Effects and Limits of Rape Law and Policy Reforms in Ethiopia

Mesay Hagos Asfaw

A Thesis Submitted to the Center for Human Rights in Total Fulfilment of the Requirements for the Degree of Philosophiae Doctor (PhD) in Human Rights

Supervisors

Dr. Meron Zeleke Eresso

Dr. Emezat Hailu Mengesha

Addis Ababa University

Addis Ababa, Ethiopia

July 2019

AUTHOR'S DECLARATION

I, the undersigned, Mesay Hagos Asfaw, hereby declare that I am the sole author of this thesis. To the best of my knowledge, this thesis contains no material previously published by any other person except where due acknowledgment has been made. This thesis contains no material, which has been previously submitted as part of the requirements of any other academic degree or non-degree program. I declare that this thesis is fewer than 150,000 words.

This is a true copy of my thesis, including final revisions, and is being submitted for evaluation for the first time.

Name: Mesay Hagos Asfaw

Signature: _____ Date: _____

SUPERVISORS' APPROVAL

This thesis has been submitted for examination with my approval as a supervisor.

Name: Dr. Meron Zeleke Eresso

Signature: _____ Date: _____

Name: Dr. Emezat Hailu Mengesha

Signature: _____ Date: _____

HEAD OF THE CENTER OR PHD PROGRAM COORDINATOR

Name: _____

Signature: _____ Date: _____

TABLE CONTENTS

ACKNOWLEDGEMENTS

I am deeply grateful to my supervisors Dr. Meron Zeleke Eresso and Dr. Emezat Hailu Mengesha for their thorough supervision as well as valuable, constructive and ever enlightening comments and insights. The successful accomplishment of my research project would have been very difficult without their generous time devotion from the early development to the final writing up of this thesis.

I would like to express my sincere thanks to all the individuals who participated in the study and gave their time and information so generously. Special thanks are also due to my friends, colleagues and former classmates who have been working within the criminal justice system (CJS) in various capacities and helped me make use of their social capital to advance the cause of my research project. I am particularly indebted to Judge Endale Tadasse, Prosecutor Daniel Birehanu, Prosecutor Yisak Fikadu, Prosecutor Endale Tegenie, Prosecutor Robel Hailemariam, Prosecutor Dorka Alemu, Dr. Abdurrahman Seid, Tsegayie Babegie, Zelalem Moges, Abdusamad Ahmed, Alemayehu Merech, Gizachew Kindie, Gizachew Teshome, and my wife Frieweyni Musa for their invaluable moral and material assistance. Special thanks are also due to Mesay Demsie and Eyerusalem Melaw, social workers at the Federal First Instance Court, Ledeta Division, for their professional assistance in conducting interviews with rape victims.

Finally, I would like to thank Dr. Anna Bruce (Professor, Lund University) and Dr. Maria Andrea Nardi (Professor, Lund University) for their insightful comments on some chapters of the draft research, and Professor Andrea de Guttery (Professor, Scuola Superiore Sant'Anna) for kindly facilitating my research visit to Sant'Anna School of Advanced Study, Pisa, Italy.

NOTES ON ETHIOPIAN NAMING SYSTEM AND THE ETHIOPIAN CALENDAR

Ethiopians follow a patronymic naming system. Hence, the second name is not a family name, but the first name of the father. Whenever a third name is added, as is often the case, it is the first name of the grandfather. For instance, a person whose name is Desta Hagos Gemmechu, the first name (Desta) is the person's first name, the second name (Hagos) is the name of the person's father, and the third name (Gemmechu) is the name of the person's grandfather. Upon marriage, women retain their names. The second name of a woman, whether she is married or not, is her father's name, and not her husband's name. In the present study, all Ethiopian names are used in accordance with this patronymic naming system.

Unlike the Gregorian calendar, the Ethiopian calendar has 12 months with 30 days each and a 13th month called *Pagume* with five days in a common year and six days during a leap year. The Ethiopian Calendar is seven to eight years behind the Gregorian calendar. The first day of the Ethiopian calendar usually falls on September 11 of the Gregorian calendar. For data which are analyzed on an annual basis, such as trends of rates of reporting, attrition, prosecution and conviction for rape cases over time, and courts' sentencing practices, the present study uses the Ethiopian Calendar as the data recording institutions do.

LIST OF ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CCTV	Closed Circuit Television
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CJS	Criminal Justice System
DEVAW	Declaration on the Elimination of Violence against Women
DHS	Demographic and Health Survey
DNA	Deoxyribonucleic Acid
E.C.	Ethiopian Calendar
EPRDF	Ethiopian People's Revolutionary Democratic Front
ESOG	Ethiopian Society of Obstetricians and Gynecologists
EWLA	Ethiopian Women Lawyer's Association
FDRE	Federal Democratic Republic of Ethiopia
FGM	Female Genital Mutilation
GBV	Gender-based Violence
HIV	Human Immunodeficiency Virus
NEWA	Network of Ethiopian Women's Associations
NGOs	Non-governmental Organizations
OAU	Organization of African Unity
PDRE	Constitution of the Peoples' Democratic Republic of Ethiopia
PTSD	Post-traumatic Stress Disorder
RCC	Revised Criminal Code
SIDA	Swedish International Development Agency
SNNPR	Southern Nations, Nationalities and Peoples Region
STIs	Sexually Transmitted Infections
SVAW	Sexual Violence against Women
TGE	Transitional Government of Ethiopia
UN	United Nations
VAW	Violence against Women
VAWC	Violence against Women and Children
WHO	World Health Organization

LIST OF TABLES

LIST OF FIGURES

LIST OF RAPE CASES

Harari Region Public Prosecutor v. Bona Ahimed Amin, File Number 46412, Cassation Division, Federal Supreme Court.
Oromia Justice Office v. Mekuanint Girma, File Number 107166, Cassation Division, Federal Supreme Court.
Public Prosecutor v. Ali Yesuf, Criminal File Number 215694, Federal First Instance Court Lideta Division.
Public Prosecutor v. Fasil Ayitenfisu Belete, Criminal File Number 219561, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Getnet Abebaw Mariyie, Criminal File Number 211474, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Hailemariam Atsibeha, Criminal File Number 193073, Lideta Division, the Federal First Instance Court.
Public Prosecutor v. Melaku Nigusie, Criminal File Number 210406, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Mikiyas Asefa, Criminal File Number 210967, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Moges Wendimageng Metaferiya, Criminal File Number 174650, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Natna'el Gonfa Bedhanie, Criminal File Number 225827, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Samu'el Dagnie Tadesse, Prosecutor File Number 003/06, Federal Attorney General Arada Office.
Public Prosecutor v. Sintayehu Desalegn Afewerk, Prosecutor File Number 00014/07, Federal Attorney General Arada Office.
Public Prosecutor v. Sintayehu Gebriela, Criminal File Number 124398, Lideta Division, Federal First Instance Court.
Public Prosecutor v. Temesgen Abatneh Desalegn, Criminal File Number 81270, Nifas-Silk-Lafto Division, Federal First Instance Court.
Public Prosecutor v. Yisihak Chinkilo, Criminal File Number 218827, Lideta Division, Federal First Instance Court.

ABSTRACT

Over the past two decades, rape law reform and various policy measures have been introduced to address the problem of sexual violence against women in Ethiopia. Yet, subsequent to these reforms, important questions remain regarding the extent to which the reforms have produced meaningful impacts in terms of improving police reporting, prosecution and conviction rates for rape cases and the treatment of rape victims. Using a largely qualitative method of enquiry and instruments such as interviews, trial observation, questionnaire, and crime statistics, this study addresses these very important public policy issues. Its objectives are threefold: i) to identify the main strands of the rape law and policy reforms; ii) to evaluate the main impacts of the reforms; and iii) to assess shortcomings of the reforms in advancing the cause of rape victims. Accordingly, the study found an increased trend in police reporting for rape cases, following the reforms, though it was not accompanied by improved rates of attrition, prosecution and conviction. It also found that the reforms have not led to a shift of focus from the character, reputation and behavior of the victim to the criminal conduct of the offender, in rape case-processing. The reforms were found to have many important shortcomings. For instance, the Revised Criminal Code still classifies rape as an affront to collective morality and chastity, makes an unnecessary distinction in the degree of gravity based on sexual acts, fails to degenderize rape, maintains violence and resistance as defining elements of rape, and decriminalizes forcible marital-rape. Moreover, the substantive law reforms were not accompanied by reforms of procedural and evidentiary laws. For instance, there are no rules of procedure protecting rape victims' physical safety and privacy. Nor are there rules of evidence prohibiting corroboration, eyewitness and prompt reporting requirements, and the admission of victims' sexual history at the trail. The study concludes that the reforms did not advance the cause of rape victims by eliminating overly restrictive notions about what counts as rape and an intricate web of stereotypical myths surrounding rape law and its enforcement, within the criminal justice system. It proposes further comprehensive reforms, including degenderizing rape, eliminating force and resistance as the defining elements of rape, abolishing the marital-rape exemption, and re-categorized forcible rape, sexual assault and sexual coercion into three: *(a) sexual assault which does not involve violence, (b) sexual assault with threats of bodily harm, and (c) aggravated sexual assault that involves violence.* It also proposes that substantive rape law reforms should be accompanied by the promulgation of specific rules of procedure and evidence laws for rape cases.

CHAPTER ONE: INTRODUCTION

1.1 Background

The social fact of sexual violence and its harmful effects not just on the individual but also on society at large are indisputable. Sexual violence is an everyday occurrence around the world. It affects about a billion women and girls over their life-times.[1] Its adverse health consequences are long lasting. For women aged between 15 and 44, sexual and other forms of gender-based violence are higher risk factors for death and disability than are cancer, war and motor vehicle accidents.[2] The overall consensus now is that sexual violence constitutes the most pervasive human rights violation that devastates lives, fractures communities and stalls development.[3] At the same time, the laws that were put in place supposedly to fight sexual violence embody biased assumptions and standards against rape victims, who are predominately women and girls.[4] Since the late 1970s and early 1980s, rape laws, procedural and evidentiary rules applicable for rape cases as well as the treatment of rape victims within the criminal justice system (CJS) have been subjected to extensive criticism.[5] Particularly, feminist anti-rape movements and crime control groups targeted

---

[1] Equality Now (2017) *The World's Shame, the Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence*, p. 5, available at: https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/308/attachments/original/1527599090/EqualityNowRapeLawReport2017_Single_Pages_0.pdf?1527599090 last visited on 9/12/2018.

[2] United Nations Development Fund for Women (2008) *Violence Against Women: Facts and Figures*, available at: http://www.unifem.org/attachments/gender_issues/violence_against_women/facts_figures_violence_against_women_2007.pdf last visited on 9/12/2018.

[3] *Ibid*, p. 1.

[4] Joan McGregor (2011) 'The Legal Heritage of the Crime of Rape', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Abingdon: Routledge, Chapter 3, p. 71.

[5] Joan McGregor (2011), *ibid*, p. 79; Wendy Larcombe (2011) 'Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law', *Feminist Legal Studies* 19(1), pp. 27-45, p. 30; Leigh Bienen (1980) 'Rape III-National Developments in Rape Reform Legislation', Women's Rights Law Reporter 6(3), pp. 170-213, p. 171; Regina Graycar and Jenny Morgan (2005) 'Law reform: What's in It for Women?', *Windsor Yearbook of Access to Justice* 23(2), pp. 393–419, p. 394; Amy L. Chasteen (2001) 'Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault', *Sociological Spectrum* 21(2), pp. 101-139, pp. 106-111; and Patricia Searles and Ronald J. Berger (1987) 'The Current Status of Rape Reform Legislation: An Examination of State Statutes', *Women's Rights Law Reporter* 10(1), pp. 25-44, p. 25.

rape laws, on the grounds that the laws had failed to protect women from sexual aggression, are manifestly biased against women, and rest on derogatory assumptions.[6]

They further argued that the law defined rape too restrictively, required the corroboration of the victim's testimony and proof of physical resistance against the attacker while allowing the offender to use evidence of the victim's past sexual behavior to discredit her account or imply consent.[7] They were also critical of the attitudes of the key actors within the CJS – the police, prosecutors and judges – who, they thought, employ biased assumptions and standards and perpetuated the injustices against the interests of women.[8] Critics maintained that by discouraging rape victims from reporting the crime to the police and permitting rapists to escape prosecution, these rules and biased practices created major barriers to the successful prosecution of rapists.[9] In response to these concerns, states across jurisdictions have introduced reforms to their respective rape laws and related rules of procedural and evidentiary laws.[10]

The reforms in many jurisdictions were largely geared towards making the crime of rape gender-neutral, eliminating force and resistance requirements, broadening the scope of sexual acts beyond sexual intercourse, abolishing the marital-rape exemption, eliminating the corroboration requirement, and enacting the so-called rape shield laws that limit the admissibility of evidence regarding the victim's prior sexual history,[11] and the admission of psychological evidence

---

[6] Jennifer Temkin (1982) 'Towards a Modern Law of Rape', *The Modern Law Review* 45(4), pp. 399-419, p. 399.
[7] Cassia Spohn and Julie Horney (1993) 'Rape Law Reform and the Effect of Victim Characteristics on Case Processing', *Journal of Quantitative Criminology* 9(4), pp. 383-409, p. 383; and Joan McGregor (2011), *supra note* 4, p. 71.
[8] Joan McGregor (2011), *ibid*, pp. 71-73.
[9] Cassia Spohn and Julie Horney (1993), *supra note* 7, p. 71.
[10] Joan McGregor (2011), *supra note* 4, p. 79; Wendy Larcombe (2011), *supra note* 5, p. 30; Leigh Bienen (1980), *supra note* 5, p. 171; Regina Graycar and Jenny Morgan (2005), *supra note* 5, p. 394; Amy L. Chasteen (2001), *supra note* 5, pp. 106-111; and Patricia Searles and Ronald J. Berger (1987), *supra note* 5, p. 25.
[11] Julie Horney and Cassia Spohn (1991) 'Rape Law Reform and Instrumental Change in Six Urban Jurisdictions', *Law and Society Review* 25(1), pp. 117-154, p. 118; Leigh Bienen (1980), *ibid*; Ronet Bachman and Raymond Paternoster (1993) 'A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?', *The Journal of Criminal Law and Criminology* 84(3), pp. 554-574, pp. 556–560; Richard Klein (2008) 'An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness', *Akron Law Review* 41(4), pp. 981-1058; and Kathleen Daly and Brigitte Bouhours (2010) 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries', *Crime and Justice* 39(1), pp. 565-650, pp. 577-576.

regarding post-traumatic stress disorder (PTSD).[12] The goals of these reforms were both symbolic and instrumental. As most feminists viewed the law as a symbol of male authority, a system of social control and a symbolic index of social attitudes,[13] they targeted the legal system as a precondition to broader social changes because of its role in legitimizing sexual violence against women (SVAW) and its capacity to influence public perceptions of women's problems.[14] The symbolic and educational goals of the reforms, therefore, include abolishing legal rules that were thought to embody biased and sexist assumptions, and a concomitant change in attitudes and assumptions about rape as reflected and reinforced by the laws.[15] The reforms' main goals have, however, been the instrumental ones such as encouraging victims to report the crime, facilitating the prosecution of the offenders, and alleviating the ordeals of rape victims, within the CJS.[16]

According to Ronald J. Berger *et al*., the reforms aimed at "increasing the reporting, prosecution, and conviction of rape cases; improving the treatment of rape victims in the [CJS]; prohibiting a wider range of coercive sexual conduct[s]; and expanding the range of persons protected by the law."[17] The advocates of the reforms also anticipated that the legal reforms, in instrumental terms, would increase not just the likelihood that victims will report the crime to the police but also cooperate with law enforcement organs, reduce the intense attacks on the credibility of victims

[12] Laura Hengehold (2000) 'Remapping the Event: Institutional Discourses and the Trauma of Rape', *Signs* 26(1), pp. 189-214, p. 191.
[13] Vanessa E. Munro and Carl F. Stychin (2007) 'Introduction', in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law: Feminist Engagements*, New York: Routledge-Cavendish, pp. xi-xii; and Catharine A. Mackinnon (1983) 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence', *Signs* 8(4): 635-658.
[14] Vicki McNickle Rose (1977) 'Rape as a Social Problem: A By product of the Feminist Movement', *Social Problems* 25(1), pp. 75-89, p. 78; and Vivian Berger (1977) 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom', *Columbia Law Review* 77(1), pp. 1-103.
[15] David P. Bryden and Sonja Lengnick (1997) 'Rape in the Criminal Justice System', *the Journal of Criminal Law and Criminology* 87(4), pp. 1194-1384, p. 1198; Ronald J. Berger *et al.* (1988) 'The Dimensions of Rape Reform Legislation', *Law and Society Review* 22(2): 329-358, p 329; and Vicki McNickle Rose (1977), *ibid,* pp. 75-76.
[16] David P. Bryden and Sonja Lengnick (1997), *ibid,* pp. 1198-1199; and Searles and Ronald J. Berger (1987), *supra note* 5, p. 25.
[17] Ronald J. Berger *et al.* (1991) 'The Social and Political Context of Rape Law Reform: An Aggregate Analysis', *Social Science Quarterly* 72: pp. 221–238, p. 221.

during rape-case proceedings, and increase rates of prosecution and conviction.[18] However, subsequent studies on the effects of the reforms did not offer conclusive evidence that rape law reforms brought about the desired instrumental outcomes as some researchers report evidence of improved outcomes[19] while others provide little evidence that the reforms have impacted the CJS.[20]

In Ethiopia, reforming rape law was on the public agenda in late 1990s and early 2000s with an advocacy research conducted by a women's rights advocacy group, the Ethiopian Women Lawyers Association (EWLA), on the 1957 Penal Code vis-à-vis the FDRE Constitution and international human rights standards. The findings of the research exposed the discriminatory features of the Penal Code, particularly with respect to women's sexual rights, and brought to attention the need for several legal reforms. Partly in response to demands from women's rights advocacy groups, and as part of the overall revision of the 1957 Penal Code, the lawmaker has introduced reforms to the Ethiopian rape law, in 2004. The stated impetus for the reforms was mainly the recognition of women's human rights by the FDRE Constitution and the international human right instruments adopted by Ethiopia.[21] The Revised Criminal Code (RCC), which came into effect on the 9th of May of 2005, has brought some improvements, compared to its predecessor. Moreover, the legal reforms have either been preceded or accompanied by various policy reforms and measures, as far as sexual and other forms of VAW are concerned. The present study deals with rape law and policy reforms in Ethiopia as important public policy, human rights and gender issues.

---

[18] Cassia C. Spohn (1999) 'The Rape Reform Movement: The Traditional Common Law and Rape Law Reforms', *Jurimetrics* 39(2), pp. 119-130; Leigh Bienen (1980), *supra note* 5, p. 171; Julie Horney and Cassia Spohn (1991), *supra note* 11, p. 118; and Cassia Spohn and Julie Horney (1993), *supra note* 7, p. 384.

[19] *See for e.g.*, David John Frank *et al.* (2009) 'The Global Dimensions of Rape-Law Reform: A Cross-National Study of Policy Outcomes', *American Sociological Review* 74: 272-290, pp. 285-286; and Stacy Futter and Walter R. Mebane Jr (2001) 'The Effects of Rape Law Reform on Rape Case Processing', *Berkeley Women's Law Journal* 16: pp. 68-72.

[20] *See for e.g.,* Kenneth Polk (1985) 'Rape Reform and Criminal Justice Processing', *Crime & Delinquency* 31: pp. 191-205; and Ilene Seidman and Susan Vickers (2005) 'The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform', *Suffolk University Law Review* 18: pp. 467-91, p. 470.

[21] Proclamation No. 414/2004, The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Addis Ababa, 9th May, 2005, Preamble para. 1 [Here-in-after the "Revised Criminal Code"].

1.2 Statement of the Problem

Numerous studies conducted in various settings and regions in the FDRE clearly show that sexual violence is widespread and common.[22] These studies also indicate that the victims of sexual violence are predominately women and girls and that most of the offenders are men. Since sexual violence is an issue that disproportionately affects women and girls, it is a gendered problem.[23] Sexual violence has adverse effects on victims' mental, physical and reproductive health and socio-economic well-being. The threat of sexual violence diminishes the autonomy of women by altering their lifestyles and restricting certain choices, for example, the freedom of movement, in order to minimize the risk of being raped.[24] Above all, sexual violence denies women and girls of fundamental human rights.[25]

Nonetheless, the proportion of rape victims who report the incident to the police and seek justice is notoriously low. In those few cases that are reported, most offenders will never be arrested and prosecuted.[26] Even where the offender is prosecuted and convicted, he is often inadequately punished while having left the victim with permanent emotional trauma and physical scar.[27]

---

[22] *See infra* Chapter 3 Section "3.2. Magnitude and Nature of the Problem" with accompanying notes.
[23] CARE Ethiopia (2008) *The Status of Gender Based Violence and Related Services in Four Woredas (Woredas surrounding Bahir Dar town, Burayu woreda, Bako woreda and Gulele Sub-city of Addis Ababa),* CARE Ethiopia, February 2008, p. 8.
[24] Brande Stellings (1993) 'The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship', *Harvard Civil Rights-Civil Liberties Law Review* 28(1), pp. 185-216, p. 188.
[25] UNICEF (2000) 'Domestic Violence against Women and Girls', *Innocenti Digest*, No. 6, P. 8, available at: https://www.unicef.org/malaysia/ID_2000_Domestic_Violence_Women_Girls__6e.pdf last visited on 1/27/2019.
[26] Mersha Shenkute (2013) *Causes and Socio-Health Effects of Rape on Women at Gandhi Memorial Hospital in Addis Ababa, Ethiopia*, MSW Thesis, Indira Gandhi National Open University, pp. 42-55; Gessessew A. and Mesfin M. (2004) 'Rape and Related Health Problems in Adigrat Zonal Hospital, Tigray Region, Ethiopia', *Ethiopian Journal of Health Development* 18(3), pp. 140-144, p. 142; and Seblework Tadesse (2004) *Assessment of Sexual Coercion among Addis Ababa University Female Students*, Mph Thesis, Addis Ababa University, p. 29.
[27] Emebet Kebede (2004) 'Protection of Women from Violence under the Criminal Law and under the Criminal Law Amendment Proposals', Reflections: *Documentation of the forum on gender*, number 10, Addis Ababa: Panos Ethiopia, pp. 68-71; and Sara Tadiwos (2001) 'Rape in Ethiopia' in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender*, Number 5, Addis Ababa: Panos Ethiopia, pp. 20-22, available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf.

During the criminal proceedings, rape victims have often been "treated as criminals themselves."[28] As Sara Tadiwos succinctly put it, "the victim, rather than the rapist, is put on trial, rendering rape still a serious threat to women."[29] In handling rape cases, the key actors within the CJS – the police, prosecutors and judges – employ biased assumptions against rape victims. As Sara further noted, "social attitudes and their articulation in the legal process operate to protect not the victim but the rapist" and that "[a]s things stand now, being raped is what is punished and what at the same time constitutes the crime."[30]

However, the post-1991 political transition, with the government's official commitment to democracy and a constitution based on universal human rights, offered unprecedented opportunities to Ethiopian women to engage in rights-based activism to address the problem of sexual and other forms of VAW, using the legal framework.[31] In early 2000s, women's rights activists campaigned for legal reforms by highlighting the apparent discrepancies between the provisions of the 1957 Penal Code and the human rights standards.[32] Partly in response to their demands and as part of the overall revision of the 1957 Penal Code of Ethiopia, the lawmaker has introduced reforms to the Ethiopian rape law. The stated impetus for the reforms was mainly the recognition of women's human rights by the FDRE Constitution and the international human right instruments adopted by Ethiopia.[33] The RCC came into effect on the 9th of May of 2005. In comparison to its predecessor, it has made some progresses on sexual offence and other forms VAW. For instance, the RCC has abolished the immunity of rapists in the event of subsequent

---

[28] Indrawatie Biseswar (2011) *The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality 1974-2005*. University of South Africa, South Africa, p. 186, available at: http://uir.unisa.ac.za/bitstream/handle/10500/5538/dissertation_indrawatie_b.pdf?sequence=1 last visited on 10/29/2018.
[29] Sara Tadiwos (2001), *supra note* 27, p. 6.
[30] *Ibid.*
[31] Gemma Burgess (2013) 'A Hidden History: Women's Activism in Ethiopia', *Journal of International Women's Studies* 14(3), pp. 96-107, p. 105.
[32] Gemma Burgess (2011) 'The Uneven Geography of Participation in the Global Scale: Ethiopian Women Activists at the Global Periphery', *Globalizations* 8(2), pp. 163–177, p. 164.
[33] The Revised Criminal Code, *supra note* 21, Preamble para. 1.

conclusion of marriage with their victims,[34] and introduced reforms in the penalty structure of rape, including a mandatory minimum sentence and penalty gradations with a continuum of acts that specified varying degrees of gravity.[35] It has also criminalized other practices that men in patriarchal societies use to deny women of their sexuality such as female genital mutilation (FGM) including *clitoridectomy* and infibulation,[36] and to force men's sexuality upon women, such as child marriage and marriage by abduction.[37] The RCC has also made a specific reference to the so-called domestic violence.

Furthermore, the 2004 rape law reforms have either been preceded or accompanied by various policy reforms. The principal policy reforms include the establishment of special (women's and children's) investigation and prosecution units at least at each sub-city level police department and the FDRE Federal Attorney prosecutors' office in Addis Ababa. Likewise, special trial benches for sexual and other forms of VAWC (Violence against Women and Children) have been established at least in five divisions of the Federal First Instance Court in Addis Ababa. In these trial benches, child rape victims have been testifying via closed circuit television (CCTV) system and questioned through a third person, a trained social worker acting as a buffer against hostile and intimidating questions from the offenders or their lawyers. Most importantly, as of 2008, a pilot one-stop center has been set up at the Gandhi Memorial Hospital in Addis Ababa, with the objective of providing medical, counselling and legal services to rape victims and other forms of VAW at one place and in a hospital setting. With similar objectives, referral systems and a coordination mechanism (between the various players within the CSJ and beyond) have been set up. In addition to the provision of legal literacy services to the general public, capacity building trainings have been given to the key actors within the CJS on a more or less regular basis.

---

[34] The Revised Criminal Code, *ibid*, Article 620 and Article 587(3). *But see*, the Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957, Article 599 and Article 558 (2), *Negarit Gazeta*, 16th Year No. 1, Addis Ababa, 23rd July 1957 [Here-in-after the "Penal Code"].
[35] *Ibid*, Article 620.
[36] *Ibid*, Article 565 and Article 566.
[37] *Ibid*, Article 648 and Article 567.

Yet, subsequent to these legal and policy reforms, significant questions remain regarding how far the reforms have produced instrumental impacts in terms of improving police reporting, attrition, prosecution and conviction rates for rape cases. Neither is it clearly known (if and) how far the treatment of rape victims and the handling of rape cases within the criminal justice system has improved, subsequent to the reforms. Therefore, using a largely qualitative method of enquiry, the present study addresses these very important public policy, human rights and gender issues. To this end, it identifies the main strands of the 2004 rape law and the preceding or accompanying policy reforms. Then, it evaluates the instrumental impacts of the reforms in one urban jurisdiction, Addis Ababa. In doing so, it employs reform outcome indicators such as the trends of police reporting, attrition, prosecution and conviction rates for rape cases in the post-reform period. In evaluating whether the reforms have shifted the focus away from the characteristics of the victim to the criminal conduct of the offender in rape case-processing within the CJS, it examines the factors that have been considered in rape case decision making subsequent to the reforms. Finally, it assesses the limits or weaknesses of the legal and policy reforms in affording greater protection to rape victims by eliminating overly restrictive notions about what counts as rape, and an intricate web of stereotypical myths surrounding rape law and its enforcement within the CJS.

1.3 Research Objectives

The general objectives of this study are:

- ✓ to identify the main strands of the 2004 rape law reforms and the preceding or accompanying policy reforms;

- ✓ to evaluate the effects of 2004 rape law reforms and the preceding or accompanying policy reforms, in terms of improving police reporting, attrition, prosecution and conviction rates for rape cases and the handling of rape cases, with the CJS; and

- ✓ to assess the limits/weaknesses of the rape law and policy reforms in advancing the cause of rape victims by eliminating overly restrictive notions about what counts as rape, and an

intricate web of stereotypical myths surrounding rape law and its enforcement within the CJS.

Having the above general objectives in view, this study seeks to address the following specific questions:

- ✓ What are the main strands of the 2004 rape law reforms and the preceding or accompanying policy reforms?
- ✓ Are rape victims more likely to report their experience to the police following the 2004 rape law reforms and the preceding or accompanying policy reforms?
- ✓ What is the overall trend of the rate of attrition, prosecution and conviction for rape cases in the post-reform years?
- ✓ What are the influences of victim characteristics on rape case-processing within the CJS in post-reform years? Has there been a shift of focus in post-reform years?
- ✓ What are the main weaknesses of the rape law and policy reforms in affording adequate protection to rape victims by eliminating overly restrictive notions about what counts as rape, and an intricate web of stereotypical myths surrounding rape law and its application within the CJS?

1.4 Research Methodology

1.4.1 Research Design

This study is designed within an interpretivist-constructionist perspective. Taking account of the nature of the research questions and challenges to obtain data, it employs a qualitative approach. Such an approach allows for a closer examination of the strands, effects and limits of the rape law and policy reforms and helps to contextualize the issues. Data were gathered from primary, secondary and tertiary sources. The primary source comprises data obtained directly from key

informants and rape victims as well as from various legal documents including the Constitution, the international human rights instruments adopted by Ethiopia, the Revised Criminal Code, the Criminal Procedure Code, the 1957 Penal Code, and other relevant laws published in the Federal *Negari*t Gazette as well as court cases. The secondary and tertiary sources include articles in scholarly journals, reports, theses, conference papers, books, treatises, commentaries, abstracts, bibliographies, dictionaries, encyclopedias, and reviews. Interviews, trial observations, questionnaires, and records of crime statistics were used to gather the required data.

1.4.2 Instruments and Procedures of Data Collection

Interviews: Interviews were conducted with various key informants and rape victims. First, interviews with seven key informants within the CJS were conducted. Accordingly, interview was conducted with one judge from the 7th (Women's and Children's) Criminal Bench, Lideta Division, Federal First Instance Court, who also had previously worked as a prosecutor for 12 years and has been a Coordinator of VAWC Unit at the Federal Attorney General Sub-city Office.

Interviews were also conducted with four prosecutors. While three of the prosecutors had previously been serving in the prosecution units in charge of handling rape cases along with other forms of VAWC, and were coordinators of the special prosecution units at the Federal Attorney General's Sub-city offices, the remaining one had been the head of a department of the Federal Attorney General tasked with women's and children's affairs, and a prosecutor at the VAWC Unit at the Federal Attorney General Sub-city office.

Of the two police officers interviewed, one has been serving as the head of the unit in charge of investigating VAWC cases, at the Sub-city Police Department while the remaining one had been an investigator in the same unit. The interviews, which were semi-structured, lasted between one and two hours each and were conducted at the interviewees' work place, during working hours.

In addition, interviews with two key informants from women's human rights advocacy groups were conducted. One of the interviewees has been working as the Executive Director of the Network of Ethiopian Women's Associations (NEWA) while the other has been working as a

representative of the Ethiopian Women Lawyers' Association (EWLA), at the time of the study. Both interviews were conducted between March 15 and March 18, 2019 at the head office of the interviewees' respective organization, and lasted about an hour each. Permission was obtained to tape-record their interviews. Similarly, an interview with two social workers at the Federal First Instance Court, Lideta Division, Social Work Department was conducted. This was unstructured interview and conducted with both interviewees at a time and place. The interview focused only on the conduct of rape trials in which the interviewees were involved as social workers.

Most importantly, interviews were conducted with six rape victims. Interview with one victim was conducted on March 17, 2018, by women with experience in conducting research on VAW, in a private area within the premises of the Nifas-Silk-Lafto Police Department. Interviews with the remaining five victims were conducted between March 18 and March 26, 2019, by two trained women social workers, inside the counseling room of the social work department, Lideta Division, Federal First Instance Court. The interviews, which were semi-structured, were conducted during working hours and lasted about an hour each. While interviewing the victims, all ethical standards pertinent to research on VAW were strictly observed.

Trial observation: With a view to learning about the manners and settings in which rape trials were conducted, and the types of questions posed to rape victims at the trials, rape trial observation was done at the 7th Criminal Bench (Women's and Children's), the Federal First Instance Court, Lideta Division, the oldest special trial bench on VAWC, from October 30 to November 3, 2017 and November 27 to November 30, 2017. Normally, rape-case trial is closed to the public and tried *in-camera* where it involves adult victims and where the prosecutors' witnesses are heard. Whereas, in cases involving minors, the prosecutors' witnesses are heard in public, but the victims are given the opportunity to testify via a CCTV system. Rape-case trials are fully conducted in public where the offenders' defense witnesses are heard. Thus, rape-trial observation was limited to cases where the trials were open to the public.

Questionnaire: In examining whether the reforms have led to a shift of focus from the character, reputation and behavior of the victim to the criminal conduct of the offender in rape-case

proceedings, the present study considers the effects of factors which were identified in various studies as leading decision makers to blaming the victim or questioning the victim's credibility or determine the outcomes of rape-case processing within the CJS in one urban jurisdiction, Addis Ababa. To this end, a questionnaire was developed and distributed to collect data from the concerned bodies. Accordingly, police officers, prosecutors, defense lawyers, attorneys, and judges who had actually participated in handling and making decisions on rape cases, in their respective capacities, were carefully identified as respondents. The questionnaire was originally prepared in English and then was translated into Amharic with the assistance of experts, for ease of understanding by the respondents. Amharic was chosen because it is the official language of the selected urban jurisdiction. All of the 47 questionnaires distributed to the participants were properly filled and returned. Once the questionnaires were collected, they were translated back into English for analysis purposes.

Crime statistics from the law enforcement agencies: statistics on police reporting, prosecution and conviction rates for rape cases are considered crucial indicators for measuring the impacts of the legal and policy reforms. Figures on police reporting, prosecution and conviction have been considered both a baseline data and key indicators on the state's response to sexual violence and other forms of VAW.[38] For instance, an increasing police reporting trend indicates decreased tolerance to SVAW and increased victims' confidence in the CJS.[39]

Likewise, prosecution and conviction rates show the impact of the reforms. According to Yakin Ertürk, the UN Special Rapporteur on VAW, "the proportion of cases that are prosecuted and which result in convictions act as a measure of whether the impediments in how cases are processed and discriminatory procedural rules have been removed."[40] Prosecution rates not only mirror an increased trend in police reporting, but also grow independently, if the legal and policy

[38] The United Nations Human Rights Council (2008) *Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk - *Addendum - The Next Step: Developing Transnational Indicators on Violence Against Women*, A/HRC/7/6/Add. 5, para. 330.
[39] *Ibid.*
[40] *Ibid*, para. 290.

reforms have brought about the desired instrumental impacts.[41] Conviction rates should, at least, stay constant and increase only if the reforms had been effective.[42] They should not be lower than the rates for other offences since, in many cases of VAW, the identity of the offender is known.[43]

Particularly, attrition rate is considered as the basic process and outcome indicator through examining the so-called "justice gap"[44] – the difference between the number of persons brought before the CJS and the number of persons receiving convictions.[45] According to Yakin Ertürk, "[t]racking attrition across all forms of VAW offers one of the most powerful and revealing indicators of state responses, assessing the effectiveness of laws, actions of state officials in fulfilling rights and the good will of governments in implementation."[46] The Rapporteur adds that "[u]sing attrition as an outcome indicator offers not only a common measure across the range of forms of VAW, but also one that comprises three key dimensions – reporting, prosecution and convictions. It is also one of the few measures which [can be] used [to systematically] track trends over time."[47]

Generally, the present study uses police reporting, attrition, prosecution and conviction rates as indicators of the outcomes of the reforms. As Yakin Ertürk pointed out, "the reporting rate shows whether efforts to ensure remedies are enjoyed are being effective in increasing [reporting]; the proportion of cases that are prosecuted and which result in convictions act as a measure of whether the impediments in how cases are processed and discriminatory procedural rules have been removed."[48] Accordingly, the present study uses the trend in attrition rates for sexual offences over

---

[41] *Ibid*, para. 330.
[42] *Ibid.*
[43] *Ibid.*
[44] Sylvia Walby, Jo Armstrong and Sofia Strid (2011) 'Developing Measures of Multiple Forms of Sexual Violence and Their Contested Treatment in the Criminal Justice System', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Chapter 4, Abingdon: Routledge, p. 108.
[45] Jennifer M. Brown and Sandra (2011) 'Glossary of Terms', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Abingdon: Routledge, p. 502.
[46] The United Nations Human Rights Council (2008), *supra note* 38, para. 311.
[47] *Ibid*, para. 330.
[48] *Ibid*, para. 290.

time as key for evaluating the instrumental impacts of the reforms. Here, attrition rate is defined as the proportion of cases that "fall out" over the course of the criminal proceedings.[49] It is the percentage of cases which are discontinued, and thus fail to reach trial and/or result in a conviction.[50] A decline in attrition rates implies improvement, as it suggests that a smaller proportion of cases are dropping out,[51] and the vice versa.[52] That is, if there is an increase in attrition rate, less victims have access to justice, implying deterioration.[53]

There are three crucial stages at which attrition occurs: the police investigation stage, the prosecution stage and the trial stage.[54] One may analyze the attrition rate for each of the various stages within the CJS, separately.[55] Another approach would be to track individual cases across the CJS to monitor attrition more accurately at the different stages in the process.[56] This approach presumes that all institutions within the CJS that keep their own records of data follow consistent data entry, storage, retrieval, and analysis standards in compatible data bank systems.[57] As this is not the case in the Ethiopian CJS, the present study calculates the attrition and prosecution rates for different parts of the CJS separately: at the *investigation stage* (from the number of cases recorded, to those referred for prosecution), at the *prosecution stage* (from the number of cases referred for prosecution, to those charged at the trial-court), and at the *trial stage* (whether cases remain at trial-court and tried or are dismissed or withdrawn).

---

[49] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 100; the United Nations Human Rights Council (2008), *supra note* 38, *ibid*, para. 290; and Jennifer M. Brown and Sandra (2011), *supra note* 45, p. 501.
[50] Jo Lovett and Liz Kelly (2009) *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe*, Final Research Report, Child and Women Abuse Studies Unit London Metropolitan University, p. 17, available at: http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/197/different last visited on 9/12/2018; and Amnesty International (2010) *Case Closed: Rape and Human Rights in the Nordic Countries*, Summary Report, London, United Kingdom: Amnesty International Publications, p. 5.
[51] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 100.
[52] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *ibid*; and The United Nations Human Rights Council (2008), *supra note* 38, para. 290
[53] Jo Lovett and Liz Kelly (2009), *supra note* 50, p. 17.
[54] *See generally*, *ibid*, pp. 19-22.
[55] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 107.
[56] *Ibid*.
[57] Jörg-Martin Jehle (2012) 'Attrition and Conviction Rates of Sexual Offences in Europe: Definitions and Criminal Justice Responses', *European Journal of Criminology* 18(1), pp.145–161, p. 146.

Conviction rate is a measure of the extent to which the offenders are held to account by the CJS, through convictions.[58] It refers to the proportion of crimes committed that results in conviction. An increased rate of conviction implies improvement while a lower rate implies deterioration. Depending on the starting and end points of its measurement, conviction rate can be defined differently. There are at least three possible starting points for measuring conviction rates: the number of crimes that are recorded by the police, the number of crimes reported in the national crime victimization surveys, and the number of crimes prosecuted. The most comprehensive approach for calculating conviction rates would be to use the earliest possible point at which the numbers of crimes are measured – the national crime victimization survey. A narrower approach is to measure it from the point of prosecution. In measuring conviction rates, the present study adopts the latter approach. It measures the conviction rate using the number of rape cases which are prosecuted and tried, against those cases that are convicted.

Desk Review: In the process of identifying the main strands and limits of the rape law and policy reforms, the present study utilizes domestic legislations as well as regional and international human rights instruments including cases, reports, comments and recommendations by regional and international human rights bodies. It also analyses 13 and two randomly selected rape-case files from the Federal First Instance Court and the Federal Prosecutor General's public prosecutor offices, respectively. All files were decided by the court of first instance in the post-reform years and selected from the courts and prosecutor's offices having jurisdiction in Addis Ababa City. Efforts were also made to select cases from each post-reform year, with a view to examining the effects of the reforms over time. Moreover, the study utilizes crime statistics from the Federal First Instance Court's digital database system, primarily to examine the courts' sentencing practices on rape cases, following the reforms, and to determine the time taken for disposing rape cases, within the CJS. In addition, it extensively uses secondary and tertiary data including articles in scholarly journals, reports, theses, conference papers, books, treatises and commentaries.

[58] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 106.

1.4.3 Data Sources, Time and Sampling

The study seeks to identify the strands of the rape law and policy reforms, evaluate the effects of the reforms and assess the limits of the reforms in one urban jurisdiction, Addis Ababa City Administration. This urban jurisdiction was selected on the presumption that, there would be a more systematic record of data, compared to other cities or jurisdictions in rural settings. Out of the ten sub-cities of the Addis Ababa City Administration, five sub-cities with the highest number of reported rape cases since the post-reform years were selected to participate. The five sub-cities were Bole, Kolfe-Keraniyo, Yeka, Nifas-Silik-Lafto and Arada. At the trial level, Lideta sub-city was also included in the sample because, before the expansion of women's and children's benches to the Federal First Instance Court's divisions in the sample sub-cities, all rape cases were tried at Lideta Division, 7th (Women's and Children's) Bench. In addition, rape cases in one of the sample sub-cities, Arada, was tried at Lideta Division along rape cases from two sub-cities, which were not included in the sample – Lideta and Addis Ketema sub-cities.

Generally, the respondents were selected using purposive sampling, targeting the most experienced actors and important players within the CSJ who have had a direct involvement in the handling of rape cases. The reason for using purposive sampling was to maximize the depth and breadth of data required for the study. Accordingly, police officers, prosecutors, defense lawyers, attorneys, and judges who had actually participated in handling and making decisions on rape cases, in their respective capacities, were carefully identified and participated as respondents. Accordingly, using interviews and questionnaires, data were collected between October 26, 2017 and March 26, 2019.

The study measures police reporting, attrition, prosecution and conviction rates on a year-by-year basis, using crime data obtained from relevant institutions within the CJS. Data on police reporting trends were obtained from the Addis Ababa Police Commission. Accordingly, a total of six years of data records on police reporting in the post-reform period, from 1997-1999 E.C., and from 2005-2007 E.C. were accessed and analyzed. On the other hand, data for measuring attrition, prosecution and conviction rates for VAW in general were collected from the Office of the Federal Attorney General, where five years of data records, from 2005-2009 E.C., were accessed and analyzed. In

analyzing these data, the year 1997 E.C. was taken as a point of reference marking the post-reform years for two reasons. First, 1997 E.C. was the year when the RCC came into effect. Second, the various policy reforms were not introduced at one particular time. Data on police reporting, attrition, prosecution and conviction rates were collected from all ten sub-cities in Addis Ababa City Administration.

1.4.4 Reliability and Validity of the Data

Reliability: All the data collection and coding works were carried out by the researcher himself. No assistant data collector participated except in conducting interviews with rape victims. This has helped ensure the reliability of the research and maintain consistency in data collection procedures. In addition, at the initial stage, about ten questionnaires were distributed. In this pre-test, participants appeared to be reluctant to fill in open-ended questions. Taking note of this, during the actual administration, the questionnaires were revised to include an option for respondents to skip the open-ended items, if they wished so. Instead, the open-ended items were addressed through the interviews with key informants and rape victims.

Validity: Throughout the various stages of the study, due care has been taken to ensure the validity of the instruments by constantly checking them against the research questions. A variety of measures have been taken in this regard. They have been further validated with in a variety of ways. The instruments were carefully designed with the guidance and assistance of two research advisors. The preparation of the items, particularly the questionnaire items, was done with additional technical support from language experts. Two language and literature experts were hired for this as well as the translation of questionnaire items and data from English into Amharic and vice versa. Moreover, an assistant was hired to code, enter and clean the data for analysis using SPSS. Throughout the data collection, coding and analysis process, notes had been taken to identify issues within the data and orientation has been given to the data encoder accordingly.

1.4.5 Data Analysis

Regarding the data analysis techniques, qualitative data were organized in line with the objectives of the research, and transcribed, coded and analyzed using qualitative data analysis procedures. Specifically, data were systematically organized into related themes and categories, in accordance with the main objectives of the study, based on which analyses and interpretations were made. On the other hand, simple descriptive statistics were used in analyzing the trends of police reporting, attrition, prosecution, and conviction rates of rape cases. Similar descriptive statistics were used in analyzing data collected through questionnaires, and Chi-square tests were carried out to determine statistical significance, using SPSS. All along, efforts were made to triangulate data from various sources. Finally, a comprehensive interpretation of data from all sources was done and corresponding inferences made and conclusions were drawn.

1.5 Scope and Limitations

The present study confines its scope to one form of VAW, namely, sexual violence. It specifically deals with sexual violence in peacetime as a human rights issue. Rape during armed conflict, which is mainly the subject of humanitarian law, is beyond the scope of the study, which, instead, is focused on rape committed by non-state actors outside the context of armed conflict. Specifically, the study focuses on rape committed by men against women; hence, rape committed by women against men and same-sex rape are excluded from the scope of the present study.

Moreover, as a first attempt to assess the effects and limits of rape law and policy reforms in Ethiopia, the study has some limitations. First, it assesses the effects of the 2004 rape law and the preceding or accompanying policy reforms in one urban jurisdiction – Addis Ababa. Getting a comprehensive understanding of the effects of the legal and policy reforms at national level necessarily requires conducting a nation-wide accounting of post-reform trends in police reporting, attrition, prosecution and conviction rates for rape cases. Despite these limitations, however, the study provides a valuable insight into the contemporary picture of the country's CJS as far as the trends in reporting, attrition, prosecution and conviction for rape cases as well as factors affecting rape case-processing within the CSJ in the post-reform years are concerned.

Second, in evaluating attrition rates, the ideal starting point would be at an earlier stage – the number of crimes actually committed, as estimated by crime victimization surveys, as opposed to the number reported cases.[59] However, the present study calculates the rates of attrition on the basis of reported and recorded cases as there has been, as of yet, no crime victimization survey in Ethiopia. In addition, within the CJS, data on VAW are not generally disaggregated and recorded by forms or types as physical, sexual or psychological violence. Nevertheless, measuring attrition is easiest where there is a specific criminal offence.[60] In Addis Ababa, data disaggregated by forms were available only at the level of police departments. This makes the possibility of estimating the exact and separate rates of attrition, prosecution and conviction for rape cases in the post-reform year nearly impossible.

At the prosecution stage, where crime data on attrition, prosecution and conviction rates were available, records were kept in three categories, depending on the units or tracks of the prosecution. VAWC cases were recorded separately in one category. Sexual offences were included and recorded in VAWC cases, making them available only in aggregated data. However, such aggregations of data were not random. All offences which are considered VAWC cases do share common features: they have been covered by the progressive legal and policy reforms and handled by the same special (women's and children's) investigation departments, prosecution units and trial benches. It follows that the reforms should be expected to yield lower attrition rates and higher conviction rates for VAWC than other offences, including those involving interpersonal violence in general. The present study, by comparing the attrition, prosecution and conviction trends of VAWC cases with other categories of crimes, draws general insights into attrition trends for sexual offence cases. It then triangulates the findings from the aggregated data, through interviews with key informants within the CJS. In this regard, it has been often argued that attrition, prosecution and conviction can be assessed with respect to areas that constitute named crimes under the

[59] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 100.
[60] The United Nations Human Rights Council (2008), *supra note* 38, para. 290.

criminal law.[61] Where there is no named crime, for instance, domestic violence or sexual violence, more complex methods will need to be devised for capturing data,[62] as the present study does.

Third, in evaluating the effects of the reforms, the study does not make comparisons between the pre-reform and post-reform periods. Rather, it only deals with the post-reform years' trends in police reporting, prosecution, attrition and conviction rates. There are challenges for doing a pre-reform and post-reform comparison study. First, institutional restructuring within the CJS and the subsequent changes in data recording procedures or practices might affect the continuity of the data series for a pre-reform and post-reform comparison. Second, the organs within the CJS were not using the same crime categorization schemes for data recording. Third, beside the issue of categorization, reported rape cases are not necessarily disposed of within the same year. Fourth, unlike rape law reforms that were introduced and came into effect at one particular time, the policy reforms have been introduced at various times, either preceding or accompanying the legal reforms. This aspect of the policy reforms makes the pre-reform and post-reform analysis very difficult. Above all, the present study is not a comparative research.

Finally, the present study considers factors which affect rape-case decision making, as identified in various studies to have been leading decision makers to blame the victim or question the victim's credibility or determine attrition rate for rape cases. Nonetheless, it only assesses whether these factors have been considered by the key actors within the CJS, in their decision making, and if so, how often. It does not intend to identify the existence of an association between consideration of these factors and attribution of blame and credibility to the victim or the outcome of rape case-processing, within the CJS.

---

[61] *Ibid*, para. 330.
[62] *Ibid.*

1.6 Ethical Considerations

As a way of obtaining the informed consent of informants, the purpose of the study was explained and consent was obtained from each participant, before beginning the interviews. To ensure anonymity, all statements of the interviewees were presented in this report using codes. The participants who filled in the questionnaire were also informed that they had the freedom to skip items or even totally decline filling in the questionnaire, if they wished. They were also fully informed that their response will be kept confidential and analyzed on an aggregate sample level. In addition to ensuring strict confidentiality and privacy of victim participants, the World Health Organization (WHO) ethical recommendations regarding research on VAW was strictly observed.[63] Accordingly, the interviews were arranged in a way that ensures the physical safety of the participants and reduce any possible distress. Furthermore, the interviews were undertaken with due attention to respecting the participants' rights and dignities. During the interview, all interviewees had basic support services including counseling.

1.7 Organisation of the Thesis

This thesis is organized into eight chapters including this introductory Chapter One. Chapter Two deals with conceptual and theoretical issues. Chapter Three presents preliminary information on the prevalence, magnitude and nature of sexual violence in Ethiopia. Chapter Four is devoted to issues revolving around human rights and VAW. Chapter Five ccontextualizes the 2004 rape law reforms and the preceding or accompanying policy reforms. Chapter Six evaluates the effects of rape law and policy reforms. Chapter Seven assesses the shortcomings of the legal and policy reforms. Chapter Eight summarizes the main findings of the study and their implications, and offers suggestions for further comprehensive reforms.

---

[63] World Health Organization (2016) *Ethical and Safety Recommendations for Intervention Research on Violence against Women*: *Building on Lessons from the WHO Publication*, Geneva: World Health Organization, p. 7.

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Introduction

This Chapter deals with conceptual and theoretical issues. The first section is devoted to conceptual framework. It conceptualizes rape as a form of violence against women (VAW). It also clarifies intersectional issues like sexual orientation, gender identity and gendered violence. Then, it deals with the definition of sexual violence. As one of the objectives of the present study is to identify myths surrounding rape law and its enforcement within the CJS, it also clarifies the concept of rape myths and their adverse effects in advancing the cause rape victims. The second section deals with etiological theories of rape. Of several theories on the etiology of rape against women, psychological, biological and feminist theories have been reviewed with reasonable details.

2.2 Conceptual Framework

2.2.1 Sexual Violence as a Gendered Problem

The terms VAW and gender-based violence GBV are often used interchangeably.[64] Even if the term GBV appears to refer to offences perpetrated against both men and women, it often refers to violence committed by men against women.[65] Nowadays, VAW is generally understood within a gender framework since it largely stems from women's subordinate status in society relative to men and has gendered causes and impacts.[66] According to the UN Declaration on the Elimination of Violence against Women (DEVAW), 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" and that it "is one of the crucial social mechanisms by which women are forced

---

[64] *See e.g.*, Mary Ellsberg and Lori Heise (2005) *Researching Violence Against Women: A Practical Guide for Researchers and Activists*, Washington DC, United States: World Health Organization, PATH, p. 11.
[65] Hilaire Barnett (1998) *Introduction to Feminist Jurisprudence*, London: Cavendish Publishing Limited, p. 264.
[66] Mary Ellsberg and Lori Heise (2005), *supra note* 64, p. 11; and Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19*, para. 9. [Here-in-after "General Recommendation No. 35"].

into a subordinate position compared with men."[67] In reiterating this, the Convention on the Elimination of all forms of Discrimination against Women (the CEDAW) Committee states that VAW is "rooted in gender-related factors such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behavior"[68] Generally, VAW is viewed "as a social – rather than an individual – problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors."[69] The present study also approaches the issue of sexual violence as form of VAW and as a gendered problem.

The study also embraces the definition of VAW as offered by the DEVAW: "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[70] Depending on the setting where it is committed, VAW can be categorized into three as violence committed in the family, violence committed in the community, and violence committed or condoned by the state. VAW in the family includes battering by intimate-partners, sexual abuse of female children in the household, dowry-related violence, marital-rape and FGMs and other practices harmful to women.[71] It also covers abuse of domestic workers such as involuntary confinement, physical brutality, slavery-like conditions and sexual assault.[72] VAW in the community includes rape, sexual abuse, sexual harassment and assault at work, in educational institutions and elsewhere.[73] Trafficking, forced prostitution and forced labor fall into this category, which also covers rape and other abuses by armed groups.[74]

---

[67] Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, at 217, U.N. Doc. A/48/49 (Dec. 20, 1993). (Here-in-after the "DEVAW"), preamble para. 6.
[68] General Recommendation No. 35, *supra note* 66, para. 19.
[69] *Ibid*, para. 9.
[70] The DEVAW, *supra note* 67, Article 1.
[71] Amnesty International (2004) *It's in Our Hands: Stop Violence against Women*, London: Amnesty International, p. 2, available at: http://www.oneinthree.com.au/storage/pdfs/Amnesty_SVAW_report.pdf last visited on 1/26/2019.
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*

VAW committed or condoned by the state includes acts of violence committed or condoned by police, prison guards, soldiers, border guards, immigration officials and so on.[75]

In any of these categories, VAW may be physical, psychological, and sexual. Physical violence typically includes slapping, beating, arm twisting, stabbing, strangling, burning, chocking, kicking, threats with objects or weapon, and murder.[76] Psychological violence includes insult, belittling, threats of abandonment or abuse, confinement to the home, surveillance, and threats to take away custody of the children, destruction of objects, isolation, verbal aggression and constant humiliation.[77] Sexual violence, which is the prime subject matter of the present study, exists along a continuum from unwanted touching to murder rape. According to L. Kelly, for instance, sexual violence includes "any physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact."[78]

The WHO defines sexual violence as encompassing "a wide range of acts, including coerced sex in marriage and dating relationships, rape by strangers, systematic rape during armed conflict, sexual harassment (including demands for sexual favors in return for jobs or school grades), sexual abuse of children, forced prostitution and sexual trafficking, child marriage, and violent acts against the sexual integrity of women, including [FGM] and obligatory inspections for virginity."[79] Other forms of sexual violence identified by the international community as crimes against humanity and war crimes include sexual slavery, enforced prostitution, forced pregnancy, enforced

---

[75] *Ibid.*
[76] Yenenesh Tadesse (2008) 'Policy Analysis in Relation to Domestic Violence Against Women', in Deborah Zinn *et al*. (eds) *Ethiopian Social Policy Reader* Volume 3, Addis Ababa University Graduate School of Social Work p. 4, available at: https://deborahzinn.files.wordpress.com/2010/02/ethiopiansocialpolicyreadervolume3-2008.pdf last visited on 1/26/2019.
[77] *Ibid.*
[78] L. Kelly (1988) *Surviving Sexual Violence*, Cambridge: Polity, p. 41.
[79] World Health Organization (2002) World Report on Violence and Health: Summary, Washington, D.C., p. 17.

sterilization, or any other form of sexual violence of comparable gravity.[80] Thus, the diversity of sexual violence encompasses a range of different victim-offender relationships, sexual acts, forms of coercion and contexts of vulnerability and it occurs in a range of settings.[81] In this study, the term sexual violence is used in its broader sense as defined by the WHO. This definition is so broad and may not necessarily correspond to the legal notion of sexual offence or rape. However, sexual violence attributable to the state is beyond the scope of the present study.

2.2.2 Intersectional Issues: Sexuality, Gender Identity and Gendered Violence

This sub-section clarifies intersectional issues surrounding diverse sexuality, gender identity and gendered violence. Sexuality or sexual orientation and gender identity are distinct aspects of the self.[82] Sexual orientation refers to the individual's object of sexual or romantic attraction or desire, whether of the same or other sex relative to the individual's sex.[83] Other than the dominant heterosexuality and binary gender identity, there are diverse sexualities and gender identity. In terms of sexuality, there are lesbian, gay, bisexual, and questioning while transgender exists as distinct gender identity. All these are often abbreviated as LGBTQ, an acronym that refers to individuals who are lesbian, gay, bisexual, transgendered, or questioning, respectively.[84] Lesbian, gay, bisexual and questioning relate with sexualities while transgendered is gender identity.

---

[80] UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, ISBN No. 92-9227-227-6, Article 7(1)(g), Article 8(2)(b)(xxii), and Article 8(2)(e)(vi), available at: https://www.refworld.org/docid/3ae6b3a84.html last visited on 1/29/2019.

[81] Elizabeth Dartnall and Rachel Jewkes (2013) Sexual Violence against Women: The Scope of the Problem', *Best Practice and Research Clinical Obstetrics and Gynaecology* 27(1), pp. 3–13, p. 4.

[82] Sabra L. Katz-Wise *et al.* (2016) 'LGBT Youth and Family Acceptance', *Pediatr Clin North Am.* 63(6), pp. 1011–1025, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127283/pdf/nihms823230.pdf last visited on 4/01/2019.

[83] M. Rosario and E. W. Schrimshaw (2014) 'Theories and Etiologies of Sexual Orientation', in D. L. Tolman *et al.* (eds) *APA Handbook of Sexuality and Psychology*, Washington, DC: American Psychological Association, pp. 555–596.

[84] Kamilah F. Majied (2010) 'The Impact of Sexual Orientation and Gender Expression Bias on African American Students', *The Journal of Negro Education* 79(2), pp. 151-165, p. 154.

Lesbians are females who are oriented toward other females emotionally, socially, politically, and sexually.[85] Gay are males who are oriented toward other males emotionally, socially, politically, and sexually.[86] Bisexual individuals can be oriented toward both males and females in the same ways.[87] While the term "questioning" refers to individuals who are in an evaluative or re-evaluative stage regarding their sexuality.[88] Individuals having a sexual orientation that is partly or exclusively focused on the same-sex are often referred to as sexual minorities.[89]

The term transgender refers to individuals for whom current gender identity and sex assigned at birth are not concordant, while cisgender refers to individuals for whom current gender identity is congruent with sex assigned at birth.[90] Transgendered individuals have a gender identity that is different from the physical characteristics with which they were born.[91] Instance of transgendered persons are an individual who is born in a female body but psychologically, emotionally, and socially identifies as a male or the vice versa.[92] In terms of sexuality, transgendered persons are not homogenies. They may identify themselves as heterosexual, homosexual, or bisexual, and may sometimes undergo sexual reassignment procedures.[93] Thus, transgender individuals may or may not be sexual minorities and the vice versa.[94] The term "gender expression" is used in reference to how a person presents their gender through their physical appearance such as dress, hairstyles, accessories, cosmetics and mannerisms such as speech, behavioral patterns, names and personal references.[95] However, this expression may or may not conform to their gender identity.[96]

---

[85] *Ibid.*
[86] *Ibid.*
[87] *Ibid.*
[88] K. Majied (2008) cited in Kamilah F. Majied (2010), *ibid.*
[89] Sabra L. Katz-Wise *et al.* (2016), *supra note* 82.
[90] M. Rosario and E. W. Schrimshaw (2014), *supra note* 83.
[91] Kamilah F. Majied (2010), *supra note* 84, p. 154.
[92] *Ibid.*
[93] *Ibid.*
[94] Sabra L. Katz-Wise *et al.* (2016), *supra note* 82.
[95] Kim Vance *et al*. (2018) 'The rise of SOGI: human rights for LGBT people at the United Nations', in Nancy Nicol *et al*. (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, UK: School of Advanced Study, University of London, Institute of Commonwealth Studies, at note 3.
[96] *Ibid.*

Besides, there are people who have intersex conditions. The term "intersex" is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical medical and cultural definitions of female or male.[97] For example, a person might be born appearing to be female on the outside, but having mostly male-typical internal anatomy.[98] Generally, transgender and intersex are not similar. Transgender individuals are typically people who are born with male or female anatomies but feel as though they have been born into the "wrong body."[99] On the other hand, people who have intersex conditions have anatomy that is not considered typically male or female, and that the vast majority of intersex people identify as male or female rather than transgender.[100] Generally, intersex people are heterogeneous, with varied bodies, sexes, and sexual and gender identities.[101]

Sometimes, the term "queer" is used to refer to a category of identity including sexuality and gender identity that are outside the dominant heterosexuality and the binary gender category.[102] However, the present study uses "sexual minorities" to refer to LGBTQ persons.[103] Sexual minorities are often juxtaposed with heterosexism or the hegemonic heteronormativity. Heterosexism refers to the dominant worldview that heterosexuality is the norm and that all other sexualities are in contrast to this norm.[104] It is, according to Kamilah F. Majied, "a pervasive social problem that contributes to the invisibility of LGBTQ persons."[105] Heterosexism is viewed as

---

[97] Intersex Society of North America: *What is intersex?* Available at: http://www.isna.org/faq/what_is_intersex last visited on 04/02/2019.
[98] *Ibid.*
[99] Intersex Society of North America: *What's the difference between being transgender or transsexual and having an intersex condition?* Available at: http://www.isna.org/faq/transgender last visited on 04/02/2019.
[100] *Ibid.*
[101] Morgan Carpenter (2016) 'The Human Rights of Intersex People', *Reproductive Health Matters* 24(47), pp. 74-84, p. 74.
[102] Kristen A. Renn (2010) 'LGBT and Queer Research in Higher Education: The State and Status of the Field', *Educational Researcher* 39(2), pp. 132-141, p. 132.
[103] Andy Mprah (2016) 'Sexual and Reproductive Health Needs of LGBT', *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 20(1), pp. 16-20, p. 16.
[104] D. Epstein and R. Johnson (1994) 'On the Straight and Narrow: The Heterosexual Presumption, Homophobias and schools', in D. Epstein (ed.) *Challenging Lesbian and Gay Inequalities in Education* (pp. 197–230), Berkshire, England: Open University Press, p 198; and Laura S. Brown (1989) 'New voices, new visions: Toward a Lesbian/Gay Paradigm for Psychology', *Psychology of Women Quarterly* 13(4), pp. 445-458, p. 447.
[105] Kamilah F. Majied (2010), *supra note* 84, p. 154.

paradigm of oppression faced by LGBTQ people.[106] The notions of masculinity and heteronormativity are triggered a gendered violence against sexual minorities.[107] For instance, sexual violence against lesbian women through "curative" rape.[108] Generally, violence targeting sexual minorities is based on the notion that "effeminate gay men betray the superiority of masculinity, and masculine lesbian women challenge and try to usurp male superiority and therefore these individuals need to be punished for being a threat to the 'natural' social order."[109] They are, in essence, targeted for "doing gender" inappropriately,[110] and, therefore, facing a gendered violence.

Finally, same-sex rape against men also has strong conceptual links with rape of women by men though the two are not exactly the same. Generally, when men rape other men, they are acting in terms of the same stereotypes and justifications, and cause similar harms as they do while sexually assaulting women.[111] For instance, masculinities are socially defined by male domination and power, which is manifested through aggression, strength and violence.[112] Femininities are constructed as physically weak and sexually vulnerable that fit overall perceptions of sexual victims.[113] While social expectations of what it is to be a man as strong, tough, self-sufficient, and impenetrable fit counter images of sexual victimization.[114] With "real" men expected to avoid

---

[106] Kamilah F. Majied (2010), *ibid*, p. 152; G. M. Herek (1990) 'The Context of Anti-gay Violence: Notes on Cultural and Psychological Heterosexism', *Journal of Interpersonal Violence* 5(3), pp. 316–333, p. 16.
[107] Thabo Msibi (2009) 'Not Crossing the Line: Masculinities and Homophobic Violence in South Africa', *Agenda: Empowering Women for Gender Equity* 80: pp. 50-54, p. 50.
[108] *Ibid*, p. 51.
[109] Thabo Msibi Wells H (2006) cited in Thabo Msibi (2009), *ibid.*
[110] Barbara Perry (2001) *In the Name of Hate*, New York: Routledge, p. 110; and Beatrice von Schulthess (1992) 'Violence in the Streets: Anti-lesbian Assault and Harassment in San Francisco' in G. Herek and K. Berrill (eds) *Hate Crimes*, Newbury Park, CA: Sage, pp. 65-82.
[111] Elsje Bonthuys (2008) 'Putting Gender into the Definition of Rape or Taking it Out? Masiya v Director of Public Prosecutions (Pretoria) and Others, 2007 (8) BCLR 827 (CC)' *Feminist Legal Studies* 16: pp. 249–260, p. 256, available at: https://slideheaven.com/putting-gender-into-the-definition-of-rape-or-taking-it-out.html last visited on 04/01/2019.
[112] Noreen Abdullah-Khan (2008) *Male Rape: The Emergence of a Social and Legal Issue*, New York: Palgrave Macmillan, p. 88.
[113] Karen G. Weiss (2010) 'Male Sexual Victimization: Examining Men's Experiences of Rape and Sexual Assault', *Men and Masculinities* 12(3), pp. 275-298, p. 277.
[114] *Ibid.*

behaviors associated with femininities, men who are overpowered by other men may be judged to have failed in their masculine duty and perceived as less manly.[115] As F. Rush noted, "[m]en rape other men because they feminise their victims within heterosexual patterns of dominance and subordination."[116] Simply, male rape involves the process of "feminizing" male victims.[117]

Men are often targeted because they fail to conform to ideal masculine gender roles.[118] Male rape victim loses his masculine status and, he becomes, in terms of his sexual role, a woman.[119] Thus, male victimization is described as "a gendering experience", which changes male victims into social and sexual women, which, indirectly, confirms the subordinate sexual status of female rape victims.[120] Male rape serves to punish transgressions of gender roles.[121] The offenders aim at humiliating their victims and display their own masculinity and power.[122] The "feminized" male rape victims doubt their own masculinity and question their manhood.[123]

Moreover, as masculinity is bound up with heterosexuality, and "real" men are supposed to play an "active" penetrative role in sexual encounter.[124] Because of the association of masculinity with heterosexuality and penetrative sexual acts, male rape victims are often tainted with the social

---

[115] Kathy Doherty and Irina Anderson (2004) 'Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims', *Journal of Community and Applied Social Psychology* 14(2), pp. 85-103, p. 97.
[116] F. Rush (1990) 'The many faces of the backlash' in Dorchen Leidholdt and Janice G. Raymond (eds) The Sexual Liberals and the Attack on Feminism, Oxford: Pergamon Press, pp. 169-170.
[117] W. Rideau and B. Sinclair (1982) 'Prison: The Sexual Jungle', in A.M. Scacco (ed) *Male Rape: A Casebook of Sexual Aggression*, New York: Ams Press, p. 5.
[118] Catharine A. MacKinnon (1997a) 'Oncale v. Sundowner Offshore Services, Inc., 96-568, Amici Curiae Brief in Support of Petitioner', *UCLA Women's Law Journal* 8(1), pp. 9–46, pp. 19–20; and Christopher D. Man and John P. Cronan (2001) 'Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for 'Deliberate Indifference'', *Journal of Criminal Law and Criminology* 92(1), pp. 127–186.
[119] Elsje Bonthuys (2008), *supra note* 111, p. 255.
[120] Sasha Gear (2005) 'Rules of Engagement: Structuring Sex and Damage in Men's Prisons and Beyond', *Culture, Health and Sexuality* 7(3), pp. 195–208, p. 119; Catharine A. MacKinnon (1997a), *supra note* 118, p. 19; and Angelo Pantazis (1999) 'Notes on Male Rape', *South African Journal of Criminal Justice* 12(3), pp. 369–375, p. 373.
[121] Elsje Bonthuys (2008), *supra note* 111, pp. 255-256.
[122] Marc S. Spindelman and John Stoltenberg (1997) 'Oncale: Exposing 'manhood'', *UCLA Women's Law Journal* 8(1), pp. 3–7, p. 5; and Siegmund F. Fuchs (2004) 'Male Sexual Assault: Issues of Arousal and Consent', *Cleveland State Law Review* 51: pp. 93–121, pp. 105–107.
[123] Karen G. Weiss (2010), *supra note* 113, p. 277; Elsje Bonthuys (2008), *supra note* 111, p. 255; and Noreen Abdullah-Khan (2008), *supra note* 112, p. 88.
[124] Ngaire Naffine (1994) 'Possession: Erotic Love in the Law of Rape', *Modern Law Review* 57(1), pp. 10–37.

stigma of homosexuality, but this stigma is not attached to offenders, who are acting in accordance with an acceptable sexual script by penetrating.[125] Accordingly, male rape victims are made to feel guilty if they are homosexual, or homosexual and "less manly" if they are heterosexual.[126] Unlike women victims, as Bennett Capers noted, male victims "may have trouble reconciling conceptions of sexuality and masculinity."[127] Generally, same-sex rape against men is simply a part of the similar system of gender inequality, domination and discrimination which causes men to rape women.[128] In this sense, male victims too are facing a gendered sexual violence.

2.2.3 The Legal Notion of Rape

Laws across jurisdictions differ in the aspects of sexual violence that they regard as offences.[129] Particularly, the term "rape" is legally defined and its definition varies across times and jurisdictions.[130] However, sexual violence that falls on a continuum is much wider than the range of sexual violence that is criminalized under the law. Sexual violence which is criminalized under the law is narrow. Under the RCC, the term rape is used in reference to only one gender-specific sexual offence, namely, sexual intercourse (penile-vaginal penetration) of a woman, outside of marriage, by violence (physical force), by threat of force (grave intimidation), or by rendering the victim incapable of offering resistance or unconscious. Other sexual offenses have been treated separately with a variety of headings and gravity of sanctions. In the present study, however, term rape is used in reference to all sexual offences which have been criminalized under the RCC (from

---

[125] Sandesh Sivakumaran (2005) 'Male/Male Rape and the "taint" of Homosexuality', *Human Rights Quarterly* 27(4), pp. 1274–1306, pp. 1289–1300.
[126] Noreen Abdullah-Khan (2008), *supra note* 112, p. 88.
[127] Bennett Capers (2011) 'Real Rape Too', *California Law Review* 99(5), pp. 1259-1307, p. 1268.
[128] Sandesh Sivakumaran (2005), *supra note* 125, p. 1281; Philip Rumney and Martin Morgan-Taylor (1997) 'Recognizing the Male Victim: Gender Neutrality and the Law of Rape: Part One', *Anglo-American Law Review* 26: pp. 198–234, p. 226; Catharine A. MacKinnon (1997a), *supra note* 118, p. 19; Siegmund F. Fuchs (2004), *supra note* 122, p. 105; and Hilary S. Axam and Deborah Zalesne (1999) 'Simulated Sodomy and Other Forms of Heterosexual "Horseplay": Same Sex Sexual Harassment, Workplace Gender Hierarchies, and the Myth of the Gender Monolith Before and After Oncale', *Yale Journal of Law and Feminism* 11(1), pp. 155–249, p. 158.
[129] Elizabeth Dartnall and Rachel Jewkes (2013), *supra note* 81, p. 4.
[130] Joseph A. Camilleri and Kelly A. Stiver (2014) 'Adaptation and Sexual Offending', in V.A. Weekes-Shackelford and T.K. Shackelford (eds) *Evolutionary Perspectives on Human Sexual Psychology and Behavior, Evolutionary Psychology,* New York: Springer Science+Business Media, p. 43.

Article 620 to Article 627) since all these sexual offences are often recorded as rape, within the CJS. It also uses rape and sexual offence(s) interchangeably. In separating each sexual offences as well as in identifying the victim and the offender in rape cases, the following definitions are used:

Forcible rape: refers to what has been defined as "Rape" under the RCC. Article 620(1) of the Code defines rape as: "[w]hoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable…"

Sexual assault: is used in reference to what has been defined as "Sexual Outrages Accompanied by Violence," under the RCC. Article 622 of the RCC defines Sexual Outrages Accompanied by Violence as: "[w]hoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, to perform, or to submit to an act corresponding to the sexual act, or any other indecent act, is punishable…"

The following elements distinguish sexual assault from forcible rape: The sexual act for sexual assault is "an act corresponding to the sexual act, or any other indecent act" while for forcible rape it is "sexual intercourse" (penile-vaginal penetration). Another point of difference is that the scope of sexual assault is broader than forcible rape since sexual assault can be committed by a woman against man and the vice versa but forcible rape is a crime committed only by a man against a woman. In addition, marital-rape is not excluded from sexual assault but from forcible rape. Sexual assault and forcible rape can be differentiated in terms of gravity since the former is punishable with simple imprisonment for not less than one year, or rigorous imprisonment not exceeding ten years while the latter is punishable with rigorous imprisonment from five years to fifteen years

Sexual coercion: refers to sexual relations with a "consenting" women under fraudulent conditions or through manipulative tactics or under coercive circumstances. In sexual coercion, the victims do not give their free consent, but defective consent. In the present study, the term is used in

reference to a combination of three sexual offences: i) *Sexual Outrages on Unconscious or Deluded Persons, or on Persons Incapable of Resisting* (Article 623); ii) *Sexual Outrages on Persons in Hospital, Interned or Under Detention* (Article 624), and iii) sexual offence by *Taking Advantage of the Distress or Dependence of a Woman* (Article 625).

Statutory rape: refers to any sexual act with a minor, whether with or without the "consent" of the minor as criminalized under Article 626 and 627 of the RCC under the heading of "Sexual Outrages on Minors between the Ages of Thirteen and Eighteen Years" and "Sexual Outrages Committed on Infants," respectively.

Marital-rape: refers to the commission of forcible rape, sexual assault and sexual coercion by a man against his spouse. Where the term is used to refer to the commission of forcible rape, sexual assault and sexual coercion by a woman against her spouse, clear reference is made.

Same-sex rape: refers to the commission of forcible rape, sexual assault or sexual coercion by a person against person of the same-sex.

Offender: A range of terms are used within the CJS to denote perpetration of sexual offence including suspected person, accused person, offender or defendant to indicate the role and position of individuals at different stages of the criminal proceedings. To refer to the perpetrator, the present study uses the term offender throughout.

Victim: In reference to a person who has experienced sexual violence or other violent crimes, the term "victim" or injured person or "survivor" are often used interchangeably. Usually, "victim" is a term used in the legal and medical sectors while "survivor" is the term generally preferred in the psychological and social support sectors since it implies resilience. Writers also noted that the term "survivor" is favored by "the feminist movement to capture the ways in which women routinely and actively resist the oppression they experience on a day-to-day basis. Historically put in opposition to the concept of victim though contemporarily there is greater awareness that the process of moving from being a victim to a survivor can be quite complex on an individual level

that is not necessarily achieved by everyone."[131] Having this complexity in view, the present study uses the term "victim" to refer to any person who experiences a crime within the Ethiopian CJS. However, such usage should not be understood to imply a lack of agency.

2.2.4 The Concept of Rape Myths

As one of the objectives of the present study is to identify myths surrounding the rape law and its enforcement within the CJS, it is vital to clarify the concept from the beginning. Rape myths are rape-specific stereotypes.[132] According to Martha Burt, rape myths are "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists [...] creating a climate hostile to rape victims […] a pervasive ideology that […] supports or excuses sexual assault."[133] Rape myths are specific beliefs surrounding rape.[134] Similarly, K. A. Lonsway and L. F. Fitzgerald describe rape myths as "attitudes and beliefs that are generally false but are widely and persistently held that serve to deny and justify male sexual aggression against women."[135] Rape myths are pervasive assumptions about rape, which "affect subjective definitions of what constitutes a 'typical rape', contain problematic assumptions about the likely behavior of perpetrators and victims, and paint a distorted picture of the antecedents and consequences of rape."[136] An example of such beliefs is that women enjoy being raped or that they could easily resist rapists if they really wanted to.[137]

Rape myths comprise a number of components of which victim-blaming is central. Writers identify four general types of rape myth: The first type refers to beliefs that blame the victim for their own

---

[131] Jennifer M. Brown and Sandra (2011), *supra note* 45, p. 502.
[132] Klaus Drieschner and Alfred Lange (1999) 'A Review of Cognitive Factors in the Etiology of Rape: Theories, Empirical Studies, and Implications', *Clinical Psychology Review* 19(1), pp. 57–77, p. 60.
[133] Martha Burt (1980) 'Cultural Myths and Supports for Rape', *Journal of Personality and Social Psychology* 38(2), pp. 217-230.
[134] Klaus Drieschner and Alfred Lange (1999), *supra note* 132, p. 60.
[135] K. A. Lonsway and L. F. Fitzgerald (1994) 'Rape Myths: In Review', *Psychology of Women Quarterly* 18(2), pp. 133–164, p. 134.
[136] Gerd Bohner *et al.* (2009) 'Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator', in M. Horvath, and J. Brown (eds) *Rape: Challenging Contemporary Thinking* (pp. 17–45), Cullompton: Willan, p. 18.
[137] Klaus Drieschner and Alfred Lange (1999), *supra note* 132, p. 60.

victimization (for instance, "women have an unconscious desire to be raped" and "women often provoke rape through their appearance or behavior"). The second includes beliefs that express a disbelief in claims of rape ("most charges of rape are unfounded", "women tend to exaggerate how much rape affects them"). The third type relates to beliefs that exonerate the offender ("most rapists are over-sexed", "rape happens when a man's sex drive gets out of control"). The fourth type refers to beliefs that allude that only certain types of women are raped ("a woman who dresses in skimpy clothes should not be surprised if a man tries to force her to have sex", "usually it is women who do things like hang out in bars and sleep around that are raped").[138]

Others further subcategorized rape myths into seven main domains: First, "she asked for it" (for instance, "if a woman goes home with a man she does not know, it is her own fault if she is raped"). Second, "it was not really rape" ("a rape probably did not happen if the woman has no bruises or marks"). Third, "he did not mean to" ("rape happens when a man's sex drive gets out of control"). Fourth, "she wanted it" ("many women actually enjoy sex after the guy uses a little force"). Fifth, "she lied" ("a lot of women lead a man on and then they cry rape"). Sixth, "rape is a trivial event" ("women tend to exaggerate how much rape affects them"). Seventh, "rape is a deviant event" (for instance, "rape mainly occurs on the 'bad' side of town").[139] All these myths are used instrumentally as cognitive tools to turn off social prohibitions and inhibitions,[140] trivialize and justify the SVAW by men, thereby allow potential offenders to minimize the seriousness of their violent acts.[141] Rape myths have also consequences for the administration of the criminal justice.[142] They can distort an investigator's perception, lead to bias in an investigation, prevent a thorough investigation and even deter any investigative response,[143] lead law enforcement to doubt the

---

[138] Gerd Bohner *et al.* (2009), *supra note* 136, p. 19.
[139] D. L. Payne *et al*. (1999) 'Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale', *Journal of Research in Personality* 33(1), pp. 27-68.
[140] Martha Burt (1980), *supra note* 133, pp. 217–230, p. 282.
[141] G. Bohner *et al.* (2006) 'Social Norms and the Likelihood of Raping: Perceived Rape Myth Acceptance of Others Affects Men's Rape Proclivity', *Personality and Social Psychology Bulletin* 32(3), pp. 286–297, p. 286.
[142] Francis X. Shen (2011) How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform', *Columbia Journal of Gender and Law* 22(1), pp. 1-80, p. 24.
[143] John O. Savino and Brent E. Turvey (2011) 'Rape and Sexual Assault', in John O. Savino and Brent E. Turvey (eds) *Rape Investigation Handbook* (2nd ed), Chapter 2, New York: Academic Press, p. 48.

legitimacy of a woman's claim, and lead lawmakers away from passing appropriate legislation to address the problem.[144]

2.3 Etiological Theories of Rape

The critical reason for theorizing is to answer the "why" question.[145] In relation to rape, J. Reid Meloy sets one question: "[w]hy on earth would someone want to pursue another who shows absolutely no interest in his or her attentions?"[146] An understanding of the etiology of rape is essential to address the problem.[147] The major task of a good etiological theory is to account for the onset, development and maintenance of sexual aggression.[148] Ideally, this would be a universal theory that integrated all relevant phenomena into a coherent and rich theoretical structure.[149] However, such a theory is not developed so far.[150] Focusing on different factors, several theories have been proposed to explain the etiology of rape. Of these, psychological, biological and feminist theories were reviewed in this sub-section though the present study embraces plurality of theories while adopting mainly the feminist perspectives as its theoretical lens.

---

[144] Renae Franiuk *et al.* (2008) 'Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case', *Violence against Women*, 14(3):287-309, pp. 288-290.
[145] Breakwell and D. Rose (2000) 'Research; Theory and Method', in G. Breakwell, S. Hammond and C. Fife-Schaw (eds) *Research Methods in Psychology* (2nd ed), London: Sage, p. 5.
[146] J. Reid Meloy (1998) *The Psychology of Stalking: Clinical and Forensic Perspectives*, San Diego: Academic Press, p. 1.
[147] Klaus Drieschner and Alfred Lange (1999), *supra note* 132, p. 58.
[148] Devon L. L. Polaschek *et al.* (1997) 'Rape and Rapists: Theory and Treatment', *Clinical Psychology Review* 17(2), pp. 117-144, p. 124.
[149] *Ibid.*
[150] *Ibid.*

2.3.1 Psychological Theories

2.3.1.1 Psychodynamic Theories

Psychodynamic theory is one the earliest psychological theories of rape and sexual aggression. Freud's (1905/1953) work offered one of the earliest explanations.[151] Freud believed that sexual aggression originates from a serious form of psychopathology within the offender that originated in childhood.[152] This theory holds that deviant sexual behavior of all types had its origin in unresolved infantile sexual urges that persisted in distorted form into adulthood.[153] It viewed the deviant sexual behavior as a direct reflection of a character disorder, which was very resistant to treatment and rarely possible to change it.[154] However, this theory was not empirically validated.[155] Based mostly on individual case analyses, the psychodynamic inferences are difficult to develop into a general theory of sexual deviance in general, or rape in particular.[156]

2.3.1.2 Behavioral Theories

Early behavioral etiological models assumed that sexual arousal in the presence of rape cues was the critical motivation for sexual offending.[157] Classical conditioning theories highlight the pairing of sexual arousal with aggression and dominance cues while theories that incorporate operant conditioning emphasize the reinforcement of deviant sexual behavior by pleasure, status, or power.[158] Both theories viewed sexual aggression as a learnt behavior either by association or reinforcement. However, they did not explain how and why such conditioned responses occur in

---

[151] Alicia Jenkins and Wayne Petherick (2014) Serial Rape in Profiling and Serial Crime, Third Edition, Chapter 15, Amsterdam: Anderson publishing, p. 331.
[152] *Ibid*, p. 331.
[153] Laurence Miller (2014) 'Rape: Sex crime, Act of violence, or Naturalistic Adaptation?', *Aggression and Violent Behavior* 19(1), pp. 67–81, p. 75.
[154] Devon L. L. Polaschek *et al.* (1997), *supra note* 148, p. 125.
[155] Alicia Jenkins and Wayne Petherick (2014), *supra note* 151, p. 331.
[156] Laurence Miller (2014), *supra note* 153, p. 75.
[157] Devon L. L. Polaschek *et al.* (1997), *supra note* 148, p. 125.
[158] Laurence Miller (2014), *supra note* 153, p. 75.

the first place, and why these connections do not inevitably become reinforced for all individuals exposed to them.[159]

2.3.1.3 Social Cognitive Theories

Social cognition concerns the study of social knowledge (its structure and content), and cognitive processes, including the acquisition, representation and retrieval of information, in an effort to understand social behavior and its mediating factors.[160] Three fundamental questions underlie the study of social cognition are: What type of information is stored and how is it organized in memory? How does social information stored in memory affect subsequent information processing, decision making and behavior? How and when is stored information altered both by new information and by cognitive processes?[161] As far as sexual violence is concerned, social cognitive theories focus on deficits in empathy, and distortions of perception and interpretation of their own and their victims' sexual desires and behaviors as the primary factor influencing the rapist's mindset.[162]

Examples of such cognitive distortions, include over interpreting victim seductiveness (for instance, "she crossed her legs and smiled, so she must be hot for me"), mistaking fearful passivity for consent ("she did not yell or fight, so she must have liked it"), or general self-serving cognitive distortions about female sexuality ("saying 'no' means 'try harder' – some women just want you to work for it").[163] Generally, social cognitive theories maintain that the possession of distorted sex-related cognitions is likely to predispose the individual to sexual offences. The nature of offenders' beliefs about their targets – women and children – has been considered as important mediating factor. Although the social cognitive model offers important insights in understanding rape, it has been criticized for its implicit assumption that all that is necessary for the offenders to

[159] *Ibid.*
[160] Devon L. L. Polaschek *et al.* (1997), *supra note* 148, pp. 126-127.
[161] *Ibid*, p. 125.
[162] Laurence Miller (2014), *supra note* 153, p. 75.
[163] *Ibid.*

renounce their pattern of sexual predation is to show them the error of their misconceptions in the cognitive process.[164] It is also argued that it is typically the powerful sexual and aggressive motivation that drives the biased thinking or misconception, but not the vice versa.[165]

2.3.2 Biological Theories

The biological or evolutionary explanation for rape is grounded in the argument that sexual aggression is an evolved adaptation in human males.[166] It builds on Charles Darwin's theory of natural and sexual selection.[167] The natural selection is the doctrine that, in the struggle for survival, evolutionary progress is achieved by the inheritance of advantageous characteristics that prosper at the expense of less advantageous ones.[168] Sexual selection is a specific case of natural selection for the evolution of sex differences.[169] As far as rape is concerned, the biological explanation proposes that human males and females have evolved different, yet complementary, mating strategies.[170] Because the effort involved is minimal, males seek to maximize the dissemination of their genes by coupling with as many females as they can and tend to be relatively indiscriminate in their mating with many females.[171] On the other hand, females must invest a tremendous amount of time, energy, and material resources to conceive, carry, bear, and raise a child.[172] Thus, they tend to be far more selective about whom they pair up with.[173] Females want to select males with the strength and status to be a good provider, and, at the same time, they want to ensure their mates fidelity to avoid being quickly abandoned in favor of younger and more attractive females.[174] During evolution, this asymmetry causes males who could mate with

---

[164] *Ibid.*
[165] *Ibid.*
[166] Peggy Reeves Sanday (2015) 'Rape and Sexual Coercion', *International Encyclopedia of the Social and Behavioral Sciences*, 2nd edition, Volume 19, p. 887.
[167] Peggy Reeves Sanday (2015), *ibid*; and Laurence Miller (2014), *supra note* 153, p. 75.
[168] *Ibid*.
[169] Peggy Reeves Sanday (2015), *supra note* 166, p. 887.
[170] Laurence Miller (2014), *supra note* 153, p. 75.
[171] *Ibid.*
[172] *Ibid.*
[173] *Ibid*, pp. 75-76.
[174] *Ibid*, p. 76.

multiple partners to be favored by sexual selection because they out produced males who could not gain access to multiple females.[175] Females, on the other hand, have been sexually selected to secure a mate with whom they have bonded and can together be responsible for the offspring.[176] Therefore, females have adapted to resist sexual intercourse with an un-bonded partner and to be more selective regarding their sexual partners.[177] For evolutionary theories, if females were selected to be willing to mate with any male under any circumstances, rape would not occur.[178]

However, evolutionary theories do not explain gang rapes, same-sex rapes, extremely violent rapes such as murder rape, rapes that do not involve penetration, incest and child molestation.[179] The model does not explain the evolutionary advantage of these sexual offences. Nor does it recognize the role that socio-cultural influences may play in the occurrence of sexual violence.[180]

2.3.3 Feminist Theories

Feminist theorists viewed rape as an act of violence and a consequence of male domination, power, and control over women. According to Susan Brownmiller, rape is "a conscious process of intimidation by which *all men keep all women* in a state of fear."[181] Likewise, Susan Griffin asserted that "rape is a kind of terrorism which severely limits the freedom of women and makes women dependent on men. [...] The threat of rape is used to deny women employment. [...] The fear of rape keeps women off the streets at night. Keeps women at home. Keeps women passive and modest for fear that they be thought provocative."[182] Feminist theory maintains that the social fact of rape not only subordinates its victims, but also controls the freedom, mobility and

---

[175] Thornhill and Thornhill (1992) cited in Shannon (2004) *Theories of Sexual Coercion: Evolutionary, Feminist, and Biosocial Perspectives*, available at: http://www.pandys.org/theoriescoercion.pdf last visited on 1/27/2019.
[176] Shannon (2004), *ibid,* p. 4.
[177] *Ibid.*
[178] *Ibid.*
[179] *Ibid*, p. 20.
[180] Alicia Jenkins and Wayne Petherick (2014), *supra note* 151, p. 331; and Shannon (2004), *ibid*.
[181] Susan Brownmiller (1975) *Against Our Will: Men, Women, and Rape,* New York: Bantam Books, p. 15.
[182] Susan Griffin (1977) 'Rape: The All-American Crime', in M. Vetterling-Braggin *et al.* (eds) *Feminism and Philosophy* (pp. 313-332), p. 331.

aspirations all women through the instillation of fear.[183] By this account, rape constitutes a deliberate instrument of male dominance and supremacy, and thus represents one of a variety of strategies traditionally used by men to subjugate and control women and to intimidate them into remaining in a subservient role in a male dominated society.[184]

Feminist theories claim that rape and other social control tactics are supported politically, religiously, and culturally.[185] Feminists relate the occurrence of rape to sex-role attitudes and relationships result from the socialization processes of males from childhood, and attitudes that encourage the view of women as subservient to men and endorse male entitlement and supremacy relative to women.[186] For feminist theorists, rape is primarily motivated by male dominance, with rape and the fear it incites serving as a mechanism of social control. They view rape as "fundamentally an aggressive rather than a sexual act, that its motivation and dynamics arise out of hostility rather than sexual need."[187] While feminists generally identified rape as a major mechanism explaining the social exploitation of women, and saw it functioning simultaneously as a primary mode of domination, creating and perpetuating the patriarchal social order,[188] there are, however, some differences among variants of feminist thoughts in their explanation.

For instance, radical feminists viewed rape essentially as a product of patriarchal constructions of gender and sexuality, as an act of power and control, and emphasized on the harm that rape does to women as a group.[189] They consider rape as a weapon to control and dominate women.[190] Rape

---

[183] Hilaire Barnett (1998), *supra note* 65, p. 257; and Susan Brownmiller (1975), *supra note* 181, p. 255.
[184] Laurence Miller (2014), *supra note* 153, p. 75.
[185] *Ibid.*
[186] *Ibid.*
[187] L. Melani and L. Fodaski (1974) 'The Psychology of the Rapist and His Victim', in N. Connell and C. Wilson (eds) *Rape: The First Wourcebook for Women* (pp. 82–93), New York, NY: New American, p. 82; and Susan Griffin (1971) 'Rape: The All-American Crime' *Ramparts* 10(3), pp. 21–35.
[188] Rebecca Whisnant (2011) 'Feminist Perspectives on Rape', in Edward N. Zalta (eds) The Stanford Encyclopedia of Philosophy, (Spring 2011 Edition), available at: http://plato.stanford.edu/archives/spr2011/entries/feminism-rape/ last visited on 19/02/2016; and Andrea Dworkin (1976) *Our Blood: Prophecies and Discourses on Sexual Politics*, New York: Perigee Books, p. 37.
[189] Andrea Dworkin (1976), *ibid*; Rebecca Whisnant (2011), *ibid*; and Susan Brownmiller (1975), *supra note* 181, p. 15.
[190] Noreen Abdullah-Khan (2008), *supra note* 112, p. 61.

simply serves to keep women in constant fear, and thereby strengthening male control over them.[191] On the other hand, liberal feminists concerned mainly with giving women equal legal and political rights.[192] Liberal feminists, as Gregory suggests, have "drawn attention to the denial of civil liberties that occurs within the [CJS] whenever those who come under its scrutiny are treated differently on the basis of sex. Their goal is sexual equality [and] their strategy is to eliminate sexual ideology from the legal system."[193] Thus, liberal feminists tend to regard rape as a gender-neutral assault on individual autonomy and focus primarily on the harm that rape does to individual victims.[194] Socialist feminism (or Marxist feminism) relates violence to gender and class stratification. It regards gender oppression as an obvious feature of capitalist societies which can only be eradicated by constructing a completely different society, one that is free from gender and class stratification.[195] This explanation contradicts the radical feminists' view that the oppression of women predates capitalism and, thus, it is patriarchy and not capitalism which is responsible for gender oppression and violence.[196] Despite these differences, virtually all feminist thoughts share several underlying themes such as taking women's and girls' experiences of sexual violation seriously; challenging the idea that rape is rare and exceptional; and dispelling an intricate web of rape myths surrounding rape law and its enforcement within the CJS.[197]

One of the main contributions of feminist theorists was that they challenged etiological notions based on offender's psychology or biology. Their perspectives affected the definition of sexual violence, the way rape victims were viewed and treated, and have identified aspects of the rape supportive culture.[198] The theoretical shift to view rape as motivated by power also played an important role in shifting the blame away from victims, and as a consequence, rape victims'

---

[191] *Ibid*, p. 62
[192] *Ibid*, p. 61
[193] J. Gregory (1986) 'Sex, Class and Crime: Towards a Non-sexist Criminology' in R. Matthews and J. Young (eds) *Confronting Crime*, London: Sage, p. 65.
[194] Rebecca Whisnant (2011), *supra note* 188.
[195] Noreen Abdullah-Khan (2008), *supra note* 112, pp. 59-60.
[196] J. Gregory (1986), *supra note* 193, p. 64.
[197] Andrea Dworkin (1976), *supra note* 188, p. 37; Rebecca Whisnant (2011), *supra note* 188; and Susan Brownmiller (1975), *supra note* 181, p. 15.
[198] Devon L. L. Polaschek *et al.* (1997), *supra note* 148, p. 126.

characteristics such as physical attractiveness and sexual history became less relevant.[199] Besides, terminologies have been changed, for instance, from "victim" to "survivor" and from "rape"' to "sexual assault" in an effort to focus on the violent aspect of the act rather than its sexual aspect.[200]

Moreover, over the last four decades, feminist reformers have challenged and exposed sexist assumptions inherent in rape laws.[201] They have introduced several radical ideas about rape, including any woman can be a rape victim: Any man can be a rapist, and rape itself occurs in many forms, including in acquaintance or dating situation and marital relation.[202] They sought to broaden definitions of each category and demanded public attention to sexual assault as a serious crime resulting from male domination.[203] Feminist critiques had and continue to have a profound effect on rape law reforms across jurisdictions.[204]

However, as feminist theorists are interested in the societal attitudes and values that support rape and as they derive their evidence from macro-level observations of the legal and social systems, they cannot account for the differential impact of influences at the individual level.[205] In addition, by attributing rape to a deliberate social control mechanism, their model narrowed offenders' motivations to a singular goal of patriarchal power and control.[206] However, motivations for any single violent sexual act are complex, multiple, and even unconscious.[207] As Gavey argues, "it is not always clear in these debates whether sex, power, or violence are being invoked as motivations,

---

[199] Beverly A. McPhail (2015) 'Feminist Framework Plus: Knitting Feminist Theories of Rape Etiology into a Comprehensive Model', *Trauma, Violence, & Abuse,* pp. 1-16, p. 3, available at: https://www.uh.edu/socialwork/news/news-releases/2015-06-10_McPhail_FFP.pdf last visited on 1/27/2019.
[200] *Ibid.*
[201] Alletta Brenner (2013) 'Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape', *Harvard Journal of Law and Gender* 36(2), pp, 503-568**,** p. 605.
[202] Susan Brownmiller (1975) *supra note* 181; Susan Griffin (1971) *supra note* 187; Diana E. H. Russell (1975) *The Politics of Rape: The Victim's Perspective*, New York: Stein and Day; and Ann Wolbert Burgess and Linda Holmstrom (1974) 'Rape Trauma Syndrome', *American Journal of Psychiatry* 131: pp. 981–995.
[203] Amy L. Chasteen (2001), *supra note* 5, p. 107.
[204] Alletta Brenner (2013), *supra note 201*, p. 506.
[205] Devon L. L. Polaschek *et al*. (1997), *supra note* 148, p. 126.
[206] Beverly A. McPhail (2015), *supra note* 199, p. 4.
[207] *Ibid*.

means, or in some cases effects."[208] The feminist perspectives do not account for the range of motivations that characterize individuals in every society.[209] Laurence Miller also noted that "it is clearly a case of theoretical overreaching to ascribe a sexual crime committed by a minority of men to a deliberate social control mechanism planned and perpetrated by all men in a given society."[210] The claim that all men have power over all women is also viewed as an oversimplification since it fails to acknowledge male diversity.[211] Besides, attributing rape to a deliberate social control mechanism may have the unintended consequence of normalizing it: "if rape dominance is such a widely enculturated male trait, then how can it be a crime?"[212]

In sum, all theories reviewed above are single factor theories that focus on either psychological or biological or socio-cultural factors. They are, along many other theories, developed to explain the occurrence of rape. The absence of an integrated approach to theory building leads to proliferation of theories. Works were under way to unite various theories into one explanatory model. For instance, the confluence model of sexual aggression is one of the earliest models to offer a multifactorial perspective of rape and evolved to reconcile feminist, socio-cultural, and evolutionary perspectives.[213] However, it has been considered as highly complex theory that lacks explanatory depth and internal consistency.[214] Given the plethora of theories, researchers often attempt to place their studies into a number of theoretical frameworks. Similarly, the present study embraces plurality of theories but mainly adopts the commonalities of radical/liberal feminist perspectives as its theoretical lens since it mainly concerns with structural factors such as the law, the CJS and stereotypes and myths surrounding rape law and its enforcement within the CJS.

---

[208] N. Gavey (2005) Just Sex?: *The Cultural Scaffolding of Rape*, London, England: Routledge, p. 31.
[209] Laurence Miller (2014), *supra note* 153, p. 75.
[210] *Ibid.*
[211] Beverly A. McPhail (2015), *supra note* 199, p. 4.
[212] Laurence Miller (2014), *supra note* 153, p. 75.
[213] T. R. Gannon *et al.* (2008) cited in Alicia Jenkins and Wayne Petherick (2014), *supra note* 151, p. 332.
[214] Alicia Jenkins and Wayne Petherick (2014), *ibid*, pp. 332-333.

CHAPTER THREE: SVAW IN ETHIOPIA

3.1 Introduction

For an effective intervention to address SVAW, having an understanding of basic information on the prevalence and magnitude of the problem, risk factors accounting for the high prevalence rate and prior legal responses have paramount importance. This chapter presents a review of this preliminary information. The first section reviews prior studies to show the prevalence, magnitude and nature of sexual violence in Ethiopia. The second section discusses the multifaceted factors that account for the high prevalence rate, underreporting of and inadequate responses to sexual violence. The third section traces the historic underpinnings of the laws on sexual offences since the first writen law was introduced to Ethiopia.

3.2 Magnitude and Nature of the Problem

It is very difficult to accurately ascertain the true prevalence rates of sexual violence. Usually, there are three main forms of measurement of sexual violence: *a nationally representative population survey*; *data from the law enforcement agencies or service providers*, and *small-scale studies*, which are often conducted by academics and non-governmental organizations (NGOs).[215] All forms of measurement have their own limitations. For instance, population survey is affected by victims' reluctance or inability to describe their experience as sexual violence. Data from the law enforcement agencies are not reliable as they do not include unreported cases.[216] Service-based data from service providers cannot be accurate since all victims may not report and use the available services. Likewise, small-scale studies are likely to be affected by the use of wide variations of definitions, methods, designs and inclusion and exclusion criterion. Despite their

[215] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 91.
[216] Catharine White (2015) 'Sexual Assault and Rape', *Obstetrics, Gynecology and Reproductive Medicine* 25(10), pp. 295-301, p. 295.

limitations, surveys and small-scale studies could give a relatively more accurate information regarding the magnitude and nature of sexual violence in Ethiopia.

At national level, a study conducted by the Ministry of Women's, Children's and Youth Affairs (MoWCYA) in 2013 shows that the prevalence of sexual violence in work places was 37% in the public sector while it was 33% in the private sector.[217] In secondary schools, the prevalence rate was 20.7% whereas in higher education institutions, it rose to 39%.[218] Similarly, the 2016 Demographic and Health Survey (DHS) found that 10% of women between the age of 15 and 49 experienced sexual violence at some point in their lives, and 7% experienced sexual violence within the year prior to the survey.[219] The survey also revealed that 5% of women had experienced sexual violence by age 18 and 2% by age 15.[220] These two studies represent a relatively nationally representative data on the prevalence rate of sexual violence. Yet, there is a noticeable difference in their findings; the rate in the DHS survey was much lower than that in the study by the MoWCYA. This might be due to the fact that the former limited its scope to sexual violence as a form of domestic VAW.[221]

Small-scale studies conducted at various levels, settings and regions also provide ample evidence that sexual violence is pervasive across the country. For instance, a study conducted in 2007 among schoolgirls in Jimma Zone, the most populous zone in Oromia Regional State, 87.3% of girls reported that they had been raped once while 12.7% reported that they had been raped more than once in their life-time.[222] It also indicated that 9.1% of the girls had experienced an attempted rape.[223] According to a study in Jimma town, the prevalence of life-time rape was 15.3% while the

---

[217] Ministry of Women, Children and Youth Affairs (MoWCYA) (2013) *Assessment of Conditions of Violence Against Women in Ethiopia*, Final Report November 2013, Addis Ababa, Ethiopia, pp. 60-64.
[218] *Ibid.*
[219] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016) *Ethiopia Demographic and Health Survey 2016*. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF, p. 292.
[220] *Ibid.*
[221] *Ibid*, p. 290.
[222] Mekonnen Gorfu and Asresash Demsse (2007) 'Sexual Violence against Schoolgirls in Jimma Zone: Prevalence, Patterns, and Consequences', *Ethiopian Journal of Education and Science* 2(2), pp. 11-37, pp. 22-23.
[223] *Ibid*, p. 27.

prevalence of life-time attempted rape was 17.7%.[224] Of those participants who were sexually active, nearly 26% stated they had started sexual activity because of rape.[225] Similarly, a study conducted in Assendabo town in Jimma Zone revealed that that 8% of the respondents reported to have been subjected to sexual violence in their life-time.[226] Another study conducted among female students of Mada Walabu University, which is located in Oromia Regional State, the prevalence of sexual violence was nearly 11%.[227]

According to a 2011 study among secondary school students from the towns of Dire Dawa, Harar, and Jijiga, about 68% of females reported to have been subjected to at least one instance of sexual violence.[228] Another study in the same setting reported that the prevalence of sexual aggression, which was defined as a physically forced sexual intercourse, was 23%.[229] In the Somali Regional State, a population-based survey conducted in two refugee camps and one of the surrounding host communities revealed that approximately 20% of women and girls had been raped within the 18 months preceding the survey.[230]

In the more ethno-linguistically diversified region of the Southern Nations, Nationalities and Peoples Region (SNNPR), a study conducted in 2008 among 1,330 female college students in Hawassa city found a life-time prevalence rate of approximately 55% for sexual violence and

---

[224] Yohannes Dibaba (2007) 'Sexual Violence against Female Youth in Jimma Town: Prevalence, Risk Factors and Consequences', *Ethiopian Journal of Health Science* 17(1), pp. 47-58, p. 53.
[225] *Ibid*, p. 52.
[226] Adey Bogale *et al.* (2004) 'Assessment of Sexual Assault among Women in Assendabo Town, Oromia Region, South West Ethiopia', *Ethiopian Journal of Health Science* 14(1), pp 23-30.
[227] Tolesa Bekel *et al.* (2015) 'Sexual Violence and Associated Factors among Female Students of Madawalabu University in Ethiopia', *Epidemiology (sunnyvale)* 5(2), pp. 1-8.
[228] Alemayehu Belachew Bekele *et al.* (2011) 'Sexual Violence Victimization among Female Secondary School Students in Eastern Ethiopia', *Violence and Victims* 26(5), pp. 608-630, p. 608.
[229] Alemayehu Belachew Bekele (2012) *Determinants of Sexual Violence among Eastern Ethiopian Secondary School Students*, PhD Thesis, Utrecht University, p. 26.
[230] Angela Parcesepe *et al.* (2008) *Using the Neighborhood Method to Measure Violence and Rape in Ethiopia*, Columbia University's Program on Forced Migration and Health and the International Rescue Committee (IRC) Ethiopia, p. 3, available at: http://www.cpcnetwork.org/wp-content/uploads/2014/04/Ethiopia-Report_Final.pdf last visited on 9/14/2018.

13.3% for forced sexual intercourse.[231] A study on the prevalence and risk factors of VAW committed by males, which involved 1,378 male college students in the same town, also indicated that the rate of sexual violence within the year preceding the survey was 17%.[232] These two studies measured the prevalence rates of sexual violence both from female and male participants. In both cases, the prevalence rate does not fall below two digits. However, the figure skyrocketed among night school students in the same town. According to a 2010 study among night school students in Hawassa city, the prevalence rate of life-time sexual violence was 86.4%.[233]

In other parts of the region, a study conducted in 2013 among female students of Wolaita Sodo University found the prevalence of sexual violence for attempted rape was 23.4% while it was 8.7% for rape cases.[234] A 2015 study in the same setting found life-time sexual violence to be 45.4% while 36.1% of the respondents reported having experienced sexual violence since entering university, with 24.4% reporting it to have experienced sexual violence in the same academic year.[235] According to a 2015 study among Mizan-Tepi University students in southwestern Ethiopia, the prevalence of rape since joining the university and in the same academic year was 13.5% and nearly 9%, respectively.[236] The life-time prevalence of attempted rape and rape was 33.5% and 20.7%, respectively.[237] A 2017 study on the prevalence and associated factors of SVAW among high school students in Dilla town, Gedeo Zone of SNNPR indicated that the

[231] Dodie Arnold *et al.* (2008) 'Prevalence and Risk Factors of Gender-based Violence among Female College Students in Awassa, Ethiopia', *Violence and Victims 23(6),* pp. 787-800.
[232] M. Philpart *et al.* (2009) 'Prevalence and Risk Factors of Gender-based Violence Committed by Male College Students in Awassa, Ethiopia', *Violence and Victims* 24(1), pp. 122-136.
[233] Medhanit Asfaw (2010) *Sexual Violence and Its Consequence among Female Night School Students in Hawassa Town, Southern Ethiopia: A Cross-sectional Study,* Mph Thesis, Addis Ababa University, p. 35.
[234] Abebayehu Tora (2013) 'Assessment of Sexual Violence against Female Students in Wolaita Sodo University, Southern Ethiopia', *Journal of Interpersonal Violence* 28(11), pp. 2351-2367.
[235] Yohannes Mehretie Adinew and Mihiret Abreham Hagos (2017) 'Sexual Violence against Female University Students in Ethiopia', *BMC International Health and Human Rights* 17(19), p. 1.
[236] Andualem Henok *et al*. (2015) 'Sexual Violence and Substance Use among Female Students of Mizan-Tepi University, Southwest Ethiopia: A Mixed Method Study', *Journal of Women's Health, Issues and Care* 4(4), pp. 1-9.
[237] *Ibid*, p. 1.

prevalence of sexual violence was 13.2%.[238] In a rural setting, the findings of a study by the World Health Organization (WHO) in Meskan and Mareko indicated that 59% of women reported to have been subjected to sexual violence.[239] The variations in the findings of these studies might be due to the definitions of sexual violence they used, the research methods and designs they employed and the criterion they applied for inclusion and/or exclusion of participants.

Sexual violence is also common in the northern parts of the country. For instance, in Tigray Regional State a study among female students in higher learning institutions in Mekelle city found that the life-time prevalence rate of sexual violence was 45.4% and the prevalence of sexual violence since joining college was 34.4%.[240] The prevalence of sexual violence in the academic year in which the study was conducted was 28.1%.[241] Likewise, in the Amhara Regional State, a 2011 study in Debere Berhan town has shown that the life-time prevalence of rape was 13.2% while it was 5.5% in the year prior to the study.[242] A previous study conducted among female students in Debark town indicated that the prevalence of rape was nearly 9% while it was 11.5% for attempted rape.[243] In a study conducted in Dabat town, out of the students who reported having started sexual intercourse, 33.3% were subjected to rape while 20.4% had faced attempted rape.[244] According to a 2015 study among high school female students in Debre Markos town, the prevalence of attempted rape was 20.2% while it was almost 13% for rape. It also found that 24.2%

---

[238] Desalegn Tarekegn *et al.* (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2), p. 1.
[239] World Health Organization (2005) *WHO Multi-country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses*. Geneva, World Health Organization, 2005, p. 6.
[240] Yaynshet G/Yohannes (2007) *Prevalence and Factors Related to Gender Based Violence among Female Students of Higher Learning Institutions in Mekelle Town, Tigray, Northern Ethiopia,* Mph Thesis, Addis Ababa University.
[241] *Ibid.*
[242] Emebet Zeleke (2011) *Assessment of Prevalence Associated Factors and Outcome of Sexual Violence among High School Students in Debereberhan Town,* Mph Thesis, Addis Ababa University.
[243] Worku A. and Addisie M. (2002) 'Sexual Violence among Female High School Students in Debark, North West Ethiopia', *East African Medical Journal* 79(2), pp. 96-99.
[244] Fitaw Y. *et al.* (2005*)* 'Gender Based Violence among High School Students in North West Ethiopia', *Ethiopian Medical Journal* 43(4), pp. 215-221.

of the respondents reported that they had experienced sexual violence in their life-time.[245] According to a study among "street" females in Bahir Dar city, the life-time prevalence rate of rape was 24.3% while it was 11.4% in the year prior to the study.[246]

The available evidences also demonstrated that sexual violence is common in the capital Addis Ababa. According to a 2000 study, the prevalence rate of rape among female "street" adolescents in Addis Ababa was 15.6% and it was repetitive for 60% of the victims.[247] Among female adolescents in Addis Ababa, 33.9% of the respondents reported that they had been experienced forced sex.[248] In a school setting, a study in three selected high schools showed that 26.1% of the respondents' first sexual experience was rape.[249] According to a study conducted in the Gullele Sub-City of Addis Ababa, the prevalence of non-partner sexual violence was 16.2%.[250] Likewise, in a cross-sectional study conducted in three selected high schools in Addis Ababa, 26.1% of the participants reported that they had been subjected to rape[251] while in another survey conducted in the same year, 21.2% of schoolgirls were reported to have been raped.[252] A study among Addis Ababa University female students put the prevalence of life-time rape and attempted rape at 12.7% and 27.5%, respectively.[253] According to a study conducted among female "street" adolescents in Addis Ababa, the prevalence of rape and attempted rape was 15.6% and 20.4%, respectively.[254] A

---

[245] Getachew Mullu *et al.* (2015) 'Prevalence of Gender Based Violence and Associated Factors among Female Students of Menkorer High School in Debre Markos Town, Northwest Ethiopia', *Science Journal of Public Health* 3(1), pp. 67-74.
[246] Alemayehu C. Misganaw and Yalew A. Worku (2013) 'Assessment of Sexual Violence among Street Females in Bahir-Dar town, North West Ethiopia: A Mixed Method Study', *BMC Public Health* 13(1):825, p. 1.
[247] Mitike Molle *et al.* (2002) 'Sexual violence among female street adolescents in Addis Ababa, April 2000', *Ethiopian Journal of Health and Development,* 16(2), pp. 119-128.
[248] Rahel Tessema (2006) *Sexual Violence and Reproductive Health Problems among Female Adolescents in Addis Ababa,* MA Thesis. Addis Ababa University.
[249] Gelane Lelissa and Lukman Yusuf (2008) 'A Cross Sectional Study on Prevalence of Gender Based Violence in Three High Schools, Addis Ababa, Ethiopia', *Ethiopian Journal of Reproductive Health* 2(1), pp. 52-60.
[250] CARE Ethiopia (2008), *supra note* 23, p. 40.
[251] Gelane Lelissa and Lukman Yusuf (2008), *supra note* 249.
[252] Belay Endeshaw (2008) *Factors Contributing To Sexual Violence against Female High School Students in Addis Ababa,* Msc Thesis, Addis Ababa University, p. 80.
[253] Seblework Tadesse (2004), *supra note* 26, p. 29.
[254] Mitike Molle *et al.* (2002), *supra note* 247, pp. 119-128.

relatively recent study on the nature and magnitude of sexual abuse on girls in Addis Ababa found that 66.6%, or six out of 10 girls, had encountered various forms of sexual violence.[255]

Therefore, all available data clearly show that sexual violence in Ethiopia is widespread and common. The figures also indicate that victims of sexual violence are predominately women and girls. Young boys and men are also occasional victims.[256] Even in such cases, most of the offenders are men.[257] Generally, most of the victims of sexual violence are women and most of the offenders of sexual violence are men. Sexual violence is an issue that disproportionately affects women and girls, and hence, it is a gendered problem.[258]

Empirical evidence also revealed that, in most cases, women and girls are sexually assaulted by persons whom they are familiar with.[259] Offenders are often relatives, boyfriends or figureheads including teachers.[260] Sexual violence can be committed anywhere and in every setting including family homes, neighborhoods, hotels, schools, streets and work places.[261] It can also be committed during any time of the day.[262]

Sexual violence has adverse effects on victims' mental, physical, reproductive health and socio-economic well-being.[263] Psychologically, the victims suffer from many forms of painful experiences including anxiety and depression,[264] self-blame, hopelessness, sleeplessness, suicidal

---

[255] Getnet Tadele and Desta Ayode (2008) *The Situation of Sexual Abuse and Commercial Sexual Exploitation of Girl Children in Addis Ababa*, Forum on Street Children Ethiopia (FSCE), p. iii.
[256] Federal Ministry of Health Ethiopia (2009) *National Guideline for the Management of Survivors of Sexual Assault in Ethiopia*, p. 1, available at: http://www.esog.org.et/gbv.pdf last visited on 27/12/2014.
[257] *See infra* Chapter 5 Section "5.3.1.6. Criminalizing Same-Sex Rape against Children" with accompanying notes.
[258] CARE Ethiopia (2008), *supra note* 23, p. 8.
[259] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293; and Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iii.
[260] Mersha Shenkute (2013), *supra note* 26, p. 43.
[261] Mersha Shenkute (2013), *ibid*, p. 55; and Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iii.
[262] Mersha Shenkute (2013), *ibid*, p. 39.
[263] Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 4.
[264] Getachew Mullu *et al*. (2015), *supra note* 245, p. 73.

tendencies and suicidal attempts,[265] substance abuse and PTSD.[266] Studies suggest that PTSD occurs in 60% – 70% of the victims of sexual violence.[267] A study conducted in Addis Ababa categorized **t**he psychological effects into two: *immediate and lifelong*. The immediate effects occur in the first week subsequent to the incident and include a wide range of emotions and misbehavior, accompanied by anger, self-blame, anxiety, feelings of guilt, shock and disbelief, confusion, feeling of worthlessness, and fear of being alone.[268] In the long term, these were followed by a change life style with manifestations of phobia, sexual dysfunction, suicidal attempts, lack of confidence, difficulty to make decisions, heightened hatred towards men and heightened desire for revenge.[269] Victims of sexual violence also sustain a variety of physical injuries ranging from soreness and bruising to vaginal and rectal bleeding.[270]

The adverse effects of sexual violence on the reproductive and sexual health of the victims include unwanted pregnancy, abortion, sexually transmitted infections (STIs) including HIV/AIDS, sexual dysfunction and increased tendencies to develop risky sexual behaviors.[271] Socio-economically, sexual violence leads to poor performance, failure or withdrawal from school, rejection by family and friends,[272] and loss of job.[273] The victims were found to be socially unacceptable, considered

---

[265] Emebet Zeleke (2011), *supra note* 242, p. 33; Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5; Beata Cybulska and Greta Forster (2005) 'Sexual Assault: Examination of the Victim' *MEDICINE* 33(9), pp. 23-28, p. 26; and Yaynshet G/Yohannes (2007), *supra note* 240, p. 36.
[266] Beata Cybulska and Greta Forster (2005), *ibid*; and Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 5.
[267] Beata Cybulska and Greta Forster (2005), *ibid*.
[268] Mersha Shenkute (2013), *supra note* 26, p. 51.
[269] *Ibid.*
[270] *See for e.g*., Getachew Mullu *et al.* (2015), *supra note* 245, p. 73; Medhanit Asfaw (2010), *supra note* 233, p. vii; Emebet Zeleke (2011), *supra note* 242, p. 46; Yaynshet G/Yohannes (2007), *supra note* 240, p. 35-36; Seblework Tadesse (2004), *supra note* 26, p. 34; and Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5-6.
[271] Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 5; Yaynshet G/Yohannes (2007), *ibid*; Getachew Mullu *et al.* (2015), *supra note* 245, p. 73; Medhanit Asfaw (2010), *ibid*, p. vii; Seblework Tadesse (2004), *ibid*; Emebet Zeleke (2011), *ibid*, p. 49; Tolesa Bekel *et al.* (2015), *ibid*, p. 5-6; B. Manning-Geist *et al.* (2016) 'Predictors of Medical Outcome in 1,712 Ethiopian Survivors of Rape', *Annals of Global Health* 82(3), pp. 319-327, p. 324; Mersha Shenkute (2013), *supra note* 26, p. 50; Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv; and CARE Ethiopia (2008), *supra note* 23, pp. 45-46.
[272] Yaynshet G/Yohannes (2007), *ibid*; Worku A. and Addisie M. (2002), *supra note* 243; and Ministry of Women, Children and Youth Affairs (MoWCYA) (2013), *supra note* 217, p. 35.
[273] Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.

as worthless and stigmatized by their own families and members of their communities, forcing them to run away to other areas where they usually engage in activities, exposing them to further violence such as "prostitution" and "street" life.[274]

Perhaps the most crucial consequence of sexual violence is the denial of fundamental human rights to women and girls.[275] It is maintained that the very existence of sexual violence is discriminatory since the threat of rape diminishes the autonomy of women by altering their lifestyles and restricting certain choices - for example, the freedom of movement - in order to minimize the risk of being raped.[276]

Despite the high prevalence rate and devastating consequences of sexual violence, the proportion of women and girls who report the incident to the police is extremely low. According to the 2016 DHS, only 8% of victims of SVAW seek help from the police.[277] Only 2 – 3% of women have ever sought help from other service providers such as lawyers, medical personnel, and social workers.[278] A 2004 study also indicated that 93.6% rape victims did not report the incidence of rape to anybody,[279] while a 2010 study in Hawassa city showed that 83.3% of rape victims did not report the incidence to the police.[280] Likewise, a study among school girls in Jimma Zone concluded that nearly 66% rape cases were not reported to any legal body.[281] A 2015 study among female students of Mada Walabu University showed that nearly 88% of the victims did not report the incident to a legal body.[282] A study in Debre Birhan town also found that 92% of the victims did not report the incident to a legal body[283] while a study among "street" females in Bahir Dar city revealed that around 94% of rape victims did not report the incident to law enforcement

[274] Mersha Shenkute (2013), *supra note* 26, p. 50.
[275] UNICEF (2000), *supra note* 25, P. 8.
[276] Brande Stellings (1993), *supra note* 24, p. 188.
[277] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 297.
[278] *Ibid*.
[279] Seblework Tadesse (2004), *supra note* 26, p. 29.
[280] Medhanit Asfaw (2010), *supra note* 233, p. 32.
[281] Mekonnen Gorfu and Asresash Demsse (2007), *supra note* 222, p. 31.
[282] Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5.
[283] Emebet Zeleke (2011), *supra note* 242, p. 28.

organs.[284] Similarly, a study in Addis Ababa revealed that only 11.4% of victims of sexual violence reported the incident to the law enforcement bodies.[285] Thus, a substantial portion of victims of sexual violence did not report the incident to the police and seek remedy from the CJS.

Rape victims do not report the incident for a variety of reasons. Generally, fear of retribution, especially if the victim is known to the offender; fear of stigma attached to being sexually victimized; fear of blame for the incident; history of negative outcome following a previous disclosure; and fear of psychological consequences of disclosure, including anxiety or depression from revisiting the event have been identified as the main factors for nondisclosure.[286] Particularly, in Ethiopia, the primary factors preventing victims of sexual violence from reporting the incident and seeking justice include lack of awareness about their rights; ineffectiveness of the CJS; fear of retribution from the offender; fear of parents; fear of stigma, public reaction or shame; lack of awareness as to where to go to or what to do; and the perception that the legal apparatus is not helpful and that the offender would not be prosecuted.[287] More specifically, a study by CARE Ethiopia concluded that "there is a tendency, by the community, to assume that women and girls who experience gender-based violence must have 'asked for it' in some way."[288]

The prevailing view of rape as shameful, degrading and dishonoring to the victim and her family seems to be more consequential in keeping the victim from disclosing the incident and seeking justice.[289] According to Sinidu Fekadu, fear of stigma is one of the main reason deterring the victims from reporting the incident.[290] Rape is framed as *shameful*. The victim is often tainted with the social stigma. She must hide herself and cannot openly say what has happened to her. Bringing

---

[284] Alemayehu C. Misganaw and Yalew A. Worku (2013), *supra note* 246, p. 1.
[285] Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.
[286] R. Acierno *et al.* (1997) 'Prevalence Rates: Case Identification and Risk Factors for Sexual Assault, Physical Assault, and Domestic Violence in Men and Women', *Behavioral Medicine* 23(2), pp. 53–64.
[287] CARE Ethiopia (2008), *supra note* 23, pp. 48-52; Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5; Mekonnen Gorfu and Asresash Demsse (2007), *supra note* 222, p. 26; and Mersha Shenkute (2013), *supra note* 26, p. 55.
[288] CARE Ethiopia (2008), *ibid*, p. 48.
[289] Sara Tadiwos (2001), *supra note* 27, p. 5; and Indrawatie Biseswar (2011), *supra note* 28, p. 184.
[290] Sinidu Fekadu (2008) *An Assessment of Causes of Rape and Its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa*, MA Thesis, Addis Ababa University, pp. 54-57.

the matter to the public, as Biseswar notes, "instead of being seen as a cry for help, exposes such families and the victims in particular to ostracism, stereotyping and scrutiny."[291] This social sanction allows the offender to take undue advantage for which the victim is not liable. Instead, the victim is blamed for what the offender does. This constitutes a second victimization to the victim. It deters the victim from reporting the incident and seeking justice and other supports she needs.[292] As Theresa Rouger rightly noted "[s]ilence in Ethiopian society (at domestic, community and even at state level) in the face of sexual abuse or rape is the price paid for the family's reputation and honor, sometimes [*sic*.] at the risk of the individual woman's interest."[293]

Since most rape victims do not report the incident to the police, most offenders will never be arrested, prosecuted, convicted and punished. Even where the case is reported, most rapists may never be arrested. For instance, out of the 181 rape cases documented in Adigrat Hospital of Tigray Region and reported to the police, about 90 % of the offenders were identified by the victims, but only 42 % were arrested by the police.[294] A study in Addis Ababa also found that out of 73 rape victims, only five reported the incident to the police and only one offender was sentenced.[295] A relatively recent study conducted among rape victims at the Gandhi Memorial Hospital presented a much worse figure yet, stating that "all cases were reported to the police [officers], but none of the rapists was arrested."[296] In identifying the reasons, it suggested that most police officers were reluctant to locate and arrest the offenders, and took a long time to collect medical forensic evidence and investigate rape cases.[297] The study also found that the prosecution and conviction rates for rape cases were substantially low, particularly in cases involving acquaintances.[298] Thus,

---

[291] Indrawatie Biseswar (2011), *supra note* 28, p. 184.
[292] Sinidu Fekadu (2008), *supra note* 2690, pp. 54-55.
[293] Theresa Rouger (2009) 'The Impact of International Human Rights Law on the National Laws of Ethiopia from a Gender Rights and Disability Rights Perspective', in Malcolm MacLachlan and Leslie Swartz (eds) *Disability & International Development: Towards Inclusive Global Health*, Chapter 3, New York: Springer Science+Business Media, pp. 35-36.
[294] Gessessew A. and Mesfin M. (2004), *supra note* 26, p. 142.
[295] Seblework Tadesse (2004), *supra note* 26, p. 29.
[296] Mersha Shenkute (2013), *supra note* 26, p. 55.
[297] *Ibid*, p. 59.
[298] *Ibid*, p. 52.

even in the few circumstances where cases are reported to the police, offenders have been prosecuted and convicted only on a limited scale. Where the offender is convicted, he is often inadequately punished despite having left his victim with a permanent emotional trauma and physical scar.[299] Above all, throughout the criminal proceedings, rape victims have often been treated as *criminals themselves*.[300] These factors, in effect, discourage actual and potential victims from reporting the incident to the police and seeking justice from the CJS.[301]

3.3 Multifaceted Factors Accounting for High Prevalence of Sexual Violence

As stated earlier, rape is a gendered crime which disproportionately affects girls and women. It is also one of the least reported crimes. There are multifaceted factors behind a culture that produces such a high rate of prevalence, underreporting and inadequate responses.[302] Sexual violence is a problem with multiple causes and, hence, cannot be attributed to one particular factor. There are a variety of structural, socio-cultural, economic, psychological, legal, and biological factors explaining the high prevalence of sexual violence.[303] Of course, all types of violence are strongly associated with social determinants, including weak governance and rule of law, socio-cultural and gender norms, income and gender inequality, rapid social change, limited educational opportunities, and unemployment.[304] Likewise, the causes of sexual violence are complex and

---

[299] Emebet Kebede (2004), *supra note* 27, pp. 68-71; and Sara Tadiwos (2001), *supra note* 27, pp. 20-22.
[300] Indrawatie Biseswar (2011), *supra note* 28, p. 186.
[301] Mersha Shenkute (2013), *supra note* 26, p. 52.
[302] Susan J. Lea *et al.* (2003) 'Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors' *British Journal of Criminology 43*(3), pp. 83–599; Marijke Velzeboer *et al.* (2003) *Violence against Women: The Health Sector Responds*, Occasional publication No. 12 (Washington, D.C., Pan American Health Organization, 2003), p. 5, available at: https://www.researchgate.net/publication/306012171_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_Pan_American_Health_Organization_Pan_American_Health_Organization last Visited on 10/28/2018.
[303] Susan J. Lea *et al.* (2003), *ibid*; and Marijke Velzeboer *et al.* (2003), *Ibid*.
[304] World Health Organization (2014) *Global Status Report on Violence Prevention*, p. ix, available at: https://www.google.com/search?q=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&oq=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&aqs=chrome..69i57.847j0j4&sourceid=chrome&ie=UTF-8 last Visited on 10/28/2018.

happen at varying levels. According to the ecological model, risk factors for sexual violence can be categorized into four levels of influence: *societal*, *community*, *relationship*, and *individual*.[305]

The first one (i.e. societal-level influence) looks at the broad societal factors that create a climate that encourages or inhibits of violence, including the responsiveness of the CJS, socio-cultural norms, income inequality, the social acceptability of violence, the exposure to violence through mass media, and political instability.[306] It relates to the larger, macro-level factors that influence the occurrence of sexual violence.[307] At societal level, for instance, gender roles are rigidly defined and enforced and the concept of masculinity is linked to physical strength, male honor or dominance.[308] Religious or cultural belief systems, societal norms and socio-economic policies are also important factors, making sexual violence largely a structural problem.[309]

Particularly, feminist theorists viewed sexual violence as symptomatic of unequal power relations within society.[310] In this sense, sexual violence is simply "a manifestation of the power imbalance between men and women."[311] Other scholars associate sexual violence with patriarchy. They claim that, in patriarchal cultures, rape is paradigmatic – that it enacts and reinforces, rather than contradicting, widely shared cultural views about gender and sexuality.[312] A core dynamic of patriarchal sexuality, according to this view, is the normalizing and sexualizing of male (or

---

[305] World Health Organization/London School of Hygiene and Tropical Medicine (2010) *Preventing Intimate Partner and Sexual Violence against Women: Taking Action and Generating Evidence*, Geneva, World Health Organization, 2010, p. 19, available at: http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf Last visited on 10/28/2018.

[306] Etienne G Krug *et al.* (2002) *The World Report on Violence and Health*, p. 1085, available at: https://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=4ACE46FF1BC38A44719DF1E8F4713D60?sequence=1 last visited on 10/28/2018.

[307] World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19.

[308] Mary Ellsberg and Lori Heise (2005), *supra note* 64, p. 24.

[309] Christine Chinkin (1995) 'Violence against Women: The International Legal Response', *Gender and Development* 3(2), pp. 23-28, p. 24.

[310] Hilaire Barnett (1998), *supra note* 65, p. 257.

[311] Christine Chinkin (1995), *supra note* 309, p. 24.

[312] Rebecca Whisnant (2011), *supra note* 188; Andrea Dworkin (1976), *supra note* 188, pp. 45-46; and R.W. Connell (1987) *Gender and Power: Society, the Person, and Sexual Politics*, Stanford, California: Stanford University Press, p. 107.

masculine) control and dominance over females (or the feminine).[313] This dynamic finds expression in a number of beliefs about what is *natural*, *acceptable*, and even *desirable* in male-female sexual interaction: that the male will be persistent and aggressive, the female often reluctant and passive; that the male is invulnerable, powerful, hard, and commanding, and that women desire such behavior from men; that real men are capable of getting sexual access from women as they wish it; that sexual intercourse is an act of male conquest; that women are men's sexual objects or possessions; and that men need and are entitled to sex.[314]

Generally, the above structural explanation for the occurrence of sexual violence fits to Ethiopian society, which is largely patriarchal, with a clear separation of gender roles.[315] As Irina Anderson and Kathy Doherty well noted, "men and women are shaped almost entirely by the society and the institution in which they live."[316] From early childhood, men and women are socialized very differently and separate gender roles are assigned through the socialization process. In Ethiopia, as Yelfign Worku observed, "a girl is told to stay at home and to help [her] mother or to watch the boys play. If she is allowed to play, she is expected to play soft games with girls and to keep neat and tidy even when playing. Instead of going to school, she is expected to get married at an early age and to take over the household chores."[317] Sexuality too is linked to the idea of masculinity and femininity.[318] As Hirut Terefe noted, "[w]hat constitute the essence of maleness and femaleness is expressed in sexual norms and ideologies."[319] The society views men as powerful,

---

[313] Rebecca Whisnant (2011), *ibid.*
[314] *Ibid.*
[315] Amith Ben-David (1993) 'Culture and Gender in Marital Therapy with Ethiopian Immigrants: A Conversation in Metaphors', *Contemporary Family Therapy* 15(4), pp. 327–339; Abbi Kedir and Lul Admasachew (2010) 'Violence against Women in Ethiopia', *Gender, Place and Culture: A Journal of Feminist Geography* 17(4), pp. 437-452, p. 447; and እሸቱ ድባዑ (1997) *ተባእታይ አገዛዝ በኢትዮጵያ፡ ችግሩና የመፍትሄው መንገዶ፤* አዲስ አበባ፤ አዲስ ጥራት ማተሚያ ቤት, Chapter 7 (Amharic).
[316] Irina Anderson and Kathy Doherty (1997) 'Psychology, Sexuality and Power: Constructing Sex and Violence', *Feminism Psychology*, 17(4), pp. 495–514.
[317] Yelfign Worku (2001) 'Ethiopia: From Bottom to Top in Higher Education – Gender Role Problems', *International Journal of Sociology and Social Policy* 21(1/2), pp. 98 – 104, p. 99.
[318] Hirut Terefe (2002) 'Violence Against Women from Gender and Cultural Perspectives', *Reflections: Documentation of the forum on gender*, number 7, Heinrich Böll Foundation, Addis Ababa, available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect7.pdf last visited 10/19/2018.
[319] *Ibid.*

dominant, and aggressive while viewing women as weak, feeble, and fragile, and VAW is embedded in the very societal construction of masculinity.[320]

Sexual violence is an act internalized and embedded in the culture of the society.[321] It is supported through cultural attitudes that promote false beliefs about the nature of the violence and the victims.[322] Institutions like language, family, advertising, education, the mass media and others use a discourse and convey an ideological message that influence the behavior of men and women, expecting the latter conform to the established cultural patterns that promote gender inequality.[323] In language, for instance, there are several proverbs that portray men as aggressive and superior and women as submissive and inferior. In this regard, Jeylan Wolyie Hussein identified the following typical proverbs of the Oromo: *males are an iron pole of a house while females are the outside gate that belongs to others*; *for women and children, the stick is a matchless treatment*; *it is the man, the possessor who should manage his horse as well as his wife*; *women and donkey do not complain about burden*; *women are bulky but not great*; and *women make good dish but not good idea*.[324] Similar proverbs are found abundantly in various ethno-linguistic groups in

[320] Melakou Tegegn (2001) 'The Campaign on Violence against Women: How did it go?', in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender,* Number 5, Addis Ababa: Panos Ethiopia, pp. 34-43, available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf last visited on 10/28/2018; and እሸቱ ድባዑ (1997), *supra note* 315, pp. 59-60.

[321] B. Alemu and M. Asnake (2007) *Women's Empowerment in Ethiopia: New Solutions to Ancient Problems*, Pathfinder International Ethiopia, p. 7, available at: http://www2.pathfinder.org/site/DocServer/PI_WE_paper_final.pdf?docID=10202 last visited on 10-28-2018; Sara Tadiwos (2001), *supra note* 27, p. 6; Theresa Rouger (2009), *supra note* 293, pp. 35-36; Indrawatie Biseswar (2011), *supra note* 28, p. 18; Hirut Terefe (2002), *supra note* 318; and እሸቱ ድባዑ (1997), *ibid*, pp. 59-60.

[322] እሸቱ ድባዑ (1997), *ibid*, pp. 59-88.

[323] Inter-American Commission on Human Rights (2011) *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63 9 December 2011 Original: Spanish, pp. 14-15, available at: https://www.oas.org/en/iachr/women/docs/pdf/women%20mesoamerica%20eng.pdf last visited on 9/15/2018.

[324] Jeylan W. Hussein (2004) 'A Cultural Representation of Women in the Oromo Society', *African Study Monographs* 25(3), pp. 103-147; and Jeylan W. Hussein (2009) 'A Discursive Representation of Women in Sample Proverbs from Ethiopia, Sudan, and Kenya', *Research in African Literatures* 40(3), pp. 96-108.

Ethiopia.[325] These proverbs shape the moral consciousness, opinions, and beliefs of members of the society and reinforce the roles and stereotypes that are detrimental to women.[326]

Another structural factor relates to the law and the CJS. Obviously, the law does not exist in a vacuum but rather arises out of the 'mores' of the society,[327] which traditionally, have placed women in a subordinate position, relative to men, and confined women to the private sphere, typically, childbearing and child-nurturing.[328] On the other hand, men have set to be provider and the dominant figure in the family – the patriarch.[329] As the father figure and the husband, they have been bestowed with full powers of management over the family matters.[330] The law often mirrored, legitimized and enforced these stereotypic gender role assignments. For instance, the 1960 Family Law of Ethiopia explicitly stated that the "husband is the head of the family"[331] to whom the "wife owes obedience."[332] The husband not just "owes protection to his wife", under the law, but also "watches over her relations and guides her in her conduct", which implies his right to control his wife's behavior, including the authority to 'correct' an erring.[333] The law legitimized, reinforced and enforced the stereotype that encourages women to be submissive and led men to assuming that women are not equal to them and resort to violence to assert their authority and superiority. It also obliged a married woman that "[w]here the husband is not in a position to provide his wife with servants, she is bound to attend to the household duties herself."[334] If her husband is too poor to hire - presumably other women – 'servants', she must assume that role herself.

---

[325] *See for e.g.*, እሸቱ ድባዑ (1997) *supra note* 315.
[326] Inter-American Commission on Human Rights (2011), *supra note* 323, p. 15.
[327] Hilaire Barnett (1998), *supra note* 65, p. 257.
[328] *Ibid.*
[329] *Ibid.*
[330] *Ibid.*
[331] The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Article 635(1), *Negarit Gazeta*, 19th Year No. 2, Addis Ababa, 5th May 1960 [Here-in-after the "Civil Code"].
[332] *Ibid,* Article 635(1) and (2).
[333] *Ibid,* Article 635, Article 637, Article 644, and Article 646.
[334] *Ibid,* Article 646.

The second level in the ecological model explores the community context in which social relationships are embedded and seeks to identify the characteristics of these settings that are associated with the occurrence of sexual violence.[335] At the community level, women's mobility is reduced with lack of social support[336] while male peer groups condone and legitimize men's violence.[337] On top of this, the community fails to appropriately sanction VAW.[338]

The third level of influence in the ecological model focuses on relationships.[339] It refers to variables that increase risk as a result of relationships with peers, intimate partners and family members, including having multiple partners.[340] At the level of the family and relationships, the male controls wealth and decision making within the family, and marital conflict is frequent.[341]

The fourth level in the model relates to individual-level factors. It identifies biological and personal factors that influence how individuals behave and increase their likelihood of becoming a victim or an offender, including demographic characteristics, personality disorders, substance abuse, and a history of experiencing, witnessing or engaging in violent behavior.[342]

Empirical studies show that there is an association between factors at all levels, including cultural norms, poverty, family breakup, use of alcohol and drugs, instability of the community, and the occurrence of sexual violence in Ethiopia.[343] In this regard, a study by CARE Ethiopia identified the following as factors fostering an environment of VAW: attitudes in society that define women as inferior and as the property of men, the perception that women 'deserve' punishment for

---

[335] Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085; and World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19.
[336] Mary Ellsberg and Lori Heise (2005), *supra note* 64, p. 24.
[337] *Ibid.*
[338] World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, pp. 24-25.
[339] Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085.
[340] World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, pp. 19-23.
[341] Mary Ellsberg and Lori Heise (2005), *supra note* 64, p. 24.
[342] World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19; Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085; Mary Ellsberg and Lori Heise (2005), *ibid*, p. 24; and Hilaire Barnett (1998), *supra note* 65, pp. 256-257.
[343] Mersha Shenkute (2013), *supra note* 26, p. 50.

perceived 'erring' conducts, poverty, gender inequality, women's lack of self-confidence and self-esteem, and societal constructions of masculinity and femininity.[344]

Besides, the community, in some ways, condones VAW. There are, for instance, cultural beliefs providing justification for VAW, particularly within the family.[345] Often, a wife is seen as her husband's property.[346] It is also assumed that a husband has the right to discipline his wife and this might include the use of physical violence.[347] Such beliefs encourage women to be submissive to men and compliant with abuse while giving an undue sense of supremacy to men.[348] As Indrawatie Biseswar noted, "[a]nything considered part of the ancient Ethiopian traditional and customary heritage, including various forms of violations of women's rights, is often fervently defended."[349] She further claimed that "[m]ost of [VAW] are historically closely intertwined in women's daily lives as the norm through their cultural, religious or traditional identities to such an extent that they are not realized or recognized as violations."[350] These risk factors are closely intertwined and mutually reinforced by macro-level factors at societal level such as inequality and patriarchy.

Empirical studies also linked risk factors both at the third and the fourth levels (i.e. relationships and individual-level factors, respectively) to the occurrence of sexual violence. For instance, studies among secondary school students in Eastern Ethiopia identified the following as significant risk factors: having multiple sexual partners, frequent watching of pornography, use of alcohol or other mild drugs (*Khat* or hookah), narcissism, positive attitude towards sexual violence, high sensitivity to rejection, violence in the parental home, and dreadful parental attachment.[351] Other

---

[344] CARE Ethiopia (2008), *supra note* 23, p. 45.
[345] Abbi Kedir and Lul Admasachew (2010), *supra note* 315, p. 447; Indrawatie Biseswar (2011), *supra note* 28, pp. 9-10; Hirut Terefe (2002), *supra note* 318; Tsegaye Megersa (2015) *Gender Based Violence in the Rural Setting of Arsi: Causes and Consequence Analysis in Hetosa District*, MA Thesis, Addis Ababa University, p. 53. *See* also እሸቱ ድባቡ (1997), *supra note* 315, p. 207 *et seq*.; and CARE Ethiopia (2008), *ibid*, p. 42.
[346] Hirut Terefe (2002), *ibid*.
[347] Abbi Kedir and Lul Admasachew (2010), *supra note* 315, p. 446.
[348] *Ibid*, p. 447.
[349] Indrawatie Biseswar (2011), *supra note* 28, pp. 9-10.
[350] *Ibid.*
[351] Alemayehu Belachew Bekele (2012), *supra note* 229, p. 46; and Alemayehu Belachew Bekele *et al.* (2011), *supra note* 228, p. 626.

studies also found the following as factors associated with the occurrence of sexual violence: history of alcohol and drug use, witnessing domestic violence, having a regular boyfriend,[352] being "off the street" females, being a "prostitute" and being between the age of 15 and 29.[353] Still other studies identified a combination of factors, including peer influence, drug use and abuse, economic problems and girls' dependence on men as the main reasons exposing girls to sexual violence.[354]

Generally, there are multiple risk factors for the occurrence of sexual violence at social, community, relationship and individual levels. There are also dynamic interactions among the various risk factors within and between different levels.[355] One level of risk factors or individual factor alone may not fully explain the complex problem of sexual violence. Any successful intervention to prevent sexual violence requires taking action across different levels.[356] Thus, effective intervention against SVAW presupposes a thorough understanding of each risk factor and the dynamic interactions that exist between and among these factors.

3.4 Prior Legal Responses to Sexual Violence

3.4.1 Sexual Offence under the *Fetha Nagas* of the 15th Century

Throughout history, each jurisdiction has sought to define criminal sexual behavior in ways that best reflect the prevailing attitudes and beliefs in each time and place. Historically, however, women's sexuality was regarded as a "property" of men [357] and its value was measured largely by

---

[352] DesalegnTarekegn, Balcha Berhanu and Yigrem Ali (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2), p. 1, available at: https://www.omicsonline.org/open-access/prevalence-and-associated-factors-of-sexual-violence-among-high-school-female-students-in-dilla-town-gedeo-zone-snnpr-ethiopia-2161-1165-1000320.php?aid=92471 last visited 1/27/2019; Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5; Mersha Shenkute (2013), *supra note* 26, p. 49; and Emebet Zeleke (2011), *supra note* 242, p. 48.
[353] Alemayehu C. Misganaw and Yalew A. Worku (2013), *supra note* 246, p. 1.
[354] Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.
[355] World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19.
[356] Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085.
[357] Andrea Dworkin (1976), *supra note* 188, p. 26; Susan Brownmiller (1975), *supra note* 181, pp. 6-22; and አሸቱ ድባቡ (1997), *supra note* 315, pp. 59-60.

women's sexual purity, virginity or chastity.[358] Consequently, rape was articulated as 'a property crime' against a woman's father or her husband and as the theft of virginity, an embezzlement of a man's fair price for his daughter.[359] This conception of rape was institutionalized in marriage, where a woman was made her husband's sexual and reproductive property,[360] and in which he "cannot be prosecuted for using his own property as he sees fit."[361] But, where she was raped by someone else, it was seen as an attack against the male's property, and her husband, if she was married, or her father if she was not married, could expect to receive compensation for their damaged property.[362] Thus, in the past, rape law punished rapists not to protect women from sexual aggression, but to advance the legal interests of patriarchs, reinforce males' control of sexual access to women,[363] and to strike "a balance between the interests of males-in-possession and their predatory counterparts."[364]

---

[358] Julia R. Schwendinger and Herman Schwendinger (1982) 'Rape, the Law, and Private Property', *Crime and Delinquency* 28(2) pp. 271-291, p. 272; Mikki van Zyl (1990) 'Rape Mythology', *Critical Arts: South-North Cultural and Media Studies* 5(2), pp. 10-36, p. 10; and Robin West (1996) 'A Comment on Consent, Sex, and Rape', *Legal Theory* 2(3), pp. 233-251.

[359] Andrea Dworkin (1976), *supra note* 188, pp. 27-30; K. Burgess-Jackson (1996) *Rape: A Philosophical Investigation*, Brookfield, Vermont: Dartmouth Publishing Company, pp. 44-49; Louise du Toit (2008) 'The Contradictions of Consent in Rape Law', *South African Review of Sociology* 39(1), pp. 140-155, p. 143; Susan Brownmiller (1975), *supra note* 181, Chapter 1, passim; Deborah L. Rhode (1991) *Justice and Gender: Sex Discrimination and the Law*, Massachusetts: Harvard University Press, p. 154; Donald A. Dripps (1992) 'Beyond Rape: An Essay on the Difference between the Presence of Force and the Absence of Consent', *Columbia Law Review* 92(7), pp. 1780-1809, p. 1780; Catharine McNamee (2001) 'Rape', in Rita James Simon (eds) *A Comparative Perspective on Major Social Problems*, Lexington Books: Lanham, p. 2; Shani D'Cruze (2011) 'Sexual Violence in History: A Contemporary Heritage?', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Chapter 1, Abingdon: Routledge, p. 44; and Lorenne Clark and Debra Lewis (1977) *Rape: The Price of Coercive Sexuality*, Toronto: The Women's Press, pp. 115-116.

[360] Andrea Dworkin (1976), *ibid*, p. 27; Mikki van Zyl (1990), *supra note* 358, p. 10; Louise du Toit (2008), *ibid*, p. 143; and Jennifer Temkin (1982), *supra note* 6, p. 400.

[361] Andrea Dworkin (1976), *ibid*, p. 26; and Frances P. Bernat (2002) 'Rape Law Reform', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada*, Chapter 6, Westport: Praeger Publishers, p. 86.

[362] K. Burgess-Jackson (1996), *supra note* 359, pp. 60-68; A. F. Schiff (1982) 'Rape: Wife vs Husband', *Journal of the Forensic Science Society* 22(3), pp. 235-240, p. 235; and Vicki McNickle Rose (1977), *supra note* 14, pp. 75-89.

[363] Susan Brownmiller (1975), *supra note* 181, pp. 6-22; Jennifer Temkin (1982), *supra note* 6, p. 400; and Donald A. Dripps (1992), *supra note* 359, p. 1781.

[364] Donald A. Dripps (1992), *ibid*, p. 1782.

In Ethiopia, before the 15th century, there were no written criminal laws amenable to historical scrutiny. Before the Penal Code of 1930, the principal origins of law were the *Fetha Nagast* for the Christian populations of ancient provinces, the Islamic law for the populations of Harrar and the coastal areas of the Red Sea, and the customary law for the other regions of the country.[365] The *Fetha Nagast*, also referred to as "The Law of the Kings", was adopted during the reign of Emperor Zara Yacob (1426-1460) and was in force for centuries among the Chirtian populations of the Ethiopian Empire.[366] The earliest information about the implementation of the *Fetha Nagast* can be traced to the chronicles of Emperor Serts'e Dingil (1563-1597), Emperor Susnīyos (1607-1632), Emperor Īyasu I (1682-1706), Emperor Īyasu II (1730-1755), Emperor Tēwodros (1855-1868), and Emperor Mīnīlik II (1889-1913).[367] As Jean Graven noted, "[the *Fetha Nagast*] has laid the foundation of all the laws which succeeded themselves" in Ethiopia.[368] The *Fetha Nagast* had had a significant influence on the subsequent codified criminal laws.

In its contents, the *Fetha Nagast* has two parts. The first part of the *Fetha Nagast* (chapters 1–22) deals with matters of ecclesiastic law. The second, secular part (chapters 23–51) and the appendix deal with various matters.[369] The Syro-Roman and Roman-Byzantine laws were the sources of the second part of the *Fetha Nagast*.[370] Its religious content was derived from the Old and New Testaments while the secular content originated from Roman-Byzantine laws.[371] Sexual offences were included in chapter 48 of the second part under the heading of *Corporal and Spiritual Punishment for Fornication*.[372] The provisions of the *Fetha Nagast* on sexual offences clearly

---

[365] Jean Graven (1964) 'The Penal Code of the Empire of Ethiopia', *Journal of Ethiopian Law* 1(2), pp. 267-314, p. 268.
[366] *Ibid*, p. 269.
[367] Zuzanna Augustyniak (2012) *The Genesis of the Contemporary Ethiopian Legal System*, Studies of the Department of African, Languages and Cultures, No 46, p. 104, available at: https://pbn.nauka.gov.pl/sedno-webapp/getFile/26624 last visited on 10/28/2018.
[368] Jean Graven (1964), *supra note* 365, pp. 268-269.
[369] *The Fetha Nagast: The Law of the Kings*, Translated from the Ge'ez by Abba Paulos Tzadua, Edited by Peter L. Strauss, Addis Ababa, Faculty of Law, Haile Sellassie I University, 1968. [Here-in-after the "*Fetha Nagast*"].
[370] René David (1963) 'Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries', *Tulane Law Review* 37: pp. 187-204, pp. 187-192; and Jean Graven (1964), *supra note* 365, p. 268.
[371] *Fetha Nagast*, *supra note* 369, Foreword, pp. xv ff.
[372] *Ibid*, pp. xv ff.

revealed that there existed deeply intertwined relationships between sexual interactions and Christian religious norms, gender and sex roles or class relations and morality. The protection of individual victims was not the pillar of sexual offences under the the *Fetha Nagast*.

Generally, the *Fetha Nagast*'s provisions on sexual offences can roughly be categorized into four overlapping groups. The first category was directed primarily towards the protection of the unmarried virgin and betrothed girls in the interests of males. For instance, one of the *Fetha Nagast*'s provisions on sexual offences proscribed that"[t]he one who carries a virgin off by force shall has his nose cut off; a third part of his property shall be given to her."[373] The same provision provided too that "[o]ne who carries off a girl before she attains thirteen years of age shall have his nose cut off; half of his belongings shall be given to her."[374] Both these provisions criminalized forcible rape against an unmarried virgin and imposed the same punishment. However, based on the age of the victim, distinction was made on the amount of compensation.

Similarly, section I (V) (65) of the *Fetha Nagast* stated that "[i]f a man has carnal relations with a virgin outside the knowledge, be it with her consent or without it, her parents have the choice of fulfilling his desire [or not] if he wishes to marry her. If one of the parents refuses, the man who spoiled her give her a pond of gold, if he is not rich and can do this. If he cannot, he shall give her half of his property. If he is absolutely poor, he shall be beaten, half his head shaved, and then be exiled."[375] Under this provision, the first "punishment" for having sex with an unmarried virgin against the will of her parents was marriage if the latter agreed so. The consent of the girl was made totally irrelevant; instead, the law viewed her parents as victims. If marriage was not in her parents' favor, compensation would be due. If the offender was too poor to afford the payment of compensation for spoiling a highly propertied virgin, the punishment would be beating, shaving his head and forcing him into exile in lieu of compensation. However, as a girl was viewed as a "damaged good" after being raped, as a source of shame to her parents with a little prospect of

[373] *Ibid*, Chapter 48, Section I (III) (67).
[374] *Ibid.*
[375] *Ibid*, Chapter 48, Section I (V) (65).

marriage, the parents would have no option than forcing the victim to marry her rapist. Indeed, expressions like "the man who spoiled her" in the law to describe the state of the rape victim reflected the idea attached to the woman's body and the subsequent loss of her value to her male possessor.[376] In this sense, the rape law was simply used to protect the male from any depreciation in the 'value' of his sexual 'possession', which resulted from rape.[377]

The law also criminalized sex with a woman who was betrothed. Section I (V) (69) of the *Fetha Nagast* stated that "[i]f a man carries off the betrothed of another with her consent, both he and she shall have their noses cut off; but if he compelled her, a third of his property shall be given to her after he is awarded this punishment." This sexual offence was formulated to protect the interest of the future husband of a betrothed woman since her consent was made irrelevant. The law criminalized consensual sex with a betrothed woman and punished both the woman and the man involved. The betrothed woman would escape punishment only if the sexual encounter was a forced one. On the contrary, the law did not regulate and criminalize the sexual conduct of a betrothed man. This indicates that the law punished the rapist only to protect the male's interest and, in this specific case, the prospective husband.

Overall, sexual offences under the first category implicitly treated women's sexuality as a commodity, valued according to virginity or chastity and accrued to the benefit of her father, husband or family.[378] Accordingly, if a woman is a virgin, then she still belongs to her father and rape could be committed.[379] If she is not married and is not a virgin, then she belongs to no particular man and a crime of rape could not be committed against her.[380] The law was primarily

---

[376] Anonyms (1952) 'Note: Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard', *the Yale Law Journal 62(1)*, pp. 55-83, p. 73.
[377] Camille E LeGrand (1973) 'Rape and Rape Laws: Sexism in Society and Law', *California Law Review* 61(3), pp. 919-941, p. 924.
[378] እሸቱ ድባዑ (1997), *supra note* 315, p. 62; Andrea Dworkin (1976), *supra note* 188, p. 31; and Erin G. Palmer (2004) 'Antiquated Notions of Womanhood and the Myth of the Unstoppable Male: Why Post-Penetration Rape Should Be a Crime in North Carolina', *North Carolina Law Review* 82(3), 1258-1278.
[379] Andrea Dworkin (1976), *supra note* 188, p. 31.
[380] *Ibid.*

preoccupied with the protection of propertied virgins from rape, abduction and forced marriage.[381] According to MacKinnon, this conception "centers upon one way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy (exclusive access by one man) than against women's sexual dignity or intimate integrity."[382]

The second category of sexual offences under the *Fetha Nagast* protected a class of women by ascribing to them specific attributes or characteristics or on account of their membership to a particular social group. For instance, Section I (IV) (41) provided that "those who kidnap a betrothed girl, a girl not yet betrothed, a widow, be she one who is of noble birth or a woman slave, or a manumitted woman – especially if she is one of those who by their behavior hold themselves apart for God's sake – shall be punished with the sword if they did this with violence."[383] Section I (V) (65) also stated that "[i]f a slave dares carry off his mistress, and if another helps him in this, they shall be burned at the stake together." Slaves would also be punished for failing to lend assistance to their mistress. According to Section I (V) (65), "[i]f the slave is aware of a scheme to kidnap his mistress and does not help her in this, he shall be consumed by fire." Thus, women who consecrated themselves to God by their characters, and women with the status of a 'mistress' by their membership to a particular social class received a degree of protection from the law. All other women were viewed as "unrapeable", or at least, that *no one important* was harmed by their victimization. This reflects that rape law was historically premised on false assumptions that rape only happens, or only matters when it happens, to sexually pure, virtuous or religious women.

The third category explicitly treated rape against a certain group of women as purely a property crime. In this respect, Section I (VI) (61) stated that "[t]he one who sins with a female slave who does not belong to him shall give *to her master* thirty-six dinars of gold if he is rich. If he is from among those who are relatives, he shall be beaten and shall pay whatever he can of thirty-six

---

[381] Jennifer Temkin (1982), *supra note* 6, p. 412.
[382] Catharine A. MacKinnon (1997b) 'Rape: On Coercion and Consent', in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, London: Routledge, p. 420; Catharine A. Mackinnon (1983), *supra note* 13, pp. 635-658; and Andrea Dworkin (1976), *supra note* 188, p. 30.
[383] *Fetha Nagast*, *supra note* 369, Chapter 48, Section I (IV) (41).

dinars."[384] Thus, where there was a forcible or consensual sex against a slave woman belonging to another person compensation was due to her "owner" who was viewed as a victim. The phrase "the one who sins with a female slave who does not belong to him" also implies that slave masters had unconditional sexual access to their women slaves. The master would only be liable for having sex with his slave if he was married. In this regard, the law stated that "whosoever has a wife and lies down with his female slave shall do penance with beatings when his deed is discovered."[385] Hence, an unmarried slave master would use his female slave as he wishes just as a husband would do to his wife. Decriminalization of rape against slave women by unmarried 'masters' and against one's wife by a husband provide important evidence in support of the contention that rape was a property crime – a man cannot steal what he already *owns*: his slave or his wife.

Conversely, where a woman, regardless of her marital status, had sex with her slave, she would be criminally liable. Regarding anon-slave woman who had sex with slaves, the law essentially criminated interclass sex. According to Section I (VI) (45), "[i]n case a woman who has no husband commits fornication with her slave, if she has no children, she shall be beaten and shall have her head shaved; the slave shall be beaten, shall have his head shaved, and then shall be given and sold to the governor. If the woman has children, all her property shall be given to her children, but it shall be entrusted to the king for safe keeping; only the work shall be in her hand. The price of the slave shall also go to her children." It punished a woman (and the slave), for having a consensual sex. Thus, in the past, the law on sexual offences was not only sexist but also virtually racist.

The fourth category of sexual offences was directly tied to the religious or moral condemnation of premarital sex and certain types of marital relationships and sexual conducts. Under this category, the law criminalized non-marital consensual sex,[386] marriages between relatives by consanguinity

[384] *Ibid*, Chapter 48, Section I (VI) (61). Emphasis mine.
[385] *Ibid.*
[386] *Ibid*, Chapter 48, Section VII (46).

or affinity,[387] marrying nuns, deaconesses or a woman living in a monastery[388] or a godmother[389] and bigamous marriage.[390] Under this category, the law criminalized adultery, but it punished not just the adulterer and adulteress, but also the man who was supposed to be the victim – the husband of the adulteress.[391] In this regard, it stated that "[t]he one who knows of his wife's adultery and keeps silent shall be exiled after being beaten."[392]

Sodomy and bestiality are other sexual conducts which were criminalized on the grounds of morality and Christian values. In this regard, the law proscribed that "[t]hose who commit the sins of Gomorrah – the one who commits them and the one on whom they are committed – shall be punished with the sword."[393] It punished both participants regardless of their wish. The criminality is intrinsic to the act of sodomy. However, if the act was committed against children under the age of 12 years, they were exonerated from punishment due to their age.[394] The law also criminalized bestiality, sexual activity with an animal. It proscribed that "[t]hose who lie down with a beast shall be castrated."[395] Bestiality entailed castration, most likely a physical castration than a chemical one. This is perhaps the most effective punishment to incapacitate the offender from reoffending though it was designed to deter sexual acts directed at an animal.

3.4.2 Sexual Offence under the 1930 Penal Code of Ethiopia

The 1930 Penal Code was the first codified Penal Code of Ethiopia.[396] In promulgating Ethiopia's first Penal Code in 1930, the lawmaker clearly stated that their work was a revision of the *Fetha*

[387] *Ibid*, Chapter 48, Section I.
[388] *Ibid.*
[389] *Ibid*, Chapter 48, Section II (63).
[390] *Ibid*, Chapter 48, Section VII (71).
[391] *Ibid*, Chapter 48, Section X (66).
[392] *Ibid.*
[393] *Ibid*, Chapter 48, Section VIII (71).
[394] *Ibid.*
[395] *Ibid*, Chapter 48, Section IX (72).
[396] Jean Graven (1964), *supra note* 365, p. 272.

Nagast, an 'updated' version to meet the needs of the times.[397] In fact, the 1930 Penal Code made references to the latter in more than 60 Articles. Relatively speaking, it made significant progress in advancing criminal law jurisprudence in Ethiopia.[398] Unlike the *Fetha Nagast*, the 1930 Penal Code set down specific punishments for precisely defined offenses. It made distinctions among preparatory acts, attempted offenses, and completed offenses. The chapter of the 1930 Penal Code on sexual offences, about three pages long (Article 386 - Article 400), consists of a little more than a verbatim reproduction of *the Fetha Nagast*'s section on fornications.[399] However, it clarifies groups of women to whom it extended protection. It clearly criminalized rape against married women.[400] This was proscribed in the interest of her husband since the latter can do the same act with impunity. It also criminalized rape against a woman who was betrothed, in the interest of the prospective husband.[401] Likewise, it criminalized sexual intercourse with an unmarried woman under the age of puberty, without the consent of her parents.[402] This was also proscribed in the interest of her parents since her consent was rendered irrelevant.

Other sexual conducts which were criminalized under the 1930 Penal Code include sexual intercourse between a teacher and his student and between a man and a girl who was entrusted by other in his custody.[403] Like its predecessor, other provisions of the 1930 Penal Code dealt with marriages between relatives by consanguinity or affinity,[404] adultery,[405] bigamous marriage by a Christian man[406] and sexual intercourse with women with religious virtue such as nuns or non-nuns living in a monastery.[407] All sexual offences were private crimes punishable upon complaints

---

[397] *See* generally, የወንጀለኞች መቅጫ ደንብ፤ በቀዳማዊ ኀይለሥላሴ ንጉሰ ነገስት በኢትዮጵያ ማተሚያ ቤት ታተመ፤ መስከረም 1923 ዓመተ ምሕረት አዲስ አበባ, Preface, (Amharic) [Here-in-after the "1930 Penal Code"].
[398] Jean Graven (1964), *supra note* 365, p. 268.
[399] *Ibid.*
[400] The 1930 Penal Code, *supra note* 397, Article 387.
[401] *Ibid*, Article 391.
[402] *Ibid*, Article 395.
[403] *Ibid*, Article 398.
[404] *Ibid*, Article 397.
[405] *Ibid*, Article 398.
[406] *Ibid*, Article 390.
[407] *Ibid*, Article 391-392.

by the victims.[408] However, the very important departure from *the Fetha Nagast* was that it no longer imposed varying punishments when the victims or the offenders came from different social classes. It also abolished reference to slaves; and introduced sentencing and fine instead of compensation alone. It also abolished a bizarre punishment its predecessor imposed upon a man who was supposed to be the victim – the husband of the adulteress woman.

3.4.3 Sexual Offence under the 1957 Penal Code of Ethiopia

The 1957 Penal Code of Ethiopia was issued, as stated in its preface, to meet the demands of the date, adopting modern concepts without abandoning "the venerable and well-established legal traditions" of the Empire as "revealed in the *Fetha Nagast* and in subsequent legislation and practice, including those customs and usages which arc common to all citizens."[409] During the codification of this code, the Swiss Code and laws of other European countries were used.[410] It formally introduced the principles of legality. For every offense listed under it, there were upper and lower limits of punishment, recognizing the concept of degrees of culpability. The 1957 Penal Code also incorporated separate provisions for juvenile offenders.

The 1957 Penal Code of Ethiopia was praised as one of the most advanced criminal codes of its time,[411] marking an important milestone in the development of rape law within the Ethiopian CJS. As far as sexual offences are concerned, the RCC does not introduce noticeable changes in definitions; instead, as Tsehai Wada noted, "most of the elements of sexual crimes [under the RCC] are verbatim copies of the [1957 Penal Code]."[412] Unlike its predecessor, the 1957 Penal Code turned its focus to the male offender whose act was increasingly viewed as criminal. With an exception of one sexual offence,[413] it treated all sexual offences as public crimes with a

---

[408] *Ibid*, Article 399.
[409] The Penal Code, *supra note* 34, Preface para. 3.
[410] Zuzanna Augustyniak (2012), *supra note* 367, p. 111.
[411] *See generally*, Jean Graven (1964), *supra note* 365, pp. 281-296.
[412] Tsehai Wada (2012) '*Rethinking the Ethiopian Rape Law', Journal of Ethiopian Law* 25(2), pp. 191-253, at note 60.
[413] The Penal Code, *supra note* 34, Article 593.

mandatory investigation regardless of the desire of the victim. It provided for a number of well-defined sexual offences.

First, the 1957 Penal Code defined rape as a forcible sexual intercourse as follows: "[w]hosoever compels a woman, to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or, incapable of resistance, is punishable with rigorous imprisonment not exceeding ten years."[414] This provisions not just used the term "rape" for the first time but also it offered a clear definition regarding what acts precisely constitute the crime and the scope of its application. It limited its application to "sexual intercourse" only against women and outside of marriage.

Second, the 1957 Penal Code also took progressive steps in defining, under the heading of *Sexual Outrages Accompanied by Violence*. Accordingly, it proscribed sexual assault as follows: "[w]hosoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, outside wedlock, to perform or to submit to an act corresponding to the sexual act, or any other indecent act, is punishable…"[415] This offence too limited its application to heterosexual sexual encounters outside of marriage. Besides, it lacked clarity regarding what kinds of sexual acts constitute "an act corresponding to the sexual act" and "any other indecent act." However, an act corresponding to the sexual act was used to mean "an act corresponding to sexual intercourse", as indicated in the official Amharic version of the Code. This act, though it appeared vague, may include any sexual act that does not involve a penile-vaginal penetration. It can include behaviors such as manual stimulation, oral sex, anal sex, and the use of sexual toys such as vibrators and dildos. An act corresponding to the sexual act or other indecent act can be interpreted too broadly to included touching or kissing a woman's body parts.[416]

---

[414] *Ibid*, Article 589.
[415] *Ibid*, Article 590.
[416] Tsehai Wada (2012), *supra note* 412, P. 210.

Third, the 1957 Penal Code recognized the importance of addressing cases that suggest a lack of consent due to the victim's physical or mental disability. For instance, Article 591 of the Code provided that "[w]hosoever, knowing of his victim's incapacity, but without using violence or intimidation, has sexual intercourse, or commits a like or any other indecent act, outside wedlock, with an idiot [*sic*], with a feebleminded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature of the act, is punishable …"[417] Hence, under the 1957 Penal Code, it was a crime to have sexual contact with a person who is incapable of giving consent for the reason of being physically or mentally disabled. However, marital rape was excluded in this category of sexual offence too.

Fourth, the 1957 Penal Code set specific age limits in which consent is presumed to be lacking, to protect children from sexual abuses. Accordingly, it was an offense to have sex with a child under the age of 15 years old.[418] Article 595(1) of the 1957 Penal Code criminalized statutory rape against minors between the age of 15 and 18 years old, stating that "[w]hosoever has sexual intercourse or performs an analogous act with a minor of the opposite sex of more than fifteen and of less than eighteen years of age, is punishable with simple imprisonment." Although these provisions covered all minors, Article 596 of the Code redundantly stated that "[w]hosoever, by taking unfair advantage of the inexperience or trust of a female minor between fifteen and eighteen years of age, induces her to have sexual intercourse with him, whether by promise of marriage, trickery or otherwise, is punishable, upon complaint, with simple imprisonment."[419] In both cases of statutory rape against minors between the age of 15 and 18 years old, the punishment was simple imprisonment, but in the latter case, it was made a private offence.

The 1957 Penal Code also recognized the importance of addressing coercive contexts that imply a lack of consent, such as abusing a superior position or a victim's dependency to satisfy one's sexual desires. In this respect, Article 592 of the Code stated that "[w]hosoever, by taking advantage of

[417] The Penal Code, *supra note* 34, Article 591.
[418] *See*, *ibid*, Article 594.
[419] *Ibid*, Article 596.

his position, office or state, has sexual intercourse or performs an act corresponding to the sexual act or any other indecent act with an inmate of a hospital, an alms-house or an asylum, or any establishment of education, correction, internment or detention, who is under his direction, supervision or authority, is punishable…" Generally, in terms of comprehensiveness and clarity on sexual offences, the 1957 Penal Code made a significant progress.

3.4.4 Procedural and Evidentiary Laws Applicable to Sexual Offence

Criminal procedure law is part of the law which provides rules on the reporting, investigation and prosecution of crimes and, if found guilty, the conviction and sentencing of criminals. Evidence law sets rules on the collection and production of evidence as well as on deciding their admissibility, relevance and probative values. Before 1961, there was no codified procedural law in Ethiopia. Nor was there codified law of evidence. There were, however, various customary procedural rules used by variuos segments of the society. These customary procedural rules were used parallel with the formal rules used by the courts.[420] In Ethiopia, there are, at least, sixty customary laws, and some of them are functioning in parallel with the formal legal system of the state.[421] Characteristically, customary rules did not make a distinction between procedural and evidentiary matters, criminal and civil matters, and private and public offences.

Until 1943, criminal proceedings were largely initiated by the aggrieved parties themselves or their representatives, and judgments were executed by the parties to the litigation.[422] This practice was operational until the Office of the Public Prosecutor was established in 1943.[423] The proceedings were also characterized by relative informality, free debate by the parties, their representatives and bystanders, primary reliance on testimonial proof by human witnesses, some supernatural modes

---

[420] Stanley Z. Fisher (1974) 'Traditional Criminal Procedure in Ethiopia', *the American Journal of Comparative Law* 19(4), pp. 709-746.
[421] Dolores A. Donovan and Getachew Assefa (2003) 'Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism', *the American Journal of Comparative Law* 51(3), pp. 505-552, p. 505.
[422] Stanley Z. Fisher (1974), *supra note* 420.
[423] Aberra Jembere (1998) *Legal History of Ethiopia, 1434-1974,* Rotterdam: Erasmus Universiteit, Leiden: Afrika-Studie-Centrum pp. 243-285.

of proof, and "consensus" judgments strongly influenced by lay participants. The trials had to take place in a public place.[424] Although the present study could not locate documented evidence on the use customary procedural rules for rape proceedings, the very features of the rules, such as the reliance on eyewitnesses and conducting of trials in public are apparently incompatible with the very nature of sexual offences.

The 1961 Criminal Procedure Code is the first codified procedural law which has, at least in theory, replaced the customary criminal procedural laws, and one that had a nation-wide applicability.[425] It sets detailed rules aimed at protecting the due process rights of suspected or accused persons, on the one hand, and bringing the criminals to justice, on the other. The due process rights are necessitated to make sure that innocent persons are not convicted and punished. In this regard, the 1961 Criminal Procedure Code protects the following constitutionally recognized rights of a suspected or an accused person: the right not to be subjected to arbitrary arrest, detention, search or seizure;[426] the right to counsel;[427] the presumption of innocence;[428] the right to be released on bail;[429] the right to a public trial by an independent court;[430] the right to test the prosecution evidence, including the right to examine witnesses;[431] the right to give and call evidence;[432] and the right to appeal.[433] However, the Code does not attempt to strike a balance between the victim's rights to justice and the due process rights of the offender by incorporating the rights of victims of

[424] Aberra Jembere (1998), *ibid*, pp. 243-285.
[425] Criminal Procedure Code of Ethiopia, Proclamation No. 185/1961, *Negarit Gazeta*, Extraordinary Issue No. 1 of 1961, Addis Ababa. [Here-in-after the "Criminal Procedure Code"].
[426] Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st Year No. 1 Addis Ababa, 21st August, 1995, Article 17. [Here-in-after the "FDRE Constitution"].
[427] *Ibid*, Article 20(5).
[428] *Ibid*, Article 20(3).
[429] *Ibid*, Article 19(6).
[430] *Ibid*, Article 20(1).
[431] *Ibid*, Article 20(4).
[432] *Ibid.*
[433] *Ibid*, Article 20(6).

violent crimes in the criminal proceedings. Nor was it accompanied by a codified rules of evidence law.

3.5 Conclusion

Sexual violence is a widespread and daily occurrence, and most of the victims of sexual violence are women and most offenders are men. Moreover, it is a gendered problem, with adverse consequences to the victims' mental, physical, reproductive health and socio-economic well-being. Despite this, the proportion of victims who reported the incident to the police was extremely low. Even where the case was reported, most offenders were never arrested, making the prosecution and conviction rates for rape cases substantially low. In the few circumstances where the offender was convicted, he was inadequately punished. Often, rape victims were subjected to a harrowing treatment within the CJS. There are a multitude of factors that account for the high prevalence rate, underreporting and inadequacy of responses to sexual violence. Effective intervention presupposes a thorough understanding of these factors and the dynamic interactions among them. However, a review of previous legal intervention practices indicates that the law and CJS did not consider sexual violence as a violent crime directed against individual victims. Instead, rape was defined as a 'property crime' against a woman's father or her husband and as the theft of virginity. However, after the coming into effect of the 1957 Penal Code of Ethiopia, the law turned its focus to the male offender whose act was increasingly viewed as a criminal conduct. In this respect, the 1957 Penal Code provided a number of well-defined sexual offences.

CHAPTER FOUR: SVAW WITHIN THE HUMAN RIGHTS FRAMEWORK

4.1 Introduction

This chapter deals with the treatment of sexual and other forms of VAW, within the human rights frameworks at international, regional and national levels. Accordingly, the first section reviews how the early gender-neutral human rights standards failed to recognize and address VAW as a violation human rights and discusses how such a failure has been brought into the public agenda and swung the opinion of the international community to recognize VAW as a form of discrimination with detrimental effects on women's ability to enjoy human rights on a basis of equality with men. The subsequent three sections touch upon the most relevant international, regional and national human rights instruments on sexual and other forms of VAW.

4.2 The Mainstream Human Rights Standards and VAW

With its various forms and manifestations, VAW pervades every sector of society, regardless of class, race or ethnicity, culture, level of education, income, age, region or religion.[434] VAW exists in every country, cutting across boundaries of culture, class, education, income, ethnicity and age.[435] It continues to be a global epidemic that kills, tortures, and maims victims – physically, psychologically, sexually and economically.[436] VAW is the most pervasive and gender-specific human rights violation, denying women and girls of equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms.[437] However, the mainstream human rights standards guaranteed in the UN covenants, namely, the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which include, among others, the right of life, to bodily integrity, and to be free from

---

[434] I/A Court H.R. *Case of Inés Fernández et al. v. Mexico*, Judgment of August 30, 2010. Series C No. 215, para. 118; UNICEF (2000), *supra note* 25, p. 2; Marijke Velzeboer *et al.* (2003), *supra note* 302, p. 5.
[435] *Ibid*.
[436] UNICEF (2000), *ibid*.
[437] UNICEF (2000), *ibid*; and Christine Chinkin (1995), *supra note* 309, p. 23.

torture, cruel and degrading treatment, were not previously interpreted to include gender-specific sexual and other forms of violence.[438] Until recently, the issue of VAW has been ignored by the mainstream international human rights frameworks.[439] There were a number of reasons for such a gender-blindness of the mainstream international human rights frameworks.

One of the reasons was related to the nature of the international legal system. International law, within which human rights law operates, primarily regulates the conducts of states.[440] Generally, it creates obligations and rights between one or more states. In the past, international human rights law too has been formulated to guarantee protection against wrongful acts of the state, within the public arena.[441] Additionally, states often fail to acknowledge blatant and frequent sexual and other forms of VAW in private settings as private and family matters, which remain out of the reach of criminal laws.[442] Even where such violence is reported, legal authorities often regard it as a private matter and fail to respond as they would do to other interpersonal violence in the public sphere.[443] Particularly, sexual violence is perceived as a private matter even though it is formally recognized as a public offence and a human rights issue, both at national and international levels.[444]

Furthermore, the true magnitude of VAW globally has remained concealed as it has been largely unreported, and therefore it does not appear in the official records.[445] Numerous forms of SVAW that are committed in many different settings do in fact exist but they are often rendered 'invisible' due to lack of studies or statistics on the prevalence and magnitude of the problem.[446] On top of

---

[438] Christine Chinkin (1995), *ibid*; Sarah Y. Lai and Regan E. Ralph (1993) 'Female Sexual Autonomy and Human Rights', *Harvard Human Rights Journal* 8: pp. 201-127, p. 203.
[439] Christine Chinkin (1995), *ibid*; and Alice M. Miller (2004) 'Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection', *Health and Human Right* 7(2), pp. 16-47, p. 22.
[440] Christine Chinkin (1995), *ibid*, p. 24; and Sarah Y. Lai and Regan E. Ralph (1993), *supra note* 438, p. 204.
[441] Christine Chinkin (1995), *ibid*; and Sarah Y. Lai and Regan E. Ralph (1993), *ibid.*
[442] Christine Chinkin (1995), *ibid*, p. 24; Giles Mohan and Jeremy Holland (2001) 'Human Rights and Development in Africa: Moral Intrusion or Empowering Opportunity?', *Review of African Political Economy* 28(88), pp. 177–96; and Dorothy Q. Thomas and Michele E. Beasley (1993) 'Domestic Violence as a Human Rights Issue', *Human Rights Quarterly* 15(1), pp. 36–62.
[443] Christine Chinkin (1995), *ibid*, pp. 23-24.
[444] Inter-American Commission on Human Rights (2011), *supra note* 323, p. 2.
[445] Christine Chinkin (1995), *supra note* 309, pp. 23-24.
[446] Inter-American Commission on Human Rights (2011), *supra note* 323, p. 2.

this, the economic and social dependence of women upon men, who often abuse them, prevents many victims from reporting the incident to the police.[447] Similarly, biased assumptions and beliefs about gender roles are used to justify and perpetuate VAW as well as the oppression and subordination of women.[448] Often, the women themselves are forced to accept violence as part of normal life and blame themselves for its occurrence.[449] This silence about VAW obscures the reality that it is actually an international problem.[450]

However, women activists working in international and national NGOs have lobbied the concerned international bodies to direct increasing attention to VAW, particularly since the UN Women's Conference in Nairobi convened in 1985.[451] They managed to place the issue on the agenda of international conferences, first at the World Conference on Human Rights (Vienna, 1993) and then again at the Fourth World Conference on Women (Beijing, 1995).[452] Global attention to the role of rape in notorious armed conflicts, first in the former Yugoslavia and later in Rwanda, amplified women's claims at the Vienna and Beijing Conferences, leading to legal, structural, and political victories in important international platforms.[453] The commitments made by various participants during these conferences directed a growing attention to VAW.[454] VAW was thus recognized as serious human rights issue. With an eye to address VAW, many new mechanisms and norms came into effect, within the international, regional and national human rights frameworks.

---

[446] Christine Chinkin (1995), *supra note* 309, pp. 23-24.
[447] *Ibid.*
[448] *Ibid*, p. 24.
[449] *Ibid.*
[450] *Ibid*, pp. 23-24.
[451] Sarah Y. Lai and Regan E. Ralph (1993), *supra note* 438, p. 203-204; and Alice M. Miller (2004), *supra note* 439, p. 25.
[452] Alice M. Miller (2004), *ibid*, p. 21.
[453] *Ibid.*
[454] Marijke Velzeboer *et al.* (2003), *supra note* 302, p. 1; and Dorothy L. Hodgson (2002) 'Women's Rights as Human Rights: Women in Law and Development in Africa (WiLDAF)', *Africa Today* 49(2), pp. 3-26, p. 6.

4.3 The International Human Rights Framework on SVAW

4.3.1 The CEDAW and "Soft" Laws on VAW

4.3.1.1 The CEDAW on VAW

The drafting of the CEDAW began in the 1970s, and it eventually entered into force in 1981. The CEDAW is referred to in varying ways, including, among others, as an *International Bill of Rights for Women*,[455] and the *Women's Convention*.[456] The use of these terms in reference to the CEDAW shows the marginalization of women's human rights in the pre-CEDAW gender-neutral international human rights norms and institutional frameworks.[457] In its contents, the CEDAW is an extraordinarily broad and comprehensive, issue-specific human rights instrument adopted to address the problem of discrimination against women. It calls on member states to eliminate direct or indirect discrimination in both the public and private spheres of life,[458] and to improve women's *de facto* position within society.[459]

Interestingly, the CEDAW calls upon state parties to take steps to end gender stereotypes. Article 5(a) is the CEDAW's key provision against stereotypes and stereotyping.[460] It sets out the CEDAW's crosscutting obligations upon the state to "modify and transform gender stereotypes and eliminate wrongful gender stereotyping."[461] Article 5(a) obliges states parties to take "all appropriate measures" to "modify the social and cultural patterns of conduct of men and women" in an effort to eliminate practices "based on the idea of inferiority or the superiority of either of

---

[455] *Ibid*, p. 15.
[456] Christine Chinkin (1995), *supra note* 309, p. 25.
[457] Christine Chinkin (1995), *ibid*; and Lisa R. Pruitt (2011) 'Deconstructing CEDAW's Article 14: Naming and Explaining Rural Difference', *William and Mary Journal of Women and the Law* 17(2), pp. 347-394, p. 349.
[458] Convention on the Elimination of All Forms of Discrimination Against Women (adopted Dec. 1979, entered into force 3 Sept. 1981) UN General Assembly resolution 34/180, Article 2(d)-(e). [Here-in-after the "CEDAW"].
[459] *See ibid*, Article 4 (providing affirmative action as a means to achieve "*de facto* equality between men and women"). *See* also *ibid*, Article 2(a) (referring to "practical realization of [the equality] principle").
[460] *See also ibid*, preamble para. 14, Article 5(b) and Article 10(c).
[461] Committee on the Elimination of Discrimination against Women: Communication No. 28/2010- *R.K.B. v. Turkey*, para. 8.8.

the sexes or on stereotyped roles for men and women."[462] Article 2(f) reinforces Article 5(a) by requiring states parties to take "all appropriate measures" to "modify or abolish […] laws, regulations, customs and practices which constitute [discrimination] against women." These obligations apply to all branches of government.[463]

Beyond calling on state parties to take steps to end gender stereotypes, the CEDAW also offers a broad definition of discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[464] The phrase "on a basis of equality of men and women" is repeated in many provisions of the Convention. Additionally, the CEDAW specifies a range of civil and political rights as well as socio-economic rights for women to equally enjoy as men. These rights include the right to good-quality education;[465] the right to comprehensive health services, including family planning;[466] the right to have equal access to jobs, benefits, and social security;[467] the right to be free from all forms of trafficking and prostitution;[468] the right to vote, run for elections and hold public office;[469] the right to represent the country internationally;[470] and the right to participate in recreational activities such as sports.[471] It also requires states to take appropriate

[462] The CEDAW, *supra note* 458, Article 5(a).
[463] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 39. [Here-in-after "General Recommendation No. 28"].
[464] The CEDAW, *supra note* 458, Article 1.
[465] *Ibid*, Article 10.
[466] *Ibid*, Article 12.
[467] *Ibid*, Article 11.
[468] *Ibid*, Article 6.
[469] *Ibid*, Article 7.
[470] *Ibid*, Article 8.
[471] *Ibid*, Article 13.

measures to eliminate discrimination within the family.[472] Article 14 of the CEDAW is devoted particularly to the unique concerns of rural women.

Most importantly, the CEDAW sets mechanisms to follow up states' implementation of their obligations in accordance with its provisions. It establishes the Committee (CEDAW's Committee) under Article 17, with the task of following up the implementation of the convention by member states. The committee discharges its task by reviewing reports by states, which are submitted to it in accordance with Article 18. Hence, it has created a reporting procedure whereby state parties are required to submit periodic reports regarding measures they have taken to implement the provisions of the CEDAW.[473] After receiving the report from member states, the committee prepares a concluding observation that contains the evaluation of the committee regarding the adequacy of the measures taken by the state in question as well as a recommendation regarding the gaps that need to be filled so as to give full effect to the CEDAW's provisions.[474]

Although these procedures play a significant role on the protection of women's human rights, they do not provide individual compliant mechanisms that could enable individual victims whose rights under the CEDAW have been violated, to communicate to the Committee. To remedy this gap, the Optional Protocol to the CEDAW was adopted by the UN General Assembly Resolution A/54/4, on 6 October 1999 and entered into force on 22 December 2000.[475] The Optional Protocol has introduced two additional procedural mechanisms: the communication procedure[476] and the inquiry procedure.[477] The communication procedure has been introduced in order to receive complaints from individual women victims, groups or organizations acting on behalf of women victims about the violations of their rights, against member states, provided that the victim in

[472] *Ibid*, Article 16.
[473] *Ibid*, Article 18.
[474] *Ibid*, Article 20 and Article 21.
[475] Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, 1999 GA Res 54/4, 6 October 1999.
[476] *Ibid*, Article 1 and Article 2.
[477] *Ibid*, Article 8.

question exhausted domestic remedies.[478] The inquiry procedure is meant to initiate a confidential investigation against a member state when the Committee receives allegations of gross violations of the CEDAW's provisions or when it is believed that there are systematic violations of the CEDAW's provisions.[479] The investigation includes visits by the CEDAW's investigators to the territory of the member state in question, upon securing the consent of the state.[480]

Be that as it may, the CEDAW does not explicitly address the problem of VAW. The CEDAW's Committee has identified this gap as a major obstacle to women's enjoyment of the rights guaranteed under the Convention.[481] Accordingly, in 1992, the Committee, in its General Recommendation 19, directs states' attention towards the elimination of violence, stating that that VAW is a form of discrimination "that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."[482] By doing so, it clarifies that the concept of discrimination in the CEDAW includes violence that is *directed against a woman because she is a woman* or *that disproportionately affects women*.[483]

The CEDAW Committee's General Recommendation 19 makes the link between VAW and existing human rights norms and standards. It maintains that VAW, "which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of [Article 1 of the CEDAW]."[484] The rights which are violated by VAW include the right to protection from torture, the right to life, the right to equal protection under the law, the right to equality in the family, the

---

[478] *Ibid*, Article 1, Article 2 and Article 4 (1).
[479] *Ibid*, Article 8.
[480] *Ibid*, Article 8(2).
[481] Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19, Violence against Women*, [here-in-after "General Recommendation No. 19"]; and General Recommendation No. 35, *supra note* 66.
[482] General Recommendation No. 19, *ibid*, para. 1; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 12, Violence against Women*; and General Recommendation No. 35, *ibid.*
[483] General Recommendation No. 19, *ibid*, para. 6.
[484] *Ibid*, para. 7.

right to health and the right to just and favorable conditions of work.[485] It also sets out specific recommendations regarding the obligations of the state parties in addressing VAW.

In this regard, it calls on state parties to take all legal and other measures that are necessary to provide women with effective protection against VAW, whether by public or private actors.[486] The CEDAW's Committee also calls on the state to provide effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women from all forms of violence.[487] Accordingly, state parties should take preventive measures, including public information and education campaigns to change attitudes about the role and status of men and women.[488] They should also take protective measures, including refuges, counselling, and rehabilitation and support services for women who are the victims of violence or at risk of violence.[489] These recommendations show how the cause and consequences of VAW have been understood and approached holistically.

Generally, the scope of states' obligations in relation to VAW occurring in particular contexts are addressed in General Recommendation No. 28.[490] Additionally, in its General Recommendation No. 35, in 2017, the CEDAW Committee stated that the general obligations encompass all areas of state action, including the legislative, executive and judicial branches, at the federal, national, sub-national, local and decentralized levels as well as privatized services.[491] At the legislative level, it calls on states to adopt legislation proscribing all forms of VAW and harmonizing domestic legislation with the provisions of the CEDAW.[492] At the executive level, states are obliged to adopt and adequately budget diverse institutional measures, in coordination with the relevant state

[485] *Ibid.*
[486] *Ibid*, para. 24(a).
[487] *Ibid*, para. 24(t)(i).
[488] *Ibid*, para. 24(t)(ii).
[489] *Ibid*, para. 24(t)(iii).
[490] General Recommendation No. 35, *supra note* 66, para. 11.
[491] *Ibid*, para. 26.
[492] *Ibid*, para. 26(a).

branches.[493] At the judicial level, all judicial bodies are obliged to refrain from engaging in any act or practice of discrimination or VAW.[494] They are also required to strictly apply all criminal law provisions punishing VAW, ensuring all rules of procedural law are impartial and fair.[495] Most importantly, they are obliged to refrain from applying preconceived and stereotyped notions of what constitutes VAW and how women respond to such violence.[496] Applying this means that the judiciary must dispel rape myths in its decision making.

4.3.1.2 Other Important "Soft" Laws on VAW

The adoption the UN Declaration on the Elimination of Violence against Women (DEVAW) and the creation of a UN Special Rapporteur on Violence against Women were the other progressive steps taken by the international community to address the problem of sexual and other forms of VAW. By adopting the DEVAW on the 20th of December of 1993, the UN General Assembly has recognized VAW as a human rights issue.[497] This declaration represents a broad-based statement by the General Assembly on the unacceptability of VAW. Interestingly, the DEVAW offers the first official definition of VAW within the UN human rights framework.

According to Article 1 of the DEVAW, gender-based VAW is "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[498] The definition of VAW is further broadened to include physical, sexual and psychological violence occurring in the family, within the wider community, or perpetrated or condoned by the state, wherever it occurs.[499] Thus, sexual violence includes sexual abuse of female children in the household and marital-rape in the family, and rape, sexual

[493] *Ibid*, para. 26(b).
[494] *Ibid*, para. 26(c).
[495] *Ibid.*
[496] *Ibid.*
[497] The DEVAW, *supra note* 67, para. 5.
[498] *Ibid*, Article 1.
[499] *Ibid*, Article 2.

abuse and sexual harassment within the community.[500] Furthermore, the DEVAW acknowledged that VAW is a form of discrimination in that it restricts women's ability to enjoy their human rights and freedoms on the same basis as men and as a violation of human rights.[501] Here, the reference to violence as "gender-based" emphasizes the gender specificity of the problem.

Accordingly, VAW, including sexual violence, is now well understood as a gender crime and a form of discrimination against women. It is also viewed as one manifestation of the continuation of women's unequal social conditions and is, therefore, the ultimate expression of the lack of equality between men and women. According to the DEVAW, "[VAW] is a manifestation of the historically unequal power relations between men and women, which have led to a domination over and discrimination against women by men and to the prevention of women's full advancement, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men."[502] The DEVAW has also clarified that states are duty-bound to condemn VAW and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect of its elimination.[503] States also should pursue, by all appropriate means and without delay, a policy of eliminating VAW.[504] According to Article 4(c) of the DEVAW, states are required to exercise due diligence to prevent, investigate, and punish acts of VAW perpetrated by the state, or by private persons.[505]

Furthermore, shortly after the adoption of the DEVAW, the United Nations Commission on Human Rights, stated that it was "[d]eeply concerned at continuing and endemic violence against women," and, among other measures,[506] appointed the first Special Rapporteur on VAW, in March 1994. The Rapporteur was appointed to seek and receive information on VAW, its causes and its

---

[500] *Ibid.*
[501] *Ibid*, Preamble, para. 4 and para. 5.
[502] *Ibid*, Preamble, para. 6.
[503] *Ibid*, Article 4.
[504] *Ibid.*
[505] *Ibid*, Article 4(c).
[506] The United Nations Commission on Human Rights (1994) Resolution 1994/45, Preamble, para. 3, available at: https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx last visited on 1/29/2019.

consequences from a variety of sources,[507] and "[r]ecommend measures, ways and means, at the national, regional and international levels, to eliminate [VAW] and its causes, and to remedy its consequences."[508] A multitude of reports have been produced by the Rapporteur highlighting the fact that the issue affects women in the family,[509] in war situations,[510] and on cultural dimensions of VAW,[511] amongst many others. As a UN Special Rapporteur on VAW, Rhadika Coomaraswamy holds that women are particularly vulnerable to violence because of their socially and culturally defined sexuality as in the case of rape, because of their relationship with men, as in the case of domestic violence, or because they belong to a particular social group, as in the case of rape during armed conflict to humiliate the group they belong to.[512] The Rapporteur has also emphasized that the violation of a woman's sexuality is a "manifestation of the way in which masculine power and domination over women's bodies is established."[513] It is "part of a historical process and is not natural or born of biological determinism. The system of male dominance has historical roots, and manifestations change over time."[514] Thus, the causes, nature and consequences of VAW are different from other forms of interpersonal violence in general.[515]

---

[507] *Ibid*, Article 7(a).
[508] *Ibid*, Article 7(b).
[509] The United Nations Commission on Human Rights (1995) *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, submitted in accordance with Commission on Human Rights resolution 1995/85.
[510] The United Nations Commission on Human Rights (2000) *Report of the Special Rapporteur on violence against women, its causes and consequences,* Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/45 Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000).
[511] The United Nations Commission on Human Rights (2001) *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, submitted in accordance with Commission on Human Rights resolution 2001/49 Cultural practices in the family that are violent towards women.
[512] The United Nations Commission on Human Rights (1994) *Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms.* Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, para. 48.
[513] The United Nations Commission on Human Rights (2003) Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Towards an Effective Implementation of International Norms to End Violence against Women, UN Doc. E/CN.4/2004/66, 26 December 2003, para. 35.
[514] *Ibid*, para. 49.
[515] Maria Eriksson (2010) *Defining Rape: Emerging Obligations for States under International Law?* Örebro Studies in Law 2, Örebro University, p. 351, available at: http://oru.diva-portal.org/smash/get/diva2:317541/FULLTEXT02.pdf last visited on 9/12/2018.

Finally, it is important to note that both the DEVAW and the reports of the UN Special Rapporteur on VAW, like other UN declarations and resolutions, decisions and general comments by UN treaty organs (such as the CEDAW Committee's General Recommendation 19) or statements at international conferences are not legally binding instruments. However, they form part of the so-called "soft law," quasi-legal documents indicating the aspiration and political consensus among members of the international community.[516] Soft law documents play an important part in international law, either as precursors to the emergence of hard laws or as supplements to hard laws, or in resolving ambiguities, or filling in the gaps in the existing instruments.[517] They have been particularly important for the advancement of international law pertaining to VAW. They also advance the discussion on the issue of VAW.

4.4 SVAW in the African Regional Human Rights Framework

4.4.1 The African Charter on Human and Peoples' Rights

In post-colonial African countries, the issue of human rights was at the margin of the then Organization of African Unity (OAU) agenda.[518] The OAU was concerned with the persistence of colonialism in the former Portuguese colonies of Mozambique and Angola and the unilateral declaration of independence by the then Southern Rhodesia (now Zimbabwe) under a racist minority regime.[519] With the notable exception of its condemnation of the Apartheid regime in South Africa, the OAU gave particular attention to the sovereignty and territorial integrity of states and non-interference in the internal affairs of states, and maintained an indifferent attitude to the notorious violation of human rights in its member states.[520] The issue of human rights was not a

---

[516] David Wippman *et al*. (2002) *International Law, Norms, Actors, Process: A Problem-Oriented Approach*, New York: Aspen Law and Business, p. 70.
[517] *Ibid*, p. 87.
[518] Ziyad Motala (1989) 'Human Rights in Africa: A Cultural, Ideological, and Legal Examination', *Hastings International and Comparative Law Review* 12: pp. 373-410, p. 395.
[519] U. O. Umozurike (1983) 'The African Charter on Human and Peoples' Rights', *The American Journal of International Law* 77(4), pp. 902-912, pp. 902-903.
[520] *Ibid.*

priority until the African Charter on Human and Peoples' Rights (ACHPR) was adopted the then OAU General Assembly, on 28 June 1981, in Nairobi, Kenya.

As far as women's rights are concerned, the ACHPR, which came into force on 21 October 1986, contains general as well as specific provisions. Article 2 of the ACHPR contains a general clause dealing with the issue of discrimination. It recognizes the right to freedom from discrimination on any grounds including, among other things, sex in the enjoyment of the rights and freedoms guaranteed in its substantive provisions.[521] Furthermore, it guarantees equality before the law and equal protection under the law.[522] The ACHPR recognizes, along with many other substantive human rights, the right to respect for one's inherent dignity as a human being, including freedom from slavery and slave trade, torture, cruel, and inhumane or degrading punishment and treatment.[523] Referring specifically to women, Article 18(3) of the ACHPR calls on member states to *ensure the elimination of every discrimination against women and also ensure the protection of the rights of woman and the child as stipulated in international declarations and conventions*.[524] Under this specific provision, discrimination against women is prohibited only in the context of family protection and by making reference to the international declarations and conventions. Other than this, however, it does not contain specific provisions on VAW. Thus, it failed to take into account the key human rights issues affecting specifically women within the continent.

4.4.2 The Protocol to the ACHPR on the Rights of Women in Africa

The Protocol to the African Charter on the Rights of Women in Africa (the Women's Protocol) was adopted by the 2nd ordinary session of the Assembly of the African Union, in Maputo, on 11 July 2003 and came into effect in 2005. Despite the adoption of the ACHPR, the concern of

---

[521] The African Charter on Human and Peoples' Rights, Article 2 adopted 27 June 1981 by the 18th Assembly of Heads of State of the Organization of African Unity at Nairobi and entered into force on 21 October 1986. [Here-in-after the "ACHPR"].
[522] *Ibid*, Article 3.
[523] *Ibid*, Article 5.
[524] *Ibid*, Article 18(3).

addressing discrimination and VAW is highlighted in the preamble of the Women's Protocol.[525] Like the DEVAW, the Women's Protocol offers a broad definition of VAW. It defines VAW as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war."[526] The Women's Protocol acknowledges VAW as an affront to women's dignity.[527]

Accordingly, it requires member states to adopt and implement appropriate measures "to prohibit any exploitation or degradation of women"[528] and "to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence."[529] The Protocol also recognizes VAW as a violation of human rights. Its Article 4(1) starts by reiterating the core human rights to life and to be free from degrading and/or inhumane punishment and treatment while its Article 4(2) contains an exhaustive list of states' obligations.[530] Member states are duty-bound to enact and enforce laws prohibiting all forms of VAW. More specifically, they are obliged to take appropriate and effective measures to "enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public."[531] This provision proscribes sexual and other forms of VAW, whether they take place in the private or in the public sphere. The prohibition of

[525] *See generally*, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Preamble; approved at the second ordinary session of the Assembly of the Union, Maputo, July 11, 2003. [Here-in-after the "Women's Protocol").
[526] *Ibid*, Article 1(j).
[527] *Ibid*, Article 3.
[528] *Ibid*, Article 3(4).
[529] *Ibid*.
[530] *Ibid*, Article 4(1).
[531] *Ibid*, Article 4(2)(a).

unwanted or forced sex in private settings means that member states are obliged to criminalize marital rape in their domestic criminal laws.[532]

Other forms of family-related violence outlawed in the Protocol include forced marriage and child marriage.[533] Subjecting widows to degrading and inhumane treatment, upon the death of their husbands, has also been prohibited.[534] In this regard, member states shall take appropriate legal measures to ensure that "a widow shall have the right to remarry, and in that event, to marry the person of her choice."[535] This provision outlaws the so-called 'inheritance marriages.'[536]

The Protocol also requires states to protect women against sexual violence during armed conflicts. It calls on member states "to protect asylum seeking women, refugees, returnees and internally displaced persons, against all forms of violence, rape and other forms of sexual exploitation, and to ensure that such acts are considered war crimes, genocide and/or crimes against humanity and that their perpetrators are brought to justice before a competent criminal jurisdiction."[537] Taking into account the specific conditions of certain groups of women, the Protocol offers special consideration for elderly women,[538] women with disabilities,[539] and women in distress.[540]

Linking SVAW with reproductive rights, the Protocol also provides a wide range of entitlements to women.[541] In this regard, it obliges member states to "ensure that the right to health of women, including sexual and reproductive health is respected and promoted."[542] It further illustrates that this right includes the right to control their fertility;[543] the right to decide whether to have children

---

[532] Fareda Banda (2008) 'Building on a Global Movement: Violence against Women in the African Context', *African Human Rights Law Journal* 8(1), pp. 1-22, p. 13.
[533] The Women's Protocol, *supra note* 525, Article 6(a) and Article 6(b).
[534] *Ibid*, Article 20 (a).
[535] *Ibid*, Article 20(c).
[536] Fareda Banda (2008), *supra note* 532, p. 18.
[537] The Women's Protocol, *supra note* 525, Article 11(3).
[538] *Ibid*, Article 22.
[539] *Ibid*, Article 23.
[540] *Ibid*, Article 24.
[541] *See generally, ibid*, Article 14.
[542] *Ibid*, Article 14(1).
[543] *Ibid*, Article 14(1)(a).

as well as the number of children and the spacing of children;[544] the right to choose any method of contraception;[545] the right to self-protection and to be protected against STIs, including HIV/AIDS;[546] the right to be informed on one's health status and on the health status of one's partner, particularly if affected with STIs, including HIV/AIDS;[547] and the right to have family planning education.[548] It further calls on states to protect the reproductive rights of women by authorizing medical abortion in cases of pregnancy resulting from, among others, rape.[549]

The Protocol extensively deals with discrimination against women as well as harmful cultural and traditional practices. For instance, Article 2(1) requires member states to "combat all forms of discrimination against women through appropriate legislative, institutional and other measures."[550] It defines discrimination against women as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life."[551] Similarly, it requires member states to take measures with a "view to achieving the elimination of harmful cultural and traditional practices."[552] It also defines harmful practices as "all behavior, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity."[553] It calls on member states to "prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards."[554]

---

[544] *Ibid*, Article 14(1)(b).
[545] *Ibid*, Article 14(1)(c).
[546] *Ibid*, Article 14(1)(d).
[547] *Ibid*, Article 14(1)(e).
[548] *Ibid*, Article 14(1)(g).
[549] *Ibid*, Article 14(2)(c).
[550] *Ibid*, Article 2(1).
[551] *Ibid*, Article 1(f).
[552] *Ibid*, Article 2(2).
[553] *Ibid*, Article 1(g).
[554] *Ibid*, Article 5.

Generally, the Protocol adopts a multi-pronged approach in dealing with VAW. Accordingly, it requires that there must be adequate administrative, social and economic measures to prevent, punish and eradicate all forms of VAW.[555] Under the Protocol, member states need not only to punish the offenders but also provide rehabilitation services to the victims and facilitate the provision of reparations, if necessary.[556] The Protocol further requires member states to provide access to justice by providing legal aid services and information to victims as well as providing training to judges.[557] The duty of the state to provide adequate remedies is further amplified in Article 25 of the Women's Protocol.[558] Moreover, as Fareda Banda rightly suggested, the Protocol "reflects an understanding of gender (social and cultural construction of the roles of men and women in society) and how it impacts upon justifications often given for VAW, and also the reasons why it is sometimes difficult to change behavior."[559]

Hence, the Protocol obliges member states to take measures "to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 women and men."[560] It requires states to take measures to "eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of [VAW]"[561] It also requires states to take "measures to prevent the exploitation and misuse of women in advertising practices."[562]

---

[555] *Ibid*, Article 4.
[556] *Ibid*, Article 4 (2) (e) and (f).
[557] *Ibid*, Article 8.
[558] *See ibid*, Article 25.
[559] CEDAW General Recommendation No. 19, *supra note* 481, para 11. *See also Fareda Banda* (2008), *supra note* 532, pp. 12-13.
[560] The Women's Protocol, *supra note* 525, Article 2(2).
[561] *Ibid*, Article 4(2)(d).
[562] *Ibid*, Article 13.

4.5 SVAW under the Ethiopian Human Rights Framework

4.5.1 Human Rights in Pre-1991 Ethiopia

To properly appreciate the existing human rights framework, it is critically important to briefly recount the socio-political, cultural and historical contexts under which the present human rights framework evolved. Before the 1974 Revolution, the socio-economic and political structure of the Ethiopian society was largely a feudal system.[563] The feudal land system kept peasants and tenant farmers under oppression, exploitation and frequent famines.[564] As Peter Schwab noted, the pre-1974 regime "represented an oppressive feudal order which violated the human rights of peasants on a massive scale."[565] Under feudalism, exploitation was institutionalized,[566] and "embedded in the norms and laws which governed relations between the ruling nobility and the mass of serfs."[567]

Furthermore, the dominant socio-political culture in much of Ethiopia, according to Sarah Vaughan and Kjetil Tronvoll, "has historically been vertically stratified, and rigidly hierarchical."[568] They further noted that "it is often the case that processes of socialization from birth teach Ethiopians that people are *not* equal. Instead, they instill an understanding of the roles and statuses which are assigned to different individuals, marking them as either marginal, and disenfranchised, or privileged and empowered, usually on the basis of ethnicity, clan, class, gender,

---

[563] Gene Ellis (1976) 'The Feudal Paradigm as a Hindrance to Understanding Ethiopia', *The Journal of Modern African Studies* 14(2), pp. 275-295, p. 278; and Paul Brietzke (1976) 'Land Reform in Revolutionary Ethiopia', *The Journal of Modern African Studies* 14(4), pp. 637-660, p. 640.
[564] Peter Schwab (1976) 'Human Rights in Ethiopia', *The Journal of Modern African Studies* 14(1), pp. 155-160, p. 155; and Lionel Cliffe (1974) 'Capitalism or Feudalism? The Famine in Ethiopia', *Review of African Political Economy* 1(1), pp. 34-40.
[565] Peter Schwab (1976), *ibid*, p. 156.
[566] Tom J. Farer (1979) *War Clouds on the Horn of Africa: The Widening Storm*, 2nd revised ed, New York: Carnegie Endowment for International Peace, p. 12.
[567] Mohamud H. Khalif and Martin Doornbos (2002) 'The Somali Region in Ethiopia: A Neglected Human Rights Tragedy', *Review of African Political Economy* 29(91), pp. 73-94, p. 76.
[568] Sarah Vaughan and Kjetil Tronvoll (2003) *The Culture of Power in Contemporary Ethiopian Political Life*, Sida Studies Number 10, p. 1, available at: http://ehrp.org/wp-content/uploads/2014/05/VaughnandTronvoll-The-Culture-of-Power-in-Contemporary-Ethiopian-Political-Life.pdf last visited on 10-27-2018.

wealth or age."[569] In terms of gender relations and interactions, men are entitled to be superior to women, both in private and public settings.[570] In the private sphere, males assumed the position of head of the household.[571] This gender hierarchy was further legitimized by laws. In the public sphere, which was historically viewed as males' domain, women are represented by their husbands.[572] Consequently, the culture and socio-political institutions of the country were largely contrary to the notion of human rights, which are premised on the idea that all human beings are equal irrespective, of, among other things, gender, sex or sexuality.

It was against a background of such structural conditions that the first written Imperial Constitution of the 1931 was introduced. The Imperial Constitution incorporated a bundle of rights to the *subjects* of the then Ethiopian Empire. It adumbrated what can now be referred to as civil and political rights, including the right to movement,[573] the right to freedom from arbitrary arrest,[574] the right to be tried before a court of law,[575] the right to privacy against arbitrary domiciliary searches[576] and secrecy of correspondences,[577] the right to property,[578] and the right to petition.[579]

A closer look at how these rights were formulated indicates that they were meant to guarantee protection against wrongful acts by the government, within the public arena, traditionally considered to be males' domain, where men exercise their public lives. Women's traditional place in private settings inevitably diminished their presence and activities within the public sphere. Most of the rights included in the Imperial Constitution of 1931 did not, and naturally, cannot address, many acts of VAW committed by private individuals in private spheres and within the

---

[569] *Ibid*, p. 11.
[570] *Ibid*, p. 33.
[571] *Ibid*, pp. 33-34.
[572] *Ibid.*
[573] Ethiopian Constitution of 1931, Established in the reign of His Majesty Hail`e Sellassi´e I 16th July 1931, Article 22.
[574] *Ibid*, Article 23.
[575] *Ibid*, Article 24.
[576] *Ibid*, Article 25.
[577] *Ibid*, Article 26.
[578] *Ibid*, Article 27.
[579] *Ibid*, Article 28.

community at large. Various forms of VAW within the family setting were further concealed by the notion of privacy right protected the family unit from government intrusion. Additionally, the Imperial Constitution did not forbid discrimination based on gender. Nor did it limit the power of the monarch from restricting his subjects' rights by "his supreme power."[580]

The 1955 Revised Constitution, which replaced the Imperial Constitution of 1931, incorporated articles from the 1948 Universal Declaration of Human Rights (UDHR) by the UN.[581] This did not, however, prevent the popular upheavals against the monarchy and the 1974 popular revolution, which completely wiped out the monarchy.[582] After the downfall the monarch, the popular revolution was diverted toward communism by a small military junta known as the *Derg*, leading to horrendous violations of human rights in the name of justice, democracy, and safeguarding the revolution.[583] In terms of respect for human rights, the transition from the monarchical regime to the *Derg* was a transition from bad to worse.[584]

After ruling the country for many years through decrees, the *Derg* promulgated the Constitution of the Peoples' Democratic Republic of Ethiopia (PDRE) in 1987, which incorporated a bundle of largely socio-economic and cultural rights as well as civil and political rights along with a list of duties, under chapter seven (Article 35-Article 58).[585] Regarding women's rights, Article 35(1) of the PDRE Constitution provided for the right to equality before the law irrespective of, among other things, sex.[586] More specifically, Article 36 of the PDRE Constitution guaranteed equality of

---

[580] *Ibid,* Article 29.
[581] Mohamud H. Khalif and Martin Doornbos (2002), *supra note,* 561, p. 76.
[582] Edmond J. Keller (1981) 'Ethiopia: Revolution, Class, and the National Question', *African Affairs* 80(321), pp. 519-549, pp. 534-535; and Lionel Cliffe (1974), *supra note* 564, p. 40.
[583] Teshale Tibebu (2008) 'Modernity, Eurocentrism, and Radical Politics in Ethiopia, 1961–1991', *African Identities* 6(4), pp. 345-371, pp. 354-355; and Edmond J. Keller (1985) 'State, Party, and Revolution in Ethiopia', *African Studies Review* 28(1), pp. 1-17, p. 9.
[584] Peter Schwab (1976), *supra note* 564, p. 156; Teshale Tibebu (2008), *ibid,* p. 353; and Paul Brietzke (1976), *supra note* 563, p. 637.
[585] The Constitution of the Peoples' Democratic Republic of Ethiopia, Proclamation No. 1/1987, *Negarit Gazeta*, Vol. 47, No. 2, Addis Ababa, 12th September 1987, Chapter Seven (Article 35-Article 58).
[586] *Ibid*, Article 35(1).

men and women as well as affirmative measures for women.[587] Moreover, Article 37(1) recognized equal rights of spouses in marriage.[588] However, as Indrawatie Biseswar noted, "[d]espite such a genuine legal instrument, the balance sheet in the end showed no major changes in the status of women and, in fact, specifically reflected the prevalence and continuation of cultural practices that prevented women from taking advantage of state policies, directives or decrees."[589]

4.5.2 Human Rights Framework under the FDRE Constitution and VAW

In a landmark conference held in Addis Ababa immediately after the downfall of the *Derg* in July 1991, the victorious Ethiopian People's Revolutionary Democratic Front (EPRDF) had managed to bring to the conference a combination of veteran and swiftly self-constituted ethno-national political organizations.[590] The representatives at the conference formed a Council of Representatives, which approved the Transitional Period Charter and established the Transitional Government of Ethiopia (TGE). The Transitional Charter, in its first article, guaranteed human rights, as recognized by the UDHR, and made specific reference to a bundle of civil and political rights. Under the TGE, the election of a constituent assembly was held, and the newly drafted constitution, the FDRE Constitution, was ratified in 1994.

The preamble of the FDRE Constitution includes the principles of fundamental rights and freedoms and equality and non-discrimination on the grounds of sex, among others.[591] It embodies the principle of the sanctity of human rights, under Article 10(1), stating that "[h]uman rights and freedoms, emanating from the nature of mankind [*sic*], are inviolable and inalienable."[592] Out of the total 106 articles of the FDRE Constitution, 31 articles under chapter three of the Constitution are devoted to human rights provisions. The Constitution provides a reasonably clear and

---

[587] *Ibid*, Article 36.
[588] *Ibid*, Article 37(1).
[589] Indrawatie Biseswar (2011), *supra note* 28, pp. 109-110.
[590] T. Lyons (1996) 'Closing the Transition: The May 1995 Elections in Ethiopia', *Journal of Modern African Studies* 34(1), pp. 121-142, p. 123.
[591] The FDRE Constitution, *supra note* 426, Preamble, para. 2.
[592] *Ibid*, Article 10(1).

comprehensive list of fundamental rights and freedoms. Essentially, chapter three of the Constitution includes all human rights known to have been recognized under major international human rights covenants, namely, the ICCPR and the ICESCR. It incorporates the right to life,[593] the right to humane treatment, including freedom from torture and cruel, inhumane or degrading treatment or punishment, freedom from slavery, servitude, forced and compulsory labour,[594] the right to liberty and security, including freedom from arbitrary arrest or detention and so on.[595]

As far as women's rights are concerned, Article 25 of the Constitution provides for the right to equality before the law and equal protection under the law. It further stipulates that "the law shall guarantee to all persons equal and effective protection without discrimination on grounds of […] sex…"[596] Thus, the Constitution provides all human rights protections to men and women.[597] Generally, none of the rights protected shall be denied based on sex. Through this equal protection, human rights such as the rights to life, liberty and security of person, freedom from torture and cruel, degrading or inhumane treatment or punishment and freedom from slavery cover women's right to protection from sexual and other forms of gender-specific violence.

However, the Constitution goes beyond the protection of human rights, in gender-neutral terms. In its Article 35, it specifically provides comprehensive provisions entirely devoted to women's rights issues. It consists of nine sub-articles on the equal enjoyment of the constitutionally guaranteed rights by women; [598] on the equal rights of women and men in marriage;[599] on women's entitlement to affirmative measures to bring about *de facto* equality;[600] on the right to a paid maternity leave; on equal participation in programme planning and implementation;[601] on equal

[593] *Ibid*, Article 14.
[594] *Ibid*, Article 18.
[595] *Ibid*, Article 16 and Article 17.
[596] *Ibid*, Article 25.
[597] *Ibid*, Article 7.
[598] *Ibid*, Article 35(1).
[599] *Ibid*, Article 35(2).
[600] *Ibid*, Article 35(3).
[601] *Ibid*, Article 35(6).

rights on property ownership;[602] on equality in employment;[603] on women's right to full access to reproductive health care;[604] and most importantly, on freedom from harmful practices.[605]

The most relevant provision of the Constitution with respect to VAW is Article 35(4), which stipulates that "[t]he State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited."[606] This provision explicitly recognizes the existence of culturally rooted gender-specific oppressive customs and practices (of violence) perpetrated against women. It mentions the adverse effects of such violence on women's physical and mental well-being. It also recognized the role of laws, stereotypes, ideas and customs in perpetuating such violence and, therefore, obliges the state to protect women from such gender-specific violence. In essence, it refers to VAW and the need for its elimination. The *expose des motifs* of the Constitution also indicates that Article 35(4) has been introduced with a view to eliminating prejudices, customary and practices, which are based on the idea of the inferiority of women and stereotyped roles for men and women.[607]

Be that as it may, the Constitution proscribes "laws, customs and practices that oppress or cause bodily or mental harm to women" without providing, at least, an illustrative list of VAW. However, it offers an important interpretative tool for its bill of human rights as a whole. In this regard, Article 13(3) of the Constitution instructs that "[t]he fundamental rights and freedoms specified in [chapter three] shall be interpreted in a manner conforming to the principles of the [UDHR], International Covenants on Human Rights and international instruments adopted by Ethiopia."[608] Here, the international human rights instruments need not be treaties in order to serve as interpretative guidelines for constitutional human rights provisions. They can be non-treaty human

---

[602] *Ibid*, Article 35(7).
[603] *Ibid*, Article 35(8).
[604] *Ibid*, Article 35(8).
[605] *Ibid*, Article 35(4).
[606] *Ibid*, Article 35(4).
[607] *የኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ሀገ-መንግስት ማብራሪያ*, p. 87, available at: https://www.abyssinialaw.com/constitutions last visited on 1/29/2019.
[608] The FDRE Constitution, *supra note* 426, Article 13(2).

rights instruments as long as they are adopted by Ethiopia in international platforms, such as the UN or other international platforms.[609] Accordingly, what acts constitute "customs and practices that oppress or cause bodily or mental harm to women" can be interpreted in line with issue-specific non-treaty human rights instruments, such as the DEVAW. The definition of VAW under the DEVAW includes physical, sexual and psychological violence occurring in the family, within the wider community, or perpetrated or condoned by the state, wherever it occurs.[610] Interpreted in line with the DEVAW's provisions, Article 35(4) of the Constitution proscribes sexual violence committed in private settings, within the community and condoned by the state. In view of this, it is the duty of the government to criminalize all forms of SVAW and take effective measures to prevent, investigate, prosecute and punish acts of sexual violence.

In addition to instructing the use of international human rights instruments as interpretative guidelines, the Constitution also incorporates international human rights treaties ratified by Ethiopia into the domestic laws.[611] It domesticates the international human rights treaties ratified by Ethiopia, including the CEDAW. In this regard, with reservations on some critical provisions, Ethiopia has ratified the most comprehensive issue-specific regional human rights treaty – the Women's Protocol – in March 2018.[612] Upon ratification of the Protocol, Ethiopia has officially incorporated detailed definitions of VAW, harmful practices and discrimination against women into its human rights framework though it has not been translated into the country's official language and issued in its official Federal *Negarit Gazetta*. Thus, the Protocol's definition of VAW as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public

---

[609] *Ibid*, Article 13(2).
[610] DEVAW, *supra note* 67, Article 2.
[611] The FDRE Constitution, Article 9(4).
[612] *See* Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation No. 1082/2018, Federal *Negarit Gazetta*, Article 2, 24th Year No. 33, Addis Ababa, March 30th, 2018. [Here-in-after the "Women's Protocol Ratification Proclamation"].

life in peace time and during situations of armed conflicts or of war,"[613] has formally become a part of the Ethiopian human rights framework.

Likewise, the Protocol's definition of harmful practices as "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity," has been incorporated into the Ethiopian human rights framework.[614] The same holds true for its definition of discrimination against women as "any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life."[615] Generally, by ratifying and domesticating this treaty, Ethiopia is obliged to respect, protect and fulfil women's human rights, including the right to freedom from violence.

Overall, the FDRE Constitution has, in comparison to its predecessors, made significant progress in terms of clearly and comprehensively addressing the concerns with respect to women's rights. However, the Ethiopian human rights normative framework has inherent weaknesses in protecting women's rights. For instance, it does not preclude the adjudication of disputes in relation to personal and family laws, in accordance with religious or customary laws.[616] As Gemma Lucy Burgess notes "[t]he Constitution recognizes customary law and tradition as being legitimate for regulating social life, particularly in the realm of the family (where laws are often discriminatory), whilst also stating that equality between men and women and the protection of their human rights is paramount."[617] By doing so, it gives due recognition to customary and religious laws to regulate and adjudicate personal matters such as marriage, divorce, property ownership, child custody, inheritance and adoption and the like.[618] This constitutionally guaranteed legal pluralism

---

[613] The Women's Protocol, *supra note* 525, Article 1(j).
[614] *Ibid*, Article 1(g).
[615] *Ibid*, Article 1(f).
[616] The FDRE Constitution, *supra note* 426, Article 34 (5).
[617] Gemma Lucy Burgess (2012) 'When the Personal Becomes Political: Using Legal Reform to Combat Violence against Women in Ethiopia', *Gender, Place & Culture: A Journal of Feminist Geography*, 19(2), pp. 153-174, P. 163.
[618] Indrawatie Biseswar (2011), *supra note* 28, pp. 132-133.

undermines the protection and promotion of women's rights,[619] creating barriers for advancing women's equal rights in inheritance, property ownership, land use and family relations.[620]

As Indrawatie Biseswar succinctly put it, "the very constitution that grants women equal rights also includes laws that infringe upon these rights."[621] In fact, empirical evidence shows that the recognition and parallel application of religious or customary laws imperils women's human rights. For instance, a study conducted on *Xeer,* a customary law practiced in the Somali Regional State, concluded that this customary law violates women's rights, including the right to equality, the right to property, the right to freedom of movement, the right to participation and women's marital, personal and family rights.[622] In limiting the application of religious and customary laws, the Constitution gives an option to the disputing parties to choose a form for adjudication. Any one of the parities can reject the application of customary laws and the jurisdictions of customary or religious institutions.[623] However, this approach unfairly assumes that women are free to reject the application of religious and customary laws, without facing stigma and isolation from their family and communities.[624] In the case of *Xeer,* for instance, women are not free to reject the *Xeer,* without facing stigma and isolation.[625]

The Ethiopian government does not ratify the CEDAW's optional protocol which provided an avenue for individuals to bring individual complaints alleging a breach of their rights guaranteed

---

[619] Mohammed Abdo (2011) 'Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia', *Mizan Law Review* 5(1), pp. 72-104, P. 94; and Berihun Adugna Gebeye (2013) 'Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State', *Women in Society* 6, p. 31, available at: https://ssrn.com/abstract=2683685 last visited on 1/26/2019.
[620] Meaza Ashenafi and Zenebeworke Tadesse (2005) *Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia*, p. 25, available at: http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-and-inheritance-rights-the-case-of-ethiopia/23.pdf last visited on 1/26/2019.
[621] Indrawatie Biseswar (2011), *supra note* 28, p. 132; and Indrawatie Biseswar (2008) 'A New Discourse on 'Gender' in Ethiopia', *African Identities* 6(4), pp. 405–429, p. 418.
[622] Berihun Adugna Gebeye (2013), *supra note* 619**,** p. 31.
[623] The FDRE Constitution, *supra note* 426, Article 34(5).
[624] Meaza Ashenafi and Zenebeworke Tadesse (2005), *supra note* 620, p. 22.
[625] Berihun Adugna Gebeye (2013), *supra note* 619, p. 31.

under the CEDAW's provisions, to the Committee.[626] In addition, the Women's Protocol has been ratified by Ethiopia, with reservations on some critical provisions.[627] In this regard, it has made reservations to the provisions of the Protocol on monogamy and polygamous marital relationships;[628] on the formality requirements of a valid marriage;[629] on a married woman's maiden name;[630] on separation, divorce or annulment of a marriage by the courts;[631] and on the minimum age of marriage.[632] As far as SVAW is concerned, reservation has been made on the most critical issue. For instance, reservation has been submitted against the application of the Protocol's Article 4(2)(a), which calls on the state to "enact and enforce laws to prohibit all forms of [VAW] including unwanted or forced sex whether the violence takes place in private or public."[633] By doing so, the Ethiopia government has made it clear that "Article 4(2)(a) shall be applicable in accordance with Article 620 of the [RCC] that defines rape to be a forced sexual intercourse that occurs out of wedlock."[634] Since Article 620 of the RCC deals only with gender-specific forcible rape by a man against woman, this reservation does not refer to rape committed by a woman against a man, under Article 621 of the RCC. Thus, it is a gendered reservation, legitimizing SVAW in the private sphere. However, this study argues that Article 620 of the RCC itself is discriminatory against women and has been outlawed by other provisions of the Women's Protocol to which no reservation has been made by Ethiopia, such as Article 2 on the elimination of discrimination against women, and Article 8 on equal protection under the law.[635]

---

[626] *See generally* the list of states' ratification, accession, or succession status to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en
[627] The Women's Protocol Ratification Proclamation, *supra note* 612, Article 3.
[628] *Ibid*, Article 3(1) (a).
[629] *Ibid*, Article 3(1) (b).
[630] *Ibid*, Article 3(1) (c).
[631] *Ibid*, Article 3(1) (d).
[632] *Ibid*, Article 3(2) (b).
[633] The Women's Protocol, *supra note* 525, Article 4(2)(a).
[634] The Women's Protocol Ratification Proclamation, *supra note* 612, Article 3(2) (a).
[635] *See generally infra* Chapter 7. Section "*7.2.5.3. A case for Ending Marital-Rape Exemption*" with accompanying notes.

Non-implementation of the normative standards of the rights is yet another problem.[636] This, in part, relates to the non-issuance of international human rights treaties, such as the CEDAW and the Women's Protocol in the country's *Federal Negarit Gazetta*, from which the court and other government organs are supposed to take judicial notice.[637] Others factors for the non-realization of human rights are lack of commitment from the government, lack of appropriate enforcement and monitoring mechanisms, lack of adequate resources, under-representation of women within the justice system, the existence of persistent attitudes and practices that undermine the full realization of women's rights, and lack of awareness about the already guaranteed rights.[638]

4.6 Conclusion

Although VAW is the most pervasive and gender-specific human rights violation, denying women and girls of equality, security, dignity, self-worth, and their right to enjoy fundamental freedoms, the mainstream human rights standards under the ICCPR and ICESCR were not interpreted to include gender-specific sexual and numerous other forms of VAW. However, women activists, working through international and national NGOs, have lobbied international bodies to direct increasing attention to VAW and managed to place the issue on the agenda and direct a growing attention to the problem. By now, the general consensus is that sexual and other forms of VAW constitute a violation of women's human rights and have thus been dealt with as such under the international, regional and national human rights frameworks.

[636] Indrawatie Biseswar (2011), *supra note* 28, p. 9.
[637] Indrawatie Biseswar (2008), *supra note* 621, p. 419.
[638] Indrawatie Biseswar (2008), *ibid*.

CHAPTER FIVE: CONTEXTUALIZING THE RAPE LAW AND POLICY REFORMS

5.1 Introduction

This chapter addresses one of the general objectives of the present study: identifying the main strands of the 2004 rape law and the preceding or accompanying policy reforms. It also contextualizes the process of the reforms. Accordingly, the first section presents the main factors that necessitated the reforms, the overall goals of the reforms and the actors actively involved in the reform process. The second section identifies the main strands of the 2004 rape law reforms and the preceding and accompanying policy reforms and measures.

5.2 Background to and Strands of Rape Law and Policy Reforms in Ethiopia

Unlike reforms introduced in other jurisdictions, there have been no reforms specifically aimed at revising rape law in Ethiopia. Rather, rape law reforms were introduced along with the overall revision of the 1957 Penal Code of Ethiopia, in 2004. There were two main interrelated factors that necessitated rape law reforms during the overall revision of the 1957 Penal Code. The first factor was the recognition of women's human rights under the FDRE Constitution and the international human rights treaties to which Ethiopia is a party, such as the CEDAW. The country's commitment to such international human rights treaties triggered the domestic legislative reform so as to meet the standards enshrined in those treaties.[639] In order to demonstrate its commitment to the human rights standards and maintain legitimacy in the eyes of the international community, the government was compelled to take some progressive legislative measures.[640] Specifically, it had to change the provisions of the 1957 Penal Code which contradicted with its commitment to human rights.[641] This has been reflected in the purpose statement (preamble) of the RCC, which

[639] Theresa Rouger (2009), *supra note* 293, p. 33; and Gemma Lucy Burgess (2012), *supra note* 617, p. 157.
[640] Gemma Burgess (2011), *supra note* 32, p. 170.
[641] *Ibid.*

states that the reform was necessitated to achieve alignment of the provisions of the criminal law with the FDRE Constitution, including provisions related to women's human rights.[642]

The second factor directly relates to the first one – the transition to a "democratic" political system.[643] This transition, with a commitment to democracy and ideals of constitutional universal human rights, gave women a platform to engage in rights-based activism.[644] It gave women both the space and legitimacy for their work on women's rights issue and advocacy for legal reforms.[645] Consequently, this led to the emergence civil society organizations which challenge the dominant gender roles and relations.[646] Following the transition, a number of rights-based and development-oriented women's organizations were established to advance the cause of Ethiopian women.[647] The Ethiopian Women Lawyer's Association (EWLA) was one of the prominent actors which took advantage of the new political space to advocate for legal reforms in Ethiopia.[648] It used the human rights framework to challenge legislation, which discriminated against women, and to raise awareness on issues affecting women's lives, including VAW.[649] EWLA has been the most significant actor involved in pressing for legal reforms.[650] Since its establishment, it has commissioned various researches covering most of the laws that affect women and women'

---

[642] The Revised Criminal Code, *supra note* 21, Preamble Para. 1.
[643] Gemma Burgess (2013), *supra note* 31, p. 96.
[644] Gemma Burgess (2013), *ibid*, p. 107; and Gemma Lucy Burgess (2012), *supra note* 617, P. 160.
[645] Gemma Burgess (2013), *ibid*, p. 105; Gemma Burgess (2011), *supra note* 32, p. 96; Billene Seyoum Woldeyes and Earuyan Solutions (2017) *The Ethiopian Women Lawyers Association – A Story of Service, Movement Building and Survival, Rooted in Ethiopia's Political Legacy*, A Research Commissioned by AWIB Ethiopia, p. 4; and Sarah Jane Holcombe (2018) 'Medical Society Engagement in Contentious Policy Reform: the Ethiopian Society for Obstetricians and Gynecologists (ESOG) and Ethiopia's 2005 Reform of Its Penal Code on Abortion', *Health Policy and Planning* 33(4), pp. 583–591, p. 584.
[646] Gemma Burgess (2013), *ibid*, p. 97; and Gemma Lucy Burgess (2012), *supra note* 617, pp. 157-160.
[647] Tigest Abye (2016) Life Story Narratives of Ethiopian Women Activists: The Journey to Feminist Activism, PhD Thesis, University of Bradford, p. 244.
[648] Interview with Advocate Two on 15 March 2019 09:30-10:09 AM. *See also* Gemma Lucy Burgess (2012), *supra note* 617, P. 160; Tigest Abye (2016), *ibid*, p. 102; and Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 4.
[649] Logan Cochrane and Betel Bekele Birhanu (2018) 'Pathways of Legal Advocacy for Change: Ethiopian Women Lawyers Association', Forum for Development Studies, DOI: 10.1080/08039410.2018.1534752, pp. 2-6; and Gemma Burgess (2011), *supra note* 32, pp. 163-178.
[650] Interview with Advocate Two, *supra note* 648. See also Gemma Burgess (2013), *supra note* 31, p. 103; Gemma Lucy Burgess (2012), *supra note* 617, p. 160; and Sara Tadiwos (2001), *supra note* 27, p. 6.

rights.[651] It identified laws that discriminated against women in light of the constitutional and international human rights standards.[652] More specifically, EWLA played a key role in bringing the need for the revision of the 1957 Penal Code into the government's political agenda.[653]

The process of revising the 1957 Penal Code was preceded by the reforms of the Ethiopian Family Law, which, in terms of advancing women's rights, was viewed by many as EWLA's success story.[654] In advocating for the reform of the Family Law, EWLA conducted studies on the existing law, identified the needed changes, and submitted its findings to the concerned institutions.[655] Based on its findings, it engaged in advocacy works through a variety of public forums. Eventually, the EWLA managed to get its main demands incorporated into the Revised Family Law, which was adopted on 4th July 2000 and came into effect on 9th December 2000.[656] According to one of the key informants, Advocate One, "the circumstance was very good at that time. The revision of the Family Law, coupled with the government's willingness to amend laws that hinder women's rights, paved the way for us to demand for reforms of the Penal Code as well."[657]

The reform effort was started in late 1990s, with a study on the 1957 Penal Code of Ethiopia in light of the constitutional human rights provisions and the international human rights standards.[658] The study's findings exposed the discriminatory features of the 1957 Penal Code, particularly with respect to the sexual rights of women.[659] The findings were submitted to the then Ministry of Justice and the Federal Institute of Law Reform, which, at that time, were in charge of revising

---

[651] Interview with Advocate Two, *ibid*; Gemma Burgess (2013), *ibid*; Gemma Lucy Burgess (2012), *ibid*; and Gemma Burgess (2011), *supra note* 32, pp. 163–177.
[652] *Ibid.*
[653] *Ibid.*
[654] Ethiopian Women Lawyers Association (2001) *Ethiopian Women Lawyers Association Activity Report November 1999 – December 2000*, Addis Ababa: EWLA, available at: http://www.seleda.com/jul_aug01/EWLA.doc last visited on 9/17/2018.
[655] *Ibid*.
[656] *Ibid*.
[657] Interview with Advocate One on 18 March 2019 3:50-11:05 PM.
[658] Gemma Burgess (2013), *supra note* 31, p. 103; Ethiopian Women Lawyers Association (2001), *supra note* 654; and Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 7.
[659] Gemma Burgess (2013), *ibid*, p. 103; Ethiopian Women Lawyers Association (2001), *ibid*; and Billene Seyoum Woldeyes and Earuyan Solutions (2017), *ibid*.

laws.[660] EWLA's research findings also draw attention to the need for several changes in the laws as they affect the rights of women.[661] Subsequently, EWLA devoted its resources to awareness raising activities and campaigns. It, along with other stakeholders, organized debates and discussions in all Addis Ababa's administration zones, involving schools, communities and NGOs.[662] A candlelight vigil was held for three consecutive evenings at the Meskel Square, which was then followed by the rally on 10th February 2001.[663] On the final day, more than one thousand women marched to the office of the Prime Minister and the Parliament.[664] Petitions bringing the issue of VAW to the attention of the Prime Minister's Office and the Parliament were presented, which received affirmative responses.[665]

In their lobbying efforts, EWLA members focused on VAW such as rape, abduction, early marriage, FGM,[666] sexual harassment and marital-rape.[667] As far as sexual offence was concerned, EWLA called attention to the need for setting a minimum mandatory sentence, and demanded that rape be punished more severely as it seriously abuses women's fundamental right to life given the advent of the deadly HIV/AIDS.[668] The EWLA also called attention to Article 594 of the 1957 Penal Code, which criminalized sexual assault against infants or children under 15 years of age.[669] It specifically pointed out that this provision excluded children between the ages of 15 and 18.[670]

---

[660] *Ibid.*
[661] *Ibid.*
[662] Interview with Advocate One, *supra note* 657. *See also* Adanetch Kidane Mariam (2001) 'The Campaign on Violence Against Women: How Did It Go?', in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender, Number 5,* Addis Ababa: Panos Ethiopia, p. 18, available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf last visited on 10/29/2018.
[663] Adanetch Kidane Mariam (2001), *ibid,* p. 19.
[664] Logan Cochrane and Betel Bekele Birhanu (2018), *supra note* 649, p. 14; Ethiopian Women Lawyers Association (2001), *supra note* 654; and Gemma Lucy Burgess (2012), *supra note* 617, pp. 166-167.
[665]Adanetch Kidane Mariam (2001), *supra note* 662 p. 19; and Tigest Abye (2016), *supra note* 647, p. 82.
[666] Interview with Advocate One, *supra note* 657. *See also* Gemma Burgess (2011), *supra note* 32, p. 169.
[667] Interview with Advocate One, *ibid*.
[668] Interview with Advocate One, *ibid*. *See also* Ethiopian Women Lawyers Association (2001), *supra note* 654.
[669] Interview with Advocate One, *ibid*. *See also* Ethiopian Women Lawyers Association (2001), *ibid.*
[670] Ethiopian Women Lawyers Association (2001), *ibid.*

The EWLA proposed the inclusion of children between the age of 15 and 18 years in the same provisions as minors.[671]

The other area of concern was the issue of domestic violence such as battery, feticide, insults, and destruction of property and denial of access to the marital home.[672] For EWLA, domestic violence was a key problem affecting women's rights and one for which the 1957 Penal Code failed to provide adequate remedy.[673] Thus, it engaged in advocacy works for the inclusion of specific provisions on domestic violence, and stressed the need for civil remedies such as "protection orders" by the courts to protect victims of domestic violence from further retribution.[674]

In addition, EWLA lobbied for reforms of the Criminal Procedure Code.[675] For instance, it demanded the adoption of rules of procedural law that allow the trial of rape cases *in-camera*.[676] It argued that the court needs to reduce the burden of proof since in cases such as rape, the victim is often unable to produce the required evidence due to the nature of the crime. [677] It further demanded that the constitutional right of arrested persons to be released on bail to be restricted, particularly in cases involving girls who are victimized by their relatives or neighbors.[678] All these efforts culminated in the release of the amended draft penal law by the then Ministry of Justice, in September 2000.[679] Work then continued towards improving the draft, which did not meet the demands of the reform advocates.[680] A national workshop was also held to improve the draft and a communiqué outlining matters that women demanded to see in the revised criminal law was forwarded to the then Minister of Justice.[681]

---

[671] Interview with Advocate One, *supra note* 657.
[672] Interview with Advocate One *ibid*. *See also* Ethiopian Women Lawyers Association (2001), *supra note* 654.
[673] Ethiopian Women Lawyers Association (2001), *ibid.*
[674] *Ibid*.
[675] *Ibid*.
[676] *Ibid*.
[677] *Ibid.*
[678] *Ibid.*
[679] *Ibid.*
[680] *Ibid.*
[681] *Ibid.*

In its advocacy works, the EWLA was not working alone. Rather, it adopted a collaborative approach in working with the government, used the pre-existing formal and informal networks and created a sort of alliance with individuals within the government.[682] Most importantly, it mobilized a wide range of actors and facilitated the establishment of a broad-based coalition of women's organizations – the Network of Ethiopian Women's Associations (NEWA) – in 2003.[683] During the reform, one of the present study's key informant was a representative of the NEWA, which included the EWLA as its prominent member.[684] The NEWA was established to enable all member organizations have a strong representation and voice on issues of common interest.[685] At the time of its formation, the NEWA had 43 member organizations, but this decreased substantially to less than ten members, following the coming into effect of the then overly restrictive Charities and Civil Societies' Law.[686] One of the common issue that all the member organizations stood together against was the issue of VAW.[687] One of the key informants noted that "[a]t the time, it was agreed by the member organizations that the NEWA should voice against numerous challenges faced by Ethiopian women, specifically sexual and forms of [VAW]."[688]

Moreover, the EWLA was a prominent but not the sole actor impacting the reform process. Other internal and external actors also involved in the process. Particularly, in socially contentious reform agenda, such as abortion law reform, other NGOs such as the Ethiopian Society of Obstetricians and Gynecologists (ESOG) had actively participated.[689] The ESOG participated in the process by building a research base, conducting evidence-based advocacy, and framing the rationale for reform from the perspective of public health and maternal mortality prevention.[690] Other actors also engaged in abortion law reform by forming a broad-based coalition of civil

---

[682] Logan Cochrane and Betel Bekele Birhanu (2018), *supra note* 649, p. 12.
[683] *Ibid*, p. 13.
[684] Interview with Advocate One, *supra note* 657.
[685] *Ibid*.
[686] *Ibid*.
[687] *Ibid*.
[688] *Ibid*.
[689] Sarah Jane Holcombe (2018), *supra note*, 645, p. 583.
[690] *Ibid*, p. 584.

societies and stockholders. In this regard, the Abortion Advocacy Working Group was formed, whose members worked together in building public opinion, shifting policymakers' perspectives, and creating an enabling environment for service providers.[691]

However, foreign actors also contributed to the overall reform process indirectly through funding the activities of local advocacy groups. For instance, the EWLA, the prominent player in the reform, got its main financial support from a consortium of overseas donors, including bilateral government agencies as well as international charities.[692] It was able to secure funding from foreign donors to provide local legal services and to fund campaigns for legal reforms.[693] Notably, the EWLA experimented with the idea of "basket funding" where various donors pooled their resources together into one comprehensive core funding scheme.[694] As it secured most of its funding from foreign government agencies and international charities,[695] EWLA's success story on the reform of the 1957 Penal Code can be attributed, at least in part, to the financial capital it was able to generate from external sources, without any restrictions or preconditions.[696]

Key informants were asked whether international NGOs, foreign governmental organizations and other external actors took bold agenda-setting steps during the revision of the 1957 Penal Code. One of the key informants expressed her doubt on the role of these actors, stating that "she did not think that they had significant influences on the reform process. Their roles were insignificant and mainly restricted to conducting researches under the watch of the NEWA. They did not directly involve in advocacy and take bold agenda-setting steps during the reform process."[697] She added that "though there some were foreign organizations that were working for abortion law reforms,

---

[691] Ipas (2008) *Tools for Progressive Policy Change: Lessons Learned from Ethiopia's Abortion Law Reform*, Ipas, Chapel Hill, NC, available at: https://endabortionstigma.org/en/Home/Resources/Ipas%20Publications/Tools-for-progressive-policy-change-Lessons-learned-from-Ethiopias-abortion-law-reform.aspx last visited on 1/27/2019.
[692] Gemma Lucy Burgess (2012), *supra note* 617, P. 160; and Gemma Burgess (2011), *supra note* 32, p. 168.
[693] Logan Cochrane and Betel Bekele Birhanu (2018), *supra note* 649, p. 8; and Gemma Burgess (2011), *ibid*, p. 166.
[694] Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 11.
[695] Gemma Burgess (2011), *supra note* 32, p. 173.
[696] Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 11.
[697] Interview with Advocate One, *supra note* 657.

but generally foreign actors left local issues for local actors."[698] However, she admitted that foreign organizations were enablers of local organizations through funding.[699]

In sum, the Revised Criminal Code (RCC) addresses some of the issues raised by the EWLA.[700] It came into effect on the 9th of May 2005.[701] It included some progressive changes welcomed by the EWLA.[702] The protection of women's human rights is explicitly mentioned, in the preamble of the RCC, as the primary objective of the legal reforms. It stated that one of the aims of the reforms was remedying the failure of the 1957 Penal Code "to acknowledge the grave injuries and sufferings caused to women and children by reason of harmful traditional practices."[703] The revision of the 1957 Penal Code was also meant to acknowledge the importance of "adopting progressive laws at times, educate and guide the public to dissociate itself from harmful traditional practices."[704] Thus, apart from the deterrence goal of criminal law, the RCC has the additional goal of serving an educative function in changing societal attitudes toward VAW. Interestingly, the legal reform has been preceded or accompanied by other policy reforms and measures to address sexual and other forms of VAW. Generally, in adopting these reforms, the policymakers and reform advocates sought to curb levels of sexual and other forms of VAW and improve the treatments the victims.[705] Thus, the reforms' goals were both symbolic (education and changing attitudes) and instrumental (punishment and deterrence).

---

[698] *Ibid.*
[699] *Ibid.*
[700] Ethiopian Women Lawyers Association (2001), *supra note* 654.
[701] The Revised Criminal Code, *supra note* 21, p. V.
[702] Gemma Burgess (2011), *supra note* 32, p. 169.
[703] The Revised Criminal Code, *supra note* 21, Preamble Para. 3, p. II.
[704] *Ibid.*
[705] Interview with Advocate One, *supra note* 657. *See also* *የኢትዮጵያ ፌደራላዊ ዴሞክራሲያዊ ሪፐብሊክ የተሻሻለው የወንጀል ህግ ሐተታ ዘምክንያት* 1996 ዓ/ም (Amharic), p. 287. [Here-in-after the "*Expose des motifs* of the Revised Criminal Code"].

5.3 The Main Strands of the Rape Law and Policy Reforms

5.3.1 The Main Strands of the 2004 Rape Law Reform

5.3.1.1 Abolishing Impunity of Rapists in the Event of Marrying the Victims

Writers identified many characteristics of male's power in patriarchal societies, such as the power of men to use women as objects in transactions between males (for instance, the use of women as gifts or bride price).[706] "Women's sexuality is," according to Catharine MacKinnon, "socially, a thing to be stolen, sold, bought, bartered, or exchanged by others."[707] There are many instances in the Ethiopian context that well substantiate MacKinnon's assertion. In some parts of the country, for instance, girls were not only sold out but also they were even pledged as a collateral to borrow cattles or simply given as a gift or inherited by the relative of their deceased husband.[708] Of the many forms VAW within the community, marriage by abduction is more common and often followed by rape.[709] Usually, a man, in consort with his friends, abducts a woman he wishes to take as his wife. Then, he rapes the abducted girl, after which she and her family feel they have no option but to agree to a marriage since the victim's perceived marriageability afterwards is severely compromised.[710] As the society attaches a high value on women's virginity, once girls are abducted and raped, they often "are forced to marry off their offender as no one will marry her in the future – as she is considered as a 'broken item' among the society and bring shame to the family."[711] In these cases, the offender either pays "compensation" to the victim's parents or pays a "bride price"

---

[706] Adrienne Rich (1999) 'Compulsory Heterosexuality and Lesbian Existence', in Richard Parker and Peter Aggleton (eds) *Culture, Society and Sexuality: The Reader*, Chapter 11, London: UCL Press, pp. 204-205.
[707] Catharine A. MacKinnon (1997b), *supra note* 382, p. 420. *See also* Andrea Dworkin (1976), *supra note* 188, p. 26.
[708] እሸቱ ድባዑ (1997), *supra note* 315, pp. 61-79.
[709] Sinidu Fekadu (2008), *supra note* 2690, p. 23; Indrawatie Biseswar (2011), *supra note* 28, p 186; CARE Ethiopia (2008), *supra note* 23; እሸቱ ድባዑ (1997), *ibid*, p. 73; and African Commission on Human and Peoples' Rights: Communication 341/2007 – *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. The Federal Democratic Republic of Ethiopia*. [Here-in-after "African Commission on Human and Peoples' Rights: Communication 341/2007"].
[710] EGLDAM (2008) cited in Annabel Erulkar (2013) 'Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia', In*ternational Perspectives on Sexual and Reproductive Health* 39(1), pp. 6-13.
[711] CARE Ethiopia (2008), *supra note* 23, pp. 39-40; and Indrawatie Biseswar (2011), *supra note* 28, p. 188.

to her parents and marries her in order to avoid bringing public attention and shame to the girl and her family.[712] The settlements often involve arbitration by elders.[713] Thus, marriage by abduction is a typical instance where, as Dworkin succinctly puts it, "[r]ape precedes marriage, engagement, betrothal, and courtship as sanctioned social behavior."[714]

Under the 1957 Penal Code, both abduction and rape were criminal offences. However, if the offender married the victim, he was totally exonerated from criminal liability for both the abduction and the rape.[715] Thus, the penalty for rape of an unbetrothed virgin was marriage as it was during the biblical time.[716] Though the law assumed that the victim will freely give her consent to marry her rapist, young girls, barely ten or twelve years old, have no voice to speak against the wish of their parents and cannot withstand the socio-cultural pressure from the community, and the threats from the offenders.[717] The parents often consent to settle the matter through marriage because the victims were considered as 'broken items' and would be socially unacceptable for a subsequent marriage to another man.[718] What is rendered invisible in the process is the negative physical and psychological impacts inflicted by the offence upon the victims, including the long term socio-economic consequences in terms of losing education and future job opportunities.[719]

Under the RCC, the exoneration of rapists and abductors from criminal liability upon subsequent conclusion of "marriage" with their victims was formally abolished.[720] In a clear reversal of the approach adopted under the 1957 Penal Code, the RCC has stipulated two new provisions. First,

---

[712] *Ibid.*
[713] *Ibid.*
[714] Andrea Dworkin (1976), *supra note* 188, p. 26.
[715] The Penal Code, *supra note* 34, Article 599, Article 558(2).
[716] According to the book of Deuteronomy, should a virgin be raped, the punishment for the captor is that he must marry the girl, as well as pay a fine for his act. If a man finds a young woman who is a virgin, who is not betrothed, and he seizes her and lies with her, and they are found out, then the man who lay with her shall give to the young woman's father fifty shekels of silver, and she shall be his wife because he has humbled her; he shall not be permitted to divorce her all his days. (Deuteronomy 22:25-29, New International Version).
[717] እሸቱ ድባዑ (1997), *supra note* 315, p. 74.
[718] *Ibid.*
[719] Indrawatie Biseswar (2011), *supra note* 28, p 186; and እሸቱ ድባዑ (1997), *ibid*, p. 68.
[720] The Revised Criminal Code, *supra note* 21, Article 620-Article 628, and Article 587(3).

Article 587(2) of the RCC states that "[w]here the act of abduction is accompanied by rape, the offender shall be liable to the punishment prescribed for rape in this Code."[721] Second, Article 587(3) of the RCC stipulates that "[t]he conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability."[722] The RCC further recognizes the right of the victim "to claim compensation under civil law for the moral and material damage she may have sustained as a result of the abduction.[723] In acknowledging the concurrent occurrence of abduction and rape, it provides that "[w]here the rape is related to illegal restraint or abduction of the victim, […], the relevant provisions of this Code shall apply concurrently."[724]

However, ending the exoneration of rapists and abductors from criminal liability upon subsequent conclusion of marriage with their victims does not appear to meet the expectation the reform advocates since the legal reform is not translated into practice. Despite the reform, abduction and rape are often settled through arbitration and ended up with the conclusion of marriage between the victim and the offender. For instance, a 2015 study in Arsi, Oromia Region, revealed that the issue of abduction often referred to the Elder's Council for settlement.[725] Similarly, a 2008 cross-regional study which included a *Woreda* in Addis Ababa concluded that "women are forced to marry off their perpetrator as no one will marry her in the future – as she is considered as a 'broken item' among the society and [brings shame] to the family. In these cases, the perpetrator either pays compensation to the family of the girl or pays an amount of money and marries the girl in order to avoid bringing public attention and shame to the girl and her family."[726]

Finally, the RCC did not specifically address other forms of VAW which, in their effects, are largely similar to marriage by abduction and virtually relegated the status of women and girls to mere chattels.[727] For instance, the law did not specifically address wife inheritance, a marriage

---

[721] *Ibid*, Article 587.
[722] *Ibid*, Article 587.
[723] *Ibid*, Article 587.
[724] *Ibid*, Article 620.
[725] Tsegaye Megersa (2015), *supra note* 345, p. 50.
[726] CARE Ethiopia (2008), *supra note* 23, pp. 40-39.
[727] እሸቱ ድባዑ (1997), *supra note* 315, pp. 61-79.

type where a woman marries her husband's brother, following her husband's death, as a form of VAW. In some cultures, wife inheritance is common.[728] In some worst cases, if a wife dies, her family will offer the husband to marry one of the deceased's sisters.[729] In some cultures, marriage involves bartering girls and women as mere objects in men's transactions. For instance, in the so-called exchange marriage among the Gumuz in Benishangul Gumuz Regional State, a girl can be exchanged for the sake of her brother's, father's, uncles', or cousin's marriage.[730] In this transaction, the male chooses a girl that he wishes to marry and informs this to the elders who mediate the issue with her family.[731] Upon the consent of the families involved, marriage takes place through exchange of the bride groom's sisters or near relatives.[732] In this transaction, the consent of girls so bartered is totally disregarded and rendered irrelevant.[733] The transaction simply involves giving away a girl in exchange of another girl and can take place only where a man has a sister or female relatives to be bartered or exchanged.[734] As it is a quid pro quo transaction, the more sisters a man has, the more wives he can marry.[735] The problem, however, is that by failing to criminalize wife inheritance, exchange marriage and other similar practices, the law assumes that these arrangements are consensual rather than forms of VAW.

5.3.1.2 Repealing "Victim-Blaming" Legal Provision

The 1957 Penal Code explicitly incorporated, legitimized and reinforced a rape myth which makes the victims responsible for their own victimization. For instance, Article 597(2) of the Penal Code stated that "[w]here the infant or young *person's behavior has encouraged or provoked the accused person to commit the offence*, the relevant extenuating circumstance (Art. 79 (d)) may be

---

[728] Tsegaye Megersa (2015), *supra note* 345, p. 55; and Berihun Adugna Gebeye (2013), *supra note* 619, p. 14.
[729] Berihun Adugna Gebeye (2013), *ibid*.
[730] Kalkidan Bekele (2007) *Cultural Practices that Affected the Status of Women in Benishangul Gumuz Mandura Woreda*, MA Thesis, Addis Ababa University, pp. 49-50.
[731] *Ibid.*
[732] *Ibid.*
[733] *Ibid.*
[734] *Ibid.*
[735] *Ibid.*

applied."[736] This provision, in essence, limited the criminal responsibility of the offenders and reduced the severity of the punishment where they committed the offence in response to the supposed youngsters' and even infants' "provocative" or "encouraging" behaviors. It virtually assumed that that victims' behaviors, such as their dressing, provoke, with the potential of unleashing uncontrolled desire in men. Apparently, the law viewed women as the causal agents in their own victimization. It also assumed that men are unable to control their sexual urges and cannot, at least partially, be held responsible for their own sexual "misconduct", if they are "provoked" by women's behaviors, such as their sexual "attractiveness" or dressing styles.

Article 597(2) of the Penal Code also indicates that the law framed rape as a crime of passion, motivated by the offender's overwhelming lust supposedly in response to the victim's sexual "attractiveness" or provocative behaviors. It also conceived rape victims as complicit in or accomplices to their own victimization. Thus, it partly misplaced and attributed responsibility to the victims while reducing the offenders' criminal liability. By doing so, it reinforced the widespread belief that women are responsible for preventing bodily violations, implying that women who are sexually victimized are culpable. It also legitimized the rape myth that women "ask for it" by not keeping themselves safe,[737] and reinforced the belief that the victim was to blame for the rape while, at the same time, minimizing and justifying the rapist's violent actions.

The law also incorporated a faulty assumption that, by being "good", the potential rape victim can avoid disastrous incidents. By implication, it reprimands how a young girl should behave in order not to encourage or provoke potential rapists. As Ann J. Cahill observed, "the feminine body is marked by hesitancy, relative weakness, delicacy, and restraint – qualities that in fact render women more vulnerable to violence – and yet the woman or girl is taught to view her sexual body as dangerously provocative."[738] Thus, it is her duty to control, conceal, and monitor her body and

---

[736] The Penal Code, *supra note* 34, Article 597(2). Emphasis mine.
[737] Nicole Westmarland and Laura Graham (2010) 'The Promotion and Resistance of Rape Myths in an Internet Discussion Forum', *the Journal of Social Criminology Journal of Social Criminology* 1(2), pp. 80-104, pp. 89-91.
[738] Ann J. Cahill (2001) *Rethinking Rape*, Ithaca NY: Cornell University Press, p. 159.

its movements to avoid potential disaster upon herself. "The socially produced feminine body," Cahill further noted, "is the body of the *guilty* pre-victim […] she was somewhere she should not have been, moving her body in ways she should not have, carrying on in a manner so free and easy as to convey an utter abandonment of her responsibilities of self-protection and self-surveillance."[739]

Under the RCC, Article 597(2) of the Penal Code has been repealed. The *expose des motifs* of the RCC stated that it was revealed "because there was a consensus that the offender is provoked by an underage girl to commit the offence cannot be admitted as a defense."[740] However, the mere fact that the legal provision has been repealed does not mean that acceptance of such myth has been dispelled from the mindset of the key actors within the CJS.

As a study indicated, the judges apply and perpetuate myths in their decision-making. For instance, a 2011 study documented a case where the judge acquitted a rapist, accusing a child victim as being provocative and responsible for what happed to her.[741] This clearly indicates that legal reform is necessary but is not sufficient measure to dispel myths and stereotypes hindering the full protection the rights of rape victims. That is why the state is obliged, in addition to legal reforms, to take other measures to ensure the actual implementation the laws effectively, including organizing public awareness-raising works and gender-focused trainings for the key actors within the CJS and concerned public officials.[742]

---

[739] *Ibid*, p. 160.
[740] *Expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 292.
[741] Getachew Assefa Woldemariam (2011) 'The Predicaments of Child Victims of Crime Seeking Justice in Ethiopia: A Double Victimization by the Justice Process', *Afrika focus* 24(1), pp. 11-31, p. 17. *See* also Sinidu Fekadu (2008), *supra note* 2690, p. 49; and Indrawatie Biseswar (2011), *supra note* 28, p 186.
[742] *See e.g.,* General Recommendation No. 19, *supra note* 481, para. 24; Committee on the Elimination of Discrimination against Women: Communication No. 2/2003- A.*T. v. Hungary*, para. 9.6, [here-in-after "CEDAW, A.T. v. Hungary, No. 2/2003"]; Committee on Economic, Social and Cultural Rights (2005) General Comment No. 16, the Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), para. 27; and the United Nations Commission on Human Rights (2000) CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10, para. 11.

Similar obligations have also been imposed upon state, under the Women's Protocol. In this regard, Article 4(2)(d) of the Protocol obliges member states to take appropriate and effective measures to "actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of [VAW]."[743]

5.3.1.3 Raising the Severity of Punishments for Sexual Offences

Under the 1957 Penal Code of Ethiopia, there was no minimum mandatory sentence for the commission of rape, including forcible rape, since rape was viewed as a less serious criminal offence.[744] Instead, rapists were given too lenient sentences, and released either within a short time or on bail.[745] The law generally left the penalty to the discretion of judges, with a maximum penalty of 15 years imprisonment.[746] During the 2004 criminal law reform, the EWLA lobbied to have the penalty for rape increased with a minimum mandatory sentence.[747]

Table 1. Reforms on penalty's schemes for sexual offences

Type of Sexual Offence	**Under 1957 Penal Code**		**Under RCC**	
	Min.	Max.	Min.	Max.
Forcible Rape (RCC Art. 620)	0	15 years	5 years	15 years
Sexual Assault (RCC Art. 622)	6 months	8 years	1 year	10 years
Sexual Coercion (RCC Art. 623)	3 months	5 years	1 year	15 years
Sexual Coercion (RCC Art. 624)	1 month	5 years	1 year	15 years
Statutory Rape (RCC Art. 627)	0	5 years	13 years	25 years
Statutory Rape (RCC Art. 626)	0	simple imprisonment	3 years	15 years

[743] The Women's Protocol, *supra note* 525, Article 4(2)(d).
[744] Sara Tadiwos (2001), *supra note* 27.
[745] *Ibid*.
[746] Meaza Ashenafi (2004) 'Advocacy for Legal Reform for Safe Abortion', *African Journal of Reproductive Health /La Revue Africaine de la Santé Reproductive* 8(1), pp. 79-84, p. 81.
[747] Sara Tadiwos (2001), *supra note* 27.

Thus, the RCC restructured the prison terms for forcible rape, with a minimum five-year sentence and maximum 15 years sentence.[748] Aggravating factors are specifically delineated in the sentencing scheme. These factors include the victim's age, relationship to the offender (i.e. abuse of power or trust), physical or mental disability, the number of offenders, and acts of particular cruelty or violence.[749] As shown in Table 1, raising the severity of punishment is one of the most visible features of the 2004 reforms, addressing almost all sexual offences. As indicated in the *expose des motifs*, "raising the severity of punishment were necessitated to curb the rising cases of sexual offence by increasing its deterrent and preventive capabilities."[750] This statement indicates that the prime purpose of raising the severity of punishment was deterrence. The preface of the Code also embraces deterrence as one of the objectives of punishing the offenders. However, by focusing merely on raising the severity of punishment, the RCC has generally disregarded a key aspect of deterrence – certainty of punishment.

Generally, deterrence theory suggests that the severity and certainty of punishment are additive factors. Empirical evidence also revealed that the certainty of punishment was a more robust predictor of deterrence than the severity of punishments.[751] The RCC has stressed solely on increasing the severity of punishment. Nor has it been accompanied by changes to the procedural law, evidentiary rules or practices within the CJS to ensure the certainty of punishment, for example, by encouraging the victims to report the incident to the police. Underreporting reduces the probability of detection, the arrest and prosecution of offenders and the utilization of

[748] The Revised Criminal Code, *supra note* 21, Article 620.
[749] *Ibid*, Article 620.
[750] *Expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 287.
[751] Eberhard Feess *et al.* (2018) 'The Impact of Fine Size and Uncertainty on Punishment and Deterrence: Theory and Evidence from the Laboratory', Journal of Economic Behavior and Organization 149: pp. 58–73, p. 60; Andrew von Hirsch, et al (1999) Criminal Deterrence and Sentence Severity: An Analysis of Recent Research, Oxford: Hart Publishing; Daniel Nagin and Greg Pogarsky (2001) 'Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence', *Criminology* 39(4), pp. 865 - 892; and Horst Entorf (2012) *Certainty and Severity of Sanctions in Classical and Behavioral Models of Deterrence: A Survey*, Goethe University Frankfurt and IZA Discussion Paper No. 6516 April 2012, available at: https://www.researchgate.net/publication/241642062_Certainty_and_Severity_of_Sanctions_in_Classical_and_Behavioral_Models_of_Deterrence_A_Survey/download last visited on 1/26/2019.

deterrence.[752] So, other reforms should have been introduced along with increasing the severity of punishment to encourage the victims to report the incident the police. High penalties for sexual offences lone are less likely to have a significant impact in the absence of other evidence-based legal, institutional and societal reforms.[753]

Table 2. The sentencing decisions of the Federal First Instance Court Yeka Division.

File Number	Date of Decision	Term of Imprisonment
119584	04/04/2009	5 years and 6 months
119783	11/04/2009	9 months
119986	04/04/2009	8 months
120074	04/04/2009	6 years 6 months
120164	18/05/2009	6 years 9 months
120573	02/06/2009	0
120591	18/05/2009	0
121794	04/11/2009	13 years 2 months
122194	29/09/2009	5 years 10 months
122775	28/11/2009	5 months suspended sentence
122776	26/07/2009	8 months
122777	16/09/2009	5 years 9 months
123183	28/10/2009	8 months suspended sentence
123767	23/09/2009	1 years 2 months
123961	23/09/2009	1 years 8 months
123961	23/09/2009	1 years 2 months

Source: Author's elaboration based on data collected from the Database of Yeka Division, Federal First Instance Court, data accessed on 10/27/2017.

[752] W. David Allen (2007) 'The Reporting and Underreporting of Rape', *Southern Economic Journal* 73(3), pp. 623-641, p. 623.
[753] Jill Thompson and Felly Nkewto Simmonds (2012) *Rape Sentencing Study: A Review of Statutory Sentencing Provisions for Rape, Defilement, and Sexual Assault in East, Central, and Southern Africa*, Lusaka: Population Council, p. 17.

However, setting appropriate sanctions for rape and other forms of VAW is not an easy task. As Yakin Ertürk observed, it "is a matter of ongoing debate with calls for stronger sentences risking decreased reporting and convictions when the sentences are draconian, and differentially allocated to minority men. At the same time women lose faith in justice systems where sentences are minimal and fail to offer them any protection."[754] In Ethiopia, as Table 2 and Table 3 indicate, the courts did not apply, in the majority of cases, the minimum mandatory sentence after convicting the offenders, making a hollow victory for the advocates of a harsher punishment for rape.

Table 3. The 2008 sentencing decisions of the Federal First Instance Court Lideta Division.

File Number	Date of Decision (in E.C.)	Term of Imprisonment
188631	14/11/2008	2 years 6 months
202675	13/10/2008	8 years 5 months
209434	14/6/2008	5 years 6 months
213603	5/7/2008	5 year
214342	23/5/2008	13 year
215768	26/9/2008	2 years 9 months
216304	8/10/2008	4 year
126332	14/11/2008	10 year
216939	5/7/2008	6 month
217133	8/9/2008	18 year
218028	25/9/2008	8 years 8 months
221145	2/2/2008	1 years 10 months
221352	29/11/2008	1 year
222859	10/9/2008	1 years 2 months
223146	7/6/2008	2 years 3 months
223183	19/5/2008	3 years 3 months 10, 000 Birr
225024	27/5/2008	2 years suspended
225064	24/5/2008	Days he spent under detention before conviction
225182	3/8/2008	17 year

[754] The United Nations Human Rights Council (2008), *supra note* 38, para. 312

226414	15/10/2008	9 year
226819	20/10/2008	2 years 6 months
226983	7/6/2008	1 year
227325	5/9/2008	2 years 6 months
229047	4/9/2008	2 years 9 months
229093	12/7/2008	1 years 4 months
229103	9/7/2008	1 year
229309	29/9/2008	1 year
229964	18/5/2008	2 years 9 months
230841	3/9/2008	6 year
231540	15/10/2008	1 year
233162	24/9/2008	9 year

Source: Author's elaboration based on data collected from the Database of Lideta Division, Federal First Instance Court, data accessed on November 10, 2017.

As shown in Table 2, out of 16 consecutive sentencing decisions made by the Federal First Instance Court, Yeka Division, it is only in six cases that the penalties meet the minimum five years term for forcible rape; in five of the cases, the offenders have been sentenced to less than a year, of which two cases were suspended sentences. In two of the cases, the offenders were not sentenced at all though it is difficult to find out the reason based merely on statistical data.

A one-year sentencing data from the Federal First Instance Court, Lideta Division, 7th Criminal Bench, shows that convicted offenders face prison terms lower than the mandatory minimum sentence for forcible rape, on average. As Table 3 depicts, the average prison terms for 31 sentenced rape cases in 2008 E.C. was 56.77 months or 4.73 years, where a suspended sentence was counted as zero. This is below the five-year minimum mandatory sentence introduced for forcible rape during the 2004 rape law reform. Two of the present study's key informants from

women's rights advocacy groups also expressed their concerns on the sentencing practices and believed that penalties set by the courts are often too lenient to have a deterrent effect.[755]

5.3.1.4 Abolishing Marital-Rape Exemption from "Less Serious" Sexual Offences

One of sexual offences unnecessarily treated separately is sexual assault that the law criminalized under the heading of *Sexual Outrages Accompanied by Violence*. Under Article 590 of the 1957 Penal Code, there was marital-rape exemption for sexual assault, explicitly exonerating a husband from criminal liability for violently forcing his wife "to an act corresponding to the sexual act, or any other indecent act."[756] The law did not, however, specifically indicate what an act corresponding to the sexual act, or any other indecent act consists of. As it treated sexual offences involving sexual intercourse in a separate article, one can assume that all sexual acts other than those involving intercourse fall under this umbrella provision. At any rate, marital-rape exemption has been abolished from Article 622 of the RCC. The *expose des motifs* of the RCC simply states that some words were reframed for the sake of clarity.[757] As will be discussed in Chapter Seven, this reformulation creates more confusion than clarity.

A similar reform was introduced to sexual coercion, which was criminalized under the heading *Sexual Outrages on Unconscious or Deluded Persons, or on Persons Incapable of Resisting*, in Article 591 of the 1957 Penal Code. It defined the offence (i.e. sexual coercion) as follows: "[w]hosoever, knowing of his victim's incapacity, but without using violence or intimidation, has sexual intercourse, or commits a like or any other indecent act, *outside wedlock*, with an idiot [*sic*], with a feebleminded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature of the act, is punishable…"[758] Under this provision, sexual intercourse between spouses was not a criminal offence even if one of the spouses was mentally disabled or, as the law put it, is an idiot, a feebleminded or insane. By eliminating this exemption,

[755] Interview with Advocate One, *supra note* 657; and Interview with Advocate Two, *supra note* 648.
[756] The Penal Code, *supra note* 34, Article 590. Emphasis mine.
[757] The *expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 288.
[758] The Penal Code, *supra note* 34, Article 591(1). Emphasis mine.

the RCC, under Article 623, criminalizes sex with a mentally disabled spouse. By doing so, it restricts the sexual rights of mentally disabled married persons.

5.3.1.5 Decriminalizing Abortion for Rape-Caused Pregnancy

One of the well-documented adverse reproductive health consequences of rape is unwanted pregnancy. For instance, in the U.S., the national rape-related pregnancy rate among victims who had reached reproductive age is 5% while, among adult women, an estimated 32,101 pregnancies result from rape each year.[759]

In Ethiopia, the prevalence of rape among women who presented with abortion complications were 3%, and among women with unwanted pregnancy, the incidence of rape was 18%.[760] Despite this, the 1957 Penal Code criminalised abortion, including in rape cases.[761] This too restrictive abortion law forced women, who are often determined to terminate unwanted pregnancies, to resort to life-risking unsafe abortion.[762] Concerned with the consequences of unsafe abortion, a number of advocacy groups campaigned for women's right to a safe abortion, during the 2004 legal reforms.[763] In response, the lawmaker has improved the Ethiopian abortion law.[764] Hence, the RCC decriminalized abortion, among other grounds, in case of rape and incest.[765]

Following the legal reform, the Ministry of Health issued the "Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia," in June 2006, for practical implementation of

[759] Melisa M. Holmes et al (1996) 'Rape-related Pregnancy Estimates and Descriptive Characteristics from a National Sample of Women', *American Gynecological Society* 175(2), pp. 320-355, p. 320.
[760] Tekleab Mekbib *et al.* (2007) 'Survey of Unsafe Abortion in Selected Health Facilities in Ethiopia', *Ethiopian Journal of Reproductive Health* 1(1), pp 28-43.
[761] The Penal Code, *supra note* 34, Article 528, Article 529, Article 530, Article 532. *See* Article 533, *ibid.* Under the Penal Code, rape and incest were only recognized as mitigating circumstances.
[762] Meaza Ashenafi (2004), *supra note* 746, p. 83.
[763] *Ibid.*
[764] *Ibid*, p. 79.
[765] The Revised Criminal Code, *supra note* 21, Article 551.

the reform,[766] which was later revised in 2013.[767] According to the guidelines, where the pregnancy is a result of rape, termination of pregnancy shall be carried out based on the request and the disclosure of the woman that the pregnancy is a result of rape.[768] This fact shall be recorded in the woman's medical record.[769] However, she is not required to submit evidence of rape or identify the offender to obtain an abortion service.[770]

5.3.1.6 Criminalizing Same-Sex Rape against Children

Prior to the 2004 rape law reform, the law did not criminalize same-sex rape whether it was directed against children or adults. Generally, the issue of same-sex rape has been viewed as a consensual homosexual activity. There has so far been very little research attempts on same-sex rape or any aspect of it, particularly with regard to cases involving adult victims. In other jurisdictions, however, the issue of same-sex rape against not just children but also adult victims has been widely recognized, particularly within the prison system.[771]

---

[766] Meaza Ashenafi (2004), *supra note* 746, p. 83. *See also* Federal Ministry of Health Ethiopia (2006) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia.*
[767] For the revised version, s*ee* Federal Ministry of Health (2013) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*, Second edition Federal Ministry of Health 2013.
[768] Federal Ministry of Health Ethiopia (2006), *supra note* 766.
[769] *Ibid.*
[770] *Ibid.*
[771] Noreen Abdullah-Khan (2008), *supra note* 112, p. 16.

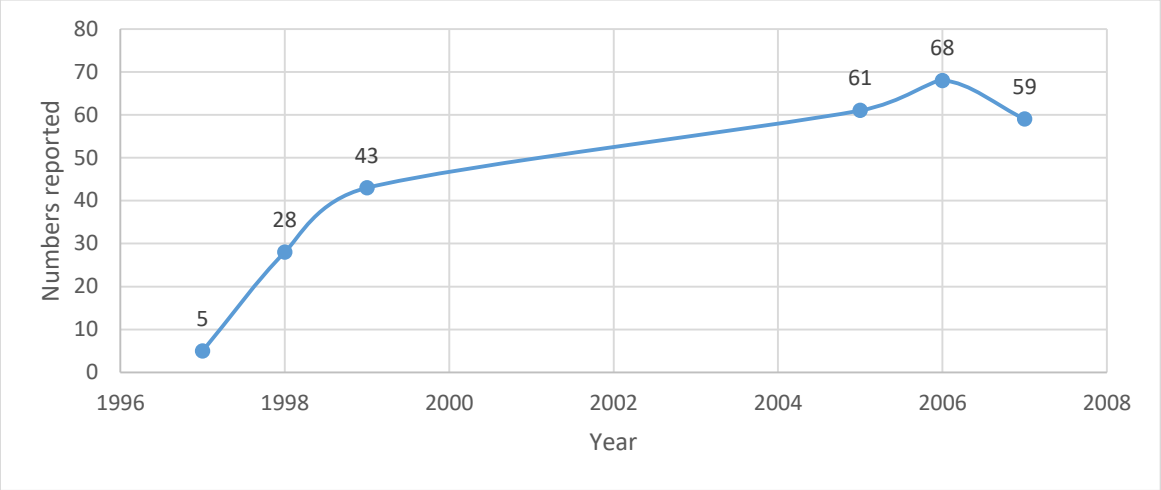

Figure 1. Same-sex sexual offences reported in 10 sub-cities of Addis Ababa

Source: Author's elaboration based on data collected from the Addis Ababa Police Commission (Year in E.C.).

Although it was very difficult to have data on the prevalence of same-sex rape in all age groups, the number of reported same-sex rape cases against children in Addis Ababa, as Figure 1 shows, has been rising steadily over time. While one of the major challenges of studying this issue is underreporting due to fear of social stigma, the scantly available study indicated that the life-time prevalence of rape and sexual harassment among boys in Addis Ababa were 4.3%, and 68.2%, respectively.[772] Data from the police records and various studies might not show the actual prevalence rates of same-sex rape cases. Generally, the incidents remain largely unreported, under-reported or misreported due to the socio-cultural perception of the issue as *un-Ethiopian*.[773] This does not, however, mean that the problem is nonexistent or negligible. If it does exist, the law should intervene to address it. Instead of addressing the issue, the law does not even conceptualize heterosexual rape and same-sex rape similarly. Both the 1957 Penal Code and the RCC categorized

[772] Rahel Tesfaye Haile *et al.* (2013) Prevalence of Sexual Abuse of Male High School Students in Addis Ababa, Ethiopia', *BMC International Health and Human Rights* 13:24 http://www.biomedcentral.com/1472-698X/13/24 last visited on 9/13/2018.
[773] Getnet Tadele (2009) 'Unrecognized Victims': Sexual Abuse against Male Street Children in Merkato Area, Addis Ababa', *Ethiopian Journal of Health Development* 23(3), pp. 174-182, p. 181.

heterosexual sexual offences as Injury to Sexual Liberty and Chastity and same-sex sexual conducts as Sexual Deviations.[774]

In this regard, Article 600(1) of the 1957 Penal Code stated that "[w]hosoever performs with another person of the same sex an act corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment."[775] While Article 600(2) provides that where an infant or a young person is involved in this crime, the law did not treat them as a victim but as an offender who was not subjected to punishment.[776] Under the 1957 Penal Code, child victims were treated as offenders, but exonerated from punishment. Had it not been this exception child victims of same-sex rape would have been held criminally liable since the criminality was intrinsic to the homosexual acts regardless of the desires of the participants. The RCC has introduced partial changes to this approach by criminalizing same-sex rape against minors as a distinct offence under the heading *Homosexual and Other Indecent Acts Performed on Minors*.

Accordingly, Article 631(1) of the RCC clearly proscribes that "[w]hoever performs a homosexual act on a minor, is punishable with: a) a rigorous imprisonment of three years to 15 years, where the victim is between the ages of 13 and 18 years; or b) a rigorous imprisonment of 15 years to 25 years, where the victim is under 13 years of age."[777] It also speculated that this act can potentially happen to young girls who can be raped by another woman. Under Article 631(2) of the RCC, a woman who performs a homosexual act on a female minor is punishable with a rigorous imprisonment not exceeding 10 years.[778] It also proscribes what it calls *Other Indecent Acts*, stating that "[w]hoever performs any other indecent act on a minor of the same sex, is punishable…"[779] However, it does not specifically indicate what *other indecent act* is. Nor does it offer an illustrated list of indecent acts. Thus, the law leaves broader discretionary powers for the courts to

---

[774] *See generally infra* Chapter 7. Section "*7.2.3. Gender-Specificity of Rape"* with accompanying notes.
[775] The Penal Code, *supra note* 34, Article 600(1).
[776] *Ibid*, Article 600(2).
[777] The Revised Criminal Code, *supra note* 21, Article 631(1).
[778] *Ibid*, Article 631(2).
[779] *Ibid*, Article 631(3).

subjectively determine, on a case-by-case basis, what *indecent acts* comprise. Most of all, the RCC has maintained its predecessor's approach on same-sex rape committed against adults.

Besides, the RCC has introduced the possibility of holding a juridical person, a fictitious person created by the law, criminally liable for involving in sexual offences directed at minors under their custody. In this regarding, Article 632 of the RCC provides that "[w]here an official or employee of a juridical person or any other person commits one of the (sexual) crimes […] on a minor living in an institution established for the purpose of upbringing, educating, training or in any other way taking care of children, and where the operation or administration of such juridical person has created a favorable condition for the commission of such crimes, or where the crime is committed because the juridical person has not provided sufficient safeguard, the juridical person shall be punishable […] according to the kind and gravity of each crime."[780]

5.3.1.7 Criminalizing Child Marriage as a Distinct Offence

In patriarchal societies, child marriage is one of the manifestations of males' power to force their sexuality upon girls.[781] Although it is used in this research to refer only to marriage of girls under 18 years of age, child marriage is defined as a gender-neutral marriage in which either party is under the age of 18 years.[782]

Child marriage is more common in the northern part of Ethiopia.[783] For instance, a 2009/2010 survey conducted in seven of Ethiopia's nine major regions revealed that 17% of respondents had married before the age of 15 years and 30% had married at between the ages of 15 and 17 years.[784] One in six young women had married by age 15.[785]

---

[780] *Ibid*, Article 632.
[781] እሸቱ ድባዑ (1997), *supra note* 315, pp. 62-68; and Adrienne Rich (1999), *supra note* 706, pp. 204-205.
[782] Annabel Erulkar (2013), *supra note* 710, p. 6.
[783] Meaza Ashenafi (2004), *supra note* 746, p. 81.
[784] Annabel Erulkar (2013), *supra note* 710, pp. 6-13.
[785] *Ibid.*

As child marriage involves minors who have not attained physical and psychological maturity, it has serious detrimental effects on victims' reproductive rights and health.[786] Studies also indicated that victims of child marriage were generally at a distinct disadvantage within the marriage and at elevated risk of "intimate" VAW, including marital-rape as a first sex.[787] Child marriage denies girls an essential empowering tool – education.[788] Empirical studies also show that most victims of child marriage had never attended school.[789] Despite this, the 1957 Penal Code did not address the issue and offer protection to girls at risk of child marriage.[790] Child marriage was not even understood as a form of sexual violence which can be addressed by applying the existing legal framework against sexual offences directed at minors, too.

Child marriage almost always involves sexual relation with girls under the age of consent and sexual intercourse with minors, which was a criminal act under the 1957 Penal Code. The Code criminalized statutory rape at least against girls under the age of 15 years.[791] However, it did not treat child marriage as a sexual offence which, instead, was addressed by its provision against statutory rape. VAW such as early or forced marriage or FGM is usually categorized under harmful cultural practices as opposed to sexual violence.[792] Thus, in 2000, a reform has been introduced to the 1960 Family Law to reset the minimum age for marriage for females from 15 to 18 and, thereby, equates the age of marriage with that of males.[793] In 2004, the 1957 Penal Code was reformed to specifically criminalize child marriage as an offence punishable with rigorous imprisonment not exceeding three years, where the age of the victim is 13 years or above and with

[786] Hirut Terefe (2002), *supra note* 318; and Meaza Ashenafi (2004), *supra note* 746, p. 81.
[787] Annabel Erulkar (2013), *supra note* 710, pp. 6-13.
[788] Meaza Ashenafi (2004), *supra note* 746, p. 81.
[789] Annabel Erulkar (2013), *supra note* 710, pp. 6-13.
[790] Meaza Ashenafi (2004), *supra note* 746, p. 81.
[791] *See e.g.*, the Penal Code, *supra note* 34, Article 594 on Sexual outrage on infants or young persons, Article 595 on Sexual outrages on minors between fifteen and eighteen years of age, and Article 596 on Seduction.
[792] *See e.g.*, Andrzej Kulczycki (2017) 'Reproductive Rights' *International Encyclopedia of Public Health*, 2nd ed., Vol. 6, p. 315.
[793] The Revised Family Code, Proclamation No. 213/2000, Federal *Negarit Gazetta*, 6th year No. 1, Addis Ababa, 4th July 2000, Article 7(1). [Here-in-after the "Revised Family Code"].

rigorous imprisonment not exceeding seven years, where the age of the victim is below 13 years.[794] However, the Code has categorized child marriage as a crime against the institution of marriage, not against an individual victim. The maximum punishments for child marriage against girls under the age of 13 and 18 years old have been lower than the minimum mandatory sentences set for statutory rape in both age groups. In addition, the RCC does not specifically stipulate the concurrent prosecution of child marriage and statutory rape where the child marriage involves sexual intercourse, which is usually the case.[795]

5.3.1.8 Criminalizing Female Genital Mutilation

Another manifestation of males' power in patriarchal societies is men's ability to deny women's sexuality by means of FGM.[796] Mostly, FGM includes procedures that intentionally alter or cause injury to the female genital organs for non-medical reasons.[797] It is practiced in many forms of varying severity, but it often includes the removal of the clitoris and surrounding tissues (*clitoridectomy*) and the stitching together of the outer lips of the vagina (infibulation), leaving only a small opening for urine and menstrual flow.[798]

FGM practices are widespread and regarded as norms in many parts of Ethiopia.[799] According to the 2016 DHS, two-third of women between the age of 15 and 49 years were circumcised.[800]

---

[794] *Ibid*, Article 648.
[795] *Ibid*, Article 660.
[796] እሸቱ ድባዑ (1997), *supra note* 315, pp. 62-68; and Adrienne Rich (1999), *supra note* 706, pp. 204-205.
[797] Catharine White (2015), *supra note* 216, p. 301; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 315.
[798] Shelly L. Marmion (2006) 'Global Violence against Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) *"Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 10, Westport: Praeger Publishers, p. 147; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*.
[799] B. Alemu and M. Asnake (2007), *supra note* 321, pp. 5-7; Indrawatie Biseswar (2011), *supra note* 28, pp. 178-191; እሸቱ ድባዑ (1997), *supra note* 315, p. 67; and Sarah Vaughan and Kjetil Tronvoll (2003), *supra note* 568, pp. 20-21.
[800] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 317.

Although the practice is declining,[801] FGM is often performed on young girls as a rite of passage, under brutal conditions.[802] The most common type of FGM involved *clitoridectomy,* with 73% of women reporting this type of circumcision while 7% reported infibulation.[803] In most cases, FGM is performed by persons with no medical training, without anesthesia and with unclean or contaminated "surgical" instruments.[804] As such, it has significant consequences for woman's physical, mental, gynecological and reproductive health and well-being.[805]

At societal level, various justifications were provided for practicing FGM. In most cases, the practice was considered essential to a woman's identity – a sign of chastity, cleanliness, fertility, beauty, and docility.[806] Girls who had not undergone FGM were viewed as being unsuitable for marriage, unclean, unchaste, and likely to engage in infidelity.[807] In Ethiopia, the practice was "justified" for a number of reasons including the belief that it makes a woman faithful to her husband, controls her sexual desire and makes her obedient to her husband.[808] There was also a belief that everything will be blessed if the girl is circumcised.[809] Due to such beliefs, the parents fear that their daughter may not get a husband unless she is circumcised.[810]

Whatever the justifications, FGM is nothing less than a form of controlling and limiting women's sexuality. It is an act against the sexual integrity of girls and women. Hence, the WHO defines it as on form of SVAW.[811] As a first move to denounce the practice and recognize FGM as a form

---

[801] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*; and Sibylle I. Rahlenbeck *et al.* (2010) 'Female Genital Cutting Starts to Decline among Women in Oromia, Ethiopia', *Reproductive BioMedicine Online* 20(7), pp. 867–872.
[802] Shelly L. Marmion (2006), *supra note* 798, p. 147; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*, p. 315.
[803] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*, p. 317.
[804] Shelly L. Marmion (2006), *supra note* 798, p. 147.
[805] Catharine White (2015), *supra note* 216, p. 301; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 315.
[806] Shelly L. Marmion (2006), *supra note* 798, p. 147.
[807] *Ibid.*
[808] CARE Ethiopia (2008), *supra note* 23, p. 34.
[809] *Ibid.*
[810] *Ibid.*
[811] World Health Organization (2002), *supra note* 79, p. 21.

of violence, if not as a sexual one, the RCC has criminalized *clitoridectomy*[812] and infibulation[813] along with other forms harmful practices.

5.3.1.9 Making Cross-Reference to Physical Violence in Private Setting

As an important first step in recognizing VAW in a private setting, the RCC has introduced one provision under the heading of *Violence against a Marriage Partner or a Person Cohabiting in an Irregular Union*.[814] It stipulates that "[t]he relevant provision of [the] Code (Arts. 555-560) shall apply to a person who, by doing violence to a marriage partner or a person cohabiting in an irregular union, causes grave or common injury to his/her physical or mental health."[815] This provision did not, however, actually make physical VAW in a private setting a distinct crime. Rather, it merely makes a cross-reference to interpersonal violence in general. At least in theory, making this reference is a good thing in two ways: it sends out a message that husbands are not entitled to physically abuse their wives, and by including this reference under the category of harmful traditional practice, it admits that violence in private setting is often rooted in cultures of the society. However, the law ignored the gendered nature of the violence and construed the notion of violence too narrowly. The main shortcomings of such a formulation are discussed below.

First, the RCC treats violence within the family (in *de jure* and *de facto* marriage) like any other kinds of interpersonal violence in general. As such, it articulates violence in gender-neutral terms. Empirical evidence clearly shows, however, that the problem is generally gender-specific. Girls and women are more likely to be victimized by a family member or an intimate-partner than boys and men.[816] According to the 2006 WHO multi-country study, the most common form of VAW

---

[812] The Revised Criminal Code, *supra note* 21, Article 565.
[813] *Ibid*, Article 566.
[814] *Ibid*, Article 564.
[815] *Ibid.*
[816] Alemayehu Areda and Original W/Giorgis (2008) 'Nationwide Survey on Domestic Violence', *BERCHI, ANNUAL JOURNAL: ETHIOPIAN WOMEN LAWYERS ASSOCIATION*, Issue 7, pp. 8-89, p. 8; and L. Heise *et al.* (1999) 'Ending Violence Against Women', *Population Reports*, Series L, No. 11. Baltimore, Johns Hopkins University School of Public Health, December 1999, p. 9, available at:

was perpetrated by intimate-partner which was 70.9% in Ethiopia.[817] Likewise, a study conducted in selected woredas in Amhara Region and Oromia Region and Gullele Sub-city of Addis Ababa put the prevalence of VAW in a private setting at 92%.[818] In Bakko Woreda of the Oromia Region, the prevalence was 100%.[819] So, the law should take into account the magnitude and gendered nature of VAW in a private setting.

Second, unlike interpersonal violence in general, not only are the victims of VAW in a private setting girls and women but also they are dependent upon the offenders both emotionally and financially. As Burgess succinctly puts it, "[w]omen who suffer abuse are often economically dependent on their husbands, who control household finances and property."[820] The fact that victims are often emotionally involved with and financially dependent upon the offenders has profound implications for how best to intervene.[821] Taking account of this dynamic, other jurisdictions have responded to intimate VAW in a peculiar way. The legislative interventions often go beyond criminalizing the violent acts to include procedural measures like protective or restraining orders or a combination of both.[822] Under protective or restraining orders, courts are authorized to remove the offender temporarily from the home or order him to seek counselling, get treatment for substance abuse and pay maintenance and child support.[823] During the revision of the 1957 Penal Code, the need for civil remedies was demanded by the reform advocates.[824]

---

https://www.researchgate.net/publication/287170875_Population_reports_Ending_violence_against_women/download last visited on 1/26/2019.

[817] Karen Devries *et al.* (2011) Violence against Women Is Strongly Associated with Suicide Attempts: Evidence from the WHO Multi-country Study on Women's Health and Domestic Violence against Women', *Social Science and Medicine* 73 (1), pp. 79-86, p. 82.

[818] CARE Ethiopia (2008), *supra note* 23, p. 20.

[819] *Ibid.*

[820] Gemma Lucy Burgess (2012), *supra note* 617, p 161.

[821] L. Heise *et al.* (1999), *supra note* 816, p. 9.

[822] *Ibid.*

[823] *Ibid.*

[824] Interview with Advocate One, *supra note* 657. *See also* Ethiopian Women Lawyers Association (2001), *supra note* 654.

However, the RCC did not go beyond making a mere cross-reference to include procedural measures pertinent to the nature of VAW in a private setting.

Third, the RCC has construed VAW in private settings too restrictively in terms of both what constitutes violent acts and the persons to whom it offers protections. In terms of what constitutes violence, the law limits itself to physical violence only. It does not cover many other deliberate forms of violence in private settings such as verbal abuse, intimidation, emotional abuse, economic abuse, social abuse, cultural abuse, religious abuse and sexual abuse (marital-rape) against women. However, empirical evidence shows that all these forms of violence have actually occurred in private settings.[825] According to the 2016 DHS, 44% of ever-married women between the ages of 15 and 49 years have experienced spousal physical violence (24%), sexual violence (10%), and emotional violence (24%).[826] It was also shown that physical violence is almost always accompanied by other forms of VAW including sexual violence.[827] The 2016 DHS also found that a combination of different forms of VAW occur at a time. It indicated that 16% of women experienced physical violence only, 3% experienced sexual violence only, and 7% experienced both physical and sexual violence.[828] The possibility of experiencing a combination of sexual violence and physical violence (7%) is much higher than the possibility of experiencing only sexual violence only (3%). According to a 2011 study conducted in Western Ethiopia, a co-occurrence of psychological, physical, and sexual violence was 56.9%.[829] Likewise, a 2012 study conducted in southwest Ethiopia found that there was a substantial overlap between physical and sexual violence, and indicated the 219(26.4%) women who had ever experienced any violence

[825] CARE Ethiopia (2008), *supra note* 23, p. 20.
[826] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 294.
[827] Marijke Velzeboer *et al.* (2003), *supra note* 302, p. 5.
[828] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.
[829] Sileshi Garoma Abeya *et al.* (2011) 'Intimate Partner Violence against Women in Western Ethiopia: Prevalence, Patterns, and Associated Factors', *BMC Public Health* 11:913, P. 18, available at: http://www.biomedcentral.com/1471-2458/11/913 last visited on 9/14/2018.

reported both physical and sexual violence and there were more women (23.6%) who reported experiencing only sexual violence than only physical violence (14.6%).[830]

Similarly, the RCC construes persons to whom it extends protection too restrictively. It refers only to married couples and couples in a *de facto* marriage. It fails to specifically refer to VAW in a private setting by boyfriends or relatives by consanguinity, affinity or adoption. Nor did it include VAW committed by an ex-spouse. Like other forms of violence, empirical evidence suggests that sexual violence is committed by ex-husbands or partners. For instance, the 2016 DHS found that among ever-married women between the age of 15 and 49 years who had ever experienced sexual violence, 69% reported their current husband or partner and 30% reported former husbands or partners as the offenders.[831]

Regarding the making of cross-referencing, the *expose des motifs* states that "[t]his provision was not clearly incorporated under the [1957] Penal Code and was added to the RCC during the reform. As indicated in the opening statement, it was adopted as a means to prevent [VAW] and the concept relates to what is known in English as 'Domestic Violence'. Its substantive element was intended to punish spouses or sexual partners who commit [VAW]."[832] In stating the goals of the new provision, the *expose des motifs* further stipulates that "it will dispel the obsolete notion that men have entitlement to punish their wives, and, as it clearly shows the right of victims of spousal violence to take their complaints to the law enforcement, it rectifies the existing problem that makes the investigation of such kind of cases very difficult."[833] It further noted that the new provision has also been "intended to end unwarranted assumptions including that 'there is no clear law allowing a wife to take criminal charges against her husband, it is not possible to investigate

---

[830] Kebede Deriba *et al.* (2012) 'Magnitudes and Correlates of Intimate Partner Violence against Women and its Outcome in Southwest Ethiopia', *PLoS ONE* 7(4), p. 4, available at: https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0036189&type=printable last visited on 9/14/2018.
[831] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.
[832] The *expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 268
[833] *Ibid.*

spousal disputes in criminal proceeding, taking criminal charge against a husband is unacceptable, it is impossible to testify in cases involving spousal disputes' and the like."[834]

If these are the goals the new provision, VAW in a private setting should have been formulated to enable married women to report and initiate a criminal proceeding against abusive husbands, by recognizing the gender-specific nature the problem. The concept should have been defined broadly going beyond physical violence to include other forms of violence such as sexual and psychological violence. It should have also been subject to specific legislation, and the relationships targeted should have been expanded.

Generally, two key informants from the advocacy groups identified the failure of the RCC to address the issue of domestic violence (or violence in an intimate relationship) in a comprehensive manner as one of the major shortcomings of the 2004 reforms.[835] They also noted that during the reform, advocates demanded for the inclusion of legal provisions specifically addressing domestic violence, covering sexual, physical, psychological and economic abuses.[836] Yet, the RCC simply came up with a provision that makes a mere cross-reference to a provision on interpersonal physical violence. In this regard, key informants observed two additional points. First, the gender-neutral approach under the RCC was not limited to physical violence in a private setting. Rather, the law has framed all violent offences in gender-neutral terms. Offences that can well be understood as forms of VAW have been scattered in its various sections and treated like any other interpersonal violence.[837] Generally, the RCC has not clearly defined VAW. Nor has it offered a list of acts that constitute VAW.[838] Having noted this, key informants also stressed the importance of having a clear definition of VAW and a catalog of acts that constitute VAW under the law.[839] Second, as a consequence of the first point, the existing gender-neutral criminal law fails to address

---

[834] *Ibid.*
[835] Interview with Advocate Two, *supra note* 648; and Interview with Advocate One, *supra note* 657. *See also* Alemayehu Areda and Original W/Giorgis (2008), *supra note* 816, p. 9.
[836] Interview with Advocate One, *ibid*. *See also* Ethiopian Women Lawyers Association (2001), *supra note* 654.
[837] Interview with Advocate One, *ibid.*
[838] *Ibid.*
[839] *Ibid.*

even one and perhaps the worst form of VAW – acid attack – as a gendered problem.[840] In highlighting this, one of the key informants recounted a highly publicized acid attack case against a 21-year-old woman, Kamilat Mehdi, by a spurned "lover" in 2007. She thus questions the fairness of the application of the law against bodily injuries in general to cases like this. Noting, however, that Kamilat's case was treated as an attempted murder, the informant suggested that this and other forms of gender-specific violence should be defined as VAW and dealt with accordingly.[841]

5.3.2 The Main Strands the Policy Reforms

The 2004 rape law reforms have been either preceded or accompanied by various policy and institutional reforms within the CJS and beyond. Within the CJS, the government has set up institutional mechanisms and taken various progressive measures to tackle sexual and other forms of VAWC, which are discussed below.

5.3.2.1 Establishing Special Investigation and Prosecution Units

To deal with sexual and other forms of VAWC, specialized units of investigation and prosecution have been established, at least, at all sub-cities level police departments and the Federal Attorney General Branch offices, respectively.[842] Where the victim decides to report the incident to the law enforcement organs, the police are the first contact persons who the victim turns to with her stories and grievances. The initial response of the police and behavior they demonstrated affect the subsequent investigation process, the victim's willingness to cooperate with them, and the outcome of the investigation.[843] Establishing specialized units for rape and other forms of VAW within the

---

[840] *Ibid.*
[841] *Ibid.*
[842] Interview with Police Officer One on November 14, 2017 at 10:00 AM-11:00 AM; Interview with Judge One on January 8, 2018 at 11:00 AM- 12: 00 AM; and Interview with Prosecutor One on October 25, 2017.
[843] Raoul Wallenberg Institute/ILAC (2007) *Gender Justice Best Practices Haiti 10–11*, Report Commissioned by the International Legal Assistance Consortium upon request by the Haitian Ministry of Women's Affairs and Women's Rights, presented at a seminar in Haiti, September 2007, p. 61, available at: https://rwi.lu.se/app/uploads/2017/01/9-3-126-1-10-20150128.pdf last visited on 10/29/2018.

police departments is one way of ensuring a high level of professionalism in dealing with the issue.[844] Special investigation units were often comprised of police officers and prosecutors and, in some instances, social workers.[845] They receive rape cases and other forms of VAWC.[846] Their establishment has not only enhanced the coordination between investigation and prosecution processes but also reduced the prolonged time taken in the referral of cases between the two offices. In addition, according to the present study's key informant, Police Officer One, the establishment of specialized police units has improved the treatment of rape victims.[847]

Like the investigation units, the Federal Attorney General also has established specialized units for prosecution of sexual and other forms of VAWC in all its sub-city level branch offices in Addis Ababa. It has also assigned focal persons in each sub-cities' branch office to give special priory for cases of sexual and other forms of VAW and to handle these cases in coordination with other stakeholders. All the interviewees who were assigned as focal person were women. During the trial observations, the researcher has observed that all prosecutors at rape-case trials were women. It seems that this was done by design. Other studies also indicated that there was a deliberate attempt to assign women both at the special investigation and prosecution units.[848] According to Prosecutor Two, "[t]he main reason behind the establishment of special prosecution units is to prioritize [VAWC] cases and address such cases swiftly and effectively."[849] She added that "prosecutors at the special units have been given trainings to make them fit for the post and to

---

[844] *Ibid.*
[845] Interview with Police Officer One, *supra note* 842.
[846] *Ibid.*
[847] *Ibid.*
[848] UN Women Ethiopia (2016) *Shelters for Women and Girls Who Are Survivors of Violence in Ethiopia: National Assessment on the Availability, Accessibility, Quality and Demand for Rehabilitative and Reintegration Services*, UN Women Ethiopia Addis Ababa, January 2016, p. 32, available at: https://www.peacewomen.org/sites/default/files/shelters-for-survivors-of-violence-ethiopia.pdf last visited on 10/29/2018.
[849] Interview with Prosecutor Two on 28 February 2018 at 1:40-2:10 PM.

process cases in coordination with the police and other stakeholders including temporary shelter and other support service providers for the victims."[850]

Similarly, Prosecutor Three stated that "[t]he reasons for the establishment of the unit is due to the special nature of VAW such as rape. For example, rape has psychological effects, and its victims cannot be interrogated while other people are in the same room listening to the conversations which always involve reference to victims' private parts. Rape victims may not be willing to talk about their cases in detail even in a private setting."[851] She also stated that "[o]ur office is different from others because it has materials for kids like toys at the places where they stay."[852] Moreover, the Federal Attorney General has established a task force to deal with VAW though it has remained non-operational so far.[853]

Generally, the establishment of specialized investigation and prosecution units is of paramount importance in advancing the cause of rape victims since they are most likely staffed by trained and relatively competent officers and prosecutors. It significantly determines the chances of successful investigation and prosecution. However, the present study's key informants complained that both the investigation and prosecution units are underfunded and understaffed. At the investigation units, for instance, there are resource constraints including basic office equipment (typewriters, computers, papers) and vehicles even to transport those victims who are in need of emergency medical attention.[854] At prosecution, as Prosecutor Two noted, "[i]t is a positive thing that there is a special prosecutorial office, but I do not think it is doing all it can for women since it is understaffed and underfunded."[855] She added "[t]he financial aid received from foreign partners is earmarked for specifically designated activities, and hence cannot be used for other purposes which require more priority. Despite these problems, the unit is doing all it can with the limited

---

[850] *Ibid.*
[851] Interview with Prosecutor Three on 05 March 2018, at 1:40-2:20 PM.
[852] *Ibid.*
[853] Interview with Advocate One, *supra note* 657.
[854] Interview with Police Officer One, *supra note* 842; and Interview with Advocate One, *ibid.*
[855] Interview with Prosecutor Two, *supra note* 849.

resource at its disposal."[856] In addition, the investigation and prosecution units receive, investigate and prosecute numerous crimes including sexual and physical VAWC, infanticide and child labor exploitation. The physical set up of the units such as the availability of private room for interviewing rape victims is far from what might be ideally expected.[857] Nor was there gender and age segregated facilities at the units.[858]

5.3.2.2 Coordination Mechanism and Referral System

As part of the efforts to set up a coordination mechanism and referral system among various sectors to address the problem of VAW, an Ethiopian delegation was sent for a visit to South Africa in 2008. After observing the multi-sectoral approach to VAWC in South Africa, the delegation recommended two measures be adopted in Ethiopia: i) the setting up of a body in charge of coordinating the activities of various sectors; and ii) the setting up of one-stop centers for the provision of comprehensive services for victims.[859] Following this recommendation, the National Coordinating Body on VAW was established.[860] Efforts were made to ensure a broad-based participation of actors in the Body, including the government, NGOs and international organizations.[861] Subsequently, the participating institutions formalized their cooperation by signing a Memorandum of Understanding (MoU).[862] The formation of a national coordinating mechanism can be seen as a remarkable policy measure in advancing the cause of sexual and other forms of VAW.[863] The MoU further formalized the formation of the coordination and as well as

---

[856] *Ibid.*
[857] Interview with Prosecutor Two, *ibid*; Interview with Police Officer One, *supra note* 842; and Rape Trial Observation, 7th Criminal Bench, Federal First Instance Court, Lideta Division, from October 30- November 3, 2017 and November 27- November 30, 2017.
[858] *Ibid.*
[859] Elshaday K. Woldeyesus *et al.* (2018) *Policy and legal analysis notes: Ethiopia: A review of the Strategic Plan for a Multisectoral Response to Violence Against Women and Children*, December 2018, the Gender and Adolescence: Global Evidence (GAGE) programme, p. 1.
[860] Elshaday K. Woldeyesus *et al.* (2018), *ibid*, p. 1; and UN Women Ethiopia (2016), *supra note* 848, pp. 28-31.
[861] *Ibid.*
[862] *Ibid.*
[863] *Ibid.*

enhancing the accountability of the participating institutions.[864] This decisive measure was followed by a five-year strategic plan – the Strategic Plan for an Integrated and Multi-Sectoral Response to Violence against Women and Children and Child Justice in Ethiopia (the Strategic Plan) – and a three-year detailed plan of action.[865]

The strategic plan focused on prevention, protection and response mechanism in dealing with sexual and other forms of VAW and identified the justice, health, education and social sectors as the most relevant stakeholders.[866] It has five main pillars: *the adoption and implementation of protective laws and policies, system and capacity building, provision of comprehensive service to the victims, community mobilization, and coordination among the relevant sectors*.[867] However, lack of effective enforcement, monitoring and evaluation mechanism, equal commitments among stakeholders and funding have been identified as the main challenges for the effective implementation of the strategic plan.[868] In addition, lack of awareness on the referral linkages and the various services provided to victims remained to have been the major challenges for the effective utilization of the existing mechanism.[869]

5.3.2.3 The Establishment of One-Stop Center

A one-stop center was piloted at Gandhi Memorial Hospital in 2008. It was modelled on South Africa's *Thuthuzela* Care Centers, which provide comprehensive services for victims of VAWC.[870] The center facilitates victims' access to different services at one place.[871] It operates in a hospital environment and provides healthcare, police, counselling and legal services under one roof.[872]

---

[864] *Ibid.*
[865] Elshaday K. Woldeyesus *et al.* (2018), *supra note* 858, p. 2; and UN Women Ethiopia (2016), pp. 28-31, *ibid.*
[866] Elshaday K. Woldeyesus *et al.* (2018), *ibid.*
[867] *Ibid.*
[868] *Ibid*, p. 3.
[869] UN Women Ethiopia (2016), *supra note* 848, pp. 28-31.
[870] Interview with Advocate One, *supra note* 657. *See also* Elshaday K. Woldeyesus *et al.* (2018), *supra note* 858, p. 1; and UN Women Ethiopia (2016), p. 9.
[871] Interview with Advocate Two, *supra note* 648.
[872] Interview with Prosecutor One, *supra note* 842.

Victims are treated in private rooms, receive counseling and medical care, contact the police and are, if needed, referred to temporary shelters.[873]

The establishment of a one-stop center plays a pivotal role in advancing the cause of rape victims as specialized staff from different professions can learn from each other, and have a more holistic view of the needs of the victims.[874] It has also proved to be successful in eliminating secondary victimization resulting from a harrowing treatment of the victims.[875]

Moreover, the one-stop center plays a pivotal role in timely collection and preservation of medical forensic evidence and, thereby, enhances the chances of successful investigation and prosecution. Evidence from other jurisdictions also shows that the model has reduced the investigation time and improved the conviction rate.[876] Thus, the National Coordination Body strongly recommended the expansion of the one-stop centers to other hospitals in Addis Ababa such as Yekatit 12 and Alert hospitals.[877] In fact, the Growth and Transformation Plan II has had the expanding of one-stop centers in other parts of the country as one of its goals.[878] This was incorporated in the Sectoral Growth and Transformation Plan II of the Ministry of Women's and Children's Affairs, which set the goal of establishing 11 additional one-stop centers and improving the capacity of the existing three centers.[879] However, according to key informants, the existing centers are not only very limited in number but also they are not accessible to all victims in need of a comprehensive

---

[873] *Ibid.*
[874] Raoul Wallenberg Institute/ILAC (2007), *supra note* 843, p. 64
[875] *Ibid.*
[876] South Africa: Vera Institute of Justice, Bureau of Justice Assistance (2004) *Thuthuezela Care Centres: Has Treatment of Rape Survivors Improved since 2000?, A Study of Rape Survivors in the Western Cape* (November 2004), pp. 2-5, available at: https://www.google.com/search?q=Thuthuezela+Care+Centres%3A+Has+Treatment+of+Rape+Survivors+Improved+since+2000%3F%2C+A+Study+of+Rape+Survivors+in+the+Western+Cape&oq=Thuthuezela+Care+Centres%3A+Has+Treatment+of+Rape+Survivors+Improved+since+2000%3F%2C+A+Study+of+Rape+Survivors+in+the+Western+Cape&aqs=chrome..69i57.788j0j9&sourceid=chrome&ie=UTF-8 last visited on 1/26/2019.
[877] UN Women Ethiopia (2016), *supra note* 848, p. ix.
[878] *Ibid.*
[879] የሴቶችና ህፃናት ጉዳይ ሚኒስቴር (2008) በሴቶችና ህፃናት ጉዳይ ሚኒስቴር የሴክተሩ ሁለተኛው ዙር የዕድገትና ትራንስፎርሜሽን ዕቅድ (2008-2012) ጥቅምት 2008 ዓ.ም አዲስ አበባ፣ p. 20 (Amharic).

service.[880] In addition, the utilization of the existing center seems to be limited. A 2013 study conducted in Addis Ababa indicated that only two-fifth of the rape victims were informed by the health care providers to visit Gandhi Memorial Hospital, where the model was piloted, and the health care providers usually facilitate further medical diagnosis and treatment.[881]

5.3.2.4 Shelters for Victims of VAW

Another important development was the availability of NGOs offering temporary shelters and other support services for victims of sexual and other forms of VAW. There are at least 12 shelters in Ethiopia which provide various services for victims of VAW.[882] Of these, five shelters are located in Addis Ababa.[883] However, only one shelter in Dire Dawa was managed and entirely financed by the government.[884] Some shelter providers offer services including basic needs such as food, shelter and health care, economic empowerment initiatives, counseling and other therapeutic activities, and referral to legal services.[885] The shelter providers were working in close coordination with the CJS.[886] Generally, shelters were available to homeless victims and victims who were living with the offenders.[887] Once admitted, victims often remain at the shelters until the final disposition of their cases.[888] Similarly, the one-stop center and shelter providers were working in close coordination.[889]

Shelter provision plays a significant role in advancing the cause of rape victims. Particularly, it allows homeless victims to get justice or at least support services. According to Police Officer One, shelter provision allows rape victims to get, at least support services, in cases where finding

[880] Interview with Advocate One, *supra note* 657.
[881] Mersha Shenkute (2013), *supra note* 26, p. 45
[882] UN Women Ethiopia (2016), *supra note* 848, p. 6.
[883] *Ibid.*
[884] *Ibid.*
[885] *Ibid.*
[886] Interview with Police Officer One, *supra note* 842.
[887] *Ibid.*
[888] Interview with Prosecutor One, *supra note* 842.
[889] UN Women Ethiopia (2016), *supra note* 848, p. 34.

the offenders takes a long time or is impossible.[890] He recounted the case of an ongoing investigation file during the interview.[891] Accordingly, the victim was 19 years old when she came to Addis Ababa from a rural area in the Amhara Regional State in search of work. When she arrived at the main bus station in Addis Ababa, she was received by a broker who took her to his office at a location she did not know. Through a broker, she was later hired as a maid, and after working for about three weeks, her employer raped her at midnight and took her out of his home by his car, pretending that he was looking for a clinic. In the meantime, he dropped her out of his car somewhere around a neighborhood in Bole area. Afterwards, she was taken to the nearby police station by two residents of the area. According to the present study's key informant, the unit at Bole Sub-city Police Department began its investigation immediately. But, the victim did know the address and contacts of neither the broker nor her employer. Nor even their full name. She could locate neither the offender's home nor the broker's office. For this reason, the police were unable to identify the offender. However, she received medical treatment including counselling service and was transferred to a temporary shelter. The police were working to trace and identify the offender and his accomplice; whenever a suspect was found, they would call her from the shelter for identification.[892] In the absence of a temporary shelter, cases like this might not be investigated thoroughly as the victims could not avail themselves during the proceedings. However, the number of shelters were very limited and receiving victims beyond their capacity.[893]

5.3.2.5 Establishment of Child-friendly Criminal Benches

Courts are one of the key institutions within the CJS. They have the ultimate say in rape-case proceedings. In cases involving rape, the judge's competency is very important to avoid secondary victimization.[894] The judge may bar irrelevant and offending questions that are often posed to the

[890] Interview with Police Officer One, *supra note* 842.
[891] *Ibid.*
[892] *Ibid.*
[893] Interview with Advocate One, *supra note* 657.
[894] Raoul Wallenberg Institute/ILAC (2007), *supra note* 843, p. 62

victims by the offender or his lawyer.[895] The judge may also allow special measures to be taken to ensure that the victim is not subjected to harassment and intimidation.[896] However, this works only if the judge possesses sufficient knowledge about the nature of SVAW.[897] The creation of special benches with specialized judges can solve the knowledge gaps in this respect.[898]

In Ethiopia, specialized criminal benches have been established at least in six out of 10 divisions of the Federal First Instance Courts in Addis Ababa to handle sexual and other forms of VAWC.[899]

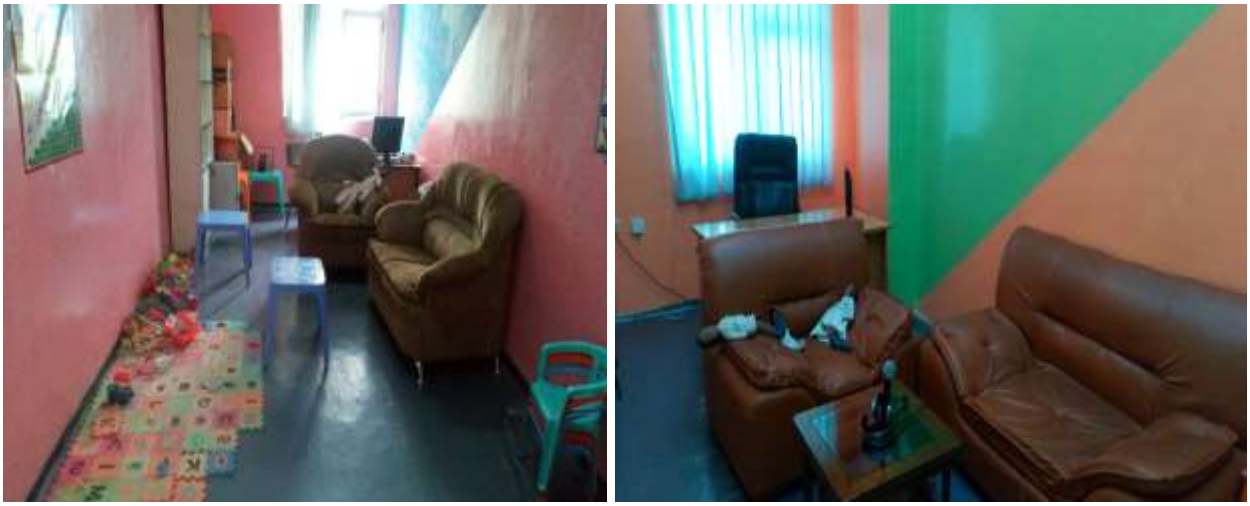

Figure 2. Partial view of child victims' waiting room and a private room for testimony

The Federal First Instance Court, Lideta Division, child victims' waiting room (left) and a private room for testifying with CCTV system (right), Picture taken on January 8, 2018 at 04:00 AM.

One of the present study's key informants, Judge One, was a judge at the court where rape-case trial observation was made. Prior to her appointment as a judge, she was, for more than a decade, a persecutor and focal person on VAWC in one of the Federal Attorney General's sub-city level branch offices in Addis Ababa. Her predecessor was also a woman.[900] Months after she had been

[895] *Ibid.*
[896] *Ibid.*
[897] *Ibid.*
[898] *Ibid.*
[899] Interview with Judge One, *supra note* 842.
[900] Interview with Social Worker One and Social Worker Two on 26 March 2019 02:00-02:30 PM.

interviewed, she was replaced by another key informant, Prosecutor Two, a long-serving Prosecutor and focal person on VAWC at the Federal Attorney General's sub-city level branch offices in Addis Ababa. The assignment of well experienced and trained judges to preside trials of rape cases seems to be made by design. In rape-trial observations, the researcher also observed that the specialized bench adopts special approaches to obtain the testimony of child rape victims. As Figure 2 shows, where a child rape victim is named as the prosecutor's witness, the court orders that the witness testifies outside the courtroom, from another well-furnished small room, and by means of a CCTV system. In addition, the child-witness is questioned through a third person, a trained social worker, acting as a buffer against hostile and intimidating questions. This allows children to testify in a comfortable setting without a direct confrontation with the offender in an open trial, while at the same time preserving the offender's right to cross-examine and challenge the testimony of the witness. This approach alleviates the psychological and emotional stress on child rape victims. As Judge One noted, "[a]dopting this approach is useful: first children will be free from fear and concentrate on giving their testimonial statements. Second, most of the time, children tend to be psychologically affected when they face the offender face to face. So, placing them in a separate room gives them freedom while testifying."[901]

Informants, who have been working as social worker in the Federal First Instance Court, Lideta Division, also confirmed that the special approach is applicable for all child rape victims.[902] The special approach was part of the project implemented to create a child friendly justice system with services from social workers and psychologists in the court setting.[903] Key informants also noted that social workers and psychologists are offering professional services to children appearing before the court as victims, witnesses or offenders, both in criminal and civil proceedings.[904] They were asked to state if there are positive outcomes from the implementation of this project, particularly from the adoption of a special approach for taking child testimony with the help of

[901] Interview with Judge One, *supra note* 842.
[902] Interview with Social Worker One and Social Worker Two, *supra note* 900.
[903] *Ibid.*
[904] *Ibid.*

CCTV system and a third party. They stated that the approach, by shifting the proceedings from intimidating and traumatizing to caring and rehabilitative ones, improved the treatment of children who contacted the CJS as victims and witnesses. The key informant also noted that the approach enabled child rape victims to have access to support services in the court setting and in accordance with the principle of *the best interest of the child*.[905]

However, giving testimony with a CCTV system and a third party assistant is available only to child rape victims. According to Judge One, "in other cases, for example, when cases are directly linked with the morals of the victims and involved private matters, they are usually tried *in-camera*. In these cases, only the judge, the prosecutor and the parties to the case attend the trial. Sometimes even family members will not be allowed to be present at the trial."[906] Thus, cases involving adult rape victims give their testimony in a closed trial.[907] However, even where the approach was applied to child witnesses, there were irregularities among various benches. As Prosecutor Two noted, "sometimes there is irregularity in the practice where the trial-courts let children above the age of 15 years old to testify in courtrooms."[908]

5.3.2.6 A National Guideline for the Management of Survivors of Sexual Assault

Beyond the CJS, a related policy reform was introduced in the healthcare system. For instance, in 2009 the Federal Ministry of Health had issued a National Guideline for the Management of Survivors of Sexual Assault in Ethiopia (the Guideline) to be followed in handling rape cases.[909] The Guideline offers detailed rules on the provision of quality healthcare services for rape victims including preventive medical measures to prevent pregnancy, sexually transmitted diseases and HIV.[910] According to the Guideline, an effective intervention by heath care providers will in the

[905] *Ibid.*
[906] Interview with Prosecutor Two, *supra note* 849.
[907] Interview with Judge One, *supra note* 842.
[908] Interview with Prosecutor Two, *supra note* 849.
[909] Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 1.
[910] *Ibid*, pp. 23-24.

long term reduce crime and encourage victims to seek legal services.[911] Thus, the goals of this policy include improving police reporting and conviction rates for rape cases. Regarding the collection of forensic medical evidence, it specifically obliges healthcare providers to record events accurately, document injuries preferably with diagrams, document other vital details with photography, videography and other available documentation means, collect sample to be sent for forensic examination whenever possible, and provide medico-legal certificate using the reporting format upon request from legal authorities.[912] If properly implemented, this policy reform could be very essential in advancing the cause of rape victims. It facilitates the timely collection of physical, psychological and biological evidences before they are compromised or gone. However, the contents of forensic medical examination reports attached to rape-case files make the application of the Guideline questionable.[913]

5.3.2.7 Capacity Building Trainings and Legal Literacy

According to Police Officer Two, investigation officers assigned in the specialized units received regular trainings from various governmental organs and NGOs.[914] The subject matters of the trainings often cover the nature and effects of sexual and other forms of VAW, support services to the victims, investigation skills including interrogating the victims, evidence collection skills including from the crime scenes and the victims' bodies.[915]

At least for the last decade, the Federal Attorney General, formerly known as Ministry of Justice, has consistently engaged in various activities to enhance the awareness of legal professionals and the general public on VAW, women's human rights and related issues.[916] Capacity building trainings, and legal literacy and awareness raising campaigns have become part of the regular

---

[911] *Ibid*, p. 1.
[912] *Ibid*, p. 30.
[913] *See infra* Chapter 7. Section *"7.3.2.5. Forensic Medical Examination"* with accompanying notes
[914] Interview with Police Officer Two on November 15, 2017 at 10:00 AM-11:00 AM.
[915] *Ibid.*
[916] Interview with Prosecutor One, *supra note* 842.

activities of the Federal Attorney General. For instance, the 2005 E.C. Federal Attorney General Annual Report stated that capacity building trainings were offered to religious leaders, crime investigators, members of community policing units and other stakeholders. The subject matters addressed include the roles of the CJS and the public in addressing the problem of VAW. Likewise, the 2006 E.C. Annual Report of the Federal Attorney General mentioned that capacity building trainings were given to prosecutors and other stakeholders on VAWC cases including investigation, prosecution and litigation skills and the treatment of the victims. According to the 2007 E.C. Annual Report of the Federal Attorney General, legal literacy programs were broadcasted to the general public on EBC, and Fana Radio, while the 2008 E.C. Report indicated that legal litiracy and trainings activities targeted at members of community forums and representatives of stakeholder institutions were undertaken. In addition, legal literacy programs were broadcasted to the public on Fana Radio, FM 96.3 and FM 96.1. Likewise, the 2008 E.C. Report of the Federal Attorney General stated that awareness raising panel discussions were organized. Generally, Annual Reports of the Federal Attorney General between 2005 E.C. and 2009 E.C. show that capacity building trainings, legal literacy and awareness raising campaigns using occasions like the *white ribbon day on ending VAW* have become part of the regular activities of the Federal Attorney General. This is also an important policy measure to advance the cause of rape victims beyond the CJS. In addition to government organs, NGOs including women's rights advocacy groups involved in awareness raising programs on VAWC and publicized contents using a variety of means such as posters, flyers, brochures, and radio and TV programmes.[917] All these publicities were made carrying the message that something is being done about rape and other forms of VAWC.

[917] Tezeta Meshesha (2008) *Media Strategies for Awareness Creation: A Comparative Analysis of Three Organizations Working on Women's Rights in Ethiopia*, MA Thesis, Addis Ababa University.

5.4 Conclusion

The recognition of women's human rights under the FDRE Constitution and the international human rights treaties ratified by Ethiopia, reinforced by the transition to a formal "democratic" system, offered new spaces for women's activism in Ethiopia. Thus, largely in response to demands from women's rights advocacy groups, and as part of the overall revision of the 1957 Penal Code of Ethiopia, the lawmaker has reformed the Ethiopian rape law, making some important progresses. The legal reforms have either been preceded or accompanied by various policy reforms within the CJS and beyond, including the establishment of special investigation and prosecution units, special trial benches, referral systems and coordination mechanisms and one-stop centers. In adopting these reforms, the policymakers sought to curb the levels of SVAW and improve the treatment of the victims.

CHAPTER SIX: EFFECTS OF THE RAPE LAW AND POLICY REFORMS

6.1 Introduction

This chapter deals with one of the principal objectives of the present study – evaluating the effects of the rape law and policy reforms. It specifically seeks to find out about any changes with regard to the rate of reporting, attrition, prosecution and conviction of rape cases and the influences of victim characteristics on rape-case processing within the CJS, in the post-reform years. Accordingly, the first section evaluates the effects of the reforms on police reporting. The second section assesses the trends of attrition, prosecution and conviction rates in post-reform period. The third section evaluates the extent to which factors identified as victims' characteristics are taken into account in rape-case decision making process within the CJS.

6.2 Effects of the Rape Law and Policy Reforms on Police Reporting

This section reviews official police data from Addis Ababa Police Commission to evaluate the effects of the legal and policy reforms on police reporting for rape cases. The data reviewed represent six years' annual reports, from 1997 E.C. to 1999 E.C., and from 2005 to 2007 E.C. as the data for the years in between could not be accessed. In reviewing the data, it aims at determining if there is a relationship between the adoption of the legal and policy reforms and an increased police reporting trend. The year when the RCC was enacted has been taken as a reference marking the post-reform period although some policy reforms preceded or accompanied the 2004 rape law reforms.

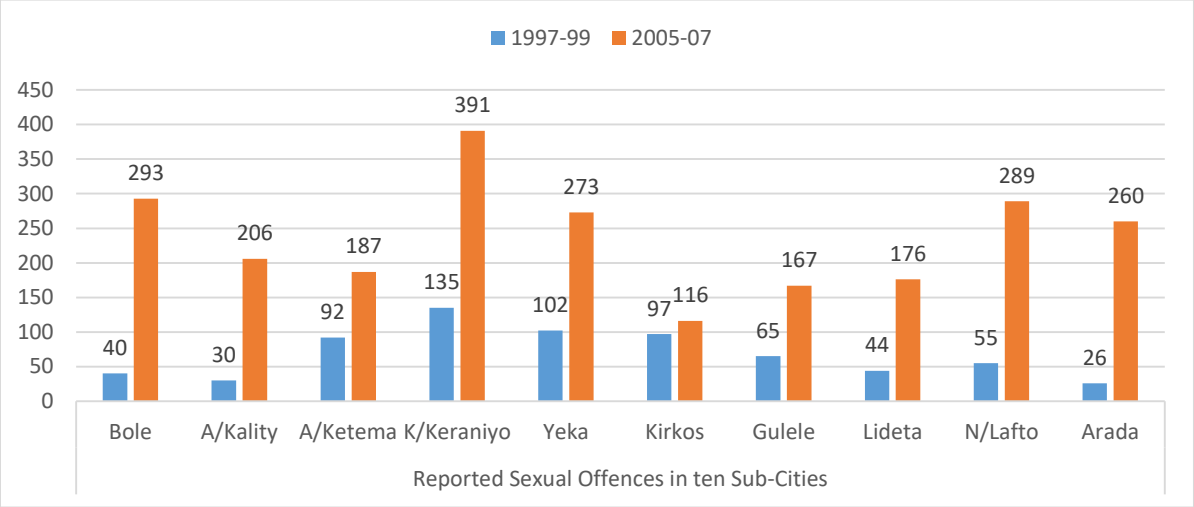

Figure 3. Trends of sexual offences reported in each of 10 sub-cities of Addis Ababa

As Figure 3 shows, there was an increase in police reporting between 2005 E.C. and 2007 E.C. as compared to the reporting trend in the early post-reform years (i.e. between 1997 E.C. and 1999 E.C.) in each sub-city. The average police reporting in late post-reform years (i.e. 2005 E.C.-2007 E.C.) increased about five times in five sub-cities (Bole, Akaki-Kality, Lideta, Nifas-Silk-Lafto, and Arada) as compared to early post-reform years (i.e. between 1997 E.C. - 1999 E.C.). It increased two times in four sub-cities (Addis-Ketema, Kolfe-Keraniyo, Yeka and Gulelie) while it increased two-fold in the remaining Kirkos sub-city.

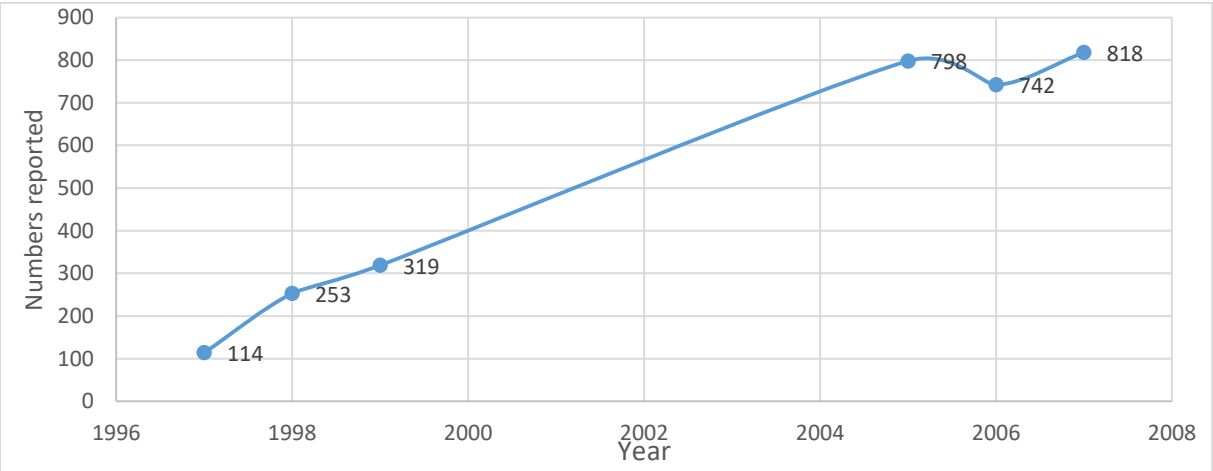

Figure 4. Trends of sexual offences reported in the 10 sub-cities of Addis Ababa

Likewise, as Figure 4 shows, there was an increased police reporting trend in the late post-reform years (i.e. 2005 E.C., 2006 E.C. and 2007 E.C.) as compared to the reporting trend in the early post-reform years (i.e. 1997 E.C., 1998 E.C. and 1999 E.C.) in all sub-cities. The police reporting trend was increasing in the early post-reform years. There were 114 reported rape cases in 1997 E.C. alone and the number increased by more than two fold to 253 in 1998 E.C. and almost tripled to 319 in 1999 E.C. The police reporting trend was somehow stabilized from 2005 E.C to 2007 E.C. as there were 798, 742 and 818 reported rape cases in 2005 E.C., 2006 E.C. and 2007 E.C., respectively.

Generally, there was a noticeably higher trend of police reporting for rape cases from 1997 E.C. to 2007 E.C. This might be the result of (i) change in victim reporting behavior, (ii) change in police record-keeping behavior, and (iii) an increase of incidences of rape. For this research's purpose, the conflation of number (i) and (ii) does not create a problem since the reforms can facilitate changes both in the victim reporting behavior and police record-keeping behavior. However, the difference between number (i) and (ii) on one hand, and number (iii) on the other, is problematic. Thus, without ruling out the possibility that an increased police reporting might result from an increase of incidences of rape, the present study assumes that the legal and policy reforms are more likely to foster changes in victims' reporting and police' record keeping behaviors. This makes the rates of police reporting over time a valid indicator of the impact of the reforms.

There are various complementary explanations for an increased trend in police reporting for rape cases. First, policy reforms such as the establishment of especial investigation and prosecution units and trial benches for rape cases and the provision of routine capacity building trainings to the key actors within the CJS might have improved the efficiency of the CJS's response. This, in return, could encourage more victims to come forward and report the incident to the police. Information obtained from key informants substantiates this possible explanation. An informant, Prosecutor Three, attributed an increased police reporting for rape cases to the establishment of especial investigation and prosecution units and trial benches for rape and other forms of VAWC

cases.[918] In fact, the 2005 E.C. and 2006 E.C. Federal Attorney General Annual Reports attributed the improved outcomes to the assignment of focal persons at each sub-city level offices' special prosecution units and to the expansion of the number of special trial benches.[919] In addition to the establishment of special units and trial benches, one of the present study's key informants also linked an increased police reporting trend to the establishment of women's affairs offices under various levels of government structures.[920] She pointed out that these offices were serving as the first contact point for the victims and offering essential advice including information regarding where to go and what to do.[921]

Second, the establishment of one-stop center with referral systems, coordination mechanism and comprehensive support services might be contributing to more victims coming forward with their cases and seeking justice. This may be contributing to an increased trend in police reporting for rape cases. The establishment of one-stop centers also has paramount importance in encouraging more victims to report the incident. Victims usually disclose the incident to health care providers who often referred clients with suspicious rape cases to the Gandhi Memorial Hospital. At the one-stop center at Gandhi Memorial Hospital, rape victims received not only medical care and treatment but also came to the attention of the CJS.[922] The police and the prosecutors working at the one-stop center at the Gandhi Memorial Hospital took statements from victims with suspicious cases, considered forensic medical examination reports and determined whether the cases had a criminal nature, for intervention by the CJS.[923] Thus, the establishment of one-stop centers might have been encouraging rape victims to come to the attention of the CJS who otherwise would have just received medical treatment only. According to the present study's key informant, Prosecutor One, the number of cases brought to the attention of the CJS from the one-stop center at the Gandhi

---

[918] Interview with Prosecutor One, *supra note* 842.
[919] FDRE Federal Attorney General (2005) *The 2005 E.C. Federal Attorney General Annual Performance Report,* Unpublished Report; and FDRE Federal Attorney General (2006) *The 2006 E.C. Federal Attorney General Annual Performance Report,* Unpublished Report.
[920] Interview with Advocate Two, *supra note* 648.
[921] *Ibid.*
[922] Interview with Prosecutor One, *supra note* 842.
[923] *Ibid.*

Memorial Hospital has been increasing and for this reason, her office was working with stakeholders to expand one-stop centers in Addis Ababa.[924]

Third, the availability of support services including counselling, shelters and other social and rehabilitative supports might be inducing an increased police reporting by, for example, making rape victims aware of the existence such support services, in effect serving as incentives and encouraging victims to report the incident. Particularity, the availability of temporary shelters has been linked to an increased trend in police reporting for rape cases. According to one of the key informants, Police Officer One, without the availability of temporary shelters, homeless victims may not report the incident to the police in the first place, and even where they come forward, they may not come back after the initial reporting.[925] Without temporary shelters, it is difficult to successfully investigate and prosecute cases involving vulnerable groups since they do not have a specific address to follow up their cases during the criminal proceedings.

Information obtained from rape victims also substantiates the above points. For instance, one of the interviewees, Victim One, was only 15 when she came to Addis Ababa from a rural area where she used to live with her poor family. Upon her arrival, she was hired as a home assistant.[926] However, one day, her employer arbitrarily fired her at night without paying her salary. She did not know where to go but was desperately crying for help at the roadside when she was approached by few passers-by. After learning the difficult situation she was facing, they took her to a nearby church and informed the guard of her situation. The guard allowed her to sleep in the church's compound where he forcibly raped her at midnight. By the next morning, two of the passers-by who took her to the church came back to take her to the police. But, they learned that the church guard, who was supposed to offer a safe shelter, had in fact raped her. Thus, they took her to the Nifas-Silk-Lafto Police Department for criminal investigation instead of work-related issue. The victim described her experience after her case was reported as follows: "[t]hey took me to a

[924] *Ibid.*
[925] Interview with Police Officer One, *supra note* 842.
[926] Interview with Victim One on March 17, 2018, 8:09: 8:39 PM.

hospital and an NGO for other supports. When I went to the hospital, they gave me medical treatments and took urine sample. Then, they took me to the NGO for supports where I get shelter, food, clothing and education."[927]

While Victim One was still in a shelter at the time of the interview, the police at the Women's and Children's Unit were finalizing the investigation on her case. In the absence of a temporary shelter, her case might not have been processed by the police since she had no option but either to return back to her family or join homeless children in the streets of Addis Ababa.

Shelter provision also facilitated the reporting of cases involving victims who live with and depend on their abusers and trapped in violent homes. For instance, one of the interviewees, Victim Two, was a 14-year-old girl who lived with and was dependent on her aunt.[928] She was subjected to repeated rape by her aunt's husband. Her situation forced her to live in a trap as she was dependent on the offender for her livelihood. She was asked how her case came to the police's attention. She stated that "[w]hen I was repeatedly absent from my class, my teachers approached and asked me if there was any problem and I told them all that had happened to me. My teachers took me to the police and the police referred me to the Gandhi [Memorial Hospital] for medical service and an NGO for shelter, food and clothing."[929]

This was almost the same story of another interviewee, Victim Three, a 13 years old girl who was subjected to repeated rape involving a combination of force, threat and psychological pressure.[930] She lived with and dependent on her aunt. The offender in this case was not a husband but the son of her aunt. She did not keep the incident secret, but told to her aunt, who is the offender's mother. She recounted her aunt's response as follows: "[m]y aunt called and criticized him for breaking a trust and doing this to me while I was entrusted to the family's care."[931] The offender's mother did

---

[927] *Ibid.*
[928] Interview with Victim Two on March 18, 2019, at 11:00:12:00 AM.
[929] *Ibid.*
[930] Interview with Victim Three on March 19, 2019, at 11:00:12:00 AM
[931] *Ibid.*

nothing to report or encourage the victim to report the case to the police. She also informed about the incident to her friends living in a shared compound, who gave her comfort and demonstrated empathy but did not help her to report the case to the police. She was asked how her case came to the attention of the police. She stated the following: "I was tired of living with repeated attacks and decided to leave. I left the home and was crying by the roadside when passersby approached and asked me what had happed to me. I told them all that had happened to me. Then, they took me to a nearby police station."[932] The police then referred her to the Gandhi Memorial Hospital for medical treatment and examination, and, later, to a shelter where she was provided with support services. After receiving rehabilitative and psycho-social support, she exclaimed her gradual recovery as follows: "I was subjected to repeated attack, but now I have regained my peace!"[933]

All victim interviewees who were in shelters at the time of the interviews also had received similar services and supports. As far as child rape victims were concerned, the standard practice generally was that once they reported the incident to the police, they were referred to the Gandhi Memorial Hospital for medical care and examination, and if their case so required, to the NGOs, for shelter and other support services. In all cases, medical care, psychological counseling, shelter with basic needs were provided to child rape victims. These support services improved the treatment of the victims. In addition, their availability, serves as an incentive and encourages other victims to report the incident to the police. As a 2016 study by UN Women Ethiopia suggested, "[i]n the absence of effective rehabilitative and psycho-social support, women and girl-survivors of violence have found very little incentive to report the violence and seek justice against the perpetrators."[934] Given this, it can be presumed that the availability of support services could have played a positive role to an increased police reporting trend in post-reform years.

However, the comprehensive services seem to exclude some child victims who are not in shelters. For instance, Victim Six was a 14-years-old girl when she was raped by her schoolmate who was

---

[932] *Ibid.*
[933] *Ibid.*
[934] UN Women Ethiopia (2016), *supra note* 848, p. 32.

about 24 years old.[935] While they were on their way from the school to their homes in the evening, the offender convinced the victim to follow him along a shortcut path but then took her to an obscure place where he raped her. She immediately told the incident to her aunt. Her aunt told the matter to her husband and soon they took her to a nearby police station. Then, she was referred to a hospital for forensic medical examination. Her case was investigated and the offender was arrested, prosecuted and tried. She did not have to stay in a shelter during the course of the proceeding because her case did not necessitate it. Unlike other interviewees, she was not referred to the Gandhi Memorial Hospital but to the Minilik II Hospital for forensic medical examination. She was asked whether she had support services as a victim of rape and she responded that she did not receive any support.[936]

Fourth, capacity building trainings and legal literacy activities including awareness raising campaigns have become part of the regular activities of government institutions such as the Federal Attorney General, and NGOs including women's rights advocacy groups. All these were done carrying the message that something is being done about rape and other forms of VAW. Capacity building trainings provided to the key actors within the CJS might address and change wrong attitudes about rape and rape victims and, as a result, the victims might be treated appropriately and provided with the needed support services. Likewise, legal literacy programs and campaigns against VAW addressing the general public might have led to enhanced awareness about the issue of SVAW and changes in attitude among members of the society. These in return might be encouraging rape victims to come forward and seek legal redress, particularly those who would have otherwise kept the incident secret for fear of stigma, bias and mistreatment. The present study's key informant also linked an increased trend in police reporting to works that have been done to make the general public aware of the issue and to the provision of capacity building trainings.[937] As a 2016 study by UN Women Ethiopia too linked the level of awareness on VAW

[935] Interview with Victim Six on March 26, 2019, at 11:00:12:00 AM.
[936] *Ibid.*
[937] Interview with Prosecutor One, *supra note* 842; and Interview with Advocate Two, *supra note* 648.

to an improved reporting rate, stating that "[a]mong some of the areas where a considerable level of awareness on [violence against women and girls] was registered were Dire Dawa, where VAW [and girls] was highly reported and community members were increasingly willing to be witnesses, whenever required."[938]

In the above instances, the legal and policy reforms may directly affect reporting, whereby victims have become aware of the reforms and hence make decisions about reporting, or indirectly by contributing to a change in how the key actors within the CJS and the general public view the issue of rape and rape victims. However, there is still another possibility for an increased police reporting trend in the post-reform years. Though its effect appeared to be very minimal, police reporting might be increasing simply due to the scope-expanding effects of the 2004 rape law reforms. Cases which were not considered as sexual offence under the 1957 Penal Code may now be recorded as sexual offence. For instance, under the RCC, the exoneration of rapists from criminal liability upon the subsequent conclusion of marriage with their victims has been abolished. Likewise, marital-rape exemption has been abolished from some sexual offences such as sexual assault[939] and sexual coercion[940] cases. These reforms may have scope-expanding effects. Police recording might also be increasing due to the introduction of new sexual offences such rape against a man by a woman though data used in this study were taken from the Women and Children Investigation and Care Department of Addis Ababa Police Commission, where only sexual offences committed against women and same-sex rape committed against children are recorded separately.[941] The police recording may also be increasing where an offence which otherwise would have been recorded as a single non-sexual offence is now being recorded as two separate offences, due to the explicit inclusion of concurrent criminal liabilities for abduction and rape, under the RCC.

[938] UN Women Ethiopia (2016), *supra note* 848, p. 32.
[939] The Revised Criminal Code, *supra note* 21, Article 622.
[940] *Ibid*, Article 623.
[941] *Ibid*, Article 621.

Consistent with the finding of the present study, previous post rape-law reform studies in other jurisdictions found that subsequent to the adoption rape law reforms, there were increased police reporting trends.[942] For instance, in their post rape-law reform study in Canada, Julian Roberts and Robert Gebotys found that over the five-year period prior to Canada's 1983 rape law reforms, the overall reporting rate of all three types of sexual assault increased by 22%, while that of non-sexual assault increased by 20%.[943] There was a significant increase in police reporting following the introduction of the legal reform. Police reporting was increased by 110% – more than twofold – as compared to the rate police reporting for non-sexual assault cases in the five years subsequent to the reforms.[944] They concluded that the increase in police reporting following the introduction of the legal reform is "due to a change in victims' attitudes, brought about by the reform legislation and the publicity surrounding its passage."[945]

Likewise, in the United States, Cassia Spohn and Julie Horney analyzed data from six urban jurisdictions: Detroit, Chicago, Philadelphia, Washington, D.C., Atlanta, and Houston.[946] The first three cities were in states with strong rape law reforms, whereas the last three cities were located in jurisdictions with weak rape law reforms. They found that in the years from 1970 to 1984, the legal reforms had no positive effect in Chicago, Philadelphia, and Atlanta. Spohn and Horney observed in Detroit, a city in the state with the strongest reforms, and in Houston, the jurisdiction with the weakest reforms, an increase in police reporting rates that appeared in some way correlated with the reforms. They suggested that "the increases resulted from publicity surrounding

---

[942] *See for e.g.*, Jo Lovett and Liz Kelly (2009), *supra note* 50, p. 19; David John Frank *et al.* (2009), *supra note* 19, pp. 272-290; Jody Clay-Warner and Callie Harbin Burt (2005) 'Rape Reporting After Reforms: Have Times Really Changed?', *Violence Against Women* 11(2), pp. 150-176, p. 173; Julian V. Roberts and Robert J. Gebotys (1992) 'Reforming Rape Laws: Effects of Legislative Change in Canada', *Law and Human Behavior* 16(5) pp. 555–573, pp. 561-563; and Cassia Spohn and Julie Horney (1992) *Rape Law Reform: A Grassroots Revolutional and Its Impact*, New York: Springer Science+Business Media, LLC, pp. 35-36; and Ronet Bachman and Raymond Paternoster (1993), *supra note* 11, pp. 565-566.
[943] Julian V. Roberts and Robert J. Gebotys (1992), *ibid*, pp. 561-563.
[944] *Ibid.*
[945] *Ibid*, P. 568.
[946] Cassia Spohn and Julie Horney (1992), *supra note* 942, pp. 35-36.

the reforms."[947] In their subsequent notes, they suggested that "[v]ictims who were reluctant to report the crime to the police in the pre-reform era may have been encouraged to do so in the post-reform period by the highly touted and widely publicized new laws."[948] They also believe that "women raped by acquaintances and women whose behavior did not conform to stereotypes of the traditional rape victim were more likely to report the crime to the police following the reforms."[949]

6.3 Effects of the Reforms on Attrition, Prosecution and Conviction

The previous section has found that there was a noticeable increase in police reporting for rape cases, subsequent to the reforms. However, police reporting is a crucial first step towards law enforcement but is not an end in itself. Reporting must be followed by a thorough investigation, prosecution and, if the accused found guilty, by conviction and sentencing. Ideally, when a violent crime like rape is committed, the victim reports it to the police. The police verify the report, try to identify and, where required, upon securing an arrest warrant, arrest the offender and, upon finalizing the investigation, transfer the case to the prosecutor. Then, the prosecutor collates evidences, files charges and proves the offender's guilt at a trial-court. The judge passes a verdict with due consideration to the aggravating and mitigating circumstances specified under the law. However, in practice, the CJS does not operate this way. Rather, there are various exit points where cases are filtered out of the system in what is known as *attrition*.[950]

Generally, once a case is reported and recorded, there are three major sites of attrition, at least for SVAW cases. First, at the police investigation stage, whether the police identify a suspect, investigate the case and handover the investigation file to the prosecutor. Second, at the prosecution stage, that is, after the case moves past the police to prosecution, whether the prosecutor determines to proceed to the trial-court. Third, at the trial stage, that is, after the case moves to the trial-court, whether the case remains at the trial-court or dismissed or withdrawn, the

---

[947] *Ibid*, pp. 101-02.
[948] Cassia Spohn and Julie Horney (1993), *supra note* 7, p. 398.
[949] *Ibid*, PP. 398-399.
[950] David P. Bryden and Sonja Lengnick (1997), *supra note* 15, p. 1208.

and whether offender pleads guilty or is found guilty or acquitted at the trial. In the present study, whether the offender pleads guilty or found guilty or acquitted at trial-trial court was used to measure conviction rate. The police are thus the key gatekeepers and the first point of contact for rape victims. However, in Ethiopia, the prosecutor, as an intermediate actor between the police and the court, plays a decisive role for case attrition, both at the investigation and prosecution stages. After completing their investigations, the police are always supposed to hand over all cases to the prosecutor. The prosecutor has considerable discretionary power over the fate of the cases.

Normally, where victims of crimes report the incident to the police and the offender is not identified, the prosecutor can make two decisions. It can either demand that the police take further investigative steps to identify and arrest the offender, or it can decide to discontinue the case on the grounds that the police were unable to identify the offender.[951] In cases where the offender is identified, the police take a series of investigative measures. Where the investigation is finalized, the prosecutor can decide to prosecute (i.e. file criminal charges) or to discontinue the case, or instruct the police to carry out further investigation before making the final decision on filing the charge or discontinuing the case.[952] Thus, it is the public prosecutor who plays a decisive role for case attrition, both at the investigation and the prosecution stages. This is particularly true for sexual and other forms of VAWC cases where the police and the prosecutor work together at the police departments or police stations.[953]

[951] Criminal Procedure Code, *supra note* 425, Article 38.
[952] *Ibid.*
[953] Interview with Police Officer One, *supra note* 842.

6.3.1 Attrition and Prosecution Rates at Investigation and Prosecution Stages

Table 4. Attrition at the investigation and the prosecution stage in 2005-2007 E.C.

No.	Case Status Indicator	Year in E.C.	Prosecution Track/Unit		
			Accelerated	Regular	VAWC
1	Total cases under the prosecution	2005	12426	41832	1647
		2006	10,563	35,244	1,250
		2007	10,783	41,779	1,425
2	Cases charged	2005	12334	12538	715
		2006	10,439	16,923	771
		2007	10,694	13,438	767
3	Cases pending	2005	-	-	-
		2006	-	6	-
		2007	-	105	-
4	Cases terminated	2005	92	29294	932
		2006	124	18,315	479
		2007	89	28,236	658
5	Attrition rate	2005	0.740%	53.294%	56.587%
		2006	1.1739%	51.975%	38.32%
		2007	0.825%	67.754%	46.175%
6	Prosecution rate	2005	99.259%	84.533%	43.412%
		2006	98.826%	48.016%	61.68%
		2007	99.174%	32.164%	53.824%

Source: Author's elaboration from the Federal Attorney General Annual Reports 2005-2007 E.C.

As Table 4 shows, a substantial proportion of VAWC cases were filtered out of the CJS at three exit points. In 2005 E.C., there were 1,647 cases of VAWC in prosecution units while there were 12,426 and 41,832 cases in fast-track and regular prosecution tracks, respectively. Out of a total of 1,647 VAWC cases, only 715 cases were prosecuted or passed to the trial-courts. In the fast-track prosecution units, 12,334 out of 12,426 total cases of VAWC were prosecuted or passed to the trial-courts while in the regular prosecution tracks, 12,538 out of the total 41,832 cases were prosecuted or passed to the trial-courts. The attrition rate was 56.587% for VAWC cases while it was 0.740% for fast-track cases and 53.294% for cases in regular prosecution units. The lowest attrition rate was observed for cases processed in the fast-track prosecution units. The reason for this is clear as fast-track prosecution applies to cases whose offenders are caught in flagrant or petty offences. In flagrant cases, direct witnesses are almost always available, reducing attrition due to evidentiary matters. Likewise, the burden of proof seems to be less stringent in petty offence cases. The highest attrition rate was observed in VAWC cases than the remaining two prosecution

units. More than half of VAWC cases were filtered out at the investigation and prosecution stages. This figure implies that the policy reforms introduced to deal with VAWC cases including rape cases did not impact the rate of attrition with in the CJS.

In 2006 E.C., there were 1,250 cases of VAWC prosecution units while there were 10,563 and 35,244 cases in the fast-track and regular prosecution tracks, respectively. Out of 1,250 total cases of VAWC, only 771 cases were prosecuted or passed to the trial-courts. In the fast-track prosecution units, 10,439 out of 10,563 total cases were prosecuted or passed to the trial-courts. In the regular prosecution tracks, 16,923 out of the total 35,244 cases were prosecuted or passed to the trial-courts. The attrition rate was 38.32% for VAWC cases while it was 1.1739% for fast-track cases and nearly 52% for cases in the regular prosecution units. In 2006 E.C., more than one-third of VAWC cases were filtered out of the CJS at the investigation and prosecution stages. The attrition rate for VAWC cases decreased as compared to cases processed in the regular prosecution track, but not for cases processed in the fast-track unit. In 2006 E.C., attrition for VAWC cases was 38.32% and it has improved as compared to the figure in the previous year, which was 56.587%.

In 2007 E.C., there were 1,425 cases of VAWC prosecution units, while there were 10,783 and 41,779 cases in the fast-track and regular prosecution tracks, respectively. Out of 1,425 total cases of VAWC, only 767 cases were prosecuted or passed to the trial-courts. In the fast-track prosecution units, 10,694 out of 10,783 total cases were prosecuted or passed to the trial-courts. In the regular prosecution tracks, 13,438 out of the total 41,779 cases were prosecuted or passed to the trial-courts. The attrition rate was 46.175% for VAWC cases while it was 0.825% for the fast-track cases and 67.754% for cases processed in the regular prosecution units. In 2007 E.C., nearly half of VAWC cases were filtered out at the investigation and prosecution stages. There was an increase in attrition rate (46.175%) as compared to the figures in the previous year, which was 38.32%. However, it was lower than the rate for cases prosecuted in the regular prosecution tracks.

Generally, the attrition for VAWC cases at the investigation and prosecution stages was 56.587% for 2005 E.C., 38.32% for 2006 E.C. and 46.175% for 2007 E.C. The three years' average attrition

rate was 47.027% while the attrition for fast-track cases at the same stage was 0.740% for 2005 E.C., 1.1739% for 2006 E.C. and 0.825% for 2007 E.C. The three years' average attrition rate was 0.912%. The three years' attrition for cases in the regular prosecution units was 53.294% for 2005 E.C., 51.975% for 2006 E.C. and 67.754% for 2007 E.C. while the average was 57.674%. This means that not only are nearly half of VAWC cases lost at the investigation and prosecution stages but also the attrition rate was the worst as compared to cases in the fast-track units while it was almost similar as compared to the rate for cases in the regular prosecution units.

However, the aggregation of data on VAWC cases could have deflated the actual rate of attrition for rape cases. The actual attrition rate might have been much worse if there were data disaggregated by crime types for separately analyzing attrition for rape cases. This is so because the average 47.027% attrition rate for aggregated VAWC cases was less than, albeit with a narrow margin, the rates of attrition consistently identified by previous studies in other jurisdictions. Although various studies have found diverse rates of attrition at the investigation and prosecution stages, many have consistently demonstrated that less than half of all reported rape cases progress further than the investigation stage, which is the equivalent of investigation and prosecution stages for the Ethiopian CJS. For instance, a study by L. Kelly in the UK found that between half and three-quarters of reported rape cases did not proceed beyond the police investigation stage.[954] Likewise, a study by S. Triggs in New Zealand found that the police filed charges in 31% of rape cases.[955] Daly and Bouhours combined the results of 75 studies across five countries and found that the rate of attrition at investigation stage was around 65%.[956] According to a 2010 Amnesty International study in the Nordic Countries, 60% of rape cases are closed by the prosecution in Denmark whereas, in Finland and Norway, approximately 16% of rape cases proceed to the trial-

[954] L. Kelly *et al.* (2005) *A gap or a chasm? Attrition in reported Rape cases*, Home Office Research Study 293, London: Home Office.
[955] Sue Triggs *et al.* (2009) *Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System*, Wellington: Ministry of Women's Affairs, available at: http://women.govt.nz/sites/public_files/responding%20to%20sexual%20violence%20attrition-pdf.pdf last visited on 10/19/2018.
[956] Kathleen Daly and Brigitte Bouhours (2010), *supra note* 11.

court.[957] However, the three years average 47.027% attrition rate based on an aggregated data on VAWC cases in Ethiopia was less than the rate of attrition for sexual offences identified by these studies. Had the rate of attrition for rape cases been found and analyzed separately, it possibly could have been much worse.

Regarding prosecution rates, in 2005 E.C., out of 1,647 total cases of VAWC, only 715 cases were prosecuted or passed to the trial-courts, making the prosecution rate 43.412%. Whereas in the fast-track prosecution units, 12,334 out of 12,426 total cases were prosecuted or passed to the trial-courts, making the prosecution rate 99.259%. In the regular prosecution tracks, 12,538 out of a total of 41,832 cases were prosecuted or passed to the trial-courts, making the prosecution rate 84.533%. Thus, the prosecution rate for VAWC cases is far worse as compared to the rates for cases processed both in the fast-track and regular prosecution units.

In 2006 E.C., out of 1,250 total cases of VAWC, only 771 cases were prosecuted or passed to the trial-court, making the prosecution rates was 61.68%. In the fast-track prosecution units, 10,439 out of 10,563 total cases were prosecuted or passed to the trial-courts, making the prosecution rate 98.826%. In the regular prosecution tracks, 16,923 out of the total of 35,244 cases were prosecuted or passed to the trial-courts, making the prosecution rate 48.016%. Likewise, in 2007 E.C., out of 1,425 total cases of VAWC, only 767 cases were prosecuted or passed to the trial-courts, making the prosecution rate 53.824%. In the fast-track prosecution units, 10,694 out of 10,783 total cases were prosecuted or passed to the trial-courts, making the prosecution rate 99.174%. In the regular prosecution tracks, 13,438 out of the total of 41,779 cases were prosecuted or passed to the trial-courts, making the prosecution rate 32.164%. The three years' average prosecution rate for VAWC cases was nearly 53% while it was 99.08% and nearly 55% for cases in the fast-track and regular prosecution tracks, respectively. Thus, the average prosecution rate for VAWC cases was the lowest as compared to the rates for cases processed both in the fast-track and regular prosecution

[957] Amnesty International (2010), *supra note* 50, p. 5.

units. This should not, however, be the case since the identity of the offender is known in many instances of VAW cases, particularly in rape cases.

6.3.2 Attrition and Conviction at Trial Stage

Table 5. Attrition and Conviction at the trial stage, from 2005-2007 E.C.

No.	**Case Status Indicator**	**Year in E.C)**	**Prosecution Track/Unit**		
			Accelerated	**Regular**	**VAWC**
1	Total cases at the court	2005	15,391	17,472	1359
		2006	12,588	19,198	1,353
		2007	13,158	24,507	1,449
2	Acquitted cases	2005	2,005	386	54
		2006	212	407	53
		2007	276	548	30
3	Convicted cases	2005	10,596	4,987	427
		2006	8.468	5,331	377
		2007	7,434	5,380	361
4	Cases terminated	2005	945	7155	185
		2006	924	6,254	199
		2007	939	5,645	103
5	Pending cases	2005	1,845	4,944	693
		2006	2,984	7,206	724
		2007	4,509	12,934	955
6	Attrition rate	2005	21.777%	60.193%	35.886%
		2006	11.828%	55.545%	40.063
		2007	9.530%	53.512%	26.923%
7	Conviction rate	2005	84.088%	92.815%	88.773%
		2006	97.557%	92.907%	87.674%
		2007	96.420%	90.755%	92.327%

Source: Author's elaboration from the Federal Attorney General Annual Reports 2005-2007 E.C.

At the trial stage, that is, after charges had been filed by the prosecutor, a number of VAWC cases were filtered out of the CJS for a variety of reasons. As Table 5 indicates, in 2005 E.C., there were 1,359 cases of VAWC trial benches while there were 15,391 and 17,472 cases in the fast-track and regular prosecution tracks, respectively. Out of the total 1,359 VAWC cases, only 427 ended up with convictions. The 185 cases were either withdrawn or dismissed for a variety of reasons. The remaining 54 cases ended up with acquittals. The attrition rate for VAWC cases was approximately 36 % while the conviction rate was approximately 89%. In the fast-track prosecution units, 10,596 out of a total of 15,391 cases at the trial-court ended up with convictions while 945 cases were

either withdrawn or dismissed for various reasons, and the remaining 2,005 cases ended up with acquittals. The attrition rate for cases processed in the fast-track prosecution units was close to 22% while the conviction rate was 84.088%. In the regular prosecution tracks, 4,987 out of the total 17,472 cases ended up with convictions. While 7,155 cases were either withdrawn or dismissed for various reasons, the remaining 386 cases ended up with acquittals. The attrition rate for cases processed in the regular prosecution units was about 60%. The conviction rate was close to 93%. In 2005 E.C., nearly one-third of VAWC cases were filtered out of the CJS due to withdrawal or dismissal and acquittal at the trial stage. The attrition rate for VAWC cases for that year was nearly 36%. This was much better than the attrition rate for cases prosecuted in the regular tracks, which was about 60%. But, the reverse was true for the conviction rate.

According to the 2005 E.C. Federal Attorney General Annual Report, the conviction rate for VAWC cases was nearly 52% in 2004 E.C. and showed an increase of nearly 37% in 2005 E.C. The report attributed the improvement to the assignment of focal persons for VAWC cases at various levels of the Federal Attorney General's sub-city level branch offices, the priority given to the issue of VAW, and expansion special trial benches.

In 2006 E.C., there were 1,353 cases of VAWC trial benches while there were 12,588 and 19,198 cases in the fast-track and regular prosecution tracks, respectively. Out of the total 1,353 VAWC cases, only 377 ended up with convictions while 199 cases were either withdrawn or dismissed for a variety of reasons. The remaining 53 cases ended up with acquittals. The attrition rate of VAWC cases was 40.063% while the conviction rate was 87.674%. In the fast-track prosecution units, 8,468 out of the total 12,588 cases at the trial-court ended up with convictions. 924 cases were either withdrawn or dismissed for various reasons while the remaining 212 cases ended up with acquittals. The attrition rate for cases processed in the fast-track prosecution units was nearly 12% while the conviction rate was 97.557%. In the regular prosecution tracks, 5,331 out of the total 19,198 cases ended up with convictions, and 6,254 cases were either withdrawn or dismissed for various reasons. The remaining 407 cases ended up with acquittals. The attrition rate for cases processed in the regular prosecution units was 55.545% while the conviction rate was almost 93%. In 2006 E.C., more than one-third of VAWC cases (40.063%) were filtered out of the CJS due to

case withdrawal or dismissal and acquittal. As in the previous year, the attrition rate for VAWC cases for this year was better than the attrition rate for cases processed in regular tracks. But, it increased by around 5%, compared to the rate in the previous year. The conviction rate for VAWC cases lags behind the other two prosecution units by at least 5%. Thus, in 2006 E.C. the improved attrition and conviction rates observed in the previous year disappeared.

In 2007 E.C., there were 1,449 cases of VAWC trial benches while there were 13,158 and 24,507 cases in the fast-track and regular prosecution tracks, respectively. Out of the total 1,449 VAWC cases, only 361 ended up with convictions. While 103 cases were either withdrawn or dismissed for a variety of reasons, the remaining 30 cases ended up with acquittals. The attrition rate of VAWC cases was nearly 27% while the conviction rate was 92.327%. In the fast-track prosecution units, 7,434 out of the total 13,158 cases at the trial-court ended up with convictions. 939 cases were either withdrawn or dismissed for various reasons, and the remaining 276 cases ended up with acquittals. The attrition rate for cases processed in the fast-track units was 9.530% while the conviction rate was 96.420%. In the regular prosecution tracks, 5,380 out of the total 24,507 cases ended up with convictions. While 5,645 cases were either withdrawn or dismissed for various reasons, the remaining 548 cases ended up with acquittals. The attrition rate for cases processed in the regular prosecution units was 53.512% while the conviction rate was 90.755%. In 2007 E.C., one-fourth of VAWC cases were filtered out of the CJS due to withdrawal or dismissal and acquittal. For VAWC cases, both the attrition and conviction rates improved in this year. The rates also improved in comparison to the rates observed in cases tried by the regular track.

Table 6. Attrition and Conviction at the trial stage in 2008 E.C.

No.	**Case Status indicator**	**Year in E.C.**	**Crime types**	
			VAWC	**Other Crimes**
1	Attrition rate	2008	34.146%	41.377%.
2	Conviction rate	2008	85.520%.	93.853%.

Source: Author's elaboration from the Federal Attorney General Annual Reports 2008 E.C.

In In 2008 E.C., crime data were recorded dichotomously by merging the fast-track and regular cases in one category and VAWC cases in another. The attrition and conviction rates for VAWC

cases were 34.146% and 85.520%, respectively. The attrition and conviction rates for other criminal cases were 41.377% and 93.853%, respectively.

Table 7. Attrition and Conviction at the trial stage in 2009 E.C.

No.	Case Status indicator	Year in E.C.	Crime types				
			VAWC	**Organized crimes**	**Economic crimes**	**Corruptions**	**Other Crimes**
1	Attrition rate	2009	15.14%	7.2%	9.1%	2.5%	20.3%
2	Conviction rate	2009	90.3%	91%	82.5%	92.2%	94%

Source: Author's elaboration from the Federal Attorney General Annual Reports 2009 E.C.

In 2009 E.C., crime data were recorded in three categories based on crime types: *organized crimes*, *economic crimes*, *corruption (crimes)*, *other crimes*, and *VAWC crimes*. However, the attrition and conviction rates for each type of crime were calculated and included in the 2009 E.C. Annual Report of the Federal Attorney General. According to the Report, the attrition rate at the trial stage was 7.2% for organized crimes, 9.1% for economic crimes, 2.5% for corruption (crimes), 20.3% for other crimes and 15.14% for VAWC crimes. The conviction rate was 91% for organized crimes, 82.5% for economic crimes, 92.2% for corruption (crimes), 94% for other crimes and 90.3% for VAWC crimes. Based on the report, the attrition rates for organized crimes, economic crimes and corruption (crimes) were better than the attrition rate for VAWC cases, which was slightly better than the unnamed *other crimes*. Likewise, the conviction rates for organized crimes, corruption (crimes) and the unnamed *other crimes* were better than the conviction rate for VAWC cases, which was slightly better than that of economic crimes.

Generally, the five years' average attrition rate for VAWC cases at the trial stage was 30.431%. As stated earlier, the three years' average attrition rate for VAWC cases at the investigation and prosecution stages was 47.027%. Only a quarter of reported VAWC cases were tried and resulted in either conviction or acquittal of the offenders by the trial-court. This means about three-quarters of reported cases did not proceed beyond the investigation and prosecution stages or were dropped out at the trial stage before the court gives a verdict either convicting or acquitting the offender. Only a quarter of reported VAWC cases were tried and resulted in either conviction or acquittal of the offenders by the trial-court. Of all VAWC cases that were tried by the court, about 90% ended

up with convictions. This rate was almost similar to the conviction rates for other criminal cases processed in the fast-track and regular prosecution units and other types of crimes.

6.3.3 Attrition and Conviction for Rape Cases: Trends and Reasons

The figures in the previous sub-section offer useful insights into the attrition, prosecution and conviction rates for rape as a form of VAWC cases included in the aggregated data analyzed. For a better understanding into the trends of and the reasons for attrition, prosecution and conviction rates for sexual offence cases specifically, information were obtained from key informants, mainly (from) prosecutors, who were assigned as focal persons at the VAWC prosecution units at the sub-city level branch offices of the Federal Attorney General in Addis Ababa. Regarding the attrition for rape cases, one of the key informants, Prosecutor Two, a long-serving former focal person of Women's and Children's Unit of the Federal Attorney General (and currently a judge at the Federal First Instance Court Special – Women's and Children's – Bench) stated that "[a] lot of rape cases tend to be screened out of the CJS at the investigation or persecution stages. Many cases have not been taken to the court for trial."[958]

Regarding the temporal trends of attrition, Prosecutor Two also stated that "[w]hen we see the statistics, it varies from one year to another. Sometimes, sexual offence cases rarely come to our office as was the case in 2006 and 2007 E.C. By the following year, there was an increase in the number of cases. So, the overall prosecution trend was not consistent at least at the place where I was assigned as a focal person."[959] Similarly, Prosecutor Three stated that "[i]n the past two or more years, the number of reported sexual offence cases was increasing, but only few reported cases were passed the investigation and prosecution stages and taken to the trial-court."[960] She

[958] Interview with Prosecutor Two, *supra note* 849.
[959] *Ibid.*
[960] Interview with Prosecutor Three, *supra note* 851.

added that for rape cases, "nowadays, going to the court is a very rare phenomenon except in cases involving child victims."[961]

On the rate of attrition at the trial stage, Prosecutor Two stated that "the trend of conviction rates varies from one trial bench to another. For example, when I was working in Nifas-Silik-Lafto Prosecutor's Office, I observed that the court convicted the defendants in the majority of the cases. The conviction rate was very high. However, if you ask people from *Sebategna* area, they may tell you a very different story. They may tell you that more than half of rape cases at the trail bench ended up with the acquittal of the defendants."[962] She added that "[a]t Gullelle and Lideta Sub-cities, more than half of the rape cases ended up with the acquittal of the defendants."[963] Prosecutor Three also shared this view, and noted that "[w]hen it comes to rape cases, the number of cases that resulted in the acquittal of the defendants have been increasing, at least in the past six months."[964] Prosecutor Four also agreed with the views of the two informants that the overall trends of attrition, prosecution or conviction rates for rape cases vary from one bench to another and from time to time. However, she doubted the possibility of concluding with certainty the trends, without reference to offence-specific data,[965] which is, at least as of yet, not recorded separately and, thus inexistent. Generally, the present study's key informants believe that a considerable number of reported rape cases were filtered out of the CJS through the attrition process. Thus, despite the legal and policy reforms, case attrition for rape cases was common.

This does not mean that case attrition is unique for sexual offence cases. Case attrition occurs in any CJS and for any types of offence.[966] Whoever decides and for whatever reason, where there is culpability, attrition represents a failure to impose appropriate punishment and thus a gap in the CJS. However, attrition for rape cases has often been criticized for the reason that, unlike for other

---

[961] *Ibid.*
[962] Interview with Prosecutor Two, *supra note* 849.
[963] *Ibid.*
[964] Interview with Prosecutor Three, *supra note* 851.
[965] Interview with Police Officer One, *supra note* 842.
[966] Jörg-Martin Jehle (2012), *supra note* 57, P. 145.

crimes, it has something to do with prejudicial, stereotyped, or false beliefs about rape, rape victims, and the rapists.[967] Attrition occurs for a variety of reasons. As far as the reasons of attrition for rape cases are concerned, the present study's key informant, Prosecutor One, identified three categories (of reasons): i) reasons attributable to the victims, ii) reasons attributable to the community and iii) reasons attributable to the CJS.[968] According to one of the key informants, reasons for attrition attributable to the victims include failure to immediately report the incident to the police, failure to follow up their cases after reporting, concealing evidence after reporting, and settling the case by making compromises with the offender.[969]

Reasons for attrition attributable to the community include witnesses' unwillingness to testify at the trial-court, witness disappearance, and blaming the victims for their own victimization and forcing them to think that they are somehow responsible for what happened to them.[970] Whereas reasons for attrition attributable to the CJS include absence of codified rules of evidence, absence of rules of procedural law on measures to be taken in dealing deal with sexual offence cases, which are special in their natures (e.g. child-friendly rules and trials, rules for the hearing of witnesses, roles of psychiatrists and psychologists and the like), absence of adequate facilities for medico-legal forensic examinations such as deoxyribonucleic acid (DNA) evidence.[971] Other reasons attributable to the CJS, as identified by other key informants, include: the incompetence of the judges, prosecutors and medical forensic examiners.[972] In this regard, one of the present study's key informants outside of the CJS, Advocate Two, stated that "[t]he problem within the CJS is that the police officers lack commitments in taking the issue of VAW seriously and giving serious investigative responses. They did not have basic investigative skills."[973] She also added, "[i]n many instances, the police did not investigate cases we referred to them after evaluating the nature

[967] *Ibid*, P. 146.
[968] Interview with Prosecutor One, *supra note* 842.
[969] *Ibid.*
[970] *Ibid.*
[971] *Ibid.*
[972] Interview with Prosecutor Two, *supra note* 849.
[973] Interview with Advocate Two, *supra note* 648.

of our clients' cases. In cases involving violence in marriage, they often encourage reconciliation between the offender and the victim rather than conducting criminal investigation."[974] Similar problems were observed at the prosecution stage, including lack of commitment and failure to cite appropriate and relevant legal provisions while filing criminal charges.[975]

Apart from the above reasons, attrition was partly a result of different assessments made by the key actors within the CJS. These assessments are, in large part, dependent on not only the competence of the actors but also on their subjective motives, attitudes and values. This means case-processing outcome may be hampered by the biased attitudes and expectations about how women should behave and react to an incident of rape, and the notions of *real rape* or the *ideal victim*. Put simply, the acceptance of rape myths among the key actors likely affects case attrition.

Rape myth acceptance, particularly that "women lie about being raped" appeared to be more common even among prosecutors who were assigned as focal persons at the sub-city level branch offices' special prosecution units. In this regard, the present study's key informants, who were assigned as focal persons in VAWC prosecution units, believed that there were more false accusations of rape cases than other crimes. For instance, key informants were asked the reasons for the high level of attrition for rape cases, and Prosecutor Two explained that "[t]his is due to the prevalence of false accusations. Especially, adult women often report fabricated cases. There are a lot of false accusations brought to us. This is why most cases are dropped out by the prosecutors."[976] She further stated that "[w]e thoroughly investigate women who bring forth allegations of rape before we file criminal charges. We do this because after initially giving their statement alleging rape, they later change their mind after a thorough interrogation."[977] She added that "after changing their initial statement, they often say: 'He did not rape me, but he just did not give me the money he promised to' or 'I just wanted to get medical care from the Ghandi

[974] *Ibid. See also* Alemayehu Areda and Original W/Giorgis (2008), *supra note* 816, p. 10.
[975] *Ibid.*
[976] Interview with Prosecutor Two, *supra note* 849.
[977] *Ibid.*

[Memorial] Hospital' and the like. So, we have realized that especially women above the age of 18 years old need an aggressive interrogation."[978] The present study's key informant's view indicates her acceptance of rape myths. Such a view is premised on the myth that women who had consented to sex, change their mind afterwards, claiming to have been raped, and that rape accusations are used to seek revenge on men.

Likewise, Prosecutor Three, stated that "[w]e cannot take a case to the court based on the victim's statement alone. We take cases involving adult victims very seriously."[979] She added that "the victims often alleged to have been raped when giving their initial statements during investigation at the Ghandi [Memorial] Hospital. When they later give their statements at the police stations, they completely change the initial statements and claim that it was a false allegation and that they reported rape just to get medical care and contraceptives. So, we have realized that cases, especially those involving women above the age of 18 years old, need a serious investigation."[980] She added that "[t]he main problem we are facing is that rape victims retract their prior statements. Most of them, after giving their consent and having had sex, they claim rape. When we investigate further, they claim that they had a fight or were not given what the alleged offenders promised to."[981] Here again, key informant's views are premised on the rape myths that women, who had consented to sex, change their mind subsequently claiming to have been raped, and that women use rape accusations to seek revenge on men.

Though she did not call it rape myth, the present study's key informant from women's rights advocacy groups also reported observing rape myths acceptance among key actors within the CJS. In this regard, Advocate Two, stated that "the police and prosecutors demonstrate incredulity to the claims of rape victims. They often blame the victims and force them to feel that they were, in some ways, responsible for their own victimization."[982] She added, that the key actors "generalized

---

[978] Interview with Prosecutor Three, *supra note* 851.
[979] *Ibid.*
[980] *Ibid.*
[981] *Ibid.*
[982] Interview with Advocate Two, *supra note* 648.

just one or two instances of cases whose victims change their initial claims of rape to a consensual sex to all other rape cases too."[983] Generally, key informants from the CJS express a disbelief in claims of rape, and alluded to the fact that only certain types of women, such as underage girls, are genuine victims. Even underage girls themselves may not always be considered genuine victims. In this regard, Prosecutor Two suggested that "[f]alse accusations are often made by adult women. This does not mean that children do not lie about being raped. Children too may lie because of family's influence. When they feel that they are not loved enough by a family member, they may also claim they are raped. But, when we examine them thoroughly, they would admit that they had lied."[984] This view also assumes that children lie about being raped at least under family influence and that children too use rape accusations to seek revenge.

Furthermore, three out of four key informants from the CJS did not even consider an increased police reporting trend for rape cases as a gradual positive outcome of the legal and policy reforms. Nor did they consider an increased attrition rate for rape cases as a gap or shortcoming in the CJS. Rather, they linked an increased police reporting trend and a high-level attrition for rape cases to the prevalence of false accusations. An increased police reporting and a high-level attrition were viewed as concomitant effects of false accusations. Thus, the acceptance of rape myths leads to what Amy Grubb and Emily Turner described as "inaccurate portrayal and perception of the number of false rape allegations that are made by adult women."[985]

Informants were asked whether the prosecutors file charges against women who make "false" accusations for reporting false accusations. One of key the informants, Prosecutor Three, explained that "[w]hen we receive rape case files from the Gandhi [Memorial] Hospital [one-stop center] and before requesting an arrest warrant against the accused, we ask the victims about the allegation they made. If they change their initial statement, we (would) send them home without filing any

---

[983] *Ibid.*
[984] Interview with Prosecutor Two, *supra note* 849.
[985] Amy Grubb and Emily Turner (2012) 'Attribution of Blame in Rape Cases: A Review of The Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming', *Aggression and Violent Behavior* 17(5), pp. 443–452, pp. 446-447.

charges against them since the accused has no knowledge about the accusation. But, if they change their statements after the accused has been arrested, we will charge them for making false accusations."[986] This means false allegation is presumed, and the chance is given to the victim to retract her allegation before the alleged offender is summoned. The option to retract their initial claim involves, albeit implicitly, threat of a possible prosecution for making false accusation.

The finding of the present study on rape myth acceptance among key actors is consistent with the finding of a previous study conducted in Addis Ababa. Although there was no explicit reference of rape myth acceptance, a study by Blain Worku found that the police and prosecutors believe that there are more false accusations in rape cases than other crimes.[987] She documented very clear cases of rape myth acceptance where the key actors claimed that there is a high levels of false accusations, and that adult women use rape accusation as a *bargaining tool* or as a *control drama* wherever men failed to keep their promises, or as a *means of negotiating for money* or "[re]securing a bad relationship."[988] Blain also linked this unwarranted fear of false accusation among the key actors with the CJS with the notions of *real rape* or the *ideal victim.*[989] She suggested that acquaintance-rape is not *real rape* and victim of acquaintance-rape is not the *ideal victim*.[990]

Generally, it appeared that reported rape cases would not automatically be deemed crimes until the investigations showed otherwise. This is especially the case in relation to allegations by adult victims. The default position is that their allegations are fabricated and, hence they are viewed as suspects for false accusation until thorough interrogations prove otherwise. Normally, the police should consider any accusation as though a crime was committed until their investigation efforts show otherwise. This does not apply for allegations of rape by adult victims. These institutionalized incredulities might be forcing adult rape victims to think that the investigations

---

[986] Interview with Prosecutor Three, *supra note* 851.
[987] Blain Worku (2011) *Criminal Justice System's Response to Acquaintance Rape Cases in Ethiopia: The Women's Right Perspective*, Unpublished MA Thesis, Addis Ababa University, pp. 52-56.
[988] Blain Worku (2011), *supra note* 987, pp. 52-56.
[989] *Ibid*, P. 56.
[990] *Ibid*.

and prosecutions do not work in their favor. As a result, they may become reluctant to follow up their case and cooperate with the CJS or may even completely change their initial statements after suffering the ordeals at the hands of the police. Viciously, the key actors linked the victims' failure to cooperate and follow up their cases after reporting to the making of false allegations initially.

Many adult victims may not be willing to cooperate or fail to follow up their cases after reporting the incident, and this might and should not necessarily be linked to false allegations. It could, for instance, be due to the harrowing treatment and hostile approach adopted by the the key actors towards adult rape victims, as is often the case in most rape cases.[991] Particularly, adult victims were repeatedly interrogated by multiple police officers simultaneously or one after another.[992] Investigators even used threats against the victims as an *interrogation technique*.[993] In essence, the victims were treated as if they were offenders. After facing these ordeals, they may never come back to and cooperate with the CJS.[994] The ordeals are strong enough to deter them from coming back to the police and proceed with their cases.[995] However, the police misinterpreted the victims' failure to come back as an indication of the success of their investigation efforts since they believed that adult women are "lying" about the incident.[996]

Rape victims may be too emotionally upset, afraid, or embarrassed to cooperate with the police. Studies show that there are many reasons attributable to victims' failure to procced with their cases. For instance, Cassia Spohn *et al.* contend that "the reluctance of victims to proceed with a case [could] be attributed to a combination of factors including: a belief that prosecution of the subject is not in her own interest; a belief that prosecution of the subject is not worth either the time and the effort required or the humiliation of testifying about her victimization; and a belief, either arrived at independently or communicated by police and prosecutors, that her character and

[991] *Ibid*.
[992] *Ibid*, p. 52.
[993] *Ibid*.
[994] *Ibid*.
[995] *Ibid*, p. 53.
[996] *Ibid*, p. 52.

behavior at the time of the incident make conviction unlikely."[997] They added that "[t]he victims in these cases […] may have made a rational decision that pursuing the case would be too traumatic and/or would be a waste of time given the low odds of conviction."[998]

In sum, there has been an increased police reporting trend for rape cases subsequent to the rape law and policy reforms. This increase, however, has not been matched by a correspondingly improved rates of attrition, prosecution and conviction. This means attrition, prosecution and conviction rates did not lead to an increased trend in police reporting in the post-reform years. In addition, the number of reported rape cases that were believed to be and labelled as false accusations by the key actors indicated that generally the CJS is overly solicitous to the offenders and overly suspicious of the victims. The study also revealed the existence of a high level of rape myth acceptance, particularly the myth that the victims lie about being raped. This might be a factor contributing to the high level of attrition for rape cases. This finding contradicts, at least partly, what other authors had suggested regarding the publicities surrounding the legal and policy reforms. For instance, Tsehai Wada stated that "civil society organizations, particularly those engaged in gender issues have done their best to sensitize the issue using different fora. As a consequence of this development, there is a media hype on such issues wherein shocking incidents of grave violations of sexual integrity, particularly on minor children are reported, probably every week, if not every day."[999] He added that "as a result of such sensitization, the agencies of the country's CJS have given a special attention to such matters, as a result of which, many criminals are sent to prison, to serve their sentences and special benches are established in some courts to deal with rape cases."[1000] However, this was not the case since offenders in three-quarters of rape (and other forms of VAWC) cases were not even tried let alone to be convicted and sentenced.

---

[997] Cassia Spohn *et al*. (2001) 'Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the 'Gateway to Justice*', Social Problems* 48(2), pp. 206-235, p. 232.
[998] *Ibid.*
[999] *Ibid*, p. 206.
[1000] *Ibid*.

However, the findings of the present study is consistent with previous studies in other jurisdictions. For instance, a study in England and Wales found that throughout the period between 1997 and 2009, there has been an increased police reporting perhaps due to an increased women's confidence in the police and the CJS, but an increased trend in reporting has not been matched by an increased rate of convictions.[1001] In the United States, a wave of state-level rape law reforms introduced in the 1970s demonstrated little impact on practice in the CJS after 10 years.[1002] As Bachman and Paternoster noted, "in the vast majority of jurisdictions, legal reforms have not been followed by significant increases in either the reporting of rape cases or the arrest and conviction probabilities for rape"[1003] Likewise, in Canada, the 1963 rape-law reform registered modest to negligible effects on arrest and prosecution rates[1004] while the 1983 reform increased police reporting.[1005] Thus, reform outcomes generally fell apparently far short of the desired goals.

The weak outcomes the reforms might, at least partly, be attributed to the inability of the legal and policy reforms to dispel from the CJS rape myths and attitudes that support or trivialize sexual and other forms of VAW.[1006] In addition, rape law reform is a long-term process of efforts to change the legal culture, organizational and professional practices, and attitudes toward and beliefs about men's and women's sexualities, culpabilities, and responsibilities for sexual victimization.[1007] There is also a long line of actions and interactions between the legal reforms and changes in people's attitudes and actions towards the implementation of reformed laws and policy

[1001] Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 105.
[1002] David John Frank *et al.* (2009), *supra note* 19, p. 274.
[1003] Ronet Bachman and Raymond Paternoster (1993), *supra note* 11, p. 556.
[1004] Bernard Schissel (1996) 'Law Reform and Social Change: A Time-Series Analysis of Sexual Assault in Canada', *Journal of Criminal Justice* 24(2), pp. 123–138.
[1005] Julian V. Roberts and Robert J. Gebotys (1992) *supra note* 942; Julian V. Roberts *et al.* (1996) 'Rape Reform in Canada: Public Knowledge and Opinion', *Journal of Family Violence* 11(2), pp. 133–148; and Kwong-Leung Tang (1998) 'Rape Law Reform in Canada: The Success and Limits of Legislation', *International Journal of Offender Therapy and Comparative Criminology* 42(3), pp. 258–270.
[1006] Wendy Larcombe (2011), *supra note* 5, p. 32.
[1007] Kathleen Daly and Brigitte Bouhours (2010), *supra note* 11, p. 579.

measures.[1008] Therefore, legal and policy reforms are necessary but not sufficient measures to address complex problem such as rape.[1009]

6.4 Effect of Victim Characteristics on Rape-Case Processing

6.4.1 Findings

Table 8. Frequency distribution of background variable

Background Variable	Category	Frequency	Percentage
Name of Justice Organ	Addis Ababa Police Commission	8	17.0
	Federal Attorney General	21	44.7
	Federal Court	11	23.4
	Attorney	7	14.9
Division/Bench/Branch	Arada	7	14.9
	Bole	8	17.0
	Kolfe-keranyo	7	14.9
	Nifas-Silk-Lafto	11	23.4
	Yeka	7	14.9
	Attorney at federal courts	7	14.9
Occupation	Police Officer	8	17.0
	Prosecutor	21	44.7
	Judge	7	14.9
	Defense Lawyer (State-funded)	4	8.5
	Attorney (Licensed Lawyer)	7	14.9
Sex	Male	21	44.7
	Female	26	55.3
Age	<= 29.00	16	34.0
	30.00 - 34.00	21	44.7
	35.00+	10	21.3
Marital Status	Never Married	18	38.3

[1008] *Ibid*.
[1009] Ronald J. Berger *et al.* (1988), *supra note* 15, p. 347.

	Married	29	61.7
Educational Level	Certificate	3	6.4
	Diploma	7	14.9
	First Degree	33	70.2
	Second Degree or Above	4	8.5
Experience (in years)	<= 5.00	17	36.2
	6.00 - 8.00	16	34.0
	9.00+	14	29.8

As indicated in Table 6, a total of 47 participants participated in this study, the majority of whom (55.3%) were males and the rest 44.7% were females. Regarding their age, 44.7% of participants were in the age group of 30-34, 34% were under 30 years old whereas the remaining 21.3% were above the age of 34 years old. As to the justice organs, 44.7% of the participants were working at the Federal Attorney General, 23.4% were working at the Federal Court, 17% were working at Addis Ababa Police Commission and the remaining 14.9% were working as attorneys (licensed lawyers at federal courts).

Regarding division or branch offices, the majority of the participants (23.4%) were working at the Nifas-Silk-Lafto Sub-city. Equal proportions of 14.9% were working at the Arada Sub-city and Yekka Sub-city or as attorneys at federal courts. The remaining 17% of the participants were working at the Bole Sub-city division of the Federal First Instance Court or branch office of the Federal Attorney General. With regard to occupation, 44.7% of the participants were working as prosecutors, 17% as police officer, an equal proportion of 14.9% as judges and attorneys while the remaining 8.5%, were working as defense lawyers under the Federal Supreme Court.

Regarding marital status, the majority of the participants (61.7%) were married and the remaining 38.3% were never married. Concerning educational level, 6.4 % of the participants had a certificate and 14.9 % had a diploma while 70.2% and 8.5% of the participants had qualification of a bachelor's degree and a master's degree, respectively. As for their work experience, 36.2% of the participants had an experience of five years and less, 34% had six to ten years whereas the remaining 29.8% had nine years and above work experience.

Table 9. Victim's characteristics included in the final dataset

Categories	Data items
1	The age of the victim
	The employment history of the victim
	The education background of victim (whether the victim is well-educated)
2 Group 1	Prior relationship of the victim and the offender (whether they are strangers or acquaintances)
	Prior sexual relationship between the victim and the offender
	Prior sexual relationship of the victim with another person
	Whether the victim physically resisted the offender during the offence
	Whether the victim screamed during the commission of the offence
2 Group 2	The victim's promptness in reporting the incidence to the police
	Whether the victim was under the influence of alcohol during the commission of the offence
	Whether the victim under the influence of drugs during the commission of the offence
	The victim's history of working in a "disreputable" situation such as "prostitution"
	Whether someone other than the victim reported the incident to the police
2 Group 3	Whether the victim's victim was walking alone late at night in an unsafe neighborhood
	Whether the victim was in a bar alone during the commission of the offence
	Whether the victim was hitchhiking during the commission of the offence
	Whether the victim agreed to accompany the offender to his residence where the offence was committed
	Whether the victim invited the defendant to her residence where offence was committed
3 Group 1	Whether the victim does/does not appear to be upset by the alleged rape committed against her
	The physical unattractiveness of the victim
	The presence/absence of a big discrepancies between the age of the victim and the offender
	The victim's mental health condition during the commission of the offence
	The presence of inconsistencies in the victim's account
3 Group 2	The victim's willingness to cooperate
	The victim's willingness/refusal to submit to a medical examination
	The victim's attempt to preserve the necessary physical evidence
	The presence/absence of physical condition supporting the alleged commission of rape
	The victim's previous history of reporting incidents to the police that did not progress
	The victim's prior history of having had trouble with the police

Victim Characteristics Category One

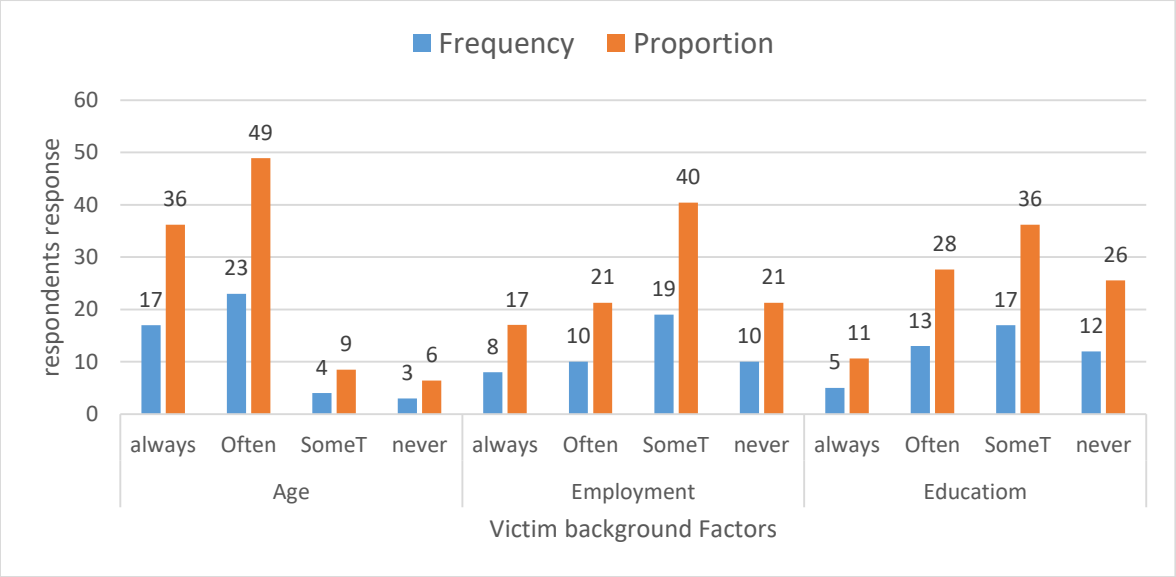

Figure 5. Frequency and proportion of Victim's background factors consideration

The first category of victim characteristics included in the final dataset relates to background factors: age, occupation, and education. The participants were asked how often they consider these background factors while handling rape cases. As Figure 5 shows, victim characteristics such as background factors of age, occupation, and education were considered by the participants and affect rape case decision-making process. However, all factors were not equally considered in rape case decision-making process. Decision makers considered the age of the victim more frequently than her occupation or education. In this respect, 36% of the participants indicated that they 'always' took the age of the victim into account in their decision making and 49% said that they 'often' do so while 17% and 21% of the participants reported that they took the employment background of the victim into account 'always' and 'often', respectively. Education was the least frequently considered background factor, with only 11% and 28% of the participants reporting considering it 'always' and 'often', respectively, in their decision making. . This simple descriptive analysis implied that victim's background characteristics were considered by the key actors in their rape case decision-making. A chi-square analysis of each factor also revealed the extent to which each factor was considered in rape-case decision making (*see* Appendix 3).

Previous studies consistently showed that victim characteristics such as background factors were not only considered in decision making but also they influenced the way in which the key actors attribute blames and credibility to the victims and determined case-processing outcomes (i.e. attrition). For instance, a study by Millsteed and McDonald found that cases involving victims aged between 10 and 17 years old were associated with an increased likelihood that an incident would have a police progression outcome recorded (which did not result in case attrition at the investigation stage).[1010] However, the opposite was true for cases involving adult victims.[1011] Other studies also suggested that young adult victims were less likely than victims in other age groups to have their cases progressed by the police.[1012]

[1010] Melanie Millsteed Cleave McDonald (2017) *Attrition of sexual offence incidents across the Victorian Criminal Justice System*, Melbourne: Crime Statistics Agency, p. 11, available at: https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/01/fd/8d51b2494/20170202_SexualOffenceAttrition_FinalReport.pdf last visited on 10/18/2018.
[1011] *Ibid*.
[1012] Kathleen D. Kelley and Rebecca Campbell (2013) 'Moving On or Dropping Out: Police Processing of Adult Sexual Assault Cases', *Women and Criminal Justice* 23(1), pp. 1-18; Jeffrey W. Spears and Cassia C. Spohn (1996) 'The Genuine Victim and Prosecutors' Charging Decisions in Sexual Assault Cases', *American Journal of Criminal Justice* 20(2), pp. 183-205; and Jeffrey W. Spears and Cassia C. Spohn (1997) 'The Effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases', *Justice Quarterly* 14(3), pp. 501-524.

Victim Characteristics Category Two

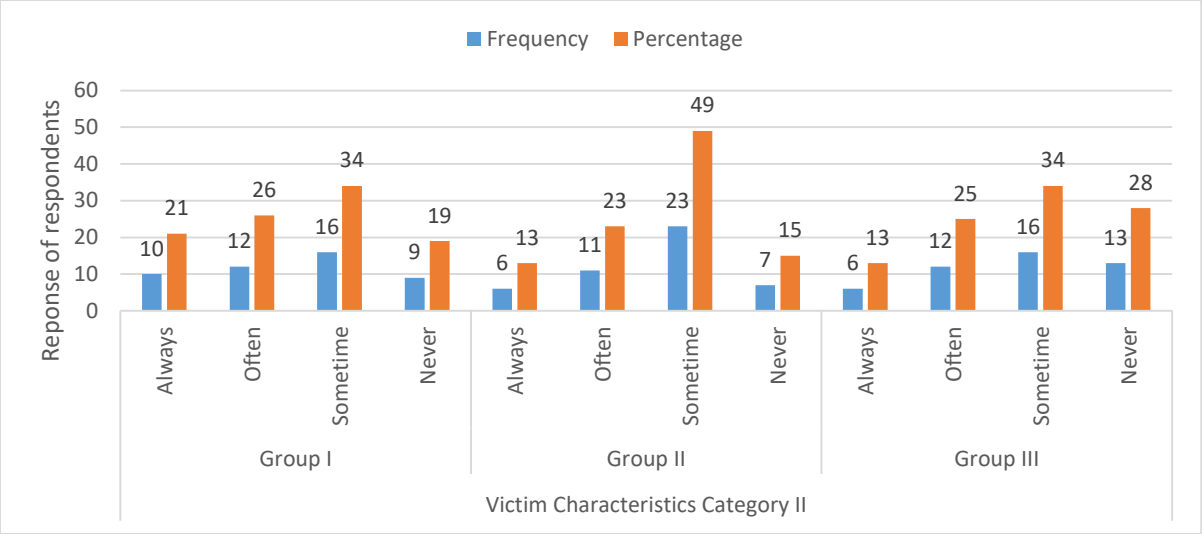

Figure 6. Frequency and proportion of victim characteristics category two consideration

Victim Characteristics Category Two Group One: A second category consists of factors sometimes viewed as leading decision makers to blaming the victim or questioning her credibility. For the purpose of simple descriptive analysis, they have been classified into three groups. The first group of factors include: prior relationship of the victim and the offender (whether they are strangers or acquaintances); prior sexual relationship between the victim and the offender; prior sexual relationship of the victim with another person; whether the victim physically resisted the offender during the offence; and whether the victim screamed during the commission of the offence. As Figure 6 shows, on average, these factors are 'always' considered in decision making by 21% of the participants and 'often' considered by 26% of the participants. Whereas, 34% and 19% of the participants considered them 'sometimes' and 'never', respectively. The majority of the participants took these factors into account at least once, and only a small proportion of the participants (19%) 'never' considered them in decision making. This simple descriptive analysis implied that factors labelled as *Victim Characteristics Category Two Group One* were considered by the key actors in their decision making. A chi-square analysis of each factor also revealed the extent to which each factor was considered (*see* Appendix 3).

As with the factors in the first category, previous studies also revealed that factors included in this group were not only considered in decision making but also they affect attribution of blames and credibility and case-processing outcomes. For instance, a variable of victim–offender relationship was not just associated with decision making but also a main factor which was used to attribute blame and credibility.[1013] Most cases perceived as false reports involve victim and offender with a current or prior relationship.[1014] The key actors within the CJS described reports of rape as real or serious when the offender was a stranger.[1015] A study by Theresa Claire Kelly found that the better the victim and offender know each other and the closer their relationship, the more blame was typically assigned to the victims.[1016] It also found that men and women in acquaintance-rape cases tended to find the offender less responsible.[1017] In Ethiopia also, a study suggested that the key actors within the CJS used victim–offender relationship as a factor to differentiate an ideal victim worth of telling the truth from an incredible victim who was destined to be blamed.[1018]

Beyond attribution of blame and credibility, other studies also found that closer relationships between offenders and victims were associated with an increased rate of attrition.[1019] A study by Millsteed and McDonald, for instance, found that cases involving current and former partners were less likely to pass from the investigation stage to prosecution stage while those involving other

---

[1013] Susan T. Bell *et al.* (1994) 'Understanding Attributions of Blame in Stranger Rape and Date Rape Situations: An Examination of Gender, Race, Identification, and Students' Social Perceptions of Rape Victims', *Journal of Applied Social Psychology* 24(19), pp. 1719–1734; Theresa Claire Kelly (2009) *Judgments and Perceptions of Blame: The Impact of Benevolent Sexism and Rape Type on Attributions of Responsibility in Sexual Assault*, PhD Thesis, University of Toronto; and Niwako Yamawaki (2009) 'The Role of Rape Myth Acceptance and Belief in a Just World on Victim: A Study in Japan', *Psychologia: An International Journal of Psychology in the Orient* 52(3), pp. 163–174.
[1014] Rachel M. Venema (2016) 'Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports', *Journal of Interpersonal Violence* 31(5), pp. 872–899, p. 880.
[1015] *Ibid*, p. 885.
[1016] Theresa Claire Kelly (2009), *supra note* 1013, p. 77.
[1017] *Ibid.*
[1018] Blain Worku (2011), *supra note* 987, p. 56.
[1019] Melanie Millsteed Cleave McDonald (2017), *supra note* 1010; Denise Lievore (2005) 'Prosecutorial Decisions in Adult Sexual Assault Cases', *Trends and Issues in Crime and Criminal Justice* No. 291, Canberra: Australian Institute of Criminology, available at: https://aic.gov.au/publications/tandi/tandi291 last visited on 1/27/2019; Melinda Tasca *et al.* (2012) 'Police Decision Making in Sexual Assault Cases: Predictors of Suspect Identification and Arrest', *Journal of Interpersonal Violence* 28(6), pp. 1157-1177; and Sue Triggs *et al.* (2009), *supra note* 955.

family members and acquaintances were more likely to progress to the next stage.[1020] At the prosecution stage, cases involving victims who were the offender's current partner were less likely to proceed to the trial-court while those involving victims who were strangers to the offender were more likely to proceed to the trial-court.[1021]

Similarly, a study in Ethiopia suggested that victim–offender relationship determines attribution of blame and credibility and case attrition.[1022] In her qualitative study in Addis Ababa, Blain Worku found that "it is very difficult for a woman to get appropriate consideration from the existing system or her words to be believed if she has a previous relationship with the accuse[d] [e]specially that of [a] sexual in nature."[1023] She added that "[a] previous relationship creates doubts on the actors for an existence of consent on the part of the victim. In most of the cases where the victim has a previous sexual relationship with the accused, consent seems to be presumed."[1024] This presumption of consent was irrefutable even by producing direct witnesses or corroborative evidences.[1025] Regarding the effects the factor on case-processing outcome, Blain found that in most cases, "the prosecutor had used victim's relation or acts before the commission of the crime as a sole or additional ground to close a case." [1026] This, in essence, means that the existence of a prior sexual relationship between the victim and the offender arguably decriminalizes a subsequent sexual offence.

The effect of victim–offender relationship goes even beyond the prosecution and conviction stages. According to a study by Frazier and Haney, victim–offender relationship (whether they are strangers or acquaintances) affects the decision to sentence the convict and the gravity of the

[1020] Melanie Millsteed Cleave McDonald (2017), *ibid*, p. 11.
[1021] *Ibid*, p. 18.
[1022] Blain Worku (2011), *supra note* 987, pp. 56 -59.
[1023] *Ibid*, pp. 56-57.
[1024] *Ibid*, p. 57.
[1025] *Ibid*.
[1026] *Ibid*, p. 59.

penalty.[1027] They found that offenders in stranger-rape cases were more than twice as likely to receive prison sentences as the offenders in acquaintance-rape cases (41%).[1028] Similarly, prison sentences were longer in stranger-rape cases than in acquaintance-rape cases, although the difference was only marginally significant.[1029] Offenders in acquaintance-rape cases were also more likely to be placed on probation, to be sentenced to the workhouse, and to receive a better treatment than offenders in stranger-rape cases.[1030]

Other factors included in this group such as whether the victims physically resisted the offender was also used to attribute credibility and blame and affected case attrition. Previous studies found that it was considered in decision making and determined credibility and blame attributions.[1031] For instance, a study by A. R. Grubb and J. Harrower found that the key actors within the CJS were more blaming victims who did not resist the offender and believing of victims who physically resisted.[1032] A study in Ethiopia also suggested that victim's failure to physically resist the offender led to case attrition at the investigation or prosecution stages.[1033]

In Ethiopia, the variable of resistance may not necessarily be an extra-legal factor to be attributed to the key actors' attitudes and subjective assessment of rape cases since it is a constituent element for both forcible rape and sexual assault under the RCC. However, the way the key actors treated the victim that failed to resist the offender shows that the law rather reinforces their biased

---

[1027] Patricia A. Frazier and Beth Haney (1996) 'Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives', *Law and Human Behavior* 20(6), pp. 607-628, p. 619.
[1028] *Ibid.*
[1029] *Ibid.*
[1030] *Ibid.*
[1031] Beverly A. Kopper (1996) 'Gender, Gender Identity, Rape Myth Acceptance, and Time of Initial Resistance on the Perception of Acquaintance Rape Blame and Avoidability', *Sex Roles* 34(1-2), pp. 81–93; R. Lance Shotland and Lynne Goodstein (1983) 'Just Because She Doesn't Want to Doesn't Mean It's Rape: An Experimentally Based Causal Model of the Perception of Rape in a Dating Situation', *Social Psychology Quarterly* 46(3), pp. 220–232; Karen Yescavage (1999) 'Teaching Women a Lesson: Sexually Aggressive and Sexually Nonaggressivemen's Perceptions of Acquaintance and Date Rape', *Violence Against Women* 5(7), pp. 796–812; Rachel M. Venema (2016), *supra note* 1014; and J. Shaw *et al.* (2017) 'Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records', Psychology of Violence 7(4), pp. 602-614.
[1032] A. R. Grubb and J. Harrower (2008) 'Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Aggression and Violent Behavior* 13, pp. 396–405.
[1033] Blain Worku (2011), *supra note* 987, pp. 43-46.

assumptions. The police made exclamations like "You are a big girl, why did not you stop him?" or "Why did you consent to have tea with him?"[1034] These remarks clearly suggest that the officers believe that any victim can resist the offender if she really wants to. By making the victim's resistance an element of forcible rape and sexual assault, the law simply reflects, endorses and reinforces this belief. However, this study identified another related but separate variable included in the final dataset of the present study, namely, verbal resistance as a factor which determines case outcome.[1035] According to Blain, the prosecutor declined to file a charge stating "the victim's failure to scream or shout for help knowing that someone was around to help her."[1036] Although it is not a legal element of forcible rape and sexual assault, verbal resistance is not just associated with decision making but it is used as a factor to determine the victim's credibility.

Victim Characteristics Category Two Group Two: The second group of factors in the second category include: the victim's promptness in reporting the incidence to the police; whether the victim was under the influence of alcohol during the commission of the offence; whether the victim under the influence of drugs during the commission of the offence; the victim's history of working in a "disreputable" situation such as "prostitution"; and whether someone other than the victim reported the incident to the police. As Figure 6 shows, on average, these factors were considered 'always' by 13% of the participants and considered 'often' by 23% of the respondents while 49% and 15% of the respondents reported they considered them 'sometimes' and 'never', respectively. The majority of the respondents took these factors into account at least 'once', and only a small proportion of the respondents (15%) said they 'never' considered them. A chi-square analysis of each factor also revealed the extent to which each factor was considered by the key actors in rape case decision making (*see* Appendix 3).

As with the other variables in the final dataset, previous studies linked factors included in this group such as victim's delay in reporting to attribution of blame and credibility and case

[1034] Gemma Lucy Burgess (2012), *supra note* 617, p. 162.
[1035] Blain Worku (2011), *supra note* 987, p. 46.
[1036] *Ibid.*

attrition.[1037] For instance, a study by Jacqueline Fitzgerald found that progression is positively associated with shorter periods of time between the occurrence of the offence and the victim reporting the incident to the police.[1038] Likewise, other variables such as drunkenness are linked to attribution of blame and credibility and case attrition. Studies demonstrated that observers perceived victims who consume alcohol prior to being assaulted as more responsible for the sexual assault and less credible than they did to rape victims who were not-drunk.[1039] A study by R. A. Schuller and A. Stewart also found that the more the victim was perceived to be drunk, significantly more blame was attributed to the victim and significantly less to the offender.[1040] The more the victim was perceived to be drunk, the less credibility was attributed to the victim.[1041] Other studies linked victims' drunkenness to attrition and suggested that case progression is negatively related to victim drug and/or alcohol use at the time of the incident.[1042]

Other variables in the final dataset such as victim's history of working in a "disreputable" situation such as prostitution was also identified by previous studies as a factor which determined victims' credibility.[1043] For example, a study by A. D. Page found that the police were less likely to believe

---

[1037] Shane D. *et al.* (2013) 'Patterned Characteristics of Continued and Discontinued Sexual Assault Complaints in the Criminal Justice Process', *Current Issues in Criminal Justice* 24(3), pp. 395-417.

[1038] Jacqueline Fitzgerald (2006) 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System', *Contemporary Issues in Crime and Justice*, No. 92, Sydney: NSW Bureau of Crime Statistics, p. 11, available at: https://www.bocsar.nsw.gov.au/Documents/CJB/cjb92.pdf last visited on 1/26/2019; and Shane D. *et al.* (2013), *ibid*.

[1039] Theresa Claire Kelly (2009), *supra note* 1013; Jane Goodman-Delahunty and Kelly Graham (2011) 'The Influence of Victim Intoxication and Victim Attire on Police Response to Sexual Assault', *Journal of Investigative Psychology and Offender Profiling* 8(1), pp. 22–40; R. A. Schuller and A. Stewart (2000) 'Police Responses to Sexual Assault Complaints: The Role of Perpetrator/Complainant Intoxication', *Law and Human Behavior* 24(5), pp. 535-551; D. Richardson and J. L. Campbell (1982) 'The Effect of Alcohol on Attributions of Blame for Rape', *Personality and Social Psychology Bulletin* 8(3), pp. 468–476; C. A. Scronce and K. J. Corcoran (1991) 'Perceptions of Date Rape: Effects of Outcome Information and Victim's Alcohol Consumption', *Addictive Behaviors* 22(5), pp. 577–585; Amy Grubb and Emily Turner (2012), *supra note* 985, p. 448; and C. M. Simms *et al.* (2007) 'Rape Blame as a Function of Alcohol Presence and Resistant Type', *Addictive Behaviors* 32(12), pp. 2766–2776.

[1040] R. A. Schuller and A. Stewart (2000), *ibid*, p. 545.

[1041] *Ibid.*

[1042] R. A. Schuller and A. Stewart (2000), *ibid*; Crocker (2005) 'Regulating Intimacy: Judicial Discourse in Cases of Wife Assault (1970 to 2000)', *Violence Against Women* 11(2), pp. 197-226; and D. Holleran *et al.* (2008) 'Examining Charge Agreement between Police and Prosecutors in Rape Cases', *Crime and Delinquency* 56(3), pp. 385-413.

[1043] B. A. Campbell *et al.* (2015) 'The Determination of Victim Credibility by Adult and Juvenile Sexual Assault Investigators', *Journal of Criminal Justice* 43(1), pp. 29–39; and Rachel M. Venema (2016), *supra note* 1014, p. 880.

victims who were sex workers.[1044] Likewise, a study by Rachel M. Venema indicated that reports of rape by someone involved in prostitution were often perceived as false allegations.[1045]

Victim Characteristics Category Two Group Three: The third group of factors in the final dataset relate to victim's "risk-taking" behavior. They include: whether the victim's victim was walking alone late at night in an unsafe neighborhood; whether the victim was in a bar alone during the offence; whether the victim was hitchhiking during the offence; whether the victim agreed to accompany the offender to his residence where the offence was committed; and whether the victim invited the defendant to her residence where offence was committed. As Figure 6 shows, on average, these factors were considered 'always' by 13% of the participants and considered 'often' by 25% of the respondents while 34% and 28% of the respondents said they considered them 'sometimes' and 'never', respectively. The majority of the respondents took these factors into account in rape case decision-making at least 'once', and a smaller proportion (28%) said they 'never' considered these factors. A chi-square analysis of each factor revealed the extent to which each factor was considered in rape case decision-making (*see* Appendix 3).

Like with the other variables, previous studies also found that victim's "risk-taking" behavior such as walking alone late at night, hitchhiking, accompanying the offender to his residence, inviting him to her residence and being seen at a bar alone determine blame and credibility attribution and case attrition.[1046] A study by Jeffrey W. Spears and Cassia C. Spohn, for instance, identified these variables as elements that distinguish 'genuine' victims from other victims.[1047] Genuine victims were those having a 'good' moral character (for example, no history of drug or alcohol abuse, previous offending, or working in the sex industry); who did not engage in a risk-taking behavior

[1044] A. D. Page (2007) 'Behind the Blue Line: Investigating Police Officers' Attitudes towards Rape' *Journal of Police and Criminal Psychology*, 22(1), pp 22–32.
[1045] Rachel M. Venema (2016), *supra note* 1014, p. 880.
[1046] Jeffrey W. Spears and Cassia C. Spohn (1996), *supra note* 1012, p. 192.
[1047] *Ibid.*

before the offense (walking alone at night, hitchhiking, being seen at a bar alone, going home with the offender); who screamed and physically resisted; and who report the offense immediately.[1048]

Similarly, in her study in Addis Ababa, Blain documented instances where perceived risk-taking behaviors were used to disqualify rape victims from being seen as 'genuine' and determine case-processing outcome.[1049] She used the term 'vulnerability' for what would otherwise be considered as 'risk-taking' behavior. Her study clearly demonstrates that the police and prosecutors believed that rape is a preventable crime if the victim really wants to avoid it by not engaging in 'risk-taking' behavior.[1050] The key actors' believed that the victim, by engaging in a risk-taking behavior, takes the offender to 'the point of no return' where he can no more control his sexual urge.[1051] They took victim's 'risk-taking' behavior as the main factor to determine the criminal nature of the sexual encounter in question.[1052] In Blain's study, risk-taking behavior appeared to be understood by the key actors too broadly as what "a reasonable member of a society might think that a sexual intercourse will come next."[1053] The key actors believed that sexual intercourse will come next, for instance, if the victim accompanies the offender to his home at night.[1054]

[1048] *Ibid.*
[1049] Blain Worku (2011), *supra note* 987, pp. 58-59
[1050] *Ibid*.
[1051] *Ibid*.
[1052] *Ibid*, p. 58.
[1053] *Ibid*.
[1054] *Ibid*, pp. 58-59.

Victim Characteristics Category Three

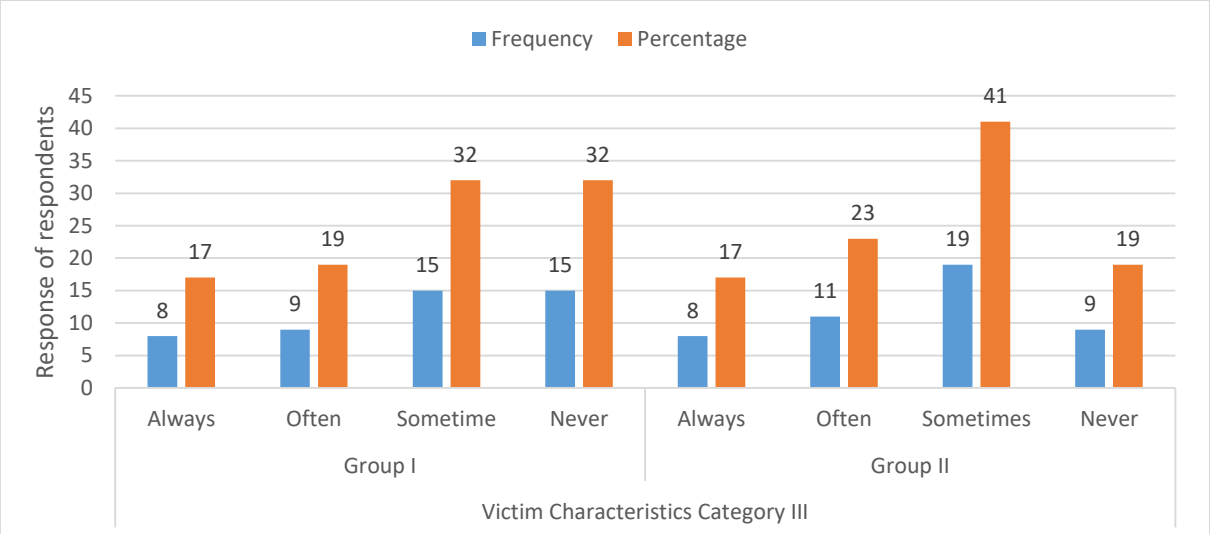

Figure 7. Frequency and proportion of victim characteristics category three consideration

Victim Characteristics Category Three Group One: The first group of factors in this category include: whether the victim does or does not appear to be upset by the alleged rape committed against her; the physical unattractiveness of the victim; the presence or absence of a big discrepancies between the age of the victim and the offender; the victim's mental health condition during the commission of the offence; and the presence of inconsistencies in the victim's account. As Figure 7 shows, on average, these factors were considered 'always' by 17% and of the participants considered 'often' by 19% of the respondents while 32% and 32% of the respondents considered these factors sometimes and never, respectively. The majority of the respondents indicated that they took these factors into account at least 'once', and 32% of the respondents said they 'never' considered them. A chi-square analysis of each factor revealed the extent to which each factor was considered in rape case decision-making (*see* Appendix 3).

Like with the other variables, previous studies also found that factors included in this group such as mental health problems rarely result in prosecution of the offender, determining attrition for

rape cases.[1055] For instance, a study by Marianne Hester OBE found that only about a third (35.2%) of rape cases where the victim had mental health problems resulted in arrest, compared to half of the cases where no such problems were recorded (54.9%).[1056] Similarly, studies indicated that whether victim's account contains inconsistencies or not affect credibility: victims were deemed more credible when their accounts of the rape did not vary, and a consistent narrative was presented by the victim.[1057] In this regard, a study by Rachel M. Venema found that credibility was, among other things, linked to consistency and level of detail provided in the victim's statements.[1058]

Studies also identified other variables included in the final dataset such as the victim's emotional reaction to the incident (whether she does not appear to be upset by the offence or not) as determinants of attribution of credibility.[1059] For instance, in their study, G. C Bollingmo *et al.* found that credibility ratings by the police were affected by the emotions displayed by the victim when giving her statement, these being "congruent" (negative emotion displayed, upset victim), "neutral", or "incongruent" (positive emotions displayed, relaxed victim).[1060] The highest credibility ratings were given to the "congruent" victim in comparison to the "incongruent" victim.[1061] The study suggested that when the victim presents negative emotions and is upset

---

[1055] Marianne Hester OBE (2013) *From Report to Court: Rape Cases and the Criminal Justice System in the North East*, Centre for Gender and Violence Research, Research Commissioned by the Northern Rock Foundation, P. 11, available at: https://research-information.bristol.ac.uk/files/9852501/From_Report_to_Court.pdf last visited on 1/26/2019; J. Harris and S. Grace (1999) *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*, London: Home Office; Susan J. Lea *et al.* (2003), *supra note* 302; and L. Kelly *et al.* (2005), *supra note* 954.
[1056] Marianne Hester OBE (2013), *ibid*, P. 13.
[1057] B. A. Campbell *et al*. (2015), *supra note* 1043; and Rachel M. Venema (2016) *supra note* 1014.
[1058] Rachel M. Venema (2016), *ibid*, p. 882.
[1059] K. Ask and S. Landstrom (2010) 'Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect', *Law and Human Behavior* 34(5), pp. 392–401; Rachel M. Venema (2016), *ibid*; Lucy Maddox *et al.* (2012) 'The Impact of Psychological Consequences of Rape on Rape Case Attrition: The Police Perspective', *Journal of Police and Criminal Psychology* 27(1), pp. 33–44; and Guri C. Bollingmo *et al.* (2008) 'Credibility of the Emotional Witness: A Study of Ratings by Police Investigators', *Psychology, Crime and Law* 14(1), pp. 29–40.
[1060] Guri C. Bollingmo *et al.* (2008), *ibid*, pp. 33-34.
[1061] *Ibid.*

(example, congruent), this matches the stereotypical beliefs that people hold about rape victims and potentially strengthens the impression that the allegation is credible.[1062]

Studies also linked other factors in the final dataset, namely, the victim's physical attractiveness to attribution of blame.[1063] In this regard, a study by Susan J. Lea found that "[r]ape is constructed by both perpetrators and professionals/paraprofessionals largely as a crime of sexual desire perpetrated against younger, attractive women."[1064] It stated that "[f]emales were seen to be (partially) responsible for their rape because they were physically desirable."[1065] Likewise, a study by Marsha B. Jacobson and Paula M. Popovich found that people tend to be biased against the attractive victim, but biased in favor of the attractive offender, making obtaining convictions very difficult.[1066] They also noted that "people see the attractive victim as having played an active role in her own assault and thus hold her at least partially to blame."[1067]

Victim Characteristics Category Three Group Two: The second group include in the third category include: the victim's willingness to cooperate; the victim's willingness or refusal to submit to a medical examination; the victim's attempt to preserve the necessary physical evidence; the presence or absence of physical condition supporting the alleged commission of rape; the victim's previous history of reporting incidents to the police that did not progress; and the victim's prior history of having had trouble with the police. As Figure 7 shows, on average, these factors were considered 'always' by 17% of the participants and considered 'often' by 23% of the respondents while 41% and 19% of the respondents reported that they considered them 'sometimes' and 'never', respectively. The majority of the respondents said that they took these factors into account at least 'once', and only a small proportion of the respondents (19%) said they 'never' considered

---

[1062] *Ibid.*
[1063] Susan J. Lea (2007) 'A Discursive Investigation into Victim Responsibility in Rape', *Feminism Psychology* 17(4), pp. 495-514; and Marsha B. Jacobson and Paula M. Popovich (1983) 'Victim Attractiveness and Perceptions of Responsibility in an Ambiguous Rape Case', *Psychology of Women Quarterly* 8(1), pp. 100-104.
[1064] Susan J. Lea (2007), *ibid*, p. 508.
[1065] *Ibid*, p. 510.
[1066] Marsha B. Jacobson and Paula M. Popovich (1983), *supra note* 1063, p. 100.
[1067] *Ibid*, pp. 100-104.

them. A chi-square analysis of each factor also revealed the extent to which each factor was considered in rape case decision-making (*see* Appendix 3). Like with the other variables in the final dataset, previous studies also indicated that factors included in this group such as whether the victim had reported previous incidents to the police that did not progress,[1068] and whether the victim is uncooperative as factors that determine rape-case processing outcome.[1069]

6.4.2. Respondent's Sex on Victim Characteristics Consideration

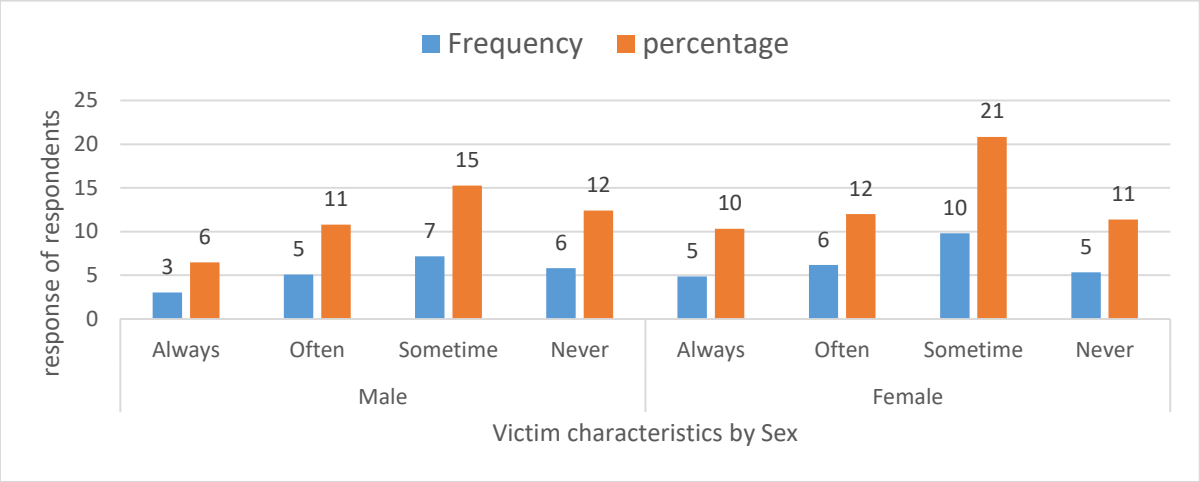

Figure 8. Victim characteristics consideration by respondent's sex

As Figure 8 shows, on average, factors included in the final dataset as victims' characteristics were considered 'always' by 6% of the male participants and 10% of the female participants. They were considered 'often' by 11% of the male participants and 12% of the female participants. They were considered 'sometimes' by 15% of the male participants and 21% of the female participants while they were 'never' considered by 12% of the male participants and 11% of the female participants. However, this descriptive analysis did not inform whether there exist statistically significance differences and, if so, on which specific factor. However, chi-square analysis indicated that there

[1068] Marianne Hester OBE (2013), *supra note* 1055, p. 11.
[1069] W. A. Kerstetter (1990) 'Gateway to Justice: Police and Prosecutorial Response to Sexual Assault against Women', *Journal of Criminal Law and Criminology* 81(2), pp. 267-313, p. 290.

was no statistically significant frequency distribution difference between males and females in their responses, except in two factors: victim's history of working in a 'disreputable' situation and victim's emotional reaction, that is, whether she does not appear to be upset by the offence (*see* Appendix 3).

On the first factor, the participants were asked how often they consider victim's history of working in a 'disreputable' situation such as prostitution. The majority of the participants (46.8% of whom 27.7% are female and 19.1% are male) reported that they 'sometimes' consider victim's work history whereas 23.4% of the participants (19.1% male and 4.3% female) reported that they 'never' consider this factor and 17% (all female) of the participants reported that they 'often' consider victim's working history. The remaining 12.8% of the participants (equal proportion of 6.4% male and female) reported that they 'always' consider victim's working history in a disreputable situation. The chi-square result shows that there was a statistically significant frequency distribution difference between males and females in their response, χ^2 (3, n=47) = 12.8, p = 0.005. There was a statistically significant association between gender and consideration of victim's history of working in rape case decision-making. This means that the proportion of female participants who consider victim's working history is significantly higher than male participants.

Similarly, the participants were asked how often they consider the victim's emotional reaction, that is, whether she does not appear to be upset by the offence while 34% of the participants (25.5% female and 8.5% male) reported that they 'sometimes' consider this factor. 14. 23.4% of participants (14.9% female. 8.5% male) said that they 'often' consider it. On the other hand, more males (17%) than females (4.3%) reported that they 'never' consider it. A chi-square test for independence indicated that there was a significant association between gender and the factor under consideration, χ^2(3, n=47) = 7.98, p = 0.046. The proportion of female participants who consider the factor that *the victim does not appear to be upset by the offence* was significantly higher than male participants. Except in these two cases, there was no statistically significant frequency distribution difference between males and females in their responses (*see* Appendix 3). The findings of the present study, therefore, found that generally both male and female participants

took into account factors included in the final dataset as victim characteristics in rape case decision-making.

The two factors, namely, *the victim's history of working in a disreputable situation* and *the victim's emotional reaction* were more frequently considered in decision making by female than male participants. Previous studies consistently found, however, that male observers blame victims more than female observers do in various situations.[1070] For instance, male observers tend to be more accepting about rape situations,[1071] and minimize the seriousness of rape scenarios more than female observers.[1072] In addition, because male observers may identify with the offender more than female observers, women blamed the offender more than do men.[1073] The more the participants identified with the offender, the less blame they assigned to the offender and the more blame they assigned to the victim.[1074] While the findings of the present study appeared to contradict these findings, it did not examine why female participants more frequently considered the victim's history of working in a "disreputable" situation and the victim's emotional reaction than male participants. For instance, female participants might be considering the victim's working history

[1070] M. Davies *et al.* (2009) 'Effects of Victim Gender, Victim Sexual Orientation, Victim Response and Respondent Gender on Judgements of Blame in a Hypothetical Adolescent Rape', *Legal and Criminological Psychology* 14(2), pp. 331–338; Michelle Davies *et al.* (2009) 'Police Perceptions of Rape as a Function of Victim Gender and Sexuality', *the Police Journal* 82(1), pp. 4–12; Lawrence J. Schneider *et al.* (2009) 'The Role of Gender and Ethnicity in Perceptions of Rape and Its Aftereffects', *Sex Roles* 60(5/6), pp. 410–421; C. M. Simms *et al.* (2007), *supra note* 1039; K. A. Black and D. J. Gold (2008) 'Gender Differences and Socioeconomic Status Biases in Judgments about Blame in Date Rape Scenarios', *Violence and Victims* 23(1), pp. 115–128; A. R. Grubb and J. Harrower (2009) 'Understanding Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Journal of Sexual Aggression* 15(1), pp. 63–81; and C. A. Ewoldt *et al.* (2000) 'Attributions about Rape in a Continuum of Dissolving Marital Relationships', *Journal of Interpersonal Violence* 15(11), pp. 1175–1182.

[1071] Kimberly K. Talbot *et al.* (2010) 'Rape-accepting Attitudes of University Undergraduate Students', *Journal of Forensic Nursing* 6(4), pp. 170–179.

[1072] P. A. Newcombe *et al.* (2008) 'Attributions of Responsibility for Rape: Differences across Familiarity of Situation, Gender, and Acceptance of Rape Myths', *Journal of Applied Social Psychology* 38(7), pp. 1736–1754.

[1073] Arnold S. Kahn *et al.* (2011) 'Gender versus Gender Role in Attributions of Blame for a Sexual Assault', *Journal of Applied Social Psychology* 41(2), pp. 239–251, p. 239.

[1074] *Ibid*, p. 247.

in a disreputable situation like prostitution as a particularly vulnerable group. Thus, further research is required to fully disentangle the findings of the present study.

6.5 Conclusion

There was generally an increased police reporting trend for rape cases following the reforms. However, this increase in police reporting was not correspondingly accompanied by an improved rates of attrition, prosecution and conviction. Generally, the rates of attrition, prosecution and conviction for rape cases were not positively affected by the reforms. Likewise, the reforms did not lead to a shift of focus from the character, reputation and behavior of the victim to the criminal conduct of the offender in rape-case processing within the CJS.

CHAPTER SEVEN: LIMITS OF THE RAPE LAW AND POLICY REFORMS

7.1 Introduction

This chapter deals with one of the main objectives of the present study – assessing the limits of the rape law and policy reforms in advancing the cause of rape victims by eliminating overly restrictive ideas about what counts as rape and an intricate web of stereotypical myths surrounding rape law and its enforcement within the CJS. Accordingly, the first section identifies and critically analyses the main weaknesses of the reforms on substantive law while the second section deals with the rules and practices of procedural and evidentiary laws applicable to rape cases.

7.2 Limits of the 2004 Rape Law Reform

7.2.1 Rape as Crimes against Morality and Chastity

The first weakness of the 2004 rape law reform, though primarily symbolic, is the failure to reclassify sexual offences as crimes against the person or an individual victim. The RCC treats sexual offences as an affront to collective morality and places them under its Book V and Title IV on *Crime Against Morals and the Family*,[1075] specifically, in Chapter I under the heading: *Crimes Against Morals*.[1076] Section I of this chapter also includes sexual offences under the heading of *Injury to Sexual Liberty and Chastity*, along with another section that deals with *Sexual Deviations*,[1077] such as consensual same-sex sexual relation and other indecent acts,[1078] and sexual intercourse with an animal.[1079] The overall structure of parts of the RCC where sexual offences are dealt with shows that morality and chastity or honor are the core protected interests.

[1075] The Revised Criminal Code, *supra note* 21, Book V, Tittle IV.
[1076] *Ibid*, Part II, Book V, Title IV, Chapter I.
[1077] *Ibid*, Part II, Book V, Title IV, Chapter I, Section II.
[1078] *Ibid*, Article 629.
[1079] *Ibid*, Article 633.

Although sexual liberty is mentioned along with chastity in the legal text, the law does not seriously take other rights and interests such as personal security or integrity, sexual self-determination, and sexual security and discretion. The word *chastity* pervaded in many provisions of the RCC. Even cross-references to the part of the RCC on sexual offences have been made by other provisions clearly, indicated that chastity was what the law intended to protect.[1080] This is particularly true where the victims are minors.[1081] Thus, under the law, values such as honor, social decency, virginity, chastity, and good morals prevail over values such as the mental and physical integrity of the woman and her sexual self-determination.[1082] However, the primary harms of acts of sexual violence are not injuries to the woman's honor, social decency, virginity, chastity, and good morals.[1083] The wrong of acts of sexual violence, as Joan McGregor noted, "consist of violations of personal integrity, identity and dignity, because it touches one of the most intimate aspects of the human being."[1084] According to M. Frye and C. Shafer, "[w]hether it is the rapist's intention or not, being raped conveys for the woman the message that she is a being without respect, that she is not a person."[1085] Ann J. Cahill also maintained that "rape must be understood fundamentally […] as an affront to the embodied subject […] a sexually specific act that destroys (if only temporarily) the intersubjective, embodied agency and therefore personhood of a woman."[1086] Michelle J. Anderson further noted that rape is not just the denial of sexual autonomy, but also "sexually invasive dehumanization."[1087]

[1080] *See for e.g., ibid,* Article 660(3). (Stating that "[i]n cases where a crime of indecent behaviour between relatives (Art. 655), is committed simultaneously with a crime against chastity (Arts. 622 - 625, 627 and 628, 629-631, and 639), the relevant provisions shall apply concurrently.")
[1081] *See for e.g., ibid*, Article 660 and Article 661.
[1082] IACHR, Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section IV, Conclusions, para 4.
[1083] Maria Eriksson (2010), *supra note* 515, p. 85.
[1084] Joan McGregor (2005) *Is It Rape?: On Acquaintance Rape and Taking Women's Consent Seriously*, Hampshire, England: Ashgate Publishing, p. 223.
[1085] M. Frye and C. Shafer (1977) 'Rape and Respect', in M. Vetterling-Braggin, F. Elliston and J. English (eds) *Feminism and Philosophy*, Savage, MD: Rowman and Littlefield, pp. 341-342.
[1086] Ann J. Cahill (2001), *supra note* 738, p. 13
[1087] Michelle J. Anderson (2005) 'All-American Rape', *St. John's Law Review* 79(3), pp. 625–644, p. 643.

The African Regional Human Rights Jurisprudence shared similar underlying assumptions. For instance, in 2007, the EWLA and Equality Now filed a complaint at the African Commission on Human and Peoples' Rights (the Commission) on behalf of Woineshet Zebene, victim of abduction and rape, claiming a violation of her rights under the ACHPR. They alleged violations of various provisions of the ACHPR on the right to equal protection under the law, protection from discrimination against women, and integrity and security of the person, including freedom from cruel, inhumane and degrading treatment.[1088] After settling preliminary procedural matters, the Commission heard the merits of the case and passed its final ruling on November 2015. In its ruling, it stated that "by rape, the victim is treated as a mere object of sexual gratification against his or her will and conscience. The victim is treated without regard for the personal autonomy and control over what happens to his or her body."[1089] The Commission adds, "[b]y rape, the personal volition of the victim is gravely subverted and disregarded, and the victim is reduced from being a human being who has innate worth, value, significance and personal volition, to a mere object by which the perpetrator can meet his or her sadistic sexual urges."[1090]

According to the Commission, though rape is not listed under Article 5 of the ACHPR on right to respect for dignity and prohibition of torture, cruel, inhuman and degrading treatment, it is a grave violation of human rights, often resulting in "unimaginable mental anguish."[1091] It also held that the Ethiopian government's failure to take measures to prevent abduction and rape and investigate and punish the offenders violated several obligations under the ACHPR including the rights to integrity of her person, dignity, liberty and security of her person, protection from inhuman and degrading treatment, have her cause heard, and protection under the law.[1092]

Had the law really sought to protect the rights to integrity of person, dignity, liberty and security of person including protection from inhumane and degrading treatment as its interest, the RCC

[1088] African Commission on Human and Peoples' Rights: Communication 341/2007, *supra note* 709, para. 14
[1089] *Ibid*, para. 120.
[1090] *Ibid*.
[1091] *Ibid*.
[1092] *Ibid*, para. 139.

ought to have reclassified sexual offences as crimes against an individual victim, as the first symbolic step in recognizing the wrong of acts of sexual violence. As Susan Brownmiller stated, "[t]he crime of rape must be totally separated from all traditional concepts of chastity, for the very meaning of chastity presupposes that it is a woman's duty (but not a man's) to refrain from sex outside matrimonial union. That sexual activity renders a woman 'unchaste' is a totally male view of the female as his pure vessel."[1093] The symbolic importance of the reclassification would be that it acknowledges the personal harm suffered by the individual victims, and recognizes that victims, predominantly women, would no longer be used to further societal understanding of sexual morality.[1094]

By maintaining sexual offences as an affront to morality, however, the law premises itself on stereotypical concepts about women's role in society and values like honor, decency and chastity. According to Equality Now, classifying sexual offences "as a moral crime rather than one of violence and assault of bodily integrity puts the focus as much on the complainant as on the perpetrator, ascribing to her values to be considered when judging him. Such a definition positions the woman or girl as the repository of the so-called honor of her community rather than putting the opprobrium squarely where it should lie – on the perpetrator."[1095]

Reclassification would have also been a recognition that "[r]ape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behavior and values and generating fear."[1096] Beyond the symbolic ramification, viewing rape as an affront to collective morality sets obstacles for effective investigation and prosecution of rape cases. As Yakin Ertürk noted, "[w]hen rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is

---

[1093] Susan Brownmiller (1975), *supra note* 181, p. 386.
[1094] Rachel A. Van Cleave (2008) 'Renaissance Redux? Chastity and Punishment in Italian Rape Law', *Ohio State Journal of Criminal Law* 6(1), pp. 335-350.
[1095] Equality Now (2017), *supra note* 1, p. 21.
[1096] Martin Wright (1996) *Justice for Victims and Offenders: A Restorative Response to Crime*, 2nd ed, Winchester: Waterside Press, p. 250.

often viewed by the community as 'dirty' or 'spoiled'. Consequently, many women will neither report nor discuss the violence that has been perpetrated against them."[1097] It may also place the woman's morality and her sexual behavior before the key actors for assessment and decision making.[1098] If the victim is sexually active, she may be presumed to have consented.[1099] It will also reinforce the stereotype that women should be chaste, with possible inferences that an unchaste woman has a propensity to consent to sex and must have consented.

Evidence also suggests that key actors undermine the credibility of the victims where a forensic medical examination report indicated either the victim is no longer a virgin or fails to precisely indicate the date of penetration.[1100] This was also a concern of the present researcher's key informants from advocacy groups. According to Advocate One, "[w]hen rape was considered as crime against morality, it sets obstacles for prosecution. When we see rape-case files at police stations, the question often raised was whether or not the victim lost her virginity. A lot of rape files closed at the investigation stage involve victims who were considered to be not virgin."[1101] Likewise, Advocate Two, linked the classification of sexual offences as crime against collective morality or chastity with the inadequate investigative response from the police, and pointed out that "[t]he police often link rape with being chaste, which means being virgin, and therefore become reluctant to investigate cases that they thought involve unchaste victims or where a medical evidence suggests that victim's virginity is intact or undamaged."[1102]

[1097] The United Nations Human Rights Council (2009) *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on violence against women, its causes and consequences,* Yakin Ertürk, *Addendum: 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences* (1994-2009) - *A Critical Review,* A/HRC/11/6/Add.5, para. 45.
[1098] Amnesty International (2004), *supra note* 71, p. 84.
[1099] *Ibid.*
[1100] Theresa Rouger (2009), *supra note* 293, p. 36; Sinidu Fekadu (2008), *supra note* 2690, pp. 18- 23; Indrawatie Biseswar (2011), *supra note* 28, p. 185; and The African Child Policy Forum (2011) *Accessing Justice: The Experience of ACPF's Children's Legal Protection Centr*e, Addis Ababa, p. 6, available at: http://www.africanchildforum.org/site/images/stories/Accessing_Justice_Final_Edited_on_July_7_2011.pdf last visited on 9/12/2018.
[1101] Interview with Advocate One, *supra note* 657.
[1102] *Ibid.*

For all the right reasons, sexual offences should have been reclassified as crime against an individual person. This kind of reclassification has been introduced in other jurisdictions. For instance, one aspect of the 1996 rape law reforms in Italy, a jurisdiction with a civil law tradition like Ethiopia, was a reclassification of sexual offenses from "crimes against public morality and decency" to "crimes against the person."[1103] Likewise, rape has been reclassified from a "Crime of Lasciviousness" to an "Offence against Liberty" in Poland, and from a "Crime against Chastity" to a "Crime against Persons," in the Philippines.[1104] Generally, after reviewing world wide data on rape law reforms between 1945 and 2005, David John Frank *et al.* concluded that "rape increasingly came to be regarded as a fundamental violation of individual human liberty, rather than an affront to collective morality."[1105]

Similar reform must be introduced to the RCC to reclassify sexual offences as crimes directed at persons against whom the acts are perpetrated, who are predominately women. This would be a recognition that sexual offences constitute a profound violation of women's bodily integrity, security, and freedom from discrimination.[1106] The reclassification would also make the Ethiopian rape law in conformity with the international human rights standards. According to the CEDAW Committee, sexual offences should be defined as crimes of violence against persons and not as crimes against morality. In its General Recommendation No. 35, it reiterated and called upon the state to "[e]nsure that sexual assault, including rape, is characterized as a crime against women's right to personal security and their physical, sexual and psychological integrity."[1107] Thus, it is the obligation of the state under the international human rights standards to reclassify sexual offences as crimes against an individual victim.

[1103] Rachel A. Van Cleave (2008), *supra note* 1094.
[1104] David John Frank *et al.* (2009), *supra note* 19, p. 276.
[1105] *Ibid*, p. 285.
[1106] Susana T. Fried (2003) 'Violence Against Women', *Violence, Health, and Human Rights* 6(2), pp. 88-111, pp. 88-96.
[1107] General Recommendation No. 35, *supra note* 66, para. 33.

7.2.2 A Dichotomous Approach on Sexual Acts

Taking a cursory look at the manner in which the RCC's provisions on rape frames its object shows that it maintains the overly restrictive definition of sexual acts. Sexual acts for forcible rape (Article 620), rape against a man by a woman (Article 621), and statutory rape (Article 626(1) and (2) and Article 627(1) and (2)) have not included all forms of sexual acts or penetrations. Rather, they limit themselves only to sexual intercourse in heterosexual sexual interactions. They emphasize on heterosexual rape, which is defined by a penile penetration of the vagina either by a man against a woman (for forceful rape under Article 620 and for statutory rape under Article 626(1) and Article 627(1)) or by a woman against a man (for forceful rape under Article 621 and for statutory rape under Article 626(2) and Article 627(2)). Thus, the RCC does not expand the definition of sexual acts beyond sexual intercourse (vaginal-penile penetration) to include other forms of sexual conducts such as anal or oral penetration, penetration by sticks, fingers or other objects.[1108] Under the RCC, sexual acts other than sexual intercourse (vaginal-penile penetration) constitute supposedly less serious offences categorically referred as "an act corresponding to the sexual act or any other indecent act."[1109]

Particularly, the definition of forcible rape under Article 620 of the RCC leaves instances of forced penile-oral, penile-anal, finger-vaginal or object-vaginal sex out of its ambit. The impact of sexual offences involving sexual acts other than penile-vaginal intercourse is viewed as less traumatic as they are sanctioned with a lenient or lesser punishment.[1110] Sexual offences involving sexual acts other than penile-vaginal intercourse are treated not as sexual acts but acts "corresponding to the sexual act or any other indecent act."[1111] Regarding sexual acts, the RCC adopts a dichotomous approach: sexual intercourse (vaginal-penile penetration) and an act corresponding to the sexual act or any other indecent act. Commenting on this dichotomy, Tsehai Wada noted that it "is the

[1108] The Revised Criminal Code, *supra note* 21, Article 620(1); and the Penal Code, *supra note* 34, Article 589.
[1109] The Revised Criminal Code, *ibid*, Article 622, Article 626 (3) and Article 627 (3).
[1110] *Ibid*, Article 620, Article 622, Article 626(1) and (3), Article 627(1) and (3).
[1111] Tsehai Wada (2012), *supra note* 412, p. 210.

lawmaker's fixation on pregnancy which may be brought about by genital copulation alone but not through the other forms."[1112] He added, "[s]uch fixation can, however, be criticized for failing to take into account the trauma that follows from the other forms of rape which may be equally or even more disastrous than rape committed through genital organs."[1113] The dichotomous approach has highly influenced the sentencing practices of the courts, leading to what can be called a *de facto* decriminalization of sexual offences which do not involve sexual intercourse.

For instance, in a criminal File Number 124398, Lideta Division, Federal First Instance Court, the prosecutor charged a man on two counts of sexual offences: oral rape (fellatio) of a 5-year-old girl, and oral rape of a 6-year-old girl, in two separate incidents.[1114] The offender was charged for violating of Article 627(3) of the RCC, which stipulates that "[w]however performs an act corresponding to the sexual act or any other indecent act upon a minor, of the opposite sex who is between the ages of thirteen and eighteen years, induces him to perform such an act, or deliberately performs such an act in his presence, is punishable with simple imprisonment *not less than three months or with rigorous imprisonment not exceeding five years*."[1115] For the two counts of sexual offence, the offender was convicted and sentenced for a 20 days simple imprisonment. Such a prison term amounts to setting free the convicted offender since the court ordered that the sentence shall be enforced after deducting prison terms he spent in detention before he was convicted. It is a *de facto* decriminalization of rape that does not involve sexual acts other than sexual intercourse.

In a criminal File Number 210406, Lideta Division, Federal First Instance Court, the prosecutor charged a man on two counts of offence: finger-raping an 8-year-old girl and a 3-year-old girl, in separate incidents.[1116] The offender was charged for violating Article 627(3) of the RCC. For the two counts, he was convicted and sentenced for a one year and two months' rigorous

---

[1112] *Ibid.*
[1113] *Ibid.*
[1114] *Public Prosecutor v. Sintayehu Gebriela*, Criminal File Number 124398, Lideta Division, Federal First Instance Court.
[1115] The Revised Criminal Code, *supra note* 21, Article 627(3). Emphasis mine.
[1116] *Public Prosecutor v. Melaku Nigusie*, Criminal File Number 210406, Lideta Division, Federal First Instance Court.

imprisonment. For this sexual offence, the law sets the punishment to be a simple imprisonment not less than three months or with a rigorous imprisonment not exceeding five years (Article 627 (3) while it sets a minimum imprisonment term of 13 years for sexual offences involving sexual intercourse. Even such a dichotomous legal approach cannot justify a one year and two months' rigorous imprisonment for two counts of offence.

Likewise, in a criminal File Number 225827, Lideta Division, Federal First Instance Court, the prosecutor charged the offender for an attempted rape.[1117] The charge was brought against the offender for an attempted violation of Article 627(1). For this offence, the law sets a minimum imprisonment term of 13 years and a maximum 25 years' rigorous imprisonment. The forensic medical examination report indicated that the hymeneal status of the victim was 'not ruptured', which is normally the case for attempted rape. The prosecutor's charge for the attempted (statutory) rape is also consistent with this medical forensic evidence. However, the court, in its own motion, blurred the differences between a more serious offence of attempted (statutory) rape (Article 627(1)) and a less serious offence of an act corresponding to the sexual act (Article 627(3)). It then gave the benefit of the doubt to the offender, stating that the charge did not show whether the offender intended to rape the victim (Article 627(1)) or to perform an act corresponding to the sexual act (Article 627(3)). So, the offender was convicted for a less serious sexual offence under Article 627(3) instead of an attempted (statutory) rape and sentenced just for eight months' simple imprisonment.

According to Gay J. McDougall, the UN Special Rapporteur on Sexual Slavery, "the historic focus on the act of penetration largely derives from a male preoccupation with assuring women's chastity and ascertaining paternity of children."[1118] It is rooted in the patriarchal conception of women's

---

[1117] *Public Prosecutor v. Natna'el Gonfa Bedhanie*, Criminal File Number 225827, Lideta Division, Federal First Instance Court.

[1118] UN Sub-Commission on the Promotion and Protection of Human Rights, *Systematic rape, sexual slavery and slavery-like practices during armed conflict: final report /submitted by Gay J. McDougall, Special Rapporteur*, 22 June 1998, E/CN.4/Sub.2/1998/13, para. 24.

sexuality which affirms sexuality as heterosexual, penetrative and procreative,[1119] while simultaneously revealing notions of decent or natural sex as other forms of sexual assault are defined categorically as crimes of indecent assault.[1120] In addition, women's sexuality was seen as a commodity, valued according to virginity or chastity and accrued to the benefit of her father, husband or family.[1121] Historically, rape laws were primarily concerned with the theft of a woman's virginity.[1122] If a woman is a virgin, then she still belongs to her father and a crime has been committed.[1123] If she is not married and is not a virgin, then she belongs to no particular man and a crime has not been committed.[1124] Thus, the vaginal-penile penetration element was preoccupied with the protection of virgins from rape and forced marriage.[1125] According to Catharine A. MacKinnon, this element "centers upon one way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy (exclusive access by one man) than against women's sexual dignity or intimate integrity."[1126]

This explanation seems more fitting to Ethiopia where control over women's sexuality to make sure that she will be exclusively accessed by one man is still continues to be a matter of great concern. In many cultures, girls are obliged to remain virgin until the date their marriage.[1127] Even the term "girl" is not understood as an unmarried woman, rather it is linked to the notion of virginity. Engaging in pre-marital sex will endanger the security of a woman, regardless of her age.[1128] The fact that a woman engaged in pre-marital sex will also degrade her parents' honor.[1129] If she is found not to be a virgin on the date her marriage, she will not only be expelled from the

---

[1119] Catharine A. Mackinnon (1983), *supra note* 13, p. 647; and Mikki van Zyl (1990), *supra note* 358, p. 19.
[1120] Mikki van Zyl (1990), *ibid*. *See also* the Revised Criminal Code, *supra note* 21, Article 622 *et seq.*
[1121] እሸቱ ድባዑ (1997), *supra note* 315, p. 62; Andrea Dworkin (1976), *supra note* 188, p. 31; and Erin G. Palmer (2004), *supra note* 378, pp. 1266-1268.
[1122] Jennifer Temkin (1987) *Rape and the Legal Process*, London: Sweet and Maxwell, p. 57.
[1123] Andrea Dworkin (1976), *supra note* 188, P. 31.
[1124] *Ibid.*
[1125] Jennifer Temkin (1982), *supra note* 6, p. 412.
[1126] Catharine A. MacKinnon (1997b), *supra note* 382, p. 420; Catharine A. Mackinnon (1983), *supra note* 13, p. 647; and Andrea Dworkin (1976), *supra note* 188, p. 30.
[1127] እሸቱ ድባዑ (1997), *supra note* 315, pp. 61-62.
[1128] *Ibid.*
[1129] *Ibid.*

new family with humiliations, but also, at least in some cultures, beaten, paper-sprayed and even her genital might be burned.[1130] She will not be welcomed back even by her parents. A study by Meron Zeleke Eresso also indicated that the high value attached to virginity leads to child marriage, forcing underage girls to marry early to avoid premarital sex and the consequent loss of virginity.[1131] It highlighted the nexus between priced virginity and child marriage, which is a form of sexual violence as it involves, almost always, statutory rape. While control over women's sexuality is culturally sanctioned, the law, by focusing on vaginal-penile penetration (or, at least, by considering such an act as a more serious and traumatic offence than offences involving other sexual acts), advances the legal interests of patriarchs, reinforces males' control of over women's sexuality,[1132] and tries to, as Donald A. Dripps noted, "strike a balance between the interests of males-in-possession and their predatory counterparts."[1133]

By confining forcible rape to vaginal-penile penetration, the law assumes that greater harm is caused from sexual intercourse than other forms of sexual acts and attached a lesser penalty to the latter.[1134] By doing so, it trivializes victims' account of sexual aggression through other forms of sexual act. However, Radhika Coomaraswamy, the UN Special Rapporteur on Violence against Women, noted that "frequently the offender is unable or chooses not to penetrate his victim in this manner, but may force her to perform acts of oral sex, penetrate her with other parts of the body or other objects or demean her in other ways."[1135] In Ethiopia, the practitioners appeared to have subscribed to the legal approach. For instance, a key informant of the present study, Prosecutor Two, stated "I think it is appropriate that the law separates sexual intercourse and other forms of sexual acts. That is because sexual intercourse is a separate act in its own, but an act corresponding to sexual act is similar to sexual act but not identical to sexual intercourse. The separation

---

[1130] *Ibid.*
[1131] Meron Zeleke Eresso (2018): Sisters on the move: Ethiopia's gendered labor Migration milieu, Canadian Journal of African Studies / Revue canadienne des études africaines, p. 9. DOI: 10.1080/00083968.2018.1519451
[1132] Susan Brownmiller (1975), *supra note* 181, pp. 6-22; Jennifer Temkin (1982), *supra note* 6, p. 400; and Donald A. Dripps (1992), *supra note* 359, p. 1781.
[1133] Donald A. Dripps (1992), *ibid*, p. 1782.
[1134] The Revised Criminal Code, *supra note* 21, Article 620 and Article 622.
[1135] The United Nations Commission on Human Rights (1994), *supra note* 512, para. 180.

influences the seriousness of our responses to each crime and the severity of the punishment attached to it. So, in my opinion, it is appropriate that the law differentiates these crimes."[1136] Yet, a woman's experience of rape is an invasion of her body, regardless of which orifice was used, or which object penetrated her.[1137] The victim experiences similar physical scar and psychological trauma from forced anal or oral penetration or sexual penetration by instruments other than penis.[1138] As Susan Brownmiller suggested, "[a]ll acts of sex forced on unwilling victims deserve to be treated in concept as equally grave offenses in the eyes of the law, for the avenue of penetration is less significant than the intention to degrade."[1139]

The dichotomous approach adopted by the law may also lead the key actors to focus on examining the victim's sexual history to verify whether she had engaged in prior sexual activities instead of examining whether she is or is not sexually violated. In this regard, informants from advocacy groups were asked whether this approach has ever been an issue, and they responded that it in fact is another problematic issue.[1140] According to Advocate Two, "[i]t leads the police to see sexual acts which do not involve sexual intercourse and affect the victim's chastity [virginity] as too minor problem to deserve serious investigative responses."[1141] Likewise, Advocate One noted that "[e]ven where cases were investigated and prosecuted and the offenders were convicted, the approach often leads to inadequate sentencing where the criminal conducts did not involve sexual intercourse."[1142] Various rape cases also substantiate such a view. For instance, in a criminal File Number 81270 in Nifas Silk Lafto Division, Federal First Instance Court, the prosecutor charged a 24-years-old man with alternative offence of (statutory) rape under Article 627(1), or an act

---

[1136] Interview with Prosecutor Two, *supra note* 849.
[1137] Mikki van Zyl (1990), *supra note* 358, p. 19.
[1138] Home Office Review of Sex Offences (2000) *Setting the Boundaries: Reforming the law on sex offences,* Volume 1, London: Home Office Communication Directorate, p. 15, available at: http://webarchive.nationalarchives.gov.uk/%2B/:/www.homeoffice.gov.uk/documents/vol1main.pdf%3Fview%3DBinary last visited 9/12/2018.
[1139] Susan Brownmiller (1975), *supra note* 181, p. 378.
[1140] Interview with Advocate One, *supra note* 657; and Interview with Advocate Two, *supra note* 648.
[1141] Interview with Advocate Two, *ibid*.
[1142] Interview with Advocate One, *supra note* 657.

corresponding to the sexual act under Article 627(3) committed against a 9-years-old girl.[1143] The forensic medical examination report described the hymeneal status of the victim as "ruptured but not recently." Other prosecutor's witnesses and the victim herself testified that the incident came to the attention of her parents and was then reported to the police long after it actually had occurred.

The victim testified that the offender touched her sexual organ, using a rather informal Amharic term *babboyen* (literary means "my bread"), a term often used by little girls to refer to that private part of their body, mostly in a family setting. When further asked, she clarified that he touched her body part she used for urinating but she was too afraid to say that he penetrated her. Immediately after the incident, she told to her little friend that she was raped. Her 6-years-old friend who was named as the prosecutor's witness testified that the victim told her that a white fluid was discharged from her genital during the assault. However, the court did not piece together all these facts to reconstruct what really happened to the little girl. Nor did it grasp that the victim was too afraid to precisely name her private part that was penetrated. The fact that the incident occurred long before it actually came to her parent's attention, the forensic medical examination report's description of the hymeneal status as "ruptured but not recently", and the hearsay testimony that a (white) fluid was discharged did not lead to the conclusion that she had been raped. Rather, the court drew its conclusion from the testimony of the victim that the offender touched her private part, and from the forensic medical examination report's description of the hymeneal status as "ruptured but not recently" though the latter proved penetration. It convicted the offender for a lessor sexual offence involving an act corresponding to sexual intercourse and sentenced him just for a one-year's rigorous imprisonment. These cases illustrate how the law reinforces the view that "once a woman has had sex, she loses anything when subsequently raped."[1144]

The dichotomous legal approach on sexual acts may pose real difficulties for adult victims who had prior sexual conduct since the key actors, including the defense lawyers, have often equated

---

[1143] *Public Prosecutor v. Temesgen Abatneh Desalegn*, Criminal File Number 81270, Nifas-Silk-Lafto Division, Federal First Instance Court.
[1144] Catharine A. Mackinnon (1983), *supra note* 13, p. 647.

forcible rape with vaginal-penile penetration leading to the loss of virginity. For this reason, the Cassation Division of the Federal Supreme Court, the highest appellate bench in Ethiopia, passed a binding decision on October 15, 2015 in File Number 107166, interpreting Article 627(1) of the RCC.[1145] In this case, the offender was charged for raping an 8-year-old girl. He was convicted and sentenced. The forensic medical examination report described the hymeneal status of the victim as "intact, not raptured." But, other evidences proved that there were bruises in her womb, suggesting sexual penetration. The victim herself also testified that she had been penetrated. The offender's lawyer argued that since the medical forensic evidence proved that the hymen was intact, it was impossible to conclude that (statutory) rape was committed. He took the case from the first instance court to the highest appellate court. In its decision, the Cassation Division stated that whether the hymeneal status is intact or raptured is not the element of Article 627(1) of the RCC. This interpretation, by implication, applies to all sexual offences which include sexual intercourse as their defining element. Had the law abolished its dichotomous approach on sexual acts and included all forms of sexual acts in one category with equal gravity, the obsession on ascertaining the victim's hymeneal status would have been avoided.

In addition, bringing all forms sexual acts into the same scope of legal sanction would be a useful blueprint to dispel a narrower interpretation of rape by the key actors within the CJS. On the other hand, where the law emphasized on penetrative-heterosexual rape, the key actors must determine whether there was any penetration by the genitalia of either the victim or the offender, in which case the crime would be one involving sexual intercourse. To make this decision, the key actors have to ask the victim humiliating questions.[1146] From the investigation to the trial stages, the victim must describe in detail every intimate part of her body that was violated, using words which, under normal circumstances, are often embarrassing. According to Sue Lees, "[t]he paradox is that the very use of such language, referring to private sexual parts of the anatomy, is sufficient to render a woman 'unrespectable.' Many women never say such words even in the privacy of their

[1145] *Oromia Justice Office v. Mekuanint Girma*, File Number 107166, Cassation Division, Federal Supreme Court.
[1146] Rachel A. Van Cleave (2008) *supra note* 1094.

homes, let alone to strangers in open court. Except in pornography, the kind of details described in rape cases would never be articulated."[1147] In Ethiopia, as Tsehai Wada noted, "sexual matters are so private, so much so that, individuals including those that may be considered as 'modern and educated' by the society's standard, are not free to discuss such matters with anyone except with close associates."[1148]

However, throughout the proceedings, rape victims are often required to describe in precise detail not only every intimate parts of their body that was violated but also intimate parts of the offender's body used to sexual penetration. For instance, in criminal File Number 174650, in Lideta Division, Federal First Instance Court, the prosecutor charged a 53-years-old man for raping his domestic assistant.[1149] At the trial, the victim, as one of the prosecutor's witnesses, tried to describe her private body parts and that of the offender, using what she considered less humiliating words. However, she was repeatedly asked to name which organs of the offender and hers were involved in the sexual encounter. The examiner did not stop asking her when she said he penetrated her womb and she was forced to precisely name the private body part that was penetrated and used to penetrate, in precise terms. Whenever she hesitated to name, questions like "Did he use his penis or finger?" were repeatedly posed to her. In his rape trial observations, the present researcher also noted that rape victims were asked to name, using precise terms, body parts that were penetrated and used to penetrate so that the court could determine whether the case involved sexual intercourse or other "less" serious sexual acts. Asking this kind of question repeatedly at the trial often results in a re-victimization of the victim.[1150] The re-victimization could have been reduced had the law included all forms of criminal sexual acts into the same scope of gravity in general and instead graded the offence by the degree of violence used rather than the orifice penetrated

[1147] Sue Lees (1993) 'Judicial Rape', *Women's Studies International Forum* 16(1), pp. 11-36, p. 15.
[1148] Tsehai Wada (2012), *supra note* 412, pp. 224-225; and Indrawatie Biseswar (2011), *supra note* 28, p. 206.
[1149] *Public Prosecutor v. Moges Wendimageng Metaferiya*, Criminal File Number 174650, Lideta Division, Federal First Instance Court.
[1150] Rachel A. Van Cleave (2008) *supra note* 1094.

and the means used for penetration. It could also minimize an unnecessarily detailed inquiry during trial to specific sexual acts such as penetration.[1151]

On the other hand, a definition of rape that focuses on penetration diverts attention away from the coercive and life-threatening aspect of rape.[1152] Recognizing this, many jurisdictions have abolished the offence of rape which specifically required the penetration of vagina by penis and replaced by the offence of sexual assault which refers to penetration of any orifice of the victim.[1153] As Sue Lees noted, "[t]he offence of rape which specifically required penetration of the penis by the vagina was abolished and replaced by the offence of sexual assault which refers to penetration of any orifice of the victim."[1154] The reformed law has three tiers and is graded by the degree of violence used: *sexual assault, sexual assault with threats of bodily harm, and aggravated sexual assault*.[1155] This reformulation is also a recognition that rape as an offence pertains to violence rather than sex.[1156] It emphasizes on the demeaning and violent aspects of rape rather than focusing purely on its sexual aspect.[1157]

Similar reforms have been introduced in some African countries. For instance, the reform in Zimbabwe broadened the range of non-consensual sexual acts that fall under the umbrella of rape.[1158] Prior to the reform, the scope of the crime of rape was limited to non-consensual vaginal intercourse (vaginal-penile penetration) under Zimbabwean rape law.[1159] However, under Article 8(1) of the 2001 Sexual Offences Act, rape is defined as an act by "[a]ny person who, whether or not married to the other person, without the consent of that other person - (a) with the male organ, penetrates any part of the other person's body; or (b) with any object other than the male organ,

---

[1151] Jennifer Temkin (1987), *supra note* 1122, p. 160.
[1152] Sue Lees (1993), *supra note* 1147, p. 15.
[1153] *Ibid*, pp. 31-32.
[1154] *Ibid*, p. 31.
[1155] Sue Lees (1993), *ibid*; and Amnesty International (2010), *supra note* 50, p. 11.
[1156] *Ibid.*
[1157] The United Nations Commission on Human Rights (1994), *supra note* 512, para. 180.
[1158] David John Frank *et al.* (2009), *supra note* 19, p. 273.
[1159] *Ibid.*

penetrates the other person's genitalia or anus; or (c) engages in fellatio or cunnilingus with the other person; shall be guilty of an offence and liable […] to the penalties provided by law for rape."[1160] Under this definition, the penalty is the same whether the sexual act involves vaginal intercourse or other sexual acts. The present study's key informants from women's rights advocacy groups also proposed the adoption of the Zimbabwean rape law model.[1161] According to Advocate One, "[i]t is good that the law puts sexual acts in different categories because each act is performed in a different way. The provision of the criminal law must be clear. However, in terms of setting penalty, all sexual acts should be sanctioned equally."[1162]

Furthermore, the dichotomous approach has created confusion among the key actors in comprehending the difference among various forms of sexual acts. In this regard, a key informant, Prosecutor Three, stated "[i]n my opinion, Article 620, Article 621, Article 622 and other sexual offence provisions have created confusion among prosecutors and even courts."[1163] Prosecutor Two also said "[w]hen it comes to sexual offence, the first challenge we are facing is concerning the definition of sexual intercourse. For instance, the law lacks a clear definition of what sexual intercourse is and what an act corresponding to sexual acts is."[1164] She recounted a case she was handling which is still pending at the Federal Supreme Court Cassation Division. It revolves around whether forcible anal sex is forcible rape or sexual assault. The issue, in essence, is that whether anal sex is sexual intercourse (under Article 620), or an act corresponding to sexual acts (under Article 622). Prosecutor Two filed a charge against the offender for committing forcible rape in violation of Article 620 while the offender's lawyer argued that the act does not constitute

[1160] Sexual Offences Act of Zimbabwe, *Act 8/2001*, Article 8(1) Gazetted 17th August, 2001 (General Notice 408/2001). Avialable at: http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/zimbabwe%20-%20sexual%20offences%20act%202001.pdf?vs=1843 last visited on 4/14/2018.
[1161] Interview with Advocate One, *supra note* 657; and Interview with Advocate Two, *supra note* 648.
[1162] Interview with Advocate One, *ibid*.
[1163] Interview with Prosecutor Three, *supra note* 851.
[1164] Interview with Prosecutor Two, *supra note* 849.

forcible rape but, instead, sexual assault. Prosecutor Two believed "[t]his issue would have been avoided had our criminal law clearly defined sexual intercourse."[1165]

For all the above reasons, sexual offences involving penile-vaginal penetration, penile-anal penetration, penile-oral penetration, and penetration by sticks, fingers and other objects have to constitute sexual acts, with the same scope and degree of gravity. The offence should then be graded by the degree of violence used as is the case, for instance, under Zimbabwean rape law.

7.2.3 Gender-Specificity of Rape

Gender-neutrality in rape law has been advocated with an eye to providing equal protection to all persons without making unnecessary distinctions based on gender identity or sexual orientations.[1166] This is deemed a right approach in light of the possibility that men can be rape victims too.[1167] However, under the 1957 Penal Code, forcible rape was defined in terms of women as rape victims and men as offenders.[1168] Likewise, it defined sexual assault as a sexual offence committed against *a person of the opposite sex*.[1169] The RCC has maintained the approach of its predecessor and defined sexual assault as a sexual offence committed against "a person of the opposite sex."[1170] Unlike its predecessor, the RCC has introduced a new distinct sexual offence committed by a woman against a man under the heading of *Compelling a Man to Sexual Intercourse*. The provision for this new offence simply states: "[a] woman who compels a man to sexual intercourse with herself, is punishable with rigorous imprisonment not exceeding five years."[1171] This addition makes forcible rape as a sexual offence committed against "a person of

---

[1165] *Ibid*.
[1166] Philip N.S. Rumney (2007) 'In Defence of Gender Neutrality within Rape', *Seattle Journal for Social Justice* 6(1), pp. 481-526; and Home Office Review of Sex Offences (2000), *supra note* 1138, p. 3.
[1167] Karen G. Weiss (2010), *supra note* 113, pp. 275-298; Noreen Abdullah-Khan (2008), *supra note* 112, Chapter 2; and Susan Estrich (2006) *Male Rapes Occur, and It's Time to Address Them*, Pocono Record, available at: http://www.poconorecord.com/apps/pbcs.dll/article?AID=/20061224/NEWS04/612240301 last visited 9/12/2018.
[1168] The Penal Code, *supra note* 34, Article 589.
[1169] *Ibid*, Article 590.
[1170] The Revised Criminal Code, *supra note* 21, Article 622.
[1171] *Ibid*, Article 621.

the opposite sex" though the constituent elements of forcible rape committed by a woman against a man vary from its counterpart of forcible rape committed by a man against a woman. Having seen this new addition, some writers argued that one of the major contributions of the RCC is making the crime of rape gender-neutral.[1172] However, the new formulation shows the way in which a seemingly gender-neutral approach can produce bizarre results that entrench the hitherto hegemonic heteronormativity.

Under the RCC, forcible rape and sexual assault are defined in terms of heterosexual sexual acts, which are committed against a person of the opposite sex. This approach, by definition, excludes same-sex rape victims. The law has conceived rape as a crime that can be committed only against a person of the opposite sex. It formulated rape as a crime in which either women are victims and men are offenders (Article 620, Article 626(1) and Article 627(1)) or men are victims and women are offenders (Article 621, Article 626(2) and Article 627(2)). Thus, rape is not a fully gender-neutral crime committed by a peson against another person. The law does not consider men as potential offenders against men (and women against women). Such a formulation not just make rape gender-specific but also arbitrarily denies equal protection to adult same-sex rape victims.

In addition to arbitrarily denying equal protection, the law treats the victims themselves as criminals. It categorically criminalizes homosexual acts. It defines "homosexual" and other "indecent" acts as: "[w]hoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable..."[1173] Criminality here is intrinsic to the "homosexual" acts regardless of the desires of the participants. It does not take into account who the aggressor is and who the victim is. Whether the act is consensual or forcible or coerced is not an element of the crime. Nevertheless, the use of violence, intimidation, coercion or fraud is considered as an aggravating circumstance, not the elements of the offence itself.[1174] Thus, in cases where the homosexual acts involved two adults, both parties will be prosecuted, with one of them considered

[1172] Tsehai Wada (2012), *supra note* 412, at note 66.
[1173] The Revised Criminal Code, *supra note* 21, Article 629.
[1174] *Ibid*, Article 630(2)(a).

an *accomplice*. The only ground by which an adult same-sex rape victim may avoid criminal liability is by invoking the defense of absolute coercion, provided, however, that he tried his level best to physically resist the assailant.[1175]

Moreover, a closer look at the formulation of same-sex sexual activities under the RCC also shows that the law not only obscures sex and sexual orientation but also punishes consensual sexual conducts as "deviations" from the dominant heterosexual norm or heteronormativity. First, whether it is consensual, forced or coerced, the RCC does not use the phrase "same-sex" in reference to sexual activities between persons of the same-sex. Rather, it uses the terms *Homosexual and other Indecent Acts*[1176] and *Homosexual and Other Indecent Acts Performed on Minors*.[1177] However, referring same-sex sexual conducts as "homosexual" acts is technically inaccurate. It conflates the sex of the persons involved with their sexual orientations. In cases of forced or coerced sexual encounters, such a reference leaves a wrong impression that men who rape and/or who are raped are homosexuals. It equates same-sex sexual acts with homosexuality. Technically, sex refers to biological differences between men and women, and same-sex implies sameness of the sex of the persons involved in the sexual encounter. Same-sex rape may not necessarily relate with the sexual orientation of the offender or the victim whereas homosexual rape involves one or more homosexuals raping another person of the same-sex.[1178] The conflation of sex with sexual orientation is premised on the myth that men who are sexually assaulted by men must be gay[1179] or that women who are sexually assaulted by women must be lesbian. It stems from the belief that same-sex rape is sexually motivated and that it is done for sexual gratification, and must, therefore, be a homosexual act.[1180] However, numerous empirical studies contradict this assumption.

[1175] *Ibid*, Article 71.
[1176] *Ibid*, Article 629.
[1177] *Ibid*, Article 631.
[1178] Noreen Abdullah-Khan (2008), *supra note* 112, p. 19.
[1179] L. Stermac *et al.* (2004) 'Stranger and Acquaintance Sexual Assault of Adult Males', *Journal of Interpersonal Violence* 19(8), pp. 901-915, p. 901.
[1180] Noreen Abdullah-Khan (2008), *supra note* 112, p. 18.

Studies involving men indicated that offenders can be heterosexual males, bisexual males and homosexual males.[1181] In reality, men who rape men, like men who rape women, are not concerned with the sexual orientation of their victims.[1182] However, sexuality may have a contribution in making one group, say for example sexual minorities, more susceptible to be victimized than heterosexual males.[1183] This does not mean that it is only homosexual men who rape, or are raped.[1184] Rather, all men are potential victims for rape, regardless of their sexual orientation.[1185] However, the RCC fails to recognize this fact and does not criminalize same-sex rape involving adults. It simply assumes that all same-sex sexual acts involving adults are consensual homosexual acts. By framing same-sex rape involving adults as such, the RCC embodies various male rape myths including, among others, that *men cannot be forced to have sex against their will*;[1186] *men are less affected by sexual assault than are women*;[1187] and that a *man is supposed to be able to defend himself against sexual assault*.[1188]

Second, the law places same-sex sexual act – whether it is consensual, coerced or forced – under its specific section entitled "Sexual Deviations", a catalog of offences including sexual intercourse with an animal or bestiality. Much worse, it attaches the same penalty for bestiality and same-sex sexual acts – simple imprisonment. Thus, the law not only fails to provide due protection to adult victims of same-sex rape but, at the same time, it also criminalizes consensual same-sex sexual acts. By doing so, it punishes individuals who 'deviate' from the dominant heterosexual social norm, and punishes sexual minorities simply for their sexual orientations. Essentially, the law totally disregards the fact that sexual minorities are persons just like everyone else, except for their sexual preferences. In the eyes of the law, they should be treated as individual citizens deserving

---

[1181] *Ibid*, p. 20.
[1182] *Ibid*, p. 21.
[1183] Noreen Abdullah-Khan (2008), *ibid*, pp. 21-23; and Sandesh Sivakumaran (2005), *supra note* 125, p. 1283.
[1184] *Ibid.*
[1185] Noreen Abdullah-Khan (2008), *ibid*, p. 23.
[1186] L. Stermac *et al.* (2004), *supra note* 1179, p. 901.
[1187] *Ibid.*
[1188] A. N.Groth and A. W. Burgess (1980) 'Male Rape: Offenders and Victims', *American Journal of Psychiatry* 137(7), pp. 806-810, p. 808.

equal rights and protections. However, in a patriarchal society like Ethiopia, let alone advancing the cause of sexual minorities, raising the issue is viewed as "dangerous" even for academic discussions and debates.[1189]

Primarily, the intolerance for diverse sexualities and gender identities emanates from viewing such diversities as a threat to deep-rooted social norms of heterosexism or heteronormativity as the defining social fabric of the Ethiopian society. The issue is not only rendered invisible but also considered as a "dangerous western import."[1190] Even a researcher who dared to present and discuss her research findings on the life of Ethiopian lesbians to a few post-graduate students at the Institute of Gender Studies in Addis Ababa University was not only bashed and characterized as "evil" but also received negative feedback and harsh criticism afterwards.[1191] Given the taboo, secrecy and silence surrounding the issue and the scope of the present study, additional, thorough studies are needed on these issues.

Finally, the focus on the hetero normative sexuality perpetuates the belief that men cannot be victims of rape, particularly by females, because the latter are believed to be the only victims of such crimes.[1192] In this regard, the RCC criminalizes statutory rape against children under the age of 12 and between the age of 13 and 18 years old, under Article 627 and Article 626, respectively. At the same time, it sets the age of criminal responsibility at the age of 9 years old.[1193] Thus, violation the provisions of the RCC by children under the age of 9 years old is not considered as a criminal act. Where children between the age of 9 and 15 years old violate the provision of the RCC, they are treated as juvenile offenders, with special protection.[1194] Children above the age of 15 years old are generally treated as adults for the purpose of holding them criminally responsible.

[1189] Aaronette M. White (2011) 'Unpacking Black Feminist Pedagogy in Ethiopia', *Feminist Teacher* 21(3), pp. 195-211, pp. 202-203.
[1190] *Ibid*, p. 206.
[1191] *Ibid*, p. 205.
[1192] Nicola L. Fisher and Afroditi Pina (2013) 'An Overview of the Literature on Female-Perpetrated Adult Male Sexual Victimization', *Aggression and Violent Behavior* 18(1), pp. 54–61, P. 57.
[1193] The Revised Criminal Code, *supra note* 21, Article 52.
[1194] *Ibid*, Article 53.

From a legal viewpoint, where two persons of the opposite sex above the age of criminal responsibility but below the age of consent, which is 18 years, have "consensual" sexual intercourse, both are deemed to be the victims at the same time and offenders of their acts. However, in practice, where minors engage in sexual acts between themselves, only the boy, who is treated as an offender, is prosecuted, convicted and sentenced. The girl involved, on the other hand, is treated as a victim and named as prosecutor's witness. The court viewed the statutory rape law as if it were designed to protect the chastity of girls.

For instance, in a criminal File Number 219561, Lideta Division, Federal First Instance Court, the prosecutor charged a 17-years-old boy for having sexual intercourse with a 14-years-old girl, in violation of Article 626(1) of the RCC.[1195] In this case, only the boy was considered as an offender, prosecuted, convicted and sentenced for a two years and three months' rigorous imprisonment. The girl involved, on the other hand, was treated merely as a victim, named as the prosecutor's witness and testified against the boy. The Cassation Division of the Federal Supreme Court passed a decision on November 9, 2010 in File Number 46412, in which it gave a legally binding interpretation to this gendered practice.[1196] This decision is a typical instance to illustrate how gender and sex role stereotypes had crept into the CJS, preventing even the highest appellate court from applying the appropriate legal provision.

The relevant legal provision for consensual sexual acts between minors is Article 661 of the RCC. It clearly stipulates that "[w]here the victim to sexual outrage, to an act against chastity [*sic*] or to an unnatural carnal crime [*sic.*] is a minor, he [or she] shall not be liable to punishment. Appropriate measures for his [or her] proper upbringing and protection may be applied."[1197] By applying this provision to statutory rape cases involving two minors, the court should exonerate both minor boys and girls who are involved in the incident from criminal liability since they are

---

[1195] *Public Prosecutor v. Fasil Ayitenfisu Belete*, Criminal File Number 219561, Lideta Division, Federal First Instance Court.
[1196] *Harari Region Public Prosecutor v. Bona Ahimed Amin*, File Number 46412, Cassation Division, Federal Supreme Court.
[1197] The Revised Criminal Code, *supra note* 21, Article 661.

victims and, at the same time, offenders. As victims, they will be subjected to measures for their proper upbringing and protection. This provision is gender-neutral; it is equally applicable to male and female minors. In practice, however, only boys were viewed as offenders, playing an 'active' penetrative role whereas girls were seen as passive victims.

The decisions of the courts simply mirror and reinforce the stereotypes of male and female sexual roles, which form the basis of the very *violent and perverse form of masculine identity*,[1198] which is a manifestation of patriarchy. By holding that only women can be victims of statutory rape, the decisions legitimize the stereotypical dichotomies about sex: only men can penetrate and only women can be penetrated; and men are sexually inviolable; they are the offenders of rape and women are the only victims.[1199] Generally, viewing males as offenders and females as victims in this context is the judicial equivalent of male-aggressive and female-submissive gender role stereotype in the society at large.

In sum, it should be underlined that rape is rape regardless of sexual orientations and the gender identity of the offenders or the victims. Sexual victimization occurs regardless of the sexual orientations and gender identities of the offenders or the victims. Even where the victims are sexual minorities, they deserve the same protection as heterosexuals. The law should premised on the protection of citizens, rather than on policing religious or cultural norms.[1200] It should serve as a value-generating force and act as a catalyst for social change regarding gender and sexual norms. As a first step towards this goal, the law should redefine rape, in fully gender-neutral terms, as a crime committed by a person against another person. This redefinition may challenge and change biased practice within the CJS. It could ensure equal protection to all persons regardless of their gender identity or sexual orientation.[1201] In this formulation, the focus of the law would be on the

---

[1198] Siegmund F. Fuchs (2004), *supra note* 122, p. 117.
[1199] Catharine A. MacKinnon (1997a), *supra note* 118, p. 21
[1200] Pere DeRoy and Namela Baynes Henry (2018) 'Violence and LGBT Human Rights in Guyana', in Nancy Nicol *et al*. (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, UK: School of Advanced Study, University of London, Institute of Commonwealth Studies, p. 173.
[1201] Philip N.S. Rumney (2007), *supra note* 1166; and Home Office Review of Sex Offences (2000), *supra note* 1138, p. 3.

sexual autonomy of the person.[1202] This is an approach adopted, for instance, in most of European countries,[1203] from where the normative contents of the Ethiopian rape law were largely adopted, such as the Swiss Penal Code of 21 December 1937.[1204] Such a move has also been taken in some African jurisdictions. For instance, in 1988, South Africa made its rape law fully gender-neutral, removing the restriction that offenders are males only and victims are females only.[1205] The law now has degenderized sexual offences, by making it legally possible for a man to rape a man, for a woman to rape a woman, and for a woman to rape a man.[1206]

7.2.4 Biased and Gendered Standard of Consent for Forcible Rape and Sexual Assault

7.2.4.1 Absence of Consent as Presence of Force or Threat of Violence

Failure to address the issue of consent for forcible rape and sexual assault cases is another major weakness of the 2004 rape law reforms. The RCC has not defined both forcible rape and sexual assault based on a lack of consent. Instead, it presumes absence of consent, where the offender uses violence, or a threat to use violence, against his victim.[1207] Under Article 620, it defines forcible rape as follows: "[w]hoever compels a woman to submit to sexual intercourse outside wedlock, whether by *the use of violence* or *grave intimidation*, or *after having rendered her unconscious* or *incapable of resistance*, is punishable …"[1208] It also maintains similar elements for sexual assault, under Article 622. In both forcible rape and sexual assault cases, words like "without the consent of the woman" or "against her will" or other equivalent terminologies are not used. Thus, a man can only be prosecuted for forcible rape or sexual assault only where he used violence or "grave" intimidation against his victim, or he rendered his victim unconscious or

---

[1202] Anne-Marie de Brouwer (2005) *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Antwerp, Oxford: Intersentia, p. 110.
[1203] Jo Lovett and Liz Kelly (2009), *supra note* 50, p. 103.
[1204] *See generally* Swiss Criminal Code of 21 December 1937, Article 189- Article 193, available at: https://www.admin.ch/opc/en/classified-compilation/19370083/201803010000/311.0.pdf last visited on 9/15/2018
[1205] David John Frank *et al.* (2009), *supra note* 19, p. 273.
[1206] *Ibid.*
[1207] The Revised Criminal Code, *supra note* 21, Article 620 and Article 622.
[1208] *Ibid*, Article 620(1). Emphasis mine.

incapable of resistance. By formulating the notion of consent in this way, the law has totally eliminated the victim's voice and rendered her consent irrelevant. In this sense, it disregards female autonomy and denies that she is capable of making decisions about sex.[1209] Such a disregard represents both the deprivation of women's capacity to choose sexual contact, and a perpetuation of the power relationship that privileges men.[1210]

Under the RCC, sexual encounter is "consensual" unless the offender used violence or "grave" intimidation or rendered his victim unconscious or incapable of resistance.[1211] Here, the concept of free consent is totally ignored. Usually, the term consent refers to the act of giving permission with full awareness of the consequences. It has been described as a "remarkable power(s) of personhood", and often associated with the notions of autonomy and choice.[1212] The notion of consent as self-rule involves the protection of one's autonomy to make choices as to one's sexual intimate relationships and contacts.[1213] It is essential because it allows individuals to act as moral agents.[1214] The ability to genuinely consent is an essential component of sexual autonomy.[1215] This implies that the state has to enact a law that guarantees the sexual boundaries of the individual and, thereby, protect their sexual autonomy. However, the RCC fails to conceptualize consent in forcible rape and sexual assault cases in such a way that it fully protects a woman's right to sexual autonomy. It rather it equates absence of consent with presence of violence, or a threat of violence. By doing so, it totally fails to take woman's consent and sexual autonomy seriously.

[1209] Susan Estrich (1986) 'Rape', *The Yale Law Journal* 95(6), pp. 1087-1184, p. 1095.
[1210] Mustafa T. Kasubhai (1996) 'Destabilizing Power in Rape: Why Consent Theory in Rape Law is Turned on Its Head', *Wisconsin Women's Law Journal* 11: pp. 37–74, p. 43.
[1211] Tsehai Wada (2012), *supra note* 412, p. 209.
[1212] Heidi M. Hurd (1996) 'The Moral Magic of Consent' *Legal Theory* 2(2), pp 121–146, p. 121.
[1213] Sharon Cowan (2007) 'Freedom and Capacity to Make a Choice': A Feminist Analysis of Consent in the Criminal Law of Rape', in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law Feminist Engagements*, Chapter 3, Routledge-Cavendish: Glasshouse Press, p. 51.
[1214] John Gardner and S. Shute (2000) 'The Wrongness of Rape' in Jeremy Horder (ed) *Oxford Essays on Jurisprudence*, Fourth Series, Oxford: Oxford University Press, p. 207.
[1215] *Ibid*.

7.2.4.2 Absence of Consent as Presence of Physical Resistance

Under the law, victims of forcible rape and sexual assault are presumed as consenting if they do not make physical resistance to the offender. The RCC requires evidence of resistance as indicated by the use of the phrase "after having rendered [her] incapable of resistance" in the very definitions of forcible rape and sexual assault.[1216] In addition, the physical resistance requirement is implicitly included by other elements of forcible rape and sexual assault such as the use of violence or force or a threat of violence, since the offender does not automatically resort to violence or threat to use violence. Normally, the use of violence, or threat to use violence, presupposes that the offender's initial sexual encounter is met with some sort of resistance from the victim. The violence element of forcible rape and sexual assault requires women to physically resist and fight back the offender in order to produce evidence of the use of violence or force. As Katharine K. Baker and Michelle Oberman noted, the law requires women to "engage in a physical battle that they were almost certain to lose" in order to get legal protection.[1217]

The victim had to prove that she "resisted to the utmost" before she was sexually assaulted.[1218] She is required to make resistance until she is overpowered and rendered incapable of offering further resistance. This requirement sets a standard of model behavior against which the court has to evaluate women's actions to settle two issues: proof of lack of consent and proof of use of violence or force.[1219] Accordingly, the prosecutor has to prove beyond a reasonable doubt that the woman resisted the offender to the utmost of her physical capacity to prove that the sexual encounter was forcible rape or sexual assault. If a woman did not resist the offender to the utmost of her ability, she was not raped.[1220]

[1216] The Revised Criminal Code, *supra note* 21, Article 620 and Article 622.
[1217] Katharine K. Baker and Michelle Oberman (2016) 'Women's Sexual Agency and the Law of Rape in the 21st Century', *Studies in Law, Politics and Society*, 69: pp. 63-111, p. 69.
[1218] Susan Estrich (1987) *Real Rape*, Cambridge, Massachusetts: Harvard University Press, p. 30.
[1219] Michelle J. Anderson (2010) 'Diminishing the Legal Impact of Negative Social Attitudes toward Acquaintance Rape Victims, *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 644-664, P. 653.
[1220] *Ibid.*

Regarding the degree of resistance, scholars and practitioners appeared to be consistent. For instance, Tsehai Wada, a legal scholar, noted that "the law demands a high level of intimidation, but not the ordinary one, for it is required that the degree of intimidation has to be 'grave', and the victim should be made unconscious, or incapable of resistance. Thus, any threat, short of this, may lead to a conclusion that the victim could have resisted the intimidating force and the actor cannot be held liable."[1221] This means forcible rape or sexual assault which involves "ordinary" intimidation is deemed consensual under the law. Determining whether the intimidation was an ordinary or a "grave" one has been left to the court. It, presumably, is judged against the preconceived model behavior.

Practitioners also share the above view. For instance, Prosecutor Three, stated that "[p]articularly, where the victims are above 18 years old, the law requires that the offenders must make their victims incapable of offering resistance. If the victims are not rendered incapable of offering resistance, their case cannot be considered as rape."[1222] This key informant was also asked whether oral resistance suffices to negate the consent of the victim. She responded that "[i]n my view, if a woman says 'no' verbally but her actions show otherwise, a man should not be held criminally liable."[1223] Thus, showing verbal resistance – saying "No!"– is insufficient to prove lack of consent.[1224] Nor does offering some slight physical resistance (for example, turning away from a kiss). A previous study in Addis Ababa also revealed that if a rape victim fails to offer utmost physical resistance, the police do not consider the encounter as rape and her case will be dropped at the investigation stage.[1225]

[1221] Tsehai Wada (2012), *supra note* 412, p. 212.
[1222] Interview with Prosecutor Three, *supra note* 851.
[1223] *Ibid.*
[1224] Tsehai Wada (2012), *supra note* 412, p. 216.
[1225] Blain Worku (2011), *supra note* 987, p. 43.

7.2.4.3 Forcible Rape and Sexual Assault by Fraud, Coercion or Impersonation

Unlike other areas of the law, consent in forcible rape and sexual assault cases is conceived quite uniquely. It is inferred from a mere submission even where such a submission was obtained through intimidation unless the threat to use violence is deemed "grave" intimidation. Thus, a mere submission for sexual encounter is deemed consensual unless it involves physical violence, or "grave" intimidation to use violence. Even where the encounter involves the use of violence (or "grave" intimidation), and if such violence or threat is directed against a third party other than the victim herself (for instance, against her ascendant, descendant or spouse), it cannot vitiate her consent. Although the law is clear on this point, Prosecutor Two argued that "[i]f a man threatens a woman's family member like her descendant, and forces her to have sexual intercourse, this constitutes (forcible) rape because he rendered her defenseless by threatening to harm her family members. According to Article 620, he used a threat against his victim."[1226]

However, it is clear that where the RCC uses the phrase "by the use of grave intimidation" both for forcible rape and sexual assault, it does not leave a room for an extended interpretation to include threats directed at a person other than the victim herself by analogy. For a gender-specific forcible rape under Article 620 of the CRC, the wording of the provision "compels a woman to submit to sexual intercourse […] whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance" presupposes two fighting parties: the victim battling hard to avoid submission and a violent offender trying to subdue and render his victim unconscious or incapable of resistance. In this regard, Tsehai Wada noted that "whether the threat should be posed against the victim or someone else related or unrelated to her is an issue that demands a judicial interpretation. It may, however, be suggested that as far as there is intimidation, it should apply to all situations, for the law has not limited this circumstance to any specific person or relationship."[1227] However, this view contradicts one of the pillars of the

[1226] Interview with Prosecutor Two, *supra note* 849.
[1227] Tsehai Wada (2012), *supra note* 412, pp. 212-213.

principle of legality: the provisions of criminal law must be construed narrowly. The law is clear. Other than the victim herself, it does not offer even an illustrative list against whom the threat should be directed. In the absence of, at least an illustrative list, the principle of legality prohibits making an offence by analogy.[1228] In addition, in criminal cases, benefit of the doubt generally goes to the advantage of the offender, not for the prosecutor's case.

Furthermore, the law treats a mere submission for sexual encounter as consensual even where such submission is obtained through manipulative tactics such as deception or fraud or impersonation. Simply stated, rape by deception or fraud or impersonation is not a criminal offence.[1229] Yet, rape by deception or fraud or impersonation is not a rare occurrence. According to a study in Addis Ababa, proportion of the means used by the offenders were as follows: deception (28.6%), inviting girls to recreational places (20.7%), providing gifts and other material offers (15.5%), using force (9.7%), using threat (7.6%), using power (7.0%), and snatching properties (3%) and using friends of girls or go-betweens (2.4%).[1230]

Rape by impersonation does also occur. For instance, a key informant of the present study, Prosecutor Four, recounted a typical case of rape by impersonation that came to her attention as a prosecutor.[1231] In this particular case, a couple and their friends were spending together half the night at a nightclub, drinking alcohol. After getting drunk, the couple alone went out of the club to have a bed in a nearby pension where they found one. After staying with her for minutes in one of the bedrooms, the victim's partner left her alone to join his friends at the nightclub. The guard of the pension, who well noticed that she was over drunk and left alone in an unlocked room, entered into her bedroom after about half an hour and had sexual intercourse with her. She "consented" to have a sexual intercourse with the intruder, believing that he was actually her partner. Subsequently, she realized that the person she had slept and had sexual intercourse with

[1228] The Revised Criminal Code, *supra note* 21, Article 2(3).
[1229] Tsehai Wada (2012), *supra note* 412, p. 215.
[1230] Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.
[1231] Interview with Prosecutor Four on 16 March 2018, at 11:10-11:30 AM.

was, in fact, not her partner but someone else she did not know. As she felt that she had been raped, she went to a nearby police station at dawn and reported the incident to the police. However, after consulting the case with the prosecutor, who also was a key informant of the present study, the police dismissed her case saying it 'was not a crime'. The police told her that the alleged act did not constitute rape.[1232] In this case, it was clear that if the victim had known the truth about who he was, she apparently would not have agreed to have sexual intercourse with the intruder. The offender knew this, but nevertheless he was not even called for questioning. Under the law, what he did is not a crime but a 'consensual' sexual conduct and the victim was 'not raped'. Such an understanding of the notion of consent is in contradiction to the simple essence of sexual autonomy; individuals do have the right to decide for themselves with whom and under what circumstances to have sex.[1233]

The RCC even excludes from its ambit the only exceptional instance of rape by impersonation, under Article 591 of the 1957 Penal Code. The latter Code, under its provision titled *Sexual Outrages on Unconscious or Deluded persons, or on Persons Incapable of Resisting,* criminalized sexual offences against certain groups of people. In this regard, Article 591(2) of the 1957 Penal Code stated that where a sexual offence is committed against unconscious or deluded persons, or on persons incapable of resisting, "[t]he same punishments apply to anyone shown to have committed such an act *by misrepresentation*."[1234] As far as an unconscious victim is concerned, this provision is irrelevant since an unconscious person cannot be deceived by misrepresentation or impersonation. However, it might be relevant in other contexts. Instead of extending the scope to include other circumstances that indicate lack of free consent, the RCC excludes the narrowly construed notion of rape-by-misrepresentation, under the 1957 Penal Code.

[1232] *Ibid*.
[1233] Jed Rubenfeld (2013) 'The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy', *the Yale Law Journal* 122(6), pp. 1372-1443, p. 1379.
[1234] The Penal Code, *supra note* 34, Article 591(2). Emphasis mine.

Moreover, the RCC maintains the approach of its predecessor in addressing coercive contexts that implicitly suggest a lack of consent due to a victim's mental or physical subordinate position relative to the offender, and dependency on the offender, at least in three exceptional instances. The first instance relates to rape involving sexual intercourse and acts corresponding to sexual act or other indecent act "with an idiot [*sic*], with a feeble-minded [*sic*] or retarded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature or consequences of the act."[1235] This is a less serious crime with a one-year minimum mandatory sentence. For forcible rape, the minimum mandatory sentence is five years. The law seems to assume that if a woman cannot make physical resistance and defend herself, for example, because of sleep, a self-imposed intoxication, a state of unconsciousness or illness, the sexual encounter directed at her should not be considered as a serious as forcible rape. It categorizes women who are helpless or unconscious because of their own action as less worthy of legal protection than other women who can make physical resistance and defend themselves. This seems to be premised on gender stereotypes where "honorable" women should behave in ways to control their behaviors. If women are unable to defend themselves in breach of this expectation, they do not deserve serious legal protection and, thus, the offenders are sanctioned with a lesser penalty.

The second instance relates to procuring sexual intercourse using victim's dependency as a means of coercion. In this regard, Article 625 of the RCC states that "[w]hoever […] procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, *upon complaint, with simple imprisonment*."[1236] However, the shortcoming in this provision is that it fails to take such offences as public crimes. Thus, it can only be prosecuted upon a private complaint of the victim. By doing so, it ignores that the very hierarchical relationship which exposed the victim to sexual coercion could deter her from filing a private complaint against her

[1235] The Revised Criminal Code, *supra note* 21, Article 623.
[1236] *Ibid*, Article 625. Emphasis mine.

superior. It also attaches a very lenient sentence, which is simple imprisonment with no minimum mandatory sentence. In addition, other than material or mental distress of the victim and her superior-inferior relationship with the offender, it does not envisage other coercive circumstances.

The third instance relates to having sexual intercourse or performing an act corresponding to the sexual act or any other indecent act using his superior position or against a victim under his custody.[1237] Here, too, it attaches a lenient sentence of a one-year minimum mandatory sentence.

Generally, the approach adopted under Article 625 and, partially, under Article 624 and Article 623 of the RCC is below the minimum human rights standards. The accepted standard under the international human rights jurisprudence is that sexual offence should not constitute a private offence.[1238] Nor should the sentence be too lenient.[1239]

Generally, the standard of consent for forcible rape and sexual assault departs strikingly from how consent is understood in other areas of the law.[1240] As Robin West observes, "fraud or coercion that vitiates consent in nonsexual contexts constitutes either criminal or tortious activity."[1241] Likewise, under the Ethiopian law of obligations, if consent is vitiated by fraud, it not only entails invalidation of the contract and payment of compensation but also leads to criminal liability and punishment.[1242] Specifically, Article 692 of the RCC criminalizes the use of fraudulent practices

---

[1237] *Ibid*, Article 624. (Stating that "[w]hoever, by taking advantage of his position, office or state, has sexual intercourse or performs an act corresponding to the sexual act or any other indecent act with an inmate of a hospital, an alms-house or an asylum, or any establishment of education, correction, internment or detention, who is under his direction, supervision or authority, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.")

[1238] *See e.g.* Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Portugal, A/57/38, part I, para. 320.

[1239] *See e.g.* Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Czech Republic, A/57/38, part III, para. 95; Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Iceland, A/57/38, part I (2002), paras. 245-246; and Committee on the Elimination of Discrimination against Women (2003), Concluding Observations, Japan, A/58/38, part II, para. 361.

[1240] Rebecca Whisnant (2011), *supra note* 188.

[1241] Robin West (1996), *supra note* 358, p. 233.

[1242] George Krzeczunowicz (1983) *Formation and Effects of Contracts in Ethiopian Law*, Addis Ababa: Addis Ababa University Faculty of Law, p. 44.

undertaken with the intent to gain material benefits from others. It stipulates that "[w]hoever, with intent to obtain for himself or to procure for a third person an unlawful enrichment, fraudulently causes a person to act in a manner prejudicial to his rights in property, or those of a third person, whether such acts are of commission or omission, either by misleading statements, or by misrepresenting his status or situation or by concealing facts which he had a duty to reveal, or by taking advantage of the person's erroneous beliefs, is punishable…"[1243] However, similar fraudulent practices to obtain sex is not a criminal offence. By doing so, the law values property rights over women's sexual autonomy. This approach negates the reason for requiring consent in the law in the first place, which is to ensure respect for sexual autonomy of the person.[1244]

7.2.4.4 The Notion of Consent in Other Non-sexual Offences

The consent standard for forcible rape and sexual assault are unique. It requires rape victims, unlike victims of any other crimes, to demonstrate their non-consent through physical resistance.[1245] For forcible rape and sexual assault, in the absence of violence and physical resistance, consent is presumed to exist. However in other criminal offences, consent is not presumed but it must be affirmatively sought.[1246] There are other offences for which non-consent is an element or consent of the victim is pleaded as a defense, but as Lani Remick puts it, "only in rape is proof of a lack of consent insufficient to prove non-consent."[1247] It is only in rape that the victim is expected to physically resist her attacker to demonstrate her wish.[1248] For instance, a common defense for a crime of theft of movable property is that the owner of such a property has consented to the offender to take her good.[1249] A mere testimony that the owner has never given her consent to the

[1243] The Revised Criminal Code, *supra note* 21, Article 692(1).
[1244] Joan McGregor (2011), *supra note* 4, p. 76.
[1245] *Ibid*, pp. 75-76.
[1246] *Ibid*, p. 76.
[1247] Susan Estrich (1986), *supra note* 1209, p. 1090; and Lani Anne Remick (1993) 'Read Her Lips: An Argument for a Verbal Consent Standard in Rape', *University of Pennsylvania Law Review* 141(3), pp. 1103-1151, p. 1111.
[1248] Susan Estrich (1997) 'Enduring Distrust: The Modern Law of Force', in Lori Gruen and George E. Panichas (eds) Sex, Morality and the Law, Chapter 6, London: Routledge, 410-418, p. 411; Lani Anne Remick (1993), *ibid*, p. 1111; and Susan Estrich (1987), *supra note* 1218, p. 29.
[1249] Lani Anne Remick (1993), *ibid*, p. 1111.

offender, permitting to take her good is enough to defeat this defense. The owner is not required to make physical resistance to show that she did not consent. However, for forcible rape and sexual assault, the 'default' position is consent.[1250] Consent is presumed. This presumption could only be defeated by the most extreme circumstances i.e. if the rapist used violence or grave intimidation or rendered his victim unconscious or incapable of resistance.

Likewise, robbery is a crime which includes violence (force) and non-consent as defining elements. Both robbery and forcible rape or sexual assault are nonconsensual and violent instances of human interactions.[1251] Like forcible rape and sexual assault, the RCC defines robbery as a crime whereby the offender "uses violence or intimidation towards a person or otherwise render[s] such person incapable of resisting."[1252] However, as Susan Estrich noted, "[i]n robbery, only where the owner of the property actively participates in planning and committing the theft will consent be found. Mere 'passive submission' or 'passive assent' does not amount to consent - except in the law of rape."[1253] Lucy Reed Harris further observed that "only the law of rape makes unjustified adverse assumptions about the general sincerity of alleged victims, which lead to requirements of much higher levels of proof of force and resistance. Such requirements leave the physical safety of women correspondingly less protected in cases of rape than in cases of robbery."[1254] The RCC considers robbery as a more serious property crime that involves violence than theft. Even if the offender does not resort to violence in committing the offence or if the violence is not proved, he will not be totally exonerated from any criminal liability. Instead, his act is downgraded to a lesser serious property crime and prosecuted for theft for taking property belonging to another person without the permission of the owner.

[1250] Lani Anne Remick (1993), *ibid*, p. 1111; and Joan McGregor (2011), *supra note* 4, p. 76.
[1251] Lucy Reed Harris (1976) 'Towards a Consent Standard in the Law of Rape', *the University of Chicago Law Review* 43(3), pp. 613-645, p. 638.
[1252] Revised Criminal Code, *supra note* 21, Article 670.
[1253] Susan Estrich (1986), *supra note* 1209, p. 1126.
[1254] Lucy Reed Harris (1976), *supra note* 1251, p. 638.

7.2.4.5 A Gendered Consent Standard Premised on Rape Myths

It has been argued that rape laws were designed to protect men's interests in their daughters and wives.[1255] The *resistance* requirement was one instance in which rape laws protect male interests.[1256] It was used to determine whether a woman had consented to a sexual interaction. Such a requirement reflects the belief that a woman should protect her chastity in the expense of her life.[1257] As Joan McGregor stated, "[w]omen's chastity was worth a lot to men interested in marrying off their daughters and ensuring that children conceived during their marriage were biologically their progeny. Without chastity, women lost their value and were often ostracized by [their own] family and [by the] community."[1258] She added, "[t]he assumption of these laws was that women too held chastity to be of the highest value and would protect theirs with their own life. Given this assumption, failure to protect one's chastity with 'utmost resistance' was seen as giving consent to the sexual interaction."[1259] Besides, the resistance requirement protects men's interest by making the possibility of obtaining conviction very difficult.[1260]

Beyond maintaining the resistance requirement, the RCC has also introduced discriminatory standards of consent. In this regard, under its provision titled "Compelling a Man to Sexual Intercourse", it defines rape committed by a woman against a man as follows: "[a] woman who compels a man to sexual intercourse with herself, is punishable…" This provision does not (and should not) require men victims to demonstrate physical resistance in order to have legal protection. Nor does it require the offender to use violence, or threat of violence, against her victim. It does not list the means used by a woman to compel a man nor define the notion compulsion. If a woman compels a man to have sexual intercourse with herself against his will, she will be held criminally liable. This is so regardless of the means she used to compel him. The means used to

---

[1255] Joan McGregor (2011), *supra note* 4, p. 73.
[1256] *Ibid.*
[1257] *Ibid.*
[1258] *Ibid.*
[1259] *Ibid.*
[1260] *Ibid.*

compel a man can be psychological pressure, physical force, threats, frauds or impersonation. Consequently, the RCC provides different standards of consent that discriminates against women. This is *de jure* discrimination. It is a flagrant violation of the non-discrimination clauses of the CEDAW, the Women's Protocol and the FDRE Constitution. By doing so, the RCC has directly contributed to the very problem it is meant to address.

Furthermore, the consent standard for forcible rape and sexual assault is also founded on the so-called 'real rape' myth. According to Helen Reece, 'real rape' myth is the belief that rape is "a very violent attack in a dark alleyway by an armed stranger on a woman who physically resists and is physically injured."[1261] This popular image of 'real rape' typically assumes the existence of, amongst other things, a knife-wielding stranger offender, a public attack location, a use of violence, and a show of physical resistance.[1262] If the offender conforms to this 'real rape' scenario, the public generally condemns the offence and sympathizes with the victim.[1263] Framed along the 'real rape' myth, the Ethiopian rape law fails to clearly proscribe less violent rape. As MacKinnon noted, this kind of formulation simply "assumes the sadomasochistic definition of rape: intercourse with force or coercion can be or become consensual."[1264]

The use of phrases such as "to submit to sexual intercourse" and "use of violence or grave intimidation" in the very definition of forcible rape under the RCC also shows how the law characterizes female victims as submissive and male offenders as aggressive. The law does not employ similar phrases where the rape is committed by a woman against a man. The law does not

---

[1261] Helen Reece (2013) 'Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?', *Oxford Journal of Legal Studies* 33(3), pp. 445–473.
[1262] Louise Ellison and Vanessa E. Munro (2010) 'A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections Upon Received Rape Myth Wisdom in the Context of a Mock Jury Study', *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 781-801, p. 781; and Samuel H. Pillsbury (2002) 'Crimes Against the Heart: Recognizing the Wrongs of Forced Sex', *Loyola of Los Angeles Law Review* 35:845, p. 865, available at: https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2320&context=llr last visited on 1/28/2019.
[1263] Susan Estrich (1987), *supra note* 1218, pp. 13-14.
[1264] Catharine A. MacKinnon (1997b), *supra note* 382, p. 419.

ascribe aggressive behavior to female offenders and submissive behavior to male victims. This formulation is premised on stereotypic gender roles ascribed to males and females. It simply mirrors, legitimizes and enforces a view of sex and women which glorifies male aggressiveness and punishes female passivity.[1265]

Similarly, the resistance requirement was based upon a distrust of women.[1266] In the past, such a distrust was pervasive in rape laws across jurisdictions. For instance, rape victims were not only required to resist their assailant to the utmost of their ability and to promptly report the incidence to the police but also they had to substantiate their testimony through corroboration and good reputation.[1267] All these requirements were premised on the myth that women lie about being raped. Particularly, the resistance requirement was one of the institutionalized incredulities towards rape victims. It assumes that women who fail to make physical resistance cause their own victimization, leading the victims to feel that they were somehow responsible for what happened and preventing them from seeking legal redress.[1268] It also leads to victim-blaming if she fails to do something to discourage her attacker.[1269]

Moreover, under the rape law, verbal resistance such as saying "No!" is not sufficient to prove absence of consent. Thus, saying "No!" to a sexual encounter is essentially conceived as saying "Yes!", and is, instead, taken to mean the inverse of its ordinary meaning in other human interactions. This approach is premised on the assumptions that "women say 'No!' and do not really mean it"; that "women are ambivalent about consent to sex"; and that "women have conflicting emotions and are unable to directly express their sexual desires."[1270] Generally, the

---

[1265] Susan Estrich (1986), *supra note* 1209, p. 1092.
[1266] Susan Estrich (1986), *ibid*, p. 1105; and Susan Estrich (1992) 'Palm Beach Stories', *Law and Philosophy* 11(1-2), pp. 5-33, p. 11.
[1267] Cassia C. Spohn (1999), *supra note* 18, p. 119; Mustafa T. Kasubhai (1996), *supra note* 1210; and Jocelynne A. Scutt (1992) 'The Incredible Woman: A Recurring Character in Criminal Law', *Women's Studies International Forum* 15(4), pp. 441-460, p. 442.
[1268] Sinidu Fekadu (2008), *supra note* 2690, pp. 54-55.
[1269] Lani Anne Remick (1993), *supra note* 1247, p. 1112.
[1270] Joan McGregor (2011), *supra note* 4, p. 77.

approach to consent for forcible rape and sexual assault cases lends credence to the concept of justifiable rape. As Lani Anne Remick suggested, "[i]f the notion that rape can be justifiable is ever to be dispelled and adequate protection from rape is ever to be provided, the law must declare that proof of a lack of consent satisfies the non-consent element."[1271] According to Christian Diesen and Eva F. Diesen, "[i]f the law requires resistance, it implies that a woman is sexually available until she resists physically, resulting in an attitude that a woman reporting rape without injuries should be mistrusted."[1272] They also added that "[t]his mistrust of the victim and the victim's attendant feelings of self-blame aggravate the victim's trauma. On the other hand, a modern rape law based on lack of consent gives the signal that a woman is not available until she has given her consent, resulting in a different starting position for the investigation."[1273]

7.2.4.6 Towards a New Standard of Consent for Forcible Rape and Sexual Assault

Generally, by conceptualizing consent for forcible rape and sexual assault with the use of violence or grave intimidation and resistance from the victim, the RCC has failed to bring its object closer to the experiences of victims of sexual offence. As Lani Anne Remick noted, "[r]equiring a woman to do anything at all as a prerequisite to protection under the rape laws implies that her freedom from nonconsensual sex is a privilege rather than a right."[1274] This overly restrictive formulation of consent denies legal protection to a substantial number victims of sexual offence. This is so because most rape victims, particularly in cases involving acquaintances, do not often resist their attacker physically, but use other subtle means of resistance.[1275] Usually, women do not respond with physical force in threatening situations but will respond verbally.[1276] This might be simply

[1271] Lani Anne Remick (1993), *supra note* 1247, p. 1112.
[1272] Christian Diesen and Eva F. Diesen (2010) 'Sex Crime Legislation: Proactive and Anti-therapeutic Effects', *International Journal of Law and Psychiatry* 33: pp. 329–335, p. 329.
[1273] *Ibid*.
[1274] Lani Anne Remick (1993), *supra note* 1247, p. 1112.
[1275] Frances P. Bernat (2002), *supra note* 361, pp. 90-91.
[1276] Joan McGregor (2011), *supra note* 4, p. 82.

due to the normal differentials in physical strength.[1277] For a variety of legitimate reasons, the victim may not make physical resistance to the offender

For instance, if a woman is inordinately afraid, too embarrassed to defend herself, or simply indisposed to make resistance in any situation, she may submit to a nonconsensual sex even in the absence of a show of violence, or threat of violence, from the offender.[1278] However, the law fails to acknowledge that that the victim did not resist the offender just because she was 'frozen by fear and panic' rather than consenting to the sexual encounter.[1279] It also fails to acknowledge that victims of non-consensual sex, even if there were no physical violence, suffer trauma, at least as much as victims of forceful rape do.[1280] However, as Camille N. Ward and Paula K. Lundberg-Love noted, "the level of psychological impact experienced by victims of stranger rape (…) is no greater than that experienced by victims of acquaintance-rape. Women who are raped by men they know may actually recover more slowly, in part because they are less likely to recognize their experience as rape and seek counseling or other forms of support."[1281]

Requiring a woman to display physical resistance as a prerequisite to legal protection, as Susan Estrich argued, "unnecessarily and unfairly immunizes those men whose victims are afraid enough, or intimidated enough, or, frankly, smart enough, not to take the risk of resisting physically."[1282] However, if the central purpose of the law is to protect sexual autonomy, the use of violence or threat of violence and victim's resistance should have been eliminated from the definition of forcible rape and sexual assault. The law should give priority to and take sexual autonomy seriously. As Stephen Schulhofer succinctly stated, "at the very least making this core

---

[1277] *Ibid.*
[1278] Lani Anne Remick (1993), *supra note* 1247, p. 1118.
[1279] Commonwealth v. Mlinarich (1985) reprinted in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge, p. 406.
[1280] Michelle J. Anderson (2005), *supra note* 1087, p. 636.
[1281] Camille N. Ward and Paula K. Lundberg-Love (2006) 'Sexual Abuse of Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) *"Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 5, Westport: Praeger Publishers, p. 64.
[1282] Susan Estrich (1986), *supra note* 1209, P. 1101.

constituent of human freedom an explicit part of criminal law standards of permissible behavior and recognizing that violations warrant condemnation and serious penalties"[1283] The very nature of rape is non-consensual sex, and violence, threats and intimidation are simply ways of exerting power over the victim.[1284] The essential wrong of rape is that the sexual relations are non-consensual, not the violence used to obtain sex.[1285] Since the harm sustained is a transgression of an individual's sexual autonomy, it is logical to conclude that the primary harm of rape is nonconsensual sex, and that the physical violence that may accompany it is an aggravating factor in determining the gravity of the punishment, but not the existence of the crime itself. As Daphne Edwards succinctly puts it, "[i]t is the violation, not the violence, that is criminal."[1286]

However, by defining forcible rape and sexual assault in terms of the presence or absence of violence, or threat of violence, and resistance, the Ethiopian rape law fails to provide adequate protection to women's sexual autonomy. The protection it provides does not even meet the minimum requirement accepted in the international human rights jurisprudence. In this regard, the general comments and concluding observations of the CEDAW Committee recommended that the law should, at a minimum, define rape based on the lack of consent and not on the use of violence or force or coercion.[1287] Particularly, in its 2017 General Recommendation No. 35, the CEDAW Committee also called upon the state to "[e]nsure that the definition of sexual crimes, including marital and acquaintance or date rape is based on lack of freely given consent, and takes account of coercive circumstances."[1288] Hence, at least, as a first step to meet the minimum human rights

---

[1283] Stephen J. Schulhofer (1992) 'Taking Sexual Autonomy Seriously: Rape Law and beyond Law and Philosophy', *Philosophical Issues in Rape Law* 11(1/2), pp. 35-94, p. 94.
[1284] Joan McGregor (1994) 'Force, Consent and the Reasonable Woman', in Jules Coleman and Allen Buchanan (eds) *In Harm's Way: Essays in Honor of Joel Feinberg*, Cambridge: Cambridge University Press, p. 233.
[1285] *Ibid*.
[1286] Daphne Edwards (1996) 'Acquaintance Rape and the Force Element', *Golden Gate University Law Review* 26: pp. 241-300, p. 300.
[1287] See e.g. Committee on the Elimination of Discrimination against Women (2002), *supra note* 1239, paras. 95-96; and Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Estonia, A/57/38, part I, para. 98.
[1288] General Recommendation No. 35, *supra note* 66, para. 33.

standards and effectively protect women's sexual autonomy, the Ethiopian rap law must distinguish between violations and violence.[1289]

Violence or threat of violence and resistance requirements must be eliminated as defining elements of forcible rape and sexual assault. The law should introduce a new consent standard that allows individuals to act as moral agents. Consent should be defined according to "no means no" standard.[1290] This approach will serve as a useful blueprint for reversing perverse cultural assumptions, raising consciousness among men, and empowering women.[1291] It would bring all instances of sexual offences clearly within the boundaries of the criminal law and underscores the gravity of their harms. Forcible rape and sexual assault should simply be defined as "nonconsensual sex" and the severity of the offense, and, hence, the gravity of the punishment, should be graded according to whether or not violence was used to achieve it, and, if it was, what kind and how much. In this definition, the essence of rape is its non-consensuality, and that non-consensuality is criminal whether or not accompanied by violence or threat of violence.

7.2.5 Marital-Rape Exemption

7.2.5.1 Magnitude and Nature of the Problem

Although the family unit is often considered to be the safest place where individuals living in it seek love, safety, security and shelter, empirical evidence shows that it, instead, is a place where the most drastic forms of VAW are committed.[1292] Sexual violence is one of the various forms of VAW perpetrated within the family setting. In reference to such violence, various terminologies are used including forced marital intercourse, forced sexual activity in marriage, marital sexual

[1289] Stephen J. Schulhofer (1992), *supra note* 1283, p. 35.
[1290] Susan Estrich (1987), *supra note* 1218, p. 102.
[1291] Stephen J. Schulhofer (1992), *supra note* 1283, p. 42; and Susan Estrich (1986), *supra note* 1209, p. 1132.
[1292] UNICEF (2000), *supra note* 25, p. 3.

aggression, marital sexual assault or, as the present study prefers to use, marital-rape.[1293] At times, the term 'wife-rape' is used to emphasize the gender-specific nature of the issue.[1294] Regardless of the differences in terminologies, marital-rape is often considered as one of the most common forms VAW with adverse consequences on individual victims. Although the true level of its prevalence has largely been concealed, much of the available data in Ethiopia put the prevalence rate in a double-digit, with most estimates putting it at as high as 50%.

According to the 2016 DHS, for instance, among ever-married women who were between the age of 15 and 49 years old, 69% reported their current husband or partner and 30% reported former husbands or partners as offenders.[1295] A study in Somali Region refugee camps and the surrounding host communities in Ethiopia indicated that more than 70% of the rapes were committed by husbands and other intimate-partners.[1296] Similarly, a study in Southwest Ethiopia shows that 50.1% of the women faced physical and sexual violence in their life-time at the hands of their husbands or partners.[1297] A study in Western Ethiopia also revealed that about 59% of women reported that they had been subjected to forced sexual intercourse by their husbands or partners at some point in their life-time.[1298] Around Gondar in Northwest part of Ethiopia, 50.8% of women reported that they had experienced physical, sexual, and/or psychological abuse by their partners.[1299] Likewise, a study by the WHO in a rural setting in southern Ethiopia concluded that "[n]early one third of Ethiopian women reported being physically forced by a partner to have sex against their will within the past 12 months."[1300]

[1293] Candice M. Monson *et al.* (1998) 'Sexual and Nonsexual Marital Aggression: Legal Considerations, Epidemiology, and an Integrated Typology of Perpetrators', *Aggression and Violent Behavior*, 3(4), pp. 369–389, pp. 371-372.
[1294] *Ibid*, p. 372.
[1295] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.
[1296] Angela Parcesepe *et al.* (2008), *supra note* 230, p. 3.
[1297] Kebede Deriba *et al.* (2012), *supra note* 830, p. 4.
[1298] Sileshi Garoma Abeya *et al.* (2011), *supra note* 829, p. 18.
[1299] Yigzaw T. *et al.* (2004) 'Domestic Violence around Gondar in Northwest Ethiopia', *Ethiopian Journal of Health Science* 18(3), pp. 133-139.
[1300] World Health Organization (2005), *supra note* 239, p. 7.

In another study conducted by CARE Ethiopia in four *woredas* in various regions including a district in Addis Ababa, 76.6% of women reported that they had been subjected to sexual violence by their partners or husbands.[1301] The study found that the prevalence of sexual violence in Gullelle Sub-city in Addis Ababa was 65.6%.[1302]

According to a study conducted in Southwest Ethiopia, the life-time prevalence of sexual violence was 50.1% and, 41.5% of women reported physical or sexual or both forms of violence in the year preceding the survey.[1303] In 2015, Agumasie Semahegn and Bezatu Mengistie systematically reviewed peer reviewed papers and articles published from 2000 to 2014 and two consecutive Ethiopian DHSs (2005 and 2011), and found that the life-time SVAW by husbands or intimate-partners ranged from 19.2 to 59%.[1304]

These figures clearly show that marital-rape is common and pervasive. They also show that women are much more likely than men to experience sexual violence from their partners – husbands, cohabitants or regular sexual partners – than from strangers.

Effect wise, marital-rape is no less traumatic and abusive than rape by a stranger.[1305] Marital-rape occurs repetitively and co-occurs along with other forms of violence.[1306] As Richard Gelles succinctly puts it, "many wife victims are trapped in a reign of terror and experience repeated sexual assaults over a period of years. When you are raped by a stranger, you have to live with a frightening memory. When you are raped by your husband, you have to live with your rapist."[1307]

[1301] CARE Ethiopia (2008), *supra note* 23, p. 21.
[1302] *Ibid*.
[1303] Kebede Deriba *et al.* (2012) '*supra note* 830, p. 1.
[1304] Agumasie Semahegn and Bezatu Mengistie (2015) 'Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review', *Reproductive Health* 12:78, available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553009/ last visited on 9/15/2018.
[1305] David Finkelhor and Kersti Yllo (1985) License to Rape: Sexual Abuse of Wives, New York: Holt, Rinehart and Winston, p. 118; and Michelle J. Anderson (2010), *supra note* 1219, P. 663.
[1306] Jennifer A. Bennice and Patricia A. Resick (2003) 'Marital Rape: History, Research and Practice', *Trauma Violence Abuse* 4(3), pp. 228-246, p. 230.
[1307] The Testimony of Richard Gelles before the New Hampshire State Legislature cited in Joanne Schulman (1981) 'Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases', *Clearinghouse Review* 15(4), pp. 342-345, p. 345.

Due to its repetitive nature and co-occurrence with other forms of violence, mainly physical violence, women experiencing SVAW by their partners are among the most severely victimized individuals.[1308] Despite the significant negative consequences, victims of marital-rape rarely receive the appropriate attention and care.[1309]

Physically, marital-rape causes injuries ranging from relatively minor cuts and bruises to permanent disability and death.[1310] It causes injuries including cuts, bruises, or aches, eye injuries, sprains, dislocations, burns, deep wounds, broken bones or broken teeth.[1311] Psychologically, it has negative consequences raging from depression and PTSD to alcohol and drug abuse.[1312] As it is a serious breach of expectations, marital-rape may leave the victims in a confused state with strong feelings of anger, betrayal, shame, and a persistent fear of being re-victimized.[1313]

Moreover, the underlying motive for the commission of marital-rape is different from other forms of interpersonal violence in general. Evidence suggests that men often use violence in marriage instrumentally, for the specific purpose of striking fear and terror in their wives' hearts in order to ensure compliance, obedience, and passive acceptance of their rule in the home or simply where they feel a loss of power to which they felt entitled.[1314] In one study, for instance, a respondent was reported as having exclaimed "[i]f you call my asking for sex with my wife a rape, what would you call then the illegal forced sex occurring outside [of] marriage?"[1315] He was in essence asking: "If you cannot rape your wife, whom can you rape?" In the study by Care Ethiopia, one participant was reported to have stated "[m]y wife means my property - she is living with me to satisfy all my needs – this is not an issue to be bargained about. A husband and wife are sleeping together and

---

[1308] S. Boucher *et al.* (2009) 'Marital Rape and Relational Trauma', *Sexologies* 18(2), pp. 95-97, P. 95.
[1309] *Ibid*.
[1310] L. Heise *et al.* (1999), *supra note* 816, p. 16.
[1311] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 296.
[1312] L. Heise *et al.* (1999), *supra note* 816, p. 16; and World Health Organization (2005), *supra note* 239, p. 16.
[1313] David Finkelhor and Kersti Yllo (1985), *supra note* 1305, p. 118.
[1314] L. Heise *et al.* (1999), *supra note* 816, p. 9.
[1315] Tegbar Yigzaw *et al.* (2010) 'Perceptions and Attitude towards Violence against Women by Their Spouses: A Qualitative Study in Northwest Ethiopia', *Ethiopian Journal of Health Development* 24(1), pp. 39-45, p. 42.

sex will take place when I am in need."[1316] He added, "[a] wife has no right to refuse to have sex with her husband. A husband-wife relationship is based on this [expectation on the] issue and a wife is there to serve the husband when he wants to have sex."[1317] These views imply that if their wives refuse to satisfy their sexual need, then they will resort to violence to enforce what they feel they are entitled to.

According to the Care Ethiopia study, "[a] belief in male sexual entitlement, in the case of marriage, has been documented across all the [surveyed] *woredas*."[1318] The vast majority of sexual violence is more about power, anger, and control than about sexual gratification. Thus, marital-rape often tends to be accompanied by excessively controlling behaviors such as insisting on knowing where she is at all times, controlling her access to health care, keeping her from visiting friends, getting angry if she speaks with others, and keeping her from participating in any kind of social gathering.[1319] Men who were too controlling were more likely to be violent against their partner.[1320] The 2016 DHS in Ethiopia also demonstrates that violence is preceded by controlling behaviors such as being "jealous or angry if she talks to other men; frequently accuses her of being unfaithful; does not permit her to meet her female friends; tries to limit her contact with her family; and insists on knowing where she is at all times."[1321] It also suggests that "[a]ttempts by husbands to closely control and monitor their wives' behavior are important warning signs and correlates of violence in a relationship."[1322] Sometimes, marital-rape involves acts of cruelty other than the offenders' sense of sexual entitlement over their victims. In this regard**,** a key informant of the present study recounted horrific stories of EWLA's clients including a victim who was raped while

[1316] CARE Ethiopia (2008), *supra note* 23, p. 28.
[1317] *Ibid.*
[1318] *Ibid*, p. 44.
[1319] *Ibid*, P. 32.
[1320] Kebede Deriba *et al.* (2012), *supra note* 830, p. 1.
[1321] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.
[1322] *Ibid.*

she was under treatment for ovarian cancer, and another victim who was subjected to (forcible) marital-rape repeatedly by a drug-using offender.[1323]

Despite all these tribulations, the majority of women in abusive relationships do not seek help. According to the 2016 DHS, only about one-quarter of women who have experienced physical or sexual violence had sought help.[1324] There are cultural, religious, social and economic barriers that may contribute to the difficulty women have to end violence or their relationships. Often times, women remain in abusive relationships due to concern for their children,[1325] social unacceptability of being single or unmarried,[1326] fear of retribution, lack of other means of economic support, emotional dependency, and lack of support from family and friends.[1327] Other factors identified by the CARE Ethiopia study include women's acceptance of a subordinate position to men; lack of self-confidence and self-esteem; having many children with no source of income to support them; and elders' advice to tolerate the abusive relationship, citing marriage and children as an excuse.[1328] Sadly, ending a relationship does not necessarily reduce a woman's risk, as some partners become even more violent when women leave or attempt to leave the relationships.[1329]

7.2.5.2 Unjustifiable "Justifications" for the Exemption of Marital-Rape

One of, perhaps, the most visible weaknesses of the RCC is that it does not abolish the exemption of marital-rape for forcible rape.[1330] By maintaining marital rape exemption, it has simply mirrored

[1323] Interview with Advocate Two, *supra note* 648.
[1324] Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 297.
[1325] Sileshi Garoma Abeya *et al.* (2012) 'Intimate Partner Violence against Women in West Ethiopia: A Qualitative Study on Attitudes, Woman's Response, and Suggested Measures as Perceived by Community Members', *Reproductive Health* 9:14, available at: http://www.reproductive-health-journal.com/content/9/1/14 last visited on 10-29-2018.
[1326] K. Zimmerman (1995) *Plates in a Basket Will Rattle: Domestic Violence in Cambodia: A Summary*, pp. 3-4, available at: https://www.cisas.org.ni/files/Plates%20in%20a%20basket%20will%20rattle%20domestic%20violence%20in%20Cambodia.pdf last visited on 9/13/2018.
[1327] *Ibid*.
[1328] CARE Ethiopia (2008), *supra note* 23, p. 52.
[1329] L. Heise *et al.* (1999), *supra note* 816, p. 7.
[1330] The Revised Criminal Code, *supra note* 21, Article 620.

and reinforced the longstanding societal views of married women as *sexual and reproductive properties* of their husbands. It simply has legitimized and enforced the belief that marriage 'grants men unconditional sexual access to their wives.'[1331] However, various commentators have espoused 'justifications for the exemption of marital-rape during both the Ethiopian family law reform in 2000 and the 1957 Penal Code reform in 2004. During the family law reform, marital-rape was recognized as a crime in the early draft of the legislation put forward for public discussions and debates.[1332] In the subsequent debates, the main arguments for maintaining the marital-rape exemption were that criminalizing marital-rape will create animosity between spouses and adversely affect marital harmony, lead to divorce after the conviction and sentencing of the offending spouse,[1333] and create difficulty in collecting and producing evidence.[1334] However, none of these 'arguments' provide justification for the impunity of offenders of forcible rape. If a woman suffers no less pain, humiliation, or fear from forcible rape by her husband than perpetrated by her relative, boyfriend, or stranger, the difference is not strong enough to warrant the total exoneration of the marital-rape offender, but not the others, from criminal liability and sanction.

Likewise, the argument that criminalizing marital-rape will damage marital harmony appears to assume that reconciliation and restoration of marital harmony are fostered by decriminalizing violent acts and barring prosecution of the offender. However, once the act is criminalized and the wife reports the incident and initiates criminal prosecution, there is little chance for the spouse to change her mind.[1335] In addition, reconciliation is not a realistic justification unless some matrimonial harmony exists in the relationship.[1336] If the couple are no longer concerned with the furtherance of their relationship, the wife should be protected from sexual or any other forms of

---

[1331] CARE Ethiopia (2008), *supra note* 23, p. 27.
[1332] Mandefrot Belay (2016) 'Notes on Legislative Intent: Public Consultation toward Ethiopia's Family Law Reform and the Revised Code's Response', *Mizan Law Review* 10(1), pp. 244-264, pp. 262-263.
[1333] *Ibid*, p. 263.
[1334] *Ibid.*
[1335] Stuart M. Litoff (1978) 'Criminal Law—The Husband's Rape Exception: An Equal Protection Alternative—State v. Smith, 148 N.J. Super. 219, 372 A.2d 386 (Essex County Ct. 1977)', *Western New England Law Review* 1(2), pp. 409-427, p. 414.
[1336] Peter English (1976) 'The Husband Who Rapes His Wife', *The New Law Journal* 126: pp. 1223–1225, p. 1225.

violence perpetrated by her husband.[1337] It is also recognized that conciliation in cases of intra-family violence is inadvisable as a means of solving intra-family violence. Conciliation is premised on the notion that the parties at the negotiating table are operating from equal bargaining positions, which is generally not true in cases of intra-family violence.[1338]

Similarly, the argument that there will be difficulty to prove the offence and the offender's criminal culpability cannot also be a justification to decriminalize forcible rape in marriage. In fact, marital-rape has already been criminalized by the RCC itself in other instances regardless of issues of evidence. For instance, marital-rape is a criminal offence when it is committed by a woman against her husband.[1339] Rape against a man is simply defined as follows: "[a] woman who compels a man to [a] sexual intercourse with herself, is punishable…."[1340] Perhaps inadvertently, the phrase "outside wedlock" is omitted from this newly added sexual offence. Hence, this provision, at least in theory, protects a man from rape committed by a woman, including his wife. In this case, the law does not take into account the relationship between the offender and the victim. Raising evidentiary issues to defend the exemption of marital-rape, while criminalizing it where it is committed by a woman against her husband, does not make sense.

Moreover, forcible rape is also a criminal offence where it is committed by a man against his partner in a *de facto* marriage or in what is, in legal terms, known as *irregular inion*.[1341] Under the Revised Family Code, irregular union is recognized as a factual institution with nearly similar matrimonial effects with a *de jure* marriage.[1342] Where an irregular union exists for three years, it will have, like marriage, the same retrospective effects on the property of the spouses.[1343] Marriage

---

[1337] *Ibid*, p. 1223.
[1338] Inter-American Commission on Human Rights (2011) *supra note* 323.
[1339] The Revised Criminal Code, *supra note* 21, Article 621.
[1340] *Ibid*, Article 621.
[1341] *Ibid*, Article 620.
[1342] The Revised Family Code, *supra note* 793, Article 98 (According to this provision, "An irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage.").
[1343] *Ibid*, Article 103.

and irregular union do have the same effects in establishing paternity.[1344] The two institutions do share common features in most substantive matters and differ only in some minor issues. However, when it comes to sexual offence, a man who cohabits with a woman in this *de facto* marriage cannot rape his partner with impunity as the exemption of marital-rape is limited to a man who rapes his wife in a wedlock or in a *de jure* marriage.[1345] This means a woman in a factual institution of 'irregular union' is protected from being raped by a cohabitant, but not a woman in marriage. No logic lends credibility to any argument for the exemption of marital-rape in a *de jure* marriage while it is criminalized in an 'irregular union.' Marital-rape has also been criminalized where it is committed by a husband, knowing of his wife's mental incapacity.[1346]

Most importantly, marital-rape has been criminalized in sexual assault cases where the sexual acts do not involve intercourse (penile-vaginal penetration).[1347] The law criminalizes sexual assault as a separate but a less serious offence, under Article 622. By excluding the phase "outside wedlock" from Article 590 of the 1957 Penal Code, the RCC defines sexual assault under the heading of *Sexual Outrages Accompanied by Violence* as follows: "Whoever […] compels a person of the opposite sex, to perform, or to submit to an act corresponding to the sexual act, or any other indecent act, is punishable …."[1348] This offence does not (and should not) employ the term "outside wedlock" to exonerate either of the spouses from criminal prosecution.[1349] Thus, a man cannot compel his wife *to perform or to submit to an act corresponding to the sexual act, or any other indecent act* with impunity.[1350] Under this formulation, the main flaw is that it has arbitrarily characterized acts corresponding to sexual intercourse, such as anal or oral sex, as a less serious crime than penile-vaginal penetration and attached lesser penalties to them.[1351] Then, it

[1344] *Ibid*, Article 104 and Article 130.
[1345] The Revised Criminal Code, *supra note* 21, Article 620.
[1346] *Ibid*, Article 623.
[1347] *Ibid*, Article 622.
[1348] The *Ibid.*
[1349] *See* the Penal Code, *supra note* 34, Article 590.
[1350] The Revised Criminal Code, *supra note* 21, Article 622.
[1351] *Ibid.*

decriminalizes marital-rape for what it deems more serious offences such as forced penile-vaginal penetration while criminalizing it for supposedly less serious offences like forced anal or oral sex.

Decriminalizing forcible rape while criminalizing sexual assault, in essence, amounts to criminalizing theft while decriminalizing robbery. The *expose des motifs* of the RCC states that revising this specific provision was necessitated just for clarification of terminologies.[1352] But, instead the lawmaker has added more confusion and absurdity than clarity to the approach adopted by the 1957 Penal Code. At any rate, it does not make any sense to raise any reasons for the exemption of marital-rape while criminalizing it in numerous other instances.

Debates for and against the exemption of marital-rape were also raised during the criminal law reforms. In the two drafts codes prepared by the then Ministry of Justice and the then Justice and Legal System Research Institute, the exemption of marital-rape was not abolished.[1353] One of the reasons stated by the drafters was that the prevalence of marital-rape was not known as there had been no case was reported to the police.[1354] The drafters thought that marital-rape was not a social problem.[1355] However, they failed to recognize the fact that marital-rape was not reported to the police because, among other things, it was not a criminal act in the first place.[1356] Neither had they themselves tried to conduct or pushed for a survey to be conducted before making a gross conclusion that marital-rape was not a problem of the society simply because it had not been reported to the police. As was the case during the family law reform, during the criminal law reforms too, the issue surrounding evidentiary matters was also raised.[1357]

Subsequently, forums were organized to gather the opinion of the public on the first draft. During these forums, advocacy groups such as the EWLA requested for the criminalization of marital-

---

[1352] The *Expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 288.
[1353] Kidist Abayneh (2006) *Analysis of the 2005 Criminal Code of Ethiopia in Light of Protecting Women's Rights*, L.L.B Thesis, Addis Ababa University, p. 20.
[1354] *Ibid.*
[1355] Interview with Advocate One, *supra note* 657. *See also* Kidist Abayneh (2006), *ibid.*
[1356] Kidist Abayneh (2006), *ibid.*
[1357] Interview with Advocate One, *supra note* 657.

rape.[1358] The advocates argued that women should not be obliged to make sexual intercourse only to fulfill the needs of their husbands; that giving priority to men's sexual interest by disregarding women's consent contradicts women's human rights; that the conclusion of marriage does not give permission to a man to forcibly rape his wife; and that the risks posed by the exemption of marital-rape on the expansion of HIV/AIDS would be grave.[1359]

On the other hand, the proponents of marital-rape exemption argued that that marital-rape does not exist or is legally impossible because the wife has already given her consent (by virtue of the marriage contract) to have sexual intercourse with her husband – the implied consent doctrine,[1360] and that criminalizing marital-rape would undermine the sanctity of marriage and become a cause for divorce – the marital privacy 'argument.'[1361] During these debates, however, both the implied consent doctrine and the marital privacy theory were no longer legal 'arguments' and their relevance was limited just to the legal history books.

The implied consent doctrine, also known as 'Hale Doctrine', was developed by and named after a jurist, Sir William Hale.[1362] It was the earliest 'rationale' and most enduring justification for the exemption of marital-rape within the English common law.[1363] The doctrine maintains that, through marriage, a wife gives her irrevocable consent to sexual intercourse with her husband, under all circumstances and irrespective of the state of her health or how she happens to be feeling at the time. It was also based up on the doctrine of *one flesh in marriage*.[1364] Under this doctrine, upon marriage, a woman is placed under the protection and authority of her husband; they were,

---

[1358] Interview with Advocate One, *ibid*. *See also* Kidist Abayneh (2006), *supra note* 1353, p. 19; Sinidu Fekadu (2008), *supra note* 2690, p. 18; and Mersha Shenkute (2013), *supra note* 26, p. 21.
[1359] Interview with Advocate One, *ibid*. *See also* Kidist Abayneh (2006), *ibid.*
[1360] Interview with Advocate One, *ibid*. *See also* Kidist Abayneh (2006), *ibid,* p. 21.
[1361] Kidist Abayneh (2006), *ibid.*
[1362] Maria Pracher (1981) 'The Marital Rape Exemption: A Violation of a Woman's Right of Privacy', *Golden Gate University Law Review* 11(3), p. 717, available at: https://digitalcommons.law.ggu.edu/ggulrev/vol11/iss3/1/ last visited on 9/14/2018.
[1363] Michelle J. Anderson (2010), *supra note* 1219, P. 662.
[1364] Hilaire Barnett (1998), *supra note* 65, pp. 259-260.

by law, one flesh, and that flesh was the man.[1365] Of course, the Hale Doctrine was not theorized to justify the exemption of marital-rape in Ethiopia. Neither has the doctrine been formally incorporated into the Ethiopian legal system. However, the theory had the support of empirical studies. For instance, a study conducted by CARE Ethiopia demonstrated that there is a widely accepted belief *that a marriage contract provides a husband with unconditional access to sex with his wife whenever he chooses*.[1366] The lawmaker has, in essence, maintained the law on the belief that its removal was thought to be 'contrary to the societal culture' as argued by the proponents of impunity of the husband or the marital-rape exemption.[1367] Yet, neither the Hale Doctrine nor societal beliefs can justify the protection of the husband from prosecution for committing forcible rape against his wife. It is unreasonable for one to conclude from a woman's decision to marry that she intends to make her body accessible whenever the husband wants.

The second argument – the marital privacy theory – simply maintained that spousal sexual relations should be treated as personal matters outside of the realm of criminal law.[1368] This argument too is unreasonable, discriminatory and unjust. As Pracher argued, "[a] formulation of privacy which would protect a marital unit rather than an individual's rights within that relationship disregards basic premises of privacy by failing to recognize an individual's autonomy over selfhood."[1369] As Maria Pracher noted, it makes "the notion of privacy vague, in that by allowing the marital exemption, what is protected is the dominant role of the husband, rather than the marital relationship or privacy."[1370] Pracher added that "[a] woman does not forfeit her right to privacy upon marriage."[1371] Thus, the marital veil of privacy is nothing more than a cover up to give abusive husbands a 'license' to rape their wives and to shield them from criminal liability.

[1365] *Ibid.*
[1366] CARE Ethiopia (2008), *supra note* 23, pp. 44-45.
[1367] Interview with Advocate One, *supra note* 657.
[1368] Emebet Kebede (2004), *supra note* 27, pp. 68-71.
[1369] Maria Pracher (1981), *supra note* 1362, p. 751.
[1370] *Ibid.*
[1371] *Ibid.*

It also appears that the legal impossibility of marital-rape is reminiscent of the view of rape as a property crime. In the past, a woman was viewed as a sexual and reproductive property of her husband.[1372] Thus, a married man cannot be prosecuted under the law for using his own property as he sees fit.[1373] However, where she was raped by someone else, it was seen as an attack against a man's property. In such cases, the woman's husband, if she was married, or her father, if she was not married, could expect to receive compensation for the *damaged property*.[1374] This was institutionalized under the Ethiopian law. Accordingly, the husband had a vested interest to claim compensation for sexual or physical assaults committed against his wife, and if the victim was unmarried, compensation was due to her family. For instance, Article 2114 of the Civil Code of Ethiopia stipulated that "[w]here a person has been sentenced by a criminal court for rape or indecent assault, the court may award the victim fair compensation by way of redress."[1375] It further provides that "[i]n such an event, compensation may also be awarded to the husband of the woman, or to the family of the girl who has been raped."[1376]

For physical assaults, Article 2115 of the Civil Code stipulated that a "[f]air compensation may be awarded by way of redress to a husband against a person who, by inflicting bodily injury on the wife, renders her companionship *less useful or less agreeable* to the husband."[1377] It added that "[t]he action which the husband may bring on this ground shall be independent of the action for damages which the wife may bring in respect of the injury she has suffered."[1378] A husband was not criminally liable for raping his wife simply because he was using his property as he wished. Where his wife was sexually or physically violated by a third party, the act not only constituted a criminal offence but also the husband can bring a civil action against the offender for making the

---

[1372] Andrea Dworkin (1976), *supra note* 188, p. 27; Mikki van Zyl (1990), *supra note* 358, p. 10; Louise du Toit (2008), *supra note* 359, p. 143; and Jennifer Temkin (1982), *supra note* 6, p. 400.
[1373] Andrea Dworkin (1976), *ibid*, p. 26; and Frances P. Bernat (2002), *supra note* 361, p. 86.
[1374] K. Burgess-Jackson (1996), *supra note* 359, pp. 60-68; A. F. Schiff (1982), *supra note* 362, p. 235; and Vicki McNickle Rose (1977), *supra note* 14, pp. 75-89.
[1375] The Civil Code, *supra note* 331, Article 2114 (1).
[1376] *Ibid*, Article 2114 (2).
[1377] *Ibid*, Article 2115.
[1378] *Ibid*, Article 2115.

victim '*less useful' or 'less agreeable'* to him as a husband. Although these provisions were tacitly repealed by the equality clause of the FDRE Constitution, the CEDAW, the Women's Protocol and Revised Family Code, the legal usage of words like '*less useful' or 'less agreeable'* to describe the relative importance of married victims to their husband reflected not just the idea of a stain attaching to the woman's body but also the subsequent loss of her value to her male possessor. In this way, the rape law was used to advance the interest of the patriarchy.

In sum, the debates for and against the exemption of marital-rape ended up playing out against the interest of women's rights advocacy groups. In this regard, as a member of the legislation drafting committee, Tsehai Wada noted that "[I] had also the opportunity to read recommendations submitted by different bodies, such as gender based NGOs. Though these groups have expressed their disagreement with this legal position, they were not passionate enough to arouse public support, as they did with regard to other crimes such as abortion."[1379] He added that "[t]he general mood of participants of the different workshops tends to show that removing the exception is 'contrary to our culture', it disrupts the bond that needs to exist between spouses, etc. So, the exception that was seen in the repealed law is allowed to continue."[1380] Thus, by maintaining marital-rape exemption, the law allows the culture of violence and impunity to continue.

7.2.5.3 A Case for Ending Marital-Rape Exemption

Nowadays, marital-rape is well understood as one form VAW, which denies its victim the right to physical security, bodily integrity, privacy, liberty, equality and freedom from discrimination. The exemption of marital rape constitutes discrimination against women. It assigns to married women a separate and disadvantaged status by creating an irrational distinction between married women and single women, married men and married women, women in a *de jure* marriage and women in a *de facto* marriage. Marital rape constitutes violation of women's human rights. In its Recommendation No. 19, for instance, the CEDAW Committee asserted that state parties should

[1379] Tsehai Wada (2012), *supra note* 412, at note 87.
[1380] *Ibid.*

ensure that "laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity."[1381] However, by maintaining the discriminatory law that exempts marital rape against a married woman, but not against a married man, the state fails to respect its obligations under the Constitution[1382] and international treaties.[1383]

Although Ethiopia has made reservation to a provision of the Women's Protocol that calls upon states to proscribe sexual violence in a private setting,[1384] it has not made reservation to maintain discriminatory laws. Apparently, Article 620 of the RCC is discriminatory against married women. Thus, it has been outlawed by other provisions of the Women's Protocol to which Ethiopia has entered no reservation. In this regard, Article 2(1)(b) of the Women's Protocol obliges state parties to "combat all forms of discrimination against women through appropriate legislative, institutional and other measures [and] enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination…"[1385] Likewise, Article 8(f) stipulates that "[w]omen and men are equal before the law and shall have the right to equal protection and benefit of the law" and obliges states to take measures to ensure "reform of *existing discriminatory laws* and practices in order to promote and protect the rights of women."[1386] Being discriminatory against married women, Article 620 of the RCC and the reservation to it contradict Article 2(1) and Article 8(f) of the Women's Protocol. It also contradicts the equality clause of the FDRE Constitution and other international treaties, including the CEDAW.

Ending marital-rape exemption, as Michelle J. Anderson noted, "is crucial to redressing the harms caused by wife rape."[1387] It is the bare minimum that the law has to claim fairness to women.[1388]

[1381] General Recommendation No. 19, *supra note* 481, para. 24.
[1382] The FDRE Constitution, *supra note* 426, Article 35(1-2)
[1383] *See e.g.,* the Women's Protocol, *supra note* 525, Article 14; and the CEDAW, *supra note* 458, Article 2(d)-(e).
[1384] The Women's Protocol Ratification Proclamation, *supra note* 612, Article 3(2)(a).
[1385] *Ibid*, Article 2(b).
[1386] *Ibid*, Article 8(f).
[1387] Michelle J. Anderson (2010), *supra note* 1219, P. 663.
[1388] *Ibid.*

In this regard, the CEDAW Committees clarifies that, to meet the minimum international human rights standards, the law should, at least, criminalize marital-rape.[1389] Specifically addressing the Ethiopian rape law, the CEDAW Committee expressed its concern about Ethiopia's failure to criminalize marital-rape[1390] and recommended that it should amend its criminal law to criminalize marital-rape.[1391] Maintaining marital-rape exemption is, therefore, failing to meet the bare minimum international human rights standards on VAW.

Maintaining marital-rape exemption, on the other hand, defeats one of the explicitly stated purposes of rape law reform – the protection of women's human rights. By decriminalizing marital rape, the law denies sexual autonomy to women. Often, women who lack sexual autonomy are powerless to refuse unwanted sex or to use contraception and, thus, are at risk of unwanted pregnancies.[1392] This, in effect, undermines women's reproductive rights as recognized under the Constitution and the international human rights instruments adopted by Ethiopia. It specifically undermines the basic right of all couples to decide freely and responsibly the number, spacing and timing of the children they give birth to.[1393] Additionally, married women do not even have the right to a safe abortion when the pregnancy had resulted from a forcible marital-rape since, legally speaking, a married woman cannot be raped by her husband.[1394] This is so, despite the fact that reproductive rights are considered as central to women's control over their own lives.[1395]

[1389] *See e.g*. Committee on the Elimination of Discrimination against Women (2002), *supra note* 1239, paras. 95-96; Committee on the Elimination of Discrimination against Women (2006) Concluding Observations, Malaysia, CEDAW/C/MYS/CO/2, para. 21; the United Nations Commission on Human Rights (2001) Concluding Observations, Azerbaijan, CCPR/CO/73/AZE (2001), para. 17; and the United Nations Commission on Human Rights (2003) Concluding Observations, Sri Lanka, CCPR/CO/79/LKA, para. 20.

[1390] Committee on the Elimination of Discrimination against Women (2011) Concluding Observations, Ethiopia, para. 20.

[1391] *Ibid*, para, 21(a).

[1392] L. Heise *et al.* (1999), *supra note* 816, p. 14.

[1393] See e.g., the Women's Protocol, *supra note* 525, Article 14, the CEDAW , *supra note* 458, Article 16; International Covenant on Civil and Political Rights, Article 17, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; International Covenant on Economic, Social and Cultural Rights, Article 12, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; and the ACHPR, *supra note* 521, Article 9 and Article 16.

[1394] The Revised Criminal Code, *supra note* 21, Article 551(1)(a).

[1395] Amnesty International (2004), *supra note* 71, p. 24.

According to Meaza Ashenafi, "women's reproductive autonomy is central to the issue of women's equality and full participation in society."[1396] She added that it is "a key to women's ability to exercise all other fundamental rights."[1397] Thus, criminalizing marital-rape can be taken as an important first step in protecting women's reproductive autonomy and rights.

Most of all, marital-rape exemption may compromise women's ability to protect themselves from HIV/AIDS. Sexual violence influences the risk of HIV and other STIs directly when it interferes with women's ability to negotiate condom use.[1398] As Fikremarkos Merso suggested, marital-rape exemption "would certainly be a risk factor for HIV as the wife does not have the right to determine her sexuality."[1399] Recounting stories of the EWLA's clients, Meaza Ashenafi also noted that "in marital relationships, women are forced to submit to sexual advances even when they are sure of their partners' infidelity."[1400] Likewise, an informant of the present study, Advocate One, noted that the "main issue raised by advocates of criminalizing marital rape during the revision of the 1957 Penal Code was the spread of HIV/AIDS. Women who are economically dependent on their husbands are more likely to sleep with their spouses, even while knowing that they are infected with the virus. They cannot refuse sexual intercourse."[1401] However, the law ignores this imbalance of power in negotiating safe sex in marriage and maintains marital-rape exemption by a man against his wife, but not the vice versa. By doing so, it ultimately undermines women's right to life, a basic right to enjoy and exercise all other human rights.

In relation to the advent of HIV/AIDS, failure to criminalize marital rape is a breach of specific obligations under international treaties ratified by Ethiopia. In this regard, the Women's Protocol imposes upon the state clear and precise obligations, calling upon the state to respect and promote

---

[1396] Meaza Ashenafi (2004), *supra note* 746, p. 80.
[1397] *Ibid*, p. 83.
[1398] L. Heise *et al.* (1999), *supra note* 816, p. 16.
[1399] Fikremarkos Merso (2008) *Women and Girls and HIV/AIDS in Ethiopia: An Assessment of the Policy and Legal Framework Protecting the Rights of Women and Girls and Reducing Their Vulnerability to HIV/AIDS*, UNFPA Document, p. 14.
[1400] Meaza Ashenafi (2004), *supra note* 746, p. 81.
[1401] Interview with Advocate One, *supra note* 657.

the right to the sexual and reproductive health of women in general and "the right to self-protection and to be protected against [STIs], including HIV/AIDS" in particular.[1402] Self-protection is at stake due to the power imbalance in negotiating safe sex while the duty to protect rests upon the state. Thus, it is the obligation the state to protect married women against STIs, including HIV/AIDS, among other things, by criminalizing forcible rape in marriage.

Moreover, failure to define (forcible) marital rape as a criminal act, in essence, is a refusal to acknowledge it as a violation of human rights and a denial of its existence, deterring the introduction of legal and policy reforms to address it.[1403] Marital-rape exemption promotes a culture of impunity and contributes to the view of sexual violence as a routine, socially accepted and normal act. Criminalizing marital rape, on the other hand, sends a firm social message that rape is a form of VAW regardless of the relationship between the offender and the victim, that it will not be tolerated, and that it would be punished wherever and whenever it occurred.

7.3 Limits of the Rape Law and Policy Reforms on Procedural and Evidentiary Matters

Unlike victims of inter-personal violence in general, rape victims who decide to report the incident to the police and participate in the criminal proceedings may experience secondary distress in many ways, including insensitive questioning by the police, attitudes of skepticism and disbelief by the key actors within the CJS, frustration and inconvenience related to excessively prolonged proceedings, anxiety about testifying in a public trial,[1404] and a hostile cross-examination by the offender or his lawyer at the trial.[1405] Such secondary distress can be alleviated by reforming the procedural and evidentiary rules and practices, within the CJS. The failure to address these matters could be contributing for the high level of attrition, the low level of conviction rates for rape cases

---

[1402] The Women's Protocol, *supra note* 525, Article 14(1)(d).
[1403] Sana Loue (2001) *Intimate Partner Violence: Societal, Medical, Legal, and Individual Responses*, New York: Kluwer Academic Publishers, p. 77.
[1404] Ivana Bacik *et al.*(1998) *The Legal Process and Victims of Rape: A Comparative Analysis of the Laws and Legal Procedures Relating to Rape, and Their Impact Upon Victims of Rape, in the Fifteen Member States of the European Union*, Dublin: The Dublin Rape Crisis Centre, p 31.
[1405] Carol Smart (1989) *Feminism and the Power of Law*, London: Routledge, Chapter 2, p. 39.

and the harrowing treatment of the victims. Regard this, Sara Tadiwos noted that "[f]ew cases come to court, still fewer rapists are convicted, and the victim, rather than the rapist, is put on trial, rendering rape still a serious threat to women."[1406] In highlighting the myths and stereotypes surrounding the implementation of rape law, Sara added that "social attitudes and their articulation in the legal process operate to protect not the victim but the rapist" and that "being raped is what is punished and what at the same time constitutes the crime."[1407]

During the 2004 reform, advocacy groups such as the EWLA lobbied for the amendment of the procedural and evidentiary rules.[1408] They demanded for the adoption of the rules on trying rape cases *in-camera*, reducing the burden of proof for rape cases, and limiting the offender's bail right.[1409] Yet, the substantive rape law reforms were not accompanied by changes in procedural law and evidentiary rules or practices. The following two sub-sections identify and critically analyze the main gaps in the rules and practices of procedural and evidentiary laws, respectively.

7.3.1 Limits of the Rape Law on Procedural Matters

7.3.1.1 Gender-blind Rules of Criminal Procedure

Despite some promising policy reforms, both the criminal procedure law in force and the draft code of procedural and evidentiary rules do not include specific rules applicable to rape cases. Generally, the 1961 Criminal Procedure Code is the main procedural law, which, in the absence of other specific legislations, regulates all criminal proceedings. It is a default procedural law for criminal proceedings. According to the present study's key informant, Judge One, "[t]here is no separate rules of procedure promulgated specifically to deal with rape cases. Nor do we have

[1406] Sara Tadiwos (2001), *supra note* 27, p. 6.
[1407] *Ibid.*
[1408] Ethiopian Women Lawyers Association (2001), *supra note* 654.
[1409] *Ibid.*

specific policy, directives or protocols on rape cases. We follow the general rules of procedural law that are used to deal with any other criminal cases."[1410]

The 1961 Criminal Procedure Code does not incorporate the rights of rape victims such as the right to be treated with respect and recognition, the right to be referred to adequate support services, the right to receive information about the progress of the case, the right to be present and give input to the decision-making, the right to counsel, the right to protection of physical safety and privacy, and the right to compensation. The existing criminal procedure law remains gender-blind. Thus, if rape victims decide to report the incident to the police and be involved in the CJS, their cases will be treated like any other criminal cases. Under such a gender-blind legal context, it is highly likely for rape myths and stereotypes to creep in and influence the judgments of the key actors at every stage of the CJS, leading to the harrowing treatment of the victims.

7.3.1.2 Initial Reporting and Recording of Rape Cases

Normally, a rape case is initially reported to the police.[1411] It may also be reported to the prosecutor, who must forward it to the police.[1412] The disbelief and mistreatment of the victims start at this early stage. Often, the victims' stories will be trusted based on what the police think of them and the prevailing stereotypes of women who *can or cannot be raped*.[1413] These criteria set up model women who cannot be raped, and victims who do not meet the criteria often cannot be and often are not classified by the police as genuine rape victims.[1414] The typical example in this regard is the police' classification and recording of rape victims into two categories: virgins and non-virgins.[1415] Upon reporting, as this classification and recording implies, a victim of rape would be routinely questioned as to whether she was virgin or not at the time of the alleged assault. If she

[1410] Interview with Prosecutor Two, *supra note* 849.
[1411] Criminal Procedure Code, *supra note* 425, Article 16.
[1412] *Ibid*, Article 16.
[1413] Mikki van Zyl (1990), *supra note* 358, pp. 22- 27.
[1414] Jeanne Gregory and Sue Lees (1999) *Policing Sexual Violence*, London: Routledge.
[1415] Theresa Rouger (2009), *supra note* 293, p. 36; Sinidu Fekadu (2008), *supra note* 2690, p. 18; and Indrawatie Biseswar (2011), *supra note* 28, p. 185.

was virgin, her case meets the criteria and her credibility may not be questioned. Instead, her case would be met with a more serious investigation response, as compared to cases involving a non-virgin victim.[1416] The practice of classifying victims as virgin and non-virgin has largely been abandoned. However, some official reports from sub-city level police departments contain such classification and recording. The federal courts' digital data-base system has also included a separate category for virgin rape victims. For instance, as recently as 2016, the digital database of the Lideta Division of the Federal First Instance Court had contained at least three convictions for abducting and raping virgins .This indicates that the virgin and non-virgin dichotomy and recordings, with the implicit assumption behind it, still persist.

Currently, rape cases are generally classified and recorded based on the age of the victims, as child victims and adult victims. However, replacing the virgin and non-virgin dichotomy with child and adult dichotomy may have the same effect as children are often considered to be virgin while adults are viewed generally as non-virgin. For instance, the present study's key informants believe that more adults report fabricated rape cases than do child victims. The classification of rape cases based on the age of the victims, with this unwarranted assumptions regarding false accusation of rape by adult victims, may still use as certain criteria to determine the degree and seriousness of the responses from the CJS. It will affect how the key actors respond to rape cases involving child victims on the one hand and adult victims on the other. It appears that in rape cases involving children, their credibility might not be questioned, potentially securing a serious investigation response while in cases involving adults, the focus seems to be on the credibility of the victims. However, the classification of rape cases along the age of the victims by itself does not create a problem if it is detached from the attribution of credibility and used only to offer specialized care and treatment that meet the needs of child victims.

[1416] Sinidu Fekadu (2008), *ibid*, p. 18.

7.3.1.3 Location and Manner of Interviewing Rape Victim

After a rape case is reported, the victim has to be interviewed and her statement recorded as part of the initial investigation process. However, there is no procedural rule or directive instructing the responding police officer to talk with and interview the victim in a private area to prevent re-traumatization. For instance, in an observation conducted by the present researcher at the Bole Sub-city Police Department on November 14, 2017, the special unit in charge of investigating rape cases had only one small office, which is further partitioned into two rooms. In the first small room, which is located immediately behind the entrance door, the prosecutor was interviewing the victim and a meter or so away in the same room, the unit head was dealing with routine administrative activities and receiving other clients. Sometimes, clients meet the unit head in team while the prosecutor was interviewing the victim next to the group of people.

Figure 9. Partial view of victims' interview room of Bole Sub-city Police Department
Bole Sub-city Police Department Women's and Children's Investigation Unit, Picture taken on November 14, 2017 8:55 AM.

As Figure 9 shows, the remaining four investigators use the next small single room, for interviewing the victims. Other police departments also face similar challenges as there are no

separate private rooms to interview one victim at a time.[1417] An informant of the present study, Prosecutor Two, noted "I used to interview victims in the same room where investigators were taking statements of other rape victims."[1418] This view was also shared by rape-victim interviewees. For instance, victims were asked whether they were interviewed in a private place during investigation. Victim One and Victim Three stated that they were interviewed in the presence of other persons. Other key informants also expressed their concern over the lack of private place for interviewing the victims.[1419] Thus, in the current situation, the victims have to describe in precise detail what had happened to them, in the presence of other clients and officers. Public references to intimate parts such as sexual organs are almost always embarrassing and it is especially traumatic for someone who has been sexually assaulted.[1420]

Furthermore, the victims are not given the option to report the incident to and be interviewed by a female police. In this regard, the interviewees were asked to identify the sex of the police who investigated their cases. Four interviewees stated that their cases were investigated by male officers[1421] while one interviewee, Victim Five, stated that she gave her initial statement to a female officer but subsequently her case was investigated by a male officer. Only one interviewee, Victim Two, who stated that her case was handled entirely by a female police officer. However, as Yakin Ertürk noted, "[t]he principles of dignity, integrity, privacy and respect also need to be born in mind with respect to reporting – with provisions for confidentiality and being able to make reports to female staff [being] key basic measures."[1422] For this reason, rape victims should have been, at least, provided with the option to report and be interviewed by a female officer.

In addition to the location of interviewing and the sex of the officer, the attitudes of the police and the overall manner of interviewing are also essential to prevent re-traumatization and secondary

---

[1417] Interview with Prosecutor Two, *supra note* 849.
[1418] *Ibid.*
[1419] Interview with Advocate Two, *supra note* 648.
[1420] Mikki van Zyl (1990), *supra note* 358, p. 22.
[1421] Interview with Victim Six, *supra note* 935; Interview with Victim One, *supra note* 926; Interview with Victim Four on March 20, 2019, at 11:00:12:00 AM; and Interview with Victim Three, *supra note* 930.
[1422] The United Nations Human Rights Council (2008), *supra note* 38, para. 274.

victimization. The victim has to be treated as a human being, deserving of trust and respect.[1423] The police should, at least, show genuine empathy to the victim. They should avoid demonstrating a judgmental attitude and forwarding leading or suggestive questions. They should give the victim adequate time to tell her story without undue interruption. The police should react in a neutral manner but show empathy to her story. However, there are no directives or procedural rules which provide detailed instructions for the initial interview of a rape victim by the police.

In the absence of clear instructions, the police tend to blame the victim and may ask leading or suggestive questions.[1424] The police used to blame the victim saying: "You are the one who bring this event, so what are you doing here at the police station?";[1425] "Well, why did you go with the offender? You were asking for it!"[1426] and "What wrongs did the offender do against you other than the rape that you are alleging?"[1427] Within the CJS, these kinds of suggestive or leading questions are common.

For instance, an interviewee of the present study, Victim Five, was a 16-years-old girl.[1428] She was raped by a neighbor who was living in a shared compound. However, fearing threats from the offender, she did not report the incident to the police for about four months. Later on, she decided to tell the story to one of her close relatives who encouraged her to report the case to the police. She was asked what kind of questions were posed to her by the police during the investigation, and she confirmed that the following suggestive or leading questions were asked: *What kind of cloth did you wear during the incident? Did you scream*? *Were you alone at that time*? *Did you try to stop him*? Other four interviewees also faced similar questions during the investigations.[1429]

[1423] *Ibid*, para. 280.
[1424] Ministry of Women, Children and Youth Affairs (MoWCYA) (2013), *supra note* 217, pp. 73-74.
[1425] Sinidu Fekadu (2008), *supra note* 2690, p. 49.
[1426] Gemma Lucy Burgess (2012), *supra note* 617, p. 162.
[1427] Blain Worku (2011), *supra note* 987, p. 53.
[1428] Interview with Victim Five on March 22, 2019, at 11:00:12:00 AM.
[1429] Interview with Victim Six, *supra note* 935; Interview with Victim One, *supra note* 926; Interview with Victim Two, *supra note* 928; and Interview with Victim Three, *supra note* 930.

Moreover, in the absence of clear instructions, rape victims could be subjected to interrogation by multiple officers, at the same time or consecutively, and sometimes, at different places. Victims were asked about the number of police officers involved in the investigation of their cases. Only one interviewee, Victim Two, stated she was treated by one police officer. Two interviewees, Victim One and Victim Three, stated that they were contacted by two police officers while the remaining two, Victim Four and Victim Five, stated that they were contacted by five and three police officers, respectively. However, the number of officers who dealt with the case of Victim Four might have been inflated as the case was not first disclosed at a police station, but to the police, who were called and came to the home, amid family violence at night.

Victims were also asked whether they were interviewed in one place. Three interviewees – Victim One, Victim Three and Victim Five – reported that the police office where they initially gave their statements and where their cases were investigated were not the same while the reaming two – Victim Two and Victim Four – stated that they were interviewed in one place.

Previous studies also indicated that rape victims were subjected to multiple interrogations by multiple officers. For instance, in her study on the CJS in Addis Ababa, Blain Worku noted: "the very environment at the police departments is terrifying for a mere visitor, let alone to a victim of rape. [Three] or more police officers, in military dresses, sit in a single narrow room, in the same compound not far from other rooms providing other police services."[1430] She further observed that the "victim is expected to talk to and answer for question forwarded from all of [the police officeres] consecutively or sometimes at the same time."[1431] Blain also found that "[t]he way of questioning […] is more of leading her to be inconsistent in her allegations and admit that she is lying about being [raped]."[1432] This indicates that the victim was interrogated like a suspect herself.

[1430] Blain Worku (2011), *supra note* 987, p. 53.
[1431] *Ibid.*
[1432] *Ibid.*

The institutional settings and personnel assignments are also contributing to the repeated interrogation of the victims. According to key informants, the victim may initially report the incident to the nearby police station, where the responding officer must determine whether the case constitutes VAWC to be entertained by the special (Women's and Children's) investigation unit.[1433] If that is the case, the victim could be referred to the relevant special unit, which is, in most cases, located at the sub-city level police department, for a full-fledged investigation.[1434] In cases where the victim initially reported the incident at the Gandhi Memorial Hospital, initial interviews are conducted by the police and prosecutor assigned at the one-stop center.[1435] In such cases, the police and the prosecutor at the center take the victim's statement to determine whether the case has a criminal nature; if it has, they refer that particular victim to the special police unit at sub-city level police department with a local jurisdiction, for a full-fledged investigation.[1436]

In addition, the victims may also be interviewed by more than one prosecutor who are assigned, on a rotating basis, to work at the police department and at the trial-court in three-month's interval.[1437] Moreover, the prosecutor working with the police at sub-city level police department or station at the investigation stage and the prosecutor who entertains the case at the prosecution stage are often not the same. Thus, the victim has to tell her story to, at least, two prosecutors.

Generally, the rape victim was interrogated in a narrow room by multiple police officers, repeatedly, as if she were a suspect. Then, she was interviewed by, at least, two prosecutors. At the trial-court, she was subjected to a hostile cross-examination, including enquiry into her social conducts and sexual history. She must tell and re-tell the story of her rape to many different people, over and over again, which can be traumatic and difficult. She has to relive a profoundly traumatic

---

[1433] Interview with Police Officer One, *supra note* 842; Interview with Prosecutor One, *supra note* 842; Interview with Prosecutor Two, *supra note* 849; and Interview with Prosecutor Three, *supra note* 851.
[1434] *Ibid.*
[1435] *Ibid.*
[1436] *Ibid.*
[1437] *Ibid.*

experience each time she recalls. The victim has to review events of the rape in the distant future, long after she has partly adjusted to the disruption provoked by the offence.

In this regard, victims were asked to state one of the major adverse experiences they faced during the criminal proceedings. The precise response of Victim Six was: "to be questioned repeatedly." Likewise, Victim Two replied as follows: "I was tired of calling my [intimate body] part repeatedly."[1438] The practice of questioning victims by multiple actors repeatedly leads to secondary victimization. It defeats the essence of establishing a one-stop center, which is to provide to the victims all services in one location.[1439]

7.3.1.4 Physical Safety and Privacy Rights of the Victim

During the criminal proceedings, the victims need effective legal protection, particularly from any possible retaliatory attack, harassment or intimidation by the offender or his accomplices. It was for this reason that the CEDAW Committee called upon the state to adopt and implement effective measures to protect witnesses of VAW before, during and after the legal proceedings through, among others, "the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance."[1440] The victims' privacy rights should also be protected. In this regard, the CEDAW Committee requested states to adopt and implement effective measures to protect witnesses' privacy and safety through gender-sensitive court procedures and measures.[1441] However, within the Ethiopian CJS, there are no procedural rules specifically designed to this effect.[1442] This means rape victims are offered neither protection to their physical safety nor to their privacy rights during the proceedings.

[1438] Interview with Victim Two, *supra note* 928.
[1439] UNICEF (2008) *UNICEF South Africa*, available at: http://www.unicef.org/southafrica/hiv_aids_998.html last visited on 9/18/2018.
[1440] General Recommendation No. 35, *supra note* 66, para. 40(b).
[1441] *Ibid*, para. 40(a).
[1442] Interview with Advocate Two, *supra note* 648.

Regarding the protection of victims' physical safety, the procedural law currently in force does not even restrict the bail right of the offender. In principle, rape is a bailable offence unless the victim has been murdered.[1443] Generally, bail will be denied where: (1) the offender is unlikely to comply with the conditions laid down in the bail bond; (2) the offender is, if released on bail, likely to commit other offences; and (3) the offender is likely to interfere with witnesses or tamper with evidence.[1444] All these case-by-case restrictions of bail rights are not specifically linked to the protection rape victims. The offender may not be denied his bail right for the sole purpose of protecting the victim.[1445] Generally, where the offender is released on bail, conditions of non-contact or non-intimidation of the victim are not imposed on his release.[1446] However, according to this study's key informants, at least in some compelling circumstances, the court strictly ordered the offender not to contact the victim, upon accepting his application for bail.[1447] Cases also show that the court ordered the offender to leave the compound he shared with the victim. For instance, in a criminal File Number 225827, the Federal First Instance Court, Lideta Division, the court issued this kind of order reasoning that allowing the offender to live in a shared compound would compromise the psychological well-being of the victim.[1448]

However, the practice generally is that the victims do not have any say in the decision regarding bail or the type of conditions which may be imposed on the bail.[1449] The victims even are not informed about the decision made regarding bail. Both at the investigation and the trial stages, the offenders appeared before the court, with the police and prosecutor, respectively. The victims were not considered parties to the criminal proceedings, but, instead, are usually treated as prosecutors' witnesses.[1450] At the investigation stage, the offender and the police were made parties to the

---

[1443] The Criminal Procedure Code, *supra note* 425, Article 28 and Article 63 (1); and the Revised Criminal Code, *supra note* 21, Article 620 (3).
[1444] The Criminal Procedure Code, *ibid*, Article 67.
[1445] Interview with Judge One, *supra note* 842; and Interview with Prosecutor One, *supra note* 842.
[1446] Rape Trial Observation, *supra note* 857.
[1447] Interview with Judge One, *supra note* 842.
[1448] *Public Prosecutor v. Natna'el Gonfa Bedhanie, supra note* 1117.
[1449] Interview with Judge One, *supra note* 842.
[1450] Rape Trial Observation, *supra note* 857.

proceedings whereas, at the trail stage, the offender and the prosecutor were named as parties to the case.[1451] The victims can attend the proceedings as a member of the public.[1452]

Moreover, the procedural law currently in force does not incorporate other specific rules that allow the court to take other measures to keep the victim safe during the proceedings. Nor does it envisage the provision of shelters to victims and/or other mechanisms to protect the victims from possible threats. There is no procedural rule enabling the court to take protective measures such as allowing the victim to stay in temporary shelters. However, the present study's key informant noted that, in some instances, the court issued orders to protect the victims. This was specifically the case where the victim was dependent on the offender and, therefore, he might influence her to withdraw her allegation.[1453] In such cases, the court does not deny bail right to the offender; instead, it orders the victim to stay in a temporary shelter. According to Prosecutor Two, "[i]f we think that the victim is going to face a threat or pressure to change her initial statement, we keep her in a temporary shelter until the trial is held."[1454] She added that "[s]helters are provided by NGOs. We have connections with shelter providers. They often help the law enforcement agencies in providing shelters to the victims until the case is finally disposed."[1455]

Other key informants also stated that, in compelling circumstances, the victims will be transferred to temporary shelters.[1456] Thus, currently, shelter provision serves as an important shield to protect the victims from possible threats by the offenders, at least for the duration of the proceedings. In this regard, the victims were asked whether they were threatened by the offenders during the proceedings, and all of the interviewees stated that they did not face any threats because they were in shelters. However, one interviewee, Victim Two, complained that the police did not allow her to be visited by her relatives while she was in a shelter.[1457] In so far as it does not involve activities

---

[1451] *Ibid.*
[1452] *Ibid.*
[1453] Interview with Judge One, *supra note* 842, and Interview with Prosecutor One, *supra note* 842.
[1454] Interview with Prosecutor Two, *supra note* 849.
[1455] *Ibid.*
[1456] Interview with Prosecutor Three, *supra note* 851.
[1457] Interview with Victim Two, *supra note* 928.

that would compromise the prosecution process, victims in a shelter should not be denied of a very least right which even a convict is entitled to – the right to be visited by relatives.

However, the above policy measures constitute good practices, but cannot be viewed as victims' rights. Provision of shelters cannot be an effective protection as their availability is determined by the will and accommodation capacity of the NGOs. Thus, the failure to provide effective protection is one of the main barriers that undermines the cause of rape victims within the CJS. As Viano suggests, "[t]he realization that the system is not able or willing to effectively protect her from other assault or harassment and to solve her problem in a satisfactory and definitive manner, once she summons the courage to report it, is a powerful deterrent against seeking help and redress."[1458] For this reason, the government must issue procedural rules that authorize the courts to restrict the bail right of rapists and/or order the offender to refrain from harassing, intimidating or threatening rape victims, upon granting the bail right. This is the duty of the government under the international human rights treaties ratified by Ethiopia, such as the CEDAW. In particular, it is obliged to grant victims the option to apply for a protection or restraint order.[1459]

Like physical safety, victims' privacy right is not guaranteed in a satisfactory manner, particularly at the trial stage. Obviously, attending the court is too traumatic for rape victims as they often face cross-examination on specific private details including their past sexual history and social conduct. This is particularly the case in Ethiopia, where there are no procedural rules that enable the victims to prevent their previous sexual history and social conduct from being raised at the trial.[1460] According to one key informant, Prosecutor One, "[t]here is no law that protects a victim of rape from being questioned about her sexual history, but when it goes to court, the role of the prosecutor

[1458] E. Viano (1983) 'Violence, Victimization, and Social Change: A Socio-cultural and Public Policy Analysis', *Victimology* 8(3/4), pp. 54-79, p. 71.
[1459] CEDAW, A.T. v. Hungary, No. 2/2003, *supra note* 742, para. 9.6.
[1460] Interview with Prosecutor One, *supra note* 842.

is essential. When this kind of question is asked by the defense lawyer, the prosecutor should raise an objection. The court will either accept or overrule that objection."[1461]

But other informants favored the inquiry into victims' sexual history. For instance, Prosecutor Three argued that "[a] victim should be asked about her sexual history because sometimes what she claims and what really happened may be contradictory. If a woman claims she is raped and medical evidence shows otherwise, the court may close the case under Article 141[of the Criminal Procedural Code]. For example, she may claim that she had no sexual relation with anyone prior to the incident, and that she was sexual penetrated at the time of the assault. But, when the medical evidence is produced, it proves that there is no recent sexual penetration."[1462]

Likewise, Judge One linked the importance of an inquiry into victims' sexual history to their age, stating that "[i]t depends on the case; for instance, if a girl of 12 years old is asked whether she had had previous sexual relations, it makes no difference whether she says she had had or not because other evidences are taken into consideration. Sometimes, the victim may be above the age of 18 years old, and claims that she was raped while medical evidence shows that she is a virgin or it may show that she is not virgin and that it was not-recently lost. In such a case, she might be asked about her prior sexual history."[1463] However, the forensic medical examination report did not prove whether forced sexual intercourse took place.[1464] This is usually inferred from the hymnal status of the victim as described in the report. If the hymeneal status was described as "intact" or "raptured, but not recently" in the report, it was inferred that forced sexual intercourse did not occur. According to one informant, "[m]ost offenders are freed because the statement of the victim and the medical evidence contradict each other."[1465] If the victim stated that sexual intercourse occurred but the forensic medical examination report described her hymeneal status as

---

[1461] Interview with Prosecutor Two, *supra note* 849.
[1462] Interview with Prosecutor Three, *supra note* 851.
[1463] Interview with Judge One, *supra note* 842.
[1464] *See generally infra* Chapter 5. Section "5.3.1.6. Criminalizing Same-Sex Rape against Children" with accompanying notes.
[1465] Interview with Prosecutor Three, *supra note* 851.

"intact" or "raptured, but not recently", her statement and the finding in the report would not match. This, however, does not necessarily mean that the contested sexual intercourse had not occurred since sexual intercourse can occur while the hymeneal status of the victim is still "intact"[1466] or was "raptured" at any time before the contested act took place.

Generally, rape victims face humiliating questions at the trial including a cross-examination of their previous sexual conduct. According to the present study's informants, Social Worker One and Social Worker Two, who have been working as intermediating third parties between testifying child victims of rape and the trial-court, it is common to raise questions about victims' sexual history during the cross-examination. Defense lawyers routinely cross-examined the victims on their previous sexual conducts, particularly in cases involving victims between the age of 14 and 18 years old. In some instances, victims under the age of ten were asked about their sexual history, but in such cases, the court and the prosecutor intervened.[1467]

Sometimes, it appears that the cross-examination was made for no purpose other than humiliating the victim. For instance, in a criminal File Number 218827, Lideta Division of the Federal First Instance Court, the prosecutor charged a 20-years-old man for raping a woman, who was 22, on August 24, 2014, at 1:00 PM.[1468] The charge stated that the offender raped the victim after chasing and beating her while she was trying to escape and screaming for help. An eyewitness of the case testified that he tried to help the victim by pushing the offender off the top of her body until when the offender reacted violently. He also testified that he and the victim reported the incident to the police immediately and the police found the offender around the scene and arrested him. The victim herself gave a similar testimony. The forensic medical examination report also indicated graphically that there were injuries and bruises around her sexual organs. It also stated that there

[1466] *See for e.g., Harari Region Public Prosecutor v. Bona Ahimed Amin*, *supra note* 1196.
[1467] Interview with Social Worker One and Social Worker Two, *supra note* 900.
[1468] *Public Prosecutor v. Yisihak Chinkilo*, Criminal File Number 218827, Lideta Division, Federal First Instance Court.

was semen inside her womb. This is a typical case best fit to the "real rape" myth: it was committed by stranger late at night, using physical violence.

The victim resisted the encounter, screamed and cried for help, was overpowered by the assailant and was injured. Accidentally, the case was witnessed by an eyewitness and reported to the police immediately. Committed by a violent, stranger man against an unaccompanied woman in a rough place at night, this case best fits even the overly restrictive definition of forcible rape under the RCC. However, even these facts did not prevent the defense lawyer from inquiring into the victim's sexual history or prior sexual activities, at the trial. At the trial, when the defense lawyer asked the victim whether she had, prior to the incident at issue, had a sexual intercourse with another person, she responded that she did not have a sexual intercourse previously. Although the forensic medical examination report suggested otherwise, she did not say "Yes, I had" apparently out of embarrassment or humiliation to openly say so in public. She was simply forced to lie about her sexual past. Does this mean she was lying about what happened to her on the night of August 24, 2014? This kind of inquiry resulted in harassment and further humiliation of the victim.

Often, questions about the time and place of the event are followed by other questions like: *Did you scream?*[1469] *Were you alone? Why did not you try to stop him?*[1470] In some cases, even a 12-years-old victim's moral conduct was questioned at the trial. The defense lawyer may question whether she had a boyfriend or whether she was visited by other boys, to suggest that she is unchaste and her case is a fabricated one.[1471]

At the trial stage, the victim faces perhaps the most hostile cross-examination. She is subjected to brutal and humiliating cross-examination of her life including her prior sex life. As Joan McGregor noted, "[t]he object of these cross-examinations was to make her out, no matter how violent or

---

[1469] *See for e.g. Public Prosecutor v. Moges Wendimageng Metaferiya*, *supra note* 1149; *Public Prosecutor v. Hailemariam Atsibeha*, Criminal File Number 193073, Lideta Division, Federal First Instance Court; *Public Prosecutor v. Yisihak Chinkilo*, *ibid.*
[1470] Rape Trial Observation, *supra note* 857.
[1471] *See* Public Prosecutor v. Hailemariam Atsibeha, *supra note* 1469.

outrageous the alleged rape was, to be a 'bad girl' who either consented to the events or got what she deserved given her 'loose' lifestyle."[1472] In some instances, the cross-examination goes to what Sue Lees described as the 'judicial rape'[1473] and others as a 'second rape.'[1474] Judicial rape, according to Lees, is "where a woman's reputation is put on trial by the court is [and viewed by] many victims as humiliating as the actual rape. In some respects it is worse, more deliberate and systematic, more subtle and more dishonest, masquerading in the name of justice."[1475]

To illustrate this, the cross-examination of a victim in File Number 210967, the Federal First Instance Court, Lideta Division, has been reproduced here. This case involves a typical rape which not only best fits to the overly restrictive definition of forcible rape but also was substantiated by eyewitness accounts and a forensic medical examination.[1476] In this typical rape case, the prosecutor filed a charge against Mikiyas Asefa for violating Article 620(2)(a) of the RCC, on December 31, 2013. In the charge, the prosecutor stated that the offender committed forcible rape against a 15 years-old victim (Witness 1) which resulted in loss of her virginity on November 10, 2013 around 7 PM, in Yeka Sub-city, Kebele 16/17, at a specific neighborhood called Tofik Dabbo Bet. The prosecutor also stated in the charge that the offender was a broker who took the victim to her current job as a domestic assistant in a private household. It was also indicated that the offender went at her workplace and told her that there was a problem with her family and took her to his house. He then locked the door, forced her to lay down on the mattress, threatening her with a knife, covered her mouth to prevent her from screaming, took off her clothes and raped her.

The prosecutor attached to the charge a list of evidence, including a forensic medical examination report, which stated that there were genital injuries and described the hymeneal status of the victim as *raptured recently*. The victim and other three eyewitnesses, who arrived at the crime scene

---

[1472] Joan McGregor (2011), *supra note* 4, p. 78.
[1473] Sue Lees (1993), *supra note* 1147, p. 11.
[1474] David P. Bryden and Sonja Lengnick (1997) *supra note* 15; L. Madigan and N.C. Gamble (1991) *The Second Rape: Society's Continued Betrayal of the Victim*, London: MacMillan; and J. E Williams and K.A. Holmes (1981) *The Second Assault*, Westport, CT: Greenwood.
[1475] Sue Lees (1993), *supra note* 1147, p. 11.
[1476] *Public Prosecutor v. Mikiyas Asefa*, Criminal File Number 210967, Lideta Division, Federal First Instance Court.

immediately, were named as prosecutor's witnesses. At the trail, which was held on March 28, 2014, the prosecutor presented four eyewitnesses. Leaving other matters aside, questions posed to the victim at the main examination and the cross-examination are reproduced below.

EXAMINATION-IN-CHIEF BY PUBLIC PROSECUTOR

Prosecutor: What did Mikiyas do to you?

Witness 1: He created a problem on me.

Prosecutor: Okay. Do you remember the date?

Witness 1: Yes! It was on November 10, 2013.

Prosecutor: Do you remember the exact time?

Witness 1: It was at 7.

Prosecutor: Was it at night or in the morning?

Witness 1: It was at night.

Prosecutor: Do you know the sub-city or the kebele?

Witness 1: I came from the countryside recently. So, I do not know.

Prosecutor: How did he rape you? Can you explain? You said before he created a problem on you, what kind of problem was it? What were you doing at the time?

Witness 1: He raped me. He called me out of the place where I was working. Then he told me he was taking me to my sister's house. When we got there, I told him "This is not my sister's house" but he forced me to enter and closed the door. Afterwards, he laid a mattress on the floor, forced me to lay down, took off my underwear, lifted my dress up and raped me.

Prosecutor: You said he told you there was a problem with your family and took you away. Where exactly did he take you to?

Witness 1: He told me he was taking me to my sister's house. I don't know the address of the place where he took me to?

Prosecutor: How did he close the door?

Witness 1: After he forced me in, when I tried to go out, he said, "It is your sister's house" and locked me inside.

Prosecutor: How did he make you lay down on the mattress?

Witness 1: After he laid the mattress on the floor, he forcefully threw me down onto the mattress, took my underwear off, lifted my dress, started raping me, and then took out a knife and told me he would stab me and put his hands over my mouth. When I started screaming, he opened the door and pushed me out.

Prosecutor: What did he use to stop you from screaming?

Witness 1: He used his hands.

Prosecutor: Did he do anything before he took off your underwear?

Witness 1: No! He just laid the mattress on the floor, took my under wear off and raped me.

Prosecutor: How old are you?

Witness 1: 15

Prosecutor: What were you wearing on that day? Do you know what clothes you were wearing?

Witness 1: Yes! I was wearing a red under wear and a white dress.

Prosecutor: What did he do to your dress?

Witness 1: He told me there was something on my dress and pulled it up very high and took my under wear off.

CROSS-EXAMINATION BY THE DEFENSE LAWYER

Defense lawyer: You said that it was November 10, 2013. How did you remember the exact date? Tell me how did you know? How did you know it was 7:00 PM? Did you see a watch?

Witness 1: It was at 7:00 PM.

Defense lawyer: Did you guess or did you see a watch at the time? How did you know the exact time? By guessing or seeing a watch?

Witness 1: I guessed, it was 7:00 PM.

Defense lawyer: You said that he took you from a house where you were working. Did anybody in the house know that he called you out?

Witness 1: Yes! He came at the day time and called me out. They knew I went out but did not know who called me out.

Defense lawyer: So, you did not tell them when you went out?

Witness 1: They knew he came but they did not know what he said to me.

Defense lawyer: When you went out that day, what did you tell to the people you were working for?

Witness 1: I told them I was going out. When they asked me what was wrong, I did not tell them. I just told them that I wanted to go out.

Defense lawyer: Did you take your belongings with you?

Witness 1: I did not.

Defense lawyer: He [the offender] told you that there was a family emergency - what kind of family emergency was it?

Witness 1: He told me he would take me to my sister's house

Defense lawyer: When you got to the house, how many rooms were there?

Witness 1: One room.

Defense lawyer: Was there anybody else in the room or around the house? Were there any neighbors?

Witness 1: The neighbors came afterwards, but at the beginning, there was nobody around.

Defense lawyer: Did anyone see you when you were getting in?

Witness 1: No! No one saw us.

Defense lawyer: You said that he locked the door on you - what kind of key was on the door? Do you remember?

Witness 1: Yes! I saw him when he was locking it. It was a white key.

Defense lawyer: You said he threw you onto the mattress - how did he throw you?

Witness 1: I was struggling with him, he lifted me up like this (moving her hands upwards) and he threw me on the floor.

Defense lawyer: With how many hands? One or two?

Witness 1: Two.

Defense lawyer: He threw you down with his two hands - did he let your waist go afterwards?

Witness 1: No, he did not. He took of my under wear and took off his trouser and then rape me.

Defense lawyer: If he was holding your waist, with which hand did he take off your cloth and under wear? Was it before or after he threw you down onto the mattress?

Witness 1: At the beginning he used his two hands to throw me onto the mattress, then took of my underwear and put his hand on my mouth and raped me.

Defense lawyer: How many hands did he put on your mouth?

Witness 1: One.

Defense lawyer: Was there electricity at that day in the house? Was there anything else in the room?

Witness 1: There was nothing there. There was electricity, TV and Tape which he turned on and put into high volume.

Defense lawyer: You said he took out a knife and threatened you - where did he get it? Was he holding it?

Witness 1: No, he was not. He took it out from a drawer.

Defense lawyer: Was the knife big or small?

Witness 1: It was small.

Defense lawyer: When he pushed you out, how many people saw what happened?

Witness 1: First there were only three. Afterwards, a lot of people came.

Defense lawyer: Do you remember their names?

Witness 1: I do not. I was in a state of shock.

Defense lawyer: What did you tell them?

Witness 1: I told them that he had raped me.

Defense lawyer: Do you know any one aside from Mikiya? Do you have a boyfriend?

Witness 1: No, I do not. I am a virgin.

Defense lawyer: Is it your first time to have sexual intercourse with Mikiyas or has anyone else done this to you?

Witness 1: No!

Defense lawyer: Before Mikiyas, do you know a driver who brings garlic?

Witness 1: No, I do not.

Defense lawyer: Before November 10, did anybody have sexual intercourse with you, other than Mikiyas? Did not you have a fight with Mikiyas concerning money? Did not you agree on money payment before you had sexual intercourse? When he gave you 150 birr, did not you say that it was not enough and threw the money away? [Witness 1 did not respond for these consecutive questions for a while]

Witness 1: No, we did not.

Defense lawyer: After you had been raped that day, did you see anything on your body?

Witness 1: Yes, I saw blood.

In this typical rape case, the victim was mercilessly subjected to a cross-examination not only about aspects of the offence but also regarding her sexual morality and trustworthiness as a witness. Leaving so many other irrelevant inquires aside, questions such as: "Did not you have a fight with Mikiyas concerning money?"; Did not you agree on payment money before you had sexual intercourse?"; and "When he gave you 150 birr, did not you say it was not enough and threw it away?" were not arbitrarily raised by the defense lawyer. Rather, they were designed to suggest that she engaged in a consensual sexual activity on payment and brought false allegations when there was disagreement on the amount of money. It was intended to imply that the victim had motives to avenge the offender. The inquiry seems to be premised on the assumptions that rape accusation was used by women to seek revenge on the offender, after having a consensual sexual intercourse. This was despite the fact that the offender cannot escape criminal liability by pleading the consent of the victim who is a 15 years-old minor and in fact under the age of consent.

Likewise, questions such as: "Before November 10, did anybody have a sexual intercourse with you aside from Mikiyas?"; "Do you know anyone other than Mikiyas?"; "Do you have a boyfriend?"; "Is it your first time to have sex with Mikiyas or has anyone else done this to you?"; and "Before Mikiyas, do you know a driver who brings garlic?" were posed to the victim to suggest that she is sexually promiscuous or had previously had a consensual sexual intercourse with the offender. The defense lawyer used evidence of prior sexual conduct to imply the consent by contending that if she had had sex with various men on many different occasions, it is likely that she consented to the sexual encounter in question. He designed these questions to re-script the victim as a precipitating agent and disqualify her from a victim status. Generally, the case shows how the conduct of trials puts the victim on trial as if she were the offender. Fortunately, after this ordeal, in a decision rendered on March 18, 2015, the court convicted the offender and sentenced him for an eight-year rigorous imprisonment.[1477]

The full episode of the main examination and cross-examination of the case presented above clearly indicates that questioning at rape-case trial is, in part, about the victim's sexual history and sexual conduct. The conduct of cross-examination in this case is largely similar with what has been seen in other cases and observed during rape-trial observations. Questioning victim's sexual history and sexual conduct at trials is unnecessary, unreasonable and inconsistent with the nature of sexual offences. It seeks to deflect responsibility away from the offender by insinuating that the victim's provocative behavior is to blame. It subjects the victim to another episode of humiliation and leads to secondary victimization. It was also suggests that anticipation of such kind of humiliating treatment at trials deters potential victims from reporting the incident and seeking justice.[1478] Thus, by recognizing victim's ordeal at rape trials, many jurisdictions have enacted

[1477] The offender was prosecuted and convicted for forcible rape committed against a minor under Article 620(2)(a). He could have been prosecuted for statutory rape under Article 626(1) of the RCC without need to prove the use of violence, threat of violence and victim's physical resistance. However, the difference between forcible rape under Article 620(2) (a) and statutory rape under Article 626(1) is that the punishment for forcible rape is rigorous imprisonment from five years to twenty years while it is rigorous imprisonment from three years to fifteen years.
[1478] LM Williams and S Walfield (2016) 'Rape and Sexual Assault', *Encyclopedia of Mental Health* 4: pp. 13-22, p. 14.

laws to safeguard victims' privacy by limiting the introduction of evidence about victims' sexual history at the trial.[1479] These laws are often referred to as "rape shield" laws.[1480]

As the name suggests, rape shield law protects or shields a victim of rape who is named as witness from being asked questions about her sexual history and sexual conduct. [1481] There were two main reasons behind the introduction of rape shield laws. First, it was believed that many women would not come forward to report the incident if they knew they would be subjected to humiliating questions about their sexual history and sexual conduct. Second, there was a big concern that judges were being unduly influenced and prejudiced by hearing information about the prior sexual involvement of the victim who is claiming at the trial that she had not consented to relations with the offender.[1482] The prime objectives of rape shield laws are: to prevent a potentially irrelevant, prejudicial testimony from being heard at the trial, to restrict the admissibility of such evidence, to minimize the humiliating cross-examination of the victim, and to improve the abysmally low rate of conviction rates for rape cases.[1483]

The last point in relation to victims' right to privacy is the absence of procedural rules to protect the identity of the victim of rape from the media or the public, if she so requested. According to Judge One, "[w]hen a case is presented to the media, they are informed not to disclose in their reporting the victim's name, face or anything that may implicate her identity in any manner."[1484] She added, however, that "[t]his is not prohibited by law; we just try to protect the victim as much as possible."[1485] This view is shared by other key informants too. For instance, Prosecutor Two stated that "[t]here is no formal rule of procedure or law that prohibits victims' identities from

---

[1479] Jennifer K. Brown *et al.* (2011) *Achieving Justice for Victims of Rape and Advancing Women's Rights: A Comparative Study of Legal Reform*, p. 27, available at: https://www.trust.org/contentAsset/raw-data/e531c966-13c7-4eba-824e-c6cac927101b/file last visited on 1/26/2019.
[1480] Jennifer K. Brown *et al.* (2011), *ibid*, p. 27; and Richard Klein (2008), *supra note* 11, p. 990.
[1481] Richard Klein (2008), *ibid*.
[1482] *Ibid.*
[1483] Eugene Borgida and Phyllis White (1978) 'Social Perception of Rape Victims: The Impact of Legal Reform', *Law and Human Behavior* 2(4), pp. 339-351, p. 340.
[1484] Interview with Judge One, *supra note* 842.
[1485] *Ibid.*

being disclosed when the case is presented to the media but the prosecutors will make sure that their identities should not be made public."[1486] This is a good practice. However, it should have been backed by mandatory procedural rules.

Regarding persons who attend the trials, this study's key informant stated that the court excludes the public from part of the trial, usually when the victim's testimony is heard.[1487] The defense witnesses are heard in public.[1488] This is consistent with what has been observed during trial observations. Although it is intended to protect the victim's privacy, conducting rape-case trials partly in public and partly *in-camera* creates its own unintended problems. Where the public are excluded only during the victim's testimony session, it might be detrimental to the victim's interests. This so because the offender's side of the story would be told publicly, but the victim's would not.[1489] For this reason, rape-case trials should be held fully *in-camera*.

7.3.1.5 Timely Remedies, Legal and Financial Assistance to Rape Victims

There are also problems relating to the availability of legal and financial assistance to rape victims. Obviously, criminal case proceedings are extremely formal, complex and lengthy. Despite the promise under the FDRE Criminal Justice Policy to prioritize prosecution of cases of VAWC along with other serious crimes such as terrorism and crimes against the constitution and the constitutional order,[1490] rape-case prosecutions takes up to at least a year at trial-courts.[1491] Based on an analysis of crime data between 1997 E.C and 2008 E.C., the average time taken for 179 cases at the Federal First Instance Court, Lideta Division was about 10 months at the investigation stage. Similarly, at the trial stage, the average time for 1,776 cases at the same Division and time interval was about 10 months. Thus, without considering the time at appellate courts, a rape case

[1486] Interview with Prosecutor Two, *supra note* 849.
[1487] Interview with Judge One, *supra note* 842.
[1488] Rape Trial Observation, *supra note* 857.
[1489] Ivana Bacik *et al.* (1998), *supra note* 1404, p. 12.
[1490] ፍትሕ ሚኒስቴር (2003) *የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ* የካቲት 25/2003 ዓ.ም (Amharic), p. 16.
[1491] Interview with Prosecutor One, *supra note* 842.

gets a final decision in 20 months on average. Studies identified lengthy and expensive legal process as being among the factors that discourage the victims from reporting and seek remedy, fostering an environment of VAW.[1492] Likewise, the expectation of reviewing events of rape in the distant future is likely to discourage the victims from following up the proceeding.[1493]

If a victim is willing to proceed, she needs legal and financial assistance. However, there is no state-funded legal assistance programs in Ethiopia. Nor are there state-funded victim or witness assistance programs to provide more basic legal orientation aimed at enhancing the understanding and participation of the victim in the criminal proceedings.[1494] Actually, prosecutors assigned at the special (women's and children's) unit offer legal counsel to rape victims during the proceedings.[1495] This, however, does not mean that the victim has the rights to have legal assistance in her own interest. Nor does it mean a victim has the right to access a dedicated lawyer.[1496] Prosecutors are not lawyers for the victims. Rather, they need the victims' participation and cooperation as essential to move forward and achieve a successful prosecution.[1497]

Yet, rape victim should be entitled to a separate legal representation in her own interests. Her lawyer should be present and assist her when she gives her statement to the police. If she wishes, her lawyer should have the responsibility for providing information to her about the progress of the case, and act as a channel of communication between the victim and the CJS and inform her whether the offender has given a statement, and whether it has been decided to proceed with the prosecution or not and so on. Indeed, by recognizing that to be victimized is to have one's power and agency removed, a number of jurisdictions have adopted the right to a separate legal advice

[1492] CARE Ethiopia (2008), *supra note* 23, p. 45; and Gail Steketee and Anne H. Austin (1989) 'Rape Victims and the Justice System: Utilization and Impact', *Social Service Review* 63(2), pp. 285-303, p. 293.
[1493] *Ibid*.
[1494] Interview with Judge One, *supra note* 842.
[1495] Interview with Prosecutor One, *supra note* 842.
[1496] *Ibid.*
[1497] *Ibid.*

and legal representation to the victim, so as to redress and restore her agency.[1498] Similar approach should be adopted under the Ethiopian CJS.

However, as the rules and practices stand now, rape victims are not informed even whether the offender is in custody or has been released on bail. For instance, rape victims were asked whether they were given information about the progress of the proceedings, and all the interviewees responded that they were not even informed whether the offender was in custody or has been released on bail. According to Victim One, "[t]he man who raped me was in prison, but I do not know whether he is released on bail. The police do not inform me about anything about the case."[1499] Victim Three stated that "the offender was under arrest but other witnesses who come to the court to testify with me told me that he was released on bail."[1500] Likewise, Victim Four stated that "I knew he was under arrest, but I do not know whether he was released on bail subsequently."[1501] Almost all the interviewees stated that they were not receiving information about the progress of their cases. However, some interviewees described the contacts between the police and shelter providers regarding the adjournment of their respective cases as information about the progress of their cases.

In addition legal assistance, rape victims need financial assistance at least to cover expenses they incurred during the criminal proceedings.[1502] However, this kind of assistance cannot be realized in the absence of state-funded criminal injury compensation schemes.[1503] While basic healthcare is provided to the victim for free by the public health institutions, there is no state-funded compensation for lost earning-capacity or physical injuries under the Ethiopian CJS.[1504] Generally, the victims themselves should normally cover expenses such as travel costs and consequential loss

---

[1498] The United Nations Human Rights Council (2008), *supra note* 38, para. 276.
[1499] Interview with Victim One, *supra note* 926.
[1500] Interview with Victim Three, *supra note* 930.
[1501] Interview with Victim Four, *supra note* 1421.
[1502] Interview with Prosecutor One, *supra note* 842.
[1503] Interview with Judge One, *supra note* 842; Interview with Prosecutor Two, *supra note* 849*;* and Interview with Prosecutor One, *ibid.*
[1504] Interview with Judge One, *ibid.*

of incomes or loss of earning-capacity. For instance, Victim Three, Victim Four and Victim Six stated that the cost of their transportation during the proceedings was covered by their relatives while Victim Two reported that it was covered by the shelter provider.

The victims may sue the offender, and claim compensation for the costs of their medical cares, counseling, consequential loss of incomes or earning-capacity and other expenses.[1505] But, the same hesitations that prevent the victim from proceeding with criminal cases prevent her from filing civil suits as well.[1506] The criminal court may also order the offender to pay compensation for the victims provided that it is specifically sought.[1507] The limitation with this option is that the law explicitly requires the production of witnesses,[1508] which is very difficult in most rape cases. Nor does it alleviate the financial burden of the victim if the offender is unknown, or is known but absconded, or is too poor to pay compensation. For these reasons, victims should be compensated or financially assisted by the state at least on a case-by-case basis.

It is worth noting that both legal assistance and financial assistance should not be seen as a charitable handout for the victims. Rather, it is part of the duties of the state to fulfill the victims' right to an effective remedy under the international human rights treaties ratified by Ethiopia, such as the Women's Protocol and the CEDAW. For instance, under the Women's Protocol, states are obliged to take measures to "punish the perpetrators of [VAW] and implement programmes for the rehabilitation of women victims."[1509] Under Article 4(2)(f), the state is required to take appropriate and effective measures to "establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women."[1510] Similarly, Article 8 of the Women's Protocol stipulates that member states shall take all appropriate measures to ensure "effective access by women to judicial and legal services, including legal aid"[1511] and

---

[1505] The Civil Code, *supra note* 331, Article 2090, Article 2091, and Article 2116(3).
[1506] Francis X. Shen (2011), *supra note* 142, p. 32.
[1507] The Criminal Procedure Code, *supra note* 425, Article 154 (1) and (2), and Article 159.
[1508] *Ibid*, Article 154 (1) and (2), and Article 159.
[1509] The Women's Protocol, *supra note* 525, Article 4(2)(e).
[1510] *Ibid*, Article 4(2)(f).
[1511] *Ibid*, Article 8(a).

"support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid."[1512]

Likewise, Article 2(b) and Article 2(c) of the CEDAW contain an implied obligation upon state parties to provide effective remedies to women whose human rights have been violated.[1513] In this regard, the CEDAW committee, in its concluding observations, expressed its concern about lack of victim assistance and rehabilitation services in Ethiopia[1514] and called on the state to "[e]nhance victim assistance and rehabilitation, by strengthening the legal aid services of the Ministry of Justice, providing psychological counselling, supporting local women's rights organizations which offer shelter and assistance to victims, and establishing victim support centers in the regional states."[1515] The CEDAW Committee has also explained that states parties must "provide reparation to women whose rights under the Convention have been violated. Without reparation the obligation to provide an appropriate remedy is not discharged."[1516] It has further explained that States Parties must "ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate."[1517]

7.3.2 Limits of the Rape Law Reform on Evidentiary Matters

Criminal investigation refers to the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who was responsible for committing the crime.[1518] It is the process of gathering, through legal means, evidence of a crime that has been or is being committed.[1519] Under the Criminal Procedure Code of Ethiopia, the police are tasked with

---

[1512] *Ibid*, Article 8(b).
[1513] General Recommendation No. 28, *supra note* 463, paras. 32, 34.
[1514] Committee on the Elimination of Discrimination against Women (2011), *supra note* 1390, para. 20.
[1515] *Ibid*, para, 21(e).
[1516] General Recommendation No. 28, *supra note* 463, para. 32.
[1517] *Ibid*, para. 32, para. 34.
[1518] Karen M. Hess and Wayne W. Bennett (2001) *Criminal Investigation*, 6th ed, USA: Thomson Learning, p. 3.
[1519] M. F. Brown (2001) *Criminal Investigation, Law and Practice*, 2nd ed, USA: Butter worth-Heinemann, p. 3.

investigating rape cases.[1520] Investigation of rape cases is accomplished, among others, by proper investigation of the crime scene, interviews with the victim, the alleged offender, and any witnesses as well as the reconstruction of physical evidence.[1521] The purpose of such reconstruction is to objectively establish what did and did not happen during an event. Upon the completion of the investigation, the police handover the case to the prosecutor. The prosecutor normally collates evidence, builds the case, and determines whether to file a criminal charge.

The problem within the Ethiopian CJS, however, is that there are neither codified rules of evidence law nor evidentiary rules specifically designed to deal with rape cases.[1522] The available evidentiary rules are not only piecemeal but also scattered throughout the substantive and procedural laws. In the context of this legal vacuum, the key actors within the CJS exercise wider discretionary powers over the rules of evidence law. As far as rape case is concerned, the police and the prosecutor have developed stereotypical practices to reconstruct the victims' account at the trial-court. The followings are the main weaknesses and loopholes of the rules and practices of evidentiary matters as applied in rape cases.

7.3.2.1 Corroboration Requirement

Corroboration requirement depends on a particular legal system adopted by a given jurisdiction. Across the world, there are two major legal systems: adversarial and inquisitorial. The two systems are distinguished, among other things, in their approach towards the application of rules of evidence. In adversarial legal systems, strict rules exist as to the admissibility of evidence at trial, whereas in inquisitorial systems, two key principles apply: The first one is the principle of *intime conviction*, which means that the judge must be convinced of the truth before they reach a

[1520] Criminal Procedure Code, *supra note* 425, Article 8, Article 9, Article 10 and Article 22 *et. Seq.*
[1521] Interview with Judge One, *supra note* 842; and Interview with Prosecutor One, *supra note* 842. *See also* Criminal Procedure Code, *ibid*, Article 24, Article 27, Article 30 and Article 34.
[1522] Interview with Judge One, *ibid*; Interview with Prosecutor Two, *supra note* 849; and Interview with Prosecutor Three, *supra note* 851. *See also* Tsehai Wada (2012), *supra note* 412, pp. 220-221.

verdict.[1523] The second one is the principle of *free evaluation of evidence*, which means that the judge may consider all relevant evidence in coming to their decision.[1524] The inquisitorial trial is seen as a search for the truth, while the adversarial trial may be represented as a contest between two opposing sides. This distinction is reflected in the approaches taken in different jurisdictions towards other issues, including corroborative evidence.[1525] In most inquisitorial systems, the offender may be convicted based on the victim's evidence alone as far as the judge convinced beyond reasonable doubt.[1526] There is no requirement that the evidence should be corroborated.[1527] Nor are there special rules that apply to the use of victim's testimony by the trial court.[1528]

The Ethiopian legal system seems to be a blend of both the adversarial and inquisitorial systems. However, as far as evidentiary matter is concerned, the Criminal Procedure Code apparently favors the rules of the inquisitorial system over the adversarial. First, there are no strict rules as to the admissibility of evidence at the trial. Where objections are raised by either party on admissibility, it is up to the judge at the trial-court to determine the issue as per Article 146 of the Criminal Procedure Code. The law gives the judge significant powers including examination of witnesses at any time of the proceedings[1529] and ordering the production of additional evidence where it deems necessary in the search for the truth.[1530] Consistent with most inquisitorial systems, the judge must be convinced of the truth before they reach a verdict. The judge may consider all relevant evidence in coming to their decision.[1531] This means the judge have the power to freely evaluate evidence. Most importantly, there is no rule prohibiting the judge at the trial-court from convicting the alleged offender based on the victim's testimony alone. Nor there is a requirement that the victim's testimony should be corroborated. In practice, however, the victim's testimony is

[1523] Ivana Bacik *et al.*(1998), *supra note* 1404, p. 14.
[1524] *Ibid*, p. 165.
[1525] *Ibid*, pp. 15-16.
[1526] *Ibid*, p. 15.
[1527] *Ibid*, pp. 15-16.
[1528] *Ibid.*
[1529] Criminal Procedure Code, *supra note* 425, Article 136(4).
[1530] *Ibid*, Article 143(1).
[1531] *Ibid*, Article 141 and Article 149.

deemed false even long before the case reaches the trial-court unless there is additional evidence to corroborate victim's testimony.

According to Prosecutor Two, "[t]he testimony of the victim alone cannot be the only evidence to file a criminal charge. In addition to her testimony, there must be medical evidence and eyewitnesses or circumstantial evidence."[1532] She added that "[n]o case will be brought to a trial-court based the victim's statement alone because securing conviction at the trial-court is impossible. Taking rape cases to the trial-court which may be ended up in acquittal of the offender is seen generally as a waste of time and resources."[1533] All informants from the CJS consistently stated that the victim's testimony alone cannot be sufficient evidence to file criminal charges.[1534] One of the key informants from the advocacy groups, Advocate Two also noted that "[b]ased on the victim's statement alone, the police often do not investigate rape cases."[1535] In the absence of a rule requiring that the victim's evidence must be corroborated, the key actors within the CJS have set the corroboration requirement as a precondition to proceed with a rape case. In effect, the corroboration requirement becomes an unwritten rule.

In practice, the victim is required to prove, beyond her words, that she did not consent to a sexual intercourse with the offender. This disqualifies many victims as unworthy of serious response from the CJS. The victim's word is not recognized as having a sufficient evidentiary weight. Despite being under an oath to testify "the truth, the whole truth, and nothing but the truth", she is not presumed in the first instance to be telling the truth. Her statement may be true or false. Both truthfulness and falsity should equally be considered as viable. As a witness, the victim may be lying or telling the truth or mixing truth with selected fictitious stories. Each of these possibilities should be considered without prejudice and stereotype. But, in practice, little or no value is

[1532] Interview with Prosecutor Two, *supra note* 849.
[1533] *Ibid.*
[1534] Interview with Prosecutor One, *supra note* 842; and Interview with Prosecutor Two, *ibid.*
[1535] Interview with Advocate Two, *supra note* 648.

attached to what the victim says, and the first reaction is not to believe her. This is contrary to the principle of the full admissibility of evidence where the victim herself is a qualified witness.

Historically, the corroboration requirement was founded on the myth of woman lying.[1536] There is an unwarranted assumption as to the rate of false accusations of rape within the CJS. In reality, however, there are several factors that discourage victims from reporting the incident to the police, including fear of stigma, retaliation and harrowing treatments within the CJS. The corroboration requirement itself has a deterrent effect, at least to the extent that a potential victim is aware of its existence. These disincentives are so powerful that many real rape victims avoid reporting the incident to the police. The real problem in rape case is victims' failure to report the incident to the police and seek justice, not the other way round. Having this in view, the possibility of a deliberate falsification alone cannot and should not justify the application of the corroboration requirement.

7.3.2.2 Eyewitness Requirement

Eyewitness is one of perhaps the most problematic type of evidence which is required to corroborate a victim's testimony. According to a key informant, types of evidence that must be collected to corroborate the victim's statement include eyewitness, forensic medical examination, crime-scene evidence and circumstantial evidence.[1537] The main problem with eyewitness requirement is that it totally fails to acknowledge that rape is a special type of violent crime that generally takes place when no one other than the victim and the offender is present. This nature of the offence makes the victim's statement the most fundamental piece of evidence. In some instances, the police request the victims to produce eyewitnesses before commencing a criminal investigation and summoning the offender for questioning.[1538] This practice disqualifies the victim at the earliest stage of the proceeding even before summoning the alleged offender and asking

[1536] Susan Estrich (1992), *supra note* 1266, p. 11; Cassia C. Spohn (1999), *supra note* 18, p. 126; Mustafa T. Kasubhai (1996), *supra note* 1210; and Jocelynne A. Scutt (1992), *supra note* 1262, p. 442.
[1537] Interview with Prosecutor One, *supra note* 842.
[1538] Interview with Advocate Two, *supra note* 648.

whether he admits the allegation. It also disregards the collection of other important physical evidence that can corroborate her statement.

7.3.2.3. Prompt Reporting Requirement

There is still another yet very subtle and biased corroboration requirement which is effectively used to disqualify many rape victims – the prompt reporting requirement. According to Prosecutor Three, "[w]hen a woman claims that she is raped, there must be eyewitness. There should be someone who saw her being forced to go with the offender. At least, after she is raped, she needs to tell somebody around her that she was raped, immediately after the incident, unless the circumstance prevented her from doing so."[1539] This means, in addition to or in the absence of any physical evidence and a direct eyewitness, the victim's story must be corroborated by hearsay witnesses to whom she told the incident immediately to secure a serious investigative response.

Another key informant, Judge One, also stated that "[s]ince rape is not a crime committed in front of eyewitnesses, the available types of evidence are medical evidence and circumstantial evidence. When a victim is raped, she might go and tell about the incident to somebody around her, and that person would be able to see what had actually happened to her both physically and emotionally. Thus, he can be called as a witness."[1540] All of the present study's key informants were consistent in their response. Prosecutor Three also believed that "[i]f a woman reports an incident of rape after many days, it is unlikely that she had been raped. Proving to the court that she was raped is very difficult."[1541] A key informant, Advocate Two, recounting the stories of the EWLA's clients, pointed out that the police do not investigate a rape case unless promptly reported.[1542] This means a woman is required to make a prompt complaint not just to the police but also to someone around

[1539] Interview with Prosecutor Three, *supra note* 851.
[1540] Interview with Judge One, *supra note* 842.
[1541] Interview with Prosecutor Three, *supra note* 851.
[1542] Interview with Advocate Two, *supra note* 648.

her to be treated as a credible victim. Other studies also documented cases where the court considered prompt reporting as a factor for convicting or acquitting the offender.[1543]

Historically, the prompt reporting requirement was founded upon the myth of woman lying.[1544] Equivalent to the practice which continues to date within the Ethiopian CJS, rape laws required the victims to promptly report the incident to the police.[1545] If a victim did not promptly report the incident, then the assumption was that she had second thoughts about her consensual sexual activity and that she was not raped at all.[1546] The prompt report requirement was premised on the faulty assumption that if a woman were really raped, she would immediately report the incident to the police (or to someone else). In fact, most victims never report the incident to the police, let alone to report it immediately. Victims may have valid reasons for not reporting the incident promptly,[1547] including fear of a negative publicity, stigma and harrowing treatment within the CJS.[1548] They may be aware of the myths that pervade the CJS, and as a result they are discouraged from reporting rape at all or, at least, from reporting immediately.[1549]

The stories of the interviewees illustrate the above point though their cases did match stereotypical stranger-rape cases. For instance, Victim Four is a 14-years-old girl who was repeatedly raped by her step father estimated to be between 35 to 40 years old.[1550] She did not report the incident, fearing the offender and fearing that her mother might not believe her. But, she used to write down what had happened to her, in her diary. After reading her diary, her brother asked her to tell him what had happened to her. She told him all the story, but he did not help her to report the case to

---

[1543] Tsehai Wada (2012), *supra note* 412, P. 224.
[1544] Susan Estrich (1992), *supra note* 1266, p. 11; Cassia C. Spohn (1999), *supra note* 18,p. 126; Mustafa T. Kasubhai (1996), *supra note* 1210; and Jocelynne A. Scutt (1992), *supra note* 1262, p. 442.
[1545] Cassia C. Spohn (1999), *ibid,* p. 119; Mustafa T. Kasubhai (1996), *ibid*; and Jocelynne A. Scutt (1992), *ibid,* p. 442
[1546] Joan McGregor (2011), *supra note* 4, p. 75.
[1547] John O. Savino and Brent E. Turvey (2011), *supra note* 143, p. 53.
[1548] Carol Bohmer (1973-74) 'Judicial Attitudes toward Rape Victims', *Judicature* 57(7), pp. 303-307.
[1549] Maxime Rowson (2014) 'Corroborating Evidence, Rape Myths and Stereotypes: A Vicious Circle of Attrition', *Kaleidoscope* 6(2), pp. 135-143, p. 135.
[1550] Interview with Victim Four, *supra note* 1421.

the police. Rather, he warned her to tell him if this ever happens to her again. This seems an effort to shield his father from prosecution. The case of Victim Four came to the police' attention almost by accident. She recounted the story as follows: "I reported the incident to the police who, called by neighbors, came to our home in the middle of a family violence. I remember that some neighbors were encouraging me to tell everything to the police at that time."[1551]

Other interviewees also shared similar reasons for not promptly reporting their cases to the police. For instance, Victim Two and Victim Five did not report their case for more than a year because the offenders had threatened them not to do so.[1552] Likewise, Victim Three did not report the issue to anyone due to a threat from the offender to expel her from home if she did so.[1553] For these and other reasons, victims do not promptly report the incident to the police.[1554] Failure to report promptly should not, therefore, lead to the conclusion that the victims were not raped and that they were lying about being raped. Nor should it prevent a serious investigative response by the police. Generally, the prompt reporting requirement is founded on an unfounded assumption and is unfair.

The problem, however, is the fact that even where the victims promptly report the incident to the police or to third parties, they are not viewed as credible victims and their cases secure serious investigation responses. Victim's credibility can even be questioned where there were hearsay witnesses to whom she told about the incident immediately and where there was a forensic medical examination report, showing the presence of serious genital injuries and physical evidence corroborating her statement. A typical case to illustrate this point is the decision of the 7th Criminal Bench of the Federal First Instance Court, Lideta Division. The decision was rendered on March 09, 2015, in Criminal File Number 211474.[1555] In this case, the prosecutor filed a charge against the offender for violation of Article 620(1) of the RCC. In summary, the victim was raped by a

---

[1551] *Ibid*.
[1552] Interview with Victim Two, *supra note* 928; and Interview with Victim Five), *supra note* 1428.
[1553] Interview with Victim Three, *supra note* 930.
[1554] Michelle J. Anderson (2010), *supra note* 1219, p. 650.
[1555] *Public Prosecutor v. Getnet Abebaw Mariyie*, Criminal File Number 211474, Lideta Division, Federal First Instance Court.

stranger at 7:30 PM on December 23, 2013 while she was searching for a police station to report a theft of her personal belongings. The offender, who was a passerby, agreed to show her the way to a police station. However, he accompanied and took her to the place where he raped her. With the assistance of another woman to find the nearby police station, she immediately reported to the police both incidents of theft and rape. As she followed the offender and saw the compound where he entered into after raping her, she also located the whereabouts of the offender to the police just soon after reporting the incident. The police arrested the offender forthwith. By the following day, she was taken for examination to a hospital. The forensic medical examination report too revealed the presence of genital injuries though with an irrelevant and unnecessary information about the hymeneal status of the victim as "raptured but not recently."

The victim, as the first prosecutor's witness, testified on all facts in the charge. The second witness, who is the responding police officer, also testified that on December 11, 2013, at about 7:30 PM, the victim and another woman approached him. He further stated that when he asked her what had happened to her, she told him that she lost her money in a hair salon, that she asked the offender for a direction to the police station to which he agreed but instead took her to a place where he raped her. The police officer also testified that he asked her to show to the police where the offender went, and that she took the police to the location and the police arrested the offender and took him to the police station. Asked about the location where the offence was committed, he stated that he did not see it, but he stated that there was a river around that place and the offender's house was near the camp. The third witness, who is a relative of the victim, also testified that she was called to come to the police station on December 24, 2014. She further testified that when she asked the victim what had happened to her, the victim told her that she was raped, went to the Yeka Police Station and then to the Gandhi Hospital. As to the location of the offence, she stated that there was a river around the police station. The court then ruled that the offender has to defend the case.

The offender called four defense witnesses. One of his defense witness testified that there was no river and forest at the location where the offence was allegedly committed. Two defense witnesses testified that the offender was at home when the offence took place and remained at home until the police came and took him for questioning. This was an *alibi* defense, where the offender

claimed that he was elsewhere at the time of the offense. The remaining defense witness, who was a friend of the offender, stated that the victim called the offender when they were walking home together, and she asked him for a direction to the police station. He stated that the offender showed her the way to the police station and she went home with him. Perhaps this contradicts an alibi defense, depending on the exact time the defense witnesses were referring to. However, the court decided that the offender was not guilty.

The "reasons" for acquittal as stated in the judgment were as follows: First, there is no forest or river at the place where the alleged offence occurred. Second, had the place where the victim claimed to have been raped been near the police station, the police would have heard her screams. The court went on to say that when the victim gave her testimony, she claimed that she had screamed during the offence but there was a police station nearby. If she had screamed, it would have been heard so her testimony is not trustworthy.

Third, the victim initially reported that she was stolen and changed her statement and claimed she was raped. The victim's testimony that she had been robbed and later raped was interpreted by the court as changing her allegation from theft to rape. The court then stated, in an obscure manner, that the victim initially claimed she had been robbed and afterwards she claimed she had been raped. As a result, the court lost its trust on the testimonial statements of the victim. For the court, had she been a genuine victim, she would have reported the incident of rape case first. This is a unique "reasoning" where the court linked the sequence of reporting of the two crimes as a ground to disbelieve the victim's account.

The other key informant, Prosecutor Two, also recounted one rape case which further demonstrates the depth of the institutionalized incredulity of rape victim within the CJS.[1556] According to this informant, the case is still pending at the Cassation Bench of the Federal Supreme Court at the time of the interview. In this particular case, the victim was a former girlfriend of the offender.

[1556] Interview with Prosecutor Two, *supra note* 849.

After over three years since their relationship had broken up, they come across one day and agreed to have some drink together. They, together with another friend of his, had some alcoholic drinks, and later went out of the pub they were staying in. After deriving for a while, both her former boyfriend and his friend raped her inside the car they were driving. When the case was taken to the court, the defense that was raised against the prosecutor's charge was that the offender was her boyfriend and thus the sexual relation was consensual. Prosecutor Two argued that "[t]his is not fair as nothing suggested that there was consensual sex. The forensic medical evidence shows that forced sexual intercourse had occurred and her face and back were scratched and bruised."[1557] She added that "there were eyewitnesses around the place and at the time where she got off the car and they saw her injuries. The case was dismissed because, at the police station, she had claimed that she was the one who wrote down the plate number of the car, but in court, she claimed that it was someone else who did it for her."[1558]

Essentially, the prosecutor's case was dismissed by the trial-court not because the victim had consented, but instead, because her statement at the police station at the investigation stage and at the trial stage regarding who recorded the plate number of the offender's car was inconsistent. The inconsistency was not on the accuracy of the plate number or whether she had it, but who recorded it down. In the presence of other eyewitnesses and a forensic medical examination report consistently corroborating the victim's allegation of rape, this inconsistency had little effect in determining the whole outcome of the issues. Given the traumatic condition she was in when she was interviewed at the police station, her statement as to who actually wrote down the plate number might not be correct. As far the plate number stated to the police and to the court matches with that of the offender's car, the inconsistencies on who wrote it down should not render the victim's story a total fabrication, given the presence of eyewitnesses and a forensic medical examination report. But the court generalized such a minor inconsistency to the whole issue surrounding the case, to conclude that she was lying and had not been raped at all. The case is still pending in the cassation

[1557] *Ibid.*
[1558] *Ibid.*

bench. The chance of getting the lower court's decision reversed at this stage is very minimal since the Cassation Bench considers a case only where there is a fundamental error of law.

Previous studies conducted in Addis Ababa also documented a case where the victim promptly reported the incident of rape to three eyewitnesses but the prosecutor dismissed the case long before even it reached the trial-court.[1559] In this specific case, the victim reported that she was raped by the son of the owner of the house where she was living for a time.[1560] She claimed that the offender raped her by tightly holding her mouth and preventing her from screaming for help.[1561] There were three eyewitnesses who testified that they had been told by the victim about the incident.[1562] However, the prosecutor closed her case stating that there was no evidence.[1563]

7.3.2.4 Victim's Sexual History

Even where there are corroborating evidences and where the victim is named as a witness, her past sexual history either concerning the relationship with the offender or her sexual history in general is examined at the trial. Sometimes, the inquiry goes to the extent of cross-examining the victim herself and other prosecutor's witnesses about the victim's sexual history, including her marital status.[1564] Prosecutor's witnesses were examined whether the victim came from a place where early marriage is common, to infer from their testimony that the victim involved in a child marriage and had sexual intercourse in that marriage.[1565] For cases involving adults, the inquiry into the victims' prior sexual history seems to be a standard practice. According to Judge One, the court does not, generally, protect adult rape victims from being cross-examined about their sexual history, at the trial.[1566] All the prosecutors who were interviewed had similar views.

[1559] Blain Worku (2011), *supra note* 987, pp. 53-54.
[1560] *Ibid.*
[1561] *Ibid.*
[1562] *Ibid.*
[1563] *Ibid.*
[1564] *See e.g.,* Public Prosecutor v. Hailemariam Atsibeha, *supra note* 1469.
[1565] *Ibid.*
[1566] Interview with Judge One, *supra note* 842.

However, the inquiry into the victim's sexual history does not start at the trial stage. Instead, it enters into the CJS at the initial reporting stage somehow blatantly. For instance, the classification and recording rape victims by the police as 'virgin' and 'non-virgin' had in the past presupposed some sort of inquiry into the victim's sexual history. At the investigation stage, the police often refer the victims to hospital for forensic medical examination. The forensic medical examination reports accessed by the present researcher consistently contains the hymeneal status of the victim.[1567] The hymeneal status as described in the examination reports informs the police, the prosecutor, the judge and the offender or his lawyer about the victims' sexual history. At least, it allows the key actors to make inferences about the victims' sexual history.

Regarding the admissibility of the victim's previous sexual history in rape cases, there were two closely intertwined assumptions. First, a woman who was unchaste was thought more likely to have consented to the contested sexual encounter with the offender.[1568] Unchasteness was understood as participating in either pre-marital or extra-marital sex. It was assumed that an unchaste woman would be more likely to consent to a sexual intercourse than a woman without a history of pre-marital or extra-marital sexual relations.[1569] Thus, the offenders or their lawyers make inquiries into the sexual history of witnesses in order to suggest consent. The assumption seems that having been unchaste with other men previously was enough to suggest consent to a sexual intercourse with the offender himself.[1570]

Second, it was believed that a woman who had been sexually active was a less credible witness in general.[1571] This means a woman's chastity informs her credibility as a witness. An unchaste woman was viewed as a lying witness.[1572] This assumption was developed against a cultural

---

[1567] *See infra* Chapter 7. Section *"7.3.2.5. Forensic Medical Examination"* with accompanying notes
[1568] Richard Klein (2008), *supra note* 11, p. 990
[1569] Cassia C. Spohn (1999), *supra note* 18, p. 126.
[1570] Michelle J. Anderson (2010), *supra note* 1219, P. 658.
[1571] Richard Klein (2008), *supra note* 11, p. 990.
[1572] Julia Simon-Kerr (2008) 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment', *the Yale Law Journal* 117(8), pp. 1854-1898, p. 1854.

background that equated a woman's *honor*, and thus her credibility, with her sexual virtue.[1573] As a woman's *honor* depended on her sexual virtue, her credibility suffered from any real or perceived failings of that virtue.[1574] Her credibility depended on the value attached to chastity and sexual virtue as opposed to her reputation for truth telling.[1575] If a woman was unchaste, she had broken societal mores already and was presumed to continue to defy those mores by lying as a witness under an oath to testify *the truth, the whole truth, and nothing but the truth.*

Where the offenders or their lawyers make inquiries into the sexual history of rape victims in order to impeach their credibility as witnesses, they do so against a cultural background that connected women's truthfulness to their chastity and sexual virtue. Thus, in practice, a woman is required to be chaste and sexually virtuous to get legal protection. As Michelle J. Anderson noted, "[w]omen heard the rules: If you want the criminal law to vindicate you if you are raped, you better have led an unsullied sexual life. By having been unchaste with the defendant or others before, you assumed the risk that men would sexually violate you."[1576] Generally, a victim's sexual history is examined at the trial to determine the issue of consent and credibility.[1577]

However, a woman had once had sexual relations with one man does not mean that she has consented to sexual relations with all men all the time. It does not mean that she, by her prior consent, allows him to rape her later. Evidence that the victim had previously engaged in a sexual activity has very little bearing upon or relevance to whether she consented on that subsequent particular day.[1578] Likewise, no logic lends credibility to the assumption that the victim is more likely to lie under oath because she had previously had a consensual sexual intercourse with

---

[1573] *Ibid*.
[1574] *Ibid*, pp. 1856-1857.
[1575] *Ibid*, p. 1857.
[1576] Michelle J. Anderson (2010), *supra note* 1219, p. 659.
[1577] Julia Simon-Kerr (2008), *supra note* 1572, p. 1854.
[1578] Michelle J. Anderson (2010), *supra note* 1219, p. 659; Hilaire Barnett (1998), *supra note* 65, p. 278; Vivian Berger (1977), *supra note* 14, pp. 57-59; and Linda A. Purdy (1986) 'Rape: Adding Insult to Injury', *Vermont Law Review* 11(1), pp. 361-372.

someone else.[1579] It is also indefensible to state that 'unchaste' women are more likely to fabricate events in relation to rape than any others offences.[1580] Thus, rape victims deserve unqualified legal protection regardless of their previous sexual history and whether they are 'unchaste' or 'promiscuous' with the offender or with others.[1581] The victims deserve to be treated with due respect under the law, regardless of their sexual history.[1582]

Moreover, the practice of unrestricted admission of rape victims' sexual history at the trials is not only illogical but also it constitutes a discrimination against women since it cannot be used to impeach men's credibility or to suggest consent where men are rape victims. Legally speaking, a man's previous sexual conduct, even if he was previously convicted for rape, has no relevance to his credibility. In this regard, the Criminal Procedure Code stipulates that "the previous convictions of an accused person shall not be disclosed to the court until after he has been convicted."[1583] It further adds that "[t]he previous convictions of an accused person shall not be included in the record of any preliminary inquiry."[1584] Hence, not just his prior sexual conduct but also his previous conviction for rape is not relevant to determine his trustworthiness. Nothing is inferred from a man's sexual history whether he involves in the CJS as a witness, a victim or an offender. Where a man involves in the criminal proceeding as an offender, his previous criminal sexual conduct might be considered at the sentencing stage as an aggravating factor.

The right of the offender to cross-examine witnesses has been regarded as an important constitutional right.[1585] However, the exercise of that right, if it goes to the extent of inquiring into the victim's sexual history, entails considerable emotional and psychological costs, humiliation

---

[1579] Michelle J. Anderson (2010), *ibid.*
[1580] Vivian Berger (1977), *ibid*; and Aileen McColgan (1996) 'Common Law and the Relevance of Sexual History Evidence', *Oxford Journal of Legal Studies* 16(2), pp. 275-308.
[1581] Michelle J. Anderson (2010), *supra note* 1219, p. 660.
[1582] *Ibid*, p. 661.
[1583] Criminal Procedure Code, *supra note* 425, Article 138(1).
[1584] *Ibid*, Article 138(2).
[1585] Hilaire Barnett (1998), *supra note* 65, p. 278.

and trauma for the victims.[1586] For this and other reasons stated above, restricting the use of victims' sexual history will not deprive the offender of his rights for a fair trial.[1587] Instead, it can be used to balance the interests of the victim against the rights of the offender by generally denying the admission of sexual history at the trial.[1588] This can be done by enacting the so-called rape shield law, prohibiting the use of evidence of victims' sexual history, with an exception for its admission only where the court finds it appropriate in the interest of justice.

7.3.2.5 Forensic Medical Examination

Forensic medical examination is essential to reconstruct events more objectively. In sexual offence cases, it can well address three basic forensic questions: (1) *whether any sexual contact had happened*; and if so, (2) *with whom did it happen;* and (3) *whether it was consensual or non-consensua*l. However, the contents of five randomly selected written forensic medical examination reports from the Gandhi Memorial Hospital did not address these basic questions.[1589] Nor did they include the required details to assist the CJS. The standard format for forensic medical examination reports is just a single page of an A4 size paper. It leaves just a line or two for demographic and general information such as name, sex, age, occupation, reference or card number and date of examination. The remaining part is left for other substantive details including the findings of the examination and the examiner's suggestion or opinion. The substantive contents of the forensic medical examination reports did not include the essential components but instead included unnecessary and irrelevant information having adverse effect in advancing the cause of rape victims. The following are the main weaknesses of the sample reports.

[1586] *Ibid.*
[1587] Vivian Berger (1977), *supra note* 14, p. 57.
[1588] Cassia C. Spohn (1999), *supra note* 18, p. 128.
[1589] The sample forensic medical examination reports were attached as an evidence in *Public Prosecutor v. Ali Yesuf*, Criminal File Number 215694, Federal First Instance Court Lideta Division; *Public Prosecutor v. Fasil Ayitenfisu Belete*, *supra note* 1195; *Public Prosecutor v. Yisihak Chinkilo*, *supra note* 1468; *Public Prosecutor v. Sintayehu Desalegn Afewerk*, Prosecutor File Number 00014/07, Federal Attorney General Arada Office; and *Public Prosecutor v. Samu'el Dagnie Tadesse*, File Number 003/06, Federal Attorney General Arada Office.

First, all forensic medical examination reports did not include the victim's statement and a description of her emotional state. Nor did they even state whether a forensic medical interview was conducted with the victim. This means forensic medical examination reports submitted to the police, the prosecutors and ultimately to the court failed to document the most vital components of a forensic examination. As Linda E. Ledray noted "[p]recise documentation is important because statements made to the physician or nurse examiner during the medical-legal examination can be repeated in the courtroom as an exception to the hearsay rule and are very helpful in corroborating the victim's account of the sexual assault."[1590] In documenting victims' statements, the examiner should, where appropriate, use qualifying statements such as "patient states" or "patient reports", and if the exam findings match the history given by the victim, the examiner should also document "there is congruence between the victim's story and her injuries" or "the injuries are consistent with the story."[1591] But, none of the sample had included such vital findings.

Second, from the sample reports, it appears that the forensic medical examination was limited to assessing the presence of genital injuries, disregarding evidence of non-genital injuries. Even evidence of genital injuries were not documented in a way that helps to corroborate the use of force, coercion or lack of consent. Genital injuries can occur as a consequence of both a sexual offence and of a consensual sexual activity.[1592] Self-inflicted injuries are also possible.[1593] Genital injuries could have an alternative aetiology such as *infection*, *inflammation*, *bleeding disorder*, *skin condition*, *neoplasia* and the like.[1594] This means genital injuries in themselves do not corroborate the use of force or lack of consent. Genital injuries have to be interpreted during the

---

[1590] Linda E. Ledray (2005) 'Forensic Medical Evidence: The Contributions of the Sexual Assault Nurse Examiner (SANE)', in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 6, London: Elsevier Academic Press, p. 127.
[1591] Linda E. Ledray (2005), *ibid*, p. 128.
[1592] Graeme Walker (2015) 'The (in)significance of Genital Injury in Rape and Sexual Assault', *Journal of Forensic and Legal Medicine* 34: pp. 173-178, p. 175.
[1593] Ole Ingemann-Hansen and Annie Vesterby Charles (2013) 'Forensic Medical Examination of Adolescent and Adult Victims of Sexual Violence', *Best Practice & Research Clinical Obstetrics & Gynaecology* 27(1), pp. 91-102, p. 99.
[1594] Graeme Walker (2015), *supra note* 1592, p. 174.

forensic medical examination.[1595] However, the sample reports did not include the findings and interpretation of such examination. Rather, they merely state the presence of genital injuries.

It is worth noting that the presence of genital injury, if properly examined and interpreted, can provide evidence that sexual contact had occurred and corroborate the use of force, coercion or lack of consent, but the absence of genital injury does not mean that sexual contact has not occurred.[1596] As a 2013 study at the Gandhi Memorial Hospital found, it was only about 41% of rape victims that had physical signs during examination.[1597]

Moreover, the sample forensic medical examination reports included unnecessary and irrelevant facts such as the hymeneal status of rape victims. They described the hymeneal status as: "hymen raptured but not recently" or "hymen intact" or "hymen raptured recently." Examination of the hymeneal status seems to be a standard practice in the Gandhi Memorial Hospital as another study found that hymen status as was stated in forensic medical examination reports submitted to the police.[1598] However, the inclusion of hymeneal status in the reports does not serve the interest of justice and advance the cause of rape victims. Hymeneal examination cannot be an effective test to determine whether the victim is sexually assaulted. This kind of examination does not address the basic forensic questions stated above. According to Catharine White, "it is not scientifically possible by a clinical examination to determine with accuracy whether or not there has been penile penetration of the vagina…"[1599] The victim may be sexually penetrated but the hymen may not be ruptured or injured.[1600] A study also showed that laceration of the hymen was only found to be acute in 32% of virgin adolescents who reported sexual assault.[1601]

[1595] Ole Ingemann-Hansen and Annie Vesterby Charles (2013), *supra note* 1593, p. 99.
[1596] Graeme Walker (2015), *supra note* 1592, p. 175.
[1597] Mersha Shenkute (2013), *supra note* 26, p. 55.
[1598] *Ibid*, p. 58.
[1599] Catharine White (2015), *supra note* 216, p 301.
[1600] *See for e.g.*, Oromia Justice Office v. Mekuanint Girma, *supra note* 1145.
[1601] Catharine White and Iain McLean (2006) 'Adolescent Complainants of Sexual Assault; Injury Patterns in Virgin and Non-virgin Groups', *Journal of Clinical Forensic Medicine* 13(4), pp. 172-180, p. 179.

Particularly, the inclusion of a hymeneal status description as "raptured but not recently" in the forensic medical examination reports has no forensic value. The law does not define rape as a crime against virgins. Hymeneal status, where it is stated negatively as "hymen raptured but not recently", does not offer any clue to determine whether the offence had actually occurred. However, four out of five sample forensic medical examination reports described the victims' hymeneal status as non-virgin (hymen ruptured), but not recently. In one report, the victim's hymeneal status was described as virgin (hymen intact). Thus, all the sample reports contained negative findings. Reports of negative findings neither confirm nor refute the allegation that a sexual offence was committed. The inclusion of negative findings in the reports is unprofessional as it gives a wrong impression to the reader, regarding the occurrence of the offence.

A negative finding of hymeneal status, particularly where it is described as "raptured but not recently" in the forensic medical examination reports, might prove that a woman has had previous sexual intercourse. This does not mean that she relinquish her right to refuse sex subsequently. This practice seems to be predicated on the belief that rape is mainly a sexual act and thus for women who had had a prior sexual intercourse, one more act should not matter.[1602] It reinforces the stereotype that women should be chaste and that that an unchaste woman has a propensity to consent to sex or is less credible as a witness. It allows the offender or his lawyer to characterize such negative findings with their own adventitious interpretations to undermine the victim's credibility. Above all, hymeneal examination is demeaning, degrading and humiliating to the victim and has a significant negative social, physical and psychological impact on her.[1603] It is also discriminatory as the issue of hymeneal status does not address male sexual conduct.[1604] For instance, it cannot be used as evidence where the victim is male.

[1602] Kurt Weiss and Sandra S. Borges (1973) 'Victimology and Rape: The Case of the Legitimate Victim', *Issues in Criminology* 8(2), pp. 71- 115.
[1603] Catharine White (2015), *supra note* 216, p 301.
[1604] *Ibid.*

Furthermore, the sample reports did not include evidence of non-genital injuries which may be equally important in corroborating the victim's sexual history. Non-genital injuries can corroborate the victim's account and the use of force, which implies lack of consent.[1605] For example, oral or anal injuries may occur as a consequence of oral or anal rape, respectively.[1606] Non-genital bruises, abrasions or lacerations may be the result of attempts to restrain the victim or may be part of an associated physical assault during the commission of a forcible rape or sexual assault.[1607] A bruise on the arm may corroborate that the victim was grabbed by the arm and dragged into, for example, a car.[1608] Injuries to the inner thigh may corroborate that the victim's legs were forced apart during the commission of rape.[1609] However, the sample reports did not document non-genital injuries. It is worth noting that the absence of injuries neither proves lack of force nor presence of consent.[1610]

Third, one of the basic forensic questions, namely, with whom the sexual contact happened, is unlikely to be uncovered purely on the basis of injuries. For this question, other evidence, particularly DNA, are likely to be more helpful.[1611] DNA evidence is being used increasingly in criminal cases involving rape not only to identify the offender but also to exonerate innocent who were wrongfully convicted.[1612] The use of DNA evidence in other jurisdictions is not a recent phenomenon. It was in 1987 that the first man was convicted of rape with the help of DNA evidence.[1613] However, the forensic medical examination in Ethiopia has not benefited from the advancement of science. Thus, the sample reports stated nothing about DNA evidence. The present study's key informant also considered non-utilization of DNA evidence as one of the main challenges for the successful prosecution of rape.[1614] DNA evidence has paramount importance

[1605] Linda E. Ledray (2005), *supra note* 1590, p. 134.
[1606] Graeme Walker (2015), *supra note* 1592, p. 173.
[1607] *Ibid.*
[1608] Linda E. Ledray (2005), *supra note* 1590, pp. 134-135.
[1609] *Ibid.*
[1610] *Ibid.*
[1611] Graeme Walker (2015), *supra note* 1592, p. 175.
[1612] John M. Butler and Terilynne W. Butler (2005) 'DNA for Detectives', in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 8, London: Elsevier Academic Press, p. 165.
[1613] Linda E. Ledray (2005), *supra note* 1590, p. 131.
[1614] Interview with Prosecutor One, *supra note* 842.

for the Ethiopian CJS where, in most cases, the issue revolves around addressing whether sexual intercourse had occurred and the offender often relies on an *alibi* defense.

Fourth, all the sample reports had unnecessary included the findings of examination for STIs. Yet, the inclusion of such findings in the reports is problematic. The findings for STIs do not have evidentiary value as they were supposed to. As Linda E. Ledray noted, in the past, "[t]he rationale was that if a victim was negative initially and positive on follow-up, the assailant, if apprehended, could be tested as well. If he was positive for the same STI this could then link him to the crime.[1615] Since there are so many variables that could account for a positive STI test, it has not been a useful forensic evidence and is no longer recommended for cases involving adult and adolescent victims.[1616] STI evidence is seldom used in court unless the individual is sexually inexperienced or elderly.[1617] Generally, the consensus now is that testing for STIs has no forensic value. If positive, it will only show if the victim had an STI prior to the offence. If she had, this information may be accessed by the offender or his lawyer and can be used against her in court.[1618] For this reason, such kind of finding should not be included in reports involving adult victims.

Fifth, the sample reports omitted the essential component of forensic medical examination, namely, the interpretation and conclusion of forensic findings. From a legal perspective, the forensic medical examination reports should include the following: accurate history; documentations of observations; collecting of forensic-trace evidence; interpretation of the findings; a standardized medico-legal report in objective terms; and provision of expert opinion in the proceedings.[1619] The sample reports, however, included in what should be interpretation and conclusion of forensic findings forensically irrelevant statements or an unnecessary validation of the alleged offence. Four out of the five reports included statements with no forensic value. Under the heading of "Examiner's Comments", they stated that the examiners had recommended the

---

[1615] Linda E. Ledray (2005), *supra note* 1590, p. 130.
[1616] *Ibid.*
[1617] Beata Cybulska and Greta Forster (2005), *supra note* 265, p. 26.
[1618] Linda E. Ledray (2005), *supra note* 1590, p. 129.
[1619] Ole Ingemann-Hansen and Annie Vesterby Charles (2013), *supra note* 1593, p. 92.

victim to comeback after a month or more for either pregnancy test or HIV/AIDS screening or both. This indicates that the medical forensic examiners did not conduct or, at least, document every examination they perform, in a forensic mind-set.

The sample reports did not provide interpretations about whether and how the findings may be consistent with a forcible sexual act or with the victim's account. Rather, they simply reported that the victim was tested for STIs and pregnancy and appointed to come back again for a follow-up. The examiners ignored the purpose of forensic examination, which is to educate the judiciary. They took rape as a diagnosis, not as a legal concept. A previous study conducted at the Gandhi Memorial Hospital also indicated that the examiner examined the victims and told them to check for pregnancy and STIs test.[1620] It found that 83.80% of the victims were only given medical examinations.[1621] Conversely, the remaining one sample report improperly validated the commission of an offence. It simply concluded that "[i]t was proven that she was raped." A medical forensic examiner is never expected to state whether the crime was committed or not. This is a matter of jurisprudence that must be left to the judge at the trial-court.

Last but not least, there is a tendency to limit the investigation efforts to forensic medical examination and eyewitnesses. The CJS has disregarded other types of evidence that may be essential to shed light on the case. For instance, the use of trace evidence was not mentioned in all rape cases consulted by the present researcher. Nor was it mentioned by key informants. It was not observed during trial observations. Since sexual offences are often committed in the absence of eyewitnesses, the use of trace evidence is critically important. The basic premise behind the use of most types of trace evidence is that a person often leaves something at a crime scene and takes something away from it. In violent crimes like forcible rape and sexual assault, this leads to the intensive search for very small pieces of evidence, often referred to as trace evidence, including

[1620] Mersha Shenkute (2013), *supra note* 26, p. 57
[1621] *Ibid.*

hairs, fibers, smears of semen or blood, glass, soils and the like.[1622] Trace evidence is often present in such small quantities, making difficult to see it without the aid of specialized lighting techniques.[1623] The offender may think of sanitizing the scene with respect to normally observable evidence, but he will likely miss trace materials transferred to a victim, the scene or himself.[1624] Like DNA evidence, trace evidence is essential in advancing the cause of rape victims since the issue in many cases is whether sexual intercourse had occurred, and that the offender often relies on an *alibi* defense. However, it appeared that only the victim's body was considered as a crime scene for trace-evidence collection without being transferred to the offender's.

7.4 Conclusion

The legal and policy reforms were incomprehensive and piecemeal. The substantive rape law maintains the classification of sexual offence as an *affront to collective morality and chastity*, and makes an unnecessary distinction in degree of gravity between rape involving sexual intercourse and rape involving other forms of sexual penetration or act. It fails to define rape in fully gender-neutral terms, does not define forcible rape and sexual assault as non-consensual sexual conducts and maintains marital-rape exemption for a forcible rape. In addition, the revision of the substantive law has not been accompanied by changes in rules and practices of procedural and evidentiary matters. Generally, the criminal procedure law in force treats rape cases just like any other crimes. Nor does it incorporate the rights of rape victims. Although the policy reforms are commendable, they have not adequately addressed many issues and improved the treatment of rape victims, within the CJS. Furthermore, the reform did not address matters in relation to practices and rules of evidentiary law. On top of all this, the key actors within the CJS have developed stereotypical practices to reconstruct rape victims' account as at the trial-court.

[1622] Robert R. Hazelwood and Ann Wolbert Burgess (2001) *Practical Aspects of Rape Investigation: A Multidisciplinary Approach,* 3rd ed., Washington, D.C.: CRC Press, p. 270.
[1623] *Ibid.*
[1624] *Ibid.*

CHAPTER EIGHT: CONCLUDING REMARKS AND WAYS FORWARD

8.1 Conclusion

With the recognition of sexual and other forms of VAW as a violation of women's human rights, various legal and policy measures have been introduced to address the problem. In Ethiopia, partly in response to the demands from women's rights advocacy groups, and as part of the overall revision of the 1957 Penal Code, the lawmaker has introduced reforms to the Ethiopian rape law, in 2004. The RCC came into effect on the 9th of May of 2005 and has, in comparison to its predecessor, made some progress. First, the RCC has abolished the immunity of rapists and abductors, in the event of the subsequent conclusion of marriage with their victims. Second, with inherent weaknesses in its formulation, it has abolished marital rape exemption from sexual assault and sexual coercion. Third, it has introduced reforms in the penalty structure of rape including, setting a mandatory minimum sentence and penalty gradations with a continuum of acts that specified varying degrees of gravity. Fourth, it has abolished explicit legal provision which was premised on the faulty assumption that young victims encourage or provoke, by their behavior, the offenders and contribute for their own victimization. Fifth, it has criminalized other forms of SVAW such as FGM, child marriage and marriage by abduction. However, it has failed to specifically criminalize other forms of gender-specific violence such as wife inheritance and marriage by exchange. Sixth, in recognition of VAW in a private setting, the RCC has specifically made reference to the so-called domestic violence or violence within an intimate relationship. However, it has not only ignored the gendered nature of violence in the family setting but also too narrowly construed the acts that constitute violence as well as persons to whom it offers protection. Most importantly, the legal reforms have either been preceded or accompanied by various policy reforms, including the establishment of special investigation units, prosecution units and trial benches for sexual and other forms of VAWC. Referral systems, coordination mechanisms and a one-stop center to facilitate victims' access to different services were also established. Generally, the legal and policy reforms have made important progresses. In adopting these reforms, the lawmaker sought to curb the high level of sexual violence and improve the treatment of the victims.

Regarding the effects of the legal and policy reforms, the present study found that there was generally an increased police reporting trend for rape cases, subsequent to the reforms. However, such an increase police reporting trend has not correspondingly been accompanied by improved rates of attrition, prosecution and conviction. Generally, the attrition, prosecution and conviction rates for VAWC cases, which include rape cases, were not positively impacted by the reforms. The study also found that the legal and policy reforms have not led to a shift of focus from the character, reputation and behavior of the victim to the criminal conduct of the offender in rape case-processing within the CJS.

Of the 29 items that were included in the final dataset as victim's characteristics, almost all were considered by the key actors while making decision on rape cases. There was no statistically significant difference between male and female participants in their responses regarding the consideration of victim characteristics, except on two items – victim's working history in a "disreputable" situation, and victim's emotional reaction to the incident. The present study does not consider the effects of considering victim characteristics on attribution of blame and credibility or case-processing outcome. However, numerous studies consistently identified victim characteristics included in the final dataset as leading factors to attribute blame and credibility to victims, and determine case-processing outcome (attrition) for rape cases. The present study assumes that victim characteristics included in the final dataset might have been used to attribute blame and credibility and determine attrition for rape cases within the Ethiopian CJS too. Further researches should explore the effects of victim characteristics on the attribution of blame and credibility, and case-processing outcomes.

Generally, with the exception of an increased police reporting trend, the legal and policy reforms have not improved the rates of attrition, prosecution and conviction for rape cases. Nor did they lead to a shift of focus from the character, reputation and behavior of the victim to the criminal conduct of the offender, within the CJS. The overall instrumental impacts of the reforms were not noticeable. This might be due, in part, to the inability of the legal and policy reforms to dispel from the CJS rape myths' acceptance and attitudes that support or trivialize SVAW. Furthermore, reforms are long-term processes involving efforts to change legal culture, organizational and

professional practices within and beyond the CJS, and attitudes toward and beliefs about men's and women's sexualities, rape, rapists and rape victims. This suggests that the legal and policy reforms are necessary but not sufficient measures to address the complex problem of SVAW.

In Ethiopia, however, it appears that even the prerequisite legal and policy frameworks have not been put in place and utilized to their limits. In this regard, the present study found that the reforms introduced so far did not advance the cause of rape victims by eliminating overly restrictive ideas about what counts as rape and an intricate web of myths surrounding rape law and its enforcement within the CJS. It specifically identified the following as the main gaps in substantive rape law: First, the law classifies sexual offence as an affront to collective morality and chastity. Second, it makes an unnecessary distinction in degree of gravity between sexual offences involving sexual intercourse (penile-vaginal penetration) and other sexual penetration or acts (penile-anal, finger-vaginal or object-vaginal). Third, it fails to degenderize sexual offences. Fourth, the law does not define forcible rape and sexual assault as a non-consensual sexual conduct. Instead, it maintains the use of violence, threat of violence and resistance as defining elements of forcible rape and sexual assault. Fifth, it frames the notion of sexual coercion too restrictively with a lenient sentence and as a private crime. Sixth, it maintains the obsolete notion that forcible rape by a man against his wife is legally impossible.

However, the most conspicuous weakness of the reforms was that the revision of the substantive rape law has not been accompanied by changes in rules and, mainly, practices of procedural and evidentiary matters. Generally, the procedural rules under the Criminal Procedural Code treat sexual offences like any other crimes. The Criminal Procedural Code has not included specific rules for the investigation, prosecution and trial of rape cases. Nor does it incorporate the rights of rape victims, such as the right to be treated with respect and dignity, the right to be referred to adequate support services, the right to receive information about the progress of the case, the right to be present and give input to the decision-making process, the right to counsel, the right to protection of physical safety and privacy, and the right of compensation. Although the policy reforms on these matters are commendable, they have not adequately addressed many issues and improved the treatment of victims, within the CJS. For instance, there is no private location for

interviewing rape victims. Nor are there directives protecting the victim from being interrogated by multiple police officers and prosecutors repeatedly. There are no rules that have been promulgated to specifically protect rape victims' physical safety and privacy either.

Likewise, the reforms introduced so far did not address matters in relation to practices and rules of evidence law. In Ethiopia, there is no codified 'Rules of Evidence'. Nor are there evidentiary rules specifically designed to deal with rape cases. The present study found that, on this backdrop, the key actors within the CJS have developed stereotypical practices to reconstruct rape victims' account at the trial-court, including corroboration, eyewitness and prompt reporting requirements, and the routine admission of victims' sexual history at the trial. In addition, the conduct of forensic medical examination omitted the essential components, such as the interpretation and conclusion of forensic findings, and included unnecessary and irrelevant information, such as hymeneal status and the findings of examination for STIs. The forensic medical examination is not also benefited from the scientific advancements in the field, such as the use of DNA evidence. There is also a tendency to limit the investigation efforts to medical examination and eyewitness accounts, disregarding other types of evidence that may be essential to shed light on the facts of the case.

8.2 Ways Forward

The legal and policy reforms introduced so far to address the problem of SVAW have been incomprehensive and piecemeal. They lead only to minimal instrumental effects in terms of improving police reporting rate, highlighting the need for further comprehensive reforms. Accordingly, the present study proposes the following reforms on substantive rape law: First, the law should place rape under its section entitled "Crimes against the Person" and reclassify rape as violent offense rather than an affront to public morals or an attack against chastity.

Second, the dichotomous classification of sexual acts into sexual intercourse and acts corresponding to sexual acts or indecent acts should be abolished. All forms of sexual penetration or act, such as penile-oral, finger-vaginal, finger-anal and object-vaginal and sexual assault on any part of the body should be considered as serious as penile-vaginal penetration (sexual intercourse).

To this end, forcible rape, sexual assault and sexual coercion have to be re-categorized into three offences and graded by the degree of violence used: *(a) sexual assault which does not involve violence and threat thereof, (b) sexual assault with threats of bodily harm, and (c) aggravated sexual assault that involves violence.*

Third, sexual offence should be made entirely gender-neutral. In the first place, the new rape law should be premised on the basic assumption that under any circumstances, committing rape constitutes a violation of fundamental human rights, no matter who the victim is, regardless of the relationship between the victim and the offender and irrespective of the gender identity and sexuality of the victim or the offender. Then, the law should completely degenderize sexual offences to account for adult same-sex rape victims and to avoid unnecessary distinction on the basis of sex, gender identity or sexual orientation.

Fourth, the definition of rape that requires the use of violence or threat or resistance should be abolished. Rape should simply be redefined based on the presence or absence of consent. Consent should be defined according to the "No means, no!" standard. This would bring all instances of sexual offence clearly within the boundaries of the criminal law and underscores the gravity of their harms. Accordingly, rape should simply be defined as "nonconsensual sex" and the gravity of the offense, and, hence, the severity of the punishment, should be graded according to whether or not violence was used to achieve it. Three tiers of grading could be identified and used for this purpose: sexual assault, sexual assault with threats of bodily harm, and aggravated sexual assault with the use of violence. In this approach, the essence of rape is its non-consensuality, and that non-consensuality is criminal, whether or not accompanied by violence.

Fifth, forcible rape committed by a man against his wife should be treated equally as an offence just as any physical violence by a husband against his wife is treated as an offence under the law. The law should criminalize forcible rape by a husband against his wife at least in one of two ways: First, forcible marital-rape can be addressed by adopting a specific and comprehensive law against domestic violence or intimate-partner VAW, with a broad definition of acts including physical, sexual and psychological violence. This specific law should incorporate procedural rules allowing

the courts to take protective measures. A second option could be abolishing marital-rape exemption from all sexual offences, which should also be accompanied by specific rules of procedural law, which authorize the courts to take temporary protective measures, including the removal of the abusive spouse from a shared home and obliging him to pay maintenance.

The substantive law reforms should be accompanied by reforms on procedural and evidentiary laws. More specifically, reforms on procedural law should aim at protecting victims' physical safety and privacy rights. To this end, rules of procedural law should be set to restrict, if circumstances so require, the bail right of the offender, and enable the courts to take other protective measures, such as allowing the victim to stay in temporary shelters. In an effort to protect rape victims' privacy right, rules of procedure should be issued, giving the victim an option of anonymity at trial, and holding the trial wholly or partly in public or *in-camera*, and regulating media reporting of rape trials. Testifying through CCTV system should not be limited to child victims, rather, it has to be extended to all victims regardless of their age, gender and sexuality. At least, adult victims should be given the option to testify through CCTV system or *in-camera*.

Reforms should also be introduced addressing evidentiary matters. In furthering victims' privacy rights, the so-called rape shield law should be enacted. This law should restrict the routine admission of victim's sexual history and social conducts at the trials. Other reforms addressing evidentiary matters should also be introduced. Specifically, the reforms should deal with practices in relation to rape cases, including corroboration, eyewitness and prompt reporting requirements.

Beyond the legal reforms, various policy measures should also be taken. The goals of the policy measures should be furthering the rights of rape victims, such as the right to be treated with respect and dignity, the right to have adequate support services, the right to have a say and receive information about the criminal proceeding, the right to protection of physical safety and privacy, and encouraging the victims to report the incident to the police. The first policy measure to be taken should be establishing sexual offence units at sub-city level police departments and prosecutor's offices and sexual offence benches at each division of the Federal First Instance Court where rape cases are tried. While the establishment of special police and prosecution units and

trail benches for VAWC is commendable, the cases handled in these units are numerous, blurring their specialty status, at least, in relation to rape cases. Thus, establishing investigation and prosecution units and trial benches for rape cases, or at least sub-specialist units and benches, within the existing units and benches should be considered. Support should be provided for those police officers, prosecutors and judges who would be assigned in the special or sub-special units and benches. The police, prosecutors and judges should specialize in the area of sexual violence.

In addition, special private interview rooms should be available at the special or sub-special investigation and prosecution units so that taking victims' statements and interviews by the police and prosecutors can be conducted in private locations. The police and prosecutors should be instructed to follow detailed protocols for interviewing victims of rape. The protocols should direct the responding police officer and prosecutor to conduct interview with victims of rape in a designated private place, to allow the presence of another person if the victim so requests, and to allow the victim to talk without interruption, while offering reassurances that everything possible will be done to prevent re-traumatization. At least up on the request of the victims, video-taping of their statements to the police at the investigation stage should be considered. This can advance the cause of rape victims in two ways: First, it can be used as an input to supervise the manner of the police officers' interviews with rape victims and to further improve their professional skills. Second, victims' initial video statement can be accessed by other police officers and prosecutors to prevent repeated interviews.

Besides, rape victims should be granted the right to be questioned by a person of the same-sex as well as the right to refuse to answer intimate questions about the rape. Mandatory directives have to be issued obliging the police and prosecutors that interview with rape victims be made by one officer and prosecutors, and that a prosecutor who deals with the case at the investigation state has to file a charge and prosecute the offender at the trial-court. Policy reforms should also be introduced to minimize unnecessary delay between the reporting of rape cases and the trial date. In this regard, fast-track prosecution process should be considered.

Moreover, the one-stop center should be expanded and established, at least, in all public hospitals in Addis Ababa. Formal communication lines and cooperation between the police, the prosecution, the one-stop center and temporary shelter providers should be made. Particularly, the coordination between the police and the forensic medical examiners at the one-stop center should be strengthened, so that the police know where to bring a victim after she reports the incident, and a list of designated forensic medical examiners should be provided in every police department and police station where the special or sub-special units for rape cases are located. The victim should be granted the right to access free psycho-social and legal support throughout the criminal proceedings. Because of the voluntary nature the available support services, such as temporary shelter, there is a need to ensure that adequate material and technical support to service providers is given. Thus, support services provided by NGOs should not only be monitored but also adequate funding should be provided to improve the accessibility, quality and quantity of their services. The police should be instructed to provide information to the victim about the availability of support services, including the address and contact numbers of the providers, at the reporting stage.

Furthermore, rape victims should have the right to receive information about the criminal proceedings and to actively participate in the proceedings. To this end, policy measures should be introduced to provide a separate legal representation to the victim. The victim's lawyer should have the responsibility for providing information to the victim about the progress of the case and act as a channel of communication between the victim and the key actors, within the CJS. In particular, the lawyer should ensure that the victim is informed whether the offender has made a statement, pleaded guilty or not guilty, and whether the prosecutor has decided to proceed with the prosecution or not, and other related matters. Specifically, the victim should have a say in the types of conditions which may be imposed on bail, and should be formally informed of the outcome of the bail decision through her lawyer. The police should be instructed to formally inform the victim about the existence of such a right, at the reporting stage, preferably before taking her statement.

At each stage of the proceedings, rape victims should be treated professionally and with due respect. Besides, the focus of the proceedings should be shifted from the characteristics of the victim to the criminal conduct of the offender. It appears that biased attitudes, stereotypes and

acceptance of rape myths have been contributing to the assessment of the credibility of rape victims and to the attribution of blame to victims. It is only when the attitudes towards rape and rape victim have changed and the stereotypic myths surrounding rape law and its enforcement have been exposed through an educative process would the levels of rape decrease and the treatment of the victim would be improved. Moreover, the legal and policy reforms can produce desirable instrumental effects when they are accompanied by attitudinal changes. For this reason, a wide range of policy measures, including training and education to change discriminatory attitudes towards rape and rape victims, should be taken. Specialist in-service training for everyone who is assigned at special investigation and prosecution units and trial benches should be provided. Trainings should specifically involve the identification and demystification of each type of rape myth affecting rape case processing, within the CJS. Beyond the CJS, special trainings on the basic forensic principles and forensic medical examination skills as well as on preparing forensic medical examination reports should also be given to all forensic medical examiners.

Although the present study focuses on structural factors at societal level, particularly, the law and the CJS, the risk factors for the occurrence of SVAW are complex. The risk factors exist not just at societal level but also at community, relationship and individual levels, with dynamic interaction within and between different levels of factors. Any successful intervention to deal with the problem requires taking action across different levels. Having this in view, the legal and policy reforms should be accompanied by other measures beyond the law and the CJS. These measures should include public awareness-raising campaigns aiming at not only dispelling myths and attitudes that support or trivialize SVAW but also eliminating other practices based on stereotyped roles for men and women. Measures should also be taken to educate children about mutual respect in relationships, gender and sexual diversity, and to promote equality in education curricula, media and entertainment.

BIBLIOGRAPHY

Books, Book Chapters and Journal Articles

Abbi Kedir and Lul Admasachew (2010) 'Violence against Women in Ethiopia', *Gender, Place and Culture: A Journal of Feminist Geography* 17(4), pp. 437-452.

Abdullah-Khan, Noreen (2008) *Male Rape: The Emergence of a Social and Legal Issue*, New York: Palgrave Macmillan.

Abebayehu Tora (2013) 'Assessment of Sexual Violence against Female Students in Wolaita Sodo University, Southern Ethiopia', *Journal of Interpersonal Violence* 28(11), pp. 2351-2367.

Aberra Jembere (1998) *Legal History of Ethiopia, 1434-1974*, Rotterdam: Erasmus Universiteit, Leiden: Afrika-Studie-Centrum.

Acierno, R. *et al.* (1997) 'Prevalence Rates: Case Identification and Risk Factors for Sexual Assault, Physical Assault, and Domestic Violence in Men and Women', *Behavioral Medicine* 23(2), pp. 53–64.

Adey Bogale *et al.* (2004) 'Assessment of Sexual Assault among Women in Assendabo Town, Oromia Region, South West Ethiopia', *Ethiopian Journal of Health Science* 14(1), pp 23-30.

Alemayehu Areda and Original W/Giorgis (2008) 'Nationwide Survey on Domestic Violence', *BERCHI, ANNUAL JOURNAL: ETHIOPIAN WOMEN LAWYERS ASSOCIATION*, Issue 7, pp. 8-89

Alemayehu Belachew Bekele *et al.* (2011) 'Sexual Violence Victimization among Female Secondary School Students in Eastern Ethiopia', *Violence and Victims* 26(5), pp. 608-630.

Allen, W. David (2007) 'The Reporting and Underreporting of Rape', *Southern Economic Journal* 73(3), pp. 623-641.

Anderson, Irina and Kathy Doherty (1997) 'Psychology, Sexuality and Power: Constructing Sex and Violence', *Feminism Psychology* 17(4), pp. 495-514.

Anderson, Michelle J. (2005) 'All-American Rape', *St. John's Law Review* 79(3), pp. 625–644.

Anderson, Michelle J. (2010) 'Diminishing the Legal Impact of Negative Social Attitudes toward Acquaintance Rape Victims, *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 644-664.

Andualem Henok *et al.* (2015) 'Sexual Violence and Substance Use among Female Students of Mizan-Tepi University, Southwest Ethiopia: A Mixed Method Study', *Journal of Women's Health, Issues and Care* 4(4), pp. 1-9.

Anonyms (1952) 'Note: Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard', *the Yale Law Journal 62(1),* pp. 55-83.

Arnold, Dodie *et al.* (2008) 'Prevalence and Risk Factors of Gender-based Violence among Female College Students in Awassa, Ethiopia', *Violence and Victims 23(6),* pp. 787-800.

Ask, K. and S. Landstrom (2010) 'Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect', *Law and Human Behavior* 34(5), pp. 392–401.

Axam, Hilary S. and Deborah Zalesne (1999) 'Simulated Sodomy and Other Forms of Heterosexual "Horseplay": Same Sex Sexual Harassment, Workplace Gender Hierarchies, and the Myth of the Gender Monolith Before and After Oncale', *Yale Journal of Law and Feminism* 11(1), pp. 155–249.

Bachman, Ronet and Raymond Paternoster (1993) 'A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?', *The Journal of Criminal Law and Criminology* 84(3), pp. 554-574.

Baker, Katharine K. and Michelle Oberman and (2016) 'Women's Sexual Agency and the Law of Rape in the 21st Century', *Studies in Law, Politics and Society,* 69: pp. 63-111.

Banda, Fareda (2008) 'Building on a Global Movement: Violence against Women in the African Context', *African Human Rights Law Journal* 8(1), pp. 1-22.

Barnett, Hilaire (1998) *Introduction to Feminist Jurisprudence,* London: Cavendish Publishing Limited.

Bell, Susan T. *et al.* (1994) 'Understanding Attributions of Blame in Stranger Rape and Date Rape Situations: An Examination of Gender, Race, Identification, and Students' Social

Perceptions of Rape Victims', *Journal of Applied Social Psychology* 24(19), pp. 1719–1734.

Ben-David, Amith (1993) 'Culture and Gender in Marital Therapy with Ethiopian Immigrants: A Conversation in Metaphors', *Contemporary Family Therapy* 15(4), pp. 327–339.

Bennice, Jennifer A. and Patricia A. Resick (2003) 'Marital Rape: History, Research and Practice', *Trauma Violence Abuse* 4(3), pp. 228-246.

Berger, Ronald J. *et al.* (1988) 'The Dimensions of Rape Reform Legislation', *Law and Society Review* 22(2): 329-358.

Berger, Ronald J. *et al.* (1991) 'The Social and Political Context of Rape Law Reform: An Aggregate Analysis', *Social Science Quarterly* 72: pp. 221–238.

Berger, Vivian (1977) 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom', *Columbia Law Review* 77(1), pp. 1-103.

Bernat, Frances P. (2002) 'Rape Law Reform', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada,* Chapter 6, Westport: Praeger Publishers.

Bienen, Leigh (1980) 'Rape III-National Developments in Rape Reform Legislation', *Women's Rights Law Reporter* 6(3), pp. 170-213.

Biseswar, Indrawatie (2008) 'A New Discourse on 'Gender' in Ethiopia', *African Identities* 6(4), pp. 405–429.

Black, K. A. and D. J. Gold (2008) 'Gender Differences and Socioeconomic Status Biases in Judgments about Blame in Date Rape Scenarios', *Violence and Victims* 23(1), pp. 115–128.

Bohmer, Carol (1973-74) 'Judicial Attitudes toward Rape Victims', *Judicature* 57(7), pp. 303-307.

Bohner, G. *et al.* (2006) 'Social Norms and the Likelihood of Raping: Perceived Rape Myth Acceptance of Others Affects Men's Rape Proclivity', *Personality and Social Psychology Bulletin* 32(3), pp. 286–297.

Bohner, Gerd *et al.* (2009) 'Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator', in M. Horvath, and J. Brown (eds) *Rape: Challenging Contemporary Thinking*, Cullompton: Willan.

Bollingmo, Guri C. *et al.* (2008) 'Credibility of the Emotional Witness: A Study of Ratings by Police Investigators', *Psychology, Crime and Law* 14(1), pp. 29–40.

Borgida, Eugene and Phyllis White (1978) 'Social Perception of Rape Victims: The Impact of Legal Reform', *Law and Human Behavior* 2(4), pp. 339-351.

Boucher, S. *et al.* (2009) 'Marital Rape and Relational Trauma', *Sexologies* 18(2), pp. 95-97.

Breakwell, G. and D. Rose (2000) 'Research; Theory and Method', in G. Breakwell, S. Hammond and C. Fife-Schaw (eds) *Research Methods in Psychology* (2nd ed), London: Sage.

Brenner, Alletta (2013) 'Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape', *Harvard Journal of Law and Gender* 36(2), pp, 503-568.

Brietzke, Paul (1976) 'Land Reform in Revolutionary Ethiopia', *The Journal of Modern African Studies* 14(4), pp. 637-660.

Brouwer, Anne-Marie de (2005) *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR,* Antwerp, Oxford: Intersentia.

Brown, Jennifer M. and Sandra (2011) 'Glossary of Terms', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence,* Abingdon: Routledge.

Brown, Laura S. (1989) 'New voices, new visions: Toward a Lesbian/Gay Paradigm for Psychology', *Psychology of Women Quarterly* 13(4), pp. 445-458.

Brown, M. F. (2001) *Criminal Investigation, Law and Practice,* 2nd ed, USA: Butter worth-Heinemann.

Brownmiller, Susan (1975) *Against Our Will: Men, Women, and Rape,* New York: Bantam Books.

Bryden, David P. and Sonja Lengnick (1997) 'Rape in the Criminal Justice System', *the Journal of Criminal Law and Criminology* 87(4), pp. 1194-1384.

Burgess, Ann Wolbert and Linda Holmstrom (1974) 'Rape Trauma Syndrome', *American Journal of Psychiatry* 131: pp. 981–995.

Burgess, Gemma (2011) ‘The Uneven Geography of Participation in the Global Scale: Ethiopian Women Activists at the Global Periphery’, *Globalizations* 8(2), pp. 163–177.

Burgess, Gemma (2013) ‘A Hidden History: Women's Activism in Ethiopia’, *Journal of International Women's Studies* 14(3), pp. 96-107.

Burgess, Gemma Lucy (2012) ‘When the Personal Becomes Political: Using Legal Reform to Combat Violence against Women in Ethiopia’, *Gender, Place & Culture: A Journal of Feminist Geography*, 19(2), pp. 153-174.

Burgess-Jackson, K. (1996) *Rape: A Philosophical Investigation*, Brookfield, Vermont: Dartmouth Publishing Company.

Burt, Martha (1980) ‘Cultural Myths and Supports for Rape’, *Journal of Personality and Social Psychology* 38(2), pp. 217-230.

Butler, John M. and Terilynne W. Butler (2005) ‘DNA for Detectives’, in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook,* Chapter 8, London: Elsevier Academic Press.

Cahill, Ann J. (2001) *Rethinking Rape*, Ithaca NY: Cornell University Press.

Camilleri, Joseph A. and Kelly A. Stiver (2014) ‘Adaptation and Sexual Offending’, in V.A. Weekes-Shackelford and T.K. Shackelford (eds) *Evolutionary Perspectives on Human Sexual Psychology and Behavior, Evolutionary Psychology,* New York: Springer Science+Business Media.

Campbell, B. A. *et al.* (2015) ‘The Determination of Victim Credibility by Adult and Juvenile Sexual Assault Investigators’, *Journal of Criminal Justice* 43(1), pp. 29–39.

Capers, Bennett (2011) ‘Real Rape Too’, *California Law Review* 99(5), pp. 1259-1307.

Carpenter, Morgan (2016) ‘The Human Rights of Intersex People’, *Reproductive Health Matters* 24(47), pp. 74-84.

Chasteen, Amy L. (2001) ‘Constructing Rape: Feminism, Change, and Women’s Everyday Understandings of Sexual Assault’, *Sociological Spectrum* 21(2), pp. 101-139.

Chinkin, Christine (1995) ‘Violence against Women: The International Legal Response’, *Gender and Development* 3(2), pp. 23-28.

Clark, Lorenne and Debra Lewis (1977) *Rape: The Price of Coercive Sexuality,* Toronto: The Women's Press.

Clay-Warner, Jody and Callie Harbin Burt (2005) 'Rape Reporting After Reforms: Have Times Really Changed?', *Violence Against Women* 11(2), pp. 150-176.

Cliffe, Lionel (1974) 'Capitalism or Feudalism? The Famine in Ethiopia', *Review of African Political Economy* 1(1), pp. 34-40.

Commonwealth v. Mlinarich (1985) reprinted in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law,* Chapter 6, London: Routledge.

Connell, R.W. (1987) *Gender and Power: Society, the Person, and Sexual Politics*, Stanford, California: Stanford University Press.

Cook, Rebecca J. and Simone Cusack (2010) *Gender Stereotyping: Transnational Legal Perspectives,* Philadelphia: University of Pennsylvania Press.

Cowan, Sharon (2007) 'Freedom and Capacity to Make a Choice': A Feminist Analysis of Consent in the Criminal Law of Rape', in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law Feminist Engagements,* Chapter 3, Routledge-Cavendish: Glasshouse Press.

Crocker, D. (2005) 'Regulating Intimacy: Judicial Discourse in Cases of Wife Assault (1970 to 2000)', *Violence Against Women* 11(2), pp. 197-226.

Cybulska, Beata and Greta Forster (2005) 'Sexual Assault: Examination of the Victim' *MEDICINE* 33(9), pp. 23-28.

D., Shane *et al.* (2013) 'Patterned Characteristics of Continued and Discontinued Sexual Assault Complaints in the Criminal Justice Process', *Current Issues in Criminal Justice* 24(3), pp. 395-417.

Daly, Kathleen and Brigitte Bouhours (2010) 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries', *Crime and Justice* 39(1), pp. 565-650.

Dartnall, Elizabeth and Rachel Jewkes (2013) Sexual Violence against Women: The Scope of the Problem', *Best Practice and Research Clinical Obstetrics and Gynaecology* 27(1), pp. 3–13.

David, René (1963) 'Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries', *Tulane Law Review* 37: pp. 187-204.

Davies, M. *et al.* (2009) 'Effects of Victim Gender, Victim Sexual Orientation, Victim Response and Respondent Gender on Judgements of Blame in a Hypothetical Adolescent Rape', *Legal and Criminological Psychology* 14(2), pp. 331–338.

Davies, Michelle *et al.* (2009) 'Police Perceptions of Rape as a Function of Victim Gender and Sexuality', *the Police Journal* 82(1), pp. 4–12.

D'Cruze, Shani (2011) 'Sexual Violence in History: A Contemporary Heritage?', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence,* Chapter 1, Abingdon: Routledge.

Denike, Margaret A. (2002) 'Myths of Woman and the Rights of Man: The Politics of Credibility in Canadian Rape Law', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada,* Chapter 7, Westport: Praeger Publishers.

DeRoy, Pere and Namela Baynes Henry (2018) 'Violence and LGBT Human Rights in Guyana', in Nancy Nicol *et al.* (eds) *Envisioning Global LGBT Human Rights*: (*Neo)colonialism, Neoliberalism, Resistance and Hope,* UK: School of Advanced Study, University of London, Institute of Commonwealth Studies.

Devries, Karen *et al.* (2011) Violence against Women Is Strongly Associated with Suicide Attempts: Evidence from the WHO Multi-country Study on Women's Health and Domestic Violence against Women', *Social Science and Medicine* 73 (1), pp. 79-86.

Diesen, Christian and Eva F. Diesen (2010) 'Sex Crime Legislation: Proactive and Anti-therapeutic Effects', *International Journal of Law and Psychiatry* 33: pp. 329–335.

Doherty, Kathy and Irina Anderson (2004) 'Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims', *Journal of Community and Applied Social Psychology* 14(2), pp. 85-103.

Donovan, Dolores A. and Getachew Assefa (2003) 'Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism', *the American Journal of Comparative Law* 51(3), pp. 505-552.

Drieschner, Klaus and Alfred Lange (1999) 'A Review of Cognitive Factors in the Etiology of Rape: Theories, Empirical Studies, and Implications', *Clinical Psychology Review* 19(1), pp. 57–77.

Dripps, Donald A. (1992) 'Beyond Rape: An Essay on the Difference between the Presence of Force and the Absence of Consent', *Columbia Law Review* 92(7), pp. 1780-1809.

Dworkin, Andrea (1976) *Our Blood: Prophecies and Discourses on Sexual Politics*, New York: Perigee Books.

Dworkin, Andrea (1997) *Life and Death: Unapologetic Writings on the Continuing War Against Women*, New York: Free Press.

Edwards, Daphne (1996) 'Acquaintance Rape and the Force Element', *Golden Gate University Law Review* 26: pp. 241-300.

Edwards, Susan M. (1981) *Female Sexuality and the Law*, Oxford: Martin Robertson.

Ellis, Gene (1976) 'The Feudal Paradigm as a Hindrance to Understanding Ethiopia', *The Journal of Modern African Studies* 14(2), pp. 275-295.

Ellison, Louise and Vanessa E. Munro (2010) 'A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections upon Received Rape Myth Wisdom in the Context of a Mock Jury Study', *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 781-801.

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

English, Peter (1976) 'The Husband Who Rapes His Wife', *The New Law Journal* 126: pp. 1223–1225.

Epstein, D. and R. Johnson (1994) 'On the Straight and Narrow: The Heterosexual Presumption, Homophobias and schools', in D. Epstein (ed.) *Challenging Lesbian and Gay Inequalities in Education*, Berkshire, England: Open University Press.

Erulkar, Annabel (2013) 'Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia', In*ternational Perspectives on Sexual and Reproductive Health* 39(1), pp. 6-13.

Estrich, Susan (1986) 'Rape', *The Yale Law Journal* 95(6), pp. 1087-1184.

Estrich, Susan (1987) *Real Rape,* Cambridge, Massachusetts: Harvard University Press.

Estrich, Susan (1992) 'Palm Beach Stories', *Law and Philosophy* 11(1-2), pp. 5-33.

Estrich, Susan (1997) 'Enduring Distrust: The Modern Law of Force', in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law,* Chapter 6, London: Routledge.

Ewoldt, C. A. *et al.* (2000) 'Attributions about Rape in a Continuum of Dissolving Marital Relationships', *Journal of Interpersonal Violence* 15(11), pp. 1175–1182.

Farer, Tom J. (1979) *War Clouds on the Horn of Africa: The Widening Storm*, 2nd revised ed, New York: Carnegie Endowment for International Peace.

Feess, Eberhard *et al.* (2018) 'The Impact of Fine Size and Uncertainty on Punishment and Deterrence: Theory and Evidence from the Laboratory', *Journal of Economic Behavior and Organization* 149: pp. 58–73.

Finkelhor, David and Kersti Yllo (1985) *License to Rape: Sexual Abuse of Wives,* New York: Holt, Rinehart and Winston.

Fisher, Nicola L. and Afroditi Pina (2013) 'An Overview of the Literature on Female-Perpetrated Adult Male Sexual Victimization', *Aggression and Violent Behavior* 18(1), pp. 54–61.

Fisher, Stanley Z. (1974) 'Traditional Criminal Procedure in Ethiopia', *the American Journal of Comparative Law* 19(4), pp. 709-746.

Fitaw Y. *et al.* (2005) 'Gender Based Violence among High School Students in North West Ethiopia', *Ethiopian Medical Journal* 43(4), pp. 215-221.

Franiuk, Renae *et al.* (2008) 'Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case', *Violence against Women,* 14(3): pp. 287-309.

Frank, David John *et al.* (2009) 'The Global Dimensions of Rape-Law Reform: A Cross-National Study of Policy Outcomes', *American Sociological Review* 74(2), pp. 272-290.

Frazier, Patricia A. and Beth Haney (1996) 'Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives', *Law and Human Behavior* 20(6), pp. 607-628.

Fried, Susana T. (2003) 'Violence Against Women', *Violence, Health, and Human Rights* 6(2), pp. 88-111.

Frye, M., and C. Shafer (1977) 'Rape and Respect', in M. Vetterling-Braggin, F. Elliston and J. English (eds) *Feminism and Philosophy,* Savage, MD: Rowman and Littlefield, pp. 333–346.

Fuchs, Siegmund F. (2004) 'Male Sexual Assault: Issues of Arousal and Consent', *Cleveland State Law Review* 51: pp. 93-121.

Futter, Stacy and Walter R. Mebane Jr (2001) 'The Effects of Rape Law Reform on Rape Case Processing', *Berkeley Women's Law Journal* 16: pp. 68-72.

Gardner, John and S. Shute (2000) 'The Wrongness of Rape' in Jeremy Horder (ed) *Oxford Essays on Jurisprudence,* Fourth Series, Oxford: Oxford University Press.

Gavey, N. (2005) *Just Sex?: The Cultural Scaffolding of Rape,* London, England: Routledge.

Gear, Sasha (2005) 'Rules of Engagement: Structuring Sex and Damage in Men's Prisons and Beyond', *Culture, Health and Sexuality* 7(3), pp. 195–208.

Gelane Lelissa and Lukman Yusuf (2008) 'A Cross Sectional Study on Prevalence of Gender Based Violence in Three High Schools, Addis Ababa, Ethiopia', *Ethiopian Journal of Reproductive Health* 2(1), pp. 52-60.

Gessessew A. and Mesfin M. (2004) 'Rape and Related Health Problems in Adigrat Zonal Hospital, Tigray Region, Ethiopia', *Ethiopian Journal of Health Development* 18(3), pp. 140-144.

Getachew Assefa Woldemariam (2011) 'The Predicaments of Child Victims of Crime Seeking Justice in Ethiopia: A Double Victimization by the Justice Process', *Afrika focus* 24(1), pp. 11-31.

Getachew Mullu *et al.* (2015) 'Prevalence of Gender Based Violence and Associated Factors among Female Students of Menkorer High School in Debre Markos Town, Northwest Ethiopia', *Science Journal of Public Health* 3(1), pp. 67-74.

Getnet Tadele (2009) 'Unrecognized Victims': Sexual Abuse against Male Street Children in Merkato Area, Addis Ababa', *Ethiopian Journal of Health Development* 23(3), pp. 174-182.

Goodman-Delahunty, Jane and Kelly Graham (2011) 'The Influence of Victim Intoxication and Victim Attire on Police Response to Sexual Assault', *Journal of Investigative Psychology and Offender Profiling* 8(1), pp. 22–40.

Graven, Jean (1964) 'The Penal Code of the Empire of Ethiopia', *Journal of Ethiopian Law* 1(2), pp. 267-314.

Graycar, Regina and Jenny Morgan (2005) 'Law reform: What's in It for Women?', *Windsor Yearbook of Access to Justice* 23(2), pp. 393–419.

Gregory, J. (1986) 'Sex, Class and Crime: Towards a Non-sexist Criminology' in R. Matthews and J. Young (eds) *Confronting Crime*, London: Sage.

Gregory, Jeanne and Sue Lees (1999) *Policing Sexual Violence*, London: Routledge.

Griffin, Susan (1971) 'Rape: The All-American Crime' *Ramparts* 10(3), pp. 21–35.

Griffin, Susan (1977) 'Rape: The All-American Crime', in M. Vetterling-Braggin *et al.* (eds) *Feminism and Philosophy* (pp. 313-332).

Groth, A. N. and A. W. Burgess (1980) 'Male Rape: Offenders and Victims', *American Journal of Psychiatry* 137(7), pp. 806-810.

Grubb, A. R. and J. Harrower (2008) 'Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Aggression and Violent Behavior* 13, pp. 396–405.

Grubb, A. R. and J. Harrower (2009) 'Understanding Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Journal of Sexual Aggression* 15(1), pp. 63–81.

Grubb, Amy and Emily Turner (2012) 'Attribution of Blame in Rape Cases: A Review of The Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming', *Aggression and Violent Behavior* 17(5), pp. 443–452.

Harris, J. and S. Grace (1999) *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*, London: Home Office.

Harris, Lucy Reed (1976) 'Towards a Consent Standard in the Law of Rape', *the University of Chicago Law Review* 43(3), pp. 613-645.

Hazelwood, Robert R. and Ann Wolbert Burgess (2001) *Practical Aspects of Rape Investigation: A Multidisciplinary Approach,* 3rd ed., Washington, D.C.: CRC Press.

Hengehold, Laura (2000) 'Remapping the Event: Institutional Discourses and the Trauma of Rape', *Signs* 26(1), pp. 189-214.

Herek, G. M. (1990) 'The Context of Anti-gay Violence: Notes on Cultural and Psychological Heterosexism', *Journal of Interpersonal Violence* 5(3), pp. 316–333.

Hess, Karen M. and Wayne W. Bennett (2001) *Criminal Investigation,* 6th ed, USA: Thomson Learning.

Hirsch, Andrew von et al (1999) Criminal Deterrence and Sentence Severity: An Analysis of Recent Research, Oxford: Hart Publishing.

Hodgson, Dorothy L. (2002) 'Women's Rights as Human Rights: Women in Law and Development in Africa (WiLDAF)', *Africa Today* 49(2), pp. 3-26.

Holcombe, Sarah Jane (2018) 'Medical Society Engagement in Contentious Policy Reform: the Ethiopian Society for Obstetricians and Gynecologists (ESOG) and Ethiopia's 2005 Reform of Its Penal Code on Abortion', *Health Policy and Planning* 33(4), pp. 583–591

Holleran, D. *et al.* (2008) 'Examining Charge Agreement between Police and Prosecutors in Rape Cases', *Crime and Delinquency* 56(3), pp. 385-413.

Holmes, Melisa M. et al (1996) 'Rape-related Pregnancy Estimates and Descriptive Characteristics from a National Sample of Women', *American Gynecological Society* 175(2), pp. 320-355.

Horney, Julie and Cassia Spohn (1991) 'Rape Law Reform and Instrumental Change in Six Urban Jurisdictions', *Law and Society Review* 25(1), pp. 117-154.

Hurd, Heidi M. (1996) 'The Moral Magic of Consent' *Legal Theory* 2(2), pp 121–146.

Ingemann-Hansen, Ole and Annie Vesterby Charles (2013) 'Forensic Medical Examination of Adolescent and Adult Victims of Sexual Violence', *Best Practice & Research Clinical Obstetrics & Gynaecology* 27(1), pp. 91-102.

Jacobson, Marsha B. and Paula M. Popovich (1983) 'Victim Attractiveness and Perceptions of Responsibility in an Ambiguous Rape Case', *Psychology of Women Quarterly* 8(1), pp. 100-104.

Jehle, Jörg-Martin (2012) 'Attrition and Conviction Rates of Sexual Offences in Europe: Definitions and Criminal Justice Responses', *European Journal of Criminology* 18(1), pp. 145–161.

Jenkins, Alicia and Wayne Petherick (2014) Serial Rape in Profiling and Serial Crime, Third Edition, Chapter 15, Amsterdam: Anderson publishing.

Jeylan W. Hussein (2004) 'A Cultural Representation of Women in the Oromo Society', *African Study Monographs* 25(3), pp. 103-147.

Jeylan W. Hussein (2009) 'A Discursive Representation of Women in Sample Proverbs from Ethiopia, Sudan, and Kenya', *Research in African Literatures,* 40(3), pp. 96-108.

Kahn, Arnold S. *et al.* (2011) 'Gender versus Gender Role in Attributions of Blame for a Sexual Assault', *Journal of Applied Social Psychology* 41(2), pp. 239–251.

Kasubhai, Mustafa T. (1996) 'Destabilizing Power in Rape: Why Consent Theory in Rape Law is Turned on Its Head', *Wisconsin Women's Law Journal* 11: pp. 37–74.

Keller, Edmond J. (1981) 'Ethiopia: Revolution, Class, and the National Question', *African Affairs* 80(321), pp. 519-549.

Keller, Edmond J. (1985) 'State, Party, and Revolution in Ethiopia', *African Studies Review* 28(1), pp. 1-17.

Kelley, Kathleen D. and Rebecca Campbell (2013) 'Moving On or Dropping Out: Police Processing of Adult Sexual Assault Cases', *Women and Criminal Justice* 23(1), pp. 1-18.

Kelly, L. (1988) *Surviving Sexual Violence*, Cambridge: Polity.

Kelly, L. *et al.* (2005) *A gap or a chasm? Attrition in reported Rape cases*, Home Office Research Study 293, London: Home Office.

Kerstetter, W. A. (1990) 'Gateway to Justice: Police and Prosecutorial Response to Sexual Assault against Women', *Journal of Criminal Law and Criminology* 81(2), pp. 267-313.

Khalif, Mohamud H. and Martin Doornbos (2002) 'The Somali Region in Ethiopia: A Neglected Human Rights Tragedy', *Review of African Political Economy* 29(91), pp. 73-94.

Kimmel, Michael S. (2005) *The Gender of Desire: Essays on Male Sexuality*, Albany, New York: State University of New York Press.

Klein, Richard (2008) ‘An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness’, *Akron Law Review* 41(4), pp. 981-1058.

Kopper, Beverly A. (1996) ‘Gender, Gender Identity, Rape Myth Acceptance, and Time of Initial Resistance on the Perception of Acquaintance Rape Blame and Avoidability’, *Sex Roles* 34(1-2), pp. 81–93.

Krzeczunowicz, George (1983) *Formation and Effects of Contracts in Ethiopian Law*, Addis Ababa: Addis Ababa University Faculty of Law.

Kulczycki, Andrzej (2017) ‘Reproductive Rights’ *International Encyclopedia of Public Health*, 2nd ed, Vol. 6.

Lai, Sarah Y. and Regan E. Ralph (1993) ‘Female Sexual Autonomy and Human Rights', *Harvard Human Rights Journal* 8: pp. 201-127.

Larcombe, Wendy (2011) ‘Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law’, *Feminist Legal Studies* 19(1), pp. 27-45.

Lea, Susan J. (2007) ‘A Discursive Investigation into Victim Responsibility in Rape’, *Feminism Psychology* 17(4), pp. 495-514.

Lea, Susan J. *et al.* (2003) ‘Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors’ *British Journal of Criminology 43*(3), pp. 83–599.

Ledray, Linda E. (2005) ‘Forensic Medical Evidence: The Contributions of the Sexual Assault Nurse Examiner (SANE)’, in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 6, London: Elsevier Academic Press.

Lees, Sue (1993) ‘Judicial Rape’, *Women's Studies International Forum* 16(1), pp. 11-36.

LeGrand, Camille E (1973) ‘Rape and Rape Laws: Sexism in Society and Law’, *California Law Review* 61(3), pp. 919-941.

Litoff, Stuart M. (1978) ‘Criminal Law—The Husband's Rape Exception: An Equal Protection Alternative—State v. Smith, 148 N.J. Super. 219, 372 A.2d 386 (Essex County Ct. 1977)’, *Western New England Law Review* 1(2), pp. 409-427.

Lonsway, K. A. and L. F. Fitzgerald (1994) ‘Rape Myths: In Review’, *Psychology of Women Quarterly* 18(2), pp. 133–164.

Lord, Vivian B. and Gary Rassel (2002) 'Law Enforcement's Response to Sexual Assault: A Comparative Study of Nine Counties in North Carolina', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada*, Chapter 10, Westport: Praeger Publishers.

Loue, Sana (2001) *Intimate Partner Violence: Societal, Medical, Legal, and Individual Responses*, New York: Kluwer Academic Publishers.

Lyons, T. (1996) 'Closing the Transition: The May 1995 Elections in Ethiopia', *Journal of Modern African Studies* 34(1), pp. 121-142.

Mackinnon, Catharine A. (1983) 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence', *Signs* 8(4), pp. 635-658.

MacKinnon, Catharine A. (1997a) 'Oncale v. Sundowner Offshore Services, Inc., 96-568, Amici Curiae Brief in Support of Petitioner', *UCLA Women's Law Journal* 8(1), pp. 9-46.

MacKinnon, Catharine A. (1997b) 'Rape: On Coercion and Consent', in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge.

Maddox, Lucy *et al.* (2012) 'The Impact of Psychological Consequences of Rape on Rape Case Attrition: The Police Perspective', *Journal of Police and Criminal Psychology* 27(1), pp. 33–44.

Madigan, L. and N.C. Gamble (1991) *The Second Rape: Society's Continued Betrayal of the Victim*, London: MacMillan.

Majied, Kamilah F. (2010) 'The Impact of Sexual Orientation and Gender Expression Bias on African American Students', *The Journal of Negro Education* 79(2), pp. 151-165.

Man, Christopher D. and John P. Cronan (2001) 'Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for 'Deliberate Indifference'', *Journal of Criminal Law and Criminology* 92(1), pp. 127–186.

Mandefrot Belay (2016) 'Notes on Legislative Intent: Public Consultation toward Ethiopia's Family Law Reform and the Revised Code's Response', *Mizan Law Review* 10(1), pp. 244-264.

Manning-Geist, B. *et al.* (2016) 'Predictors of Medical Outcome in 1,712 Ethiopian Survivors of Rape', *Annals of Global Health* 82(3), pp. 319-327.

Marmion, Shelly L. (2006) 'Global Violence against Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) "*Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 10, Westport: Praeger Publishers.

McColgan, Aileen (1996) 'Common Law and the Relevance of Sexual History Evidence', *Oxford Journal of Legal Studies* 16(2), pp. 275-308.

McGregor, Joan (1994) 'Force, Consent and the Reasonable Woman', in Jules Coleman and Allen Buchanan (eds) *In Harm's Way: Essays in Honor of Joel Feinberg*, Cambridge: Cambridge University Press.

McGregor, Joan (2005) *Is It Rape?: On Acquaintance Rape and Taking Women's Consent Seriously*, Hampshire, England: Ashgate Publishing.

McGregor, Joan (2011) 'The Legal Heritage of the Crime of Rape', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence,* Chapter 3, Abingdon: Routledge.

McNamee, Catharine (2001) 'Rape', in Rita James Simon (eds) *A Comparative Perspective on Major Social Problems,* Lexington Books: Lanham.

Meaza Ashenafi (2004) 'Advocacy for Legal Reform for Safe Abortion', *African Journal of Reproductive Health /La Revue Africaine de la Santé Reproductive* 8(1), pp. 79-84.

Mekonnen Gorfu and Asresash Demsse (2007) 'Sexual Violence against Schoolgirls in Jimma Zone: Prevalence, Patterns, and Consequences', *Ethiopian Journal of Education and Science* 2(2), pp. 11-37

Melani, L. and L. Fodaski (1974) 'The Psychology of the Rapist and His Victim', in N. Connell and C. Wilson (eds) *Rape: The First Wourcebook for Women* (pp. 82–93), New York, NY: New American.

Meloy, J. Reid (1998) *The Psychology of Stalking: Clinical and Forensic Perspectives,* San Diego: Academic Press.

Miller, Alice M. (2004) 'Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection', *Health and Human Right* 7(2), pp. 16-47.

Miller, Laurence (2014) 'Rape: Sex crime, Act of violence, or Naturalistic Adaptation?', *Aggression and Violent Behavior* 19(1), pp. 67–81.

Mitike Molle *et al.* (2002) 'Sexual violence among female street adolescents in Addis Ababa, April 2000', *Ethiopian Journal of Health and Development,* 16(2), pp. 119-128.

Mohammed Abdo (2011) 'Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia', *Mizan Law Review* 5(1), pp. 72-104.

Mohan, Giles and Jeremy Holland (2001) 'Human Rights and Development in Africa: Moral Intrusion or Empowering Opportunity?', *Review of African Political Economy* 28(88), pp. 177–96.

Monson, Candice M. *et al.* (1998) 'Sexual and Nonsexual Marital Aggression: Legal Considerations, Epidemiology, and an Integrated Typology of Perpetrators', *Aggression and Violent Behavior,* 3(4), pp. 369–389.

Motala, Ziyad (1989) 'Human Rights in Africa: A Cultural, Ideological, and Legal Examination', *Hastings International and Comparative Law Review* 12: pp. 373-410.

Mprah, Andy (2016) 'Sexual and Reproductive Health needs Of LGBT', *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 20(1), pp. 16-20.

Msibi, Thabo (2009) 'Not Crossing the Line: Masculinities and Homophobic Violence in South Africa', *Agenda: Empowering Women for Gender Equity* 80: pp. 50-54.

Munro, Vanessa E. and Carl F. Stychin (2007) 'Introduction', in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law: Feminist Engagements,* New York: Routledge-Cavendish.

Murray, Mary (1995) *The Law of the Father?: Patriarchy in the Transition from Feudalism to Capitalism,* New York: Routledge.

Naffine, Ngaire (1994) 'Possession: Erotic Love in the Law of Rape', *Modern Law Review* 57(1), pp. 10–37.

Nagin, Daniel and Greg Pogarsky (2001) 'Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence', *Criminology* 39(4), pp. 865-892.

Newcombe, P. A. *et al.* (2008) 'Attributions of Responsibility for Rape: Differences across Familiarity of Situation, Gender, and Acceptance of Rape Myths', *Journal of Applied Social Psychology* 38(7), pp. 1736–1754.

Page, A. D. (2007) ‘Behind the Blue Line: Investigating Police Officers' Attitudes towards Rape’, *Journal of Police and Criminal Psychology* 22(1), pp. 22-32.

Palmer, Erin G. (2004) ‘Antiquated Notions of Womanhood and the Myth of the Unstoppable Male: Why Post-penetration Rape Should Be a Crime in North Carolina’, *North Carolina Law Review* 82(3), pp. 1258-1278.

Pantazis, Angelo (1999) ‘Notes on Male Rape’, *South African Journal of Criminal Justice* 12(3), pp. 369-375.

Payne, D. L. *et al.* (1999) ‘Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale’, *Journal of Research in Personality* 33(1), pp. 27-68.

Perry, Barbara (2001) *In the Name of Hate*, New York: Routledge.

Philpart, M. *et al.* (2009) ‘Prevalence and Risk Factors of Gender-based Violence Committed by Male College Students in Awassa, Ethiopia’, *Violence and Victims* 24(1), pp. 122-136.

Polaschek, Devon L. L. *et al.* (1997) ‘Rape and Rapists: Theory and Treatment’, *Clinical Psychology Review* 17(2), pp. 117-144.

Polk, Kenneth (1985) ‘Rape Reform and Criminal Justice Processing’, *Crime & Delinquency* 31: pp. 191-205.

Pruitt, Lisa R. (2011) ‘Deconstructing CEDAW's Article 14: Naming and Explaining Rural Difference’, *William and Mary Journal of Women and the Law* 17(2), pp. 347-394.

Purdy, Linda A. (1986) ‘Rape: Adding Insult to Injury’, *Vermont Law Review* 11(1), pp. 361-372

Rahlenbeck, Sibylle I. *et al.* (2010) ‘Female Genital Cutting Starts to Decline among Women in Oromia, Ethiopia’, *Reproductive BioMedicine Online* 20(7), pp. 867–872.

Reece, Helen (2013) ‘Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?’, *Oxford Journal of Legal Studies* 33(3), pp. 445-473.

Remick, Lani Anne (1993) ‘Read Her Lips: An Argument for a Verbal Consent Standard in Rape’, *University of Pennsylvania Law Review* 141(3), pp. 1103-1151.

Renn, Kristen A. (2010) ‘LGBT and Queer Research in Higher Education: The State and Status of the Field’, *Educational Researcher* 39(2), pp. 132-141.

Rhode, Deborah L. (1991) *Justice and Gender: Sex Discrimination and the Law*, Massachusetts: Harvard University Press.

Rich, Adrienne (1999) 'Compulsory Heterosexuality and Lesbian Existence', in Richard Parker and Peter Aggleton (eds) *Culture, Society and Sexuality: The Reader*, Chapter 11, London: UCL Press.

Richardson, D. and J. L. Campbell (1982) 'The Effect of Alcohol on Attributions of Blame for Rape', *Personality and Social Psychology Bulletin* 8(3), pp. 468–476.

Rideau, W. and B. Sinclair (1982) 'Prison: The Sexual Jungle', in A.M. Scacco (ed) *Male Rape: A Casebook of Sexual Aggression,* New York: Ams Press.

Roberts, Julian V. and Robert J. Gebotys (1992) 'Reforming Rape Laws: Effects of Legislative Change in Canada', *Law and Human Behavior* 16(5) pp. 555–573.

Roberts, Julian V. *et al.* (1996) 'Rape Reform in Canada: Public Knowledge and Opinion', *Journal of Family Violence* 11(2), pp. 133–148.

Rosario, M. and E. W. Schrimshaw (2014) 'Theories and Etiologies of Sexual Orientation', in D. L. Tolman *et al.* (eds) *APA Handbook of Sexuality and Psychology,* pp. 555–596, Washington, DC: American Psychological Association.

Rose, Vicki McNickle (1977) 'Rape as a Social Problem: A By product of the Feminist Movement', *Social Problems* 25(1), pp. 75-89.

Rouger, Theresa (2009) 'The Impact of International Human Rights Law on the National Laws of Ethiopia from a Gender Rights and Disability Rights Perspective', in Malcolm MacLachlan and Leslie Swartz (eds) *Disability & International Development: Towards Inclusive Global Health*, Chapter 3, New York: Springer Science+Business Media.

Rowson, Maxime (2014) 'Corroborating Evidence, Rape Myths and Stereotypes: A Vicious Circle of Attrition', *Kaleidoscope* 6(2), pp. 135-143.

Rubenfeld, Jed (2013) 'The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy', *the Yale Law Journal* 122(6), pp. 1372-1443.

Rumney, Philip and Martin Morgan-Taylor (1997) 'Recognizing the Male Victim: Gender Neutrality and the Law of Rape: Part One', *Anglo-American Law Review* 26: pp. 198-234.

Rumney, Philip N.S. (2007) 'In Defence of Gender Neutrality within Rape', *Seattle Journal for Social Justice* 6(1), pp. 481-526.

Rush, F. (1990) 'The many faces of the backlash' in Dorchen Leidholdt and Janice G. Raymond (eds) *The Sexual Liberals and the Attack on Feminism,* Oxford: Pergamon Press.

Russell, Diana E. H. (1975) *The Politics of Rape,* New York: Stein and Day.

Sanday, Peggy Reeves (2015) 'Rape and Sexual Coercion', *International Encyclopedia of the Social and Behavioral Science*s, 2nd edition, Volume 19.

Savino, John O. and Brent E. Turvey (2011) 'Rape and Sexual Assault', in John O. Savino and Brent E. Turvey (eds) *Rape Investigation Handbook* (2nd ed), Chapter 2, New York: Academic Press.

Schiff, A. F. (1982) 'Rape: Wife vs Husband', *Journal of the Forensic Science Society* 22(3), pp. 235-240.

Schissel, Bernard (1996) 'Law Reform and Social Change: A Time-Series Analysis of Sexual Assault in Canada', *Journal of Criminal Justice* 24(2), pp. 123–138.

Schneider, Lawrence J. *et al.* (2009) 'The Role of Gender and Ethnicity in Perceptions of Rape and Its Aftereffects', *Sex Roles* 60(5/6), pp. 410–421.

Schulhofer, Stephen J. (1992) 'Taking Sexual Autonomy Seriously: Rape Law and beyond Law and Philosophy', *Philosophical Issues in Rape Law* 11(1/2), pp. 35-94.

Schuller, R. A. and A. Stewart (2000) 'Police Responses to Sexual Assault Complaints: The Role of Perpetrator/Complainant Intoxication', *Law and Human Behavior* 24(5), pp. 535-551.

Schulman, Joanne (1981) 'Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases', *Clearinghouse Review* 15(4), pp. 342-345.

Schulthess, Beatrice von (1992) 'Violence in the Streets: Anti-lesbian Assault and Harassment in San Francisco' in G. Herek and K. Berrill (eds) *Hate Crimes,* Newbury Park, CA: Sage.

Schwab, Peter (1976) 'Human Rights in Ethiopia', *The Journal of Modern African Studies* 14(1), pp. 155-160.

Schwendinger, Julia R. and Herman Schwendinger (1982) 'Rape, the Law, and Private Property', *Crime and Delinquency* 28(2), pp. 271-291.

Scronce, C. A. and K. J. Corcoran (1991) 'Perceptions of Date Rape: Effects of Outcome Information and Victim's Alcohol Consumption', *Addictive Behaviors* 22(5), pp. 577–585.

Scully, Diana (1990) *Understanding Sexual Violence,* Boston: Unwin Hyman.

Scutt, Jocelynne A. (1992) 'The Incredible Woman: A Recurring Character in Criminal Law', *Women's Studies International Forum* 15(4), pp. 441-460.

Searles, Patricia and Ronald J. Berger (1987) 'The Current Status of Rape Reform Legislation: An Examination of State Statutes', *Women's Rights Law Reporter* 10(1), pp. 25-44.

Seidman, Ilene and Susan Vickers (2005) 'The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform', *Suffolk University Law Review* 18: pp. 467-91.

Shaw, J. *et al.* (2017) 'Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records', *Psychology of Violence 7*(4), pp. 602-614.

Shen, Francis X. (2011) How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform', *Columbia Journal of Gender and Law* 22(1), pp. 1-80.

Shotland, R. Lance and Lynne Goodstein (1983) 'Just Because She Doesn't Want to Doesn't Mean It's Rape: An Experimentally Based Causal Model of the Perception of Rape in a Dating Situation', *Social Psychology Quarterly* 46(3), pp. 220–232.

Simms, C. M. *et al.* (2007) 'Rape Blame as a Function of Alcohol Presence and Resistant Type', *Addictive Behaviors* 32(12), pp. 2766–2776.

Simon-Kerr, Julia (2008) 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment', *the Yale Law Journal* 117(8), pp. 1854-1898.

Sivakumaran, Sandesh (2005) 'Male/Male Rape and the "taint" of Homosexuality', *Human Rights Quarterly* 27(4), pp. 1274–1306.

Smart, Carol (1989) *Feminism and the Power of Law,* London: Routledge

Spears, Jeffrey W. and Cassia C. Spohn (1996) 'The Genuine Victim and Prosecutors' Charging Decisions in Sexual Assault Cases', *American Journal of Criminal Justice* 20(2), pp. 183-205.

Spears, Jeffrey W. and Cassia C. Spohn (1997) 'The Effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases', *Justice Quarterly* 14(3), pp. 501-524.

Spindelman, Marc S. and John Stoltenberg (1997) 'Oncale: Exposing 'manhood'', *UCLA Women's Law Journal* 8(1), pp. 3–7.

Spohn, Cassia and Julie Horney (1992) *Rape Law Reform: A Grassroots Revolutional and Its Impact*, New York: Springer Science+Business Media, LLC.

Spohn, Cassia and Julie Horney (1993) 'Rape Law Reform and the Effect of Victim Characteristics on Case Processing', *Journal of Quantitative Criminology* 9(4), pp. 383-409.

Spohn, Cassia C. (1999) 'The Rape Reform Movement: The Traditional Common Law and Rape Law Reforms', *Jurimetrics* 39(2), pp. 119-130.

Spohn, Cassia *et al.* (2001) 'Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the 'Gateway to Justice'', *Social Problems* 48(2), pp. 206-235.

Steketee, Gail and Anne H. Austin (1989) 'Rape Victims and the Justice System: Utilization and Impact', *Social Service Review* 63(2), pp. 285-303.

Stellings, Brande (1993) 'The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship', *Harvard Civil Rights-Civil Liberties Law Review* 28(1), pp. 185-216.

Stermac, L *et al.* (2004) 'Stranger and Acquaintance Sexual Assault of Adult Males', *Journal of Interpersonal Violence* 19(8), pp. 901-915.

Talbot, Kimberly K. *et al.* (2010) 'Rape-accepting Attitudes of University Undergraduate Students', *Journal of Forensic Nursing* 6(4), pp. 170–179.

Tang, Kwong-Leung (1998) 'Rape Law Reform in Canada: The Success and Limits of Legislation', *International Journal of Offender Therapy and Comparative Criminology* 42(3), pp. 258–270.

Tasca, Melinda *et al.* (2012) 'Police Decision Making in Sexual Assault Cases: Predictors of Suspect Identification and Arrest', *Journal of Interpersonal Violence* 28(6), pp. 1157-1177.

Tegbar Yigzaw *et al.* (2010) 'Perceptions and Attitude towards Violence against Women by Their Spouses: A Qualitative Study in Northwest Ethiopia', *Ethiopian Journal of Health Development* 24(1), pp. 39-45.

Tekleab Mekbib *et al.* (2007) 'Survey of Unsafe Abortion in Selected Health Facilities in Ethiopia', *Ethiopian Journal of Reproductive Health* 1(1), pp 28-43

Temkin, Jennifer (1982) 'Towards a Modern Law of Rape', *The Modern Law Review* 45(4), pp. 399-419.

Temkin, Jennifer (1987) *Rape and the Legal Process*, London: Sweet and Maxwell.

Teshale Tibebu (2008) 'Modernity, Eurocentrism, and Radical Politics in Ethiopia, 1961–1991', *African Identities* 6(4), pp. 345-371.

Thomas, Dorothy Q. and Michele E. Beasley (1993) 'Domestic Violence as a Human Rights Issue', *Human Rights Quarterly* 15(1), pp. 36–62.

Thompson, Jill and Felly Nkewto Simmonds (2012) *Rape Sentencing Study: A Review of Statutory Sentencing Provisions for Rape, Defilement, and Sexual Assault in East, Central, and Southern Africa*, Lusaka: Population Council.

Toit, Louise du (2008) 'The Contradictions of Consent in Rape Law', *South African Review of Sociology* 39(1), pp. 140-155.

Tolesa Bekel *et al.* (2015) 'Sexual Violence and Associated Factors among Female Students of Madawalabu University in Ethiopia', *Epidemiology (sunnyvale)* 5(2), pp. 1-8.

Tsehai Wada (2012) '*Rethinking the Ethiopian Rape Law', Journal of Ethiopian Law* 25(2), pp. 191-253.

Umozurike, U. O. (1983) 'The African Charter on Human and Peoples' Rights', *The American Journal of International Law* 77(4), pp. 902-912

Van Cleave, Rachel A. (2008) 'Renaissance Redux? Chastity and Punishment in Italian Rape Law', *Ohio State Journal of Criminal Law* 6(1), pp. 335-350.

Vance, Kim *et al*. (2018) 'The rise of SOGI: human rights for LGBT people at the United Nations', in Nancy Nicol *et al*. (eds) *Envisioning Global LGBT Human Rights*: (*Neo)colonialism, Neoliberalism, Resistance and Hope,* UK: School of Advanced Study, University of London, Institute of Commonwealth Studies.

Venema, Rachel M. (2016) 'Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports', *Journal of Interpersonal Violence* 31(5), pp. 872–899.

Viano, E. (1983) 'Violence, Victimization, and Social Change: A Socio-cultural and Public Policy Analysis', *Victimology* 8(3/4), pp. 54-79.

Walby, Sylvia, Jo Armstrong and Sofia Strid (2011) 'Developing Measures of Multiple Forms of Sexual Violence and Their Contested Treatment in the Criminal Justice System', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence,* Chapter 4, Abingdon: Routledge.

Walker, Graeme (2015) 'The (in)significance of Genital Injury in Rape and Sexual Assault', *Journal of Forensic and Legal Medicine* 34: pp. 173-178.

Ward, Camille N. and Paula K. Lundberg-Love (2006) 'Sexual Abuse of Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) "*Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack,* Chapter 5, Westport: Praeger Publishers.

Weiss, Karen G. (2010) 'Male Sexual Victimization: Examining Men's Experiences of Rape and Sexual Assault', *Men and Masculinities* 12 (3), pp. 275-298.

Weiss, Kurt and Sandra S. Borges (1973) 'Victimology and Rape: The Case of the Legitimate Victim', *Issues in Criminology* 8(2), pp. 71- 115.

West, Robin (1996) 'A Comment on Consent, Sex, and Rape', *Legal Theory* 2(3), pp. 233-251.

Westmarland, Nicole and Laura Graham (2010) 'The Promotion and Resistance of Rape Myths in an Internet Discussion Forum', *the Journal of Social Criminology Journal of Social Criminology* 1(2), pp. 80-104.

White, Aaronette M. (2011) 'Unpacking Black Feminist Pedagogy in Ethiopia', *Feminist Teacher* 21(3), pp. 195-211.

White, Catharine (2015) 'Sexual Assault and Rape', *Obstetrics, Gynecology and Reproductive Medicine* 25(10), pp. 295-301.

White, Catharine and Iain McLean (2006) 'Adolescent Complainants of Sexual Assault; Injury Patterns in Virgin and Non-virgin Groups', *Journal of Clinical Forensic Medicine* 13(4), pp. 172-180.

Williams, J. E and K.A. Holmes (1981) *The Second Assault,* Westport, CT: Greenwood.

Williams, LM and S Walfield (2016) 'Rape and Sexual Assault', *Encyclopedia of Mental Health* 4: pp. 13-22.

Wippman, David *et al.* (2002) *International Law, Norms, Actors, Process: A Problem-Oriented Approach,* New York: Aspen Law and Business.

Worku A. and Addisie M. (2002) 'Sexual Violence among Female High School Students in Debark, North West Ethiopia', *East African Medical Journal* 79(2), pp. 96-99.

World Health Organization (2002) World Report on Violence and Health: Summary, Washington, D.C.

Wright, Martin (1996) *Justice for Victims and Offenders: A Restorative Response to Crime*, 2nd ed, Winchester: Waterside Press.

Yamawaki, Niwako (2009) 'The Role of Rape Myth Acceptance and Belief in a Just World on Victim: A Study in Japan', *Psychologia: An International Journal of Psychology in the Orient* 52(3), pp. 163–174.

Yelfign Worku (2001) 'Ethiopia: From Bottom to Top in Higher Education – Gender Role Problems', *International Journal of Sociology and Social Policy* 21(1/2), pp. 98 – 104.

Yescavage, Karen (1999) 'Teaching Women a Lesson: Sexually Aggressive and Sexually Nonaggressivemen's Perceptions of Acquaintance and Date Rape', *Violence Against Women* 5(7), pp. 796–812.

Yigzaw T. *et al.* (2004) 'Domestic Violence around Gondar in Northwest Ethiopia', *Ethiopian Journal of Health Science* 18(3), pp. 133-139.

Yohannes Dibaba (2007) 'Sexual Violence against Female Youth in Jimma Town: Prevalence, Risk Factors and Consequences', *Ethiopian Journal of Health Science* 17(1), pp. 47-58.

Zyl, Mikki van (1990) 'Rape Mythology', *Critical Arts: South-North Cultural and Media Studies* 5(2), pp. 10-36.

መሐሪ ረዳኢ (1995) *የተሻሻለውን የቤተሰብ ህግ ለመገንዘብ የሚረዱ አንዳንድ ነጥቦች፣* ቅጽ አንድ፣ አዲስ አበባ፤ ንግድ ማተሚያ ድርጅት (Amharic).

እሸቱ ድባቡ (1997) *ተባእታይ አገዛዝ በኢትዮጵያ፡ ችግሩና የመፍትሄው መንገድ፤* አዲስ አበባ፤ አዲስ ጥራት ማተሚያ ቤት (Amharic).

የሴቶችና ህፃናት ጉዳይ ሚኒስቴር (2008) *በሴቶችና ህፃናት ጉዳይ ሚኒስቴር የሴክተሩ ሁለተኛው ዙር የዕድገትና ትራንስፎርሜሽን ዕቅድ* (2008-2012) ጥቅምት 2008 ዓ.ም አዲስ አበባ (Amharic).

Legislations

Criminal Procedure Code of Ethiopia, Proclamation No. 185/1961, *Negarit Gazeta*, Extraordinary Issue No. 1 of 1961, Addis Ababa.

Ethiopian Constitution of 1931, Established in the reign of His Majesty Hail`e Sellassi´e I 16th July 1931.

Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st Year No. 1 Addis Ababa, 21st August, 1995.

Proclamation No. 414/2004, The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Addis Ababa, 9th May, 2005.

Sexual Offences Act of Zimbabwe, *Act 8/2001,* Gazetted 17th August, 2001 (General Notice 408/2001). Avialable at: http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/zimbabwe%20-%20sexual%20offences%20act%202001.pdf?vs=1843. Last visited on 4/14/2018.

Swiss Criminal Code of 21 December 1937. Available at: https://www.admin.ch/opc/en/classified-compilation/19370083/201803010000/311.0.pdf. Last visited on 9/15/2018

The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, *Negarit Gazeta*, 19th Year No. 2, Addis Ababa, 5th May 1960.

The Constitution of the Peoples' Democratic Republic of Ethiopia, Proclamation No. 1/1987, *Negarit Gazeta*, Vol. 47, No. 2, Addis Ababa, 12th September 1987.

The Fetha Nagast: The Law of the Kings, Translated from the Ge'ez by Abba Paulos Tzadua Edited by Peter L. Strauss, Addis Ababa, Faculty of Law, Haile Sellassie I University, 1968.

The Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957, *Negarit Gazeta*, 16th Year No. 1, Addis Ababa, 23rd July 1957.

The Revised Family Code, Proclamation No. 213/2000, Federal *Negarit Gazetta*, 6th year No. 1, Addis Ababa, 4th July 2000.

Human Rights Instruments, Cases and Materials

ACHR, Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section IV, Conclusions.

African Commission on Human and Peoples' Rights: Communication 341/2007 – *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. The Federal Democratic Republic of Ethiopia*.

Committee on Economic, Social and Cultural Rights (2005) General Comment No. 16, the Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights).

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Czech Republic, A/57/38, part III.

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Estonia, A/57/38, part I.

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Iceland, A/57/38, part I (2002).

Committee on the Elimination of Discrimination against Women (2003), Concluding Observations, Japan, A/58/38, part II.

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Portugal, A/57/38, part I.

Committee on the Elimination of Discrimination against Women (2006) Concluding Observations, Malaysia, CEDAW/C/MYS/CO/2.

Committee on the Elimination of Discrimination against Women (2011) Concluding Observations, Ethiopia. Available at: https://www.refworld.org/docid/4eeb4c8c2.html Last visited on 1/29/2019.

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19*.

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19, Violence against Women*.

Committee on the Elimination of Discrimination against Women, *General Recommendation No.* 12, *Violence against Women.*

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*.

Committee on the Elimination of Discrimination against Women: Communication No. 28/2010- *R.K.B. v. Turkey.*

Committee on the Elimination of Discrimination against Women: Communication No. 2/2003- *A.T. v. Hungary*.

Convention on the Elimination of All Forms of Discrimination Against Women (adopted Dec. 1979, entered into force 3 Sept. 1981) UN General Assembly resolution 34/180.

Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, at 217, U.N. Doc. A/48/49 (Dec. 20, 1993).

I/A Court H.R. *Case of Inés Fernández et al. v. Mexico*, Judgment of August 30, 2010. Series C No. 215.

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, 1999 GA Res 54/4, 6 October 1999.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation No. 1082/2018, Federal *Negarit Gazetta*, 24th Year No. 33, Addis Ababa, March 30th, 2018.

The African Charter on Human and Peoples' Rights, adopted 27 June 1981 by the 18th Assembly of Heads of State of the Organization of African Unity at Nairobi and entered into force on 21 October 1986.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, approved at the second ordinary session of the Assembly of the Union, Maputo, July 11, 2003.

The United Nations Commission on Human Rights (1994) *Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy,* in accordance with Commission on Human Rights resolution 1994/45.

The United Nations Commission on Human Rights (2001) Concluding Observations, Azerbaijan, CCPR/CO/73/AZE.

The United Nations Commission on Human Rights (2003) Concluding Observations, Sri Lanka, CCPR/CO/79/LKA.

Internet and Others Materials

Adanetch Kidane Mariam (2001) 'The Campaign on Violence Against Women: How Did It Go?', in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender,* Number 5, Addis Ababa: Panos Ethiopia. Available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf. Last visited on 10-29-2018.

Agumasie Semahegn and Bezatu Mengistie (2015) 'Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review', *Reproductive Health* 12:78. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553009/. Last visited on 9/15/2018.

Alemayehu Belachew Bekele (2012) *Determinants of Sexual Violence among Eastern Ethiopian Secondary School Students,* PhD Thesis, Utrecht University.

Alemayehu C. Misganaw and Yalew A. Worku (2013) 'Assessment of Sexual Violence among Street Females in Bahir-Dar town, North West Ethiopia: A Mixed Method Study', *BMC Public Health* 13(1):825.

Amnesty International (2004) *It's in Our Hands: Stop Violence against Women,* London: Amnesty International. Available at: http://www.oneinthree.com.au/storage/pdfs/Amnesty_SVAW_report.pdf Last visited on 1/26/2019.

Amnesty International (2010) *Case Closed: Rape and Human Rights in the Nordic Countries*, Summary Report, London, United Kingdom: Amnesty International Publications

Augustyniak, Zuzanna (2012) *The Genesis of the Contemporary Ethiopian Legal System*, Studies of the Department of African, Languages and Cultures, No 46. Available at: https://pbn.nauka.gov.pl/sedno-webapp/getFile/26624. Last visited on 10-28-2018.

B. Alemu and M. Asnake (2007) W*omen's Empowerment in Ethiopia: New Solutions to Ancient Problems*, Pathfinder International Ethiopia. Available at: http://www2.pathfinder.org/site/DocServer/PI_WE_paper_final.pdf?docID=10202. Last visited on 10-28-2018.

Bacik, Ivana *et al.* (1998) *The Legal Process and Victims of Rape: A Comparative Analysis of the Laws and Legal Procedures Relating to Rape, and Their Impact Upon Victims of Rape, in the Fifteen Member States of the European Union*, Dublin: The Dublin Rape Crisis Centre. Available at: http://www.drcc.ie/get-informed/policy-publications/legal-process-victims-rape/. Last visited on 1/29/2019.

Belay Endeshaw (2008) *Factors Contributing To Sexual Violence against Female High School Students in Addis Ababa*, Msc Thesis, Addis Ababa University.

Berihun Adugna Gebeye (2013) 'Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State', *Women in Society* 6. Available at SSRN: https://ssrn.com/abstract=2683685. Last visited on 1/26/2019.

Billene Seyoum Woldeyes and Earuyan Solutions (2017) *The Ethiopian Women Lawyers Association – A Story of Service, Movement Building and Survival, Rooted in Ethiopia's Political Legacy*, A Research Commissioned by AWIB Ethiopia.

Blain Worku (2011) *Criminal Justice System's Response to Acquaintance Rape Cases in Ethiopia: The Women's Right Perspective*, Unpublished MA Thesis, Addis Ababa University.

Bonthuys, Elsje (2008) 'Putting Gender into the Definition of Rape or Taking it Out? Masiya v Director of Public Prosecutions (Pretoria) and Others, 2007 (8) BCLR 827 (CC)' *Feminist Legal Studies* 16: pp. 249–260 Available at: https://slideheaven.com/putting-gender-into-the-definition-of-rape-or-taking-it-out.html. Last visited on 04/01/2019.

Brown, Jennifer K. *et al*. (2011) *Achieving Justice for Victims of Rape and Advancing Women's Rights: A Comparative Study of Legal Reform*. Available at:

https://www.trust.org/contentAsset/raw-data/e531c966-13c7-4eba-824e-c6cac927101b/file. Last visited on 1/26/2019.

CARE Ethiopia (2008) *The Status of Gender Based Violence and Related Services in Four Woredas (Woredas surrounding Bahir Dar town, Burayu woreda, Bako woreda and Gulele Sub-city of Addis Ababa)*, CARE Ethiopia, February 2008.

Central Statistical Agency (CSA) [Ethiopia] and ICF (2016) *Ethiopia Demographic and Health Survey 2016*. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF.

Cochrane, Logan and Betel Bekele Birhanu (2018) 'Pathways of Legal Advocacy for Change: Ethiopian Women Lawyers Association', *Forum for Development Studies*, DOI: 10.1080/08039410.2018.1534752.

Desalegn Tarekegn *et al.* (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2).

DesalegnTarekegn, Balcha Berhanu and Yigrem Ali (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2). Available at: https://www.omicsonline.org/open-access/prevalence-and-associated-factors-of-sexual-violence-among-high-school-female-students-in-dilla-town-gedeo-zone-snnpr-ethiopia-2161-1165-1000320.php?aid=92471 Last visited 1/27/2019.

Elshaday K. Woldeyesus *et al.* (2018) *Policy and legal analysis notes: Ethiopia: A review of the Strategic Plan for a Multisectoral Response to Violence Against Women and Children*, December 2018, the Gender and Adolescence: Global Evidence (GAGE) programme.

Emebet Kebede (2004) 'Protection of Women from Violence under the Criminal Law and under the Criminal Law Amendment Proposals', *Reflections: Documentation of the forum on gender*, number 10, Addis Ababa: Panos Ethiopia.

Emebet Zeleke (2011) *Assessment of Prevalence Associated Factors and Outcome of Sexual Violence among High School Students in Debereberhan Town,* Mph Thesis, Addis Ababa University.

Entorf, Horst (2012) *Certainty and Severity of Sanctions in Classical and Behavioral Models of Deterrence: A Survey*, Goethe University Frankfurt and IZA Discussion Paper No. 6516 April 2012. Available at: https://www.researchgate.net/publication/241642062_Certainty_and_Severity_of_Sanctions_in_Classical_and_Behavioral_Models_of_Deterrence_A_Survey/download. Last visited on 1/26/2019.

Equality Now (2017) *The World's Shame, the Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence*. Available at: https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/308/attachments/original/1527599090/EqualityNowRapeLawReport2017_Single_Pages_0.pdf?1527599090. Last visited on 9/12/2018.

Eriksson, Maria (2010) *Defining Rape: Emerging Obligations for States under International Law?* Örebro Studies in Law 2, Örebro University. Available at: http://oru.diva-portal.org/smash/get/diva2:317541/FULLTEXT02.pdf. Last visited on 9/12/2018.

Estrich, Susan (2006) *Male Rapes Occur, and It's Time to Address Them*, Pocono Record. Available at: http://www.poconorecord.com/apps/pbcs.dll/article?AID=/20061224/NEWS04/612240301. Last visited 9/12/2018.

Ethiopian Women Lawyers Association (2001) *Ethiopian Women Lawyers Association Activity Report November 1999 – December 2000*, Addis Ababa: EWLA. Available at: http://www.seleda.com/jul_aug01/EWLA.doc Last visited on 9/17/2018.

FDRE Federal Attorney General (2005) *The 2005 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.

FDRE Federal Attorney General (2006) *The 2006 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.

FDRE Federal Attorney General (2007) *The 2007 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.

FDRE Federal Attorney General (2008) *The 2008 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.

FDRE Federal Attorney General (2009) *The 2009 E.C. Federal Attorney General Annual Performance Report,* Unpublished Report.

Federal Ministry of Health (2013) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*, Second edition Federal Ministry of Health 2013.

Federal Ministry of Health Ethiopia (2006) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*.

Federal Ministry of Health Ethiopia (2009) *National Guideline for the Management of Survivors of Sexual Assault in Ethiopia*. Available at: http://www.esog.org.et/gbv.pdf. Last visited 27/12/2014.

Fikremarkos Merso (2008) *Women and Girls and HIV/AIDS in Ethiopia: An Assessment of the Policy and Legal Framework Protecting the Rights of Women and Girls and Reducing Their Vulnerability to HIV/AIDS,* UNFPA Document.

Fitzgerald, Jacqueline (2006) 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System', *Contemporary Issues in Crime and Justice*, No. 92, Sydney: NSW Bureau of Crime Statistics. Available at: https://www.bocsar.nsw.gov.au/Documents/CJB/cjb92.pdf. Last visited on 1/26/2019.

Getnet Tadele and Desta Ayode (2008) *The Situation of Sexual Abuse and Commercial Sexual Exploitation of Girl Children in Addis Ababa,* Forum on Street Children Ethiopia (FSCE).

Heise, L. *et al.* (1999) 'Ending Violence Against Women', *Population Reports,* Series L, No. 11. Baltimore, Johns Hopkins University School of Public Health, December 1999. Available at: https://www.researchgate.net/publication/287170875_Population_reports_Ending_violence_against_women/download. Last visited on 1/26/2019.

Hester OBE, Marianne (2013) *From Report to Court: Rape Cases and the Criminal Justice System in the North East,* Centre for Gender and Violence Research, Research Commissioned by the Northern Rock Foundation. Available at: https://research-information.bristol.ac.uk/files/9852501/From_Report_to_Court.pdf. Last visited on 1/26/2019.

Hirut Terefe (2002) 'Violence Against Women From Gender and Cultural Perspectives', *Reflections: Documentation of the forum on gender*, number 7, Heinrich Böll Foundation, Addis Ababa. Available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect7.pdf. Last visited 10-19-2018.

Home Office Review of Sex Offences (2000) *Setting the Boundaries: Reforming the law on sex offences*, Volume 1, London: Home Office Communication Directorate. Available at: http://webarchive.nationalarchives.gov.uk/%2B/:/www.homeoffice.gov.uk/documents/vol1main.pdf%3Fview%3DBinary. Last visited 9/12/2018.

Indrawatie Biseswar (2011) *The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality 1974-2005*. University of South Africa, South Africa. Available at: http://uir.unisa.ac.za/bitstream/handle/10500/5538/dissertation_indrawatie_b.pdf?sequence=1. Last visited on 10-29-2018

Inter-American Commission on Human Rights (2011) *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63 9 December 2011 Original: Spanish. Available at: https://www.oas.org/en/iachr/women/docs/pdf/women%20mesoamerica%20eng.pdf. Last visited on 9/15/2018.

Intersex Society of North America: *What is intersex?* Available at: http://www.isna.org/faq/what_is_intersex. Last visited on 04/02/2019.

Intersex Society of North America: *What's the difference between being transgender or transsexual and having an intersex condition?* Available at: http://www.isna.org/faq/transgender. Last visited on 04/02/2019

Ipas (2008) *Tools for Progressive Policy Change: Lessons Learned from Ethiopia's Abortion Law Reform*, Ipas, Chapel Hill, NC. Available at: https://endabortionstigma.org/en/Home/Resources/Ipas%20Publications/Tools-for-progressive-policy-change-Lessons-learned-from-Ethiopias-abortion-law-reform.aspx. Last visited on 1/27/2019.

Kalkidan Bekele (2007) *Cultural Practices that Affected the Status of Women in Benishangul Gumuz Mandura Woreda*, MA Thesis, Addis Ababa University.

Katz-Wise, Sabra L. *et al.* (2016) 'LGBT Youth and Family Acceptance', *Pediatr Clin North Am*. 63(6), pp. 1011–1025. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127283/pdf/nihms823230.pdf. Last visited on 4/01/2019.

Kebede Deriba *et al.* (2012) 'Magnitudes and Correlates of Intimate Partner Violence against Women and its Outcome in Southwest Ethiopia', *PLoS ONE* 7(4). Available at: https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0036189&type=printable. Last visited on 9/14/2018.

Kelly, Theresa Claire (2009) *Judgments and Perceptions of Blame: The Impact of Benevolent Sexism and Rape Type on Attributions of Responsibility in Sexual Assault*, PhD Thesis, University of Toronto.

Kidist Abayneh (2006) *Analysis of the 2005 Criminal Code of Ethiopia in Light of Protecting Women's Rights*, L.L.B Thesis, Addis Ababa University.

Krug, Etienne G *et al.* (2002) *The World Report on Violence and Health*. Available at: https://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=4ACE46FF1BC38A44719DF1E8F4713D60?sequence=1. Last visited on 10-28-2018.

Lievore, Denise (2005) 'Prosecutorial Decisions in Adult Sexual Assault Cases', *Trends and Issues in Crime and Criminal Justice* No. 291, Canberra: Australian Institute of Criminology. Available at: https://aic.gov.au/publications/tandi/tandi291. Last visited on 1/27/2019.

Lovett, Jo and Liz Kelly (2009) *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe*, Final Research Report, Child and Women Abuse Studies Unit London Metropolitan University. Available at: http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/197/different. Last visited 9/12/2018.

McPhail, Beverly A. (2015) 'Feminist Framework Plus: Knitting Feminist Theories of Rape Etiology into a Comprehensive Model', *Trauma, Violence, & Abuse*, pp. 1-16. Available

at: https://www.uh.edu/socialwork/news/news-releases/2015-06-10_McPhail_FFP.pdf. Last visited on 1/27/2019.

Meaza Ashenafi and Zenebeworke Tadesse (2005) *Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia*. Available at: http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-and-inheritance-rights-the-case-of-ethiopia/23.pdf. Last visited on 1/26/2019.

Medhanit Asfaw (2010) *Sexual Violence and Its Consequence among Female Night School Students in Hawassa Town, Southern Ethiopia: A Cross-sectional Study,* Mph Thesis, Addis Ababa University.

Melakou Tegegn (2001) 'The Campaign on Violence against Women: How did it go?' in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender,* Number 5, Addis Ababa: Panos Ethiopia. Available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf. Last visited on 10-29-2018.

Meron Zeleke Eresso (2018) 'Sisters on the Move: Ethiopia's Gendered Labor Migration Milieu', *Canadian Journal of African Studies/Revue canadienne des études africaines.* DOI: 10.1080/00083968.2018.1519451.

Mersha Shenkute (2013) *Causes and Socio-Health Effects of Rape on Women at Gandhi Memorial Hospital in Addis Ababa, Ethiopia*, MSW Thesis, Indira Gandhi National Open University.

Millsteed, Melanie Cleave McDonald (2017) *Attrition of sexual offence incidents across the Victorian Criminal Justice System*, Melbourne: Crime Statistics Agency. Available at: https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/01/fd/8d51b2494/20170202_SexualOffenceAttrition_FinalReport.pdf Last visited 10-18-2018. Last visited on 1/26/2019.

Ministry of Women, Children and Youth Affairs (MoWCYA) (2013) *Assessment of Conditions of Violence Against Women in Ethiopia*, Final Report November 2013, Addis Ababa, Ethiopia.

Parcesepe, Angela *et al.* (2008) *Using the Neighborhood Method to Measure Violence and Rape in Ethiopia*, Columbia University's Program on Forced Migration and Health and the International Rescue Committee (IRC) Ethiopia. Available at: http://www.cpcnetwork.org/wp-content/uploads/2014/04/Ethiopia-Report_Final.pdf. Last visited on 9/14/2018.

Pillsbury, Samuel H. (2002) 'Crimes Against the Heart: Recognizing the Wrongs of Forced Sex', *Loyola of Los Angeles Law Review* 35:845. Available at: https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2320&context=llr. Last visited on 1/28/2019.

Pracher, Maria (1981) 'The Marital Rape Exemption: A Violation of a Woman's Right of Privacy', *Golden Gate University Law Review* 11(3). Available at: https://digitalcommons.law.ggu.edu/ggulrev/vol11/iss3/1/. Last visited on 9/14/2018.

Rahel Tesfaye Haile *et al.* (2013) Prevalence of Sexual Abuse of Male High School Students in Addis Ababa, Ethiopia', *BMC International Health and Human Rights* 13:24 Available at: http://www.biomedcentral.com/1472-698X/13/24. Last visited on 9/13/2018.

Rahel Tessema (2006) *Sexual Violence and Reproductive Health Problems among Female Adolescents in Addis Ababa,* MA Thesis, Addis Ababa University.

Raoul Wallenberg Institute/ILAC (2007) *Gender Justice Best Practices Haiti 10–11,* Report Commissioned by the International Legal Assistance Consortium upon request by the Haitian Ministry of Women's Affairs and Women's Rights, presented at a seminar in Haiti, September 2007. Available at: https://rwi.lu.se/app/uploads/2017/01/9-3-126-1-10-20150128.pdf. Last visited on 10-29-2018.

Sara Tadiwos (2001) 'Rape in Ethiopia' in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender*, Number 5, Addis Ababa: Panos Ethiopia. Available at: http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf. Last visited on 10-29-2018.

Seblework Tadesse (2004) *Assessment of Sexual Coercion among Addis Ababa University Female Students*, Mph Thesis, Addis Ababa University.

Shannon (2004) *Theories of Sexual Coercion: Evolutionary, Feminist, and Biosocial Perspectives*. Available at: http://www.pandys.org/theoriescoercion.pdf. Last visited on 1/27/2019

Sileshi Garoma Abeya *et al.* (2011) 'Intimate Partner Violence against Women in Western Ethiopia: Prevalence, Patterns, and Associated Factors', *BMC Public Health* 11:913. Available at: http://www.biomedcentral.com/1471-2458/11/913. Last visited on 9/14/2018.

Sileshi Garoma Abeya *et al.* (2012) 'Intimate Partner Violence against Women in West Ethiopia: A Qualitative Study on Attitudes, Woman's Response, and Suggested Measures as Perceived by Community Members', *Reproductive Health* 9:14. Available at: http://www.reproductive-health-journal.com/content/9/1/14. Last visited on 10-29-2018.

Sinidu Fekadu (2008) *An Assessment of Causes of Rape and Its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa*, MA Thesis, Addis Ababa University.

South Africa: Vera Institute of Justice, Bureau of Justice Assistance (2004) *Thuthuezela Care Centres: Has Treatment of Rape Survivors Improved since 2000?, A Study of Rape Survivors in the Western Cape* (November 2004). Available at: https://www.google.com/search?q=Thuthuezela+Care+Centres%3A+Has+Treatment+of+Rape+Survivors+Improved+since+2000%3F%2C+A+Study+of+Rape+Survivors+in+the+Western+Cape&oq=Thuthuezela+Care+Centres%3A+Has+Treatment+of+Rape+Survivors+Improved+since+2000%3F%2C+A+Study+of+Rape+Survivors+in+the+Western+Cape&aqs=chrome..69i57.788j0j9&sourceid=chrome&ie=UTF-8. Last visited on 1/26/2019.

Tezeta Meshesha (2008) *Media Strategies for Awareness Creation: A Comparative Analysis of Three Organizations Working on Women's Rights in Ethiopia*, MA Thesis, Addis Ababa University

The African Child Policy Forum (2011) *Accessing Justice: The Experience of ACPF's Children's Legal Protection Centr*e, Addis Ababa. Available at: http://www.africanchildforum.org/site/images/stories/Accessing_Justice_Final_Edited_on_July_7__2011.pdf. Last visited 9/12/2018.

Tigest Abye (2016) *Life Story Narratives of Ethiopian Women Activists: The Journey to Feminist Activism*, PhD Thesis, University of Bradford.

Triggs, Sue *et al.* (2009) *Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System*, Wellington: Ministry of Women's Affairs. Available at: http://women.govt.nz/sites/public_files/responding%20to%20sexual%20violence%20attrition-pdf.pdf. Last visited 10-19-2018.

Tsegaye Megersa (2015) *Gender Based Violence in the Rural Setting of Arsi: Causes and Consequence Analysis in Hetosa District*, MA Thesis, Addis Ababa University.

UN Women Ethiopia (2016) *Shelters for Women and Girls Who Are Survivors of Violence in Ethiopia: National Assessment on the Availability, Accessibility, Quality and Demand for Rehabilitative and Reintegration Services,* UN Women Ethiopia Addis Ababa, January 2016. Available at: https://www.peacewomen.org/sites/default/files/shelters-for-survivors-of-violence-ethiopia.pdf. Last visited on 10-29-2018.

UNICEF (2000) 'Domestic Violence against Women and Girls', *Innocenti Digest*, No. 6. Available at: https://www.unicef.org/malaysia/ID_2000_Domestic_Violence_Women_Girls__6e.pdf. Last visited on 1/27/2019.

UNICEF (2008) *UNICEF South Africa*. Available at: http://www.unicef.org/southafrica/hiv_aids_998.html. Last visited on 9/18/2018.

United Nations Development Fund for Women (2008) *Violence Against Women: Facts and Figures*. Available at: http://www.unifem.org/attachments/gender_issues/violence_against_women/facts_figures_violence_against_women_2007.pdf. Last visited on 9/12/2018.

Vaughan, Sarah and Kjetil Tronvoll (2003) *The Culture of Power in Contemporary Ethiopian Political Life*, Sida Studies Number 10. Available at: http://ehrp.org/wp-content/uploads/2014/05/VaughnandTronvoll-The-Culture-of-Power-in-Contemporary-Ethiopian-Political-Life.pdf last visited on 10-27-2018. Last visited on 1/26/2019.

Velzeboer, Marijke *et al.* (2003) *Violence against Women: The Health Sector Responds*, Occasional publication No. 12 (Washington, D.C., Pan American Health Organization,

2003). Available at: https://www.researchgate.net/publication/306012171_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_Pan_American_Health_Organization_Pan_American_Health_Organization. Last Visited on 10-28-2018.

Whisnant, Rebecca (2011) 'Feminist Perspectives on Rape', in Edward N. Zalta (eds) The Stanford Encyclopedia of Philosophy, (Spring 2011 Edition). Available at: http://plato.stanford.edu/archives/spr2011/entries/feminism-rape/. Last visited 19/02/2016.

World Health Organization (2005) *WHO Multi-country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses*. Geneva, World Health Organization, 2005.

World Health Organization (2014) *Global Status Report on Violence Prevention*. Available at: https://www.google.com/search?q=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&oq=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&aqs=chrome..69i57.847j0j4&sourceid=chrome&ie=UTF-8. Last Visited on 10-28-2018.

World Health Organization (2016) *Ethical and Safety Recommendations for Intervention Research on Violence against Women: Building on Lessons from the WHO Publication*, Geneva: World Health Organization.

World Health Organization/London School of Hygiene and Tropical Medicine (2010) *Preventing Intimate Partner and Sexual Violence against Women: Taking Action and Generating Evidence*, Geneva, World Health Organization, 2010. Available at: http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf. Last visited on 10-28-2018.

Yaynshet G/Yohannes (2007) *Prevalence and Factors Related to Gender Based Violence among Female Students of Higher Learning Institutions in Mekelle Town, Tigray, Northern Ethiopia,* Mph Thesis, Addis Ababa University.

Yenenesh Tadesse (2008) 'Policy Analysis in Relation to Domestic Violence Against Women', in Deborah Zinn *et al.* (eds) *Ethiopian Social Policy Reader* Volume 3, Addis Ababa University Graduate School of Social Work. Available at: https://deborahzinn.files.wordpress.com/2010/02/ethiopiansocialpolicyreadervolume3-2008.pdf. Last visited on 1/26/2019.

Yohannes Mehretie Adinew and Mihiret Abreham Hagos (2017) 'Sexual Violence against Female University Students in Ethiopia', *BMC International Health and Human Rights* 17(19). Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5525286/. Last Visited on 10-28-2018.

Zimmerman, K. (1995) *Plates in a Basket Will Rattle: Domestic Violence in Cambodia: A Summary*. Available at: https://www.cisas.org.ni/files/Plates%20in%20a%20basket%20will%20rattle%20domestic%20violence%20in%20Cambodia.pdf. Last visited on 9/13/2018.

የኢትዮጵያ ፌደራላዊ ዲሞክራሲያዊ ሪፐብሊክ ህጉመንግስት ማብራሪያ (Amharic) Available at: https://www.abyssinialaw.com/constitutions. Last visited on 1/29/2019.

የኢትዮጵያ ፌደራላዊ ዴሞክራሲያዊ ሪፐብሊክ የተሻሻለው የወንጀል ህግ ሐተታ ዘምክንያት 1996 ዓ/ም (Amharic).

ፍትሕ ሚኒስቴር (2003) *የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ* የካቲት 25/2003 ዓ.ም (Amharic).

APPENDIX

Appendix 1 List of Key Informants

Eyerusalam Solomon, Executive Director, the EWLA.

Eyerusalem Melaw, social worker, Federal First Instance Court, Ledeta Division.

Inku Aweke, Former Prosecutor and Focal Person on VAW, Federal Attorney General.

Inspector Asefa Weyin, Head, Women and Children Unit, Bole Sub-city Police Department.

Inspector Dejenie Bekele, Investigator, Nifas-Silk-Lafto Sub-city Police Department.

Judge Asahib Bizuneh, Former Prosecutor and Focal Person on VAW, Federal Attorney General.

Judge Haregeweyin Teklu, Judge, Federal First Instance Court, Lideta Division.

Mesay Demsie, social worker, Federal First Instance Court, Ledeta Division.

Prosecutor Abeba, Prosecutor and Focal Person on VAW, Federal Attorney General.

Prosecutor Habtamnesh, Prosecutor and Focal Person on VAW, Federal Attorney General.

Saba Gebremedhin, Executive Director, the NEWA.

Appendix 2 Questionnaire

Questionnaire to be filled by Judges, Prosecutors, Defense Lawyers and Police Officers

Dear Judges, Prosecutors, Defense Lawyers and Police Officers

I am a candidate for the Degree of Philosophiae Doctor (PhD) in Human Rights at Center for Human Rights, Addis Ababa University. As part of the requirements for my degree, I am conducting a PhD thesis titled: "Effects and Limits of the 2004 Rape Law Reform in Ethiopia" under the supervision of my advisors, Dr. Meron Z. Eresso and Dr. Emezat H. Mengesha. The Center for Human Rights has approved my research proposal in November 2016, and the Federal First Instance Court, the Federal Supreme, the Federal Attorney General, and the Addis Ababa Police Commission have given me permission to collect data from Judges, Prosecutors, Defense Lawyers and Police Officers, respectively.

The purpose of the research threefold: to identify the main strands the reforms on sexual offences which have been introduced during the overall revision the 1957 Penal Code of Ethiopia in 2004; to evaluates the instrumental impacts of the 2004 reforms on sexual offences; and to assess the limits (weaknesses) of the 2004 reforms on sexual offences. Your professional experiences and knowledge are essential for the success of my research project. The findings of the research will also inform the law and policy makers to introduce further comprehensive reforms to improve the law on sexual offences and its enforcement. Your participation is completely voluntary. Your individual responses will be kept confidential and participants will remain anonymous. All data will be stored in a locked file by the researcher. The results will be introduced only in general form by using statistical procedures. No individual responses will be published.

The data of the research will be collected by means of a questionnaire. The questionnaire contains different sections and your filling of it takes approximately ____ minutes of your time. The deadline for the completing and returning of the questionnaire is _____. Once you have completed the questionnaire, please return it to the secretary of your respective department. Any questions regarding the study are welcomed and can be directed to the researcher (phone: …)

and/or to the advisors of the research, Dr. Meron Zeleke Eresso (Email: eressokiyya@gmail.com) and Dr. Emezat Hailu Mengesha (Email: emezatia.ethiel@gmail.com). Thank you in advance for your participation!

Sincerely,

Mesay Hagos Asfaw, PhD candidate, Center for Human Rights, Addis Ababa University.

I. Background information.

Please respond to the following questions by writing the appropriate information on the space provided or by writing "√" in one of the boxes provided.

1. Your name and tittle _____/Optional/
2. Name of the justice Organ:
   Police Commission ☐ Federal Attorney General ☐ Federal Court ☐ Attorney ☐
3. District/Division/Bench
   Arada ☐ Bole ☐ K/Keraniyo ☐ N/S/Lafto ☐ Yeka ☐ Federal Courts Attorney ☐
4. Occupation:
   Police Officer ☐ Prosecutor ☐ Judge ☐ Defense Lawyer ☐ Attorney ☐
5. Sex:
   Female ☐ Male ☐
6. Age: _____
7. Marital status:
   Never married ☐ ☐ Windowed ☐ Divorced ☐
8. Educational level:
   Certificate ☐ Diploma ☐ First Degree ☐ Master's Degree or above ☐
9. Total work experience in year_____

II. The Legal Process and Victims of Rape

Please respond to the following questions by writing the appropriate information on the space provided or by writing "√" in one of the boxes provided.

1. The Law on Rape

1.1. What is the legal definition of rape against adult?

1.2 Are there distinctions made in law between categories of rape (for example, stranger/acquaintance rape, indoor/outdoor rape,)?

Yes ☐ No ☐

1.3 If your answer for question number 1.2 is "yes", what are the distinctions?

1.4 Does the incident of rape have to be reported within a certain time after the commission?

Yes ☐ No ☐

1.5 If your answer for question number 1.4 is "yes", what is the time limit?

1.6 Does rape have to be prosecuted within a certain time?

Yes ☐ No ☐

1.7 If your answer for question number 1.6 is "yes", what is the time limit?

2. Pre-trial

Reporting and Prosecution

2.1 Is there a special rape/sexual assault unit in the police?

Yes ☐ No ☐

2.2 If your answer for question number 2.1 is "yes", give more details:

2.3 Do police officers get training for dealing with rape?

Yes ☐ No ☐

2.4 If your answer for question number 2.3 is "yes", who provides this training?

2.5 What does this training consist of?

2.6 Is this training provided:

During initial training of police recruits ☐ As part of an in-service training programme ☐

2.7 Is there a special rape/sexual assault medical unit which conducts a medical examination of the victim when a rape is reported?

Yes ☐ No ☐

2.8 If your answer for question number 2.7 is "yes", what services are available?

2.9 Are these services available to all victims?

Yes ☐ No ☐

2.10 Are women doctors available to conduct the medical examinations if the victim requests?

Yes ☐ No ☐

2.11 Are police surgeons available to conduct the medical examinations if the victim requests?

Yes ☐ No ☐

2.12 Is the victim entitled to legal advice at the reporting stage?

Yes ☐ No ☐

2.13 If your answer for question number 2.12 is "yes", is this legal advice state funded?

Yes ☐ No ☐

2.14 Is the victim entitled to any other support pre-trial?

Yes ☐ No ☐

2.15 If your answer for question number 2.14 is "yes", please specify:

2.16 Is a special prosecutor assigned to rape cases?

Yes ☐ No ☐

2.17 If your answer for question number 2.16 is "yes", please explain how the special prosecutor is selected.

2.18 Does the prosecutor have the discretion to drop the case, even where the victim wishes to proceed?

Yes ☐ No ☐

2.19 If your answer for question number 2.18 is "yes", please specify the reasons for dropping cases:

2.20 Can the victim withdraw her complaint at any stage?

Yes ☐ No ☐

Investigation

2.21 Once a suspect has been identified and arrested, is he entitled to be released on bail?

Yes ☐ No ☐

2.22 If your answer for question number 2.21 is "yes", what are the conditions to grant the bail?

2.23 Does the victim have any say in the bail decision?

Yes ☐ No ☐

2.24 Is the victim entitled to any pre-trial protection from the suspect?

Yes ☐ No ☐

2.25 If your answer for question number 2.24 is “yes”, what protections are provided?

2.26 Is legal aid available for the victim pre-trial?

Yes ☐ No ☐

2.27 Is the victim kept informed of the progress of the case pre-trial?

Yes ☐ No ☐

2.28 If your answer for question number 2.27 is “yes”, who has responsibility for informing the victim?

2.29 Does the victim have an opportunity to meet the prosecutor before the trial?

Yes ☐ No ☐

2.30 If your answer for question number 2.29 is “yes”, please explain:

2.31 Is information on the trial procedures available to victims pretrial?

Yes ☐ No ☐

2.32 If your answer for question number 2.31 is “yes”, what form does this information take (leaflet, letter, etc.)?

3. Trial

General Procedures

3.1 Which level of court hears rape trials?

Federal First Instance ☐ Federal High Court ☐ Federal Supreme Court ☐

3.2 Is special training in the conduct of rape trials provided?

Yes ☐ No ☐

3.3 If your answer for question number 3.2 is “yes”, for whom this special training provided?

For judges ☐ For Prosecutors ☐ For defense Lawyers ☐

3.4 Is any special training provided where the victim is a child?

Yes ☐ No ☐

3.5 Are there any special procedures where the defendant is a child?

Yes ☐ No ☐

3.6 If your answer for question number 3.5 is “yes”, please give details:

3.7 In the courts in which rape is tried, is there a separate waiting room for the victim?

Yes ☐ No ☐

3.8 In the courts in which rape is tried, is there separate bathroom facilities for the victim?

Yes ☐ No ☐

3.9 In the courts in which rape is tried, is there a separate eating area for the victim?

Yes ☐ No ☐

3.10 Is the victim protected from contact with the defendant during the trial?

Yes ☐ No ☐

3.11 Is the victim entitled to anonymity throughout the trial?

Yes ☐ No ☐

3.12 Is the victim entitled to anonymity after the verdict?

Yes ☐ No ☐

3.13 Is the trial held:

In public ☐ *In-camera*/private ☐

3.14 Are there restrictions on how the media report rape trials?

Yes ☐ No ☐

3.15 If your answer for question number 3.14 is “yes”, what are they?

3.16 Are there restrictions on who may be present in the court?

Yes ☐ No ☐

3.17 If your answer for question number 3.16 is “yes”, what are the restrictions?

3.18 Does the victim have any power to decide on who may be present in the court-room?

Yes ☐ No ☐

3.19 Does the victim have the right to have a non-lawyer support person present in the court-room during the trial?

Yes ☐ No ☐

3.20 Does the prosecutor have a duty to look after the victims interests in court?

Yes ☐ No ☐

3.21 Does the defense lawyer cross-examine the victim?

Yes ☐ No ☐

3.22 Is there a possibility of multiple cross-examination where there is more than one defendant?

Yes ☐ No ☐

3.23 Where the defendant is not legally represented, can he cross-examine the victim?

Yes ☐ No ☐

3.24 Is the victim entitled to give evidence behind a screen/on video?

Yes ☐ No ☐

3.25 Are there special procedures in place for victims who are minors to give evidence?

Yes ☐ No ☐

3.26 If your answer for question number 3.25 is “yes”, what are they?

3.27 Are there any other special procedures relating to the conduct of rape trials?

Yes ☐ No ☐

3.28 If your answer for question number 3.27 is “yes”, what are they?

Evidence

3.29 Does the prosecutor have to prove in the trail court that the victim was not consenting to sexual intercourse?

Yes ☐ No ☐

3.30 If your answer for question number 3.29 is “yes”, what kind of evidences are produced to prove absence of consent?

3.31 Does the prosecutor have to prove that the defendant used physical force/violence?

Yes ☐ No ☐

3.32 Does the prosecutor have to prove that the defendant used threat of physical force/violence?

Yes ☐ No ☐

3.33 Does the prosecutor have to prove that the victim resisted physically in order to show she did not consent?

Yes ☐ No ☐

3.34 Are there any other elements of the offence of rape which the prosecutor has to prove?

Yes ☐ No ☐

3.35 If your answer for question number 3.34 is “yes”, what are they?

3.36 Can the defendant be convicted on the evidence given by the victim alone?

Yes ☐ No ☐

3.37 Where the only evidence is that given by the victim, are there special rules which apply to the use of that evidence?

Yes ☐ No ☐

3.38 If your answer for question number 3.37 is "yes", what are they?

3.39 Can evidence of the victim's prior sexual experience with the defendant be used by the defendant in court?

Yes ☐ No ☐

3.40 If your answer for question number 3.39 is "yes", are there any special rules which apply to this evidence?

Yes ☐ No ☐

3.41 If your answer for question number 3.40 is "yes", what are they?

3.42 Can evidence of the victim's sexual experience with others be used by the defendant in court?

Yes ☐ No ☐

3.43 If your answer for question number 3.42 is "yes", are there any special rules which apply to this evidence?

Yes ☐ No ☐

3.44 If your answer for question number 3.43 is "yes", what are they?

4. Post-trial

Sentencing

4.1 What is the maximum sentence of imprisonment for rape?

4.2 Is there a mandatory minimum sentence for rape?

Yes ☐ No ☐

4.3 If your answer for question number 4.2 is "yes", what is it?

4.4 Does the impact of the rape on the victim affect the sentence?

Yes ☐ No ☐

4.5 If your answer for question number 4.4 is "yes", please explain how it is presented to the court, and how it influences the sentence:

Criminal injury compensation

4.6 Is the trial-court entitled to award compensation to victims of rape?

Yes ☐ No ☐

4.7 If your answer for question number 4.6 is “yes”, is it paid by:

The state ☐ The defendant ☐ Other ☐, please specify:_____

4.8 Is any other form of reparation to the victim available after a criminal conviction?

Yes ☐ No ☐

4.9 If your answer for question number 4.8 is “yes”, please specify:

4.10 Is there a state-funded scheme for victims of crime generally?

Yes ☐ No ☐

4.11 If your answer for question number 4.10 is “yes”, does this cover victims of rape?

Yes ☐ No ☐

4.12 If your answer for question number 4.11 is “yes”, is there a maximum amount which may be awarded?

5. Legal Reforms

5.1 Are there reforms introduced to the law on sexual offences during the revision of the1957 Penal Code of Ethiopia in 2004?

Yes ☐ No ☐

5.2 If your answer for question number 5.1 is “yes”, please list the main reforms to the law sexual offences:

5.3 Is the current law on sexual offences adequately protect victims of sexual offences?

Yes ☐ No ☐

5.4 If your answer for question number 5.3 is “no”, please list the main weaknesses of the law:

5.5 Have you any other comments on the way in which rape is dealt with in the Ethiopian legal system, with reference to the aims and specific objectives of this research?

Yes ☐ No ☐

5.6 If your answer for question number 5.5 is “yes”, please describe your comments:

6. Effects of Victim, Offender and Case Characteristics in Rape-case Processing

6.1. In the next table, there are some statements on victim’s characteristics that you would be considering while handling alleged rape cases in your respective justice organ. I kindly ask you to

read each statement and then write "√" mark in one of the given options which is closest to your opinion.

No	How often do the following victim characteristics affect your decision while handling rape cases?	Choices			
		Always	Often	Sometimes	Never
6.1.1	The age of the victim				
6.1.2	The employment history of the victim				
6.1.3	The education background of victim (whether the victim is well-educated)				
6.1.4	Prior relationship of the victim and the offender (whether they are strangers or acquaintances)				
6.1.5	Prior sexual relationship between the victim and the offender				
6.1.6	Prior sexual relationship of the victim with another person				
6.1.7	Whether the victim physically resisted the offender during the offence				
6.1.8	Whether the victim screamed during the commission of the offence				
6.1.9	The victim's promptness in reporting the incidence to the police				
6.1.10	Whether the victim was under the influence of alcohol during the commission of the offence				
6.1.11	Whether the victim under the influence of drugs during the commission of the offence				
6.1.12	The victim's history of working in a "disreputable" situation such as "prostitution"				
6.1.13	The victim's mental health condition during the commission of the offence				
6.1.14	Whether the victim does/does not appear to be upset by the alleged rape committed against her				
6.1.15	The physical unattractiveness of the victim				
6.1.16	The presence/absence of a big discrepancies between the age of the victim and the offender				
6.1.17	Whether the victim's victim was walking alone late at night in an unsafe neighborhood				
6.1.18	Whether the victim was in a bar alone during the commission of the offence				
6.1.19	Whether the victim was hitchhiking during the commission of the offence				
6.1.20	Whether the victim agreed to accompany the offender to his residence where the offence was committed				
6.1.21	Whether the victim invited the defendant to her residence where offence was committed				
6.1.22	Whether someone other than the victim reported the incident to the police				
6.1.23	The presence of inconsistencies in the victim's account				
6.1.24	The victim's willingness to cooperate				
6.1.25	The victim's willingness/refusal to submit to a medical examination				
6.1.26	The victim's attempt to preserve the necessary physical evidence				
6.1.27	The presence/absence of physical condition supporting the alleged commission of rape				

6.1.28	The victim's previous history of reporting incidents to the police that did not progress				
6.1.29	The victim's prior history of having had trouble with the police				

6.2. In the next table, there are some statements on offender's characteristics that you would be considering while handling alleged rape cases in your respective law enforcement organ. I kindly ask you to read each statement and then write "√" mark in one of the given options which is closest to your opinion.

No	**How often do the following offender characteristics affect your decision while handling rape cases?**	**Choices**			
		Always	**Often**	**Sometimes**	**Never**
6.2.1	The age of the alleged offender				
6.2.2	The alleged offender does not have a previous criminal record				
6.2.3	The danger that the alleged offender pose to the victim				
6.2.4	The danger that the alleged offender pose to the community				

6.3. In the next table, there are some statements rape case characteristics that you would be considering while handling alleged rape cases in your respective law enforcement organ. I kindly ask you to read each statement and then write "√" mark in one of the given options which is closest to your opinion.

No	**How often do the following case characteristics affect your decision while handling rape cases?**	**Choices**			
		Always	Often	Sometimes	Never
6.3.1	The number of the alleged offenders involved in the commission of rape				
6.3.2	The number of victims against whom the alleged rape was committed				
6.3.3	The alleged crime involved penile-vaginal penetration				
6.3.4	The alleged offender used a gun/weapon during the commission of rape				
6.3.5	The alleged offender used a knife during the commission of rape				
6.3.6	The level of resistance offered by victim during the commission of rape				
6.3.7	The use of physical force in committing rape by the alleged offender				

6.3.8	Physical injuries sustained by the victim during the commission of rape				
6.3.9	The presence of eyewitness to the incident of rape				
6.3.10	The presence of physical evidence (semen, fingerprints, blood stains, hair or skin samples)				
6.3.11	The results of the forensic/medico-legal examination				
6.3.12	The likelihood of finding or arresting the alleged offender				
6.3.13	The presence of aggravating circumstances				
6.3.14	The presence mitigating circumstances				
6.3.15	Lack of physical condition supporting the alleged crime such as demonstrable scratches or injuries to victim's sex organs				

I thank you very much for taking the time to complete this questionnaire.

Appendix 3 Effects of Victim Characteristics in Rape Cases: Cross Tabulation by Sex

Items	Sex		Always	Often	Sometimes	Never	Total	Ch-square value	df	Sig. (p)
1. The age of the victim	Male	N	6	11	2	2	21	1.331[a]	3	.722
		%	12.8%	23.4%	4.3%	4.3%	44.7%			
	Female	N	11	12	2	1	26			
		%	23.4%	25.5%	4.3%	2.1%	55.3%			
	Total	N	17	23	4	3	47			
		%	36.2%	48.9%	8.5%	6.4%	100%			
2. The employment history of the victim	Male	N	2	6	8	5	21	2.369[a]	3	.500
		%	4.3%	12.8%	17.0%	10.6%	44.7%			
	Female	N	6	4	11	5	26			
		%	12.8%	8.5%	23.4%	10.6%	55.3%			
	Total	N	8	10	19	10	47			
		%	17.0%	21.3%	40.4%	21.3%	100%			
3. The education background of victim (whether the victim is well-educated)	Male	N	1	6	9	5	21	1.757[a]	3	.624
		%	2.1%	12.8%	19.1%	10.6%	44.7%			
	Female	N	4	7	8	7	26			
		%	8.5%	14.9%	17.0%	14.9%	55.3%			
	Total	N	5	13	17	12	47			
		%	10.6%	27.7%	36.2%	25.5%	100%			
4. Prior relationship of the victim and the offender (whether they are strangers or acquaintances)	Male	N	5	9	7	0	21	3.684[a]	3	.298
		%	10.6%	19.1%	14.9%	0.0%	44.7%			
	Female	N	9	5	11	1	26			
		%	19.1%	10.6%	23.4%	2.1%	55.3%			
	Total	N	14	14	18	1	47			
		%	29.8%	29.8%	38.3%	2.1%	100%			
5. Prior sexual relationship between the victim and the offender	Male	N	4	9	5	3	21	2.564[a]	3	.464
		%	8.5%	19.1%	10.6%	6.4%	44.7%			
	Female	N	6	9	10	1	26			
		%	12.8%	19.1%	21.3%	2.1%	55.3%			
	Total	N	10	18	15	4	47			
		%	21.3%	38.3%	31.9%	8.5%	100%			

6. Prior sexual relationship of the victim with another person	Male	N	3	2	3	13	21	6.104[a]	3	.107
		%	6.4%	4.3%	6.4%	27.7%	44.7%			
	Female	N	1	2	12	11	26			
		%	2.1%	4.3%	25.5%	23.4%	55.3%			
	Total	N	4	4	15	24	47			
		%	8.5%	8.5%	31.9%	51.1%	100%			
7. Whether the victim physically resisted the offender during the offence	Male	N	5	5	6	5	21	.656[a]	3	.884
		%	10.6%	10.6%	12.8%	10.6%	44.7%			
	Female	N	8	4	8	6	26			
		%	17.0%	8.5%	17.0%	12.8%	55.3%			
	Total	N	13	9	14	11	47			
		%	27.7%	19.1%	29.8%	23.4%	100%			
8. Whether the victim screamed during the commission of the offence	Male	N	5	5	7	4	21	1.981[a]	3	.576
		%	10.6%	10.6%	14.9%	8.5%	44.7%			
	Female	N	6	10	8	2	26			
		%	12.8%	21.3%	17.0%	4.3%	55.3%			
	Total	N	11	15	15	6	47			
		%	23.4%	31.9%	31.9%	12.8%	100%			
9. The victim's promptness in reporting the incidence to the police	Male	N	2	7	10	2	21	1.332[a]	3	.721
		%	4.3%	14.9%	21.3%	4.3%	44.7%			
	Female	N	3	12	10	1	26			
		%	6.4%	25.5%	21.3%	2.1%	55.3%			
	Total	N	5	19	20	3	47			
		%	10.6%	40.4%	42.6%	6.4%	100%			
10. Whether the victim was under the influence of alcohol during the commission of the offence	Male	N	3	5	12	1	21	.191[a]	3	.979
		%	6.4%	10.6%	25.5%	2.1%	44.7%			
	Female	N	4	6	14	2	26			
		%	8.5%	12.8%	29.8%	4.3%	55.3%			
	Total	N	7	11	26	3	47			
		%	14.9%	23.4%	55.3%	6.4%	100%			
11. Whether the victim under the influence of drugs	Male	N	4	3	12	2	21	1.453[a]	3	.693
		%	8.5%	6.4%	25.5%	4.3%	44.7%			
		N	3	5	13	5	26			

during the commission of the offence	Female	%	6.4%	10.6%	27.7%	10.6%	55.3%			
	Total	N	7	8	25	7	47			
		%	14.9%	17.0%	53.2%	14.9%	100%			
12. The victim's history of working in a "disreputable" situation such as "prostitution"	Male	N	3	0	9	9	21	12.795[a]	3	.005
		%	6.4%	0.0%	19.1%	19.1%	44.7%			
	Female	N	3	8	13	2	26			
		%	6.4%	17.0%	27.7%	4.3%	55.3%			
	Total	N	6	8	22	11	47			
		%	12.8%	17.0%	46.8%	23.4%	100%			
13. The victim's mental health condition during the commission of the offence	Male	N	2	6	10	3	21	1.847[a]	3	.605
		%	4.3%	12.8%	21.3%	6.4%	44.7%			
	Female	N	4	5	10	7	26			
		%	8.5%	10.6%	21.3%	14.9%	55.3%			
	Total	N	6	11	20	10	47			
		%	12.8%	23.4%	42.6%	21.3%	100%			
14. Whether the victim does/does not appear to be upset by the alleged rape committed against her	Male	N	5	4	4	8	21	7.977[a]	3	.046
		%	10.6%	8.5%	8.5%	17.0%	44.7%			
	Female	N	5	7	12	2	26			
		%	10.6%	14.9%	25.5%	4.3%	55.3%			
	Total	N	10	11	16	10	47			
		%	21.3%	23.4%	34.0%	21.3%	100%			
15. The physical unattractiveness of the victim	Male	N		1	2	18	21	1.822[a]	2	.402
		%		2.1%	4.3%	38.3%	44.7%			
	Female	N		2	6	18	26			
		%		4.3%	12.8%	38.3%	55.3%			
	Total	N		3	8	36	47			
		%		6.4%	17.0%	76.6%	100%			
16. The presence/absence of a big discrepancies between the age of	Male	N	1	2	10	8	21	3.684[a]	3	.298
		%	2.1%	4.3%	21.3%	17.0%	44.7%			
	Female	N	5	5	8	8	26			
		%	10.6%	10.6%	17.0%	17.0%	55.3%			
		N	6	7	18	16	47			

the victim and the offender	Total	%	12.8%	14.9%	38.3%	34.0%	100%			
17. Whether the victim's victim was walking alone late at night in an unsafe neighborhood	Male	N	3	4	7	7	21	.039[a]	3	.998
		%	6.4%	8.5%	14.9%	14.9%	44.7%			
	Female	N	4	5	8	9	26			
		%	8.5%	10.6%	17.0%	19.1%	55.3%			
	Total	N	7	9	15	16	47			
		%	14.9%	19.1%	31.9%	34.0%	100%			
18. Whether the victim was in a bar alone during the commission of the offence	Male	N	1	5	6	9	21	2.014[a]	3	.569
		%	2.1%	10.6%	12.8%	19.1%	44.7%			
	Female	N	0	5	11	10	26			
		%	0.0%	10.6%	23.4%	21.3%	55.3%			
	Total	N	1	10	17	19	47			
		%	2.1%	21.3%	36.2%	40.4%	100%			
19. Whether the victim was hitchhiking during the commission of the offence	Male	N	1	2	8	10	21	1.159[a]	3	.763
		%	2.1%	4.3%	17.0%	21.3%	44.7%			
	Female	N	2	5	9	10	26			
		%	4.3%	10.6%	19.1%	21.3%	55.3%			
	Total	N	3	7	17	20	47			
		%	6.4%	14.9%	36.2%	42.6%	100%			
20. Whether the victim agreed to accompany the offender to his residence where the offence was committed	Male	N	2	8	6	5	21	8.089[a]	3	.044
		%	4.3%	17.0%	12.8%	10.6%	44.7%			
	Female	N	6	9	11	0	26			
		%	12.8%	19.1%	23.4%	0.0%	55.3%			
	Total	N	8	17	17	5	47			
		%	17.0%	36.2%	36.2%	10.6%	100%			
21. Whether the victim invited the defendant to her residence where	Male	N	2	9	6	4	21	5.163[a]	3	.160
		%	4.3%	19.1%	12.8%	8.5%	44.7%			
	Female	N	7	8	10	1	26			
		%	14.9%	17.0%	21.3%	2.1%	55.3%			
		N	9	17	16	5	47			

offence was committed	Total	%	19.1%	36.2%	34.0%	10.6%	100%			
22. Whether someone other than the victim reported the incident to the police	Male	N	2	6	8	5	21	1.745[a]	3	.627
		%	4.3%	12.8%	17.0%	10.6%	44.7%			
	Female	N	4	4	13	5	26			
		%	8.5%	8.5%	27.7%	10.6%	55.3%			
	Total	N	6	10	21	10	47			
		%	12.8%	21.3%	44.7%	21.3%	100%			
23. The presence of inconsistencies in the victim's account	Male	N	7	7	6	1	21	1.661[a]	3	.646
		%	14.9%	14.9%	12.8%	2.1%	44.7%			
	Female	N	11	7	8	0	26			
		%	23.4%	14.9%	17.0%	0.0%	55.3%			
	Total	N	18	14	14	1	47			
		%	38.3%	29.8%	29.8%	2.1%	100%			
24. The victim's willingness to cooperate	Male	N	5	4	12	0	21	3.604[a]	3	.308
		%	10.6%	8.5%	25.5%	0.0%	44.7%			
	Female	N	7	8	9	2	26			
		%	14.9%	17.0%	19.1%	4.3%	55.3%			
	Total	N	12	12	21	2	47			
		%	25.5%	25.5%	44.7%	4.3%	100%			
25. The victim's willingness/refusal to submit to a medical examination	Male	N	4	5	8	4	21	3.068[a]	3	.381
		%	8.5%	10.6%	17.0%	8.5%	44.7%			
	Female	N	6	9	10	1	26			
		%	12.8%	19.1%	21.3%	2.1%	55.3%			
	Total	N	10	14	18	5	47			
		%	21.3%	29.8%	38.3%	10.6%	100%			
26. The victim's attempt to preserve the necessary physical evidence	Male	N	4	5	4	8	21	3.579[a]	3	.311
		%	8.5%	10.6%	8.5%	17.0%	44.7%			
	Female	N	5	5	11	5	26			
		%	10.6%	10.6%	23.4%	10.6%	55.3%			
	Total	N	9	10	15	13	47			
		%	19.1%	21.3%	31.9%	27.7%	100%			

27. The presence/absence of physical condition supporting the alleged commission of rape	Male	N	1	6	8	6	21	2.983[a]	3	.394
		%	2.1%	12.8%	17.0%	12.8%	44.7%			
	Female	N	4	5	13	4	26			
		%	8.5%	10.6%	27.7%	8.5%	55.3%			
	Total	N	5	11	21	10	47			
		%	10.6%	23.4%	44.7%	21.3%	100%			
28. The victim's previous history of reporting incidents to the police that did not progress	Male	N	2	4	9	6	21	.976[a]	3	.807
		%	4.3%	8.5%	19.1%	12.8%	44.7%			
	Female	N	1	5	10	10	26			
		%	2.1%	10.6%	21.3%	21.3%	55.3%			
	Total	N	3	9	19	16	47			
		%	6.4%	19.1%	40.4%	34.0%	100%			
29. The victim's prior history of having had trouble with the police	Male	N	0	1	4	16	21	.846[a]	3	.838
		%	0.0%	2.1%	8.5%	34.0%	44.7%			
	Female	N	1	1	5	19	26			
		%	2.1%	2.1%	10.6%	40.4%	55.3%			
	Total	N	1	2	9	35	47			
		%	2.1%	4.3%	19.1%	74.5%	100%			