



**Addis Ababa University
School of Graduate Studies
Faculty of Law**

**ACCESS TO ABORTION AS A REPRODUCTIVE
HEALTH RIGHT IN ETHIOPIA: NORMATIVE AND
PRACTICAL CHALLENGES**

By

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SCHOOL OF GRADUATE STUDIES
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in Ethiopia: Normative and Practical Challenges**

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**Thesis Submitted to the School of Graduate Studies of
Addis Ababa University in Partial Fulfillment of the
Requirements for the Masters of Law (LLM) in
Human Rights Law**

DECLARATION

Tarikua Getachew, hereby declare that this research paper is original and has never been presented in any other institution, to the best of my knowledge and belief. I also declare that any information used has been duly acknowledged.

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ACRONYMS

ACHPR	African Charter on Human and Peoples ' Rights
AU	Africa Union
CRC	Convention on the Rights of Child
FDRE	Federal Democratic Republic of Ethiopia
FMWSA	Federal Ministry of Women, and Social Affairs
HRC	Human Rights Committee
ICPD	International Conference on Population and Development
ICEDAW	International Convention on the Elimination of all forms of Discrimination Against Women
ICRPD	International Convention on the Rights of Persons with Disabilities
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IESO	Integrated Emergency Surgical Officer
FMOH	Federal Ministry of Health
NGOs	Non-Governmental Organizations
LNMP	Last Normal Menstrual Period
UDHR	Universal Declaration of Human Rights
UN	United Nations
WHO	World Health Organization

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ABSTRACT

Abortion is the artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus. There has been a long-standing debate on the issue of abortion, starting from earlier periods of time, as to its liberalization or criminalization. The situation in Ethiopia is no exception in this regard.

This study looks at the extent to which protection for the right to safe abortion is provided under international human rights law. It also examines the protections available for the right to safe abortion in Ethiopia's law. In principle, abortion is a crime under Ethiopian law. It is only on the exceptionally stipulated grounds of the law that legal abortion can be procured. One such exception to the law is pregnancy because of the criminal acts of rape and incest. To procure a legal abortion on the basis of this particular ground, the mere statement by the woman that she is a victim of rape or incest is adequate. Thus, this research aims at examining the legal frameworks related to the right to safe abortion in Ethiopia and pointing out some normative and practical challenges. Hence, the research employed qualitative research methodology, including a literature review, examination, and analysis of relevant international and regional instruments as well as domestic laws and academic articles relevant to the study. In-depth interviews and unstructured and semi-structured questions were also employed by the experts. The writer argues that both international human rights law and Ethiopian law provide some level of protection for the right to safe abortion as a women's reproductive health right, even though normative and practical challenges are hindering exercising the right. There is also a duty on the part of the government of Ethiopia to enforce such protections available for women's reproductive health rights. The concerned authorities in Ethiopia have to take measures that will ensure compliance of the practice of abortion with the law and provide better protection for women's reproductive health rights by revising the restricted abortion law.

Key Words: *women's reproductive health rights; the right to safe and legal abortion; legal restrictions on abortion.*

CHAPTER ONE

INTRODUCTION

1.1 Background

The Black's Law Dictionary defines abortion as “an artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus.”¹ Abortion is a sensitive and contentious issue with religious, moral, cultural, and political dimensions, and it is also a public health concern. Abortion can be performed in a safe or unsafe condition. WHO defines “safe abortion” as an abortion that meets the following three criteria: (i) done with a method recommended by WHO (medical abortion, vacuum aspiration, dilatation, and evaluation) (ii) appropriate to the pregnancy duration, and (iii) provided by a trained health-care provider.²

Reproductive rights began to appear as a subset of human rights in the 1968 Proclamation of Teheran, which states, “Parents have a basic right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect.” Reproductive rights consist of three broad categories of rights. (1) Rights to reproductive self- determination. (2) Rights to sexual and reproductive health services, information, and education; and (3) rights to equality and non-discrimination.³ The term “reproductive rights” has not yet been defined by any international human rights convention. However, the International Convention on the Rights of Persons with Disabilities defines reproductive right as the right to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning, education, and the means necessary to enable them to exercise these rights.⁴ “Abortion” is not mentioned, but the wording...“The right to decide freely and responsibly on the number and spacing of their children and to have the information and means to do so” can be interpreted as including the right to abortion.

Generally, women's reproductive rights may include some or all of the following; abortion, birth control, freedom from coerced sterilization and contraception, the right to access good-quality care, and the right to education and access in order to make free and informed reproductive choices.⁵

¹ · Bryan A. Garner, Black Law Dictionary(9th edition) p 6

² World Health Organization (2012) Safe abortions: Technical and policy guidance for health systems

³ . Erdman, R.J. Cook, [2008] ‘Reproductive right’ international encyclopedia of public health p1

⁴ International Convention on the Rights of Persons with Disabilities (adopted 13 December 2006 ([A/RES/61/106](#))) (CRPD) Article 23 (b)

⁵ Peter Benenson House, ‘Stop Violence against Women: Reproductive rights [2007] Amnesty International USA publication p1

Women's sexual and reproductive health rights are also related to multiple human rights, including the right to life, the right to be free from torture, the right to health, the right to privacy, the right to education, and the prohibition of discrimination.⁶

The Committee on Economic, Social, and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW) have both clearly indicated that women's right to health includes their sexual and reproductive health.⁷ "The UN Human Rights Committee's General Comment No.36 on the Right to Life" states⁸ availability of safe, legal, and effective access to abortion on broad socioeconomic grounds is critical to women's and girls' enjoyment of their human rights, including, in particular, to health and bodily autonomy and, even more fundamentally, to their right to life. ⁹The WHO Constitution stated: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic condition or social condition."¹⁰

Access to safe abortion is often not viewed as a reproductive health right in many societies, but UN human rights monitoring bodies are increasingly forcing governments to ensure women's ability to access safe abortion and post abortion care in accordance with existing laws and to review legal restrictions on abortion because of potential conflicts with human rights commitments.¹¹ "Yet there is no global human rights instrument explicitly placing an obligation on states to liberalize restrictive abortion laws"¹².

In Africa at the regional level generally, there is a lack of acknowledgment and implementation of the right to "safe abortion as a reproductive health" right by regional treaty bodies, including its official interpretation and application¹³. But "the African human rights system has recently come up with a protocol that clearly obligates state parties to allow medical abortion in certain conditions."¹⁴

Reproductive health rights and abortion are highly politicized issues both on global and national

⁶ . Erdman, R.J. Cook (see n 3) p 1

⁷ CEDAW general recommendation No 24 and CESCR General Comment No 14 & 22

⁸ Berro Pizzarossa, L. (2019). Abortion, health and gender stereotypes: a critical analysis of the Uruguayan and South African abortion laws through the lens of human rights. [Thesis fully internal (DIV), University of Groningen]

⁹ The UN Human Rights Committee's General Comment 36 on the Right to Life / CCPR/C/GC/36/ para8

¹⁰ WHO Constitution adopted, June to 22 July 1946 entered into force on 7 April 1948.¹⁰

¹¹ Judy Gold et al 'about abortion: a guide to rights-based messaging' [2015] IPPF p 3

¹² Libasie,mekdes Fisseha, prevention of Unsafe Abortion through Legal Reform, International Human Rights law and National Implementation in Ethiopia (May, 2006 unpublished University of Oslo),p30

¹³ Charles Ngwena, "access to safe abortion as a human right in the African region lessons from emerging jurisprudence un treaty body" vol 29 (2017) p400

¹⁴ Judy Gold et al (see n11) p3

levels and subject to continuous debate arising from questions about gender and equity, human rights, morality, religion, and norms, regardless of the population's socioeconomic, religious, or cultural status.¹⁵ Besides politicizing the issue, restrictions on abortion law and abortion-related stigma are basic barrier to exercising the right. “Abortion is stigmatized because it challenges a number of social, cultural, and religious norms and values.”¹⁶

Ethiopian abortion laws started with the Feteha Negest, which stated:-

If a woman conceives and wants to abort the unborn child in her womb, she shall be beaten and exiled.”(Chapter XLVIII, Corporal and Spiritual Punishment for Fornication; VII-72) and “If a man makes a woman abort with poison and lies with her, he must remain outside the church for the rest of his life.” (Chapter XLVII, Homicide and its Corporal and Spiritual Punishment) The position of the 1930 Penal Code on abortion was absolute, with no exceptions. But the 1957 Penal Code made a significant departure from the Feteha Negest and the 1930 Penal Code by recognizing some exceptions. Generally, Ethiopian abortion law history started with rigid restrictions and some reform in 1957, and it has indeed broadened the scope of permissible abortion under the new revised Criminal Code.¹⁷

1.2 Statement of problem

In 2020, “in Ethiopia, an estimated 620,300 induced abortions were performed per year, making the annual abortion rate 28 per 1000 women aged 15–49. Unsafe abortion accounts for 8.6% of maternal deaths in Ethiopia, and many more suffer from injuries or illnesses related to unsafe abortion.”¹⁸ “Unsafe abortion has resulted from deep-rooted poverty, gender inequalities, and a lack of commitment by responsible actors to ensuring women’s rights to safe abortion.”¹⁹

Access to safe abortion in Ethiopia is not considered part of reproductive right; it is a criminal act. But the new Criminal Code provides exceptions. According to Article 551 of, abortion is not punishable “if it is to save the life of the woman, to preserve physical and mental health, rape or incest, or fetal impairment only other factors like economic or social reasons and availability on request are

¹⁵ Astrid Blystad. et al ‘Reproductive health and the politics of abortion’ [2020] *Journal for Equity Health* p1

¹⁶ Judy Gold et al, (see n 11) p 6

¹⁷ Tsehai Wada , abortion law in Ethiopia a comparative perspective, *Mizan Law Review* Vol. 2 No.1, AAU press, Jan (2008) p20

¹⁸ Kidus. Kebede ,et al ‘Magnitude and Determinants of the Late Request for Safe Abortion Care Among Women Seeking Abortion Care at a Tertiary Referral Hospital in Ethiopia’[Jan2021 Vol 2020] *international journal of women health* p1224

¹⁹ Tsehai Wada, ‘(seen n 17) p1

not included under this article”.²⁰ The right to access safe abortion in Ethiopia also seems not to be well known to the public and is strongly challenged by prevailing religious-cultural norms and abortion-related stigma.²¹

1.3 Literature Review

There are some studies on the rights of women in Ethiopia related to abortion. However, the researcher believes that studies on Access to Safe Abortion as a Reproductive Health Right in Ethiopia: Normative and Practical Challenges are new and have great contributions to the protection of women's rights in Ethiopia because none of them directly touch on the issues in a broader manner.

Abortion Debates

The people who argue for criminalization of abortion argue that the fetus has its own special existence and full genetic constitution, which differs from the life of the mother so; Abortion is morally and religiously wrong. The justifications provided for this argument “abortion denies both the conceived child and the society at large from getting its contributions; causes both physical and psychological harm to parents; it is the wrong method of birth control; and it is against the medical ethics of not harming others.”²².

*People who argue for the liberalization of abortion consider it an autonomous decision of the pregnant woman based on her body, basing their argument on her right to liberty and privacy. The proponents of the pregnant woman's right to abortion also argue that, though there should be a certain sort of protection for the fetus, the state cannot compel women to carry fetuses as they have rights over their own bodies. The bases for this argument are autonomy, bodily integrity, and self-ownership. Priority shall be given to the health and interests of the pregnant woman, which are required by the fundamental right to life and liberty. Therefore, the government is not in a position to tell women what they can and cannot do with their bodies.*²³

The proponents of liberalization of abortion raised objections to abortion that are not as such supported by a certain sort of medical proof. Most of them are based on religious and moral grounds. The medical assertion that life begins at the time of conception seems not to be true because of the viability of a fetus. The viability of a fetus starts at a later time in the pregnancy, around the 26th week of pregnancy before birth, so we cannot say the fetus is alive at the time of

²⁰ Kidus Meskele Ashine, ‘An Assessment of Ethiopian Law of Abortion: A Human Rights Approach vol 27,’ [2017] p1

²¹ Susheela Singh et al, ‘Making Abortion Services Accessible in The Wake of Legal Reforms Framework And Six Case Studies’ [2012] *Gutmacher Institute* p4

²² Kidus Meskele Ashine (see n20) p1

²³ Ibid

*conception.*²⁴

Abortion laws

National laws and policies directly affect women's access to safe abortion. The legal status of abortion is one factor that determines the extent to which abortion procedures are safe, affordable, and accessible.²⁵ Where abortion laws are liberal, there is generally no or very little evidence of unsafe abortion and related morbidity and mortality. In contrast, legal restrictions result in women self-inducing abortions, and generally, these abortions are unlawful and unsafe.²⁶

Restrictions on abortion exist around the world. "However, the extent of these restrictions varies widely from country to country. In some countries, abortion is highly restricted and accessible under only a few circumstances. In other countries, the range of circumstances under which women can access abortion is much broader".²⁷ Generally, state abortion laws can be classified into three groups: restrictive, moderate, and liberal abortion laws.²⁸

Restrictive abortion laws are abortion laws that ban abortion in any case or that permit abortion only on exceptional grounds. These laws criminalize the practice of abortion as principle. For example, pregnancy termination may be permitted in these countries if the woman has been a victim of rape or incest or if it can be shown that her child will be born with serious defects. Brazil, Mexico, Panama, Ethiopia, and Sudan, which have highly restrictive laws, allow abortions following rape, and the Democratic Republic of the Congo, Ethiopia, and Panama permit the procedure when the fetus is impaired.²⁹

Liberal abortion laws are abortion laws that permit abortion on broad grounds. These states decriminalize the practice of abortion, and abortion is permitted at any time during pregnancy, with some exceptions. Thus, in principle, abortion is permitted, and only in exceptional situations is it prohibited. Canada, China, North Korea, Vietnam, and Zambia are some of the countries that do have liberal abortion laws.³⁰

Moderate abortion laws are abortion laws that allow abortion only in the first trimester of pregnancy and only on particular grounds; such state laws criminalize abortion if it is procured after the first

²⁴ Kidus Meskele Ashine (see n20) p2

²⁵ Susheela Singh et al, (see n 21) p4

²⁶ The UN Human Rights Committee's General Comment 36 on the Right to Life / CCPR/C/GC/36

²⁷ Judy Gold et al, (see n 11) p 3

²⁸ Nanette J. Davis, 'From Crime to Choice the Transformation of Abortion in America' [1985] *Greenwood Press* p 3-17

²⁹ Pm rick Lee and Robert P. George. 'The Wrong of Abortion' [1997] *Fotdham international law Journal* 747 P 21

³⁰ Nanette J. Davis, (see n28) p 20

trimester is passed or if the pre-listed ground is not fulfilled. After the first trimester, only on exceptional grounds is abortion permitted in these countries. USA, France, and Great Britain are some countries that do have moderate abortion laws.³¹

*According to the Center for Reproductive Rights, a global legal advocacy organization, there are 24 countries in the world where abortion is completely prohibited. These include Andorra and Malta in Europe, El Salvador and Honduras in Central America, Senegal and Egypt in Africa, and the Philippines and Laos in Asia. Some 90 million (5%) women of reproductive age live in countries that prohibit abortion altogether. More than 50 countries and regions permit abortions only when the woman's health is at risk. Some refer only to physical health, while others include mental health. According to the Center for Reproductive Rights, in most of Europe, more than half of women of reproductive age can safely access abortion either on request or based on broad social or economic grounds.*³²

*An estimated 56 million induced abortions occur each year globally, and 22,800 women die from complications of unsafe abortions, contributing to 8% of maternal deaths worldwide. In Ethiopia, an estimated 620,300 induced abortions were performed per year, making the annual abortion rate 28 per 1000 women aged 15–49. Unsafe abortion accounts for 8.6% of maternal deaths in Ethiopia, and many more suffer from injuries or illnesses related to unsafe procedures.*³³

In Ethiopian context, factors associated with culture, diverse religious opinions, and views on women's rights to control over their own lives and bodies and the right of the fetus to life highly affects the positions on the abortion issue.³⁴ Generally, in Ethiopia, the violation of women's reproductive rights is both a cause and a manifestation of women's disempowerment. Obstacles to the full realization of Ethiopian women's reproductive health and rights include the persistence of harmful traditional practices and unsafe abortions. Unsafe abortions represent a particularly serious threat to women's health and lives. Ethiopia's status as a signatory to the Convention to Eliminate All Forms of Discrimination against Women (CEDAW) and its constitutional guarantee of women's equality demand more aggressive action to eradicate such practices, and reviewing law.³⁵

³¹ Pm rick Lee and Robert P. George. '(see n 29) P 20

³² Eloise Bappy, the state of abortion right around the world Times news paper published may 3/2022

³³ Kidus- K,et al (seen n18) 17

³⁴ Fasika freed Alemu minor awareness about new abortion law and access to safe abortion service in Ethiopia: The Case of Marie Stops International Ethiopia Centers in Addis Ababa"(university of Amsterdam in medical anthropology) p15

³⁵ Meaza Ashenafi 'Advocacy for Legal Reform for Safe Abortion' [Apr., 2004] Vol 8 No.1 *African Journal of Reproductive Health* p 80

1.4 Research Question

The research is intended to answer the following questions:

1. What is the legal status of access to safe abortion in international and regional human rights instruments ratified by Ethiopia?
2. What is the legal and policy framework for access to safe abortion in Ethiopia, including reproductive health rights?
3. What is the state of the implementation of abortion laws in Ethiopia?
4. What are the normative and practical challenges attached to exercising the right to safe abortion in Ethiopia?

1.5 Objectives of the study

1.5.1 General objective:-

The general objective of the study is to analyze the legal and policy frameworks related to the right to safe abortion in Ethiopia and to point out some of normative and practical challenge.

1.5.2 Specific objectives:-

- To evaluate right to safe abortion in laws, policies, and international human rights instruments that Ethiopia ratified.
- To assess the normative and practical challenges attached to the right to safe abortion in Ethiopia.
- To assess the compatibility of Ethiopia's laws and policies with international human rights instruments that Ethiopia has ratified.

1.6 Research Methodology

In order to achieve its objectives, the writer employed a qualitative methodology that basically includes literature review, examination of international and national legal instruments.

The research used in-depth interviews with unstructured and semi-structured questions for ten experts who are working in different institutions and four women who actually underwent abortions. The institution was selected by the writer because the institutions are knowledgeable or well experienced with the issue of abortion, and some of the institutions have been working on abortion and related reproductive health rights for a long time in Ethiopia. The interview was made with four medical experts who are working in Marie Stops International Ethiopia clinics and Family Guidance Association Ethiopia (FGAE) clinics, one legal expert who is working at the Ministry of Women and Social Affairs, one legal expert who is working at the Ethiopian Women's Lawyer Association, one expert who is working at the Ministry of Health, two federal prosecutors who are working at the

federal prosecutor office, and one federal judge.

1.7 Scope of the study

This study was conducted and analyzed the legal frameworks put in place for the right to safe abortion at the national level and the major international human rights instruments ratified by Ethiopia will be examined in addition to practical challenges. i.e., social, economic, and cultural barriers to the right to safe abortion in Ethiopia were examined.

1.8 Limitation of the study

The major limitation encountered by the writer is that:-

- Limited Cooperation by an organization working on the issue to provide information and documents which are useful to the research.
- Limited local literature on the issue.
- Difficulties to find volunteer interviewees on abortion due to fear of abortion-related stigma.

1.9 Organization of the study

The study has five chapters:-

Chapter one discuss the background of the study, statement of problem, literature review, research questions, objective of the research, methodology, scope, and limitations of the research, and the organization of the research.

Chapter two deals with abortion rights as a human right and tries to analyze legal status of access to safe abortion as a reproductive health right: The writer tries to identify whether the right to safe abortion is part of a reproductive health right or not. From the international law perspective mainly UN Charter, declarations and resolutions; this chapter also tries to analyze hard and soft laws, policies, and guidelines about the right of access safe abortion as a reproductive health right.

Chapter three tries to analyze the legal and policy framework for the right to safe abortion as a reproductive right and implementation of abortion laws in Ethiopia. Basically, this chapter analyzes the legal status of access to safe abortion as a reproductive health right in Ethiopia mainly Constitution, other national laws and major international laws ratified by the Ethiopia.

Chapter four deals with normative and practical challenges to exercising abortion rights as part of reproductive rights in Ethiopia This chapter tries to research major challenges and drawbacks to exercising abortion rights, like the restriction of abortion laws, abortion-related stigma, a lack of enough resources and public awareness, and other related challenges.

Conclusions and recommendations: Finally, the research final chapter is conclusion and recommendations. The writer try to forward same recommendations based on research findings.

CHAPTER TWO

ACCESSES TO SAFE ABORTION AS A REPRODUCTIVE HEALTH RIGHT IN INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

2.1 Introduction

“Sources of international law are treaties, custom, general principles of law, judicial decisions, and the writings of publicists. International conventions and soft laws are the most important sources for understanding the right” to safe abortion.³⁶

Generally, as a legal issue, abortion law is usually discussed in light of the principles of “criminal law in either criminalizing or decriminalizing the act, or in” relation to constitutional law”, whether a woman has a constitutional right to terminate her pregnancy or not.³⁷

The Chapter is divided into two sections. Section one discusses access to safe abortion as a reproductive health right in international law; section two discusses access to safe abortion as a reproductive health right in Maputo protocol; Finally, the chapter ends with a conclusion and summary of rights to safe abortion under international and African legal frame work.

2.2 The right to Access to Safe Abortion as a reproductive health right in international law

2.2.1 The right to Access to Safe Abortion under United Nation Convention

No global UN treaty contains the word “abortion”, nor can a “right to abortion” be inferred from the ordinary meaning of the words of any treaty.³⁸ Treaties like, ICCPR, ICESCR, CEDAW and CRC “have not yet addressed abortion specifically but the monitoring bodies that evaluate countries progress toward achieving treaty commitments are beginning to offer guidelines for how to interpret existing ” treaty³⁹.

2.2.1.1 Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly of the United Nations on December 10, 1948. The Universal Declaration of Human Rights has declare

³⁶Libasie,mekdes Fisseha, (see n 12) p13

³⁷ Tsehai Wada , (see n 17) P1

³⁸ Piero A. Tozzi, J.D, *International Law and the Right to Abortion* [published 2010]p5

³⁹ Fred Sai, International Commitments and Guidance on Unsafe Abortion *African Journal of Reproductive Health* Vol. 8, No. 1 (Apr., 2004) p17

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services...”⁴⁰ State restrictive abortion laws violate the principles of non-discrimination and the right to get adequate health services, including abortion, as stated under Article 25 of UDHR. “Every individual is also protected from arbitrary interference in their privacy. It has been contended that access to abortion is a private right, and criminalizing it could be an infringement of the right to privacy and right to safe abortion.”⁴¹

2.2.1.1 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) was adopted by United Nations General Assembly Resolution 2200A (XXI) on December 16, 1966, and entered into force on March 23, 1976. Article 6(1) of the ICCPR states that “every human being has the inherent right to life”⁴²

The HRC General Comment No.28 asks States Parties, when reporting on the right to life protected by Article 6, to give information on any measures taken by the state to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions. This comment also declares states shall consider reviewing restrictive abortion. “laws or policies and impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortions, a potential violation of the right to life (Article 6) and the right to not torture or to cruel, inhuman or degrading treatment or punishment” (Article 7)⁴³

The HRC Committee has specifically addressed the effect of restrictive abortion laws on women’s health. For example, the recently reviewed Peru’s restrictive abortion law in KL v. Peru. The case of KL involved a 17-year-old Peruvian girl who was pregnant with an anencephalic fetus.” Doctors confirmed that her fetus would likely be born without major portions of its brain, leading to stillbirth or death, which posed risks to KL’s life if the pregnancy continued. “While abortion is illegal in Peru, there is a limited exception for women’s lives or health. Despite this legal exception and medical recommendations to terminate the girl’s

⁴⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 Article 25

⁴¹ Libasie, mekdes Fisseha, (see n12) p53

⁴² International Convention on Civil and Political Rights (ICCPR) adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December, (1966) Article 6

⁴³ Christina Zampas and Jaime M. Gher "Abortion as a Human Right International and Regional Standards" Oxford journal (2008) P 256

pregnancy, Peru's state hospitals ultimately denied KL's request for an abortion because they claimed it fell outside the health and life exceptions, as there is no explicit right to abortion in cases of severe fetal impairment. KL was forced to carry her pregnancy to term and gave birth to an anencephalic girl. After she was forced to breastfeed the baby for four days, the baby, as medically expected, died, and KL became severely depressed, requiring psychiatric treatment. Thereafter, three non-governmental organizations collectively submitted an individual complaint to the HRC on KL's behalf⁴⁴

HRC Committee found violations of Article 17 (arbitrary interference with privacy) and Article 7 (cruel, inhuman, or degrading treatment) of the ICCPR, reasoning that the applicant suffered mental distress and the state failed to provide adequate medical and psychological support.⁴⁵

HRC's Concluding Observation to Poland expresses concern about "the lack of accessibility of abortion even when the law permits it due to a lack of information and the use of conscientious objection by medical practitioners as a threat to a woman's life, and advises Poland to liberalize its legislation and practice on abortion."⁴⁶

HRC Committee's General Comment No. 36 states that the availability of safe, legal, and effective access to abortion on broad socio-economic grounds is critical to women's and girls' enjoyment of their human rights, in particular, health and bodily autonomy, and even more fundamentally, their right to life.⁴⁷ "The HRC has also called upon States Parties to amend restrictive abortion laws to help women avoid unwanted pregnancies and unsafe abortions and to bring laws in line with the ICCPR, specifically Article 6 (right to life)."⁴⁸ Ethiopia became a party to the International Covenant on Civil and Political Rights (ICCPR) on June 11, 1993.⁴⁹

2.2.1.2 International Convention on the Rights of the Child (ICRC)

The International Convention on the Rights of the Child (ICRC) state "States Parties recognize that every child has the inherent right to life. And States Parties shall ensure to the maximum extent possible the survival and development of the child"⁵⁰ "The Committee on the Rights of the Child

⁴⁴ Christina Zampas and Jaime M. Gher (see n 43) P 270

⁴⁵ UN Human Rights Committee, *Karen Noelia Llanto Huamán v. Peru*, Communication No. 1153/2003, 24 Oct/2005

⁴⁶ Christina Zampas and Jaime M. Gher (see n 43) P 258

⁴⁷ The UN Human Rights Committee's General Comment 36 on the Right to Life / CCPR/C/GC/36/20

⁴⁸ Christina Zampas and Jaime M. Gher (see n 43) P 257

⁴⁹ UN treaty body ratification status data base (OHCHR)

⁵⁰ Convention on the Rights of the Child, (ICRC) Adopted and opened for signature, ratification and accession by General assembly resolution 44/25 of 20 November, (1989) Article 6

(CRC) has expressed repeated concern over adolescent girls' access to safe abortion services and the need for states parties to provide access to sexual and reproductive health services, including safe abortion services”.

*The CRC urged States Parties to provide safe abortion services where abortion is not against the law. Further, the CRC has linked unsafe abortion to high maternal mortality rates and expressed concern over the impact of punitive legislation on maternal mortality. In that regard, the CRC has specifically recommended that a state party undertake a study of the negative impact of early pregnancy and illegal abortion.*⁵¹

Ethiopia became a party to the International Convention on the Rights of the Child (ICRC) on May 14, 1991.⁵²

2.2.1.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR does not explicitly confer the right to life. But the Committee on Economic, Social, and Cultural Rights (CESCR) has repeatedly expressed concern regarding the relationship between high rates of maternal mortality and illegal, unsafe, and clandestine abortions. The CESCR also called upon States Parties to take remedial measures to address the problems of unwanted pregnancies, clandestine abortions, and high maternal mortality rates and to permit or consider permitting abortion certain condition “when pregnancies are life-threatening or a result of rape or incest”⁵³

“The ICESCR obligates state governments to ensure the highest attainable standard of physical and mental health. The committee interprets this obligation in terms of women’s right to health”⁵⁴ and the committee stresses to eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy for promoting women's right to health throughout their lives. Such a strategy should include policies to provide access to a full range of high-quality and affordable health care, including sexual and reproductive services⁵⁵. The “CESCR stresses that many measures, such as strategies and programs designed to eliminate health-related discrimination, can be pursued through the adoption, modification, or abrogation of legislation”⁵⁶. Ethiopia became a party to

⁵¹ Christina Zampas and Jaime M. Gher (see n 43) P 260

⁵² UN treaty body ratification status data (base (OHCHR)

⁵³Christina Zampas and Jaime M. Gher (see n 43) P 260

⁵⁴ Ibid p 261

⁵⁵ CESCR General Comments No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

⁵⁶ Libasie,mekdes Fisseha(see n 12) p 39

the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on June 11, 1993.⁵⁷

2.2.1.4 Convention on the Elimination of all forms of Discrimination against Woman (CEDAW)

“Women have specific health needs that cannot be met by the uniform treatment of all individuals. The need to eliminate discrimination against women also includes the obligation to take into consideration the special health needs of women.”⁵⁸

The CEDAW committee raises reproductive health right by stating, “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”⁵⁹

The CEDAW committee General Recommendation No. 24 has addressed the impact of abortion on women’s health and lives and, ultimately, women’s equality⁶⁰. “The provision of reproductive health services is essential to women’s equality, and ‘it is discriminatory for a state party to refuse to provide legally for the performance of certain reproductive health services for women’⁶¹, includes abortion.

The CEDAW committee makes the important point that “restrictive abortion laws tend to correspond with the high prevalence of unsafe abortions, which contributes to high rates of maternal mortality”.⁶² And recommended providing social security coverage for abortion procedures and asked States Parties to amend their restrictive legislation.⁶³

The committee suggested that Peru should review its abortion law in order to mitigate clandestine abortion and suspend or remove the punishments for individuals who have already gone through the process”.⁶⁴ The committee also made a remark to Poland that restrictions have recently been imposed on abortions that exclude economic and social grounds for performing legal abortions⁶⁵ affected the right to health of women in Poland. Because of this restriction

⁵⁷ UN treaty body ratification status data base

⁵⁸ Libasie mekdes ,(see n12) p28

⁵⁹ International Convention on the Elimination of all forms of Discrimination against Woman (1979) CEDAW art 12,

⁶⁰ CEDAW, General Recommendation n. 24, Article 12 of the Convention (women and health) (1999)

⁶¹ Libasie mekdes ,(see n12) p29

⁶² Ibid p30

⁶³ Ibid p28

⁶⁴ Ibid p30

⁶⁵ Ibid p31

*women in Poland are resorting to unscrupulous abortionists and risking their health in doing so.*⁶⁶

Ethiopia became a party to the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on September 11, 1981.⁶⁷

2.2.2 Soft laws

2.2.2.1 International Conference on Population and Development (ICPD 1994)

"The International Conference on Population and Development and its program of action are one of the soft laws that demand the fulfillment of individual reproductive rights and reproductive health needs, including abortion."⁶⁸ This document stated that:-

*Abortion cannot be promoted as a way of family planning and that countries should strive for the reduction of unwanted pregnancies and abortions through improved and expanded ways of family planning. The document does not hold a position as to whether abortion is legalized; it simply states where abortion is legal in national laws and how the states should address the issue of safety.*⁶⁹

The United Nations General Assembly convened a five-year assessment in 1999 in Cairo, when it evaluated how well states were doing with their implementation of the ICPD program of Action. The consensus document that resulted expanded on the problem of unsafe abortion by saying that:-

*In circumstances where abortion is not against the law, health systems should train and equip health service providers and should take other measures to ensure that abortion is safe and accessible. This agreement holds health systems responsible for ensuring that all health facilities providing reproductive health services employ appropriately trained and equipped providers. Furthermore, legally permitted safe abortion services must be accessible, and referral systems for post-abortion care should be available to treat the complications of unsafe abortions and incomplete miscarriages.*⁷⁰

2.2.2.2 Beijing Declaration and Platform of Action (1995)

The issues facing women in the domain of reproductive health have been highlighted as major

⁶⁶ Libasie mekdes ,(see n12) p28

⁶⁷ UN treaty body ratification status data base (OHCHR)

⁶⁸ Libasie mekdes ,(see n12) p16

⁶⁹ Ibid p19

⁷⁰ 1999 the ICPD Conference Programme of Action ICPD+5 Para 63(iii)

areas of concern in the Beijing Declaration and Platform of Action from 1995.

*The consensus at the Beijing conference was to recognize and deal with the health impact of unsafe abortion as a major public health concern, further strengthening the idea that women should not be criminalized for having an abortion and governments should consider reviewing laws containing punitive measures against women who have undergone illegal abortions.*⁷¹

The Cairo and Beijing Declarations “have extensively dealt with the issue of reproductive autonomy, reproductive health, and unsafe abortion as cases threatening women’s health and life expectancy, but these documents contain principles that lack adequate legal sanctioning”⁷². Because of a lack of consensus among states, neither of these documents contains the right to abortion.⁷³

2.2.2.3 World Health Organization: Safe Abortion: Technical and Policy Guidance (2012)

Safe Abortion: Technical and Policy Guidance Related to Safe Abortion Service was created by WHO.-The recommendations acknowledge that safe services are frequently unavailable, even when they are legal, which one of the factors is contributing to the continuance of unsafe abortion.

*The guidance clarifies the nature and extent of states human rights obligations regarding access to safe abortion. It explains the practical or administrative steps the state must take to regulate abortion while complying with human rights. The WHO guidance focuses on how to develop and implement abortion laws in ways that respect, protect, and fulfill women’s human rights. Even where abortion laws are restrictive, the WHO guidance stresses that laws must be interpreted and applied to promote and protect women’s health rights. It highlights that states have an obligation to ensure that abortion laws are implemented and to put in place institutional and administrative safeguards for woman seeking abortions. The safeguards should include mechanisms for independent woman seeking abortions. The safeguards should include mechanisms for independent administrative review of decisions, allowing the views of the woman seeking abortion to be taken into account, and timely resolution of the review process.*⁷⁴

Ethiopia accepted WHO guidelines and enact technical and procedural guidelines for safe abortion services.

⁷¹ Libasie mekdes ,(see n12) p55

⁷² ibid p54

⁷³ Piero A. Tozzi, J.D (see n37) p12

⁷⁴ World Health Organization (2012). Safe abortion: technical and policy guidance for health systems, 2nd ed WHO

2.3 Access ‘to Safe Abortion as a Reproductive Health Right in the African Legal Framework

2.3.1 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted on July 11, 2003, and came into force on November 25, 2005. Its primary objective is to consolidate and advance women's rights at the regional level with a focus on equality and non-discrimination, like CEDAW. The Protocol declares states to adopt appropriate measures “to protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.”⁷⁵ It breaks new ground in international human rights law in that it constitutes the very first time that an explicit state obligation to permit abortion has appeared in a treaty.

The Protocol has the potential to positively impact access to abortion in three main areas. First, it takes forward the global consensus on combating abortion as a major public health danger. Second, it provides African countries with not just an incentive but, more significantly, a legal imperative for reforming abortion laws in a transparent manner. Third, if implemented in the context of a treaty whose underpinning philosophy centers on achieving the equality and non-discrimination of women, the Protocol has the potential to contribute towards transforming abortion law from a crime and punishment model to a reproductive health model. to reproductive health model⁷⁶ that complements the objects of CEDAW and the broader philosophy of the International Conference on Population and Development. (ICPD)⁷⁷

The ratification of the protocol imposes an obligation to reform restrictive abortion laws to accommodate the specified circumstances. “But the implementation of this obligation is limited only to the decriminalization of the law; the state has no obligation to provide abortion services in cases where the circumstances envisaged by the protocol”.⁷⁸ The protocol states that “countries with more liberal abortion provisions than the protocol” are not to downgrade their laws.⁷⁹ Ethiopia signed the

⁷⁵ Protocol to the African Charter on Human and Peoples' Rights on the right of women in Africa (seen 11) Article 14

⁷⁶ Charles G. Ngwena, *Human right and African abortion law* [published 2014]p1

⁷⁷ Ibid p2

⁷⁸ Libasie,mekdes Fisseha, (seen 12) p 4

⁷⁹ Ibid p45

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) on June 1, 2004.

ACHPR “adopted General Comments on the family planning, contraception, and abortion provisions of Article 14 of the Maputo Protocol. The General Comments indicate that the state intends to raise public awareness about unsafe abortion and the role of legal and healthcare systems in reducing it”.⁸⁰

“The General Comments serve to clarify the nature and extent of the normative content of ratifying state obligations. Even for states that have not yet ratified the Maputo Protocol the General Comments are a source of information, education, and guidance for lawyers and judges”.⁸¹

*The AU adopted the Maputo Plan of Action for the implementation of the Continental Policy Framework for Sexual and Reproductive Health and Rights. The Maputo Plan of Action expresses the consensus of African Ministers of Health to promote universal access to comprehensive sexual and reproductive health services in Africa. African Ministers of Health recognize the crucial role of effective implementation of abortion laws as a tool for reducing unsafe abortions. The Plan of Action requires African states to enact policies and legal frameworks to reduce the incidence of unsafe abortion, train healthcare providers in the provision of comprehensive safe abortion services that are lawful and to the fullest extent of the law, and educate communities on available safe abortion services as allowed by national laws.*⁸²

2.4 Conclusion

There is no international law explicitly recognizing the right to safe abortion. The right to access safe and legal abortion as a reproductive right is expressly recognized only by the Protocol to the African Charter of Human and People’s Rights on the rights of women in Africa (Maputo Protocol) under Article 14.

Principle of non discrimination, the entitlement to the highest attainable standard of health and the right to privacy are same of right which indirectly demand the rights to get safe and legal abortion, and different UN human rights committees try to create the right to safe abortion by interpretation.

States are aware of the negative impact and consequence of restriction of abortion law and unsafe abortion, which were basically raised by the Cairo and Beijing conference. But the document that came out of these two conferences is a soft law that is not binding.

⁸⁰ Charles G. Ngwena,(see n 76) 4

⁸¹ *ibid* 47

⁸² *Ibid* p48

Table 1 Summary of the right to safe and legal abortion in international and regional legal frame - work ratified by Ethiopia⁸³

Human Rights Protect	International Legal Instruments					Regional Instruments	Conference Documents	
	UDHR	ICCPR	CEDAW	IECSR	CRC	Maputo Protocol	Cairo	Beijing
"The right to life, liberty & Security	Art. 3	Art.6.1,Art.9.1			Art. 6Art, 37(b), Art. 37©, Art. 37(d)	Art. 4" ⁸⁴	Para.8.34	Para. 106,Para.216
"The right to be free from cruel ,inhuman or degrading treatment	Art. 5	Art. 7			Art. 37(a) A	Art. 4" ⁸⁵	Para.4.10	
"The right to equality& to be free from gender discrimination	Art. 2	Art. 2.1 Art. 3	Art. 1, Art, 2Art. 3	Art. 2.2, Art. 3	Art. 2	Art. 2" ⁸⁶		Para. 214,Para.216 Para. 232
"The right to modify Customs that discriminate against women			Art. 2, Art.3,Art.5		Art. 24.3	Art.2(2) ⁸⁷	Para.4.4,Para.5.5,Para.9.2"	Para. 107,Para.224 Para. 230
"The right to health, reproductive health,& family planning	Art. 25		Art11.1(f),Art .11.3 Art. 12Art,14.2(b)	Art. 12	Art. 24	Art.14 ⁸⁸	Para 8,Para.7.2,Para.7.3 Para.7.5	Para. 89,Para 92 Para. 106,Para 223
"The right to privacy	Art. 12	Art. 17			Art.16		Para 7.2	Para. 106 Para. 107

⁸³ Safe and legal abortion is women human right" (2011) Center for Reproductive rights p6

CHAPTER THREE

LEGAL FRAMEWORK AND IMPLEMENTATION

3.1 Introduction

In Ethiopia, approaching the right to abortion from a public health perspective or preventing deaths and injuries from unsafe abortion rather than from a rights-based perspective is more significant in addressing the issue.⁸⁹

“In Ethiopia, an estimated 620,300 induced abortions were performed per year, making the annual abortion rate 28 per 1000 women aged 15–49. Unsafe abortion accounts for 8.6% of maternal deaths in Ethiopia, and many more suffer from injuries or illnesses related to unsafe procedures.”⁹⁰ Unsafe abortion in Ethiopia is not only a medical problem but also a social one. Abortion in Ethiopia is a criminal offense in principle, with the exception stated under Article 551 of the revised criminal code.⁹¹ The Ethiopian Ministry of Health enacted national standards and guidelines for the provision of abortion care in 2006, based on internationally endorsed guidance from the WHO; the guidelines were revised in 2014.⁹²

The above and related issues will be discussed in this chapter. This chapter is divided into two sections accordingly. Section one discusses the legal and policy framework for access to safe abortion as a reproductive health right in Ethiopia, Implementation of abortion laws in Ethiopia and the Ethiopian government’s obligation under international law will be discussed in Section two. Finally, the chapter ends with a conclusion.

3.2. Legal and policy framework

The FDRE’s constitution guarantees women reproductive health rights.⁹³ In principle abortion is a crime but the exceptional condition which abortion is permitted stated under Article 551 of the revised criminal law. “Abortion is not punishable within the period of time accepted by the medical profession if it is to save the life of the woman, preserve physical and mental health, rape or incest, or cause fetal

⁸⁹ Meaza Ashenafi (see n 35) p 80

⁹⁰ Kidus- K, et al (seen n 18) p 17

⁹¹ See Article 545 & 551 FDRE Criminal Code (2004) proclamations No.414/2004

⁹² Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, Ministry of Health, June 2006/2014 Addis Ababa

⁹³ Article 35(1)–(9) Federal Democratic Republic of Ethiopia (FDRE) Constitution, Proclamation No. 1/1995,

impairment. Factors like economic or social reasons and on request are not included in the code".⁹⁴
The right to safe abortion in Ethiopia is not right-based; it is condition-based.

3.2.1 The FDRE constitution

The FDRE's constitution guarantees reproductive health rights,⁹⁵ Even if FDRE constitution doesn't specifically mention the right to safe abortion as a reproductive health right, based on the definition and concept of a reproductive right, we can consider the right to abortion included as part of women's reproductive rights in the constitution. Besides, FDRE's constitution has no constitutional guarantees "to the right to life of unborn child."⁹⁶ In terms of law, the right to life does not begin at conception but rather at birth. As article 1 of the Civil Code states that "the human person is the subject of rights from its birth to its death,"⁹⁷ so we may conclude that a child merely conceived cannot be the subject of rights. So, the rights to life of the unborn child are not considered.

- Freedom from discrimination

The FDRE Constitution states, "Women shall; in the enjoyment of rights and protections provided for by this Constitution, have equal right with men."⁹⁸ "This is the most prominent anti-discrimination provision in the constitution, and another constitutional principle states the equality of men and women by imposing an obligation on the state to eliminate discriminatory practices and laws".⁹⁹ Article 35 (4) state "The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited."¹⁰⁰ including unsafe abortion.

- The right privacy

According to Article 26 of the Constitution, "Everyone has the right to privacy"¹⁰¹ "It has been contended that access to abortion is a private right, and criminalizing it could be an infringement of the right to privacy. The right to protection against bodily harm and the prohibition against inhuman treatment, as cruel, inhuman"¹⁰² and degrading treatment, are also explicitly mentioned in the

⁹⁴ Kidus Meskele Ashine (seen n20) p1

⁹⁵ Article 18&35 Federal Democratic Republic of Ethiopia (FDRE) Constitution (seen n 95)

⁹⁶ Libasie,mekdes Fisseha(seen n12) p

⁹⁷ Article 1 Civil Code of the emperor of Ethiopia proclamation No.165/1960

⁹⁸ Article 35(1) constitution (see n93)

⁹⁹ Libasie,mekdes Fisseha(seen n12) p52

¹⁰⁰ Article 35 (4) Federal Democratic Republic of Ethiopia (FDRE) Constitution (seen n 93)

¹⁰¹ Ibid article 26

¹⁰²Libasie,mekdes Fisseha(seen n12) p54

constitution's provisions.

- **The right to access health care**

The Constitution states that “every Ethiopian national has the right to equal access to publicly funded social services”¹⁰³ including safe abortion services. According ICESCR social and economic right achieved through progressive allocation of increasing resources including the right to adequate health.¹⁰⁴The right to get access to safe abortion is achieved in Ethiopia through the progressive allocation of resources to health facilities.

The country suffers from a deficiency in the infrastructure of health. It has one of the lowest standards of healthcare in the world, but despite that fact, health resources should be accessible to everyone without discrimination. The constitution makes progressive allocation to health and education facility”¹⁰⁵

“Equality for access to services will meet its target when specified laws, policies, and regulations are in place. As stated by the CESCR committee, to eliminate discrimination against women, there is a need to develop and implement a comprehensive national strategy and policy.”¹⁰⁶

- **Rights to Information and Education**

FDRE constitution states “To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.”¹⁰⁷ “Capacity can be interpreted as being capable of accessing family planning, which means the right extends not only to information and education but also to getting the services and being capable of family planning”.¹⁰⁸

From the above provisions, one can argue that the constitution implicitly recognizes abortion as a reproductive health right of women, since laws that preclude abortion have their own influence on the right to physical and mental health and reproductive self-determination of women. Because there is a clear law that criminalizes the act of abortion, women cannot abort unwanted pregnancies in legally recognized health institutions, which will force them to conduct unsafe abortions. Due to this, their physical and mental health is affected, and this also

¹⁰³ Art 35 (1) Federal Democratic Republic of Ethiopia (FDRE) Constitution (seen n 95)

¹⁰⁴ Libasie,mekdes Fisseha(seen n12) p55

¹⁰⁵ Ibid 56

¹⁰⁶ Ibid 57

¹⁰⁷ Art 35 (9) Federal Democratic Republic of Ethiopia (FDRE) Constitution, (see n 93)

¹⁰⁸ Libasie,mekdes Fisseha (see n 12) p55

*violates the right of women to determine when they have children and how many children they will have. This is an equal amount of a violation of the reproductive self-determination rights of women. In addition, the constitution sets obligations on the state by stating, the state has an obligation to allocate ever-increasing resources to provide public health, education, and other social services.”So, facilitating safe abortion can rely on the obligations of states, which are corporate in other social services. Hence, one can argue that the constitution recognizes abortion as one of the rights of women.*¹⁰⁹

3.2.2 Revised Criminal Code

The Criminal Code has eight provisions regarding abortion, (Article 545 – article 553)

The Principle

Article 545 of the Criminal Code proclaims “The intentional termination of a pregnancy, at whatever stage or however affected, is punishable according to the following provisions, except as otherwise provided under Article 551 ”.¹¹⁰

“The Criminal Code prohibits abortion, whether procured by the pregnant woman herself or by other people with or without her consent. Punishment for the crime depends on whether the abortion was procured by the pregnant woman herself or by another person.”¹¹¹

Article 546 state “A pregnant woman who intentionally procures her own abortion is punishable with simple imprisonment. And any other person who procured for her the means of, or aids her in the abortion, shall be punishable as a principal criminal or an accomplice, with simple imprisonment”.¹¹²

Criminal Code stated “Whoever contrary to the law performs an abortion on another, or assists in the commission of the crime, is punishable with simple imprisonment,”¹¹³

In aggravated cases, according to Article 548 (1 and 3) of the Criminal Code, “in cases where the criminal has acted for gain, or made a profession of abortion, he is punishable with fine in addition to the penalties. also “in cases where the crime is committed by a person who has no proper medical

¹⁰⁹” Fekadie Misganaw,“ criminalization of abortion and its implication on the rights of women in Ethiopia unpublished paper for partial fulfillment of LLM University of Gondar) Gondar P 80

¹¹⁰ Article 545(1) of criminal code (see n 91)

¹¹¹ Simangele D Mavundla: access to legal abortion by rape victims as a reproductive health right: case study Swaziland and Ethiopia; faculty of law, University of Addis Ababa, Ethiopia (LLM thesis) October,(2009) p45

¹¹² Article 546(1) and (2) FDRE Criminal Code (see n 93)

¹¹³ Ibid article 547

profession, the punishment shall be simple imprisonment for not less than one year, and fine.”¹¹⁴ But, based on Article 548 (2) of the Criminal Code, “in cases where the crime is committed by a person who has no proper medical profession, the punishment shall be simple imprisonment for not less than one year and a fine¹¹⁵.” And this provision is very helpful in deterring unsafe abortionists.

Exceptions to the Rule

Article 551 of the Criminal Code states exceptions Cases where Terminating Pregnancy is allowed by Law. Termination of pregnancy by a recognized medical institution within the period permitted by the profession is not punishable where:

- a) The pregnancy is the result of rape or incest; or*
- b) The continuance of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother; or*
- c) Where the child has an incurable and serious deformity; or*
- d) Where the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child.¹¹⁶*

Article 552 of the Criminal Code provides “In the case of terminating pregnancy in accordance with sub article (1) (a) of Article 551 the mere statement by the woman is adequate to prove that her pregnancy is the result of rape or incest”¹¹⁷

3.2.3 Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, Ministry of Health, 2006 and 2014

Article 552(2) of the Criminal Code of Ethiopia stated. “The Ministry of Health shall shortly issue a directive whereby pregnancy may be terminated under the conditions specified in Article 551 above, in a manner which does not affect the interest of pregnant women ”¹¹⁸The guideline only explains “how to conduct abortion on legitimate grounds under” the Criminal Code. Doesn’t create a new right other than that already sated under the Criminal Code, so it has no role “in the promotion and protection of women’s human rights in a better way than the”¹¹⁹ Criminal Code.

The guidelines were revised in 2014 to update the clinical regimens and gestational limits for the use

¹¹⁴ Article 548(1) and (3) FDRE Criminal Code (see n 91)

¹¹⁵ Ibid article 548(2)

¹¹⁶ Article 551 FDRE Criminal Code (see n 91)

¹¹⁷ Article 552 (2) of FDRE Criminal Code (see n 91)

¹¹⁸ Ibid article 552 (2)

¹¹⁹ Fekadie Misganaw,“ (see n109) P 80

of medical abortion, the expanded provision of second-trimester services, and the expansion of Integrated Emergency Surgical Officers (IESOs) as midlevel providers with the capacity to provide comprehensive abortion care. The main updates of the guideline are;

- "The issue of medication abortion in the past, there was no adequate evidence for the use of medication for gestational age beyond 9 weeks. However, there is now better evidence on the use of medication for abortion which have a positive impact on quality or access to safe abortion services".
- Revised guideline gives attention to "second-trimester abortions". "While the first edition of the guidelines addressed the first trimester in sufficient detail, second-trimester abortion" has been left out."
- The roles of the health extension workers and IESOs are "better defined in harmony with their existing respective job descriptions, and the roles of private institutions that are not providing comprehensive abortion care have been elucidated and well-defined in the"¹²⁰ new guidelines.

*The aim of the guideline is to serve as a working document on the techniques and procedures that must be observed in providing safe termination of pregnancy services as permitted by the Criminal Code. The guideline states that where the pregnancy is a result of rape or incest, termination of pregnancy shall be carried out based on the request and disclosure of the woman that the pregnancy is the result of rape or incest. The fact that a request for termination of pregnancy after rape or incest does not require any production of evidence or identification of the suspect is a really important innovation in the law, considering the fact that rape is associated with stigma, as is abortion.*¹²¹

*Minors and mentally disabled women should not be required to sign a consent form to obtain an abortion procedure. In fact, they do not have to provide an excuse for their request to terminate their pregnancy, as the law looks at them and sees that they are likely to be unable to take care of the resulting child for social and economic reasons. Doctors, according to the Medical Ethics for Physicians Practicing in Ethiopia, are obliged to intervene by terminating a pregnancy in order to save the woman's life or health. However, the guidelines had no legal force and only served the purpose of medical courtesy.*¹²²

3.2.3.1 Legal Requirements for Safe Abortion Services under the Guidelines

¹²⁰ Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, Ministry of Health, 2014 p2

¹²¹ Simangele D Mavundla: (see n111) p46

¹²² Ibid p47

- **Pregnancy as a result of rape or incest/Article 551 (1-A)**

If the pregnancy was caused by rape or incest, an abortion is done, and the woman must disclose whether rape or incest had place before the pregnancy can be terminated. This information will be recorded in the woman's medical file. However, in order to receive abortion services, women who desire termination of pregnancy following rape or incest are not required to provide proof of the rape or incest and/or name the perpetrator.¹²³

- **Pregnancy poses a threat to the mother's or the unborn child's life/Article 551/(1-B)**

When the continuation of the pregnancy puts the mother's or the child's life, or the mother's health, in danger, or when giving birth to the child puts the mother's life or health in danger, the provider should, in good faith, abide by what is known as standard medical practice. Indications that a pregnancy must be terminated in order to protect the mother's life or health; the woman need not be in poor health in order to request safe abortion services.¹²⁴.

- **Fetus has an incurable and serious deformity /Article 551/ (1-C)**

“When the fetus has an incurable and serious deformity that the physician, after conducting the necessary tests, diagnoses as a physical or genetic abnormality that is incurable, termination of pregnancy can be conducted” based on the criminal Code.

- **Grave and imminent danger /Article 551(2)**

In the case of grave and imminent danger, which can be averted only by immediate intervention, an act of terminating a pregnancy in accordance with the provisions of Article 545 of this Code is not punishable¹²⁵

“When the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child, the provider will use the stated age on the medical record for age determination, No additional proof is required.”¹²⁶ Ethiopian law explicitly considers the barriers adolescents face and permits abortion legally on the grounds of being below the age of eighteen without requiring proof of age.¹²⁷

“A disabled person is one who has a condition called disability that interferes with his or her ability to

¹²³ Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, Ministry of Health, 2014 p12

¹²⁴ Ibid p 12

¹²⁵ Ibid p 13

¹²⁶ Ibid p14

¹²⁷ Godfrey Kangaude, Ernestina Coast & Tamara Fetters [2020] ‘Adolescent sexual and reproductive health and universal health coverage: a comparative policy and legal analysis of Ethiopia, Malawi and Zamba’ *Sexual and Reproductive Health Matters*, p 216

perform one or more activities of everyday living. Disability can be mental or physical, and the provider should assess if the woman is suffering from any form of mental or physical disability”¹²⁸.

3.2.3.2 Abortion procedure under Guideline:-

“The provider has to secure informed consent for the procedure using a standard consent form. But the provider shall not be prosecuted if the information provided by the woman is subsequently found to be incorrect. Minors and mentally disabled women should not be required to sign a consent form to obtain an abortion procedure.”¹²⁹ The guideline was revised in 2018 for procedural details of second-trimester abortion services not yet completed.¹³⁰

Here, it can also be noted that the guideline has a meaning only for how to conduct abortion on legitimate grounds under the Criminal Code in Ethiopia, and it does not have many roles for the promotion and protection of women’s human rights in a better way than the Criminal Code. The one role it has is that it obliges health experts to provide service for post-abortion care, which is a comprehensive service for treating women who present to healthcare facilities after abortion, whether it has occurred spontaneously, after an attempted termination, or after an induced abortion, regardless of whether the abortion is legal or illegal¹³¹.

The new abortion law has introduced new grounds for legal abortion, such as rape, incest, and the mental and physical readiness of the pregnant women; this is a step forward in agreement with the current development of international law on the matter Compared to the past criminal law, although to a limited extent, the new law better promotes the agenda of CEDAW, ICESCR, ICPD, and the Beijing Declaration and Platform of Action. The new abortion law is in line with the protocol of the African Charter on the Rights of Women in Africa.

“The proof requirement for rape and incest in the Ethiopian Criminal Code is the mere declaration of pregnant women; such a loose criterion is very creative and helps women get swift service without having to go through the cumbersome proving process”.¹³²

Even if this principle has created ample opportunity for many pregnant women to abuse the law and get safe abortion services illegally,¹³³ Abortion in Ethiopia is still a crime, and restrictive laws couldn’t

¹²⁸ Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, Ministry of Health, 2014 p1

¹²⁹ Ibid p14

¹³⁰ Interview with Alemitu Seyoum health expert at family guidance associations Ethiopia may25/2014

¹³¹ Fekadie Misganaw,“ (see n 109) P 80

¹³² Libasie,mekdes Fisseha (see n12) p 68

¹³³ Interview with Alemitu seyoum health expert at family guidance association Ethiopia may25/2014 and Tiruwork Amare nurse at mar stop international Ethiopia clinics.

“solve the problem of unsafe abortion, which is the highest cause of maternal mortality in Ethiopia”.¹³⁴

The Beijing Declaration and Platform for Action, which prominently acknowledge that unsafe abortion should be recognized and dealt with as a major public health problem. One method of dealing with unsafe abortion is to review criminal laws in order to decriminalize abortion. The fact that abortion is still a crime undermines the commitment the Ethiopian government has made to the Beijing and Cairo international conferences.

“The CEDAW committee has made a remark to Ethiopia that it is concerned about the high rate of clandestine abortion and its causes and recommended the adoption of measures to guarantee effective access for women, including young women, to health-care information and services.”¹³⁵ But still, recent estimates show that one-third of adolescent abortions are clandestine and thus potentially unsafe; complications from unsafe abortions account for 19.6% of all maternal deaths.¹³⁶ So, we can conclude that there is a gap in fulfilling international human rights standards.

Ethiopian abortion law meets the criteria stated under Article 14 of the Protocol of the African Charter on the Rights of Women in Africa, but in Ethiopia, “rape is a very small percentage of the cause of abortion, and incest is almost never reported”¹³⁷. A large percentage of the causes of abortion are social and economic. So, the criminal law has not “solved the problem of unsafe abortion” the same is true the protocol in Ethiopian context. Beside a service, “in particular regarding reproductive health, with the aim of reducing clandestine abortions, reviewing the law is one step and one measure, as CEDAW” has “in several instances told countries to review their abortion laws in order to deal with the adverse impacts of illegal abortion”. So the Ethiopian government needs to review the abortion law.¹³⁸

Ethiopian abortion law is still categorized as a restrictive abortion law. Restrictive laws undermine the government’s readiness to receive new forms of abortion technology or train personnel. Thus, it can be considered a paradox when the MOH holds the position that it should first feel prepared before abortion is made legal. Regarding adolescents under the age of, the new law presents a favorable situation, as the physical and mental incapacity of a minor child is

¹³⁴ Libasie, mekdes Fisseha (see n12) p 68

¹³⁵ Ibid p69

¹³⁶ Astrid Blystad1, et al (see n 15)

¹³⁷ Ibid P 69

¹³⁸ Libasie, mekdes Fisseha (see n 12) P 69

*one of the exceptions where abortion is legal*¹³⁹.

In general, Ethiopian laws seem not to meet all international human rights instrument standards, even if the Ethiopian government made significant improvements by enacting a new criminal law.

Ethiopia is a party to ICCPR, ICESCR, CRC, CEDAW, ICPD (1994), and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 9(4) FDRE constitution; proclaim “any international agreements ratified by Ethiopia an integral part of the law of the land”.¹⁴⁰ “The binding international instruments stated in Chapter two are parts of Ethiopian law. As such, Ethiopia is duty-bound to enact its laws and act in accordance with those instruments. Non-binding instruments or documents have persuasive power over the laws and executive acts of the country.”¹⁴¹

The constitution clearly states that “The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.”¹⁴² According to Article 9 (1) of the FDRE constitution state “any law, customary practice, or decision of an organ of state or a public official who contravenes this Constitution shall be of no effect”¹⁴³

“Here, it can be understood that not only the interpretation but also the enactment of laws should be in conformity with the constitution and international human rights instruments. Therefore, Ethiopia is duty-bound to enact its laws and act in accordance with those human rights instruments.”¹⁴⁴ Besides that, the legal status of such instruments is not clear. Moreover, the fact that the international human rights instruments, including CEDAW, are not translated in accordance with the working language of the country and are not published under the official legal gazette may create uncertainty and ambiguity in the direct application of such instruments by the national courts.¹⁴⁵

3.3 Implementation of abortion laws in Ethiopia

¹³⁹Ibid P 70

¹⁴⁰ Art 9(4) Federal Democratic Republic of Ethiopia Constitution, (see n 94)

¹⁴¹ Kidus meskele asine,(seen n20) p2

¹⁴² Article 13 Federal Democratic Republic of Ethiopia Constitution, (see n 93)

¹⁴³ Ibid article 9

¹⁴⁴ Fekadie Misganaw, (see n 109) P 81

¹⁴⁵ Etsegenet Kedir, "Major Gaps on the Rights of Women in Ethiopia" (Master Thesis International Human Rights

Abortion law in Ethiopia's is restrictive. Almost six in 10 abortions in Ethiopia are unsafe.¹⁴⁶ "In Ethiopia, an estimated 620,300 induced abortions were performed per year, making the annual abortion rate 28 per 1000 women aged 15–49. Unsafe abortion accounts for 8.6% of maternal deaths in Ethiopia, and many more suffer from injuries or illnesses related to unsafe procedures."¹⁴⁷

The abortion rate in Ethiopia varied from region to region, with the highest rate in urban areas and the lowest in rural areas.,

*In 2014, 53% of abortions in Ethiopia took place in health facilities, while 47% took place outside of health facilities. Similarly, about 5.7% out of every 1,000 women of reproductive age in 2014 received treatment in health facilities for complications following induced abortions or miscarriages. This indicates that unsafe abortions are still occurring in Ethiopia. Even if an increasing number of women have access to health services to treat abortion-related complications, many Ethiopian women continue to obtain abortions under unsafe circumstances despite the expanded availability of safe services, contributing to persistently high complication rates.*¹⁴⁸

An emergency obstetric and newborn care assessment made by the Ministry of Health in 2017 indicated "only 39 percent of health centers and clinics provided safe abortion services.¹⁴⁹ The percentage of safe abortions ranged from 6% in Gambella to 67% in Dire Dawa.7% of spontaneous, incomplete, and unsafe abortions had evidence of severe complications". Bleeding, sepsis, and genital or abdominal injuries are major complications of unsafe abortion.¹⁵⁰

In Ethiopia, estimates indicate that one-third of adolescent abortions are clandestine and thus potentially unsafe and recent estimates indicate that complications from unsafe abortions account for 19.6% of all maternal deaths.¹⁵¹ Yearly supervision made in 2022 by the Ministry of Health on comprehensive abortion service in health facilities shows that only 64% of them provide abortion

¹⁴⁶ World Health Organization (WHO), *Unsafe Abortion: Global and Regional Estimates of the Incidence of Unsafe Abortion and Associated Mortality in 2003*, fifth ed., Geneva: WHO, 2007

¹⁴⁷ Kidus. K,et al (see n20). P 17

¹⁴⁸ Yirgu Gebrehiwot, et al,Changes in morbidity and abortion care in Ethiopia after legal reform: national results from 2008 & 2014 [2016] *International Perspectives on Sexual and Reproductive Health*,P 2

¹⁴⁹ Ethiopia Emergency Obstetric and newborn care assessment (ministry of health and Ethiopian Public Health Institute (2017) p287

¹⁵⁰ Ibid p172

¹⁵¹ Astrid Blystad, et al (see n15)

service; the rest, 36%, are not providing abortion service for different reasons.¹⁵²

Deaths and suffering from unsafe abortion continue to occur and often require surgery, expensive drugs and supplies, and prolonged hospital stays. The cost of treating a septic abortion is estimated to be four times that of an assisted delivery, so “the treatment of incomplete abortions and other complications keeps emptying the budget of the health sector” .¹⁵³

The study shows in Ethiopia that:-

*The legal response given to abortion not only decides the safety of the abortion but also the repetition of the act. A woman who went through a legal and safe abortion is more likely to get post-abortion counseling, and for a woman who goes through a clandestine abortion and goes without counseling, there is a high chance that she might have another unwanted pregnancy.*¹⁵⁴

The physician procuring abortion services in Addis Ababa mentioned that it’s not just pregnant girls who are actually raped or become victims of incest that are invoking criminal code to get abortion service, even though the physician knows that the women are dishonest. But they also cannot do anything because the declaration is enough to get the service.¹⁵⁵

3.4 Conclusion

Access to safe abortion in Ethiopia is not considered part of a reproductive right; it is a criminal act.

The FDRE Constitution recognizes reproductive health rights and the equality of women in exercising all rights protected by the FDRE Constitution. It also promotes international human right instrument ratified by Ethiopia. But criminal law criminalizes abortion. Ethiopian abortion laws also comply with Article 14(2)(c) of the Maputo Protocol.

Ethiopia had adopted Cairo the Beijing Platform for Action; these two documents acknowledge unsafe abortion as a major public health problem. And suggest the state needs to review restrictive abortion laws. But abortion is still a crime in Ethiopia, which shows the Ethiopian government failed to fulfill its commitments to the Beijing and Cairo international conferences. Significant progress in improving access to safe abortion services, but additional improvements are still necessary.

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¹⁵² Interview with zemzem mahomed at ministry of health national maternal health team leader June6/2014

¹⁵³ Yirgu Gebrehiwot, et al (see n 145) p 7

¹⁵⁴ Libasie,mekdes Fisseha (see n 12) p 7

¹⁵⁵ Interview with Alemitu seyoom, health expert at family guidance association Ethiopia may25/2014 and Tiruwork Amare nurse at mar stop international Ethiopia clinics.

CHAPTER FOUR

NORMATIVE AND PRACTICAL CHALLENGES

4.1 Introduction

There are many normative and practical challenges attached to the right to safe abortion in Ethiopia. ‘Normative challenges’ are challenges attached to norms and standards. Norms can be legal norms (a binding rule or principle) or social norms (a shared standard of acceptable behavior by groups)¹⁵⁶ normative challenges include the criminalization of abortion laws. Practical difficulties stem from abortion-related practices and/or the nation's socio cultural and economic conditions. These challenges are not usually encompassed in national legislation or norms.

4.2 Normative and practical challenges

4.2.1 Normative challenges

4.2.1.1 Criminalization of abortion

*Abortion is a criminal act in Ethiopia. Due to the criminalization of abortion currently in Ethiopia, many Ethiopian women continue to have abortions outside of health facilities, often under unsafe conditions; they are highly exposed to death and many health problems. So, the criminalization of abortion does not affect its incidence or activities; rather, it only determines the place where the act is conducted and affects its safety”.*¹⁵⁷

“Women in Ethiopia want to terminate their pregnancy for different reasons. They want to hide it from the community when the pregnancy occurs out of marriage, to resolve socio-economic problems, to protect against social crises, to keep their marriage relationship.”¹⁵⁸

According to the author, women cannot obtain abortion services in public health facilities without a doctor's consent, with the exception of those whose circumstances fit within the criminal code exclusions. This encourages women to have illegal abortions in locations they outside health facility. There are a few abortion cases prosecuted at the federal prosecutor’s office, some of which involve women who try to abort out of a health facility in unsafe conditions but are not able to complete it there are few abortion cases, mainly because of the difficulty of proof and the non-cooperation of private health facilities providing abortion services.¹⁵⁹ Still, the illegality of abortion also has a

¹⁵⁶ Claudia Lo Forte, ‘Safe abortion and social norms’ [2018] p 40

¹⁵⁷ Fekadie Misganaw ,(see n 109) P11

¹⁵⁸ Ibid P12

¹⁵⁹ Interview with Semert Tadesse and Rhama Alemneh federal prosecutor at ministry of justice may27/2014 and June 10/2014

psychological impact on women whose cases do not fall under the exception stated in the criminal code because of fear of prosecution; they may not consider abortion in a health facility. Because of the criminalization of abortion, women who want an abortion in cases that do not fall under exceptional circumstances may be forced to be dishonest to get the abortion services. “Practically, some health experts are obliged to provide abortion services for women whose cases fall under socio-economic reasons in Ethiopia by lying and pushing women to say, ‘I was raped, or pregnancy is the result of incest,” and this is absolutely unethical and illegal”¹⁶⁰ the writer believe this is not the solution to unsafe abortion because this isn’t the right way to exercise the right to safe abortion. The law should be clear enough to exercise the right. Besides, we can understand from this fact that “rape is a very small percentage” of the cause of abortion, and “incest is almost never reported”¹⁶¹. A large number of cases of abortion are socio economic, so the criminal code shall consider this fact and make amendments in order to increase access to safe abortion.

*Many health scholars argue that the heartbeat of the fetus can be identified with an assistive device in the 8th week of gestation. But the other body of the fetus is formed after 12 weeks, and the life of the fetus is highly related to the formation of the physical body of the fetus, so they conclude that the fetus has no life in the first trimester.*¹⁶²

Criminalization of abortion in Ethiopia has implications for women who conduct unsafe abortions. Also, there is a scientific fact in the first trimester of pregnancy (12-week gestation), there is no viability of the fetus. “So, during the first trimester of pregnancy,” the Ethiopian Criminal Law should allow obtaining an abortion service since it has no valid justification and “should consider socio-economic reasons as a legitimate ground for abortion”, and include in Article 551 of the Criminal Code.¹⁶³ Second Cycle Health Sector Strategic Plan aims to achieve zero percent of unsafe abortion.¹⁶⁴ The writer believes that the Ethiopian government cannot achieve this strategic plan with the current criminal code.

4.2.2 Practical challenges

4.2.1.1 Religious and moral beliefs

Religious and moral beliefs had a major influence on women’s decisions to access the service

¹⁶⁰ Fekadie Misganaw ,(see n 109) P11

¹⁶¹ Libasie,mekdes Fisseha (see n 12) p 7

¹⁶² Fekadie Misganaw ,(see n 109) P11

¹⁶³ Ibid P12

¹⁶⁴ Interview with pawlos assfa , health expert at family guidance association Ethiopia June/2014

*and the service provider's decisions to provide the service in Ethiopia. Abortion may be considered an immoral, murderous, and sinful act in a society. This view is also articulated in the findings of other qualitative studies".*¹⁶⁵

The law and a guideline are not enough in protecting the right to safe abortion. Because Ethiopian society is a deeply cultured society, the government is careful not to step on anybody's (religious) toes; the government is also reluctant to promote safe abortion because it wants conservative or religious people to think abortion is illegal.¹⁶⁶

A study made in Ethiopia More than half of women had a positive attitude toward the legalization of abortion but an immense proportion of women (42%) still have a negative attitude towards the legalization of abortion mainly because of the influence of religion.¹⁶⁷

4.2.2.2 "Conscientious objection"

"Conscientious objection permits medical providers to refuse to provide certain health services based on religious or moral objections. The conscientious objection should apply to individuals, not institutions".¹⁶⁸ There are some professionals in Ethiopia working in public sector institutions that refuse to give abortion services by invoking moral and religious grounds.¹⁶⁹ "Professionals at government health institutions and offices also lack awareness about the law and develop a negative" attitude towards the service providers due to religious beliefs.¹⁷⁰ Because of fears of conscientious objection, private institutions that provide abortion-related service hire health Professionals Who are willing in providing health assistance to abortion service.¹⁷¹

¹⁶⁵ Awol Seid, et al', Barriers to access safe abortion services in East Shoa and Arsi Zones of Oromia Regional State, Ethiopia' [2015] *Ethiop. J. Health Dev* p 18

¹⁶⁶ Joseph Mumba Zulu et al The access paradox: abortion law, policy and practice in Ethiopia, Tanzania and Zambia' *International Journal for Equity in Health* [2019] p 8

¹⁶⁷ Tilahun Fufa Debela et al, Reproductive Health Knowledge and attitude of women towards the legalization of abortion in the selected town of Ethiopia [2018] *Reproductive Health journal* p8

¹⁶⁸ Marcel Vekemans, Upeka de Silva and Manuelle Hurwitz, *Access to safe abortion A tool for assessing legal and other obstacles* (published 2008) p 25

¹⁶⁹ Interview with Alemitu Seyoum health expert at family guidance association Ethiopia may25/2014 and TirueworkAmare nurse at mar stop international clinic June/2014.

¹⁷⁰ Interview with Alemitu Seyoum health expert at family guidance association Ethiopia may25/2014 and TirueworkAmare nurse at mar stop international clinic June/2014

¹⁷¹ Interview with Alemitu Seyoum, health expert at family guidance association Ethiopia may25/2014 and TirueworkAmare nurse at mar stop international clinic June/2014.

An annual review conducted by the Ministry of Health concerning abortion care in Ethiopia shows some health experts refuse to provide abortion services because of religious grounds.¹⁷² A recent study in Ethiopia describes health professionals' struggle to balance religious and moral-based oppositions to abortion against their professional duty to provide abortions and their concern for the women.¹⁷³

Negative attitudes toward abortion among professionals providing abortion services could be an obstacle even under a law that permits abortion on request. The shortage of health care providers who are willing or trained to perform abortions undermines the provisions of safe abortion services by limiting the availability of safe, legal abortions and has serious implications for women's access to abortion services and health service planning.¹⁷⁴

4.2.2.3 Spouse or partner authorization

"Husbands' disapproval of seeking abortion services is a key barrier to accessing safe abortion" services.¹⁷⁵ In Ethiopia, most husbands are not willing to terminate the pregnancy of their child. Some of the husbands file a charge against their wife and a professional who provides abortion services by invoking that they didn't consent to the termination of their wife's pregnancy.¹⁷⁶

4.2.2.4"Restrictions on performing institutions or experts"

"Many countries restrict access to abortion by specifying the types of medical facilities in which abortion can be performed and the categories of health providers that may perform the procedure".¹⁷⁷

In Ethiopia, "all public health facilities at the level of a health center and above and private facilities starting primary clinics" can perform termination of pregnancy as permitted for pregnancies less than 12 weeks of gestation from the last normal menstrual period (LNMP). Termination of pregnancy between 13 and 24 weeks should be performed in a primary, general, or tertiary hospital.¹⁷⁸

¹⁷² Interview with Zemzem Mahomed at ministry of health national maternal health team leader June7/2014

¹⁷³ Demelash Bezabih Ewnetu, et al , ' Still a moral dilemma: how Ethiopian professionals providing abortion come to terms with conflicting norms and demand[2020] *BMC medical ethics* p2

¹⁷⁴ Tarekegn Asmamaw, assessment of knowledge, attitude and intention of health science student to ward safe abortion care provision in Debre Markose University (2011) (partial fulfillment of the requirements for the Degree of Master of Science in Reproductive Health Nursing) Addis Ababa p1

¹⁷⁵ Awol Seid, et al (see n165) 15

¹⁷⁶ Interview with Alemitu Seyoum, health expert at family guidance association Ethiopia June7/2014

¹⁷⁷ Marcel Vekemans, et al (see n168) p 24

¹⁷⁸ Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia,; Ministry of Health,(2014) p14

The first challenge Restrictions on performing institutions or personnel is that women who seek abortion services may not know which service is available in which medical facility second there is generally a lack of health infrastructure. As a result, women' may be referred to another health facility that costs additional money, so they may be discouraged from getting the service and become barriers to exercising their rights.¹⁷⁹

4.2.2.5 Counseling

“Many laws require that a pregnant woman be given counseling before having an abortion; sometimes, counseling seeks to discourage abortion or even provides medically inaccurate information”.¹⁸⁰

In Ethiopia, the Guidelines provide counseling requirements; almost all public and private health facilities give counseling services before abortion services, but sometimes women who get counseling services do not return for abortion services because of the information they gather during the counseling like medically inaccurate information or insignificant information.¹⁸¹

4.2.2.6 “Abortion-related stigma”

*Abortion-related stigma is the association of negative attributes with people involved in seeking, providing, or supporting abortion. Abortion is stigmatized because it challenges a number of social, cultural, and religious norms and values, such as the attribution of personhood to a fetus, traditional expectations about women’s role in society, and a woman’s rights to express her sexuality, which have a direct link to abortion-related stigma. Abortion-related stigma can allow myths about abortion to flourish and lead to shame, bullying, harassment, and physical and mental harm to individuals who undergo abortions, their families and friends, and those who provide abortion services.*¹⁸²

An annual review conducted by the Ministry of Health concerning abortion care in Ethiopia shows social stigma attached to health officials and women seeking abortion is the biggest challenge. Health experts trained for abortion services are not willing to provide them because of social stigma.¹⁸³ A study made in Ethiopia shows social stigma is the biggest challenge in exercising the right to safe abortion because almost all social, cultural, and religious norms and values directly

¹⁷⁹ Interview with Zemzem Mahomed at ministry of health national maternal health team leader June6/2014

¹⁸⁰ Marcel Vekemans, et al (see n168) p 26

¹⁸¹ Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia,; Ministry of Health, (2014) p14

¹⁸² Judy Gold, et al (see n 11) p5

¹⁸³ Interview with Zemzem Mahomed at ministry of health national maternal health team leader June6/2014

oppose abortion since it is regarded as the act of killing human beings.¹⁸⁴

4.2.2.7 Lack of information

Women in Ethiopia face significant challenges, including a lack of knowledge of the abortion law's liberalization and access to safe abortion facilities..¹⁸⁵

Moreover, health professionals also lack awareness of the new law. A study conducted by the Ethiopian Society of Obstetricians and Gynecologists found that only 29 percent of health workers knew the correct provision of the Criminal code for termination of pregnancy".¹⁸⁶

A study that assessed awareness of the new abortion law and access to safe abortion services found that most of the health professionals did not have knowledge about the Ethiopian abortion law and believed that abortion was illegal. Another study in Ethiopia also corroborates the fact that the dissemination of information about the new abortion law has been weak and that many within the health care system, as well as the general population, have limited knowledge about the issue.¹⁸⁷

4.2.2.8 Lack of medical supply

Lack or shortage of the necessary equipment and supplies, especially at the lower level, was reported as a barrier to seeking safe abortion services. In rural Ethiopia, where the majority of the population resides, grassroots health facilities often do not have trained and competent abortion-related service providers. In certain instances, even when a trained provider is present, service provision is impeded by the absence or stock out of needed medical equipment and supplies. Moreover, there is poor referral linkage between various levels of health care delivery. Referral is often a complicated process, characterized by communication and transportation challenges, where the woman often lacks the money to pay for transport to the health facility and is not readily accepted. Even after arriving at a health facility, the woman may still need to be referred to a better-equipped facility due to frequent stock-outs of drugs, causing delays in receiving the required services. On top of this, the difficulty in maintaining the privacy and confidentiality of a woman seeking the service was the main concern.¹⁸⁸

An annual review conducted by the Ministry of Health concerning abortion care in Ethiopia shows

¹⁸⁴ Interview with Dereje Tegyebelu law affair director at ministry of women and social affair may26/2014

¹⁸⁵ Tilahun Fufa et al (see n 167) p8

¹⁸⁶ Fasika Freed Alemu (see n 34) p70

¹⁸⁷ Awol Seid, et al (see n165) p 15

¹⁸⁸ ibid p16

that there is a lack of infrastructure in the health sector, including electricity and water supply.¹⁸⁹ Emergency obstetric and newborn care assessments made by the Ministry of Health in 2017 indicate “that thirteen percent of health centers had no source of electricity and only 60 percent had access to the electric grid. Concerning access to water, 76 percent had water on site or within the compound, but 18 percent had to travel more than 500 meters to reach it”.¹⁹⁰

4.2.2.9 Costs

“Financial constraints were frequently cited as barriers to accessing safe abortion in Ethiopia. Most of the women in Ethiopia who can’t afford these expenses are economically dependent on their husbands or partners, have low incomes, and lack an independent source of income.”¹⁹¹

*Some public facilities charge payment before treatment of obstetric emergencies in general and abortion services in particular for medicines, supplies, and drugs. There was a large disparity in user fees between public and private, for-profit facilities that might deter women from accessing facilities for abortion services. Less than 4 percent of the public and over 70 percent of private, for-profit facilities charge women for treatment before obstetric emergencies and medicines and supplies.*¹⁹²

4.2.2.10 Lack of governmental commitment

The Ethiopian government lacks commitment to the promotion of the right to safe abortion. The right to safe abortion is one of the rights disregarded and a right which not give proper recognition by Ethiopia government. The Ethiopian government is trying to make conservative religious groups think abortion is illegal and is not willing to change that any time soon.¹⁹³

¹⁸⁹ Interview with Zemzem Mahomed at ministry of health national maternal health team leader June7/2014

¹⁹⁰ Ethiopia Emergency obstetric and newborn care assessment (ministry of health and Ethiopian Public Health Institute (2016) p290

¹⁹¹ Awol Seid, et al (see n165) p 15

¹⁹² Ibid p 291

¹⁹³ Ibid p 8

4.3 Conclusion

There are many challenges attached to the right to safe abortion in Ethiopia. These challenges can be normative challenges or practical challenges. Normative challenges include restrictions on abortion law, conscientious objection, spouse or partner authorization, or counseling requirements.

Practical challenges include Lack of information, Abortion-related stigma, lack of drugs and equipment; optimal quality of care and costs; lack of governmental commitment, etc .The challenges discussed in this chapter can be obstacles to exercising the right to safe abortion in Ethiopia. This also indicates the Ethiopian government needs to make a great effort to ensure the right to safe abortion in Ethiopia by making legal and policy reforms.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

5.1. CONCLUSION

This research aimed to assess legal and policy frameworks related to the right to safe abortion in Ethiopia and to point out some normative and practical challenges to exercising the right. The researcher's aim was basically to address abortion in light of reproductive health rights and try to address the right to safe abortion in light of the right to life and other rights of women under national and international laws. The right to access safe and legal abortion is impliedly and explicitly recognized under international and regional law.

The right to access safe and legal abortion is a reproductive right explicitly recognized under Article 14(2)(c) of the Protocol to the African Charter of Human and People's Rights on the Rights of Women in Africa. The protocol is the first and only law at treaty level to proclaim abortion as a reproductive right for women. There is no other international law that explicitly recognizes a state's right to allow abortion other than the Maputo Protocol. Major UN human rights treaties implicitly recognize the right to safe abortion.

Through interpretation, various UN human rights committees attempt to establish the right to a safe abortion. Among the many rights of women that implicitly call for the execution of the right to have a safe and legal abortion are the right to be free from sex-based discrimination and the right to the best possible quality of health.

The UDHR proclaims that every individual has the right to privacy; it has been argued that having access to abortions is a private right, and making it illegal might violate that right. The nature and scope of governments' human rights obligations for access to safe abortion are made clear by WHO recommendations.

The 1994 ICPD in Cairo and the Fourth World Conference on Women in Beijing identified unsafe abortion as a public health concern and suggested that states need to revise restrictive abortion laws. But the resolutions that came out of these two conferences are soft laws and are not binding.

We can conclude that the right to access safe abortion is a right existing in international law, only in the Maputo Protocol as a reproductive health right, but different UN committees create the right to safe abortion by interpretation. Therefore, at an international level, abortion is a reproductive right for women.

Access to safe abortion in Ethiopia isn't considered part of reproductive health rights; it's a criminal act, saving the same expiation; abortion is not punishable if it is conducted in expiation or under

conditions stated under Article 551 of the revised criminal law unsafe abortions accounted for 8.6% of avoidable maternal Deaths in Ethiopia. The FDRE constitution affirms that women have equal rights to all of the safeguards and rights the constitution provides. It also offers a useful pathway for the nation to carry out obligations under international agreements. Both tacitly and explicitly, the FDRE constitution upholds women's rights to life, health, reproductive autonomy, and nondiscrimination.

The Cairo and Beijing Declaration and Platform for Action recognized unsafe abortion as a major public health problem and suggested that states revise their restrictive abortion laws even if Ethiopia enters into a commitment to these two declarations. This may undermine the commitment the country has made to these international conferences. Therefore, it can be concluded that the constitution indirectly considers abortion a woman's human right and a reproductive right in particular. But the criminal code is incompatible with the constitution of international rights and the general human rights laws ratified by the Ethiopian government.

The physical body of the fetus forms after 12 weeks of pregnancy. The fact that the life of the fetus is highly related to its physical formation means we can conclude the fetus has no life before 12 weeks of pregnancy or in the first trimester. The criminalization of abortion in the first trimester has no valid justification or moral grounds.

In a legal sense, the right to life starts at birth, not from conception. As Article 1 of the Civil Code states that "the human person is the subject of rights from its birth and its death," one may conclude that a child merely conceived cannot be the subject of rights. So, the rights to life of the unborn child are not considered. Similarly, major international and regional human rights instruments do not consider the right to the life of an unborn child. Therefore, the justifications for making abortion a criminal act in the first trimester in Ethiopia for the protection of the life of the unborn child and public morals are not valid justifications. In addition, abortion accounts for 8.6% of maternal deaths, which is the second highest. Cause of maternal death. the criminalization of abortion, mainly in the first trimester, and socio-economic reasons in the Criminal Code of Ethiopia are incongruous with scientific fact and major international human rights instruments ratified by Ethiopia.

The FDRE constitution implicitly and explicitly protects reproductive health rights. Women's self-determination and non-discrimination rights are implicitly and explicitly recognized in international human rights laws ratified by the Ethiopian Government, but the criminal code is incompatible with the constitution of international human rights laws ratified by the Ethiopian government.

The research also reveals that there are many challenges attached to the right to safe abortion. The right to safe abortion in Ethiopia is strongly challenged by normative and practical challenges.

5.2. RECOMMENDATION

Based on the above findings, the writer of this paper suggests the following recommendations:

- 5.2.1. Lawmakers should revised Article 545(1) of the Criminal Code amendment can be as follows: "the intentional termination of pregnancy after the first trimester is punishable according to the following provisions, except as otherwise provided under Article 551." Amending this article is significant for better protection of the women's right to life, health, reproductive self-determination, and non-discrimination.
- 5.2.2. Lawmakers should revised Art.551 (1) of the Criminal Code soon, and it should have (e) On socio-economic reasons. Moreover, Art.552 (2) of the Criminal Code should also be amended in a way; "in the case of terminating a pregnancy in accordance with sub-article (1) (a) And (e) of Art.551. The mere statement by the woman is adequate to prove that her pregnancy is the result of rape or incest or she seeks abortion based on socio - economic reasons.
- 5.2.3. Women's rights groups, international and national NGOs, and associations like the Ethiopian Women Lawyers Association try to minimize abortion-related stigma by working on shifting community attitudes toward an understanding of why women seek an abortion and that seeking an abortion is not a luxury but rather a matter of necessity.
- 5.2.4. The Ministry of Women and Social Affairs and the Ministry of Health should consider legalizing or decriminalizing abortion and improving safe abortion services.
- 5.2.5. NGOs that are working on safe abortion issues should lobby the government to amend the Criminal Code of Ethiopia and improve health infrastructure.
- 5.2.6. Governments shall consider the fact that abortion is not only a medical problem but a social problem too. They need to make a strong commitment by making zero percent unsafe abortion.
- 5.2.7. Governments should promote a society where women are free to control access to their own bodies, guaranteeing their liberty and justice. This envisions a society where men and women have the same status in terms of equality before the law and in traditional institutions.
- 5.2.8. Problems with the status of international law in the Ethiopian legal system also need to be resolved through the adoption of laws that clarify the legal status of international law as ratified by the Ethiopian government.

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Annex 1

Guiding questions for the interview of health experts working mar stop international clinics and family guidance association

Dear interviewee, the purpose of this interview is to gather data relevant to the study to be conducted for **Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law** on the "**Access to Safe Abortion as a Reproductive Health Right in Ethiopia: Normative and Practical Challenge.**" First, your full consent is required before you answer any of the questions; if you are willing, your responses are important for the successful completion of the study. Your answers, suggestions, and opinions shall be used only for the above - mentioned research purposes, and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

The researcher believes the interviewee is knowledgeable about or well experienced with the research area and the challenge attached to exercising the right to safe abortion in Ethiopia and may have many contributions to protecting the human rights of women.

Interviewee full name-----**Sex**----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**Phone No**-----

1. Can you tell me about why women want to terminate their pregnancy generally and in Ethiopian context/Ethiopian women?
2. What are the procedures or the requirements or preconditions asked/required to get abortion services? Is there a monitoring procedure to check the preconditions?
3. Are counseling; and mandatory waiting periods; requirements to get abortion services?
4. Can you tell me when the life of the fetus begins in your study of medical science? Is it certainly known?
5. Do you think their right to safe abortion exists as a right in Ethiopia? Do you believe the Ethiopian criminal code that criminalization of abortion is fair and does it have justifications for criminalization of abortion in the first trimester (12 -week gestation)?

6. In principle, abortion is a criminal act at any stage of gestation. What do you observe through your experience with regard, to the implications in light of women's rights? And if you have a history in this regard, please share it with me.
7. What do you think are others factors besides the criminalization of abortion law that could be challenging to women who want abortion services?
8. Are there medical providers in Ethiopia refusing the provision of abortion?
9. Conscientious objection of medical providers refusing to provide abortion services based on religious or moral objections be challenged in Ethiopia based on your experience? How do you see your professional ethics integrated based on humanity and the law and the practice of abortion in Ethiopia? Are there your professional ethics issues that might conflict with abortion?
10. Do you have a professional duty to treat a fetus as a person? Which should prevail when a contradiction happens between women's rights and protecting the fetus?
11. Do you believe the criminalization of abortion prevents the act of abortion? Why?
12. Different studies show that the rate of unsafe abortion is high in Ethiopia-what do you think is the reason? In your working experience?
13. . How do you see the relationship between criminalization of abortion, unsafe abortion, and maternal mortality in your work experience?
14. Have you confronted them cases of women that want to abort because of socioeconomic reasons? Or request? If you were confronted, how did you treat them?
15. If your answer to question 14 is no. do you guess what type of measures such as women have taken to terminate their unwanted pregnancy and what do you think the implication on their right to life?
16. Could you think excluding socio-economic reasons for abortion on request from the legitimate ground for termination of abortion is fair in light of women's rights? How?
17. What do you think is the solution to overcome the challenges attached to the right to safe abortion in Ethiopia?
18. Do you think abortion-related stigma or the country's economic situation can be challenging on exercising the right to safe abortion?

Annex 2

**Guiding questions for the interview of legal experts working on women’s lawyers
association, ministry of Women, social Affairs and ministry of health**

Dear interviewee, the purpose of this interview is to gather data relevant to the study to be conducted for **Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law** on the "Access to Safe Abortion as a Reproductive Health Right in Ethiopia: Normative and Practical Challenge." First, your full consent is required before you answer any of the questions; if you are willing, your responses are important for the successful completion of the study. Your answers, suggestions, and opinions shall be used only for the above - mentioned research purposes, and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

The researcher believes the interviewee is knowledgeable about or well experienced with the research area and the challenge attached to exercising the right to safe abortion in Ethiopia and may have many contributions to protecting the human rights of women.

Interviewee full name-----Sex-----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----phone No. -----

1. Do you think the right to safe abortion is a right that existed under national Ethiopian law and the international human rights instrument ratified by the Ethiopian government?
2. Different medical studies show that the fetus has no life, at least in the first trimester (in 12 weeks of gestation) but, the current criminal code of Ethiopia criminalizes abortion at any stage of gestation. Do you think about the fairness of the Criminal law in this regard in light of women's human rights?
3. Do you think about the implications of the criminalization of abortion on the rights of women, particularly the right to life, health and reproductive self-determination, and non-discrimination of women?

4. How do you see the criminalization of abortion for socio-economic reasons, and on the request, at least in the first trimester, in light of the right to life of the women?
5. Do you think the criminalization of abortion at any stage of gestation in the Criminal Code violates the right to health and reproductive self-determination of women? How? In such instances, does Criminal complement the FDRE constitution and international human rights instruments like ICESCR?
6. Do you think the criminalization of abortion in principle at any stage of gestation is equal amount to discrimination against women to exercise their right to reproductive health right? How?
7. Some legal scholars argue that our criminal code on the stand of abortion is a law that has the effect and purpose to discriminate against women, to exercise the human right to health, reproductive self-determination, and the right to life of women. Do you support/against this argument? How?
8. If you support the argument of question No.7, do you think the Criminal code prevents women from exercising their human rights that are protected under the FDRE constitution and international human rights conventions?
9. Do you think the Ethiopian Criminal code prevents the criminalization of abortion at any stage of gestation in principle and socio-economic reasons as exceptions has implications on the rights of women particularly on the right to life, health ,reproductive self determination ,and non-discrimination rights of women in the current situations of Ethiopia? How?
10. Do you think permitting abortion for socio-economic reasons, in the tone of other exceptions and on the request in the first trimester, contradicts moral and religious matters? How?
11. What should prevail when there is a contradiction between the human rights of women on one side and the moral and religious issues of the community and protection of the fetus on the other in the action of abortion? Why?
12. What do you think others factors besides the criminalization of abortion law is challenge women who want abortion services?
13. Do you think abortion- related stigma, religious beliefs or the country's economic situation can be challenging in exercising the right to safe abortion?

Thank you so much for giving your precious working time,

Annex 3

Guiding questions for the interview federal public prosecutor

Dear interviewee, the purpose of this interview is to gather data relevant to the study to be conducted for **Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law** on the "Access to Safe Abortion as a Reproductive Health Right in Ethiopia: Normative and Practical Challenge." First, your full consent is required before you answer any of the questions; if you are willing, your responses are important for the successful completion of the study. Your answers, suggestions, and opinions shall be used only for the above - mentioned research purposes, and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

The researcher believes the interviewee is knowledgeable about or well experienced with the research area and the challenge attached to exercising the right to safe abortion in Ethiopia and may have many contributions to protecting the human rights of women.

Interviewee full name-----Sex-----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----phone No. -----

1. Have you prosecuted cases of illegal abortion in your working experience? If so, how did you treat women that conducted illegal abortions?
2. In the current CC of Ethiopian, abortion is in principle a criminal act at any stage of gestation. What do you observe through your experiences with regard to the implications of criminalization of abortion in light of women's human rights, particularly the right to life, health, reproductive self-determination, and non-discrimination rights of them? And if you have a history in this regard, please share it with me.

3. Is unsafe abortion speeding up in Ethiopia and a cause of death for lots of women? Does the criminalization of abortion are a pushing factor for women to opt for unsafe abortion in Ethiopia? How?
4. Could you think excluding socio-economic reasons from the legitimate ground for termination of abortion narrowed the human rights of women, particularly the above rights? How?
5. According to Maputo protocol G.C No.2 the right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved for them, such as abortion and post-abortion care. Do you think our CC exposed women to be subjected to criminal proceedings contrary to the protocol?
6. Do you think precluding abortion in our CC particularly on socio-economic grounds and on the request at least in the first trimester prevents women to exercise their human rights , particularly the right to life, health, reproductive self determination ,and non-Discrimination rights that are protected under FDRE constitution and international human right instruments that Ethiopia is a party?
7. Do you think permitting abortion in Ethiopia for socio-economic reasons and on the request for the first trimester contradicts with the morals and religions of our community? How?
8. If your answer is yes to question 7 why for other grounds listed in CC and how to balance with the human rights of women?
9. Do you think setting socio-economic reasons as a legitimate ground for termination of abortion and permit to termination of abortion on the request, at least in the first trimester in Ethiopia, are solutions to reducing the death of women's on unsafe abortion? If you have other suggestions for protect women's rights broadly in this regard, please share with us.

Thank you so much for giving your precious working time,

Annex 4

Guiding questions for the interview federal judges

Dear interviewee, the purpose of this interview is to gather data relevant to the study to be conducted for **Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law** on the "Access to Safe Abortion as a Reproductive Health Right in Ethiopia: Normative and Practical Challenge." First, your full consent is required before you answer any of the questions; if you are willing, your responses are important for the successful completion of the study. Your answers, suggestions, and opinions shall be used only for the above - mentioned research purposes, and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

The researcher believes the interviewee is knowledgeable about or well experienced with the research area and the challenge attached to exercising the right to safe abortion in Ethiopia and may have many contributions to protecting the human rights of women.

Interviewee full name-----**Sex**----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**phone No.** -----

1. Have you prosecuted cases of illegal abortion in your working experience? If so, how did you treat women that conducted illegal abortions?
2. In the current CC of Ethiopian, abortion is in principle a criminal act at any stage of gestation. What do you observe through your experiences with regard to the implications of criminalization of abortion in light of women's human rights, particularly the right to life, health, reproductive self-determination, and non-discrimination rights of them? And if you have a history in this regard, please share it with me.
3. Is unsafe abortion speeding up in Ethiopia and a cause of death for lots of women? Does the criminalization of abortion are a pushing factor for women to opt for unsafe abortion in Ethiopia? How?

4. Could you think excluding socio-economic reasons from the legitimate ground for termination of abortion narrowed the human rights of women particularly the above rights? How?
10. Could you think excluding socio-economic reasons from the legitimate ground for termination of abortion narrowed the human rights of women, particularly the above rights? How?
11. According to Maputo protocol G.C No.2 the right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved for them, such as abortion and post-abortion care. Do you think our CC exposed women to be subjected to criminal proceedings contrary to the protocol?
12. Do you think precluding abortion in our CC particularly on socio-economic grounds and on the request at least in the first trimester prevents women to exercise their human rights , particularly the right to life, health, reproductive self determination ,and non-Discrimination rights that are protected under FDRE constitution and international human right instruments that Ethiopia is a party?
13. Do you think permitting abortion in Ethiopia for socio-economic reasons and on the request for the first trimester contradicts with the morals and religions of our community? How?
14. If your answer is yes to question 7 why for other grounds listed in CC and how to balance with the human rights of women?
15. Do you think setting socio-economic reasons as a legitimate ground for termination of abortion and permit to termination of abortion on the request, at least in the first trimester in Ethiopia, are solutions to reducing the death of women's on unsafe abortion? If you have other suggestions for protect women's rights broadly in this regard, please share with us.

Thank you so much for giving your precious working time,

Annex 5

Guiding questions for the interview of women under take abortion

Dear interviewee, the purpose of this interview is to gather data relevant to the study to be conducted for **Partial Fulfillment of the Requirements for the Masters of Law (LL.M) in Human Rights Law** on the "**Access to Safe Abortion as a Reproductive Health Right in Ethiopia: Normative and Practical Challenge.**" First, your full consent is required before you answer any of the questions; if you are willing, your responses are important for the successful completion of the study. Your answers, suggestions, and opinions shall be used only for the above - mentioned research purposes, and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

The researcher believes the interviewee is knowledgeable about or well experienced with the research area and the challenge attached to exercising the right to safe abortion in Ethiopia and may have many contributions to protecting the human rights of women.

Interviewee full name-----**Sex**----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**phone No.** -----

1. Can you tell me why women want to terminate their pregnancy in Ethiopian women in general and in your case?
2. What are the procedures or the requirement or preconditions asked you to get abortion services?
3. Are you asked for counseling and, mandatory waiting periods to get abortion services?
4. What is the challenge of getting abortion services in your experience?
5. Could you think excluding socio-economic reasons for abortion on request from legitimate ground for termination of abortion is fair in light of women's rights? How?
6. What do you think is the solution to overcome challenges attached to the right to safe abortion in Ethiopia?