



ADDIS ABABA UNIVERSITY COLLEGE OF LAW AND  
GOVERNANCE STUDIES  
SCHOOL OF LAW

Ethiopian Reservation to the Protocol to the African Charter on the  
Rights of Women

BY RAHEL BEDADA SERBESA

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## Ethiopian Reservation to the Protocol to the African Charter on the Rights of Women

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# Ethiopian Reservation to the Protocol to the African Charter on the Rights of Women

A RESEARCH PAPER SUBMITTED FOR THE PARTIAL FULFILLMENT OF THE  
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LAW

ADVISOR: WONDEMAGEGN TADESSE (PhD, Associate Professor)

Addis Ababa University, Ethiopia

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## List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of Discrimination against Women
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
EDHS	Ethiopia Demographic and Health Survey
EPRDF	Ethiopian People's Revolutionary Democratic Front
ESCR	Economic Social and Cultural Rights
FDRE	Federal Democratic Republic of Ethiopia
HPR	House of Peoples Representative
NGOs	Non-Governmental Organizations
No.	Number OAU Organization of African Union
SOWAR	Solidarity for African Women Right
Para.	Paragraph
P.	Page
UDHR	Universal Declaration of Human Rights UN United Nations
UNDP	United Nations Development Program

## Declaration

I hereby declare that the study on “Ethiopian Reservation to the Protocol to the African Charter on the Rights of Women” is my own work and the sources used are duly cited and acknowledged.

Approval Sheet

Candidate

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Principal supervisor

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Approved by the board of examiners

Examiner 1

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Examiner 2

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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## Abstract

*Recently Ethiopia ratified the African Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Ratification aims to implement international human rights standards that will ensure the protection of women's rights.*

*The ratification of the instrument was encountered by a substantial amount of reservations. Some of the provisions that are reserved under the Protocol are the new right that makes the protocol creative. Besides having the new features, adhering to the Protocol is the international obligation of the country under various human rights instruments. Therefore the study examines the validity of Ethiopia's reservation in line with emerging international human rights discourse that is ratification without reservation. The study also examines the importance of compliance with the reserved provisions of the Protocol to promote gender equality.*

# CHAPTER ONE

## Introduction

### 1.1 Background of the Research

Ethiopia has a strong track record of commitment endorsing international and regional instruments of human rights. The country's key attempts to strengthen the protection and implementation of women's rights articulated by the adoption of international documents on human rights such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDW). The ratification of the instruments marks a move forward in achieving gender equity and advancing women's rights. The essence of ratification is supposed to solve the profoundly ingrained construction of gender inequalities in the country.

The striking paradox surrounding the country's plethora of ratification and the actual conditions of women are far more different. Women in the country constitute half of the population. However, gender asymmetry between men and women significantly reflected in all social-cultural, economic, and political facets of women's lives.

Thus, according to the United Nations Development Survey, Ethiopia is one of the low index countries for human development, with an HDI of 0.470 (0.428 for female, 0.507 for male) 173 out of 189 countries worldwide.<sup>1</sup> Of critical importance, the country's 2018 Gender Inequality Index (GII), which assessed the gap between men and women in three areas such as education, sexual health, and the labor force, rated 123 out of 162 countries with a GII score of 0.508.<sup>2</sup> The gender gap remains in women's political representation, whereby women occupy just 37.3 percent of legislative seats relative to 62.7 percent of males. In terms of education, 11.2 percent of adult women have at least completed a high school standard, contrasted with 21.4 percent of their male counterparts. Moreover, 353 women die from pregnancy-associated complications for every 100,000 live births, and the teenage birth rate is 62.5 births per 1,000 females aged 15-19. Women's labor market engagement is 77.2 percent relative to 87.8 for men.<sup>3</sup>

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<sup>1</sup> UNDP. *Human Development Indices and Indicators: 2019 Statistical Update*, 2019. Retrived November 12, 2019 [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/ETH.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/ETH.pdf)

<sup>2</sup> Ibid, 5

<sup>3</sup> Ibid., 6

Against this backdrop, the Government has approved a range of legislative measures; in July 2018, Ethiopia ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) with substantial amounts of reservations.<sup>4</sup>The Maputo Protocol is the solution to the concerns that CEDAW does not tackle in light of the cultural apprehension that occurred on the continent.<sup>5</sup> Once again, the status of Ethiopia on gender inequalities is no different from other parts of the region, for more or less, society is strongly patriarchal when it comes to gender roles.

Reservation to a treaty hereby is an independent statement that excludes or modifies the legal impact of certain terms of the treaty in their relation to states' obligation on that particular treaty.<sup>6</sup> Within the language of human rights instruments, the reservation of treaties is not entirely prohibited as long as they do not contradict the object and purpose of the treaties.<sup>7</sup>The reservation is meant to improve the acceptance of the treaty but a large reservation weakens the essence of the document.<sup>8</sup> According to the Vienna Declaration on the Law of Treaties Reservations that endanger women's rights are undesirable. In reality, reservations to the human treaty's rights are deemed to limit the norm creation of the treaties in the international human rights law regime.<sup>9</sup>

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the international instruments of which Ethiopia is a member state and has essential provisions for the protection of women's rights. CEDAW prohibits reservations that contravene the object and purpose of the treaty. Ethiopian record of the reservation to this particular instrument of human rights is nil in comparison with the Maputo Protocol.

At the time when Ethiopia became a state party to the Convention and ratified the instrument in September 1981. The State, however, declares that Ethiopia is not bound by

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<sup>4</sup> See Status List of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, last updated 10 October 2019

<sup>5</sup> Fareda Banda, "Global Standards: Local Values." *International Journal of Law, Policy and the Family* 17, (2003):1-27.

<sup>6</sup> Vienna Convention on the Law of Treaties, 1969: 1155 United Nations Treaty Series 331 article Art.2(1) d

<sup>7</sup> *Ibid.*,article 19 (c )

<sup>8</sup> Ferreira, GM, and MP Ferreira-Snyman. "The Impact of Treaty Reservations on the Establishment of an International Human Rights Regime." *The Comparative and International Law Journal of Southern Africa* 38, no. 2 (2005): 148-83.

<sup>9</sup> *Ibid*

Article 29 of paragraph 1 of the Convention.<sup>10</sup> The clause allows inter-state complaints concerning conflicts occurring between States that affect the implementation of the Convention's application. The irony is that CEDAW is known to be the most reserved human rights instrument inside the UN human rights framework,<sup>11</sup> but Ethiopia adopted all of the clauses stipulated in the convention except one article.

In contrast, Ethiopia has entered into a blanket of reservation on the Maputo Protocol, thereby undermines the Protocol's desire for universal ratification. Given, the long-term goal of the Protocol, it was to reach universal ratification and domesticated rights under national legislation.<sup>12</sup> Especially the reservation is linked with the protocol's unique future. The right unique to the Maputo Protocol, but reserved by Ethiopia, includes the minimum age of marriage 18 years, the prohibition of domestic abuse in private realms such as forced sex in marriage,<sup>13</sup> mandatory marriage registration, the security of women in a polygamous marriage and the separation to be a judicial order, equitable share of the property at the time of divorce.

Indeed, this research is driven by the fact that Ethiopia's entry into the substantial reservation to the provisions of the African Women's Protocol adversely affects the advantage of women. And their enjoyment of the rights protected under the international instruments. Ethiopia endeavors to triumph human rights by entering into commitments to various human rights instruments and in many of women's human rights instruments. Yet, women's political, economic, and social positions remain at the bottom.

This leads to doubts about the impact and implementation of the country's previous international obligations, whether they improved socio-economic conditions to benefit women, or if they rendered a substantial contribution to them. Precisely the reservation to the Maputo Protocol created concern regarding the basic position of previous human rights documents introduced to secure women's rights because the protocol borrowed its main

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<sup>10</sup> Un treaty collection, depository status of treaties

([https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV8&chapter=4&clang=en))

<sup>11</sup> See united nation treaty collection

<sup>12</sup> Mohamed, *Supra note* 14, at 18

<sup>13</sup> Rose Gawayo Mukasa and Rosemary Semafumu. "The African Women's Protocol: a new dimension for women's rights in Africa." *Gender and Development*, 13, no 3. (2005):42-50.

elements from the pre-existing women's rights law.<sup>14</sup> For that reason, reservation to Maputo Protocol's essential futures hinders advancement in the realization of women's rights. "Ratification Without Reservation" is an emerging trend, particularly in the contemporary rhetoric of the international human rights system. Thus, governments are expected to remove reservations that fulfill their obligations concerning fundamental human rights provisions. Notwithstanding, controversial claims within the debate on international human rights law, the general language of reservations to human rights treaties continues to influence the integrity of human rights.

## 1.2 Statement of the Problem

The international human rights discourse has made significant gains in the areas of human rights. The advancement of women's human rights has been one of its successes over the past decades. The Vienna Declaration and Program of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993 reaffirm the universality of human rights by taking into account the significance of national and regional particularities and various historical, cultural and religious backgrounds.<sup>15</sup> It recognizes the universality of women's rights and calls on states to uphold fundamental rights in addition to their cultural, political, and economic systems.<sup>16</sup>

While the international human rights framework progressed to protect women's rights, Ethiopia is successful in ratifying several of the international human rights instruments intended to secure women's rights. Ethiopia ratified Maputo Protocol on 18 July 2018. Maputo protocol as articulated is a home-grown instrument for human rights belonging to Africans, and it enhances women's rights by filling current lope holes that are not covered by other instruments such as CEDAW or the African Charter and People's Rights.<sup>17</sup>

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<sup>14</sup> See the preamble of Africa Women's protocol it recognizes regional and international human rights instruments that African practices consistent as important reference points for its application

<sup>15</sup> Vienna Declaration and Programme of Action, U.N. Doc A/CONF.157/23, (1993) para 5

<sup>16</sup> UN.Doc. A/CONF.157/23 page 3-5

<sup>17</sup> Mukasa and Rosemary, supra note 17, at 44.

However, the state made tremendous reservations under the Protocol, the reservation text reads as follows;<sup>18</sup> article 4 (2) (a) that protection of women from violence in private sphere that includes criminalization of marital rape; article 6 that stipulated important provision for protection of women under marriage, as such article 6(b) the article which obliges minimum marriage age to be 18 years, it require Ethiopia to eliminate provision under Revised family code that allow dispensation minimum marriage age, article 6(c) also obliges states to the protection of women's right under the polygamous marriage, article 6(d) mandatory registration of marriage to be legally recognized, article 6(f) the use of women median name in marriage and article 6(j) women's right to acquire, manage and administer her own property during marriage; article 7(a) obliges separation of spouse to be by judicial oranges, article 7(d) that stipulates the right to an equitable sharing of the joint property deriving from the marriage; article 13(l) that stipulates the secondary responsibility for state and private sector to child upbringing; article 14(b) that stipulate women's reproductive right to decide to have a child the right to decide whether to have children, the number of children and the spacing of children; article 21 (1) the rights of widow to inherit her deceased spouse; article 27 it stipulates the power of African Court on human and people's right to interpret on the application or implementation.

Indeed, Ethiopia's reservation to the Protocol is justified by its reference to domestic laws. Law is the representation of one societal values, norms, cultures, and social structures hence the values are reflected directly or implicitly on the documents.<sup>19</sup> So the provisions reserved under the Maputo Protocol mirror the conditions and positions of women in the country, as well as values attached to the provisions. Certainly, the reservation which upholds the reference to domestic legal provisions, in particular their content and scope, undermines the successful implementation of the documents, and it weakens the compliance of the obligations of States parties.<sup>20</sup>

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<sup>18</sup> See Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, opened for signature 11 July 2003, and entered into force 25 November 2005. Hereinafter 'Maputo Protocol'

<sup>19</sup> Yehezkel Dror, "Values and the Law." *Antioch Review* 17 no.4 (1957):440-454

<sup>20</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, available at: <https://www.refworld.org/docid/453883fc11.html> [accessed 20 March 2020]

Even so, States made reservations and exercised their right under international law. The assumption is that reservations are not prohibited, but instead presumed that states would rethink their decision to withdraw from reservations, meaning that the default position of the reservation appears to be ratification without reservation, provided that individual rights are at stake at the time of reservation.<sup>21</sup> Similarly, Ethiopia's reservations restrict the universality argument of the Protocol and have impeded its counterproductive impact on women's lives by exacerbating the gender imbalance already posed in the legal, political, and social framework. The issue is whether the instrument requires to be ratified with the reservation if the country is incapable of successfully enforcing the current commitments. Because reservation to revolutionary nature of the privileges set out in the protocol would thus hinder women from experiencing their human rights.

The research, therefore, examines the effect of Ethiopia's reservation to the Maputo Protocol on achieving gender equality. And compliance with specific provisions under the Protocol. While focused on the international human rights system in reservation areas and recent developments, this study would propose ways to reconsider the reservation to African Women's Protocol.

### **1.3 Objective of the Research**

#### **1.3.1 General Objective**

The objective of this study is to examine the impact of Ethiopia's reservation to the Maputo Protocol on the socio-economic and legal status of women based on the theoretical perspectives applicable to understand the effects of the treaty reservation. The research assesses its drawbacks by analyzing current international developments in the reservation human rights in light of promoting gender equality.

#### **1.3.2 Specific Objective**

- The research's specific objective is to ascertain the effect of the reservation on the particular provisions enumerated under the Women's Rights Protocol.

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<sup>21</sup> Eric Neumayer , "Qualified Ratification: Explaining Reservations to International Human Rights Treaties." *The Journal of Legal Studie* 36, no.2 (2007): 397-429.

- To assess how the country's prior commitments in the international instruments of human rights affected by Ethiopia reservation to the Protocol and gender relations structures.
- Finally, it elaborating the drawback of excluding certain rights by reservation under the Protocol which would have met the needs of women.

## 1.4 Research Questions

The underlying research question discussed in this paper is rooted in addressing the concern: “how Ethiopia's reservation on the Maputo Protocol implies denial for assurance of women's rights by assessing the existing gender reality in the country?” Therefore, this paper examines treaty reservations under the international human rights law regime. The specific question the research attempt to address includes;

1. Why Ethiopia has reserved the provisions under Maputo Protocol to set aside the terms of the protocol?
2. How does Ethiopia’s reservation on the Protocol affect women's rights?
3. How reservations affect women from experiencing additional rights than the pre-existing instruments of human rights?
4. Does Ethiopia’s reservation to the Protocol constitute a valid reservation under human rights law?
5. Should Ethiopia withdraw from the Maputo Protocol reservation or not?

## 1.5 Methodology

This research approaches the question of Ethiopia's reservation to the Maputo Protocol by examining different theoretical viewpoints in the area to understand the situations of women in the country. Moreover, the research is contemplating various feminist approaches to women's experiences and viewpoints. Thus, it starts to examine the current articulation of the Maputo Protocol reservations that accelerate inequalities between men and women. This research is conducted primarily based on library or desktop research, and the sources are doctrinal texts, regional and international jurisprudence, UN instruments, and documents.

A handful of secondary data, relevant policy, legislation, and other important pieces of the literature analyzed regarding the situation of women. Further, ratification of the bulk of

human rights instruments that expected to transform gender asymmetry regarded. Moreover, arguments and theoretical frameworks used to explain the multifaceted perspectives on reservations and women's human rights.

## 1.6 Literature Review

The review of the literature aims to address the debate on the subject of reservations concerning international human rights law. In specific, it discusses ideas and conflicting views about the acceptability and characteristics of the reservations of the Treaties. In this regard, there is a grand debate concerning reservation to treaties. Some scholars purport the position that reservation to human rights treaties undermines the integrity of the human rights treaties by bearing its universality, and the protection of the human rights of individuals. Others argue based on state sovereignty and consent at its center. The state has the power to determine reservation to the treaties including the extent of its reservation. However, states make a reservation for different purposes, such as the duty they undertake requires some costs to modify, and also when a certain policy change is necessary.<sup>22</sup>

The Vienna Convention on the Law of the Treaties determines reservations as independent statements intended to change the obligations of States concerning clauses on the application of the Treaty. That is “*Unilateral statement to exclude or modify the legal effect of certain provisions of the treaty in their application to that State.*”<sup>23</sup> "Reservations are acceptable under the Vienna Convention unless the treaty explicitly forbids them as being inconsistent with the object and purpose of the treaty."<sup>24</sup> Since the Vienna Convention governs only permissible reservations, it is also not clear as to the legal consequences of impermissible reservations which do not agree with Articles 19, 20, and 23 of the Convention.

The laws of reservations before the Vienna Convention on Law of Treaties maintain the principle of state objections. In this rule at the time of the objection, the reserving State was either required to withdraw or amend its reservation to become a party to the Treaty while

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<sup>22</sup>Kelebogile Zvobgo and Wayne Sandholtz. “Reserving Rights: Explaining Human Rights Treaty Reservations.” *Political Science and International Relations University of Southern California Global Research Institute*, 2019. Retrived January 5, 2020

([https://www.researchgate.net/publication/325788763\\_Reserving\\_Rights\\_Explaining\\_Human\\_Rights\\_Treaty\\_Reservations](https://www.researchgate.net/publication/325788763_Reserving_Rights_Explaining_Human_Rights_Treaty_Reservations))

<sup>23</sup> Vienna Convention on the Law of Treaties, 1969: Art.2(1) d

<sup>24</sup> Vienna Convention on the Law of Treaties, 1969: Art.19

other states object its reservation.<sup>25</sup> In this regard reservation to be valid required to be accepted by another member state.

In contrast, there is growing criticism that the Vienna Convention's flexible reservation structure, intended to promote universal participation in treaties, has accomplished this aim at the cost of the integrity of treaties subject to mass reservations.<sup>26</sup> Furthermore, based on the nature of human rights instruments it can be said that ratification without Reservation is the most favored way to enter into the treaty. As such the reservation without due consideration to latter withdrawal from the reservations is not supported action but it doesn't mean that reservation is not allowed. Lijnzaad stressed that the "*default position must be ratification without reservation.*"<sup>27</sup> She contends that trying to balance reservation with universal participation harm the right of the individual. In which states reluctance to object reservation for the reason that doesn't entail a reciprocal obligation on them is the actual danger for human rights.<sup>28</sup>

The 1950 advisory opinion of the International Court of Justice (ICJ) provides a decision regarding the permissibility of reservation on the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>29</sup> The court gives its advisory opinion on the matter to the UN Secretary-General regarding the place of states that made the reservation on this multilateral instrument even if other states objects the reservation. The court emphasizes the need to assess the object and purpose of the treaty in this case, the genocide treaty does not give individual interest to the state, but the treaty has a humanitarian and civilized character.<sup>30</sup> The court's decision balances the right to the reservation as states are not obligated to comply with the treaty without their consent, as well as their sovereign right to reserve as

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<sup>25</sup> Mr. Alain Pellet, Special Rapporteur Fifteenth report on reservations to treaties. DOCUMENT A/CN.4/624 and Add.1-2

<sup>26</sup> Catherine J Redgwell, "Reservations to Treaties and Human Rights Committee General Comment No. 24(52)." *International and Comparative Law Quarterly* 46, no. 2 (1997): 390-412. doi:10.1017/S0020589300060486.

<sup>27</sup> Eric Neumayer "Qualified Ratification: Explaining Reservations to International Human Rights Treaties." *The Journal of Legal Studie* 36, no.2 (2007): 397-429.

<sup>28</sup> *Ibid.*,

<sup>29</sup> Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion of 28 May, 1951, ICJ Reports 1951, pp. 15-45 (<https://www.icj-cij.org/files/case-related/12/012-19510528-ADV-01-00-EN.pdf>) Mr. Alain Pellet, Special Rapporteur Fifteenth report on reservations to treaties. DOCUMENT A/CN.4/624 and Add.1-2

<sup>30</sup> *Ibid.*,

long as they stick to the object and purpose of the treaty. It recognizes the right of the State to determine the compatibility and incompatibility of the Treaty, but a reservation which is not valid does not satisfy these combined requirements, regardless of whether it is accepted by the contracting party.<sup>31</sup>

The aim of human rights obligations enshrined in many international treaties is to protect individual rights which differ from other multilateral treaties that reflect reciprocal obligations under their instruments. The Human Rights Committee, under General Comment 24 has expressed its desire for the State to recognize full obligations under the Treaties, because human rights are supposed to protect individual rights.<sup>32</sup> According to the committee, the object and purpose of the convention is to create legally binding human rights standards.<sup>33</sup> The committee also addresses the issue that states may enter reservation with its lack of intention to change a specific law.<sup>34</sup> It highlights the importance of changing some structures of domestic law to enforce the convention at the local level. The Committee commented that State should not make several reservations about accepting limited human rights responsibilities and reservations do not necessarily reduce the State's obligations to uphold even less stringent domestic law requirements.<sup>35</sup>

Another groundbreaking statement is the Human Rights Committee's introduction of the concept of severability according to General Comment 24.<sup>36</sup> In addition to the ability of the committee to assess the validity of the reservations, it stated that invalid reservations would be excluded from the treaty and that the reserving state would be obliged by the treaty in its fullest, including the reservation article. Therefore, the Committee expressed the reservation principles that are used under other multilateral treaties do not apply to human rights treaties due to their special character and lack of reciprocity including its competence in determining valid reservations.

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<sup>31</sup> Ibid.,

<sup>32</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 24: Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols thereto, or in Relation to Declarations under Article 41 of the Covenant, 4 November 1994, CCPR/C/21/Rev.1/Add.6, available at:

<https://www.refworld.org/docid/453883fc11.html> [accessed 20 March 2020]

<sup>33</sup> Ibid., para 7

<sup>34</sup> Ibid., para 12

<sup>35</sup> Ibid., para 19

<sup>36</sup> Ibid., para 17

One of the results of the feminism fight of women's human rights is the adoption of CEDAW, a bill of rights for women. CEDAW encompasses a broad variety of women's rights, including economic, political, social, cultural, and civil or some other domain of state and non-state discrimination.<sup>37</sup> CEDAW has a particular significance as a foundation for the Maputo Protocol.<sup>38</sup> The Convention follows the same procedure as Article 19(c) of the Vienna Convention concerning reservations to the treaty. Article 28 of the CEDAW allowed reservations to be made in specific terms so long as that does not contradict with the objective and purpose of the Treaty.<sup>39</sup> Furthermore, the convention explicitly urges States to withdraw from the reservations using the convention procedure.<sup>40</sup> Over time, several countries withdrawn from CEDAW reservation based on recommendations from the committee, 32 countries remove their reservations until 2010.<sup>41</sup> It adopted General Recommendations No 4 (1987), No 20 (1992), and No 21(1994) that urge states to remove reservations to Article 16 on the elimination of marriage discrimination. Also, CEDAW stated its concerns on the reservations to Article 2 and 16 core provisions.<sup>42</sup> According to its statement, the Convention's object and purpose is to eradicate discrimination in all its forms, it requires necessary steps, to modify or remove current laws, rules, customs, and practices that constitute discrimination against women.<sup>43</sup> The aspiration of the Convention on promoting de jure and de facto women's equality and highlighted reservations prevent the Committee from assessing the progress of the implementation of the Convention by States parties.<sup>44</sup>

### 1.6.1 Women's right and human rights

The human rights discourse has been the epicenter of conflicting debate for many scholars in particular in the topics of women's rights. Significantly the human right discourse

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<sup>37</sup> Simone Cusack and Lisa Pusey, "CEDAW and the Rights to Non-discrimination and Equality." *Melbourne Journal of International Law* 14 (2010)

<sup>38</sup> Fareda Banda,

<sup>39</sup> See Statements on reservations to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the Committee on the Elimination of Discrimination against Women A/53/38/Rev.

<sup>40</sup> Ibid

<sup>41</sup> Byrnes, Andrew and Marsha Freeman, "The impact of the CEDAW Convention: Paths to Equality." World Development Report 2012. p.11

<sup>42</sup> Report of the Committee on the Elimination of Discrimination against Women, Eighteenth and nineteenth sessions. General Assembly. Fifty-third session. A/53/38/Rev.1. p47. para. 6. see also article 2 of CEDAW , Comm. on the Elimination of Discrimination against Women, General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, at 2, 10, ¶¶ 6, 41, U.N. Doc. CEDAW/C/GC/28

<sup>43</sup> Ibid.,

<sup>44</sup> Ibid.,

challenged for being held on to western values, and not expansive enough in taking certain rights such as women's rights.<sup>45</sup> In this regard, feminist and cultural relativists criticized the existing human rights discourse from different perspectives.

The notion of the universality of human rights has been contested based on cultural grounds, supposed that the present discourse of human rights represents only the western conception of rights in such a way it doesn't signify the culture and values of the rest of the world<sup>46</sup>. "*Human rights are the product of the dominant western parts of the world, framed their language, reflecting their needs and aspirations.*"<sup>47</sup> Similar to, R. Panikkar uttered that the existing notion of human rights is the result of one-sided construction of cultures in the world<sup>48</sup>. Yet, these ideas rejected by some scholars as it is an abuse to the international human right system. For instance, Eva Brems classified the opponent of human rights on the biases of culture into two groups as radicals who rejected the idea of the inclusion of western culture in the human right system on the other hand moderate tries to accommodate the human rights system by the inclusion of culture.<sup>49</sup> In this regard, digging into the feminist debate concerning international human rights discourse is vital discussing the issue of reservation since the majority of women's human rights instruments resulted from the advocacy of women's movement. Therefore, the position of cultural relativist and feminist cultural relativism tends to support reservations to certain provisions as a result of cultural defense.

Notably, international human rights discourse confronted by a range of women's rights discussions, in particular, the attack comes from a feminist approach towards international law. The current human rights discourse criticized as short of including women's rights and proposed the change in the system. Barbara Stark, for instance, maintained that the rhetoric of international law is made by men in every aspect so it doesn't signify women's interest.<sup>50</sup> On

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<sup>45</sup> Eva Brems "Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse." *Human Rights Quarterly* 19, no.1(1997): 136-164.

<sup>46</sup> Panikkar, R., & Panikkar, R.1982. Is the Notion of Human Rights a Western Concept? *Diogenes* 30(120):75–102. Doi:10.1177/039219218203012005

<sup>47</sup> Brems, Supra note 43 at 142.

<sup>48</sup> Panikkar, R., & Panikkar, supra note 44 at 75.

<sup>49</sup> Brems, "Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse" 144

<sup>50</sup> Barbara Stark "The Women's Convention, Reproductive Rights, and the Reproduction of Gender." *Duke Journal of Gender Law & Policy* , 2011: 18:261.

the other hand, other feminists retain the idea that human rights discourse incorporated women's rights in doing so this rhetoric begins with wordings of the international human right instruments for the reason that they protect human beings. Markedly, the proponents concrete their argument on the human rights discourse and human rights instruments given the fact the right of women is violated. Keren Angl in her article put the advocates in two groups as doctrinal and institutional.<sup>51</sup> Both approaches recognize the existence of women's rights in international human rights instruments. Yet, doctrinal targeted in filling the gap between the instruments and violation of women's rights by taking into the expression of women and propose changes such as legal regime. Whereas institutions targeted institutions that are established to implement human rights instruments and mostly they proposed the changes in the institutions such as treaty bodies.

While this and other discussions are central for the development of women's rights on Africa based upon the African people's particularities as well as women's specific demands in the continent. In this regard, the Maputo protocol claims to recognize Africans practices and norms as a basis for the adoption of the instrument.<sup>52</sup>“*The protocol address specific problems and issues that have significantly hindered African women's rights and well-being in the past.*”<sup>53</sup> Geng Jing, For example, articulated that Maputo protocol vividly reconciles the local cultural context by attesting the international human rights discourse.<sup>54</sup> The protocol adheres to Africa's particularities regarding the protection of the rights of women so reservation to the protocol, in particular, in its substance is damaging.

## 1.7 Structure

The research will be structured in five chapters. The first chapter will consist of the introduction of the research paper. The second chapter will discuss the theoretical framework

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<sup>51</sup> Karen Engle "International Human Rights and Feminism: When Discourses Meet." *Michigan Journal of International Law* 13, no 3 ( 1992) : 517.

<sup>52</sup> See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Preamble

<sup>53</sup> Roselynn Musa, “Breathing life into the African union protocol on women’s right in Africa.” African Union Headquarter. Solidarity for Africa women’s right and African Union. 2006. Pp.19.

<sup>54</sup> Jing Geng, “Maputo Protocol and the Reconciliation of Gender and Culture in Africa.” In Research Handbook on Feminist Engagement with International Law, ed. S. H. Rimmer and Kate Ogg. Cheltenham, UK:Edward (Elgar publisher. 2019), 411-430 Retrieved February 4, 2020 <https://www.elgar.com/shop/eep/preview/book/isbn/9781785363924/>

based on the strands of the study. In which the chapter goes over the gender structures of the country in line with cultural and patriarchal norms that glimpse the rationale for the reservation on Maputo protocol will be examined. Chapter three will provide a disposition of the backgrounds of socio-cultural legal and political lands escapes international and regional human rights instruments and how they actualize lieu of women's rights that will enable us to inquire about important progress or redundancies in the human rights discourse will be asserted. Chapter four will address Ethiopia's reservation on the African woman protocol in brief, including the relevant provisions. Chapter five addresses briefly the findings, conclusions, and recommendations of the country's reservations to the Maputo Protocol on the effects of gender disparity in the country and on women's human rights.

### **1.8 Limitations**

Time is the primary limitation in this research, in which without enough time, it is impossible to frame and analyze the majority of legal instruments in Ethiopia. In particular, it is a difficult task to determine the positive aspect of human rights documents in achieving gender equality including the aspects of reservations to the African women's protocol. In reality, depending solely on the legal structure does not tell us what concrete change is being undertaken on the ground, so the problem concerns from secondary evidence to show what Ethiopia loss from the reservation and its adverse implication on the rights of women is apparent.

### **1.9 Scope of the Study**

This study primarily emphasizes analyzing Ethiopia's reservation on the African Women Protocol (Maputo Protocol) on the rights of women and de jure and de facto gender equality in the country. This research is therefore limited to examining matters about Ethiopia's reservation to the Maputo Protocol.

## CHAPTER TWO

### Theoretical Framework

#### 2.1 Introduction

The introductory remarks of the research addressed in the first chapter include histories of facts crucial to understand the passage of the reservation to the Maputo Protocol on Women's Right per international normative standards necessary for the evaluation of Ethiopian women's circumstances. The discussions are important to understand the backdrop of the reservations of Ethiopia to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol). Reservation to the treaty obligation as it is defined under the Vienna Convention on the Law of Treaties is a distinct statement intended to alter states' obligations towards certain provisions to ratified treaties.<sup>55</sup>

Responding to the amount of the factor to the Ethiopian government to enter into the reservation to Maputo protocol helps frame the scenario regarding its acceptability on the reservation regime in the current human right discourse. As such several theories back up the conflicting ideas surrounding the realm of treaty reservations. In which many theories explore treaty reservations from the divergent perspective that illuminate the nature of sates reservation under the scrutiny of the legal, political and socio-cultural setting of the reserving states as well as universal norms and principles painstakingly.

Furthermore, there is no distinct theoretical framework that fully comprehends treaty reservations and why sates enter into the reservation to the treaty. However, the discussion is important since these papers in particular focus on reservations on the human rights of women. Thus, some of the theoretical frameworks discussed are substantial to set down the explanation and response to a reservation of Ethiopian to Maputo Protocol to a certain extent. Therefore, this chapter explores four grand theories that serve as a lens to enunciate the question surrounding and rationale towards Ethiopia's reservation to the Maputo Protocol. And again, women's rights and the gender issues in regards to women's rights that would answer the reservation on the women's right.

#### 2.2 Universalism

The advocates of the universalism of human rights consider human rights as fundamentally applicable to all peoples across all religions, gender, and other distinctions. It

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<sup>55</sup> Vienna Convention on the Law of Treaties, 1969: Art.2(1) d

is the “belief that human rights exist independent of culture, ideology, and value systems.”<sup>56</sup> The claim for justification of human rights or their legitimacy is derived from natural law, divine authority, and intuition generally called Philosophical universalism and the document or the ratification of international instruments called positivist universalism. These two groups of theories explain the universality of human rights.

The classical or philosophical universalism comprised of naturalist that propounds human rights autonomy from human dignity and reason; divine authority based moral and religious beliefs in which the divine origins of the law such as Christian, Jewish and Islam theological and bases, and self-evident proof or intuitionism that claims existence of the instrument by itself proves the existence of the right such as the text of UDHR which enshrined the inalienable and inherent by itself is a validation for the presumptions of universality intuitively.<sup>57</sup>

The other theory explains the existence of the universality of human rights from the international law perspective that constitutes the ratification of the human rights instrument and the extent of international consensus as well as the political reality of the international community. The international human rights law regimes constitute enormous human rights documents “*norms and decision-making procedures accepted by international actors to regulate an issue area*” and mostly this requires the state's compliance with the regime.<sup>58</sup> Yet, it constitutes a normative international universality of human rights regimes that are accepted universally in which states voluntarily accept them and applied in the domestic legal system.<sup>59</sup> To this end, some argue in favor of reservations that human rights treaties support universalist aspirations by maximizing membership in those treaties because it allows states

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<sup>56</sup> Alison Dundes Renteln, *International Human Rights - Universalism versus Relativism* (Newbury Park: Sage Publications, 1990) 12.

<sup>57</sup> Jerome J Shestack, "The Philosophic Foundations of Human Rights." *Human Rights Quarterly* 20, no. 2 (1998): 201-34; Hugo Grotius, *De Jure Belli Et Pacis* (Book 1, 1689); See also Heinrich Albert ROMMEN, *The Natural Law: A Study in Legal and Social History and Philosophy* (1948); John Locke, *The Second Treatise of Government* (1952); MYRES S. McDougal Et AL., *Human Rights And World Public Order* (1980), and Frank Thilly, "Intuitionism and Teleology." *International Journal of Ethics* 12, no. 4 (1902):487-494

<sup>58</sup> Jack Donnelly, "International Human Rights: A Regime Analysis." *International Organization* 40 , no. 3(1986):599-642.

<sup>59</sup> Jack Donnelly, "The Relative Universality of Human Rights." *Human Rights Quarterly* 29, no. 2 (2007): 281-306.

to adjust the treaty by preserving its integrity.<sup>60</sup> Another proponent of reservations claims that a state cannot be forced by terms of the treaties that it is failed to accept.<sup>61</sup> However, states may ratify the treaty for political purposes without changing their domestic conditions.<sup>62</sup>

In contravene allowing reservation to human rights treaties threaten the rights of individuals since individuals are the beneficiaries of expectations placed on states.<sup>63</sup> The reservations to the human rights treaty undermine the effectiveness of the implementation of the treaty.<sup>64</sup> For instance, CEDAW expresses its frustration on broad Sharia and customs based reservations because it constitutes an acute problem regarding the implementation of the Convention and the ability of the Committee to monitor its compliance.<sup>65</sup> Goodman argues given particular importance of human rights treaties which formulate and maintain a minimum level of global standard enabling states to join the treaty with incompatible reservations, results to repudiated or downgraded the normative or standard-setting effects of the treaty.<sup>66</sup> Domestic laws, practices, and beliefs coupled with a refusal to make any adjustments in this regard frequently contribute to human rights reservations this in turn lead states to escape their responsibility.<sup>67</sup> In short, the reservations undermine the application of implantations of the treaty.

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<sup>60</sup> Rebecca J. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination against Women, 30 VA. J. INT'L L. 643 (1990).

<sup>61</sup> Eva Brems, "Reconciling Universality and Diversity in International Human Rights Law." In *Human Rights with Modesty: The Problem of Universalism*, by András Sajó, 216. Leiden/Boston: Martinus Nijhoff Publishers, 2004.

<sup>62</sup> GM Ferreira and MP Ferreira-Snyman, The Impact of Treaty Reservations on the Establishment of an International Human Rights Regime

<sup>63</sup> Ibid.,

<sup>64</sup> ICCPR, General Recommendation ,24

<sup>65</sup> CEDAW

<sup>66</sup> Ryan Goodman, "Human Rights Treaties, Invalid Reservations, and State Consent." *The American Journal of International Law* 96, no. 3 (2002): 531-60.

<sup>67</sup> GM Ferreira and MP Ferreira-Snyman, "The Impact of Treaty Reservations on the Establishment of an International Human Rights Regime." *The Comparative and International Law Journal of Southern Africa* 38, no. 2 (2005): 148-83.

## 2.3 Cultural Relativism

Various claims and assumptions have been debated in light of cultural relativism many cultural relativist advocates vindicate their stance based on cultural claims. Such principles' adherents criticize languages of Universal human rights for a lack of understanding of this difference. In this regard given the diversity of culture in the world, no trans-cultural ideas and rights can be agreed otherwise its amounts to enforcing other state cultures under the pretense of human rights thus equal to cultural imperialism.<sup>68</sup>For instance in CEDAW article 2(a) 2(f), article 5 and article 16 reserved under the pretext of sharia-based reservation by states like Egypt, Bangladesh against the purpose and objects of the treaty. However, the document's intended to establish women's equal rights in all areas such as legislation, customary and cultural practices. In this line of argument, Berms propose only the harmful cultural practices should be at the center otherwise cultures can be accommodated to the international human rights framework.<sup>69</sup>

The opponents argue that the human rights instrument only lies a minimum standard that's already minim standards, so a reservation is against the aim of the instruments in creating a standard-setting.<sup>70</sup> In particular, regarding human rights instruments designed to shield disadvantaged people, such as women and children, weaker international standards, and difficult to align with the object and purpose of the documents.<sup>71</sup>Also, the ratification only indicates a formal universality but universal human rights lack substantive universality since the only universally valid and integrally binding rule may be established as a requirement for substantive universality in terms of customary international law or treaty law however this validity is impaired by reservation.<sup>72</sup>

Cultural relativist claims taken into account under the Vienna Declaration complex and changing context of international human rights law should be taken into consideration in harmony with the importance of national and geographical particularities as well as relevant historical, cultural, and religious contexts.<sup>73</sup>Important to note that the African Charter on Human and people's rights (1981) ACHR and African woman's right protocol incorporated

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<sup>68</sup> Ibid.,175

<sup>69</sup> Brems, Human rights: universality and diversity (2001) 51

<sup>70</sup> Ibid., and Goldman

<sup>71</sup> Ibid.,167

<sup>72</sup> Lijnzaad Reservations to UN-human rights treaties: ratify or ruin? (Doctoral dissertation Rijksuniversiteit Limburg Netherlands 1994)

<sup>73</sup> see Vienna Declaration and Programme of Action on Human Rights, para 5

African particularities that manifested the values of African societies.<sup>74</sup> Likewise, the rights regime in Africa has the capacity for the legitimization of cultural differences and incorporating international human rights standards that are stipulated under the international human rights instruments.

## 2.4 Doctrine of Severability

Human rights treaties that do not include reservation clauses are subject to the customary laws of the Vienna Convention on the Law of the Treaties. Often states do not object to the Treaty reservation even if it is contrary to the object and purpose as laid down in the Vienna Convention for various reasons, such as political reasons, but even so, the objection is raised it does not preclude the Treaty from entering into force. Thus, if the reservation is against the object and purpose of the treaty, the state remains to be bound by the treaty regardless of its reservation.

The theory moves from the classical way of determining reservation compatibility by the objection of states under the laws of Vienna on the effect of conflicting reservations towards the severability parameter. Mainly the decision made by the European Court of Human Rights claimed that an invalid reservation severed for the State's to become a party to the treaty. The decision of the courts is a groundbreaking regarding the human rights treaty and elaborated under in the case of *Belilos v. Switzerland*<sup>75</sup> and the cases of *Weber and Loizidou*.<sup>76</sup> Also, the Committee on Human Rights has followed this opinion in its General Statement No. 24, noting that the usual effect of an incompatible reservation is not that a reserving group does not have the treaty in place at all.<sup>77</sup> Instead, the reservation would usually be severable, in the context that the treaty would apply to the reserving state without the benefit of reservation.<sup>78</sup>

To balance the doctrine of severability with the state consent ILC approach to the doctrine of severability arguing that a State Party may only be deemed bound by the treaty as a whole

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<sup>74</sup> Claude Ake, "The African context of human rights." *Africa Today* 32, no. 1/2 (1987:) 511.

<sup>75</sup> *Belilos v. Switzerland* ECHR 1988 Series A no 132. Fifteenth report on reservations to treaties, by Mr. Alain Pellet, Special Rapporteur DOCUMENT A/CN.4/624 and Add.1-2

<sup>76</sup> *Loizidou v. Turkey*, ECHR 1995 Series A no 310, para 96.

<sup>77</sup> UN Human Rights Committee, 'General Comment No 24' (4 November 1994) para 18.

<sup>78</sup> *Ibid*

if it has not conveyed the contrary intention.<sup>79</sup> Hence, unless the reservation is a basic condition to be ratification in strict senses.<sup>80</sup>

## 2.5 Feminism Theories on the Reservation of Human Right Treaties

The evolution of women's movements and activism in the 20<sup>th</sup> century influences the human right discourse towards incorporating the issue of gender equality. The wave of women's rights movements especially feminists forwarded the subject of gender inequality into a new perspective as a landmark for social, economic, and political equality. However, the challenge of women in the 21st century is whether women can exert their political power enough at the regional, local, and global levels to ensure the full application of the Treaty on women's human rights.<sup>81</sup>

Feminist discourse fundamentally questioning human rights law substance, as well as analyzing the experience of women, and generally raise questions about social organization.<sup>82</sup> There is no single feminist united movement their ideas are sometimes divergent and sometimes contradictory. According to Alison Jagger's operational definition, it is a variety of social movements that are primarily devoted to ending women's subordination.<sup>83</sup>

In discussing the feminist debate under the international human rights regime on the subject of the reservation to human rights treaties do not raise single-course arguments. Feminists challenge the human rights discourse generally from the perspective of culture and other differences. Liberal feminist theory mainly asserted their argument based on the equality of men and women based on the existed legal frameworks. But their articulation criticized for creating artificial equality between men and women because without considering their practical difference on the ground.<sup>84</sup> Under international human rights law, they use human rights instruments for equal treatment of men and women without sex/gender

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<sup>79</sup> ILC, 'Guide to Practice on Reservations to Treaties', Guideline 4.5.3 § 2.

<sup>80</sup> Goodman, Human Rights Treaties, Invalid Reservations, and State Consent, 533

<sup>81</sup> Arvonne S. Fraser, "Becoming Human: The Origins and Development of Women's Human Rights." *Human Rights Quarterly* 2, no.4 (1999):853-906.

<sup>82</sup> Gayle Binion, "Human Rights: A Feminist Perspective." *Human Rights Quarterly* 17, no. 3 (1995): 509-526, 513

<sup>83</sup> *Ibid.*, 72 (as cited in Valerie Bryson, 1999),

<sup>84</sup> *Ibid.*, 72

difference.<sup>85</sup> For instance, CEDAW is considered as the manifestation of the Liberal feminism. The document encountered massive reservations compared to other human rights documents. The flexible reservation system criticized by feminist as the number of reservations made to articles which are deemed to be key provisions. This hinders the efficacy of CEDAW in improving the status of women since reservations allow them to conform only to certain sections of the treaty.<sup>86</sup> Reservations also affect the creation of normative standards by the treaty.<sup>87</sup> It also signifies the inability of international law institutions to deal with uncooperative states on the reservation to the human rights treaties that undermine the integrity of the human rights laws, in particular, the right of women.<sup>88</sup>

The radical feminist theory emphasizes women's oppression as resulted from men's control over women or structural oppression. It considers international human rights law as the product of patriarchy and man-made that lack considering women's experience while speaking about equality.<sup>89</sup> Indeed, male-centered as well as silent to the needs of the female perhaps by manifesting public-private dichotomy.<sup>90</sup>

Cultural feminists argued for the need for reconsideration and conceptualization of human rights based on women's demands. For the most part, proponents don't spare their argument with formal equality rather stresses upon practical differences such as psychological exposure of women or social context that impacted the lives of women. Moreover, in these lines of argument scholars such as John Hardwig go to the extreme and rejected formal equality at all claiming it's the adversarial and abstract character of patriarchy.<sup>91</sup>

In contrast, the post-modernist and anti-essentialist approach projected a more straightforward argument about state reservations. For example, Diane Otto believed that the debate on the claim of universalism over relativism is a representation of which muscular

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<sup>85</sup> Karen Engle "International Human Rights and Feminism: When Discourses Meet." *Michigan Journal of International Law* 13, no 3 ( 1992) : 517.

<sup>86</sup> Belinda Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women." *The American Journal of International Law* 85, no. 2 (1991): 281-321.

<sup>87</sup> Ibid

<sup>88</sup> Burrows, "International Law and Human Rights," note 4 at 85. See also Sheila McLean, "The Right to Reproduce," in *Rhetoric to Reality*, ed. Campbell, note 4 at 99.

<sup>89</sup> Barbara Stark, 'The Women's Convention, Reproductive Rights, and the Reproduction of Gender' (2011) 18 *Duke Journal of Gender Law & Policy* 261, 263-4

<sup>90</sup> Hilary Charlesworth and Christine Chinkin, "Gender of Jus Cogens." *human rights quarterly* 15, (1993):63

<sup>91</sup> See John Hardwig, *should women think in terms of rights?* 94 *Ethics* 441 (1984) In Eva Brems *Enemies of Aliens?*

strand prevails over the other and rather forward us to the divided direction.<sup>92</sup>International human rights law is thus comprised of norms, practices, and institutions involving an arbitrary decision, and feminist arguments are one of those claims.<sup>93</sup>In this aspect, the advocates claim in favor of a pragmatic and prudent means of pushing a feminist agenda forward. In this line of argument, Siobhan Mullally proposed a dual-track reservation approach claiming that neither severability nor post-modernist approach is sound rather dual-track is a solution that intended to discuss with the beneficiary of the rights while making reservation decisions.<sup>94</sup> Also, states are an institution for the defense of human rights; in the globalized environment, people become international citizens, and reservation has little basis at all.

## 2.6 Conclusion

The advocates of the universalism of human rights consider human rights as fundamentally applicable to all peoples across all religions, gender, and other distinctions. Thus, allowing reservations to human rights treaties threaten the rights of individuals since individuals are the beneficiaries of expectations placed on states. The universality of human rights laws has been criticized by cultural relativists for lack of consideration of diversified world culture. The cultural relativist approach to the human right system is criticized by feminist scholars since culture and religion are the epicenters of male dominance and women repression. Feminists are outliers in the reservation discussions and demanded changes in the human rights discourse in many aspects. In this regard post-modernist and anti-essentialist approach projected a more straightforward argument about state reservations. The theory advocated for the pragmatic reconsideration for women at the time of reservations. Severability theory assumes states that made an invalid reservation to be bound by the treaty without the benefit of reservation.

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<sup>92</sup>Siobhan Mullally, "Gender Culture and Human Rights: Reclaiming Universalism." Bloomsbury Publishing, 2006.

<sup>93</sup> Mullally, *Gender Culture and Human Rights: Reclaiming Universalism*, 110

<sup>94</sup> *Ibid.*, 113

## CHAPTER THREE

### Ethiopia reservation to Maputo protocol under domestic and International Laws

#### 3.1 Introduction

The above chapter discusses the theoretical frameworks pertinent to understand Ethiopia's reservation to the Maputo Protocol. The theoretical frameworks mentioned herein mark the path to understand the reality with a different lens and back up the arguments that are introduced in the paper. The Universalist justification underlines reservations impact on limiting the integrity of the right and the minimum protection that are enumerated under the document. Cultural relativist theories also discussed with the intent to peruse the rights claim on the context of regional particularities in the realm of culture and traditional values that uphold the characterization of Maputo protocol. As a result, Ethiopia's reservation to the protocol is not just against universal norms but also against tailor-made regional rhetoric that has something in common with Ethiopia. Feminist theories also discussed intending to explain the realities and experiences of women alongside a view of patriarchal structure in the international human right regimes, domestic legal, and social formworks. This in turn allows us to understand and contextualize the importance of incorporating the reserved rights into national legal frameworks.

The purpose of this chapter is to use a hand full of social, economic and legal realities of Ethiopia to create a connection with reservation to the treaty provisions under the women's right protocol and to demonstrate as it is against the current human rights trend supported view "ratification without reservation". And more, it goes against the supposed obligations of the country under various human rights instruments perhaps it takes into consideration the real conditions and position of women that the protocol aspires to change. In light of that, the paper analysis the dimensions of conditions of Ethiopians women and economic and social positions that help us to understand the grass-root level and why Ethiopia needs to accept rights enumerated under the Protocol. It also examines the incompatibility Ethiopia's reservations with the domestic Laws and international instruments ratified by Ethiopia to the promotion of women's rights. To that end, this chapter is dedicated to showing Ethiopia's international obligation to adhere to the pledges in the protection of women's rights by endorsing those rights that are enumerated under Africa's Women's Protocol.

### 3.2 Shortcoming of Reservation under Maputo Protocol

Ethiopian women constitute half of the total population' and hold low-level social strata in all social, economic, and political spheres. Also, they are oppressed by patriarchal setups that undermine their roles. According to the UNDP gender inequality profile that values countries' gender disparity based on reproductive health, empowerment, and economic activity, Ethiopia is low rank amongst world countries with high-level gender gaps that persisted in all sects of their lives. Women role in the society affected by social and institutional setups that challenges them from fully taking control of their lives and the exercise of their rights. In which various discriminatory practices existed in the society that limited their roles in many areas and deprive women of involving in productive activities.

The conditions and position of women in society demonstrate that there exists a higher level of gender imbalance in all areas of their lives. Women are not equal in terms of power relationships with men and are deprived of the enjoyment of their rights in society. That being said, the relationship between women and men is shaped based on patriarchal social values that favor the rights of men. That in turn determines the private relationship to the roles of women in public affairs. To give an illustration, the perception towards women is shaped from the beginning of birth with the choice of boys over girl children in various communities. Such activities contributed to children drop out of school, maternal mortality, and maternal morbidity rate in which girl children bear children at an early age. Evidently in the county, there existed entrenched harmful traditional practices such as early marriage, abduction, arranged marriage, and female genital mutilation mostly these practices highly contributed to the lower position of women in the community. By the same token, the reproductive rights of women are very poor in which according to the UNDP gender inequality index indicators the rate for every 100,000 live births, 353 women die from pregnancy-related causes<sup>95</sup> thus, this type of issue is impacting women's health rights. Not only but also the rate of HIV/AIDS is a prominent health issue in the country that is, of course, has a positive relationship with the rate of violence against women in the country

Furthermore, the gender basis of the society has a stronghold in education, employment, and political arena. For instance, the rate of females drops out is higher compared to men's and women's illiteracy rates outnumber men's illiteracy rates at large. In which education is

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<sup>95</sup> Ibid.,1

aspired to create self-actualization for women and it's an instrument that equips women to fight for their rights. Women's lack of knowledge also much contributed to their access to the information that regards the causes of HIV/AIDS and the fight for their rights from certain forms of violence.

Similarly, the condition woman in the work is small in which women are more engaged in the informal economic sectors that do not count at the national level. As well as mainly involved in small businesses as a result of lack of education and training. For that reason, women mostly are dependent on the hands of man or husband for the provisions of basic goods and cash. Likewise, the participation of women in public and political affairs is still low despite some efforts of the government women are underrepresented in all levels of the decision-making areas including government and private sectors compared to the size of women in the country. For example, currently, the legislature constitutes only 38% of elected female representatives and it is the result of the perception of the society towards female leaders and few numbers of educated women that reside in the society unable to challenge the existed societal structures. The position of engagement of women in the power of key decision-making areas demonstrates its huge repercussion to many policy framers.

Given the background, the international human rights framework is indeed considered as a mechanism to ensure the equality of women within the international and national legal structure, because it has the power to transform society by challenging existing beliefs, policies, and norms that impede the development of individual rights. Many of the international human rights instruments are designed to systematically monitor the progress that is made in the areas of women's lives by the states. That's why international cooperation in the form of ODA that holds a huge amount flowed towards achieving gender equality as an obligation of the international community.

The Maputo Protocol's ultimate objective is to eradicate all types of oppression against women to ensure de jure and de facto equality between women and men. As stated in the Protocol, the Protocol seeks to promote and strengthen the obligations already enshrined in the international instruments for Human Rights.<sup>96</sup> CEDAW in its General Recommendation stated that formal legal or pragmatic approach is not sufficient to achieve de facto equality

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<sup>96</sup> See Maputo Protocol Preamble

between women and men, which the Committee interprets as equality of substance.<sup>97</sup> However, the committee requires that women be given equal opportunity, and the state's responsibility to adhere to their legal obligation to respect, protect, promote, and fulfill this right under the convention. But for particular importance it stipulates the duty of States Parties to guarantee that there is no direct or indirect discrimination against women in their laws and women are protected from discrimination.

In this respect, Ethiopia's reservation of the provisions is a refusal to comply with the most relevant areas of women's lives, such as minimum marriage age, domestic violence, which is the State's duty to protect under human rights legislation. For this reason, the Protocol enshrines the minimum standard for human rights which questions the state's compliance. Maputo Protocol obliges Ethiopia to submit periodic reports under article 26 according to article 62 of African charter this is a way of accountability for the country.<sup>98</sup> These aspects of the clause require the country to take steps to protect women's rights under specific provisions, including the transformation of domestic legal systems and customary practices.

The other important point is the level of compliances of the country to be tasted by treaty provisions and mostly evaluated by the African Commission on human and people's rights experts. The protocol obliges states to take all necessary measures for implantation of the rights including budgetary measures.<sup>99</sup> Litigation is one means of ensuring the implantation rights of women, in particular the reservation by Ethiopia to Article 27 on the duty of the African Court on Human and Peoples ' Rights under the Protocol limits women's rights to justice. Since it enables civil societies and individuals to have access to a court that in turn allows women to demand the realization of substantive provisions. This reservation also impacted the strength of enforcement on the domestic institutions including on the advocacy and lobby on the rights of women.

### **3.3 Reservation to Maputo protocol vs. the FDRE constitution**

The FDRE constitution enshrined the equal rights of women in all economic, social, and political shares as well it enshrines the rights of women to be free from discrimination based

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<sup>97</sup> Report of the Committee on the Elimination of Discrimination against Women, UN Doc, A/49/38, 12 April 1994,

<sup>98</sup> Maputo Protocol article 26

<sup>99</sup> Ibid.,

on sex. It is a stepping stone for policies and legislation adopted on the rights of women. The FDRE constitution as a mega right in the land integrated the bill of rights that enumerated beneath various international human rights documents that Ethiopia is a state party. In particular many of the freedoms stipulated under the human rights sections of the constitution follow the standards that are depicted in the international and regional human rights documents.

Moreover, the constitutions under article 13 set out the interpretation of provision enumerated under chapter three of the constitution to conform with the international bill of rights. Perhaps the provisions are subject to prolonged scholastic and legal debate. Article 9 propounds the international human rights instruments ratified by the country to be the integral parts of the law of the land. The provision holds a position that the ratified treaties to be in an equal position with the law that is enacted by the House of People Representatives HPR. Hence, the fact comprises the country followed a dualistic approach in the domestication of international human rights law. Yet, the constitution as stated under article 55 (12) sets out the requirement for the international agreements to be ratified by the House are expected to be published under the *Negarit Gazeta* to enable federal and regional as well as all government organs to consider the laws. This provision also puts Ethiopia under a constitutional duty to take certain steps to fulfill the minimum standards set down in the provisions of the international human rights instruments.

Certainly, the constitution under article 25 underlines the equality of women and freedom from discrimination. Although article 35 (4) of the constitution promulgates the duty of the state to protect women from the influence of harmful customary practices, laws, stereotyped ideas, and customs which oppress women or that will prompt body and mental well-being. Also, the National Ethiopian Women's Policy that was enacted in 1993 has mapped out the problems of Ethiopian women in all field areas and identified the patriarchal system as the root cause that exposed women to political, economic and social discrimination which is reinforced by traditional practices that give credence to cultural/religious norms and values over women's human rights.

Ethiopia's reservation to the Maputo Protocol is, however, against the fundamental rights of women laid down in the Constitution. Article 35(4) prohibits any customary practices and laws that stereotype women directly or indirectly. The rights of women in marriage are also addressed under Article 34 of the constitution stating that women hold equal rights during

marriage, divorce, and equal decision-making during the marriage. The provision speaks about the equal power of women to decide with her husband regarding matters including sexual matters or any that concerned their interest.

Otherwise, instead of taking action to guarantee women's rights under the constitution, Reservation to the Protocol by the justification of national legislation that does not minimally safeguard women's rights is contradictory to the constitution and the country's commitment under international human rights law. It seems that the country upholds principles that have patriarchal grounds rather than taking legislative measures.

Moreover, Ethiopia reservation to Maputo Protocol such as article 6(b) minimum marriage age to be 18 years; 4 (2) (a) criminalization of marital rape, the protection of women's right under the polygamous marriage, women's right to acquire, manage and administer her property during the marriage, article 7(d) that stipulates the right to an equitable sharing of the joint property deriving from the marriage article 6(d) mandatory registration of marriage to be legally recognized, 7(a) obliges separation of the spouse to be by judicial oranges, article 7(d) that stipulates the right to an equitable sharing of the joint property deriving from the marriage.

This reservation doesn't have a constitutional ground as well as contravene international instruments that become an integral part of the Ethiopia constitution. It is in sharp contrast with the provision of the constitution because this is a denial of equal privileges for women in essential matters. This is the area women are most disadvantaged and their basic rights are violated. For instance, in Ethiopia, there exists a complex set of legal systems in which Regional states have their laws that govern the issue of families such as marriage and divorce. And gain various customary and religious practices are persisted in the country especially in the regional states. Many of the customary laws hold some aspects that disadvantage women. The traditional practices as well as deeply rooted discriminatory practices in society hinders the promotion of gender inequality that is persisted structurally, and more reflected in lower social conditions and status of women.

### **3.4 Ethiopia Commitment to CEDAW**

CEDAW is the contribution of the consistent feminist movement in the area of international human rights that intended to change the existed gender inequality through the separate instrument. In 1980 after the world conference held on the rights of women in Copenhagen CEDAW draft open for signature, and open to enter into force after 20 states have ratified it. In the year 1982, the committee on the elimination of the discrimination started to operate after the third conference in Nairobi.<sup>100</sup> CEDAW contributed immensely to the promotion of women right under the international and national legal frameworks. For illustration, Anne F. Bayefsk describes the contribution of CEDAW as a standard that increase the understanding of prevailing international human rights in particular for the enjoinderment of women's right.<sup>101</sup>

CEDAW ratified by 186 states with a considerable amount of reservation that makes it one of the most reserved human right documents in which 48 sates enters into the reservation to the basic rights that are underlined in the instrument.<sup>102</sup> At that time CEDAW entered into a force out of one hundred states 41 sates make reservation and 19 states entered on the part of provisions about dispute settlement mechanisms, and others make a substantial reservation that was questioned by the treaty regarding its admissibility.<sup>103</sup> *"The most contentious reservations are those that are made in order to preserve the cultural and religious values of a nation."*<sup>104</sup> The Member States presented different approaches and opinions on the reservation, which indicated that some of the sates shared the opinion that the universal rules laid down in the Vienna Convention on the Law of Treaties be conform to, while others in contravention, represented the opinions and suggested the introduction of new criteria.<sup>105</sup>

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<sup>100</sup> Tinker Catherine, "Human Rights for Women: The U. N. Convention on the Elimination of All Forms of Discrimination against Women," *Human Rights Quarterly* 3 no. 2(1981):32-43 Retrived April 5, 2020 from <https://www.jstor.org/stable/761855>

<sup>101</sup> Anne F. Bayefsky et al., "The CEDAW Convention: It's Contribution Today." *American Society of International Law* 94 no. 5-8(2000): 197-203, Retrieved April 5, 2020 from <https://www.jstor.org/stable/25659389>

<sup>102</sup> See UN treaty collection, Multilateral Treaties Deposited in the Secretary General. Retrieved April 20, 2020 from [https://treaties.un.org/Pages/Content.aspx?path=DB/titles/page1\\_en.xml](https://treaties.un.org/Pages/Content.aspx?path=DB/titles/page1_en.xml)

<sup>103</sup> Belinda Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women." *The American Journal of International Law* 85 no. 2 (1991) :281-321 Retrieved April 5, 2020 from <https://www.jstor.org/stable/2203063>

<sup>104</sup> Sindiso Ngaba, "CEDAW: Eliminating Discrimination against Women," *Agenda: Empowering Women for Gender Equity* 27 (1995): 81-89

<sup>105</sup> Belinda Clark, "The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women," 287.

The objects of the treaty are individuals in the case of the convention on the elimination of discrimination against women CEDAW; in particular, the beneficiaries are women. It is believed that the convention holds favorable rights for the protection of women. The world conference on human rights eight 1993 calls upon states to withdraw from the reservation that is in contravene with the object and purpose of the treaty as well as to give due regard to their reservation continuously.<sup>106</sup> The committee adopted General recommendation No.28 regarding article 2 and article 16 that is basic obligations towards the state. Reservations for the reasons of cultural, religious, and national laws justifications are not permissible. As a result, sates entered into the reservation with this principle. The committee declares it will follow the permissibility principles thus reservation contrary to the object and purpose of the convention is not permitted.

### **3.5 Reservation on CEDAW vs. Maputo Protocol**

Many states reserved to CEDAW on Article 2 which needs fundamental changes to the legal, constitutional, and policy matters to the elimination of discrimination against women. Article 2 is a substantive provision regards to the protection of women's rights that requires measures to be taken.<sup>107</sup> As well as many states reserved article 16 that covers equality of marriage and dissolution. Article 16 of CEDAW has a very similar obligation to Article 6 of the Maputo Protocol which stipulates for equality in marriage. As such Article 16(2) is about child marriage that reaffirms values that have been accepted universally as essential since the adoption of 1964 of the Convention on the Consent to Marriage, the Minimum Age for Marriage, and the Registration of Marriages. Remember that the provisions that Ethiopia reserves under the Maputo Protocol are Article 6(b) which provides for the minimum marriage age to be 18 years old and Article 6(d) for compulsory marriage registration, as well as Article 6(j) which allows women to hold their personal property in marriage. Including the protection of women under polygamous marriage article 6(c).

Above all the provisions that are generally stipulated under article 6 of Maputo Protocol as mentioned elsewhere are the reaffirmations of article 16 of CEDAW about equality in marriage. Accordingly, the reservation under Article 16 of CEDAW amounts to the state's

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<sup>106</sup> Vienna Declaration and Programme of Action Adopted by the World Conference on Human Rights in Vienna on 25 June 1993,

<sup>107</sup> See article 2 CEDAW

unwillingness to recognize the equal rights of women in marriage and it holds the same obligation as article 6 of the Maputo Protocol. The intention of article 16 of CEDAW that includes article 6 of Maputo is the protection of child marriage. Therefore, the reservations of Article 6 of the Maputo Protocol lead to doubt the willingness and commitment of Ethiopia to address child marriages as well as its implications on child marriage.

The reservation of Ethiopia under the Maputo Protocol is a striking paradox to the obligation of Ethiopia under the CEDAW. In addition to the extensive reservations entered by the country concerning the provisions of the Maputo Protocol, the country is a signatory to CEDAW and has reserved only one provision which is Article 29 of the CEDAW provision which relates mainly procedural and talks about interstate dispute resolution.<sup>108</sup> This means Ethiopia is bound by the same clause, which is protected by CEDAW but reserved under the Maputo Protocol. Certainly, Ethiopia reserved provisions to the Maputo Protocol that reaffirms states obligations under other international human rights instruments aimed at protecting women's rights, such as CEDAW. This, therefore, questions the logic behind Ethiopia's reservation of the Maputo Protocol responsibility and the countries' obligations to enforce its obligations under CEDAW to similar commitments. As it would make logical sense if Ethiopia were reserved for CEDAW and entered into a new obligation under Maputo which would imply progress towards the protection of the human rights arena. On the contrary, it seems to be going in the opposite direction that leads us to doubt the level of implementation of the country's preexisting commitments under CEDAW and other important human rights documents.

### **3.6 Experience of Reservation on CEDAW in the Selected States**

The bulk of the reservation entered by states is under Article 2 and 16 of the CEDAW that is sharia-based by sub-Saharan countries and Islamic states. Niger, for example, made a substantive reservation on CEDAW articles 2, 5, 15, and 16 by the justification of customary

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<sup>108</sup> United Nations Treaty Collection, Supra Note 96.

and religious practices. Similarly, Egypt also made the reservation to article 2, 9, and 16 based on Sharia laws stating that the country will comply with the provisions unless it contradicts with sharia laws. Likewise, other countries entered similar reservations based on sharia laws.

### 3.6.1 Niger Reservations

At the time of its accession in 1999, Niger with the majority of the Muslim population had entered into reservations under Article 2, 16, and 5 of the provisions of CEDAW. Eleven Islamic states have also reserved all or part of CEDAW under Article 2 that obliges states to examine and change laws, policies, and institutions to implement CEDAW. Article 16 is about equality in marriage and article 5 that requires the transformation of cultural practices.

The explanation for Niger's entry to reservations is the difficulty of practices that are compromised in their individual, family, and Islamic laws due to customary and Islamic values in effect.<sup>109</sup> Furthermore, Niger reserved Article 5 stating that the social and cultural conditions are deeply rooted so that it cannot be altered simply by enacting legislation that requires time.

Regarding Niger's extensive reservation the Committee stated that reservations to Articles 2 and 16 are contrary to the object and purpose of the Convention. Reservation to articles 2 and 16 is an impermissible reservation under the convention.<sup>110</sup> The committee fears Niger continuing legal provisions and regulations that discriminate against women.<sup>111</sup> Noting that the negative the application of customary and namely statutory, customary, and religious laws the committee recommended Niger to sort out patriarchal culture that deeply embedded the assumptions surrounding the positions and obligations of women and men.<sup>112</sup>

The Committee underlines the importance of harmonizing statutory, customary and religious law with the provisions of the Convention. Including the fact that reservation should

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<sup>109</sup> Committee on the Elimination of Discrimination against Women, Consideration of States Parties Reports: Niger, Combined Initial and Second Periodic Report, CEDAW/C/NER/1-2 (2005)

<sup>110</sup> Responses to the list of issues and questions submitted in preparation for consideration of the initial and second periodic reports of Niger, CEDAW/C/NER/Q/2/Add.1 (20 February 2007).

<sup>111</sup> Ibid.,

<sup>112</sup> Ibid.,

not be justified by traditional, religious, and cultural practices that include justification of incompatibility to national laws and policies.<sup>113</sup>

### 3.6.2 Algeria Reservations

Algeria is one of the countries which has made substantive reservations based on national legislation on article 2, article 9 (2), 15(4), and article 16 of CEDAW.<sup>114</sup> The reservation on the international commitments of the states to conform to the national law is against the object of the human rights instruments that in turn makes it impermissible accordingly. In this respect, the Committee proposes that Algeria make its laws comply with the requirements of CEDAW, as one of the key objectives of Article 2 of CEDAW is to change national laws, abolishing customs that hold discriminating practices for women.<sup>115</sup>

Many state reservations dependent on national legislation pose challenges due to the absence of a specified time to confirm the national legislation with provisions of CEDAW.<sup>116</sup> Therefore, the states are required to put a reasonable period to make their national legislations consistent with CEDAW.

Article 2 and Article 16 are the core obligation under CEDAW to which reservation of these provisions is contrary to the object and purpose of the Treaty. Article 27 of the Vienna Convention specifically stipulated that national laws could not be invoked to avoid international obligations.<sup>117</sup> In this regard, the CEDAW Committee has expressed the reality that several countries do not enter into reservations but yet have laws that do not support the convention provisions.<sup>118</sup> Several provisions in their legislation discriminate against women

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<sup>113</sup> Concluding observations on the combined third and fourth periodic reports of the Niger ,Adopted by the Committee at its sixty-seventh session, CEDAW/C/NER/Q/3-4 (3-21 July 2017).

<sup>114</sup> United Nations Treaty Collections

<sup>115</sup> CEDAW Concluding Recommendation: Algeria, UN Doc,A/54/38, 27 January 1999, paras 83-84

<sup>116</sup> See Amnesty International, Reservation to the Elimination of all forms of Discrimination against Women. Weakening the Protection of Women from Violence in the Middle East and North Africa Region, Retrieved May 15, 2020 from <https://www.amnesty.org/en/documents/IO51/009/2004/en/>

<sup>117</sup> Ibid.,

<sup>118</sup> Report of the Committee on the Elimination of Discrimination against Women, UN Doc, A/49/38, 12 April 1994, para 45 and 46. And see Amnesty International, Reservation to the Elimination of all forms of Discrimination against Women. Weakening the Protection of Women from Violence in the Middle East and North Africa Region, Retrieved May 15, 2020 from <https://www.amnesty.org/en/documents/IO51/009/2004/en/>

on the grounds of customs, practices, and socio-cultural biases.<sup>119</sup> Thus, the committee expresses the difficulty encountered to determine the status of women.

In this regard, as we look at Ethiopia's substantive reservation entered into Maputo Protocol, it does not explicitly set a specific time to amend domestic laws to comply with the standards laid down in the Protocol. Apart from that Ethiopia reservation is mostly justified by domestic legislation, it simply bypasses the detail by referring domestic laws to reserve the provisions of Maputo protocol.

In this respect, non-compliance with the Treaty from the nation's laws justification is an unacceptable reservation as laid down in Article 2 of the Convention. Because it is the core principle, the purpose of Article 2 of CEDAW is to change discriminatory national legislation in compliance with international standards. Therefore, rather than entering into reservations States are required to eliminate conflicting domestic legislation.

### 3.5 Maputo Protocol

Maputo Protocol is adopted in 2003 and comes into force in 2005 after the long advocacy of African women and NGOs in Africa.<sup>120</sup> The protocol is binding instruments that produced on the continent. The protocol enjoyed international legitimacy partly due to the part played in the drafting of the document by African women's rights activists.<sup>121</sup>

The protocol in its aspect is a response to the aforementioned human instruments such as CEDAW and the African Charter that are more concerned about historical developments.<sup>122</sup> Moreover, the African charter simply mentioned the rights of women without addressing their demand in detail for that reason it faces some shortcomings. For instance, the Charter does not explicitly define discrimination against women, the rights to consent, and equality in marriage as well it mainly stresses traditional values that do not deal specificity about those traditional value settings.<sup>123</sup> The charter under article 18 made a reference to women's rights

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<sup>119</sup> Ibid.,

<sup>120</sup> See Fareda Banda, "Blazing a Trail"

<sup>121</sup> Johanna Bond, "Gender, Discourse and Customary Law in Africa," *Southern California Law Review* 83 (2010): 425. Retrieved April 5, 2020 from [file:///C:/Users/user/Downloads/SSRN-id1596269%20\(1\).pdf](file:///C:/Users/user/Downloads/SSRN-id1596269%20(1).pdf)

<sup>122</sup> Banda Frada and Johanna Bond (459) and Frans Viljoen, "An Introduction to the protocol to the African Charter on Human and Peoples Rights on The Rights of Women in Africa." *Washington and Lee Journal of Civil Rights and Social Justice* 16, no.11(2009) :4

<sup>123</sup> Winson Langley, "The Rights of women, the African charter, and the economic development of Africa." *Boston Collage the Third world law Journal* 7 no.2 (1987)

including the state's obligation to the elimination of discrimination against women.<sup>124</sup> However, this makes it inadequate to solve deeply entrenched problems women are encountering in the continent.

The Protocol is primarily aimed at reinforcement of the African Charters (Banjul Charter) on human rights that talk about gender equality on its provisions. Indeed, the protocol uses CEDAW as a model but it's more progressive than CEDAW because it incorporated rights such as the right to abortion, criminalization of marital rape marital, protection of women under polygamous marriage, minimum marriage age<sup>125</sup>, the Protocol strengthens CEDAW on a variety of topics.<sup>126</sup> This shows the role of CEDAW in shaping the provisions of the Protocol to some extent and how the two the right instrument supplement each other. Of vital importance, the Protocol covers the social, economic, health, or sexual and reproductive rights robustly.

Furthermore, the charter also under article 60 and 61 identifies regional and international standards as well as compatible African practices relevant reference point for the implementation and understanding of the African charter.<sup>127</sup> As mentioned earlier, the principles that are enumerated under the African women protocol depends on the established international human rights standards that is why they reinforce one another.<sup>128</sup> The African women protocol shows progress by leveling some of the rights due to the fact it explicitly stipulating them on the instruments.

### **3.7 Unique Rights on Maputo Protocol**

Maputo Protocol is detailed and creative than any other document on human rights as it covers civil and political rights, economic, social, and cultural rights, and also specifically stipulates the right to health and reproduction. Maputo Protocols differ from CEDAW as it explicitly enshrines some of the rights provided in its provisions. According to Articles 2 and 18 of the African Charter, discrimination on the ground of sex is prohibited and the member States are expected to adhere to the principles of gender equality. The Protocol defines what

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<sup>124</sup> African charter Article 18

<sup>125</sup> Banda Frada , Blazing Trial 73

<sup>126</sup> Rose Gawayana and Rosemary Semafumu Mukasa, The African Women's Protocol: a new dimension for women's rights in Africa 44

<sup>127</sup> African Charter Article 60 and 61

<sup>128</sup> Mapto Protocol preamble

discrimination to women encompasses.<sup>129</sup> Also, the Protocol address several women's rights such as the member States' duty to eradicate discrimination against women.<sup>130</sup>

Maputo Protocol is different from CEDAW in a way it is the first human rights instrument explicitly calls for the elimination of harmful traditional practices such as FGM<sup>131</sup>It openly embraces the constructive roles of culture towards women in African society. Thus, under article 17 indicates that women are entitled to live in a positive cultural environment.<sup>132</sup>

Maputo protocol does indeed have a remarkable future alongside enhancing the rights which are not covered under other international law instruments. Both CEDAW and Maputo Protocol calls for the elimination of Discrimination against women, in this regard CEDAW moderately calls for the elimination of de facto and de jure discrimination under articles 2, 4, and 5. However, Maputo Protocol under article 4(1) and (2) laid state obligation to protect women from all forms of violence and the need to place measures to prevent and address sexual violence that includes Marital Rape.<sup>133</sup>

The protocol is the first instrument obliges state parties to allow medical abortion under Article 14 (2)(b)<sup>134</sup>and stipulates women's right to be safe against HIV/AIDS.<sup>135</sup>However, CEDAW provision under article 12 regarding health is very detailed and pus the obligation of the state to offer free health services for women.

CEDAW in Articles 15 and 16 provide expressly for the equality of men and women before the law and marriage life. In this regard the Protocol is the first instrument that obliges states to protect women in the polygamous marriage;<sup>136</sup> CEDAW has a gap regarding the and left room minimum age of marriage. In contrast, Maputo demands that the minimum

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<sup>129</sup> Article 1(f)

<sup>130</sup> Article 2.

<sup>131</sup> Article 5.

<sup>132</sup> See Maputo protocol preamble that defines positive African cultural values that is depicted under The African Charter article 29 (7) as of the principles of equality, peace, freedom, dignity, justice, solidarity and democracy

<sup>133</sup> Article 4(2)(a).

<sup>134</sup> Article 14(1)(d)

<sup>135</sup> Article 14

<sup>136</sup> Article 6 (C)

marriageable age is set at 18 years of age.<sup>137</sup> Likewise, the Protocol insisted on marriage to be documented or the registry of marriage to have a legal effect.<sup>138</sup>

The Protocol does approach certain rights that do not identify by other international instruments including CEDAW. More specifically, it highlighted comprehensive socio-economic rights such as the right to housing, food protection, and so on.<sup>139</sup> The Protocol explicitly defines the right to sustainable development,<sup>140</sup> freedom from exploitation,<sup>141</sup> right to dignity,<sup>142</sup> as well as political rights and economic rights.<sup>143</sup>

### 3.8 Reservations under Maputo Protocol

The Protocol is not clear in terms of reservations as of the other treaties that openly permit states to make reservations at the time of ratification to some of their provisions. Noting that the Vienna Convention on the Law of Treaties as a Customary International Law expressly permits States to reserve so long as it is not contrary to the object and purpose of the treaty, that is to say, it's the procedure conducted on CEDAW.<sup>144</sup> Though this does not imply that reservations are not conceivable dependent on the appropriate international norms in that respect. Certainly, the Protocol adheres to established international norms concerning the human rights discourse.

In this regard, Frans Viljoen describes the potential explanation for the absence reservation provision in the women's protocol as of evidence of the background of the human rights system in the continent and he argues that

The omission may be a factor explaining the difference in African state practice between CEDAW, the African Charter and the Protocol, as well as another element that may understand why states regard the fellow states' comparatively short-sighted approach towards the African structure, and the African Commission's poor implementation and follow-up as proof that reservations are not needed.<sup>145</sup> P. 41

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<sup>137</sup> Article 6(a)

<sup>138</sup> Article 6(b)

<sup>139</sup> See article 14, 15 and 16

<sup>140</sup> Article 19.

<sup>141</sup> Article 18.

<sup>142</sup> Article 3.

<sup>143</sup> Article 9

<sup>144</sup> See VCLT article 19

<sup>145</sup> Frans Viljoen, "An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa." *Washington and Lee Journal of Civil Rights and Social Justice* 16 no.4 (2009)

The Protocol aimed at universal ratification in 2020 and persuades states to ratify the Protocol. The status of the Protocol until 2018 is that 40 countries ratify the Protocol and six countries entered into reservation countries includes South Africa, Uganda, Namibia, South Africa, Cameroon, and Kenya.<sup>146</sup> Often such reservations put at risk the aspiration AU member state to achieve a wider acceptance of the Protocol by all member states.

The Charter as well as the Women's Right Protocol explicitly reaffirms, it is in compliance with universal human rights norms and principles and outlines its adherence to the existed international law norms for its application and interpretation. Hence, customary international practices are pertinent to the understanding of the issue of women. Thus, even though there is no specific clause concerning the reservation process, it complies with standard international law, i.e. in according to the Vienna Convention on the Law of Treaties. It is to say in essence the same practice as CEDAW could be implemented under the reservation system towards the Protocol.

The same is valid, according to international law, in entering into reservation sates are at liberty as current state practice. However, it is equally important to propose withdrawing from the reservation via alienated to the more desirable laws on the international and regional arenas owing to the terms of the human rights treaties.

### **3.9 Reservation under Maputo Protocol state Experience**

Looking at the experiences of the African Countries Reservation against CEDAW, countries like Lesotho and Libya are making momentum by unreservedly ratifying the Maputo Protocol. Libya has entered reservations concerning Islamic Shariah law as regards Articles 2 and 16(c) and (d) of the CEDAW.<sup>147</sup> Notwithstanding, provisions in the Protocol holds similar effect to those to which it made reservations under CEDAW, Libya made no reservations to the Protocol.<sup>148</sup>

In this regard Reservation made by South African to the Maputo Protocol in particular to Article 6(d),<sup>149</sup> which demands that marriages be registered and documented in writing to be

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<sup>146</sup> High Level Consultation on the Ratification of the Maputo Protocol. 2018. Retrieved from <https://au.int/en/newsevents/20180129/high-level-consultation-ratification-maputo-protocol>

<sup>147</sup> United Nations Treaty Collection

<sup>148</sup> African Human Rights Documents, <http://www.chr.up.ac.za/hrdocs/themes/theme39.html>

<sup>149</sup> See African Human Rights Documents, and see Frans Viljoen, "An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa." *Washington and Lee Journal of Civil Rights and Social Justice* 16 no.4 (2009), 41

recognized. The difficulty concerning this provision is it doesn't specify the duration for how long it will stay. In this regard Frans Viljoen argued, the failure to register customary marriage significantly raises the probability of early marriage at the age of 18 years so it is an invalid reservation.<sup>150</sup> When we look at the experiences of African countries to compare to the reservation made by Ethiopia to the Protocol, it is a blanket reservation that affects the integrity of the treaty and it limits the protection and realization of women human rights based on the international standards and the implementation of the rights in domestic social and legal share.

## CHAPTER FOUR

### THE VALIDITY OF ETHIOPIA RESERVATION TO MAPUTO PROTOCOL

#### 4.1 Introduction

Ethiopia signed the Protocol on 1 June 2004 and on 18 July 2018 ratified the Protocol that is recognized as the Right of Women in Africa Proclamation No1082/2018.<sup>151</sup> However, Ethiopian entered into broad reservations not to be bound by the specific stipulations of African Women's Right Protocol. The paradox is Ethiopia reserved provisions that are deemed to be innovative for the Protocol. The rights include the equal rights of women under the marriage, such as the minimum marriageable age to be 18 years, mandatory registration of marriage, the protection of women under the polygamous marriage, as well as forced sex under marriage, and the provision that requests separation to be decided by the court.<sup>152</sup>

The protocol complements the international human rights instruments for the Protection of women's rights. Therefore, reservation undermines their integrity, in particular, the new freedoms to be enjoyed by women. Ethiopia's reservation to the provisions not only encourages questioning how far the existing instruments of human rights have implemented effectively to transformed women's socio-cultural realities in the country. But also leads, to see the inconsistency because the Protocol reaffirms obligations enshrined on women's bill of rights such as CEDAW that Ethiopia ratified. Ethiopia's reservation to creative privileges that

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<sup>150</sup> See Right of Women in Africa Proclamation No1082/2018

<sup>151</sup> Proclamation to Ratify The Protocol to the African Charter On Human and Peoples Rights on The Rights of Women in Africa

<sup>152</sup> See Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation No1082/2018. Article 3(1) and (2)  
file:///C:/import.%20doc/Maputo%20Protol/Proclamation-No.-1082-2018-Proclamation-to-Ratify-The-Protocol-to-the-African.pdf

are enshrined under the protocol lacks to take sufficient account of the reality of women. What's more the protocol intends to solve particular challenges faced by African women.

## VALIDITY OF ETHIOPIA RESERVATIONS TO SELECTED PROVISIONS

### 4.2 Compatibility of on minimum marriage age

Maputo Protocol on women's rights includes specific provisions for the protection of women's rights in the continent. The marriage areas are one of the significant promulgations retained by the Protocol and the creative privileges expressed. Under Article 6 of the Women's Protocol, the duty of States parties to guarantee equal treatment for women and men concerning equal spouses in a mirage is stated succinctly.

The rights under this particular provision are similar, and more enshrined under the existed human right instruments such as ICCPR, and CEDAW. The provision under article 6 of the protocol is built on many existing human rights instruments pretending to the Convention on the Consents of Marriage, ICCPR and CEDAW.<sup>153</sup> The article under 6(a) requests consent to be given by both men and women to undertake marriage,<sup>154</sup> article 6(b) also requires minimum marriageable age to be 18 years;<sup>155</sup> article 6(c) also obliges states to encourage monogamy as a preferred form of marriage and to guarantee the right of women under polygamous marital relationships.<sup>156</sup> Moreover, article 6(d) urged registration of marriage to be legally recognized.<sup>157</sup>

Regarding the minimum age for marriage, the purpose of the Protocol is to consider child marriage in which many girls are compelled to marry at an early age because they are not able to negotiate.<sup>158</sup> Certainly, in Ethiopia child marriage is a widespread practice in which according to the EDHS data 2016, 58% of women in the country tend to marry before the age of 18 years compared to 9% of men. That is a potential limit from the exercise of women's human rights on instruments such as CEDAW, CRC, and ACRWC.

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<sup>153</sup> Frada Banda, *supra* note 13, 75.

<sup>154</sup> African protocol on women's rights article 6(a)

<sup>155</sup> *Ibid.*, article 6(b)

<sup>156</sup> *Ibid.*, article 6(c )

<sup>157</sup> *Ibid.*, article 6(d )

<sup>158</sup> See Banda explains how many of African state maintain laws that uphold early marriage and how the provision face challenge as a result .

The Ethiopia Constitution enshrines equality of marriage under Article 34(5), on the other hand the Constitution permitted customary and religious traditions to be practiced. For various instances on the rural areas the country retained many customary practices that do not comply with the provision under the Protocol. Indeed, in the country it's a long-standing practice for a girl to marry at an early age without having the maturity to bear any Burdon on family matters. Yet again girl's educational potential is halted at an early age along with health-related issues such as HIV / AIDS which involves obstetric fistula, and birth-related issues are few of them.

For example, the country's amended family law of 2000 that increases the mandatory age of marriage to 18 although it does, in conditions, includes an exception for the minimum age<sup>159</sup>. In the same way, areas such as the Afar and Somalia areas also do not have their family laws. This in turn leads to being governed under sharia rules and customary rules that favor men. The other way round will be the implementation of the 1960 code which maintains harmful provisions that allow marriage age at the age of 15<sup>160</sup> as well as under article 635 that stated men's as the head of the family including the gender hierarchy the obedience of women to all his orders. What's more article 644 depicts the husband's power to guide his wife of her conduct.

Maputo Protocol Provision of article reserved by Ethiopia 6(a) minimum age of marriage and 6(b) is the similar provisions with article 16 of CEDAWs core provisions which reservation of these provisions is contrary to the object and purpose of the Treaty. First since Ethiopia is a state party to CEDAW and bounded by core provision of article 16 entry into reservation is impermissible from the outset. The second important point is since the objective of the provision is the protection of child marriage. Given the prominent practice in child marriage in Ethiopia. It has an international obligation under CEDAW article 2 and under the Maputo Protocol article 2, ICCPR article 2 including Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage in 1964 to eliminate a discriminatory law, customs and practices. Marriage under the age of 18 breaches the wide range of human rights that harm women's well-being, and protecting their right to a minimum marriage age is the country's duty under international human rights law. Hence, according to the Severability Principle, Ethiopia is bound by the obligation under article even if the country enters into the reservation as a result it's against the object and purpose of the Treaty.

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<sup>159</sup> FDRE Revised family Code 2000 Article 7

<sup>160</sup> 1960 Civil code article

Admittedly, there is a lack of uniformity in Ethiopia's legal frameworks across the country. In this regard, the right that is protected under article 6 of the Protocol is the minimum standard, so the country is supposed to give more protection than this. In reality, ratification aims to put national legislation in line with international norms rather than the other way round. In this line of arguments, for instance, VCLT under article 27 prohibits the use of national legislation to escape the international treaty obligation. Further, Ethiopia is under commitment to abolish and discriminatory laws on article 2 of CEDAW that in turn exacerbates gender inequalities.

Given, the fact that Ethiopia did not specify any specific periods to make the domestic law in line with the international obligation. This somehow indicates there is no intention to eradicate this legal imparity at a certain time, at least that shows there is a pragmatic plan to this.

Off major importance, reservations to the Maputo Protocol remain paradoxical with existed human rights pledges of the country as well as with its constitutional responsibility. Indeed. it shows the country's unwillingness to comply with the accepted norms of human rights. While in Ethiopia marriage is the area where most of the subjugation of women occurs. plus a high patriarchal structure manifested, and where women's sexual positions carry more weight. For instance, widely practiced forms of marriage such as arranged marriage, early marriages, and abdication persisted for several socio-cultural and traditional reasons.

In this regard, Ethiopia receives many recommendations on its stance against this specific provision. For obvious reasons, CEDAW expresses its concern about this provision in its recent concluding observation.<sup>161</sup>Therefore, it recommends that the country to withdraw the exemption for child marriage exception because incorporating the right in the national legislation will oblige the country to focus on the areas and to be committed towards the specific provisions. Also, it bound the state to be responsible and answerable under its international obligation based on the Protocol.

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<sup>161</sup> Concluding observations on the eighth periodic report of Ethiopia

### 4.3 Compatibility of Reservation on the rights of women's under polygamous marriage

Maputo Protocol also holds important provisions in regards to the protection of women under the Polygamous marriage. One of the contentious topics at the time of the debate surrounding the protocol was the elimination of polygamy and opposition from several countries.<sup>162</sup> In reality, many African countries have customary and religious practices that allow them to participate in a polygamous marriage to prevent drafters from enshrining a clause that speaks about polygamy. The provision stipulated in article 6 (c) is aimed to reflect the reality of women in a polygamous marriage and not to harm them because of abolishment.<sup>163</sup> Polygamy is a result of unequal power relationships and a form of gender disparity between men and women produced structural discrimination that enables men to have more than one wife.<sup>164</sup> In this respect, if we look at Ethiopia's reservation to this specific article, it may lead us to examine the country's legal and socio-cultural environments.

The Government of Ethiopia fails to accept this provision aimed at securing women's rights in polygamous marriage under Proclamation No 1082/2018, which offers the justification for the debate that the relationship should be preserved in compliance with the country's criminal code.

The matter somehow disregards the fact that owing to cultural and religious values, polygamy is one of the prevalent traditions in various parts of the country. Evidently, according to the 2016 Ethiopia Demographic and Health Survey, 11% of women between the ages of 15 and 49 have entered into polygamous marriage; there is a higher trend in rural areas.<sup>165</sup> In the countries, the regional state of Somalia accounts for 29% of the polygamous alliance, which is the largest, led by Benishangul-Gumuz 21%, Gambela 21%, Afar 19%, SNNPR 16% Oromiya 14%, Dire Dawa 6%, Harari 5%, Tigray 3%, Addis Ababa 2% and Amhara 1%. In fact, according to the study, polygamous increases in poor educational and income status relative to those born outside the monogamy.<sup>166</sup> Furthermore, one of the studies undertaken in the "Gedio Region" to define the effect of polygamy on women and children

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<sup>162</sup> Banda, "Blazing Trial." 77

<sup>163</sup> Ibid., 78

<sup>164</sup> Martha Nussbaum, . Sex and Social Justice . Oxford: Oxford University (1999), Thom Brooks, "The Problem with Polygamy." *Philosophical Topics* 37, no. 2 (2009): 109-22.

<sup>165</sup> EDHS 2016

<sup>166</sup> Ibid

specifically identifies the detrimental effects of polygamy against the senior wife by causing tension and anger, as well as transferring the man's focus and wealth to the new wife.<sup>167</sup>

Ethiopia's reservation to the protocol for women under Article 6(c) by presenting an explanation of why the regulations clash with domestic law is not possible. Because hitherto both the revised family code 2000 and criminal holds provision that criminalizes bigamy. Pursuant article 650 Criminal Code, it depicts bigamy enshrined bigamy as a criminal offense,<sup>168</sup> also it maintains the customary and religious marriage.<sup>169</sup> Moreover, even if the revised family code 2000 under article 11 enshrines prohibits bigamy, it specifically preserves customary and religious marriages that sounds a paradox.<sup>170</sup> The key problem here is the inconsistency between the legal framework and the reality given the fact that in practice a substantial number of polygamous marriages occurred. Yet again, the country has received a repeated recommendation to legislate and give clear recognition to the protection of the human rights of women which also affects their socio-economic rights.

In this manner, as regards the African Protocol on the right of women, it is one of the reflections of regional peculiarities which preserve cultural values to be aligned with international standards. The protocol retains polygamous marriage because the continent faces unique challenges as a consequence of its profoundly ingrained traditional and religious values that maintains the practice. Thus, one of the painstaking decisions made by the protocol is ensuring to protect women's rights who live under polygamous marriage. Accordingly, the country's reservation to Article 6(c) is explained by the justification for Ethiopian national law referring the judgment of the Federal Supreme Court Cassation in 200 files No.50489 between Zeyeneba Kalfa and Kadeja Siraje specifying that it upholds a breakthrough judgment to safeguard women's interest in a polygamous marriage. The relevance of the decision is based on the fact that the decision of the Federal cassation division by the power vested in it under Proclamation No. 454/2005 the interpretation is presumed to bound lower courts in the entire country.<sup>171</sup> However, its shortcoming includes a lack of specificity whether the decision binds organs such as administrative tribunal,

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<sup>167</sup> Tesfay Gebremeskel. "The adverse effect of polygamy on the rights of women: a case study in Gedeo and Sidama Zones". *Hramaya law review* 6: ISSN: 2227-2178(P) & 2305-3739(E). 2020.(2017)

<sup>168</sup> Criminal code article 650

<sup>169</sup> *Ibid.*, article 651

<sup>170</sup> Revised family code article 2 and 3

<sup>171</sup> Proclamation no. 454/2005, Article 2(1)

customary and religious tribunal.<sup>172</sup> More specifically, the proclamation will not account for the impact of the overruling and the preconditions for overruling the cassation division's previous decisions.<sup>173</sup> This makes the court's decision inconsistent compared to having uniform laws that will govern matter of the polygamy. The silver lining is the legislation that is strong enough to respond to the socio-culturally ingrained polygamous marriage because the application of interpretation of the law in no way equals to lawmaking. That's why international human rights instruments are one step ahead of states legislations and address pressing issues vibrantly by introducing new standards. Indeed the Protocol will help Ethiopia to see the challenge in dynamic ways.

Since the provision is new tailored to the African particularity there is no inherent contradiction for the country not to be bound by the provision. Article 6 ( c ) provides better protection for the women who are already living under the polygamous marriage. As EDHS 2016 data shows polygamous marriage it's one of the persistent practices in the country that requires uniform regulation. The fragmentation of the law in this regard will only ensure the existed inequality. Thus, the Maputo Protocol holds a new platform that is not stipulated in the domestic legislation.

That being said, the CEDAW Committee, although expresses its concern repeatedly in its recent concluding observation 2019 stating that the Federal and Regional provisions 'are not harmonized' to indicate the lack of consistency of the legal framework towards polygamy.<sup>174</sup> In particular, it underlines the absence of family codes on the two regions Afar and Somali where the rate of polygamy higher compared to others. It then proposed that the country alienate the legal requirements, likely recommending that the country withdraws from the reservation on a particular provision that addresses polygamy under the Protocol. Even the CEDAW requests state parties under Article 2(f) to make a platform that needs States Parties to take all necessary steps, including legislation, to reform or eliminate existing laws, rules, traditions, and activities that are biased against women.<sup>175</sup>

In this regard, the reservation made by Ethiopia is too general and poses contradictions with the purpose of the Protocol. Ethiopia is responsible to eliminate any laws and customary

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<sup>172</sup> Hussein Ahmed Tura, "Uniform Application of law in Ethiopia: Effects of Cassation Decisions of the Federal Supreme Court." *Africa Journal of Legal Studies* 7(2014):203-231

<sup>173</sup> Ibid

<sup>174</sup> Concluding observations on the eighth periodic report of Ethiopia, para 58

<sup>175</sup> CEDAW article 2(f)

practices under the CDEAW and Maputo Protocol. So, the reservation without specifying a period to make legal reform is an invalid reservation according to the VCLT article 27. As long as the practice is persistent and there is no measure taken, so non-compliance with the provision means letting women live in a continued disadvantage position. In brief, Ethiopia needs to reconsider the reservation on the Protocol provides that addresses the demands of women under polygamous marriage. Polygamous marriage affects the rights of in many regards, but setting a pragmatic solution by law offers at minimal secure women's interest over their economic asocial status in that union.

#### **4.4 Compatibility Reservation on the Mandatory Registration of Marriage**

Ethiopia retains reservation to the provision that obliges the mandatory registration of marriage according to article 6(d) to be legally recognized. The provision supplement existed human rights instruments such as Convention on the consent of marriage that requires the minimum age and the registration of marriage as well as CEDAW and other human rights instruments.

At the deliberation stage of the draft of the protocol one of the provisions that disagreed over is article 6(d) since most of the countries have a lot of unregistered marriage on the ground.<sup>176</sup> Marriages as a vital aspect of women's life, registering the event, allow it easier to form the course of women's lives, including the right to defend them when necessary. One of the most important benefits of the registration is to protect them from the early marriage in which most will require the certainty of passing the minimum age requirement to be legal. Marriage Registration has a triple benefit of checking to ensure consent.<sup>177</sup> In other circumstances it enables one to determine women's status regarding their property right at the time of dissolution. For instance, the general recommendation on CEDAW under article 25 and article 26 requests states to have a scheme for marriage registration, and yet the preparation of mechanisms that do not penalize unregistered instead to have a mechanism to

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<sup>176</sup> Frada Banda,76

<sup>177</sup> Ibid

the enforcement of the existing one for lack of knowledge and facilities.<sup>178</sup> Thus, the provision obliges states to have a framework to register marriage to protect the rights of women.

One of the conditions that Ethiopia makes a declaration on the grounds of disagreement with national law stating that it will not need to be invalidated if the marriage is not registered. The reason for this was Ethiopia concerning proclamation no.760/2012 under Article 17(2) and 2(1) plus Article 94 Revised family requires proof of marriage through the marriage certificate.<sup>179</sup> However, so far many issues have arisen with the provision allowing for the irregular union under Article 98 of the revised family code, which allows proof of status if they live more than three years.<sup>180</sup> The concern with these articulations is that many women who have formed this sort of union are already in a weaker bargaining position. Of this purpose, it is difficult since the burden of proof lies on the individual who wanted to prove the union, particularly for women, because they are the target of the law being unable to prove their presence on account of financial reasons and lack of information.<sup>181</sup> In fact, in many cases women who acquire properties with this period are unable to prove it; the provision lacks to consider the acquisition of property with less than three years. It would, therefore, be prudent for the country at least to render a marriage register compulsory and to focus on promoting registration of marriage

In this regard committee on CEDAW also gives its recommendation towards the compulsory registration of vital events such as marriage that will impact the lives of women on various occasions.<sup>182</sup> Here again based on the country's commitment to the international obligation to secure the human rights of women is worth considering the right to implement it in the national legislation to benefit women and comply with article 6 ( c) of the women's Protocol.

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<sup>178</sup> Committee on the Elimination of Discrimination against Women CEDAW/C/GC/29 General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women [https://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1\\_en.pdf](https://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf)

<sup>179</sup> Registration of vital Event and National Identity Card Proclamation no .760/2012, Revised Family Code article 94

<sup>180</sup> Ibid,

<sup>181</sup> Legal perspective as a legal expert for the FDRE ministry of woman children and young we are faced with cases that emerging from distressed women who have been unable to explain their engagement with their husband for three years or more because they do not know what constitutes evidence of the proof of existence of irregular union left vacant owing, in fact, to denial by their spouse after investing their emotions and assets.

<sup>182</sup> CEDAW/C/ETH/CO/6-7, para.57

Admittedly, mandatory registration of marriage under article Ethiopia 6(c) is the similar provisions with article 16 of CEDAW are core provisions in which reservation of these provisions is contrary to the object and purpose of the Treaty. Ethiopia thus bounded by core provision of 16 article entry into reservation is impermissible. One of the objectives of the provision is also the protection child marriage that reinforced by Ethiopia obligation under CEDAW article 2 and the Maputo Protocol article 2, ICCPR article 2 including Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage in 1964 to eliminate a discriminatory law, customs and practices. Hence according to the severability Principle, Ethiopia is bound by the obligation under article even if the country enters into the reservation perhaps cannot benefit to escape the obligation under the article. Thus, an invalid reservation amount to the country cannot benefit from the reservation on the Protocol.

#### **4.5 Compatibility of Reservation under on the rights to protection of Marital Rape**

The African women's rights protocol one the progressive future also emanates from the recognition of the existence of the violence against women in the private sphere under article 4. Banda explains Article 4 of the African Protocol on Human Rights of women as building up international advancement in the area of violence against women.<sup>183</sup> The breakthrough of the human rights system under the protocol in this context is the acknowledgment of sexual and verbal abuse under Article 3(4) of the protocol.<sup>184</sup> By the same token, the provision is a supplement for CEDAW general recommendation no.19 so that it requires states to investigate, punish, and provide compensation.<sup>185</sup>

In Ethiopia Marital rape is not recognized as abuse that threatens women's human rights from all walks of life. In certain ways the rationale behind this marital rape is a profoundly entrenched patriarchal environment in the country notwithstanding a variety of cases. For instance, In Ethiopia, 50-60% of women experienced domestic violence in their

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<sup>183</sup> Band, "Blazing Trial," 79 explains that the convention is the product of Vienna convention on program of action of action, the UN General Assembly and Declaration on the Elimination of Violence Against Women and the Beijing platform for action except CEDAW which does not include regarding violence against women.

<sup>184</sup> Africans women protocol under article 3(4)

<sup>185</sup> CEDAW General Recommendation No.19

lifetime.<sup>186</sup>Physical and emotional violence was experienced by age 14-49 of 24% each, and sexual violence by 10%.<sup>187</sup>

Thirty-four percent of women between the ages of 15 and 49 have witnessed physical, sexual, or emotional abuse from their new husband/partner whether they are already married or the previous husband /partner if they are married previously.<sup>188</sup>Women in Ethiopia, encounter various forms of sexual harassment by their husbands, including 8% who have ever been married coerced by their spouse to have sexual intercourse.<sup>189</sup> Likewise, 4 percent of women are pressured to engage in sexual activities that they do not choose to perform. And still, their mate pressures the remaining 3 percent to commit sexual activities as well. Notwithstanding that, the existence of a challenge in collecting reliable statistics on marital abuse and hidden accounts as a consequence in conventional and standard values, the results suggest a high prevalence of domestic violence.

Therefore, relying on the above fact's reservation of Ethiopia on the provision of the Protocol that protects the women from the private sphere violence is inherently against the object and purpose of the article to 2 of CEDAW and the Maputo Protocol that obliges states to take measures to eliminate violence in all sphere. As well the reservation invokes the contradiction with national laws that don't give protection for the violence that occurs in the private sphere. In regard it is impermissible and invalid reservation according to article 28 CEDAW and According to article 27 Vienna Convention. It's possible to conclude that Ethiopia is bound by the treaty obligation without the benefit of reservation.

The government has given many proposals based on its international pledge to include and criminalize marital rape in Ethiopia, as it explicitly abuses women's human rights. The Committee on the Elimination of Violence against Women Concluding observation on the eight findings, proposed Ethiopia that marital rape be taken into account as one of the criminal actions and in turn to withdraw from the reservation on the African protocol for the human rights of women that influence women's lives.<sup>190</sup> In short the introduction of marital

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<sup>186</sup>Ethiopia Demographic and health Survey EDHS 2016,

<sup>187</sup> Ibid

<sup>188</sup> ibid

<sup>189</sup> Ibid

<sup>190</sup> Committee on the Elimination of Discrimination against Women, Concluding Observation (2019) CEDAW/C/ETH/CO/8

rape or the protection of women from all spheres of violence is the core obligation under the African Women's Protocol.

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([https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ETH/CO/8&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ETH/CO/8&Lang=En))

## CHAPTER FIVE

### Finding, Conclusion, and Recommendation

#### 5.1 Findings

Women's positions and condition in the society is determined based on the prevailing formal equality that is based on the de jure and de facto equality although through employment, political participation, poverty level, health condition, education. As equally significant, the ultimate achievement of gender equity is related to the improvements taking place in the general socio-cultural, legal, economic, and political areas. The international human rights treaties thus play a crucial instrumental function in bringing about progress in society.

This paper finds that the reservations entered by Ethiopia to the Provisions of Maputo Protocols are impermissible. Because they are made in contradiction to the objects and purpose of the CEDAW articles 2 and 16 that are core provisions. Thus, according to the human rights trends and the decision of Human rights Committee invalid reservations are severable, so Ethiopia is bounded by the provisions without the benefit of reservation. This will in turn obliges Ethiopia to submit periodic reports and take measures concerning the reserved provisions.

The reservation entered by Ethiopia does not consider empirical data and women's actual circumstances. One of the significances of entering into an international obligation on human rights instruments is to make the national legislation in line with international standards. That permeates to realities of women by putting states under obligation to take measures. The rights reserved contravene discriminatory national provision, that requires reforms so it difficult for the country to make changes on the ground without recognizing the empirical disparities that persisted on the ground.

Ethiopia reservation on the Maputo Protocol is kind of going in the opposite direction because Ethiopia did not enter to the reservation on the marriage equality rights under CEDAW nor any substantive provisions but entered into the reservation to similar of the provisions under Maputo Protocol.

The reservation to Maputo Protocol limits Ethiopian women's enjoyment of newly incorporated rights under the protocol. Because Ethiopia entered into the so-called unique or innovative rights under the protocol. Since these rights incorporated with the intent to respond to the Africa unique circumstances it's against the purpose of the protocol, eventually limits Ethiopian women from exercising these rights.

The reservation affects the integrity of the protocol and its aspiration achieves universal human right document ratification. Finally the reservation is against the constitution of the country that requires the elimination of the discriminatory in all its forms be it legal or customary practices.

## **5.2 Recommendation**

Maputo Protocol underlines grassroots approaches to the challenges posed on African women based on Africa's common values. Ethiopia's reservation to the protocol, however, has disadvantages for women to enjoy these privileges. As well as undermines the integrity of the protocol.

It is significant to facilitate quantitative studies to include reliable evidence regarding the experiences of women to maintain the provisions that are reserved under the protocol. Hence, it is important to question the existing perception of reserved rights by providing empirical proof in this regard.

It is also important to employ qualitative studies to determine the gaps in the legal frameworks to incorporate the rights reserved under the Maputo Protocol.

This study found that the disparity is more in the domestic legal system rather than with Maputo Protocol, thus there is no inherent contradiction that limits the country from implementing the reserved provision on the domestic legal system. Therefore, it only needs the political will of the government to comply with its international obligation

Thus, the rights reserved under the protocol have a strong correlation with the condition and position of women therefore it is important to evaluate the dimension of grassroots problems to effectively apply the maintain provision to solve these problems to ensure gender equality.

To introduce gender equality through the legal reform, the government must find credible facts rather than a superficial reference on domestic laws to restricting its responsibilities

under the protocol. Yet, this type of reservation is invalid under international human rights law discourse so the government is under a duty closely monitoring the implantation of these rights.

Given that the reservation entered is incompatible with the country's international obligations, it is necessary to involve experts in the fields to determine a criterion for integrating the reserved rights and to facilitate the withdrawal from the Protocol reservation.

Ethiopia is dominated by patriarchal cultures that reflected on structural inequality in all areas of women's life that persisted in the country. Perhaps the purpose of the Protocol is to ensure gender equality in all aspects of women's life. Hence, reservation entails the continuation of the disparity and restricting women's from enjoying new privileges from the international standards. Therefore, the government should rethink withdrawal from the reserved clause.

The government should take a measure to change the domestic legislation and practices that are inconstant in many areas of women's lives.

Stakeholders including private actors and NGOs should lobby the implementation of the rights on the ground. And influence the government to withdraw from the reservation under the protocol as well as to lobby to concentrate on the reserved rights under the protocol.

Under this context, it's not only a matter of choice because Ethiopia is already under the obligation on other human rights instruments to realize these rights such as CEDAW therefore, but it's also the duty to meet this obligation.

### **5.3 Conclusion**

Ethiopia's ratification of the Maputo Protocol is one of the latest undertakings that aim to entitle women some new privileges in the country. The Protocol, though, is subjected to a substantive reservation on the essential provisions. The realization of women's rights, therefore, is challenged by an enormous amount of reservation towards the Maputo Protocol. The country's reservation to the protocol impedes its compliance with the minimum international human rights standards under the Protocol. The reservation on the Maputo Protocol mirrored the country's actual context and women's experiences, as well as states degree of the commitment for the realization of women's rights

The paper aims to examine the potential explanations for Ethiopia's reservation to the Maputo Protocol according to the country's actual situation. In particular, depending on the country's obligation to promote and protect women's rights under international human rights instruments. The protocol has particular benefits relating to the protection of women's rights which are not protected by the other instruments of human rights, such that the reservation restricts the enjoyment of women's rights set down in it. Ethiopia's reservation to the Maputo Protocol justified by the national legal and social framework. Thus, the justifications are against pledges under the international human rights instruments. And more hampers the improvement of the already existed gender inequality in the country.

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## **International Laws**

Convention on the Elimination of All Forms of Discrimination against Women CEDAW

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

The International Covenant on Civil and Political Rights (ICCPR)

## **Regional Laws**

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