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College of Development Studies
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**Ascertainment of Paternity under the Ethiopian Revised
Family Law: Legal and Practical Challenges from a
Gender Perspective**

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May, 2022

Addis Ababa, Ethiopia

Declaration

I hereby declare that this proposal entitled “*Ascertainment of Paternity under the Ethiopian Revised Family Law: Legal and Practical Challenges from a Gender Perspective*” has been carried out by me under the guidance and supervision of Emezat Hailu Mengesha. Ph.D.

The proposal is original and has not been submitted for the award of any degree or diploma to any university or institution.

Selam Kibret signature _____ Date May 6, 2022

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

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Approval

The undersigned certify that they have read and hereby recommend to the Addis Ababa University to accept the Thesis submitted by Selam Kibret entitled “*Ascertainment of Paternity under the Ethiopian Revised Family Law: Legal and Practical Challenges from a Gender Perspective*”, in partial fulfillment of the requirements for the award of a Master’s in ender studies

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Acknowledgement

First, I thank the Almighty God for giving me the courage and grace to pursue the MA program. My heartfelt gratitude goes to my advisor Mrs. Emezat Hailu Mengesha (PHD) her expert guidance, valuable suggestions, and encouragement made to me in all stages during the work of this Thesis.

I would like to express my sincere appreciation to my family and especially to my dad “my guardian angel” for their love, encouragement, and support that have given me strength and courage.

I am also very much grateful to the Federal Supreme Court Child Justices Office staff, clients, pro bono lawyer and The Federal First Instances Court Judges for their cooperation in answering my interview questions and their much-appreciated advice.

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Abstract

Ascertainment of paternity under the family code entails various problems in the Ethiopian context. The major problem is associated with the difficulty of ascertaining paternity by all the available mechanisms. The mechanisms provided by the law to ascertain paternity are legal presumption; acknowledgement of paternity and judicial declaration. Each of these mechanisms' present challenges to the women who are required to prove a man is the father of their child. The challenges presented by the law would be reflected in the practice of litigation process mainly in weighing of the evidence as a result it influences the process to seek medical evidence. This research aims to assess the legal and practical challenges of ascertaining paternity, under the Ethiopian context, from a legal and gender perspective. The research used the doctrinal research method as it broadens legal discourses in terms of its theoretical and conceptual framework which guided the direction of the researcher by enabling to generate evidences to answer the research problems. To this effect, the researcher employed qualitative research approach by using key-informant and in-depth interviews. The research identified that the mechanism to assert paternity in the Ethiopian Revised Family Code does not allow means of ascertainment other than specifically recognized in the law. The law as it stands now solely burdens the woman to prove the man is indeed the child's father, and demands evidence is submitted before litigation starts. The way the law is designed puts a precondition on a woman to prove the existence of legally recognized relationship. The research further found the practical aspect of ascertaining of paternity present the major challenges such as; requiring a standard of proof higher than any other civil matters; long period of litigations before getting a final judgment; and difficult to execute the judgment. The research also assessed on top of these legally recognized method how the practice created new widely implemented ways of ascertaining paternity in the form medical proof; DNA test, which differs from what is provided in the law. The legal and the practical gaps resulted in unequal treatments between a man and a woman, a financial burden and having to carry the load of both parents in child raising on the woman alone.

Chapter One: Introduction

1.1. Background

The origin of the concept of ascertainment of paternity can be traced back to Roman law: Roman law recognized what is known as, Marital Presumption, which has been the predominantly used method to ascertain paternity. This presumption holds that the husband of a mother is presumed to be the father of the child, unless the husband is sterile, impotent, or had no access to his wife during the period when conception occurred (Donald 2003 p.60).

On the other hand, a biological father's duty to support his non-marital children originated in England in 1576, as part of the British Poor Laws, also known as "Bastardy Laws". Indeed, this duty was not conceived taking into account the interest of the child. Rather, the parental support duty originated as an attempt to help alleviate the state's burden for the poor, illegitimate children. Children and unwed mothers of children who were not receiving public assistance had no right to support from a biological father (Katharine 2004).

Ascertainment of paternity means the mechanisms and/or procedures used to determine the father of a child born in or out of wedlock. Ascertainment of paternity is relevant for two major purposes. The first is to determine whether a certain child has an inheritance right.

The second is to determine whether a certain child has a right to acquire support from his/her father. The second purpose of ascertainment of paternity evokes certain gender issues. One of these issues relates to the prevalent financial inequality among the father and mother. Often, the father's financial resources significantly exceed that of the mothers. In such cases, ascertainment of paternity relates to the financial inequality among the father and mother and the need to accord the child the financial resources that assure his/her best interest, especially if the child is born out of wedlock.

In the Ethiopian context, the first statute-based provisions dealing with ascertainment of paternity are contained in the 1960's Civil Code of Ethiopia. These provisions set legal presumptions and further provided for the ascertainment of paternity through acknowledgment and judicial declaration (Ethiopia Civil Code 1960).

The provisions of the Civil Code are repealed pursuant to the Ethiopian Family Code (Proclamation No.213/2000). Although the latter has amended the provisions of the former based on the modern conception of spousal and women's rights, such as equal decision making in family related issues, like naming a child and property management; recognizes the human and civil rights of women in and after marriage, it has made a relative amendment on the provisions dealing with the ascertainment of paternity.

1.2. Statement of the Problem

Ascertainment of paternity under the FDRE Revised Family Code Proclamation no. 213/2000 (hereafter the Family code) entails various problems in the Ethiopian context. This was observed by the researcher while engaging in the Children Legal Protection Center under Child Justice Project as a Senior project officer for five years from end of 2012 till 2017. The Child Justice Program was an initiative of the Federal Supreme Court that aims at providing legal assistance for marginalized groups. During the engagement, the researcher observed some of the challenges encountered by mothers of children in judicial ascertaining of paternity.

In my professional engagement with the Project, women of all ages would come to the legal aid center seeking legal counselling on different family issues they are facing. One of the most popular requests from clients revolves one way or another with the father of their child. The cases frequently presented range from ascertainment of paternity, child support claims to visitation rights. The basis for the mothers/ clients of the Project for claiming any of the above-mentioned rights of the child is standing on the ascertainment of paternity. There are 33 cases in minimum handled by the legal aid center weekly at the Federal Supreme Court alone. About 14 of those cases are related to paternity, more than half of the mothers coming to claim ascertainment of paternity do not have the information about what is needed regards to evidence and facts to claim paternity. As a legal professional, it is difficult to put the facts provided into a viable case to bring to the Court.

The major problem is associated with the difficulty of ascertaining paternity by all the available mechanisms. In this regard, the first mechanism, i.e. the legal presumption, may fail in various circumstances. Legal presumption means the inference the law makes in regard to socially

assumed and accepted facts. The assumptions can be rebuttable by anyone who has a vested interest and has sufficient evidence to prove otherwise.

As the legal presumption applies in marriage/irregular union cases, it doesn't apply to cases that don't constitute marriage or irregular union as per the Family Code. In other words, the legal presumption doesn't apply to children born out of wedlock/irregular union. This is of particular concern in the Ethiopian context where many children are born in mere sexual relations and out of wedlock. Similarly, the second mechanism, which is acknowledgment by the father, might not apply to several cases as it predominantly depends on the willingness of the father to acknowledge the child.

Likewise, the last resort to ascertain paternity through judicial declarations is also problematic as it is applied to certain conditions whose elements are sometimes difficult to prove which, in turn, have some repercussions. For instance, the Revised Family Code states that one of the conditions for ascertaining paternity by judicial declaration is if the pregnancy was a result of a continuous sexual relationship between the father and mother who were both living together. This condition only applies to persons who are living together and excludes those who procreate without living together. This means a woman who wants to invoke this particular condition has to prove that she was living with the said father of the child during the period regarded by law as the period of pregnancy. As such, the mother is faced with the fact of establishing her residency which has its own legal hurdles (e.g. how long should she live with the concerned father so that she can establish her residency? What kind of documentary evidence or witness can she furnish to establish the fact that she was living with the concerned father?). As the law is silent on the methods of evidence to prove residing with the father, the discretion is assumed by the judge.

Another condition is if at the time of conception of the child the mother has been the "victim of seduction accompanied by abuse of authority, a promise of marriage, or any other similar act of intentional deception". This condition is particularly difficult to prove in some instances due to the personal nature of the offense. A mother who seeks to invoke this condition has to prove that the intentional deception or gender-based persuasion took place by producing documentary evidence or witnesses. However, the nature of the commission of such intentional deceptions is secret and personal; in other words, it is difficult to prove the commission by the production of evidence and witnesses. As a result, if a mother fails to ascertain paternity by providing admissible evidence and

witnesses, the father may be exonerated from obligation even though he probably had caused the pregnancy (notably without the free consent of the mother) and, in turn, he should have taken the risks arising from such pregnancy.

Such difficulties are further complicated if the father objected that the mother of the child had a sexual relationship with another man. In this instance, the mother of the child has the sole option of proving paternity by providing medical evidence, DNA testing.

After understanding the limitations mothers bring to the case the legal framework by itself is rigid making it problematic for the legal professionals to render justice. It results in prolonged court litigation. This long duration doesn't meet the needs of the mother and child on time.

All of the above difficulties have some repercussions. This further entails an economical burden on the mother, as she is the one who solely carries the financial burden of raising the child for the litigation period, and adversely affects the maintenance of the child since the child would only get lower financial resources of the mother which in most cases is significantly below than that of the fathers.

1.3. Research Objective

The general objective of this research is to assess the legal and practical challenges of ascertaining paternity, under the Ethiopian context, from a legal and gender perspective.

The specific objectives of the research are:

- Assess the legal gaps in the ascertainment of paternity from a legal and gender perspective;
- Explore the practical application of the methods of ascertaining paternity in a court of law, the practical challenges arising thereof from the legal professionals' and judges' perspectives; and
- Explore the major practical challenges encountered by mothers when ascertaining paternity.

1.4. Research Questions

The proposed research thesis will try to address the following questions:

- 1) What are the legal gaps in the ascertainment of paternity from a legal and gender perspective?
- 2) How are the methods of ascertaining paternity applied in a court of law, and what are the practical challenges arising thereof?

1.5. Significance of the Research

As the research aims to assess the legal and practical issues pertaining to the ascertainment of paternity in the Ethiopian context, it is believed to give a detailed assessment of the subject matter. The research focuses on assessing the challenges of ascertaining paternity from a gender perspective. The ascertainment of paternity, among other things, is about the financial obligation of the father and mother to the child they have procreated together. The woman and man who caused a pregnancy of the child have the financial obligation to raise the child. However, the financial obligation cannot be equally distributed to the mother and the father as in most cases the very financial resource they have is unequal.

From a gender perspective, ascertainment of paternity can be considered as a means for the father to share parental responsibilities equally with the mother, these include financial as well as emotional/ physical attachments. As such, since this research will try to explore the issue from a gender perspective, it will serve as a supplement to practitioners who seek to grasp gender insights into the ascertainment of paternity.

Further, the proposed research is believed to share the voices and concerns of mothers who encounter a challenge in the ascertainment of paternity from their standpoint. As such, it will give insights into the experiences nature and content of the voices and concerns of the mothers to the reader and policy makers. It is also believed to have an academic significance since, to this end, there is only very few researches conducted on the subject matter in the Ethiopian context. Particularly, it will fill the literature gap on the subject matter. Thus, it may be used as a benchmark

for further related studies. Further, it will inform any interested party about the legal and practical issues pertaining to the ascertainment of paternity in the Ethiopian Context.

1.6. Scope and Delimitation of the Study

Scope

The research scope is delimited to the provisions of the Revised Federal Family Code on ascertainment of paternity. It will not assess the regional family codes because it will widen the scope of the research that may make the legal gap and gender analysis difficult as each region may have its own context. As such, the research will be limited to the provisions of the Revised Federal Family Code, as well as court cases that have been entertained at The Federal First Instance level at the Bole and Yeka bench. These benches are selected purposively as the research is logistically constrained.

Limitation

As far as this research is concerned, the limitations anticipated include a lack of studies on the subject matter in the Ethiopian context, and time constraints and logistical limitations (so as to extend the research to regions).

Chapter Two: Literature Review

This section explores the major conceptual and theoretical issues with respect to the ascertainment of paternity. Particularly, it will briefly discuss the elements constituting the concept of paternity, the rationale for ascertaining paternity, some controversial considerations that are to be taken into account in the ascertainment of paternity, and literature in the Ethiopian context.

2.1. Concept of Paternity

The concept of paternity comprises various elements that are typical but not necessarily connected. The traditional concept of a father includes genetic, psychological, and social elements, as well as elements of causal and moral responsibility (Donald, 2003, p.62). The genetic element mainly considers the direct blood relation that exists between the father and the child (Donald, 2003). Genetically, the father is the male parent, the man whose haploid cell contributed half of his genetic material to the child. There was a time when it would have seemed equally correct to say the genetic father is the man who contributed the sperm cell to fertilize the egg that developed into a human infant.

However, the possibility of fertilization through the use of DNA of a haploidized normal (somatic) cell makes this account problematic (Donald, 2003, p.63). The artificial gamete produced may not be appropriately considered a sperm cell or, if it is considered a sperm cell, it may be more properly considered that of another man (Donald, 2003). The role of the genetic father is typically closely associated with the role of causing the pregnancy that results in the creation of a child (Donald, 2003). In a normal case of impregnation, the same act that causes the process that results in the development of a child involves the transfer of gametes from the male parent to the female parent (Donald, 2003). This connection is not necessary, though, and techniques of artificial insemination and in vitro fertilization can result in a genetic father who does not have causal responsibility for the pregnancy or, alternatively, a man having causal responsibility for a pregnancy without being the genetic father (Donald, 2003).

Due to the close causal link in the normal case between the act of intercourse causing pregnancy and the genetic relation between the child and the man involved in the act of sexual intercourse, few previous writers on paternity have separated genetic paternity from causal paternity (Donald, 2003, p.64). the genetic and causal elements of paternity are conceptually, and sometimes empirically, separate (Donald, 2003, p.63).

The concept of paternity includes much more than the genetic and causal elements. Typically, fathers and mothers share moral responsibility for the existence of their children they voluntarily engage in actions that they know, or should know, might cause pregnancy. This role is clearly separate from the genetic element of paternity and it involves more than the mere causal paternity. One may be a causal agent in the production of an outcome without being morally responsible for it. This can happen because of various sorts of "excusing conditions," of either a global or local nature (Donald, 2003). Perhaps the most obvious case of a man being causally responsible for a pregnancy without being morally responsible for it is the rare case of heterosexual rape of a man that results in pregnancy (Donald, 2003). The heterosexual rape of a man by the employment of coercive threats would be one example where a man would have causal but not moral responsibility for the resulting child. Such cases are rare, and it is rarer still that such an act leads to a successful pregnancy. Acts of this sort, however, are certainly possible (Donald, 2003, p.66).

Hence, it can be argued that there is a need to distinguish causal responsibility for a child's life from moral responsibility. Our paradigmatic father is the genetic father who is both causally and morally responsible for the creation of his children (Donald, 2003, p.67).

Other elements of fatherhood include a variety of psychological relationships with a child and social roles with respect to the child (Donald, 2003). Ordinarily, fathers and children are bound together by special bonds of affection (Donald, 2003). This does not entail that "father-child love" can exist only between individuals who have other elements of the father-child relationship (genetic, causal, etc.) (Donald, 2003).

It is generally understood that psychological and social aspects of fatherhood can exist separately from the genetic and casual aspects (Donald, 2003, p.62). There is a long history of adoptive fathers, stepfathers, and other adult men nurturing, supporting, and raising children to whom they

are not genetically related, sometimes even without knowing that there is no genetic relationship (Donald, 2003).

2.2. The rationale for Ascertaining Paternity

Historically, the need for ascertaining paternity is rooted in the early paternity doctrine. The early paternity doctrine aims at punishing the offender in this case the male who engaged in a procreative sexual relationship. More basically, it punishes men for engaging in sex (Katharine, 2004, p.14). The paternity doctrine goes to the extent of punishing those who are not considered irresponsible. It makes male victims of statutory rape responsible for child support and carries no exception for male victims of deceit and fraud (Katharine, 2004).

The need for ascertaining paternity can also be justified by a more developed version of the punishment theory (Katharine, 2004, p.19). This developed version focuses on the risk rather than simply entailing punishment (Katharine, 2004). It contends that, when engaging in sexual intercourse, men assume the risk that a court will not find someone better suited to be the father of any potential child. Perhaps regardless of whether they have done anything wrong by engaging in intercourse and regardless of how much more say a woman has in bringing the child into the world, men should still share some of the risks of unwanted pregnancies (Katharine, 2004). Forcing men to assume this risk would help deter them from engaging in irresponsible sexual behavior and would honor whatever duty flows from blood connection (Katharine, 2004).

There is another rationale that necessitates the ascertainment of paternity. This rationale focuses on the interests that can be addressed from a father-child relationship. Some personal and societal interests prompt a desire to establish paternity (Donald, 2003, p.32). Indeed, paternity is a personal relationship between a father and child (Donald, 2003). However, some parties have a certain interest in such a relation as they are affected by it. A typical person affected by such a relation is the mother of the child (Donald, 2003). Particularly, the mother has the interest to find a person that can share the burden of caring for the child.

Setting aside the interest of the mother, there are strong personal interests on the part of the child and father that necessitate the establishment of paternity (Donald, 2003). First, there is a medical

interest on the part of the child that is the access to information about one's genetic heritage. Persons who lack the medical history of both parents are at a disadvantage in the diagnosis and treatment of a variety of diseases compared to those who possess such information (Donald, 2003). Children receive a clear medical benefit from paternity establishment based simply on the increased knowledge of their genetic endowment (Donald, 2003, p.33).

Second, there is a financial interest that is shared by both the father and the child. On the part of the child, the child has a financial interest as the father's economic resources, which often exceed the mother's, provide a crucial benefit for children, frequently making the difference between a life of poverty and a comfortable, if not opulent, existence (Donald, 2003, p.35). On the other part, the father, especially those living in developing countries, has a financial interest as children are considered as economic assets, providing efficient and low-cost labor for family farms (Donald, 2003, p.37).

Third, there is an emotional interest. Both parents and children typically have strong emotional interests in their relationship with one another. In the best of circumstances, this relationship is among life's most fulfilling relationships for both parents and children, even if the children are not aware of it until later in life (Donald, 2003, p.38).

Fourth, there is a developmental interest on the part of the child. In particular, children have a significant interest in paternity establishment because it can affect their development into normal, healthy adults (Donald, 2003, p.41).

Apart from the personal interests embedded in paternity, there are certain societal interests as well. One of the societal interests is in the children's well-being. Insofar as one of the objectives of a society is to "promote the common good," children's well-being is, ipso facto, a societal interest. Furthermore, for a society to flourish through time, its children must be raised with love, care, and sufficient material resources for them to flourish as individuals. The societal costs of children who are raised in abject poverty or without the guidance of loving, involved parents are high (Donald, 2003, p.45).

2.3. Some controversial issues in the Ascertainment of Paternity

Some controversial issues in the literature revolve around the ascertainment of paternity. One of these controversial issues is the method by which paternity is ascertained. In this respect, almost all jurisdictions use the “marital presumption” to ascertain the paternity of those born in wedlock. This presumption considers the husband to be the father of the child. This presumption of legitimacy is not absolute in the sense that it can be rebutted with proof of the husband’s impotence or his absence “beyond the overseas” (Susan, 2017, p. 242).

The main controversy arises with respect to children born out of wedlock. In this regard, jurisdiction adopts several methods; legal presumption, acknowledgment of paternity, and petition.

In respect of children born out-of-wedlock, some jurisdictions set some legal presumptions. For instance, in the US, states that endorsed the 1973 version of the Uniform Parentage Act have the authority to presume that a man who receives a child into his home and openly holds out the child as his natural child is the child’s father. If this presumption goes unchallenged, then the man is the child’s father (Paula, 2005, p.2).

Another method used is “voluntary acknowledgment” which involves the acknowledgment of the father or both father and mother (Paula, 2005). Another method is by instituting a paternity suit in a court of law (Paula, 2005, p.1). A paternity suit or filiation proceeding is a judicial or administrative procedure for establishing the identity of the biological father of a child born outside marriage, sometimes by using DNA testing (Leslie, 2007, p.312).

All of the aforementioned methods, including marital presumption and DNA testing, are controversial as none of them can certainly determine whether a father is the actual father of the child (Susan, 2017, p.239). This uncertainty has in some paternity cases led to what is called paternity fraud. For instance, the U.S. Citizens against Paternity Fraud and Women against Paternity Fraud claim that “28-30% of fathers tested for paternity are not the real father” (Susan, 2017, p.238).

Another major issue worth mentioning is the diverse views regarding disestablishing paternity (Susan, 2017, p.250). This means how a father shall disestablish paternity. In this regard, there are two views; the old view and the modern view (Susan, 2017).

Under the old view, if a father allows a judgment to be entered, or if he signs an acknowledgment without a genetic test, he is considered selfish when he later seeks to disestablish paternity (Susan, 2017). When paternity law operates under the old view, then truth is based on kinship and the best interests of the child (Susan, 2017, p.247). This view was expressed in a famous case in Florida in 2005, Parker Vs Parker (Susan, 2017, p.250).

Parker Vs Parker, Florida, 2005

In this particular case, a married couple had a child, and the wife repeatedly assured her husband that he was the father." When the child was three-and-a-half, the couple divorced, and in the divorce proceedings, the wife again represented that the husband was the father, so the divorce judgment stated that there was a child of the marriage. This was a legal adjudication of paternity. Two years later, when the child was about five, the ex-husband obtained DNA testing that showed that he was not the father. About two months after that, the ex-husband filed a petition to disestablish paternity. He alleged that the mother knew he was not the father "due to sexual relations she had with another man" and that she concealed that information in order to collect child support from him. The solution for fathers, according to the Florida court in Parker, was to ask for genetic testing before final adjudication as the legal father." The opinion recited, "there may be some merit in telling divorcing fathers who are in doubt to 'test now, or forever hold your peace."

The trial court dismissed his petition, which the appeals court affirmed because the ex-husband did not challenge the divorce judgment within the one-year rule to set aside the judgment on the basis of extrinsic fraud, and moreover, the wife's fraud would be considered intrinsic fraud, so he could not have challenged it successfully even within a year. The Parker appellate court opinion discussed the policy reasons for not allowing a

father to challenge paternity after a short period-the concern with finality and the overriding concern with the "psychological devastation that the child will undoubtedly experience from losing the only father he or she has ever known." (Susan, 2017, p.250-251)

As opposed to the old view, the modern discourse gives science a higher claim to truth irrespective of the kinship and interest of the child (Susan, 2017, p.251).

2.4. Literature in the Ethiopian Context

As far as this proposal is concerned, there are only few specific literatures written on the ascertainment of paternity. This shows that how underdeveloped is the legal jurisprudence and research on the subject matter in the Ethiopian Context. Hence, the proposed thesis title is believed to be one of a few researches on the ascertainment of paternity in the Ethiopian context.

One of the notable literatures in the Ethiopian context is George Krzeczunowicz article entitled, "The Ethiopian Law of Filiation Revisited" (George, 1980). In this Article, Krzeczunowicz explores the establishment, non-contentious and contentious proof, and contestation of maternal and paternal filiation, as well as the effects of filiation in light of the 1960's Ethiopian Civil Code.

Regarding the Revised Family Code, there are few research/articles on the law of filiation. First, Dr. Mehari Redae (one of the drafters of the revised family code) in a book entitled, "The Revised Family Law of Ethiopia," discusses the rationale, justification and local context regarding the law on paternity. As such, this book is a sort of commentary on the revised family code, in general.

Second, Professor Tilahun Teshome in an article entitled, "Reflections on the Revised Family Code," reflects on some aspects of the family code.

The above articles deal with examining and explaining the word of the law to assist with interpretation of the laws for legal professionals. Further, the article by Dr. Mehari Redae deals with the concept of filiation in the revised family code, which is the first-degree descendants exercises their civil rights. The articles are intended for the legal professionals, which resulted in disregarding the human aspects of interpretation of the law.

All of the above literature has limitations. First, they are not written from a gender perspective. This research will, therefore, fill this gap in the literature by employing gender methodologies and assessing the law on paternity from a gender perspective.

Second, the work of Krzeczunowicz, despite its academic and practical significance, has a limitation since it discusses filiation in light of the 1960's Ethiopian Civil Code and doesn't explore the law of filiation under the Revised Family Code even though it is understandable that the Revised Family Code was enacted in 2000.

Third, the work of Dr. Mehari Redae and Professor Tilahun Teshome try to deal with the revised family code in general. Both works do not try assessing the law of paternity as they do not address the issue of paternity as separate important issue. Hence, this research will try to specifically deal with the law of paternity and its practical implications from a gender perspective.

Chapter Three: Research Methodology and Procedure

3.1. Research Paradigm and the Choice of the Research

Research is about acquiring knowledge and developing understanding, collecting facts, and interpreting them to build up a picture of the world around us, and even within us (Nicholas, 2011).

As gender research, the research will adhere to feminist epistemology (way of knowing and a theory of how we know things about the world). The feminist way of knowing assumes that knowledge always exists, what is known is influenced by the shared experiences and the political orientations of the person who knows, and all knowledge is valid from where a person stands (Sandra, 1987). The standpoint epistemologists argue that marginalized groups hold a particular claim to knowing. At the core of standpoint epistemology is their assertion that they represent the world from a socially situated perspective, which represents epistemic privilege or authority. This epistemic privileging is located in the standpoint of the marginalized or disadvantaged, and all women, regardless of social location, occupy this position (Andrea & Natasha, 2006, p37).

By adhering to the feminist way of knowing, the researcher will try to acquire knowledge or drive facts from the standpoint of female custodians that need to ascertain paternity for the concerned child. The researcher will focus on capturing women's voices, concerns, and understandings with respect to the ascertainment of paternity.

3.2. Type of Research Design

The research design provides a framework for the collection and analysis of data and subsequently indicates which research methods are appropriate (Sandra, 1987, p.13).

The proposed research is applied research in terms of the application of the research study. Applied research is done to solve specific, practical questions for policy formulation, administration, and understanding of a phenomenon (C.R., 1990). Applied research aims at finding a solution for an immediate problem facing a society or an industrial/business organization (C.R., 1990). Thus, the

central aim of applied research is to discover a solution for some pressing practical problem (C.R., 1990). Hence, as the proposed research tries to explore the practical challenges encountered in the ascertainment of legal paternity and identify their solutions, it can be considered applied research.

In terms of the viewpoint of objectives, this research is descriptive research that attempts to describe systematically a situation, problem, phenomenon, service or program, or provides information (Sandra, 1987, p.2). The choice of a descriptive research design is believed to be important to achieve the objectives of the research.

3.3. Approach and Methodology

Research methodology is a way to systematically solve the research problem. It may be understood as a science of studying how research is done scientifically. In it, we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them (Sandra, 1987, p.8).

This research is doctrinal research. Doctrinal legal research comprises in-depth analysis of the legal doctrine with its development process and legal reasoning (Kharel, 2018, p.4). As this research relates to a matter of the legal field, the researcher will use the doctrinal research method as it broadens legal discourses in terms of its theoretical and conceptual framework which guides the direction of the researcher by enabling to generate evidence to answer the above research problems. The doctrinal research will involve an analysis of the revised family law, as well as cases that have been entertained by federal first instance courts.

This research further adopts the feminist research methodology. The feminist research methodology presupposes gender as a category of experience; as such, the methodology considers gender as a primary factor in the data analysis. This research will employ this methodology so as to explore the challenges of ascertaining paternity in terms of a gender perspective.

This research is qualitative research. Qualitative research is concerned with qualitative phenomena, i.e., phenomena relating to or involving quality or kind. In this respect, the researcher proposes qualitative research as the proposed title is concerned with a qualitative phenomenon

(C.R., 1990). This research tries to analyze on how paternity is ascertained in the law and practice and understand the gender effects.

The analysis of both primary and secondary data will be based on legal analysis and gender analysis. The legal analysis will involve a legal gap analysis that identifies the legal gap in the provisions of the revised family code dealing with ascertainment of paternity. On the other hand, the gender analysis will focus on whether these provisions are practically gender-responsive (this seeks to identify whether the provisions acknowledge and consider women's and men's specific needs), and gender-transformative (this seeks to identify whether the provisions address the causes of gender-based inequalities and works to transform harmful gender roles, norms, and power relations).

3.4. Data Collection

The researcher employed qualitative data collection methods to supplement the analysis of the family law and relevant cases. The data collection method depended on key informant interviews. The researcher conducted key informant interviews (KIIs) with 2 court judges and 4 legal professionals and 3 in-depth interviews with mothers who have encountered difficulty in ascertaining paternity.

The legal professionals are chosen from the Federal supreme court child justice project which deals with facilitating DNA testing for ascertainment of paternity. The Project has 8 staffs, including support staffs, and pro bono lawyers (lawyer giving free- services); out of which 4 the researcher has conducted interviews with 3 lawyers and 1 senior project officer. The mothers selected for the interviews are those who have received legal aid from the Project and were willing and able to give in-depth interviews for the research.

The researcher chose Yeka and Bole federal first instance court family bench because the benches have given verdicts in the cases of the ascertainment of paternity, in the cases of the mothers that selected and volunteered for the in-depth interviews. The judges interviewed from the Benches were a male and female judge to understand if the gender of the presiding judges have any effects on the decision making.

The interview with the court judges and practitioners aimed at gathering the relevant information on how the three mechanisms are currently applied and identify the major legal and practical challenges relating to the ascertainment of paternity.

The interview with the affected mothers focused on exploring the major practical challenges encountered by mothers when ascertaining paternity. It emphasized on capturing the voices and concerns of mothers who have encountered judicial ascertain paternity.

The interviewees for the KIIs are purposively selected by the researcher. The court judges and practitioners will be selected based on their current position and years of experience in order to get the optimal data from such expertise. Further, both male and female judges and practitioners will be targeted in order to explore the concerns, understandings, and perceptions of both with respect to the ascertainment of paternity.

The in-depth interviews with the mothers who have encountered challenges in the ascertainment of paternity will emphasize on unmarried and young mothers. This is because, in the researcher's personal experience working for the Project office, it is expected that most of the legal and practical challenges arise in cases relating to children born out of wedlock. As a principle, married mothers can benefit from the legal presumption that presumes the husband as the father of the child. However, unmarried mothers face two possibilities. First, the father may acknowledge the child and assume the obligation that follows from the acknowledgment. Second, the father may not acknowledge, and the mother is left with the option of instituting a petition for the ascertainment of paternity in a court of law. In this regard, she is expected to prove that her case falls under any of the conditions in which the petition is allowed and, further, refute any objection and/or evidence that may be invoked and/or furnished by the respondent. The in-depth interviews with the unmarried mothers are believed to unveil the core legal gaps and practical challenges posited by the current practical application of the law.

Besides the in-depth interviews, KIIs and the primary sources, the researcher will review data from secondary sources that include books, articles, journals, etc., pertaining to the subject matter.

3.5. Data Analysis

Qualitative data analysis that is based on content analysis is used to explain the data acquired through interview and expert testimonies. Content analysis as one form of qualitative analysis for research is used to address legal gaps.

Content analysis is a method that is used to study and examine organizational behaviors, stakeholder perceptions and societal trends (Bengtsson, 2016). This Research focuses on paternity cases presented to a court of law and the relationship between weighing of evidence and the effect of prolonged litigation processes, with a focus on the existing laws, the justice system and the human capacity. Therefore, the researcher opted to use this method to address issues raised by the research questions.

In addition, a narrative analysis, that is used to revise and formulate the data from key-informant interviews are also used. Analysis of the legal frameworks on family matters is made by analyzing the content to identify any gaps created by the existing laws. Qualitative analysis that is based on the evidence gathered by secondary sources is used to identify any differences in the legal requirement and the actual practice on the ground.

3.6. Ethical Considerations

The research is fully governed by the ethical principles of research. To this effect, during data collection through KII and in-depth interview, due care will be made to protect every respondent, therefore, building confidence with the participant of the research. Furthermore, permission from the individual institutions and informed consent of the sampled key informants is obtained before conducting the interviews. All key informants and participants have been informed that they can withdraw at any time of the interview, as well as the data they provide will be maintained confidentially and presented in the thesis anonymously. All sources of information is duly acknowledged and cited.

Chapter Four: Legal and Practical Challenges of the Ascertainment of Paternity in the Ethiopian Context: A Gender Perspective

4.1. Introduction

Under Ethiopia Laws, neither the Ethiopian Civil Code of 1960 nor the Family Code defined the concept family. However, the through reading of the provisions reveals that family relationship will emanate from marriage, consequently or artificial filiations. Therefore, from this one can note that the understanding of the concept family under Ethiopian law is similar to the understanding of the lawyers in its narrower sense.

Family is protected through our country Constitutions, Article 34(3) states “the Family is the natural and fundamental unit of society and entitled to protection by the society and the state.” The above discussion shows that almost all nations in the world provide constitutional protection to this most important institution, especially by those countries, which ratified one or more of the International Conventions.

According to licensed attorney and practicing lawyer that participated in the KII the opinion the provisions contained in the Family Code are articulated taking international conventions ratified by the Country into account. As long as they are interpreted and implemented properly, the provisions envisage the best interests of the child in setting rights and obligations; and they require courts of law to consider the best interest of the child in rendering decisions. (Interview with a licensed lawyer at all Federal Courts). However, the judge presiding over a family bench has a different opinion in connection with the coverage and amenability of the Revised Family Code in connection to the right of women. As per her point of view, the Revised Family Code is too narrow in the formulation of the relationship between the man and the women. The law is supposed to be a dynamic institution that is capable of changing according to every changing dynamic of the society, but the Revised Family Code is not designed in such away to be adoptive and responsive manner. (Interview with Female judge at Federal First Instance Court Bole Bench, Interviewed on Nov. 1, 2021)

This opinion of a learned judge at the Federal First Instance is further backed up by another judge from Yeka Bench. According to him, the law provides only three ways of ascertainment of paternity: judicial declaration, acknowledgement and presumption of the law. As these three are the only recognized forms of ascertainment of paternity, there is no possibility a judge would be allowed to include other forms of ascertainment of paternity. (Interview with a male judge at Federal first Instance Court Yeka Bench, interviewed on Nov. 5, 2021)

As there exists difference of opinion on coverage and amenability of the Revised Family Code when it comes to ascertainment, even with in the legal experts in the field this by itself can be viewed as a challenge that can create a gap.

4.2. Ascertainment of Filiation

According to Planiol, filiation may be understood in two senses. In the natural sense of the term, i.e., in the wider sense, it is taken as descent in the direct line, which includes the entire series of the intermediaries who link a given person to this or that ancestor, however, distant he or she may be (Marcel, 1939). But in legal terminology, i.e., in a narrower sense, the term has assumed a much more restricted meaning. In this latter sense of the word, filiations extend exclusively to the immediate relationship of father or mother, i.e., it applies to consanguineal relationship of first degree in the direct line (Marcel, 1939). In its broader sense, filiation involves lines of relationship going beyond the first degree. In the narrower sense, it signifies maternal and paternal affiliations, which, in a sense are limited to the first degree. In other words, the mode of establishing in law, the blood relationship of the first degree is known as filiation (with all its consequence in family and succession law) between a child and a given woman and man (George, 1980). The repetition of filiation produces lines or series of degrees (George, 1980). Accordingly, filiation is defined as the relationship that exists between two persons, one of whom is the father or the mother of the child. To put it differently, the term filiation denotes the legal bond between a child and its mother or father. As regards maternal filiation, the sole fact of birth establishes maternal filiation. Paternity on the other hand, is not easily determined. It is spoken of in terms of probability of begetting and it is presumed if a child is in a legally recognized union. In all other cases, it is established by acknowledgement, assignment, judicial declaration or agreement of the presumptive fathers.

Attempts in a court of law to prove paternity the biological paternal link between a child and a man, are made primarily for two reasons in Ethiopia; most frequently so that a child may be in the position of an heir to the man's estate, but occasionally so as to entitle a child during his minority to support from the man. Due to the absence of public records registries in the nation, it is often necessary for a child conceived and born during a valid marriage, formally entered into, to establish his paternity in court. But much paternity litigation appearing in the Ethiopian courts today involves attempts to establish filiation in the eyes of the law between a person and a man to whom the person's mother was not formally married. When such out-of-wedlock paternities are legally established the children are treated the same juridically as children born in wedlock. Ethiopia, in its recent history at least, has not had a legal concept of illegitimacy.

In 1960 the country adopted a Civil Code, based primarily upon Western models, which contains detailed provisions dealing with filiation. These replaced the previously existing customary practices. The Code provisions have been discussed by Professor Krzeczunowicz in the *Journal of Ethiopian Law*. The reader is referred to that article for an exposition of how the law of filiation in all its aspects is ideally intended to operate. In this section we will deal with the code provisions only insofar as they have appeared to pose major problems in the way from the standpoint of legal systems analysis: the efficacy of transplanting laws from one society to another. Thus, although considerable statutory interpretation and construction will be engaged in so as to appreciate what has been facing the courts, the purpose of this section is not to solve every problem presented. In addition, filiation decisions of the Supreme Imperial Court sitting in Addis Ababa in the decade, since the enactment of the Civil Code were located and examined.

The Civil Code preserved intact all "legal situations" which existed prior to its effective date. Thus, if an instance of legal filiation was created prior to the Code, the Code's provisions dealing with the establishment of such situations would have no effect on it. But, of course, if no such situation was created, if at all, until after the Code's effective date, then the Code will govern the establishment of filiation in the case. For the purpose of discussing problems that have arisen in the courts, it is convenient for us to divide the cases along these lines into "post-code" and "pre-code" categories. First, however, before looking at the court cases we should acquire a frame of reference by examining what is known of customary practices and generally outlining the scheme

of the Civil Code. The concept of filiation and its effects is also fully enshrined under the Revised Family Law.

4.3. Laying the Foundation

4.3.1. Custom and the Code

Little is known about the customary practices in Ethiopia concerning paternal filiation. There is evidence that among some groups a ceremonial procedure has existed whereby a bastard child could be accepted by a man. It involves the slaughtering of animals, the spilling of blood, and, in the presence of relatives and neighbors, the administration of an oath to the mother through the office of her “soul father”, after which the mother would physically hand the child to the man. Voluntary receipt by the man at the point presumably constituted acceptance by him of paternal responsibility for the child’s birth. The youngster would apparently be recognized thereafter for all purposes as the child of the man.

Regarding the situation where the alleged father was dead, the Ethiopian Old Judgments Book contains cases indicating that adjudicative tribunals were ready to declare filiation if relatives or friends of the man testified, he orally informed them he was the father. There have been recent suggestions, however, that courts, at least in the years just prior to the adoption of the Code, were in the habit of declaring filiation on the basis of little more than rumors in the community. It seems that the courts were full of lost or forgotten middle-aged bastard children seeking to inherit a share of “father’s” estate. It has been asserted that the affiliation provisions of the Code were intended to correct this lose situation, with the dangers of injustice that it entailed. Certainly, they could have that effect when fully implemented by the establishment of institutions which the Code contemplates but does not exist now and if some of the broad and conflicting provisions are interpreted to that end. Let us move on to examine the aspects of the Code that are most pertinent to this study.

4.3.2 The Civil Code

The Code, in its basic framework, stipulates that filiation between a man and a child can be legally established by showing either that (1) the man was married to the child's mother when the child was conceived or born, (2) the man was engaged in an “irregular union” with the mother at the time of conception or birth, (3) the man (or certain relatives if he is deceased) has acknowledged the paternity in writing, or (4) the mother was raped or abducted by the man during the time of conception. This scheme is similar to European continental models upon which the draftsman, Rend David, drew with the exception of the “irregular union category; this was a concession to local Ethiopian conditions. The categories listed above are to be taken as the situations that proof admitted into court should seek to establish. The Code devotes a special section to the mechanics of the proof itself. Records of birth are mentioned as the primary means of proof “a system for recording such vital information as the facts of birth and parentage has yet been established in Ethiopia although it is provided for in the Code. In default of a record of birth, filiation may be proven by showing “possession of the status of child in accordance with Article 770.

Having the customer practices and previous legislations as a foundation under our belts to give us the legal background, now we can transition into looking at the current laws that deals with ascertainment and filiation issues.

4.4. Ascertainment of Paternity under Revised Family Code of Ethiopia

As an old saying goes, maternity is a matter of fact, but paternity is a matter of opinion. By very nature ascertainment of paternity is not an easy task. Under Article 36 of the 1995 FDRE Constitution, child born out of wedlock shall have the same right and protection as children born of wedlock. Moreover, there is no specific period of limitation to bring paternity ascertainment claim under Ethiopian law. These intertwined issues give rise to a lot of problems.

In this case, when children are born in a relationship that cannot be characterized as either marriage or irregular union, the burden of proof lies on the alleging mother as per the ordinary burden of proof that saying that the one who alleged must prove his allegation. Unfortunately, most of the

mothers are not able to produce witnesses who can testify that the defendant is the father of the child.

However, there are several relationships between man and woman ranging from one-night stand, committed relationship and friends with benefit. The law as it stands now, fails to include such type of relationship. To clearly understand the intent of the law and how it treats ascertainment of paternity, it will need a detailed examination of the law.

In the sections below, the researcher attempts to analyze the laws related to ascertainment of paternity in line with the views of the legal expertise the judges that interpret the law, the lawyers that align the facts of the case with the law and experts that support the justice system.

4.4.1. Ascertainment of Paternity by Legal Presumption

While it is easy to establish maternal filiation by proving the delivery of the child by the mother and the identity of the child, this is not the case for paternal filiation. Paternity cannot normally be established by direct evidence. It can only be inferred from the fact that the alleged father had sexual intercourse with the mother at the time when the child must have been conceived. This can be expressed in the adage that maternity is a matter of fact, whereas paternity is a matter of opinion.

In connection with this problem, one American judge has said that “the fact, indeed, that any child is the child of any man is not capable of direct proof, and can only be the result of presumption” In order to facilitate the proof of paternity, the Ethiopian legislator has provided a presumption by virtue of Article 126 of the Revised Family Code states that a child conceived or born during wedlock is presumed to be the child of the husband of the mother, or as expressed in Latin, *pater est quem nuptiae demonstrante*. Had it not been for this presumption, a child who is burdened in proving that a certain person is his father would have hardly succeeded in so doing. And when this presumption of paternity exists, the burden of proof upon the mother to establish paternity is of no importance, since presumption supplies the proof.

This presumption is justified based on the probability that the father of the children born during wedlock is usually their mother’s husband. This presumption find itself not only in probability, but it is said also that it presupposes that the spouses have executed the two obligations that result

from their union: the obligation of cohabitation; and the obligation of fidelity (for the wife). In other terms it can be illustrated as the presumption of legitimacy (paternity) is based upon the broad principles of natural justice and the supposed virtue of the mother. It is the branch of the general rule of equity and justice which assumes the innocence of the person until there is proof of actual guilt, and whenever it is not inconsistent with the facts proven, the presumption is controlling.

The general presumption of Article 126 of the Revised Family Code discusses about the generality of the presumption provided under thus the presumption that a child conceived or born in wedlock has the husband of the mother as his father. This presumption of paternity applies in whatever manner the maternal filiation of the child is established or proved. For a child to have his paternal filiation established by law, the establishment of his maternal filiation is a necessary requirement. In other words, determination of maternal filiation a *sin qua* for the determination of paternal filiation. The expression under Article 127(1) of the Revised Family Code saying that the provisions of Article 126 shall apply whatever the manner in which the maternal filiation of the child may have been established exhibits that paternal filiation results from maternal filiation and hence, maternal filiation is a prerequisite to the paternal one.

4.4.1.1. Paternal Ascertainment through Marriage or Irregular Union

While ascertainment of mothers is easy since birth is easy to determine, determination of the father creates difficulties in all legal systems. All developed systems cope with these difficulties primarily by attaching a less conclusive presumption of paternity to whoever is the husband of the mother at the time of birth or conception as per the maxim of *pater is est quem nuptiae demonstrant*- which is to mean the father is he who is married to the mother. The modern legislator adheres to this method, which he supports by an almost irrebuttable presumption that a child born more than 180 days after celebration of marriage or less than 300 days after its dissolution is conceived during the marriage. Likewise, the Ethiopian Family law provides rebuttable kinds of presumption on the father. As per Article 168 of the Revised Family Code, the person to whom the law attributes the paternity of a child may disown such child by proving decisively that he could not have had sexual intercourse with the mother during the period between the 300th and 180th day before the birth of the child.

In this regard, it's quite reasonable to discuss the scope of the presumption of paternity in Ethiopia and the force of this presumption.

With regards to the scope of the presumption of the law, does it cover only marriage or also other unions? All often justify the presumptive paternity of the husband by the legal duty of sexual fidelity and co-habitation, which exists only exists in a proper marriage (Munderere, 2020). As per Article 98 of the Revised Family Code, an irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage. Thus, under Ethiopian legal system an irregular union between man and woman, in which no such duty of cohabitation and a valid marriage exists, is put for the purpose of paternity on exactly the same footing as Marriage. (Article 36(4) of the FDRE Constitution cumulative Article 104 of the Revised Family Code). In order to create an irregular union, merely the behavior of the man and woman must be analogous to that of married people. Such type of arrangement, in spite of the absence of a “fidelity” obligation, a probability of conception by the man perhaps is not less than in marriage if not great. Such probability is sanctioned by the legal presumption of paternity.

That is why Article 104 of the Revised Family Code tries to incorporate the provision of ascertainment of paternity during marriage to the case of irregular union. The absolute non-discrimination between marital and extra-marital children in Ethiopia is not limited to the effects of filiation. As shown above, it extends also to the modes of affiliation, which are the same for marriage and irregular union. (Article 36(4) of the FDRE Constitution cum 104 of the Revised Family Code). Moreover, Article 2(1) of Convention on the right of the Children, to which Ethiopia formally accessed to the Convention, states that “ states Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

The second issue that needs to be answered is the force of the presumption. Who may rebut it and how and when may he do it? As to the question who may rebut the presumption of paternity? Only the presumptive father can bring an action for disowning the child.

As per Article 168 of the Revised Family Code, the person to whom the law attributes the paternity of a child may disown such child by proving decisively that who could not have had sexual intercourse with the mother during the period between the 300th and 180th day before the birth of the child. To this effect, the law indicated a rebuttable legal presumption stating that the spouses shall be deemed to have had no sexual intercourse with one another during the time when they actually lived separately following a petition for divorce made by one of them or in consequence of an agreement concluded between them.

Neither the child himself nor faithless mother nor her lover himself may institute such action as they may be tempted to do in order to claim or acknowledge another paternity. The interest in maintaining the peace of a household and preventing litigation prevails here, irrespective of truth, over less meritorious interests.

As to how may the presumptive father rebut the presumption of his paternity, the suggested proposition from the law is again quite restrictive. The presumptive father must prove in some limited ways. First and foremost, by proving that he had no relations with the mother within the legal conception period i.e., between the 300th and the 180th day before birth. The second way is by proving that with court permission based on circumstantial evidence, that his paternity is absolutely and materially impossible. The court may not justify its permission by the mere fact of the mother's adultery or admission.

The third possibility may be proof against the presumption is free only where the maternal affiliation by birth is itself not determined but is being established by an action to claim status. As to the question when the presumptive father may bring an action to disown the child, as stated under Article 176 of the Revised Family Code, an action to disown shall be instituted by the man to whom the paternity of the child is attributed by law within 180 days following the day he knew, or he should have known the birth of the child.

All in all, the scope of the presumption of paternity in Ethiopia is extensive since it includes irregular union as defined under Article 98 of the Revised Family Code and the force of presumption is also quite extensive as the ground of reputable presumptions are limited. Since our law only glorifies and gives acknowledgment to formal and recognized relationship between man and woman, the modern ways of relationships are left from benefitting of the legal presumption.

For example, women that are involved in what is considered to be in a modern and non-obligatory relationship would be left without any legal recognition.

4.4.1.2. Duration of Pregnancy

Since duration of pregnancy cannot exactly be determined, some countries have adopted a law fixing the time for a period of pregnancy while others left the matter to be established by evidence of the parties concerned. The Ethiopian legislature following the system applied by the French has strictly fixed the time within which a child can stay in his mother's womb. And Art. 128(1) of the revised Family Code states that when a child is born more than 180 days after the celebration of the marriage and less than 300 days after its dissolution, it will be considered as having been conceived in wedlock. The *acontrario* reading of this provision, a child born not more than 180 days after the celebration of the marriage, or a child born on or more than 300 days after its dissolution shall be deemed conceived out of wedlock.

Despite the fact that Article 127(1) of the Revised Family Code fixed the duration of pregnancy, Article 126 of the Revised Family Code, as discussed above, "a child conceived or born in wedlock has the husband as the father." Thus, pursuant to Article 126 of the Revised Family Code even though a child is born outside the period of pregnancy provided by law, so long as the child is born in wedlock it seems that there is a presumption of paternity against the husband of the together. But it can be argued that despite Art 126 speaks of a child "conceived or born" in wedlock, this doesn't mean that child born not more than 180 days after the celebration of the marriage - a child born just a day after the celebration of the marriage for example, can avail himself of the presumption of paternity of the husband.

Moreover, if we allow children born before 180 days after the celebration of the marriage to benefit from the presumption of paternity laid down under Art 126 of the Revised Family Code for mere reason that it speaks of children "conceived or born" in wedlock, the whole purpose behind the presumption of paternity will be defeated. Thus, children born at an earlier date than the 180th day after the celebration of the marriage are deemed conceived outside wedlock, And the husband will not be presumed father for children born not more than 180 days after the celebration of the marriage.

4.4.1.3 Absence of the Husband

Article 129 of the Revised Family Code when a child is born after the judgment declaring the absence of the husband, this child will not be presumed the child of the husband. According to this Article, therefore, the presumption of paternity of Article 126 will not operate in favor of children who are born after the declaration of the absence of the husband of their mother even though they are born on or before 300 days after the dissolution of the marriage because of the declaration of absence as provided under Article 154 and the following of the Civil Code.

For a person to be judicially declared absent, two years at least must have elapsed from his disappearance and no news of him must have been heard too. If the husband has disappeared from his home at least for two years, it means he could not have access to his wife, and it is impossible that the child born then is the cause of the union between him and the mother. Even if the child is said to have been conceived before the absence of the husband, the maximum period of pregnancy the law contemplates is 300 hundred days and not more than a period of two years.

Thus, a husband declared absent in accordance with Art. 154 and following of the Civil Code is not presumed by law to be the father of the child born after such declaration. And no need of him to bring an action to disown against such child, since from the outset he doesn't own the paternity of the child.

4.4.2. Paternal Affiliation by Acknowledgement

Acknowledgement is a procedure whereby a man makes a declaration that he considers himself the father of a certain child merely conceived or born. However, the law does not allow for acknowledgement of every child. That is, it is only when a child does not benefit from the presumption, we will discuss this below, that acknowledgement comes to picture. It follows that acknowledgement is meant to serve children born are conceived out of wedlock or irregular union, or those who have been disowned by presumptive father. As stated under Article 131 of the Revised Family Code, “when the father of the child is not determined by applying the provisions of the preceding articles, the paternal filiation of the child may he established by an acknowledgement of paternity.”

Paternal acknowledgement is a juridical act that consists of and results from a man's declaration that he considers himself the father of a certain children. As per Article 132 of the Revised Family Code, an acknowledgement is deemed to be made "when a certain man made a declaration that he considers himself the father of a certain child merely conceived or born." It is an act declaratory of an existing situation between a child and a man. Thus, it's an admission by the man that he is the father of the child. It has already been stated above that children born out of wedlock or out of irregular union shall have a juridical bond only with their mother unless they are acknowledged or adopted by a certain man. This is because the law does not recognize and attach legal effects to fewer stable unions. As a result, no body but children not born from a marriage or an irregular union but born from less stable relations, having a juridical bond only with the mother can be acknowledged. It is also important to take note of the fact that acknowledgement applies to one's own natural child. In this respect, it solemnizes a clandestine affiliation, which existed even before the time and act of acknowledgment. As a result, it departs from artificial filiations of adoption, which creates a filiation new.

Children not born from a marriage or an irregular union, but from less stable relations, have a juridical bond only with their mother and have no father unless a voluntary acknowledgement or an adoption has taken place. An acknowledgement of paternity consists in a man's declaration that he considers himself the father of the child concerned. Only a child who has no legal father can be so acknowledged has an important respect, the effects of such acknowledgement differ from those of an artificial filiation created by adoption. adoption has no effect with regard to the adopter's relatives who have opposed the adoption, while no such limitation has been enacted with respect to acknowledgement which therefore, if validly made, affects even unwilling relatives. Now, I will turn to discuss the following main points regarding acknowledgement of paternity as envisaged under Ethiopian Revised Family Code.

The first and foremost concern would be who may acknowledge or be acknowledged? As a matter of rule only the purported father himself may acknowledge the child. As per Article 134 of the Revised Family Code, even if the father of the child is a minor the declaration shall be made personally.

But if he is dead or unable to manifest his will, a paternal ascendant may acknowledge the child in the father's name as stated under Article 135 of the Revised Family Code. As stated under Article

139 of the Revised Family Code, the acknowledgement of paternity may not be made after the death of the child unless the latter has left descendants. Thus, as a matter of principle only a living child may be acknowledged. A dead child cannot be acknowledged unless he has left descendants.

The second important concern would be what should be the formal requirements for acknowledgement. As per Article 133 of the Revised Family Code, the acknowledgement must be made in writing will or document attested by competent authority which is now the Document Authentication and Registration Office as per the power and mandate given to it as per Article 5 of Proclamation No. 922/2015. In exceptional cases, a power of attorney which is both special and approved by the court, the declaration of acknowledgement must be made personally.

The third critical question in this process is the necessity of acceptance. As per Article 136 of the Revised Family Code acknowledgement of paternity is of no effect unless accepted as well founded by the child's mother or, if she is dead or unable to manifest her will, by one of her parents, or by the children's guardian. If the child is a minor no guardian, he must also assent. The required acceptances may be implicitly i.e., by not explicitly refusing and raising no objection within one month of taking cognizance of the acknowledgement within the meaning of Article 138 of the Revised Family Code. These acceptance requirements show that paternal certainty by acknowledgement presupposes, as do other modes of paternal affiliation, a prior maternal affiliation as established by childbirth. It therefore seems that a foundling can be adopted but not acknowledged. They provide a check on the truth of the acknowledgement and increase the chances that the child's interests will be considered.

The fourth question which is pretty much intertwined with the third question is that in the interest of stability in the legal status of children. No or little protection is given to a regretting opportunity for acknowledgement of a child provide that an acknowledgement of paternity is, as a rule, as stated under Article 140 (1) of the Revised Family Code, is irrevocable except if contained in a testament, since testaments are essentially revocable. As per Article 140 (2) of the Revised Family Code, the acknowledger cannot revoke it unless he was a minor and acts within a year from reaching majority and where the acknowledger's consent is vitiated his acknowledgement can be avoided if it was extorted by violence or duress. As per Article 1696 and subsequent provisions of the Civil Code, it may not be avoided on the ground of error (mistake) or fraud unless the acknowledger also

decisively proves the impossibility of his paternity. Thus, an acknowledger who was defrauded by an unfaithful mistress into believing himself to be the child's father has, as a rule no remedy.

The fifth all-important question is priority of acknowledgement by the father. As per Article 142 of the Revised Family Code, where an acknowledgement of paternity has been made in regard to a child, no other acknowledgement of the child by another man shall be permitted, unless the first acknowledgement has been annulled. Which is to mean where a child was and remains validly acknowledged by a man in accordance with the requirements stated above, any subsequent acknowledgement by another person of his fatherhood has no legal effect.

The six question is ground to challenge paternity. As per Article 141 of the Revised Family Code Acknowledgment can be challenged by the acknowledger on the ground of error or fraud unless it is decisively proved that the child could not have been conceived of the person who made the acknowledgement. The acknowledger alone can challenge acknowledgement provided that their vitiation of consent and decisive impossibility of begetting by him.

Perhaps the last critical question would be judicial nature of the acknowledgement. Is acknowledgment of paternity a juridical act which, in law or is it merely a mode of proof by admission which ascertains retroactively a past relationship? Acknowledgement does not figure among the modes of proving filiation which are mentioned under Chapter Nine of the Code's chapter on filiation. Obviously, it figures among the modes of establishing the legal bond of filiation. The acknowledger need not have intended to produce the legal effects of acknowledgement, while an intention to produce legal effects is a requisite of "juridical" acts. Acknowledgement thus at least partakes of the nature of the mode of proof called admission, so that we may perhaps consider its effects as retroactive.

This suggestion appears to be in line with a common sense of requirement: a man either is not the father or is the father from the very start of conception. There is no possibility other than these two. It is only in the distinct case of artificial affiliation, called adoption, that the juridical act involved has no retroactive effects, as discussed above. Indeed, adoption of another's child and thus, an act creating a new situation is clearly distinction from acknowledgement of one's own child which is an act declaratory of an existing situation. One may pose the following question in connection to this, is inchoate juridical act, called acknowledgement of paternity, unilateral or is

it in the nature of an agreement? The second option seems true in view of the requirement for its “acceptance.” Practical consequence: the acknowledgement may be avoided by the acceptor if her acceptance was vitiated by violence. More obviously, a testamentary (posthumous) acknowledgement is inoperative in the absence of a (tacit or express) acceptance.

As mentioned above, acknowledgment of paternity only lies on a man’s willingness to acknowledge his natural or biological child, which in literal terms is left for the man as a matter of choice. But, in nowhere in our law that gives the right for the woman/ mother to declare what she knows is true who the child’s father is and would hold water in the eyes of the law, other than agreeing to an acknowledgment made by the man. This is the reason why the woman always has to go to court and provide evidence in judicial ascertainment of paternity.

4.4.3. Paternal Ascertainment by Judicial Declaration

Where a child has neither a presumptive father as discussed above nor a self-acknowledged as discussed above, his paternal affiliation may be judicially declared if his mother was raped or abducted at what is considered the time of conception as stated under Article 143(1) of the Revised Family Code.

In like manner to the 1960 Civil Code, establishment of paternity by legal presumption and by acknowledgement are voluntary in nature in the Revised Family Code. When it comes to judicial declaration of paternity, it is an involuntary in nature. In both cases, obviously, judicial declaration of paternity may not be obtained merely because a man committed a culpable conduct of the nature of like rape or abduction and others. Only children who were born from occasional union, i.e., not from marriage or irregular union, may obtain it and hence the father of the child is not ascertained by presumption and acknowledgements.

The first ground provided in the Revised Family Code, for judicial declaration of paternity is the situation in which the mother has been the victim of rape or abduction at the time conception of the child. As the 1960 Civil Code, the Revised Family Code, nowhere defined the above two concepts similarly, here also unavoidable to resort to the penal code searching for their definition.

One controversial point that was raised at the time of the discussion on the preparation of the Revised Family Code is it possible to give judicial declaration before the conviction of the author

of the act criminally? In the case of *Yohannes Abera v, Momina*, the Supreme Court replied in the negative (Civil Appeal Case No. 1589/72). The respondent for the affirmation of paternity of the appellant brought the action in the High Court to her child. The high court affirmed the paternity on the strength of the evidence produced by the respondent, which, it had, established the facts of rape and abduction.

However, the Supreme Court reversed the decision of the high court by stating that since abduction and rape are criminal acts, it is necessary, for the plaintiff first to accuse the respondent and have him convicted by criminal court. From the analysis of the above case, one can understand that there was inconsistency among courts with respect to the issue, since the Supreme Court in this appellate case has the final say. As the Supreme Court is sitting on the top of the hierarchy of the appellate courts, its decisions on controversial cases like this might have a de facto precedent effect and, in most scenarios, lower courts tend to give decisions based on the previous Supreme Court decisions.

When the court requires a rape conviction on the man as precondition to ascertain paternity, it is changing the standard of proof from a fifty plus one, to “beyond a reasonable doubt”, which is the requirement for conviction in criminal cases. However, ascertainment of paternity is a civil case that in any other condition does not require a criminal level of standard of proof. The evidences for rape cases are either medical or the word of the woman, the first is time sensitive and the second is only backed by the first one or someone else that can attest to it. This in most cases results in no convictions. Therefore, if we make criminal conviction a prerequisite for ascertainment the mother/ the woman would end up being the victim, not only of the crime committed to her but also with justice system of both criminal and civil procedures. This restriction and pressure of the mother exercising her rights does not emanate from the letters of the law rather the practice within the justice system.

First and foremost, this rape or abduction action cannot be brought by a raped or abducted mother of a child who already has a valid affiliation. The requirement of “rape” or “abduction” as defined under the Criminal Code, the paternity judgement will ordinarily follow upon a criminal conviction for rape or abduction as it’s purely criminal activity as stated under Article 587 of the Revised Criminal Code. The respective proceeding may be jointed as per the requirement of Civil Procedure Code as per Article 197(2) cum 217.

The third requirement is that “time of conception” may be fixed by analogy to that determined under Article 128 of the Revised Family Code, therefore between the 300th and 180th day preceding birth. The fourth issue is who could bring an action. As a rule, only the raped or abducted mother. As stated under Article 144(1) of the Revised Family Code, in the case where the mother of the child had sexual relationship with another man in the period regarded by law as the period of pregnancy unless it is proved by medical or other reliable evidence that such man is not the father of the child. If she died or is unable to manifest her will, the child’s guardian may bring it. The fifth concern is when may the action be brought? The relevant criminal conviction period of limitation would be applicable for the case. The other subsidiary concern is defense to the action. It’s a conclusive defense for the rapist or abductor to prove decisively that he could not have conceived the child.

In connection to its ambiguity and scope, a licensed lawyer who took part in the KII stated that it has its own drawback and its merits. He argues and state his practical experience as:

In cases where paternity is to be proved through judicial declaration, the conditions enumerated under Article 143 of the Code are not wide enough to cover all the circumstances in which a child may be born out of wedlock. In fact, courts of law are tolerant enough to smoothly entertain even cases of paternity which do not fall within the limits of this article. I know the article is not exhaustive in listing the conditions which is a good thing as it reserves room for courts to handle cases that do not squarely fall within those conditions). However, the code could have at least added some more conditions to avoid unnecessary litigation between parties (as in when a child is born because of an instant sexual relation between a man and a woman who have never met before and after the said child is conceived). (Interview with a licensed lawyer at all Federal Courts, Interviewed on Oct. 6, 2021)

The other problem of this is its practical challenge. It doesn’t take more than a horse sense that the man and the woman concluded sex in private and it’s impossible for the witnesses to prove the existence of sex and judge all often find themselves in a very precarious condition on this issue. (Interview with a Female judge at the federal first instance court Bole Bench, interviewed on Nov. 1st, 2021).

For instance, in one case where a woman and the man who met in a wedding concluded sex in a toilet which result conceive a child. It was difficult to prove this issue by witnesses and the case was finally decided by the DNA test. (Interview with a Female judge at the Federal First Instance Court Bole Bench, interviewed on Nov. 1st, 2021)

On top of this as provided under Article 143 of the Revised Family Code, paternity by judicial declaration could be established by other means. First, at the time of conception of the child, the mother has been the victim of seduction accompanied by abuse of authority, promise of marriage, or any other similar act of intentional deception. There is practical evidence which indicated that a child can be conceived from sexual intercourse accompanied by abuse of authority, promise of marriage, or any other similar act of intentional deception. In the discussion, it was strongly argued by the then drafters of the code that the Revised Family Code has to take this practical evidence in to consideration in its formation. As a result, it has been taken as one ground for judicial declaration of paternity in the Family Code.

Second, in the case where there exist letters or other documents written by the claimed father which unequivocally prove paternity. Here what is expected from the mother is to present a letter or any other document. As suggested in the background of the Revised Family Code this document can be where a father registered as a baby father in the pension form, or any other similar documents can be paternity.

Third, where the claimed father and the mother of the child have lived together in continuous sexual relation, without having a legally recognized relation, in the period regarded by law as the period of pregnancy and perhaps. In this case where the claimed father and the mother of the child have lived together in continuous sexual relations without having marriage or irregular union, in the period regarded by law as period of pregnancy. Though this is considered as one factor to ascertain paternity by judicial declaration, it cannot escape from criticism. One of this is, it is very difficult to prove the existence of continuous sexual relationship between partners. Since sex is usually especially particularly in our culture performed secretly.

How can one prove that the existence of continuous sexual relationship? In addition, the Revised Family Code in nowhere does not provide the means to prove its existence. Does it enough to state the mere existence of continuous sexual intercourse in the period of pregnancy by the mother of

the child or there is a need to prove by calling witnesses? Is question is difficult to answer. Even if it's permitted, having people to witness you is perhaps one of the most painstaking and daunting tasks for a mother. Thus, asking witnesses to appear on the court and testify was also another challenge as they have their own task and life burden to take care of.

The fourth and the final ground or mode of ascertaining paternity in the Revised Family Code for judicial declaration of paternity is where the person claimed to be the father of the child has participated in the maintenance, care and, education of the child in the capacity of a father. The last point considered as a ground in the Revised Family Code for judicial declaration of paternity is in case where the person claimed to be the father of the child has participated in maintenance, care, and education of the child in the capacity of a father. As raised at the time of discussion in the preparation of the Revised Family Cod, it was argued that this could serve as a good indicator to identify the father of the child due to his act to the child. At the same time, this ground also created fear not to enforce persons who help children out of humanity to be taken as their father involuntarily.

No action for judicial declaration of paternity may be brought on other grounds as stated under 145 of the Revised Family Code. This does not exclude actions concerned with proving that paternity has been established by the other modes discussed in this paper. The final concern is the effect judicial affiliation, since judicial affiliation is a sanction of blamable conduct, its effects differ from those of ordinary affiliation in the following respect while the rapist or abductor must support the child, the converse is not true, and the child need not support him. The child owes no maintenance to a “judicially declared” father.

As a matter of practice too, the Family Bench in determining the amount of maintenance the father should contribute by way of alimony, A licensed lawyer involved in the KII said

“usually do not take into account that the woman spends much of her time looking after the children. While they firmly believe that contributing maintenance to the bringing up of the children has to be shared equally between the mother and the father, they however do not consider that the woman is shouldering the burden of taking care of the children unilaterally, all alone by herself”. (Interview with a licensed lawyer at all Federal Courts interviewed on Oct. 11 2021)

In this connection it's worthy of considering, two sideline issues, as they could be raised only in connection and subordinate to the issue discussed above: paternity by assignment of paternity and conflict of paternal filiations. According to a well-known entitlement, rights of status are not in *cominercio*. They are fixed by law and should not be bargained about. This principle however is not clearly established and stated under Ethiopian law. The legal father of a child born less than 300 days after the dissolution of his marriage or irregular union with a woman may assign his paternity to another man. The court would be obliged to order DNA test results as proof of paternity.

Nevertheless, because of the expensiveness of the cost of DNA test, as it currently reached ETB 20,655 virtually none of them could afford to pay the fee. There are only two institutions that offers DNA service in Ethiopia and both of these institutions are private institutions. Consequently, the mothers are forced to stay the proceeding for a long time until they are able to raise the fund or find a third party who could cover the expenses. In the meantime, the child starves, and the old adages hold water here justice delayed, is justice denied. (Interview with Project Officer at the Federal Supreme Court Children Legal Protection Center, interviewed on Oct. 14, 2021)

As per Article 149 of the Revised Family Code, the material and formal requirements for such assignment are as follows the child must be born more than 210 days after the conclusion of the marriage or commencement of irregular union, the husband or the man living with the women may assign his right to third party who must however declare as the father of the child. The same right is provided where the child is born more than 210 days after the dissolution of the marriage or the cessation of the irregular union. Assignment of paternity is irrevocable, and its avoidance is subject to restriction similar to those concerning acknowledgement of paternity and enacted for similar reasons.

In some exceptional circumstance, a mother in childbirth may have simultaneously, a husband and an irregular union with another person even worse a child conceived in a prior marriage or union may be born in a subsequent relationship. In order to solve the ensuing double paternity conflicts, the Revised Family Code, permits the men concerned to decide by agreement who is father. As per Article 150 of the Revised Family Code, the agreement on the assignment of paternity shall be attested by three witnesses and approved by the court, attested by three witnesses and the mother of child should be heard at all times unless it's prevented by force majeure.

Such agreed regulation of the conflict is irrevocable, and its avoidance is as difficult as that of an assignment or an acknowledgement of paternity. As per 153(2) of the Revised Family Code, it is only in the absence of such agreement or when the agreement become void from the very beginning or invalidated for reason in connection to vitiation of consent that the law as a last resort solves the conflict himself by giving preference to the quality of the husband or to the time of birth as criterion for determining paternity.

The practical challenges in witnesses' examination and testimony is that their testimony is not suitable and conclusive for the court and legal processing purpose. Most of them say that they have seen the two persons together at night or the alleged father visit her home frequent and some other shy expression. Because of the conservatives of the society, it is even rare people testimony saying that I have seen him kissing her let alone they have had sex. (Interview with female judge at The Federal First Instance Court Bole Bench, interviewed on Nov. 1st, 2021).

In addition to the challenges presented in the implementation of the law, one of the major oversights that could be identified within the letters of the law is the power imbalance that exist between a man and a woman in society. One of the many reasons that called for the amendment of the family code is the limitation of the rights of women. While the revised family law, now, acknowledges equal rights between a man and a woman, it fails to exercise equity so that the existing disparity could be reduced. This could have been achieved if the law provided for the tools that may create justice instead of merely declaring equal rights. The same applies to the ascertainment of paternity under the judicial declaration of the Family Code: in which the provisions failed to recognize the impossible tasks of proofing the circumstances in the court. The law by itself cannot provide for a real equality, rather it should be supported a national policy and strategy to serve justice that women do not, mostly dealt the short end of the stick.

4.5. Proof of Paternity under the Revised Family Code

There are two ways of proving filiation: continuous and non-continuous modes of proving filiation. As per Article 154 of the Revised Family Code, enquiry-based act of notoriety must be used instead of records of birth for proving birth. But the “officers of civil status or notaries” required by Article 155 of the Revised Family Code, to address such acts of notoriety.

Moreover, in view of the above, the paramount mode of non-contentious proof of filiation in Ethiopia is birth record possession of status. As per Article 154 of the Revised Family Code, a person possesses the status of child if he is “treated by a man or woman, by their relatives and by society” as being his or her child. This covers the requirements of *tractatus* and *fama* of the corresponding continental doctrines on possession of status.

There are no that many issues where a maternal filiation or, perhaps a joint filiation with respect to both parents is shown by possession of status. But can a child of unknown maternal filiation be allowed to prove, by possession of status, his paternal filiation alone? Although the words “treated by a man, or woman” do not literally exclude such disagreement, it seems ruled out by the whole logic of our system. As shown before, the modes of establishment of paternity are merely accessory to establishing maternity. The same applies to proof of such establishment. For instance, an orphan can neither be acknowledged nor have his paternal filiation proved by possession of status.

The second method of proofing paternity is through contentious proof of filiation as stated under Article 164 and subsequent provisions of the Revised Family Code. In some rare instances the child or parent does not possess his status and hence, is not treated as child or parent. Or else the required elements of such treatment by family and relatives and society are so doubtful that they have been contested by interested parties as stated under Article 163 of the Revised Family Code. In such case the burden is on the child or parent to claim and prove the filiation bond- contentiously in a special action to claim status.

Whatever be the procedure might be the proof at this stage will no more be directed to showing a “possession of” paternity status but to showing a right to possess such status. By any means of evidence, the very facts establishing paternity that is the birth plus, for instance the marriage or the acknowledgement must be proved to have specifically occurred. However, another kind of possession of status may play an incidental role where the existence of a marriage or irregular union at birth or conception time is sought to be proved by showing possession of the conforming status as between mother and alleged father.

Claims of parental filiation status by its non-possessors are disturbing for the social order. As can be inferred from the close reading of Article 172 and 173 of the Revised Family Code, the Ethiopian legislator admits them only upon a special court authorization based on circumstantial

evidence resulting from facts which are constant and sufficiently grave. The relevant fact may for instance, consist in a child's patent physical resemblance to the alleged parent on such basis, the claimant may be allowed to bring other evidence and proceed with his action.

As per 161 of the Revised Family Code, a child's action to claim status must, as a matter of rule, be brought in his lifetime without any period of limitation. The child's heirs are barred from bringing it unless the child died before the age of twenty and they act within one year from his death as stated under Article 161(2) of the Revised Family Code. As a general proposition, maternity is thus a legal pre-requisite of paternity with respect to both contentious and non-contentious proof of filiation and hence, as per above discussed paternal affiliation is merely incidental to the maternal one.

Where there is no sufficient evidence brought before the court, the court has no option but to close the case. In family case, however, the court stretch extra-mile to protect the right of the child to protect the best interest of the child enshrined under the FDRE Constitution and various international human right treaties to which Ethiopia is a party. (interview with a female Judge at Federal First Instances Court Bole Bench, interviewed on Nov. 1st, 2021)

However, it's important to pose the following critical question, how can a possessed filiation be disproved? Actions to contest paternity is perhaps very disturbing for the social order as are the above-discussed actions, thus, by non-possession to claim it. Because of this, they are submitted to the same restrictive requirement of a preliminary court authorization based on serious and constant evidence as mentioned and discussed above. The severely circumscribed fathers' action to disown a child by overcoming the presumption that he produced it has been discussed before in connection with the presumption of paternity resulting from marriage or irregular union.

4.5. The Practice of Ascertainment of paternity

4.5.1. The Practice of Ascertainment of paternity from Gender Perspective

As we have discussed in the above sections, paternity may result from legal presumption, acknowledgement and judicial declaration. The presumption holds that the father of a child conceived or born in wedlock and irregular union is the husband and the man engaged is such

union with the mother respectively. All three mothers that participated in this research fell short of their relationship being legally recognized, as it is assessed by the researcher, the longest relationship the mothers have admitted to was two years. For the law to recognize a relationship as irregular union, a man and a woman need to live together for a minimum of uninterrupted three years as husband and wife, and the society needs to recognize as that.

A child is deemed to have been conceived in wed lock or irregular union if he is born more than 180 days after the celebration of marriage or the commencement of irregular union and less than 300 days after dissolution of marriage or termination of irregular union. By this general presumption, the law aims at striking a balance between two interests. That is, the interest, in fact, the constitutional right of the child to know his/her parents, on the one hand, and the interest of the society (state) to assure that children would be born institutional structures capable of raising them; that is, stable families and hence stabilize family relationships on the other. The law also strives for identifying the biological father of the child when it requires a woman to observe a period of widowhood from which she is dispensed on only few grounds. To the extent that rebutting this general presumption of paternity is made difficult or prevented, a legal family relationship that transcends biology may be created; even so, however, the focus of presumption of paternity is primarily on biological tie. If, however, the father of the child cannot be pinpointed by this general presumption, the law allows other grounds by which paternity can be ascertained.

The second means establishing paternity is acknowledgment by the father. The law gives room for a man to acknowledge his fatherhood on his free will. But, this judicial act does not come without conditions. A man can only accept a child where he believes the child was conceived from a relationship with the mother. The law demands for the mother to accept the acknowledgment by the man. The law requires these conditions to be fulfilled, since the child can only be acknowledged by one man.

Mother 1 that participated in this research stated that as a 23-year-old young woman having to experience her first pregnancy giving birth without the support of the father was a painful experience. As the alleged father abandoned her as he was made aware of her pregnancy and he never acknowledged the child as well. While in the other two cases, the fathers have initially acknowledged the child but later rescinded the acknowledgment.

Mother 2 who was 24 at the time of her pregnancy had a relationship with the alleged father, whom she has known from her teenage years, for a period of more than two years. The mother was excited at first to have a child from a man she loved. The alleged father flew to Sweden after being aware of her pregnancy and as his return to the country has been tipped by her friends, she requested for alimony at the Women and Children's affairs office in her sub-city. The alleged father did not contest the child being his and agreed and signed a document to pay 2,000 per month for child support. This could be shown as proof of acknowledgement. However, he later stopped paying the child support which resulted in the mother going to the court.

Mother 3 was living with the alleged father and having a continuous relationship for a period less than two years from the age of 28. The mother was using contraceptive, leading her to not know of her pregnancy until the fourth months and the father had accepted the news of her being pregnant in a good way. However, after the 23rd day of delivering the Child, he abandoned the mother and his child. In a nutshell, acknowledgement always depends on the whim of the father and the ultimate burden of ascertaining paternity will always fall on the mother.

The final means of ascertaining paternity is judicial declaration. Mother 1 had to take her case to court as the father denied their sexual relationship that resulted in the pregnancy. Due to their relationship being a private one, when the time came for her to support her claims of paternity to the court, she lacked sufficient evidence to prove the paternity. In her own words, the mother explains her long court process as follows;

I remember having to go back to court so many times and not having enough money for transport and having to walk to court most of the times. I did not have the help to care for my child and I was forced to take my child to court for all court appointments. When the time came for court to hear my witnesses, the witnesses can only explain to the court that we have been in a relationship and they most often see us spending time together. Even though my child's father did not have witnesses, he just claimed that I have been with another man. Therefore, the court ordered for a DNA test. Since I told the court I did not have the means to pay for the test, they sent me to Child office. While I had to wait for the test the court left me and my child with no financial support and did not take into consideration my situation. But at the end I was right, and he was the father. After it was proved that he was the father, the court decided for him to pay 1,000 Birr monthly

child support. But, he threatened to kill me and himself, if I was to request for more money. I have been in constant state of fear and stress. It makes me sad that my child is growing up without the love and support of his father. (EM age 25, interviewed on Nov. 3rd, 2021)

Mother 2 was forced to take her case to the court as the father stopped the child support that he first agreed to. In between he flew out of the country again and the judge adjourned the case some many times. Ironically, the main issue the court framed was, whether he is the real father of the child in the presence of clear evidence to this fact by the alleged father. She finally got court verdict but after very long process and procedural hustle. Had she had a lawyer represented her, she could have a judgement too earlier. The expertise and the knowledge of the Judges did not help here. By having a lawyer, the mother could have succeeded in redirecting the judge's attention to the evidence that she has and the methods her evidence would have been weighed from the legal standing point. By this practice, the way the justice system implemented the law was wrongful.

I went to court only for him to continue the child support he owed. But, since he is rich he hired a lawyer who came to court claiming he never admitted being the father, rather agreed to pay this money out of the kindness of his heart until the real father is found, because we have been in a relationship before he travelled out of the country. The Judge was accepting all the things the lawyer was saying rather than taking the evidence I submitted as it is and make him pay the child support and guarantee he will keep paying. It felt like the Judge was favoring the lawyer and even decided against me when I requested for the court to order him to not leave the country. Accepting the lawyer's arguments, the Judge gave order for DNA test but because he already left the country, I had to wait for almost a year for him to come and take the test. During this time, I had to raise my child by myself without any support. Even after he came, they were coming up with lots of excuses to avoid the test but in the end the test proved my truth. I am still going back and forth to court because he has refused to pay child support while he is not in the country. Even after four years I am still attending court, but at least now I have the Child justice office supporting me with legal counselling. (EB, Age 28, interviewed on Nov. 8, 2021)

Mother 3 had a relationship with the alleged father in a form of irregular union for a period less than two years. She didn't know about her pregnancy until the fourth months and he had accepted the news of her being pregnancy in a good way. However, after 23rd day of delivering the Child, he left her with no reason.

As I was አረብ ቤት (maternity break) and not working when “my husband” left me, I did not have any income. When I decided to go to court I had to pay 400 Birr for a guy around the court house to write my application for me, which means that took away the little money that I had for me and my child. After serving the summons, we finally got to see the judge. I was hoping the Judge to order him to return back home and raise the child or give me money, so I can take care of my kid. Unfortunately, the Judge said we do not have a marriage in the legal eye and first the court needed to determine if the man was indeed my baby's father. I made sure I brought my neighbors and family to testify that he was “my husband” and the father of my baby. But the court decided against me and requested more proof of his fatherhood and gave an order to Child Office to get the DNA test. After going through all these processes for around nine months for something I have already knew the truth to, the court decided that he was the father, after receiving the DNA results. Even after all these trouble that I have been through, my baby still does not know his father as he refuses to see him. (SF age 32, Interviewed on Nov. 3, 2021)

The code only recognizes two form of relationship between the woman and man which is either proper marriage or irregular union, disregarding any kind of relationship. While in this day and age they are multiple type of relationship that should be given equal value.

The onus of proving the existence of sexual relationship with the man rest on the woman. However, in case the man denies the existence of sexual relationship between the alleged woman and him, it's perhaps very difficult to prove the existence of sexual relationship by way witnesses as sexual relationship is very private by the very nature.

The best interest of the child in turn is enables the child to enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interest of the child shall

be the paramount considerations as provide under Article 2 of Convention on the Right of the Child.

This has a huge impact on women rights. In critiquing this decision of the grand court, a licensed attorney involved in the KII said;

The bench's decision no doubt created an unbearable burden on the mother, as most of the women who make allegation of paternity are completely broke. That would definitely compromise their right of securing alimony. Most women are forced to stay the proceeding due to lack of money to pay for the test, which in effect would affect the basic right of the child to obtain food, education, medical treatments and others. (Interviewed on Oct. 11, 2021)

The delay in the court process is another prominent problem of the women. It's very evident that once the complaint is filed, delays and adjournments often follow because of backlogs, inefficiency, lack of personnel, lack of materials, space limitations, and other inadequate judicial infrastructure and inefficiency (World Bank, 2004, p.42). The long period of time courts of law takes to render a final decision is a major problem woman face in ascertaining paternity. They lose trust in the legal system as more and more appointments are given to render a final judgment. Moreover, even after they secure the judgment, it becomes a difficult task for them to find the alleged father) for the execution of decrees on alimony.

As execution benches are not coercive enough to make the father pay the alimony properly without interruption, the woman is forced to file an application every other month, as the defendant could not discharge his obligation of paying maintenance upon his own initiatives as per the decision of the court. This consumes her time so hugely that she would not even be capable of raising her children properly late alone do some work to generate more income. (Interview with a licensed lawyer at all Federal Courts, Interviewed on Oct. 14, 2021)

The court process is too frustrating for the women too from the delay and the patience of the expertise of the judge who reside over a family bench. A licensed lawyer involved in KII in this regard said that:

Judges are trained only legal aspects. Usually Family dispute arise because of social, economic and psychological matters. Judges are not trained for this. I believe every family dispute need to be refer to social worker or psychologist before of divorce or separation or child custody decision. The current family code gave full right to the judge on determining family matter. Through practice and effort of some organization's courts are referring family dispute to social workers. This doesn't have legal frame or base. Thus, I believe the current family code lacks this basic aspect in protecting family as base of the society that envisaged by the constitution. (Interviewed on Oct. 14, 2021)

All often, the alleged father is represented by attorney whereas the women litigate by and their own and this often is intermediate for the women. Moreover, alimony is not paid backwards, and this mean the women will shoulder all the economic, and emotional burden all alone.

Above the legal limitation, practical limitations are so immense for mothers to face alone. In this very patriarchal society, the alleged father/husband treated the mother either to stop the case or to lower the amount of alimony she claimed.

Oftentimes, these mothers, who go to court to ascertain paternity, don't have the means and the finance to hire lawyer to handle their cases. That by and on itself is a treating and frustrating process and end up raising their child as a single mother.

4.5.2. Ascertainment of Paternity through DNA

As a matter of legal principle, Ethiopian law doesn't permit compulsory medical examination and as such anyone is at liberty not to submit to any medical examination except when provided by law or regulation with a view to safeguarding the interest of the public as provide under Article 20 of the Civil Code. However, when a person refuses to submit himself to a medical examination not involving any serious danger for the human body, the court may consider as established the facts which the examination had the object of ascertaining as indicated under Article 22 of the Civil Code.

In line with this legal provision, it is possible for a person as of right, to refuse to submit to the medical examination. As a consequence of his refusal, however, the court may assume that

judgment should be pronounced against him. The problem here is who among the alleged fathers is to be the father of the child. As an illustration let us assume that the mother of the child had been the victim of rape by more than a man during the probable period of conception and all of them refused to submit to the examination of the consequence of which is the consideration of all the persons as fathers of a child which completely runs against the principle that a child is naturally attributable to one person.

What if the person with whom the mother is alleged to have had sexual relation voluntarily refuses to submit to medical examination when a man claimed to be the father of the child seeks the joining into the proceeding of the former? It is, impossible for such persons to escape from compulsory medical examination like in America even in cases where the mother has misled by alleging that she has used contraceptives and the like (Kraws,1989, p.175). The English law on the same line vests the court with a power to direct the parties for action to medical examination in any civil action concerning the determination of paternity of any child (Holden, 1969 p. 91).

Moreover, in all paternity matters, it was argued, in disputed cases, compulsory medical examination should be pre-trial or pre-settlement routine (Michigan Law Review, 1971, p. 269). To the same effect, Art 5 of the European Convention on the legal status of children born out of wedlock which justified the admissibility and request of any medical evidence in all actions concerning the determination of paternity of child.

In the paternity dispute, no doubt it is the child's interest which is at stake and compulsory medical examination would raise no question of infringement of constitutional protections. The child's best interest should not, this writer submits, be jeopardized by the refusal of any alleged party since we have tried to see that in all actions concerning children, the primary consideration should be the child's best interest and hence the provision in our civil code on medical examination that sanctions for refusal to submit to medical examination with the possibility of a negative decision is an inadequate and as such may not apply to paternity cases. Moreover, as family is a critical aspect of any society, here is also a public interest aspect. If we apply such aural, a person who cannot otherwise be the father of the child, may refuse to submit when he is indeed to have a child for any reason which doesn't go in line with the best interest of the child.

There is nowhere in the revised Family Code, DNA is mentioned as prove of paternity. The judges base to order ascertainment of paternity by way of DNA is emanated from the best interest of the child as incorporated under the constitution and various international treaties. However, as a matter of practice it's widely used. In one decision, the Federal Supreme Court Cassation division held that where DNA is required by the any of the litigant party, the person who ask the DNA test should bear the cost. As provided under Proclamation No. 1234/2021 the decision of the FDRE Federal Supreme Court Cassation bench has a precedential value for lower courts.

This causes a lot of suffering and problems for a mother who has a child on her hand. For instance, mother #3 Involved in the In-dept interview had a relationship with the alleged father in a form of irregular union for a period less than two years. She didn't know about her pregnancy until the fourth months and he had accepted the news of her being pregnant in a good way. However, after 23rd day of delivering the Child, he left her with no reason. Because of her status by the time, she was not able to work and generate money. Moreover, when she files a claim before the court, she had to pay ETB 400 for the legal writer. All often, the defendant doesn't appear in person and the court gives another appointment. After so many appointments, he requested for D.N.A test and she had to ask the Federal Supreme Court Child Justices Project Office to cover the expense and it took her one year. In all this period, the judge was neither willing nor able to give preliminary ruling and order.

The experience stated above, from my experience in the Project Office, seems to be the norm in most instances, as the other mothers that participated in the research also faced similar problems. First, the challenges of getting the DNA test comes from the financial burden which the mothers clearly are not in the position to cover. This creates another hurdle of finding a sponsor to cover the cost of the test, this is where the Federal Supreme Court Child Justice Project Office comes in to the picture. Unfortunately, the Project Office cannot meet the financial demands of the DNA requests of all 10 Federal court benches with a minimum of 4 court orders per week, resulting in delaying the testing process.

If and when the funds for the test become available, testing also depends on the willingness of the alleged fathers. This is often a challenge, since the men do not prioritize the process. This was also mentioned by the interviewed mothers as major difficulties that unnecessarily prolonged the process of judicial decision making.

Despite the fact that there is no mentioning of DNA as a means of ascertainment of paternity, DNA is widely practiced with the view to protect and enforce the best interest of the Child as enshrined under Article 36(2) of the FDRE Constitution. As per Article 9(2) of the FDRE Constitution, all citizens, organs of state, political organizations, other associations as well as their officials have the duty to ensure observance of the Constitution and to obey it. Thus, judges have constitutional obligation to protect the best interest of the child. (Interview with male Judge, at Federal First Instance Judge Yeka Bench, Interviewed on Nov. 5, 2021)

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

5.1. Conclusion

One area of difficulty is ascertainment of paternity. Filiation extends exclusively to the immediate relationship of father and mother with their child as other relationships are identically reproduced within each generation. Thus, the relationship of filiation may take the name of paternity or maternity depending on the side from which it is viewed. While the maternal filiations are typically established by the sole fact of birth (*mater sepe est*) paternal filiation may at times be difficult to establish.

The Revised Family Code provide for detail provisions regulating filiation which shall not be derogated from unless otherwise provided by law. Under both codes, maternal filiation of the child results from the sole fact of birth. On the other hand, paternal filiation may result from legal presumption which is after the maternal filiation of the child is established, acknowledgement and judicial declaration.

The presumption holds that the father of a child conceived or born in wedlock and irregular union is the husband and the man engaged in such union with the mother respectively. And the child is deemed to have been conceived in wedlock or irregular union if he is born more than 180 days after the celebration of marriage or the commencement of irregular union and less than 300 days after dissolution of marriage or termination of irregular union. In doing so, this general presumption, the law aims at striking a balance between two interests. That is, the interest, in fact, the constitutional right of the child to know his/her parents, on the one hand, and the interest of the society (state) to assure that children would be born within institutional structures capable of raising them; that is, stable families and hence stabilize family relationships on the other.

The law, as per Article 128(2) of the Revised Family Code, provided irrebuttable presumption. This prohibitive provision which disallows the admission of any evidence to testify that the child has been born less than 180 days following the celebration of marriage or commencement of irregular union, or more than 300 days following the dissolution or cessation of marriage and

irregular union respectively. Research has shown that children can sometimes be born less than 180 days and more than 300 days for the legal presumption to apply.

The second mechanism of ascertainment of paternity is acknowledgement. Acknowledgement is a procedure whereby a man makes a declaration that he considers himself the father of a certain child merely conceived or born. However, the law does not allow for acknowledgement of every child. That is, it is only when a child does not benefit from the presumption, we discussed earlier that acknowledgement comes to picture. It follows that acknowledgement is meant to serve children born are conceived out of wed- lock or irregular union, or those who have been disowned by presumptive father.

The third way of ascertainment of paternity is judicial declaration. Rape or abduction seduction of the mother accompanied by abuse of authority, promise of marriage or any other similar act of intentional deception could be a ground for judicial declaration of paternity under the Code. The claimed father and the mother of the child have lived together in a continuous sexual relation in the period regarded by law as the period of pregnancy without having a legally recognized relationship and other grounds are listed in exhaustive manner the paternity ascertainment by judicial declaration. The declaration made by a man before an officer of civil status or by a Will he made writing or by a document attested by any competent authority that he is the father of the child indicates that the document must be approved by the Document Authentication and Registration Office.

The Revised Family Code recognizes limited type of relationship between the man and women: irregular union and marriage. once the existence of marriage is ascertained, it produces legal effects between spouses. These effects are broadly speaking two-fold namely, personal and pecuniary. They pertain to duty of cohabitation, fidelity, succor, respect, assistance, management of common property, relation of spouses and third parties, discharge of debts of the spouses and transactions between the latter. Some of the effects of marriage may be regulated by contract of marriage, which the spouses shall conclude before or at the time of marriage; in default of such contract, provisions of the codes will come into an application and regulate effect of marriage. Despite maintain the two forms of relationship between the man and the women is desirable from the perspective of pecuniary aspect, it is neither desirable nor fair to limit the relationship in connection with personal effect especially from the ascertainment of paternity perspective.

At this day and age to consider this instrument as protective device is unthinkable since a lot of changes had taken place in the society and thereby in the traditional way of forming a family. As the Revised Family Code drives the ideas and protection of family from the Civil Code promulgated, i.e., before 60 years the attitude of the society was patriarchal in which men were heads of families and in which only men held all the power. This sentiment also reaffirmed by Christianity since Christianity tends to legitimize male supremacy in many things, while on the other hand it maintains the subordination of women. However, after the lapse of six decades all the above sentiments considered to be unconstitutional and not in line with the current trend and international treaties to which Ethiopia is a party, where the need to revising the law came to effect.

Even though the Revised Family Code made major changes in acknowledging basic right of woman in decision making, economical roles and child raising with in their family, the Revised Family Code failed to give recognition to the power imbalance between man and woman in general. If the Revised Family Code had recognized the power dynamic, it could have influenced the implementation of the law to favor the one with lesser power in the relationship. This kind of practice are common with in legal framework, for example, the Ethiopian Labour law acknowledges that there is a power imbalance in employment relationship where employers holds the upper hand. When it comes to settling issue in court or in Labour boards the power dynamic is understood and guides the decision-making process.

The national laws that deals with family matter upholds equality before the law and the best interest of the child as fundamental principles that guilds the practice. If the Revised Family Code had recognized the power imbalances in a romantic or sexual relationship between man and women, the principle of equity would have been considered as one of the fundamental principles. By the same token the equity principle in turn would offer women the opportunities and facilities, by law and by other means, to enjoy special layer of protection that grants a condition of freedom and dignity.

The practice of ascertainment of paternity put the burden of proving the existence of sexual relationship with the man that is alleged to be the father on the woman. However, in case the man denies the existence of sextual relationship between the alleged woman and him, it's very difficult to prove the existence of sexual relationship by way witnesses or other evidences as sextual relationship is very private by the very nature.

On top that, in some cases courts require a higher standard of proof that differ from the law. However, family matter is civil case where the standard of treatment is based on preponderance of evidence. In this case of preponderance of evidence, the party who present 50+ evidential weight should be enough. However, as a matter of fact the father denies its relationship which is only proven by DNA which in turn constitute beyond reasonable doubt standard of treatment. It is believed that this test is not the most desirable one, for it not only does not carries out the policy of the law, but also provides a standard with the use of which the courts are not familiar in civil proceeding.

All often the mothers are not duly represented by lawyer or advocate, which as a result make the litigation process long and burdensome, in addition to having to raise a child without help. This widens the gaps identified within the revised family law due to lack of the required legal knowledge and understanding.

5.2. Recommendations

Having provide these concluding remarks, the writer of this thesis recommends the following major issues.

In the writer's opinion, the burden of proof should reverse from the women to the male after proofing of essential or basic facts: i.e. the existence of a sexual relationship, the period of pregnancy. As a practice, a man's claim of his woman possibly being unfaithful in the relationship is being taken as a matter to disprove the woman's eligible claims. Where and yet all claims should be supported by evidence to put all parties involved in the litigation in equal footing.

Rather than putting a fixed time on how long the parties should live in such type of relationship so that it amounts to "continues sexual relationship"? within the meaning of this provision. In view of the fact that conception is a matter of seconds or minutes, it appears that the period should not necessarily be counted in terms of months, weeks or days for that matter. Therefore, the requirement of "continuous sexual relationship" should be changed in to any sexual relationship that may result in conception of a child.

The requirement to have a document written and approved by the authorities does not take the majority's way of life in to consideration; given the fact that 51.77% of our population is still illiterate does not even know the very existence of Documents Authentication and Registration Agency, it would be nice and sensible to lower down the standard required. As it is having to gather evidence of this sort, which if it even exists, the man would keep it safe and close by to secure confidentiality. As a result, expecting the alleging mothers to provide such documents is setting them up to fail.

Enhancing the expertise of the judge who reside in family bench should have done inline of gender sensitivity, familiarizing them with relative law, procedurally aspects and better understanding social issues. Family matter is a sensitive issue that goes beyond the texts of the law as it deals with other social foundations and has a dynamic nature as the society continuously evolves.

There should be a serious attempt from the government to make the whole justice system gender friendly to the possible extent. We are not short of examples for this. The case in point is that un

the Federal First instance courts there is child friendly benches that only entertains child related cases like victims, juveniles and custody battels having different court room setup, social workers accompany the process, arranging different rooms for child witness, training the judges and setting up CCTV cameras. Thus, such type of system should be introduced for in case for case of ascertainment of paternity.

The law should widen the scope of recognized relationship between man and women, from that of marriage and irregular union. Having regard to the framework of our law presently, there may exist time when the child's father cannot be attributable to only one father or to none among some persons against whom an action may be brought when the true father of the child is sought.

The law puts a fixed time as a period of pregnancy, which defies science as research has shown that children can sometimes be born less than 180 days and more than 300 days. Though, the fixation of the period was done for the protection of women, it should be progressive with conditions. The period of pregnancy be made in congruity with science and courts be vested with a power to evaluate any evidence relating to period of gestation.

A government central medical laboratory for conducting DNA and other medical examinations must be established so that the true parent of the child would be ascertained. There are only two DNA laboratories centers are currently operating in Ethiopia. As they are private centers, the cost of DNA is too much to bear for the poor parent who even cannot feed themselves and their child.

Women in ascertainment court cases should also get the opportunity to be represented by a lawyer. In Ethiopia, the law governing Federal Courts Advocates' code of conduct has made the rendition of free legal service, pro bono service, mandatory for every advocate admitted to the practice of law at least for 50 hours per year. As this service is given for a person who cannot afford to pay, the government should make a policy in such a way that at least mother who litigate in connection to paternity should be allowed to have pro bono lawyer on *prima facie*.

It doesn't take more than a horse sense that the mere change of law by and its own doesn't bring substantial change. The law is a mean to an end, not an end by itself. Thus, there should be awareness creation for all section of the society, particularly boy, girl, men, and women. This could be done in various mechanisms: providing training, running Radio/ Tv, program, pamphlets, magazine and other means.

Bibliography

1960's Civil Code of Ethiopia;

Andre Doucet, and Natasha S. Mauthner, "Feminist Methodologies and Epistemology," 2006.

P.37 Retrieved from: [https://www.researchgate.net/profile/Andrea-](https://www.researchgate.net/profile/Andrea-Doucet/publication/251770477_FEMINIST_METHODOLOGIES_AND_EPISTEMOLOGY/links/02e7e52a1322748e5e000000/FEMINIST-METHODOLOGIES-AND-EPISTEMOLOGY.pdf)

[Doucet/publication/251770477_FEMINIST_METHODOLOGIES_AND_EPISTEMOLOGY/links/02e7e52a1322748e5e000000/FEMINIST-METHODOLOGIES-AND-EPISTEMOLOGY.pdf](https://www.researchgate.net/profile/Andrea-Doucet/publication/251770477_FEMINIST_METHODOLOGIES_AND_EPISTEMOLOGY/links/02e7e52a1322748e5e000000/FEMINIST-METHODOLOGIES-AND-EPISTEMOLOGY.pdf)

Betty Yorburg, *The Nuclear and the Extended Family: An Area of conceptual confusion* Vol.6 Issue 1, Spring 1975, pp.5-14

C.R. KOTHARI, *RESEARCH METHODOLOGY: METHODS AND TECHNIQUES* (2ND ED, NEW AGE INTERNATIONAL PUBLISHERS, 1990)

Constitution of the Federal Democratic Republic of Ethiopia Proclamation No.1/1995.

D. A Holden, *Child Legislation* (1969)

Donald C. Hubin, "Daddy Dilemmas: Untangling the Puzzles of Paternity," *Cornell Journal of Law and Public Policy* Vol. 13 Issue 1, 2003. Retrieved from: <https://core.ac.uk/download/pdf/73963003.pdf> ;

Ethiopian Revised Family Code (Proclamation No.213/2000);

Federal Supreme Court in a case between *Yohannes Abera vs. Mamina Ferha*, Civil Appeal Case No. 1589/72

George Krzeczunowicz (1980), *The Law of Filiation under the Civil Code*, *Journal of Ethiopian Law*, (p 89- 104). Vol. 11 No. 1

Katharine K. Baker, "Bargaining or Biology- The History and Future of Paternity Law and Parental Status," *Cornell Journal of Law and Public Policy* Vol 14 No.1. Retrieved from: <https://core.ac.uk/download/pdf/73962987.pdf> ;

Kathryn Coe and Craig Palmer, (2008) *The Words of Our Ancestors: Kinship, Tradition and Moral Codes*. *World culture eJournal*,16(1)

Kharel, Amrit (2018), *Doctrinal Legal Research*, SSRN Electronic Journal. 10.2139/ssrn.3130525.

Leslie Joan Harris, "A New Paternity Law for the Twenty-First Century: Of Biology, Social Function, Children's Interests, and Betrayal," *Willamette Law Review*, Vol 44, 2007.

M. Morrell, *Artificial Insemination: Current and Future Trends*

Marcel Planion,(1939) *Treaties on the Civil Law*

Michigan Law Review, The Emerging Constitutional Protection of the Putative Father's Paternity Rights, 70, Mich. L. REV. 1581 (1972) Available at: <https://repository.law.umich.edu/mlr/vol70/iss8/5>

Munderere J. Damascene, The Judicial Management of Cohabitation of Spouse under Legal Separation, Journal of Law and Judicial System, Journal of Law and Judicial System, Vol 3, Issue 1, 2020 p.39-40

NICHOLAS WALLIMAN, RESEARCH METHODS THE BASICS (ROUTLEDGE, 2011).

Paula Roberts, "Truth and Consequences: Disestablishing the Paternity of Non-Marital Children," Retrieved from: <https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/0111.pdf>; and

Sandra Harding, "Introduction: Is there a Feminist Method?" in Feminism and Methodology (ed, Harding, Blommingto: Indiana University Press, 1987).

Steven Ruggles, Prolonged Connections: The Rise of Extended Family in Nineteenth- Century England and America, Journal of Social History, Vol 21, Issue 2, winter 1987. P 397-399

Sumita Chudhri, Social Development and the Family Law

Susan Ayres, "Paternity Un(certainty): How the Law Surrounding Paternity Challenges Negatively Impacts Family Relationships and Women's Sexuality," The Journal of Gender, Race & Justice Vol.20, 2017. Retrieved from: <https://core.ac.uk/download/pdf/217217929.pdf>

World Bank. (2004). Ethiopia: Legal and Judicial Sector Assessment. Washington, DC.

Interviews Participants

Key Informant interview-

Ato Mulugeta Dula Jabe, Attorney at law, Pro-bono lawyer at the Federal Supreme Court Children Legal Protection Center and a former assistant Judge Family Bench at the FFIC, Interview conducted October 11th, 2021

Ato Sena Tilahun, Attorney at Law, Pro-bono lawyer at the Federal Supreme Court Children Legal Protection Center and a former assistant Judge Family Bench at the FFIC, interview conducted on October 6th, 2021

Ato Asegid Tilahun, Attorney at Law, Pro-bono lawyer at the Federal Supreme Court Children Legal Protection Center October 14th, 2021.

W/ro Zaid Hassen, Project Officer at the Federal Supreme Court Children Legal Protection Center, Interview conducted on October 14th, 2021

W/ro Mesert Mesgana, a Federal Judge at the Federal First Instances Court at Bole Bench, Interview conducted on November 1st, 2021

Ato Daniel Hugasa, a Federal Judge at the Federal First Instance Court at Yeka Bench, interview conducted on November 5th, 2021.

In-depth interview

W/rit Etinesh Mekonen, Mother and a client at the Federal Supreme Court Children Legal Protection Center, interview conducted on November 3rd, 2021.

W/rit Semegn Feseha, Mother and a client at the Federal Supreme court Children Legal Protection Center, interview conducted on November 3rd,2021.

W/rit Esegnet Bekiri, Mother and a client at the Federal Supreme court Children Legal Protection Center, interview conducted on November 8th, 2021.

Annex:

KII guiding questions

1. Name
2. Profession and work experiences
3. What are your relevant experiences do you have in ascertainment of paternity cases?
4. How do you see the compatibility of the existing Family Code of Ethiopia in line with international conventions to which Ethiopia is a party in ascertainment of paternity?
5. How do you see the adequacy coverage of the Revised Family Code in the ascertainment of paternity question?
6. How do you see the role of the judges as the protector of the social institution of marriage/family, as a result the mother's right, as an institution worth of protection as envisaged under Article 34(3) and Article 35 of the FDRE Constitution to which Ethiopia is a party?
7. Do you see a problem with paternity that arise out of irregular union and proper marriage as envisaged under the Revised family Code?
8. In cases where the paternity is arising because of sexual relation out of irregular union and proper marriage per se how the mother is going to prove the paternity?
9. What is the evidence gaps you have observed so far?
10. The law doesn't clearly recognize ascertainment of paternity by way of DAN test. What is your take on that and what is the basis for the existing practice of ascertainment of paternity via DAN?
11. The Federal Supreme Court Cassation decision in a matter between Geremew Mumecha vs. Mrs. Asefa Nebebe under file No. 63195 held that whoever ask the ascertainment of paternity by ways of DAN should cover this expense. As the expense of DNA is unaffordable for most of Women in Ethiopia, how do you see this right in terms of the right to secure alimony by the mother of the Child?
12. Please tell us more about paternity ascertainment problems you have experienced that possibility jeopardized women rights.
13. What do you think the possible recommendations and way forward for these problems we have raised?

In-Depth guiding questions

1. What is your name?
2. How old is your child?
3. Is it a boy or a girl?
4. What's your child's name?
5. What the name of the child's father?
6. How did you meet the father of your child?
7. Was your child conceived during marriage, irregular union or other relationships (sexual)?
8. When did you find out you were pregnant?
9. How and When did you tell the father you were pregnant?
10. What was the reaction from the father?
11. What difficulty did you face when you told the father?
12. What 'out of court' means have you used to prove he is a real father of your child?
13. What made you decide to sue the father before court of law?
14. How did you find the court proceedings?
15. What was the main challenge?
16. Were you represented by attorney?
17. If the answer to question 16 is yes, how was his/her approach and attitude towards the case?
18. If the answer to question 15 no, who help/ assisted you on your preparation for the court proceedings?
19. What evidences did you provide the court to prove the man as the father?
20. For how long was your case adjourned before final decision was given?
21. Have you faced difficulty in supporting your child because of the protracted proceeding?
22. What needs to be changed in the court proceeding? Recommendation?