



**Family Laws and the Rights of Vulnerable Family Members in
Ethiopia: Assessments of the Federal, the Amhara, and the
Benishangul-Gumuz's Laws and Practices**

A Research Report

Researchers:

- 1) Yirgalem Germu (Lecturer of Law, Hawassa University
Email: yirgalemg45@gmail.com Phone No. +251 912 01 46 22)
- 2) Andualem Nega (Assistant Professor, Hawassa University
Email: andualemnega1983@gmail.com Phone No. +251 913 29 81 33)
- 3) Dires Gashaneh (Lecturer of Law, Debre Berhan University
Email: diresgashaneh@gmail.com Phone No. +251 911 27 27 08)

This research has been produced with the assistance of the Ethiopian Women Lawyers' Association (EWLA). The contents of this work are the sole responsibility of the authors and can in no way be taken to reflect the views of EWLA.

November 5, 2024

Contents

Acronyms.....	iii
Contents.....	i
Abstract.....	iiiv
Chapter One.....	1
1. Introduction.....	1
1.1. Background of the Study.....	1
1.2. Statement of the Problem.....	4
1.3. Objectives of the Study.....	6
1.3.1. General Objective.....	6
1.3.2. Specific Objectives.....	6
1.4. Research Questions.....	7
1.5. Methodology of the Research.....	8
1.5.1. Study Site and Target Population.....	8
1.5.2. Samples and Sampling Procedures.....	9
1.5.3. Sources of Data and Data Collection Tools.....	9
1.5.4. Data Analyses Techniques.....	11
1.6. Significance of the study.....	11
1.7. Ethical Considerations.....	11
1.8. Organization of the Research.....	12
Chapter Two.....	13
2. The Rights of Women and Children in Family Law: Assessments of the Three Jurisdictions.....	13
2.1. Women’s Rights Protection under Family Laws.....	13
2.1.1. Introduction.....	13
2.1.2. Protections under Human Right Instruments: Issue Related with Marriage and Family.....	15
2.1.3. Marriage and Family Rights under International Human Right Instruments.....	18
2.1.4. Women's Rights Protection under National Family Laws: FDRE, ANRS, and BGRS in Focus.....	20
2.2. Child Rights Protection under Family Laws.....	22
2.2.1. Introduction.....	22

2.2.2.	Child Rights Protection under International Legal Instruments ...	24
2.2.3.	Child Rights Protection under Family Laws: the FDRE, ANRS, and BGRS in Focus	32
Chapter Three		48
3. Gaps and Challenges in the Implementation and Penetration of the Family Laws of the Three Jurisdictions.....		48
3.1.	Women's Rights Protections under the Family Laws.....	48
3.1.1.	During Betrothal	52
3.1.2.	During Marriage (Including Prevention of Domestic Violence)....	53
3.1.3.	Protection of Women in Irregular Union	54
3.1.4.	Divorce Process and Related Issues	55
3.1.5.	Post-Divorce Protection for Women from Abuse	57
3.2.	Implementation Challenges against Women's Rights Protection.....	58
3.3.	Children’s Rights Protections under the Family Laws.....	62
3.3.1.	The Best Interest of the Child	64
3.3.2.	Child Custody and Maintenance	65
3.3.3.	Protection of a Child from Abuse	68
3.3.4.	Paternity	68
3.3.5.	The Rights to Education and Health	70
3.4.	Penetration of Family Laws in the Society	70
3.5.	Positive Changes	72
3.6.	Divergence between the Family Law and the Demand of the Society .	72
3.7.	Barriers against the Implementation the Family Laws.....	77
3.8.	Possible Solutions to Bridge the Gaps and Challenges	80
3.9.	Activities to be performed by EWLA.....	81
3.10.	Institutions Identified to collaborate with EWLA.....	84
Chapter Four		85
Recommendatory Conclusion and Mechanisms for Strategic Intervention		85
References.....		89
Annexes.....		95
	KII Guides.....	95
	KII Data Summary Sheet.....	107

Acronyms

AA	Addis Ababa
ACRWC	African Charter on the Rights and Welfare of the Child
ANRS	Amhara Regional State
ANRSFL	Amhara Regional State Family Law/s
BGNRS	Benishangul Gumuz Regional State
BOWSA	Bureau of Women and Social Affairs
CCI	Council of Constitutional Inquiry
CRC	Convention on the Rights of Children
CSOs	Civil Society Organizations
DD	Dire Dawa
EHRC	Ethiopian Human Rights Commission
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal Democratic Republic of Ethiopia
FSC	Federal Supreme Court
HOF	House of Federation
HPR	House of People's Representatives
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural
KII	Key Informant Interview
RVC	Revised Family Code of Ethiopia
WCSAO	Women, Children and Social Affairs Office

Abstract

The family laws of the state are expected to embody and ensure the protection of the human rights of women and children besides ensuring the stability of the nucleus of the society. General, normative gaps and practical challenges that undermine the rights of the human rights of vulnerable family members must regularly be assessed, examined and referred to solutions. Thus, this research is designed to study the normative gaps and practical challenges in the implementation of the RFC and the family codes of the ANRS and the BGNRS vis-a-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. The study is designed as mixed research that embodies both doctrinal and non-doctrinal components. For this purpose, the major stakeholders in study areas interested with the protection of women's and children's rights have been made part of the study subjects.

The study has found that the family laws of the study area have made a meaningful change in the protection of women's and children's rights, especially in matters such as marriage, divorce, and the right to administer and enjoy property. Major parts of the code are based on the human rights protections of the FDRE Constitution, the regional constitutions and international instruments ratified by Ethiopia. However, the legitimacy of the laws in the society, limited awareness and gaps in implementation of the law are identified as obstacles to the realization of the rights under the laws. Additionally, the study indicated major gaps in the law and possible solutions. The study recommends that to bridge the gaps and overcome the challenges, it is necessary to organize awareness raising programs to the society, ensuring public participation in the activities and initiating advocacy efforts. For the realization of its activities, EWLA may collaborate with government institutions at regional and federal levels, CSOs, religious institutions, academic institutions, rehabilitation centers, Edir and institutions working for the protection of Human rights.

**Keywords: Child Rights, Divorce, Domestic Violence, Marriage,
Women's Rights**

Chapter One

1. Introduction

1.1. Background of the Study

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 mention, Ethiopia is not an exception to this conclusion as, throughout its history all the way from the era of the Fetha Negest to date, family remains to be one of the major social fabrics to get accorded a strong legal and societal protection. Apart from the varying societal normative standards tolerated to operate across the different cultures, the formal state apparatus puts in place policy level, constitutional, legal and administrative frameworks aimed at the protection of the different aspects of family relations.

Amongst, the pioneering importance of the FDRE Constitution comes first. The Constitution, in the first place, guarantees family rights to everyone and gives a clear recognition to the already established fact that family is the natural and fundamental unit of society which thereby deserves protections by the society and the State.² Again, with the view of accommodating societal values, the Constitution rightly recognizes the different roles of religious and customary laws and practices such as the recognition of marriage concluded according to culture and religion, the acceptance of religiously justified polyamory marriage, and the role of customary and religious courts in entertaining personal matters including family disputes.³

Other provisions of the Constitution that guarantees the right to equality, the right of women and the right of children are also part of the constitutional

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

² FDRE Constitution, Article 34.

³ See Article 34/4 & 5 of the FDRE Constitution.

package of protection offered in the form of human rights to family.⁴ Furthermore, the Constitution provides for the promulgation of legislations specific aimed at regulating family relations. Here, it is imperative to grasp the overall legislative architecture of the constitutional order and locate the place of family laws. After the coming into force of the FDRE Constitution on 21st August 1995, Ethiopia has officially been reconfigured as a federal state composed of the central government and constituent units known as regional states. The Constitution that has architected the federal system apportions power between the federal government and the regional states based on the overarching principles and theories familiar in the realm of the international political discourses.⁵ Accordingly, it divides legislative powers between the two governmental layers as exclusive, concurrent, residual, and framework powers.⁶ However, the answer to the question ‘whose power is it to enact family laws’ was not clear from the constitutional texts. The two contending views were between Article 55/6 that empower the federal government to enact ‘civil laws which the HOF deems necessary to establish and sustain one economic community’ and Article 52/1 that reserves residual powers (supposedly including enacting family laws) to regional states. It has even been subjected to judicial contestation in the form of constitutional adjudication when the Prime Minister’s office requested the HOF to decide if the federal government has the competency to make a family law applicable to all regions. Ruling on the matter, the CCI (the advisory body to the HOF) has decided that the power to enact family codes is the competence of regional states and the federal government can issue a family code applicable only to Addis Ababa and Dire Dawa.⁷ The two major reasons underlying the decision of the CCI were the allocation of residual power under Article 52/1 of the Constitution and the

⁴ See Article 25, Article 33 and Article 35 of the FDRE Constitution.

⁵ Alefe Abeje Belay, ‘Evaluating the System of Power Sharing Ethiopia in Light of Arend Lijphart’s Model of Power Sharing’ (2013) 9 *European Scientific Journal* 258, 258.

⁶ See Article 50-56 of the FDRE Constitution.

⁷ Ruling of the Council of the Constitutional Inquiry (CCI) *Miazia* 26 1992 E.C. (May 2000).

prevailing fact that the enactment of a family code is intertwined with the culture and religion of society that are region specific.

Accordingly, in 2000, the federal government has enacted the RFC with a view of governing family relations in the two cities under its administration, Addis Ababa and Dire Dawa. Subsequently, seven of the nine regional states enacted their own family codes.⁸ As these regional family codes mostly replicate the RFC, some scholars contend that the federal family law, beyond regulating family relations in the two cities, does also served as a model instrument for regional family codes.⁹ In sum, today, reflective of the federal state structure of the country and the legislative power division installed by the constitution, the federal government and regional states have their own family laws, issued in the form of codes, applicable to their respective residents. Counted from today, these laws have served for more than twenty years, from the turn of the millennia to date.

Regulating family relations, family laws have the purpose of enforcing the human rights of individuals engaging in family relations in deferent capacities. The provisions of the law are expected to be in agreement with the internationally accepted human rights values. Specifically, they are expected to recognize and enforce the rights of vulnerable family members such as women and children. As such, this research is designed to assess the gaps and implementations challenges of the RVC and the family codes of the ANRS and the BGNRS from the perspectives of human rights of vulnerable family members such women and children.

⁸ Except Afar and Ethiopian Somali Regional States, the rest seven states of the federation, i.e. Amhara, Oromia, Tigray, SNNP, Benshangul, Gambella and Harari have enacted their own family laws after the promulgation of the federal Revised Family Code. In Ethiopian Somali the Ethiopian Civil Code of 1960 as a statutory, and customary (Xeer) and Sharia laws operate simultaneously. Berihun Adugna Gebeye, *Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State, Women in Society* Volume 6, (2013) ISSN 2042-7220 (Print) ISSN 2042-7239 (Online). Afar has the same practice.

⁹ Mehari Redae, 'Some Points in Understanding the Revised Family Code', Volume 1 (Amharic Version, 1995 EC) 6.

1.2. Statement of the Problem

The RVC was highly enthused by human right groups and indeed attained, with some reservation, its objectives.¹⁰ The drafting process of the code highly solicited the meaningful participation of human right advocacy groups such as EWLA and the Women's Affairs Standing Committee of the House of Peoples' Representatives.¹¹ Theoretically, the same characterization may generally work for the regional family codes as they have replicated the main values of the RFC. However, perfection cannot be claimed and there are some reservations in the content of the codes already identified by research. As concluded by Mulugeta, for example, 'turning blind eyes to betrothal, withering the institution of family arbitration and abolishing customary forms of adoption' in the names of human rights and modernity showcase some of the scenario in which the advocacy of prominent human rights groups resulted in unintended consequences of affecting the rights of vulnerable family members such as women and children. Other researchers, likewise, suggested for the revision of the RFC in its contents with a view of entrenching unequivocal prohibition of child and polygamous marriages, towards providing for women's right to stay at residual home during divorce proceeding, and in favour of other more transformative women enabling measures.¹²

Moreover, 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. Many studies tried to identify several issues that are arising as challenges in the implementation of the family codes of regions and the federal government. The complication brought

¹⁰ Interview with *Mulugeta Tadesse, ex-Federal High Court Assistant Judge in Family Bench and now private practitioner, interviewed on February 11, 2010, as cited in Mulugeta Getu, 'Departure of Ethiopian Family Laws: The Need to Redefine the Place of Societal Norms in Family Matters' (2015) 4 HLR.*

¹¹ Mulugeta Getu Sisay, 'Departure of Ethiopian Family Laws: The Need to Redefine the Place of Societal Norms in Family Matters' (2015) 4 *Haramaya Law Review* 81, 89.

¹² 'A Review of Ethiopian Law from a Gender Perspective' 61 <<https://africa.unwomen.org/en/digital-library/publications/2022/04/a-review-of-ethiopian-law-from-a-gender-perspective>> accessed March 2024.

about by the legally prohibited but practically prevalent practice of polygamous marriage on division of property during divorce is the one that has remained as a top agenda for academic discourses and judicial jurisprudences in realm of family law.¹³ This has, indeed, been a subject of continues judicial engagement as the cassations bench of the federal and the regional Supreme Courts has been giving diverging rulings at different times over the matter.¹⁴

The other agenda already outlined above in the overall policy direction and the administration of family matters is the place of cultural and religious mechanisms known generally as family arbitrators. The RFC turned blind eyes against such systems in the names of human rights values and modernization. However, as studies showed, this is resulting in specifically harming the rights of women as the state mechanisms operate not on par with some societal values that could have afforded better protection for women. Indeed, in multicultural federal systems, the well-working cooperation of the State and the ethno-religious groups is necessary for the realization of women's rights in the context of family law.¹⁵ Coupled with the low level of awareness in the part of women on how to utilize the formal legal procedures, the abolishment of the informal mechanism denied women of better protection, some argue.

The issue of child marriage in Ethiopia is also at the stage of its highness at least partially implicating problems in the overall of implementation of family laws including lack of successful dissemination.¹⁶ There are also plethora of

¹³ 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.

¹⁴ 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.

¹⁵ Sisay Kinfu, 'Protection of Women's Rights in the Family Law Arena in Ethiopia' (2023) 16 <https://www.researchgate.net/publication/373490534_Protection_of_Women_s_Rights_in_the_Family_Law_Arena_in_Ethiopia>.

¹⁶ 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.

evidences about other gaps and challenges in the implementation of the federal and regional family laws of Ethiopia pertaining to the different aspect of family relations such as betrothal, property effects of irregular union, division of common property, maintenance and general women empowerment measures that are directly impacting the realization of the rights of women and children.¹⁷

While the problems highlighted above exists in the country as a whole, the magnitude and severity of the problem can only be more acute in regional states such as Amhara and Benishangul Gumuz.¹⁸ On the other end, because of the fact that family matter, no matter what the text of the law says, highly involves cultural and religious practices that in one or another way affect the rights of the same groups. General, normative gaps and practical challenges that undermine the rights of the human rights of vulnerable family members must regularly be assessed, examined and referred to solutions. Thus, this research is designed to study the normative gaps and practical challenges in the implementation of the RFC and the family codes of the ANRS and the BGNRS 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.

1.3. Objectives of the Study

1.3.1. General Objective

The general objective of the research is to assess the implementation of the family codes of the federal government, the ANRS and the BGRS and identify gaps and challenges with a view of tabling further intervention areas amid at bringing more human rights friendly law regime in the study sites.

1.3.2. Specific Objectives

In the course of attaining the above general objective, the research will also address the following specific objectives.

¹⁷ Interview with Anonymous - Family Law Lecturer at Debre Berhan University, 'Human Rights Issues Under the Amhara National Regional State Family Code' (28 February 2024).

¹⁸ Mikyas 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.

- Analysing the family laws of the federal government, the ANRS, and the BGRS against the underlying human rights values of women and children;
- Identify specific provisions that impact the rights of women and children within the family context, including marriage, divorce, inheritance, custody, and domestic violence;
- Assessing the implementation and penetration of the family laws of the federal government, the ANRS and the BGRS;
- Identifying the differences between the existing legal frameworks and the needs of the society in each jurisdiction, particularly in terms of gender equality, child protection, and access to justice;
- Identify challenges that impede the implementation of the family laws of the federal government, the ANRS and the BGRS;
- Proposing lists of targeted recommendations to address the identified gaps and barriers.

1.4. Research Questions

To address the above specific objectives, the research devised the following specific questions.

- How do the family laws of the federal government, the ANRS, and the BGRS are in alignment with the underlying human rights values of women and children?
- Which specific provisions of the family laws of the federal government, the ANRS, and the BGRS impacts the rights of women and children within the family context, including marriage, divorce, inheritance, custody, and domestic violence?
- What looks like the implementation and penetration of the family laws of the federal government, the ANRS and the BGRS?
- What are the nuances between the existing legal frameworks and the needs of the society in each jurisdiction, particularly in terms of gender equality, child protection, and access to justice?

- What are the challenges that impede the implementation of the family laws of the federal government, the ANRS and the BGRS?
- What targeted recommendations are there to address the identified gaps and barriers?

1.5. Methodology of the Research

The study is designed as mixed research that embodies both doctrinal and non-doctrinal components. In the doctrinal sections, the research systematises, rectifies and clarifies the law and literature already produced in the existing knowledge. This method will rely extensively on using court judgments and codes to explain law. This has an assumption that the character of legal inquiry is derived from law itself. The non-doctrinal component is a contemporary approach of studying law in the broader social and political context with the use of a range of other methods taken from disciplines in the social sciences and humanities. The implementation and penetration of the family laws; the needs of the society on gender equality, child protection, and access to justice; and human right implications will be addressed through this method.

Likewise, the study follows a qualitative analytical research approach which aimed to assess the implementation of the family codes of the federal government, the ANRS and the BGRS. Through this approach, it will identify gaps and challenges for further intervention against the laws in the study sites. The theoretical perspective will shadow rights-based approaches. Qualitative research involves a naturalistic approach such as open-ended interviews, which capture a wide range of information based on the perceptions of participants. Accordingly, those tools which are relevant for qualitative research inquiry such as interview, case analysis and personal observation will be devised. This approach creates an enabling environment to conduct whole range of investigative, analytical, critical, and theoretical synthesis of laws and facts.

1.5.1. Study Site and Target Population

The geographic study site of this study includes Addis Ababa and Dire Dawa City administrations, and the Amhara and Benshngul Gumuz regions. Justice

offices, courts, women and social affairs offices, national human rights institutions, local CSOs and academic institutions in the study are areas are targeted by this study. The population comprises judges, advocates, gender equality and women rights promoters, officials, cases, and the family laws of each region and the federal government.

1.5.2. Samples and Sampling Procedures

Purposive sampling technique is employed to select the informants from the target institutions mentioned above. This technique has been used with a view of soliciting relevant qualitative data from the most appropriate informants. Accordingly, the court, advocates, gender defenders and government offices. This sampling technique will help to select information-rich participants and to obtain adequate data on the implementation of family codes. The size will be depending on the qualitative research approach i.e. level of saturation. Cases will be selected systematically to represent the total case population and based on the merit of the case. Systematic sampling involves choosing samples in a systematic pattern by taking every *n*th element in the sampling frame until the total is reached.

1.5.3. Sources of Data and Data Collection Tools

The research uses both primary and secondary data. Secondary data is collected from published and unpublished secondary sources. Accordingly, legal review, books, journals articles, magazines, newspapers, government reports, online databases; government and institutional records; court cases, and other existing knowledge materials related with the research topic has been reviewed. Specifically, the FDRE Constitution, the constitutions of the two regions, the RFC, the family codes of the regions, international human rights instruments, relevant cassation decisions, and articles published about human rights, the rights of women and children, and family relations have been analysed against the objectives of the study.

Moreover, primary qualitative data have been collected through key informant interview conducted with respondents selected based on the sampling method

designed above. The key informant interviews have administered with the support of semi structured interview guides annexed to research report. The following table shows the list and composition of KII respondents of the study.

List of KII Respondents Participated in this Study			
No	Institution	Respondent	No.
Addis Ababa			
1	Federal First Instance Court Akaki Kaliti	Family bench judge	1
2	Ministry of Women and Social Affairs	Women rights expert and Children rights expert	2
3	AA Women and Children Affairs Office	Legal Director	1
4	EWLA	Main Office Experts	2
5	Ethiopia Human Rights Commission Main Office	Women rights expert and Children rights expert	2
6	Private legal practitioner sector	Consultant and attorney of law	
Area Total			8
Dire Dawa			
1	DD Women and Social Affairs Office	Women rights expert and Children rights expert	2
2	Private legal practitioner sector	Consultant and attorney of law	1
3	DD First Instance Court	Judge	1
4	EWLA	DD Branch office	1
5	Dire Dawa University	Lecturer and researcher of law	1
Area Total			6
Amhara National Regional State			
1	EWLA	Bahir Dar branch coordinator	1
2	Bahir Dar Woreda Court	Family bench judge	1
3	Private legal practitioner sector	Consultant and attorney of law	1
4	Bahir Dar University	Free Legal Aid Centre Coordinator	1
5	Ethiopia Human Rights Commission	Woman and children right department human right officer	1
6	ANRS BOWSA	Women Rights Expert and Children Rights Expert	2
Area Total			7
Benishangul Gumuz National Regional State			
1	BGNRS Supreme Court	Cassation bench judge	1
2	BGNRS Bureau of Women and Social affaire	Child rights expert and Women empowerment expert	2
4	Private legal practitioner sector	Consultant and attorney of law	1
5	Assosa University	A family law teacher and researcher	1

6	EWLA, BGNRS Office	Regional Coordinator	1
Area Total			6
Total Number of KII Respondents			27

Table 1: list of KII respondents participated in the study

1.5.4. Data Analyses Techniques

The data gathered from KIIs are transcribed from the local languages and then translated into English. The analysis is done using content analysis, through narrating and interpreting the issue and the results will be thematically presented in narrative form. The data from all sites and actors are analysed independently, and their realities, experiences, and contexts are explored in detail. The data then is organized, compiled, and compared against each other to examine similarities and differences, create common themes and sub-themes, and make them suitable for analysis thematically. Secondary sources are, likewise, presented in their flows to set up the theoretical framework of the research and to substantiate the findings of the primary sources.

1.6. Significance of the study

The study will have the following significances.

- Inform interested governmental bodies about the gaps and challenges in the implementation of the family codes if the research sites and thereby enable to take appropriate interventions.
- Inform nongovernmental organizations including human rights CSOs about the gaps and challenges in the implementation of the family codes if the research sites and thereby advocate and implement for appropriate interventions.
- Serve as a benchmark for similar future research.

1.7. Ethical Considerations

The researchers applied measures of ensuring ethical duties applicable to scientific studies. First, sufficient explanation is made to respondents as to the objective of the assessment and the purposes for which the information will be used for. Second, specifically, consent has been secured through a form

prepared in advance respondents. Third, Anonymity is protected for informants. another protection of the informants. Researchers will protect the informant through changing the identity or anonymising him/her. In addition, researchers are familiar with what to do in specific situations for their safety issues. The data will be kept secure and will not be disclosed to unauthorised persons. Researchers will use a locked storage for hard copies in a locked office which will not be accessible for others except researchers. For soft copy it will be protected through password-protected laptop and encrypted storage. No one including the data encoder have the privilege to see the data which is a secret type or expose the informant for harm. Unless the process is totally harmless for the informant and his/her beloved, researchers will not release it in the future.

1.8. Organization of the Research

The research report is organized into five chapters. Following this introductory section, Chapter Two will present the theoretical correlation between the Rights of women and children and family laws. The chapter will also scan the family laws of the three Jurisdictions against the supposed relations established in theoretical discussion. Next, still without losing its focus on the rights of women and children, Chapter Three, will, dwell on the practical implementation and penetration of the family laws of the three Jurisdictions. After identifying the gaps and challenges of the implementation of the family laws of the three jurisdictions under Chapter Four, the report will be closed with the conclusion and recommendation sections of Chapter Five.

Chapter Two

2. The Rights of Women and Children in Family Law: Assessments of the Three Jurisdictions

2.1. Women's Rights Protection under Family Laws

2.1.1. Introduction

Human rights and fundamental freedoms are provided for all without discrimination and women are entitled to enjoy the same as other individuals.¹⁹ International human rights treaties require state parties to take proactive steps to ensure that women's human rights are respected by law and to eliminate discrimination, inequalities, and practices that negatively affect women's rights. Under international human rights law, women are also be entitled to specific additional rights such as those concerning reproductive healthcare.²⁰

As a vulnerable group, in particular, women have special status and protection within the United Nations and regional human rights systems. International human rights treaties prohibit discrimination based on gender and also require states to ensure the protection and realization of women's rights in all areas ranging from property ownership and protection from violence to equal access to education, and participation in government.²¹ From the list, the CEDAW is

¹⁹ United Nations, Women's Rights are Human Rights, United Nations Publication SALES NO. E.14.XIV.5, 2014. Available at <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf> accessed on 12 October 2024.

²⁰ Report of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

²¹ For this effect, states have ratified and reaffirmed their commitment for the protection of women's rights under various instruments. This includes the African Charter on Democracy, Elections and Governance (Particularly Art. 8(2), 29, and 43), African Charter on Human and Peoples' Rights (Art. 18(3)), the Protocol to the African Charter on the Rights of Women in Africa ("Maputo Protocol"), the African Charter on the Rights and Welfare of the Child (art. 14(e)); the Convention on the Elimination of All Forms of Discrimination Against Women, Convention on the Nationality of Married Women; the Convention on the Political Rights of Women, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the International Covenant on Civil and Political Rights (Arts. 2, 3 and 26), the International Covenant on Economic, Social and Cultural Rights (Arts. 2, 3 and 7(i)), the United Nations Standard Minimum Rules for the Treatment of Prisoners (Para. 6, 8, 23 and 53), the Universal Declaration of Human Rights (preamble)

the most comprehensive treaty on the rights of women with 189 signatories. It condemns any form of discrimination against women and reaffirms the importance of guaranteeing equal rights to women and men, such as political, economic, social, cultural and civil rights.²² It authorizes states to take temporary special measures to accelerate the achievement of equality in practice²³, and to take actions to modify social and cultural patterns that maintain discrimination²⁴. The convention also calls for appropriate measures to eliminate discrimination in matters relating to marriage and family and underlines the equal responsibilities of men and women in the context of family life.²⁵ This Convention also highlights the need for childcare accommodations and other social services aimed at supporting women to earn from their labour and satisfy family obligations which thereby ensures women's participation in public life.²⁶ Regionally, The "Maputo Protocol²⁷," embodies issues of specific importance in Africa, such as genital mutilation.²⁸ It also specifies that women have the right to dignity²⁹, the right to equality in marriage³⁰ and the problem of trafficking in women³¹.

Gender equality, in terms of "equal rights, responsibilities and opportunities of women and men and girls and boys,"³² is a principal objective and foundational

²² CEDAW, Articles 1, 2 and 3.

²³ CEDAW, Article 4.

²⁴ CEDAW, Article 5.

²⁵ CEDAW, Article 16.

²⁶ CEDAW, Article 11.

²⁷ Protocol to the African Charter on the Rights of Women in Africa ("Maputo Protocol") (adopted 11 July 2003, entered into force 25 November 2005),

²⁸ Protocol to the African Charter on the Rights of Women in Africa ("Maputo Protocol") (adopted 11 July 2003, entered into force 25 November 2005), CAB/LEG/66.6 (15 September 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, art. 5.

²⁹ The Maputo Protocol, Art. 3.

³⁰ The Maputo Protocol, Art. 6.

³¹ The Maputo Protocol, Art. 4.

³² Office of the Special Advisor on Gender Issues and Advancement of Women, *Gender Mainstreaming: Strategy for Promoting Gender Equality* (2001), p. 1; CEDAW, preamble; Human

concept in the struggle to achieve women's human rights. States have obligations to avoid all forms discrimination against women and ensure equal opportunity with men.³³ This objective might be achieved through taking suitable measures including adopting anti-discrimination legislation, establishing legal protection for the rights of women, and modifying or abolishing discriminatory laws and practices.³⁴

2.1.2. Protections under Human Right Instruments: Issue Related with Marriage and Family

A) Protection from Violence against Women under International Legal Instruments

Violence against women has been defined to as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”³⁵ Violence against women includes sexual violence, sexual violence in conflict zones, genital mutilation, and domestic violence.³⁶ The enjoyment of human rights requires freedom from violence and fear of violence. For this effect, states are obliged to implement effective mechanisms to reduce frequency of violence, prosecute perpetrators, and provide necessary support to victims.³⁷ Thus, the international legal framework has a robust level of protection for women against abuse and violence.

Rights Committee, *General Comment No. 28, Article 3 (The equality of rights between men and women)*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000.

³³ CEDAW Committee, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010, para. 16.

³⁴ CEDAW, Art. 2; the Maputo Protocol, Art. 2.

³⁵ CEDAW, Art. 1.

³⁶ UN Women, *Frequently asked questions: Types of violence against women and girls*, available at <https://africa.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence-1> accessed on 27 September 2024.

³⁷ ECtHR, *Eremia v. Republic of Moldova*, no. 3564/11, Judgment of 28 May 2013, paras. 48-52, 56; the Inter American Court of Human Rights, *Rosendo Cantú et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216

B) Sexual and Reproductive Rights and Health under International Legal Instruments

As the Human Rights Committee concluded, sexual and reproductive health are pivotal to a woman's overall health and well-being.³⁸ Hence, state parties are duty bound to ensure all women have access to comprehensive reproductive health services.³⁹ The services should comprise sexual health information and education, family planning, maternal healthcare and treatment.⁴⁰ States as duty bearer should employ a gender-based approach to healthcare policies and management, so that barriers do not improperly restrict women's access to the services.⁴¹ The CEDAW Committee under General Recommendation 24 stated that "high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport" are considered as barriers preventing equal access to healthcare services.⁴²

C) Abortion under International Legal Instruments

The core international and regional human rights treaties do not explicitly address the issue of abortion. However, the Maputo Protocol requires state parties to protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of

³⁸ Human Rights Committee, *Concluding Observations on Poland, Report of the Human Rights Committee to the General Assembly, 66th Session*, UN Doc. CCPR/C/79/Add.110 (1999), paras. 10-11.

³⁹ CEDAW Committee, *General Recommendation No. 24, Women and Health*, UN Doc. A/54/38/Rev.1 (I), 1999; CESCR, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 May 2000, paras. 14, 20-21.

⁴⁰ CRR & UNFPA, *Briefing Paper: The Right to Contraceptive Information and Services for Women and Adolescents* (2010).

⁴¹ CESCR, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 20; World Health Organization, *Consolidated guideline on sexual and reproductive health and rights of women living with HIV*, 2017, available at <https://iris.who.int/bitstream/handle/10665/254885/9789241549998-eng.pdf?sequence=1> accessed on 01 October 2024.

⁴² CEDAW Committee, *General Recommendation No. 24, Women and Health*, UN Doc. A/54/38/Rev.1 (I), 1999, para. 21.

the mother or the fetus.⁴³ In the UN system, the UN Human Rights Committee recommended decriminalizing abortion and the abetment of abortion.⁴⁴ The other regional body, the European Court of Human Rights have addressed the issue of abortion. The European Court of Human Rights has decided that States have a “broad margin of appreciation” in determining when abortions will be permitted under domestic law.⁴⁵ Since domestic law allowed for abortion in the case of fetal malformation, the state had an obligation to ensure pregnant women could access full, reliable information concerning the fetus’s health.⁴⁶ The State’s failure to fulfill this obligation resulted in a violation of the applicant’s right to privacy and freedom from cruel, inhuman and degrading treatment.⁴⁷ Additionally, denying access to an abortion when necessary to ensure other human rights (life and well-being of the mother) may violate a States’ human rights obligations.⁴⁸

D) Medically Assisted Procreation under International Legal Instruments

While international human rights law generally protects the right to have a child by natural means, it may not necessarily guarantee a right to medically assisted procreation. Because, some argues that it may affect the “the rights of others’ (e.g. the other gamete provider in disputes over embryos) and ‘morals’ (e.g. public policy objections to heterologous fertilization, surrogacy and the posthumous use of cryopreserved gametes/embryos)”.⁴⁹ Human rights bodies have recognized that “the right of a couple to conceive a child and to make use

⁴³ The Maputo Protocol, Art. 14(2)(c).

⁴⁴ UNOCHR, Information Series On Sexual And Reproductive Health And Rights, 2020, available at https://www.ohchr.org/sites/default/files/INFO_Abortion_WEB.pdf accessed on 04 October 2024

⁴⁵ See ECtHR, *A, B, and C v. Ireland* [GC], no. 25579/05, ECHR 2010, Judgment of 16 December 2010, para. 249.

⁴⁶ ECtHR, *R.R. v. Poland*, no. 2761/04, ECHR 2011, Judgment of 26 May 2011.

⁴⁷ ECtHR, *R.R. v. Poland*, no. 2761/04, ECHR 2011, Judgment of 26 May 2011.

⁴⁸ ECtHR, *Tysic v. Poland*, no. 5410/03, ECHR 2007-I, Judgment of 20 March 2007.

⁴⁹ Carmen Draghici, *Procreative Rights in International Law Insights from the European Court of Human Rights*, Cambridge University Press (2024), pp. 41 - 109

of medically assisted procreation for that purpose is ... an expression of private and family life.”⁵⁰ However, the interpretation of this recognition under international human rights instruments is “subject to a particularly dynamic development in science and law”.⁵¹ Carmen Draghici argues that:

*The refusal to treat couples with donated gametes imposes a choice between genetic parenthood and the continuance of marriage to an infertile spouse, affecting both prospective and existing family life. It further maintains that reproductive autonomy should extend to posthumous reproduction where the deceased left advance directions and there are no overriding child welfare concerns.*⁵²

2.1.3. Marriage and Family Rights under International Human Right Instruments

A. Marriage

All women have the right to choose whether, when and whom to marry.⁵³ In addition to this, arranged marriages and other traditional practices should not interfere with the legally guaranteed right of free will or consent to engage in a marital relationship.⁵⁴ With regard to marriageable age, the Maputo Protocol provided 18 years of age as a minimum requirement under 6. Hence, child marriage is against the Maputo Protocol, protections extended under CRC and CEDAW.⁵⁵ During a marriage and at dissolution of marriage, the woman is entitled to have the same rights as their male spouses.⁵⁶ Thus, both partners in a marriage must have equal legal rights and the woman cannot be prevented

⁵⁰ ECtHR, Case of Peřilová V. The Czech Republic, (Application no. 14889/19), available at <https://hudoc.echr.coe.int/fre#%7B%22sort%22:%5B%22kdate%20Descending%22%5D,%22itemid%22:%5B%22001-221266%22%5D%7D> accessed on 04 October 2024.

⁵¹ See, e.g., ECtHR, *S.H. and Others v. Austria* [GC], no. 57813/00, ECHR 2011, Judgment of 3 November 2011, paras. 82, 118.

⁵² Carmen Draghici, *Procreative Rights in International Law Insights from the European Court of Human Rights*, Cambridge University Press (2024), pp. 41 - 109

⁵³ CEDAW, Art. 16.

⁵⁴ CEDAW Committee, *General Recommendation No. 21, Equality in Marriage and Family Relations*, UN Doc. A/49/38, 1994, paras. 15 and 16.

⁵⁵ CEDAW Committee, *General Recommendation No. 21, Equality in Marriage and Family Relations*, 1994, paras. 36-37; UNFPA, *Marrying too Young: End Child Marriage* (2012).

⁵⁶ CEDAW, Arts. 9(1), 11(2), 16.

from any fundamental rights by marrying or divorcing.⁵⁷ Her marital status alone cannot be employed to regulate a woman's privileges and responsibilities, including but not limited to her own nationality, parental rights, access to public benefits, and to own or transfer property.⁵⁸

B. Family and Parental Rights under International Human Right Instruments

Family is a "natural and fundamental group unit of society entitled to protection by society and states."⁵⁹ The term family is understood broadly to include unmarried couples with children, married couples with children, and single parents.⁶⁰ The equal rights of women within a family, including whether to have family, is protected under major human right instruments. Additionally, the woman is entitled to choose both the number and the spacing of children when she decided to give birth.⁶¹ The CEDAW requires States parties to ensure that women and men have the same rights and responsibilities in the family as parents, which extends from guardianship to owning and administering property.⁶² The right to own and administer property is dealt under the upcoming sub-section.

C. The right to Property under International Human Rights Instruments

Women's right to own, administer and enjoy property is guaranteed on equal base with those of male spouses.⁶³ Article 14 of the African Charter on Human and People's Rights and Article 17 of the Universal Declaration of Human Rights recognized the right to property. Article 16 of ICCPR⁶⁴ is also provided to

⁵⁷ The Maputo Protocol, Arts. 6, 7.

⁵⁸ CEDAW, art. 16; Maputo Protocol, Arts. 6, 20, 21.

⁵⁹ The Universal Declaration of Human Rights, Art. 16.

⁶⁰ Human Rights Committee, *General Comment No. 28, Equality of Rights between Men and Women*, UN. Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 27.

⁶¹ [CEDAW](#), Art. 16(1); the Maputo Protocol, Art. 14.

⁶² CEDAW, Art. 16.

⁶³ CEDAW, Arts. 15 and 16.

⁶⁴ International Covenant on Civil and Political Rights, Art. 16.

protect the capacity of women to own property as a manifestation of the right to recognition as a person before the law.⁶⁵

2.1.4. Women's Rights Protection under National Family Laws: FDRE, ANRS, and BGRS in Focus

A) Protection of Women's Rights at Betrothal stage

In the Ethiopian tradition, before the conclusion of marriage, the spouses would go through the process of betrothal. Mainly this practice is performed by and between the parents of the future spouses. Which miss the basic requirement of consent of the spouses recognized under the FDRE Constitution and the Family Codes of the research areas.⁶⁶ The practice in some areas of Ethiopia reveals that this agreement has been concluded concerning underage spouses, which is against the protection under the Constitution. Currently, the RFC has excluded the concept of betrothal from its ambit. The BGR Family Code and the Amhara Region Family Code has recognized betrothal.⁶⁷ However, the recognition is different from that of the Civil Code, the regional family codes have made the consent of the future spouses a fundamental requirement. As provided under Article 1 and 3 of the ARFC and Article 8 of the BGRFC betrothal is contract based on free will between fiancé and fiancée to conclude marriage in the future and such agreement will not have a legal effect without the free will of them.

B) Women's Rights During Marriage: Protection from Domestic Violence

There is no specific provision expressly deals with protection of women from domestic violence under the family codes of the regions under scrutiny and the federal one (unless we assimilate the provisions on mutual respect as a ground for the protection). However, Article 564 of the Criminal Code⁶⁸ criminalized

⁶⁵ Human Rights Committee, General Comment No. 28, Article 3, the equality of rights between men and women, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, para. 19.

⁶⁶ Betrothal is defined under article 560 of the civil code as a contract between the members of two families that a marriage shall take place between two persons, the provision is framed in a way that respects the choice, consent and interest of these family members rather than the future spouses.

⁶⁷ AR FC Arts. 1-9 and BGR FC Arts. 8-19.

⁶⁸ FDRE, Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Proc. No. 414/2005, Fed. Neg. Gaz., Year 10, No. 58.

violence against a Marriage Partner or a Person Cohabiting in an Irregular Union. In addition to this, the code stipulated that “intentionally or by negligence causes bodily injury to another or impairs his health is punishable in accordance with Articles 555 to 560”. These provisions cover all manner of bodily assaults, blows, wounds, maiming, injuries or harm, and all damage to the physical or mental health of an individual.

C) Women's Rights during Divorce: Property Rights in Focus

The three family codes provides that all properties of the marriage presumed as common property of the spouses and anyone claiming a property as personal is required to proof such fact. These basic principles of the law serve as a guide for the determination of personal and common property and the application of the principle shall be observed by the family arbitrators or the court when they are interested to effect partition of property after dissolution of marriage. As provided under Article 42 (1) of the RVC, Article 53(1) of the ARFC and Article 63(1) of BGRFC the spouses are given the freedom to regulate the pecuniary effect of their marriage (before or on the date of their marriage). However, as provided under Article 42(3) of the RFC, 53(3) of the ARFC and 63(3) of the BGRFC the contract shall not violate the mandatory provisions of the law. This limitation to respect the “mandatory provisions” may have a greater impact in ensuring women’s right to own, administer and enjoy properties that have been acquired through income of the spouses, income from personal property and properties acquired after the conclusion of the marriage.

The other protection is provided when the contract is made after the conclusion of marriage. As provided under Article 47 of the RVC, Article 58 of the ARFC and Article 68 of BGRFC the contract with respect to designation of a property as personal or common property after the conclusion of the marriage requires a court approval. This oversight by the court will have greater importance to protect the vulnerable party from entering into such contract under coercion and undue influence. The third protection is when there is divorce by mutual consent. As stated under Article 77 of the RVC, Article 88 of the ARFC and Article 135 of BGRFC their agreement for the dissolution of marriage may

regulate the effects of the dissolution which includes partition of property. However, such agreement requires court approval and if the agreement violates the rights of the spouses the court will reject such part and approve only the mutual agreement for the dissolution of the marriage.

D) Women's Rights after Divorce: Child Custody, Protection against intimidation and violence from ex-husband

Article 113 of the RFC, Article 124 of the ARFC and Article 98 of BGRFC reinstate that when a marriage is dissolved through divorce, the court is required to decide over the issue of who should have custody of those minor children. Custody of a minor child encompasses various set of rights and obligations under it, like the right to live with the child in a shared residence, authority over the discipline of the child and education as well as medical treatment. The visitation right of the non-custodial parent is also an issue to be determined at the time of deciding on the custody of the minor. While deciding over the issue the parents have equal right to take custody of children. However, the issue is influenced by various factors including the best interest of the child principle, income, age, health and the spouses living condition.⁶⁹ On the issue of Protection against intimidation and violence from ex-husband, neither the regional nor the federal Family Codes have provided a mechanism for this effect. However, the FDRE Criminal Code under 560 (assault), Article 580 (intimidation), 582 (coercion),⁷⁰ 585 (illegal restraint), 601 (Restraint of the Free Exercise of Civil Rights) and 840 (assault and minor acts of violence- under the code of petty offences) has covered the issue as an act which can be committed by any other person.

2.2. Child Rights Protection under Family Laws

2.2.1. Introduction

There are about 2.3 billion children in the world, nearly a third of the total human population. Children are defined by law as people who are under the

⁶⁹ RFC Art. 113(2), ARFC Art. 124(2) and BGRFC Art. 135(2).

⁷⁰ This provision refers to coercion when there is relationship emanating from marriage, but here we are talking about coercion committed after the dissolution of marriage

age of majority in their country, usually 18 years old. All children have human rights regardless of age. This includes the right to life, equality, health, education, speaking out and expressing opinions, a clean environment, a safe place to live, and protection from all kinds of harm.⁷¹

Child rights protection is a broad term used for to refer efforts to safeguard children from actions or situations that place their healthy development and well-being at risk. Children need to be protected because they are physically, mentally, and emotionally immature and unable to protect themselves adequately. The younger a child is, the more care and protection he/she needs. Measures and structures that prevent and respond to physical, sexual, emotional, or psychological abuse; commercial sexual exploitation; child trafficking; child labor; abuse in the home, school, and community; and harmful and abusive traditional practices are a range of protections accorded to the child. Every child has the right to be safe from harm.⁷²

Nevertheless, every year the lives and physical, mental, and emotional well-being of millions of children around the world are threatened by maltreatment such as abuse, neglect, violence, and exploitation.⁷³ This can start at birth. For example, an estimated 290 million children globally have not had their births registered, so they have no legal identity or proof of existence. Over 61 million children do not attend primary school. An estimated 150 million girls and 73 million boys are sexually assaulted every year. In some countries, girls as young as nine are forced into marriage, and children as young as six are judged as adults in criminal courts. At least 330,000 children are held in immigration detention in 80 countries every year, simply for being migrants or refugees. Many are forcibly separated from their parents and families. As the study 2019 indicated, one in six children was living in extreme poverty a situation that puts

⁷¹ Richard Burton, 'Children's Human Rights', Amnesty International, (2024) <<https://www.amnesty.org/en/what-we-do/child-rights/>>, Accessed on: 21/09/2024.

⁷² ILO declaration, 'Accelerating action against child labour: global report' (2010) Geneva: International Labour Organization.

⁷³ Ibid.

children at greater risk of domestic violence, child labour, sexual exploitation, teenage pregnancy, and child marriage.⁷⁴ These are only some of the staggering figures that show the magnitude of child protection violations around the world. They are underrecognized and under-reported and constitute barriers to fulfilling children's human rights. They also undermine children's healthy development and survival.⁷⁵ These violations occur in every country, culture, and social and economic group. In response to these and other related child rights violations the international community, regional organizations, and states took legislative measures to combat it.

2.2.2. Child Rights Protection under International Legal Instruments

Children are protected by an array of international and regional instruments, Guidelines, and protocols. The ICCPR⁷⁶ and the ICESCR⁷⁷ were both Cold War time responses to human rights issues. Likewise, the⁷⁸ and the ACRWC⁷⁹ were the international and regional post-Cold War legal responses to the violations of the rights of the child. During the Cold War, nations were divided with different political and social ideologies and gave priority to one category over the other. In other words, the West favored civil and political rights, and the East (the communist) nations favored economic, social, and cultural rights.⁸⁰ These two instruments provided recognition for the protection of fundamental rights of the child in a nutshell.

A) The International Covenant on Civil and Political Rights (ICCPR)

ICCPR underscored the need for child rights protection. Article 24 states that every child has no discrimination on any ground the right to measures of

⁷⁴ Richard (n 1).

⁷⁵ The State of the World's Children's 'special edition; celebrating 20 years of the Convention on the Rights of the Child' (2009), UNICEF New York.

⁷⁶ International Covenant on Civil and Political Rights 1966 (ICCPR 1966).

⁷⁷ International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).

⁷⁸ Convention on the Rights of the Child 1989 (CRC 1989).

⁷⁹ African Charter on The Rights and Welfare of The Child 1990 (ACRWC 1990).

⁸⁰ J.A. Lindgren Alves, 'The United Nations: Postmodernity and Human Rights' (1998), 498.

protection as are required by his status as a minor, on the part of his family, society, and the State.⁸¹ Correspondingly, article 26 of the convention declares that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law which includes children.⁸² These two provisions guarantee a child's non-discrimination right in every aspect of life and equal protection of the law.⁸³ Additionally, the ICCPR recognizes the family as the natural and fundamental unit of society.⁸⁴ This is the foundation for the protection of the rights of children. Another better protection espoused by the convention is the prohibition of sentence of death for crimes committed by children.⁸⁵ This very article may serve as an inception for the development of soft criminal laws by the member states of the convention and to endorse less rigorous policies toward sentences for juvenile offenders.

B) International Covenant on Economic, Social, and Cultural Rights (ICESCR)

Another UN Convention which deals with the socio-economic rights of persons and recognizes the rights of the child in this regard is ICESCR. This document makes a child's right to protection by the government a positive social right.⁸⁶ Specifically, Article 10(3) of the ICESCR asserts that special measures of protection and assistance should be taken on behalf of all children and young persons and Article 12 speaks of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health which includes children for stronger reason.⁸⁷ These were general protections of ICESCR accorded to the well-being of the child and it was an inception for the forthcoming legislation in this regard.

⁸¹ ICCPR 1966, Art. 24.

⁸² ICCPR 1966, Art. 26.

⁸³ Sanford J. Fox, 'Beyond the American Legal System for the Protection of Children's Rights' (1997) 240.

⁸⁴ ICCPR 1966, Art. 23.

⁸⁵ ICCPR 1966, Art. 6(5).

⁸⁶ ICESCR 1966, Art. 10.

⁸⁷ ICESCR 1966, Art. 12.

ICESCR has given a special place for the protection of the right to education. It mandates the member states to make education accessible to everyone in law and fact. In addition, they should ensure the nature of education accessible to children to contribute to the “full development” of their personality.⁸⁸ It also imposed a duty on states to work out and adopt a detailed plan of action for the progressive implementation of compulsory education free of charge for all.⁸⁹ Gradually, participating states have to reduce and eventually eliminate fees until education is free from both direct and indirect costs.⁹⁰

The other fundamental recognition of the right of the child by ICESCR was the subject of child labour. Article 10(3) recognizes children’s right to a just and favorable working condition and an adequate standard of living.⁹¹ The ICESCR specifically states that nations should protect children from economic exploitation and child labour; preserve children’s health, morals, and development; and make the exploitation of children punishable by law.⁹²

C) Convention on the Rights of Children (CRC)

The protections bestowed under the above two instruments were a prelude to the comprehensive convention specialized on the rights of the child after the Cold War. The passage of the Convention on the Rights of the Child by the United Nations on November 20, 1989, institutionalized concepts of international law as it pertains to children and brought into a single document. The CRC changed international law for children by recognizing the rights of the ‘whole child’ and not limiting the child’s rights to those related to ‘care and protection’. To protect the child’s interest, the CRC articulated the survival, development, protection, and participation of children as key factors throughout the document.⁹³

⁸⁸ ICESCR 1966, Art. 13.

⁸⁹ ICESCR 1966, Art. 14.

⁹⁰ Ibid.

⁹¹ ICESCR 1966, Art. 10(3).

⁹² Ibid.

⁹³ Asgeir (n 22).

The CRC specifically states that at all levels of society and government, 'the best interests of the child' shall be a governing course of action. It is the most comprehensive human rights treaty and legal instrument for the promotion and protection of children's rights. The CRC addresses civil, political, economic, and cultural rights in one comprehensive framework. It applies to all children at all times in all situations. It also provides the moral and legal basis for governments and civil society to protect every human being younger than 18.⁹⁴

The convention on the right of the child has assumptions to be achieved which were stipulated by different international legal instruments. The convention at its preamble recognizes that childhood is entitled to special care and assistance. It underscores the 'family' as the fundamental group of society that needs the necessary protection and assistance. The full and harmonious development of the child's personality demands growth within a family environment in an atmosphere of happiness, love, and understanding. It also emphasizes that the child should be fully prepared to live an individual life in society and brought up in the spirit of peace, dignity, tolerance, freedom, equality, and solidarity. Taking into account his physical and mental immaturity, the child needs special safeguards and care, including appropriate legal protection, before as well as after birth.⁹⁵

Aspirations pinpointed in the preamble of the convention are targeted to inform the state parties of the whole notion of the document and to enforce the protections in a positive spirit. 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.⁹⁶ This protection embraces the adopted child.⁹⁷

⁹⁴ Ibid.

⁹⁵ CRC 1989, Preamble.

⁹⁶ CRC 1989, Art. 3(1).

⁹⁷ CRC 1989, Art. 21.

The development of the child is a key concern of the convention. States Parties are required to ensure to the maximum extent possible the survival and development of the child.⁹⁸ The right to life of the child, health, education, and upbringing of the child might fall under this category. All appropriate legislative, administrative, social, and educational measures have to be taken to protect the child 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.⁹⁹ To this end, they have to recognize that every child has the inherent right to life.¹⁰⁰ And no child shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age.¹⁰¹

The States Parties must also recognize the right of the child to the enjoyment of the highest attainable standard of health and access to health care services.¹⁰² This recognition includes mentally or physically disabled children's right to enjoy a full and decent life, in conditions that ensure dignity, promote self-reliance, and facilitate the child's active participation in the community.¹⁰³ Another fundamental recognition under this category is the right of the child to education, and to achieve this right progressively and based on equal opportunity.¹⁰⁴ States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.¹⁰⁵ To realize the above objectives, the child shall

⁹⁸ CRC 1989, Art. 6(1-2).

⁹⁹ CRC 1989, Art. 19(1).

¹⁰⁰ CRC 1989, Art. 12-17.

¹⁰¹ CRC 1989, Art. 37.

¹⁰² CRC 1989, Art. 24(1).

¹⁰³ CRC 1989, Art. 23(1).

¹⁰⁴ CRC 1989, Art. 28(1).

¹⁰⁵ CRC 1989, Art. 18(1).

be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and as far as possible, the right to know and be cared for by his/her parents.¹⁰⁶

Protection and participation are other pillars of the convention. States Parties are expected to respect and ensure the rights outlined in the Convention to each child within their jurisdiction without discrimination of any kind.¹⁰⁷ This protection extends to all forms of discrimination or punishment based on the status, activities expressed opinions, or beliefs of the child's parents, legal guardians, or family members.¹⁰⁸

The other protection guaranteed to the child is the labour rights of the child which was part of ILO conventions. The right to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development is well recognized.¹⁰⁹ States Parties are also expected to undertake to protect the child from all forms of sexual exploitation and sexual abuse.¹¹⁰ In doing so, States Parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form.¹¹¹ The duty imposed by Geneva Conventions against States Parties is also part of this convention. They are required to undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts that are relevant to the child.¹¹²

¹⁰⁶ CRC 1989, Art. 7(1).

¹⁰⁷ CRC 1989, Art. 2(1).

¹⁰⁸ CRC 1989, Art. 2(2).

¹⁰⁹ CRC 1989, Art. 32 (1).

¹¹⁰ CRC 1989, Art. 34.

¹¹¹ CRC 1989, Art. 35.

¹¹² CRC 1989, Art. 38(1).

The other recognition to be mentioned here is the criminal justice rights of the child. States Parties recognize the right of every child alleged as 'accused of' or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.¹¹³

D) The African Charter on the Rights and Welfare of the Child

The ACRWC or the Children's Charter was adopted by the Organization of African Unity (OAU) in 1990 and entered into force in 1999. Like the CRC, the Children's Charter is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children. Every child is entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, color, sex, language, religion, political or other opinions, national and social origin, fortune, birth or other status.¹¹⁴ In all actions concerning the child undertaken by any person or authority, the 'best interests' of the child shall be the primary consideration.¹¹⁵

Like the CRC, this Charter gave special emphasis to the survival and development of the child. It recognized the inherent right to life of the child and States Parties are required to ensure, to the maximum extent possible, the survival, protection, and development of the child and this right to be protected by law. The right to life is not subject to limitation since a death sentence is not imposed for crimes committed by children.¹¹⁶

¹¹³ CRC 1989, Art. 40(1).

¹¹⁴ ACRWC 1990, Art. 3.

¹¹⁵ ACRWC 1990, Art. (1).

¹¹⁶ ACRWC 1990, Art. 5(1-3)

Parents or other persons responsible for the child shall have the primary responsibility for the upbringing and development of the child and shall have the duty among other things to ensure the 'best interests' of the child at all times.¹¹⁷ The protection also encompasses the best interest of the adopted child.¹¹⁸ For this purpose, the document acknowledges the family as the natural unit and basis of society and recognizes the enjoyment of the protection and support of the State for its establishment and development.¹¹⁹ In turn, every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines by the appropriate law, that such separation is in the best interest of the child.¹²⁰ Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance.¹²¹

Among the civil and political rights, protection against child abuse and torture;¹²² Freedom of expression, freedom of association; freedom of thought, conscience, and religion, and protection of privacy are rights guaranteed under the charter to maintain the well-being of the child and for the promotion and development of the child's personality.¹²³

The other fundamental protection of the charter is the recognition of the socio/cultural and economic rights of the child. Every child has the right to education. This right among other things must foster the promotion and development of the child's personality, talents, and mental and physical abilities

¹¹⁷ ACRWC 1990, Art. 20(1(a)).

¹¹⁸ ACRWC 1990, Art. 24.

¹¹⁹ ACRWC 1990, Art. 18(1).

¹²⁰ ACRWC 1990, Art. 19(1).

¹²¹ ACRWC 1990, Art. 25.

¹²² ACRWC 1990, Art. 16.

¹²³ ACRWC 1990, Art. 7-10.

to their fullest potential.¹²⁴ The right to health and health services;¹²⁵ Protection from all forms of economic exploitation and from performing any work are additional socio-economic rights protections of the document.¹²⁶ In addition, States Parties are required to take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth, and development of the child.¹²⁷

As part of the duty bearers of the Geneva Conventions, the charter requested States Parties to undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts that affect the child.¹²⁸ Protection against apartheid and discrimination, sexual exploitation, drug abuse; sale, trafficking, and abduction; juvenile justice, and children of imprisoned mothers are further protections of the charter.¹²⁹ To the full enjoyment of the above protections, the identification of the identity of the child is vital. Thus, the charter recognized the immediate registration after birth; to have the name from birth, and to acquire a nationality like the CRC principles.¹³⁰

2.2.3. Child Rights Protection under National Family Laws: the FDRE, ANRS, and BGRS in Focus

Following the introduction of the federal structure, Ethiopia established multilayered administrative structures with legislative powers. As part of their self-administration, constituent units of the federation and the federal government are entrusted to legislate laws without encroaching on each other's boundaries. The federal government and regional states underwent massive promulgation and revision of the family laws on the eve and in the first decade

¹²⁴ ACRWC 1990, Art. 11 (1 & 2(a)).

¹²⁵ ACRWC 1990, Art. 14.

¹²⁶ ACRWC 1990, Art. 15.

¹²⁷ ACRWC 1990, Art. 21.

¹²⁸ ACRWC 1990, Art. 22(1)

¹²⁹ ACRWC 1990, Art. 26-30.

¹³⁰ ACRWC 1990, Art. 6(1-3)

of the second millennium. The legislation or revision of family laws was triggered to amend the law in action to incorporate fundamental child rights protections into regional family laws which include the well-being, upbringing, and protection of children recognized under the Constitution and international instruments that Ethiopia has ratified. This objective of the legislation/revision of family laws is implicated under the preambles of the family codes of the three regional states.¹³¹ The contents of regional state family laws in most cases are the verbatim copy of the RFC.

Child rights protection mainly focuses on the protection of a child's 'best interest' as drawn in the international and regional instruments. This sub-theme will deal with the contents of the FDRE Constitution, the RFC; the ANRS family laws and BGNRS family laws child rights protections.

A) Child Rights Protection Under FDRE Constitution

FDRE Constitution dedicated one full provision for the protection of the rights of the child apart from other scattered provisions that dealt with the concept parenthetically. Article 36 of the constitution declared the Rights of Children. The first protection safeguarded the right to life of the child. Even though, Article 15 of the constitution declared the protection of the right to life for every person subject to deprivation as a consequence of serious criminal offense;¹³² the provision at hand bestowed the right to life for a child with absolute protection.¹³³ This shows the better protection of the rights of a child and the policy implication of the constitution towards children.

The constitution also recognized a child's right to have a name and nationality. This provision is similar to the contents of Article 7 of the Convention on the rights of the child.¹³⁴ Ethiopia is a state party and a signatory state; duty bound

¹³¹ FDRE RFC Proclamation No. 213/2000, The ANRS Family Code Proclamation No. 79/2003, The Revised Family Code of BGNRS Proclamation No. 63/2006.

¹³² (FDRE Constitution 1995) Art. 15.

¹³³ FDRE Constitution 1995, Art. 36(1(a)).

¹³⁴ CRC 1989, Art. 7.

to incorporate into its domestic laws and it is also part of the civil code of Ethiopia.¹³⁵ Making sure a child has a name and nationality is the first step to recognizing each individual as a human being with rights. These are core elements of all individuals' identities. In the absence of name and nationality; children remain invisible into adulthood: they have no legal identity, no voice, and are at greater risk of other rights abuses. This article is crucial to children and the state because, to develop laws and policies that make sense, they need accurate information about the number and situation of children in the country.¹³⁶ Article 36 of the FDRE Constitution and Article 7 of the convention aim to facilitate recognition of the legal personality of the child as an independent human being having the agency to exercise their rights everywhere from birth through the right to a name, provision of full citizenship rights, nationality, and preventing statelessness.¹³⁷

The third protection under Article 36 of the constitution is the child's right to know and be cared for by his or her parents or legal guardians.¹³⁸ This provision is also recognized under Article 7 of the ICRC.¹³⁹ In recognition of the importance of the child's parentage to their identity, optimum development, and maintaining the best interest of the child, the constitution/convention introduced the protection to know and be cared for by his/her parents or legal guardians.¹⁴⁰

The fourth fundamental protection of the child's right is not to be subject to exploitative, hazardous, or harmful work to his or her education, health, or

¹³⁵ Civil Code of the Empire of Ethiopia 1960 (CCE 1960) Art. 33.

¹³⁶ Child Rights International Network, 'Name and nationality' (2018), Article 7:

<https://archive.crin.org/en/home/rights/convention/articles/article-7-name-and-nationality.html>, Accessed on: 13/09/2024.

¹³⁷ Ziba Vaghri, Jean Zermatten, Gerison Lansdown, and Roberta Ruggiero, 'Monitoring State Compliance with the UN Convention on the Rights of the Child', (2022) Children's Well-Being: Indicators and Research, Volume 25.

¹³⁸ FDRE Constitution 1995, Art. 36(1(c)).

¹³⁹ CRC 1989, Art. 7.

¹⁴⁰ Ziba (n 66).

well-being.¹⁴¹ As a principle, work is not necessarily bad for children subject to its nature and the level of his/her age. Children can help their parents in the home or the family farm or business, as long as the work is not dangerous and does not interfere with school attendance and other normal childhood activities.¹⁴² What is prohibited is those forms of employment or unpaid work that violate children's rights. The exploitative, hazardous, or harmful or 'worst forms of child labour',¹⁴³ A term coined by the International Labour Organization includes but is not limited to grave forms of exploitation that violate the rights of a child, such as slavery, trafficking, forced labour, sexual exploitation, the use of children in the production and trafficking of illegal drugs and forced recruitment into armed forces.¹⁴⁴

Another essential protection of the right of the child under Article 36(1(e)) of the FDRE Constitution is the right to be free from corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.¹⁴⁵ As well articulated under the issue paper of the European Council, the Commissioner for Human Rights 'Corporal punishment of children often becomes inhuman or degrading, and it always violates their physical integrity, demonstrates disrespect for human dignity, and undermines self-esteem'.¹⁴⁶ The protection accorded under the FDRE Constitution is a special protection that reinforces the general human rights protection of the Constitution pinpointed under Article 18 titled 'Prohibition against Inhuman

¹⁴¹ FDRE Constitution 1995 Art. 36(1(d)).

¹⁴² Dan O'Donnell 'Child Protection, A Handbook for Parliamentarians, Inter-Parliamentary Union' (2004), <http://hrlibrary.umn.edu/research/Egypt/childprotection_en.pdf>, Accessed on: 13/09/2024.

¹⁴³ ILO Convention, 'Worst Forms of Child Labour' (1999 (No. 182)) The General Conference of the International Labour Organization, convened at Geneva by the Governing Body of the International Labour Office and having met in its 87th Session on 1 June 1999.

¹⁴⁴ Dan O'Donnell (n 71)

¹⁴⁵ FDRE Constitution 1995, Art. 36(1(e))

¹⁴⁶ Council for Europe Commissioner for Human Rights Children and Corporal Punishment, 'The Right Not to Be Hit, Also A Children's Right' (2008) <<https://rm.coe.int/children-and-corporal-punishment-the-right-not-to-be-hit-also-a-childr/16806da87b>> Accessed on: 13/09/2024.

Treatment'.¹⁴⁷ This double-fold absolute protection of the right of the child in this regard shows a complete intolerance of corporeal, cruel, or inhumane treatment against a child.

Another vital protection of the constitution is imposing a duty on state and non-state actors who work on the rights of the child. It states that 'in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities, or legislative bodies, the primary consideration shall be the 'best interests of the child'. The doctrine of the child's best interest is a widely recognized principle in child rights protection and applies to family affairs in particular, in disputes concerning custody, guardianship, maintenance, adoption, etc. of the child.¹⁴⁸ This implies that the 'best interest of the child' is the guiding principle in legislating, enforcing, or adjudicating children's agenda. The constitution also recognizes the equality of a child born in different setups. It states that 'Children born out of wedlock shall have the same rights as children born of wedlock'.¹⁴⁹ Thus, the only criteria to recognize the right of the child is to be born in any type of relationship disregarding the modalities.

To protect child inmates in corrective institutions or rehabilitative or placed in orphanages from adult inmates' abuse or exchange of behavior, the FDRE constitution mandated the responsible bodies to keep them separate.¹⁵⁰ In addition, the State shall accord special protection to orphans and shall encourage the establishment of institutions that ensure and promote their adoption and advance their welfare and education.¹⁵¹

¹⁴⁷ FDRE Constitution 1995, Art. 18.

¹⁴⁸ Aron Degol and Shimelis Dinku, 'Notes on The Principle "Best Interest of The Child": Meaning, History and Its Place Under Ethiopian Law' (2011), Mizan Law Review Vol. 5 No.2.

¹⁴⁹ FDRE Constitution 1995, Art. 36(4).

¹⁵⁰ FDRE Constitution 1995, Art. 36(3).

¹⁵¹ FDRE Constitution 1995, Art. 36(5).

In addition to Article 36, the FDRE Constitution incorporates different rights of a child in different provisions. Article 34 declares that laws shall be enacted to ensure the protection of the rights and interests of children at the time of divorce.¹⁵² Laws enacted following this constitution must vanguard the rights and interests of the child during divorce. Article 35 underscores that the duration of maternity leave is to be determined by law taking into account the well-being of the child.¹⁵³ Thus, among the notions of maternity leave is not only the health of the mother rather it has to consider the welfare of the child. Article 41 (5) states that the state shall, within available means, allocate resources to rehabilitate children who are left without parents or guardians.¹⁵⁴ The state is constitutionally mandated to take care of children without parents/guardians subject to its capacity. It is a progressive right that does not impose immediate responsibility on the state.

B) Child Rights Protection Born in Wedlock Under Family Laws

A child born within six months after marriage and within 300 days after divorce is considered a child born in wedlock. In this regard, the family laws of the federal and regional states have identical contents i.e. ‘when a child is born more than 180 days after the celebration of the marriage and less than 300 days after its dissolution, it will be considered as having been conceived in wedlock’.¹⁵⁵ It is an absolute protection that no proof to the contrary shall be admitted.¹⁵⁶ Thus, being born in wedlock is a privilege for the child to claim the automatic authorization of paternity rights since it declares that a child conceived or born in wedlock has the husband as the father.¹⁵⁷

The FDRE Constitution under article 34(1) stipulates that men and women have equal rights while entering into, during marriage, and at the time of divorce. Specifically, article 35 emphasizes the equal rights of men with women in marriage. These two provisions of the constitution voiced the equal rights of parents on their children since

¹⁵² FDRE Constitution 1995, Art. 34(1).

¹⁵³ FDRE Constitution 1995, Art. 35(5(a)).

¹⁵⁴ FDRE Constitution 1995, Art. 41(5).

¹⁵⁵ FDRE RFC 2000, Art. 128(1); ANRS FC 2003, Art. 139(a), and BGRS FC 2006, Art. 152(1).

¹⁵⁶ FDRE RFC 2000, Art. 128(2); ANRS FC 2003, Art. 139(b), and BGRS FC 2006, Art. 152(2).

¹⁵⁷ FDRE RFC 2000, Art. 126; ANRS FC 2003, Art. 137, and BGRS FC 2006, Art. 150.

they are the results of marriage. Following this broad constitutional recognition the RFC¹⁵⁸, ANRS Family Code¹⁵⁹, and the BGNRS Family Code¹⁶⁰ Articulated the role of parents in marriage and the authority of parents on their children.

A child is considered as a minor in legal definition if he/she has not attained majority age. Under Ethiopian family laws, a minor is a person of either sex who has not attained the full age of eighteen years.¹⁶¹ A minor, as regards the proper care of his person, shall be placed under the authority of a guardian, and in matters concerning his pecuniary interests and the administration of his property, a minor shall be represented by his tutor.¹⁶²

The father and the mother are joint guardians and tutors of their minor children during their marriage. The opposite interpretation of these provisions signifies that a minor child has a right to get joint guardianship and tutorship from his/her parents. Where the child no longer has his father and mother, and in default of a valid appointment made by the survivor, the functions of guardian or tutor of the child shall devolve, by the law, to his/her relatives. Thus, ascendants of the child; the brothers or sisters of the child who have attained majority; and the uncle or aunt of the child respectively might be entrusted to the position of guardianship or tutorship.¹⁶³ Where there are no relatives the responsibility may be entrusted to such person as may be appointed by the court.¹⁶⁴ Accordingly, the functions of a guardian or tutor may, where necessary, be entrusted by the court to an institution of assistance established for such purpose.¹⁶⁵ Spouses/guardians/tutors must create a responsible

¹⁵⁸ FDRE RFC 2000, Art. 219.

¹⁵⁹ ANRS FC 2003, Art. 230.

¹⁶⁰ BGRS FC 2006, Art. 243.

¹⁶¹ FDRE RFC 2000, Art. 215; ANRS FC 2003, Art. 226, and BGRS FC 2006, Art. 239.

¹⁶² FDRE RFC 2000, Art. 216(2); ANRS FC 2003, Art. 227(2), BGRS FC 2006, Art. 240(2).

¹⁶³ FDRE RFC 2000, Art. 225(a, b, c); ANRS FC 2003, Art. 236(a, b, c) and BGRS FC 2006, Art. 249(1)

¹⁶⁴ FDRE RFC 2000, Art. 227; ANRS FC 2003, Art. 238, and BGRS FC 2006, Art. 251.

¹⁶⁵ FDRE RFC 2000, Art. 229; ANRS FC 2003, Art. 240, and BGRS FC 2006, Art. 253.

citizen. To this end, in all cases, the spouses/guardians/tutors shall cooperate to protect the family's security and interest, to bring up and ensure their children's good behavior and education, and to make them responsible citizens.¹⁶⁶ Accordingly, children born in wedlock have the right to get the joint protection of their security, in nurturing their behavior and education.

Despite the above child right protections, the constitutional rights incorporated under article 36 of the FDRE Constitution like the right to life; a child's right to have a name and nationality; prohibition from corporeal punishment or cruel treatment; and protection from exploitative, hazardous, or harmful work is not taken in full under the family laws of the federal government and regional states. The assumption of the lawmaker might be these provisions which are not included under the family laws might be addressed by other laws of the country like the criminal law, labour law, and nationality laws. Since the family laws of regional states are a verbatim copy of the federal family law, there is no single divergence in this regard, and the constitutional right protections safeguarded for a child are not incorporated.

C) Child Rights Protection Born Out of Wedlock Under Family Laws

A child born within 180 days after the celebration of the marriage and after 300 days of dissolution of the marriage is considered a child born out of wedlock.¹⁶⁷ In any case, relations established between a man and a woman out of wedlock or out of an irregular union shall have no juridical effect attached to them under the Ethiopian family law regime.¹⁶⁸ When children are born in a relationship that cannot be characterized as either marriage or irregular union, the burden of proof lies on the alleging mother as per the ordinary burden of proving that saying that the one who alleged must prove his allegation. As an old saying goes, maternity is a matter of fact, but paternity is a matter of opinion; relating to the acknowledgment of paternity or adoption, children born of such

¹⁶⁶ FDRE RFC 2000, Art. 50; ANRS FC 2003, Art. 61 BGRS FC 2006, Art. 71.

¹⁶⁷ FDRE RFC 2000, Art. 128(1); ANRS FC 2003, Art. 139(a), and BGRS FC 2006, Art. 152(1).

¹⁶⁸ FDRE RFC 2000, Art. 107(1); ANRS FC 2003, Art. 118(1), BGRS FC 2006, Art. 129(1).

relationships shall have a juridical bond only with their mother.¹⁶⁹ Unfortunately, most of the mothers are not able to produce witnesses who can testify that the defendant is the father of the child in such modalities.¹⁷⁰ Paternity may be ascertained through legal presumption, acknowledgment, or judicial declaration in Ethiopian family laws.

The presumption is one means of ascertaining paternity. A child conceived or born in wedlock has the husband as a father. A child conceived or born during an irregular union has as a father the man engaged in such union.¹⁷¹ The other means of ascertaining paternity is acknowledgment. An acknowledgment is deemed to be made when a certain man makes a declaration that he considers himself the father of a certain child merely conceived or born.¹⁷² Acknowledgment is a procedure whereby a man makes a declaration that he considers himself the father of a certain child merely conceived or born. However, the law does not allow for the acknowledgment of every child. That is, it is only when a child does not benefit from the presumption. It follows that acknowledgment is meant to serve children born are conceived out of wedlock or irregular union, or those who have been disowned by the presumptive father. As stated under Article 131 of the RFC, “when the father of the child is not determined by applying the provisions of the preceding articles, the paternal filiation of the child may be established by an acknowledgment of paternity.”¹⁷³

The third modality of ascertainment of paternity is a judicial declaration. Where the mother has been the victim of abduction or rape at the time of conception of the child or the mother has been the victim of seduction accompanied by abuse of authority, a promise of marriage, or any other similar act of intentional deception; or where there exist letters or other documents written by the

¹⁶⁹ FDRE RFC 2000, Art. 107(2); ANRS FC 2003, Art. 118(2), BGRS FC 2006, Art. 129(2).

¹⁷⁰ Selam Kibret, ‘Ascertainment of Paternity under the Ethiopian Revised Family Law: Legal and Practical Challenges from a Gender Perspective’ (2022), Addis Ababa, Ethiopia.

¹⁷¹ FDRE RFC 2000, Art. 130; ANRS FC 2003, Art. 137, and BGRS FC 2006, Art. 150.

¹⁷² FDRE RFC 2000, Art. 132; ANRS FC 2003 Art. 143, and BGRS FC 206, Art. 156.

¹⁷³ Selam (n 117)

claimed father which unequivocally prove paternity or where the claimed father and the mother of the child have lived together in continuous sexual relation, without having a legally recognized relation in the period regarded by law as the period of pregnancy or where the person claimed to be the father of the child has participated in the maintenance, care, and education of the child in the capacity of a father a judicial declaration of paternity may be obtained.¹⁷⁴

In Ethiopia, whether a child is born in or out of wedlock is legally inconsequential in terms of the rights of the child once his filiation is determined. Children born out of wedlock shall have the same rights and protection as children born in wedlock.¹⁷⁵ Children born out of wedlock have the same claim to maintenance, succession, and all other rights that a child born within a marriage is entitled to claim. The rights of children to claim maintenance, inheritance, and other benefits are tied to the ascertainment of paternity and not to legitimation. Thus, whether the parents of a child are married or not is immaterial so long as paternity has been established.¹⁷⁶ A marriage contract between the parents of a child born outside of marriage does not automatically generate any more legal rights that the child would otherwise have so long as paternity has already been established.¹⁷⁷

D) Adopted Child Rights Protection Under Family Laws

Adoption is a legal and social institution by which kinship is established between adoptive parents and the adopted child, which is identical or similar to the natural parenting relationship. Adoption achieves family-legal protection of children without parental care through establishing a parental relationship between the adoptive parent and the adopted child. Because of this, adoption appears as an institute of family law. It is a kinship relationship between the adoptive parent who is a full-time capable adult, and the adoptee, who is an

¹⁷⁴ FDRE RFC 2000, Art. 143(a-e); ANRS FC 2003, Art. 154(a-e), and BGRS FC 2006, Art. 167(a-e).

¹⁷⁵ FDRE Constitution 1995, Art. 36(4).

¹⁷⁶ Hanibal M. Goitom 'Ethiopia: Federal Paternity and Legitimation Laws' (2009), Law Library of Congress, Global Legal Research Directorate.

¹⁷⁷ Ibid.

alien minor. Adoption is important and affects not only the adoptive family but also the adopted child, his extended family, and the community. The impact is also generational, as it will affect future generations of the family. However, first and foremost, adoption is important to the adopted child.¹⁷⁸

Adoptive filiation may be created by an agreement between a person and a child.¹⁷⁹ This agreement unless approved by the court, shall be of no effect. The court shall verify the adoption decisively whether the agreement is in the best interest of the child. Thus, to guarantee this strong protection of the right of the adopted child, the court shall take the opinion of the child about the adoption; the opinion of the guardian or tutor of the child if he has not previously given his consent; the capability of the adopter to raise and take care of the child; where the adopter is a foreigner, the absence of access to raise the child in Ethiopia; and the availability of information which will enable the court to know that the adopter will handle the adopted child as his child and will not abuse him.¹⁸⁰ Unless the adoption agreement is verified as aligned to the best interest of the child the court shall not approve it.¹⁸¹ In addition, agreement of the adoption may not be made where the adopter is married, and the two spouses conjointly adopt the child.¹⁸² The court before approving the adoption, shall also take into consideration the effects of the existence of children of the adopter on the wellbeing and interest of the adopted child.¹⁸³ Where the

¹⁷⁸ Blagojce Anastasov and Jasminka Kochoska, 'Adoption of a Child - An Act of Noble Character' (2020), Technium Social Sciences Journal

<https://www.researchgate.net/publication/346602629_Adoption_of_a_child_-_an_act_of_noble_character/link/636bab6154eb5f547cb96af7/download?tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19> Accessed on: 15/09/2024.

¹⁷⁹ FDRE RFC 2000, Art. 180; ANRS FC 2003, Art. 191, BGRS FC 2006, Art. 204.

¹⁸⁰ FDRE RFC 2000, Art. 194; ANRS FC 2003, Art. 205, and BGRS FC 2006, Art. 218.

¹⁸¹ Girmachew Alemu & Yonas Birmeta, 'Handbook on the Rights of the Child in Ethiopia', Center for Human Rights in Collaboration with Save the Children Norway- Ethiopia, <<https://resourcecentre.savethechildren.net/pdf/6630.pdf/>> Accessed on: 10/09/2024.

¹⁸² FDRE RFC 2000, Art. 186, ANRS FC 2003, Art. 197, BGRS FC 2006, Art. 210.

¹⁸³ FDRE RFC 2000, Art. 188, ANRS FC 2003, Art. 199, BGRS FC 2006, Art. 212.

Adopter is a Foreigner (where the adopter is out of the region in the case of ANRSFL), the court may not approve the adoption unless an authority empowered to follow the wellbeing of children gives its opinion that the agreement is beneficial to the child after considering the personal, social and economic position of the adopter. If the court thinks that the agreement is not helpful to the child, it may disregard the opinion of the authority and reject the agreement.¹⁸⁴ The ANRSFL in this regard the adoption of a child by an adopter out of the region and adoption by a foreigner has a similar effect which is the most stringent protection for adopted children among the family laws.¹⁸⁵

The family laws seem to require relatively stringent procedures for the courts to assess the necessity of adoption before approving the adoption contract. Under the Civil Code, it was enough if the consent and opinion of the adopted child and the adopter were obtained; but the new family laws require not only the opinion of the adopted child and the adopter but also stipulates that the court shall take into consideration the capability of the adopter to raise and take care of the child.¹⁸⁶ Despite these rigorous procedures, as soon as the adoption is concluded for all purposes, the adopted child is deemed to be the child of the adopter.¹⁸⁷ The adopted child also has the luxury of maintaining a relationship with his/her family of origin and the new family.¹⁸⁸

Adoption is irrevocable as a principle.¹⁸⁹ Exceptionally where the adopter, instead of looking after the adopted child as his child, handles him as a slave, or in conditions resembling slavery, or makes him engage in immoral acts for his gain, or handles him in any other manner that is detrimental to his future, the

¹⁸⁴ FDRE RFC 2000, Art. 193, ANRS FC 2003, Art. 204, BGRS FC 2006, Art. 217.

¹⁸⁵ ANRS FC 2003, Art. 204.

¹⁸⁶ Aron (n 77)

¹⁸⁷ FDRE RFC 2000, Art. 181; ANRS FC 2003, Art. 192, and BGRS FC 2006, Art. 205.

¹⁸⁸ FDRE RFC 2000, Art. 183; ANRS FC 2003, Art. 194, and BGRS FC 2006, Art. 207.

¹⁸⁹ FDRE RFC 2000, Art. 195(1); ANRS FC 2003, Art.206(1), and BGRS FC 2006, Art. 219(1).

court may revoke the adoption.¹⁹⁰ In general, any decision rendered by competent authorities regarding adoption/minors in general shall be guided by maintaining the proper care and well-being of children.¹⁹¹

E) Child Rights Protection in Divorced Parents under Family Laws

Divorce is the end of an official marriage of married couples by a court or other competent body as experienced in other legal regimes. It is an incident in people's lives and is a common phenomenon that occurs in many parts of the world. In addition, it is the dissolution of the socially and legally recognized marital relationship that changes the responsibilities and obligations of married couples. Therefore, divorce is one of the most shocking events individuals face and is highly associated with an increase in emotional instability.¹⁹² The success and failure of one marriage have consequences beyond one's own life.¹⁹³ Divorce can affect and hamper the life of spouses and children, economically, physically, and emotionally. And in every aspect of their life hindered the development of their future life.¹⁹⁴

Under the Ethiopian family law regime, divorce is put into action when the spouses have agreed to divorce by mutual consent and such agreement is accepted by the court; and the spouses or one of them makes a petition for divorce to the court.¹⁹⁵ Where a divorce petition is made, the court may discuss it with the spouses separately or jointly and counsel them to renounce their intention to divorce since marriage is a huge institution in the community and

¹⁹⁰ FDRE RFC 2000, Art. 195(2); ANRS FC 2003, Art. 206(2), and BGRS FC 2006, Art. 219(2).

¹⁹¹ FDRE RFC 2000, Art. 218; ANRS FC 2003, Art. 229, and BGRS FC 2006, Art. 242.

¹⁹² Adugna Abebe, 'The Impact of Divorce on Children's Human Rights among the Community of Agaro Town, Ethiopia' (2021), <<https://repository.ju.edu.et/bitstream/handle/123456789/7013/Adugna%20Abebe%20final%20research11111.pdf?sequence=1&isAllowed=y>> Accessed on: 13/09/2024.

¹⁹³ Ibid.

¹⁹⁴ Abebe Tsehay, Problems Surrounding Divorce in Federal Revised Family Code, Law, and Practice (2010), <<http://repository.smuc.edu.et/bitstream/123456789/507/1/ABEBE%20TSEHAY.pdf>> Accessed on: 13/09/2024.

¹⁹⁵ FDRE RFC 2000, Art. 76; ANRS FC 2003, Art. 87, BGRS FC 2006, Art. 97.

the consequence is detrimental for the departing family and offspring.¹⁹⁶ If the spouses do not show a willingness to renounce their intention to divorce, the court will not pronounce a divorce judgment but rather dismiss them giving a cooling period of not more than three months.¹⁹⁷ Where the spouses did not change their intention to divorce within the cooling period, they may re-apply to the court to approve their agreement to divorce within six months from the last date of such cooling period.¹⁹⁸ The court shall approve the divorce agreement only when it believes that the agreement is the true expression of the intention and free consent of the spouses and is not contrary to law and morality.¹⁹⁹ Where the spouses decide to divorce by mutual consent, they shall decide by agreement regarding the tutor and guardians of their children. Where, in any case of divorce, the spouses did not agree on the tutorial and guardianship of their children, the court which decides the divorce shall also decide the tutor and guardian of the children.²⁰⁰

The court shall approve the conditions of the divorce agreed upon between the spouses together with the divorce agreement.²⁰¹ And if the conditions of divorce do not sufficiently protect the interest and well-being of their children, or, where it adversely affects the interests of one of the spouses, the court may approve only the divorce agreement and give decisions it may deem appropriate to correct the defects on the conditions of divorce.²⁰² The best interest of a child is the very concern of the court must be checked from the condition of divorce before declaring the divorce of the spouses. In cases of agreement between the divorcing spouses, the court is free to give relevant decisions by its initiation.

¹⁹⁶ FDRE RFC 2000, Art. 78(1); ANRS FC 2003, Art. 89(1), and BGRS FC 2006, Art. 99(1).

¹⁹⁷ FDRE RFC 2000, Art. 78(2); ANRS FC 2003, Art. 89(2), and BGRS FC 2006, Art. 99(2).

¹⁹⁸ FDRE RFC 2000, Art. 79(1); ANRS FC 2003, Art. 90(1), and BGRS FC 2006, Art. 100(1).

¹⁹⁹ FDRE RFC 2000, Art. 80(1); ANRS FC 2003, Art. 91(1), and BGRS FC 2006, Art. 101(1).

²⁰⁰ FDRE RFC 2000, Art. 221(1-2); ANRS FC 2003, Art. 232(1-2), and BGRS FC 2006, Art. 245(1-2).

²⁰¹ FDRE RFC 2000, Art. 80(2); ANRS FC 2003, Art. 91(2), and BGRS FC 2006, Art. 101(2).

²⁰² FDRE RFC 2000, Art. 80(3); ANRS FC 2003, Art. 89(1), and BGRS FC 2006, Art. 101(3).

The second modality of divorce is done via petition. Where the divorce is done through petition, the court shall speak to the spouses separately or jointly with a view of persuading them to renounce the divorce petition and solve their dispute amicably.²⁰³ If the attempt fails or is likely to fail, the court may direct the spouses to settle their dispute through arbitrators of their own choice.²⁰⁴ Where the spouses did not agree to settle their dispute through arbitration, the court may dismiss the parties by giving them a cooling period of up to three months.²⁰⁵ Where all the efforts made have failed, the court shall pronounce divorce within one month from the receipt of the reports of arbitrators, or the end of the cooling period, as the case may be.²⁰⁶

From the time the divorce petition is brought before it, the court shall forthwith give appropriate orders regarding the maintenance of the spouses, the custody and maintenance of their children, and the management of their property.²⁰⁷ Where circumstances require that one of the spouses leave their common abode, the court shall, when giving an order take into consideration the interest of the children and the condition of the spouse who may be affected more by leaving their common abode.²⁰⁸ Thus custody, maintenance, and abode of the children are the topical agenda of the court during the process of divorce. The court has no luxury of time to neglect these issues and wait for the conclusion of the divorce process since it is seriously attached to the best interests of the children.

When deciding the dissolution of marriage, also decide which spouse shall have custody of the children, care of their education, health, maintenance, and the rights of the parents and the children to visit each other. The court shall take

²⁰³ FDRE RFC 2000, Art. 82(1); ANRS FC 2003, Art. 93(1), and BGRS FC 2006, Art. 103(1).

²⁰⁴ FDRE RFC 2000, Art. 82(2); ANRS FC 2003, Art. 93(2), and BGRS FC 2006, Art. 103(2).

²⁰⁵ FDRE RFC 2000, Art. 82(3); ANRS FC 2003, Art. 93(3), and BGRS FC 2006, Art. 103(3).

²⁰⁶ FDRE RFC 2000, Art. 82(4); ANRS FC 2003, Art. 93(4), and BGRS FC 2006, Art. 103(4).

²⁰⁷ FDRE RFC 2000, Art. 82(5); ANRS FC 2003, Art. 93(5), and BGRS FC 2006, Art. 103(5).

²⁰⁸ FDRE RFC 2000, Art. 82(6); ANRS FC 2003, Art. 93(6), and BGRS FC 2006, Art. 103(6).

into account the income, age, health, and condition of living of the spouses as well as the age and interests of the children. The court may, on application and taking into account change of circumstances, revise or reverse its decision regarding the custody and maintenance of the children.²⁰⁹ The ANRSFL, departing from the common precedent of other family laws, declares a mandatory provision for the court to order the custody of children below the age of five years to be entrusted to their mothers.²¹⁰ The assumption is that the best interest of a child below five years is well safeguarded if he/she is placed at the hand of the mother. Accordingly, the above family laws envisage that such children are entrusted with the right to maintenance, right to custody, right to be heard through their parents or a court, the right to visitation, right to education, and right to health care. Also, these provisions of the codes imply that certain obligations lie on divorced parents to respect these rights and refrain from acts violating the exercise of the rights.²¹¹

After divorce, a woman shall experience a period of widowhood before marching to a new marriage. A woman may not remarry unless one hundred and eighty days have elapsed since the dissolution of the previous marriage.²¹² This is in the best interest of the child born from the previous marriage child from conflict of paternity. Each of the spouses shall retain an exclusive right of decision in matters concerning the upbringing of children whom he had before the marriage.²¹³

²⁰⁹ FDRE RFC 2000, Art. 113(1-3); ANRS FC 2003, Art. 124(1-4), and BGRS FC 2006, Art. 135(1-3).

²¹⁰ ANRS FC 2003, Art. 124(3).

²¹¹ Firehiwot Girma, 'The Protection of the Rights of Children of Divorced Parents in Ethiopia' (2017), < <https://etd.aau.edu.et/server/api/core/bitstreams/dded17e2-0dc9-48b5-b818-5bf17053182f/content>>, Accessed on: 13/09/2024.

²¹² FDRE RFC 2000, Art. 16, ANRS FC 2003, Art. 27, and BGRS FC 2006, Art. 37.

²¹³ FDRE RFC 2000, Art. 52, ANRS FC 2003, Art. 63, and BGRS FC 2006, Art. 73.

Chapter Three

3. Gaps and Challenges in the Implementation and Penetration of the Family Laws of the Three Jurisdictions

3.1. Women's Rights Protections under the Family Laws

The revised RVC has made significant changes in the protection of women's rights, especially in matters such as marriage, divorce, and the right to administer and enjoy property. The regulation of family matters has been part of the civil code of Ethiopia. Among the reasons of the revision of the civil code was related to the need to ensure rights and protection for women. Especially the equality of women was not properly addressed by the former law. It was against the equality principle of the FDRE constitution, and the revision of the civil code provisions was the only choice left. It enabled us to better address women's rights. For instance, the marriageable age for both spouses brought up to 18. The civil code was 15 for women and 18 for men.²¹⁴

In addition, the revised family law is based on the human rights protections of the FDRE Constitution and international instruments ratified by Ethiopia. How to administer the family, rights protections of the family, children's rights, spouses' rights, and duties are included.²¹⁵ The family code is also issued to address the right to equality and related rights of women.²¹⁶ Key improvements include the shift in betrothal definition (from the family involvement to parties consent), promotion of gender equality in marriage, and addressing issues such as consent and age requirements to protect women from forced marriage were vital developments in the revised family law. Prohibition of marriage between consanguineal relationships, prohibition of double marriage and prohibition of exchange marriage are among the attributions of the family law.²¹⁷ It also

²¹⁴ The Civil Code, Art. 581.

²¹⁵ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024)

²¹⁶ Interview with Instructor of Law at Dire Dawa University (September 24, 2024)

²¹⁷ Interview with Women Rights Awareness Raising and Education Expert at Women and Children Affairs Office, Addis Ababa, (October 11, 2024)

protects women from economic hardship, including equitable distribution of property and provision of maintenance during divorce.²¹⁸ Measures have been taken to protect women from domestic violence, emphasizing the responsibility of women to uphold their rights. Even the registration of the title deed accustomed to men's side, the custom is converted into common property recognition and the property insecurity of a woman is significantly improved.²¹⁹ The RVC has a huge contribution to the protection of women's rights. Property rights, prohibition of double marriage/bigamy, early marriage and common property issues are addressed.²²⁰

The Federal Supreme Court Cassation Division also decided that bigamous marriage is not void-ab-initio.²²¹ This protection is extended to protect the interest of the woman in the second marriage. However, the silence of the first wife when the second marriage is concluded does not mean agreeing to share her property to the second marriage.²²² It is the attribution of the equality principle set in Article 25 of the Constitution. The family law also imposed a duty to pay compensation against the person who became the reason for the dissolution of the marriage. This compensation may include allocating part or entire property gained from the common property of the judgment debtor to the victim.²²³ This is the privilege for a woman since are the main victims of divorce. However, the need for compensation shall be indicated under the petition submitted to the court and the court shall ascertain the compensation is

²¹⁸ Interview with Experts, the EWLA, Main Office (October 14, 2024)

²¹⁹ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa, (September 26, 2024)

²²⁰ Interview with Women Rights education Dissemination Expert at Women and Children Affairs Office, Addis Ababa, (October 12, 2024).

²²¹ Argaw Abeoche Vs. Aster Abegaz, the Federal Supreme Court Cassation Division, File No. 39408, 24/02/2002 E.C.

²²² Handegiba Shikur Vs. Almitu Ibrahim, the Federal Supreme Court Cassation Division, File No. 120844, 27/08/2008 E.C.

²²³ Hamziya Soleyiman Vs. Ayalew Bekele, the Federal Supreme Court Cassation Division, File No. 152968, 21/01/2011 E.C.

necessary to render fair and just decision on the matter.²²⁴ Regarding the partition of property women without discrimination based on sex, their status, or the opinion they hold, have the right to hold their property and they share equally the property gained in the marriage.²²⁵

The Amhara Regional State Family Law is almost the verbatim copy of the RFC except for some deviations. The regional family law is good in terms of protecting the rights of women. The law includes provisions that significantly impact women's rights throughout various stages of pre-marriage, during marriage, and after divorce. From the betrothal stage to marriage and dissolution of the marriage, the law emphasizes mutual and equal support and property generation, highlighting its positive impact on women's rights within marital relationships.²²⁶ The law is also aligned with the FDRE Constitution and international standards in providing protections such as marriageable age, consent, and equality for women. However, some areas need improvement, particularly in addressing issues related to betrothal practices and ensuring proper enforcement mechanisms to safeguard women's rights effectively.²²⁷

The Benishangul Regional State Family Law is almost a copy of the RFC.²²⁸ It contains many provisions to protect the rights of women, especially the provisions that are in line with the FDRE constitution and international conventions ratified by Ethiopia, such as CEDAW. The BGNRSFL is similar to the federal code in various aspects.²²⁹ It also recognizes women's rights and makes part the constitutional and rights protected under international human

²²⁴ Tiringo Mesfin Vs. Mulugeta Mekuaninit, the Federal Supreme Court Cassation Division, File No. 101552, 01/10/2007 E.C.

²²⁵ Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

²²⁶ Interview with Family Bench Judge, Bahir Dar Zuria Woreda Court (September 27, 2024).

²²⁷ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024),

²²⁸ Interview with attorney, Assosa (September 23, 2024).

²²⁹ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

rights instruments. As provided under the preamble and Article 26 of the BGRSFC to have a valid marriage the consent of both parties is a yardstick requirement. This requirement helps to protect the rights of women from forced and arranged marriage. Regarding the minimum age for marriage, Article 27 of the code stipulates neither the man nor the woman can marry before the majority age of 18, this marriageable age is stated for both parties without discrimination or differentiated treatment. Article 31 of the code sets prohibition against bigamous marriage, this prohibition is aimed at restraining the practice of having more than one wife and in turn protecting the property and related rights of the woman.

Again, Article 32 of the same code expressly prohibits exchange marriage, which is a practice widely performed by the members of the Gumuz Ethnic group of the region (nowadays such practice is highly decreasing).²³⁰ Article 71 (1) provides that husband and wife have equal rights in the management of the family, and women have equal rights with men (their husbands) when marriage is concluded, during marriage, and when marriage is dissolved by divorce, this provision is stipulated in line with the preamble of the code which reaffirms gender equality in all aspect's marriage. Article 111(1) deals with the partition of property. It has been determined that the husband and wife can divide their property by agreement, but it emphasized that the common property shall be divided equally between the spouses. In general, the family law of the region is progressive, and it can be said that it has explored the core issues that are recognized under the international and regional agreements concerning women, gender equality, and the general human rights conventions.²³¹ Thus, we may conclude that the family law is much better than the Civil Code.²³²

²³⁰ Interview with Attorney at Law and Assistant Professor of Law, Assossa University (September 24, 2024).

²³¹ Interview with Attorney at Law and Assistant Professor of Law, Assossa University (September 24, 2024).

²³² Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

The following sub sections are dedicated to a discussion on the provisions of the three family codes particularly focusing on the provisions having greater impact on the rights of women.

3.1.1. During Betrothal

The ANRSFC preserved the betrothal cultural practice as a good manifestation of sensitivity to good cultures of the people and at the same time respecting the right of the parties. But the society is not using it in the manner the law says rather it's used against the interest of the fiancée.²³³ Betrothal is one of the provisions in the Amhara region mostly abused by the fiancée family.²³⁴ Despite the recognition of this engagement, the practice opened a room for the fiancée's families to misuse this provision to sideline/ignore the law like the marriage age and equality principles. Parents of the fiancé may arrange marriages without the consent of the couple, forcing the woman into marriage with they do not know or want. It is evidenced in the community the fact that underage women are engaging in marriage under the guise of betrothal.²³⁵

Article 6 of the RFC dictates that a valid marriage shall take place only when the spouses have given their free and full consent.²³⁶ Notwithstanding declaring consent-based marriage, the RFC is silent regarding betrothal. Some argues that it is a customary practice, and it would be better if it is recognized RFC.²³⁷ However, the explicit recognition is denied aligning with the CEDAW Convention which clearly prohibits betrothal.

The practice of betrothal in Dire Dawa is not properly managed and there is no legal backup to protect the relationship. If a pregnancy occurs at the time of betrothal the child is considered as a child born out of wedlock and his paternity

²³³ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024)

²³⁴ Interview with Assistant Professor of Law and Free Legal Aid Centre Coordinator, Bihar Dar University (September 26, 2024)

²³⁵ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024).

²³⁶ Interview with Experts, EWLA main Office (October 14, 2024)

²³⁷ Interview with Judge, Federal First Instance Court Akaki-Kaliti Bench (October 11, 2024).

claims are entertained based on the family code provisions on declaration of paternity but without considering the betrothal engagement.²³⁸

The BGRS FC under Article 27(2) and Article 18(2) of the ANRS FC, allows marriage even if she is under 18, upon approval by the regional justice bureau. Practically, the justice bureau of the region is not accessible to the potential spouses, and the arrangement is done in the absence of the required approval. The interviewee recommended that the mandate be fit for court authorization rather than the justice sector.²³⁹

3.1.2. During Marriage (Including Prevention of Domestic Violence)

The ANRSFC declares that during marriage, the family law stipulates better protections than the past legal regime, in terms of managing a family, in terms of equality and it is perfect in terms of upbringing a child together.²⁴⁰ The RFC Article 7 Sets the legal age for marriage and stipulates that both partners must consent to marriage which helps to prevent forced marriages and a means for minimizing violence during marriage.²⁴¹

During conclusion of marriage, the protections associated with having the consent the woman and marriageable age are repeatedly violated by arranged marriages. The reason for such violation is associated with the prevalent custom practiced in the research area and poor implementation of the law.²⁴² In a marriage concluded without securing full and free consent leads to inevitable violence within the marriage. In addition to this, the negative understanding of equality in the community which recognizes man's superiority in a household is the base for most of the domestic violence.²⁴³

²³⁸ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024); Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

²³⁹ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

²⁴⁰ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

²⁴¹ Interview with Experts, EWLA main Office (October 14, 2024).

²⁴² Interview with Assistant Professor of Law and Free Legal Aid Centre Coordinator, Bahir Dar University (September 26, 2024).

²⁴³ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024).

The very purpose of the law is to promote equality and respect for women, but there is a need to address domestic violence issues through criminal laws or anti-sexual harassment laws rather than solely relying on family law provisions.²⁴⁴ Since violence is a crime, it is not left to the family law regime.²⁴⁵ There is also a concept of marital rape during the marriage which is well recognized in Western jurisprudence. But under the family laws of the research areas failed to recognize marital rape. The key informants revealed the fact that in recent years, considerable number of women are claiming the existence of marital rape in their marriage, and it is becoming a major reason for divorce. However, as it is provided under the code having sexual relationship is provided as a duty and there is no room to protect her from such violence. The criminal code under Article 620 excludes marital rape from its ambit. While providing having sexual relationship as a duty there should be a mechanism to protect the woman from sexual violence from her spouse. Thus, the other source of violence might emanate from marital rape.²⁴⁶

The other challenge related to domestic violence is the lack of evidence since the crime was committed behind bars. The adjudication process needs the production of evidence to prove guilty of the offender. 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.²⁴⁷ The researchers have of the opinion that if the divorce is the result of domestic violence, it should be recognized under the law that the woman's right to get considerable amount of property as a compensation for the violation.

3.1.3. Protection of Women in Irregular Union

The provision on irregular union emphasizes women's rights and protections at the critical stage of joint family life without concluding marriage and promoting gender

²⁴⁴ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

²⁴⁵ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024)

²⁴⁶ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

²⁴⁷ Interview with an expert, Addis Ababa City Administration WCSAO (October 16, 2024).

equality and security.²⁴⁸ Despite this, because of the ignorance of the law, couples in a relationship with an irregular union assume the union as a proper union and costs too much because of their ignorance during separation.²⁴⁹ There is a perception error regarding the irregular union issue. The law demands to stay together as a husband and wife for three or more years to have the effect of marriage on their pecuniary issues, but the community is misperceiving it as a shorter period than provided under the law.²⁵⁰ Those women living with their presumed potential husbands in irregular unions can't protect their property rights unless the relationship lasts for 3 years. It is also very difficult to produce evidence regarding starting time of their engagement. Many clients wait for the protection of their rights saving their irregular union status, but the process doesn't deliver it. Their rights are frequently bypassed, or the rights might be preserved through tedious procedures.²⁵¹

3.1.4. Divorce Process and Related Issues

The RFC has incorporated provisions for the procedural elements of divorce, the protections to maintain the marriage, the cooling period, the freedom to decide on the fate of their marriage, the effects of divorce, partition of property, and the maintenance and custody of the children. Custody of children, maintenance, and partition of property (personal and common property) are dealt with under the family law properly as a consequence of divorce.²⁵² There are issues that the law stipulates regarding the divorce process and other related issues. Rights during divorce are equal for both men and women. Equitable and equal distribution of property acquired during the marriage, protection of women's financial interests, and security after divorce are vital rights of women during divorce. Some things have been placed around the process of property distribution during divorce that has a lot of impact on women's rights because it

²⁴⁸ Interview with Experts, EWLA main Office (October 14, 2024).

²⁴⁹ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024).

²⁵⁰ Interview with a Legal Support Department Expert, Dir Dawa WCSA Office (September 25, 2024).

²⁵¹ Interview with a Legal Support Department Expert, Dir Dawa WCSA Office (September 25, 2024).

²⁵² Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

is against the principle of equality of spouses. The most common problem in practicing family law is the distribution of assets in most families is the management and the ownership of property are totally in the hands of the husband.²⁵³ Administration of common property is solely owned by the head of the house i.e. the husband. The women have no clue unless they reach the divorce stage in most case scenarios.²⁵⁴

Society is in a situation where property is not shared equally in the divorce process, especially in rural areas, where property is dedicated as male property and female property. At this time, the woman loses most of her possessions.²⁵⁵ In addition, the equal rights of custody of children are denied as a result of the mischievous activities of the husband. Children are lobbied to stay with the unfit parent disregarding their long-term best interests. To prevent such misconducts, it is much better to be selected by the court in consultation with the social worker.

There is a strong tendency to hide the income of the husband. The recent maintenance directive has the potential to solve some of the challenges concerning the calculation of maintenance benefit. Some parents hide the income and sometimes they may terminate their contract of employment for this sake.²⁵⁶

The practice revealed that there is a problem regarding the division of common property equally, and there is also unequal responsibility shearing in child custody to women, which affects women's economic and other rights and hinders their development.²⁵⁷ The maintenance and shelter of women during the divorce process depends on the judge's initiative.²⁵⁸ Accordingly, the

²⁵³ Interview with Assistant Professor of Law and Free Legal Aid Centre Coordinator, Bihar Dar University (September 26, 2024).

²⁵⁴ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

²⁵⁵ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

²⁵⁶ Interview with an expert, Addis Ababa City Administration WCSAO (October 16, 2024).

²⁵⁷ Interview with Assistant Professor of Law, Bihar Dar University (September 26, 2024).

²⁵⁸ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

divorce process undermines women's rights, necessitating reforms to ensure equitable outcomes.²⁵⁹

3.1.5. Post-Divorce Protection for Women from Abuse by the Ex-Partners

After divorce, cultural norms impose a heavy burden on women. Often, divorces are conducted community elders without court approval, complicating the effects of divorce and against the standing of the law. The law states that there should be equality during marriage and divorce; however, the negative consequences disproportionately done by elders which affect women, especially regarding custody. Women often 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.²⁶⁰ After the divorce, the relationship between ex-spouses is most of the time done via the agency of their children.²⁶¹ Frequent requests for visitation of children once the guardianship is given to a woman is a reason for their conflicts.²⁶² As a result, violence after divorce is common. Bodily injury and psychological harm are frequently committed.²⁶³

To deter the post-divorce offenders the law has to provide strong and explicit protection which is accompanied with civil and criminal liabilities. This will mitigate the violence of post-divorce as the best tool to deal with the violators. However, the assessment of the damage is subject to the judge's discretion. The law has no special procedures regarding post-divorce violence. The law should offer stronger protections for women facing violence from ex-spouses, enhancing safety measures and legal support for victims.²⁶⁴ It is dealt with under the criminal law and institutions like EWLA and the Women and

²⁵⁹ Interview with Bahir Dar Branch Coordinator, EWLA (September 27).

²⁶⁰ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024).

²⁶¹ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

²⁶² Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024).

²⁶³ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024)

²⁶⁴ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024),

Children Affairs Office strives to attain redress in the research areas. Rape, harassment, and bodily harm are addressed by the criminal law and the above-mentioned institutions rather than the family codes.²⁶⁵

3.2. Implementation Challenges against Women's Rights Protection

The main challenges to the implementation of family law at the required level are related to the challenge of introducing family law to the community.²⁶⁶ These might be related to different factors.

1. **Cultural Resistance:** Ingrained cultural practices and beliefs, especially in rural areas, hinder the acceptance and implementation of the law.
2. **Litigation costs and court-related fees:** Inadequate funding and resources for enforcement mechanisms, such as court and limited legal aid services, affect the implementation of the law. Many women are dependent upon their husband's income, and this becomes a great obstacle when there is litigation for divorce, maintenance, and partition of property.
3. **Education and Training:** Inadequate training for law enforcement bodies and the judiciary on new provisions of the law may result in inconsistent implementation. While the Revised Family Code represents a major step forward in promoting gender equality and protecting children's rights, effective implementation will require sustained advocacy, education, and resource allocation to overcome cultural barriers and logistical challenges.²⁶⁷

In the BGRS FC the challenges emanate from the law and the practice. The following articles of the family law of the region are perceived as a means for hindering the respect of women's rights. Under the title of marriage outside the state, particularly Article 24(1) states that marriages performed outside the state based on other marriage performance laws will be accepted by the same law as long as it does not contradict the morals of the people of the state. Under Article 24 sub-number (3) “notwithstanding sub-article 1 of this provision, spouses may

²⁶⁵ Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

²⁶⁶ Interview with Assistant Professor of Law, Bihar Dar University (September 26, 2024).

²⁶⁷ Interview with Experts, EWLA main Office (October 14, 2024).

be governed according to the law, custom and the religion of the place of celebration if they submit to the court written agreement to this effect". This means, as long as the husband and wife agree in writing, their marriage can be governed according to cultural or religious laws of the place of celebration, and this sometimes may have the potential to open the door for the violation of women's equality and other human rights guaranteed under the constitution. Rather than, directly approving by the mere fact of the written agreement there should be a standard or a test such as assessing the compatibility of the custom or religious law of the place of celebration with human rights instruments and national laws provided to ensure gender equality and women's rights.²⁶⁸

Article 74(2) provides that unless it is dangerous to their health, the husband and wife must perform the regular sexual intercourse expected of marriage. And in sub-paragraph 3 of the same article, it is stipulated that any agreement contrary to this will not be effective. However, this provision is contrary to Articles 1-3 and 5 (A) of CEDAW. Articles 8-19 of the BGR Family Code are provided for betrothal and its legal effect. However, Article 16(2) of the CEDAW prohibits recognition of such relationship. As a party to this convention and as provided under Article 9(4) of the FDRE Constitution the international agreements signed by the country are an integral part of the law of the country. Hence, the family code of the region needs to be revised in this line.

The code, in the federal one, does not have a provision on the manner of partition of property when there is the dissolution of bigamous marriage. The regional courts tend to decide half of the property for the husband and the remaining fifty percent to be shared by the women/wives. However, this standing is against equality rights reaffirmed under the constitution and major human rights instruments.²⁶⁹ On this issue, there are various decisions by the Federal Supreme Court Cassation Division but still, there are issues arising from such kind of litigations. As evidenced under file numbers 24625, 50489 and

²⁶⁸ Interview with Assistant Professor of Law, Assossa University (September 24, 2024).

²⁶⁹ Interview with and Assistant Professor of Law, Assossa University (September 24, 2024).

45548, the standing of the division is allocating half of the property to the women engaged in the bigamous marriage and letting the other half to the husband.

When the divorce takes place with a child under the age of five, the situation may force the mother to take care of the children in person. This in turn will keep them at home and difficult to engage in work to earn. On the other hand, in determining maintenance issues there is no law to consider such a scenario and oblige the father to pay an additional amount of money as maintenance or support for the family.

During the process of litigation for divorce, the husband transfers the ownership of common property to their next of kin and violates the woman's right to equal share from the common property. To prevent such kind of practices the family code needs to have a provision on the manner of protection of common property during divorce proceedings. We need to consider the Civil Procedure Code Provisions on this issue ... like attachment provisions of the code or we may say the attachment provisions are operational upon the request of the interested party and needs to be supported by affidavit. If so, a lay man and vulnerable party such as women may not have legal expertise and representation to request the order from the court. If such provision is incorporated under the family code the court may order by its own initiative either when there is reasonable suspicion or a mandatory requirement until the case is settled. This argument by the researchers goes in line the decision of the cassation division. The bench decided that after the dissolution of marriage, the common properties and incomes from the common properties remain the common property of the spouses until it is shared to them.²⁷⁰ This means the party who mismanaged the property, transferred for third party or alienated it will be responsible for the damage inflicted against the interest of the other party.

²⁷⁰ Halefom Girmaye Vs. Haben Fishaye, the Federal Supreme Court Cassation Division, File No. 153258, 23/01/2011 E.C.

In Dire Dawa City administration the challenge for the enforcement of the family law is mainly related to the language barrier for the rural community. Since the revised family law has not been translated into the languages of *Afan Oromo* and *Af Soomaali*, the dissemination of the law to the community and creating awareness becomes subject to limitations. As a result, the access to these laws and policies is not properly communicated. The community has no know-how regarding these laws. The reason for frequent domestic violence, early marriage, and child rights violations is strongly attached to this fact.²⁷¹ The other challenge in this city administration is related to a pregnant woman as a result of irregular union. Since the potential father declines to accept the pregnancy result most of the women left without any assistance. Maintenance and shelter is the very challenge in this regard.²⁷² This pregnancy dilemma must be addressed by the law. Women are victims since there are no remedial mechanisms. Pregnant women must have to get maintenance.²⁷³ The other challenge is related to the enforcement of decisions on the maintenance of children which has a direct impact on the rights of women.²⁷⁴

Some challenges are related to the law, interpretation, perception of justice bodies, and proper enforcement of the law. Especially there are vague provisions subject to different interpretations. Judges may give different interpretations of a similar case. Law enforcement officials including police have no sufficient awareness of the family law issues. Law enforcement officials are not interested in entertaining family cases as they consider them as an intervention in the affairs of the family since the family is presumed as the result of love and affection.²⁷⁵

²⁷¹ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024).

²⁷² Dire Dawa City WCAO (September 20, 2024).

²⁷³ Interview with Legal Support Department, Dire Dawa WCSA (September 22, 2024).

²⁷⁴ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

²⁷⁵ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

3.3. Children's Rights Protections under the Family Laws

The FDRE Constitution articles 35 and 36 deal with the rights of women and children respectively. The family law was issued following these constitutional protections. The interest of the child is protected in the constitution and the RFC. Maintenance, custody, and paternity issues are addressed by the law to keep the best interest of the child. A woman may not be entitled to custody if she is not fit for the best interest of the child. The well-being of the child, maintenance, tuition, and other issues are seriously considered. It is based on the support/opinion of the social worker.²⁷⁶ Custody, guardianship, and maintenance are the vested interests of the child. For instance, the decision of guardianship is decided after considering the interests of the child. Thus, either the parents or other guardians will be determined based on this notion. Before the pronouncement of divorce, the case is referred for arbitration to elders to maintain the marriage. In case they decline to survive their marriage, the main issue to be considered by the court is the custody and maintenance of children. Most of the time the guardianship is assigned to the woman rather than for a man to maintain the best interest of the child. The law has good protection of guardianship, tutorship, and maintenance of the child.²⁷⁷

The ANRS FC has numerous provisions designed to protect the rights of children.²⁷⁸ Regarding the protection of children's rights within the family law, there are notable gaps, particularly in decision-making processes, maintenance assessments, child custody post-divorce, and establishing paternity. These gaps hinder the effective protection of children's rights and require urgent attention to align with international standards and best practices.²⁷⁹ During marriage, and after marriage the rights of the child are a relevant issue.²⁸⁰ While the

²⁷⁶ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

²⁷⁷ Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

²⁷⁸ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024)

²⁷⁹ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024),

²⁸⁰ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

Family Law includes provisions for protecting children's rights, there is a notable gap in implementation, emphasizing the need for enhanced enforcement mechanisms. The lack of effective implementation of criminal law again poses a significant challenge in fully enforcing the Family Law to protect women's and children's rights, especially in the post-divorce stage.²⁸¹

Although it is not possible to say that the BGR FC is sufficient in terms of protecting the rights of children, it includes various provisions regarding children, for example: Article 73(1) under the heading of children of previous marriage, it is stipulated that “each of the spouses shall retain an exclusive right of decision in matters concerning the upbringing of children whom he/she had before the marriage”. Article 103(5) states that once the divorce petition has been filed, the court will issue such orders as may be deemed appropriate regarding the maintenance of their children and the management of their property. Article 135(1) “The court shall when deciding the dissolution of marriage also decide as to which spouse shall have custody of the children, care of their education, health, maintenance and the rights of the parents and children to visit each other”. However, none of the family codes have provided a way out if the parent with visitation right does not want to visit his/her child but pays the maintenance as ordered by the court.

Again, after divorce, more than the division of property, the law prioritizes children’s fate including expert studies.²⁸² Regarding the protection of children's rights, when we look at maintenance, child custody, and divorce, many children are negatively affected. Despite the provisions of the law about children, there is a situation where society does not take care of children's rights.²⁸³

The main issue regarding the protection of children's rights is related to their maintenance. Maintenance court decision management decisions are full of

²⁸¹ Interview with a Family Bench Judge, Bahir Dar Zuria Woreda Court (September 22, 2024); Interview with Women Rights Dissemination Expert, Addis Ababa WCO (October 13, 2024).

²⁸² Interview with attorney, Assosa (September 23, 2024).

²⁸³ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

problems. In the Dire Dawa area courts maintenance considers 1/3 of the income of the parent. But this is subject to the nature of the work of the parent. Unless the parent has permanent-based work/employment, it is impossible to enforce it. If he/she has permanent work, it is possible to effect payment through serving letters to the employer. But maintenance is not an easy task when the work of the parent is on a temporary contract basis. If he/she has no income it is impossible to enforce the maintenance right of the child.²⁸⁴ In addition to this, the BGR courts are struggling to have consistency in terms of the amount maintenance. The respondents have evidenced that the courts repeatedly decide varying amount of maintenance from a judgment debtors with similar status of income and living conditions. To solve this problem, it is better to have a guideline on determination of the amount of maintenance as it is recently done at the federal level. This solution will solve at least the problem of inconsistency and abuse of discretionary power by the judiciary.

3.3.1. The Best Interest of the Child

The best interest of the child is mentioned in Article 194(4) regarding the power of the court in the adoption case, this protection of best interest of the child at adoption extends to cancellation of contract of adoption for the best interest of the child.²⁸⁵

On the other hand, the ANRS FC declares that decisions on custody and care must prioritize the best interest of the child and ensure their safety.²⁸⁶ The justice process should strengthen decision-making processes to prioritize the best interests of children, ensuring their well-being is safeguarded.²⁸⁷ The BGR FC under Article 135(1) states that “the court shall when deciding the dissolution of marriage also decide as to which spouse shall have custody of the

²⁸⁴ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

²⁸⁵ RFC, Art. 195(2) and Franswis Pastor Vs. Dukman Venno, the Federal Supreme Court Cassation Division, File No. 44101, 24/06/2002 E.C.

²⁸⁶ Interview with Experts, EWLA main Office (October 14, 2024).

²⁸⁷ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024).

children, care of their education, health, maintenance and the rights of the parents and children to visit each other". This provision is provided to protect the best interest of the child considering the natural parents will make reasonable decisions for the wellbeing of their child. Article 101(3) states that if the divorce by mutual consent does not sufficiently protect the interest and well-being of their children the court may approve only the divorce agreement and give decisions it may deem appropriate to correct the defect on the conditions of divorce.²⁸⁸

3.3.2. Child Custody and Maintenance

Regarding custody and children's rights, the ANRS FC under Article 124(3) attempts to provide some protection, stating that every child under the age of five should live with their mother and is entitled to maintenance from the father. After this age, custody is determined by the court with the assistance of social worker assessments. However, this process is often violated, and women are typically held responsible for their children, making life difficult for them after divorce. Throughout this process, their rights are frequently violated and abused, resulting in children becoming street kids and losing access to education and other rights. Additionally, inflation affecting court-mandated maintenance amounts makes life difficult for mothers and children, leading many mothers to resort to begging or working in poor conditions, including participation in prostitution.²⁸⁹ The maintenance issue depends on the capacity of the parent. For instance, the practice in Dire Dawa, sometimes maintenance amount depends on daily income. In such a case, it is very difficult to know the income of the duty bearer since it fluctuates. It is very difficult to render justice and back up with evidence.²⁹⁰ Even though a new directive has been promulgated to administer the maintenance issue, still there are challenges required to be not settled. The guardians must also be selected duly

²⁸⁸ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

²⁸⁹ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024).

²⁹⁰ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024).

considering the future of the child. Maintenance follows the guardianship decisions. The guardian is duty-bound for the proper upbringing of the child while the other spouse is duty-bound to pay maintenance. The law is designed to give priority to the interests of the child so that their rights to protection, education, and proper upbringing are legally recognized. In practice, cultural attitudes on parental authority can influence the enforcement of these rights. For example, customary attitudes toward discipline may conflict with legal protections, which impedes child protection measures.²⁹¹

There are incidences of guardianship decisions for the woman but on the agreement of the two divorced spouses, the other couple may have custody of children despite the contrary decision of the court. After exchanging the children without the knowledge of the court, during the dispute, the woman institutes cases to resecure the custody of the children. Most of the time, this is related to ignorance of the law. The guardians of maintenance creditors routinely lodge their cases before courts and police departments to enforce their children's rights.²⁹² Concerning maintenance decisions disrespecting the court orders is a common trend and in some instances, they have no consequences for belittling the decisions of the court. As a result, there are incidences where arrests are pronounced, and non-paid maintenance is affected. ²⁹³

The practice in Dire Dawa shows that the upbringing of the children below 7 years of age is assigned to their mother. Children above the age of 7 may choose their parents to live with. In most of cases the guardianship is given to the mother and the maintenance is for the father without considering their fitness and the requirements prescribed under the code. Mothers have no awareness about the payment capacity of their ex-husband, and it is only 1/3 of his income which is mainly limited to cover tuition of the child. ²⁹⁴ Most of the maintenance

²⁹¹ Interview with Experts, EWLA main Office (October 14, 2024).

²⁹² Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

²⁹³ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024).

²⁹⁴ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

debtors are required to pay maintenance as long as they have an income. To avoid this duty, they terminate their employment relation with employer known by the court and this unacceptable habit is being taken as a lesson by other duty-bearers.²⁹⁵

The ANRS FC provisions on custody issue also has loopholes, by disproportionately burdening mothers with the majority of responsibilities despite the law's provisions for shared parenting.²⁹⁶ The law has no details about amount of maintenance which leads to inconsistent decisions by the court. The provisions on the mechanism of giving maintenance is somehow inconvenient and impossible to implement in rural society.²⁹⁷ Detailed directives on maintenance assessments are crucial to protect children's rights and ensure adequate financial support. There is no manual in the region which helps us to decide the amount of maintenance. Perhaps the FSC adopted a new guideline. So, we need to contextualize it to our region. Deciding maintenance is only for under 18 children. However, a child over 18 such as a university student cannot have a means to support himself. Thus, maintenance for children including those above 18 when they have no means has to be included. Otherwise, it imposes a burden on the mother.²⁹⁸ Reforms are needed to ensure fair and balanced child custody arrangements post-divorce, prioritizing the welfare of children.²⁹⁹ Establishing clear guidelines for post-divorce custody arrangements promotes a stable environment for children, and both parents contribute to their upbringing.³⁰⁰

The other gap in the law is the lack of stipulation for the minimum amount of maintenance to be paid for a child. Because of this, courts are deciding for very

²⁹⁵ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

²⁹⁶ Interview with a Family Bench Judge, Bahir Dar Zuria Woreda Court (September 22, 2024).

²⁹⁷ Interview with Assistant Professor of Law, Bahir Dar University (September 26, 2024).

²⁹⁸ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

²⁹⁹ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024).

³⁰⁰ Interview with Experts, EWLA main Office (October 14, 2024).

small and inconsistent decisions for cases with similar factors which may help to fix the amount of maintenance.³⁰¹ In addition, maintenance of the children is a difficult issue when the parent has no permanent basis work, and the law has to be revisited in this regard. The payment modality must not be based on a payroll basis rather other mechanisms must be searched.³⁰²

3.3.3. Protection of a Child from Abuse

The law includes measures to protect children from abuse and neglect and defines the responsibilities of government bodies to intervene when children's rights are at risk.³⁰³ But most of the time violence against the child is related to maintenance administration. It is a common practice to assign guardianship for the woman and maintenance to be covered by the husband. The challenge is related to making the payment and visitation rights. Children are abused by their parents during a quarrel/conflict between their parents related to the above facts. Children are victims of the conflicts among their parents. There are cases where children are transferred to a third party without the knowledge of the court. This is a result of a quarrel between them or the incapacity to afford to upbringing them. As a result, children might be exposed to labor exploitation.³⁰⁴

3.3.4. Paternity

The paternity claims are entertained under the family codes. Clear provisions for establishing paternity are essential to protect children's rights and provide them with legal recognition and support.³⁰⁵ Paternity is acknowledged if the child is born in wedlock or if there is a status of marriage. The paternity claim is entertained through presumption and via declaration of paternity. For disputes at court regarding paternity courts require a DNA test to be conducted and such

³⁰¹ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

³⁰² Dire Dawa City WCAO (September 20, 2024).

³⁰³ Interview with Experts, EWLA main Office (October 14, 2024).

³⁰⁴ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

³⁰⁵ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024).

test has solved many challenges in this regard.³⁰⁶ However, the cost for DNA examination is a challenge to the party who claims the fact to be proven, mainly the mother, and the cassation division pronounced judgment which directed the costs of the DNA test to be covered by the claimant. Judges sometimes recommends the cost to be shared among the parties in the dispute if the paternity is ascertained.³⁰⁷ In some of the cases, because of the inability of the mother to cover cost of the DNA test the court may dismiss the case, leaving the child without ascertained father, which is challenging for both the child and the mother.³⁰⁸

DNA brings a good solution.³⁰⁹ However, the following points should be improved as they are perceived gaps. The fact that the family law does not contain a provision to file a lawsuit to disown parents by children, disowning is provided for a father. Hence, it is better to have a provision for such a right to allow children to contest established paternity.³¹⁰ On the other hand, the cassation division declared that submission of a petition for the ascertainment or declaration of a father by judgment is allowed for a child.³¹¹

Assignment of paternity by agreement, according to Article 173(1) of BGR FC “where the child is born within (210) days from the conclusion of the marriage or the commencement of irregular union, the husband or the man who is living with the woman may, by agreement assign the paternity of the child to another person who declares that he is the father of the child”. Determining paternity only with the consent of a person who has accepted the status violates the constitutional right of children to know their real parents. Additionally, such

³⁰⁶ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

³⁰⁷ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

³⁰⁸ Interview with Attorney and EWLA’s volunteer lawyer at Bahir Dar (September 25, 2024).

³⁰⁹ Interview with an expert, Addis Ababa City Administration WCSAO (October 16, 2024).

³¹⁰ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

³¹¹ *Ermiyas Kistantinos Gilips Vs. Solomon Kistantinos Gilips*, the Federal Supreme Court Cassation Division, File No. 57607, 30/09/2003 E.C.

an agreement equates a child with a mere transfer of a certain property through agreement.³¹² Paternity determination is given to the high court. (Article 149), by the Civil Procedure Code. However, the power to entertain family matters such as divorce and maintenance is given to woreda courts. Thus, seen from the perspective of access to justice, I suggest the woreda courts should also have this jurisdiction to decide on paternity. So, the regional as well as the federal family laws should allow woreda courts to entertain all family matters including paternity.³¹³

3.3.5. The Rights to Education and Health

To promote children's development and well-being, their right to education and health care is recognized under the constitution and laws of the states. Despite these developments, there are challenges in implementation and public awareness, especially in rural areas where customary practices may conflict with legal standards. Overall, the Act represents a major step forward in protecting children's rights, but effective implementation is critical for real impact.³¹⁴

3.4. Penetration of Family Laws in the Society

The acceptance and implementation of the RFC by society varies greatly in different regions and communities.³¹⁵ The law may not be clear and accessible to all sections of society.³¹⁶ Our community is guided by society's norms or customs and traditions rather than the law, especially when it comes to family matters, so it is not given enough space to understand or implement the law.³¹⁷ For example, marriage between relatives (beyond the third degree) in some communities is a norm and acceptable practice. In some communities, couples

³¹² Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

³¹³ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

³¹⁴ Interview with Experts, EWLA main Office (October 14, 2024).

³¹⁵ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

³¹⁶ Interview with Experts, EWLA main Office (October 14, 2024).

³¹⁷ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

choose Sharia court disregarding the family laws preferring religious commitments. Some others choose traditional elders thinking that it better protects their rights.³¹⁸ But some denounce that citing this may not respect their equality and wish to be adjudicated by ordinary courts. On the other hand the state courts are administering high number of family related cases. This in turn becoming a reason for case load resulting in delay of judgments. Thus, it is better to establish a special bench for family matters.³¹⁹

Thus, the penetration and integration of the family laws into society remains a concern, with traditional practices prevailing within the communities. A significant number of the community including urban dwellers do not know the requirements for a valid marriage, the rights and obligations of the two spouses, reasons or ways for dissolution of marriage, the rights and obligations of the spouse during the divorce, the right to maintain a property as a personal property during marriage, the requirement of court approval for the property bought from the proceeds of transactions from personal property during marriage, whether there can be separate property during marriage and personal or joint debts in marriage and their effect.³²⁰ Child abuse, rape, bigamy exchange marriage (which is clearly prohibited under Article 32 of the BGR FC), and harmful traditional practices like FGM, are commonly practiced which serve as a showcase of the lack of penetration.³²¹

To address this gap, women and children's social affairs, governmental, nongovernmental, justice organs, and prosecutors must engage with communities, providing education and awareness on the rights and protections guaranteed by the law and further making them (law violators) accountable

³¹⁸ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

³¹⁹ Interview with Judge, BGNRS' Supreme Court (September 24, 2024).

³²⁰ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

³²¹ Interview with Children's Rights Protection Directorate Director, ANRS BOWYSA (September 26, 2024).

to the law.³²² In addition, research or assessment is needed to answer the level of family law penetration into the society (accepted and applied).³²³

3.5. Positive Changes

The laws under scrutiny have a significant impact on women's rights improvement. The significant parts of the codes are provided for the protection of women's rights. The awareness of women and communities about their rights under the law is better than before because more women than ever are seeking legal remedies for things like divorce and domestic violence. This may be due to the increase in free legal aid services, and the involvement of non-governmental organs such as EWLA. Established shelters for victims and legal aid service centers are the implications of improvements in the system.³²⁴ As a result, the acceptance of the law is in progress.³²⁵ The penetration within the community may be in the affirmative compared with the civil code.³²⁶ The law has better penetration and acceptance within the community.³²⁷

3.6. Divergence between the Family Law and the Demand of the Society

The provisions that have acceptance/legitimacy within the community are very limited despite the campaigns for awareness creation. Significant number of the community does not know the law rather they learn from the consequences of the decisions of the court or other bodies. Not the family law, but rather the practice that guides the community. Thus, the purpose of the family law is not penetrated to the public. But there is better awareness of the rights of women compared with the previous one. Law enforcement officials' knowledge of family law is very nominal but progressive.³²⁸

³²² Interview with a Family Bench Judge, Bahir Dar Zuria Woreda Court (September 22, 2024).

³²³ Interview with Assistant Professor of Law, Bahir Dar University (September 26, 2024)

³²⁴ Interview with Experts, EWLA main Office (October 14, 2024).

³²⁵ Interview Women and Children Rights Experts, ANRS WSAO (September 20, 2024)

³²⁶ Interview with Instructor of Law, Dire Dawa University (September 27, 2024).

³²⁷ Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

³²⁸ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

The practical implementation of the law, particularly in the rural areas, is constrained by the traditional association of the community to norms, cultures, and traditional practices. The community's acceptance and implementation of the Family Law may vary within the community, with some aspects being embraced while others face resistance due to cultural practices or societal attitudes. Certain parts of the law, such as property, equality and marriageable age regulations, may encounter challenges in community acceptance, requiring targeted awareness campaigns and education initiatives.³²⁹

The community does not respect or follow what family law states; rather, it focuses on cultural practices that negatively impact women and children, violating their human rights and dignity. In the community, issues such as female genital mutilation (FGM), keeping children out of education, early marriage, and child labor abuse are prevalent.³³⁰

The difference between the law and the society is related to the lack of awareness and negative perception of modern laws.³³¹ Limited access to justice institutions, the lack of education for the community to comply with the law, and the fact that the community has approved customary laws instead of the law.³³² The difference between family law and society's needs, especially in terms of gender equality, protection of children's rights, and access to justice, can be explained as follows:

A) Community Perception Concerning Gender Equality

There is a discrepancy between the law and the level of awareness of the community concerning gender equality.³³³

³²⁹ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024),

³³⁰ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024)

³³¹ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024)

³³² Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

³³³ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024).

The RVC aims to promote gender equality by ensuring equal rights in marriage, divorce, and inheritance. It emphasizes women's autonomy and protection from discrimination. While the law aims to promote gender equality, societal norms and practices hindered its full realization.³³⁴ Equality provisions are there under the code but society perceives the husband as the head of the family and this perception is highly supported even by women because of cultural influence. Equality of men with women exists at the bare minimum and traditional values dominate the community.³³⁵ The society has divergent views on the equality of women and men.³³⁶ It is seen by the community that gender issues, property issues, and some parts of the law are judged by a society's access system based on biased sex relations or being subject to the culture rather than the law.³³⁷ It is a patriarchal society. Many societies may still hold traditional beliefs that prioritize male authority and gender roles and oppose laws that contradict these norms. The husband is the head of the house and the ultimate decision-maker. The community has no place for women. Attitudinal challenges regarding the capacity of women and the lack of women empowerment are the main challenges in this regard. For instance, abduction is perceived in practice as one way of concluding marriage. Even though it is mandatory to register marriage and birth of a child at the office of civil status the society is not as such complying with the stipulation.³³⁸

The family law of the Amhara region has made some good reforms. Despite this, the old practice is yet there. For instance, in betrothal, the woman's full consent is not sought at the time of marriage. Even in marriage, it is still the man who is the main leader of the house. This shows the huge gap in gender

³³⁴ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024).

³³⁵ Interview with an Expert, Addis Ababa City Administration WCSAO (October 16, 2024).

³³⁶ Interview with Women's Participation and Mobilization Directorate Director, BGNRS BOWSA (September 25, 2024).

³³⁷ Interview Women and Children Rights Experts, ANRS WSAO (September 20, 2024).

³³⁸ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

equality.³³⁹ The perception of society is vital in legal development. The community has norms and traditions. The community is eager to maintain its traditions. For instance, the early marriage issue is the celebrated one in the community despite the family laws prohibition. The roles of women and men are already spelled out by the traditions. The violence against women is not a big deal and is too much tolerated. Men are the breadwinners while women are the household mentors. Access to justice is not an easy business for women. The community is also resistant in this regard. The community hides the man who commits violence and discourages the women not to bring the case before the court of law or the justice bodies.³⁴⁰

B) Perception of the Community to the Protection of Children's Rights

A child has among other things the right to life, education and living in a safe environment. It is also reinforced by CRC protections in addition to the revised family law. However, the community is not sensitive to these rights protections. The CRC states that it is clear that children above the age of 6 have the right to make decisions in their matters, but the practice is in line with this assertion. Despite this protection, A child is not entitled to be listened to in his opinion except to do what the parents told him to do. During violence against children, the community may not be ready to bring the case before the court and there are challenges to cooperating with the justice organs in the production of witnesses and related activities.³⁴¹ During divorce, society believes that a child should grow up with his mother, on the other hand, the law dictates a child to grow up not only with his mother but with the person who can raise him/her in the best way.³⁴²

C) The Right to Justice

Access to justice is a constitutional right and everybody is entitled to it regardless of their status. Women and children must be supported considering

³³⁹ Interview with Assistant Professor of Law, Bihar Dar University (September 26, 2024).

³⁴⁰ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024).

³⁴¹ Interview with Assistant Professor of Law, Bihar Dar University (September 26, 2024).

³⁴² Interview Women and Children Rights Experts, ANRS WSAO (September 20, 2024).

their social status. The pro-bono service must address this section of the community. Family law must consider these issues in consultation with other organs.³⁴³ The law provides a framework for seeking justice, including legal aid provisions, protection orders, and mechanisms for resolving complaints related to family matters. Also, Article 37 of the FDRE constitution regarding the right to access justice, clearly states that it is possible to get justice by approaching the court or any other organ in authority. Despite this, women and children's access to justice might be denied for different reasons.³⁴⁴ Justice officials tend to decline to entertain the cases of victims of domestic violence based on the mere fact of the non-intervention in the family issues. For instance, women who lose their eyesight, and hearing capacity, and get bodily harm are left without access to justice for the mere fact of non-intervention in family matters. This seriously undermined the right to access to justice for women.³⁴⁵ The gender equality disparity in access to justice is visible. Society treats that men are superior and need better justice, and the law declares that men and women should get equal justice.³⁴⁶ Within the culture, if the woman goes to the legal authority to seek justice, the society considers the woman as a person who threatens the culture.³⁴⁷

Access to justice may be hampered by factors such as economic barriers, lack of awareness of legal rights, and inadequate legal infrastructure.³⁴⁸ Many individuals, especially women and children in marginalized communities, may find it difficult to navigate the legal system despite laws intended to protect them.³⁴⁹

³⁴³ Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

³⁴⁴ Interview with Experts, EWLA main Office (October 14, 2024).

³⁴⁵ Interview with Dire Dawa Branch Office Coordinator, EWLA (September 26, 2024).

³⁴⁶ Interview Women and Children Rights Experts, ANRS WSAO (September 20, 2024).

³⁴⁷ Interview with Assistant Professor of Law, Bihar Dar University (September 26, 2024)

³⁴⁸ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

³⁴⁹ Interview with Experts, EWLA main Office (October 14, 2024).

Women face numerous challenges when they go to court due to societal pressures that silence their voices. Elders often push women to endure difficult situations and remain with their husbands regardless of the bad family circumstances. Even around the court, there is mistreatment by court officials. The economic status of women is another issue hindering women's access to justice. Since the household resource and property during the marriage is controlled by the husband, women often lack the income to pay for legal representation during litigation.³⁵⁰ In Benshangul Gumuz Region the absence of a special family bench is mentioned as an impediment to speedy access to justice.³⁵¹

In a nutshell, even though, the RFC provides a progressive framework aimed at addressing gender equality, children's rights, and access to justice, there is a significant gap between these legal provisions and societal attitudes and practices. Bridging this gap requires continued education, community engagement, and resources to ensure legal rights are understood, accepted, and effectively implemented.³⁵²

3.7. Barriers against the Implementation the Family Laws

Lack of women and child-friendly institutions: The main challenges to enforcing and implementing family law at the required level include the Absence of child-friendly courts, and judicial bodies and the Lack of awareness of such rights.

Access to Information and Lack of Awareness: Access and lack of information are other challenges for implementing family laws. The community has no sufficient information. Many individuals, especially those living in rural areas, are not aware of their rights under the law, limiting their ability to seek protection and justice. For instance, in Dire Dawa 38 rural kebeles speak either Affan Oromo or Somali languages. On the other hand, the family law is written in Amharic and English which have no other language versions. Thus, language

³⁵⁰ Interview with Attorney and EWLA's volunteer lawyer at Bahir Dar (September 25, 2024).

³⁵¹ Interview with Attorney, Assosa (September 26, 2024).

³⁵² Interview with Experts, EWLA Main Office (October 14, 2024).

might be considered as a barrier for lack of information and a challenge for the implementation of the family law.³⁵³

The generality of the law: The generality of the law which ascribes detailed directives and guidelines (for instance the guardianship and maintenance details) mentioned as a challenge for the enforcement of family law provisions.³⁵⁴

The Lack of Institutional Coordination: Lack of institutional coordination towards addressing challenges (panning and enforcement); lack of follow-up and inspection; resource constraints (money, car, trained human power); and insecurity issues are mentioned as challenges to implementing the family law in the Amhara region.³⁵⁵

Customs and Traditions: The implementation of the codes is highly hindered by complex and detrimental cultural traditions and customs within the community. The community is highly dependent on tradition rather than law, which negatively impacts children and women's rights.³⁵⁶ Deep-rooted cultural practices and beliefs can hinder smooth implementation, especially in rural areas where customary norms often override legal frameworks. Ingrained cultural beliefs and practices often prioritize traditional gender roles, leading to opposition to provisions promoting gender equality and women's rights.

Inconsistent application: Inconsistent application of the provisions of the law by justice organs in turn results in protection gaps.

Education and training gaps: Continuous education is needed to inform the public and those responsible for the enforcement of the law about the provisions and implications of the law.³⁵⁷

³⁵³ Interview with Legal Support Expert, Dire Dawa City WCAO (September 20, 2024).

³⁵⁴ Interview with Assistant Judge, Federal First Instance Court, Dire Dawa (September 24, 2024).

³⁵⁵ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024).

³⁵⁶ Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024).

³⁵⁷ Interview with Experts, EWLA Main Office (October 14, 2024).

While there are signs that the law is being adopted and partially implemented, significant obstacles remain. Continued efforts through education, advocacy, and training are critical to ensure that the law is fully ingrained in society and to protect the rights it seeks to uphold.

Inadequate Training (for Law Enforcement organs and the Judiciary): Inadequate training for police, judges, and legal professionals on family law leads to inconsistent implementation and enforcement.

Limited resources (financial and human resources): Budget constraints and human resource challenges can hinder the establishment of essential support services such as legal aid, shelters for domestic violence survivors, and effective court systems.

Accessibility Issues: Access to legal services and courts in remote areas may be limited, making it difficult for individuals to enforce their rights.

Social isolation: Women and children may fear social consequences for seeking help, especially domestic violence or divorce, which may prevent them from using legal protections.

To effectively implement and enforce family law, it is important to address these challenges through comprehensive public education campaigns, legal professional training programs, and community engagement to acknowledge the rights.³⁵⁸

As mentioned above, the main challenges in enforcing the Family Law include societal acceptance issues, limited awareness of legal rights, and gaps in implementation that impact the effective protection of women and children.³⁵⁹ Society's negative perception of ingrained culture, customs, and traditions hugely affects the implementation of family laws. To bridge the gaps and

³⁵⁸ Interview with Experts, EWLA Main Office (October 14, 2024).

³⁵⁹ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024).

overcome the challenges, it is necessary to equip the society with a good understanding about the law, women's rights, child rights, equality, and harmful customs, consult (public participation) the lower society during the enactment of the law, and awareness creation and advocacy must be done.³⁶⁰

3.8. Possible Solutions to Bridge the Gaps and Challenges

To address these challenges, comprehensive reforms, community education initiatives, and collaboration with key stakeholders such as the police, courts, and community-based organizations are essential to ensure the effective implementation of the Family Law.³⁶¹

Approaches include work on domestic violence; punishment of the offenders; strong cooperation among stakeholders, capacity building,³⁶² economic empowerment,³⁶³ awareness raising, community mobilization, media campaigns, participation of religious leaders, and training till community perception change is required.³⁶⁴ Judicial accessibility,³⁶⁵ and imposing civil and criminal liabilities when the family law is violated are the solutions forwarded by the informants to tackle the challenges faced in the implementation of the family laws. The informants also recommended during the assessment of maintenance the income of the duty bearer must be settled through creating categories. Awareness-raising campaigns must target police departments, justice bodies, courts, and other responsible bodies in addition to the community. Establishing joint platforms for stakeholders to discuss common agendas is the other vital solution for the family law regime.³⁶⁶

³⁶⁰ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

³⁶¹ Interview Women and Children Rights Experts, ANRS WSAO (September 20, 2024).

³⁶² Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024).

³⁶³ Interview Women and Children Rights Experts, ANRS WSAO (September 20, 2024).

³⁶⁴ Interview with and Women Rights Dissemination Expert, Addis Ababa City Administration WCSAO (October 16, 2024).

³⁶⁵ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

³⁶⁶ Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

3.9. Activities to be performed by EWLA

As the main stakeholder on the issue at hand, Ethiopian Women Lawyers Association should focus on providing legal aid services, conducting targeted awareness campaigns, and collaborating closely with institutions such as the police, courts, and community-based organizations. By working together and advocating for legal reforms, it is possible to strengthen the protection of women's and children's rights to ensure a more just and equitable society.³⁶⁷ To bridge the gaps and overcome the challenges, conduct a wide survey, take action to close the gaps found in the research, advocate to enact a new law to fill the gap, and provide training and awareness programs are some of the possible engagements for EWLA.³⁶⁸ The capacity of EWLA must be reinforced in human resources, branching, benefit packages of the employees, and promoting the activities of the association. Data centers in each kebele must be established. Brushers, short messages, and online services must be facilitated.³⁶⁹ Several steps can be taken to address the gaps and challenges in enforcing and implementing the family laws, some of the activities are mentioned hereunder:

Research and Advocacy: Research must be done on the maintenance of children and women during divorce; access to justice, the status of marriage enforcement during irregular union, and related concepts, and advocacy and capacity building must be done based on the findings of the research.

Media Engagement: Use local media, including radio and social media, to disseminate information and success stories related to the laws.

Comprehensive training: Providing comprehensive training to law enforcement, judiciary, and legal professionals on the provisions of the law and best practices in its implementation. Training for staff in shelters and legal aid organizations to effectively assist those seeking legal protection. **Increasing funding:** Increase

³⁶⁷ Interview with Woman and Children Right Department Human Right Officer, EHRC Bahir Dar (September 27, 2024).

³⁶⁸ Interview with Assistant Professor of Law, Bihar Dar University (September 26, 2024)

³⁶⁹ Interview with Legal Support Expert, Dire Dawa City WCAO (September 20, 2024).

funding for courts, legal aid services, and shelters to improve access and support for individuals seeking justice. Establish accessible legal aid institutions in rural areas to help individuals navigate the legal system. To this effect the EWLA may introduce mobile legal aid center to travel from urban stations to rural areas on business days, market days and other special gathering events.

Involvement of Community Leaders and Community Right Promoters: Engaging local leaders and influencers to advocate for legislation and challenge practices that are contrary to the provisions of the law.

Engaging Institutions of the Community: “Edir” and similar institutions operating at the grass root will have a great impact when EWLA wants to deliver trainings, disseminate required information to the community and facilitating mechanisms to address community-specific challenges.

Facilitate support groups: Facilitate support groups for women and children to learn about their rights and share experiences in a safe environment.

Establishing monitoring mechanisms: Establishing independent bodies to monitor the implementation of the law and monitor any discrepancies or failures in implementation.

Feedback mechanisms: Feedback mechanisms that enable the implementation of a system where individuals report their challenges in accessing justice can help identify areas for improvement. **Promoting gender equality, education, and empowerment programs:** Encourage programs aimed at empowering women and promoting gender equality, addressing cultural norms that prevent legal acceptance.

Cooperation with non-governmental organizations (Working together): Working with non-governmental organizations focused on women's and children's rights to enhance access, to education and support services. Civic society organizations and the media working on the protection of women's and children's rights may have a great impact in bringing change in the society.³⁷⁰

³⁷⁰ Interview with Attorney at Law and Assistant Professor of Law, Assosa University (September 24, 2024).

Court Representation: children and women are vulnerable groups that have no resources to cover lawyers' fee. Thus, the representation of these sections of the community shall be the objective of EWLA by broadening its current activity areas.

One-stop centers service: to be established at each health center and court to receive every support to the victim needs, such as health care, social, legal, etc. So, EWLA shall among other things create a system of a DNA testing opportunity. Many are suffering from a lack of certainly identifying paternity. This creates lots of complications.³⁷¹

Capacity building programs (for Professionals): Providing specialized training to women lawyers in family law provisions, advocacy skills, and legal representation to enhance their effectiveness in supporting their clients.

Mentorship Programs: Establish mentorship networks that connect experienced lawyers with young women in the field to share knowledge and resources.

Policy Advocacy: Engage in advocacy efforts to improve legal frameworks and policies affecting women and children, seeking amendments where necessary.

Case Studies: Sharing a collection of case studies that highlight successful legal interventions and outcomes, demonstrating the impact of legal aid.

Public Forums: Host community forums to discuss legal rights and challenges, encouraging dialogue between legal professionals, community leaders, and the public.

Online Forums: Create online forums or social media groups where lawyers can discuss challenges, share experiences and provide peer support.³⁷²

By focusing on these activities, EWLA can play an important role in bridging the gaps in Ethiopia, overcoming the challenges, and promoting greater gender equality and rights in the process of implementing family law.³⁷³ By implementing these strategies, stakeholders can work to close gaps in the implementation of the Family Law and ensure that its provisions are fully

³⁷¹ Interview with Children's Rights Protection Director, ANRS BOWYSA (September 23, 2024).

³⁷² Interview with Mobilization and Participation Expert at ANRS WCSA (September 23, 2024)

³⁷³ Interview with Experts, EWLA main Office (October 14, 2024).

implemented and accepted in society. Sustained efforts in education, resource allocation, and community engagement are essential for meaningful change.

Implementation of the RFC requires a multidimensional approach that includes collaboration, technology, cultural practices, and community engagement. By taking these additional aspects into consideration, a stronger and more effective framework can be created for stakeholders to uphold and protect the rights of women and children in Ethiopia.³⁷⁴

3.10. Institutions Identified to collaborate with EWLA

Ethiopian Women Lawyers Association, advocating for strengthened legislation, particularly concerning issues like domestic violence and women's rights protection, is crucial to improving legal protections for women. Additionally, fostering collaborations with key stakeholders such as the courts, police commission, social affairs bureaus for women and children, human rights commission, and religious institutions is essential to address gaps, enhance enforcement, and overcome challenges in upholding women and children's rights under the family laws.³⁷⁵

Ethiopian Women's Lawyers Association is expected to strive to bridge the gaps through providing training or community awareness, looking closely at the needs of the community, and researching to identify the problem that prevents the community from implementing these laws. Thus, working closely with governmental (police, courts, institutions working on women's issues), regional and federal levels, women's and youth's associations such as the Women's Development Association CSOs,³⁷⁶religious institutions, lawyers' associations, Universities, legislative organs, rehabilitation centers, *Edir* and institutions working for the protection of Human rights.³⁷⁷

³⁷⁴ Interview with Experts, EWLA main Office (October 14, 2024).

³⁷⁵ Interview with a Family Bench Judge, Bahir Dar Zuria Woreda Court (September 22, 2024).

³⁷⁶ Interview with Bahir Dar Branch Coordinator, EWLA (September 27, 2024).

³⁷⁷ Interview with Legal Support Expert, Dire Dawa City WCAO (September 20, 2024); Interview with Instructor of Law, Dire Dawa University (September 27, 2024); Interview with Consultant and Attorney at Law, Dire Dawa (September 26, 2024).

Chapter Four

4. **Recommendatory Conclusion and Mechanisms for Strategic Intervention**

The family codes under the study have made a momentous change in the protection of women's rights, especially in matters such as marriage, divorce, and the right to administer and enjoy property. Major parts of the code are based on the human rights protections of the FDRE Constitution, the regional constitutions and international instruments ratified by Ethiopia. The prohibition of bigamous marriage and exchange marriage (as provided under Article 32 of the BGR FC), administration of the family, mechanisms accorded for the protection children's rights, spouses' rights and duties and rights related with the administration and enjoyment of property are the issues covered with due consideration of the principle of equality between spouses. In addition to these, to have a valid marriage the consent of both parties is a yardstick requirement. This requirement helps to protect the rights of women from forced and arranged marriage.

The protection of child rights is guaranteed in different international, regional, national, and sub-national legislations. The ICCPR, ICESCR, and CRC might be mentioned among international instruments that bestowed robust recognition of child rights. ACRWC is a regional instrument signed by African state parties to ground the international instruments vividly on African soil. Ethiopia is a signatory state of international and regional instruments. As part of its effort to domesticate these laws, the FDRE Constitution recognized basic rights of the child which are part and parcel of the international and regional instruments. Following the FDRE Constitution, the FDRE government and regional state parliaments endorsed family laws which have relatively identical content with the constitution and the above instruments. The above laws in terms of content principally dwell on the recognition of the child's civil, political, social, economic, and cultural rights. The survival, development,

protection, and participation rights of the child are duly acknowledged. Ethiopian laws despite different modalities of childhood, the constitution, and the family laws of the federal and the regional states acknowledged its rights. The 'best interest' of the child is the serious concern of the laws and institutions in every activity related to the child.

Despite the protections extended and the improvements made under in the black letter of the law, the study identified gaps and some of them are indicated hereunder:

The first issue is related to betrothal, which is recognized under the regional family codes. Although the recognition of this engagement, the practice opened a room for the fiancée's families to misuse the appreciation to sideline the basic requirements for a valid marriage provided under the law, such as the marriage age and equality principles. Parents of the fiancée may arrange marriages without the consent of the woman and the arrangement may engage a minor as a fiancée. It is evidenced in the community the fact that underage women are engaging in marriage under the guise of betrothal.

Second, the law has no indication regarding the amount of maintenance which leads to inconsistent decisions by the court. The practice also proven that the mechanism of providing maintenance is somehow impossible to implement in rural society. Hence, it is advised to customize and adopt the recent directive on maintenance amount prepared by the federal government to the regional counterparts.

Third, under special circumstances, marriage is allowed under the age of 18 (but not less than two years) and this marriage requires the authorization of the regional justice bureaus. However, these bureaus are inaccessible for the rural community and marriages are being celebrated without the scrutiny by the designated authority. Hence, it is recommended that the mandate be fit for court authorization rather than the justice sector.

Fourth, court litigations on the issue of divorce are revealing the fact that domestic violence is one of the major reasons for dissolution of marriage. However, the family codes have provided neither punishment on the wrongdoer nor a remedy for the victim. The laws shall deal with the mechanisms of prevention of domestic violence, providing protection and legal remedies for women. The researchers have of the opinion that if the divorce is the result of domestic violence, it should be explicitly recognized under the law that the woman's right to get considerable amount of property as a compensation for the violation.

Fifth, the key informants revealed the fact that in recent years, considerable number of women are calming the existence of marital rape in their marriage and it is becoming a major reason for divorce. However, as it is stated under the code having "with one another the sexual relations normal in marriage" is provided as a duty and there is no room to protect her from such violence. Providing such duty under the codes exacerbates the vulnerability of the woman for sexual violence from her spouse. Thus, the legislature needs to reconsider the provision on this duty and revisit the legal elements of the crime of rape under Article 620 of the Criminal Code.

Sixth, our society is in a situation where property is not shared equally in the divorce process, especially in rural areas, where property is dedicated as male property and female property. At this time, the woman loses most of her possessions. To alleviate the woman from such suffering, EWLA needs to work to raise the awareness of the rural women on the issue of property rights in general and administration of pecuniary interests in marriage in particular.

Seventh, neither the family codes nor the criminal code specifically addressed the issue of prevention of violence by ex-husband. Hence, advocacy works needs to be done to enable the law to offer stronger protections for women facing violence from ex-spouses, enhancing safety measures and legal support for victims.

Eighth, in Dire Dawa City administration the challenge for the enforcement of the family law is mainly related to the language barrier for the rural community, the RFC is not translated into the local languages of the rural areas, *Afan Oromo* and *Af Soomaali*. Thus, EWLA needs to work on the translation efforts with stakeholders.

The main challenges in enforcing the Family Law include societal acceptance issues, limited awareness of legal rights, and gaps in implementation that impact the effective protection of women and children. Society's negative perception and ingrained culture, customs, and traditions hugely affects the implementation of family laws. To bridge the gaps and overcome the challenges, it is necessary to organize awareness raising programs to the society, ensuring public participation in the activities and advocacy efforts are priceless. To attain its objectives and properly implement the activities listed under chapter three of this research, EWLA may collaborate with government institutions at regional and federal levels, CSOs, religious institutions, academic institutions, rehabilitation centers, "*Edir*" and institutions working for the protection of Human rights.

References

'A Review of Ethiopian Law from a Gender Perspective' 61 <<https://africa.unwomen.org/en/digital-library/publications/2022/04/a-review-of-ethiopian-law-from-a-gender-perspective>> accessed March 2024.

'Departure of Ethiopian Family Laws: The Need to Redefine the Place of Societal Norms in Family Matters' (2015) 4 HLR.

Abebe Tsehay, Problems Surrounding Divorce in Federal Revised Family Code, Law, and Practice (2010), <<http://repository.smuc.edu.et/bitstream/123456789/507/1/ABEBE%20TSEHAY.pdf>> Accessed on: 13/09/2024.

Adugna Abebe, 'The Impact of Divorce on Children's Human Rights among the Community of Agaro Town, Ethiopia' (2021), <<https://repository.ju.edu.et/bitstream/handle/123456789/7013/Adugna%20Abebe%20final%20research11111.pdf?sequence=1&isAllowed=y>> Accessed on: 13/09/2024.

African Charter on Democracy, Elections and Governance

African Charter on Human and Peoples' Rights

African Charter on The Rights and Welfare of The Child 1990 (ACRWC 1990).

Alefe Abeje Belay, 'Evaluating the System of Power Sharing Ethiopia in Light of Arend Lijphart's Model of Power Sharing' (2013) 9 European Scientific Journal 258.

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.

Aron Degol and Shimelis Dinku, 'Notes on The Principle "Best Interest of The Child": Meaning, History and Its Place Under Ethiopian Law' (2011), Mizan Law Review Vol. 5 No.2.

Berihun Adugna Gebeye, *Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State*, Women in Society Volume 6, (2013) ISSN 2042-7220 (Print) ISSN 2042-7239 (Online). Afar has the same practice.

Blagojce Anastasov and Jasminka Kochoska, 'Adoption of a Child - An Act of Noble Character' (2020), Technium Social Sciences Journal

Carmen Draghici, *Procreative Rights in International Law Insights from the European Court of Human Rights*, Cambridge University Press (2024).

CEDAW Committee, *General Recommendation No. 21, Equality in Marriage and Family Relations*, UN Doc. A/49/38, 1994.

CEDAW Committee, *General Recommendation No. 24, Women and Health*, UN Doc. A/54/38/Rev.1 (I), 1999; CESCR, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 May 2000.

CEDAW Committee, *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28, 2010.

CESCR, *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, UN Doc. E/C.12/2000/4, 11 August 2000, para. 20; World Health Organization, *Consolidated guideline on sexual and reproductive health and rights of women living with HIV*, 2017, available at <https://iris.who.int/bitstream/handle/10665/254885/9789241549998-eng.pdf?sequence=1> accessed on 01 October 2024.

Child Rights International Network, 'Name and nationality' (2018).

Civil Code of Ethiopia, 1960, Art. 1845, Proc. No. 165, Neg. Gaz. year 19, no. 2.
Convention on the Nationality of Married Women

Convention on the Rights of the Child 1989 (CRC 1989).

Council for Europe Commissioner for Human Rights Children and Corporal Punishment, 'The Right Not to Be Hit, Also A Children's Right' (2008) <<https://rm.coe.int/children-and-corporal-punishment-the-right-not-to-be-hit-also-a-childr/16806da87b>> Accessed on: 13/09/2024.

CRR & UNFPA, *Briefing Paper: The Right to Contraceptive Information and Services for Women and Adolescents* (2010).

Dan O'Donnell 'Child Protection, A Handbook for Parliamentarians, Inter-Parliamentary Union' (2004), <http://hrlibrary.umn.edu/research/Egypt/childprotection_en.pdf>, Accessed on: 13/09/2024.

ECtHR, Case of Peřilová V. The Czech Republic, (Application no. 14889/19), available at <https://hudoc.echr.coe.int/fre#%7B%22sort%22:%5B%22kupdate%20Descending%22%5D,%22itemid%22:%5B%22001-221266%22%5D%7D> accessed on 04 October 2024.

ECtHR, *A, B, and C v. Ireland* [GC], no. 25579/05, ECHR 2010, Judgment of 16 December 2010.

ECtHR, *Eremia v. Republic of Moldova*, no. 3564/11, Judgment of 28 May 2013, paras. 48-52, 56; the Inter American Court of Human Rights, *Rosendo Cantú et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216

ECtHR, *R.R. v. Poland*, no. 2761/04, ECHR 2011, Judgment of 26 May 2011.

ECtHR, *R.R. v. Poland*, no. 2761/04, ECHR 2011, Judgment of 26 May 2011.

ECtHR, *S.H. and Others v. Austria* [GC], no. 57813/00, ECHR 2011, Judgment of 3 November 2011, paras. 82, 118.

ECtHR, *Tysiąc v. Poland*, no. 5410/03, ECHR 2007-I, Judgment of 20 March 2007.

FDRE Constitution, Proclamation No. 1/1995.

FDRE Constitution.

FDRE RFC Proclamation No. 213/2000.

FDRE, Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Proc. No. 414/2005, Fed. Neg. Gaz., Year 10, No. 58.

FDRE, the Revised Family Code, 2000.

Girmachew Alemu & Yonas Birmeta, 'Handbook on the Rights of the Child in Ethiopia', Center for Human Rights in Collaboration with Save the Children Norway- Ethiopia, < <https://resourcecentre.savethechildren.net/pdf/6630.pdf>> Accessed on: 10/09/2024.

Hanibal M. Goitom 'Ethiopia: Federal Paternity and Legitimation Laws' (2009), Law Library of Congress, Global Legal Research Directorate.

Human Rights Committee, General Comment No. 28, Article 3, the equality of rights between men and women, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000, para. 19.

Human Rights Committee, *Concluding Observations on Poland, Report of the Human Rights Committee to the General Assembly, 66th Session, UN Doc. CCPR/C/79/Add.110* (1999).

Human Rights Committee, *General Comment No. 28, Equality of Rights between Men and Women*, UN. Doc. CCPR/C/21/Rev.1/Add.10, 29 March 2000.

ILO Convention, 'Worst Forms of Child Labour' (1999 (No. 182)) The General Conference of the International Labour Organization, convened at Geneva by the Governing Body of the International Labour Office and having met in its 87th Session on 1 June 1999.

ILO declaration, 'Accelerating action against child labour: global report' (2010) Geneva: International Labour Organization.

J.A. Lindgren Alves, 'The United Nations: Postmodernity and Human Rights' (1998).

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.

Lawrence Meir Friedman, '*Private Lives: Families, Individuals, And the Law*' (Harvard University Press, London, England) (2004).

Mehari Redae, 'Some Points in Understanding the Revised Family Code', Volume 1 (Amharic Version, 1995 EC).

Mikyasa 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.

Mulugeta Getu Sisay, 'Departure of Ethiopian Family Laws: The Need to Redefine the Place of Societal Norms in Family Matters' (2015) 4 Haramaya Law Review 81.

Office of the Special Advisor on Gender Issues and Advancement of Women, *Gender Mainstreaming: Strategy for Promoting Gender Equality* (2001), p. 1; CEDAW, preamble; Human Rights Committee, *General Comment No. 28, Article 3 (The equality of rights between men and women)*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 29 March 2000.

Report of the International Conference on Population and Development, Cairo, 5-13 September 1994 (United Nations publication, Sales No. E.95.XIII.18), chap. I, resolution 1, annex.

Richard Burton, 'Children's Human Rights', Amnesty International, (2024) <<https://www.amnesty.org/en/what-we-do/child-rights/>>, Accessed on: 21/09/2024.

Ruling of the Council of the Constitutional Inquiry (CCI) *Miazia* 26 1992 E.C. (May 2000).

Sanford J. Fox, 'Beyond the American Legal System for the Protection of Children's Rights' (1997).

Selam Kibret, 'Ascertainment of Paternity under the Ethiopian Revised Family Law: Legal and Practical Challenges from a Gender Perspective' (2022), Addis Ababa, Ethiopia.

Sisay Kinfe, 'Protection of Women's Rights in the Family Law Arena in Ethiopia' (2023)

https://www.researchgate.net/publication/373490534_Protection_of_Women_s_Rights_in_the_Family_Law_Arena_in_Ethiopia>.

The African Charter on the Rights and Welfare of the Child

The ANRS Family Code Proclamation No. 79/2003.

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

The Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Political Rights of Women

The International Covenant on Civil and Political Rights

The International Covenant on Economic, Social and Cultural Rights

The Protocol to the African Charter on the Rights of Women in Africa ("Maputo Protocol")

The Revised Family Code of BGNRS Proclamation No. 63/2006.

The State of the World's Children's 'special edition; celebrating 20 years of the Convention on the Rights of the Child' (2009), UNICEF New York.

The United Nations Standard Minimum Rules for the Treatment of Prisoners

The Universal Declaration of Human Rights (preamble)

This provision refers to coercion when there is relationship emanating from marriage, but here we are talking about coercion committed after the dissolution of marriage

UN Women, Frequently asked questions: Types of violence against women and girls, available at <https://africa.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence-1> accessed on 27 September 2024.

United Nations, Women's Rights are Human Rights, United Nations Publication SALES NO. E.14.XIV.5, 2014. Available at <https://www.ohchr.org/sites/default/files/Documents/Events/WHRD/WomenRightsAreHR.pdf> accessed on 12 October 2024.

UNOCHR, Information Series On Sexual And Reproductive Health And Rights, 2020, available at

https://www.ohchr.org/sites/default/files/INFO_Abortion_WEB.pdf accessed on 04 October 2024

Ziba Vaghri, Jean Zermatten, Gerison Lansdown, and Roberta Ruggiero, 'Monitoring State Compliance with the UN Convention on the Rights of the Child', (2022) *Children's Well-Being: Indicators and Research*, Volume 25.

Cases Decided by the FSCCD

Halefom Girmaye Vs. Haben Fishaye, the Federal Supreme Court Cassation Division, File No. 153258, 23/01/2011 E.C.

Hamziya Soleyiman Vs. Ayalew Bekele, the Federal Supreme Court Cassation Division, File No. 152968, 21/01/2011 E.C.

Handegiba Shikur Vs. Almitu Ibrahim, the Federal Supreme Court Cassation Division, File No. 120844, 27/08/2008 E.C.

Franswis Pastor Vs. Dukman Venno, the Federal Supreme Court Cassation Division, File No. 44101, 24/06/2002 E.C.

Tiringo Mesfin Vs. Mulugeta Mekuaninit, the Federal Supreme Court Cassation Division, File No. 101552, 01/10/2007 E.C.

**የቁልፍ መረጃ ሰጪ ቃለ መጠይቅ
የመጠይቅ መምሪያ ጥያቄዎች
አዲስ አበባ**

መግቢያ

የዚህ መጠይቅ አላማ በኢ.ፌ.ዲ.ሪ እንዲሁም በአማራ እና በኢሻንጉል ጉሙዝ ክልሎች የቤተሰብ ህጎች ለሴቶች እና ህጻናት መብት ስለመጠበቅ በህግጋቱ ድንጋጌዎች እና በተግባር የሚስተዋሉ መሰረታዊ ስህተቶች፣ ክፍተቶች፣ ጠንካራ ጎኖች እና ተያያዥ ጉዳዮችን በማጥናት ለትግበራ በሚያመች መልኩ ምክረ ሀሳቦችን ማቅረብ ነው። የጥናቱ ርዕስ “Family Laws and the Rights of Vulnerable Family Members in Ethiopia: Assessments of the Federal, the Amhara, and the Benishangul-Gumuz’s Laws and Practices” የሚሰራውም በኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ድጋፍ እና ሀሳብ አመንጨነት ነው። ስለሆነም መረጃ ሰጪዎች የሚሰጡት ሀሳብ እና መረጃ ምስጢራዊነቱ ከመጠበቁም በተጨማሪ በምንም መልኩ ከጥናቱ አላማ ውጪ ለሌሎች ስራዎች ግብዓት የሚውል አይሆንም።

1. የሚጠየቁ ተቋማት

ቀጥር	ተቋም	ለመጠይቁ የሚረዳለዎ ሰው	ብዛት
1.	የሴቶችና ማህበራዊ ጉዳይ ሚኒስቴር (2 ሰዎች)	የሴቶች መብት ላይ የሚሰራ ባለሙያ	1
		በህጻናት መብት ላይ የሚሰራ ባለሙያ	1
2.	የፌድራል የመጀመሪያ ደረጃ ፍርድ ቤት (የቤተሰብ ችሎት ያለበት)	የቤተሰብ ችሎት ዳኛ	1
3.	የአዲስ አበባ ከተማ ሴቶች እና ህጻናት 2 ሰዎች)	በህጻናት መብት ላይ የሚሰራ ባለሙያ	1
		የሴቶች መብት ላይ የሚሰራ ባለሙያ	1
4.	የኢትዮጵያ ሴት የህግ ባለሙያዎች ማህበር	በተቋሙ የሚሰጥ ባለሙያ	1
5.	የኢትዮጵያ ሰብዓዊ መብቶች ኮሚሽን ዋናው ቢሮ	በተቋሙ የሚሰጥ ባለሙያ	1
6.	ጠበቃ	በአዲስ አበባ ውስጥ የቤተሰብ ጉዳዮችን በመያዝ የሚታወቅ ጠበቃ	1
7.	አጠቃላይ ብዛት		8

2. ተቀዳሚ መረጃዎች

ቃለ መጠይቅ የተደረገለት ሰው _____
መስሪያ ቤት _____
ሃላፊነት _____
ስልክ _____
ጾታ _____
ቃለ መጠይቅ አድራጊው _____

3. ዝርዝር ጥያቄዎች

ማስታወሻ: ጥያቄዎቹን ሲመልሱ በህጉ ውስጥ ያሉ ክፍተቶችን እና ከህጉ አፈጻጸም ጋር የሚያያዙ ተግዳሮቶችን እየለዩ ቢያነሱልን እና እነዚህንም ለመገንዘብ የሚረዱ ክልምድዎ እና ከንባብዎ የሚውቋቸውን እውነተኛ ጉዳዮች (ኬሶችን) እያጠቀሱ እንዲያካፍሉን በትህትና እንጠይላን።

1. ስምዎትን፣ ተቋምዎትን እና ሃላፊነቶችን ቢያስተዋውቁን

2. የተሻሻለውን የኢ.ፌ.ዲ.ሪ የቤተሰብ ህግ፡-

ሀ. የሴቶችን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

ለ. የህጻናትን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

3. ከቤተሰብ ህጉ የትኞቹ አንቀጾች እና የህጉ ክፍሎች በሴቶች መብቶች ላይ የጎላ ተጽዕኖ አላቸው ይላሉ?

ሀ. በመተጫጨት ወቅት

ለ. በጋብቻ ወቅት (የቤት ውስጥ ጥቃትን ከመከላከል ጀምሮ ጨምሮ)

ሐ. ፍቺን ሂደት እና ተያያዥ ጉዳዮች

መ. ከፍቺ በኋላ ባሉ ከፍቺ በኋላ ሴቶች በቀድሞ የትዳር አጋራቸው ጥቃት

- በህጻናት መብቶች ላይስ?

ሀ. በህጻናት አስተዳደግ

ለ. በቀላሉ ጉዳይ

ሐ. ከፍቺ በኋላ በሚወሰን የልጅ አስተዳደግ ዙሪያ

መ. አባትነትን ከመወሰን አንጻር

4. የተሻሻለውን የኢ.ፌ.ዲ.ሪ የቤተሰብ ህግን ተግባራዊ አፈጻጸም በአጠቃላይ እንዴት ይመለከቱታል?
 - ህጉን በማህበረሰቡ ውስጥ ሰርጓል (ተቀባይነት አግኝቶ ይተገበራል) ብለው ያምናሉ?
 - በማህበረሰቡ ዘንድ ተቀባይነት የላቸውም ብለው የሚያስቧቸውን የህጉን ክፍሎች ቢያነሱልን
5. በቤተሰብ ህጉ እና በማህበረ-ሰቡ ፍላጎት መካከል ያለ ልዩነት ምንድነው ብለው ያስባሉ በተለይም:-
 - ሀ. የጾታ እኩልነትን በሚመለከት
 - ለ. የህጻናት መብት ጥበቃን በሚመለከት
 - ሐ. ፍትህ የማግኘት መብት
6. የቤተሰብ ህጉን በሚፈለገው ደረጃ ለማስፈጸም እና ተግባራዊ ለማድረግ ዋና ዋና ተግዳሮቶች ምንድን ናቸው?
 - ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት ምን መደረግ አለበት ብለው ያስባሉ?
 - ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ምን አይነት ስራዎችን ቢሰራ ብለው ይመክራሉ?
 - ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ከየትኞቹ ተቋማት ጋር በቅርበት ቢሰራ ብለው ይመክራሉ?
7. ከተያዘው ርዕስ ጉዳይ ጋር የሚገናኙ እና ከላይ ያላነሳናቸው ተጨማሪ ነገሮች ካሉ ቢያጋሩን

ስለትብብር ክልብ እናመሰግናለን!

**የቁልፍ መረጃ ሰጪ ቃለ መጠይቅ
የመጠይቅ መምሪያ ጥያቄዎች
ድሬ ዳዋ**

መግቢያ

የዚህ መጠይቅ አላማ በኢ.ፌ.ዲ.ሪ እንዲሁም በአማራ እና በቤኒሻንጉል ጉሙዝ ክልሎች የቤተሰብ ህጎች ለሴቶች እና ህጻናት መብት ስለመጠበቅ በህግጋቱ ድንጋጌዎች እና በተግባር የሚስተዋሉ መሰረታዊ ስህተቶች፣ ክፍተቶች፣ ጠንካራ ጎኖች እና ተያያዥ ጉዳዮችን በማጥናት ለትግበራ በሚያመች መልኩ ምክረ ሀሳቦችን ማቅረብ ነው። የጥናቱ ርዕስ “Family Laws and the Rights of Vulnerable Family Members in Ethiopia: Assessments of the Federal, the Amhara, and the Benishangul-Gumuz’s Laws and Practices” የሚሰራውም በኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ድጋፍ እና ሀሳብ አመንጨነት ነው። ስለሆነም መረጃ ሰጪዎች የሚሰጡት ሀሳብ እና መረጃ ምስጢራዊነቱ ከመጠበቁም በተጨማሪ በምንም መልኩ ከጥናቱ አላማ ውጪ ለሌሎች ስራዎች ግብዓት የሚውል አይሆንም።

1. የሚጠየቁ ተቋማት

ቀጥር	ተቋም	ለመጠይቁ የሚፈለግ ሰው	ብዛት
8.	የድሬ ዳዋ ከተማ የሴቶችና ማህበራዊ ጉዳይ ቢሮ (2 ሰዎች)	የሴቶች መብት ላይ የሚሰራ ባለሙያ	1
		በህጻናት መብት ላይ የሚሰራ ባለሙያ	1
9.	የፌዴራል የመጀመሪያ ደረጃ ፍርድ ቤት ድሬ ዳዋ	የቤተሰብ ችሎት ዳኛ	1
10.	የኢትዮጵያ ሴት የህግ ባለሙያዎች ማህበር ድሬ ዳዋ ቢሮ	በተቋሙ የሚሰጥ ባለሙያ	1
11.	የኢትዮጵያ ሰብዓዊ መብቶች ኮሚሽን ድሬ ዳዋ ቢሮ	በተቋሙ የሚሰጥ ባለሙያ	1
12.	ድሬ ዳዋ ዩኒቨርሲቲ	የቤተሰብ ህግ የሚያስተምር መምህር	1
13.	ጠበቃ	በድሬ ዳዋ ውስጥ የቤተሰብ ጉዳዮችን በመያዝ የሚታወቅ ጠበቃ	1
14.	አጠቃላይ ብዛት		7

2. ተቀዳሚ መረጃዎች

ቃለ መጠይቅ የተደረገለት ሰው _____
መስሪያ ቤት _____
ሃላፊነት _____
ስልክ _____
ጾታ _____
ቃለ መጠይቅ አድራጊው _____

3. ዝርዝር ጥያቄዎች

ማስታወሻ: ጥያቄዎቹን ሲመልሱ በህጉ ውስጥ ያሉ ክፍተቶችን እና ከህጉ አፈጻጸም ጋር የሚያያዙ ተግዳሮቶችን እየለዩ ቢያነሱልን እና እነዚህንም ለመገንዘብ የሚረዱ ክልምድዎ እና ከንባብዎ የሚውቋቸውን እውነተኛ ጉዳዮች (ኬሶችን) እያጠቀሱ እንዲያካፍሉን በትህትና እንጠይላን።

8. ስምዎትን፣ ተቋምዎትን እና ሃላፊነቶትን ቢያስተዋውቁን

9. የተሻሻለውን የኢ.ፌ.ዲ.ሪ የቤተሰብ ህግ፡-

ሀ. የሴቶችን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

ለ. የህጻናትን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

10. ከቤተሰብ ህጉ የትኞቹ አንቀጾች እና የህጉ ክፍሎች በሴቶች መብቶች ላይ የጎላ ተጽዕኖ አላቸው ይላሉ?

ሀ. በመተጫጨት ወቅት

ለ. በጋብቻ ወቅት (የቤት ውስጥ ጥቃትን ከመከላከል ጀምሮ ጨምሮ)

ሐ. ፍቺን ሂደት እና ተያያዥ ጉዳዮች

መ. ከፍቺ በኋላ ባሉ ከፍቺ በኋላ ሴቶች በቀድሞ የትዳር አጋራቸው ጥቃት

- በህጻናት መብቶች ላይስ?

ሀ. በህጻናት አስተዳደግ

ለ. በቀላሉ ጉዳይ

ሐ. ከፍቺ በኋላ በሚወሰን የልጅ አስተዳደግ ዙሪያ

መ. አባትነትን ከመወሰን አንጻር

11.የተሻሻለውን የኢ.ፌ.ዲ.ሪ የቤተሰብ ህግን ተግባራዊ አፈጻጸም በአጠቃላይ እንዴት ይመለከቱታል?

- ህጉን በማህበረሰቡ ውስጥ ሰርጓል (ተቀባይነት አግኝቶ ይተገበራል) ብለው ያምናሉ?
- በማህበረሰቡ ዘንድ ተቀባይነት የላቸውም ብለው የሚያስቧቸውን የህጉን ክፍሎች ቢያነሱልን

12.በቤተሰብ ህጉ እና በማህበረ-ሰቡ ፍላጎት መካከል ያለ ልዩነት ምንድነው ብለው ያስባሉ በተለይም:-

- ሀ. የጾታ እኩልነትን በሚመለከት
- ለ. የህጻናት መብት ጥበቃን በሚመለከት
- ሐ. ፍትህ የማግኘት መብት

13.የቤተሰብ ህጉን በሚፈለገው ደረጃ ለማስፈጸም እና ተግባራዊ ለማድረግ ዋና ዋና ተግዳሮቶች ምንድን ናቸው?

- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት ምን መደረግ አለበት ብለው ያስባሉ?
- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ምን አይነት ስራዎችን ቢሰራ ብለው ይመክራሉ?
- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ከየትኞቹ ተቋማት ጋር በቅርበት ቢሰራ ብለው ይመክራሉ?

14.ከተያዘው ርዕስ ጉዳይ ጋር የሚገናኙ እና ከላይ ያላነሳናቸው ተጨማሪ ነገሮች ካሉ ቢያጋሩን

ስለትብብር ክልብ እናመሰግናለን!

የቁልፍ መረጃ ሰጪ ቃለ መጠይቅ የመጠይቅ መምሪያ ጥያቄዎች አሰሳ

1. መግቢያ

የዚህ መጠይቅ አላማ በኢ.ፌ.ዲ.ሪ እንዲሁም በአማራ እና በቤኒሻንጉል ጉሙዝ ክልሎች የቤተሰብ ህጎች ለሴቶች እና ህጻናት መብት ስለመጠበቅ በህግጋቱ ድንጋጌዎች እና በተግባር የሚስተዋሉ መሰረታዊ ስህተቶች፣ ክፍተቶች፣ ጠንካራ ጎኖች እና ተያያዥ ጉዳዮችን በማጥናት ለትግበራ በሚያመች መልኩ ምክረ ሀሳቦችን ማቅረብ ነው። የጥናቱ ርዕስ “Family Laws and the Rights of Vulnerable Family Members in Ethiopia: Assessments of the Federal, the Amhara, and the Benishangul-Gumuz’s Laws and Practices” የሚሰራውም በኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ድጋፍ እና ሀሳብ አመንጨነት ነው። ስለሆነም መረጃ ሰጪዎች የሚሰጡት ሀሳብ እና መረጃ ምስጢራዊነቱ ከመጠበቁም በተጨማሪ በምንም መልኩ ከጥናቱ አላማ ውጪ ለሌሎች ስራዎች ግብዓት የሚውል አይሆንም።

2) የሚጠየቁ ተቋማት

ቀጥር	ተቋም	ለመጠይቁ የሚፈለግ ሰው	ብዛት
15.	የቤኒሻንጉል ጉሙዝ ክልል የሴቶችና ማህበራዊ ጉዳይ ቢሮ (2 ሰዎች)	የሴቶች መብት ላይ የሚሰራ ባለሞያ	1
		በህጻናት መብት ላይ የሚሰራ ባለሞያ	1
16.	በቤኒሻንጉል ጉሙዝ ክልል ከፍተኛ ፍርድ ቤት የአሰሳ ዙሪያ (ወይም የአሰሳ ከተማ) የመጀመሪያ ደረጃ ፍርድ ቤት	የቤተሰብ ችሎት ዳኛ	1
17.	የኢትዮጵያ ሴት የህግ ባለሞያዎች ማህበር የአሰሳ ቢሮ	በተቋሙ የሚሰጥ ባለሞያ	1
18.	የኢትዮጵያ ሰብዓዊ መብቶች ኮሚሽን የአሰሳ ቢሮ	በተቋሙ የሚሰጥ ባለሞያ	1
19.	አሰሳ ዩኒቨርሲቲ	የቤተሰብ ህግ የሚያስተምር መምህር	1
20.	ጠበቃ	በአሰሳ ከተማ ውስጥ የቤተሰብ ጉዳዮችን በመያዝ የሚታወቅ ጠበቃ	1
21.	አጠቃላይ ብዛት		7

3) ተቀዳሚ መረጃዎች

ቃለ መጠይቅ የተደረገለት ሰው _____

መስሪያ ቤት _____

ሃላፊነት _____

ስልክ _____

ጾታ _____

ቃለ መጠይቅ አድራጊው _____

4) ዝርዝር ጥያቄዎች

ማስታወሻ፡ ጥያቄዎቹን ሲመልሱ በህጉ ውስጥ ያሉ ክፍተቶችን እና ከህጉ አፈጻጸም ጋር የሚያያዙ ተግዳሮቶችን እየለዩ ቢያነሱልን እና እነዚህንም ለመገንዘብ የሚረዱ ክልምድዎ እና ከንባብዎ የሚውቋቸውን እውነተኛ ጉዳዮች (ኬሶችን) እያጠቀሱ እንዲያካፍሉን በትህትና እንጠይላን።

2. ስምዎትን፣ ተቋምዎትን እና ሃላፊነቶትን ቢያስተዋውቁን

3. የቤኒሻንጉል ጉሙዝ ክልልን የቤተሰብ ህግ፡-

ሀ. የሴቶችን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

ለ. የህጻናትን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

4. ከቤተሰብ ህጉ የትኞቹ አንቀጾች እና የህጉ ክፍሎች በሴቶች መብቶች ላይ የጎላ ተጽዕኖ አላቸው ይላሉ?

ሀ. በመተጫጨት ወቅት

ለ. በጋብቻ ወቅት (የቤት ውስጥ ጥቃትን ከመከላከል ጀምሮ ጨምሮ)

ሐ. ፍቺን ሂደት እና ተያያዥ ጉዳዮች

መ. ከፍቺ በኋላ ባሉ ክፍቺ በኋላ ሴቶች በቀድሞ የትዳር አጋራቸው ጥቃት

- በህጻናት መብቶች ላይስ?

ሀ. በህጻናት አስተዳደግ

ለ. በቀለብ ጉዳይ

ሐ. ከፍቺ በኋላ በሚወሰን የልጅ አስተዳደግ ዙሪያ

መ. አባትነትን ከመሰን አንጻር

5. የቤኒሻንጉል ጉሙዝ ክልልን የቤተሰብ ህግ፡-

- ህጉስ በማህበረሰቡ ውስጥ ስርጓል (ተቀባይነት አግኝቶ ይተገበራል) ብለው ያምናሉ?
 - በማህበረሰቡ ዘንድ ተቀባይነት የላቸውም ብለው የሚያስቧቸውን የህጉን ክፍሎች ቢያነሱልን
6. በቤተሰብ ህጉ እና በማህበረ-ሰቡ ፍላጎት መካከል ያለ ልዩነት ምንድነው ብለው ያስባሉ በተለይም:-
- ሀ. የጾታ እኩልነትን በሚመለከት
 - ለ. የህጻናት መብት ጥበቃን በሚመለከት
 - ሐ. ፍትህ የማግኛት መብት
7. የቤተሰብ ህጉን በሚፈለገው ደረጃ ለማስፈጸም እና ተግባራዊ ለማድረግ ዋና ዋና ተግዳሮቶች ምንድን ናቸው?
- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት ምን መደረግ አለበት ብለው ያስባሉ?
 - ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ምን አይነት ስራዎችን ቢሰራ ብለው ይመክራሉ?
 - ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ከየትኞቹ ተቋማት ጋር በቅርበት ቢሰራ ብለው ይመክራሉ?
8. ከተያዘው ርዕስ ጉዳይ ጋር የሚገናኙ እና ከላይ ያላነሳናቸው ተጨማሪ ነገሮች ካሉ ቢያጋሩን

ስለትብብር ክልብ እናመሰግናለን!

የቁልፍ መረጃ ሰጪ ቃለ መጠይቅ
የመጠይቅ መምሪያ ጥያቄዎች
ባህር ዳር

መግቢያ

የዚህ መጠይቅ አላማ በኢ.ፌ.ዲ.ሪ እንዲሁም በአማራ እና በቤኒሻንጉል ጉሙዝ ክልሎች የቤተሰብ ህጎች ለሴቶች እና ህጻናት መብት ስለመጠበቅ በህግጋቱ ድንጋጌዎች እና በተግባር የሚስተዋሉ መሰረታዊ ስህተቶች፣ ክፍተቶች፣ ጠንካራ ጎኖች እና ተያያዥ ጉዳዮችን በማጥናት ለትግበራ በሚያመች መልኩ ምክረ ሀሳቦችን ማቅረብ ነው። የጥናቱ ርዕስ “Family Laws and the Rights of Vulnerable Family Members in Ethiopia: Assessments of the Federal, the Amhara, and the Benishangul-Gumuz’s Laws and Practices” የሚሰራውም በኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ድጋፍ እና ሀሳብ አመንጨነት ነው። ስለሆነም መረጃ ሰጪዎች የሚሰጡት ሀሳብ እና መረጃ ምስጢራዊነቱ ከመጠበቁም በተጨማሪ በምንም መልኩ ከጥናቱ አላማ ውጪ ለሌሎች ስራዎች ግብዓት የሚውል አይሆንም።

1. የሚጠየቁ ተቋማት

ቀጥር	ተቋም	ለመጠይቁ የሚፈለግ ሰው	ብዛት
22.	የአማራ ክልል የሴቶችና ማህበራዊ ጉዳይ ቢሮ (2 ሰዎች)	የሴቶች መብት ላይ የሚሰራ ባለሙያ	1
		በህጻናት መብት ላይ የሚሰራ ባለሙያ	1
23.	በአማራ ክልል ከፍተኛ ፍረድ ቤት የባህር ዳር ዙሪያ (ወይም የባህር ዳር ከተማ) የመጀመሪያ ደረጃ ፍርድ ቤት	የቤተሰብ ችሎት ዳኛ	1
24.	የኢትዮጵያ ሴት የህግ ባለሙያዎች ማህበር የባህር ዳር ቢሮ	በተቋሙ የሚሰጥ ባለሙያ	1
25.	የኢትዮጵያ ሰብዓዊ መብቶች ኮሚሽን የባህር ዳር ቢሮ	በተቋሙ የሚሰጥ ባለሙያ	1
26.	ባህር ዳር ዩኒቨርሲቲ	የቤተሰብ ህግ የሚያስተምር መምህር	1
27.	ጠበቃ	በባህር ዳር ከተማ ውስጥ የቤተሰብ ጉዳዮችን በመያዝ የሚታወቅ ጠበቃ	1
28.	አጠቃላይ ብዛት		7

5. ተቀዳሚ መረጃዎች

ቃለ መጠይቅ የተደረገለት ሰው _____
መስሪያ ቤት _____
ሃላፊነት _____
ስልክ _____
ጾታ _____
ቃለ መጠይቅ አድራጊው _____

6. ዝርዝር ጥያቄዎች

ማስታወሻ: ጥያቄዎቹን ሲመልሱ በህጉ ውስጥ ያሉ ክፍተቶችን እና ከህጉ አፈጻጸም ጋር የሚያያዙ ተግዳሮቶችን እየለዩ ቢያነሱልን እና እነዚህንም ለመገንዘብ የሚረዱ ክልምድዎ እና ከንባብዎ የሚውቋቸውን እውነተኛ ጉዳዮች (ኬሶችን) እያጠቀሱ እንዲያካፍሉን በትህትና እንጠይላን።

15. ስምዎትን፣ ተቋምዎትን እና ሃላፊነቶትን ቢያስተዋውቁን

16. የአማራ ክልልን የቤተሰብ ህግ፡-

- ሀ. የሴቶችን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?
- ለ. የህጻናትን መብት ከማስከበር አንጻር እንዴት ይገመግሙታል?

17. ከቤተሰብ ህጉ የትኞቹ አንቀጾች እና የህጉ ክፍሎች በሴቶች መብቶች ላይ የጎላ ተጽዕኖ አላቸው ይላሉ?

- ሀ. በመተጫጨት ወቅት
- ለ. በጋብቻ ወቅት (የቤት ውስጥ ጥቃትን ከመከላከል ጀምሮ ጨምሮ)
- ሐ. ፍቺን ሂደት እና ተያያዥ ጉዳዮች
- መ. ከፍቺ በኋላ ባሉ ከፍቺ በኋላ ሴቶች በቀድሞ የትዳር አጋራቸው ጥቃት

- በህጻናት መብቶች ላይስ?

- ሀ. በህጻናት አስተዳደግ
- ለ. በቀላብ ጉዳይ
- ሐ. ከፍቺ በኋላ በሚወሰን የልጅ አስተዳደግ ዙሪያ
- መ. አባትነትን ከመሰን አንጻር

18. የአማራ ክልል የቤተሰብ ህግ፡-

- ህጉስ በማህበረሰቡ ውስጥ ስርገል (ተቀባይነት አግኝቶ ይተገበራል) ብለው ያምናሉ?
- በማህበረሰቡ ዘንድ ተቀባይነት የላቸውም ብለው የሚያስቧቸውን የህጉን ክፍሎች ቢያነሱልን

19. በቤተሰብ ህጉ እና በማህበረ-ሰቡ ፍላጎት መካከል ያለ ልዩነት ምንድነው ብለው ያስባሉ በተለይም:-

- ሀ. የጾታ እኩልነትን በሚመለከት
- ለ. የህጻናት መብት ጥበቃን በሚመለከት
- ሐ. ፍትህ የማግኘት መብት

20. የቤተሰብ ህጉን በሚፈለገው ደረጃ ለማስፈጸም እና ተግባራዊ ለማድረግ ዋና ዋና ተግዳሮቶች ምንድን ናቸው?

- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት ምን መደረግ አለበት ብለው ያስባሉ?
- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ምን አይነት ስራዎችን ቢሰራ ብለው ይመክራሉ?
- ክፍተቶችን ለማረም እና ተግዳሮቶችን ለመፍታት የኢትዮጵያ የህግ ባለሙያ ሴቶች ማህበር ከየትኞቹ ተቋማት ጋር በቅርበት ቢሰራ ብለው ይመክራሉ?

21. ከተያዘው ርዕስ ጉዳይ ጋር የሚገናኙ እና ከላይ ያላነሳናቸው ተጨማሪ ነገሮች ካሉ ቢያጋሩን

ስለትብብር ክልብ እናመሰግናለን!

KII Data Summary Sheet

“Family Laws and the Rights of Vulnerable Family Members in Ethiopia:
Assessments of the Federal, the Amhara, and the Benishangul-Gumuz’s Laws and
Practices”

የቃለ መጠይቅ መረጃዎች ማስረከቢያ ቅጽ

1.	ተቋም	
2.	የመላሽ ስም	
3.	ሃላፊነት	
4.	የመላሽ ስልክ	
5.	የቃለ መጠይቅ ቀን	
6.	ቃለ መጠይቅ አድራጊ	
7.	የቃለ መጠይቅ አድራጊ ስልክ	

ጥር	ጥያቄ	የተገኘው መረጃ ማጠቃለያ (ዘርዘር ተደርጎ የሚጻፍ)
1.		
2.		
3.		
4.		
5.		
6.		