

The Ethiopia's Legal Framework on Domestic Violence against Women: a Critical Perspective

Megersa Dugasa Fite¹

Abstract

Feminist study has shown precise resource deprivation and physical and sexual violence committed against girls and women worldwide. Even where constructive regulation to defend the victims of domestic violence are established, weak execution remains caused through exclusive and occasionally fraudulent judicial and police structures. In Ethiopia, women's exposure to domestic violence should be considered from the context of their position in the society. High degree of violence is being perpetrated on women in both the public and private spheres of their life. This article concludes therefore that, to realize its national and international obligations to gender equality more policy efforts are still required from the Government of Ethiopia. These inter alia include changing the societal attitudes to and perception on women, reassessing the existing scattered applicable laws, urgently establishing comprehensive legal framework to protect the victims of domestic violence, and ratifying of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol. These can particularly help to secure those who remain susceptible and in threat of violence and abuse in the domestic domain and generally back the strategy to bring about gender justice in Ethiopia.

Keywords: Domestic Violence; Ethiopia; Inequalities; Legal Framework; Rights; Women

1. Introductory Remarks

"Even though victims of domestic violence continue to encounter institutional, structural, and cultural barriers that keep them from leaving, we should not be surprised that people continue to ask "Why doesn't she leave?" (Berns, 1999:105).

¹ LLB, LLM (Lecturer), Megersa Dugasa Fite, School of Law, Ambo University, Ambo, 19, Ethiopia; Phone: +251-913-110421; Fax: 251-112-365639; Email:megiduga153@gmail.com

1.1. The Problem of Defining Domestic Violence

The definition of the scope of domestic violence is a major problem as it can be defined either narrowly or broadly (Abbi et al., 2010:438). Hence, there is no universally acceptable definition, which is why, in practice; there are few model definitions available. Here are two selected exemplary definitions of the term for the purpose of this essay. The United Nations Declaration on the Elimination of Violence against Women (UN, DEVAW, 1993) defines violence against women as: *'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life'* (UN, DEVAW, 1993: article 1). Accordingly, the Declaration went on to present a non-exhaustive list of what it considered constituted gender-based violence. These includes physical, sexual and psychological violence within the family, female child sexual abuse, dowry-related violence, marital rape, female genital mutilation, rape and sexual abuse, sexual harassment in the workplace and educational institutions, trafficking in women, forced prostitution, battering, non-spousal violence, exploitation, state violence that occurs anywhere etc (UN, DEVAW, 1993: article 2).

The other definition of violence which is worthy to consider is one that is found in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, better known as the Maputo Protocol, which was adopted by the African Union in 2003 in Maputo, Mozambique and entered into force in 2005 (AU, Maputo Protocol, 2003). As per this protocol, violence against women means: *"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"* (AU, Maputo Protocol, 2003: article 1.b. paragraph. 8).

1.2. The Adverse Aspects of Domestic Violence to Women

Domestic violence has serious adverse consequences for the physical, mental, and reproductive health of women (Cook et al., 2008:386). It can also have severe effects on the health of their children as the latter may be at increased risk for emotional and behavioural problems, such as anxiety and depression (Bott et al., 2005:12).

It's indicated that gender-based violence against women in families does not stop even during pregnancy and thus, it have grave consequences for women's sexual and reproductive health including gynaecological problems, chronic pelvic pain, unsafe abortion, a sexual dysfunction, an induced abortion, miscarriage etc (Ibid., p.12; Garcia Moreno et al., 2005:1282). Gender based violence may also result in pain, memory loss, dizziness, and vaginal discharge (Ibid., p.1283). Concerning sexual violence, it is the integrity of the female body that is at risk (Cook et al., 2008:387). High rate of sexual violence may also leads to an unwanted pregnancy and seriously compromises women's ability to protect them-selves from HIV as both are considered to be two sides of the same coin (Bott et al., 2005:12; Human Rights Watch, 2002). Denying her autonomy, violence also offends against the principle of respect for persons thus abused women were more likely to experience emotional distress (Cook et al., 2008:387; Garcia Moreno et al., 2005:1283). Depending on the seriousness, nature and frequency of the abuses to be inflicted on the victims and/or survivors, domestic violence could also violate the minimum standards of human rights protection like that of security of persons, protection against inhuman and degrading treatment, and even protection of life itself (Cook et al., 2008:387).

1.3. The Paradox in Women's Protection against Domestic Violence

The ways by which the human rights protection of private and family life is sometimes understood are one and the major of the challenges facing women's protection against domestic violence (Ibid., p. 387). Some states tried to classify activity within the families as totally falling within the private sphere rather than as a criminal offense against the personal integrity of a woman, and therefore do not allow governmental intervention (Ibid., p. 387; Bott et al., 2005: 17, 31). This principle rarely benefits the family concerning consensual contraceptive practice, for example (Cook et al., 2008:387). However, most of the time, this approach becomes dangerous for a society due to some reasons.

First, it may be invoked to reject police and other governmental intervention in non-consensual incidences of domestic violence like that of marital rape, assaults inside the home etc (Ibid., p. 387). Second, governmental restraint from intervention in violent and otherwise abusive conduct within families may perpetuate a culture of violence against women, both sexual and non-sexual (Ibid., p. 387). Thirdly, this failure violates certain standards provided in international and/or regional treaties.

Typical examples here are, the Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979 by the UN General Assembly (UN, CEDAW, *article 5*) and the African Charter on Human and Peoples' Rights (AU, Charter, *article 4.2.d.*), under which states agree to implement appropriate measures '*to modify the social and cultural patterns of conduct... which are based on the idea of the inferiority or the superiority of either of sexes or on stereotyped roles for men and women*'. Therefore, the human right to private and family life cannot and/or should not be used as a shield to tolerate private conduct of violence (Cook et al., 2008:387).

The key human rights principle is that violence deliberately directed against any other person is never a purely private matter (Ibid., p. 387). For example, both the UN DEVAW (1993) *under article 1* and the AU Maputo Protocol (2003) *under article 1.B. par. 8 & article 4. 2. A* consider any act of gender-based violence...whether occurring '*in public or private life*' as it constitutes violation of rights.

1.4. The Magnitude of Domestic Violence in Ethiopia

Violence against women is not only an extremely rooted but also an accepted rather than challenged problem in Ethiopia (Abbi et al., 2010:437). Perhaps, a recent study by the WHO showed that 71% of Ethiopian women experience either physical or sexual violence or both (WHO, 2005). As to the findings of this study 49% and 59% of ever-partnered women experienced physical and sexual violence by a partner at some point in their lives respectively (Ibid). Moreover, 35% of all ever-partnered women experienced at least one severe form of physical violence - kicked, dragged, beaten up, choked, burnt on purpose, threatened with a weapon, etc. (Ibid).

Furthermore, community based studies in Ethiopia indicated that 50-60% of women experienced domestic violence in their life time (Deyessa et al., 1998: 83-92). The severity of the problem was supplementary evidenced by school-based study in central Ethiopia involving randomly selected 1401 female high school students (Yemaneh, 1998).

As to this this study 74% and 15% sexual harassment and rape respectively was reported by the participating female students (Mulugeta et al., 1998:167-74). Women in Ethiopia were reported to be experiencing the highest rates of emotionally abusive acts (Yemaneh, 1998). Generally, Ethiopia is found to be one of the countries with highest prevalence of both sexual and physical violence (Yemaneh, 1998).

2. The Legal Framework on Domestic Violence in Ethiopia

2.1. Historical and Cultural Context

The highest prevalence of domestic violence in its all forms that we have seen above is contextualized as a result of the historical and/or cultural background of the problem in the country (Abbi et al., 2010:438). Many of the historical or cultural structure of Ethiopian society inherently encourage violence against women (Ibid., p.438). For instance, there is an Ethiopian proverb which says '*Set ena aheya dula yewodale*', which translates into English as '*Women and donkeys love being battered*' (Ibid., p.437). Accordingly, the older family law provides that husband is the head of the family and thus have an authority to control and follow up his wife's conduct (Proclamation No. 165 of 1960, articles 635, 637 & 644).

The older criminal law had also recognised chastisement in some way and thereby legalised the incidence of domestic violence (Proclamation No. 158 of 1957, article 548.2). Hence, the legal codes in Ethiopia used to support male supremacy imposing lesser stringent sanctions on perpetrators of different forms of violence against women both in the private and public sphere (Yemaneh, 1998).

2.2. The Current Legal Framework Response to Domestic Violence

Targeting at providing better protection of the rights of women, Ethiopia has undertaken significant 'gender-sensitive' legislative reforms in the last decade (Fikremarkos: 5). Foremost among these laws are the 1995 FDRE constitution, the 2003 Revised Family Law and the 2005 Revised Criminal Code (Ibid).

2.2.1. The FDRE Constitution

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE Constitution, 1995), within its chapter of fundamental rights and freedoms, contains a number of rights which have direct relevance to the right of women to be protected from domestic violence. One article is totally devoted to enlist the specific rights of women (FDRE Constitution, 1995: article 35).

These *inter alia* include equal protection of the law, equality in marital affairs, entitlement to affirmative measures, protection from harmful traditional practices, maternity rights in employment, the right to consultation, property rights, employment rights, and access to family planning information and services etc (Ibid). One of the several sub-provisions under this general article explicitly imposes an obligation and accountability on the state to protect women from violence (Ibid., article 35.4). Moreover, the constitution has recognized the fundamental rights directly related with the right to protection from domestic violence like that of security of persons and prohibition against inhuman treatment (Ibid., articles 15, 16, & 18).

The constitution further provides that all international treaties ratified by the country are integral parts of the law of the land (Ibid., article 9.4) and fundamental rights and freedoms recognized shall be interpreted in a manner conforming to these treaties (Ibid., article 13.2). These provisions, if appropriately used, provide a significant prospect to interpret the rights, including those in relation to domestic violence, in light of the international treaties which have been broadly interpreted over the years (Fikremarkos: 52). This ultimately is crucial as Ethiopia has been a country that ratified many of these treaties including ICCPR, ICESCR, and CEDAW (Ibid., p.52).

2.2.2. The Family Law

Subsequent to the FDRE Constitution other more specific gender sensitive laws were issued in the country (Ibid., p.52). One of these laws is family law (Revised Family Code, 2000) that has shown a radical change to the parts of the Civil Code dealing with marriage and abolished most of the discriminatory provisions in the Code concerning marriage (Ibid., p.53). Some of these improvements are those rules which require respect, support, assistance and fidelity between spouses and one that mandates joint management of family (Revised Family Law, 2000: articles 49, 50 & 56).

2.2.3. The Criminal Law

The Revised Criminal Code of the Federal Democratic Republic of Ethiopia (The Criminal Code, 2004) is the other major areas of Ethiopian law that has been recently revised in conformity with the FDRE constitution (Fikremarkos: 54) and includes new and revised provisions that are of pertinent to the protection of women from domestic violence. The Code addresses violence against women in different forms: by expanding the existing vague provision, by introducing new offences, by redefining the elements of these offences, by adding aggravating circumstances and by revising the penalties applicable in cases of violation (Ibid). Accordingly, the code criminalizes most forms of violence against women and girls including rape (The Criminal Code, 2004: articles 620-28), trafficking women (Ibid., article 597), prostitution of another for gain (Ibid., article 634), and physical violence within marriage or in an irregular union (Ibid., article 564), abduction, (Ibid., articles 587-590), Female Genital Mutilation (Ibid., articles 565-6), and early marriage ((Ibid., article 649).

2.3. The Critical Gaps in the Laws

Despite some of the revolutionary changes noticed above, there are still several gaps in the new legislative framework in commendably protecting women from domestic violence.

2.3.1. Absence of Civil Remedies for Victims or Survivors

The Ethiopian law is deprived of any kind of civil remedies against domestic violence. There has been no separate domestic violence act or law which provides specific civil remedies for victims/survivors such as right to obtain protection order, monetary/compensation relief, custody order, residence order, shelter or medical benefits or more than one such order.

2.3.2. Absence of Sufficient Criminal Liabilities on Perpetrators

Despite some of its affirmative improvements stated above, the new Ethiopian Criminal Code has still fall short of addressing the problem of domestic violence in sufficient manner showing some critical gaps.

Above all, the code has not put comprehensive definition and scope of the term violence against women as is done under the CEDAW and/or African Protocol. Article 564 is the single provision with explicit reference to the term domestic violence in the code. The problem is that such article not only narrowed the type of domestic relationships to marriage partner and person co-habiting in an irregular union but also refers back to the provisions dealing with crimes against person and health (Articles 555-560) for determination of its criminality and punishments. These scattered provisions may complicate the evidencing process for victims considering the unique nature of the problem in the patriarchal nature of Ethiopian society.

Additionally there are no ways to distinguish the acts that constitutes a domestic violence even to those very limited persons. For instance it has not taken in to consideration the different aspects of domestic violence such as the economic abuse.

Furthermore, there are no mandated organs which bear duty for protection, report or control of problems arising from violence's. Simply stated the code has not as such created an offence of domestic violence in its own right but it simply assimilates it to ordinary assault and battery (Fikremarkos:59). Considering the special nature of domestic violence, where the victim is usually in a relationship of dependence with the perpetrator (Ibid), there is thus a need to look at the problem with a more cautious way.

3. Transcending the Conventional Criminal Law: Experience of Namibia

From the African region, Namibia has a well-established law regulating domestic violence - *Combating of Domestic Violence Act No. 4 of 2003* - from which other African countries including Ethiopia could learn much. This act has many worthy substantive and procedural structures that need a reflection here. Definition and scope wise, unlike that of Ethiopia's situation, the act introduces the concept of domestic violence into the Namibian legal system, and gives it a wide definition that includes physical abuse, sexual abuse, economic abuse, intimidation, harassment and serious emotional, verbal or psychological abuse (Combating of Domestic Violence Act, 2003: Part I, 2(1), par. (a) - (h)). Hence the act defines domestic violence in a manner that offers greater protection than would be derived from conventional criminal law statutes.

Concerning domestic relationship the act again surmounts our legal framework by articulating relationship that renders one a high potential to be respondent. Thus, a person is deemed to be in a “domestic relationship” with another person if, they are or were married to each other, or are or were engaged to be so married, or live or have lived together in a relationship in the nature of marriage, or they have, have had or are expecting a child together, or they are or were otherwise family members related by consanguinity, affinity or adoption, or stand in the place of family members by virtue of foster arrangements, or they have some connection of a domestic nature, including the sharing of a residence; or being financially or otherwise dependant on the other; or they are or were in an actual or a perceived intimate or romantic relationship and customary union (Ibid., Part I, 3(1), par. (a) - (f).).

The other worthy feature of the act that one cannot find under the Ethiopian legal framework relates to its rules on the kinds of civil remedies prearranged to victims/survivors by means of interim and final protection orders. The orders include provisions restraining the respondent from subjecting the compliant to domestic violence (Ibid., Part II, 14(1)). These includes, depending on the circumstance, surrender of firearms, no-contact, exclusive occupation of joint residence, police protection, collection of personal belongings from the residence, accommodation or shelter, periodic payments in respect of the maintenance of the compliant, temporary sole custody, etc (Ibid., Part II, 14(2), par. (a) - (k)). Note that breach of such orders at the same time entails a criminal liability (Ibid, Part II, 16(1-7)).

Finally, provisions in the act that provides for the powers and duties of police officers in relation to rendering assistance in respect of matters pertaining to domestic(arrest and control of suspected persons) are exemplary features of the act (Ibid, Part II, 23(1-2)) that need to be established in Ethiopia’s legal framework.

4. Conclusion and Suggestions

The overall conclusion of this article is that women’s exposure to domestic violence should be considered from the context of the position of women in the Ethiopian society.

In view of the high degree of violence being perpetrated on them in both the public and private spheres of their life, more efforts are still required by government and all other stakeholders to change the cultural, structural, institutional, and social barriers to remove the problem. Based on the analysis and findings made above on the current Ethiopia's legal framework protecting women from domestic violence, this essay has come about with the following suggestions.

The initial step must be significantly changing the societal attitudes to and perception on the place of women in the society at the national, regional, local, community and household levels. Creating and/or expanding all-encompassing community awareness programs about the existing laws protecting women's rights become central.

Then, though remarkable changes have been made to it, we have seen that the current legal framework status quo does not adequately control domestic violence, which in turn contributes to the high magnitude of the problem in the country. There is hence the need to reconsider the criminal legal framework with respect to domestic violence.

Thirdly, this essay has backed the argument that the use of the conventional criminal law and/or family law in addressing the problem of domestic violence should be considered sensibly. Though these laws would certainly play a role in lessening the problem, they could not stand by themselves to be the most effective and appropriate way of tackling the problem of domestic violence. Such legal frameworks as they stand now are greatly fragmented and non-comprehensive in protecting women from domestic violence. There is thus a need to make this issue complete. This could be remedied, among other things, by legislating specific act/law that effectively controls domestic violence. Accordingly, the government ought to allocate to stakeholders sustainable resource so that they could actively engage in the drafting process of an act of domestic violence that provides for an effective remedial rules and enforcement institutions. Whereas having a separate a legal regime for the problem does not automatically guarantee the abolishing of it, legally obligatory laws that are backed up by serious social pressure are most crucial to the maintenance of social life (Lacey, 2002: 81-2).

Fourthly, in the process of the legislation, of course without forgetting to undertake an in-depth analysis on the issue of domestic violence in the Ethiopian actual context, lessons ought to be drawn from Namibia where, as discussed above, there is an act which has many imperative structural arrangements that help to mitigate the incidence of domestic violence.

Last, but not least, ratification by the government of Ethiopia of the 2003 AU Maputo Protocol, which is designed to harmonise national laws with international standards and take all necessary measures to fight against violence against women, is absolutely vital. This measure will help to, not only deal with the issues of domestic violence, but also with all other issues surrounding the effort to bring about gender justice in the country (Abbi et al., 2010:437; Fana, 2010).

References

Journal Publication, Book, and Web Sources

- Abbi Kedir & Lul Admasachew. (2010). Violence against women in Ethiopia. *Gender, Place & Culture*, 17:4, 437-452.
- Berns, N. (1999). My Problem and How I Solved It: Domestic Violence in Women's Magazines. *The Sociological Quarterly*, 40:1, 85-108.
- Bott, S., Morrison, A., & Ellsberg, M. (2005). Preventing and responding to gender-based violence in middle and low income countries: a global review and analysis. World Bank Policy Research Working Paper, WPS3618.
- Cook, R., Dickens, B., & Fathalla, M. (2008). Reproductive health and human rights: integrating medicine, ethics, and law. New York: Oxford University Press Inc.
- Fana Hagos Berhane, (2010), Why Ethiopia should ratify the Maputo Protocol [Online] Available: <http://allafrica.com/stories/201011291587.html> (25 November 25, 2010).
- Fikremarkos Merso, Women & 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, [Online] Available: <http://ethiopia.unfpa.org/drive/WomenandGirlsandHIV-AIDSinEthiopia.pdf>.
- Garcia-Moreno, C., Heise, L., Jansen, H., Marry, Ellsberg, & Watts, C. (2005). Violence against Women. *Science, New Series*, 310:5752, 1282-1283.
- Human Rights Watch, (2002), Suffering in Silence: the link between human rights abuse and HIV transmission to girls in Zimbabwe, [Online] Available: www.hrw.org/reports/2003/zambia/zambia1202.pdf (June 1, 2002).
- Lacey, N. (2002). State Punishment: Political Principles and Community Values. London: Taylor & Francis e-Library.

- UNFPA, *The Policy and Legal Framework Protecting the Rights of Women and Girls in Ethiopia & Reducing their Vulnerability to HIV/AIDS*, An Advocacy Toolkit, [Online] Available: <http://ethiopia.unfpa.org/drive/AdvocacyToolkitonHIV-AIDS.pdf>.
- WHO, (2005), *Multi-country Study on Women's Health and Domestic Violence against Women, Ethiopia*, [Online] Available: <http://www.who.int/gender/violence/en/>.
- Yemane Berhane. (2004). *Ending Domestic Violence against Women in Ethiopia*. *Ethiopian Journal of Health Development*, 18:3, 131-132.

Treaties and Laws

- AU. (1981). *African [Banjul] Charter on Human and Peoples' Rights*, adopted by the OAU.
- AU. (2003). *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, better known as the Maputo Protocol, adopted by the African Union.
- Civil Code of the Empire of Ethiopia*, Proclamation No. 165 of 1960, *Negarit Gazeta*, Berhanenna Selam Printing Press - 11-9-52- No. 2071-52- 5000.
- Combating of Domestic Violence Act*, Act No. 4, 2003, *Government Gazette of the Republic of Namibia*, No.3002.
- Constitution of the Federal Democratic Republic of Ethiopia*, Proclamation No. 1/1995, *Federal Negarit Gazeta* - No.1 (1995).
- Penal Code of the Empire of Ethiopia*, Proclamation No. 158 of 1957, *Negarit Gazeta*.
- The Criminal Code of the Federal Democratic Republic of Ethiopia*, Proclamation No.414/2004.
- The Revised Family Code*, Proclamation No. 213/2000, *Federal Negarit Gazetta Extra Ordinary Issue* No. 1/2000.
- UN. (1979). *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, adopted by the UN General Assembly.
- UN. (1993). *Declaration on Violence against Women*, UN General Assembly Resolution, 48/104, 20 Dec. 1993.