he mostly pays for maintenance of the woman. The Amharic word *Kimit* signifies the financial responsibility of the man and a certain level of fidelity expected of the woman. This form of relation is confidential, and most widely practiced by men with relatively better economic status. The data gathered shows that the practice is spreading with the increased urbanization and enlargement of the urban middle class; often, men involved in the practice are either government officials or wealthy businessmen.¹⁹¹

Wife Abandonment

Many of the women who participated in the study actually fit in this category. This is where the man moves in with another woman without formally dissolving his marriage. This may happen with the knowledge of the first wife; sometimes it may be the case that the husbands who moved to or from the study areas start a new family by completely abandoning the first marriage. The data collected from both study areas actually showed that the practice of cohabiting with two or more women is rare; the husbands tend to abandon the first marriage in favor of the second

¹⁹⁰Id.

¹⁹¹KII, Feye Dufera, Adama City Prosecution Office Head, interviewed 20/08/2015.

marriage or relationship, without however fulfilling the formal legal or cultural procedures to end the first relationship hence putting the women in limbo.

ii. Social Attitude towards Multiple Spousal Relationships

According to the key informants and participants in the focus group discussions, the social attitude towards multiple spousal relationships is attuned by religious and cultural norms in the study areas. For Muslims, they enter into polygamous marriage as accepted in the religion. According to one FGD participant:

In Islam, it is allowed for a man to marry up to four wives. This can only happen if the man can treat and support all of them equally. This was practiced in the old times, but nowadays it is not accepted especially by women although there are men who enter into such relationship saying that it is permitted.¹⁹²

The informants also mentioned that the practice is supported by the Oromo culture, which allows a man to marry two or three wives. It was also found that keeping mistresses is a fairly common practice in the area. One of the participants in the FGD stated:

I was born and raised in a rural area and I also work there. I am borne of a peasant family. I know everything; there isn't a man who does not have a mistress although he may not formally enter into another marriage. When a man comes to the city, he has what is called a 'regular'. He goes there, drinks, spends the night with a woman and his wife wouldn't say anything; she accepts him when he returns. In a small rural Kebele like mine, it is commonplace to hear people say that she is somebody's wife. If the society accepts this, then it becomes a rule, a norm of the sorts.¹⁹³

In addition to being common, keeping a mistress was said to be considered as gallantry by many men. *"In rural Kebeles, keeping a mistress is something to brag about; when we go there to give awareness on the issue, we ask why this is the case. They told that it is considered as a sign of economic status to keep a mistress in the city".*¹⁹⁴ As one of the key informants explained, the existence of proverbs such as *'And Mist, And Ayin'* (one Wife is like one eye) shows the wide acceptance of the practice.¹⁹⁵

¹⁹²FGD, Adama City, 21/08/2015.

¹⁹³Id.

¹⁹⁴Id.

¹⁹⁵KII Ato Abudlkadir Feysel, Adama Woreda BoWCA, 20/08/2015.

iii. Women's Perception of Men's Reasons to Engage in Multiple Spousal Relationships

The study participants mentioned different reasons as to why they think their husbands have decided to begin relationship with another woman while still married. Such included sexual drive of men, long distance relationships, desire for better wife, economic reasons and pressure from family.

Sexual Drive of Men

When asked why they believe men take more than one wife or engage in multiple spousal relations, many study participants factored the case of sexual desire by men. They perceive men as having an abnormal level of sexual desire and urge. One of the participants reported that her husband has sexual urge that is so difficult to satisfy; he did not only limit himself to her and the other woman he cohabits with, but also sleeps with prostitutes and other women regularly.¹⁹⁶ Another FGD participant stated:

I am a city girl. I see what goes on in the city. I observe the marriage of my friends as well what is on the streets and I take lessons from that. [...] But this man goes to another woman and from her to another woman. He is now on his fourth and fifth woman [...] I believe this man is promiscuous because I have what the other woman has and I take care of myself, wearing clean clothes; so, I think he has an addiction to sex.¹⁹⁷

Long Distance Relationship

For some of the women interviewed, their husbands entered into another relationship when they were living away from their marital abode. One of the participants experienced this when her husband went to Addis Ababa and Jimma for further education. She explained what happened:

Living separately creates a rift in a relationship. When we were living together, I have neither seen nor heard about such things. He did not have thoughts about other women; you would never know he would. He was disgusted with other people who do such things. But he left for his education and that was it.¹⁹⁸

Another participant said her husband was a contractor – which meant that he stays away on field works frequently.

¹⁹⁶Z.G. Study participant, Adama City, interviewed 20/08/2015.

¹⁹⁷FGD, Adama City, 21/08/2015.

¹⁹⁸FGD, Adama City, 21/08/2015.

When there is shortage of work here, he said he needed to go to rural areas to work and we agreed that he should. At first, he used to come three days a week, then it became two days, then just one day a week [...] after a while he started not coming home for up to six months. Then, he just shows up, is served meals, and drinks his coffee and just leaves.¹⁹⁹

Economic Motivations and Wives with Better Status

Some of the participants stated that their husbands might have left them for women with better education and/or income. One of the participants described what the second wife told her about herself: “she told me she went to Adama University and is a lawyer; she also said she studied psychology and business and has a master’s degree.”²⁰⁰The participant said she did not pursue her education beyond reading and writing. Another participant, whose husband has been with multiple women said: “the first woman he was in a relationship with was a university student. She also had a job. She may have better salary and knowledge than me, but she was not any better in terms of physical appearance.”²⁰¹The same participant then told the following about the woman that he is currently married to:

She came from abroad. She was looking for someone to do a proposal for her and people introduced her to him. They got married after knowing each other for a day. They spent the night the day they met and got married the next day. She has lived in the US for 21 years. She is very wealthy.²⁰²

iv. Physical and Emotional Impact of Multiple Spousal Relationships

For most of the participants in the study, in addition to their husband being in multiple spousal relationships, they also faced other types of violence such as physical and verbal abuse. One of the participants narrated what her husband, 34 years old, did to her:

I went to the court, but he promised to change and we reconciled. A little later, he married another woman. I decided not to say anything, but he started beating me. He gets drunk and comes home in the morning; he verbally abuses me, tells me that he does not want me and that I should leave with my children.²⁰³

¹⁹⁹KII, S.H, Adama City Legal Aid Office, 21/08/2015.

²⁰⁰Id.

²⁰¹FGD Adama City, 21/08/2015.

²⁰²Id.

²⁰³S.H. Study participant, Adama City, interviewed 22/08/2015.

At the time of the interview, she had already left home and was staying with a sister – following the latest episode of beating which resulted in her being unconscious and hospitalized. In addition, she told that the woman who the husband left her for and who also happened to live close by – verbally abuses and throws stones at her.

Another participant who married when she was 16/17 said her husband prevented her from continuing her education or having any kind of contact with other people. He also did not allow her to do any work:

He covers all expenses. I don't do anything. When I try to work, he does not approve; in time, he decreases the allowance he gives me. When he does this, I could not cover all house expenses and as my business failed, I had to go back to being a housewife. I believe he did not want me to work because he feared I would find out his secret [about the other woman].²⁰⁴

Economic hardship is another adverse impact that comes along with multiple spousal relationships. Economic hardship occurs because husbands are often the primary breadwinners of families; when they enter into another relationship, they generally terminate the financial support. This prevents women from taking their cases to courts. As one of the participants put it:

When I called my husband, the new wife insults me– telling that I could not talk to him that way. At last, people advised that I should take my case to the court, but I did not want to. First, I did not have any property; economically, I lead a desperate life. I told him I did not want to sue him, but that he should provide money to raise our child; he kept saying he didn't have money and could only afford to offer 2000 or 5000 birr [...] Finally, I decided to take the case to court which is now pending.²⁰⁵

Another woman described the financial problems she faced when she was expecting her child and after she gave birth because her husband who was living with another woman refused to offer assistance.

I gave birth to my daughter in an empty house. My sister asked him how he leaves a woman who just gave birth in such a state. He replied "that is her problem; she eats if I have money and there is nothing I can do if I don't have [...]". I have never been able to provide for the basics; instead of milk, I was forced to give her

²⁰⁴Id.

²⁰⁵Id.

potatoes and whatever I can find, and pay the rent with support of other people.²⁰⁶

Another participant in a similar situation narrated that her son could not be enrolled in school for lack of money. Although this participant had earned a degree, she described the difficulties of looking for a job carrying her son on her back.

The economic difficulties also come with going through prolonged court cases. “There is a lot of hardship encountered when pursuing a court case; I had to sacrifice my time, money and job”²⁰⁷ explained one of the participants – adding that her father supported her financially from his pension during the divorce proceeding. Another participant explained: “when a man leaves his house, he already has set himself up. The woman does not have anything. The court proceeding may take a long time. In this process, her finances dwindle while his increase.”²⁰⁸

One of the participants said she was very sick as a result of her husband leaving her and marrying another woman and emotionally hurt.²⁰⁹ Another woman narrated she was so shaken by the experience and was sobbing most of the time during the interview and FGD.

v. Remedies and Responsiveness of the Formal Justice Mechanism

According to the key informants, women affected by multiple spousal relationships seek the formal justice sector as a last resort. In most instances, women affected would try to resolve their disputes through traditional mechanisms such as family mediation – and then through elders and religious leaders.²¹⁰ Whenever they come to state institutions, as noted above, women rarely seek for the dissolution of the second marriage or ask for the man to be punished for adultery; rather, most claims focus on the provision of maintenance for children, dissolution of the marriage and partition of marital property.²¹¹

Although having multiple spousal relationships is a punishable offense under the Criminal Code, criminal prosecutions are rare according to interviewees from justice institutions in Adama. Cases are resolved either through reconciliation, or would be discontinued for lack of sufficient evidence, or the victims would prefer to end the cases in civil courts

²⁰⁶FGD Adama City, 21 /08/2015.

²⁰⁷T. B., Study participant, Adama City Legal Aid Office, 22/08/2015.

²⁰⁸FGD Adama City, 21 /08/2015.

²⁰⁹FGD Adama City, 21 /08/2015.

²¹⁰KII, Ato Feye Dufera, Adama City Public Prosecutor, 20 /08/2015.

²¹¹Multiple sources in the KII as well as the Study Participants interview.

through divorce. The major problem, as pointed out by the key informants, is difficulties in acquiring evidence and proving polygamy. As the head of the Public Prosecutor's Office explained:

Since the man comes from other places to Adama, the wife who lives in another part of the country may not have the information about this. Even if the woman is able to get information, the society is not willing to provide evidence or to be a witness. In rare cases where both live in the area, we can only institute a criminal case if the marriage is formulated in one of three ways: religious, customary or before an officer of civil status. It is also hard to prove irregular union because they have to live together for at least three years and could be proved by the community.²¹²

This view was also shared by another public prosecutor in the same office:

Although cases are submitted alleging the commission of polygamy, it is hard to prove because when men go for a second wife, it is not concluded as a marriage in the eyes of the law; they just start living with the women. There is no hard proof showing that a marriage has been validly concluded in either one of three ways. Given also that many witnesses do not wish to come forward and testify, most cases would be discontinued and shelved while at the police station.²¹³

Lack of concrete evidence to prove the conclusion of marriage is also said to open doors for men to come up with defense: "the first wives who come to file complaint do not even have proof of their own marriage; nor could they find evidence that the second relationship is actually a marriage. In fact, when men are asked, they would simply tell that the woman in the house is a domestic worker or a relative."²¹⁴

The public prosecutors interviewed during the case studies advised that the better solution they recommend when there is no enough evidence to prove a second marriage is to charge the man for adultery. However, this comes with its own problems of proof; the crime is punishable only upon complaint. They also mentioned that in some instances, civil benches adjudicating on divorce cases would send the file to their office asking if prosecutors could detect the commission of polygamy.

There are instances where civil courts send files saying that from the facts presented, the occurrence of polygamy appears to have taken

²¹²KII, Ato Feye Dufera, Adama City Public Prosecutor, 20 /08/2015.

²¹³KII, Abayneh Bayew, Public Prosecutor at Adama City Public Prosecutor's Office 20/08/2015.

²¹⁴KII, Dejene Gonfa, Adama Woreda Public Prosecutor's Office, 20/08/2015.

place which merit further investigation; but, when we ask in which of the three ways the second marriage is concluded, that is when the case gets stuck. The wife would not know and couldn't bring witnesses either.²¹⁵

According to the informants in the justice system, many cases also end up in reconciliation. One of the reasons for opting for reconciliation could be the life they shared.

Most women are very emotional and cry a lot when they first come. They relate their stories from the beginning, and in most relationships, there are children. Although they are hurt by what had happened, because they have shared love and good memories with the husbands and for the sake of children, they are easily persuaded to reconcile.²¹⁶

In addition, there is heavy pressure from traditional elders for settlement—mostly allowing husbands to go back to their first wives and raise the children. Concern about the economic and other ramifications is also another reason that factors in not following through with court cases.

Reconciliation efforts are also pursued by the formal justice institutions.

There are cases when women come to complain about multiple spousal relationships. What do we do in such cases? They have children and we look at their economic status. So, we focus more on reconciliation. For example, the second woman may argue that she did not know that the man had a wife...we negotiate so that she can get what she needs and tell the man to take care of his children and not to abandon his marriage.²¹⁷

Lack of awareness about the criminal nature of the act was also a problem the formal justice system recognizes as a major hindrance. "Women come complaining that their husband is living with another woman – not knowing that polygamy is a crime. If they had the awareness, they might be able to gather evidence and be ready to institute suits."²¹⁸

In the form of assistance, police provides advice to such women who come with complaints of polygamy; often, women are informed how they can gather evidence. But, according to Inspector Berhanu, it is not customary to

²¹⁵Id.

²¹⁶KII, Abayneh Bayew, Public Prosecutor at Adama City Public Prosecutor's Office, 20/08/2015.

²¹⁷FGD, Adama City, 20/08/2015.

²¹⁸KII, Abayneh Bayew.

assign police investigators for such cases; assignments by the police must entail matters of public interest.”²¹⁹

Women who participated in the study revealed that they feel aggrieved with the quality of treatment and service they received in the hands of formal justice institutions. One of their criticisms relates to the amount of time it takes to bring a case to its end. They suggested that the process, especially in cases of divorce and partition of property, has to be expedited. According to one of the participants, “it takes about two or three years to conclude a divorce case and partition a property. During such time, the property or the evidence may just disappear. That means all the hardship endured during the proceedings would be futile – engendering despair and prompting people to leave matters as are”.²²⁰

An FGD participant explained what she encountered when she went to the women and children affairs bureau:

*Although I have never gone to court before, I convinced myself that it is better than leaving my child in a state of starvation. I went to the women and children bureau and met a civil servant to whom I explained my situation. She said ‘so what is the problem if he marries another woman? You should secure maintenance for your child and do nothing’; this affected me psychologically. She made me give up...I believe such offices should focus on addressing psychological issues as well.*²²¹

Some of the women also perceived that actors in the justice system are corrupt, and hence, it would be futile to seek remedies from such institutions. One participant explained that although she knew that polygamy is a criminal offense, she did not want to take the matter to the police; “my husband’s hands extend far, his pocket is full. He is not the kind of person you can defeat in such forum. He knows all the key people; so, I convinced myself that I would not get any benefit pursuing this road.”²²²

²¹⁹KII, Inspector Berhanu, Adama Woreda 3 Police Station, 20/08/2015.

²²⁰FGD, Adama City, 20/08/2015.

²²¹FGD, Adama City, 20/08/2015.

²²²S.H. Study participant, Adama City, interviewed 22 /08/2015.

XI. Conclusions and Recommendations

Conclusions

Despite the various forms of multiple spousal relationships, nearly all women affected by such arrangement have an understanding of the practices as illegitimate and unfair; however, not all possess knowledge that it is a criminal act. All study participants also share the same view that multiple spousal relationships have negative socio-economic and psychological impact on women.

The key reasons for many husbands to seek for additional relationship with women are related to promiscuity, the husbands' excessive sexual desire, mobility to other places for education or work purposes, the husbands' new-found achievements in terms of finance and education and their desire to marry a wife that 'matches' their new status, family pressure. There are also situation where all children from the first marriage/relationship are female, husbands think they have a better chance of getting male offspring if the try with another woman.

In many cases, it was found that there are a few cases where a man cohabits with two or more women simultaneously; for the most part, however, multiple spousal relationship takes a form of abandoning the earlier wife/partner in favor of the new one – without formally dissolving the first relationship. Lack of proper public records and difficulty of access to the available ones – coupled with the absence of developed practice in using such records before getting in to marriages – have been identified as fundamental problems that encourage the ever-increasing incidences of multiple spousal relationships in the study areas.

It was also noted that women rarely seek for the dissolution of the second marriage or request for the man to be punished for adultery. Rather, the most frequent claims submitted by women are confined to issues of maintenance for children, the dissolution of the marriage itself, and the partition of marital properties.

The study established that nearly all women knew about their legal rights both under the civil and criminal laws. However, very few pursue their rights in practice. It was accounted in the study that this is largely due to the availability of limited resources, their economic standing (as most live on daily incomes, they do not have the luxury to pursue cumbersome and time-taking legal actions), lack of trust in the system, and the anticipation of maintaining continued relationship with husbands for children's sake.

Recommendations

What is obvious from both the literature reviews and empirical investigations is that the socio-legal problems women continued to encounter as a result of multiple spousal relations has not been accorded sufficient attention.

To ameliorate the problems of women in the context of multiple spousal relations in Ethiopia in general and the study areas in particular, certain measures have to be adopted. The first measure is to give credence to these virtually unregulated social phenomenons. There is a need for in-depth and multidisciplinary investigation of the subject, which informs the nature, and extent of future actions.

It was clearly established in the research that women particularly suffer from their husbands' decisions to engage in multiple spousal relations because of their economic dependence. Again, the possibilities of extending remedies as provided under the law are hampered because of women's economic conditions. In this light, therefore, promoting measures that empower women economically becomes very imperative; economic emancipation has direct bearing in mitigating the ill effects of multiple spousal relationships. Among others, this includes measures that improve women's access to land, property, technologies and other means of production by involving men in these efforts through legal and human rights education. Creating an environment that enables more women to work in the formal sector, including through affirmative action, can serve the purpose.

In relation to problems associated with lack of access to public records on marital status, Proclamation No.760/2012 on Registration of Vital Events and National Identity Card (as amended) provides for compulsory and universal registration and certification of vital events. Its thorough application can reduce problems related to public record systems. A Federal Vital Events Registration Agency has since been established. Governments of regional states and city administrations have also enacted regional vital events registration laws and furthermore established corresponding regional agencies. However, concerted efforts must be exerted by both tiers of government and civil society organizations to promote a culture of utilizing such records.

Help Seeking Experiences of Female Victims of Intimate Partner Violence: Legal and Social Protections

Anchinesh Shiferaw and Kuribachew Hailu²²³

Abstract

This article seeks to bring out the lived experiences of women in seeking help from the formal and informal help providers in two study sites. It mainly aims to explore the prevailing norms, cultural practices and perceptions about intimate partner violence (IPV) in the study sites through a qualitative study. It provides insightful information about the challenges victims of IPV face in pursuing redress. This paper reveals that most victims of IPV often seek help from informal help providers. In these situations, their definition of victimhood is not recognized by the society y and large. The society rather seeks to protect the integrity of the family by advising the victims to tolerate the violence. The few women who pursued formal avenues are not provided with a comprehensive remedy. Starting from the way they are treated by the police up to final judicial decisions, their peculiar situation as victims is not given the necessary consideration. This article relying on the lived experiences of female victims of IPV shows the plight of women in seeking help and recommends measures that should be taken to improve the assistance victims of IPV receive from the formal and informal help providers.

Keywords: Intimate Partner Violence, Help Seeking, Gender Based Violence, Power and Control, Legal Protections

I. Introduction and Background

Despite the prominence of the term intimate partner violence (IPV) among researchers, policy makers and governmental and non-governmental organizations, a standard definition is lacking. Domestic violence, battering, wife abuse and wife beating have commonly been used as alternative terminologies for IPV.

In some settings, domestic violence is used to describe violence between intimate partners, while in other contexts it refers to violence among family members such as violence against children and the elderly.²²⁴ Similarly,

²²³We would like to acknowledge Solen Dula, Birhanu Wakijera and Yidneckachew Ayele who facilitated the data collection process by identifying informants and assisting with logistics of the fieldwork. We would also like to thank Dr. Yitayew and two unanimous reviewers of the paper for their valuable comments on the initial draft of this article.

²²⁴ Garcia, Claudia. 2012. *Understanding and Addressing Violence against Women*. World Health Organization, http://www.who.int/iris/bitstream/10665/77433/1/WHO_RHR_12.35_eng.pdf.

some define the term IPV as dealing only with married couples, however, for others it includes violence between married couples, partners in irregular unions and couples in dating relationship.²²⁵ In the past, the terms domestic violence and battering were used interchangeably based on the claim that battering is part and parcel of every act of domestic violence.²²⁶ Battering is also considered as the most severe form of violence between partners.²²⁷ Thus, the terminologies may or may not be used interchangeably, and a single term may hold different implications at different circumstances and for different actors.

The purpose of this article is not to come up with a term that accurately describes the subject matter. But this article rather intends to investigate both the experience of intimate violence by women and their efforts to seek help. Considering these facts, the term 'intimate partner violence', or IPV, was found to be the most appropriate concept to describe the subject matter of this article. In this article, IPV is conceptualized as any behavior between married couples and/or partners in irregular union that causes physical, psychological or sexual harm to those in the relationship. This may include acts of physical aggression, psychological abuse, sexual coercion, economic/financial abuse and controlling behaviors.²²⁸

II. Notes on the Research Design and Methodology

The study that led to this publication draws on qualitative research method related with naturalistic or interpretative framework. The research also applied the critical or emancipatory method suiting violence related research as it attempts to uncover the hidden power and gender imbalances.²²⁹ This paradigm has "the potential to expose hidden power

(Accessed on 21 June 2015). Mears, Daniel P. 2003. "Research and Interventions to Reduce Domestic Violence Revictimization" *Trauma, Violence and Abuse* 4 (2): 130.

²²⁵García-Moreno, Claudia and Pallitto Christina. 2013. *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-partner Sexual Violence*, World Health Organization.

http://apps.who.int/iris/bitstream/10665/85239/1/9789241564625_eng.pdf.

(Accessed on 19 June 2015).

²²⁶Kelly, Joan B. and Michael P. Johnson. 2008. "Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions" *Family Court Review* 46(3): 476.

²²⁷Garcia, Claudia. *Supra note 1*.

²²⁸Krug, Etienne G. et al., eds. 2002. *World Report on Violence and Health*. Geneva, World Health Organization: 89.

²²⁹Ellsberg, Mary and Lori Heise. 2005. *Researching Violence Against Women: A Practical Guide for Researchers and Activists*. Washington DC, United States: World Health Organization, PATH:

imbalances and to empower those involved to understand, as well as to transform, the world.”²³⁰ It is an approach used by feminists and participatory researchers. These methods enabled the researchers to uncover subjective realities by interpreting the experiences, views and feelings of the study’s participants.²³¹ It is also used to determine peoples’ beliefs, attitudes and perceptions.²³²

Primary and secondary sources of data were utilized in the study. The primary sources of data were collected through in-depth interviews, focus group discussions and key informant interviews. Secondary data was collected and analyzed from books, journal articles, published and unpublished research, legal documents, reports and Internet sources.

In-depth interviews were held with women who were survivors of IPV in Hawassa and Ambo. These women came from different socio-economic backgrounds and reside in both urban and rural areas. The study applied the phenomenological perspective to investigate the experiences of these women. In selecting these study participants, the research applied sequential sampling in which interviews are held until no new relevant information is obtained.²³³ Interviews were held with 27 women who have been victims of violence (12 in Ambo and 15 in Hawassa and surrounding areas). The 27 female interviewees were identified through the legal aid centers of Addis Ababa University. These women used the legal aid centers to pursue divorce and child maintenance cases without bringing cases on IPV. Focus group discussions (FGD) were conducted with women who were selected using maximum variation sampling that helped the researchers to include a diverse group of women in both study sites. This included women who are young, old, educated, uneducated and women who have been either abused or not. In Ambo, nine women participated in the FGD while in Hawassa, 12 women took part in the FGD.

Structured key informant interviews were conducted with officials of 15 governmental and non-governmental organizations and community and

54.http://apps.who.int/iris/bitstream/10665/42966/1/9241546476_eng.pdf. (Accessed on 20 June 2015).

²³⁰Olsen V. Feminisms and Models of Qualitative Research. In: Denzin N, Lincoln Y, (eds.). 1994 *Handbook of Qualitative Research*. Thousand Oaks: Sage as cited Ellsberg, Mary, and Lori Heise. Id.

²³¹Ellsberg, Mary and Lori Heise. Supra note 6.

²³²Ellsberg, Mary and Lori Heise. Id., 55

²³³Ellsberg, Mary and Lori Heise. Supra note 6

religious leaders selected using stratified purposive sampling.²³⁴ FGDs with key informants from various governmental offices and NGOs were conducted both in Hawassa and Ambo. Six individuals participated in each FGD. Data was collected in July and August 2015.

IPV research requires a strict adherence to ethical considerations due to sensitivity and safety concerns for participants.²³⁵ In this research, the World Health Organization's (WHO) ethical and safety recommendations for IPV research were applied. Based on the recommendations, the study team ensured that the respondents participated with their full consent and has taken the necessary precaution not to cause any harm and endanger their safety.

III. Literature review

i. Prevalence of IPV

Violence does not exclusively affect men or women. Both sexes are vulnerable to violence. However, disparities exist when considering both the type of violence and the gender of the perpetrator. Women are more vulnerable to violence afflicted by their loved ones such as their intimate partners while men are more likely to experience violence perpetrated by strangers or acquaintances.²³⁶

Studies conducted in Western countries such as the United States of America, Canada and the United Kingdom suggest that male partners are and can be victims of violence perpetrated by their female partners.²³⁷ The

²³⁴Interviews were conducted with officials from Ambo Woreda Court, Ambo Woreda Justice Bureau, Ambo Communication Office, Hawassa City Administration Women and Children Affairs, Ethiopian Women's Lawyers Associations- Hawassa Branch, Concern Ethiopia- Hawassa Branch, Misrak Bire Police Department, Hawassa City Communication Office, SNNP Justice Bureau- Violence Against Women and Children (VAWC) Special Prosecution Unit, Dore Woreda court, Dore Woreda Prosecutor office and Dore Woreda Women and Children Affairs. In addition, Boku elders, Ambo town elder and elder in Bore Bafano were interviewed.

²³⁵Fisher, Colleen. 2009. *The Exploration of the Nature and Understanding of Family and Domestic Violence within the Sudanese, Somalian, Ethiopian, Liberian and Sierra Leonean Communities and Its Impact on Individuals, Family Relations, the Community and Settlement*, Association for Services to Torture and Trauma Survivors Inc. 36.

²³⁶Krug, Etienne G. et al., supra note 5.

²³⁷Kelly, Joan B. and Johnson, Michael P. Supra note 3; See also Carney, Michele. Fred Buttell & Don Dutton. 2007. "Women who perpetrate intimate partner violence: A review of the literature with recommendations for treatment" *Aggression and Violent Behavior* 12:108-115; Dutton, Donald G. & Kenneth Corvo. 2006. "Transforming a

finding of high prevalence of violence against males by their female intimate partners in such studies cannot be generalized to non-Western countries which are mostly characterized as “collectivist in cultural orientation and have relatively low empowerment of women”.²³⁸ Though women can be violent against their male partners, proportionally most incidents of IPV are directed against women by their male partners than vice versa.²³⁹

IPV is a global problem. Its magnitude and prevalence differs across different communities, nations and regions. The true magnitude of IPV against women is unknown as incidents of violence are underreported as a result of deep-rooted cultural attitudes and norms surrounding the issue.²⁴⁰ Though surveys and data on IPV against women cannot convey the true extent of this type of violence, they provide insight on the issue. Most researches on the prevalence of IPV against women focus on physical violence and sexual violence, and, to some extent, psychological violence. Available data concentrates on these forms of IPV.

Globally, one in three women (30%) experienced physical and/or sexual violence by her intimate partner.²⁴¹ According to a World Health Organization study on IPV against women conducted in ten different countries (including Butajira Province in Ethiopia), the lifetime prevalence of physical and sexual violence is 71%. The prevalence of such violence during the 12 months prior to the survey is 54%.²⁴² In both cases, the highest prevalence rate was reported from Butajira.²⁴³ The study in Butajira indicated that 48.7 % women had experienced physical violence, 58.6%

flawed policy: A call to revive psychology and science in domestic violence research and practice” *Aggression and Violence Behavior* 11 (5): 457-483.

²³⁸Archer, John. 2006. “Cross-Cultural Differences in Physical Aggression Between Partners: A social Role Analysis” *Personality and Social Psychology Review* 10 (2): 133-153.

²³⁹Ellsberg, Mary and Lori Heise. Supra note 6; See also Heise, Lori, Mary Ellsberg and Gottemoeller M. 1999. *Ending violence against women*. Baltimore, MD, Johns Hopkins University School of Public Health, Center for Communications Programs. (Population Reports, Series L, No. 11).

²⁴⁰Population Reference Bureau. 2000. *Conveying Concerns: Women Report on Gender-based Violence*, Washington, DC, <http://www.prb.org/Publications/Reports/2000/ConveyingConcernsGenderBasedViolence.aspx>. (Accessed on 16 June 2015).

²⁴¹García-Moreno, Claudia and Pallitto Christina. Supra note 2.

²⁴²Garcia-Mareno, Claudia et al. *WHO Multi-country Study on Women’s Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women’s Responses*. Geneva: World Health Organization, 2005.

²⁴³*Ibid*

suffered from sexual violence and 75.1 % experienced acts of emotional abuse/psychological violence.²⁴⁴

A survey on violence against women (VAW) and children undertaken in selected *Woredas* of Amhara, Oromia and Gambela in 2014 indicated that 35.5% of teenage female respondents (aged 14 to 18 years old) and 36.8% of adult female respondents (above 18 years of age) had experienced IPV.²⁴⁵ The prevalence rate for one of the study site of this research is also high according to a survey on IPV conducted in the area. The result of this survey provided that, in Hawassa and Tula areas, wife battering is at 85%, insult and disrespect at 77%, forced displacement from their home at 75%, intimidation at 73% and rape at 58%.²⁴⁶ Furthermore, in Hawassa, a study conducted on IPV against married women has reported a lifetime prevalence rate of 56.3% and 39.8% of physical and sexual violence respectively.²⁴⁷ The recent national survey by Central Statistics Agency also reported that 35% of ever-married women experienced IPV at some point in their life.²⁴⁸ 24%, 25% and 11% of the women reported experiencing emotional, physical and sexual violence respectively.²⁴⁹

The available evidence on the prevalence of IPV against women in Ethiopia, though not representative of the country or violence as a whole, reveals that it affects a significant number of women in the country. More importantly, the magnitude of IPV against women reported in Hawassa area hints that women in one of the study sites of the research are highly victimized by violence.

ii. Effects of Intimate Partner Violence

IPV results in multifaceted impacts on the victims. These ranges from physical, psychological, sexual to economic impacts. It also negatively

²⁴⁴Ibid; See also Gossaye, Yegomawork. et al. 2003. "Women's health and life events study in rural Ethiopia", *Ethiopian Journal of Health Development*. 2003; 17(Special issue): 1-41.

http://www.researchgate.net/publication/273732836_Women's_Health_and_Events_Study_in_Rural_Ethiopia.pdf. Accessed on June 12 2015.

²⁴⁵Ethiopian Women Lawyers Association. "KAP Survey on GBV/VAWC in Selected Woredas of Amhara, Oromia and Gambella Regional States". 2014:50-52.

²⁴⁶Areda, Alemayehu & Original W/Giorgis. 2008. "Nationwide Survey on Domestic Violence" *BERCHI* 7:8-89.

²⁴⁷Eyoel, Mekdes. 2007. "Pattern of Intimate Partner Violence Among Married Women of Hawassa Town". Unpublished Master's Thesis. Addis Ababa University.

²⁴⁸Ethiopia Central Statistics Agency .2016. *Demography and Health Survey: Key Indicators Report*, 44.

²⁴⁹Ibid.

impacts the family of the victim, as well as their community, society and the country at large. Evidence on the full impact of the violence is lacking since many studies concentrate solely on its impact on health.

IPV leads to multiple health effects including physical trauma such as injury, disability and death.²⁵⁰ Psychological trauma is also present, including stress and mental health problems.²⁵¹ Other related issues include; harmful substance use, decreased prenatal/maternal health, exposure to non-communicable diseases and sexual and reproductive health problems such as sexually transmitted infections and induced abortion.²⁵² Studies in various parts of Ethiopia disclosed that victims of IPV suffered from various health problems such as sexually transmitted infections, mental health problems such as depression and attempted suicide, as well as complications during pregnancy including low weight, child mortality, miscarriages, infection and physical trauma leading to injury.²⁵³

There is also an adverse effect on the children who are raised in an environment where they witnessed IPV. Children who grow up witnessing violence between their father and mother are at a higher risk of becoming victims of abuse or perpetrators of IPV later in their adulthood as compared to children who are raised in non-violent homes.²⁵⁴

Furthermore, IPV stresses the economy of developing countries by reducing worker productivity and income, and accumulation of human and social capital.²⁵⁵ One study estimated that in the United States of America, the yearly cost of IPV exceeded \$5.8 billion, the majority of which is the cost of

²⁵⁰García-Moreno, Claudia and Pallitto Christina. Supra note 2.

²⁵¹Ibid

²⁵²Ibid

²⁵³Garcia-Mareno, Claudia et al., supra note 19. See also Gossaye, Y et al. Supra note 21; Deyessa, Negussie et al. 2009. "Domestic violence and depression among women in rural Ethiopia: A cross sectional study" *Clinical Practice and Epidemiology in Mental Health* 5(8); Yigzaw, Tegbar, Yibrie Anwar & Kebede Yigzaw. 2004. "Domestic Violence around Gonder in Northwest Ethiopia" *Ethiopian Journal of Health Development* 18 (3):133-139;; Deribew, Amare. 2008. "The Physical Health Consequences of Intimate Partner Violence Against Women in Agaro Town, Southwest Ethiopia" *Ethiopian Journal of Health Science* 17(4): 173-178.

²⁵⁴UNCEF. 2006. *Behind Closed Doors: The Impact of Violence on Children*, New York; See also Due, Shanti R. et al. 2002. "Exposure to Abuse, Neglect, and Household Dysfunction Among Adults Who Witnessed Intimate Partner Violence as Children: Implication for Integrated Health and Social Services", *Violence and Victims* 17(1): 3-17.

²⁵⁵Bott, Sarah, Morrison Andrew and Ellsberg Mary. 2005. *Preventing and Responding to Gender-based Violence in Middle and Low-income Countries: a global review and analysis*. World Bank Policy Research Working paper 3618:13.

direct medical and mental health care services.²⁵⁶ Unfortunately, studies that provide an estimate of economic repercussion of these costs in developing countries and on the Ethiopian economy in particular are lacking.

iii. Major Theories on IPV

Theories that can provide a coherent explanation of empirical data on IPV across various settings are important in IPV researches. Theory development in IPV research may follow multilevel models that examine the link between community level factors of IPV and individual level outcomes or life course models, which may look into various factors and their relevance for individuals and relationships.²⁵⁷ The theoretical framework on IPV stresses determining the factors leading into the violence by addressing the theme from various disciplines' perspectives. Among these theories, this article focuses on theories that explain why women are the targets of IPV. In this regard, power and control theory and ecological theory are found to be relevant.

a. The Power and Control Theory

The power and control theory also described as Power and Control Wheel analyzes VAW in terms of power and gender relationships.²⁵⁸ Supported by Norm theory, Feminist theory and Social constructionist theory, it argues that "partner violence is in part a function of social norms, as well as structures that grant men the right to control female behavior and limit women's power in both public and private life."²⁵⁹ According to this theory, it is socially constructed gender inequality and oppression that explains IPV.²⁶⁰ It presents patriarchy which is "entrenched in social and cultural norms, institutionalized in the law and political structures and embedded

²⁵⁶National Center for Injury Prevention and Control. 2003. *Cost of Intimate Partner Violence against Women in the United States*. Atlanta (GA).

²⁵⁷Mears, Daniel P. 2003. "Research and Interventions to Reduce Domestic Violence Revictimization", *Trauma, Violence and Abuse*, 4(2): 133 – 134, <http://tva.sagepub.com/cgi/content/abstract/4/2/127> (Accessed June 15, 2015).

²⁵⁸Lucille, Pope and Ferraro, Kathleen. 2006. *The Duluth Power and Control Model*. http://vawresources.org/index_files/powercontrolmodel.pdf. (Accessed 20 June 2015).

²⁵⁹Heise, Lori.2012. *What Works to Prevent Partner Violence: An Evidence Overview*: 12.

²⁶⁰Fisher. C., supra note 12.

in local and global economies” as the root cause of IPV.²⁶¹ Accordingly, violence is a means and consequence of women’s subordination and it is both a means and an expression of inequality between men and women.²⁶² According to this theory, explanation of violence based on the personal history of the perpetrator such as past exposure to violence, alcohol abuse, and socio-economic conditions fail to consider the broader impact of systematic subordination of women by men. Thus, any explanation of the causes of violence should be situated within the social context of power relations.²⁶³

This theory is closely related to a type of IPV known as Coercive Controlling Violence, which is “a pattern of emotionally abusive intimidation, coercion, and control coupled with physical violence against partners”.²⁶⁴ Under this type of violence, abusers may use one or a combination of tactics such as intimidation, emotional abuse, isolation, diminishing, denying and blaming, using children, asserting male privilege, economic abuse, coercion and threats. .²⁶⁵

However, there are various arguments against the Power and Control Theory since it does not cover other types of IPV such as Situational Couple Violence which occurs because of occasional situations or arguments between intimate partners²⁶⁶ and Separation Instigated Violence which occurs as a result of traumatic separation.”²⁶⁷ Power and Control Theory is also criticized since it applies a Monolithic Phenomenon Approach and fails to recognize intersectionality in relation to the impact of IPV on various women. Accordingly, the impact of IPV varies depending on economic and social class and race, etc.²⁶⁸ Thus, the Power and Control Theory cannot be

²⁶¹In-depth Study on all Forms of Violence against Women: Report of the Secretary-General, A/61/122/Add.1, 28.

²⁶²Id., 29.

²⁶³Id., 29.

²⁶⁴Kelly, Joan B. and Michael P. Johnson. *supra* note 3: 478.

²⁶⁵Pence and Paymar, 1993 as cited in Kelly, Joan B. and Michael P. Johnson, *id.* 481.

²⁶⁶Kelly, Joan B. and Michael P. Johnson, *supra* note 3.

²⁶⁷Joan B. Kelly and Michael P. Johnson, *id.*, 487.

²⁶⁸Bograd, 2005 as cited in Fisher, Colleen. *supra* note 12: 16. See also Sokoloff, Natalie J. and Ida Dupont. 2005. “Domestic Violence at the Intersections of Race, Class and gender: Challenges and Contribution to Understanding Violence against Marginalized Women in Diverse Communities”. *Violence against Women*, 11(1); 43.
<http://vaw.sagepub.com/cgi/content/abstract/11/1/38>. (Accessed June 20 2015).

taken as an exclusive explanation for IPV as there are various factors that could potentially explain violence.

b. Ecological Framework

Various authors have pointed out that one theory simply cannot exclusively provide explanation for IPV and why women are the primary targets.²⁶⁹ Thus, Ecological Approach is developed to conceptualize “violence as a multifaceted phenomenon grounded in interplay among personal, situational, and socio-cultural factors”.²⁷⁰

The ecological approach accommodates both feminist and social science theories on IPV. It is founded on four analytical levels. The first level represents personal history risk factors. It argues that the cause of male violence relates to witnessing violence, being a victim as a child or the absence of a father.²⁷¹ The next level known as micro- system represents the context in which violence happens. Often it is in the family or in other intimate relationships where there is male dominance, male control of wealth, alcohol abuse or marital conflicts. The third level, the ecosystem, explains the formal and informal institutional and social systems that sustain violence. It manifests in low socio-economic conditions, social isolation of women and delinquent peer association. The last level is the macro system, which represents the views and attitudes that sustain violent behaviors such as the male ownership of women, the linkage of masculinity to aggression, subscription to rigid gender roles and acceptance of the use of violence such as physical punishment for women. Though these four levels of explanation of violence under the Ecological Approach are taken together, they are not exhaustive lists.²⁷²

IV. Legal and Policy Framework

It is not uncommon to hear many arguing that state intervention in regulating the private sphere such as IPV may compromise the social stability of the family, adherence to religion or tradition. However, from a

²⁶⁹Brewster, Mary P. *Domestic Violence Theories, Research and Practice Implications* in Roberts, Albert R. (ed.). 2002. *Handbook of Domestic Violence Intervention Strategies: Policies, Programs and Legal Remedies*. Oxford University Press, New York.

²⁷⁰Heise, Lori. 1998. *Violence Against Women: An integrated, Ecological Framework*. 263. Accessed June 10, 2015. <http://www.sagepublications.com>. (Accessed June 20, 2015).

²⁷¹Brewster, Mary P. *supra* notes 47.

²⁷²Heise, Lori L., *supra* note 48, 281. See also USAID. 2006. *Linking gender-Based Violence research to Practice in East, Central and Southern Africa: A Review of Risk Factors and Promising Interventions*: 16-17.

human rights perspective, IPV is a violation of basic human rights that must be eliminated through political will, and by legal and civil action.²⁷³

Based on the latter view, various protection and safeguarding measures are envisaged at international level on VAW and thereby IPV.²⁷⁴ The Convention on Elimination of Violence against Women (CEDAW), the first convention to deal with discrimination against women does not directly deal with IPV. However, its General Recommendation no. 19 which came out in 1992 provides that gender based violence is directed against women because she is a woman and it disproportionately affects women. It provides that discrimination is the cause of gender-based violence. Furthermore, it provides that “States may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.²⁷⁵

The other important instrument, the United Nations Declaration on Elimination of Violence against Women (DEVAW) adopted in December 1993 recognizes violence in the family including IPV as a form of VAW. This declaration states that any form of VAW is “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men to the prevention of the full advancement of women”.²⁷⁶ It defines VAW to include “physical, sexual and psychological violence occurring in the family.”²⁷⁷ It calls upon States to “pursue by all appropriate means and without delay a policy of eliminating violence against women” and further to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.²⁷⁸ It requires states to condemn VAW and not invoke custom, tradition or religion to avoid their obligations to eliminate such violence.²⁷⁹ Further, the Beijing Declaration and Platform for Action adopted in 1995-underlined VAW as a violation of women’s human rights and thereby underlining that states are duty bearers to take actions to prevent and eliminate VAW. A more specific

²⁷³Fisher, Colleen. 2009. *supra* note 12: 14-15.

²⁷⁴ Convention to Eliminate Discrimination against Women (CEDAW), International Covenant on Civil and Political Rights (ICCPR) and Convention on the Rights of the Child (CRC) have indirect provisions, which are applicable on domestic violence.

²⁷⁵ Committee on the Elimination of Violence Against Women, Eleventh Session, General Recommendation 19, Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38 (A/47/38), Ch.1.

²⁷⁶Preamble of General Assembly Resolution 48/104 of 20 December 1993.

²⁷⁷ *Id.*, Article 2.

²⁷⁸ General Assembly Resolution 48/104 of 20 December 1993, Article 4

²⁷⁹ *Id.*, Article 4

Resolution on the Elimination of Domestic Violence against Women was adopted in 2004 by the General Assembly recognizing IPV as a human rights issue with serious, immediate and long-term implications.²⁸⁰

At the regional level, the African Charter on Human and Peoples' Rights (ACRWC) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provides for various protection measures to victims of violence.

In relation to domestic laws, various states took legal and other measures at the domestic level in line with international obligations. Some countries created special legislation on IPV that provides special quasi-criminal remedies and procedures such as protection or bound over order and lower standard of proof.

Ethiopia, in line with its obligation under international and regional human rights instruments,²⁸¹ has adopted legal and other measures to sanction VAW and IPV. The Federal Democratic Republic of Ethiopia Constitution (FDRE Constitution) prohibits laws, customs and practices that oppress or cause bodily and mental harm to women.²⁸² It also protects the right to life and provides protection for security of a person, bodily integrity, and freedom from inhuman and degrading treatment.²⁸³

The provisions of the Oromia and Southern Nations, Nationalities and Peoples regions (SNNPR) Family Laws that require respect, support, assistance and fidelity between spouses and one that mandates joint management of the family are important provisions that indirectly protect women from IPV.²⁸⁴

The Criminal Law prohibits physical violence within marriage or in an irregular union.²⁸⁵ It punishes violence against a marriage partner or on a person cohabiting in an irregular union that caused grave or common injury to his/her physical or mental health. However, the punishments provided for such acts are the same punishments for ordinary crimes of physical assault and battery. This approach of the criminal law does not

²⁸⁰"Elimination of domestic violence against women" GA Res. 58/147, UN Doc. A/RES/58/147 (Feb. 19, 2004) (Resolution 18/145)

²⁸¹ Ethiopia ratified CEDAW, ICCPR, CRC and ACHPR that protect women from any forms of violence. Under article 9 (4) of the FDRE Constitution, these international human rights instruments are integral part of the law of the land.

²⁸²Article 35 (4) of the FDRE Constitution.

²⁸³Article 14, 16 & 18 of the FDRE Constitution.

²⁸⁴Article 65 of Oromia Regional State Family Code.

²⁸⁵Article 564 of the Criminal Code of Ethiopia.

consider the unique nature of IPV in relation to its being a result of patriarchal beliefs and practices. In addition, the criminal law does not punish economic violence and marital rape as a form of VAW.²⁸⁶

A special procedure is not provided for cases of VAW under the Criminal Procedure Code. However, the Criminal Justice Administration Policy adopted in 2011 provides for the rights of victims to participate in criminal investigation, charging and trial.²⁸⁷ It provides that the legal framework will be put in place to protect women who are survivors of violence.²⁸⁸ These require reviewing procedural laws such as the Criminal Procedure Law to ensure that victims are protected during the investigation and prosecution of VAW cases.²⁸⁹ The policy prohibits plea-bargaining and diversion in cases of gender based violence.²⁹⁰

The justice system reform also introduced prosecutors led investigation of cases of VAW with the intention of protecting victims of VAW. However, there is no legal provision under the Criminal Procedure Code to ensure legal proceedings are undertaken in a manner that protects the safety of survivors.²⁹¹ Despite this legal lacuna, the Ministry of Justice has established Center for the Investigation and Prosecution of VAWC and has developed a Special Operational Guideline for the Investigation and Prosecution of Cases of Violence against Women and Girls and Counseling of Survivors. This Guideline provides for gender sensitive investigation and prosecution of violence and protects survivors from secondary victimization. It envisages enhancing the skills of the police and prosecutor in applying specialized methods, skills and attitudes to protect and serve survivors of violence.

The Ministry of Justice, the current Federal Attorney General have developed strategic documents providing for Integrated and Multi-Sectoral Response to Violence against Women and Children and Child Justice in

²⁸⁶Fite, Megersa Dugasa. 2014. "The Ethiopia's Legal Framework on Domestic Violence against Women: A Critical Perspective." *International Journal of gender and women's Studies*, 2 (1): 56.

²⁸⁷Section 6.2.1 of the Criminal justice Administrative Policy

²⁸⁸Section 6.2.1 of the Criminal Justice Administrative Policy.

²⁸⁹Federal Democratic Republic of Ethiopia. 2009. Preliminary Analysis of the Legislation Requirements of the Criminal Justice Administration Policy: 15.

²⁹⁰Under Section 4.6.2.5 of the Criminal Justice Administration Policy, the Plea bargaining and divergence might be sought by prosecutor if these options have the potential to rehabilitate the perpetrator and create peace in the society.

²⁹¹Ministry of Justice. 2010. *Rapid Assessment of Services and Interventions to Prevent and Respond to Violence against Women and Children*. Ministry of Justice. 9.

Ethiopia ²⁹² This document focuses on the prevention, protection and response mechanisms to address VAW. However, there is no legal requirement for free access to medical, shelter, legal and psycho-social services which are important for the rehabilitation of victims/survivors of IPV.²⁹³

Though the law provides reporting of criminal cases, it is not mandatory unless the crime is punishable for more than fifteen years.²⁹⁴ The law also has gaps in requiring mandatory reporting of cases of IPV by institutions and professionals such as medical, social and health service providers.²⁹⁵ The law does not provide for protection orders or restraining orders as an immediate remedy that prevents abusers from continuing their act of violence. In some countries, courts are authorized to order an abuser to stay away from the survivor for certain periods of time.²⁹⁶ The same should be provided under Ethiopian law.

V. Major Findings

i. Prevailing Meanings, Cultural Norms and Perceptions attached to Intimate Partner Violence

The interviews held with elders, survivors of IPV and FGDs conducted with female community members in both research sites conveyed certain evidences regarding meanings, prevailing cultural norms and perceptions attached to IPV among the communities.

Elders who were interviewed claimed that the problem of IPV is not as prevalent as it used to be. Though the elders who were interviewed emphasized that IPV is not an acceptable act, their explanation regarding culture and predominant values in their community especially in relation to women elaborated the existence of cultural norms and perceptions that are directly or indirectly related to acts of VAW by their intimate partner. According to one elder, husbands are the ones in charge of the administration and transfer of property while wives can only do so in the absence of their partners.²⁹⁷ Furthermore, he stated that when a father gives

²⁹²Ministry of Justice and National Coordinating Body. 2011. *Strategic Plan for an Integrated and multi-sectoral response to violence against Women and Children and Child Justice in Ethiopia*.

²⁹³Ministry of Justice Supra note 69.

²⁹⁴Article 11 of the Criminal Procedure Code of Ethiopia.

²⁹⁵Ministry of Justice, Supra note 69.

²⁹⁶*Ibid*.

²⁹⁷Interview with Ato Ejigu Gutu- Toke Kutay *Wereda*, Boku Spiritual Elder conducted in Ambo on 21 August

his daughter's hand for marriage, he advises her to obey her husband and culture gives the husband the responsibility to discipline his wife. Accordingly, there are rules a wife should follow. As an example, he mentioned that a wife should not go to sleep before her husband. This shows that there are predetermined cultural expectations regarding the role of wife and a husband in marriage. If the women transgress this socially and culturally predefined roles and expectations, it has its own consequence that might include violence.

Elders and female community members also provided several common sayings in Amharic and Afan Oromo accenting the underlying message about the subordination of women. *Nama niiti qabutu qixaaxxata*- Afan Oromo meaning, "a husband who has a wife can punish her." *Warri abba hinsodattu abba warra male* – a common Afan Oromo proverb literally meaning- "a wife doesn't fear her father but her husband."²⁹⁸ Another Amharic saying raised by informants was; *Yebal dula kebe newe*- "a stick a husband uses to beat his wife is like butter"²⁹⁹

Elders used various accounts to show the acceptance of wife beating in their culture. The following are some of the narratives given by the elders to demonstrate the justifications for wife beating. The first line of explanation evolved around the two categories of Wife beatings. There is beating out of love. In this case, the husband uses "*ertib dula*" which is a freshly cut stick to beat her. The husband uses such this as a disciplinary mechanism in case of simple disagreement to make his wife afraid. The other type of beating is when the husband uses dry stick to beat his wife and/or throw shoes at her. This usually happens if she commits grave mistake. A man who uses a dry stick to beat his wife is described as "a bad husband".³⁰⁰ Beating might result from the fault of the husband or the wife.

Another reason for beating is adultery (or a suspicion related to mere jealousy). If the wife is the one who had an affair with another man, the husband beats her. On the other hand, if the husband turns out to be the one who had an affair, the wife cannot do anything because she is not capable of beating him. When she questions him for his act, he beats her back to teach her a lesson for the future.³⁰¹

²⁹⁸Ibid.

²⁹⁹FGD with female community members conducted in Hawassa on 29 August 2015.

³⁰⁰Supra note 75.

³⁰¹Interview with Ato Bekele Bayeta- Ambo town local elder conducted in Ambo on 21 August 2015.

The above quotations from interviews with elders and women in both sites show that the gender roles assigned to females and males have a strong link to IPV. The sayings and proverbs of the society imply that the society has a patriarchal view that perceives women as subordinate and men as superior. The society restricts the actions, thoughts and feelings of women so that women can serve male interests. These perceptions excuse the actions of male partners against their female partners.

Moreover, a similar perception is reflected in the decisions and actions of elders and governmental organizations. In most instances, they recognize that IPV is a violation of rights of women. But when it comes to taking action, most are reluctant to extend full protection to the victim. For example, there are instances whereby the police, by their own subjective judgment, view some injuries as grave and entailing legal sanction, and others as minor injuries resulting in no legal liability.³⁰² The police and other government institutions such as women and children affairs offices and public prosecutors give priority to preventing the disintegration of the families over the protection of victims' rights.³⁰³

The researchers asked informants in both sites to narrate their stories and experiences to understand how they define IPV. In their narrations, most of the informants described the type of injuries a partner inflicted on their physical, psychological, sexual and economic well being. The participants from both sites listed the physical violence they sustained in their relationships. Among them, one informant had been burned with hot sauce³⁰⁴, another lost her molar tooth³⁰⁵ and another one was thrown against a door and was hurt by a nail on the door.³⁰⁶ Some expressed that they faced a risk to their life as a result of their partner's attempt to hurt them by throwing or using different kinds of sharp objects such as knives, spears or a saw.³⁰⁷ In addition, other participants also stated that their partners tried to kill them by strangling and beating them.³⁰⁸ In these instances, informants indicated that they were humiliated, insulted and belittled by their partner in front of their families, children, neighbors,

³⁰²Interview with Inspector Tariku Admasu W/Mariam, Technical investigation Head, Hawassa City Administration Police department on 30 July 2015.

³⁰³Interview with Assistant Inspector Shimelese Birru- criminal case investigation technique team leader, Dore Woreda Police on 31 July 2015.

³⁰⁴Interview with AT conducted in Ambo on 20 August 2015.

³⁰⁵Interview with MS conducted in Hawassa city on 30 July 2015.

³⁰⁶Interview with KR conducted in Ambo on 20 August 2015.

³⁰⁷Interview with FU conducted in Hawassa city on 27 August 2015 and MK and MA conducted in Ambo on 20 August 2015.

³⁰⁸Interview with BS conducted in Hawassa city on 27 August 2015 and KB conducted in Ambo on 20 August 2015.

friends and strangers.³⁰⁹ In addition, their partner limited their mobility, restricted their social and family contact, and restricted their educational, career and personal growth.³¹⁰

In addition to inflicting physical and other injuries, their male partners refused to provide financial support to help sustain the survival of the family. As a result, they were unable to sustain their own livelihood as well as their children's livelihood because of lack of financial support from their partner and/or lack of access to resources.³¹¹ Some women narrated that their male partner denied them from accessing and utilizing their common property and destroyed, transferred or sold it without their knowledge for his own benefit.³¹²

Few participants revealed that they have faced sexual abuse. For instance, one informant mentioned that her partner forced her to have sex during pregnancy while he was drunk.³¹³ Another informant who is living with HIV/AIDS said that her partner forced her to have unprotected sex despite the fact that her doctor informed them to use condom during sex in order to control the level of her CD4.³¹⁴ Another informant expressed that her husband forced her to have sex while she was sick.³¹⁵

The study indicates that, except two study participants,³¹⁶ the rest view IPV as a fact of life rather than as a violation of their rights. Even though many of the study participants mentioned their injuries to be faults of their partners; they do not recognize these acts as a violation of their rights thereby capable of bringing legal accountability.

From their narrations, it can be determined that not only did women suffer different forms of violence, but they have also encountered overlapping forms of violence. However, sexual violence was not specifically

³⁰⁹Interview with MM, ZS, HL conducted in Dore Bafano on 28 August 2015, AbK, AK conducted in Ambo on 20 August 2015 and with BS conducted in Hawassa city on 27 August 2015.

³¹⁰Interview with FA and BS conducted in Hawassa city on 27 August 2015 and AK, BF, MK, ET and LM conducted in Ambo on 20 August 2015.

³¹¹Interview with TR conducted in Hawassa city on 30 July 2015 and BS in Hawassa city on 27 August 2015, ST conducted in Dore Bafano on 31 July 2015, MM, ZS conducted in Dore Bafana on 28 August 2015 and AK, KB, ET, KR, LM, DK, AT, AbK conducted in Ambo on 20 August 2015.

³¹²Interview with EE conducted in Dore Bafano on 31 July 2015 and AK, LM, AT conducted in Ambo on 20 August 2015.

³¹³Interview with DK conducted in Ambo on 20 August 2015.

³¹⁴Interview with FA conducted in Ambo on 20 August 2015.

³¹⁵Interview with ZS conducted in Dore Bafano on 28 August 2015.

³¹⁶ Interview with MA and AK conducted in Ambo on 20 August 2015.

mentioned by most participants as a form of IPV.³¹⁷ This might potentially be due to the fact that speaking about sexual matters is considered taboo in most of Ethiopian society. It may also be due to societal expectations in which women consider sex with intimate partners to be their duty even if it is done without their consent or it affects their health.

ii. The Invisible Hands of Power Relations in Intimate Partner Violence

The most significant reason behind violence is the power relationship that accepts acts of violence as an expression of male superiority. Male superiority can be manifested through his ability to control the actions, behaviors and views of his partner. The society views men who fail to do so as weak. The stories below demonstrate how male partners use power to control the actions, behaviors and views of their female partners:

“He does not want me to work. He came and disturbed my business and because of that I stopped working for four months. He does not want me to go anywhere.”³¹⁸ “He does not want me to continue my education. I could not continue because he is not willing to pay for my education. He does not want me to meet friends and work. I used to have my own shop. But he does not want me to treat my customers with hospitality. ³¹⁹ Though he is educated, his view towards women is very traditional. He believes that women are subordinate to men, has no capability. He thinks a woman should stay home, cook and clean for her husband.”³²⁰

“He does not allow me to socialize with neighbors by taking part in coffee ceremonies. He does not want me to go out of the house and do my own thing. When I have to attend a funeral or wedding, he does not allow me. He justifies my absence by telling my family and neighbors that I am sick and cannot attend those events though I am healthy”.³²¹

Traditionally, a woman cannot attend a funeral by herself. She must be accompanied by her husband. However, my husband does not want to attend the funeral of my family members. Because of this, I was unable to attend the funeral of my grandparents. Whenever, I go out for shopping, he

³¹⁷ It is four of the study participants who expressed that they have been forced to have sex when they do not want.

³¹⁸ Interview with LM conducted in Ambo on 20 August 2015.

³¹⁹ Supra note 83.

³²⁰ Ibid.

³²¹ Interview with ST conducted in Dore Bafano on 31 July 2015.

sets time limits in terms of minutes. If I stay longer than the time limit set by him, he gets mad.³²²

The aforementioned accounts of informants from both study sites show a violation of rights ranging from control of mobility, right to work to basic sexual rights.

One informant reported that her husband prevented her from working by arguing that the income he generates is sufficient.³²³ Another informant pointed out that her husband prohibits her from continuing her education. She said, “He even removes the bulb at night so that I won’t study”.³²⁴ The above acts of control and isolation are exercised in order to maintain a husband’s power over his partner. In some cases, the study participants expressed that the socially constructed roles of men and women has contributed to the domination of women by men. In certain instances, the cause of the violence is related to the male assumption that his wife is not fulfilling her role.

In addition to power relations, some argue that the educational and economic situation of a woman makes her vulnerable to IPV. The researchers considered the educational levels and employment status of the study participants to find out how it relates to IPV.

Among the 24 informants, only 2 (8.3%) are illiterate. The rest of the informants had some level of education ranging from primary school to university level education. From the educational background of the study participants, one can infer that the level of education of the study participant does not necessarily relate to their vulnerability to IPV in a direct way. A woman’s educational status does not by itself exonerate her from being a victim. It may even make a woman more vulnerable to IPV as her empowerment may threaten the existing power and control relationship that stands to benefit her husband. As a result, men may resort to exercising controlling behaviors and violent acts to maintain the status quo.

In relation to employment status of our informants, twelve (48%) among the 24 are employed or run their own business. However, women’s ability to earn an income by itself does not protect them from violent acts perpetrated by their partners. In certain instances, her employment status resulted in a negative reaction from her husband who may try to solidify his power and

³²²Interview with AH conducted in Dore Bafano on 31 July 2015.

³²³Interview with BF conducted in Ambo on 20 August 2015.

³²⁴SA discussant of FGD with Women Community Members conducted in Ambo on 24 August 2015.

further suppress his wife. In other instances, her enhanced capacity to earn income seems to divert the income of the husband for personal consumption rather than for family consumption. This resulted in her carrying the entire financial burden of providing for the family.³²⁵ This shows that unless the economic empowerment of women is supported by a change in societal attitudes, women will not escape from IPV.

From the data gathered, 9 out of the 25 study participants (36%) identified the starting point of violence at pregnancy and childbirth. They explained that their partner felt that women have no choice other than to stay with their partner under any condition after pregnancy and childbirth. This explains that the more children women have the less power they have over themselves and the more they tolerate violence for the sake of their children.

iii. Other Factors Associated with Intimate Partner Violence

Apart from the desire to exercise power and control as described above, our study participants indicated alcohol abuse, the interference of in-laws, financial disputes and infidelity as factors that triggered violence.³²⁶ In addition, one participant informed us that violence started when her partner began blaming her for not being able to give birth and for being HIV positive.³²⁷

The difference in the accounts of survivors of IPV elucidate that a single factor cannot be attributed as its cause. As has been explained by the ecological framework, many factors contribute to IPV.³²⁸ Moreover, various literatures associated early marriage as a factor that increases the vulnerability of women to IPV. According to our finding, close to half of the interviewed survivors of IPV were married before the marriageable age provided under the law. Though it is difficult to establish causality between early marriage and IPV, it can be concluded that it is one contributing factor for IPV among the study participants. However, further research is necessary to establish whether this can be generalized to all cases of early marriage.

³²⁵Interview with MH conducted in Hawassa and FGD with Women community members-in Hawassa on August 29, 2015.

³²⁶Interview with MK, KR and AT conducted in Ambo on 20 August 2015, ST and AH conducted in Dore Bafano on 31 July 2015 and MJ conducted in Hawassa city on 30 July 2015.

³²⁷Supra note 92.

³²⁸Brewster, Mary P. Supra note 47: 36.

The researchers also investigated the association between forced marriage and IPV. According to the findings, most of survivors of IPV 14 out of 21 (67%) entered into their marriage through their free consent. Only 6 out of 21 (28%) of IPV survivors interviewed were forced to marry. From this, it can be implied that even women who entered into marriage of their own free will potentially face IPV.

The stories told by our informants can be best explained by Power and Control Theory. Although Power and Control may not be the only factor at play, we can infer from our informants' stories that the Power and Control Theory best explains their experiences.

iv. Consequence of Intimate Partner Violence

According to our informants, the violent acts resulted in bodily injuries, psychological stress and trauma, financial hardships and a distorted self-concept. Some of our informants sustained injuries to their uterus, ear, teeth and on other parts of their bodies.³²⁹ Because of the violence, they became fearful and felt embarrassed. They also sustained mental breakdown and diminished self-concept.³³⁰ The violent acts affected their children's wellbeing, which resulted in the children dropping out of school, low results in their education, and psychological problems.³³¹

As can be inferred from the interviews, the physical, psychological, sexual violence and controlling behaviors caused different kinds of harm on the women and their families. In addition to the effects of IPV on the women, there are also costs to the state.

Studies have established that in economic terms, violence results in countries losing billions of dollars due to the cost of justice and healthcare services, loss of productivity and missed work.³³² Governments should be made aware of the economic cost of violence in order to incentivize the urgent need to take legal measures toward eliminating IPV.

³²⁹Interview with TR and MS conducted in Hawassa city on 30 July 2015, EE conducted in Dore Bafano on 31 July 2015 and KR and BF conducted in Ambo on 20 August 2015.

³³⁰Interview with MA conducted in Hawassa city on 30 July 2015.

³³¹Interview with TR and MS conducted in Hawassa city on 30 July 2015.

³³²Duvvury, Nata et al. 2013. *Intimate Partner Violence: Economic Costs and Implications for Growth and Development*, The World Bank. See also Day, Tanis, Katherine McKenna and Audra Bowlus. 2005. *The Economic Costs of Violence Against Women: An Evaluation of the Literature*. *The United Nations Expert Brief* NO 5.

v. Trends in Help-seeking by Survivors

Almost all of the study participants sought help from informal help providers such as family, community members, neighbors, local elders and religious leaders rather than from formal help providers such as the police, the courts, Women and Children Affairs Offices before going to the legal aid center. From the interviews with survivors of violence, informal help providers are preferred to formal ones. In seeking help, the survivors of IPV tried to resolve the marital problem by approaching more than one help provider. Accordingly, 60% (15 out of 25) of the study participants sought help from family, 40% (10 out of 25) from elders, 24% (6 out of 25 study participants) from neighbors and 8% (2 out of 25 study participants) from religious leaders. When we look at the proportion of women who reported their case to the police, Women and Children Affairs Bureaus and *Kebele*, it is 36% (9 out of 25 study participants), 20% (5 out of 25 study participants) and 24% (6 out of 25 study participants) of women respectively. The researchers also found out that one study participant used self-defense as coping mechanism in addition to seeking help.³³³

The study participants who sought help from informal help providers underlined that the informal help providers, most of the time, are not gender sensitive and require the woman to tolerate her husband by endorsing the social norms that require a woman to embrace her family. Some of the study participants in Ambo stated that when they sought help from neighbors, elders and family, their first response was to ask them to tolerate the abuse and reconcile. This can be seen in the following excerpts from interviews:

“My neighbors advised me to tolerate everything for the sake of my child and the properties we acquired.”³³⁴ “I took my case to elders three times. The elders advised me to tolerate while they told him to allow me to work.”³³⁵ “The elders pressured me to reconcile. They said *ebabe ena gundan enkwane abero keremtune yasalefal* literally meaning ‘even a snake and an ant live together/ tolerate each other during the rainy season.’”³³⁶

Some survivors of IPV in Hawassa informed us that upon mentioning about the violence they faced, they were sidelined by family members and friends. This is reflected in the account of one informant who recounted that, “I talked to his mother. She told me that though he behaved badly, I

³³³Interview with KB conducted in Ambo on 20 August 2015.

³³⁴Interview with AK conducted in Ambo on 20 August 2015.

³³⁵Supra note 101.

³³⁶Supra note 92.

do not have to complain about it as it is his nature.”³³⁷ Likewise, another informant pointed out, “When things became unbearable, I told our situation to his brothers. However, they sided with him.”³³⁸

The same holds true for some study participants in both research sites when they approached the police for help. Accordingly, the police either dismissed their story by telling them to resolve it through mediation or misled them by informing them that the issue is not a criminal case or that cases should be filed upon complaint while the injury is grave. The following excerpts from interviews show these interactions with police:

“I went to the police. They referred me to the legal aid center claiming that the case is a civil case.”³³⁹ “I took my case to the police once when I was kicked on my rib by an intimate partner. He convinced them that it happened unintentionally and they settled the case amicably”.³⁴⁰ “When I was breast feeding our seven months old child, my husband tried to kill me and I was injured on my head. I went to the police and they took me to the health center. They arrested him for two months but they released him saying that I did not file a complaint against him”.³⁴¹

Moreover, the study participants who approached the police were not satisfied with the outcomes in both research sites. Most of the study participants who sought help from the police claimed that the police were not effective in providing help. The following are some of their encounters:

“He has been arrested by the police but he was released in no time.”³⁴² “I once went to the police but they sent me away and told me to go to a hospital. The police officers were not sensitive to my case.”³⁴³ The police also admitted “light cases (minor injuries) end with mediation while grave crimes such as bodily injury are prosecuted even if the parties come to terms.”³⁴⁴

Most victims took temporary measures such as moving out of their home and staying at a neighbor’s or family member’s place until their husband or partner calmed down. After a while family and neighbors intervened and

³³⁷Supra note 99.

³³⁸Interview with TR conducted in Hawassa city on 30 July 2015.

³³⁹Supra note 100.

³⁴⁰Interview with MJ conducted in Hawassa city on 30 July 2015.

³⁴¹Supra note 112.

³⁴²Supra note 117.

³⁴³Interview with MK conducted in Ambo on 20 August 2015.

³⁴⁴Supra note 80.

settled the matter. However, this does not last long as the violence recurs soon after. This can be seen in the following narrations:

“The court referred our case for mediation four times. I settled the dispute amicably for the sake of my children. But when it became unbearable, I got a divorce a year ago.”³⁴⁵ “I told friends of my partner about the issue and asked them to advise him. He did not accept their advice. The violence became even worse after they advised him.”³⁴⁶ “After the abuse, I told his brother what he was doing. He advised him to refrain from abusing me. However, that did not change him. I waited for him to change until my child turned three. Finally, because the abuse continued, I went to Women and Children Affairs office and told them about the abuses I suffered.”³⁴⁷

As a last resort, when the violence becomes unbearable, the survivors went to the legal aid center seeking help to process their divorce or separation or child maintenance. One informant said “I came to the Legal Aid Center after nine years of abuse. He always apologies whenever elders/neighbors intervene however he never changed for long.”³⁴⁸

This shows that women resort to courts when the situation becomes unbearable and even in such instances they often pursue civil remedies such as divorce instead of seeking the criminal prosecution of their partners on account of IPV.

vi. Determinants of Help Seeking Trends

Most of the study participants did not seek help from help providers until it became unbearable for various reasons. One of the reasons mentioned by the study participants was that they did not seek help for the sake of their children’s wellbeing, i.e., for the sake of protecting their children from being fatherless due to divorce. The other reason is related to the wider societal norm whereby the society expects victims of IPV to tolerate the abuse. According to our informants, this is justified using various sayings such as *tersena melase senkaka yegachale* which means “even our own teeth and tongue push each other” and *ebabe ena gundan enkwane abero keremtune yasalefal*, which means that “even a snake and an ant live tolerating each

³⁴⁵Interview with ZE conducted in Dore Bafano on 28 August 2015.

³⁴⁶Interview with AbKe conducted in Ambo on 20 August 2015.

³⁴⁷Supra note 83.

³⁴⁸Ibid

during the rainy season”.³⁴⁹ In addition, they face various threats from their partners whenever they take a step forward in seeking help.³⁵⁰

According to elders interviewed, primarily, traditional rules require a woman to resort to local elders, who might be family members or neighbors for help. If she transgresses this requirement, they consider it disrespectful to the traditional and the societal way of life.³⁵¹ This pressures women to seek help from informal help providers first before resorting to formal help providers. Most of the study participants did not seek help from formal help providers for the abuses they suffered for various reasons. The following are some of the reasons why they did not go to the formal help providers and the challenges they faced when they approached formal help providers:

“I don’t have the ability to articulate my view before such public places. I went to the legal aid center because of the pressure from my friends to get help. I did not go to the police believing that even if he is arrested for some time, he will be free after a while which will make him more dangerous.”³⁵²

“I know courts will take action and separate couples. However, this happens after a long exhausting process. I believe divorce should be a last resort and I am giving him the chance to correct and improve himself”.³⁵³

According to our key informants, survivors of IPV prefer the informal help provided for various reasons. Accordingly, cultural pressure and economic dependency of women prevent them from seeking help. Most of the reported cases do not end up in courts. Because of traditional pressures, women do not pursue their cases further to avoid social isolation and family break up. IPV cases are brought to court by women in urban areas. Rural women don’t bring cases for various reasons...Women usually do not afford to take their cases to courts since courts are far away from their hometowns. They do not have the financial capacity to cover transportation

³⁴⁹ FGD with Community members in Hawassa and Interview with FA conducted in Ambo 20 August 2015.

³⁵⁰ Interview with ST conducted in Dore Bafano on 31 July 2015 and AK conducted in Ambo on 20 August 2015.

³⁵¹ Interview with Ato Bekele Bayeta- Ambo town local elder and Ato Ejigu Gutu- Toke Kutay Wereda, Boku Spiritual Elder on 21 August 2015.

³⁵² Supra note 83.

³⁵³ Ibid.

cost, court fee, food and shelter cost. They have to travel a long distance on foot, which exposes them to other types of violence, to come to court.³⁵⁴

In addition to this, even when cases are brought to courts, there is a tendency to give less attention and weight to cases of IPV. Courts were not rendering deterring decision/punishment since judges are also influenced by traditional views though this is improving from time to time.³⁵⁵ It was also stressed that “There is delay in proceedings and passing final decisions which leads to distorted evidence and witnesses losing the exact account of facts because of a lapse of time.”³⁵⁶

Some of our informants reported that the abuse lessened or stopped after they took their cases to formal legal service providers.³⁵⁷ This can be seen in the following narrative from one of the informants:

“After I came to the legal aid center, now he provides financial support to cover the expenses of his children. Since he knows that I am going to leave him with my children if he continues to abuse me, he stopped the abuse because of his love for our children”.³⁵⁸

On the contrary, some are not satisfied with the outcomes from formal help providers. This can be inferred from the following accounts:

“I informed my situation to the Kebele administration. However, they did nothing. They did not arrest him. Once he spread Kerosene gas on the food I cooked. I sued him at Women’s Affairs Office. They advised us and settled the case amicably. But he did continue abusing me afterwards.³⁵⁹ “I have gone to Women and Children Affairs Office, Kebele administration and the police several times but they were not effective. I lived in such a situation for 10 years. I have gone to the police and they arrested him and released him after one day. They said that they could only hold him for 24 hours according to the law. I did not file a complaint.”³⁶⁰

³⁵⁴ Interview with Ato Asfaw Negera (Ambo Wereda Court President) conducted in Ambo on 21 August 2015.

³⁵⁵ An interview with Ato Tadele Eredachew, VAWC Special Prosecution Unit Coordinator, SNNPR Justice Bureau on 30 July 2015.

³⁵⁶ Ibid.

³⁵⁷ Interview with MS conducted in Hawassa city on 30 July 2015 and EE conducted in Dore Bafano on 31 July 2015.

³⁵⁸ Supra note 83.

³⁵⁹ Interview with EE conducted in Dore Bafano on 31 July 2015.

³⁶⁰ Supra note 92.

It was found out that the mediation by elders, family and other formal institutions does not target finding out about the real causes of the problem and finding lasting solutions. Most of the time, the parties are advised to forget and forgive their issues without carefully addressing the root causes and their solutions.³⁶¹ This makes mediation ineffective as the same situations present themselves a few days after the mediation.

vii. Availability of Services to victims of Intimate Partner

In Hawassa, since 2014 G.C a Special Women and Children Prosecutor Unit has been established. The Unit carries out various activities to prevent VAW and children and investigates and prosecutes such cases. The Unit has a team composed of prosecutors, police and social workers to investigate and prosecute these cases.³⁶² However, it is difficult to identify which cases of IPV the Unit handled since the case recording reports do not include IPV in the list of crimes. The case recording report shows that the Unit has investigated and prosecuted grave physical injuries, insult and simple physical injury against women. However, it does not show whether these crimes occurred within marriage or in irregular union.

In an interview held with the Unit's coordinator, it was provided that the Unit entertained cases of violence. When such cases are brought forth, the Unit investigates the case using its female police officers, prosecutors and social workers and applied various protective measures. According to the Unit, protection measures are based on the gravity of the cases and include calling the abuser and speaking with him about the matter. If living with the abuser threatens the life of the victim, he is required by the police to dissert their home until an investigation is completed. However, this action of the Unit does not have any legal support.³⁶³

Women and Children Affairs Bureaus and offices in both research sites entertain IPV cases. In most of the cases, they reconcile the parties. If the parties are not willing to reconcile, their cases are sent to the police or court or legal aid centers whenever appropriate.³⁶⁴

³⁶¹FGD with women community member in Hawassa city on 29 August 2015.

³⁶²Supra note 133.

³⁶³Ibid.

³⁶⁴Interview with Genet Gabisa Hawassa City Women, Children and Youth Affairs Office conducted in Hawassa on August 26, 2015, Interview with Almaze Shofe – Dore Woreda Women and Children Affairs Office, legal officer, conducted in Dore Bafano

In Hawassa City, a network that works on sexual violence and gender based and child violence has been established. The network is established among seven relevant offices: Hawassa referral Hospital, the First Instance and High Courts, the VAWC Special Prosecution Unit, the Hawassa City Police Administration, sub-city police stations, sub-city Women and Children Affairs offices, schools and other non-governmental organizations.³⁶⁵ It has a referral system that was established in order to prevent VAW and protect victims of sexual violence and GBV. Though this network was established to work on all forms of violence, the participants of FGD noted that VAW and IPV were not priority areas for the network. Instead, the primary focus is the protection of child victims.³⁶⁶ This shows that a common understanding on the scope of the work of the network should be created among stakeholders.

In addition to the government efforts mentioned above, various NGOs provide shelter and psychosocial services to survivors of violence in Hawassa. Though there are various initiatives in Hawassa for the prevention of VAW and protection of victims, a coordinated and multi-sectoral response to violence and IPV does not exist, especially in the Ambo and Dore Bafana areas.

The initiatives in Hawassa, though commendable, have gaps and challenges. According to Women and Children Affairs Office, the main challenge is the lack of funding needed to address the needs of survivors of IPV. In addition, there is lack of political commitment to women's issues in general and IPV in particular in budget allocation.³⁶⁷ It was also mentioned that traditional views are reflected in the decisions and actions of law enforcement organs and judiciary.³⁶⁸

The researchers found that the role of elders is pronounced in marital disputes in Dore Bafana and Ambo. According to elders, they apply various punishments in marital disputes and order compensation against the party

on August 28, 2015. FGD discussants Almaz Taye -Ambo Woreda Women and Children Affairs Office and Alem Bellama- W/Shoa Zone Women and Children Affairs Office conducted in Ambo on August 24, 2015.

³⁶⁵An interview with Ato Gelay Tibo- Mainstreaming Gender in development coordinator of Hawassa City Administration, Women and Children Affairs Office conducted on 30 July 2015.

³⁶⁶FGD with Key informants in Hawassa city on 29 August 2015.

³⁶⁷ Ibid.

³⁶⁸ Supra note 144.

who is at fault. The following narrations describe these punishments issued by elders:

Women, who are assaulted, expelled from home by their husbands come to us. If the husband is at fault, we apply '*sera*'. This is a traditional procedure that isolates the husband from interacting with the society. In such a case, the husband will not meet anyone or any person will not have an interaction with him. He cannot attend funerals or any other ceremony. In addition, we punish him with a fine. If he does not have money to pay, he apologizes and we forgive him if he starts to behave properly.³⁶⁹ If there is a physical damage sustained by the woman, we order the husband to compensate her blood by slaughtering a goat for her. If the damage she sustained is grave, a calf will be slaughtered for her.³⁷⁰

When marital disputes arise, the case will be taken to local elders as a first step, Aba Boku as second step and Court as a last step. Aba Boku orders the perpetrators to give "*gabi and kibe*" means "butter and traditional comforter" to the victims as compensation. Aba Boku makes the perpetrator promise not to commit the act again and if he breaks the promise he will be cursed. The solution given by elders is preferable as the persons are more open before elders. It is also a win-win situation. The perpetrators fear breaking the promise they made in front of the elders because of the place such promise has in Oromo culture. If they break such promise, they face severe punishment. Punishments are paid in kind (bull for Aba Boku, "*gabi*" for the victim, a sheep, grain and butter). There are cases where the parties forgo this since the properties from which the perpetrators pay compensation are common properties.³⁷¹

The main gap in the traditional dispute resolution mechanisms is that women do not participate as mediators. They do not also participate in the whole process since a woman cannot attend public sessions of mediation (*Gubaye*). But according to elders "they give priority to women's issue when such issues arise".³⁷² Further, the mediators do not allow the women to divorce as can be understood from their view that "a woman who does not want to live with her husband in the first place should not come to us."³⁷³

³⁶⁹ Interview with Gowano Humilo, Local Elder at Dore Bafano on 28 August 2015.

³⁷⁰ Ibid.

³⁷¹ Supra note 130.

³⁷² Supra note 147.

³⁷³ Ibid.

VI. Conclusions and Recommendations

This paper accents the need to pay due attention to structural factors accounting for the existence and prevalence of IPV. One of such factors relates to the patriarchal norm. Male partners wanting to manifest power and control over their female partner is the main factor for the infliction of physical, psychological, sexual and economic violence and controlling behaviors. Traditional norms, views and attitudes of the society sustain this behavior of power and control by men over their female partners.

Numerous factors account for the dominant trend whereby victims of IPV often resort to seek help from informal help providers. When they seek help from the formal help providers, they are not provided with the full protection needed. Thus, the authors recommend the following measures to be taken by the government and other stakeholders working on the protection of women's rights in the research sites.

Based on the major findings of the study this paper forwards the following policy recommendations;

- A mechanism to improve and coordinate law enforcement response should be designed with the involvement of all stakeholders.
- Standards and guidelines should be developed to make the investigation and prosecution of IPV cases gender sensitive and victim-centered.
- The existing mediation format should be formalized with the adoption and utilization of human rights standard.
- Resources should be allocated for the prevention of IPV and the protection of IPV survivors.
- A law should be adopted that allows law enforcement organs to apply protective measures such as restraining orders to protect survivors from revictimization.

Furthermore this paper forwards the following recommendations for programmes addressing IPV;

- Raising awareness on the rights of women should be done using various methods including community dialogue.
- A communication strategy should be designed to provide IPV victims with information about existing help providers.
- The existing referral network in Hawassa should be strengthened and similar referral mechanisms should be instituted in Ambo and Dore Bafana.
- Legal assistance and other support measures should be provided to survivors of IPV.

- Human rights trainings should be given to mediators.
- Trainings should be provided for law enforcement organs on how to investigate and prosecute IPV cases in a gender sensitive manner.
- Reversing the trend and practice of female IPV victims running away from home to seek help is necessary.
- A mechanism should be devised that protects a woman from revictimization and allows her to pursue a legal case while she is at home with her children.
- Cases of IPV filed to the police, public prosecutor office and courts should be recorded for research and policy making purposes.

Rights and Reality: The Working Conditions of Female Factory Workers in Selected Manufacturing Industry Sites in Ethiopia

Kokebe Wolde, Fekade Alemayhu, & Tadesse Tesfaye

Abstract

The past few years have seen gradual expansion of the manufacturing industry in Ethiopia, creating employment opportunity for thousands of Ethiopians. There is a growing concern that the much-touted growing employment opportunity in the manufacturing sector is not matched by decent working conditions. This paper aims to present an assessment of the working conditions of female factory workers by focusing on a study conducted at selected manufacturing industry sites. Through a qualitative method and using the standard conditions of work set by the law as points of reference, the paper examines the working conditions of female factory workers as well as their interaction with the formal legal system to vindicate their rights and advance their interests in the workplace. It has been found out female factory workers, which constitute the largest portion of the work force in the manufacturing industries, are concentrated in blue collar jobs and survive under dismal working conditions that are way below the standards set by the law. A number of factors that hinder female factory workers from demanding enforcement of their rights utilizing the law and the formal legal system were also noted. The research findings point to the need for serious of legislative and programmatic interventions to ameliorate the condition of female factory workers.

Keywords: Working Conditions; labour Rights; Working Women; Manufacturing Industry; Ethiopia; Gender.

I. Background and Context of the Study

Following the liberalization of the Ethiopian economy in 1991, the manufacturing industry sector has seen gradual expansion. As the Ethiopian Government engages in a push towards ensuring economic and social development, the manufacturing sector has taken centre stage in its policy matrix. This is a vital approach as the manufacturing sector raises national income through value adding, creates demand for agriculture-based traditional products and provides growing employment opportunities.³⁷⁴With this in view, the Ethiopian government has focused

³⁷⁴Mitiku Amare&S.K.V. Suryanaryanaraya Raju, 2015, "Overview of Ethiopian Manufacturing Industries",*Industrial Engineering Letters*, 5(5): 41
<http://www.iiste.org/Journals/index.php/IEL/article/view/22270/22776>. (Accessed on17 Januay 2015.

on transforming the economy from a primarily agrarian economy to an industrialized modern economy.

As a result, over the past 10 years Ethiopia has registered expanding investment in manufacturing industries as more and more foreign companies are enticed by the cheap labour prevailing in Ethiopia, in addition to the fledgling domestic manufacturing industry. It has become a rapidly growing economic sector providing increasing employment opportunities for thousands of Ethiopians. The number of large and medium scale manufacturing industries that was 796 in 2000/01³⁷⁵ has reached 2,610 in 2012/13.³⁷⁶ Between 2012/13 and 2014/15, the manufacturing industry sector has expanded, on average by 22%.³⁷⁷ Manufacturing industry output growth has been, on average, 14.9% for the period 2009/10 and 2013.³⁷⁸ The number of job opportunities the manufacturing industry created has also risen sharply, from 93, 515 jobs in 2000/01 to 380,000 by 2014/15.³⁷⁹ This expansion of the manufacturing sector in terms of size, economic output and job opportunity is set to accelerate as the Government is poised to make Ethiopia a leading manufacturing hub in Africa. The Government's Growth and Transformation Plan II (GTP-II) gives substantial emphasis to the manufacturing sector. The manufacturing industry is projected to grow by an annual average rate of 21.9% and manufacturing sector job opportunity by 15% for the GTP-II period (2015/16 - 2019/20), and the employment opportunity is anticipated to rise to 1.5 million by 2025 from the current 380, 000.³⁸⁰

While these developments in and buoyant trajectory of the manufacturing industry sector is a welcome development for a country besieged by poverty and unemployment, the growing manufacturing industry has brought new environmental and social problems. More specifically, with the expansion in industrialization and the concomitant rise in the number of factory labourers arise issues of working condition of factory workers. Reports, anecdotal stories and causal observation attest the existence of

³⁷⁵Central Statistics Agency. 2003. *Manufacturing Industry Survey*. Addis Ababa: Central Statistics Agency.

³⁷⁶Central Statistics Agency. 2014. *Manufacturing Industry Survey*. Addis Ababa: Central Statistics Agency.

³⁷⁷National Bank of Ethiopia. 2015. *Annual Report for 2014/15*. Addis Ababa: National Bank of Ethiopia.

³⁷⁸Ministry of Finance and Economic Development. 2014. *Growth and Transformation Plan Annual Progress Report for F. Y. 2012/13*. Addis Ababa: MoFED.

³⁷⁹Central Statistics Agency, *Manufacturing Survey (2003)*; National Planning Commission. 2016. *Growth and Transformation Plan II (GT-II) (2015/16-2019/20)*. Addis Ababa.

³⁸⁰National Planning Commission, *Growth and Transformation Plan II*.

forbidding working conditions in the mushrooming manufacturing industries.

With regard to women specifically, available data show that over the past two decades women's employment rate has increased even in times when there has been decline in the national unemployment rate.³⁸¹ The current employment policy which aims at generating employment for the country's abundant labour force through the expansion of labour-intensive export-oriented private investment and the liberalization of employment regulation as of 1991 seem to have helped in creating employment opportunity for the many poor and unskilled women. Textiles and garment, leather, agro-processing industries are among the manufacturing sectors that the government wanted to promote as labour-intensive economic activities and that have actually created employment opportunity largely for women.³⁸²

However, there is paucity of literature as regards the question of whether this increasing access by women to paid work has been matched by quality and empowering working conditions. In fact no single research on the topic of the working condition of female factory workers was found. This research was, therefore, conducted with the purpose of probing and understanding the working conditions of female workers in the growing manufacturing industries. The main objective of the research is to explore and understand the working conditions of female factory workers and how they perceive and interact with the legal system to vindicate their rights as workers. Specific objective of the research include assessing the working conditions of female factory workers; gauge women workers' understanding of labour rights and their attitude towards and practice of claiming rights; identify the major challenges and rights violations that female factory workers face; explore factors that determine women workers' inability/unwillingness to avail themselves of the formal labour

³⁸¹Central Statistical Agency.1999.*National Employment/Unemployment Survey for the Urban Population Report*, Addis Ababa: Central Statistics Agency; Central Statistics Agency.2003. *Manufacturing Industry Survey*. Addis Ababa: Central Statistics Agency; Central Statistical Agency of Ethiopia. 2004. *National Employment/Unemployment Survey for the Urban Population Report*. Addis Ababa: Central Statistics Agency; Central Statistical Agency. 2006. *National Employment/Unemployment Survey for the Urban Population Report*. Addis Ababa: Central Statistics Agency; Central Statistical Agency. 2011. *National Employment/Unemployment Survey for the Urban Population Report*. Addis Ababa: Central Statistics Agency.

³⁸²Bigsten, Arne, and Mulu Gebreeyesus. 2009. "Firm Productivity and Exports: Evidence from Ethiopian Manufacturing." *Journal of Development Studies* 45 (10); Denu, Berhanu, Abraham Tekeste, and van der Deijl Hannah. 2005. "Characteristics and Determinants of Youth Unemployment, Underemployment and Inadequate Employment in Ethiopia." *Employment Strategy Papers* 7. Geneva: ILO.

dispute settlement fora to enforce their labour rights; and sort out issues related to the working conditions of female factory workers and labour rights enforcement for policy and program interventions.

The research followed a qualitative type of research method. Both primary and secondary data have been used. The research was preceded with a review of legal and policy framework, official data (statistics and reports) and literature on the subject. This was followed by development of primary qualitative data collection tools. Using the data collection tools qualitative data were collected from the study participants (female factory workers) and key informants from an array of institutions that directly or indirectly deal with employee-employer relationship or workers' welfare.

The qualitative data for the research were collected from Almegena-Sebeta and Modjo-Adama vicinities, on the southwest and southeast outskirts of Addis Ababa, respectively, and from Hawassa city. These sites were chosen because of the high concentration of manufacturing industries in these areas. In particular, the Alemgena-Sebeta and Modjo-Adama vicinities have the highest concentration of manufacturing industries in the country.

The data were collected from the study participants and key informants using a combination of different data collection tools: observation (in their working environment and body language and physical appearance during interviews); in-depth interview of study participants using semi-structured interview questions; focus group discussion; survey of study participants using structured checklist to gauge understanding of and attitude towards enforcing labour rights, and interview of employers and key informants from governmental and non-governmental institutions.

Data analysis was done manually. In analysing the data, a combination of thematic content and grounded analysis methods was adopted. First, thematic content analysis was done based on the following themes, predetermined based on the spectrum of the employment relationship and following the basic schema of the Ethiopian labour law that governs the working condition of factory workers. As more discrete information emerged from the data that does not fit with the pre-identified themes, the researchers updated and adapted the themes. The analysis is dotted with narration of personal stories of the lived experience of female factory workers to illustrate what they experience and the way they think, feel and react to life as factory workers.

II. Overview of the Legal Framework Governing the Working Condition of Female Labourers

A range of labour rights pertaining to the working condition of employees in general and female workers in particular, are provided for in an array of domestic legal and policy documents as well as international legal instruments ratified or adhered to by Ethiopia. This section will, review these legal instruments and highlight the rights of female factory workers as a background for analysis of the real working condition of female factory workers.

The first major international instrument that enunciated universal human rights was the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly as a foundation for world peace. This document has provided, in a general wording, 30 provisions of fundamental rights that form the core of the current international human rights law system, including labour rights. This instrument provides, among others, that women, in the same manner as men, are entitled to right of work by freely choosing their occupation in 'just and favourable' environments. In addition, women are also entitled to get equal pay with men for an equal work they performed, and for this payment to be 'just and favourable' as to enable them to live a dignified life that is capable of supporting their family. Moreover, the UDHR specifies that women have the right to 'rest and leisure time' with their working time limited reasonably and guaranteed holidays with pay. Besides these individual rights, women have also a collective right to form trade unions, or join a trade union of their choice to promote their interests.

The other relevant major international human right instrument is the International Covenant on Economic, Social and Cultural rights (ICESCR). It builds upon the UDHR and imposes upon state parties of the Covenant to ensure the economic, social and cultural rights of, among others, women. The ICESCR reiterates the right of work of women and obliges state parties to fulfil this right, by providing trainings and vocational guidance. The Covenant considers the free choice of employment as part of the right of work and imposes the same obligation on the states to take appropriate measures to safeguard it. It also reaffirms the right of women to work in just and favourable conditions 'not inferior to those enjoyed by men, with equal pay for equal work, 'a remuneration that enables them to live decent life, safe and healthy work conditions, equal opportunity in promotion to a higher level by requirement of seniority and competence, and rest, leisure and paid public holidays. Collectively, women workers have the right to form trade unions or join existing ones and a right to strike. The ICESCR, in

addition, provides that these rights, be them individual or collective, should be exercised without any discrimination of any kind including based on sex and obliges the State to ensure that women and men enjoy the rights equally.

The Convention for the elimination of all forms of Discrimination against Women (CEDAW) also deals with employment related rights of women. It obliges the State to ensure the elimination of discrimination of women in employment by taking appropriate measures. Specifically, it obliges states to ensure non-discrimination in realizing the right to work, the right to same employment opportunities especially by applying the same criteria for employment selection, the right to freely choose profession, and the right to equal pay. In addition, the state is under obligation to prohibit termination of employment of women on the ground of marriage and/or pregnancy, to introduce maternity leave, and to provide special protection for women during pregnancy from works harmful to them.

Similarly, the African Charter on Human and Peoples Rights (ACHPR) guarantees the right to work 'under equitable and satisfactory conditions' and equal remuneration for equal work. In addition, it stipulates that the enjoyment of rights under it should be free from discrimination. The Protocol to the ACHPR on the Rights of Women in Africa, like the CEDAW, calls on the state to take measures to redress discrimination against women via legislative or other measures especially in promotion of access to employment, in remuneration, in recruitment, promotion, and dismissal, by supporting their employment and their economic activities especially in the informal sector, and by providing 'adequate and paid pre- and post-natal maternity leave in both the private and public sectors.'

Further to those general provisions in the above mentioned human rights instruments, employment related specific rights for women workers are also stipulated under the International Labour Organization (ILO) conventions. As per the numerous conventions adopted under the auspice of ILO, in addition to the common protections they enjoy with workingmen, women workers are accorded specific rights. These rights include the right not to be discriminated against 'in respect of employment and occupation' and remuneration. The State is obliged to formulate and implement national policies that promote occupational safety and health in particular and working conditions in general. They are also obliged to give effect to this obligation by enacting laws. Female workers are also afforded protection during and after pregnancy: prohibition of engagement in works that are deemed to be hazardous to health of the mother or the foetus, to a minimum of 14 weeks maternity leave, and to a leave upon medical recommendation before or after giving birth. In addition, pregnant women

workers are protected from working in the night shift - from 10p.m. to 7a.m. Further, employed women are protected from being dismissed on account of their sex or for being pregnant or for having family responsibilities or for their marital status. The ILO conventions also provide women workers' right to form or join trade unions of their choice, to bid for trade union leadership or choose their representatives, free from interference by employers and employers' organizations.

In addition to the aforementioned international instruments, which are made part of the laws of Ethiopia by virtue of the Constitution of Ethiopia, legal protections for employed women are also set out in the Constitution itself and other subsidiary laws. The Constitution stipulates the right to equality in employment, promotion, pay and pension schemes, to paid prenatal and postnatal maternity leave, to 'reasonable limitation on the hours of work, to rest, to leisure, to periodic leaves with pay, paid public holidays' and 'safe and healthy' conditions of work. Women workers, just like other workers, have the right to form trade union and to strike. Moreover, the Constitution obliges the government to take 'all measures necessary to increase opportunities for citizens to find gainful employment'.

Labour Proclamation no. 377/2003 sets out the details of the general labour rights provided for in the international legal instruments and the Constitution. It provides common as well as specific protections for working women, including the prohibition of discrimination in employment, payment, and promotion and prohibition of dismissal on ground of their sex or maternity status. In relation to occupational safety and health, the Proclamation obliges employers to ensure that women workers are properly instructed as to the particular hazards of the work, and as to what they should do to keep themselves safe, provide safety tools with proper instructions, and in general, to ensure the safety and health of workers. In addition, women workers are entitled to prenatal maternity leave of 30 consecutive days and 60 consecutive days of post-natal maternity leave, with additional leave in case she did not give birth within the 30 days pre-natal leave, and leave with pay when a doctor recommends during pregnancy. Moreover, the proclamation provides that pregnant woman worker should not be assigned to night work (10 p.m. to 6 a.m.) or on overtime work, or on work, which is hazardous to the health of the mother or the foetus. In addition to maternal leave, women workers, like any other worker, are entitled to paid annual leave of 14 days for the first year of service (and an additional one day for each additional year of service), to sick leave, to leave for family events, union leave, and leave for special purposes. The Proclamation also stipulates the right to form and/or join a trade union as well as to engage in strike to advance their interests in

the workplace. Social security protections are provided in the Labour Proclamation itself and pension and social health insurance laws.

III. Findings on Female Factory Workers' Working Conditions

a. The Search for Job

The road to paid employment is arduous for female job seekers. Finding employment is made difficult by the absence of streamlined employment service systems and the high number of job seekers relative to the available jobs in the labour market.

While it is not uncommon for employers in the manufacturing sector to advertise vacancies by posting in public places or using print or electronic media, it is less common for blue-collar job vacancies to follow similar procedures. For vacancies of this job category, what employers do utmost to publicize vacancies is posting vacancy notices in public places and outside of their workshop premises. According to information from study participants, most female factory employees manage to get employment by roaming around factories and imploring for employment. The word of mouth communication about vacancies among job seekers is an important source of information regarding employment opportunities. Study participants have indicated that it is common for job seekers to gather around factory premises or in open spaces, in areas where there is concentration of factories, waiting for any chance to be called in and offered employment.

This difficulty of locating employment opportunities is made even more difficult by the large number of job seekers. Whenever the news of an employment opportunity with a certain enterprise is heard, often a large number of applicants report. Both employers and employees interviewed for this research have confirmed that female job seekers account for a higher proportion of job seekers.

When employers want to hire, the responsible person will just go outside of the enterprise premises and pick from among those gathered there, having regard to level of education and physical integrity of job seekers. Having relations, friends or acquaintances in a given enterprise guarantees better opportunity of employment. Even establishing connection with security guards of a factory is important, as they will tip information when a vacancy is available. While these are the common ways of getting employed, bribing insiders who can facilitate employment is also reported as a less common way of getting employment. Lelisie, a 23 years old girl

who works in a steel mill, said; *"I had to pay 200 birr and use networks of an insider who helped me to get the job"*.

By and large, getting employment in factories is difficult for job seeking women. It takes time, energy and money. Particularly for new job seekers it takes up to three months to get employment, as reported by study participants. For Lensa, a 24 years old girl who came to Addis Ababa from Butajira (130 kms south of Addis Ababa) in search of a job after dropping out from grade 7, getting employed was tough. She narrates her story of finding a job as follows

"When I arrived in Alemgena [south-west periphery of Addis Ababa], I took shelter with my childhood friend who has settled there earlier upon getting employment in a nearby factory. Since arriving there, I, along with other job seekers that I met there, went to various factories searching for an employment opportunity. Getting one was difficult despite my efforts day-in and day-out. At last I was in despair and about to return to my parents when an acquaintance tipped me about a vacancy in the enterprise where I make a living now, a wood-work factory owned and managed by Chinese people. I immediately rushed there and got employed forthwith to my relief".

This difficulty of getting employment by female job seekers is despite the preferential treatment of female job applicants by employers. As noted by key informants and study participants, employers often prefer female job applicants over male and, in fact, most of the employees in the factories in the study sites are women. If employers prefer male applicants it is only for physically demanding jobs such as loading/unloading, moving heavy materials and operating heavy-duty machines and for managerial and supervisory positions.

The preferential treatment of female job seekers by employers is not at all out of humanitarian consideration on the part of industrialists for female job seekers. It is rather for practical management reasons. A human resource manager of a tannery in Modjo town stated that they prefer to employ female job seekers for they are obedient and can be put anywhere in the production line anytime. In a candid reflection as to why women are preferred in employment, a plant manager whom one of the researchers closely knows said that female workers are obedient and are not as naughty and demanding of their rights as the men turn out to be. These testaments sum up the considerations behind the preferential treatment of female job applicants by employers. This view is further shared by experts at labour affairs offices.

b. The Working Conditions of Female Factory Workers

The term 'working conditions' refers, in relation to labour market relations, to the working environment and all existing circumstances affecting labour in the workplace including working time, remuneration, amenities, physical conditions and mental demands as well as degree of safety and danger that exist in the workplace. Qualitative information generated from employees, groups of employees', and government offices (labour and social affairs and women and children affairs) reveal the dismal working conditions of female factory workers. Bare minimum wage, exhausting working hours, inadequate rest, employment insecurity, and hazardous and unhealthy work environment characterize the working condition of female factory workers. In women's own words, 'the working condition is suffocating'.

Wage:

The most serious complaint by female workers, and also echoed by government officers, is the meagreness of the wage. The wage paid to female factory workers is the bare minimum. According to information from study participants the common hourly and daily rates are, respectively, 4 birr and 30 birr. The daily rate is sometimes as low as 20 birr. A monthly wage as low as 500 birr is not uncommon. The common highest salary paid to blue collar workers having long years of service is in the tune of 2000 birr. Most female workers' monthly salary is in the range of 650 – 900 birr.

Workers bitterly complain that the salary they earn is insufficient to cover the cost of basic necessities for living. "The monthly rent rate for a 3x3 meters room is 500 birr, then what is left off for covering other basic expenses?", exclaim one female employee who took part in an in-depth interview. "The wage paid is not sufficient to cover basic living expenses, let alone to make a saving", said another female interviewee.

When Lensa decided to come to Addis Ababa from Butajira, her ideal plan was to get a well-paying job and make savings. She planned to return to her village, help her parents and start small business for herself. When she arrived in Alemgena (a manufacturing industry hotspot on the south-west outskirt of Addis Ababa) she found out that finding any job, let alone a well-paying job, was difficult. When she got one, the salary was negligible. Now after working sometime and getting a pay raise, she earns a gross monthly salary of 800 birr. This amount is subject to deduction of income tax and pension contribution. Lensa said;

“I realized the difficulty of living by myself with such meagre income and started living together [in an informal relationship] with my boyfriend.”

Even so, Lensa still laments about life; despite the new cost sharing arrangement she is in, she says “the bare minimum wage coupled with the high cost of living has made life unbearable”.

Other female factory workers share Lensa’s story. Since the salary they are paid cannot cover their basic costs of living, they have devised alternative sources of income. According to our informants almost all female employees routinely engage in overtime work, working extended hours in regular working days and weekly rest days. There are female employees who work 12 hours in a day or week-in week-out without having weekly rest breaks, as long as overtime work is available. This is discounting the household chores they have to be engaged back home. Others engage in in-house retail of goods or do handicrafts (such as embroidery) for sale during their spare time. Hawi, a 24 years old woman, works for a detergent factory in Hawassa for a gross salary of 1,022 and gets net 840 birr after the legal deductions. She is divorced, as her husband was not willing to let her work, and has two children to care for. She narrates her lived experience: “The income from my employment is not enough to support myself and my two children. As a result, to fill the gap between the rising cost of living and the negligible net income I have, I engage in baking and vending ‘injera’ at home”.

A 22 years old returnee migrant from the Gulf countries says;

“The net monthly income of 600 birr from my new employment does not cover my monthly basic expenses. As a result I make use of the money I saved while working overseas. I could not work overtime as it is not available in the tannery where I work”.

Lelisie works for a gross salary of 600 birr. She is married and has got a child. She says:

“As my husband’s salary and mine is not enough to cover our basic expenses, I have to work overtime whenever it is available at my place of work. During the regular working days I work for extra 4 hours and the whole day on Sunday [her weekly rest day]. That gives me extra 300 or 400 birr income per month. In addition to the overtime work, I do handicraft (embroidery) for sale during my spare time at home”.

Other female workers have developed other coping mechanisms to deal with the mismatch between the bare minimum wage and the skyrocketing cost of living. Some get assistance in kind from their parents back in their home area. Others share accommodation with co-workers. Dure, 22, came

to Alemgena from West Shewa to search for a job after completing post-grade 10 vocational training in cooperatives accounting. She said;

“At first I was not able to get a job that fits my qualifications. After a lot of effort I got employed in a biscuit factory as packer for a gross salary of 700 birr. I share accommodation with my sister, who has also moved to Alemgena. As the salary I and my sister get is inadequate to cover our basic expenses our parents support us by sending staple food grains”.

As the afore presented experiences clearly show, employment in manufacturing industries does not provide living wage for women. This is unanimously agreed by employees, employees’ associations and government offices directly involved in regulating working conditions or that promote the welfare of women. All agree that the government has to come up with minimum wage legislation that guarantees minimum living wage.

Working Hour:

Study participants reported that employers normally arrange the working hours following the legal requirement of maximum 8 hours of work per day. This apparent compliance with the law is, however, circumvented by the routine recourse to overtime work arrangements. Study participants repeatedly noted that employers usually prompted by fluctuations in the demand for and supply of products or raw materials, demand employees to make themselves available for overtime work. Failure to report for overtime work called by the employer is considered as a disciplinary breach eliciting the employer’s disciplinary action, including dismissal from employment. So, workers will be obliged to work extended hours during the regular working days (4 – 6 hours above the maximum working hours limit) and during weekly rest days (usually Sunday). It is common for female workers to work from 7:00 a.m. – 7:00 p.m. (or, during night shifts, from 7:00 p.m. – 7:00 a.m.). If the employer wishes, this will continue throughout the week, week-in and week-out, with no Sunday breaks or substituted weekly rest days.

Of course it is difficult for the workers themselves to resist the temptation of working overtime, be it during regular working days or weekend rest days, as this is their main way of generating additional income. Working overtime is part of the life of female factory workers. There are women workers who work for 16 hours a day, from 7:00 a.m. – 11:00 p.m., with interim breaks for lunch and dinner. There are others who work from 7:00 a.m. – 9:00 p.m., to fetch payment for 5 hours of overtime work per day. Dure’s life illustrates this. She says this: “I report for work at 8:00 a.m. and work until 5:00 p.m., with 30 minutes of interim break for lunch. If

overtime work is available, I continue working till 8:00 p.m.” Lensa does the same. She says, “I report for work at 7:00 a.m. and work till 4:00 p.m.; if there is the opportunity I work overtime till 7:00 p.m. If, again, there is the opportunity, I continue to work on the weekend day off”. Lelisie also shares the same story. She says that

“My gross salary for the regular working hours is 600 birr. To add to this, I regularly work overtime, frequently being on duty from 7:00 a.m. – 7:00 p.m., including on Sundays, as long as overtime work is available. When I feel exhausted I take 2 or 3 days off utilizing my annual leave”.

Female factory workers impart that it is not worth doing overtime. It is exhausting and the payment is not rewarding. It is reported by study participants that, because of the exhaustion from the long hours of work, some workers have difficulty preparing or having meals back home. For married workers and those with children, this is just one part of their life, as they have a husband to care for and/or child(ren) to nurse or look after. The deeply embedded tradition of gender-based division of roles in our society which assigns household chores as the domain of women means that the factory working woman has to also tend to all household affairs by herself, even if she is married or have male partner living with her. When having child (ren) is added to that, the domestic responsibility itself is immense. While for the husband/male partner returning home from work usually means getting rest, for the employed wife/female partner, it is the start of another work shift. They have to take care of all household work. Thus, female factory workers often live shouldering bifurcated responsibilities: as an employee in the workplace and as a housemaid back home. This puts severe strain on their life.

Most of our study participants (in FGD and in-depth interview) who live in marital or marital-like relationships stated that their husbands/partners do not help them with the household work. So, upon return from work, be it regular or overtime, they have to engage themselves in that routine household work. They will stay on this work as late as 11:00 p.m. They have to, again, rise early in the morning for some as early as 5:00 a.m. to prepare breakfast for the family and also fill the lunch boxes for herself, her husband/partner and any school going child (ren). Being assigned in the evening or night shift by her employer further complicates her life, particularly if she has child(ren) who need nursing or close supervision.

Such is the life of Ayantu and other female factory workers. Ayantu, a 26 years old woman, works in a garment factory. She is married and has two children of school age. She has said this:

"My husband does not at all help me with the household work. I usually wake up on or before 5:00 a.m. to prepare breakfast and also fill lunch boxes for my husband (who is a factory worker as well) and myself, and our two children who go to school. At 8:00 a.m. I report for work at the garment factory. I work there till 5:00 p.m., after which I will rush home to attend to the kids after school and take care of the household work. Sometimes, however, my employer obliges me to stay on for overtime work till 8:00 p.m. That worries me a lot as there will be no one who will look after my children after school. The children stay with our neighbours until I return home after 8:00 p.m. Upon returning home I immerse myself in the routines of household chores: cleaning, washing clothes, preparing dinner, fetching water, etc.... till 10:00 or 11:00 p.m."

For Ayantu life goes on like this. That is also how life as an employee was for Birtukan, who was an employee of a textile factory but was recently dismissed by her employer. She is married and has a child of school age.

"When I was working", Birtukan, said, "I used to start my day at about 5:00 a.m. I prepare food for my husband and the child, and myself. At 8:00 a.m. I report at my workplace to work till 5:00 p.m. If there is overtime work opportunity, I will continue to work till 8:00 p.m. upon returning home I do household chores usually till 10:00 p.m. My husband, who does not like the idea of me working in a factory, does not help me in the household work. The most that he does is dressing the child".

Lelisie, however, says "I am lucky as I have got a husband who does his share of the household work. He makes coffee, washes clothes, bakes 'injera' and cooks stew, brooms the house, etc."

Rest and Leisure:

On annual leave, sick leave and maternity leave, female factory workers seem to benefit from the prescriptions provided by the labour proclamation, although some irregularities and violations of the law are observed. The information from our study participants indicated that female factory workers are provided an annual leave of 14 working days for the first year of service plus one working day for each additional years of service. Few employers provide 15 working days of annual leave irrespective of the length of service while there are other employers that do not afford paid annual leave for their employees at all, except 3 or 4 days off for the most industrious and loyal of their employees.

Information obtained from the study participants show that sick leave is provided more or less according to the stipulations of the law. The only persistent unwieldy requirement by employers for the purpose of granting

sick leave is employees have to produce medical papers from government medical institutions; medical certificates offered by private medical institutions are not accepted by employers. Some employers provide sick leave without pay.

As regards maternity leave the practice seems to be more or less uniform and according to the law. Paid leave is given for periodic medical check-up purposes upon production of medical paper from government medical institutions or an institution authorized by the employer. When pregnancy of a worker is confirmed, employers, in most cases, make favourable adjustments for the pregnant worker; no overtime work, no work during night shift, transfer to posts which are physically less demanding etc. Some employers, however, do not make such adjustments and the pregnant worker will be forced to leave her job on her own at the 7th or 8th month of her pregnancy when her condition of work becomes unbearable. Our informants confirmed that many employers comply with 30 days of prenatal and 60 days of postnatal leave, if the pregnant worker manages to survive the hard working conditions up to the 8th month of pregnancy. There are employers who grant extended unpaid maternity leave upon the expiry of the legally stipulated maternity leave period. There are, however, also reports of unpaid maternity leave or dismissal on ground of pregnancy.

Employment Security:

Female employees work under job insecurity. Their employers often remind them that they are employed for fixed-term and their employment can be terminated upon the expiry of that term. They also believe that the employer can dismiss them at his will in the same way he employed them; they do not know that they have legal protection from arbitrary dismissal. So, they always live under an atmosphere of insecurity. One cannot miss how hard it is to live on bare minimum wage and again feel the possibility of dismissal at anytime. It leaves every worker in utter insecurity. Of course, thanks to the deeply held belief in divine providence in our society, these female factory workers find solace in God. 'God determines what the future holds for me; He would not let me down', they say.

Occupational Safety and Health:

Female factory workers work in appalling occupational safety and health conditions. The information gathered from our study participants and key informants show that female employees work in warehouses, processing and assembling lines, operate machines, handle chemicals without any protective equipments such as helmet, boots, goggle, overalls, mask, etc., that may be necessary according to the nature of the risk a particular

workstation involves. Beshatu, 22, who came from Arsi works in a tanning position in a tannery at Modjo, an industrial area on the eastern outskirts of Addis Ababa. She described her experience: "I am not provided with basic protection materials such as: gloves, boots, overall and face mask, which were essential for the particular job I do. I do all the work with bare hands and sandal on my feet."

Female employees complain suffering from back pain, irregular menstrual cycles, kidney pain, and skin rash which they say is because of the nature of the job they do or the way they do it (standing or sitting steadfast for long hours). Annual or bi-annual medical check-ups for workers working in hazardous positions are not common. Where it is done, it is done nominally in ill-equipped medical institutions, just for reporting purposes and to keep the workers satisfied. Key informants from labour and social affairs offices noted that the only center in Ethiopia for occupation related risks examination is the Health and Nutrition Research Institute (Pasteur Institute) in Addis Ababa. Over and above these, it is reported that bullying and intimidation of female workers by supervisors is common, particularly in enterprises owned and run by foreigners.

c. Access to Social Security Services

Access to social security services is the other major issue to be noted in understanding the life of female factory workers. Social security mechanisms provide a socially shared safety net for times of ill health, old age and redundancies.

The starting point for economic security in times of any mishaps is personal saving. For female factory workers, however, saving is difficult, given the meagreness of their income. Our study participants noted that some female factory workers try to make some savings using the traditional institution of *Iqub*. Few others take part in credit and saving associations established by workers at their workplaces. This, however, is not common among factory workers. There are also female workers who are members of *Idir*, a neighbourhood association of households for helping each other in the event of the death of a family member.

Many female employees seem to be covered by the recently introduced private enterprises employees' pension scheme. Many of the study participants have indicated that they have been registered for the pension scheme with the facilitation of their employer. There is, however, a risk of the employees being victims of scam by the employer: employees may feel covered by the pension program but not actually. Trade union leaders and study participants have indicated that employers often deduct pension contribution from the employees' salary, without, however, actually

transferring the fund to the government organ entrusted by law to administer the pension scheme. For instance, in one textile enterprise from Adama, the trade union there had twice uncovered such irresponsible act of the management of the enterprise and had caused the fund to be transferred to the appropriate government authority. It is also indicated by labour affairs officers that employers cover their share of the pension contribution by deducting from the employees' salary.

The other thing that operates against female employees benefiting from the pension scheme is the high turnover of female factory workers. When giving birth or when female employees quit employment for other reasons, their pension record may not be traced and connected to a new pension record upon new employment. This means the previous contributions will be lost.

In general, female factory workers survive at the margins of social safety net. They live under employment insecurity and bare minimum wages and without benefits package for times of unemployment or coverage by any meaningful formal or informal system for basic welfare protections.

d. Working Women in Collective Labour Relations

For workers, engaging in collective labour relations is helpful to improve their working conditions. Collective labour relation is defined as relation of workers as a collectivity with employer to engage in sustained dialogue to arrive at solutions for the conflicting interests and values of labour and capital: profit and employee welfare. Unionization gives strength for the worker while collective bargaining provides the platform for engaging with the employer and achieving gains for the workers.

The study participants agreed that the existence of a trade union in the workplace is useful. It is also indicated that female factory workers join trade unions, where there is one. There are, however, others who, for fear of reprisal by the employer or for not knowing the real significance of unionization, do not consider being part of a trade union. Given the really tough resistance from the employer for the formation and operation of trade unions, there are female factory workers who do not want to associate themselves with such venture.

Many of the study participants see the potential and actual benefit in having and being part of trade unions, if it were not for problems, internal to the workers themselves and influence from the employer, which make trade unions dysfunctional in reality. Genet who works in a garment factory in Alemgena agrees that in principle trade unions are useful.

However, she says “in reality I have not seen the potential benefits realized as there is always confrontation between trade unions and the enterprise’s management”. Hawi, who works in a detergent factory in Hawassa, says, “the existence of a trade union is important as it works on my behalf for the protection of my interests”. Dinsure, another employee in a flour factory in Hawassa says *“I have actually benefited from the existence of a strong trade union in my workplace”*.

Most of the study participants, however, agree that establishing or running trade union is not an easy venture. Employers do everything within their power not to see a trade union within their enterprises or to weaken it, if there is one. The employers either dismiss (using false causes) or transfer union leaders or workers who steer the formation of trade unions to another workplace. The other technique used by employers to disband or weaken trade unions is infiltrating the union leadership circle with pro-employer workers. According to our study participants and key informants, these techniques are routinely and widely practiced by employers to make sure that there is no strong trade union within their respective enterprises. Labour inspection officers and trade union leaders that the researchers talked to have strongly expressed the near impossibility of establishing or running trade unions. Lack of cohesion, unity and common vision as well as the absence of a sense of permanent tie with a given employer among employees are considered as secondary factors for the minimal place of trade unions in the life of factory workers.

No wonder, then, that there are not many trade unions in the study areas despite the large number of enterprises having various numbers of employees. For instance in Adama town, while there exist 1,369 enterprises of various type having employees of various size, only 43 of them have trade unions, according to information obtained from the city’s Labour and Social Affairs Office. Of 445 private enterprises that exist in East Shewa Zone, only 48 of them have trade unions. The story is the same in Hawassa and Almggen-Sebeta industrial areas.

Having trade union is not an end by itself. It is a means to collective bargaining and entering into collective agreements with the employer with the aim of procuring better working conditions for the workers. Yet, again, the evidence gathered from the study areas show that working to this end is even more frustrating. Given the hostile relationship that often exists between the unions and employers or because of the internal weakness of the unions themselves, not many of them succeed in negotiating and entering into collective agreements with the employer. For instance, of the 43 enterprises in Adamatown, which have trade unions, only 20 of them have succeeded in concluding collective agreements with the respective

employers. And in East Shewa Zone, of the 48 trade unions that exist, only 36 have collective agreements with the respective employers. This is even without having regard to the quality of the collective agreements in ensuring decent working conditions for the workers. As a matter of fact only in public enterprises or privatized public enterprises one can find relatively stronger trade unions that bring relatively better benefits for the workers.

In relation to the protection of the special interests of female factory workers through the collective labour relations structure, there is one more problem other than that of the absence of strong trade unions that can bargain for better working conditions on behalf of the workers. Obviously female factory workers have special interests not shared by male co-workers that need protection at the workplace. These interests primarily relate to/arise from the special role that women have in the human reproduction process and vulnerability to gender based violence. There are issues that matter immediately to workingwomen and to society at large: protection from assignments that are not safe for the reproductive function; and protection and favourable treatment at the workplace in times of pregnancy and breastfeeding. Arising from the imbalanced gender relationship in our society, female factory workers need protection from sexual violence and gender-based discrimination.

Obviously, if a collective agreement has to protect the interest of all workers, it has to address such issues that are of special and immediate concern to female workers. Naturally, raising and addressing such special issues of concern for women through the collective labour relations process requires the active involvement of women in the process. However, that is not the reality on the ground. While women constitute most of the workforce in manufacturing industries, they are, however, invisible in the leadership circle of the trade unions that exist. The leadership of trade unions is dominated by men. Men are actually minority in the manufacturing industries workforce. During the field work the researchers have not found a trade union headed by women. We had the chance to meet only one woman who works in a privatized enterprise in Adama and serves as the vice chairperson of the trade union there. In general, women are not represented in union leadership positions. In trade unions that have 5, 7 or 9 executive committee members, one can get only one or, in rare cases, two female members. One cannot expect women's special interests to be reflected in the collective bargaining process with the marginal role that they have in union leadership positions. While the Confederation of Ethiopian Trade Unions (CETU) and labour and social affairs offices, which facilitate and advise on the formation of trade unions, work to ensure that

gender is mainstreamed in the organization and work of trade unions, it has not helped to reverse the underrepresentation trend.

Our society's stereotyped expectation of what role women should have and where and how they should (not) act seem to partly explain why female factory workers play marginal role in union leadership positions. The gender-based, stereotyped, division of social roles that assigns all household works to women means that the attention of employed women, during off duty hours, will be on their household assignments which make women 'time poor' for trade union activities. The triple responsibility that working women have as worker, wife and mother does not give them the time or energy needed to take part in union activities. Other than that, our tradition does not promote women to go out into the public, express and assert themselves, or assume leadership roles. Their domain is supposed to be the household routine. Study participants have confirmed that there are husbands/partners who even believe that women should only handle household works and should not go out for paid employment.

e. The Role of Gender in Employment and the Workplace

Gender is a social construct that defines the relationship between men and women, their roles, access to and control over resources, division of labour, interests and needs. Gender affects the employment opportunity as well as the life of women as employees.

Study participants and key informants noted that, contrary to what one might expect, generally employers do not discriminate female job applicants simply on ground of their sex. In fact employers prefer to have female employees, unless the nature of the particular job, in their view, necessitates taking male job applicants. The information gathered clearly shows that women have taken most of the employment positions in manufacturing industries. It should be clear, however, that women's numerical superiority is in blue collar jobs. The number of female employees in white collar and enterprise management positions is negligible.

Female job applicants are vulnerable to discrimination at the time of employment if they are pregnant. The study participants explained that a female applicant whose pregnancy is physically observable has no chance of getting employed. Many employers ask if an applicant is pregnant at the time of screening for employment. Some employers also require pregnancy test results before proceeding with employment. Dismissal of a worker for getting pregnant is not, however, common, according to informants. There are, however, reports of sporadic practices of indirect dismissal, i.e. by failing to make working condition adjustment that suits the pregnant

worker. Study informants have also reported dismissal on grounds of pregnancy in some enterprises.

In the manufacturing plants there is differential assignment of job responsibilities along sex lines. Study participants noted that, usually, men and women are assigned different types of jobs. Those jobs that require applying heavy physical force go to men, while those jobs that are tedious or require dexterity and attention to details are assigned to women. While such assignment of jobs in the factories seems, on the face of it innocent, it, however, carries with it the seeds of gender-based discrimination against women. The male workers are paid higher relative to the female workers, even if there is no difference in the complexity of the assignments or the degree of skill or knowledge that the posts require. The jobs that female workers engage in are looked down upon by male co-workers and are regarded as less valuable by the female workers themselves. In addition to this disguised discrimination in remuneration, information gathered from study participants and key informants indicate the prevalent practice by employers of paying less for female workers compared to that paid for male workers for works of equal value.

Study participants (FGD and in-depth interview) and key informants from government offices indicated the prevalence of violence against female factory workers, usually by male supervisors. It is reported that bullying and intimidation are common. Cases of battery have been reported. Sexual violence and abuses are noted as common. Study participants and key informants from various offices told us that they know in some enterprises (naming specific Turkish and Chinese companies in Modjo-Adama and Alemgena-Sebeta areas) employment of female workers is done having regard not to educational qualification, skills or experience, but having regard to physical attractiveness³⁸³. They said that when these companies want to hire, they line-up female job applicants at the gate of their premises and pick from the lines those that they identify as 'sexy'. Our informants noted that female employees from these enterprises have been forced to quit their employment within short periods of their employment because of the incessant sexual harassment. This is a matter widely known by officers in labour and social affairs office and women and children affairs office.

While the Turkish and Chinese enterprises are raised commonly for their notoriety on the issue, sexual harassment exists in other enterprises as well. The victims of sexual harassment will either submit to or bear the hostile

³⁸³Interview with Kumele Gadisa, Head of Adama Woreda Women and Children Affairs Office, interviewed in August, 2015. This was also repeated by our interview with Kedija Hussien, head of the Adama City Women and Children Affairs Office, interviewed in the same period.

conditions. Some leave their employment to look for employment elsewhere. Askal, a 24 years old girl who works in a garment factory in Alemgena, says

“My immediate supervisor did repeatedly ask me for sexual favour and put every pressure to compel me. I did not report the matter to the enterprise management since I did not trust that they would take effective measures. Neither did I report it to the police or women and children affairs office, since I am afraid of approaching and talking to authorities”.

Another study participant has told us the story of her friend who had to quit her job when the enterprise management failed to take measure on her immediate supervisor who has repeatedly sexually assaulted her. And another study participant has related the story of a female factory worker who is raped and stabbed on her way back to her home by a co-worker whom she refused to have sexual relation with.

Factory representatives we talked to assert that their enterprise is serious on the issue of sexual harassment. But they have not shown us their policy document on the subject or procedures papers for taking disciplinary measures on sexual predators.

f. Knowledge and Attitude towards Claiming Rights by Female Factory Workers

Knowledge of labour rights and the attitude to enforce these rights by workers are keys to realizing the protections provided by law and ensure decent working conditions and industrial peace. In relation to female factory workers it is interesting to note that they have a fair understanding of the basic labour protections provided by law. Using an inventory of rights and entitlements from the labour law, we were able to note our study participants identify most of them as rights/entitlements of a worker. Most of them were able to identify the following rights, entitlements and protections: 8 hours per day maximum working hour; payment for overtime work; access to occupational safety and accident prevention tools; annual leave; sick leave; maternity leave; unionization; prohibition of arbitrary dismissal; and permanent employment status after probation period of 45 days following employment.

However, female factory workers are not used to asserting observance of their rights when they encounter violations at their place of work. Information gathered from study participants and key informants clearly show that female factory workers do not like or entertain the idea of raising claims against their employer. They have lower rate of instituting labour claims before labour disputes settlement bodies compared to male workers.

Statistical information obtained from courts attest to this assertion. Of the 252 labour cases entertained by Adama District Court in 2007 (E.C.) fiscal year, only 61 cases were initiated by working women. The President of the Court also told us in an interview that of about 70 labour cases that are, on average, entertained in a month, only 5 or 6 cases involve female plaintiffs. Labour bench judges from Hawassa City High Court also stated that not more than 5 labour cases are brought by women annually, emphatically indicating the insignificance of the number of labour cases instituted by women labourers compared to men. The same statement is echoed by officers from labour and social affairs offices entertaining complaints from employees of business enterprises.

The minimal number of labour cases involving female workers is not because the number of female employees in the private sector is small; nor is it because female employees do not encounter violation of their rights. In fact the information gathered from study participants and key informants show that female factory workers encounter a myriad of rights violations: delayed payment of salary; unaccounted for deductions from wage and overtime payments; arbitrary dismissal; sexual violence; denial of annual leave, sick leave, and maternity leave; unjustified disciplinary measures and transfers, etc. Information gathered using different methods from female factory workers, judges, labour affairs officers, and trade union officials reveal the practical barriers that hinder female factory workers from litigating against their employers for violating their rights.

A major factor that explains why female factory workers do not press claim against their employer is their deep-seated fear of their employer. A shocking revelation during the fieldwork for this research was the extent to which female employees dread the employer. Talking to female workers around their working premises during off duty hours was almost impossible. They say that their employer will scold or discipline them if they are seen talking to strangers. As a result we had to arrange interview meetings in places away from their workplace. FGD participant female workers drawn from various manufacturing enterprises from Adama and Modjo areas have cautioned us not to disclose their identity or the fact that they have taken part in the FGD, noting that it will put them in trouble with their employer.

Whether the manner of treatment of workers by enterprise managers elicits such fear on the part of female workers is something that needs further investigation. What is clear is that female factory workers highly dread their employer and, undoubtedly, that has negatively affected their attitude of taking legal action against their employer. They say that suing the employer is not a wise choice. Many female employees consider the

employer as having power that enables him to outmaneuver workers that engage against him. There is tendency among the female factory workers to assimilate the employer with government, which, in our tradition of governance is considered as having absolute power over the life of individuals. They say 'how come I sue a company... it is like a government?', with exclamation and 'it is impossible' overtone.

Others raise the resource that the employer has compared to theirs and reach to the conclusion that it is almost impossible to win a case against the employer. They also assume that the employer can use its resource to tilt the balance of justice in his favour. Hence, they prefer to leave their grievance to the Almighty. Others are concerned with the practical issue of having smooth relations with the employer after the legal battle. They opt to entertain the idea of suing the employer only if they are dismissed or are determined to quit their job. Hence, as noted by our study participants and key informants from courts and labour affairs offices, most labour cases brought by female workers relate to termination of contract of employment. This atmosphere of fear is not limited only to suing the enterprise. Female employees are also afraid of making complaints against their immediate supervisor to higher-level management.

Such poignant atmosphere of fear of women workers to take legal action when they encounter grievance at the workplace can be explained partly by the economic insecurity they live in and partly by our tradition of how girls are nurtured. The fact that wages are bare minimum and the difficulty of finding another job means that female workers have to maintain their job at any cost. The workers are certain that the employer will retaliate against them for being sued and that it can do it even by terminating a worker. Most female workers' reason for not wanting to sue the employer or lodge complaint against their immediate supervisors who violate their rights is fear of retaliatory dismissal. An interviewee has told us the story of a female co-worker who lost her job as a result of false accusation by her immediate supervisor whom she physically resisted when he sexually assaulted her after calling her into his office. The following true story narrated by a labour affairs officer we interviewed also serves to illustrate the magnitude of the problem.

A pregnant employee working in a factory was repeatedly asked for sexual favour by her immediate supervisor. He has even kissed her by force. She has not, however, reported the harassment she is enduring to the enterprise management or law enforcement organs. Her husband, somehow, came to know about the matter and reported it to the labour and social affairs office of the area, without her knowledge. When she was summoned and asked by a labour affairs officer about the matter, she said that she did not report

it since she was afraid that he would have her dismissed, as he is her immediate supervisor.

The tradition of bringing up girls and our society's stereotypical expectation of how a woman should behave or act also explains why female workers shun the idea of taking legal action against their employer. Women grow up often being told to be shy, reserved, and staying in house. Going public, connecting and interacting with others and asserting oneself is not considered as a typical feminine role. Hence, women do not acquire these as life skills and tend to be withdrawn and reserved. As a result, engaging with the employer will not be an easy business for female factory workers. In fact, the study participants have said that they do not want to sue their employer because they are afraid of going to court or other offices. The researchers have come to know in the course of this research that female workers do not even dare to inquire about suspected unexplained deductions from their salary or overtime payments. It seems that they feel ineptness and step back from asserting themselves. And when they dare they lack the hint on how to go forward - where to go and how to express themselves prove to be challenging. How can such women challenge the employer before court of law or any other forum? In the words of one women's rights activist, interviewed in the course of the field research, "how can a woman who reveres entering the living room (salon) go to a court of law and fight with her employer?"³⁸⁴

The other factor that discourages female factory workers from taking legal action against the employer is the time, money and energy that litigation requires. Female factory workers who also assume the responsibility of looking after the household affairs do not have the luxury of spare time, money and energy for litigating with the employer. This is further aggravated by the inaccessibility and unresponsiveness of the institutions entrusted to entertain labour cases. Some of our study participants who have the experience of suing their employer bitterly complain about the unhelpfulness of the labour disputes settlement system. And this is a view shared by labour affairs and women affairs officers within the government structure.

The other challenge for female factory workers who may be determined to bring a claim against their employer is the problem of obtaining supporting evidence. For a worker plaintiff the handiest evidence to support allegations of right violation is naming co-workers as witnesses. But co-workers are not willing to testify against their employer for fear of reprisal.

³⁸⁴Interview with Serke Bekele, a women's rights activist in Hawassa city who has been supporting women having legal cases. Interview held in August 2015 (Her real name has been changed to ensure anonymity of her identity).

This is a serious issue, mentioned by our study participants and key informants. Birtukan, who is now jobless after being dismissed by her employer, recalls how she lost a case due to unwillingness of her co-workers to testify against the employer. She said this:

I was absent from the workplace for one day due to a severe toothache that I had. When I reported for work the following day the manager was mad at me and told me to leave the workplace immediately. He did not even take the chance to look at the medical paper that I brought from my doctor. I, then, went to the nearby labour and social affairs office. An officer of the labour and social affairs office wanted to mediate between me and the employer but the owner-manager did not heed to the summons issued by the labour affairs officer. Then, as per the advice of the labour affairs officer I went on to institute a court case against the employer. When I was asked for evidence in support of my allegation that the employer unceremoniously dismissed me from my workplace, I named two of my co-workers who knew about the matter very well. When I asked them to appear before court and testify to the facts, they refused saying that the employer will dismiss them if they testify. When they were summoned by the court, they testified saying that they knew nothing about the matter, simply out of fear of reprisal by the employer. As a result I lost the case and could not return to work. When I started the case I was confident that I will win; but the witnesses dashed my hope. As I was hopeless I did not appeal the case to the next tier of court.

All these factors militate against female employees lodging claims against their employer. Whatever violations they sustain in the hands of the employer they bear it. Once again, the belief in divine providence pops up to provide comfort for the soul wounded by the sense of defeat, helplessness and indignation. 'It is God's will', they say.

When female factory workers like to institute action against their employer, most of them take their case to labour and social affairs offices. Some like to take their case to women and children affairs offices. Most of them do not like to go to court, even when they are told that it is the only organ that has the mandate to decide on their particular cases.

The major type of complaints made by female factory workers against the employer often presented to labour and social affairs offices, women and children affairs offices or courts of law are related to unfair dismissal and related claims. However, it is rare to find other types of complaints being presented by female factory workers to these institutions.

g. Issues in Labour Relations Regulation

While the mandate to issue labour law in Ethiopia is that of the federal lawmaker, the institutions for implementing the law exist at the federal as well as regional state levels. At the federal level there is the Ministry of Labour and Social Affairs and each regional state and Addis Ababa and Dire Dawa administrations have their own bureaus of labour and social affairs. In the regional states and city administrations the labour relations regulation structures exist at the zonal and *woreda* (district) administrative units levels.

With regard to adjudication of labour matters, there are two structures: regular courts are mandated to entertain individual labour disputes, while collective labour disputes are set to be handled through amicable disputes settlement processes set up under the Ministry/Bureaus of labour and social affairs.

While this is the basic design of the labour relations regulatory system, much remains to be desired in enforcement. Key informants from labour and social affairs offices, women and children affairs offices and trade unions noted that the institution that is mandated to regulate labour affairs is not well organized and equipped. The problem starts with the poor staffing of the labour affairs offices. The offices are not staffed with adequate number of qualified professionals. Labour affairs officers that the researchers talked to speak in unison the near impossibility of getting staff qualified in occupational safety and health. According to key informants from labour and social affairs offices, the only higher education institution in the country that provides training in occupational safety and health is Gonder University.³⁸⁵ It graduates limited number of occupational safety and health officers annually. There is a big gap between the demand for and supply of occupational safety and health officers. This is raised as big concern by labour and social affairs offices that the researchers visited. At the SNNRS Bureau of Labour and Social Affairs level there are only 4 occupational safety and health officers. It is not possible to find and assign such officers at the zonal or *woreda* (district) levels. What is done as alternative measure is hiring graduates in natural sciences (biology and chemistry) and giving them short-term training in occupational safety and health to certify them as occupational safety and health officers. Officials have admitted that this approach has its own limitation, as these are not properly qualified occupational safety and health officers.³⁸⁶ The problem is, even after adopting this approach, it is difficult to have the required

³⁸⁵Shimeles Negash, Head of Adama Woreda Labor & Social Affairs Office. Interviewed in August 2015.

³⁸⁶Ibid

number of officers at a given labour and social affairs office. Adama Town Labour and Social Affairs Office has only one such officer (graduate in applied chemistry) but has more than 1300 enterprises to inspect under it.³⁸⁷ All officials in labour and social affairs offices we talked to expressed their dissatisfaction for not being able to discharge their duties due to lack of qualified occupational safety and health officers.

It appears that this regulatory organ is not given due attention by the Government. There seems to be lack of political commitment to make the institutions robust. Apart from the lack of occupational safety and health officers, there are complaints that it is staffed with poorly qualified professionals. A trade union chairman from Adama has bitterly expressed his dissatisfaction with the services provided by these offices. He says that the government has not given its attention to the office; it has just made it a dumping ground for demoted and reprimanded officials. He said that the officials are not receptive, cooperative and responsive. They are not properly discharging their responsibility of looking after labour relations and working conditions. This is a view widely shared by workers, trade union officials and labour affairs officers themselves who speak candidly in private conversations.

Officials and labour inspectors at the labour affairs offices themselves bitterly complain that inputs necessary for carrying out their duties such as vehicles, equipments and laboratories for inspection of occupational hazard are not provided. Inspection guidelines and manuals are not available or accessible. For instance the research team was told that the Directive on women's working condition issued by the Ministry of Labour and Social Affairs is not available at Adama Woreda Labour and Social Affairs Office. Senior labour inspector at SNNRS Bureau of Labour and Social Affairs has told us that as there are no detailed inspection guidelines developed for Ethiopia they use a model guideline developed by ILO³⁸⁸.

A further problem raised by the labour inspectors is the intervention by higher officials in their day-to-day inspection activities. Often this arises in relation to inspection works on foreign owned enterprises. The inspectors say that foreign owned companies are resistant to instructions they give after inspection.³⁸⁹ The managers of these enterprises often complain saying that we came to do business in Ethiopia after we were told about the

³⁸⁷Interview with Haji Ketema, Labour and industrial peace expert, Adama city labour & social affair office, interviewed in August 2015. Also see Supra note 12.

³⁸⁸Interview with Girma, Labor and Industrial Peace Expert, SNNPR Bureau of Labor and Social Affairs Agency, August 2015.

³⁸⁹Interview with Sintayehu Terefe, Head, East Shewa Zone Labor and Social Affairs Office. Interview with Shimeles, Supra note 11.

availability of cheap labour, so we should not be bothered about workers safety or broader working condition issues³⁹⁰. Some of these foreigners call the high level officials they know at the regional state or federal level. This is, in some cases, followed by telephone contact to lower level officials (Woreda, zone, city mayors) by the higher level officials (ministers and bureau heads) to give instruction for appeasing those foreign investors who, they say, came to Ethiopia after painstaking lobbying.

A further problem pertaining to the regulation of labour relations is the inaccessibility of the organs established to handle labour disputes. Particularly, there is a serious problem with regard to the accessibility of the Labour Relations Board, the organ mandated to amicably settle collective labour disputes. For Oromia, the largest region in Ethiopia, there are only two benches of the Board, one in Nekemte (for west Oromia) and another in Adama (for east Oromia). The bench situated in Adama is supposed to entertain collective labour disputes from the entire east Oromia including West Hararghe, East Hararghe, Bale, Arsi, East Shewa, and North Shewa. If workers from these areas want to bring a case before the Board, they have to travel hundreds of kilometres, which is not affordable for factory workers. Further problematic arrangement of the work of the Board is that its members are not fulltime functionaries. They are drawn from various government offices and sit to entertain labour cases in their capacity as Board members only one day in a week. Often it takes a lot of time to finalize and give decision on a case. That this organ is not properly functioning is evident from the insignificant number of cases it entertains. For example, in the 2007 (E. C.) fiscal year, the bench of the Board situated in Adama entertained only 17 cases. It is the same in Hawassa. The secretariat of the Hawassa Bench of the Board told us that only few cases come to the Board. By the time the research team visited the Hawassa Bench of the Board, it had only four cases to entertain.

³⁹⁰Ibid, see also Supra notes 12, 14, 15.

IV. Conclusion and Recommendations

This paper draws on an exploratory qualitative research to understand the working life and condition of female factory workers and their interaction with the formal legal system to vindicate their rights as worker. The research is conducted on study participants drawn from manufacturing industries found in three sites: Alemgena-Sebeta and Modjo-Adama areas on the outskirt of Addis Ababa and Hawassa city.

In the course of the study it is observed that the manufacturing industry has provided employment opportunity for many women. In fact, it has been found that women constitute higher proportion of the work force in the manufacturing industry. Women workers are, however, concentrated in blue collar jobs and the few women serving in management are relegated to lower level supervisory jobs.

The growing employment opportunity created for women by the manufacturing industry sector is not matched by decent working conditions. Female factory workers survive under dismal working conditions that are way below the standard set by the labour law. Data collected during the research attest to female workers job insecurity. They are employed in most cases on a short-term contract bases and are routinely subjected to arbitrary dismissal. The study participants as well as the key informants indicated that female workers experience physical and sexual abuses by their supervisors. There are also limitations in the exercise of rights to annual leave, to sick leave and maternity leave as provided under the labour law.

Discrimination on ground of pregnancy, unpaid maternity leave, hazardous working practice, and underpaid overtime work are some of the bad practices reported. It is also widely raised that female factory workers are not getting payment commensurate to the exhausting condition they are required to work and the rising cost of living. Unionization is appallingly difficult process and trade union movement is extremely weak due, mainly, to tough resistance from employers. And in those manufacturing enterprises where there exists trade union, women workers' role in the unions is marginal, with minimal role in union leadership positions and activism.

Regarding attitude towards and practice of demanding the observance of labour rights, both the study participants and key informants indicated that women workers are not used to demanding redress for violation of rights. A number of practical barriers are raised as factors hindering female

workers from demanding enforcement of their rights. One of the common obstacles repeatedly noted is getting evidence, especially witnesses willing to attest in support of their allegation. The common form of evidence that a worker can produce in support of her allegation of violations of rights at the work place is witness from among co-workers. However, study participants and key informants emphatically stated that no serving employee is willing to give testimony against her employer for fear of reprisal.

Other factors mentioned by the key informants and study participants as obstacles affecting female employees from claiming their rights include: lack of confidence and limited awareness about the mechanisms for enforcing rights; the time and monetary cost associated with pursuing a legal claim; and the deeply ingrained social norm that upholds that women should be passive and obedient, not assertive and demanding. It appears that in some enterprises, let alone raising broader labour rights and welfare issues at the workplace, inquiring about unaccounted wage deductions is understood by the workers as a reprimand-able behaviour. There is, however, a belief, at least on the part of those female workers who have gone through litigation, that going for legal action helps to improve the situation, if not for them, for their colleagues and they noted that rights awareness creation initiatives are useful.

There is also a big sloppy side in the regulatory and law enforcement sector of the state. The existing labour legislation is not up to the growing complexity of labour relations with the growing industrialization. Labour affairs departments are found to be deficient in terms of response and in their human resource, technical capacity and budgeting. They are not provided with quality and adequate staff and budget to enable them carryout the ever-expanding labour inspection and labour disputes conciliation work. Even more disturbing is the attitude of higher government officials at the Federal and Oromia Regional State government level, who, upon receiving informal complaint from enterprise owners, particularly foreign ones, scold lower level officers for investigating alleged labour standard violations in the name of being favourable to investment.

This paper forwards the following recommendations to tackle the plight of women factory workers.

- The labour relations regulatory organ, the Ministry of Labour and Social Affairs and corresponding regional and local offices, should be organized and resourced to a degree that befits their growing task with the expanding investment in manufacturing industry and other sectors.

- The Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Education and higher education institutions should work in collaboration to train and address the shortage of qualified occupational safety and health officers, which is raised as critical problem.
- Minimum wage should be introduced, sector wide or universal. This will help female factory workers as leverage to secure a living wage.
- Concerted effort should be made to create confidence on the contents of the labour law and provide capacity building training on workplace issues for workers and employers.
- Implement a program to nurture a culture of unionization and labour movement.
- Implement program to engender a practice of adherence to voluntary industry code of conducts and social audit.

Women with Disabilities, their Challenges in Laws and Administration of Justice: Cases from Addis Ababa

Bezawit Bekele, Yonas Mulugeta, and Hanna Girma

Abstract

The rights of women with disabilities are violated both at home and outside of the home setting. They face multiple sets of violations and discrimination because of the double vulnerability brought about by their gender and disabilities. Most of the time, these violations remain unaddressed partly due to the inaccessibility of judicial organs to women with disabilities. This research sets out to explore the experience of women with disabilities who come into contact with the law albeit limiting itself to Addis Ababa and to women with visual and hearing impairments and those with physical disabilities. It is aimed at identifying the major hurdles women with disabilities face in pursuing legal remedies and documenting their attitude towards the justice system. It also tried to assess the sufficiency of legal and institutional frameworks and interventions. The research employed a qualitative research method; accordingly primary data for the research was obtained through face – to – face interviews and focus group discussions with women who have had a run-in with judicial and quasi-judicial organs in civil matter and key informants from relevant institutions. This was corroborated with document reviews and observations. The research found that women with disabilities face many obstacles in exercising their right to access to justice. They lack awareness of the law, rights and legal remedies preventing them from accessing the formal justice system. Their experience with the justice institutions is tarnished by the physical inaccessibility of the institutions and communication obstacles.

Key words: women with disabilities, access to justice, challenges, accessibility, legal framework

I. Introduction

The World Health Organization (WHO) estimates that around 15% of the world's population, over a billion people, live with one or another form of disability. Although the extent is contested, female prevalence of disability is higher than male prevalence. According to the WHO survey, the rate of disability is 11.8% in high-income countries as compared to low-income countries where the prevalence rate is as high as 18%.³⁹¹ The WHO puts the number of persons with disability (PWD) in Ethiopia to be around 15 million, representing 17.6% of the population.³⁹² The disability data in the

³⁹¹World Health Organization and World Bank. 2011. World Report on Disability.

Accessed on March 12, 2018. Available online at

https://www.unicef.org/protection/World_report_on_disability_eng.pdf.

³⁹²Shakespeare, Tom, and Alana Officer. 2011 "World Report on Disability" *DisabilRehabil* Volume 33 (17-18): 1491.

country however is said to be incomplete, fragmented and misleading.³⁹³ Nevertheless the number of PWD in Ethiopia is believed to be more than the average for developing countries due to the history of civil war, poor living conditions, such as inadequate nutrition, lack of health and sanitation facilities and exposure to various forms of accidents.³⁹⁴ 85% of PWD in Ethiopia live in rural areas where they have no opportunity to contribute to the labour force due to prejudice, absence of rehabilitation centres and lack of an inclusive education system, which has made the lives of PWD an uphill battle.³⁹⁵

Unlike most of the developed world where changes in laws and attitudes have opened up opportunities for PWD to actively participate in education, employment, the political system, the judicial system and many parts of the society, PWD in most developing countries live a life of exclusion and vulnerability denied of their autonomy, often discriminated against and subjected to violence.³⁹⁶ PWD are often unable to enjoy their rights due to the prejudice associated with disability, isolation and exclusion from the society, and communication barriers. The denial of enjoyment of rights by PWD is exacerbated by the inaccessibility of mechanisms that are in place to stop, address, remedy and prevent violations and to ensure the inclusion of PWD within the society.³⁹⁷

Access to justice is both a 'means' used to give PWD the opportunity to enforce protection of their fundamental rights before an impartial and independent tribunal or court and an 'end' where it is sought to avail individuals with the relevant procedures, institutions and processes that recognize, protect and enforce fundamental human rights.³⁹⁸ The reality, however, is far from this with PWD unable to effectively participate in the justice system and put at a particular disadvantage in relation to both the

³⁹³Tesfaye, SeyoumYohannes. 2010 "Towards Inclusive Employment: the Conceptual Basis and Features of Proclamation 568/2008 on the Employment of People with Disabilities." *Journal of Ethiopian law* 24 (I 1).

³⁹⁴The Secretariat of the African Decade of Persons with Disabilities. 2010. *Baseline Study on the Status of Persons with Disabilities and the Influence of the African Decade Pronouncement in Ethiopia*. <http://www.molsa.gov.et/English/SWD/Documents/Baseline%20Study%20Final%20.pdf>. (Accessed on October 12, 2016).

³⁹⁵Ibid.

³⁹⁶United Nations Development Program. 2005. *Programming for Justice: Access for All – A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, Geneva.

³⁹⁷Ibid.

³⁹⁸Charles Ngweni, Ilze Grobbelaar-du Plessis, Helene Combrinck and Serges Djoyou Kamga (ed). 2013. *African Disability Rights Year Book. Volume*. Pretoria University Law Press. <http://www.pulp.up.ac.za/journals/african-disability-rights-yearbook-volume-1-2013> (Accessed January 31 2015).

civil and criminal justice systems. They are often excluded from judicial proceedings and considered as incompetent and unreliable.³⁹⁹

Although both men and women with disabilities are subject to discrimination because of their disabilities, women are at a greater disadvantage.⁴⁰⁰In its General Recommendation No. 18, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) stressed that women with disabilities may be subject to double discrimination on account of their gender and disability.⁴⁰¹Women with disabilities are often at greater risk, both within and outside the home, from violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation and are subjected to multiple or aggravated forms of discrimination.⁴⁰²In addition to the general vulnerability of women with disabilities, this research was inspired by the desire to explore the reasons behind the limited number of women with disabilities, compared to those without disabilities, who made use of the legal aid services offered by the Access to Justice Project of Addis Ababa University, Center for Human Rights.

Most researches on PWD in Ethiopia have focused on their inclusion in education and employment opportunities as well as sexual and reproductive issues⁴⁰³A few have focused on women with disabilities and challenges they face. Sona (2015)⁴⁰⁴ studied the psychological challenges of

³⁹⁹Equality and Human Rights Commission. 2014. *Annual Report and Accounts*. <http://www.equalityhumanrights.com>: www.equalityhumanrights.com (Accessed December 15, 2015).

⁴⁰⁰Traustadottir, Rannveig, and Perri Harris. 1997. *Women with Disabilities: Issues, Resources, Connections*. Syracuse Univ., NY. Center on Human Policy.

⁴⁰¹ Ibid.

⁴⁰²Annual Report of the Office of the United Nations High commission for Human Rights. 2012. Twentieth Session Agenda Item 2 and 3 Promotion and protection of all human rights, Civil, Political, Economic social and Cultural rights, including the right to Development; Thematic Study on the Issue of Violence against women and girls with disability. New York: United Nations High commission for Human Rights.

⁴⁰³ See for example, Wakene, DagnachewBogale. 2006. "Employment Discriminations on the Basis of Disability: the Current Legal Regime in Ethiopia and Its Implementation" [Unpublished thesis]. Faculty of Law, Addis Ababa University; Junjejo, Tekalign. 2007. "Vulnerability of Persons with Disabilities To HIV Infection: The Case of the Blind, the Deaf and the Physically Disabled in Gullele Sub City of Addis Ababa". [Unpublished MA thesis]. School of social work, Addis Ababa University; Tesfay, SeyoumYohannes. 2010 "Towards Inclusive Employment: the Conceptual Basis and Features of Proclamation 568/2008 on the Employment of People with Disabilities." *Journal of Ethiopian Law* Volume 24 (Issue 1).

⁴⁰⁴Sono, BerhanuDendena. 2015. "Psychosocial Challenges of Women with Disabilities in Some Selected Districts of Gedeo Zone, Southern Ethiopia". *International Journal of Criminal Justice Science* Volume 10 (Issue 2).

women with disabilities in Southern Ethiopia and found that women with disabilities faced social challenges like abuse, discrimination, neglect, rape and harassment and were exposed to psychological harm as a result of these challenges. Habtemariam (2015)⁴⁰⁵ conducted a comparative study of Ethiopia and Kenya on gender based violence and access to justice for women with disabilities. Her research was not, however, empirical but a desk review of the laws and policies and did not include the experiences of Women with Disabilities (WWDs). The present study focusing on identifying the different systematic and procedural challenges faced by women with disabilities in justice system through empirical investigation hopes to contribute to existing scholarship on WWDs in Ethiopia and its findings can also be used by the relevant governmental and non-governmental organizations to address the access to justice needs of WWDs.

The main objective of the research is to look at the situation of access to justice for women with disabilities in Addis Ababa. Specifically, it aims to explore; the experience, challenges and attitudes of women with disabilities who come into contact with the formal justice system in different capacities (i.e. as victims, witnesses, parties and claimants). Furthermore, it examines the sufficiency and adequacy of substantive and procedural laws as well as institutional framework to address access to justice for women with disabilities. Last but not least, it explores the existing interventions and support systems available for women with disabilities both through governmental institutions and non-governmental organizations

II. Scope of the Research

This research focuses on the experiences of women with disabilities in the formal justice system. The informal justice system, although touched upon in some discussions and interviews, was not explored in detail. The research also focuses mainly on three types of disabilities; visual, hearing and physical impairments. The empirical data for this research was based only in Addis Ababa because of time and budget considerations. The interviewees and focus group discussion participants as well as key informants from governmental and non-governmental organizations were all based in Addis Ababa. As key informants from the police and courts have stressed the number of women with disabilities who are imprisoned and/or brought to court as defendants is very small, the research has not dealt with their experiences as defendants in criminal procedures.

⁴⁰⁵Habtemariam, MahiderMulugeta. 2015. "Gender Based Violence, Women with Disabilities and Access to Justice: Ethiopia and Kenya". [Unpublished MA thesis] Central European University.

III. Research Design and Methodology

In order to obtain an in-depth understanding regarding the experiences of women with disabilities, the research employed a qualitative research methodology. The interpretive approach was used in order to get at the uniqueness of the story of each participant. The researchers tried to ensure the reliability of the information through triangulation. The data collected through in-depth interviews and focus group discussions was triangulated with information from key informants in governmental and non-governmental organizations as well as participant observation and analysis of documentary sources.

Primary data regarding the experience of women with disabilities in their encounter with the justice system was drawn from in-depth interviews and focus group discussions. The research team held in-depth interviews with eight women (3 with visual impairment, 2 with hearing impairment and 3 with physical disability) and a focus group discussion where six women with visual and physical disabilities participated. In addition, the researchers interviewed representatives from different associations of persons' with disabilities, relevant government institutions including the Ministry of Labour and Social Affairs, the Ministry of Women and Children Affairs, the Ethiopian Human Rights Commission and Office of the Ombudsman and civil society organizations and individual legal professionals working on disability rights.

The research team at first attempted to utilize purposive sampling by contacting and interviewing women with disabilities who have sought legal assistance from the Addis Ababa University, Center for Human Rights legal aid centers. However, it was only possible to find nine women through this approach. The DPOs were able to provide contact information for members of their respective organizations who have ongoing or settled cases before courts or administrative agencies with powers of adjudication. Further in-depth interviews were obtained using a snowball method where the interviewees recommended another woman with disability they know has come into contact with the justice system.

IV. Ethical Considerations

The researchers upheld the ethical considerations of research. The participation of all the interviewees, FGD participants and key informants in the research was voluntary. The researchers explained the purpose of the researcher to all participants and obtained their written informed consent. Ethical standards to protect the confidentiality and anonymity of the study participants were also complied with. The researchers took care to use pseudonyms to refer to interviews with WWDs. The name of key

informants is, however, included as they have given their consent and provided information in their official capacity.

V. Review of Conceptual and Legal Framework

i. The Concept of Disability

The way we define and understand the concept of disability has an impact on how we approach matters related to it.⁴⁰⁶ There is, however, no universally agreed upon definition of disability. The difficulties in defining the concept of disability arise from the fact that it encompasses numerous conditions of mind and body. The term covers a wide range of conditions such as paraplegia, deafness, blindness, autism, epilepsy, schizophrenia and bipolar disorder.⁴⁰⁷ Definitions and understandings also vary because of changes in medical science, theoretical thinking and legal approaches.⁴⁰⁸ In the past, the term disability has been used interchangeably with 'inability'. It is only in recent times that it came to be used in reference to a distinct group of people.⁴⁰⁹ Most dictionary definitions of disability included incapacity, disadvantage, deficiency or something that hinders or incapacitates.⁴¹⁰

Different theoretical approaches to disability have been forwarded over the years. The Medical approach to disability understands disability as physical or mental impairment of a person⁴¹¹ and that "disability lies with the individual with impairment".⁴¹² The Charity model (approach) treats persons with disabilities as victims who require care and protection by others.⁴¹³ The social approach sees disability in a social context and environment.⁴¹⁴ It shifts the understanding of disability as an attribute of the person with disability to a socially created problem.⁴¹⁵ The Bio-psychosocial approach, a compromise between the medical and social approach considers disability as a "dynamic interaction between health conditions,

⁴⁰⁶Degener, Theresia. 2004. "Definition of Disability". <http://www.pedz.uni-mannheim.de/daten/edz-ath/gdem/04/disabdef.pdf>. (Accessed on October 16, 2016).

⁴⁰⁷Wasserman, David, Adrienne Asch, Jeffrey Blustein, and Daniel Putnam. 2011. "Disability: definitions, models, experience." *Stanford Encyclopedia of Philosophy*.

⁴⁰⁸Degener, Theresia. 2004.

⁴⁰⁹*Ibid*

⁴¹⁰Linton, S. 1998. *Claiming disability: Knowledge and identity*. NYU Press.

⁴¹¹Degener, Theresia. 2004.

⁴¹²Government of India, Ministry of Statistics and Program Implementation, Central Statistics Office. 2011. <http://mospi.nic.in/mospi-new/upload/disability-india-statistical-data-11mar2011/chapter%203%20Disability.pdf>. (Accessed June 25, 2015.)

⁴¹³*Ibid*.

⁴¹⁴European Commission, Employment and Social Affairs. 2002) "*Definition of Disability in Europe: Comparative Analysis*". European Commission; Brussels.

⁴¹⁵*Ibid*.

environmental and personal factors.”⁴¹⁶ The International Classification of Functioning, Disability and Health (ICF), the most widely accepted framework for describing and organizing information of functioning and disability follows the bio-psychosocial approach.⁴¹⁷ The framework which was adopted by the WHO Assembly in 2001 states that functioning and disability are multi-dimensional concepts relating to the body functions and structures of people and impairment; activities and activity limitations; participations and restrictions to participation and environmental factors which affect these experiences.⁴¹⁸

A recent trend in understanding the issue of disability has been to follow the human rights based approach which calls for the inclusion of persons with disabilities in the category of humans entitled to all the rights and freedom in the human rights normative framework rather than considering them as a separate group. The human rights standards should be the benchmark to measure the experiences of PWD.⁴¹⁹ This approach is considered as beneficial because it equips persons with disabilities a mechanism for enforceable remedies.⁴²⁰ This research employs the human rights based approach to disability in documenting the experiences of WWD considering the right to access to justice as a fundamental right.

ii. Disability and Access to Justice

Access to justice is a broad concept, encompassing people’s effective access to the systems, procedures, information, and locations used in the administration of justice.⁴²¹ Access to justice can be both an issue of institutions or processes such as access to courts and legal representation as well as substantive issues in the sense of just and equitable outcomes.⁴²² Hansen in his report ‘Access to Justice and Legal Aid in East Africa’ writes that access to justice should have the following elements;⁴²³ a framework of legal protection setting out acceptable substantive and procedural standards, legal awareness on the part of providers and users, the availability of legal services needed to link needs to enforceable remedies, including legal aid and counsel, adjudication of disputes that is fair and

⁴¹⁶Degener, Theresia. 2004.

⁴¹⁷World Health Organization. 2001. *International Classification of Functioning, Disability and Health*: ICF. World Health Organization.

⁴¹⁸*Ibid.*

⁴¹⁹Degener, Theresia. 2004.

⁴²⁰*Ibid.*

⁴²¹Danish Institute for Human Rights. 2011. Access to Justice and Legal Aid in East Africa. <https://www.humanrights.dk/publications/access-justice-legal-aid-east-africa>

⁴²²Friedman, L. 2009. “Access to Justice: Some Historical Comments”. *Fordham Urban Law Journal* Volume. 37 Issue 1.

⁴²³Danish Institute for Human Rights, 2011.

effective enforcement or remedies and transparency and oversight of the operation of the system.

Access to justice includes different dimensions. Geographical access refers to the distribution and location of justice institutions.⁴²⁴ Physical access refers to the ability of consumers to visit the facilities of justice institutions as well as ensuring that participants can adequately follow the proceedings.⁴²⁵ Financial access is concerned with the ability to pay court fees and the availability of legal aid for free or at reduced costs.⁴²⁶ Technological access, on the other hand, is about access to information outlets such as the Internet.⁴²⁷ The concept of intellectual access deals with the legal capability of persons to access the justice system.⁴²⁸

Access to justice for PWD often means overcoming obstacles of discrimination, communication, as well limitations in physical, technological, financial and intellectual access.⁴²⁹ The negative stereotypes and marginalization by society lead to the exclusion of persons with disabilities from participation in the justice system often times putting into question their legal capability.⁴³⁰ Another problem is the lack of physical access to buildings and transport facilities, which prevents them from accessing the justice system.⁴³¹ There are also barriers in communications such as lack of interpreters for those with hearing disabilities and the non-availability of social workers or psychiatrists for those with intellectual or psychiatric disabilities.⁴³² Lack of awareness and information on the rights and available remedies is another barrier that prevents access to justice for PWD.⁴³³

⁴²⁴Legal Services Institute. 2012. "Improving Access to Justice: Scope of the Regulatory Framework". <https://stephenmayson.files.wordpress.com/2013/08/mayson-marley-dunn-2012-access-to-justice.pdf>. (Accessed on April 13, 2016).

⁴²⁵Ibid

⁴²⁶European Network of Councils for the Judiciary. 2011. "Quality and Access to Justice 2009-10". <https://www.encj.eu/index.php?limitstart=15&lang=en>. (Accessed on June 12, 2015).

⁴²⁷Ibid

⁴²⁸Legal Services Institute. 2012. Improving Access to Justice: Scope of the Regulatory Framework.

⁴²⁹UNDP. 2005. Programming for Justice: Access for All – A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice. http://www.asiapacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/democratic_governance/RBAP-DG-2005-Programming-for-Justice.pdf (Accessed on June 12, 2015).

⁴³⁰Ibid.

⁴³¹Ibid.

⁴³²Ibid.

⁴³³Ibid.

iii. The International Normative and Institutional Framework on Disability Rights

The issue of disability rights has been on the United Nations (UN) agenda for a long period of time. The Universal Declaration on Human Rights (UDHR) mentions disability under article 25 stating “everyone has a right to adequate standard of living [...] and right to security in the event of unemployment, sickness, disability, widowhood [...]”.⁴³⁴ In the early years of the UN, disability was considered only in the context of rehabilitation, social protection and welfare issues.⁴³⁵ In 1982, the UN General Assembly adopted the World Programme of Action concerning disabled persons and also proclaimed 1983-1992 as the United Nations Decade of Disabled Persons with the aim of highlighting the issue of disability rights.⁴³⁶ The World Program of Action hailed a shift from the welfare approach to the rights based approach to disability and focused on how to remove environmental and attitudinal barriers for PWD to enjoy the full realm of rights.⁴³⁷ The UN has also passed various non-binding declarations with the aim of encouraging member states to take measures that can improve the plight of PWD. In 2014, the UN appointed the first Special Rapporteur on the Rights of Persons with Disabilities. In this section a brief discussion of the right of PWD under the different UN declarations, International Bill of Human Rights and the Convention on the Rights of Persons with Disability (CRPD) is presented.

a. Disability Rights and Access to Justice under UN ‘Soft Laws’

Although on piecemeal basis, various United Nations General Assembly (UNGA) Declarations and human rights instruments that preceded CRPD have addressed the issues of access to justice for persons with disability, for instance, the Declaration on the Rights of Mentally Retarded Persons (1971) provided that PWD charged with any criminal offense are entitled to due process of law with full recognition being given to their degree of mental

⁴³⁴UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 March 2018].

⁴³⁵United Nations Department of Economic And Social Affairs. 2018. The United Nations and Disability: 70 Years of the Work towards a More Inclusive World. https://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2018/01/History_Disability-in-the-UN_jan23.18-Clean.pdf. Accessed on March 1, 2018.

⁴³⁶Lang, R. 2006. “Human Rights and Disability; New and Dynamic Perspectives with the United Nations Convention on Disability” *Asia Pacific Disability Rehabilitation Journal* 17 (14).

⁴³⁷United Nations Department of Economic And Social Affairs, 2018.

responsibility.⁴³⁸ It also called for the introduction of safeguards against abuse whenever the exercise of rights by a person with disability has to be restricted.⁴³⁹ The Declaration on the Rights of Disabled Persons adopted by UNGA in 1975 also provided that judicial proceedings and legal procedures should take the physical and mental condition of PWD into account and that PWD should be granted access to qualified legal aid.⁴⁴⁰ These earlier declarations were, however, criticized for retaining the “medical/social welfare” approaches to disability. The World Program of Action proclaimed in 1982 encouraged the development of national programs directed at achieving equality for PWD.⁴⁴¹ Furthermore the UN also came up with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in 1993, which serve as instruments for policy making and action to persons with disabilities and their organizations.⁴⁴² The major drawback of all of these Declarations and Program of Actions was that they were all legally unenforceable.⁴⁴³

b. The Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD, which was adopted on 13 December 2006 and came into force on 3 May 2008, aims at ensuring the genuine enjoyment of the rights already conferred by international bill of rights and make them available in a meaningful sense to PWD. The Convention covers civil and political rights and economic, social and cultural rights and recognizes the particular vulnerability of women and girls to violence, abuse and injury both within and outside the home.⁴⁴⁴ In order to help women with disabilities overcome the multiple of discrimination that they face and to enable them to enjoy their rights, the convention calls upon states to take measures aimed at ensuring the full development, advancement and empowerment

⁴³⁸United Nations General Assembly (20 December 1971). UN General Assembly, Declaration on the Rights of Mentally Retarded Persons. A/RES/2856(XXVI), available at: <http://www.refworld.org/docid/3b00f04e5c.html> [accessed 18 October 2016]. Accessed on March 17, 2017.

⁴³⁹Ibid.

⁴⁴⁰United Nations General Assembly. 2007. UN General Assembly Convention on the Rights of Persons with Disabilities. A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>. accessed 18 October 2016.

⁴⁴¹The United Nations and Persons with Disabilities Chronology: 1980's – present available online at <https://www.un.org/development/desa/disabilities/about-us/history-of-disability-and-the-united-nations/the-united-nations-and-persons-with-disabilities-chronology-1980s-present.html> accessed 13 March 2018.

⁴⁴²United Nations General Assembly. (20 December 1993) Standard Rules on Equalization of Opportunities for Persons with Disabilities. A/RES/48/96 85th plenary meeting.

⁴⁴³United Nations Department of Economic And Social Affairs. 2018.

⁴⁴⁴UN Convention on the Rights of Persons with Disabilities.

of women.⁴⁴⁵The Convention also obliges states to not only work to abolish and modify existing laws, regulations customs and practices that are discriminatory against PWD but also to put in place effective legislations and policies for the implementation of the rights recognized in the Convention.⁴⁴⁶

Recognizing the dangerous implications of denial of capacity before the law and to ensure the enjoyment of the other rights, the Convention imposes on states the obligation to respect the legal capacity of PWD. To this end ratifying states are required to ensure access to support for the exercise of legal capacity, and to ensure that measures for the exercise of legal capacity respect the right, will, preference of the PWD and that they are free from conflict of interest, undue influence and are subject to regular review by competent, independence and impartial authority or judicial body.⁴⁴⁷

One of the rights, which is said to be an invention by CRPD rather than an elaboration of existing rights, is the right of accessibility. According to Article 9 of the Convention, states are called upon to eliminate barriers of accessibility in the physical environment, and accessibility of information, communications and other services including the services of justice institutions. Accessibility includes provision of information in Braille or easy to read formats, making available sign language interpreters etc.⁴⁴⁸

The Convention expounds upon ways in which states can respect, protect and fulfil the enjoyment of access to justice through ensuring fair and effective access to justice. The CRPD expressly addresses access to justice for persons with disabilities. Article 13 of the convention stipulates;

(1) States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

(2) In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.⁴⁴⁹

⁴⁴⁵Ibid, Article 6.

⁴⁴⁶Ibid, Article 4.

⁴⁴⁷Ibid, Article 12.

⁴⁴⁸Ibid, Article 9.

⁴⁴⁹Ibid, Article 13.

c. Monitoring Mechanisms under CRPD

The CRPD has traditional implementation and monitoring structures as well as other innovative instruments to oversee state party implementation at the UN level.⁴⁵⁰ Thus, the CRPD Committee receives reports, hears individual complaints, where a state party has ratified the Optional Protocol, and makes general comments to interpret the application of Convention articles in particular contexts. The Committee engages in a constructive dialogue with states on the implementation of the convention, and issues concluding observations and recommendations for follow-up action to improve and strengthen implementation.⁴⁵¹

As regards the implementation at the national level the creative addition by CRPD is the idea of focal points i.e. government organs with the responsibility of facilitating the implementation of the convention in different sectors and at different levels. Ratifying states have the obligation to ensure the implementation of the rights enshrined in CRPD by establishing an independent mechanism that will promote, protect and monitor the implementation of the specific provisions.⁴⁵²

iv. Protection of the Rights of PWD under Regional Frameworks

Different regional institutions have either adopted the CRPD or came up with their own normative and institutional frameworks to implement the rights of PWD within their respective contexts. In the context of Africa, the African Charter on Human and Peoples' Rights although it does not specifically list disability states that the rights in the charter should be enjoyed without any distinction such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. It also proclaims equality before and equal protection by the law.⁴⁵³

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) has directly addressed the rights of women with disabilities. The Protocol obligates state parties to "ensure the protection of women with disabilities and take specific measures commensurate with their physical, economic and social needs to

⁴⁵⁰Flynn, E. 2011. *From Rhetoric to Action: Implementing the UN Convention on the Rights of Persons with Disabilities*. New York: Cambridge University Press.

⁴⁵¹CRPD, Articles 34-37.

⁴⁵²Flynn, E. 2011.

⁴⁵³Organization of African Unity. 1981. *Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter")*. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.refworld.org/docid/3ae6b3630.html> [accessed 18 October 2016], Article 2 and 3.

facilitate their access to employment, professional and vocational training as well as their participation in decision-making". It also provides for the right of women with disabilities to be free from violence including sexual abuse, discrimination based on disability and the right to be treated with dignity.⁴⁵⁴

Further efforts were also made at the continental level to highlight and improve the protection of the rights of PWD, hence 1999-2009 was designated the African Decade of PWDs, which in 2009 was extended to the Second African Decade of PWDs.⁴⁵⁵ The African Union (AU) adopted the Continental Plan of Action for PWDs in 2002 to guide member states to achieve the goals of the decade which were ensuring the full participation, equality and empowerment of PWDs in Africa.⁴⁵⁶

The AU has recently adopted the Protocol to The African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, which deals with the rights of PWDs in a comprehensive manner. The Protocol states that PWD should be given equal recognition before the law, which includes the right to legal capacity and equality before and equal protection before the law. The Protocol imposes a duty on state parties to review laws and policies, which have the purpose or effect of limiting the enjoyment of legal capacity by PWDs.⁴⁵⁷

The Protocol recognizes the right to access to justice for PWDs, which also includes the provision of procedural and gender appropriate accommodations to facilitate their full participation in procedures.⁴⁵⁸ The Protocol specifically deals with the rights of women with disabilities and provides that;

States Parties shall ensure that women with disabilities have full enjoyment of human rights and fundamental freedoms on an equal basis with other persons, including by ensuring that:

⁴⁵⁴The African Commission Human and Peoples' Rights. 2003. Protocol to the African Charter On Human And Peoples' Rights on the Rights of Women in Africa, Article 23. http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

⁴⁵⁵Pretoria University. 2013. *African Disability Rights Year Book Volume 1*. Pretoria, South Africa: Pretoria University Law Press.

⁴⁵⁶African Union. 2002. *Continental Plan of Action for the African Decade of Persons with Disabilities: 1999-2009*. African Union. https://au.int/sites/default/files/pages/32900-file-cpoa_handbook_audp.english_-_copy.pdf. Accessed on January 20,2017.

⁴⁵⁷Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, Article 8. <http://www.achpr.org/instruments/women-protocol/>. Accessed on May 1,2017.

⁴⁵⁸ Ibid, Article 9.

- a. Women with disabilities participate in social, economic and political decision-making and activities;
- b. Women with disabilities are protected from sexual and gender based violence and are provided with rehabilitation and psychosocial support against sexual and gender based violence;
- c. The sexual and reproductive health rights of women with disabilities are guaranteed, and women with disabilities have the right to retain and control their fertility;
- d. Gender perspectives are integrated in policies, legislation, plans, programmes and activities in all spheres that affect women with disabilities.⁴⁵⁹

v. The Ethiopian Legal and Policy Framework on the Rights of PWD

The Ethiopian legal and policy framework has dealt with the rights and protections of PWD through different legal and policy prescriptions. It is, however, lacking in taking into account the particular circumstances of women with disabilities. The laws and policies for the most part do not address WWD as a separate category. Therefore, the discussions in this section are on the rights of PWD with the supposition that they apply to WWDs.

a. FDRE Constitution⁴⁶⁰

The FDRE Constitution lays down the principle of equality under Article 25 in which all persons are equal before the law and are entitled without any discrimination to the equal and effective protection of the law. Although this provision of the constitution does not make a specific reference to disability, the inclusion of the term ‘other status’ can be construed to include disability as one of the prohibited grounds for differential treatment of citizens. In addition to the general non-discrimination clause, different provisions of the constitution also safeguard the rights of PWD. For instance, the Constitution imposes an obligation on the State to provide rehabilitation and assistance to the “physically and mentally disabled

⁴⁵⁹ Ibid, Article 22.

⁴⁶⁰ Constitution of the Federal Democratic Republic of Ethiopia Proclamation No. 1/1995,1995.

within available resources”.⁴⁶¹As the obligation is dependent on available resources of the state, it makes the realization of this right conditional.

b. The Civil Code of Ethiopia⁴⁶²

In similar manner with the constitution, the Civil Code of Ethiopia confirms the rights of equality by providing the principle that; the human person is the subject of rights from its birth to its death.⁴⁶³ In civil matters, every physical person is capable of performing all the acts of civil life unless he/she is declared incapable by the law.⁴⁶⁴ Even though capacity is presumed, the mental condition of a person amounts to general disability.⁴⁶⁵ However, any person who alleges the disability of a physical person shall prove that such person is under a disability.⁴⁶⁶ Furthermore, the civil code states that, ‘deaf-mute, blind persons, and other persons who, as a consequence of a permanent infirmity are not capable to take care of themselves or to administer their property may invoke in their favour the provisions of the law which afford protection to those who are insane’.⁴⁶⁷ The framing of this provision by itself has negative connotations including its wording. Nonetheless, it gives an option for them to use it as a shield when they are unfit to take care of themselves or to administer their property.⁴⁶⁸

c. The Revised Family Code⁴⁶⁹

Since PWD are part of the family and the society, they should be accorded protection in this respect. Taking into account this fact, the Revised Family code also has provisions concerning the rights of PWD. The family code gives protection for a judicially interdicted person. The judicially interdicted person or his/her guardian may request the court for the

⁴⁶¹ Ibid, Article 41 (5).

⁴⁶² Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960. (1960).

⁴⁶³ Ibid, Article 1.

⁴⁶⁴ Ibid, Article 192.

⁴⁶⁵ Ibid, Article 196 (1) and Article 193.

⁴⁶⁶ Ibid, 196 (2).

⁴⁶⁷ Ibid, Article 340. See also Article 339 of the civil code which defines insane as: an insane person is one who, as a consequence of his being insufficiently developed or as a consequence of a mental disease or of is senility, is not capable to understand the importance of his actions.

⁴⁶⁸ See also Article 343 of the Civil Code states that, juridical acts performed by a person where the infirmity which renders such person unfit to take care of himself and to administer his property is apparent, may be impugned by that person, by his representatives or by his heirs.

⁴⁶⁹ Revised Family Code No. 213/2000. (2000).

dissolution of a marriage where it was contracted without prior authorization of the court.⁴⁷⁰ Although it might be argued such provisions help judicially interdicted persons to be under the shelter of the law, the code also includes a provision, which considers PWD as incapable of doing anything. Article 51(1) of the code, for example, states that, 'where one of the spouses is under disability, the other spouse shall alone carry out the management of the family.'⁴⁷¹ The code considers the mere fact of living with disability as a factor that amounts to inability in the management of the family, which highly impairs the rights of persons with disability.

Article 113(2) of the family code, which deals with custody of children, lists the health of the spouses as one fact that is taken into account when deciding custody of the child.⁴⁷² This article leads to the question of whether or not disability is held against a parent in determination of custody. Although the code seems to leave the matter to the discretion of the courts, it is fair to assume that in light of the principles of equality enshrined in the constitutions as well as the CRPD which Ethiopia has ratified courts would not hold disability against a parent who fulfils the other criteria while deciding on custody cases.

d. Persons with Disabilities and Labor Rights

Persons with disability also have protection under the labour proclamation, which outlaws any discrimination.⁴⁷³ The proclamation further makes the employer liable for occupational accidents⁴⁷⁴ that result in disability. On the part dealing with reduction of workers, the proclamation states that, employees in the undertaking who were disabled by an employment injury have a priority of being retained in their posts compared to others.⁴⁷⁵ However, this privilege is not entitled to all persons with disability rather it gives protection for those who are disabled by an employment injury in the undertaking.

Likewise, the Civil Servants Proclamation gives protection for persons with disability by putting in place the principle of non-discrimination upon

⁴⁷⁰Ibid, Article 34.

⁴⁷¹Ibid, Article 51 (1).

⁴⁷²Ibid, Article 113(2)

⁴⁷³Labor Proclamation No. 377/2003. (2003), as amended by Proclamation No. 494/2006.

⁴⁷⁴Occupational accident means any organic injury or functional disorder sustained by a worker as a result of any cause extraneous to the injured worker or any effort he makes during or in connection with the performance of his work. See Article 97 of Labor proclamation.

⁴⁷⁵Labor Proclamation, Article 29(3).

hiring.⁴⁷⁶Notwithstanding the equality provision, the proclamation clearly states that, in recruitment, promotion and deployment preference shall be given to candidates with disabilities having equal or close scores to that of other candidates.⁴⁷⁷As the law explicitly mentions the affirmative action given for PWD goes one step further for the protection of their rights.

More specifically, there is legislation on the right to employment of persons with disabilities, which is designed to create a favourable working environment for PWD.⁴⁷⁸This proclamation came into effect replacing Proclamation No. 101/94 because of lack of enforceability of the provisions. The existing proclamation provides the principle of non-discrimination and affirmative action in case of recruitment, promotion, placement, to participate in training programs to be conducted either locally or abroad or transfer procedures at the time when they have the necessary qualifications and having equal or close score to that of other candidates unless the nature of the work dictates otherwise (Article 4(1) (2)).⁴⁷⁹ With the exception of scenarios where the nature of work dictates, no selection criteria shall refer to disabilities of a candidate.⁴⁸⁰

The Proclamation, under Article 5(3), includes a very vital component that could safeguard the rights of PWD irrespective of available resources.

*'When a disabled person is not in a position to exercise his equal right of employment opportunity, as a result of absence of a reasonable accommodation, such an act shall be regarded as discrimination.'*⁴⁸¹

One salient feature of this Proclamation is that, unlike regular legal procedures, the burden of proof lies with employer to prove that there was no act of discrimination.⁴⁸²

e. Other Legal Protections

There are also other legislations like the Ethiopian Building Proclamation, which safeguards the rights of persons with disability.⁴⁸³ The proclamation states the kind of facilities, which should be in place for physically impaired persons. It provides that any public building shall have a means of access suitable for use by physically impaired persons, including those who are obliged to use wheelchairs and those who are able to walk but unable to

⁴⁷⁶Federal Civil Servants Proclamation No. 515/2006. (2006).

⁴⁷⁷Ibid, Article 13 (3).

⁴⁷⁸Right to Employment of Persons with Disability Proclamation No. 568/2008. (2008).

⁴⁷⁹Ibid, Article 4(1) and (2).

⁴⁸⁰Ibid, Article 4(3).

⁴⁸¹Ibid, Article 5(3).

⁴⁸²Ibid, Article 7.

⁴⁸³Ethiopian Building Proclamation No. 624/2009. (2009).

negotiate steps.⁴⁸⁴ Additionally, concerning toilet facilities in any building, it states that, physically impaired persons shall make a number of such facilities suitable for use.⁴⁸⁵

In one-way or another, persons with disability might be involved in criminal activities. In these instances, the Criminal code gives special protection for persons with mental disability.⁴⁸⁶ Those persons incapable of understanding the nature and consequence of their action at the time of the act are not responsible and those who partially understand are partially liable.⁴⁸⁷ Nonetheless, they are not left out of the justice system without any treatment rather the court shall order his/her treatment or confinement in a suitable institution.⁴⁸⁸

f. Procedural Protections for PWDs

Having all these substantive rights by it is not enough unless procedural safeguards are put in place for PWD. Article 34(1) of the Civil Procedure Code provides that, 'a person under disability may sue or be sued through his legal representative'.⁴⁸⁹ This can be construed to mean that in case of civil matters, persons with disability are considered as incapable to bring their case unless through legal representation. The provisions of Article

⁴⁸⁴Ibid, Article 36(1).

⁴⁸⁵Ibid, Article 36(2).

⁴⁸⁶The Criminal Code of the Federal Democratic Republic of Ethiopia 2004. (2004)

⁴⁸⁷Article 48(2) of the Criminal Code: A person is not responsible for his acts under the law when, owing to age, illness, abnormal delay in his development, deterioration of his mental faculties, one of the causes specified under Article 49 sub-article 1 or any other similar biological cause, he was incapable at the time of his act, of understanding the nature or consequences of his act, or of regulating his conduct according to such understanding. See also Article 49(1): He who owing to one of the causes specified under Article 48 sub-article (2) above, or a derangement or an abnormal or deficient condition or any other similar biological cause was, at the time of his act, partially incapable of understanding the nature or consequences thereof or regulating his conduct according to such understanding shall be partially liable to the punishment specified for the crime committed.

⁴⁸⁸Article 131 of the Criminal Code provides that: Where a criminal is suffering from a mental disease or deficiency, deafness and dumbness, epilepsy chronic alcoholism, narcotic and psychotropic substances, intoxication due to the abuse of narcotics or any other pathological deficiency and requires to be treated or placed in a hospital or asylum the Court shall order his treatment in a suitable institution or department of an institution. See also Article 132(1): The competent administrative authority shall carry out the Court's decision concerning treatment and confinement. Treatment and confinement shall be of indefinite duration but the Court shall review its decision every two years. As soon as, according to expert opinion, the reason for the measure has disappeared, the administrative authority shall, after having referred the matter to the Court and upon its decision, put an end to the measure ordered.

⁴⁸⁹The Civil Procedure Code Decree, 1965.(1965), Article 34(1).

33(2), which provides that where a person under disability is not represented by his legal representative, this is cause to have the proceedings stayed until a legal representative is appointed, can strengthen this argument.⁴⁹⁰ Yet this kind of general approach impairs their right and also affects the constitutionally assured rights of everyone to be equal before the law. Furthermore as indicated in the preceding sections 'safeguards must be put in place whenever the exercise of rights by a person with disability has to be restricted' which the Ethiopian law seems to lack.

Although the purpose is not clearly spelt out in its provision the Civil Procedure code in Article 222 (2) provides that a statement of claim should contain a statement to the effect when either the plaintiff or the defendant is a person with disability. Without a clear indication of the purpose it is safe to assume that the purpose of indicating such fact is so that courts could make the necessary accommodation such as entertain their cases in courtrooms better suited.⁴⁹¹

One of the rights provided for accused persons under the constitution is the right to request the assistance of an interpreter at state expense where the court proceedings are conducted in a language they do not understand.⁴⁹² The provision, however, does not explicitly guarantee the right of persons with hearing impairment to a sign language interpreter. An argument can be made that persons with hearing impairment should benefit from this protection by way of interpretation since they only understand sign language.

In similar manner, the Criminal procedure code also extends similar protection for the rights of persons with disability.⁴⁹³ Pertaining to the right of having interpreter, where the arrested person is unable to properly understand the language in which his answers are to be recorded, he shall be supplied with a competent interpreter, who shall certify the correctness of all questions and answers.⁴⁹⁴ Broad interpretation of the term 'language' includes sign language as a means of communication for the purpose of the law is to deliver fair trial by making sure that the accused understand the charge and the witnesses brought against him/her and by preparing his own defence accordingly. Additionally, whenever persons with mental disability are brought before the court of law, the presiding judge shall by

⁴⁹⁰ Ibid, Article 33(2).

⁴⁹¹ Ibid, Article 222(2).

⁴⁹² FDRE Constitution, Article 20 (7).

⁴⁹³ The Criminal Procedure Code Proclamation 1961. (1961).

⁴⁹⁴ Ibid, Article 27(4).

warrant order that the accused be remanded to a suitable institution for confinement or treatment.⁴⁹⁵

g. Policy and Institutional Frameworks

There are also different policies and strategies in relation to the rights of persons with disability. Ethiopia has adopted the National Plan of Action of Persons with Disability (NPAPWD).⁴⁹⁶ It addresses the needs of PWD in Ethiopia for comprehensive rehabilitation services, equal opportunities for education, skills training and work, and full participation in the life of their families, communities and the union. The Plan of Action focuses on twin track approach. One program focuses on mainstream programs and services and the other track focuses on disability specific programs and service provision. The Second Growth and Transformation Plan (GTP II) addresses the issue of disability in its social welfare and targets and provides that the objective should be ensuring equal benefits are enjoyed by the disabled in political, economic and social activities.⁴⁹⁷

The Ministry of Labor and Social Affairs is primarily mandated with the responsibility of ensuring the rights of PWD. According to Article 34(13) of Proclamation 916/2015 on Definition of Powers and Duties of Executive Organs, the Ministry of Labour and Social Affairs (MoLSA) is given the mandate to enable persons with disabilities benefit from equal opportunities and full participation.⁴⁹⁸ The Ministry of Women and Children Affairs is also a relevant agency as it is given the responsibility to ensure the creation of opportunities for women to participate in political, economic and social affairs of the country and coordinate all stakeholders to protect the rights of women.⁴⁹⁹ In addition, each of the government ministries are expected to address women's issues in policies, laws, programs and projects and to mainstream the issues of PWDs by creating conditions, within their respective powers, whereby PWDs benefit from equal opportunities and full participation.⁵⁰⁰

⁴⁹⁵Ibid, Article 208.

⁴⁹⁶Ministry of Labor and Social Affairs. April 2012. National Plan of Action of Persons with Disability (2012 - 2021). Ministry of Labor and Social Affairs.

⁴⁹⁷National Planning Commission. 2016. FDRE Growth and Transformation Plan II (GTP II) 2015/16-2019/20.

⁴⁹⁸Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 916/2015. (2015), Article 34 (13).

⁴⁹⁹Ibid, Article 36.

⁵⁰⁰Ibid, Article 10 (4).

There are different organizations of PWD⁵⁰¹ in Ethiopia that work for the promotion and protection of the rights of PWD and their social and economic empowerment. There is an organization that specifically works on the rights of women with disabilities independently i.e. the Ethiopian Women with Disabilities National Association. This organization is unique, as it is formed based on gender unlike the other DPOs whose membership is based on type of disability or impairment. The formation of the Federation of Ethiopian National Association of People with Disability (FENAPD)⁵⁰² also plays a vital role for the protection of the rights of PWD since it enables them to collectively lobby for the enforcement of their legally recognized rights.

The Ethiopian Human Rights Commission and the Institution of the Ombudsman also have a significant role to play in the enforcement of the rights of PWD. The Ethiopian Human Rights Commission is given the power to ensure that human rights and freedoms in the constitution are respected by all citizens, organs of state and political organizations and that all laws, regulations and directives do not contravene these rights. It also has the power to investigate complaints of human rights violations.⁵⁰³ The Institution of the Ombudsman, on the other hand, has the power to supervise that administrative directives, decisions and practices by executive organs do not contravene constitutional rights and to receive and investigate complaints of maladministration.⁵⁰⁴ These oversight and investigative mandates of the institutions make them important for the respect of the rights of PWD.

⁵⁰¹Ethiopian Center for Disability and Development (ECDD), Federation of Ethiopian National Association of People with Disability (FENAPD), The Ethiopian National Association of the Physically Handicapped, the Ethiopian National Association of the Blind, the Ethiopian National Association of the Deaf, Ethiopia National Association of the Deaf-Blind, Ethiopian National Association of Persons affected by leprosy, Ethiopian National Association of Intellectual Disability, Ethiopian Disability Action Network (ENDAN), Ethiopian Women with Disabilities National Association are among the Organizations of PWD. See also Country Profile on Disability Federal Democratic Republic of Ethiopia, 2002, pp. 22.

⁵⁰²FENAPD is a network of six single disability focused national associations. FENAPD has been established to help PWDs in averting disability related problems and improve their lives. Its member national associations are: 1) Ethiopian National Association of the Deaf (ENAD) 2) Ethiopian National Association of Persons Affected by Leprosy (ENAPAL) 3) Ethiopian National Association on Persons with Intellectual Disabilities (ENAIID) 4) Ethiopian National Association of the Deaf-Blind (ENADB) 5) Ethiopian National Association of the Blind (ENAB) and 6) National Development Association of Persons with physical Disabilities. Also available on <http://www.fenapd.org/about.php> last accessed on June 27, 2015

⁵⁰³ Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000, Article 6.

⁵⁰⁴Institute of the Ombudsman Establishment Proclamation No. 211/2000, Article 6.

There are also a number of co-operation projects on disability organized by international and other donors.⁵⁰⁵

VI. Findings and Discussions

This section presents a discussion of the major findings of the research obtained through interviews with WWDs, representatives from relevant governmental and non-governmental organizations, document analysis and observations made by the team in three main themes (1) the sufficiency and accessibility of Ethiopia's substantive and procedural laws and institutional framework for WWDs (2) the experiences, attitudes and challenges of WWDs in accessing the justice system and (3) activities undertaken by governmental and non-governmental organizations to facilitate access to justice for WWDs and shortcomings in this regard.

i. Adequacy of Substantive and Procedural Laws and Institutional Frameworks

The Ethiopian legal framework for WWDs includes the relevant international agreements signed by the country (including the CRPD which has been ratified by Proclamation No. 676/2010) as well as domestic laws. For most of the experts and focal persons within DPOs interviewed for this research, the Ethiopian legal framework provides at least on paper adequate protections for WWDs and the major challenge is the enforcement of these laws. One of the key informants, a legal professional, however, feels the domestic legal framework is lagging behind as compared to the extensive protections under the CRPD. One area where the application of the Convention is lacking, according to this expert, is the requirement of issuing directives and working procedures to give effect to the rights enshrined in the Convention.⁵⁰⁶ An illustration of this lacuna with regard to access to justice is the fact that there is no directive which obligates justice institutions to hire an interpreter for those with hearing impairment or one that requires courts to post schedules and directions in braille for those with visual impairments.⁵⁰⁷

Although Article 20(7) of the constitution and Article 27(4) of the criminal procedure code on the rights of persons accused to request for an

⁵⁰⁵The United Nations Educational, Scientific and Cultural Organization (UNESCO) have financed a school for children with hearing impairment. International NGOs such as Save the Children Fund, Oxfam and Christoffel Blind Mission (CBM) have played a large role in disability-related assistance in Ethiopia. Programs focus on Community-based Rehabilitation (CBR), vocational training, awareness creation, and educational support. See Country Profile on Ethiopia, pp. 22

⁵⁰⁶Interview with Ato Getachew, held on 08/10/2015 Access to Justice Head Office.

⁵⁰⁷Ibid.

interpreter at state expenses where court proceedings are conducted in a language they do not understand can be interpreted in favour of WWDs with hearing impairment and their right to a sign language interpreter, this is not clearly stated in the law and it does not deal with civil proceedings.

Another key informant who is also a lawyer mentioned the lack of a comprehensive disability policy and a focal institution solely assigned to deal with disability issues. He said that the institution currently mandated, the Ministry of Labour and Social Affairs, has to juggle with many issue related to labor and social affairs and recommends a more empowered and specific organ. In addition he added that much of the focus has been on making persons with disabilities included in the general protections of the law and there is still need for laws specific to PWD.⁵⁰⁸

Ato Derese who is working for the National Association for Persons with Disabilities criticizes the approach followed by the law. He says laws, including the FDRE Constitution, are in line with the charity-based approach. He argues that the inclusion of the phrase “within available means” in Article 41 of the Constitution indicates that disability assistance is a matter of charity. He emphasized that the law should move towards the right-based approach.⁵⁰⁹ The provisions in the Civil Code and Revised Criminal Code are especially problematic including the language utilized. The provisions in these codes are restrictive to the legal capacity of WWDs, emphasising inability and do not make any kind of distinction as to the type and extent of disability.

ii. Access to Justice and the Experience, Attitudes and Challenges of WWDs

a. Barriers to Accessing the Justice System

The challenges faced by women with disabilities in relation to access to justice can be looked at from two contexts. On the one hand, there are barriers that prevent women from accessing institutions in the formal justice system and on the other hand, there are challenges they face once they have decided to take their issues to these institutions. Although the participants of this study have all taken their case to one or another justice institution, barriers that impede women from taking their complaints to judicial and quasi-judicial organs were raised during the individual and focus group interviews. Women with all three types of disabilities have raised these barriers.

⁵⁰⁸Interview with Ato Woldesenbet Berhanmeskel held on 09/10/2015 at Federation of Ethiopian Federation of Associations of Persons with Disabilities.

⁵⁰⁹Interview with Ato Derese Tadesse held on 7 /8 /2015 at Federation of Ethiopian Associations of Persons with Disability.

The major barrier highlighted was lack of legal awareness. WWD disabilities are not aware of the legal remedies available or which institutions they should resort to. Although accessibility of information is provided as integral part of the right to access to justice for PWD in the CRPD, access to information about the law and rights and awareness trainings targeting WWD are rare. In the words of one participant in the FGD,

“Most women with disabilities do not go to the courts because they don't know what their rights are and how they can secure them. There are many women I know who choose to raise their children by themselves, without any support because they are unaware of the duty of spouses to provide maintenance following divorce”⁵¹⁰

None of the women who participated in this research have received any training on legal rights or remedies from governmental or non-governmental organizations. For those women who mentioned that they have knowledge about the law, though limited, the source of information was listening to the radio or watching television.⁵¹¹

Another barrier is the belief that the final outcome of going through the formal justice system does not justify the various hurdles and the hardships that the women must go through. Taking into account the previous outcome of cases, the women prefer not to access the legal system. One of the participants of the FGD elucidating this point stated;

“I used the little legal knowledge I have to get maintenance for my friend's child. Although the father's salary was 4000 birr, the court only decided a maintenance payment of 100 birr per month and this makes things very difficult.”⁵¹²

b. Challenges faced by WWDs within the Formal Justice System

Women with disabilities also face challenges once they have brought their cases to judicial and quasi-judicial organs. Some of the challenges are crosscutting affecting women with all types of disability while others are specific to women with certain kinds of disability. These common challenges raised by the research participants are concerned with financial accessibility of the justice system. WWDs are unable to pay for legal counsel and their access to legal aid is also limited. WWDs have also reported

⁵¹⁰Focus group discussion held on 08/08/2015, Access to Justice Project Head Office.

⁵¹¹Ibid.

⁵¹²Ibid.

experiencing problems resulting from the negative stereotypes of service providers, which lead to their maltreatment.

c. Lack of Legal Support and Problems resulting from Self-representation

With the exception of two of the study participants, the other women did not have legal counsel while pursuing their court cases. Only one had the financial means to hire a lawyer and the other had a lawyer appointed to her through support of women and children's affairs bureau. The other women were unable to hire a lawyer due to financial constraints and because they did not know how and where to seek legal support. Some of the participants however said that they had knowledge of legal aid providers and sought their help. They received advice and the services of writing the necessary documents, while others had to seek the help of neighbours and pay to have documents necessary for their cases written. One participant remembered how she pursued her case in court;

“My case was at First Instance Court in Piassa. I represented myself; there was no one who supported me. I used to pay a lot to have documents written. Even though I was in pain, I used to carry and sale maize in the evenings. When I was not able to afford it, I used to beg them to write for me”.⁵¹³

Another participant went through the same problem, “I used to have my petitions written in those places around the courts. I used to pay 25 or 30 birr per petition, and whenever they feel sorry for me they used to charge me 15 birr.”⁵¹⁴

In addition to the financial costs, lack of knowledge about court procedures and the procedures of quasi-judicial organs was another problem the women who were representing themselves faced in court. Lack of knowledge regarding court proceedings coupled with the intimidating atmosphere in the courts had made it difficult for some of the participants to effectively take part in their case. There is a perception among the participants that those with legal counsel will have the upper hand in proceedings as they can articulate their cases in a manner that will influence the judge. One woman stated, “the judge did not listen to me when I was

⁵¹³Interview with W/rtTiringo held on 7/10/2015, Access to Justice Project Head Office.

⁵¹⁴Focus group discussion held on 08/08/2015, Access to Justice Project Head Office.

talking. There were also instances where I did not know the procedures. Rather than helping, they disparaged me."⁵¹⁵

Another woman put the advantage of having legal counsel in the following terms;

*"Those clients with a lawyer benefit because they know the law. I asked the judge to change the court appointment date because I had a medical appointment at the same time but my request was rejected. The lawyer's request for a change of appointment is, however, promptly agreed to."*⁵¹⁶

d. Negative Treatment and lack of Good Governance

One of the major issues raised during the focus group discussion with women with disabilities is the fact that there is negative perception about the capability of women with disabilities. As one of the participants put it;

*"Whether it is courts or labour and social affairs office, women with disabilities are not given attention. They believe that their efforts can't bear fruit, that they cannot take their matters far. In my opinion, this comes from their lack of awareness about disability."*⁵¹⁷

Although one of the important components of right to access to justice recognized in the CRPD is the provision of appropriate training for those working in the field of the administration of justice in order to remedy gaps in awareness and understanding, this is still a problem in the justice system.

In relation to lack of good governance, the participants raised their grievances about the treatment of institutions, especially the quasi-judicial organs (personnel at Kebele, Wereda and KifleKetema level). There are also complaints about police officers. The women feel the mistreatment is a result of their disability. According to one participant,

*"There are problems at police stations. The police and public prosecutors may sometimes conspire to make documents disappear. The justice system is distorted when it comes to persons with disability. Even more than the issues/ cases that bring persons with disabilities to justice institutions, the proceedings and treatments in justice institutions make the situation worse."*⁵¹⁸

Another interviewee who had taken her case to court and obtained a decision in her favour expressed the hassle and delays at *Wereda* level in

⁵¹⁵Ibid.

⁵¹⁶Ibid.

⁵¹⁷Ibid.

⁵¹⁸Ibid.

having the decision enforced. "There are a lot of problems at the Woreda level. The employees don't treat me with respect. A poor person like me is not given attention at these places, they only listen to those with money." Furthermore, on in the interview the same woman added "When we go there [the *Wereda*] we are not given an ear, they belittle us; they don't listen when we talk. There were many times I returned from there in tears."⁵¹⁹

One participant in the focus group discussion had to take her disagreement with her husband to the police. She explained the treatment she received;

"When I went to the police and asked them to resolve a dispute I had with my husband, they told me that they couldn't help because it was past 6pm in the evening. But because my husband buys them beer, there was a time they knocked on my door at 10pm in the evening. I refused to open. Most of them are corrupt. They favor those with money and belittle people like me".⁵²⁰

These factors affect the attitude of WWDs towards the justice system. The attitude of the women towards administrative and quasi-judicial institutions such as Kebeles, Woredas and Kifle Ketemas was largely negative. The women relate the trouble they have had in dealing with these institutions, the delays and repetitive trips that did not bear fruit as negative experiences. The opinion of the women towards the police officers they encountered was also negative. For the most part, the opinion of the interviewees towards the courts and judges are more positive. Courts and judges are said to have a positive attitude towards women with disabilities and provide support. One participant said; "The courts are good. They work based on the law and the procedure. Although they don't give priority to women with disabilities, they serve you properly when your turn comes". The same woman explained that the judge in her case was compassionate and helpful to her.⁵²¹ There are however, some complaints against courts as well. A participant who had a suit for maintenance decided in her favour but couldn't get it enforced said

"At first I thought that the matter would be resolved quickly. But there was a lot of hassle. They told me that there is nothing that can be done unless the man has money or a house. Their service was good in the beginning but now they are refusing to help me. When they see me, they don't even consider me as a human being."⁵²²

⁵¹⁹Ibid.

⁵²⁰Focus group discussion held on 08/08/2015, Access to Justice Project Head Office.

⁵²¹Interview with W/rtTiringo held on 7/10/2015, Access to Justice Project Head Office

⁵²²Interview with W/roChayachew held on 14/10/2015, Premises of the National Association for the Blind.

Women who visited Women and Children's Affairs offices also have a positive opinion about the support they received from these institutions. They said that the staff at the offices provided the necessary advice and sometimes writing petitions for them. As one participant put it, "They are good. They give me legal advice. They write for me for free petitions which I would have had to pay for outside."⁵²³

e. Challenges faced by Women with Physical Impairments

The challenges specific to women with physical impairment relate to the physical accessibility of justice institutions. Most of the institutions including courts, justice bureaus, police stations have stairs, don't have ramps for wheel-chairs and elevators are either unavailable or are not working properly. Physical accessibility is the most commonly raised aspect in relation to PWDs. Eliminating barriers of accessibility in the physical environment is one of the requirements of the CRPD. It is also required under Ethiopian law under the Building Proclamation. There are, however, major gaps in the implementation of these legal requirements.

One participant with physical impairment stated, "although most of the court rooms are on the ground or first floor, the justice bureau, the President's office are on the 3rd and 4th floors."⁵²⁴ Another participant said, "It is very difficult for me to climb stairs because of my disability. At first the court room was on the ground floor then they moved it to the third floor."⁵²⁵

The research team was also able to note some of these problems of physical inaccessibility through observations of some premises of Federal First Instance Courts in Addis Ababa. Although in the newly built court premises, there are efforts to make them physically accessible such as building wheelchair ramps and installing elevators, there are other problems such as access to rest room facilities. The situation is worse for those court rooms using rented buildings. The Federal First Instance Court, Nefas Silk Lafto Division, for instance is housed in a rented building. There are offices of the court on the first floor but the court rooms are found on the 2nd floor of the building while the registrar office is on the 3rd floor while the KefleKetema's justice bureau and public prosecutors' office are on the 4th floor. There is no wheel-chair ramp leading to the building and it does not have an elevator. The bathrooms outside the building are not accessible at all to a person with a disability and only have urinal stalls. A related problem of physical accessibility is access to transport services. Most

⁵²³Ibid.

⁵²⁴Focus group discussion held on 08/08/2015, Access to Justice Project Head Office.

⁵²⁵Focus group discussion held on 08/08/2015, Access to Justice Project Head Office.

of the transport systems including buses and taxis are not accessible to women with disabilities. Although the train was said to solve this problem, the escalators have not yet started service.⁵²⁶

f. Challenges faced by Women with Hearing Impairment

The major challenge for women with hearing impairment during their contact with justice institutions relates to difficulties in communication. This is despite the fact that the CRPD provides that accessibility for PWD should include making available sign language interpreters. There is lack of staff that can use sign language especially in police stations and Wereda and Kebele and although courts are required to provide sign language interpreters, there is a delay or complete failure in fulfilling this responsibility. The problem is especially hard for those women with hearing impairment who cannot read and write and even for those who have not learnt sign language because they couldn't even communicate with a sign language interpreter.

One of the participants with hearing impairment went to the police station to report a case of sexual assault. She said, "I told the police what happened but they told me to go home. I tried to explain to them but they offered me food and drink, I said I didn't want any.... We couldn't communicate".⁵²⁷ This participant's case has reached the courts but since a sign language interpreter was requested but didn't appear in court, her case was adjourned for another date.

Another participant had a civil case in court and although the court ordered an interpreter to be assigned, the registrar failed to. As a result she was forced to pay for an interpreter herself. Before its resolution in her favour, there were 15 appointments and she had to pay 150 birr per appointment for the interpreter. She hopes that she will get her money back because she has included the cost of interpreter in her suit for execution of the court order.⁵²⁸

Whenever cases involving parties with hearing impairment appear before a Federal First Instance Court the first step is for the judge orders and registrar to supply a sign language translator. However, the effective undertaking of this task by the registrar is made difficult by the fact that the court does not have a fulltime staffs that are sign language translators. Although the court does not have a position of sign language translator within its staff and salary structures it has tried to address the problem by

⁵²⁶Interview with Ato Derese Tadesse held on 7 /8 /2015 at Federation of Ethiopian Associations of Persons with Disability.

⁵²⁷Interview with W/rt Tsion held on 01/28/2016, AWSAD Safe House.

⁵²⁸Interview with W/ro Selam held on 12/25/2015, Access to Justice Head Office.

hiring a sign language translator as it would a translator for any other language. These measures the informant indicated however did not bring lasting solution, as the pay rate within its structure was far less than what a sign language translator would earn doing freelance work. As a result of this the court does not have a fulltime sign language translators and it is therefore forced to hire freelance sign language translators whenever it can. However, this approach too is proving difficult to sustain as the per diem of birr 70 paid for per each appearance is still too small given the length, complexity and difficulty of the task involved. The task of providing sign language translators is made even more difficult by the absence of sufficient number of translators because of which the registrar is forced to ask parties seeking the service to look for translators through personal contacts.⁵²⁹

g. Challenges faced by Women with Visual Impairment

Physical accessibility is a challenge for women with visual impairment although in a different way than those with physical impairment. Because of the physical layout of the justice institutions as well as the roads leading there, women with visual impairment require the help of another person, usually a relative to accompany them. One participant with visual impairment mentioned that she wouldn't have been able to find the court rooms if she was not with her mother and even together they had to ask for directions several times before they can finally find the court.⁵³⁰

Another problem unique to women with visual impairments is the problem they face in giving testimony. As one of the participants in the focus discussion put it;

*"Women with visual impairment know the person who attacked them through his voice but when they go to the courts, they are asked to bring another witness or they won't accept their allegation. They ask them how they saw the perpetrator and her case was dismissed because of this."*⁵³¹

This does not take into consideration the duty of the justice institutions to facilitate the effective role of PWDs as participants in the justice system including making the necessary accommodations.

⁵²⁹Interview with W/ro Zufan, Assistant Registrar of Federal First Instance Court held on 09/10/2015 at the Federal First Instance Court Lideta Branch.

⁵³⁰Focus group discussion held on 08/08/2015, Access to Justice Project Head Office.

⁵³¹Ibid.

iii. Intervention by Government Organs

The team held interviews with representatives, key informants, experts and focal persons in selected governmental organs working on issues related with PWDs. Special emphasis was given to their work related to access to justice with particular focus if any with regard to WWDs. The activities undertaken by the government institutions do not indicate that access to justice for WWDs has been given any emphasis by the relevant government institutions. Furthermore, the initiatives that could have some impact on facilitating access to justice for WWDs are fragmented and not embedded in the activities of the institutions in any systematic manner.

The Ministry of Labor and Social Affairs is the primary agency mandated to work on the rights of PWD.

The Ministry's work on PWDs is, however, mostly focused on employment rights of PWDs and ensuring the enforcement of Proclamation No. 568/2008 on the Rights to Employment of PWD. Although the representative stated they have provided awareness creation programs for judicial institutions these were also focused on this employment proclamation and the principle of reasonable accommodation.

There is a committee overseen by the MoLSA working on the implementation and follow-up of the CRPD established at the national level and regional levels. The national committee also has different sub-committees working on implementation of the macro-goals set by the national committee. The committee evaluates its implementation process every 6 months. The National Committee has 20 members at the federal level. There are 3 main clusters; civil service, social and finance cluster. Different government institutions are categorized under the three sectors depending on their main responsibilities and mainstream the issue of disability. The Ministries submit their annual plan and report to Ministry of Labor and Social Affairs.⁵³²The Ministry admits that the committee is not operating as it is expected due to problems of commitment on the part of the organizations as well as the pressures of other organizations. According to the representative, the Ministry feels that there are gaps in the implementation of the CRPD and attributes this gap to financial and personnel constraints and lack of awareness on the part of institutions and the society. ⁵³³Concerning access to justice, the Ministry has given sign language training for Information desk officers working in federal bureaus in collaboration with National association for persons with hearing

⁵³²Interview with Ato Damtew Alemu, Team leader at Minister of Labour and Social Affairs, Social Security Directorate held on 08/10/2015 at the MoLSA.

⁵³³Ibid.

impairment for three years. Personnel working in judicial organs were also the beneficiaries of the training.⁵³⁴

The Ministry of Justice (currently Federal Attorney General), on the other hand, conducts different initiatives concerning the rights of PWDs. The representative from the Ministry mentioned that there is a guideline currently prepared by the Ministry on how to handle cases that come to judiciary organs. The prosecution manual includes points relating with assigning sign language interpreter, giving charge in brail when visually impaired persons become accused or victim and recording of their voices besides the report of the police so as to make them sure that what they have said is exactly the same with the report of the police.⁵³⁵

In the current judicial system, police officers, public prosecutors and psychologists work together at police stations. Hence, according to the representative, it is necessary to train them to know sign languages so that persons with hearing impairment will not be in difficulty to express their violation. Thus, starting from last year, the Ministry organized sign language trainings for public prosecutors, psychologists and specifically those who handle cases concerning violation of women's and children rights. However, judges were not part of the training but there are plans to include them. There is also free legal aid service given by the Ministry in which PWDs are one of targeted beneficiaries.⁵³⁶

The Ministry of Women, Children and Youth Affairs is the other concerned Government organ working on the issue of disability. The Ministry is also the chair of the social cluster of the national committee. According to an expert from the ministry, awareness creation and mobilization coordinator, in any policies and strategies of the Ministry, the rights of PWDs is taken under consideration. Whenever the Ministry arranges awareness creation programs on its policies and strategies, the associations are represented. The Ministry also works on giving legal aid service. However the expert explains that, there are two approaches that the Ministry follows in this regard. In some regions, there is assigned person to give legal aid service including for PWDs. On others, the experts refer the case to concerned organs that give legal aid service for vulnerable persons in the society.⁵³⁷

⁵³⁴Ibid.

⁵³⁵Interview with W/ro Wosenylesh Admasu, Director of Women and Children Directorate, held on 12/10/2015 at the Minister of Justice. (The current Federal Attorney General)

⁵³⁶ Ibid.

⁵³⁷ Interview with Ato Seleshi Tadesse Women and Children Minister Awareness Creation and Mobilization Directorate Director held on 15/02/2016 at Women and Children Minister office on 15/02/2016.

The Ethiopian Human Rights Commission (EHRC) is one of the institutions working on the issue of disability. However, According to W/ro Ubah Mohammod, Deputy Commissioner for Women and Children, the issue of the rights of PWD is one of the area in which the Commission feels it needs to give more emphasis on. ⁵³⁸ According to a document which was provided to the team and which was said to outline the functions of the Commission, EHRC works to ensure the realization of the rights of PWD through research, monitoring, educating the public, translating and ensuring access to human rights instruments, investigating upon complaints and on its own initiation and advising the government on measures that it should take to ensure promotion and protection of human rights. The commission has incorporated the issue of disability in its 2012-2016 five years plan.

Setting for itself plans to work towards the mainstreaming of disability issue, conducting monitoring aimed at assessing the situation of PWD, conducting research, designing projects and mobilizing funds, identifying and working for the scaling up of best practices. Of these plans the Commission succeeded in preparing training manual on PWD, translating international human rights instruments into brail, including disability issue in its awareness raising programs, and establishing a forum of stakeholders regarding disability and attempted to ring the issue of PWD into the spotlight by organizing Television and radio talk shows and programs. The forum established to monitor the implementation of the rights of PWD meets annually share best practise and way forward.⁵³⁹

iv. Interventions by Non-Governmental Organs

The main non-governmental organizations studied in this research are the different DPOs. The discussions with the DPOs focused on what the organizations did, if they participated in discussions regarding draft laws, if they undertook activities aimed at rights awareness and awareness raising about the law, whether or not they provided assistance to members who have cases pending before a judicial or quasi-judicial organs.

Most of the representatives of the DPOs interviewed drew a distinction between the major focus of their associations before and after the CSO proclamation following the promulgation of which most have turned their face towards addressing only social and economic empowerment. Accordingly, all of the DPOs interviewed during the research except the

⁵³⁸ Interview with W/ro Ubah Mohammed Head of Women and Children Directorate at the Ethiopian Human Rights Commission held on 08/10/2015 at the Ethiopian Human Rights Commission.

⁵³⁹ Unpublished Report by Ethiopian Human Rights Commission August 2013.

Association for the Physically Disabled are Ethiopian Resident societies, which receive more than 10% of their funds from foreign sources restricting them from working on rights and advocacy. The Association of Persons with Physical Disability registered as an Ethiopian society is the only association working in the area of human rights. The association according to its chairman works for the realization of social, economic, and political rights of its membership.⁵⁴⁰

Participation in deliberations regarding policies, laws and directives is one of the major ways in which DPOs are trying to ensure the protection of the rights of their members. In this regard, most of the representatives expressed that they are given the opportunity to deliberate on draft legislations regarding PWD invited to do so by relevant government organs. They have in particular participated in discussions on the draft labour proclamation, construction proclamation and the tax directive, proclamations on accessibility of public facilities, government offices and transport services and maintain the accommodations to PWD in the Addis light railway lines as the expression of their successes.

Although most of the DPOs expressed that they do their best to help members who have pending cases, using personal contacts and favours none of them have a formal structures or working relationship with institutions that provide legal assistance. The assistance however according to some is limited to legal entanglements emanating from discrimination based on the disability of their members.

VII. Concluding Remarks and Recommendations

Despite the protections provided for persons with disability in general and women with disabilities under the international and regional legal frameworks and despite the fact that Ethiopia is a party to these international and regional instruments and has in addition, provided rights and protection in the domestic legal and policy frameworks, women with disabilities are still facing many problems when it comes to access to justice.

This research set out to explore the experiences of women with disabilities who come in contact with the justice system, their attitudes and challenges; assess the adequacy of substantive and procedural laws and institutional mechanisms to address the right to access to justice for WWDs and explore what actions is being taken by governmental and non-governmental organizations to facilitate the exercise of the right by WWDs.

⁵⁴⁰Interview with Ato Aman Jemal, Head of Association of Persons with Physical Disability held on 08/10/2015at Association's office.

Accordingly, the research found that despite the fact that Ethiopia has signed and ratified the CRPD, there are still gaps in harmonizing the laws and practices to the provisions of the Convention, with regard to access to justice from the vantage point of this research. There are still laws, which are not in congruence with the spirit of the Convention or whose wordings still echo negative connotations. Some of the provisions in the laws still espouse to out-dated “medical/welfare” approaches to disability.

The experiences of WWD indicated that their right to access to justice is curtailed by many hurdles. WWDs do not have awareness about their legal rights and available remedies. They also do not have confidence in the fair outcome of cases. These prevent many WWDs from accessing formal justice institutions. For those who decide to access justice institutions, their experience is one with many challenges. The majority of the women interviewed represented themselves in court. They had to pay to have petitions written, which represented a financial burden for most. They also felt they were at a disadvantage while representing themselves as they found the court atmosphere intimidating not properly knowing the laws and procedures. The women also reported not receiving proper treatment especially by quasi-judicial organs and the police. Justice institutions were not physically accessible for women with visual and physical disabilities and women with hearing impairment faced problems with communications, as sign language interpreters were not readily available.

The role of governmental and non-governmental institutions in facilitating the right to access to justice for WWDs is also lacking. There is little evidence to indicate that the relevant government institutions have considered access to justice for WWDs as a focus area. The works they are undertaking with regard to PWDs in general are focused on other areas such as employment and physical accessibility. Any activities these institutions are undertaking that are remotely related to access to justice are fragmented and no effort is made to make them binding and sustainable. Non-governmental organizations, especially the DPOs are also not working on access to justice because of limitations of the Charities and Societies Proclamation.

Based on the findings of this study, the researchers forward the following recommendations

- There should be a comprehensive review of the laws and policies of the country in order to ensure that the laws are in harmony with the CRPD and revisions should be made accordingly
- There should be proper monitoring of the implementation of the rights enshrined in the Convention and to ensure that all

institutions are undertaking their responsibilities to mainstream the rights of PWDs in their policies and programs

- The justice sector, in particular, should come up with directives and guidelines on mechanisms of ensuring access to justice for PWDs. This should address all aspects of accessibility (physical, financial, technological and intellectual accessibilities) and also recognize the special circumstances of WWDs
- Government institutions, including justice organs should institute a system of keeping data disaggregated by gender and disability.
- DPOs should give emphasis to access to justice for their members especially WWDs by and establish links with governmental and non-governmental organizations working on legal awareness and those, which provide legal assistance.