

Addis Ababa
University
(Since 1950)



Effects and Limitations of Rape Law and Policy Reforms in Ethiopia

Mesay Hagos Asfaw

A Dissertation Submitted to the Center for Human Rights, College of Law and Governance Studies, Addis Ababa University, in Fulfilment of the Requirements for the Degree of Philosophy Doctor (PhD) in Human Rights

Supervisors:

Dr. Meron Zeleke Eresso

Dr. Emezat Hailu Mengesha

Center for Human Rights, College of Law and Governance Studies, Addis Ababa University

March 2020

Addis Ababa, Ethiopia

AUTHOR'S DECLARATION

I, the undersigned, hereby declare that this dissertation is my original work and, to the best of my knowledge, contains no material which has been previously submitted as part of the requirements of any other academic degree or non-degree program and that all sources of information used in this dissertation have been duly acknowledged.

Mesay Hagos Asfaw

Date

SUPERVISORS' APPROVAL

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

Name: Dr. Meron Zeleke Eresso

Signature: _____ Date: _____

Name: Dr. Emezat Hailu Mengesha

Signature: _____ Date: _____

HEAD OF THE CENTER OR PHD PROGRAM COORDINATOR

Name: _____

Signature: _____ Date: _____

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	VI
NOTES ON ETHIOPIAN NAMING SYSTEM AND THE ETHIOPIAN CALENDAR.....	VII
LIST OF ACRONYMS AND ABBREVIATIONS	VIII
LIST OF TABLES	IX
LIST OF FIGURES	IX
LIST OF RAPE CASES	X
ABSTRACT.....	XI
CHAPTER ONE: INTRODUCTION.....	1
1.1 Background	1
1.2 Statement of the Problem.....	5
1.3 Research Objectives	8
1.4 Research Questions	9
1.5 Research Methodology.....	10
1.5.1 Research Design.....	10
1.5.2 Data Sources, Time and Sampling.....	10
1.5.3 Instruments and Procedures of Data Collection.....	12
1.5.4 Reliability and Validity of the Data	19
1.5.5 Data Analysis Procedures	20
1.6 Scope and Limitations of the Study	21
1.7 Ethical Considerations	24
1.8 Organisation of the Dissertation.....	25
CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK	26
2.1 Introduction	26
2.2 Conceptual Framework	26
2.2.1 Sexual Violence as a Gendered Problem.....	26
2.2.2 Intersectional Issues: Sexuality, Gender Identity and Gendered Violence	29
2.2.3 The Legal Notion of Rape	35
2.2.4 The Concept of Rape Myths.....	38
2.3 Etiological Theories of Rape	40
2.3.1 Psychological Theories	41
2.3.2 Biological Theories	43
2.3.3 Feminist Theories	44
CHAPTER THREE: SVAW IN ETHIOPIA	50
3.1 Introduction	50
3.2 Magnitude and Nature of the Problem.....	50
3.3 Multifaceted Factors Accounting for the High Prevalence of Sexual Violence	61
3.4 Prior Legal Responses to Sexual Violence in Ethiopia	69
3.4.1 Sexual Offence under the <i>Fetha Nagast</i> of the 15 th Century.....	69
3.4.2 Sexual Offence under the 1930 Penal Code of Ethiopia	76
3.4.3 Sexual Offence under the 1957 Penal Code of Ethiopia	77
3.4.4 Procedural and Evidentiary Laws Applicable to Sexual Offence	80
3.5 Conclusion	82
CHAPTER FOUR: SVAW WITHIN THE HUMAN RIGHTS FRAMEWORK.....	84

4.1 Introduction	84
4.2 The Mainstream Human Rights Standards and VAW	84
4.3 The International Human Rights Framework on SVAW	87
4.3.1 The CEDAW and ‘Soft’ Laws on VAW	87
4.4 SVAW within the African Regional Human Rights Framework	95
4.4.1 The African Charter on Human and Peoples’ Rights	95
4.4.2 The Protocol to the ACHPR on the Rights of Women in Africa	97
4.5 SVAW under the Ethiopian Human Rights Framework	101
4.5.1 Human Rights in Pre-1991 Ethiopia	101
4.5.2 Human Rights Framework under the FDRE Constitution and VAW	104
4.6 Conclusion	111
CHAPTER FIVE: CONTEXTUALIZING THE RAPE LAW AND POLICY REFORMS.....	112
5.1 Introduction	112
5.2 Background to and Strands of Rape Law and Policy Reforms in Ethiopia	112
5.3 The Main Strands of the 2004 Rape Law and Corresponding Policy Reforms	120
5.3.1 The Main Strands of the 2004 Rape Law Reform	120
5.3.2 The Main Strands of the Policy Reforms on VAW	145
5.4 Conclusion	158
CHAPTER SIX: EFFECTS OF THE RAPE LAW AND POLICY REFORMS	159
6.1 Introduction	159
6.2 Effects of the Rape Law and Policy Reforms on Trends of Police Reporting.....	160
6.3 Effects of the Reforms on Attrition, Prosecution and Conviction Rates of Rape Cases	170
6.3.1 Attrition and Prosecution Rates at the Investigation and Prosecution Stages	172
6.3.2 Rates of Attrition and Conviction at the Trial Stage	176
6.3.3 Attrition and Conviction Rates for Rape Cases: Trends and Reasons.....	180
6.4 The Impact of Victim Characteristics on Rape Case-Processing	190
6.4.1 Findings.....	190
6.4.2 Respondent’s Sex on Victim Characteristics Consideration	206
6.5 Conclusion	208
CHAPTER SEVEN: LIMITATIONS OF THE 2004 RAPE LAW REFORMS.....	210
7.1 Introduction	210
7.2 Sexual Offences as Crimes against Morality and Chastity	210
7.3 A Dichotomous Approach on Sexual Acts	215
7.4 Gender-Specificity of Rape	227
7.5 A Biased and Gendered Standard of Consent.....	234
7.5.1 ‘Absence of Consent’ as the ‘Presence of Force or Threat of Violence’	234
7.5.2 ‘Absence of Consent’ as the ‘Presence of Physical Resistance’	236
7.5.3 Forcible Rape and Sexual Assault by Fraud, Coercion or Impersonation	238
7.5.4 The Notion of Consent in other Non-Sexual Offences	244
7.5.5 A Gendered Standard of Consent Premised on Rape Myths.....	245
7.5.6 Towards a New Standard of Consent	249
7.6 The Exemption of Marital Rape	252
7.6.1 Magnitude and Nature of the Problem.....	252
7.6.2 Unjustifiable “Justifications” for the Exemption of Marital Rape.....	258

7.6.3 A Case for Ending the Exemption of Marital Rape	266
7.7 Conclusion	270
CHAPTER EIGHT: LIMITATIONS OF THE RAPE LAW AND POLICY REFORMS ON PROCEDURAL AND EVIDENTIARY MATTERS	271
8.1 Introduction	271
8.2 Limitations of the Rape Law on Procedural Matters	271
8.2.1 Gender-blind Rules of Criminal Procedure Law	271
8.2.2 Initial Reporting and Recording of Rape Cases	273
8.2.3 Setting and Manner of Interviewing Rape Victim	274
8.2.4 The Physical Safety and Privacy Rights of the Victims	280
8.2.5 Timely Remedies, Legal and Financial Assistance to Rape Victims	295
8.3 Limitations of the Rape Law Reforms on Evidentiary Matters	299
8.3.1 The Corroboration Requirement	300
8.3.2 The Eyewitness Requirement	303
8.3.3 The Prompt Reporting Requirement	303
8.3.4 The Victim’s Sexual History	310
8.3.5 Forensic Medical Examination	314
8.4 Conclusion	322
CHAPTER NINE: CONCLUDING REMARKS AND WAY FORWARD	323
9.1 Conclusion	323
9.2 Way Forward	329
BIBLIOGRAPHY	344
APPENDICES	373
Appendix 1: List of Key Informants	373
Appendix 2: Questionnaire	374
Appendix 3: Effects of Victim Characteristics in Rape Cases: Cross Tabulation by Sex	383

ACKNOWLEDGEMENTS

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

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

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

NOTES ON ETHIOPIAN NAMING SYSTEM AND THE ETHIOPIAN CALENDAR

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

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

LIST OF ACRONYMS AND ABBREVIATIONS

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

LIST OF TABLES

Table 1. Frequency distribution of the participants' background variables	14
Table 2. Reforms on penalty schemes for sexual offences	127
Table 3. The sentencing decisions of the Federal First Instance Court Yeka Division.	129
Table 4. The 2008 sentencing decisions of the Federal First Instance Court Lideta Division.....	130
Table 5. Attrition at the investigation and the prosecution stage (2005-2007 E.C.).....	172
Table 6. Rates of attrition and conviction at the trial stage (2005-2007 E.C.).....	176
Table 7. Rates of attrition and conviction at the trial stage (2008 E.C.).....	178
Table 8. Rates of Attrition and conviction at the trial stage (2009 E.C.).....	179
Table 9. Victims' characteristics included in the questionnaire	190

LIST OF FIGURES

Figure 1. Same-sex sexual offences reported in 10 sub-cities of Addis Ababa	134
Figure 2. Partial view of child victims' waiting room and a private room for testimony	154
Figure 3. Trends of rape cases reported in each of ten sub-cities of Addis Ababa City	160
Figure 4. Trends of rape cases reported in the ten sub-cities of Addis Ababa City	161
Figure 5. Frequency and proportion of the consideration of victims' background factors	192
Figure 6. Frequency and proportion of the consideration of victim characteristics category two	194
Figure 7. Frequency and proportion of the consideration of victim characteristics category three	202
Figure 8. Victim characteristics consideration by respondent's sex	206
Figure 9. Partial view of victims' interview room of Bole Sub-City Police Department	275

LIST OF RAPE CASES

Harari Region Public Prosecutor v. Bona Ahimed Amin, File Number 46412, Cassation Division, Federal Supreme Court, 30/2/2003 E.C.

Oromia Justice Office v. Mekuanint Girma, File Number 107166, Cassation Division, Federal Supreme Court, 4/2/2008 E.C.

Public Prosecutor v. Ali Yesuf, Criminal File Number 215694, Federal First Instance Court Lideta Division, 10/2/2008 E.C.

Public Prosecutor v. Fasil Ayitenfisu Belete, Criminal File Number 219561, Lideta Division, Federal First Instance Court, 5/9/2007 E.C.

Public Prosecutor v. Getnet Abebaw Mariyie, Criminal File Number 211474, Lideta Division, Federal First Instance Court, 30/6/2007 E.C.

Public Prosecutor v. Hailemariam Atsibeha, Criminal File Number 193073, Lideta Division, Federal First Instance Court, 1/6/2005 E.C.

Public Prosecutor v. Melaku Nigusie, Criminal File Number 210406, Lideta Division, Federal First Instance Court, 21/2/2007 E.C.

Public Prosecutor v. Mikiyas Asefa, Criminal File Number 210967, Lideta Division, Federal First Instance Court, 9/7/2007 E.C.

Public Prosecutor v. Moges Wendimageng Metaferiya, Criminal File Number 174650, Lideta Division, Federal First Instance Court, 1/5/2004 E.C.

Public Prosecutor v. Natna'el Gonfa Bedhanie, Criminal File Number 225827, Lideta Division, Federal First Instance Court, 22/10/2009 E.C.

Public Prosecutor v. Samu'el Dagnie Tadesse, Prosecutor File Number 003/06, Federal Attorney General Arada Office

Public Prosecutor v. Sintayehu Desalegn Afewerk, Prosecutor File Number 00014/07, Federal Attorney General Arada Office

Public Prosecutor v. Sintayehu Gebriela, Criminal File Number 124398, Lideta Division, Federal First Instance Court, 10/3/2001 E.C.

Public Prosecutor v. Temesgen Abatneh Desalegn, Criminal File Number 81270, Nifas Silk-Lafto Division, Federal First Instance Court, 16/10/2006 E.C.

Public Prosecutor v. Yisihak Chinkilo, Criminal File Number 218827, Lideta Division, Federal First Instance Court, 30/6/2007 E.C.

ABSTRACT

Over the past two decades, rape law reform and various policy measures have been introduced to address the problem of sexual violence against women in Ethiopia. Yet, subsequent to these reforms, important questions remain regarding the extent to which the reforms have produced meaningful results in terms of improving police reporting, prosecution and conviction rates for rape cases and the treatment of rape victims. Using a largely qualitative method of enquiry and instruments such as interviews, trial observation, questionnaire, and crime statistics, this study explores these very important public policy, human rights and gender issues. Its objectives are threefold: i) to identify the main strands of the 2004 rape law and policy reforms; ii) to evaluate the main effects of the reforms; and iii) to assess limitations of the reforms in advancing the cause of rape victims. Accordingly, the study found an increased trend in police reporting for rape cases, following the reforms, though it was not accompanied by improved rates of attrition, prosecution and conviction. It also found that the reforms have not led to a shift of focus from the character, reputation and behavior of the victim to the criminal conduct of the offender, in rape case-processing. The reforms were found to have many important limitations. For instance, the Revised Criminal Code still classifies rape as an affront to collective morality and chastity; makes an unnecessary distinction in the degree of gravity of offences based on sexual acts; fails to degenderize sexual offences; maintains violence and resistance as defining elements of forcible rape and sexual assault; and decriminalizes forcible marital rape. Moreover, the substantive rape law reforms were not accompanied by reforms of procedural and evidentiary laws. For instance, there are no rules of procedure protecting rape victims' physical safety and privacy. Nor are there rules of evidence prohibiting the corroboration, eyewitness and prompt reporting requirements and the routine admission of victims' sexual history and social conducts, during rape case trials. The study concludes that the reforms did not advance the cause of rape victims by eliminating overly restrictive notions about what counts as rape and an intricate web of stereotypical myths surrounding rape law and its enforcement, within the criminal justice system. It proposes further comprehensive reforms, including degenderizing sexual offences; eliminating force and resistance as the defining elements of rape; abolishing the marital rape exemption; and redefining rape as *any nonconsensual sex*. It also proposes that substantive reforms to the rape law should be accompanied by the promulgation of specific rules of procedural and evidence laws for rape cases.

CHAPTER ONE: INTRODUCTION

1.1 Background

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

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

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

³ *Ibid*, p. 1.

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

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

from sexual aggression; are manifestly biased against women; and rest on derogatory assumptions.⁶

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

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

⁶ Jennifer Temkin (1982) 'Towards a Modern Law of Rape', *The Modern Law Review* 45(4), pp. 399-419, p. 399.

⁷ Cassia Spohn and Julie Horney (1993) 'Rape Law Reform and the Effect of Victim Characteristics on Case Processing', *Journal of Quantitative Criminology* 9(4), pp. 383-409, p. 383; and Joan McGregor (2011), *supra note* 4, p. 71.

⁸ Joan McGregor (2011), *ibid*, pp. 71-73.

⁹ Cassia Spohn and Julie Horney (1993), *supra note* 7, p. 71.

¹⁰ Joan McGregor (2011), *supra note* 4, p. 79; Wendy Larcombe (2011), *supra note* 5, p. 30; Leigh Bienen (1980), *supra note* 5, p. 171; Regina Graycar and Jenny Morgan (2005), *supra note* 5, p. 394; Amy L. Chasteen (2001), *supra note* 5, pp. 106-111; and Patricia Searles and Ronald J. Berger (1987), *supra note* 5, p. 25.

¹¹ Julie Horney and Cassia Spohn (1991) 'Rape Law Reform and Instrumental Change in Six Urban Jurisdictions', *Law and Society Review* 25(1), pp. 117-154, p. 118; Leigh Bienen (1980), *ibid*; Ronet Bachman and Raymond Paternoster (1993) 'A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?', *The Journal of Criminal Law and Criminology* 84(3), pp. 554-574, pp. 556-560; Richard Klein (2008) 'An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness', *Akron Law Review* 41(4), pp.

regarding post-traumatic stress disorder (PTSD).¹² The goals of these reforms were both symbolic and instrumental. As most feminists viewed the law as a symbol of male authority, a system of social control and a symbolic index of social attitudes,¹³ they targeted the legal system as a precondition to broader social changes because of its role in legitimizing sexual violence against women (SVAW) and its capacity to influence public perceptions of women's problems.¹⁴ The symbolic and educational goals of the reforms, therefore, include abolishing laws that were thought to embody biased and sexist assumptions and a concomitant change in attitudes and assumptions about rape as reflected and reinforced by the laws.¹⁵

The reforms' primary goals have, however, been the instrumental ones such as encouraging victims of rape to report the incident to the police, facilitating the prosecution of rape cases, and alleviating the ordeals of victims of rape, within the CJS.¹⁶ According to Ronald J. Berger *et al.*, the reforms aimed at "increasing the reporting, prosecution, and conviction of rape cases; improving the treatment of rape victims in the [CJS]; prohibiting a wider range of coercive sexual conduct[s]; and expanding the range of persons protected by the law."¹⁷ The advocates of the reforms also anticipated that the legal reforms, in instrumental terms, would increase not just the likelihood that victims will report incidents to the police but also cooperate with law enforcement

981-1058; and Kathleen Daly and Brigitte Bouhours (2010) 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries', *Crime and Justice* 39(1), pp. 565-650, pp. 577-576.

¹² Laura Hengehold (2000) 'Remapping the Event: Institutional Discourses and the Trauma of Rape', *Signs* 26(1), pp. 189-214, p. 191.

¹³ Vanessa E. Munro and Carl F. Stychin (2007) 'Introduction', in Vanessa E. Munro and Carl F. Stychin (eds) *Sexuality and the Law: Feminist Engagements*, New York: Routledge-Cavendish, pp. xi-xii; and Catharine A. Mackinnon (1983) 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence', *Signs* 8(4): 635-658.

¹⁴ Vicki McNickle Rose (1977) 'Rape as a Social Problem: A By product of the Feminist Movement', *Social Problems* 25(1), pp. 75-89, p. 78; and Vivian Berger (1977) 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom', *Columbia Law Review* 77(1), pp. 1-103.

¹⁵ David P. Bryden and Sonja Lengnick (1997) 'Rape in the Criminal Justice System', *the Journal of Criminal Law and Criminology* 87(4), pp. 1194-1384, p. 1198; Ronald J. Berger *et al.* (1988) 'The Dimensions of Rape Reform Legislation', *Law and Society Review* 22(2): 329-358, p. 329; and Vicki McNickle Rose (1977), *ibid*, pp. 75-76.

¹⁶ David P. Bryden and Sonja Lengnick (1997), *ibid*, pp. 1198-1199; and Searles and Ronald J. Berger (1987), *supra* note 5, p. 25.

¹⁷ Ronald J. Berger *et al.* (1991) 'The Social and Political Context of Rape Law Reform: An Aggregate Analysis', *Social Science Quarterly* 72: pp. 221-238, p. 221.

organs, reduce the intense attacks on the credibility of victims during rape-case proceedings, and increase rates of prosecution and conviction.¹⁸

However, subsequent studies on the effects of the reforms did not offer conclusive evidence that rape law reforms have brought about the desired instrumental outcomes as some researchers report evidence of improved outcomes¹⁹ while others provide little evidence that the reforms have actually positively impacted the CJS.²⁰

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

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

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

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

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

other forms of VAW are concerned. The present study deals with rape law and policy reforms in Ethiopia as important public policy, human rights, and gender issues.

1.2 Statement of the Problem

Numerous studies conducted in various settings and regions in the FDRE clearly show that sexual violence is widespread and common.²² These studies also indicate that the victims of sexual violence are predominantly women and girls and that most of the offenders are men. Since sexual violence is not only an issue that disproportionately affects women and girls but also has gendered causes and effects, it is essentially a gendered problem.²³ Sexual violence has adverse effects on the victims' mental, physical and reproductive health and socio-economic well-being. The threat of sexual violence diminishes the autonomy of women by altering their lifestyles and restricting certain choices – for example, their freedom of movement – in order to minimize the risk of being raped.²⁴ Above all, sexual violence denies women and girls of their fundamental human rights and freedoms.²⁵

Nonetheless, the proportion victims of rape who report the incident to the police and seek justice is extremely low. In those few cases that are reported, most offenders would never be arrested and prosecuted.²⁶ Even where the offenders are prosecuted and convicted, they are often inadequately

²² See *infra* Chapter Three Section “3.2. Magnitude and Nature of the Problem” with accompanying notes.

²³ See generally *infra* Chapter Two Section “2.2.1 Sexual Violence as a Gendered Problem with accompanying notes. See also CARE Ethiopia (2008) *The Status of Gender Based Violence and Related Services in Four Woredas (Woredas surrounding Bahir Dar town, Burayu woreda, Bako woreda and Gulele Sub-city of Addis Ababa)*, CARE Ethiopia, February 2008, p. 8.

²⁴ Brande Stellings (1993) ‘The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship’, *Harvard Civil Rights-Civil Liberties Law Review* 28(1), pp. 185-216, p. 188.

²⁵ UNICEF (2000) ‘Domestic Violence against Women and Girls’, *Innocenti Digest*, No. 6, P. 8, available at: https://www.unicef.org/malaysia/ID_2000_Domestic_Violence_Women_Girls_6e.pdf last visited on 1/27/2019.

²⁶ Mersha Shenkute (2013) *Causes and Socio-Health Effects of Rape on Women at Gandhi Memorial Hospital in Addis Ababa, Ethiopia*, MSW Thesis, Indira Gandhi National Open University, pp. 42-55; Gessesew A. and Mesfin M. (2004) ‘Rape and Related Health Problems in Adigrat Zonal Hospital, Tigray Region, Ethiopia’, *Ethiopian Journal of Health Development* 18(3), pp. 140-144, p. 142; and Seblework Tadesse (2004) *Assessment of Sexual Coercion among Addis Ababa University Female Students*, Mph Thesis, Addis Ababa University, p. 29.

punished while having left the victim with permanent emotional trauma and physical scar.²⁷ During the criminal proceedings, rape victims have often been “treated as criminals themselves.”²⁸ As Sara Tadiwos succinctly put it, “the victim, rather than the rapist, is put on trial, rendering rape still a serious threat to women.”²⁹ In handling rape cases, the key actors within the CJS – the police, prosecutors and judges – employ biased assumptions against rape victims. As Sara further notes, “social attitudes and their articulation in the legal process operate to protect not the victim but the rapist” and that “[a]s things stand now, being raped is what is punished and what at the same time constitutes the crime.”³⁰

However, the post-1991 political transition, with the government’s formal commitment to democracy and a constitution founded on universal human rights, brought unprecedented opportunities to Ethiopian women to engage in rights-based activism to address the problem of sexual and other forms of VAW, using the legal framework.³¹ During the early 2000s, women’s rights activists campaigned for legal reforms by highlighting the apparent discrepancies between the provisions of the 1957 Penal Code and the constitutional and international human rights standards.³² Partly in response to their demands and as part of the overall revision of the 1957 Penal Code of Ethiopia, reforms to the Ethiopian rape law were introduced. The stated impetus for the reforms was mainly the recognition of women’s human rights by the FDRE Constitution and

²⁷ Emebet Kebede (2004) ‘Protection of Women from Violence under the Criminal Law and under the Criminal Law Amendment Proposals’, *Reflections: Documentation of the forum on gender*, number 10, Addis Ababa: Panos Ethiopia, pp. 68-71; and Sara Tadiwos (2001) ‘Rape in Ethiopia’ in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender*, Number 5, Addis Ababa: Panos Ethiopia, pp. 20-22, available at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf>.

²⁸ Indrawatie Biseswar (2011) *The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality 1974-2005*. University of South Africa, South Africa, p. 186, available at: http://uir.unisa.ac.za/bitstream/handle/10500/5538/dissertation_indrawatie_b.pdf?sequence=1 last visited on 10/29/2018.

²⁹ Sara Tadiwos (2001), *supra note 27*, p. 6.

³⁰ *Ibid.*

³¹ Gemma Burgess (2013) ‘A Hidden History: Women’s Activism in Ethiopia’, *Journal of International Women’s Studies* 14(3), pp. 96-107, p. 105.

³² Gemma Burgess (2011) ‘The Uneven Geography of Participation in the Global Scale: Ethiopian Women Activists at the Global Periphery’, *Globalizations* 8(2), pp. 163–177, p. 164.

the international human right instruments adopted by Ethiopia.³³ The RCC came into effect on the 9th of May of 2005. In comparison to its predecessor, the RCC has introduced some improvements on sexual offences and other forms VAW. For instance, the RCC has abolished the immunity of rapists in the event of subsequent conclusion of marriage with their victims,³⁴ and has introduced reforms in the penalty structure of rape, including a mandatory minimum sentence, and penalty gradations with a continuum of acts that specified varying degrees of gravity.³⁵ It also criminalizes other practices that men in patriarchal societies use to deny women of their sexuality such as female genital mutilation (FGM) including *clitoridectomy* and infibulation,³⁶ and to force men's sexuality upon women, such as child marriage and marriage by abduction.³⁷ The RCC also makes specific reference to physical violence in private setting.

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

³³ The Revised Criminal Code, *supra note* 21, Preamble para. 1.

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

³⁵ *Ibid*, Article 620.

³⁶ *Ibid*, Article 565 and Article 566.

³⁷ *Ibid*, Article 648 and Article 567.

coordination mechanism between the various players within the CJS and beyond have also been set up. In addition to the provision of legal literacy services to the general public, capacity building trainings have been given to the key actors within the CJS on a regular basis.

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

1.3 Research Objectives

Assessing the effects and limitations of the rape law and policy reforms in Ethiopia is the general objective of the present study.

The following are the specific objectives of the present study:

- ✓ To find out the main strands of the 2004 rape law reforms and the corresponding policy reforms.

- ✓ To explore impact of the the 2004 rape law reforms and the corresponding policy reforms on rape victims' likelihood to report their cases to the police.
- ✓ To examine the overall trend of the rate of attrition, prosecution and conviction for rape cases in the post-reform years.
- ✓ To find out the influence of victims' characteristics on rape case-processing within the CJS in the post-reform years.
- ✓ To identify the main limitations of the 2004 rape law and policy reforms in affording adequate protection to rape victims by eliminating overly restrictive notions about what counts as rape, and an intricate web of stereotypical myths surrounding rape law and its application within the CJS.

1.4 Research Questions

The present study seeks to answer the following research questions:

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

1.5 Research Methodology

1.5.1 Research Design

This study is designed within an interpretivist-constructionist perspective. Taking account of the nature of the research questions and challenges to obtain data, it employs a qualitative approach. Such an approach allows for a closer examination of the strands, effects and limitations of the rape law and policy reforms and helps to contextualize the specific issues under consideration. Data were gathered from primary, secondary and tertiary sources. The primary source comprises data obtained directly from research participants, trial observations as well as from various legal documents, including the FDRE Constitution, the international human rights instruments adopted by Ethiopia, the Revised Criminal Code, the Criminal Procedure Code, the 1957 Penal Code, and other relevant laws published in the Federal *Negarit* Gazette as well as court cases. The secondary and tertiary sources include articles published in scholarly journals, reports, theses, conference papers, books, treatises, commentaries, abstracts, bibliographies, dictionaries, encyclopedias, and reviews. Interviews, trial observations, questionnaires, and records of crime statistics were used to gather the required data.

1.5.2 Data Sources, Time and Sampling

This study seeks to identify the main strands of the 2004 rape law and policy reforms in Ethiopia, and to assess the effects and limitations of the reforms in one urban jurisdiction, Addis Ababa City Administration. This urban jurisdiction was selected on the presumption that a more systematic record of data can be obtained, compared to other cities or jurisdictions in rural settings. Out of the 10 sub-cities of the Addis Ababa City Administration, five sub-cities with the highest number of reported rape cases since the post-reform years were selected to participate in the study. The five sub-cities were Bole, Kolfe-Keraniyo, Yeka, Nifas Silk-Lafto and Arada. At the trial level, Lideta Sub-City was also included in the sample because, prior to the expansion of women's and children's benches to the Federal First Instance Court's divisions in the sample sub-cities, all rape cases were tried at Lideta Division, 7th (Women's and Children's) Bench. In addition, rape cases

in one of the sample sub-cities, Arada, was tried at Lideta Division, along with rape cases from two sub-cities – Lideta and Addis Ketema.

Generally, the respondents were selected using purposive sampling, targeting the most experienced actors and important players within the CJS who have had a direct involvement in the handling of rape cases. The reason for using purposive sampling was to maximize the depth and breadth of data required for the study. Accordingly, police officers, prosecutors, defense lawyers, attorneys, and judges who had actually participated in handling and making decisions on rape cases in their respective capacities, were carefully identified and selected to participate as respondents. Accordingly, data were collected using interviews, questionnaires, observations of rape case trials, reviews of various (governmental and non-governmental) documents and/or reports. While much of the data gathering work was mainly undertaken between 25th October 2017 and 17th March 2018, supplementary data were collected between 15th - 26th March, with the objective of further enriching and thereby triangulating the data already gathered. To this end, additional interviews were conducted with five victims of rape, two representatives of advocacy groups and two social workers.

The study aims to assess police reporting, attrition, prosecution and conviction rates on a year-by-year basis, using crime data obtained from relevant institutions within the CJS. Data on police reporting were obtained from the Addis Ababa Police Commission. Accordingly, a total of six years of data records on police reporting in the post-reform period, from 1997-1999 E.C., and from 2005-2007 E.C. were accessed and analyzed. On the other hand, data on attrition, prosecution and conviction rates for VAW in general were collected from the Office of the Federal Attorney General, where five years of data records, from 2005-2009 E.C., were accessed and analyzed. In analyzing these data, the year 1997 E.C. was taken as a point of reference marking ‘post-reform years,’ for two reasons. First, 1997 E.C. was the year when the RCC came into effect. Second, the various policy reforms were not introduced at one particular time.

Data on police reporting, attrition, prosecution and conviction rates were collected from all 10 sub-cities in Addis Ababa City Administration.

1.5.3 Instruments and Procedures of Data Collection

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

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

Of the two police officers interviewed, one had been serving as the head of the unit in charge of investigating VAWC cases, at the Sub-City Police Department, while the remaining one had been an investigator in the same unit.

The interviews, which were semi-structured, lasted between one and two hours each and were conducted at the interviewees' work place, during working hours.

In addition, interviews were conducted with two key informants from women's human rights advocacy groups. One of the interviewees had been working as the Executive Director of the Network of Ethiopian Women's Associations (NEWA) while the other was working as a representative of the Ethiopian Women Lawyers' Association (EWLA), at the time of the study. Both interviews were conducted between 15–18 March, 2019 at the head office of the interviewees' respective organization, and lasted about an hour each. Permission was obtained to tape-record their interviews.

Similarly, an interview was conducted with two social workers at the Federal First Instance Court, Lideta Division's Social Work Department. This unstructured interview was conducted with both interviewees together i.e. at one time and place. The interview focused on the conduct of rape trials in which the interviewees involved as social workers.

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

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

Questionnaire: In examining whether the reforms have led to a shift of focus away from the character, reputation and behavior of the victim to the criminal conduct of the offender in rape-case proceedings, the present study considers the effects of factors which were identified in various studies as factors responsible for leading the key actors within the CJS to blame the victim or question her credibility or to determine the outcomes of rape-case processing within the CJS, in

one urban jurisdiction, namely, Addis Ababa City Administration. To this end, a structured questionnaire comprising 29 items was developed and distributed to collect data from the concerned bodies. Accordingly, police officers, prosecutors, defense lawyers, attorneys, and judges, who had actually participated in handling and making decisions on rape cases in their respective capacities, were carefully identified as respondents. The table below depicts a summary of the important background details of the participants.

Table 1. Frequency distribution of the participants' background variables

Background Variable	Category	Frequency	Percentage
Name of the Justice Organ	Addis Ababa Police Commission	8	17
	Federal Attorney General	21	44.7
	Federal Court	11	23.4
	Attorney	7	14.9
Division/Bench/Branch	Arada	7	14.9
	Bole	8	17
	Kolfe-Keranyo	7	14.9
	Nifas Silk-Lafto	11	23.4
	Yeka	7	14.9
	Attorney at Federal Courts	7	14.9
Occupation	Police Officer	8	17
	Prosecutor	21	44.7
	Judge	7	14.9
	Defense Lawyer (State-funded)	4	8.5
	Attorney (Licensed Lawyer)	7	14.9
Sex	Male	21	44.7
	Female	26	55.3
Age	<= 29	16	34
	30 – 34	21	44.7
	35+	10	21.3
Marital Status	Never Married	18	38.3
	Married	29	61.7
Level of Education	Certificate	3	6.4
	Diploma	7	14.9
	First Degree	33	70.2
	Second Degree or Above	4	8.5
Experience (in years)	<= 5	17	36.2
	6 – 8	16	34
	9+	14	29.8

As indicated in Table 1 above, a total of 47 participants, of whom 55.3% were males and 44.7% were females, took part in this study. Regarding their age, 44.7% of the participants were between the ages of 30-34, 34% were under 30 years old whereas the remaining 21.3% were above the age of 34 years old. As to the justice organs where the participants were drawn from, 44.7% of the participants were working at the Federal Attorney General, 23.4% were working at the federal courts, 17% were working at the Addis Ababa Police Commission, and the remaining 14.9% were working as attorneys (licensed lawyers at federal courts), at the time the study was conducted.

Regarding the divisions or branch offices where they worked, the majority of the participants (23.4%) were working at the Nifas Silk-Lafto Sub-City. Equal proportions of 14.9% were working at the Arada and Yeka Sub-Cities, or as attorneys (private practitioners) at federal courts. The remaining 17% of the participants were working at the Bole Sub-City division of the Federal First Instance Court or branch office of the Federal Attorney General. With regard to their occupation, 44.7% of the participants were working as prosecutors, 17% as police officers, and an equal proportion of 14.9% as judges and attorneys while the remaining 8.5% were working as defense lawyers under the Federal Supreme Court. Regarding their marital status, the majority of the participants (61.7%) were married and the remaining 38.3% were never married. Concerning their level of education, 6.4 % of the participants had a certificate and 14.9 % had a diploma while 70.2% and 8.5% of the participants had the qualification of a bachelor's degree and a master's degree, respectively. As for their work experience, 36.2% of the participants had an experience of five years and less, 34% had six to 10 years whereas the remaining 29.8% had nine years and above work experience.

Originally, the questionnaire had been prepared in English and, with technical assistance from language experts, it was later translated into Amharic, for ease of understanding by the respondents. Amharic was chosen because it is the official language of the selected urban jurisdiction. All of the 47 questionnaires distributed to the participants were properly filled and returned. Once the completed questionnaires have been collected, they were translated back into English for the purpose of analysis.

Crime Statistics from the Law Enforcement Agencies: Statistics on police reporting, prosecution and conviction rates for rape cases are considered crucial indicators for measuring the impacts of the legal and policy reforms. Figures on police reporting, prosecution and conviction have been considered both as a baseline data and as key indicators on the state's response to sexual violence and other forms of VAW.³⁸ For instance, an increasing police-reporting trend indicates a decrease in tolerance to SVAW and an increase in victims' confidence in the CJS.³⁹

Likewise, prosecution and conviction rates show the impact of the reforms. According to Yakin Ertürk, the UN Special Rapporteur on VAW, "the proportion of cases that are prosecuted and which result in convictions act as a measure of whether the impediments in how cases are processed and discriminatory procedural rules have been removed."⁴⁰ Prosecution rates not only mirror an increased trend in police reporting, but also grow independently, if the legal and policy reforms have brought about the desired instrumental impacts.⁴¹ On the other hand, conviction rates should, at least, remain constant and increase only if the reforms have been effective.⁴² They should not be lower than the rates for other offences since, in many cases of VAW, the identity of the offender is known.⁴³

Particularly, attrition rate is considered as the basic process and outcome indicator through examining the so-called "justice gap"⁴⁴ – the difference between the number of persons brought before the CJS and the number of persons who were convicted.⁴⁵ According to Yakin Ertürk,

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

³⁹ *Ibid.*

⁴⁰ *Ibid.*, para. 290.

⁴¹ *Ibid.*, para. 330.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Sylvia Walby, Jo Armstrong and Sofia Strid (2011) 'Developing Measures of Multiple Forms of Sexual Violence and Their Contested Treatment in the Criminal Justice System', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Chapter 4, Abingdon: Routledge, p. 108.

⁴⁵ Jennifer M. Brown and Sandra (2011) 'Glossary of Terms', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Abingdon: Routledge, p. 502.

“[t]racking attrition across all forms of VAW offers one of the most powerful and revealing indicators of state responses, assessing the effectiveness of laws, actions of state officials in fulfilling rights and the good will of governments in implementation.”⁴⁶ The Rapporteur added that “[u]sing attrition as an outcome indicator offers not only a common measure across the range of forms of VAW, but also one that comprises three key dimensions – reporting, prosecution and convictions. It is also one of the few measures which [can be] used [to systematically] track trends over time.”⁴⁷

Generally, the present study uses police reporting, attrition, prosecution and conviction rates as indicators of the outcomes of the reforms. As Yakin Ertürk pointed out, “the reporting rate shows whether efforts to ensure remedies are enjoyed are being effective in increasing [reporting]; the proportion of cases that are prosecuted and which result in convictions act as a measure of whether the impediments in how cases are processed and discriminatory procedural rules have been removed.”⁴⁸ Accordingly, the present study uses the trend in attrition rates for sexual offences over time as key for evaluating the instrumental impacts of the reforms. Here, attrition rate is defined as the proportion of cases that ‘fall out’ over the course of the criminal proceedings.⁴⁹ It is the percentage of cases, which are discontinued, and thus fail to reach trial and/or result in a conviction.⁵⁰ A decline in attrition rates implies improvement, as it suggests that a smaller

⁴⁶ The United Nations Human Rights Council (2008), *supra note 38*, para. 311.

⁴⁷ *Ibid*, para. 330.

⁴⁸ *Ibid*, para. 290.

⁴⁹ Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note 44*, p. 100; the United Nations Human Rights Council (2008), *supra note 38*, *ibid*, para. 290; and Jennifer M. Brown and Sandra (2011), *supra note 45*, p. 501.

⁵⁰ Jo Lovett and Liz Kelly (2009) *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe*, Final Research Report, Child and Women Abuse Studies Unit London Metropolitan University, p. 17, available at: <http://kunskapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/197/different> last visited on 9/12/2018; and Amnesty International (2010) *Case Closed: Rape and Human Rights in the Nordic Countries*, Summary Report, London, United Kingdom: Amnesty International Publications, p. 5.

proportion of cases are dropping out,⁵¹ and the vice versa.⁵² That is, if there is an increase in attrition rate, less victims have access to justice, implying ineffectiveness of the CJS.⁵³

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

Conviction rate is a measure of the extent to which the offenders are held to account by the CJS, through convictions.⁵⁸ It refers to the proportion of crimes committed that result in a conviction. An increased rate of conviction implies improvement while a lower rate implies deterioration. Depending on the starting and end points of its measurement, conviction rate can be defined differently. There are at least three possible starting points for measuring conviction rates: (1) the number of crimes that are recorded by the police, (2) the number of crimes reported in the national crime victimization surveys, and (3) the number of crimes prosecuted. The most comprehensive

⁵¹ Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note 44*, p. 100.

⁵² Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *ibid*; and The United Nations Human Rights Council (2008), *supra note 38*, para. 290

⁵³ Jo Lovett and Liz Kelly (2009), *supra note 50*, p. 17.

⁵⁴ *See generally, ibid*, pp. 19-22.

⁵⁵ Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note 44*, p. 107.

⁵⁶ *Ibid*.

⁵⁷ Jörg-Martin Jehle (2012) 'Attrition and Conviction Rates of Sexual Offences in Europe: Definitions and Criminal Justice Responses', *European Journal of Criminology* 18(1), pp.145–161, p. 146.

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

approach for calculating conviction rates would be to use the earliest possible point at which the numbers of crimes are measured – the national crime victimization survey. A narrower approach is to measure it from the point of prosecution. In measuring conviction rates, the present study adopts the latter approach. It measures the conviction rate using the number of rape cases that are prosecuted and tried, against those cases that are convicted.

Desk Review: In the process of identifying the main strands and limitations of the rape law and policy reforms, the present study relied on a review of domestic legislations as well as regional and international human rights instruments, including cases, reports, comments and recommendations by regional and international human rights bodies. Besides, 13 rape-case files from the Federal First Instance Court and two rape-case files from the Federal Attorney General's Public Prosecutor Office, both of which were selected randomly, were used for this study. The files, whose rulings had been made by first instance courts and in the post-reform years, were selected from the courts and the prosecutor's offices having jurisdiction in Addis Ababa City Administration. Efforts have also been made to include cases from each post-reform year, with a view to examining the effects of the reforms over time. Moreover, the study used crime statistics from the Federal First Instance Court's digital database system, primarily to examine the courts' sentencing practices on rape cases, following the reforms, and to calculate the average time taken for disposing rape cases, within the CJS. In addition, the study has extensively used secondary and tertiary data, including articles published in scholarly journals, reports, theses, conference papers, books, treatises and commentaries.

1.5.4 Reliability and Validity of the Data

Reliability: All the data collection and coding works were carried out by the researcher himself, except for assistant data collectors hired to help in conducting interviews with rape victims. The assistants were well experienced in participating on similar studies and, before conducting the interviews, they were thoroughly familiarized with the subject of this particular study. This has helped maintain consistency in the data collection procedures and thereby ensure the reliability of the research. To ensure that sufficient, relevant and representative data are obtained for the study,

data from a broad variety of sources directly or indirectly related to the subject under investigation, including rape victims, judges, prosecutors, the police etc., were collected. Moreover, by triangulating the data using a variety of instruments such as interviews, questionnaires, trial observations and review of various documentary materials, attempt has been made to maximize the quality and reliability of the data.

Validity: Throughout the various stages of the study, due care has been taken to ensure the validity of the instruments by constantly checking them against the research questions and objectives. A variety of steps was taken in this regard. First, the instruments were carefully designed with the guidance and assistance of two research advisors. Besides, the preparation of the items, particularly the questionnaire items, was done with additional technical support from language experts. Two language experts were hired for this task as well as the translation of questionnaire items and data from English into Amharic and vice versa.

To ensure the consistency and validity of the items, the questionnaire was first piloted with a few randomly selected participants. Hence, 10 questionnaires were distributed. Based on the feedback results obtained from the pilot test, appropriate revisions were made to the questionnaire. Taking note of most participants' reluctance to fill in open-ended items, the questionnaire was revised to include an option for respondents to skip the open-ended items if they so wished. Instead, the open-ended items were addressed through interviews with key informants and rape victims. Subsequently, the required number of copies, with enough provisions for possible incomplete and/or missing responses, were duplicated and distributed to the participants.

1.5.5 Data Analysis Procedures

Regarding the data analysis techniques, qualitative data were organized in line with the objectives of the research, and transcribed, coded and analyzed using qualitative data analysis procedures. Specifically, data were systematically organized into related themes and categories, in accordance with the main objectives of the study, based on which analyses and interpretations were made. On the other hand, simple descriptive statistics were used in analyzing the trends of police reporting,

attrition, prosecution, and conviction rates of rape cases. Similar descriptive statistics were used in analyzing data collected through questionnaires, and Chi-square tests were carried out to determine statistical significance, using SPSS. All along, efforts were made to triangulate data from various sources. Finally, a comprehensive interpretation of data from all sources was done, corresponding inferences made, and conclusions were drawn.

1.6 Scope and Limitations of the Study

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

As a first attempt to assess the effects and limitations of rape law and policy reforms in Ethiopia, the study has certain limitations. First, it assesses the effects of the 2004 rape law and the corresponding policy reforms in just one urban jurisdiction, Addis Ababa, and as such, the findings of the present study may not necessarily be representative of the reality of the whole country. Getting a comprehensive understanding of the effects of the legal and policy reforms at national level necessarily requires conducting a nation-wide accounting of the post-reform trends in terms of police reporting, attrition, prosecution and conviction rates for rape cases. Likewise, the present study's proposed policy reforms are influenced by the data collected from a predominantly urban and better resourced jurisdiction – Addis Ababa City Administration. Due to this, the adoption and successful implementation of the proposed policy reforms in the other regions of the country might be largely dependent on the availability of resources at their disposal. Despite these limitations, however, the study provides valuable insights into the contemporary picture of the country's CJS as far as the trends in reporting, attrition, prosecution and conviction for rape cases as well as factors affecting rape case-processing within the CJS in the post-reform years are concerned.

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

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

⁵⁹ Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 100.

⁶⁰ The United Nations Human Rights Council (2008), *supra note* 38, para. 290.

crimes under the criminal law.⁶¹ Where there is no named crime, for instance, as domestic violence or sexual violence, methods that are more complex should be devised for capturing data,⁶² as the present study attempts to do.

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

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

⁶¹ *Ibid*, para. 330.

⁶² *Ibid*.

1.7 Ethical Considerations

By way of obtaining the informed consent of the participants, before starting the interviews, the purpose of the study was clearly explained to and consent was obtained from each participant. To ensure anonymity, all statements of the interviewees were analyzed and presented in this report using codes and the full list of their names is included in the ‘Appendices’ section. Accordingly, the names of the judge interviewees have been coded as J1, J2, J3 etc. while the names of prosecutors have been as PP1, PP2, PP3 etc. Police officers have been identified using the codes PO1, PO2 etc. Likewise, the names of interviewees from human rights advocacy groups have been coded as A1, A2 etc. and that of social workers as S1, S2 etc. The codes V1, V2, V3 etc. have been used to identify the name of victim interviewees.

In addition to ensuring strict confidentiality and the privacy participants who were victims of rape, the World Health Organization’s (WHO) ethical recommendations regarding research on VAW has been strictly observed.⁶³ Accordingly, the interviews were arranged in a way that ensures the physical safety of the participants and reduces any possible distress. Furthermore, the interviews were undertaken with due consideration to the observance of the participants’ rights and dignities. During the interviews, efforts had been made to ensure all interviewees received basic support services, including counseling service.

The participants who filled in the questionnaires were also informed that they had the freedom to skip items or even totally decline filling in the questionnaire, if they wished. They were also fully informed that their response would be kept confidential and analyzed on an aggregate sample level.

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

1.8 Organisation of the Dissertation

This dissertation is organized into nine chapters including this introductory chapter, Chapter One. Chapter Two deals with conceptual and theoretical issues. Chapter Three presents preliminary information on the prevalence, magnitude and nature of sexual violence in Ethiopia. Chapter Four is devoted to issues revolving around human rights and VAW. Chapter Five contextualizes the 2004 rape law reforms and the corresponding policy reforms. Chapter Six evaluates the effects of the rape law and policy reforms. Chapter Seven identifies and critically examines the main limitations of the reforms in terms of substantive law. Chapter Eight assesses the shortcomings of the reforms with regard to the rules and practices of procedural and evidentiary laws applicable to rape cases. Finally, Chapter Nine summarizes the major findings of the study and their implications, and puts forth recommendations for further comprehensive reforms.

CHAPTER TWO: CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Introduction

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

2.2 Conceptual Framework

2.2.1 Sexual Violence as a Gendered Problem

The terms VAW and gender-based violence (GBV) are often used interchangeably.⁶⁴ Even if the term GBV appears to refer to offences perpetrated against both men and women, it often refers to violence committed by men against women.⁶⁵ Nowadays, VAW is generally understood within a gender framework since it largely stems from women's subordinate status in society – relative to that of men's – and has gendered causes and impacts.⁶⁶ According to the UN Declaration on the Elimination of Violence against Women (DEVAW), VAW is a “manifestation of historically unequal power relations between men and women, which have led to domination over and

⁶⁴ See e.g., Mary Ellsberg and Lori Heise (2005) *Researching Violence Against Women: A Practical Guide for Researchers and Activists*, Washington DC, United States: World Health Organization, PATH, p. 11.

⁶⁵ Hilaire Barnett (1998) *Introduction to Feminist Jurisprudence*, London: Cavendish Publishing Limited, p. 264.

⁶⁶ Mary Ellsberg and Lori Heise (2005), *supra note 64*, p. 11; and Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19*, para. 9. [Here-in-after “General Recommendation No. 35”].

discrimination against women by men” and it “is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”⁶⁷ In reiterating this, the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Committee states that VAW is “rooted in gender-related factors such as the ideology of men’s entitlement and privilege over women, social norms regarding masculinity, the need to assert male control or power, enforce gender roles, or prevent, discourage or punish what is considered to be unacceptable female behavior.”⁶⁸ Generally, VAW is viewed “as a social – rather than an individual – problem, requiring comprehensive responses, beyond specific events, individual perpetrators and victims/survivors.”⁶⁹

The present study also approaches the issue of sexual violence as a form of VAW and as a gendered problem.

The study also embraces the definition of VAW as offered by the DEVAW: “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”⁷⁰

Depending on the setting where it is committed, VAW can be categorized into three as violence committed in the family, violence committed in the community, and violence committed or condoned by the state. VAW in the family includes battering by intimate-partners, sexual abuse of female children in the household, dowry-related violence, marital rape and Female Genital Mutilation (FGM) and other harmful practices against women and girls.⁷¹ It also covers abuse of domestic workers such as involuntary confinement, physical brutality, slavery-like conditions and

⁶⁷ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, at 217, U.N. Doc. A/48/49 (Dec. 20, 1993). (Here-in-after the “DEVAW”), preamble para. 6.

⁶⁸ General Recommendation No. 35, *supra note* 66, para. 19.

⁶⁹ *Ibid*, para. 9.

⁷⁰ The DEVAW, *supra note* 67, Article 1.

⁷¹ Amnesty International (2004) *It's in Our Hands: Stop Violence against Women*, London: Amnesty International, p. 2, available at: http://www.oneinthree.com.au/storage/pdfs/Amnesty_SVAW_report.pdf last visited on 1/26/2019.

sexual assault.⁷² VAW in the community includes rape, sexual abuse, sexual harassment and sexual assault in the workplace, in educational institutions and elsewhere.⁷³ Trafficking, forced prostitution and forced labor fall into this category, which also covers rape and other abuses by armed groups.⁷⁴ VAW committed or condoned by the state includes acts of violence committed or condoned by police, prison guards, soldiers, border guards, immigration officials and so on.⁷⁵

In any of these categories, the nature of VAW may be physical, psychological, or sexual. Physical violence typically includes slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threatening with objects or weapons, and murder.⁷⁶ Psychological violence includes insult, belittling, threats of abandonment or abuse, confinement to the home, surveillance, threats to take away custody of children, destruction of property, isolation, verbal aggression, and constant humiliation.⁷⁷

Sexual violence, which is the prime subject of the present study, exists along a continuum from unwanted touching to murder-rape. According to L. Kelly, for instance, sexual violence includes “any physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact.”⁷⁸

The WHO defines sexual violence as encompassing “a wide range of acts, including coerced sex in marriage and dating relationships, rape by strangers, systematic rape during armed conflict, sexual harassment (...), sexual abuse of children, forced prostitution and sexual trafficking, child

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Yenenesh Tadesse (2008) ‘Policy Analysis in Relation to Domestic Violence Against Women’, in Deborah Zinn *et al.* (eds) *Ethiopian Social Policy Reader* Volume 3, Addis Ababa University Graduate School of Social Work p. 4, available at: <https://deborahzinn.files.wordpress.com/2010/02/ethiopiansocialpolicyreadervolume3-2008.pdf> last visited on 1/26/2019.

⁷⁷ *Ibid.*

⁷⁸ L. Kelly (1988) *Surviving Sexual Violence*, Cambridge: Polity, p. 41.

marriage, and violent acts against the sexual integrity of women, including [FGM] and obligatory inspections for virginity.”⁷⁹ Other forms of sexual violence, which also have been designated under international law as crimes against humanity and war crimes, include sexual slavery, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of a comparable gravity.⁸⁰ Thus, the diversity of sexual violence encompasses a range of different victim-offender relationships, sexual acts, forms of coercion and contexts of vulnerability and it occurs in a range of settings.⁸¹

In this study, the term sexual violence is used in its broader sense as defined by the WHO. This definition is so broad and may not necessarily correspond to the legal notion of sexual offence or rape. However, sexual violence attributable to the state and sexual violence during armed conflict are beyond the scope of the present study.

2.2.2 Intersectional Issues: Sexuality, Gender Identity and Gendered Violence

This sub-section expounds upon intersectional issues surrounding sexuality, gender identity and gendered violence. Sexuality, or sexual orientation, and gender identity are distinct aspects of the notion of self.⁸² Sexual orientation refers to an individual’s object of sexual or romantic attraction, desire or gratification, whether of the same as, or different from, that individual’s sex.⁸³ Other than the dominant heterosexual and binary gender identities, there are diverse sexualities and gender identities out there. In terms of sexuality, for instance, there are *lesbian*, *gay*, *bisexual*, and

⁷⁹ World Health Organization (2002) *World Report on Violence and Health: Summary*, Washington, D.C., p. 17.

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

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

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

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

questioning, whereas *transgender* exists as a distinct gender identity. The abbreviation ‘LGBTQ’ – which stands for *lesbian, gay, bisexual, transgender, or questioning* – has often been used to refer to these identities, or more specifically, individuals with these identities.⁸⁴ *Lesbian, gay, bisexual* and *questioning* relate to sexualities while *transgender* is a gender identity.

Lesbians are females who are oriented toward other females emotionally, socially, politically, and sexually.⁸⁵ *Gays* are males who are oriented toward other males emotionally, socially, politically, and sexually.⁸⁶ *Bisexual* individuals can be equally oriented towards both sexes⁸⁷ while the term “questioning” refers to individuals who are in an evaluative or re-evaluative stage regarding their sexuality.⁸⁸ Individuals having a sexual orientation that is partly or exclusively focused on the same-sex are often referred to as *sexual minorities*.⁸⁹

The term *transgender* refers to individuals for whom their current gender identity and sex assigned at birth are not concordant while *cisgender* refers to individuals for whom their current gender identity is congruent with the sex assigned at birth.⁹⁰ Transgender individuals have a gender identity that is different from the physical characteristics that they were born with.⁹¹ An example of a transgender person is an individual born in a female body but psychologically, emotionally, and socially identifies as a male, or vice versa.⁹² In terms of sexuality, transgender persons are not homogeneous. They may identify themselves as *heterosexual, homosexual, or bisexual*, and may

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

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ K. Majied (2008) cited in Kamilah F. Majied (2010), *ibid.*

⁸⁹ Sabra L. Katz-Wise *et al.* (2016), *supra note* 82.

⁹⁰ M. Rosario and E. W. Schrimshaw (2014), *supra note* 83.

⁹¹ Kamilah F. Majied (2010), *supra note* 84, p. 154.

⁹² *Ibid.*

sometimes undergo “sex” reassignment procedures.⁹³ Thus, transgender individuals may or may not be sexual minorities and vice versa.⁹⁴

The term “gender expression” is used in reference to how a person presents their gender through their physical appearance such as dress, hairstyles, accessories, cosmetics and mannerisms such as speech, behavioral patterns, names and personal references.⁹⁵ However, this expression may or may not conform to their gender identity.⁹⁶

Besides, there are people who have *intersex* conditions. The term “intersex” is a general term used for a variety of conditions in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical medical and cultural definitions of the notions of ‘female’ or ‘male’.⁹⁷ For example, a person might be born with a female outside but having a largely male internal anatomy.⁹⁸ Generally, the terms ‘transgender’ and ‘intersex’ are not similar. Transgender individuals are typically people who are born with the anatomy of a male or a female but feel as though they were born into the “wrong body.”⁹⁹ On the other hand, people who have intersex conditions have an anatomy that is not considered typically male or female, and the vast majority of intersex people identify themselves as male or female rather than transgender.¹⁰⁰ Generally, intersex people are heterogeneous, with varied anatomies, sexes as well as sexual and gender identities.¹⁰¹

⁹³ *Ibid.*

⁹⁴ Sabra L. Katz-Wise *et al.* (2016), *supra* note 82.

⁹⁵ Kim Vance *et al.* (2018) ‘The rise of SOGI: human rights for LGBT people at the United Nations’, in Nancy Nicol *et al.* (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, UK: School of Advanced Study, University of London, Institute of Commonwealth Studies, at note 3.

⁹⁶ *Ibid.*

⁹⁷ Intersex Society of North America: *What is intersex?* Available at: http://www.isna.org/faq/what_is_intersex last visited on 04/02/2019.

⁹⁸ *Ibid.*

⁹⁹ Intersex Society of North America: *What's the difference between being transgender or transsexual and having an intersex condition?* Available at: <http://www.isna.org/faq/transgender> last visited on 04/02/2019.

¹⁰⁰ *Ibid.*

¹⁰¹ Morgan Carpenter (2016) ‘The Human Rights of Intersex People’, *Reproductive Health Matters* 24(47), pp. 74-84, p. 74.

Sometimes, the term “queer” is used to refer to a category of identity combining notions of sexuality and gender identity that are outside of the dominant heterosexuality and the binary gender category.¹⁰² However, the present study uses “sexual minorities” to refer to LGBTQ persons.¹⁰³ Sexual minorities are often juxtaposed with heterosexism or the hegemonic *heteronormativity*. *Heterosexism* refers to the dominant worldview that heterosexuality is the norm and that all other sexualities are in contradiction to this norm.¹⁰⁴ It, as Kamilah F. Majied argues, is “a pervasive social problem that contributes to the invisibility of LGBTQ persons.”¹⁰⁵ Heterosexism is viewed as a paradigm of oppression faced by LGBTQ people.¹⁰⁶ The notions of masculinity and heteronormativity are thought to have triggered a gendered violence against sexual minorities,¹⁰⁷ for instance, sexual violence against lesbian women through “curative” rape.¹⁰⁸ Generally, violence targeting sexual minorities is based on the notion that “effeminate gay men betray the superiority of masculinity, and masculine lesbian women challenge and try to usurp male superiority and therefore these individuals need to be punished for being a threat to the ‘natural’ social order.”¹⁰⁹ They are, in essence, targeted for “doing gender” inappropriately,¹¹⁰ and, therefore, facing a gendered violence.

¹⁰² Kristen A. Renn (2010) ‘LGBT and Queer Research in Higher Education: The State and Status of the Field’, *Educational Researcher* 39(2), pp. 132-141, p. 132.

¹⁰³ Andy Mprah (2016) ‘Sexual and Reproductive Health Needs of LGBT’, *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 20(1), pp. 16-20, p. 16.

¹⁰⁴ D. Epstein and R. Johnson (1994) ‘On the Straight and Narrow: The Heterosexual Presumption, Homophobias and schools’, in D. Epstein (ed.) *Challenging Lesbian and Gay Inequalities in Education* (pp. 197–230), Berkshire, England: Open University Press, p 198; and Laura S. Brown (1989) ‘New voices, new visions: Toward a Lesbian/Gay Paradigm for Psychology’, *Psychology of Women Quarterly* 13(4), pp. 445-458, p. 447.

¹⁰⁵ Kamilah F. Majied (2010), *supra note* 84, p. 154.

¹⁰⁶ Kamilah F. Majied (2010), *ibid*, p. 152; G. M. Herek (1990) ‘The Context of Anti-gay Violence: Notes on Cultural and Psychological Heterosexism’, *Journal of Interpersonal Violence* 5(3), pp. 316–333, p. 16.

¹⁰⁷ Thabo Msibi (2009) ‘Not Crossing the Line: Masculinities and Homophobic Violence in South Africa’, *Agenda: Empowering Women for Gender Equity* 80: pp. 50-54, p. 50.

¹⁰⁸ *Ibid*, p. 51.

¹⁰⁹ Thabo Msibi Wells H (2006) cited in Thabo Msibi (2009), *ibid*.

¹¹⁰ Barbara Perry (2001) *In the Name of Hate*, New York: Routledge, p. 110; and Beatrice von Schulthess (1992) ‘Violence in the Streets: Anti-lesbian Assault and Harassment in San Francisco’ in G. Herek and K. Berrill (eds) *Hate Crimes*, Newbury Park, CA: Sage, pp. 65-82.

Finally, same-sex rape against men also has strong conceptual links with raping of women by men though the two are not exactly the same. Generally, when men rape other men, they are acting based on the same stereotypes and justifications, and cause similar harms as they do when sexually assaulting women.¹¹¹ For instance, masculinity is socially defined by male domination and power, which is manifested through aggression, strength and violence.¹¹² Femininity, on the other hand, is constructed socially in such a way that portrays women as physically weak and sexually vulnerable, which generally fits the perceptions of victims of sexual violence.¹¹³ While the social construction of masculinity as physically strong, tough, self-sufficient, and impenetrable, fitting the images of sexual aggressor.¹¹⁴ With “real” men expected to avoid behaviors associated with femininities, men who are overpowered by other men may be judged as having failed in their masculine duty and perceived as less manly.¹¹⁵ As F. Rush notes, “[m]en rape other men because they feminise their victims within heterosexual patterns of dominance and subordination.”¹¹⁶ Simply, raping of males involves the process of “feminizing” male victims.¹¹⁷

Men are often targeted because they fail to conform to ideal masculine gender roles.¹¹⁸ A male victim of rape loses his masculine status and, in terms of his sexual role, he becomes a woman.¹¹⁹

¹¹¹ Elsje Bonthuys (2008) ‘Putting Gender into the Definition of Rape or Taking it Out? Masiya v Director of Public Prosecutions (Pretoria) and Others, 2007 (8) BCLR 827 (CC)’ *Feminist Legal Studies* 16: pp. 249–260, p. 256, available at: <https://slideheaven.com/putting-gender-into-the-definition-of-rape-or-taking-it-out.html> last visited on 04/01/2019.

¹¹² Noreen Abdullah-Khan (2008) *Male Rape: The Emergence of a Social and Legal Issue*, New York: Palgrave Macmillan, p. 88.

¹¹³ Karen G. Weiss (2010) ‘Male Sexual Victimization: Examining Men’s Experiences of Rape and Sexual Assault’, *Men and Masculinities* 12(3), pp. 275-298, p. 277.

¹¹⁴ *Ibid.*

¹¹⁵ Kathy Doherty and Irina Anderson (2004) ‘Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims’, *Journal of Community and Applied Social Psychology* 14(2), pp. 85-103, p. 97.

¹¹⁶ F. Rush (1990) ‘The many faces of the backlash’ in Dorchen Leidholdt and Janice G. Raymond (eds) *The Sexual Liberals and the Attack on Feminism*, Oxford: Pergamon Press, pp. 169-170.

¹¹⁷ W. Rideau and B. Sinclair (1982) ‘Prison: The Sexual Jungle’, in A.M. Scacco (ed) *Male Rape: A Casebook of Sexual Aggression*, New York: Ams Press, p. 5.

¹¹⁸ Catharine A. MacKinnon (1997a) ‘Oncale v. Sundowner Offshore Services, Inc., 96-568, Amici Curiae Brief in Support of Petitioner’, *UCLA Women’s Law Journal* 8(1), pp. 9–46, pp. 19–20; and Christopher D. Man and John P. Cronan (2001) ‘Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for ‘Deliberate Indifference’’, *Journal of Criminal Law and Criminology* 92(1), pp. 127–186.

¹¹⁹ Elsje Bonthuys (2008), *supra note* 111, p. 255.

Thus, male victimization is described as “a gendering experience” which changes male victims into social and sexual women, which, indirectly, affirms the subordinate sexual status of female rape victims.¹²⁰ Male rape serves to punish transgressions of gender roles.¹²¹ The offenders aim at humiliating their victims and assert their own masculinity and power.¹²² The “feminized” male rape victims doubt their own masculinity and question their manhood.¹²³

Moreover, as masculinity is bound up with heterosexuality, “real” men are supposed to play an “active” penetrative role in sexual encounter.¹²⁴ Because of the association of masculinity with heterosexuality and penetrative sexual acts, male victims of rape are often tainted with the social stigma of ‘homosexuality,’ yet such stigma is not attached to the offenders, who, by penetrating, are acting in accordance with an acceptable script of sexuality.¹²⁵ Accordingly, male victims of rape are made to feel guilty if they are ‘homosexual’ or ‘homosexual,’ and to feel ‘less manly’ if they are ‘heterosexual.’¹²⁶ As Bennett Capers notes, male victims, unlike female victims, “may have trouble reconciling their conceptions of sexuality and masculinity.”¹²⁷ Generally, same-sex rape against men is simply a part of the same, broader, underlying socio-cultural set up of gender inequality, domination and discrimination which leads men to rape women.¹²⁸ In this sense, male victims too are facing a gendered sexual violence.

¹²⁰ Sasha Gear (2005) ‘Rules of Engagement: Structuring Sex and Damage in Men’s Prisons and Beyond’, *Culture, Health and Sexuality* 7(3), pp. 195–208, p. 119; Catharine A. MacKinnon (1997a), *supra note* 118, p. 19; and Angelo Pantazis (1999) ‘Notes on Male Rape’, *South African Journal of Criminal Justice* 12(3), pp. 369–375, p. 373.

¹²¹ Elsje Bonthuys (2008), *supra note* 111, pp. 255–256.

¹²² Marc S. Spindelman and John Stoltenberg (1997) ‘Oncle: Exposing ‘manhood’’, *UCLA Women’s Law Journal* 8(1), pp. 3–7, p. 5; and Siegmund F. Fuchs (2004) ‘Male Sexual Assault: Issues of Arousal and Consent’, *Cleveland State Law Review* 51: pp. 93–121, pp. 105–107.

¹²³ Karen G. Weiss (2010), *supra note* 113, p. 277; Elsje Bonthuys (2008), *supra note* 111, p. 255; and Noreen Abdullah-Khan (2008), *supra note* 112, p. 88.

¹²⁴ Ngaire Naffine (1994) ‘Possession: Erotic Love in the Law of Rape’, *Modern Law Review* 57(1), pp. 10–37.

¹²⁵ Sandesh Sivakumaran (2005) ‘Male/Male Rape and the “taint” of Homosexuality’, *Human Rights Quarterly* 27(4), pp. 1274–1306, pp. 1289–1300.

¹²⁶ Noreen Abdullah-Khan (2008), *supra note* 112, p. 88.

¹²⁷ Bennett Capers (2011) ‘Real Rape Too’, *California Law Review* 99(5), pp. 1259–1307, p. 1268.

¹²⁸ Sandesh Sivakumaran (2005), *supra note* 125, p. 1281; Philip Rumney and Martin Morgan-Taylor (1997) ‘Recognizing the Male Victim: Gender Neutrality and the Law of Rape: Part One’, *Anglo-American Law Review* 26: pp. 198–234, p. 226; Catharine A. MacKinnon (1997a), *supra note* 118, p. 19; Siegmund F. Fuchs (2004), *supra note*

2.2.3 The Legal Notion of Rape

Laws across jurisdictions differ in the aspects of sexual violence that they regard as offences.¹²⁹ Specifically, the term “rape” is legally defined and its definition varies across times and jurisdictions.¹³⁰ However, sexual violence that falls on a continuum is much wider than the range of sexual violence that is criminalized under the law. Sexual violence that is criminalized under the law is narrow. Under the RCC, the term rape is used in reference to just one gender-specific sexual offence, namely, sexual intercourse (penile-vaginal penetration) of a man with a woman, outside of marriage, by violence (physical force), by threat of force (grave intimidation), or by rendering the victim incapable of offering resistance or unconscious. Other sexual offences have been treated separately with a variety of headings and gravity of sanctions. In the present study, however, the term “rape” is used in reference to all sexual offences which have been criminalized under the RCC (Article 620 - Article 627) since all these sexual offences are usually recorded as rape, within the CJS. It also uses the terms rape and sexual offence interchangeably. In distinguishing each sexual offence as well as in identifying the victim and the offender in rape cases, the following definitions are used in the present study:

Forcible rape refers to a sexual offence which is defined as “Rape” under Article 620(1) of the RCC as follows: “[w]hoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable...” The use of the term ‘forcible rape’ here is not intended to suggest that the use of violence should be the defining element of rape. Likewise, it is not

122, p. 105; and Hilary S. Axam and Deborah Zalesne (1999) ‘Simulated Sodomy and Other Forms of Heterosexual “Horseplay”’: Same Sex Sexual Harassment, Workplace Gender Hierarchies, and the Myth of the Gender Monolith Before and After Oncale’, *Yale Journal of Law and Feminism* 11(1), pp. 155–249, p. 158.

¹²⁹ Elizabeth Dartnall and Rachel Jewkes (2013), *supra note* 81, p. 4.

¹³⁰ Joseph A. Camilleri and Kelly A. Stiver (2014) ‘Adaptation and Sexual Offending’, in V.A. Weekes-Shackelford and T.K. Shackelford (eds) *Evolutionary Perspectives on Human Sexual Psychology and Behavior, Evolutionary Psychology*, New York: Springer Science+Business Media, p. 43.

intended to imply that rape that does not involve violence is less violating and humiliating than a nonconsensual rape, which does not involve the use of violence.

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

The following elements distinguish sexual assault from forcible rape: The sexual act for sexual assault is “an act corresponding to the sexual act, or any other indecent act” while for forcible rape it is “sexual intercourse” (penile-vaginal penetration). Another point of difference is that the scope of sexual assault is broader than forcible rape since sexual assault can be committed by a woman against a man and vice versa but forcible rape is a crime committed only by a man against a woman. In addition, marital rape is not excluded from sexual assault but from forcible rape. Sexual assault and forcible rape can be differentiated in terms of gravity since the former is punishable with a simple imprisonment of not less than one year, or a rigorous imprisonment not exceeding 10 years while the latter is punishable with a rigorous imprisonment of five to 15 years.

Sexual coercion: refers to sexual relations with a “consenting” woman under fraudulent conditions or through manipulative tactics or under coercive circumstances. In sexual coercion, the victims do not give their free consent, but rather a defective consent. In the present study, the term is used in reference to a combination of three sexual offences: i) *Sexual Outrages on Unconscious or Deluded Persons, or on Persons Incapable of Resisting* (Article 623); ii) *Sexual Outrages on Persons in Hospital, Interned or Under Detention* (Article 624), and iii) sexual offence by *Taking Advantage of the Distress or Dependence of a Woman* (Article 625).

Statutory rape: refers to any sexual act with a minor, with or without the “consent” of the minor as criminalized under Article 626 and 627 of the RCC under the heading of “Sexual Outrages on

Minors between the Ages of Thirteen and Eighteen Years” and “Sexual Outrages Committed on Infants,” respectively.

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

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

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

Victim: in reference to a person who has experienced sexual violence or other violent crimes, the term “victim” or “injured person” or “survivor” are often used interchangeably. Usually, “victim” is a term used in the legal and medical fields while “survivor” is the term generally preferred in the psychological and social support sectors since it implies resilience. Some authors also stress that the term “survivor” is favored by the feminist movement in order to “capture the ways in which women routinely and actively resist the oppression they experience on a day-to-day basis [though] the process of moving from being a victim to a survivor can be quite complex on an individual level that is not necessarily achieved by everyone.”¹³¹ Having this complexity in view, the present study uses the term “victim” to refer to any person who experiences a crime within the Ethiopian CJS. However, such usage should not be understood to imply a lack of agency.

¹³¹ Jennifer M. Brown and Sandra (2011), *supra note* 45, p. 502.

2.2.4 The Concept of Rape Myths

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

Although victim blaming is at center, rape myths comprise a number of components. Writers identify four general types of rape myths: The first type refers to beliefs that blame the victim for their own victimization (for instance: *women have an unconscious desire to be raped*, and *women often provoke rape through their appearance or behavior*). The second includes beliefs that express a disbelief in women’s claims of rape (for example: *most charges of rape are unfounded*, *women tend to exaggerate how much rape affects them*). The third type relates to beliefs that

¹³² Klaus Drieschner and Alfred Lange (1999) ‘A Review of Cognitive Factors in the Etiology of Rape: Theories, Empirical Studies, and Implications’, *Clinical Psychology Review* 19(1), pp. 57–77, p. 60.

¹³³ Martha Burt (1980) ‘Cultural Myths and Supports for Rape’, *Journal of Personality and Social Psychology* 38(2), pp. 217–230.

¹³⁴ Klaus Drieschner and Alfred Lange (1999), *supra note* 132, p. 60.

¹³⁵ K. A. Lonsway and L. F. Fitzgerald (1994) ‘Rape Myths: In Review’, *Psychology of Women Quarterly* 18(2), pp. 133–164, p. 134.

¹³⁶ Gerd Bohner *et al.* (2009) ‘Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator’, in M. Horvath, and J. Brown (eds) *Rape: Challenging Contemporary Thinking* (pp. 17–45), Cullompton: Willan, p. 18.

¹³⁷ Klaus Drieschner and Alfred Lange (1999), *supra note* 132, p. 60.

exonerate the offender (for example: *most rapists are over-sexed, rape happens when a man's sex drive gets out of control*). The fourth type refers to beliefs which allude that only certain types of women are raped (for example: *a woman who dresses in skimpy clothes should not be surprised if a man tries to force her to have sex, usually it is women who do things like hanging out in bars and sleeping around that are raped*).¹³⁸

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

¹³⁸ Gerd Bohner *et al.* (2009), *supra note* 136, p. 19.

¹³⁹ D. L. Payne *et al.* (1999) ‘Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale’, *Journal of Research in Personality* 33(1), pp. 27-68.

¹⁴⁰ Martha Burt (1980), *supra note* 133, pp. 217–230, p. 282.

¹⁴¹ G. Bohner *et al.* (2006) ‘Social Norms and the Likelihood of Raping: Perceived Rape Myth Acceptance of Others Affects Men's Rape Proclivity’, *Personality and Social Psychology Bulletin* 32(3), pp. 286–297, p. 286.

¹⁴² Francis X. Shen (2011) How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform’, *Columbia Journal of Gender and Law* 22(1), pp. 1-80, p. 24.

investigative response,¹⁴³ lead law enforcement to doubt the legitimacy of a woman's claims, and prevent lawmakers from passing appropriate legislation to address the problem.¹⁴⁴

2.3 Etiological Theories of Rape

The critical reason for theorizing is to answer the “why” question.¹⁴⁵ In relation to rape, J. Reid Meloy raises an important question: “[w]hy on earth would someone want to pursue another who shows absolutely no interest in his or her attentions?”¹⁴⁶ An understanding of the etiology of rape is essential to address the problem.¹⁴⁷ The major task of a good etiological theory is to account for the onset, development and maintenance of rape and sexual aggression.¹⁴⁸ Ideally, this would be a universal theory that integrated all relevant phenomena into a coherent and rich theoretical structure.¹⁴⁹ However, as far as rape is concerned, such a theory has yet to be developed.¹⁵⁰ Focusing on different factors, several theories have been proposed to explain the etiology of rape. Of these, psychological, biological and feminist theories will be reviewed in this sub-section though the present study, while taking mainly a feminist perspective as its theoretical lens, acknowledges a plurality of theories.

¹⁴³ John O. Savino and Brent E. Turvey (2011) ‘Rape and Sexual Assault’, in John O. Savino and Brent E. Turvey (eds) *Rape Investigation Handbook* (2nd ed), Chapter 2, New York: Academic Press, p. 48.

¹⁴⁴ Renae Franiuk *et al.* (2008) ‘Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case’, *Violence against Women*, 14(3):287-309, pp. 288-290.

¹⁴⁵ Breakwell and D. Rose (2000) ‘Research; Theory and Method’, in G. Breakwell, S. Hammond and C. Fife-Schaw (eds) *Research Methods in Psychology* (2nd ed), London: Sage, p. 5.

¹⁴⁶ J. Reid Meloy (1998) *The Psychology of Stalking: Clinical and Forensic Perspectives*, San Diego: Academic Press, p. 1.

¹⁴⁷ Klaus Drieschner and Alfred Lange (1999), *supra note* 132, p. 58.

¹⁴⁸ Devon L. L. Polaschek *et al.* (1997) ‘Rape and Rapists: Theory and Treatment’, *Clinical Psychology Review* 17(2), pp. 117-144, p. 124.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

2.3.1 Psychological Theories

2.3.1.1 Psychodynamic Theories

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

2.3.1.2 Behavioral Theories

Early behavioral etiological models assumed that sexual arousal in the presence of rape cues was the critical motivation for rape and sexual aggression.¹⁵⁷ In this regard, classical conditioning theories highlight the pairing of sexual arousal with aggression and dominance cues while theories that draw on the notion of operant conditioning emphasize the reinforcement of deviant sexual behavior by pleasure, status, or power.¹⁵⁸ Both theories viewed sexual aggression as a learnt

¹⁵¹ Alicia Jenkins and Wayne Petherick (2014) *Serial Rape in Profiling and Serial Crime*, Third Edition, Chapter 15, Amsterdam: Anderson publishing, p. 331.

¹⁵² *Ibid*, p. 331.

¹⁵³ Laurence Miller (2014) 'Rape: Sex crime, Act of violence, or Naturalistic Adaptation?', *Aggression and Violent Behavior* 19(1), pp. 67–81, p. 75.

¹⁵⁴ Devon L. L. Polaschek *et al.* (1997), *supra note* 148, p. 125.

¹⁵⁵ Alicia Jenkins and Wayne Petherick (2014), *supra note* 151, p. 331.

¹⁵⁶ Laurence Miller (2014), *supra note* 153, p. 75.

¹⁵⁷ Devon L. L. Polaschek *et al.* (1997), *supra note* 148, p. 125.

¹⁵⁸ Laurence Miller (2014), *supra note* 153, p. 75.

behavior either by association or reinforcement. However, they did not explain how and why such conditioned responses occur in the first place, and why these connections do not inevitably become reinforced for all individuals exposed to them.¹⁵⁹

2.3.1.3 Social Cognitive Theories

Social cognition concerns the study of social knowledge (its structure and content), and cognitive processes, including the acquisition, representation and retrieval of information, in an effort to understand social behavior and its mediating factors.¹⁶⁰ Three fundamental questions that underlie the study of social cognition are: *What type of information is stored and how is it organized in memory? How does social information stored in memory affect subsequent information-processing, decision making and behavior? How and when is stored information altered both by new information and by cognitive processes?*¹⁶¹

As far as rape is concerned, social cognitive theories focus on lack of empathy as well as distortions of perception and interpretation of their own and their victims' sexual desires and behaviors as the key factors influencing the rapist's mindset.¹⁶²

Examples of such cognitive distortions include over-interpreting victim seductiveness (for instance: *she crossed her legs and smiled, so she must be hot for me*), mistaking fearful passivity for consent (for example: *she did not yell or fight, so she must have liked it*), or general self-serving cognitive distortions about female sexuality (for example: *saying 'no' means 'trying harder' – some women just want you to work for it*).¹⁶³ Generally, social cognitive theories maintain that the possession of distorted sex-related cognitions is likely to predispose the individual to commit sexual offences. The nature of offenders' beliefs about their targets – women and children – has

¹⁵⁹ *Ibid.*

¹⁶⁰ Devon L. L. Polaschek *et al.* (1997), *supra note* 148, pp. 126-127.

¹⁶¹ *Ibid.*, p. 125.

¹⁶² Laurence Miller (2014), *supra note* 153, p. 75.

¹⁶³ *Ibid.*

been considered as important mediating factor. Although the social cognitive model offers important insights in understanding rape, it has been criticized for its implicit assumption that all that is needed for the offenders to renounce their pattern of sexual predation is to show them their misconceptions.¹⁶⁴ It is also argued that it is typically the powerful sexual and aggressive motivation that drives the biased thinking or misconception, but not vice versa.¹⁶⁵

2.3.2 Biological Theories

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

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ Peggy Reeves Sanday (2015) 'Rape and Sexual Coercion', *International Encyclopedia of the Social and Behavioral Sciences*, 2nd edition, Volume 19, p. 887.

¹⁶⁷ Peggy Reeves Sanday (2015), *ibid.*; and Laurence Miller (2014), *supra note 153*, p. 75.

¹⁶⁸ *Ibid.*

¹⁶⁹ Peggy Reeves Sanday (2015), *supra note 166*, p. 887.

¹⁷⁰ Laurence Miller (2014), *supra note 153*, p. 75.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ *Ibid.*, pp. 75-76.

to ensure their mate's fidelity to avoid being quickly abandoned in favor of younger and more attractive females.¹⁷⁴ During evolution, this asymmetry causes males who could mate with multiple partners to be favored by sexual selection because they out-produced males who could not gain access to multiple females.¹⁷⁵ Females, on the other hand, have been sexually selected to secure a mate with whom they have bonded and can together be responsible for the offspring.¹⁷⁶ Therefore, females have adapted to resisting a sexual intercourse with an un-bonded partner and to being more selective regarding their sexual partners.¹⁷⁷ For evolutionary theorists, if females were selected to be willing to mate with any male under any circumstances, rape would not occur.¹⁷⁸

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

2.3.3 Feminist Theories

Feminist theorists viewed rape as an act of violence and a consequence of male domination, power, and control over women. According to Susan Brownmiller, rape is “a conscious process of intimidation by which *all men keep all women* in a state of fear.”¹⁸¹ Likewise, Susan Griffin characterizes rape as a kind of terrorism which severely limits women's freedom and makes them dependent on men. Not only is rape used to deny women employment, she further maintains, the fear of rape keeps women at home and off the streets at night, passive and modest for fear that they

¹⁷⁴ *Ibid*, p. 76.

¹⁷⁵ Thornhill and Thornhill (1992) cited in Shannon (2004) *Theories of Sexual Coercion: Evolutionary, Feminist, and Biosocial Perspectives*, available at: <http://www.pandys.org/theoriescoercion.pdf> last visited on 1/27/2019.

¹⁷⁶ Shannon (2004), *ibid*, p. 4.

¹⁷⁷ *Ibid*.

¹⁷⁸ *Ibid*.

¹⁷⁹ *Ibid*, p. 20.

¹⁸⁰ Alicia Jenkins and Wayne Petherick (2014), *supra note* 151, p. 331; and Shannon (2004), *ibid*.

¹⁸¹ Susan Brownmiller (1975) *Against Our Will: Men, Women, and Rape*, New York: Bantam Books, p. 15.

would be considered provocative.¹⁸² Feminist theory maintains that the social fact of rape not only subordinates its victims, but also, through the instillation of fear, controls the freedom, mobility and aspirations of all women.¹⁸³ By this account, rape constitutes a deliberate instrument of male dominance and supremacy, and thus represents one of a variety of strategies traditionally used by men to subjugate and control women and to intimidate them into remaining in a subservient role in a male-dominated society.¹⁸⁴

Feminist theories claim that rape and other social control tactics are reinforced by political, religious, and cultural patterns and structures of society.¹⁸⁵ Feminists relate the occurrence of rape to sex-role assignments and socialization processes from childhood, and attitudes that encourage a view of women as subservient to men and endorse male entitlement and supremacy over women.¹⁸⁶ For feminist theorists, rape is primarily motivated by male dominance, with rape and the fear it triggers serving as a mechanism of social control. They view rape as fundamentally an aggressive, rather than a sexual, act whose motivation and dynamics arise out of hostility rather than a sexual desire.¹⁸⁷

While feminists generally identified rape as a major mechanism explaining the social exploitation of women, and saw it functioning simultaneously as a primary mode of domination, creating and perpetuating the patriarchal social order,¹⁸⁸ there are, however, some differences among variants of feminist thoughts in their explanation.

¹⁸² Susan Griffin (1977) 'Rape: The All-American Crime', in M. Vetterling-Braggin *et al.* (eds) *Feminism and Philosophy* (pp. 313-332), p. 331.

¹⁸³ Hilaire Barnett (1998), *supra note* 65, p. 257; and Susan Brownmiller (1975), *supra note* 181, p. 255.

¹⁸⁴ Laurence Miller (2014), *supra note* 153, p. 75.

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ L. Melani and L. Fodaski (1974) 'The Psychology of the Rapist and His Victim', in N. Connell and C. Wilson (eds) *Rape: The First Wourcebook for Women* (pp. 82-93), New York, NY: New American, p. 82; and Susan Griffin (1971) 'Rape: The All-American Crime' *Ramparts* 10(3), pp. 21-35.

¹⁸⁸ Rebecca Whisnant (2011) 'Feminist Perspectives on Rape', in Edward N. Zalta (eds) *The Stanford Encyclopedia of Philosophy*, (Spring 2011 Edition), available at: <http://plato.stanford.edu/archives/spr2011/entries/feminism-rape/> last visited on 19/02/2016; and Andrea Dworkin (1976) *Our Blood: Prophecies and Discourses on Sexual Politics*, New York: Perigee Books, p. 37.

For instance, radical feminists viewed rape essentially as a product of patriarchal constructions of gender and sexuality – as an act of power and control – and emphasized the harm that rape does to women as a group.¹⁸⁹ They consider rape as a weapon used by men to control and dominate women.¹⁹⁰ Rape simply serves to keep women in constant fear, and thereby strengthening male control over women.¹⁹¹

On the other hand, liberal feminists are primarily concerned with giving women equal legal and political rights as men.¹⁹² Liberal feminists, as Gregory suggests, have “drawn attention to the denial of civil liberties that occurs within the [CJS] whenever those who come under its scrutiny are treated differently on the basis of sex. Their goal is sexual equality [and] their strategy is to eliminate sexual ideology from the legal system.”¹⁹³ Thus, liberal feminists tend to regard rape as a gender-neutral assault on individual autonomy and focus primarily on the harm that rape does to individual victims.¹⁹⁴

Socialist feminism (or Marxist feminism) relates VAW to gender and class stratification. It regards gender oppression as an obvious feature of capitalist societies and something that can only be eradicated by constructing a completely different society, one that is free from gender and class stratification.¹⁹⁵ This explanation contradicts the radical feminists’ view that the oppression of women predates capitalism and, thus, it is patriarchy – and not capitalism – which is responsible for gender oppression and violence.¹⁹⁶

¹⁸⁹ Andrea Dworkin (1976), *ibid*; Rebecca Whisnant (2011), *ibid*; and Susan Brownmiller (1975), *supra note* 181, p. 15.

¹⁹⁰ Noreen Abdullah-Khan (2008), *supra note* 112, p. 61.

¹⁹¹ *Ibid*, p. 62

¹⁹² *Ibid*, p. 61

¹⁹³ J. Gregory (1986) ‘Sex, Class and Crime: Towards a Non-sexist Criminology’ in R. Matthews and J. Young (eds) *Confronting Crime*, London: Sage, p. 65.

¹⁹⁴ Rebecca Whisnant (2011), *supra note* 188.

¹⁹⁵ Noreen Abdullah-Khan (2008), *supra note* 112, pp. 59-60.

¹⁹⁶ J. Gregory (1986), *supra note* 193, p. 64.

Despite these differences, virtually all feminist thoughts share several underlying themes such as taking women's and girls' experiences of sexual violence seriously; challenging the idea that rape is a rare and exceptional phenomena; and dispelling an intricate web of rape myths surrounding rape law and its enforcement within the CJS.¹⁹⁷

One of the main contributions of feminist theorists was that they challenged etiological notions based on the offender's psychology or biology. Their perspectives significantly influenced the way sexual violence was defined and rape victims were viewed and treated, and highlighted aspects of the culture that are supportive of rape.¹⁹⁸ The theoretical shift towards a view of rape as something motivated by power also played an important role in shifting the blame away from victims to the offenders, and as a consequence, rape victims' characteristics such as physical attractiveness and sexual history became less relevant.¹⁹⁹ There was also a change in the use of terminologies, for instance, from "victim" to "survivor," and from "rape" to "sexual assault," in an effort to emphasize on the violent, rather than the sexual, aspect of the act.²⁰⁰

Moreover, over the last four decades, feminist reformers have challenged and exposed sexist assumptions inherent in rape laws.²⁰¹ They have introduced several radical ideas about rape, including that any woman can be a victim of rape; that any man can be a rapist; and that rape itself occurs in many different forms, including in acquaintance or in a dating situation and marital relation.²⁰² They sought to broaden the definitions of each category and demanded public attention

¹⁹⁷ Andrea Dworkin (1976), *supra note* 188, p. 37; Rebecca Whisnant (2011), *supra note* 188; and Susan Brownmiller (1975), *supra note* 181, p. 15.

¹⁹⁸ Devon L. L. Polaschek *et al.* (1997), *supra note* 148, p. 126.

¹⁹⁹ Beverly A. McPhail (2015) 'Feminist Framework Plus: Knitting Feminist Theories of Rape Etiology into a Comprehensive Model', *Trauma, Violence, & Abuse*, pp. 1-16, p. 3, available at: https://www.uh.edu/socialwork/news/news-releases/2015-06-10_McPhail_FFP.pdf last visited on 1/27/2019.

²⁰⁰ *Ibid.*

²⁰¹ Alletta Brenner (2013) 'Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape', *Harvard Journal of Law and Gender* 36(2), pp. 503-568, p. 605.

²⁰² Susan Brownmiller (1975) *supra note* 181; Susan Griffin (1971) *supra note* 187; Diana E. H. Russell (1975) *The Politics of Rape: The Victim's Perspective*, New York: Stein and Day; and Ann Wolbert Burgess and Linda Holmstrom (1974) 'Rape Trauma Syndrome', *American Journal of Psychiatry* 131: pp. 981-995.

to sexual assault as a serious crime resulting from male domination.²⁰³ Feminist critiques had and continue to have a profound effect on rape law reforms introduced across jurisdictions.²⁰⁴

However, as feminist theorists are interested in the societal attitudes and values that reinforce rape and as they derive their evidence from macro-level observations of the legal and social systems, they cannot account for the differential impact of influences at the individual level.²⁰⁵ In addition, by attributing rape to a deliberate social control mechanism, their model reduces the offenders' motivations just to a singular goal of patriarchal power and control.²⁰⁶ However, the possible motivations for any single violent sexual act are complex, multiple, and even unconscious.²⁰⁷ As Gavey argues, "it is not always clear (...) whether sex, power, or violence are being invoked as motivations, means, or in some cases effects."²⁰⁸ The feminist perspectives do not fully account for the range of motivations that underpin the violent sexual acts of individuals in every society.²⁰⁹ In this regard, Laurence Miller observes: "it is clearly a case of theoretical overreaching to ascribe a sexual crime committed by a minority of men to a deliberate social control mechanism planned and perpetrated by all men in a given society."²¹⁰ Hence, the claim that all men have power over all women is also viewed as an oversimplification since it fails to acknowledge male diversity.²¹¹ Besides, attributing rape to a deliberate social control mechanism may have the unintended consequence of normalizing it: *if rape dominance is such a widely enculturated male trait, then how can it be a crime?*²¹²

In sum, all the theories discussed above are single factor theories that focus on either psychological or biological or socio-cultural factors. They are, along with many other theories, developed to

²⁰³ Amy L. Chasteen (2001), *supra note 5*, p. 107.

²⁰⁴ Alletta Brenner (2013), *supra note 201*, p. 506.

²⁰⁵ Devon L. L. Polaschek *et al.* (1997), *supra note 148*, p. 126.

²⁰⁶ Beverly A. McPhail (2015), *supra note 199*, p. 4.

²⁰⁷ *Ibid.*

²⁰⁸ N. Gavey (2005) *Just Sex?: The Cultural Scaffolding of Rape*, London, England: Routledge, p. 31.

²⁰⁹ Laurence Miller (2014), *supra note 153*, p. 75.

²¹⁰ *Ibid.*

²¹¹ Beverly A. McPhail (2015), *supra note 199*, p. 4.

²¹² Laurence Miller (2014), *supra note 153*, p. 75.

explain the occurrence of rape. The absence of an integrated approach to theory building leads to a proliferation of theories. There have been attempts to develop a unifying, explanatory theoretical model that brings together various theories. For instance, the “confluence model of sexual aggression” is one of the earliest models to offer a multifactorial perspective of rape and attempt to reconcile feminist, socio-cultural, and evolutionary perspectives.²¹³ However, it was criticized for being a highly complex theory that lacks explanatory depth and internal consistency.²¹⁴

Given the plethora of theories, researchers often attempt to place their studies within one or more theoretical framework. Likewise, the present study embraces the plurality of theories but mainly adopts the basic and common features of radical/liberal feminist perspectives as its theoretical lens since it is mainly concerned with structural factors such as the law, the CJS and stereotypes and myths surrounding rape law and its enforcement within the CJS.

²¹³ T. R. Gannon *et al.* (2008) cited in Alicia Jenkins and Wayne Petherick (2014), *supra note* 151, p. 332.

²¹⁴ Alicia Jenkins and Wayne Petherick (2014), *ibid*, pp. 332-333.

CHAPTER THREE: SVAW IN ETHIOPIA

3.1 Introduction

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

3.2 Magnitude and Nature of the Problem

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

²¹⁵ Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note 44*, p. 91.

²¹⁶ Catharine White (2015) 'Sexual Assault and Rape', *Obstetrics, Gynecology and Reproductive Medicine* 25(10), pp. 295-301, p. 295.

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

At national level, a study conducted by the Ministry of Women's, Children's and Youth Affairs (MoWCYA) in 2013 shows that the prevalence of sexual violence in work places was 37% in the public sector while it was 33% in the private sector.²¹⁷ In secondary schools, the prevalence rate was 20.7% whereas in higher education institutions, it was found to be much higher, at 39%.²¹⁸ Similarly, a 2016 Demographic and Health Survey (DHS) found that 10% of women between the ages of 15 and 49 had experienced sexual violence at some point in their lives, and 7% experienced sexual violence during the year prior to the survey.²¹⁹ The survey also revealed that 5% of women had experienced sexual violence by age 18 and 2% by age 15.²²⁰ These two studies represent a relatively more representative data on the prevalence rate of sexual violence at national level. Yet, there is a noticeable difference in their findings; the rate in the DHS survey was much lower than that in the study by the MoWCYA. This might be due to the fact that the former study limited its scope to sexual violence as a form of domestic VAW.²²¹

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

²¹⁷ Ministry of Women, Children and Youth Affairs (MoWCYA) (2013) *Assessment of Conditions of Violence Against Women in Ethiopia*, Final Report November 2013, Addis Ababa, Ethiopia, pp. 60-64.

²¹⁸ *Ibid.*

²¹⁹ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016) *Ethiopia Demographic and Health Survey 2016*. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF, p. 292.

²²⁰ *Ibid.*

²²¹ *Ibid.*, p. 290.

²²² Mekonnen Gorfu and Asresash Demsse (2007) 'Sexual Violence against Schoolgirls in Jimma Zone: Prevalence, Patterns, and Consequences', *Ethiopian Journal of Education and Science* 2(2), pp. 11-37, pp. 22-23.

²²³ *Ibid.*, p. 27.

of lifetime rape was 15.3% while the prevalence of lifetime-attempted rape was 17.7%.²²⁴ Of those participants who were sexually active, nearly 26% stated they started sexual activity because of rape.²²⁵ Similarly, a study conducted in Assendabo town in Jimma Zone revealed that that 8% of the respondents reported having been subjected to sexual violence in their lifetime.²²⁶ Another study conducted among female students of Mada Walabu University, which is located in the Oromia Regional State, the prevalence of sexual violence was nearly 11%.²²⁷

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

In the more ethno-linguistically diversified region of the Southern Nations, Nationalities and Peoples Region (SNNPR), a study conducted in 2008 among 1,330 female college students in Hawassa city found a lifetime prevalence rate of approximately 55% for sexual violence and 13.3%

²²⁴ Yohannes Dibaba (2007) 'Sexual Violence against Female Youth in Jimma Town: Prevalence, Risk Factors and Consequences', *Ethiopian Journal of Health Science* 17(1), pp. 47-58, p. 53.

²²⁵ *Ibid*, p. 52.

²²⁶ Adey Bogale *et al.* (2004) 'Assessment of Sexual Assault among Women in Assendabo Town, Oromia Region, South West Ethiopia', *Ethiopian Journal of Health Science* 14(1), pp 23-30.

²²⁷ Tolesa Bekel *et al.* (2015) 'Sexual Violence and Associated Factors among Female Students of Madawalabu University in Ethiopia', *Epidemiology (sunnyvale)* 5(2), pp. 1-8.

²²⁸ Alemayehu Belachew Bekele *et al.* (2011) 'Sexual Violence Victimization among Female Secondary School Students in Eastern Ethiopia', *Violence and Victims* 26(5), pp. 608-630, p. 608.

²²⁹ Alemayehu Belachew Bekele (2012) *Determinants of Sexual Violence among Eastern Ethiopian Secondary School Students*, PhD Thesis, Utrecht University, p. 26.

²³⁰ Angela Parcesep *et al.* (2008) *Using the Neighborhood Method to Measure Violence and Rape in Ethiopia*, Columbia University's Program on Forced Migration and Health and the International Rescue Committee (IRC) Ethiopia, p. 3, available at: http://www.cpcnetwork.org/wp-content/uploads/2014/04/Ethiopia-Report_Final.pdf last visited on 9/14/2018.

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

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

²³¹ Dodie Arnold *et al.* (2008) 'Prevalence and Risk Factors of Gender-based Violence among Female College Students in Awassa, Ethiopia', *Violence and Victims* 23(6), pp. 787-800.

²³² M. Philpart *et al.* (2009) 'Prevalence and Risk Factors of Gender-based Violence Committed by Male College Students in Awassa, Ethiopia', *Violence and Victims* 24(1), pp. 122-136.

²³³ Medhanit Asfaw (2010) *Sexual Violence and Its Consequence among Female Night School Students in Hawassa Town, Southern Ethiopia: A Cross-sectional Study*, Mph Thesis, Addis Ababa University, p. 35.

²³⁴ Abebayehu Tora (2013) 'Assessment of Sexual Violence against Female Students in Wolaita Sodo University, Southern Ethiopia', *Journal of Interpersonal Violence* 28(11), pp. 2351-2367.

²³⁵ Yohannes Mehretie Adinew and Mihiret Abreham Hagos (2017) 'Sexual Violence against Female University Students in Ethiopia', *BMC International Health and Human Rights* 17(19), p. 1.

²³⁶ Andualem Henok *et al.* (2015) 'Sexual Violence and Substance Use among Female Students of Mizan-Tepi University, Southwest Ethiopia: A Mixed Method Study', *Journal of Women's Health, Issues and Care* 4(4), pp. 1-9.

²³⁷ *Ibid.*, p. 1.

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

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

²³⁸ Desalegn Tarekegn *et al.* (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2), p. 1.

²³⁹ World Health Organization (2005) *WHO Multi-country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses*. Geneva, World Health Organization, 2005, p. 6.

²⁴⁰ Yaynshet G/Yohannes (2007) *Prevalence and Factors Related to Gender Based Violence among Female Students of Higher Learning Institutions in Mekelle Town, Tigray, Northern Ethiopia*, Mph Thesis, Addis Ababa University.

²⁴¹ *Ibid.*

²⁴² Emebet Zeleke (2011) *Assessment of Prevalence Associated Factors and Outcome of Sexual Violence among High School Students in Deberberhan Town*, Mph Thesis, Addis Ababa University.

²⁴³ Worku A. and Addisie M. (2002) 'Sexual Violence among Female High School Students in Debark, North West Ethiopia', *East African Medical Journal* 79(2), pp. 96-99.

²⁴⁴ Fitaw Y. *et al.* (2005) 'Gender Based Violence among High School Students in North West Ethiopia', *Ethiopian Medical Journal* 43(4), pp. 215-221.

also found that 24.2% of the respondents reported that they had experienced sexual violence in their lifetime.²⁴⁵ According to a study conducted among “street” girls in Bahir Dar city, the lifetime prevalence rate of rape was 24.3% while it was 11.4% in the year prior to the study.²⁴⁶

Available evidence also demonstrates that sexual violence is common in the capital Addis Ababa. According to a 2000 study, the prevalence of rape among “street” girls in Addis Ababa was 15.6%, with 60% of the victims reporting that it was repetitive.²⁴⁷ Among “street” girls in Addis Ababa, 33.9% of the respondents reported that they had experienced forced sex.²⁴⁸ In a school setting, a study conducted in three selected high schools showed that 26.1% of the respondents’ first sexual experience was rape.²⁴⁹ According to a study conducted in the Gullele Sub-City of Addis Ababa, the prevalence of non-partner sexual violence was 16.2%.²⁵⁰ Likewise, in a cross-sectional study conducted in three selected high schools in Addis Ababa, 26.1% of the participants reported that they had been subjected to rape²⁵¹ while in another survey conducted in the same year, 21.2% of schoolgirls were reported to have been raped.²⁵² A study conducted among Addis Ababa University female students puts the prevalence of lifetime rape and attempted rape at 12.7% and 27.5%, respectively.²⁵³ According to a study conducted among adolescent “street” females in Addis Ababa, the prevalence of rape and attempted rape was 15.6% and 20.4%, respectively.²⁵⁴ A

²⁴⁵ Getachew Mulu et al. (2015) ‘Prevalence of Gender Based Violence and Associated Factors among Female Students of Menkoror High School in Debre Markos Town, Northwest Ethiopia’, *Science Journal of Public Health* 3(1), pp. 67-74.

²⁴⁶ Alemayehu C. Misganaw and Yalew A. Worku (2013) ‘Assessment of Sexual Violence among Street Females in Bahir-Dar town, North West Ethiopia: A Mixed Method Study’, *BMC Public Health* 13(1):825, p. 1.

²⁴⁷ Mitike Molle et al. (2002) ‘Sexual violence among female street adolescents in Addis Ababa, April 2000’, *Ethiopian Journal of Health and Development*, 16(2), pp. 119-128.

²⁴⁸ Rahel Tessema (2006) *Sexual Violence and Reproductive Health Problems among Female Adolescents in Addis Ababa*, MA Thesis. Addis Ababa University.

²⁴⁹ Gelane Lelissa and Lukman Yusuf (2008) ‘A Cross Sectional Study on Prevalence of Gender Based Violence in Three High Schools, Addis Ababa, Ethiopia’, *Ethiopian Journal of Reproductive Health* 2(1), pp. 52-60.

²⁵⁰ CARE Ethiopia (2008), *supra note 23*, p. 40.

²⁵¹ Gelane Lelissa and Lukman Yusuf (2008), *supra note 249*.

²⁵² Belay Endeshaw (2008) *Factors Contributing To Sexual Violence against Female High School Students in Addis Ababa*, Msc Thesis, Addis Ababa University, p. 80.

²⁵³ Seblework Tadesse (2004), *supra note 26*, p. 29.

²⁵⁴ Mitike Molle et al. (2002), *supra note 247*, pp. 119-128.

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

Therefore, all available data clearly show that sexual violence in Ethiopia is widespread and common. The statistics also indicate that the victims of sexual violence are predominantly women and girls. Young boys and men are also occasional victims.²⁵⁶ Even in such cases, most of the offenders are men.²⁵⁷ Generally, most of the victims of sexual violence are women and most of the offenders are men. This clearly reaffirms that sexual violence is not only an issue that disproportionately affects women and girls but also has gendered causes and effects, and hence, it is a gendered problem.²⁵⁸

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

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

²⁵⁵ Getnet Tadele and Desta Ayode (2008) *The Situation of Sexual Abuse and Commercial Sexual Exploitation of Girl Children in Addis Ababa*, Forum on Street Children Ethiopia (FSCE), p. iii.

²⁵⁶ Federal Ministry of Health Ethiopia (2009) *National Guideline for the Management of Survivors of Sexual Assault in Ethiopia*, p. 1, available at: <http://www.esog.org.et/gbv.pdf> last visited on 27/12/2014.

²⁵⁷ See *infra* Chapter Five Section "5.3.1.6. Criminalizing Same-Sex Rape against Children" with accompanying notes.

²⁵⁸ CARE Ethiopia (2008), *supra note* 23, p. 8. See also generally *supra* Chapter 2 Section "2.2.1 Sexual Violence as a Gendered Problem with accompanying notes.

²⁵⁹ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293; and Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iii.

²⁶⁰ Mersha Shenkute (2013), *supra note* 26, p. 43.

²⁶¹ Mersha Shenkute (2013), *ibid*, p. 55; and Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iii.

²⁶² Mersha Shenkute (2013), *ibid*, p. 39.

²⁶³ Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 4.

²⁶⁴ Getachew Mullu *et al.* (2015), *supra note* 245, p. 73.

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

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

²⁶⁵ Emebet Zeleke (2011), *supra note* 242, p. 33; Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5; Beata Cybulska and Greta Forster (2005) ‘Sexual Assault: Examination of the Victim’ *MEDICINE* 33(9), pp. 23-28, p. 26; and Yaynshet G/Yohannes (2007), *supra note* 240, p. 36.

²⁶⁶ Beata Cybulska and Greta Forster (2005), *ibid*; and Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 5.

²⁶⁷ Beata Cybulska and Greta Forster (2005), *ibid*.

²⁶⁸ Mersha Shenkute (2013), *supra note* 26, p. 51.

²⁶⁹ *Ibid*.

²⁷⁰ See for e.g., Getachew Mullu *et al.* (2015), *supra note* 245, p. 73; Medhanit Asfaw (2010), *supra note* 233, p. vii; Emebet Zeleke (2011), *supra note* 242, p. 46; Yaynshet G/Yohannes (2007), *supra note* 240, p. 35-36; Seblework Tadesse (2004), *supra note* 26, p. 34; and Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5-6.

²⁷¹ Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 5; Yaynshet G/Yohannes (2007), *ibid*; Getachew Mullu *et al.* (2015), *supra note* 245, p. 73; Medhanit Asfaw (2010), *ibid*, p. vii; Seblework Tadesse (2004), *ibid*; Emebet Zeleke (2011), *ibid*, p. 49; Tolesa Bekel *et al.* (2015), *ibid*, p. 5-6; B. Manning-Geist *et al.* (2016) ‘Predictors of Medical Outcome in 1,712 Ethiopian Survivors of Rape’, *Annals of Global Health* 82(3), pp. 319-327, p. 324; Mersha Shenkute (2013), *supra note* 26, p. 50; Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv; and CARE Ethiopia (2008), *supra note* 23, pp. 45-46.

²⁷² Yaynshet G/Yohannes (2007), *ibid*; Worku A. and Addisie M. (2002), *supra note* 243; and Ministry of Women, Children and Youth Affairs (MoWCYA) (2013), *supra note* 217, p. 35.

²⁷³ Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.

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

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

Despite the high prevalence rate and devastating consequences of sexual violence, the proportion of women and girls who report the incident to the police is extremely low. According to a 2016 DHS, only 8% of the victims of SVAW seek help from the police.²⁷⁷ Only 2 – 3% of women have ever sought help from other service providers such as lawyers, medical personnel, and social workers.²⁷⁸ A 2004 study also indicated that 93.6% rape victims did not report the incident of rape to anybody,²⁷⁹ while a 2010 study conducted in Hawassa city showed that 83.3% of rape victims did not report the incident to the police.²⁸⁰ Likewise, a study conducted among school girls in Jimma Zone concluded that nearly 66% of rape cases were not reported to any legal body.²⁸¹ A 2015 study conducted among female students of Mada Walabu University showed that nearly 88% of the victims did not report the incident to the police.²⁸² A study conducted in Debre Birhan town also found that 92% of the victims did not report the incident to the police²⁸³ while a study conducted among “street” females in Bahir Dar city revealed that around 94% of rape victims did

²⁷⁴ Mersha Shenkute (2013), *supra note 26*, p. 50.

²⁷⁵ UNICEF (2000), *supra note 25*, P. 8.

²⁷⁶ Brande Stellings (1993), *supra note 24*, p. 188.

²⁷⁷ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note 219*, p. 297.

²⁷⁸ *Ibid.*

²⁷⁹ Seblework Tadesse (2004), *supra note 26*, p. 29.

²⁸⁰ Medhanit Asfaw (2010), *supra note 233*, p. 32.

²⁸¹ Mekonnen Gofu and Asresash Demsse (2007), *supra note 222*, p. 31.

²⁸² Tolesa Bekel *et al.* (2015), *supra note 227*, p. 5.

²⁸³ Emebet Zeleke (2011), *supra note 242*, p. 28.

not report the incident to the police.²⁸⁴ Similarly, a study conducted in Addis Ababa revealed that only 11.4% of the victims of sexual violence reported the incident to the police.²⁸⁵ Thus, one can clearly note that a substantial proportion of the victims of sexual violence did not report the incident to the police and seek remedy from the CJS.

Rape victims do not report the incident for a variety of reasons. Generally, fear of retribution, especially if the victim is known to the offender; fear of stigma attached to being sexually victimized; fear of blame for the incident; a history of negative outcome following a previous disclosure; and fear of psychological consequences of disclosure, including anxiety or depression from revisiting the event have been identified as the main factors for nondisclosure of the incident by victims.²⁸⁶ Specifically, in Ethiopia, the primary factors preventing victims of sexual violence from reporting the incident and seeking justice include lack of awareness about their rights; ineffectiveness of the CJS; fear of retribution from the offender; fear of possible negative reaction from parents; fear of stigma, public reaction or shame; lack of awareness as to where to go to or what to do; and lack of confidence on the CJS and its ability to prosecute the offenders.²⁸⁷ More specifically, a study by CARE Ethiopia concludes that there is a tendency among members of the community to assume that victims of VAW must have ‘asked for it’ in some way.²⁸⁸

The prevailing perception of rape as shameful, degrading and dishonoring to the victims and their family seems to be more consequential in keeping victims from disclosing the incident and seeking justice.²⁸⁹ According to Sinidu Fekadu, fear of stigma is one of the main reason deterring the victims from reporting the incident.²⁹⁰ Rape is framed as *shameful* and the victim is often tainted

²⁸⁴ Alemayehu C. Misganaw and Yalew A. Worku (2013), *supra note* 246, p. 1.

²⁸⁵ Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.

²⁸⁶ R. Acierno *et al.* (1997) ‘Prevalence Rates: Case Identification and Risk Factors for Sexual Assault, Physical Assault, and Domestic Violence in Men and Women’, *Behavioral Medicine* 23(2), pp. 53–64.

²⁸⁷ CARE Ethiopia (2008), *supra note* 23, pp. 48-52; Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5; Mekonnen Gorfu and Asresash Demse (2007), *supra note* 222, p. 26; and Mersha Shenkute (2013), *supra note* 26, p. 55.

²⁸⁸ CARE Ethiopia (2008), *ibid*, p. 48.

²⁸⁹ Sara Tadiwos (2001), *supra note* 27, p. 5; and Indrawatie Biseswar (2011), *supra note* 28, p. 184.

²⁹⁰ Sinidu Fekadu (2008) *An Assessment of Causes of Rape and Its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa*, MA Thesis, Addis Ababa University, pp. 54-57.

with social stigma. Thus, the victim must hide herself and cannot openly say what has happened to her. Making the incident public, as Biseswar maintains, “instead of being seen as a cry for help, exposes such families and the victims in particular to ostracism, stereotyping and scrutiny.”²⁹¹ This social sanction allows the offender to take undue advantage for which the victim is not liable. Instead, the victim is blamed for what the offender has done. This constitutes a second victimization to the victim. Consequently, it deters the victim from reporting the incident and seeking justice and other supports she needs.²⁹² As Theresa Rouger rightly observes, “[s]ilence in Ethiopian society (at domestic, community and even at state level) in the face of sexual abuse or rape is the price paid for the family’s reputation and honor, sometimes [*sic.*] at the risk of the individual woman’s interest.”²⁹³

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

²⁹¹ Indrawatie Biseswar (2011), *supra note* 28, p. 184.

²⁹² Sinidu Fekadu (2008), *supra note* 2690, pp. 54-55.

²⁹³ Theresa Rouger (2009) ‘The Impact of International Human Rights Law on the National Laws of Ethiopia from a Gender Rights and Disability Rights Perspective’, in Malcolm MacLachlan and Leslie Swartz (eds) *Disability & International Development: Towards Inclusive Global Health*, Chapter 3, New York: Springer Science+Business Media, pp. 35-36.

²⁹⁴ Gessesew A. and Mesfin M. (2004), *supra note* 26, p. 142.

²⁹⁵ Seblework Tadesse (2004), *supra note* 26, p. 29.

²⁹⁶ Mersha Shenkute (2013), *supra note* 26, p. 55.

²⁹⁷ *Ibid*, p. 59.

rates for rape cases were substantially low, particularly in cases involving acquaintances.²⁹⁸ Thus, even in the few instances where rape cases are reported to the police, the offenders have been prosecuted and convicted only on a limited scale. Even where the offenders are convicted, they are often inadequately punished despite having left their victim with a permanent emotional trauma and physical scar.²⁹⁹ Above all, throughout the criminal proceedings, rape victims have often been treated as *criminals themselves*.³⁰⁰ These factors, in effect, discourage actual and potential victims from reporting the incident to the police and seeking justice from the CJS.³⁰¹

3.3 Multifaceted Factors Accounting for the High Prevalence of Sexual Violence

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

²⁹⁸ *Ibid*, p. 52.

²⁹⁹ Emebet Kebede (2004), *supra note 27*, pp. 68-71; and Sara Tadiwos (2001), *supra note 27*, pp. 20-22.

³⁰⁰ Indrawatie Biseswar (2011), *supra note 28*, p. 186.

³⁰¹ Mersha Shenkute (2013), *supra note 26*, p. 52.

³⁰² Susan J. Lea *et al.* (2003) 'Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors' *British Journal of Criminology* 43(3), pp. 83–599; Marijke Velzeboer *et al.* (2003) *Violence against Women: The Health Sector Responds*, Occasional publication No. 12 (Washington, D.C., Pan American Health Organization, 2003), p. 5, available at:

https://www.researchgate.net/publication/306012171_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_Pan_American_Health_Organization_Pan_American_Health_Organization last Visited on 10/28/2018.

³⁰³ Susan J. Lea *et al.* (2003), *ibid*; and Marijke Velzeboer *et al.* (2003), *Ibid*.

³⁰⁴ World Health Organization (2014) *Global Status Report on Violence Prevention*, p. ix, available at: [https://www.google.com/search?q=World+Health+Organization+\(2014\)+Global+Status+Report+on+Violence+Prevention.&oq=World+Health+Organization+\(2014\)+Global+Status+Report+on+Violence+Prevention.&aqs=chrome..69i57.847j0j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&oq=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&aqs=chrome..69i57.847j0j4&sourceid=chrome&ie=UTF-8) last Visited on 10/28/2018.

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

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

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

³⁰⁵ World Health Organization/London School of Hygiene and Tropical Medicine (2010) *Preventing Intimate Partner and Sexual Violence against Women: Taking Action and Generating Evidence*, Geneva, World Health Organization, 2010, p. 19, available at:

http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf Last visited on 10/28/2018.

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

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

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

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

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

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

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

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

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

Sexuality too is linked to the notions of masculinity and femininity.³¹⁸ As Hirut Terefe notes, “[w]hat constitute the essence of maleness and femaleness is expressed in sexual norms and

³¹³ Rebecca Whisnant (2011), *ibid.*

³¹⁴ *Ibid.*

³¹⁵ Amith Ben-David (1993) ‘Culture and Gender in Marital Therapy with Ethiopian Immigrants: A Conversation in Metaphors’, *Contemporary Family Therapy* 15(4), pp. 327–339; Abbi Kedir and Lul Admasachew (2010) ‘Violence against Women in Ethiopia’, *Gender, Place and Culture: A Journal of Feminist Geography* 17(4), pp. 437–452, p. 447; and አሸቱ ድባቡ (1997) *ተባእታይ አገዛዝ በኢትዮጵያ: ችግሩና የመፍትሄው መንገድ፤ አዲስ አበባ፤ አዲስ ጥራት ማተሚያ ቤት*, Chapter 7 (Amharic).

³¹⁶ Irina Anderson and Kathy Doherty (1997) ‘Psychology, Sexuality and Power: Constructing Sex and Violence’, *Feminism Psychology*, 17(4), pp. 495–514.

³¹⁷ Yelfign Worku (2001) ‘Ethiopia: From Bottom to Top in Higher Education – Gender Role Problems’, *International Journal of Sociology and Social Policy* 21(1/2), pp. 98 – 104, p. 99.

³¹⁸ Hirut Terefe (2002) ‘Violence Against Women from Gender and Cultural Perspectives’, *Reflections: Documentation of the forum on gender*, number 7, Heinrich Böll Foundation, Addis Ababa, available at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect7.pdf> last visited 10/19/2018.

ideologies.”³¹⁹ The society views men as powerful, dominant, and aggressive while viewing women as weak, feeble, and fragile, and VAW is embedded in the very societal construction of masculinity.³²⁰

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

³¹⁹ *Ibid.*

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

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

³²² እሸቱ ድባቡ (1997), *ibid.*, pp. 59-88.

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

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

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

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

³²⁵ See for e.g., አሸቱ ደብረ (1997) *supra* note 315.

³²⁶ Inter-American Commission on Human Rights (2011), *supra* note 323, p. 15.

³²⁷ Hilaire Barnett (1998), *supra* note 65, p. 257.

³²⁸ *Ibid.*

³²⁹ *Ibid.*

³³⁰ *Ibid.*

³³¹ The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, Article 635(1), *Negarit Gazeta*, 19th Year No. 2, Addis Ababa, 5th May 1960 [Here-in-after the “Civil Code”].

³³² *Ibid.*, Article 635(1) and (2).

³³³ *Ibid.*, Article 635, Article 637, Article 644, and Article 646.

³³⁴ *Ibid.*, Article 646.

The second level in the ecological model explores the community context in which social relationships are embedded and seeks to identify the characteristics of these settings that are associated with the occurrence of sexual violence.³³⁵ At the community level, women's mobility is reduced due to lack of social support³³⁶ while male peer groups condone and legitimize the violent behavior of men.³³⁷ On top of this, the community fails to appropriately sanction VAW.³³⁸

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

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

Empirical evidence shows that there is an intricate association between factors at all levels, including cultural norms, poverty, family breakup, alcohol and drug use, instability within the community, and the occurrence of sexual violence in Ethiopia.³⁴³ In this regard, a study by CARE Ethiopia identified the following as factors fostering an environment of VAW: attitudes in society that depict women as inferior and as the property of men; the persisting misperception that women

³³⁵ Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085; and World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19.

³³⁶ Mary Ellsberg and Lori Heise (2005), *supra note* 64, p. 24.

³³⁷ *Ibid.*

³³⁸ World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, pp. 24-25.

³³⁹ Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085.

³⁴⁰ World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, pp. 19-23.

³⁴¹ Mary Ellsberg and Lori Heise (2005), *supra note* 64, p. 24.

³⁴² World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19; Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085; Mary Ellsberg and Lori Heise (2005), *ibid.*, p. 24; and Hilaire Barnett (1998), *supra note* 65, pp. 256-257.

³⁴³ Mersha Shenkute (2013), *supra note* 26, p. 50.

‘deserve’ punishment for perceived ‘erring’ conducts; poverty; gender inequality; women’s lack of self-confidence and self-esteem; and societal constructions of masculinity and femininity.³⁴⁴

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

Studies have also linked risk factors both at the third and the fourth levels (i.e. relationships and individual-level factors, respectively) to the occurrence of sexual violence. For instance, studies conducted among secondary school students in Eastern Ethiopia identified the following as significant risk factors: having multiple sexual partners, frequent watching of pornography, use of alcohol or other mild drugs (e.g. *khat* or *hookah*), narcissism, wrong perceptions towards sexual violence, high sensitivity to rejection, violence in the parental home, and problems related to

³⁴⁴ CARE Ethiopia (2008), *supra note 23*, p. 45.

³⁴⁵ Abbi Kedir and Lul Admasachew (2010), *supra note 315*, p. 447; Indrawatie Biseswar (2011), *supra note 28*, pp. 9-10; Hirut Terefe (2002), *supra note 318*; Tsegaye Megersa (2015) *Gender Based Violence in the Rural Setting of Arsi: Causes and Consequence Analysis in Hetosa District*, MA Thesis, Addis Ababa University, p. 53. See also አሸቱ ደባብ (1997), *supra note 315*, p. 207 *et seq.*; and CARE Ethiopia (2008), *ibid*, p. 42.

³⁴⁶ Hirut Terefe (2002), *ibid*.

³⁴⁷ Abbi Kedir and Lul Admasachew (2010), *supra note 315*, p. 446.

³⁴⁸ *Ibid*, p. 447.

³⁴⁹ Indrawatie Biseswar (2011), *supra note 28*, pp. 9-10.

³⁵⁰ *Ibid*.

parental attachment.³⁵¹ Other studies also found the following as factors associated with the occurrence of sexual violence: history of alcohol and drug use, witnessing domestic violence,³⁵² being a “prostitute,” and young age (i.e. being between the age of 15 and 29 years).³⁵³ Still other studies identified a combination of factors, including peer influence, drug use and/or abuse, economic problems and girls’ dependence on men, as the main reasons exposing girls to sexual violence.³⁵⁴

Generally, there are multiple risk factors for the occurrence of sexual violence at social, community, relationship and individual levels. The occurrence of sexual violence is a result of complex interactions among the various levels of risk factors, which often reinforce one another.³⁵⁵ One particular level or specific instance of risk factor alone may not fully explain the complex problem of sexual violence. Hence, any meaningful attempt to prevent sexual violence in general and specifically SVAW requires taking action across different levels,³⁵⁶ and this, in turn, entails a thorough understanding of each risk factor and the dynamic interactions that exist between and among these factors.

³⁵¹ Alemayehu Belachew Bekele (2012), *supra note* 229, p. 46; and Alemayehu Belachew Bekele *et al.* (2011), *supra note* 228, p. 626.

³⁵² DesalegnTarekegn, Balcha Berhanu and Yigrem Ali (2017) ‘Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia’, *Psychology and Behavioral Science International Journal* 6 (2), p. 1, available at: <https://www.omicsonline.org/open-access/prevalence-and-associated-factors-of-sexual-violence-among-high-school-female-students-in-dilla-town-gedeo-zone-snnpr-ethiopia-2161-1165-1000320.php?aid=92471> last visited 1/27/2019; Tolesa Bekel *et al.* (2015), *supra note* 227, p. 5; Mersha Shenkute (2013), *supra note* 26, p. 49; and Emebet Zeleke (2011), *supra note* 242, p. 48.

³⁵³ Alemayehu C. Misganaw and Yalew A. Worku (2013), *supra note* 246, p. 1.

³⁵⁴ Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.

³⁵⁵ World Health Organization/London School of Hygiene and Tropical Medicine (2010), *supra note* 305, p. 19.

³⁵⁶ Etienne G Krug *et al.* (2002), *supra note* 306, p. 1085.

3.4 Prior Legal Responses to Sexual Violence in Ethiopia

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

Throughout history, each jurisdiction has sought to define criminal sexual behavior in ways that best reflect the prevailing attitudes and beliefs of the time and place. Historically, however, women's sexuality was in most situations regarded as a "property" of men³⁵⁷ and its value was measured largely by women's sexual purity, virginity or chastity.³⁵⁸ Consequently, rape was typically framed as 'a property crime' against a woman's father or her husband and as a theft of virginity, an embezzlement of a man's fair price for his daughter.³⁵⁹ Such a conception of rape was institutionalized in marriage, where a woman was rendered her husband's sexual and reproductive property,³⁶⁰ and in which the husband "cannot be prosecuted for using his own property as he sees fit."³⁶¹ But in the event that a woman was raped by someone else, it was seen as an attack against the male's property; and her husband – if she had been married – or her father – if she had not been

³⁵⁷ Andrea Dworkin (1976), *supra note* 188, p. 26; Susan Brownmiller (1975), *supra note* 181, pp. 6-22; and አሸቲ ደብረ (1997), *supra note* 315, pp. 59-60.

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

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

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

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

married – could expect to receive compensation for their damaged property.³⁶² Thus, in the past, rape law punished rapists, not to protect women from sexual aggression but to advance the legal interests of patriarchs, assert males’ control of sexual access to women,³⁶³ and strike “a balance between the interests of males-in-possession and their predatory counterparts.”³⁶⁴

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

In its contents, the *Fetha Nagast* has two parts. The first part of the *Fetha Nagast* (Chapters 1–22) deals with matters of ecclesiastic law. The second, secular part (Chapters 23–51) and the appendix

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

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

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

³⁶⁵ Jean Graven (1964) ‘The Penal Code of the Empire of Ethiopia’, *Journal of Ethiopian Law* 1(2), pp. 267-314, p. 268.

³⁶⁶ *Ibid*, p. 269.

³⁶⁷ Zuzanna Augustyniak (2012) *The Genesis of the Contemporary Ethiopian Legal System*, Studies of the Department of African, Languages and Cultures, No 46, p. 104, available at: <https://pbn.nauka.gov.pl/sedno-webapp/getFile/26624> last visited on 10/28/2018.

³⁶⁸ Jean Graven (1964), *supra note* 365, pp. 268-269.

deal with various matters.³⁶⁹ The Syro-Roman and Roman-Byzantine laws were the sources of the second part of the *Fetha Nagast*.³⁷⁰ Its religious content was derived from the Old and New Testaments while the secular content originated from Roman-Byzantine laws.³⁷¹ Sexual offences were included in chapter 48 of the second part under the heading of ‘Corporal and Spiritual Punishment for Fornication’.³⁷² The provisions of the *Fetha Nagast* on sexual offences clearly reveal that there existed deeply intertwined relationships between sexual interactions and Christian religious norms, gender and sex roles and class relations and morality. The protection of individual victims was not the pillar of the provisions on sexual offences under the the *Fetha Nagast*.

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

Similarly, Section I (V) (65) of the *Fetha Nagast* states the following: “[i]f a man has carnal relations with a virgin outside their knowledge, be it with her consent or without it, her parents have the choice of fulfilling his desire [or not] if he wishes to marry her. If one of the parents refuses, the man who spoiled her give her a pound of gold, if he is rich and can do this. If he cannot,

³⁶⁹ *The Fetha Nagast: The Law of the Kings*, Translated from the Ge’ez by Abba Paulos Tzadua, Edited by Peter L. Strauss, Addis Ababa, Faculty of Law, Haile Sellassie I University, 1968. [Here-in-after the “*Fetha Nagast*”].

³⁷⁰ René David (1963) ‘Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries’, *Tulane Law Review* 37: pp. 187-204, pp. 187-192; and Jean Graven (1964), *supra note* 365, p. 268.

³⁷¹ *Fetha Nagast*, *supra note* 369, Foreword, pp. xv ff.

³⁷² *Ibid*, pp. xv ff.

³⁷³ *Ibid*, Chapter 48, Section I (III) (67).

³⁷⁴ *Ibid*.

he shall give her half of his property. If he is absolutely poor, he shall be beaten, half his head shaved, and then be exiled.”³⁷⁵ Under this provision, the first ‘punishment’ for having sex with an unmarried virgin against the will of her parents is marriage, if the latter agreed so. The consent of the girl was rendered completely irrelevant; instead, the law viewed her parents as victims. If marriage was not in her parents’ favor, compensation would be due. If the offender was too poor to afford the payment of compensation for spoiling a highly valued virgin, the punishment would be beating, shaving his head and forcing him into exile in lieu of the compensation. However, since a girl, after being raped, was viewed as a “damaged good” and as a source of shame to her parents, with a little prospect of marriage, the parents would have no option than forcing the victim to marry her rapist. Indeed, the use of phrases in the law, such as ‘the man who spoiled her’, in reference to the state of the rape victim typically reflects the idea attached to the woman’s body and the consequent loss of her value in the eyes of her actual or potential male ‘possessor’.³⁷⁶ In this sense, the rape law was simply used to protect the male from a depreciation in the ‘value’ of his sexual ‘possession’ because of rape.³⁷⁷

The law also criminalized sex with a betrothed woman. Section I (V) (69) of the *Fetha Nagast* states: “[i]f a man carries off the betrothed of another with her consent, both he and she shall have their noses cut off; but if he compelled her, a third of his property shall be given to her after he is awarded this punishment.” Clearly, this sexual offence has been incorporated with the intent to protect the interest of the future husband of a betrothed woman, as it makes the woman’s consent irrelevant. The law criminalized consensual sex with a betrothed woman and equally punished both the woman and the man involved. The betrothed woman would escape punishment only if the sexual encounter was a forced one. On the contrary, the law did not regulate and criminalize

³⁷⁵ *Ibid*, Chapter 48, Section I (V) (65).

³⁷⁶ Anonyms (1952) ‘Note: Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard’, *the Yale Law Journal* 62(1), pp. 55-83, p. 73.

³⁷⁷ Camille E LeGrand (1973) ‘Rape and Rape Laws: Sexism in Society and Law’, *California Law Review* 61(3), pp. 919-941, p. 924.

the sexual conduct of a betrothed man. This indicates that the law punished the rapist only to protect the male's interest and, in this specific case, the prospective husband's interest.

Overall, sexual offences under the first category implicitly treated women's sexuality as a commodity, valued according to virginity or chastity and accrued to the benefit of her father, husband or family.³⁷⁸ Accordingly, if a woman was a virgin, then she still belonged to her father and rape could be committed.³⁷⁹ If she was not married and was not a virgin, then she belonged to no particular man and a crime of rape could not be committed against her.³⁸⁰ The law was primarily preoccupied with the protection of propertied virgins from rape, abduction and forced marriage.³⁸¹ According to MacKinnon, this conception "centers upon one way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy (exclusive access by one man) than against women's sexual dignity or intimate integrity."³⁸²

The second category of sexual offences under the *Fetha Nagast* protected a certain class of women by ascribing to them specific attributes or characteristics or on account of their membership to a particular social group. For instance, Section I (IV) (41) provided that "those who kidnap a betrothed girl, a girl not yet betrothed, a widow, be she one who is of noble birth or a woman slave, or a manumitted woman – especially if she is one of those who by their behavior hold themselves apart for God's sake – shall be punished with the sword if they did this with violence."³⁸³ Section I (V) (65) also stated that "[i]f a slave dares carry off his mistress, and if another helps him in this, they shall be burned at the stake together." Slaves would also be punished for failing to lend assistance to their mistress. According to Section I (V) (65), "[i]f the slave is aware of a scheme

³⁷⁸ እሸቱ ድባቡ (1997), *supra note* 315, p. 62; Andrea Dworkin (1976), *supra note* 188, p. 31; and Erin G. Palmer (2004) 'Antiquated Notions of Womanhood and the Myth of the Unstoppable Male: Why Post-Penetration Rape Should Be a Crime in North Carolina', *North Carolina Law Review* 82(3), 1258-1278.

³⁷⁹ Andrea Dworkin (1976), *supra note* 188, p. 31.

³⁸⁰ *Ibid.*

³⁸¹ Jennifer Temkin (1982), *supra note* 6, p. 412.

³⁸² Catharine A. MacKinnon (1997b) 'Rape: On Coercion and Consent', in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, London: Routledge, p. 420; Catharine A. Mackinnon (1983), *supra note* 13, pp. 635-658; and Andrea Dworkin (1976), *supra note* 188, p. 30.

³⁸³ *Fetha Nagast*, *supra note* 369, Chapter 48, Section I (IV) (41).

to kidnap his mistress and does not help her in this, he shall be consumed by fire.” Thus, women who consecrated themselves to God by their characters, and women with the status of a ‘mistress’ by virtue of their membership to a particular social class received a degree of protection by the law. All other women were viewed as “unrapeable” or at least, that *no one important* was harmed by their victimization. This reflects that rape law was historically premised on false assumptions that rape only happens, or only matters when it happens, to sexually pure, virtuous or religious women.

The third category explicitly treated rape against a certain group of women as purely a property crime. In this respect, Section I (VI) (61) states: “[t]he one who sins with a female slave who does not belong to him shall give *to her master* thirty-six dinars of gold if he is rich. If he is from among those who are relatives, he shall be beaten and shall pay whatever he can of thirty-six dinars.”³⁸⁴ Thus, where there was a forcible or consensual sex with a slave woman belonging to another person, compensation was due to her *owner*, who was viewed as a victim himself. The phrase “the one who sins with a female slave who does not belong to him” also implies that slave masters had unconditional sexual access to their women slaves. The master would only be liable for having sex with his slave while being himself married. In this regard, the law stated that “whosoever has a wife and lies down with his female slave shall do penance with beatings when his deed is discovered.”³⁸⁵ Hence, an unmarried slave master would use his female slaves as he wishes just as a husband would do to his wife. The decriminalization of rape against slave women by unmarried ‘masters’ and against one’s wife by a husband provide important evidence in support of the contention that rape was a property crime – a man cannot steal what he already *owns*: his slave or his wife.

Conversely, where a woman, regardless of her marital status, had sex with her slave, she would be criminally liable. Regarding a non-slave woman who had sex with slaves, the law essentially criminalized interclass sex, as clearly indicated under Section I (VI) (45): “[i]n case a woman who

³⁸⁴ *Ibid.*, Chapter 48, Section I (VI) (61). Emphasis mine.

³⁸⁵ *Ibid.*

has no husband commits fornication with her slave, if she has no children, she shall be beaten and shall have her head shaved; the slave shall be beaten, shall have his head shaved, and then shall be given and sold to the governor. If the woman has children, all her property shall be given to her children, but it shall be entrusted to the king for safe keeping; only the work shall be in her hand. The price of the slave shall also go to her children.” The law punished a woman (and the slave) for having a consensual sex. Thus, in the past, the law on sexual offences was not only sexist but also virtually discriminatory against members of a certain class irrespective of their gender and sex.

The fourth category of sexual offences was directly tied to the religious or moral condemnation of premarital sex and certain types of marital relationships and sexual conducts. Under this category, the law criminalized non-marital consensual sex,³⁸⁶ marriages between relatives by consanguinity or affinity,³⁸⁷ marrying nuns, deaconesses or a woman living in a monastery³⁸⁸ or a godmother³⁸⁹ and bigamous marriage.³⁹⁰ Under this category, the law criminalized adultery, but it punished not just the adulterer and adulteress, but also the man who was supposed to be the victim – the husband of the adulteress.³⁹¹ In this regard, it stated that “[t]he one who knows of his wife’s adultery and keeps silent shall be exiled after being beaten.”³⁹²

Sodomy and bestiality are other sexual conducts that were criminalized on the grounds of morality and Christian values. In this regard, the law proscribed that “[t]hose who commit the sins of Gomorrah – the one who commits them and the one on whom they are committed – shall be punished with the sword.”³⁹³ It punished both the offender and the victim, regardless of their intent. The criminality is intrinsic to the act of sodomy. However, if the act was committed against children under the age of 12 years, they were exonerated from punishment due to their age.³⁹⁴ The

³⁸⁶ *Ibid.*, Chapter 48, Section VII (46).

³⁸⁷ *Ibid.*, Chapter 48, Section I.

³⁸⁸ *Ibid.*

³⁸⁹ *Ibid.*, Chapter 48, Section II (63).

³⁹⁰ *Ibid.*, Chapter 48, Section VII (71).

³⁹¹ *Ibid.*, Chapter 48, Section X (66).

³⁹² *Ibid.*

³⁹³ *Ibid.*, Chapter 48, Section VIII (71).

³⁹⁴ *Ibid.*

law also criminalized bestiality, i.e. a sexual activity with an animal. It proscribed that “[t]hose who lie down with a beast shall be castrated.”³⁹⁵ Bestiality entailed castration, most likely a physical castration, rather than a chemical one. This is perhaps the most effective punishment to incapacitate and effectively prevent the offender from reoffending though it was designed to deter sexual acts directed at an animal.

3.4.2 Sexual Offence under the 1930 Penal Code of Ethiopia

The 1930 Penal Code was the first codified Penal Code of Ethiopia.³⁹⁶ In promulgating Ethiopia’s first Penal Code in 1930, the lawmaker clearly stated that their work was a revision of the *Fetha Nagast*, an ‘updated’ version to meet the needs of the times.³⁹⁷ In fact, the 1930 Penal Code refers to the latter in more than 60 Articles. Relatively speaking, it has made a significant progress in advancing criminal law jurisprudence in Ethiopia.³⁹⁸ Unlike the *Fetha Nagast*, the 1930 Penal Code set specific punishments for precisely defined offences. It has made distinctions between preparatory acts, attempted offences, and completed offences. The chapter of the 1930 Penal Code on sexual offences, about three pages long (Articles 386 - 400), consists of a little more than a verbatim reproduction of *the Fetha Nagast’s* section on fornications.³⁹⁹ However, it clarifies groups of women to whom it extended protection. It clearly criminalized rape against married women⁴⁰⁰ yet this provision was still proscribed in the interest of the husband since the latter can do the same act with impunity. It also criminalized rape against a betrothed woman, in the interest of the prospective husband.⁴⁰¹ Likewise, it criminalized sexual intercourse with an unmarried

³⁹⁵ *Ibid*, Chapter 48, Section IX (72).

³⁹⁶ Jean Graven (1964), *supra note* 365, p. 272.

³⁹⁷ See generally, የወንጀለኞች መቆጫ ደንብ፤ በቀዳማዊ ኅይለሥላሴ ንጉሰ ነገስት በኢትዮጵያ ማተሚያ ቤት ታተመ፤ መስከረም 1923 ዓ.ም.ተ ምስረት አዲስ አበባ, Preface, (Amharic) [Here-in-after the “1930 Penal Code”].

³⁹⁸ Jean Graven (1964), *supra note* 365, p. 268.

³⁹⁹ *Ibid*.

⁴⁰⁰ The 1930 Penal Code, *supra note* 397, Article 387.

⁴⁰¹ *Ibid*, Article 391.

woman under the age of puberty, and without the consent of her parents.⁴⁰² This provision was also proscribed in the interest of her parents since it renders the victim's consent irrelevant.

Other sexual conducts, which were criminalized under the 1930 Penal Code, include sexual intercourse between a teacher and his student and between a man and a girl whom he has been entrusted with custodianship.⁴⁰³ Like its predecessor, other provisions of the 1930 Penal Code dealt with marriages between relatives by consanguinity or affinity,⁴⁰⁴ adultery,⁴⁰⁵ bigamous marriage by a Christian man⁴⁰⁶ and sexual intercourse with women with religious virtue, such as nuns or non-nuns living in a monastery.⁴⁰⁷ All sexual offences were private crimes punishable upon complaints by the victims.⁴⁰⁸ However, a very important departure from *the Fetha Nagast* was that it no longer imposed varying punishments when the victims or the offenders came from different social classes. It also abolished reference to slaves; and introduced sentencing and fine instead of compensation alone. It also abolished reference to slaves, and introduced sentencing and fines instead of compensation alone.

3.4.3 Sexual Offence under the 1957 Penal Code of Ethiopia

The 1957 Penal Code of Ethiopia was issued, as stated in its preface, to meet the demands of the day, adopting modern concepts without abandoning “the venerable and well-established legal traditions” of the Empire as “revealed in the *Fetha Nagast* and in subsequent legislation and practice, including those customs and usages which are common to all citizens.”⁴⁰⁹ During the codification of the 1957 Penal Code, the Swiss Code and laws of other European countries were used as the principal sources.⁴¹⁰ It formally introduced the principles of legality. For every offence

⁴⁰² *Ibid*, Article 395.

⁴⁰³ *Ibid*, Article 398.

⁴⁰⁴ *Ibid*, Article 397.

⁴⁰⁵ *Ibid*, Article 398.

⁴⁰⁶ *Ibid*, Article 390.

⁴⁰⁷ *Ibid*, Article 391-392.

⁴⁰⁸ *Ibid*, Article 399.

⁴⁰⁹ The Penal Code, *supra note* 34, Preface para. 3.

⁴¹⁰ Zuzanna Augustyniak (2012), *supra note* 367, p. 111.

listed under it, there were upper and lower limits of punishment, recognizing the concept of degrees of culpability. The 1957 Penal Code also incorporated separate provisions for juvenile offenders.

The 1957 Penal Code of Ethiopia was praised as one of the most advanced criminal codes of its time,⁴¹¹ marking an important milestone in the development of rape law within the Ethiopian CJS. As far as sexual offences are concerned, the RCC did not introduce noticeable changes in definitions; instead, as Tsehai Wada commented, “most of the elements of sexual crimes [under the RCC] are verbatim copies of the [1957 Penal Code].”⁴¹² Unlike its predecessor, the 1957 Penal Code turned its focus to the male offender whose act was increasingly viewed as criminal. With an exception of one sexual offence,⁴¹³ it treated all sexual offences as public crimes with a mandatory investigation regardless of the intention or desire of the victim. It provided for a number of well-defined sexual offences.

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

Second, the 1957 Penal Code also took progressive steps in defining sexual offence, which is referred in this study as ‘sexual assault’, under the heading of *Sexual Outrages Accompanied by Violence*. Accordingly, it proscribed sexual assault as follows: “[w]hosoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of

⁴¹¹ See generally, Jean Graven (1964), *supra note* 365, pp. 281-296.

⁴¹² Tsehai Wada (2012) ‘Rethinking the Ethiopian Rape Law’, *Journal of Ethiopian Law* 25(2), pp. 191-253, at note 60.

⁴¹³ The Penal Code, *supra note* 34, Article 593.

⁴¹⁴ *Ibid*, Article 589.

offering resistance, compels a person of the opposite sex, outside wedlock, to perform or to submit to an act corresponding to the sexual act, or any other indecent act, is punishable...”⁴¹⁵ Apparently, this offence also limited its scope to heterosexual sexual encounters outside of marriage. Besides, it lacked clarity regarding specifically what kinds of sexual acts constitute “an act corresponding to the sexual act” and “any other indecent act.” However, an act corresponding to the sexual act was used to mean “an act corresponding to sexual intercourse,” as indicated in the official Amharic version of the Code. This act, though it appeared vague, may possibly include any sexual act that does not involve a penile-vaginal penetration. Specifically, it can include behaviors such as manual stimulation, oral sex, anal sex, and the use of sex toys such as vibrators and dildos. An act corresponding to the sexual act or other indecent act can be interpreted too broadly to include touching or kissing a woman’s body parts.⁴¹⁶

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

Fourth, the 1957 Penal Code set specific age limits in which consent is presumed to be lacking, so as to protect children from sexual abuse by adults. Accordingly, it was an offence to have sex with a child under the age of 15 years old.⁴¹⁸ Article 595(1) of the 1957 Penal Code criminalized

⁴¹⁵ *Ibid*, Article 590.

⁴¹⁶ Tsehai Wada (2012), *supra note* 412, P. 210.

⁴¹⁷ The Penal Code, *supra note* 34, Article 591.

⁴¹⁸ *See, ibid*, Article 594.

statutory rape against minors between the age of 15 and 18 years old, stating: “[w]hosoever has sexual intercourse or performs an analogous act with a minor of the opposite sex of more than fifteen and of less than eighteen years of age, is punishable with simple imprisonment.” Although these provisions covered all minors, Article 596 of the Code redundantly stated that “[w]hosoever, by taking unfair advantage of the inexperience or trust of a female minor between fifteen and eighteen years of age, induces her to have sexual intercourse with him, whether by promise of marriage, trickery or otherwise, is punishable, upon complaint, with simple imprisonment.”⁴¹⁹ In both cases of statutory rape against minors between the ages of 15 and 18 years old, the punishment was a simple imprisonment, but in the latter case, it was made a private offence that could be investigated and prosecuted only upon the request of the victim or her representative alone.

The 1957 Penal Code also recognized the importance of addressing coercive contexts that imply a lack of consent, such as abusing one’s superior position or a victim’s dependency to satisfy one’s sexual desires. In this respect, Article 592 of the Code stated: “[w]hosoever, by taking advantage of his position, office or state, has sexual intercourse or performs an act corresponding to the sexual act or any other indecent act with an inmate of a hospital, an alms-house or an asylum, or any establishment of education, correction, internment or detention, who is under his direction, supervision or authority, is punishable...” Generally, in terms of comprehensiveness and clarity on sexual offences, the 1957 Penal Code made a significant progress, particularly in comparison to its predecessor.

3.4.4 Procedural and Evidentiary Laws Applicable to Sexual Offence

Criminal procedure law is a part of the law which sets forth rules on the reporting, investigation and prosecution of crimes and, upon proof of guilt, the conviction and sentencing of criminals. Evidence law, on the other hand, sets rules on the collection and production of evidence as well as on deciding their admissibility, relevance and probative values. Before 1961, there was no codified

⁴¹⁹ *Ibid*, Article 596.

procedural law in Ethiopia. Nor was there a codified law of evidence. There were, however, various customary procedural rules used by various segments of the society. These customary procedural rules were used parallel to the formal rules used by the courts.⁴²⁰ In Ethiopia, there are, at least, 60 customary laws and some of them are functioning parallel to the formal legal system of the state.⁴²¹ Characteristically, customary rules did not make a distinction between procedural and evidentiary matters, criminal and civil matters, and private and public offences.

Until 1943, criminal proceedings were largely initiated by the aggrieved parties themselves or their representatives, and decrees were executed by the parties to the litigation.⁴²² This practice was operational until the establishment, in 1943, of the Office of the Public Prosecutor.⁴²³ The proceedings were also characterized by relative informality, free debate by the parties, their representatives and bystanders, primary reliance on testimonial proof by human witnesses, some supernatural modes of proof, and “consensus” judgments strongly influenced by lay participants. The trials had to take place in a public place.⁴²⁴ Although the present study could not locate documented evidence on the use customary procedural rules for rape proceedings, the very features of the rules, such as the reliance on eyewitnesses and conducting of trials in public, are apparently incompatible with the very nature of sexual offences.

The 1961 Criminal Procedure Code is the first codified procedural law which has, at least in theory, replaced the customary criminal procedural laws, and one that had a nation-wide applicability.⁴²⁵ It sets forth detailed rules aimed at protecting the due process rights of suspected or accused persons, on the one hand, and bringing the criminals to justice, on the other. The due process rights

⁴²⁰ Stanley Z. Fisher (1974) ‘Traditional Criminal Procedure in Ethiopia’, *the American Journal of Comparative Law* 19(4), pp. 709-746.

⁴²¹ Dolores A. Donovan and Getachew Assefa (2003) ‘Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism’, *the American Journal of Comparative Law* 51(3), pp. 505-552, p. 505.

⁴²² Stanley Z. Fisher (1974), *supra note* 420.

⁴²³ Aberra Jembere (1998) *Legal History of Ethiopia, 1434-1974*, Rotterdam: Erasmus Universiteit, Leiden: Afrika-Studie-Centrum pp. 243-285.

⁴²⁴ Aberra Jembere (1998), *ibid*, pp. 243-285.

⁴²⁵ Criminal Procedure Code of Ethiopia, Proclamation No. 185/1961, *Negarit Gazeta*, Extraordinary Issue No. 1 of 1961, Addis Ababa. [Here-in-after the “Criminal Procedure Code”].

are necessitated to make sure that innocent persons are not convicted and punished. In this regard, the 1961 Criminal Procedure Code protects the following constitutionally recognized rights of a suspected or an accused person: *the right not to be subjected to arbitrary arrest, detention, search or seizure*;⁴²⁶ *the right to counsel*;⁴²⁷ *the presumption of innocence*;⁴²⁸ *the right to be released on bail*;⁴²⁹ *the right to a public trial by an independent court*;⁴³⁰ *the right to test the prosecution evidence, including the right to examine witnesses*;⁴³¹ *the right to give and call evidence*;⁴³² and *the right to appeal*.⁴³³ Nevertheless, the Code does not attempt to strike a balance between the victim's rights to justice and the due process rights of the offender by incorporating the rights of victims of violent crimes in the criminal proceedings. Nor was it accompanied by a codified rules of evidence law.

3.5 Conclusion

Sexual violence is a widespread and daily occurrence, and most of the victims of sexual violence are women and most of the offenders are men. Moreover, it is a gendered problem, with adverse consequences to the victims' mental, physical, reproductive health and socio-economic well-being. Despite this, the proportion of victims who report the incident to the police was extremely low. Even where the case was reported, most of the offenders were never arrested, making the prosecution and conviction rates for rape cases substantially low. In the few circumstances where the offenders were convicted, they were inadequately punished. Often, rape victims were subjected to a harrowing treatment within the CJS.

⁴²⁶ Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st Year No. 1 Addis Ababa, 21st August, 1995, Article 17. [Here-in-after the "FDRE Constitution"].

⁴²⁷ *Ibid*, Article 20(5).

⁴²⁸ *Ibid*, Article 20(3).

⁴²⁹ *Ibid*, Article 19(6).

⁴³⁰ *Ibid*, Article 20(1).

⁴³¹ *Ibid*, Article 20(4).

⁴³² *Ibid*.

⁴³³ *Ibid*, Article 20(6).

There are a multitude of factors that account for the high prevalence rate, underreporting and inadequacy of responses to sexual violence. Effective intervention to address SVAW in Ethiopia requires a thorough understanding of these factors and the complex interactions among them. However, a review of previous legal intervention indicates that the law and CJS did not consider sexual violence as a violent crime directed against individual victims. Instead, rape was defined as a ‘property crime’ against a woman’s father or her husband and as a theft of virginity. However, after the coming into effect of the 1957 Penal Code of Ethiopia, the law turned its focus to male offenders whose acts were increasingly viewed as a criminal conduct. In this respect, the 1957 Penal Code specified a number of well-defined sexual offences.

CHAPTER FOUR: SVAW WITHIN THE HUMAN RIGHTS FRAMEWORK

4.1 Introduction

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

4.2 The Mainstream Human Rights Standards and VAW

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

⁴³⁴ I/A Court H.R. *Case of Inés Fernández et al. v. Mexico*, Judgment of August 30, 2010. Series C No. 215, para. 118; UNICEF (2000), *supra note 25*, p. 2; Marijke Velzeboer *et al.* (2003), *supra note 302*, p. 5.

⁴³⁵ *Ibid.*

⁴³⁶ UNICEF (2000), *ibid.*

⁴³⁷ UNICEF (2000), *ibid.*; and Christine Chinkin (1995), *supra note 309*, p. 23.

(ICESCR), which include, among others, the right to life, bodily integrity, and protection from torture, cruel and degrading treatment, were not previously interpreted to include gender-specific sexual and other forms of violence.⁴³⁸ Until recently, the issue of VAW has been ignored by the mainstream international human rights frameworks.⁴³⁹ There were a number of reasons for such a gender-blindness of the mainstream international human rights frameworks.

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

Furthermore, the true magnitude of VAW globally has often been underestimated as it went largely unreported, and therefore it does not appear in the official record.⁴⁴⁵ Numerous forms of SVAW

⁴³⁸ Christine Chinkin (1995), *ibid*; Sarah Y. Lai and Regan E. Ralph (1993) 'Female Sexual Autonomy and Human Rights', *Harvard Human Rights Journal* 8: pp. 201-127, p. 203.

⁴³⁹ Christine Chinkin (1995), *ibid*; and Alice M. Miller (2004) 'Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection', *Health and Human Right* 7(2), pp. 16-47, p. 22.

⁴⁴⁰ Christine Chinkin (1995), *ibid*, p. 24; and Sarah Y. Lai and Regan E. Ralph (1993), *supra note* 438, p. 204.

⁴⁴¹ Christine Chinkin (1995), *ibid*; and Sarah Y. Lai and Regan E. Ralph (1993), *ibid*.

⁴⁴² Christine Chinkin (1995), *ibid*, p. 24; Giles Mohan and Jeremy Holland (2001) 'Human Rights and Development in Africa: Moral Intrusion or Empowering Opportunity?', *Review of African Political Economy* 28(88), pp. 177-96; and Dorothy Q. Thomas and Michele E. Beasley (1993) 'Domestic Violence as a Human Rights Issue', *Human Rights Quarterly* 15(1), pp. 36-62.

⁴⁴³ Christine Chinkin (1995), *ibid*, pp. 23-24.

⁴⁴⁴ Inter-American Commission on Human Rights (2011), *supra note* 323, p. 2.

⁴⁴⁵ Christine Chinkin (1995), *supra note* 309, pp. 23-24.

that are committed in many different settings do actually exist yet remain ‘invisible’ due to lack of studies or statistics on the prevalence and magnitude of the problem.⁴⁴⁶ On top of this, women’s economic and social dependence on men, who often abuse them, prevents many victims from reporting the incident to the police and seeking justice.⁴⁴⁷ Similarly, biased assumptions and beliefs about gender roles are used to justify and perpetuate VAW as well as the oppression and subordination of women.⁴⁴⁸ Often, the women themselves are forced to accept violence as part of normal life and even take the blame for its occurrence.⁴⁴⁹ This silence about VAW obscures the reality that it is actually a serious social problem requiring intervention at international level.⁴⁵⁰

However, women activists working in international and local NGOs have lobbied the concerned international bodies to direct serious attention towards VAW, particularly since the UN Women's Conference which was convened in Nairobi, in 1985.⁴⁵¹ They managed to place the issue on the agenda of international conferences, first at the World Conference on Human Rights, held in Vienna, in 1993, and then again at the Fourth World Conference on Women, held in Beijing, in 1995.⁴⁵² Global attention to the role of rape in notorious armed conflicts, first in the former Republic of Yugoslavia and later in Rwanda, amplified the claims and concerns women had raised during the Vienna and Beijing conferences, leading to legal, structural, and political victories in important international platforms.⁴⁵³ The commitments made by various participants during these conferences directed a growing attention to VAW.⁴⁵⁴ VAW was thus recognized as a serious

⁴⁴⁶ Inter-American Commission on Human Rights (2011), *supra note* 323, p. 2.

⁴⁴⁶ Christine Chinkin (1995), *supra note* 309, pp. 23-24.

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*, p. 24.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*, pp. 23-24.

⁴⁵¹ Sarah Y. Lai and Regan E. Ralph (1993), *supra note* 438, p. 203-204; and Alice M. Miller (2004), *supra note* 439, p. 25.

⁴⁵² Alice M. Miller (2004), *ibid.*, p. 21.

⁴⁵³ *Ibid.*

⁴⁵⁴ Marijke Velzeboer *et al.* (2003), *supra note* 302, p. 1; and Dorothy L. Hodgson (2002) ‘Women's Rights as Human Rights: Women in Law and Development in Africa (WiLDAF)’, *Africa Today* 49(2), pp. 3-26, p. 6.

human rights issue. With an eye to addressing VAW, many new mechanisms and norms came into effect, within the international, regional and national human rights frameworks.

4.3 The International Human Rights Framework on SVAW

4.3.1 The CEDAW and ‘Soft’ Laws on VAW

4.3.1.1 The CEDAW on VAW

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

Interestingly, the CEDAW calls upon states parties to take steps to end gender stereotypes. Article 5(a) is the CEDAW’s key provision against stereotypes and stereotyping.⁴⁶⁰ It sets out the CEDAW’s crosscutting obligations upon the state to “modify and transform gender stereotypes

⁴⁵⁵ *Ibid*, p. 15.

⁴⁵⁶ Christine Chinkin (1995), *supra note* 309, p. 25.

⁴⁵⁷ Christine Chinkin (1995), *ibid*; and Lisa R. Pruitt (2011) ‘Deconstructing CEDAW’s Article 14: Naming and Explaining Rural Difference’, *William and Mary Journal of Women and the Law* 17(2), pp. 347-394, p. 349.

⁴⁵⁸ Convention on the Elimination of All Forms of Discrimination Against Women (adopted Dec. 1979, entered into force 3 Sept. 1981) UN General Assembly resolution 34/180, Article 2(d)-(e). [Here-in-after the “CEDAW”].

⁴⁵⁹ See *ibid*, Article 4 (providing affirmative action as a means to achieve “*de facto* equality between men and women”). See also *ibid*, Article 2(a) (referring to “practical realization of [the equality] principle”).

⁴⁶⁰ See also *ibid*, preamble para. 14, Article 5(b) and Article 10(c).

and eliminate wrongful gender stereotyping.”⁴⁶¹ Article 5(a) obliges states parties to take “all appropriate measures” to “modify the social and cultural patterns of conduct of men and women” in an effort to eliminate practices “based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁴⁶² Article 2(f) reinforces Article 5(a) by requiring states parties to take “all appropriate measures” to “modify or abolish [...] laws, regulations, customs and practices which constitute [discrimination] against women.” These obligations apply to all branches of government.⁴⁶³

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

⁴⁶¹ Committee on the Elimination of Discrimination against Women: Communication No. 28/2010- *R.K.B. v. Turkey*, para. 8.8.

⁴⁶² The CEDAW, *supra note* 458, Article 5(a).

⁴⁶³ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, para. 39. [Here-in-after “General Recommendation No. 28”].

⁴⁶⁴ The CEDAW, *supra note* 458, Article 1.

⁴⁶⁵ *Ibid*, Article 10.

⁴⁶⁶ *Ibid*, Article 12.

⁴⁶⁷ *Ibid*, Article 11.

⁴⁶⁸ *Ibid*, Article 6.

⁴⁶⁹ *Ibid*, Article 7.

⁴⁷⁰ *Ibid*, Article 8.

participate in recreational activities, such as sports.⁴⁷¹ It also requires states to take appropriate measures to eliminate discrimination within the family.⁴⁷² Article 14 of the CEDAW is devoted particularly to addressing the unique concerns of rural women.

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

Although these procedures play a significant role on the protection of women's human rights, they do not provide individual compliant mechanisms that could enable individual victims whose rights under the CEDAW have been violated, for communicating with the Committee. To remedy this gap, the Optional Protocol to the CEDAW was adopted by the UN General Assembly Resolution A/54/4, on the 6th of October 1999 and entered into force on the 22nd of December 2000.⁴⁷⁵ The Optional Protocol has introduced two additional procedural mechanisms: the *communication procedure*⁴⁷⁶ and the *inquiry procedure*.⁴⁷⁷ The *communication procedure* was introduced to

⁴⁷¹ *Ibid*, Article 13.

⁴⁷² *Ibid*, Article 16.

⁴⁷³ *Ibid*, Article 18.

⁴⁷⁴ *Ibid*, Article 20 and Article 21.

⁴⁷⁵ Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, 1999 GA Res 54/4, 6 October 1999.

⁴⁷⁶ *Ibid*, Article 1 and Article 2.

⁴⁷⁷ *Ibid*, Article 8.

receive complaints from individual women victims, groups or organizations acting on behalf of women victims about the violations of their rights, against member states, provided that the victim in question exhausted domestic remedies.⁴⁷⁸ The *inquiry procedure* is meant to initiate a confidential investigation against a member state when the Committee receives allegations of gross violations of the CEDAW's provisions or when it is deemed that there are systematic violations of the CEDAW's provisions.⁴⁷⁹ The investigation includes visits by the CEDAW's investigators to the territory of the member state in question, upon securing the consent of the state.⁴⁸⁰

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

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

⁴⁷⁸ *Ibid*, Article 1, Article 2 and Article 4 (1).

⁴⁷⁹ *Ibid*, Article 8.

⁴⁸⁰ *Ibid*, Article 8(2).

⁴⁸¹ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19, Violence against Women*, [here-in-after "General Recommendation No. 19"]; and General Recommendation No. 35, *supra note* 66.

⁴⁸² General Recommendation No. 19, *ibid*, para. 1; Committee on the Elimination of Discrimination against Women, *General Recommendation No. 12, Violence against Women*; and General Recommendation No. 35, *ibid*.

⁴⁸³ General Recommendation No. 19, *ibid*, para. 6.

⁴⁸⁴ *Ibid*, para. 7.

torture, the right to life, the right to equal protection under the law, the right to equality in the family, the right to health, and the right to just and favorable conditions of work.⁴⁸⁵

General Recommendation 19 also sets out specific recommendations regarding the obligations of states parties in addressing VAW. In this regard, it calls on states parties to take all legal and other measures that are necessary to provide women with effective protection against VAW, whether by public or private actors.⁴⁸⁶ The CEDAW's Committee also calls on the state to provide effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women from all forms of violence.⁴⁸⁷ Accordingly, states parties should take preventive measures, including public information and education campaigns to change attitudes about the role and status of men and women.⁴⁸⁸ They should also take protective measures, including provision of shelters, counselling, and rehabilitation and support services for the victims of VAW or those who are at risk of violence.⁴⁸⁹ These recommendations show how the causes and consequences of VAW were understood and approached holistically.

Generally, the scope of states' obligations in relation to VAW occurring in particular contexts are addressed in General Recommendation No. 28.⁴⁹⁰ Additionally, in its General Recommendation No. 35, in 2017, the CEDAW Committee stated that the general obligations encompass all areas of state action, including the legislative, executive and judicial branches at the federal, national, sub-national, local and decentralized levels as well as acts in privatized service sectors.⁴⁹¹ At the legislative level, it calls on states to adopt legislation proscribing all forms of VAW and harmonizing domestic legislation with the provisions of the CEDAW.⁴⁹² At the executive level, states are obliged to adopt and adequately budget diverse institutional measures, in coordination

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Ibid.*, para. 24(a).

⁴⁸⁷ *Ibid.*, para. 24(t)(i).

⁴⁸⁸ *Ibid.*, para. 24(t)(ii).

⁴⁸⁹ *Ibid.*, para. 24(t)(iii).

⁴⁹⁰ General Recommendation No. 35, *supra note* 66, para. 11.

⁴⁹¹ *Ibid.*, para. 26.

⁴⁹² *Ibid.*, para. 26(a).

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

4.3.1.2 Other Important 'Soft' Laws on VAW

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

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

⁴⁹³ *Ibid*, para. 26(b).

⁴⁹⁴ *Ibid*, para. 26(c).

⁴⁹⁵ *Ibid*.

⁴⁹⁶ *Ibid*.

⁴⁹⁷ The DEVAW, *supra note 67*, para. 5.

⁴⁹⁸ *Ibid*, Article 1.

⁴⁹⁹ *Ibid*, Article 2.

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

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

Furthermore, shortly after the adoption of the DEVAW, the United Nations Commission on Human Rights, stated that it was deeply concerned at the "continuing and endemic violence against women," and, among other measures,⁵⁰⁶ it appointed the first Special Rapporteur on VAW, in

⁵⁰⁰ *Ibid.*

⁵⁰¹ *Ibid.*, Preamble, para. 4 and para. 5.

⁵⁰² *Ibid.*, Preamble, para. 6.

⁵⁰³ *Ibid.*, Article 4.

⁵⁰⁴ *Ibid.*

⁵⁰⁵ *Ibid.*, Article 4(c).

⁵⁰⁶ The United Nations Commission on Human Rights (1994) Resolution 1994/45, Preamble, para. 3, available at: <https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx> last visited on 1/29/2019.

March 1994. The Rapporteur was mandated to seek and receive information on VAW, its causes and its consequences from a variety of sources,⁵⁰⁷ and “[r]ecommend measures, ways and means, at the national, regional and international levels, to eliminate [VAW] and its causes, and to remedy its consequences.”⁵⁰⁸ Numerous reports have since been produced by the Rapporteur highlighting the fact that the issue affects women in the family,⁵⁰⁹ in war situations,⁵¹⁰ and on cultural dimensions of VAW,⁵¹¹ amongst many others. According to Radhika Coomaraswamy, a UN Special Rapporteur on VAW, women are particularly vulnerable to violence because of their socially and culturally defined sexuality, as in the case of rape; because of their relationship with men, as in the case of domestic violence; or because they belong to a particular social group, as in the case of rape during armed conflict to humiliate the group they belong to.⁵¹² The Rapporteur also emphasized that VAW is a “manifestation of the way in which masculine power and domination over women’s bodies is established.”⁵¹³ It is “part of a historical process and is not natural or born of biological determinism. The system of male dominance has historical roots, and

⁵⁰⁷ *Ibid*, Article 7(a).

⁵⁰⁸ *Ibid*, Article 7(b).

⁵⁰⁹ The United Nations Commission on Human Rights (1995) *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85.

⁵¹⁰ The United Nations Commission on Human Rights (2000) *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2000/45 Violence against women perpetrated and/or condoned by the State during times of armed conflict (1997-2000).

⁵¹¹ The United Nations Commission on Human Rights (2001) *Report of the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/49 Cultural practices in the family that are violent towards women.

⁵¹² The United Nations Commission on Human Rights (1994) *Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences*, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 1994/45, para. 48.

⁵¹³ The United Nations Commission on Human Rights (2003) *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Towards an Effective Implementation of International Norms to End Violence against Women*, UN Doc. E/CN.4/2004/66, 26 December 2003, para. 35.

manifestations change over time.”⁵¹⁴ Thus, the causes, nature and consequences of VAW are essentially different from other forms of interpersonal violence in general.⁵¹⁵

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

4.4 SVAW within the African Regional Human Rights Framework

4.4.1 The African Charter on Human and Peoples’ Rights

In post-colonial African countries, the issue of human rights was at the margin of the then Organization of African Unity (OAU) agenda.⁵¹⁸ The OAU was preoccupied with the persistence of colonialism in the former Portuguese colonies of Mozambique and Angola and the unilateral declaration of independence by the then Southern Rhodesia (now Zimbabwe) under a racist

⁵¹⁴ *Ibid*, para. 49.

⁵¹⁵ Maria Eriksson (2010) *Defining Rape: Emerging Obligations for States under International Law?* Örebro Studies in Law 2, Örebro University, p. 351, available at: <http://oru.diva-portal.org/smash/get/diva2:317541/FULLTEXT02.pdf> last visited on 9/12/2018.

⁵¹⁶ David Wippman *et al.* (2002) *International Law, Norms, Actors, Process: A Problem-Oriented Approach*, New York: Aspen Law and Business, p. 70.

⁵¹⁷ *Ibid*, p. 87.

⁵¹⁸ Ziyad Motala (1989) ‘Human Rights in Africa: A Cultural, Ideological, and Legal Examination’, *Hastings International and Comparative Law Review* 12: pp. 373-410, p. 395.

minority regime.⁵¹⁹ With the notable exception of its condemnation of the Apartheid regime in South Africa, the OAU gave particular attention to the sovereignty and territorial integrity of states and non-interference in the internal affairs of states, and maintained an indifferent attitude to the notorious violation of human rights in its member states.⁵²⁰ The issue of human rights was not a priority until the African Charter on Human and Peoples' Rights (ACHPR) was adopted by the then OAU General Assembly, on 28 June 1981, in Nairobi, Kenya.

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

⁵¹⁹ U. O. Umzurike (1983) 'The African Charter on Human and Peoples' Rights', *The American Journal of International Law* 77(4), pp. 902-912, pp. 902-903.

⁵²⁰ *Ibid.*

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

⁵²² *Ibid.*, Article 3.

⁵²³ *Ibid.*, Article 5.

⁵²⁴ *Ibid.*, Article 18(3).

failed to take into account the key human rights issues affecting specifically women within the continent.

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

The Protocol to the African Charter on the Rights of Women in Africa (the Women’s Protocol) was adopted by the second ordinary session of the Assembly of the African Union, in Maputo, on 11 July 2003 and came into effect in 2005. Despite the adoption of the ACHPR, the concern of addressing discrimination and VAW is highlighted in the preamble of the Women’s Protocol.⁵²⁵ Like the DEVAW, the Women’s Protocol offers a broad definition of VAW. It defines VAW as: “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.”⁵²⁶

The Women’s Protocol acknowledges VAW as an affront to women’s dignity.⁵²⁷ Accordingly, it requires member states to adopt and implement appropriate measures to “prohibit any exploitation or degradation of women”⁵²⁸ and to “ensure the protection of every woman’s right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence.”⁵²⁹ The Protocol also recognizes VAW as a violation of human rights. Its Article 4(1) starts by reiterating the core human rights to life and to be free from degrading and/or inhumane punishment and treatment while its Article 4(2) contains an exhaustive list of states’ obligations.⁵³⁰ Member states are duty-bound to enact and enforce laws prohibiting all forms of VAW. More

⁵²⁵ See generally, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Preamble; approved at the second ordinary session of the Assembly of the Union, Maputo, July 11, 2003. [Here-in-after the “Women’s Protocol”].

⁵²⁶ *Ibid*, Article 1(j).

⁵²⁷ *Ibid*, Article 3.

⁵²⁸ *Ibid*, Article 3(4).

⁵²⁹ *Ibid*.

⁵³⁰ *Ibid*, Article 4(1).

specifically, they are obliged to take appropriate and effective measures to “enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.”⁵³¹ This provision proscribes sexual and other forms of VAW, whether they take place in the private or in the public sphere. The prohibition of unwanted or forced sex in private settings means that member states are obliged to criminalize marital rape in their domestic criminal laws.⁵³²

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

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

⁵³¹ *Ibid.*, Article 4(2)(a).

⁵³² Fareda Banda (2008) ‘Building on a Global Movement: Violence against Women in the African Context’, *African Human Rights Law Journal* 8(1), pp. 1-22, p. 13.

⁵³³ The Women’s Protocol, *supra note* 525, Article 6(a) and Article 6(b).

⁵³⁴ *Ibid.*, Article 20 (a).

⁵³⁵ *Ibid.*, Article 20(c).

⁵³⁶ Fareda Banda (2008), *supra note* 532, p. 18.

⁵³⁷ The Women’s Protocol, *supra note* 525, Article 11(3).

⁵³⁸ *Ibid.*, Article 22.

⁵³⁹ *Ibid.*, Article 23.

⁵⁴⁰ *Ibid.*, Article 24.

Linking SVAW with reproductive rights, the Protocol also provides a wide range of entitlements to women.⁵⁴¹ In this regard, it obliges member states to “ensure that the right to health of women, including sexual and reproductive health is respected and promoted.”⁵⁴² It further illustrates that this right includes the right to control their fertility;⁵⁴³ the right to decide whether to have children as well as the number of children and the spacing of children;⁵⁴⁴ the right to choose any method of contraception;⁵⁴⁵ the right to self-protection and to be protected against STIs, including HIV/AIDS;⁵⁴⁶ the right to be informed on one’s health status and on the health status of one’s partner, particularly if affected with STIs, including HIV/AIDS;⁵⁴⁷ and the right to have family planning education.⁵⁴⁸ It further calls on states to protect the reproductive rights of women by authorizing medical abortion in cases of pregnancy resulting from, among others, rape.⁵⁴⁹

The Protocol extensively deals with discrimination against women as well as harmful cultural and traditional practices. For instance, Article 2(1) requires member states to “combat all forms of discrimination against women through appropriate legislative, institutional and other measures.”⁵⁵⁰ It defines discrimination against women as “any distinction, exclusion or restriction or any differential treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”⁵⁵¹ Similarly, it requires member states to take measures with a “view to achieving the elimination of harmful cultural and traditional practices.”⁵⁵² It also defines harmful practices as “all behavior, attitudes and/or practices which

⁵⁴¹ *See generally, ibid*, Article 14.

⁵⁴² *Ibid*, Article 14(1).

⁵⁴³ *Ibid*, Article 14(1)(a).

⁵⁴⁴ *Ibid*, Article 14(1)(b).

⁵⁴⁵ *Ibid*, Article 14(1)(c).

⁵⁴⁶ *Ibid*, Article 14(1)(d).

⁵⁴⁷ *Ibid*, Article 14(1)(e).

⁵⁴⁸ *Ibid*, Article 14(1)(g).

⁵⁴⁹ *Ibid*, Article 14(2)(c).

⁵⁵⁰ *Ibid*, Article 2(1).

⁵⁵¹ *Ibid*, Article 1(f).

⁵⁵² *Ibid*, Article 2(2).

negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity.”⁵⁵³ Meanwhile, the Protocol calls on member states to “prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards.”⁵⁵⁴

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

Hence, the Protocol obliges member states to take measures to “modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.”⁵⁶⁰ It requires states

⁵⁵³ *Ibid*, Article 1(g).

⁵⁵⁴ *Ibid*, Article 5.

⁵⁵⁵ *Ibid*, Article 4.

⁵⁵⁶ *Ibid*, Article 4 (2) (e) and (f).

⁵⁵⁷ *Ibid*, Article 8.

⁵⁵⁸ *See ibid*, Article 25.

⁵⁵⁹ CEDAW General Recommendation No. 19, *supra note* 481, para 11. *See also Fareda Banda* (2008), *supra note* 532, pp. 12-13.

⁵⁶⁰ The Women’s Protocol, *supra note* 525, Article 2(2).

to take measures to “eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of [VAW]”⁵⁶¹ It also requires states to take “measures to prevent the exploitation and misuse of women in advertising practices.”⁵⁶²

4.5 SVAW under the Ethiopian Human Rights Framework

4.5.1 Human Rights in Pre-1991 Ethiopia

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

Furthermore, the dominant socio-political culture in much of Ethiopia, according to Sarah Vaughan and Kjetil Tronvoll, “has historically been vertically stratified, and rigidly

⁵⁶¹ *Ibid*, Article 4(2)(d).

⁵⁶² *Ibid*, Article 13.

⁵⁶³ Gene Ellis (1976) ‘The Feudal Paradigm as a Hindrance to Understanding Ethiopia’, *The Journal of Modern African Studies* 14(2), pp. 275-295, p. 278; and Paul Brietzke (1976) ‘Land Reform in Revolutionary Ethiopia’, *The Journal of Modern African Studies* 14(4), pp. 637-660, p. 640.

⁵⁶⁴ Peter Schwab (1976) ‘Human Rights in Ethiopia’, *The Journal of Modern African Studies* 14(1), pp. 155-160, p. 155; and Lionel Cliffe (1974) ‘Capitalism or Feudalism? The Famine in Ethiopia’, *Review of African Political Economy* 1(1), pp. 34-40.

⁵⁶⁵ Peter Schwab (1976), *ibid*, p. 156.

⁵⁶⁶ Tom J. Farer (1979) *War Clouds on the Horn of Africa: The Widening Storm*, 2nd revised ed, New York: Carnegie Endowment for International Peace, p. 12.

⁵⁶⁷ Mohamud H. Khalif and Martin Doornbos (2002) ‘The Somali Region in Ethiopia: A Neglected Human Rights Tragedy’, *Review of African Political Economy* 29(91), pp. 73-94, p. 76.

hierarchical.”⁵⁶⁸ They further note: “it is often the case that processes of socialization from birth teach Ethiopians that people are *not* equal. Instead, they instill an understanding of the roles and statuses which are assigned to different individuals, marking them as either marginal, and disenfranchised, or privileged and empowered, usually on the basis of ethnicity, clan, class, gender, wealth or age.”⁵⁶⁹ In terms of gender relations and interactions, men are entitled to be superior to women, both in private and public settings.⁵⁷⁰ In the private sphere, males assumed the position of head of the household.⁵⁷¹ Laws further legitimized this gender hierarchy. In the public sphere, which was historically viewed as males’ domain, women are represented by their husbands.⁵⁷² Consequently, the culture and socio-political institutions of the country were largely contrary to the notion of human rights, which are premised on the idea that all human beings are equal irrespective of, among other things, gender, sex or sexuality.

It was against a background of such structural conditions that the first written Imperial Constitution of the 1931 was introduced. The Imperial Constitution incorporated a bundle of rights to the *subjects* of the then Ethiopian Empire. It adumbrated what can now be referred to as civil and political rights, including the right to movement,⁵⁷³ the right to freedom from arbitrary arrest,⁵⁷⁴ the right to be tried before a court of law,⁵⁷⁵ the right to privacy against arbitrary domiciliary searches⁵⁷⁶ and secrecy of correspondences,⁵⁷⁷ the right to property,⁵⁷⁸ and the right to petition.⁵⁷⁹

⁵⁶⁸ Sarah Vaughan and Kjetil Tronvoll (2003) *The Culture of Power in Contemporary Ethiopian Political Life*, Sida Studies Number 10, p. 1, available at: <http://ehrp.org/wp-content/uploads/2014/05/VaughnandTronvoll-The-Culture-of-Power-in-Contemporary-Ethiopian-Political-Life.pdf> last visited on 10-27-2018.

⁵⁶⁹ *Ibid.*, p. 11.

⁵⁷⁰ *Ibid.*, p. 33.

⁵⁷¹ *Ibid.*, pp. 33-34.

⁵⁷² *Ibid.*

⁵⁷³ Ethiopian Constitution of 1931, Established in the reign of His Majesty Hail`e Sellassi`e I 16th July 1931, Article 22.

⁵⁷⁴ *Ibid.*, Article 23.

⁵⁷⁵ *Ibid.*, Article 24.

⁵⁷⁶ *Ibid.*, Article 25.

⁵⁷⁷ *Ibid.*, Article 26.

⁵⁷⁸ *Ibid.*, Article 27.

⁵⁷⁹ *Ibid.*, Article 28.

A closer look at how these rights were formulated indicates that they were meant to guarantee protection against wrongful acts by the government within the public sphere, traditionally considered males' domain, where men enjoyed their public lives. Women's traditional place in private settings inevitably diminished their presence and activities within the public sphere. Most of the rights incorporated in the Imperial Constitution of 1931 did not, and naturally cannot, address many acts of VAW committed by private individuals in private spheres and within the community at large. Various forms of VAW within the family setting were further concealed by the notion of privacy right that was intended to protect the family unit from government intrusion. Additionally, the Imperial Constitution did not prohibit discrimination based on gender. Nor did it limit the power of the monarch from restricting his subjects' rights by "his supreme power."⁵⁸⁰

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

After ruling the country for many years through decrees, the *Derg* promulgated the Constitution of the Peoples' Democratic Republic of Ethiopia (PDRE) in 1987, which incorporated a bundle of

⁵⁸⁰ *Ibid*, Article 29.

⁵⁸¹ Mohamud H. Khalif and Martin Doornbos (2002), *supra note*, 561, p. 76.

⁵⁸² Edmond J. Keller (1981) 'Ethiopia: Revolution, Class, and the National Question', *African Affairs* 80(321), pp. 519-549, pp. 534-535; and Lionel Cliffe (1974), *supra note* 564, p. 40.

⁵⁸³ Teshale Tibebu (2008) 'Modernity, Eurocentrism, and Radical Politics in Ethiopia, 1961-1991', *African Identities* 6(4), pp. 345-371, pp. 354-355; and Edmond J. Keller (1985) 'State, Party, and Revolution in Ethiopia', *African Studies Review* 28(1), pp. 1-17, p. 9.

⁵⁸⁴ Peter Schwab (1976), *supra note* 564, p. 156; Teshale Tibebu (2008), *ibid*, p. 353; and Paul Brietzke (1976), *supra note* 563, p. 637.

largely socio-economic and cultural rights as well as civil and political rights along with a list of duties, under Chapter Seven (Article 35-Article 58).⁵⁸⁵ Regarding women's rights, Article 35(1) of the PDRE Constitution provided for the right to equality before the law, irrespective of, among other things, sex.⁵⁸⁶ More specifically, Article 36 of the PDRE Constitution guaranteed equality of men and women as well as affirmative measures for women.⁵⁸⁷ Moreover, Article 37(1) recognized equal rights of spouses in marriage.⁵⁸⁸ However, as Indrawatie Biseswar noted, “[d]espite such a genuine legal instrument, the balance sheet in the end showed no major changes in the status of women and, in fact, specifically reflected the prevalence and continuation of cultural practices that prevented women from taking advantage of state policies, directives or decrees.”⁵⁸⁹

4.5.2 Human Rights Framework under the FDRE Constitution and VAW

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

⁵⁸⁵ The Constitution of the Peoples' Democratic Republic of Ethiopia, Proclamation No. 1/1987, *Negarit Gazeta*, Vol. 47, No. 2, Addis Ababa, 12th September 1987, Chapter Seven (Article 35-Article 58).

⁵⁸⁶ *Ibid*, Article 35(1).

⁵⁸⁷ *Ibid*, Article 36.

⁵⁸⁸ *Ibid*, Article 37(1).

⁵⁸⁹ Indrawatie Biseswar (2011), *supra note* 28, pp. 109-110.

⁵⁹⁰ T. Lyons (1996) 'Closing the Transition: The May 1995 Elections in Ethiopia', *Journal of Modern African Studies* 34(1), pp. 121-142, p. 123.

The preamble of the FDRE Constitution includes the principles of fundamental rights and freedoms and equality and non-discrimination on the grounds of sex, among others.⁵⁹¹ It embodies the principle of the sanctity of human rights, under Article 10(1), stating: “[h]uman rights and freedoms, emanating from the nature of mankind [*sic*], are inviolable and inalienable.”⁵⁹² Out of the total 106 articles of the FDRE Constitution, 31 articles under chapter three of the Constitution are devoted to human rights provisions. The Constitution provides a reasonably clear and comprehensive list of fundamental rights and freedoms. Essentially, Chapter Three of the Constitution includes all human rights known to have been recognized under major international human rights covenants, namely, the ICCPR and the ICESCR. It incorporates the right to life;⁵⁹³ the right to humane treatment, including freedom from torture and cruel, inhumane or degrading treatment or punishment, freedom from slavery, servitude, forced and compulsory labour;⁵⁹⁴ the right to liberty and security, including freedom from arbitrary arrest or detention and so on.⁵⁹⁵

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

However, the Constitution goes beyond the protection of human rights, in gender-neutral terms. In its Article 35, it specifically provides comprehensive provisions entirely devoted to women’s

⁵⁹¹ The FDRE Constitution, *supra note* 426, Preamble, para. 2.

⁵⁹² *Ibid*, Article 10(1).

⁵⁹³ *Ibid*, Article 14.

⁵⁹⁴ *Ibid*, Article 18.

⁵⁹⁵ *Ibid*, Article 16 and Article 17.

⁵⁹⁶ *Ibid*, Article 25.

⁵⁹⁷ *Ibid*, Article 7.

rights issues. It consists of nine sub-articles on the equal enjoyment of the constitutionally guaranteed rights by women;⁵⁹⁸ on the equal rights of women and men in marriage;⁵⁹⁹ on women's entitlement to affirmative measures to bring about *de facto* equality;⁶⁰⁰ on the right to a paid maternity leave; on equal participation in programme planning and implementation;⁶⁰¹ on equal rights on property ownership;⁶⁰² on equality in employment;⁶⁰³ on women's right to full access to reproductive health care;⁶⁰⁴ and most importantly, on freedom from harmful practices.⁶⁰⁵

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

Be that as it may, the Constitution proscribes “laws, customs and practices that oppress or cause bodily or mental harm to women” without providing, at least, an illustrative list of VAW. However,

⁵⁹⁸ *Ibid*, Article 35(1).

⁵⁹⁹ *Ibid*, Article 35(2).

⁶⁰⁰ *Ibid*, Article 35(3).

⁶⁰¹ *Ibid*, Article 35(6).

⁶⁰² *Ibid*, Article 35(7).

⁶⁰³ *Ibid*, Article 35(8).

⁶⁰⁴ *Ibid*, Article 35(8).

⁶⁰⁵ *Ibid*, Article 35(4).

⁶⁰⁶ *Ibid*, Article 35(4).

⁶⁰⁷ የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ህገ-መንግስት ማብራሪያ, p. 87, available at: <https://www.abysinnialaw.com/constitutions>, last visited on 1/29/2019.

it offers an important interpretative tool for its bill of human rights as a whole. In this regard, Article 13(3) of the Constitution instructs: “[t]he fundamental rights and freedoms specified in [chapter three] shall be interpreted in a manner conforming to the principles of the [UDHR], International Covenants on Human Rights and international instruments adopted by Ethiopia.”⁶⁰⁸ Here, the international human rights instruments need not be treaties in order to serve as interpretative guidelines for constitutional human rights provisions. They can be non-treaty human rights instruments as long as they are adopted by Ethiopia in international platforms, such as the UN or other international platforms.⁶⁰⁹ Accordingly, what acts constitute “customs and practices that oppress or cause bodily or mental harm to women” can be interpreted in line with issue-specific non-treaty human rights instruments, such as the DEVAW. The definition of VAW under the DEVAW includes physical, sexual and psychological violence occurring in the family, within the wider community, or perpetrated or condoned by the state, wherever it occurs.⁶¹⁰ Interpreted in line with the DEVAW’s provisions, Article 35(4) of the Constitution proscribes sexual violence committed in private settings, within the community and condoned by the state. In view of this, it is the duty of the government to criminalize all forms of SVAW and take effective measures to prevent, investigate, prosecute and punish acts of sexual violence.

In addition to instructing the use of international human rights instruments as interpretative guidelines, the Constitution also incorporates international human rights treaties ratified by Ethiopia into the domestic laws.⁶¹¹ It domesticates the international human rights treaties ratified by Ethiopia, including the CEDAW. In this regard, with reservations on some critical provisions, Ethiopia has ratified the most comprehensive issue-specific regional human rights treaty – the Women’s Protocol – in March 2018.⁶¹² By ratifying the Protocol, Ethiopia has officially

⁶⁰⁸ The FDRE Constitution, *supra note* 426, Article 13(2).

⁶⁰⁹ *Ibid*, Article 13(2).

⁶¹⁰ DEVAW, *supra note* 67, Article 2.

⁶¹¹ The FDRE Constitution, Article 9(4).

⁶¹² See Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa Ratification Proclamation No. 1082/2018, *Federal Negarit Gazette*, Article 2, 24th Year No. 33, Addis Ababa, March 30th, 2018. [Here-in-after the “Women’s Protocol Ratification Proclamation”].

incorporated detailed definitions of VAW, harmful practices and discrimination against women into its human rights framework though it has not yet been translated into the country's official language and issued in its official *Federal Negarit Gazetta*. Thus, the Protocol's definition of VAW as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war,"⁶¹³ has formally become a part of the Ethiopian human rights framework.

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

Overall, the FDRE Constitution has, in comparison to its predecessors, made significant progress in terms of clearly and comprehensively addressing concerns with respect to women's rights. However, the Ethiopian normative human rights framework has inherent weaknesses in protecting women's rights. For instance, it does not preclude the adjudication of disputes in relation to personal and family laws, in accordance with religious or customary laws.⁶¹⁶ As Gemma Lucy Burgess notes "[t]he Constitution recognizes customary law and tradition as being legitimate for

⁶¹³ The Women's Protocol, *supra* note 525, Article 1(j).

⁶¹⁴ *Ibid*, Article 1(g).

⁶¹⁵ *Ibid*, Article 1(f).

⁶¹⁶ The FDRE Constitution, *supra* note 426, Article 34 (5).

regulating social life, particularly in the realm of the family (where laws are often discriminatory), whilst also stating that equality between men and women and the protection of their human rights is paramount.”⁶¹⁷ By doing so, it gives due recognition to customary and religious laws to regulate and adjudicate personal matters such as marriage, divorce, property ownership, child custody, inheritance and adoption and the like.⁶¹⁸ This constitutionally guaranteed legal pluralism undermines the protection and promotion of women’s rights,⁶¹⁹ creating barriers for advancing women’s equal rights in inheritance, property ownership, land use and family relations.⁶²⁰

As Indrawatie Biseswar succinctly put it, “the very constitution that grants women equal rights also includes laws that infringe upon these rights.”⁶²¹ In fact, empirical evidence shows that the recognition and parallel application of religious or customary laws imperils women’s human rights. For instance, a study conducted on *Xeer*, a customary law practiced in the Somali Regional State, concluded that this customary law violates women’s rights, including the right to equality, the right to property, the right to freedom of movement, the right to participation and women’s marital, personal and family rights.⁶²² In limiting the application of religious and customary laws, the Constitution gives an option to the disputing parties to choose a form for adjudication. Any one of the parties can reject the application of customary laws and the jurisdictions of customary or religious institutions.⁶²³ However, this approach unfairly assumes that women are free to reject the application of religious and customary laws, without facing stigma and isolation from their

⁶¹⁷ Gemma Lucy Burgess (2012) ‘When the Personal Becomes Political: Using Legal Reform to Combat Violence against Women in Ethiopia’, *Gender, Place & Culture: A Journal of Feminist Geography*, 19(2), pp. 153-174, P. 163.

⁶¹⁸ Indrawatie Biseswar (2011), *supra note* 28, pp. 132-133.

⁶¹⁹ Mohammed Abdo (2011) ‘Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia’, *Mizan Law Review* 5(1), pp. 72-104, P. 94; and Berihun Adugna Gebeye (2013) ‘Women’s Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State’, *Women in Society* 6, p. 31, available at: <https://ssrn.com/abstract=2683685> last visited on 1/26/2019.

⁶²⁰ Meaza Ashenafi and Zenebeworke Tadesse (2005) *Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia*, p. 25, available at: <http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-and-inheritance-rights-the-case-of-ethiopia/23.pdf> last visited on 1/26/2019.

⁶²¹ Indrawatie Biseswar (2011), *supra note* 28, p. 132; and Indrawatie Biseswar (2008) ‘A New Discourse on ‘Gender’ in Ethiopia’, *African Identities* 6(4), pp. 405–429, p. 418.

⁶²² Berihun Adugna Gebeye (2013), *supra note* 619, p. 31.

⁶²³ The FDRE Constitution, *supra note* 426, Article 34(5).

family and the community.⁶²⁴ In the case of *Xeer*, for instance, women are not free to reject the *Xeer*, without facing stigma and isolation.⁶²⁵

The Ethiopian government has not ratified the CEDAW's optional protocol, which provides an avenue for individuals to bring individual complaints alleging a breach of their rights guaranteed under the CEDAW's provisions, to the CEDAW Committee.⁶²⁶ In addition, the Women's Protocol has been ratified by Ethiopia, with reservations on some critical provisions.⁶²⁷ In this regard, it has made reservations to the provisions of the Protocol on monogamy and polygamous marital relationships;⁶²⁸ on the formality requirements of a valid marriage;⁶²⁹ on a married woman's maiden name;⁶³⁰ on separation, divorce or annulment of a marriage by the courts;⁶³¹ and on the minimum age of marriage.⁶³² As far as SVAW is concerned, reservation has been made on the most critical issue. For instance, reservation has been submitted against the application of the Protocol's Article 4(2)(a), which calls on the state to "enact and enforce laws to prohibit all forms of [VAW] including unwanted or forced sex, whether the violence takes place in private or public."⁶³³ By doing so, the Ethiopia government has made it clear that "Article 4(2)(a) shall be applicable in accordance with Article 620 of the [RCC] that defines rape to be a forced sexual intercourse that occurs out of wedlock."⁶³⁴ Since Article 620 of the RCC deals only with gender-specific forcible rape by a man against a woman, this reservation does not refer to rape committed by a woman against a man, under Article 621 of the RCC. Thus, it is a gendered reservation, legitimizing SVAW in the private sphere. However, the present study argues that Article 620 of

⁶²⁴ Meaza Ashenafi and Zenebeworke Tadesse (2005), *supra note* 620, p. 22.

⁶²⁵ Berihun Adugna Gebeye (2013), *supra note* 619, p. 31.

⁶²⁶ See generally the list of states' ratification, accession, or succession status to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en

⁶²⁷ The Women's Protocol Ratification Proclamation, *supra note* 612, Article 3.

⁶²⁸ *Ibid*, Article 3(1) (a).

⁶²⁹ *Ibid*, Article 3(1) (b).

⁶³⁰ *Ibid*, Article 3(1) (c).

⁶³¹ *Ibid*, Article 3(1) (d).

⁶³² *Ibid*, Article 3(2) (b).

⁶³³ The Women's Protocol, *supra note* 525, Article 4(2)(a).

⁶³⁴ The Women's Protocol Ratification Proclamation, *supra note* 612, Article 3(2) (a).

the RCC itself is discriminatory against women and has been outlawed by other provisions of the Women's Protocol to which no reservation has been made by Ethiopia, such as Article 2 on the elimination of discrimination against women, and Article 8 on equal protection under the law.⁶³⁵

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

4.6 Conclusion

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

⁶³⁵ See generally *infra* Chapter Seven. Section "7.6.3 A Case for Ending the Exemption of Marital Rape" with accompanying notes.

⁶³⁶ Indrawatie Biseswar (2011), *supra note* 28, p. 9.

⁶³⁷ Indrawatie Biseswar (2008), *supra note* 621, p. 419.

⁶³⁸ Indrawatie Biseswar (2008), *ibid.*

CHAPTER FIVE: CONTEXTUALIZING THE RAPE LAW AND POLICY REFORMS

5.1 Introduction

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

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

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

⁶³⁹ Theresa Rouger (2009), *supra note* 293, p. 33; and Gemma Lucy Burgess (2012), *supra note* 617, p. 157.

⁶⁴⁰ Gemma Burgess (2011), *supra note* 32, p. 170.

⁶⁴¹ *Ibid.*

was necessitated to achieve alignment of the provisions of the criminal law with the FDRE Constitution, including provisions related to women’s human rights.⁶⁴²

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

⁶⁴² The Revised Criminal Code, *supra note* 21, Preamble Para. 1.

⁶⁴³ Gemma Burgess (2013), *supra note* 31, p. 96.

⁶⁴⁴ Gemma Burgess (2013), *ibid*, p. 107; and Gemma Lucy Burgess (2012), *supra note* 617, P. 160.

⁶⁴⁵ Gemma Burgess (2013), *ibid*, p. 105; Gemma Burgess (2011), *supra note* 32, p. 96; Billene Seyoum Woldeyes and Earuyan Solutions (2017) *The Ethiopian Women Lawyers Association – A Story of Service, Movement Building and Survival, Rooted in Ethiopia’s Political Legacy*, A Research Commissioned by AWIB Ethiopia, p. 4; and Sarah Jane Holcombe (2018) ‘Medical Society Engagement in Contentious Policy Reform: the Ethiopian Society for Obstetricians and Gynecologists (ESOG) and Ethiopia’s 2005 Reform of Its Penal Code on Abortion’, *Health Policy and Planning* 33(4), pp. 583–591, p. 584.

⁶⁴⁶ Gemma Burgess (2013), *ibid*, p. 97; and Gemma Lucy Burgess (2012), *supra note* 617, pp. 157-160.

⁶⁴⁷ Tigest Abye (2016) *Life Story Narratives of Ethiopian Women Activists: The Journey to Feminist Activism*, PhD Thesis, University of Bradford, p. 244.

⁶⁴⁸ Interview with A2 on 15 March 2019 09:30-10:09 AM. See also Gemma Lucy Burgess (2012), *supra note* 617, P. 160; Tigest Abye (2016), *ibid*, p. 102; and Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 4.

⁶⁴⁹ Logan Cochrane and Betel Bekele Birhanu (2018) ‘Pathways of Legal Advocacy for Change: Ethiopian Women Lawyers Association’, Forum for Development Studies, DOI: 10.1080/08039410.2018.1534752, pp. 2-6; and Gemma Burgess (2011), *supra note* 32, pp. 163-178.

⁶⁵⁰ Interview with A2, *supra note* 648. See also Gemma Burgess (2013), *supra note* 31, p. 103; Gemma Lucy Burgess (2012), *supra note* 617, p. 160; and Sara Tadiwos (2001), *supra note* 27, p. 6.

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

The process of revising the 1957 Penal Code was preceded by the reforms on the Ethiopian Family Law, which, in terms of advancing women's rights, was viewed by many as the EWLA's success story.⁶⁵⁴ In advocating for the reform of the Family Law, EWLA conducted studies on the existing law, identified the changes needed, and submitted its findings to the concerned institutions.⁶⁵⁵ Based on its findings, it engaged in advocacy works through a variety of public forums. Eventually, the EWLA managed to get its main demands incorporated into the Revised Family Law, which was adopted on 4th July 2000 and came into effect on 9th December 2000.⁶⁵⁶ According to one of the present study's key informants, A1, "the circumstance was very good at that time. The revision of the Family Law, coupled with the government's willingness to amend laws that hinder women's rights, paved the way for us to demand for reforms of the Penal Code as well."⁶⁵⁷

The reform effort was started in the late 1990s, with a study on the 1957 Penal Code of Ethiopia in light of the constitutional human rights provisions and the international human rights standards.⁶⁵⁸ The study's findings exposed the discriminatory features of the 1957 Penal Code, particularly with respect to the sexual rights of women.⁶⁵⁹ The findings were submitted to the then

⁶⁵¹ Interview with A2, *ibid*; Gemma Burgess (2013), *ibid*; Gemma Lucy Burgess (2012), *ibid*; and Gemma Burgess (2011), *supra note* 32, pp. 163–177.

⁶⁵² *Ibid*.

⁶⁵³ *Ibid*.

⁶⁵⁴ Ethiopian Women Lawyers Association (2001) *Ethiopian Women Lawyers Association Activity Report November 1999 – December 2000*, Addis Ababa: EWLA, available at: http://www.seleda.com/jul_aug01/EWLA.doc last visited on 9/17/2018.

⁶⁵⁵ *Ibid*.

⁶⁵⁶ *Ibid*.

⁶⁵⁷ Interview with A1 on 18 March 2019 3:50-11:05 PM.

⁶⁵⁸ Gemma Burgess (2013), *supra note* 31, p. 103; Ethiopian Women Lawyers Association (2001), *supra note* 654; and Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 7.

⁶⁵⁹ Gemma Burgess (2013), *ibid*, p. 103; Ethiopian Women Lawyers Association (2001), *ibid*; and Billene Seyoum Woldeyes and Earuyan Solutions (2017), *ibid*.

Ministry of Justice and the Federal Institute of Law Reform, which, at that time, were in charge of revising laws.⁶⁶⁰ EWLA's research findings also draw attention to the need for several changes in the laws as they affect the rights of women.⁶⁶¹ Subsequently, the EWLA devoted its resources to awareness raising activities and campaigns. It, along with other stakeholders, organized debates and discussions involving schools, communities and NGOs in all Addis Ababa's administrative zones.⁶⁶² A candlelight vigil was held for three consecutive nights at the Meskel Square, and this was followed by a rally held on 10th February 2001.⁶⁶³ On the final day, more than one thousand women marched to the office of the Prime Minister and the Parliament.⁶⁶⁴ Petitions aimed at bringing the issue of VAW to the attention of the Prime Minister's Office and the Parliament were presented, which received affirmative responses.⁶⁶⁵

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

⁶⁶⁰ *Ibid.*

⁶⁶¹ *Ibid.*

⁶⁶² Interview with A1, *supra* note 657. See also Adanetch Kidane Mariam (2001) 'The Campaign on Violence Against Women: How Did It Go?', in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender, Number 5*, Addis Ababa: Panos Ethiopia, p. 18, available at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf> last visited on 10/29/2018.

⁶⁶³ Adanetch Kidane Mariam (2001), *ibid.*, p. 19.

⁶⁶⁴ Logan Cochrane and Betel Bekele Birhanu (2018), *supra* note 649, p. 14; Ethiopian Women Lawyers Association (2001), *supra* note 654; and Gemma Lucy Burgess (2012), *supra* note 617, pp. 166-167.

⁶⁶⁵ Adanetch Kidane Mariam (2001), *supra* note 662 p. 19; and Tigest Abye (2016), *supra* note 647, p. 82.

⁶⁶⁶ Interview with A1, *supra* note 657. See also Gemma Burgess (2011), *supra* note 32, p. 169.

⁶⁶⁷ Interview with A1, *ibid.*

⁶⁶⁸ Interview with A1, *ibid.* See also Ethiopian Women Lawyers Association (2001), *supra* note 654.

⁶⁶⁹ Interview with A1, *ibid.* See also Ethiopian Women Lawyers Association (2001), *ibid.*

excluded children between the ages of 15 and 18.⁶⁷⁰ The EWLA proposed the inclusion of children between the ages of 15 and 18 years in the same provision as minors.⁶⁷¹

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

In addition, the EWLA lobbied for reforms on the Criminal Procedure Code.⁶⁷⁵ For instance, it demanded the adoption of rules of procedural law that allow the trial of rape cases *in-camera*.⁶⁷⁶ It argued that the court needs to reduce the burden of proof since in cases such as rape, the victim is often unable to produce the required evidence due to the nature of the crime.⁶⁷⁷ The EWLA further demanded that the constitutional right of arrested persons to be released on bail be restricted, particularly in cases involving girls who are victimized by their relatives or neighbors.⁶⁷⁸ All these efforts culminated in the release of the amended draft penal law by the then Ministry of Justice, in September 2000.⁶⁷⁹ Work then continued towards improving the draft, which did not meet the demands of the reform advocates.⁶⁸⁰ A national workshop was also held to improve the

⁶⁷⁰ Ethiopian Women Lawyers Association (2001), *ibid*.

⁶⁷¹ Interview with A1, *supra note* 657.

⁶⁷² Interview with A1 *ibid*. See also Ethiopian Women Lawyers Association (2001), *supra note* 654.

⁶⁷³ Ethiopian Women Lawyers Association (2001), *ibid*.

⁶⁷⁴ *Ibid*.

⁶⁷⁵ *Ibid*.

⁶⁷⁶ *Ibid*.

⁶⁷⁷ *Ibid*.

⁶⁷⁸ *Ibid*.

⁶⁷⁹ *Ibid*.

⁶⁸⁰ *Ibid*.

draft and a communiqué outlining matters that women demanded to see in the revised criminal law was forwarded to the then Minister of Justice.⁶⁸¹

In its advocacy works, the EWLA was not working alone. Rather, it adopted a collaborative approach in working with the government, used the pre-existing formal and informal networks and created a sort of alliance with individuals within the government.⁶⁸² Most importantly, it mobilized a wide range of actors and facilitated the establishment of a broad-based coalition of women's organizations – the Network of Ethiopian Women's Associations (NEWA) – in 2003.⁶⁸³ During the reform, one of the present study's key informant was a representative of the NEWA, which included the EWLA as its prominent member.⁶⁸⁴

The NEWA was established to enable all member organizations to have a strong representation and voice on issues of mutual interest.⁶⁸⁵ At the time of its formation, the NEWA had 43 member organizations, but this later declined substantially to less than 10 members, following the coming into effect of the then overly restrictive Charities and Civil Societies' Law.⁶⁸⁶ One of the common issues that all the member organizations stood together against was the issue of VAW.⁶⁸⁷ One of the key informants noted: “[a]t the time, it was agreed by the member organizations that the NEWA should voice against numerous challenges faced by Ethiopian women, specifically sexual and forms of [VAW].”⁶⁸⁸

Moreover, the EWLA was the most prominent, but not the sole actor influencing the reform process. Other internal and external actors were also involved in the process. Particularly, in socially contentious reform agenda, such as abortion law reform, other NGOs such as the Ethiopian

⁶⁸¹ *Ibid.*

⁶⁸² Logan Cochrane and Betel Bekele Birhanu (2018), *supra note* 649, p. 12.

⁶⁸³ *Ibid.*, p. 13.

⁶⁸⁴ Interview with A1, *supra note* 657.

⁶⁸⁵ *Ibid.*

⁶⁸⁶ *Ibid.*

⁶⁸⁷ *Ibid.*

⁶⁸⁸ *Ibid.*

Society of Obstetricians and Gynecologists (ESOG) had actively participated.⁶⁸⁹ The ESOG participated in the process by building a research base, conducting evidence-based advocacy, and framing the rationale for reform from the perspective of public health and maternal mortality prevention.⁶⁹⁰ Other actors have also engaged in abortion law reform by forming a broad-based coalition of civil societies and stockholders. In this regard, the Abortion Advocacy Working Group was formed, whose members worked together in building public opinion, shifting policymakers' perspectives, and creating an enabling environment for service providers.⁶⁹¹

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

Key informants were asked whether international NGOs, foreign governmental organizations and other external actors took bold agenda-setting steps during the revision of the 1957 Penal Code. One of the key informants, A1, expressed her doubt on the role of these actors, stating that she did

⁶⁸⁹ Sarah Jane Holcombe (2018), *supra note*, 645, p. 583.

⁶⁹⁰ *Ibid*, p. 584.

⁶⁹¹ Ipas (2008) *Tools for Progressive Policy Change: Lessons Learned from Ethiopia's Abortion Law Reform*, Ipas, Chapel Hill, NC, available at: <https://endabortionstigma.org/en/Home/Resources/Ipas%20Publications/Tools-for-progressive-policy-change-Lessons-learned-from-Ethiopia's-abortion-law-reform.aspx> last visited on 1/27/2019.

⁶⁹² Gemma Lucy Burgess (2012), *supra note* 617, P. 160; and Gemma Burgess (2011), *supra note* 32, p. 168.

⁶⁹³ Logan Cochrane and Betel Bekele Birhanu (2018), *supra note* 649, p. 8; and Gemma Burgess (2011), *ibid*, p. 166.

⁶⁹⁴ Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 11.

⁶⁹⁵ Gemma Burgess (2011), *supra note* 32, p. 173.

⁶⁹⁶ Billene Seyoum Woldeyes and Earuyan Solutions (2017), *supra note* 645, p. 11.

not think that they had a significant influence on the reform process. She further notes: “the roles of external actors were insignificant and mainly limited to conducting researches under the watch of the NEWA. They did not directly involve in advocacy and did not take bold agenda-setting steps during the reform process.”⁶⁹⁷ She added that “though there some were foreign organizations that were working for abortion law reforms, but generally foreign actors left local issues for local actors.”⁶⁹⁸ However, she admitted that foreign organizations were important as enablers for local organizations through funding.⁶⁹⁹ In addition, as donor funding almost always involves alignment of agenda, the influence of external actors on the reform process could not be underestimated.

In sum, the Revised Criminal Code (RCC) has addressed some of the issues raised by the EWLA.⁷⁰⁰ It came into effect on the 9th of May 2005.⁷⁰¹ It incorporated some progressive changes that were welcomed by the EWLA.⁷⁰² The protection of women’s human rights is explicitly mentioned, in the preamble of the RCC, as the primary objective of the legal reforms. It stated that one of the aims of the reforms was to remedy the failure of the 1957 Penal Code to “acknowledge the grave injuries and sufferings caused to women and children by reason of harmful traditional practices.”⁷⁰³ The revision of the 1957 Penal Code was also meant to acknowledge the importance of “adopting progressive laws at times, educate and guide the public to dissociate itself from harmful traditional practices.”⁷⁰⁴ Thus, apart from the deterrence goal of criminal law, the RCC has the additional goal of serving an educative function in changing societal attitudes toward VAW. Interestingly, the legal reform has been accompanied by other parallel policy reforms and measures to address sexual and other forms of VAW. Generally, in adopting these reforms, the policymakers, and reform advocates sought to curb the rate of sexual and other forms of VAW and

⁶⁹⁷ Interview with A1, *supra note 657*.

⁶⁹⁸ *Ibid.*

⁶⁹⁹ *Ibid.*

⁷⁰⁰ Ethiopian Women Lawyers Association (2001), *supra note 654*.

⁷⁰¹ The Revised Criminal Code, *supra note 21*, p. V.

⁷⁰² Gemma Burgess (2011), *supra note 32*, p. 169.

⁷⁰³ The Revised Criminal Code, *supra note 21*, Preamble Para. 3, p. II.

⁷⁰⁴ *Ibid.*

improve the treatment of the victims.⁷⁰⁵ Thus, the reforms’ goals were both symbolic (education and changing of attitudes) and instrumental (punishment and deterrence).

5.3 The Main Strands of the 2004 Rape Law and Corresponding Policy Reforms

5.3.1 The Main Strands of the 2004 Rape Law Reform

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

Writers have identified many different manifestations of males’ power in patriarchal societies, such as the power of men to use women as objects in transactions between males (for instance, the use of women as a gift or bride price).⁷⁰⁶ “Women’s sexuality,” according to Catharine MacKinnon, “is socially, a thing to be stolen, sold, bought, bartered, or exchanged by others.”⁷⁰⁷ There are many instances in the Ethiopian context that well substantiate MacKinnon’s assertion. In some parts of the country, for instance, girls were not only sold out but also they were even pledged as a collateral to borrow cattles, simply given as a gift, or inherited by the relative of their deceased husband.⁷⁰⁸ Of the many forms VAW within the community, marriage by abduction is more common and often followed by rape.⁷⁰⁹ Usually, a man, in consort with his friends, abducts a woman he wishes to take as his wife. Then, he rapes the abducted girl, after which she and her family feel they have no option but to agree to a marriage since the victim’s perceived marriageability afterwards is severely compromised.⁷¹⁰ As the society attaches a high value on

⁷⁰⁵ Interview with A1, *supra note* 657. See also የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የተሻሻለው የወንጀል ህግ ሐተታ ዘምከንያት 1996 ዓ/ም (Amharic), p. 287. [Here-in-after the “*Expose des motifs* of the Revised Criminal Code”].

⁷⁰⁶ Adrienne Rich (1999) ‘Compulsory Heterosexuality and Lesbian Existence’, in Richard Parker and Peter Aggleton (eds) *Culture, Society and Sexuality: The Reader*, Chapter 11, London: UCL Press, pp. 204-205.

⁷⁰⁷ Catharine A. MacKinnon (1997b), *supra note* 382, p. 420. See also Andrea Dworkin (1976), *supra note* 188, p. 26.

⁷⁰⁸ እሸቱ ድባቡ (1997), *supra note* 315, pp. 61-79.

⁷⁰⁹ Sinidu Fekadu (2008), *supra note* 2690, p. 23; Indrawatie Biseswar (2011), *supra note* 28, p 186; CARE Ethiopia (2008), *supra note* 23; እሸቱ ድባቡ (1997), *ibid*, p. 73; and African Commission on Human and Peoples’ Rights: Communication 341/2007 – *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. The Federal Democratic Republic of Ethiopia*. [Here-in-after “African Commission on Human and Peoples’ Rights: Communication 341/2007”].

⁷¹⁰ EGLDAM (2008) cited in Annabel Erulkar (2013) ‘Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia’, *International Perspectives on Sexual and Reproductive Health* 39(1), pp. 6-13.

women’s virginity, once girls are abducted and raped, they often “are forced to marry off [to] their offender as no one will marry her in the future – as she is considered as a ‘broken item’ among the society and bring shame to the family.”⁷¹¹ In these cases, the offender either pays “compensation” to the victim’s parents or pays a “bride price” to her parents and marries her in order to avoid bringing public attention and shame to the girl and her family.⁷¹² The settlements often involve arbitration by elders.⁷¹³ Thus, marriage by abduction is a typical instance where, as Andrea Dworkin succinctly puts it, “[r]ape precedes marriage, engagement, betrothal, and courtship as sanctioned social behavior.”⁷¹⁴

Under the 1957 Penal Code, both abduction and rape were criminal offences. However, if the offender married the victim, he would be totally exonerated from criminal liability for both types of sexual offences.⁷¹⁵ Thus, like in biblical times, the penalty for the raping of an unbetrothed virgin was marriage.⁷¹⁶ Though the law assumed that the victim would freely give her consent to marry her rapist, young girls, barely 10 or 12 years old, have actually no voice to speak against the wish of their parents and cannot withstand the socio-cultural pressure from the community and threats from the offenders.⁷¹⁷ The parents often consent to settle the matter through marriage because the victims were considered as ‘broken items’ and would be socially unacceptable for a marriage to another man.⁷¹⁸ What is rendered invisible in the process is the negative physical and

⁷¹¹ CARE Ethiopia (2008), *supra note* 23, pp. 39-40; and Indrawatie Biseswar (2011), *supra note* 28, p. 188.

⁷¹² *Ibid.*

⁷¹³ *Ibid.*

⁷¹⁴ Andrea Dworkin (1976), *supra note* 188, p. 26.

⁷¹⁵ The Penal Code, *supra note* 34, Article 599, Article 558(2).

⁷¹⁶ According to the book of Deuteronomy, should a virgin be raped, the punishment for the captor is that he must marry the girl, as well as pay a fine for his act. If a man finds a young woman who is a virgin, who is not betrothed, and he seizes her and lies with her, and they are found out, then the man who lay with her shall give to the young woman’s father fifty shekels of silver, and she shall be his wife because he has humbled her; he shall not be permitted to divorce her all his days. (Deuteronomy 22:25-29, New International Version).

⁷¹⁷ አሸቱ ደባቡ (1997), *supra note* 315, p. 74.

⁷¹⁸ *Ibid.*

psychological impacts inflicted by the offence upon the victims, including the long-term socio-economic consequences in terms of losing education and future job opportunities.⁷¹⁹

Under the RCC, the exoneration of rapists and abductors from criminal liability upon the subsequent conclusion of ‘marriage’ with their victims was formally abolished.⁷²⁰ In a clear reversal of the approach adopted under the 1957 Penal Code, the RCC has incorporated two new provisions. First, Article 587(2) of the RCC states: “[w]here the act of abduction is accompanied by rape, the offender shall be liable to the punishment prescribed for rape in this Code.”⁷²¹ Second, Article 587(3) of the RCC stipulates: “[t]he conclusion of a marriage between the abductor and the abducted, subsequent to the abduction, shall not preclude criminal liability.”⁷²² The RCC further recognizes the right of the victim to “claim compensation under civil law for the moral and material damage she may have sustained as a result of the abduction.”⁷²³ In addressing the concurrent occurrence of abduction and rape, it provides: “[w]here the rape is related to illegal restraint or abduction of the victim, [...], the relevant provisions of this Code shall apply concurrently.”⁷²⁴

However, ending the exoneration of rapists and abductors from criminal liability upon the subsequent conclusion of marriage with their victims does not appear to meet the expectation the reform advocates since the legal reform is not translated into practice. Despite the reform, abduction and rape are often settled through arbitration and end up with the conclusion of marriage between the victim and the offender. For instance, a 2015 study in Arsi, Oromia Region, revealed that the issue of abduction was often referred to the Elder’s Council for settlement.⁷²⁵ Similarly, a 2008 multi-region study which included a *Woreda* in Addis Ababa concluded that women victims

⁷¹⁹ Indrawatie Biseswar (2011), *supra note* 28, p 186; and አሸቱ ደባቡ (1997), *ibid*, p. 68.

⁷²⁰ The Revised Criminal Code, *supra note* 21, Article 620-Article 628, and Article 587(3).

⁷²¹ *Ibid*, Article 587.

⁷²² *Ibid*, Article 587.

⁷²³ *Ibid*, Article 587.

⁷²⁴ *Ibid*, Article 620.

⁷²⁵ Tsegaye Megersa (2015), *supra note* 345, p. 50.

are either forced to marry off to their offenders or the offenders are required to pay compensation to the family of the victims as the latter are considered to be a ‘broken item’.⁷²⁶

Finally, the RCC did not specifically address other forms of VAW which, in their effects, are largely similar to marriage by abduction and which virtually relegated the status of women and girls to mere chattels.⁷²⁷ For instance, the law did not specifically address *wife inheritance*, a type of marriage where a woman marries her husband’s brother, following the former’s death, as a form of VAW. In some cultures, *wife inheritance* is common.⁷²⁸ In some worst cases, if a wife dies, her family would offer the husband to marry one of the sisters of the deceased.⁷²⁹ In some cultures, marriage involves bartering girls and women as mere objects in transactions between men. For instance, in the so-called *exchange marriage*, among the Gumuz in Benishangul Gumuz Regional State, a girl can be exchanged for the sake of her brother’s, father’s, uncle’s or cousin’s marriage.⁷³⁰ In this transaction, the male chooses a girl that he wishes to marry and informs this to the elders who mediate the issue with her family.⁷³¹ Upon the consent of the families involved, marriage takes place through exchanging the bride groom’s sisters or, where there are no sisters, his closest female relatives.⁷³² In this transaction, the consent of the girls so bartered is totally disregarded and rendered irrelevant.⁷³³ The transaction simply involves giving away a girl in exchange for another girl and can take place only where a man has a sister or female relatives to be bartered or exchanged.⁷³⁴ As it is a *quid pro quo* transaction, the more the number of sisters a man has, the more wives he can marry.⁷³⁵ The problem, however, is that by failing to criminalize wife

⁷²⁶ CARE Ethiopia (2008), *supra note* 23, pp. 40-39.

⁷²⁷ አሸቱ ድባቡ (1997), *supra note* 315, pp. 61-79.

⁷²⁸ Tsegaye Megersa (2015), *supra note* 345, p. 55; and Berihun Adugna Gebeye (2013), *supra note* 619, p. 14.

⁷²⁹ Berihun Adugna Gebeye (2013), *ibid.*

⁷³⁰ Kalkidan Bekele (2007) *Cultural Practices that Affected the Status of Women in Benishangul Gumuz Mandura Woreda*, MA Thesis, Addis Ababa University, pp. 49-50.

⁷³¹ *Ibid.*

⁷³² *Ibid.*

⁷³³ *Ibid.*

⁷³⁴ *Ibid.*

⁷³⁵ *Ibid.*

inheritance, exchange marriage and other similar practices, the law presumes, albeit indirectly, that these arrangements are consensual activities rather than forms of VAW.

5.3.1.2 *The Repealing of a 'Victim-Blaming' Legal Provision*

The 1957 Penal Code explicitly incorporated, legitimized and reinforced a rape myth which makes the victims responsible for their own victimization. For instance, Article 597(2) of the Penal Code states: “[w]here the infant or young *person's behavior has encouraged or provoked the accused person to commit the offence*, the relevant extenuating circumstance (Art. 79 (d)) may be applied.”⁷³⁶

This provision has, in essence, limited the criminal responsibility of the offenders and reduced the severity of the punishment if the offence had been committed in response to the supposed youngsters’ and even infants’ ‘provocative’ or ‘encouraging’ behaviors. It virtually assumed that that victims’ behaviors, such as their dressing, are provocative to the extent of triggering uncontrolled sexual desire in men. Apparently, the law viewed women as the causal agents in their own victimization. It also assumed that men are unable to control their sexual urges and cannot, at least partially, be held responsible for their own sexual misconducts, if they are ‘provoked’ by women’s behaviors, such as their sexual ‘attractiveness’ or dressing styles.

Article 597(2) of the Penal Code also indicates that the law framed rape as a crime of passion, motivated by the offender’s overwhelming lust supposedly in response to the victim’s sexual “attractiveness” or provocative behaviors. It also considered rape victims as complicit in or accomplices to their own victimization. Thus, it has partly misplaced and attributed the responsibility for the occurrence of the crime to the victims while reducing the offenders’ criminal liability. By doing so, it reinforced the widespread belief that women are responsible for preventing the occurrence of bodily violations, implying that women who are sexually victimized are culpable

⁷³⁶ The Penal Code, *supra note 34*, Article 597(2). Emphasis mine.

for the crime. It also legitimized the rape myth that women “ask for it” by not keeping themselves safe,⁷³⁷ and reinforced the belief that the victim was to blame for the rape while, at the same time, minimizing and justifying the rapist’s violent actions.

The law also incorporated a faulty assumption that, by being “good”, the potential rape victim can avoid disastrous incidents. By implication, it imposes restrictions as to how a young girl should behave in order not to encourage or provoke potential rapists. As Ann J. Cahill observed, “the feminine body is marked by hesitancy, relative weakness, delicacy, and restraint – qualities that in fact render women more vulnerable to violence – and yet the woman or girl is taught to view her sexual body as dangerously provocative.”⁷³⁸ Thus, the law assumes that it is the woman’s duty to control, conceal, and monitor her body and its movements to avoid potential disaster upon herself. “The socially produced feminine body,” Cahill further notes, “is the body of the *guilty* pre-victim [...] she was somewhere she should not have been, moving her body in ways she should not have, carrying on in a manner so free and easy as to convey an utter abandonment of her responsibilities of self-protection and self-surveillance.”⁷³⁹

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

As studied have indicated, the judges apply and perpetuate myths in their decision-making. For instance, a 2011 study documented a case where the judge acquitted a rapist, accusing a child

⁷³⁷ Nicole Westmarland and Laura Graham (2010) ‘The Promotion and Resistance of Rape Myths in an Internet Discussion Forum’, *the Journal of Social Criminology Journal of Social Criminology* 1(2), pp. 80-104, pp. 89-91.

⁷³⁸ Ann J. Cahill (2001) *Rethinking Rape*, Ithaca NY: Cornell University Press, p. 159.

⁷³⁹ *Ibid*, p. 160.

⁷⁴⁰ *Expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 292.

victim of being provocative and responsible for what had happened to her.⁷⁴¹ This clearly indicates that legal reform is a necessary, but not a sufficient, measure to dispel myths and stereotypes hindering the full protection the rights of rape victims. That is why the state is obliged, in addition to the legal reforms, to take other measures to ensure the actual implementation the laws effectively, including organizing public awareness-raising works and gender-focused trainings for the key actors within the CJS as well as other concerned public officials.⁷⁴²

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

5.3.1.3 Raising the Severity of Punishments for Sexual Offences

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

⁷⁴¹ Getachew Assefa Woldemariam (2011) ‘The Predicaments of Child Victims of Crime Seeking Justice in Ethiopia: A Double Victimization by the Justice Process’, *Afrika focus* 24(1), pp. 11-31, p. 17. See also Sinidu Fekadu (2008), *supra note* 2690, p. 49; and Indrawatie Biseswar (2011), *supra note* 28, p 186.

⁷⁴² See e.g., General Recommendation No. 19, *supra note* 481, para. 24; Committee on the Elimination of Discrimination against Women: Communication No. 2/2003- A.T. v. Hungary, para. 9.6, [here-in-after “CEDAW, A.T. v. Hungary, No. 2/2003”]; Committee on Economic, Social and Cultural Rights (2005) General Comment No. 16, the Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights), para. 27; and the United Nations Commission on Human Rights (2000) CCPR General Comment No. 28: Article 3 (The Equality of Rights between Men and Women), 29 March 2000, CCPR/C/21/Rev.1/Add.10, para. 11.

⁷⁴³ The Women’s Protocol, *supra note* 525, Article 4(2)(d).

⁷⁴⁴ Sara Tadiwos (2001), *supra note* 27.

⁷⁴⁵ *Ibid.*

penalty of 15 years imprisonment.⁷⁴⁶ During the 2004 reform of the criminal law, the EWLA lobbied to have the penalty for rape increased, with a mandatory minimum sentence.⁷⁴⁷

Table 2. Reforms on penalty schemes for sexual offences

Type of Sexual Offence	Penalty Under the 1957 Penal Code		Penalty Under the RCC	
	Min.	Max.	Min.	Max.
Forcible Rape (RCC Art. 620)	0 years	15 years	Five years	15 years
Sexual Assault (RCC Art. 622)	Six months	Eight years	One year	10 years
Sexual Coercion (RCC Art. 623)	Three months	Five years	One year	15 years
Sexual Coercion (RCC Art. 624)	One month	Five years	One year	15 years
Statutory Rape (RCC Art. 627)	0 years	Five years	13 years	25 years
Statutory Rape (RCC Art. 626)	0 years	Simple imprisonment	Three years	15 years

Source: Author’s elaboration of the rape law provisions under the 1957 Penal Code and the RCC

Thus, the RCC restructured the prison terms for forcible rape, with a minimum five-year sentence and maximum 15 years sentence.⁷⁴⁸ Aggravating factors are specifically delineated in the sentencing scheme. These factors include the victim’s age, relationship to the offender (i.e. abuse of power or trust) and physical or mental disability; the number of offenders involved; and acts of particular cruelty or violence.⁷⁴⁹ As shown in Table 2 above, raising the severity of punishment is one of the most visible features of the 2004 reforms, addressing almost all type of sexual offences. As indicated in the *expose des motifs*, “raising the severity of punishment was necessitated to curb the rising cases of sexual offence by increasing its deterrent and preventive capabilities.”⁷⁵⁰ This statement indicates that the prime purpose of raising the severity of punishment was deterrence. The preface of the RCC also emphasizes on the notion of deterrence as one of the goals of

⁷⁴⁶ Meaza Ashenafi (2004) ‘Advocacy for Legal Reform for Safe Abortion’, *African Journal of Reproductive Health /La Revue Africaine de la Santé Reproductive* 8(1), pp. 79-84, p. 81.

⁷⁴⁷ Sara Tadiwos (2001), *supra note 27*.

⁷⁴⁸ The Revised Criminal Code, *supra note 21*, Article 620.

⁷⁴⁹ *Ibid*, Article 620.

⁷⁵⁰ *Expose des motifs* of the Revised Criminal Code, *supra note 705*, p. 287.

punishing the offenders. However, by focusing merely on raising the severity of punishment, the RCC has generally disregarded a key aspect of deterrence – the certainty of punishment.

Generally, deterrence theory suggests that the severity and certainty of punishment are complementary factors. Empirical evidence even reveals that the certainty of punishment was a more robust predictor of deterrence than is the severity of punishments.⁷⁵¹ The RCC has stressed solely on increasing the severity of punishment. Nor has it been accompanied by changes to the procedural law, evidentiary rules or practices within the CJS to ensure the certainty of punishment, for example, by encouraging the victims to report the incident to the police. Underreporting lowers the probability of detection, the arrest and prosecution of offenders and the successful realization of the goal of deterrence.⁷⁵² Therefore, along with the measures of increasing the severity of punishment, other reforms should also have been introduced, to encourage the victims to report the incident to the police. In the absence of other evidence-based legal, institutional and societal reforms, severe penalties alone are less likely to have a significant impact.⁷⁵³

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

⁷⁵² W. David Allen (2007) ‘The Reporting and Underreporting of Rape’, *Southern Economic Journal* 73(3), pp. 623-641, p. 623.

⁷⁵³ Jill Thompson and Felly Nkewto Simmonds (2012) *Rape Sentencing Study: A Review of Statutory Sentencing Provisions for Rape, Defilement, and Sexual Assault in East, Central, and Southern Africa*, Lusaka: Population Council, p. 17.

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

File Number	Date of Decision (in E.C)	Term of Imprisonment
119584	04/04/2009	Five years and six months
119783	11/04/2009	Nine months
119986	04/04/2009	Eight months
120074	04/04/2009	Six years and six months
120164	18/05/2009	Six years and nine months
120573	02/06/2009	0 years
120591	18/05/2009	0 years
121794	04/11/2009	13 years and two months
122194	29/09/2009	Five years and 10 months
122775	28/11/2009	Five months suspended sentence
122776	26/07/2009	Eight months
122777	16/09/2009	Five years and nine months
123183	28/10/2009	Eight months suspended sentence
123767	23/09/2009	One year and two months
123961	23/09/2009	One year and eight months
123961	23/09/2009	One year and two months

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

However, setting appropriate sanctions for rape and other forms of VAW is not an easy task. As Yakin Ertürk observed, it “is a matter of ongoing debate with calls for stronger sentences risking decreased reporting and convictions when the sentences are draconian, and differentially allocated to minority men. At the same time women lose faith in justice systems where sentences are minimal and fail to offer them any protection.”⁷⁵⁴ In Ethiopia, as Table 3 above and Table 4 below

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

depict, in the majority of cases, the courts did not apply the mandatory minimum sentence, making a hollow victory for the advocates of a harsher punishment for rape.

Table 4. The 2008 sentencing decisions of the Federal First Instance Court Lideta Division.

File Number	Date of Decision (in E.C.)	Term of Imprisonment
188631	14/11/2008	Two years and six months
202675	13/10/2008	Eight years and five months
209434	14/6/2008	Five years and months
213603	5/7/2008	Five years
214342	23/5/2008	13 years
215768	26/9/2008	Two years and nine months
216304	8/10/2008	Four years
126332	14/11/2008	10 years
216939	5/7/2008	Six months
217133	8/9/2008	18 years
218028	25/9/2008	Eight years and eight months
221145	2/2/2008	One year and 10 months
221352	29/11/2008	One year
222859	10/9/2008	One year and two months
223146	7/6/2008	Two years and three months
223183	19/5/2008	Three years and three months and a 10, 000 Birr fine
225024	27/5/2008	Two years suspended sentence
225064	24/5/2008	Days he spent under detention before conviction
225182	3/8/2008	17 years
226414	15/10/2008	Nine years
226819	20/10/2008	Two years and six months
226983	7/6/2008	One year
227325	5/9/2008	Two years and six months
229047	4/9/2008	Two years and nine months
229093	12/7/2008	One year and four months
229103	9/7/2008	One year
229309	29/9/2008	One year
229964	18/5/2008	Two years and nine months
230841	3/9/2008	Six years
231540	15/10/2008	One year
233162	24/9/2008	Nine years

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

As shown in Table 3, out of 16 consecutive sentencing decisions made by the Federal First Instance Court, Yeka Division, it is only in six cases that the penalties meet the minimum five years term for forcible rape; in five of the cases, the offenders were sentenced to less than a year, of which two cases were suspended sentences. In two of the cases, the offenders were not sentenced at all though it is difficult to tell the reason based merely on the statistical data.

A one-year's sentencing data from the Federal First Instance Court, Lideta Division, 7th Criminal Bench, shows that convicted offenders face prison terms lower than the mandatory minimum sentence for forcible rape, on average. As Table 4 depicts, the average prison term for the 31 sentenced rape cases in 2008 E.C. was 56.77 months or 4.73 years, where a suspended sentence was counted as zero. This is below the five-year mandatory minimum sentence for forcible rape introduced in the 2004 rape law reform. Two of the present study's key informants from women's rights advocacy groups also expressed their concerns on the sentencing practices and believed that the penalties set by the courts are often too lenient to have a deterrent effect.⁷⁵⁵

5.3.1.4 Abolishing Marital Rape Exemption from 'Less Serious' Sexual Offences

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

⁷⁵⁵ Interview with A1, *supra note 657*; and Interview with A2, *supra note 648*.

⁷⁵⁶ The Penal Code, *supra note 34*, Article 590. Emphasis mine.

simply states that some words have been reframed for the sake of clarity.⁷⁵⁷ As will be discussed in Chapter Seven, this reformulation creates more confusion than clarity and the legislators' intention did not seem to extend legal protection to victims of SVAW committed in private settings since the RCC does not abolish marital rape exemption from the more serious sexual offence – forcible rape under Article 620.

A similar reform was introduced to sexual coercion, which was criminalized under the heading 'Sexual Outrages on Unconscious or Deluded Persons, or on Persons Incapable of Resisting' in Article 591 of the 1957 Penal Code. It defined the offence (i.e. sexual coercion) as follows: "[w]hosoever, knowing of his victim's incapacity, but without using violence or intimidation, has sexual intercourse, or commits a like or any other indecent act, *outside wedlock*, with an idiot [*sic*], with a feeble-minded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature of the act, is punishable..."⁷⁵⁸ Under this provision, sexual intercourse between spouses was not regarded as a criminal offence even if one of the spouses was mentally disabled or, is, as the law put it, an idiot, a feeble-minded or insane. By eliminating this exemption, the RCC, under Article 623, criminalizes sex with a mentally disabled spouse. By doing so, it restricts the sexual rights of mentally disabled married persons. Here too, the legislators' intention did not seem providing legal protection to victims of sexual coercion in private settings. Rather, it presumably appeared to be a result of an overlooking in the preparation of the draft of the legislation since the RCC does not abolish marital rape exemption from what it deems more serious sexual offence – forcible rape.

5.3.1.5 Decriminalizing of Abortion in the Case of Pregnancy as a Result of Rape

One of the well-documented adverse consequences of rape on the victims' reproductive health is unwanted pregnancy. For instance, in the U.S., the rate of rape-related pregnancy among victims

⁷⁵⁷ The *expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 288.

⁷⁵⁸ The Penal Code, *supra note* 34, Article 591(1). Emphasis mine.

who had reached reproductive age is 5% nationally while, among adult women, an estimated 32,101 pregnancies annually result from rape.⁷⁵⁹

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

Following the legal reform, the Ministry of Health issued the “Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia,” in June 2006, for practical implementation of the reform,⁷⁶⁶ which was later revised in 2013.⁷⁶⁷ According to the guidelines, where the pregnancy is a result of rape, termination of pregnancy shall be carried out based on the request and the disclosure by the woman that the pregnancy is a result of rape.⁷⁶⁸ This fact shall be recorded in the

⁷⁵⁹ Melisa M. Holmes et al (1996) ‘Rape-related Pregnancy Estimates and Descriptive Characteristics from a National Sample of Women’, *American Gynecological Society* 175(2), pp. 320-355, p. 320.

⁷⁶⁰ Tekleab Mekbib *et al.* (2007) ‘Survey of Unsafe Abortion in Selected Health Facilities in Ethiopia’, *Ethiopian Journal of Reproductive Health* 1(1), pp 28-43.

⁷⁶¹ The Penal Code, *supra note* 34, Article 528, Article 529, Article 530, Article 532. *See* Article 533, *ibid.* Under the Penal Code, rape and incest were only recognized as mitigating circumstances.

⁷⁶² Meaza Ashenafi (2004), *supra note* 746, p. 83.

⁷⁶³ *Ibid.*

⁷⁶⁴ *Ibid.*, p. 79.

⁷⁶⁵ The Revised Criminal Code, *supra note* 21, Article 551.

⁷⁶⁶ Meaza Ashenafi (2004), *supra note* 746, p. 83. *See also* Federal Ministry of Health Ethiopia (2006) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*.

⁷⁶⁷ For the revised version, *see* Federal Ministry of Health (2013) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*, Second edition Federal Ministry of Health 2013.

⁷⁶⁸ Federal Ministry of Health Ethiopia (2006), *supra note* 766.

woman's medical record.⁷⁶⁹ However, she is not required to furnish evidence of rape or identify the offender to obtain an abortion service.⁷⁷⁰

5.3.1.6 Criminalizing of Same-Sex Rape against Children

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

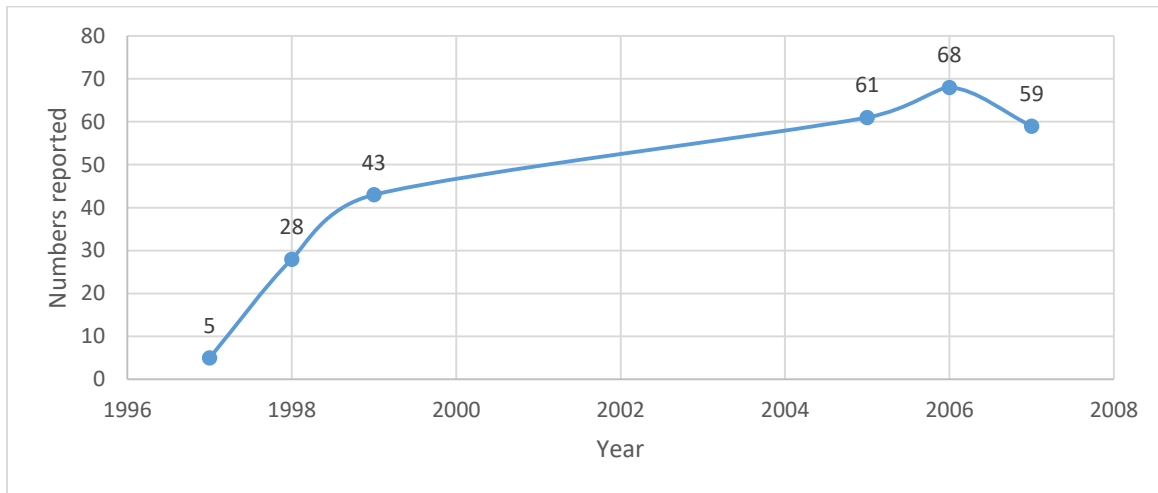


Figure 1. Same-sex sexual offences reported in 10 sub-cities of Addis Ababa

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

Although it was very difficult to have data on the prevalence of same-sex rape in all age groups, the number of reported same-sex rape cases against children in Addis Ababa, as Figure 1 above

⁷⁶⁹ *Ibid.*

⁷⁷⁰ *Ibid.*

⁷⁷¹ Noreen Abdullah-Khan (2008), *supra note* 112, p. 16.

shows, has been rising steadily over time. While one of the major challenges of studying this issue is underreporting due to fear of social stigma, the scanty available studies have indicated that the lifetime prevalence of rape and sexual harassment among boys in Addis Ababa was 4.3%, and 68.2%, respectively.⁷⁷² Data from the police records and various studies might not show the actual prevalence rates of same-sex rape cases. Generally, the incidents remain largely unreported, under-reported or misreported due to the socio-cultural perception of the issue as *un-Ethiopian*.⁷⁷³ This does not, however, mean that the problem is nonexistent or not widespread. If it does exist, the law should intervene to address it. Instead of addressing the issue, the law does not even conceptualize heterosexual rape and same-sex rape in the same way. Both the 1957 Penal Code and the RCC have categorized heterosexual sexual offences as ‘Injury to Sexual Liberty and Chastity,’ and same-sex sexual conducts as ‘Sexual Deviations.’⁷⁷⁴

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

⁷⁷² Rahel Tesfaye Haile *et al.* (2013) Prevalence of Sexual Abuse of Male High School Students in Addis Ababa, Ethiopia’, *BMC International Health and Human Rights* 13:24 <http://www.biomedcentral.com/1472-698X/13/24> last visited on 9/13/2018.

⁷⁷³ Getnet Tadele (2009) ‘Unrecognized Victims’: Sexual Abuse against Male Street Children in Merkato Area, Addis Ababa’, *Ethiopian Journal of Health Development* 23(3), pp. 174-182, p. 181.

⁷⁷⁴ See generally *infra* Chapter Seven. Section “7.4 Gender-Specificity of Rape” with accompanying notes.

⁷⁷⁵ The Penal Code, *supra note* 34, Article 600(1).

⁷⁷⁶ *Ibid*, Article 600(2).

Accordingly, Article 631(1) of the RCC clearly proscribes: “[w]hoever performs a homosexual act on a minor, is punishable with: a) a rigorous imprisonment of three years to 15 years, where the victim is between the ages of 13 and 18 years; or b) a rigorous imprisonment of 15 years to 25 years, where the victim is under 13 years of age.”⁷⁷⁷ It also anticipated that this act can potentially happen to young girls who could be raped by other women. Under Article 631(2) of the RCC, a woman who performs a ‘homosexual’ act on a female minor is punishable with a rigorous imprisonment not exceeding 10 years.⁷⁷⁸ It also proscribes what it refers to as ‘other indecent acts,’ stating: “[w]hoever performs any other indecent act on a minor of the same sex, is punishable...”⁷⁷⁹ However, it does not specifically indicate precisely what ‘other indecent act’ is. Nor does it provide an illustrative list of those indecent acts. Thus, the law leaves broader discretionary powers for the courts to subjectively determine, on a case-by-case basis, what *indecent acts* comprise. Most of all, the RCC has maintained its predecessor’s approach on same-sex rape committed against adults.

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

⁷⁷⁷ The Revised Criminal Code, *supra note* 21, Article 631(1).

⁷⁷⁸ *Ibid*, Article 631(2).

⁷⁷⁹ *Ibid*, Article 631(3).

⁷⁸⁰ *Ibid*, Article 632.

5.3.1.7 Criminalizing of Child Marriage as a Distinct Offence

In patriarchal societies, child marriage is one of the manifestations of males' power to force their sexuality upon women.⁷⁸¹ Although it is used in the present study to refer only to marriage of girls under 18 years of age, child marriage is defined as any type of marriage, irrespective of the sex of the partners involved, in which either party is under the age of 18 years.⁷⁸²

Child marriage is more common in the northern part of Ethiopia.⁷⁸³ For instance, a 2009/2010 survey conducted in seven of Ethiopia's nine major regions revealed that 17% of the respondents had married before the age of 15 years and 30% had married between the ages of 15 -17 years.⁷⁸⁴ One in six young women had married by age 15.⁷⁸⁵

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

⁷⁸¹ እሸቱ ድባቡ (1997), *supra note* 315, pp. 62-68; and Adrienne Rich (1999), *supra note* 706, pp. 204-205.

⁷⁸² Annabel Erulkar (2013), *supra note* 710, p. 6.

⁷⁸³ Meaza Ashenafi (2004), *supra note* 746, p. 81.

⁷⁸⁴ Annabel Erulkar (2013), *supra note* 710, pp. 6-13.

⁷⁸⁵ *Ibid.*

⁷⁸⁶ Hirut Terefe (2002), *supra note* 318; and Meaza Ashenafi (2004), *supra note* 746, p. 81.

⁷⁸⁷ Annabel Erulkar (2013), *supra note* 710, pp. 6-13.

⁷⁸⁸ Meaza Ashenafi (2004), *supra note* 746, p. 81.

⁷⁸⁹ Annabel Erulkar (2013), *supra note* 710, pp. 6-13.

⁷⁹⁰ Meaza Ashenafi (2004), *supra note* 746, p. 81.

Child marriage almost always involves sexual relation with girls under the age of consent and sexual intercourse with minors, which was a criminal act under the 1957 Penal Code. The Code criminalized statutory rape, at least against girls under the age of 15 years.⁷⁹¹ However, it did not treat child marriage as a sexual offence which, instead, was addressed by its provision against statutory rape. Acts of VAW such as early or forced marriage or FGM are usually categorized under harmful cultural practices, rather than sexual violence.⁷⁹² Thus, in 2000, a reform was introduced to the 1960 Family Law to reset the minimum age for marriage for women from 15 to 18 and, which makes the age of marriage similar with that of men.⁷⁹³ In 2004, the 1957 Penal Code was reformed to specifically criminalize child marriage as an offence punishable with a rigorous imprisonment not exceeding three years, where the age of the victim is 13 years or above, and with a rigorous imprisonment not exceeding seven years, where the age of the victim is below 13 years.⁷⁹⁴ However, the Code has categorized child marriage as a crime against the institution of marriage, and not against an individual victim. The maximum punishments for child marriage against girls under the ages of 13 and 18 years old were lower than the mandatory minimum sentences set for statutory rape in both age groups. In addition, the RCC does not specifically stipulate the concurrent prosecution of child marriage and statutory rape where the child marriage involves sexual intercourse, which is often the case.⁷⁹⁵

5.3.1.8 Criminalizing of Female Genital Mutilation

Another manifestation of males' power over women in patriarchal societies is the former's ability to deny the latter's sexuality by means of FGM.⁷⁹⁶ Mostly, FGM includes procedures that

⁷⁹¹ See e.g., the Penal Code, *supra note* 34, Article 594 on Sexual outrage on infants or young persons, Article 595 on Sexual outrages on minors between fifteen and eighteen years of age, and Article 596 on Seduction.

⁷⁹² See e.g., Andrzej Kulczycki (2017) 'Reproductive Rights' *International Encyclopedia of Public Health*, 2nd ed., Vol. 6, p. 315.

⁷⁹³ The Revised Family Code, Proclamation No. 213/2000, *Federal Negarit Gazette*, 6th year No. 1, Addis Ababa, 4th July 2000, Article 7(1). [Here-in-after the "Revised Family Code"].

⁷⁹⁴ *Ibid*, Article 648.

⁷⁹⁵ *Ibid*, Article 660.

⁷⁹⁶ አሸቶ ደባቡ (1997), *supra note* 315, pp. 62-68; and Adrienne Rich (1999), *supra note* 706, pp. 204-205.

intentionally alter or cause injury to the female genital organs for non-medical reasons.⁷⁹⁷ It is practiced in many forms of varying severity, but it often includes the removal of the clitoris and surrounding tissues (*clitoridectomy*) and the stitching together of the outer lips of the vagina (*infibulation*), leaving only a small opening for urine and menstrual flow.⁷⁹⁸

FGM practices are widespread and regarded as a norm in many parts of Ethiopia.⁷⁹⁹ According to a 2016 DHS, two-third of women between the ages of 15 and 49 years were circumcised.⁸⁰⁰ Although the practice is declining in recent years,⁸⁰¹ FGM is often performed on young girls as a rite of passage, under brutal conditions.⁸⁰² The most common type of FGM has involved *clitoridectomy*, with 73% of women reporting this type of circumcision while 7% reported undergoing *infibulation*.⁸⁰³ In most cases, FGM is performed by persons with no medical training, without anesthesia and with unclean or contaminated “surgical” instruments.⁸⁰⁴ As such, it has significant consequences for woman’s physical, mental and reproductive health and well-being.⁸⁰⁵

At societal level, various justifications have been provided for practicing FGM. In most cases, the practice was considered essential to a woman’s identity – a sign of chastity, cleanliness, fertility, beauty, and docility.⁸⁰⁶ Girls who had not undergone FGM were viewed as being unsuitable for

⁷⁹⁷ Catharine White (2015), *supra note* 216, p. 301; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 315.

⁷⁹⁸ Shelly L. Marmion (2006) ‘Global Violence against Women’, in Paula K. Lundberg-Love and Shelly L. Marmion (eds) *“Intimate” Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 10, Westport: Praeger Publishers, p. 147; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*.

⁷⁹⁹ B. Alemu and M. Asnake (2007), *supra note* 321, pp. 5-7; Indrawatie Biseswar (2011), *supra note* 28, pp. 178-191; አሸቱ ደብቡ (1997), *supra note* 315, p. 67; and Sarah Vaughan and Kjetil Tronvoll (2003), *supra note* 568, pp. 20-21.

⁸⁰⁰ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 317.

⁸⁰¹ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*; and Sibylle I. Rahlenbeck *et al.* (2010) ‘Female Genital Cutting Starts to Decline among Women in Oromia, Ethiopia’, *Reproductive BioMedicine Online* 20(7), pp. 867–872.

⁸⁰² Shelly L. Marmion (2006), *supra note* 798, p. 147; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*, p. 315.

⁸⁰³ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *ibid*, p. 317.

⁸⁰⁴ Shelly L. Marmion (2006), *supra note* 798, p. 147.

⁸⁰⁵ Catharine White (2015), *supra note* 216, p. 301; and Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 315.

⁸⁰⁶ Shelly L. Marmion (2006), *supra note* 798, p. 147.

marriage, unclean, unchaste, and likely to engage in infidelity.⁸⁰⁷ In Ethiopia, the practice was ‘justified’ with a number of reasons, including the belief that it makes a woman faithful to her husband, controls her sexual desire and makes her obedient to her husband.⁸⁰⁸ There was also a belief that *everything will be blessed if the girl is circumcised*.⁸⁰⁹ Due to such socio-cultural beliefs, the parents fear that their daughter may not get a husband unless she is circumcised.⁸¹⁰

Whatever the justifications, FGM is nothing short of an attempt to control and limit women’s sexuality. It is an act against the sexual integrity of girls and women. Hence, the WHO characterizes it as one form of SVAW.⁸¹¹ As a first move to denouncing the practice and recognizing FGM as a form of violence, the RCC has criminalized *clitoridectomy*⁸¹² and infibulation⁸¹³ along with other forms of harmful practices.

5.3.1.9 Making Cross-Reference to Physical Violence in Private Setting

As an important first step in recognizing VAW in a private setting, the RCC has introduced one provision under the heading of ‘Violence against a Marriage Partner or a Person Cohabiting in an Irregular Union.’⁸¹⁴ In this regard, it stipulates: “[t]he relevant provision of [the] Code (Arts. 555-560) shall apply to a person who, by doing violence to a marriage partner or a person cohabiting in an irregular union, causes grave or common injury to his/her physical or mental health.”⁸¹⁵ This provision did not, however, actually make physical VAW in a private setting a distinct crime. Instead, it merely makes a cross-reference to interpersonal violence in general, without specifically indicating what acts actually constitute VAW in a private setting. At least in theory, making this reference is in itself a good step at least in two ways: (1) it sends out a message that husbands are

⁸⁰⁷ *Ibid.*

⁸⁰⁸ CARE Ethiopia (2008), *supra note 23*, p. 34.

⁸⁰⁹ *Ibid.*

⁸¹⁰ *Ibid.*

⁸¹¹ World Health Organization (2002), *supra note 79*, p. 21.

⁸¹² The Revised Criminal Code, *supra note 21*, Article 565.

⁸¹³ *Ibid.*, Article 566.

⁸¹⁴ *Ibid.*, Article 564.

⁸¹⁵ *Ibid.*

not entitled to physically abuse their wives; and (2) by including this reference under the category of ‘Harmful Traditional Practices,’ it acknowledges that violence in private settings is often rooted in the cultures of the society. However, the law ignored the gendered nature of the violence and construed the notion of violence too narrowly. The following are the main shortcomings of this approach:

First, the RCC treats violence within the family (in *de jure* and *de facto* marriages) like any other kinds of interpersonal violence in general. As such, it frames acts of violence in private settings in gender-neutral terms. However, empirical evidence clearly shows that the problem is generally gender-specific. That is, girls and women are more likely to be victimized by a family member or an intimate-partner than are boys and men.⁸¹⁶ According to a 2006, multi-country study by the WHO, the most common form of VAW was perpetrated by intimate-partners, which for Ethiopia, was 70.9%.⁸¹⁷ Likewise, a study conducted in selected woredas in the Amhara and Oromia Regional States and Gullele Sub-City of Addis Ababa City Administration put the prevalence of VAW in private settings at 92%.⁸¹⁸ In Bakko Woreda of the Oromia Regional State, the prevalence was 100%.⁸¹⁹ So, the law should take into account the magnitude as well as the gendered nature of VAW committed in private settings.

Second, unlike interpersonal violence in general, not only are the victims of VAW in private settings girls and women but also they are dependent upon the offenders both emotionally and financially. As Gemma Lucy Burgess rightly observes, “[w]omen who suffer abuse are often

⁸¹⁶ Alemayehu Areda and Original W/Giorgis (2008) ‘Nationwide Survey on Domestic Violence’, *BERCHI, ANNUAL JOURNAL: ETHIOPIAN WOMEN LAWYERS ASSOCIATION*, Issue 7, pp. 8-89, p. 8; and L. Heise *et al.* (1999) ‘Ending Violence Against Women’, *Population Reports*, Series L, No. 11. Baltimore, Johns Hopkins University School of Public Health, December 1999, p. 9, available at: https://www.researchgate.net/publication/287170875_Population_reports_Ending_violence_against_women/download last visited on 1/26/2019.

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

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

⁸¹⁹ *Ibid.*

economically dependent on their husbands, who control household finances and property.”⁸²⁰ The fact that the victims are often emotionally involved with and financially dependent upon the offenders has profound implications for how best to intervene.⁸²¹ Taking account of these dynamic, other jurisdictions have responded to ‘intimate’ VAW in a peculiar way. The legislative interventions often go beyond criminalizing the violent acts to include procedural measures like protective or restraining orders or a combination of both.⁸²² Under protective or restraining orders, courts are authorized to remove the offender temporarily from the home or to order him to seek counselling, get treatment for substance abuse and pay maintenance and child support.⁸²³ During the revision of the 1957 Penal Code, the advocates of the reform demanded the need for civil remedies.⁸²⁴ However, the RCC did not go beyond making a mere cross-reference to include procedural measures pertinent to the nature of VAW in a private setting.

Third, the RCC construes VAW in private settings too restrictively in terms of both what constitutes violent acts and the persons to whom it provides protection. In terms of what constitutes violence, the law limits itself to physical violence only. It does not cover many other deliberate forms of violence in private settings, such as verbal abuse, intimidation, psychological abuse, economic abuse, social abuse, cultural abuse, religious abuse and sexual abuse (marital rape) against women. However, empirical evidence shows that all these forms of violence had actually occurred in private settings.⁸²⁵ According to the 2016 DHS, 44% of ever-married women between the ages of 15 - 49 years had experienced spousal physical violence (24%), sexual violence (10%), and psychological violence (24%).⁸²⁶ It was also shown that physical violence is usually accompanied by other forms of VAW, including sexual violence.⁸²⁷ The 2016 DHS also found that a combination of different forms of VAW occur simultaneously. It indicated that 16% of women

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

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

⁸²² *Ibid.*

⁸²³ *Ibid.*

⁸²⁴ Interview with A1, *supra note* 657. See also Ethiopian Women Lawyers Association (2001), *supra note* 654.

⁸²⁵ CARE Ethiopia (2008), *supra note* 23, p. 20.

⁸²⁶ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 294.

⁸²⁷ Marijke Velzeboer *et al.* (2003), *supra note* 302, p. 5.

had experienced physical violence only, 3% had experienced sexual violence only, and 7% had experienced both physical and sexual violence.⁸²⁸ The possibility of experiencing a combination of sexual violence and physical violence (7%) is much higher than the possibility of experiencing sexual violence only (3%). According to a 2011 study conducted in Western Ethiopia, the likelihood of co-occurrence of psychological, physical, and sexual violence was 56.9%.⁸²⁹ Likewise, a 2012 study conducted in southwestern Ethiopia found that there was a significant overlap between physical and sexual violence, and indicated the 219 (26.4%) women who had ever experienced any violence reported experiencing both physical and sexual violence, and there were more women (23.6%) who reported experiencing sexual violence only than those who reported experiencing physical violence only (14.6%).⁸³⁰

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

Regarding the making of cross-referencing, the *expose des motifs* states: “[t]his provision was not clearly incorporated under the [1957] Penal Code and was added to the RCC during the reform.

⁸²⁸ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.

⁸²⁹ Sileshi Garoma Abeya *et al.* (2011) ‘Intimate Partner Violence against Women in Western Ethiopia: Prevalence, Patterns, and Associated Factors’, *BMC Public Health* 11:913, P. 18, available at: <http://www.biomedcentral.com/1471-2458/11/913> last visited on 9/14/2018.

⁸³⁰ Kebede Deriba *et al.* (2012) ‘Magnitudes and Correlates of Intimate Partner Violence against Women and its Outcome in Southwest Ethiopia’, *PLoS ONE* 7(4), p. 4, available at: <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0036189&type=printable> last visited on 9/14/2018.

⁸³¹ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.

As indicated in the opening statement, it was adopted as a means to prevent [VAW] and the concept relates to what is known in English as ‘Domestic Violence’. Its substantive element was intended to punish spouses or sexual partners who commit [VAW].”⁸³² In stating the goals of the new provision, the *expose des motifs* further stipulates: “it will dispel the obsolete notion that men have entitlement to punish their wives, and, as it clearly shows the right of victims of spousal violence to take their complaints to the law enforcement, it rectifies the existing problem that makes the investigation of such kind of cases very difficult.”⁸³³ It further noted that the new provision has also been *intended to end unwarranted assumptions including that ‘there is no clear law allowing a wife to take criminal charges against her husband, it is not possible to investigate spousal disputes in criminal proceedings, taking criminal charge against a husband is unacceptable, it is impossible to testify in cases involving spousal disputes’ and the like.*⁸³⁴

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

Generally, two key informants from the advocacy groups identified the failure of the RCC to address the issue of domestic violence (or violence in an intimate relationship) in a comprehensive manner as one of the major shortcomings of the 2004 criminal law reforms.⁸³⁵ They also noted that, during the reform, the advocates demanded for the inclusion of legal provisions specifically addressing domestic violence, covering sexual, physical, psychological and economic abuses.⁸³⁶

⁸³² The *expose des motifs* of the Revised Criminal Code, *supra* note 705, p. 268

⁸³³ *Ibid.*

⁸³⁴ *Ibid.*

⁸³⁵ Interview with A2, *supra* note 648; and Interview with A1, *supra* note 657. See also Alemayehu Areda and Original W/Giorgis (2008), *supra* note 816, p. 9.

⁸³⁶ Interview with A1, *ibid.* See also Ethiopian Women Lawyers Association (2001), *supra* note 654.

Yet, the RCC simply came up with a provision that makes a mere cross-reference to a provision on interpersonal physical violence in general. In this regard, the key informants noted two additional points. First, the gender-neutral approach under the RCC was not limited to physical violence in a private setting. Rather, the law has framed all violent offences in gender-neutral terms. Offences that can well be understood as forms of VAW have been scattered in its various sections and treated like any other forms of interpersonal violence.⁸³⁷

Generally, the RCC has not clearly defined VAW. Nor has it provided a list of acts that constitute VAW.⁸³⁸ Having noted this, the key informants also stressed the importance of having a clear definition of VAW and a catalog of acts that constitute VAW under the revised law.⁸³⁹ Second, because of the first point, the existing gender-neutral criminal law fails to address even one and perhaps the worst form of VAW – acid attack – as a gendered problem.⁸⁴⁰ In highlighting this, one of the key informants recounted a highly publicized acid attack case against a 21-year-old woman, Kamilat Mehdi, by a spurned ‘lover’ of the victim’s, in 2007. She thus questions the fairness of the application of the law against bodily injuries in general to cases like this. Noting, however, that Kamilat’s case was treated as an attempted murder, the informant suggested that this and other forms of gender-specific violence should be defined as VAW and dealt with accordingly.⁸⁴¹

5.3.2 The Main Strands of the Policy Reforms on VAW

The 2004 rape law reforms have been accompanied by various policy and institutional reforms within the CJS and beyond. Within the CJS, the government has set up institutional mechanisms and taken a variety of progressive measures to tackle sexual and other forms of VAWC, and these are discussed in the following sub-sections.

⁸³⁷ Interview with A1, *ibid.*

⁸³⁸ *Ibid.*

⁸³⁹ *Ibid.*

⁸⁴⁰ *Ibid.*

⁸⁴¹ *Ibid.*

5.3.2.1 Establishing Special Investigation and Prosecution Units

To deal with sexual and other forms of VAWC, specialized units of investigation and prosecution have been established, at least at all sub-city level police departments and the Federal Attorney General Branch offices, respectively.⁸⁴² Where the victim decides to report the incident to the law enforcement bodies, the police are the first contact persons who the victim turns to with her stories and grievances. The initial response of the police and the behavior they demonstrate affect the subsequent investigation process, the victim's willingness to cooperate with them, and the outcome of the investigation.⁸⁴³ Establishing specialized units for rape and other forms of VAW within the police departments is one way of ensuring a high level of professionalism in dealing with the issue.⁸⁴⁴ Special investigation units have often comprised of police officers and prosecutors and, in some instances, social workers.⁸⁴⁵ They receive complaints of rape cases and other forms of VAWC.⁸⁴⁶ The establishment of these units has not only enhanced the coordination between investigation and prosecution processes but also reduced the prolonged time taken in the referral of cases between the two offices. In addition, according to the present study's key informant, PO1, the establishment of specialized police units has improved the treatment of rape victims.⁸⁴⁷

Like the investigation units, the Federal Attorney General also has established specialized units for prosecution of sexual and other forms of VAWC in all its sub-city level branch offices in Addis Ababa. It has also assigned focal persons in each sub-cities' branch office to give special priority for cases of sexual and other forms of VAW and to handle these cases in coordination with other stakeholders. All the interviewees who were assigned as focal persons were women. During the

⁸⁴² Interview with PO1 on November 14, 2017 at 10:00 AM-11:00 AM; Interview with J1 on January 8, 2018 at 11:00 AM- 12: 00 AM; and Interview with PP1 on October 25, 2017.

⁸⁴³ Raoul Wallenberg Institute/ILAC (2007) *Gender Justice Best Practices Haiti 10–11*, Report Commissioned by the International Legal Assistance Consortium upon request by the Haitian Ministry of Women's Affairs and Women's Rights, presented at a seminar in Haiti, September 2007, p. 61, available at: <https://rwi.lu.se/app/uploads/2017/01/9-3-126-1-10-20150128.pdf> last visited on 10/29/2018.

⁸⁴⁴ *Ibid.*

⁸⁴⁵ Interview with PO1, *supra note* 842.

⁸⁴⁶ *Ibid.*

⁸⁴⁷ *Ibid.*

trial observations, the present researcher has witnessed that all the prosecutors at rape-case trials were women. It appears that this was done by design. Other studies also indicated that there was a deliberate attempt to assign women both at the special investigation and prosecution units.⁸⁴⁸ According to PP2, “[t]he main reason behind the establishment of special prosecution units is to prioritize [VAWC] cases and address such cases swiftly and effectively.”⁸⁴⁹ She also added: “prosecutors at the special units have been given trainings to make them fit for the post and to process cases in coordination with the police and other stakeholders including temporary shelter and other support service providers for the victims.”⁸⁵⁰

Likewise, PP3 stated: “[t]he reasons for the establishment of the unit is due to the special nature of VAW such as rape. For example, rape has psychological effects, and its victims cannot be interrogated while other people are in the same room listening to the conversations which always involve reference to victims’ private parts. Rape victims may not be willing to talk about their cases in detail even in a private setting.”⁸⁵¹ She also added: “[o]ur office is different from others because it has materials for kids like toys at the places where they stay.”⁸⁵² Moreover, the Federal Attorney General has established a task force to deal with VAW though it has so far remained non-operational.⁸⁵³

Generally, the establishment of specialized investigation and prosecution units is of paramount importance in advancing the cause of rape victims since they are most likely staffed by trained and relatively competent officers and prosecutors. It significantly determines the chances of successful investigation and prosecution. However, the present study’s key informants complained that both

⁸⁴⁸ UN Women Ethiopia (2016) *Shelters for Women and Girls Who Are Survivors of Violence in Ethiopia: National Assessment on the Availability, Accessibility, Quality and Demand for Rehabilitative and Reintegration Services*, UN Women Ethiopia Addis Ababa, January 2016, p. 32, available at: <https://www.peacewomen.org/sites/default/files/shelters-for-survivors-of-violence-ethiopia.pdf> last visited on 10/29/2018.

⁸⁴⁹ Interview with PP2 on 28 February 2018 at 1:40-2:10 PM.

⁸⁵⁰ *Ibid.*

⁸⁵¹ Interview with PP3 on 05 March 2018, at 1:40-2:20 PM.

⁸⁵² *Ibid.*

⁸⁵³ Interview with A1, *supra note* 657.

the investigation and prosecution units are underfunded and understaffed. At the investigation units, for instance, there are resource constraints including basic office equipment (typewriters, computers, papers) and vehicles even to transport those victims who are in need of emergency medical attention.⁸⁵⁴ At prosecution, as PP2 stated, “[i]t is a positive thing that there is a special prosecution office, but I do not think it is doing all it can for women since it is understaffed and underfunded.”⁸⁵⁵ “The financial aid received from foreign partners is earmarked for specifically designated activities, and hence cannot be used for other purposes which require more priority. Despite these problems, the unit is doing all it can with the limited resource at its disposal,” she added.⁸⁵⁶ In addition, the investigation and prosecution units receive, investigate and prosecute numerous crimes including sexual and physical VAWC, infanticide and child labor exploitation. The physical set up of the units, such as the availability of private room for interviewing rape victims is far from what might be ideally expected.⁸⁵⁷ Nor were there gender- and age-segregated facilities at the units.⁸⁵⁸

5.3.2.2 The Establishment of a Coordination Mechanism and Referral System

As part of the efforts to set up a coordination mechanism and referral system among various sectors to address the problem of VAW, an Ethiopian delegation was sent for a visit to South Africa in 2008. After observing the multi-sectoral approach to VAWC in South Africa, the delegation recommended two measures to be adopted in Ethiopia: i) the setting up of a body in charge of coordinating the activities of various sectors; and ii) the setting up of one-stop centers for the provision of comprehensive services for victims.⁸⁵⁹ Following this recommendation, the National

⁸⁵⁴ Interview with PO1, *supra note* 842; and Interview with A1, *ibid*.

⁸⁵⁵ Interview with PP2, *supra note* 849.

⁸⁵⁶ *Ibid*.

⁸⁵⁷ Interview with PP2, *ibid*; Interview with PO1, *supra note* 842; and Rape Trial Observation, 7th Criminal Bench, Federal First Instance Court, Lideta Division, from October 30- November 3, 2017 and November 27- November 30, 2017.

⁸⁵⁸ *Ibid*.

⁸⁵⁹ Elshaday K. Woldeyesus *et al.* (2018) *Policy and legal analysis notes: Ethiopia: A review of the Strategic Plan for a Multisectoral Response to Violence Against Women and Children*, December 2018, the Gender and Adolescence: Global Evidence (GAGE) programme, p. 1.

Coordinating Body on VAW was established.⁸⁶⁰ Efforts were made to ensure a broad-based participation and representation of actors in the Body, including the government, NGOs and international organizations.⁸⁶¹ Subsequently, the participating institutions formalized their cooperation by signing a Memorandum of Understanding (MoU).⁸⁶² The formation of a national coordinating mechanism can be seen as a remarkable policy measure in advancing the cause of sexual and other forms of VAW.⁸⁶³ The MoU further formalized the formation of the coordination as well as consolidating more accountability on the part of the participating institutions.⁸⁶⁴ This decisive measure was followed by a five-year strategic plan – the Strategic Plan for an Integrated and Multi-Sectoral Response to Violence against Women and Children and Child Justice in Ethiopia (here-in-after the ‘Strategic Plan’) – and a three-year detailed plan of action.⁸⁶⁵

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

⁸⁶⁰ Elshaday K. Woldeyesus *et al.* (2018), *ibid.*, p. 1; and UN Women Ethiopia (2016), *supra note* 848, pp. 28-31.

⁸⁶¹ *Ibid.*

⁸⁶² *Ibid.*

⁸⁶³ *Ibid.*

⁸⁶⁴ *Ibid.*

⁸⁶⁵ Elshaday K. Woldeyesus *et al.* (2018), *supra note* 858, p. 2; and UN Women Ethiopia (2016), pp. 28-31, *ibid.*

⁸⁶⁶ Elshaday K. Woldeyesus *et al.* (2018), *ibid.*

⁸⁶⁷ *Ibid.*

⁸⁶⁸ *Ibid.*, p. 3.

⁸⁶⁹ UN Women Ethiopia (2016), *supra note* 848, pp. 28-31.

5.3.2.3 The Establishment of a One-Stop Center

A one-stop center was piloted at the Gandhi Memorial Hospital in 2008. It was modelled on South Africa's *Thuthuzela* Care Centers, which provide comprehensive services for victims of VAWC.⁸⁷⁰ The center facilitates victims' access to different services at one place.⁸⁷¹ It operates in a hospital environment and provides healthcare, police, counselling and legal services under one roof.⁸⁷² Victims are treated in private rooms, receive counseling and medical care, contact the police and are, if needed, referred to temporary shelters.⁸⁷³

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

Moreover, the one-stop center plays a pivotal role in ensuring the timely collection and preservation of medical forensic evidence and, thereby, enhances the chances of successful investigation and prosecution. Evidence from other jurisdictions also shows that the model has substantially shortened the investigation time and improved the conviction rate.⁸⁷⁶ Thus, the National Coordination Body strongly recommended the expansion of the one-stop centers to other

⁸⁷⁰ Interview with A1, *supra note* 657. See also Elshaday K. Woldeyesus *et al.* (2018), *supra note* 858, p. 1; and UN Women Ethiopia (2016), p. 9.

⁸⁷¹ Interview with A2, *supra note* 648.

⁸⁷² Interview with PP1, *supra note* 842.

⁸⁷³ *Ibid.*

⁸⁷⁴ Raoul Wallenberg Institute/ILAC (2007), *supra note* 843, p. 64

⁸⁷⁵ *Ibid.*

⁸⁷⁶ South Africa: Vera Institute of Justice, Bureau of Justice Assistance (2004) *Thuthuzela Care Centres: Has Treatment of Rape Survivors Improved since 2000?*, A Study of Rape Survivors in the Western Cape (November 2004), pp. 2-5, available at:

<https://www.google.com/search?q=Thuthuzela+Care+Centres%3A+Has+Treatment+of+Rape+Survivors+Improved+since+2000%3F%2C+A+Study+of+Rape+Survivors+in+the+Western+Cape&dq=Thuthuzela+Care+Centres%3A+Has+Treatment+of+Rape+Survivors+Improved+since+2000%3F%2C+A+Study+of+Rape+Survivors+in+the+Western+Cape&aq=chrome..69i57.788j0j9&sourceid=chrome&ie=UTF-8> last visited on 1/26/2019.

hospitals in Addis Ababa such as Yekatit 12 and Alert hospitals.⁸⁷⁷ In fact, the Growth and Transformation Plan II has had the expanding of one-stop centers in other parts of the country as one of its main goals.⁸⁷⁸ This was incorporated in the Sectoral Growth and Transformation Plan II of the Ministry of Women’s and Children’s Affairs, which had set the goal of establishing 11 additional one-stop centers and improving the capacity of the existing three centers.⁸⁷⁹ However, according to the present study’s key informants, the existing centers are not only very limited in number but also they are not accessible to all victims in need of a comprehensive service.⁸⁸⁰ In addition, the utilization of the existing center seems to be limited. A 2013 study conducted in Addis Ababa indicated that only two-fifths of rape victims had been advised by the health care providers to visit the Gandhi Memorial Hospital, where the model was being piloted and where health care providers usually facilitate further medical diagnosis and treatment.⁸⁸¹

5.3.2.4 Providing Shelters for Victims of VAW

Another important development was the availability of NGOs offering temporary shelters and other support services for victims of sexual and other forms of VAW. Currently, there are at least 12 shelters in Ethiopia which provide various services for victims of VAW.⁸⁸² Of these, five shelters are located in Addis Ababa.⁸⁸³ However, only one shelter in Dire Dawa was managed and entirely financed by the government.⁸⁸⁴ Some shelter providers offer services including basic needs such as food, shelter and health care, economic empowerment initiatives, counseling and other therapeutic activities, and referral to legal services.⁸⁸⁵ The shelter providers were working in close

⁸⁷⁷ UN Women Ethiopia (2016), *supra note* 848, p. ix.

⁸⁷⁸ *Ibid.*

⁸⁷⁹ የሴቶችና ህፃናት ጉዳይ ሚኒስቴር (2008) በሴቶችና ህፃናት ጉዳይ ሚኒስቴር የሴክተር ሀላፊዎች ዙር የዕድገትና ትራንስፎርሜሽን ዕቅድ (2008-2012) ጥቅምት 2008 ዓ.ም አዲስ አበባ፣ p. 20 (Amharic).

⁸⁸⁰ Interview with A1, *supra note* 657.

⁸⁸¹ Mersha Shenkute (2013), *supra note* 26, p. 45

⁸⁸² UN Women Ethiopia (2016), *supra note* 848, p. 6.

⁸⁸³ *Ibid.*

⁸⁸⁴ *Ibid.*

⁸⁸⁵ *Ibid.*

coordination with the CJS.⁸⁸⁶ Generally, shelters were available to homeless victims and victims who were living with the offenders.⁸⁸⁷ Once admitted, the victims often remain at the shelters, until the final disposition of their cases.⁸⁸⁸ Similarly, the one-stop center and shelter providers were working in close coordination.⁸⁸⁹

The provision of shelter plays a significant role in advancing the cause of rape victims. Particularly, it allows homeless victims to get justice or at least support services. According to one of the present study's key informant, PO1, shelter provision allows rape victims at least to get support services, in cases where finding the offenders takes a long time or is impossible.⁸⁹⁰ He recounted the case of an ongoing investigation file at the time of the interview.⁸⁹¹ Accordingly, the victim was 19 years old when she came to Addis Ababa in search of work from a rural area in the Amhara Regional State. When she arrived at the main (intercity) bus station in Addis Ababa, she was received by a broker, who took her to his office at a location she did not know. Through a broker, she was later hired as a house maid, and after working for about three weeks, her employer raped her at midnight and took her out of his home by his car, pretending as if he was looking for a clinic. After a while, he dropped her out of his car somewhere around a neighborhood in the Bole area. Afterwards, she was taken to a nearby police station by two residents of the area. According a key informant of the present study, the unit at the Bole Sub-City Police Department began its investigation immediately. But, the victim did know the address and contacts of neither the broker nor her employer. Nor even their full name. She could locate neither the offender's home nor the broker's office. For this reason, the police were unable to identify the offender. However, she received medical treatment, including counselling service, and was transferred to a temporary shelter. The police were working to trace and identify the offender and his accomplice; whenever a suspect was found, they would call her out of the shelter and ask her to identify if it was the

⁸⁸⁶ Interview with PO1, *supra note* 842.

⁸⁸⁷ *Ibid.*

⁸⁸⁸ Interview with PP1, *supra note* 842.

⁸⁸⁹ UN Women Ethiopia (2016), *supra note* 848, p. 34.

⁸⁹⁰ Interview with PO1, *supra note* 842.

⁸⁹¹ *Ibid.*

offender.⁸⁹² Without a temporary shelter, cases like this might not be investigated thoroughly as the victims could not avail themselves during the proceedings. However, the number of shelters was very limited and the shelters have been accommodating large numbers of victims, much beyond their capacity.⁸⁹³

5.3.2.5 *The Establishment of Child-Friendly Criminal Benches*

Courts are one of the key institutions and most important players within the CJS. They have the ultimate say in rape-case proceedings and trials. In cases involving rape, the competency of the judges is very crucial so as to avoid the possibility of a secondary victimization.⁸⁹⁴ For example, the judge may bar irrelevant and offending questions that are often posed to the victims by the offender or his lawyer.⁸⁹⁵ The judge may also allow special measures to be taken to ensure that the victim is not subjected to harassment and intimidation.⁸⁹⁶ However, this happens only if the judge possesses sufficient knowledge about the nature of SVAW.⁸⁹⁷ The formation of special benches with specialized judges can solve the knowledge gaps in this respect.⁸⁹⁸

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

⁸⁹² *Ibid.*

⁸⁹³ Interview with A1, *supra note* 657.

⁸⁹⁴ Raoul Wallenberg Institute/ILAC (2007), *supra note* 843, p. 62

⁸⁹⁵ *Ibid.*

⁸⁹⁶ *Ibid.*

⁸⁹⁷ *Ibid.*

⁸⁹⁸ *Ibid.*

⁸⁹⁹ Interview with J1, *supra note* 842.



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

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

One of the present study's key informants, J1, was a judge at the court where the present researcher carried out an observation of rape-case trials. Prior to her appointment as a judge, the aforementioned judge has, for more than a decade, been working as a Prosecutor and a Focal Person on VAWC, in one of the Federal Attorney General's sub-city level branch offices in Addis Ababa. Her predecessor and follower was also a woman.⁹⁰⁰ Months after her interview for this study was conducted, she was replaced by another key informant, PP2, a long-serving Prosecutor and Focal Person on VAWC, at the Federal Attorney General's sub-city level branch offices in Addis Ababa. The assignment of well-experienced and trained judges to preside trials of rape cases seems to have been made by design. During the rape-trial observations, the present researcher also witnessed that the specialized bench follows a different approach for obtaining the testimony of child victims of rape than those commonly used in other trials.

As Figure 2 above shows, where a child victim of rape is named as the prosecutor's witness, the court orders the witness to testify outside the courtroom, from another well-furnished small room, and by means of a CCTV system. In addition, the child-witness is questioned via a third person, a

⁹⁰⁰ Interview with S1 and S2 on 26 March 2019 02:00-02:30 PM.

trained social worker, acting as a buffer against hostile and intimidating questions from the offender and/or the offender's lawyer. This allows children to testify in a comfortable setting without a direct confrontation with the offender, in an open trial, while at the same time preserving the offender's right to cross-examine and challenge the testimony of the witness. This approach alleviates the psychological and emotional stress on child victims of rape. As J1 noted, "[a]dopting this approach is useful: first children will be free from fear and concentrate on giving their testimonial statements. Second, most of the time, children tend to be psychologically affected when they face the offender face to face. So, placing them in a separate room gives them freedom while testifying."⁹⁰¹

Informants, who have been working as social worker in the Federal First Instance Court, Lideta Division, also confirmed that the special approach is applicable for all child victims of rape.⁹⁰² The special approach was part of the project implemented to create a child-friendly justice system, with services from social workers and psychologists in the court setting.⁹⁰³ The key informants also noted that social workers and psychologists are offering professional services to children appearing before the court as victims, witnesses or offenders, both in criminal and civil proceedings.⁹⁰⁴ They were asked to tell if there are any positive outcomes from the implementation of this project, particularly from the adopting of a special approach for taking children's testimony with the help of CCTV system and a third party. Accordingly, they stated that, by shifting the proceedings from an 'intimidating and traumatizing' atmosphere to a 'caring and rehabilitative' one, the approach, has improved the treatment of children coming to the CJS as victims and witnesses. The key informants also noted that the approach enabled child victims of rape to have access to support services in the court setting and in accordance with the principle of *the best interest of the child*.⁹⁰⁵

⁹⁰¹ Interview with J1, *supra note* 842.

⁹⁰² Interview with S1 and S2, *supra note* 900.

⁹⁰³ *Ibid.*

⁹⁰⁴ *Ibid.*

⁹⁰⁵ *Ibid.*

However, giving testimony in a CCTV system and a third party assistant is available only to child victims of rape. According to J1, “in other cases, for example, when cases are directly linked with the morals of the victims and involve private matters, they are usually tried *in-camera*. In these cases, only the judge, the prosecutor and the parties to the case attend the trial. Sometimes even family members will not be allowed to be present at the trial.”⁹⁰⁶ Thus, cases involving adult victims of rape give their testimony in a closed trial.⁹⁰⁷ However, even where the approach was applied to child witnesses, there were irregularities in various trial benches. As PP2 noted, “sometimes there is irregularity in the practice where the courts let children above the age of 15 years old to testify in courtrooms.”⁹⁰⁸

5.3.2.6 *The Issuance of a National Guideline for the Management of Survivors of Sexual Assault*

Beyond the CJS, a related policy reform has been introduced in the healthcare system. For instance, in 2009, the Federal Ministry of Health issued a *National Guideline for the Management of Survivors of Sexual Assault in Ethiopia* (here-in-after the ‘Guideline’) to be followed in handling rape cases.⁹⁰⁹ The Guideline provides detailed rules on the provision of quality healthcare services for rape victims including preventive medical measures to prevent pregnancy, sexually transmitted diseases and HIV.⁹¹⁰ According to the Guideline, an effective intervention by health care providers will in the long term reduce crime and encourage victims to seek legal services.⁹¹¹ Thus, the goals of this policy include improving police reporting and conviction rates for rape cases. Regarding the collection of forensic medical evidence, it specifically obliges healthcare providers to record events accurately; document injuries, preferably with diagrams; document other vital details with photography, videography and other available documentation means; collect sample to be sent for forensic examination whenever possible; and provide medico-legal certificate using the reporting

⁹⁰⁶ Interview with PP2, *supra note* 849.

⁹⁰⁷ Interview with J1, *supra note* 842.

⁹⁰⁸ Interview with PP2, *supra note* 849.

⁹⁰⁹ Federal Ministry of Health Ethiopia (2009), *supra note* 256, p. 1.

⁹¹⁰ *Ibid*, pp. 23-24.

⁹¹¹ *Ibid*, p. 1.

format, upon request from legal authorities.⁹¹² If properly implemented, this policy reform could be very crucial in advancing the cause of rape victims. It facilitates the timely collection of physical, psychological and biological evidences before they are compromised or gone. However, the contents of forensic medical examination reports attached to rape-case files make the application of the Guideline questionable.⁹¹³

5.3.2.7 7 Providing Capacity Building Trainings and 'Legal Literacy' Education

According to a key informant of the present study, PO2, investigation officers assigned in the specialized units have been given regular trainings arranged by various governmental organs and NGOs.⁹¹⁴ The trainings have often focused on various issues pertaining to their work, including the nature and effects of sexual and other forms of VAW, support services to be given to the victims, investigation skills such as interrogating the victims, collecting evidence from the crime scenes, the victims' bodies and the like.⁹¹⁵

At least for the last decade, the Federal Attorney General, formerly known as the Ministry of Justice, has consistently engaged in various activities to enhance legal professionals' and the general public's awareness on VAW, women's human rights and related issues.⁹¹⁶ Capacity building trainings and legal literacy and awareness raising campaigns have become part of the regular activities of the Federal Attorney General. For instance, the 2005 E.C. Federal Attorney General's Annual Report stated that capacity building trainings have been given to religious leaders, crime investigators, members of community policing units and other stakeholders. The subject matters addressed include the roles of the CJS and the public in addressing the problem of VAW. Likewise, the 2006 E.C. Annual Report of the Federal Attorney General mentioned that capacity building trainings were given to prosecutors and other stakeholders on VAWC cases

⁹¹² *Ibid.*, p. 30.

⁹¹³ *See infra* Chapter Eight. Section "8.3.5 Forensic Medical Examination" with accompanying notes

⁹¹⁴ Interview with PO2 on November 15, 2017 at 10:00 AM-11:00 AM.

⁹¹⁵ *Ibid.*

⁹¹⁶ Interview with PP1, *supra note* 842.

including investigation, prosecution and litigation skills and the treatment of the victims. According to the 2007 E.C. Annual Report of the Federal Attorney General, legal literacy education programs were broadcast to the general public on EBC and Fana Radio, while the 2008 E.C. Report indicated that legal literacy education and training activities targeted at members of community forums and representatives of stakeholder institutions had been undertaken. In addition, legal literacy programs were broadcast to the public on Fana, FM 96.3 and FM 96.1 radio stations. Likewise, the 2008 E.C. Report of the Federal Attorney General stated that awareness raising panel discussions had been organized. Generally, the Annual Reports of the Federal Attorney General between 2005 E.C. and 2009 E.C. show that capacity building trainings, legal literacy education and awareness raising campaigns using occasions like the *White Ribbon Day on Ending VAW* have become part of the regular activities of the Federal Attorney General. This is also an important policy measure to advance the cause of rape victims beyond the CJS. In addition to governmental bodies, NGOs, including women's rights advocacy groups, had involved in awareness raising programs on VAWC and publicized contents using a variety of means such as posters, flyers, brochures, and radio and TV programmes.⁹¹⁷ All these activities carry the message that something is being done to address the problem of sexual and other forms of VAWC.

5.4 Conclusion

The recognition of women's human rights under the FDRE Constitution and the international human rights treaties ratified by Ethiopia, reinforced by the transition to a formal 'democratic' system, opened up a new space for women's activism in Ethiopia. Thus, partly in response to the demands from women's rights advocacy groups, and as part of the overall revision of the 1957 Penal Code, reforms were introduced to the Ethiopian rape law, in 2004. The RCC came into effect on the 9th of May of 2005. In comparison to its predecessor, it has made considerable progress in advancing the cause of rape victims. First, the RCC has abolished the immunity of rapists and

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

abductors, in the event of the subsequent conclusion of marriage with their victims. Second, it has introduced reforms in the penalty structure of rape, including setting a mandatory minimum sentence, and penalty gradations with a continuum of acts that specified varying degrees of gravity. Third, it has abolished an explicit legal provision in the 1957 Penal Code, which was premised on the faulty assumption that young victims encourage or provoke, by their behavior, the offenders and contribute for their own victimization. Fourth, it has criminalized other forms of SVAW such as FGM, child marriage and marriage by abduction despite its failure to specifically criminalize other forms of gender-specific violence, such as wife inheritance and marriage by exchange. Fifth, in recognition of VAW in private settings, the RCC has made a specific reference to the so-called domestic violence. However, not only does it ignore the gendered nature of violence in the family setting but it also too narrowly construes the acts that constitute violence and persons to whom it guarantees protection. Most importantly, the legal reforms were accompanied by various parallel policy reforms and measures, including the establishment of special investigation units, prosecution units and trial benches for sexual and other forms of VAWC. Referral systems, coordination mechanisms and a one-stop center to facilitate victims' access to different services were also introduced by the reform. Generally, the legal and policy reforms have introduced a variety of important, progressive steps in dealing with sexual and other forms of VAW. In adopting these reforms, legislators sought to curb the high prevalence of sexual violence and improve the treatment of the victims, within the CJS and beyond.

CHAPTER SIX: EFFECTS OF THE RAPE LAW AND POLICY REFORMS

6.1 Introduction

This chapter deals with one of the principal objectives of the present study – assessing the effects of the 2004 rape law and the corresponding policy reforms. Specifically, it seeks to point out any changes with regard to the rate of reporting, attrition, prosecution and conviction for rape cases and the influence of victim characteristics on rape-case processing within the CJS, in the post-reform years. Accordingly, the first section evaluates the effects of the reforms on police reporting. The second section assesses the trends of attrition, prosecution and conviction rates for rape cases

in post-reform period. The last section evaluates the extent to which factors identified as victims' characteristics are taken into account in rape-case decision making processes within the CJS.

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

This section reviews official police data from the Addis Ababa Police Commission in order to assess the effects of the legal and policy reforms on the rates of police reporting for rape cases overtime. The data reviewed represents six years of annual reports, from 1997 E.C. to 1999 E.C., and from 2005 to 2007 E.C. as the data for the years in between could not be accessed. In reviewing the data, the present study aims to determine if there is a relationship between the adoption of the legal and policy reforms and an increase in trends of police reporting. The year when the RCC was enacted, i.e. 2004, was taken as a point of reference marking the post-reform period although some of the policy reforms were introduced prior to or parallel with the rape law reforms.

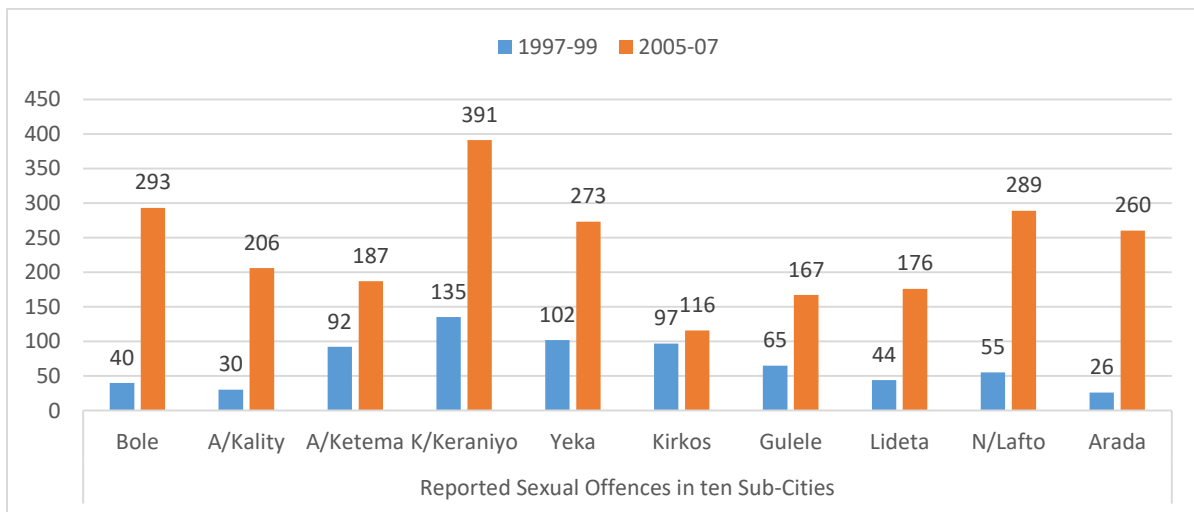


Figure 3. Trends of rape cases reported in each of ten sub-cities of Addis Ababa City

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

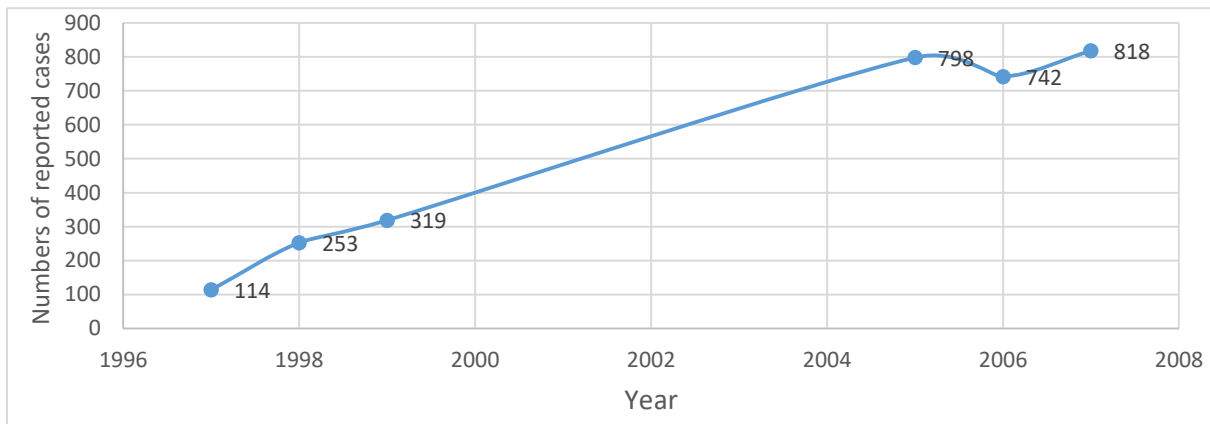


Figure 4. Trends of rape cases reported in the ten sub-cities of Addis Ababa City

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

Generally, there was a noticeably higher trend of police reporting for rape cases from 1997 E.C. to 2007 E.C. This might be the result of one or more of the following reasons: (i) a change in victims' reporting behavior, (ii) a change in record-keeping behavior of the police, and (iii) an increase of incidences of rape. For this research's purpose, the combination of (i) and (ii) does not

create a problem since the reforms can facilitate changes both in the victims' reporting behavior and record-keeping behavior of the police. However, the difference between (i) and (ii) on one hand, and (iii) on the other, is problematic. Thus, without ruling out the possibility that an increased police reporting trend might result from an increase of incidences of rape, the present study presumes that the legal and policy reforms are more likely to foster changes in victims' reporting and police' record-keeping behaviors. This renders the rates of police reporting over time a valid indicator of the impact of the reforms.

There are a variety of complementary explanations for an increased trend in police reporting for rape cases. First, policy reforms such as the establishment of special investigation and prosecution units and trial benches for rape cases and the provision of routine capacity building trainings to the key actors within the CJS might have improved the efficiency of the CJS's response. This, in return, could encourage more and more victims to come forward and report the incident to the police. Data obtained from the present study's key informants also substantiates such a possibility. For instance, PP3, attributed the increase in police reporting trend for rape cases to the establishment of special investigation and prosecution units and trial benches for rape and other forms of VAWC cases.⁹¹⁸ In fact, the 2005 E.C. and 2006 E.C. Federal Attorney General Annual Reports attributed the improved outcomes to the assignment of focal persons at each sub-city level offices' special prosecution units and to the expansion of the number of special trial benches.⁹¹⁹ In addition to the establishment of special units and trial benches, one of the present study's key informants also linked an increased police reporting trend to the establishment of women's affairs offices at various levels within the governmental structure.⁹²⁰ She pointed out that these offices

⁹¹⁸ Interview with PP1, *supra note* 842.

⁹¹⁹ FDRE Federal Attorney General (2005) *The 2005 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report; and FDRE Federal Attorney General (2006) *The 2006 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.

⁹²⁰ Interview with A2, *supra note* 648.

have been serving as the first points of contact for the victims and providing useful advice, including information regarding where to go and what to do.⁹²¹

Second, the establishment of one-stop centers with referral systems, a coordination mechanism and comprehensive support services might have contributed in terms of encouraging more and more victims to come forward with their cases and seek justice. This might have contributed to an increased trend in police reporting for rape cases. The establishment of one-stop centers also has paramount importance in encouraging more and more victims to report the incident. Victims usually disclose the incident to health care providers, who often have referred clients with suspicious rape cases to the Gandhi Memorial Hospital. Rape victims visiting the one-stop center at the Gandhi Memorial Hospital, apart from getting medical care and treatment, came to the attention of the CJS.⁹²² The police and the prosecutors working at the one-stop center at the Gandhi Memorial Hospital took statements from victims with suspicious cases, considered forensic medical examination reports and determined whether the cases had a criminal nature, for intervention by the CJS.⁹²³ Thus, the establishment of one-stop centers might have encouraged rape victims to come to the attention of the CJS who otherwise would have just received medical treatment only. According to the present study's key informant, PP1, the number of cases brought to the attention of the CJS from the one-stop center at the Gandhi Memorial Hospital has been increasing from time to time, and therefore, her office was working with stakeholders to expand one-stop centers in other hospitals within the Addis Ababa City Administration.⁹²⁴

Third, the availability of support services including counselling, shelters and other social and rehabilitative supports might have induced an increased trend of police reporting, for example, by making rape victims aware of the availability of such support services, in effect encouraging victims to report the incident. Particularly, the availability of temporary shelters has been linked

⁹²¹ *Ibid.*

⁹²² Interview with PP1, *supra note* 842.

⁹²³ *Ibid.*

⁹²⁴ *Ibid.*

to an increased trend in police reporting for rape cases. According to one of the key informants, PO1, if those temporary shelters were not available, homeless victims may not report the incident to the police in the first place, and even where they do, they may not come back after the initial reporting.⁹²⁵ Without temporary shelters, it is difficult to successfully investigate and prosecute cases involving vulnerable groups since they do not have a specific address to follow up their cases.

Information obtained from rape victims also substantiates the above points. For instance, one of the interviewees, V1, was only 15 when she came to Addis Ababa from a rural area where she used to live with her poor family. Upon her arrival, she was hired as a home worker.⁹²⁶ However, one day, her employer arbitrarily fired her and told her to go away at night without paying her salary. She did not know where to go, and she was desperately crying for help at the roadside when some passers-by approached her. After learning about the difficult situation she was under, they took her to a nearby church and informed the guard of her situation. The guard allowed her to sleep inside the church's premises where he forcibly raped her at midnight. By the next morning, two of the passers-by who had taken her to the church the previous day came back to take her to the police. But, they learned that the church guard, who was supposed to offer her a safe shelter, had in fact raped her. Thus, they took her to the Nifas Silk-Lafto Police Department for criminal investigation instead of work-related issue. The victim described her experience after her case was reported, as follows: “[t]hey took me to a hospital and an NGO for other supports. When I went to the hospital, they gave me medical treatment and took urine sample. Then, they took me to the NGO for support where I could get shelter, food, clothing and education.”⁹²⁷

While V1 was still in a shelter at the time of the interview, the police at the Women's and Children's Unit were finalizing the investigation on her case. Without the temporary shelter, her

⁹²⁵ Interview with PO1, *supra note* 842.

⁹²⁶ Interview with V1 on March 17, 2018, 8:09: 8:39 PM.

⁹²⁷ *Ibid.*

case might not have been processed by the police since she had no option but either to return back to her family or join homeless children in the streets of Addis Ababa.

The provision of shelter has also facilitated the reporting of cases involving victims who live with and depend on their abusers and trapped in violent homes. For instance, one of the interviewees, V2, was a 14-year-old girl who lived with and was dependent on her aunt.⁹²⁸ She was subjected to repeated rape by her aunt's husband. Her situation forced her to live in a trap as she was dependent on the offender for a living. When asked how her case came to attention of the police, she stated the following: “[w]hen I was repeatedly absent from my class, my teachers approached and asked me if there was any problem, and I told them all that had happened to me. My teachers took me to the police and the police referred me to the Gandhi [Memorial Hospital] for medical service and an NGO for shelter, food and clothing.”⁹²⁹

The above story was almost a similar account of another interviewee, V3, a 13-years-old girl who has been subjected to repeated rape involving a combination of force, threat and psychological pressure.⁹³⁰ The victim lived with and depended for a living on her aunt. The offender in this case was not a husband but the son of her aunt. She did not keep the incident a secret, but told it to her aunt, who is the offender's mother. She recounted her aunt's response as follows: “[m]y aunt called and reprimanded him for breaching trust and doing this to me while I was entrusted to the family's care.”⁹³¹ The offender's mother did nothing to report or encourage the victim to report the case to the police. She also informed about the incident to her friends living in a shared compound, who gave her comfort and demonstrated empathy but did not help her to report the case to the police. She was asked how her case came to the attention of the police, for which she replied as follows: “I was tired of living with repeated attacks and decided to leave. I left the home and was crying by the roadside when passersby approached and asked me what had happened to me. I told them all that

⁹²⁸ Interview with V2 on March 18, 2019, at 11:00:12:00 AM.

⁹²⁹ *Ibid.*

⁹³⁰ Interview with V3 on March 19, 2019, at 11:00:12:00 AM

⁹³¹ *Ibid.*

had happened to me. Then, they took me to a nearby police station.”⁹³² The police then referred her to the Gandhi Memorial Hospital for medical treatment and examination, and, later, to a shelter, where she was provided with support services. After receiving rehabilitative and psycho-social support, she spoke of her gradual recovery, as follows: “I was subjected to repeated attacks, but now I have regained my peace!”⁹³³

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

However, the comprehensive services seem to exclude some child victims who are not in shelters. For instance, V6 was a 14-years-old girl when she was raped by her schoolmate, who was about 24-years-old.⁹³⁵ While on their way home from school and in the evening, the offender had convinced the victim to follow him along a shortcut path, but he then took her to an obscure place where he raped her. She immediately told the incident to her aunt. Her aunt told the matter to her

⁹³² *Ibid.*

⁹³³ *Ibid.*

⁹³⁴ UN Women Ethiopia (2016), *supra note* 848, p. 32.

⁹³⁵ Interview with V6 on March 26, 2019, at 11:00:12:00 AM.

husband, and they immediately took her to a nearby police station. Then, she was referred to a hospital for forensic medical examination. Her case was investigated and the offender was arrested, prosecuted and tried. She did not have to stay in a shelter during the course of the proceeding because her case did not necessitate it. Unlike the other interviewees, she was not referred to the Gandhi Memorial Hospital but to the Minilik II Hospital for forensic medical examination. She was asked whether she was given support services as a victim of rape, and she replied that she had not received any support.⁹³⁶

Fourth, capacity building trainings and legal literacy education activities, including awareness raising campaigns, have become part of the regular activities of governmental institutions, such as the Office of the Federal Attorney General and NGOs including women's rights advocacy groups. All these were done with a message that something is being done about rape and other forms of VAW. Capacity building trainings provided to the key actors within the CJS might address and change wrong attitudes about rape and rape victims and, as a result, the victims might be treated appropriately and provided with the support services they need. Likewise, legal literacy education programs and campaigns against VAW addressing the general public might have led to enhanced awareness about the issue of SVAW and changes in attitude among members of the society. These in return might have encouraged rape victims to come forward and seek legal redress, particularly those who would have otherwise kept the incident secret for fear of stigma, bias and mistreatment. The present study's key informant also linked an increased trend in police reporting to works that have been done to make the general public aware of the issue and to the provision of capacity building trainings.⁹³⁷ As a 2016 study by UN Women Ethiopia too linked the level of awareness on VAW to an improved reporting rate. In this regard, it stated, for instance, that Dire Dawa was not only one of the areas where a considerably improved level of awareness on VAW was recorded

⁹³⁶ *Ibid.*

⁹³⁷ Interview with PP1, *supra note* 842; and Interview with A2, *supra note* 648.

but also it was a place where a higher number of VAW cases was reported and where community members were increasingly willing to be witnesses in VAW cases.⁹³⁸

In the above instances, the legal and policy reforms may directly affect reporting, whereby victims have become aware of the reforms and hence make decisions about reporting, or indirectly by contributing to a change in how the key actors within the CJS and the general public view the issue of rape and rape victims. However, there is still another likely reason for an increased police reporting trend in the post-reform years. Though its effect appeared to be very minimal, police reporting might be increasing simply due to the scope-expanding effects of the 2004 rape law reforms. Cases which were not considered as sexual offence under the 1957 Penal Code may now be recorded as cases sexual offence. For instance, under the RCC, the exoneration of rapists from criminal liability upon the subsequent conclusion of marriage with their victims has been abolished. Likewise, the exemption of marital rape has been abolished from some sexual offences such as sexual assault⁹³⁹ and sexual coercion⁹⁴⁰ cases. These reforms might have had scope-expanding effects.

Police reporting might have also been increasing due to the introduction of new types of sexual offences, such as rape against a man by a woman, though data used for the present study had been taken from the Women's and Children's Investigation and Care Department of the Addis Ababa Police Commission, where only sexual offences committed against women and same-sex rape committed against children are separately recorded.⁹⁴¹ The reporting might also be increasing where an offence which otherwise would have been recorded as a single non-sexual offence is now being recorded as two separate offences, due to the explicit inclusion of concurrent criminal liabilities for abduction and rape, under the RCC.

⁹³⁸ UN Women Ethiopia (2016), *supra note* 848, p. 32.

⁹³⁹ The Revised Criminal Code, *supra note* 21, Article 622.

⁹⁴⁰ *Ibid*, Article 623.

⁹⁴¹ *Ibid*, Article 621.

Consistent with the findings of the present study, previous studies on post rape-law reform in other jurisdictions also found that subsequent to the adoption rape law reforms, there had been increased police reporting trends.⁹⁴² For instance, in a study conducted in Canada, Julian Roberts and Robert Gebotys found that, over the five-year period prior to Canada’s 1983 rape law reforms, the overall reporting rate of all three types of sexual assault increased by 22%, while that of non-sexual assault cases increased by 20%,⁹⁴³ indicating a significant increase in police reporting trends, following the introduction of the legal reforms. The rate of police reporting increased by 110% – more than twofold – as compared to the rate police reporting for non-sexual assault cases in the five years subsequent to the reforms.⁹⁴⁴ The researchers concluded that the increase in police reporting following the introduction of the legal reform was due “a change in victims’ attitudes, brought about by the reform legislation and the publicity surrounding its passage.”⁹⁴⁵

Likewise, in the US, Cassia Spohn and Julie Horney analyzed data from six urban jurisdictions, namely, Detroit, Chicago, Philadelphia, Washington, D.C., Atlanta, and Houston.⁹⁴⁶ The first three cities were found in states that had adopted stronger rape law reforms, whereas the last three cities represent jurisdictions where weaker rape law reforms had been introduced. Their study found that in the years from 1970 to 1984, the legal reforms had no positive effect in Chicago, Philadelphia, and Atlanta. In Detroit – a city in the state with the strongest reforms – and Houston, – the jurisdiction with the weakest reforms – the researchers observed an increase in police reporting rates that appeared, in some way, correlated with the reforms. The authors pointed out that the

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

⁹⁴³ Julian V. Roberts and Robert J. Gebotys (1992), *ibid*, pp. 561-563.

⁹⁴⁴ *Ibid.*

⁹⁴⁵ *Ibid.*, P. 568.

⁹⁴⁶ Cassia Spohn and Julie Horney (1992), *supra note* 942, pp. 35-36.

increase “resulted from the publicity surrounding the reforms,”⁹⁴⁷ further noting: “[v]ictims who were reluctant to report the crime to the police in the pre-reform era may have been encouraged to do so in the post-reform period by the highly touted and widely publicized new laws.”⁹⁴⁸ They also believe that *women raped by acquaintances and women whose behavior did not conform to stereotypes of the traditional rape victim were more likely to report the crime to the police, subsequent to the reforms.*⁹⁴⁹

6.3 Effects of the Reforms on Attrition, Prosecution and Conviction Rates of Rape Cases

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

Generally, once a case is reported and recorded, there are three major possible points of attrition, at least for SVAW cases: (1) *the police investigation stage*, that is, whether or not the police identify a suspect, investigate the case and handover the investigation file to the prosecutor; (2) *the prosecution stage*, that is, after the case moves past the police to prosecution, whether or not the prosecutor determines to proceed to the court; and (3) *the trial stage*, that is, after the case

⁹⁴⁷ *Ibid*, pp. 101-02.

⁹⁴⁸ Cassia Spohn and Julie Horney (1993), *supra note 7*, p. 398.

⁹⁴⁹ *Ibid*, PP. 398-399.

⁹⁵⁰ David P. Bryden and Sonja Lengnick (1997), *supra note 15*, p. 1208.

moves to the court, whether or not the case remains at the court or is dismissed or is withdrawn, and whether or not the offender pleads guilty, or is found guilty or is acquitted at the trial. In assessing the rate of conviction for rape cases, the present study relies on the third (i.e. *trial*) stage, that is, whether or not the offender pleads guilty, or is found guilty or acquitted at the trial-trial court.

The police are thus the key gatekeepers and the first point of contact for rape victims. However, in Ethiopia, the prosecutor, as an intermediate actor between the police and the courts, plays a decisive role for case attrition, both at the investigation and prosecution stages. After completing their investigations, the police are always supposed to hand over all cases to the prosecutor. The prosecutor has considerable discretionary power over the fate of the cases.

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

⁹⁵¹ Criminal Procedure Code, *supra note* 425, Article 38.

⁹⁵² *Ibid.*

⁹⁵³ Interview with PO1, *supra note* 842.

6.3.1 Attrition and Prosecution Rates at the Investigation and Prosecution Stages

Table 5. Attrition at the investigation and the prosecution stage (2005-2007 E.C.)

No.	Case Status Indicator	Year (in E.C.)	Prosecution Track/Unit		
			Accelerated	Regular	VAWC
1	Total cases under prosecution	2005	12,426	41,832	1,647
		2006	10,563	35,244	1,250
		2007	10,783	41,779	1,425
2	Cases charged	2005	12,334	12,538	715
		2006	10,439	16,923	771
		2007	10,694	13,438	767
3	Cases pending	2005	-	-	-
		2006	-	6	-
		2007	-	105	-
4	Cases terminated	2005	92	29,294	932
		2006	124	18,315	479
		2007	89	28,236	658
5	Attrition rate	2005	0.7%	53.3%	56.6%
		2006	1.2%	52%	38.3%
		2007	0.8%	67.8%	46.2%
6	Prosecution rate	2005	99.3%	84.5%	43.4%
		2006	98.8%	48%	61.7%
		2007	99.2%	32.2%	53.8%

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

As Table 5 above shows, a substantial proportion of VAWC cases were filtered out of the CJS at three exit points. In 2005 E.C., there were 1,647 cases of VAWC in prosecution units while there were 12,426 and 41,832 cases under the accelerated and regular prosecution tracks, respectively. Out of a total of 1,647 VAWC cases, only 715 cases have been prosecuted or passed on to courts. Under the accelerated prosecution units, 12,334 cases out of a total of 12,426 cases of VAWC have been prosecuted or passed on to courts while under the regular prosecution tracks, 12,538 out of the total 41,832 cases have been prosecuted or passed on to courts. The attrition rate was 56.6% for VAWC cases while it was 0.7% for fast-track cases and 53.3% for cases under the regular prosecution units. The lowest rate of attrition was observed for cases processed under the fast-track prosecution units. The reason for this is clear as fast-track prosecution applies to flagrant or petty offences. In the case of flagrant offences, direct witnesses are almost always available, minimizing possibilities of attrition arising from evidentiary matters. Likewise, the burden of proof seems to be less stringent in petty offence cases. The highest rate of attrition was observed in

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

In 2006 E.C., there were 1,250 cases under the VAWC prosecution track while there were 10,563 and 35,244 cases under the accelerated and regular prosecution tracks, respectively. Out of 1,250 total cases under the VAWC track, only 771 cases have been prosecuted or passed on to courts. Under the accelerated track, 10,439 cases out of the total 10,563 cases have been prosecuted or passed on to courts. Under the regular prosecution track, 16,923 out of the total 35,244 cases have been prosecuted or passed on to courts. The attrition rate was 38.3% for VAWC cases while it was 1.2% for fast-track cases, and nearly 52% for cases under the regular prosecution track. In 2006 E.C., more than one-third of VAWC cases were filtered out of the CJS at the investigation and prosecution stages. The attrition rate for VAWC cases decreased as compared to cases processed under the regular prosecution track, but not for cases processed under the accelerated track. In 2006 E.C., the attrition rate for VAWC cases was 38.3% and it has shown an improvement, as compared to the figure in the previous year, which was 56.6%.

In 2007 E.C., there were 1,425 cases under the VAWC prosecution track, while there were 10,783 and 41,779 cases under the accelerated and regular prosecution tracks, respectively. Out of 1,425 total cases of VAWC, only 767 cases have been prosecuted or passed on to courts. Under the accelerated prosecution track, 10,694 out of 10,783 total cases have been prosecuted or passed on to courts. Under the regular prosecution tracks, 13,438 out of the total 41,779 cases have been prosecuted or passed on to courts. The attrition rate was 46.2% for VAWC cases while it was 0.8% for the fast-track cases, and 67.8% for cases processed under the regular prosecution units. In 2007 E.C., nearly half of the VAWC cases were filtered out at the investigation and prosecution stages. There was an increase in attrition rate (46.2%) as compared to the figures in the previous year, which was 38.3%. However, it was lower than the rate for cases prosecuted under the regular prosecution tracks.

Generally, the attrition for VAWC cases at the investigation and prosecution stages was 56.6% in 2005 E.C., 38.3% in 2006 E.C., and 46.2% in 2007 E.C. The three-year average attrition rate was 47.027% while the attrition for fast-track cases at the same stage was 0.7% in 2005 E.C., 1.2% in 2006 E.C., and 0.8% in 2007 E.C. The three-year average attrition rate was 0.9%. The three-year attrition for cases in the regular prosecution units was 53.3% in 2005 E.C., 52% in 2006 E.C., and 67.8% in 2007 E.C. while the average was 57.7%. This means that not only are nearly half of the VAWC cases dropped at the investigation and prosecution stages but also the attrition rate was the worst as compared to cases under the accelerated track while it was almost the same as the rate for cases under the regular track.

However, the aggregation of data on VAWC cases could have undermined the actual rate of attrition for rape cases. The actual attrition rate might have been much worse if there were data disaggregated by crime types for separately analyzing the rate of attrition for rape cases. This is so because the average attrition rate for aggregated VAWC cases (47%) was slightly lower than what previous studies in other jurisdictions have consistently found. Although various studies have found varying rates of attrition at the investigation and prosecution stages, most have consistently showed that less than half of all reported rape cases go past the investigation stage, which is the equivalent of investigation and prosecution stages in the case of Ethiopian CJS. For instance, a study by L. Kelly in the UK found that between half and three-quarters of reported rape cases did not proceed beyond the police investigation stage.⁹⁵⁴ Likewise, a study in New Zealand found that charges had been filed only in 31% of the rape cases reported to the police.⁹⁵⁵ After reviewing the results of 75 studies conducted across five countries, Daly and Bouhours found that the rate of attrition at the investigation stage was around 65%.⁹⁵⁶ According to a 2010 study undertaken by

⁹⁵⁴ L. Kelly *et al.* (2005) *A gap or a chasm? Attrition in reported Rape cases*, Home Office Research Study 293, London: Home Office.

⁹⁵⁵ Sue Triggs *et al.* (2009) *Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System*, Wellington: Ministry of Women's Affairs, available at: http://women.govt.nz/sites/public_files/responding%20to%20sexual%20violence%20attrition-pdf.pdf last visited on 10/19/2018.

⁹⁵⁶ Kathleen Daly and Brigitte Bouhours (2010), *supra note* 11.

Amnesty International in the Nordic Countries, 60% of the rape case files in Denmark are closed by the prosecution whereas in Finland and Norway, approximately 16% of the rape cases proceed to the court.⁹⁵⁷ However, the three-year average rate of attrition in Ethiopia (47.027%), based on an aggregated data on VAWC cases, was less than the rate of attrition for sexual offences found by the aforementioned study. Had the rate of attrition for rape cases been found and analyzed separately, it could possibly have been much worse.

Regarding prosecution rates, in 2005 E.C., out of 1,647 total cases of VAWC, only 715 cases have been prosecuted or passed on to courts, making the prosecution rate 43.4%. Whereas under the accelerated prosecution track, 12,334 out of the total 12,426 cases have been prosecuted or passed on to courts, making the prosecution rate 99.3%. Under the regular track, out of a total of 41,832 cases, 12,538 cases have been prosecuted or passed on to courts, resulting in a prosecution rate of 84.5%. Thus, the prosecution rate for VAWC cases is far worse as compared to the rates for cases processed both in the fast-track and the regular prosecution units.

In 2006 E.C., out of 1,250 total cases of VAWC, only 771 cases have been prosecuted or passed on to courts, and the prosecution rate was 61.7%. Under the accelerated track, 10,439 out of a total of 10,563 cases have been prosecuted or passed on to the courts, with a prosecution rate of 98.8%. Under the regular prosecution track, 16,923 out of the total of 35,244 cases have been prosecuted or passed on to courts, with a prosecution rate of 48%. Likewise, in 2007 E.C., out of 1,425 total cases of VAWC, only 767 cases have been prosecuted or passed on to courts, making the prosecution rate 53.8%. Under the accelerated prosecution track, 10,694 out of 10,783 total cases have been prosecuted or passed on to courts, showing a prosecution rate of 99.2%. In the regular prosecution tracks, 13,438 out of a total of 41,779 cases have been prosecuted or passed on to courts, making the prosecution rate 32.2%. The three-years' average prosecution rate for VAWC cases was nearly 53% while it was 99.08% and nearly 55% for cases under the fast-track and regular prosecution tracks, respectively. Thus, the average prosecution rate for VAWC cases was

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

the lowest as compared to the rates for cases processed both under the accelerated and regular prosecution tracks. This should not, however, be the case since the identity of the offender is known in many instances of VAW cases, particularly in rape cases.

6.3.2 Rates of Attrition and Conviction at the Trial Stage

Table 6. Rates of attrition and conviction at the trial stage (2005-2007 E.C.)

No.	Case Status Indicator	Year (E.C)	Prosecution Track/Unit		
			Accelerated	Regular	VAWC
1	Total number of cases brought to courts	2005	15,391	17,472	1359
		2006	12,588	19,198	1,353
		2007	13,158	24,507	1,449
2	Acquitted cases	2005	2,005	386	54
		2006	212	407	53
		2007	276	548	30
3	Convicted cases	2005	10,596	4,987	427
		2006	8,468	5,331	377
		2007	7,434	5,380	361
4	Terminated cases	2005	945	7,155	185
		2006	924	6,254	199
		2007	939	5,645	103
5	Pending cases	2005	1,845	4,944	693
		2006	2,984	7,206	724
		2007	4,509	12,934	955
6	Attrition rate	2005	21.8%	60.2%%	35.9%
		2006	11.8%	55.5%	40.1%
		2007	9.5%	53.5%	26.9%
7	Conviction rate	2005	84.1%	92.8%	88.8%
		2006	97.6%	92.9%	87.7%
		2007	96.4%	90.8%	92.3%

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

At the trial stage, that is, after charges had been filed by the prosecutor, a number of VAWC cases have been filtered out of the CJS for a variety of reasons. As Table 6 above depicts, in 2005 E.C., there were 1,359 cases of VAWC at the trial benches while there were 15,391 and 17,472 cases under the accelerated and regular prosecution tracks, respectively. Out of the total 1,359 VAWC cases, only 427 ended up with convictions. While 185 cases were either withdrawn or dismissed for a variety of reasons, the remaining 54 cases ended up with acquittals. The attrition rate for VAWC cases was approximately 36% while the conviction rate was approximately 89%. Under

the fast-track prosecution scheme, 10,596 out of a total of 15,391 cases brought to the courts ended up with convictions while 945 cases were either withdrawn or dismissed for various reasons, and the remaining 2,005 cases ended up with acquittals. The attrition rate for cases processed under the fast-track scheme was close to 22% while the conviction rate was 84.1%. In the regular prosecution track, 4,987 out of the total 17,472 cases ended up with convictions. While 7,155 cases were either withdrawn or dismissed for various reasons, the remaining 386 cases ended up with acquittals. The attrition rate for cases processed under the regular prosecution track was about 60% whereas the rate of conviction was close to 93%. In 2005 E.C., nearly one-third of the VAWC cases were filtered out of the CJS at the trial stage due to withdrawal or dismissal and acquittal. The attrition rate for VAWC cases for that year was nearly 36%. This was much better than the attrition rate for cases prosecuted under the regular track, which was about 60%.

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

In 2006 E.C., there were 1,353 cases of VAWC at trials while there were 12,588 and 19,198 cases in the accelerated and regular prosecution tracks, respectively. Out of the total 1,353 VAWC cases, only 377 ended up with convictions while 199 cases were either withdrawn or dismissed for a variety of reasons. The remaining 53 cases ended up with acquittals. The attrition rate of VAWC cases was 40.1% while the conviction rate was 87.7%. In the fast-track prosecution units, 8,468 out of the total 12,588 cases at the court ended up with convictions. While 924 cases were either withdrawn or dismissed for various reasons, the remaining 212 cases ended up with acquittals. The rate of attrition for cases processed under the accelerated prosecution track was nearly 12% while the conviction rate was 97.6%. Under the regular prosecution track, 5,331 out of the total 19,198 cases ended up with convictions, and 6,254 cases were either withdrawn or dismissed for various reasons. The remaining 407 cases ended up with acquittals. The attrition rate for cases processed under the regular prosecution track was 55.5% while the conviction rate was almost 93%. In 2006

E.C., more than one-third of the VAWC cases (40.1%) were filtered out of the CJS due to case withdrawal or dismissal and acquittal. As in the previous year, the attrition rate for VAWC cases for 2005 E.C. was better than the rate of attrition for cases processed under the regular track. But, it increased by around 5%, compared to the rate in the previous year. The conviction rate for VAWC cases lags behind the other two prosecution units by at least 5%. Thus, in 2006 E.C. the improved attrition and conviction rates observed in the previous year disappeared.

In 2007 E.C., there were 1,449 cases of VAWC at trials while there were 13,158 and 24,507 cases in the accelerated and regular prosecution tracks, respectively. Out of the total 1,449 VAWC cases, only 361 ended up with convictions. While 103 cases were either withdrawn or dismissed for a variety of reasons, the remaining 30 cases ended up with acquittals. The rate of attrition for VAWC cases was nearly 27% while the conviction rate was 92.3%. Under the fast-track scheme, 7,434 out of the total 13,158 cases at the court ended up with convictions whereas 939 cases were either withdrawn or dismissed for various reasons, and the remaining 276 cases ended up with acquittals. The attrition rate for cases processed in the fast-track scheme was 9.5% while the conviction rate was 96.4%. Under the regular prosecution track, 5,380 out of the total 24,507 cases ended up with convictions. While 5,645 cases were either withdrawn or dismissed for various reasons, the remaining 548 cases ended up with acquittals. The attrition rate for cases processed in the regular prosecution scheme was 53.5% while the conviction rate was 90.8%. In 2007 E.C., a quarter of the VAWC cases were filtered out of the CJS due to withdrawal or dismissal and acquittal. For VAWC cases, both the attrition and conviction rates improved in that year. The rates have also shown an improvement as compared that of cases tried under the regular track.

Table 7. Rates of attrition and conviction at the trial stage (2008 E.C.)

No.	Case Status Indicator	Year (E.C.)	Type of Crime	
			VAWC	Other Crimes
1	Attrition rate	2008	34.1%	41.4%
2	Conviction rate	2008	85.5%	93.9%

Source: Author's elaboration of data from the Federal Attorney General's Annual Report (2008 E.C.)

In 2008 E.C., crime data were recorded under two categories, with one category comprising cases in the fast-track and regular schemes, and another category for VAWC cases. Accordingly, the rate of attrition and conviction for VAWC cases was 34.1% and 85.5%, respectively. The rate of attrition and conviction for other criminal cases was 41.4% and 93.9%, respectively.

Table 8. Rates of Attrition and conviction at the trial stage (2009 E.C.)

No.	Case Status Indicator	Year (E.C.)	Type of Crime				
			VAWC	Organized Crimes	Economic Crimes	Corruptions Crimes	Other Crimes
1	Attrition rate	2009	15.14%	7.2%	9.1%	2.5%	20.3%
2	Conviction rate	2009	90.3%	91%	82.5%	92.2%	94%

Source: Author's elaboration of data from the Federal Attorney General's Annual Report (2009 E.C.)

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

Generally, the five-years' average attrition rate for VAWC cases at the trial stage was 30.4%. As indicated earlier, the three-years' average attrition rate for VAWC cases at the investigation and prosecution stages was 47%. Only a quarter of the reported VAWC cases had been tried and resulted in either conviction or acquittal of the offenders by the court. This means about three-quarters of the reported cases did not proceed beyond the investigation and prosecution stages, or were dropped out at the trial phase before the court gives a verdict either convicting or acquitting

the offender. Only a quarter of the reported VAWC cases had been tried and resulted in either conviction or acquittal of the offenders by the courts. Of all the VAWC cases that had been tried by the courts, about 90% ended up with convictions. This rate is nearly the same as the conviction rates for other criminal cases processed under the accelerated and regular prosecution tracks and other types of crimes.

6.3.3 Attrition and Conviction Rates for Rape Cases: Trends and Reasons

The figures in the previous sub-section offer useful insights into the rates of attrition, prosecution and conviction for rape as a form of VAWC. In order to get a better understanding into the trends of and the reasons for the rates of attrition, prosecution and conviction for sexual offence cases specifically, data were obtained from key informants, mainly from prosecutors, who had been working as focal persons at the VAWC prosecution units at the Federal Attorney General's sub-city level branch offices in Addis Ababa City Administration. Regarding the attrition for rape cases, one of the key informants, PP2, a long-serving former focal person of the Women's and Children's Unit of the Federal Attorney General (and who was, at the time the present study was conducted, working as a judge at the Federal First Instance Court Special – Women's and Children's – Bench) stated: “[a] lot of rape cases tend to be filtered out of the CJS at the investigation or persecution phases. Many cases are not brought before the courts for trial.”⁹⁵⁸

Regarding the trends of attrition over time, another key informant, PP2 also stated: “[w]hen we see the statistics, it varies from one year to another. Sometimes, sexual offence cases rarely come to our office as was the case in 2006 and 2007 E.C. By the following year, i.e. 2008 EC., there has been an increase in the number of cases. Thus, the overall trend of the rate of prosecution has not been consistent, at least at the place where I had been working as a focal person.”⁹⁵⁹ This was reiterated by PP3, who stated: “[i]n the past two or so years, the number of reported cases of sexual offence has been increasing, but only a few number of the reported cases were passed on to the

⁹⁵⁸ Interview with PP2, *supra note* 849.

⁹⁵⁹ *Ibid.*

investigation and prosecution stages and brought to the courts.”⁹⁶⁰ “Nowadays,” she further added, “going to the court [with allegations of rape] is a very rare phenomenon except in cases involving child victims.”⁹⁶¹

As to the rate of attrition at the trial phase, PP2 stated the following: “[t]he trend of conviction rates varies from one trial bench to another. For example, when I was working in the Prosecutor’s Office of Nifas Silik-Lafto Sub-City, I observed that in the majority of the cases, the defendants had been convicted by the court. The conviction rate was very high. However, if you ask people from *Sebategna* area, they may tell you a very different story. They may tell you that more than half of the rape cases at the court have ended up with the acquittal of the defendants.”⁹⁶² She added that “[a]t Gullele and Lideta Sub-cities, more than half of the rape cases ended up with the acquittal of the defendants.”⁹⁶³

PP3 also shares the above view, stating: “[w]hen it comes to rape cases, the number of cases that resulted in the acquittal of the defendants have been increasing, at least in the past six months.”⁹⁶⁴

PP4 also concurs with the views of the two informants mentioned above and maintains that the overall trends of attrition, prosecution or conviction rates for rape cases vary from one bench to another and over time, while expressing that, without reference to offence-specific data, which was – at least as of yet – not being recorded separately, and is thus inexistent, it is difficult to conclude with certainty about the trends.⁹⁶⁵ Generally, the present study’s key informants believe that a considerable number of reported rape cases have been filtered out of the CJS, through the process of attrition. Thus, despite the legal and policy reforms, case attrition for rape cases has been a common occurrence.

⁹⁶⁰ Interview with PP3, *supra note* 851.

⁹⁶¹ *Ibid.*

⁹⁶² Interview with PP2, *supra note* 849.

⁹⁶³ *Ibid.*

⁹⁶⁴ Interview with PP3, *supra note* 851.

⁹⁶⁵ Interview with PO1, *supra note* 842.

This, nonetheless, does not mean that case attrition is unique for sexual offence cases. Case attrition occurs in any CJS and for any types of criminal offences.⁹⁶⁶ Whoever decides and for whatever reason, where culpability has been proven, attrition represents a failure to impose appropriate punishment on the offenders, and hence a major gap, within the CJS. However, attrition for rape cases has often been criticized on the grounds that, unlike with other types of crimes, it has something to do with prejudiced, stereotypical, or false beliefs about rape, rape victims, and the rapists.⁹⁶⁷

Attrition occurs for a variety of reasons. As far as the reasons of attrition for rape cases are concerned, the present study's key informant, PP1, identified three categories (of reasons): (i) reasons attributable to the victims; (ii) reasons attributable to the community, and (iii) reasons attributable to the CJS.⁹⁶⁸ According to the key informant, reasons for attrition attributable to the victims include failure to immediately report the incident to the police, failure to follow up their cases after reporting, concealing evidence after reporting, and settling the case by making negotiations with the offender.⁹⁶⁹

Reasons for attrition attributable to the community include witnesses' unwillingness to testify at the court, witness disappearance, and blaming the victims for their own victimization and forcing them to think that they were somehow responsible for what had happened to them.⁹⁷⁰ Whereas reasons for attrition attributable to the CJS include the absence of codified rules of evidence, the absence of rules of procedural law on measures to be taken in dealing deal with rape cases (e.g. child-friendly rules and trials, rules for the hearing of witnesses, roles of psychiatrists and psychologists and the like), the lack of adequate facilities for forensic examinations, such as deoxyribonucleic acid (DNA) evidence.⁹⁷¹ Other reasons attributable to the CJS, as identified by

⁹⁶⁶ Jörg-Martin Jehle (2012), *supra note 57*, P. 145.

⁹⁶⁷ *Ibid.*, P. 146.

⁹⁶⁸ Interview with PP1, *supra note 842*.

⁹⁶⁹ *Ibid.*

⁹⁷⁰ *Ibid.*

⁹⁷¹ *Ibid.*

other key informants, include the incompetence of the judges, prosecutors and forensic medical examiners.⁹⁷² In this regard, one of the present study's key informants outside of the CJS, A2, stated: "[t]he problem within the CJS is that the police officers lack commitments in taking the issue of VAW seriously and giving serious investigative responses. They did not have basic investigative skills."⁹⁷³ "In many instances," she also added, "the police did not investigate cases we had referred to them after evaluating the nature of our clients' cases. In cases involving violence in marriage, they often encourage in facilitating reconciliation between the offenders and the victims rather than conducting criminal investigations."⁹⁷⁴ Similar problems were observed at the prosecution stage, including lack of commitment and failure to cite appropriate and relevant legal provisions while filing criminal charges.⁹⁷⁵

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

The acceptance of rape myths, particularly that "women lie about being raped," appeared to be more common even among prosecutors assigned as Focal Persons at the sub-city level branch offices' Special Prosecution Units. In this regard, the present study's key informants, who had been working as focal persons in VAWC Prosecution Units, believed that there had been more false accusations of rape cases than other crimes. For instance, key informants were asked about the reasons for the high rate of attrition for rape cases, and PP2 explained: "[t]his is due to the prevalence of false accusations. Especially, adult women often report fabricated cases. There are

⁹⁷² Interview with PP2, *supra note* 849.

⁹⁷³ Interview with A2, *supra note* 648.

⁹⁷⁴ *Ibid.* See also Alemayehu Areda and Original W/Giorgis (2008), *supra note* 816, p. 10.

⁹⁷⁵ *Ibid.*

a lot of false accusations brought to us. This is why most of the cases are dropped by the prosecutors.”⁹⁷⁶ She further noted: “[w]e thoroughly investigate women who bring forth allegations of rape before we file criminal charges. We do this because after initially giving their statement alleging rape, they later change their mind after a thorough interrogation.”⁹⁷⁷ “After changing their initial statement,” she added, “they often say: ‘He did not rape me, but he just did not give me the money he promised to’ or ‘I just wanted to get medical care from the Gandhi [Memorial] Hospital’ and the like. So, we have realized that especially women above the age of 18 years old need an aggressive interrogation.”⁹⁷⁸ This view of the key informant’s suggests her acceptance of rape myths. Such a view is premised on the myth that women who had consented to sex, change their mind afterwards, claiming to have been raped, and that the accusations of rape are used to seek revenge on men.

Likewise, PP3, stated: “[w]e cannot take a case to the court based on the victim’s statement alone. We take cases involving adult victims very seriously.”⁹⁷⁹ She added: “[w]hen giving their initial statements during investigation at the Gandhi [Memorial] Hospital, the victims often allege to have been raped. When they later give their statements at the police stations, they completely change the initial statements and claim that it was a false allegation and that they had reported being raped just to get medical care and contraceptives. Thus, we have realized that cases, especially those involving women above the age of 18 years old, need a serious investigation.”⁹⁸⁰ “The main problem we are facing,” she also stressed “is that rape victims retract their prior statements. Most of them, after giving their consent and having had sex, they claim that they had been raped. When we investigate further, they claim that they had a fight or were not given what the alleged offenders promised to.”⁹⁸¹ Here again, the key informant’s views are premised on the rape myth that women,

⁹⁷⁶ Interview with PP2, *supra note* 849.

⁹⁷⁷ *Ibid.*

⁹⁷⁸ Interview with PP3, *supra note* 851.

⁹⁷⁹ *Ibid.*

⁹⁸⁰ *Ibid.*

⁹⁸¹ *Ibid.*

who had consented to sex, change their mind afterwards, claiming to have been raped, and that women use rape accusations to seek revenge upon men.

A key informant of the present study from women's rights advocacy groups also reported observing tendencies akin to rape myth acceptance among key actors within the CJS. In this regard, A2, stated: "the police and prosecutors demonstrate incredulity to the claims of rape victims. They often blame the victims and force them to feel that they were, in some ways, responsible for their own victimization."⁹⁸² She added that the key actors often generalize just one or two instances of cases in which the alleged victims change their initial claims of rape to a consensual sex as if that was the case with all other rape cases too.⁹⁸³ Generally, key informants from the CJS have expressed a disbelief in claims of rape, and alluded to the fact that only certain types of women, such as underage girls, are genuine victims. Even underage girls themselves may not always be considered genuine victims. In this regard, PP2 commented: "[f]alse accusations are often made by adult women. This does not mean that children do not lie about being raped. Children too may lie because of family influence. When they feel that they are not loved enough by a family member, they may also claim they had been raped. But, when we examine them thoroughly, they would admit that they had lied."⁹⁸⁴ This view also assumes that children lie about being raped, at least because of family influence, and that children too use rape accusations to seek revenge upon men.

Furthermore, three out of four key informants from the CJS did not even consider an increased police reporting trend for rape cases as a gradual, positive outcome of the legal and policy reforms. Nor did they consider an increased attrition rate for rape cases as a gap or shortcoming in the CJS. Rather, they linked an increased police reporting trend and a high rate of attrition for rape cases to the prevalence of false accusations. An increased police reporting and a high rate of attrition were viewed as concomitant effects of false accusations of rape. Thus, the acceptance of rape myths

⁹⁸² Interview with A2, *supra note* 648.

⁹⁸³ *Ibid.*

⁹⁸⁴ Interview with PP2, *supra note* 849.

leads to what Amy Grubb and Emily Turner described as “inaccurate portrayal and perception of the number of false rape allegations that are made by adult women.”⁹⁸⁵

Informants were asked whether the prosecutors file charges against women who make “false” accusations, once their claims have been proven to be so. Accordingly, one of the key informants, PP3, explained thus: “[w]hen we receive rape case files from the Gandhi [Memorial] Hospital [one-stop center] and before requesting an arrest warrant against the accused, we ask the victims about the allegation they have made. If they change their initial statement, we will send them home without filing any charges against them since the accused has no knowledge about the accusation. But, if they change their statements after the accused has been arrested, we will charge them for making false accusations.”⁹⁸⁶ This means false allegation was presumed, and the chance is given to the victim to retract her allegation before the alleged offender is summoned. The option to retract their initial claim involves, albeit implicitly, threat of a possible prosecution for making a false accusation.

The findings of the present study regarding the acceptance of rape myths among the key actors within the CJS is consistent with the findings of a previous study conducted in Addis Ababa. Although there was no explicit reference of rape myth acceptance, a study conducted in Addis Ababa on CJS’s response to acquaintance rape cases in Ethiopia found that the police and prosecutors believe that there were more false accusations in rape cases than other crimes.⁹⁸⁷ She documented very clear cases of rape myth acceptance where the key actors within the CJS had claimed that there is a high prevalence of false accusations, and that adult women use rape accusations as a *bargaining tool* wherever men failed to keep their promises, or as a *means of negotiating for ransom* or “[re]securing a bad relationship.”⁹⁸⁸ Blain also linked this unwarranted

⁹⁸⁵ Amy Grubb and Emily Turner (2012) ‘Attribution of Blame in Rape Cases: A Review of The Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming’, *Aggression and Violent Behavior* 17(5), pp. 443–452, pp. 446-447.

⁹⁸⁶ Interview with PP3, *supra note* 851.

⁹⁸⁷ Blain Worku (2011) *Criminal Justice System’s Response to Acquaintance Rape Cases in Ethiopia: The Women’s Right Perspective*, Unpublished MA Thesis, Addis Ababa University, pp. 52-56.

⁹⁸⁸ Blain Worku (2011), *supra note* 987, pp. 52-56.

suspicion of false accusations among the key actors with the CJS with the notions of *real rape* or the *ideal victim*,⁹⁸⁹ suggesting that acquaintance-rape is not considered as *real rape*, and a victim of acquaintance-rape is not considered as the *ideal victim*.⁹⁹⁰

Generally, it appeared that most of the reported rape cases would not automatically be deemed crimes until the investigations showed otherwise. This is especially the case in relation to allegations by adult victims. The default position is that their allegations are fabricated and, hence they are viewed as suspects for false accusation until thorough interrogations prove otherwise. Normally, the police should presume any accusation as though a crime had been committed, until their investigation efforts show otherwise. This, however, does not apply for allegations of rape by adult victims. These institutionalized incredulities might be forcing adult rape victims to think that the investigations and prosecutions do not work in their favor. As a result, they may become reluctant to follow up their case and cooperate with the CJS or may even completely change their initial statements after suffering the ordeals at the hands of the police. Ironically, the key actors within the CJS linked the victims' failure to cooperate and follow up their cases after reporting it, to the falseness of their allegations in the first place.

Many adult victims may not be willing to cooperate or may fail to follow up their cases after reporting the incident, and this might and should not necessarily be linked to false allegations. It could, for instance, be due to the harrowing treatment and hostile approach adopted by the the key actors towards adult rape victims, as is often the case in most rape cases.⁹⁹¹ Particularly, adult victims have often been repeatedly interrogated by multiple police officers simultaneously or one after another.⁹⁹² Investigators have even used threats against the victims as an *interrogation technique*.⁹⁹³ In essence, the victims have been treated as if they were offenders. After facing these

⁹⁸⁹ *Ibid*, P. 56.

⁹⁹⁰ *Ibid*.

⁹⁹¹ *Ibid*.

⁹⁹² *Ibid*, p. 52.

⁹⁹³ *Ibid*.

ordeals, they may never come back to and cooperate with the CJS.⁹⁹⁴ More often than not, the ordeals are severe enough to dissuade the victims from ever coming back to the police and pursue their cases.⁹⁹⁵ However, the police have misinterpreted the victims' failure to come back as an indication of the success of their investigation efforts since they believed that adult women are "lying" about the incident.⁹⁹⁶

Rape victims may be too emotionally upset, afraid, or embarrassed to cooperate with the police. Studies show that there are many reasons attributable to victims' failure to proceed with their cases. For instance, Cassia Spohn *et al.* contend: "the reluctance of victims to proceed with a case [could] be attributed to a combination of factors including: a belief that prosecution of the subject is not in her own interest; a belief that prosecution of the subject is not worth either the time and the effort required or the humiliation of testifying about her victimization; and a belief, either arrived at independently or communicated by police and prosecutors, that her character and behavior at the time of the incident make conviction unlikely."⁹⁹⁷ The authors further noted that the victims in these cases "may have made a rational decision that pursuing the case would be too traumatic and/or would be a waste of time given the low odds of conviction."⁹⁹⁸

In sum, subsequent to the rape law and policy reforms, there has been an increased police reporting trend for rape cases. This increase, however, has not been matched by a corresponding improvement in attrition, prosecution and conviction rates. In addition, the number of reported rape cases that had been considered and labelled by the key actors as false accusations indicated that, generally, the CJS is overly solicitous to the offenders and overly suspicious of the victims. The study also revealed that there is a widespread prevalence of rape myth acceptance, particularly the myth that the victims lie about being raped. This might be a factor contributing to the high rate

⁹⁹⁴ *Ibid.*

⁹⁹⁵ *Ibid.*, p. 53.

⁹⁹⁶ *Ibid.*, p. 52.

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

⁹⁹⁸ *Ibid.*

of attrition for rape cases. Such a finding contradicts, at least in part, what other authors had suggested regarding the publicities surrounding the legal and policy reforms. For instance, Tsehai Wada noted: “civil society organizations, particularly those engaged in gender issues, have done their best to sensitize the issue using different fora. As a consequence of this development, there is a media hype on such issues wherein shocking incidents of grave violations of sexual integrity, particularly on minors, are reported, probably every week, if not every day.”⁹⁹⁹ “As a result of such sensitization,” he further added, “the agencies of the country’s CJS have given a special attention to such matters, as a result of which many criminals are sent to prison to serve their sentences, and special benches are established in some courts to deal with rape cases.”¹⁰⁰⁰ However, this was not the case since, in three-quarters of rape (and other forms of VAWC) cases, the offenders had not even been tried, let alone being convicted and sentenced.

However, the findings of the present study are consistent with previous studies conducted in other jurisdictions. For instance, a study in England and Wales found that throughout the period between 1997 and 2009, there had been an increased police reporting, perhaps due to an increased women’s confidence in the police and the CJS, but an increased trend in reporting has not been matched by an increased rate of convictions.¹⁰⁰¹ In the United States, a wave of state-level rape law reforms introduced in the 1970s demonstrated little impact on practice within the CJS, ten years after those reforms were introduced.¹⁰⁰² Post-reform studies found that in most jurisdictions, legal reforms have not been followed by significant increases in the reporting and conviction of rape cases.¹⁰⁰³ Likewise, in Canada, the 1963 rape law reform had registered modest to negligible effects on arrest

⁹⁹⁹ *Ibid.*, p. 206.

¹⁰⁰⁰ *Ibid.*

¹⁰⁰¹ Sylvia Walby, Jo Armstrong and Sofia Strid (2011), *supra note* 44, p. 105.

¹⁰⁰² David John Frank *et al.* (2009), *supra note* 19, p. 274.

¹⁰⁰³ Ronet Bachman and Raymond Paternoster (1993), *supra note* 11, p. 556.

and prosecution rates¹⁰⁰⁴ while the 1983 reform led to an increased trend of police reporting.¹⁰⁰⁵ Thus, reform outcomes generally fell apparently far short of the desired goals.

The limited outcomes of the reforms might, at least in part, be attributed to the inability of the legal and policy reforms to dispel from the CJS rape myths and attitudes that support or trivialize sexual and other forms of VAW.¹⁰⁰⁶ In addition, rape law reform is a prolonged process of efforts to change the legal culture, organizational and professional practices, and attitudes toward and beliefs about men’s and women’s sexualities and responsibilities for sexual victimization.¹⁰⁰⁷ There is also a broad and complex line of actions and interactions between the legal reforms and changes in people’s attitudes and actions towards the implementation of reformed laws and policy measures.¹⁰⁰⁸ Therefore, legal and policy reforms are necessary but not sufficient measures to address a complex problem such as rape.¹⁰⁰⁹

6.4 The Impact of Victim Characteristics on Rape Case-Processing

6.4.1 Findings

Table 9. Victims’ characteristics included in the questionnaire

Category/Group	Items
Category 1	The age of the victim
	The employment history of the victim
	The education background of the victim

¹⁰⁰⁴ Bernard Schissel (1996) ‘Law Reform and Social Change: A Time-Series Analysis of Sexual Assault in Canada’, *Journal of Criminal Justice* 24(2), pp. 123–138.

¹⁰⁰⁵ Julian V. Roberts and Robert J. Gebotys (1992) *supra note* 942; Julian V. Roberts *et al.* (1996) ‘Rape Reform in Canada: Public Knowledge and Opinion’, *Journal of Family Violence* 11(2), pp. 133–148; and Kwong-Leung Tang (1998) ‘Rape Law Reform in Canada: The Success and Limits of Legislation’, *International Journal of Offender Therapy and Comparative Criminology* 42(3), pp. 258–270.

¹⁰⁰⁶ Wendy Larcombe (2011), *supra note* 5, p. 32.

¹⁰⁰⁷ Kathleen Daly and Brigitte Bouhours (2010), *supra note* 11, p. 579.

¹⁰⁰⁸ *Ibid.*

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

Category 2, Group I	Prior relationship of the victim and the offender
	Prior sexual relationship between the victim and the offender
	Prior sexual relationship of the victim with another person
	Whether or not the victim had physically resisted the offender during the offence
	Whether or not the victim had screamed during the incident
Category 2, Group II	The victim's promptness in reporting the incident to the police
	Whether or not the victim was under the influence of alcohol during the incident
	Whether or not the victim was under the influence of drugs during the incident
	The victim's history of working in a "disreputable" situation such as "prostitution"
	Whether or not someone other than the victim had reported the incident to the police
Category 2, Group III	Whether or not the victim was walking alone late at night in an unsafe neighborhood
	Whether or not the victim had been in a bar alone during the incident
	Whether or not the victim was hitchhiking during the incident
	Whether or not the victim had accompanied the offender to his residence where the offence was committed
	Whether or not the victim had invited the offender to her residence where offence was committed
Category 3, Group I	Whether or not the victim appeared to be upset by the rape allegedly committed against her
	The physical attractiveness of the victim
	Whether or not there was a huge discrepancy between the age of the victim and that of the offender
	The victim's mental health condition during the incident
	Whether or not there were inconsistencies in the victim's account
Category 3, Group II	The victim's willingness to cooperate
	The victim's willingness to undergo a medical examination
	The victim's attempt to preserve the necessary physical evidence
	The presence/absence of a physical condition supporting the alleged commission of rape
	The victim's previous history of reporting incidents to the police and that did not progress
	The victim's prior history of having had trouble with the police

As Table 9 above shows, 29 items, which were identified in various studies as factors or victim characteristics responsible for leading the key actors within the CJS to blame the victim or question her credibility or to determine the outcomes of rape-case processing within the CJS, were included in the questionnaire. The items were categorized under three broad categories, based on the major themes identified in accordance with the objectives of the present study, with the first category dealing with the preliminary background information of the victims, and the items under the second focusing on pertinent details prior to and during the occurrence of the incident, and the related and the third category mainly dealing with factors occurring after the incident. Under the broad categories, the items were further sorted under sub-categories (indicated in the table below as ‘Group’), again based on the similarity of sub-themes being dealt with. Such a thematic categorization scheme has been adopted because it would enable to undertake a systematic and comprehensive enquiry and understanding into the issue under investigation, towards the attainment of the objectives of the study.

Victim Characteristics Category One

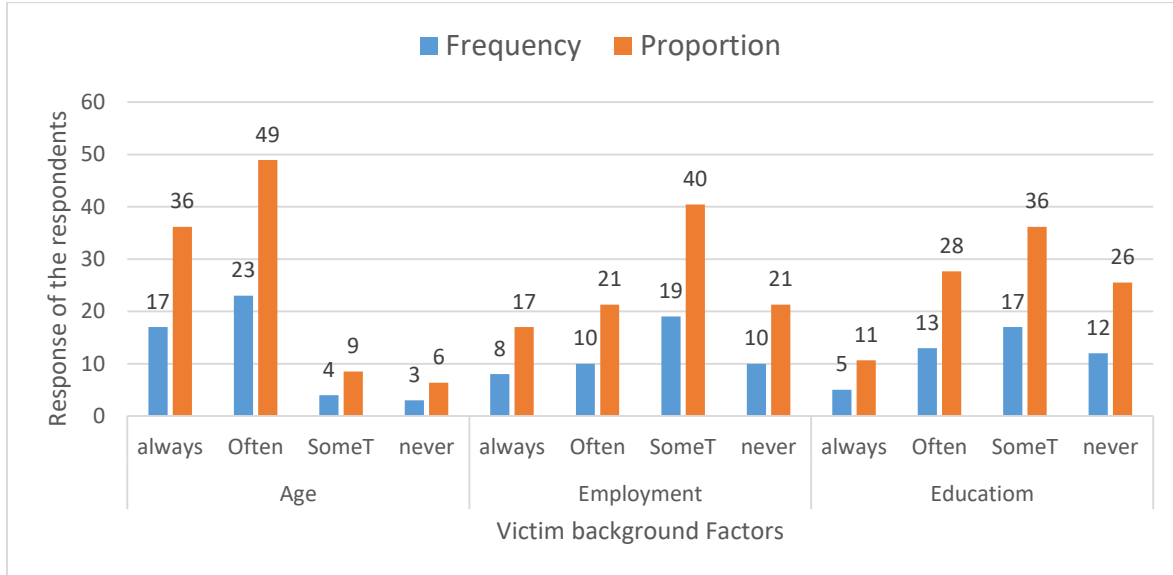


Figure 5. Frequency and proportion of the consideration of victims' background factors

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

Previous studies have consistently shown that victim characteristics such as background factors were not only considered in decision making but also they influenced the way in which the key actors attribute blames and credibility to the victims and determined case-processing outcomes (i.e. attrition). For instance, a study conducted on attrition of sexual offence incidents across the Victorian CJS found that cases involving victims aged between 10 and 17 years old had been associated with an increased likelihood that an incident would have a police progression outcome recorded (which did not result in case attrition at the investigation stage).¹⁰¹⁰ However, the opposite

¹⁰¹⁰ Melanie Millsteed and Cleave McDonald (2017) *Attrition of sexual offence incidents across the Victorian Criminal Justice System*, Melbourne: Crime Statistics Agency, p. 11, available at: https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/01/fd/8d51b2494/20170202_SexualOffenceAttrition_FinalReport.pdf last visited on 10/18/2018.

was true for cases involving adult victims.¹⁰¹¹ Other studies also suggested that young adult victims were less likely than victims in other age groups to have their cases progressed by the police.¹⁰¹²

Victim Characteristics Category Two

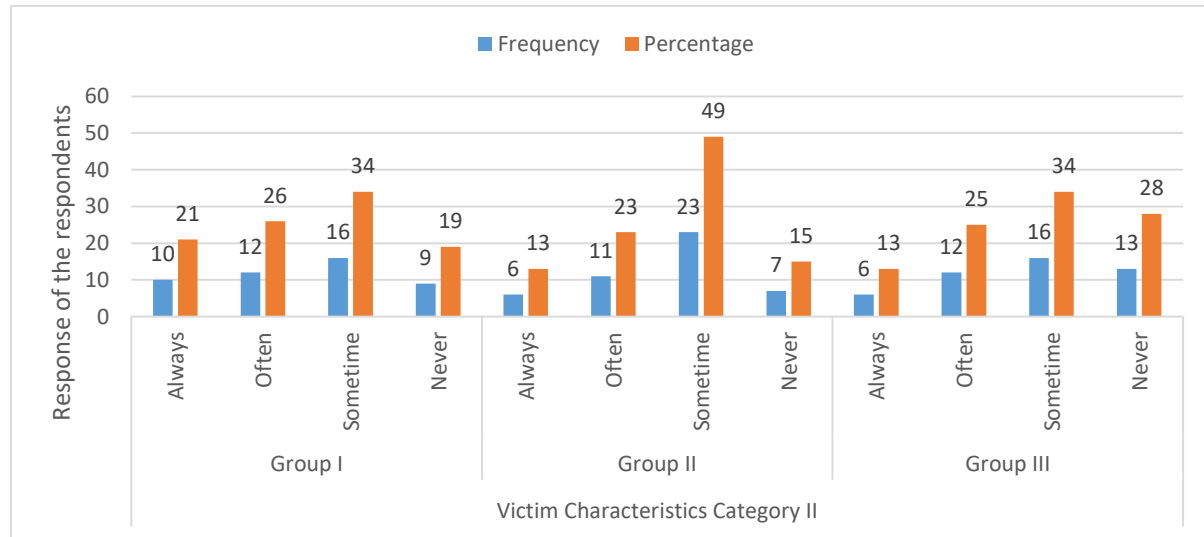


Figure 6. Frequency and proportion of the consideration of victim characteristics category two

Victim Characteristics Category Two, Group I: A second category consists of factors sometimes viewed as influencing decision makers to blaming the victim or questioning her credibility. For the purpose of simple descriptive analysis, these factors have been classified into three groups. The first group of factors includes: prior relationship of the victim and the offender (whether they are strangers or acquaintances); prior sexual relationship between the victim and the offender; prior sexual relationship of the victim with another person; whether or not the victim had physically resisted the offender during the offence; and whether or not the victim had screamed during the

¹⁰¹¹ *Ibid.*

¹⁰¹² Kathleen D. Kelley and Rebecca Campbell (2013) ‘Moving On or Dropping Out: Police Processing of Adult Sexual Assault Cases’, *Women and Criminal Justice* 23(1), pp. 1-18; Jeffrey W. Spears and Cassia C. Spohn (1996) ‘The Genuine Victim and Prosecutors’ Charging Decisions in Sexual Assault Cases’, *American Journal of Criminal Justice* 20(2), pp. 183-205; and Jeffrey W. Spears and Cassia C. Spohn (1997) ‘The Effect of Evidence Factors and Victim Characteristics on Prosecutors’ Charging Decisions in Sexual Assault Cases’, *Justice Quarterly* 14(3), pp. 501-524.

incident. As Figure 6 above shows, on average, these factors are ‘always’ considered in decision making by 21% of the participants and ‘often’ considered by 26% of the participants. Whereas, 34% and 19% of the participants considered them ‘sometimes’ and ‘never,’ respectively. The majority of the participants took these factors into account at least once, and only a small proportion of the participants (19%) ‘never’ considered them in decision making. This simple descriptive analysis implies that factors labelled as ‘Victim Characteristics Category Two Group One’ were considered by the key actors in their decision making. A chi-square analysis of each factor also revealed the extent to which each factor was considered (*see* Appendix 3).

As with the factors in the first category, previous studies have also revealed that factors included in this group had not only been considered in decision making but also they affect attribution of blames and credibility and case-processing outcomes. For instance, the variable ‘victim-offender relationship’ had not just been associated with decision making but also a main factor used to attribute blame and credibility.¹⁰¹³ Most cases perceived as false allegations have often involved a victim and an offender with a current or prior relationship.¹⁰¹⁴ The key actors within the CJS described reports of rape as real or serious only when the offender was a stranger.¹⁰¹⁵ A study by Theresa Claire Kelly found that the better the victim and the offender know each other and the closer their relationship, the more blame was typically assigned to the victims.¹⁰¹⁶ The study also found that men and women in acquaintance-rape cases had tended to find the offender less responsible.¹⁰¹⁷ In Ethiopia too, a study suggested that the key actors within the CJS had used

¹⁰¹³ Susan T. Bell *et al.* (1994) ‘Understanding Attributions of Blame in Stranger Rape and Date Rape Situations: An Examination of Gender, Race, Identification, and Students’ Social Perceptions of Rape Victims’, *Journal of Applied Social Psychology* 24(19), pp. 1719–1734; Theresa Claire Kelly (2009) *Judgments and Perceptions of Blame: The Impact of Benevolent Sexism and Rape Type on Attributions of Responsibility in Sexual Assault*, PhD Thesis, University of Toronto; and Niwako Yamawaki (2009) ‘The Role of Rape Myth Acceptance and Belief in a Just World on Victim: A Study in Japan’, *Psychologia: An International Journal of Psychology in the Orient* 52(3), pp. 163–174.

¹⁰¹⁴ Rachel M. Venema (2016) ‘Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports’, *Journal of Interpersonal Violence* 31(5), pp. 872–899, p. 880.

¹⁰¹⁵ *Ibid.*, p. 885.

¹⁰¹⁶ Theresa Claire Kelly (2009), *supra note* 1013, p. 77.

¹⁰¹⁷ *Ibid.*

victim-offender relationship as a factor to differentiate an ideal victim worth of telling the truth from an ‘incredulous’ victim who was destined to be blamed.¹⁰¹⁸

Beyond attribution of blame and credibility, other studies also found that closer relationships between offenders and victims had been associated with an increased rate of attrition.¹⁰¹⁹ A study conducted on attrition of sexual offence incidents across the Victorian CJS, for instance, found that cases involving current and former partners were less likely to move past the investigation stage to the prosecution phase while those involving other family members and acquaintances were more likely to progress to the next stage.¹⁰²⁰ At the prosecution stage, cases involving victims who were the offender’s current partner were less likely to proceed to the court while those involving victims who were strangers to the offender were more likely to proceed to the court.¹⁰²¹

Similarly, a study in Ethiopia suggested that victim-offender relationship determines the attribution of blame and credibility and case attrition.¹⁰²² For instance, a qualitative study conducted in Addis Ababa found that it is very difficult for a woman to get appropriate response from the CJS or ‘her words to be believed’ if she has had a previous sexual relationship with the offender.¹⁰²³ According to a study conducted in Addis Ababa on CJS’s response to acquaintance rape cases in Ethiopia, “[i]n most of the cases where the victim has had a previous sexual relationship with the accused, consent seems to be presumed”¹⁰²⁴ by the key actors within the CJS. This presumption of consent was irrefutable even by producing direct witnesses or corroborative evidence.¹⁰²⁵ Regarding the effects victim-offender relationship on the outcome of case-

¹⁰¹⁸ Blain Worku (2011), *supra note* 987, p. 56.

¹⁰¹⁹ Melanie Millsteed and Cleave McDonald (2017), *supra note* 1010; Denise Lievore (2005) ‘Prosecutorial Decisions in Adult Sexual Assault Cases’, *Trends and Issues in Crime and Criminal Justice* No. 291, Canberra: Australian Institute of Criminology, available at: <https://aic.gov.au/publications/tandi/tandi291> last visited on 1/27/2019; Melinda Tasca *et al.* (2012) ‘Police Decision Making in Sexual Assault Cases: Predictors of Suspect Identification and Arrest’, *Journal of Interpersonal Violence* 28(6), pp. 1157-1177; and Sue Triggs *et al.* (2009), *supra note* 955.

¹⁰²⁰ Melanie Millsteed and Cleave McDonald (2017), *ibid.*, p. 11.

¹⁰²¹ *Ibid.*, p. 18.

¹⁰²² Blain Worku (2011), *supra note* 987, pp. 56 -59.

¹⁰²³ *Ibid.*, pp. 56-57.

¹⁰²⁴ *Ibid.*, p. 57.

¹⁰²⁵ *Ibid.*

processing, Blain found that in most cases, “the prosecutor had used victim’s relation or acts before the commission of the crime as a sole or an additional ground to close a case.”¹⁰²⁶ This, in essence, implies that the existence of a prior sexual relationship between the victim and the offender could arguably decriminalize a subsequent sexual offence.

The effect of victim–offender relationship goes even beyond the prosecution and conviction stages. Victim-offender relationship (i.e. whether or not they are strangers or acquaintances) affects the decision of whether to sentence the convict as well as the gravity of the penalty.¹⁰²⁷ They found that offenders in stranger-rape cases were more than twice as likely to receive prison sentences as the offenders in acquaintance-rape cases (41%).¹⁰²⁸ Similarly, prison sentences were longer in stranger-rape cases than in acquaintance-rape cases, although the difference was only marginally significant.¹⁰²⁹ Offenders in acquaintance-rape cases were also more likely to be placed on probation, to be sentenced to the workhouse, and to receive a better treatment than offenders in stranger-rape cases.¹⁰³⁰

Other factors included in this group such as whether or not the victim had physically resisted the offender was also used to attribute credibility and blame, and affected case attrition. Previous studies found that it had been considered in decision making and determined credibility and blame attributions.¹⁰³¹ For instance, review of numerous studies by Amy Rose Grubb and Julie Harrower found that individuals were more blaming of victims who had not resisted the offender and

¹⁰²⁶ *Ibid*, p. 59.

¹⁰²⁷ Patricia A. Frazier and Beth Haney (1996) ‘Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives’, *Law and Human Behavior* 20(6), pp. 607-628, p. 619.

¹⁰²⁸ *Ibid*.

¹⁰²⁹ *Ibid*.

¹⁰³⁰ *Ibid*.

¹⁰³¹ Beverly A. Kopper (1996) ‘Gender, Gender Identity, Rape Myth Acceptance, and Time of Initial Resistance on the Perception of Acquaintance Rape Blame and Avoidability’, *Sex Roles* 34(1-2), pp. 81–93; R. Lance Shotland and Lynne Goodstein (1983) ‘Just Because She Doesn't Want to Doesn't Mean It's Rape: An Experimentally Based Causal Model of the Perception of Rape in a Dating Situation’, *Social Psychology Quarterly* 46(3), pp. 220–232; Karen Yescavage (1999) ‘Teaching Women a Lesson: Sexually Aggressive and Sexually Nonaggressivemen's Perceptions of Acquaintance and Date Rape’, *Violence Against Women* 5(7), pp. 796–812; Rachel M. Venema (2016), *supra note* 1014; and J. Shaw *et al.* (2017) ‘Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records’, *Psychology of Violence* 7(4), pp. 602-614.

believing of victims who had physically resisted.¹⁰³² A study in Ethiopia also suggested that victim's failure to physically resist the offender led to case attrition at the investigation or prosecution stages.¹⁰³³

In Ethiopia, the variable of resistance may not necessarily be an extra-legal factor to be attributed to the key actors' attitudes and subjective assessment of rape cases since it is a constituent element for both forcible rape and sexual assault under the RCC. However, the way the key actors treated the victim that had failed to resist the offender shows that the law rather reinforces their biased assumptions. The police made exclamations like "You are a big girl, why did not you stop him?" or "Why did you consent to have tea with him?"¹⁰³⁴ These remarks clearly suggest that the police officers believe that any victim can resist the offender if she really wanted to. By making the victim's resistance an element of forcible rape and sexual assault, the law simply reflects, endorses and reinforces this belief. However, this study identified another related but separate variable included in the questionnaire of the present study, namely, verbal resistance as a factor which determines case outcome.¹⁰³⁵ According to Blain, the prosecutor declined to file a charge stating "the victim's failure to scream or shout for help knowing that someone was around to help her."¹⁰³⁶ Although it is not a legal element of forcible rape and sexual assault, verbal resistance is not just associated with decision making but it is used as a factor to determine the victim's credibility.

Victim Characteristics Category Two, Group II: The second group of factors in the second category include: the victim's promptness in reporting the incident to the police; whether or not the victim was under the influence of alcohol during the incident; whether or not the victim was under the influence of drugs during the incident; the victim's history of working in a "disreputable" situation such as "prostitution"; and whether or not someone other than the victim reported the

¹⁰³² Amy Rose Grubb and Julie Harrower (2008) 'Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Aggression and Violent Behavior* 13, pp. 396–405.

¹⁰³³ Blain Worku (2011), *supra note* 987, pp. 43-46.

¹⁰³⁴ Gemma Lucy Burgess (2012), *supra note* 617, p. 162.

¹⁰³⁵ Blain Worku (2011), *supra note* 987, p. 46.

¹⁰³⁶ *Ibid.*

incident to the police. As Figure 6 above shows, on average, these factors had been considered 'always' by 13% of the respondents and considered 'often' by 23% of the respondents while 49% and 15% of the respondents reported they had considered them 'sometimes' and 'never,' respectively. The majority of the respondents had taken these factors into account at least 'once', and only a small proportion of the respondents (15%) said they had 'never' considered them. A chi-square analysis of each factor also revealed the extent to which each factor had been considered by the key actors in rape-case decision making (*see* Appendix 3).

As with the other variables in the questionnaire, previous studies linked factors included in this group such as the victim's delay in reporting to attribution of blame and credibility and case attrition.¹⁰³⁷ For instance, a study by Jacqueline Fitzgerald found that progression is positively associated with shorter periods of time between the occurrence of the offence and the victim reporting the incident to the police.¹⁰³⁸ Likewise, other variables such as drunkenness are linked to the attribution of blame and credibility and case attrition. Studies have shown that observers perceived victims who had consumed alcohol prior to being assaulted as more responsible for the sexual assault and less credible than they did to rape victims who had been not-drunk.¹⁰³⁹ A study in the Queensland police Service on the role of victim and offender alcohol intoxication in police officers' judgments of credibility, their attributions of blame, and their evaluations of a claim of sexual assault also found that the more the victim was perceived to have been drunk, significantly

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

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

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

more blame was attributed to the victim and significantly less to the offender.¹⁰⁴⁰ The more the victim was perceived to have been drunk, the less credibility was attributed to the victim.¹⁰⁴¹ Other studies linked victims' drunkenness to attrition and suggested that case progression is negatively related to victim drug and/or alcohol use at the time of the incident.¹⁰⁴²

Other variables in the questionnaire such as victim's history of working in a "disreputable" situation like prostitution had also been identified by previous studies as a factor which determined victims' credibility.¹⁰⁴³ For example, a 2007 study conducted in two states in the southeastern United States found that the police were less likely to believe victims who were sex workers.¹⁰⁴⁴ Likewise, a 2016 study conducted in the Great Lakes region indicated that reports of rape by someone involved in prostitution were often perceived as false allegations as police officers consider the sexual encounter to be consensual.¹⁰⁴⁵

Victim Characteristics Category Two, Group III: The third group of factors in the questionnaire relate to victims' "risk-taking" behavior. They include: whether or not the victim had been walking alone late at night in an unsafe neighborhood; whether or not the victim had been in a bar, alone, during the offence; whether or not the victim had been hitchhiking during the offence; whether or not the victim had agreed to accompany the offender to his residence where the offence was committed; and whether or not the victim invited the offender to her residence where offence was committed. As Figure 6 above shows, on average, these factors had been considered 'always' by 13% of the respondents and considered 'often' by 25% of the respondents while 34% and 28% of

¹⁰⁴⁰ Regina A. Schuller and Anna Stewart (2000), *ibid*, p. 545.

¹⁰⁴¹ *Ibid*.

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

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

¹⁰⁴⁴ Amy Dellinger Page (2007) 'Behind the Blue Line: Investigating Police Officers' Attitudes towards Rape' *Journal of Police and Criminal Psychology*, 22(1), pp 22-32.

¹⁰⁴⁵ Rachel M. Venema (2016), *supra note* 1014, p. 880.

the respondents said they had considered them ‘sometimes’ and ‘never,’ respectively. The majority of the respondents had taken these factors into account in rape case decision-making at least ‘once’, and a smaller proportion (28%) said they had ‘never’ considered these factors. A chi-square analysis of each factor revealed the extent to which each factor had been considered in rape case decision-making (*see* Appendix 3).

Like with the other variables, previous studies also found that victims’ “risk-taking” behaviors such as walking alone late at night, hitchhiking, accompanying the offender to his residence, inviting him to her residence and being seen alone at a bar determine blame and credibility attribution and case attrition.¹⁰⁴⁶ A study by Jeffrey W. Spears and Cassia C. Spohn, for instance, identified these variables as elements that distinguish ‘genuine’ victims from other victims.¹⁰⁴⁷ Genuine victims were those having a ‘good’ moral character (for example, no history of drug or alcohol abuse, previous offending, or working in the sex industry); who had not engaged in a risk-taking behavior before the offence (walking alone at night, hitchhiking, being seen alone at a bar, going home with the offender); who had screamed and physically resisted the offender; and who report the offence immediately.¹⁰⁴⁸

Similarly, in her study conducted in Addis Ababa, Blain documented instances where perceived risk-taking behaviors had been used to disqualify rape victims from being seen as ‘genuine’ and to determine case-processing outcomes.¹⁰⁴⁹ She used the term ‘vulnerability’ for what could otherwise be considered as a ‘risk-taking behavior.’ Her study clearly demonstrates that the police and prosecutors believed that rape is a preventable crime if the victim really wanted to avoid it, by not engaging in a ‘risk-taking behavior.’¹⁰⁵⁰ The key actors’ believed that the victim, by engaging in a risk-taking behavior, takes the offender to such an extent that he cannot control his sexual

¹⁰⁴⁶ Jeffrey W. Spears and Cassia C. Spohn (1996), *supra* note 1012, p. 192.

¹⁰⁴⁷ *Ibid.*

¹⁰⁴⁸ *Ibid.*

¹⁰⁴⁹ Blain Worku (2011), *supra* note 987, pp. 58-59

¹⁰⁵⁰ *Ibid.*

urges.¹⁰⁵¹ They took the victim’s ‘risk-taking behavior’ as the main factor in determining the criminal nature of the sexual encounter in question.¹⁰⁵² In Blain’s study, risk-taking behavior appeared to be understood by the key actors, too broadly, as *what a reasonable member of a society might think that a sexual intercourse will come next*.¹⁰⁵³ The key actors believed that sexual intercourse will come next if, for instance, the victim accompanies the offender to his home, at night.¹⁰⁵⁴

Victim Characteristics Category Three

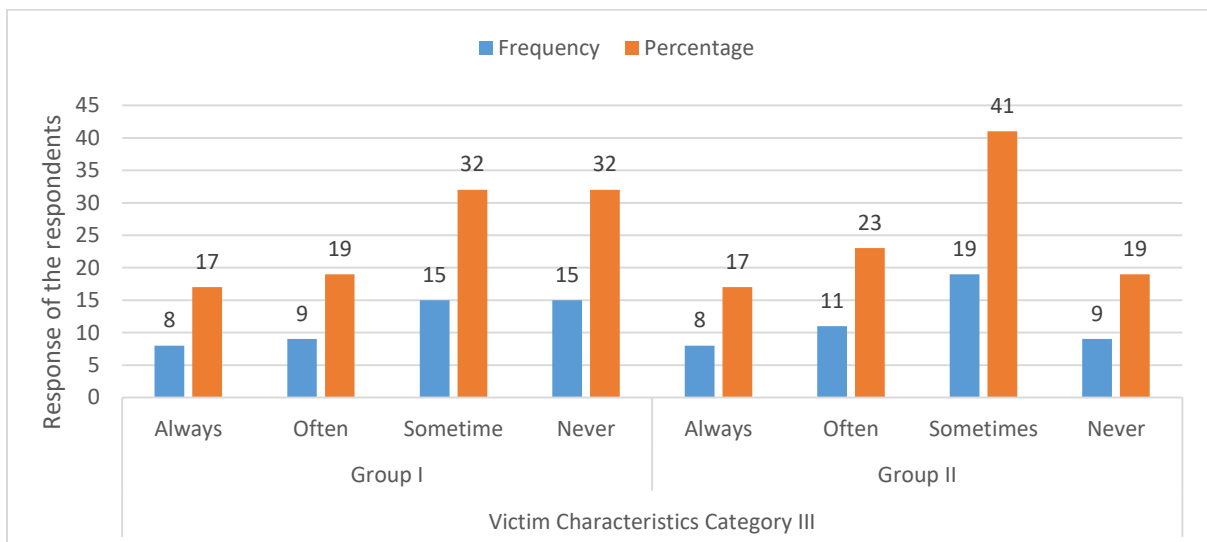


Figure 7. Frequency and proportion of the consideration of victim characteristics category three

Victim Characteristics Category Three, Group I: The first group of factors in this category include: whether or not the victim appeared to be upset by the alleged rape committed against her; the physical unattractiveness of the victim; whether or not there was a big discrepancy between the age of the victim and the offender; the victim’s mental health condition during the incident; and

¹⁰⁵¹ *Ibid.*

¹⁰⁵² *Ibid*, p. 58.

¹⁰⁵³ *Ibid.*

¹⁰⁵⁴ *Ibid*, pp. 58-59.

whether or not there were inconsistencies in the victim's account. As Figure 7 above shows, on average, these factors had been considered 'always' by 17% and of the respondents considered 'often' by 19% of the respondents while an equal proportion of 32% of the respondents each had considered these factors 'sometimes' and 'never.' The majority of the respondents indicated that they had taken these factors into account at least 'once,' and 32% of the respondents said they had 'never' considered them. A chi-square analysis of each factor revealed the extent to which each factor had been considered in rape case decision-making (*see* Appendix 3).

Like with the other variables, previous studies have also found that factors included in this group, such as mental health problems, rarely result in the prosecution of the offender, thus affecting attrition for rape cases.¹⁰⁵⁵ For instance, a 2013 study conducted in the North East of England on rape case attrition within the CJS found that only about a third (35.2%) of rape cases where the victim had mental health problems had resulted in the offender's arrest, compared to more than half of the cases (54.9%) where no such problems had been recorded.¹⁰⁵⁶ Likewise, studies have indicated that whether or not the victim's account contains inconsistencies affect credibility: victims were deemed more credible when their accounts of the alleged rape had not varied, and a consistent narrative had been presented by the victim.¹⁰⁵⁷ In this regard, a 2016 study conducted in the Great Lakes region found that credibility had been linked, among other things, to the consistency and level of detail provided in the victim's statements.¹⁰⁵⁸

Studies have also identified other variables included in the questionnaire such as the victim's emotional reaction to the incident (i.e. whether or not she appears to be upset by the offence) as

¹⁰⁵⁵ Marianne Hester (2013) *From Report to Court: Rape Cases and the Criminal Justice System in the North East*, Bristol: University of Bristol in association with the Northern Rock Foundation, P. 11, available at: https://research-information.bristol.ac.uk/files/9852501/From_Report_to_Court.pdf last visited on 1/26/2019; J. Harris and S. Grace (1999) *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*, London: Home Office; Susan J. Lea *et al.* (2003), *supra* note 302; and L. Kelly *et al.* (2005), *supra* note 954.

¹⁰⁵⁶ Marianne Hester (2013), *ibid*, P. 13.

¹⁰⁵⁷ B. A. Campbell *et al.* (2015), *supra* note 1043; and Rachel M. Venema (2016) *supra* note 1014.

¹⁰⁵⁸ Rachel M. Venema (2016), *ibid*, p. 882.

determinants of attribution of credibility.¹⁰⁵⁹ For instance, a 2006 study comparing credibility ratings by Norwegian court judges with those made by lay people found that credibility ratings by the police had been affected by the emotions displayed by the victim when giving her statement, these being “congruent” (negative emotion displayed, upset victim), “neutral”, or “incongruent” (positive emotions displayed, relaxed victim).¹⁰⁶⁰ The highest credibility ratings were given to the “congruent” victims, in comparison to the “incongruent” victims.¹⁰⁶¹ The study suggested that when the victim presents negative emotions and is upset (example, congruent), this matches the stereotypical beliefs that people hold about rape victims and potentially strengthens the impression that the allegation is credible.¹⁰⁶²

Studies have also linked other factors in the questionnaire, namely, the victim’s physical attractiveness, to the attribution of blame.¹⁰⁶³ In this regard, a 2007 study conducted in the UK on victim responsibility in the talk of convicted offenders and those who work with them concluded that “[r]ape is constructed by both perpetrators and professionals/paraprofessionals largely as a crime of sexual desire perpetrated against younger, attractive women.”¹⁰⁶⁴ The authors further noted: “[f]emales were seen to be (partially) responsible for their rape because they were physically desirable.”¹⁰⁶⁵ Likewise, a study on the dual effects of victim’s and offender’s attractiveness on people’s judgments in an ambiguous rape case (i.e. when it is unclear whether a rape actually took place) found that people tend to be biased against the attractive victim, but biased in favor of the

¹⁰⁵⁹ K. Ask and S. Landstrom (2010) ‘Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect’, *Law and Human Behavior* 34(5), pp. 392–401; Rachel M. Venema (2016), *ibid*; Lucy Maddox *et al.* (2012) ‘The Impact of Psychological Consequences of Rape on Rape Case Attrition: The Police Perspective’, *Journal of Police and Criminal Psychology* 27(1), pp. 33–44; and Guri C. Bollingmo *et al.* (2008) ‘Credibility of the Emotional Witness: A Study of Ratings by Police Investigators’, *Psychology, Crime and Law* 14(1), pp. 29–40.

¹⁰⁶⁰ Guri C. Bollingmo *et al.* (2008), *ibid*, pp. 33–34.

¹⁰⁶¹ *Ibid.*

¹⁰⁶² *Ibid.*

¹⁰⁶³ Susan J. Lea (2007) ‘A Discursive Investigation into Victim Responsibility in Rape’, *Feminism Psychology* 17(4), pp. 495–514; and Marsha B. Jacobson and Paula M. Popovich (1983) ‘Victim Attractiveness and Perceptions of Responsibility in an Ambiguous Rape Case’, *Psychology of Women Quarterly* 8(1), pp. 100–104.

¹⁰⁶⁴ Susan J. Lea (2007), *ibid*, p. 508.

¹⁰⁶⁵ *Ibid*, p. 510.

attractive offender, making it very difficult to get convictions.¹⁰⁶⁶ It also revealed that “people see the attractive victim as having played an active role in her own assault and thus hold her at least partially to blame.”¹⁰⁶⁷

Victim Characteristics Category Three, Group II: The second group include in the third category include: the victim’s willingness to cooperate; the victim’s willingness or refusal to submit to a medical examination; the victim’s attempt to preserve the necessary physical evidence; the presence or absence of a physical condition supporting the alleged commission of rape; the victim’s previous history of having reported incidents to the police that did not progress; and the victim’s prior history of having had trouble with the police. As Figure 7 above shows, on average, these factors had been considered ‘always’ by 17% of the respondents and considered ‘often’ by 23% of the respondents while 41% and 19% of the respondents reported that they had considered them ‘sometimes’ and ‘never,’ respectively. The majority of the respondents said that they had taken these factors into account at least ‘once’, and only a small proportion of the respondents (19%) said they had ‘never’ considered them. A chi-square analysis of each factor also revealed the extent to which each factor had been considered in rape case decision-making (*see* Appendix 3).

Like with the other variables in the questionnaire, previous studies have also indicated that factors included in this group, such as whether the victim had reported previous incidents to the police that did not progress,¹⁰⁶⁸ and whether the victim was uncooperative, as factors that determine rape-case processing outcomes.¹⁰⁶⁹

¹⁰⁶⁶ Marsha B. Jacobson and Paula M. Popovich (1983), *supra note* 1063, p. 100.

¹⁰⁶⁷ *Ibid*, pp. 100-104.

¹⁰⁶⁸ Marianne Hester (2013), *supra note* 1055, p. 11.

¹⁰⁶⁹ W. A. Kerstetter (1990) ‘Gateway to Justice: Police and Prosecutorial Response to Sexual Assault against Women’, *Journal of Criminal Law and Criminology* 81(2), pp. 267-313, p. 290.

6.4.2 Respondent's Sex on Victim Characteristics Consideration

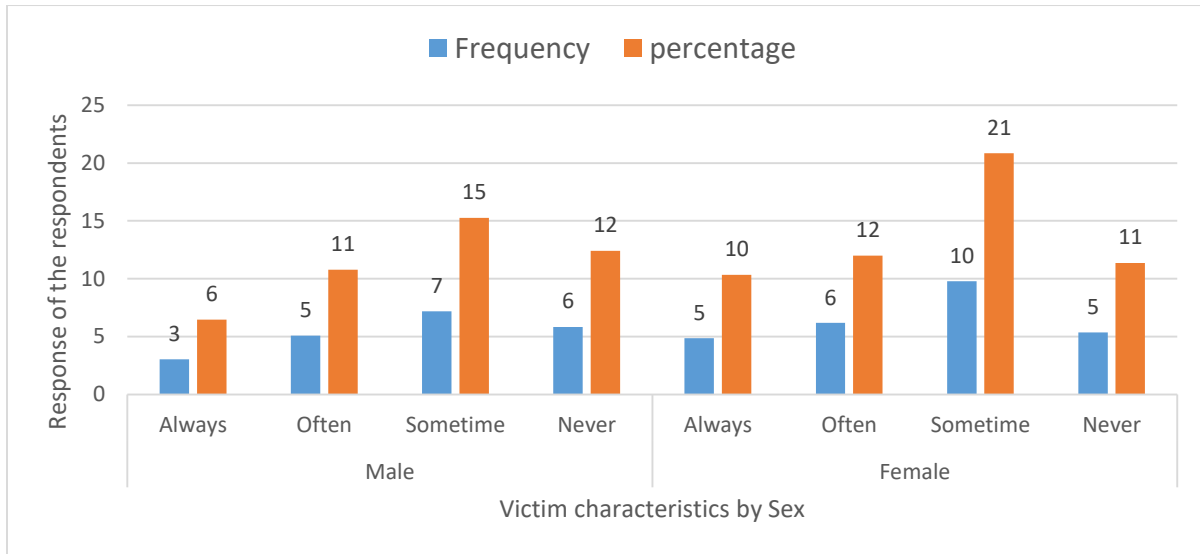


Figure 8. Victim characteristics consideration by respondent's sex

As Figure 8 above shows, on average, factors included in the questionnaire as victims' characteristics had been considered 'always' by 6% of the male participants and 10% of the female participants, and considered 'often' by 11% of the male participants and 12% of the female participants. They had been considered 'sometimes' by 15% of the male participants and 21% of the female participants while they were 'never' considered by 12% of the male participants and 11% of the female participants. However, this descriptive analysis does not indicate if there exists a statistically significant difference and, if so, on which specific factor. To determine statistical significance, Chi-square analysis was computed in SPSS. Accordingly, the result of the analysis indicated that there was no statistically significant frequency distribution difference between males and females in their responses, except in two factors, namely, the victim's history of working in a 'disreputable' situation, and the victim's emotional reaction (*see* Appendix 3).

Regarding the first factor, the participants were asked how often they consider the victim's history of working in a 'disreputable' situation, such as prostitution. The majority of the participants (46.8%, of whom 27.7% are females and 19.1% are males) reported that they had 'sometimes' considered the victim's work history whereas 23.4% of the participants (19.1% males and 4.3%

females) reported that they had ‘never’ considered this factor and 17% (all females) of the participants reported that they had ‘often’ considered the victim’s work history. The remaining 12.8% of the participants (an equal proportion of 6.4% of males and females) reported that they had ‘always’ considered the victim’s history of working in a disreputable situation. The Chi-square analysis result showed that there was a statistically significant frequency distribution difference between males and females in their response, $\chi^2(3, n=47) = 12.8, p = 0.005$. There was a statistically significant association between the participants’ sex and their consideration of the victim’s work history, in rape case decision-making; that is, the proportion of female participants who consider the victim’s work history is significantly higher than male participants.

Again, the participants were asked how often they consider the victim’s emotional reaction, i.e., whether or not the victim appears to be upset by the offence, where 34% of the participants (25.5% females and 8.5% males) reported that they had ‘sometimes’ considered this factor. 23.4% of the participants (14.9% females and 8.5% males) said that they had ‘often’ considered it. On the other hand, more males (17%) than females (4.3%) reported that they had ‘never’ considered it. A Chi-square test for independence indicated that there was a significant association between sex and the factor under consideration, $\chi^2(3, n=47) = 7.98, p = 0.046$. The proportion of female participants who said they consider *whether or not the victim appears to be upset by the offence* in their decisions on rape-cases was significantly higher than the male participants.

Except for two of the above-mentioned factors, there was no statistically significant frequency distribution difference between males and females in their responses (*see* Appendix 3). The findings of the present study, therefore, indicate that, generally, both male and female participants consider factors included in the questionnaire as victim characteristics in rape cases.

The two factors, namely, *the victim’s history of working in a disreputable situation* and *the victim’s emotional reaction*, were more frequently considered in decision making by female than male participants. Previous studies have consistently found, however, that male observers blame victims

more than female observers do in various situations.¹⁰⁷⁰ For instance, male observers tend to be more accepting about rape situations,¹⁰⁷¹ and undermine the seriousness of rape scenarios than do female observers.¹⁰⁷² In addition, because male observers may identify with the offender more than do female observers, women tend to blame the offender more than do men.¹⁰⁷³ The more the participants identified with the offender, the less blame they assigned to the offender and the more blame they assigned to the victim.¹⁰⁷⁴ The present did not, however, examine why female participants more frequently considered the victim's work history and emotional reaction than male participants. Further research is required to fully unravel the findings of the present study.

6.5 Conclusion

There has generally been an increased police reporting trend for rape cases, following the 2004 rape law and corresponding policy reforms in Ethiopia. However, this increase in police reporting has not been met with a corresponding improvement in rates of attrition, prosecution and conviction. Generally, the rates of attrition, prosecution and conviction for rape cases have not been positively impacted by the reforms. Likewise, the reforms did not lead to a shift of focus from

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

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

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

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

¹⁰⁷⁴ *Ibid*, p. 247.

the character, reputation and behavior of the victim to the criminal conduct of the offender, in rape-case processing within the CJS.

CHAPTER SEVEN: LIMITATIONS OF THE 2004 RAPE LAW REFORMS

7.1 Introduction

This chapter addresses one of the main objectives of the present study, i.e. assessing the limitations of the 2004 rape law reforms in advancing the cause of rape victims by eliminating overly restrictive notions about what counts as rape, and an intricate web of stereotypical myths surrounding rape law and its enforcement within the CJS. Accordingly, it points out and critically examines the main limitations of the reforms with regard to the substantive rape law.

7.2 Sexual Offences as Crimes against Morality and Chastity

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

Although sexual liberty is mentioned along with chastity in the legal text, the law does not seriously take other rights and interests, such as personal security or integrity, sexual self-determination, and sexual security and discretion. The word *chastity* pervaded in many provisions of the RCC. Even cross-references to the part of the RCC on sexual offences which have been

¹⁰⁷⁵ The Revised Criminal Code, *supra note* 21, Book V, Title IV.

¹⁰⁷⁶ *Ibid*, Part II, Book V, Title IV, Chapter I.

¹⁰⁷⁷ *Ibid*, Part II, Book V, Title IV, Chapter I, Section II.

¹⁰⁷⁸ *Ibid*, Article 629.

¹⁰⁷⁹ *Ibid*, Article 633.

made by other provisions clearly indicate that chastity was what the law intended to protect.¹⁰⁸⁰ This is particularly true in cases where the victims are minors.¹⁰⁸¹ Thus, under the law, values such as honor, social decency, virginity, chastity and good morals prevail over values such as the mental and physical integrity of the woman and her sexual self-determination.¹⁰⁸² Nevertheless, the primary harms of acts of sexual violence are not actually injuries to the woman's honor, social decency, virginity, chastity and good morals.¹⁰⁸³ Instead, the wrongful acts of sexual violence, as Joan McGregor notes, "consist of violations of personal integrity, identity and dignity, because it touches one of the most intimate aspects of the human being."¹⁰⁸⁴ Whatever the intention of the offender, being raped sends a message to a woman that she is a person without respect or that she is not a person at all.¹⁰⁸⁵ In this regard, Ann J. Cahill contends that "rape must be understood fundamentally [...] as an affront to the embodied subject [...] a sexually specific act that destroys (if only temporarily) the intersubjective, embodied agency and therefore personhood of a woman."¹⁰⁸⁶ Michelle J. Anderson further emphasized that rape is not just the denial of sexual autonomy but also constitutes a "sexually invasive dehumanization."¹⁰⁸⁷

The African Regional Human Rights Jurisprudence shared similar underlying assumptions. For instance, in 2007, the EWLA and Equality Now filed a complaint at the African Commission on Human and Peoples' Rights (here-in-after the Commission) on behalf of Woineshet Zebene, a victim of abduction and rape, claiming a violation of her rights under the ACHPR. They alleged violations of various provisions of the ACHPR on the right to equal protection under the law,

¹⁰⁸⁰ See for e.g., *ibid*, Article 660(3). (Stating that "[i]n cases where a crime of indecent behaviour between relatives (Art. 655), is committed simultaneously with a crime against chastity (Arts. 622 - 625, 627 and 628, 629-631, and 639), the relevant provisions shall apply concurrently.")

¹⁰⁸¹ See for e.g., *ibid*, Article 660 and Article 661.

¹⁰⁸² IACHR, Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section IV, Conclusions, para 4.

¹⁰⁸³ Maria Eriksson (2010), *supra note* 515, p. 85.

¹⁰⁸⁴ Joan McGregor (2005) *Is It Rape?: On Acquaintance Rape and Taking Women's Consent Seriously*, Hampshire, England: Ashgate Publishing, p. 223.

¹⁰⁸⁵ M. Frye and C. Shafer (1977) 'Rape and Respect', in M. Vetterling-Braggin, F. Elliston and J. English (eds) *Feminism and Philosophy*, Savage, MD: Rowman and Littlefield, pp. 341-342.

¹⁰⁸⁶ Ann J. Cahill (2001), *supra note* 738, p. 13

¹⁰⁸⁷ Michelle J. Anderson (2005) 'All-American Rape', *St. John's Law Review* 79(3), pp. 625-644, p. 643.

protection from discrimination against women, and integrity and security of the person, including freedom from cruel, inhumane and degrading treatment.¹⁰⁸⁸ After settling preliminary procedural matters, the Commission heard the merits of the case and passed its final ruling on November 2015. In its ruling, it stated that “by rape, the victim is treated as a mere object of sexual gratification against his or her will and conscience. The victim is treated without regard for the personal autonomy and control over what happens to his or her body.”¹⁰⁸⁹ The Commission adds: “[b]y rape, the personal volition of the victim is gravely subverted and disregarded, and the victim is reduced from being a human being who has innate worth, value, significance and personal volition, to a mere object by which the perpetrator can meet his or her sadistic sexual urges.”¹⁰⁹⁰

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

Had the law really sought to protect the rights to the integrity of the person; dignity, liberty and security of the person, including protection from inhumane and degrading treatment, as its interest, the RCC ought to have reclassified sexual offences as crimes against an individual victim, as a first symbolic step in recognizing the wrongful of acts of sexual violence. As Susan Brownmiller stated, “[t]he crime of rape must be totally separated from all traditional concepts of chastity, for the very meaning of chastity presupposes that it is a woman’s duty (but not a man’s) to refrain from sex outside matrimonial union. That sexual activity renders a woman ‘unchaste’ is a totally

¹⁰⁸⁸ African Commission on Human and Peoples’ Rights: Communication 341/2007, *supra note* 709, para. 14

¹⁰⁸⁹ *Ibid*, para. 120.

¹⁰⁹⁰ *Ibid*.

¹⁰⁹¹ *Ibid*.

¹⁰⁹² *Ibid*, para. 139.

male view of the female as his pure vessel.”¹⁰⁹³ The symbolic importance of the reclassification would be that it acknowledges the personal harm suffered by the individual victims, and recognizes that victims would no longer be used to further societal understanding of sexual morality.¹⁰⁹⁴

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

Reclassifying would have also been a recognition that “[r]ape is an experience which shakes the foundations of the lives of the victims. For many, its effect is a long-term one, impairing their capacity for personal relationships, altering their behavior and values and generating fear.”¹⁰⁹⁶ Beyond the symbolic implications, viewing rape as an affront to collective morality sets obstacles for effective investigation and prosecution of rape cases. As Yakin Ertürk noted, “[w]hen rape is perceived as a crime against honour or morality, shame commonly ensues for the victim, who is often viewed by the community as ‘dirty’ or ‘spoiled’. Consequently, many women will neither report nor discuss the violence that has been perpetrated against them.”¹⁰⁹⁷ It may also place the woman’s morality and her sexual behavior before the key actors for assessment and decision

¹⁰⁹³ Susan Brownmiller (1975), *supra note* 181, p. 386.

¹⁰⁹⁴ Rachel A. Van Cleave (2008) ‘Renaissance Redux? Chastity and Punishment in Italian Rape Law’, *Ohio State Journal of Criminal Law* 6(1), pp. 335-350.

¹⁰⁹⁵ Equality Now (2017), *supra note* 1, p. 21.

¹⁰⁹⁶ Martin Wright (1996) *Justice for Victims and Offenders: A Restorative Response to Crime*, 2nd ed, Winchester: Waterside Press, p. 250.

¹⁰⁹⁷ The United Nations Human Rights Council (2009) *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Report of the Special Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk, *Addendum: 15 Years of the United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences (1994-2009) - A Critical Review*, A/HRC/11/6/Add.5, para. 45.

making.¹⁰⁹⁸ If the victim is sexually active, she may be presumed to have consented.¹⁰⁹⁹ It will also reinforce the stereotype that women should be chaste, with possible inferences that an unchaste woman has a propensity to consent to sex and must have consented.

Evidence also suggests that key actors undermine the credibility of the victims where a forensic medical examination report indicates that the victim is no longer a virgin or fails to precisely indicate the date of penetration.¹¹⁰⁰ This was also a concern of the present researcher's key informants from advocacy groups. According to A1, "[w]hen rape was considered as crime against morality, it sets obstacles for prosecution. When we see rape-case files at police stations, the question often raised was whether or not the victim had lost her virginity. A lot of rape files closed at the investigation stage involve victims who were considered to be not virgin."¹¹⁰¹ Likewise, A2, linked the classification of sexual offences as crimes against collective morality or chastity to the inadequate investigative response from the police, and pointed out that "[t]he police often link rape with being chaste – which means being virgin – and therefore become reluctant to investigate cases that they thought had involved unchaste victims, or where a forensic medical examination report suggests that the victim's virginity is intact or undamaged."¹¹⁰²

For all the right reasons, sexual offences should have been reclassified as crimes against an individual person. This kind of reclassification has been introduced in other jurisdictions. For instance, one aspect of the 1996 rape law reforms in Italy, a jurisdiction with a civil law tradition similar to Ethiopia's, has been a reclassification of sexual offences from "Crimes against Public Morality and Decency" to "Crimes against the Person."¹¹⁰³ Likewise, in Poland, rape has been

¹⁰⁹⁸ Amnesty International (2004), *supra note* 71, p. 84.

¹⁰⁹⁹ *Ibid.*

¹¹⁰⁰ Theresa Rouger (2009), *supra note* 293, p. 36; Sinidu Fekadu (2008), *supra note* 2690, pp. 18- 23; Indrawatie Biseswar (2011), *supra note* 28, p. 185; and The African Child Policy Forum (2011) *Accessing Justice: The Experience of ACPF's Children's Legal Protection Centre*, Addis Ababa, p. 6, available at: [http://www.africanchildforum.org/site/images/stories/Accessing Justice Final Edited on July 7 2011.pdf](http://www.africanchildforum.org/site/images/stories/Accessing_Justice_Final_Edited_on_July_7_2011.pdf) last visited on 9/12/2018.

¹¹⁰¹ Interview with A1, *supra note* 657.

¹¹⁰² *Ibid.*

¹¹⁰³ Rachel A. Van Cleave (2008), *supra note* 1094.

reclassified from a “Crime of Lasciviousness” to an “Offence against Liberty,” and in the Philippines, from a “Crime against Chastity” to a “Crime against Persons.”¹¹⁰⁴ Generally, after reviewing world wide data on rape law reforms between 1945 and 2005, David John Frank *et al.* concluded that “rape increasingly came to be regarded as a fundamental violation of individual human liberty, rather than an affront to collective morality.”¹¹⁰⁵

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

7.3 A Dichotomous Approach on Sexual Acts

A cursory look at the way in which the RCC’s provisions on rape frames its object shows that the law (RCC) maintains the overly restrictive definition of sexual acts. Sexual acts for forcible rape (Article 620), rape against a man by a woman (Article 621), and statutory rape (Article 626(1) and (2) and Article 627(1) and (2)) did not include all forms of sexual acts or penetrations. Rather, they limit themselves only to sexual intercourse in sexual interactions of heterosexual nature. They

¹¹⁰⁴ David John Frank *et al.* (2009), *supra note* 19, p. 276.

¹¹⁰⁵ *Ibid*, p. 285.

¹¹⁰⁶ Susana T. Fried (2003) ‘Violence Against Women’, *Violence, Health, and Human Rights* 6(2), pp. 88-111, pp. 88-96.

¹¹⁰⁷ General Recommendation No. 35, *supra note* 66, para. 33.

emphasize on heterosexual rape, which is defined by a penile penetration of the vagina either by a man against a woman (for forceful rape, under Article 620 and for statutory rape, under Article 626(1) and Article 627(1)) or by a woman against a man (for forceful rape, under Article 621 and for statutory rape, under Article 626(2) and Article 627(2)). Thus, the RCC does not expand the scope of the definition of sexual acts beyond sexual intercourse (vaginal-penile penetration) to include other forms of sexual conducts such as anal or oral penetration, penetration by sticks, fingers or other objects.¹¹⁰⁸ Under the RCC, sexual acts other than sexual intercourse (vaginal-penile penetration) constitute supposedly less serious offences referred to as “an act corresponding to the sexual act or any other indecent act.”¹¹⁰⁹

Particularly, the definition of forcible rape under Article 620 of the RCC leaves instances of forced penile-oral, penile-anal, finger-vaginal or object-vaginal sex out of its ambit. The impact of sexual offences involving sexual acts other than penile-vaginal intercourse is viewed as less traumatic as they are sanctioned with a lenient or less severe punishment.¹¹¹⁰ Sexual offences involving sexual acts other than penile-vaginal intercourse are treated not as sexual acts but as acts “corresponding to the sexual act or any other indecent act.”¹¹¹¹ Regarding the categorization of sexual acts, the RCC adopts a dichotomous approach: *acts of sexual intercourse* (vaginal-penile penetration) and *acts corresponding to a sexual act or any other indecent act*. Commenting on such dichotomy, Tsehai Wada noted that it “is the lawmaker’s fixation on pregnancy which may be brought about by genital copulation alone but not through the other forms.”¹¹¹² He added, “[s]uch fixation can, however, be criticized for failing to take into account the trauma that follows from the other forms of rape which may be equally or even more disastrous than rape committed through genital organs.”¹¹¹³ Apparently, this dichotomous approach has considerably influenced the sentencing

¹¹⁰⁸ The Revised Criminal Code, *supra note* 21, Article 620(1); and the Penal Code, *supra note* 34, Article 589.

¹¹⁰⁹ The Revised Criminal Code, *ibid*, Article 622, Article 626 (3) and Article 627 (3).

¹¹¹⁰ *Ibid*, Article 620, Article 622, Article 626(1) and (3), Article 627(1) and (3).

¹¹¹¹ Tsehai Wada (2012), *supra note* 412, p. 210.

¹¹¹² *Ibid*.

¹¹¹³ *Ibid*.

practices of the courts, resulting in what can be characterized as a *de facto* decriminalization of sexual offences that do not involve sexual intercourse.

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

In a criminal File Number 210406, Lideta Division, Federal First Instance Court, the prosecutor charged a man on two counts of offence: finger-raping an 8-year-old girl and a 3-year-old girl, in two separate incidents.¹¹¹⁶ The offender was charged for violating Article 627(3) of the RCC. On both counts, he was convicted and sentenced to a one-year-and-two-months’ rigorous imprisonment. For this particular type of sexual offence, the law sets the punishment to be a simple imprisonment not less than three months or a rigorous imprisonment not exceeding five years (Article 627 (3)) whereas it sets a minimum imprisonment of 13 years for sexual offences

¹¹¹⁴ *Public Prosecutor v. Sintayehu Gebriela*, Criminal File Number 124398, Lideta Division, Federal First Instance Court, 10/3/2001 E.C.

¹¹¹⁵ The Revised Criminal Code, *supra note* 21, Article 627(3). Emphasis mine.

¹¹¹⁶ *Public Prosecutor v. Melaku Nigusie*, Criminal File Number 210406, Lideta Division, Federal First Instance Court, 21/2/2007 E.C.

involving sexual intercourse. Even such a dichotomous legal approach cannot justify a one-year-and-two -months' rigorous imprisonment for two counts of offence.

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

According to Gay J. McDougall, the UN Special Rapporteur on Sexual Slavery, "the historic focus on the act of penetration largely derives from a male preoccupation with assuring women's chastity and ascertaining paternity of children."¹¹¹⁸ It is rooted in the patriarchal conception of women's sexuality, which defines sexuality as heterosexual, penetrative and procreative,¹¹¹⁹ while simultaneously revealing the adoption of the notions of *decent* or *natural sex* and indecent or unnatural sex under the law.¹¹²⁰ In addition, women's sexuality was seen as a commodity, valued

¹¹¹⁷ *Public Prosecutor v. Natna'el Gonfa Bedhanie*, Criminal File Number 225827, Lideta Division, Federal First Instance Court, 22/10/2009 E.C.

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

¹¹¹⁹ Catharine A. Mackinnon (1983), *supra note* 13, p. 647; and Mikki van Zyl (1990), *supra note* 358, p. 19.

¹¹²⁰ Mikki van Zyl (1990), *ibid.* See also the Revised Criminal Code, *supra note* 21, Article 622 *et seq.*

according to virginity or chastity and accrued to the benefit of her father, husband or family.¹¹²¹ Historically, rape laws had been primarily concerned with the theft of a woman's virginity.¹¹²² if a woman was a virgin, then she still belonged to her father and a crime has been committed;¹¹²³ and if she was not married and was not a virgin, then she belonged to no particular man and a crime has not been committed.¹¹²⁴ Thus, the vaginal-penile penetration element was preoccupied with the protection of virgins from rape and forced marriage.¹¹²⁵ According to Catharine A. MacKinnon, this element "centers upon one way men define loss of exclusive access. In this light, rape, as legally defined, appears more a crime against female monogamy (exclusive access by one man) than against women's sexual dignity or intimate integrity."¹¹²⁶

This explanation seems more fitting to the Ethiopian context where control over a woman's sexuality to make sure that she will be exclusively accessed by one man still continues to be a matter of great concern for men. In many cultures, girls are obliged to remain virgin until the date of their marriage.¹¹²⁷ Even the term "girl" is not understood as referring to an unmarried woman; rather, it is linked to the notion of virginity. Engaging in pre-marital sex will endanger the security of a woman, regardless of her age.¹¹²⁸ The fact that a woman had engaged in pre-marital sex will also degrade her parents' honor.¹¹²⁹ If she is found not to be a virgin on the date of her marriage, she could not only be humiliated by and expelled from the new family, but also, at least in some cultures, face physical violence, including beatings, paper-spraying and even setting fire on her genitals.¹¹³⁰ She could not be welcomed back even by her parents. A study by Meron Zeleke Eresso

¹¹²¹ አሸቱ ድባቡ (1997), *supra note* 315, p. 62; Andrea Dworkin (1976), *supra note* 188, p. 31; and Erin G. Palmer (2004), *supra note* 378, pp. 1266-1268.

¹¹²² Jennifer Temkin (1987) *Rape and the Legal Process*, London: Sweet and Maxwell, p. 57.

¹¹²³ Andrea Dworkin (1976), *supra note* 188, P. 31.

¹¹²⁴ *Ibid.*

¹¹²⁵ Jennifer Temkin (1982), *supra note* 6, p. 412.

¹¹²⁶ Catharine A. MacKinnon (1997b), *supra note* 382, p. 420; Catharine A. Mackinnon (1983), *supra note* 13, p. 647; and Andrea Dworkin (1976), *supra note* 188, p. 30.

¹¹²⁷ አሸቱ ድባቡ (1997), *supra note* 315, pp. 61-62.

¹¹²⁸ *Ibid.*

¹¹²⁹ *Ibid.*

¹¹³⁰ *Ibid.*

also indicated that the high value attached to virginity leads to child marriage, forcing underage girls to marry as early as possible in order to avoid premarital sex and the consequent loss of virginity.¹¹³¹ It highlighted the nexus between priced virginity and child marriage, which is a form of sexual violence as it involves, almost always, statutory rape. While control over women's sexuality is a culturally sanctioned phenomenon, the law, by focusing on vaginal-penile penetration (or, at least, by considering such an act as a more serious and traumatic offence than offences involving other sexual acts), advances the legal interests of patriarchs, reinforces males' control of over women's sexuality,¹¹³² and, as Donald A. Dripps has rightly noted, tries to "strike a balance between the interests of males-in-possession and their predatory counterparts."¹¹³³

By confining the scope of forcible rape to a vaginal-penile penetration only, the law assumes that greater harm is caused from sexual intercourse than other forms of sexual acts and attaches a less severe penalty to the latter.¹¹³⁴ By doing so, it underestimates victims' account of sexual aggression through other forms of sexual act. Yet, many observers have pointed out important concerns, including, among others, Radhika Coomaraswamy, the UN Special Rapporteur on VAW, who contends: "frequently, the offender is unable or chooses not to penetrate his victim in this manner, but may force her to perform acts of oral sex, penetrate her with other parts of the body or other objects or demean her in other ways."¹¹³⁵

In Ethiopia, the practitioners appeared to have subscribed to a dichotomous approach on sexual acts as adopted under the law. For instance, a key informant of the present study, PP2, states: "I think it is appropriate that the law separates sexual intercourse and other forms of sexual acts. That is because sexual intercourse is a separate act in its own, but *an act corresponding to [a] sexual act* is similar to a sexual act but not identical to sexual intercourse. The separation influences the

¹¹³¹ Meron Zeleke Eresso (2018): Sisters on the move: Ethiopia's gendered labor Migration milieu, Canadian Journal of African Studies / Revue canadienne des études africaines, p. 9. DOI: 10.1080/00083968.2018.1519451

¹¹³² Susan Brownmiller (1975), *supra note* 181, pp. 6-22; Jennifer Temkin (1982), *supra note* 6, p. 400; and Donald A. Dripps (1992), *supra note* 359, p. 1781.

¹¹³³ Donald A. Dripps (1992), *ibid*, p. 1782.

¹¹³⁴ The Revised Criminal Code, *supra note* 21, Article 620 and Article 622.

¹¹³⁵ The United Nations Commission on Human Rights (1994), *supra note* 512, para. 180.

seriousness of our responses to each crime and the severity of the punishment attached to it. So, in my opinion, it is appropriate that the law differentiates these crimes.”¹¹³⁶ Yet, a woman’s experience of rape is an invasion of her body, regardless of which orifice was used, or which object penetrated her,¹¹³⁷ and the victim experiences the same physical scar and psychological trauma from forced anal or oral penetration or sexual penetration through objects other than penis.¹¹³⁸ As Susan Brownmiller suggested, “[a]ll acts of sex forced on unwilling victims deserve to be treated in concept as equally grave offences in the eyes of the law, for the avenue of penetration is less significant than the intention to degrade.”¹¹³⁹

The dichotomous approach adopted by the law may also lead the key actors within the CJS to focus on examining the victim’s sexual history to verify whether she had previously engaged in sexual activities, instead of examining whether or not she has been sexually assaulted. In this regard, informants from advocacy groups were asked whether this approach has ever been an issue, and they responded that it, in fact, is another problematic issue.¹¹⁴⁰ According to A2, “[i]t leads the police to regard sexual acts which do not involve sexual intercourse and affect the victim’s chastity [virginity] as too minor problems to deserve serious investigative responses.”¹¹⁴¹ Likewise, A1 noted that “[e]ven where cases have been investigated and prosecuted and the offenders have been convicted, the approach has often led to inadequate sentencing if the criminal conducts in question had not involved a sexual intercourse.”¹¹⁴²

Various rape cases also substantiate such a view. For instance, in a criminal File Number 81270 in Nifas Silk Lafto Division, Federal First Instance Court, the prosecutor charged a 24-years-old

¹¹³⁶ Interview with PP2, *supra note* 849.

¹¹³⁷ Mikki van Zyl (1990), *supra note* 358, p. 19.

¹¹³⁸ Home Office Review of Sex Offences (2000) *Setting the Boundaries: Reforming the law on sex offences*, Volume 1, London: Home Office Communication Directorate, p. 15, available at: <http://webarchive.nationalarchives.gov.uk/%2B/:/www.homeoffice.gov.uk/documents/vol1main.pdf%3Fview%3DBinary> last visited 9/12/2018.

¹¹³⁹ Susan Brownmiller (1975), *supra note* 181, p. 378.

¹¹⁴⁰ Interview with A1, *supra note* 657; and Interview with A2, *supra note* 648.

¹¹⁴¹ Interview with A2, *ibid.*

¹¹⁴² Interview with A1, *supra note* 657.

man with an alternative offence of (statutory) rape, under Article 627(1), or committing *an act corresponding to [a] sexual act* against a 9-years-old girl, under Article 627(3).¹¹⁴³ The forensic medical examination report described the hymeneal status of the victim as “ruptured but not recently.” Other witnesses of the prosecutor and the victim herself testified that the incident came to the attention of her parents and was then reported to the police long after it actually had occurred.

Using the rather informal Amharic term *babboyen* (which literally translates as “my bread”), a term often used by little girls to refer to that private part of their body, usually in a family setting, the victim testified that the offender had touched her sexual organs. When asked further, she clarified that he had touched the part of her body that is used for urinating, but she was too afraid to say that he had penetrated her. Shortly after the incident, she told to her little friend that she had been raped. Her 6-years-old friend, who was named as the prosecutor’s witness, testified that the victim had told her that, during the assault, a white fluid was discharged from her genitals. However, the court did not piece together all these facts to reconstruct what really had happened to the little girl. Nor did it understand that the victim was too afraid to precisely name her private part that had been penetrated. The fact that the incident had occurred long before it actually came to her parent’s attention, the forensic medical evidence’s description of the victim’s hymeneal status as “ruptured but not recently,” and the hearsay testimony that a (white) fluid had been discharged did not lead to the conclusion that the victim had been raped. Instead, the court drew its conclusion from the victim’s testimony that the offender touched her private part, and from the forensic medical examination report’s description of the hymeneal status as “ruptured but not recently” though the latter proved penetration. Eventually, the court convicted the offender for a less grave offence involving *an act corresponding to a sexual intercourse*, and sentenced him to a rigorous imprisonment of just one year. These cases clearly illustrate how the law reinforces the view that “once a woman has had sex, she loses anything when subsequently raped.”¹¹⁴⁴

¹¹⁴³ *Public Prosecutor v. Temesgen Abatneh Desalegn*, Criminal File Number 81270, Nifas Silk-Lafto Division, Federal First Instance Court, 16/10/2006 E.C.

¹¹⁴⁴ Catharine A. Mackinnon (1983), *supra note* 13, p. 647.

The dichotomous approach of the law on sexual acts may pose real difficulties for adult victims who have a prior sexual experience since the key actors within the CJS, including defense lawyers, have often equated rape with vaginal-penile penetration leading to the loss of virginity. For this reason, the Cassation Division of the Federal Supreme Court, the highest appellate bench in Ethiopia, passed a binding decision on October 15, 2015, in File Number 107166, interpreting Article 627(1) of the RCC.¹¹⁴⁵ In this particular case, the offender had been charged for raping an 8-year-old girl, for which he was found guilty and was sentenced. The forensic medical evidence described the hymeneal status of the victim as “intact, not ruptured.” But other evidences proved that there were bruises in her womb, suggesting sexual penetration. The victim herself also testified that she had been penetrated. The offender’s lawyer argued that since the medical forensic evidence had proved that the victim’s hymen was intact, it was impossible to conclude that (statutory) rape has been committed. Subsequently, he took the case to the highest appellate court (i.e. the Cassation Division of the Federal Supreme Court). In its decision, the Cassation Division stated that whether the hymeneal status is intact or ruptured is not an essential element of Article 627(1) of the RCC. This interpretation, by implication, applies to all sexual offences which include sexual intercourse as their defining element. Had the law abolished its dichotomous approach on sexual acts and instead included all forms of sexual acts into one category and with equal gravity, the obsession on ascertaining the victim’s hymeneal status would have been circumvented.

In addition, bringing all forms of sexual acts into the same scope of legal sanction would be a useful basic frame of reference to dispel a narrower interpretation of rape by the key actors within the CJS. On the other hand, where the law emphasized on penetrative-heterosexual rape, the key actors must determine whether there has been any penetration by the genitalia of either the victim or the offender, in which case the crime would be one involving sexual intercourse. To make this decision, the key actors have to ask the victim humiliating questions.¹¹⁴⁶ From the investigation to

¹¹⁴⁵ *Oromia Justice Office v. Mekuanint Girma*, File Number 107166, Cassation Division, Federal Supreme Court, 4/2/2008 E.C.

¹¹⁴⁶ Rachel A. Van Cleave (2008) *supra note* 1094.

the trial stages, the victim must describe in detail every intimate part of her body that had been violated, using words which, under normal circumstances, could often be quite embarrassing for most women to use. According to Sue Lees, “[t]he paradox is that the very use of such language, referring to private sexual parts of the anatomy, is sufficient to render a woman ‘unrespectable.’ Many women never say such words even in the privacy of their homes, let alone to strangers in an open court. Except in pornography, the kind of details described in rape cases would never be articulated.”¹¹⁴⁷ In Ethiopia, as Tsehai Wada noted, “sexual matters are so private, so much so, that individuals, including those that may be considered as ‘modern and educated’ by the society’s standard, are not free to discuss such matters with anyone except with close associates.”¹¹⁴⁸

However, throughout the proceedings, rape victims are often required to describe in precise detail not only every intimate parts of their body that had been violated but also intimate parts of the offender’s body used for sexual penetration. For instance, in criminal File Number 174650, the prosecutor charged a 53-years-old man for raping his domestic assistant.¹¹⁴⁹ During the trial, the victim, as one of the prosecutor’s witnesses, tried to describe her private body parts and that of the offender, using what she considered ‘less embarrassing’ words. However, she was repeatedly asked to name which organs of the offender and hers were involved in the sexual encounter. The examiner did not stop asking her when she stated to the court that the offender had penetrated her womb, but the examiner insisted that she specifically name the private body part that had been penetrated and used for penetration, in precise terms. When she hesitated to do so, questions like “Did he use his penis or finger?” were repeatedly posed to her.

While undertaking rape trial observations for the present study, the researcher also had witnessed that rape victims were asked to name, using precise terms, the body parts that had been penetrated and used for penetration so that the court could determine whether the case involved sexual

¹¹⁴⁷ Sue Lees (1993) ‘Judicial Rape’, *Women's Studies International Forum* 16(1), pp. 11-36, p. 15.

¹¹⁴⁸ Tsehai Wada (2012), *supra note* 412, pp. 224-225; and Indrawatie Biseswar (2011), *supra note* 28, p. 206.

¹¹⁴⁹ *Public Prosecutor v. Moges Wendimageng Metaferiya*, Criminal File Number 174650, Lideta Division, Federal First Instance Court, 1/5/2004 E.C.

intercourse or other “less serious” sexual acts. Asking these kinds of questions repeatedly at the trial often results in a re-victimization of the victim.¹¹⁵⁰ Such re-victimization could have been significantly minimized had the law included all forms of criminal sexual acts into the same scope of gravity and instead graded the offences by the degree of violence used rather than the orifice penetrated and the means used for penetration. It could also minimize an unnecessarily too detailed inquiry during trial, particularly in cases involving specific sexual acts such as penetration.¹¹⁵¹

On the other hand, a definition of rape that focuses on penetration diverts attention away from the coercive and life-threatening aspects of sexual offences.¹¹⁵² Cognizant of this, many jurisdictions have abolished the offence of rape which specifically required the penetration of vagina by penis and replaced it with the offence of sexual assault which refers to penetration of any orifice of the victim.¹¹⁵³ For instance, Sue Lees has noted that rape law reforms in Canada and Western Australia abolish the offence of rape which specifically required penetration of the vagina by the penis and replaced by the offence of sexual assault, expanding the sexual act beyond vaginal-penile penetration to penetration of any orifice of the victim.¹¹⁵⁴ The reformed rape laws have three tiers and is graded by the degree of violence involved, as follows: *sexual assault*, *sexual assault with threats of bodily harm*, and *aggravated sexual assault*.¹¹⁵⁵ This reformulation is also a recognition that rape as an offence pertains to violence, rather than just a sexual act.¹¹⁵⁶ As such, it emphasizes the demeaning and violent aspects of rape rather than focusing purely on its sexual aspect.¹¹⁵⁷

Similar reforms have been introduced in some African countries. For instance, the reform in Zimbabwe broadened the range of non-consensual sexual acts that fall under the umbrella of

¹¹⁵⁰ Rachel A. Van Cleave (2008) *supra note* 1094.

¹¹⁵¹ Jennifer Temkin (1987), *supra note* 1122, p. 160.

¹¹⁵² Sue Lees (1993), *supra note* 1147, p. 15.

¹¹⁵³ *Ibid*, pp. 31-32.

¹¹⁵⁴ *Ibid*.

¹¹⁵⁵ Sue Lees (1993), *ibid*; and Amnesty International (2010), *supra note* 50, p. 11.

¹¹⁵⁶ *Ibid*.

¹¹⁵⁷ The United Nations Commission on Human Rights (1994), *supra note* 512, para. 180.

rape.¹¹⁵⁸ Prior to the reforms, the scope of the crime of rape under the Zimbabwean rape law had just been limited to a non-consensual vaginal intercourse (vaginal-penile penetration).¹¹⁵⁹ However, under Article 8(1) of the 2001 Sexual Offences Act, rape can be committed: with the male organ, penetrates any part of the other person's body; with any object other than the male organ, penetrates the other person's genitalia or anus; or by engaging in fellatio or cunnilingus with the other person.¹¹⁶⁰ Under this definition, the penalty is the same irrespective of whether the sexual act involves vaginal intercourse or other sexual acts. The present study's key informants from women's rights advocacy groups also proposed adopting Zimbabwe's model of rape law reform.¹¹⁶¹ According to A1, "[i]t is good that the law puts sexual acts in different categories because each act is performed in a different way. The provision of the criminal law must be clear. However, when it comes to setting penalty, all sexual acts should be sanctioned equally."¹¹⁶²

Furthermore, the dichotomous approach has created a confusion among the key actors within the CJS in comprehending the difference between various forms of sexual acts. In this regard, a key informant, PP3, stated the following: "[i]n my opinion, Article 620, Article 621, Article 622 and other provisions on sexual offences have created a confusion among prosecutors and even courts."¹¹⁶³ Likewise, PP2 stated: "[w]hen it comes to sexual offence cases, the first challenge we are facing is on the definition of sexual intercourse. For instance, the law lacks a clear definition on what *sexual intercourse* is and what constitutes *an act corresponding to a sexual act*."¹¹⁶⁴ She recounted a case she was handling which is still pending at the Federal Supreme Court Cassation Division. It revolves around whether or not a forcible anal sex constitutes a forcible rape or a sexual assault. The issue, in essence, is that whether anal sex is a sexual intercourse (under Article

¹¹⁵⁸ David John Frank *et al.* (2009), *supra note* 19, p. 273.

¹¹⁵⁹ *Ibid.*

¹¹⁶⁰ Sexual Offences Act of Zimbabwe, *Act 8/2001*, Article 8(1), Gazetted 17th August, 2001 (General Notice 408/2001). Available at: <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/zimbabwe%20-%20sexual%20offences%20act%202001.pdf?vs=1843> last visited on 4/14/2018.

¹¹⁶¹ Interview with A1, *supra note* 657; and Interview with A2, *supra note* 648.

¹¹⁶² Interview with A1, *ibid.*

¹¹⁶³ Interview with PP3, *supra note* 851.

¹¹⁶⁴ Interview with PP2, *supra note* 849.

620), or *an act corresponding to sexual acts* (under Article 622). PP2 filed a charge against the offender for committing a forcible rape in violation of Article 620 while the defendant's lawyer argued that the act did not constitute a forcible rape but rather a sexual assault. PP2 believed: "[t]his issue would have been avoided had our criminal law clearly defined sexual intercourse."¹¹⁶⁵

For all the above reasons, sexual offences involving penile-vaginal, penile-anal, and penile-oral penetration as well as penetration by sticks, fingers and other objects have to constitute sexual acts, with the same scope and degree of gravity. The offence should then be graded by the degree of violence used as is the case under the Zimbabwean rape law, for instance.

7.4 Gender-Specificity of Rape

Gender-neutrality in rape law has been advocated with an eye to providing equal protection to all persons without making unnecessary distinctions based on gender identity or sexual orientations.¹¹⁶⁶ This is deemed a right approach in light of the possibility that men can be rape victims too.¹¹⁶⁷ However, under the 1957 Penal Code, forcible rape has been defined in terms of women as victims of rape and men as offenders.¹¹⁶⁸ Likewise, the Penal Code defined sexual assault as a sexual offence committed against *a person of the opposite sex*.¹¹⁶⁹ The RCC has maintained the approach of its predecessor and defined sexual assault as a sexual offence committed against "a person of the opposite sex."¹¹⁷⁰ Unlike its predecessor, the RCC has introduced a new form of sexual offence committed by a woman against a man, under the heading "Compelling a Man to Sexual Intercourse." The provision for this new offence simply states: "[a] woman who compels a man to sexual intercourse with herself is punishable with a rigorous

¹¹⁶⁵ *Ibid.*

¹¹⁶⁶ Philip N.S. Rumney (2007) 'In Defence of Gender Neutrality within Rape', *Seattle Journal for Social Justice* 6(1), pp. 481-526; and Home Office Review of Sex Offences (2000), *supra note* 1138, p. 3.

¹¹⁶⁷ Karen G. Weiss (2010), *supra note* 113, pp. 275-298; Noreen Abdullah-Khan (2008), *supra note* 112, Chapter 2; and Susan Estrich (2006) *Male Rapes Occur, and It's Time to Address Them*, Pocono Record, available at: <http://www.poconorecord.com/apps/pbcs.dll/article?AID=/20061224/NEWS04/612240301> last visited 9/12/2018.

¹¹⁶⁸ The Penal Code, *supra note* 34, Article 589.

¹¹⁶⁹ *Ibid.*, Article 590.

¹¹⁷⁰ The Revised Criminal Code, *supra note* 21, Article 622.

imprisonment not exceeding five years.”¹¹⁷¹ This addition renders forcible rape an offence committed against “a person of the opposite sex” though the elements of forcible rape committed by a woman against a man are different from its counterpart of forcible rape committed by a man against a woman. Having seen this new addition, some writers argued that one of the major contributions of the RCC has been the reframing of the crime of rape as a gender-neutral offence.¹¹⁷² However, the new formulation shows the way in which a seemingly gender-neutral approach can produce bizarre results that entrench the hitherto hegemonic heteronormativity.

Under the RCC, forcible rape and sexual assault are defined in terms of heterosexual sexual acts, which apparently are committed against a person of the opposite sex. This approach, by definition, excludes victims of same-sex rape. The law has conceived rape as a crime that can be committed only against a person of the opposite sex. It formulated rape as a crime in which either women are victims and men are offenders (Article 620, Article 626(1) and Article 627(1)) or men are victims and women are offenders (Article 621, Article 626(2) and Article 627(2)). Thus, rape is not a fully gender-neutral crime committed by ‘a person against another person,’ in the full sense of the term. The law does not consider men as potential offenders against men (and women against women). Such a formulation not just makes the crime of rape a gender-specific phenomenon but also unfairly denies adult victims of same-sex rape their right to equal protection under the law.

Apart from unfairly denying equal protection, the law treats the victims as criminals themselves in that it categorically criminalizes all ‘homosexual’ acts. The law defines ‘homosexual’ and other ‘indecent’ acts as: “[w]hoever performs, with another person of the same sex, a homosexual act, or any other indecent act, is punishable...”¹¹⁷³ Criminality here is intrinsic to the ‘homosexual’ acts regardless of the desires of the participants involved in the sexual acts. It does not take into account who was the aggressor and who was the victim. Whether the sexual act is consensual or forcible or coerced is not a factor in determining the criminal nature of the act. Nevertheless, the use of

¹¹⁷¹ *Ibid*, Article 621.

¹¹⁷² Tsehai Wada (2012), *supra note* 412, at note 66.

¹¹⁷³ The Revised Criminal Code, *supra note* 21, Article 629.

violence, intimidation, coercion or fraud is considered as an aggravating circumstance, but not the elements of the offence itself.¹¹⁷⁴ Thus, in cases where the ‘homosexual’ act involved two adults, both parties will be prosecuted, with one of them considered an *accomplice*. The only ground by which an adult victim of same-sex rape may avoid criminal liability is by invoking the defense of absolute coercion, provided, however, that he had tried his level best to physically resist the assailant.¹¹⁷⁵

Moreover, a closer look at the formulation of same-sex sexual activities under the RCC also shows that the law not only obscures sex and sexual orientation but also punishes consensual sexual conducts as “deviations” from the dominant heterosexual norm or heteronormativity. First, whether consensual, forced or coerced, the RCC does not use the phrase “same-sex” in referring to sexual activities between persons of the same-sex. Instead, it uses the terms ‘Homosexual and other Indecent Acts’¹¹⁷⁶ and ‘Homosexual and Other Indecent Acts Performed on Minors.’¹¹⁷⁷ However, referring to same-sex sexual conducts as ‘homosexual acts’ is technically inaccurate because it conflates the sex of the persons involved with their sexual orientations. In cases of forced or coerced sexual encounters, for instance, such a reference leaves a wrong impression that men who rape and/or who are raped are ‘homosexuals.’ That is, it equates same-sex sexual acts with ‘homosexuality.’ Technically, *sex* refers to biological differences between men and women, and *same-sex* implies sameness of the sex of the persons involved in the sexual encounter. Same-sex rape may not necessarily relate with the sexual orientation of the offender or the victim whereas ‘homosexual rape’ involves one or more ‘homosexuals’ raping another person of the same-sex.¹¹⁷⁸ Such a conflation of sex with sexual orientation is apparently premised on the myth that men who are sexually assaulted by men must be gay¹¹⁷⁹ or that women who are sexually assaulted by women

¹¹⁷⁴ *Ibid*, Article 630(2)(a).

¹¹⁷⁵ *Ibid*, Article 71.

¹¹⁷⁶ *Ibid*, Article 629.

¹¹⁷⁷ *Ibid*, Article 631.

¹¹⁷⁸ Noreen Abdullah-Khan (2008), *supra note* 112, p. 19.

¹¹⁷⁹ L. Stermac *et al.* (2004) ‘Stranger and Acquaintance Sexual Assault of Adult Males’, *Journal of Interpersonal Violence* 19(8), pp. 901-915, p. 901.

must be lesbian. It stems from the belief that same-sex rape is sexually motivated and that it is done for sexual gratification, and must, therefore, be a ‘homosexual’ act.¹¹⁸⁰ However, numerous empirical studies contradict this assumption.

Studies involving men have indicated that offenders can be heterosexual males, bisexual males and ‘homosexual’ males.¹¹⁸¹ In reality, men who rape men, like men who rape women, are not concerned with the sexual orientation of their victims.¹¹⁸² However, sexuality may have a contribution in making one group, say for example sexual minorities, more susceptible to be victimized than heterosexual males.¹¹⁸³ This does not mean that it is only homosexual men who rape, or are raped.¹¹⁸⁴ Rather, all men are potential victims for rape, regardless of their sexual orientation.¹¹⁸⁵ However, the RCC fails to recognize this fact and does not criminalize same-sex rape involving adults; instead, it simply assumes that all same-sex sexual acts involving adults are consensual ‘homosexual’ acts. By framing same-sex rape involving adults as such, the RCC embodies various male rape myths including, among others, that *men cannot be forced to have sex against their will*,¹¹⁸⁶ *men are less affected by sexual assault than are women*,¹¹⁸⁷ and that *a man is supposed to be able to defend himself against sexual assault*.¹¹⁸⁸

Second, the law places same-sex sexual acts, whether consensual, coerced or forced, under its specific section entitled “Sexual Deviations,” a catalog of offences, including sexual intercourse with an animal or bestiality. Much worse, it attaches the same penalty – simple imprisonment – for bestiality and same-sex sexual acts. Thus, the law not only fails to provide due protection to adult victims of same-sex rape but, at the same time, it also criminalizes consensual same-sex

¹¹⁸⁰ Noreen Abdullah-Khan (2008), *supra note* 112, p. 18.

¹¹⁸¹ *Ibid*, p. 20.

¹¹⁸² *Ibid*, p. 21.

¹¹⁸³ Noreen Abdullah-Khan (2008), *ibid*, pp. 21-23; and Sandesh Sivakumaran (2005), *supra note* 125, p. 1283.

¹¹⁸⁴ *Ibid*.

¹¹⁸⁵ Noreen Abdullah-Khan (2008), *ibid*, p. 23.

¹¹⁸⁶ L. Stermac *et al.* (2004), *supra note* 1179, p. 901.

¹¹⁸⁷ *Ibid*.

¹¹⁸⁸ A. N.Groth and A. W. Burgess (1980) ‘Male Rape: Offenders and Victims’, *American Journal of Psychiatry* 137(7), pp. 806-810, p. 808.

sexual acts. By doing so, it punishes individuals who 'deviate' from the dominant heterosexual social norm, and punishes sexual minorities simply for their sexual orientations. Essentially, the law totally disregards the fact that sexual minorities are persons just like everyone else, except for their sexual preferences. In the eyes of the law, they should be treated as individual citizens deserving equal rights and protections. However, in a patriarchal society like Ethiopia, let alone advancing the cause of sexual minorities, raising the issue, even for academic discussions and debates, is viewed as "dangerous."¹¹⁸⁹

Primarily, the intolerance for diverse sexualities and gender identities emanates from viewing such diversities as a threat to deep-rooted social norms of heteronormativity as the defining social fabric of the Ethiopian society. The issue is not only rendered invisible but also considered as a 'dangerous western import.'¹¹⁹⁰ Even a researcher who on one occasion had ventured to present and discuss her research findings on the life of Ethiopian lesbians, to an audience comprised of a few post-graduate students at the Institute of Gender Studies in Addis Ababa University, was not only bashed and characterized as "evil" but also received negative feedback and harsh criticism afterwards.¹¹⁹¹ Given the taboo, secrecy and silence surrounding the issue and the scope of the present study, additional, more thorough studies are needed on these issues.

Finally, the focus on the hetero normative sexuality perpetuates the belief that men cannot be victims of rape, particularly by females, because the latter are believed to be the only victims of such crimes.¹¹⁹² In this regard, the RCC criminalizes statutory rape against children under the age of 12 years old and between the ages of 13-18 years old, under Article 627 and Article 626, respectively. At the same time, it sets the age for criminal responsibility at the age of 9 years old.¹¹⁹³ Thus, violation of the provisions of the RCC by children under the age of 9 years old is not

¹¹⁸⁹ Aaronette M. White (2011) 'Unpacking Black Feminist Pedagogy in Ethiopia', *Feminist Teacher* 21(3), pp. 195-211, pp. 202-203.

¹¹⁹⁰ *Ibid*, p. 206.

¹¹⁹¹ *Ibid*, p. 205.

¹¹⁹² Nicola L. Fisher and Afroditi Pina (2013) 'An Overview of the Literature on Female-Perpetrated Adult Male Sexual Victimization', *Aggression and Violent Behavior* 18(1), pp. 54–61, P. 57.

¹¹⁹³ The Revised Criminal Code, *supra note* 21, Article 52.

considered as a criminal act. Where children between the ages of 9-15 years old violate the provision of the RCC, they are treated as juvenile offenders, with special protection.¹¹⁹⁴ Children above the age of 15 years old are generally treated as adults for the purpose of holding them criminally responsible. From a legal viewpoint, where two persons of the opposite sex above the age of criminal responsibility but below the age of consent, which is 18 years, have a “consensual” sexual intercourse, both are deemed to be victims, and at the same time, offenders for their acts. However, in practice, where minors engage in sexual acts between themselves, only the boy, who is treated as an offender, is prosecuted, convicted and sentenced. The girl involved in the act, on the other hand, is treated as a victim and named as the prosecutor’s witness. The court viewed the statutory rape law as if it were designed to protect the chastity of girls.

For instance, in a criminal File Number 219561, Lideta Division, Federal First Instance Court, the prosecutor charged a 17-years-old boy for having a sexual intercourse with a 14-years-old girl, in violation of Article 626(1) of the RCC.¹¹⁹⁵ In this case, only the boy had been considered as an offender, prosecuted, convicted and sentenced for a rigorous imprisonment of two-years-and-three months. The girl involved in the act, on the other hand, was treated merely as a victim, named as the prosecutor’s witness and testified against the boy. The Cassation Division of the Federal Supreme Court passed a decision on November 9, 2010, in File Number 46412, in which it gave a legally binding interpretation to this gendered practice.¹¹⁹⁶ This decision is a typical instance to illustrate how gender and sex role stereotypes had crept into the CJS, preventing even the highest appellate court from applying the appropriate legal provision.

The relevant legal provision for consensual sexual acts between minors is Article 661 of the RCC, which clearly stipulates: “[w]here the victim to sexual outrage, to an act against chastity [*sic*] or to an unnatural carnal crime [*sic*] is a minor, he [or she] shall not be liable to punishment. Appropriate

¹¹⁹⁴ *Ibid*, Article 53.

¹¹⁹⁵ *Public Prosecutor v. Fasil Ayitenfisu Belete*, Criminal File Number 219561, Lideta Division, Federal First Instance Court, 5/9/2007 E.C.

¹¹⁹⁶ *Harari Region Public Prosecutor v. Bona Ahimed Amin*, File Number 46412, Cassation Division, Federal Supreme Court, 30/2/2003 E.C.

measures for his [or her] proper upbringing and protection may be applied.”¹¹⁹⁷ By applying this provision to statutory rape cases involving two minors, the court should exonerate both minor boys and girls who are involved in the incident from criminal liability since they are victims and, at the same time, offenders. As victims, they will be subjected to measures for their proper upbringing and protection. This provision is gender-neutral; it is equally applicable to male and female minors. In practice, however, only boys were viewed as offenders, playing an ‘active’ penetrative role, whereas girls were seen as passive victims.

The decisions of the courts simply mirror and reinforce the stereotypes of male and female sexual roles, which form the basis of the very *violent and perverse form of masculine identity*,¹¹⁹⁸ which is a manifestation of patriarchy. By holding that only women can be victims of statutory rape, the decisions legitimize the stereotypical dichotomies about sex: that only men can penetrate and only women can be penetrated; that men are sexually inviolable, and that they are the offenders of rape and women are the only victims.¹¹⁹⁹ Generally, viewing males as offenders and females as victims in this context is the judicial equivalent of ‘male - aggressive’ and ‘female - submissive’ gender role stereotype in the society at large.

In sum, it should be underlined that rape, in any form or under any circumstance, is still rape, regardless of the sexual orientations and the gender identity of the offenders or the victims. Sexual victimization occurs regardless of the sexual orientations and gender identities of the offenders or the victims. Even where the victims are sexual minorities, they deserve the same legal protection as heterosexuals. The law should essentially be premised on the protection of citizens, rather than on policing religious or cultural norms.¹²⁰⁰ It should serve as a value-generating force and act as a catalyst for social change regarding gender and sexual norms. As a first step towards this goal, the

¹¹⁹⁷ The Revised Criminal Code, *supra note* 21, Article 661.

¹¹⁹⁸ Siegmund F. Fuchs (2004), *supra note* 122, p. 117.

¹¹⁹⁹ Catharine A. MacKinnon (1997a), *supra note* 118, p. 21

¹²⁰⁰ Pere DeRoy and Namela Baynes Henry (2018) ‘Violence and LGBT Human Rights in Guyana’, in Nancy Nicol *et al.* (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, UK: School of Advanced Study, University of London, Institute of Commonwealth Studies, p. 173.

law should redefine rape, in fully gender-neutral terms, as a crime committed by a person against another person. This redefinition may challenge and change biased practices within the CJS. It could ensure equal protection to all persons regardless of their gender identity or sexual orientation.¹²⁰¹ In this formulation, the focus of the law would be on the sexual autonomy of the person.¹²⁰² This is an approach adopted, for instance, in most European countries,¹²⁰³ from where the normative contents of the Ethiopian rape law were largely adopted, such as the 1937 Swiss Penal Code.¹²⁰⁴ Similar moves have also been taken in some African jurisdictions. For instance, in 1988, South Africa adopted a fully gender-neutral rape law, eliminating narrower misconceptions of rape in earlier version of the rape law that had been based upon the presumption that only males are offenders and only females are victims.¹²⁰⁵ As a result of the changes adopted, the law now has degenderized sexual offences, by making it legally possible for a man to rape a man, for a woman to rape a woman, and for a woman to rape a man.¹²⁰⁶

7.5 A Biased and Gendered Standard of Consent

7.5.1 ‘Absence of Consent’ as the ‘Presence of Force or Threat of Violence’

The failure to address the issue of consent for forcible rape and sexual assault cases is another major limitation of the 2004 rape law reforms. The RCC has not defined both forcible rape and sexual assault based on a lack of consent. Instead, only where the offender uses violence, or a threat to use violence, against his victim, the RCC presumes absence of consent.¹²⁰⁷ Under Article 620, the RCC defines forcible rape as follows: “[w]hoever compels a woman to submit to sexual

¹²⁰¹ Philip N.S. Rumney (2007), *supra note* 1166; and Home Office Review of Sex Offences (2000), *supra note* 1138, p. 3.

¹²⁰² Anne-Marie de Brouwer (2005) *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Antwerp, Oxford: Intersentia, p. 110.

¹²⁰³ Jo Lovett and Liz Kelly (2009), *supra note* 50, p. 103.

¹²⁰⁴ See generally Swiss Criminal Code of 21 December 1937, Article 189- Article 193, available at: <https://www.admin.ch/opc/en/classified-compilation/19370083/201803010000/311.0.pdf> last visited on 9/15/2018

¹²⁰⁵ David John Frank *et al.* (2009), *supra note* 19, p. 273.

¹²⁰⁶ *Ibid.*

¹²⁰⁷ The Revised Criminal Code, *supra note* 21, Article 620 and Article 622.

intercourse outside wedlock, whether by *the use of violence* or *grave intimidation*, or *after having rendered her unconscious* or *incapable of resistance*, is punishable ...”¹²⁰⁸ The RCC also maintains similar elements for sexual assault, under Article 622. In the provisions for both forcible rape and sexual assault cases, expressions like “without the consent of the woman” or “against her will” or other equivalent terminologies have not been used. Thus, a man can only be prosecuted for forcible rape or sexual assault only where he had used violence or ‘grave intimidation’ against his victim, or he had rendered his victim unconscious or incapable of resistance. By formulating the notion of consent as such, the law has totally nullified the victim’s voice and rendered her consent irrelevant. As such, the law disregards female autonomy and her capacity to make decisions about sex.¹²⁰⁹ Such a disregard represents both a deprivation of women’s the right to decide for themselves with whom and under what circumstances to have sex and a perpetuation of the lopsided power relationship within society that privileges men.¹²¹⁰

Under the RCC, sexual encounter is considered to be “consensual” unless the offender had used violence or ‘grave intimidation’ or rendered his victim unconscious or incapable of resistance.¹²¹¹ Here, the concept of free consent has been totally ignored. Normally, the term consent refers to the act of giving one’s will to engage in a certain undertaking, with full awareness of the nature and consequences. Typically associated with the notions of autonomy and choice, consent has largely been recognized as one of the notable manifestation of the power(s) of personhood.¹²¹² The notion of consent as self-rule involves the protection of one’s autonomy to make choices as to one’s sexual intimate relationships and contacts.¹²¹³ It is essential because it allows individuals to

¹²⁰⁸ *Ibid*, Article 620(1). Emphasis mine.

¹²⁰⁹ Susan Estrich (1986) ‘Rape’, *The Yale Law Journal* 95(6), pp. 1087-1184, p. 1095.

¹²¹⁰ Mustafa T. Kasubhai (1996) ‘Destabilizing Power in Rape: Why Consent Theory in Rape Law is Turned on Its Head’, *Wisconsin Women’s Law Journal* 11: pp. 37–74, p. 43.

¹²¹¹ Tsehai Wada (2012), *supra note* 412, p. 209.

¹²¹² Heidi M. Hurd (1996) ‘The Moral Magic of Consent’ *Legal Theory* 2(2), pp 121–146, p. 121.

¹²¹³ Sharon Cowan (2007) ‘Freedom and Capacity to Make a Choice’: A Feminist Analysis of Consent in the Criminal Law of Rape’, in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law Feminist Engagements*, Chapter 3, Routledge-Cavendish: Glasshouse Press, p. 51.

act as moral agents.¹²¹⁴ The ability to give a genuine consent is an essential component of sexual autonomy.¹²¹⁵ This entails that the state has to promulgate a law that guarantees the sexual boundaries of the individual and, thereby, protect their sexual autonomy. However, the RCC fails to conceptualize consent in forcible rape and sexual assault cases in such a way that it fully protects a woman's right to sexual autonomy. It instead equates the absence of consent with the presence of violence or a threat of violence. By doing so, the RCC has completely failed to take the consent and sexual autonomy of women seriously.

7.5.2 'Absence of Consent' as the 'Presence of Physical Resistance'

Under the law, victims of forcible rape and sexual assault are presumed as consenting if they do not make physical resistance to the offender. The RCC requires evidence of resistance, as suggested by the use of the phrase "after having rendered [her] incapable of resistance," in the very definitions of forcible rape and sexual assault.¹²¹⁶ In addition, the physical resistance requirement is subtly implied in other elements of forcible rape and sexual assault, such as the use of violence or force or a threat of violence, since it is presumed that the offender would not automatically resort to violence or threat to use violence. Normally, the use of violence, or a threat to use violence, presupposes that the offender's initial sexual encounter would be met with some form of resistance from the victim. Hence, the violence element of forcible rape and sexual assault requires women to physically resist and fight back the offender in order to produce evidence of the use of violence or force. Such a requirement under the law is unfair. As Katharine K. Baker and Michelle Oberman well-noted, the law requires women to "engage in a physical battle that they were almost certain to lose" in order to get legal protection.¹²¹⁷

¹²¹⁴ John Gardner and S. Shute (2000) 'The Wrongness of Rape' in Jeremy Horder (ed) *Oxford Essays on Jurisprudence*, Fourth Series, Oxford: Oxford University Press, p. 207.

¹²¹⁵ *Ibid.*

¹²¹⁶ The Revised Criminal Code, *supra note* 21, Article 620 and Article 622.

¹²¹⁷ Katharine K. Baker and Michelle Oberman (2016) 'Women's Sexual Agency and the Law of Rape in the 21st Century', *Studies in Law, Politics and Society*, 69: pp. 63-111, p. 69.

The victim had to prove that she had made “utmost resistance” before being sexually assaulted.¹²¹⁸ She is required to make resistance until she is overpowered and rendered incapable of offering further resistance. This requirement sets a standard of model behavior against which the court has to evaluate women’s actions to settle two issues: a proof of lack of consent and a proof of use of violence or force.¹²¹⁹ Accordingly, the prosecutor has to prove beyond a reasonable doubt that the woman had resisted the offender to the utmost of her physical capacity to prove that the sexual encounter was a forcible rape or sexual assault. If a woman had not resisted the offender to the utmost of her ability, she was not raped.¹²²⁰

Regarding the degree of resistance, scholars and practitioners appeared to be consistent. For instance, Tsehai Wada, a legal scholar, noted that “the law demands a high level of intimidation, but not the ordinary one, for it is required that the degree of intimidation has to be ‘grave’, and the victim should be made unconscious, or incapable of resistance. Thus, any threat, short of this, may lead to a conclusion that the victim could have resisted the intimidating force and the actor cannot be held liable.”¹²²¹ This means a forcible rape or sexual assault which involves “ordinary” intimidation is deemed consensual under the law. Determining whether the intimidation was an ordinary or a grave one has been left to the courts, which presumably is judged against the preconceived model behavior.

Practitioners also share the above view. For instance, PP3, stated: “[p]articularly, where the victims are above 18 years old, the law requires that the offenders render their victims incapable of offering resistance. If the victims were not rendered incapable of offering resistance, their case cannot be considered rape.”¹²²² This key informant was also asked whether verbal resistance suffices to indicate a lack of consent on the part of the victim. She responded: “[i]n my view, if a woman says

¹²¹⁸ Susan Estrich (1987) *Real Rape*, Cambridge, Massachusetts: Harvard University Press, p. 30.

¹²¹⁹ Michelle J. Anderson (2010) ‘Diminishing the Legal Impact of Negative Social Attitudes toward Acquaintance Rape Victims, *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 644-664, P. 653.

¹²²⁰ *Ibid.*

¹²²¹ Tsehai Wada (2012), *supra note* 412, p. 212.

¹²²² Interview with PP3, *supra note* 851.

‘no’ verbally but her actions show otherwise, a man should not be held criminally liable.”¹²²³ Thus, showing verbal resistance – saying “No!” – is insufficient to prove a lack of consent.¹²²⁴ Neither is offering some slight physical resistance (for example, turning away from a kiss) sufficient to prove a lack of consent. A previous study conducted in Addis Ababa has also revealed that if a victim of rape fails to offer utmost physical resistance, the police do not consider the encounter as rape and the case will be dropped at the investigation stage.¹²²⁵

7.5.3 Forcible Rape and Sexual Assault by Fraud, Coercion or Impersonation

Unlike other areas of the law, consent in forcible rape and sexual assault cases is conceived quite uniquely. It is inferred from a mere submission of the victim for sexual encounter even where such a submission has been obtained through intimidation unless the threat to use violence has been found to be a ‘grave’ one. Thus, a mere submission for a sexual encounter is deemed consensual unless it involves physical violence or a ‘grave’ intimidation to use force. Even where the sexual encounter involves the use of violence (or ‘grave’ intimidation), and if such violence or threat is directed against a third party other than the victim herself (for instance, against her ascendant, descendant or spouse), it is not considered as a factor that vitiates her consent. Although the law is clear on this point, PP2 maintained that “[i]f a man threatens a woman’s family member, such as her descendant, and forces her into a sexual intercourse with him, this constitutes (a forcible) rape because he had rendered her defenseless by threatening to harm her family members. According to Article 620, he used a threat against his victim.”¹²²⁶

However, it is clear that where the RCC uses the phrase “by the use of grave intimidation” both for forcible rape and sexual assault, it does not leave a room for an extended interpretation to include threats directed at a person other than the victim herself by analogy. The use of the phrases “whoever compels a woman to submit to sexual intercourse;” “by the use of violence or grave

¹²²³ *Ibid.*

¹²²⁴ Tsehai Wada (2012), *supra note* 412, p. 216.

¹²²⁵ Blain Worku (2011), *supra note* 987, p. 43.

¹²²⁶ Interview with PP2, *supra note* 849.

intimidation;” or “after having rendered [the victim] unconscious or incapable of resistance,” in the very definition of forcible rape, under Article 620 of the RCC presupposes two fighting parties. The definition of forcible rape assumes a victim battling hard not to submit into a sexual intercourse risking her life while confronting a violent offender who is trying to physically subdue or render her unconscious or incapable of resistance. Commenting on this point, Tsehai Wada notes: “whether the threat should be posed against the victim or someone else related or unrelated to her is an issue that demands a judicial interpretation. It may, however, be suggested that as far as there is intimidation, it should apply to all situations, for the law has not limited this circumstance to any specific person or relationship.”¹²²⁷ However, this view contradicts one of the pillars of the principle of legality – that *the provisions of criminal law must be construed narrowly*. The law is clear on this point: other than the victim herself, it does not offer even an illustrative list against whom the threat should be directed. In the absence of such an illustrative list, the principle of legality prohibits making an offence by analogy.¹²²⁸ In addition, in criminal cases, the benefit of doubt generally goes to the offender’s advantage, not in favor of the prosecutor’s case.

Furthermore, the law treats a mere submission for sexual encounter as consensual even where such submission is obtained through manipulative tactics such as deception or fraud or impersonation. Simply stated, rape by deception or fraud or impersonation is not a criminal offence.¹²²⁹ Yet, empirical evidence shows that rape by deception or fraud or impersonation is not a rare occurrence. For instance, according to a study conducted in Addis Ababa, the proportion of the means used by offenders in committing rape was as follows: deception (28.6%), inviting girls to recreational places (20.7%), presenting gifts and other material offers (15.5%), using force (9.7%), using threat (7.6%), abusing authority (7.0%), forcefully taking away of properties (3%), and using friends of girls or go-betweens (2.4%).¹²³⁰

¹²²⁷ Tsehai Wada (2012), *supra note* 412, pp. 212-213.

¹²²⁸ The Revised Criminal Code, *supra note* 21, Article 2(3).

¹²²⁹ Tsehai Wada (2012), *supra note* 412, p. 215.

¹²³⁰ Getnet Tadele and Desta Ayode (2008), *supra note* 255, p. iv.

Rape by impersonation does also occur. For instance, a key informant of the present study, PP4, recounted a typical case of rape by impersonation that had been brought to her attention as a prosecutor.¹²³¹ In this particular case, a couple and their friends were spending together half the night at a nightclub, drinking alcohol. After getting drunk, the couple alone went out of the club to look for a bedroom in a nearby pension where they found one. After staying with her for a few minutes inside their rented bedroom, the victim's partner left her alone inside the room to join his friends back at the nightclub. The pension's steward, who had well noticed that the girl had been too drunk and left alone in the room, which was not locked, entered into the bedroom after about half an hour and had a sexual intercourse with her. Apparently, she had "consented" to having a sexual intercourse with the intruder, believing that he was actually her partner. Subsequently, she realized that the person she had slept and had a sexual intercourse with was, in fact, not her partner but someone else she did not know. As she believed that she had been raped, she went to a nearby police station early in the next morning and reported the incident to the police. However, after consulting on the case with the prosecutor, who also was a key informant of the present study, the police dismissed her case saying 'it was not a crime.' The police told her that the alleged act did not constitute rape.¹²³² In this case, it is clear that if the victim had been aware of the true identity of the offender, she apparently would not have agreed to have a sexual intercourse with the intruder. The offender knew this very well, but nevertheless he was not even called for questioning by the police. Under the law, what he did is not a crime but a 'consensual' sex and the victim 'has not been raped.' Such an understanding of the notion of consent is in contradiction with the basic essence of the concept of sexual autonomy: that individuals do have the right to decide for themselves with whom and under what circumstances to have sex.¹²³³

The RCC even excludes from its ambit the only instance of rape by impersonation, under Article 591 of the 1957 Penal Code. The latter Code, under its provision titled 'Sexual Outrages on

¹²³¹ Interview with PP4 on 16 March 2018, at 11:10-11:30 AM.

¹²³² *Ibid.*

¹²³³ Jed Rubenfeld (2013) 'The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy', *the Yale Law Journal* 122(6), pp. 1372-1443, p. 1379.

Unconscious or Deluded persons, or on Persons Incapable of Resisting,' criminalized sexual offences against certain groups of people. In this regard, Article 591(2) of the 1957 Penal Code stated that where a sexual offence is committed against unconscious or deluded persons, or on persons incapable of resisting, "[t]he same punishments apply to anyone shown to have committed such an act *by misrepresentation*."¹²³⁴ As far as an unconscious victim is concerned, this provision is irrelevant since an unconscious person cannot be deceived by misrepresentation or impersonation. However, it might be relevant in other contexts. Instead of extending the scope to include other coercive circumstances that suggest a lack of free consent, the RCC excludes the narrowly construed notion of rape-by-misrepresentation, under the 1957 Penal Code.

Moreover, the RCC maintains the approach of its predecessor in addressing coercive contexts that implicitly suggest a lack of consent due to a victim's mental or physical subordinate position relative to the offender, and dependency on the offender, at least in three exceptional instances. The first instance relates to rape involving sexual intercourse and acts corresponding to a sexual act or other indecent act "with an idiot [*sic*], with a feeble-minded [*sic*] or retarded, insane or unconscious person, or with a person who is for any other reason incapable of understanding the nature or consequences of the act."¹²³⁵ This is a less serious crime with a mandatory minimum sentence of one year. For forcible rape, the mandatory minimum sentence is five years. The law seems to assume that if a woman cannot make physical resistance and defend herself, for example, because of sleep, a self-inflicted intoxication, a state of unconsciousness or illness, the sexual encounter directed at her should not be considered as equally serious, violating and humiliating as forcible rape. It categorizes women who are helpless or unconscious because of their own action as being less worthy of legal protection than other women who can make physical resistance and defend themselves. This seems to be premised on gender stereotypes where 'honorable' women should behave in ways to control their behaviors. If women are unable to defend themselves in

¹²³⁴ The Penal Code, *supra note* 34, Article 591(2). Emphasis mine.

¹²³⁵ The Revised Criminal Code, *supra note* 21, Article 623.

breach of this expectation, they do not deserve serious legal protection and, thus, the offenders are sanctioned with a lesser penalty.

The second instance relates to procuring a sexual intercourse using a victim's dependency as a means of coercion. In this regard, Article 625 of the RCC states: "[w]hoever [...] procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, *upon complaint, with simple imprisonment.*"¹²³⁶ However, this provision has a limitation in that it fails to take these offences as public crimes. Thus, an offence under this provision can only be prosecuted upon a private complaint by the victim. By doing so, it ignores that the very hierarchical relationship which in the first place exposed the victim to sexual coercion could also deter her from filing a private complaint against her superior. It also attaches a very lenient punishment, which is a simple imprisonment with no mandatory minimum sentence. In addition, other than the material or mental distress of the victim and her inferior-superior relationship with the offender, the provision of the law does not envisage other coercive circumstances.

The third instance relates to a man having a sexual intercourse or performing an act corresponding to the sexual act or any other indecent act using his superior position against a victim under his custody.¹²³⁷ Here, too, the provision of the law attaches a lenient punishment of a mandatory minimum sentence of just one year.

Generally, the approach adopted under Article 625 and, to some extent, under Articles 624 and 623 of the RCC is below the minimum human rights standards. The accepted standard under the

¹²³⁶*Ibid*, Article 625. Emphasis mine.

¹²³⁷ *Ibid*, Article 624. (Stating that "[w]hoever, by taking advantage of his position, office or state, has sexual intercourse or performs an act corresponding to the sexual act or any other indecent act with an inmate of a hospital, an alms-house or an asylum, or any establishment of education, correction, internment or detention, who is under his direction, supervision or authority, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.")

international human rights jurisprudence is that sexual offence should not constitute a private offence¹²³⁸ nor should the sentencing for it be too lenient.¹²³⁹

Generally, the standard of consent for forcible rape and sexual assault departs strikingly from how consent is understood in other areas of the law.¹²⁴⁰ As Robin West observes, “fraud or coercion that vitiates consent in nonsexual contexts constitutes either a criminal or a tortious activity.”¹²⁴¹ Likewise, under the Ethiopian Law of Obligations, if consent is vitiated by fraud, it not only entails invalidation of the contract and payment of compensation but also leads to criminal liability and punishment.¹²⁴² Specifically, Article 692 of the RCC criminalizes the use of fraudulent practices undertaken with the intent to gain material benefits from others. It stipulates: “[w]hoever, with intent to obtain for himself or to procure for a third person an unlawful enrichment, fraudulently causes a person to act in a manner prejudicial to his rights in property, or those of a third person, whether such acts are of commission or omission, either by misleading statements, or by misrepresenting his status or situation or by concealing facts which he had a duty to reveal, or by taking advantage of the person's erroneous beliefs, is punishable...”¹²⁴³ However, similar fraudulent practices undertaken with an intent to obtain a sexual intercourse do not constitute a criminal offence. By doing so, the law values property rights over women’s sexual autonomy. This approach contradicts the very rationale under the law for requiring consent in the first place, which is to ensure respect for the sexual autonomy of the person.¹²⁴⁴

¹²³⁸ See e.g. Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Portugal, A/57/38, part I, para. 320.

¹²³⁹ See e.g. Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Czech Republic, A/57/38, part III, para. 95; Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Iceland, A/57/38, part I (2002), paras. 245-246; and Committee on the Elimination of Discrimination against Women (2003), Concluding Observations, Japan, A/58/38, part II, para. 361.

¹²⁴⁰ Rebecca Whisnant (2011), *supra note* 188.

¹²⁴¹ Robin West (1996), *supra note* 358, p. 233.

¹²⁴² George Krzeczunowicz (1983) *Formation and Effects of Contracts in Ethiopian Law*, Addis Ababa: Addis Ababa University Faculty of Law, p. 44.

¹²⁴³ The Revised Criminal Code, *supra note* 21, Article 692(1).

¹²⁴⁴ Joan McGregor (2011), *supra note* 4, p. 76.

7.5.4 The Notion of Consent in other Non-Sexual Offences

The consent standard for forcible rape and sexual assault is unique in that, as opposed to any other crimes, it requires rape victims to demonstrate their non-consent through a physical resistance against the offender.¹²⁴⁵ For forcible rape and sexual assault, where there is no evidence of violence and physical resistance, consent is presumed to exist. However in other criminal offences, consent is not presumed but it must be affirmatively sought.¹²⁴⁶ There are other offences for which non-consent is an essential element or the consent of the victim is pleaded as a defense but not in rape cases where, as Lani Remick notes, “proof of a lack of consent insufficient to prove non-consent.”¹²⁴⁷ It is only in rape cases that the victim is required to physically resist her attacker to demonstrate her wish.¹²⁴⁸

For instance, a common defense for a crime of theft of movable property is that the owner of such a property had consented for the offender to take the property.¹²⁴⁹ A mere testimony that the owner has never given his or her consent for the offender to take the property is enough to defeat this defense. The owner is not required to provide evidence of physical resistance against the offender to show that he or she had not consented. However, for forcible rape and sexual assault cases, the presumption of consent is the ‘default’ position.¹²⁵⁰ The presumption of consent could only be defeated in cases involving extreme circumstances, that is, where the rapist used violence or grave intimidation or rendered his victim unconscious or incapable of resistance.

Likewise, robbery is a crime which includes violence (force) and non-consent as defining elements. Both robbery and forcible rape or sexual assault are non-consensual and violent

¹²⁴⁵ *Ibid*, pp. 75-76.

¹²⁴⁶ *Ibid*, p. 76.

¹²⁴⁷ Susan Estrich (1986), *supra note* 1209, p. 1090; and Lani Anne Remick (1993) ‘Read Her Lips: An Argument for a Verbal Consent Standard in Rape’, *University of Pennsylvania Law Review* 141(3), pp. 1103-1151, p. 1111.

¹²⁴⁸ Susan Estrich (1997) ‘Enduring Distrust: The Modern Law of Force’, in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge, 410-418, p. 411; Lani Anne Remick (1993), *ibid*, p. 1111; and Susan Estrich (1987), *supra note* 1218, p. 29.

¹²⁴⁹ Lani Anne Remick (1993), *ibid*, p. 1111.

¹²⁵⁰ Lani Anne Remick (1993), *ibid*, p. 1111; and Joan McGregor (2011), *supra note* 4, p. 76.

instances of human interactions.¹²⁵¹ Like forcible rape and sexual assault, the RCC defines robbery as a crime whereby the offender “uses violence or intimidation towards a person or otherwise render[s] such person incapable of resisting.”¹²⁵² However, as Susan Estrich noted, “[i]n robbery, only where the owner of the property actively participates in planning and committing the theft will consent be found. Mere ‘passive submission’ or ‘passive assent’ does not amount to consent - except in the law of rape.”¹²⁵³ Lucy Reed Harris further observed that “only the law of rape makes unjustified adverse assumptions about the general sincerity of alleged victims, which lead to requirements of much higher levels of proof of force and resistance. Such requirements leave the physical safety of women correspondingly less protected in cases of rape than in cases of robbery.”¹²⁵⁴ The RCC considers robbery as a more serious and violent property crime than is theft. Even if the offender did not resort to violence while committing the offence, or if the use of violence could not be proved, the offender will not still be totally exonerated from any criminal liability. Instead, the gravity of the offence will be downgraded to a less serious property crime and the offender will be prosecuted for theft for taking property belonging to another person without the permission of the owner.

7.5.5 A Gendered Standard of Consent Premised on Rape Myths

It has been argued that rape laws were designed primarily to protect the interests of men over their daughters and wives.¹²⁵⁵ The ‘physical resistance’ requirement in establishing the criminal nature of forcible rape and sexual assault cases has been used as a typical illustration of how rape laws protect male interests.¹²⁵⁶ The law requires that a victim of forcible rape or sexual assault should physically resist the offender, as an evidence to determine that she had not consented to the sexual encounter. Such a requirement reflects the belief that a woman should protect her chastity to extent

¹²⁵¹ Lucy Reed Harris (1976) ‘Towards a Consent Standard in the Law of Rape’, *the University of Chicago Law Review* 43(3), pp. 613-645, p. 638.

¹²⁵² Revised Criminal Code, *supra note 21*, Article 670.

¹²⁵³ Susan Estrich (1986), *supra note 1209*, p. 1126.

¹²⁵⁴ Lucy Reed Harris (1976), *supra note 1251*, p. 638.

¹²⁵⁵ Joan McGregor (2011), *supra note 4*, p. 73.

¹²⁵⁶ *Ibid.*

of risking her own life.¹²⁵⁷ Commenting on this, Joan McGregor noted the following: “[w]omen’s chastity was worth a lot to men interested in marrying off their daughters and ensuring that children conceived during their marriage were biologically their progeny. Without chastity, women lost their value and were often ostracized by [their own] family and [by the] community.”¹²⁵⁸ According to her, the assumption of these rape laws was that “women too held chastity to be of the highest value and would protect theirs with their own life. Given this assumption, failure to protect one’s chastity with ‘utmost resistance’ was seen as giving consent to the sexual interaction.”¹²⁵⁹ Besides, the resistance requirement protects men’s interest by making the possibility of obtaining a conviction very difficult.¹²⁶⁰

Beyond maintaining the resistance requirement, the RCC has also introduced discriminatory standards of consent. In this regard, under its provision titled “Compelling a Man to a Sexual Intercourse,” it defines rape committed by a woman against a man as follows: “[a] woman who compels a man to sexual intercourse with herself, is punishable....” This provision does not (and should not) require men victims of rape to provide evidence of physical resistance against the offender in order to have legal protection. Nor does it require the woman offender to use violence, or threat of violence, against her victim. The law does not provide a possible list of the means that could be used by a woman to compel a man nor does it define the notion of ‘compulsion’ or what acts and/or behaviors constitute ‘compulsion.’ According to the law, if a woman compels a man to have a sexual intercourse with herself against his will, she will be held criminally liable. This is so regardless of the means the woman used to compel the man, which, among other things, could be psychological pressure, physical force, threats, frauds or impersonation. Consequently, the RCC provides different standards of consent that discriminate against women. This is a *de jure* discrimination, and a flagrant violation of the non-discrimination clauses of the CEDAW, the

¹²⁵⁷ *Ibid.*

¹²⁵⁸ *Ibid.*

¹²⁵⁹ *Ibid.*

¹²⁶⁰ *Ibid.*

Women’s Protocol, and the FDRE Constitution. Consequently, the RCC has directly contributed to the very problem it is meant to address.

Furthermore, the consent standard for forcible rape and sexual assault is also founded on the so-called ‘real rape’ myth, which, according to Helen Reece, is the belief that rape is “a very violent attack in a dark alleyway by an armed stranger on a woman who physically resists and is physically injured.”¹²⁶¹ This popular image of ‘real rape’ typically assumes the existence of, amongst other things, a knife-wielding stranger offender, a public attack location, a use of violence, and a show of physical resistance.¹²⁶² If the offender conforms to this ‘real rape’ scenario, the public generally condemns the offence and sympathizes with the victim.¹²⁶³ Framed along the ‘real rape’ myth, the Ethiopian rape law fails to clearly proscribe less violent rape. As MacKinnon noted, this kind of formulation simply “assumes the sadomasochistic definition of rape: [sexual] intercourse with force or coercion can be or become consensual.”¹²⁶⁴

The use of phrases such as “to submit to a sexual intercourse” and “use of violence or grave intimidation” in the very definition of forcible rape under the RCC also shows how the law conceives and characterizes female victims as submissive and male offenders as aggressive. The law does not employ similar phrases where the rape is committed by a woman against a man. The law does not ascribe aggressive behavior to female offenders and submissive behavior to male victims. Such a formulation is premised on stereotypic gender roles ascribed to males and females.

¹²⁶¹ Helen Reece (2013) ‘Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?’, *Oxford Journal of Legal Studies* 33(3), pp. 445–473.

¹²⁶² Louise Ellison and Vanessa E. Munro (2010) ‘A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections Upon Received Rape Myth Wisdom in the Context of a Mock Jury Study’, *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 781-801, p. 781; and Samuel H. Pillsbury (2002) ‘Crimes Against the Heart: Recognizing the Wrongs of Forced Sex’, *Loyola of Los Angeles Law Review* 35:845, p. 865, available at: <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2320&context=llr> last visited on 1/28/2019.

¹²⁶³ Susan Estrich (1987), *supra note* 1218, pp. 13-14.

¹²⁶⁴ Catharine A. MacKinnon (1997b), *supra note* 382, p. 419.

It simply mirrors, legitimizes and enforces a view of sex and of women which glorifies male aggressiveness and punishes female passivity.¹²⁶⁵

Also, the resistance requirement was based upon a distrust of women.¹²⁶⁶ In the past, such a distrust had been pervasive in rape laws across jurisdictions. For instance, rape victims were not only required to physically resist their assailant to the utmost of their ability and to promptly report the incident to the police but also they had to substantiate their testimony through corroboration and good reputation.¹²⁶⁷ All these requirements were premised on the myth that women lie about being raped. Particularly, the resistance requirement represents one of the institutionalized incredulities towards rape victims, whereby it was assumed that women who fail to make a physical resistance against the offender cause their own victimization, leading the victims to feel that they were somehow responsible for what had happened and thus preventing them from seeking legal redress.¹²⁶⁸ It also leads to victim-blaming if she fails to do something to discourage her attacker.¹²⁶⁹

Moreover, under the RCC, making a verbal resistance such as saying “No!” is not sufficient to prove an absence of consent on the part of the victim. Thus, saying “No!” to a sexual encounter is essentially conceived as saying “Yes!” and is, instead, taken to mean the converse of its ordinary meaning in other human interactions. This approach is premised on the assumptions that *women say ‘No!’ and do not really mean it; that women are ambivalent about giving their consent to sex; and that women have conflicting emotions and are unable to directly express their sexual desires.*¹²⁷⁰ Generally, under the law and within the CJS, the approach to consent for forcible rape

¹²⁶⁵ Susan Estrich (1986), *supra note* 1209, p. 1092.

¹²⁶⁶ Susan Estrich (1986), *ibid.*, p. 1105; and Susan Estrich (1992) ‘Palm Beach Stories’, *Law and Philosophy* 11(1-2), pp. 5-33, p. 11.

¹²⁶⁷ Cassia C. Spohn (1999), *supra note* 18, p. 119; Mustafa T. Kasubhai (1996), *supra note* 1210; and Jocelyne A. Scutt (1992) ‘The Incredible Woman: A Recurring Character in Criminal Law’, *Women’s Studies International Forum* 15(4), pp. 441-460, p. 442.

¹²⁶⁸ Sinidu Fekadu (2008), *supra note* 2690, pp. 54-55.

¹²⁶⁹ Lani Anne Remick (1993), *supra note* 1247, p. 1112.

¹²⁷⁰ Joan McGregor (2011), *supra note* 4, p. 77.

and sexual assault cases lends credence to the concept of justifiable rape. As Lani Anne Remick suggested, “[i]f the notion that rape can be justifiable is ever to be dispelled and adequate protection from rape is ever to be provided, the law must declare that proof of a lack of consent satisfies the non-consent element.”¹²⁷¹ Such a view is also supported by Christian Diesen and Eva F. Diesen, who state: “[i]f the law requires resistance, it implies that a woman is sexually available until she resists physically, resulting in an attitude that a woman reporting rape without injuries should be mistrusted.”¹²⁷² “This mistrust of the victim and the victim’s attendant feelings of self-blame,” they further note, “aggravate the victim’s trauma. On the other hand, a modern rape law based on a lack of consent gives the signal that a woman is not available until she has given her consent, resulting in a different starting position for the investigation.”¹²⁷³

7.5.6 Towards a New Standard of Consent

Generally, by conceptualizing consent for forcible rape and sexual assault in terms of the use of violence or grave intimidation and resistance from the victim, the RCC has failed to bring its object closer to the experiences of most of victims of rape. As Lani Anne Remick noted, “[r]equiring a woman to do anything at all as a prerequisite to protection under the rape laws implies that her freedom from nonconsensual sex is a privilege rather than a right.”¹²⁷⁴ Such an overly restrictive formulation of consent denies legal protection to countless victims of rape. This is so because most rape victims, particularly in cases involving acquaintances, do not often resist their attacker physically, but use other subtle means of resistance.¹²⁷⁵ Usually, in threatening situations women

¹²⁷¹ Lani Anne Remick (1993), *supra note* 1247, p. 1112.

¹²⁷² Christian Diesen and Eva F. Diesen (2010) ‘Sex Crime Legislation: Proactive and Anti-therapeutic Effects’, *International Journal of Law and Psychiatry* 33: pp. 329–335, p. 329.

¹²⁷³ *Ibid.*

¹²⁷⁴ Lani Anne Remick (1993), *supra note* 1247, p. 1112.

¹²⁷⁵ Frances P. Bernat (2002), *supra note* 361, pp. 90-91.

do not respond with physical force but will respond verbally.¹²⁷⁶ This might be simply due to the normal differentials in physical strength.¹²⁷⁷

For a variety of legitimate reasons, the victim may not make a physical resistance against the offender. For instance, if a woman is inordinately afraid, too embarrassed to defend herself, or simply indisposed to make resistance in any situation, she may submit to a nonconsensual sex even in the absence of any show of violence, or threat of violence, from the offender.¹²⁷⁸ However, the law fails to recognize the victim's failure to resist the offender as being a result of her being overwhelmed by fear and panic rather than consenting to the sexual encounter.¹²⁷⁹ It also fails to acknowledge that victims of non-consensual sex, including victims of acquaintance-rape, although no physical violence had been involved, suffer at least as much psychological trauma as do victims of forcible rape or sexual assault.¹²⁸⁰ In fact, as Camille N. Ward and Paula K. Lundberg-Love noted, victims of acquaintance-rape "may actually recover more slowly, in part because they are less likely to recognize their experience as rape and seek counseling or other forms of support."¹²⁸¹

Requiring a woman to make a physical resistance against the offender as a prerequisite to legal protection, as Susan Estrich argued, "unnecessarily and unfairly immunizes those men whose victims are afraid enough, or intimidated enough, or, frankly, smart enough, not to take the risk of resisting physically."¹²⁸² However, if the central purpose of the law is to protect sexual autonomy, the use of violence or threat of violence should have been eliminated from the definition of forcible rape and sexual assault. The law should instead give priority to and taking sexual autonomy seriously. As Stephen Schulhofer succinctly stated, "at the very least making this core constituent

¹²⁷⁶ Joan McGregor (2011), *supra note* 4, p. 82.

¹²⁷⁷ *Ibid.*

¹²⁷⁸ Lani Anne Remick (1993), *supra note* 1247, p. 1118.

¹²⁷⁹ Commonwealth v. Mlinarich (1985) reprinted in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge, p. 406.

¹²⁸⁰ Michelle J. Anderson (2005), *supra note* 1087, p. 636; and Camille N. Ward and Paula K. Lundberg-Love (2006) 'Sexual Abuse of Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) *"Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 5, Westport: Praeger Publishers, p. 64.

¹²⁸¹ Camille N. Ward and Paula K. Lundberg-Love (2006), *ibid.*

¹²⁸² Susan Estrich (1986), *supra note* 1209, P. 1101.

of human freedom an explicit part of criminal law standards of permissible behavior and recognizing that violations warrant condemnation and serious penalties.”¹²⁸³ The very defining feature of rape is a non-consensual sex, and violence, threats and intimidation are simply ways of exerting power over the victim.¹²⁸⁴ The essential wrong of rape is that the sexual relations are non-consensual, not the violence used to do the sexual act.¹²⁸⁵ Since the harm sustained is a transgression of an individual’s sexual autonomy, it is logical to conclude that the primary harm of rape is nonconsensual sex, and that the physical violence that may accompany it is an aggravating factor in determining the gravity of the punishment, but not the existence of the crime itself. As Daphne Edwards succinctly puts it, “[i]t is the violation, not the violence, that is criminal.”¹²⁸⁶

However, by defining forcible rape and sexual assault in terms of the presence or absence of violence, or a threat of violence, and resistance, the Ethiopian rape law fails to provide adequate protection to women’s sexual autonomy. The protection it provides does not even meet the minimum requirement accepted in the international human rights jurisprudence. In this regard, the general comments and concluding observations of the CEDAW Committee recommended that the law should, at a minimum, define rape based on a lack of consent and not on the use of violence or force or coercion.¹²⁸⁷ Particularly, in its 2017 General Recommendation No. 35, the CEDAW Committee also called upon the state to “[e]nsure that the definition of sexual crimes, including marital and acquaintance or date rape is based on lack of freely given consent, and takes account of coercive circumstances.”¹²⁸⁸ Hence, at least as a first step to meet the minimum human rights

¹²⁸³ Stephen J. Schulhofer (1992) ‘Taking Sexual Autonomy Seriously: Rape Law and beyond Law and Philosophy’, *Philosophical Issues in Rape Law* 11(1/2), pp. 35-94, p. 94.

¹²⁸⁴ Joan McGregor (1994) ‘Force, Consent and the Reasonable Woman’, in Jules Coleman and Allen Buchanan (eds) *In Harm’s Way: Essays in Honor of Joel Feinberg*, Cambridge: Cambridge University Press, p. 233.

¹²⁸⁵ *Ibid.*

¹²⁸⁶ Daphne Edwards (1996) ‘Acquaintance Rape and the Force Element’, *Golden Gate University Law Review* 26: pp. 241-300, p. 300.

¹²⁸⁷ See e.g. Committee on the Elimination of Discrimination against Women (2002), *supra note* 1239, paras. 95-96; and Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Estonia, A/57/38, part I, para. 98.

¹²⁸⁸ General Recommendation No. 35, *supra note* 66, para. 33.

standards and to ensure the effective protection of women's sexual autonomy, the Ethiopian rape law must distinguish between 'violations' and 'violence.'¹²⁸⁹

To this end, the *use of violence, or threat of violence*, and the *physical resistance* requirements must be eliminated as defining elements of forcible rape and sexual assault. The law should introduce a new standard of consent that acknowledges the fact that individuals act as moral agents. Consent should be defined according to a "No means, no!" standard.¹²⁹⁰ This approach would serve as a useful legal tool for gradually reversing perverse cultural assumptions, raising consciousness among men, and empowering women.¹²⁹¹ It would bring all instances of sexual offences clearly within the boundaries of the criminal law and underscores the gravity of their harms. Forcible rape and sexual assault should simply be defined as "nonconsensual sex" and the severity of the offence, and hence the gravity of the punishment, should be graded according to whether or not violence had been used to achieve it, and, if it had, the specific type and degree of violence involved. In this definition, the essence of rape is the non-consensuality of the sexual act, and non-consensuality, irrespective of whether or not the act had been accompanied by violence, or a threat of violence, entails a criminal liability.

7.6 The Exemption of Marital Rape

7.6.1 Magnitude and Nature of the Problem

Although the family unit is often considered to be the safest place where individuals living in it enjoy love, safety, security and shelter, empirical evidence shows that it, instead, is a place where the most drastic forms of VAW are committed.¹²⁹² Sexual violence is one of the various forms of VAW perpetrated within the family setting. Various terminologies are used in reference to such violence, including among others, forced marital intercourse, forced sexual activity in marriage,

¹²⁸⁹ Stephen J. Schulhofer (1992), *supra note* 1283, p. 35.

¹²⁹⁰ Susan Estrich (1987), *supra note* 1218, p. 102.

¹²⁹¹ Stephen J. Schulhofer (1992), *supra note* 1283, p. 42; and Susan Estrich (1986), *supra note* 1209, p. 1132.

¹²⁹² UNICEF (2000), *supra note* 25, p. 3.

marital sexual aggression, marital sexual assault or, as the present study prefers to use, and marital rape.¹²⁹³ At times, the term ‘wife rape’ is used to emphasize the gender-specific nature of the issue.¹²⁹⁴ Regardless of the differences in terminologies, marital rape is often considered as one of the most common forms VAW with adverse consequences on individual victims. Although the true level of its prevalence has largely remained concealed, much of the available data in Ethiopia puts the prevalence rate in a double digit, with most estimates putting it at as high as 50%.

According to the 2016 DHS, for instance, among women between the age of 15 and 49 years old who reported having ever been married, 69% reported having experienced sexual violence in which their current husband or partner was the offender while 30% reported having experienced sexual violence in which their former husbands or partners were the offenders.¹²⁹⁵ A study conducted in refugee camps and the surrounding host communities in the Somali Region of Ethiopia indicated that more than 70% of the rapes had been committed by husbands and other intimate partners.¹²⁹⁶ Likewise, a study conducted in southwestern Ethiopia found that 50.1% of the women had faced physical and sexual violence in their lifetime at the hands of their husbands or partners.¹²⁹⁷ A study conducted in western Ethiopia also revealed that about 59% of women reported that they had been subjected to a forced sexual intercourse by their husbands or partners at some point in their lifetime.¹²⁹⁸ Around the Gondar area in the northwestern part of Ethiopia, 50.8% of women reported that they had experienced physical, sexual and/or psychological abuse by their partners.¹²⁹⁹ Likewise, a study conducted by the WHO in a rural setting in southern

¹²⁹³ Candice M. Monson *et al.* (1998) ‘Sexual and Nonsexual Marital Aggression: Legal Considerations, Epidemiology, and an Integrated Typology of Perpetrators’, *Aggression and Violent Behavior*, 3(4), pp. 369–389, pp. 371-372.

¹²⁹⁴ *Ibid*, p. 372.

¹²⁹⁵ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 293.

¹²⁹⁶ Angela Parcesepe *et al.* (2008), *supra note* 230, p. 3.

¹²⁹⁷ Kebede Deriba *et al.* (2012), *supra note* 830, p. 4.

¹²⁹⁸ Sileshi Garoma Abeya *et al.* (2011), *supra note* 829, p. 18.

¹²⁹⁹ Yigzaw T. *et al.* (2004) ‘Domestic Violence around Gondar in Northwest Ethiopia’, *Ethiopian Journal of Health Science* 18(3), pp. 133-139.

Ethiopia concluded that “[n]early one third of Ethiopian women reported being physically forced by a partner to have sex against their will within the past 12 months.”¹³⁰⁰

In another study conducted by CARE Ethiopia in four *woredas* in various regions, including a district within the Addis Ababa City Administration, 76.6% of women reported that they had been subjected to sexual violence by their partners or husbands.¹³⁰¹ The study found that the prevalence of sexual violence in Gullelle Sub-City in Addis Ababa was 65.6%.¹³⁰²

According to a study conducted in southwestern Ethiopia, the lifetime prevalence of sexual violence was 50.1%, and 41.5% of women reported having experienced physical or sexual or both forms of violence in the year preceding the survey.¹³⁰³ Likewise, a 2015 systematic review of peer reviewed papers and articles published from 2000 to 2014 and two consecutive Ethiopian DHSs (2005 and 2011) found that the lifetime prevalence of SVAW offences by husbands or intimate partners ranged from 19.2 to 59%.¹³⁰⁴

These figures clearly show that marital rape is common and pervasive. They also show that women are much more likely than men to experience sexual violence by their partners – husbands, cohabitants or regular sexual partners – than by strangers.

Effect wise, marital rape is no less traumatic and abusive than rape by a stranger.¹³⁰⁵ Marital rape occurs repetitively and co-occurs along with other forms of violence.¹³⁰⁶ The following quote by Richard Gelles captures the seriousness of the problem: “many wife victims are trapped in a reign

¹³⁰⁰ World Health Organization (2005), *supra note* 239, p. 7.

¹³⁰¹ CARE Ethiopia (2008), *supra note* 23, p. 21.

¹³⁰² *Ibid.*

¹³⁰³ Kebede Deriba *et al.* (2012) ‘*supra note* 830, p. 1.

¹³⁰⁴ Agumasie Semahegn and Bezatu Mengistie (2015) ‘Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review’, *Reproductive Health* 12:78, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553009/> last visited on 9/15/2018.

¹³⁰⁵ David Finkelhor and Kersti Yllo (1985) *License to Rape: Sexual Abuse of Wives*, New York: Holt, Rinehart and Winston, p. 118; and Michelle J. Anderson (2010), *supra note* 1219, P. 663.

¹³⁰⁶ Jennifer A. Bennice and Patricia A. Resick (2003) ‘Marital Rape: History, Research and Practice’, *Trauma Violence Abuse* 4(3), pp. 228-246, p. 230.

of terror and experience repeated sexual assaults over a period of years. When you are raped by a stranger, you have to live with a frightening memory. When you are raped by your husband, you have to live with your rapist.”¹³⁰⁷ Due to its repetitive nature and co-occurrence along with other forms of violence, mainly physical violence, women experiencing SVAW by their partners are among the most severely victimized individuals.¹³⁰⁸ Despite the significant negative consequences, victims of marital rape rarely receive the appropriate attention and care.¹³⁰⁹

Physically, marital rape causes injuries ranging from relatively minor cuts and bruises to permanent disability and death.¹³¹⁰ It causes injuries including cuts, bruises or aches, eye injuries, sprains, dislocations, burns, deep wounds, broken bones or broken teeth.¹³¹¹ Psychologically, it has negative consequences ranging from depression and PTSD to alcohol and drug abuse.¹³¹² As it is a serious breach of expectations, marital rape may leave the victims in a confused state with strong feelings of anger, betrayal, shame, and a persistent fear of being re-victimized.¹³¹³

Moreover, the underlying motive for committing marital rape is different from other forms of interpersonal violence in general. Evidence suggests that men often use violence in marriage instrumentally, specifically for the purpose of instilling fear and terror in their wives’ hearts in order to ensure compliance, obedience, and passive acceptance of their rule in the home or simply when they feel a loss of power to which they felt they are entitled to.¹³¹⁴ In one study, for instance, a respondent was reported as having exclaimed: *If you call my asking for sex with my wife a rape, then what would you call forced sex occurring outside of marriage.*¹³¹⁵ He was, in essence, asking:

¹³⁰⁷ The Testimony of Richard Gelles before the New Hampshire State Legislature cited in Joanne Schulman (1981) ‘Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases’, *Clearinghouse Review* 15(4), pp. 342-345, p. 345.

¹³⁰⁸ S. Boucher *et al.* (2009) ‘Marital Rape and Relational Trauma’, *Sexologies* 18(2), pp. 95-97, P. 95.

¹³⁰⁹ *Ibid.*

¹³¹⁰ L. Heise *et al.* (1999), *supra note* 816, p. 16.

¹³¹¹ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 296.

¹³¹² L. Heise *et al.* (1999), *supra note* 816, p. 16; and World Health Organization (2005), *supra note* 239, p. 16.

¹³¹³ David Finkelhor and Kersti Yllo (1985), *supra note* 1305, p. 118.

¹³¹⁴ L. Heise *et al.* (1999), *supra note* 816, p. 9.

¹³¹⁵ Tegbar Yigzaw *et al.* (2010) ‘Perceptions and Attitude towards Violence against Women by Their Spouses: A Qualitative Study in Northwest Ethiopia’, *Ethiopian Journal of Health Development* 24(1), pp. 39-45, p. 42.

If you cannot rape your wife, who else can you rape? In the study by Care Ethiopia, one participant was reported as having stated that *my wife means my property – she is living with me to satisfy all my needs – this is not an issue that is up for negotiation.*¹³¹⁶ He also added: “[a] wife has no right to refuse to have sex with her husband. A husband-wife relationship is based on this [expectation on the] issue and a wife is there to serve the husband [whenever] he [needs] to have sex.”¹³¹⁷ These views imply that if their wives refuse to satisfy their sexual needs, then the husbands will resort to violence to enforce what they feel they are entitled to.

According to the Care Ethiopia study, “[a] belief in male sexual entitlement, in the case of marriage, has been documented across all the [surveyed] *woredas*.”¹³¹⁸ The vast majority of sexual violence is more about power, anger, and control than about sexual gratification. Thus, marital rape often tends to be accompanied by excessive controlling behaviors on the part of the husband, such as always insisting on knowing the wife’s whereabouts, controlling her access to health care services, preventing her from visiting friends and speaking with others, and keeping her from participating in any kind of social gathering.¹³¹⁹ Men who were too controlling were more likely to be violent against their partner.¹³²⁰ The 2016 DHS conducted in Ethiopia also demonstrates that violence is preceded by controlling behaviors such as being jealous or angry if she talks to other men; frequently accusing her of being unfaithful; forbidding her from meeting her female friends; trying to limit her contact with her family; and insisting on knowing her whereabouts at all times.¹³²¹ The survey also suggested that *attempts by husbands to closely control and monitor their wives’ behavior are important warning signs and correlates of violence in a relationship.*¹³²² Sometimes, marital rape involves acts of cruelty other than the offenders’ sense of sexual entitlement over their victims. In this regard, a key informant of the present study recounted

¹³¹⁶ CARE Ethiopia (2008), *supra note 23*, p. 28.

¹³¹⁷ *Ibid.*

¹³¹⁸ *Ibid.*, p. 44.

¹³¹⁹ *Ibid.*, P. 32.

¹³²⁰ Kebede Deriba *et al.* (2012), *supra note 830*, p. 1.

¹³²¹ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note 219*, p. 293.

¹³²² *Ibid.*

horrific stories of the EWLA's clients including a victim who was raped while undergoing a treatment for ovarian cancer, and another victim who was repeatedly subjected to a (forcible) marital rape by a drug-using offender.¹³²³

Despite all these tribulations, the majority of women in abusive relationships do not seek help. According to the 2016 DHS, only about one-quarter of women who had experienced physical or sexual violence sought assistance.¹³²⁴ There are cultural, religious, social and economic barriers that might contribute to the difficulty women face to end violence in their relationships. Often times, women continue to stay in abusive relationships due to concerns for the fate of their children,¹³²⁵ the social unacceptability of being single or unmarried,¹³²⁶ fear of retribution, lack of other means of economic support, emotional dependency, and lack of support from family and friends.¹³²⁷ Other factors identified by the CARE Ethiopia study include women's acceptance of a subordinate position to men; lack of self-confidence and self-esteem; having many children but no source of income to support them; and elders' advice to tolerate the abusive relationship citing marriage and children as an excuse.¹³²⁸ Sadly, ending a relationship does not necessarily reduce a woman's risk, as some partners become even more violent when women leave or attempt to leave the relationships.¹³²⁹

¹³²³ Interview with A2, *supra note* 648.

¹³²⁴ Central Statistical Agency (CSA) [Ethiopia] and ICF (2016), *supra note* 219, p. 297.

¹³²⁵ Sileshi Garoma Abeya *et al.* (2012) 'Intimate Partner Violence against Women in West Ethiopia: A Qualitative Study on Attitudes, Woman's Response, and Suggested Measures as Perceived by Community Members', *Reproductive Health* 9:14, available at: <http://www.reproductive-health-journal.com/content/9/1/14> last visited on 10-29-2018.

¹³²⁶ K. Zimmerman (1995) *Plates in a Basket Will Rattle: Domestic Violence in Cambodia: A Summary*, pp. 3-4, available at: <https://www.cisas.org.ni/files/Plates%20in%20a%20basket%20will%20rattle%20domestic%20violence%20in%20Cambodia.pdf> last visited on 9/13/2018.

¹³²⁷ *Ibid.*

¹³²⁸ CARE Ethiopia (2008), *supra note* 23, p. 52.

¹³²⁹ L. Heise *et al.* (1999), *supra note* 816, p. 7.

7.6.2 Unjustifiable “Justifications” for the Exemption of Marital Rape

One of perhaps the most visible limitations of the RCC is its failure to abolish the exemption of marital rape for forcible rape.¹³³⁰ By maintaining the exemption of marital rape, the RCC has simply mirrored and reinforced the longstanding societal views of married women as *sexual and reproductive properties* of their husbands. It simply has legitimized and enforced the belief that marriage ‘grants men unconditional sexual access to their wives.’¹³³¹ However, various commentators have put forward ‘justifications’ for the exemption of marital rape, during both the 2000 Ethiopian Family Law reform and the 2004 Penal Code reform. During the family law reform, marital rape was recognized as a crime in the early draft of the legislation put forward for public discussions and debates.¹³³² In the ensuing debates, the main arguments for maintaining the exemption of marital rape were that criminalizing marital rape will create animosity between spouses and adversely affect marital harmony, lead to divorce after the conviction and sentencing of the offending spouse,¹³³³ and create difficulty in collecting and producing evidence.¹³³⁴ However, none of these ‘arguments’ provide a justification for the impunity of offenders of forcible rape. If a woman suffers no less pain, humiliation, or fear from forcible rape by her husband than that perpetrated by her relative, boyfriend, or stranger, the difference is not strong enough to warrant the total exoneration of the offender in the case of a marital rape, but not the others, from criminal liability and sanction.

Likewise, the argument that criminalizing marital rape will damage marital harmony appears to assume that reconciliation and restoration of marital harmony are fostered by decriminalizing violent acts and barring the offenders from prosecution. However, once the act has been criminalized and the wife reports the incident and initiates a criminal investigation, there is little

¹³³⁰ The Revised Criminal Code, *supra note* 21, Article 620.

¹³³¹ CARE Ethiopia (2008), *supra note* 23, p. 27.

¹³³² Mandefrot Belay (2016) ‘Notes on Legislative Intent: Public Consultation toward Ethiopia’s Family Law Reform and the Revised Code’s Response’, *Mizan Law Review* 10(1), pp. 244-264, pp. 262-263.

¹³³³ *Ibid*, p. 263.

¹³³⁴ *Ibid*.

chance for the spouse to change her mind.¹³³⁵ In addition, reconciliation is not a realistic justification unless some matrimonial harmony exists in the relationship.¹³³⁶ If the couple are no longer concerned about the furtherance of their relationship, the wife should be protected from sexual or any other forms of violence perpetrated by her husband.¹³³⁷ It is also recognized that conciliation in cases of intra-family violence is inadvisable as a means of solving intra-family violence. Conciliation is premised on the notion that the parties at the negotiating table are operating from equal bargaining positions, which is generally not true in cases of intra-family violence.¹³³⁸

So too, the argument that it would be difficult to prove the offence and the offender's criminal culpability cannot also be a justification to decriminalize forcible rape in marriage. In fact, marital rape has already been criminalized by the RCC itself. For instance, marital rape is a criminal offence when it is committed by a woman against her husband.¹³³⁹ Rape against a man is simply defined as follows: “[a] woman who compels a man to [a] sexual intercourse with herself, is punishable....”¹³⁴⁰ Perhaps due to oversight, the phrase “outside wedlock” has been omitted from this newly added type of sexual offence. Hence, this provision, at least in theory, protects a man against a rape that could potentially be committed by a woman, including his wife. In this case, the law does not take into account the relationship between the offender and the victim. Raising evidentiary issues to defend the exemption of marital rape – while at the same time criminalizing it where it is committed by a woman against her husband – does not make sense.

¹³³⁵ Stuart M. Litoff (1978) ‘Criminal Law—The Husband's Rape Exception: An Equal Protection Alternative—State v. Smith, 148 N.J. Super. 219, 372 A.2d 386 (Essex County Ct. 1977)’, *Western New England Law Review* 1(2), pp. 409-427, p. 414.

¹³³⁶ Peter English (1976) ‘The Husband Who Rapes His Wife’, *The New Law Journal* 126: pp. 1223–1225, p. 1225.

¹³³⁷ *Ibid*, p. 1223.

¹³³⁸ Inter-American Commission on Human Rights (2011) *supra note* 323.

¹³³⁹ The Revised Criminal Code, *supra note* 21, Article 621.

¹³⁴⁰ *Ibid*, Article 621.

Moreover, forcible rape is also a criminal offence where it is committed by a man against his partner in a *de facto* marriage or in what is, in legal terms, known as *irregular union*.¹³⁴¹ Under the Revised Family Code, irregular union is recognized as a factual institution with nearly the same matrimonial effects as a *de jure* marriage.¹³⁴² Where an irregular union has existed for three years, it, like a *de jure* marriage, will have the same retrospective effects on the property of the spouses.¹³⁴³ Marriage and irregular union do have the same effects in establishing paternity.¹³⁴⁴ The two institutions do share common features in most substantive matters and differ only in some minor issues. However, when it comes to sexual offence, a man who cohabits with a woman in this *de facto* marriage cannot rape his partner with impunity as the exemption of marital rape is just limited to a man who rapes his wife in a wedlock or in a *de jure* marriage.¹³⁴⁵ This means a woman in a factual institution of ‘irregular union’ is protected from being raped by a cohabitant, but not a woman in marriage. No logic lends credibility to any argument for the exemption of marital rape in a *de jure* marriage while it is criminalized in an ‘irregular union.’ Marital rape has also been criminalized where it has been committed by a husband, knowing of his wife’s mental incapacity.¹³⁴⁶

Most importantly, marital rape has been criminalized in sexual assault cases where the sexual acts do not involve intercourse (penile-vaginal penetration).¹³⁴⁷ The law criminalizes sexual assault as a separate but a less serious offence, under Article 622. By eliminating the phrase “outside wedlock” from Article 590 of the 1957 Penal Code, the RCC defines sexual assault under the heading ‘Sexual Outrages Accompanied by Violence,’ as follows: “Whoever [...] compels a person of the opposite sex, to perform, or to submit to an act corresponding to the sexual act, or

¹³⁴¹ *Ibid*, Article 620.

¹³⁴² The Revised Family Code, *supra note* 793, Article 98 (According to this provision, “An irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage.”).

¹³⁴³ *Ibid*, Article 103.

¹³⁴⁴ *Ibid*, Article 104 and Article 130.

¹³⁴⁵ The Revised Criminal Code, *supra note* 21, Article 620.

¹³⁴⁶ *Ibid*, Article 623.

¹³⁴⁷ *Ibid*, Article 622.

any other indecent act, is punishable”¹³⁴⁸ This offence does not (and should not) employ the term “outside wedlock” to exonerate either of the spouses from a criminal liability.¹³⁴⁹ Thus, a man cannot compel his wife to ‘perform or to submit to an act corresponding to the sexual act, or any other indecent act’ with impunity.¹³⁵⁰ The major flaw of such a formulation is that it has arbitrarily characterized ‘acts corresponding to a sexual act’ (intercourse), such as anal or oral sex, as a less serious crime than penile-vaginal penetration and attached less severe penalties to them.¹³⁵¹ Meanwhile, it decriminalizes marital rape for what it deems to be more serious offences, such as forced penile-vaginal penetration, while criminalizing it for supposedly less serious offences like forced anal or oral sex.

Decriminalizing forcible rape while criminalizing sexual assault, in essence, amounts to criminalizing theft while decriminalizing robbery. The *expose des motifs* of the RCC states that revising this specific provision was necessitated just for clarification of terminologies.¹³⁵² But instead, the lawmaker added more confusion and absurdity than clarity to the approach adopted by the 1957 Penal Code. At any rate, it does not make any sense to come up with any reason to justify the exemption of marital rape while criminalizing it in numerous other instances.

Debates for and against the exemption of marital rape were also raised during the criminal law reforms. In the two draft codes prepared by the then Ministry of Justice and the then Justice and Legal System Research Institute, the exemption of marital rape was not abolished.¹³⁵³ One of the reasons stated by the drafters of the RCC was that the prevalence of marital rape was not known since no such case had been reported to the police.¹³⁵⁴ Merely the absence of any previous reported

¹³⁴⁸ The *Ibid.*

¹³⁴⁹ See the Penal Code, *supra note* 34, Article 590.

¹³⁵⁰ The Revised Criminal Code, *supra note* 21, Article 622.

¹³⁵¹ *Ibid.*

¹³⁵² The *Expose des motifs* of the Revised Criminal Code, *supra note* 705, p. 288.

¹³⁵³ Kidist Abayneh (2006) *Analysis of the 2005 Criminal Code of Ethiopia in Light of Protecting Women's Rights*, L.L.B Thesis, Addis Ababa University, p. 20.

¹³⁵⁴ *Ibid.*

cases convinced the drafters to believe that marital rape was not a social problem at all.¹³⁵⁵ However, they failed to recognize the fact that marital rape was not reported to the police because, among other things, it was not made a criminal act in the first place.¹³⁵⁶ Neither had they themselves tried to conduct or pushed for a survey to be conducted or the available studies to be reviewed before making a gross conclusion that marital rape was not a social problem simply because it has not been reported to the police. As had been the case during the family law reform, during the criminal law reforms too, the issue surrounding evidentiary matters was also raised.¹³⁵⁷

Subsequently, forums were organized to gather public opinion on the first draft. During these forums, advocacy groups such as the EWLA requested for the criminalization of marital rape.¹³⁵⁸ The advocates argued that women should not be obliged to make sexual intercourse only to fulfill the needs of their husbands; that giving priority to men's sexual interest by disregarding women's consent contradicts women's human rights; that the conclusion of a marriage with a woman does not entitle a man to forcibly rape his wife; and that the risks posed by the exemption of marital rape on the advent and spreading of HIV/AIDS would be grave.¹³⁵⁹

On the other hand, the proponents of the exemption of marital rape argued that marital rape does not exist or is legally impossible because the wife has already given her consent (by virtue of the marriage contract) to have sexual intercourse with her husband – the *implied consent* doctrine,¹³⁶⁰ and that criminalizing marital rape would undermine the sanctity of marriage and become a cause for divorce – the *marital privacy* 'argument.'¹³⁶¹ During these debates, however, both the *implied*

¹³⁵⁵ Interview with A1, *supra note* 657. See also Kidist Abayneh (2006), *ibid.*

¹³⁵⁶ Kidist Abayneh (2006), *ibid.*

¹³⁵⁷ Interview with A1, *supra note* 657.

¹³⁵⁸ Interview with A1, *ibid.* See also Kidist Abayneh (2006), *supra note* 1353, p. 19; Sinidu Fekadu (2008), *supra note* 2690, p. 18; and Mersha Shenkute (2013), *supra note* 26, p. 21.

¹³⁵⁹ Interview with A1, *ibid.* See also Kidist Abayneh (2006), *ibid.*

¹³⁶⁰ Interview with A1, *ibid.* See also Kidist Abayneh (2006), *ibid.*, p. 21.

¹³⁶¹ Kidist Abayneh (2006), *ibid.*

consent doctrine and the *marital privacy* theory were no longer legal ‘arguments’ and their relevance was just limited to legal history books.

The *implied consent* doctrine, also known as ‘Hale Doctrine,’ was developed by and named after a jurist, Sir William Hale.¹³⁶² It was the earliest ‘rationale’ and most enduring justification for the exemption of marital rape within the English common law tradition.¹³⁶³ The doctrine maintains that, through marriage, a wife gives her irrevocable consent to sexual intercourse with her husband, under all circumstances and irrespective of the state of her health or how she happens to be feeling at the time. It was also based up on the doctrine of *one flesh in marriage*.¹³⁶⁴ Under this doctrine, upon marriage, a woman is placed under the protection and authority of her husband; they were, by law, one flesh, and that flesh was the man.¹³⁶⁵ Of course, the Hale Doctrine was not theorized to justify the exemption of marital rape in Ethiopia. Neither has the doctrine been formally incorporated into the Ethiopian legal system. However, the theory had the support of empirical studies. For instance, a study conducted by CARE Ethiopia showed that there is a widely accepted belief that *a marriage contract provides a husband with unconditional access to sex with his wife whenever he chooses*.¹³⁶⁶ Presumably, lawmakers maintained the law on the belief that its removal was thought to be ‘contrary to the societal culture’ as argued by the proponents of the marital rape exemption.¹³⁶⁷ Yet, neither the Hale Doctrine nor societal beliefs can justify the protection of the husband from prosecution for committing forcible rape against his wife. It is unreasonable for one to conclude based simply on a woman’s decision to marry that she intends to make her body accessible to her husband whenever wants.

¹³⁶² Maria Pracher (1981) ‘The Marital Rape Exemption: A Violation of a Woman's Right of Privacy’, *Golden Gate University Law Review* 11(3), p. 717, available at: <https://digitalcommons.law.ggu.edu/ggulrev/vol11/iss3/1/> last visited on 9/14/2018.

¹³⁶³ Michelle J. Anderson (2010), *supra note* 1219, P. 662.

¹³⁶⁴ Hilaire Barnett (1998), *supra note* 65, pp. 259-260.

¹³⁶⁵ *Ibid.*

¹³⁶⁶ CARE Ethiopia (2008), *supra note* 23, pp. 44-45.

¹³⁶⁷ Interview with A1, *supra note* 657.

The second argument, the *marital privacy* theory, simply maintains that spousal sexual relations should be treated as personal matters outside of the realm of criminal law.¹³⁶⁸ This argument too is irrational, discriminatory and unjust. As Maria Pracher argued, “[a] formulation of privacy which would protect a marital unit, rather than an individual's rights within that relationship, disregards basic premises of privacy by failing to recognize an individual’s autonomy over selfhood.”¹³⁶⁹ As Pracher noted, it makes “the notion of privacy vague, in that by allowing the marital exemption, what is protected is the dominant role of the husband, rather than the marital relationship or privacy.”¹³⁷⁰ Pracher also added that “[a] woman does not forfeit her right to privacy upon marriage.”¹³⁷¹ Thus, the marital veil of privacy is nothing more than a cover up to give abusive husbands a ‘license’ to rape their wives and to shield them from criminal liability.

It also appears that the legal impossibility of marital rape is reminiscent of a view of rape as a property crime. In the past, a woman was viewed as a sexual and reproductive property of her husband.¹³⁷² Thus, a married man cannot be prosecuted under the law for using his own property as he sees fit.¹³⁷³ However, where the rape has been committed by someone else, it was seen as an attack against a man’s property. In such cases, the woman’s husband, if she was married, or her father, if she was not married, could expect to receive compensation for the *damaged property*.¹³⁷⁴ This practice was institutionalized under the Ethiopian law. Accordingly, the husband had a vested interest to claim compensation for sexual or physical assaults committed against his wife, and if the victim was unmarried, compensation was due to her family. For instance, Article 2114 of the 1960 Civil Code of Ethiopia stipulates that “[w]here a person has been sentenced by a criminal court for rape or indecent assault, the court may award the victim fair compensation by way of

¹³⁶⁸ Emebet Kebede (2004), *supra note 27*, pp. 68-71.

¹³⁶⁹ Maria Pracher (1981), *supra note 1362*, p. 751.

¹³⁷⁰ *Ibid.*

¹³⁷¹ *Ibid.*

¹³⁷² Andrea Dworkin (1976), *supra note 188*, p. 27; Mikki van Zyl (1990), *supra note 358*, p. 10; Louise du Toit (2008), *supra note 359*, p. 143; and Jennifer Temkin (1982), *supra note 6*, p. 400.

¹³⁷³ Andrea Dworkin (1976), *ibid.*, p. 26; and Frances P. Bernat (2002), *supra note 361*, p. 86.

¹³⁷⁴ K. Burgess-Jackson (1996), *supra note 359*, pp. 60-68; A. F. Schiff (1982), *supra note 362*, p. 235; and Vicki McNickle Rose (1977), *supra note 14*, pp. 75-89.

redress.”¹³⁷⁵ It further provides that “[i]n such an event, compensation may also be awarded to the husband of the woman, or to the family of the girl who has been raped.”¹³⁷⁶

For physical assaults, Article 2115 of the 1960 Civil Code stipulates that a “[f]air compensation may be awarded by way of redress to a husband against a person who, by inflicting bodily injury on the wife, renders her companionship *less useful or less agreeable* to the husband.”¹³⁷⁷ It added that “[t]he action which the husband may bring on this ground shall be independent of the action for damages which the wife may bring in respect of the injury she has suffered.”¹³⁷⁸ A husband was not criminally liable for raping his wife simply because he was using his property as he wished. Where his wife was sexually or physically violated by a third party, the act not only constituted a criminal offence but also the husband can bring a civil action against the offender for making the victim ‘*less useful*’ or ‘*less agreeable*’ to him as a husband. Although these provisions were tacitly repealed by the equality clause of the FDRE Constitution, the CEDAW, the Women’s Protocol and Revised Family Code, the legal usage of words like ‘*less useful*’ or ‘*less agreeable*’ to describe the relative importance of married victims to their husband reflected not just the idea of a stain attached to the woman’s body but also the subsequent loss of her value to her male possessor. In this way, the rape law has been used to advance the interest of the patriarchy.

In sum, the debates for and against the exemption of marital rape ended up playing out against the interest of women’s rights advocacy groups. In this regard, as a member of the legislation drafting committee, Tsehai Wada noted: “[I] had also the opportunity to read recommendations submitted by different bodies, such as gender based NGOs. Though these groups have expressed their disagreement with this legal position, they were not passionate enough to arouse public support, as they did with regard to other crimes such as abortion.”¹³⁷⁹ He added that “[t]he general mood of the participants of the different workshops tends to show that removing the exception is ‘contrary

¹³⁷⁵ The Civil Code, *supra note* 331, Article 2114 (1).

¹³⁷⁶ *Ibid*, Article 2114 (2).

¹³⁷⁷ *Ibid*, Article 2115.

¹³⁷⁸ *Ibid*, Article 2115.

¹³⁷⁹ Tsehai Wada (2012), *supra note* 412, at note 87.

to our culture,' it disrupts the bond that needs to exist between spouses, etc. So the exception that was seen in the repealed law is allowed to continue.”¹³⁸⁰ Thus, by maintaining the exemption of marital rape, the law has allowed the culture of violence and impunity to continue.

7.6.3 A Case for Ending the Exemption of Marital Rape

Nowadays, marital rape is well understood as a form of VAW that denies its victim the right to physical security, bodily integrity, privacy, liberty, equality and freedom from discrimination. The exemption of marital rape constitutes a discrimination against women. It assigns to married women a separate and disadvantaged status by creating an irrational distinction between married women and single women, married men and married women, and women in a *de jure* marriage and women in a *de facto* marriage. Marital rape constitutes a violation of women’s human rights. In its Recommendation No. 19, for instance, the CEDAW Committee has stressed the need for state parties to ensure that “laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.”¹³⁸¹ However, by maintaining the discriminatory law that exempts marital rape against a married woman, but not against a married man, the state has failed to respect its obligations under the Constitution¹³⁸² and international treaties.¹³⁸³

Although Ethiopia has made a reservation to a provision of the Women’s Protocol that calls upon states to proscribe sexual violence in a private setting,¹³⁸⁴ it has not made a reservation to maintain discriminatory laws. But, Article 620 of the RCC is discriminatory against married women, and as such (i.e. being discriminatory), it is implicitly outlawed by other provisions of the Women’s Protocol to which Ethiopia has not made any reservation. In this regard, Article 2(1)(b) of the Women’s Protocol obliges states parties to “combat all forms of discrimination against women

¹³⁸⁰ *Ibid.*

¹³⁸¹ General Recommendation No. 19, *supra note* 481, para. 24.

¹³⁸² The FDRE Constitution, *supra note* 426, Article 35(1-2)

¹³⁸³ *See e.g.*, the Women’s Protocol, *supra note* 525, Article 14; and the CEDAW, *supra note* 458, Article 2(d)-(e).

¹³⁸⁴ The Women’s Protocol Ratification Proclamation, *supra note* 612, Article 3(2)(a).

through appropriate legislative, institutional and other measures [and] enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination...”¹³⁸⁵ Likewise, Article 8(f) stipulates that “[w]omen and men are equal before the law and shall have the right to equal protection and benefit of the law” and obliges states to take measures to ensure “reform of *existing discriminatory laws* and practices in order to promote and protect the rights of women.”¹³⁸⁶ Being discriminatory against married women, Article 620 of the RCC and the reservation to it contradict Article 2(1) and Article 8(f) of the Women’s Protocol. It also contradicts the equality clause of the FDRE Constitution and other international treaties, including the CEDAW.

Ending the exemption of marital rape, as Michelle J. Anderson noted, “is crucial to redressing the harms caused by wife rape.”¹³⁸⁷ It is the bare minimum that the law has to claim fairness to women.¹³⁸⁸ In this regard, the CEDAW Committee clarifies that, to meet the minimum international human rights standards, the law should at least criminalize marital rape.¹³⁸⁹ Specifically addressing the Ethiopian rape law, the CEDAW Committee expressed its concern about Ethiopia’s failure to criminalize marital rape¹³⁹⁰ and recommended that it should amend its criminal law to criminalize marital rape.¹³⁹¹ Maintaining the exemption of marital rape, therefore, is a failure to meet the minimum international human rights standards on VAW.

Maintaining the exemption of marital rape, on the other hand, defeats one of the explicitly stated purposes of the rape law reforms – ensuring the protection of women’s human rights. By

¹³⁸⁵ *Ibid*, Article 2(b).

¹³⁸⁶ *Ibid*, Article 8(f).

¹³⁸⁷ Michelle J. Anderson (2010), *supra note* 1219, P. 663.

¹³⁸⁸ *Ibid*.

¹³⁸⁹ *See e.g.* Committee on the Elimination of Discrimination against Women (2002), *supra note* 1239, paras. 95-96; Committee on the Elimination of Discrimination against Women (2006) Concluding Observations, Malaysia, CEDAW/C/MYS/CO/2, para. 21; the United Nations Commission on Human Rights (2001) Concluding Observations, Azerbaijan, CCPR/CO/73/AZE (2001), para. 17; and the United Nations Commission on Human Rights (2003) Concluding Observations, Sri Lanka, CCPR/CO/79/LKA, para. 20.

¹³⁹⁰ Committee on the Elimination of Discrimination against Women (2011) Concluding Observations, Ethiopia, para. 20.

¹³⁹¹ *Ibid*, para. 21(a).

decriminalizing marital rape, the law denies sexual autonomy to women. Often, women who lack sexual autonomy are powerless to refuse unwanted sex or to use contraception and, thus, are at a higher risk of unwanted pregnancies.¹³⁹² This, in effect, undermines women's reproductive rights as recognized under the Constitution and the international human rights instruments adopted by Ethiopia. It specifically undermines the basic right of all couples to decide freely and responsibly the number, spacing and timing of the children they give birth to.¹³⁹³ Additionally, married women do not even have the right to a safe abortion when the pregnancy had resulted from a forcible marital rape since, legally speaking, a married woman cannot be raped by her husband.¹³⁹⁴ This is so despite the fact that reproductive rights are considered as central to women's control over their own lives.¹³⁹⁵ According to Meaza Ashenafi, "women's reproductive autonomy is central to the issue of women's equality and full participation in society."¹³⁹⁶ She added that it is "a key to women's ability to exercise all other fundamental rights."¹³⁹⁷ Thus, criminalizing marital rape can be taken as an important first step in protecting women's reproductive autonomy and rights.

Most of all, the exemption of marital rape may compromise women's ability to protect themselves from HIV/AIDS. Sexual violence directly affects the risk of exposure to HIV and other STIs, especially when it interferes with women's ability to demand the use of condom.¹³⁹⁸ As Fikremarkos Merso suggested, marital rape exemption "would certainly be a risk factor for HIV as the wife does not have the right to determine her sexuality."¹³⁹⁹ Recounting stories of the

¹³⁹² L. Heise *et al.* (1999), *supra note* 816, p. 14.

¹³⁹³ See e.g., the Women's Protocol, *supra note* 525, Article 14, the CEDAW, *supra note* 458, Article 16; International Covenant on Civil and Political Rights, Article 17, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; International Covenant on Economic, Social and Cultural Rights, Article 12, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966; and the ACHPR, *supra note* 521, Article 9 and Article 16.

¹³⁹⁴ The Revised Criminal Code, *supra note* 21, Article 551(1)(a).

¹³⁹⁵ Amnesty International (2004), *supra note* 71, p. 24.

¹³⁹⁶ Meaza Ashenafi (2004), *supra note* 746, p. 80.

¹³⁹⁷ *Ibid*, p. 83.

¹³⁹⁸ L. Heise *et al.* (1999), *supra note* 816, p. 16.

¹³⁹⁹ Fikremarkos Merso (2008) *Women and Girls and HIV/AIDS in Ethiopia: An Assessment of the Policy and Legal Framework Protecting the Rights of Women and Girls and Reducing Their Vulnerability to HIV/AIDS*, UNFPA Document, p. 14.

EWLA's clients, Meaza Ashenafi also noted that "in marital relationships, women are forced to submit to sexual advances even when they are sure of their partners' infidelity."¹⁴⁰⁰ Likewise, an informant of the present study, A1, noted that "the main issue raised by advocates of the criminalizing of marital rape during the revision of the 1957 Penal Code was the spread of HIV/AIDS. Women who are economically dependent on their husbands are more likely to sleep with their spouses, even while knowing that they are infected with the virus. They cannot refuse sexual intercourse."¹⁴⁰¹ However, the law ignores this imbalance of power in negotiating safe sex in marriage and maintains the exemption of marital rape by a man against his wife, but not vice versa. By doing so, it ultimately undermines women's right to life, a basic right to enjoy and exercise all other human rights.

In relation to the advent of HIV/AIDS, failure to criminalize marital rape is a breach of specific obligations under international treaties ratified by Ethiopia. In this regard, the Women's Protocol imposes upon the state clear and precise obligations, calling upon the state to respect and promote the right to the sexual and reproductive health of women in general and "the right to self-protection and to be protected against [STIs], including HIV/AIDS" in particular.¹⁴⁰² Self-protection is at stake due to the power imbalance in negotiating safe sex and hence the duty to protect women rests upon the state. Thus, it is the obligation of the state to protect married women against STIs, including HIV/AIDS, among other things, by criminalizing forcible rape in marriage.

Moreover, failure to define (forcible) marital rape as a criminal act, in essence, is a refusal to acknowledge it as a violation of human rights and a denial of its existence, preventing the introduction of the required legal and policy reforms to address it.¹⁴⁰³ The exemption of marital rape promotes a culture of impunity and contributes to a view of sexual violence as a routine, socially accepted and normal act among the public. Criminalizing marital rape, on the other hand,

¹⁴⁰⁰ Meaza Ashenafi (2004), *supra note* 746, p. 81.

¹⁴⁰¹ Interview with A1, *supra note* 657.

¹⁴⁰² The Women's Protocol, *supra note* 525, Article 14(1)(d).

¹⁴⁰³ Sana Loue (2001) *Intimate Partner Violence: Societal, Medical, Legal, and Individual Responses*, New York: Kluwer Academic Publishers, p. 77.

sends a firm social message that rape is a form of VAW regardless of the relationship between the offender and the victim; that it will not be tolerated; and that it would be punished wherever and whenever it occurs.

7.7 Conclusion

Generally, the 2004 rape law reforms were found to be incomprehensive and piecemeal in their nature. The RCC maintains the preexisting classification of sexual offence as an *affront to collective morality and chastity*, and makes an unnecessary distinction in the degree of gravity between rape assaults involving sexual intercourse and those involving other forms of sexual penetration or act. Moreover, not only does the RCC fail to define rape in fully gender-neutral terms and to define forcible rape and sexual assault as non-consensual sexual conducts, but it also maintains the exemption of forcible marital rape.

CHAPTER EIGHT: LIMITATIONS OF THE RAPE LAW AND POLICY REFORMS ON PROCEDURAL AND EVIDENTIARY MATTERS

8.1 Introduction

This chapter addresses one of the primary objectives of the present study - assessing the limitations of rape law and policy reforms, specifically with respect to procedural and evidentiary matters. Accordingly, the first section identifies and critically examines the main limitations of the reforms in addressing the rules and practices of procedural law applicable to rape cases while the second section explicates the gaps of the reforms in terms of rules and practices of evidentiary law.

8.2 Limitations of the Rape Law on Procedural Matters

8.2.1 Gender-blind Rules of Criminal Procedure Law

Unlike victims of inter-personal violence in general, rape victims who decide to report the incident to the police and participate in the criminal proceedings may experience secondary distress in many ways, including insensitive questioning, attitudes of skepticism and disbelief by the key actors within the CJS, frustration and inconvenience related to excessively prolonged proceedings, anxiety about testifying in a public trial,¹⁴⁰⁴ and a hostile cross-examination by the offender or his lawyer at the trial.¹⁴⁰⁵ Such secondary distress can be alleviated by reforming the procedural and evidentiary rules and practices within the CJS. The failure to address these matters might possibly be contributing for the high level of attrition and the low level of conviction rates for rape cases and the harrowing treatment of the victims. Regarding this, Sara Tadiwos noted that “[f]ew cases come to courts, still fewer rapists are convicted, and the victim, rather than the rapist, is put on trial, rendering rape still a serious threat to women.”¹⁴⁰⁶ In highlighting the myths and stereotypes

¹⁴⁰⁴ Ivana Bacik *et al.* (1998) *The Legal Process and Victims of Rape: A Comparative Analysis of the Laws and Legal Procedures Relating to Rape, and Their Impact Upon Victims of Rape, in the Fifteen Member States of the European Union*, Dublin: The Dublin Rape Crisis Centre, p 31.

¹⁴⁰⁵ Carol Smart (1989) *Feminism and the Power of Law*, London: Routledge, Chapter 2, p. 39.

¹⁴⁰⁶ Sara Tadiwos (2001), *supra note 27*, p. 6.

surrounding the implementation of rape law, Sara added that “social attitudes and their articulation in the legal process operate to protect not the victim but the rapist” and that “being raped is what is punished and what at the same time constitutes the crime.”¹⁴⁰⁷

During the 2004 rape law reform, advocacy groups such as the EWLA lobbied for the amendment of the procedural and evidentiary rules.¹⁴⁰⁸ They demanded for the adoption of the rules on trying rape cases *in-camera*, reducing the burden of proof for rape cases, and limiting the offender’s bail right.¹⁴⁰⁹ Yet, the substantive rape law reforms have not been accompanied by changes in procedural law and evidentiary rules or practices.

Thus, despite some promising policy reforms, both the criminal procedure law currently in force and the draft code of procedural and evidentiary rules do not include specific rules applicable to rape cases. Generally, the 1961 Criminal Procedure Code is the main procedural law which, in the absence of other specific legislations, regulates all criminal proceedings. It is a default procedural law for criminal proceedings. According to the present study’s key informant, J1, “[t]here is no separate rules of procedure promulgated specifically to deal with rape cases. Nor do we have a specific policy, directives or protocols on rape cases. We follow the general rules of procedural law that are used to deal with any other criminal cases.”¹⁴¹⁰

The 1961 Criminal Procedure Code does not incorporate the rights of rape victims such as the right to be treated with respect and recognition, the right to be referred to adequate support services, the right to receive information about the progress of the case, the right to be present and give input to the decision-making process, the right to counsel, the right to protection of physical safety and privacy, the right to compensation and the like. The existing criminal procedure law appears to be gender-blind. Thus, if rape victims decide to report the incident to the police and be involved in the CJS, their cases will be treated like any other criminal cases. Under such a gender-blind legal

¹⁴⁰⁷ *Ibid.*

¹⁴⁰⁸ Ethiopian Women Lawyers Association (2001), *supra note* 654.

¹⁴⁰⁹ *Ibid.*

¹⁴¹⁰ Interview with PP2, *supra note* 849.

context, it is highly likely for rape myths and stereotypes to creep in and influence the judgments of the key actors at every stage of the CJS, leading to a harrowing treatment of the victims.

8.2.2 Initial Reporting and Recording of Rape Cases

Normally, a rape case is initially reported to the police.¹⁴¹¹ It may also be reported to the prosecutor, who must then forward it to the police.¹⁴¹² The disbelief and mistreatment of the victims starts at this early stage. Often, the victims' stories will be trusted based on what the police think of them and the prevailing stereotypes of women who *can or cannot be raped*.¹⁴¹³ These criteria set up images of model women who cannot be raped, and victims who do not meet the criteria often cannot be and often are not classified by the police as genuine victims of rape.¹⁴¹⁴ The typical example in this regard is the police' classification and recording of rape victims into two categories: virgins and non-virgins.¹⁴¹⁵ Upon reporting, as this classification and recording implies, a victim of rape would be repeatedly questioned as to whether she was a virgin or not at the time of the alleged assault. If she was a virgin, her case meets the criteria and her credibility may not be questioned. Instead, her case would be met with a more serious investigative response, as compared to cases involving a non-virgin victim.¹⁴¹⁶ The practice of classifying victims as virgin and non-virgin has largely been abandoned. However, some official reports from sub-city level police departments contain such classification and recording. The federal courts' digital data-base system has also included a separate category for victims of rape who are virgin. For instance, as recently as 2016, the digital database of the Lideta Division of the Federal First Instance Court had contained at least three convictions for abducting and raping virgins. This indicates that the virgin and non-virgin dichotomy and recordings still persist.

¹⁴¹¹ Criminal Procedure Code, *supra note* 425, Article 16.

¹⁴¹² *Ibid*, Article 16.

¹⁴¹³ Mikki van Zyl (1990), *supra note* 358, pp. 22- 27.

¹⁴¹⁴ Jeanne Gregory and Sue Lees (1999) *Policing Sexual Violence*, London: Routledge.

¹⁴¹⁵ Theresa Rouger (2009), *supra note* 293, p. 36; Sinidu Fekadu (2008), *supra note* 2690, p. 18; and Indrawatie Biseswar (2011), *supra note* 28, p. 185.

¹⁴¹⁶ Sinidu Fekadu (2008), *ibid*, p. 18.

Currently, rape cases are generally classified and recorded based on the age of the victims, as child victims and adult victims. However, replacing the ‘virgin and non-virgin’ dichotomy with a ‘child and adult’ dichotomy may have the same effect as children are often considered to be virgin while adults are generally viewed as non-virgin. For instance, the present study’s key informants believe that more adults report fabricated rape cases than do child victims. The classification of rape cases based on the age of the victims, with such unwarranted assumptions regarding false accusation of rape by adult victims, may still use certain criteria to determine the degree and seriousness of the responses from the CJS. It will affect how the key actors respond to rape cases involving child victims on the one hand and those involving adult victims on the other. It appears that in rape cases involving children, their credibility might not be questioned, potentially warranting a serious investigation response while in cases involving adults, the focus seems to be on the credibility of the victims and/or their claims. However, the classification of rape cases along the age of the victims by itself does not create a problem if it is detached from the attribution of credibility and is used only to offer specialized care and treatment that meet the needs of child victims.

8.2.3 Setting and Manner of Interviewing Rape Victim

Once a rape case has been reported, the victim has to be interviewed and her statement recorded as part of the initial investigation process. However, there is no procedural rule or directive instructing the responding police officer to talk with and interview the victim in a private area to prevent a possible re-traumatization. For instance, in an observation conducted by the present researcher at the Bole Sub-City Police Department on November 14, 2017, the special unit in charge of investigating rape cases had only one small office, which is further partitioned into two rooms. In the first small room, which is located immediately behind the room’s main gate, the prosecutor was interviewing the victim and a meter or so apart in the same room, the head of the unit was handling routine administrative activities and receiving other clients. Sometimes, clients were seen meeting the head of the unit, in groups, while right next to them, the prosecutor was interviewing a victim.



Figure 9. Partial view of victims' interview room of Bole Sub-City Police Department

Bole Sub-City Police Department Women's and Children's Investigation Unit, Picture taken on November 14, 2017 8:55 AM

As shown in Figure 9 above, the remaining four investigators use the next small room for interviewing the victims. Other police departments also face similar challenges as there are no separate private rooms to interview one victim at a time.¹⁴¹⁷ An informant of the present study, PP2, affirmed the existence of this problem saying, "I used to interview victims in the same room where investigators were taking statements of other rape victims."¹⁴¹⁸ This view was also shared by rape-victim interviewees. For instance, victims were asked whether they were interviewed in a private place during the investigation of their cases. Accordingly, V1 and V3 stated that they had been interviewed in the presence of other persons. Other key informants also expressed their concern over the lack of a private place for interviewing the victims.¹⁴¹⁹ Thus, in the existing situation, the victims have to describe in precise detail what had happened to them, in the presence of other clients and officers. In a public setting, naming one's intimate body parts such as sexual

¹⁴¹⁷ Interview with PP2, *supra note* 849.

¹⁴¹⁸ *Ibid.*

¹⁴¹⁹ Interview with A2, *supra note* 648.

organs is almost always embarrassing and it is particularly traumatic for someone who has been sexually assaulted.¹⁴²⁰

Furthermore, the victims are not given the option to report the incident to and be interviewed by a female police officer. In this regard, the interviewees were asked to identify the sex of the police officer who investigated their cases. Four interviewees stated that their cases were investigated by male officers¹⁴²¹ while one interviewee, V5, stated that she had given her initial statement to a female officer but afterwards her case was investigated by a male officer. Only one interviewee, V2, stated that her case had been handled entirely by a female police officer. However, as Yakin Ertürk emphasizes, “[t]he principles of dignity, integrity, privacy and respect also need to be borne in mind with respect to reporting – with provisions for confidentiality and being able to make reports to female staff [being] key basic measures.”¹⁴²² For this reason, rape victims should have at least been provided with the option to report their cases to and be interviewed by a female officer.

In addition to the setting of interviewing and the sex of the police officer in charge of investigating the case, the attitudes of the police and the overall manner of interviewing are also essential factors to prevent a possible re-traumatization and secondary victimization of the victims. The victim has to be treated as a human being, deserving of trust and respect.¹⁴²³ The police should at least show genuine empathy to the victim. They should refrain from showing a judgmental attitude and forwarding leading or suggestive questions to the victims. Also, they should allow the victim adequate time to tell her story without undue interruption. The police should react in a neutral manner but show empathy to her story. However, there are no directives or procedural rules which

¹⁴²⁰ Mikki van Zyl (1990), *supra note* 358, p. 22.

¹⁴²¹ Interview with V6, *supra note* 935; Interview with V1, *supra note* 926; Interview with V4 on March 20, 2019, at 11:00:12:00 AM; and Interview with V3, *supra note* 930.

¹⁴²² The United Nations Human Rights Council (2008), *supra note* 38, para. 274.

¹⁴²³ *Ibid*, para. 280.

provide detailed instructions regarding the manners of conducting the preliminary interview of a rape victim by the police.

In the absence of clear instructions, the police tend to blame the victim and may ask leading or suggestive questions.¹⁴²⁴ All too often, the police blame the victim, using such statements of rebuke as the following: *You are the one who bring this event, so what are you doing here at the police station?*¹⁴²⁵; *Well, why did you go with the offender? You were asking for it!*¹⁴²⁶; *What wrongs did the offender do against you other than the rape that you are alleging?*¹⁴²⁷ Within the CJS, these kinds of suggestive or leading questions are common.

For instance, an interviewee of the present study, V5, was a 16-years-old girl.¹⁴²⁸ She was raped by a neighbor who was living in a shared compound. However, fearing threats from the offender, she did not report the incident to the police for about four months after the incident had happened. Later on, she decided to tell the story to one of her close relatives who encouraged her to report the case to the police. The victim was asked to tell what kind of questions were posed to her by the police during the investigation, and she confirmed being asked the following suggestive or leading questions: *What kind of cloth did you wear during the incident? Did you scream? Were you alone at that time? Did you try to stop him?* Four other interviewees also stated that they had faced similar questions during the investigations.¹⁴²⁹

Moreover, in the absence of clear instructions, rape victims could be subjected to interrogation by multiple officers, simultaneously or one after the other, and sometimes, at different places. Victims were asked about the number of police officers involved in the investigation of their cases. Only one interviewee, V2, stated that she had been treated by one police officer. Two interviewees, V1

¹⁴²⁴ Ministry of Women, Children and Youth Affairs (MoWCYA) (2013), *supra note* 217, pp. 73-74.

¹⁴²⁵ Sinidu Fekadu (2008), *supra note* 2690, p. 49.

¹⁴²⁶ Gemma Lucy Burgess (2012), *supra note* 617, p. 162.

¹⁴²⁷ Blain Worku (2011), *supra note* 987, p. 53.

¹⁴²⁸ Interview with V5 on March 22, 2019, at 11:00:12:00 AM.

¹⁴²⁹ Interview with V6, *supra note* 935; Interview with V1, *supra note* 926; Interview with V2, *supra note* 928; and Interview with V3, *supra note* 930.

and V3, stated that they were contacted by two police officers while the remaining two, V4 and V5, stated that they were contacted by five and three police officers, respectively. However, the number of officers who handled V4's case might possibly have been inflated as the case had not initially been disclosed at a police station but to individual police officers, who were called and came to the particular home where the incident had happened, amid a family violence at night.

Victims were also asked whether their interview took place in one place. Three interviewees – V1, V3 and V5 – reported that the police stations where they initially gave their statements and where their cases were investigated were not the same while the remaining two – V2 and V4 – stated that their interviews had taken place in one place.

Previous studies also indicated that rape victims had been subjected to multiple interrogations by multiple officers. For instance, in her study conducted in Addis Ababa on CJS's response to acquaintance rape cases, Blain Worku observed: "the very environment at the police departments is terrifying for a mere visitor, let alone to a victim of rape. [Three] or more police officers, in military dresses, sit in a single narrow room, in the same compound not far from other rooms providing other police services."¹⁴³⁰ She further observed that the "victim is expected to talk to and answer to question[s] forwarded from all of [the police officers] consecutively or sometimes at the same time."¹⁴³¹ Blain also found that "[t]he way of questioning [...] is more of leading her to be inconsistent in her allegations and admit that she is lying about being [raped]."¹⁴³² This indicates that the victim was being interrogated like a suspect herself.

The institutional settings and personnel assignments have also had their contribution when it comes to the repeated interrogation of the victims. According to key informants, the victim may initially report the incident to the nearby police station, where the responding officer must determine whether the case constitutes VAWC so that it can be entertained by the special (Women's and

¹⁴³⁰ Blain Worku (2011), *supra note* 987, p. 53.

¹⁴³¹ *Ibid.*

¹⁴³² *Ibid.*

Children's) investigation unit.¹⁴³³ If the case is found to be VAWC, the victim could be referred to the relevant special unit, which, in most cases, is located at the sub-city level police department, for a full-fledged investigation.¹⁴³⁴ In cases where the incident has initially been reported by the victim at the Gandhi Memorial Hospital, initial interviews have been conducted by the police and the prosecutor assigned at the one-stop center in the hospital.¹⁴³⁵ In such cases, the police and the prosecutor at the center take the victim's statement to determine whether the case has a criminal nature; if it has, they refer that particular victim to the special police unit at sub-city level police department with a local jurisdiction, for a full-fledged investigation.¹⁴³⁶

In addition, the victims may also be interviewed by more than one prosecutor who are assigned to work at the police department and at the court, on a rotating basis of a three-months-long interval.¹⁴³⁷ Moreover, the prosecutor working with the police at sub-city level police department or station during the investigation stage, and the prosecutor who entertains the case during the prosecution stage are often not the same. Thus, the victim has to tell her story to at least two different prosecutors.

Generally, the rape victim is interrogated in a narrow room and interrogated repeatedly by multiple police officers as if she were a suspect. Then, she is interviewed by at least two different prosecutors. At the court, she is subjected to a hostile cross-examination, including enquiries into her social conducts and sexual history. She must tell and re-tell her rape's accounts to many different people, over and over again, which can be profoundly traumatic and quite difficult.

In this regard, victims were asked to state one of the major adverse experiences they had ever faced during the criminal proceedings. V6's response to this question was brief: "to have to be questioned

¹⁴³³ Interview with PO1, *supra note* 842; Interview with PP1, *supra note* 842; Interview with PP2, *supra note* 849; and Interview with PP3, *supra note* 851.

¹⁴³⁴ *Ibid.*

¹⁴³⁵ *Ibid.*

¹⁴³⁶ *Ibid.*

¹⁴³⁷ *Ibid.*

repeatedly.” Likewise, V2 replied as follows: “I was tired of naming my [intimate body] parts now and again.”¹⁴³⁸ The practice of repeatedly questioning victims by multiple actors leads to a secondary victimization. It defeats the essence of establishing a one-stop center, which is to provide the victims with all the services they need in one location.¹⁴³⁹

8.2.4 The Physical Safety and Privacy Rights of the Victims

During the criminal proceedings, the victims need effective legal protection, particularly from any possible retaliatory attacks, harassment or intimidation by the offender or his accomplices. It was for this very reason that the CEDAW Committee called upon the state to adopt and implement effective measures to protect witnesses of VAW cases before, during and after the legal proceedings through, among other things, “the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance.”¹⁴⁴⁰ The victims’ privacy rights should also be protected. In this regard, the CEDAW Committee had requested states to adopt and implement effective measures to protect witnesses’ privacy and safety through putting in place gender-sensitive court procedures and measures.¹⁴⁴¹ However, within the Ethiopian CJS, there are no procedural rules specifically designed to this effect.¹⁴⁴² This means rape victims are provided neither protection to their physical safety nor to their privacy rights during the proceedings.

Regarding the protection of victims’ physical safety, the procedural law currently in force does not even restrict the bail right of the offender. In principle, rape is aailable offence unless the victim has been murdered.¹⁴⁴³ Generally, bail would be denied where: (1) the offender is unlikely to

¹⁴³⁸ Interview with V2, *supra note* 928.

¹⁴³⁹ UNICEF (2008) *UNICEF South Africa*, available at: http://www.unicef.org/southafrica/hiv_aids_998.html last visited on 9/18/2018.

¹⁴⁴⁰ General Recommendation No. 35, *supra note* 66, para. 40(b).

¹⁴⁴¹ *Ibid*, para. 40(a).

¹⁴⁴² Interview with A2, *supra note* 648.

¹⁴⁴³ The Criminal Procedure Code, *supra note* 425, Article 28 and Article 63 (1); and the Revised Criminal Code, *supra note* 21, Article 620 (3).

comply with the conditions laid down in the bail bond; (2) the offender is, if released on bail, likely to commit other offences; and (3) the offender is likely to interfere with witnesses or tamper with evidence.¹⁴⁴⁴ All these case-by-case restrictions of bail rights are not specifically linked to the protection rape victims. The offender may not be denied his bail right for the sole purpose of protecting the victim.¹⁴⁴⁵ Generally, where the offender is released on bail, the conditions of non-contact or non-intimidation of the victim are not imposed upon his release.¹⁴⁴⁶ However, according to the present study's key informants, the courts have, at least in some compelling circumstances, issued strict instructions for the offender not to contact the victim, upon accepting his application for bail.¹⁴⁴⁷

Cases also show that the courts have ordered the offender to leave the compound he shared with the victim. For instance, in a criminal File Number 225827, the Federal First Instance Court, Lideta Division, the court issued this kind of order reasoning that allowing the offender to live in a shared compound would compromise the psychological well-being of the victim.¹⁴⁴⁸

However, the practice generally is that the victims do not have any say in the decision regarding bail or the type of conditions which may be imposed on the bail.¹⁴⁴⁹ The victims even are not informed about the decision made regarding bail. Both at the investigation and the trial stages, the offenders appeared before the court, with the police and prosecutor, respectively. The victims were not considered parties to the criminal proceedings, but instead are usually treated as prosecutors' witnesses.¹⁴⁵⁰ At the investigation stage, the offender and the police were made parties to the

¹⁴⁴⁴ The Criminal Procedure Code, *ibid*, Article 67.

¹⁴⁴⁵ Interview with J1, *supra note* 842; and Interview with PP1, *supra note* 842.

¹⁴⁴⁶ Rape Trial Observation, *supra note* 857.

¹⁴⁴⁷ Interview with J1, *supra note* 842.

¹⁴⁴⁸ *Public Prosecutor v. Natna'el Gonfa Bedhanie*, *supra note* 1117.

¹⁴⁴⁹ Interview with J1, *supra note* 842.

¹⁴⁵⁰ Rape Trial Observation, *supra note* 857.

proceedings whereas, at the trial stage, the offender and the prosecutor were named as parties to the case.¹⁴⁵¹ The victims can only attend the proceedings as a member of the public.¹⁴⁵²

Moreover, the procedural law currently in force does not incorporate other specific rules that allow the courts to take other measures to keep the victim safe during the proceedings. Nor does it envisage the provision of shelters to victims and/or other mechanisms to protect the victims from possible threats. There is no procedural rule enabling the courts to take protective measures such as allowing the victim to stay in temporary shelters. However, the present study's key informant indicated that, in some instances, the courts issued orders to protect the victims. This was specifically the case where the victim was dependent on the offender and, therefore, the latter might influence the victim to withdraw her criminal charge.¹⁴⁵³ In such cases, the court does not deny bail right to the offender; instead, it orders the victim to stay in a temporary shelter. In this respect, PP2 stated the following: “[i]f we think that the victim is going to face a threat or pressure to change her initial statement, we let her stay in a temporary shelter until the trial is held.”¹⁴⁵⁴ She also added: “[s]helters are provided by NGOs. We have connections with shelter providers. They often help the law enforcement agencies in providing shelters to the victims until the case is finally disposed.”¹⁴⁵⁵

Other key informants also stated that, in compelling circumstances, the victims will be transferred to temporary shelters.¹⁴⁵⁶ Thus, currently, shelter provision serves as an important shield to protect the victims from possible threats by the offenders, at least for the duration of the proceedings. In this regard, the victims were asked whether they had been subjected to any threats by the offenders during the proceedings, and all of the interviewees stated that they had not faced any threats because they were in shelters. However, one interviewee, V2, complained that the police did not

¹⁴⁵¹ *Ibid.*

¹⁴⁵² *Ibid.*

¹⁴⁵³ Interview with J1, *supra note* 842, and Interview with PP1, *supra note* 842.

¹⁴⁵⁴ Interview with PP2, *supra note* 849.

¹⁴⁵⁵ *Ibid.*

¹⁴⁵⁶ Interview with PP3, *supra note* 851.

allow her to be visited by her relatives while she was staying in a shelter.¹⁴⁵⁷ In so far as it does not involve activities that would compromise the prosecution process, victims staying in a temporary shelter should not be denied of a very least right which even a convict is entitled to – the right to be visited by relatives.

However, the above policy measures constitute good practices, but cannot be viewed as victims' rights. The provision of shelters cannot be an effective protection as their availability is determined by the will and accommodation capacity of the NGOs. Thus, the failure to provide effective protection is one of the main barriers that undermines the cause of rape victims within the CJS. As Viano suggests, “[t]he realization that the system is not able or willing to effectively protect her from other assault or harassment and to solve her problem in a satisfactory and definitive manner, once she summons the courage to report it, is a powerful deterrent against seeking help and redress.”¹⁴⁵⁸ For this reason, the government must issue procedural rules that authorize the courts to restrict the bail right of rapists and/or order the offenders to refrain from harassing, intimidating or threatening rape victims, upon granting the bail right. This is the duty of the government under the international human rights treaties ratified by Ethiopia, such as the CEDAW. In particular, it is obliged to grant victims the option to apply for a protection or restraint order.¹⁴⁵⁹

Like physical safety, victims' privacy right is not guaranteed in a satisfactory manner, particularly at the trial stage. Obviously, attending the court is too traumatic for rape victims as they often face cross-examination on specific private details including their past sexual history and social conduct. This is particularly the case in Ethiopia, where there are no procedural rules that enable the victims to prevent their previous sexual history and social conduct from being raised at the trial.¹⁴⁶⁰ According to one key informant, PP1, “[t]here is no law that protects a victim of rape from being questioned about her sexual history, but once the case has been taken to court, the role of the

¹⁴⁵⁷ Interview with V2, *supra note* 928.

¹⁴⁵⁸ E. Viano (1983) ‘Violence, Victimization, and Social Change: A Socio-cultural and Public Policy Analysis’, *Victimology* 8(3/4), pp. 54-79, p. 71.

¹⁴⁵⁹ CEDAW, A.T. v. Hungary, No. 2/2003, *supra note* 742, para. 9.6.

¹⁴⁶⁰ Interview with PP1, *supra note* 842.

prosecutor is essential. When this kind of question is asked by the defense lawyer, the prosecutor should raise an objection. The court will either accept or overrule that objection.”¹⁴⁶¹

But other informants favored the inquiry into victims’ sexual history. For instance, PP3 argued that “[a] victim should be asked about her sexual history because sometimes what she claims and what actually had happened may be contradictory. If a woman claims that she has been raped and the forensic medical evidence shows otherwise, the court may close the case, under Article 141[of the Criminal Procedural Code]. For example, she may claim that she had had no sexual relation with anyone prior to the incident, and that she was sexually penetrated at the time of the assault. But, when the forensic medical evidence is produced, it proves that there is no recent sexual penetration.”¹⁴⁶²

Likewise, J1 linked the importance of an inquiry into victims’ sexual history to their age, stating that “[i]t depends on the case; for instance, if a girl of 12 years old is asked whether she had had previous sexual relations, it makes no difference whether she says she did have or not because other evidences are taken into consideration. Sometimes, the victim may be above the age of 18 years old, and claims that she had been raped while forensic medical evidence shows that she is a virgin or it may show that she is not virgin and that the virginity was not-recently lost. In such a case, she might be asked about her prior sexual history.”¹⁴⁶³ However, the forensic medical examination report did not prove whether a forced sexual intercourse had taken place.¹⁴⁶⁴ This is usually inferred from the victim’s the hymenal status as described in the report. If, in the report, the hymeneal status had been indicated as “intact” or “raptured, but not recently,” it was inferred that a forced sexual intercourse had not occurred. According to one informant, “[m]ost offenders are freed because the statement of the victim and the forensic medical evidence contradict each

¹⁴⁶¹ Interview with PP2, *supra note* 849.

¹⁴⁶² Interview with PP3, *supra note* 851.

¹⁴⁶³ Interview with J1, *supra note* 842.

¹⁴⁶⁴ See generally *infra* Chapter Five. Section “5.3.1.6. Criminalizing Same-Sex Rape against Children” with accompanying notes.

other.”¹⁴⁶⁵ If the victim stated that a sexual intercourse had occurred but the forensic medical examination report indicated her hymeneal status as “intact” or “raptured, but not recently,” her statement and the finding in the report would not match. This, however, does not necessarily mean that the contested sexual intercourse had not occurred since sexual intercourse can occur while the hymeneal status of the victim is still “intact”¹⁴⁶⁶ or was “raptured” at any time before the contested act took place.

Generally, rape victims face humiliating questions at the trial, including a cross-examination of their previous sexual conduct. According to the present study’s informants, S1 and S2, during cross-examinations, it is common to ask questions about the victims’ sexual history. As social workers who have been working as a third party intermediary between the testifying child victims of rape and the court, these informants observed that defense lawyers routinely cross-examined the victims on their previous sexual conducts, particularly in cases involving victims between the age of 14 and 18 years old. In some instances, victims under the age of 10 years old were asked about their sexual history, but in such cases, the court and the prosecutor usually intervene.¹⁴⁶⁷

Sometimes, it appears that the cross-examination was done for no apparent reason other than humiliating the victim. For instance, in a criminal File Number 218827, Lideta Division of the Federal First Instance Court, the prosecutor charged a 20-years-old man for raping a woman, who was 22, on August 24, 2014, at 1:00 PM.¹⁴⁶⁸ The charge stated that the offender had raped the victim after chasing and beating her while she was trying to escape and screaming for help. An eyewitness of the case testified that he had tried to help the victim by pushing the offender off the top of her body but the offender reacted violently. He also testified that he and the victim had reported the incident to the police immediately and the police found the offender around the scene of the incident and arrested him. The victim herself gave a similar testimony. The forensic medical

¹⁴⁶⁵ Interview with PP3, *supra note* 851.

¹⁴⁶⁶ See for e.g., *Harari Region Public Prosecutor v. Bona Ahimed Amin*, *supra note* 1196.

¹⁴⁶⁷ Interview with S1 and S2, *supra note* 900.

¹⁴⁶⁸ *Public Prosecutor v. Yisihak Chinkilo*, Criminal File Number 218827, Lideta Division, Federal First Instance Court, 30/6/2007 E.C.

examination report also indicated that there were injuries and bruises around her sexual organs as well as evidence of the presence of seminal fluid inside her womb. This is a typical case that best fits the “real rape” myth: *the rape was committed by stranger and late at night, using physical violence.*

The victim had physically resisted the encounter, screamed and cried for help, but she was overpowered by the assailant and was injured. Incidentally, an eyewitness had witnessed the incident and immediately reported it to the police. Committed by a violent, stranger man against an unaccompanied woman in a rough place at night, this incident best fits even the overly restrictive definition of forcible rape under the RCC. However, even these facts did not prevent the defense lawyer from inquiring into the victim’s sexual history or prior sexual activities, at the trial. During the trial, when the defense lawyer asked the victim whether she had, prior to the specific incident in question, had a sexual intercourse with another person, she responded that she did not have a sexual intercourse with anyone previously. Although the forensic medical examination report suggested to the contrary, she did not say “Yes, I had a sexual intercourse,” apparently out of embarrassment or humiliation to openly say so in public. She was simply forced to lie about her sexual past. The question that ought to be asked here is ‘*Does this the fact that she did not say she had previously had a sexual intercourse really mean she was lying about what had happened to her on the night of August 24, 2014?*’ Apparently, the arguably ‘false’ answer by the victim regarding her sexual history is quite understandable given the circumstances under which she has been testifying, and this kind of inquiry resulted in harassment and further humiliation of the victims.

Often, questions about the time and place of the event are followed by other questions like: *Did you scream?*¹⁴⁶⁹ *Were you alone?* *Why did not you try to stop him?*¹⁴⁷⁰ In some instances, even the

¹⁴⁶⁹ See for e.g. *Public Prosecutor v. Moges Wendimageng Metaferiya*, *supra* note 1149; *Public Prosecutor v. Hailemariam Atsibeha*, Criminal File Number 193073, Lideta Division, Federal First Instance Court, 1/6/2005 E.C.; *Public Prosecutor v. Yisihak Chinkilo*, *ibid.*

¹⁴⁷⁰ Rape Trial Observation, *supra* note 857.

moral conduct of victims as young as 12-year-old was questioned during the trials. The defense lawyer may question whether she had a boyfriend or whether she has ever been visited by other boys, to suggest that she is unchaste and thus her case is a fabricated one.¹⁴⁷¹

During the trial stage, the victim faces perhaps the most hostile cross-examination. She is subjected to a brutal and humiliating cross-examination of her life including her prior sexual life. As Joan McGregor notes, “[t]he object of these cross-examinations was to make her out, no matter how violent or outrageous the alleged rape was, to be a ‘bad girl’ who either consented to the events or got what she deserved given her ‘loose’ lifestyle.”¹⁴⁷² In some instances, the cross-examination goes to what Sue Lees described as a ‘judicial rape’¹⁴⁷³ and others as a ‘second rape.’¹⁴⁷⁴ Judicial rape, according to Lees, is “where a woman’s reputation is put on trial by the court [and is viewed by] many victims as humiliating as the actual rape. In some respects, it is worse, more deliberate and systematic, more subtle and more dishonest, masquerading in the name of justice.”¹⁴⁷⁵

To illustrate this, the cross-examination of a victim in File Number 210967, the Federal First Instance Court, Lideta Division, has been reproduced here. This case involves a typical rape which not only best fits to the overly restrictive definition of forcible rape under the RCC but also was corroborated by eyewitness accounts and a forensic medical evidence.¹⁴⁷⁶ In this typical rape case, the prosecutor filed a charge against Mikiyas Asefa for violating Article 620(2)(a) of the RCC, on December 31, 2013. In the charge, the prosecutor stated that the offender had committed forcible rape against a 15 years-old victim (here-in-after Witness 1) which resulted in the loss of her virginity on November 10, 2013 around 7 PM, in Yeka Sub-City, Kebele 16/17, at a specific

¹⁴⁷¹ See *Public Prosecutor v. Hailemariam Atsibeha*, *supra note* 1469.

¹⁴⁷² Joan McGregor (2011), *supra note* 4, p. 78.

¹⁴⁷³ Sue Lees (1993), *supra note* 1147, p. 11.

¹⁴⁷⁴ David P. Bryden and Sonja Lengnick (1997) *supra note* 15; L. Madigan and N.C. Gamble (1991) *The Second Rape: Society’s Continued Betrayal of the Victim*, London: MacMillan; and J. E Williams and K.A. Holmes (1981) *The Second Assault*, Westport, CT: Greenwood.

¹⁴⁷⁵ Sue Lees (1993), *supra note* 1147, p. 11.

¹⁴⁷⁶ *Public Prosecutor v. Mikiyas Asefa*, Criminal File Number 210967, Lideta Division, Federal First Instance Court, 9/7/2007 E.C.

neighborhood called Tofik Dabbo Bet. The prosecutor also stated in the charge that the offender was a broker who had facilitated the victim's hiring to her current job as a domestic assistant in a private household. It was also indicated that the offender went to her workplace and told her that there was a problem with her family and took her to his house. He then locked the door forced her to lie down on the mattress, threatening her with a knife. Afterwards, he covered her mouth to prevent her from screaming, took off her clothes and raped her.

The prosecutor had attached to the charge a dossier containing evidence, including a forensic medical examination report, which stated that there were genital injuries and described the hymeneal status of the victim as 'raptured recently.' The victim and other three eyewitnesses, who had arrived at the crime scene immediately after the occurrence of the incident, were named as the prosecutor's witnesses. During the trial, which was held on March 28, 2014, the prosecutor brought forth four eyewitnesses. Leaving other matters aside, questions posed to the victim at the main examination and the cross-examination have been reproduced here as follows:

EXAMINATION-IN-CHIEF BY THE PUBLIC PROSECUTOR

Prosecutor: What did Mikiyas do to you?

Witness 1: He caused a trouble on me.

Prosecutor: Okay. Do you remember the date?

Witness 1: Yes! It was on November 10, 2013.

Prosecutor: Do you remember the exact time?

Witness 1: It was at 7:00.

Prosecutor: Was it at night or in the morning?

Witness 1: It was at night.

Prosecutor: Do you know the sub-city or the kebele?

Witness 1: I came from the countryside very recently. So I do not know.

Prosecutor: How did he rape you? Can you explain? You said earlier that he had caused a trouble on you; what kind of trouble was it? What were you doing at the time?

Witness 1: He raped me. He called me out of the place where I was working. Then he told me he was taking me to my sister's house. When we got there, I told him "This is not my sister's house" but he forced me to

enter and closed the door. Afterwards, he laid a mattress on the floor, forced me to lay down, took off my underwear, pulled my dress up and raped me.

Prosecutor: You said he had told you there was a problem with your family and took you with him. Where exactly did he take you to?

Witness 1: He told me he was taking me to my sister's house. I do not know the address of the place where he took me to?

Prosecutor: How did he close the door?

Witness 1: After he forced me in, when I tried to go out, he said, "It is your sister's house," and locked me inside.

Prosecutor: How did he make you lie down on the mattress?

Witness 1: After he laid the mattress on the floor, he forcefully threw me down onto the mattress, took my underwear off, pulled my dress up, started raping me, and then took out a knife and told me he would stab me and he put his hands over my mouth. When I started to scream, he opened the door and pushed me out.

Prosecutor: What did he use to stop you from screaming?

Witness 1: He used his hands.

Prosecutor: Did he do anything before he took off your underwear?

Witness 1: No! He just laid the mattress on the floor, took off my underwear and raped me.

Prosecutor: How old are you?

Witness 1: 15

Prosecutor: What were you wearing on that day? Do you know what clothes you were wearing?

Witness 1: Yes! I was wearing a white dress and a red underwear.

Prosecutor: What did he do to your dress?

Witness 1: He told me there was something on my dress and pulled it up very high and took my underwear off.

CROSS-EXAMINATION BY THE DEFENSE LAWYER

Defense Lawyer: You said that the date of the incident was November 10, 2013. How did you remember the exact date? Tell me, how did you know? How did you know it was 7:00 PM? Did you see a watch?

Witness 1: It was at 7:00 PM.

Defense Lawyer: Did you simply guess or did you see a watch at the time? How did you know the exact time? By guessing or looking at a watch?

Witness 1: I guessed, it was 7:00 PM.

Defense Lawyer: You said that he took you from the house where you had been working. Did anybody in the house know that he called you out?

Witness 1: Yes! He came at day time and called me out. They knew I went out but did not know who called me out.

Defense Lawyer: So, you did not tell them when you went out?

Witness 1: They knew he came but they did not know what he had said to me.

Defense Lawyer: When you went out that day, what did you tell to the people you were working for?

Witness 1: I told them I was going out. When they asked me what was wrong, I did not tell them. I just told them that I wanted to go out.

Defense Lawyer: Did you take your belongings with you?

Witness 1: I did not.

Defense Lawyer: He [the offender] told you that there was a family emergency - what kind of family emergency was it?

Witness 1: He told me he would take me to my sister's house.

Defense Lawyer: When you got to the house, how many rooms were there in the house?

Witness 1: One room.

Defense Lawyer: Was there anyone else in the room or around the house? Were there any neighbors?

Witness 1: The neighbors came afterwards, but at the beginning, there was nobody around.

Defense Lawyer: Did anyone see you when you were getting in?

Witness 1: No! No one saw us.

Defense Lawyer: You said that he had locked the door on you - what kind of key was on the door? Do you remember?

Witness 1: Yes! I saw him when he was locking it. It was a white key.

Defense Lawyer: You said he had thrown you onto the mattress - how did he throw you?

Witness 1: I was struggling with him, he lifted me up like this (moving her hands upwards) and he threw me on the floor.

Defense Lawyer: With how many hands? One or two?

Witness 1: Two.

Defense Lawyer: He threw you down with his two hands - did he let your waist go afterwards?

Witness 1: No, he did not. He took off my underwear and he took off his trousers and then raped me.

Defense Lawyer: If he was holding your waist, with which hand did he take off your cloth and underwear? Was it before or after he threw you down onto the mattress?

Witness 1: At the beginning, he used his two hands to throw me onto the mattress, then took off my underwear and put his hand on my mouth and raped me.

Defense Lawyer: How many hands did he put on your mouth?

Witness 1: One.

Defense Lawyer: Was there electricity at that day in the house? Was there anything else in the room?

Witness 1: There was nothing there. There was electricity, a TV and a tape player which he turned on and put into a high volume.

Defense Lawyer: You said he had taken out a knife and threatened you - where did he get it? Was he holding it?

Witness 1: No, he was not. He took it out from a drawer.

Defense Lawyer: Was the knife big or small?

Witness 1: It was small.

Defense Lawyer: When he pushed you out, how many people saw what happened?

Witness 1: First there were only three. Later on, a lot of people came.

Defense Lawyer: Do you remember their names?

Witness 1: I do not. I was in a state of shock.

Defense Lawyer: What did you tell them?

Witness 1: I told them that he had raped me.

Defense Lawyer: Do you know any one aside from Mikiyas? Do you have a boyfriend?

Witness 1: No, I do not. I am a virgin.

Defense Lawyer: Is it your first time to have a sexual intercourse with Mikiyas or has anyone else done this to you?

Witness 1: No!

Defense Lawyer: Before Mikiyas, do you know a driver who brings garlic?

Witness 1: No, I do not.

Defense Lawyer: Before November 10, did anybody have a sexual intercourse with you, other than Mikiyas?

Did not you have a fight with Mikiyas concerning money? Did not you agree on payment of money before you had a sexual intercourse? When he gave you 150 birr, did not you say that it was not enough and threw the money away? [For a while, Witness 1 did not respond for these consecutive questions]

Witness 1: No, we did not.

Defense Lawyer: After being raped, did you see anything on your body?

Witness 1: Yes, I saw blood.

In this typical rape case, the victim was mercilessly subjected to a cross-examination not only about aspects of the offence but also regarding her sexual morality and her trustworthiness as a witness. Leaving so many other irrelevant inquires aside, questions such as: *Did not you have a fight with Mikiyas concerning money? Did not you agree on payment money before you had sexual intercourse? When he gave you 150 birr, did not you say it was not enough and threw it away?* were not arbitrarily raised by the defense lawyer. Rather, they were designed to suggest that she had engaged in a consensual sexual activity with pay and brought false allegations following a disagreement on the amount of money. It was intended to imply that the victim had a motive to avenge the offender. The inquiry seems to be premised on the assumptions that rape accusation is used by women to seek revenge on the offender, after having engaged in a consensual sexual intercourse. This was despite the fact that the offender cannot escape criminal liability by pleading the consent of the victim, who is a 15 years-old minor and in fact under the age of consent.

Likewise, questions such as: *Before November 10, did anybody have a sexual intercourse with you, aside from Mikiyas? Do you know anyone other than Mikiyas? Do you have a boyfriend? Is it your first time to have sex with Mikiyas or has anyone else done this to you? Before Mikiyas, do you know a driver who brings garlic?* were posed to the victim to suggest that she is sexually promiscuous or had previously had a consensual sexual intercourse with the offender. The defense lawyer used evidence of prior sexual conduct to imply consent by contending that if she had had sex with various men on many different occasions, it is likely that she consented to the sexual encounter in question too. He designed these questions to re-script the victim as a precipitating agent and disqualify her from a victim status. Generally, the case shows how the trials are conducted puts the victim on trial as if she were the offender herself. Fortunately, after all such ordeal, in a decision rendered on March 18, 2015, the court convicted the offender and sentenced him to a rigorous imprisonment of eight years.¹⁴⁷⁷

¹⁴⁷⁷ The offender was prosecuted and convicted for forcible rape committed against a minor under Article 620(2)(a). He could have been prosecuted for statutory rape under Article 626(1) of the RCC without need to prove the use of violence, threat of violence and victim's physical resistance. However, the difference between forcible rape under

The full episode of the main examination and cross-examination of the case presented above clearly indicates that questioning at rape-case trial is, in part, about the victim's sexual history and sexual conduct. The conduct of cross-examination in this case is largely similar with what has been seen in other cases and what has been witnessed by the present researcher during rape-trial observations. However, questioning victim's sexual history and sexual conduct during trials is unnecessary, unreasonable and inconsistent with the nature of sexual offences. It is meant to deflect responsibility away from the offender by insinuating that the victim's provocative behavior is to blame for the occurrence of the incident. It subjects the victim to another episode of humiliation and leads to a secondary victimization. It has also been suggested that anticipation of such kind of humiliating treatment during trials deters potential victims from reporting the incident to the police and seeking justice.¹⁴⁷⁸ Thus, by recognizing the ordeals that victims pass through during rape-case trials, many jurisdictions have enacted laws to safeguard the privacy of rape victims by generally prohibiting the admissibility of evidence about victims' sexual history during the trials.¹⁴⁷⁹ These laws are often referred to as "rape shield laws."¹⁴⁸⁰

As the name suggests, a *rape shield law* protects or shields a victim of rape who is named as a prosecutor's witness in rape case trial from being asked questions about her sexual history and sexual conduct.¹⁴⁸¹ There were two main reasons behind the introduction of *rape shield laws*. First, it was believed that many women victims of rape would not come forward to report the incident to the police if they knew they would be subjected to humiliating questions about their sexual history and sexual conduct. Second, there was a big concern that judges were being unduly influenced and prejudiced by information heard about the prior sexual involvement of the victim

Article 620(2) (a) and statutory rape under Article 626(1) is that the punishment for forcible rape is rigorous imprisonment from five years to twenty years while it is rigorous imprisonment from three years to fifteen years.

¹⁴⁷⁸ LM Williams and S Walfield (2016) 'Rape and Sexual Assault', *Encyclopedia of Mental Health* 4: pp. 13-22, p. 14.

¹⁴⁷⁹ Jennifer K. Brown *et al.* (2011) *Achieving Justice for Victims of Rape and Advancing Women's Rights: A Comparative Study of Legal Reform*, p. 27, available at: <https://www.trust.org/contentAsset/raw-data/e531c966-13c7-4eba-824e-c6cac927101b/file> last visited on 1/26/2019.

¹⁴⁸⁰ Jennifer K. Brown *et al.* (2011), *ibid.*, p. 27; and Richard Klein (2008), *supra note* 11, p. 990.

¹⁴⁸¹ Richard Klein (2008), *ibid.*

who, for her part, is claiming at the trial that she had not consented to engage in a sexual relation with the offender.¹⁴⁸² The prime objectives of *rape shield laws* are to: prevent a potentially irrelevant, prejudicial testimony from being heard at the trial; restrict the admissibility of such evidence; minimize the humiliating cross-examination of the victim; and improve the extremely low conviction rates for rape cases.¹⁴⁸³

The last point in relation to victims' right to privacy is the absence of procedural rules to protect the identity of the victims of rape from being disclosed to the media or the public, if the victim so requested. According to J1, “[w]hen a case is presented to the media, they are informed not to disclose in their reporting the victim’s name, face or anything that may implicate her identity in any manner.”¹⁴⁸⁴ She added, however, that “[t]his is not prohibited by law; we just try to protect the victim as much as possible.”¹⁴⁸⁵ This view is shared by other key informants too. For instance, PP2 stated: “[t]here is no formal rule of procedure or law that prohibits victims’ identities from being disclosed when the case is presented to the media but the prosecutors will make sure that the victims’ identities should not be made public.”¹⁴⁸⁶ This in itself is a good practice. However, it should have been backed by mandatory procedural rules.

Regarding persons who attend the trials, a key informant of the present study stated that the court bars the public from witnessing certain parts of the trials, usually when the victim’s testimony is heard.¹⁴⁸⁷ The defense witnesses, however, are heard in public.¹⁴⁸⁸ This is consistent with what has been witnessed by the present researcher, while conducting rape-case trial observations. Although it is intended to protect the victims’ privacy, conducting rape-case trials partly in public and partly *in-camera* creates its own unintended problems. Where the public are barred from witnessing the

¹⁴⁸² *Ibid.*

¹⁴⁸³ Eugene Borgida and Phyllis White (1978) ‘Social Perception of Rape Victims: The Impact of Legal Reform’, *Law and Human Behavior* 2(4), pp. 339-351, p. 340.

¹⁴⁸⁴ Interview with J1, *supra note* 842.

¹⁴⁸⁵ *Ibid.*

¹⁴⁸⁶ Interview with PP2, *supra note* 849.

¹⁴⁸⁷ Interview with J1, *supra note* 842.

¹⁴⁸⁸ Rape Trial Observation, *supra note* 857.

trial only during the victim's testimony session, it might be detrimental to the victim's interests. This so because the offender's side of the story would be told publicly, but not the victim's.¹⁴⁸⁹ For this reason, rape-case trials should be held fully *in-camera*.

8.2.5 Timely Remedies, Legal and Financial Assistance to Rape Victims

There are also problems relating to the availability of legal and financial assistance to rape victims. Obviously, criminal case proceedings are extremely formal, complex and lengthy. Despite the promise under the FDRE Criminal Justice Policy to prioritize prosecution of cases of VAWC along with other serious crimes such as terrorism and crimes against the constitution and the constitutional order,¹⁴⁹⁰ rape-case prosecutions takes up to at least a year at the first instance courts.¹⁴⁹¹ Based on an analysis of crime data between 1997 E.C and 2008 E.C., the average time taken for processing 179 cases at the Federal First Instance Court, Lideta Division was about 10 months at the investigation stage. Similarly, during the trial stage, the average time taken for processing 1,776 cases at the same Division and time interval was about 10 months. Thus, without considering the time taken at appellate courts, it takes, on average, 20 months for a rape case to get a final decision. Studies have identified a lengthy and expensive legal process as being among the factors that discourage the victims from reporting the incident and seeking legal remedy, fostering a conducive environment for sexual and other forms of VAW.¹⁴⁹² Likewise, the expectation of reviewing events of rape in the distant future is likely to discourage the victims from following up their cases.¹⁴⁹³

If a victim is willing to proceed with her case, she needs legal and financial assistance. However, there are no state-funded schemes for providing legal assistance services in Ethiopia. Nor are there

¹⁴⁸⁹ Ivana Bacik *et al.* (1998), *supra note* 1404, p. 12.

¹⁴⁹⁰ ፍትሕ ሚኒስቴር (2003) የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ የካቲት 25/2003 ዓ.ም (Amharic), p. 16.

¹⁴⁹¹ Interview with PP1, *supra note* 842.

¹⁴⁹² CARE Ethiopia (2008), *supra note* 23, p. 45; and Gail Steketee and Anne H. Austin (1989) 'Rape Victims and the Justice System: Utilization and Impact', *Social Service Review* 63(2), pp. 285-303, p. 293.

¹⁴⁹³ *Ibid.*

any state-funded schemes to assist victims or witnesses, for instance by providing basic legal orientation aimed at enhancing victims' awareness and active involvement in the criminal proceedings.¹⁴⁹⁴ In fact, the prosecutors assigned at the Special (Women's and Children's) Unit offer legal counsel to rape victims during the proceedings.¹⁴⁹⁵ This, however, does not mean that the victim has a right to have legal assistance in her own interest nor to access a dedicated lawyer.¹⁴⁹⁶ Prosecutors are not lawyers for the victims, but rather they need the victims' participation and cooperation as being essential to help move their cases forward and achieve a successful prosecution.¹⁴⁹⁷

Nonetheless, a rape victim should be entitled to a separate legal representation. Her lawyer should always accompany and assist her when she gives her statement to the police. If she wishes, her lawyer should have the responsibility for providing her with information about the progress of the case, and act as a channel of communication between the victim and the CJS and inform her whether the offender has given a statement, and whether a decision has been reached to proceed with the prosecution and so on. Indeed, by recognizing that to be victimized is to have one's power and agency removed, a number of jurisdictions have adopted the right to a separate legal representation for the victim, so as to redress and restore her agency.¹⁴⁹⁸ A similar approach should be adopted within the Ethiopian CJS.

However, as the rules and practices stand now, rape victims are not informed even whether the offender is in custody or has been released on bail. For instance, rape victims were asked whether they had been kept informed about the progress of the proceedings of their respective cases, and all the interviewees responded that they had not even been informed whether the offender was in custody or has been released on bail. According to V1, "[t]he man who had raped me was in prison, but I do not know whether he was released on bail. The police do not inform me about anything

¹⁴⁹⁴ Interview with J1, *supra* note 842.

¹⁴⁹⁵ Interview with PP1, *supra* note 842.

¹⁴⁹⁶ *Ibid.*

¹⁴⁹⁷ *Ibid.*

¹⁴⁹⁸ The United Nations Human Rights Council (2008), *supra* note 38, para. 276.

about the case.”¹⁴⁹⁹ For her part, V3 stated: “the offender was under arrest but other witnesses coming to the court to testify with me told me that he had been released on bail.”¹⁵⁰⁰ Likewise, V4 provided the following response: “I knew he was under arrest, but I do not know whether he has been released on bail subsequently.”¹⁵⁰¹ Almost all the interviewees stated that they were not getting information about the progress of their respective cases.

In addition to legal assistance, rape victims need financial assistance at least to cover the expenses they have incurred during the criminal proceedings.¹⁵⁰² However, this kind of assistance cannot be realized in the absence of state-funded criminal injury compensation schemes.¹⁵⁰³ While basic healthcare is provided to the victim for free by the public health institutions, under the Ethiopian CJS, there is no state-funded compensation for lost earning-capacity or physical injuries sustained by victims.¹⁵⁰⁴ Generally, the victims themselves should normally cover expenses such as travel costs and consequential loss of incomes or loss of earning-capacity. For instance, V3, V4 and V6 stated that the cost of their transportation during the proceedings was covered by their relatives while V2 reported that it was covered by the shelter provider.

The victims may sue the offender, and claim compensation for the costs of their medical care and counseling services as well as consequent loss of income or earning-capacity and other expenses.¹⁵⁰⁵ But the same factors that prevent the victims from reporting the incident to the police and proceeding with their criminal cases prevent them from filing civil suits too.¹⁵⁰⁶ The criminal bench may also order the offender to pay a compensation for the victim provided that it is specifically sought by the victim.¹⁵⁰⁷ The limitation with this option is that the law explicitly

¹⁴⁹⁹ Interview with V1, *supra note* 926.

¹⁵⁰⁰ Interview with V3, *supra note* 930.

¹⁵⁰¹ Interview with V4, *supra note* 1421.

¹⁵⁰² Interview with PP1, *supra note* 842.

¹⁵⁰³ Interview with J1, *supra note* 842; Interview with PP2, *supra note* 849; and Interview with PP1, *ibid.*

¹⁵⁰⁴ Interview with J1, *ibid.*

¹⁵⁰⁵ The Civil Code, *supra note* 331, Article 2090, Article 2091, and Article 2116(3).

¹⁵⁰⁶ Francis X. Shen (2011), *supra note* 142, p. 32.

¹⁵⁰⁷ The Criminal Procedure Code, *supra note* 425, Article 154 (1) and (2), and Article 159.

requires the producing of witnesses,¹⁵⁰⁸ which, in most rape cases, is often very difficult. Nor does this option alleviate the financial burden of the victim if the offender is unknown, or is known but absconded, or is too poor to pay compensation. For these reasons, victims should be compensated or financially assisted by the state, at least on a case-by-case basis, to prioritize those who are most in need of such assistance.

It is worth noting here that both legal assistance and financial assistance should not be seen as a charitable handout for the victims. Instead, it is part of the state's obligations under the international human rights treaties ratified by Ethiopia, such as the Women's Protocol and the CEDAW, to fulfill the victims' right to an effective remedy. For instance, under the Women's Protocol, states are obliged to take measures to "punish the perpetrators of [VAW] and implement programmes for the rehabilitation of women victims."¹⁵⁰⁹ Under Article 4(2)(f) of the Women's Protocol, the state is required to take appropriate and effective measures to "establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women."¹⁵¹⁰ Similarly, Article 8 of the Women's Protocol stipulates that member states shall take all appropriate measures to ensure "effective access by women to judicial and legal services, including legal aid"¹⁵¹¹ and "support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid."¹⁵¹²

Likewise, Article 2(b) and Article 2(c) of the CEDAW contain an implied obligation upon states parties to provide effective remedies to women whose human rights have been violated.¹⁵¹³ In this regard, the CEDAW Committee, in its concluding observations, expressed its concern about the lack of victim assistance and rehabilitation services in Ethiopia¹⁵¹⁴ and called on the state to "[e]nhance victim assistance and rehabilitation, by strengthening the legal aid services of the

¹⁵⁰⁸ *Ibid*, Article 154 (1) and (2), and Article 159.

¹⁵⁰⁹ The Women's Protocol, *supra note* 525, Article 4(2)(e).

¹⁵¹⁰ *Ibid*, Article 4(2)(f).

¹⁵¹¹ *Ibid*, Article 8(a).

¹⁵¹² *Ibid*, Article 8(b).

¹⁵¹³ General Recommendation No. 28, *supra note* 463, paras. 32, 34.

¹⁵¹⁴ Committee on the Elimination of Discrimination against Women (2011), *supra note* 1390, para. 20.

Ministry of Justice, providing psychological counselling, supporting local women's rights organizations which offer shelter and assistance to victims, and establishing victim support centers in the regional states."¹⁵¹⁵ The CEDAW Committee has also required that state parties must "provide reparation to women whose rights under the Convention have been violated. Without reparation, the obligation to provide an appropriate remedy is not discharged."¹⁵¹⁶ It has further emphasized that states parties must "ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate."¹⁵¹⁷

8.3 Limitations of the Rape Law Reforms on Evidentiary Matters

Criminal investigation refers to the process of discovering, collecting, preparing, identifying and presenting evidence to determine what happened and who was responsible for committing the crime.¹⁵¹⁸ It is the process of gathering, through legal means, evidence of a crime that has been or is being committed.¹⁵¹⁹ Under the Criminal Procedure Code of Ethiopia, the police are tasked with investigating rape cases.¹⁵²⁰ Investigation of rape cases is accomplished, among others, through a proper investigation of the crime scene, interviews with the victim, the alleged offender, and any witnesses as well as the reconstruction of physical evidence.¹⁵²¹ The purpose of such reconstruction is to objectively establish what did and did not happen during an event. Upon the completion of the investigation, the police handover the case to the prosecutor. The prosecutor normally collates evidence, builds the case, and determines whether to file a criminal charge.

¹⁵¹⁵ *Ibid*, para, 21(e).

¹⁵¹⁶ General Recommendation No. 28, *supra note* 463, para. 32.

¹⁵¹⁷ *Ibid*, para. 32, para. 34.

¹⁵¹⁸ Karen M. Hess and Wayne W. Bennett (2001) *Criminal Investigation*, 6th ed, USA: Thomson Learning, p. 3.

¹⁵¹⁹ M. F. Brown (2001) *Criminal Investigation, Law and Practice*, 2nd ed, USA: Butter worth-Heinemann, p. 3.

¹⁵²⁰ Criminal Procedure Code, *supra note* 425, Article 8, Article 9, Article 10 and Article 22 *et. Seq.*

¹⁵²¹ Interview with J1, *supra note* 842; and Interview with PP1, *supra note* 842. *See also* Criminal Procedure Code, *ibid*, Article 24, Article 27, Article 30 and Article 34.

The problem within the Ethiopian CJS, however, is that there are neither codified rules of evidence law nor evidentiary rules specifically designed to deal with rape cases.¹⁵²² The available evidentiary rules are not only piecemeal but also scattered throughout the substantive and procedural laws. In the context of this legal vacuum, the key actors within the CJS exercise wider discretionary powers over the rules of evidence law. As far as rape-case is concerned, the police and the prosecutor have developed stereotypical practices to reconstruct the victims' account at the trial. The followings are the main weaknesses and loopholes of the rules and practices of evidentiary matters as applied in rape cases.

8.3.1 The Corroboration Requirement

Corroboration requirement depends on the particular legal system adopted by a given jurisdiction. Worldwide, there are two major legal systems: *adversarial* and *inquisitorial*. The two systems are distinguished, among other things, in their approach towards the application of rules of evidence. In adversarial legal systems, strict rules exist as to the admissibility of evidence at trial, whereas in inquisitorial systems, two key principles apply. The first one is the principle of *in time conviction*, which means that the judge must be convinced of the truth before passing a verdict.¹⁵²³ The second one is the principle of *free evaluation of evidence*, which means that the judge may consider all relevant evidence in arriving at a decision.¹⁵²⁴ The inquisitorial trial is seen as a search for the truth, while the adversarial trial may be represented as a contest between two opposing sides. This distinction is reflected in the approaches taken by different jurisdictions towards other issues, including corroborative evidence.¹⁵²⁵ In most inquisitorial systems, the offender may be convicted based on the victim's evidence alone as long as the judge is convinced beyond a

¹⁵²² Interview with J1, *ibid*; Interview with PP2, *supra note* 849; and Interview with PP3, *supra note* 851. See also Tsehai Wada (2012), *supra note* 412, pp. 220-221.

¹⁵²³ Ivana Bacik *et al.* (1998), *supra note* 1404, p. 14.

¹⁵²⁴ *Ibid*, p. 165.

¹⁵²⁵ *Ibid*, pp. 15-16.

reasonable doubt.¹⁵²⁶ There is no requirement that the evidence should be corroborated.¹⁵²⁷ Nor are there special rules that apply as to the use of victim's testimony by the court.¹⁵²⁸

The Ethiopian legal system seems to be a blend of both the adversarial and inquisitorial systems. However, as far as evidentiary matter is concerned, the Criminal Procedure Code apparently favors the rules of the inquisitorial system over the adversarial one. First, there are no strict rules as to the admissibility of evidence at the trial. Where objections are raised by either party regarding admissibility, it is up to the judge to determine the issue as per Article 146 of the Criminal Procedure Code. The law gives the judge significant powers including examination of witnesses at any time of the proceedings¹⁵²⁹ and ordering the production of additional evidence where it deems necessary in the search for the truth.¹⁵³⁰ Consistent with most inquisitorial systems, the judge must be convinced of the truth before passing a verdict. The judge may consider all relevant evidence in arriving at a decision.¹⁵³¹ This means the judges have the power to freely evaluate evidence. Most importantly, there is no rule prohibiting judges from convicting the alleged offender based on the victim's testimony only. Nor is there a requirement that the victim's testimony should be corroborated with additional evidence. Yet, in practice, it is often the case that the victim's testimony is misjudged to be false even long before the case reaches the trial unless there is additional evidence to corroborate victim's testimony.

According to PP2, “[t]he victim's testimony alone cannot be the only evidence to be used in filing a criminal charge. In addition to the victims' testimony, there must be forensic medical evidence and eyewitnesses or circumstantial evidence.”¹⁵³² She added: “[n]o case would be brought to a court based the victim's statement alone as this would make the likelihood of securing conviction almost impossible. Taking rape cases to the court, where it is highly likely that the trial may end

¹⁵²⁶ *Ibid*, p. 15.

¹⁵²⁷ *Ibid*, pp. 15-16.

¹⁵²⁸ *Ibid*.

¹⁵²⁹ Criminal Procedure Code, *supra note* 425, Article 136(4).

¹⁵³⁰ *Ibid*, Article 143(1).

¹⁵³¹ *Ibid*, Article 141 and Article 149.

¹⁵³² Interview with PP2, *supra note* 849.

up with the acquittal of the offender, is generally seen as a waste of time and resources.”¹⁵³³ All informants from the CJS consistently affirmed that the victim’s testimony alone would not be an adequate enough evidence to file criminal charges.¹⁵³⁴ One of the key informants from the advocacy groups, A2, too appeared to concur with the position of informants from the CJS, stating: “based on the victim’s statement alone, the police often do not investigate rape cases.”¹⁵³⁵ Rather paradoxically, there are currently no rules requiring that the victim’s evidence must be corroborated with additional evidence, and yet the key actors within the CJS have set the corroboration requirement as a precondition to proceed with a given rape case. In effect, the corroboration requirement has become an unwritten rule.

In practice, the victim is required to prove, beyond her words, that she did not consent to a sexual intercourse with the offender. This disqualifies many victims as unworthy of a serious investigative response from the CJS. The victim’s word is not recognized as having a sufficient evidentiary weight. Despite being under an oath to testify “the truth, the whole truth, and nothing but the truth,” she is not presumed in the first place to be telling the truth. Her statement may in fact be true or false. Both truthfulness and falsity should be considered as equally viable. As a witness, the victim may be lying or telling the truth or mixing truth with selected fictitious stories. Each of these possibilities should be considered without prejudice and stereotype. But, in practice, little or no value is attached to what the victim says, and the first reaction of the key actors within the CJS is simply not to believe her anyway. This is contrary to the principle of the full admissibility of evidence where the victim herself is a qualified witness.

Historically, the corroboration requirement was founded on the myth of *woman lying*.¹⁵³⁶ There is an unwarranted assumption as to the rate of false accusations of rape within the CJS. In reality, however, there are several factors that discourage victims from reporting the incident to the police,

¹⁵³³ *Ibid.*

¹⁵³⁴ Interview with PP1, *supra note* 842; and Interview with PP2, *ibid.*

¹⁵³⁵ Interview with A2, *supra note* 648.

¹⁵³⁶ Susan Estrich (1992), *supra note* 1266, p. 11; Cassia C. Spohn (1999), *supra note* 18, p. 126; Mustafa T. Kasubhai (1996), *supra note* 1210; and Jocelyne A. Scutt (1992), *supra note* 1262, p. 442.

including fear of stigma, retaliation and a harrowing treatment within the CJS. The corroboration requirement by itself has a deterrent effect, at least to the extent that a potential victim is aware of its existence. These disincentives are so powerful that many real victims of rape avoid reporting the incident to the police. The real problem in rape cases is the victims' failure to report the incident to the police and seek justice, not the other way round. Having this reality in view, the possibility of a deliberate falsification alone cannot and should not justify the corroboration requirement.

8.3.2 The Eyewitness Requirement

Eyewitness evidence is one of perhaps the most problematic type of evidence which is required to corroborate a victim's testimony. According to a key informant of the present study, types of evidence that must be collected to corroborate the victim's statement include eyewitness evidence, forensic medical evidence, crime-scene evidence and circumstantial evidence.¹⁵³⁷ The main problem with the eyewitness requirement is that it totally fails to acknowledge that rape is a special type of violent crime that generally takes place when no one other than the victim and the offender is present. This nature of the offence makes the victim's statement the most fundamental piece of evidence. In some instances, the police request the victims to produce eyewitnesses before commencing a criminal investigation and summoning the offender for questioning.¹⁵³⁸ This practice disqualifies the victim at the earliest stage of the proceeding, even before summoning the alleged offender and asking whether he admits to committing the alleged offence. It also disregards the collection of other important physical evidence that can corroborate the victim's statement.

8.3.3 The Prompt Reporting Requirement

There is still another yet very subtle and biased corroboration requirement that effectively disqualifies many victims of rape, which is the *prompt reporting requirement*. According to PP3, "[w]hen a woman claims that she has been raped, there must be eyewitness. There should be

¹⁵³⁷ Interview with PP1, *supra note* 842.

¹⁵³⁸ Interview with A2, *supra note* 648.

someone who saw her being forced to go with the offender. At least after she has been raped, she needs to tell someone around her that she had been raped, immediately after the incident, unless the circumstance prevent her from doing so.”¹⁵³⁹ This means, in addition to, or in the absence of, any physical evidence and a direct eyewitness, the victim’s story must be corroborated by hearsay witnesses to whom she had told about the incident immediately after its occurrence, in order for her case to secure a serious investigative response.

Another key informant, J1, also stated: “[s]ince rape is not a crime committed in front of eyewitnesses, the only available types of evidence are forensic medical evidence and circumstantial evidence. When a victim is raped, she might go and tell about the incident to somebody around her, and that person would be able to see what had actually happened to her both physically and emotionally. Thus, he can be named and summoned as a witness.”¹⁵⁴⁰ All of the present study’s key informants were consistent in their response. For instance, PP3 believed that “[i]f a woman reports an incident of rape after many days following its occurrence, it is unlikely that she was raped. Proving to the court that she was raped is very difficult.”¹⁵⁴¹ A key informant, A2, recounting the stories of the EWLA’s clients, pointed out that the police do not investigate a rape case unless it is reported promptly.¹⁵⁴² This means a woman is required to make a prompt complaint not just to the police but also to someone around her to be treated as a credible victim. Other studies have also documented cases where the court considered prompt reporting as a factor for convicting or acquitting the offender.¹⁵⁴³

Historically, the prompt reporting requirement was founded upon the myth of woman lying.¹⁵⁴⁴ Equivalent to the practice which continues still today within the Ethiopian CJS, rape laws required

¹⁵³⁹ Interview with PP3, *supra note* 851.

¹⁵⁴⁰ Interview with J1, *supra note* 842.

¹⁵⁴¹ Interview with PP3, *supra note* 851.

¹⁵⁴² Interview with A2, *supra note* 648.

¹⁵⁴³ Tsehai Wada (2012), *supra note* 412, P. 224.

¹⁵⁴⁴ Susan Estrich (1992), *supra note* 1266, p. 11; Cassia C. Spohn (1999), *supra note* 18, p. 126; Mustafa T. Kasubhai (1996), *supra note* 1210; and Jocelyne A. Scutt (1992), *supra note* 1262, p. 442.

the victims to promptly report the incident to the police.¹⁵⁴⁵ If a victim did not promptly report the incident, then the assumption was that she had second thoughts about her consensual sexual activity and that she had not been raped at all.¹⁵⁴⁶ The prompt reporting requirement was premised on the faulty assumption that if a woman was really raped, she would immediately report the incident to the police (or to someone else). In fact, most victims never report the incident to the police, let alone to report it immediately. Victims may have valid reasons for not reporting the incident promptly,¹⁵⁴⁷ including fear of a negative publicity, stigma and a harrowing treatment within the CJS.¹⁵⁴⁸ They may be aware of the myths that pervade the CJS, and as a result, they are discouraged from reporting incidences of rape at all or, at least from reporting them immediately.¹⁵⁴⁹

The stories of the interviewees illustrate the above point though their cases did match stereotypical stranger-rape cases. For instance, V4 is a 14-years-old girl who had been repeatedly raped by her step father estimated to be between 35 to 40 years old.¹⁵⁵⁰ She did not report the incident, fearing the offender and fearing that her mother might not believe her. But she used to write down what had happened to her, in her diary. After reading her diary, her brother asked her to tell him what had happened to her. She told him all the story, but he did not help her to report the case to the police. Rather, he warned her to tell him if this ever happens to her again. This seems an effort to shield his father from prosecution. The case of V4 came to the police' attention almost by accident. She recounted the story as follows: "I reported the incident to the police who, upon being called

¹⁵⁴⁵ Cassia C. Spohn (1999), *ibid*, p. 119; Mustafa T. Kasubhai (1996), *ibid*; and Jocelyne A. Scutt (1992), *ibid*, p. 442

¹⁵⁴⁶ Joan McGregor (2011), *supra note* 4, p. 75.

¹⁵⁴⁷ John O. Savino and Brent E. Turvey (2011), *supra note* 143, p. 53.

¹⁵⁴⁸ Carol Bohmer (1973-74) 'Judicial Attitudes toward Rape Victims', *Judicature* 57(7), pp. 303-307.

¹⁵⁴⁹ Maxime Rowson (2014) 'Corroborating Evidence, Rape Myths and Stereotypes: A Vicious Circle of Attrition', *Kaleidoscope* 6(2), pp. 135-143, p. 135.

¹⁵⁵⁰ Interview with V4, *supra note* 1421.

by neighbors, came to our home in the middle of a family violence. I remember that some neighbors were encouraging me to tell everything to the police at that time.”¹⁵⁵¹

Other interviewees also shared similar reasons for not promptly reporting their cases to the police. For instance, V2 and V5 did not report their case for more than a year because the offenders had threatened them not to do so.¹⁵⁵² Likewise, V3 did not report the issue to anyone due to a threat from the offender to expel her from home if she did so.¹⁵⁵³ For these and other reasons, victims do not promptly report the incident to the police.¹⁵⁵⁴ Failure to report promptly should not, therefore, lead to the conclusion that the victims were not raped and that they were lying about being raped. Nor should it prevent a serious investigative response by the police. Generally, the prompt reporting requirement is founded on an unfounded assumption and is unfair.

The problem, however, is the fact that even where the victims promptly report the incident to the police or to other third parties, they are not viewed as credible victims and their cases would not secure serious investigation responses. A victim’s credibility can still be questioned even where there are hearsay witnesses to whom she had told about the incident immediately after its occurrence and where there is a forensic medical evidence showing the presence of serious genital injuries and a physical evidence corroborating her statement. A typical case to illustrate this point is the decision of the 7th Criminal Bench of the Federal First Instance Court, Lideta Division. The decision was rendered on March 09, 2015, in a Criminal File Number 211474.¹⁵⁵⁵ In this particular case, the prosecutor filed a charge against the offender for violation of Article 620(1) of the RCC. In summary, the victim was raped by a stranger at 7:30 PM on December 23, 2013 while she was searching for a police station to report an incident involving the theft of her personal belongings. The offender, who was a passerby, had agreed to show her the way to a police station. However,

¹⁵⁵¹ *Ibid.*

¹⁵⁵² Interview with V2, *supra note* 928; and Interview with V5), *supra note* 1428.

¹⁵⁵³ Interview with V3, *supra note* 930.

¹⁵⁵⁴ Michelle J. Anderson (2010), *supra note* 1219, p. 650.

¹⁵⁵⁵ *Public Prosecutor v. Getnet Abebaw Mariyie*, Criminal File Number 211474, Lideta Division, Federal First Instance Court, 30/6/2007 E.C.

he accompanied and took her to the place where he raped her. With the help of another woman to find the nearby police station, she immediately reported to the police both the incidents of theft and rape. Since she has been pursuing the offender and saw the compound where he entered into after raping her, she also identified to the police of the location, and the police arrested the offender forthwith. By the following day, she was taken to a hospital for forensic medical examination. The forensic medical evidence too revealed the presence of genital injuries though with an irrelevant and unnecessary information about the hymeneal status of the victim as “raptured but not recently.”

The victim, as the prosecutor’s first witness, testified on all of the facts contained in the charge. The second witness, who is the responding police officer, also testified that on December 11, 2013, at about 7:30 PM, he was approached by the victim and another woman. He further stated that when he asked the victim what had happened to her, she told him that she had lost her money in a hair salon; that she asked the offender to show her the direction to a nearby police station, to which he agreed, but instead took her to a place where he raped her. The police officer also testified that he had asked the victim to show to him where the offender went after committing the alleged crime; and that she took the police to the offender’s location, and then the police arrested the offender and took him to the police station. Asked about the location where the offence was committed, the police officer stated that he did not actually see it, but he stated that there was a river around that place and the offender’s house was near the camp. The third witness, who is a relative of the victim, also testified that she was called to the police station on December 24, 2014. She further testified that when she asked the victim what had happened to her, the victim told her that she had been raped, and that she then went to the Yeka Police Station and then to the Gandhi Memorial Hospital. As to the location of the offence, she stated that there was a river around the police station. The court then ruled that the offender should defend the allegation.

The offender called four defense witnesses. One of his defense witness testified that there was no river and forest at the location where the offence was allegedly committed. Two defense witnesses testified that the offender was at home when the offence took place and that he was still staying at home until the police came and took him for questioning. This was an *alibi* defense, where the offender claimed that he was elsewhere at the time of the offence. The remaining defense witness,

who was a friend of the offender's, stated that he and the offender were together on their way home when the victim called his friend (the offender), and she asked him to show her the direction to a nearby police station. He stated that his friend (the offender) showed her the way to the police station and he went home with him. Perhaps this contradicts an *alibi* defense, depending on the exact time the defense witnesses were referring to. However, the court decided that the offender was not guilty and acquitted him.

The "reasons" for acquittal, as stated in the judge's final ruling, were as follows: First, there is no forest or river at the place where the alleged offence occurred. Second, had the place where the victim claimed to have been raped been near the police station, the police would have heard her screams. The court went on to say that when the victim gave her testimony, she claimed that she had screamed during the offence but there was a police station nearby. If she had actually screamed, it would have been heard, so her testimony is not trustworthy.

Third, the victim initially reported that she had her belongings stolen and later changed her statement and claimed she had been raped. The victim's testimony that she had been robbed and later raped was interpreted by the court as changing her allegation from theft to one of rape. The court then stated, in an obscure manner, that the victim initially claimed she had been robbed and afterwards she claimed she had been raped. As a result, the court lost its trust on the testimonial statements of the victim. For the court, had she been a genuine victim, she would have reported the incident of rape first. This is a unique "reasoning" where the court relied on the sequence of reporting of the two crimes as a ground to disbelieve the victim's account.

The other key informant, PP2, also recounted one rape case which further demonstrates how much profound the institutionalized incredulity of rape victim is within the CJS.¹⁵⁵⁶ According to this informant, the case was still pending at the Cassation Bench of the Federal Supreme Court at the time of the interview. In this particular case, the victim was a former girlfriend of the offender.

¹⁵⁵⁶ Interview with PP2, *supra note* 849.

More than three years after their relationship had broken up, they came across one day and agreed to have some drinks together. The couple, accompanied by a friend of the alleged offender, had some alcoholic drinks, and later went out of the pub they were staying in. After driving for a while, both her former boyfriend and his friend raped her inside the car they were driving. When the case was taken to court, the defense that was raised against the prosecutor's charge was that the offender had been her boyfriend and thus the sexual encounter was consensual. However, PP2 contends that the encounter was not consensual, saying: "[t]his is not fair as there is nothing that suggests that the sexual encounter was consensual. The forensic medical evidence shows that a forced sexual intercourse had occurred and there were scratches and bruises on her face and back."¹⁵⁵⁷ She added that "there were eyewitnesses around the place and at the time she got off the car, and they saw her injuries. The case was dismissed just because, at the police station, she had claimed that she was the one who took down the plate number of the car, but in court, she claimed that it was someone else who did it for her."¹⁵⁵⁸

Essentially, the prosecutor's case was dismissed by the court not because the victim had consented, but instead, because her statement at the police station and during the trial - regarding who recorded the plate number of the offender's car - was inconsistent. The inconsistency of the victim's statement was not on the accuracy of the plate number, but on who took it down. In the presence of other eyewitnesses and a forensic medical evidence consistently corroborating the victim's account of rape, this inconsistency should have little effect in determining the whole outcome of the issues. Given the traumatic condition she was in when she was interviewed at the police station, her statement as to who actually took down the plate number understandably might not be correct. As long as the plate number that the victim reported to the police and to the court matches with that of the offender's car, the inconsistencies on who wrote it down should not render the victim's story a total fabrication, given the presence of eyewitnesses and a forensic medical evidence. But the court generalized such a minor inconsistency to the whole issue surrounding the case, to

¹⁵⁵⁷ *Ibid.*

¹⁵⁵⁸ *Ibid.*

conclude that she was just lying and had not been raped at all. The case was still pending in the Cassation Bench, at the time this study was being conducted. The chance of getting the lower court's decision reversed at this stage is very minimal since the Cassation Bench considers a case only where there is a fundamental error of law.

Previous studies conducted in Addis Ababa have also documented a case where the victim promptly reported the incident of rape to three eyewitnesses but the prosecutor dismissed the case long before it even reached the court for trial.¹⁵⁵⁹ In this particular case, the victim reported that she had been raped by the son of the owner of the house where she was living for a time.¹⁵⁶⁰ She claimed that the offender had raped her by tightly holding her mouth and preventing her from screaming for help.¹⁵⁶¹ There were three eyewitnesses who testified that they had been told by the victim about the incident.¹⁵⁶² However, the prosecutor closed her case stating that there was no evidence to substantiate the victim's claim of rape.¹⁵⁶³

8.3.4 The Victim's Sexual History

Even where there is corroborating evidence and the victim is named as a witness, her past sexual history either concerning the relationship with the offender or her sexual history in general is examined during the trial. Sometimes, the inquiry goes to the extent of cross-examining the victim herself and other witnesses of the prosecutor, about the victim's sexual history, including her marital status.¹⁵⁶⁴ The prosecutor's witnesses were examined as to whether the victim came from a place where early marriage is common, to deduce from their testimony that the victim had involved in child marriage and has had an experience of a sexual intercourse in that marriage.¹⁵⁶⁵ For cases involving adults, the inquiry into the victims' prior sexual history seems to be a standard

¹⁵⁵⁹ Blain Worku (2011), *supra note* 987, pp. 53-54.

¹⁵⁶⁰ *Ibid.*

¹⁵⁶¹ *Ibid.*

¹⁵⁶² *Ibid.*

¹⁵⁶³ *Ibid.*

¹⁵⁶⁴ *See e.g.*, Public Prosecutor v. Hailemariam Atsibeha, *supra note* 1469.

¹⁵⁶⁵ *Ibid.*

practice. According to J1, the courts generally do not protect adult rape victims from being cross-examined about their sexual history, during the trials.¹⁵⁶⁶ All the prosecutors interviewed had similar views.

However, the inquiry into the victim's sexual history does not start at the trial stage. Instead, it – rather blatantly – comes into play within the CJS at the initial reporting stage. For instance, the classification and recording rape victims by the police as 'virgin' and 'non-virgin' had, in the past, presupposed some sort of inquiry into the victim's sexual history. At the investigation phase, the police often refer the victims to hospital for forensic medical examination. The forensic medical examination reports accessed by the present researcher was found to consistently contain information about the hymeneal status of the victim.¹⁵⁶⁷ The hymeneal status, as described in the examination reports, informs the police, the prosecutor, the judge and the offender or his lawyer about the victims' sexual history. At least, it allows the key actors within the CJS to make inferences about the victims' sexual history.

Regarding the admissibility of the victim's previous sexual history in rape cases, there were two closely intertwined assumptions. First, a woman who was unchaste was believed more likely to have consented to the contested sexual encounter with the offender.¹⁵⁶⁸ Unchasteness was understood as engaging in either a pre-marital or an extra-marital sex. It was assumed that an unchaste woman would be more likely to consent to a sexual intercourse than a woman without a history of pre-marital or extra-marital sexual relations.¹⁵⁶⁹ Thus, the offenders or their lawyers make inquiries into the sexual history of witnesses in order to suggest that the victim had consented to the sexual encounter in question too. The assumption seems that having been unchaste with

¹⁵⁶⁶ Interview with J1, *supra* note 842.

¹⁵⁶⁷ *See infra* Chapter Eight. Section "8.3.5 Forensic Medical Examination" with accompanying notes

¹⁵⁶⁸ Richard Klein (2008), *supra* note 11, p. 990

¹⁵⁶⁹ Cassia C. Spohn (1999), *supra* note 18, p. 126.

other men previously was enough to suggest the presence of the victim's consent to engage in a sexual intercourse with the offender himself.¹⁵⁷⁰

Second, it was believed that a woman who had been sexually active was generally a less credible witness.¹⁵⁷¹ In other words, a woman's chastity informs her credibility as a witness. An unchaste woman was thus viewed as a lying witness.¹⁵⁷² This assumption evolved from a socio-cultural milieu that equated a woman's *honor*, and thus her credibility, with her sexual virtue.¹⁵⁷³ As a woman's *honor* depended on her sexual virtue, her credibility suffered from any real or perceived failings of that virtue.¹⁵⁷⁴ A woman's credibility depended on the value attached to her chastity and sexual virtue, rather than her reputation for truth telling.¹⁵⁷⁵ If a woman was unchaste, she is viewed as having already broken the societal mores and was presumed to continue to defy those mores by lying as a witness under an oath to testify the truth in a court.

Where the offenders or their lawyers make inquiries into the sexual history of rape victims in order to discredit their trustworthiness as witnesses, they do so within a context of a socio-cultural setup that directly links women's truthfulness to their chastity and sexual virtue. Thus, in practice, a woman is required to be chaste and sexually virtuous in order to get the protection of the law. Commenting on this kind of practice and its effects, Michelle J. Anderson notes: "[w]omen heard the rules: If you want the criminal law to vindicate you if you are raped, you better have led an unsullied sexual life. By having been unchaste with the defendant or others before, you assumed the risk that men would sexually violate you."¹⁵⁷⁶ Generally, a victim's sexual history is examined at the trial to determine the issue of consent and credibility.¹⁵⁷⁷

¹⁵⁷⁰ Michelle J. Anderson (2010), *supra note* 1219, P. 658.

¹⁵⁷¹ Richard Klein (2008), *supra note* 11, p. 990.

¹⁵⁷² Julia Simon-Kerr (2008) 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment', *the Yale Law Journal* 117(8), pp. 1854-1898, p. 1854.

¹⁵⁷³ *Ibid.*

¹⁵⁷⁴ *Ibid.*, pp. 1856-1857.

¹⁵⁷⁵ *Ibid.*, p. 1857.

¹⁵⁷⁶ Michelle J. Anderson (2010), *supra note* 1219, p. 659.

¹⁵⁷⁷ Julia Simon-Kerr (2008), *supra note* 1572, p. 1854.

However, the fact that a woman had once had sexual relations with a man does not mean that she will consent to any and all other sexual relations she might have with all men all the time. A woman's previous experience of engaging in a consensual sexual encounter with a man does not entitle him to rape her subsequently. Evidence that the victim had previously engaged in a sexual activity has a very little bearing upon or relevance to whether she consented to any subsequent sexual encounter she might engage in.¹⁵⁷⁸ Likewise, no logic lends credibility to the assumption that the victim is more likely to lie under oath because she had previously had a consensual sexual intercourse with someone else.¹⁵⁷⁹ It is also indefensible to state that 'unchaste' women are more likely to fabricate events in relation to rape than any other types of offences.¹⁵⁸⁰ Thus, rape victims, regardless of their previous sexual history and whether they are 'unchaste' or 'promiscuous' with the offender or with others, ought to be provided with an unqualified protection of the law.¹⁵⁸¹ They deserve to be treated with due respect under the law.¹⁵⁸²

Moreover, the practice of unrestricted admission of rape victims' sexual history as evidence at the trials is not only illogical but also it constitutes a discrimination against women since the same practice does not equally apply in the case of men victims of rape. That is, in cases involving men victims of rape, the victim's sexual history and/or unchaste sexual character is not used to discredit their trustworthiness or to suggest the presence of consent on the part of the victim to engage in a given sexual encounter. From a legal point of view, a man's previous sexual conduct, even if he had previously been convicted for rape, has no relevance whatsoever to his credibility on any subsequent allegations of sexual violence brought against him. In this regard, the Criminal Procedure Code stipulates that "the previous convictions of an accused person shall not be

¹⁵⁷⁸ Michelle J. Anderson (2010), *supra note* 1219, p. 659; Hilaire Barnett (1998), *supra note* 65, p. 278; Vivian Berger (1977), *supra note* 14, pp. 57-59; and Linda A. Purdy (1986) 'Rape: Adding Insult to Injury', *Vermont Law Review* 11(1), pp. 361-372.

¹⁵⁷⁹ Michelle J. Anderson (2010), *ibid.*

¹⁵⁸⁰ Vivian Berger (1977), *ibid.*; and Aileen McColgan (1996) 'Common Law and the Relevance of Sexual History Evidence', *Oxford Journal of Legal Studies* 16(2), pp. 275-308.

¹⁵⁸¹ Michelle J. Anderson (2010), *supra note* 1219, p. 660.

¹⁵⁸² *Ibid.*, p. 661.

disclosed to the court until after he has been convicted.”¹⁵⁸³ The Code further adds that “[t]he previous convictions of an accused person shall not be included in the record of any preliminary inquiry.”¹⁵⁸⁴ Hence, not just his prior sexual conduct but also his previous conviction for an actual sexual offence is not relevant to determine his trustworthiness in a subsequent allegation of rape brought against him. Regardless of in what role he involves in the CJS, i.e. as a witness, a victim or an offender, nothing is inferred from a man’s sexual history during the criminal proceedings. Perhaps the only exception is where a man involves in the criminal proceeding as an offender, in which case his previous criminal sexual conduct might be considered during the sentencing stage as an aggravating factor.

An offender’s right to cross-examine witnesses has been regarded as an important constitutional right.¹⁵⁸⁵ However, the exercise of this right, if it goes to the extent of inquiring into the victim’s sexual history, entails a considerable emotional and psychological cost, humiliation and trauma upon the victims.¹⁵⁸⁶ For this and other reasons stated above, restricting the use of victims’ sexual history will not deprive the offender of his rights for a fair trial.¹⁵⁸⁷ Instead, it can be used to balance the interests of the victim against the rights of the offender by generally denying the admission of sexual history during the trials.¹⁵⁸⁸ This can be achieved by enacting the so-called *rape shield law*, prohibiting the use of evidence of victims’ sexual history, with an exception for its admission only where the court finds it appropriate in the interest of justice.

8.3.5 Forensic Medical Examination

Forensic medical examination is essential to reconstruct events more objectively. In sexual offence cases, it can well address three basic forensic questions: (1) *whether any sexual contact had*

¹⁵⁸³ Criminal Procedure Code, *supra note* 425, Article 138(1).

¹⁵⁸⁴ *Ibid*, Article 138(2).

¹⁵⁸⁵ Hilaire Barnett (1998), *supra note* 65, p. 278.

¹⁵⁸⁶ *Ibid*.

¹⁵⁸⁷ Vivian Berger (1977), *supra note* 14, p. 57.

¹⁵⁸⁸ Cassia C. Spohn (1999), *supra note* 18, p. 128.

happened; and if so, (2) *with whom it did happen*; and (3) *whether it was consensual or non-consensual*. However, the contents of five randomly selected written forensic medical examination reports from the Gandhi Memorial Hospital did not address these basic questions.¹⁵⁸⁹ Nor did they include the required details to assist the CJS. The standard format for forensic medical examination reports is just a single page of an A4 size paper. It leaves just a line or two for demographic and general information such as name, sex, age, occupation, reference or card number and date of examination. The remaining part is left for other substantive details including the findings of the examination and the examiner's suggestion or opinion. The substantive contents of the forensic medical examination reports did not include the essential components but instead included unnecessary and irrelevant information having adverse effect in advancing the cause of rape victims. The main shortcomings of the sample reports are discussed below.

First, all forensic medical examination reports did not include the victim's statement and a description of her emotional state. Nor did they even state whether a forensic medical interview was conducted with the victim. This means forensic medical examination reports submitted to the police, the prosecutors and ultimately to the court failed to document the most vital components of a forensic examination. As Linda E. Ledray noted, "[p]recise documentation is important because statements made to the physician or nurse examiner during the medical-legal examination can be repeated in the courtroom as an exception to the hearsay rule and are very helpful in corroborating the victim's account of the sexual assault."¹⁵⁹⁰ In documenting victims' statements, the examiner should, where appropriate, use qualifying statements such as "patient states" or "patient reports," and if the exam findings match the history given by the victim, the examiner should also document that "there is a congruence between the victim's story and her injuries" or

¹⁵⁸⁹ The sample forensic medical examination reports were attached as an evidence in *Public Prosecutor v. Ali Yesuf*, Criminal File Number 215694, Federal First Instance Court Lideta Division, 10/2/2008 E.C.; *Public Prosecutor v. Fasil Ayitenfisu Belete*, *supra* note 1195; *Public Prosecutor v. Yisihak Chinkilo*, *supra* note 1468; *Public Prosecutor v. Sintayehu Desalegn Afework*, Prosecutor File Number 00014/07, Federal Attorney General Arada Office; and *Public Prosecutor v. Samu 'el Dagnie Tadesse*, File Number 003/06, Federal Attorney General Arada Office.

¹⁵⁹⁰ Linda E. Ledray (2005) 'Forensic Medical Evidence: The Contributions of the Sexual Assault Nurse Examiner (SANE)', in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 6, London: Elsevier Academic Press, p. 127.

“the injuries are consistent with the story.”¹⁵⁹¹ However, none of the sample reports scrutinized had included such vital findings.

Second, from the sample reports, it appears that the forensic medical examination was limited to assessing the presence of genital injuries, disregarding evidence of non-genital injuries. Even evidence of genital injuries were not documented in a way that helps to corroborate the use of force, coercion or lack of consent. Genital injuries can occur as a consequence of both a sexual offence and of a consensual sexual activity.¹⁵⁹² Self-inflicted injuries are also possible.¹⁵⁹³ Genital injuries could have an alternative aetiology such as *infection, inflammation, bleeding disorder, skin condition, neoplasia* and the like.¹⁵⁹⁴ This means genital injuries in themselves cannot be taken as a definitive evidence of the use of force or a lack of consent. Genital injuries have to be carefully interpreted during the forensic medical examination.¹⁵⁹⁵ Nonetheless, the sample reports did not include the findings and interpretation of such examination; instead, they merely state the presence of genital injuries.

It is worth noting that the presence of genital injury, if properly examined and interpreted, can provide evidence that a sexual contact had actually occurred and corroborate the use of force, coercion or a lack of consent, but conversely, the absence of genital injury does not necessarily mean that a sexual contact has not occurred.¹⁵⁹⁶ As a 2013 study at the Gandhi Memorial Hospital found, it was only about 41% of rape victims that had physical indications of the occurrence of a sexual offence during examination.¹⁵⁹⁷

¹⁵⁹¹ Linda E. Ledray (2005), *ibid*, p. 128.

¹⁵⁹² Graeme Walker (2015) ‘The (in)significance of Genital Injury in Rape and Sexual Assault’, *Journal of Forensic and Legal Medicine* 34: pp. 173-178, p. 175.

¹⁵⁹³ Ole Ingemann-Hansen and Annie Vesterby Charles (2013) ‘Forensic Medical Examination of Adolescent and Adult Victims of Sexual Violence’, *Best Practice & Research Clinical Obstetrics & Gynaecology* 27(1), pp. 91-102, p. 99.

¹⁵⁹⁴ Graeme Walker (2015), *supra note* 1592, p. 174.

¹⁵⁹⁵ Ole Ingemann-Hansen and Annie Vesterby Charles (2013), *supra note* 1593, p. 99.

¹⁵⁹⁶ Graeme Walker (2015), *supra note* 1592, p. 175.

¹⁵⁹⁷ Mersha Shenkute (2013), *supra note* 26, p. 55.

Moreover, the sample forensic medical examination reports were found to contain unnecessary and irrelevant facts such as the hymeneal status of the rape victims. They described the hymeneal status as: “hymen ruptured but not recently” or “hymen intact” or “hymen ruptured recently.” The examination of the hymeneal status seems to be a standard practice in the Gandhi Memorial Hospital as another study also found that the hymeneal status had been stated in the forensic medical examination reports submitted to the police.¹⁵⁹⁸ However, the inclusion of hymeneal status in the reports does not serve the interest of justice and advance the cause of rape victims. Hymeneal examination cannot be an effective test to determine whether the victim has been sexually assaulted. This kind of examination does not address the basic forensic questions stated above. According to Catharine White, “it is not scientifically possible by a clinical examination to determine with accuracy whether or not there has been penile penetration of the vagina....”¹⁵⁹⁹ The victim may actually have been sexually penetrated but still the hymen may not be ruptured or injured.¹⁶⁰⁰ A study also showed that laceration of the hymen was only found to be acute in 32% of virgin adolescents who had reported sexual assault.¹⁶⁰¹

Particularly, the inclusion of a hymeneal status description as “ruptured but not recently” in the forensic medical examination reports has no forensic value. The law does not define rape as a crime against virgins only. The hymeneal status, where it is stated negatively as “hymen ruptured but not recently,” does not offer any clue to determine whether the offence had actually occurred. However, four out of five of the sample forensic medical examination reports scrutinized in the present study have described the victims’ hymeneal status as “non-virgin (hymen ruptured), but not recently.” In one report, the victim’s hymeneal status has been described as “virgin (hymen intact).” Thus, all the sample reports contained negative findings. Reports of negative findings neither confirm nor refute the allegation that a sexual offence had been committed. The inclusion

¹⁵⁹⁸ *Ibid*, p. 58.

¹⁵⁹⁹ Catharine White (2015), *supra note* 216, p 301.

¹⁶⁰⁰ *See for e.g.*, Oromia Justice Office v. Mekuanint Girma, *supra note* 1145.

¹⁶⁰¹ Catharine White and Iain McLean (2006) ‘Adolescent Complainants of Sexual Assault; Injury Patterns in Virgin and Non-virgin Groups’, *Journal of Clinical Forensic Medicine* 13(4), pp. 172-180, p. 179.

of negative findings in the reports is unprofessional as it gives a wrong impression to the reader, regarding the actual occurrence (or nonoccurrence) of the alleged offence.

A negative finding about a hymeneal status, particularly where it is described as “raptured but not recently,” in the forensic medical examination reports, might prove that a woman has had a prior sexual intercourse. This does not mean that she relinquishes her right to refuse having sex with anyone subsequently. This practice seems to be predicated on the belief that rape is mainly a sexual act and thus for women who had had a prior sexual intercourse, one more sexual act should not matter.¹⁶⁰² It reinforces the stereotype that women should be chaste and that an unchaste woman has a propensity to consent to sex, or is less credible as a witness. Meanwhile, it allows the offender or his lawyer to characterize such negative findings with their own interpretations to undermine the victim’s credibility. Above all, a hymeneal examination is demeaning, degrading and humiliating to the victim and has a significant negative social, physical and psychological impact on her.¹⁶⁰³ It is also discriminatory as the issue of hymeneal status does not apply to male sexual conduct, due to bio-anatomical differences between males and females.¹⁶⁰⁴ For instance, where the victim is a male, apparently the hymeneal status cannot be used as an evidence.

Furthermore, the sample reports did not include evidence of non-genital injuries which may be equally important in corroborating the victim’s sexual history. Non-genital injuries can be used to corroborate the victim’s account and the use of force by the offender, which implies a lack of consent.¹⁶⁰⁵ For example, oral or anal injuries may occur as a consequence of oral or anal rape, respectively.¹⁶⁰⁶ Non-genital bruises, abrasions or lacerations may be the result of attempts to restrain the victim or may be part of an associated physical assault during sexual offence.¹⁶⁰⁷ A bruise on the arm may corroborate that the victim had been grabbed by the arm and dragged, for

¹⁶⁰² Kurt Weiss and Sandra S. Borges (1973) ‘Victimology and Rape: The Case of the Legitimate Victim’, *Issues in Criminology* 8(2), pp. 71- 115.

¹⁶⁰³ Catharine White (2015), *supra note* 216, p 301.

¹⁶⁰⁴ *Ibid.*

¹⁶⁰⁵ Linda E. Ledray (2005), *supra note* 1590, p. 134.

¹⁶⁰⁶ Graeme Walker (2015), *supra note* 1592, p. 173.

¹⁶⁰⁷ *Ibid.*

example, into a car.¹⁶⁰⁸ Injuries to the inner thigh may corroborate that the victim's legs were forced apart during sexual offence.¹⁶⁰⁹ However, the sample reports did not document any of these and other types of non-genital injuries. It should be noted here that the absence of injuries neither proves an absence of force nor the presence of a consent.¹⁶¹⁰

Third, one of the basic forensic questions, namely, with whom the sexual contact happened, is unlikely to be uncovered based purely on injuries. For this question, other evidence, particularly DNA evidence, are likely to be more helpful.¹⁶¹¹ DNA evidence is increasingly being used in criminal cases involving rape not only to determine the identity of the offender but also to exonerate innocent criminal suspects who had been wrongfully convicted.¹⁶¹² The use of DNA evidence in other jurisdictions is not a recent phenomenon. It was in 1987 that the first man was convicted of rape with the help of a DNA evidence.¹⁶¹³ However, the practice of forensic medical examination in Ethiopia has not benefited from the advancement of science in this area. Thus, the sample forensic medical examination reports scrutinized in the present study were found to have included nothing at all about DNA evidence. A key informant of the present study also considered failure to utilize DNA evidence as one of the main challenges for the successful prosecution of rape cases.¹⁶¹⁴ DNA evidence has a paramount importance for the Ethiopian CJS where the central issue in the criminal investigations involving rape cases often revolves around determining whether a sexual intercourse had occurred and the offender often relies on an *alibi* defense.

Fourth, all the sample forensic medical examination reports had unnecessarily included information about the findings of examination for STIs. Yet, the inclusion of such findings in the reports is problematic. The findings for STIs do not have evidentiary value as they were supposed

¹⁶⁰⁸ Linda E. Ledray (2005), *supra note* 1590, pp. 134-135.

¹⁶⁰⁹ *Ibid.*

¹⁶¹⁰ *Ibid.*

¹⁶¹¹ Graeme Walker (2015), *supra note* 1592, p. 175.

¹⁶¹² John M. Butler and Terilynne W. Butler (2005) 'DNA for Detectives', in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 8, London: Elsevier Academic Press, p. 165.

¹⁶¹³ Linda E. Ledray (2005), *supra note* 1590, p. 131.

¹⁶¹⁴ Interview with PP1, *supra note* 842.

to. As Linda E. Ledray notes, in the past, “[t]he rationale was that if a victim was negative initially and positive on follow-up, the assailant, if apprehended, could be tested as well. If he was positive for the same STI this could then link him to the crime.”¹⁶¹⁵ Since there are so many variables that could account for a positive STI test, result, it has often not been a useful forensic evidence and is no longer recommended for cases involving adult and adolescent sexual offence victims.¹⁶¹⁶ STI evidence is seldom used in courts unless the individual is sexually inexperienced or elderly.¹⁶¹⁷ Generally, the consensus now is that testing for STIs has no forensic value. If positive, it will only show if the victim had an STI prior to the offence. If that is found to be the case, this information may be accessed by the offender or his lawyer and can be used against her in a court.¹⁶¹⁸ For this reason, such kind of finding should not be included in forensic medical examination reports of cases involving adult rape victims.

Fifth, the sample reports had omitted the essential component of forensic medical examination, namely, the interpretation and conclusion of the forensic findings. From a legal perspective, the forensic medical examination reports should include the following components: an accurate record of the victim’s history; documentations of observations; gathering of forensic-trace evidence; an interpretation of the findings; a standardized medico-legal report in objective terms; and a hearing of expert opinion in the proceedings.¹⁶¹⁹ The sample reports, however, had included, in what ought to be the interpretation and conclusion of the forensic findings, statements of no forensic relevance whatsoever or an unnecessary validation of the alleged offence. Four out of the five reports scrutinized in this study were found to contain statements with no forensic value. Under the heading of “Examiner’s Comments,” the reports stated that the examiners had recommended for the victim to come back a month or so later for taking a pregnancy test and/or an HIV/AIDS test. This indicates that the forensic medical examiners had not been conducting, or at least

¹⁶¹⁵ Linda E. Ledray (2005), *supra note* 1590, p. 130.

¹⁶¹⁶ *Ibid.*

¹⁶¹⁷ Beata Cybulska and Greta Forster (2005), *supra note* 265, p. 26.

¹⁶¹⁸ Linda E. Ledray (2005), *supra note* 1590, p. 129.

¹⁶¹⁹ Ole Ingemann-Hansen and Annie Vesterby Charles (2013), *supra note* 1593, p. 92.

documenting, each and every examination they performed, within a ‘forensic mindset,’ in the strict sense of the term.

Again, the sample reports did not provide interpretations about whether and how the findings may be consistent with a forcible sexual act or with the victim’s account of the incident. Instead, they simply reported that the victim had been tested for STIs and pregnancy and had been given an appointment to come back again for a follow-up. The examiners ignored the purpose of forensic examination, which is to provide information to the judiciary. Instead, they considered rape as a diagnosis, not as a legal concept. A previous study conducted at the Gandhi Memorial Hospital also indicated that among the victims who took an initial examination and were subsequently referred for a further examination to check for pregnancy and STIs test.¹⁶²⁰ The study further revealed that about 83.8% of the victims were given only medical examinations.¹⁶²¹ Conversely, the remaining one sample forensic medical examination report had wrongly confirmed the commission of an offence. The report simply concluded that “[i]t was proven that she has been raped.” In any case, a medical forensic examiner is never supposed to state whether a crime had been committed or not. This is a matter of jurisprudence that must be left to the court.

Last but not least, there is a tendency to confine the criminal investigation efforts just to rely on a forensic medical examination and eyewitness evidence only. The CJS has disregarded other types of evidence that may be essential to shed light on the case. For instance, the use of trace evidence was not mentioned in all rape-case files scrutinized by the present researcher nor has any mention of it been made by present study’s key informants. Since sexual offences are often committed in the absence of eyewitnesses, the use of trace evidence is critically important. The basic premise behind the use of most types of trace evidence is that a person often leaves something at a crime scene and takes something away from it. In violent crimes like forcible rape and sexual assault, this leads to the intensive search for very small pieces of evidence, often referred to as trace

¹⁶²⁰ Mersha Shenkute (2013), *supra note* 26, p. 57

¹⁶²¹ *Ibid.*

evidence, including hairs, fibers, smears of semen or blood, glass, soils and the like.¹⁶²² Trace evidence is often present in such small quantities, making difficult to see it without the aid of specialized lighting techniques.¹⁶²³ The offender may think of sanitizing the scene with respect to normally observable evidence, but he will likely miss trace materials transferred to a victim, the scene or himself.¹⁶²⁴ Like DNA evidence, trace evidence is essential in advancing the cause of rape victims since the issue, in many cases, is whether a sexual intercourse had occurred, and that the offender often relies on an *alibi* defense. However, it appeared that only the victim's body had been considered as a crime scene for gathering of trace-evidence without being transferred to the offender's.

8.4 Conclusion

The reforms introduced with regard to substantive law in the RCC have not been corresponded by changes in rules and practices of procedural and evidentiary matters. Generally, the Criminal Procedure Law currently in force treats rape cases just like any other crimes nor does it incorporate the rights of rape victims. Although the policy reforms are commendable, they have not adequately addressed a number of outstanding issues and led to a meaningful improvement in the treatment of rape victims within the CJS. Likewise, the revisions in substantive rape law have not been accompanied by corresponding reforms addressing practices and rules of evidentiary law applicable to rape cases. Above all, the key actors within the CJS were found to have developed stereotypical practices to reconstructing the accounts of rape victims at the trials.

¹⁶²² Robert R. Hazelwood and Ann Wolbert Burgess (2001) *Practical Aspects of Rape Investigation: A Multidisciplinary Approach*, 3rd ed., Washington, D.C.: CRC Press, p. 270.

¹⁶²³ *Ibid.*

¹⁶²⁴ *Ibid.*

CHAPTER NINE: CONCLUDING REMARKS AND WAY FORWARD

9.1 Conclusion

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

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

Under the Ethiopian human rights normative framework, the FDRE Constitution, starting from its preamble, incorporates the principles of fundamental rights and freedoms and equality and non-discrimination on the grounds of sex. It also embodies the principle of the sanctity of human rights as inviolable and inalienable. As far as women's rights are concerned, the FDRE Constitution provides for the right to equality before the law and equal protection under the law without discrimination on grounds of sex. Through this equal protection, human rights such as the rights to life, liberty and security of person, freedom from torture and cruel, degrading or inhumane treatment or punishment, and freedom from slavery guarantee women's right to protection from sexual and other forms of gender-specific violence. Specifically, the FDRE Constitution, in its Article 35, provides comprehensive provisions entirely devoted to women's rights issues, including the equal enjoyment of the constitutionally guaranteed rights by women; the equal rights of women and men in marriage; women's entitlement to affirmative measures to bring about a *de facto* equality; the right to a paid maternity leave; equal participation in programme planning and implementation; equal rights on property ownership; equality in employment; women's right to a full access to reproductive health care; and most importantly, freedom from harmful practices.

The most relevant provision of the Constitution with respect to VAW is Article 35(4), which stipulates that "[t]he State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited." This provision explicitly recognizes the existence of culturally rooted, gender-specific oppressive customs and practices (of violence) perpetrated against women. It mentions the adverse effects of such violence on women's physical and mental well-being. It also recognized the role of laws, stereotypes, ideas and customs in perpetuating such violence and, therefore, obliges the state to protect women from such gender-specific violence. In essence, it refers to VAW and the need for its elimination. Overall, the FDRE Constitution has, in comparison to its predecessors, made a significant progress in terms of clearly and comprehensively addressing the concerns with respect to women's rights.

However, the Ethiopian human rights normative framework has inherent weaknesses in protecting women's rights. First, the FDRE Constitution does not preclude the adjudication of disputes in

relation to personal and family laws in accordance with religious or customary laws. This undermines the protection women's rights, particularly in a private setting. Second, the Ethiopian government has not ratified the CEDAW's optional protocol, which provides an avenue for individuals to bring private complaints to the Committee, where their rights guaranteed under the CEDAW's provisions are violated. Third, the Women's Protocol has been ratified by Ethiopia, but with reservations on some critical provisions, including reservation against the application of the Protocol's Article 4(2)(a), which calls on the state to "enact and enforce laws to prohibit all forms of [VAW] including unwanted or forced sex whether the violence takes place in private or public." Fourth, the government's failure to implement the normative standards of the rights is yet another problem. This, in part, relates to the fact that the international human rights treaties such as the CEDAW and the Women's Protocol have not so far been issued in the country's Federal *Negarit Gazette*, from which the court and other governmental organs are supposed to take judicial notice. Moreover, lack of commitment from the government, lack of appropriate enforcement and monitoring mechanisms, lack of adequate resources for the protection and promotion of human rights, underrepresentation of women within the justice system, and lack of awareness on the part of the public are also some of the main challenges undermining the full realization of women's rights in Ethiopia.

Despite these limitations, the recognition of women's human rights under the FDRE Constitution and the international human rights treaties ratified by Ethiopia, reinforced by the transition to a formal "democratic" system of government, provided new spaces for women's activism in Ethiopia. Thus, partly in response to the demands from women's rights advocacy groups, and as part of the overall revision of the 1957 Penal Code, reforms were introduced to the Ethiopian rape law, in 2004. The RCC came into effect on the 9th of May of 2005. In comparison to its predecessor, the RCC has brought about a significant progress in advancing the cause of rape victims. First, the RCC has abolished the immunity of rapists and abductors, in the event of the subsequent conclusion of marriage with their victims. Second, it has introduced reforms in the penalty structure of rape, including setting a mandatory minimum sentence and penalty gradations with a continuum of acts that specified varying degrees of gravity. Third, it has abolished an explicit legal provision in the preceding Code that was premised on the faulty assumption that young victims

encourage or provoke, by their behavior, the offenders and thus contribute for their own victimization. Fourth, it has criminalized other forms of SVAW such as FGM, child marriage and marriage by abduction, despite failing to specifically criminalize other forms of gender-specific violence such as wife inheritance and marriage by exchange. Fifth, in recognition of VAW in a private setting, the RCC makes a specific reference to the so-called domestic violence. However, it does not only ignore the gendered nature of violence in the family setting but also construes too restrictively the acts that constitute violence and the persons to whom it extends legal protection.

Most importantly, the legal reforms were accompanied by various policy reforms and measures, including the establishment of special investigation units, prosecution units and trial benches for sexual and other forms of VAWC. Referral systems, coordination mechanisms and a one-stop center to facilitate victims' access to different services have also been set up. Generally, the legal and policy reforms have brought about a remarkable improvement in dealing with sexual and other forms of VAW. In adopting these reforms, legislators sought to curb the high level of sexual violence and improve the treatment of the victims within the CJS and beyond.

Regarding the effects of the legal and policy reforms, the present study found that, subsequent to the reforms, there has generally been an increased trend of police reporting for rape cases in Addis Ababa. However, such an increased trend of police reporting has not been accompanied by a corresponding improvement in rates of attrition, prosecution and conviction. Generally, the attrition, prosecution and conviction rates for VAWC cases, including rape cases, have not been positively impacted by the reforms. The study also found that the legal and policy reforms have not led to a shift of focus away from the character, reputation and behavior of the victim to the criminal conduct of the offender, in rape case-processing within the CJS.

Of the 29 items that were included in the questionnaire as victim characteristics, almost all were reported to have been taken into consideration by the key actors within the CJS in making decision on rape cases. There was no statistically significant difference between male and female participants in their responses regarding the consideration of victim characteristics, except for two items – *victims' working history in a "disreputable" situation*, and *victims' emotional reaction to*

the incident. The present study does not seek to look into the effects or implications of considering victim characteristics on the attribution of blame and credibility or case-processing outcome. However, numerous studies have consistently found the victim characteristics included in the questionnaire as being leading factors for the attribution of blame and credibility to victims, and for determining case-processing outcome (attrition) for rape cases. The present study assumes that victim characteristics included in the questionnaire might have been used to attribute blame and credibility and determine attrition for rape cases within the Ethiopian CJS too. Further studies are needed to explore the effects of victim characteristics on the attribution of blame and credibility, and case-processing outcomes.

Generally, with the exception of an increased trend of police reporting, the legal and policy reforms have not improved the rates of attrition, prosecution and conviction for rape cases nor have they led to a shift of focus away from the character, reputation and behavior of the victim to the criminal conduct of the offender, within the CJS. The overall instrumental impacts of the reforms were not remarkable. This might be due, in part, to the failure of the legal and policy reforms to dispel from the CJS the acceptance of rape myths and attitudes that support or trivialize SVAW. Furthermore, reforms, by their very nature, are long-term processes involving efforts to change the legal culture, organizational and professional practices within and beyond the CJS, and attitudes toward and beliefs about men's and women's sexualities, rape, rapists and rape victims. This entails that the legal and policy reforms are necessary but not sufficient measures to address the complex problem of SVAW.

In Ethiopia, however, it appears that even the prerequisite legal and policy frameworks have not been put in place and utilized to their limits. In this regard, the present study found that the reforms introduced so far have failed to advance the cause of rape victims by eliminating overly restrictive notions about what counts as rape and an intricate web of myths surrounding rape law and its enforcement within the CJS. It specifically identified the following as the main limitations in substantive rape law: First, the law classifies sexual offence as an affront to collective morality and chastity. Second, it makes an unnecessary distinction in the degree of gravity between sexual offences involving sexual intercourse (penile-vaginal penetration) and other sexual penetrations or

acts (penile-anal, finger-vaginal or object-vaginal). Third, it fails to fully degenderize sexual offences. Fourth, the law does not define forcible rape and sexual assault as a non-consensual sexual conduct; instead, it maintains the use of violence, or threat of violence, and resistance (by the victim) as the defining elements of forcible rape and sexual assault. Fifth, it frames the notion of sexual coercion too restrictively, with a lenient sentence and, in one instance, as a private crime. Sixth, it maintains the obsolete notion that forcible rape by a man against his wife is legally impossible.

Yet, the most conspicuous limitation of the reforms was that the revision of the substantive rape law has not been accompanied by changes in rules and, mainly in the practices of procedural and evidentiary matters. Generally, the existing procedural rules treat sexual offences like any other crimes. The Criminal Procedural Code has not incorporated specific rules for the investigation, prosecution and trial of rape cases. Nor does it incorporate the rights of rape victims, such as the right to be treated with respect and dignity, the right to be referred to adequate support services, the right to receive information about the progress of the case, the right to be physically present and give input to the decision-making process, the right to counsel, the right to protection of physical safety and privacy, and the right of compensation. Although the policy reforms on these matters are commendable, they have failed to adequately address many issues and improve the treatment of victims, within the CJS. For instance, there is not a private location for interviewing rape victims. Nor are there directives protecting victims from being repeatedly interrogated by multiple police officers and prosecutors. There are no rules promulgated to specifically protect rape victims' physical safety and privacy either.

Likewise, the reforms introduced so far did not address matters in relation to practices and rules of evidence law. In Ethiopia, there is, as of yet, no codified 'Rules of Evidence.' Nor are there evidentiary rules specifically designed to deal with rape cases. The present study found that, against this backdrop, the key actors within the CJS have developed stereotypical practices to reconstructing rape victims' account of the incident at the trials, including, among others, the corroboration, eyewitness and prompt reporting requirements, and the routine admission of victims' sexual history at the trials. In addition, the conduct of forensic medical examination was

found to miss essential components, such as the interpretation and conclusion of forensic findings, and instead include unnecessary and irrelevant information, such as the hymeneal status of the victim and the findings of examination for STIs. The forensic medical examination is not also benefitting from the scientific advancements in the field, such as the use of DNA evidence. There is also a tendency to limit the investigation efforts to just evidence from medical examination and eyewitness accounts, disregarding other types of evidence that may be essential in shedding light on the facts of the case.

9.2 Way Forward

The legal and policy reforms introduced so far to address the problem of SVAW in Ethiopia were found to be piecemeal in their nature. Such fragmented measures have resulted in only insignificant instrumental effects in terms of improving the rates of police reporting, highlighting the need for further comprehensive reforms. Accordingly, the present study proposes the following reforms on substantive rape law: First, the RCC should put rape under its section entitled “Crimes against the Person” and reclassify rape as a violent offence rather than an affront to public morals or an attack against chastity. This kind of reclassification has also been introduced in other jurisdictions as a first, largely symbolic, step in recognizing rape as an invasive, a dehumanizing and a humiliating act that violates a victim’s physical safety, sexual integrity and autonomy.

For instance, in Kenya, prior to the enactment of an issue-specific legislation – the *Sexual Offences Act* – in 2006, sexual offences were categorized under the “Offences against Morality” section of the country’s Penal Code.¹⁶²⁵

¹⁶²⁵ Winifred Kamau (2013) Legal Treatment of Consent in Sexual Offences in Kenya, University of Nairobi, Nairobi, p. 3, available at: <https://www.google.com/url?sa=t&source=web&rct=j&url=http://theequalityeffect.org/pdfs/ConsentPaperKenya.pdf&ved=2ahUKEwjY2sSKutboAhXR3oUKHd1iAjcQFjAAegQIAhAB&usg=AOvVaw12riuumq2lVIBGMcSzpZPA&cshid=1586267568958> last visited on 1/29/2019.

Likewise, one aspect of the rape law reforms introduced in 1996 in Italy, a jurisdiction with a civil law tradition like Ethiopia, was a reclassification of sexual offences from “Crimes against Public Morality and Decency” to that of “Crimes against the Person.”¹⁶²⁶ Likewise, in Poland, rape has been reclassified as an “Offence against Liberty,” from the previous categorization of it as a “Crime of Lasciviousness” where as in the Philippines, a re-categorization of rape as a “Crime against Persons” has been adopted in lieu of the previous categorization of it as a “Crime against Chastity.”¹⁶²⁷ Similar measures have also been introduced in several other jurisdictions over the past few decades.¹⁶²⁸

Given such global trends, which depict the increasing global recognition of the adverse effects and harm inflicted upon individuals as a result of sexual offences and the need to ensure effective protection of individuals from such offences, it is absolutely essential that similar legislative measures as those mentioned above are taken in Ethiopia. Specifically, under the Ethiopian rape law, sexual offences should be reclassified as “Crimes against an Individual Person.” Such reclassification would not only recognize sexual offences as crimes that violate a victim’s bodily integrity, security, and freedom from discrimination but also render the Ethiopian rape law in conformity with the minimum international human rights standards. According to these standards, sexual offences should be defined as crimes of violence against persons and not as crimes against morality. In this regard, the CEDAW Committee has called upon member states, including the Ethiopian state, to “[e]nsure that sexual assault, including rape, is characterized as a crime against women’s right to personal security and their physical, sexual and psychological integrity.”¹⁶²⁹

Second, the dichotomous approach to the classification of sexual acts into ‘sexual intercourse’ and ‘acts corresponding to sexual acts or indecent acts’ should be abolished. All forms of sexual penetration or act, such as penile-oral, finger-vaginal, finger-anal and object-vaginal and sexual

¹⁶²⁶ Rachel A. Van Cleave (2008), *supra note* 1094.

¹⁶²⁷ David John Frank *et al.* (2009), *supra note* 19, p. 276.

¹⁶²⁸ *Ibid*, p. 285.

¹⁶²⁹ General Recommendation No. 35, *supra note* 66, para. 33.

assault on any part of the body should be considered as being equally serious offences as penile-vaginal penetration (sexual intercourse). Under the law, the method or means of penetration should be made totally irrelevant since the humiliation, degradation and physical harm suffered from forced or coerced penile-oral, finger-vaginal, finger-anal or object-vaginal penetration is as much a violation of the dignity and sexual autonomy of the victim as in a penile-vaginal penetration. In this regard, similar reforms have also been introduced in other jurisdictions. For instance, the reform in Zimbabwe has broadened the range of non-consensual sexual acts that fall under the umbrella of rape. Prior to the reform, the scope of the crime of rape was limited to a non-consensual vaginal intercourse,¹⁶³⁰ but after the promulgation of the *Sexual Offences Act*, in 2001, rape has been redefined to encompass many other forms of sexual acts, as follows: “[a]ny person who, whether or not married to the other person, without the consent of that other person - (a) with the male organ, penetrates any part of the other person’s body; or (b) with any object other than the male organ, penetrates the other person’s genitalia or anus; or (c) engages in fellatio or cunnilingus with the other person, shall be guilty of an offence and liable [...] to the penalties provided by law for rape.”¹⁶³¹

Likewise, in South Africa, prior to the Constitutional Court’s ruling on the famous *S v Masiya* case, in 2007, only penile-vaginal penetration constituted a crime of rape.¹⁶³² Other forms of sexual acts such as anal, mouth or finger penetrations were treated as less serious offences or indecent assaults with a lenient penalty attached to them.¹⁶³³ In the *S v Masiya* case, Mr. Masiya was charged with having a nonconsensual anal (sexual) intercourse with a nine-year-old girl, a less serious sexual offence than rape.¹⁶³⁴ The lower court decided that the rather too restrictive definition of rape should be expanded to include a nonconsensual anal penetration and convicted Mr. Masiya

¹⁶³⁰ David John Frank *et al.* (2009), *supra note* 19, p. 273.

¹⁶³¹ Sexual Offences Act of Zimbabwe, *Act 8/2001*, Article 8(1), *supra note* 1160.

¹⁶³² Nikki Naylor (2008) ‘The Politics of a Definition’, in Lillian Artz and Dee Smythe (eds) *Should We Consent? Rape Law Reform in South Africa*, Chapter 2, Cape Town: Juta & Co, Ltd, p. 23.

¹⁶³³ *Ibid.*

¹⁶³⁴ Case No. CCT 54/06, Constitutional Court Judgment of 10 May 2007, para 24 cited in Nikki Naylor (2008), *ibid.*, pp. 23-25

for committing a crime of rape, a decision which was also upheld by the appellate court. The constitutionality of the definition rape was also referred to the Constitutional Court. The later upheld that the case involved a number of rights under the Constitution, including the right to dignity, equality and freedom and security of the person.¹⁶³⁵ It also found that historically the definition of rape had been based on protecting the interests of society in doing away with an unchaste behavior, rather than protecting the interests of rape victims.¹⁶³⁶ But the Constitutional Court maintained that, under the law, rape should be viewed within the context of the right of all women to dignity, autonomy, bodily integrity and security of the person. Thus, it held that the definition of rape should be expanded.¹⁶³⁷ And for similar reasons, reforms should also be introduced to Ethiopian rape law to make all forms of sexual penetration or acts as equally serious as a penile-vaginal penetration.

Third, under the law, sexual offence should be framed in fully gender-neutral terms. In the first place, the law should be premised on the basic assumption that under any circumstances, committing rape constitutes a violation of fundamental human rights, no matter who the victim is, regardless of the relationship between the victim and the offender, and irrespective of the gender identity and sexual orientation of the victim or the offender. Then, the law should completely degenderize sexual offences to account for adult same-sex rape victims and to avoid an unnecessary distinction on the bases of sex, gender identity or sexual orientation. Under the 1957 Penal Code of Ethiopia, it was legally impossible for a man to be raped by a woman. This was so as the rape law was originally designed to regulate the chastity and virginity of women in the interest of the patriarchy and hence rape was considered to be a crime committed only by men against women. This definition of rape was premised on the stereotype that views women as passive victims and men as aggressive offenders. The RCC has addressed this issue only partially by introducing a new, gender-specific offence of rape by a woman against a man, under its Article

¹⁶³⁵*Ibid*, p. 25.

¹⁶³⁶ *Ibid*.

¹⁶³⁷ *Ibid*.

621. Yet, the RCC fails to fully degenderize sexual offences as crimes committed by a person against another person. Hence, reforms should be introduced to the Ethiopian rape law to fully degenderize all sexual offences, as has been done in other jurisdictions too. For instance, in 1988, South Africa adopted changes to its rape law to make it gender-neutral, by removing the restriction that the offenders in rape crimes are males only and the victims are females only.¹⁶³⁸ The law now has degenderized sexual offences, by making it legally possible for a man to rape another man, for a woman to rape another woman, and for a woman to rape a man as well as for a man to rape a woman.¹⁶³⁹

Fourth, the definition of rape that requires the use of violence, or threat of violence, or a physical resistance by the victim should be abolished. Instead, rape should simply be redefined based on the presence or absence of consent. Meanwhile, consent should be defined according to the “No means, no!” standard. This would bring all instances of sexual offence clearly within the boundaries of the criminal law and underscores the gravity of their harms upon the victims. Accordingly, rape should simply be defined as a “nonconsensual sexual act” and the gravity of the offense, and hence the severity of the punishment, should be graded according to whether or not violence has been used to achieve it. Three tiers of grading for sexual offences could be identified and used for this purpose: (1) *sexual assault*, (2) *sexual assault with threats of bodily harm*, and (3) *aggravated sexual assault with the use of violence*. In this approach, the essence of rape is its non-consensuality, and that the non-consensuality of a given sexual encounter is automatically criminal act, irrespective of whether or not the encounter had been accompanied by violence. In this regard, the Ethiopian rape law should follow the Kenyan approach.

In Kenya, prior to the enactment of the 2006 *Sexual Offences Act*, the country’s Penal Code did not provide any definition of consent.¹⁶⁴⁰ However, the 2006 *Sexual Offences Act* not only does define the term ‘consent’ but also contains extensive provisions on the notion of consent,

¹⁶³⁸ David John Frank *et al.* (2009), *supra note* 19, p. 273.

¹⁶³⁹ *Ibid.*

¹⁶⁴⁰ Winifred Kamau (2013), *supra note* 1625, p. 5

specifically in rape cases. For instance, Section 42 of the *Act* provides: “a person consents if he or she agrees by choice, and has the freedom and capacity to make that choice.”¹⁶⁴¹ This definition underlines the importance of individuals’ free will and their ability to make a decision as to whether or not to take part in the sexual activity, without coercion or deceitful practices or incapacity due to age and mental condition.¹⁶⁴²

Moreover, the 2006 *Sexual Offences Act* provides for rebuttable and non-rebuttable evidential presumptions about consent in rape cases.¹⁶⁴³ Accordingly, a lack of consent is presumed if the prosecutor proves one of the following circumstances to exist: (1) any person has, at the time of the act or immediately before the first sexual activity began, used or threatened to use violence against the victim; (2) any person has, at the time of the act or immediately before the first sexual act, caused the victim to fear that violence was about to be used or would be used immediately against another person; (3) the victim was, and the offender was not, unlawfully detained at the time; (4) the victim was asleep or otherwise unconscious at the time; (5) the victim was unable to communicate consent to the offender because of a disability; (6) and any person has administered or caused the victim to take a substance, without the victim’s consent, which was capable of causing or enabling the victim to be stupefied or overpowered at the time of the relevant act.¹⁶⁴⁴ The presumption, upon proving one of these circumstances, is a rebuttal and the burden of refuting the presumption rests upon the offender.¹⁶⁴⁵

Likewise, a lack of consent is presumed if the prosecutor proves one of the following circumstances to exist: (1) the offender intentionally deceived the victim as to the nature or purpose of the act complained of; and (2) the offender intentionally induced the victim to consent to the act complained of by impersonating a person known personally to the victim.¹⁶⁴⁶ The presumption,

¹⁶⁴¹ Sexual Offences Act No. 3 of 2006, Section 42, cited in Winifred Kamau (2013), *ibid*, p. 6.

¹⁶⁴² Winifred Kamau (2013), *ibid*.

¹⁶⁴³ *Ibid*, pp. 6-7.

¹⁶⁴⁴ Sexual Offences Act No. 3 of 2006, Section 44(2), cited in Winifred Kamau (2013), *ibid*, p. 7.

¹⁶⁴⁵ Winifred Kamau (2013), *ibid*.

¹⁶⁴⁶ Sexual Offences Act No. 3 of 2006, Section 45(2), cited in Winifred Kamau (2013), *ibid*, pp. 8-9.

upon proving one of these circumstances, is not a rebuttal.¹⁶⁴⁷ Thus, if the existence of one of these circumstances has been proven by the prosecutor, then the court concludes that the victim did not consent, that the offender did not believe that the victim had consented, and the court must therefore convict the offender.¹⁶⁴⁸ Adopting this approach under the Ethiopian rape law would help address the effects of biased attitudes and stereotypical assumptions often espoused among the key actors within the CJS in their handling of the issue of consent in rape cases. Moreover, introducing such reforms would render the Ethiopian rape law in conformity with the minimum international human rights standards.

In this regard, the minimum international human rights standard is that the law should define rape based on a lack of consent, and not on the use of violence or force or coercion.¹⁶⁴⁹ For instance, the CEDAW Committee called upon member states, including the Ethiopian state, to ensure that the definition of sexual offence is based on a lack of a freely given consent, and takes into account coercive circumstances.¹⁶⁵⁰ The new approach to consent would also render the Ethiopian rape law in conformity with the minimum international human rights standards by abolishing Articles 625, 624 and 623 of the RCC that either attach too lenient sentences to sexual offences or treat sexual offences as private crimes. The minimum human rights standard here is that sexual offences should not constitute a private offence¹⁶⁵¹ and the sentence should not be too lenient.¹⁶⁵²

Fifth, forcible rape committed by a man against his wife should be treated equally as an offence just like any physical violence by a husband against his wife is treated as an offence under the law.

¹⁶⁴⁷ Winifred Kamau (2013), *ibid*, p. 9.

¹⁶⁴⁸ *Ibid*, p. 9.

¹⁶⁴⁹ See e.g. Committee on the Elimination of Discrimination against Women (2002), *supra note* 1239, paras. 95-96; and Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Estonia, A/57/38, part I, *supra note* 1287, para. 98.

¹⁶⁵⁰ General Recommendation No. 35, *supra note* 66, para. 33.

¹⁶⁵¹ See e.g. Committee on the Elimination of Discrimination against Women (2002), *supra note* 1238.

¹⁶⁵² See e.g. Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Czech Republic, A/57/38, part III, *supra note* 1239, para. 95; Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Iceland, A/57/38, part I (2002), *supra note* 1239, paras. 245-246; and Committee on the Elimination of Discrimination against Women (2003), Concluding Observations, Japan, A/58/38, part II, *supra note* 1239, para. 361.

There are a multitude of factors that could justify legal intervention. To begin with, marital rape is not only a pervasive problem but also is no less traumatic and abusive than rape involving strangers. Unlike rape cases involving strangers, marital rape occurs repetitively and often co-occurs along with other forms of violence. Moreover, under the Ethiopian rape law, marital rape has, by design or by accident, been criminalized when it is committed by a woman against her husband, under Article 621 of the RCC. In view of this, the partial exemption of marital rape constitutes a *de jure* discrimination against married women. It also assigns to married women a separate and disadvantaged status by creating an illogical distinction between married women and single women, married men and married women, and women in a *de jure* marriage and women in a *de facto* marriage.

Most of all, marital rape is a form VAW, which denies the victim the right to physical security, bodily integrity, privacy, liberty, equality and freedom from discrimination. It also undermines women's reproductive rights and compromises women's ability to protect themselves from HIV/AIDS, ultimately jeopardizing women's right to life. By maintaining the exemption of marital rape, the law has failed to meet the bare minimum international human rights standards on VAW. According to the CEDAW Committee, the law should criminalize marital rape to meet the bare minimum human rights standards.¹⁶⁵³ Specifically referring to the gaps under the Ethiopian rape law, the Committee recommended that the state should amend its criminal law to criminalize marital rape.¹⁶⁵⁴ Criminalizing marital rape would, therefore, render the Ethiopian rape law in conformity with the minimum international human rights standards. On the other hand, failure to criminalize marital rape carries the danger of promoting a culture of impunity and contributes to normalization of sexual violence as a routine, socially accepted act within the society.

¹⁶⁵³ See e.g. Committee on the Elimination of Discrimination against Women (2002), *supra note* 1239, paras. 95-96; Committee on the Elimination of Discrimination against Women (2006), *supra note* 1389; the United Nations Commission on Human Rights (2001), *supra note* 1389; and *supra note* 1389.

¹⁶⁵⁴ Committee on the Elimination of Discrimination against Women (2011) *supra note* 1390, para 21(a).

For these reasons, the law should criminalize a forcible rape by a husband against his wife at least in one of two ways: First, forcible marital rape can be addressed by adopting a specific and comprehensive law against domestic violence or VAW by intimate partners, with a broad definition of acts including physical, sexual and psychological violence. Such a specific law should incorporate procedural rules allowing the courts to take protective measures. A second option could be abolishing the exemption of marital rape from all types of sexual offences, which should also be accompanied by specific rules of procedural law, which authorize the courts to take temporary protective measures, including the removal of an abusive spouse from a shared home and obliging him to pay maintenance.

Meanwhile, the substantive law reforms should be accompanied by reforms on procedural and evidentiary laws. The goals of the reforms on procedural and evidentiary laws should be to protect the rights of rape victims, including the right to protection of physical safety and privacy, the right to be treated with respect and recognition, the right to be referred to adequate support services, the right to a separate legal representation, the right to get information about the progress of the case, the right to be physically present and give input to the decision-making process, the right to counsel, and the right to compensation. More specifically, the reforms on the procedural law should aim at protecting victims' physical safety and privacy rights. To this end, rules of procedural law should be designed in such a way as to restrict, if circumstances so require, the bail right of the offender, and enable the courts to take other protective measures, such as allowing the victim to stay in temporary shelters.

In an effort to protect rape victims' privacy right, rules of procedure should be issued, giving the victim an option of anonymity during the trial, and holding the trial wholly *in-camera*, and regulating media reporting of rape trials. Testifying through a CCTV system should also not be limited to child victims; instead, it has to be extended to all victims of rape regardless of their age, gender and sexual orientation. Adult victims should at least be given the option to testify through a CCTV system or *in-camera*.

Reforms should also be introduced to address evidentiary matters. In furthering victims' privacy rights, the so-called *rape shield law* should be enacted. This law should restrict the routine admission of the victim's sexual history and social conducts during the trials, with the following primary objectives: (1) to prevent a potentially irrelevant, prejudicial testimony from being heard at the trials; (2) to restrict the admissibility of such evidence, (3) to minimize the humiliating cross-examination of the victim; and (4) to improve the low rates of reporting, prosecution and conviction for rape cases. Other reforms addressing evidentiary matters should also be introduced. Specifically, the reforms should deal with practices in relation to rape cases, including corroboration, eyewitness and prompt reporting requirements.

Beyond the legal reforms, various policy reforms and measures should also be taken. Like the legal reforms, the goals of the policy reforms and measures should be furthering the rights of rape victims, and encouraging the victims to report the incident to the police. The first policy measure to be taken should be establishing sexual offence units at sub-city level police departments and prosecutor's offices, and sexual offence benches at each division of the Federal First Instance Court where rape cases are tried. While the establishment – previously – of special police and prosecution units and trial benches for VAWC is commendable, the cases handled in these units are numerous, to the extent of obscuring their specialty status, at least in relation to rape cases. Thus, establishing investigation and prosecution units and trial benches for rape cases, or at least sub-specialist units and benches, within the existing units and benches should be considered. Support should be provided for those police officers, prosecutors and judges who would be assigned in the special or sub-special units and benches. The police officers, prosecutors and judges involved in handling cases of SVAW should specialize in the area of sexual violence.

In addition, special rooms for conducting interviews privately should be available at the special or sub-special investigation and prosecution units so that taking victims' statements and interviews by the police and prosecutors can be conducted in private settings. The police and prosecutors should be trained and/or instructed to follow detailed protocols while interviewing victims of rape. The protocols should direct the responding police officer and prosecutor to conduct interviews with victims of rape in a designated private place; to allow the presence of another person if the

victim so requests; to allow the victim to talk without an undue interruption; to avoid demonstrating a judgmental attitude; to refrain from posing leading or suggestive questions; and to demonstrate a genuine empathy to the victim while giving reassurances that everything possible will be done to prevent a possible re-traumatization and secondary victimization. At least up on the request of the victims, a video-taping of their statements to the police during the investigation phase should also be considered. This can advance the cause of rape victims in two ways. First, it can be used as an input to supervise the manner of the police officers' interviews with victims and to improve their professional skills. Second, the victims' initial video-recorded statements can be accessed by other police officers and prosecutors to prevent repeated interviews.

Besides, rape victims should be granted the right to be interrogated by a person of the same sex as well as the right to refuse to answer embarrassing questions about the incident. Also, mandatory directives have to be issued obliging the police and prosecutors that interrogations of rape victims should be undertaken by one officer and prosecutor and that it should be the same prosecutor who handles the case during the investigation stage that should also be responsible for filing a criminal charge against and prosecuting the offender during the trials. Policy reforms should also be introduced to minimize unnecessary delays between the reporting of rape cases and the date of the trials. To this end, introducing a fast-track prosecution scheme for rape cases should be considered as an option.

Moreover, the one-stop center currently being run at the Gandhi Memorial Hospital and should also be expanded and established, at least in all public hospitals in Addis Ababa City Administration. Formal communication lines and cooperation between the police, the prosecution, the one-stop center and temporary shelter providers should be set up and effectively utilized to facilitate the effective processing of rape cases. Particularly, the coordination between the police and the forensic medical examiners at the one-stop centers should be strengthened further, so that the police know where to take a victim after she has reported the incident, and a list of designated forensic medical examiners, including their address and contact details should be made available in each police department and police station where the special or sub-special units for rape cases are located. The victim should be granted the right to access free psycho-social and legal support

throughout the criminal proceedings. Because of the voluntary nature the support services currently being provided, such as temporary shelter, there is a need to ensure that adequate material, logistical, financial and technical support is given to service providers. Thus, the support services provided by NGOs should not only be closely monitored but also adequate funding should be provided to enhance the accessibility, quality and quantity of the services they provide. The police should be instructed to provide victims with information about the availability of support services, including the address and contact numbers of the service providers, preferably during the initial reporting stage.

Furthermore, rape victims should have the right to receive information about the progress and any relevant details of the criminal proceedings and to be actively involved in the proceedings. To this end, policy measures should be introduced to ensure the victims are provided with their own legal representation at the expense of the state. The victim's lawyer should have the responsibility for keeping the victim informed about the progress of the case and acting as a bridge between the victim and the key actors within the CJS. Specifically, the victim's lawyer should ensure that the victim is informed whether the offender has given his statement, pleaded guilty or not guilty, and whether the prosecutor has decided to proceed with the prosecution or not, and any other related matters of significance to the victim and her case. Specifically, the victim should have a say in the types of conditions which may be imposed on the bail right of the offender, and should be formally informed of the outcome regarding the decision on the application of bail right, through her lawyer. The police should be instructed to formally inform the victim about the existence of such a right, during the reporting stage, preferably before taking her statement. In addition to providing a separate legal representation at its own cost, the state should provide financial assistance to the victim.

Providing support services, and legal and financial assistance to the victim is part of the duties of the state to fulfill the victims' right to an effective remedy, under the international human rights treaties ratified by Ethiopia. In this regard, the Women's Protocol obliges member states to take appropriate and effective measures to *implement programmes for the rehabilitation of women*

victims;¹⁶⁵⁵ *establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women;*¹⁶⁵⁶ *ensure effective access by women to judicial and legal services, including legal aid*¹⁶⁵⁷ *and support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid.*¹⁶⁵⁸

Likewise, Article 2(b) and Article 2(c) of the CEDAW contain an obligation upon states parties to provide effective remedies to women whose human rights have been violated.¹⁶⁵⁹ In this regard, the CEDAW Committee, in its concluding observations, expressed its concern about the lack of victim assistance and rehabilitation services in Ethiopia,¹⁶⁶⁰ and called on the state to “[e]nhance victim assistance and rehabilitation, by strengthening the legal aid services of the [then] Ministry of Justice [and now, the Federal Attorney General], providing psychological counselling, supporting local women’s rights organizations which offer shelter and assistance to victims, and establishing victim support centers in the regional states.”¹⁶⁶¹ The CEDAW Committee has also emphasized that state parties “must provide reparation to women whose rights under the Convention have been violated,” adding that “[w]ithout reparation, the obligation to provide an appropriate remedy is not discharged.”¹⁶⁶² It has further stressed that state parties “must ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate.”¹⁶⁶³

At each stage of the proceedings, rape victims should be treated professionally and with due respect. Besides, the focus of the proceedings should be shifted away from the character, reputation

¹⁶⁵⁵ The Women’s Protocol, *supra note 525*, Article 4(2)(e).

¹⁶⁵⁶ *Ibid*, Article 4(2)(f).

¹⁶⁵⁷ *Ibid*, Article 8(a).

¹⁶⁵⁸ *Ibid*, Article 8(b).

¹⁶⁵⁹ General Recommendation No. 28, *supra note 463*, paras. 32, 34.

¹⁶⁶⁰ Committee on the Elimination of Discrimination against Women (2011), *supra note 1390*, para. 20.

¹⁶⁶¹ *Ibid*, para. 21(e).

¹⁶⁶² General Recommendation No. 28, *supra note 463*, para. 32.

¹⁶⁶³ *Ibid*, para. 32, para. 34.

and behavior of the victim to the criminal conduct of the offender. It appears that, so far, biased attitudes, stereotypes and the acceptance of rape myths have been contributing to the assessment – by the key actors within the CJS – of the credibility of rape victims and to the attribution of blame to the victims. It is only when the attitudes towards rape and rape victim have changed and the stereotypical myths surrounding rape law and its enforcement have been exposed through education and awareness-raising activities that the rates of sexual offences would progressively decrease and the treatment of the victims improve. Moreover, the legal and policy reforms can produce the desired instrumental effects when they are accompanied by attitudinal changes on the part of the key actors within the CJS, the victims and the wider public at large. For this reason, a wide range of policy measures, including training and education to change discriminatory attitudes towards rape and rape victims, should be taken. Also, specialist on-the-job training for everyone who is assigned at special or sub-special investigation and prosecution units and trial benches should be provided. The trainings should specifically focus on, *inter alia*, the identification and demystification of each type of rape myth affecting rape case-processing within the CJS. Beyond the CJS, special trainings on the basic forensic principles and forensic medical examination skills as well as on preparing forensic medical examination reports should also be given to all forensic medical examiners.

Although the focus of the present study is primarily on exploring structural factors at societal level, particularly the law and the CJS, the risk factors for the occurrence of SVAW are complex. The risk factors exist not just at societal level but also at community, interpersonal (relational) and individual levels, often involving a dynamic and complex interaction within and between factors at different levels. Any successful intervention to deal with the problem requires taking action across different levels. Having this in view, the legal and policy reforms should be accompanied by other measures beyond just the law and the CJS. These measures should include intensifying public awareness-raising campaigns aiming at not only dispelling myths and attitudes that support or trivialize SVAW but also eliminating other practices that are based on stereotyped roles for men and women. Other measures should include educating children about the importance of mutual

respect in relationships, gender and sexual diversity, and promoting equality through various media and entertainment platforms.

Like the provisions of support services, and legal and financial assistance to the victim, organizing gender-focused trainings for the key actors within the CJS and other concerned public officials as well as undertaking public awareness-raising works is part of the duties of the state to protect women's rights, under the international human rights treaties ratified by Ethiopia.¹⁶⁶⁴ The Women's Protocol, for instance, obliges member states to take appropriate and effective measures to "actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of [VAW]."¹⁶⁶⁵

¹⁶⁶⁴ See e.g., General Recommendation No. 19, *supra note* 481, para. 24; CEDAW, A.T. v. Hungary, No. 2/2003, *supra note* 899, para. 9.6; Committee on Economic, Social and Cultural Rights (2005) *supra note* 899, para. 27; and the United Nations Commission on Human Rights (2000) *supra note* 899, para. 11.

¹⁶⁶⁵ The Women's Protocol, *supra note* 525, Article 4(2)(d).

BIBLIOGRAPHY

Books, Book Chapters and Journal Articles

- Abbi Kedir and Lul Admasachew (2010) 'Violence against Women in Ethiopia', *Gender, Place and Culture: A Journal of Feminist Geography* 17(4), pp. 437-452.
- Abdullah-Khan, Noreen (2008) *Male Rape: The Emergence of a Social and Legal Issue*, New York: Palgrave Macmillan.
- Abebayehu Tora (2013) 'Assessment of Sexual Violence against Female Students in Wolaita Sodo University, Southern Ethiopia', *Journal of Interpersonal Violence* 28(11), pp. 2351-2367.
- Abera Jembere (1998) *Legal History of Ethiopia, 1434-1974*, Rotterdam: Erasmus Universiteit, Leiden: Afrika-Studie-Centrum.
- Acierno, R. *et al.* (1997) 'Prevalence Rates: Case Identification and Risk Factors for Sexual Assault, Physical Assault, and Domestic Violence in Men and Women', *Behavioral Medicine* 23(2), pp. 53-64.
- Adey Bogale *et al.* (2004) 'Assessment of Sexual Assault among Women in Assendabo Town, Oromia Region, South West Ethiopia', *Ethiopian Journal of Health Science* 14(1), pp 23-30.
- Alemayehu Areda and Original W/Giorgis (2008) 'Nationwide Survey on Domestic Violence', *BERCHI, ANNUAL JOURNAL: ETHIOPIAN WOMEN LAWYERS ASSOCIATION*, Issue 7, pp. 8-89
- Alemayehu Belachew Bekele *et al.* (2011) 'Sexual Violence Victimization among Female Secondary School Students in Eastern Ethiopia', *Violence and Victims* 26(5), pp. 608-630.
- Allen, W. David (2007) 'The Reporting and Underreporting of Rape', *Southern Economic Journal* 73(3), pp. 623-641.
- Anderson, Irina and Kathy Doherty (1997) 'Psychology, Sexuality and Power: Constructing Sex and Violence', *Feminism Psychology* 17(4), pp. 495-514.
- Anderson, Michelle J. (2005) 'All-American Rape', *St. John's Law Review* 79(3), pp. 625-644.
- Anderson, Michelle J. (2010) 'Diminishing the Legal Impact of Negative Social Attitudes toward Acquaintance Rape Victims', *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 644-664.
- Andualem Henok *et al.* (2015) 'Sexual Violence and Substance Use among Female Students of Mizan-Tepi University, Southwest Ethiopia: A Mixed Method Study', *Journal of Women's Health, Issues and Care* 4(4), pp. 1-9.
- Anonyms (1952) 'Note: Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard', *the Yale Law Journal* 62(1), pp. 55-83.
- Arnold, Dodie *et al.* (2008) 'Prevalence and Risk Factors of Gender-based Violence among Female College Students in Awassa, Ethiopia', *Violence and Victims* 23(6), pp. 787-800.
- Ask, K. and S. Landstrom (2010) 'Why Emotions Matter: Expectancy Violation and Affective Response Mediate the Emotional Victim Effect', *Law and Human Behavior* 34(5), pp. 392-401.

- Axam, Hilary S. and Deborah Zalesne (1999) 'Simulated Sodomy and Other Forms of Heterosexual "Horseplay": Same Sex Sexual Harassment, Workplace Gender Hierarchies, and the Myth of the Gender Monolith Before and After Oncale', *Yale Journal of Law and Feminism* 11(1), pp. 155–249.
- Bachman, Ronet and Raymond Paternoster (1993) 'A Contemporary Look at the Effects of Rape Law Reform: How Far Have We Really Come?', *The Journal of Criminal Law and Criminology* 84(3), pp. 554-574.
- Baker, Katharine K. and Michelle Oberman and (2016) 'Women's Sexual Agency and the Law of Rape in the 21st Century', *Studies in Law, Politics and Society*, 69: pp. 63-111.
- Banda, Fareda (2008) 'Building on a Global Movement: Violence against Women in the African Context', *African Human Rights Law Journal* 8(1), pp. 1-22.
- Barnett, Hilaire (1998) *Introduction to Feminist Jurisprudence*, London: Cavendish Publishing Limited.
- Bell, Susan T. *et al.* (1994) 'Understanding Attributions of Blame in Stranger Rape and Date Rape Situations: An Examination of Gender, Race, Identification, and Students' Social Perceptions of Rape Victims', *Journal of Applied Social Psychology* 24(19), pp. 1719–1734.
- Ben-David, Amith (1993) 'Culture and Gender in Marital Therapy with Ethiopian Immigrants: A Conversation in Metaphors', *Contemporary Family Therapy* 15(4), pp. 327–339.
- Bennice, Jennifer A. and Patricia A. Resick (2003) 'Marital Rape: History, Research and Practice', *Trauma Violence Abuse* 4(3), pp. 228-246.
- Berger, Ronald J. *et al.* (1988) 'The Dimensions of Rape Reform Legislation', *Law and Society Review* 22(2): 329-358.
- Berger, Ronald J. *et al.* (1991) 'The Social and Political Context of Rape Law Reform: An Aggregate Analysis', *Social Science Quarterly* 72: pp. 221–238.
- Berger, Vivian (1977) 'Man's Trial, Woman's Tribulation: Rape Cases in the Courtroom', *Columbia Law Review* 77(1), pp. 1-103.
- Bernat, Frances P. (2002) 'Rape Law Reform', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada*, Chapter 6, Westport: Praeger Publishers.
- Bienen, Leigh (1980) 'Rape III-National Developments in Rape Reform Legislation', *Women's Rights Law Reporter* 6(3), pp. 170-213.
- Biseswar, Indrawatie (2008) 'A New Discourse on 'Gender' in Ethiopia', *African Identities* 6(4), pp. 405–429.
- Black, K. A. and D. J. Gold (2008) 'Gender Differences and Socioeconomic Status Biases in Judgments about Blame in Date Rape Scenarios', *Violence and Victims* 23(1), pp. 115–128.
- Bohmer, Carol (1973-74) 'Judicial Attitudes toward Rape Victims', *Judicature* 57(7), pp. 303-307.
- Bohner, G. *et al.* (2006) 'Social Norms and the Likelihood of Raping: Perceived Rape Myth Acceptance of Others Affects Men's Rape Proclivity', *Personality and Social Psychology Bulletin* 32(3), pp. 286–297.

- Bohner, Gerd *et al.* (2009) 'Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator', in M. Horvath, and J. Brown (eds) *Rape: Challenging Contemporary Thinking*, Cullompton: Willan.
- Bollingmo, Guri C. *et al.* (2008) 'Credibility of the Emotional Witness: A Study of Ratings by Police Investigators', *Psychology, Crime and Law* 14(1), pp. 29–40.
- Borgida, Eugene and Phyllis White (1978) 'Social Perception of Rape Victims: The Impact of Legal Reform', *Law and Human Behavior* 2(4), pp. 339-351.
- Boucher, S. *et al.* (2009) 'Marital Rape and Relational Trauma', *Sexologies* 18(2), pp. 95-97.
- Breakwell, G. and D. Rose (2000) 'Research; Theory and Method', in G. Breakwell, S. Hammond and C. Fife-Schaw (eds) *Research Methods in Psychology* (2nd ed), London: Sage.
- Brenner, Alletta (2013) 'Resisting Simple Dichotomies: Critiquing Narratives of Victims, Perpetrators, and Harm in Feminist Theories of Rape', *Harvard Journal of Law and Gender* 36(2), pp. 503-568.
- Brietzke, Paul (1976) 'Land Reform in Revolutionary Ethiopia', *The Journal of Modern African Studies* 14(4), pp. 637-660.
- Brouwer, Anne-Marie de (2005) *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Antwerp, Oxford: Intersentia.
- Brown, Jennifer M. and Sandra (2011) 'Glossary of Terms', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Abingdon: Routledge.
- Brown, Laura S. (1989) 'New voices, new visions: Toward a Lesbian/Gay Paradigm for Psychology', *Psychology of Women Quarterly* 13(4), pp. 445-458.
- Brown, M. F. (2001) *Criminal Investigation, Law and Practice*, 2nd ed, USA: Butter worth-Heinemann.
- Brownmiller, Susan (1975) *Against Our Will: Men, Women, and Rape*, New York: Bantam Books.
- Bryden, David P. and Sonja Lengnick (1997) 'Rape in the Criminal Justice System', *the Journal of Criminal Law and Criminology* 87(4), pp. 1194-1384.
- Burgess, Ann Wolbert and Linda Holmstrom (1974) 'Rape Trauma Syndrome', *American Journal of Psychiatry* 131: pp. 981–995.
- Burgess, Gemma (2011) 'The Uneven Geography of Participation in the Global Scale: Ethiopian Women Activists at the Global Periphery', *Globalizations* 8(2), pp. 163–177.
- Burgess, Gemma (2013) 'A Hidden History: Women's Activism in Ethiopia', *Journal of International Women's Studies* 14(3), pp. 96-107.
- Burgess, Gemma Lucy (2012) 'When the Personal Becomes Political: Using Legal Reform to Combat Violence against Women in Ethiopia', *Gender, Place & Culture: A Journal of Feminist Geography*, 19(2), pp. 153-174.
- Burgess-Jackson, K. (1996) *Rape: A Philosophical Investigation*, Brookfield, Vermont: Dartmouth Publishing Company.

- Burt, Martha (1980) 'Cultural Myths and Supports for Rape', *Journal of Personality and Social Psychology* 38(2), pp. 217-230.
- Butler, John M. and Terilynne W. Butler (2005) 'DNA for Detectives', in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 8, London: Elsevier Academic Press.
- Cahill, Ann J. (2001) *Rethinking Rape*, Ithaca NY: Cornell University Press.
- Camilleri, Joseph A. and Kelly A. Stiver (2014) 'Adaptation and Sexual Offending', in V.A. Weekes-Shackelford and T.K. Shackelford (eds) *Evolutionary Perspectives on Human Sexual Psychology and Behavior, Evolutionary Psychology*, New York: Springer Science+Business Media.
- Campbell, B. A. *et al.* (2015) 'The Determination of Victim Credibility by Adult and Juvenile Sexual Assault Investigators', *Journal of Criminal Justice* 43(1), pp. 29–39.
- Capers, Bennett (2011) 'Real Rape Too', *California Law Review* 99(5), pp. 1259-1307.
- Carpenter, Morgan (2016) 'The Human Rights of Intersex People', *Reproductive Health Matters* 24(47), pp. 74-84.
- Chasteen, Amy L. (2001) 'Constructing Rape: Feminism, Change, and Women's Everyday Understandings of Sexual Assault', *Sociological Spectrum* 21(2), pp. 101-139.
- Chinkin, Christine (1995) 'Violence against Women: The International Legal Response', *Gender and Development* 3(2), pp. 23-28.
- Clark, Lorene and Debra Lewis (1977) *Rape: The Price of Coercive Sexuality*, Toronto: The Women's Press.
- Clay-Warner, Jody and Callie Harbin Burt (2005) 'Rape Reporting After Reforms: Have Times Really Changed?', *Violence Against Women* 11(2), pp. 150-176.
- Cliffe, Lionel (1974) 'Capitalism or Feudalism? The Famine in Ethiopia', *Review of African Political Economy* 1(1), pp. 34-40.
- Commonwealth v. Mlinarich (1985) reprinted in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge.
- Connell, R.W. (1987) *Gender and Power: Society, the Person, and Sexual Politics*, Stanford, California: Stanford University Press.
- Cook, Rebecca J. and Simone Cusack (2010) *Gender Stereotyping: Transnational Legal Perspectives*, Philadelphia: University of Pennsylvania Press.
- Cowan, Sharon (2007) 'Freedom and Capacity to Make a Choice': A Feminist Analysis of Consent in the Criminal Law of Rape', in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law Feminist Engagements*, Chapter 3, Routledge-Cavendish: Glasshouse Press.
- Crocker, D. (2005) 'Regulating Intimacy: Judicial Discourse in Cases of Wife Assault (1970 to 2000)', *Violence Against Women* 11(2), pp. 197-226.
- Cybulska, Beata and Greta Forster (2005) 'Sexual Assault: Examination of the Victim' *MEDICINE* 33(9), pp. 23-28.
- D., Shane *et al.* (2013) 'Patterned Characteristics of Continued and Discontinued Sexual Assault Complaints in the Criminal Justice Process', *Current Issues in Criminal Justice* 24(3), pp. 395-417.

- Daly, Kathleen and Brigitte Bouhours (2010) 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries', *Crime and Justice* 39(1), pp. 565-650.
- Dartnall, Elizabeth and Rachel Jewkes (2013) 'Sexual Violence against Women: The Scope of the Problem', *Best Practice and Research Clinical Obstetrics and Gynaecology* 27(1), pp. 3–13.
- David, René (1963) 'Civil Code for Ethiopia: Considerations on the Codification of the Civil Law in African Countries', *Tulane Law Review* 37: pp. 187-204.
- Davies, M. *et al.* (2009) 'Effects of Victim Gender, Victim Sexual Orientation, Victim Response and Respondent Gender on Judgements of Blame in a Hypothetical Adolescent Rape', *Legal and Criminological Psychology* 14(2), pp. 331–338.
- Davies, Michelle *et al.* (2009) 'Police Perceptions of Rape as a Function of Victim Gender and Sexuality', *the Police Journal* 82(1), pp. 4–12.
- D'Cruze, Shani (2011) 'Sexual Violence in History: A Contemporary Heritage?', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Chapter 1, Abingdon: Routledge.
- Denike, Margaret A. (2002) 'Myths of Woman and the Rights of Man: The Politics of Credibility in Canadian Rape Law', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada*, Chapter 7, Westport: Praeger Publishers.
- DeRoy, Pere and Namela Baynes Henry (2018) 'Violence and LGBT Human Rights in Guyana', in Nancy Nicol *et al.* (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, UK: School of Advanced Study, University of London, Institute of Commonwealth Studies.
- Devries, Karen *et al.* (2011) 'Violence against Women Is Strongly Associated with Suicide Attempts: Evidence from the WHO Multi-country Study on Women's Health and Domestic Violence against Women', *Social Science and Medicine* 73 (1), pp. 79-86.
- Diesen, Christian and Eva F. Diesen (2010) 'Sex Crime Legislation: Proactive and Anti-therapeutic Effects', *International Journal of Law and Psychiatry* 33: pp. 329–335.
- Doherty, Kathy and Irina Anderson (2004) 'Making Sense of Male Rape: Constructions of Gender, Sexuality and Experience of Rape Victims', *Journal of Community and Applied Social Psychology* 14(2), pp. 85-103.
- Donovan, Dolores A. and Getachew Assefa (2003) 'Homicide in Ethiopia: Human Rights, Federalism, and Legal Pluralism', *the American Journal of Comparative Law* 51(3), pp. 505-552.
- Drieschner, Klaus and Alfred Lange (1999) 'A Review of Cognitive Factors in the Etiology of Rape: Theories, Empirical Studies, and Implications', *Clinical Psychology Review* 19(1), pp. 57–77.
- Dripps, Donald A. (1992) 'Beyond Rape: An Essay on the Difference between the Presence of Force and the Absence of Consent', *Columbia Law Review* 92(7), pp. 1780-1809.
- Dworkin, Andrea (1976) *Our Blood: Prophecies and Discourses on Sexual Politics*, New York: Perigee Books.
- Dworkin, Andrea (1997) *Life and Death: Unapologetic Writings on the Continuing War Against Women*, New York: Free Press.

- Edwards, Daphne (1996) 'Acquaintance Rape and the Force Element', *Golden Gate University Law Review* 26: pp. 241-300.
- Edwards, Susan M. (1981) *Female Sexuality and the Law*, Oxford: Martin Robertson.
- Ellis, Gene (1976) 'The Feudal Paradigm as a Hindrance to Understanding Ethiopia', *The Journal of Modern African Studies* 14(2), pp. 275-295.
- Ellison, Louise and Vanessa E. Munro (2010) 'A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections upon Received Rape Myth Wisdom in the Context of a Mock Jury Study', *New Criminal Law Review: An International and Interdisciplinary Journal* 13(4), pp. 781-801.
- Ellsberg, Mary and Lori Heise (2005) *Researching Violence Against Women: A Practical Guide for Researchers and Activists*, Washington DC, United States: World Health Organization, PATH.
- English, Peter (1976) 'The Husband Who Rapes His Wife', *The New Law Journal* 126: pp. 1223-1225.
- Epstein, D. and R. Johnson (1994) 'On the Straight and Narrow: The Heterosexual Presumption, Homophobias and schools', in D. Epstein (ed.) *Challenging Lesbian and Gay Inequalities in Education*, Berkshire, England: Open University Press.
- Erulkar, Annabel (2013) 'Early Marriage, Marital Relations and Intimate Partner Violence in Ethiopia', *International Perspectives on Sexual and Reproductive Health* 39(1), pp. 6-13.
- Estrich, Susan (1986) 'Rape', *The Yale Law Journal* 95(6), pp. 1087-1184.
- Estrich, Susan (1987) *Real Rape*, Cambridge, Massachusetts: Harvard University Press.
- Estrich, Susan (1992) 'Palm Beach Stories', *Law and Philosophy* 11(1-2), pp. 5-33.
- Estrich, Susan (1997) 'Enduring Distrust: The Modern Law of Force', in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge.
- Ewoldt, C. A. *et al.* (2000) 'Attributions about Rape in a Continuum of Dissolving Marital Relationships', *Journal of Interpersonal Violence* 15(11), pp. 1175-1182.
- Farer, Tom J. (1979) *War Clouds on the Horn of Africa: The Widening Storm*, 2nd revised ed, New York: Carnegie Endowment for International Peace.
- Feess, Eberhard *et al.* (2018) 'The Impact of Fine Size and Uncertainty on Punishment and Deterrence: Theory and Evidence from the Laboratory', *Journal of Economic Behavior and Organization* 149: pp. 58-73.
- Finkelhor, David and Kersti Yllo (1985) *License to Rape: Sexual Abuse of Wives*, New York: Holt, Rinehart and Winston.
- Fisher, Nicola L. and Afroditi Pina (2013) 'An Overview of the Literature on Female-Perpetrated Adult Male Sexual Victimization', *Aggression and Violent Behavior* 18(1), pp. 54-61.
- Fisher, Stanley Z. (1974) 'Traditional Criminal Procedure in Ethiopia', *the American Journal of Comparative Law* 19(4), pp. 709-746.
- Fitaw Y. *et al.* (2005) 'Gender Based Violence among High School Students in North West Ethiopia', *Ethiopian Medical Journal* 43(4), pp. 215-221.

- Franiuk, Renae *et al.* (2008) 'Prevalence and Effects of Rape Myths in Print Journalism: The Kobe Bryant Case', *Violence against Women*, 14(3): pp. 287-309.
- Frank, David John *et al.* (2009) 'The Global Dimensions of Rape-Law Reform: A Cross-National Study of Policy Outcomes', *American Sociological Review* 74(2), pp. 272-290.
- Frazier, Patricia A. and Beth Haney (1996) 'Sexual Assault Cases in the Legal System: Police, Prosecutor, and Victim Perspectives', *Law and Human Behavior* 20(6), pp. 607-628.
- Fried, Susana T. (2003) 'Violence Against Women', *Violence, Health, and Human Rights* 6(2), pp. 88-111.
- Frye, M., and C. Shafer (1977) 'Rape and Respect', in M. Vetterling-Braggin, F. Elliston and J. English (eds) *Feminism and Philosophy*, Savage, MD: Rowman and Littlefield, pp. 333-346.
- Fuchs, Sigmund F. (2004) 'Male Sexual Assault: Issues of Arousal and Consent', *Cleveland State Law Review* 51: pp. 93-121.
- Futter, Stacy and Walter R. Mebane Jr (2001) 'The Effects of Rape Law Reform on Rape Case Processing', *Berkeley Women's Law Journal* 16: pp. 68-72.
- Gardner, John and S. Shute (2000) 'The Wrongness of Rape' in Jeremy Horder (ed) *Oxford Essays on Jurisprudence*, Fourth Series, Oxford: Oxford University Press.
- Gavey, N. (2005) *Just Sex?: The Cultural Scaffolding of Rape*, London, England: Routledge.
- Gear, Sasha (2005) 'Rules of Engagement: Structuring Sex and Damage in Men's Prisons and Beyond', *Culture, Health and Sexuality* 7(3), pp. 195-208.
- Gelane Lelissa and Lukman Yusuf (2008) 'A Cross Sectional Study on Prevalence of Gender Based Violence in Three High Schools, Addis Ababa, Ethiopia', *Ethiopian Journal of Reproductive Health* 2(1), pp. 52-60.
- Gessesew A. and Mesfin M. (2004) 'Rape and Related Health Problems in Adigrat Zonal Hospital, Tigray Region, Ethiopia', *Ethiopian Journal of Health Development* 18(3), pp. 140-144.
- Getachew Assefa Woldemariam (2011) 'The Predicaments of Child Victims of Crime Seeking Justice in Ethiopia: A Double Victimization by the Justice Process', *Afrika focus* 24(1), pp. 11-31.
- Getachew Mullu *et al.* (2015) 'Prevalence of Gender Based Violence and Associated Factors among Female Students of Menkoror High School in Debre Markos Town, Northwest Ethiopia', *Science Journal of Public Health* 3(1), pp. 67-74.
- Getnet Tadele (2009) 'Unrecognized Victims': Sexual Abuse against Male Street Children in Merkato Area, Addis Ababa', *Ethiopian Journal of Health Development* 23(3), pp. 174-182.
- Goodman-Delahunty, Jane and Kelly Graham (2011) 'The Influence of Victim Intoxication and Victim Attire on Police Response to Sexual Assault', *Journal of Investigative Psychology and Offender Profiling* 8(1), pp. 22-40.
- Graven, Jean (1964) 'The Penal Code of the Empire of Ethiopia', *Journal of Ethiopian Law* 1(2), pp. 267-314.
- Graycar, Regina and Jenny Morgan (2005) 'Law reform: What's in It for Women?', *Windsor Yearbook of Access to Justice* 23(2), pp. 393-419.

- Gregory, J. (1986) 'Sex, Class and Crime: Towards a Non-sexist Criminology' in R. Matthews and J. Young (eds) *Confronting Crime*, London: Sage.
- Gregory, Jeanne and Sue Lees (1999) *Policing Sexual Violence*, London: Routledge.
- Griffin, Susan (1971) 'Rape: The All-American Crime' *Ramparts* 10(3), pp. 21–35.
- Griffin, Susan (1977) 'Rape: The All-American Crime', in M. Vetterling-Braggin *et al.* (eds) *Feminism and Philosophy* (pp. 313-332).
- Groth, A. N. and A. W. Burgess (1980) 'Male Rape: Offenders and Victims', *American Journal of Psychiatry* 137(7), pp. 806-810.
- Grubb, Amy Rose Grubb and Julie Harrower (2008) 'Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Aggression and Violent Behavior* 13, pp. 396–405.
- Grubb, Amy Rose Grubb and Julie Harrower (2009) 'Understanding Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim', *Journal of Sexual Aggression* 15(1), pp. 63–81.
- Grubb, Amy and Emily Turner (2012) 'Attribution of Blame in Rape Cases: A Review of The Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming', *Aggression and Violent Behavior* 17(5), pp. 443–452.
- Harris, J. and S. Grace (1999) *A Question of Evidence? Investigating and Prosecuting Rape in the 1990s*, London: Home Office.
- Harris, Lucy Reed (1976) 'Towards a Consent Standard in the Law of Rape', *the University of Chicago Law Review* 43(3), pp. 613-645.
- Hazelwood, Robert R. and Ann Wolbert Burgess (2001) *Practical Aspects of Rape Investigation: A Multidisciplinary Approach*, 3rd ed., Washington, D.C.: CRC Press.
- Hengehold, Laura (2000) 'Remapping the Event: Institutional Discourses and the Trauma of Rape', *Signs* 26(1), pp. 189-214.
- Herek, G. M. (1990) 'The Context of Anti-gay Violence: Notes on Cultural and Psychological Heterosexism', *Journal of Interpersonal Violence* 5(3), pp. 316–333.
- Hess, Karen M. and Wayne W. Bennett (2001) *Criminal Investigation*, 6th ed, USA: Thomson Learning.
- Hirsch, Andrew von et al (1999) *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research*, Oxford: Hart Publishing.
- Hodgson, Dorothy L. (2002) 'Women's Rights as Human Rights: Women in Law and Development in Africa (WiLDAF)', *Africa Today* 49(2), pp. 3-26.
- Holcombe, Sarah Jane (2018) 'Medical Society Engagement in Contentious Policy Reform: the Ethiopian Society for Obstetricians and Gynecologists (ESOG) and Ethiopia's 2005 Reform of Its Penal Code on Abortion', *Health Policy and Planning* 33(4), pp. 583–591

- Holleran, D. *et al.* (2008) 'Examining Charge Agreement between Police and Prosecutors in Rape Cases', *Crime and Delinquency* 56(3), pp. 385-413.
- Holmes, Melisa M. *et al.* (1996) 'Rape-related Pregnancy Estimates and Descriptive Characteristics from a National Sample of Women', *American Gynecological Society* 175(2), pp. 320-355.
- Horney, Julie and Cassia Spohn (1991) 'Rape Law Reform and Instrumental Change in Six Urban Jurisdictions', *Law and Society Review* 25(1), pp. 117-154.
- Hurd, Heidi M. (1996) 'The Moral Magic of Consent' *Legal Theory* 2(2), pp 121-146.
- Ingemann-Hansen, Ole and Annie Vesterby Charles (2013) 'Forensic Medical Examination of Adolescent and Adult Victims of Sexual Violence', *Best Practice & Research Clinical Obstetrics & Gynaecology* 27(1), pp. 91-102.
- Jacobson, Marsha B. and Paula M. Popovich (1983) 'Victim Attractiveness and Perceptions of Responsibility in an Ambiguous Rape Case', *Psychology of Women Quarterly* 8(1), pp. 100-104.
- Jehle, Jörg-Martin (2012) 'Attrition and Conviction Rates of Sexual Offences in Europe: Definitions and Criminal Justice Responses', *European Journal of Criminology* 18(1), pp. 145-161.
- Jenkins, Alicia and Wayne Petherick (2014) *Serial Rape in Profiling and Serial Crime*, Third Edition, Chapter 15, Amsterdam: Anderson publishing.
- Jeylan W. Hussein (2004) 'A Cultural Representation of Women in the Oromo Society', *African Study Monographs* 25(3), pp. 103-147.
- Jeylan W. Hussein (2009) 'A Discursive Representation of Women in Sample Proverbs from Ethiopia, Sudan, and Kenya', *Research in African Literatures*, 40(3), pp. 96-108.
- Kahn, Arnold S. *et al.* (2011) 'Gender versus Gender Role in Attributions of Blame for a Sexual Assault', *Journal of Applied Social Psychology* 41(2), pp. 239-251.
- Kasubhai, Mustafa T. (1996) 'Destabilizing Power in Rape: Why Consent Theory in Rape Law is Turned on Its Head', *Wisconsin Women's Law Journal* 11: pp. 37-74.
- Keller, Edmond J. (1981) 'Ethiopia: Revolution, Class, and the National Question', *African Affairs* 80(321), pp. 519-549.
- Keller, Edmond J. (1985) 'State, Party, and Revolution in Ethiopia', *African Studies Review* 28(1), pp. 1-17.
- Kelley, Kathleen D. and Rebecca Campbell (2013) 'Moving On or Dropping Out: Police Processing of Adult Sexual Assault Cases', *Women and Criminal Justice* 23(1), pp. 1-18.
- Kelly, L. (1988) *Surviving Sexual Violence*, Cambridge: Polity.
- Kelly, L. *et al.* (2005) *A gap or a chasm? Attrition in reported Rape cases*, Home Office Research Study 293, London: Home Office.
- Kerstetter, W. A. (1990) 'Gateway to Justice: Police and Prosecutorial Response to Sexual Assault against Women', *Journal of Criminal Law and Criminology* 81(2), pp. 267-313.

- Khalif, Mohamud H. and Martin Doornbos (2002) 'The Somali Region in Ethiopia: A Neglected Human Rights Tragedy', *Review of African Political Economy* 29(91), pp. 73-94.
- Kimmel, Michael S. (2005) *The Gender of Desire: Essays on Male Sexuality*, Albany, New York: State University of New York Press.
- Klein, Richard (2008) 'An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness', *Akron Law Review* 41(4), pp. 981-1058.
- Kopper, Beverly A. (1996) 'Gender, Gender Identity, Rape Myth Acceptance, and Time of Initial Resistance on the Perception of Acquaintance Rape Blame and Avoidability', *Sex Roles* 34(1-2), pp. 81-93.
- Krzeczunowicz, George (1983) *Formation and Effects of Contracts in Ethiopian Law*, Addis Ababa: Addis Ababa University Faculty of Law.
- Kulczycki, Andrzej (2017) 'Reproductive Rights' *International Encyclopedia of Public Health*, 2nd ed, Vol. 6.
- Lai, Sarah Y. and Regan E. Ralph (1993) 'Female Sexual Autonomy and Human Rights', *Harvard Human Rights Journal* 8: pp. 201-127.
- Larcombe, Wendy (2011) 'Falling Rape Conviction Rates: (Some) Feminist Aims and Measures for Rape Law', *Feminist Legal Studies* 19(1), pp. 27-45.
- Lea, Susan J. (2007) 'A Discursive Investigation into Victim Responsibility in Rape', *Feminism Psychology* 17(4), pp. 495-514.
- Lea, Susan J. *et al.* (2003) 'Attrition in Rape Cases: Developing a Profile and Identifying Relevant Factors' *British Journal of Criminology* 43(3), pp. 83-599.
- Ledray, Linda E. (2005) 'Forensic Medical evidence: The Contributions of the Sexual Assault Nurse Examiner (SANE)', in John O. Savino Brent E. Turvey (eds) *Rape Investigation Handbook*, Chapter 6, London: Elsevier Academic Press.
- Lees, Sue (1993) 'Judicial Rape', *Women's Studies International Forum* 16(1), pp. 11-36.
- LeGrand, Camille E (1973) 'Rape and Rape Laws: Sexism in Society and Law', *California Law Review* 61(3), pp. 919-941.
- Litoff, Stuart M. (1978) 'Criminal Law—The Husband's Rape Exception: An Equal Protection Alternative—State v. Smith, 148 N.J. Super. 219, 372 A.2d 386 (Essex County Ct. 1977)', *Western New England Law Review* 1(2), pp. 409-427.
- Lonsway, K. A. and L. F. Fitzgerald (1994) 'Rape Myths: In Review', *Psychology of Women Quarterly* 18(2), pp. 133-164.
- Lord, Vivian B. and Gary Rassel (2002) 'Law Enforcement's Response to Sexual Assault: A Comparative Study of Nine Counties in North Carolina', in James F. Hodgson and Debra S. Kelley (eds) *Sexual Violence: Policies, Practices, and Challenge in the United States and Canada*, Chapter 10, Westport: Praeger Publishers.
- Loue, Sana (2001) *Intimate Partner Violence: Societal, Medical, Legal, and Individual Responses*, New York: Kluwer Academic Publishers.

- Lyons, T. (1996) 'Closing the Transition: The May 1995 Elections in Ethiopia', *Journal of Modern African Studies* 34(1), pp. 121-142.
- Mackinnon, Catharine A. (1983) 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence', *Signs* 8(4), pp. 635-658.
- MacKinnon, Catharine A. (1997a) 'Oncale v. Sundowner Offshore Services, Inc., 96-568, Amici Curiae Brief in Support of Petitioner', *UCLA Women's Law Journal* 8(1), pp. 9-46.
- MacKinnon, Catharine A. (1997b) 'Rape: On Coercion and Consent', in Lori Gruen and George E. Panichas (eds) *Sex, Morality and the Law*, Chapter 6, London: Routledge.
- Maddox, Lucy *et al.* (2012) 'The Impact of Psychological Consequences of Rape on Rape Case Attrition: The Police Perspective', *Journal of Police and Criminal Psychology* 27(1), pp. 33-44.
- Madigan, L. and N.C. Gamble (1991) *The Second Rape: Society's Continued Betrayal of the Victim*, London: MacMillan.
- Majied, Kamilah F. (2010) 'The Impact of Sexual Orientation and Gender Expression Bias on African American Students', *The Journal of Negro Education* 79(2), pp. 151-165.
- Man, Christopher D. and John P. Cronan (2001) 'Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for 'Deliberate Indifference'', *Journal of Criminal Law and Criminology* 92(1), pp. 127-186.
- Mandefrot Belay (2016) 'Notes on Legislative Intent: Public Consultation toward Ethiopia's Family Law Reform and the Revised Code's Response', *Mizan Law Review* 10(1), pp. 244-264.
- Manning-Geist, B. *et al.* (2016) 'Predictors of Medical Outcome in 1,712 Ethiopian Survivors of Rape', *Annals of Global Health* 82(3), pp. 319-327.
- Marmion, Shelly L. (2006) 'Global Violence against Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) *"Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 10, Westport: Praeger Publishers.
- McColgan, Aileen (1996) 'Common Law and the Relevance of Sexual History Evidence', *Oxford Journal of Legal Studies* 16(2), pp. 275-308.
- McGregor, Joan (1994) 'Force, Consent and the Reasonable Woman', in Jules Coleman and Allen Buchanan (eds) *In Harm's Way: Essays in Honor of Joel Feinberg*, Cambridge: Cambridge University Press.
- McGregor, Joan (2005) *Is It Rape?: On Acquaintance Rape and Taking Women's Consent Seriously*, Hampshire, England: Ashgate Publishing.
- McGregor, Joan (2011) 'The Legal Heritage of the Crime of Rape', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Chapter 3, Abingdon: Routledge.
- McNamee, Catharine (2001) 'Rape', in Rita James Simon (eds) *A Comparative Perspective on Major Social Problems*, Lexington Books: Lanham.

- Meaza Ashenafi (2004) 'Advocacy for Legal Reform for Safe Abortion', *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 8(1), pp. 79-84.
- Mekonnen Gorfu and Asresash Demisse (2007) 'Sexual Violence against Schoolgirls in Jimma Zone: Prevalence, Patterns, and Consequences', *Ethiopian Journal of Education and Science* 2(2), pp. 11-37
- Melani, L. and L. Fodaski (1974) 'The Psychology of the Rapist and His Victim', in N. Connell and C. Wilson (eds) *Rape: The First Sourcebook for Women* (pp. 82-93), New York, NY: New American.
- Meloy, J. Reid (1998) *The Psychology of Stalking: Clinical and Forensic Perspectives*, San Diego: Academic Press.
- Miller, Alice M. (2004) 'Sexuality, Violence against Women, and Human Rights: Women Make Demands and Ladies Get Protection', *Health and Human Rights* 7(2), pp. 16-47.
- Miller, Laurence (2014) 'Rape: Sex crime, Act of violence, or Naturalistic Adaptation?', *Aggression and Violent Behavior* 19(1), pp. 67-81.
- Mitike Molle *et al.* (2002) 'Sexual violence among female street adolescents in Addis Ababa, April 2000', *Ethiopian Journal of Health and Development*, 16(2), pp. 119-128.
- Mohammed Abdo (2011) 'Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia', *Mizan Law Review* 5(1), pp. 72-104.
- Mohan, Giles and Jeremy Holland (2001) 'Human Rights and Development in Africa: Moral Intrusion or Empowering Opportunity?', *Review of African Political Economy* 28(88), pp. 177-96.
- Monson, Candice M. *et al.* (1998) 'Sexual and Nonsexual Marital Aggression: Legal Considerations, Epidemiology, and an Integrated Typology of Perpetrators', *Aggression and Violent Behavior*, 3(4), pp. 369-389.
- Motala, Ziyad (1989) 'Human Rights in Africa: A Cultural, Ideological, and Legal Examination', *Hastings International and Comparative Law Review* 12: pp. 373-410.
- Mprah, Andy (2016) 'Sexual and Reproductive Health needs Of LGBT', *African Journal of Reproductive Health / La Revue Africaine de la Santé Reproductive* 20(1), pp. 16-20.
- Msibi, Thabo (2009) 'Not Crossing the Line: Masculinities and Homophobic Violence in South Africa', *Agenda: Empowering Women for Gender Equity* 80: pp. 50-54.
- Munro, Vanessa E. and Carl F. Stychin (2007) 'Introduction', in Vanessa E Munro and Carl F Stychin (eds) *Sexuality and the Law: Feminist Engagements*, New York: Routledge-Cavendish.
- Murray, Mary (1995) *The Law of the Father?: Patriarchy in the Transition from Feudalism to Capitalism*, New York: Routledge.
- Naffine, Ngaire (1994) 'Possession: Erotic Love in the Law of Rape', *Modern Law Review* 57(1), pp. 10-37.
- Nagin, Daniel and Greg Pogarsky (2001) 'Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence', *Criminology* 39(4), pp. 865-892.
- Naylor, Nikki (2008) 'The Politics of a Definition', in Lillian Artz and Dee Smythe (eds) *Should We Consent? Rape Law Reform in South Africa*, Chapter 2, Cape Town: Juta & Co, Ltd.

- Newcombe, P. A. *et al.* (2008) 'Attributions of Responsibility for Rape: Differences across Familiarity of Situation, Gender, and Acceptance of Rape Myths', *Journal of Applied Social Psychology* 38(7), pp. 1736–1754.
- Page, Amy Dellinger (2007) 'Behind the Blue Line: Investigating Police Officers' Attitudes towards Rape', *Journal of Police and Criminal Psychology* 22(1), pp. 22-32.
- Palmer, Erin G. (2004) 'Antiquated Notions of Womanhood and the Myth of the Unstoppable Male: Why Post-penetration Rape Should Be a Crime in North Carolina', *North Carolina Law Review* 82(3), pp. 1258-1278.
- Pantazis, Angelo (1999) 'Notes on Male Rape', *South African Journal of Criminal Justice* 12(3), pp. 369-375.
- Payne, D. L. *et al.* (1999) 'Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale', *Journal of Research in Personality* 33(1), pp. 27-68.
- Perry, Barbara (2001) *In the Name of Hate*, New York: Routledge.
- Philpart, M. *et al.* (2009) 'Prevalence and Risk Factors of Gender-based Violence Committed by Male College Students in Awassa, Ethiopia', *Violence and Victims* 24(1), pp. 122-136.
- Polaschek, Devon L. L. *et al.* (1997) 'Rape and Rapists: Theory and Treatment', *Clinical Psychology Review* 17(2), pp. 117-144.
- Polk, Kenneth (1985) 'Rape Reform and Criminal Justice Processing', *Crime & Delinquency* 31: pp. 191-205.
- Pruitt, Lisa R. (2011) 'Deconstructing CEDAW's Article 14: Naming and Explaining Rural Difference', *William and Mary Journal of Women and the Law* 17(2), pp. 347-394.
- Purdy, Linda A. (1986) 'Rape: Adding Insult to Injury', *Vermont Law Review* 11(1), pp. 361-372
- Rahlenbeck, Sibylle I. *et al.* (2010) 'Female Genital Cutting Starts to Decline among Women in Oromia, Ethiopia', *Reproductive BioMedicine Online* 20(7), pp. 867–872.
- Reece, Helen (2013) 'Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?', *Oxford Journal of Legal Studies* 33(3), pp. 445-473.
- Remick, Lani Anne (1993) 'Read Her Lips: An Argument for a Verbal Consent Standard in Rape', *University of Pennsylvania Law Review* 141(3), pp. 1103-1151.
- Renn, Kristen A. (2010) 'LGBT and Queer Research in Higher Education: The State and Status of the Field', *Educational Researcher* 39(2), pp. 132-141.
- Rhode, Deborah L. (1991) *Justice and Gender: Sex Discrimination and the Law*, Massachusetts: Harvard University Press.
- Rich, Adrienne (1999) 'Compulsory Heterosexuality and Lesbian Existence', in Richard Parker and Peter Aggleton (eds) *Culture, Society and Sexuality: The Reader*, Chapter 11, London: UCL Press.
- Richardson, D. and J. L. Campbell (1982) 'The Effect of Alcohol on Attributions of Blame for Rape', *Personality and Social Psychology Bulletin* 8(3), pp. 468–476.
- Rideau, W. and B. Sinclair (1982) 'Prison: The Sexual Jungle', in A.M. Scacco (ed) *Male Rape: A Casebook of Sexual Aggression*, New York: Ams Press.

- Roberts, Julian V. and Robert J. Gebotys (1992) 'Reforming Rape Laws: Effects of Legislative Change in Canada', *Law and Human Behavior* 16(5) pp. 555–573.
- Roberts, Julian V. *et al.* (1996) 'Rape Reform in Canada: Public Knowledge and Opinion', *Journal of Family Violence* 11(2), pp. 133–148.
- Rosario, M. and E. W. Schrimshaw (2014) 'Theories and Etiologies of Sexual Orientation', in D. L. Tolman *et al.* (eds) *APA Handbook of Sexuality and Psychology*, pp. 555–596, Washington, DC: American Psychological Association.
- Rose, Vicki McNickle (1977) 'Rape as a Social Problem: A By product of the Feminist Movement', *Social Problems* 25(1), pp. 75-89.
- Rouger, Theresa (2009) 'The Impact of International Human Rights Law on the National Laws of Ethiopia from a Gender Rights and Disability Rights Perspective', in Malcolm MacLachlan and Leslie Swartz (eds) *Disability & International Development: Towards Inclusive Global Health*, Chapter 3, New York: Springer Science+Business Media.
- Rowson, Maxime (2014) 'Corroborating Evidence, Rape Myths and Stereotypes: A Vicious Circle of Attrition', *Kaleidoscope* 6(2), pp. 135-143.
- Rubinfeld, Jed (2013) 'The Riddle of Rape-by-Deception and the Myth of Sexual Autonomy', *the Yale Law Journal* 122(6), pp. 1372-1443.
- Rumney, Philip and Martin Morgan-Taylor (1997) 'Recognizing the Male Victim: Gender Neutrality and the Law of Rape: Part One', *Anglo-American Law Review* 26: pp. 198-234.
- Rumney, Philip N.S. (2007) 'In Defence of Gender Neutrality within Rape', *Seattle Journal for Social Justice* 6(1), pp. 481-526.
- Rush, F. (1990) 'The many faces of the backlash' in Dorchen Leidholdt and Janice G. Raymond (eds) *The Sexual Liberals and the Attack on Feminism*, Oxford: Pergamon Press.
- Russell, Diana E. H. (1975) *The Politics of Rape*, New York: Stein and Day.
- Sanday, Peggy Reeves (2015) 'Rape and Sexual Coercion', *International Encyclopedia of the Social and Behavioral Sciences*, 2nd edition, Volume 19.
- Savino, John O. and Brent E. Turvey (2011) 'Rape and Sexual Assault', in John O. Savino and Brent E. Turvey (eds) *Rape Investigation Handbook* (2nd ed), Chapter 2, New York: Academic Press.
- Schiff, A. F. (1982) 'Rape: Wife vs Husband', *Journal of the Forensic Science Society* 22(3), pp. 235-240.
- Schissel, Bernard (1996) 'Law Reform and Social Change: A Time-Series Analysis of Sexual Assault in Canada', *Journal of Criminal Justice* 24(2), pp. 123–138.
- Schneider, Lawrence J. *et al.* (2009) 'The Role of Gender and Ethnicity in Perceptions of Rape and Its Aftereffects', *Sex Roles* 60(5/6), pp. 410–421.
- Schulhofer, Stephen J. (1992) 'Taking Sexual Autonomy Seriously: Rape Law and beyond Law and Philosophy', *Philosophical Issues in Rape Law* 11(1/2), pp. 35-94.

- Schuller, Regina A. and Anna Stewart (2000) 'Police Responses to Sexual Assault Complaints: The Role of Perpetrator/Complainant Intoxication', *Law and Human Behavior* 24(5), pp. 535-551.
- Schulman, Joanne (1981) 'Battered Women Score Major Victories in New Jersey and Massachusetts Marital Rape Cases', *Clearinghouse Review* 15(4), pp. 342-345.
- Schulthess, Beatrice von (1992) 'Violence in the Streets: Anti-lesbian Assault and Harassment in San Francisco' in G. Herek and K. Berrill (eds) *Hate Crimes*, Newbury Park, CA: Sage.
- Schwab, Peter (1976) 'Human Rights in Ethiopia', *The Journal of Modern African Studies* 14(1), pp. 155-160.
- Schwendinger, Julia R. and Herman Schwendinger (1982) 'Rape, the Law, and Private Property', *Crime and Delinquency* 28(2), pp. 271-291.
- Scronce, C. A. and K. J. Corcoran (1991) 'Perceptions of Date Rape: Effects of Outcome Information and Victim's Alcohol Consumption', *Addictive Behaviors* 22(5), pp. 577-585.
- Scully, Diana (1990) *Understanding Sexual Violence*, Boston: Unwin Hyman.
- Scutt, Jocelyne A. (1992) 'The Incredible Woman: A Recurring Character in Criminal Law', *Women's Studies International Forum* 15(4), pp. 441-460.
- Searles, Patricia and Ronald J. Berger (1987) 'The Current Status of Rape Reform Legislation: An Examination of State Statutes', *Women's Rights Law Reporter* 10(1), pp. 25-44.
- Seidman, Ilene and Susan Vickers (2005) 'The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform', *Suffolk University Law Review* 18: pp. 467-91.
- Shaw, J. *et al.* (2017) 'Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records', *Psychology of Violence* 7(4), pp. 602-614.
- Shen, Francis X. (2011) 'How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform', *Columbia Journal of Gender and Law* 22(1), pp. 1-80.
- Shotland, R. Lance and Lynne Goodstein (1983) 'Just Because She Doesn't Want to Doesn't Mean It's Rape: An Experimentally Based Causal Model of the Perception of Rape in a Dating Situation', *Social Psychology Quarterly* 46(3), pp. 220-232.
- Simms, C. M. *et al.* (2007) 'Rape Blame as a Function of Alcohol Presence and Resistant Type', *Addictive Behaviors* 32(12), pp. 2766-2776.
- Simon-Kerr, Julia (2008) 'Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment', *the Yale Law Journal* 117(8), pp. 1854-1898.
- Sivakumaran, Sandesh (2005) 'Male/Male Rape and the "taint" of Homosexuality', *Human Rights Quarterly* 27(4), pp. 1274-1306.
- Smart, Carol (1989) *Feminism and the Power of Law*, London: Routledge
- Spears, Jeffrey W. and Cassia C. Spohn (1996) 'The Genuine Victim and Prosecutors' Charging Decisions in Sexual Assault Cases', *American Journal of Criminal Justice* 20(2), pp. 183-205.

- Spears, Jeffrey W. and Cassia C. Spohn (1997) 'The Effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases', *Justice Quarterly* 14(3), pp. 501-524.
- Spindelman, Marc S. and John Stoltenberg (1997) 'Oncale: Exposing 'manhood'', *UCLA Women's Law Journal* 8(1), pp. 3-7.
- Spohn, Cassia and Julie Horney (1992) *Rape Law Reform: A Grassroots Revolutionary and Its Impact*, New York: Springer Science+Business Media, LLC.
- Spohn, Cassia and Julie Horney (1993) 'Rape Law Reform and the Effect of Victim Characteristics on Case Processing', *Journal of Quantitative Criminology* 9(4), pp. 383-409.
- Spohn, Cassia C. (1999) 'The Rape Reform Movement: The Traditional Common Law and Rape Law Reforms', *Jurimetrics* 39(2), pp. 119-130.
- Spohn, Cassia *et al.* (2001) 'Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the 'Gateway to Justice'', *Social Problems* 48(2), pp. 206-235.
- Steketee, Gail and Anne H. Austin (1989) 'Rape Victims and the Justice System: Utilization and Impact', *Social Service Review* 63(2), pp. 285-303.
- Stellings, Brande (1993) 'The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship', *Harvard Civil Rights-Civil Liberties Law Review* 28(1), pp. 185-216.
- Stermac, L *et al.* (2004) 'Stranger and Acquaintance Sexual Assault of Adult Males', *Journal of Interpersonal Violence* 19(8), pp. 901-915.
- Talbot, Kimberly K. *et al.* (2010) 'Rape-accepting Attitudes of University Undergraduate Students', *Journal of Forensic Nursing* 6(4), pp. 170-179.
- Tang, Kwong-Leung (1998) 'Rape Law Reform in Canada: The Success and Limits of Legislation', *International Journal of Offender Therapy and Comparative Criminology* 42(3), pp. 258-270.
- Tasca, Melinda *et al.* (2012) 'Police Decision Making in Sexual Assault Cases: Predictors of Suspect Identification and Arrest', *Journal of Interpersonal Violence* 28(6), pp. 1157-1177.
- Tegbar Yigzaw *et al.* (2010) 'Perceptions and Attitude towards Violence against Women by Their Spouses: A Qualitative Study in Northwest Ethiopia', *Ethiopian Journal of Health Development* 24(1), pp. 39-45.
- Tekleab Mekbib *et al.* (2007) 'Survey of Unsafe Abortion in Selected Health Facilities in Ethiopia', *Ethiopian Journal of Reproductive Health* 1(1), pp 28-43
- Temkin, Jennifer (1982) 'Towards a Modern Law of Rape', *The Modern Law Review* 45(4), pp. 399-419.
- Temkin, Jennifer (1987) *Rape and the Legal Process*, London: Sweet and Maxwell.
- Teshale Tibebu (2008) 'Modernity, Eurocentrism, and Radical Politics in Ethiopia, 1961-1991', *African Identities* 6(4), pp. 345-371.
- Thomas, Dorothy Q. and Michele E. Beasley (1993) 'Domestic Violence as a Human Rights Issue', *Human Rights Quarterly* 15(1), pp. 36-62.

- Thompson, Jill and Felly Nkewto Simmonds (2012) *Rape Sentencing Study: A Review of Statutory Sentencing Provisions for Rape, Defilement, and Sexual Assault in East, Central, and Southern Africa*, Lusaka: Population Council.
- Toit, Louise du (2008) 'The Contradictions of Consent in Rape Law', *South African Review of Sociology* 39(1), pp. 140-155.
- Tolesa Bekel *et al.* (2015) 'Sexual Violence and Associated Factors among Female Students of Madawalabu University in Ethiopia', *Epidemiology (sunnyvale)* 5(2), pp. 1-8.
- Tsehai Wada (2012) 'Rethinking the Ethiopian Rape Law', *Journal of Ethiopian Law* 25(2), pp. 191-253.
- Umzurike, U. O. (1983) 'The African Charter on Human and Peoples' Rights', *The American Journal of International Law* 77(4), pp. 902-912
- Van Cleave, Rachel A. (2008) 'Renaissance Redux? Chastity and Punishment in Italian Rape Law', *Ohio State Journal of Criminal Law* 6(1), pp. 335-350.
- Vance, Kim *et al.* (2018) 'The rise of SOGI: human rights for LGBT people at the United Nations', in Nancy Nicol *et al.* (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope*, UK: School of Advanced Study, University of London, Institute of Commonwealth Studies.
- Venema, Rachel M. (2016) 'Police Officer Schema of Sexual Assault Reports: Real Rape, Ambiguous Cases, and False Reports', *Journal of Interpersonal Violence* 31(5), pp. 872–899.
- Viano, E. (1983) 'Violence, Victimization, and Social Change: A Socio-cultural and Public Policy Analysis', *Victimology* 8(3/4), pp. 54-79.
- Walby, Sylvia, Jo Armstrong and Sofia Strid (2011) 'Developing Measures of Multiple Forms of Sexual Violence and Their Contested Treatment in the Criminal Justice System', in Jennifer M. Brown and Sandra L. Walklate (eds) *Handbook on Sexual Violence*, Chapter 4, Abingdon: Routledge.
- Walker, Graeme (2015) 'The (in)significance of Genital Injury in Rape and Sexual Assault', *Journal of Forensic and Legal Medicine* 34: pp. 173-178.
- Ward, Camille N. and Paula K. Lundberg-Love (2006) 'Sexual Abuse of Women', in Paula K. Lundberg-Love and Shelly L. Marmion (eds) "*Intimate*" *Violence against Women: When Spouses, Partners, or Lovers Attack*, Chapter 5, Westport: Praeger Publishers.
- Weiss, Karen G. (2010) 'Male Sexual Victimization: Examining Men's Experiences of Rape and Sexual Assault', *Men and Masculinities* 12 (3), pp. 275-298.
- Weiss, Kurt and Sandra S. Borges (1973) 'Victimology and Rape: The Case of the Legitimate Victim', *Issues in Criminology* 8(2), pp. 71- 115.
- West, Robin (1996) 'A Comment on Consent, Sex, and Rape', *Legal Theory* 2(3), pp. 233-251.
- Westmarland, Nicole and Laura Graham (2010) 'The Promotion and Resistance of Rape Myths in an Internet Discussion Forum', *the Journal of Social Criminology Journal of Social Criminology* 1(2), pp. 80-104.
- White, Aaronette M. (2011) 'Unpacking Black Feminist Pedagogy in Ethiopia', *Feminist Teacher* 21(3), pp. 195-211.

- White, Catharine (2015) 'Sexual Assault and Rape', *Obstetrics, Gynecology and Reproductive Medicine* 25(10), pp. 295-301.
- White, Catharine and Iain McLean (2006) 'Adolescent Complainants of Sexual Assault; Injury Patterns in Virgin and Non-virgin Groups', *Journal of Clinical Forensic Medicine* 13(4), pp. 172-180.
- Williams, J. E and K.A. Holmes (1981) *The Second Assault*, Westport, CT: Greenwood.
- Williams, LM and S Walfield (2016) 'Rape and Sexual Assault', *Encyclopedia of Mental Health* 4: pp. 13-22.
- Wippman, David *et al.* (2002) *International Law, Norms, Actors, Process: A Problem-Oriented Approach*, New York: Aspen Law and Business.
- Worku A. and Addisie M. (2002) 'Sexual Violence among Female High School Students in Debarq, North West Ethiopia', *East African Medical Journal* 79(2), pp. 96-99.
- World Health Organization (2002) *World Report on Violence and Health: Summary*, Washington, D.C.
- Wright, Martin (1996) *Justice for Victims and Offenders: A Restorative Response to Crime*, 2nd ed, Winchester: Waterside Press.
- Yamawaki, Niwako (2009) 'The Role of Rape Myth Acceptance and Belief in a Just World on Victim: A Study in Japan', *Psychologia: An International Journal of Psychology in the Orient* 52(3), pp. 163–174.
- Yelfign Worku (2001) 'Ethiopia: From Bottom to Top in Higher Education – Gender Role Problems', *International Journal of Sociology and Social Policy* 21(1/2), pp. 98 – 104.
- Yescavage, Karen (1999) 'Teaching Women a Lesson: Sexually Aggressive and Sexually Nonaggressiveness Perceptions of Acquaintance and Date Rape', *Violence Against Women* 5(7), pp. 796–812.
- Yigzaw T. *et al.* (2004) 'Domestic Violence around Gondar in Northwest Ethiopia', *Ethiopian Journal of Health Science* 18(3), pp. 133-139.
- Yohannes Dibaba (2007) 'Sexual Violence against Female Youth in Jimma Town: Prevalence, Risk Factors and Consequences', *Ethiopian Journal of Health Science* 17(1), pp. 47-58.
- Zyl, Mikki van (1990) 'Rape Mythology', *Critical Arts: South-North Cultural and Media Studies* 5(2), pp. 10-36.
- መሐሪ ረዳኢ. (1995) *የተሻሻለውን የቤተሰብ ህግ ለመገንዘብ የሚረዱ አንዳንድ ነጥቦች፣ ቅጽ አንድ፣ አዲስ አበባ፣ ንግድ ማተሚያ ድርጅት* (Amharic).
- እሸቱ ድባቡ (1997) *ተባእታይ አገዛዝ በኢትዮጵያ፣ ችግሩና የመፍትሄው መንገድ፣ አዲስ አበባ፣ አዲስ ጥራት ማተሚያ ቤት* (Amharic).
- የሴቶችና ህፃናት ጉዳይ ሚኒስቴር (2008) *በሴቶችና ህፃናት ጉዳይ ሚኒስቴር የሴክተሩ ሀላፊዎች ዙር የዕድገትና ትራንስፎርሜሽን ዕቅድ* (2008-2012) ጥቅምት 2008 ዓ.ም አዲስ አበባ (Amharic).

Legislations

- Criminal Procedure Code of Ethiopia, Proclamation No. 185/1961, *Negarit Gazeta*, Extraordinary Issue No. 1 of 1961, Addis Ababa.
- Ethiopian Constitution of 1931, Established in the reign of His Majesty Hail'e Sellassi'e I 16th July 1931.
- Proclamation No. 1/1995, Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazeta*, 1st Year No. 1 Addis Ababa, 21st August, 1995.

Proclamation No. 414/2004, The Criminal Code of the Federal Democratic Republic of Ethiopia 2004, Addis Ababa, 9th May, 2005.

Sexual Offences Act of Zimbabwe, *Act 8/2001*, Gazetted 17th August, 2001 (General Notice 408/2001). Available at: <http://evaw-global-database.unwomen.org/-/media/files/un%20women/vaw/full%20text/africa/zimbabwe%20-%20sexual%20offences%20act%202001.pdf?vs=1843>. Last visited on 4/14/2018.

Swiss Criminal Code of 21 December 1937. Available at: <https://www.admin.ch/opc/en/classified-compilation/19370083/201803010000/311.0.pdf>. Last visited on 9/15/2018

The Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960, *Negarit Gazeta*, 19th Year No. 2, Addis Ababa, 5th May 1960.

The Constitution of the Peoples' Democratic Republic of Ethiopia, Proclamation No. 1/1987, *Negarit Gazeta*, Vol. 47, No. 2, Addis Ababa, 12th September 1987.

The Fetha Nagast: The Law of the Kings, Translated from the Ge'ez by Abba Paulos Tzadua Edited by Peter L. Strauss, Addis Ababa, Faculty of Law, Haile Sellassie I University, 1968.

The Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957, *Negarit Gazeta*, 16th Year No. 1, Addis Ababa, 23rd July 1957.

The Revised Family Code, Proclamation No. 213/2000, *Federal Negarit Gazetta*, 6th year No. 1, Addis Ababa, 4th July 2000.

Human Rights Instruments, Cases and Materials

ACHR, Report of the Inter-American Commission on Human Rights on the Status of Women in the Americas, OEA/SER.L/V/II.98, doc. 17, October 13, 1998, Section IV, Conclusions.

African Commission on Human and Peoples' Rights: Communication 341/2007 – *Equality Now and Ethiopian Women Lawyers Association (EWLA) v. The Federal Democratic Republic of Ethiopia*.

Committee on Economic, Social and Cultural Rights (2005) General Comment No. 16, the Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights).

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Czech Republic, A/57/38, part III.

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Estonia, A/57/38, part I.

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Iceland, A/57/38, part I (2002).

Committee on the Elimination of Discrimination against Women (2003), Concluding Observations, Japan, A/58/38, part II.

Committee on the Elimination of Discrimination against Women (2002) Concluding Observations, Portugal, A/57/38, part I.

Committee on the Elimination of Discrimination against Women (2006) Concluding Observations, Malaysia, CEDAW/C/MYS/CO/2.

Committee on the Elimination of Discrimination against Women (2011) Concluding Observations, Ethiopia. Available at: <https://www.refworld.org/docid/4eeb4c8c2.html> Last visited on 1/29/2019.

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35 on Gender-based Violence against Women, Updating General Recommendation No. 19*.

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19, Violence against Women*.

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 12, Violence against Women*.

Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*.

Committee on the Elimination of Discrimination against Women: Communication No. 28/2010- *R.K.B. v. Turkey*.

Committee on the Elimination of Discrimination against Women: Communication No. 2/2003- *A.T. v. Hungary*.

Convention on the Elimination of All Forms of Discrimination Against Women (adopted Dec. 1979, entered into force 3 Sept. 1981) UN General Assembly resolution 34/180.

Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, at 217, U.N. Doc. A/48/49 (Dec. 20, 1993).

I/A Court H.R. *Case of Inés Fernández et al. v. Mexico*, Judgment of August 30, 2010. Series C No. 215.

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966.

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, 1999 GA Res 54/4, 6 October 1999.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation No. 1082/2018, *Federal Negarit Gazette*, 24th Year No. 33, Addis Ababa, March 30th, 2018.

The African Charter on Human and Peoples' Rights, adopted 27 June 1981 by the 18th Assembly of Heads of State of the Organization of African Unity at Nairobi and entered into force on 21 October 1986.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, approved at the second ordinary session of the Assembly of the Union, Maputo, July 11, 2003.

The United Nations Commission on Human Rights (1994) *Preliminary report submitted by the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy*, in accordance with Commission on Human Rights resolution 1994/45.

The United Nations Commission on Human Rights (2001) Concluding Observations, Azerbaijan, CCPR/CO/73/AZE.

The United Nations Commission on Human Rights (2003) Concluding Observations, Sri Lanka, CCPR/CO/79/LKA.

Internet and Others Materials

Adanetch Kidane Mariam (2001) 'The Campaign on Violence Against Women: How Did It Go?', in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender*, Number 5, Addis Ababa: Panos Ethiopia. Available at: <http://www.preventgbv africa.org/sites/default/files/resources/panosreflect5.excerpts.pdf>. Last visited on 10-29-2018.

Agumasie Semahegn and Bezatu Mengistie (2015) 'Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review', *Reproductive Health* 12:78. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553009/>. Last visited on 9/15/2018.

Alemayehu Belachew Bekele (2012) *Determinants of Sexual Violence among Eastern Ethiopian Secondary School Students*, PhD Thesis, Utrecht University.

Alemayehu C. Misganaw and Yalew A. Worku (2013) 'Assessment of Sexual Violence among Street Females in Bahir-Dar town, North West Ethiopia: A Mixed Method Study', *BMC Public Health* 13(1):825.

Amnesty International (2004) *It's in Our Hands: Stop Violence against Women*, London: Amnesty International. Available at: http://www.oneinthree.com.au/storage/pdfs/Amnesty_SVAW_report.pdf Last visited on 1/26/2019.

Amnesty International (2010) *Case Closed: Rape and Human Rights in the Nordic Countries*, Summary Report, London, United Kingdom: Amnesty International Publications

Augustyniak, Zuzanna (2012) *The Genesis of the Contemporary Ethiopian Legal System*, Studies of the Department of African, Languages and Cultures, No 46. Available at: <https://pbn.nauka.gov.pl/sedno-webapp/getFile/26624>. Last visited on 10-28-2018.

B. Alemu and M. Asnake (2007) *Women's Empowerment in Ethiopia: New Solutions to Ancient Problems*, Pathfinder International Ethiopia. Available at: http://www2.pathfinder.org/site/DocServer/PI_WE_paper_final.pdf?docID=10202. Last visited on 10-28-2018.

Bacik, Ivana et al. (1998) *The Legal Process and Victims of Rape: A Comparative Analysis of the Laws and Legal Procedures Relating to Rape, and Their Impact Upon Victims of Rape, in the Fifteen Member States of the European Union*, Dublin: The Dublin Rape Crisis Centre. Available at: <http://www.drcc.ie/get-informed/policy-publications/legal-process-victims-rape/>. Last visited on 1/29/2019.

- Belay Endeshaw (2008) *Factors Contributing To Sexual Violence against Female High School Students in Addis Ababa*, Msc Thesis, Addis Ababa University.
- Berihun Adugna Gebeye (2013) 'Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State', *Women in Society* 6. Available at SSRN: <https://ssrn.com/abstract=2683685>. Last visited on 1/26/2019.
- Billene Seyoum Woldeyes and Earuyan Solutions (2017) *The Ethiopian Women Lawyers Association – A Story of Service, Movement Building and Survival, Rooted in Ethiopia's Political Legacy*, A Research Commissioned by AWIB Ethiopia.
- Blain Worku (2011) *Criminal Justice System's Response to Acquaintance Rape Cases in Ethiopia: The Women's Right Perspective*, Unpublished MA Thesis, Addis Ababa University.
- Bonthuys, Elsje (2008) 'Putting Gender into the Definition of Rape or Taking it Out? Masiya v Director of Public Prosecutions (Pretoria) and Others, 2007 (8) BCLR 827 (CC)' *Feminist Legal Studies* 16: pp. 249–260 Available at: <https://slideheaven.com/putting-gender-into-the-definition-of-rape-or-taking-it-out.html>. Last visited on 04/01/2019.
- Brown, Jennifer K. et al. (2011) *Achieving Justice for Victims of Rape and Advancing Women's Rights: A Comparative Study of Legal Reform*. Available at: <https://www.trust.org/contentAsset/raw-data/e531c966-13c7-4eba-824e-c6cac927101b/file>. Last visited on 1/26/2019.
- CARE Ethiopia (2008) *The Status of Gender Based Violence and Related Services in Four Woredas (Woredas surrounding Bahir Dar town, Burayu woreda, Bako woreda and Gulele Sub-city of Addis Ababa)*, CARE Ethiopia, February 2008.
- Central Statistical Agency (CSA) [Ethiopia] and ICF (2016) *Ethiopia Demographic and Health Survey 2016*. Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF.
- Cochrane, Logan and Betel Bekele Birhanu (2018) 'Pathways of Legal Advocacy for Change: Ethiopian Women Lawyers Association', *Forum for Development Studies*, DOI: 10.1080/08039410.2018.1534752.
- Desalegn Tarekegn et al. (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2).
- DesalegnTarekegn, Balcha Berhanu and Yigrem Ali (2017) 'Prevalence and Associated Factors of Sexual Violence among High School Female Students in Dilla Town, Gedeo Zone SNNPR, Ethiopia', *Psychology and Behavioral Science International Journal* 6 (2). Available at: <https://www.omicsonline.org/open-access/prevalence-and-associated-factors-of-sexual-violence-among-high-school-female-students-in-dilla-town-gedeo-zone-snnpr-ethiopia-2161-1165-1000320.php?aid=92471> Last visited 1/27/2019.
- Elshaday K. Woldeyesus et al. (2018) *Policy and legal analysis notes: Ethiopia: A review of the Strategic Plan for a Multisectoral Response to Violence Against Women and Children*, December 2018, the Gender and Adolescence: Global Evidence (GAGE) programme.

- Emebet Kebede (2004) 'Protection of Women from Violence under the Criminal Law and under the Criminal Law Amendment Proposals', *Reflections: Documentation of the forum on gender*, number 10, Addis Ababa: Panos Ethiopia.
- Emebet Zeleke (2011) *Assessment of Prevalence Associated Factors and Outcome of Sexual Violence among High School Students in Deberberhan Town*, Mph Thesis, Addis Ababa University.
- Entorf, Horst (2012) *Certainty and Severity of Sanctions in Classical and Behavioral Models of Deterrence: A Survey*, Goethe University Frankfurt and IZA Discussion Paper No. 6516 April 2012. Available at: https://www.researchgate.net/publication/241642062_Certainty_and_Severity_of_Sanctions_in_Classical_and_Behavioral_Models_of_Deterrence_A_Survey/download. Last visited on 1/26/2019.
- Equality Now (2017) *The World's Shame, the Global Rape Epidemic: How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence*. Available at: https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/308/attachments/original/1527599090/EqualityNowRapeLawReport2017_Single_Pages_0.pdf?1527599090. Last visited on 9/12/2018.
- Eriksson, Maria (2010) *Defining Rape: Emerging Obligations for States under International Law?* Örebro Studies in Law 2, Örebro University. Available at: <http://oru.diva-portal.org/smash/get/diva2:317541/FULLTEXT02.pdf>. Last visited on 9/12/2018.
- Estrich, Susan (2006) *Male Rapes Occur, and It's Time to Address Them*, Pocono Record. Available at: <http://www.poconorecord.com/apps/pbcs.dll/article?AID=/20061224/NEWS04/612240301>. Last visited 9/12/2018.
- Ethiopian Women Lawyers Association (2001) *Ethiopian Women Lawyers Association Activity Report November 1999 – December 2000*, Addis Ababa: EWLA. Available at: http://www.seleda.com/jul_aug01/EWLA.doc Last visited on 9/17/2018.
- FDRE Federal Attorney General (2005) *The 2005 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.
- FDRE Federal Attorney General (2006) *The 2006 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.
- FDRE Federal Attorney General (2007) *The 2007 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.
- FDRE Federal Attorney General (2008) *The 2008 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.
- FDRE Federal Attorney General (2009) *The 2009 E.C. Federal Attorney General Annual Performance Report*, Unpublished Report.
- Federal Ministry of Health (2013) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*, Second edition Federal Ministry of Health 2013.

- Federal Ministry of Health Ethiopia (2006) *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*.
- Federal Ministry of Health Ethiopia (2009) *National Guideline for the Management of Survivors of Sexual Assault in Ethiopia*. Available at: <http://www.esog.org.et/gbv.pdf>. Last visited 27/12/2014.
- Fikremarkos Merso (2008) *Women and Girls and HIV/AIDS in Ethiopia: An Assessment of the Policy and Legal Framework Protecting the Rights of Women and Girls and Reducing Their Vulnerability to HIV/AIDS*, UNFPA Document.
- Fitzgerald, Jacqueline (2006) 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System', *Contemporary Issues in Crime and Justice*, No. 92, Sydney: NSW Bureau of Crime Statistics. Available at: <https://www.bocsar.nsw.gov.au/Documents/CJB/cjb92.pdf>. Last visited on 1/26/2019.
- Getnet Tadele and Desta Ayode (2008) *The Situation of Sexual Abuse and Commercial Sexual Exploitation of Girl Children in Addis Ababa*, Forum on Street Children Ethiopia (FSCE).
- Heise, L. et al. (1999) 'Ending Violence Against Women', *Population Reports*, Series L, No. 11. Baltimore, Johns Hopkins University School of Public Health, December 1999. Available at: https://www.researchgate.net/publication/287170875_Population_reports_Ending_violence_against_women/download. Last visited on 1/26/2019.
- Hester, Marianne (2013) *From Report to Court: Rape Cases and the Criminal Justice System in the North East*, Bristol: University of Bristol in association with the Northern Rock Foundation. Available at: https://research-information.bristol.ac.uk/files/9852501/From_Report_to_Court.pdf. Last visited on 1/26/2019.
- Hirut Terefe (2002) 'Violence Against Women From Gender and Cultural Perspectives', *Reflections: Documentation of the forum on gender*, number 7, Heinrich Böll Foundation, Addis Ababa. Available at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect7.pdf>. Last visited 10-19-2018.
- Home Office Review of Sex Offences (2000) *Setting the Boundaries: Reforming the law on sex offences*, Volume 1, London: Home Office Communication Directorate. Available at: <http://webarchive.nationalarchives.gov.uk/%2B/:/www.homeoffice.gov.uk/documents/vol1main.pdf%3Fview%3DBinary>. Last visited 9/12/2018.
- Indrawatie Biseswar (2011) *The Role of Educated/Intellectual Women in Ethiopia in the Process of Change and Transformation towards Gender Equality 1974-2005*. University of South Africa, South Africa. Available at: http://uir.unisa.ac.za/bitstream/handle/10500/5538/dissertation_indrawatie_b.pdf?sequence=1. Last visited on 10-29-2018
- Inter-American Commission on Human Rights (2011) *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, OEA/Ser.L/V/II. Doc. 63 9 December 2011 Original: Spanish. Available at: <https://www.oas.org/en/iachr/women/docs/pdf/women%20mesoamerica%20eng.pdf>. Last visited on 9/15/2018.

- Intersex Society of North America: *What is intersex?* Available at: http://www.isna.org/faq/what_is_intersex. Last visited on 04/02/2019.
- Intersex Society of North America: *What's the difference between being transgender or transsexual and having an intersex condition?* Available at: <http://www.isna.org/faq/transgender>. Last visited on 04/02/2019
- Ipas (2008) *Tools for Progressive Policy Change: Lessons Learned from Ethiopia's Abortion Law Reform*, Ipas, Chapel Hill, NC. Available at: <https://endabortionstigma.org/en/Home/Resources/Ipas%20Publications/Tools-for-progressive-policy-change-Lessons-learned-from-Ethiopia-s-abortion-law-reform.aspx>. Last visited on 1/27/2019.
- Kalkidan Bekele (2007) *Cultural Practices that Affected the Status of Women in Benishangul Gumuz Mandura Woreda*, MA Thesis, Addis Ababa University.
- Kamau, Winifred (2013) *Legal Treatment of Consent in Sexual Offences in Kenya*, available at: <https://www.google.com/url?sa=t&source=web&rct=j&url=http://theequalityeffect.org/pdfs/ConsentPaperKenya.pdf&ved=2ahUKEwjY2sSKutboAhXR3oUKHd1iAjcQFjAAegQIAhAB&usg=AOvVaw12riuumq2lVIBGMcSzpZPA&cshid=1586267568958>. last visited on 1/29/2019.
- Katz-Wise, Sabra L. *et al.* (2016) 'LGBT Youth and Family Acceptance', *Pediatr Clin North Am.* 63(6), pp. 1011–1025. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127283/pdf/nihms823230.pdf>. Last visited on 4/01/2019.
- Kebede Deriba *et al.* (2012) 'Magnitudes and Correlates of Intimate Partner Violence against Women and its Outcome in Southwest Ethiopia', *PLoS ONE* 7(4). Available at: <https://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0036189&type=printable>. Last visited on 9/14/2018.
- Kelly, Theresa Claire (2009) *Judgments and Perceptions of Blame: The Impact of Benevolent Sexism and Rape Type on Attributions of Responsibility in Sexual Assault*, PhD Thesis, University of Toronto.
- Kidist Abayneh (2006) *Analysis of the 2005 Criminal Code of Ethiopia in Light of Protecting Women's Rights*, L.L.B Thesis, Addis Ababa University.
- Krug, Etienne G *et al.* (2002) *The World Report on Violence and Health*. Available at: https://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=4ACE46FF1BC38A44719DF1E8F4713D60?sequence=1. Last visited on 10-28-2018.
- Lievore, Denise (2005) 'Prosecutorial Decisions in Adult Sexual Assault Cases', *Trends and Issues in Crime and Criminal Justice* No. 291, Canberra: Australian Institute of Criminology. Available at: <https://aic.gov.au/publications/tandi/tandi291>. Last visited on 1/27/2019.
- Lovett, Jo and Liz Kelly (2009) *Different Systems, Similar Outcomes? Tracking Attrition in Reported Rape Cases Across Europe*, Final Research Report, Child and Women Abuse Studies Unit London Metropolitan University. Available at: <http://kunsapsbanken.nck.uu.se/nckkb/nck/publik/fil/visa/197/different>. Last visited 9/12/2018.

- McPhail, Beverly A. (2015) 'Feminist Framework Plus: Knitting Feminist Theories of Rape Etiology into a Comprehensive Model', *Trauma, Violence, & Abuse*, pp. 1-16. Available at: https://www.uh.edu/socialwork/news/news-releases/2015-06-10_McPhail_FFP.pdf. Last visited on 1/27/2019.
- Meaza Ashenafi and Zenebeworke Tadesse (2005) *Women, HIV/AIDS, Property and Inheritance Rights: The Case of Ethiopia*. Available at: <http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/women-hiv-aids-property-and-inheritance-rights-the-case-of-ethiopia/23.pdf>. Last visited on 1/26/2019.
- Medhanit Asfaw (2010) *Sexual Violence and Its Consequence among Female Night School Students in Hawassa Town, Southern Ethiopia: A Cross-sectional Study*, Mph Thesis, Addis Ababa University.
- Melakou Tegegn (2001) 'The Campaign on Violence against Women: How did it go?' in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender*, Number 5, Addis Ababa: Panos Ethiopia. Available at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf>. Last visited on 10-29-2018.
- Meron Zeleke Eresso (2018) 'Sisters on the Move: Ethiopia's Gendered Labor Migration Milieu', *Canadian Journal of African Studies/Revue canadienne des études africaines*. DOI: 10.1080/00083968.2018.1519451.
- Mersha Shenkute (2013) *Causes and Socio-Health Effects of Rape on Women at Gandhi Memorial Hospital in Addis Ababa, Ethiopia*, MSW Thesis, Indira Gandhi National Open University.
- Millstead, Melanie and Cleave McDonald (2017) *Attrition of sexual offence incidents across the Victorian Criminal Justice System*, Melbourne: Crime Statistics Agency. Available at: https://www.crimestatistics.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2017/01/fd/8d51b2494/20170202_SexualOffenceAttrition_FinalReport.pdf Last visited 10-18-2018. Last visited on 1/26/2019.
- Ministry of Women, Children and Youth Affairs (MoWCYA) (2013) *Assessment of Conditions of Violence Against Women in Ethiopia*, Final Report November 2013, Addis Ababa, Ethiopia.
- Parcesepe, Angela *et al.* (2008) *Using the Neighborhood Method to Measure Violence and Rape in Ethiopia*, Columbia University's Program on Forced Migration and Health and the International Rescue Committee (IRC) Ethiopia. Available at: http://www.cpcnetwork.org/wp-content/uploads/2014/04/Ethiopia-Report_Final.pdf. Last visited on 9/14/2018.
- Pillsbury, Samuel H. (2002) 'Crimes Against the Heart: Recognizing the Wrongs of Forced Sex', *Loyola of Los Angeles Law Review* 35:845. Available at: <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2320&context=llr>. Last visited on 1/28/2019.

- Pracher, Maria (1981) 'The Marital Rape Exemption: A Violation of a Woman's Right of Privacy', *Golden Gate University Law Review* 11(3). Available at: <https://digitalcommons.law.ggu.edu/ggulrev/vol11/iss3/1/>. Last visited on 9/14/2018.
- Rahel Tesfaye Haile *et al.* (2013) Prevalence of Sexual Abuse of Male High School Students in Addis Ababa, Ethiopia', *BMC International Health and Human Rights* 13:24 Available at: <http://www.biomedcentral.com/1472-698X/13/24>. Last visited on 9/13/2018.
- Rahel Tessema (2006) *Sexual Violence and Reproductive Health Problems among Female Adolescents in Addis Ababa*, MA Thesis, Addis Ababa University.
- Raoul Wallenberg Institute/ILAC (2007) *Gender Justice Best Practices Haiti 10–11*, Report Commissioned by the International Legal Assistance Consortium upon request by the Haitian Ministry of Women's Affairs and Women's Rights, presented at a seminar in Haiti, September 2007. Available at: <https://rwi.lu.se/app/uploads/2017/01/9-3-126-1-10-20150128.pdf>. Last visited on 10-29-2018.
- Sara Tadiwos (2001) 'Rape in Ethiopia' in Yonas Admassu (eds) *Excerpt from Reflections: Documentation of the Forum on Gender*, Number 5, Addis Ababa: Panos Ethiopia. Available at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf>. Last visited on 10-29-2018.
- Seblework Tadesse (2004) *Assessment of Sexual Coercion among Addis Ababa University Female Students*, Mph Thesis, Addis Ababa University.
- Shannon (2004) *Theories of Sexual Coercion: Evolutionary, Feminist, and Biosocial Perspectives*. Available at: <http://www.pandys.org/theoriescoercion.pdf>. Last visited on 1/27/2019
- Sileshi Garoma Abeya *et al.* (2011) 'Intimate Partner Violence against Women in Western Ethiopia: Prevalence, Patterns, and Associated Factors', *BMC Public Health* 11:913. Available at: <http://www.biomedcentral.com/1471-2458/11/913>. Last visited on 9/14/2018.
- Sileshi Garoma Abeya *et al.* (2012) 'Intimate Partner Violence against Women in West Ethiopia: A Qualitative Study on Attitudes, Woman's Response, and Suggested Measures as Perceived by Community Members', *Reproductive Health* 9:14. Available at: <http://www.reproductive-health-journal.com/content/9/1/14>. Last visited on 10-29-2018.
- Sinidu Fekadu (2008) *An Assessment of Causes of Rape and Its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa*, MA Thesis, Addis Ababa University.
- South Africa: Vera Institute of Justice, Bureau of Justice Assistance (2004) *Thuthuzela Care Centres: Has Treatment of Rape Survivors Improved since 2000?, A Study of Rape Survivors in the Western Cape* (November 2004). Available at: <https://www.google.com=UTF-8>. Last visited on 1/26/2019.
- Tezeta Meshesha (2008) *Media Strategies for Awareness Creation: A Comparative Analysis of Three Organizations Working on Women's Rights in Ethiopia*, MA Thesis, Addis Ababa University

- The African Child Policy Forum (2011) *Accessing Justice: The Experience of ACPF's Children's Legal Protection Centre*, Addis Ababa. Available at: [http://www.africanchildforum.org/site/images/stories/Accessing Justice Final Edited on July 7 2011.pdf](http://www.africanchildforum.org/site/images/stories/Accessing_Justice_Final_Edited_on_July_7_2011.pdf). Last visited 9/12/2018.
- Tigest Abye (2016) *Life Story Narratives of Ethiopian Women Activists: The Journey to Feminist Activism*, PhD Thesis, University of Bradford.
- Triggs, Sue *et al.* (2009) *Responding to Sexual Violence: Attrition in the New Zealand Criminal Justice System*, Wellington: Ministry of Women's Affairs. Available at: http://women.govt.nz/sites/public_files/responding%20to%20sexual%20violence%20attrition-pdf.pdf. Last visited 10-19-2018.
- Tsegaye Megersa (2015) *Gender Based Violence in the Rural Setting of Arsi: Causes and Consequence Analysis in Hetosa District*, MA Thesis, Addis Ababa University.
- UN Women Ethiopia (2016) *Shelters for Women and Girls Who Are Survivors of Violence in Ethiopia: National Assessment on the Availability, Accessibility, Quality and Demand for Rehabilitative and Reintegration Services*, UN Women Ethiopia Addis Ababa, January 2016. Available at: <https://www.peacewomen.org/sites/default/files/shelters-for-survivors-of-violence-ethiopia.pdf>. Last visited on 10-29-2018.
- UNICEF (2000) 'Domestic Violence against Women and Girls', *Innocenti Digest*, No. 6. Available at: https://www.unicef.org/malaysia/ID_2000_Domestic_Violence_Women_Girls_6e.pdf. Last visited on 1/27/2019.
- UNICEF (2008) *UNICEF South Africa*. Available at: http://www.unicef.org/southafrica/hiv_aids_998.html. Last visited on 9/18/2018.
- United Nations Development Fund for Women (2008) *Violence Against Women: Facts and Figures*. Available at: http://www.unifem.org/attachments/gender_issues/violence_against_women/facts_figures_violence_against_women_2007.pdf. Last visited on 9/12/2018.
- Vaughan, Sarah and Kjetil Tronvoll (2003) *The Culture of Power in Contemporary Ethiopian Political Life*, Sida Studies Number 10. Available at: <http://ehrp.org/wp-content/uploads/2014/05/VaughnandTronvoll-The-Culture-of-Power-in-Contemporary-Ethiopian-Political-Life.pdf> last visited on 10-27-2018. Last visited on 1/26/2019.
- Velzeboer, Marijke *et al.* (2003) *Violence against Women: The Health Sector Responds*, Occasional publication No. 12 (Washington, D.C., Pan American Health Organization, 2003). Available at: https://www.researchgate.net/publication/306012171_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_VIOLENCE_AGAINST_WOMEN_The_Health_Sector_Responds_Pan_American_Health_Organization_Pan_American_Health_Organization. Last Visited on 10-28-2018.

- Whisnant, Rebecca (2011) 'Feminist Perspectives on Rape', in Edward N. Zalta (eds) *The Stanford Encyclopedia of Philosophy*, (Spring 2011 Edition). Available at: <http://plato.stanford.edu/archives/spr2011/entries/feminism-rape/>. Last visited 19/02/2016.
- World Health Organization (2005) *WHO Multi-country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses*. Geneva, World Health Organization, 2005.
- World Health Organization (2014) *Global Status Report on Violence Prevention*. Available at: [https://www.google.com/search?q=World+Health+Organization+\(2014\)+Global+Status+Report+on+Violence+Prevention.&aq=World+Health+Organization+\(2014\)+Global+Status+Report+on+Violence+Prevention.&aq=chrome..69i57.847j0j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&aq=World+Health+Organization+(2014)+Global+Status+Report+on+Violence+Prevention.&aq=chrome..69i57.847j0j4&sourceid=chrome&ie=UTF-8). Last Visited on 10-28-2018.
- World Health Organization (2016) *Ethical and Safety Recommendations for Intervention Research on Violence against Women: Building on Lessons from the WHO Publication*, Geneva: World Health Organization.
- World Health Organization/London School of Hygiene and Tropical Medicine (2010) *Preventing Intimate Partner and Sexual Violence against Women: Taking Action and Generating Evidence*, Geneva, World Health Organization, 2010. Available at: http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf. Last visited on 10-28-2018.
- Yaynshet G/Yohannes (2007) *Prevalence and Factors Related to Gender Based Violence among Female Students of Higher Learning Institutions in Mekelle Town, Tigray, Northern Ethiopia*, Mph Thesis, Addis Ababa University.
- Yenenesh Tadesse (2008) 'Policy Analysis in Relation to Domestic Violence Against Women', in Deborah Zinn *et al.* (eds) *Ethiopian Social Policy Reader Volume 3*, Addis Ababa University Graduate School of Social Work. Available at: <https://deborahzinn.files.wordpress.com/2010/02/ethiopian-social-policy-reader-volume-3-2008.pdf>. Last visited on 1/26/2019.
- Yohannes Mehretie Adinew and Mihiret Abreham Hagos (2017) 'Sexual Violence against Female University Students in Ethiopia', *BMC International Health and Human Rights* 17(19). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5525286/>. Last Visited on 10-28-2018.
- Zimmerman, K. (1995) *Plates in a Basket Will Rattle: Domestic Violence in Cambodia: A Summary*. Available at: <https://www.cisas.org.ni/files/Plates%20in%20a%20basket%20will%20rattle%20domestic%20violence%20in%20Cambodia.pdf>. Last visited on 9/13/2018.
- የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ ህገ-መንግስት ማብራሪያ (Amharic) Available at: <https://www.abyssinialaw.com/constitutions>. Last visited on 1/29/2019.
- የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የተሻሻለው የወንጀል ህግ ሐተታ ዘምክንዶት 1996 ዓ/ም (Amharic).
- ፍትሕ ሚኒስቴር (2003) የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ የወንጀል ፍትሕ ፖሊሲ የካቲት 25/2003 ዓ.ም (Amharic).

APPENDICES

Appendix 1: List of Key Informants

Eyerusalem Solomon, Executive Director, the EWLA.

Eyerusalem Melaw, social worker, Federal First Instance Court, Ledeta Division.

Inku Aweke, Former Prosecutor and Focal Person on VAW, Federal Attorney General.

Inspector Asefa Weyin, Head, Women and Children Unit, Bole Sub-City Police Department.

Inspector Dejenie Bekele, Investigator, Nifas Silk-Lafto Sub-City Police Department.

Judge Asahib Bizuneh, Former Prosecutor and Focal Person on VAW, Federal Attorney General.

Judge Haregeweyin Teklu, Judge, Federal First Instance Court, Lideta Division.

Mesay Demsie, social worker, Federal First Instance Court, Ledeta Division.

Prosecutor Abeba, Prosecutor and Focal Person on VAW, Federal Attorney General.

Prosecutor Habtammesh, Prosecutor and Focal Person on VAW, Federal Attorney General.

Saba Gebremedhin, Executive Director, the NEWA.

Appendix 2: Questionnaire

Questionnaire to be filled by Judges, Prosecutors, Defense Lawyers and Police Officers

Dear Judges, Prosecutors, Defense Lawyers and Police Officers

I am a candidate for the Degree of Philosophiae Doctor (PhD) in Human Rights at Center for Human Rights, Addis Ababa University. As part of the requirements for my degree, I am conducting a PhD thesis titled: “Effects and Limitations of the 2004 Rape Law Reform in Ethiopia” under the supervision of my advisors, Dr. Meron Z. Eresso and Dr. Emezat H. Mengesha. The Center for Human Rights has approved my research proposal in November 2016, and the Federal First Instance Court, the Federal Supreme, the Federal Attorney General, and the Addis Ababa Police Commission have given me permission to collect data from Judges, Prosecutors, Defense Lawyers and Police Officers, respectively.

The purpose of the research threefold: to identify the main strands the reforms on sexual offences which have been introduced during the overall revision the 1957 Penal Code of Ethiopia in 2004; to evaluates the instrumental impacts of the 2004 reforms on sexual offences; and to assess the limitations (weaknesses) of the 2004 reforms on sexual offences. Your professional experiences and knowledge are essential for the success of my research project. The findings of the research will also inform the law and policy makers to introduce further comprehensive reforms to improve the law on sexual offences and its enforcement. Your participation is completely voluntary. Your individual responses will be kept confidential and participants will remain anonymous. All data will be stored in a locked file by the researcher. The results will be introduced only in general form by using statistical procedures. No individual responses will be published.

The data of the research will be collected by means of a questionnaire. The questionnaire contains different sections and your filling of it takes approximately ____ minutes of your time. The deadline for the completing and returning of the questionnaire is _____. Once you have completed the questionnaire, please return it to the secretary of your respective department. Any questions regarding the study are welcomed and can be directed to the researcher (phone: ...)

and/or to the advisors of the research, Dr. Meron Zeleke Eresso (Email: eressokiyya@gmail.com) and Dr. Emezat Hailu Mengesha (Email: emezatia.ethiel@gmail.com). Thank you in advance for your participation!

Sincerely,

Mesay Hagos Asfaw, PhD candidate, Center for Human Rights, Addis Ababa University.

I. Background information.

Please respond to the following questions by writing the appropriate information on the space provided or by writing “√” in one of the boxes provided.

1. Your name and title _____/Optional/
2. Name of the justice Organ:
Police Commission Federal Attorney General Federal Court Attorney
3. District/Division/Bench
Arada Bole K/Keraniyo N/S/Lafto Yeka Federal Courts Attorney
4. Occupation:
Police Officer Prosecutor Judge Defense Lawyer Attorney
5. Sex:
Female Male
6. Age: _____
7. Marital status:
Never married Windowed Divorced
8. Educational level:
Certificate Diploma First Degree Master's Degree or above
9. Total work experience in year _____

II. The Legal Process and Victims of Rape

Please respond to the following questions by writing the appropriate information on the space provided or by writing “√” in one of the boxes provided.

1. The Law on Rape

- 1.1. What is the legal definition of rape against adult?
- 1.2. Are there distinctions made in law between categories of rape (for example, stranger/acquaintance rape, indoor/outdoor rape,)?
Yes No
- 1.3. If your answer for question number 1.2 is “yes”, what are the distinctions?
- 1.4. Does the incident of rape have to be reported within a certain time after the commission?
Yes No
- 1.5. If your answer for question number 1.4 is “yes”, what is the time limit?
- 1.6. Does rape have to be prosecuted within a certain time?

Yes

No

1.7 If your answer for question number 1.6 is “yes”, what is the time limit?

2. Pre-trial

Reporting and Prosecution

2.1 Is there a special rape/sexual assault unit in the police?

Yes

No

2.2 If your answer for question number 2.1 is “yes”, give more details:

2.3 Do police officers get training for dealing with rape?

Yes

No

2.4 If your answer for question number 2.3 is “yes”, who provides this training?

2.5 What does this training consist of?

2.6 Is this training provided:

During initial training of police recruits As part of an in-service training programme

2.7 Is there a special rape/sexual assault medical unit which conducts a medical examination of the victim when a rape is reported?

Yes

No

2.8 If your answer for question number 2.7 is “yes”, what services are available?

2.9 Are these services available to all victims?

Yes

No

2.10 Are women doctors available to conduct the medical examinations if the victim requests?

Yes

No

2.11 Are police surgeons available to conduct the medical examinations if the victim requests?

Yes

No

2.12 Is the victim entitled to legal advice at the reporting stage?

Yes

No

2.13 If your answer for question number 2.12 is “yes”, is this legal advice state funded?

Yes

No

2.14 Is the victim entitled to any other support pre-trial?

Yes

No

2.15 If your answer for question number 2.14 is “yes”, please specify:

2.16 Is a special prosecutor assigned to rape cases?

Yes

No

2.17 If your answer for question number 2.16 is “yes”, please explain how the special prosecutor is selected.

2.18 Does the prosecutor have the discretion to drop the case, even where the victim wishes to proceed?

Yes

No

2.19 If your answer for question number 2.18 is “yes”, please specify the reasons for dropping cases:

2.20 Can the victim withdraw her complaint at any stage?

Yes

No

Investigation

2.21 Once a suspect has been identified and arrested, is he entitled to be released on bail?

Yes

No

- 2.22 If your answer for question number 2.21 is “yes”, what are the conditions to grant the bail?
- 2.23 Does the victim have any say in the bail decision?
 Yes No
- 2.24 Is the victim entitled to any pre-trial protection from the suspect?
 Yes No
- 2.25 If your answer for question number 2.24 is “yes”, what protections are provided?
- 2.26 Is legal aid available for the victim pre-trial?
 Yes No
- 2.27 Is the victim kept informed of the progress of the case pre-trial?
 Yes No
- 2.28 If your answer for question number 2.27 is “yes”, who has responsibility for informing the victim?
- 2.29 Does the victim have an opportunity to meet the prosecutor before the trial?
 Yes No
- 2.30 If your answer for question number 2.29 is “yes”, please explain:
- 2.31 Is information on the trial procedures available to victims pretrial?
 Yes No
- 2.32 If your answer for question number 2.31 is “yes”, what form does this information take (leaflet, letter, etc.)?

3. Trial

General Procedures

- 3.1 Which level of court hears rape trials?
 Federal First Instance Federal High Court Federal Supreme Court
- 3.2 Is special training in the conduct of rape trials provided?
 Yes No
- 3.3 If your answer for question number 3.2 is “yes”, for whom this special training provided?
 For judges For Prosecutors For defense Lawyers
- 3.4 Is any special training provided where the victim is a child?
 Yes No
- 3.5 Are there any special procedures where the defendant is a child?
 Yes No
- 3.6 If your answer for question number 3.5 is “yes”, please give details:
- 3.7 In the courts in which rape is tried, is there a separate waiting room for the victim?
 Yes No
- 3.8 In the courts in which rape is tried, is there separate bathroom facilities for the victim?
 Yes No
- 3.9 In the courts in which rape is tried, is there a separate eating area for the victim?
 Yes No
- 3.10 Is the victim protected from contact with the defendant during the trial?
 Yes No
- 3.11 Is the victim entitled to anonymity throughout the trial?
 Yes No
- 3.12 Is the victim entitled to anonymity after the verdict?
 Yes No

- 3.35 If your answer for question number 3.34 is “yes”, what are they?
- 3.36 Can the defendant be convicted on the evidence given by the victim alone?
 Yes No
- 3.37 Where the only evidence is that given by the victim, are there special rules which apply to the use of that evidence?
 Yes No
- 3.38 If your answer for question number 3.37 is “yes”, what are they?
- 3.39 Can evidence of the victim’s prior sexual experience with the defendant be used by the defendant in court?
 Yes No
- 3.40 If your answer for question number 3.39 is “yes”, are there any special rules which apply to this evidence?
 Yes No
- 3.41 If your answer for question number 3.40 is “yes”, what are they?
- 3.42 Can evidence of the victim’s sexual experience with others be used by the defendant in court?
 Yes No
- 3.43 If your answer for question number 3.42 is “yes”, are there any special rules which apply to this evidence?
 Yes No
- 3.44 If your answer for question number 3.43 is “yes”, what are they?

4. Post-trial

Sentencing

- 4.1 What is the maximum sentence of imprisonment for rape?
- 4.2 Is there a mandatory minimum sentence for rape?
 Yes No
- 4.3 If your answer for question number 4.2 is “yes”, what is it?
- 4.4 Does the impact of the rape on the victim affect the sentence?
 Yes No
- 4.5 If your answer for question number 4.4 is “yes”, please explain how it is presented to the court, and how it influences the sentence:

Criminal injury compensation

- 4.6 Is the trial-court entitled to award compensation to victims of rape?
 Yes No
- 4.7 If your answer for question number 4.6 is “yes”, is it paid by:
 The state The defendant Other , please specify: _____
- 4.8 Is any other form of reparation to the victim available after a criminal conviction?
 Yes No
- 4.9 If your answer for question number 4.8 is “yes”, please specify:
- 4.10 Is there a state-funded scheme for victims of crime generally?
 Yes No
- 4.11 If your answer for question number 4.10 is “yes”, does this cover victims of rape?
 Yes No
- 4.12 If your answer for question number 4.11 is “yes”, is there a maximum amount which may be awarded?

5. Legal Reforms

5.1 Are there reforms introduced to the law on sexual offences during the revision of the 1957 Penal Code of Ethiopia in 2004?

Yes

No

5.2 If your answer for question number 5.1 is “yes”, please list the main reforms to the law sexual offences:

5.3 Is the current law on sexual offences adequately protect victims of sexual offences?

Yes

No

5.4 If your answer for question number 5.3 is “no”, please list the main weaknesses of the law:

5.5 Have you any other comments on the way in which rape is dealt with in the Ethiopian legal system, with reference to the aims and specific objectives of this research?

Yes

No

5.6 If your answer for question number 5.5 is “yes”, please describe your comments:

6. Effects of Victim, Offender and Case Characteristics in Rape-case Processing

6.1. In the next table, there are some statements on victim’s characteristics that you would be considering while handling alleged rape cases in your respective justice organ. I kindly ask you to read each statement and then write “√” mark in one of the given options which is closest to your opinion.

No	How often do the following victim characteristics affect your decision while handling rape cases?	Choices			
		Always	Often	Sometimes	Never
6.1.1	The age of the victim				
6.1.2	The employment history of the victim				
6.1.3	The education background of victim (whether the victim well-educated)				
6.1.4	Prior relationship of the victim and the offender (whether they are strangers or acquaintances)				
6.1.5	Prior sexual relationship between the victim and the offender				
6.1.6	Prior sexual relationship of the victim with another person				
6.1.7	Whether the victim physically resisted the offender during the offence				
6.1.8	Whether the victim screamed during the incident				
6.1.9	The victim’s promptness in reporting the incident to the police				
6.1.10	Whether the victim was under the influence of alcohol during the incident				
6.1.11	Whether the victim was under the influence of drugs during the incident				
6.1.12	The victim’s history of working in a “disreputable” situation such as “prostitution”				
6.1.13	The victim’s mental health condition during the incident				
6.1.14	Whether the victim did/did not appear to be upset by the alleged rape				
6.1.15	The physical unattractiveness of the victim				
6.1.16	The presence/absence of a big discrepancies between the age of the victim and the offender				
6.1.17	Whether the victim was walking alone late at night in an unsafe neighborhood				
6.1.18	Whether the victim was in a bar alone during the incident				
6.1.19	Whether the victim was hitchhiking during the incident				
6.1.20	Whether the victim agreed to accompany the offender to his residence				

6.1.21	Whether the victim invited the defendant to her residence				
6.1.22	Whether someone other than the victim reported the incident to the police				
6.1.23	The presence of inconsistencies in the victim's account				
6.1.24	The victim's willingness to cooperate				
6.1.25	The victim's willingness/refusal to submit to a medical examination				
6.1.26	The victim's attempt to preserve the necessary physical evidence				
6.1.27	The presence/absence of physical condition supporting the alleged rape				
6.1.28	The victim's previous history of reporting incidents that did not progress				
6.1.29	The victim's prior history of having had trouble with the police				

6.2. In the next table, there are some statements on offender's characteristics that you would be considering while handling alleged rape cases in your respective law enforcement organ. I kindly ask you to read each statement and then write "√" mark in one of the given options which is closest to your opinion.

No	How often do the following offender characteristics affect your decision while handling rape cases?	Choices			
		Always	Often	Sometimes	Never
6.2.1	The age of the alleged offender				
6.2.2	The alleged offender does not have a previous criminal record				
6.2.3	The danger that the alleged offender pose to the victim				
6.2.4	The danger that the alleged offender pose to the community				

6.3. In the next table, there are some statements rape case characteristics that you would be considering while handling alleged rape cases in your respective law enforcement organ. I kindly ask you to read each statement and then write "√" mark in one of the given options which is closest to your opinion.

No	How often do the following case characteristics affect your decision while handling rape cases?	Choices			
		Always	Often	Sometimes	Never
6.3.1	The number of the alleged offenders involved in the commission of rape				
6.3.2	The number of victims against whom the alleged rape was committed				
6.3.3	The alleged crime involved penile-vaginal penetration				
6.3.4	The alleged offender used a gun/weapon during the commission of rape				
6.3.5	The alleged offender used a knife during the commission of rape				
6.3.6	The level of resistance offered by victim during the commission of rape				
6.3.7	The use of physical force in committing rape by the alleged offender				
6.3.8	Physical injuries sustained by the victim during the commission of rape				
6.3.9	The presence of eyewitness to the incident of rape				
6.3.10	The presence of physical evidence (semen, fingerprints, blood stains, hair or skin samples)				
6.3.11	The results of the forensic/medico-legal examination				

6.3.12	The likelihood of finding or arresting the alleged offender				
6.3.13	The presence of aggravating circumstances				
6.3.14	The presence mitigating circumstances				
6.3.15	Lack of physical condition supporting the alleged crime such as demonstrable scratches or injuries to victim's sex organs				

I thank you very much for taking the time to complete this questionnaire.

Appendix 3: Effects of Victim Characteristics in Rape Cases: Cross Tabulation by Sex

Items	Sex		Always	Often	Sometimes	Never	Total	Ch-square value	df	Sig. (p)
1. The age of the victim	Male	N	6	11	2	2	21	1.331 ^a	3	.722
		%	12.8%	23.4%	4.3%	4.3%	44.7%			
	Female	N	11	12	2	1	26			
		%	23.4%	25.5%	4.3%	2.1%	55.3%			
	Total	N	17	23	4	3	47			
%	36.2%	48.9%	8.5%	6.4%	100%					
2. The employment history of the victim	Male	N	2	6	8	5	21	2.369 ^a	3	.500
		%	4.3%	12.8%	17.0%	10.6%	44.7%			
	Female	N	6	4	11	5	26			
		%	12.8%	8.5%	23.4%	10.6%	55.3%			
	Total	N	8	10	19	10	47			
%	17.0%	21.3%	40.4%	21.3%	100%					
3. The education background of victim (whether the victim is well-educated)	Male	N	1	6	9	5	21	1.757 ^a	3	.624
		%	2.1%	12.8%	19.1%	10.6%	44.7%			
	Female	N	4	7	8	7	26			
		%	8.5%	14.9%	17.0%	14.9%	55.3%			
	Total	N	5	13	17	12	47			
%	10.6%	27.7%	36.2%	25.5%	100%					
4. Prior relationship of the victim and the offender (whether they are strangers or acquaintances)	Male	N	5	9	7	0	21	3.684 ^a	3	.298
		%	10.6%	19.1%	14.9%	0.0%	44.7%			
	Female	N	9	5	11	1	26			
		%	19.1%	10.6%	23.4%	2.1%	55.3%			
	Total	N	14	14	18	1	47			
%	29.8%	29.8%	38.3%	2.1%	100%					
5. Prior sexual relationship between the victim and the offender	Male	N	4	9	5	3	21	2.564 ^a	3	.464
		%	8.5%	19.1%	10.6%	6.4%	44.7%			
	Female	N	6	9	10	1	26			
		%	12.8%	19.1%	21.3%	2.1%	55.3%			
	Total	N	10	18	15	4	47			
%	21.3%	38.3%	31.9%	8.5%	100%					

6. Prior sexual relationship of the victim with another person	Male	N	3	2	3	13	21	6.104 ^a	3	.107
		%	6.4%	4.3%	6.4%	27.7%	44.7%			
	Female	N	1	2	12	11	26			
		%	2.1%	4.3%	25.5%	23.4%	55.3%			
	Total	N	4	4	15	24	47			
		%	8.5%	8.5%	31.9%	51.1%	100%			
7. Whether the victim physically resisted the offender during the offence	Male	N	5	5	6	5	21	.656 ^a	3	.884
		%	10.6%	10.6%	12.8%	10.6%	44.7%			
	Female	N	8	4	8	6	26			
		%	17.0%	8.5%	17.0%	12.8%	55.3%			
	Total	N	13	9	14	11	47			
		%	27.7%	19.1%	29.8%	23.4%	100%			
8. Whether the victim screamed during the incident	Male	N	5	5	7	4	21	1.981 ^a	3	.576
		%	10.6%	10.6%	14.9%	8.5%	44.7%			
	Female	N	6	10	8	2	26			
		%	12.8%	21.3%	17.0%	4.3%	55.3%			
	Total	N	11	15	15	6	47			
		%	23.4%	31.9%	31.9%	12.8%	100%			
9. The victim's promptness in reporting the incident to the police	Male	N	2	7	10	2	21	1.332 ^a	3	.721
		%	4.3%	14.9%	21.3%	4.3%	44.7%			
	Female	N	3	12	10	1	26			
		%	6.4%	25.5%	21.3%	2.1%	55.3%			
	Total	N	5	19	20	3	47			
		%	10.6%	40.4%	42.6%	6.4%	100%			
10. Whether the victim was under the influence of alcohol during the incident	Male	N	3	5	12	1	21	.191 ^a	3	.979
		%	6.4%	10.6%	25.5%	2.1%	44.7%			
	Female	N	4	6	14	2	26			
		%	8.5%	12.8%	29.8%	4.3%	55.3%			
	Total	N	7	11	26	3	47			
		%	14.9%	23.4%	55.3%	6.4%	100%			
11. Whether the victim under the	Male	N	4	3	12	2	21	1.453 ^a	3	.693
		%	8.5%	6.4%	25.5%	4.3%	44.7%			
	N	3	5	13	5	26				

influence of drugs during the incident	Female	%	6.4%	10.6%	27.7%	10.6%	55.3%			
		N	7	8	25	7	47			
	Total	%	14.9%	17.0%	53.2%	14.9%	100%			
12. The victim's history of working in a "disreputable" situation such as "prostitution"	Male	N	3	0	9	9	21	12.795 ^a	3	.005
		%	6.4%	0.0%	19.1%	19.1%	44.7%			
	Female	N	3	8	13	2	26			
		%	6.4%	17.0%	27.7%	4.3%	55.3%			
	Total	N	6	8	22	11	47			
		%	12.8%	17.0%	46.8%	23.4%	100%			
13. The victim's mental health condition during the incident	Male	N	2	6	10	3	21	1.847 ^a	3	.605
		%	4.3%	12.8%	21.3%	6.4%	44.7%			
	Female	N	4	5	10	7	26			
		%	8.5%	10.6%	21.3%	14.9%	55.3%			
	Total	N	6	11	20	10	47			
		%	12.8%	23.4%	42.6%	21.3%	100%			
14. Whether the victim does/does not appear to be upset by the alleged rape committed against her	Male	N	5	4	4	8	21	7.977 ^a	3	.046
		%	10.6%	8.5%	8.5%	17.0%	44.7%			
	Female	N	5	7	12	2	26			
		%	10.6%	14.9%	25.5%	4.3%	55.3%			
	Total	N	10	11	16	10	47			
		%	21.3%	23.4%	34.0%	21.3%	100%			
15. The physical unattractiveness of the victim	Male	N		1	2	18	21	1.822 ^a	2	.402
		%		2.1%	4.3%	38.3%	44.7%			
	Female	N		2	6	18	26			
		%		4.3%	12.8%	38.3%	55.3%			
	Total	N		3	8	36	47			
		%		6.4%	17.0%	76.6%	100%			
16. The presence/absence of a big discrepancies between the age of	Male	N	1	2	10	8	21	3.684 ^a	3	.298
		%	2.1%	4.3%	21.3%	17.0%	44.7%			
	Female	N	5	5	8	8	26			
		%	10.6%	10.6%	17.0%	17.0%	55.3%			
		N	6	7	18	16	47			
		%								

the victim and the offender	Total	%	12.8%	14.9%	38.3%	34.0%	100%			
17. Whether the victim's victim was walking alone late at night in an unsafe neighborhood	Male	N	3	4	7	7	21	.039 ^a	3	.998
		%	6.4%	8.5%	14.9%	14.9%	44.7%			
	Female	N	4	5	8	9	26			
		%	8.5%	10.6%	17.0%	19.1%	55.3%			
	Total	N	7	9	15	16	47			
		%	14.9%	19.1%	31.9%	34.0%	100%			
18. Whether the victim was in a bar alone during the incident	Male	N	1	5	6	9	21	2.014 ^a	3	.569
		%	2.1%	10.6%	12.8%	19.1%	44.7%			
	Female	N	0	5	11	10	26			
		%	0.0%	10.6%	23.4%	21.3%	55.3%			
	Total	N	1	10	17	19	47			
		%	2.1%	21.3%	36.2%	40.4%	100%			
19. Whether the victim was hitchhiking during the incident	Male	N	1	2	8	10	21	1.159 ^a	3	.763
		%	2.1%	4.3%	17.0%	21.3%	44.7%			
	Female	N	2	5	9	10	26			
		%	4.3%	10.6%	19.1%	21.3%	55.3%			
	Total	N	3	7	17	20	47			
		%	6.4%	14.9%	36.2%	42.6%	100%			
20. Whether the victim agreed to accompany the offender to his residence where the offence was committed	Male	N	2	8	6	5	21	8.089 ^a	3	.044
		%	4.3%	17.0%	12.8%	10.6%	44.7%			
	Female	N	6	9	11	0	26			
		%	12.8%	19.1%	23.4%	0.0%	55.3%			
	Total	N	8	17	17	5	47			
		%	17.0%	36.2%	36.2%	10.6%	100%			
21. Whether the victim invited the offender to her residence where	Male	N	2	9	6	4	21	5.163 ^a	3	.160
		%	4.3%	19.1%	12.8%	8.5%	44.7%			
	Female	N	7	8	10	1	26			
		%	14.9%	17.0%	21.3%	2.1%	55.3%			
		N	9	17	16	5	47			

offence was committed	Total	%	19.1%	36.2%	34.0%	10.6%	100%			
22. Whether someone other than the victim reported the incident to the police	Male	N	2	6	8	5	21	1.745 ^a	3	.627
		%	4.3%	12.8%	17.0%	10.6%	44.7%			
	Female	N	4	4	13	5	26			
		%	8.5%	8.5%	27.7%	10.6%	55.3%			
	Total	N	6	10	21	10	47			
		%	12.8%	21.3%	44.7%	21.3%	100%			
23. The presence of inconsistencies in the victim's account	Male	N	7	7	6	1	21	1.661 ^a	3	.646
		%	14.9%	14.9%	12.8%	2.1%	44.7%			
	Female	N	11	7	8	0	26			
		%	23.4%	14.9%	17.0%	0.0%	55.3%			
	Total	N	18	14	14	1	47			
		%	38.3%	29.8%	29.8%	2.1%	100%			
24. The victim's willingness to cooperate	Male	N	5	4	12	0	21	3.604 ^a	3	.308
		%	10.6%	8.5%	25.5%	0.0%	44.7%			
	Female	N	7	8	9	2	26			
		%	14.9%	17.0%	19.1%	4.3%	55.3%			
	Total	N	12	12	21	2	47			
		%	25.5%	25.5%	44.7%	4.3%	100%			
25. The victim's willingness/refusal to submit to a medical examination	Male	N	4	5	8	4	21	3.068 ^a	3	.381
		%	8.5%	10.6%	17.0%	8.5%	44.7%			
	Female	N	6	9	10	1	26			
		%	12.8%	19.1%	21.3%	2.1%	55.3%			
	Total	N	10	14	18	5	47			
		%	21.3%	29.8%	38.3%	10.6%	100%			
26. The victim's attempt to preserve the necessary physical evidence	Male	N	4	5	4	8	21	3.579 ^a	3	.311
		%	8.5%	10.6%	8.5%	17.0%	44.7%			
	Female	N	5	5	11	5	26			
		%	10.6%	10.6%	23.4%	10.6%	55.3%			
	Total	N	9	10	15	13	47			
		%	19.1%	21.3%	31.9%	27.7%	100%			

27. The presence/absence of physical condition supporting the alleged commission of rape	Male	N	1	6	8	6	21	2.983 ^a	3	.394
		%	2.1%	12.8%	17.0%	12.8%	44.7%			
	Female	N	4	5	13	4	26			
		%	8.5%	10.6%	27.7%	8.5%	55.3%			
	Total	N	5	11	21	10	47			
		%	10.6%	23.4%	44.7%	21.3%	100%			
28. The victim's previous history of reporting incidents to the police that did not progress	Male	N	2	4	9	6	21	.976 ^a	3	.807
		%	4.3%	8.5%	19.1%	12.8%	44.7%			
	Female	N	1	5	10	10	26			
		%	2.1%	10.6%	21.3%	21.3%	55.3%			
	Total	N	3	9	19	16	47			
		%	6.4%	19.1%	40.4%	34.0%	100%			
29. The victim's prior history of having had trouble with the police	Male	N	0	1	4	16	21	.846 ^a	3	.838
		%	0.0%	2.1%	8.5%	34.0%	44.7%			
	Female	N	1	1	5	19	26			
		%	2.1%	2.1%	10.6%	40.4%	55.3%			
	Total	N	1	2	9	35	47			
		%	2.1%	4.3%	19.1%	74.5%	100%			