

Gender, Development and Women's Rights Ethiopian Perspective

**Edited by
Meron Zeleke and Meskerem Geset**



Center for Human Rights

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Gender, Development and Women's Rights: Ethiopian Perspective

This edited volume discusses some of the prominent challenges in the advancement of women and girls in Ethiopia. Its central theme is the linkage between gender, development, and women's rights, particularly anchored on the overarching topics of equality and participation, economic empowerment, land governance, and freedom from discrimination and violence. This multidisciplinary book draws attention to the broader conception of development that places human rights and gender equality at the center. The edited volume makes crucial contribution to addressing current imbalances in policy and practice with respect to women's substantive participation and empowerment, freedom, and well-being. Featuring work by Ethiopian and international scholars and experts, this multidisciplinary collection will be of great interest to academics, practitioners, policy makers, public officials, and students working in the area of law, gender, human rights, and development.

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Preface

This peer-reviewed book *Gender, Development and Women's Rights: Ethiopian Perspective* is one of two publications the Center is releasing under the long standing tripartite academic partnership with the Institute of International Law and International Relations (University of Graz) and the Civil Service University (Ethiopia). The partnership, which lasted for more than three years, was an extension of an earlier comparable partnership that had stayed for same number of years, resulting in more than a dozen of academic exchanges, visiting professors for the Center's graduate programs, a number of policy dialogue forums, and a couple of PhD opportunities at the University of Graz. This longstanding relationship has been among the best academic partnerships the Center has had.

Although these publications were not part of the initial design, as there were other research and publications in the partnership, the Austrian Academic Service (OeAD), which sponsored the partnership on behalf of Austrian Agency for International Development Cooperation (ADA), gave permission to the Center, in the no-cost extended period, to use remaining funds for the publication of this edited volume and another publication on *Constitutionalism, Constitutional Adjudication and Human Rights in Ethiopia*. For graciously permitting the funds for these publications as well as for sponsoring the entire fruitful tripartite collaboration, the Center would like to express its gratitude to OeAD-ADA.

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Acronyms

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
AGOA	African Growth and Opportunity Act
APROP	Protocol to the ACHPR on the Rights of Persons with Disabilities
AU	African Union
CAT	Committee against Torture
CBHI	Community Based Health Insurance
CCI	Council of Constitutional Inquiry
CEDAW	Convention on the Elimination of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CESCR Committee	Committee on Economic, Social, and Cultural Rights
CMI	Chr. Mechelsen Institute
CRC Committee	Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSA	Central Statistical Agency
CSOs	Civil Society Organizations
DEVAW	Declaration on the Elimination of Violence against Women
DFID	Department for International Development
DRTD	Declaration on the Right to Development
DTM	Displacement Tracking Matrix
EBA	Everything But Arms
ECOSOC	Establishment of the Committee on the Status of Women under Economic and Social Council

ECtHR	European Court of Human Rights
EDHS	Ethiopian Demographic and Health Survey
EEOC	Equal Employment Opportunities Commission
ENDF	Ethiopian National Defense Force
EPRDF	Ethiopian People's Revolutionary Democratic Front
ESOG	Ethiopian Society of Gynecologists
ETB	Ethiopian Birr
ETIDI	Ethiopian Textile Development Institute
EWLA	Ethiopian Women Lawyers Association
EZEMA	Ye Ethiopia Zegoch le Mahiberawi Fetih (Ethiopian People for Social Justice)
FAO	Food and Agriculture Organization
FDRE	Federal Democratic Republic of Ethiopia
FGDs	Focus Group Discussions
FGM/C	Female Genital Mutilation/Cutting
FSC	Federal Supreme Court
GAGE	Gender and Adolescence: Global Evidence
GBV	Gender based Violence
GDP	Gross Domestic Product
GER	Gross Enrolment Rate
GoE	Government of Ethiopia
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
GSLCE	General School Leaving Certificate Examination
GSP+	General Systems of Preference
GTP	Growth and Transformation Plan
HDA	Health Development Army
HIP	Hawassa Industrial Park
HoF	House of Federation
HoPR	House of People's Representatives
HTPs	Harmful Traditional Practices
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights

ICERD	International Convention on Elimination of All forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IFIs	International Financial Institutions
ILO	International Labor Organization
ILPI	International Law and Policy Institute
IOM	International Organization for Migration
IPV	Intimate Partner Violence
LFP	Labor Force Participation
LJAAC	Legal and Justice Affairs Advisory Council
MDGs	Millennium Development Goals
MoE	Ministry of Education
MoH	Ministry of Health
MoWCY	Ministry of Women Children and Youth
NEBE	National Electoral Board of Ethiopia
NER	Net Enrolment Rate
NEWA	Network of Ethiopian Women Associations
NGO	Non-Governmental Organization
NHRAP	National human rights action plan
NHRIs	National Human Rights Institutions
PASDEP	Plan for Accelerated and Sustainable Development to End Poverty
PRSP	Poverty Reduction Strategy Paper PSNP Productive Safety Net
RTD	Right to Development
SDGs	Sustainable Development Goals
SNNPR	South Nations Nationalities and Peoples Republic
SOP	Standard Operating Procedure
TBAs	Traditional Birth Attendants
TIDI	Textile Industry Development Institute
TVET	Technical and Vocational Education and Training
UDHR	Universal Declaration of Human Rights
UEUS	Urban Employment Unemployment Survey UN United Nations

UNDP	United Nations Development Fund
UNDROP	United Nations Declaration on the Rights of Peasants
UNESCO	United Nations Economic and Social Council
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNOHCHR	United Nations Office of High Commissioner for Human Rights
UNSRVAW	United Nations Special Rapporteur on Violence against Women
UNWGDAW	United Nations Working Group on Discrimination against Women
US	United States of America
USD	US Dollar
VAW	Violence against Women
VAWE	Violence against Women in Elections
VCLT	Vienna Convention on the Law of Treaty
WDA	Women Developmental Army
WHO	World Health Organization

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Exploring Ethiopia's Commitment to the Advancement of Women and Girls: An Overview

Meskerem Geset and Meron Zeleke

1. A Glance at what lies beyond the Policy Framework

Entrenched patriarchal values have for long been taken as a defining feature of gender relations in most societies around the world indicating the pervasive influence of gender in both private as well as communal lives. Gender relations in Ethiopia are no exception and have been deeply embedded in the overarching cultural framework delineated by patriarchal ethos impacting women's everyday experience in the various domains of lives (Smith 2013). The socio-cultural landscape has for long adversely impacted the lives of Ethiopian women in history with deep rooted androcentric orientations that neglect women's perspectives. Women have often been portrayed as being utterly incompetent; a view that has been projected and reinforced through generations (Pankhurst 1992). The patriarchal ideology immensely determined the relationship of women and power resulting in gendered disparities of wider magnitude including public decision-making, basic access to education, property ownership and inheritance, work opportunities and strategic career paths, salaries and wages, sexual and bodily integrity of women, and so on (Berhane Selassie 1991). Furthermore, the stark gender disparity in Ethiopia also persists in other domains outside the formal system such as in customary institutions where women have insignificant role to play in governance pertaining to a range of social, economic, political, and personal matters. Their marginalization is often noted in traditional institutions of conflict resolution despite the due emphasis given in the United Nations (UN) and the African Union (AU) peace and security agendas that promote the active involvement of women in peace and security (Zeleke 2020).

Ethiopia has made numerous efforts to counter such a highly gendered cultural, social, and political landscape through the introduction and adoption of policies geared towards achieving gender equality and the promotion of women's rights. The domestic legal system presents a constitution with laudable features on women's and children's rights as well as broader human rights issues that have significant implications for women and girls in terms of ensuring equal enjoyment of the rights and freedoms enshrined therein. The Constitution of the Federal Democratic Republic of Ethiopia (FDRE) entrenched equality of women and men in all areas of life and introduced special measures in the domestic system that aim to accelerate the achievement of gender equality in the country.¹ A number of subsidiary laws provide frameworks for the implementation of constitutional principles on equal rights of women. Over the years, several legislative measures have been taken and progress has been recorded in achieving formal equality and legal protection of women and girls through relevant legal reforms such as that of the criminal law, family law, labor law, land law, pension law, and others.

Moreover, Ethiopia is a party to major international human rights treaties relevant to the promotion and protection of the rights of women and girls as part of the global as well as the African human rights systems. This can arguably be taken as demonstration of political will to uphold the standards on gender equality and women's rights pronounced in international human rights frameworks as a global commitment among modern-day States. Specific commitments enshrined under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), and the Beijing Declaration and Platform for Action are important milestones in the formal recognition and institutionalization of a range of entitlements for women and girls.

It is also important to note that Ethiopia has put in place a National Human Rights Action Plan (NHRAP)² which offers a comprehensive framework for the implementation of both national and international commitments on women's human rights and gender equality. Nonetheless, the country's performance is far from complacency as discriminatory laws and practices still persist and observable gaps between laws and practices remain dominant in some areas as conversed in this book.

1 See for example Articles 25, 34, 35 and 38 of FDRE Constitution.

2 The first NHRAP (NHRAP I) was launched in 2010 for five years followed by NAHRAP II that was in effect between 2016 and 2020. Currently, the government is preparing NHRAP III for the coming five years.

With the view to operationalize the commitments made under the national and international development frameworks, important measures have been introduced by the Government that specifically target gender equality and women's empowerment. An overview of the country's development and poverty reduction policy framework depicts that gender equality and women's empowerment is central to the national development agenda, being well positioned in key national development plans such as the Growth and Transformation Plan (GTP) and specific plans such as the Industrial Strategic Plan, Education Sector Development Plan, the Health Sector Development Plan, and others. Furthermore, as part of the global community, the country has shown pronounced commitment to implement the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs) towards improving the lives of women and girls. Another important milestone to note is the institutionalization of gender mainstreaming. With the adoption of a law on government institutions' obligation to give due attention to women's issues in all policies, development programs, and projects (Proclamation No. 1097/2018) and a law on integration of gender responsive budgeting (Proclamation No.970/2016); gender mainstreaming is no longer a matter of policy choice by public leaders but rather a legal duty. Measures towards effective implementation and monitoring, however, seem to be yet at embryonic stage.

The past decades have seen not only positive policy and institutional frameworks with respect to gender and development but also measurable outcomes on women's economic empowerment, educational advancement, elimination of violence and harmful practices, participation in politics and public leadership, and improved health outcomes (FDRE 2019). In the latest World Economic Forum of 2020, Ethiopia was hailed as one of the 'most improved country' in closing the gender gap in a range of areas such as Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment (World Economic Forum 2020, 24).

With the aim to reduce female poverty and improve women's economic status in the country, a great deal of the public financing under the GTP has focused on job creation, access to assets and resources, access to finance and market, and expanding women owned enterprises (UNDP 2018). Consequently millions of women joined the paid job market, acquired land and housing, and benefited from credit services to build small enterprises. Furthermore, the National Social Protection Policy, issued in 2014, introduced productive and social safety net programs both in the rural and urban contexts to support poor households and reduce vulnerability (Melaku 2010). It put in place a comprehensive package for the progressive realization of social and economic rights enshrined in the Constitution leading to coordinated actions that advanced community

asset building, productivity, food security, and employment opportunities, among others. Women's participation in the national labor market has grown progressively, currently at 77.8 percent, despite the undeniable gender gaps persisting across all sectors (FDRE 2019). The Industrial Strategic Plan (2013-2025) prioritizes in labor intensive, women-dominated sectors, which resulted in millions of women securing employment in regular and mega industrial projects.³ Equally, women's entrepreneurship flourished through opportunities created by government to access finances and the market (World Bank 2015). This is not of course without limits. Reports show that the number of women benefiting from microcredit services and large-scale loans still remains low and that women-owned firms tend to be smaller and concentrated in low productivity, low-technology, and low-growth sectors (FDRE 2019, 9-10).

Through the implementation of land certification programs as well as specific housing schemes, significant advances have been recorded in terms of women's access to land and housing (Gebretsion and Demissie 2016). The 2003 land certification allowing joint titling of land holdings between husband and wife has replaced the 1998 titling, which often recognized the male household head. This joint titling was acclaimed to have "recognized both the distinctive challenges faced by women and the positive development effects of empowering women" (Girma and Giovarelli 2013, 3). In some regions these include special provisions for polygamous marriages with certificates for some landholdings being issued in the wives names (their husbands having only secondary entitlements) (Smith 2017).⁴ The 2005 Rural Land Administration and Land Use Proclamation (No.456/2005) has been introduced aiming at increasing tenure security and strengthening women's rights to land. As a result of such progressive measures taken, millions of women have acquired land use right certificates either jointly or separately kicking the rate of women land holders to 40 percent. Moreover, thousands of women have also become house owners in both urban and rural areas of the country through the implementation of pro-poor, pro-women housing programs including a quota system in housing allocation (FDRE 2017; UN WOMEN 2015). This, without undervaluing the strides, has not necessarily ensured effective control or decision making power for majority women over their land and house as is inextricably linked to the broader gender roles and power relations within family and society (Chuta 2017).

3 It is estimated that, more than five million new jobs have been created under GTP II with the significant share of these job opportunities going to women (Barett and Baumann-Pauly 2019).

4 Despite lack of recognition by federal law, such marriages are given separate attention in some regions in order to protect the rights of women involved.

Girls and women's educational progress has also been of particular importance to Ethiopia. The Government has taken several measures towards ensuring the equal participation of women and girls in education and more specifically increasing girls' and women's access to, retention in, and completion of education, technical and vocational education and training (TVET), and skills development programs. Not only gender parity in primary school enrolment has increased (from 0.66 in 2000 to 0.91 in 2015) but most importantly girls' learning outcomes have also improved; girls' literacy rate has grown from 33 percent in 2005 to 72 percent in 2017 (World Bank 2020) and young women's attainment in TVET and higher education has increased progressively (MoE 2018). Moreover, specific affirmative programs such as partial scholarships or discounted education fees have been introduced to expand women and girls' access to educational opportunities (FDRE 2019). To deepen the gains, the new Ethiopian Education Development Roadmap (2018-2030) calls for measures for gender sensitive curriculum as well as family and community level interventions for gender sensitive awareness about girls' education. Gender gaps in the secondary and tertiary education, and gender based violence against girl students are yet critical areas of concern to be addressed (CEDAW Committee 2019).

Besides education, improving women's health outcomes has been among the priorities as demonstrated by government's investment on the health system with a focus on women specific health programs and services such as pregnancy and maternity related care, among others. Ethiopia achieved most of the MDG targets in maternal mortality (69 percent decrease) and in contraceptive access (42 percent increase) (FDRE 2019; Olson and Piller 2013). However, evidence shows that maternal mortality is far from the SDGs target and accelerated measures are desired in this respect (ECA and WHO 2019). The introduction of a Community Based Health Insurance (CBHI) aiming to ensure universal health coverage has featured an important step forward in the health sector (FDRE 2017; Mebratie 2015). The program in particular targets women whose access to quality health care may be constrained owing to economic, cultural, and physical conditions. CBHI reportedly has improved women's access to health services in the past few years. Nonetheless, gaps have been identified including in quality of care and differential treatments (Mebratie 2015). Infrastructural and financial constraints also continue to pose critical impediments to many women in the country in terms of access to health care (UN Women 2015).

In politics and public leadership, Ethiopia has seen notable progress in women's participation over the past two decades. The former ruling party, the Ethiopian

People's Democratic Party (EPRDF)⁵, has made tangible efforts to ensure the increasing participation of women in the political system mainly in elected legislative bodies at the federal and regional levels. The progressive increment in the representation of women in the Federal Parliament has been remarkable reaching 38 percent during the 2015 election which stands above the Sub-Saharan Africa average of 24 percent and the global average (25 percent) for 2019.⁶ The local parliaments in Regional States have also recorded comparable success several of which have above 30 percent women in Regional State Councils, as much higher as above 50 percent in one Regional State (FDRE 2019). Ethiopia now ranks among the top 30 in the world in terms of women's representation in national parliament, according to the International Parliamentary Union Ethiopia (IPU 2020). Progress in the representation of women in appointed positions in the executive, judiciary, and other public positions have also been noted over the years. Nonetheless, the Ethiopian political sphere still remains a male domain; still a long way to go to achieve gender balance in public and political leadership (Aalen, Kotsadam, and Villanger 2019). Even though the country is a federal state, no regional government has been headed by a woman. Amidst the dozens of political parties in the country, a handful of women are found in senior party leadership while only party one has recently appointed a woman chair.⁷ There are several barriers for women to enter the public domain and there is still no domestic legal framework for quota measures to ensure the representation of women in decision-making bodies.

Elimination of violence against women (VAW) is also central to the human rights and development agenda of the country. The Criminal Code of 2005 introduced important provisions for punishing different forms of violence against women and girls, an important milestone coupled with the pertinent international human rights commitments. Recent important policy frameworks such as GTP II (2015-2020), NHRAP II (2016-2020) and Women's Development and Change Strategy (2017) have duly positioned the elimination of VAW, including harmful traditional practices (HTPs), as a strategic priority, focusing on protection, prevention, and victim support. The highlights of progress in this area include the enhancement of comprehensive services for violence survivors; the establishment of special divisions in courts dealing with sexual

5 EPRDF has transformed into the current Prosperity Party, which took over as the ruling party since 2019. See details on <https://www.ezega.com/News/NewsDetails/7599/The-EPRDF-Of-ficially-Ends-The-Prosperity-artyBegins>.

6 See details in World Bank database on proportion of seats held by women in national parliaments. Available on: <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=BF&display=graph--%3E>.

7 The National Electoral Board's record shows more than seventy political parties are currently operating in the country.

crimes against women and children; the launch of a National Road-map on Child Marriage and Female Genital Mutilation (2020-2024); the introduction of legal protection against workplace harassment (Civil Servants Proclamation No. 1064/2017 and Labor Proclamation No. 1156/2019); and the coming into force of anti-trafficking law (Proclamation No 909/2015) with severe penalties as well as mechanisms such as victim's fund and a national referral system (FDRE 2019). Prevalence of VAW remains a major challenge in Ethiopia as gaps persist in adequate legal protection, effective implementation of laws, and community awareness, as will be demonstrated in the book.

Despite the aforementioned notable progresses in different fields, the last decade has been marked by a profound dissatisfaction over Ethiopia's human rights record, with strong critics towards the Government for entrenching a system of oppression (Techane 2016). Ethiopia has been on the international spotlight for gross violation of a range of human rights. Its autocratic political system characterized as "electoral authoritarian regime" was well known despite the self-identification of the ruling regime as democratic (Aalen and Tronvoll 2008). The 2005 highly contested national election narrowed down the political space resulting in a crackdown on opposition parties, dissenting voices, and civil society while ensuring a complete domination of the federal and regional parliaments by the ruling party (Aalen and Tronvoll 2008). The country has seen repressive laws and measures with respect to media freedom, civil society regulation, and counter-terrorism, among others (University of Wyoming 2018). Within the broader context of shrinking human rights and democratic space the country experienced, women's rights activism has diminished, women human rights defenders have been endangered, and civil society's contribution to women's rights and gender equality has been crippled (Dupuy, Ron and Prakash 2015). Individual advocates of women's rights became redesigned as political actors by the ruling party (Burgess 2013). The crackdown on Ethiopian Women Lawyers Association (EWLA), Ethiopia's most prominent women's rights advocacy group since 2001, is a case in point.

The growing frustration of the Ethiopian population over the repressive regime of the EPRDF in the face of the increasingly deteriorating social and economic conditions and unmet aspirations has led to wide and sustained popular protests in 2015. This was culminated with the 2018 'quiet revolution' ushering unprecedented decision of the ruling party to make fundamental changes in governance, which has since opened the door for a multifaceted reform (Temin and Badwaza 2019). The ongoing political transformation in the country has notably brought a new dynamics to the existing gendered sociopolitical landscape of the country with possibly far reaching implications towards the overall progress in the advancement of women in Ethiopia. This falls within the

multi-sectorial reform that involved rapid progress in political liberalization, the return of exiled opposition politicians and release of political prisoners, measures towards liberalizing the economy, comprehensive legal reform and the repeal of repressive laws,⁸ strengthening independent democratic and human rights institutions,⁹ and opening up participatory space and dialogues (Temin and Badwaza 2019).

The reform introduced a shift in gender representation in the newly formed cabinet in 2018. Half of the Ministers in the cabinet are women, making Ethiopia among the only three African States, with Rwanda and South Africa, to achieve gender parity in cabinet. The landmark increase in the number of women in higher government positions features one of the remarkable achievements in the past two years, including the appointment of a former female opposition party leader as head of the National Election Board and a prominent women's rights advocate and EWLA's former Executive Director as head of the Supreme Court, the first women to hold these long male reserved key positions in the country (Temin and Badwaza 2019). Women currently head a number of key national institutions that have for long been traditionally considered as exclusive male domains in the Ethiopian context.¹⁰ The appointment of the first female President of the nation was among these changes that received an international headline. Ethiopia is one of the few countries in the world where women hold the positions of President, Chief Justice, and Attorney General, and have equal proportion of representation in the cabinet. No much room for complacency yet; "there is a need to create a more welcoming environment for women in leadership positions within both the private and public spheres" (Tefera 2020, 126).

Despite progress in gender diversity at the top political and leadership positions, evidence shows that women in the country still face multifaceted barriers to achieve gender equality at many levels (CEDAW Committee 2019). It warrants further investigation to measure the contribution of the critical mass of women

8 A legislative reform process led by an advisory body composed of renowned legal professionals (the Legal and Justice Affairs Advisory Council) has been established under the auspices of the Federal Attorney General that spearheaded the revision of several laws including the Charities and Societies Proclamation, the Anti-Terrorism Proclamation, and the Media Law.

9 Measures to reform the National Electoral Board, the Ethiopian Human Rights Commission, and the Institution of the Ombudsman have been demonstrated in the amendment of relevant laws to ensure the independence and strong mandate of these institutions and the appointment of new members through an open process.

10 Some of the Ministries led by female Ministers include of Ministry of Peace, Ministry of Labour and Social Affairs, Ministry of Health, Ministry of Transportation, Minister of Science and Higher Education, and more.

top leaders in shaping a transformative gender agenda and mainstreaming gender in their respective institutions. It is imperative that the new reform agenda shall indulge strategic priorities to deepening gender justice outcomes in all spheres and strata. In this regard, the new administration assured to make gender equality part of the country's new political dispensation and promised to speed up its efforts to improve women's all-rounded participation and benefit.¹¹

2. Unpacking the Interplay between Gender, Development, and Women's Rights

The three underlying themes of this edited volume, *Gender, Development, and Women's Right*, are intertwined in many ways. Gender, development and women's right are complex variables that are highly embedded in and impacted by social, cultural, economic, and political contexts. This tripartite linkage is observable nowhere better than in the Agenda 2030 for sustainable development. The Agenda, grounded in human rights principles, presents a nuanced notion of development in its entirety, encompassing economic, social, cultural, and political development. Furthermore, it encompasses the advancement of individuals, communities, and nations, wherein gender equality and women's empowerment is positioned at the center (UNGA 2015).

The four overarching themes covered in this edited volume, economic empowerment, equality and participation, freedom from discrimination and violence, and land governance, are dominant gender issues that are also often analyzed from human rights and sustainable development perspectives. The Sustainable Development Goals (SDGs) framework represents comprehensive commitments related to these overarching themes with the view to contribute to the advancement of women and girls as part of the development process envisioned. It has integrated many targets specifically recognizing gender equality and the empowerment of all women and girls as both the objective, and part of the solution for sustainable development at all levels;¹² not just vital on its own merit but "key to achieving inclusive growth and resilient societies" (Hallward-Driemeier and Hasan 2012, 5). This resonates with the contemporary conception of development, which envisions its basic objective as improvement of lives or people's capabilities rather than only as advancement in wealth or

11 See Prime Minister Abiy Ahmed. *Inaugural Speech to Parliament*, April 2, 2018. Available on: [https://www.opride.com/2018/04/03/english-partial-transcript-of-ethiopian-prime-minister-abiy-ahmeds-inaugural address](https://www.opride.com/2018/04/03/english-partial-transcript-of-ethiopian-prime-minister-abiy-ahmeds-inaugural-address).

12 From a standalone goal on gender equality (Goal 5) to specific goals on poverty reduction, hunger, education, employment, health, water and sanitation, sustainable energy, inequalities and social inclusion, sustainable cities, climate change, strong institutions (Goals 1-8, 10,11,13 and 16), all have incorporated targets towards achieving gender equality and women's rights perspectives.

income (Nussbaum 2000; Sen 1999).¹³ Certainly human choices and precursors of capabilities go beyond income growth; development is hence expected to broaden these choices and capabilities. Furthermore, rightly emphasized by Kanade (2018), development is not just a result but a process, which must not be measured based only on the outcomes (what is achieved) but also on the process (how it is achieved).¹⁴ The Declaration on the Rights to Development (DRTD) describes the process as a “comprehensive economic, social, cultural, and political process” aiming at the “constant improvement of the well-being of the entire population and of all individuals” (DRTD 1986, 1). This is coherent with what development scholars call “participatory development”,¹⁵ embedded in “active, free and meaningful participation” of all the concerned and the “fair distribution of the benefits” (DRTD 1986).

Equality and participation are overarching principles across discourses on human rights, gender, and development. A chief human rights norm since the Universal Declaration of Human Rights (UDHR), equality is a foundation for the full realization of all civil, political, economic, social, and cultural rights. The concept of equality encompasses the existence of equal opportunities and equal distribution of outcomes in all spheres for all people without distinction of any kind for the full realization of their human rights (CEDAW Committee 2004), which is both a precondition for, and a byproduct of gender equality and development.¹⁶ If development is imagined in terms of improving people’s lives or capabilities, everyone must enjoy equal access to opportunities and the results thereof. Nonetheless, power and opportunities are unequally distributed within patriarchal social structures, and women have endured a long fought battle for equality in economic, political, social, and cultural fields. Gender equality constitutes a fundamental human rights and an essential component of sustainable development. It comprises acts of offering equal opportunities and believing in equal potential of men and women to contribute to the socio-political, economic, and cultural development of a nation and benefiting from the results (Pandey and Kumar 2019). This requires the equal recognition of women as agents of change and essential actors in the local, national, and international development and not merely as victims or vulnerable groups and beneficiaries or subjects of development.

13 The Human Development Report established “the objective of development is to create an enabling environment to enjoy long, healthy and creative lives” (UNDP 1999). See also World Bank indicators of development, <http://datatopics.worldbank.org/world-development-indicators>.

14 See also UNESCO (1999) paragraph. 36-46.

15 See for example Mohan (2014) and Sengupta (2000).

16 See Duflo (2012) for an in-depth discussion of the mutually reinforcing relationship between development and gender equality.

Equal participation in all processes without any distinction based on sex, *inter alia*, is hence a long held human rights standard and a concrete expression of equality and gender justice. However, public life and governance remains a highly gendered sphere that has marginalized women for long, owing to the detrimental role of deeply entrenched and reinforced gender stereotypes about women's public life and role within community (UNWGDAW 2019 and 2013). Governance comprises the "formal and informal institutions that shape and are shaped by power inequalities" that have bearings on development outcomes (Milazzo and Goldstein 2017, 3). The global sustainable development agenda recognizes the importance of ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, cultural, social, and public life to enable the achievement of goals targeting at sustainable well-being of individuals and the entire population (UNGA 2015).¹⁷ If we are to view development as a 'comprehensive process', women should have equal opportunity to access formal as well as informal spaces to fully participate in 'economic, social, cultural, and political processes'.

One of the overarching themes of the edited volume, economic empowerment depicts the nexus between gender, development and women's rights. Economic empowerment while largely a gendered process is both a development outcome and a human rights objective. There is significant evidence on the importance of gender equality for economic development and the vice versa; "increased productivity through improved economic opportunities and access to productive resources for women" is highly instrumental (Milazzo and Goldstein 2017, 6). But most importantly, economic growth without ensuring women's well-being and meaningful participation and fulfilling their basic human rights falls short of development in light of the contemporary notion. All over the world, feminization of poverty continues to be a challenge as "gender inequality makes and keeps women poor, depriving them of basic rights and opportunities for well-being" (UN Women n.d, 5). Women must have equal access to decent work, productive resources and financial services, as well as an equal voice in economic decisions if their full empowerment and overall societal development is to be realized. Gender stereotypes and social norms constraining economic opportunities often push women into economic 'unfreedom', channeling them into precarious jobs by prescribing what 'women's work' is, and depriving them of access to and control over resources by defining their roles within family and community (UNWGDAW 2019; Milazzo and Goldstein 2017).

17 This, for example, includes those goals on enhancing agricultural productivity in small holder farms, water and sanitation and resource management, increasing productivity, reducing inequalities, promoting peaceful and inclusive societies, creating decent work, and ensuring health lives.

On the other hand, linked to urbanization, industrialization, and globalization, peoples' mobility for better jobs has increased. Global trends on labor as well as migration are increasingly showing the close tripartite link between feminization of poverty, feminization of factory jobs, and feminization of labor migration. Labor migration is a phenomenon highly impacted by existing gendered socio-cultural norms, socialization patterns, and role characteristics that define who migrates, why and how, in the context of patriarchal society (Zeleke 2018), culminating in a complex and multifaceted human rights implications at different stages of the labor and migration chain (Grant 2005). Reinforcing gendered economic and social power relations, different factors marginalize women from enjoying the ultimate development outcomes and the entitlement of all human beings, which is freedom and well-being.

Access to land and productive sources is a key determinant to gender equality and economic development. Beyond securing economic and social empowerment as vital asset, human rights bodies have established that land is essential to the enjoyment of fundamental rights guaranteed under human rights law - the realization of the right to food, housing, protection of the family, environment and sustainable development highly depends on access to use, ownership and control over land and its resources (Techane 2017, 337). In countries like Ethiopia where most of the livelihood is based on subsistence agriculture, women's access to land is intrinsic to food security and hence to their survival and well-being. There is strong evidence that women's right to land contributes to securing their "welfare, productivity, equality, and empowerment" (Cooper 2012, 642) and broader societal benefits in preserving livelihoods and reducing poverty (World Bank 2011 and 2001). Poverty reduction is a central theme in development discourses and the SDGs framework in which secure access to land and productive resources constitute among the crucial components (see Goal 1). Further, as affirmed by Gomez and Tran (2012, 2), the rights attached to land go hand in hand with several sustainable human development goals, including women's social and economic empowerment, poverty eradication, food security, and sustainable agriculture, rural growth, and others.

Nonetheless, access to land is gendered. Regardless of women's key role as majority of agricultural workers, they are the first victims of discrimination when it comes to ownership and control over land and natural resources (CEDAW Committee 2016). Women's land tenure endures backlash from State agents as well as non-State actors such as family or community members and companies. Discriminatory legislation or policy framework including plurality of legal systems, weak application of laws or weak governance due to institutional, socio-cultural or other factors, land commercialization trends, harmful and discriminatory traditional practices (e.g. against widows), gender-based violence

(property grabbing as a form of gendered violence) erode women's land rights and the individual and collective development gains thereof (Techane 2017, 339). Therefore, effective land governance is instrumental to ensure gender justice and inclusive development. In view of this, the SDGs framework (Goal 5 and 16) paralleled with human rights frameworks calls for States' measures to undertake reforms, put in place sound policies, enforce legislations as well as strong institutions to ensure women's equal rights to access, ownership, and control over land and other resources.

Discrimination and violence against women, the other overarching theme of this edited volume, violates fundamental human rights and counters development by diminishing women's basic capabilities. Sandra Bartky's work 'Foucault, Femininity, and the Modernization of Patriarchal Power' elucidates how gendered norms are highly intertwined with violence, which constitutes a form of gender-based discrimination¹⁸: "An aesthetic of femininity that mandates fragility and a lack of muscular strength produces females bodies that can offer little resistance to physical abuse, and the physical abuse of women by men" (Bartky 2003, 35). The connection between gender-based violence and development is often portrayed in three dominant discourses in development literature (Sen, 1998; Sweetman 1998). The first one, impediment to efficiency or effectiveness approach, argues that VAW limits the effectiveness or efficiency of development projects. The second line of thought is the obstacle or barrier to participation approach addressing how gender-based violence hinders equitable participation while the third approach construes violence as a contradiction or an offence to human development, and that all forms of economic development must address the theme of gender-based violence. Despite the departures in the major points emphasized by the aforementioned lines of arguments, they all pinpoint to the general underlying thesis that the personal is political, economic, and social.

VAW poses a significant threat to development by curtailing social and economic as well as human advancement. It also constitutes a blatant transgression of basic principles enshrined in the UDHR and fundamental human rights treaties. This elucidates that elimination of gender-based discrimination and violence is a central agenda in the SDGs¹⁹ as well as human rights frameworks as is

18 See CEDAW Committee General Recommendation 19 (1992).

19 See SDGs Goals 5.1 End all forms of discrimination against all women and girls everywhere; 5.2 Eliminate all forms of violence against all women and girls in the public and private spheres; 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation. Also ending discrimination against women and girls (5.1, 10.3, and 16.b) is positioned as a precondition to attain other SDGs; eliminating all forms of violence against women and girls is recognized as vital to the realization of gender equality, as well as eradicating poverty, and advancing peace and security and human rights (5.2, 16.1, 16.2). See

equally dominant in gender discourses. It can never be overemphasized that the eradication of poverty/deprivation in all its forms, the ultimate development goal, can only be achieved with the elimination of gender-based discrimination in all spheres and the full realization of women's rights. There is also a bi-directional relationship between economic development and VAW. Women's economic situation has critical importance to their exposure to violence; poverty leaves women more vulnerable to violence while economic development that targets women supports violence prevention (Coker 2003). The other dominant themes at the intersection of gender, development and women's rights discussed in this book (equality, participation, empowerment and access to resources) are all closely linked to gender-based violence and discrimination in a mutually reinforcing manner.

It is also important to note that development itself is conceptualized as a human right. According to Article 1 of the UN Declaration on the Right to Development (DRTD)²⁰, "the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized". While the African Charter on Human and People's Rights recognizes the collective right of peoples to development (African Charter 1981, Article 22), its Protocol on the Rights of Women (Maputo Protocol), under Article 19, specifically enshrines women's rights to development, bringing the triple agenda on gender equality, development and women's right together. Article 43 of the FDRE Constitution also recognizes the collective right to development of the peoples of Ethiopia. More specifically, the Constitution seems to follow the capabilities approach as it clearly established that the "aim of development activities shall be to enhance the capacity of citizens for development and meet their basic needs" (Article 43(4)). It adopted a citizen centered/ human centered development objectives as well as processes that focus on participation resonating with the present-day understanding of development. The Constitution under Article 43(2) enshrines that citizens have the right to participate in national development issues and in particular Article 35(6) guarantees women's right to be consulted with respect to development policies and projects. The new Draft Convention on the Right to Development recognizes the right to development as an integral part of human rights which cannot be realized without observing other human rights (Article

2017 HLPF Thematic review of SDG 5: Achieve gender equality and empower all women and girls, Available on: <https://sustainabledevelopment.un.org/content/documents/14383SDG5format-revOD.pdf>.

20 It is to be noted that a legally binding international instrument on the right to development has been drafted in 2019.

6) and prescribes ending all forms of discrimination against all women and girls everywhere as a prerequisite for their full and equal enjoyment of the right to development (Article 16).

The discourse around gender, development, and women's right in contemporary Ethiopia is highly impacted by calls for change. Positive advances or shifting trends of gender relations, development outcomes, and women's rights is a unifying point among the contributions to this edited volume. Indeed, significant shift in the economic and political sphere towards more inclusion of women in many sectors and towards gender responsiveness in legal and policy frameworks have been recorded in the country as demonstrated in the different chapters. Nonetheless, the question remains whether the shifting trends and changes introduced have brought meaningful and lasting empowerment in the lives of Ethiopian women and girls. While acknowledging progresses made, reservations are often echoed that most of the changes may not have always resulted in significant improvements in the lives of women and girls in terms of social transformation (Semela, Bekele, and Abraham 2019). Often, the government is criticized for following an instrumentalist approach that focuses on politics of number than quality. The quality of the jobs, education, resources, as well as the substantive participation/representation women and girls attained, among others, has been questioned. Meanwhile, government is called upon to consider a robust gender analysis into the political reform process that is currently re- shaping the country (Tefera 2020).

3. Synopsis of the Contributions and Overarching Themes

In this edited volume, the nexus between gender, development, and women's right in contemporary Ethiopia are addressed drawing on four overarching themes; equality and participation, economic empowerment, land governance, and freedom from discrimination and violence. The twelve chapters of the book critically examine a range of topics, categorized under the following four thematic sections.

3.1. Equality and Participation

The discourse on equality and development is often dominated by hegemonic perceptions of what constitutes gender equality, participation, and sustainable development. In as much as customary norms and informal/traditional structures reinforce and perpetuate gender inequality, they may offer a room for localizing human rights by building on local translations of equality, dignity, and justice and expand or safeguard spheres of autonomy for women to exercise control and decision-making. Some traditions and informal institutions in Ethiopia may offer local gender norms or values and mechanisms conferring specific rights and negotiation power that may contribute to strengthening human rights

norms or modern notions of gender equality and women's participation. On the other hand, political equality manifested in equal opportunities to participate in decision-making in formal institutions, through the acquisition and exercise of political power, is one of the tangible expressions of gender equality and equal participation. Despite the constitutional recognition of equal right to political participation of all women and men, which is also crucial for partaking in development processes, electoral politics in Ethiopia is highly dominated by men. The two chapters in this section explore women's equality and participation in Ethiopia through a gender lens, one in a traditional context and the other in the formal political sphere.

Marit Tolo Østebø's chapter entitled "*Exploring Gender Equality from Below*" critically reflects on the notion of gender equality with a focus on local translation and understanding of gender quality. Drawing on a long-term ethnographic fieldwork the author conducted among the rural Arsi Oromo, this chapter offers an alternative perspective on what gender equality and gender justice could look like. The author explores and situates local translations of gender equality in relation to *wayyyuu*, a tacit moral model of respect and sacred foundation for institutions and norms that have secured rural Arsi Oromo women certain rights and power. Inspired by theories of respect and equality in feminist and anthropological discussions, the author argues that even though there are certain limitations inherent in *wayyyuu*, the sacred respect it entails calls for an exploration of respect not as an alternative to equality, but as a complementary notion, which to a greater extent could be included in discussions of what could constitute gender equality in Ethiopia today. Even though a structure entirely liberated from gendered oppression and injustice is not imagined in the chapter, the author alludes, through giving voice to and exploring subaltern visions and translations of gender justice, we may be better equipped to generate locally situated and sustainable gender policies and frameworks.

Devoting particular attention to equality and participation in the political sphere in a 'transitional' democracy, the contribution by Meskerem Geset and Tayechalem G. Moges "*Counting Absence in Political Equality: A Preliminary Gender Analysis of the Electoral Law Reform in Ethiopia*" sets to examine the gender responsiveness of the 2019 electoral reform Ethiopia undertook. The chapter, using primary and secondary evidence gathered from interviews and documents, offers an insight into women's representation in the new electoral legal framework of Ethiopia through a lens of feminist jurisprudence. By examining the law reform process from agenda setting by the drafting group to the adoption of the new electoral law by the Ethiopian Parliament, the chapter places a conspicuous absence of women's representation and their interests as central to the 'gains' made by patriarchal institutions in marginalizing Ethiopian

women from electoral offices. The value of a gender responsive electoral system cannot be overemphasized, given the significant role elections have in facilitating access to political office and women's participation in public decision-making with far reaching outcomes on gender equality, women's social and economic empowerment, and women's contribution to collective development.

3.2. Economic Empowerment

The concept of women's economic empowerment within development often frames the economic dimensions of gender equality in economic terms with insignificant attention to the spillover effects in other domains of women's lives. This trend resonates with the underlying presumption of women's empowerment in developmental State whereby enhancing women's participation in the formal economy is believed to be an important step to women's empowerment. Going beyond this dominant discourse, the chapters included under this section accentuate that any efforts to support women's economic empowerment need to be comprehensive in addressing underlying social norms, economic policies, legislations, and structural barriers limiting women's and girls' choices and opportunities by and large. The analysis illuminates notable limitations of women's economic empowerment approach in reference to mainstreaming gender equality in development.

The contributions by Elshady Kifle, Linn Ternsjö, and Meron Zeleke partly address the general question on how much the turn towards the developmental State model has impacted female employment in the formal economy in Ethiopia, their socio-economic empowerment, and their roles in the labour market; the analysis points to a paradox, i.e., a context whereby women are encouraged and expected to contribute to and being part of the economic growth and the formal economy, and a context where their socio-economic empowerment tends to remain the same leaving them with very limited options for household and public influence, which is a crucial aspect of gender equality. This resonates with the experiences of some South Eastern Asian countries where women engaged in industrial jobs tend to predominantly occupy low status, being paid low wage, and finding themselves working in labor intensive positions (Sundaram 2009).

Elshaday Kifle's chapter "*Employment as a Pathway to Women's Empowerment: Experiences of Women Textile Factory Workers in Ethiopia*" delves into the complex interrelationship between employment and empowerment. Interested in measuring empowerment at the household level, the chapter elucidates various dimensions of empowerment such as control over income and contribution to family support, freedom of movement, decision-making, and self-esteem. Through a qualitative research conducted at Ayka Textile and Garment Industries, Addis Ababa, the lived experiences of women and girls in factory work are presented. The findings of the research show positive impacts

of women's employment at the personal (individual) and familial (relational) levels such as self-esteem, mobility, control over income, decision-making, and skill development. On the other hand, the findings indicate that factory work also comes with countering repercussions as low pay, limited education opportunities, and difficult working conditions leading to health problems.

Shifting the focus to another factory, Linn Ternsjö's chapter entitled "*A Continuum of Choices and Constraints: Women's Decision-Making, Sense of Agency and Well-being in the Ethiopian Garment Industry*" looks into the implications of industrial job for women and girls. Drawing on a qualitative case study undertaken in a garment factory in Bole Lemi Industrial Park, Addis Ababa, she explores the impact of paid work on women's empowerment, as perceived by the women themselves. Exploring the question why and how women pursue paid work in the industry, it further examines the ways in which paid work might affect women's intra-household decision-making, agency, and well-being. The findings reveal that experiences of working in the garment industry differ depending on women's social position or background. Paid work in the export-oriented garment industry can induce a sense of freedom and independence for some women while for others, married or mothers, it may be associated with hardship, constrained autonomy, and time shortage affecting quality of life.

In her contribution entitled "*The Nexus between Industrial Jobs and Gendered Migration: The Ethiopian Experience*", Meron Zeleke investigates the connection between industrial labor and gendered migration patterns. The chapter examines the extent to which attempts geared towards women's economic empowerment are contributing to the phenomenon of gendered migration. Drawing on empirical research conducted in Addis Ababa and Hawassa, the chapter presents in what ways the existing discourse of female empowerment affects the trends of gendered labor migration in Ethiopia. Furthermore, it discusses how the phenomenon of female labor migration is highly influenced by overarching gender norms and socio-cultural landscape in Ethiopia while the national development and economic policies have also, in one or the other way, enhanced gendered internal labor migration patterns in Ethiopia. It concludes that migration to the cities and working at the textile and garment factories, influenced by the interplay of several factors, is an "ephemeral experience" for many female migrant workers than bringing socio-economic empowerment of women and reformulating gender roles. This is mainly due to the low income earned that can hardly bring meaningful change to the lives of migrant workers. The empirical studies by Elshaday, Linn, and Meron emphasize the fact that inclusion in the formal labor market alone cannot in any way guarantee women's broader empowerment, calling hence for a comprehensive approach.

Building on the call for a comprehensive approach to empowerment, the contribution by Elizabeth Presler-Marshall, Nicola Jones, Guday Emirie, and Workneh Yadete points that it should start from an early age in women's lives, giving due consideration to the underlying structural barriers. Framed around capabilities approach focusing on girls' gender- and adolescent-specific dimensions, the chapter entitled "*Promoting Ethiopian Women's Economic Rights by addressing the Antecedents of Gender Inequality in Adolescence*" brings empirically grounded analysis on the various ways precursors of gender inequality become entrenched during adolescence (10-19 years) and leave young women at a disadvantaged position in terms of economic participation. It presents findings from rural and urban areas in three regional states of Ethiopia (Afar, Amhara, and Oromia) showing a common pattern whereby the education policy in Ethiopia lacks focus in child-friendly pedagogies emphasizing on critical thinking and other important soft skills. The authors argue that a more holistic approach to supporting girls' broader capabilities is vital for unleashing their potential, an argument related to the broader conceptualization of empowerment this publication is calling for. Such broader capabilities will help challenging the deeply entrenched gender inequalities and further empower girls with life skills to enhance their life chances, and accelerating the realization of human rights as well as the sustainable development agenda of leaving no one behind. This emphasizes the life cycle approach (focusing on girls and women of all ages) to gender equality, development, and human rights this book calls for by recognizing the continuum of both violation as well as empowerment throughout women's and girls' lives.

3.3. Land Governance

The strong link between women's access to land, food security, economic empowerment, and poverty reduction has been established in the SDGs and the human rights framework. Effective land governance is key to ensure women's access to use, ownership of and control over land. However, some of the significant issues with respect to effective land governance remain less addressed in Ethiopia in an integrated manner. Land rights in Ethiopia seem to be vaguely conceptualized but also further complicated by policy choice and weak legal framework. Moreover, women's land claims including those favorably settled by judicial bodies may face several impediments to proper enforcement. The chapters in this section show the legislative/policy gaps as well as institutional hurdles in land governance are interfering with the enforcement of women's land rights and impeding their legal and institutional access to justice/remedies.

The contribution "*Women and Land Tenure Security in Ethiopia: Preliminary Reflections towards a Policy Reform Deliberation*" by Daniel Behailu

Gebreamanuel highlights gaps in land governance that impeded women's secure access to land use, ownership, and control. The preliminary analysis contends that a lack of robust and secured land tenure in the nation makes women vulnerable to double-edged discrimination; women not only suffer from the general policy, which weakens land tenures and land rights in the country, but also from deeply entrenched customs and patriarchal orders of the society. Furthermore, it alludes the laws of the nation relevant to furthering women's land rights remain devoid of proper enforcement. Drawing on women's experiences from rural communities of Ethiopia, the author points to the prevalent challenges for relevant considerations towards improving women's land tenure security. The plight of rural women who lose their access to land due to ambiguities in the law, weaker implementation of laws, and discriminatory customs is illuminated as a critical land governance matter in the country. The chapter emphasizes on the need for a comprehensive gender sensitive land policy and legal reform to combat the existing challenges; and further calls for extensive land rights advocacy programs in order to ensure women's land rights are widely promoted and respected.

Constrained capacity of the judicial system and relevant institutions can jeopardize implementation of positive laws and execution of favorable judgments to enforce rights and remedies. In their chapter entitled "*Taking Enforcement of Women's Land Claims in Ethiopia Seriously*", Habtamu Sitotaw Semahagn and Muradu Abdo Srur examine the execution of judicial awards pertaining to women's land claims. Focusing on disputes in relation to women's landholdings, the chapter particularly looks at the challenges in enforcement of decisions rendered by the two highest federal adjudication bodies, the House of Federation and the Federal Supreme Court. Notwithstanding the relevant decisions of these bodies in elaborating women's land rights enshrined in the existing legal framework, the assessment alludes that the decisions are either ill-enforced or not enforced at all due to a host of factors such as entrenched customary practices, women's economic status, knowledge and capacity gaps, and weak institutional mechanisms. Strategies ranging from establishing special tribunals and harmonization of legal systems to engaging relevant actors, empowering women in governance, and bridging capacity and awareness gaps are proposed to address the problem. Such measures to ensure effective enforcement of women's land claims have a far-reaching implication to the realization of women's human rights and the achievement of gender equality and a range of development goals.

3.4. *Freedom from Discrimination and Violence*

A life liberated from any form of discrimination and violence anchored in the notion of development as freedom, well-being, and equal dignity, the four contributions included in this book draw on boarder issues of discrimination and VAW in Ethiopia in line with the relevant AU and UN standards. Through a thorough analysis of different legislative, policy and institutional frameworks, and practical enforcement, they simultaneously engage with strengths and gaps in the normative and institutional paradigms. The chapters in this section demonstrate that gendered stereotypes and norms manifested in discriminatory laws or discriminatory application of laws as well as weak legal and institutional frameworks often deprive women and girls the ideals of a life liberated from discrimination and violence, which constrain their basic capabilities and empowerment. The analysis accentuates the significance of measures towards ensuring comprehensive access to justice both at legislative and institutional level to eliminate all forms of discrimination and violence against women and girls and to ultimately ensure equality, well-being, and development at personal and collective level.

The chapter by Enguday Meskele Ashine entitled “*Renewed Commitment towards Women's Rights in Ethiopia: Promises and Limits of Ratification of the Maputo Protocol*” assesses the implications of the long awaited recent ratification by the Ethiopian government of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The author notes the advanced provisions of the Protocol will contribute to bring changes in key areas, such as protection from violence, harmful and discriminatory practices against women, reproductive health, and sustainable development, where there is gap in the domestic legal system. Acknowledging the ratification as an important milestone in the legal recognition, promotion, and protection of women's right in Ethiopia, the chapter draws attention to the reservations and declarations entered by the Government with respect to specific provisions dealing with the protection of women in polygamous marriage, minimum age of marriage, and gender based violence in the private sphere. This is believed to limit the Protocol's application in important realms relating to family, community, and tradition wherein particular challenges are deeply ingrained. Based on her analysis, the author concludes that the particular reservations and declarations will weaken the normative force of the Maputo Protocol and calls upon the government to consider removing such self-refuting confines.

Anchinesh Shiferw Mulu's chapter “*Ethiopia's Compliance with International Norms on Ending Violence against Women*” is another contribution that interrogates the protection of women's and girls' rights in Ethiopia in light of international standards. With a focus on VAW, it sheds lights on steps taken

by the Ethiopian Government, notable progresses achieved, and gaps observed in the normative and institutional frameworks to address the incidence. The chapter in particular point to some forms of VAW that are not covered under the criminal law, the capacity gap to effectively implement existing protections, and the gap in provision of comprehensive services to survivors of VAW. It illuminates Ethiopia's level of compliance, which does not match with all its obligations under international law. The chapter recommends relevant measures towards full compliance including bridging the legislative lacuna by adopting a comprehensive law on VAW, building the capacity of justice professionals to improve effective implementation of laws, and introducing appropriate non-legal measures at community level to improve awareness and change attitudes towards VAW.

Fana Hagos Berhane takes the discussion deeper into one form of violence: rape. The chapter entitled "*Reforming the Legal Definition of Rape in Ethiopia: Towards the Elimination of the Resistance Requirement*" explores the interplay between statutory constructions of rape in the Ethiopian criminal law and judicial interpretation of the 'violence' element and the requirement of forcible compulsion or a victim's resistance of an attack. Presenting the contemporary understanding of rape, the author illuminates the void in the definition of the act under the Ethiopian criminal law that reinforces flawed, often stereotypic, judicial practice and impedes access to justice for victims. The analysis brings empirical examination of selected Ethiopian court cases from Tigray Regional State that reveal how victim's resistance requirement makes it difficult for complainants to secure justice for the alleged human rights violation they suffered from acts of rapists. She concludes by calling for the elimination of the resistance-based outdated conception of rape and shifting towards a consent-based approach in order to ensure broader protection of Ethiopian women and girls from sexual violence.

The discussion then moves to sexual harassment. Welcoming the new International Labor Organization (ILO) Convention on the Elimination of Violence and Harassment in the World of Work (Convention 90, 2019) and the promulgation of the Ethiopian revised labor law (Proclamation No 1156/2019), in their contribution entitled "*Towards Sexual Harassment Free Workplace: Testing the Limits of Ethiopia's Labor Law*", Dureti Abate Fulas and Asrat Adugna Jimma assess the legal protection of women from sexual harassment and violence at workplace. The chapter's mainly focus is devoted to the new Ethiopian labor law, which for the first time introduced prohibition of workplace sexual harassment. Drawing insights from jurisprudence of human rights bodies and the American jurisprudence where groundbreaking conceptualization of the subject matter has been ingrained, the authors analyze the new legal

framework's contribution towards sexual harassment free workplace in the Ethiopian context. Their examination reveals that the new labor law falls short of ensuring harassment free workspace due to its limited scope of application and hence far from a zero tolerance position. Duly emphasizing on the important role of the law as a vital tool, the chapter calls upon the legislature to strike a fairer balance in defining sexual harassment, in determining the worker and the workspace, and in stipulating redress procedures.

Overall, the edited volume covers a range of human rights issues including equality, freedom from violence, access to education, land rights, rights at work, and political participation. Specific laws such as the criminal law, electoral law, labor law, and land law are also the subject of a closer analysis under specific chapters. The book also draws a lot from international human rights law. Several chapters intertwined the analysis therein in international human rights standards drawing attention to the State's international obligations with respect to the advancement of women and girls.

The book is anchored in multidisciplinary research. It represents diversity from legal to social science methods and extensive use of qualitative as well as quantitative data. By presenting several empirically grounded chapters, the book is hoped to contribute to evidence based human rights discourse on crucial issues affecting the lives of women and girls in contemporary Ethiopia. Beyond the overall national picture, the book pays attention to and brings in regional variations. Empirical evidence is drawn particularly from Regional States of Afar (chapter six), Amhara (chapter six), Oromia (chapters one, six, and seven), SNNPR (chapters five and seven), and Tigray (chapter eleven) as well as the federal cities of Addis Ababa and Dire Dawa (chapters two, three, four, five, eight and ten). The data also embodies experiences from both rural and urban areas. This adds to the richness of the empirical data, presenting experiences of different groups of women and girls in Ethiopia and reflecting on perspectives from the different Regional States. Cognizant to social positionality in shaping experiences, the book also brings in the voices of women and girls from various sections of society such as students, industrial workers, migrants, farmers, politicians, advocates, government officers and violence survivors with different age groups and social positions including adolescents, married women, unmarried women, mothers, and rural women.

4. Bringing it all together

Some of the contributions drawing on empirical research bring to light the impact of heterogeneous socio-cultural norms on shaping the gender dynamics, women's empowerment, and basic rights of women and young girls (see chapters three, four, five, six, and seven). The editors of the volume by

no means claim making a comprehensive assessment of topics pertaining to gender, development, and women's rights in Ethiopia but believe that this book offers a timely reflection as Ethiopia is going through a major reform process. Based on the analysis of data presented in this book, we argue that discussions of gender and development need to go beyond an integrationist approach that merely focuses on ensuring the mere participation or representation of women in a given development paradigm. Such an approach often has a tendency of weakening the transformative elements of a given gender policy while failing to conceptualize gender parity not just as an end by itself, but also as a means for achieving economic, social, and political progress. We call for an integrated model of representation that links the formal, descriptive, substantive, and symbolic representation as stated in the seminal work of Schwindt-Bayer and Mishler (2005).

Encouraging reform in the country's development and women's inclusion in development efforts in particular has been noted while questions around quality gap remain dominant. As the discussions in chapters three, four, and five prove, the progress made in increasing the participation of women and girls in paid work cannot be taken at face value. While the manufacturing sector has ushered in an unprecedented number of women into the labor market, we see that it did not always shift women's status. Instead, it has rather induced feminization of labor exploitation and labor migration (See chapter five). Empowerment of women is a process that encompasses various mutually reinforcing components ranging from economic empowerment to political participation, implying that the socio-economic development of women is deeply intertwined with multifaceted dynamics. This calls for a holistic view of political, economic, and social empowerment that entails a structural shift in the area of gender equality, development, and women's rights in Ethiopia.

Meanwhile, it is important to recognize that women and girls are a heterogeneous group with different life experiences and challenges based on their age, socio-economic status, ethnic origin, disability or health condition, and others. Gender discrimination can intersect with other types of discrimination based on different factors, multiplying the burden of inequalities and barriers women face. As outlined in chapter six, we argue that antecedents shape development and empowerment early in adolescence, which reinforces our call for a life cycle approach to women's advancement, gender equality, and human rights. Women's empowerment should be processual and framed in a longitudinal approach. Change or progress has to be evaluated in terms of its impact and representativeness of women and girls from different walks of lives. Evaluations thus should remain aware that women's experiences and needs are not homogenous. Accordingly, any policy consideration needs to shy away

from the conception of women and girls as a monolithic group, often subsumed as 'vulnerable group' or 'women and children'. It also needs to integrate an intersectional approach considering the different age group, social class, health or physical status women and girls represent.

The domestic system offers a steady legal and policy framework in different areas that can bring positive impact in the lives of women and girls. However, the discussions presented in this edited volume (specifically chapters seven, eight, ten and eleven) point the existing significant gap in implementation at various levels from judiciary to other concerned institutions. Furthermore, there are areas where the normative framework in the country falls short of effective coverage of gender equality and women's rights. As persuasively demonstrated in chapters two, nine to twelve, there are gaps in the existing legal frameworks in light of international human rights laws and the adequate protection women and girls need for the realization of their rights. For example, with respect to gender-based violence, gaps in comprehensive legal protection and effective implementation of the laws including access to justice and services, remains a major concern (see chapters nine through twelve). In the same vein, the electoral law falls short of meaningful gender responsive measures to ensure women's representation in elected political positions (see chapter two). There is a need to align domestic laws with international and constitutional standards as well as good practices in other countries. Moreover, guaranteeing a solid legal and policy framework is only a start in the advancement of women's rights and gender equality. Formal equality is undeniably a fundamental aspect but would be rendered meaningless without effective implementation. This calls for the need to strengthen institutional capacity through targeted investment towards building effective institutions that can translate laws and policies into substantive equality. Positive developments with respect to land law but the gap in practice is a case in point (see chapters seven and eight). All these are key to individual and collective development and the development of the nation.

In conclusion, one needs to ask where does all this leaves us in the context of the current political and economic reform. Without a doubt Ethiopia's invigorated democratic process has opened up new possibilities for gender equality with potential to counter the persistent gender inequality that undermined individual as well as national development. Notwithstanding, the distinct contribution of the latest reform on the state of gender relations in Ethiopia, the editors of the volume wish to point to the lacunae in terms of addressing issues of gender equality in a systematic manner. This emphasizes the need for the integration of gendered perspectives in the legal, security, economic, and political reform processes. The reform underway needs to be based on a sustained commitment beyond fragmented efforts that may seemingly focus on women's fair

representation in senior leadership positions. No doubt that parity in number is an unequivocally a necessary condition and a much desired effect but far from sufficient. We further argue that challenging a deep-seated male domination should go deeper and address structural factors accounting for existing forms of systemic inequality in addition to increasing the “sheer numbers” of women in public offices and in the public sphere. The reform agenda is yet to be seen in terms of what meaningful and lasting shift it proposes to bring towards the advancement of women and girls in the context of the nation’s ever accelerating development efforts on one hand and growing threats of instability, political tension, and economic uncertainty on the other hand.

“The [Ethiopian] woman [shall] be fully empowered in all spheres, with equal social, political and economic rights...”

Agenda 2063, African Union (2015)

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Part One

Equality and Participation



Exploring Gender Equality From Below

Marit Tolo Østebo

1. Introduction

In the past few decades, gender equality has emerged as a taken for granted goal within the global development and human rights discourse. Actors who promote gender equality has steadily increased, and gender advocates are no longer limited to feminist-inspired activists and networks. National governments, donors, civil society organizations, and transnational institutions have all developed gender policies showing their commitment to gender equality and gender justice. But, what is the meaning of gender equality? And how do rural women and men in Ethiopia understand and translate this concept? In this chapter, I draw upon long-term anthropological fieldwork among the rural Arsi Oromo to explore these questions offering alternative perspectives on what gender equality and gender justice could look like. I begin with an episode that occurred in Raytu *woreda* (district) of Bale Zone, Oromia National Regional State, in 2005, at a time when I was combining ethnographic field research for my MPhil degree in International Public Health with part-time work as an advisor for a local non-governmental-organization (NGO).

I was on a visit to Aisha, one of the most respected Traditional Birth Attendants (TBAs) in Raytu *woreda*. She had invited me to see the equipment she had received from the government after having attended a training for TBAs. Shortly after I arrived at her house, Aisha brought an aluminum box out in her backyard and we explored and discussed how to use the various delivery instruments that the government had given her. We were soon joined by her daughters-in-law, her grandchildren, and some of the neighboring women, who were all curious to see what we were doing. Eager to capture the moment, I started taking pictures

with my digital camera. As it usually would do at that time, (this was long before mobile phones with cameras became a widespread commodity), it generated much interest and attention. There was a lot of laughing, attracting more children and women. They were all thrilled to see their own as well as their friends' faces on the small screen on the back of my camera.

All of a sudden, everyone began running towards the gate of the compound and out on the street. Startled by the sudden disappearance of my audience, it took me a few seconds to follow them. As I walked out the gate and saw Aisha's back and her unmistakable waddling gait disappearing around the corner, I found myself wondering: What could be so important that even an old woman would run? Following the sound of yelling and shouting, I soon reached the marketplace to discover that it was a fistfight between two young men that had attracted the villagers' attention. A horde of shouting women, furiously waving their arms in the air, surrounded the two men, urging them to stop. Three women even entered the fight, and physically separated them. Pushed by the women, the two men reluctantly left the marketplace, each in different directions. The anger still lingered between them, as they verbally insulted each other. But the fight was over.

As I observed this incident from a distance, and later walked home, I did not pay much attention to, nor did I reflect on what I had witnessed. But, as I sat down to write up my field-notes that evening, the incident emerged as a key ethnographic moment, one of those eye-opening, thrilling moments, when you discover that you may have stumbled upon something of significant importance. It was the women's ability to rapidly stop the fight that struck me the most. This is something I would never have encountered in my homeland, Norway, a country labeled a "haven for gender equality" by the UN, but where no women, particularly not elderly women, would feel obliged to, or have the courage to interfere in a fight between two young men, and certainly not have the respect and power to stop it.

The spontaneous, collective mobilization of these women and their power, not only to interfere, but also to swiftly end a fight between two men, made me rethink many of the assumptions and preconceptions I uncritically had adopted as a young development practitioner, and inspired me to explore further the role and rights of Arsi Oromo women. As I continued my research, employing participant observation, informal conversations, and in-depth semi structured interviews, I learned that Arsi Oromo women, in these rural areas, were entitled to certain rights based on their role and status as mothers and their perceived difference with men. These findings left me pondering about the very meaning of gender equality. What does gender equality mean? Is gender equality a universal,

unconditionally fixed norm? Is it independent of historical and cultural context? And what is the relationship between equality and respect?

These are some of the questions I explore in this chapter. In addition to examining local conceptions of gender equality, I detail Arsi Oromo gendered norms and practices. I pay particular attention to the interpretation of gender equality voiced by the so-called grassroots, and situate their translations in relation to *wayyuu*, a tacit moral model of respect and sacredness foundational for institutions and norms that have protected Arsi Oromo women and given them certain rights and powers. In my analysis, I draw on feminist and anthropological scholarship that has challenged dominant liberal concepts such as freedom, autonomy, and equality. More specifically, I argue that although there are certain limitations inherent in *wayyuu*, the sacred respect it entails and the implications this has had for women's status and power among the Arsi Oromo, calls for an exploration of respect, not necessarily as an alternative to equality, but as a complementary notion, which to a greater extent could be included in discussions of gender equality and gender justice.

2. Methodological Approach

Long-term anthropological research conducted in three *woredas* of Bale and West-Arsi Zone, Oromia National Regional State, forms the empirical and analytical basis for this chapter. The majority of the inhabitants in these *woredas* belong to the Arsi sub-group of the Oromo. Over a period of four years (2005-2007 and 2010-2012), my research in these districts focused largely on local gendered norms and practices. When I began my research in 2005, I was not new to these areas. From 1999-2003 I had worked as a development practitioner for a local NGO. During this period, I lived in the eastern parts of Bale where, in addition to spending much time learning the local language, *Afaan Oromoo*, I was, together with my husband, responsible for conducting preliminary assessments for new development interventions in the area. After a period of a year and a half in Norway, I returned to Bale in 2005 to work as an advisor for a newly established development project and do fieldwork for my MPhil degree in International Public Health. My initial research plan, which focused on local culture as a resource for HIV/AIDS prevention, was not at all informed by gender and feminist theory, nor geared towards the kind of questions I engage in this chapter. But unexpected and eye-opening incidents, such as the one I have detailed above, spurred my curiosity, radically altering my research interests.

In addition to paying particular attention to *wayyuu*, a moral concept of respect and sacredness, which is central to a traditional Arsi-Oromo worldview, my MPhil and subsequent PhD research examined gender equality discourses that circulated in rural districts of Bale and West-Arsi Zones at the time of my

research. I was particularly interested in how local men and women made sense of and conceptualized ‘gender equality’, a notion that was widely promoted by the Ethiopian government and the NGO community. During these years, I spent much of my time the way anthropologists typically do, talking and ‘hanging out’¹ with people in these communities. Being a mother and a married woman myself, I developed particularly close relationship with women. I participated in their daily activities, and attended events such as funerals and weddings. While the majority of them had limited or no formal education, many had participated in gender-focused trainings and workshops. Some of them had special responsibilities in their communities, either as heads of the *kebele* (village, also termed Peasant Association) women’s affairs office or as voluntary community health workers. Others had no formal responsibilities, but were members of a cooperative. I also spent time with their fathers, husbands, brothers, and children. In my capacity as an advisor for a community development project, I also interacted with, and had in-depth discussions with representatives of NGOs, civil servants, and government officials and experts at the regional and zonal levels. Along with my ability to communicate in *Afaan Oromoo*, this long-term engagement provided unique insights into the gendered norms and institutions that formed the basis for the social relationships and interactions in these rural communities.

3. Local Translations of Gender Equality

The framing of gender equality in Ethiopia’s national policies is strongly influenced by the relatively broad and liberal conceptualization of gender equality² that dominate global gender policies (Østebo and Haukanes 2016; Blystad, Haukanes, and Zenebe 2014). Reflecting a commitment to gender mainstreaming, the discourse among higher level government officials and gender experts is characterized by a focus on women’s economic, political, and social rights, equal access to education, women’s rights to land, violence against women, and especially harmful traditional practices such as Female Genital Mutilation/Cutting (FGM/C). The conceptualizations of gender equality that circulated among civil servants and representatives from the rural districts where I conducted my research, were less influenced by the global gender mainstreaming discourse. While my interlocutors in these rural localities

1 This is a well-established term in anthropology, used to describe the process of participant observation researchers engage in.

2 A liberal conceptualization of gender equality is characterized by a strong focus on individual rights, autonomy, and establishment of formal equality through the legal system. Within gender and feminist theory, this conceptualization of gender equality is associated with liberal feminism, which is often criticized for overlooking social and political structures, and for being underpinned by male norms and assumptions.

occasionally talked about women's rights to education and women's legal rights, their responses to questions about gender equality tended to focus on labor. These discourses roughly fell into two strands. The first, predominantly voiced by civil servants and gender experts in the *woreda* women's affairs offices, emphasized the importance of changing the gendered division of labor. The second, mainly articulated by local men and women, but also visible in the government's development and economic growth rhetoric, accentuated the importance of collaborative work and mutual agreement through conjugal dialogue. With their focus on labor, these two translations appear similar. Yet, they represent two fundamentally different models of gender equality; the former reflects a vision of equality as sameness, while the latter reveals a vision of gender complementarity.

The vision of equality as sameness, voiced primarily by gender officials at district level, was expressed in slogans such as "let women work the work of men and men work the work of women!" or "let women plow and men bake *injera*!" This particular gender equality model, which, as one of my interlocutors concluded, assumes that "to be equal means to do the same work" is widely known in Ethiopia, and can partly be traced back to the Marxist inspired gender ideologies introduced by the Derg regime. Women's emancipation was part of the revolutionary ideas, and the Derg frequently expressed its commitment to address and change the gendered division of labor and "women's double oppression, based on class and gender" (H. Mariam 1994, WS60). Donham (1999, 43-44) also describes how a district official in south Ethiopia in 1975 addressed gender relations in his speech to the people: "There are other things that we must do if Ethiopia is to mature. In the past, women have had a disproportionate share of the work. Now men must help them."

During the past two decades, the equality as sameness model has been reinforced and further popularized through Awra Amba, a small community, which is located in the Amhara National Regional State. Known as the place where "women plough and men bake *injera*" and promoted by the government, NGOs and feminist activists as "the place where gender equality is 'real' Awra Amba has attracted much attention both within and outside of Ethiopia. In fact, the village has emerged as a national and global model of and for gender equality (Østebø 2021).³

3 In the forthcoming book, *Village Gone Viral. Understanding the Spread of Policy Models in a Digital Age*, I use the Awra Amba case to critically discuss the widespread use of models and modeling practices in our contemporary world. The book also contains an in-depth account of Awra Amba, including its history and the impact of the model status on the community and its members.

The “let women plough and men make *injera*” version of gender equality was therefore well known in the peripheral districts where I conducted my research, and sometimes people would express their support for this particular gender equality model. When the local officials in one of the *kebeles* I worked heard I was interested in learning what people thought about gender equality, they called a meeting with a group of local farmers. Not only did these farmers assert their support for the government’s effort to promote gender equality, they also claimed that a wider societal change had taken place. Stating that they now had left what they termed “*aadaa kan duubatii haafaa*” (literally, culture that remains in the past), they claimed that gender equality, as promoted by the *woreda*’s women’s affairs machinery, had been accepted by the community with subsequent changes in the division of labor: “Now our women work in the field and we work at home. We implement what the government is teaching us,” an elderly man said, concluding the discussion. Representatives from the women’s affairs offices and some of the local people I had developed a closer and trusting relationship with, however, questioned these claims. They argued that these were empty words; ideas that people would pretend to support during official meetings, but which were not actually reflected in people’s daily lives.

The majority of the women and men I talked with did not emphasize the importance of changing the gendered division of labor when they articulated their understanding of gender equality. They equated gender equality with collaborative work. As Fatuma, a long-time friend and mother of five once told me, “gender equality means to work in unity (*tokkochomaan hojjechuu*), to work together. It means to work and to make each other work.” Relating their understanding of gender equality to teachings conducted by the government, many of my interlocutors expressed these ideas through statements such as: “The government tells us: Work equally (*qixumma hojjedhaa*)! Work together (*walliin hojjedhaa*)!”. This emphasis on gender equality as working together, which was typically skewed towards agricultural production, was often accompanied by references to the importance of mutual respect and love, conjugal dialogue and discussion (*waliin mariachuu*), and peaceful cooperation and agreement (*nagayaan walii galuu*). When talking about gender equality and working together, many of my interlocutors moreover made explicit reference to poverty reduction. This was, among others, reflected in statements such as “gender equality will save us from hunger” and “we should work together in order to escape poverty (*hiyyuuma baasuuf*)”. Few mentioned, however, the issue of male participation in the domestic sphere, but when they were explicitly asked, the majority confirmed that they were familiar with this ideal. While some women stated that they would have appreciated help from their husbands in their daily activities, the majority of the women I interacted with, clearly stated that they did not want their husbands’ interference in the domestic domain. As

one woman said: “I would not like my husband to come and tell me what to do and what not to do. This is my work”.

How can we best make sense of these partly contradictory discourses? In the following, I limit my analysis and discussion to the emphasis that local women and men give to gender equality as collaborative work. More specifically, I focus on the silencing and rejection of men’s involvement in the domestic domain and on the simultaneous strong focus on the importance of women’s involvement in agriculture. I situate this particular translation in relation to two contextual factors; gendered norms and practices among the Arsi-Oromo, and contemporary political discourses in Ethiopia.

4. Arsi-Oromo Gendered Norms and Practices

It is challenging to give a description of gender roles and norms among the rural agro-pastoralist Arsi Oromo. As Anna Meigs have argued, there is “probably (...) no such thing as a single gender ideology in any society. (...) Each society undoubtedly has many ways of thinking – complex, subtle, and even contradictory ideological options” (Meigs 1990, 15). Nevertheless, I here provide an overview of some of the norms, structures, and institutions that characterize gender relations in the areas where I conducted my research.

Gender roles among the rural Arsi Oromo are clearly differentiated and complementary. The society is divided into two separate but interdependent economic domains. As a general rule, men have the main responsibility for resources and tasks that require leaving the homestead, such as herding, tilling the fields, and plowing. Meanwhile, women are responsible for tasks carried out close to the homestead. A number of norms regulate the roles and behavior of men and women among the Arsi. These moral codes are embedded in *wayyuu*, a major construct in a traditional Arsi-Oromo worldview and a concept that my English speaking Oromo informants often would translate as respect. To simply explain *wayyuu* with reference to the English word “respect” is, however, highly problematic. We cannot assume that the meanings of words are universal, or that our interpretation and translation of concepts are independent of cultural, political, and religious contexts. This is why an in-depth exploration of local terms is important.

In response to my inquiries about the meaning of *wayyuu*, my interlocutors would typically give long recitations:

God (*Waaqa*) is *wayyuu*.

The earth/land (*laafa*) is *wayyuu*.

The father (*Abba*) is *wayyuu*.

A male in-law (*sodda*) is *wayyuu*.

The mother (*haati deete*) is *wayyuu*.

A female in-law (*soddaatii*) is *wayyuu*.

The married woman (*hadha mana*) is *wayyuu*.

The unmarried girl (the virgin) (*durbi*) is *wayyuu*.

The pregnant woman (*dubartii ulfaa*) is *wayyuu*.

Sinqee (a stick a woman will receive on her wedding day) is *wayyuu*.

Qanaffa (a necklace worn by post-partum women) is *wayyuu*.

Hanfala (a belt made of leather that a married woman wears around her waist) is *wayyuu*.

Qirii (traditional women's clothing) is *wayyuu*.

Gaadii (a piece of leather that is used to tie the back legs of cows while milking) is *wayyuu*.

Gooltii (the bedroom / the bed of husband and wife and a protected area for women) is *wayyuu*.

Gebo, *tunxoo*, and *cico* (different types of milk containers) are *wayyuu*.

Butter (*dhadha*) is *wayyuu*.

There is a clear religious and spiritual dimension inherent in *wayyuu*. *Wayyuu* is, for example, used as a title for persons who are experts in the belief systems (the *qalluu*) and of the sacred or spiritual law (*seera wayyuu*), distinguished from secular law (*seera amba*) (Hebo 2006). So, how can this concept best be explained?

Wayyuu is first and foremost about behaving in an appropriate manner towards material objects and persons that are considered to have special characteristics, or towards persons who have special roles. When something or someone has status as *wayyuu*, there are particular laws and moral principles that should be followed. These principles regulate speech and behavior; what can be said and what cannot be said, what can be touched, and what cannot be touched. When, how, and where these moral codes are applied is context dependent, determined by the relationship between the respecer and the object of respect, and by factors such as gender, age, marital status, and kinship relations. Two separate, yet interlinked incidents, can serve to illustrate some of the practical and social implications that follows from *wayyuu*.

One day, Fatuma, a highly respected, elderly woman in Raytu, came to visit me. At the time she arrived, my husband and his research assistant, a young man aged twenty-three, were having coffee in our living room. We joined them, and soon our discussions revolved around various cultural and religious issues. At one point during our conversation, we started discussing sexuality, and in particular female circumcision. In the lowlands of Bale, two forms of female circumcision are practiced: infibulation and excision. The atmosphere was very open and joking and at one point I asked Fatuma how a man can penetrate a woman who has been infibulated. She answered: “The man should be strong and powerful; he might be physically strong like Mr. X (rumors in the village had that he was impotent), but that is not what I mean. He needs a strong weapon, like Mr. Y (referring to a virile younger man)”. As she uttered this last sentence, she laughingly pointed with her right thumb to the area below her waist.

Some weeks later, during Ramadan, I happened to pass by Fatuma’s house at the time of the breaking of the fast. She invited me to join her for dinner. I sat down in front of her house, relishing the atmosphere and the joy of sharing a festive meal. People were passing by, some stopped to chat, and others, among them a very talkative middle-aged man joined our party. Realizing that he was very knowledgeable, both when it came to local history and various cultural practices and institutions, I asked him whether a practice known as *garayyuu*, a culturally condoned extramarital relationship that has ceased to exist among most Oromo groups, still existed in the area. Fatuma’s reaction to the question came immediately and took me by surprise. Screaming so loudly that all the neighbors could hear her, and covering her ears with her hands, she jumped to her feet and left.

Having limited knowledge of *wayyyuu* at the time this happened, I struggled to understand Fatuma’s reaction. Compared to the frank discussions we earlier had about female circumcision and sexuality, I thought the question I had raised was rather innocent. As I came to learn that *wayyyuu* functions, among other things, as an expression of avoidance relationships, denoting between whom there should be extreme respect and limited social contact (Heald 1990, Radcliffe-Brown 1940), I realized that Fatuma’s reaction was caused by the fact that the middle-aged man to whom I had raised the question was her in-law. They were, in other words, *wayyyuu* to each other. By raising an issue of sexual character, I violated *wayyyuu*: the norms that regulate a respectful and distanced relationship between in-laws.

Of particular relevance for the argument I make in this chapter is the fact that *wayyyuu* is strongly associated with women and with material objects that are central to dairy production and reproduction. This includes, as shown in the list above, items such as milk pots and other household utensils, but also the

fertility belt worn by married women (*hanfala laafa*). These items are symbolic representations of institutions that are closely linked to women's role as mothers; to institutions that not only have secured women certain rights, but that also have given them political, economic, and religious power. In the following, I detail the meanings of three of the above listed items: *sinqee*, a stick which a woman receives on her wedding day; *qanaffa*, an adornment used by post-partum women; and finally, *dhadha* (butter).

4.1. *Sinqee* – A Woman's Weapon

The *sinqee* stick, sometimes also called a woman's weapon, is a ritual item, which functions as a symbol of the respect and the rights a married woman is entitled to. It is present in every Arsi-Oromo wedding and plays an important role distinguishing 'legitimate' marriages from 'illegitimate' ones. The most common form of marriage, known as *kadhacha*, entails formal negotiations between two clans. A woman who is married based on *kadhacha* will receive a *sinqee* stick from her mother-in-law on her wedding day. If a couple enter into marriage without the approval of their respective families, such as in the case of abduction or elopement, there will be no *sinqee*. The absence of *sinqee* in these types of marriages is, by many Arsi Oromo, perceived to negatively affect a woman's respect, her power vis-à-vis her in-laws, and her status in the society. This is because the respect and rights women are entitled to, are conditioned on and linked to the social contract that is established between two clans in a more formalized marriage.

The term *sinqee* does not only refer to a material object. It is used interchangeably with the term *ateete* to describe women-only collective mobilizations. During these ritualized events, which often include marching, women will pray to God (*Waaqa*) or to the female deity, *Ateete*. They may also curse people, calling for divine punishment of those who have behaved in a disrespectful manner. These politico-religious rituals may be conducted as a response to natural disasters, wars, infertility, or when someone has violated a woman's *wayyuu*. Once the women mobilize for an *Ateete* ritual and start marching, this sets in motion a number of gendered taboos. All men are required to keep a solid distance from the women during this time; if a man accidentally comes near to or crosses the road while the women are marching, this requires specific rituals. While the women accuse and insult the man, they will take him to the river, where they will force him to undress and wade into the water naked. Other men will not dare to come near at this point, but will stand at a distance, throwing grass in the direction of the women and say: "Please, save him". For peace to be restored, the accused man has to give an ox to the women. The ox will be consumed by the whole community at the house of the man, and he will be forgiven. My interlocutors stressed the gravity of these kind of violations, and talked about

Ateete mobilizations as serious “beyond- human” matters. Hence, the rituals and the women have to be respected.

There are a variety of scenarios that qualify as a violation of women’s *wayyuu*. Yet, a commonality between the cases I came across in my fieldwork, is their association with sexuality and reproduction. A march that occurred in 2004, in a district in West-Arsi zone can serve as an example. The woman whose case fueled the mobilization, was one of the leaders in the local protestant church, and this particular *ateete* mobilization therefore attracted additional attention. A friend of mine, who also served as a one of my key informants, explained that these kind of rituals had been banned by the church, and that members were not expected to participate. When the woman called for an *Ateete* mobilization, it therefore stirred much debate.

I met the woman two years after the incident took place. According to her, one of her neighbors had insulted her by saying “All women are like old empty milk containers (*koonka*), but above all you are the worst.” She considered this to be too serious to neglect, and called for a meeting with the women elders. After discussing and reviewing the case, they all agreed that the case required an *Ateete* mobilization. All the women in the neighborhood gathered with *sinqee* sticks in their hands, and marched to the man’s house, confronting him with what he had done. He refused to admit any wrongdoings, and also argued that he did not believe in *Ateete* anymore, as he had become a Muslim. For more than two months, the women gathered outside his house, singing songs dominated by sexual insults, including phrases saying that they hoped he would be infected with HIV. When the man refused to apologize, the women cursed him. “After a few weeks, we saw him coming to the clinic with a serious skin infection on his face,” the woman whose case had triggered the *Ateete* mobilization concluded. According to her, the man also lost five of his cattle when they were hit by lightning: “All this happened in accordance with our curse.”

4.2. *Qanaffa* – Respect for Procreation and Motherhood

Disrespect for women’s procreative role and motherhood is considered as a severe violation of *wayyuu* among the Arsi Oromo. While motherhood is not explicitly mentioned in the case above, the use of the term *konkaa*, an empty, damaged milk container, implies a clear insult to motherhood and to a woman’s reproductive capacity. Among a number of Oromo groups, if not all, the milk pot serves as a metaphor for a woman’s sexual and reproductive body; it is also a key symbol for motherhood and for a woman’s capacity to properly care for and raise her children (Dahl 1990). It is important to emphasize here that we are talking about motherhood in a broad sense. First, respect for women as mothers is not only limited to the well-being of the individual mother, but grounded in a belief in women’s role in sustaining procreation and fertility more generally.

Threats to a woman's fertility may thus negatively affect the fertility of the land and livestock of the larger social group to which she belongs. Secondly, the reverence for motherhood is not limited to biological motherhood. Adoption (*guddifachaa*) is a well-established institution among the Arsi Oromo, allowing women who cannot bear children and women who have passed their child-bearing age to request a child for adoption from close relatives. Once adopted, the child is fully recognized as the child of the adoptive parents (Deressa 2002). Motherhood and kinship relations among the Arsi Oromo are, in other words, recognized as socially constructed, and not necessarily contingent on biology.

The strong association between *wayyuu* and motherhood is also evident in the respect one is expected to show pregnant and lactating women. When a rural Arsi Oromo woman has given birth, she will go through a cleansing and blessing ceremony. During this ritual, female village elders will, among some Arsi Oromo groups⁴, tie a *qanaffa* to the mother's forehead. The *qanaffa*, which often is worn as a necklace, consists of a small piece of wood that together with beads and strings of metal, are tied on a leather string. The *qanaffa* shows others that she recently has given birth and hence she is to be respected. There are, in other words, special rules and regulations guiding how one should behave towards a pregnant or lactating woman. While the Arsi Oromo more or less expect wife-beating to be a normal part of a marital relationship (although within very specific limits, to hit certain parts of a woman's body, such as her head, is not accepted, for example), beating is highly forbidden when women are pregnant or lactating. Furthermore, no one should speak harshly to a woman who wears a *qanaffa*, and if she has special requests, these should be accommodated. A young mother, whom I met in 2015, explained the practical implications of wearing a *qanaffa* in the following way: "When I wear the *qanaffa*, I will be treated in a special way. For example, when I go to fetch water or go to the mill, people will see that I have recently given birth, and I will, even if I come last, be treated first."

The respect and rights that rural Arsi Oromo women are entitled to through *wayyuu*, do not only have a protective function, though. There are also examples of women who have used the respect inherent in *wayyuu* as a basis for what one may consider to be illegitimate claims. One of my friends, once told me a story about her brother-in-law. As a merchant, he had a permanent spot at the local market place. One day, when he arrived at the market, he discovered that a woman had occupied his place. When he claimed his place, and asked her to move, she refused. At one point, after he repeatedly had asked her to move, he pushed her lightly. As a reaction, she screamed out loudly and the women

4. The use of the *qanaffa* is not common in Bale these days, but was something I frequently observed in rural district of West-Arsi.

around her started shouting: “He touched a pregnant woman!” The man ended up having to pay her a goat, and he lost his spot permanently. According to my friend, her brother-in-law was convinced that the woman had staged the incident; that she had done it on purpose, because she wanted his spot.

4.3. Butter – What Makes Everything Wayyuu

As I already have mentioned, butter is also considered to be *wayyuu*. Production and management of butter is, as Gudrun Dahl concludes in her study of the Borana Oromo, “a completely exclusive female task, shameful for men to carry out and fully under the authority of women” (Dahl 1990, 133). Women’s control over butter and other milk-products along with the taboos that regulate men’s involvement in the domestic domain are mechanisms that to some extent have secured women economic autonomy and indirect political influence. Women store the butter in their houses, together with other valuable items, in a special place or container called the *minjalee*. When I asked Aisha, a female elder (*hadha gosa*), why it is so important that men do not touch the butter she highlighted the *minjalee* as a place that allowed her to be independent and have control:

The things kept in the *minjalee* are things that I keep for myself. These are items that allow me to take care of myself. In times of trouble, I can use [things] from the *minjalee*. If there is a funeral, a wedding or if a guest is visiting, I can take things from there. Then I can use the butter. I will also put money aside in the *minjalee*. Let alone touching these things, such as the butter, it is a great shame for a man to come close to the fireplace.

In addition to being a central and highly valued ingredient in the Arsi-Oromo diet, of cosmetic value, and a source of income for many women, butter is a product that is “strongly symbolically loaded” (Dahl 1990, 132). It plays a fundamental role during weddings, childbirth, and religious rituals (Qashu 2010; Dahl 1990). It is, as one of my key interlocutors explained, “what makes everything *wayyuu*”, which explains why it serves as a substance of anointment in various blessing ceremonies. Butter is also a decisive part of the customary law system as it is used, together with honey, to settle disputes. In some of the areas in which I conducted research, it was impossible to close a case (*seera fixuu*) or perform the reconciliation ceremony without the presence of women and the use of butter. One could argue that this is a formality that does not provide women with much power; that the butter and women’s blessing serve as a form of “rubber stamping”, as a way to seal a deal made by men. While this is a relevant argument, it is also somehow problematic since it assumes that negotiations and decisions that matter only take place in public spaces. While women often are invisible during negotiations that take place in the public, largely male dominated domain, this does not necessarily mean they are powerless or have no say when it comes to decision making. The role women

play behind the scenes and the power they assert as mothers, sisters, and wives, need to be further explored.

5. Negotiating and Translating Gender Equality

The gendered norms and values I have described above are crucial in explaining why my grassroots interlocutors articulated and negotiated their understanding of gender equality in the way they did. If they were to accept the gender equality model which is promoted by the women's affairs machinery and which is closely associated with Awra Amba – the “let women plow and men bake injera” version – it could have far-reaching consequences. An acceptance of such a model would imply much more than a redistribution of labor. It would mean a radical alteration of norms, institutions, and practices that have provided women with very specific rights and significant, albeit limited, power. Hence, the rejection of a radical change in the gendered division of labor in this context – and particular of men's involvement in the domestic sphere – needs to be understood in light of the reproductive and domestic sphere as a site for women's control, agency, and respect. It therefore seems reasonable to conclude that the silencing and rejection of men's involvement in this sphere is as an example of how women “are safeguarding already existing spheres of autonomy” (Kandiyoti 1988).

The local articulation of gender equality as working together through discussion and peaceful cooperation resonates much more powerfully with Oromo cultural norms and values. To live together in peace (*nagaa*) is a fundamental value in rural Oromo societies. The Oromo term for peace is not limited to absence of war but entails “the ideal condition of harmony between individuals and groups” (Bassi 2005, 245), based on cooperation and mutual respect. A number of my interlocutors not only stressed the importance of mutual agreement (*walii galuu*) and cooperation as a general cultural norm, but also talked about this as a norm for spousal relationships. As Hawwa, a young mother of three, once explained to me:

When a husband and a wife live in agreement, when they speak one language, is the ideal according to our culture. My husband will, for example, come to me and say ‘There is a guest coming. What do you think we should do?’ or ‘What do you think if we sell this goat?’ He will ask me what I think and we will discuss. If I say no, he will not sell it. We can live in peace when we speak one language in all issues.

Actual relationships are obviously much more complex than this suggests. Nevertheless, in the Arsi-Oromo culture, there are several norms, institutions, and mechanisms that seek to maintain peaceful relationships. For example, if a woman accuses her husband of misusing their property or failing to provide for his family, this raises concerns within his clan, which will become involved in

negotiations between the two. If the clan fails to resolve the conflict, the wife may choose to turn to her family and clan for support, something one should avoid, as it potentially escalates the conflict to an inter-clan level. In previous times, harsh measures were taken to deal with marital conflicts. If a husband failed to improve his behavior after receiving advice from elders, a group of eight men, called the *saddetta* would punish him. They would tie his arms and his legs to the ground, and beat him. This practice has been banned by the government, according to my interlocutors, and is no longer practiced.

The accounts I have presented here partly explain why many informants associated gender equality with conjugal dialogue, common agreement, and peaceful co-existence. Yet, they do not explain the focus on working together in the field and on increasing women's participation in agriculture. To comprehend this, one has to turn to contemporary economic and political developments in Ethiopia. Since 1996, the Ethiopian government has designed and implemented a number of policies and strategies aimed at boosting economic growth, eradicate poverty, and achieve the Millennium Development Goals (MDG), which now has transitioned into the Sustainable Development Goals (SDGs). Since agricultural production is the backbone of the economy, the government has in particular put much effort into increasing women's involvement in agricultural production. In contrast to the majority of agricultural societies in Africa, which are predominantly hoe-based and female dominated (Boserup 2007 [1970]), most agricultural societies in Ethiopia are plow-based and male dominated. In this plow-based agricultural system, women's participation has been relatively limited. While women often are involved in weeding and harvesting, they do not plow, as this is perceived to be a task that requires physical strength that women do not necessarily possess.

A number of my female interlocutors discussed the increased pressure from government officials, who, during the past ten-fifteen years have started urging women to join their husbands and work "like a man" for a full day in the fields. While many of them confirmed that women are becoming more involved in cash crop production, they rejected the idea of equal labor contribution: "If I was to do the same amount of work as my husband in the field, my children would be like orphans. It would lead to poverty and create suffering. It is not possible," Aisha argued, as we sat around the fireplace in her hut. One of her friends, a neighboring woman who had joined us for a cup of coffee, chimed in: "How can I work like a man? I could never go out and work as a man in the fields. How can I do this? I am a mother. I carry a child on my back. I give birth. I am pregnant. That is why I cannot work like a man."

As I have shown here, local men and women do not just assimilate the gender equality ideas that are promoted by gender experts or development brokers,

but are actively engaged in a dialogue with the discourses in which they are situated, translating and recreating meanings of gender equality that resonate with local values, needs, and priorities. This does not mean that these local men and women translate unconditionally. The strong imprints of current political discourses on articulations of gender equality at grassroots level, emphasis on ‘working together’, and reference to current global concepts such as poverty reduction amply illustrate how their translations are colored by contemporary local and global politics. The local translations of gender equality need to be understood as situated within certain discursive structures, which also determine, in a Foucauldian sense, what can and cannot be articulated, which translations are possible, and which are not. One could therefore argue that the grassroots’ articulations of gender equality are not translations, but simply replications of a message that is coming ‘from above’. Such a reading is, however, challenged by the grassroots’ negotiations of gender equality discourse promoted by women’s affairs machinery. In these localities, radical version of gender equality that promotes sameness is silenced. It is this silencing of aspects that most clearly illustrates how local men and women also act as agents of translation.

6. Rethinking Gender Equality and Respect

The norms and institutions that I have described in this chapter, represent a challenge to the liberal feminist conceptualization of gender equality that dominates contemporary policies and interventions aimed at empowering women. In line with postcolonial and feminist-anthropological critique (Oyewumi 2002; Hodgson 2000; Mohanty 1988), these accounts challenge the gender binary that tends to dominate popular representations of women in Africa. Within such a framework, particularly pertinent within the international development discourse, power is “...automatically defined in binary terms: people who have it (read: men) and people who do not (read: women)” (Mohanty 1988, 73). This assumption is blind to the multifaceted and complex nature of gendered relations present in any society, and also dismisses the role of women as agents who not only resist, but also exercise power (Abu-Lughod 1990, Rogers 1975). While Arsi Oromo women’s power, to a considerable extent, is founded on women’s reproductive capacities and their role as mothers, it is important to emphasize that this power extends beyond the reproductive and domestic domains, consequently giving women the authority to interfere in conflicts and make claims based on their economic interests. In other words, the norms and beliefs expressed through the notion of *wayyuu*, have not only provided Arsi Oromo women with protection; they have also secured women power and created room for them to display political and economic agency. This does not mean the society is free of gendered oppression and injustice. While there are no doubts that the norms and institutions associated with *wayyuu* have played

an important role as tools of power and social control that particularly have benefitted married women, the respect inherent in *wayyuu* is not unconditional. In addition to hinging on marital status, it is a form of respect that is closely linked and conditioned on clan connections and obligations that are established through what the society consider are legitimate marriages. In other words, *wayyuu* is not a universal form of respect, that is applicable to all women, at all times.

One should also have in mind that *wayyuu* is a normative framework. As I have argued elsewhere (Østebø 2015), it can best be described as a kind of habitus, a part of a taken-for-granted worldview, or to borrow a term used by Harri Englund, a “tacit moral model” (Englund 2011, 180). The classification of *wayyuu* as a moral model is important, since this prevents an essential reading of the norms and institutions associated with *wayyuu*. The very nature of moral models, or what we may term prescriptive frameworks, is their idealism. They stipulate how things are supposed to be and how one should behave, and are important as a basis for making claims. But moral models and norms are also negotiated, disputed, and resisted by actors who are differently situated in networks of power relations. This means there will be situations or incidents in which the norms associated with *wayyuu* are disrespected. An incident that occurred during my fieldwork in the lowlands of Bale in 2006 may serve as an example. One of the most influential local businessmen had beaten his pregnant wife, using the sole of his shoe. According to people in the village, since the woman was Somali and had no one from her clan to stand up for her, she had a weak case when accusing her husband. Combined with the fact that he was influential and rich, this resulted in no action being taken on behalf of the woman. The incident was, however, highly condemned among people and generated a lot of negative laden gossip. The impact of ethnicity and class in terms of how this case was handled, illustrates the relevance of intersectional analysis (Crenshaw 1991) and also sheds light on the context dependent and relative power of moral models.

While I do believe that an analysis of *wayyuu* that emphasizes the power and agency that Arsi Oromo women have been able to assert through institutions such as *ateete* and *qanaffa* is important, such an account is potentially problematic. It risks masking the fluidity, complexity, and inconsistency inherent within any group or community. As Lila Abu-Lughod (1993, 9) has powerfully argued, “the effort to produce general ethnographic descriptions of people’s beliefs and actions risks smoothing over contradictions, conflicts of interest, doubts, and arguments, not to mention changing motivations and historical circumstance”. In other words, cultural norms and practices are never static, they are fluid; they change and are influenced by political, historical, and economic factors. Processes of modernization, political and religious change, and the emergence

of competing legal institutions and normative frameworks have for example led to deterioration of the values and practices associated with *wayyuu*. For example, the younger, urban, and educated population will often not be able to respond to questions about *wayyuu*, many of them not even being familiar with the term. In rural areas it is more commonly known, but only experts of the Oromo law (*seera*) and culture (*aada*), will be able to provide detailed descriptions of the concept. The extent to which material objects, such as the *sinqee* and the *qanaffa*, are being actively used and respected, is today limited to a few rural areas where the influence of Islam and Christianity has been relatively marginal. In these rather remote rural areas the *sinqee* stick is still given a prominent place in a woman's house and is actively used as a religious symbol, and hence properly taken care of; women still mobilize with their *sinqee* and wear the *qanaffa*.

In most areas, such as in Bale, *ateete* mobilizations are at the best extremely rare, if not totally absent, and one will never observe a woman wearing a *qanaffa*. Although all women receive a *sinqee* stick on their wedding day, many will pay little attention to it thereafter. Some of them may even lose it or as one of my interlocutors explained, her stick had been destroyed by her children.

The symbolic value of material objects such as the *sinqee* stick and the *qanaffa* have, in other words, clearly diminished. This does not, however, necessarily mean that the values and institutions symbolized by these objects have ceased to exist. Nor does the lack of articulation of *wayyuu* among the general Oromo population mean that the notion of respect embodied in *wayyuu* is not at play. The story told in the introduction, is a case in point. Although the women who interfered in the fight did so without the use of *sinqee*, and the incident lacked the characteristics of the more organized marches, it is still reflective of the power and respect associated with *wayyuu* and women's collective mobilizations.

The gendered norms and practices, and the translations of gender equality that I have outlined actualize a critical discussion of equality and its relation to respect. Together with dignity and equality, respect is considered a foundational value in the international human rights discourse (Donnelly 2013). Within the women's rights movement and in the gendered focused scholarly literature, respect is, however, seldom invoked. While there is a certain focus on respect for women's rights and for women's autonomy, there is very limited focus on respect for women. This may be linked to the close connection between respect and norms of respectability, the latter often having negative connotations among feminist activists and women's rights proponents. While it is important to acknowledge that norms of respectability can be problematic, and have negative implications on women's lives, this does not mean that we should dismiss respect, and the potential this notion has with regards to gender equality. As I have discussed more in-depth elsewhere (Østebø 2018), rather than neglecting respect, it is

important that we engage with theories of respect and empirically explore the various meanings and practices the concept invokes.

7. Conclusion

In this chapter, I have detailed and situated local translations of gender equality in relation to *wayyuu*, a tacit moral model of respect and sacredness foundational for institutions and norms that have secured rural Arsi and Bale Oromo women certain rights and power. I have used these empirical accounts as a point of departure for a more general discussion of respect and its relation to the predominantly liberal conceptualization of gender equality that tends to dominate mainstream gender and development discourse. I have argued that even though there are certain limitations inherent in *wayyuu*, the sacred respect it entails and the implications this has had for women's status and power among the Arsi Oromo, calls for an exploration of respect, not as an alternative to equality, but as a complementary notion, which to a greater extent could be included in global discussions of gender equality and gender justice. My point has been to shed light on the multiple and possibly alternative meanings inherent in concepts that often are assumed to be universal, and to underline the importance of exploring new concepts and practices from what often is considered to be the margins. By listening to and taking seriously local translations and perspectives on gender equality, we open up the translational space, allowing for alternative voices to be heard. I suggest that the account I here have offered, illustrates the importance of research that explores gender equality 'from below'. By giving voice to and exploring subaltern visions and translations of gender justice, we may be better equipped to generate locally situated gender policies. Not only do such explorations challenge hegemonic perceptions of what constitutes gender equality, they can also shed new light on how we can further our quest for sustainable development and change.



Counting Absence in Political Equality: A Preliminary Gender Analysis of the Electoral Law Reform in Ethiopia

Meskerem Geset and Tayechalem G. Moges

“...women are equal citizens and therefore should share equally with men in public decision-making – otherwise, there is a democratic deficit”

Manon Tremblay (2007, 534)

1. Introduction

Political gender equality, an essential part of women’s empowerment, is the bedrock of democracy and human rights. It is argued that “[t]he value of political equality is central to normative theories of democracy” (Tremblay 2007, 534) and the concept will “find concrete and tangible expression” only when women are equally represented in political decision-making (Kasomo 2012, 61). International human rights standards also dictate a democratic system in which both women and men have equal rights and opportunities to take part in all aspects and at all levels of political processes.

Nevertheless, multiple barriers impede the materialization of this ideal. Still today, the cumulative effect of cultural, socio-economic, and political factors significantly influences women’s access to political power. In the words of Tremblay, these factors “interact to create a dynamic that acts as a global incubator for the election of women” (2007, 535). Stemming from the broader gender discrimination that affect women’s participation in public life, they remain disproportionately underrepresented in political processes, in electoral politics in particular (OECD 2018; ODIHR 2013). This resonates with the experience of a considerable majority of women in Ethiopia who, despite their higher portion in the country’s population, have for long remained marginalized from political power in as much as they suffer from social and economic disempowerment.

Historically, a handful of Ethiopian women with royal kinship have participated in governance either directly or indirectly (Ashenafi 2009, 6). The first female parliamentarians, two to be precise, appeared in the Emperor's parliament of the 1960s through electoral process introduced under the 1955 Constitution whereas the 1987 Constitution and the subsequent electoral law of the *Derg* has brought a number of women into the political system. The representation of women in decision-making and leadership roles has increased considerably in the post 1991 period through the implementation of targeted measures under the Federal Democratic Republic of Ethiopia (FDRE) Constitution. While Ethiopia has, throughout the different regimes, made significant improvement towards inclusion of women in the political arena, the journey to a transformative and just electoral system and political process has yet been long owing to multifaceted structural barriers still at play. It must be noted, at this juncture, that under the current leadership, for the first time women achieved parity in the cabinet and headship of the National Electoral Board and the Federal Supreme Court. Notwithstanding this progress seen in the past two years, we note the lacking wider women's representation in the new political dispensation as well as in the electoral reform processes and institutions as analyzed in this chapter.

Gender equality in electoral systems envisages gender responsive laws pertaining to electoral system, election management structures, and the electoral process; this would uphold the inclusion and equal participation of women and men, and prohibit discriminatory practices privileging or marginalizing one or the other on grounds of gender and other intersectional status. To achieve gender equality in and through elections, the full participation of women and men in a country's political and electoral decision-making processes as voters, mobilizers, candidates, elected officials, and electoral management body staff is crucial. In this regard, it is long established that States have the obligation to create favorable conditions for improving women's access to electoral processes and ultimately to political offices through various measures. Attaining gender equality in political institutions and processes is also an essential part of nations' commitments towards the realization of the Sustainable Development Goals (SDGs).

The Ethiopian electoral regime is regulated by the Constitution and subsidiary laws governing election management bodies, political parties, and electoral administration. In 2019, a rigorous electoral reform process was initiated by the government with the view to usher an effective electoral system in Ethiopia, which resulted in revised laws governing the National Electoral Board of Ethiopia (NEBE), as well as political parties, and election process (Temin and Badwaza 2019).

The chapter offers a preliminary gender analysis of the current electoral regime of Ethiopia with a particular focus on the two major electoral laws governing electoral management bodies, political parties, and elections (the National Electoral Board of Ethiopia Reestablishment Proclamation No. 1133/2019 and The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No. 1162/2019). The analysis, however, does not cover the directives adopted or under review by NEBE. Such analysis is important given the broader political reform the country is undergoing and most importantly the impending national election that was due in 2020.¹ To the knowledge of the authors, there is not yet a systematic gender analysis of the new legal framework since its adoption and the chapter presents an analysis with the aim to instigate further discourse.

The chapter outlines the role of women in the electoral reform process and the examination of the law from four main dimensions: electoral system, electoral management bodies, political parties, and electoral campaigns. The chapter does not set out to cover an entire electoral process; hence voting system, electoral observation, electoral dispute resolution, and other aspects of election cycle are outside the remit of this assessment. The analysis draws from feminist theories as a conceptual frame while also relying on human rights standards as a legal framework. Through a feminist jurisprudence lens of the critical role of law for women's emancipation and the application of a feminist State theory in understanding of a State's ambiguous role vis-à-vis women's liberation, this chapter offers an insight into women's representation in the electoral law reform of Ethiopia. The empirical inquiry is informed by working documents and key informant interviews drawn from law drafters, parliament members, electoral board, political parties, and women's organizations.² In doing so, the chapter places a conspicuous absence of women's representation and their interests as central to the 'gains' made by patriarchal institutions in holding back Ethiopian women from electoral offices and public agenda. By examining the lawreform process from agenda setting by expert group to the adoption of the two major electoral laws by the Ethiopian parliament, it shows how a patriarchal jurisprudence is masked under a supposedly ungendered law.

2. A Feminist Conceptual Framework for Examining the Electora Law Reform

In her article 'Women and Political Governance in Africa: A Feminist Perspective', Nzomo (2015) argues, from a feminist standpoint, meaningful governance

1 The election has been indefinitely postponed as a result of COVID-19 pandemic.

2 The key informant interviews involved eleven informants and all were held in Addis Ababa during the period between April and July 2020..

should be inclusive, accountable, gender responsive, and representative of the diversity of interests of the governed. Accordingly, responsive and accountable governance demands gender equitable participation and representation. Consequently, feminist perspectives on political analysis reject the definition of politics that is narrowly focused on electoral processes or State institutions (Katzenstein 1984, 9). Rather, it considers both the public and private lives of women politicians as it impacts the distribution of power within society (Waylen et al. 2013, 3). Nonetheless, within the narrow definition of electoral politics, feminist perspectives vary widely from those that portray elections as a powerful force of societal reform to those that view it as irrelevant to women's concerns (Katzenstein 1984, 7). A third category of feminists view electoral politics as a source of State control over women's lives (Lilburn 2000, 108).

Research on gender and politics has tried to answer the two most frequently asked questions of how to increase female representation in elected offices and what potential difference having women in politics make (Walby 1999, 215). There are three arguments forwarded for female representation in electoral politics. First, women represent half of the population and hence have the right to half of the seats, what is known as the justice argument (Philips 1998). The second is the experience argument, which claims women to have different experiences, biologically or socially constructed, that ought to be represented (Dahlerup 1978). And thirdly, the interest group argument envisages women and men have partly conflicting interests and thus men cannot represent women effectively (Philips 1998). Other than such arguments for women's representation in politics, research shows that authoritarian or post-conflict regimes often opt for high women's representation for purposes of legitimacy while it is contested whether such a move really ensures women's interests (Muriaas, Tønnessen, and Wang 2013). This shows, female representation in electoral politics is necessitated by various reasons including symbolism, substance, and style (Phillips 1998).

Female representation in electoral politics in Ethiopia remains a contentious issue. Ethiopian election data highlights that decades after the right to vote, Ethiopian women are still a long way from achieving gender parity in the political sphere (Kassa 2015, 1). This by no means discounts the promising developments in women's representation in the country's political structures. For example, the number of seats held by women in the Ethiopian parliament has significantly improved from 2 percent in 1995 to 22 percent in 2010 while hitting 38 percent in 2015 (IPU 2019; Kassa 2015). Contemporary scholarship in Ethiopia about electoral politics and gender, though limited, falls into two main categories. On the one hand, articles analyze the underrepresentation of women in political office and parties (e.g. Mesfin 2004; Okumo and Melesse

2014). On the other hand, other set of researches have focused on challenges and opportunities of women's participation in the vote (e.g. Abegaz and Workantif 2018; Kassa 2015; Ashenafi 2009).

Examining the electoral law reform in Ethiopia from a feminist perspective requires not only an elaboration of the problems of female representation and of the challenges of engaging women's participation in elections, but also an analysis of a general interpretive framework to help understand the gendered and relational aspects of the law. These considerations necessitate drawing upon theoretical foundations that make sense of the larger context, which influence and shape electoral processes in Ethiopia. For this reason, this chapter draws upon two critical theoretical traditions, feminist jurisprudence and feminist State theory, to analyze the electoral reform.

Feminist jurisprudence is born out of feminist legal theory and is largely understood as a "body of legal scholarship dedicated to understanding issues of relevance to the law's treatment of gender and sexuality" (West 1998, 60). More broadly, feminist jurisprudence has two major projects. The first project is the unmasking and critiquing of the patriarchy behind purportedly ungendered law and theory, or, put differently, the uncovering of what we might call 'patriarchal jurisprudence' from under the protective covering of 'jurisprudence' (West 1998, 60). It is one of the few legal philosophies that "confronts patriarchy as a central issue" by providing "a vantage point for truly creative and insightful analysis of the most basic structures of law and society" (Smith 1993, 297). The second project in which feminist legal theorists engage is the undertaking of a feminist law reform in many areas of women's rights including in the areas of sexual violence and reproductive freedom (West 1998, 60-61).

Feminist jurisprudence assumes that law is subjective and is often developed in a context of male domination in public life (Sjöholm 2017, 5). It serves to identify gaps in the law, such as silences and inconsistencies in the legal framework as well as norm interpretation by courts. In this particular research, feminist jurisprudence offers a method to analyze how the electoral law reform positions women in the gender hierarchies of the Ethiopian political system.

The second theoretical framework, feminist State theory, was in the past used to analyze the ways in which women were subordinated by the centralized State. More recently, it is employed to critique the State and unearth "how States are differentiated entities, comprised of multiple gender arrangements" (Haney 2000, 641). Feminist State theory with regard to political participation serves as "a field for developing new ideas, practices, and justifications for how political institutions and practices should be organized and reconstructed" (McAfee and Howard 2018, 1). Together with feminist jurisprudence, it is used to examine

the politics of representation and “provide ways to mine legal norms for their gendered meanings” of a broad range of State projects and interventions (Haney 2000, 657). Moreover, feminist State theory also takes into consideration the intersection of gender with “race, ethnicity, disability and multiple identities” by critiquing the category ‘women’ in the representation and participation of women in politics (Mahler, Chaudhuri, and Patil 2015, 102). Even though this research does not undertake an intersectional analysis of multiple identities and contexts, it acknowledges the “complex and multidimensional structuring of inequality” among Ethiopian women’s representation and participation in politics (Nicholas and Siltanen 2017, 375) and hence emphasize on the need for any law and policy measures to devote serious consideration to this aspect.

The combination of feminist jurisprudence with feminist State theory provides a lens that would serve to analyze the subjectivities of the new electoral law taking into account the multiple gender arrangements (differentiated entities) of the FDRE. In doing so, it rejects the supply and demand theories that assume access to elected office as a question of “resources and motivations on the one hand, and abilities and qualifications on the other”; and rather is informed by feminist jurisprudence and State theories that link the issue of gender and elections to “the systemic, practical and normative configurations of gendered institutions” (Krook 2010, 710-711).

Based on the above theoretical frameworks, the chapter sets out to interrogate mainly whether the electoral law reform in Ethiopia meaningfully promotes the equal participation and representation of women in all relevant processes, systems, and institutions. Within the framework of this general inquiry, this research reflects on the following questions regarding the new electoral law:

- Does the new electoral law have a mechanism by which women are selectively promoted to political offices?
- To what extent did the electoral law reform process involve women and women’s organizations?
- How did it create a space to encourage mobilization of women as part of the electoral processes?
- What mechanisms does the electoral law provide for promoting gender equality in election management bodies, political parties, and election campaigns?

Under the frameworks of feminist jurisprudence and feminist State theory, this research makes initial analysis of the electoral reform process, the electoral system, and three important structures of the electoral system in Ethiopia with respect to the new legal framework. The examination into the reform process reflects on the questions around the level of engagement of women and women’s organizations in the legislative drafting process from inception to advanced

stage. The appraisal on the electoral system addresses questions on the forms of representation and their conduciveness to increase female participation and representation in the Ethiopian politics. To combat electoral gender inequality in the electoral system, various countries have adopted quota systems either in their legislature or political parties (Rosenblum 2005, 1122).

With regard to the examinations of structures in the new electoral law, first, this research critically analyzes the mandate and composition of election management bodies. Evidence shows that an electoral management body can greatly influence the extent of women's participation in elections (IFES 2014).

It is relevant to examine if appropriate gender perspectives are integrated in the structures, policies, design, and execution of activities and stakeholder of electoral management bodies. By implications, the analysis will reflect on the question whether the mandate of the national electoral body allows the institution to undertake a more active role in promoting candidacy so that women and other marginalized groups are encouraged to stand for elections.

Second, this research examines the mandate of political parties to promote female representation under the new electoral law. One of the important questions on political parties and female representation is to ask what sort of power political parties wield either in encouraging or prohibiting women from political offices. Some scholars, such as Dahlerup (2008, 325), argue that political parties, not the voters, are "the real gate keepers to elected offices" irrespective of the political system or the electoral regime. Thus, it is imperative to see to what extent the new electoral law prompts political parties to undertake structural change and select women candidates to stand in elections.

The third structure to explore is the law on political campaigns. In this regard, the law on political campaigns is not only examined in terms of the space it creates for the participation of women but also if it actively promotes mobilization and consciousness raising among women in a given context. It questions whether the electoral law made an effort to curb gender discrimination in campaign financing, access to media and gender based discrimination, and violence, towards creating an enabling environment for women's mobilization to fight marginalization.

One major impediment for women on the road to equality is the "lack of enough participation and empowerment in decisions that affect their lives in political and social processes" (Kasomo 2012, 59). This includes participation and decision-making in the formulation and interpretation of laws (UNWGDAW 2015). So we examine how much women as a group and their interests are represented in law making processes and institutions in particular in the electoral law reform process.

3. Human Rights Standards and Gender Quotas in Electoral Politics

The impetus for political equality and bridging the gender gap in the formal political arena by eliminating discrimination has been embedded in international frameworks. More specifically, Article 7 of the Convention on Elimination of All forms of Discrimination against Women (CEDAW) stipulates that States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, and shall, in particular, ensure to women, on equal terms with men, the participation in voting in elections, standing as candidates to elected offices, policy decision making, holding public office, and others. Furthermore, Article 4 indicates the implementation of temporary special measures aimed at accelerating de facto equality.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol 2003) reinforces, in Article 9, that States shall ensure women's participation without any discrimination in all election; equal representation with men at all levels in all electoral processes; and equal participation with men in the development and implementation of State policies and programs. The Protocol further boldly imposes obligation on States to adopt special measures favoring women, possibly in the form of electoral quota and/or other forms of differential treatment.

Jurisprudence from human rights bodies clearly establish that gender neutral or identical treatment of women and men does not eliminate discrimination but rather reinforces it. Under international human rights law, not only an explicit discriminatory stipulation in law/policy but the absence of gender specific measures amounts to discrimination because pre-existing inequalities are not addressed, rather exacerbated by gender neutral measures (CEDAW Committee 2010, para 9; CESCR 2005, para 36). To remedy pre-existing inequalities and achieve equality, it is not enough to 'guarantee identical treatment with men' (CEDAW Committee 2004, para 8). Adopting special measures is paramount to address the underlying structural causes disadvantaging women and ensure gender equality (UNWGDW 2013; CEDAW Committee 2004; Human Rights Committee 2000). Thus, both temporary special measures (affirmative actions) to remedy historical wrongs and a more permanent effort on structural shift are needed to bring change in women's lived realities.

Looking beyond human rights treaties, ensuring "women's equal access to and full participation in power structures and decision-making" was one of the twelve objectives of the Beijing Platform for Action, adopted at the Fourth World Conference for Women in 1995 (United Nations 1995:122). The platform emphasizes the need for directing focus from women's lack of resources to the "discriminatory attitudes and practices and unequal power relations" of political

institutions and political parties (Dahlerup and Freidenvall 2011, 14). This shifts the attention from women to the practice of political entities that play pivotal role in marginalizing women. In the interest of providing a practical solution, the Beijing outcome document clearly stipulates the aim to achieve gender balance in the nomination as well as in all decision-making processes. Affirmative strategies were also recommended while the controversial word ‘quotas’ was avoided.

In line with the human rights standards and since the Beijing Declaration, several governments around the world adopted special measures such as quotas for women’s political representation which folded the global average of women in parliament in two decades (from 12 percent in 1997 to 23.6 percent in 2017).³

It is reported that the most significant increase in the proportion of women in national parliaments is particularly attributed to countries “where special measures have been effectively constructed and implemented” (UNWGDW 2013, 10).

Special measures are often incorporated in domestic legal systems through explicit stipulation in constitutions or electoral laws. The FDRE Constitution is one of those few constitutions with detailed provisions on elections. It also provides for an independent institution, the National Election Board, for the conduct and supervision of elections (FDRE 1995, Article 102). The Constitution assures women of equal rights with men in every sphere and emphasizes on affirmative action to remedy past inequalities suffered by women. The affirmative action entitlement under of the Constitution aims to “provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions” (FDRE 1995, Article 35(3)). Further by subscription to the international human rights standards, affirmative actions are unambiguously incorporated into the legal system (FDRE 1995, Article 9)⁴ and hence the State is bound to be guided by international human rights standards, both treaty provisions and stipulations of human rights bodies.⁵ Few examples of the implementation of a constitutionally mandated affirmative action measures

3 See Inter-Parliamentary Union (IPU) *Statistical Archive Women in National Parliaments*; Available on: <http://archive.ipu.org/wmn-e/classif-arc.htm>.

4 By virtue of Article 9(4), international instruments adopted by the State are part of the law of the land.

5 Ethiopia is a State party to all the relevant international human rights frameworks: International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, Convention on the Elimination of Discrimination against Women, the African Charter on Human and Peoples’ Rights, the Maputo Protocol on the Rights of Women in Africa; and has committed to the Beijing Declaration and Platform for Action.

for women in Ethiopia include lesser passing grades in higher education entry and preference for female recruitment in the public sector whenever women have ‘equal or close scores’ over candidates (Gebremichael 2010).

One of the most effective ways in which the Ethiopian State can promote equality in political participation is through temporary special measures (affirmative actions) aimed at accelerating *de facto* equality between men and women. This has been evidenced in other African countries where affirmative action measures, particularly quotas, were critical in increasing the number of women in parliament and other elected offices (UN Women 2019; Andrew 2018, 11225-11226).⁶ In many cases, such affirmative action includes but not limited to quota systems in the legislature and political parties. Unlike very few constitutions like the 2010 Kenyan Constitution,⁷ the Ethiopian Constitution does not stipulate gender quota or specific type of affirmative actions. However, it has arguably adopted international standards of special measures including gender quotas by virtue of the stipulation that the constitutional provisions concerning human rights shall be interpreted in light of international human rights instruments (FDRE 1995, Article 13(2)). For constitutionally endorsed affirmative action measures in the political arena, the assumption is that each and every legislation and policy in the country would consider how to mainstream it in its specific mandate to remedy past discrimination. With regard to reforming electoral laws, the minimum expectation would be the undertaking of an in-depth analysis and wider consultations on how to integrate affirmative action measures in the political arena to not only bring more and diverse women in the system but also put in place supportive mechanisms and enabling environment for quality representation. The CEDAW Committee, in its review of Ethiopia, noted that lack of sufficient affirmative action in the form of quotas for women constitutes one of the factors that impede women’s equal participation in political life in the country (CEDAW Committee 2011, 8-9). It recommended that the State should adopt gender quotas applicable throughout the NEBE structure and all political appointments, and should allocate greater public funds for women candidates’ election campaigning

Most of the discussion around the use of special measures to advance women’s political representation and participation point towards the implementation of gender quotas, which have proved to produce significant result over the past

6 For example, Angola, Burundi, Mozambique, Namibia, Rwanda, South Africa, Tanzania, and Uganda are among countries that have recorded significant increase in women’s representation using gender quotas.

7 Article 27(8) of the Kenyan Constitution reads “The State shall take legislative and other measures to implement the principle that not more than two thirds of the members of elective or appointive bodies shall be of the same gender.”

decades. Gender electoral quota commonly deals with stipulating a percentage for the representation of women in the electoral list and/or in political bodies (Dahlerup 2007); hence boosting numerical representation, which constitutes “an important first step towards facilitating real change in power relations” (IDEA 2004, 128).

Quotas have become popular over the decades and there are currently various types of gender quotas implemented for public elections across the world. Global data shows that around half of the countries of the world apply some type of electoral quota for their parliament (Krook 2008, 345).⁸ Primarily, three models of gender electoral quota are commonly observed. The two are legislated quotas mandated by a binding statutory framework (constitutional and/or electoral law) while the other bases on voluntary rules. The first model is the reserved seats quota that deals with legislated number of seats in the parliament that goes directly to women through a special election arrangement stipulated by law. According to the Gender Quotas Database,⁹ this model is adopted by a number of countries around the world (more than twenty-five) including, for example, China, Guyana Morocco, Pakistan, and Zimbabwe. The legislated candidate quota is the second type that provides a compulsory percentage of women and men to be in the electoral candidate list of political parties. A larger number of countries (more than fifty-five) across the different regions of the world are implementing this type of quota including Burkina Faso, Chile, Indonesia, Spain, Solomon Islands, and Ukraine. The other is the voluntary political parties’ quota that concerns a certain percentage reserved for women candidates as freely decided by parties. A number of countries apply this type of quota, around forty countries as of 2019 including Australia, Botswana, and Namibia (Rodríguez 2019). It must be noted that countries may use a mix of these models as they are not mutually exclusive. According to Andrew (2018), the three quota frameworks have fundamental share in the achievements gained in bringing more women in African parliaments. In particular, in those that rank among the top fifty countries in the world in women’s representation in their national parliaments, reserved seats (in Rwanda, Tanzania, and Uganda), legislated candidate quotas (in Angola and Senegal), and voluntary party quotas (in Ethiopia, Mozambique and South Africa) have proved to be instrumental.¹⁰

8 See also International IDEA. *Gender Quotas Database*. Available on: <https://www.idea.int/data-tools/data/gender-quotas/quotas>.

9 Ibid.

10 For up to date ranking, see <http://archive.ipu.org/wmn-e/world-arc.htm>. For type of quotas by country, see *Gender Quotas Database*; Available on: <https://www.idea.int/data-tools/data/gender-quotas/quotas>.

Even though there is a wider consensus that gender quota is an effective tool to increase women's participation in governance structures, several factors can influence the efficiency of quota rules (IDEA 2011, 59).¹¹ Additional strategies and actions must be taken for effective representation of women in politics as gender quotas are often constituted in a context of systemic and structural gender inequalities (Bari 2005, 7). The legal framework alone cannot guarantee the results of gender quota implementation. Beyond the creation of a legal basis, much also depends on voters' attitude, which requires a range of non-legislative measures. It is also argued that quotas work best when well-designed and accompanied by sanctions for non-compliance and closely monitored by gender-responsive independent bodies, including national electoral bodies and human rights institutions as well as a party monitoring entity (UNWGDW 2013; IDEA 2011, 65-66).

Another essential component to consider in gender quotas is the assumption of women as a distinct category. Gender quotas in governance structures should be located within "the framework of diversity and difference" to ensure women's political empowerment in diverse settings (Bari 2005, 6). This rings especially true in the Ethiopian federal governance structure that is mainly demarcated along ethnic lines. As such, gender quota systems in Ethiopia need to consider lines of class, ethnicity, religion, urban/rural residence, disability, and other diversity factors. Moreover, it should be understood that the quota system is often associated with social representation whereas representation of women in politics should consider both the representation of ideas and social groups (Pitkin 1967, 32). And a system that "combines the politics of ideas with the politics of presence" is needed for gender quotas to work (Philips 1995, 16). In other words, equal participation of women in politics requires equal and diverse representation of women and their interests.

4. The Electoral Law Reform in Ethiopia

4.1. The Representation of Ethiopian Women and their Interests in the Reform Process

The participation of women and women's organizations in legislative reform or any relevant reform process is vital. It is important to note that "women's autonomous civil society organizations are crucial to women's participation in public and political life" (UNWGDW 2013, 12) and that their contributions

11 Despite the general perception about the influence of quotas in increasing women's representation, quota system remains a debated subject and some consider it as a token measure or serving the dominant party by building allegiance and patronage networks or simply privileging women connected to the political establishment (IFES 2014, IDEA 2004, Tamale 2001).

to reform processes cannot be overemphasized. Women's political or public participation should not be measured only by coming into political office or participation in election, rather the whole spectrum of women's engagement and activism in decision-making platforms starting from agenda setting. Mlambo and Kapingura (2019), in their study on factors influencing women's political participation in Southern Africa, observed unhealthy dynamics between women's participation and electoral politics in that women become important around election period and become invisible after elections.

The larger context that shaped the new electoral reform in Ethiopia has been lack of women's representation, both in terms of accommodating women's interest and their participation. The electoral law reform process followed the declaration in January 2018, by the ruling Ethiopian People's Revolutionary Democracy Front (EPRDF) that it would respond to intensifying antigovernment protests that began in November 2015 by pursuing "meaningful reforms, including the revision or repeal of laws that tightly constrained politics, preparations for free and fair elections, and the release of political prisoners" (Temin and Badwaza 2018, 2).

The drafting process for the electoral reform took place in a context of a fragmented civic space, with lack of platforms to amplify the voices of diverse female citizens of Ethiopia. In stark contrast with the drafting of previous laws, most prominently those of the Federal Family Law and the Criminal Code of Ethiopia, women's civil society organizations (CSOs), rights organizations, and individual activists were seldom invited in the 'rushed' electoral law reform process. This is coupled with the impact of the 2009 CSO law of Ethiopia, repealed by Proclamation No. 1113/2019, that restricted rights based work by civil societies, which consequently contributed to the present dwindling of organized women's rights activism in Ethiopia (Smith and Wiest 2005; Burgess 2011).

The reform process was spearheaded by the Legal and Justice Affairs Advisory Council (LJAAC) with the close engagement of the NEBE. The active participation and contribution of several legal experts drawn mainly from the academia, representatives of political parties, and other stakeholder was conspicuous. On the contrary, most notably, women experts, women's organizations and activists were rarely represented in the crucial stages of consultation during the drafting of the electoral law.

4.1.1 Agenda setting

The first step in the electoral law reform was agenda setting. Our interviews revealed a Working Group on Democratic Institutions set up by the LJAAC in 2018, with membership predominantly consisting of men with limited

expertise on gender, was engaged in issue identification to set the main agenda for the reform. The very few women members of this Working Group joined later at different stages of the drafting process. From interviews and scrutiny of working papers considered by the expert group, it is apparent that the topic of gender equality in electoral politics has not been among the priorities on the agenda though ‘gender consideration’ was ambiguously put on the table. The kind of questions posed by law reform bodies to identify the issue or the problem matters because, “they set the parameters, not only for the problem posed, but also the possible solutions” (McLoughlin and O’Brien 2019, 34). More precisely, the in-depth studies that followed the issues identified (see next sub-section) demonstrated the de-prioritization visibly. The agenda setting was not consultative of women groups or gender experts or women politicians for that matter. A woman politician echoed “no one consulted with us about what the electoral reform should bring for women in politics”.¹² Thus, the representation of Ethiopian women and their interests, however diverse, has been largely absent at the initial stage of the electoral law reform. More so, the major failure was the absence of the subject matter of women’s representation in politics and elected offices from the outset. A political will towards bringing more women to political office has already been demonstrated by the government, in most recent and past years, including in increasing women’s representation in parliament and cabinet. Given this, one would expect gender equality to be one of the prominent issues in such a reform process, a chance to revisit the legal framework and align it with international and constitutional standards. The question remains why women and women’s organizations were not at the table when the reform agenda was set. How much their representation is decisive, not just from democratic point of view but prominently also from instrumentalist aspect has become clearer from the invisibility of gender issues on the agenda.

4.1.2 *In-depth studies*

Four in-depth studies were commissioned on the themes of election management bodies, political party registration and management, dispute resolution, and electoral systems. Hence, the Working Group approached its work “constrained by traditional legal categories” rather than making it ‘issue based’ that would have been crucial to address the exclusion of women’s experiences in the electoral law reform (Graycar and Morgan 2005, 6). Moreover, not one of the in-depth studies necessarily integrated adequate gender analysis or incorporated gender

¹² Interview with Ms. Sisay Habtamu, independent politician (former member of EZEMA Party), 12 July 2020, Addis Ababa. Also interviews with Ms. Nebiha Mohammed from Freedom and Equality Party and Ms. Kewser Edris from EZEMA Party (30 July 2020, Addis Ababa) confirmed her assertions.

experts, women lawyers, or women researchers.¹³ Most importantly, a crucial analysis on how to mainstream constitutionally mandated affirmative action and gender equality principles within the electoral reform did not constitute part of the in-depth studies. This omission from the inception set an unlikely precedent for the systematic inclusion of women in the electoral reform. Thus, as Mossman (1994, 10) has put it, a law reform process that “occur within an existing legal context and build on existing ideas” can only promote “incremental rather than fundamental change”.

The main audiences for the in-depth studies have been representatives of political parties. This is significant as most political parties in existence follow strict gender hierarchies and often are gate keepers of women’s representation in Ethiopian politics where women rarely hold top leadership positions in political parties (Ashenafi 2009, 46-47). In the same manner, here again, the studies were not shared or consulted with women groups or organizations. It is considered another missed opportunity for interest groups to advance women’s issues in the discourses and contribute meaningfully to the legislative reform process.

The only instance where gender issues were considered as part of the background study was when a UN Agency commissioned research was presented to a wider audience in one of the consultations at the later stage of the drafting process. Unfortunately, it did not have much influence on the drafting as it came at the last minute, hence the contribution, unfortunately, remained on the shelf.¹⁴ Given the value of this contribution, it would arguably have made a possible difference in the legal reform had it been prioritized.¹⁵

4.1.3 *Drafting the laws*

The drafting was undertaken by a working group with no designated gender advisor or members with notable gender expertise. No representatives of women’s rights organizations were part of this working group while experts/members from political parties were represented.¹⁶ The drafting was done based on the four in-depth studies and a number of expert consultations at

13 Interviews with members of Working Group on Democratic Institutions (LJAAC), Dr. Sisay Alemahu, 8 April 2020, Addis Ababa and Dr. Getahun Kassa, 15 April 2020, Addis Ababa; and analysis of the texts of the in-depth studies of the Working Group by the authors.

14 Interviews with Dr. Sisay Alemahu, 8 April 2020; Dr. Getahun Kassa,

15 April 2020 (Working Group Members); Interview with Hon. Bizuwork Ketete, NEBE member (former Working Group member), 10 June 2020, Addis Ababa.

15 Interview with Saba Gebremedihin, Network of Women’s Association in Ethiopia (NEWA), 15 April 2020, Addis Ababa.

16 Interviews with Dr. Sisay Alemahu, 8 April 2020, Addis Ababa and Dr. Getahun Kassa 15 April 2020, Addis Ababa (Working Group Members).

different stages. Most of the discussions have marginalized women and focused significantly on political parties. The unparalleled focus on the views of political parties is problematic in a context of a strong patriarchal set up where women's presence in the public sphere is heavily negotiated. In the words of one women's rights activist "it was all about political parties, others did not matter".¹⁷ From the interviews with some members of the working group, political parties were the main protagonists of the drafting process, which were most consulted stakeholders with views often taken into consideration in the drafting process. There was little space for civil society and women's rights organizations to take part in the crucial stages of the drafting process. As evidenced from the outcome of the process, political parties, often patriarchal institutions, dictated the outcome, by opposing measures to promote the inclusion of women in the electoral processes as explained in next two sub-sections.

It cannot be dismissed that the drafting process, both at expert group and the Parliament level, included some positive measures, mostly non-compulsory, that aim at promoting the representation of women in election management and electoral process as will be examined in the next section. As discussions with working group members revealed, uncertainty as to how far the constitutional affirmative action can be pushed, limited the possible considerations.

4.1.4 Public consultations

The lack of wider engagement of women's groups and women in general in the public consultations were a missed opportunity to affect a legislative response that takes seriously the underrepresentation of Ethiopian women in politics.

Reason of expediency was cited on the part of the working group and not finding gender experts and organizations to participate in the short timeframe.¹⁸ In the words of a feminist activist who took part in the public consultation:

The political parties were so opposed to our feedback during the public consultation; there were some people who were furious at our contributions and push for a proper quota system in the electoral reform. Others expressed their view that too few women come forward to participate in politics political parties were strongly opposed to minor reforms such as 10 percent membership in political parties and considering gender as a tie breaker between candidates.¹⁹

A few women's rights organizations and women rights activists including the Network of Ethiopian Women Association (NEWA) and *Setawee* movement

17 Interview with Saba Gebremedihin, NEWA, 15 April 2020, Addis Ababa.

18 Interviews with Dr. Sisay Alemahu, 8 April 2020, Addis Ababa and Dr. Getahun Kassa 15 April 2020, Addis Ababa (Working Group Members).

19 Interview with Dr. Sehin Tefera, *Setawee* Movement, 10 April 2020, Addis Ababa.

were able to participate in the electoral law reform at a later stage during a public hearing called by the Parliament to discuss the draft electoral law. From these, only a few of the organizations were able to see the draft law beforehand. One women's rights activist expressed the view that the electoral reform has failed in ensuring proper representation of women, which resulted in failure to accommodate women's interests in the electoral reform. In her words;

This was shocking given the long term reach of the electoral reform, we backtracked on past achievements, from political parties having their own quotas voluntarily in the past to opposing any form of incentives for the involvement of women in politics.²⁰

During the public consultations, women's organizations and activists raised the following critical issues to be included in the electoral reform:

- The mainstreaming of constitutionally mandated affirmative action in the electoral law
- Quota for women in parliament
- Candidate and membership quotas for women's representation in political parties

Nonetheless, none of their recommendations were accepted and reflected in the final draft. It was apparent that the uncertainty about special measures was also prevalent within the Parliament. Measures in line with constitutionally mandated affirmative action were, at times, confused with 'discriminatory' practices towards men citizens of the country by some members of the parliament.²¹ One particular example from the parliamentary debate was the controversial Article 61(3) of the draft bill that required preference to be given to women in case of a tie between a female and male candidate. Normally a re-election would be required in case of an equal vote earned by candidates. However, such affirmative action did not pass after debated by the Parliament as was considered discriminatory.²² Such an argument seems to be contrary to the spirit of the Ethiopian Constitution that stipulated positive measures to enhance the participation of women at all levels including in decision-making.

²⁰ Ibid.

²¹ Interview with Saba Gebremedihin, NEWA, 15 April 2020, Addis Ababa; Interview with Hon. Tesfaye Daba, Member of Parliament (House of Peoples Representatives), 10 June 2020, Addis Ababa; Interviews with Dr. Sisay Alemahu, 8 April 2020, Addis Ababa and Dr. Getahun Kassa 15 April 2020, Addis Ababa (Working Group Members); Interview with Hon. Bizuwork Ketete, NEBE, 10 June 2020, Addis Ababa.

²² According to Parliamentarians, the provision was supported by the Parliamentary Standing Committee on Legal Affairs but did not ultimately win the vote of the Parliament (Interviews with Hon. Tesfaye Daba, 10 June 2020, Addis Ababa and Hon. Abebe Gojebo, 20 June 2020, Addis Ababa (Members of the House of Peoples Representatives).

Such resistance is directly attributed to the omission of gender equality and affirmative action measures in the issue identification and in-depth studies that informed the draft electoral law.

From our assessment we learned that the drafting process was expediency driven and as a result suffered from apparent lack of gender expertise and proper consultation with interest groups. The electoral law reform exhibits a democratic deficit for the gross lack of women's participation and outward rejection of women's demands. This is attributed to the reluctance on the part of the LJAAC and its working groups, the NEBE, and the Parliament; it is a shared view among civil society organizations that they could have made some effort in as much as they were highly invested with the political parties.²³ It is worth noting that some criticisms have also been leveled against women's rights organizations for not pushing enough for their representation in the electoral reform from the outset.

4.2 An Examination of the Legislative Framework

The analysis of the gendered and relational aspects of the electoral law reform reveals gender insensitive language and tokenism in the inclusion of women and their interests in the electoral process. The new legislations under consideration mainly followed previous traditions of Ethiopian law design of using male pronouns/nouns to include the female in legislations; and a gender neutral language or a general reference to gender considerations are employed occasionally as discussed in the next sub-sections. An absence of a gender sensitive language and affirmative action measures in the drafting of electoral laws can be partly attributed to the lack of a gender analysis from the outset and thus "fail to take account women's circumstances" and in effect become "largely irrelevant to them" (Chinkin 2001, 49). This section will undertake a preliminary analysis of the substantive gaps in the new electoral legal framework, with Dr. Sisay Alemahu, 8 April 2020, Addis Ababa and Dr. Getahun Kassa 15 April 2020, Addis Ababa (Working Group Members); Interview with Hon. Bizuwork Ketete, NEBE, 10 June 2020, Addis Ababa. both the NEBE reestablishment law and the law dealing with electoral process and political parties.

4.2.1. Electoral systems

By no means electoral systems can be gender-neutral while constructed in societies with deep rooted gender inequality, it is therefore imperative to "ensure the needs of women [as] an integral part of discussions on electoral system design" (IFES 2014, 30). Any sustainable reform in this regard would be

23 Interview with Saba Gebremedihin, NEWA, 15 April 2020, Addis Ababa.

expected to focus on electoral systems than elections.

There are diverse electoral systems throughout the world and there is little consensus as to which is best for democratic governance and political stability (Reynolds 1999, 91). Electoral systems in Africa represent majoritarian (first-past-the-post) or constituency based and proportional representation as well as mixed ones (Lindberg 2005). These electoral systems differ fundamentally in terms of their essence and features as well as their impact on election outcomes and the political stability needed for democratic governance (Reynolds 1999). Krennerich and De Ville (1997) are of the view that the major political aim of the principle of proportional representation is to reflect accurately the social forces and political groups in parliament. They argue that proportional representation has a better chance of significantly reducing disproportionality between seats and votes rather than constituency based and other plurality electoral systems. On a different note, Barkan (1998) claims that majoritarian system arrangements are best suited to African society because they offer a direct link between representatives and their electorate, and thus these systems can promote accountability. Bogaards (2007) adds that constituency based electoral systems promotes governability. Reynolds (1999), however, contends that majoritarian electoral systems induce more competitive, confrontational, exclusionary politics, whereas proportional systems are often argued to produce inclusive, consensual governments. There is also a mixed system where “both the voting method and the allocation of seats are in part majoritarian and in part proportional” (Sartori 2001, 99). It is further alluded:

The electoral system determines how votes cast in elections translate into party or individual candidate seats. Different types of electoral systems can have gender implications, often resulting in the underrepresentation of women. The use of special measures such as quotas can be integrated into the electoral system to help address this (IFES 2014, 25).

Research has shown that, in general, women’s chances of winning seats in parliamentary elections increase in proportional representation systems (Schwindt-Bayer 2009, 15). Majoritarian systems, in the context of divided societies will “engender alienation through exclusion from power by minorities; a high proportion of wasted votes” and in effect lower incentives for participation of women in politics (Lindberg 2005, 44). On the other hand, studies show in both electoral systems, quotas have been effective in ensuring the election of women in particular in post-conflict countries (UN 2005, IDEA 2004).

The examination of the electoral system enshrined in the electoral law of Ethiopia concerns issues of form of representation and its impact on women’s participation in the Ethiopian politics. The new electoral law, the Ethiopian

Electoral and Political Parties Proclamation of 2019, affirms the first-past-the-post arrangement in accordance with Article 54(2) of the FDRE Constitution.²⁴ Article 4(1) of the electoral law (Proclamation No.1162/2019) stipulates:

In the election of members of the House of People's Representatives and state/regional councils candidates who got the biggest number shall be declared the winner. Where, in accordance with State constitutions, a constituency elects more than one candidate to regional/state councils, the candidates shall be elected in the order of the total votes they won.

The reform simply opted to maintain the electoral system prescribed by the Constitution as other options would raise a question of constitutional amendment, a rigorous process not called for at the time under the limited scope of the electoral law reform.²⁵ Thus, the issue to be raised here is whether the electoral system provided under the law is conducive to gender equality and increased representation of women in politics. The success of electoral systems in the Ethiopian context needs to be measured by the space created for the participation, mobilization, and consciousness raising of women and other social groups, and the extent to which they facilitate intersections of social movements and electoral participation (Marshall 2002, 707-725). The first-past-the-post form, which has a constitutional backing in the Ethiopian context, makes it difficult to achieve gender representation. Proportional representation, which could have been instrumental in increasing the presence of women and their interests in the Ethiopian politics, was not an option stipulated in the Ethiopian Constitution. Furthermore, the relevant constitutional provisions on election (Articles 38 and 54) do not provide for specific gender quotas, be it reserved seat or candidate quota. It is witnessed that, notwithstanding the specific electoral arrangement, various countries have adopted quota systems either in their legislature or political parties to combat gender inequality (Rosenblum 2005, 1119-1122). Nonetheless, this was not an option taken by the Ethiopian electoral system and the new electoral law.

The first-past-the-post form of representation, model followed by Ethiopian law, may have inherent disadvantage for gender proportional representations, which can possibly be redeemed by the integration of specific measures targeting gender balance. Conveniently, Article 35 of the Constitution provides

²⁴ Article 54 (2) of the FDRE Constitution 1995 reads "Members of the House shall be elected from candidates in each electoral district by a plurality of the votes cast. Provisions shall be made by law for special representation for minority Nationalities and Peoples."

²⁵ Interviews with Dr. Sisay Alemahu, 8 April 2020, Addis Ababa and Dr. Getahun Kassa, 15 April 2020, Addis Ababa (Working Group Members).

for a general affirmative action principle, which serves to remedy the gap in women's representation that emanates from the electoral system. A judicious consideration of the constitutional principle is expected to offer possibilities for integration of appropriate positive measures targeting the advancement of women's representation. However, proposals for legislated gender quotas spearheaded by women's rights organizations, which go hand in hand with the constitutional affirmative action stipulation, were rejected both by political parties and the Ethiopian parliament. Nor was there any form of gender quota actively supported by important actors such as NEBE or the drafters. Ultimately, a general gender representation clause was all that can be championed (see below sub-section 4.2.3). Some interviews with experts involved in the drafting process and women's rights activists that participated in public consultation revealed the quota concept was vocally opposed. Most importantly, several political parties that were frequently consulted during the drafting process vehemently opposed 'legislative quota' and basic initiatives for the inclusion of women candidates.²⁶ From our interviews, reasons often provided by some political parties include the following:

- Women 'are not interested in politics', so no critical mass of qualified women are set for the role
- Inclusion of women is an agenda of the ruling party, which can leverage public resources for incentivizing more women candidates

Thus, the reasons forwarded by political parties and parliamentarians in both the drafting process and public consultations demonstrate that access to elected offices is considered as a supply and demand issue rather than one of right. As such, the persistent perception of politicians that were in position of power to negotiate the electoral law is that the representation of women in politics has to do with 'resources and motivations' as well as 'abilities and qualifications'; a resistance, which reveals how exclusion of Ethiopian women in politics remains to be a 'systemic, practical and normative' configuration of gendered institutions (Krook 2010, 710-711). In the context of no legally mandated quotas for women, the new electoral regime has no mechanism by which women are selectively promoted in the formation of political elite.

4.2.2. Electoral management bodies

An electoral management body, irrespective of the diverse shapes and size, represents the body (bodies) legally mandated by law for "managing some or

²⁶ It must be noted that not all political parties may have opposed such proposals. Some political parties, for example, EZEMA claimed to have supported gender quota proposals (Interviews with EZEMA Party members Ms. Kewser Edris and Mr. Nathanael Aberra, 30 July 2020, Addis Ababa).

all of the elements that are essential for the conduct of elections” (IDEA 2016, 9). Electoral management bodies would need holistic and meaningful gender integration within their own organizations (internal dimension) as well as in electoral processes and activities (external dimension).

Equal participation and representation of women in election management is part of the conundrum with respect to gender equality in electoral processes. Women should hold positions at all levels within an electoral management body, which is crucial for electoral decision-making. Moreover, it is asserted that “the degree to which women are able to participate in elections can be strongly influenced by the policies and programs of an EMB [electoral management body]” (IFES 2014, 3). In this regard, evidence shows the representation of women in decision-making and management positions can help ensure the inclusion of women’s perspectives in the development of electoral regulations, procedures, and activities (IFES 2014).

In accordance with the new law governing the NEBE, the NEBE Re-establishment Proclamation No.1133/2019, the electoral board comprises of five permanent members who are appointed by and accountable to the House of Peoples Representatives, the lower house of the Ethiopian Parliament. The law envisions guaranteeing independent appointment of NEBE members and ensuring financial autonomy of the institution.²⁷ With respect to the composition of NEBE members, it requires, in general terms, taking into account gender diversity (Article 6). This general proviso for gender consideration calls for the nomination and appointment of women candidates for NEBE membership. However, there is no stipulation as to the proportion of the gender composition; a draft proposal prescribing for not more than two thirds of the members to be of the same gender/sex has failed to get approved.²⁸ It is not clear what having a ‘gender consideration’ entails in measurable terms, as there are no clear targets or concrete strategies on how to entertain this consideration. Besides, the possible sanctions for failure in such consideration of gender representation are not clearly indicated under the law, hence left to the discretion of the nominating and appointing bodies. It is opportune that the recent nomination and appointment followed some practical considerations and currently NEBE, chaired by a woman, comprises two women out of the five members.

27 Preamble of the NEBE Re-establishment Proclamation 1133/2019.

28 The Draft Proclamation Article7(2) stated “The composition of management board members shall take into account the national ethnic composition, and members of the same gender must not exceed 2/3 of all management board members”.

On the other hand, the gender consideration requirement under the Proclamation is limited to NEBE board membership and not required, in the same manner, in the lower structures of NEBE. Though the law calls for the establishment of regional offices of the Board that facilitate elections in the regions, there is no corresponding obligation to incorporate gender considerations in the appointment of NEBE regional officers (Article 23). Hence, gender consideration is not necessarily institutionalized throughout NEBE structures except for the discretion of the management. Given that gendered constraints tend to be intact the further one moves away from the center, a binding requirement for gender balance in regional branch offices would serve a great deal.

Looking at structures, at constituency and polling station level, would also be relevant in examining electoral management. The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (No. 1162/2019) provides for relevant provisions regarding constituencies and polling stations. With respect to the establishment of constituencies, the law expects gender representation, as general as it may be, in the recruitment and assignment of election officials for the general and local elections (Article 13(5) and 15(9)). The Electoral Board is further obliged to establish polling stations that serve as designated locations for voter registration, casting and counting of votes; each of these polling stations are expected to serve around 1500 voters (Article 15(3) and (6)). The law introduces two important structures for each polling station: an Election Administration Committee and a Grievance Hearing Committee. The gender composition of the Electoral Administration Committee should follow the general 'gender consideration' rule set for NEBE membership (Article 13(3)). Whereas, the Grievance Hearing Committee chaired by the Electoral Administration Committee shall have two more members, one man and one woman, who are selected from registered voters in the constituency with no affiliation to political parties and known to have good ethics (Article 15(10)). This mandatory reserved seat for women in the Grievance Hearing Committee of each polling station is one of the areas where the electoral law gives due recognition to gender parity in election management. By far, this is the only clear-cut provision for a gender proportional composition in the electoral management structure under the new Ethiopian electoral law.

Regardless of stipulations under the law, an electoral management body should strive to establish gender balance within its staffing and ensure that women hold positions at all levels within the institution (IFES 2014, 14-15). With the view to achieve this, electoral management bodies themselves can implement quotas or targets as well as gender sensitive recruitment policies, among others, within their internal organization, particularly in decision-making positions (IFES

2014). It is expected that NEBE's bylaws will integrate such frameworks for effective inclusion of women within the institution.²⁹

From the look of its legal mandate, NEBE's is not strategically placed to play an active role in promoting gender equality as its mandate is limited under the Proclamation. This has also been demonstrated in practice in its activities, issues in focus, and stakeholder engagements during the electoral law drafting process. While NEBE has had considerable dealings with political parties, the engagement with women's groups and wider electoral stakeholders that are focusing on gender equality has been minimal. Among several consultations NEBE spearheaded during the legal reform, none was dedicated to women's issues. It is important that electoral management bodies proactively consider gender not just in their configuration, more so in the design and execution of their activities as well in their interactions with other actors (IFES 2014). It is reported that NEBE plans to proactively mainstream gender through its directives and policies and activities.³⁰

4.2.3. Political parties

Political parties, are vital catalysts of women's participation in politics, as they select candidates for elections (UNDP and NDI 2012). As emphasized by UNWGDW (2013, 17), "[t]he most effective strategies for women's political empowerment involve reforms to incorporate rules that guarantee women's representation within political parties". In this regard, it noted that good practices of States include a legislative requirement that political parties should place women in realistic positions in their candidate list and condition the funding of political parties on this, apply quotas, guarantee the rotation of power, and ensure gender par membership in their governing structures.

Institutional factors in relation to political parties are among the forces affecting women's political participation or the 'supply' of women politicians. Institutional constraints include party systems that operate through rigid schedules insensitive to women's needs and the type of electoral quotas used, if any (Kangas et al. 2015). This is further explained as the "lack of adequate support structures to rectify existing codified institutions" that are desired to change the party culture in order to ensure the inclusion of women in political leadership and achieve gender equality in politics (Morobane 2014). Political parties that are embedded in patriarchal notion of democracy are likely to oppose fundamental shifts in party or political culture that destabilize the gender hierarchies and relationships. Hence, laws governing political parties can be of paramount significance in setting the standards for women's political participation (United Nations 2005, 32).

²⁹ Interview with Hon. Bizuwork Ketete, NEBE, 10 June 2020, Addis Ababa.

³⁰ Ibid.

It was clear from our preliminary analysis of the drafting process that political parties in Ethiopia were powerfully positioned to reject the few proposals to increase women's representation in the legislative. The Ethiopian Electoral,

Political Parties Registration and Election's Code of Conduct Proclamation (No. 1162/2019) does not have a standalone provision targeting gender equality in political parties and rarely mainstreams gender concerns in this domain. The few improved requirements compared to the previous electoral law is the mentioning of a mandatory but general 'gender consideration', under Article 64 and 74 of the Proclamation, in the number of female candidates, members, founding members, and leaders within political parties.³¹ This general requirement appears nominal compared to specific often sizable quota requirements stipulated by law in several Latin American countries for candidate list as well as for internal party structures (IDEA 2011). According to the new Ethiopian electoral law, political parties in Ethiopia are expected to consider the representation of women in their structures from their inception through their operational decision-making. The consequence, however, for those political parties that may not adhere to this standard is not clearly stipulated. Further, the gender consideration requirement does not translate to candidates list; there is no binding obligation on the part of political parties to have female candidates stand in elections, which is the fundamental condition for women's access to political office.

Article 100 of the Proclamation, which regulates government's financial support to political parties, specifies the number of female candidates as one of the determining factors for deciding the amount of financial support granted to the respective parties.³² Nonetheless, it is not clear from the provision to what extent the number of women candidates in a political party determines the degree of financial support to be received. This may be clarified in the future by relevant directives to be issued by NEBE.

The provisions governing the formation, organization, financing, and management of political parties focuses on a voluntary and incentive based approach to promote the inclusion of women in political parties (Proclamation No. 1162/2019, Part four). Given political parties in Ethiopia are often marred

31 Article 64(6) "The recruitment of founding members in accordance with sub-article 1 of this Article shall reflect gender considerations and the contribution of members of the local community"; Article 74(4) "Every political party when conducting election for leadership position shall ensure gender balance consideration".

32 Article 100(1) "The government shall grant annual financial support for political parties to enable them conduct legal operations and meet their obligations, based on the vote they win at Federal and State Council elections, the support and donations they receive from members and supporters, the number of female and disabled candidates they nominate as candidates, and other relevant criteria".

by patriarchal hierarchies, the strategies envisaged in the Proclamation do not rise above mere tokenism. It is considered necessary to require political parties to put forward a minimum number of candidates of each gender, with reasonable chances to be elected (ODIHR 2013); this is imperative to achieve meaningful equality of opportunities beyond the rhetoric. The CEDAW Committee (1997, 28 and 42-43) emphasized that it is the State's obligation to enact appropriate legislation that complies with their Constitution, and more specifically to identify and implement temporary special measures and further ensure that political parties do not discriminate against women.

In the absence of legislative quotas in Ethiopia, regulating political parties for women's representation is an uphill battle. The new electoral law stipulates no obligation, loose guidance, and insufficient incentives for the representation of women in the formation of, membership, and candidacy in political parties. According to Kittilson (1999) the following party characteristics can influence party-level variation in women's representation in the absence of gender quotas:

High levels of institutionalization, a localized level of candidate nomination, and leftist and post-materialist values all individually enable parties to increase the descriptive representation of women. Further, high levels of women working at internal party offices and the presence of formal rules designed to increase the number of women MPs [members of parliament] are each conducive to women's representation. ... The finding that women's party activism is integral to women's representation in parliament is especially encouraging in an era when women's activity in party politics has increased substantially. Not only can women party activists pressure the party for women's representation in parliamentary office, activists can also institutionalize the gains made by pressing to implement rules that call for guaranteed proportions of female candidates (Kittilson 1999, 94)

It is asserted that political parties indeed have a duty to show commitment to the principle of gender equality in their constitutions and ensure that women are included in party lists and nominated for election (CEDAW Committee 1997, 28 and 34). In 2004, the ruling party, the then EPRDF, administered a 30 percent quota for female candidates to stand in elections, which significantly increased women's representation in parliament; women's representation progressively raised from 2 to 38 percent over two decades.³³ One may reasonably expect the same gesture from the current ruling party³⁴ given the political will already demonstrated in bringing more women to political and public decision-making

33 See <https://www.thenewhumanitarian.org/report/51869/ethiopia-ruling-party-wants-more-women-parliament>.

34 Following the political reform, the EPRDF has transformed itself to create the new Prosperity Party which is the current ruling party since 2019.

offices. Nonetheless, it is far from certain if both the ruling party and opposition parties would integrate an internal gender quota system for candidacy without mandatory stipulation in the electoral law.

The State is obliged to build favorable conditions towards improving women's access to political office. This, for example, requires establishing preconditions for women's parity or at least a critical mass of women in parliament and local government through a quota system to serve as "a tool for consolidating strong female representation" (Okume and Asfaw 2014, 106). In order to achieve this, structural barriers women may face need to be addressed. Laws on political parties in many countries stipulate that statutes of political parties should adhere to an electoral quota of at least 30 percent women on the candidate list and some even stipulate 40 percent for parliamentary candidates (e.g. Bolivia and Mexico) (IDEA 2011). This does not necessarily mean that political parties have always complied with these requirements and in some jurisdictions violations of quota requirement may be followed by financial or other sanctions. This, in some countries (e.g. in Costa Rica, Argentina, and Ukraine), may be a legitimate reason for rejection of candidates (the candidate list) nominated by the concerned party (Rodríguez 2019; IDEA 2011).

While there are constitutional and international standards as well as best practices to draw valuable insights from, the electoral law reform did not modify party registration, financing, organization, and functions, in ways that explicitly and meaningfully redress the exclusion of women from electoral politics. As such, it can be said that the political parties regulatory model that this new law inculcated shows little interest to rectify the underrepresentation of women and their interests in the political arena. All in all, the law emboldened political parties against reform for increasing women's representation in the political sphere by failing to require structural change and compulsory requirements on the election of candidates and party nomination practices. In doing so, it has failed to systematically promote the inclusion of women in the Ethiopian politics.

4.2.4. Election campaigns

Election campaign is one key aspect of the election process envisaged by the Ethiopian electoral law. A candidate, upon receipt of a certificate of candidature, is allowed to organize on her/his own or through supporters, rallies, and peaceful marches as may be desired to support her/his political campaign by furnishing a written notification (Proclamation No. 1162/2019, Article 43).

Gender sensitive policies are important determinants for maintaining a level playing field in election campaigning. As society is not gender-neutral, nor can

be campaigns. Several factors should be considered in order to ensure gender equality in political campaigns.

Equal access to finances

Financial limitations represent a substantial obstacle disproportionately faced by women political candidates. Women often lack the economic standing for their political participation (Mlambo and Kapingura 2019); a phenomenon highly linked to the underlying socio-economic factors and systemic discrimination they experience. Studies show that, given the costs associated with elections, in particular the cost of campaigning being very high, lack of financial resources can largely limit women's participation in elections (Muriaas, Wang, and Murray 2019; Kassa 2015; WPL 2014). Campaign finance laws may be designed in a manner to assist women (United Nations 2005, 23). According to Ohman (2012, 29), there are two common approaches to promote gender equality in elections. The first is by tying the extent of direct public funding to gender equity among candidates (eg. Ethiopia). The second approach is providing other financial incentives (earmarking of public funding) to increase gender equality in political parties through different activities sponsored by government.

The Ethiopian electoral law, Article 100, provides financial incentive in the form of additional funding for political parties based on the proportion of women members. However, it lacks a mechanism that guarantees the investment on women members or candidates of the government fund received by political parties. In some countries, such as Brazil and Mexico, statutory public financing for political parties clearly require that some of these funds are used to increase women's capacity and promote their political participation (IDEA 2011, 22). To create an enabling environment for women to participate in politics, parties should make a conscious effort to facilitate women candidates' access to party and public funds. The allocation of special campaign funds for women candidates and incorporation of statutory obligation to ensure the allocation by political parties of a certain percentage of their public funding to promote women's political participation would be particularly important to increase women's access to campaign finance. This, however, is not clearly stipulated under the Ethiopian electoral law and is left to the discretion of political parties. When political parties are reluctant to promote gender equality, State actors can play a significant role by "using funding regulations and campaign support opportunities to create incentives or impose sanctions on parties to encourage them to include women" (Krook and Norris 2014, 7). Moreover, campaign financing for independent candidates remains unclear under the electoral law; the attention the law dedicates to independent candidates, in general, is minimal. The precarious position of independent candidates in general and the gendered imbalances in campaign financing sources may greatly affect gender equality

among independent candidates running for elections. Public financing for independent candidates and special funds for women independent candidates will be imperative to address the gaps.

Equal access to media

The media plays a crucial role in shaping voter interest in political parties and candidates. Media groups can significantly influence women's participation in election in "[t]he way [they] portray women, how they deal with issues of special concern to women, and whether they convey effectual voter education messages" (United Nations 2005, 41). Quality media coverage can "improve public governance: informed voters are more willing to support candidates who want to run on public policy platforms" (Vicente and Leonard 2009, 302). Regulations and incentives on media used by political parties may enhance women candidate's access to the public. In countries where all candidates receive equal portion of free airtime in State media where there is also limit on paid political advertising, women may normally benefit from proportionate share in broadcasting time; meanwhile, extra airtime may also be allocated for political parties that nominate women candidates (United Nations 2005, 41). As an instrumental tool for campaigning, contesting political parties in Ethiopia are entitled, under the electoral law, to enjoy equal access to State- owned mass media such as the radio, TV, and newspapers (Proclamation 1162/2019, Article 44). By virtue of this, one would expect that women candidates from political parties would enjoy equal access to the media while independent candidates are not provided with any scheme.

Even though formal rules on media coverage of candidates may mostly be gender-neutral, media practices may disadvantage women by creating an informal or indirect gendered discrimination impeding their equitable access to broadcasting. This challenge may even become stark in case of independent political candidates who may not leverage political party backing as envisioned by the Proclamation. Special media package designated for women candidates would serve best in countering disadvantages women may face in their media access. Albeit, such affirmative measures are not incorporated in the electoral law.

In addition to media bias and presence of few female candidates, election campaigns may not pay much attention to gender issues, which alienate female voters (Andreassen, Geisler and Tostensen 1992, ix). Thus, access to media should not be measured just by the amount of media coverage devoted to women; most important is also the quality of coverage. Equal access to media would hence heavily concern the content of the information. No doubt that the "quality of media coverage can have a major impact on the advancement of

women as candidates and as voters” (United Nations 2005, 42). This is crucial for consciousness raising and mobilization among constituencies. The media may not only perpetuate stereotypes of women in their traditional roles instead of their image as political leaders, it may also confine women in political life to certain ‘soft social issues’ (women, children, social affairs, etc.) than portraying competence in ‘hard core’ politics (economic policy, defense, foreign policy, etc.) designated as a male domain (Llanos 2011). Research found that “[women] candidates are often portrayed of long-standing gender stereotypes, these gender differences have important implications for voters’ perceptions of candidates and may shape widely shared attitudes towards women’s role in the political arena” (Kittilson and Fridkin 2008, 1). Women candidates frequently endure personalization of political reporting, receiving coverage focusing more on their personal qualities or family responsibilities than on issues magnifying their political positions; whereas their portrayal in the media as active political participants and leaders on the contrary can greatly boost women’s political participation (United Nations 2005, 42). To this end, the role of the electoral law in providing standards for gender sensitive media coverage with respect to elections and political campaign is indispensable. No provision under the new electoral law of Ethiopia offers some guidance to this effect.

Violence/harassment in elections

Gender based violence of any nature and magnitude has become a growing concern associated with women’s political participation. According to UN Special Rapporteur on Violence against Women (UNSRVAW), it may range from “misogynistic and sexist verbal attacks to the most commonplace acts of harassment and sexual harassment” occurring offline and online; it consists any gender motivated act of violence that may likely cause physical, sexual or psychological harm “directed against a woman in politics because she is a woman, or affects women disproportionately” (UNSRVAW 2018, 11-12). The aim of such acts is to discourage women from being politically active and this may affect women as voters and electoral officers as well. Bardall (2013, 1-2) illuminated that; violence against women in elections (VAWE) refers to:

Any random or conspiratorial act to discourage, suppress, or prevent women from exercising their electoral rights. This includes women’s participation as voters, candidates, party supporters, election workers, observers, journalists, or public officials ... may take place in both public and private spheres ... commonly perpetrated by political opponents and party militants; however, it may also be perpetrated by family members, domestic partners, religious leaders and the media.

Political contestants may perpetuate sexism in political communication. Electoral standards desired to facilitate women's participation in election would place campaign ethics requirements towards regulating discrimination and sexism in political communications. A gender sensitive campaign entails avoiding gender discriminating subjects, issues, and language by political contestants, party or candidate supporters, media, and all concerned bodies. The electoral law of Ethiopia is silent on this; it thus creates a gap in putting compulsory ethical standards on gendered communications as legal requirements. And it is not clear how much the directives to be adopted by NEBE will attempt to properly address these issues. As the laws stand now, it does little to protect women from sexist political communications with a far reaching impact on equal standing of women candidates with men.

Women candidates have gender-specific safety concerns while taking part in campaigns as they may be exposed to different forms of gender based violence. It is noted that “[l]ack of female security personnel at polling stations, insecure travel routes and poor infrastructure may undermine women's ability to participate in voter outreach and electoral campaigns, as well as simply vote themselves” (IFES 2014, 9). Putting in place a gender sensitive campaign security package is indispensable while addressing broader issues of accountability for VAWE. Even though other laws on gender-based violence can be useful, “violence against women in politics is often normalized and tolerated, especially in contexts where patriarchy is deeply embedded in society” (UNSRVAW 2018, 16-17). It is therefore important that electoral laws specifically address it properly.

Addressing the various intersecting gendered barriers to women candidates' participation in political campaigns in particular calls for a targeted approach operationalized throughout the electoral cycle (IFES 2014). The electoral law follows a gender neutral approach with respect to political campaigns and does little in creating gender sensitive spaces for the participation of women and even much more less when it comes to promoting mobilization and consciousness raising among women voters. The electoral law, lacking gender perspectives, is only concerned with management of political campaigns but not the broader context of promotion of women's political participation. Thus, neither tackling gender violence in elections nor mobilization and consciousness raising are envisaged as relevant targets of the electoral reform.

5. Conclusion

This chapter has analyzed the general interpretive framework of the electoral reform process to help understand the gender and relational aspects of the new law. In doing so, it uncovered the patriarchal jurisprudence of the electoral law reform that is masked under a supposedly ungendered law. Such a conclusion was reached principally through analyzing three interrelated factors.

First, it identified gaps in the electoral reform processes, especially the absence of women and women's interests at different phases from agenda-setting or issue identification during the drafting process to adoption of the electoral laws by the Parliament. In contrast, it showed how political parties with patriarchal hierarchies were provided with plenty of opportunities to hinder some of the progressive aspects of the draft law and proposals by stakeholders. In examining the extent to which the electoral reform process involved women and their interests, this chapter found that women's organizations and activists rarely participated in agenda setting and initial consultations; and the in-depth studies did not include a gender analysis.

In addition to lack of ensuring significant participation of women in the electoral law reform process, women were not provided a platform where they can freely express their views without mediation through male participants. The recommendations of few women's rights organizations at a later stage of public consultations were not accepted by both political parties and the parliament. The grounds for rejecting the recommendations on the basis of either lack of motivations or abilities on the part of women to participate in politics to the issue of lack of resources suggest a strong and coordinated move to shy away from interrogating systemic discrimination perpetrated by gendered configurations of political institutions. The ample platforms provided for political parties to negotiate the electoral law, as opposed to women and women's organizations that resulted in hampering the few gender equality measures also demonstrate the systemic exclusion of women's interests in the reform process.

Second, the electoral law seldom has the mechanism by which women are promoted. With regard to the election management bodies, the arrangement for gender equality is limited to a general 'gender consideration' in the appointment of board members. Political parties that were the major protagonists of the electoral reform process wield the power to either encourage or prohibit women from political offices as the law does not specify obligations to do so. Rather, the electoral law focused on some incentives in relation to government financing and all other gender equality measures to be taken by political parties were at best suggestions.

Third, parallel with the absence of women and women's rights organizations has been the lack of consideration of the constitutionally mandated affirmative action measures to remedy past discrimination in governance and decision-making. The few progressive proposals in the draft law were rejected through the use of outdated theories of supply and demand, where women were blamed for lack of resources, motivation, and qualification to stand for elections. However, the critical examination of the electoral reform process rather demonstrates how patriarchal institutions of all sort, from expert groups to political parties and legislature, acted as gate keepers to hinder the inclusion of legal entitlements that usher Ethiopian women to claim their rightful place in governance structures. Thus, the new electoral law reform is another lost opportunity to adopt comprehensive and clear standards that are essential to facilitate enhanced women's participation in the Ethiopian political sphere. The reform process and outcome represents, at its best, a democratic deficit, 'unconstitutionality', and a withdrawal from global human rights standards and best practices. With this, rests a case for a gender transformative reform in the context of the new democratic dispensation in Ethiopia.

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Part Two

Economic Empowerment



Employment as a Pathway to Women's Empowerment: Experiences of Women Textile Factory Workers in Ethiopia

Elshaday Kifle

1. Introduction

The Ethiopian developmental State ideology¹ has shown progress in the past two decades with a steady gross domestic product (GDP) growth and implementation of strategies and policies to meet development goals such as the Millennium Development Goals (MDGs) (Fantini 2013). The government, aspiring to diversify its agricultural base and increase foreign exchange earnings, issued a series of developmental plans including the Poverty Reduction Strategy Paper (PRSP) (2002- 2007), Plan for Accelerated and Sustainable Development to End Poverty (PASDEP) (2002/3- 2004/5), and Growth and Transformation Plan (GTP I – 2010/11-2014/15 and GTP II -2015/16-2019/20). The highlight of the Growth and Transformation plans have been expansion of manufacturing industries and attracting foreign direct investment in the sector (Oqubay 2015).

In its recent development plan, the Ethiopian government has identified six priority sectors in the manufacturing industries, including textile and garment industry.² In line with the priority given to the sector, the government has launched the Textile Industry Development Institute (TIDI) in 2010 to address

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- 1 The developmental State ideology, usually attributed to economies in East and Southeast Asia but later adopted by African countries such as Ethiopia, Botswana, and Rwanda, is used to describe States that focus on realizing economic development with the State playing a central role in micro-planning. Other attributes of the developmental State include, an effective bureaucracy, efficient private sector, and legitimacy of the State emanating from government's efforts to reduce poverty and unemployment (Daba and Mulu 2017).
 - 2 The other priority manufacturing industries are leather and leather products, sugar and related industry, chemical industries, pharmaceutical industries, and metal and engineering industries. See also: <http://www.ipdc.gov.et/index.php/en/investment-opportunitiesmm/priority-sectors>

the industry's human resource needs. Since then, the industry has seen an influx of foreign investors including big names such as H&M, Primark, and Tesco. The development of industry parks, in different parts of the country, has further facilitated the expansion of the textile and garment industry (Pols 2015). Duty free access to US and European markets through the African Growth and Opportunity Act (AGOA), General Systems of Preference (GSP+), and Everything but Arms (EBA) respectively is also a contributing factor to the growing garment and textile industry in Ethiopia (Mihretu and Llobet 2017). In 2014, the sector generated around 113 million USD from export trade and employed 37,000 workers; the target set for 2020 is to realize an export growth of one billion USD (Pols 2015).

The development of the textile and garment sector, especially the expansion of export-oriented industry parks, has opened employment opportunities, mainly for women; women make up more than 80 percent of the labor force in textile and garment industries, particularly in sewing (UNDP 2018). Similar trend is observed in East and South East Asia and in Sub Saharan Africa (Otohe 2015). There are different justifications given as to why female workers, especially young women, are preferred in this sector. These include minimization of production cost by hiring cheap female labor and the stereotypical roles given to women as more suitable for tasks required by these factories (Elson and Pearson 1981). Elson and Pearson notes,

Women are considered not only to have naturally nimble fingers, but also to be naturally more docile and willing to accept tough work discipline, and naturally less inclined to join trade unions, than men; and to be naturally more suited to tedious, repetitious, monotonous work (Elson and Pearson 1981).

Empirical studies on empowerment of women through employment in these industries have focused on South Asian countries, however, came up with less than conclusive findings (Hancock, Middleton, and Moore 2012). Studies conducted on female factory workers in Ethiopia have focused on exploring the challenges women face in the working environment, including issues related to wage, compensation, maternity rights, and gender based violence.³ These studies, nonetheless, have not explored, in any meaningful detail, the link between employment and empowerment, which this chapter tries to address. By looking into the lived experiences of women working in Ayka Textile and Garment Factory, in Ethiopia, the chapter aims to analyze female workers' participation in the textile and garment labor force and its impact on gender roles and women's empowerment in the Ethiopian society.

3 See Yost and Shields (2017); UNDP (2018); Wolde et al. (2018).

The research has primarily employed qualitative research methodology, to emphasize on the lived experiences of female factory workers. In particular, it utilized phenomenological approach⁴ in the attempt to understand how women employed in textile and garment factories perceive the impact on their lives (Qutoshi 2018). The research employed in-depth interviews and focus group discussions (FGDs) using semi-structured interview and FGD guides. Data was collected, between 2016 and 2018, from female employees of Ayka Textile, a ready-made garment manufacturer and exporter, located in Alem Gena, a town located around 16kms from Addis Ababa. The factory has been in operation since 2010 and had over 7,000 employees; it was named as the country's number one textile and garment exporter in the year 2013/14 by Ethiopia's Textile Industry Development Institute. Women participants of the study were selected through purposive sampling in order to include both married and unmarried, women who have worked for relatively longer time, and in different job positions⁵. The study followed all ethical guidelines and secured consent from all respondents. Different interview guides were used for married and unmarried women, keeping in mind the differences primarily in division of labor, decision making power, control over income, and freedom of mobility.

2. Conceptualizing Empowerment

The term 'empowerment' has been widely used, with different meanings and understanding, in feminist literature and development rhetoric. While some consider empowerment as "an individual process of taking control of one's life", others took a political definition of the term as "granting human rights and social justice to the disadvantaged" (Kabeer 2003). Some scholars define women's empowerment in terms of gaining access to resources. Wendy James, for example, defines the term as "the process and the outcome of the process, by which women gain greater control over material and intellectual resources and challenge the ideology of patriarchy and the gender based discrimination

4 "Phenomenology as a philosophy provides a theoretical guideline to researchers to understand phenomena at the level of subjective reality. ... It is also an approach to educate our own vision, to define our position, to broaden how we see the world around, and to study the lived experience at deeper level. It, therefore, holds both the characteristics of philosophy as well as a method of inquiry" (Qutoshi 2018, 215-216).

5 The women were mostly in their early to mid-20s. 90 percent of participants completed their high school education (tenth grade and above); four women (8 percent) have diplomas from technical and vocational training centers, and three others dropped out while in elementary school. The women have worked on average from two to five years at the factory. Efforts were made to include women who worked in different departments and varying positions (sewing, finishing, and supervisor) within the factory. Only two women, working in supervisory roles, had previous training in textile or related fields. For over 85 percent of the women informants, Ayka is their first employment although some have engaged in domestic labor, small trade activities, or worked in Middle Eastern countries.

against women in all the institutions and structures of society” (James 1999). Other scholars, like Nalia Kabeer, focus on the choice aspect and define disempowerment “to be denied choice, while empowerment refers to the process by which those who have been denied the ability to make choices acquire such an ability. In other words, empowerment entails a process of change” (Kabeer 1999b). Jo Rowlands, combines choice and resources with self-reliance, and defines empowerment as a “process whereby women become able to organize themselves to increase their own self-reliance, to assert their independent right to make choices and to control resources which will assist in challenging and eliminating their own subordination” (Rowlands 1997).

Reviewing the various views on empowerment, Batiwala provides that women’s empowerment occurs at three interconnected and mutually reinforcing levels. The first is at micro-level, where individual women take control of their own lives, shape perceptions about their values and abilities and set personal goals. Second is the meso-level, relational, referring to beliefs and actions in relation to relevant others. At the third level is the macro, collective level, where empowerment is considered in a broader, societal context (Batiwala 1995).

At the individual level, empowerment involves developing self-respect or self-perception of women (Sen 1990). Rowlands states personal empowerment involves “fundamental psychological and psychosocial processes and changes developing confidence and abilities and undoing internalized oppression” (Rowlands 1997). The dominant school of thought on personal empowerment takes into account the importance of social and cultural factors in a woman’s life, recognizing personal empowerment to be subjective to the individual woman’s experiences (Esplen, Heerah, and Hunter 2006). As Rowlands states,

Because empowerment for each person or group is in a sense, a unique process, indicators must be flexible and wide-ranging, and are likely to change, possibly quite radically, over time. For a woman, for whom it is a major challenge to attend meetings, initially her presence at meetings might be the measure of her empowerment; later, it might be her regular active contribution to discussion; later still, it might be her ability to initiate group activities (Rowlands 1997).

Empowerment at the relational level takes place in networks and power relations, including the household and the community. It can be measured by looking at women’s control over household assets, independent income, involvement in household decisions, experience of gender-based violence, control over time, and overall influence in the community. Meanwhile, empowerment at the collective level, relates to access to services and resources and the ability to influence at the political level (Lombardini, Bowman, and Garwood 2017).

Within these three levels, conceptualizations of empowerment have different yet overlapping dimensions. The economic dimension of empowerment is concerned with women's control over income and resources, access to employment and other resources, and representation of their economic interests in macroeconomic policies. The psychological dimension measures self-esteem, self-efficacy, psychological well-being, collective awareness of injustice and mobilization, and systemic acceptance of women's inclusion. The socio-cultural dimension explores women's freedom of movement, visibility, access in social spaces and networks, and positive media image of women. The familial/interpersonal dimension of empowerment looks at participation in domestic decision-making, freedom from violence, shifts in marriage systems, and regional/national trends in relationships. The legal and political dimension, on the other hand, explores the knowledge of rights and political systems, community mobilization for rights, and women's representation in political processes (Malhorta, Schuler, and Boender 2002).

It is, therefore, a challenge to decide on which level and dimension to measure empowerment. A further challenge is selecting indicators, which are adequate for testing casualty between empowerment and development outcomes (Ibrahim and Alkire 2007). The leading view is that, where possible, empowerment should be measured at all three levels, considering all dimensions, including the psychological, familial/ interpersonal, legal, political, economic, and socio-cultural. For limitations of time and resources, this particular research focused on the individual and relational level of empowerment, with emphasis on the psychological, economic, and socio-cultural dimensions. At the individual level, the psychological dimension has been explored through changes in self-esteem and confidence while the economic dimension has been explored through income and contribution to family. At the relational level, the research has looked at decision making power, sharing of household responsibilities, and freedom of movement as a fusion of the economic and socio-cultural dimensions. The research situates empowerment in the particular context of the Ethiopian social and cultural fabric, which shapes women's perception of their experiences. In both rural and urban areas, extended families, social networks, and institutions are of importance, and this is reflected in the benefits and discontentment of women factory workers towards their employment.

Empowerment of women through employment has been a contentious issue. Involvement in income generating activities means access to valuable resources and better bargaining power for women; this enhances women's control over choices and decisions. Another argument is that employment allows women to participate in the public sphere, which in turn will expand their network and increases their self-esteem (West 2006). Compared to the informal sector or

domestic work, employment in manufacturing industries brings large number of women together, which is seen as a positive factor for cooperation and organizing to bargain collectively (Elson and Pearson 1981).

On the other hand, there are arguments that assert employment alone is not sufficient to overcome structural factors, such as poverty and cultural norms and beliefs that contribute to disempowerment of women (West 2006). In addition, gendered divisions of labor overburden women in the work place, at home, and in the community. Another argument concerns the nature, quality, and conditions of jobs that are available to women. Jobs most women are engaged in, especially in developing countries, are those with meager pay, poor working conditions, and minimal job security, owing to gender norms and low educational attainment of women (West 2006). Such conditions are worse in the export-oriented industry because of the high level of competition to cut production costs and ineffectiveness of labor regulations, which factories avoid by moving to less regulated countries (Pepper 2012). Regardless of the low-payment and difficult working conditions, women have better opportunities working in factories than in agricultural labor work or domestic service, which pay far less (Keane and te Velde 2008). Further, working conditions in the industries, such as long hours, delayed or no payment, and unstable work contracts, some experts argue, are generally improving due to buyers' awareness of labor compliance (Fukunishi 2012).

3. Employment and Empowerment: Perspectives of Women Factory Workers

3.1. Empowerment at Individual Level

3.1.1. Psychological empowerment: increase in self-esteem and social acceptance

Psychological empowerment of women is an important indicator as changes in self-esteem and confidence can influence the relational aspect, for example, the decision-making power in the household, which in turn have a positive influence on other aspects. On the other hand, social norms and community attitudes affect how women interact with others as well as how they perceive themselves (Malhorta, Schuler, and Boender 2002).

At personal level, women working at Ayka Textile reported improvements in their confidence and self-esteem as a result of their employment. The social acceptance and recognition that comes with having a job has also been considered as a positive aspect of their employment. Employment has been described as a chance to get out of the house, interact with people, get exposure to the outside world, and avoid stress, worry and depression caused by staying at home. According to one of the interviewees,

If you stay at home you do not take care of yourself properly, you do not even clean yourself up, and you will spend the day immersed in housework. But if you have a job, you clean yourself up, go to work, and come back home. I like that. Of course, I am also very happy that I am earning a salary (Mulu, 25.11.2018, Sebeta).

For married women, working at the factory, increase in their self-esteem has an impact on the relationship they have with their husbands; they are given respect by their husbands.

I am more confident now. At least, if my husband complains about something, over a household chore that has not been done, I can say 'I was at work all day'. Before I used to talk to him with my head down if he says something negative to me but now I face him head on because I have a job. I think to myself 'Even if he tells me to leave, I have my job'. So I have become more confident since I started working (Tigest, 19.11.2017, Addis Ababa).

Similarly, when they compare their lives with their peers who are not employed, the women feel they are in a better situation. Marriage and having kids prevented other women from continuing to work in the factory. In such cases, the needs of the women might not be met by the money they receive from their husbands. A respondent, comparing her life with that of women who have stayed behind in rural village stated,

Most of the women who have stayed in my village have gotten married and have kids now. They do not have much opportunity to get out of the house. Their husbands are engaged in agriculture and women take care of the household responsibilities. They may be better off than me economically because they have everything they need around home and do not have expenses, but I prefer to work because it gives me self-confidence and self-care (Alemtsehay, 2.12.2018, Sebeta).

Women also talked about the respect that comes with having a job: "I feel like my family respects me because I am working. In fact, everyone respects you when you have your own money including your mother and father. You even love and respect yourself more because you are working" (Hawi, 25.11.2018, Sebeta). They also said the society accords more respect for working women than housewives, even without knowing the nature of the job, the income or the challenges the woman faces at the work place.

Other empirical studies, which explored empowerment of women working at export manufacturing industries, have found similar results on the increase of women's self-esteem and confidence (Hancock, Middleton, and Moore 2012). Social recognition of working women, however, is contested. Some studies in

South East Asia have reported negative perception of society towards women working at factories (Hancock 2007). However, in this study, such negative perception has not been a factor; female factory workers expressed that they get more respect than their peers who are housewives from both the community and their own families because they have their own income.

3.1.2. *Economic empowerment: earning income and supporting families*

Economic empowerment indicators such as earning income and making economic contributions have been considered as an important dimension of empowerment for long; earning income and supporting families boasts self-esteem and self-efficacy. The women considered earning an income as a significant improvement, no matter how insignificant the money was. Their work meant that they are independent, which they consider as a major advantage. One of the respondents, who used to be a housewife before she started working at the factory, made the following comparison;

There is a lot of difference. When I was a housewife, there were some expenses that his [her husband] salary was not able to cover. It was difficult to save bits and pieces of money that he gives me to buy myself clothes or shoes. Now, at least, I can cover my own expenses and some small expenditure for the household as well, although my husband covers most of household expenses. I am able to see the contribution of my income, although my husband fails to recognize its significance. He does not care that I am working and contributing (Desta, 12.11.2017, Sebeta).

Married women, through their income, contribute to the improvement of the life of the family. Some explained that they were able to buy furniture and improve their homes. Women whose husbands have higher salaries also have been able to cover small expenses, allowing their husband's income to cover bigger expenditures.

Most of the women also talked about self-reliance that comes with working and earning an income. This has allowed them not to ask their families or husbands for money for the things they need.

There are some things that women need that are difficult to ask their husbands. There may be women who are afraid to ask and husbands who do not understand. We may need to buy sanitary pads or hair oils, and it is good to be able to cover that with your own money (Biftu, 4.12.2016, Sebeta).

Furthermore, supporting parents, siblings, and other family members have been raised by many as an important aspect of work life. For those who are able to contribute to the improvement of their families' lives, it is a source of satisfaction

and pride; meanwhile, it was a source of disappointment and dissatisfaction for those who were unable to support their families. It is more common for unmarried women to support their families living in rural areas. Some of them send money to their families while others brought their younger siblings to live with them and support them financially to pursue their education. Moreover, it is important to make a distinction between women who work at different levels, and thus different salaries. Having a relatively better income, women who work at the assembly line and as supervisors or controllers expressed their happiness to be able to improve their families' lives. A supervisor, who participated in the FGD, said:

It makes me very happy that I improved my mother's life. I saved money and renovated her house. Changing my mother's life was my childhood dream. [...] Now when I go to visit her and see the house and that my mother is happy, it gives me such a satisfaction (Adanech, 25.11.2018, Sebeta)

3.2. Relational Level Empowerment

3.2.1. Changes in decision-making power

Measuring changes in decision-making is a significant indicator as it speaks to aspects of agency. Studies have shown that changes in this dimension lead to better outcomes for women as well as their families (Huis et al. 2017). Participation of women in important decisions, such as family planning, ownership of resources, and child raising have positive outcomes for the household and well-being of children.

The women feel their employment has brought changes in their decision-making powers in the household. Positive changes in decision-making power have been reported on income, family planning, and decisions concerning children. Employment has not, however, transformed sharing of domestic responsibilities or women's freedom of mobility and their risk to violence. Nonetheless, the women interviewed stated that although their salary is not enough to cover significant household expenses, it has its contributions in covering smaller expenditures, and importantly it gives them the confidence to decide on how to spend their money.

When I compare those women who are married and have a job with those who do not have a job, it is different. Those who do not have a job, even if their husband does not say anything, are too scared to ask for money to cover even small things like salt, and husbands do not give a lot of money. But if the women have their own income, they can cover the cost of these things (Lensa, 12.11.2017, Sebeta).

They also mentioned that working at the factory has allowed them to have a say, not only with their own salaries but also on the income of their husbands as well.

Although he is the one who buys most things, I think I have decision making power as well. Earlier, I used to timidly ask for more if the money he gave me was not enough. Now I can demand with confidence. If the amount is less than what he normally gives me, I ask him directly and refuse to take it. The next day, he gives me the full amount. He may say ‘it is because they cut my salary’ or something like that, but I tell him that he has never missed work. Before I used to be ashamed of asking for more not because I was afraid of him but men may think that you have wasted the money, or he may think that I gave the money to my mother although I did not (Selam, 26.11.2017, Sebeta).

Over 80 percent of married women interviewed said they have equal decision-making power on family planning and raising children. In fact, some women convinced their husbands not to have children. The women want to wait before starting a family or have more children because they do not believe they have the adequate financial capacity. One of the interviewees, for instance, indicated that her husband wanted to have a child this year, however, she managed to convince him to wait till she finishes her education, as she is attending evening classes. She added that she believes “having a job allows women to involve in decision making; ... when you earn your own income it gives you confidence to speak and your husband also respects you” (Hana, 20.11.2016, Addis Ababa). Even in one case where the husband insisted to have children despite her disagreement, the woman explained that she made the decision to use contraceptives without his knowledge.

My husband prefers that we have a child now and I stay at home to raise our child. I do not want that because I have seen what it is like being a housewife. I know what would have happened if we had children as soon as we got married. I tell him to wait for a while. [...] my husband did not know that I was using contraceptives at the beginning. I told him I was not using anything but later he found out. We had a disagreement about that. [...] he was upset that I was secretive about it but he did not tell me to stop (Negest, 12.11.2017, Sebeta).

3.2.2. *Sharing of household responsibilities*

The primary responsibility for taking care of household chores, including cooking, cleaning, and washing clothes, in Ethiopia lies with the women, especially in the case of married women. Some of the women consider this as natural while others believe it is unfair; however, they do not think there is anything they can do to change their situation. Women who are unmarried and

live with their families have the responsibility to help with housework, more than male members of the family are expected. There are some married women who receive help from female relatives on household chores and caring for children. For one respondent, working in the factory meant that she has to be even more diligent with the household chores.

I do most of the cooking because I do not want my husband to make me quit my job. I cook when I come from work and in the morning, I get up at six AM, heat up what I cooked the night before and pack our lunch. [...] Although it is hard to do all that after work, I make it happen before he comes home, usually around eight PM. I get home around six PM. When I was a housewife, I used to do all the household chores. But now, when I get home from Ayka, all I can do is cook. I clean the house once a week because I do not have time, and I spend most Sunday until around two PM in the afternoon washing our clothes (Terufat, 26.11.2017, Sebeta).

In the not so often circumstances that the husbands help with housework, women consider it as kind gesture and are appreciative. Some of the women said their husbands are unable to help with the housework either because their work keeps them out of the house most of the time or because they are engaged in professions that are physically taxing. There were few exceptional cases, where women share the household work equally with their husbands; while these women are working at the factory, their husbands cook, clean, and take care of the children when they are at home.

Women working as supervisors, and have better salaries, hire housemaids who are responsible for the household chores; this eases the burden on the women. More educated women, at supervisory level, also said their husbands contributed to the household work. One respondent who is a controller in the dyeing department said, "my husband can cook and also helped in taking care of the child. In our house, everything is shared equally; and the time when all household work is the responsibility of the woman has passed" (Hiwot, 20.11.2016, Addis Ababa). She added that her job, and having her own income, has contributed to the equal sharing of duties between her and her husband. However, this is an exception. For most women, domestic work is unequally shared with their partners; thus, they have the double burden of factory work and domestic responsibilities at the beginning and end of the day.

3.2.3. Freedom of movement

As the women work six days a week and only have one day off, most of them indicated that they usually spend their day off doing household chores and so their social life is limited. Although they go to visit their friends or family from time to time, their movement is mainly limited due to the nature of their work.

In addition, for married women, asking permission from their husband is a requirement to get out of the house; failing to do so lead to acts of violence. One of the women had to inform her husband, at least a week in advance, if she needs to visit relatives or meet friends. She explained,

I tell him every day so that he will not get angry. If I go somewhere without telling him, he could even come to where I am and confront me. He does not tell me where he is going and I do not ask him where he has been. I think that also upsets him. I did not tell him that I was coming to this interview. He is at work and will not be coming home that is why I came. It is hard for me to imagine what will happen if he finds out that I went somewhere without telling him. It would create a big problem. Although we may not get separated, it will be hard. He has hit me before; if he came home today around noon, and did not find me home, he will ask me where I am. I may lie now and tell him the truth after some time, and he may hit me. He may not hurt me that much but I may get a slap in the face (Selome, 2.12.2016, Sebeta).

Another married respondent, whose husband works and lives in a regional town, also informs her husband in advance where she is going. This does not bother her as she expects the same from him. However, she added,

We have established this habit. So, if I do not tell him in advance, and he calls when I am somewhere visiting family or with friends, he will ask why I did not tell him before. The only thing I am afraid of is if my phone is switched off or I do not pick up because my husband does not like that (Senait, 20.11.2016, Sebeta).

3.3. Employment in Factories as a ‘Last Resort’: Discontentment and Future Prospects

Although most respondents were in consensus about working being better than staying at home, they mentioned they are generally dissatisfied with the work in the factory. The major source of discontent is the amount of salary women are paid. Although salaries may vary according to job position and year of experience, all respondents were in agreement that their salary is not sufficient to bring any transformative changes in their lives. In addition, there are limited opportunities for promotion and pay raises. Although annual salary increases are common, lack of clear set criteria and subjective nature of the increase have led to dissatisfaction, and at times caused strikes. In addition, stringent working conditions, long working hours including working on weekends, standing up all day with little to no breaks, and difficult supervisors contribute to the discontent. The social support system women established amongst themselves, whether in

the form of discussing their problems and grievances or supporting each other in times of need, has been identified as a positive outcome of working in the factory. A respondent explained,

I did not think at the time that I will work there for this long. But there is nothing better out there; all factory work is the same. Until God gives you your own thing, you have to work. You work but the income is 'hand to mouth', it is not something that can change your life. Working in the factory, I may have money month to month, but it is not enough to change my life. After tax and deduction, I get around 1000 birr⁶ (Worke, 26.11.2017, Sebeta).

Another female employee interviewed, a divorcee whose son lives with her mother in a rural part of the country, said she is unable to send money for her son because her salary is not sufficient. After tax, pension, and other deductions, she gets 900 to 1000 birr per month. Paying 400 birr for rent, with food and other expenses, she is unable to send any money for her son. For most women, their salary from working in the factory is their only source of income. Working all days of the week, except on Sundays, they are not able to engage in other paid work. However, one respondent braids hair in her house during her spare time; another mentioned she sews while a third woman sells coffee on the streets on her day off, Friday and Saturday afternoons.

Regardless of the discontents, the women keep working in the factor for lack of better options. According to a respondent,

Women prefer to work in the factory because it is better than being unemployed. I am sure many of the women will leave the factory if they find something better. There may be a few who are happy to be working there, but most of the women complain. I do not think anyone prefer to work there if alternatives existed. But currently, this is the only hopeful thing. Even working at the factory is a privilege the lucky ones get. There are many women who come and stand at the factory door and are turned back (Asnaku, 19.11.2017, Addis Ababa).

60 percent of the women interviewed have taken the Ethiopian General Secondary Education Certificate Examinations (completed tenth grade) but were not able to get the required grades to enter upper secondary school (Grade eleven and twelve). Although it was possible for them to pursue vocational training, they did not want to burden their families with the tuition fees. Some families were unable to pay for vocation training, thus, the women had to start working at the factory. One woman mentioned that she would have preferred to continue her

6 1000 birr is about 36 USD at the time of the interview.

education but chose to work and later put herself through school rather than depend on her husband.

Most respondents expressed an interest to pursue their education, preferably in evening classes while continuing working. However, the working hours at the factory are not be suitable. There may be rare instances where some are allowed to leave work early to go to evening classes; but these are exceptional cases. The women also work on Saturdays making it difficult to go to classes during the weekend. One of the respondents said she was allowed, upon permission from her supervisor, not to work on Saturdays, which meant she could continue her education. Younger women, who are not married, have expressed more interest in continuing their education compared to older, married women with children, who prefer to start their own business.

For most Ethiopian young women who have not been able to continue their education, another alternative is going to Middle Eastern countries, mostly as domestic help. In fact, some respondents tried going to the Middle East and have been unsuccessful. Some have already migrated before joining the factory. The women, however, did not have a positive attitude towards working as a nanny or domestic help in Ethiopia, even for equal or better pay. Such work, for them, has lower social status compared to factory work, and less in access and exposure to information. For others, the problem lies in the fact that such work is not permanent, and working as a live-in nanny or domestic help is not suitable for married women with children.

Respondents explained there are no better options available for them, if they have not been employed in Ayka. Few of the alternatives were to engage in farm labor along with their families, selling local beer [tella], or working as daily laborers. For the women, working in the factory is better than these other alternatives. However, most of them do not plan on working at the factory for long. While some think about getting hired at another factory with better pay, others envision starting their own business. The business that most aspire to own is a hair-salon. They mentioned different reasons to why working at the factory is not a viable option in the long term. Among these reasons are inadequate salary, disproportionate workload, the difficulty of working while standing up for eight hours or more, the routine nature of the job, and lack of opportunities for growth and promotion.

4. Conclusion

The interrelationship between employment and empowerment is complex. Similar to Kabeer, Mahmud, and Tasneem's (2011) argument, the research findings show that a simple 'yes' or 'no' answer does not respond to the question of whether or not employment empowers women. As a deeply patriarchal society

and where the phenomenon of women working outside home and in the formal sector is a recent phenomenon, the main factor of empowerment comes from leaving the house and earning an income, regardless of the amount. This led to increase in women's self-esteem and self-worth.

Improved decision-making in the household have also been recorded with women having more say on decisions concerning the use of income and resources, family planning, and child rearing. These, however, have not transpired into equal division of domestic responsibilities, especially for married women who still carry the burden of cooking, cleaning, and taking care of children. Factory work also comes with factors that contribute to the disempowerment of women. These include meager pay earned, which does not allow women to transform their lives in any meaningful way, long working hours, and hard conditions, which lead to different health problems. Long working hours also keep women from looking for other options or pursue education and training opportunities to better themselves. As the findings show, employment can be a foundation for empowering women. However, employment alone is not adequate; it needs to be coupled with other interventions. Improvements in pay and working conditions need to be foremost.



A Continuum of Choices and Constraints: Women's Decision-Making, Sense of Agency and Well-being in the Ethiopian Garment Industry¹

Linn Ternsjö

1. Introduction

Gender equality has partly been understood by policymakers as expanding women's access to paid work, which not only has positive trickle-down effects on economic growth and productivity but also on women's empowerment and household well-being; the World Bank (2011) coined these benefits of gender equality as 'smart economics'. In the early 1970s, women increasingly entered the labour market in the Global South alongside the expansion of export-oriented industries as a means to promote development (Ruwanpura 2011). Empirical studies, however, brought attention to the exploitative working environments whereby women from poor socio-economic backgrounds often ended up working in export-oriented industries for long hours and low pay (Domínguez et al. 2010; Pearson 1981). At the same time, they were expected to bear responsibilities of domestic care with minimal or no support, an observation that remains valid to this day (Benería, Berik, and Floro 2016). These considerations are widely absent in conventional discourses that tend to view the effects of paid work on women as uniform and invariably optimistic (Chant and Sweetman 2012). Feminist scholars have pointed to the effects of paid work on women's agency and well-being as ambiguous and sometimes contradictory (Benería, Berik, and Floro 2016).

In Ethiopia, the government's objective is to diversify the economy and become less dependent on agriculture; export-led industrialization with a focus on manufacturing has been identified as the better means to poverty

¹ This chapter builds on a research originally conducted for my MSc thesis in International Development and Management at Lund University.

reduction (National Planning Commission 2016). The national development strategy, the Growth and Transformation Plan (GTP II), promotes the textile and garment industry² as a priority sector for foreign direct investment, export diversification, and job creation (National Planning Commission 2016, 138). Moreover, investors consider Ethiopia as an attractive destination for light manufacturing³, because of its preferential trade access to US and European markets, proactive industrial policy, and cheap electric power (UNECA 2016). The wage differential with China is almost a factor of one to eight, while labour productivity appears to be roughly the same (Dinh et al. 2012, 26-31).

One of the strategic objectives of GTP II is to promote women's empowerment and ensure their effective participation in the development process. A way of doing this is to actively increase their entry into paid work, which the Government of Ethiopia (GoE) suggests can help overcome gender-specific challenges such as poverty, ill-health, unequal power relations, and limited decision-making (National Planning Commission 2016, 91-92). The reasoning resonates with the International Financial Institutions' (IFIs) conviction that increasing the number of women in paid work is 'smart economics'.

The GoE has committed itself to the 2030 Agenda for Sustainable Development, where goal five explicitly refers to the achievement of gender equality and empowerment of all women and girls. Other Sustainable Development Goals (SDGs) include gender equality targets, which is important given that women are often among the left-behind groups of society (Klasen and Fleurbaey 2019). Decent work for all and economic growth is another SDG, which is partly to be achieved through industrialization and labour-intensive manufacturing (United Nations 2015). Besides, in 2000, the GoE revised the family law to evade major legal constraints for women to pursue paid work. Previously, women did not have the right to pursue paid work or own private property without the husband's consent (Aalen, Kotsadam, and Villanger 2019). In recent years, however, women have come to dominate the workforce of the expanding garment industry in the country. Nevertheless, they are concentrated in low-skill and traditionally considered feminine jobs such as sewing. Women working in the industry earn low wages, which barely cover all basic expenses, and they are underrepresented in leadership positions (UNDP 2018). This gendered labour

2 This chapter focuses on the garment industry, which refers to the process of transforming fabric into clothes.

3 Light manufacturing refers to a sub-sector within an industry that tends to do all processing, fabricating, and assembly within an enclosed building. Typical items in Ethiopia include leather goods, garments, and agricultural products.

market segmentation might be an attribute of gender inequality in the Ethiopian society.

Despite the government's effort to attain gender equality through the ratification of numerous conventions such as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) (UNDP 2018), gendered institutions and structures affect the behaviour of men and women differently, putting women at a disadvantage (Mabsout and Van Staveren 2010). Girls are reported to have low literacy and high dropout rates compared to boys. Further, early and forced marriage, especially in rural areas, affects girls and women (MoF and UNICEF 2019). It is therefore not possible to analyse empowerment, or more specific to this chapter, decision-making, agency, and well-being, without considering these factors, which can be referred to as discriminatory gendered norms.

Drawing on critiques of 'smart economics', this chapter explores the impact of paid work in the Ethiopian export-oriented garment industry on women's empowerment, as perceived by women themselves. The chapter uses feminist theory to analyse the reasons for why and how women pursue paid work in the industry. It further examines how paid work affects women's decision-making, sense of agency, and well-being.

2. Setting the Scene: Women in the Ethiopian Garment Industry

Research on Ethiopia's growing garment industry is dominated by discussions that focus on how labour can become more efficient and better contribute to the sector's competitiveness (World Bank 2015). In dealing with the labour market, studies concentrate on examining high employee turnover rates, from a business point of view (Blattman and Dercon 2018; Kumar 2011) and fail to incorporate employees' perspectives. Moreover, the methodology used is mostly quantitative, giving little room to account for local processes, experiences and perceptions, not least from a gender perspective.

Some studies have addressed the protection or violation of workers' rights in the Ethiopian textile and garment industries (Mitta 2019; Yost and Shields 2017; G/Michael 2016). These studies give voice to women workers in their analysis. This is an important contribution given that women are among the socially disadvantaged groups whose interests have not been considered in the transition to rapid industrialization. Taking a slightly different approach, Vincent Hardy and Jostein Hauge (2019) look into labor turnover as a feature of 'micro-agency'. Yet, there is insufficient attention to women of different categories in the Ethiopian garment industry. Age, marital status, family composition, and level of education, for example, are important to look at because they capture varying social fabrics and experiences.

In addition, little is known about women's empowerment beyond the workplace. The gap is especially pronounced from a feminist scholarship perspective that highlights the need for in-depth studies that account for overlooked issues such as the participation in paid and unpaid work, impacts on well-being, as well as the role of gender norms. Gelila Teame's (2016) case study research is an exception and takes into account detailed experiences of women workers in an Ethiopian textile and garment factory and their experiences of intimate partner violence (IPV) at home. She argues that paid work is fundamental in reducing levels of abuse and enabling women to have more decision-making power and control over their lives. Nevertheless, there is no discussion of the agency or the experiences of unmarried women. Lovise Aalen et al. (2019) also assesses the impact of paid work in various Ethiopian manufacturing sectors, but the discussion is limited to the political agency of married women and women living with partners.

Failure to consider the different opinions of women on their living conditions and life outcomes, both in their household and at their workplace, hinders our understanding of empowerment as a process of expanding people's ability to make strategic choices and participate in decision-making. These are both closely linked to feeling a sense of agency and well-being. With this in mind, the chapter examines four dimensions of empowerment: the choice, or lack thereof, to pursue something that was traditionally denied to them (paid work), decision-making power, sense of agency, and well-being. It addresses an important gap in the literature on women in the Ethiopian garment industry and is guided by three questions: (1) How and why do women pursue paid work in the Ethiopian export-oriented garment industry? (2) How does this affect their decision-making power within the household? and (3) How is women's agency and well-being affected by working in the garment industry? In light of these questions, marital status and household composition are social positions that are principally considered throughout the chapter.

The empirical data presented in this chapter is derived from qualitative fieldwork carried out at a garment factory in Bole Lemi Industrial Park, located on the outskirts of Addis Ababa. The factory was chosen for its export-oriented production of garments and its accessibility, both in terms of time allowed inside the factory and permission to interview a variety of workers, especially those furthest down in the organisational hierarchy. At the time of the research, 3,800 people were employed in the factory, of which 86 percent were women. A combination of techniques was used to ensure a diversified sample of interviewees. An employee, reporting to the Human Resource Manager, assisted in the selection of Amharic-speaking women who had no work in an assembly line and who volunteered to speak to me in private. Additional informants were

selected using snowball sampling; interviews were conducted either at the informant's house or a local café alternatively.

Seventeen semi-structured interviews were held with female workers to understand their opinions on the meaning of paid work, time-use, and allocation of labor between different types of activities, decision-making, well-being, and the changes in their lives. To further understand the decision-making process, at the end of every interview, informants were asked to recall what they had done over the past twenty-four hours, as well as on their last day off. In addition, four focus group discussions (FGDs) were conducted to obtain further insights into the experiences of paid work. Two husbands were also interviewed to understand gender relations, household dynamics, and women's reported decision-making. All, except two of the seventeen women interviewed, were from rural parts of Ethiopia, their age ranging from nineteen to thirty-one. All were workers of the factory in different operations such as sewing, cutting, finishing, quality control, and packaging. Ten women had attended secondary school while five women completed primary education and two women left school when they were in grade three. The women interviewed were married, unmarried, and divorced. Five of them had young children, of which two were single mothers. Interviews with external experts, including Ethiopian research fellows, women's empowerment advisors at international organizations, and the Head of women's affairs at the Confederation of Ethiopian Trade Unions helped to situate women workers' experience within a wider context.⁴

This chapter addresses the underlying motivations and reasons for women to pursue work in the Ethiopian garment industry. It gets to the question of choice and the potential obstacles women have confronted to exercise this choice or lack thereof. It also delves into the household unit of analysis, as encouraged by feminist scholars, to depict the bargaining and negotiation processes leading up to a final decision. The chapter proceeds with a discussion of decision-making outcomes related to spending patterns, working extra hours, and provision of care. The chapter then elaborates on 'a sense of agency' and self-reported well-being, which gives particular attention to the local context and individuals' self-perceptions.

4 All names mentioned in the chapter are pseudonyms; sometimes also referred to as informants.

3. Feminist Conceptions of Paid Work and Women's Empowerment

3.1. Mainstream Topics, Models, and Methods: A Feminist Critique

There has been a large uptake of gender considerations in policy circles, since the rise of the Women in Development approach in the early 1970s where women were recognized for their productive contribution to the economy (Razavi and Miller 1995). However, feminists have raised many concerns, particularly about the unequal socio-economic position of women that should be approached critically. Feminist research goes beyond solely 'adding women' to the analysis or victimizing women as subject to male domination (Harding 1987). Rather, it shifts the focus to the various experiences of women. This is important knowledge to create social change and improve how women go about their lives (Reinharz 1992). In feminist economics, researchers question the absence of gender and power structures in the analysis of economic outcomes. They also question the approaches, methods, and models used in mainstream economics (Nelson 2008). Central research topics they advocate include analysis of housework and care, the feminization of industrial work, and the effects of macroeconomic policies on gender relations.

As for models, feminist scholars have been dissatisfied with the approaches to work and gender inequality in mainstream economics. Neoclassical models, for example, rationalise the overrepresentation of women in certain industries as the inevitable outcome of employers and workers coming together and making decisions that maximise efficiency under constraints (Nelson 2008). While these explanations recognize women, they ignore social positions or structural constraints, including discriminatory gender norms and other interlocking categories of differences such as age, race, and class. As Nancy Folbre (1994) highlights, conventional explanations of gender inequality implicitly lead to the acceptance of women's subordinate position. Earlier in 1981, Diane Elson and Ruth Pearson observed that gender norms and stereotypes of women as honest, caring, having greater dexterity, and docility complimented 'female occupations' in manufacturing (Elson and Pearson 1981). Low-status positions are made available to women, who are socialized into thinking they are only qualified for these jobs. This is consistently highlighted in feminist approaches to paid work under globalisation (Anker 1997).

Since the 1990s, feminist economists have come to embrace a wider range of methods beyond econometrics that help enrich quantitative data and explain choice or 'the power to choose' as Naila Kabeer (2000) calls it in her study of Bangladeshi women's labour market decisions. The use of interview and other qualitative methods reveal that many interplaying factors go into choice and decision-making processes.

Feminist researchers also emphasize the need to open up the household unit (Kabeer 1999b; Agarwal 1997). The argument goes that the household is a “site of gender inequalities in workload and resource allocation, and power relations that mediate choices and well-being outcomes” (Benería, Berik, and Floro 2016, 72). Consequently, the household can be characterised by a ‘cooperative conflict’ model, which presumes that households are sites of both cooperation and conflict, and women do not necessarily act autonomously (Sen 1990). Compared to the narrow neoclassical ‘new household economics’ model that views the family as a utility-maximizing unit of rational individuals, first introduced by Becker (1981), the former is a much more realistic view of the household. It also allows gender norms to be integrated into the analysis of paid work and its empowering effects.

Evidence points to the complex and varied daily realities, reasons for, and effects of pursuing paid work in manufacturing (Benería, Berik, and Floro 2016). Paid work in manufacturing does not always lead to greater empowerment for women (Ruwanpura 2011). Nonetheless, some policymakers are drawn to the reductionist orientation that enhancing female participation in the labour force improves women’s agency and well-being. Women’s increased access to paid work is expected to translate into a greater agency that changes unequal relationships and household decisions, which in turn improves well-being outcomes (World Bank 2011). Importantly, this narrative acknowledges empowerment as a process of change. However, it is questionable whether this process really is so seamless and holds for all women, an issue explored in this chapter in the context of Ethiopia.

3.2. Problematizing Decision-making, Agency, and Well-being

Following Naila Kabeer (1999b, 438), this chapter partly understands agency as the ability to make choices, “define one’s goals and act upon them”. It is a narrower concept than empowerment, which refers to “the expansion in people’s ability to make strategic life choices in a context where this ability was previously denied to them” (Kabeer 1999b, 437). The concept of agency, thus, is essentially the process that connects access to resources, such as paid work, with the corresponding outcomes, such as well-being. Decision-making has often been used as a proxy for agency. It is an important marker of agency because a woman will be able to make more of her own decisions provided that she has the power to do so. Within the household, an individual’s decision-making power can be unequal due to differences in the fall-back position; this depends on family support, individual wealth and income, the perceived value of the person’s household contribution, and the ability to exercise coercion. Gender norms also play an important role in shaping all these reasons (Kabeer 1999b).

Nevertheless, agency is subjective to what the person feels they can do; individuals can still manifest agency even if they do not participate in actual decision-making. One example would be delegating a task (Donald et al. 2020). On the other hand, altruism, such as caring for someone else, can coexist with (long-term) self-interest. It could also be the case that these women make decisions on what is socially accepted within the gendered institutions of their local community because they have internalized awareness of the costs of speaking out (Agarwal 1997). Decision-making is hence not enough to measure agency. It needs to be situated and nuanced because a woman may still have moral autonomy and feelings of freedom to be or do whatever she values in life even if she does not participate in much effective decision-making. It is for these reasons that the chapter distinguishes decision-making from the sense of agency.

A person's well-being is inseparable from their experience of agency to pursue freely chosen goals and decisions (Chirkov, Ryan, and Sheldon 2011). Access to paid work on its own is an inadequate measure for well-being. Therefore, the expression 'doing well or feeling good' captures multiple dimensions of well-being and fits with the human development paradigm (White 2010, 160).

Human development and well-being involve the achievement of basic needs, such as healthy functioning of the body, proper nourishment, and decent shelter, but it also constitutes much more such as the consideration of workloads and the ability to exercise agency through the determination of goals and subsequent action (Kabeer 1999b). Well-being is also about feeling a sense of self-worth, belonging, and affiliation (Kabeer 2000). This chapter builds on the concept of well-being as something subjective to the individual's evaluation of circumstances such as health, education, economic opportunities, social relations, security, and time poverty⁵ or leisure time.

There is a debate on the ways in which paid work impacts agency, decision-making, and well-being of women across the world. For instance, research on Colombia's export-oriented industry suggests that paid work has increased women's agency, well-being, and self-esteem (Friedemann-Sánchez 2006). In the export-oriented garment industry in Bangladesh, Marzia Fontana (2009) has pointed to evidence of women workers making more decisions over marriage and fertility. A similar argument is made by Naila Kabeer (2000) who finds that work in garment factories is associated with a better quality of life and higher female socio-economic status within the community. Sen (1999) further

5 Bardasi and Wodon (2010, 45) define time poverty as "the need to spend long hours working (in either the labor market or domestic work) because the alternative would be (even deeper) consumption poverty."

ascertains that women's access to paid work is fundamental for increasing their freedom in other areas of life. On the contrary, Edmé Domínguez et al. (2010) demonstrate that jobs across Mexico's and Central America's maquiladora garment industries improve women's independence in some cases, but often at a high cost. These jobs are often taken by women for economic survival; they are low-paid with appalling working conditions and can lead to health problems. Particularly married mothers are burdened with domestic care. Importantly, this literature critiques a simplistic understanding of the empowerment of women in the workforce.

Focusing on paid and unpaid work, Myriam Blin (2008) conducted a mixed method study to explore the conflicting individual experiences of women working in Mauritius's garment export-processing-zone. The study indicated that cultural and gender norms, as well as women's social position, determine the degree to which women take responsibility for double work, at home and at the workplace. Those women who were mothers or married, and who received no help from relatives, felt they suffered from a much heavier workload compared to women who were single or had no children (Blin 2008).

A recent study on women in the Ethiopian manufacturing industries finds that time poverty is the reason for why paid work does not necessarily lead to more political participation of married women (Aalen, Kotsadam, and Villanger 2019). The question of how other dimensions of empowerment are affected, and the detailed experiences of married women beyond the workplace, is partly answered in Teame's (2016) study looking at human rights awareness and IPV of female employees in the Ethiopian garment industry. The findings show that levels of violence are dependent on the type of power relationship between a husband and wife. Yet, it does not consider the impact on unmarried women who make up a significant proportion of factory floor workers in Ethiopia's export-processing zones (UNDP 2018).

4. Pursuing Paid Work and the Effects on Decision-making, Agency and Well-being

Factors informing the choice to pursue paid work in the Ethiopian garment industry tend to be diverse and subjective in nature, as indicated in the interviews and FGDs held. This has necessitated the need to cluster the dominant patterns and trends observed into themes, ranging from economic factors driven by the urge to earn an income to gendered power relationships. The following sections further go on to address the effects of paid work on decision-making, agency, and well-being.

4.1. Industrial Work as an Alternative for Women with Low Education Levels

For women with relatively low levels of education, industrial work was the better choice available for paid work. Failing to pass grade ten national exam and the state of being uneducated were frequently brought up as reasons for starting to work in the garment industry and not being able to land a better job. Another options that was mentioned as available, but considered much worse, was daily labour work at construction sites. As found in Mains's (2007) ethnographic research on youth in urban Ethiopia, education generates expectations among young people that they will be able to lead better lives. Failing to complete high school or not succeeding in joining higher academic institutions has the opposite effect. This was evident throughout the interviews whereby a job in the garment industry was considered as the "most suitable job for uneducated women like us" (Tiru, 08.02.2018, Addis Ababa). This touches upon the perception that education level restricts available choices and what is imagined to be possible.

The educational landscape is highly gendered in Ethiopia with girls' literacy and school enrolment still being lower than that of boys (MoF and UNICEF 2019). While the gender gap in education outcomes is worse for girls in marginalized rural areas with high poverty levels, it still exists in the more economically developed regions with better qualified teachers, school facilities, and resources (Tesema and Braeken 2018). This suggests that gendered socio-cultural structures, such as early marriage and the expectation for women to undertake household chores rather than prioritizing school, are present all over Ethiopia (MoF and UNICEF 2019). The situation is made worse when the extremely competitive educational system in Ethiopia makes it difficult for students to progress academically, indirectly leading to migration of young girls and women who are expected to send back remittances to their family members (Zelege 2019a).

Several informants alluded to the idea that the grade ten national exam is seen as a key indicator of whether one will do well in life or not. A woman, who had done no other paid work before joining the factory over a year ago, explained that her father had primarily planned for her to stay in the family house and do domestic work. The reason was that she never passed the national exam in grade ten. Left with a choice between unpaid household work and paid factory work, she left for Addis Ababa with a friend, who had heard about work in the garment industry. Another informant, who left school when she was in third grade, touched upon the same issue of women not receiving much support to pursue or continue their education. This restricts the types of jobs that are available for women.

Since I am the first child in my family, they wanted me to care for my younger siblings, rear cattle, and collect firewood. My father is a farmer, so he does not see the use of sending girls to school. That is why I was never able to be educated (Birtukan, 25.02.2018, Addis Ababa).

She carried on explaining that her father was going to marry her off with a stranger, despite this being illegal, which made her run away to Addis Ababa where she did domestic work before getting a job at the factory.

Exploitative work arrangements, arranged marriages, and laborious caring responsibilities play an important role in the lives of girls in rural Ethiopia. Child marriage is found to have a significant impact on the educational attainment of girls and vice versa (MoF and UNICEF 2019). This backdrop raises the question of whether pursuing paid work in the garment industry really is a choice in its full meaning, as most of the jobs are low-skill and low paying. Rather, it appears to be the result of not making it past a certain level of education. This suggests that paid work in the garment industry is not necessarily an active pursuit in and of itself, but rather an outcome of economic necessity in an environment where employment opportunities are lacking for less-educated women. Indirectly, this supports Christopher Blattman and Stefan Dercon's (2018) findings that low-skill industrial job offers are mostly taken to cope with unemployment until a better alternative becomes available.

While skills acquisition was emphasised less often as a reason for pursuing work in the garment industry, it still came up in many interviews as a means to make up for the low pay. It was spoken of as fulfilling the desire of self-improvement from being uneducated, especially for women without children. This points to a degree of agency in the decision to start work in the garment industry because there is a sense of acting in one's own interest based on the ability to access information.

4.2. Paid Work to Meet the Survival Needs of the Family

Pursuing work in the garment industry, simply as an economic necessity to make ends meet, was noticeably present throughout the conversations with informants who were breadwinners of the household. One informant asserted "the honest reason why most women work here is not for the skills, but for the money, to send their kids to school and to buy food" (Konjit, 08.02.2018, Addis Ababa). In some circumstances female workers are not aware of the specific type of job they will have at the factory. This suggests that work in the garment industry may come about for the reason of ensuring the family's welfare in a context of lacking opportunities. One of the key informants at the Ethiopian Development Research Institute raised a related point that women who pursue work in the garment industry and end up staying longer than the relatively short average

turnover rate⁶ tend to be those with no other options. Often they are poorly educated migrants from rural Ethiopia, largely devoid of family support. The cases of Chaltu and Selam illustrate this point.

Chaltu is originally from Gamo Gofa in southern Ethiopia and has been a sewing machine operator for almost two years. Together with her two daughters, she resides at her cousin's house in Addis Ababa. She earns a net monthly salary of 1600 ETB. The wage includes overtime work, which she emphasized was essential for her to do in order to afford the rent and provide for her daughters. Chaltu used to make a living from collecting fuel wood, cleaning homes, performing manual labour on construction sites, and pulping coffee beans. These, however, barely enabled her to get by, especially being a single mother of two. Similar to many other women, Chaltu expressed dismay over the low wage. Regardless, pursuing work in the garment industry was entirely out of necessity. This is emphasised by her expressed fear of the factory closing down because "if it was not for this factory, no one working here would be able to survive" (Chaltu, 06.02.2018, Addis Ababa). Returning to her hometown was not an option because there were no job opportunities. Moving to Addis Ababa provided an income and also a better living standard.

Like Chaltu, Selam, from the rural outskirts of Bole Chefa outside Addis Ababa, has worked for two years as a sewing machine operator in the factory. She can afford nothing but the basics, which she shares with her five-year-old son and husband who does irregular manual work loading rocks onto construction vehicles. Before joining the factory, she used to sell tella (a traditional Ethiopian beverage), but the income was never enough for her and the family. When she heard that the factory was recruiting workers from her district, she initiated the idea to her husband who gave her permission to work (Selam, 07.02.2018, Addis Ababa).

These two cases suggest that the pursuit of work in the garment industry for some women is driven by economic necessity, to provide for their families, raise children, pay rent, and put food on the table. The same thing clearly came out of conversations with mothers who were either single, divorced, widowed, or had an unemployed husband. For these women coming from a context of dire poverty, employment in the export-oriented garment industry stems from a choice without many other options. Many of them come from rural areas and poor households without basic infrastructure and the means for family members to support them from afar. This is supported by Kabeer (2012) who teases out the multi-faceted nature of household poverty leading women to take up paid work

6 The turnover rate of employees for this factory case in the last quarter of 2017 was 107 per cent (Human Resource Manager, 29.01.2018, Addis Ababa).

in many developing countries. Shafiqul Islam's (2016) findings based on in-depth interviews with female factory workers in Bangladesh, show that factory floor work can for some women be placed closer toward the survival-oriented income-generation end of a continuum as opposed to more accumulation-oriented income generation; the women perceive no other possible choice.

4.3. Paid Work from a Perspective of Patriarchy and Gendered Norms

In addition to economic necessity for households, it appears that traditional gender norms negatively impact women's pursuit of paid work. When Emebet failed grade ten national exams, her older brother brought her to Addis Ababa and supported her pursuit of vocational skills training in hairdressing and later also in textiles. She explained in a regretful tone: "It is our fate ... our families raise us this way" (Emebet, 26.01.2018, Addis Ababa). Meanwhile, her brother continued to go to school and had a Masters degree by the time of the interview. Though Emebet wanted to continue her studies and become a nurse, she admitted her future was pre-determined by her family, something she did not have the power to change. While she was one of the best-educated informants, and hence in a slightly better position compared to many others, she was still limited to a traditionally more feminine, low-skilled, and low paid job. This suggests that gendered power relations impact women's ability to act independently.

In contrast, the pursuit of paid work in the Ethiopian garment industry can in some cases be considered as an option that is relatively liberating for women in the context of strongly influential and discriminatory gender norms. According to an informant, Demitu, her husband was originally unwilling to let her go and work in the factory because of the low wage. Nevertheless, she convinced her husband by offering to contribute to the house rent, which led them to eventually make a joint decision. For her, it was never the wage that attracted her to pursue work in the garment industry: "I wanted to use my body and work. This was my only option to not stay at home. Domestic work [in someone else's home] was never an option anyway because I am married" (Demitu, 07.02.2018, Addis Ababa). This implies that the pursuit of work in the garment industry was a way for Demitu to increase her mobility and economic power under the context of societal norms that expect women to clean and cook at home. At the same time, it indicates how established gender norms, and perhaps husbands' lack of trust, constrain women's available choices to decide the direction of their lives.

Gender norms in combination with the varying social positions strongly determine what kinds of work are suitable for women. While some informants' processes of pursuing paid work are not reflective of survival-oriented choice with no other options, as in few of the cases mentioned earlier, they are reflective of restricted choice because of structural factors that constrain the kinds of work

women do. Hence, the negotiation reveals a degree of informal decision-making power by renegotiating power relations and achieving a higher intra-household status by contributing to household expenses. At the same time, women such as Demitu honour the traditional decision-maker, the husband.

4.4. Men's Influence on Women Pursuing Paid Work

Selam's recollection, in the above-mentioned case, reveals that although it was her own idea to pursue work in the garment industry, her husband gave the final consent. If he had disagreed, she would not have started working in the garment industry. This points to the importance of the decision-making process that women go through via other people prior to pursuing paid work in the industry.

Overall, men have a noticeable influence on women's involvement in paid work in the garment industry. The great majority of women had heard about job opportunities in the factory from social contact, a friend, a male elder, or family member. Interestingly, the women said they made the decision by themselves to start working, but they referred to family dynamics and intricate intra-household bargaining processes. All women who were married before starting paid work in the garment industry had acquired permission from their husbands. This was even true for those who recalled the idea as being their own. In all cases, the husband had to know of the plan before it was realised. There are some cases when husbands initiated the idea for their wives to work, in light of the economic need of the household.

4.5. Paid Work and Decision-making

The discussion on decision-making, an important measure of agency, encompasses points ranging from spending patterns, working extra hours, and provision of care. Married women make decisions over small household purchases, such as teff (a staple grain common in Ethiopia), kitchen utensils, charcoal, cooking oil, and vegetables. It was explained that the reason for this was because women are better suited for such shopping; their knowledge of household expenses is valued more than the men's. This suggests, once again, the deep-rootedness of traditional intra-household gender roles and norms.

On the other hand, men decide over household purchases considered to be much more valuable by informants, such as rent, more expensive foods like meat, and when and for whom to buy clothes. Interestingly, almost all married women in the individual interviews said they decide over 'larger' household purchases jointly with their husbands. The same was true for other types of decisions such as when to have sex. However, a pile-sorting activity in the FGDs elicited richer narrative explanations that it was in fact the husband who decided over sex as well as larger purchases. Women would still try to negotiate for their preference

but gave in if the husband insisted. This demonstrates that despite earning an income from paid work in the garment industry and sometimes earning more than their husbands, women's actual decision-making within the household is minimal. This suggests that norms perpetuate the gendered allocation of intra-household decisions and hence constrain the potential for making decisions with transformational significance. It is pointed out by Naila Kabeer (1999b, 461), who argues that empowerment must involve decisions that do not "merely express and reproduce [gender] inequalities."

In the cases of women living by themselves, or with a sibling or friend working in the same factory, many of the intra-household decisions were split equally. The informants' income was almost solely used to pay rent and buy food, which marks some empowering decisions. In an FGD, three unmarried informants agreed in a very matter-of-fact tone that they were not thinking about bigger purchases, although they would eventually like to buy a sofa and a TV with the income they manage to save: "Once we marry, the husband will decide when to buy these things, but it will be bought with our money as well" (Berhane, 25.02.2018, Addis Ababa). This suggests that saving money to contribute to larger household purchases in the future is a perceived option for some single women who so far have no financial obligations to support their families. The final decisions, however, will be made by future husbands.

Even if the income that women earn from working in the factory is not enough to change actual decision-making in most cases, a few married women raised the fact that their husbands no longer decided everything and that they took more decisions jointly since starting work at the factory. Still, decisions related to time-use are gender-allocated. The traditional gendered division of labour in the household is the same as before, except for some women whose husbands 'help' them wash clothes on their one day off per week. This is an interesting word-choice, in contrast, to 'share' the household burden more equally.

For those women who gain more decision-making power in relation to their husbands, the effect can be different when children are accounted for. A mother, originally from the rural part of Wollo in north-eastern Ethiopia, left her eight-month-old daughter at her place of origin under the care of her mother. She had not seen her baby for some months and had to wait seven more months until the next big holiday to make a visit. This situation offers a glimpse into the agonising decisions some women must make, whether to provide for their child and family financially or care for them being physically present (Samman, Presler-Marshall, and Jones 2016). In the absence of support networks and affordable day-care nearby, some women have no other choice than to leave their children with their parents or other relatives back home. This points to

the complex dynamics of decision-making once women enter paid work in the Ethiopian garment industry.

In sum, decision-making does not seem to increase much for women as a result of participating in paid work in the Ethiopian export-oriented garment industry. Many of the interviewees maintained their role as either dutiful wives or daughters, hence gender norms remain strong in dictating time and income allocation. On the other hand, the lack of fundamental visible changes does not mean that these women do not perceive themselves as being able to make meaningful choices that they can control (Agarwal 1997). This leads to the discussion of empowerment as the power within or the sense of agency.

4.6. Paid Work and the Sense of Agency

The feelings of freedom and independence repeatedly emerged in interviews held with women who were not yet mothers, especially those who had previously done domestic work for a living. This is in line with Marina De Regt's (2016) research in Addis Ababa on migrant domestic workers. She finds that domestic workers live very isolated lives, with severely restricted mobility and almost no time off. Indeed, there was a strong dissatisfaction among informants with the low-wage at the factories, considering the amount of time and labour they invest in the job. Nevertheless, they now appreciated the "freedom to go in and out of the house whenever" (Tsehay, 29.01.2018, Addis Ababa). Women who used to do domestic work appreciate the freedom that comes along with factory work; while women in domestic work only get a few days off per year, factory workers have one day off every week, in addition to time off in the evenings. Ironically, most interviewed women did not leave their homes in the evening or on Sundays except for Church in the morning. This was true even for those women who said they appreciated the increased freedom to leave and enter the house whenever they wished. The weekends are predominantly dedicated to household work. A few of the unmarried women did, however, go to see friends for a few hours on their day off. Evidently, there are senses of agency that are relational and subjective to the informant's contextual evaluation. These are important to consider in assessing the effects of paid work on agency, even if the women sometimes do not act, or exercise decisions, in this sense. They appreciate the opportunity they technically have to move freely in the evenings and on their day off, but this does not mean this is the outcome in reality.

In most cases, women work overtime to be able to earn and save more money. The decision to work overtime, according to some women, was their own decision because their husbands did not really care. However, this contradicts the realities of factory work. Overtime work is sometimes forced upon workers when there are big production orders. Husbands who understood their wives' overtime

work were either unemployed or in informal work; the additional income was welcomed by husbands who earned less, or nothing, for the family. Even in such cases where the wife has relatively high economic power, they first consult their husbands for permission. Both interviewed husbands expressed their dislike when their wives work overtime because it is dangerous to be outside at night. The men appeared to not trust their wives in being exposed to other men. The women, on the other hand, perceived it as a sign of affection that their husbands did not want them to work late. While decision-making, as applied to objective choice, appears to only have changed a little, as a consequence of working in the garment industry, some women still feel a sense of agency related to overtime work.

Movement within the factory is restricted, and entering the factory is not allowed when workers are late. Once they get to work, they stay at their places with only a one-time pass permitting them to go to the restroom. Women operating on sewing machines are forced to sit all day even when they have no work to do. Given such strict level of control, the independence and freedom associated with the garment industry, as mentioned by several informants, is relative to the harsh controlling systems that the women experienced in previous jobs.

Regardless, women stay in factory work for different reasons. Bina Agarwal's (1997) findings show that women's lack of resistance against the gendered institutions surrounding them does not imply they are not aware of them. Instead, women can feel a sense of agency from other avenues, such as saving money in secret. Two informants reported doing this, which suggests that some women workers in the factory can overcome gendered expectations of women being 'more altruistic' and considerate of their families' needs in order to pursue self-interest. Self-interest, however, is often closely related to the benefit of the woman's children or family. Two informants reported they were able to pay for their evening school education, something they would not otherwise have been able to do was it not for this paid work. This is a manifestation of agency and shows that paid work in the garment industry can help some women pursue alternative futures for themselves, although it is far from applicable to everyone.

Some informants felt a sense of agency, believing they could achieve independence in the long-term through the skills gained by working at the factory. The factory job, for this group of women, is a means to an end, whereby they hope for a better future as self-employed. Some jobs within the factory are also seen as better for inducing a sense of freedom and independence. Sewing was repeatedly considered the best for the desired outcome of opening up a shop in the future because it enabled better and more comprehensive skills transfer compared to, for example, jobs in cutting. On the other hand, a few of the relatively more educated women were disappointed with the work. They

thought they would do a more meaningful skills-oriented job in the factory that required reading and writing with their tenth-grade education.

Financial independence is another key element emphasised in discussions around the experiences of agency that have come about as a result of a job in the garment industry. However, the sense of economic freedom and independence seems to be greater for younger, unmarried women. References to being able to buy ‘small things’ such as lotions and hair products, and no longer being dependent on their families, show that paid work has an empowering impact on women of certain social positions. This sign of agency to change unequal relationships is substantiated by two unmarried informants’ claims that they now felt they had the ability to refuse a boyfriend who wanted to marry early, or even decide whether to marry at all (Abebech and Berhane, 25.02.2018, Addis Ababa). For married women, paid work in the garment industry does not seem to induce such a strong sense of freedom and independence. Rather it is a way to meet essential short-term needs of their families and to “not worry about tomorrow” (Selam, 07.02.2018, Addis Ababa). This shows that paid work in the garment industry is far from a silver bullet, enhancing agency for all women.

4.7. Paid Work and Well-being

As pointed out in feminist research, the advancement of agency is a way of enhancing well-being outcomes (Kabeer 1999b, 438). Well-being encompasses the ability to set goals and act toward them, but it also encompasses actual healthy functioning and a sense of self-worth, belonging, and affiliation (Kabeer 1999b). The reality of women’s paid and unpaid work is that mothers across the world often face the hardship of a double work burden (Folbre 1994). Indeed, frequent answers among interviewed women revolved around not knowing where the money or time goes; married women were especially vocal of the unfair work conditions, remuneration, and division of labour at home.

Aberash, a married informant, emphasised that she did everything by herself at home because her husband “is a man who thinks like our fathers, the traditional type. He does nothing in the house” (Aberash, 06.02.2018, Addis Ababa). Her frustration suggests that married women, and those with children, face a higher work burden and level of hardship than unmarried women. This is because they face a double work burden, spending extensive amounts of time on domestic work and care, in addition to their paid work. Both are central aspects of their lives, but women are constrained from feeling fulfilled due to gendered norms on what constitutes women’s responsibilities. This finding supports the feminist argument that time-use and work intensity must be recognized, reduced, and redistributed (Benería, Berik, and Floro 2016).

Moreover, every time Aberash would come home late from work, her husband would be violent to her even if she did not understand why. This puts her in a vulnerable position, which is exacerbated by the fact that she did “not have one birr⁷ in [her] account”.

The choices that women employees have in the factory are also very limited, which negatively affects their well-being, goals, and aspirations. Aberash explained that she cannot complain or express a grievance, which otherwise might cost her a promotion. She said the senior management had a negative attitude towards its employees and favoured the foreign floor managers who treated her badly, “as if I am a nobody – do this; do that!” (Aberash, 06.02.2018, Addis Ababa) Despite being unhappy and feeling submissive, Aberash kept working in the factory. In her opinion, it was better to be patient rather than risking it all by speaking out. According to Aberash, the discriminatory work environment affected her potential and aspirations of being promoted.

Upon answering what “doing well or feeling good,” meant to her, Aberash giggled and said she had not yet figured out what that meant. Apart from showing little well-being, it tells of a low level of agency; she does not seem to feel a sense of control or ability, which are key dimensions of individual agency (Donald et al. 2020). Another married woman said,

I feel neither very happy nor very sad. I am happy to not stay at home and that I am working at least...There might be something missing at home, some problems that must be fixed, but since I concentrate a lot at work, I forget all about it. Working here is less stressful (Abeba, 06.02.2018, Addis Ababa).

This statement reveals that paid work in the garment industry does not necessarily have any drastic effect on women’s well-being as perceived by themselves. A few women asserted they had kidney problems from not being allowed to use the bathroom or drink water throughout the day, and several women said they had respiratory infections from exposure to dust particles and chemicals in the factory. Despite these health-related consequences, working in the factory is considered better than staying at home and worrying about not earning any money for the household from financial and emotional well-being perspectives. Social exposure, affiliation, and self-fulfilment of working in the garment factory were raised as attractive attributes of the job. Many informants spoke of forming friendships in the factory as a significant benefit. They were able to talk to women from different parts of Ethiopia, facing similar challenges.

7 Local Currency used in Ethiopia.

From the interviews, it is evident that married and divorced women with children face the most hardship and double work burden. They resort to wearing the same clothes for weeks to save time on washing and skip breakfast in the mornings because they do not have time. Those informants who have children reported spending up to eleven hours on unpaid work on their day off, including washing, cooking, baking injera (Ethiopian sour flatbread), preparing coffee, and caring for child(ren). Unmarried women, living with a sister or friend, saved time by dividing the gendered household tasks between themselves. No women with children reported any leisure time to, for example, see friends, rest, and take care of themselves, which were activities enjoyed by unmarried informants and married women with no children. This also stands in contrast to the time-use reported by husbands working in construction. They recalled meeting friends outside the home, napping, watching TV, and enjoying food on their day off. The only house chore they reported doing was washing clothes.

Regarding the ability to define goals for the future, which well-being is directly tied to, most informants were indifferent as expressed by the comment that arose repeatedly: "It is God's will". The economic necessity of just making it to the end of the month, in combination with gender norms, may explain why most women lack a sense of career. Nevertheless, some informants were quite optimistic about the potential of opening a shop one day with the skills they had acquired in the factory. Other women were disappointed; their expectations as to skills acquisition were unmet because they were confined to one monotonous task. They recognised this specialisation as pointless for the future because they did not know the whole process. Another constraint to the dream of initiating their own business and being self-employed in the future was the limited possibility to save. A slight majority of informants stated that they saved some of their income from working in the garment industry, but half of these were not on a regular basis and it was for medical emergencies or the holiday season, rather than for long-term endeavours. In practice, the effects of paid work in the export-oriented garment industry on women's well-being in Ethiopia appears to be far from transformative.

5. Conclusion

The discourse on growth and development tends to assume that increasing women's access to paid work in and of itself, will automatically channel into greater decision-making power, agency, and well-being. This discourse undermines the complex realities and processes of women pursuing paid work in the export-oriented garment industry as shown in this chapter. As a country with relatively new and rapid industrial expansion, the Ethiopian case is interesting to study for parallels with previous literature on women in other countries. It

can also shed light on the situation of those women workers who were pivotal to the industrialization processes of present-day high-income countries. While the rising entrance of women into the labour market certainly contributed to fast economic development, perhaps it was not so easy on an individual level in the midst of very unequal gender norms that took a long time to change.

The case material presented here brings the perspectives of female factory floor workers to the forefront. It sheds light on paid work in labour-intensive industries from a feminist research approach. One of the informant's comments at the end of an FGD was that she felt much more relaxed and happy because she was able to talk about what was bottled up inside of her when usually "no one is interested in our lives" (Beletu, 09.02.2018, Addis Ababa). In order to achieve the SDG of gender equality and women's empowerment, we have to pay greater attention to the lived experiences of Chaltu, Selam and Aberash, to name just a few.

There is a continuum of underlying reasons and processes behind paid work in the garment industry that can only be accounted for if we see women's choices in relation to other often-hidden and under-theorised factors. Family conditions and involvement, intra-household bargaining, gender norms, and structures are some of them. Absolute decision-making power does not seem to increase much, and most of the interviewed women maintained their role as either dutiful wives or daughters, hence gender norms remain strong in dictating time and income allocation. On the other hand, lack of fundamental changes that are visible from the outside does not mean that some of these women do not perceive themselves as being able to make meaningful choices that they can control in their own interest (Agarwal 1997). This leads to the discussion of empowerment as the power within or the sense of agency.

The effects of industrial work seem to be quite paradoxical in that the women speak of greater freedom, despite experiencing what appears to be an exploitative labour arrangement in the factory. This sense of agency and well-being is mostly evident for unmarried women, and much of this sense appears to be related to previous burdensome and oppressive domestic work.

The job of being a sewing machine operator is viewed as particularly valuable for gaining financial independence in the future, as well as for skills that can eventually be used for setting up a small business. In effect, paid work has enabled many women to meet their basic needs and to put food on the table for their families. However, it is questionable how durable these effects are if the unpaid work burden is not addressed by policymakers. Paid work

in the Ethiopian garment industry, therefore, appears to be less empowering than what is commonly assumed. Moving forward, one should be cautious of making a generalized claim about the positive effects of paid work for women in this particular industry, with predominantly low-skill and low-paying jobs. Moreover, targeted interventions through support programs are required to improve the lives of all women working in the garment industry.



The Nexus between Industrial Jobs and Gendered Migration: The Ethiopian Experience

Meron Zeleke

1. Introduction

Ethiopia's move towards accelerated economic growth and achieving its Vision 2025 of becoming a lower-middle-income country called for a structural policy shift. The government branded industrialization as the best strategy to transform the economy, reduce poverty, provide jobs, and make the country a leading manufacturing hub in the continent (Oqubay 2018). Ethiopia's structural transformation agenda, with a shift from agricultural-led to industrial economy through planned industrialization, emphasized the need to promote export-oriented manufacturing industry. Consequently, the government developed a plan to diversify exports with a focus on light manufacturing such as the textile and apparel industries. As a result, there was a rise in the number of large and medium scale manufacturing industries, and industrial parks were built at different parts of the country to promote light manufacturing industries in the country.

The country's second Growth and Transformation Plan (GTP II) (2015-2020) envisages to create 174,000 jobs in the textile and apparel sector and generate 779 million USD in export revenue by 2020; this is almost equivalent to the revenue the country generates from coffee export hitherto the largest source of export revenue. The Ethiopian government opened the local economy for private and foreign investors, which enhanced the integration into the global economy.

The enabling policy environment and incentives set by the government include tax-free access to the global market such as the African Growth and Opportunity

Act (AGOA) that allowed manufacturers to export duty and quota free products to the US market. The European Union initiative, Everything But Arms (EBA), is another opportunity for investors to access the EU market for Ethiopian export goods (Mihretu and Llobet 2017). In the last decade, the booming textile and apparel manufacturing industry in the country attracted global renowned apparel brands and retailers such as Schöffel, H&M, Tesco, Levi Strauss, and others. This has resulted in rise of labor demand for the manufacturing sector. Textile Industry Development Institute (TIDI) was established to train human capital to meet the labour demand in the textile and apparel sector. Ethiopia is labeled as “largely untapped sourcing destination” for investors in the apparel and textile industry.¹

The textile and apparel manufacturing industry around the globe is defined as labor intensive and gendered landscape (Vivian and Miller 2002). The Ethiopian case is no exception. The expansion of this labor-intensive manufacturing sector encouraged internal female labor migration. Recent studies on the manufacturing sector in Ethiopia show a trend in the rise of female migrant workers in the textile and apparel industries (Barrett and Baumann 2019; UNDP 2018a).

Despite such observable trend, research on migration trajectories of female migrant factory workers is not yet fully developed in the country. There is an observable gap of study on feminization of migration in the manufacturing sector and the textile and apparel sector in particular. Aiming to bridge this gap, the chapter addresses the intricacies of gender and migration by drawing on cases of female workers in textile and apparel factories.

The chapter is informed by discourses of feminization of migration and industrial jobs. In line with this, it methodically reflects on the following general research questions: (a) What are the various factors that account for the rise of internal female labor migration in contemporary Ethiopia? (b) How do female migrant workers² in textile factories interpret their migration trajectories, decisions, and experiences in and beyond their workplace? (c) How does the overarching gender norms and socio-cultural background affect feminization of migration in Ethiopia? (d) How do gendered societal expectations define who the best potential migrant in a household or a community is? and (e) How are the living and working conditions of female migrant workers?

1 For more on this see Berg, Hedrich, and Russo (2017).

2 Migrant worker is conceptualized in this work as people who have moved within their home country to pursue work, a definition that relates to International Organization for Migration's (IOM's) definition of labor migration as the movement of persons from their home State to another State for the purpose of employment. The phrase local worker in this chapter stands for a factory worker recruited from a place where the respective factory is located; it stands for those who were born and raised in that specific setting.

By adopting a gendered analytical framework that uncovers how gender relations affect a given phenomenon, the chapter examines in what ways the existing discourse of female empowerment affects the trends of gendered labor migration in Ethiopia. Furthermore, it discusses how the phenomenon of female labor migration is highly influenced by overarching gender norms and socio-cultural landscape of the country. The main source of data used in this chapter is an ethnographic fieldwork conducted in Addis Ababa and a short fieldwork conducted in Hawassa. The study was conducted in 2017 and 2018 as the qualitative research constituent of a multidisciplinary research project.³ In-depth interviews were conducted with a total of forty-two female migrant workers at Hawassa Industrial Park (HIP) and Bole Lemi Industrial Park in Addis Ababa and two focus group discussions were held with female factory workers in Addis Ababa.⁴ The study employed a subject-centered approach paying greater attention to the lived experiences of female migrant workers.

2. Global Feminization of Migration and Gendered Industrial Jobs

Mainstream literature on migration has for long ignored the agency of women in the migration process. The pre-1980s discourse in migration research often portrayed women and girls as passive agents (Oishi 2002). There were three major trends in the academic discourse on gender and migration. The first discourse framed migration of women and young girls as a phenomenon limited to family reunification (Boyd 1996). The second dominant discourse portrayed women as “baggage of male workers” (Cohen, 1997 cited in King, 2002: 97), as those who often accompany their male partners (Chant and Radcliffe 1992). The third discourse emphasized the phenomenon of “mail order brides” i.e., a phenomenon of migration of women and young girls often associated with long distance relationships whereby they migrate to join their foreign partners (Simons 1999, 127).

Post 1990s discourse on gender and migration, on the other hand, underlined the feminization of labor migration (Knörr and Meier 2000); a process Pessar (1999) calls engendering migration studies. The feminization of labor migration discourse is highly informed by the gender balance shift in international migration flows resulting from various factors such as immigration legislation, gender-selective labor demand, and changing gender relations in countries of

3 The study was part of a research project of Chr. Michelson institute that run from 2014-2019 entitled Women in the Developmental State: Female Employment and Empowerment in Ethiopia. For more about the project please see the project website; <https://www.cmi.no/projects/1904-women-in-the-developmental-state>.

4 The largest majority of the subjects of the study, thirty-five of the forty-two female migrant workers were interviewed in Addis Ababa. The remaining seven were interviewed in Hawassa.

origin. Despite the difference in opinion on what accounted for the shift, the common ground for the discourse on feminization of migration lies in the rising number of independent female migrants across the globe (Carling 2005).

Studies conducted in post 1990s period focused much on making migrant women visible (e.g., Pessar 1999). By countering prior trends that focused on the passive role women have in deciding their state of (im)mobility, the discourse on feminization of migration rather accentuated the trend in the rise of women amongst international migrant workers. Likewise, the treatise of the global care chain literature highlighted how gender relations at countries of origin and places of destination are linked to gendered divisions of labor in the migration process (Hoschild 2002). The two most common weaknesses observed in this post 1990s literature were the gynocentric orientation, i.e., a focus on women rather than the broader gender framework and the growing tendency of essentialism (Carling 2005). Understanding the link between gender and migration is a daunting task that goes beyond presenting and discussing sex disaggregated data. It rather focuses on understanding how the underlying gender relations and gendered norms influence migration processes at large (Zeleke 2017).

The phenomenon of feminization of migration is intertwined with the discourse of gendered industrial jobs (Celia 2015). Gender selective labor demand is observed in the feminization of factory work since the 20th century. Fuentes and Ehrenreich (1983) discussed how young women living in the Third World became the main source of labor for traveling corporations in the context of growing manufacturing industries. Celia (2015) mentions three quarter of those working in the apparel industry are women.

Migration is a key feature in the global economy in general and in the apparel and textile manufacturing industry in particular (Fernandez-Stark, Frederick, and Gereffi 2011). The apparel and textile industry is mobile in its nature, with global supply-demand chains. There were about 60 to 75 million people employed in the textile, clothing, and footwear sector worldwide in 2014 (Stotz and Kane 2016).

Various studies around the globe paid attention to conditions of female migrant workers (e.g., Swami and Stanzin 2015; Absar 2002). These studies pointed out to the gendered double standards in the industry ranging from the very initial stage of preferential recruitment of workers to offering different benefit packages (Sabrina 2016). In India, women are concentrated in these industries due to “lower pay that women are usually willing to accept” (Ghsoh 2002, 18). Women are described to be more willing to accept longer hours of work in hazardous factory conditions. They have less collective bargaining power and lack negotiation for permanent contracts. Likewise, a study conducted in China

indicated migrant women workers offer many advantages for management including availability to work overtime (Gillian 2014). In Mexico, factories tend to prefer local young women because of “women’s manual dexterity and their ability to tolerate tedious and repetitive work” (Livingston 2004, 61). Men on the other hand often take administrative jobs.

Prior study conducted in Ethiopia also pointed at a similar pattern of gendered labor in the textile and apparel manufacturing industry (Clara 2014). The expansion of this labor-intensive manufacturing sector in Ethiopia encouraged internal female labor migration. Ethiopia is one of the countries with the highest rate of labor mobility where hundreds of young Ethiopian female migrants leave the country and their birthplaces on a daily basis (Zelege 2019a). According to the Displacement Tracking Matrix (DTM) from the Horn of Africa and East Africa, of the total 225,160 movements tracked in the region in July 2019, the largest majority about 74 percent were Ethiopians. The exponential growth of Ethiopian labor migration, both internal and international, is occurring despite the rapid and sustained economic growth of the country registered over the last two decades. Poverty is still pervasive as the change started with a very low base; it is reported over 22 million people are still living below the national poverty line, majority of which are women (UNDP 2018b).

To alleviate this, the Ethiopian constitution guarantees women equal access to education, employment, and provides affirmative action to bridge the long existing gender gap. The strong commitment of Ethiopia’s government to gender equality is outlined in, among others, the National Action Plan for Gender Equality and GTPII. Ethiopia has also adopted a National Women’s Policy since 1993 to encourage equitable participation of women in socio-political and economic domains. In the post 1990s period, gender has been mainstreamed into different national policies in Ethiopia. Furthermore, this period has witnessed the development of gender machinery with the establishment of Women’s Affairs office under the Prime Minister’s office, which was later, restructured to an independent Ministry of Women, Youth and Children’s Affairs in 2005. Regardless of such efforts, women continue to migrate from their birthplace, mainly in search of employment.

A closer analysis of prior studies on female migration in Ethiopia, points out four dominant patterns. First, there is an emphasis on international labor migration, often focusing on labor migrants destined to the Gulf States and the Middle East. Hence, there is a knowledge gap on the growing phenomena of internal labor migration. Second, prior studies often highlight what Carling (2005, 9) calls the “sacrifice and suffering” approach. This relates to a trend whereby studies examine violations of the rights of Ethiopian female migrants particularly those migrating to and returning from the Gulf and the Middle East (De Reget 2009).

The third dominant pattern observed is the failure to adopt a gendered lens in analyzing how the existing socio-cultural norms and values impact the gendered labor migration pattern in internal and international migration (Zeleke 2018). The discernible gap in addressing the link between development policies and strategies and gendered migration patterns observed in the country is emphasized in the fourth pattern of studies, a point addressed in this chapter.

3. Trends of Female Employment and labor Migration in Textile and Apparel Industry in Ethiopia

The number of job opportunities created at the manufacturing industry in Ethiopia shows a significant increase in the last two decades, with an increase from registered 93, 515 jobs in the year 2000 to a total of 380,000 jobs in 2015 (Wolde, Alemayehu, and Tesfaye 2018). Recent studies show Ethiopian Women's overall participation in the labor market reached 77.8 percent (UNDP 2018a). Textile and garment industry is among sectors renowned for offering employment opportunities for women in Ethiopia (Yost and Shields 2017). By March 2019, about 70,000 jobs have been created in industrial parks in Ethiopia with 80 percent of the positions being occupied by women.⁵ A study by UNDP states women constitute 60 percent of the apparel production workforce in the cutting stage, 95 percent in the sewing stage, and 15 percent in the finishing stage (UNDP 2018a). As is the case in other parts of the world, young unmarried women dominate the sector, showcasing the growing feminization of employment in the sector.

There is a nexus between the gendered labor market in the textile and apparel industry and feminization of labor migration in contemporary Ethiopia. Massive rural-urban population flow in recent years provided labor to sectors outside agriculture. According to the Ethiopian Demographic and Health Survey (EDHS 2016), there is a significant rise in the rural-urban migration trends between the years 2004/05 and 2013/14. Similarly, a study by UNDP (2018a) indicated most female workers in the manufacturing sector, about 62 percent, are said to be migrant workers who moved from rural areas. In the meantime, women's participation in the agricultural sector decreased by 10.8 percent (CSA 2016b).

This pattern was also observed in the profile of key informants interviewed during the course of the study at both research sites. Data obtained from the Human Resource office of one of the factories located at Bole Lemi industrial parks indicates that over 65 percent of employees working in the factory are migrant workers coming from different parts of Ethiopia. Out of the thirty-five key informants interviewed in Addis Ababa in the study that led to this

5 See Cepheus Research and Analytics (2019).

publication, twenty-nine of them (83 percent) are migrant workers who moved to the capital in search of jobs while five out of the seven key informants consulted in Hawassa were migrant workers.⁶

4. Factors Accounting for Gendered Employment and Feminization of Migration in Ethiopia

Understanding the underlying complex factors contributing to the predominance of female migrant workers in the textile and apparel manufacturing industry is imperative. Multitudes of interrelated factors affect migration of female factory workers. Going beyond the mere analysis of economic push and pull factors of migration, it is important to pay attention to non-economic factors affecting the decision making process of migrant workers. Factors influencing decision making of female factory workers are quite subjective in nature showing some essential similarities across informants. These factors range from underlying structural factors to personal, household, and community related factors, pointing at the complexity of the gendered migration patterns. Among these are socio-cultural and structural factors such as gendered labor demand, national development policy and strategic frameworks, feminization of poverty, and investors' preference as to be elucidated in the following sections.

4.1. Demand Driven

There are various factors as to why young female workers are preferred in the textile and apparel manufacturing industry. One of the key-driving elements from the demand side relates to the preference for women's skills and work discipline. Such naturalization phenomenon relates to an underlying prejudice about women and young girls being more suitable for low skilled manufacturing work due to their nimble fingers and productivity. Elson and Pearson (1981, 93) mention that the 'nimble fingers' of female workers are not natural but rather a result of training they received in tasks, which are thought to be socially appropriate for female. Interviews held at both research sites point to a similar pattern of strong preference for female workers in the production lines for the reason associated with their performance and skills. There is also propensity of associating personality traits such as patience and loyalty with women; this is another key factor influencing the gendered preference in employment (Fuentes and Ehrenreich 1983).

6 Of the total twenty-nine migrant female workers interviewed, ten are from Oromia regional state, eight from Amhara Regional State, six from South Nations Nationalities and People Republic, four from Tigray Regional State and one from Dire Dawa City Administration.

The discussion held with administrative staff members of the different factories located at both industrial parks pointed at a binary distinction stated in relation to the efficiency and work ethics of male and female factory workers. Male workers have been described as being slow, juvenile, irresponsible, rebellious, and unreliable. On the contrary, female workers are considered to be fast, mature, careful, obedient/submissive, and trustworthy. As one human resource officer at Hawassa states, “female employees are often placid unlike male employees who tend to be aggressive” (Nega, 05.08.2017, Hawassa). Such a reasoning is shared by an informant from Bole Lemi:

There are many reasons why we prefer female over male workers; they tend to be disciplined and dedicated. They are not confrontational like their male counterparts. The nature of the job requires obedience, being attentive, and being open to criticism. Those are qualities, which men often miss (Natnael, 01.05.2018, Bole lemi).

Furthermore, the demand is driven by the “reliability” of female workers unlike their male counterparts, who are described as being unreliable due to their interest of exploring different options than staying in one factory. The turnover rate, hence, is another factor that makes employers prefer female migrant workers to avoid labor shortage and instability of the labor force. Likewise, Barnet and Baumann-Pauly (2019) highlighted the high turnover in HIP where the overall attrition is described as being around 100 percent.⁷

The other key-driving elements relates to the labor demand side and the financial facet of the low-cost incurred by employing female workers. In most circumstances, the lower position women hold in the society and high female unemployment rate makes them desperate to accept job offers of lower wage. This point was raised indirectly by one of the key informants, a Human Resource officer:

The fact that we have more female workers is not necessarily meant to have someone who settles for a lower salary offer or pay. We have set fixed rates for the different positions as a company. Most of the women come to us without prior experience and hence agree to work in the production lines with our wage scale. We sometimes come across men who during their first job interviews try to negotiate on the salary and mention to us that they would rather work as a daily laborer and earn better, than take the job offer at our factory. Women rarely do so and they do not ask explicitly about the salary (Natnael, 12.11.2017, Bole Lemi).

⁷ This indicates factories replacing all their workers every twelve months on average.

Moreover, there is a strong preference for migrant workers. The overriding preference for migrant workers is informed by the underlying assumption that migrant female workers are more flexible and willing to work for long and extra hours due to the lower social engagement they have after work. There is a strong sentiment among the management that local workers are more demanding, asking for higher earnings and paid-leave unlike the migrant workers. And hence, local workers are considered to be rebellious, difficult to monitor, and leave their jobs without any prior notice. Beside migrants, factories in the industrial park prefer to employ unmarried young women, as the married ones are believed to be less focused due to their household responsibilities.

4.2. Government Schemes

The other contributing factor relates to state driven policy of women's economic empowerment. One of the incentives in the structural shift to industrialization, under GTPII, is the fundamental take that the manufacturing industries offering jobs to unemployed youth and women, a phenomenon believed to enhance inclusive and sustainable growth. Accordingly, of the new job opportunities to be created in the different manufacturing sectors, 60 percent of low and medium-skilled and 30 percent of high-skilled jobs are expected to be filled by women (UNDP 2018a). Such policy changes are affirmative actions aimed to address the gender gap evident in the country. The grassroots community based organizations set by the government often serve as information channels to reach out to young unemployed women. This includes Women Associations and Women's Leagues affiliated to the ruling party, often informing young girls about employment opportunities at the regional capital Hawassa and preference for female workers, as the following excerpt from a migrant worker in Hawasa Industrial Park indicates:

My mother was a member of the Women's League in my district. During one of the League members' regular biweekly meetings in January 2017, she got information about the vacancies at HIP and the recruitment of workers from our district. My mother and other members of the Women's League were assigned with the task of informing their community members specifically those households with unemployed young girls (Hewan, 11.07.2017, Hawassa).

During a related research conducted by the author in Mekele, Tigray region, the author observed a similar pattern whereby mass based organizations like Women's Association and Women's League play a vital role in propagation of employment opportunities for women.

In Southern Nations Nationalities and People Regional State (SNNPR), with a support from UK's Department for International Development (DFID), the

Regional Bureau of Trade and Industry and the Ethiopian Textile Development Institute (ETIDI) established a sourcing and screening center. This center serves as a training and examination facility for potential employees of HIP coming from different zones of the SNNPR. ETIDI was established in 2008 under Ministry of Industry with the major aim of improving the capacity of textile and apparel manufacturing sectors in Ethiopia. The establishment of the institute is part of the general strategy of setting up an institution mandated to have active role in developing policies related to the textile sector, an institution working on textile company profiling, and advising investors interested in investing in the sector. As a way of ensuring representative employment of the unemployed youth in different zones of SNNPR, the regional government has introduced a recruitment system whereby the sourcing for potential employees is decentralized to areas beyond the regional capital, Hawassa. The regional bureau has sought to expand recruitment of workers to peri-urban areas and rural settings through collaborating with district and kebele social affairs offices. This is one of the pull factors enhancing migration of young unemployed girls from the different parts of SNNPR, seeking employment at HIP.

The process of recruitment of workers for HIP starts with government offices in different close by zones where unemployed people get registered as job seekers. The screening process consists of aptitude tests and mandatory training on soft skills. The sourcing and screening centers give training to workers on various themes ranging from time management, operational skills to industrial norms. As the data obtained shows, there are more female unemployed youth registered for the jobs in the manufacturing sector in the area. This mandatory training is framed within the ‘HIPSTER Project’, the Hawassa Industrial Park Sourcing and Training Employees in the Region. The criteria in place for applicants include age (being above 18 years old), literacy (a minimum of eighth grade primary level education), and physical capability. For those who meet these criteria, the HIP’s grading center administers a dexterity test. The key purpose of this test is to identify the more ‘nimble-fingered’, who is able to run sewing machines. Once the government office recruits workers, the factories carry their own process of induction.

4.3. Economic Factor

One of the key structural factors contributing to the pattern of female migration to take up jobs at the manufacturing industries relate to the phenomenon of poverty. Rural poverty is pervasive throughout Ethiopia especially in food insecure parts of the country (Dercon and Christiansen 2007). Feminization of poverty is a phenomenon in which women experience poverty at disproportionately high rates compared to men. Jones, Tafere, and Woldehanna (2010, 9) describe this trend as, “experiences of rural poverty and vulnerability in Ethiopia are highly

gendered. Women play a significant role in agricultural productivity, but suffer from unequal access to resources and capacity-building opportunities on a number of levels”.

Women in rural parts of Ethiopia are deprived of access to economic resources such as land. According to the African Gender and Development Index, collected from twelve African nations including Ethiopia (UNECA 2014), the average ratio of women’s access to land is less than men by half. Empirical studies from different parts of Ethiopia demonstrated women are denied basic access to and ownership of land due to cultural gender stereotypes (Zenebework 2000). This trend has improved in recent years, and according to CSA 2016a, 49 percent of women have land title. Nonetheless, it is only few who benefited from the land titling, i.e. unmarried rural women face difficulty to access land. Women are also disadvantaged in the off-farm labor market, accounting to 14 percent of the labor force compared to 26 percent of men in rural areas (Quisumbing and Yisehac 2004).

The underlying factor for rural-urban migration of female migrant workers interviewed is primarily economic relating to the high unemployment rate and lower percentage of women in the rural labor market. Some female workers interviewed moved to the city with the objective of getting a job at the textile and apparel factories as a survival strategy to earn regular income and sustain their livelihood. Their migration is driven by the need to meet their financial obligations at home. The high unemployment rates and fewer economic options in the rural parts of the country are factors contributing to the overall trend of out-migration. Thus, the failing agricultural sector, rising living cost, and higher unemployment rates have been raised by informants as being the major push factors affecting their decision making to migrate to urban areas. These push factors coupled with employability of young girls and women in the low paid and labor-intensive manufacturing industries contribute to their decisions of migration.

In urban areas, Ethiopian women are engaged primarily in the wholesale and retail sector, which is followed by manufacturing sector and employment in the household (IMF 2018). The Labor Force Participation (LFP) rates are lower amongst women in Ethiopia than men with the major reason being their greater involvement in unpaid care activities than men (CSA, 2018). According to the 2016 Urban Employment and Unemployment Survey (UEUS) report, LFP rate of urban Ethiopian women is about 56.8 percent, a rate that is lower than the world average, 73 percent in 2015. Similarly, the 2018 UEUS report shows only 40.5 percent of women were employed in the public and private sector, a number that is by far lower than their male counterparts, which was 59.5 percent (CSA, 2018).

4.4. Socio-cultural Factors

4.4.1. Gendered socialization

Gendered societal values favoring social, intellectual, and physical development of a boy over that of a girl creates gender disparity in various domains of life including educational attainment of girls (Zeleke 2010). According to UNICEF (2018), 1.6 million primary and secondary school aged girls in Ethiopia are out of school. 47 percent of girls who enrolled in primary education do not make it to fifth grade. The numbers significantly increase in secondary education; 75 percent of girls do not attend secondary school (UNICEF 2018). For young girls raised in such an environment, migration appears to be the obtainable solution and a viable life option. In some circumstances, lack of basic skills and knowledge, as a result of gendered patterns in socialization, confine girls and women to the informal sector, as the following female worker at HIP suggests:

I had only two life options as a young girl born in a village. These were either getting married at a young age of fifteen and becoming a house wife or leaving my village at an early age and look for a better future elsewhere. Factory work specially working on the sewing machine or finishing lines does not require any degree or certificate except basic literacy skills. This sector is appealing to the likes of me, those who did not make it to the high school (Shakur, 19.01.2018, Hawassa).

Other aspect of the gendered socialization relates to the values and cultural ethos of the community accentuating culturally inscribed type of jobs for women and men, a phenomenon related to societal gendered division of labor. There are some activities that are considered to be exclusive and/or predominant domains of female. According to the account of a key informant interviewed in Bole Lemi,

The business we are involved in here at the factory has a lot to do with what we used to do as a young girl. Washing and sewing cloth are usually activities, assigned for female members of a family. We are doing more or less the same activity here as most of us, the female workers, are in production lines. You rarely find a woman working in administrative and managerial positions here at the park. And this is not a coincidence (Ribka, 30.01.2018, Bole Lemi).

As the accounts of informants clearly show, activities such as sewing is by and large considered to be female's job, as an extension of their domestic duty. Hence, the existing socialization patterns informed by the gendered norms affect the labor migration in defining who migrates, to take up a specific type of job. However, it is important to emphasize that women working in the public sphere,

such as textile factories, are considered to be against the dominant trend in rural Ethiopia whereby women are often limited to domestic tasks. Thus, such job opportunities in the manufacturing sector expose woman to the public sphere, showing a shift in gender norms.

Furthermore, migration to the cities for work is also informed by the gendered socialization that makes young female members of a family responsible for the upkeep and progress of the family from an early age on (Zelege 2018). The very decision to migrate and seek employment is meant not only to earn for one's own living, but also to support families.

4.4.2. *Gender based violence (GBV)*

Another sociocultural factor influencing the gendered labor migration to take up industrial jobs relates to GBV. For some female migrant workers, the decision to move to cities and look for employment in the textile and apparel factories is associated with the different forms of GBV they have experienced in their lives. According to the national statistics, large numbers of women and girls have been subjected to violence; 26 percent of women aged fifteen to forty-nine reported either physical or sexual violence, or both (CSA 2016a). Intimate partner violence and early or arranged marriage are other predominant forms of GBV practiced in rural parts of Ethiopia. Statistics showed a third of women report violence by intimate partners (CSA 2016a; MoWCYA 2013). Yikbaru's story is a case in point:

My family forced me to get married at the age of fifteen. I was in fifth grade and had to drop out of school. Getting married was the last thing I wanted in life as a young girl who had a dream of becoming a nurse. I was in a very abusive relationship that lasted for a year and half. As the situation got unbearable I run away from my ex-husband while being eight months old pregnant. One of my childhood friends who moved to Addis Ababa and live with her brother informed me about the possibilities of getting employed at the factory. I heeded her advice and came to work at Bole Lemi Industrial Park, leaving my daughter with my eldest sister in Debre Markos (Yikbaru, 11.12.2017, Bole Lemi).

Eleven of the twenty-nine key informants interviewed reported their experiences of GBV impacting their very decision to migrate. For this group of female factory workers, migration and employment in the factories is a form of exit strategy to escape from the different forms of GBV they faced in their places of origin; this reflects a general pattern corroborated by gendered migration studies in Ethiopia (Zelege 2018). Female migrant workers continue experiencing a continuum of gender-based violence, ranging from verbal insults to rape and sexual assault in the places they considered to be 'safer', i.e. their new settings.

4.4.3. Culture of migration and social networks

The growing phenomenon of female labor migration is highly intertwined with the culture of migration; “culture of migration is a context whereby migration is socially accepted and pervasive in the society, and decisions about migration are rooted in everyday experiences” (Cohen 2004, 5). The lived experience of the key informants consulted during the study shows that in some circumstances where migration is conventional, decisions are made in consultation with close family members. The society is used to the idea of young female community members migrating out in search of job, a phenomenon that is described as being recent but rapidly becoming socially acceptable and even desirable. Nurya’s account elucidates this;

The production lines in the factory are full of young women from different parts of Ethiopia. This by itself tells you that migration of young girls is quite common at least in parts of the country where the majority workers are coming from. For instance, in my own community, in Jimma, migration of young girls in search of jobs has been common for quite some time. We grew up knowing about a family member who migrated to the Gulf to support families back home. There are married women who leave their husbands and children behind and the society is used to this (Nuraya, 12.01.2018, Bole lemi).

Networks within and beyond the community contribute to the migration pattern of young women. Within the network are senior rural migrants, who are often purveyors of information. The stronger networks facilitate the flow of information, and in such context migration tends to be accepted as a viable alternative in life. Social networks with relatives, friends or fellow villagers who had the experience of working in such factories facilitate the very process of migration and help them seek a job. This relates to Massey’s account that migrant networks are “sets of interpersonal ties that connect migrants, former migrants and non-migrants in origin and destination areas through ties of kinship, friendship and shared community origin” (Massey et al. 1993, 448).

4.5. Transiting

The gendered migration also has a strategic rationale whereby some female migrant factory workers consider their migration to Addis Ababa or Hawassa as moving to transit pathways.⁸ Female migrants often consider moving to the

⁸ Out of the thirty-five key informants interviewed in Addis Ababa, twenty-nine of them, i.e. about 83 percent, are migrant workers.

capital, Addis Ababa, would help them better plan their international migration. The following quote from a female worker at Bole Lemi Industrial Park indicates this;

I came all the way from Shire to be employed here in Addis Ababa with the intention of fulfilling my migration dream. I have a TVET [Technic and Vocational Education Training] certificate in textile and could have looked for employment opportunities in Tigray. But my main intention is to save money and migrate to Turkey, the country with advanced textile and apparel industry where I want to find myself in the coming few years. There are Turkish brokers recruiting young skilled workers from factories in Addis Ababa and offering them employment opportunities in Turkey. This is something one would come across only here in Addis Ababa where there are foreigners (Freweyni, 20.06.2017, Bole Lemi).

Of the thirty-five migrant workers interviewed in Addis Ababa, twelve informants, 34.9 percent, have indicated their long term plans of migrating to the Gulf States. Four informants were already in the process of applying for their visa through the assistance of a Turkish broker. For others, migration to Addis Ababa and working in a factory is considered as a stepping-stone to acquire skills for an overseas migration plan.

4.6. Symbolic Value of Paid Work

Women's migration and employment represents an aspect of agency whereby their decision to migrate in some circumstances relates to the symbolic value of paid work, exposure to the world, and having experiences and autonomy.

This resonates with Benyon's account that, for some rural migrant women, "the advantages of gaining a sense of value, independence, autonomy, and space outweigh the actual economic and social conditions of their life in the city" (2004, 140). This is a point shared by many young female factory workers interviewed during the course of the study at the different sites. One informant accented on the value of paid work as follows:

People I met here in Addis Ababa often make fun of the amount I earn working in the factory. The main point is not how much I earn but rather how much nesanet [liberty] this job has granted me. For me moving here and being employed at the factory means a lot as it gives me a room to be by myself and work towards achieving my lifetime dream of attending a college. The monotonous routines back home in Finchweha Welegga after I failed tenth grade national exam were tedious; fetching water early in the morning, cooking for the family, bathing and feeding my younger siblings, cleaning etc. I hardly knew my neighborhood (Yibraleam, 10.10.2019, Bole Lemi).

5. Living and Working Condition of Female Migrant Workers

Employment opportunity created for women by the manufacturing industry sector in Ethiopia, as in the case of the global apparel industry, is not matched by decent working conditions. Even though the number of jobs available for female workers in the manufacturing sector has increased over the years, the nature of employment generated and its implications for workers in the sector remains problematic.

Migrant workers employed at the textile and apparel factories have onerous workloads for a low wage. This aggravates the hardship of many young migrant women who live in the expensive environs of Hawassa and Addis Ababa. Ethiopian wage workers in the manufacturing industry rank amongst the lowest in the world resulting from government's move to attract foreign investment by incentivizing the abundant labor with the lowest base wage equivalent to twenty-six USD per month (Barrette and Baumann 2019). Workers struggle to cover their basic expenses for food, transportation, and housing. As a result, compared to locals, migrant workers often experience economic difficulties in the city. As a coping mechanism and way of cutting down the costs, female migrant workers often co-reside with a group of young girls or women from their respective place of origin. The other strategy used by female migrant factory workers is to move out of the city and look for places with low rental cost. Accordingly, female migrant workers at Bole Lemi industrial park mostly live at the outskirts of Addis Ababa mainly in Lege Tafo, Kara, and Goro neighborhoods where rental costs are relatively lower.

Being away from their place of origin, moving to the cities, for some female migrant workers, led to the experience of cultural shock, homesickness, loneliness, and discrimination. The social isolation of migrant workers further reinforces their vulnerability to physical and sexual violence. The long walks to and back from their workplaces often exposes them to sexual abuse as the following case from Hawassa clearly shows:

Recently there was a case when a migrant worker was gang raped. The transport shuttle service provided by the factories usually stops at certain specific locations, and thus we have to walk to get to the pickup point. We cannot afford to rent places located on the main street or inner town. Thus, most workers are living in places located away from the main road. Leaving home quite early in the morning and getting back to our residences when it is dark is our daily routine and of course this puts us at risk (Hayat, 11.07.2017, Hawassa).

To deal with new urban hardships and lack of welfare provision, migrant workers capitalize on traditional self-help mechanism such as *Idir* and *Iqub*. Most female

migrant workers interviewed, both in Hawassa and Addis Ababa, mentioned about their membership in Iqub/Ikub, a traditional self-help association based on rotating credit and savings, whereby the members pool part of their salaries on regular bases. Few mentioned of having Idir, a traditional, member-supported association serving as base for loan provision and protection in the event of sickness and death.

To support the housing problems of low-income factory workers, the SNNPR regional government introduced a subsidized microloan initiative that helps homeowners to build rooms to be rented out exclusively to migrants working in the industrial parks. The government has also offered manufacturers free land in the premises of the industrial park to build dormitories for employees.

The migrant status of female factory workers, in some circumstances, further exposes them to insecurity. This problem is more pronounced among the migrant workers interviewed in Hawassa who expressed their fear of ethnic tensions and political discontent in SNNPR. The account of a female migrant worker best elucidates this phenomenon;

As an outsider, I feel very insecure. There are several factors, which make me live under constant fear. First, I am from an ethnic group that is not in good terms with the predominant ethnic group in this town (at this point she did not want to call the name of the groups). Second, the fact that I am living away from my work place in a neighborhood where I find cheaper accommodation adds to the insecurity. This simply means, in case, a protest happens on a day I am at work, I would find myself stranded. Furthermore, my network is limited to my coworkers who cannot be of much help in case I find myself in trouble (Hewan, 11.07.2017, Hawassa).

After the political turmoil in SNNPR that led to the Sidama referendum in 2019⁹, many migrant workers interviewed felt vulnerable expressing their concern about ethnically motivated attacks.

Some of the challenges migrant workers raised are glitches shared by local workers as well. Workers in the industry are often subjected to strict work discipline. The nature of their contracts often makes it difficult to envisage any long-term planning. In both study sites, local interlocutors pointed out penalties imposed for minor breaches of in-house regulations. The in-house regulations of

9 The Sidama are the fifth largest ethnic groups in the country that have for long campaigned for statehood and forming a semi-autonomous State. A referendum was held on November 20th 2019, which was the second vote since 1995. On November 23rd, the electoral board announced that 98.5 percent of voters backed the formation of the new Regional State.

most firms are invasive, ranging from restricted time for using toilets to limiting conversation with a fellow coworker during work hours. Furthermore, migrant workers often do not receive a detailed workplace health and safety training. In those few circumstances when they received such trainings, they are brief and often offered in Amharic, causing language barriers. A young migrant factory worker, aged nineteen, mentioned;

When I came for the induction training to Addis Ababa, I hardly spoke Amharic. The training was given to us in a language, which we do not speak and understand. It was done in a rush as well that I did not get half of what the trainer was trying to explain. Thus, I was counting on the help of co-workers and I thought it was ok to ask for help. On the second day of work, the line supervisor reported to the Human Resource and I was penalized for talking during working hour. I ended up paying a penalty for the mere fact that I had a work related question for a fellow co-worker sitting next to me (Milita, 08.05.2017, Bole Lemi).

Despite the existence of laws on maximum working hours, many female migrant workers are forced to work overtime. This is more pronounced among migrant workers for the underlying assumption of employers that the migrant workers unlike the locals have lower social commitment. For the employers, overtime work is a psychosocial therapy protecting migrant workers from boredom and loneliness as the account of the factory manager interviewed in Bole Lemi shows: “there is not much for them to do at home anyway. Most of them do not have family members or relatives to go to. So being engaged in overtime work here is a privilege and psychosocial support base than a burden” (Leul, 07.05.2017, Bole Lemi).

There is sexual segregation of jobs, a common trend that is also observed among migrant workers whereby men dominate managerial positions while women tend to dominate the assembly line. There are several factors that contribute to the representation of female workers in the lower sector jobs. One of these factors is women’s low educational attainment. Further, gender stereotypes and gender-biased societal norms consider jobs such as machine operation and other technical positions to be a man’s job. This discourages women to pursue positions other than those that require soft skills. Low educational background also restricts women from upward mobility within the factory. The segregation of job is described to correlate to the migration history of a given worker leaving migrant female workers in more disadvantaged position compared to local female coworkers. This has been described by a number of migrants who mentioned speaking Amharic and Sidama languages is a comparative advantage in the placement. HR officers interviewed mentioned communication skills specifically language being one of the key determinant factors and their

preference for someone who had previous work experience and who speaks the local languages.

Despite such working environment, migrant workers do not have the platform to raise their issues. This fits to the general pattern in the country whereby employees of industrial job often lack the right and the opportunity to join workers unions (Wolde, Alemayehu, and Tesfaye 2018). Female workers who attempt to complain about the working condition find themselves discriminated and in some circumstances losing their job. In few occasions when they report to the local labor bureaus, relevant authorities are unwilling to take on their cases. Moreover, most migrant workers are often unaware of their basic rights and are insecure about keeping their jobs. Thus, they are unwilling to pursue claims against their employers.

6. Conclusion

The national development and economic policies have enhanced gendered labor migration patterns in Ethiopia. The feminization of employment at the apparel and textile industry reinforces the gendered labor migration, enhancing intergenerational female labor migration pattern. The phenomenon of female labor migration to join the textile and apparel-manufacturing sector is influenced by interplay of several factors. This includes structural factors such as gendered labor market demands of employers, existing 'culture of migration', overarching gender norms, and several interwoven socio-economic factors accounting as push and pull factors. The precarious unemployment condition in rural parts of Ethiopia coupled with gendered education disparity and limited access to resources is a vital factor contributing to the growing migration of young girls. This makes the informal labor market and migration viable for girls and women.

Rural migrant women living and working in the cities are exposed to complex disadvantages resulting from their migrant status, gender, and work experience. The multitude of challenges female migrant workers face include abusive working conditions, exploitative employment arrangements, long working hours, non-negotiable overtime work, lack of flexible hours, and highly gendered division of labor. In gendered socio cultural landscape such as Ethiopia's, the factors tend to be compounded by gendered dynamics and gendered asymmetrical power relations. Migrating to the cities and working at the textile and apparel factories is an ephemeral experience for some female migrant workers who look beyond the economic opportunities to be gained from their employment.

There is a significant lack of policies and strategies aiming to improve the working conditions of factory workers. The government should develop a comprehensive national policy to promote the wellbeing of internal labor migrants. The recent government call for free housing to low-paid industrial park workers in SNNPR

is a step in the right direction in realising the decent job agenda. Furthermore, there is a visible gap of compliance with the labor standards Ethiopia ratified and incorporated in its legal system in labor inspection, safety material provision, and labor rights protection. It is thus imperative to have legal clinics that assist women migrants in filing claims against employers and local labor bureaus. As one of the main disadvantages of female migrant workers relates to skill gap, different stakeholders working on girls and women empowerment should offer comprehensive skill training programs at the sourcing areas. Such training programs need to incorporate an awareness raising session on workers' rights. To sum up, the 'women in development' thinking that underpins the Ethiopian government development policy does not go far enough in bringing sustainable empowerment while neglecting the complex challenges female migrant workers face.



Promoting Ethiopian Women's Economic Rights by addressing the Antecedents of Gender Inequality in Adolescence

Elizabeth Presler-Marshall, Nicola Jones, Guday Emirie and Workneh Yadete

1. Introduction

Ethiopia has made remarkable development progress over the past two decades, with indicators across sectors evidencing the government's commitment to improve the lives of its citizens. The poverty rate has approximately halved since 2000, from 46 to 24 percent (UNDP 2018b). The primary education completion rate has more than doubled, from 22 to 54 percent (World Bank 2020). Women's rights have been central in the country's development goals. For example, the National Women's Policy was developed during the Transitional Government of Ethiopia in 1993. The 1995 Constitution of the Federal Democratic Republic of Ethiopia explicitly acknowledges gender inequality and mandates an array of measures to address it. The National Costed Roadmap to End Child Marriage and Female Genital Mutilation/Cutting (FGM/C) (2020-2024) also outlines key strategies, packages of interventions, expected results, targets, and milestones towards the elimination of child marriage and FGM/C in Ethiopia (MoWCY 2019).

However, while the government of Ethiopia is depending on women to help achieve middle-income status by 2025, there is ample evidence that shows most adolescent girls remain largely excluded from the opportunities that would enable them to build secure futures for themselves, their families, and their country. Compared to their male peers, for example, adolescent girls remain more likely to be out of school, at both the primary and secondary levels, and less likely to pass the tenth grade General School Leaving Certificate Examination (GSLCE). In addition, and despite a minimum legal age of marriage of eighteen years,

rates of child marriage and early motherhood remain extremely high (CSA and ICF 2017).

This chapter, therefore, attempts to address some of these gaps based on data collected in 2017 and 2018 for the Gender and Adolescence: Global Evidence (GAGE) longitudinal study.¹ It explores the diverse ways in which the antecedents of gender inequality become entrenched during adolescence, ten to nineteen years, and leave young women in a disadvantage position in terms of economic participation, including participation in Ethiopia's growing manufacturing sector. We begin by presenting a brief literature review, theoretical framing, and methodology. Our findings are then presented in terms of how they impact adolescent girls' capacities to become women who can contribute to the country's economic transformation. We conclude by discussing implications for future policy and programming, arguing that a more holistic approach to support girls' broader capabilities is vital if the country is to harness the potential of half of Ethiopia's adolescent and youth bulge.

2. Framing and Context

2.1. Why Adolescent Girls?

Over the course of the last decade, adolescence has increasingly moved center stage. In part, this is due to recognition that the second decade of life represents an 'age of opportunity' that can alter children's trajectories as they transition from childhood to young adulthood (Steinberg 2015; UNICEF 2011). In large part because adolescence is the period of time in which the 'social' regions of the brain develop, maturation opens new pathways through which existing disadvantages can be mitigated and new possibilities made real (Blum, Mmari, and Moreau 2017; Sheehan et al. 2017; McCarthy, Brady, and Hallman 2016). The urgency of investing in adolescents has been amplified by the reality that the current generation is the largest the world has yet seen. More than 1.2 billion people, 1/6th of the world's population, are aged between ten and nineteen (UNFPA 2014).

Increased attention to adolescence has highlighted that opportunities and challenges are not only age-related, but also deeply gendered. This is because of

¹ GAGE is exploring adolescents' gendered transitions through the second decade of life in six developing countries, including Ethiopia (GAGE Consortium 2019). Data from GAGE, which is the largest longitudinal study ever undertaken with adolescents and includes 20,000 ten to nineteen year old girls and boys, is also used in other publications. This includes a series of reports and an ever-growing list of journal articles and book chapters. For more details refer to www.gage.odj.org.

the heightened salience of social norms during adolescence (Chung and Rimal 2016; McCarthy, Brady, and Hallman 2016). Critically, while adolescent boys' made in terms of girls' productive and reproductive roles (Kabeer 2018). With marriage and motherhood considered central to adult femininity, and with fewer and lower-quality labor market opportunities open to women, adolescent girls are disproportionately tasked with unpaid domestic and care work, provided with fewer resources, including time, to invest in education and training, and denied chances to set and strive towards their own goals (Harper et al. 2018). Girls, thus, enter adulthood with deficits that boys do not have (Harper et al. 2018; Kabeer 2018).

The deficits with which young women begin adulthood have potent ramifications for their own economic futures, as well as for the intergenerational transmission of poverty, given mothers' roles in supporting children's health and education. Evidence suggests, for example, that each additional year of secondary education increases a girl's eventual income by 10 to 20 percent (UNWOMEN 2012). Because education opens doors to different types of work, educated women are more likely to work for pay, and staying in school reduces the likelihood of child marriage and early motherhood (UNESCO 2018; Wodon et al. 2018; WHO 2013). Impacts on future children are also large and diverse. For example, literate mothers are 23 percent more likely to have a skilled attendant during birth, and women married as adults have fewer and better-spaced children (UNESCO 2018; Kim 2016).

2.2. The Ethiopian Context

Ethiopia remains one of the world's poorest countries. It is ranked 173rd out of 189 countries on the UN's Human Development Index (UNDP 2019) and 41st out of fifty-four on the Africa Prosperity Report Index (Lengatum Institute 2020). The population is also very young; an estimated one-quarter are adolescents between the ages of ten and nineteen (Performance Monitoring for Action 2016). To simultaneously capitalize on its youth bulge and promote economic growth, the government has invested heavily in education in the last two decades. The share of budget devoted to education grew to 27 percent by 2015 (World Bank 2020), the number of primary schools tripled to nearly 37,000 in 2019, and primary enrolment has climbed from three to twenty million (Ministry of Education

2019). UNESCO (2020) reports that in 2015, the primary gross enrolment rate (GER) was 101 percent (96 percent for girls and 106 percent for boys).^{2,3,4}

Although Ethiopia is nearing universal enrolment in primary school, many students leave school in early adolescence (MoE 2019). In 2018, on a national level, the GER for upper primary school was only 80 percent and the NER was only 63 percent (MoE 2019). Regional disparities are also marked as shown in the table below.

Tab 1: Regional disparity for enrolment (GER) in upper primary school, five to eight, for the 2018/19 school year

Region	Male	Female	Total
Tigray	106.8	106.0	106.0
Afar	33.8	28.3	31.2
Amhara	98.0	99.5	98.7
Oromia	77.0	63.6	70.3
Somali	47.0	39.1	43.3
Benshangul Gumuz	99.0	79.9	86.6
SNNP	80.0	72.4	76.5
Gambella	125.6	119.9	122.9
Harari	95.3	77.1	86.4
Addis Ababa	135.7	57.0	146.6
Dire Dawa	92.3	78.8	85.6
National	83.2	76.2	79.8

Source: MoE (2019)

- 2 The GER includes all students who are enrolled in school, regardless of whether they are 'over age'. The net enrolment rate (NER) includes only students who are enrolled at the expected grade for age. For example, a ten-year-old enrolled in first grade would be included in the GER but not the NER.
- 3 The primary level NER in 2015 was 85 percent, 81 percent for girls and 88 percent for boys (UNESCO 2020).
- 4 The Ethiopian school system does not currently align with international classification systems. In Ethiopia, primary school consists of two stages, lower (grades one to four) and upper (grades five to eight) (MoE 2019), whereas under international convention, primary school ends after sixth grade (UNESCO 2011). In Ethiopia, secondary school also consists of two stages: lower (ninth and tenth) and upper (eleventh and twelfth). Restructuring efforts are underway. Primary school will become grades one to six. Lower secondary school will become grades seven to eight. Secondary school will become grades nine to twelve (MoE 2018b).

Matriculation into and success in secondary school remains limited, in part because the government has thus far prioritized primary education and secondary schools are disproportionately located in urban areas, even though the vast majority of the population remains rural (CSA and ICF 2017). In the 2018/2019 school year, the GER for ninth and tenth grades was 49 percent and only 2/3rd of students who sat for the GSLCE at the end of tenth grade received scores of at least 50 percent (MoE 2019). The government has acknowledged that the “curriculum lacks quality and relevance” and is working to restructure the way education, especially at the secondary level, is delivered (MoE 2018b, 25). Courses are being reoriented towards critical thinking and hands-on learning, and lower and upper secondary schools are being merged into a single course of study with no intermediary exam.

At present, enrolment in the last two years of secondary school is very low; the Lower secondary school will become grades seven to eight. Secondary school will become grades nine to twelve (MoE 2018b). GER for eleventh and twelfth grades was 15 percent in the 2018-2019 academic year.^{5,6} Current low enrolment in upper secondary school is due to government policy to enroll the majority of successful GSLCE takers into technical and vocational education and training (TVET) colleges, rather than courses meant as preparation for university (MoE 2018a). TVET, which provides young people with work-related technical skills, is seen as central to the transformation of the economy (MoE 2018b; National Planning Commission 2016). However, despite the government's investment in competency-based, rather than knowledge-based, TVET (Likisa 2018), only 2/5th of TVET graduates were certified as competent in 2012 (Fikru 2016). Furthermore, and in stark opposition to government goals, enrolment in TVET has been falling in recent years; it reached nearly 350,000 in 2015 but fell to 300,000 by 2017 (MoE 2018a). This is partly as a result of the closure of a significant number of TVET institutions due to quality deficits and tighter enforcement of minimum competency standards needed to enter TVET programmes (Trines 2018).

In many ways, girls' educational progress has been especially significant. This is due to an array of government policies, including the most recent Growth and Transformation Plan II (2016-2020), which calls for unleashing women's potential “through education, skill development and employment” (National

5 The NER is half the GER due to over age enrolment (Ministry of Education 2019).

6 Using international classifications, UNESCO (2020) reports that in 2017 the GER for lower secondary school (grades nine and ten) was 43 percent. In 2015, the GER for upper secondary school (grades eleven and twelve) was 18 percent. Reflecting the large number of students who are over age, the NER for lower and upper secondary was 34 percent and 10 percent respectively (UNESCO 2020).

Planning Commission 2016, 92), the Ethiopian Education Development Roadmap (2018-2030), which calls for gender sensitive curriculum (MoE 2018b), and on-the-ground efforts to raise families' and communities' awareness about the importance of girls' education. Gender parity in primary and secondary enrolment (Gender Parity Index) climbed from only 0.66 in 2000 to 0.92 in 2015 (World Bank 2020). Girls' learning outcomes have also improved. In 2005, only 33 percent of young women aged fifteen to twenty-four were literate. By 2017, the figure had jumped to 72 percent (World Bank 2020). Females are also now slightly more likely than males to enroll in TVET (MoE 2018a). Girls' disadvantage, however, remains significant. For example, compared to boys, they are slightly less likely to complete primary school (60 percent versus 64 percent) and significantly less likely to receive at least a 2.0 average, out of 4.0, on the GSLCE (64 percent versus 72 percent) (MoE 2019). This is largely because of their domestic and care work burdens, which preclude adequate study time (Harper et al. 2018; Jones et al. 2017; Jones et al. 2016). In addition, the Ministry of Education (2019) reports that gender parity at both primary and secondary level has fallen in recent years, despite affirmative action policies that allow girls to promote with lower exam scores.⁷ At the university level, 2/3rd of the 400,000 students enrolled in 2018 were boys (MoE 2019).

While the World Economic Forum (2020, 24) notes that Ethiopia is the world's "most improved country" in terms of shrinking the gender gap, Ethiopian girls remain disadvantaged compared to their male peers in ways other than education as well. For example, the Ethiopian Demographic and Health Survey (EDHS) reports that 40 percent of young women aged twenty to twenty-four were married before the age of eighteen and 13 percent of adolescent girls between the ages of fifteen and nineteen have already begun childbearing (CSA and ICF 2017). Indeed, despite national progress, in some areas of the country, the age of marriage appears to be declining and the incidence of child marriage increasing (Jones et al. 2016). Girls are also more likely to be malnourished than boys (Mulugeta et al. 2015, 2009; Belachew et al. 2011), have less emotional support from adults and peers, and more limited control over their own lives (Harper et al. 2018; Jones et al. 2016; Edmeades, Hayes, and Gaynair 2014; GAGE 2013). Girls' access to paid work, information and technology (ranging from newspapers to mobile phones), and financial resources (including savings opportunities and credit) is also restricted compared to boys' (Jobs Creation Commission Ethiopia 2019; Harper et al. 2018; IMF 2018; CSA and ICF 2017). In addition, while Ethiopia's flagship public works programme, the

7 The Ministry of Education (2019) reports that the GPI at primary education fell from .93 to .90 and GPI Lower secondary school will become grades seven to eight. Secondary school will become grades nine to twelve (MoE 2018b).

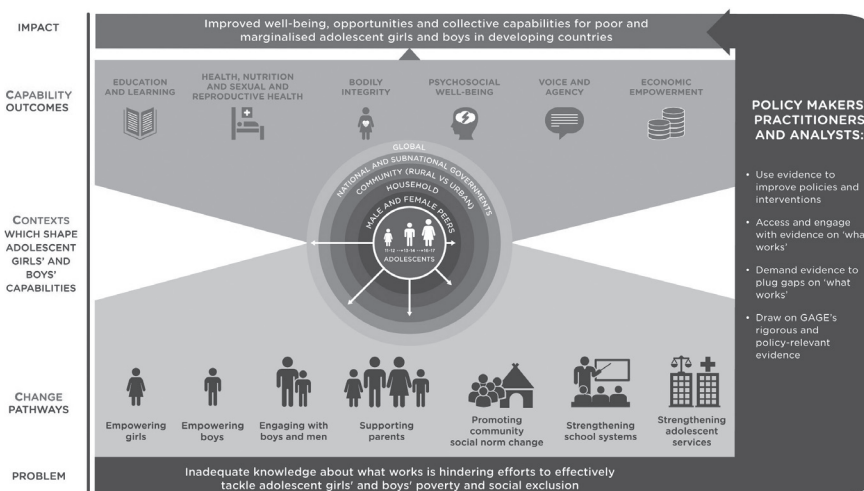
Productive Safety Net Programme (PSNP), is improving adolescents' nutrition and education outcomes by relieving financial stress (Favara, Porter, and Woldehanna 2019; Pankhurst et al. 2018), there are concerns that it costs girls. Namely, in some households, girls' workloads have increased as they are forced to take on domestic and care work that their mothers have forgone in order to participate in programme activities (Camfield 2014).

Despite the government's efforts to empower girls and women by creating opportunities in manufacturing, approximately half of the 77.8 percent of women who have entered the labor market are still clustered in the informal sector. Data shows that women's participation in the manufacturing sector only increased by 4 percent between 2004/5 and 2014/5. In 2018, participation of women in large and medium-scale manufacturing industries was only 33.3 percent, and most of them were involved in labor-intensive and low-skill jobs (UNDP 2018a).

2.3. Theoretical Framing

This chapter is framed around the capabilities approach (Sen 1985) and draws heavily on Pawson and Tilley's (1997) method of evaluation, which highlights the importance of outcomes, causal mechanisms, and contexts. Careful tailoring allows us to focus on girls' gender and adolescent-specific dimensions and capture the particular challenges of understanding what works in improving adolescent girls' capabilities. We draw on the conceptual framework developed by the GAGE consortium (2019), which focused on adolescent capabilities, contexts, and change strategies as outlined in Fig. 1.

Fig 1: GAGE 3Cs conceptual framework—capabilities, contexts, and change strategies



Source: GAGE consortium 2019

The capabilities approach was introduced originally by Amartya Sen (1985), as a justice-oriented alternative to welfare economics, and nuanced to better capture complex gender dynamics at intra-household and societal levels by Martha Nussbaum (2011) and Naila Kabeer (1999a). The approach has evolved as a broad normative framework exploring the kinds of assets and entitlements that expand individuals' freedom to choose what they wish to do and who they wish to be. At its core is a sense of competence and purposive agency; it goes beyond a focus on a fixed bundle of external assets, emphasizing instead investments in an individual's skills, knowledge, voice, and freedom. The GAGE consortium conceptual framework focuses on six core capability domains essential to adolescent well-being and transitions into adulthood. These are: education and learning, health and nutrition, bodily integrity and freedom from violence, psychosocial well-being, voice and agency, and economic empowerment (GAGE consortium 2019). As Sen recognizes, these capabilities are interconnected. For example, girls' limited freedom to pursue education or employment is inexorably linked to child marriage, which has further consequences for their lives, including ability to spend time with peers, plan pregnancies, and access quality healthcare.

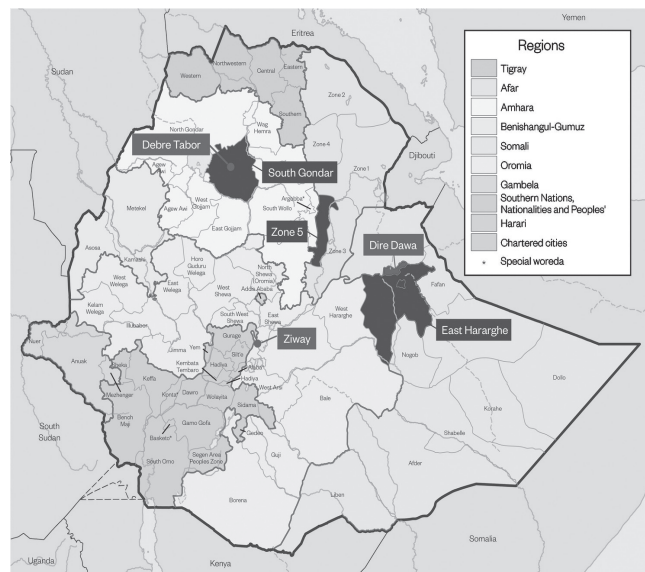
This capabilities framing recognizes not only that adolescent girls at different stages over the course of the second decade of life have different needs and face different constraints, but also that these are also highly dependent on their family (or household), community and national contexts. These contextual realities also determine the change strategies that can be employed to improve girls' capability outcomes. Moreover, in order to nurture transformative change and enable girls to freely make the choices that shape their own futures, this approach underscores that strategies must simultaneously invest in integrated intervention approaches that support girls, their families, and their communities, while also working to effect system-level change.

2.4. Mixed Methods Approach

The mixed methods research underpinning this chapter was undertaken in rural and urban sites in three zones of Ethiopia: Zone 5 (Afar), South Gondar (Amhara), and East Hararghe (Oromia) (see Fig. 2). Rural sites, of which two were in Zone 5, five were in South Gondar, and five were in East Hararghe, were chosen for their combination of economic (food-insecure districts) and social vulnerabilities (high prevalence of child marriage). Their varying distances from the district town also allowed us to explore the relative importance of distance to services and markets. The three urban settings, Batu in East Shewa (Oromia), Debre Tabor in South Gondar (Amhara), and Dire Dawa City Administration, are similarly diverse. Variation in location, size, culture, religion and migration

patterns help to highlight the different threats and opportunities that shape adolescence for girls and for boys.

Fig 2: Research sites



Source: Jones et al. 2019a

The quantitative sample included 6,700 adolescent girls and boys and their caregivers (see Jones et al. 2018b). The sample was divided into two cohorts: younger adolescents (aged ten to twelve at the time of data collection) and older adolescents (aged fifteen to seventeen). The baseline quantitative data collection activity was conducted by survey enumerators selected for each region based on their language skills and track record of collecting high-quality survey data.

In order to generate the GAGE quantitative research sample, a door-to-door listing activity was undertaken in all urban and rural research sites, following a specific protocol to ensure that the sample was consistently drawn from across sites and to minimize the risk of overlooking particularly disadvantaged adolescents (e.g. those who are out-of school, married or divorced, living with disabilities, or are internally displaced). The listing activity identified adolescents aged ten to twelve and fifteen to seventeen (urban sites only) living in the research sites, and the GAGE quantitative research sample was drawn randomly from this population.

Qualitative work was undertaken with a purposively selected sub-sample of 400 adolescents, 220 of whom completed in-depth individual interviews and 180 participated in group discussions. We also conducted interviews with

adolescents' caregivers and grandparents, their siblings, community members, and local service providers. Interviews were conducted in the relevant local languages (Amharic, Afaan Oromoo, and Afar), with researchers and interpreters only interviewing adolescents of the same sex as them.

Qualitative research instruments designed by GAGE were first trialed in a round of formative work to ensure that they were appropriately adapted. All instruments were highly interactive and allowed respondents to discuss themes in their own terms. Some, such as timelines, were directly aimed at exploring changes in opportunities open to adolescents over time. Others, such as community and body mapping, were designed to explore the different experiences of girls and boys, and younger and older adolescents. Preliminary data analysis took place during daily and site-wise debriefings. Following data collection, all interviews were transcribed and translated by native speakers of the local language, then coded thematically using the qualitative software analysis package MAXQDA.

Prior to commencing research, we secured approval from the Overseas Development Institute Research Ethics Committee, as well as from the relevant regional research ethics boards in Ethiopia. We also secured informed assent from adolescents aged seventeen and under, and informed consent from their caregivers (minors under eighteen are not legally able to give consent) and from adolescents aged eighteen and nineteen years.

3. Findings Regarding Adolescent Girls' Multidimensional Capabilities

We present our findings according to the multidimensional capabilities that are critical not only for adolescents' current well-being but also for their "well-becoming", as adolescence is critical to preparing children for a happy and productive adulthood (Biggeri and Santi 2012). We do so by working backwards from the government's goal of creating a cadre of young women capable of helping to transform Ethiopia into an industrialized modern economy. We begin with education and training, as the most immediate antecedents required, and then highlight how other relevant capabilities, such as freedom from age and gender-based violence and psychosocial well-being, are in fact required if girls are to become empowered women prepared to "catalyze the growth of the manufacturing sector" and the broader Ethiopian economy (Ministry of Trade and Industry and UNDP 2018, 7).

3.1. Education and Training

3.1.1. Aspirations and enrolment

Our findings regarding adolescents' participation in education are generally in line with national and international statistics, but highlight the mismatch

between girls' educational aspirations and educational uptake and underscore the importance of regional variation (see Jones et al. 2019b). Across rural locations, our survey found that while 94 percent of girls aged ten to twelve would like to attend secondary school, and 60 percent would like to attend university, only 82 percent were enrolled in school in the most recent term, compared with 85 percent of their male peers. Of our older urban cohort, while 99 percent of girls aspire to attend secondary school and 85 percent would like to attend university, only 87 percent were enrolled, compared with 91 percent of boys. Regional variation is also notable in our survey findings. In South Gondar, 96 percent of younger rural girls (versus 89 percent of boys) were enrolled in school. In East Hararghe, the gender gap is both larger and reversed: only 70 percent of younger girls were enrolled in school (versus 85 percent of boys). In Zone 5, Afar, where uptake of education is lowest, gender differences were not significant: only 64 percent of young adolescent girls and boys were enrolled in school.

Individual and group interviews revealed that adolescents' educational and occupational aspirations are formed around what they want and do not want. Across locations, young people in our sample aspire to become teachers, health workers, and civil servants. Although commitment to education for its own sake is widespread, with a ten-year-old girl from Community L (East Hararghe) noting that "if I do not attend school, I will become like a blind person", the impetus for commitment is most often framed around adolescents' desire to exit both the agricultural sector and poverty. As a fifteen-year-old girl from Community A (Zone 5, Afar) explained, "we do not want to be involved in the same activities as our parents ... Our parents are doing daily labor, it makes them tired."

Critically, we found that while adolescents generally have high aspirations, there is a large disconnect between what they say they want and whether they understand the routes to achieving their goals. Some young people reported, for example, that they aspired to stay in school "until the end" or to become doctors, without even understanding what grade "the end" entails or what educational pathways lead to a career in health care. Our qualitative work highlighted that girls' future-seeking is disadvantaged compared to boys' because girls have fewer concrete 'road maps' to follow, given women's historical disadvantage. This leaves some girls, especially those in East Hararghe and Zone 5, aspiring to become like the successful men they know while others have no role model at all; "I have no one whom I see as a model or want to be like," noted a ten-year-old girl in Community L (East Hararghe).

We found that adolescents' access to schooling and their learning outcomes are also shaped by poverty and agricultural demands. Young people, especially those in Zone 5 and South Gondar, reported that they enrolled in school late, sometimes by years, and that they missed days or even months of school

when their families needed their labor. A married fourteen-year-old girl from Community C (South Gondar) explained: “at the time of threshing, we will have to prepare food and take lunch to our family members who are working at the field; then, we will miss class. There are weeks in which I never miss a day and there are weeks in which I miss two days of school”. Repeated absences impinge on student learning, making grade repetition not uncommon. “If the medium achiever is absent, he will be a low achiever. And if the top achiever is absent, he will be a medium achiever,” noted a teacher from Community K (East Hararghe).

Adolescent participants reported that while both boys and girls are expected to contribute to household labor, educational impacts are often gendered because parents assign girls and boys different tasks. Boys’ work, primarily agricultural, typically ends when the sun goes down, leaving them time to study in the evenings. This is not the case for girls, whose domestic work responsibilities continue into the evening and can begin well before dawn. A ten-year-old boy from Community D (South Gondar) explained, “girls do not know how to read and write most of the time, because the girls do not come to school as regularly as boys.” Several twelve-year-old boys (from Communities H and L, East Hararghe) added that girls “are not promoted” or are “not clever in the class” because they “do not properly follow their education [because they are] responsible for performing domestic work”. Girls also agree to this claim as shown in the quote of a twelve-year-old girl from Community C (South Gondar): “after we finish school and go home we do too much work, we get very exhausted and the next day the routine is the same; instead of reading I am ordered to herd the cattle, and collect animal dung to burn as fuel”.

Adolescents observed that the impacts of girls’ disproportionate workloads extend even to corporal punishment by teachers. While boys, because they are less compliant, are more likely to experience violent discipline at school than girls, 78 percent versus 66 percent, girls are more often punished for lateness stemming from their domestic work responsibilities. A ten-year-old girl from Community J (East Hararghe) reported, “I may take food for my father to the farm field. When I come back, I may be late for school because where we farm is far from our home. I was beaten by the teacher because I was a latecomer”.

3.1.2. Support for educational transitions

Our qualitative research substantially extends the evidence base in regard to support for educational transitions, as it moves beyond statistics that merely shows high dropout rates and explanations that revolve around infrastructure deficits. Our data highlights that regional differences in girls’ and boys’ access to education, which are pronounced even at the lower-primary level, become

even more so as children progress through adolescence, in large part due to regional cultural differences that shape demand for education. Critically, we found the reasons why young people are not in school closely reflect the adult roles they will soon assume.

In South Gondar, where there is growing recognition that climate change and land scarcity are converging to render farming an untenable livelihood, respondents reported that parents increasingly prefer to educate their adolescent daughters rather than their sons, largely because girls' education is increasingly seen as providing a better return on investment. A key informant explained that not only are girls willing to "think for their mothers", but they are also better providers: "If she is educated, there is a chance that she will look back to her parents. If the boy is educated, he cares for nothing but his own interests." In addition, in recent years, girls' education has been increasingly recognized as a form of bridal gift in its own right; poorer parents can invest scarce resources in girls' education rather than saving those resources to provide more tangible bridal gifts when girls marry. Even so, girls in South Gondar continue to face a variety of gendered barriers to education. For example, given that menstruation is deeply stigmatized, and is indeed often misunderstood as a sign of sexual activity, girls are "absent from school during their menstruation periods" (teacher, Community F) because schools lack adequate water and single-sex toilet facilities to allow girls to meet their hygiene needs. Also, because girls' sexual purity is seen as central to family honor, many families refuse to send their daughters to secondary school, as this often requires either a long daily commute on foot or living in rented lodgings away from family. As a key informant at the Women's Association in Community D, which is four hours from the nearest secondary school, explained, "parents do not want to send their older female children because they might be attacked or become unexpectedly pregnant."

In East Hararghe, on the other hand, not only is commitment to education lower, but commitment to adolescent girls' education is especially low. Girls noted that their brothers receive more school supplies and their mothers require daughters to drop out as soon as they are large enough to be helpful at home, generally in early adolescence. A twelve-year-old girl in Community H explained, "I dropped out from grade six as there is no one [at home] who can do domestic work. She [mother] said as no one does domestic work, she told me to drop out." Educators agreed that girls were describing the situation accurately. A school principal in that same community added that mothers are so determined to have their daughters support them at home that they sometimes resist kebele leaders' efforts to bring girls to school: "When we go to their homes to bring students to school, there are some mothers who throw stones at us. They think the girls

should help them in the house because they have no other support.” Educators also noted that support for girls’ education, rather than improving over time, is actually falling in some communities. Due to the recent drought, some girls spend up to six hours a day collecting water. Respondents also implicated the cultural dance called ‘shegoye’, which has recently transitioned into an all-night affair, in girls’ school leaving, as it significantly drives child marriage and in many communities appears to be decreasing the age at which girls marry. A health extension worker noted that ‘there is nothing that prevents them from learning, but they do not have interest and motivation’.

In Zone 5, Afar, which is characterized by pastoralism and seasonal migration, it is uncommon for adolescents to attend school beyond the lower-primary level. The added impact of gender is not only more muted but potentially supportive of girls’ education up until mid-adolescence, at which time most girls marry. Boys meanwhile are responsible for herding the animals, which can mean weeks away from home and school. Crucially, our research suggests that girls face all but impenetrable barriers to secondary school. In Community A, a key informant admitted that because so many educated girls resist arranged marriage by their parents, there is now a community agreement to prohibit girls from attending secondary school, “because after grade eight, girls also start to refuse their families’ marriage arrangement”.

Across regions, for girls who are supported to transition to ninth grade, many are forced out of school at the end of tenth grade, when students have been required to sit for the GSLCE, which girls are more likely to fail. Teachers and girls noted that girls’ higher failure rates are largely due to years of parental underinvestment in girls’ education, with girls given less time given to study. A school principal from community E in South Gondar noted, “one of the major challenges is girls’ workload at home, which make them arrive late in school as well as school absenteeism, which in turn affects their educational performance.”

Echoing Harper et al. (2018, 7), who observe “for most adolescent girls in the Global South, marriage and education represent competing paths”, we found that adolescent girls who see their educational trajectories truncated are most often left with only one option, marriage (Jones et al. 2019b; Jones et al 2019c). Whether they are forced to marry against their will, resignedly acquiesce or willingly enter into marriage depends not only on their broader context, but also on specific marriage practices. Once married, few girls have pathways back into formal education (see Box 1).

Box 1: How regional context affects the interaction between marriage and education

In Zone 5 (Afar), where girls tend to enroll late, if at all, and progress slowly through primary school because of other demands on their time, marriages are arranged to maternal cousins (under the absuma marriage system), usually in mid-adolescence. Opportunities for a girl to choose school over marriage are effectively non-existent. Girls must marry when and whom their parents decide, and parents are deeply committed to the absuma system, as it reinforces kinship ties: “If my daughter married someone outside of our kinship, our family line would discontinue,” explained a man from Community A (Zone 5, Afar).

Adolescent girls, on the other hand, are simply resigned to the absuma system: “unless we die, it is our absuma that we are going to marry.” According to girls from Community A, while some try to “escape to the river”, parents “bring them back to the house” and “beat you seriously if you do not want to get married”. Girls also have no option of staying in school after marriage. As a teacher in the same community observed, as soon as they marry, “girls are prepared to live like their mothers”. Outside of practical realities, such as days full of “preparing food at home, fetching water, collecting fuel wood, and rearing goats”, even if girls could find the time for school, husbands often prohibit their young wives from attending. They are afraid their wives would “divorce after they complete their education” because of the way that schooling expands horizons.

In South Gondar (Amhara), the competition between marriage and education pathways is more complex, because both routes are open. On the one hand, the region has long had the country's lowest age at marriage and arranged marriages are still the norm, largely to assuage parents' fears that girls “will get wild” (adolescent girl, Community C) and “be ruined” (adolescent girl, Community D) as their bodies mature. A teacher in Community G noted that some families are so committed to child marriage that they lay complex plans in order to circumvent the law. Specifically, because teachers will report parents who make their daughters leave school in order to marry, families are now inventing pretexts, such as “health disorders” and “economic recession”, to remove their daughters from school “prior to the date of their marriage arrangement”. In such a way, they can avoid being reported and prosecuted.

On the other hand, across South Gondar, age at marriage is climbing rapidly while commitment to education is strong and growing. Indeed, a kebele administrator in Community D explained that there is emerging space to combine marriage and education: “when their parents insist that she should marry, girls will say ‘I will marry but I want to attend school as well.’” Although the combination often does not work well, with some girls forced to leave school because “her husband refused to allow her to pursue her education” (married twelve-year-old girl, Community D) and others dropping out “because she was engaged in home life and needs to work in business” (twenty-year-old husband, Debre Tabor), our research found an increasing number of husbands actively supporting their young wives to stay in school. Husbands also recognize that agriculture is increasingly untenable and that households need diversified livelihood strategies.

In rural East Hararghe (Oromia), our qualitative research suggests recent change. On the one hand, educators in Community J noted that child marriage is traditional, with parents long believing that “if a girl is able to carry a twenty-liter jerry can ... she is ready for marriage” and girls between the ages of thirteen and fifteen dropping out of school because they are “ashamed of learning”. On the other hand, parents and girls reported that girls increasingly enter child marriage by “choice” rather than by arrangement and may be doing so at ever younger ages in order to accelerate their transition to social adulthood. “Children of ten years do not talk about education, they talk about getting married!” exclaimed a teacher from Community H. Some respondents attribute change to the recent drought, as girls who are forced to leave school “prefer marriage than to simply sit idle” (father, Community K). Others attribute higher rates of school leaving and child marriage to the evolving tradition of all-night shegoye dancing, which leaves girls (who are still young enough to be enrolled in school) too tired to pay attention the next day. “Once they have started spending the night at shegoye, they plan to marry within the same time of the year,” explained a young adolescent girl from Community H. As in Zone 5, there appears to be almost no way for married girls in East Hararghe to continue their schooling. Unlike in Zone 5, however, it appears that married girls have little interest in doing so.

3.1.3. Skills training

Our qualitative research captures government efforts to scale up quality TVET as well as potential reasons why such efforts are falling short (see Jones et al. 2019d). Key informants reported that TVET “is getting better” and opening

“different options” for young people. A teacher at one college in South Gondar explained that when she was a student, classes were under resourced and purely theoretical until the final year, whereas now students are provided with more supplies and hands-on training: “when I was learning it was just an institute and there was no adequate material. But now they have a lot of facility.” Another educator commented that enrolment priority is given to girls and women, in line with national policy objectives, and that their uptake has greatly increased in recent years. Indeed, as noted above, girls are now more likely to enroll in TVET than boys (MoE 2019).

Adolescents’ perspectives on TVET were more mixed due to several factors. First, TVET is seen as less prestigious than university and so interest in TVET is declining, as more young people have more opportunities to work towards the academic qualifications that will facilitate university entrance. While many respondents were enthusiastic about what they were learning, they often began their stories by first expressing their disappointment that they were on a technical and vocational track rather than a more prestigious academic one. “I was the one everyone expected in the family to get into university,” explained an eighteen-year-old girl from Batu. Interest is further dampened by the reality that many recent TVET graduates are unable to find work in the careers in which they are trained, partly due to poor linkages between courses on offer and labor market needs. “After I graduated from TVET I could not find a job,” explained an older girl from Community D (South Gondar).

Second, for impoverished households, TVET can be quite expensive, especially at levels three and four, which are only available in larger towns. Real costs, for tuition (at private colleges) and living expenses, can be high and come after families have already invested several years in their child’s education at lower-secondary school. “It is only the rich families that can send their children to these schools,” explained a mother from Community C (South Gondar).

Third, although TVET can open other opportunities for young women, providing them with the skills for careers that are both interesting and well paid, we found that the lack of prestige and higher costs associated with TVET have disproportionate negative impacts on girls and young women. For example, a seventeen-year-old girl from Debre Tabor, South Gondar, explained that attending TVET was quite often seen as a sign of moral failure: “If we enroll in TVET, especially in the rural community, people assume that we failed because we developed inappropriate behavior and assumed we have a sexual relationship with others. They label us as girls who engage in bad behavior.” A nineteen-year-old young woman from Community C, South Gondar, added that girls are particularly sensitive about protecting their parents’ financial resources.

“My father is eighty-three years old and he cannot afford to cover my [TVET] education cost. That is why I chose to get involved in my own business rather than being a burden to my parents.” Girls’ sensitivity is heightened by the reality that they are less likely to obtain the exam scores that would enable them to attend lower-cost, government-run courses. “You may need to have acceptable scores to join those TVET institutes ... only those who have an average result above seventy-five percent can get into a programme,” explained a mother of an adolescent who was not enrolled.

Respondents also noted that while “women account for 55 percent and men 45 percent” of TVET courses (key informant, Dire Dawa), many specific courses continue to be gender segregated, although not necessarily in ways one would expect. Key informants reported that girls mostly attend courses on textiles and hospitality, and are under-represented in traditional technical occupations, which are perceived to be for ‘men’. Female TVET students in Batu, however, reported that girls “prefer to learn computer science or IT [information technology],” which are not typically seen as ‘feminine’ careers, while boys still prefer “technical and labor-demanding courses”.

3.2. Broader Precursors to Empowerment

Education and training are not the only antecedents that girls need in order to transition to adulthood ready and able to transform the national economy. Girls also need to be well-nourished, feel and be safe, have emotional support, be encouraged to make decisions and believe in themselves, be able to prevent pregnancy, and have access to assets that can help them invest in their own futures. These capabilities are required not only to support girls’ access to education and training, but also for girls to develop their own valued ways of “doing and being” (Sen 1985).

3.2.1. Bodily integrity and freedom from violence

Our research found that over 2/3rd (68 percent) of younger adolescents acknowledge experiencing violence at home (see Jones et al. 2019c). It also found that corporal punishment is used as a way to reinforce gender norms and serves to limit girls’ options. Specifically, while boys tend to report being punished for misbehaving, girls often experience violence for failing to live up to local standards of femininity. Some girls, for example, reported being punished for making mistakes with chores, because being able to run a household is considered central to womanhood: “They have beaten me because I broke the container we use for carrying lunch for workers in the field,” reported a ten-year-old girl in Community J (East Hararge). Others noted that they were beaten by their parents when they tried to fight back against the boys who were bullying them, because fighting is considered boys’ purview.

We also found that the peer violence directed at adolescent girls serves to reinforce inequitable gender norms and limit what girls perceive as possible. While girls are less likely to experience bullying than boys (39 percent versus 52 percent), our qualitative work highlighted that the lines between verbal harassment, physical violence, and sexual assault become increasingly blurred as girls move through adolescence. This leaves girls afraid to visit certain places and do certain things like looking for better livestock pasture or opening their own stall at the market. Young adolescent girls reported that boys sometimes use sexual language to intimidate and control them. “Boys would say ‘give me vagina’,” explained an eleven-year-old girl from Community E (South Gondar). As girls and boys begin to notice each other in different ways, boys admitted that they sometimes beat girls who do not reciprocate their feelings. A twelve-year-old boy from Community C (South Gondar) reported: “boys ask girls whether they like them or not. If girls tell boys that they do not like them, they beat them.”

As girls mature physically, our qualitative work emphasizes that sexual violence becomes endemic and further limits their lives. Adolescent girls reported that there are no public spaces in which they feel genuinely safe. They reported being harassed as they commute to school, gather water and fuel wood, and in some cases when they are at school. Indeed, many of the girls who live in urban areas, away from family, noted that they barricade their doors at night. As an older adolescent girl in Dire Dawa lamented, “we are all sorry when we grow older.” Girls’ distress over the constant threat of sexual violence is amplified by the reality that if they are attacked, they know they can expect no help, even from onlookers, due to fears of retaliation. Moreover, they are likely to be blamed if they experience violence: “Her family will beat her because they will ask why she went with him,” explained a twelve-year-old girl from Community F (South Gondar). Research participants noted that it remains common, especially in South Gondar, where girls’ sexual purity is highly prized, for girls who have been raped to be forced to marry the rapist, in order to erase the stain on the family’s honor. As a young adolescent girl in Community C (South Gondar) explained, “in our locality girls get forced to marry. He raped her, now after, she got married [to the rapist].”

3.2.2. *Nutrition and reproductive health*

Our data also speaks strongly to adolescent girls’ disadvantage in terms of nutrition and sexual and reproductive health. It again highlights the critical role of social norms in perpetuating that disadvantage (see Jones et al. 2019e). Our survey found evidence that younger rural girls have long had poorer nutrition than their male peers. Health officials reported that gender differentials in nutrition are the result of inequitable intra-household distribution borne of boys’

greater perceived value. “In this locality parents give priority to their male children, especially in the provision of nutritious food,” explained an official in Debre Tabor (South Gondar).

Individual and group interviews contribute to unpacking the regional variation in contraceptive uptake captured by the 2016 EDHS. In South Gondar, we found relatively good access to contraception, with some parents even supporting their unmarried daughters to use contraception so that they would not become pregnant if they were raped. As a father in Community G explained, “We have to teach the young girls to use contraceptives in order to become safe. I took my daughter to the health center and made her use contraceptives. She has no [boy] friends but I did it for safety.” In East Hararghe, on the other hand, where the age of sexual debut may be dropping, young girls are least likely to use contraception because it is considered vital that they demonstrate their fertility in order to prove their worth. As a fourteen-year-old married girl from Community H (East Hararghe) reported, “I am not using [family planning] now, before I have one child. If you stay without a child for a longer time, they will tell you, you are barren.” In Zone 5 (Afar), we found evidence of increasing uptake of contraception, at least for unmarried adolescents, but this was shrouded in secrecy. An older girl in Community A reported that adolescents “use the night-time service [because] they are afraid [shy] of family, relatives, and other Afars”.

Our qualitative research also found evidence that adolescent girls are at increasing risk of HIV due to the transformations unfolding across the Ethiopian economy, as paid work replaces subsistence agriculture and feeds rural-to-urban migration. Key informants noted that adolescents and young adults are increasingly on the move, looking for work. Adolescent boys and young men are reportedly transmitting the virus from urban areas to rural areas, as a result of the growing practice of men with rural wives also keeping urban concubines. Health officials noted that not only are condoms in short supply, “in Debre Tabor town in particular and at the national level in general” (health extension worker, Debre Tabor), but that young wives have no ability to negotiate condom use with their husband or refuse sex.

3.2.3. *Psychosocial well-being, and voice and agency*

Our research echoes the growing evidence base and found that adolescent girls have far fewer opportunities to participate in all levels of decision-making than their male peers; girls’ opportunities tend to shrink as boys’ grow, and that girls’ inability to control their own lives has cascading ramifications for both their wellbeing and their well-becoming (see Jones et al. 2019f). Our survey, which included the General Health Questionnaire-12, a tool aimed at identifying emotional distress, found that while young adolescent girls and boys were

similarly likely to be distressed, by late adolescence, girls were significantly more likely to be distressed than boys.

Our qualitative research identified loss of control over their own lives, both on a day-to-day and longer-term basis, as central to girls' distress. As a twelve-year-old girl from Community F (South Gondar) noted, "girls are widely perceived as more obedient than boys and have little say in their families. I do everything my mother tells me to." Girls not only have less say in how they spend their time, with implications for their education and work opportunities, as discussed earlier, but also face safety- and purity-related restrictions on their physical mobility. "Boys can go anywhere they want ... but there are girls who stay at home the whole time," explained a twelve-year-old girl from Community C (South Gondar). These restrictions make it difficult for girls to develop the close and sustained friendships that research increasingly highlights as critical to adolescence. They also limit girls' exposure to information.

Girls' access to technology, which could improve even homebound girls' connection to one another, expose girls to alternative role models, and expand access to a plethora of information on topics ranging from training opportunities to contraceptive side effects, is restricted for similar reasons. Parents report concerns about protecting girls' purity and family honor. As one mother in a group discussion in Community C (South Gondar) explained, "for girls, it is distracting ... All they think about is love, all they do is call and meet up. Unlike boys, I do not think mobile phones are good for girls."

Critically, in terms of protecting girls' future options, it is not only day-to-day decisions over which girls have little input. Indeed, our research suggests that girls have the least input into the decisions that ultimately shape their life trajectories: when to leave school, when and whom to marry, and whether and when to begin childbearing. Married girls, who are at high risk on intimate partner violence (CSA and ICF 2017), reported the least access to decision-making, with even their own bodies controlled by their husbands. As one fourteen-year-old girl from Community H, East Hararghe, explained: "when you are with your family, you can either take their order or ignore it but it is impossible to refuse husband's orders."

3.2.4. Economic assets, access to employment, and social protection

Our findings also extend the evidence base in regard to girls' economic empowerment and how the seeds of women's disadvantage are sewn and indeed nurtured during adolescence. For example, while noting that most of the adolescents in our sample are too young to access formal savings and credit or to have land of their own, our survey found that among the older cohort, aged fifteen to seventeen, 39 percent of boys but only 21 percent of girls reported

having any control over money. In large part, this appears due to the fact that boys are twice as likely as girls to work for pay, which are tilted towards the physical labor seen as more appropriate for boys. However, our qualitative work highlights that even when girls do earn cash, they are more likely than boys to see their wages appropriated by their parents for household use, in large part due to girls' more compliant upbringing. This leaves girls unable to invest in their own education and training and reliant on their families and husbands in order to realize their economic goals. As a seventeen-year-old girl in Community C (South Gondar) explained: "if I can open a cafe in Bahir Dar or Gondar I can earn good money. I only need start-up money, my father promised to give me a place to work ... I just want to be independent from the support of my family".

Our qualitative findings also emphasized that girls' disadvantage in local labor markets often drives migration, usually to urban centers but sometimes to the Middle East, where they largely take up poorly paid, often exploitative work that exposes them to abuse. "Women do not have options; they want to go and try to start some small business in the city or strive in any way possible," explained an eighteen-year-old girl living in Debre Tabor but from rural South Gondar. Lacking access to capital, most girls find themselves restricted to domestic work or serving in hotels and bars. A growing number of adolescents are providing unskilled labor in the manufacturing and floriculture industries being promoted by the government to offset the reality that the economy needs to generate two million jobs each year simply to match population growth (Jobs Creation Commission Ethiopia 2019) (see also Box 2).

Box 2: Vulnerabilities facing adolescent girls in factories

Due to a dearth of rural livelihood options, adolescent girls are increasingly migrating to urban areas to undertake domestic work or find employment at emerging factories. In Batu, a sizeable number of adolescent girls in the GAGE study are working in the floriculture industry, which the government is trying to develop. Evidencing why the government is pursuing this strategy, girls reported that their salaries can be as high as 1,000 birr per month and that their rights as workers are better protected than they would be if they were in other industries, especially domestic work. They added that companies also provide valuable benefits such as training and maternity leave. Some girls, however, noted that employment in the industry is deeply exploitative and detrimental to their mental and physical health, saying that if they had any other options, they would take them.

The case of Megertu, a seventeen-year-old adolescent girl from the Southern Nations, Nationalities and Peoples Region (SNNPR) of

Ethiopia, illustrates these multidimensional vulnerabilities. As a young adolescent, she aspired to become a doctor or teacher. When her father died, however, she was forced to drop out of fourth grade and begin to support herself. Now, she works at Sher Flower Company, in Batu, where our findings suggest that regulations about minimum age of employment are frequently overlooked. Days can be very long, up to twelve hours depending on the season, and employees have to stand in silence throughout their shift or risk being fined. Meeting production targets is all that matters: “if you have taken longer than the allotted time, you will be penalized. If you broke a single head of the flower, they deduct from your salary. If you have not met your targets for the month, they will deduct your salary”.

Megertu's real concern about working conditions, however, is the chemicals used in the greenhouses: “I fear that the chemicals may affect my health ... When I was first employed here, I had no health problems, but after, I started suffering from gastritis ... and low blood pressure.” Megertu wishes she had other options, but understands that with only a fourth grade education she does not: “anyone who goes to seek employment in Sher Flower Company is considered poor and does not have other means of livelihood.”

Research participants were clear that PSNP is improving food security and helping to make education financially possible, by freeing household income. As a sixteen-year-old girl from Dire Dawa explained, “I can learn without worrying about school materials. I will also be able to afford clothes like my friend.” Beneficiaries did note some drawbacks, however. In rural areas, despite programme regulations, adolescent girls and boys still sometimes substitute their own labor for that of their parents on public works projects. This impacts their school attendance. In addition, girls reported that their gendered needs were sometimes de-prioritized in the household. As a fifteen-year-old girl from Dire Dawa explained: “my father also gets PSNP direct support ... but he refused to give me even fifty *birr*. The support is meant for the poorest of the poor ... What he gives me is not even enough to buy shampoo and soap”.

4. Conclusions and Implications for Policy and Programming

Given Ethiopia's growing youth bulge, a critical question facing the Ethiopian government in the 2020s is how it can more strategically invest in expanding girls' capabilities in order to multiply the options open to them as adults while simultaneously delivering the country's economic growth goals. Our research suggests that efforts to enhance women's participation in the manufacturing sector must focus on the antecedents of women's economic empowerment by

improving girls' access to education and training that will improve productivity and open up higher-skilled jobs. The government has thus far followed a bottom-up linear approach that has prioritized the expansion of primary education and relied almost exclusively on rote learning. However, transformation on the scale needed will require both the rapid scale-up of secondary education, which would expand girls' uptake where it reduced daily travel times and eliminated the need for boarding, and an unparalleled investment in child-friendly pedagogies that emphasize critical thinking and other soft skills.

Given the number of older adolescents who are either years behind grade level, due to repetition or the need to fund their own education, or who are out of school entirely, it is also important to re-think how skills training is delivered. Lengthy courses that require an entrance exam and entail high opportunity and real costs are not tractable for many adolescents. Shorter courses, carefully aligned with local labor market needs can deliver smaller-scale results faster for more adolescents. This may well garner more interest and, as adolescents see tangible benefits from such training, encourage longer-term commitment. The government will also need to address household economic constraints. Cash, scholarships, educational loans, and/or in-kind benefits that allow poor households to survive without child labor would build parents' commitment to girls' education. As girls reach secondary school, subsidized loans for education, training, and apprenticeship would help both girls and their parents prioritize longer-term objectives. These should be paired with savings and credit opportunities that help girls set up their own businesses and earn their own incomes, which they can then use to further their skills.

School and classroom-level investments, alongside scaled-up social protection measures and financing, must be paired with extracurricular and community-based programming to address the "gender biases and cultural barriers" recognized by the Ministry of Trade and Industry and UNDP (2018, 15) as slowing women's participation and success in the manufacturing sector. Efforts should include empowering girls, helping parents to understand how they can practically support their daughters, and engaging boys and young men. Girls need access to peer networks, role models and workplace mentors, as well as gender-transformative curricula that encourage them to think beyond marriage and motherhood. Parents need to understand how they are limiting girls' academic success and occupational choices. They also need to be encouraged to take pride in their daughters because of how they do or eventually will contribute to the well-being and success of their family, community and country, rather than valuing girls' obedience and sexual purity above all else. Boys and young

men need to understand how traditional conceptions of masculinity work to silence girls and women, and put them at greater risk of various forms of harm, ranging from gender-based violence to contracting HIV.

Critically, given how education and child marriage routinely become mutually exclusive routes to womanhood, the Ethiopian government must further step up efforts to prevent child marriage. These efforts must acknowledge that 'one size does not fit all', and that in some regions (e.g. Oromia) child marriage is, in the absence of feasible alternative pathways to adulthood, nominally based on 'free' choice (Jones et al., 2016). In addition, despite the difficulties involved, interventions must also tackle entrenched customs such as absuma marriage in Afar if they are to make a real impact on girls' future choices.

Finally, as the government tries to attract new industries and scale up non-agricultural employment options, it must avoid sacrificing adolescent girls' futures in the name of rapid economic growth. Our findings highlight that it is not enough for companies to commit to labor laws and innovative policies on paper. Better oversight and enforcement are needed if girls with the fewest options are to receive adequate protection from exploitative employers and dangerous workplaces.

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Part Three
Land Governance



Women and Land Tenure Security in Ethiopia: Preliminary Reflections towards a Policy Reform Deliberation

Daniel Behailu Gebreamanuel

1. Introduction

Land tenure security and the rights of women are issues often discussed at the global and continental arena. The underlying critical issues are, however, seemingly less addressed in many Africa nations as part of transformative land governance considerations. The issue of women's access to land as well as secure tenure is complicated owing to different factors such as weak enforcement of laws, incapacitating customs, and patriarchal system that remain dominant on the continent. Further, in Ethiopia, land rights in general and women's land rights in particular are vaguely defined.

Secure access to land is important in terms of securing livelihood and ensuring human dignity; it is fundamental for the realization of human rights. In spite of equal inheritance rights granted by formal laws, ensuring fair share of matrimonial property and inheritance for women is still quite a challenge, especially in terms of inheriting entitlements over land. Traditional rules of inheritance that provide access to land tenure are discriminatory as they favor male members of the family and based on disarming preconditions.

Beyond formal laws that stipulate property rights and equal succession rights of women, the informal land deals, customary rules and institutions, play a far greater role in confirming or denying such rights. The age-old gender-based biases play into these informal laws of communities, especially among rural societies. Land tenure security is a problematic issue at large for rural women,

mainly owing to the lack of comprehensive land policy in Ethiopia¹ that hugely contributes to weaker tenure security.

Accordingly, in this chapter, an attempt is made to show a preliminary review of major challenges, and factors affecting women's access to land and secure land tenure. The analysis relied mainly on desk-based review of relevant laws and literatures together with empirical data gathered through interviews and surveys. With this, the chapter sets out to examine the issue at hand through illustrative cases as well as land governance and human rights ethos. It further points to some recommendations for policy considerations towards improving Ethiopian women's land rights. The author attempted to spark further research and deliberations than exhaustively treating land tenure issues and women's concerns in Ethiopia.

2. Essentials of Land Tenure Security

Land tenure security is a concerning issue for people whose livelihood depends on land. These concerns are more profound in case of rural women whose livelihood absolutely hinges on the land they access and the nature of tenure they enjoy. Land tenure security is of at most importance to the vulnerable section of the society, and its absence disproportionately affects rural women. Access to land is governed through land tenure systems and hence clear rules on tenure are quite essential.

According to FAO,

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. ... Land tenure is an institution, i.e., rules invented by societies to regulate behavior. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions (FAO 2002, 7).

From the definition, it can be understood that land tenure is about relationship between the land and the people. This relationship can be at individual or

¹ Though many argue that the constitutional principles concerning land and natural resources are the land policy of the nation, the FDRE constitution only provides for overarching principles guiding what the focus of the land policy ought to be. There is yet no comprehensive land policy that governs land tenures, land rights, land use and administration rules. That is the reason why partly the laws are fragmented and incoherent with no clearly defined policy objectives to achieve. The land regime, by and large, owing to lack of synchronisation of national policies, is in conflict with economic, water, forest and environmental policies of the nation, to mention but a few.

community level and is often governed by either formal or informal rules. Land tenure is also an institution, both customary and government based, defining rights of people on land and the manner they control, use or alienate such rights.

Access to land is also determined via rules of tenure. Likewise, rules of tenure define how property rights in land are to be distributed within societies, along with associated responsibilities and restraints or conditions. Security of tenure is the certainty that a person's rights to land will be recognized and protected. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. Without security of tenure, households are significantly impaired in their ability to secure sufficient food and to enjoy sustainable rural livelihoods (FAO 2002).

The formulation of land tenure in both customary and State laws have a bearing on the right holders. Vaguely defined or authoritarian tenure security rules often affect women:² the less clear the rights of women on land are the higher the probability of such rights being abused or misused (FAO 2020). Of equal importance to clarity of the laws, if not more, are the enforcement authorities. Although, title deeds clearly identify owner(s) of the land, in many places in Africa and throughout the world, individuals may have only partial ownership rights. Further, it is unclear how land owned by clans, tribes, institutions, or government actors, rather than by individuals, is understood (Doss et al. 2013). Hence, components of rights over land including their enforcement need to be understood well and the concept of land ownership must be clearly defined.

3. Land Tenure Security and Human Rights: Women in Perspective

Access to land and land tenure security empowers women economically; it reduces their reliance on male partners and relatives, increases their bargaining power within the household, and improves their chances of accessing services and credit (Meinzen-Dick et al. 2019). It also improves women's social position and boosts their ability to care for their children (Meinzen-Dick et al. 2019). This relates to the fact that access to resources from land enables women to have the means to raise their children in a healthy manner and enhances social development. The confidence gained from increased tenure security can further encourage women to undertake agricultural investments and join producer organizations. As such, placing women's secure land rights at the heart of

2 Land tenure security can be rated using indicators worked out by many organizations based on practical experiences, including, WB, FAO, IFAD, UN-HABITA ETC. It is important to have broad indicators towards land tenure security, focusing on four core issues to be assessed: Nature of rights held (or breadth of rights); duration of rights: respect, enforcement and protection of rights (duty bearers vs. rights holders); sensitivity to in-country dynamics of discrimination and disempowerment whether based on income, gender, demography, geography or power relations.

national land and gender policies has the potential to significantly generate more productive agricultural systems, promote women's economic empowerment, and ultimately improve well-being.

In recent years, gender equality in land tenure has become the focus of a large number of international human rights instruments in the form of binding treaties and recommendations (Kenney and Ana 2016).

Land is a critical issue for women; in many cases it can even be said that the question of land itself is a prism through which structural patterns of gender inequality can be revealed. Throughout the world, it is women who overwhelmingly work on the land, producing food for themselves, their families and communities. Fifty per cent of food globally is cultivated by women and this figure increases to 60-80 percent for countries in the developing world (UN Human Rights Council Advisory Committee, 2011).

A gender-responsive land policy is therefore necessary. Regardless of whether a woman lives in a rural or urban settings, secure access to land, which is a critical means of production, has a major implication for the achievement and enjoyment of a range of human rights such as the right to equality, food, health, housing, water, work, and education as guaranteed under international human rights law. In rural Africa in general and rural Ethiopia in particular, securing women's equal access to land is a human rights concern. The fulfillment of economic and social rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) hinges on access to land or other sources of livelihood.

Poverty, as a result of landlessness, can violate a range of human rights while secure access to land eases situation of severe poverty (UNHRC 2012).³ Lack of access to land and other productive resources has a negative impact on the enjoyment of various human rights for women (SIDA 2015). Furthermore, the violation of certain human rights, such as right to information, participation, association, and education, prevents women from accessing land and other productive resources. Accordingly, a broad conceptualization of land rights and access to productive resources that is gender inclusive and responsive to human rights is vital.

International legal instruments lay out a clear foundation for women's secure rights to land and other productive resources. Women's equal rights are enshrined in various international human rights instruments. As underscored by Article 2

3 See, UN Human Rights office for High Commission, Guiding Principles on Extreme Poverty and Human Rights, The Guiding Principles on extreme poverty and human rights were adopted by the Human Rights Council by consensus on September 27th 2012, in resolution 21/11.

of ICESCR (1966), States have the obligation to respect (refrain from interfering with the enjoyment of the right), protect (prevent others from interfering with the enjoyment of the right) and fulfill (adopt appropriate measures towards the full realization of the right) human rights related to access, use, and control over land and other productive resources. States are also required to ensure equal access to land, housing, property, and other productive resources for both women and men.

One of the core international instruments for women's rights, the Convention on the Elimination of Discrimination against Women (CEDAW) sets out the obligations of States to eliminate all forms of discrimination against women starting from the foundational principles of equality and non-discrimination. It emphasizes on both formal or *de jure* and *de facto* discrimination that women should be treated equally with men both in law and in practice. Thus, States are obliged to take all appropriate measures, including legislating non-discriminatory laws and modifying or abolishing existing laws, regulations, customs and practices that constitute discrimination against women in all spheres, including securing rights over land (CEDAW Committee 2010). With respect to rural women in particular, under Article 14, CEDAW provides:

State Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development (a) to participate in the elaboration and implementation of development planning at all levels; (g) to have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; (h) to enjoy adequate living conditions, particular in relation to housing, sanitation, electricity and water supply, transport and communications (CEDAW 1979, Article 14).

Ensuring women's secure access to land is a gateway towards protecting a range of human rights enshrined in the international bill of rights. When effectively translated into economic and social power through land tenure rules adopted by States, land is food, shelter, prestige and security (FAO 2011). However, the practical steps taken to ensure women's land rights are lagging behind in Ethiopia compared to others parts of the world (CEDAW Committee 2019).⁴ In most societies, women have unequal access to rural land and associated natural resources. In many cases, in the past, societies may have protected the interests

4 Besides, see report by Committee on the Elimination of Discrimination against Women, concluding observations on the eighth periodic report of Ethiopia, the Committee considered the eighth periodic report of Ethiopia (CEDAW/C/ETH/8) at its 1665th and 1666th meetings (see CEDAW/C/SR.1665 and CEDAW/C/SR.1666), held on 21 February 2019

of women through customary and religious laws and legislations. Changing socio-economic conditions, however, often result in the old rules, failing to ensure that women have access to the resources needed to raise and care for their families. Land shortages or rapidly increasing land values put pressure on communities to prevent women, particularly widowed or single women, to claim their land rights (FAO 2002). In Ethiopia, increasing challenges of land shortage is putting women's land rights in a precarious situation as competition for access is getting tougher.

4. Land Governance and Women in Africa

Weak land tenure typifies sub-Saharan Africa, which is linked to land governance (Peters 2007). Weak land governance⁵ affects all kinds of land users; women, in particular, are extremely affected by weaker land tenure, especially in nations that give excessive or unlimited legal and *de facto* power to governments and interest groups. Likewise, women are double discriminated by weak and patriarchal land governance. Further, widows in Africa are in most precarious position in securing their land rights (UN Women 2013).

There are some sporadic movements seen on the continent to end discrimination against women in their access to land and tenure security. For example, in Kenya, there has been a long struggle to improve the legal environment and ease the situation with respect to widowed women. In particular, recent interventions by civil society organizations have pushed for reforms that ensure respect to widows' rights and protect them from interference and coercion they face from chiefs and clans in relation to their land rights and inheritance claims.⁶ The relevant provisions on land in the 2010 constitutional amendment of

5 Weak land governance can be assessed where land administration and rules of tenure go against the ten commitments of the International Land Coalition good land governance indicators, which are: 1) secure tenure rights; 2) strong small-scale farming systems; 3) diverse tenure systems; 4) equal land rights for women; 5) secure territorial rights for indigenous people; 6) locally managed ecosystems; 7) inclusive decision making; 8) transparent and accessible information; 9) effective actions against land grabbing; and 10) protection of land rights defenders. Thus, one can easily assess, analyze and rate the land governance system of Ethiopia against these parameters.

6 According to Gupta, "the Widow Support Network of Kenya, pressed the Constitutional Review Commission to better protect the rights of widows, their families, and property in the constitution. In particular, they objected to traditional rites such as widow cleansing; the coercion women face from their husband's families in burying their husbands; and the interference of chiefs and clans in their claims to inheritance. The widows' organization has also demanded that family courts be mandated to deal with all matters concerning widows, widowers and their children, and that alternative dispute resolution mechanisms be established. They have also sought free legal assistance for rural women who need such help. The widow's group has worked with other landless groups, including the Pokot people in the Trans Nzoia District, and the Kenya Land Alliance" (Gupta 2014, 116).

Kenya are the result of these efforts. The 2010 Kenyan constitution provides protection against harmful and discriminatory social and cultural practices and guarantees the equal protection of property rights for women and men at the time of marriage, during marriage, and at the dissolution of marriage (Article 45). Movements in Kenya have been quite vocal with regard to women's land rights and the situation of widowed women in particular. There are also similar movements on the continent with varying degree of intensity and responsiveness from the governments such as those in Uganda, Ghana, and Zimbabwe. Though the movements are sporadic and uncoordinated, they aimed at improving the legal situation and judicial responses.

Furthermore, there is no comprehensive human rights framework pertaining to land or specialized international framework that situates land within core human rights agenda (UN Women 2013). There is no convention at the global level on land except for several guidelines (FAO 2012). The global land regime is thus largely composed of soft laws that do not have binding force on member States.

At continental level, the Protocol on the Rights of Women in Africa (the Maputo Protocol) was adopted by the African Union (AU) in 2003 recognizing a range of social, economic, civil, and political rights with explicit provisions on women's land rights. Further, recommendations have been adopted by the AU Specialized Technical Committee on Agriculture and Rural Development, Water, and Environment adopted in 2015 that aimed at facilitating women's economic empowerment in which member States are urged to allocate 30 percent of land to women through legislation and other mechanisms. Various countries have also taken measures such as the explicit recognition of women's equal rights and the prohibition of gender-based discrimination, promotion of joint ownership and registration of land, review of inheritance and property laws governing the rights for widows and children.

The African Charter on Human and Peoples' Rights (1981) and the Maputo Protocol oblige State parties to ensure women's right to an equitable share of joint property in the event of separation, divorce or annulment of marriage and grant women equal access to adequate housing, regardless of their marital status; promote women's access to and control over productive resources such as land; and guarantee their right to property (Maputo Protocol 2003, Articles 7, 16 and 19). The Protocol also confirms that a widow has the right to an equitable share in the inheritance of her deceased husband's property, and that both women and men have equal right to inherit, in equitable shares, their parents' properties. In addition, in the context of women's right to food, Article 15 of the Protocol requires that State parties should take appropriate measures to provide women with access to land and the means of producing nutritious food.

On the other hand, the joint Land Policy Initiative (LPI) of the African Union, Economic Commission for Africa, and African Development Bank (AU-ECA-AfDB), which was launched in 2006, and has developed a Framework and Guidelines on Land Policy in Africa that was adopted by the African Union in 2009. The Framework and Guidelines provide directions on how to track progress in land reforms that are underway in Africa and contains specific provisions on strengthening land rights of women. It reiterates that land is a key determinant to production and hence its control and access has an impact on the ability to access capital, technology, and labor. It also recognizes access to land and control thereof as, central to Africa's development with implications on sustainable natural resource management, agricultural and economic development, poverty reduction, peace and security, equity and justice, and food security. Such development is based on effective land management, which is built on four elements: land policies, land administration, governance, and partner support (AU, AEC, AfDB, and Land Policy in Africa 2010).

However, the potential benefits of access to land are curtailed by several obstacles especially for women in Africa. The negative aspects of the colonial legacy on land governance, adverse cultural practices, poor governance policies, poor and discriminatory land administration, corrupt land allocations, lengthy procedures of land dispute settlement mechanisms, insecurity, limited access to land, and insecure tenure are among the few (African Union 2017).⁷ These may also discourage investment on land, which in turn results in unsustainable natural resource management, low agricultural productivity, and impeding urban development. All this may then lead to low investment on land, and thus results in unsustainable natural resource management, low agricultural productivity, and poor or low urban development (slums, squatters, and others). Poverty affects all community but more so rural women.

The major problems in accessing land in Africa in general and applicable largely in Ethiopia are land scarcity, rapid population growth, and discriminatory cultural norms that hinder effective implementation of laws on equal inheritance rights. Inefficient governance coupled with malpractices easily gives into pressures from customary practices and corruption (Brody 2009). Patriarchal cultures, predominant in much of the continent, put men as *de facto* heads of household and decision makers both at household and community levels. These leave women with disproportionately fewer entitlements over land and property. Ethnic conflicts often over resources also existent in some parts of the continent, that leaves women vulnerable. In the aftermath of such conflicts,

7 See details in, A Report to the Conference of the Specialized Technical Committee on Agriculture, Rural Development, Water and Environment, 2017. AU Declaration on Land issues and Challenges: a review of progress made.

women are displaced from their land with no adequate legal protection that facilitates regaining their land and property abandoned or lost during conflict. This resonates with the recent phenomena in Ethiopia.⁸

For majority of women, access to land and property is dependent on natal and marital affiliations. Thus, women can lose rights to land during divorce or death of spouse. Due to absence of decision-making power and women's lack of independent right over land and other productive assets, men take the lead in control and access of land rights.

Owing to patriarchal norms, the exclusion of women from public decision-making, including in natural resource management and conflicts resolution also poses a major challenge in their effective access to and control over land in Africa coupled with the inadequacy of financial support from stakeholders on land issues.

In a nutshell, promoting structural shifts, such as gender equality in access to land, might require not only changes in land policy and land legislation, but also in the attitudes of much of the population. Because, as discussed, land tenure is a relationship among people, the rules defining the rights of access to land reflect the balance, or imbalance, of power as much as anything else. Changing the rules is not simply a matter of increasing access to some; it may result in a fundamental shift in existing power structures. Increased gender sensitivity in several countries has resulted in legislations that provide for women to hold legal rights to land. However, in the absence of effective governance mechanisms to enforce such legislation complemented by advocacy strategies to result in attitudinal or cultural shift, the predominance of discriminatory traditional practices is likely to continue (FAO 2002).

5. Women's Land Rights in Ethiopia: A Lethargic Progress

The issue of rural land has been primarily a political and social question in Ethiopia. Rural land has been the center of focus in policy debates in the country. Land related conflicts, exploitations, and discriminations dominate the history of land tenure in the nation. Peasant uprisings and revolts were common during the imperial era starting from the 1950s and even earlier (Crewett et al. 2008); as the government faced serious challenges following its imposition of increased tributes to modernize the country.

8 Women are the primary victims in conflict related displacements occurred in the country in most recent years. See Ethiopia's neglected crisis, 2020: No easy way home for doubly displaced Gedeos: <https://www.thenewhumanitarian.org/news-feature/2019/02/28/ethiopia-s-neglected-crisis-no-easy-way-home-doubly-displaced-gedeos>.

The first significant peasant uprising took place in the *Tigray* Province in 1943 (Crewett et al. 2008). Peasants of the then Bale province later took up arms against the Haile Selassie I regime between 1963 and 1970 as the imperial bureaucracy expropriated huge portion of arable land under the guise of tax default gradually turning peasants into landless tenants. Another rural uprising, prior to the 1974 revolution, took place in the province of Gojjam in 1968, following the new agricultural income tax that was introduced in 1967. Fierce resistance also came from Gedeo people of southern Ethiopia. These resistances fueled by the exploitative tenant system resulted in land revolution. Formalization of private land holding and introduction of large-scale farming system in the country offered opportunity to the nobles residing in towns and cities to hold large areas of farmland in the southern and western parts of the country. Thus, a class of absentee land lords emerged (Zewdie 1989). This resulted in complex land tenure system with significant difference between the northern and southern parts of the country. Later, such system contributed to a revolution that brought the demise of the feudal system in 1974 with 'land to the tillers' motto.

The Derg government, which took over power after the 1974 revolution, proclaimed public ownership of rural land abolishing the tenant system and private ownership of land. The proclamation granted each peasant headed family the right to hold up to ten hectares of land and outlawed any land transfer by sale, lease, and mortgages (Proclamation 31/75). The objective of the land reform was addressing issues of inequality, which was inherent in the feudal system by distributing rural land to peasant farmers (Rahmato 1994a). Nevertheless, the outcome of the 1974 land reform was tenure insecurity and decrease of farmland size that hindered development of the agricultural sector (Rahmato 1994b).

Yet again, the Derg government focused on family-based land grant. Hence, access to land was granted on household unit bases. Moreover, women headed households were given land use rights, which was indeed revolutionary given the track records of the country making the Derg government the first in the history of Ethiopia to recognize and act on women land rights. Indeed, in customary practices, women inherited land, especially in northern Ethiopia prior to the 1974 land reform. However, where land-based dispute over inheritance cropped up women often lost the court battle owing to different factors such as inaccessibility of courts, poverty, and intimidation from adversaries (Hailu et al. 2009).

In 1991, the Derg government was overthrown by the Ethiopian people's Revolutionary Democratic Front (EPRDF). Following, the FDRE rural land law granted free access to land to every rural resident whose livelihood is based on agriculture, regardless of their gender. The general policy principles provided in the FDRE Constitution, grant men and women the rights to acquire, administer,

control, use, and transfer property, including land (FDRE 1995, Article 40). Moreover, the Constitution guarantees women on equal footing with men the right to use, transfer, administer, control and inherit land (FDRE Constitution, Article 35 (7)). There are however challenges women, as well as men, face in exercising these land rights. The policy entails tough competition for land by creating ‘artificial scarcity’ of the resource (Daniel 2015).

6. Challenges to Women’s Land Tenure Security in Ethiopia

6.1. The Legal and Policy Framework

In Ethiopia, the legal regime and the overarching principles governing land and natural resources have originated from the 1995 Constitution of the Federal Democratic Republic of Ethiopia. During the drafting process of the FDRE Constitution, the Constitutional Assembly⁹ called for an extensive debate on land issues. The debate focused on private ownership of land vis-à-vis State ownership (Constitutional Assembly from 1992-1994).¹⁰ However, going beyond private or State ownership, the debate failed to consider a range of important issues such as communal property rights, customary land practices, women’s land rights, environmental protection, land governance, land investment, land security and others. In August 1995, the FDRE Constitution was formulated incorporating land issues and perpetuating the Derg policy of public ownership of land. Article 40 (3) of the FDRE Constitution provides:

The right to ownership of rural land and urban land, as well as all, natural resources, is exclusively vested in the state and the people of Ethiopia. Land is a common property of the Nation, Nationalities and Peoples of Ethiopia and shall not be subject to sale or to other means of transfer.

Furthermore, the Constitution delineates functions of the federal government and regional States as they relate to land-governance issues and land administration (FDRE 1995, Article 51 and 52). Accordingly, the federal government is mandated to enact framework laws while regional governments administer land as per the federal framework laws. The regional governments, given their land administration power, define access to land. They can also enact their own laws within the scope granted to them. However, the nation lacks comprehensive land policy, which defines different land tenures and land rights and establishes suiting land administration institutions. The lack of detailed land policy further makes the implementation of land use policy quite difficult. Be that as it may,

⁹ The Assembly was established during the transitional period (1991–1994) to draft and approve the constitution.

¹⁰ Refer for the details of the debate that took place in the Minutes of the Constitutional Assembly (Volume 4), available in the reading room of the House of Federation, Ethiopia.

there are different land laws emanating from the overarching principles of the FDRE Constitution that makes the legal rules on land quite fragmented.

The first framework legislation enacted by the federal government was the Federal Rural Land Administration Proclamation (Proclamation No. 89/1997), which was repealed and replaced by the 2005 Rural Land Administration and Land Use Proclamation (Proclamation No. 456/2005). The 2005 proclamation is the first comprehensive framework legislation enacted by the federal government. It affirms, in its preamble, the overarching constitutional principle that land belongs to the State and the people of Ethiopia. Accordingly, land is not to be sold, mortgaged or transferred in any form except on grounds provided by the law or within the limitations of the law and land is to be accessed for free but only for the purpose of subsistence farming (Article 5(1)(a)). Furthermore, the Proclamation confirms that women “have the right to get and use land” for agricultural purposes (Article 5 (1)(c)). However, the prominence of customary laws, norms, and practices, a result of patriarchal traditional systems, promotes the systemic discrimination of women in key institutions where decisions over land use and transactions are made while at the same time land disputes are adjudicated by formal courts (UN Women 2018). The concept of land tenure is so complex due to State ownership and the resulting unbridled power of the government over land. Yet there are different types of land with different use rights attached to it (see Article 3).

Proclamation No. 456/2005 grants free land use rights for all indefinitely (FDRE 2005, Article 7(1)). By doing so, the regime creates land scarcity given the rapid population growth and thus land fragmentations and resource depletions. In a tough competition for resource, factored by poverty, patriarchal customary land system, and weak governance, women are often at the losing end.

Further, the land regime grants ownership rights to the State. In doing so, it creates excessive State intervention that facilitated land grabbing by investors, development enterprises, and political authorities. Thus, the land regime not only weakens the land tenure of the general rural community but also disproportionately affects women’s land use rights. Eviction of farmers by the government is quite common these days under the name of public purpose and mega development projects (Lavers 2012). Such landlessness affects all but more so women, who are primarily dependent on agriculture, especially in semi-pastoral communities and female headed farming households.

6.2. Land Holding Systems

There are several types of landholdings in rural Ethiopia, among which are the following as stated under Article 3 of the 2005 Rural Land Administration and Land Use Proclamation (Proclamation No. 456/2005). These forms of land

holding defined in terms of land holders determine the nature of entitlements over rural land and women's access to land.

Private Holding: A private holding is defined as the holding of a peasant or farmer, a semi-pastoralist or a pastoralist or any other body entitled to use rural land under law; the minimum size of which is specified and usufruct rights are extended, including the renting and inheriting rights under law.¹¹ Hence, as per the Federal Land Proclamation, private holding must not be confused with free holding or private property. According to the Ethiopian land regime, private 13 The cumulative reading of Articles 2 (4) and 2 (11) of Proclamation No. 456/2005 provides, "holding right" means the right of any peasant farmer or semi-pastoralist and pastoralists shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to his, family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labor or capital and to sale, exchange and bequeath same, and "minimum private holding" means rural land in the holding of peasants, Semi-Pastoralists and Pastoralists, and other bodies who are entitled by law to use rural land. holding is simply a holding right of land extended to the holder indefinitely for free, on condition that the land used for farming. In trying to get land to everyone for free for the last forty-five years, since the Derg land to the tiller measure, land fragmentation and poverty had become the emblem of the nation. At present, owing to the land policy and age old inheritance practices, the national average size of private holdings is less than one hectare. This has led to land fragmentation, soil erosion, and forest denudation; a surge in the farming community population and climate change further adds to the problem. Private holdings could be accessed by women albeit their marital status. For married women, access and control over land is better strengthened currently through land rights certification (Daniel 2015). However, access to private holding through inheritance during divorce succumbs to customary pressures and weaker enforcement of legal rights.

Communal Holdings: The second type of holding defined under Proclamation No. 456/2005 is communal land. This is granted by the government to local residents for common grazing, forestry, and other social services (FDRE 2005, Article 2 (12)). Thus, land is under the custody of the community bestowed by the

11 The cumulative reading of Articles 2 (4) and 2 (11) of Proclamation No. 456/2005 provides, "holding right" means the right of any peasant farmer or semi-pastoralist and pastoralists shall have to use rural land for purpose of agriculture and natural resource development, lease and bequeath to his, family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labor or capital and to sale, exchange and bequeath same, and "minimum private holding" means rural land in the holding of peasants, Semi-Pastoralists and Pastoralists, and other bodies who are entitled by law to use rural land'.

government for common use. The community can use the communal holdings for animal grazing, growing perennials, and for organizing social functions. A communal land, by definition, allows access of use by all individuals who are residing members of the community. However, such land is less secure than the private holding as it can be distributed to private users anytime by the government (Oromia National Regional State 2007; Amhara National Regional State 2006). Moreover, access to communal land is decided by customary authorities who in many circumstances disfavor women land users.

State Holding: Another category is of land demarcated and to be demarcated in the future as federal or regional holding. This includes forest lands, wildlife protected area, State farms, mining lands, lakes, rivers, and other lands (FDRE 2005, Article 2 (13)). A land that is neither private nor communal holding automatically falls under the holding of the State under the legal phrase ‘... and other land’. The proclamation does not clearly state the rights of the locals to use State holdings such as fishing in water bodies and gathering lands. These lands are only controlled by the State and use rights are continuously regulated without making it private holding or communal holding; in some cases, resources on these lands are exploited by the State itself. The facts suggest lakes and forestlands are open access; its use entails no environmental or resources oversight.

State holdings also include all land that is not registered as communal holding or customary land, such as pastoral lands. It is this land segment that is now primarily the investment target of the government largely at the expense of the pastoral community and their way of life. The FDRE Constitution affirms, however, the right of the pastoralists not to be evicted from their land (FDRE 1995, Article 40 (5)). For the right to be respected, the land must have been registered, mapped, and certified in the name of a given pastoral community.¹² However, there is no consistent legal framework to do so; the law focuses on land registration and certification among agrarian society and leaves out the pastoral community. Pastoral and semi-pastoral lands have thus been an easy target for large-scale land investment and all kinds of encroachments. Communal land even among highland farming community, however, fetches greater economic value for women as they can keep small ruminants on it and do other activities that sustain them. As communal lands are devastated, women lose the most.

Lease Holding: both urban and rural land can be accessed via lease. As per the lease proclamation (FDRE 2002),¹³ urban land and rural investment land is

12 Despite the efforts of the Ethiopian government in registering and certifying private holdings, the same effort is not exerted with respect to community land.

13 This proclamation has been repealed by Proclamation 721/2011.

accessed by leasing (FDRE 2005). Rural land can be leased out to investors, be it for domestic or foreign investors. Along with this, investors are granted the right to mortgage the land (FDRE 2005), a right that is not available to other rural land users. Thus, leasing is the government approved mode of large-scale land acquisition in Ethiopia. Lease right is mortgaged and transferred in urban setting; this is limited to investors in the rural land setting. Expropriated private holdings or community and government lands are transferred to investors via leasing. Often, the lease rights extend to more than fifty years when full transfer and mortgaging rights are also granted. Lease right is acquired through competitive lease prices, and hence the well to do benefits from it.

Thus, it can be observed, property rights in land are divided among many actors. Land rights are vaguely defined, if we adopt the standard conception of property rights.¹⁴ In rural Ethiopia, land ownership is equivalent to land access and land use rights.

6.3 Tradition and Land Governance

In all parts of Ethiopia, women's rights in general and land rights of women in particular are not brought to the attention of the mass through organized advocacy and awareness raising programs. Indeed, the government often attempts to promote women's rights in general and land rights in particular.¹⁵ Institutional weakness, corruption, and general mal-governance militate against the full realization of legal rights albeit the law that fails to grant full property rights in land. Besides, weak implementation of the law by the government demotivates women to challenge violations of their rights.

Different factors affect women land rights in Ethiopia. Among the core factors is the patriarchal customary land system and practice. According to Hussein,

The informal customary land right, which constitutes knowledge of the community members, is the issue of possession of land and resources. Land is not considered as goods that can be bought or sold, but is managed according to family and lineage structures, marriage practices and religion. Generally, men control land and women gain access mostly through their relationship with male relative. The customary law limits women's rights on land and this law underpins patriarchal system of traditional authority to reinforce patriarchal values which disadvantage women and place them to subordinate position in society (Tura 2014:150).

¹⁴ Encompassing the essential element of *usus* (the right to possess and use), *fructus* (the right to enjoy the benefits) and *abusus* (the right destroy or dispose of a property).

¹⁵ Beyond and above granting equal land rights in the law of the country, the government through its massive land registration and certification program significantly enhanced land rights of women (Daniel 2015).

Customary land right of women is based on social relations between men and women. According to the Wolayita customary law, women are neither allowed to possess land nor any property. In Southern Nations Nationalities and Peoples Region (SNNPR),¹⁶ as per the official report of the regional government, women have been granted access to land along with their spouses (SNNPR Women and Youth Bureau 2017). According to this report, over 1,654,744 land use certificates were granted both in the name of the husband and wife for married couples and 256,811 certificates were granted to female headed households. The survey conducted by the Regional Women and Youth Bureau, involving 318 women, showed over 20 percent reported to have no access to land while 66 percent reported to share land rights with their husband the benefit of which, they claim, goes to the husband in taking decision, benefiting from the land and transferring portion of the rights.

Tab 2: Survey by Women and Youth Bureau of SNNPR (2017)

S.N.	Question	Respondents	
		Number	Percentage
1	Do you possess a landholding certificate?		
	Yes, I do in my own name.	33	10.38
	Yes, I do with my husband.	212	66.67
	No, I don't have one!	73	22.95
	Total	318	100

In the survey, women reported that they have difficulty in figuring out the exact nature of their legal rights over land. Women lose their right to land during divorce or inheritance level. This shows, though the law, both federal and regional, grants land rights, women fail to make use of these rights for lack of proper advocacy, legal support, and awareness raising efforts. Furthermore, the women in the survey expressed the negative influence of patriarchal custom. Indeed, there are laudable efforts on the part of the government to see to it that women benefit from land rights. Yet again, the effort is not at par with the challenges on the ground.

One area of challenge for women to access land is during divorce and death of spouse. Different traditions in Ethiopia hardly ensure women's marital property rights because of the patriarchal norms and practices. Women also lack awareness and the necessary capability to access justice through formal legal

¹⁶ Southern Nations, Nationalities and People's Regional State (SNNPR) is one of the nine federating States in Ethiopia. However, in June, 2020 Sidama Regional State was created as the 10th regional State.

system, which, in the letter of the law, advocates substantial women rights. Thus, often divorced women bear the burden of single parenthood without getting their share from marital land. The experience of Mrs. Hindia, from Oromia, West Arsi zone, illustrates on this.¹⁷ Mrs. Hindia was denied her land share by her husband after divorce and her land inheritance from her brother. Her experience is common and pervasive across culture and ethnic groups.

In related a story, Mrs. Fantaye¹⁸ from Oromia, West Arsi zone, was thrown out of her house by her in-laws after her husband's death. Moreover, her own parents refused to give her land, which subjected her to abject poverty. She was denied of her share of land inheritance from her father despite the fact that she cared more for her ailing and later deceased father and against his own will. These two cases, alongside the survey from SNNPR, show the common challenges divorced and widowed women face in the country.

Among the Arsi Oromo, access to land is largely through inheritance while use is granted by communal authorities, male members of the community. As is the case elsewhere, among the Arsi Oromo, men make decisions on important matters, especially on issues of access to land by the community. Thus, access to land is usually gained at vital events, such as marriage and death. When one marries the bridegroom gets land via donation from his family, the same privilege is not there for the bride. However, as communal decisions are made by men, women are not given the opportunity to use and access land.¹⁹

In Wolayita, women cannot share land during divorce nor could they inherit family land. Women are only allowed to use the resource as long as they are married and living with their spouses. Beyond this, they have no decision making power and rights on properties. During divorce, a woman can only take a knife she uses for processing enset (staple food) and her pillow. Gendered discrimination is also noticeable in family inheritance. Land is primarily passed over to male children. These customary rules and institutions have been discriminatory towards women for long time and remain to be an obstacle to women's attempt to ascertain their right (Tura 2014).

In similar vein, in Sidama Regional State, land access is largely through family ties (inheritance) and at times through donation. Against what is dictated in the State law, access is also possible through purchase, rent, and sharecropping. According to the Sidama culture, women do not inherit land; inheritance is

17 Interviews made under the supervision of the author by Gemechu Talo Abdi, MA student at Hawassa University, April, 2015, West Arsi Zone.

18 Ibid.

19 Interview with Obo Gadi Sola, community leader and elder, May 2018, West Arsi Zone.

mainly through the first born of male descendants; while the first born inherits half of the land, the rest is divided among the remaining male siblings.²⁰

In a nutshell, the impact of customary practices on women's land rights is significant. Women's access to land is mainly limited to marital relationships and usually denied of inheritance of family land (Abdul Aziz and Moussa 2015). Thus, during divorce and death of spouse, women are left without land, which has further implication on their livelihood and general well-being. Recognition and implementation of women's land rights in Ethiopia thus requires further improvement. Alongside the shortcomings of the policy and legal regime, the patriarchal culture affects women's access to and control over land. The gap in the implementation of land rights is quite wide as well. Exclusion of women in decision-making, at all levels, has an impact in securing their land right. For example, women are inactive members of conflict management committees that deal with land related issues. Besides, absence of clarity in the policy and laws, and lack of awareness on women's tenure security are also some of the major challenges towards ensuring women's land rights. Absences of focused stakeholder that works to transform customs and practices, which discriminate against women's land rights is also another contributing factor.

7. Conclusion

Land rights in Ethiopia are vaguely defined and poorly implemented. Absence of strong land tenure system is a challenge the State faces. Women in particular are put at risk in light of gendered discriminatory customs and patriarchal orders of the society coupled with weak land governance.

Furthermore, the law that aims to further women's land rights is not properly implemented and lacks strong support from non-State actors working on women's rights and civic advocacy. A law that is not well implemented is equivalent to the absent one. Besides, women land rights focused legislation needs to be further refined to combat challenges emanating from custom, weak implementations of law, and patriarchal attitudes and practices of the society.

Moreover, legislations and other efforts by the government need to put into consideration the restraining factor of patriarchal customary laws of the society. The government of Ethiopia is well advised to improve the laws and reform institutions as per the standards in the CEDAW and other international human rights instruments. In particular, special attention needs to be given to rural women, divorced and widowed women, and women living in pastoral and semi pastoral community.

20 Interview made under the supervision of the author by Mulugeta Besha (NC), LL.M student at Hawassa University, April 2016, Sidama Zone.

A comprehensive land policy needs to be drawn towards ensuring women's land rights joined with advocacy and awareness raising programs. Civil societies and higher educational institutions need to come forward to sufficiently recognize and respect women's land rights. Further research should be encouraged and supported. The government should take proactive role in putting in place a collaborative framework that guides and mobilizes higher education institutions and civil society in undertaking research, advocacy, and awareness raising in the area and also provide modalities for cooperation with key government and non-government stakeholders.



Taking Enforcement of Women's Land Claims in Ethiopia Seriously

Habtamu Sitotaw Semahagne and Muradu Abdo Srur

1. Introduction

Women's access to and control over land is crucial in economic empowerment and poverty reduction. Its economic value aside, equitable access to land is in the interest of a just society as the value of equality and dignity underpins the concept. In view of this, Ethiopian laws have promoted land rights of women who according to Central Statistics Agency of Ethiopia constitute at least half of the country's population (CSA 2007). The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution) contains relevant provisions to protect women's land rights (Articles 35 and 40). The country has also ratified different international human rights instruments that in one way or another have implications on the State's obligation to protect women's land rights.¹ Moreover, Ethiopia has set up institutions including the Federal Supreme Court (FSC) and the House of Federation (HoF) that serve as the guardians of constitutional rights.² The HoF, the upper house of the Parliament, has the authority to interpret the Constitution while the FSC has the highest judicial authority in the country with its cassation rulings having a binding effect across all levels of federal and regional courts. The FSC has

1 The FDRE Constitution provides that the fundamental rights and freedoms contained in Chapter Three shall be interpreted in conformity with the Universal Declaration of Human Rights, International Covenants on Human Rights, and international instruments Ethiopia has ratified (Article 13(2)). These international instruments are considered to be part of the law of the land (Article 9(4)).

2 These two organs have been rendering decisions related to land. Several land related cases concerning women have been published in the various volumes of the FSC Cassation Bench. Likewise, decisions of the HoF are being published under its series of journals.

been rendering decisions of national importance with respect to land rights of women. Likewise, the HoF has entertained cases of similar subject matter when the issue of constitutionality has been called for. The HoF receives assistance from the Council of Constitutional Inquiry (CCI) in the course of its effort to interpret the Constitution.³

Both the HoF and the FSC are expected to play significant role in relation to women's land rights. Since the HoF is an institution with a final say over constitutionality of laws, decisions, and customary practices in the country, it is an important forum where actions that undermine women's land rights can be remedied. While irregularities may occur in the process, its mandates under the FDRE Constitution positions it to safeguard women's land rights by creating a uniform and positive constitutional interpretation through its decisions. Likewise, the FSC may entertain matters related to women's land rights falling under its jurisdiction when presented for its consideration. Given its decisions from the cassation jurisdiction can serve as precedent to other subsidiary courts in the country, it is expected to elaborate and elucidate land rights of women as enshrined in the FDRE Constitution, international standards, and subsidiary national legislation. This is important in guiding lower courts how to tackle similar cases submitted to them. Further, as indicated below, the FSC established a separate department dedicated to follow-up the execution of its judgments, which is yet to fully develop (World Bank 2010). This arrangement, leading to improved enforcement of judicial remedies, may present a better chance for women judgment holders to enforce remedies granted by the FSC in their favor.

Since the decisions of the HoF and FSC are final with no possibility of appeal (though the decisions of the FSC can be reviewed by the HoF on the basis of constitutional interpretation), what would normally remain is their enforcement. Owing to the highest and final nature of the decisions of these two institutions, the scope of the chapter is delineated to a closer examination of the HoF and FSC. This is, of course, without disregarding the fact that decisions of lower courts may also have a final nature and enforceability so long as not contested by the concerned party. The time-honored maxim "justice delayed is justice denied" goes beyond mere timeliness in disposition of cases. If we accentuate 'Justice', as we should, the saying should also relate to the enforcement of

3 The CCI is an institution established by the FDRE Constitution. It is comprised of eleven members of whom eight shall necessarily have legal background while the remaining three shall be designated by the HoF from members (FDRE 1995, Article 82). When there are alleged controversies over provisions in the Constitution, claims will be presented to the CCI, which it shall critically consider whether or not the matter entails constitutional interpretation. The CCI then presents its opinions on the matter to the HoF for verdicts if it requires constitutional interpretation (FDRE 1995, Article 84/1).

decisions passed by appropriate institutions. Even though women's land rights are legally recognized and legal institutions may render decisions in favor of women landholders, often times the decisions may remain either ill enforced or unenforced. The enforcement of judgments at the various levels of courts is generally unsatisfactory and even more challenging in case of land disputes, calling for the need for the establishment of a specialized mechanism (CCI Forum 2019).⁴ A range of factors contribute to the weak enforcement of judicial decisions including entrenched customary practices, women's lower economic status as well as knowledge and capacity gaps (Odeny 2013). The situation in relation to women's land rights exhibits a state in which legitimate interests are given constitutional and legal recognition but not duly enforced at the same time. Thus, the underlying general argument of this chapter is a decision not enforced is a decision not given at all and hence amounts to denial of justice.

Therefore, the core objective of this chapter is to examine the existing challenges in the enforcement of land related decisions of the HoF and FSC and the possible remedial roles different stakeholders can play. This is done by interrogating the repertoire of normative and institutional measures to assist women landholders benefit from these judicial decisions favoring them. The chapter offers a range of recommendations to address the problem which has a far-reaching human rights and development implications. Methodologically, the chapter is largely based on desk review of primary and secondary sources with limited interviews held at the CCI.⁵ We believe that the chapter will be part of relevant contributions to ongoing discourses and further research on enforcement of judgments and the enforcement of women's land claims, which can be used by policymakers, researchers, and other stakeholders.

The chapter starts with a brief discussion on women's land rights in Ethiopia by highlighting the important frameworks and the efforts the government puts towards implementation followed by a section that provides an overview of the Ethiopian judiciary and the HoF. The next section documents the manner

4 The forum organized by the CCI in August 2019 regarding decisions involving rural land in the country alluded that the challenge in the execution of land claims and emphasized the need of special benches. Specially, the remark by the President of the FSC, serving as the chair of the CCI, alluded that the enforcement rate of decisions on rural land by the HoF is at low level. Among the many reasons is the inconsistency between federal and state rural land laws in several contexts.

5 While the chapter does not base itself on empirical study and the authors did not undertake extensive field data collection, interviews were conducted with a member of the CCI, Ato Getachew Gudina, in September 2019 and November 2019 to draw proper insights on the matter. The interviews mainly focused on the nature of cases frequently presented to the CCI, the number of cases related to women's land rights, and whether the decisions of the HoF on women's land rights are receiving due enforcement.

in which customary systems are recognized in the State legal system in an attempt to show how customary practices have gotten recognition and serving as a stepping stone to ease enforcement of decisions involving women's land rights. The chapter then examines enforcement of decisions of the HoF and the FSC regarding land related litigations that involve women along with the challenges thereof. The final section presents the different strategies that could be implemented to enforce decisions of the two institutions and realize women's land rights, followed by a conclusion.

2. Women's Land Rights in Ethiopia

The right to property, particularly land, is one of the fundamental rights vested to human kind. Discrimination in access to and control over land is both "a violation of the human rights of women and a barrier to economic development" (Tura 2014, 141). The protection of women's land rights provided under international and domestic legal frameworks put a direct linkage to their livelihood and right to life. As rightly argued by Branco, Article 3 of the Universal Declaration of Human Rights (UDHR) may serve as a basis for linking the right to land to inalienable right to life, demanding that it should meet the minimum standards of human dignity and needs to be enjoyed with freedom and safety (Branco 2014, 1222). This implies that no one shall be arbitrarily deprived from enjoying her/his human rights, which is innately equal and inviolable, except for lawful limitations that may be imposed. It is long established under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) that States parties have the duty to ensure equal right of men and women to the enjoyment of all rights guaranteed under the covenants.⁶ Accordingly, women are accorded equal protection with men on economic, political and other affairs, including rights over land.

The Convention on the Elimination of Discrimination against Women (CEDAW) requires States parties to ensure women's access to agricultural credit and loans, marketing facilities, appropriate technology, and resettlement schemes, among others (Article 14). The Committee on the Elimination of Discrimination against Women (CEDAW Committee) in its General Recommendation No. 34 also pointed that rural women often have only limited rights over land and natural resources compared to men. Women suffer from discrimination in relation to land rights in many regions, where men's domination have been witnessed. The Committee recommended that "member States should take all the necessary measures ... to achieve rural women's substantive equality regarding land and other natural resources" (CEDAW Committee 2016, 17). It further requires

6 Article 3 of both Conventions provides for the principle of equality between women and men.

States parties to design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes, and practices, which obstruct women's rights to land in particular (CEDAW Committee 2016, 17).

Furthermore, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol), in its Article 19, provides that women shall have the right to full enjoyment of sustainable development. As such, the Protocol urges States parties to take all appropriate measures, *inter alia*, to promote women's access to and control over productive resources such as land, and guarantee their right to property. In this respect, the African Union, African Development Bank, Economic Commission for Africa Consortium (AU, AfDB, AEC 2010, 8), noted that it is necessary to "deconstruct, reconstruct and reconceptualize" existing laws as well as customary norms and practices that concern women's access to and control over land. This by far is important provided women remain primary users of agricultural land in most developing societies (AU, AfDB, AEC 2010, 9). Efficient and productive use of land requires that land rights of women are best strengthened through several mechanisms. This should be in compliance with equal rights for women to inherit and bequeath land as well as co-ownership of registered land with spouses (AU, AfDB, AEC 2010, 15). The Ethiopian legal system provides frameworks to protect women's land rights. The FDRE Constitution enshrines fundamental principles that guarantee equality of women and men in all areas of life with a strong affirmative action clause aiming to enable women to compete and participate equally with men in all spheres of life (FDRE 1995, Article 35). Women's equal rights are given emphasis owing to the historical inequality and gendered discrimination women suffered under previous governance as well as traditional and cultural practices. The FDRE Constitution confers explicit recognition and protection to the right to property under Article 40 and specific reference to women's right to acquire, administer, control, use and transfer property under Article 35 (7), which in particular encompasses their equal rights with men with respect to use, transfer, administration and control of land. Land belongs to state.

The Revised Federal Family Code also recognizes equality of men and women in all aspects particularly in relation to ownership and administration of personal and common property during marriage and equal division of property upon divorce (Article 90). Furthermore, rural and urban land laws, at the federal and regional levels, recognize the rights of women over land. These laws, however, specify preconditions to access land. According to Article 5(1) of the Federal Rural Land Administration and Use Proclamation (No 456/2005), any citizen who wishes to engage in agriculture as a livelihood has the right to access rural land for free. As advancement towards access and control over

productive resources including land is crucial for improving women's economic empowerment, the Ethiopian Government has exerted efforts to secure this through land certification. Under the Second Growth and Transformation Plan (GTP II, 2015/16-2019/20), the Government of Ethiopia reported that land certification improved women's status and their bargaining power with their spouses and within the community at large. The Government reported that upon the implementation of the national land certification program, million women have acquired land use certificates either jointly with their spouse or separately which has surpassed 10.5 million as of 2019 and will continue to grow as part of the GTP (FDRE 2019a). Additional efforts were made by the Government such as ensuring mainstreaming of women's land rights in government activities. The Government has, for instance, enacted legislation that requires all federal government institutions to integrate women's interests in their respective policies, laws, development programs and projects (FDRE 2018b). These endeavors alone, however, do not ensure the concrete realization of women's land rights in the country.

Enforcement is one of the major concerns with respect to translating these rights into reality. In fact, providing substantive rights will be mere stipulation unless there are mechanisms for enforcement. This is worsened by insufficient institutional frameworks and enforcement mechanisms of gender equality. Physical, financial and linguistic inaccessibility of the FSC and the HoF to the local community hinders women to take cases to these institutions. For example, despite the large geographical size of the country, both institutions are centrally located in Addis Ababa. Due to this, people residing in the peripheries may be prevented from bringing cases that should have been lodged to this organ due to distance and financial implications. In effect, as distance increases, the chance to present cases will also be diminished (Gebremeskel and Alebachew 2018, 59–60). This is one concrete challenge restricting rural women from presenting their grievances to the FSC and HoF. Similarly, while courts have been established at the federal, regional, and local levels, large rural society and weak infrastructure creates situations in which formal courts are inaccessible to the community living in the peripheries.

3. Roles of the FSC and HoF in Enforcing Women's Land Rights

The FSC and HoF are central among the different institutions bestowed with the role to defend women's constitutional rights in Ethiopia. The FDRE Constitution conferred on the FSC a final judicial power over federal matters and a cassation power over any judicial matter in the country (Article 80). It has also vested the authority to interpret the Constitution in the HoF (Article 62(1)). Hence, the mandates of these institutions have paramount importance in the protection of

women's rights, including the right to land. Both institutions have the power to make decision over matters pertaining to women's land rights.

The role of the judiciary in general and the FSC in particular in relation to women's land rights has two dimensions. The first aspect is the case where the FSC entertains matters related to women's land rights under its ordinary jurisdiction. This is when women are involved either as complainants or respondents in a particular case presented to this court. In such cases, the FSC gets the chance to make decision that elaborates and elucidates land rights of women as enshrined in the FDRE Constitution and international standards (Daley et al. 2013, 7). The second dimension is the case where the FSC handles complaints in its cassation jurisdiction in which it reviews lower courts' decisions for basic error of law. The decisions passed by the FSC under its Cassation Division serve as precedent for similar cases dealt by lower courts.

The FSC has the mandate to review and make final decision(s) on cases processed by courts provided the decisions contain a *prima facie* case for basic error of law (FDRE 1995, Article 80 (3a)). Such decisions rendered by the FSC Cassation Division, with not less than five judges, are binding on federal and regional courts at all levels (FDRE 2005b, Article 2(4)). An integral part of the two dimensions, the FSC has an administrative department for merely following-up the execution of its decisions; however, the role of this department is not strengthened mainly due to the absence of a separate bench responsible for the execution of decisions rendered by the FSC.⁷ Despite the existence of execution benches in the federal court structure that are operational at lower court levels, this is lacking at FSC level. There are, however, ongoing efforts to establish specialized benches that follow-up the execution of FSC's decisions, which can help women landholders to process their cases timely.⁸

The HoF is 'composed of representatives of Nations, Nationalities and Peoples' of Ethiopia (the FDRE Constitution, Article 61 (1)), among others, with the authority to interpret the FDRE Constitution.⁹ The HoF has been rendering decisions that meaningfully influenced the country's legal system, including land related cases involving women litigants (FDRE 2019). It operates with the CCI to pass decisions on constitutional interpretations. The role of the CCI is to forward recommendations to the HoF on the constitutionality of a specific

7 Interview with Ato Getachew Gudina, member of the CCI, November 2019.

8 An assessment of the performance of federal courts reveals that enforcement of judgements is rather long and protracted process, which suggests urgent measures to be taken. The creation of specialized execution benches was taken as a first step. However, it is yet uncertain how much this has improved the overall enforcement performance.

9 It also plays pivotal role in the prevention and management of conflicts between regional states (FDRE 1995, Article 62).

case after conducting a thorough investigation. The CCI does not pass a final decision on its own rather it is up to the HoF to accept, modify or reject the recommendation(s) or call upon the CCI for clarification (FDRE Constitution 1995, Articles 83 and 84 (1-4)). Nonetheless, recommendations forwarded by the CCI are believed to positively influence the outcomes of cases to a significant degree (Getahun 2007, 84). Among the many recommendations the CCI has made so far, forty of them have been published in the first issue of its journal. Of these, twenty cases are property related, among which more than eleven cases involved women either as complainants or respondents (CCI 2018).

As a final authoritative decision maker on constitutional matters, laws and practices that are found to undermine women's land rights can be rectified by the HoF to the extent of annulment. According to Article 7(2) of Proclamation No 251/2001, interpretations of the HoF pertaining to fundamental rights and freedoms enshrined in the Constitution shall be made in a manner conforming to the principles of UDHR, international covenants on human rights, and other international instruments adopted by Ethiopia. This is an important modality to help secure women's rights in relation to land through the decisions of HoF.

Taking these international human right frameworks seriously by the HoF has the potential to provide advanced protection to women's property rights as indicated in section three above, adherence of the interpretations of domestic laws and practices to such international standards shall presumably benefit women and the wider society. Yet, even if Proclamation No. 251/2001 imposes duty on concerned parties to observe and execute decisions passed by the HoF (Article 56(2)), the FDRE Constitution and subsidiary laws are devoid of mechanisms for the HoF to follow on the enforcement of these decisions. Hence, although the HoF can potentially contribute to the protection of women's land rights through the interpretation of the FDRE Constitution and international instruments, the normative framework set by the Proclamation neither empowers the HoF to execute its decisions nor mandates it to follow-up or monitor.

4. Challenges in the Enforcement of Judicial Remedies Granted by FSC and HoF over Women's Land Claims

Ethiopia faces problems in the enforcement of laws and court decisions (World Bank 2010, 86). Poor record of execution of decisions is noted in the country at large both in terms of number and quality. This problem becomes particularly severe when it comes to enforcing decisions related to women's entitlement to land. Studies show that women's rights to land have been adversely affected by issues related to weak enforcement of judicial awards (World Bank 2010). Although the FSC and HoF grant remedies for women's land disputes, their decisions face enforcement hurdles. Rights and privileges accorded to people

can only be fully realized when an enabling environment and appropriate forums are available to enforce those rights; enforcement is further crucial for implementation of contested rights. Enforcement of decisions is an area attracting judicial attention not only in Ethiopia, but also globally (Odeny 2013). Unless decisions are enforced, it is of little worth for litigants who spent time, energy and money on judicial proceedings. The capacity of the judiciary and other responsible organs in enforcing decisions is essential to maintain rule of law and ensure access to justice. The failure to enforce effectively decisions timely and efficiently, however, makes the legal system untrustworthy and undermines the proper administration of justice.

4.1 Recognition of Customary Systems in the State Laws

Customary systems have unique role in addressing law enforcement needs, enforce community rules, and mediate and resolve local conflicts (Knight 2010). They exist in most communities to govern certain societal relationships. Even though customary systems operate not necessarily due to the absence or inaccessibility of government infrastructures, this factor may constitute one of the key drivers to over reliance on them.

Plural legal order comprised of both the formal and customary systems could co-exist in a legal system simultaneously constituting “legal pluralism”.¹⁰ The concern, however, with customary norms is that some individual or groups’ rights, particularly those of women, are often overlooked because of the importance it places on communal solidarity at the expense of individual rights. This can be attributed to deeply entrenched prejudice against women within various customary norms and practices (Knight 2010).

Long-lived patriarchal traditions and customary practices in the society have disadvantaged women in socio-economic and political spheres leading them to exclusion, marginalization and poverty. The prominence of customary systems obsessed with patriarchal traditional norms promotes systemic discrimination of women in key institutions. In effect, this presents challenges to the State that has the duty to uphold human right standards without discrimination. This requires particular emphasis considering that key decisions in matters concerning land that affect women’s land rights may have their foundation in such kinds of institution. Plural legal orders exist in Ethiopia as a result of existence of diversity across the country in way of life, language, cultures and practices.

¹⁰ While legal pluralism could mean different things depending on the prevailing context, it may refer to “the incorporation or recognition of customary norms within State law or to the independent co- existence of indigenous norms and institutions alongside state law” (Mohammed 2011, 93 – 94).

Customary systems have gained recognition in the State system through the FDRE Constitution. Article 37 (1) of the FDRE Constitution proclaims that “everyone has the right to bring a justiciable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”. Also, Article 35(4) allows “the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute”. Customary rules can further be recognized and incorporated into the legal system provided they are in line with the FDRE Constitution. If a certain customary practice is found to be contrary to the FDRE Constitution, it will, legally speaking, be void. In effect, the status of legal pluralism is highly dependent on the compliance of customary systems with the FDRE Constitution. Article 9 (1)) clearly stipulates “The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect”. However, even though the approach to legal pluralism envisaged under the Constitution attempts to harmonize the different customary rules with State laws, such approach has not been effectively translated into reality due to institutional constraints especially weaknesses in enforcement of land rights of vulnerable social groups such as women.

Rural land laws in the country give place to customary land rights and institutions, including dispute resolution mechanisms concerning rural land. The laws encourage and urge parties to first settle dispute through customary practices before resorting to the formal court systems.¹¹ This arrangement, *inter alia*, is relevant to promote customary systems to get better recognition in the statutory land tenure. Despite the positive roles customary institutions may play within the community in terms of greater physical, financial and linguistic accessibility, they are at times diminished by formal institutions handling women’s land claims. Conversely, enforcement of decisions of the FSC and HoF is also often impaired by customary rules as customary elders often pressurize women who have already obtained favorable court decisions to settle such decisions outside the court system to their detriment. To avert this problem and to get the best out of customary systems, integration of the State law and the customary systems appears important. Nonetheless, the benchmark must always be that such integration affords better protection to women’s land rights. This is of important consideration as the integration could be self-defeating due to conflict between

11 See Article 12 of the Federal Rural Administration and Land Use Proclamation; Article 28(1) of Tigray Rural Land Administration and Use Proclamation No. 136/2007; Article 34(1) of the Benshangul Gumz Rural Land Administration and Use Proclamation No. 85 /2010; Article 52(1/b) of the Amhara National Regional State Rural Land Administration and Use Proclamation No. 252/2017.

the formal system and customary systems with respect to dealing with human right matters, particularly those which affect women. Mohammed (2011, 96) observed that uniform application of human rights could be a real challenge in the presence of legal pluralism:

Different normative ordering recognized under the Constitution could, therefore, constrain the uniform application of human rights enshrined under the Constitution as their underpinning norms and processes are obviously bound to differ in many instances. This is most visible with respect to the constitutional guarantee of the rights of women in general and gender equality in particular vis-à-vis the treatment of women in the customary and religious laws and systems.

Effective enforcement of remedies awarded by the FSC and HoF is affected primarily by customary norms that may in most cases refute women's right to own, administer and control over land. It is noted that "persistent cultural and customary attitudes also work against implementation of women's rights" (Gashaw 2015, 63). Women do not often have customary right to inherit land from their family, and control and ownership over land during marriage is often assigned to the husband (Tura 2014, 137).

Customary systems operate commonly in several communities in the country; this may prevent enforcement of judicial decisions rendered in women's favor since, as indicated above, traditional elders incline to force women to settle entitlements duly recognized in court decisions in a way that compromises their legitimate interests given recognition in those court decisions (Tura 2014). Therefore, the manner customary systems are operating deserves closer attention given their application may present challenges in the enforcement of decisions relating to women's land rights.

4.2 Institutional Constraints

Women face critical challenges in the enforcement of their rights over lengthy court procedures that take years until a final decision is given by the FSC. Most cannot afford costs of the prolonged litigations and enforcement proceedings (Tura 2014, 164). As the World Bank (2010, 73) stated while an "overly speedy trials as an equally injurious vice – it is evident that lengthy delays can defeat a legitimate plaintiff and also discourage people from taking cases to the courtroom". Lengthy court proceedings as well as enforcement problems also affect both women and men. Indeed, lack of enforcement of decisions of the FSC and HoF could be a challenge both to men and women as much of the reasons behind lack or inadequacy of enforcements may affect them. However, the effect of non-enforcement of judicial awards is much more cumbersome to women

as opposed to men taking into account the former's economic disadvantaged position and prevalence of entrenched gender insensitive customary norms in the society.

It must be noted that the magnitude of non-enforcement of decisions of the FSC and HoF cannot easily be established owing to the fact that the Ethiopian justice system lacks adequate information in this regard (World Bank 2010, 85). However, the problem is acknowledged to be huge and has long gained attention from the FSC leading to exploring alternative institutional solutions to tackle the matter as part of the institutional reform within federal courts (World Bank 2010, 87). On this basis, the FSC has developed a targeted work plan to properly enforce judgments, leading to the expansion of specialized benches ('execution benches') in federal courts to handle the proper execution of judgments. These benches are expected to speed up execution of decisions and avoid prolonged cases that usually consume the time and resources of the courts. The benches, once they intensify their progress rates, can serve as an important forum for women judgment holders to secure the enforcement of decisions rendered in their favor. Nonetheless, we believe that the problem cannot be solved by simply creating specialized benches and setting targets but also the development of effective approaches to properly monitor enforcement in a gender sensitive manner.

Furthermore, there is overcrowding of land claims before judicial bodies in Ethiopia as most civil cases presented to the courts are dominated by cases related to land (Woldegebriel 2016, 47). Owing to this and the particular challenges in enforcing decisions pertaining to land disputes, the 2019 Forum organized by the CCI give due emphasis in establishing special land tribunals that will primarily entertain cases relating to rural land administration.¹² The need to establish special tribunals dealing with land matters is attributed to the increasing number of land cases coming to the courts. The land tribunals may ease the implementation of decisions by the courts which would extend to execution of decisions rendered in favor of women concerning their land claims. However, such efforts cannot completely tackle the enforcement challenges and other strategies shall also be adhered to. The following section presents a range of strategies to help women judgment holders in respect to their land rights.

12 Interviews with Ato Getachew Gudina, a member of the CCI, September 2019.

5. Strategies to Enhance Enforcement of Women's Land Claims Awarded by FSC and HoF

In several developing countries, there is a gap between existing gender sensitive land laws and policies and their implementation. Ethiopia is not an exception in this regard. Even if existing laws provide mechanisms to secure women's access to and control over land, implementations have been witnessed to be challenging. The World Bank (2010, 88) noted that "in some sense, the courts' success in speeding up the time to judgment has pushed those seeking to delay justice to focus on this further step—if you cannot hold off judgment then you can prevent collection of the award levied against you". This implies the need for enforcing decisions rendered by the courts, which otherwise, would delay justice. Addressing enforcement issues is, therefore, an entry point to fully realize women's rights over land and may have several implications for policymakers, executors and other stakeholders in their efforts to implement women's land rights. In effect, proposing strategies aiming to enforce decisions regarding women land rights by relevant institutions appears timely. This section, thus, discusses some of the strategies that may facilitate effective enforcement of land related decisions rendered by the HoF and FSC in favor of women. These are, by no means, one-size-fits-all strategies, rather proposals for consideration in policy, law and institutional reform to tackle the various problems.

5.1. Strengthening Women's Role in Land Governance

Women's role in land governance, which is related to empowerment of women, contributes to realize their rights over the resource. Women's empowerment is one of the key strategic objectives of the Sustainable Development Goals and the Growth and Transformation Plan of the Ethiopian Government. The African Union Agenda of 2063 also aspires to see fully empowered women with equal access and opportunity in all spheres of life, including the rights to own and inherit property (Para 20). Effective governance of land demands the participation of women both at policy formulation and implementation with the view to ensuring gender-equitable land tenure system. For this, meaningful representation is central to create favorable conditions for women (Gashaw 2015, 63). In this regard, FAO (2018, 57) reported:

...women's participation in land governance strengthens their land rights as well as improves land governance overall. When women are represented in land management and administration institutions, those institutions are more likely to create new rules (or strengthen the existing ones) to protect women and minority groups' rights, promote alignment of local rules with national and international laws that protect women's and minority groups'

land rights. Not only these, women managers, when well positioned in land administration and management institutions, are more able to influence the decision-making process so that women's land rights can be strengthened.

Steps taken by the Ethiopian Government in empowering women to control and administer their land are much to be desired. This is so because even if regional state land laws, family laws along with the FDRE Constitution and land registration program have facilitated women's access to and control over land, women still face multiple challenges in making informed decisions over their land. Especially in the event of disputes and dissolution of marriage, they are more disadvantaged than men.

Increased role in making decisions over land could be important in enforcing the decisions passed by the HoF and the FSC. This can be successfully achieved by making women joint title holders through land registration, and sole holders while not married, which is already underway. Negotiations and decisions should be made with the consent of women. To do so, however, women need to be aware of their rights and take part in land governance institutions.

5.2. Establishing Land Tribunals

The previous section recalls the limited performance of the FSC's department set up to follow through the execution of its decisions mainly due to the absence of a separate bench responsible for judgment executions. As a result of this and other emerging trends, such as the increasing flow of cases relating to land, the FSC proposed to establish land tribunals. We think the proposed initiative by the FSC to establish tribunals that specifically deal with land matters in the courts would go a long way for realizing the enforcement of land rights. The establishment of the land tribunals is ideal and timely considering most cases entertained by several courts in the country are related to land. World Bank's assessment of civil cases in selected woreda courts of Amhara, Oromia, Tigray and South Nations Nationalities and People Republic (SNNPR) regional states revealed that piloted courts are dominated by cases related to land issues, 53 percent of all civil disputes at national level. Regional states have their fair share of land dispute cases; 49.9 percent in Amhara, 55.6 percent in Tigray, 59.8 percent in Oromia, and 60 percent in SNNPR (Woldegebriel 2016, 47). The figures show that courts across regions are dominated by land related disputes making it difficult to entertain cases and follow-up on the enforcement of decisions effectively. The establishments of land tribunals can thus contribute through a specialized bench entrusted with the execution of decisions made by the courts. Such benches will be able to give special attention to women judgment holders in their effort to execute decisions secured in their favor. This is of particular importance for women judgment holders in land disputes. The

establishment of the benches, however, should not be confined to the federal level only. Extending the benches across all regional states up to local levels would be instrumental.

However, given the fact that the establishment of land tribunals is unlikely to materialize in the near future, proposing alternative or complementary approach to remedy the enforcement problem would be desirable in the short-term. This would require the FSC and HoF to set up and strengthen mechanisms that follow-up and monitor the enforcement of their decisions. This arrangement can facilitate the enforcement of decisions and at the same time serve as a stepping stone for the establishment of land tribunals.

5.3. Engaging with Customary System

The interplay between customary frameworks and formal laws may have greater implications on the implementation of land rights. The CEDAW Committee (2016, 17) stated that “States parties should pay special attention to customary systems which often govern land management, administration and transfer, particularly in rural areas, and ensure that they do not discriminate against rural women”. It further requires member States to strengthen customary and statutory institutions and mechanisms for defending or protecting women's rights on natural resources, including but not limited to land through, for example, community para-legal services (CEDAW Committee 2016). In Ethiopia, a country where customary norms are widely accepted and practiced, it is important for such norms to function alongside the State system. In fact, the FDRE Constitution recognizes customary practices so long as they do not contradict the former (Article 9). Knight (2010, 285) remarks that, “when closely analyzed, customary and statutory legal systems are not as divergent as may be thought. Lawmakers may start by working to understand customary laws and then identifying areas of overlap that may be useful for creative integration of statutory and customary land law”.

An attempt to dismiss all customs neglects a wide range of practices, which have positive implications for women's lives (UN HABITAT 2006, 30). The mere replacement of customary systems with statutory rules may not improve women's tenure security since custom still provides legitimacy and influences policy and decision makers to a certain degree. Customary practices are often more appealing to local communities than statutory laws (FAO 2018, 47). On this basis, therefore, dialogue with elders and opinion makers at a community level is necessary to raise awareness and find ways in the effort to harmonize customary norms with the statutory rules (USAID 2016, 3).

Customary practices are accessible to rural women at a community level. It has relatively low cost of enforcement and effective enforcement of decision based

on local social networks (Fiseha 2013). Incorporating the customary system with the legal structures thus enables women to benefit from court decisions. Involving community elders in land related decisions ease resistance during enforcement. In Sera Leone, for instance, some public institutions involve traditional authorities in resolution of disputes (Conteh and Alemahu 2016, 33). Likewise, Ethiopia has various customary practices that can substantially support the State system and fill the gaps left thereof, which the government shall properly utilize.

However, it has to be noted there are customary systems that prevent women from realizing their land rights. According to FAO (2018, 47), the recognition of customary land tenure has been criticized for weakening women's land rights. Most customary practices enable women to access land only through male relatives (FAO 2018)). Thus, cautions have to be taken in endorsing customary systems as part of the statutory rules not to reinforce discrimination and the exclusion of women as landowners. Customary rules are unwritten which makes it susceptible to misinterpretation by power holders, leaving women vulnerable and marginalized at risk of dispossession in the name of "custom" (FAO (2018). Hence, the incorporation of customary practices and dialogue with customary leaders shall be made with utmost care to ensure harmony with human rights standards.

5.4. Exploiting the Roles of Ombudsman and Human Rights Commission

Institutions such as the Ombudsman and Human Rights Commission can push for the enforcement of decisions involving women's land rights to a certain level. The Ethiopian Institution of the Ombudsman was established, under Article 55(15) of the FDRE Constitution, with the objective to promote good governance. As the Ombudsman is mandated to investigate and help remedy maladministration in the executive branch, there is a room for such an institution to contribute to the enforcement of decisions involving women's land rights. The Ombudsman gives priority to creating awareness to government organs to avoid maladministration in their daily functions. When maladministration occurs, the Ombudsman holds them accountable by investigating and recommending possible actions. This is of central importance for women judgment holders who enjoy remedies awarded in their favor but not enforced for reasons related to ill administration both by the courts and other law enforcements authorities. Once grievances on lack of enforcement are lodged to this institution, it considers the matter in line with its working procedures to pressure institutions or parties that fail to enforce judgments.

Likewise, the Ethiopian Human Rights Commission was established with the mandate to promote and protect human rights in the country by virtue of

Proclamation No. 210/2000 in accordance with Article 55(14) of the FDRE Constitution. The Ethiopian Human Rights Commission works to ensure that constitutional human rights and fundamental freedoms are well promoted and protected through human rights education, advocacy, monitoring; research with respect to the country's human rights situations; investigating into and addressing human rights violations; as well as paying particular attention to vulnerable groups (FDRE 2000). The Commission's mandate is instrumental to play a valuable role in enhancing the protection of human and democratic rights in the country. It can also be of an important forum to facilitate the enforcement of judgments involving women's land rights. As lack of enforcement court judgments threatens women's rights in general, the Commission is expected to give particular focus in the enforcement of decisions passed on behalf of women judgment holders. Moreover, the human rights promotion role shall extend to awareness creation for women especially on enforcement of their rights and court decisions.

5.5. Expanding and Enhancing Quality of Legal Aid Services

In the past years, both the government and civil society organizations (CSOs) have been active in providing free legal aid services to vulnerable groups within communities, including women (Alemahu 2012). Legal aid centers in law schools in universities, courts, and CSOs provide free legal service for those who cannot afford to pay. There are, however, challenges such as inaccessibility of these centers to the rural community as most are located in towns and cities farther from rural women. This suggests the need for the government to expand the services to remote areas. Researchers recommended the government should facilitate free legal aid services, with a primary purpose of empowering women to enjoy their rights to land (Tura 2014, 48; Alemahu 2012; Tafesse 2011, 164). Issues such as, where to seek execution of judgments, against whom execution claims shall be sought, the time of applications for execution claims and how women can avoid the negative force of customary practices need to be properly communicated to concerned women. Further, legal aid services should also be utilized to represent women in courtrooms and ensure the enforcement of judgments given in their favor.

5.6. Maximizing the Role of Civil Society Organizations

CSOs contribute to national development priorities through mobilization of foreign funds, provision of education and skill trainings, provision of materials and equipment, creation of business opportunities, and the enhancement of community participation and ownership, among others (Yntiso 2017, 39). Focusing on women, CSOs have worked in Ethiopia and elsewhere on economic empowerment including skill trainings, credit and saving, in-kind or cash transfer,

integrated women empowerment programs, and market access facilitation (Yntiso 2017). Accordingly, there have been positive results on women's economic gains. In the past years, the legal framework was not encouraging for CSOs involvement in the area of enforcement of decisions concerning women's land rights as the regulatory framework under Proclamation No. 621/2009 largely curtailed civic space and undermined CSOs' working on the protection of human rights in general (Alemahu 2012). Pursuant to this legislation, the government had been "forcing rights organizations to change their mandates, scale-down their activities or terminate their operations" (Yntiso, 36). Coupled with the limited capacity of government institutions to deal with implementation of human and democratic rights so far, the diminished engagement of CSOs in human right affairs put women's land rights at risk.

There is a sign of hope under the new CSOs proclamation, though. Proclamation No. 1113/2019, under its Article 62(9), states that "an organization which is established for the benefit of the general public or third parties shall ensure that its activities take into account the interests of women, children, persons with disabilities, the elderly and others exposed to threat or vulnerable groups of the society". The law further encourages all organizations to have the right to engage in any lawful activities to accomplish their objectives (FDRE 2019b, Article 62 (1)). The new proclamation further lifted the prohibition put on foreign and foreign-funded CSOs from engaging in advocacy and human rights work. It encourages CSOs to engage in advocacy and lobbying for legal and policy reforms. Due to this, it is a timely call to encourage CSOs to engage in the enforcement of women's land rights through different strategies. It is, thus, important to utilize the role CSOs can play in enforcing decisions of the FSC and the HoF on women's land rights. In addition to the provision of legal services to women who are struggling to enforce their land rights, CSOs can be instrumental in advocating women's land rights and developing the capacity of women, communities and institutions.

CSOs in different countries work in the area of legal support and representation for women. This particularly includes providing legal advice or pursuing cases on behalf of affected people. For example, in Uganda, CSOs have pursued a legal case against the Ugandan government on behalf of an indigenous community, to restore communal land rights whereas in Guatemala they have facilitated resolution of land conflicts by providing legal, surveying and mediation services in a multidisciplinary team (UNDP and ILC 2008, 44). While these services are not done specifically in the area of enforcement of judicial remedies awarded in favor women's land related claims, they can be used to encourage CSOs in Ethiopia to proactively engage on women's land rights issues through their advocacy and legal service. Once the central problems of enforcement of

decisions rendered in favor of women on their land rights and the strategies for enforcement are revealed within this chapter, it is of the opinion of the authors that CSOs can extend their services to enforce decisions.

5.7. Bridging Capacity and Awareness

One of the reasons hindering the full realization of women's right to land is lower level of awareness among women (Atinkut 2016, 7). To overcome such a problem, it is recommended to conduct awareness-raising programs with the aim of strengthening women's knowledge on land rights and context-relevant guidance on how to claim these rights (USAID 2016, 3). The capacity building and awareness creation should extend to community elders, lawyers, State officials and other stakeholders that have direct or indirect roles in the enforcement of decisions regarding women's land rights. The enhancement of such stakeholders' capacity would help them observe the relevant laws in the process of execution of judgments.

Having the required information will help women develop the confidence to claim the decisions rendered in their favor. With this strategy, it is relatively easy to help the majority of rural women to push for the enforcement of decisions by the HoF and FSC over their land rights. Moreover, forums should be created for customary authorities to educate State administrative officials and lawyers about the basic rules of customary land systems and for State officials and lawyers to create awareness on State rules relevant to their jurisdiction. These will contribute to the enforcement of decisions rendered by the two institutions in favor of women (Gashaw 2015, 63).

5.8. Institutionalizing Women's Participation in Decision-making

While women make about 51 percent of the Ethiopian population, they have minimal political and public participation. Shimelis Kassa's analysis expounds that "lack of commitment for increased women's participation and absence of sufficient political knowledge about women's representation have been some of the problems for poor participation of women in the politics" (Kassa 2015, 5). In the absence of equal participation of women in the political and governance process, the desire for sustaining democracy would become unwarranted. In spite of this, it is undeniable that women's involvement in political, social, and economic affairs is showing improvement from time to time though not still significant. If one looks at the number of seats held by women in current national parliament in Ethiopia, it accounts for 212 or 38.76 percent in the current tenure of the Parliament. While the number is still low compared to the seats held by men (335), it is by far an encouraging figure (Inter-Parliamentary Union 2015).

Moreover, following the 2018 political reform with the coming into power of a new administration under Prime Minister Abiy Ahmed, measures were taken to place women in top decision-making positions including in the judiciary. The number of women judges at the FSC has increased over the years and the first female Chief Justice was appointed in 2018 (FDRE 2019a). This is an encouraging start considering the limited participation of women in judicial positions in Ethiopia. To ensure that this change will have an enduring effect, it is imperative to create opportunities for women to participate at all levels in government. These changes at federal level need to be institutionalized to nurture women's participation at low level government administrations. Women's participation in decision-making at all levels of government administration can challenge the existing multi-layered hurdles with respect to enforcing remedies awarded by FSC and HoF. By voicing the concerns of women and spearheading relevant changes, female officials can make an impact directly or indirectly for women judgment holders to have their decisions enforced (Gashaw 2015, 63).

While putting women at public decision-making in all government structures seems to be a long term strategy and may not always directly tackle enforcement hurdles, in the long run, it may serve to expedite decisions rendered in favor of women with respect to their land rights. We think that women in relevant positions will likely be responsible and concerned to hear grievances of women who are prevented from securing enforcement of decisions favoring them and a solution for enforcement hurdles could more probably be at the table. The requirement under Proclamation No. 1097/2018 that federal executive bodies shall work towards the incorporation of women's interests in policies, laws, development programs and projects can be properly leveraged for women's land rights through the active participation of women in decision-making in key institutions. Arguably, this may contribute to improved enforcement of women's land claims.

6. Conclusion

Ethiopia's national laws recognize women's access to and control over land. Likewise, the laws of regional states declare equality of women regarding land rights. The country has implemented rural land registration program, which has led to the recognition and protection of women's land rights. Institutions are put in place including regular courts and an organ that adjudicates constitutional issues to safeguard women's land rights. The HoF and the FSC have been pronouncing decisions that help to elaborate the rights women have in the existing legal framework. Although the decisions of such institutions are usually clear and easy to apply and execute, as the practice shows, there are acute problems regarding the enforcement of decisions, particularly in land disputes involving women with favorable judgments.

Decisions rendered by these institutions are final and irrefutable with the possibility of FSC's decision reviewed by HoF for constitutional interpretation. However, lack of effective enforcement of these 'final' decisions prevents women landholders from benefiting from the existence of such forums. The existence of legislations stipulating substantive land rights by itself is not sufficient in ensuring the protection of women's land rights. Decisions delivered by judicial and pertinent administrative bodies need to be enforced. The existing trends show poor enforcement of decisions rendered by the HoF and the FSC. An intervention is thus needed to strategize enforcements. The chapter argued in favor of devising a set of strategies that can be implemented by HoF and FSC to enhance the enforcement of their decisions. These strategies include empowering women in land governance; pushing for the setting up of the intended land tribunals in the courts; systematic incorporation of customary systems in State laws by correcting their defects; strengthening and refocusing the functions of the Institution of the Ombudsman and the Human Rights Commission; expanding quality and accessible free legal aid service to reach rural women; designing mechanisms to exploit the potentials of CSOs to consider enforcement of land related decisions in their strategic priorities; bridging capacity and awareness gaps; and institutionalizing women's participation in public decision-making structures and in the judiciary. These strategies, if applied effectively, are believed to provide better protection of women's land right by enhancing enforcement of judicial remedies awarded by relevant federal and regional institutions. This will ultimately contribute to government's effort to empower women and achieve an all-inclusive development in the country.

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Part Four

*Freedom from Discrimination
and Violence*



Renewed Commitment towards Women's Rights in Ethiopia: Promises and Limits of Ratification of the Maputo Protocol

Enguday Meskele Ashine

1. Introduction

The promotion and protection of women's rights in Ethiopia has been a long winding and often bumpy road. Despite the significant progress that has been made in advancing women's rights, women and girls in Ethiopia continue to encounter a vast array of barriers that hinder them from fully exercising their basic human rights (CSA 2016, 289). Discriminatory socio-cultural factors, traditional beliefs, custom and religion have adversely affected the lives of millions of Ethiopian women and girls (FDRE 2019, 19-20), preventing them from unleashing their potential to contribute to their community. Among such factors are the widespread violence against women (VAW) and harmful traditional practices (HTPs) (UNICEF 2019, 94-97). Female genital mutilation (FGM) and early marriage have continued to impair the well-being and advancement of millions of young women in Ethiopia (Berhane 2010, 2-3). A home to millions of child brides, Ethiopia is among countries with the highest number of early marriage (UNICEF 2018, 3). Significant number of women also experience domestic violence by their husbands or intimate partners (Semahegn and Mengiste 2015, 9-10). Moreover, absence of a comprehensive law on gender-based violence addressing all forms of violence against women in Ethiopia worsened the situation of victims whose voices are silenced by cultural taboos (CEDAW Committee 2019, 6). The gaps in the existing domestic legal frameworks responding to violence and discrimination further perpetuate gender based violence (Kedir 2016, 54-55).

Over the years, Ethiopia has adopted a number of international human rights treaties and committed to frameworks and initiatives complementing the

domestic legal system in upholding the rights of women and girls. In 2018, Ethiopia has reinvigorated its commitment towards gender equality and women's rights by ratifying the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The Protocol is further incorporated into national law through Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation No.1082/2018 (hereinafter Maputo Protocol Ratification Proclamation). Nonetheless, it is not yet translated into any of the working languages in the country, which has implications on its accessibility by stakeholders. It is noted that the dearth of human rights instruments ratified by Ethiopia in working languages coupled with poor domestic implementation curtailed the potential of the instruments in enhancing protection of human rights (Techane 2016, 73).

The Maputo Protocol, adopted by the African Union in 2003, contains fundamental rights and core principles that help ensure the overall wellbeing of women. The instrument explicitly deals with the need to ensure gender equality in private as well as public spheres. It guarantees extensive rights ranging from civil and political rights to socio-economic and group rights. The Maputo Protocol also specifically addresses issues of particular concern to African women such as HTPs. It elaborates women's rights with explicit, detailed, strong and precise articulations that were missing from the text of long existing human rights instruments like Convention on Elimination of All Forms of Discrimination against Women (CEDAW). These, among others, refer to the extensive guarantees for sexual and reproductive rights and the broad protection of women against all form of violence and economic, social and cultural practices that have long impeded the advancement of women's rights in Africa. Ratification of the Protocol brings international accountability for the implementation of provisions, which will strengthen Ethiopian government's commitment to gender equality and women's rights.

Ratifying and domesticating the Protocol is a step towards ensuring that issues disproportionately affecting women would come under legal scrutiny. The Maputo Protocol will likely contribute in bringing changes in key areas such as protection against violence, HTPs and discriminatory cultural values given that it imposes clear obligation on States parties to enact and enforce laws prohibiting all forms of gender-based violence and discrimination against women and girls. The Protocol is hence expected to play an important role in areas where protection by the domestic legal system is inadequate through the adoption of new laws or amendment of existing domestic frameworks.

As one of the States parties, Ethiopia committed itself to very detailed obligations to advance women's rights. The Protocol urges the government to amend laws

that are not compatible with rights guaranteed in the instrument and adopt new laws and mechanisms that better protect women's and girls' rights in Ethiopia. The Protocol can also be used as a tool to put pressure on the government to address the underlying social, political, and health care issues that contribute to the marginalization of women. It further provides a strategic platform for advocates and civil societies seeking to bring women and girls' rights to the attention of the public, concerned organization, government and policymakers (Center for Reproductive Rights 2006, 14-16). Moreover, the significance of the Protocol lies in the legal and moral pressure it exerts over member States for its implementation. Nevertheless, these duties are subject to the reservations entered by States parties upon ratification. Ethiopia has made reservations to several provisions and entered declarations on a range of Articles of the Protocol, which plausibly curtail the potential enforcement of rights guaranteed by the document.

The underlying goal of this chapter is to examine the opportunities and shortcomings ensued upon ratification of the Maputo Protocol by the Ethiopian government. The chapter particularly seeks to examine how a range of reservations and declarations entered on the provisions of the Protocol will likely affect the protection of women's rights in Ethiopia. The chapter argues that ratification of the Protocol with several reservations and declarations will likely erode the normative significance of the Protocol in terms of protecting and promoting women's rights at the domestic level.

The chapter is divided into four main sections. The first section offers an overview of human rights protection of women in Ethiopia. The second section discusses how ratification of the Protocol could potentially bring advancement in key areas of particular interest to women in Ethiopia while the third section critically examines the implications of reservations and declarations entered on particular provisions. In the final section, concluding remarks are presented in light of the analysis in preceding sections.

2. Human Rights Protection of Women in Ethiopia: Historical and Legal Context

Throughout generations, Ethiopian women have suffered disproportionately from social norms, traditions, and religious attitudes and practices that are deeply patriarchal and discriminatory. Protection of women's rights has been given little attention during the imperial (1931-1974) and military Derg regime (1974-1991) (Bayeh 2015, 84). In the Imperial era, there were efforts to address various needs and interests of women through associations formed by and for women such as Ethiopian Women Welfare Association (EWWA), Ethiopian Young Women's Christian Association, the Armed Forces' Wives Association

and the Ethiopian Female Student Association (Burgess 2013, 99). Women's right was almost non-existent despite constitutional recognition of "rights and duties of people" under the 1955 Constitution of the Imperial regime (Gebrewold 2017). While the era has observed women who actively contributed in political movements, Ethiopian women's interests has remained mostly invisible and their voices have been largely excluded from the public and political sphere (Gebrewold 2017, 9). During the Derg regime, the Revolutionary Ethiopian Women's Association (REWA) was established with the aim of creating platform for women to exercise their rights and discharge their responsibilities as mothers, workers and citizens, and to ensure their active involvement in the socialist State reconstruction alongside men (Mulugeta 2010, 73). The 1987 Constitution has introduced some provisions that recognized women's equality with men, and the Derg regime had put women in its agenda and programs as a result of which more women came to the public sphere as workers, party members, women group leaders, etc. (Gebrewold 2017, 11; Burgess 2013, 100). Despite improvements in women's organization during this period, it contributed little in terms of protecting and promoting women's rights, instead it has served more as an instrument in using women for the benefit of the regime (Gebrewold 2017, 12). Notwithstanding Ethiopian women's long history of engagement in government, organizations, and different forms of activism, their quest for full equality has gained little attention as the legal and policy landscape was not gender sensitive and continued to undermine women in the socio-economic and political sphere (Burgess 2013, 98-99). Women in the country thus remained economically, socially, culturally and politically disadvantaged (Bekana 2019; Gebrewold 2017; Burgess 2013).

The 1960 Civil Code of Ethiopia regulates issues that fell within the ambit of family, inheritance, and acquisition of property. It embodied some provisions that perpetuated the age-old patriarchal attitudes and discriminatory practices in regulating the private sphere and family. For example, the system of betrothal and arranged marriage, and the gender-based distinction in the minimum age for marriage (age of fifteen years for a female while eighteen years for a male) that may have adverse effect on consensual marriage are cases in point (FDRE 1960, Articles 560 and 581(1)). Moreover, the Civil Code reinforces male supremacy by explicitly stipulating the man (husband) as the head of family entitled to dictate the management of family, protect his wife, watch over her relationship, guide her conduct, and decide the whereabouts of common residence (Articles 635, 637 and 644). Despite the significant contribution of women to agricultural production and food security, the land tenure system of both the imperial era and the military Derg government have denied women access to land and other resources such as agricultural products from the land (Tesfa 2002, 4). In imperial Ethiopia, tenure systems failed to provide women with secure rights to land as

women could only have inheritance (rist) over land from their late parents or deceased husband (Asmare 2016). Although the Derg has introduced progressive tenure system that recognized equality of women and men to acquire rural land, in practice, women had limited right to land due to poor implementation of the 1975 land policies and proclamation in term of protecting female headed households, divorced and widowed women's right to land (Asmare 2016; Tesfa 2002). In similar vein, the penal legislation had legitimized violence against women by imposing lenient sanctions on perpetrators and decriminalizing violence such as domestic abuse (Fite 2014, 53).

Women's right has gained significant momentum in the early 1990s after the coming into power of the Ethiopian People's Revolutionary Democratic Front (EPRDF). The post-1991 regime has made notable strides with respect to protecting and promoting women's rights. The EPRDF government has taken a number of measures ranging from the adoption of gender sensitive legal and policy frameworks to setting up institutional machineries that coordinate efforts to realize women's rights (Bayeh 2015, 85). The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) incorporated provisions (Article 35 and 36 among others) that are of paramount importance to the protection of human rights of women and girls. Furthermore, the Revised Family Law of 2000 which guarantees equality of women and men in family unit, family management and property administration was a notable progressive legislative measure. The Criminal Code of 2004 was also a normative step forward by offering a legal safeguard against violence and exploitation of women and girls in Ethiopia. In addition, the Labor Proclamation of 2003 and its amendment, and the Federal Proclamation No. 1064/2017 on Civil Servants have provided a number of employment related guarantees relevant to the realization of women's rights. The National Women's Policy of 1993 that put in place a policy framework for women's rights has been backed by a number of national strategies and action plans aimed at accelerating the elimination of discrimination against women and promoting gender equality. These include, among others, the Gender Strategy in the Education and Training Sector (2014-2015), the National Strategy and Action Plan on Harmful Traditional Practices against Women and Children in 2013, the National Women Development and Change Strategy (2017), the National Human Rights Action Plan (2016-2020), the National Reproductive Health Strategy (2016-2020), and the Criminal Justice Policy of 2011, which provides for the special protection of women and girls in the criminal justice system.

Ethiopia has ratified several international human rights instruments protecting the human rights of women and girls such as the CEDAW in 1981, the Convention on the Rights of the Child in 1991, the Optional Protocol to the Convention on

the Rights of the Child on the involvement of children in armed conflict in 2014, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2014, the Convention on the Rights of Persons with Disability in 2010, and the United Nations Protocol to Suppress and Punish Trafficking in Persons especially Women and Children in 2012.

Ethiopia has also long been a party to the African Union human rights treaties; the African Charter on Human and Peoples Rights, and the African Charter on the Right and Welfare of the Child. In 2018, Ethiopia has ratified the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (the Maputo Protocol), after years of lobbying efforts from government and non-governmental stakeholders towards its ratification (Techane 2016, 59). The ratification of the Maputo Protocol marks an important step toward gender equality and women's rights in Ethiopia. The next section discusses how the Protocol could be used as a tool to bring about change in key areas of concern.

3. Promises of Ratification of the Maputo Protocol

The Maputo Protocol is a radical African Union human rights instrument specifically dedicated to guarantee a wide range of rights to African women and girls. The Protocol has been hailed as a progressive legal instrument because it expands the scope of protected rights beyond what is provided for under CEDAW and other human rights instruments; it has introduced more nuanced provisions that are not included in the CEDAW by articulating some rights with greater specificity (Viljoen 2009, 21). The Maputo Protocol spells out the scope of socio-economic rights in more detail. Further, women's access to medical termination of pregnancy and the right to be protected against HIV infection are explicitly recognized as components of women's right to sexual and reproductive health rights (Maputo Protocol 2003, Article 14). The Protocol surpasses CEDAW standards by providing explicit binding obligation for the adoption of corrective and positive action in order to ensure formal as well as substantive equality (Article 2(1)(D)). The uniqueness of the Protocol is also obvious from the provisions that guarantee the right to peace (Article 10) and protection of women in armed conflict (Article 11), the right to food security (Article 15), the right to sustainable development (Article 19), and the protection of women living in special vulnerabilities (Articles 20, 22-24). Most importantly, the Protocol calls scrutiny to the private sphere as an important domain in which women's rights and gender equality are to be protected (Article 4 (2a)). By doing so, it draws greater attention to the day to day challenges of women and girls in Africa. This laudable continental effort, pushing the boundary in setting

norms and standards, contributes to putting women and girl's rights and gender equality at the forefront of regional human rights agenda.

At national level, the significance of the Protocol lies in its comprehensive articulation of women's and girls' rights to be protected against domestic abuse, violence and harmful cultural practice-the areas in which the existing domestic legal and policy frameworks have shortcomings (Kedir 2016, 54-55). Despite the encouraging changes that came through the revised FDRE Criminal Code of 2004 and the Revised Federal Family Code of 2000, legal protections against violence and abuse remain inadequate. Beyond the protection against violence, ensuring effective legal protection of socio-economic rights of women living in vulnerable situations in Ethiopia where a comprehensive legal framework is lacking are also illustrative examples of areas where there is a need for acceleration towards enforcement of the pertinent norms in the Maputo Protocol, be it in the form of adopting new laws or legislative amendment to cover gaps in the existing legislation or policies and programs. The Protocol, therefore, could play a role in strengthening national frameworks either through leading to amendment of legislation or by creating a new framework through which the relevant national law should be viewed. Further, the explicit legal and moral obligation it imposes on States Parties, and most importantly, its potential to reach wider spheres of family, community and tradition makes it an important document. The Protocol's provisions that call upon States to ensure legal redress and education or awareness creation are vital aspects in translating the legal norms enshrined in the Protocol into effective guarantees (Viljoen 2009, 30-34). This has the potential to guide and galvanize government and stakeholders to address the underlying social, political, cultural issues that curtail the advancement of women and girls in Ethiopia. Thus, the instrument can be a powerful tool for change if it is recognized and embraced by governments and other stakeholders. The following are promises the State is obliged to keep within the Maputo Protocol that can change the situation women are living in the country.

3.1. Reinforcing Guarantees for Equality and Elimination of Discrimination

Ethiopian women and girls continue to face discrimination due to age-old patriarchal attitudes and prejudicial traditional practices. Discriminatory social norms and stereotypes are the major constraints that hinder women and girls from enjoying their rights in several aspects of their lives including politics, education, employment, health, property ownership and other (FDRE 2019, 20). Despite legal protection for equal treatment, inequality is still persistent in the country, particularly in family and other personal matters (FDRE 2019, 20). The FDRE Constitution has bestowed adjudicatory power upon customary

and religious courts in matters related to family and personal issues (FDRE 1995, Article 78). Despite the positive contributions of customary and religious institutions, Constitutional recognition of customary and religious institutions' role to regulate rights in family and personal arena may jeopardize the rights guaranteed by the Constitution (Gebrewold 2017, 17). Customary and religious dispute settlement mechanisms may often tend to be discriminatory for women and girls as they are influenced by prevailing social norms and traditions (FDRE 2019, 20). Besides, discriminatory practices such as early marriage, FGM, and domestic violence are often driven by negative social norms and beliefs reinforcing women's and girls' inferiority to men and boys (Chuta et al. 2019, 22-24; Marshall et al. 2016, 29- 30). In relation to this, under Article 2, the Maputo Protocol explicitly prescribes equality and elimination of discrimination against women and girls and emphasizes the legislative and policy measures that State parties should take to eliminate discrimination in various contexts. With respect to combating discrimination, while the CEDAW contains a general provision allowing for temporary special measures aimed at accelerating de facto equality between men and women, the Maputo Protocol reiterates the need for positive measures by integrating throughout the different contexts captured in several provisions. The Protocol also strengthens State obligations to provide education and information to citizens that can help bring behavioral change and thus eliminate discrimination (Article 2(2)). This articulation has paramount importance in addressing discriminatory cultural practices and traditional attitudes at different levels.

The right to equality and non-discrimination with explicit binding obligation for the implementation of special measures in all spheres enshrined in the Maputo Protocol is essential in addressing gender inequality and the underlying causes that perpetuate women's subordination in Ethiopia. The Protocol being firm on special measures, its ratification unequivocally commits the State to adopt corrective and positive measures to address persisting gender disparity in education, employment and politics, etc. This is crucial given the lack of a regulatory framework for a systematic implementation of temporary special measures in various areas where Ethiopian women are not sufficiently represented (CEDAW Committee 2019, 5). In its concluding remark on the 8th periodic report of Ethiopia, the CEDAW Committee has expressed its concern by stating, "while efforts have been made to promote equality and combat discrimination against women in various areas, such efforts often concern strategies and action plans that are not always supported by any specific legal framework" (CEDAW Committee 2019, 3). In the same review, the Committee has further noted that the legal framework in the country, including the 2004 Criminal Code, does not penalize all forms of discrimination against women and recommended that

Ethiopia would need to review and strengthen the legal frameworks to capture all forms of discrimination.

Accordingly, ratification of the Protocol by the Government of Ethiopia implies a legal obligation to adopt new laws addressing the gaps in existing legislations or amend the existing legislations that are incompatible with the legal norms enshrined in the Protocol. The State is also under obligation to modify the social and cultural patterns that discriminate women through education and awareness creation. Further, the State bears a binding obligation to integrate gender perspectives in policy decisions, legislations, development plans, and programmes in line with its commitment under Article 2 of the Protocol. The Protocol would also be a useful instrument for stakeholders in pressuring the Ethiopian government to adopt additional measures that address all forms of discrimination against women.

3.2. Elimination of Violence, Exploitation, and Harmful Traditional Practices

One area of priority for the Protocol is the elimination of violence, exploitation and harmful traditional practices (Article 3(4), 4 and 5). The Protocol provides a broader definition of violence against women under Article 3 and 4. It prohibits all forms of violence including physical, sexual, psychological and economic, occurring in private as well as public space. This articulation is however very essential in eliminating violence that takes place in private spheres because most women and girls face violence in private settings within home. The Protocol further contains comprehensive provisions on elimination of HTPs; Article 5 obliges State parties to take necessary measures to eliminate all forms of harmful traditional practices.

Violence against women and girls occurring both in private and public spheres has continued to be a great concern in Ethiopia (ACPF 2014). The 2016 Demographic and Health Survey (DHS) released by the Central Statistics Agency (CSA) has revealed that 35 percent of Ethiopian women have experienced physical, emotional, or sexual violence by their spouse or intimate partner at some point in their lives (CSA 2016). The long traditionally condoned domestic violence including physical abuse remains a serious public health concern in Ethiopia (Chernet and Tadesse 2020; Semahegn and Mengistie 2015). According to a national survey taken by the government, 63 percent of women and 28 percent of men agree it is appropriate for a husband to beat his wife and 10 percent of women experience sexual violence by intimate partners (CSA 2016). Corporal punishment inflicted up on girls is also among the most common forms of violence that takes place in the private sphere (Chuta et al. 2019, 20; ACPF 2014, 22).

The DHS indicated adolescent girls are at high risk of corporal punishment and gender-based violence (CSA 2016). Among forms of violence adolescent girls face is early marriage. Ethiopia ranks among the top countries for prevalence of early marriage with a rate of 40 percent, slightly higher than the regional average for Eastern and Southern (35 percent) and about twice the global average (21 percent) (UNICEF 2018, 5). Abduction for the purpose of marriage (telefa) is also a common practice in many parts of Ethiopia (UN Women 2014, 58).

Similar to early marriage, FGM remains widely practiced in some communities in Ethiopia. The prevalence rate, however, has shown decline over time (Ministry of Women, Children and Youth 2019, 3). 65.2 percent of women aged between fifteen and forty-nine experienced FGM with the highest prevalence rate recorded in the Eastern part of the Country. Among these regions are Afar (91.2 percent), Dire Dawa (75.3 percent), and Somali (98.5 percent) (Thomson Reuters Foundation 2018, 1). Moreover, women who live in the rural parts of the country are at greater risk (CSA 2016). Ethiopia has taken a number of measures that aimed at reducing harmful traditional practices. Very recently, the Government has committed to end HTPs such as early marriage and FGM by adopting the National Coasted Roadmap to End Child Marriage and FGM (2020-2024), which is an evidence-based plan that outlines the key strategies, packages of interventions, expected results, targets and milestones towards the elimination of early marriage and FGM in Ethiopia (MoWCY 2019, 7).

Evidences suggest there is still a pressing need to adopt additional measures to tackle VAW and HTPs in Ethiopia. In this regard, the CEDAW Committee has expressed its concern regarding insufficient legal protection against various forms of violence, and recommended the adoption of a comprehensive law (CEDAW Committee 2019). Likewise, the UN Committee against Torture (CAT) is concerned about the gap in Ethiopian law and recommended the State to consider amending the Criminal Code of 2004 and Family Code of 2000 with the view to address the inadequate provisions on VAW (CAT 2011, 11-12).

Providing legal safeguard against violence and HTPs is therefore indispensable to ensure women's right to life, bodily integrity and dignity. However, the legal protection against VAW and HTPs is far from perfect. The Criminal Code does not adequately cover all forms of violence including domestic violence, marital rape, and sexual harassment (University of Wyoming 2018; Gebrewold 2017; Fite 2014). Domestic violence is not exhaustively dealt under Ethiopian law as the Criminal Code criminalizes only domestic violence committed within marriage or within an irregular union (FDRE 2004, Article 564). Moreover, the absence of specific legal protection that provides victims of domestic violence with civil remedies including the right to monetary compensation, right to secure protection order, custody order, shelter and medical benefits has been

pointed out as a loophole within the existing law (Kedir 2016, 54). The non-criminalization of marital rape is another major gap within the Criminal Code as it fails to cover sexual violence within the marriage context. While the Criminal Code can be used to punish some acts amounting to sexual harassment, it not only lacks explicit reference to sexual harassment but is also limited in scope to extend protection to various aspects of the act. The relevant provision covers only circumstances constituting 'taking advantage of a woman' and acts amounting to sexual intercourse or related acts.¹ Moreover, corporal punishment by parents or legal guardians is not punishable act (FDRE 2004, Article 576(3)). Likewise, there are shortcomings within the law pertaining to the prohibition of HTPs. This relates not only to the lenient punishment on perpetrators of HTPs (Article 565) but also to the lack of a comprehensive ban covering various types of HTPs that disproportionately affect women and girls in Ethiopia such as son preference, inheritance of a widow, isolation during menstruation and a number of food related taboos like prohibiting certain food items from being consumed by pregnant or lactating women and forcing a girl to consume more foods so as to get her bigger and marry as soon as possible (FDRE 2013, 14-15; Assefa et. al. 2005, 12-37). Despite the Criminal Code's extensive provisions on HTPs (Article 561-570), the provisions explicitly proscribe HTPs that endangers the lives of the victims or cause them bodily injury or mental impairment (See Article 561 and 567). Thus, it does not adequately cover HTPs such as widow inheritance, isolation during menstruation or food taboos that may not cause death or bodily injury yet affect women's and girl's lives and overall wellbeing. Although both the FDRE Constitution and other subsidiary legislations protect children against exploitative labor work, a law that specifically prohibits employment of underage girls in domestic work is missing (ACPF and Plan International 2019b). All these call for a comprehensive legislative reform, including amendment of existing provisions of the Criminal Code of 2004, in order to give effect to the obligations under the Maputo Protocol and other international standards.

The Protocol provides robust legal protection by calling upon States Parties to criminalize all forms of violence and exploitation occurring in private as well as public domain, which arguably may include marital rape (as a form of sexual violence occurring in private sphere) and sexual harassment. Moreover, it offers extensive provisions on elimination of HTPs through various State measures ranging from creating public awareness to punishing the act and providing

1 Article 625 of the Criminal Code deals with "procuring from a women sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercise 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 act".

adequate redress to the victims. The Protocol provides the much needed legal base to comprehensively deal with all forms of violence and exploitation against women and girls in Ethiopia, which is useful to rectify the lacunae in existing protection frameworks in the country. Ratification of the Protocol in general and giving effect to Article 3, 4 and 5 of the Protocol in particular will likely prompt the Ethiopian government to revisit its approach and take additional measures to address VAW and HTPs.

3.3. Explicit Recognition of Women's Right to Sustainable Development

The Maputo Protocol is unique by explicitly providing women's right to sustainable development. It deals with wide-ranging and substantive right to sustainable development of women (Article 19). In accordance with this provision, the State parties commit themselves to realize sustainable development for women through adopting gender sensitive national plans, promoting women's right to property, access to resources and credit services, and ensuring participation of women in development policies and programs at all levels. This is critical in light of addressing feminization of poverty, as more women are living in poverty than men in Ethiopia (Bekana 2019, 319; CEDAW Committee 2019, 11).

The Protocol provides guidance for government bodies and other stakeholders on how to address the underlying social, political and economic issues that hamper women's empowerment and sustainable development. In view of this, giving effect to the Protocol will contribute to the achievement of the targets in the Sustainable Development Goals (SDGs). Ethiopia is among the countries committed to implement the 2030 Agenda for Sustainable Development. Accordingly, the country is in the process of putting in place actions and measures to achieve a successful implementation of SDGs (UN Women 2019b, 10).

The Protocol articulates promoting women's access and control over productive resources such as land and property as key components of women's right to sustainable development (Article 19(c)). Ensuring access and control over productive resources like land, house, and property is crucial for improving women's economic status and to promote empowerment (FDRE 2019, 7). However, discriminatory cultural practices, underrepresentation of women at top leadership and decision-making positions, exclusionary economic system combined with land tenure insecurity, and lack of access to other vital resources have affected sustainable development and empowerment of Ethiopian women (Bekana 2019; Ogato 2013, 359).

Despite the existence of gender equitable legislations on property ownership and equal economic participation, women remain in subordinate position compared to their male counterpart. This is evident from the existing gender gap in access to land and tenure security (CSA 2016, 255). According to the 2016 DHS, 60 percent of women between the age of fifteen and nineteen are not paid for their work (CSA 2016, 255). Only 19.2 percent of agricultural landholders are women while majority of men singlehandedly own land and make a unilateral decision over land use (UN Women 2019b, 3). Customary laws, norms, and practices often discriminate women in controlling, using, and administering land (Tura 2014). Despite women's central role in the agricultural sector and the economy at large, they are often disadvantaged and their contribution is less valued (UN Women 2014, 42). Moreover, women's participation in qualified jobs and professional fields is at lowest level; only 23.9 percent of women are in technical and professional field (Bekana 2019). This in turn leads to disparity in earnings and access to wage (Bekana 2019; UN Women 2014; Ogato 2013). The past decades witnessed the introduction of gender-equitable legislations and adoption of positive measures in several areas (Gebrewold 2017, 16). However, ensuring economic empowerment and sustainable development for women remains to be a daunting challenge.

Securing land and property rights for women support efforts to achieve SDG1 (ending poverty), SDG2 (ending hunger, food security and nutrition and promote sustainable agriculture), SDG5 (achieving gender equality an empowerment of women and girls), and SDG8 (promote sustained, inclusive and sustainable economic growth for all). It could thus be argued that the implementation of the Maputo Protocol will strengthen and consolidate national efforts to achieve the 2030 Agenda for Sustainable Development.

3.4. Protection of Sexual and Reproductive Rights

The Maputo Protocol lays down the most comprehensive provision on the protection of sexual and reproductive rights (Article 14). The Protocol fleshed out key components of these rights, which include women's right to control fertility, autonomy in choosing methods of contraceptives, decision-making over number of children and birth spacing, the right to be protected against STDs and HIV, and access to family planning education and medical abortion (Article 14(1)). It specifically obliges States to take appropriate measures to ensure prenatal, delivery, and postnatal services (Article 14(2)).

Unlike other existing human rights instruments, the Protocol offers specific legal protection to women's right to medical abortion and protection against HIV/AIDS. The protection against diseases such as HIV/AIDS and provisions for access to medical abortion as key component of sexual and reproductive health

rights have lacked specific mention and scrutiny under other international human rights treaties. The CEDAW Committee has indeed stated unsafe abortion as violation of women's rights and the need for a human rights based approach to HIV/AIDS through its general recommendation (CEDAW Committee 1999, 4). The clear and detailed stipulations of the Protocol are, therefore, instrumental in advancing women's sexual and reproductive rights, an area where the existing legal framework in Ethiopia does not provide adequate grounds for protection.

In Ethiopia, though legislations recognizing some aspect of sexual and reproductive health rights are put in place, existing frameworks do not address the whole spectrum of sexual and reproductive health rights. The FDRE Constitution has explicitly recognized access to family planning education, information and capacity as one of the rights of Women (Article 35 sub-Article 9). However, specific legislations that ensure women's right to receive sexual education, right to contraceptive services, right to be informed and empowered to protect themselves from sexually transmitted disease including HIV/AIDS and right to maternal care are absent. Ethiopia has put in place friendly policies such as the National Reproductive Health Strategy 2006-2015 and National Adolescent and Youth Reproductive Health Strategy 2016-2020 with the intention to address reproductive health needs. Nevertheless, a number of studies have revealed that young girls in Ethiopia suffer from enormous sexual and reproductive health problems such as unplanned pregnancies, unsafe abortion, pregnancy related complications, and sexually transmitted diseases due to low level of knowledge about sexual and reproductive rights and limited utilization of sexual and reproductive health services (Munea, Alene, and Debelew 2020; Birhanu, Tushune, and Jebena 2018; Adinew, Mengesha, and Worku 2013). Besides, legal framework offers little in term of safeguarding comprehensive sexual and reproductive rights and several gaps remain unaddressed within existing laws and practices (Muntean, Kereta, and Mitchell 2015). For instance, there is no specific legal provision for ensuring access to reproductive health rights for women with disabilities, yet they have difficulties accessing reproductive health service (ACPF and Plan International 2019a). Ethiopia is among sub-Saharan countries with the worst indicators of women's sexual and reproductive health; it has high number of HIV positive women, highest number of infant and maternal mortality, lack of decision-making on the use of family planning and high number (4.5 million women and girls) of unmet needs for contraceptive services (Guttmacher Institute 2018; CSA 2016; Ogato 2013). Ensuring women to make autonomous decision regarding their body and reproductive health is essential to improve these indicators. Ratification of the Protocol, therefore, dictates the Ethiopian government to take measures to improve sexual and reproductive rights of women including legal reform. The Protocol can also

be used as a powerful tool for advocates seeking to bring change in the area of sexual and reproductive health rights.

3.5 Protection of Women Living in Vulnerable Situations

The Maputo Protocol goes beyond the existing international standard on the rights of women by providing specific legal protection to address women who experience multiple intersecting forms of discrimination. The Protocol accords special attention to groups of women who may risk special vulnerability as result of circumstances such as widowhood (Article 20), old age (Article 22), disability (Article 23), and poverty (Article 24). These provisions have paramount importance in the protection of women who seek special attention and additional measures due to the double marginalization they endure.

In countries like Ethiopia, women with disability, elderly women and widows live in dire situation due to various forms of discrimination they encounter in every aspects of life (HelpAge International 2013). At national level, with the intention to address specific vulnerability of certain groups, national policies, strategies and action plans have been put in place. Among others the National Social Policy of Ethiopia (2014), which provides for social protection mechanisms for elderly persons and persons with disability, National Plan of Action for Older Persons, which address socio-economic needs of elderly persons, and National Plan of Action of Persons with Disabilities (2012-2021), which sets areas of intervention in order to improve the situation of women with disability have bearings on the protection of women in vulnerable situation. Moreover, proclamations such as Right to Employment of Persons with Disability Proclamation No. 568/2008 and Ethiopian Building Proclamation No. 624/2009 specifically addresses issues of particular concern to persons with disabilities in the context of employment opportunity and physical accessibility of buildings respectively. Nonetheless a comprehensive legal framework that safeguards against discrimination in various spheres and guarantees the rights of women with disability is lacking. The Committee monitoring State parties compliance with the Convention on the Rights of Persons with Disabilities (CRPD Committee) as well as the CEDAW Committee have expressed concern about this gap, urging the government to ensure effective mainstreaming of the rights of women and girls with disabilities in laws (CEDAW Committee 2019, 12; CPRD Committee 2016, 1).

Specific legislation that addresses vulnerability of elderly women, widows or women in distress is absent despite incorporation of some provisions within the revised family law in relation to administration of property and obligation to supply maintenance. The Ethiopian legal system is criticized for failure to offer a comprehensive legal framework guaranteeing rights of women in vulnerable

situation including, *inter alia*, the right to work, the right to adequate standard of living, access to health care facilities and services, educational and employment opportunities (CEDAW Committee 2019). It is essential to place obligation upon State parties to adopt measures in order to address the needs of vulnerable women whose plights has been given little attention on the part of law and policy makers in Ethiopia. In fulfilling this obligation, the government of Ethiopia is required to adopt or amend laws that hinder vulnerable women from enjoying their human rights, and design and implement policies and strategies that ensure protection and promotion of these rights. The Protocol imposes binding obligations on State Parties to address physical, social and economic needs of women in vulnerable situation. This aspect is significant given the domestic law and policy frameworks don't adequately provide for legal basis for addressing challenges encountered by women in vulnerable situation. Furthermore, it will play vital role in bringing to the front the issue of such women who experience intersectional discrimination.

4. Limits of Ratification of the Maputo Protocol by the Ethiopian Government

Ratification of the Maputo Protocol reinvigorates the Ethiopian government's commitment to gender equality and protection of women's rights. The principles enshrined in the Maputo Protocol will contribute to enhance the protection and promotion of women and girls' rights in Ethiopia. However, the commitment is subject to several reservations and declarations entered by the State. When becoming a party to a treaty, a State may qualify its accession by formulating reservations, declarations and interpretative statements. In accordance with the 1969 Vienna Convention on the Law of Treaty (VCLT) (Article 1), while a reservation is a unilateral act/statement by which a State wishes to exclude or alter the legal effect of certain provisions of a treaty in their application of the treaty, a declaration (or sometimes referred as interpretive declaration) is a statement made by a State that merely indicates how it interprets a particular Article without the intention to modify or limit domestic application (Edward 1989, 378). However, it is the intention of the State rather than the title or name of such statements that matters. Therefore, if a statement purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation to be bound by the obligations therein. The Maputo Protocol is silent both on reservation and interpretive declaration, thus, it does not expressly prohibits or allows it. It does not mean that States becoming party to the treaty can enter reservation as they wish to do instead it only means they can do that subject to the VCLT regime (VCLT 1969, Article 19-23). States are not allowed to enter reservations that are prohibited by the treaty, and reservation should not

be incompatible with the object and purpose of the treaty in pursuant to Article 19 of VCLT.

The Maputo Protocol Ratification Proclamation 1082/2018 clearly stipulates the reservations and declarations made with respect to certain provisions of the Protocol. Ethiopia has ratified the Protocol with reservations in relation to the following provisions:

- protection to women in polygamous relationship (Article 6(c)),
- legal registration of every marriage (Article 6(d)),
- separation of spouse to be decided by judicial organs (Article 7(a)),
- more expenditure by State Parties on women's development and promotion by reducing military expenditure (Article 10(3)),
- widow's right to inherit her deceased husband's property (Article 21(1)) and
- adjudicatory roles of the African Court on Human and Peoples' Right (Article 27)

In addition, the State has entered declarations with respect to the following provisions:

- State Parties obligation to take effective measures to eradicate violence occurring in private as well as public domain (Article 4(2)),
- marriageable age at 18 (Article 6(b)),
- women's right to acquire personal property during marriage and right to equitable share after marriage (Article 6(j) and Article 7(d)),
- responsibility of private sector in child upbringing (Article 13(j)) and
- women's right to decide whether to have children, and the number of children (Article 14(b))

Against this backdrop, this section critically examines the implications of reservations and declarations entered with respect to the aforementioned provisions of the Protocol. It will specifically make observation on provisions relating to violence in the private spheres, child marriage, and polygamous marriage which are among the prominent settings wherein most Ethiopian women and girls are likely to experience abuse and discrimination (FDRE 2019, 20).

4.1. Sexual Violence in the Private Sphere: An Untouchable Terrain?

One of the progressive aspects of the Maputo Protocol is that it provides comprehensive legal protection against VAW, both in the public and private sphere (Article 4(2)). In Ethiopia, as is elsewhere in Africa, some of the most common violations of women and girls' rights take place in the private domain

and reinforced by traditional norms and cultural values (ACPF and Plan International 2019a, 27). The CEDAW Committee has repeatedly expressed its concern about the absence of comprehensive and inclusive law that address all forms of gender based violence such as marital rape and domestic violence (CEDAW Committee 2019a, 6; CEDAW Committee 2011, 6).

In Ethiopia, 33 percent of women experience marital rape (Berhane 2004, 131). The 2016 DHS shows more than 34 percent of ever-married women have experienced violence, whether physical, sexual or emotional, by their spouses (CSA 2016, 289). The national level data, furthermore, revealed the most common perpetrators of sexual violence to be spouses/partners (CSA 2016, 293). Likewise, young girls who got married before the legal age of eighteen experience physical, sexual or emotional violence by their intimate partners (UNICEF 2018, 7). In Ethiopia, where early marriage remains to be a widespread practice, girls who get married at a young age are likely to be at risk of marital rape. Domestic violence such as marital rape has serious repercussions across several domains of women and girls' lives. It has devastating impact on their reproductive health and overall wellbeing.

Married women and girls vulnerability to HIV/AIDS will be heightened if they lack control to make decision on when and how to have sex (Berhane 2004, 131). In Ethiopia, marital rape is condoned by traditional norms that tolerate rape and sexual abuse of women by intimate partners. Making matters worse, the existing legal framework does not provide adequate protection against domestic violence (Fite 2014, 53-56). Although the Criminal Code contains an Article pertaining domestic violence, it failed to stipulate provisions for various types of domestic violence (Article 564). In addition, marital rape is not criminalized because the law defines rape as encompassing only those incidents where a person "compels a woman to submit to sexual intercourse outside wedlock." (FDRE 2004, Article 620). Thus, there is no comprehensive legislation that prohibits all forms of violence. This is in conflict with the Maputo Protocol's sound prescriptions for comprehensive protection of women and girls against violence occurring in the private sphere.

Furthermore, Ethiopia has entered a declaration in relation to Article 4(2)(a) of the Protocol, which stipulates prohibition of violence against women in private as well as public settings (Maputo Protocol Ratification Proclamation 1082/2018, Article 3(2)). The declaration reads 'Article 4(2)(a) of the Protocol shall be applicable in light of Article 620 of the Criminal Code of Ethiopia that defines rape to be a forced sexual intercourse that occurs out of wedlock'. This declaration at least has two implications: the first implication is that Ethiopia will not amend the scope of rape under the Criminal Code. The second one is

sexual violence in the context of marriage which will continue to escape legal scrutiny. And thus, Ethiopian women remain legally unprotected against marital rape regardless of the fact that majority of women in the country are not in a position to negotiate safe sex with their spouses (CSA 2016, 263). Perhaps, the possible explanation behind this specific declaration may be to protect family relationship, in particular, maintaining sexual relationship in marriage in pursuant to Article 53 of the Revised Family Code 2000. Given the specific nature of the declaration, it may have also been regarded to pass 'compatibility with the object and purpose of the treaty test' under the law of treaties (Article 19 of VCLT.).² Nonetheless, the protection of women from all forms of sexual violence in all spheres (private or public) is considered one of the core principles of the Protocol. The declaration entered to the provision, however, has the legal effect of excluding the Protocol's reach to private sphere of home and family and consequently curtails the much sought broader protection of women and girls against all forms of violence regardless of the place or context it occurs. It therefore defeats the object and purpose of the Maputo Protocol and contradicts with Ethiopia's obligations under the CEDAW, calling for withdrawal of the declaration entered to Article 4(2)(a) of the Protocol.

4.2. Protecting Girls against Early Marriage: Commitment Upheld or Compromised?

Although significant progresses have been witnessed, HTPs such as early marriage continue to be widely practiced with varying degree across the Country. Ethiopia is among the countries with significant number of child brides, fifteen million to be precise, among which six million married before the age of fifteen; 40 percent of girls in Ethiopia are married before the age of eighteen and 14 percent are married before their fifteenth birthday (UNICEF 2018, 5). The national survey data shows Ethiopian women marry at a young age compared to men (CSA 2016, 67). The practice is driven by a number of factors ranging from traditional attitudes to gender norms and social status (Ministry of Women, Children and Youth 2019, 3-4). While adoption of laws is necessary to eliminate early marriage, a strong legal protection is needed as an effective tool to address such practice.

Ethiopia has revised its legislations, and introduced non-discriminatory laws that recognize equality of women and girls in its laws, policies and practices.

2 The UN Human Rights Committee has also noted that reservation or interpretive declaration which purports to modify the legal effect of a treaty provision must be specific and transparent, thus, it should not be general but must refer to specific provision of the treaty (Human Rights Committee 1994,7).

According to the Revised Federal Family Code, minimum age of marriage is eighteen with an exception clause that allows marriage at the age of sixteen on the application of future spouse, or the parents or guardian of one of them for serious cause (FDRE 2000, Article 7(2)). Although the exception is gender neutral, it is girls who are affected the most as they are vulnerable to multiple layers of discrimination compared to boys. Thus, the exception fails to take into account the special vulnerabilities of girls to child marriage. It has been emphatically noted that laws, which prohibit marriage under the age of eighteen but provide exceptional grounds weaken the general prohibition of marriage under the age of eighteen (ACPF and Plan International Report 2019a, 69). In this regard, the CEDAW Committee has also expressed its concern regarding these exceptions and recommended that the State should remove it from the Family Code (CEDAW Committee 2019, 13).

The Maputo Protocol condemns early marriage and sets the minimum legal age for marriage at eighteen (Article 6(b)). However, the Ethiopian government has made declaration in relation to Article 6(b) of the Protocol by giving primacy to the domestic law that allows special conditions under which the minimum age can be lowered to sixteen (Maputo Protocol Ratification Proclamation Article 3(2)(b)). Likewise, Ethiopia has made reservation on Article 6(d) by considering itself not bound by the terms of the provision which reads ‘every marriage shall be recorded and registered in accordance with national laws in order to be legally recognized’ (Maputo Protocol Ratification Proclamation Article 3(1)(b)). Apparently, this reservation has the effect of excluding domestic implementation of the Protocol’s provision that requires legal registration of all forms of marriage. It has been noted that legal registration of all forms of marriage is one way of avoiding early marriage because registration of marriage including customary marriage is believed to lessen the likelihood that woman younger than eighteen would get married (ACPF and Plan International 2019b, 2; Viljoen 2009, 42).

Under the Ethiopian law, although it is a requirement that marriages concluded before the Office of the Civil Status must immediately be registered (Vital Registration Proclamation 2012, Article 31), a compulsory requirement to register other forms of marriages such as religious and customary marriages is absent. This means underage marriages, which often take place in religious and customary settings remain unregistered and go unnoticed. It could be argued that failure to register other forms of marriage significantly contributes to the persistence of early marriage and increase the number of child brides in the country (Viljoen 2009, 42).

In view of the above, Ethiopia's declaration and reservation with regard to Article 6 of the Protocol on the minimum age of marriage and registration of all marriages compromise the State's commitment to protect girls against early marriage.

4.3. Protecting Women in Polygamous Marriage: Moving Towards or Against?

Polygamy remains a prominent practice in several communities of Ethiopia. The 2016 DHS shows 11 percent of Ethiopian women aged between fifteen and forty-nine are in polygamous marital relationship (CSA 2016, 66). The national prevalence rate remains similar to the 2011 Demographic and Health Survey (CSA 2016, 66). Polygamy continues to be common practice across all Regional States with the highest prevalence in Somali region at 29 percent followed by Benishangul Gumuz (21 percent) and Gambela region (21 percent) (CSA 2016, 66).

Polygamy arguably may have an adverse impact on socio-economic status, health and overall wellbeing of Ethiopian women (Mwambene 2017, 2; Tesfay 2017, 104-108; Solomon 2016, 45-54). A qualitative study conducted in Gedeo and Sidama Zones in Southern Ethiopia has revealed women in polygamous marriage suffer from psychological abuse, depression, poor health condition, and economic marginalization (Tesfay 2017, 104-108). It has been noted the practice poses serious threat to women's right to property and land security (UN Women 2019b, 9). However, the answer to the question whether the practice should be outlawed or legally recognized has remained debatable (Fulas 2018, 64-66; Dlamini 1989, 331-342).

There are countless arguments that could be raised in favor as well as against polygamy. Proponents of polygamy contend that allowing the practice resonates with respect for cultural values and religious freedom, helps to ensure continuity of family and clan, and benefits women through maintaining economic and social security (Tesfay 2017, 96-97; Chewaka 2014, 83; Faucon 2014, 3; Tadesse n.d, 6-11). Polygamy is also justified based on the argument that women are entitled to exercise their right to free choice including the right to choose the form of marriage (Jonas 2012, 143). On the other hand, there is a growing view that polygamy is objectionable because it discriminates, and despoils women of their fundamental rights, and it has a serious impact on health and overall wellbeing of women (Tesfay 2017, 104-108; Jonas 2012, 145 -146; Dlamini 1989, 341).

Regional legal instruments, unlike international human right documents, adopted a comprehensive and accommodating approach towards polygamous marriage (Chewaka 2014, 87). While CEDAW has endorsed abolitionist approach to

polygamy, considering the practice as infringement of equality and dignity of women (CEDAW Committee 1994, 4), the Maputo Protocol, on the other hand, states monogamy as the preferred form of marriage and emphasizes the need for the protection of women's right in polygamous marital relationships (Article 6(c)). The Maputo Protocol indeed calls upon States parties to 'discourage' the practice of polygamy rather than abolish it (Fulas 2018, 48-49). By doing so, the Protocol recognizes the adverse impact of polygamy on women's rights but acknowledged the African reality that it may persist for a while given poverty and cultural practices that can only be improved gradually. Here, it should be noted the Protocol does not endorse polygamy nor does it call for absolute rejection of the practice rather accept it as a reality.

Upon the ratification of the Protocol, Ethiopia has entered reservation to Article 6(c) (Ratification Proclamation 1082/2018, Article 3(1)(a)). Perhaps, it could be argued that Ethiopia sought to maintain the general prohibitive stance taken in line with the call by the CEDAW through limiting the legal effect of Article 6(c) of the Protocol in its domestic application. However, abolitionist approach adopted by the CEDAW has been challenged for its tendency to underestimate the possible benefits of polygamous marriage to women and children and the complex issues arising in relation to polygamy such as pecuniary effects, social cohesion created, and the fate of children born out of such marriage (Fulas 2018, 65; Dlamini 1989, 343). Moreover, outlawing polygamous practice may be as devastating because the practice may continue to exist unregulated, thus, leaving the women involved unprotected. The prohibitive stance taken by the Ethiopian government may lead to further subjugation and marginalization of women in polygamous martial relationship by denying them treatment and protection at par with women in monogamous marriage (Dlamini 1989, 343). It has been contended that abolitionary legislative measure, which is not informed by the possible benefits in the cultural context the women live in as well as the imaginable harms of the practice from women's rights protection point of view would not serve the interest of women (Fulas 2018, 64-66). Furthermore, failure to recognize the existing realities of women where many of them enter into polygamous marriage to secure economic and other benefits creates caveat and protection imbalance (Chewaka 2014, 83; Tadesse n.d, 18). Therefore, any attempt to regulate polygamy should pay attention to these relevant factors.

Ethiopian legal system has not yet taken a consistent position on polygamy while the Constitution makes room for recognition of all forms of marriage concluded under customary or religious laws (FDRE 1995, Article 34). Regional laws such as the Harari Family Code (Proclamation No.80/2007) permits polygamous marriage (Article 11). On the other hand, the Criminal Code criminalizes the

practice of polygamy, while it provides an exception to the rule for such marriages concluded in conformity with religious or traditional practices recognized by law (Article 650 and 651). The lack of harmony among the legal provisions of the country, according to CEDAW Committee, is one area of concern (CEDAW Committee 2019, 13).

In this regard, it has been argued the approach taken by the Maputo Protocol is perceptive because it calls upon States Parties to ensure protection and promotion of human rights for women in polygamous marriage (Chewaka 2014, 87). This approach provides opportunity to progressively eliminate the practice without compromising the rights of women who are already engaged in polygamous marriage. In light of this, Ethiopia's reservation could be viewed as a missed opportunity given the fact that polygamy remained to be a legal grey area, and a persistent practice that continues to pose serious challenges to women on various areas ranging from health to management of pecuniary interest and rural land holding and use rights (Hailu et al. 2019, 30; Tesfay 2017, 104-107). The reservation entered by Ethiopia removes State's obligation to protect Ethiopian women in precarious polygamous union, which may have far-reaching consequences that neither serve the interest of women in polygamy nor help efforts to eliminate the practice. The CEDAW Committee recommended in its recent Concluding Observations that Ethiopia should remove the reservation made on Article 6(c) of the Protocol (CEDAW Committee 2019).

5. Conclusion

Ethiopian government has shown its renewed commitment to gender equality and women's rights by ratifying the Maputo Protocol. The Protocol is believed to guarantee the most comprehensive rights to women. This legal instrument can help shift the trajectory on the promotion and protection of women's rights in Ethiopia with its potential to bring possible changes in several areas of concern for Ethiopian women and girls. Ratification of the Protocol may lead to the adoption of innovative legal, policy and institutional mechanisms by States that help efforts to improve the lives of women and girls. The Protocol could be a powerful tool to address violence and discriminatory practices against women and promote women's right to sustainable development and reproductive health. These are areas where the existing legal system in Ethiopia provides insufficient protection. However, Ethiopia's reservations and declarations on particular provisions of the Protocol significantly impede its implementation at different levels. The Government of Ethiopia, therefore, should reconsider lifting the reservations, which has far reaching repercussions. On the other hand, the potential and significance of the Protocol should be recognized and embraced by the Government as well as civil societies and other stakeholders. Women's rights advocates and civil societies should lobby the government to uphold the

obligations stated in the Protocol by incorporating the relevant provisions into local laws and policies. Likewise, relevant actors could use the Protocol to urge the government to amend discriminatory laws and adopt mechanisms that create conducive conditions for the full realization of the rights enshrined in the Protocol.

Ethiopia's Compliance with International Norms on Ending Violence against Women

Anchinesh Shiferaw Mulu

1. Introduction

The world has come a long way to recognize equal rights of women in the economic, social, and political spheres. Although women's rights have gained recognition under international human rights instruments, the full realization of these rights is not yet materialized, and women continued to suffer all forms of violence. This has been attributed to lack of State commitment in enforcing the rights guaranteed under these instruments. At global level, it is estimated, 35 percent of women experience the act of violence endangering their lives, health, and dignity at some point in their life (UN Women 2019a). Various international human rights norms have been developed that prohibits violence against women (VAW). These norms are grounded on equality and non-discrimination principles entrenched in various instruments since 1945.¹

The establishment of the Committee on the Status of Women under Economic and Social Council (ECOSOC) in 1946 brought to attention that women should be seen as a distinct category or group of people in the international human rights discourse (Oloka-Onyango and Tamale 1995, 714). This resulted in the adoption of the Convention on the Elimination of Discrimination against Women (CEDAW) by the United Nations General Assembly (UNGA) in 1979,

¹ See article 2 of Universal Declaration on Human Rights (UDHR), article 2 of the International Covenant on Civil and Political Rights (ICCPR) and article 3 of International Covenant on Economic, Social and Cultural Rights (ICESCR).

which entered into force on the 3rd of September 1981.² CEDAW focused on the disadvantages and sufferings of women and provided protection and promotion of fundamental rights of women. It aspires to eliminate discrimination against women by guarantying equality and challenging structural gender power relations (Hodson 2014, 562). CEDAW also ensures State's responsibility to protect women from violations of their rights in both the public and private sphere, including by private individuals, enterprises, and organizations (Hodson 2014, 576).³

CEDAW incorporated a range of women's rights to ensure formal and substantive equality.⁴ Its Committee expounded on these rights including combating VAW in its General Comments and its jurisprudence.⁵ In addition to CEDAW, at continental level, human rights instruments such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention Belém do Pará), and the Council of Europe Convention on Prevention and Combating Violence against Women and Domestic Violence (Istanbul Convention) have been instrumental in the development of international norms to end VAW.

- 2 CEDAW provides for inter-state complaint mechanism, inquiry mechanism, and State reporting procedure to ensure States' compliance. However, it did not have an individual complaint mechanism to ensure its enforcement upon its adoption. The individual complaint mechanism was introduced through its Optional Protocol adopted in 1999 (Hodson 2014, 563-564).
- 3 The mainstream human rights instruments that existed before the adoption of CEDAW mostly focused on the protection of rights in the public sphere by State actors or organs, as opposed to focusing in the private sphere by family members or at home. For instance, the prohibition of torture under the Convention against Torture, Cruel, Degrading and Inhuman Treatment (CAT) is limited only to acts that cause severe pain or suffering committed by a State official, which excluded the physical, mental or psychological sufferings women face in the hands of non-State actors such as private individuals and corporations (Byrnes 1989, 218).
- 4 Legal provisions that ensure formal equality aim to create equal opportunity for both women and men. These provisions provide equal opportunity for women in social, economic, political, and cultural sphere (see CEDAW 1979, Article 3 and 10-16). Such provisions are criticized for failing to ensure equality in outcomes. Women have their own interests, preferences and needs. In addition, women may face cultural and social barriers. 'These factors should be given due considerations to ensure equality of outcomes. The view to bring equality of outcomes takes into account substantive equality which aims to bring transformative change through treatment of men and women differently by taking into account their realities and interests (Reeves and Baden 2000, 10). To ensure substantive equality, CEDAW recognizes affirmative actions (CEDAW 1979, Article 4 and CEDAW Committee, Recommendation 25).
- 5 See General Comment 19, UN Doc CEDAW/A/47/38 (1992) and General Recommendation No. 35, UN Doc CEDAW/C/GC/35 (2017). Cases on VAW decided by the CEDAW Committee are available on the following website: <https://blogs.lse.ac.uk/vaw/int/cedaw/cedaws-key-cases/>. For a detailed discussion of some of these cases see Byrnes and Bath (2008).

These gains achieved at international and continental levels in the development of norms and standards on VAW can become meaningful only if States are willing and able to comply with the obligations incorporated in the instruments. This chapter assesses Ethiopia's compliance with international norms relating to VAW enshrined under the United Nations (UN) and African Union (AU) human rights instruments. The main focus of the analysis is based on the recommendations given by human rights treaty bodies. In doing so, it begins by describing and analyzing the normative provisions of the international human rights system to combat VAW. Following this, a theoretical framework to assess State compliance is discussed. The chapter then provides an overview of the prevalence of VAW in Ethiopia and the government's response by taking legal, policy, and institutional measures. It also elucidates the outcome of the review process of Ethiopia's State report before human rights treaty bodies and its compliance or non-compliance with recommendations and provides the strategies for the State to comply with its obligations under international instruments.

This study employs a doctrinal method to analyze the national and international laws, recommendations, and decisions of international human rights bodies on Ethiopia's commitment and performance to eliminate VAW. Drawing on the social constructivist theory or normative approach, the chapter analyzes Ethiopia's compliance with international norms to eliminate VAW. Primary information is gathered through visits to four one-stop centers where women are getting a comprehensive medical, counseling and legal services in one place, and Federal and Regional Police Commissions (in Addis Ababa, Afar, and Somali) to understand the magnitude of VAW in Ethiopia and how the government is responding to tackle VAW. Secondary sources such as books, journal articles, research articles, and survey reports are consulted to support the analysis and comparisons of the study.

2. Violence against Women under International Human Rights Law

VAW was not directly and expressly addressed in the mainstream human rights instruments. During the adoption of the International Bill of Rights (ICCPR and ICESCR) in 1966, gender equality was recognized, but with no attempt to address VAW. Provisions of the mainstream international human rights laws, which guarantee fundamental rights and freedoms, have however been useful as the act of VAW infringes on the rights and freedoms enshrined in these laws (Byrnes 1989, 236-237).⁶

6 The rights affected by VAW includes the right to life, the right not to be subject to torture or cruel, inhuman or degrading treatment or punishment, the right to the equal protection of the law, the right to the equal protection of humanitarian norms in time of international or internal

One of the prominent international instruments, CEDAW does not directly deal with VAW although, under Article 6, it focuses on trafficking and exploitation of female prostitution (Šimonović 2014, 599). Nevertheless, in its General Recommendation Number 19, the Committee on Elimination of Discrimination against Women (CEDAW Committee) addressed the issue of VAW adopted at its eleventh session in 1992. The General Recommendation has clarified that CEDAW, in which the term ‘violence’ does not appear, addresses different forms of VAW. The Committee viewed VAW as a form of “discrimination against women” defined under Article 1 of the Convention. Discrimination under the Convention includes of “gender-based violence that is violence which is directed against a woman because she is a woman or which affects women disproportionately” (CEDAW Committee 1992, para. 6). These include harmful traditional practices (HTPs) such as female circumcision or genital mutilation, dietary restrictions on pregnant women, forced marriage, dowry death, preference of male child, sexual harassment, acid attacks, trafficking in women and exploitation of female prostitutes (CEDAW Committee 1992, para.11, 13, 17, and 20). According to General Recommendation No. 35 on gender-based violence against women, adopted in 2017 updating General Recommendation No. 19, the prohibition of VAW has “evolved into a principle of customary international law” as inferred from opinion juris and State practices (CEDAW Committee 2017, para. 2). This is a key development in international law as it implies, regardless of States’ ratification of any treaty, an obligation to prohibit VAW is universally imposed; any State that fails to fulfill its obligation violates the principle of customary international law.

Another key development in international law in relation to VAW is the adoption of the Declaration to Eliminate Violence against Women (DEVAW) in 1993 by UNGA. The declaration is complementary to CEDAW and has come up with the most widely used definition of VAW: “an 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” (DEVAW 1993, Article 1). DEVAW states that VAW is a “manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men to the prevention of the full advancement of women” (DEVAW 1993, Preamble). The declaration further provides an all-encompassing form of VAW, including physical, sexual, and psychological

armed conflict, the right to liberty and security of person, the right to just and favorable conditions of work, the right to the highest standard attainable of physical and mental health, and the right to equality in the family.

violence occurring in the family or community and perpetrated or condoned by the State. The illustrative list provided in the declaration includes battering, dowry-related violence, marital rape, female genital mutilation (FGM), rape, sexual abuse, sexual harassment and intimidation, trafficking in women, and forced prostitution (DEVAW 1993, Article 2). DEVAW has been successful in making VAW an issue of international concern. However, it is criticized for its failure to declare VAW as a human rights violation. According to Charlesworth, this approach, was taken because of the thinking that the notion of human rights abuse involves State action while VAW as defined under the Declaration involves the act of private actors (Charlesworth 1999, 382-383). Departing from this idea, the Beijing Declaration and Platform for Action, which was adopted in 1995, underlined VAW as a violation of women's human rights and thereby declared the State to be responsible in preventing and eliminating VAW.

Though available treaty provisions on VAW under the auspicious of the UN are developed earlier in non-binding instruments such as declarations and general recommendations, this has changed with the adoption of binding instruments such as Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD). CRC, adopted in 1989, includes provisions that require States to protect children from all forms of violence, including physical, sexual, or psychological, and provide effective measures to abolish HTPs (CRC Committee 1989, Article 19 and 24(3)). According to the Joint General Comment of CEDAW Committee and Committee on the Rights of Children (CRC Committee), States are required "to comply with their obligations to respect, protect, and fulfill women's and children's rights." States are also duty-bound to prevent HTPs by private actors, where the Joint General Comment lay down the criteria to consider certain practices as harmful (CEDAW and CRC Committees 2014, para. 15).⁷ According to the Joint General Comment, States should provide legal protection by incorporating CEDAW and CRC and establishing institutional mechanisms that ensure the prompt, impartial, and independent investigation of cases that lead to effective

7 According to the Joint General Comment of the CEDAW and CRC Committees (2014, para. 15), HTPs include of any practice that

- a. denies the dignity and/or integrity of the individual by violating human rights;
- b. is discriminatory against women or children and result in physical, psychological, economic and social harm and/or violence that limits their capacity to participate in all spheres and use their full potential;
- c. constitutes socially prescribed norms that perpetuate male dominance and inequality of women and children; and
- d. is imposed on women and children by family, community members, or society at large, without securing their full, free and informed consent.

law enforcement and remedies for victims. Further, CRPD, adopted by the UNGA in 2006, stipulates about multiple levels of discrimination women with disabilities face and requires States to place effective legislation and policies to duly address violence and abuse against persons with disabilities, women in particular (CRPD 2006, Article 6 and 16).

The Rome Statute of the International Criminal Court also provides that systematic or widespread rape and sexual violence constitutes crimes against humanity and war crimes entailing individual criminal responsibility before the International Criminal Court (Article 7 (1(g)) and Article 8 (2 (b (xxii) and e (vi)) of Rome Statute of the International Criminal Court; Engle 2005, 50).

At continental level, in Africa, however, there are developments of binding provisions enshrined in treaties under the auspicious of the AU (Banda 2006, 79). The African Charter on Human and Peoples' Rights, (African Charter), adopted in 1981, enshrined provisions that ensure equality before the law and elimination of discrimination against women under Articles 2, 3, and 18 (3). However, lack of enforcement of these rights, which was evidenced in lack of any complaint brought before the African Commission on Human and Peoples' Rights (ACHPR) has pushed regional women's non-governmental organizations and Africa Commission to initiate a separate Protocol on women's rights in 1995 (Banda 2006, 72-73). Based on this initiative, the Maputo Protocol was adopted in 2003. The Protocol integrates provisions on VAW building upon DEVAW and Beijing Platform for Action. 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 peacetime and during situations of armed conflicts or of war (Maputo Protocol 2003, Article 1(j)).

In this definition, not only physical, sexual, and psychological violence but also economic violence is recognized. Further, Article 3 of the Protocol deals with verbal violence. This reflects the reality in the continent where victims of VAW do not only face sexual and physical violence but also suffer from emotional and financial harms, which further limit women's participation in the economic and political sphere (Wester 2013, 4). Moreover, the definition recognized VAW that occurs during peacetime and armed conflict.

The Protocol prohibits VAW at different spheres; the family, community, and the State, dealing with both the public and private domains. It prohibits all forms of VAW, including unwanted or forced sex, sexual harassment at schools

and workplaces, and trafficking in women (Maputo Protocol 2003, Article 4 (2) (a) (g)), 12 (1)(c) and 13 (c)(d)). It also prohibited harmful practices, which are defined 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” (Maputo Protocol 2003, Article 1(g) and Article 5). The holistic approach adopted by the Protocol to eliminate HTPs envisages support to victims through the provision of services such as health services, counseling, legal and judicial support as well as vocational training (Banda 2006, 79; Maputo Protocol 2003, Article 5(c)). Under Article 4 (2) (b-f) and 5(c) of the Maputo Protocol, States have the due diligence obligation to prevent, punish, and rehabilitate victims of VAW, including victims of HTPs, by taking legislative, administrative, social, and economic measures and implement educational and awareness programs. States are required to submit periodic reports on the implementation of the Protocol to the ACHPR (Banda 2006, 79; Maputo Protocol 2003, Article 26).

Another instrument developed in the continent is the African Charter on the Rights and Welfare of the Child (ACRWC). This treaty incorporated relevant provisions that prohibit violence against girls, such as sexual exploitation, trafficking, and HTPs including early and forced marriage (ACRWC 2000, Article 21(2)). The Joint General Comment by the ACHPR and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) particularly expounds upon child marriage and measures that should be taken by States. It further requires States to adopt a policy that allows pregnant girls to attend school, make sanitary facilities available at school, and reduce the risk of violence against girls on their way to school (ACHPR and ACERWC 2017, para. 31 and 32).

Recently adopted protocols such as the Protocol to the African Charter on the Rights of Older Persons (APROP) and Protocol to African Charter on the Rights of Persons with Disabilities (APRPD), adopted in January 2016 and 2018 respectively, also put into consideration VAW against women of old age and with disability (APRPD 2018, Article 27(j); APROP 2016, Article 9(1) and 8(2)). However, these Protocols have not yet come into force because of the limited number of ratifications by States.

Though African human rights instruments appropriated most of the norms created by UN, to ensure universality of norms and their legitimacy in the African context, they also envisage concerns particular to the continent by incorporating specific norms that respond to Africa's context (Viljoen 2011, 191-192). Regardless, the success of such international and continental instruments

on VAW depends on States' compliance with the obligations envisaged under each instrument.

3. Conceptual and Theoretical Framework on State Compliance

Compliance with international norms is defined as “a state of conformity or identity between an actor's behavior and a specified rule” (Krommendijk 2015, 491). It also refers to “whether countries in fact adhere to the agreement's provisions and the implementing measures” (Komanovics 2014/I, 8). Though the concept of compliance, according to Hillebrecht 2015 (as cited in Bates 2015, 1171), is mostly applied to the implementation of regional human rights courts or commissions' decision for this chapter, it is also applicable to the implementation of concluding observations/recommendations and decisions of international human rights bodies.

According to Krommendijk (2015), assessing compliance has several limitations because of the following two reasons. First, full compliance is not attainable regardless of the measures taken by States to comply. Second, it is difficult to show a causal relationship between compliance and the international norms directing such compliance. A State may imply its commitment to comply with international norms without standards having any role in guiding the State's action.

Several theories explain the reasons for compliance with human rights norms in international relations and international law literature. Some of these theories are;

- a. *Realist or neorealist theory* argues that States join international treaties after ensuring their capacity to comply (Goldsmith and Posner 2005; Downs et al. 1996 and Fearon 1998 as cited in Hillebrecht 2014, 1104). It assumes international laws are a reflection of existing practices. However, this theory downplayed the role of international law in shaping the practice of human rights among States.
- b. *Rational choice theory or instrumentalist approach* argues that a State may choose to comply with international human rights norms as a result of hegemony, coercion, sanctions, incentives, material self-interest, or reputational concerns (Bates 2015, 1170). This theory assumes other States or regional hegemony have the leverage to push for compliance through trade agreements or providing incentives in the form of conditional aids (Richards and Gelleny 2001; HafnerBurton 2009, 2008 as cited in Hillebrecht 2014, 1104). Also, compliance can be attained through coercion, naming, and shaming; Non-governmental organizations (NGOs), transnational organizations, and other actors may employ

this to encourage States to comply with their human rights obligations (Finnemore and Toope 2001 and Finnemore 1996 as cited in Hillebrecht 2014, 1104).

- c. *The social constructivist theory or normative approach* is based on a hypothesis that “international law helps to shape States’ preferences and facilitates compliance through an iterative process of social learning” (Checkel 2005, 801–826 and Goodman and Jinks 2004 as cited in Hillebrecht 2014, 1104). This approach argues that States choose to comply as a result of continuous interactions, argumentation, and exposure to norms or State practices at international level (Brunée and S.J. Toope 2010 as cited in Bates 2015, 40).

Domestic political institutions have also gained attention as the main pushing factors for compliance. International human rights institutions have weak enforcement mechanisms, and State compliance depends on its willing and able domestic institutions such as the legislator, executive, independent judiciary, civil society, and coalitions (Vreeland 2008; Simmons 2009; Hathaway 2007, 2002; Neumayer 2005; Hafner-Burton and Tsutsui 2004 as cited in Hillebrecht 2014, 1105). According to Hathaway 2002/07 (as cited in Hillebrecht 2014, 1106), media, competitive elections, and civil societies can facilitate the incorporation of international human rights norms in domestic politics.

Some scholars argue that the emphasis given to State compliance as the ultimate goal of international law is not appropriate. They argued too much focus on compliance “‘obfuscates the character of international legal normativity’, and the concept of compliance, especially viewed as rule observance, is inadequate for understanding how international law has normative effects” (Howse and Teitel 2010 as cited in Ayeni 2019). Based on this conceptualization and the social constructive theory discussed above, this chapter analyzes Ethiopia’s compliance with the legal and institutional measures for the elimination of VAW provided under international human rights instruments.

4. Context of VAW and State Measures in Ethiopia

4.1. Magnitude of VAW in Ethiopia

There is a general lack of comprehensive data on all forms of VAW in Ethiopia. The 2016 Ethiopia Demographic and Health Survey (EDHS) has included a module on VAW for the first time. This survey revealed 26 percent of women within the age bracket of fifteen to forty-nine have experienced either physical or sexual violence or both. Of these women, 23 percent and 10 percent have experienced physical violence and sexual violence respectively since age fifteen. Among them, 15 percent and 7 percent of the women have experienced

physical and sexual violence respectively in the twelve months preceding the survey (CSA and ICF 2016, 291).

The EDHS data also shows that women within the age bracket of forty to forty-nine have experienced sexual violence ten times higher than women within the age bracket of fifteen to nineteen. 11 percent of rural women have experienced sexual violence compared to 7 percent of urban women, demonstrating the vulnerability of rural women (CSA and ICF 2016, 292). With reference to geographical distribution, the existing data shows variation across Regional States in the prevalence of physical and sexual violence.⁸

Domestic violence is also prevalent in the Ethiopian community with 34 percent of married women reporting physical, sexual, or emotional violence by their spouses (CSA and ICF 2016, 294). According to EDHS survey, physical (24 percent) or emotional (24 percent) violence is more prevalent than sexual (10 percent) violence among married women (CSA and ICF 2016, 294 and 305). However, the EDHS has not provided data on the prevalence of physical and sexual violence against women younger than fifteen and above forty-nine.

Among VAW, there is also high prevalence of HTPs, FGM and child marriage being the most common ones, though it is declining from time to time. The prevalence of FGM among women aged fifteen to forty-nine was 79.9 percent, 74.3 percent, and 65 percent in 2000, 2005 and 2016 respectively (CSA 2000, 2005, 2016). This has declined to 38 percent, 23 percent and 16 percent prevalence rate among girls below the age of fifteen in 2005, 2011, and 2016 respectively (CSA 2005, 2011 and CSA and ICF 2016).

According to the latest EDHS survey, the most common type of FGM,⁹ among

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- 8 The variation in physical violence extends from 6 percent in Somali followed by 12 percent in Afar to 28, 26, and 24 percent in Oromiya, Sidama and Amhara respectively (EDHS 2016, 291 and 299). The reason for the low prevalence of physical violence in Somali and Afar relates to the religious, cultural, and traditional values that condemn such acts in the region (key informant interviews in Afar and Somali regions, August 2019). It is also important to note that the survey only relays on women's experience of physical violence since age fifteen.
 - 9 World Health Organization (WHO) classifies FGM into four types. These are Type I (clitoridectomy), Type II (excision), Type III (infibulation), and Type IV (cauterization, scraping). Type I involves "partial or total removal of the clitoris and/or the prepuce" while Type II involves "partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora." Type III narrows "the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris." Type IV includes "all other harmful procedures to the female genitalia for non-medical purposes, for example pricking, piercing, incising, scraping and cauterization" (WHO 2014; 28 Too Many 2013, 13). In Ethiopia, Type I and II are the common types of FGM that are prevalent. Type III (infibulation) is "most prevalent in Afar and Somali, but is also carried out to a lesser extent in Harari and Dire Dawa and other regions" (28 Too Many 2013, 35).

women aged fifteen to nineteen years, is excision (73 percent) followed by infibulation (7 percent) (CSA and ICF 2016, 315). FGM continues to exist for cultural and religious reasons. 18 percent of women believe the practice of FGM should continue (CSA and ICF 2016, 315). Though there is a general decline in the practice of FGM among young girls, there is still high incidence rate in Somali (91.65 percent) and Afar Regional States (98.5 percent) in the year 2016. An increase is also observed in Gambella Regional State as shown in the table below, though the reason is not clear.

Tab 3: Trends in FGM prevalence

Regions	FGM Percentage in 2005 EDHS	FGM percentage in 2016 EDHS	Trend
National	74	65.2	-8.8
Afar	91.6	91.2	-0.4
Somali	97.3	98.5	1.2
Addis Ababa	65.7	54	-11.7
Benishangul– Gumuz	67.6	62.9	-4.7
Dire Dawa	92.3	75.3	-17
Gambela	27.1	33	5.9
Harari	85.1	81.7	-3.4
Oromiya	87.2	75.6	-11.6
SNNPR	71	61.7	-9
Tigray	29.3	62	-5.1
Amhara	68.5	24.2	-6.8

Source: EDHS 2005 and 2016

The medicalization of FGM¹⁰ has been reported in the EDHS. Accordingly, 1 percent of women aged between fifteen to forty-nine and 1.9 percent of women below fifteen years have experienced FGM carried out by health professionals (CSA and ICF 2016, 325). A report shows, in 2013, 20 percent of FGM carried out in Addis Ababa is by health professionals (28 Too Many 2013, 38). Following these reports, in January 2017, the Ministry of Health (MoH) banned FGM in health facilities.¹¹

¹⁰ Medicalization of FGM occurs when FGM “is practiced by any category of health-care provider, whether in a public or private clinic, at home, or elsewhere” (See UNFPA. 2018). Brief on the medicalization of FGM is available on <https://www.unfpa.org/resources/brief-medicalization-female-genital-mutilation>.

¹¹ <https://www.afro.who.int/news/ethiopia-bans-medicalization-female-genital-mutilation-fgm>.

Another form of HTPs is child marriage. According to EDHS, 58 percent of women got married before the age of eighteen while 6 percent of women were married before the age of fifteen. The median age at first marriage is 17.1 and 23.8 for women and men aged fifteen to forty-nine (CSA and ICF 2016, 67).

Tab 4: Trends in child marriage

	2011 EDHS	2016 EDHS	Trend
Median age at first marriage among women aged 25-49	16.5	17.1	+1.4
Percentage of women marrying before age 18	63	58	-5
Percentage of women marrying before age 15	8	6	-2

Source: EDHS 2011 and 2016

4.2. Trends in Reporting VAW Incidents

Reporting VAW is relatively low, which makes it difficult to find a comprehensive national data on cases reported, prosecuted, and adjudicated. During the data collection process of this study in August 2019, the main problem identified was lack of separate recording of the different types of VAW cases in law enforcement bodies; physical violence is categorized together with other forms of crimes committed against women such as robbery and assault, which makes it difficult to identify specific VAW cases that are recorded by the police.¹² The exception are cases of sexual violence or rape, which are recorded separately as shown in the table below. Registering VAW requires recording acts of violence that are perpetrated against a woman because of her gender and disproportionately affects women in general. It thus requires separate treatment and recording from other crimes that are committed against women not necessarily on the basis of gender.

Tab 5: Trends in reported incidents of VAW to the police in Addis Ababa

Violence against women and children Reported to the police	2014/15	2015/16	2016/17
Physical violence	262	300	288
Sexual violence	506	430	428

Source: Addis Ababa Police Commission, Women and Children Affairs Department

¹² Addis Ababa police has separate records unlike other Regional States such as Somali and Afar. (Visits conducted to Federal Office of the Attorney General, Regional State justice bureaus and Police Commissions in Addis Ababa, Jijjiga and Semera in August 2019 and 2018).

In Ethiopia, based on a few studies conducted, a large number of women do not report cases of violence (Mulu and Hailu 2018, 98). According to the 2016 EDHS report, 23 percent of women who have experienced physical or sexual violence have sought help. Most victims of violence solicit help from informal help providers such as neighbors (34 percent), family members (31 percent), and family of the spouse (14 percent). Only 8 percent of women sought help from the police. It is less common for women to seek help from formal service providers such as lawyers, medical personnel, or civil society organizations; only 2 to 3 percent have ever sought help from these sources (CSA and ICF 2016, 297). There are various reasons for women to prefer informal help providers. Among these are societal expectations and cultural norms that require women to seek help from elders and keep such matters private or within the family. Lengthy and expensive court proceedings, lack of victim friendly investigative methods, prosecution, and adjudication of VAW cases by formal institutions are also mentioned as factors (Mulu and Hailu 2018, 101-102). Normalization of domestic violence adds to the underreporting and under prosecution of VAW (Mulu and Hailu 2018, 93). In this connection, 63 percent of women and 28 percent of men age fifteen to forty-nine believe a husband is justified to beat his wife in some circumstances; these are burning of food, neglecting children, refusing to have sex, arguing with husbands, and going out without permission from home (CSA and ICF 2016, 293).

Similarly, a baseline survey conducted by the International Law and Policy Institute (ILPI) in 2017 identified 19 percent of sexual and gender-based violence cases committed or witnessed are reported to the formal justice system (Goshu 2017, 16). Among these reported cases, the conviction rate is less due to acquittal and non-trial. Referral of cases to traditional justice systems, absence of parties to the case, conciliation, and lack of jurisdiction resulted in non-trial of most VAW cases. Of 1,140 adjudicated VAW cases analyzed from five Regional States in the ILPI survey, 43 percent ended with acquittal decisions due to lack of evidence and non-trial, constituting 30 percent and 13 percent respectively (Goshu 2017, 7 and 17).

Compared to other forms of VAW, prosecution and conviction rate for HTPs is much lower. According to ILPI report, only 0.35 percent of FGM cases are reported to law enforcement bodies (Goshu 2017, 4). This can be a result of the investment of the government on awareness creation and creating alternative income-generating opportunities for practitioners of FGM than referring cases to the justice system.

4.3. Legislative, Policy, and Institutional Measures (1995-2015)

International and continental human rights instruments call on States “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise” (Maputo Protocol 2003, Article 2(1); CEDAW 1979, Article 2(e)). This requires States to act with due diligence in the prevention of violations of rights and investigation and punishment of acts of VAW by their officials and private individuals. Failing to prevent such acts of violence, States shall be held responsible (CEDAW Committee 1992, para. 9; Byrnes 1989, 237). These obligations are reaffirmed under CEDAW, CRC, CRPD, ACRWC, and Maputo Protocol, which are all ratified by Ethiopia.¹³

Based on its obligations under international human rights law, the Ethiopian government has taken legislative, policy, and institutional measures to address the issue of VAW. This section will focus on the measures that are taken by the government in the period from 1995 to 2015 in compliance with treaty obligations. During this period, relevant treaty bodies have also shared concluding observations based on the country’s report although this section does not attempt to address the measures taken by the government to comply.

The first steps of measures that are taken involve legal guarantees of women’s rights. The Federal Democratic Republic of Ethiopia (FDRE) Constitution, under Article 35(4), prohibits laws, customs, and practices that oppress or cause bodily and mental harm to women in addition to protecting the right to life, bodily integrity, and freedom from inhuman and degrading treatment (FDRE 1995, Article 14, 16, and 18). The Criminal Code adopted in 2005, among other things due to human rights considerations and health implications, criminalize circumcision, child marriage, abduction, rape, violence in marriage and irregular union, trafficking and forced prostitution, child prostitution, physical and psychological injuries, and *quid pro quo* sexual harassment (FDRE 2005, Articles 556, 577, 564, 565, 580, 587-589, 597, 615, 620, 626, 635, 648 and 625).¹⁴ However, it failed to criminalize marital rape and give due consideration to the gender dimension of intimate partner violence. It subscribed similar punishment to intimate partner violence as crimes of physical assault and battery (FDRE 2005, Article 564).

13 Ethiopia ratified CEDAW in 1981, CRC in 1991, CRPD in 2010, ACRWC in 2000, and Maputo Protocol in 2018.

14 Some of these provisions on trafficking in person (article 597, 634) are repealed subsequently by Proclamation no. 909/2015 and 1178/2020, which deals with Trafficking in Persons and Smuggling of Migrants. Article 45(2) of the applicable proclamation 1178/2020 reads “The provisions of Article 243 (2) and (3), from Article 596 to Article 599 and from Article 634 to Article 638 of the Criminal Code are hereby repealed.”

Furthermore, federal and regional family laws have adopted eighteen years as the minimum age of marriage and require respect, support, and assistance between spouses (FDRE 2000, Article 49; Oromiya Regional State 2004, Article 65). Although it is being considered under the ongoing revision, the 1961 Criminal Procedure Code does not provide a special procedure for investigation and prosecution of VAW. Nonetheless, the Criminal Justice Policy adopted in 2011 protects the rights of VAW victims to participate in a criminal investigation, charging, and trial (FDRE 2011, Section 6.2.1). A provision for the protection of the safety of victims during investigation and prosecution of VAW cases is, however, lacking. Special Operational Guideline for the Investigation and Prosecution of VAW, developed by the then Ministry of Justice (currently Federal Attorney General), is applicable at the federal level. This has not yet been adopted by Regional States. There is no law providing for the right to access medical, shelter, legal, and psychosocial services for the rehabilitation of victims or survivors of VAW except in cases that fall under the Proclamation to Prevent and Suppress Trafficking in Persons and Smuggling of Persons.¹⁵

Concerning policy, Ethiopia has adopted a handful of documents dealing with VAW directly or indirectly. These include the National Policy on Women (1993), Social Protection Policy (2014), and Criminal Justice Administration Policy (2011). The Social Protection Policy provides for the protection of victims of VAW through community-based services, psychosocial, and legal services that rehabilitates victims.

The other relevant policy document, with a specific focus on VAW, is the National Strategy and Action Plan on HTPs against Women and Children in Ethiopia adopted in 2013. This strategy is now replaced by a National Costed Roadmap to End Child and FGM/C 2020-2024 adopted by the Ministry of Women, Children and Youth (MoWCY). The government had also adopted a five years strategic document on Integrated and Multi-Sectoral Response to VAW and Child Justice in Ethiopia in 2011. These policy documents put in place multi-sectoral and comprehensive VAW prevention and response mechanisms.

Institutional reform geared towards addressing VAW has also been undertaken. A National Coordinating body with a supporting technical committee was

15 The Proclamation to prevent and suppress trafficking in persons and smuggling of persons provides that victims of human trafficking and smuggling who suffer from serious illness or injury will get access to medical treatment from governmental and non-governmental institutions upon the order of the police. It also establishes a victim fund for the rehabilitation of victims of human trafficking and smuggling. The fund covers the costs of medical, psychological and legal counsel, transportation, and other services for victims. (See article 19 (4), 27, 28 and 29 of Proclamation No. 1178/2020).

established in 2013 to coordinate a comprehensive prevention and response activities on VAW and Child Justice. It coordinates efforts to combat VAW under the leadership of the Federal Attorney General. A Memorandum of Understanding was signed in 2011 among nineteen governmental organizations, both at the federal and regional level, and NGOs as its members (UN Women 2016). Currently, there is also a National Alliance on the Elimination of FGM and Child Marriage, chaired by and with a Secretariat at MoWCY. The alliance comprises of governmental and non- governmental organizations working on issues related to child marriage. A National FGM Network was also established in 2010, chaired by MoWCY with members from governmental and non-governmental organizations; it is replicated in four Regional States: Amhara, Tigray, Somali, and Southern Nations, Nationalities and Peoples Republic (SNNPR) (28 Too Many 2013, 64).

In an effort to respond to VAW, one-stop centers for survivors of VAW are established to make legal and health services accessible in different hospitals across the country. These centers provide a comprehensive service including medical checks, counseling, and crime investigation services in one place. The one-stop centers have medical, psychological/psychiatric professionals, police, and prosecutors to provide all the services victims need (UN Women 2016). Modeled after Thuthuzela Centers of South Africa and the Agaseke one-stop center in Rwanda, a one-stop center was first established in 2008 at Gandhi Hospital, Addis Ababa (UN Women 2016).

A family bench and child protection centers, including child-friendly courts and special police units, have been established in response to sexual violence (Addis Ababa University 2017, 4). However, most of these initiatives have not been accessible all over the country. The challenge of accessibility and sustainability has been raised as they are urban-based and dependent on international donor support (Addis Ababa University 2017, 33).

At national level, very few safe houses or shelters exist for rehabilitation and reintegration of VAW victims. According to an assessment conducted by UN Women in 2016, twelve shelters exist nationwide (five in Addis Ababa, two in Benishangul Gumuz, two in Oromiya, one each in Amahara, Dire Dawa and SNNPR). Most of these shelters are operated by NGOs except for Dire Dawa, which is managed and fully funded by the government. Most of these safe houses are also located in major urban areas. Some of these shelters, however, do not accommodate women with physical and mental disabilities and pregnant women. The reason for this is the absence of disability-friendly facilities and antenatal care in these shelters (UN Women 2016, 15-16).

5. Ethiopia before UN and AU Human Rights Treaty Bodies

One of the requirements for States to comply with human rights is ‘to surrender a degree of sovereignty’ and permit some degree of international scrutiny (Sikkink 1993, 142). In doing so, States are required to make reports on treaty ratifications, incorporate human rights norms in domestic laws, and implement treaty obligations (Dunne and Hanson 2009, 70).

Ethiopia has ratified most of the core UN human rights instruments including CEDAW (1981), CRC (1991) and AU treaties such as the Maputo Protocol (2018), African Charter (1998), and ACRWC (2000) that address VAW.¹⁶ Based on its ratification, Ethiopia is required to submit periodic reports for review under these instruments. The periodic review is conducted to assess the compliance of the State with the obligations under each treaty. It reflects on the measures the State took to comply with its treaty obligations. In Ethiopia, MoWCY assume the reporting responsibility to CEDAW and CRC while the Federal Attorney General prepares reports on other UN and AU instruments ratified by Ethiopia (FDRE 2016, Article 6 (8(e)); FDRE 2015, Article 36 (1(j))).

Shadow or parallel reports can be prepared and submitted by NGOs and National Human Rights Institutions (NHRIs). Reports by the State, NGOs, and NHRIs are reviewed by each treaty body, composed of independent experts, and provide its concluding observations or recommendations. Individuals can also submit complaints to treaty bodies if the State agrees to it (UNOHCR 2012).

Concluding Observations by treaty bodies are considered as soft instruments that assess States’ compliance with the obligations under the treaty. It serves to attract public attention to State’s failure to meet obligations and pinpoint areas that need improvements. In such a way, it plays a retrospective as well as the prospective role (Gemedo 2016, 36). The discussion below, thus, focuses on the concluding observations provided by treaty bodies and the outcomes.

5.1. Review of Ethiopia’s Report by the UN and AU Treaty Bodies

At the UN and AU level, Ethiopia has submitted reports to all treaty bodies at various times. The country reported to CEDAW Committee, CRC Committee, ACHPR, and ACERWC, which are discussed under this chapter. Ethiopia has submitted four reports to the CEDAW Committee in 1996, 2004, 2011 and 2018. The country has reported to the CRC Committee in 1995, 1998, 2005, and 2012. Based on the submissions, it has received Concluding Observations

¹⁶ Ethiopia has ratified CERD in 1976, CEDAW in 1981, CRC in 1991, ICCPR in 1993, ICE-SCR in 1993, CRPD in 2010 and CAT in 1994.

and comments from the two committees. This Chapter focuses on the latest Concluding Observations selected based on relevance and timeliness.

The latest concluding comments by CEDAW Committee (2011 and 2019) and CRC Committee (2015) raised a series of concerns and recommendations in the observation of women's rights provided under these international documents. In its 2011 Concluding Observation, the CEDAW Committee highlighted its "concern at the persistence of adverse cultural norms, practices and traditions as well as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life" (CEDAW Committee 2011, para. 18). It also noted that FGM remained highly prevalent in rural and pastoralist areas. The Committee stated "[FGM] and sexual, domestic and other forms of violence against women are underreported owing to cultural taboos and victims' lack of trust in the legal system" (CEDAW Committee 2011, para. 20). Likewise, the CRC Committee raised its concern in the lack of enforcement of laws that criminalized FGM against girls in all its forms, as well as forced, early and promissory marriages, and marriage by abduction (CRC Committee 2015, para. 47).

Furthermore, the CEDAW Committee highlighted that

Criminal law provisions are not consistently enforced because of insufficient allocation of funds, lack of coordination among the relevant actors, low awareness of existing laws and policies on the part of law enforcement officials, lack of capacity to apply the law in a gender-sensitive manner and discriminatory societal attitudes (CEDAW Committee 2011, para. 20).

The 2019 Concluding Observations by the CEDAW Committee, in particular, stated its concern on emerging forms of violence such as acid attacks and gang rape. It also raised the lack of effective implementation of the Strategic Plan for Integrated and Multi-Sectorial Response on Violence against Women and Children and lack of sufficient training on VAW among law enforcement bodies (CEDAW Committee 2019, para. 23).

The State's failure to criminalize marital rape, lack of victim assistance and rehabilitation services, and absence of disaggregated data on prosecution and conviction rates of VAW cases were also underlined. Lack of data and assistance to victims of trafficking was also emphasized (CEDAW Committee 2011, para. 20 and 24). The CEDAW Committee specifically pinpointed its concern against members of the Ethiopian National Defense Force (ENDF) and of private militia groups for allegedly committing sexual violence including rape, torture, and killings in areas such as the Ogaden of Somali Regional State (CEDAW Committee 2011, para. 22). For this, the State was urged to investigate the alleged

claims, prosecute perpetrators, and provide compensation and rehabilitation to survivors (CEDAW Committee 2011, para. 24).

The CEDAW Committee also indicated its concern about the 2009 Charities and Societies Proclamation which bars local and international Civil Society Organizations (CSOs) working on human rights from acquiring more than 10 percent of their funding from foreign sources (CEDAW Committee 2011, para. 28).

Based on the concerns stated above, both CEDAW and CRC Committees recommended the State to put in place a comprehensive strategy to eliminate HTPs including public education and enforcement of the criminal law in collaboration with CSOs (CRC Committee 2015, para. 48; CEDAW Committee 2011, para. 19). The CRC Committee recommended the designing of strategies and programs to combat sexual exploitation and abuse targeting vulnerable children such as girls, children on the street, refugees, children with disabilities, children living in family-like and alternative care settings and rural area (CRC Committee 2015, para. 44(b)). Adequate resourcing of institutional bodies responsible for the monitoring, investigation, and prosecution of cases of VAW is also recommended by the CRC Committee (CRC Committee 2015, para. 44(c)).

Both Committees also recommended strict penalties for FGM, criminalizing marital rape, encouraging women to report VAW cases and enhance assistance and rehabilitation for VAW survivors (CRC Committee 2015, para 48; CEDAW 2011, para. 21). The CEDAW Committee recommended the State to address the root causes of trafficking and collect disaggregated data on trafficking and HTPs cases, establish a mechanism for victims' identification, referral, and assistance (CEDAW Committee 2011, para 25).

Further, CEDAW Committee recommended the adoption of a comprehensive and inclusive law on gender-based violence, addressing all forms of VAW, including acid attacks, domestic violence, rape, marital rape, gang rape, and other forms of sexual violence. It also urged the State to implement the Committee's previous recommendations to amend the Criminal Code of 2005 to increase penalties for FGM and repeal Article 563 of the Criminal Code that empowers the court to have a discretionary power of giving a warning instead of loss of liberty for HTPs committed to endanger the life or cause bodily injury of pregnant women and children. It noted that the Criminal Code needs to criminalize marital rape and exclude the applicability of extenuating circumstances in domestic violence cases. It further recommended for effective implementation of the Strategic Plan for Integrated and Multi-Sectorial Response on VAW and training to

law enforcement officials on a gender-sensitive investigation, prosecutorial procedures, and techniques (CEDAW Committee 2019, para. 24).

At AU level, Ethiopia has submitted four reports to the ACHPR (2005, 2007, 2013, and 2015), an initial report to ACERWC (2014), and is expected to submit its initial report on the Maputo Protocol to the ACHPR in 2020. In its review of the report submitted by Ethiopia in 2015, the ACHPR has raised its concerns about the prevalence of VAW and persistent HTPs such as FGM and child marriages (ACHPR 2015, para. 36(iv) and (v)). In its recommendations, it highlighted the need to build “operational and institutional mechanisms to combat violence against women and children and provide support to victims of violence” (ACHPR 2015, para. 49 (ii)). It also recommended Ethiopia to ratify the Maputo Protocol as it was not ratified at the time (ACHPR 2015, para. 47(iii)). Likewise, in its 2015 concluding recommendations, ACERWC recommended the State to combat violence against children and girls, end impunity of perpetrators of VAW, and build the capacities of the specialized police units to investigate and prosecute violence against children (ACERWC 2015, para. 23).

5.2. State Compliance with the Concluding Observations on VAW (2015-2020)

The concluding observations discussed above focused on the existing institutional and legislative gaps in the country. They are specific and require the State to target systematic changes. Most of the recommendations require strengthening existing institutional and coordination frameworks for better protection of women and children from violence. It also requires specific actions such as the adoption of a comprehensive law on VAW and establishment of rehabilitation centers. All these require political will and commitment from the State by allocating resources and strengthening institutional measures. Under this section, the latest recommendations of the ACHPR, ACERWC, CEDAW, and CRC Committees are used as a reference point to assess compliance of the Ethiopian State.

In the period between 2015 and 2020, the Ethiopian government has shown some progress to comply with international obligations in line with the concluding observations. As recommended by the ACHPR, the State has ratified the Maputo Protocol in March 2018 with some reservations and declarations.¹⁷

¹⁷ Ethiopia has put a number of reservations and declaration under article 3 of Proclamation No. 1082/2018 during its ratification of the Maputo Protocol. The declarations entered provide that Ethiopian law will be applicable on several issues including in relation to the decriminalization of forced sex in private and dispensation of a minimum age for marriage though the Maputo Protocol requires States to legislate on forced sex in private and make 18 minimum

Upon the ratification of the Protocol, Ethiopia only accepted obligations that are compatible with its existing laws. This implies the Protocol will not bring any additional obligation that leads to bring about the change or amendment of laws. The approach taken by the government in the ratification process reduces the instrumentality of the Protocol to serve as a tool for advocacy, for change of laws in matters covered by it.¹⁸ Remarking the limitations these reservations have on the protection of women's rights, the CEDAW Committee in its 2019 Concluding Observations recommended the State to withdraw the reservations to the Maputo Protocol, in regards to marital rape and polygamy in particular (CEDAW Committee 2019, para. 58); the State has yet to comply with this recommendation.

Based on its commitment to end FGM and child marriage by 2025 at the Global Girls' Summit in London in 2014, the Ethiopian government has put in place a National Costed Roadmap to End Child Marriage and FGM (2020-2024). The Roadmap stipulates the key strategies, approaches, evidence-based interventions, and its cost thereof to achieve the national target to eliminate child marriage and FGM by 2025. It aims to achieve Sustainable Development Goal (SDGs) Target 5.3, which sets out to "eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation". With this overarching purpose, the National Roadmap clearly defined the role of different actors and establishes accountability mechanisms to end child marriage and FGM in Ethiopia; its enforcement is yet to be seen.

Other strategic documents such as the HIV/AIDS Strategic Plan (2015-2020), National Reproductive Health Strategy (2016-2020), and National Refugee Strategy for Prevention and Response to Sexual and Gender-based Violence (2017-2019) have also been developed with provisions that aim to support girls' clubs and sexual and reproductive health education in schools and to protect refugees from sexual violence. The later strategy in particular aims to improve collaboration against sexual violence and FGM across sectors such as health, social care, police and judiciary, and community-based structures.

Based on the recommendations in the concluding observations, the State has adopted Civil Servant Proclamation and Labor Proclamation prohibiting sexual

age of marriage under Article 4(2)(a) and 6(b). The first declaration is meant to imply that the provisions of the Protocol, which provide the criminalization of forced sexual act in private, is not deemed to cover marital rape in Ethiopia.

¹⁸ It does not create a new agenda for any advocacy group to promote the Protocol based on issues related to violence against women. For example, the criminalization of marital rape is not included in the Protocol, which would have created a new agenda for Ethiopia that does not specifically and explicitly criminalize marital rape.

harassment in government institutions and private enterprises in 2017 and 2019 respectively.¹⁹ A proclamation to Prevent and Suppress Trafficking in persons (Proclamation No. 909/2015) was revised and adopted in early 2020 into Proclamation No. 1178, with strict punishment on human traffickers and provision of rehabilitation for victims of human trafficking. A National Child Policy was adopted in 2017, which aims to protect children from harm or abuse, ensure speedy trial in cases involving children, and establish child-friendly justice system. It further aims to strengthen legal and rehabilitation centers to child victims of violence and the expansion of child-friendly tribunals/courts.

In the period between 2016 and 2018, one-stop centers have expanded in Addis Ababa at Menelik, Paulos, and Tirunesh Beijing General Hospitals. These centers were also established in Regional States' hospitals in Oromiya, Tigray, Amhara, Somali, Gambella, Jigjiga, and Benshangul Gumuz.²⁰ The centers provide psycho-social, medical, and legal services by gynecologists, nurses, psychologists/psychiatrists, radiologists, police, and prosecutors (UN Women 2016). However, some of these centers do not have legal services though they are named as one-stop centers; these centers refer cases to the nearby police by establishing a referral linkage.²¹ Generally, the centers are required to comply with infrastructural requirements that make victims feel safe and protected by availing child-friendly rooms and separate rooms for physical examinations, consultation, and crime investigation. They also need to secure victim's case files by registering their medical history separately from other patients and keeping it in a lockable file cabinet (MoH 2016). Though there is an effort to comply with such requirements, interviews revealed that some of the one-stop centers have failed to do so. These centers are also challenged with shortage of trained human

19 Article 2(13) Federal Civil Servant Proclamation No. 1064/2017 and Article 2(11) of Labor Proclamation 1156/2019. Article 2(13) of Proclamation No. 1064/2017 defined sexual harassment as "unwelcome sexual advance or request or other verbal or physical conduct of a sexual nature and includes unwelcoming kissing, patting, pinching or making other similar bodily contacts; following the victim or blocking the path of the victim in a manner of sexual nature and put sexual favor as a prerequisite for employment, promotion, transfer, redeployment, training, education, benefits or for executing or authorizing any human resource management act." However, Labor Law Proclamation No. 1156/2019 adopted a narrow definition under Article 2(11).

20 As of June 2020, eleven hospitals established one-stop centers to provide holistic medical, psycho-social, legal services to survivors of GBV while preparation is undergone to open four additional centers.

21 Among four one-stop centers visited in Addis Ababa (Gandi and Paulos Hospital), Oromiya (Adama Hospital) and Somali (Kara Mara Hospital), the women friendly clinic at Paulos Hospital and Kara Mara Hospital do not have legal service at the centers (visit conducted to Gandi, Paulos, Adama and Kara Mara Hospitals in August 2019).

resources because of the limited number of health workers trained on clinical management of VAW cases organized by the MoH since 2016.

The health sector has also developed a standard operating procedure (SOP) for the response and prevention of sexual violence in 2016. The procedure was developed in collaboration with MoWCY, Federal Supreme Court, Federal Police Commission, Addis Ababa Police Commission, and the Ethiopian Society of Gynecologists (ESOG). The SOP provides the responsibilities of each actor with a guideline on how to handle sexual violence cases and create multi-sectoral coordination mechanisms and referral systems. It provides a guiding format to obtain consent for medical consultation, medical certificates, and referral. However, there are gaps in its enforcement because of a shortage of the required human resources, weak coordination, lack of joint planning and implementation, and infrastructural gaps.

Since 2017, community conversations involving religious and community leaders have been conducted in various parts of the country. The women developmental army (WDA) and health development army (HDA), a group established by the relevant government sectors, have been instrumental in awareness creation activities against HTPs. Human Rights clubs and girls club in schools have also been active in campaigning against HTPs (MoWCY 2020- 2024, 32).

Further, the country has taken various legal reforms since 2018, with the coming into power of a new administration, which created an opportunity for the implementation of recommendations by international and regional institutions. The State has undertaken a comprehensive law reform which resulted in the revision of legislations such as the Charities and Societies Proclamation (Proclamation no. 621/2009),²² which directly addressed the recommendations of the treaty bodies such as CEDAW Committee and CRC Committee. The new proclamation created a conducive environment for Civil Society Organizations (CSOs) to engage in the protection of women's rights. This is expected to strengthen CSOs' capacity to engage in public education and awareness, advocacy, provision of legal aid services, monitoring of the protection of the rights of survivors of VAW, and following up on the implementation of treaty bodies' concluding observations.

The State has not yet complied with recommendations that require the amendment of the criminal law and the adoption of a comprehensive law on VAW that criminalize all forms of VAW. With the coming to an end of the Strategic Plan for Integrated and Multi-Sectorial Response on VAW in 2017, weak multi-

22 The new Proclamation that repealed Proc. 621/2009 is Organizations of Civil Societies Proclamation No. 1113/2019.

sectoral coordination in response to VAW has been observed. There are also capacity gaps to undertake a gender-sensitive investigation and prosecution of VAW cases. The State is yet to implement the recommendations to strict enforcement of the criminal law provisions on HTPs and avail disaggregated data on VAW including the number of reported cases, prosecuted, and convicted cases. The capacity of the State to prosecute sexual violence cases in a gender-sensitive manner requires to be strengthened.

5.3. Individual Complaint at the ACHPR

As the trend shows, individuals' access to international fora to pursue a cause is limited in Ethiopia. Despite treaty bodies' recommendations, Ethiopia has not ratified the optional protocols to CEDAW and CRC, which provide for individual complaint mechanisms.²³ Hence, individuals do not have access to take their cases to treaty bodies of the UN. However, at AU level, African Charter and ACRWC have an in-built mechanisms within the Charters to enable individuals access the ACHPR and ACERWC in cases of violation of their provisions (ACRWC 2000, Article 44; ACHPR 1981, Article 55).

Based on this, a case was brought against Ethiopia by Equality Now and Ethiopian Women Lawyers Association (EWLA) related to VAW before the ACHPR in 2007 (*Equality Now and EWLA vs. Ethiopia*, ACHPR 2016).²⁴ The case involved a minor who has been abducted and raped in the Southeast part of Ethiopia. After exhausting all local remedies in the country, the two CSOs submitted a complaint to the ACHPR. In 2016, the ACHPR held Ethiopia responsible for failing to prevent the abduction and rape of the victim (a minor child) and recommended a thorough investigation and prosecution. The Commission also decided that Ethiopia has violated its obligations under the African Charter to protect the right of a person to integrity, liberty, security, dignity, protection from inhuman and degrading treatment, and protection of the law. The Commission decided for the victim to be compensated for USD150,000 by the Ethiopian government. It further provided that the government should provide measures to prevent abduction and rape, prosecute offenders, train the judiciary on handling VAW cases, and report on its compliance with the decision within 180 days (*Equality Now and EWLA vs. Ethiopia*, ACHPR 2016).

23 Optional Protocol to CRC on Communications Procedure adopted 2011 and entered into force in 2014 (A/RES/66/138) and Optional Protocol to the CEDAW adopted 1999 and entered into force 2000 (A/RES/54/4).

24 *Equality Now and Ethiopian Women Lawyers Association (EWLA)*. Federal Republic of Ethiopia, Communication 341/2007 (2016) - African Commission on Human and Peoples' Rights (ACHPR) (16 to 25 February 2016, Banjul, The Gambia).

Concerning Ethiopia's compliance with the decision, there is no official report. There is no direct measure taken by the Ethiopian government with the intent to comply to pay the monetary compensation of USD150,000. In its reply to the ACHPR, the government claimed it has already compensated the victim before the decision was passed without any evidence to its effect. Nevertheless, there are several measures taken, which reinforce compliance with some of the recommendations such as the prosecution of offenders and judiciary training by the government with the support of international organizations. It should be noted that there is no reference to compliance whenever these measures are taken.

Irrespective of the enforcement of the decision, this case is groundbreaking in shaping international jurisprudence related to VAW. In the case at hand, the ACHPR for the first time laid its jurisprudence to hold a State responsible for its failure to prevent and provide redress to a victim of VAW perpetrated by non-state actors. It established the due diligence obligation of States to prevent VAW, protect victims, and punish perpetrators. Moreover, it is also significant as it shows States can be held liable for their failure to protect victims of VAW under their jurisdiction. Though this decision is applauded for holding the State responsible for its failure to comply with its due diligence obligation to prevent or investigate, prosecute and punish VAW, and provide an effective remedy in the form of monetary compensation, it is criticized for its failure to declare the act of rape and abduction as gender-based discrimination for the lack of comparator that shows there is a person who is accorded protection and justice for a similar situation (ESCR-Net n.d).

The lack of follow-up and enforcement mechanisms at regional and national level is the main problem for the implementation of decisions by the ACHPR (Murray and Mottershaw 2014, 352). Implementation of such decisions relies on the goodwill of domestic institutions. And thus, compliance depends on the strength and commitment of these domestic institutions and a push from civil society organizations and media. When the decision on this case was passed in 2016, most CSOs dealing with women's rights issues in Ethiopia were restricted by law to involve in advocacy of human right issues. However, the experience in other countries shows that CSOs and the media can mobilize compliance with a ruling of human rights bodies by putting pressure on State actors and publicizing the rulings to create transparency to the compliance process (Hillebrecht 2014, 1108). With the present more progressive CSOs law, the follow-up of decisions still requires a concerted effort of all actors including the government and non-governmental organizations.

6. Strategies to Comply with International Obligations

Thomas Risse and Kathryn Sikkink suggest socialization for the internalization and implementation of international human rights norms. Accordingly, there are three mechanisms and processes to bring change in the implementation of human rights obligation of States (Risse and Sikkink 1999, 2). These are:

- the process of instrumental adaptation and strategic bargaining
- the process of moral consciousness-raising, augmentation, shaming, dialogue and persuasion, and
- the process of institutionalization and habitualization.

At the initial stage, norm adaptation becomes important followed by the later processes (Risse and Sikkink 1999, 5). The instrumental adaptation is reflected in the adoption of international human rights norms and instruments. In this regard, instrumental gains or material interests might be an incentive for States' tactical concession (Risse and Sikkink 1999, 12). The Ethiopian government, though considered as authoritarian, has ratified most international human rights instruments protecting women from VAW.

The second step is argumentative discourse or shaming, which was not effective in Ethiopia because of the restriction on CSOs from taking such roles. Due to the repressive nature of the previous legislation, few CSOs worked on women's rights, such as EWLA and NEWA (Network of Ethiopian Women Associations), despite the challenges to raise funds and operate in full capacity. Others, such as *Setawee* and Yellow Movement worked through movements targeted at VAW. The previous Charities and Societies Proclamation has been replaced by Organizations of Civil Societies Proclamation 1113/2019. However, the effect of the revision of the proclamation in opening up space for CSOs to serve as catalysts for change is yet to be analyzed.

The last stage is norm institutionalization and habitualization, which demands time and effort from all actors to bring change. This can be achieved by making both top-down and bottom-up changes. The top-down approach can be achieved by adopting laws followed by strict enforcement. However, to bring change within the society, this should be supported by a bottom-up approach by working at the grassroots level. Bringing change within society facilitates the implementation of laws. According to Sally Merry, compliance with global human rights norm "depends on the extent to which legal concepts and norms are embedded in consciousness and cultural practices" (Merry 2006, 89).

The cultural construction of gender relations has been considered as a constraint, where governments used cultural rationalization of women's rights violations to escape critics (Xanthaki 2019, 702). 'Cultural defense' is used to resist the implementation of women's rights by governments; the view that culture should be valued as it is and respect for cultural diversity despite its human rights implications threatens the rights of women (Holtmaat and Naber 2011, 2). However, the obstacle for change lies in the belief of cultural essentialism, the presentation of culture as fixed and innate. This is criticized as culture can change through time depending on circumstances. Culture can thus be subject to change by adopting a bottom-up approach. It may also be used to reinforce and complement human rights standards. This requires awareness creation and community level mobilization. The strategies to be used should not impose 'foreign' values and norms but rather entertain local culture to bring change through community conversations and dialogue.

The Joint General Comment of CEDAW and CRC on HTPs compliments this approach. It requires "the establishment of a well-defined, rights-based and locally-relevant holistic strategy which includes supportive legal and policy measures, including social measures that are combined with a commensurate political commitment and accountability at all levels" (CEDAW and CRC Committees 2014, para. 32). It envisages coordination across sectors as well as among local, regional, and national level actors including traditional and religious institutions (CEDAW and CRC Committees 2014, para. 33). The coordination should further be supported with appropriate legislation, strategies, and plans. Adequate budget and human resource are also needed for the implementation of legislative measures. This requires the involvement of stakeholders such as national human rights institutions and CSOs to monitor implementation of the strategies (CEDAW and CRC Committees 2014, para. 34 and 35).

7. Conclusion

Ethiopia has taken legislative, policy, and institutional measures to eliminate VAW in compliance with its international human rights obligations. Several improvements have been achieved, although a lot remains to be done to strengthen the normative and institutional framework to eliminate VAW. More importantly and with emphasis, it should be noted that Ethiopia has not complied with all obligations under international human rights law to end VAW. There is a legislative lacuna in its responses; there are new forms of VAW, which have not yet been criminalized under the criminal law such as acid attack and gang rape. There is no legal provision providing for a protective order and requiring mandatory reporting of VAW cases under the Ethiopian legal system. At an institutional level, budget constraints, gaps in the institutional capacity to

investigate and prosecute cases of VAW, and lack of gender-sensitive and rights-based approach are the major challenges. The State has not also adequately addressed the needs of survivors of VAW through rehabilitative service provisions and coordination of the multi-sectorial response.

These challenges call for the adoption of a comprehensive law on VAW that protects victims and encourages women to report cases of VAW. In doing so, it needs to address the lacuna in the current laws and repeal provisions that compromise on the rights of women to be protected against VAW. The current legislative and institutional reform that has been initiated at several levels is an opportunity for the country to improve its record on gender equality and the elimination of VAW by ensuring normative compliance. The State should also strengthen its institutional capacity to enforce provisions of the criminal law on VAW through training to law enforcement officers, prosecutors, and judges. In addition, it is important to create bottom-up strategies that address the issue of VAW at the grassroots level. For this purpose, the concerted effort of various local actors and CSOs working on women's rights is necessary. CSOs and national human rights institutions need to put in place an effective follow-up mechanism to monitor State compliance with international human rights obligations. Furthermore, the international community including development partners should support the government to mainstream the issue of protection from VAW in the overall development agenda. The State needs to allocate adequate resources for the prevention of VAW and rehabilitation of victims through the provision of medical, psychological, legal services, and shelter. It is also pivotal to establish a data recording system that can provide disaggregated data on VAW including the number of reported, prosecuted, and adjudicated cases as per the recommendations. Hotline service should also be available to support reporting and assist victims.

Reforming the Legal Definition of Rape in Ethiopia: Towards the Elimination of the Resistance Requirement

Fana Hagos Berhane

*“...the alleged rape occurred during day time, why did the complainant not cry out for help? ... Why is that she does not have any bruises or other marks on her body?”
(Teklay Berhe vs. Prosecutor, 2018a, 12).*

1. Introduction

Sexual violence is an attack against the integrity and sexual autonomy of a person and constitutes a violation of a range of fundamental human rights. Rape is by no means solely a crime under law but also a social problem. The Committee on the Elimination of all forms of Discrimination against Women (CEDAW Committee) urges governments to take necessary and effective measures to combat all forms of gender-based violence, irrespective of the place or who the perpetrator is (CEDAW Committee 1992). States are obliged to prevent, investigate, prosecute, and penalize rape and sexual assault through domestic criminal laws. Hence, how rape is defined under domestic laws is crucial to provide sufficient protection for women and girls against gender-based violence. Globally, changes have been observed in the definition of rape under criminal laws, following movements by feminists and other advocates for greater protection of women’s rights. Although the definition of free consent or lack thereof may vary across the board, increasing number of countries now defines rape on the basis of lack of consent rather than based on the force element or resistance requirement.

Under the Criminal Code of the Federal Democratic Republic of Ethiopia, rape is defined as “an act of compulsion of 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” (Article 620(1)).

The reading of this suggests that proof of the presence of violence or grave intimidation inflicted by the perpetrator or proof of the victim's state of inability to resist is required. This, as argued in this chapter, has the effect of thwarting a successful conviction of rape charges. There is a paucity of research in Ethiopia on the gaps in the existing rape law. Hence, the purpose of this chapter is to stimulate and contribute to discussions examining the rationality of the force or resistance requirement as a primary condition in the legal definition of rape.

Therefore, the first section of this chapter examines the historical foundation of the resistance requirement in rape laws and shades light on how the approach of affirmative consent became the central element in the definition of rape. The adoption of and recommendations for a consent based definition of rape in the jurisprudence of human rights treaty bodies is examined in the following section. The third section looks into definition of rape under the Ethiopian criminal law while the fourth section provides an insight on Ethiopian courts' application of the resistance requirement, by analyzing purposively selected court cases from Tigray region. It argues, in the absence of legislative guidance on what constitutes 'violence' and 'resistance', judicial interpretations are based on myths about rape and gender stereotyping. Finally, the chapter calls for a reform positioning the lack of consent at the center of the legal definition of rape, to pave way for a better protection of Ethiopian women and girls from rape and other sexual violence.

2. Resistance Requirement in Rape Laws

Dating back to ancient codes and Roman law, rape has been a crime (Alta 2019, 342). Until mid-twentieth century, however, the crime of rape largely focused on protecting men's property rights, women being their possessions (Hanus 2016, 1145). Traditionally, the English common law defined rape as the carnal knowledge of a woman, "by force" and "against her will"; the prosecution, thus, had to prove three elements beyond a reasonable doubt: carnal knowledge, force, and lack of consent (Schwartz 1983, 567). Of course, rape laws under the English Common Law have been subjected to many changes through time. As Edwards described it, the required degree of resistance has changed from reflecting "death before dishonor" credo to the requirement that a victim should resist her assailant "to the utmost" (1996, 245).

Legal scholars and advocates have long been arguing that a woman's right to privacy and to refuse to sexual advances should be protected, and thus lack of consent should be made part of the definition of rape (Edwards 1996, 252). Accordingly, many countries have discarded the traditional common law requirement of resistance in favor of the requirement of existence of valid consent approach (Raphael 2011, 147). Most of these reforms took place during the late

1970s with a focus on consent and expanding the notion of force to include other forms of seemingly non-violent forces beyond physical violence (Kaplan 2017, 1078). Under the contemporary understanding of rape, consent to sexual intercourse is the touchstone of criminal regulations where most jurisdictions have formally abandoned the requirement for resistance, acknowledging it is ill-suited to measure lack of consent. Though not universally accepted, most jurisdictions now accept that ‘no’ is sufficient to establish non-consent, even when there is no additional force of any kind, be it physical, psychological, situational, or otherwise (Stephen 2017, 335).

The Canadian Sexual Assault Law adopted an affirmative consent standard by defining ‘consent’ as ‘the voluntary agreement of the complainant to engage in the sexual activity in question’ (Gotell 2008, 865-898). Similarly, Swedish rape law is amended to remove a previous definition of rape that requires a victim to be compelled by force. The new law criminalizes intercourse or any other sexual act with a person “who is not participating voluntarily” (Council of Europe 2020, 10). Where no reasonable measures are taken to establish the victim’s consent and sexual acts are carried out nonetheless, it amounts to criminal liability through negligence (Council of Europe 2020, 12). Most European countries follow the consent approach with respect to the definition of rape. Greece has been reported to be the latest EU Member State to recognize sex without consent as rape (Amnesty International 2019, 3). In the US as well, most States have removed the resistance requirement from the legal definition of rape. For example, the Minnesota statute that governs the evidence needed in criminal sexual conduct cases states that “in a prosecution there is no need to show that the victim resisted the accused” (Sandoval 2019, 456-480). Sandoval’s research also demonstrated that in States that have eliminated the resistance requirement, victims who previously would not have been able to go to court could do so without fear (Sandoval 2019, 460-461).

Similar progress on the adoption of the contemporary understanding of rape is also being observed in some African countries. For instance, the 2006 Sexual Offences Act of Kenya defines rape as intentional and unlawful penetration of one’s genital organs without the consent of the other person, or with consent obtained by force, threats, coercion or intimidation (Section 3). The Act has made a paradigm shift from the conventional approach by incorporating a definition of consent, which states that ‘a person consents if he or she agrees by choice, and has the freedom and capacity to make that choice’ (Section 42). The South African Criminal Law Amendment Act of 2007 also provides a similar definition of rape as an act of sexual penetration ‘without the consent’ of a person (Section 3).

Such a move towards the abandonment of resistance as a requirement and the adoption of absence of affirmative consent is a positive drive in the effort to reduce the prevalence of and impunity for sexual crimes. The subsequent section examines adoption and recommendation of consent based definition of rape in human rights instruments and the jurisprudence of human rights treaty bodies.

3. Consent-based Definition of Rape and International Human Rights Law

Sexual violence, as a form of gender-based violence, infringes the human rights and freedoms of individuals and also has far-reaching repercussions in all societies. The United Nations Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty” (DEVAW 1994, Article1). The Vienna Declaration and Program of Action (VDPA), emerging out of the World Conference on Human Rights in 1993, stipulated that “gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated” (VDPA 1993, para. 18).

The right not to be discriminated against, including on the basis of gender, is one of the most fundamental rights, which must be respected in order for other rights to become meaningful. In 1979, the UN General Assembly adopted the legally binding Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also known as the International Bill of Rights for Women. This is the first international treaty that comprehensively addresses women’s rights, not only within civil and political spheres, but also within economic, social, cultural, and family life. While extensively covering different forms of discrimination against women, the CEDAW provisions make no reference to violence against women and do not clearly deal with the sexual autonomy of women. There is still no core human rights treaty at the UN level with a binding text that explicitly stipulates sexual violence as violation of fundamental human rights.

Nevertheless, it has long been argued that there are multiple gains in categorizing violence against women, in particular rape, as a particular human rights concern. For instance, Maria Eriksson argues that recognizing rape as a human right violation is advantageous because measures to eliminate such violence become legal entitlements for individuals and are not left to discretion of States (Eriksson 2011). It leads to access to important mechanisms, such as regional courts and UN treaty bodies. It also provides a framework to measure the progress of States. The rights framework can further lend legitimacy to the actions

of institutions and organizations, both internationally and on the grass-roots level in the particular country, to push for changes in legislation and practice (Eriksson 2011, 257-337). Accordingly, violence against women has been given international recognition as violation of human rights by reinterpreting and extending existing provisions of international human rights treaties. Although, pursuant to the indivisibility and interrelatedness nature of rights, sexual violence affects a whole range of rights; the most regularly applied rights to justify women's right to be protected from sexual violence include equality rights, bodily integrity, and the absolute prohibition against torture that have long been entrenched in international human rights instruments.

The global trends indicate that rape remains to be unquestionably a gendered crime; rape victims are primarily women and most perpetrators are men. The principle that all human beings are equal in dignity and value and must enjoy protection against any form of discrimination is the basis for all other human rights. According to the CEDAW Committee, gender-based violence against women constitutes discrimination against women under Article 1 of the CEDAW and therefore engages all of the obligations in the Convention (CEDAW Committee 2017, para. 21). In its General Recommendation No. 19, the CEDAW Committee emphasized that gender-based violence impairs or nullifies the enjoyment of human rights and fundamental freedoms by women including the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment (CEDAW Committee 1992, para. 7). Consequently, the Committee urged States parties to protect women from such violence and to prevent, investigate, and punish all such acts (CEDAW Committee 1992, para 24). States are called upon to take necessary and effective measures to combat all forms of gender-based violence irrespective of the place where it occurs and who the perpetrator is.

In Africa, the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provides, under its Article 4, for the protection from all forms of violence, including sexual violence, both in private and public sphere. This provision of the Protocol explicitly obliges States to protect women from violence both in the public and private spheres. The Protocol contains several Articles, which require States parties to prevent sexual violence against women, to protect women from sexual violence and its consequences, and to hold the perpetrators of violence accountable. Under the right to dignity in Article 3, the Protocol also provides that States parties "shall adopt and implement appropriate measures 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". Further, under Article 4 of the Protocol, States must 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 take place in private or public”.

However, even though the Maputo Protocol is unique for its explicit incorporation of protection from violence against women as women’s right; relevant jurisprudence from the African human rights system on the protection of women from violence is generally scarce. Most importantly, with respect to the issue at hand, a close review of the system indicates that the African human rights bodies are yet to develop jurisprudence on definition of rape to guide and inform domestic laws. The African Commission on Human and Peoples’ Rights (ACHPR) has, nonetheless, made reference to issues that are relevant to protection of women from violence in some of its decisions; such as the case concerning mass crimes in Darfur, has dealt with rape allegations amongst other violations (Sudan Human Rights Organization and Centre on Housing Rights and Evictions (COHRE) vs. Sudan, ACHPR, 2009). The ACHPR also considered rape allegation in Equality now and EWLA vs. Ethiopia, in which it held the concerned State (Ethiopia) accountable for failure to investigate the rape of a thirteen-year-old minor, which was a violation of State’s due diligence obligations (ACHPR, 2016). Similarly, in 2018, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) pronounced its first decision involving sexual violence against a minor, finding that Cameroon had failed to adequately investigate, punish, and redress the rape of a ten-year-old girl (a Minor vs. Cameroon 2018, para. 82). The Committee notes that rape is the worst form of sexual abuse, which has serious physical as well as psychological effects and constitutes inhuman or degrading treatment as envisaged by Article 16 (1) of the ACRWC (*a Minor vs. Cameroon* 2018, para. 71).

The dominant contemporary understanding is that violence against women, more importantly rape, violates a range of human rights and hence governments have a human rights obligation to prohibit it through their domestic criminal laws. The scope of definitions of rape has been the subject of intense scholarly debate and significant jurisprudence, mainly on the central question of whether rape should be defined by reference to the victim’s lack of consent or the perpetrator’s use of coercion, force, or threat of force (Amensty International 2019, 8). At the international level, the definition of rape used by the International Criminal Court (ICC) is widely referred to. The ICC Statute under Article 8 (2)(e)(vi) defined rape when

(1)the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; (2) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse

of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

This legal definition of rape is important not only for recognizing the various ways the crime may be committed but also for placing the consent of the victim at the center of the definition. However, it is important to note that the ICC is restricted to crimes of international concern, the prosecutions of which are owed to all humanity. Owing to its relevance, non-governmental organizations and feminist scholars have called for the domestic adoption of the ICC's definition of rape (Dowds 2018, 624-643).

The CEDAW Committee in its jurisprudence emphasized that the constituent element of definition of rape should center on lack of consent. For instance, in the *Vertido vs. the Philippines* case, the CEDAW Committee found the Philippine Government to have violated Ms. Vertido's rights for dismissal of her charge of rape against Mr. Jose Custodio by the Pilipino court (Regional Court of Davao City) on gender-discriminatory grounds. Mr. Custodio was acquitted by the Court because of absence of physical resistance from Ms. Vertido. The acquittal of the alleged perpetrator was influenced by the Court's allegiance to stereotypes regarding rational and expected reactions of a woman and "ideal victim" of rape (*Vertido vs. the Philippines* 2008, para. 8.5). The CEDAW Committee held that Mrs. Vertido's rights under the Convention had been violated and thus constituted a breach of the corresponding State party's obligations to end discrimination in the legal process. CEDAW Committee in its recommendation urged the Government of Philippines to "review 'the definition of rape in the legislation so as to place lack of consent at its center'" (*Vertido vs. the Philippines* 2008, para. 8.9(b)(i)). This involves the removal of any requirement in the legislation that sexual abuse should be committed by force, violence or any form of resistance from the victim. In due regard to myths created by the judiciary and States parties' obligation to modify or abolish existing laws that constitute discrimination, the Committee held that:

[S]tereotyping affects women's right to a fair and just trial and that the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general (*Vertido vs. the Philippines* 2008, para. 8.4).

Supplementary jurisprudence from the CEDAW Committee is the *R.P.B. vs. the Philippines* case involving the case of sexual violence against a woman with hearing impairment committed by her neighbor. The victim was seventeen at the

time of the offence in 2006, therefore considered as a child. Five years after the rape was committed, the accused person was acquitted by the Court (Regional Trial Court of Pasig City, Metro Manila). The domestic court had questioned R.P.B.'s credibility because, in its view, she had not responded to the attack in the manner expected. The Court was particularly critical of R.P.B.'s "failure to even attempt to escape ... or at least to shout for help despite opportunities to do so" or to fight back physically, which in its view, "casts doubt on her credibility and renders her claim regarding the lack of voluntariness and consent difficult to believe" (*R.P.B. vs. the Philippines*, CEDAW Committee 2011, para. 3.2). The Court noted the lack of evidence that she had physically resisted the assault; she had not cried out, nor attempted to escape by using force, nor were her clothes torn in any way. The Court stated that an ordinary Filipina woman rape victim would "summon every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity" (*R.P.B. vs. the Philippines*, para. 3.8). The CEDAW Committee found that the Court's attitude towards the complainant and the act of rape against women in general revealed the existence of deeply embedded gender stereotyping and disregard for the "individual circumstances of the case, such as disability and age" (*R.P.B. vs. the Philippines*, para. 8.2).

These gender stereotypes and misconceptions included lack of resistance amounting to the presence of consent on the part of the rape victim, and the necessary use of force and intimidation on the part of the accused. The failure to combat such myths and stereotypes and integrate "lack of consent" into the definition of rape, according to the CEDAW Committee, amounted to a breach of Article 2(f) of the CEDAW, which requires States 'to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women' (*R.P.B. vs. the Philippines*, para. 8.8). Similarly, the Committee reiterated that the CEDAW under Article 5(a) obliges States parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, to eliminate prejudices and all practices that are based on the idea of the inferiority or the superiority of either of the sexes or gender stereotyped roles of men and women. The CEDAW Committee also called on the Philippines to institute effective training of the judiciary and legal professionals to eradicate gender bias from court proceedings and decision-making.

In both the *Vertido vs. Philippines* and *R.P.B. vs. Philippines* cases, sexual offenders accused of rape were acquitted because of the non-fulfillment of the requirement of resistance. The female victims did not act as the respective courts assumed they should have; that is, they did not physically resist enough, have not cried out, or tried to escape. Providentially, in both cases, the CEDAW

Committee held the legislation concerning rape needs to be revised and should be based on ‘lack of consent’, the absence of explicit consent to sexual intercourse, rather than ‘lack of physical resistance’.

Similar analysis on incorporation of affirmative consent, as a constituting element of definition of rape and other forms of sexual violence, has also been given by the European Court of Human Rights (ECtHR) in the *M.C. vs. Bulgaria* case. In the year 2003, a fourteen-year-old girl had alleged to be raped by two men, but the Bulgarian authorities terminated the investigation due to insufficient proof to show that the victim had been physically forced to have sex with the men who were brought before the ECtHR. The applicant, in her submission to the ECtHR, argued that the domestic legal framework, which required proof of physical resistance by the victim, and the practice of the Bulgarian authorities constituted a violation of Bulgaria’s positive obligations under the European Convention on Human Rights (*M.C. vs. Bulgaria* 2003, para. 12). In this case, the ECtHR noted any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance of the victim, risks leaving certain types of rape unpunished and thus jeopardizing the effective protection of individual’s sexual autonomy (*M.C. vs. Bulgaria* 2003, para. 166).

Moreover, in *M.C. vs. Bulgaria*, the ECtHR held that ‘States have a positive obligation ... to enact criminal law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution’ (*M.C. vs. Bulgaria* 2003, para. 153). Hence, protection of women from rape and other sexual violence requires States to enact criminal law provisions that place lack of consent at the center of the definition of rape crime rather than force or resistance requirements to prove compulsion to sexual aggression. As shown above, effective protection of women against violence requires States to abolish the requirement of proof of physical resistance in their rape laws and to penalize all non-consensual sexual acts even if the victim does not show signs of resistance.

4. Defining Rape under the Ethiopian Criminal Law

Rape law in Ethiopia dates back to the 15th century under the codified law of the *Fetha Negast* (the Law of the Kings), which stipulates it as an act of forcing a married woman into sexual intercourse, a crime falling under the category of ‘illicit sexual intercourse’ (Wada 2012, 16). The *Fetha Negast* was later replaced by the 1930 Penal Code, which was later revised into the 1957 Penal Code. Under the 1930 Penal Code, only sexual violence committed against women and underage girls was punishable by law. It was the 1957 Penal Code that laid the foundation for the current legal formulation of rape crime in Ethiopia and not much has changed since. Article 589 of the 1957 Penal Code states that “[w]ho so ever 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”.

The current Criminal Code of the Federal Democratic Republic of Ethiopia (Proclamation No.414/2004) that entered into force in May 2005 has brought many positive changes in relation to the protection of women and girls from gender based violence by criminalizing several of such acts as female genital mutilation (Article 587), abduction (Article 648), child marriage (Article 598), and trafficking of women and girls (Article 624). However, it failed to introduce any transformation, defining rape by simply adopting the one from the 1957 Penal Code and only increasing the punishment ceiling to 15 years of rigorous imprisonment. Under the current Criminal Code, rape is defined as “an act of compulsion of 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” (Article 620 (1)). According to this definition of rape, ‘compulsion’ is the crucial element for the presumption that the sexual liberty of the victim has been violated. Prosecutors and other law enforcement agencies have the obligation to prove that violence or intimidation was involved or the victim was incapable of resistance. It is evident from the provision that the Ethiopian criminal law does not expressly use the word ‘consent’ in any of the provisions related to rape crime. Hence, there is no clear statutory definition of what constitutes ‘consent’ in the context of sexual assault under the Ethiopian legal system.

Moreover, the Ethiopian legislature, in defining rape as an act of compulsion for sexual intercourse, fails to provide an indication or explanation of what constitutes ‘compulsion’ in the context of rape. The recognition of compulsion, as an essential element of rape and other sexual crimes, is a significant development in the legal system since it recognizes the various societal and hierarchical power relations that usually exist between perpetrators and victims of sexual crimes. However, failure in providing some legislative guidance as to what constitutes ‘compulsion’ in the context of rape leaves courts and law enforcement agencies to often struggle in articulating what kind of conduct satisfies elements of compulsion.

Another concern with respect to the definition of rape under the Ethiopian criminal law relates to the choice of the word ‘violence’ over ‘force’ as a means of compulsion. According to some writers, definitions of force in the context of sexual crimes may include kidnapping, use, threat, or showing of a deadly weapon or other dangerous instrument, duress, menace or violence, overcoming the victim by superior strength, physical restraint, or physical confinement; threat of extortion; express or implied intimidation and coercion;

and overcoming the victim by concealment or surprise (Raphael 2011, 147). Even if one is to assume that the use of violence in the definition of rape is to be understood as force, elements of violence remain essentially undefined under the Ethiopian criminal law. Hence, in practice, the courts must determine if compulsion/violence is present on a case-by-case basis, depending on the facts and judge's understanding of what type of conduct is equivalent to 'violence'. As Edward notes, "it indicates the standard may simply be a '*I know it when I see it*' rule" (1996, 253). Furthermore, 'grave intimidation', which is stated in the definition as a constituting element of rape, remains to be ambiguous. Consequently, the kinds of acts that constitute violence or grave intimidation in the context of sexual crimes remain contentious. Does violence or intimidation refer to physical violence only or more? Does it have to be directed against the victim herself or on another third party? What constitutes 'grave' and how is it differentiated with the 'less grave' one? Does grave intimidation refer to physical or verbal intimidation, intimidation by authority, or the intimidating environment? Scholars in other countries have long been grappling with these questions, aiming to better align society's perceptions about criminal regulation of sexual misconduct with the ever-evolving social perceptions about sexuality and gender norms (Leary 2016, 23). However, in Ethiopia, absence of a much needed academic dialogue on the subject matter, and most importantly the lack of legislative guidance as what constitutes 'compulsion', 'violence', and 'grave- intimidation' in the context of sexual violence, has left the justice sector in disarray.

In the definition of rape under the Ethiopian criminal law, a rape charge is based on the existence of 'violence' and the victim's position to 'resist' the violence, which is commonly known as the requirement of resistance standard. Literatures on Common Law rape laws show that depending on the jurisdiction the required degree of resistance varies from 'utmost resistance' to 'reasonable resistance' or 'earnest resistance' or some variant of the same to establish that an act of sexual intercourse was without consent and by force (Decker and Baroni 2013, 1088). The degree of resistance required by the Ethiopia criminal law is not clear. According to the definition of rape under the Ethiopian criminal law, the victim is relieved of the resistance requirement only if she was in a state of unconsciousness or incapable of resistance at the time of the attack or in other situations where she was unable to resist. Experience from other jurisdiction indicates that sleep, self-imposed intoxication, unconsciousness or illness were taken as grounds for considering victims to be in a situation that makes them incapable of resisting the sexual activity (Decker and Baroni 2013, 1088). However, in the Ethiopian case, there remains no legislative guidance on the range of situations that can be considered valid. The incorporation of resistance requirement in a situation where constituting elements of 'compulsion' are

not defined independently and with no guidance on the degree of resistance expected from the victim, leaves not much options for the courts but to rely on looking for proof on existence of compulsion in relation to victim's response/behavior around the time of the act.

Jurisprudence from human right bodies shows consistency with respect to emphasis on consent requirement than focusing on degrees of violence and resistance or state of inability to resist. In this regard, for example, the Council of Europe through its expert body on violence against women, the GREVIO, has called the Government of Finland to reform its out of date rape laws to include lack of consent rather than just the use of violence (GREVIO 2019). It stated that rape continues to be categorized under Finish law according to the degree of physical violence used or threatened by the perpetrator or a requirement to show that the victim was in a state of fear or helplessness and unable to defend herself or to formulate or express her will. The problem with this approach, as highlighted by the expert body, is that it does not fully capture the realities of women experiencing sexual violence and how they respond to threat (i.e. flight, fight, freeze, flop or befriend) (GREVIO 2019, 92). From the perspective of the European human rights system, based on Article 36 of the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the need for a legal definition of rape based on the absence of consent is well-recognized human rights standard.

As shown in the previous section, most States have now abandoned the resistance requirement from their rape laws; international human right bodies have urged for consent to be at the center of the definition of rape. Ethiopia, however, continues to have the force and resistance requirement in the definition of rape. This means one has to prove beyond a reasonable doubt that the victim resisted her assailant to the utmost of her physical capacity to prove that the act of sexual intercourse was rape. Such legal definitions of rape require evidence that the perpetrator used coercion or that the victim was incapable to fight back. Hence, in the absence of legislative guidance, the judiciary's understanding of resistance to violence or grave intimidation during sexual aggression is set to vary from court to court or from judge to judge making the resistance requirement standard even more ill-suited to measure 'compulsion'.

The subsequent section provides practical insights on judicial application of the resistance requirement by focusing on selected court cases to show how the absence of legislative guidance on what constitutes 'violence' and 'resistance' in the definition of rape may lead to judicial interpretations based on rape myths and gender stereotyping. With this objective, purposively selected rape cases from courts in Tigray Region are analyzed to illustrate how the requirement of resistance is interpreted and applied in trials considering rape. Although the

cases analyzed below are only from Tigray Region, one of the ten federating Regional States in the Federal Democratic Republic of Ethiopia (FDRE), they may resonate with the experience of courts in other parts of the country that remain confined in the application of the same Criminal Code that applies across the country.¹¹

5. Judicial Reliance on Proof of Resistance to Establish Use of Force in Rape Cases

The essential element that distinguishes rape from other sexual intercourse is the absence of victim's consent to the act. As argued in the foregoing sections, the framing of rape under Article 620(1) of the Ethiopian Criminal Code emphasizes on a woman's resistance to establish the absence of consent and use of force. Hence, according to this definition, in order to convict an alleged perpetrator, a prosecutor is required to prove compulsion through a number of 'subjective' criteria, including proof of physical resistance or attempt to reach out for help and prompt reporting of the case to legal authorities. The discussion in this section on the application of the resistance requirement in selected court cases illuminates the impact of rape myths and gender stereotyping in judicial practice in the absence of legislative clarity regarding the core elements of 'violence' and 'resistance' in the rape definition.

5.1 *Insufficient Physical Resistance (Fight or Flight)*

It is reported that rape victims cannot or do not necessarily resist rape or other sexual assault (Schiewe 2019, 1-8). Owing to the Criminal Code's formulation of resistance as a constituting element of rape, Ethiopian courts have shown tendency to look for proof of some form of resistance in order to convict defendants in rape cases. Such an interpretation fails to recognize the various ways women may respond to sexual attack as discussed above.

A closer look at the case of *Teklay Berhe vs. Prosecutor* from Sasie Tsaeda Emba District Court may illustrate such judicial tendency on proof of resistance. In this particular case, as description of the charge shows, the complainant (alleged victim) was dragged from her house to a nearby bush area and was raped (*Teklay Berhe vs. Prosecutor* 2018a). During the trial, the complainant testified before the court that she was too weak and sick to fight back or resist due to her one-month pregnancy. She explained that she did not attempt to call for help since, according to her, she already knew there was no one in the compound at the time. The defendant pleaded not guilty, alleging that the sexual encounter was

1 Although each federating state of the FDRE has its own judicial as well as legislative and executive organs, the FDRE Constitution Article 55 reserved the power to enact criminal law to the Federal Government with the aim to have a uniform criminal system throughout the country.

consensual. The Court, in its reasoning, concluded that the prosecution did not prove, beyond a reasonable doubt, that complainant resisted her assailant to the utmost of her physical capacity pointing to the lack of any proof of bruises. The Court consequently acquitted the defendant without the need to defend his case. The Prosecutor's office filed an appeal to the Adigrat High Court arguing against the lower court's decision. However, the appellate court approved the decision of the lower court by giving a short ruling stating the lower court's decision has nothing to be criticized of (*Teklay Berhe vs. Prosecutor* 2018b).

The lower court's reasoning in the case of *Teklay Berhe vs. Prosecutor* shows that victim's lack of physical resistance is considered as evidence to establish that the sexual act was consensual. The decision of the court was not based on assessing the existence of violence or grave intimidation but was rather based on an assessment of the existence of resistance by the alleged victim. As shown from the testimony, due to her physical weakness arising from pregnancy and helplessness that no one will show up to her rescue, the complainant did not vigorously resist the sexual advance (*Teklay Berhe vs. Prosecutor* 2018a). The court was not convinced beyond reasonable doubt that she resisted the sexual advance even though the testimony alleged that her capacity to protest had been muted because of the differences in physical strength between the two.

In case of *Mewael Haileslasie vs. Prosecutor* the court failed to take a holistic view of pertinent factors such as threats of violence, remoteness of the location, and defendant's physical strength. The case was brought before the Sasie Tsaeda Emba District Court (*Mewael Haileslasie vs. Prosecutor* 2016a). The alleged victim was an eighteen-year-old girl who was in Sinkata town waiting on the road for a bus to Wukro town when the defendant approached her with a motor tri-cycle (*Bajaj*) and offered a ride saying '... it is now late and you will not get bus from here'. According to the details in the charge, the girl went into the *Bajaj* but only after few minutes on the ride, the defendant changed the route and drove to a nearby bush where he threatened her with a knife and raped her. Because it was late at night, the girl pleaded the defendant not to leave her in the middle of the bush promising to remain silent about what happened. The defendant took her to a hotel in *Sinkata* town, where they spent the night together. The hotel staff testified, to the Court, the girl voluntarily followed him to the room. The defendant pleaded not guilty, alleging the sexual encounter was based on her consent. The Court acquitted the defendant for lack of proof that shows the sexual encounter was non-consensual. The Prosecutor's appeal to the Adigrat High Court was not successful as the decision of the lower court was affirmed (*Mewael Haileslasie vs. Prosecutor* 2018b). The 'compliance' of the girl when heading to the hotel, arguing she did not make any attempt to escape or ask for help, was emphasized by the Court. Similarly, the Court's

reasoning of ‘consent’ in the second sexual encounter put into doubt the lack of consent in the first sexual violence. Relevant circumstances, such as young age, the possible trauma she may have experienced few hours before their arrival at the hotel, and fear of being left alone at night in the middle of nowhere, were not put into consideration.

Nevertheless, reasoning of courts as in the above cases weighing much on absence of resistance or ‘inadequacy’ of resistance is inconsistent with jurisprudence of human rights treaty bodies. For instance, the CEDAW Committee stressed “there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence” (*Vertido vs. the Philippines*, CEDAW Committee 2008, para. 8.5-8.9). The resistance requirement also necessitates the victim to place herself in danger, as resistance is often met with increased force and injury. Indeed, misconceptions about free will and the actual scenarios that impede women to exercise autonomy when confronted with force, threats or coercion, is a significant stereotyping that undermines women’s equality before the law. It further illustrates the tendency by courts to narrowly construe the element of ‘compulsion’, ignoring the reality of the crime.

In addition, one of the many myths around rape is that victims necessarily suffer physical injury. Studies have demonstrated that assailants do not always use physical violence, but also verbal coercion or manipulation (Tark and Kleck 2014, 270-292). Evidencing subtle force can be used, most assailants do not use weapons and victims rarely have any external or internal physical injuries. Instead of physically resisting, several studies have found that the overwhelming response by victims is verbal; attempting to reason with the assailant, make him feel guilty, cry, or say no and tell him to stop. Other victims are unable to respond because they experience a paralyzing fear (Edwards 1996, 247).

Notwithstanding, the rape law requires some form of resistance to establish compulsion (non-consent); unless the victim is rendered unconscious or incapable of resisting, courts expect bruises and scars as evidence of physical resistance to sexual violence. For example, in the *Teklay vs. Public Prosecutor* case, the Court exhibited a tendency to look for scars and bruises as a proof for compulsion by stating “[...]ተሽሳሲ ንተበዱለ በሃሊት ጎቲቱ ናብ ሑጋ እንተተአክቲይዋ ንምንታይ ዳኣ ኣብ ሰብነታ ናይ በሰላ ምልክት ዘይብላ? [...] If she was dragged to the bush, why is that she does not have any bruises on her body?” (*Teklay Berhe vs. Public Prosecutor* 2018a, 12). Hence, in search of some form of physical resistance the court is observed in this case muddling through the assailant’s behavior to find a push, kick, or bruises to consider the act as a rape. In view of satisfying the ‘compulsion’ and ‘resistance’ elements under the Ethiopian rape law, one has

to contend that sexual advance can only be regarded as an act of rape if the victim suffers from physical harm that is presumed to result from some kind of violence, such as kicking, choking, or hitting.

5.2. *Insufficient Verbal Resistance (Hue and Cry)*

Generally, definitions of rape, which emphasize on the requirement of victim's resistance to establish whether consent had been withheld or force has been used, entail the prosecutor to prove beyond a reasonable doubt that the woman resisted to the utmost of her capacity to prove that an act of sexual intercourse was rape (Decker and Baroni 2013, 1082). This leads to examining the different ways in which victim's resistance has been demonstrated including notable verbal resistance. In particular, in the context of the Ethiopian criminal law, which lacks clear cut criteria for compulsion and resistance, there is a tendency for courts to take the liberty in construing the resistance requirement to include verbal resistance as well. A good example is the Teklay vs Prosecutor case where the Court, in its reasoning, boldly stated that a cry for help could be taken as a form of resistance (a verbal resistance).

...ተበዱለ በሃሊት ተኸላሲ ካብ ገዛ ናብ መረባ ብኣፈይ ዓቢሱ ሹድሽተ ሜትር ዝኾወን ጎቲቱኒ እትብሎ ኡይ ንከይትብል ዝኸልኸል ኮይኑ ኣይተረኸበን፡ ብሓደ ኢዱ እናጎተተ ብሓደ ኢዱ ኣፈይ ዓቢሱኒ ዝብል ሓሳብ መእመናይ ኣይኮነን፡፡ ተበዱለት ቐትሪ እናሃለወ ንምንታይ ኡይ ዘይትብል...?

..it is not convincing that the complainant was not able to cry out for help as the defendant was dragging her almost six meters away from the house; neither does it make sense that he was able to forcefully drag her in one hand and cover her mouth with the other [...]. The alleged rape occurred during day time, why is that the complainant did not cry out for help?" (*Teklay Berhe vs. Prosecutor 2018a, 11*).

Similar reasoning was held in *Desta Amene vs. Prosecutor* case from Gulo Mekda District Court, where not crying out loud was taken as consenting to the sexual advance by the assailant. The court held that:

... ንሱ ክዳነይ ክቀልዕ ኣነ ይከላኸሎ ነይረ፡፡ ኣዉያት ዘይገበርኩ ድማ ብሓደ ኢዱ ኣፈይ ዓቢሱ ብሓደ ኢዱ ክዳነይ ይቐልዕኒ ስለዝነበረ እዩ ዝበለቶ ድማ ተኣማንነት የብሉን ምክንያቱ ተኸላሲ ብሓይሊ እናገደዳ እናሀለወ ንሳ እናተኸላኸለት ሓደ ኢዱ ክዳን ክቀልዕ ሓደ ኢዱ ድማ ኣፋ ክዓብስ ኢልካ ክግመት ኣይካኣልን...

... the testimony she gave claiming that she did not cry out for help because the defendant was covering her mouth with his one hand while undressing her by force with another is not convincing because it is unimaginable for the defendant to be capable of doing both at the same time (*Desta Amene vs. Prosecutor 2018a, 17*).

The above reasoning of the Court indicates that screaming and calling for help (Hue and Cry) has been taken as a form of reasonable resistance, the absence of which was presumed to constitute the complainant's consent to sexual intercourse. Such thinking led the courts in both cases to conclude that not crying out for help amounts to consent to the sexual act. However, a scream for help may be of no point if the attack was conducted in an isolated area as in the *Teklay Berhe vs. Prosecutor* case. Taking into consideration that the same applies throughout the country, one can take the presumptions that many rape cases, are being reversed due to the absence of Hue and Cry as a form of resistance. It is also important to consider situations where victims cannot practically cry out for help. Thus, the definition of rape needs to be centered on affirmative consent rather than on the presence of compulsion and resistance.

5.3. Requirement of Prompt Complaint

Although there is no clear requirement of prompt complaint under the Ethiopian rape law, the approach adopted in defining rape in terms of act of compulsion and the requirement of resistance to implicate the non-consensual nature of a sexual encounter has invited judicial tendencies of correlating resistance requirement with requirement of prompt complaint. A good example for such tendency is observed in a court reasoning provided in the case of *Mewael Hailesiasie vs. Public prosecutor*. In this case, the court observed that:

[...]አብቲ ዝሓደረቶ ሆቴል ንተኸላሲ ስዲባቶ ትኸድን ናብ ሽቃቅ ክትመላለስን ክምዝነበረት ተዘሪቡ እዩ። ተገዲዳ እንተዝነብር ንምንታይ ነቲ ዑጡኽ ዋርድያ ንምንታይ ዘይትነግር ነበረት። ኣብ መናሃርያ ስንቃጣ ናብ ወቅሮ ዝወስድ ኣወቶብስ ክትፅበ ኣርፊዳ እያ ሽዑ ዳኣ ንፖሊስ ንምንታይ ዘይኣፍለጠት[.....] ኣብ ገዛ ምስ ከደት ስድራ ኣበይ ሓዲርኪ ምስ በልዎ ዝፈጠረቶ ታሪኽ እምበር ኣይተገደደትን .

[...] she followed the defendant to the hotel, and did not even try to notify the hotel security staff about her experience; she did not report to the police at the Sinkata bus station as she was waiting for the bus that took her back home that morning and waited until she reached back home in Wukro to report the incidence. This shows that she was not forced but rather fabricated the story when she was cornered by her parents as to where she spent the night (*Mewael Hailesiasie vs. Prosecutor* 2018a, 29).

The Court concluded that an alleged victim who did not promptly complain about the incident was taken as fabricating the accusation and hence consenting to the sexual intercourse. It is clear that Article 620(1) of the Ethiopian Criminal Code does not put prompt reporting as element of the crime. However, in the absence of clarity on what constitutes ‘compulsion’, ‘violence’, and ‘resistance’, consent or non-consent to sexual intercourse can be associated with prompt reporting,

as shown in the above case. The expectation that rape victims must report to authorities promptly or would otherwise be disbelieved is, however, unrealistic and inconsiderate of the psychological impact of rape on a victim (Klein 2008, 1020). In fact, most victims do not immediately or ever report rape cases.

There are many reasons for not reporting rape or delaying to report. Victims are faced with the decision to contact the police in the immediate aftermath of a rape incident while they at the same time may be traumatized and trying to make sense of what happened. In the aftermath of rape, victims experience a wide range of physical, psychological, and emotional symptoms, both immediate and in the long-term. These symptoms may include fear, anxiety, anger, self-blame, guiltiness, dissociation, loss of trust, flashbacks, depression, phobia, panic, and obsessive compulsive disorder (Kaplan 2017, 1078). As a result, victims may experience great difficulty in making sense of what happened to them and therefore may behave in a manner that appears counterintuitive, as a strategy to cope with the overwhelming stress. These counterintuitive behaviors may include denying the event had occurred or avoid thinking and talking about it. In addition, studies show victims are afraid, unsure of whom to tell, fearful of retaliation from the rapist, and wary of exposing themselves to a system that they do not trust and may further invade their privacy causing additional trauma (Klein 2008, 1020). Patterson (2011, 328-329) also argue that victims refrain from reporting to the police because they are ashamed or embarrassed, or fear the police will blame or disbelieve them.

5.4. Previous Acquaintance

The ‘violent stranger’ rape myth continues to find its way in rape trials. In the case of *Desta Amene vs. Prosecutor* from Gulo Mekda District Court, the charge shows the defendant was accused of attempted rape after dragging a woman from her house in the middle of the night (*Desta Amene vs. Prosecutor* 2018a). The woman (the alleged victim) opened the door for him thinking he was her husband. During the trial, the woman testified that the defendant held her down on the floor and tried to engage in sexual intercourse. However, her husband came and rescued her from the encounter while the defendant run away. The case was tried in absentia as police could not find the defendant. The Court decided not to charge the defendant of rape but adultery based on Article 27 of the Criminal Procedure Code and Article 652(1) of the Criminal Code. The Court ordered for the acquittal of the defendant from rape charge based on the following argument.

[...] The fact that she opened the door for him effectively signals a previous relationship the defendant has with her, although she denies it. Additionally, the fact that the alleged victim went to a neighbor’s (3rd witness in the case) house to spend the night of the incident rather than stay in her home with her

husband shows that she has previous acquaintance with the defendant and hence it is less likely that he did try to force her sexually (*Desta Amene vs. Prosecutor* 2018a, 19).

The appeal to Adigrat High Court was not a success (*Desta Amene vs. Prosecutor* 2018b). The judges have found justification in acquaintance to release the defendant without conviction; their reasoning assumed rape cases can only happen between strangers and not people with previous acquaintance. The tendency to believe that “real” rape is committed by a stranger and is necessarily violent leads to misconceptions about the ‘acquaintance rape’ that it is not rape, rather a consensual sex. The lower court in its reasoning even went to a great length to emphasize that the defendant and the complainant (alleged victim) had previous acquaintance without being concerned much about consent. For instance, the fact that the complainant did not cry out for help during the attack was taken as evidence that shows they had previous affiliation;

[...]ተበዳሊ እየ ባሃሊት ዘስመዓቶ ኣወያቶ ድምባ ዘይምንባር ዘረድእ ንተኸላሲ ትፈልጦ ከምዝነበረትን ኣገዲዱኒ ንምባል ዝተፈጠረ ሜላ እንተዘይኮይነ ቅድሚኡ ይፋለጡን ርክብ እዉን ምነባሮም እዩ ዘማላኽት

[...] the fact that the complainant did not cry out for help indicates that she already knows him and had an affair with him (*Desta Amene vs. Prosecutor* 2018a, 20).

As put below the husband’s (2nd witness in the case) first reaction to attack the assailant before identifying the identity of the person was also taken by the lower court as an indication of knowledge or suspicion of the affair between his wife (the complainant) and the defendant.

[...] ሰብኣይ ንተኸላሲ መን ምኻነ ከይፈለጠ ምወቃዕ ምጅማር ብቅድሚኡ ብዛዕባ ተኸላሲ ንተበዳሊ እየ ባሃሊትን ዝፈልጦ ርክብ ከምዝነበረ ዘማላኽት እዩ።

[...] the fact that the husband of the complainant proceeded to physically attack the defendant without first identifying him shows the husband already knew who the person was because of his prior suspicion of the defendant’s affairs with his wife. (*Desta Amene vs. Prosecutor* 2018a, 18).

The recommendation of the CEDAW Committee, in the case of *Vertido vs. the Philippines*, provides that States are obliged to ensure impartial and fair legal procedures in cases involving crimes of rape and other sexual offenses, not affected by prejudices or stereotypical gender notions. To achieve this, a wide range of measures is needed, including the adoption of a definition of rape that put consent at its center rather than force and resistance requirements. More importantly, all discriminatory notions and practices that undermine the impartiality and fairness of trials should be removed from legal proceedings.

6. Conclusion

Under the Ethiopian Criminal Code, rape is defined as an act of compulsion of 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. The requirement of compulsion by violence or grave intimidation and proof of resistance from the victim are among the legal requirements put into place, which impede a fair resolution of rape charges. This approach of defining rape reflects the age-old myths about rape and prejudices and unfair, pervasive doubts about the credibility of women who claim to have been raped. Under the current criminal justice system, Ethiopian women who survived rape and decided to pursue criminal charges against the aggressor face many legal obstacles.

The problem is further complicated by the failure of the law in providing an indication of what constitutes ‘compulsion’ or ‘violence’ or ‘grave intimidation’ in the context of rape. Consequently, it triggers several questions around the issue that call for further examination by the judiciary. Questions such as the nature of acts, which constitute violence or intimidation and which acts do not; whether or not the violence or grave intimidation is of physical violence only; whether such violence or intimidation should be directed against the victim herself or on another third party; how to determine the intimidation to be ‘grave’ or not; whether the grave intimidation refer to physical intimidation, verbal intimidation, intimidation by authority, intimidating environment are all subject to interpretations. The absence of legislative guidance as what constitutes ‘compulsion’ in the context of sexual violence has led the judiciary to rely on evidence of force that the victim was unable to resist. However, the problem with such construction of the rape law is the lack of clear indication as to the nature or degree of resistance expected from the victim to establish that she was compelled to the sexual act. In the context of the existing Ethiopian legal system, hence, the judiciary understands of resistance to violence or grave intimidation varies from court to court and from judge to judge, making the resistance requirement a standard not fit to gauge compulsion.

This chapter argued that a reform of the rape law is much needed in Ethiopia with the wider objective of achieving better protection of women from sexual violence and to ensure access to justice in case of victimization. Legal definitions of rape and other sexual violence ought to adopt consent-based model and compulsion through violence or grave intimidation should not be an element of the crime. A woman’s right to her body and privacy and her autonomy to say ‘no’ to sexual advances should be protected, and thus a definition of consent should be made part of the definition of rape. The best course of action would be to replace the violence/force requirement with the affirmative consent standard to

Towards Sexual Harassment Free Workplace: Testing the Limits of Ethiopia's Labor Law

Dureti Abate Fulas and Asrat Adugna Jimma

1. Introduction

Of several gendered issues at the workplace, sexual harassment is perhaps at the forefront following the global 'Me Too' and 'Time's Up' social media movements that took place in 2017 and 2018. The 'Me Too' movement that initially started in 2006 in the United States (US) to help survivors of sexual harassment, particularly women of color from low income communities exploded in 2017 as a global campaign against sexual harassment and gender based violence (Khomami, 2017). A year later, in 2018, supported by women in the entertainment industry in the US, another social media campaign by the name of 'Time's Up' exposed workplace sexual harassment in different parts of the world. The 'Me Too' movement has sparked conversations on the media in East Africa¹ and encouraged young girls to speak out against sexual harassment and violence in schools in Ethiopia.² These movements brought to the spotlight sexual harassment as a shared problem of working women worldwide, underscoring its prevalence and the need for legal action (Mackinon, 2018). In the US, some States amended their anti-sexual harassment laws in the years that followed. In 2019, for example, the State of Connecticut passed the Time's Up Act, named after the movement, imposing anti-sexual harassment trainings as a requirement for employers alongside obligation to notify new employees of the illegality of sexual harassment and remedies for victim within three months of recruitment. The Act also extended the period of limitation to file harassment claims from 180 days to 300.

1 <https://www.devex.com/news/what-metoo-has-meant-around-the-world-93871>.

2 <https://unicefethiopia.org/2017/11/02/in-ethiopia-girls-bravely-speak-up-against-sexually-abusive-teacher-as-me-too-campaign-kicks-off-worldwide>.

In June 2019, the International Labor Organization (ILO) came forward with the adoption of Convention 190, Convention Concerning the Elimination of Violence and Harassment in the World of Work, which clearly articulated a violence and harassment free work environment as a human right. Ethiopia's new labor proclamation governing the private sector, Labor Proclamation No. 1156/2019, came to effect in September 2019, introducing provisions explicitly prohibiting sexual harassment and violence at the workplace. The incorporation of anti-sexual harassment provision in the Proclamation is admittedly driven by the public outcries on the vulnerability and exposure of women to sexual harassment (MoLSA n.d.). It was taken as a commitment by the Ethiopian government to pursue a firm anti-sexual harassment policy, in a country transitioning into industrialization with more women expected to join the manufacturing sector (MoLSA n.d.).

This chapter sets out to examine through a doctrinal analysis the new Labor Proclamation's anti-sexual harassment provisions in light of international human rights law, especially emphasizing on the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).³ The chapter rests on the premise that in a legal system like Ethiopia's, which is anchored in civil law legal tradition with limited room for judicial lawmaking, anti-sexual harassment legislations need to be of greater depth and detail both in meaning and scope in order to effectively prevent and remedy sexual harassment. In scrutinizing the Proclamation, the chapter draws on the development of anti-sexual harassment law in the US as a springboard to analyze the legal meaning and scope of sexual harassment. The US jurisprudence is given attention for the reason that it has now gained greater international acceptance (Earle and Gerald 2017; Posthuma, Mark, and Michael 2004).

While the explicit condemnation of sexual harassment in Ethiopia's new Labor Proclamation is a significant step forward, the chapter argues the definition of sexual harassment is limited in scope, thus failing to provide adequate protection to individuals vulnerable to sexual harassment and violence in the workplace. Employers' roles and liabilities as well as the redress mechanism also fall short of ensuring a workplace free from sexual harassment for women. The chapter does not claim to provide a panacea towards a sexual harassment free workplace but only aims to bring forward concerns that need further consideration by the legislature to prevent sexual harassment and remedy it when it happens. It starts by highlighting general perspectives on sexual harassment both as a gendered phenomenon and a human rights violation in general. It proceeds to unpacking the notion of sexual harassment drawing insights from developments

3 Ethiopia ratified the CEDAW on 10 September, 1981.

in international human rights law and the US jurisprudence. Finally, it examines the new Ethiopian Labor Proclamation to highlight its limits in ensuring a sexual harassment free workplace for women and point areas for further reform.

2. Sexual Harassment in Perspective

2.1. Sexual Harassment as a Gendered Issue

Sexual harassment is a shared concern of working women around the globe. While both women and men can be victims as well as perpetrators of sexual harassment (Linne 2019) it remains a highly gendered problem that mostly manifests men as harassers and women as victims. Hierarchical power relation is often manifested where the male harasser, more often than not, is in a higher position of power (Welsh 1999). Furthermore, young employees with less secure contracts and individuals with precarious job security are targets of sexual harassment (Karami et al. 2019). A recent survey within the United Nations (UN) revealed pervasive abuse of power by men against junior and temporary workers who were vulnerable to sexual harassment (Welsh 2019).

Women are paid around 20 percent less than men, who are mostly situated in higher positions and with secured jobs (ILO 2019a). This reinforces the grim reality of patriarchy, which gives men the upper hand, replicating power imbalance between the sexes at the workplace. Women that enter male dominated occupations become victims of sexual harassment as a result of patriarchal power assertions, which only emphasize womanhood and play down their status as professionally qualified workers (Welsh 1999). The vulnerability of such women can vary depending on their status and the societal perception that relates to it. Studies also reveal women in low wage occupations such as the service sector are vulnerable to sexual harassment, which is underreported (Ditkowsk 2019). In its inputs to the proposed conclusions of ILO Convention 190, the United Nations Working Group on the Issue of Discrimination against Women in Law and in Practice also underscored how harassment and various forms of violence in the workplace affect women disproportionately (UNWGDAW 2018).

Workplace in Ethiopia is no exception to this overall characterization of power imbalances. Ethiopia's working women are mainly to be found in lower position jobs occupying 64 percent of clerical jobs and 65 percent of service related jobs, while they account for only 27 percent of managerial positions and 32 percent of professional posts (FDRE 2017). Linked with their concentration at the lower strata in the world of work, women's particular exposure to work-place harassment remains stark in Ethiopia calling for effective gender responsive countering measures.

Anti-sexual harassment measures have been well received by employers in the US on the basis of a classical organizational theory, which suggested sexuality has a negative impact on productivity in the workplace (Schultz 2003). Entrenched in increasing productivity and profit, adherence to this theory, however, leads to ignoring sexual harassment if redressing it is found to be costly. Highly skilled and valued employees would enjoy impunity over sexual harassment of their less valued co-workers who could easily be replaced. The legal response thus needs to look into the gendered dimension and the socio-cultural and economic power dynamics within sexual harassment.

2.2. Sexual Harassment as a Subject Matter in International Human Rights Regime

The conceptualization of sexual harassment under international human rights law and its prohibition in the workplace has evolved over the years. Anti-sexual harassment frameworks in international human rights law have emerged linked to the right to dignity and non-discrimination. These rights have long been integrated in international human rights instruments but progressed at a slow pace (Hellum 2013). The Vienna Declaration and Program of Action, for example, provides that “gender based violence and all forms of sexual harassment and exploitation including those resulting from cultural prejudice are incompatible with the dignity and worth of the human person, and must be eliminated” (United Nations 1993, 4-5). In similar fashion, continental human rights systems in Europe and Latin America articulate sexual harassment in terms of an act contrary to dignity. The European Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) under Article 40 defines sexual harassment as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person. The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention) also under Article 2 clearly stipulates harassment in the workplace as a form of violence against women which the Conventions dubs in its preamble “an offence against human dignity”. The Protocol to the African Charter on Human and Peoples’ Right on the Rights of Women in Africa (Maputo Protocol) links freedom from all forms of violence with the right to dignity (Article 3). The African Commission on Human and Peoples’ Rights (ACHPR) has also noted in its decisions, for instance in the *Nubian Community in Kenya vs. The State of Kenya* case, that the violation of a given right often leads to the violation of the dignity of a person (ACHPR 2015). The preeminence of individual dignity and worth as an underpinning for the right to equality is also guaranteed in national constitutions such as South African (Fredman 2001).

The condemnation of sexual harassment as a violation of the right to equality and non-discrimination has also evolved through different declarations, resolutions and interpretations of treaty bodies. The Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of All forms of Discrimination against Women (CEDAW Committee) provided that sexual harassment is a violation of the right to non-discrimination (ICESCR Committee 2009; CEDAW Committee 1992). The Declaration on the

Elimination of Violence against Women similarly stipulates sexual harassment and intimidation at work as a gender-based violence that is discriminatory and a manifestation of historically unequal power relations. The UN Human Rights Council correspondingly framed sexual harassment as discrimination against women as it calls for prevention and elimination in all settings (UN Human Rights Council 2018). The ILO rightly emphasizes the elimination of violence and harassment at work as a precondition for gender equality (ILO 2019a) and establishes freedom from harassment and violence as a convention right on its own. Elimination of sexual harassment also finds expression in the renewed global commitment to achieve gender equality and empower all women and girls under the Sustainable Development Goals.

These show the international system has consistently condemned sexual harassment as a gender based discrimination and violence, and urged States to implement policies and actions directed at the prevention and elimination of all forms of discrimination and violence against women and girls. It is firmly established by the international human rights system that sexual harassment violates the human dignity and right to equality and non-discrimination. Further, the definition of what it constitutes has been laid out in the CEDAW Committee's General Recommendation 19 on violence against women in 1992. Nearly three decades later, in 2019, sexual harassment free workplace became clearly pronounced as a right in the ILO Convention 190, albeit it is awaiting entry into force. As different resolutions unequivocally recognize sexual harassment as a violation of human dignity and other rights, it becomes imperative to examine what it actually constitutes for legal considerations and its practical applications. The following section examines how sexual harassment is elaborated under the CEDAW and the ILO Convention 190 while also drawing perspectives from relevant jurisprudence in the US as well as the CEDAW Committee.

3. Conceptualizing Sexual Harassment

As a highly gendered problem, mostly affecting women, measures to eliminate sexual harassment are mainly voiced through the CEDAW. Although the provisions of the CEDAW make no direct or specific reference to sexual harassment, the CEDAW Committee has pronounced authoritative

interpretations and approaches to end such harassment in different settings, including the workplace.

The CEDAW Committee in its General Recommendation 19 defines sexual harassment as:

[...] unwelcome[d] sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment (CEDAW Committee 1992, para. 18).

This definition puts sexual harassment under the general caveat of gender specific violence and provides a list of what it constitutes in a work environment. Leaving room for inclusion of more acts of harassment, the Committee firmly established both sexual behavior and lack of consent as the underlying elements of sexual harassment. An act of sexual harassment is considered discriminatory when the victim is of a legitimate belief that her refusal to the act would jeopardize her employment status be it either recruitment or promotion or other benefits. It is similarly considered discriminatory when the sexual harassment creates an intimidating or aggressive atmosphere at the work place.

Another international document that provides a definition for sexual harassment is the ILO Convention 190, which states, under its Article 1, the following:

For the purposes of this Convention: (a) the term “violence and harassment” in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment; (b) the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

ILO’s definition follows a similar suit with the CEDAW Committee in characterizing sexual harassment as gender based violence although it presents “violence and harassment” as a single concept with a leeway for States to opt for a separate conceptualization of the two (ILO 2019b). The Convention’s key definitional elements are the unacceptable nature of the behavior or practice, and the likelihood of actual or potential harm (psychological, physical, sexual or economic) that may be gender-based. The CEDAW Committee recognizes harm

as potential results of sexual harassment such as humiliation or causing health or safety problem (CEDAW Committee 1992). However, the ILO Convention, unlike CEDAW Committee, does not provide an illustrative list of acts or practices that may constitute sexual harassment. Another notable difference is the gender and status neutral framing of sexual harassment under the ILO Convention. However, the interpretation of the Convention is yet to be observed when it enters into force and is domesticated by State Parties.

Both instruments leave a gap for interpretation of sexual harassment when applied at local levels. There are no clear definitions on what makes a behavior sexually determined or unacceptable and the parameters to resolve if it is unwelcome and if directed at a person because of their sex or gender. It is worth examining how sexual harassment laws have been applied in resolving complaints submitted before judicial, quasi-judicial or similar administrative bodies at the domestic and international level. In this regard, interpretations by the CEDAW Committee with respect to complaints involving workplace discrimination or discrimination in general may bring relevant insights although the Committee has not yet entertained individual complaints specifically on sexual harassment in the workplace. It is, thus, of paramount importance to examine how sexual harassment has been framed in domestic laws and particularly in countries such as the US where advanced jurisprudence is found on the subject.

The conceptualization of sexual harassment in the US, under the US Civil Rights Act Title IIV section 703, is based on the prohibition of discrimination based on sex. In line with this, a policy guidance has been issued by the Equal Employment Opportunities Commission (EEOC), an institution with the authority to investigate charges of discrimination against employers. According to the Guideline,

Harassment on the basis of sex is a violation of section 703 of title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. (EEOC Guidelines on Discrimination Because of Sex, Code of Federal Regulations Section 1604.11 (a))

This Guideline is of paramount importance as it “provide[s] a body of experience and informed judgment to which courts and litigants may properly resort for guidance” (Occhialino and Vail 2005, 707).

3.1. Nature of the Act

It is difficult for legislatures to exhaust what constitutes sexual harassment given the subjectivity of parameters used under the different relevant documents. It can be considered as a ‘sexually determined behavior’ as CEDAW Committee frames it or ‘a verbal or physical conduct of sexual nature’ as to EEOC. Verbal conducts, under the Istanbul Convention, refer to words or sounds expressed or communicated by the perpetrator. And such verbal conducts are illustratively listed to include jokes, questions and remarks, which may be expressed orally or in writing. The Istanbul Convention defines physical conduct to be sexual behaviors involving contact with the victim. It provides a third category of acts of sexual nature that it terms ‘non-verbal conduct’ to capture expressions or communication that do not involve words or sounds (Article 40). This includes of facial expressions, hand movements or symbols. While some acts such as physical contacts, sexual advances, demands and the showing of pornography that the CEDAW Committee listed could be unambiguously categorized as sexually determined, other acts such as ‘sexually colored’ remarks are highly subjective and contestable. A remark the victim finds to be sexual harassment could be argued as a compliment on the part of the perpetrator. In such situations, the interpretation of an act as ‘unwelcomed’ or ‘unacceptable’ plays a decisive role.

The term ‘unwelcome’ in the context of the EEOC Guideline has been interpreted to provide strong protection for victims of harassment and carefully distinguished from the notions of consent and voluntary submissions to sexual advances. In the 1986 land mark case of *Meritor Savings vs. Vinson*, the US Supreme Court rejected the argument that a plaintiff’s ‘voluntary’ submission to a sexual advance, particularly sexual intercourse in the case, vitiates sexual harassment claim (Hemel and Lund 2018). The Court emphasized that the inquiry should rather be whether the victim by her/his conduct indicated that the alleged sexual advances were unwelcome and not whether the actual submission to the advance was voluntary (Hemel and Lund 2018). This interpretation captures the circumstances of workplace sexual harassments in which hierarchal job and gender relations can pressure targets of sexual harassment to submit to advances consciously and without any physical coercion. Submissions to sexual advances can be voluntarily done but unwelcomed; this can be best explained in analogy with consent obtained through duress in contractual relations where one enters into a contract under undue pressure. Another interpretation can be drawn from the Istanbul Convention’s articulation of sexual harassment as ‘unwanted’, which

is explained as an act imposed by the perpetrator (Explanatory notes to Istanbul Convention 2011, Para. 208). Furthermore, in light of the European Court of Human Rights' jurisprudence on sexual violence, consent is underscored not just as the absence of resistance; it is rather imperative to assess the totality of the surrounding circumstances to prove non-consent (*M.C. vs. Bulgaria, ECtHR*, 2003).

The conceptualization as 'unwelcome' and 'unwanted' acts of sexual nature appear to be something to be decided based on the reaction of the victim while ILO's terminology 'unacceptable behavior and practice' sets a normative standard of behaviors and practices that do not belong to the workplace. However, an attempt to establish sexual harassment as solely objective by defining acceptable and unacceptable behaviors could be detrimental to victims in making their claims. This is particularly the case in some sectors such as bars and nightclubs that operate legally by demanding their employees to dress 'provocatively'. Such sectors that objectify employees for marketing purposes may deem some forms of sexual harassment by customers or coworkers acceptable. However, individual employees may not find it acceptable despite having to work in such environment. This is not to say there should not or cannot be an objective normative standard for sexual harassment. There are a broad range of universally offensive acts and behaviors. But the 'unwelcome' or 'unwanted' nature of the act, as framed by the CEDAW Committee, the EEOC and the Istanbul Convention, need to be emphasized on top of an objective normative framework in order to surpass limitations placed by the criterion 'unacceptable workplace behavior'. The ILO Convention interestingly provides that a single occurrence of unaccepted behavior or act amounts to sexual harassment, clearly indicating there should not be a recurrence threshold for a behavior to be recognized as sexual harassment.

3.2 Discriminatory

Sexual harassment norms, as discussed in the foregoing sections, sprung from the principles of non-discrimination and dignity. It is important to note how a broad range of behaviors and acts categorized as sexual harassment are also considered as discrimination within the context of non-discrimination norms under the different international human rights instruments. Discrimination under international human rights instruments such as the International Convention on Elimination of All forms of Racial Discrimination (ICERD) and CEDAW is defined as "any distinction, exclusion, restriction or preference or other differential treatment " that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of convention rights.

The CEDAW Committee's analysis of violence against women as a form of discrimination was groundbreaking in terms of defining sexual harassment as a gender based violence and discrimination (Byrnes 2013). The underlying analysis of the Committee in formulating discrimination in light of gender based violence is on the basis that such violence is "directed against a woman because she is a woman" or that it "affects women disproportionately" (CEDAW Committee 1992, Para. 6).

The first scenario of sexual harassment being a form of sex discrimination rests on the fact of the harassment being directed to the victim because of the victim's sex and the assumption that, had the victim not been a woman, she would not have been subjected to the act. A similar argument had its way in the US jurisprudence though later was challenged and US courts have refrained from labeling sexual harassment as discrimination against women based on the conviction that harassers could possibly extort sexual favor from both female and male subordinates (Mackinnon and Siegle 2003). This formulation of discrimination however reinforces the idea that, where there is no differentiation of treatment based on a certain ground, in this case sex, there is no discrimination, which does not resonate with substantive equality. In the case of *R.K.B vs. Turkey* before the CEDAW Committee⁴, the employer claimed the ground for firing was the employee's sexual behavior with another married co-worker, which drove customers away. However, the male employee who was alleged to have engaged in the affair was not fired (CEDAW Committee 2012). The Committee decided the threats and harassment were made against the applicant because she is a woman, in particular a married woman. It emphasized on how extramarital relations were normalized for men but not for women in that particular setting. Therefore, the analysis of sex discrimination that the discriminatory treatment happened because of the victim's sex should be broadly examined by looking into how gender interacts in a given setting.

A second argument is that sexual harassment disproportionately affects women. The US courts that struggled with the first argument of discrimination based on sex, eventually, reasoned sexual harassment as discrimination on the ground that "coerced sexual relations in the workplace play a role in the perpetuation of gender inequality" (Mackinnon and Siegle 2003, 15). Thus, the step of identifying sexual harassment as gender-based discrimination was achieved by moving from the understanding of discrimination as 'group differentiation' to

4 This case was brought before CEDAW Committee by a married female employee against her employer. She was fired from her job, 'mobbed' and pressured to sign a document that she has received all her employment benefits and resign. If not, she was told she would be subject to rumours of her extra marital relationships with other men.

‘perpetuating group status inequality’ (Mackinnon and Siegle 2003, 15). This formulation of discrimination is rightly framed within the current human rights framework of substantive equality, which looks beyond the formal equality (equal treatment in law) of the sexes. The conception of sexual harassment as discrimination because it disproportionately affects women captures cases of gender harassment where women are subjected to denigrating stereotypes and insulting epithets (Nussbaum 2007). Such harassments involving sexually crude terminologies and jokes can be devoid of sexual interest and may aim at humiliating and insulting women as opposed to pressuring them to submit to a sexual relation (Leskinen et.al. 2011). Even though such gendered harassments may be devoid of sexual interest, they are discriminatory (Hemel and Lund 2018) and usually fall under the legal category of hostile environment harassment (Leskinen et al. 2011), which will be discussed in the following section.

Viewing sexual harassment as an act that disproportionately affects women due to gender stereotypes that violate equality of women, the CEDAW sets an important paradigm to eliminate sexual harassment. In its General Recommendation 35 that complements the General Recommendation 19, the CEDAW Committee notes gender-based violence against women, including sexual harassment, is rooted in gender-related factors (CEDAW Committee 2017). These factors include the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control, enforce or prevent gender roles, discourage or punish what is considered to be unacceptable female behavior. The CEDAW Committee, thus, puts stress on the elimination of such gender stereotypes by obliging States to ensure transformative equality and take all appropriate measures to modify the social and cultural patterns of conduct of men and women.

3.3. Correlation with Employment

3.3.1. Quid pro quo and hostile environment

As the CEDAW Committee, ILO and the EEOC provide a framework for sexual harassment in different settings, their emphasis on the workplace is made in correlation with conditions imposed by the harassment on the employment or promotion and the overall impact of the harassment on the victim’s working environment. What the CEDAW Committee describes as ‘disadvantage in connection with employment including recruitment and promotion’ is equivalently articulated by EEOC as ‘explicitly or implicitly put as a term or condition of an employment or employment decisions’.

Where submission to an unwelcome, unacceptable or unwanted sexual behavior is, explicitly or implicitly, made a condition for recruitment, promotion or other employment related decisions, the victim is coerced into sexual compliance

(Nussbaum 2007). This extortion is placed in exchange for employment related benefits and hence termed as a *quid pro quo* sexual harassment. The conditioning of recruitment, promotion or other benefits on anything other than merit or competence and seniority is a clear violation of individual's right to equal opportunity enshrined under Article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR) (CESCR 2016).

However, for an unwelcome sexual behavior to be sexual harassment, the victim need not necessarily be placed in a position of extortion. A ground breaking conceptualization of such situations as sexual harassment emerged in the US after the 1977 case of *Barnes vs. Costle* before the US Court of Appeals (District of Columbia), where it was argued that sexual harassment itself, with or without a threat of being fired, constituted employment discrimination on the basis of sex under Title VII of Civil Rights Act of 1964 (Basu, 2003). This conceptualization and dichotomy pervaded the EEOC's interpretation (Bartlett et al. 2016) and unveiled how sexual harassment occurs not only as sexual favor attached to terms of employment but also in creating a hostile working environment; hence known as hostile environment or condition of work sexual harassment. Such harassment, for example, may come from co-workers with no decision-making power in the workplace to make *quid pro quo* demand but with a social or circumstantial position of power. Sexually colored remarks (sexually explicit languages) made in a humiliating or offensive way can best explain such types of sexual harassment. A hostile work environment also belittles women as sex objects who can always be approached (Nussbaum 2007). The EEOC recognized such scenarios of sexual harassment and incorporated it in its definition as "... unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment" (EEOC Guidelines on Discrimination Because of Sex, Code of Federal Regulations Section 1604.11 (a)). In hostile environment harassment such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, an unproductive or offensive working atmosphere is created (Martin 1981). The CEDAW Committee also recognizes such harassment as 'discriminatory... when it creates a hostile working environment...', albeit it does not elucidate further as to what this working environment looks like (CEDAW Committee 1992, para. 18).

The EEOC agreeably remarks that drawing a clear demarcation between the two types of harassments could be difficult and there may at times be an overlap. A *quid pro quo* harassment may at the same time, by the very same sexual conduct, create a hostile work environment and induce a double victimization. In all cases, such sexual harassment creates hostility and is discriminatory and

violates the rights of all individuals to a just and favorable condition of work that is enshrined under the ICESCR.

3.3.2. *Harm*

The harm sexual harassment inflicts on victims is one of the driving factors for anti-sexual harassment laws. The psychological effects of sexual harassment can range from mild to severe, resulting in decreased work performance or job loss, symptoms of distress such as depression, anxiety, insomnia, and physical pain such as headaches, gastrointestinal problems, and hypertension (Baum 2019). Victims of sexual harassment are also known to be affected by eating disorders, mood swings, alcohol abuse, job withdrawal, stress, self-doubt, low self-esteem and lower mental health (Keplinger et al. 2018). There is evidence that sexual harassment has distinct negative effect on psychological wellbeing and job related outcomes, even after controlling victim's general level of job stress or negative disposition (Welsh 1999). It could also force victims to resign or take unpaid leaves which may also have notable economic implications (Martin 1981). A push for anti-sexual harassment laws is, thus, based on recognition of the harms of sexual harassment, both physical and psychological (Schultz 2003).

The CEDAW Committee recognizes harm in sexual harassment as “humiliating and capable of constituting health and safety problems” (CEDAW Committee 1992, para. 18). The ILO Convention even incorporates the term ‘harm’ as a definitional element of sexual harassment, framed as a “conduct that aims at, results in, or likely to result in physical, psychological, sexual or economic harm” (Article 1). However, the materialization of an actual harm is not a precondition for the interpretation of an act as sexual harassment. A potential harm rather suffices as the law is expected to provide protection before such harm is done.

A related concern with this is setting the standard against which the conduct will be judged. The CEDAW recognizes sexual harassment as discriminatory when the victim has reasonable grounds to “believe that her objection would disadvantage her in connection with her employment..., or when it creates a hostile working environment” (CEDAW Committee 1992, Para. 18). Courts in the US have tried to establish a ‘reasonable woman standard’.⁵ In assessing the circumstances, for each case, courts put into consideration the severity of the

⁵ This has however, ended creating controversy. The major opposition to establishing a standard as ‘reasonable woman standard’ is that non-discrimination clauses which embody prohibition of sexual harassment presuppose the use of a legal term that can apply to all persons, as in the case of a reasonable man standard in other cases such as tort which is coined to refer to the average adult person. teacher, master or employer, or virtue of any other like relationship, is punishable, upon complaint, with simple imprisonment.

conduct, whether it is physically threatening or humiliating or a mere offensive utterance and whether it unreasonably interferes with an employee's work performance (Lee 1995).

4. Sexual Harassment under Ethiopia's Labor Law: An Overview

Against the preceding background, anti-sexual harassment law in the workplace is a recent development in the Ethiopian legal regime. The CEDAW Committee in its concluding observations had repeatedly urged Ethiopia to enact an anti-sexual harassment law for the workplace. Following, the Government of Ethiopia in its eighth periodic report to the Committee in 2017 had conceded to the inadequacy of the employment laws (FDRE 2017). Later, the same year, the Federal Civil Servant Proclamation No. 1064 referred to the prohibition of sexual harassment in the workplace. As the Proclamation applied to employees in the civil service sector, private sector employees could only resort to protections from sexual harassment under the Criminal Code's (Article 625) provision that prohibits taking advantage of the distress or dependence of a woman. It was in 2019, after the revision of the Labor Proclamation No. 377/2007, the prohibition of sexual harassment in the workplace of the private sector has been clearly stipulated. The new Labor Proclamation No. 1156/2019 states it is unlawful to commit sexual harassment or sexual assault at the workplace.

The main body of law under the Ethiopian legal regime for sexual harassment has been the Criminal Code, which applies to workplace and beyond. The Code under Article 625 provided sexual harassment as the following:

Whoever, apart from the cases specified in the preceding Article, 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:

This provision, however, does not use the term sexual harassment. It, nonetheless, incorporates some of the acts categorized as sexual harassment. The provision starts by recognizing power relations and vulnerability to sexual extortion based on a person's material or mental distress and subordinate position in a work, education or other related settings. But more importantly, it focuses on gender relations to regulate sexual harassment as a crime against women. This assumption is flawed in its denial of protection to men as victims of such harassment. It is worth noting that gender is not the only factor in hierarchical power relations, although it is a major one. Other factors such as age, wage, and disability can put individuals in a subordinate and vulnerable position. By defining the act to be a crime only committed against women, the Criminal Code leaves vulnerable boys and men unprotected. Another limitation to the provision is the type of acts considered as crime. Procuring sexual intercourse or any other indecent act are the only acts it criminalizes. Although the term 'indecent act' is

not definitive, there is still a limitation placed upon the act to relate to physical inflictions. This excludes verbal and emotional attacks that can be considered as sexual harassment.

With the adoption of the new Labor Proclamation No. 1156/2019, the fundamental question thus remains to be whether it provides adequate protection, or remains oblivious to sexual harassment in workplace of the private sector. In assessing the law and testing its limits, in what will follow, the key legislative considerations are categorized under sub-themes as definition of the act; scope of application and employer's role and redress mechanisms.

5. Key Legislative Considerations under the Ethiopian Labor Law: Testing the Limits

5.1 Definition of the Act

The new Labor Proclamation, which governs the private sector employment relations, provides under Article 2(11), a definition of sexual harassment as “to persuade or convince another through utterances, signs or any other manner to submit to sexual favor without his/her consent”. The notion of sexual harassment under this provision is framed similar to the Criminal Code that defines it as an act demanding the victim to engage in some sort of sexual activity. The formulation of sexual harassment in such a way dismisses sexual harassment of hostile work environment whereby sexual demand may not necessarily be made. However, unlike the Criminal Code, the Labor Proclamation defined sexual harassment in a gender neutral manner, as an act in which the victim could be male or female. It also does not relate to power dynamics requiring the victim to be in any sort of subordinate position to the harasser. The sexual demand of the harasser is also framed as ‘free standing’ by the legislature in the sense that it is not essentially associated with granting or withholding employment benefits. The sexual harassment in this sense therefore does not necessarily need to be framed as a quid pro quo.⁶ Such interpretation would relieve victims from any difficulties related to adducing proof of promises in return for a sexual demand or withheld benefits in pursuit of the same. This is also a tacit recognition that sexual harassment could be committed by a person who has no authority to grant or deny employment benefits.

6 It may appear that the phrase “sexual favor” in the definition implies a quid pro quo form of sexual harassment. However, it is important to note from the binding Amharic version of the definition that the central element of sexual harassment is the persuasion, convincing or manipulation of the victim to submit to “sexual act”, “ወሲባዊ ትንኮሳ” ማለት በንግግር፣ በምልክት ወይም በሌላ ማናቸውም አድራጊነት አንዱ ሌላውን ከፈቃዱ ውጭ ለወሲባዊ ተግባር ፈቃደኛ እንዲሆን ማባበል፣ መገፋፋት፣ ተፅዕኖ ማሳደር ነው። አንቀፅ 2(11).

But one would need a parameter to evaluate lack of consent to sexual demands and forms of expression that persuade victims to accept such demands. This invites debate for interpretation as has been the case in other jurisdictions such as the US. Although the sexual harassment jurisprudence is not very well developed in Ethiopia, concepts in the laws need to be adapted to some extent. The idea of vitiated consent, for example, with reverential fear can help unpack the power dynamics within which victims submit voluntarily to sexual harassment, but without free consent. It is worth mentioning that the Amharic version of the new Labor Proclamation added ‘exertion of influence’ on victims in addition to persuading and convincing. This definition may possibly capture cases either as a quid pro quo or hostile environment harassment. Though some ideals are indirectly implied in the Proclamation, clarity in the definitional provision is needed for optimum protection of victims by the courts.

One area of concern in the Labor Proclamation’s definition of sexual harassment is its failure to recognize sexual harassment in the context of some forms of hostile environment sexual harassment which do not always manifest as a request for sexual favor. Individuals could be subjected to harassments of a sort in which the harasser posits himself/herself in such a way that he/she is ‘sexually repelled’ by the victim or engage in harassing acts and statements that makes reference to gender roles. Such sexual harassment could base itself on the sex or gender roles of the person being harassed or may manifest as unpleasant sexually colored remarks. The harasser and the harassed could be of same sex as in the case of sexual harassment of a sexual demand. Such sexual harassment has been branded as gender harassment and mostly finds expression in the hostile environment sexual harassment in other jurisdictions. But nowhere in Ethiopia’s Labor Proclamation would one find the term ‘hostile environment’ or hope for a tacit recognition of such acts as sexual harassment that do not necessarily involve sexual demand with the view to provide victims an avenue to seek redress.

This deficiency in the Labor Proclamation’s definition to cover such sexual harassment clearly surfaces as one looks at the definition of sexual harassment under the Federal Civil Servants Proclamation 1064/2017 (Article 2(13)), which defines sexual harassment quite differently from the Labor Proclamation but closer to definitions by the CEDAW Committee and the EEOC as:

Unwelcome sexual advance or request or other verbal or physical conduct of sexual nature and includes; (a) Unwelcome kissing, patting, pinching or making other similar bodily contact (b) Following the victim or blocking the path of the victim in a manner of sexual nature (c) Put sexual favor as prerequisite for employment, promotion, transfer, redeployment, training, education, benefits or executing or authorizing any human resource management act.

This definition provides room to other types of sexual harassment such as sexually colored remarks that do not necessarily demand sexual favor. It incorporates unwelcome verbal expression of sexual nature and provides employees of the civil service sector protection from a broad range of sexual harassment.

5.2 Scope of Application

The scope of application of sexual harassment law should be looked at from two perspectives; the space it applies to and the individuals it protects as workers. Labor laws regulating sexual harassment are, needless to mention, focused on creating sexual harassment free workplace and this calls for demarcating the ‘territory’ that forms the workplace. The new Labor Proclamation, under Article 14(1)(h), stipulates that it is unlawful for an employer or employee to commit sexual harassment or sexual assault at workplace. However, as central as the workplace is in regulating sexual harassment, there is no clear definition of what it is. Perhaps one may make an analogy with regulations on ‘occupational accident’ under Article 97 of the Proclamation as it tries to define what is meant to have an incident within a workplace. The Labor Proclamation, under Article 97, recognizes occupational accident as “organic injury or functional disorder sustained by a worker as a result of any effort he/she makes during or in connection with the performance of his/her work”. A close look at the listings under the provision suggests the workplace is not just the office or the premise of an undertaking but includes transportation service provided by the undertaking.

While analogizing what is considered ‘occupational’ with the workplace may provide some direction, it may not respond to all circumstances in which sexual harassment happens. Would an employee be able to bring sexual harassment claim when it happens over the phone in between conversations relating to work related issues? What will be the fate of a victim of harassment in her/his boss’s car as s/he was invited a ride on her/his way out of office? In this regard, the CEDAW Committee stresses sexual harassment manifests in a range of settings including technology mediated settings and that States should consider such scenarios (CEDAW Committee 2017). The ILO convention, on the other hand, provides a list of spaces that should be regarded as workplace for the application of anti-sexual harassment labor laws. Article 3 of the Convention covers sexual harassment occurring in the course of, linked with or arising out of work through work related communications, including through technology. However, while a definition of the workplace as a certain confined space may serve in settling labor issues, a spatial conceptualization will not address the circumstances and situations within which sexual harassment occurs. If anti-sexual harassment laws are to protect or provide redress for victims, the articulation of the workplace needs to be conceptualized beyond confined spaces of premises and look into relational aspects.

The other concern with the scope of application is with regard to individuals considered as victims. As the Labor Proclamation applies to the worker and employer, it failed to provide protection to different types of workers in the work environment. As to the Labor Proclamation, Article 2(3), a worker is a person who has contract of employment with the employer or an individual identified by the Labor Proclamation's scope of application. The underlying element of work relationship is a contract of employment where "a natural person agrees directly or indirectly to perform work for and under the authority of an employer for a definite or indefinite period or piece of work in consideration for "wage" as stipulated under Article 4(1) of the proclamation. While this articulation may serve the overall objectives of the employment law, it falls short of addressing problems of sexual harassment as it does not capture all people who work for their employer such as interns. While interns conventionally enter the workplace as inexperienced, they are seen to benefit from the exposure and are not in most cases rewarded with wages. At times, there are prospects of them joining the workforce upon completion of the internship. In such cases, internships are somewhat comparable with probationary employments without wage. However, interns are not recognized as a worker or hold any other recognized status under the Labor Proclamation to be protected within the framework of sexual harassment.

By the same token, the other major groups of people that the labor law fails to protect are job applicants that enter the workplace and are susceptible to sexual harassment. The CEDAW Committee in its concluding observations on Ethiopia's eighth periodic report underlined that discriminatory hiring and promotion practices and unfair dismissals based on gender are problems that Ethiopia needs to attend to (CEDAW Committee 2019). The "it is who you know and not what you know" problem of securing employment is a common problem in Ethiopia. The prevalence of such discrimination reveals the need to bring recruitment processes under the surveillance of anti-sexual harassment legislation. In the face of the Labor Proclamation's practical exclusion of job applicants from the ambit of protection against sexual harassment, a possible resort can be made to the Criminal Code's prohibition of 'taking advantage of the distress or dependence of a woman' under Article 625. While invoking this provision may help for female job applicants subjected to quid pro quo sexual harassment, it nevertheless provides no remedy against sexual harassment of male victims. The articulation of the crime envisions a perpetrator who is in some sort of 'supervisory role'. However, peers or even subordinates may use sexual harassment in an attempt to gain power over female workers by directing attention to the woman's sex role, rather than to her work role (Baugh 1997) and this may commence at application stage while the Criminal Code ultimately denies remedy for victims of harassment by perpetrators who do not hold such

‘superior’ position. The other limitation is that, the remedies under the Criminal Code are obviously available through instituting criminal proceedings against the alleged perpetrator. Seeking remedy under the criminal justice system however may not always be the choice of victims. While criminal liability for sexual harassment plays an important role both in terms of deterrence and rehabilitation of perpetrators, victims, however, should be availed with a civil remedy seeking platform, which may eventually be taken to the state’s prosecution machinery. In its fight against sexual harassment, the international human rights system, however, obliges States to protect all workers (including entrants to a workplace) from sexual harassment in all settings regardless of the individual’s status by virtue of the right to just and favorable conditions of work under the ICESCR (ICESCR Committee 2016).

5.3. Employer’s Role and Redress Mechanisms

As the workplace is under their supervision and control, employers should be entrusted with the responsibility to control the workplace environment. Of equal importance is setting employers’ responsibility as proactive and also responsive when it happens. At the same time, it should be recognized that sexual harassment as individual conduct of others is something that is not completely under the employer’s control. Setting employers liability and redress mechanisms should thus strike a balance between these concerns.

In the proactive and preventive sense, employers should put in place anti-sexual harassment policies. Following the global outcry against sexual harassment, some States in the US have imposed obligation on employers to provide anti-sexual harassment training to their employees where the undertaking has fifty or more employees (Davis and Ermilio 2019). Moreover, holding employers stringently liable for supervisory employees’ conduct in cases where a supervisor sexually harasses an employee under his/her supervision has been argued for as it is the authority vested in the supervisor by the employer that enables him/her to commit the harassment (Blanchard 1998). Even though employers may not be liable for all employees’ sexual conduct, the liability for managerial staff and supervisors should be a standard. In the Ethiopian Labor Proclamation, employers have vicarious liability for sexual harassment and assault committed by managerial employees as provided under Article 14. This can also be inferred from the arrangement of severance pay under Article 39 (1)(d). According to this provision, severance pay is paid to a victim who resigned from work as a result of sexual harassment by the employer, managerial employee or coworker. While the employer bears vicarious liability for harassment by herself/himself and supervisory/managerial employees, when sexual harassment is by co-worker(s) of the victim, liability arises only where there is failure to take measures in due time after a complaint is made. The assessment of employer’s measure

may consider circumstances but should also be cognizant of power dynamics. Regulations and directives that may be issued to support the Labor Proclamation should provide detailed obligations for employers to prevent sexual harassment such as trainings.

The Ethiopian Labor Proclamation, under Article 39, links employers' liability with employees' status as 'having completed probationary period'. The exclusion of victims of sexual harassment from claiming severance pay on the basis that they have not completed probationary period is double victimization by the law and against human rights. The Labor Proclamation also excludes sexual harassment by non-employees. But creating a sexual harassment free workplace demands a regulation in this regard. The EEOC, for example, calls for imposing liability for harassment by non-employees and calls into consideration the extent of the employer's control and other legal responsibilities. As far-fetched as this may seem, it has a great contribution in protecting victims of harassment by clients and business partners of employers who have hierarchical relationship with the employees of the undertaking. Employer liability, in this regard, will push towards adopting a stronger policy against sexual harassment for the undertaking.

Sexual harassment free workplace requires putting in place effective complaint procedures that are accessible and confidential. Women who report sexual harassment can suffer both professional retaliation such as getting undesirable reassignment, demotion or denial of promotion and social retaliation of being ostracized by coworkers as trouble makers (Karami et al. 2019). It is reported that "as sexual harassment is exercised by the more powerful, their denials and minimization carry more cultural and social capital than the voices and accounts of the victims" (UN Women 2018, 10). Confidentiality and protection from retaliation should therefore be emphasized.

Addressing these concerns also intersects with determining how and when victims of harassment file complaints to seek redress. Period of limitation is among the major barriers in seeking redress for sexual harassment in the workplace. As survivors of sexual harassment are often traumatized and enter post-traumatic state for a considerable period of time, period of limitation for reporting should be eliminated or extended and interim measures sensitive to the case reported should be available (UN Women 2018). The Labor Proclamation, under Article 33, provides only fifteen days period of limitation, putting victims in a compromising position of tolerating sexual harassment for fear of losing one's job. In fact, a period of limitation of three months applies to victims of the type of sexual harassment recognized under the Criminal Code as stipulated under Article 213. According to Article 218 of the Criminal Code, this can be extended to a maximum of two years if the victim is materially incapacitated

from lodging complaint. It is also important to note that the Criminal Code's relatively longer period of limitation applies only when victims wish to file their complaints to initiate criminal proceedings against their harasser.

6. Concluding Remarks

Ethiopia's adoption of the new Labor Proclamation, which for the first time mentioned the prohibition of sexual harassment in the private sector workplace is a commendable step in protecting human rights and paying due regard to recommendations of the CEDAW Committee. The enactment of the Proclamation for the private sector corresponding to the legal reform in the Civil Service is also in compliance with the State's obligation to safeguard individuals within their jurisdiction from infringement of the right to work by third parties. Indeed, law is not the only mechanism in the walk towards a sexual harassment free workplace but it is instrumental to say the least. The legal formulations are critical in decisions victims make to refuse and resist a sexual demand or give in and comply with it (Mackinnon 2007). Likewise, the obligations of employers are also to be determined in light of the legal standards.

In this regard, the new Labor Proclamation lays a good foundation by explicitly incorporating anti-sexual harassment framework to the private sector. While the explicit reference to sexual harassment is one of the major achievements of the Proclamation, it however, falls short of addressing major sexual harassment concerns, which have clearly been identified and debated in the international human rights legal regime and other domestic jurisdictions. The protection extended by the Proclamation is limited to certain overt sexual advances, excluding sexual harassment that creates hostile work environment without asking the victim for any sexual favor. There remain miles to be walked towards a zero tolerance stance in prohibiting all acts of sexual harassment, setting the scope of application for the provision and its enforcement mechanism. Furthermore, the provisions tend to be gender neutral and the peculiarities of sexual harassment to different sexes and genders roles are not adequately attended to.

As the main conceptualization of sexual harassment under the international human rights law is discrimination based on sex, much can be achieved if the Proclamation expressly or at least tacitly defines sexual harassment as discrimination on the basis of sex. With such formulation, the constitutional right to equality under Article 25 of the FDRE Constitution can be effectively used in eliminating sexual harassment against women from the workplace.

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This book provides comprehensive analyses of different dimensions of gender equality and women's rights in Ethiopia. Covering crucial aspects of women's lives in the workplace, in politics, in land administration and in the protection against discrimination and violence, the book offers well-researched insights into areas not previously thoroughly investigated. While the various chapters are a compulsory read for students and scholars of gender studies, they also offer new perspectives on the overall current political and economic developments in a country in transition, making it relevant for a wider audience looking for a better understanding of where Ethiopia is heading. This edited volume is therefore an immensely important contribution both to the emerging field of gender studies in Ethiopia and to the documentation and analysis of critical societal change in one of Africa's most populous States.

Lovise Aalen
Research Director, Chr. Michelsen Institute

This edited collection on gender, development and women's rights is a major addition to the knowledge and analysis made so far on the area. While some of the chapters offer new perspectives and approaches, others point to specific actions that need to be taken. Furthermore, the need for comprehensive approach in understanding women's rights is well evidenced and thus can be of great use to influence economic, social, and political policies, as government development plans and policies should be informed through such thorough examinations. It is interesting to see how the book challenges existing assumptions and expectations, such as economic growth alone resulting in gender equality. No doubt that the book serves as an instrumental source in analyzing women's rights issues, a guide in measuring progress made on gender equality, a direction for program design and project implementation, and a powerful tool for evidence based advocacy for women's rights organizations.

Saba Gebremedihin
Executive Director, Network of Ethiopian Women's Association

This volume on gender, development and women's rights in Ethiopia fills a crucial gap in the literature on Ethiopian society by comprehensively exploring women's experiences in the country today. Editors of the book and contributors provide an exciting portrait of Ethiopian women's lives that are complex, dynamic and intersectional. Through extensive exploration of the ways in which women's participation in political, economic, and social life is richly manifested, in tradition and modern expression, the authors demonstrate that even within the constraints to agency faced historically and today, Ethiopian women and their allies have expanded access to development and women's rights. With new empirical contributions in law, economic development, land rights, pursuit of dignity and autonomy, the authors point to the ways that gender studies and development studies that are historicized and theorized can be integrated into the core disciplines.

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