

Are Human Rights an Effective Remedy? Children, Sexual Violence, and Criminal
Justice in Ethiopia

by

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Submitted in partial fulfilment of the requirements
for the degree of Master of Arts

at

Dalhousie University
Halifax, Nova Scotia
July 2014

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ABSTRACT

This thesis is an in-depth examination of the rights of child victims of sexual violence seeking legal redress in the Ethiopian criminal justice system. It explores children's susceptibility to various injustices as they take part in the criminal justice process. These injustices are mainly inherent in gaps in law and lack of effective child-centred enforcement mechanisms. Discriminatory laws based on sex and gender insensitivity among law enforcement and judicial personnel creates additional challenges for female victims as they go through the criminal justice process. Using a human rights-based approach, which is anchored to international human rights principles and mechanisms, this thesis examines how these principles and mechanisms can remedy violations of children's rights. Looking at Ethiopia's reporting mechanism as the main monitoring mechanism; this thesis concludes that this is an efficient and effective strategy to pressure the Government of Ethiopia to take the necessary legislative, administrative and judicial measures. Eventually, these measures not only ensure the rights of child victims throughout the criminal justice process but also Ethiopia's compliance with its international human rights obligations.

LIST OF ABBREVIATIONS USED

ACPF	African Child Policy Forum
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CLPC	Children's Legal Protection Centre
CPC	Criminal Procedure Code
CPUs	Child Protection Units
CRC	Convention on the Rights of the Child
CSO	Civil society organizations
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
FGM	Female genital mutilation
HRBA	Human rights-based approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOM	International Organization for Migration

JSRP	Justice System Reform Program
MOJ	Ministry of Justice
NEWA	Network of Ethiopian Women’s Association
NGOs	Non-governmental organizations
OAU	Organization of African Unity
UDHR	Universal Declaration of Human Rights
UPR	Universal Periodic Review
UN	United Nations
UNICEF	United Nations Children’s Fund
WHO	World Health Organization

ACKNOWLEDGEMENTS

I am extremely grateful to my supervisor, Dr. Margaret Denike, for supporting and always giving me encouraging feedback. I am also indebted to Dr. Theresa Ulicki, my second reader, for her indelible advice and direction throughout this project. Thank you Dr. Shelly Whitman, my external examiner, for joining my defense committee and providing thoughtful critiques.

I would like to thank Emily Ballantyne and James Bray for their editorial help. Last but not least, I would like to thank my family for their love and support.

CHAPTER 1 INTRODUCTION

Sexual violence against children is a global problem. According to the World Health Organisation (2002), sexual violence is defined as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work” (p. 149). A comprehensive world report on violence against children published by the United Nations (UN) (2006) identifies an estimated 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact (p.12). Much of this sexual violence is inflicted by people normally trusted by children and often responsible for their care such as family members, teachers, caretakers, law enforcement authorities or other people residing in or visiting a child’s family home (UN, 2006, p.54). Girls are more vulnerable than boys to sexual violence, which is often a reflection of the influence of gender-based power relations within society.

In Sub-Saharan Africa many societies are patriarchal, and cultural norms and beliefs highly reflect male dominance over women and girls. As a result, women and girls commonly have less agency over their lives and in their relationships, and lower status in society. A male-dominated social structure is one of the causes for girls’ vulnerability to crimes of sexual violence in sub-Saharan Africa (Lalor, 2004, p. 452). Lalor (2004) argues that a male-dominated cultural belief that puts emphasis on male supremacy over females and children’s obedience to adults allows men to yield a double authority over girls (p. 453). In Ethiopia, too, sexual violence against children, particularly girls, is

highly prevalent and widespread due to deep-rooted socio-economic problems and harmful traditional practices such as abduction¹ and child marriage (Save the Children Denmark, Ministry of Education & Ministry of Women's Affairs, 2008, p.11).

Sexual violence against children is one of the worst forms of violations of the rights of children which can lead to irreversible physical, psychological and social damage, including death. Cognizant of this fact, the international community has taken responsibility for combating sexual violence and exploitation of children. A number of international and regional human rights instruments set out standards that require States to protect children from all forms of violence, to prevent violence, and to provide support to children who are victims of any forms of violence including sexual violence. The UN Convention on the Rights of the Child (CRC), the most universally accepted human rights instrument that lays down guarantees for the spectrum of the child's human rights, obliges States Parties to take all appropriate legislative, administrative, judicial and educational measures to protect the child from all forms of sexual abuse (Art. 19). Furthermore, specific principles and standards are outlined in various human rights instruments for the treatment of child victims in the justice process with a view to ensure access to justice and prevent any additional hardship when passing through the different stages of justice process (UN Guidelines, 1997 & 2005).

¹ Abduction is a culturally sanctioned way of concluding marriage. It is widely practiced in the southern part of the country. A man who is interested in marrying a girl stalks and abducts her with the help of his friends. He takes her to his village and rapes her. Once he has compromised her "chastity" (virginity is prized in the rural areas) he sends elders to her family informing them that he had abducted their daughter and would like her hand in marriage. He promises to compensate for his actions in terms of money or cattle. Thus the marriage is concluded through negotiation between elders and victims' family. The victims are very young girls and such marriages are usually concluded without their full consent (EWLA & NEWA, 2003, p. 46).

In addition, human rights monitoring bodies are established at the international and regional levels to ensure compliance of States Parties' with their international commitments. These bodies serve as effective mechanisms to monitor how, and how well, States Parties are working towards the implementation of the norms of international principles at domestic level. Furthermore, such bodies ensure that victims receive effective legal remedies for rights violations. Such mechanisms play their own role in denouncing, preventing and responding to incidents of violence, including sexual violence against children by putting pressure on States Parties to develop a legal system that criminalizes all forms of violence against children and establish effective child-centred enforcement mechanisms that ensure access to justice.

Being a member of the UN since 1945, Ethiopia is party to many international and regional human rights agreements on children's rights. Despite such international commitment, sexual violence against children is still a widespread problem and child victims seeking legal redress face a number of challenges in the justice process. This thesis is concerned with the broad question of how cases of child victims of sexual violence are administered in the Ethiopian criminal justice system.

1.1 Purpose of Study

The purpose of this research is to explore the treatment of child victims seeking legal redress in the Ethiopian criminal justice system. It also investigates the extent to which international human rights instruments and processes, to which Ethiopia is a party, could address challenges in the administration of such cases. Within this overall goal, my thesis has the following specific objectives:

- To determine international and regional human rights principles and standards relevant to the treatment of child victims of sexual violence;
- To examine existing laws, policies and programs relating to the treatment of child victims of sexual violence in Ethiopia;
- To identify the gaps in law and enforcement in criminal proceedings involving child victims;
- To critically analyse the extent to which international and regional human rights instruments and processes can address the challenges encountered by child victims in the Ethiopian criminal justice system; and
- To formulate recommendations to address the existing problems in the law and its administration with regard to the treatment of child victims in the country.

1.2 Research Questions

My research questions are:

- 1) How does the criminal justice system administer cases of child victims of sexual violence at the time of reporting, during investigation and throughout the trial process?
- 2) How can gaps in the administration of cases of child victims be addressed using international and regional human rights instruments and processes?

The following specific questions will also guide my research.

- What are the key international human rights standards pertinent to child victims of sexual violence?

- What is the legal framework concerning child victims of sexual violence in Ethiopia, and to what extent does this framework accord with international standards?
- What are the gaps in law and enforcement in the administration of justice for child victims of sexual violence?
- What legislative, administrative and other measures have been taken by the Government of Ethiopia in response to recommendations of human rights monitoring bodies?

1.3 Significance of Research

Children below the age of 18 years, who constitute 52.9% of the Ethiopian population, face various forms of sexual violence at home, school, and community settings (ACPF & Save the Children Sweden, 2006, p.55). According to a retrospective survey on violence against girls in Africa, 70% of the 485 Ethiopian respondents reported at least one experience of sexual abuse, particularly rape as a child (ACPF & Save the Children Sweden, 2006, p.55). As indicated in the UN (2006) report, in Ethiopia too, children are usually abused by individuals close to them, in whom they placed trust and confidence. This was demonstrated by a cross-sectional study conducted in Addis Ababa where 38.5 % of respondents reported child sexual abuse cases, out of which 29% of the perpetrators were victims' family members, while 68% of them were adults the children knew (Jemal, 2012, p.63).

Girls are particularly vulnerable to sexual violence due to deep-rooted social and cultural practices (Save the Children Denmark et al., 2008, p. 18). A male-dominated social structure results in many girls having little agency over their lives and contributes

to them becoming victims of various forms of violence, including sexual abuse. According to a study conducted by the National Committee on Traditional Practices of Ethiopia in 1998, the prevalence of early marriage² is 54 %, while the prevalence rate of abduction is 69 % (Save the Children Denmark et al., 2008, p. 19). The high prevalence of harmful traditional practices, such as abduction and early marriage, makes girls prone to victimization. Moreover, because of fear of harmful traditional practices, many girls flee to urban areas and end up in the commercial sex industry, which increases their exposure to risk (IOM Ethiopia, 2006, p. 15). Some studies indicate that there is an increasingly prevalent practice of trafficking in children, both within and outside of Ethiopia, for the purposes of sexual exploitation (IOM Ethiopia, 2006, p. 8). In sum, the most prevalent forms of sexual violence against children in Ethiopia include rape³, sexual outrage⁴, sexual harassment, abduction for the purpose of marriage, child prostitution,

² According to Article 648 of the Revised Penal Code, “whoever concludes marriage with a minor, who is under the age of 18 years is punishable with rigorous imprisonment not exceeding three years, where the age of the victim is thirteen years or above; or rigorous imprisonment not exceeding seven years, where the age of the victim is below thirteen years”. Despite this provision in the law, in practice, girls as young as 8 and 9 years old are wedded. In such cases, the families of the couples usually arrange the marriages. The main reasons for giving away girls in marriage at such an early age are: ‘ensuring the girl’s virginity during her marriage’ and ‘securing her futurity at an early age’ (EWLA & NEWA, 2003, p. 32).

³ Rape is defined as “an act of compelling 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 from five years to fifteen years. Where the crime is committed on a young woman between thirteen and eighteen years of age, the punishment shall be rigorous imprisonment from five years to twenty years” (Art.620 of the Revised Penal Code).

⁴ Sexual intercourse with a minor under thirteen years of age is taken as sexual outrage, and this is a consensual intercourse, according to the definition given to the act under the Code, for no violence or intimidation is required (Arts. 626 & 627). Article 622 further reads as: “whoever, by use of violence or grave intimidation, or after having in any other way rendered his victim incapable of 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.” Although there is no explicit provision in the Code, acts such as having oral sex with minors could be categorized under ‘an act corresponding to sexual act or any other indecent act’ under Article 622.

trafficking in children for sexual purposes and child marriage (Save the Children Denmark, Ministry of Education & Ministry of Women's Affairs, 2008, p.11).

In addition to the results of the above studies, other studies reveal that sexual violence is on the increase (Ministry of Labour and Social Affairs, 2006 – 2010, p. 9). While this may partly be explained by increased media attention to the rights of children, some of the official crime statistics show that child sexual abuse cases, particularly rape, are among the most prevalent offences as well as being on the increase. For instance, between 1999 and 2003, the reporting of sexual offences increased by 7%, while for rape the increase was 3% (Ministry of Labour and Social Affairs, 2006 – 2010, pp 9-10). These numbers indicate that as a result of an increase in the prevalence rate of sexual violence against children, more children are likely to go through criminal proceedings and become in contact with the law either as child victims or witnesses of crime. This raises an important question: how are cases of child victims administered in criminal proceedings?

The legal framework and the practice regarding the treatment of child victims in the administration of justice in Ethiopia is a scarcely researched subject. As a result, comprehensive data on the treatment of child victims in the Ethiopian criminal justice system does not exist. In light of the high level of prevalence of sexual violence against children and the reportedly increasing numbers of children coming into contact with the law as victims of crime, this gap needs to be addressed. Addressing these gaps and setting up a child-centred criminal justice system would ensure children's access to justice and deter potential crimes of sexual violence. This would ultimately contribute to creating an environment that fosters the physical, emotional and social development of children.

Given that children constitute more than half of the population of Ethiopia, a move towards a child-centred justice system will create a prosperous Ethiopia in the future. My research would, therefore, contribute some insights into current debates on children and the criminal justice system. My research is particularly timely given that the Criminal Procedure Code of Ethiopia that governs criminal proceedings is under revision. My research will fit within the existing literature on violence against children and contribute to bridging the gap in literature on the treatment of child victims of sexual violence in the criminal justice system in Ethiopia.

As a woman, a human rights supporter and a mother, sexual violence against children is an issue of personal concern. Moreover, in my experience as a child rights advocate in Ethiopia for the past many years, I witnessed the suffering of child victims, which motivates me to produce a critical analysis of the problem with an eye towards practical solutions for the plight of child victims.

1.4 Scope of Study

As previously mentioned, girls are more vulnerable to sexual violence in Ethiopia (Save the Children Denmark, Ministry of Education & Ministry of Women's Affairs, 2008; ACPF, 2006). Hence, my research primarily focuses on female child victims; however, the results of this study will also be relevant to the treatment of sexual abuse cases involving boys within the justice system. While my research sets out to examine the challenges facing child victims, its focus is largely limited to the analysis of gaps in law and enforcement in the criminal justice system from the time of the incident to the

completion of the trial. This study does not cover issues related to post-trial processes such as execution of judgements, which are complex and deserve a thesis of their own.

1.5 Research Method

Content analysis of recent studies and reports was the primary method to draw together existing data on the phenomenon of sexual violence against children and human rights discourses with special emphasis on the rights of children. My research relied on a desktop research of relevant human rights instruments, legislation, journal articles, cases, policy documents, newspaper reports, bulletins and research material all available in hard copy or on the internet.

I examined key human rights instruments and mechanisms at the international and regional levels in order to explore the fundamental rights of children and the corresponding duties. I also reviewed pertinent national laws and policies concerning children in order to explore the extent to which the Ethiopian legal framework responds to the needs of child victims and provides legal protection for those who seek justice as per international human rights principles and standards. I analyzed cases of sexual violence reported to law enforcement and judicial organs in order to identify the challenges that child victims face in the Ethiopian criminal justice system. Analysis of such cases helped me explore the gaps in law and enforcement, as well as the experiences of child victims in the criminal justice process.

Moreover, I reviewed and analyzed reports of Government and non-governmental organizations (NGOs) submitted to international and regional human rights monitoring bodies as well as recommendations of these bodies. International principles, standards and good practices identified from the literature review were used as

parameters for the evaluation of the practical administration of justice for child victims in Ethiopia.

1.6 Thesis Structure

The first chapter provides an introduction to the thesis topic and outlines the research question, objectives, scope and rationale for the study. Chapter two discusses the theoretical approach that this thesis draws upon, namely a human rights- based approach. In this chapter, a gender analysis of this approach is integrated in order to demonstrate the power politics in gender-based violence. Chapter three presents international and regional human rights principles and standards on violence against children. This chapter also lays down fundamental standards in the treatment of child victims in the criminal justice system, which serve as a framework to evaluate the manner in which the Ethiopian criminal justice system administers cases of child victims. Chapter four sets the context of the research study by presenting an account of the administration of cases of child victims in the Ethiopian criminal justice system. This chapter identifies the gaps in law and enforcement in the administration of these cases from the time of the incident until the completion of the trial using international human rights framework. Chapter five discusses the extent to which international human rights mechanisms could address these gaps by illustrating the role of the reporting mechanism as one of the effective tools to monitor Ethiopia's compliance with its human rights obligations. This chapter also presents key legislative, administrative and judicial measures that have been taken by the Government of Ethiopia that could ultimately ensure the rights of child victims throughout the justice process. Drawing from a human rights-based approach, chapter six

offers general conclusion and recommendations with an eye towards practical solutions for the plight of child victims of sexual violence.

CHAPTER 2 THEORETICAL APPROACH

I frame my analysis of the administration of cases of child victims of sexual violence in the Ethiopian criminal justice system using a human rights- based approach. In doing so, I will integrate gender analysis to elucidate the power relations and gender politics of sexual violence against children, particularly girls. This analysis will help me gain a broader understanding of the impact of laws, policies and programs at the core of my research. The main objective of using a human rights perspective in this thesis is to demonstrate that the phenomenon of sexual violence against children is a matter of social and gender justice.

2.1 Human Rights-Based Approach (HRBA)

A human rights-based approach (hereinafter referred to as HRBA) , also known as rights-based approach or human rights approach, has attracted enormous attention from UN agencies, international civil society organizations (CSOs) and donors since the end of the 1990s (Harris-Curtis, 2003; Cornwall & Nyamu-Musembi, 2004; Wessells,2005). Although the term has been widely used by these organizations, there have been huge disparities among them regarding its meaning and approach; hence, it is impossible to give a single definition (Cornwall & Nyamu-Musembi, 2004, p. 1415). In order to foster inter-agency partnership and consistency of approaches, the UN found it imperative to put in place a common framework that guides all UN cooperation and programs. Accordingly, it issued the Human Rights Based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies (Common Understanding) in 2003. As per this document, referred to as the Common Understanding (2003), a HRBA has the following three pillars:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights (Para.6).

According to this document, all policies and programs should have the ultimate goal of advancing the protection and fulfillment of human rights as envisaged in the Universal Declaration of Human Rights (UDHR) and other human rights documents. Any programs and policies "that only incidentally contribute to the realization of human rights do not necessarily constitute a HRBA to programming" (Common Understanding, 2003, para. 7). A HRBA strongly demands that national policy makers, in initiation, formulating, implementing, monitoring and evaluating of policies and programs, must be mindful of the realization of human rights as the final goal (Common Understanding, 2003, para. 7). This requires, among other things, to carefully incorporate the interests and needs of all segments of society, including children, in the initiation of programs and development of laws and policies.

Wessells (2005) identifies four assumptions common to various human rights-based approaches that complement the three pillars adopted by the Common Understanding (2003). First, a core assumption of a HRBA is that it views beneficiaries as active rights-holders and aims to empower them to achieve their own rights rather than looking at them as victims and passive recipients of aid (Wessells, 2005, p.10). Closely related to the issue of beneficiaries being viewed as active agents in attaining rights is

their high degree of participation that Kapur & Duwury (2006) identify as being a crucial feature of a HRBA (p.8). This places emphasis on the importance of rights-holders' meaningful access to and influence on any development process at all stages, as opposed to input being limited to symbolic consultations (Kapur & Duwury, 2006, p.8). Kapur & Duwury (2006) argue that a mere formal or ceremonial contact with beneficiaries is not sufficient. Rather, a HRBA stresses the need to have access for rights-holders to development processes, institutions, information and mechanisms for redress and complaints (p.8). Under a HRBA, individuals have the right to actively, freely and meaningfully take part in all matters affecting their lives. This is particularly important in issues dealing with victims of rights violations since this approach puts emphasis on the need to consider them as active rights-holders who can express their views and opinions in all matters affecting them to defend and enjoy their fundamental and inalienable rights.

Second, duty-bearers, primarily governments, but also organizations mandated to protect rights and, in the case of children's rights, parents and other caregivers, have legal obligations to protect and to fulfill the rights to which their holders are entitled (Wessells, 2005, p.10). This approach is based on a framework of rights and obligations which places individuals or groups of individuals as rights-holders and States and other non-State actors as duty bearers. Kapur and Duwury(2006) argue that a HRBA determines the relationship between individuals and groups with valid claims as rights-holders and States and non-State actors, as duty bearers with correlative obligations (p.7). Duty bearers are obliged to address both their “positive” obligations (to recognize, respect, protect, promote and provide rights) and their “negative” obligations (to abstain from rights violations) (Kapur & Duwury, 2006, p.7). Thus, under a HRBA, any national

programs and policies must contribute towards building the capacities of States and non-State actors to discharge their obligation and of individuals or groups of individuals to claim their rights (Common Understanding, 2003, para.6).

To this, Wessells (2005) identifies a third element: that a HRBA is necessary to address poverty as a symptom of deprivation, exclusion, and rights abuses, as this approach recognizes the root structural causes and political issues that lead to poverty and suffering of people (p.10). This approach recognizes that particular groups, such as children and women, are unduly affected by rights abuses and must, therefore, engage with issues of discrimination, equity, and vulnerability in order to reach those groups most in need of rights protection. According to Kapur & Duwury (2006), a HRBA requires policy makers and program designers and all other organizations working with vulnerable groups to consider local circumstances of these group with a view to adequately address their special needs and interests (p.8).

The final assumption is that all phases of an intervention should be guided by human rights principles (Wessells, 2005, p.11). Human rights standards derived from various human rights documents such as the UDHR should direct the design, implementation and evaluation of all programs and policies of all sectors. This requirement seeks to test the systematic integration of human rights principles and standards in all phases of development programs, policy and law making process. The Common Understanding (2003) clearly stipulated the core principles of human rights that should be the basis for a HRBA. These are: universality and inalienability (everyone, everywhere is entitled to certain rights and no one can take away these rights or renounce them); indivisibility (the promotion of one right may not justify the violation of another

right); and interdependence and interrelatedness (the promotion of specific human rights must be part of a comprehensive effort to realize human rights in a holistic way) (par.10). In addition, the principles of equality and non-discrimination; participation and inclusion; and accountability and rule of law guide any intervention from the time of program planning, implementation, monitoring and evaluation (Common Understanding, 2003, para.10).

In sum, a HRBA uses human rights and their accompanying standards in the design, development, implementation and assessment of any laws, policies, and programmes. Since a HRBA recognizes every human being as a right-holder, this approach strives to secure the freedom, well-being and dignity of all people by setting fundamental human rights and their corresponding obligations. In explaining the advantage of a HRBA, Cornwall and Nyamu-Musembi (2004) argue that whereas needs-based approaches which are often top-down and look at beneficiaries of programs or policies as passive targets without their own objectives or interests and lacks a way to hold governments accountable for their actions or inactions, a HRBA which systematically integrates human rights principles during all phases of programs and policies, can be empowering, transformative, and an effective vehicle for increasing the accountability of States to meet the rights of their citizens(pp. 1416-1417). In short, a HRBA turns needs into rights, stresses on the need to empower rights-holders with a view to defend their entitlements, promotes accountability and focuses on the inclusion and involvement of all sectors of the society particularly vulnerable groups, such as children.

Children, being one segment of vulnerable groups who are often neglected and marginalized, can be better recognized and protected by a HRBA. Applying a HRBA is a step in the right direction to integrate the special needs and interests of children in the formulation of laws, policies and development of any programs. Since this approach recognizes each individual as having his/her own agency and with full evolving capacity, it places children at the centre of any programs or interventions. Such an approach, therefore, influences development actors, policy makers, program designers, parents, and the community at large and forces them to change the lens through which they perceive children and the place they give them in the society. The core and fundamental principles such as equality and non-discrimination, which are anchored to international human rights law and are the basis for a HRBA, create the impetus to prioritize children's voices and include children on the political agenda. Tobin (2011) argues that "under a rights based approach the place of children and their voice within the political economy can no longer be ignored, devalued or marginalised on the assumption that decision makers whether they be parents, teachers, doctors, judges, institutions or government officials will automatically know what is in their best interests" (p.89). Accordingly, this approach makes the invisible visible through redirecting scarce resources to meet children's needs and holds the State, and indeed the international community, accountable when they fail to meet the international human rights standards (Tobin, 2011, p. 90).

Similarly, the United Nations Children's Fund (UNICEF) asserts that this approach is advantageous in analyzing issues concerning children. First, due to children's inherent vulnerability, this approach ensures that children are not being excluded from the benefits of laws, policies, programs and other initiatives and that they are not

adversely affected by them either (UNICEF, 1998, p.5). Second, a HRBA advocates for States to use their maximum available resources to achieve results for children and requires strengthening the capacity of parents and other primary caregivers to provide effective care for and protection of children (UNICEF, 1998, p. 5). Third, this approach focuses on engaging children in matters that affect them by supporting them in learning about their role as rights-holders so that they can actively express their views and participate in a free and fair society (UNICEF, 1998, p. 5).

In addition, Save the Children (2005) argues that by emphasizing a holistic vision of the rights of the child, while making strategic choices and taking specific actions, a HRBA would result in sustainable results for children by focusing on not only on the immediate but also the root causes of problems (p. 27). By recognizing governments as primary duty-bearers accountable to their citizens – including children – and the international community, a HRBA provides a long-term goal which is clearly set out in international legal frameworks and encourages legal and other reform, which create a much greater likelihood of sustainable change (Save the Children, 2005, p.27).

A HRBA is therefore useful to identify legal means by which rights violations such as child victims of sexual violence can be remedied and to bring the agenda of these children to the core of existing policies, practices and legislation. The enforcement of legislation and policies based on the principle of accountability guarantees children and their families' access to administrative and judicial mechanisms to seek reparation for violations of human rights. Moreover, the accountability role of States, which is inferred from their international duty not only ensures social justice but also prevents similar acts

of violence which ultimately guarantees the right of children to live in a society free of violence.

2.2 Gender Analysis of a HRBA

While proponents of a HRBA argue that this approach leads to better, more sustainable outcomes than traditional needs-based approaches, some critics argue that the effectiveness of a HRBA may be limited, particularly in issues concerning gender equality (Goonesekere, 2001; Tsikata, 2004). Sexual violence against children, particularly girls, is a central concern. As Gordon and Crehan (2000) argue, child sexual abuse is typically a gendered phenomenon, despite its incidence in both males and females (p.2). Child sexual abuse is an expression of male supremacy and power inherent in patriarchy (Gordon & Crehan, 2000, p. 5). Sexual abuse of children is an expression of male power over females and, as such, is seen as a logical extension of the nature of patriarchy. Drawing from gender analysis of a HRBA, I elucidate the sexual politics and power structures of sexual violence against children with special emphasis on girls, who are usually the target of gender-based sexual violence such as rape, abduction and early marriage. Such analysis will pin point the gaps in the construction and application of human rights principles, which are at the heart of a HRBA.

The main criticism of a HRBA primarily relies on the inherent structure of international human rights law, on which the HRBA are based. In her article *A Rights-Based Approach to Realizing Gender Equality*, Goonesekere (2001) argues that one of the challenges to the effectiveness of a HRBA is that international human rights law mainly addresses relations between the individual and the State and its agents, rather than

relations among individuals(para.52). In other words, the problem is the distinction created between acts committed in the public sphere versus acts committed in the private/domestic sphere. As Chapter 4 clearly illustrates, gender-based sexual violence is usually committed by family members and persons whom children trust most. Since such crimes usually occur in the family and in the community, infringements of human rights take place because of the actions of non-State actors or private individuals. As human rights continue to be perceived in international law as rights enforceable only against the State or its agents, a large area of gender-based violence remain outside the regulatory framework of the State and will continue to fall outside the area of effective enforcement (Goonesekere, 2001, para. 55). This means that human rights law privileges the public sphere of life, and fails to recognize the condition of girls and women in the private sphere (Higgins, 1999-2000, p.848). Higgins (1999-2000) argues that “the line between the home as private/personal and the rest of civil/political society as public, defined by social norms and law, is clearly gendered” (p. 849). According to Higgins, the construction of home as a private institution, falling outside State control and scrutiny serves to extend oppressive hierarchical order within family relationships.

These critics clearly illustrate that the effect of distinguishing between the public and the private underestimates the many violations that girls and women suffer in the private sphere and leave them unprotected. The inadequacy of rights discourses to address human rights abuses against girls and women taking place in the private sphere around sexuality is central to the criticism of a HRBA. According to Goonesekere (2001), unless in practice a HRBA takes into consideration the private sphere, a significant degree of gender-based discrimination and rights violations including sexual violence

will continue to fall outside the area of State intervention (para.53). States should aim at putting in place effective forms of prevention of violations in the private sphere and for holding non-State actors accountable for their acts (Goonesekere, 2001, para. 53). This requires, among other things, bringing the acts of private individuals within the norms and regulatory framework of rights by promulgating gender-sensitive legislation and setting up effective law enforcement mechanisms.

The public/private dichotomy further reveals the characterization of human rights, which can be perceived as men's rights. It is men who traditionally inhabit the public sphere, and this, in effect, means that human rights are exposed as men's only and women who are left in the private sphere can be largely ignored under human rights discourses (Radacic, 2010, p. 832). The notion of human rights law is not value-free; its agenda is both political and gendered (Radacic, 2010; Brooks, 2002; Charlesworth, 2002). Radacic (2010) argues that despite the high claims of inclusiveness and fundamental protection of all human beings, international human rights law has been under-inclusive and women's experiences of human rights abuse have often been neglected in international human rights discourse (p. 830). Because women are associated with domestic life, women's lives and the discussions of their concerns are made private, and so separate from the public. In *Feminism and International Law: An Opportunity for Transformation*, Brooks (2002) similarly argues that a human rights framework is deeply gendered and it privileges a certain set of normative values (p. 346). The legal construction of human rights is unsatisfactory for women because the core theme of human rights law reflects a male viewpoint, which may not necessarily echo the lived realities of women (Brooks, 2002, p. 347). Hence, the public/private divide led to human

rights discourses that largely reflect the interests, desires and beliefs of men while overlooking issues concerning girls and women.

In the contexts of violence against women and sex discrimination, Charlesworth, Chinkin, and Wright (1991) stated:

Because men generally are not the victims of sex discrimination, domestic violence, and sexual degradation and violence, for example, these matters can be consigned to a separate sphere and tend to be ignored. The orthodox face of international law and politics would change dramatically if their institutions were truly human in composition: their horizons would widen to include issues previously regarded as domestic-in the two senses of the word (p. 625).

Charlesworth (2005) further argues that attention to questions of women and gender in the UN human rights system has been “haphazard” (p.10). Although there is some attention to the position of women in particular contexts, there is no attempt to understand the way in which stereotypes about sex and gender roles can affect the human right in question(Charlesworth, 2005, p.10) . According to Charlesworth (2005) “violations of women's human rights are typically presented as an aspect of women's inherent vulnerability, as if this attribute were a biological fact” (p.10). The exclusion of women from human rights discourses is another critique inherent in the structure of international human rights law.

The other challenge that Goonesekere (2001) identified in a HRBA is the problem of competition between equally valid rights (para.57). One example illustrated by Goonesekere (2001) is gender-based violence, particularly sexual violence committed in the pretext of culture and religion such as female genital mutilation (FGM) and early marriage, and which continue to be practiced under parental authority (para.58). Although these practices infringe the principle of equal rights of girls and women, they may be legitimized on the argument that these practices are deeply rooted in religious

belief, custom or culture (Goonesekere, 2001, para. 58). So, the right to gender equality could compete with other valid rights such as freedom of religion, and cultural rights. Harmful traditional practices which violate the fundamental rights of girls are often ignored or sanctioned by governments in the name of culture and religion as will be discussed in detail in Chapter 5. When women's rights enter into conflict with religious and cultural rights, in principle and in practice, women's right to equality suffers (Radacic, 2010, p. 833). This is particularly true in non-Western societies where the universalization of human rights was seen as the imposition of 'Western norms', therefore, the universality claims of human rights discourses are strongly resisted by cultural relativists on the basis that there exists no single /external moral legal standard against which the validity of human rights practices may be measured (Powell, 2011, p. 613). Also, women's rights are often seen as impugning on men's human rights and it is seen as a zero-sum game.

According to Goonesekere(2001), efforts are needed to understand such conflicts and design strategies for resolving them so as not to undermine the core agenda of gender equality (para.57). In order to strike a balance between competing human rights, the role of national courts would not be underestimated although there is a risk of gender bias in judicial decision-making (Goonesekere 2001, para.61). In addition, more reference to common human rights standards and principles could help efforts to overcome barriers to advancing gender equality and women's rights that are often imposed in the name of culture, religion, or tradition, and which often mask a lack of political will to bring about positive change.

2.3 Conclusion

A HRBA ensures that any policies, laws and programs aim at the realization of human rights of all. This approach encourages rights-holders to claim their rights and duty-bearers to meet their obligations. A HRBA particularly focuses on those who are most vulnerable, excluded or marginalized such as children. In all phases of intervention, it is critical to remember that children have different needs, priorities, and abilities and also face different rights violations and barriers to the realization of their respective rights. Such approach also asserts the need to actively and meaningfully engage children in all matters affecting them. This is of great relevance to child victims of violence so that they can defend their rights and claim the necessary remedies. Hence, the language of human rights should not be generic but should carefully reflect the various needs and abilities of the different sectors of society, including children.

Furthermore, a HRBA is important in analysing issues concerning gender equality such as sexual violence against girls. Such analysis serves two main purposes in this thesis. First, it will assist in the elucidation of the sexual politics and power relations in cases of sexual violence against children, which usually occur in private settings and by family members and people whom children trust most. Second, looking at the inherent structure of human rights laws will assist with a critical examination of the extent to which laws could provide full protection to child victims of sexual violence with particular focus on girls. It will also shed light on how girls perceive and experience the criminal justice system in Ethiopia.

The following chapter discusses major human rights principles and standards which are the basis for the realization of human rights under a HRBA. International

human rights principles and standards relevant to children serve as a framework to analyze the extent to which the Ethiopian legal system provides protection to child victims of sexual violence. Drawing from a HRBA, I will explore the treatment of child victims in the Ethiopian criminal justice system using the internationally recognized paradigm of human rights with a view to protect their fundamental human rights.

Through the lens of a HRBA, I will also look at child victims as rights holders with full evolving capacity as active social actors who could take active roles in the problem-solving process rather than just being victims of violence. Using this approach, I will examine the extent to which the Ethiopian Government, as a primary duty bearer, is meeting its international human rights obligations regarding the protection of the rights of child victims of sexual violence.

CHAPTER 3 INTERNATIONAL AND REGIONAL HUMAN RIGHTS PRINCIPLES AND STANDARDS

3.1 International Instruments

The international principles, rules and standards for the protection of children against sexual violence and for the treatment of child victims of crime are scattered among instruments on child rights, women's rights, and criminal justice as well as general human rights instruments. Some of these are binding legal instruments⁵, while others are non-binding or soft laws.⁶ A complete discussion of these instruments is beyond the scope of this chapter and so discussion in this part shall be limited to the most pertinent instruments to the topic at hand.

At the international level, efforts to recognize the rights of children to special protection against all forms of abuse and exploitation due to their vulnerability and immaturity were first started in the 1920s as evidenced in the adoption of the 1924 League of Nations Declaration of the Rights of the Child. Since 1924 until the adoption of the CRC in 1989, a number of international human rights instruments assert that

⁵ The list of the major binding international instruments that touch upon issues relevant to the protection of children against violence and the treatment of child victims of crime include the Convention on the Rights of the Child; the African Charter on the Rights and Welfare of the Child; the Convention on the Elimination of Discrimination Against Women; the International Covenant on Civil and Political Rights; the Rules of Procedures and Evidence of the International Criminal Court; Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime; and the International Labour Organisation Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

⁶ The non-binding instruments in the area include the UN Guidelines on Justice for Child Victims and Witnesses of Crime; the General Assembly resolutions on Human Rights in the Administration of Justice; Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women; the United Nations Rules for the Protection of Juveniles Deprived of Liberty; United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules); the Basic Principles of Justice for Victims of Crime and Abuse of Power; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Declaration of the Rights of the Child; and the Universal Declaration of Human Rights.

children should be accorded with special protection due to their age and immaturity. For instance, the International Bill of Human Rights contains a broad range of principles applicable to children. The 1948 UDHR proclaims that children are entitled to special care and assistance and asserts that they should be protected by law without any discrimination, among other things, based on sex (Arts. 1, 2, 7 & 25.2). Furthermore, Article 24.1 of the International Covenant on Civil and Political Rights (ICCPR) states “every child shall have ... the right to such measures of protection as required by his status as a minor, on the part of his family, society and the State”. However, with the adoption of the CRC in 1989, a comprehensive body of binding international human rights provisions came into effect.

3.1.1 The Convention on the Rights of the Child (CRC)

The CRC represents the most important and comprehensive international instrument on the rights of children. The preamble of the CRC forcefully states that the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.

The CRC clearly stipulates equal protection before the law for both sexes. The principle of non-discrimination is outlined in Article 2 and prohibits sex discrimination. This implies that girls and boys should enjoy all of the rights provided for in the CRC on an equal basis and in their totality. Although the CRC articles are interrelated and should be considered together, the Committee on the Rights of the Child, which oversees the implementation of the CRC, adopts four general principles that should guide all types of protection, support and assistance to children (General Comments No.5, 2003, para. 12). Accordingly, CRC is founded on the following principles: non-discrimination (Art. 2),

the best interest of the child (Art. 3), the survival and development of the child (Art. 6); and consideration of the views of the child (Art. 12). These principles build the foundation for all children's rights and are applicable in all aspects concerning children including the treatment of child victims of crime. In particular, Article 3 states that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." This principle is an overarching principle in administering cases involving children, including child victims of sexual violence.

The CRC also contains extensive provisions on substantive rights of children to be protected against sexual violence. In this regard, Article 19.1 of CRC is the most important one because it provides a wide-ranging protection to children against sexual violence. Article 19.1 binds States:

to take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34 of the CRC further obliges States to take all appropriate national, bilateral and multilateral measures to prevent: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; and, the exploitative use of children in pornographic performances and materials. In discussing the treatment of child victims of sexual violence, the CRC also capitalizes on the need to take necessary measures to promote physical, psychological and social integration of a child victim in an environment which fosters the health, self-

respect and dignity of the child (Art. 39). Overall, the CRC sets out legally binding principles that require States to protect children from all forms of violence, to prevent and respond to violence, and to provide support to children who are victims of violence. The CRC recognizes the child as a full human being, possessing integrity and personality and, therefore, the principles outlined in the CRC are applicable to all cases involving children, including the treatment of child victims as they take part in the criminal justice process.

3.1.2 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The other international instrument relevant to the discussion on sexual violence against children, particularly girls, is CEDAW. Adopted in 1979, CEDAW is the first comprehensive women's human rights document that defines equality of the sexes and provides a framework for achieving equality and non-discrimination. Article 1 defines discrimination 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.

The purpose of Article 1 is not merely to attain gender neutrality, but to articulate the elimination of all forms of discrimination against women, as opposed to sex discrimination (Merry, 2011, p. 54). Although CEDAW fails to explicitly refer to violence against girls/women, General Recommendation No. 19 declares that “the definition of discrimination includes gender based violence” and that “gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights

and freedoms on a basis of equality with men” (para.1). Although the General Recommendations are not legally binding, they are designed to show States Parties their obligations when they are not clearly mentioned or not sufficiently explained in the convention itself.

CEDAW extends the ambit of international human rights law to the private arena (Merry, 2011, p. 54). Article 2 obliges States Parties to “take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise”. General Recommendation No. 19 further confirmed that States may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence (para.9). As previously discussed, girls/women disproportionately suffer human rights abuses committed beyond the glare of public scrutiny. The expansion of State responsibility promulgated by the CEDAW is of tremendous benefit to girls/women because it provides them with special protection for acts of violence committed in the private sphere. This is particularly true in cases of gender-based sexual violence and harmful traditional practices, which usually occur in the private domain and by family members.

3.1.3 The UN Guidelines for Action on Children in the Criminal Justice System (1997)

Recognizing that child victims may suffer additional hardship when passing through the different stages of the justice process, a number of international instruments have elaborated on the specific principles and standards applicable for the treatment of child victims, most of them based on the basic principles of child rights enshrined in the CRC and other pertinent international human rights instruments.

The 1997 UN Guidelines is one of the earlier soft law instruments which require that any measure established to treat child victims should ensure that they are treated with compassion and respect for their dignity. The Guidelines stress that ‘states should undertake to ensure that child victims and witnesses of crime are provided with appropriate access to justice and fair treatment; restitution; compensation; and social assistance’ (UN Guidelines, 1997, para. 43). These Guidelines further instruct that justice personnel (judges, police, prosecutors, advocates, and others) should be given training in handling cases that involve children as victims and States should establish specialized offices and units to deal with cases involving offenses towards children (Para. 44). Also, the Guidelines stipulate the importance of developing codes of conduct and practices for proper management of cases involving child victims (Para. 44). States are also required, according to these Guidelines, to put in place judicial and administrative mechanisms to enable child victims to obtain prompt, fair and accessible redress, including restitution and/or compensation for losses sustained (Paras. 45-47).

3.1.4 The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)

A more comprehensive list and description of the basic principles and standards for the treatment of child victims is found in the 2005 UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. Canvassing the provisions of international child rights instruments, notably the CRC, these Guidelines identify six general principles. These general principles are identified as crosscutting principles that professionals and others responsible for the wellbeing of child victims must respect in order to ensure justice. These include dignity, non-discrimination, best interest of the child, protection, harmonious development and participation (UN Guidelines, 2005, part

III, para. 8). The Guidelines also specified the following rights for the treatment of child victims and witnesses in the justice process: to be treated with dignity and compassion; to be protected from discrimination; to be informed; to be heard and to express views and concerns; to effective assistance; to privacy; to be protected from hardship during the justice process; to safety; to reparation; and to special preventive measures (UN Guidelines, 2005, part V, paras. 10-39). The Guidelines further stress the need for adequate training for law enforcement personnel in order to protect the special needs of child victims of sexual assault, especially girls (UN Guidelines, 2005, part I, para.4). It is important that criminal justice systems are equipped with trained personnel so that cases of sexual violence are administered in a way which is sensitive to the varying experiences of male and female children.

3.2 Regional Instruments

The history of codified human rights protection on the African regional level dates back to 1963, when the Organisation of African Unity (OAU), the predecessor of today's African Union (AU) was founded. The OAU Charter established as one of the organisation's objectives the promotion of international cooperation as regards the UN Charter and the UDHR (Art. 2). The AU's Constitutive Act, adopted in 2000, reaffirmed Africa's commitment to protect human rights and promote gender equality (Art. 4. 1). In accordance with this commitment, since the AU's establishment, several human rights instruments have been adopted.

3.2.1 The African Charter on Human and Peoples' Rights

A fundamental instrument on human rights protection, namely the African Charter on Human and Peoples' Rights, was adopted in 1981 and came into force in

1986. Under this Charter, the AU developed several legal and policy frameworks to promote and protect the rights and welfare of vulnerable groups such as children. Apart from the equality and non-discrimination clauses (Arts. 2 & 3), the African Charter obliges States Parties to "ensure the elimination of every discrimination against women and ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions" (Art. 18.3).

While this general human rights instrument is applicable to children, the most prominent legal instrument specifically targeting the protection of children's rights is the African Charter on the Rights and Welfare of the Child.

3.2.2 The African Charter on the Rights and Welfare of the Child (ACRWC)

The ACRWC, adopted in and came into force in 1999, is the first comprehensive regional treaty to address child rights. The ACRWC originated from a desire to address specific realities of children in Africa and problems peculiar to the African continent, which had not been adequately addressed by the CRC (Kaime, 2009, p. 131). In addition to incorporating the four general principles of CRC discussed above, the ACRWC stipulates that States Parties should protect children from all forms of sexual exploitation and sexual abuse, and in particular take measures to prevent sexual violence against children (Art. 27). Furthermore, one of the major themes addressed in the ACRWC is harmful traditional practices such as child marriage, which increases the chance of girls becoming victims of sexual violence. According to ACRWC, States should take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the girl child (Art. 21). Such provisions establish the primacy of girl's right to live a life free of gender-based violence

and assert that States cannot invoke custom and religion to justify acts of violence. This Charter lays a foundation for the enjoyment of full rights for girls, and lays the ground for the achievement of gender equality.

3.2.3 The Protocol to the African Charter on Human and Peoples' Rights on Women's Rights

The Protocol to the African Charter on Human and Peoples' Rights, adopted in 2003, contains an extensive set of rights for girls and women and provides another source of protection for African children. The overarching purpose of the Protocol is the elimination of discrimination against girls and women (Art.2). As clearly stipulated in the Preamble, "despite the ratification of the African Charter on Human and Peoples' Rights and other international human rights instruments by the majority of States Parties, women in Africa still continue to be victims of discrimination and harmful practices." It thus asserts the determination to ensure that the rights of girls and women are promoted, realized and protected in order to enable them to enjoy fully all their human rights (The Preamble). The Protocol requires States Parties to combat all forms of discrimination against girls and women through appropriate legislative, institutional and other measures as well as enact and enforce laws to prohibit all forms of violence including unwanted or forced sex whether the violence takes place in private or public(Art. 4.2. a &b). As an additional document to the African Charter, it addresses issues related to girls/women in Africa which are not mentioned in CEDAW. Accordingly, this Protocol provides protection to girls/women by requesting States Parties to take all the necessary legislative and other measures to prohibit harmful traditional practices such as abduction and child marriage that increase girls' vulnerability to sexual violence (Arts. 5. b).

3.3 Conclusion

In sum, the principles and standards discussed in the preceding section clearly state that children have the rights to be protected from all forms of sexual violence and harmful traditional practices. Furthermore, in any criminal proceedings, the best interests of child victims should be taken into consideration and they should actively participate in each stage of criminal proceedings. Child victims should also be treated with compassion and respect for their dignity. It is only if these principles and standards are met that child victims will obtain a just and timely remedy for violations of their rights. In addition to ensuring children's access to justice, these principles and standards prevent additional stress and hardship while child victims go through the criminal justice system. In the wording of the UN Guidelines (2005), the criminal justice process needs to be "child sensitive - an approach that is based on the child's right to protection and takes into account the child's individual needs and views" (Part IV, para. 9. d). In addition to being child-sensitive, criminal proceedings should be gender sensitive with a view to incorporating the special needs of female victims of sexual assault while they are involved with the criminal justice system.

These principles and standards are relevant for my analysis for two main reasons. First, they clearly outline the need for special protection mechanisms for child victims including legislative, administrative and judicial measures. Second, these principles and standards pin point the roles and responsibilities of justice personnel in administering cases of child victims from the beginning of the investigation process to the completion of the trial. I will, therefore, use these principles and guidelines as a framework to

examine what type of protective measures are in place and evaluate how cases of child victims are administered in the Ethiopian criminal justice system.

CHAPTER 4 CHILD VICTIMS IN THE ETHIOPIAN CRIMINAL JUSTICE SYSTEM

Ethiopia has ratified a number of human rights instruments pertinent to the protection of children against violence and the treatment of child victims including the CRC⁷ and ACRWC⁸. Despite the ratification of international and regional human rights instruments, the manner in which cases of child victims are administered in the criminal justice system leaves much to be desired. This chapter discusses the key challenges that child victims face when they take part in the criminal justice system due to gaps in law and lack of child-centred enforcement mechanisms. The first part presents the Ethiopian legal framework and the major gaps in the legal apparatus. The second part discusses the challenges encountered by child victims of sexual violence in the criminal justice process from the time of the incident to the completion of the trial.

4.1 National Legal Framework

The Federal Democratic Republic of Ethiopia (FDRE) Constitution, which is the supreme law of the land, incorporated all international agreements ratified by Ethiopia in the domestic laws of the country. According to Article 9.4 of the Constitution, all international instruments ratified by Ethiopia are an integral part of the law of the land. The incorporation of international human rights instruments in the domestic legal system is further strengthened under Article 13.2 of the Constitution, which instructs international instruments to be used as standards for the interpretation of chapter three of the Constitution dealing with fundamental rights and freedoms.

⁷ Ethiopia has ratified the CRC in 1992 as per Proclamation 10/1992.

⁸ Ethiopia has ratified the ACRWC in 2000 as per Proclamation 283/2000.

The FDRE Constitution addresses the rights of children separately under Article 36. Article 36 of the Constitution explicitly recognizes the rights of the child to life, survival and development. The Constitution goes beyond recognition of specific child rights, and incorporates the principle of ‘the best interest of the child’ as per Article 3 of the CRC. This provision provides that the best interest of the child shall be the primary consideration in all actions concerning children by public institutions, courts of law, administrative authorities or legislative bodies. Thus, the corpus of the domestic law on the protection of children from violence and the treatment of child victims includes human rights principles and standards stipulated in international instruments.

Despite the constitutional recognition of the CRC, one of the central gaps in the domestic law is the delay in publishing the CRC in the official *Negarit Gazette* in order to be applied at the domestic level. This is especially important in light of Proclamation No. 3/87 which proclaims that a law has to be promulgated in the national *Negarit Gazette* before it can be enforced in a court of law. This lack of official translation and publication of the contents of the CRC hinders the practical application of the relevant provisions of the CRC in the same manner as other domestic laws (Save the Children, UK, 2008, p.8). In practice, judges argue that the publication of the Convention in the *Negarit Gazette* is a prerequisite for invoking the provisions in local courts. As a result, the CRC was not applied until 2011 when the Cassation Bench of the Federal Supreme Court passed a landmark decision by invoking the principle of the best interests of the child (Art. 3 of the CRC) when reversing the decision passed by lower courts on a child custody case (CRC/C/ETH/4-5, para. 18)⁹. In order to ensure the application of the CRC

⁹ This case will be explained in more detail in Chapter 5.

in domestic courts, it is essential that the statutes of the CRC be published in the *Negarit Gazette*.

The other major gap in the national legal apparatus is the lack of a comprehensive and consolidated child law in the form of a Child Bill (of Rights) or A Children's Act. Having a consolidated child law serves two main purposes. First, it brings various child-related provisions under one legal document, which is practical for harmonization of domestic laws with international instruments and contextualize them in light of the country's realities (Save the Children, UK, 2008, p.18). A consolidated child law serves another useful purpose in the overall scheme of protection of children's rights. Such law could assign and allocate responsibilities to the various organs working in the area of child rights thereby ensuring coordination and creating as well as maintaining a culture of accountability (Save the Children, UK, 2008, p.18). In the absence of such law, the provisions applicable to children are scattered among the FDRE Constitution, the Revised Family Code, the Revised Penal Code, the Criminal Procedure Code and the Civil Code, which constitute the main instruments pertaining to child victims of sexual violence in Ethiopia.

In addition to being scattered, some of these laws were enacted in the 1950s and 1960s. As a result, the provisions of these laws reflect the patriarchal social and cultural attitudes with which girls and women were viewed then and even today, and, hence, are discriminatory based on gender. Despite a few recent law reforms, which will be discussed in more depth in the following chapter, the current legal apparatus still does not address all types of gender-based violence. Moreover, the law fails to recognize acts of violence that are committed against girls/women in the private sphere. For example,

marital rape is not recognized under the Revised Penal Code, which came into effect in 2005. Rape is only a crime where it is committed outside wedlock¹⁰. The notion of rape as a crime is premised upon the lack of consent of the victim. Given this, it is not clear why an act of rape committed within a marriage and against the will of the girl/woman involved is not regarded as a crime. This may be read as an indication of a general attitude towards girls/women. The failure to recognize crimes committed in the private sphere nullifies women's human rights and fundamental freedoms, which should be guaranteed irrespective of their marital status, as per international human rights instruments ratified by Ethiopia.

Another major gap in the legal apparatus is the lack of a comprehensive law that governs criminal proceedings involving child victims. The Ethiopian Government, as part of a comprehensive law reform program, has revised a number of key legislations relevant to the realization of child rights such as the Revised Family and Penal Codes.¹¹ The Revised Penal Code, for instance, provides a wide range of protections for children by specifically outlawing acts of sexual abuse and exploitation. Although criminalization of sexual violence against children is a step forward, the Criminal Procedure Code does not adequately address the manner in which cases of children should be governed in criminal proceedings. As a result, child victims seldom benefit from these provisions of the law.

¹⁰ According to the Revised Penal Code “whoever 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 from five years to fifteen years (Art. 620).

¹¹ Chapter 5 discusses the Revised Family and Penal Code, which are the major legislative measures as a result of reporting mechanism.

In sum, while the Ethiopian Constitution incorporates international principles such as dignity, respect and the best interest of the child, I argue that the realization of these principles for the Ethiopian child remains illusory. I argue that the lack of a gender and child-centered criminal justice system hampers children's access to legal remedies. It also increases the chance of perpetrators to escape criminal responsibility and disposes children to further violence. Further, child victims are treated below international standards as they go through an adult-centred criminal justice system, which does not, in many instances, recognize the unique characteristics of these children and, therefore, the need for distinctive treatment.

The following section discusses the major challenges encountered by child victims from the time of the incident to the completion of the trial in order to get the sense of the ordeal of these children as they take part in the criminal justice process. Using the international frameworks discussed in the previous chapter, I will identify the gaps in enforcement that hamper children's access to a timely and effective justice.

4.2 Challenges Facing Child Victims during Criminal Proceedings

4.2.1 At the Time of the Incident

In order that child victims benefit from any existing protections and support services in the justice process, they must first have access to the justice system. Thus, the first consideration in the international standards for the treatment of child victims is that they are to be provided with appropriate access to justice. In fact, Article 19.2 of the CRC imposes on governments a duty to establish effective procedures for reporting instances of child abuse. In Ethiopia, a number of reasons hinder child victims from reporting the

incidents to the appropriate law enforcement agencies. These reasons are attributable to culture, perception about violence against children among the community, low level of awareness about child rights and lack of reporting mechanisms (Save the Children Sweden, 2010, p.19). A culture of silence and secrecy that prevails in Ethiopia has a negative influence on children and discourages them to report and/or disclose violent acts. This is particularly true in cases of sexual violence against girls, which are usually perceived as an act that destroys the family through scandal and, hence, discourages parents and other family members from reporting such incidents to the appropriate organs. In addition, perpetrators threaten victims and their parents that they will commit more serious violence if they take the case before the police (Save the Children Sweden, 2010, p. 20).

4.2.1.1 Lack of Information and Means to Report

To make matters worse, those children who had the courage to report crimes of violence to the appropriate organs lack means and knowledge due to the absence of reporting mechanisms that are accessible to children. A recent study in 2010 on child protection mechanisms in Ethiopia shows that children both in rural and urban areas have no information as to where to go and about the reporting procedures when they face abuse and violence (Save the Children Sweden, 2010, p. 3). According to this study, challenges in accessing the police, *Kebele* (lowest administrative units in Ethiopia), and health services are identified as the major reasons for not reporting. For instance, in Addis Ababa only, out of the 35 children who participated in this study, less than half of them received information about where to go and what reporting procedures were in place (Save the Children Sweden, 2010, p.20). Similarly, a report of the Children's Legal

Protection Centre (CLPC), a centre that provides free legal counselling and judicial representation to child victims of violence in Ethiopia, reveals that out of 94 cases of violence reported to the Centre in 2006, 46 of them were sexual violence against children and the victims had no information about where to go (CLPC, 2006, p. 12). According to this report, the victims were referred by the *kebele* and people who are familiar with the work of CLPC (CLPC, 2006, p. 13).

Lack of information and means to report can delay the process of reporting at best, and at worst, result in no reporting. This would leave child victims with few options to get the necessary legal, medical and psychosocial support in a timely fashion. It has also a negative consequence on the criminal proceedings since child victims might not recall some important facts about the incidents due to their age and immaturity. More so, late reporting is a serious concern in dealing with violence against children. This mainly has to do with the difficulties involved in securing evidence, especially medical evidence that may lose its probative value over time. This is particularly true in sexual violence cases where late reporting makes it difficult for victims to produce a medical certificate upon which the police and prosecutor would base their decisions to take measures against the perpetrator. For instance, research of 170 reported cases of alleged sexual assault in two hospitals (Tikur Anbessa and St. Paul's Hospitals) in Addis Ababa shows that only 26.2% cases were reported to the police institution within 24 hours, and only 14.2% were reported to the hospitals on the same day of the sexual assault (Lakew, 2001, p. 81). According to this study, victims on average take over two weeks to report the incidents, which becomes a serious problem to prepare medical evidence (Lakew, 2001, p. 82).

Generally the late reporting in cases such as rape, for instance, has been a serious problem with health professionals since it is difficult to give testimony for sexual assault that occurred in the past (Tadele, 2001, p.10). For instance, if it is a fresh injury that has taken place within 24 hours, the blood, the hymen and the torn tissue can be easily seen and reported to the hospitals. However, if a victim reports the incident later than 24 hours, it is often difficult to clearly determine if tissue damage is a result of the reported rape incident or not (Tadele, 2001, p.10). The difficulty to produce medical evidence for cases of rape and other forms of sexual violence makes criminal proceedings even more difficult as law enforcement agencies are reluctant to proceed with investigation of such cases due to lack of gender sensitivity. For instance, the manner in which cases of rape are dealt within the police is a reflection of gender insensitivity in the criminal justice system. In practice, the police divide the crime of rape into two categories: that which involved loss of virginity and that which did not (EWLA & NEWA, 2003, p.38). Based on this classification, serious attention is usually given to crimes that resulted in loss of virginity (EWLA & NEWA, 2003, p.38). This distinction has no basis in law and is a reflection of the attitude of law enforcement personnel towards cultural norms that gives high value to virginity and highlights the degree of gender insensitivity to cases of sexual violence against girls.

Generally, lack of reporting mechanisms is one of the major bottlenecks that hinders access to a timely and effective redress for rights violation. In addition to the problems discussed, lack of reporting mechanisms also give time to perpetrators to terrorize child victims and/or their parents, destroy evidence and even commit further crimes leaving child victims with additional stress and risk.

4.2.1.2 Limited Access to Child Helplines

Under the international standards, child victims should have access to assistance and support services such as, counselling, physical and psychological recovery and other necessary services (UN Guidelines, 2005, part IX, para.22). However, in order to access these services, child victims require access to emergency response. In Ethiopia, there are few organizations that provide such services and these services are also limited in scope and geography. In addition, almost all services that are available require face-to-face interaction as there are few existing child helplines (Cherkosie & Haile, 2008, p. 24). Particularly in cases where children are living in abusive families and in other situations where it is difficult for child victims to go out and report such incidents, the existence of telephone helplines would be invaluable. The potential contribution of these helplines is supported by a UN study on violence against children (2006) which recommends mechanisms such as telephone helplines through which children can report violence, speak to a trained counsellor in confidence and ask for support and advice (p. 21). While the existence of these services is promising, accessibility to children living in poverty and in rural areas is likely to be a significant issue which diminishes their impact.

According to a rapid assessment of child helplines in Ethiopia, there are only three city-based child-focused helpline services in Adama, Gondar and Addis Ababa (Cherkosie & Haile, 2008, p. 24). The Adama child helpline, which was established in June 2007, is run by an indigenous NGO, Ethio Child Focused Association and has a toll-free three digit number, i.e. 919 (Cherkosie & Haile, 2008, p. 26). According to the rapid assessment, the child helpline service includes referring reports of child abuse and violence to Child Protection Units (CPUs) in police stations. The Gondar and Addis

Ababa child helpline service is run by an organization known as ANPPCAN-Ethiopia, which focuses on the provision of prevention and rehabilitation services for cases of child abuse, neglect and exploitation. This child helpline facilitates medical, counselling, legal and family reunification services for victims of child abuse in Addis Ababa and Gondar. However, both the Addis Ababa and Gondar help lines use the regular ten telephone digit numbers, which is difficult for children to remember (Cherkosie & Haile, 2008, p. 25).

However, the services that have been provided in these three places are inadequate due to limited human and financial resources (Cherkosie & Haile, 2008, p. 29). Moreover, the services are not widely known by the community and not well institutionalized. For example, out of the 225 child participants who participated in the rapid assessment, 76 per cent had no prior knowledge and information about child helplines (Cherkosie & Haile, 2008, p. 36). An additional concern is that all children may not be familiar with how to use phones.

According to Child Helpline International (2011), helplines have proved to be an effective means of reaching and providing services to children in times of need (p.26). The service of child helplines could fill the gap not only in terms of accessibility but also in terms of providing services like information on child protection measures, guidance, well-timed assistance, counseling, and referral in a coordinated fashion. Child helplines would also increase children's confidence to reporting crimes to appropriate authorities, enhancing child participation and creating ways for integration and reunification of children (CHI, 2011, p.26). In the absence of such helpline services in Ethiopia, coupled with the lack of information and means to report crimes of violence, benefiting from any

existing protection and support services become remote for child victims of sexual violence.

4.2.2 At the Time of Reporting and during Investigation

According to Article 12 of the CRC, children should be given the opportunity to express their views, concerns, and participate meaningfully in all matters affecting them. This principle is also applicable in the administration of justice in matters involving children. The UN Guidelines (2005), which are anchored to the principles of the CRC, also outline that child victims have the right to be informed and consulted during the criminal process (Part X & XI). In addition to this principle, one of the standards in relation to compassionate treatment of child victims at the time of reporting and during investigation is that interviews, examinations and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner (UN Guidelines, 2005, part V, para.13). Utmost care should be taken to prevent possible secondary victimisation of children by the judicial system by respecting basic principles such as protecting the privacy of child victims. These principles and standards are used as a framework to assess the treatment of child victims at the time of reporting and during investigation.

Under the Criminal Procedure Code of Ethiopia, the police is the first organ to be contacted by the victim, and as such the police assumes a key role in the hearing of compliant and conducting investigation on the alleged crime (Arts. 11 &13 of the Criminal Procedure Code). Except few Child Protection Units (CPUs) in urban areas in Ethiopia, there is no specialized unit within the police to handle cases of children. According to the UN Guidelines (1997), States should establish specialized offices and

units to deal with cases involving offenses towards children (Para.44). The failure to establish specialized offices means that police officers dealing with children's cases do not have any special training in child rights and are not familiar with international principles and standards regarding the treatment of child victims. Lack of specialized training leads to a number of challenges, including insensitivity to cases of child victims and to treatment of these children below the international standards. The following paragraphs explain some of the failures of the police to provide compassionate treatment to child victims: failure to respect privacy, inform and consider the views of child victims as well as failure to treat cases of sexual violence against children as a serious crime.

Privacy is not a priority during reporting and investigation. Child victims who reported to the Children's Legal Protection Centre (CLPC) for legal counselling revealed that they had a humiliating experience when they report their cases to police stations (CLPC, 2006-2009, p.21). According to the clients of CLPC, child victims were asked to explain what has happened to them in the presence of other people (CLPC, 2006-2009, p.23). This may be even more intimidating when observers or bystanders are of the opposite gender. The story by a social worker in Addis Ababa perhaps catches the intensity of the problem of privacy:

One day a girl of about 14 came to the police station where I work to report on a person who allegedly raped her. When she approached the gate, she was interviewed by the security guards who made her narrate the whole story. They then directed her to the CPU. On the way, she met with another group of police officers who wanted to know why an unaccompanied girl was visiting the police station. They stopped and asked her to tell them what happened all over again. Only after that did they direct her to the CPU. When she finally got to the CPU, she sat down and asked me 'how many persons are entitled to know my story?' Mind you, this is only the beginning here (Redae & Assefa, 2007, p. 31).

This story clearly demonstrates how the privacy of child victims is compromised and also how traumatizing the process can be for victims when they are asked to tell what happened to them more than once as it would force them to relive the trauma.

Law enforcement personnel, in most cases, fail to take into account the views of child victims. Review of cases reported to CLPC show that investigating police officers do not consult child victims and their parents during investigation (CLPC, 2006-2009, p.16). In addition to overlooking the rights of child victims to express their views, failure to consult child victims or their parents might have a negative impact in the investigation process. There are certain facts that are relevant to the investigation that could productively be gathered from these sources.

Child victims have the right to be informed about the progress of their investigation. Provision of information to and consultation with child victims or parents about the case under investigation is not well practiced by the police (CLPC, 2006-2009, p.30). It is even common that child victims and their parents do not have any clue about the investigation process once they have reported to the police (CLPC, 2006-2009, p.27). It is likely that victims and their parents would panic if they do not have any information about the investigation process.

As per the international principles and standards, cases involving children should be treated as a serious crime and handled in a speedy manner. However, there are investigating officers who do not take cases of sexual violence against children as a serious crime (Assefa, 2011, p. 24). Throughout the 28 police Stations in Addis Ababa, there are seven kinds of crimes that are considered by the police as serious crimes and are given priority during investigation (EWLA & NEWA, 2003, p. 39). These seven crimes

are: murder, attempted murder, house robbery, car theft, theft of car parts, armed robbery and general theft (EWLA & NEWA, 2003, p. 39). As the list shows, none of the most prevalent forms of sexual violence against girls in Ethiopia, including, rape, abduction, and early marriage are in the list. This suggests that police officers do not consider such crimes as serious offences that require immediate attention.

As a result, they are reluctant to follow up sexual violence cases and take legal action against the perpetrator. In addition to being reluctant, there is a tendency by investigating police officers to treat all cases of sexual violence in the same manner irrespective of the fact that a case involves a crime against a child (Assefa, 2011, p.24). As seen earlier, one of the protections from hardship during the justice process is to ensure that criminal proceedings are completed in a short time. However, in practice, this is far from reality and failure to treat cases of children in a speedy manner could be more frustrating to child victims due to their age and the nature of the crime. Delays in the justice process have often been seen to lead both to lapses of memory of the child victim regarding the particulars of the victimization, and the loss of interest by child victims and their parents/guardians.

The success of the criminal justice system depends upon the effectiveness and efficiency of the investigating police. The handling of sexual offences against children requires the police to be especially cautious because of both the nature of the crime and the situation of the victim. The police should respond to reports of sexual offence against children with empathy, patience, professionalism and sensitivity as clearly stipulated in international standards. However, the practice clearly shows that the manner in which

cases of child victims are treated by investigating officers at the time of reporting and during investigation falls short of international standards.

4.2.3. During Case Preparation

International principles and standards for the treatment of child victims during case preparation place an emphasis on, among other things, ensuring the best interest of the child (CRC, Art.3; UN Guidelines, 1997, para. 8. a; UN Guidelines, 2005, para.8). According to Article 40 of the Criminal Procedure Code of Ethiopia, the public prosecutor examines the results of the police investigation and decides whether to prosecute the suspect based on the probability of the occurrence of an offence and practical considerations of successful prosecution. Prosecutors have an important role in protecting the rights of children who are victims of sexual offence since they make important decisions in the case preparation stage of the criminal justice process. These include the decision to prosecute, the framing of charges, the selection of evidence and the withdrawal of charges (Art. 42 of the Criminal Procedure Code). Since the determinations of the prosecutor on such matters directly affect the rights and interests of child victims, it is imperative that ‘the best interest of the child’, as stipulated in the CRC, should be the prosecutors’ principal consideration. However, ensuring the principle of the best interest of the child is undermined by lacunas in both law and enforcement. These lacunas will be discussed in the following section.

4.2.3.1 Lack of Special Investigation Units

Within the institutional structure of the prosecutors’ office, there is no specially designated unit dealing with cases of crimes against children except in Addis Ababa (Redae & Assefa, 2007, p.33). This means that cases of child victims are processed and

initiated by prosecutors who also deal with other types of crimes. The absence of a special unit within the structure of the prosecutors' office also means that prosecutors dealing with cases of child victims do not have special training in issues concerning children. While training that deals with the specific experiences of children is essential, training which addresses the varying experiences of young males and females is also necessary. According to a study on the Ethiopian legal system concerning children, 90% of 44 prosecutors were not involved in any kind of special training regarding child rights in general and the treatment of child victims in particular (Redae & Assefa, 2007, p.35) . Lack of special training on how to handle cases involving children compromises key principles such as the need to take into account the best interest of child victims during case preparation. The major problems manifested during case preparation include limited practice of witness preparation and lack of cooperation.

Limited practice of witness preparation is one of the major gaps during case preparation. In principle, the prosecutor should have a good and friendly approach with children who are victims of sexual violence. The prosecutor is expected to know the child and have a clear understanding of the circumstances revolving around the case. Familiarizing the child witness with the criminal justice process prior to giving evidence is one of the core standards (UN Guidelines, 1997, para.51.b). In practice, however, prosecutors seldom involve children in the case preparation process. Prosecutors come into contact with child victims after the police have handed over the investigation files, or in the worst case scenario, they come in contact with child victims in court on the hearing date (Redae & Assefa, 2007, p. 32). Redae and Assefa's study (2007) illustrates that 75% of prosecutors come in contact with child victims in court on the hearing or trial

date, while more than 99% see a case involving a child victim after a police officer hands over the investigation file to the prosecution's office (P.32). Considering the age and immaturity of child victims, it is important to explain the role of the victim as a witness and examine the victim's ability and willingness to testify in court. It is difficult to imagine the feelings of child victims who just appear in court and testify without any preparation, which can lead to humiliating situations. In fact, the practice of not preparing child victims could also affect the admissibility of evidence since victims might not recall the necessary information regarding the incident. This would be a serious problem in producing reliable evidence in situations where there are no witnesses except the child victim.

The other problem is the lack of cooperation with other organs and institutions on processing and preparing the case of a child victim. The United Nations Guidelines on the Role of Prosecutors (1990) states that 'in order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions' (Para. 20). However, prosecutors, as in the case with other law enforcement personnel in Ethiopia, do not collaborate with other institutions and experts (Assefa, 2011, p.26). The involvement of appropriate professionals such as child rights advocates, social workers, and medical professionals is relevant to take into consideration the best interest of child victims during case preparation. Lack of coordination is usually compromised due to limited awareness on the part of law enforcement personnel and lack of resources, which has an adverse effect on the rights of child victims who need a timely and effective response from the justice system.

4.2.3.2 Difficulty in Determining the Age of Child Victims

One of the standards to prevent hardship during the justice process is ensuring a speedy trial (UN Guidelines, 2005, part XI, para.29.c). The difficulty in determining the age of child victims as a result of the lack of a birth registration system forces child victims to pass through long and frustrating criminal proceedings. In fact, birth registration is one of the most important rights recognized under the CRC. The CRC clearly stipulates that the child shall be registered immediately after birth (Art. 7). Similarly, according to the UN Guidelines (1997), “states should ensure the effectiveness of their birth registration programmes. In those instances where the age of the child involved in the justice system is unknown, measures should be taken to ensure that the true age of a child is ascertained by independent and objective assessment” (Para.12).

In addition to the intrinsic value of birth registration, the lack of birth registration has far-reaching implications in the administration of cases of children in criminal proceedings (Save the Children UK, 2008, p.29). The rights of the child to be protected against any form of sexual violence cannot be meaningfully realized without putting in place a systematized birth registration system. In cases where there are no birth certificates or official educational records testifying the age of child victims, prosecutors, in most cases, rely on medical evidence for age determination (ACPF, 2007, p.47). However, this does not in any way solve the whole problem. First, the process of determining the age of victims is not simple since not all medical centres possess such a facility. This is particularly true in rural parts of Ethiopia where there are no adequate health centers and professionals, and the waiting time to get an appointment is very long. Even when the facility exists, it takes up to six months to complete the medical process

(ACPF, 2007, p.47). The long process of determining the age of child victims hampers speedy trial and further traumatizes child victims and their families (Save the Children UK, 2008, p.30).

The other difficulty for law enforcement agencies such as prosecutors is the fact that hospitals spell out the age of the victim within an age range, which results in only an approximate age (ACPF, 2007, p.47). In prosecuting cases of sexual violence against children, the exact age of the victim is relevant because according to the Penal Code, the lower the age of the victim, the more severe the punishment. The Penal Code classifies child victims into two categories based on age: those below the age of thirteen are designated as infants, while those between the ages of thirteen and eighteen are referred to as minors. According to Article 626, sexual offence on minors is punishable with rigorous imprisonment from three to fifteen years, while the same offence if committed on infants is punishable from thirteen to twenty-five years according to Article 627 of the Penal Code. As a result of this distinction, if the medical evidence specifies that the age of the victim is within the age range of twelve to fourteen, it would be difficult to determine whether the charge should be framed as a crime committed against an infant or a minor. This means that even when the law provides for a higher penalty for offences against children, due to the failure to establish and prove the age of the victim, children do not get adequate redress for the violation of their rights.

In sum, the time taken to ascertain the age of child victims hampers the speedy investigation of cases and reduces the chance that an appropriate sentence will be given to an offender. In addition to the long time it takes, the medical cost to prove the age of victims could be a serious problem for parents who cannot afford to pay for medical and

other related costs. This could result in perpetrators who are charged with a less serious offence, receive a lesser punishment or even get away with their horrible crimes.

4.2.4 During Court Proceedings

4.2.4.1 Releasing Suspects with Minimal Bail Conditions

According to the UN Guidelines (2005), one of the specific rights of child victims is the right to safety (Part XII). As per the UN Guidelines (2005) “where the safety of a child victim is at risk, appropriate measures should be taken , including pre-trial detention of the accused and setting special ‘no contact’ bail conditions and placing the accused under house arrest”(Paras. 32 & 34). As discussed above, perpetrators of sexual violence, in many cases, have intimate relationships and regular direct contact with victims which puts the safety of child victims at a greater risk. It is, therefore, important that law enforcement personnel take the necessary considerations, particularly the safety of child victims in the administration of bail, into account. In practice however, the administration of bail in criminal proceedings in Ethiopia is a major factor restraining child victims’ right to safety. It further provides suspects with an increased chance of escaping criminal responsibility.

The right of accused persons to bail is one of the fundamental principles recognized under the Ethiopian Constitution (Art. 19). Based on this generally abiding rule, the Criminal Procedure Code sets detailed conditions by which accused persons may be granted or denied bail (Arts. 27, 28, 63.1, 67 and 69.2). Bail is usually granted unless it is a serious crime punishable with 15 years or more, and there is an unacceptable risk that the accused will commit new offences or interfere with witnesses (Arts. 63 & 69.2 of

the Criminal Procedure Code). These provisions direct the Court to take into account the seriousness of the charge, the likelihood of the accused's appearance, the potential danger to public order, and the resources of the accused and his guarantors. Thus, while the relative weight assigned to each factor is a matter of subjective judgment, courts are expected to set the bail bond higher for more serious offences.

Sexual offences committed against children are classified as serious crimes with severe punishment that can go up to twenty-five years of rigorous imprisonment or life imprisonment (Arts. 627, 620.2 & 3 of the Penal Code). These crimes always offer a sufficient reason for denial of bail. In practice, however, courts fail to recognize the seriousness of such crimes in determining whether the suspect should be released or denied bail. Furthermore, when bail is granted, courts usually give orders only for the deposition of money or the production of a guarantor without paying due attention to the safety and security of child victims (Hailegebrel, 2009, p.43). There are also no guidelines for judges to determine the amount of bail bonds. As a result, judges decide arbitrarily on the amount of bail bonds and, in most cases, the amount is insignificant. According to a study on the administration of bail for suspects of sexual violence against children in Ethiopia, the average maximum guarantee is Birr 5,000 (about \$250 CAD) and the amount ranges from Birr 200 (about \$10 CAD) - Birr 15,000 (about \$750 CAD) (Hailegebrel, 2009, p.43). Because suspects are released on such insignificant bail bonds, they have no financial incentive to appear before court, leading to their non-appearance and the closure of files. For instance, out of 677 files of sexual offence against children reported to the Addis Ababa Prosecutor's Office in the year 2006, 44% of files have been closed by the court because of the disappearance of suspects. This study reveals that the

failure to recognize sexual offences against children as a serious crime in the administration of bail is becoming a means to escape the justice machinery. It also leaves child victims without any legal remedies and makes them susceptible to further attack and threat. It is not difficult to imagine that perpetrators who are released on bail do all that they could to destroy evidence and even commit revenge on child victims or families just for reporting the case. This has an adverse impact in ensuring the safety and security of the victims by disrupting social security and leading to mistrust in the criminal justice system.

4.2.4.2 Under-acknowledging Child Victims' Testimony

Children's right to be heard, as stipulated under Article 12 of the CRC, should be one of the core principles in the administration of cases of child victims in the criminal justice system. Similarly, the UN Guidelines (2005) allow the views and concerns of child victims to be presented and considered at appropriate stages of the justice process (Part VIII). Moreover, the principle of non-discrimination, on the other hand, requires that 'every child should be treated as a capable witness, subject to examination, and her or his testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony' (UN Guidelines, 2005, part VI, para.18). These principles and standards clearly imply that child victims should be recognized as capable witnesses and given the opportunity to testify.

The testimony of child victims in cases of sexual violence against children is of critical significance as such crimes usually occur behind closed doors where eye witnesses are not likely to be present. Exclusion of children's evidence may mean, in

cases where the only witness is the child victim, that perpetrators will not be prosecuted because there is little or no other evidence. For instance, 23% of cases reported to the Addis Ababa Prosecutor's Office in 2006 were closed mainly because of lack of evidence (Hailegebrel, 2009, p.36). This means that many criminal acts are committed with impunity and that children become victims of repeated criminal acts. In practice, law enforcement and judicial personnel are reluctant to proceed with criminal charges solely based on child victims' testimony and prefer either to wait for corroborating evidence or decide not to prosecute at all (Redae & Assefa, 2007, p.42). In addition, law enforcement and judicial personnel apply stricter standards of credibility for the testimony of child victims due to mistrust of the ability of child witnesses to understand, recall and clearly describe facts (Redae & Assefa, 2007, p. 42). According to a presiding judge "the testimony of a child victim cannot be considered sufficient evidence because children cannot concentrate, may fall asleep and may not be able to comprehend or state facts out of fear" (Redae & Assefa, 2007, p.43). The following case was narrated by a prosecutor to elaborate on the hostile attitudes of some judges towards the testimony of child victims:

A girl raped by a man testified in the trial of the suspect before a court in Dessie. After the testimony the judge asked the child witness to describe the place where she was raped. In doing so the girl mentioned that she was raped on the **bed**. Subsequently, the judge cited contradiction of the girl's testimony with another witness for the prosecution who stated that the girl was raped on a **mattress** and acquitted the accused without the need to defend the charges (Redae & Assefa, 2007, p. 43).

The disinclination to believe the testimony of child victims is clearly witnessed in this case, which should have been decided otherwise had the judge been reasonable and sensitive to sexual violence cases as there is minimal difference in the testimony of the

victim and the eye-witness. This problem becomes further inexplicable where there is no comprehensive and codified law of evidence in the country. Due to absence of such law, law enforcement and judicial personnel rely on their own interpretations of scattered evidentiary rules in the various substantive and procedural laws (Redae & Assefa, 2007, p. 42). In this context, attitudinal factors play a significant role in the determination of the admissibility and probative value of evidence as clearly seen in the above case.

4.2.4.3 Child Victims' Testimony in Ordinary Courts

One of the core standards of the UN Guidelines (2005) is the need for special child friendly arrangements for the hearing of testimonies of child witnesses so that children can feel comfortable and safe (Part XI, para. 30. d). The Guidelines also stipulate the need to avoid direct contact between the child victims or witnesses and perpetrators at any point in the justice process (UN Guidelines, 2005, part XII, para. 34. a).

Except in some regions, where victim-friendly benches have been established recently through the support of non-governmental organizations (NGOs), cases involving child victims were, and still are, handled in ordinary courts in Ethiopia (Marowa-Wilkerson, 2011, p.110). This means that the trial of cases involving child victims, in almost all cases, is undertaken in the same way as cases involving adults. Ideally, all interviews of children should occur in settings that will not intimidate the child. The formality of court proceedings and court surroundings can be intimidating for children as it may result in fear and intimidation, particularly when victims face their perpetrators (Marowa-Wilkerson, 2011, p.111). According to UNICEF, "Most child victims/witnesses in Ethiopia are not only primarily traumatised by their disharmonious development and/or the crime(s) committed against them or they have observed, but also secondarily

traumatised by the professionals in the justice system and tertiary traumatised by the communication and general public” (UNICEF, 1998 cited in Marowa-Wilkerson, 2011, p. 111). In addition to the traumatizing effect on child victims, the absence of child friendly environment also hampers the criminal proceedings. For instance, if the child is fearful, she/he may not fully remember critical facts and cannot provide accurate information during cross examination.

Even in the absence of separate courts for children, judges should have efficiently utilized their discretion and ordered in-camera hearings as per Article 176 of the Criminal Procedure Code. In practice, however, the manner in which in-camera hearings are conducted does not guarantee the safety and privacy of child victims. For instance, in cases of child victims of less than 13, in-camera hearings are generally ordered at the discretion of judges (Assefa, 2011, p.27). In addition to the consideration of the age of the victim, judges might decide to hold a closed hearing for a particular aspect of the case such as when a victim had to show part of her body as evidence (Assefa, 2011, p. 27). Even in this case, they allow perpetrators to be present in the courtroom which is traumatizing for child victims and causes them to relive their pain. Moreover, judges do not order in-camera hearings for cases involving children between the ages of 15-18 (Assefa, 2011, p. 27). Despite the definition of CRC, the practice shows that there is a tendency to treat children between the ages of 15-18 as adults which contravenes the principle of equal treatment for all children under the age of 18.

5. Conclusion

The Ethiopian Constitution domesticates the fundamental principles of the CRC that form the basis for international standards on the treatment of child victims of crime.

Despite such measures, there are major gaps in substantive and procedural law regarding the treatment of child victims in the criminal justice system. The failure of the Government of Ethiopia to publicize the CRC in the official *Negarit Gazette* has been a major challenge in enforcing the CRC in domestic courts. Furthermore, the absence of a legal apparatus governing criminal proceedings involving children remains one of the major challenges in the administration of cases of child victims and leaves these children with no option but to go through an-adult centred criminal justice system. Moreover, gaps in the law coupled with lack of gender sensitivity among law enforcement and judicial personnel create additional burdens for children and in particular for girls.

Although there are a few recent initiatives both by the Government and NGOs such as the establishments of child helplines, Child Protection Units(CPUs) and victim-friendly benches, these services are available only in cities and do not address the needs of the majority of Ethiopian children. Generally, the lack of specialized units or offices within the police, prosecutors' office and the judiciary leads child victims to be treated without compassion and compromise the privacy, safety and dignity of child victims at the time of reporting, during investigation and throughout the trial. On the other hand, due to the lack of a birth registration system, which is key in determining the age of child victims, the investigation process usually takes a longer time and leaves child victims with further stress and anxiety. Furthermore, the absence of clear guidelines regarding the administration of bail of perpetrators results in the discontinuation of a number of court cases due to the non-appearance of perpetrators which further impedes legal redress for victims.

In addition to gaps in the legal framework, enforcement problems such as the limited capacity of law enforcement institutions and the judiciary constitute a major problem in the administration of cases of child victims. Particularly, the absence of training in child rights leaves child victims in the hands of law enforcement and judicial personnel who are insensitive to sexual violence against children, particularly girls. The reluctance to proceed with criminal charges for acts of sexual violence in general and the tendency to show less interest for cases of rape that do not involve loss of virginity are indications of a system in need of change.

In sum, the gaps in law and enforcement result in few options for getting a timely and effective redress for child victims. Moreover, the lack of a child-centered criminal justice system exacerbates the suffering of child victims as they take part in an adult centred criminal justice process. It also provides perpetrators an increased chance of escaping criminal responsibility. Therefore, Ethiopia has to take all the necessary measures, including legislative, administrative and judicial at the national level to meet its international obligations in order to ensure the principle of the best interest of the child throughout the criminal justice process. I conclude that it is only through an effective child-centred criminal justice system that children get access to justice and perpetrators can be held responsible for their criminal acts.

The following chapter examines the extent to which international and regional human rights monitoring mechanisms could address these gaps by exploring the legislative, administrative and judicial measures that have been taken by the Government of Ethiopia

CHAPTER 5 ADDRESSING GAPS IN LAW AND ENFORCEMENT THROUGH HUMAN RIGHTS MONITORING MECHANISMS

The ratification of the CRC, the ACRWC and other human rights instruments is one of the major legislative measures to ensure legal protection for children from sexual violence. However, the ratification of such instruments is not enough on its own. The fundamental rights of child victims of sexual violence are being violated as a result of gaps in law and enforcement irrespective of promises made by the Government of Ethiopia. This chapter strives to show the extent to which human rights monitoring mechanisms could address these gaps and eventually ensure Ethiopia's compliance with its international human rights obligations.

In the framework of the UN monitoring machinery, a variety of procedures exist to ensure compliance of States Parties with their international human rights obligations. While some procedures have been established by particular human rights treaties to oversee their implementation in their respective domain, others are directly mandated by the UN Charter to carry out human rights activities (Kedzia, 2003, p. 5). In addition to the UN supervisory bodies, the regional human rights systems in Africa, Europe, Inter-America and Arab States also provide a mechanism in their respective regions for monitoring States' compliance with international human rights laws.

Despite the availability of a number of monitoring mechanisms, there are limitations to the effective enforcement of human rights obligations at the international level. Kilkelly (2011) notes that "at the international level, the United Nations has no power to secure compliance with its treaty law and there is no police force to bring into line those States Parties that do not take their obligations seriously" (P. 185). While critics overly focus on the UN's lack of enforcement, they tend to underestimate the role of monitoring

mechanisms in facilitating change at the national level. This chapter illustrates how a reporting procedure,¹² which is the main mechanism that has been effective to monitor Ethiopia's performance regarding children's rights, has brought gradual and tangible changes that could eventually improve the treatment of child victims in the Ethiopian criminal justice system.

I will review reports submitted by the Government of Ethiopia and NGOs to human rights monitoring bodies as well as concluding observations of these bodies. My analysis is limited to information on Ethiopia's reports related to the implementation of the rights of children. These include reports submitted to human rights bodies overseeing the implementation of the CRC, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the ACRWC¹³ and the African Charter on Human and Peoples' Rights. In addition to these specific treaties, I will also review Ethiopia's report to the Human Rights Council based on the Universal Periodic Review (UPR) mechanism. The UPR is a "State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare the extent to which it respects its human rights obligations not only based on human rights treaties ratified by the State concerned, but also based on the UN Charter and the UDHR" (UN General Assembly, 2006, Resolution 60/251).

¹² In addition to the reporting mechanism, an individual complaint communicated to the African Commission on Human and Peoples' Rights (ACHPR) will be briefly discussed in Section 5.2.

¹³ Although the ACRWC is the most relevant regional child rights instrument, Ethiopia's initial report (the only report submitted so far) to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), a body responsible for overseeing the implementation of the ACRWC, is not accessible.

The first part of this chapter presents the impact of the reporting mechanism on Ethiopia's legislation since Ethiopia became a party to the CRC and other relevant international human rights agreements. In so doing, I will show how the process of harmonization of national laws with international principles is a necessary condition for better legal protection for children. I will then illustrate the various enforcement mechanisms that have gradually come into place as a result of on-going and constructive dialogues between the Government of Ethiopia and human rights bodies. Before concluding, I will briefly present an individual complaint, another human rights monitoring mechanism, presented to the African Commission on Human and Peoples' Rights (ACHPR), which is the principal organ for the promotion and protection of human and peoples' rights within the continent.

5.1 Reporting Mechanism

States must submit an initial report usually one year after joining (two years in the case of the CRC as per Art. 44) and then report periodically in accordance with the provisions of the treaty (usually every four or five years) to the monitoring committee. In addition, the treaty bodies may receive information on a country's human rights situation from other sources such as NGOs usually referred to as shadow/alternative reports (for instance see Art. 45 of the CRC). In light of all the information available, the monitoring committees examine the reports and publish their concerns and recommendations, referred to as 'concluding observations' (Kedzia, 2003. pp. 59-61).

The reporting requirement is one of the essential mechanisms to ensure States Parties' compliance with their respective treaty obligations. Smith (2003) argues that treaty body reporting process can act as an implementation tool in itself by forcing States

to review existing practices and facilitates an on-going dialogue and interaction between States Parties and monitoring bodies (p.146). The ongoing dialogues between individual States and human rights monitoring bodies play an important catalytic role. They catalyze the formulation of specific suggestions and recommendations to States parties, and identify priority areas for action. More so, the dialogue directs States toward programmes of technical assistance and encourages cooperation with the UN and other competent bodies (Smith, 2003, p.146).

In addition to government reports, shadow/alternative reports submitted by NGOs have a vital role in the reporting process. This is because they not only provide concrete and detailed information but also can provide a counter-narrative to the often overly optimistic State reports (Kedzia, 2003, p.77). Furthermore, one of the most important roles for NGOs is to maintain the momentum that has been built during the information gathering and report construction process by advocating for change (Kedzia, 2003, p.77). I demonstrate this by showing how an exemplary indigenous pioneering NGO (EWLA) led to the revision of the Ethiopian Civil and Penal Codes and initiated an individual complaint to the ACHPR on behalf of a child victim of sexual violence. The following section presents major legislative, judicial and administrative measures taken by the Government as a result of the reporting mechanism.

5.1.1 Legislative Measures

5.1.1.1 Direct Application of the CRC at Domestic Courts

The FDRE Constitution provides that international human rights instruments are an integral part of the law of the land (Art. 9.4). However, reference to these instruments at the court level is non-existent. The UPR report of stakeholders (consisting mostly of civil

society organizations) indicated that the provisions of human rights instruments ratified by Ethiopia had not been published in the official national gazette and; therefore their application in domestic courts was very limited(A/HRC/WG.6/6/ETH/3, p. 2).

The Committee on the Rights of the Child (hereinafter referred to as the Committee (CRC))¹⁴'s primary concern was the failure on the part of the Government to publish the CRC in the official gazette (CRC/C/15/Add.67, para.9). The Committee (CRC) recommended that its publication would give enforcement officials easy reference to the provisions of the CRC, as they tend to consult domestic legal instruments (CRC/C/15/Add.67, para. 22). It further recommended that training manuals incorporating the text of the CRC be published for professional groups working with or for children (CRC/C/15/Add.67, para. 22).

The publication of international treaties in the national official gazette is of particular importance in light of the various approaches employed by States to incorporate international laws into national legal systems. Although there are various methods, it is widely known that States follow either the monist or dualist approaches to incorporate international agreements (Ginsburg, Chernykh, & Elkins, 2008, p. 204). The former is based on the principle that international and domestic laws have identical sources, subjects and substantive contents (Ginsburg, Chernykh, & Elkins, 2008, p. 204). Hence, domestic courts can directly invoke and apply international agreements without the need for any act of adoption by the courts or transformation by the legislature (Ginsburg, Chernykh, & Elkins, 2008, p. 204). The dualist approach, on the other hand, asserts that

¹⁴CRC is the acronym for the Committee, but it is popularly used also as shorthand for the Convention that I have chosen to follow suit. Hence, for the purpose of this thesis, I will refer to the Committee as “the Committee (CRC)”. Similarly, CEDAW refers to the Convention and I will address the Committee as “the Committee (CEDAW)”.

international law and municipal laws have different subjects and operate on different planes, thus requiring at all times a domestic version of the treaty, which is carried out by either annexing the treaty to an enabling legislation or rewriting it (Ginsburg, Chernykh, & Elkins, 2008, p. 204).

The practice so far in Ethiopia shows that it is only the OAU Charter that was reproduced in the official *Negarit Gazette* (Yohannes & Assefa, 2008, p.8). In all other cases, a statement of ratification is the only information that is published in the *Negarit Gazette* after the legislative body decides to ratify a treaty. This in effect means that a treaty in the original version automatically becomes the law of the land, and binding, as soon its ratification is published (Yohannes & Assefa, 2008, p.8). Although the practice seems that Ethiopia follows the monist approach, the lack of a court decision that directly invokes an international law, including the CRC, makes this assertion open to doubt (Yohannes & Assefa, 2008, p.9). Furthermore, there has been a lack of consensus among judicial personnel whether or not international instruments should be officially published in *Negarit Gazette* in order to be applied at domestic level. While one position stresses that the publication of international instruments in the *Negarit Gazette* is a prerequisite for invoking the provisions in local courts, the opposing view dismisses the need for publication and argues that international human rights instruments can be applied in their present state (Yohannes & Assefa, 2008, p.10).

Although the Government of Ethiopia has not yet published the CRC in the official gazette, a recent decision of the Cassation Bench of the Federal Supreme Court citing provisions of the CRC is a positive precedent in this regard (CRC/C/ETH/4-5, para.18). This landmark decision invoked the principle of ‘the best interests of the child’ (Art. 3 of

the CRC) when reversing the decision passed by lower courts on a child custody case, despite the fact that the relevant family law provides otherwise (CRC/C/ETH/4-5, para. 18). The Cassation Bench set precedence by recognizing the principle of ‘the best interest of the child’ to be the primary consideration when deciding any issues affecting children (CRC/C/ETH/4-5, para. 18). The judgement rendered by the Federal Supreme Court should be recognized as a milestone as it has two main implications. First, the decision justifiably bypassed the long standing argument that publication of international human rights treaties in the official gazette should precede their implementation as the law of the country. Second, the decision presented a unique opportunity for lower courts to follow suit and base their decisions upon the precedent set by the Federal Supreme Court in applying provisions of the CRC or any other international human rights instruments in making decisions. This is particularly true with reference to Proclamation No.454/2005, which makes interpretation of a law by the Cassation Bench of the Federal Supreme Court binding on federal as well as regional courts. Moreover, this landmark decision sheds light on the potential applicability of the principle of ‘the best interest of the child’ in dealing with other cases, including child victims of sexual violence. However, the Committee (CRC)’s recommendation to publish the CRC in the official gazette remains essential for more regular application of this instrument at the national level.

In addition, based on the recommendations of the Committee (CRC), a number of activities have been undertaken by the Government and NGOs to popularize the CRC such as translating the text of CRC into local languages, preparing posters, organizing training sessions, transmitting TV programs and a series of panel discussions on different aspects of the CRC (CRC/C/70/Add.7, paras. 15-26). Such educational programs play an

important role in familiarizing professionals working for or with children with the principles of the CRC and would steadily raise the awareness level of law enforcement and judicial personnel and ultimately ensure the direct application of the CRC and other international human rights instruments at the domestic level.

5.1.1.2 Revision of Civil and Penal Codes

One of the most significant impacts of the reporting process is that it helps States Parties take an audit of their national laws and identify areas for legal reform. Following the ratification of the CRC in 1992, Ethiopia has taken a number of legislative measures. The Committee (CRC) recommended that the Government pursue the process of bringing existing legislation in line with the provisions of the CRC and that the best interests of the child be fully taken into account in the drafting of all new legislation (CRC/C/15/Add.67, para.27).

In terms of legislative measures, the adoption of the FDRE Constitution in 1995 is a step forward because it clearly stipulates that all international instruments ratified by Ethiopia are an integral part of the law of the land (Art. 9.4). It also incorporates the principle of ‘the best interest of the child’ as per Article 3 of the CRC and stipulates detailed provisions on the rights of the child including protection from sexual abuse under Article 36. In order to translate these general principles into action, substantive laws should conform to the Constitution and international human rights instruments.

During its second periodic report to the Committee (CRC), the Government reported that it established a drafting committee within the Ministry of Justice, which was responsible for the revision of its substantive laws in order to harmonize these laws with the Constitution, CRC and other international instruments (CRC/C/70/Add.7, para, 7). In

this regard, this committee accomplished a noteworthy measure in terms of the harmonization process by repealing the outdated 1960 Civil and 1957 Penal Codes in 2000 and 2005 respectively.

Revision of the 1960 Civil Code

The 1960 Civil Code¹⁵, which had for many years governed family matters, was quite discriminatory against girls and further relegates women to a subservient position (Olsen, 2009, p. 1067). This was against the constitutional right of equality before the law. One of the discriminatory provisions in the Civil Code that is relevant to the discussion on child victims of sexual violence was the minimum age of marriage. According to this Code, the minimum age of marriage was 15 for girls and 18 for boys.

Both the Committees (CRC and CEDAW) were greatly concerned with the minimum age of marriage for girls. The Committee (CRC) recommended that the Government of Ethiopia should prioritize revising the minimum age of marriage for girls (CRC/C/15/Add.67, para.27). This is particularly relevant in discouraging harmful traditional practices such as abduction (for the purpose of marriage) and child marriage which, in one way or another, put girls at a greater risk of sexual violence. In a practical sense, the 1960 Civil Code did not provide any legal protection for girls who got married between the ages of 15-18 and who became victim of sexual violence such as rape under the pretext of marriage. Considering the patriarchal society in Ethiopia where girls have subordinate position, girls and women have relatively little control over their bodies. Hence, putting the minimum age of marriage as low as 15 places girls at a greater risk of

¹⁵ According to the 1960 Civil Code, girls and women were subjected to male-dominated decision making processes which in most cases decide in favour of the husband during family disputes (Olsen, 2009, p. 1067).

sexual violence. It also leaves them with no legal recourse for any sexually violent acts that occur within marriage. Moreover, despite recommendations from human rights bodies such as the Human Rights Committee to criminalize marital rape and vigorously prosecute and punish such acts (CCPR/C/ETH/CO/1, para. 8) and internal lobbying efforts to criminalize marital rape, legislative bodies have failed to show interest and the law continues to tolerate this act of sexual violence.

Indigenous advocacy organizations, particularly the Ethiopian Women Lawyers Association (EWLA)¹⁶, took a leading role in the revision process. EWLA commissioned a research study that demonstrated how the provisions of the Civil Code violated the articles of the FDRE Constitution and international human rights instruments to which Ethiopia is a party. EWLA lobbied to fix the age of marriage to be 18 for both boys and girls (Olsen, 2009, p. 1067). It also widely disseminated its research findings and proposed amendments to various stakeholders such as members of parliament, law enforcement officials, judges, women's groups, and the media (Burgess, 2013, p. 104). In addition, EWLA requested the drafting committee to release the draft proposal before its formal submission to the House of Peoples' Representatives for discussion and deliberation (EWLA, 2000, p 16). Moreover, the inclusion of female representatives in the drafting committee was one of EWLA's requests in order to suitably reflect and adequately incorporate the rights of girls and women in the new law (EWLA, 2000, p 16).

¹⁶ EWLA was founded by a group of lawyers in 1995, immediately after the Constitution was ratified. It is a non-profit organization whose overall goal is eliminating "all forms of legally and traditionally sanctioned discriminations against women," ensuring equal treatment for women in "education, employment, access to public services and benefits," and advocating "remedial and affirmative measures" to redress the accumulated consequences of years of discrimination (Burgess, 2013, p. 102).

Finally, the Revised Family Code (issued in July 2000) replaced with major reforms. One of the reasons accounting for the reform, as stated in the Preamble of this law, was to make the law consonant with the equality principles enshrined in the Constitution and international human rights instruments to which Ethiopia is a party. The Revised Family Code duly considered the recommendations of the Committees (CRC and CEDAW) and set 18 as the minimum age of marriage for both girls and boys. The recommendations of these Committees with the lobbying effort of EWLA led to the enactment of a law which provides equality for girls and boys and protects children from child marriage and its associated risks. As a result, all provisions of the 1960 Civil Code, which had directly or indirectly discriminated against girls and women were removed and substituted with equitable ones.¹⁷

Revision of the 1957 Penal Code

The 1957 Penal Code had a number of pitfalls and did not provide adequate protection for children from violence. The Committee (CEDAW) expressed its concern that no specific legislation had been enacted to combat violence against young girls and women (A/59/38 (Part I), para. 255). In particular, looking at the provisions relevant to the discussion on child victims of sexual violence, there were three major gaps in this Code. First, there was no minimum penalty for crimes of sexual violence such as rape¹⁸. This Code used the word ‘up to’ and only put the maximum penalty for such crimes. The absence of a minimum penalty for such crimes, therefore, served as a way out for courts

¹⁷ Among the changes made in the new family law are, guaranteeing equal rights for women and men at the time of the establishment of the marriage, during the marriage, and at the time of its dissolution. Also the new law provides better protection to women with respect to matrimonial issues such as divorce, division of matrimonial property, child maintenance ...etc.

¹⁸ Article 589 of the 1957 Penal Code reads “... rape is punishable **up to** 10 years rigorous imprisonment. If the crime is committed on a young girl under 15 years of age the penalty could go **up to** 15 years rigorous imprisonment”.

to give light sentences. This was in particular true in a number of cases where courts used all kinds of reasons for the mitigation of penalties for crimes of sexual violence against girls and women (EWLA & NEWA, 2003, p.38). At the same time, courts failed to recognize that the damage caused to the victims is irreversible especially in terms of the psychological damage in a country where counseling for such victims is not available and where the HIV infection rate is one of the highest in the world (EWLA & NEWA, 2003, p. 38). In situations where there is no minimum penalty, sentences mainly depend on how severe or moderate the crime is in the eyes of the judge, not on how damaging the situation is for the victim. In a patriarchal society where the criminal justice system is male-dominated, it is not difficult to imagine that the perception of judges towards such cases can lead to light sentencing in cases of sexual violence against girls.

Second, the Code did not outlaw harmful traditional practices such as child marriage and FGM, which put girls at a greater risk of sexual violence. Third, although the Code had articles outlawing the crime of abduction and rape, it was insufficient both in scope and detail. For example, Article 588(2) of the Code had provided that all criminal proceedings against the crime of abduction and rape will be cancelled if subsequent marriage is concluded between the victim and the offender. Since cases of abduction are usually resolved through customary practices, which do not uphold the interests of girls, the exemption from criminal responsibility further nullified the rights of girls and provided a justification for continued inequality and oppression of girls/women.

In its concluding observations, the Committee (CEDAW) expressed that while abduction has been recognized as a crime under the Ethiopian Penal Code, the implementation of the law is weak and abductions tend to be resolved through

discriminatory customary laws and practice (A/59/38 (Part I), para. 255). The Committee (CEDAW) found that the exemption from criminal proceedings in case of subsequent marriage after abduction and rape left children with no legal redress. This can be illustrated by one of the cases that EWLA used as a precedent setting test case to bring about change in law and practice. In this case, a 13 year old girl, Woineshet Zebene Negash¹⁹, was abducted and raped by Aberew Jemma Negussie in the village where she lived with her mother and grandparents in the south-eastern part of Ethiopia. Two days later she was rescued, and Negussie was arrested. After he was released on bail, Negussie abducted Negash again and held her for more than a month until she managed to escape, but only after he had forced her to sign a marriage certificate. She was the first Ethiopian to legally challenge a bridal abduction. This case received international attention and was responsible for a change in Ethiopian law as Negash refused to marry her abductor and pursued legal action with the support of EWLA irrespective of the presence of a law that favours perpetrators and further gives them leeway to escape criminal responsibility (Olsen, 2009, pp 1068-1069) .

In 2003, EWLA together with another NGO, the Network of Ethiopian Women Association (NEWA), submitted the first ever shadow report to the Committee (CEDAW) (Olsen, 2009, p. 1068). Fifty-two pages long, this shadow report identified the major gaps in the 1957 Penal Code and provided a more thorough picture of the situation of girls and women in Ethiopia, correcting omissions and misstatements in the official report. Parallel to the shadow report, EWLA in collaboration with Equality Now, an international women's rights advocacy organization, launched a campaign in March

¹⁹ This case will be discussed in detail in Section 5.2 dealing with individual complaint mechanism.

2002, calling on the Ethiopian Government to comply with the sex equality provisions of its own Constitution and international law by abolishing the exemption of criminal responsibility for crimes of rape and abduction in the case of subsequent marriage (EWLA, 2000, p.21). EWLA used real cases such as Negash's to substantiate its advocacy work and to alert the Government on gaps in law and enforcement.

The Committee (CEDAW)'s recommendations along with the shadow report, which identified the major gaps in the 1957 Penal Code, led to its repeal in May 2005. The Revised Penal Code of 2005 has far-reaching impact on ensuring protection of children from sexual abuses and addressed all the three major drawbacks mentioned above. Accordingly, this law sets a minimum penalty for sexual crimes such as rape. Second, the Revised Penal Code has new provisions on abduction, child marriage, FGM, and sexual abuse and exploitation of children, which were not outlawed in the 1957 Penal Code. Third, the Revised Penal Code removed the marital exemption for abduction and rape. According to this Code, abduction has now become a punishable crime whether it leads to the consummation of marriage or not (Art. 589).

The persistent recommendations of the Committee (CEDAW) to harmonize the national laws as well as the continuous dialogue with the Government of Ethiopia resulted in a positive measure in terms of changing the out-dated Penal Code. Moreover, the internal pressure by EWLA and similar advocacy organizations to combat violence against girls and women coupled with the preparation of the shadow report resulted in a promising law that provides legal protection for children from sexual violence²⁰.

²⁰Although the enactment of the Penal Code in 2005 is a positive step forward, there are still some gaps. For instance, the Revised Penal Code does not clearly define trafficking, domestic violence and sexual harassment as well as did not criminalize marital rape, and child pornography (A/HRC/WG.6/6/ETH/3, p.2).

5.1.1.3 Enactment of a Criminal Justice Policy and Revision of the Criminal Procedure Code

Another legislative measure recently taken to improve the treatment of child victims of sexual violence is the issuance of a National Criminal Justice Policy. In its last report to the Committee (CRC), the Government drew attention to its newly formed Criminal Justice Policy in 2011. This Policy incorporated various changes to address a number of gaps observed in the criminal justice system and ensured compatibility with the provisions of the CRC and ACRWC (CRC/C/ETH/4-5, para. 16). The Policy devoted a separate section for care and special handling of victims of crimes and most of these provisions protect children who are victims of sexual violence. For instance, Section 6 of the Policy focuses on the rights of victims to participate in criminal investigation, the procedures for charging and trial, and the establishment of special units for children (CRC/C/ETH/4-5, para. 16).

In 2012, the Government further reported that following the adoption of the National Criminal Justice Policy, the Criminal Procedure Code (CPC) of 1961 is under revision and was presented to the Federal Parliament for deliberation (CRC/C/ETH/4-5, para. 17). The revision of the CPC included new provisions to ensure children's access to a protective and child friendly justice system. These include measures such as setting up child friendly structures at various levels in the judicial process in line with international principles and standards (CRC/C/ETH/4-5, para. 17).

However, the report of a civil society coalition submitted to the Human Rights Council as part of the UPR process in 2009 noted that the revision of the CPC had been ongoing for more than seven years and resulted in inconsistencies in the application of

the law (A/HRC/WG.6/6/ETH/3, p. 2). Considering the time it has taken to revise the CPC, it is of critical importance that the Government should give priority to this legal reform process. In addition, it is not yet clear from the Government report if any law reform measure has been carried out to clarify ambiguous provisions of the Code which created challenges in the administration of cases of child victims. For instance, the provision concerning the administration of bail, as discussed in the previous chapter, led to inconsistencies in the administration of bail due to the lack of clear provisions and standard guidelines for judges. Such provisions should be carefully examined in order to ensure the safety of child victims throughout the criminal justice process.

5.1.2 Judicial and Administrative Measures

One of the major challenges for child victims seeking legal redress is the absence of effective enforcement mechanisms. As illustrated in the previous chapter, the major gaps in the administration of cases of child victims could be summarized as follows: the lack of a birth registration system, the absence of a reporting mechanism, the lack of child-centred units within the police and prosecutors' office, the lack of a child-friendly court environment and the absence of trained law enforcement and judicial personnel. Although these gaps have not been completely addressed and there are still gaps in enforcement, the Government has been taking promising measures to bridge these gaps thanks to the pressure of the human rights monitoring bodies. The following section presents the role of the reporting mechanism in identifying these major gaps and providing recommendations for the development of effective child-centred enforcement mechanisms.

5.1.2.1 Birth Registration System

The registration of children at birth may seem like a simple administrative matter, but it is in fact important leverage for the enjoyment of many rights; children who are not registered do not officially exist and hence cannot enjoy their legal entitlements. As discussed in the previous chapter, the lack of birth registration hampers access to justice for child victims and victimizes children further by causing them unnecessary stress and anxiety during the criminal justice process.

The lack of a birth registration system has been one of the primary concerns of the Committee (CRC) since the submission of the initial report by the Government in 1995 until its last recent report in 2012 (CRC/C/ETH/CO/3, para. 31). The Committee (CRC) expressed its concern that children are neither registered at birth nor at a later stage and its frustration at the absence of institutional structures and the necessary legal framework to ensure birth registration (CRC/C/ETH/CO/3, para. 49). This state of affairs has led this Committee to repeatedly recommend that Ethiopia should develop measures to ensure that all children born within the national territory are registered by adopting an adequate legal framework in light of Article 7 of the CRC (CRC/C/ETH/CO/, para. 32). Similarly, the Committee (CEDAW) and the report of the Working Group on the UPR recommended that Ethiopia take measures to achieve free and timely registration of all births and create an adequate and credible birth registration system (A/59/38, para 254; A/HRC/13/17, p. 18).

Although the Government has acknowledged the need for a birth registration system since the enactment of the 1960 Civil Code²¹, implementing these provisions remain the lowest priority on the Government's agenda. Subsequent laws such as the Revised Family Law of 2000 imposed a duty on the Federal Government to issue a law on civil registration and to establish the institutional arrangements needed for its implementation within six months of its promulgation (Art. 321.1). Despite the fact that it has been well over a decade since the Revised Family Law was promulgated, the Federal Government has yet to discharge its obligation of issuing a law on civil registration.

In addition to providing concrete recommendations, the other significant role of the reporting mechanism is the fact that human rights monitoring bodies encourage State Parties to collaborate with UN and other bodies and also identify potential partners to support them in meeting their international obligations. Accordingly, the Committee (CRC) identified partners to support the Ethiopian Government and specifically recommended that Ethiopia seek technical assistance from UNICEF for the implementation of a birth registration system (CRC/C/ETH/CO/3, para. 19).

Recently, the Federal and Regional Bureaus of Women, Children and Youth in collaboration with UNICEF have implemented a pilot project where registration of children in 10 rural and 8 urban selected *Kebeles* of Addis Ababa, Dire Dawa, Amhara and Tigray. The pilot registration project was carried out from April 2009 to December 2010 and resulted in a total of 28,541 children being registered (CRC/C/ETH/4-5, para.

²¹ The 1960 Civil Code of Ethiopia stipulated detailed and comprehensive rules on civil registration. Book I, Title I of the Civil Code devoted a whole chapter (Arts. 47 to 153) to establishing a system of civil registration. From the outset, Article 47(1) made clear the importance of civil registration by specifying that births, deaths and marriages shall be proved by means of the records of civil status. The provisions of the Civil Code on civil registration had never been operational due to a transitory provision in the Civil Code itself (Art. 3361), which specified that provisions pertaining to registers of civil status shall not come into force until a day to be notified by an Order published in the *Negarit Gazette*. However, such an Order had never been issued and the rules on civil registration remained only on paper.

86). The challenges and lessons generated from the pilot phase were documented and analyzed to inform the design of the future birth registration law and system in the country (CRC/C/ETH/4-5, para. 86). Such documentation is particularly important since the society does not have a culture of registering his/her child and there is a need to massively sensitize and indoctrinate the general public on the advantages and significance of birth registration. This process is also in line with the suggestion of the Committee (CRC) to carry out a nation-wide campaign to inform the general public that birth registration is compulsory (CRC/C/15/Add.144). Although the measures that have so far been taken are slow, the pilot project through the support of UNICEF is a step in the right direction to have a nation-wide birth registration system eventually.

5.1.2.2 Reporting Mechanism for Child Victims

Establishing a reporting system for child victims is one of the means to ensure protection of and respect for child rights. As previously discussed, the lack of a reporting mechanism for child victims is one of the major problems in the administration of cases of child victims and further hinders victims from accessing the necessary support.

The Committee (CRC) recommended that a system of complaints be established for child victims of any form of violence, abuse, including sexual abuse, neglect, maltreatment or exploitation, even while in the care of their parents, as a means to ensure protection of and respect for their rights (CRC/C/15/Add.67, para.31).

One of the notable measures in terms of creating a reporting mechanism for child victims is the recent initiative of the establishment of Child Protection Units (CPUs) in police stations (CRC/C/70/Add.7, para.78). The establishment of CPUs first started with the initiative of Radda Barnen (Save the Children Sweden) and an Ethiopia-based NGO

known as Forum on Sustainable Child Empowerment (FSCE) in Addis Ababa and other urban areas (Save the Children Sweden & FSCE, 2012, p.3). The initiative of these NGOs in the establishment of CPUs in Addis Ababa and a few urban areas was recognized by the Government during its second periodic report to the Committee (CRC) (CRC/C/70/Add.7, para. 79). Although the CPUs made some contributions towards establishing a child-friendly atmosphere for children and encouraged them to report crimes, they have their own limitations. First, until very recently such CPUs existed only in very limited urban areas and were almost non-existent in rural areas where the majority of the Ethiopian children reside (CLPC, 2006-2009, p. 16). Second, even in police stations where CPUs were present, they functioned under severe resource constraints often without social workers, or social workers poorly trained in child handling techniques (CLPC, 2006-2009, p. 16). More so, CPUs were part of a project by NGOs, and therefore, were fully dependent on the financing and project interests of NGOs (CRC/C/70/Add.7, para. 78). As a result, CPUs were not part of the structure of the law enforcement agencies until recently.

In 2005, the Government took a step forward and integrated CPUs within the police structure and established more CPUs in several towns including Addis Ababa, Nazareth, Dire Dawa and Dessie (CRC/C/129/Add.8, para. 131). The inclusion of CPUs in the police structure addresses the question of sustainability since they are no longer dependent on funding from NGOs. Furthermore, in 2012 the Government reported that CPUs are now operational throughout the country. Since it is very recently that CPUs have become operational throughout the country, it is difficult to say conclusively to what extent they have achieved their goals. However, the lack of adequate resources on the

part of the Government remains a challenge to achieve the goals of CPUs. During its third periodic report to the Committee (CRC), the Government stated that had it not been for shortfalls in human resources and budgets, the CPUs would have generated better results in protecting children from abuse and exploitation (CRC/C/129/Add.8, para. 232).

Additionally, in 2012, the Government reported that the Ethiopian Human Rights Council (EHRC) signed a Memorandum of Understanding with 16 government universities throughout the country to open legal aid centers and provide free legal aid services to disadvantaged groups, particularly women and children. In addition, 39 free legal aid centers were opened at *Woreda* level in collaboration with EWLA (CRC/C/ETH/4-5, par. 35). The legal aid centres could serve as an additional means for children to report incidents of sexual abuse cases.

5.1.2.3 Special Investigation and Prosecution Centre

The need for special investigation units within the prosecutors' office is of great importance in the administration of cases of child victims. The presence of such units could contribute to improving the manner in which cases of child victims are prosecuted since prosecutors would likely have special training in international principles and standards on the investigation of cases of children. However, as discussed in the previous chapter, the lack of specialized prosecutors has led to the treatment of child victims in the same manner as other cases and compromises the principle of 'the best interest of the child' during the investigation process.

The Committee (CRC) recommended that Ethiopia ensure adequate resources to investigate cases of sexual abuse, prosecute and impose adequate sentences for such crimes (CRC/C/ETH/CO/3, para. 74(d)). Similarly, the Committee (CEDAW) urged

Ethiopia to combat violence against girls and women and ensure that all forms of violence are prosecuted and punished adequately and that victims have immediate means of redress and protection (A/59/38/Rev. 1, paras. 255 & 256).

In response to recommendations of the Committees (CRC and CEDAW), the Government in 2012 reported that the Ministry of Justice (MOJ), with financial support from UNICEF established a Centre for the Investigation and Prosecution of Violence against Women and Children in Addis Ababa- the Lideta Division Federal First Instance Court (CRC/C/ETH/4-5, para. 303). According to the Government's report, special prosecution and investigation teams work closely with the police from investigation to prosecution stages (CRC/C/ETH/4-5, para. 73). This new collaboration between prosecutors and police officers is a step forward and could address the problems discussed in the previous chapter such as the limited practice of witness preparation and failure to coordinate with other experts during the investigation stage. This Centre also includes professionals such as social workers who provide counselling to survivors of violence while they are in preparation for court hearings (CRC/C/ETH/4-5, para.306). The Government also reported that child victims and witnesses are getting support from experts in a way that is friendly and sensitive to their privacy and personal safety (CRC/C/ETH/4-5, para. 306). The presence of experts such as social workers encourages child victims to identify their special needs. Furthermore, having a special unit for cases of violence against children is another opportunity to put children's issues on the agenda of law enforcement agencies in order to secure adequate resources and manpower to investigate cases in an effective manner.

Although the establishment of the recent Investigation and Prosecution Centre is a positive measure, this Centre is available only in Addis Ababa, like many recent initiatives, and left out cases of child victims in rural areas. In order to meet its international obligation, the Government should allocate adequate resources with a view to ensure effective investigation of cases of sexual violence against children throughout the country.

In addition to the establishment of a special centre for investigation and prosecution of cases of children, the Government report to the Committee (CRC) in 2012 indicated that a Manual on Investigative Interview was developed by the Child Justice Project Office of the Federal Supreme Court. A Child Justice Guideline for dealing with Witness and Surviving Children in the Justice System was also developed by this same office (CRC/C/ETH/4-5, para. 308). Such guidelines will have an impact in improving the manner in which prosecutors handle cases of child victims during the investigation process based on international principles and standards.

5.1.2.4 Provision of Coordinated Service for Child Victims

Child victims deserve appropriate, caring, accessible, coordinated and consistent responses by all service providers. As discussed in the previous chapter, the CRC puts emphasis on the need to take necessary measures to promote physical, psychological and social integration of child victims in an environment which fosters the health, self-respect and dignity of these children (Art. 39). However, the lack of a coordinated service for child victims has been a challenge for victims to get the required assistance.

The Committee (CRC) reiterated the need to provide a coordinated service to survivors of violence, and in particular requested the Government to provide child

victims of sexual or other forms of abuse with the necessary psychological and other support for their full recovery and social reintegration (CRC/C/ETH/CO/3, para. 46). Similarly, the Committee (CEDAW) recommended that the Government take measures that enhance victim assistance and rehabilitation, by providing psychological counselling, supporting local organizations which offer shelter and assistance to victims, and establishing victim support centres (CEDAW/C/ETH/CO/6-7, p. 7). Safe places and assistance to victims of sexual violence is also one of the recommendations of the Working Group on the UPR (A/HRC/13/17, p.17).

In 2012, the Government announced a new initiative, referred to as ‘one-stop service’ that provides comprehensive services to women and children who are victims of abuse and violence (CRC/C/ETH/4-5, para. 74). This ‘one-stop service’ appears to conform to the recommendations of the human rights monitoring bodies. The Government’s report to the Committee (CRC) indicated that three ‘one-stop service’ centres are underway in Addis Ababa, Amhara, as well as South Nations, Nationalities and Peoples Region (SNNPR). Such centers are modelled based on the ‘Thuthuzela Care Center’²² in South Africa for survivors of gender based violence (CRC/C/ETH/4-5, para. 74).

Drawing from the South African experience of “Thuthuzela”, the Government reported that rehabilitation measures have also been organised for victims in different hospitals. The Ministry of Justice in collaboration with the Addis Ababa Health Bureau is establishing an integrated care and justice centre in Ghandi Hospital where multi-sectoral

²² It is a hospital-based one-stop service for women and children who have been raped, seeks to lessen the trauma of sexual violence and to reduce secondary victimisation of survivors by providing professional medical care, counselling, and access to legal services, all under one roof (UNICEF, South Africa).

victim support services including investigating police, prosecutors' forensic police, nurses and social workers work together (CRC/C/ETH/4-5, para.312).

While this 'one-stop service' provides excellent care for survivors, the need for large scale infrastructure still remains. To adequately address the recommendations from the reporting process, the Government needs to prioritize its resources and exert all efforts to respond to the multifaceted needs of child survivors in a sustainable and integrated manner.

5.1.2.5 Establishment of Victim-Friendly Benches

The absence of a child-friendly justice system has been noted as one of the major problems in ensuring children's rights at the trial stage (CRC/C/ETH/CO/3, para. 77). The Committee (CRC) urged the Government to ensure that juvenile justice standards are fully implemented. It specifically recommended that the juvenile justice should follow the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime(2005) through establishing child-friendly courts countrywide and providing special training for judges and prosecutors who handle such matters in juvenile courts (CRC/C/ETH/CO/3, para. 78).

Although, there is no special court for children who are in contact with the law such as child victims, some efforts are being made to make courts child-friendly (A/HRC/WG.6/6/ETH/1, para. 90). One of such measures is the establishment of special benches for child victims known as victim-friendly benches in major towns (CRC/C/ETH/4-5, para. 307). Victim-friendly benches are established in a separate courtroom, which is linked to another room through a closed-circuit television (CCTV) system (Save the Children Sweden & FSCE, 2012, p.8). In these specialized benches

child victims testify through a CCTV from a specially prepared room outside the formal courtroom. Moreover, child victims are supported by a trained intermediary, and if available, by a child rights advocate. Such an arrangement enables child victims to give their evidence in a separate room whilst the judges and other court officials can follow the proceedings in the courtroom (Save the Children Sweden & FSCE, 2012, p.8).

When explaining the benefits of victim friendly benches, Marowa-Wilkerson (2011) argues that this arrangement precludes face-to-face meeting between the child and the accused and enables the child witness to testify in an informal and child friendly setting (p.117). The involvement of intermediaries also affords child victims the opportunity to ask for explanations of ambiguous questions (Marowa-Wilkerson, 2011, p. 118). UNICEF Ethiopia defines the objectives behind the introduction of the victim-friendly benches as to “protect child victims and child witnesses from secondary traumatisation” that may arise during judicial proceedings as well as enabling child victims or child witnesses to testify “freely and comfortably in a child-sensitive atmosphere” (UNICEF cited in Marowa-Wilkerson, 2011, p. 119).

Although the establishment of victim-friendly benches is a notable measure in terms of creating child-friendly court environments as per the recommendations of the Committee (CRC), these benches, as in the case of other recent initiatives, are only available in major towns. Hence, the establishment of victim-friendly benches throughout the country should be a priority in order to prevent further victimization of child victims in court proceedings.

5.1.2.6 Building the Capacity of Law Enforcement and Judicial Personnel

Legislation and procedural measures are not enough in themselves to protect children from sexual abuse and provide legal redress for right violations. The laws must be enforced. The principal agencies for their enforcement- police officials, prosecutors and judicial authorities must have adequate training. How effectively these authorities function will depend not only on the resources made available to them, but also on the knowledge and skills possessed by those who interact with child victims. The lack of adequate and systematic training for law enforcement officials and judicial personnel has been a major bottleneck in the realization of the rights of children. In fact, the lack of skilled personnel is one of the major crosscutting problems in the administration of cases of child victims from the time of reporting to the completion of the trial.

Review of almost all concluding observations of human rights monitoring bodies indicate the duty on the part of the Government to build the capacity of law enforcement and judicial personnel with training on the principles and rights enshrined in international human rights instruments. All of the reports submitted by the Government to the various human rights supervisory bodies show the efforts that have been carried out to build the capacity of law enforcement and judicial personnel through a number of training programs. These on-going dialogues are indicative of the reporting mechanism role in pressuring the Government to continually raise the awareness level of law enforcement and judicial personnel on child rights.

A consolidated initial and fourth periodic report to the ACHPR shows that the Government, as one component of the Justice System Reform Program (JSRP), has been organizing extensive training and education on human rights for legislators and law

enforcement officials (Consolidated Report to the ACHPR, 2008, para, 458). The Government, as part of its JSRP, established the Justice Professionals Training Centre for prospective judges and public prosecutors that promotes human rights through its training programs (Consolidated Report to the ACHPR, 2008, para, 458). More so, the Ethiopian Human Rights Commission and the Institution of the Ombudsman organized training at the federal level and Regional States also undertook successive training programs through members of their respective State Councils and law enforcement officials under the auspices of their Capacity Building Bureaus (A/HRC/WG.6/6/ETH/1 p. 19). Moreover, as part of its training program, child rights training is incorporated in regular training programs of the Ethiopian Federal Police University College and training institutions(A/HRC/WG.6/6/ETH/1 p. 19).

Such training programs have an important role in building the capacity of personnel working in the justice sector. The various training programs will gradually increase the awareness of law enforcement and judicial personnel regarding the principles and standards on child rights in general, and the treatment of child victims in the criminal justice system, in particular. However, coordinating the various training programs organized by the different government ministries, departments and bureaus should be carefully examined to achieve a better result.

The above sections provide an account of the legislative, administrative and judicial measures taken by the Government of Ethiopia as a result of the on-going and constructive dialogues with human rights monitoring bodies using the reporting mechanism. The next section illustrates an individual complaint mechanism, which can

further strengthen the Government's compliance with its international human rights obligations.

5.2 Individual Complaint Mechanism

The other mechanism to monitor States' compliance with international human rights obligations is to make an individual complaint (Kedzia, 2003, p. 70). Treaty-based communication procedures have been established at the international and regional levels although the CRC was one of the instruments that did not provide an individual complaint mechanism until recently (Fortin, 2005, p.48). The fact that the CRC did not provide for specific enforcement mechanisms giving a right of individual petition similar to the ACRWC was one of the CRC's major weaknesses (Fortin, 2005, p.48). However, the Third Optional Protocol (3OP) to the CRC, which was adopted on 19 December 2011 and entered into force on 14 April 2014, established an individual complaint mechanism (Art.5 of the 3OP). This is a significant development and will enable the Committee (CRC) to examine communications from children and their representatives that allege violations of their rights.

The purpose of an individual complaint is to address an individual case of violation by a State Party of its human rights obligations under the treaty. This gives individuals an opportunity to receive a determination from an international expert body that supports his or her claim of a violation and an entitlement to a remedy (Boerefijn, 2009, p. 169). Individuals can claim that their rights are violated or third parties such as NGOs can submit complaints on behalf of individuals under certain set criteria (Kedzia, 2003, p. 70). These criteria require, inter alia, that the complaint can only be submitted after local remedies have been exhausted and no other parallel proceedings are taking

place on the same matter (for instance see Art. 7 of 3OP). Just as in the case of the reporting mechanism, even if there is no international police force to ensure its implementation, a decision of an international expert body that an individual's human rights have been violated can be a powerful tool for achieving redress and influencing policy and practice change at the national level.

Although an individual mechanism exists at the international and regional levels, it has been under-utilized in ensuring Ethiopia's compliance with its human rights obligations. There was no individual complaint brought to international or regional monitoring bodies on children's issues until EWLA initiated a communication in 2007 to the ACHPR²³ (EWLA/Equality Now, 2008).

This complaint was made on behalf of Negash, as discussed in Section 2.1.2. Negash was abducted in March 2001 by Negussie and his accomplices. At this time, the 1957 Penal Code made a provision that guarded perpetrators from facing criminal responsibility so long as they married the girls they abducted or raped (Arts 558 & 559). On July 22, 2003, Negussie was sentenced to 10 years' imprisonment without parole, and his four accomplices were each sentenced to 8 years' imprisonment without parole, making Negash's case the first case in which accomplices were also charged and convicted for abduction (Olsen, 2009, p. 1069). However, just four months later, on 4 December 2003, the High Court of the Arsi Zone, sitting on appeal, quashed the decision of the lower court and released the five perpetrators from prison(Olsen, 2009, p. 1069).

²³ There are three main institutions that are in charge of monitoring the compliance of Member States with the African human rights instruments. These are the African Commission on Human and Peoples' Rights (ACHPR); the African Committee of Experts on the Rights and Welfare of the Child; and the African Court of Human and Peoples' Rights.

Negash did not know of the appeal hearing held in December 2003, nor was she given the opportunity to be present. The judge made the astounding assertion that “Negash was most likely in love with her abductor and ready for marriage” (Olsen, 2009, p. 1069). The prosecutor was present at the hearing but supported the judge’s ruling. In fact, the judge stated that “Negash’s family was only out for revenge, and maybe they don't want her to marry him. So they accuse him of rape” (Olsen, 2009, p. 1069). As the practice of abduction is an age-old tradition, few abduction cases are reported. Conflicts over abductions are often resolved by traditional negotiations and, even if they are reported, law enforcement and judicial personnel are reluctant to investigate abduction cases (EWLA & NEWA, 2003, p.46). This is because the personnel themselves are also a product of patriarchal society and tend to follow the culture rather than the law (EWLA & NEWA, 2003, p.46). The above comment made by the High Court judge clearly shows the laxity of courts in dealing with such cases, which increases impunity for perpetrators.

Resisting threats and bribes, the father and daughter, with the support of EWLA, appealed. EWLA, which had been providing Negash with legal assistance, petitioned for a further appeal to address the injustice of the appeal court ruling. An appeal was allowed and the case was heard on 4 December 2004 by the Oromia Supreme Court (Olsen, 2009, p. 1069). The Court ruled that there were not sufficient grounds to reconsider the case, and it dismissed the appeal. A further appeal was submitted two days later to the Cassation Bench of the Oromia Supreme Court citing serious legal irregularities in the case, including failure to consider the evidence by both the High Court and the Supreme Court (Olsen, 2009, p. 1069). Unfortunately, the Cassation Bench of the Oromia Supreme Court in December 2005 refused to hear Negash’s appeal on the basis that it believed no

error of law had been committed by the lower courts (Olsen, 2009, p. 1069). The Cassation Bench of the Supreme Court being the highest appeal court in Ethiopia, domestic legal recourse was closed to Negash.

Since all local remedies were exhausted, EWLA in conjunction with Equality Now brought a communication in 2007 to the ACHPR claiming violation of Negash's rights under the ACRWC (EWLA/Equality Now, 2008). However, in 2008, the Commission referred back the case requesting the Government of Ethiopia and EWLA/Equality Now to amicably settle the matter (EWLA/Equality Now, 2008). Although there were some communications with the Government, EWLA/Equality Now expressed their concern since there had been inadequate progress in the case (EWLA/Equality Now, 2008). On a letter dated on November 10, 2008, EWLA/Equality Now requested the Commission to convene a meeting with the Government to help them reach a friendly settlement of the matter, including by clarifying the status of any remedial action the Government was willing to undertake and establishing a timeframe for such action. In the alternative, in case reaching into an agreement is difficult, EWLA/Equality Now requested the Commission to declare the communication admissible and proceed to consideration on the merits (EWLA/Equality Now, 2008).

Unfortunately, there has been no follow up regarding this case on the part of EWLA since it refrained from its advocacy work due to the enactment of a new Proclamation in 2009²⁴ regulating NGOs in Ethiopia, which restricted the operation of

24 According to this Proclamation, organisations which receive more than 10 per cent of their funding from foreign sources are prohibited from working on a number of human rights issues, including the promotion of equality of gender (Art. 14 of Proclamation 621/2009).

advocacy organizations including EWLA.²⁵ This case, if finalized, could serve as a benchmark to effectively enforce the Revised Penal Code of 2005, which repealed the exemption of criminal proceedings for crimes of abduction and rape in case of subsequent marriage.

5.3 Conclusion

The analysis of Ethiopia's experience under the monitoring bodies offers clear indications that the reporting procedure influences change in policy and practice. The requirement of regular reporting is important as the process itself facilitates communication between different ministries, agencies and other stakeholders at the national level. Recommendations given by human rights bodies on the basis of their expert assessment of the various reports and on-going dialogues between the Government of Ethiopia and these bodies provide influential benchmarks against which domestic policy-making can take place. In this regard, the harmonization process that the Government has undertaken since the time of the adoption of the FDRE Constitution in 1995, the revision of the Family Law in 2000 and the Penal Code in 2005 are some of the tangible evidence of the impact of the reporting mechanism on the Ethiopia justice system.

In addition, the reporting mechanism has an important role in identifying gaps in enforcement and formulating concrete recommendations. In this regard, the progressive measures that the Government has been taking to put effective enforcement mechanisms in place as per the recommendations of the human rights bodies are also promising. The

25 The restrictions on foreign funds under the law have been applied retroactively, to funds that had been received prior to the passing of the Proclamation, costing EWLA 10 million Birr (almost \$500,000 CAD) in frozen funds. As a result of the freezing of its account, EWLA had been forced to lay off almost 75 per cent of its staff and to significantly curtail its activities (Amnesty International, 2011, p.6).

establishment and incorporation of CPUs in the police stations, pilot projects to establish victim-friendly benches and a birth registration system are some of such measures that have direct impact in the administration of cases of child victims in the criminal justice system. The reporting procedures also evidenced how such monitoring schemes play a great role in terms of providing collaboration between the UN and other stakeholders. Ethiopia has benefited from the support of UNICEF during the initiation of pilot projects to set up a birth registration system and in the course of building the capacity of law enforcement and judicial organs through training programs.

Furthermore, individual complaint procedures have their own role in influencing change in law and practice beyond ensuring legal remedies for victims of human rights violations. Negash's example highlights an important moment of change, as human rights advocates struggle to overcome harmful traditional practices and establish a new pattern for investigating and prosecuting abduction in Ethiopia. This individual communication opens a window on a struggle in Ethiopia between deeply held rural and tribal traditions and a quest to establish internationally recognized legal standards in societies that have long been without them.

This chapter also clearly demonstrated the impact of NGOs in safeguarding international human rights obligations. As the experience of local advocacy organisations such as EWLA clearly shows, the preparation of shadow or alternative reports to the Committee (CEDAW), the advocacy work during the revision of the Family and Penal Codes, as well as the individual complaint communicated to the ACHPR are exemplary roles. Such pressures will alert the Government of Ethiopia to adequately protect the

rights of child victims and ultimately ensure its compliance with international human rights laws.

CHAPTER 6 CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Recognizing children's special vulnerability to violence such as sexual violence, the international child rights frameworks provide for special substantive rights to protect children against violence and special procedural rights to ensure the proper treatment of child victims in the administration of criminal justice. The CRC and other regional instruments such as the ACRWC oblige State Parties to take all appropriate legislative, administrative, judicial, and educational measures to protect children from all forms of sexual abuse and provide effective legal redress to rights violations.

One of the overarching principles of the CRC, as per Article 3, is the consideration of the best interest of children in all actions concerning them, including child victims seeking legal redress. This principle coupled with other fundamental principles such as non-discrimination, equality, participation, and inclusion, which are the basis of a HRBA, guide policies, laws and programs in the administration of child victims in the criminal justice system. A HRBA requires States, as primary duty bearers, along with other measures, to evaluate domestic legal apparatus to ensure that legislation, policies and practices are consistent with States' obligations under international human rights laws. A HRBA also requires States Parties to take necessary measures of a legislative, administrative, or judicial nature, and to provide appropriate remedies in case of violations, so as to ensure enjoyment of the established rights and freedoms.

In a bid to meet international child rights principles and standards, the Government of Ethiopia has undertaken some initiatives. The ratification of the major international and regional instruments concerning children, particularly the CRC and the

ACRWC, and the recognition of these treaties as integral parts of the laws of the land in the Constitution of the FDRE highlight the commitment of the Government to protect and promote the rights of children. The FDRE Constitution embraces, among other things, the principle of the consideration of the best interests of the child in all actions concerning children undertaken by public as well as private bodies (Art. 36). It further recognizes the necessity for care of children, to protect children against exploitation and abuse as well as the need for a favorable environment for children to develop their full potentials. Despite such commitments and pledges, the promises made for children are yet to be fully met. One of the areas where Ethiopia failed to meet its international commitment is ensuring the rights of child victims seeking legal redress.

This thesis provides evidence of the suffering of child victims as they go through the criminal justice process. The challenges encountered by victims from the time of the incident until the completion of the trial are primarily a result of lack of child-centred laws, policies as well as criminal procedures. Furthermore, lack of effective enforcement mechanisms including the lack of a birth registration system, the absence of a reporting mechanism for victims, the lack of child-centred units within the police and prosecutors' office, the lack of a child-friendly court environment and the absence of trained law enforcement and judicial personnel constitute the major bottlenecks to effectively implement national laws.

Female victims of sexual violence face additional challenges within the criminal justice system. The absence of gender-sensitive provisions in family and penal laws hinders the application of international human rights principles at a national level. Until recently, most of the laws did not provide adequate protection to girls. For example,

setting different minimum age of marriage for girls and boys is one area where the law was discriminatory against girls. Furthermore, the provision which provided criminal exemption in cases of subsequent marriage after abduction and rape was a major gap in the law that left female victims of sexual violence with no legal redress. In addition to the discriminatory provisions of the law, the current criminal law does not provide protection to girls/women in the private sphere since the law does not outlaw marital rape. In addition to gaps in the national law, cultural norms adversely affect the rights of female victims seeking legal redress. In Ethiopian culture where family honour is valued above girls' human rights, suspected loss of virginity of girls is perceived as compromising family honour and as a result, such incidents left unreported. Even if reported, they do not receive the required attention by law enforcement and judicial personnel. The criminal justice system, which is mainly male-dominated, is highly influenced by cultural norms and perceptions toward sexuality and gender. As a result, the insensitivity of law enforcement and judicial personnel accounted for further discrimination to female victims within the criminal justice system.

These gaps in law and enforcement hindered the rights and freedoms of child victims in three major ways. First, child victims cannot get timely and effective legal redress. Second, perpetrators of sexual violence frequently receive light punishment for their acts, and often escape criminal responsibility. Third, the lack of a child-centred criminal justice system exacerbates the suffering of child victims as they take part in an adult centred criminal proceedings. Ultimately, these factors limit children's access to justice and increase the rate of recurrence of violence against children. In addition to this, children lose their trust in the justice system. In sum, this study shows that much remains

to be done to address the problems faced by child victims and to ensure compliance with international standards.

While the existing unfavourable treatment of child victims in the justice system is a result of interplay among various causes, the reporting mechanism, as part of the main human rights monitoring mechanisms, plays its own part in stimulating change in policy and practice. The review of Ethiopia's reporting practice to international and regional human rights bodies shows evidence of some promising progress in addressing these gaps, which will gradually ensure children's access to justice. One of the significant advantages of the reporting mechanism is the on-going constructive dialogues between the Government and human rights bodies which result in a list of recommendations for Ethiopia to implement. This procedure helped the Government of Ethiopia to review its national laws and practices regarding the implementation of the rights of children. In this regard, the harmonization of laws in light of international human rights principles is one of the major impacts of the reporting mechanism. Along with other child rights concerns, different aspects of sexual violence against children have been addressed in the recently revised Family and Penal Codes. Because of the recent law revision process, harmful traditional practices such as abduction and child marriage that put girls at a greater risk of sexual violence are outlawed and there is a more severe punishment for acts of sexual violence such as rape. Beyond the legislative measures, the recent promising initiatives to establish child-centred enforcement mechanisms including Child Protection Units (CPUs), Special Investigation and Prosecution Units for children and women, and victim-friendly benches are steps in the right direction to create a better environment for child

victims in the criminal justice system and ensure compliance with international human rights standards.

The reporting mechanism also offers an opportunity for non-State actors, such as NGOs that are mandated to protect the rights of vulnerable groups to fulfil their obligations by preparing shadow/alternative reports. Such reports provide human rights bodies with a clearer picture about the reality of children which might not otherwise be accurately represented in Government reports. Furthermore, the information gathering, report writing and deliberation processes also served as a platform for discussion among various departments of the Government as well as other stakeholders working in the area of child rights. The reporting mechanisms coupled with internal pressure as a result of the advocacy work of NGOs based on international human rights standards raises the consciousness of the general public and further fosters social mobilisation and creates a culture of respect for human rights.

Recognizing the multifaceted problems of child victims in the Ethiopian criminal justice system and appreciating the role of various actors and the need for multi-level interventions, I forward the following recommendations at the international, regional and national levels to ensure the full realization of the rights of child victims.

6.2 Recommendations

International level

Since the adoption of the CRC in 1989, the only monitoring mechanism to ensure States Parties compliance with international child rights obligations was the reporting mechanism. As a result, children or other vested organs on behalf of children could not submit complaints regarding specific violations of their rights under the CRC and its first

two Optional Protocols. The Third Optional Protocol to the CRC on a Communications Procedure, which was adopted in 2011 is hoped to give voice to children's testimonies in order to help them obtain the necessary remedy and improve their access to justice. The Committee (CRC) has to popularize the Third Optional Protocol and encourage States to ratify it so that potential complainants are aware of the availability of the communication procedure and utilize it effectively.

Furthermore, long delays in the delivery of country reports to human rights monitoring bodies undermine the potential impact of monitoring structures. The reporting practice in Ethiopia is no exception. Even though there are no sanctions for non-submission of reports in time, persistent non-submission of reports will not throw a positive light on the commitment of States Parties. Therefore, human rights monitoring bodies should continue to put pressure on States Parties to submit their periodic reports on time. With a view to ensure the effectiveness of the reporting mechanism, UN and other agencies should provide their continued support to States Parties in the course of gathering detailed and comprehensive information and compilation of reports, which in some cases are compromised due to a lack of adequate resources, which is often cited as an excuse for late reporting as in the case of Ethiopia.

Regional level

Comprehensive human rights framework such as the ACRWC has been put in place to protect the rights of children in Africa. However, due to lack of resources and capacities, the ACERWC, which is mandated to monitor and report on the fulfillment of child rights in Africa, suffers from a low profile and lack of visibility among member states, AU institutions and bodies, and African civil society including children and youth

(ACPF, 2010, p.12). Although the ACRWC is the main regional instrument on child rights, 13 States have not yet ratified the ACRWC while the CRC was ratified by all African States except Somalia. Furthermore, as of September 2010, among those States Parties which have ratified the ACRWC, only 14 have submitted their initial reports on the implementation of the Charter (ACPF, 2010, p. 7). The reporting practice in Ethiopia is clear evidence of ACRWC's lack of popularity and visibility. While the Government of Ethiopia has been submitting its reports periodically to the Committee (CRC) since 1995, it has only submitted its initial report in 2013 to the African Committee of Experts. The Committee's low visibility and lack of capacity, unless seriously addressed, will hamper this body from executing its monitoring role of examining States' reports, receiving communications and investigating violations of rights within the ambit of the ACRWC.

Enhancing the capacity of the ACRWC and other regional human rights bodies as well as widely popularizing the role of such bodies should be a priority within the AU so that they could effectively monitor the compliance of African States with their human rights obligations. Furthermore, civil society organizations should take more active roles with a view to widely popularize existing regional human rights monitoring mechanisms. Consistent lobbying and pressure from civil society could be an effective way to hold African States accountable for the commitments they have made for the realisation of children's rights using the already existing human rights framework at a regional level.

Efforts need to be exerted to facilitate and improve the flow of information among regional monitoring bodies and other stakeholders. As in the case of the UN human rights monitoring bodies, States Parties' initial and periodic reports to the African human rights bodies and all other relevant documents need to be accessible to the public. For instance,

as mentioned in Chapter 5, Ethiopia's report, the initial and the only one so far, to the ACERWC is not accessible. This requires, among other things, developing a comprehensive information data base system with a view to make all States Parties' reports and other materials accessible to the public and designing information dissemination strategies to popularize the work of ACERWC and other regional human rights bodies.

National level

As a sign of demonstrating political will and commitment to the improvement of the protection of the rights of child victims seeking legal redress, the Government has to revisit its legal apparatus and take further legislative measures as per the recommendations of human rights monitoring bodies. The on-going harmonization process of national laws in light of CRC and other major child rights instruments should be strengthened. The Government should ensure the inclusion of females in the legal reform process with a view to adequately reflecting the lived realities of girls and women in the legislation process. As part of its legislative measures, the Government needs to ratify the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure with the aim to provide child victims of violence with greater access to justice. Moreover, the revision of the Criminal Procedure Code should be given priority to address a substantial portion of the existing gaps and problems in the administration of cases of children in criminal proceedings.

As the key guarantor of rights and primary duty bearer, the Government should ensure that specific and adequate financial and other allocations are provided in the annual budgets and systematically disbursed to all ministries and agencies to implement

the rights of children at a national level. Strengthening the capacity of judicial and law enforcement organs should be further reinforced and problems related to financial resources and skilled manpower should be adequately addressed. The Government should design adequate training programs on human rights and gender issues to the police, public prosecutors and the judges. Such capacity-building training programs could help law enforcement officials to adequately fulfill their role as protectors of human rights and respond to cases of sexual violence in a gender-sensitive manner. The recent initiatives of child-focused enforcement mechanisms including the establishment of specialized units for children within the law enforcement and judiciary bodies need to be rolled out throughout the country to ensure child sensitive and friendly treatment in the criminal justice process.

NGOs should continue to play an active role in lobbying for the Government to pay more attention to the significant role of human rights supervisory systems. The participation of NGOs such as EWLA in the reporting process is an encouraging effort. However, the active participation of NGOs in human rights activities is fully dependant on the political will of the Government. This is of particular relevance in light of the new 2009 legislation restricting civil society organizations that receive funding from foreign sources from human rights and advocacy activities. This restricts the ability of NGOs to engage in advocacy work, including pressuring and lobbying for policy and practice change. Therefore, the Government has to create an enabling environment for NGOs working in the area of human rights. The Committee on CEDAW expressed its serious concern and requested the Government of Ethiopia to amend the law with a view to lifting the funding restrictions on local human rights NGOs, and any other restrictions on

activities of local and international NGOs, which are incompatible with international human rights standards (CEDAW/C/ETH/CO/6-7, p. 10).

All the above-mentioned efforts need to be complemented with positive attitudinal change in all segments of society to the issue of sexual violence against girls, in particular and children's rights in general. The impact and effect of patriarchal structures and institutions combined with harmful traditional practices created an obstacle on the ability of children, particularly girls to obtain and enjoy their human rights. The deeply entrenched societal norms that compete with human rights norms relegate the female child to the lowest position in the social strata. To solve this problem, the Government and civil society organizations need to educate parents, communities and the general public about the harmful effects of sexual violence against children by organizing awareness- raising and advocacy campaigns and creating a zero-tolerance policy on violence against children. Society must be made aware of the severity of sexual violence and must get rid of the culture of acceptance and apathy, which have for long encouraged violence. This would ultimately eradicate the culture of complacency toward violence and empower children, particularly girls and the community to bring perpetrators to justice. Children need to overcome their victimization by defending their rights and becoming active rights-holders throughout the criminal justice process.

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