

POLICY BRIEF ON:

FAMILY LAWS AND THE RIGHTS OF VULNERABLE FAMILY MEMBERS IN ETHIOPIA



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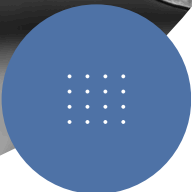
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A Policy Brief: Family Laws and the Rights of Vulnerable Family Members in Ethiopia

(the FDRE, the Amhara, and the Benishangul-Gumuz Regional States Experience)*

1. BACKGROUND

Family constitutes a basic naissance of every community and an essential unit of statehood that warrants legal protection.[1] As such, all states across the globe, regardless of the varying socio-economic and cultural contexts, have developed legal regimes governing family relations. Needless to say the family remains one of the major social fabrics accorded strong legal and societal protection. Apart from the varying societal normative standards tolerated to operate across different cultures, the formal state apparatus puts policy-level, constitutional, legal, and administrative frameworks in place to protect the different aspects of family relations.

The FDRE Constitution guarantees family rights to everyone and recognizes that the family is the natural and fundamental unit of society and thereby deserves protection by society and the State.[2]

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[1] Lawrence Meir Friedman, *Private Lives: Families, Individuals, and the Law* (Harvard University Press, London, England) (2004) 6.

[2] The FDRE Constitution, Art. 34.

Again, with the view of accommodating societal values, the Constitution recognizes marriage concluded according to culture and religion; customary and religious courts in entertaining personal matters including family disputes.[3] Furthermore, the Constitution provides for the promulgation of specific legislation amid regulating family relations. Following this constitutional provision, the Federal and Regional Governments have come up with family laws for each respective jurisdiction.

The last two decades provided us with ample opportunities to learn about the gaps and the practical challenges in the implementation of the family laws of the federal government and the regional states. The prevalent practice of polygamous marriage and the complication of the division of property during divorce[4] and cassation division diverging rulings at different times over the matter[5]; misguided family arbitrator role; and low-level legal awareness of the women were visible challenges of the family law regime.

[3] Ibid. Art. 34(4 & 5).

[4] Jetu E. Chewaka, 'Bigamous Marriage and the Division of Common Property Under the Ethiopian Law: Regulatory Challenges and Options' (2014) 3 Oromia Law Journal 78, 98–108.

[5] The rulings of the courts vary in relation to deciding the effect of polygamous marriage on the division of property. The FSC Cassation Bench, however, sides with the interpretation that the principles governing the common property under the RFC and other regional Family Codes could “*for stronger reasons*” and “by the operation of the law”, be applicable to marriages in which two or more wives exist.

There is also a plethora of evidence about gaps and challenges in the implementation of the federal and regional family laws of Ethiopia which include betrothal, division of common property, maintenance, and women empowerment.[6]

The right of children is another horizon of the family laws. The issue of child marriage in Ethiopia is also at the stage of its highness.[7] In addition, the best interest of the child, maintenance, paternity, and related rights are the concerns of the family laws. While the problems highlighted above exist in the country as a whole, the magnitude and severity of the problem can be more acute in regional states such as Amhara and Benishangul Gumuz.[8] Thus, the research employed for the development of this policy brief was designed to study the normative gaps and practical challenges in the implementation of the RFC and the family codes of the ANRS and the BGRS *visa vis* the rights of women and children and to propose tenable recommendations and advocacy tools for human rights actors in the field of family law.

[6]Interview with Anonymous - Family Law Lecturer at Debre Berhan University, 'Human Rights Issues Under the Amhara National Regional State Family Code' (28 February 2024).

[7]Anastasia J Gage, 'Child Marriage Prevention in Amhara Region, Ethiopia: Association of Communication Exposure and Social Influence with Parents/Guardians' Knowledge and Attitudes' (2013) 97 *Social Science & Medicine* 124.

[8]Mikyias Abera and others, 'Early Marriage and Women's Empowerment: The Case of Child-Brides in ANRS, Ethiopia' (2020) 20 *BMC International Health and Human Rights* 30.

2. METHODOLOGICAL OVERVIEW

The major objective of this policy brief is to indicate the implementation of the family codes of the federal government, the ANRS, and the BGRS and identify gaps and challenges to table further intervention areas amid bringing more human rights-friendly law regimes. The study, which has served as a base for this policy brief, has employed both doctrinal and non-doctrinal legal research methodology. In addition, the study followed a qualitative analytical research approach which aimed to assess the implementation of the family codes of the research areas. The geographic study site of the study includes the Federal Government, Amhara, and Benishangul Gumuz National Regional States. Justice offices, courts, women and social affairs offices, national human rights institutions, local CSOs, practicing lawyers, and academic institutions in the study areas were targeted by the study. A purposive sampling technique has been employed to select the informants from the target institutions.

3. KEY FINDINGS

3.1. Women's Rights Protections under the Family Laws

The finding uncovers anomalies related to betrothal engagement, the prevalence of violence against women during marriage, and divorce-related women's rights violations.

A) Betrothal

Despite the silence of the federal family law, the regional family laws under study recognized betrothal with the consent of the parties. However, the research revealed that the practice has opened a room for the fiancée's families to manipulate the rules on marriageable age and obtain the consent of the woman. The parents seriously hampered the rights of women and it served as a loophole for early marriage and/or marriages disregarding the consent of the fiancée.

B) During Marriage (Including Prevention of Domestic Violence)

During the conclusion of marriage, consent and marriageable age are repeatedly violated. The reason for such violation is associated with the prevalent unacceptable practices in the research areas and poor implementation of the family laws.[9] A marriage concluded without securing full and free consent leads to inevitable domestic violence. In addition to this, the negative perception towards equality in the community which recognizes man's superiority in a household is the base for most of the domestic violence committed.[10]

Despite the recognition of marital rape in Western jurisprudence, the family laws of the research areas failed it. Rather, the codes make sexual relations a duty and there is no room to protect her from sexual relations in the marriage committed against her will.

[9] Interview with Assistant Professor of Law and Free Legal Aid Centre Coordinator, Bihar Dar University (September 26, 2024).

[10] Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024).

On the ground, a considerable number of women are blaming the existence of marital rape in their marriage, and it is becoming a major reason for violence-related divorce.[11] The other challenge related to domestic violence is the lack of evidence, since the crime is committed out-of-sight behind bars. The court couldn't pronounce judgment based on the evidence produced by the victim. This enabled the offenders to escape from justice and the violence to be committed frequently.[12]

C) Divorce Process and Related Issues

The first challenge of women's rights protection during divorce is related to access to justice. It is seriously hampered by poor economic empowerment of women; a low level of awareness of legal rights; and inadequate and inaccessible legal infrastructure. The second challenge is related to the perception of the elders of the community serving as arbitrators in disputes related with family cases. The elders often push women to endure difficult situations, stay resilient, and stay with their husbands regardless of the bad family circumstances. This position of elders sometimes resulted in serious repercussions against the health and life of the women. The third challenge is related to the cooling period. Experts suggest that a cooling period be granted to consider the scenarios on the ground. Violence is imminent if the relationship is tense and the possibility of maintaining the marriage is zero.

[11] Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

[12] Interview with an expert, Addis Ababa City Administration WCSAO (October 16, 2024).

In such conditions, courts must deny the cooling period and pronounce the divorce. The fourth challenge is related to the division of property. Management and the ownership (at least the title deeds) of property are most of the time at the hands of the husband. During the process of litigation for divorce, the husband transfers the ownership of common property to their next of kin which highly affects the interest of women and takes elongated process to ascertain her right over those properties. Hence, the courts shall order attachment, as a mandatory measure, until the effect of the divorce over the properties is declared. The fifth captivating fact about the family law regime and its administration on the ground is related to the custody of children. Following divorce, the custody of children is assigned to women for the maintenance of the best interest of the child. For instance, the Amhara Region Family Code under Article 124(3) states that every child under the age of five should live with their mother. This provision is crafted in line with the best interest of the child. This burden coupled with poor economic status and the silence of the laws regarding the mechanisms to compensate the mother for taking such responsibility disadvantaged the lives of women. The six issue following the pronouncement of divorce is related to the maintenance for the child. Assigning the custody of the child to the mother in the absence of sufficient maintenance is prevalent in the study areas. The seventh challenge is related to bigamous marriage, none of the codes have a provision on manner of partition of property upon dissolution of a bigamous marriage.

D) Post-Divorce Protections

Considerable number of women remain tied to their ex-husbands, who frequently fail to provide adequate maintenance for child support and interfere in their lives, hindering their ability to remarry. The back-forth contact with the ex-husband most of the time increases her vulnerability to violence. On the other hand, courts fails to pronounce restriction orders considering such kind of situations. Article 210 of the ANRS FC, article 223 of BGRS FC, and article 199 of RFC provide that there will be no obligation to supply maintenance after divorce. However, it is recommended that it is better to consider good cause exceptions such as inability to engage in wage-earning works because of incurable illness inflicted during marriage and domestic violence. The other gap in the law is related to the period of widowhood. The family codes of the study areas requires the woman to wait until the elapse of six months. If she wants to remarry within this period, she is required to provide a medical certificate to prove she is not pregnant or give birth....[13] However, there is no restriction on the rights of the husband on this issue. Hence, to ensure equal treatment, it is recommended to provide the right of the woman to remarry immediately as a principle and requiring the production (at the office of the civil status registering the new marriage) of medical evidence that she is not pregnant as an exception.

[13] See Art. 27 of ANRSFC; Art. 16 of RFC and Art. 37 of BGRS FC.

3.2. Children's Rights Protections under the Family Laws

The best interest of the child is protected by the constitution and the family laws. Maintenance, custody, and paternity issues are addressed under the laws to keep the best interest of the child. The maintenance debtors are required to pay maintenance as long as they have an income. Considering this practise, so as to avoid their maintenance duty, some of the debtors tend to terminate their employment contract.[14] The other gap in the law is the lack of stipulation for the minimum amount of maintenance to be paid for a child.

The other challenge related to child rights protection is related to DNA testing to ascertain paternity. The physical accessibility and cost of DNA examination is a challenge to the claimants.[15]

3.3. Implementation Challenges

Access to Justice, Litigation Costs and Court-Related Fees issues are front-line reasons for the proper implementation of the family laws. The state and federal courts are administering a high number of family-related cases. This in turn becomes a reason for caseload resulting in delay of judgments. Despite this fact still, there are significant members of the community who have no access to justice as a result of physical inaccessibility, litigation costs, and court-related fees.

[14] Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

[15] Interview with Experts, EWLA main Office (October 14, 2024).

In addition, the patriarchal community that shields the man who commits violence against women and discourages women not to submit the case before the court of law hinders the right of women to access to justice. Inadequate funding and resources for enforcement mechanisms and the women being dependent upon their husbands' income worsen the problem. The legal aid inaccessibility and accumulation in urban centers also challenged the enforcement of family laws.

Education and training gaps have a role in the challenges against the enforcement of the family laws. Inadequate training (for law enforcement organs and the judiciary); lack of women and child-friendly institutions; lack of institutional coordination and inconsistent application of the laws are additional reasons for poor implementation of family laws.

3.4. Recommendations



The Recognition of Betrothal

The provisions need to be revisited by the state councils to amend the law following the CEDAW approach, which prohibits betrothal arrangements.



The Amount of Maintenance

The current practice is full of inconsistent decisions by courts. Therefore, there should be a customized guideline for regions, such as adopting directive No. 1/2024 of the Federal Government.



Domestic Violence

The laws shall deal with the mechanisms of prevention of domestic violence, providing protection and legal remedies for women. Divorce as a result of domestic violence, it should be explicitly recognized under the law as a mandatory provision to enable the woman to get a considerable amount of property as compensation for the violation.



Marital Rape

The federal legislature and the state councils must acknowledge the existence of marital rape under their laws and reconsider the provision on the duty of sexual relation and revisit the legal elements of the crime of rape under Article 620 of the Criminal Code.



Common Property Partition during dissolution of bigamous marriage

The family laws shall cover such issue to protect the interest of women engaged in such marriage in line with religious or customary practice.



Cooling Period

needs to be evaluated in terms of imminent or possible danger against the woman and the role of elders should be limited in such cases. Hence, there is a need to identify cases that may not need a cooling period, a shorter cooling period, and a three-month cooling period based on the reason for divorce and the possibility of violence against the vulnerable party.

To this effect, it is recommended to amend Article 334 of the ANRS FC and Article 347 of BGRS FC to shift the mandate to issue directives from the Regional Council to the Women, Children, and Social Affairs Bureau of the respective regions.



Post-Divorce Maintenance

Revisiting the provisions on persons entitled to maintenance, needs to be qualified on the ground of the reason for divorce (illness, victim of domestic violence). By doing so the Family Laws shall provide the possibility of allocating post-divorce maintenance to the partner who is unable to earn his/her livelihood because of illness before/during the dissolution of the marriage and victim of violence from ex-spouse.



To bridge the gaps and overcome the challenges it is necessary to

Organize awareness-raising programs for the society; ensure public participation in the activities and advocacy efforts are priceless and the activities need to address the rural areas at large.



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