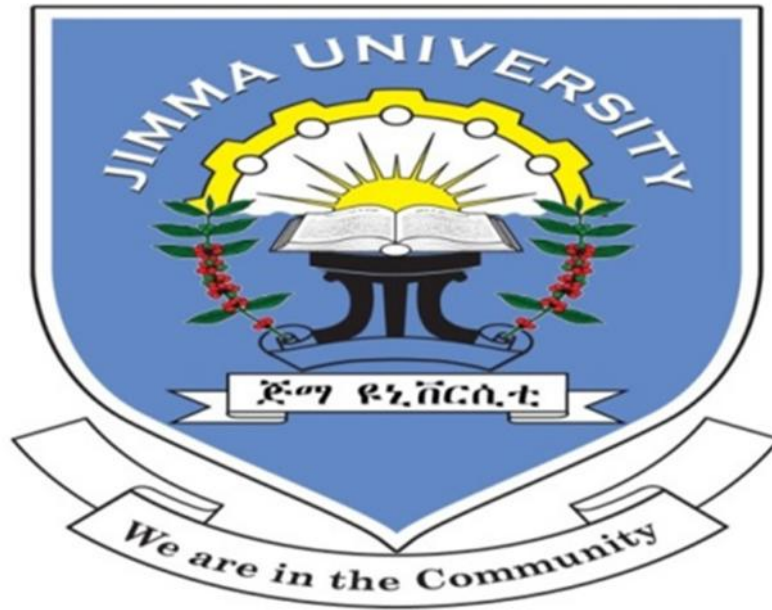


JIMMA UNIVERSITY COLLEGE OF LAW AND GOVERNANCE  
SCHOOL OF LAW



THE CHALLENGES TO THE PROTECTION OF WOMEN AGAINST  
DOMESTIC VIOLENCE IN JIMMA ZONE, SOUTH WESTERN ETHIOPIA

A Thesis Submitted in Partial Fulfillment of the Requirements for the Master of  
Laws Degree (LL.M) in Human Rights and Criminal law at School of Law, Jimma  
University

By: Lamessa Gudeta

Advisor: Mizane Abate (LL.B, LL.M, PhD, As. Prof)

June, 2017

Jimma University

## **Declaration**

Lamessa Gudeta, hereby declare that this thesis is my original work and it has not been presented for a degree in any other University. All sources of materials used have been duly acknowledged by means of complete references.

Signature: \_\_\_\_\_

Jimma University

June, 2017

This dissertation has been submitted for examination with my approval as University advisor.

Advisor: Mizane Abate (LL.B, LL.M, PhD, As. Prof)

Signature: \_\_\_\_\_

Jimma University

June, 2017

The challenges to the protection of women against domestic violence in Jimma zone, south western Ethiopia

By: Lamessa Gudeta

Approved By: Board of Examiners

Advisor: Dr. Mizane Abate, Signature \_\_\_\_\_

Examiners

1. \_\_\_\_\_ Signature \_\_\_\_\_

2. \_\_\_\_\_ Signature \_\_\_\_\_

3. \_\_\_\_\_ Signature \_\_\_\_\_

<b>Table of Contents-----</b>	<b>Page No</b>
Acknowledgments.....	vii
Acronyms.....	viii
<i>Abstract</i> .....	ix
CHAPTER-ONE.....	1
Introduction.....	1
1.1. Background of the study .....	1
1.2. Statement of the problem and Research questions.....	5
1.3. Objectives of the study.....	7
1.3.1. General Objectives of the study.....	7
1.3.2. Specific Objectives of the study .....	7
1.4. Significance of the study.....	8
1.5. Scope of the study .....	8
1.5.1. Operational definitions.....	8
1.6. Methodology of the study .....	9
1.6.1. Secondary Data sources .....	10
1.6.2. Primary Data sources .....	10
1.6.3. Target populations .....	10
1.6.4. Data gathering mechanism and Tools.....	11
1.6.5. Data analyzing methods.....	11
1.7. Literature Review.....	12
1.8. Limitation of the study.....	15
1.9. Ethical consideration .....	15
1.10. Structure of the Study.....	16
CHAPTER-TWO.....	17
The Nature and concepts of domestic violence against women .....	17
Introduction.....	17
2.1. Definition of domestic violence against women .....	17
2.2. Prevalence of domestic violence against women.....	19
2.3. The Patterns of domestic violence against women .....	21
2.3.1. Physical abuse.....	22

2.3.2. Sexual abuse .....	23
2.3.3. Psychological abuse.....	23
2.3.4. Economic abuse.....	24
2.4. Causes/Factors associated with domestic violence against women .....	25
2.4.1. Theories of Domestic Violence .....	26
2.4.1.1. Psychological theories .....	26
2.5. The consequences of domestic violence against women .....	31
CHAPTER -THREE .....	35
Protection of Women against domestic violence in International Human Rights Instruments and its Reflection in the Ethiopian National Legislation.....	35
Introduction .....	35
3.1. International human right instruments against Domestic Violence .....	36
3.1.1. Universal Declaration of Human Rights (UDHR) .....	37
3.1.2. International Covenant on Civil and Political Rights (ICCPR) .....	38
3.1.3. International Covenant on Economic, Social and Cultural Rights (ICESCR) .....	40
3.1.4. Convention on the Elimination of Discrimination against Women (CEDAW) .....	42
3.1.5. Declarations and Platforms for Action .....	44
3.1.5.1. The Declaration on Elimination of Violence against Women (DEVAW) .....	44
3. 2.Regional human right instruments against Domestic Violence .....	46
3.2.1. African Charter on Human and Peoples Rights (ACHPR).....	46
3.2.2. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women (PACHPRRW).....	47
3.2.3 General comments of the African Commission on Human and Peoples' Rights.....	48
3.3. Ethiopian policy and Legislation regarding DV in light of International standards. ....	50
3.3.1. Ethiopian Constitutions .....	51
3.3.2. Ethiopian Criminal laws .....	53
3.3.3. Family laws.....	55
CHAPTER-FOUR .....	57
The challenges to the protection of women against domestic violence in Jimma zone .....	57
Introduction .....	57
4.1. Legislative challenges to the protection of women against domestic violence.....	57

4.1.1. Inadequacy of Legal responses to criminalizes patterns of DVAW and punishment of perpetrators .....	58
4.1.2. Absence of protection order for Victims or Survivors (civil remedy) .....	66
4.2. Inadequacy of Law enforcement authorities response to DVAW and absence of victim's protection in Jimma zone .....	68
4.2.1. Giving weak attention to investigation and prosecution of DVAW .....	69
4.2.2. Absence of victim's protection .....	77
4.3. The problem of socio-economic, cultural and religious justification for DVAW .....	80
4.3.1. The challenges of status quo/religious laws to the protection of WADV .....	81
4.3.2. The challenges of socio-cultural justification to DVAW .....	83
4.3.3. The challenges of Socio-economic problems of women.....	84
4.4. Misconception about the problem and criminality of DVAW on parts of women .....	85
CHAPTER-FIVE .....	88
Conclusion and Recommendations .....	88
5.1. Conclusion.....	88
5.2. Recommendations .....	92
Bibliography .....	96
Annexes.....	104

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## Acronyms

ACHPR	African Charter on Humans and Peoples Right
ACR	African Commission Recommendation
AU	African Union
CAT	Convention against torture
CEDAW	Convention on elimination of discrimination against Women
DEVAW	Declaration on elimination of violence against Women
DVAW	Domestic violence against women
EWLA	Ethiopian Women Lawyers Association
FDRE	Federal democratic republic of Ethiopia
FGD	Focused Group Discussion
ICCPR	International covenant on civil and political rights
ICESCR	International covenant on Education, social and cultural rights
Rec	Recommendation
UDHR	Universal declaration of human rights
UN	United Nation
UNGAR	United Nation General Assembly Resolution
UNGA	United Nation General Assembly
UNR	United Nation Recommendations
VAW	Violence against women
VS	Versus
WADV	Women against domestic violence
WHO	World health organization



## **Abstract**

*Domestic violence against women is one of the scourge and pervasive violence directed against women by their; current or former husband, current or former boyfriends and other friends who has sexual relation with the women. Domestic violence has different patterns of abuse which may include; physical abuse, sexual abuse, economic abuse and psychological abuse. It has numerous and devastating physical and psychological consequences for the victim. Victims of domestic violence experience both short-term and long-lasting health outcomes including death, grave physical injury, reproductive health, unwanted pregnancy, sexually transmitted diseases, depression and suicidal behaviour.*

*However, despite of its devastating consequence, its prevalence is very high and the problems are socially condoned in Ethiopia and specifically in Jimma zone. This clearly indicates that the protection of women against domestic violence in the Jimma zone has been not succeeded which manifests the existence of challenges and obstacles. This in turn makes me to theorize that, there are something flawed which highly hinders the successful protection of women against domestic violence. Therefore, unless, such challenges are identified and take action upon, the women's human rights will continuously to be violated.*

*Hence, the aim of this paper is to identify the challenges to the protection of women against domestic violence. To this end, the Ethiopian policy and laws regarding domestic violence are analyzed, the practical commitments of law enforcement authority of Jimma zone and socio-cultural and religious of Jimma zone community are evaluated in lights of the rights to women against domestic violence. Accordingly, the research identifies different challenges to the protection of women against domestic violence in Jimma zone which includes; legal gap, practical challenges, socio-cultural, socio-economic and religious challenges dominantly. Therefore, unless, take action upon the identified challenges, the women's human rights will continuously to be violated. Hence, lastly to this end, the researcher arrived at the set of recommendations.*

**Key Words:** Domestic violence against women, the challenges, Laws and policy, Ethiopia, Jimma Zone, Law enforcement authority, socio-cultural, legal instruments.

# CHAPTER-ONE

## Introduction

### 1.1. Background of the study

Domestic violence is one of the most pervasive forms of violence against women and an act which directed against women by their intimate partners<sup>1</sup> either current or former spouses and or boyfriends or other family members in the world which affects all women regardless of their color, identity, status, nationality and or age. It leads to serious health damage, and often may end fatally.<sup>2</sup> Apart from physical, sexual and economic injuries, it causes psychological injury; fear, distress, loss of self-confidence<sup>3</sup> which even more harmful than the physical pain. It destroys a woman's self-esteem and the capacity for resistance<sup>4</sup> against such degrading and humiliating incidence of domestic violence. It can obliterate the personality of women in such a way that it becomes a serious assault on human dignity which is a core concept of human rights law.<sup>5</sup>

However, for many years ago, violence against women was not considered an issue worthy of international attention or concern. Because, it is conceived that home is often associated to security, comfort, protection and love. It is the believed that home is automatically a safe place that is invoked as a common justification to deny huge domestic violence problem that women are facing from time to time.<sup>6</sup> This began to change in the 1980s, as women's groups were organized locally and internationally to demand attention to the physical, psychological, sexual

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<sup>1</sup> UN Dep't of public information, *Unite to ending violence against women* (Factsheet, DPI/2498 Feb. 2008) <<http://www.un.org/en/women/endviolence/pdf/VAW.pdf> >accessed 23 December 2016, see also the definition of VAW given under united nations (U.N. Resolution adopted by the General Assembly, 61/143.19<sup>th</sup> December 2006)

<sup>2</sup>Council of Europe, *Preventing and Combating Domestic Violence against Women* (A learning resource for training law enforcement and justice officers, Council of Europe January 2016) <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent> >accessed 20 December 2016

<sup>3</sup> Ibid

<sup>4</sup> R. Copelon, 'Recognizing the egregious in the everyday: Domestic violence as torture' (1994) 25 Columbia Hu R Law Rev

<sup>5</sup> C. Romany, 'State responsibility goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in R. Cook (edn), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, Philadelphia 1994) 85.

<sup>6</sup> B. C. Meyers Feld, 'Reconceptualizing Domestic Violence in International Law' (2003) 67 Albany Law Review 383

and economic abuse of women.<sup>7</sup> Gradually, domestic violence against women has come to be recognized as a legitimate human rights issue and a significant threat to women's health and wellbeing.

Especially since the 1990s, violence against women, including domestic violence, has received increasing attention by the international community and, subsequently, in international law. Most importantly, this growing body of international and regional standards established the prohibition of domestic violence against women in international human rights law by addressing discrimination and violence against women, and protecting the human rights of women on an equal footing with those of men.

This surge in attention has resulted to the adoption of several crucial international and regional instruments including; the Convention on the elimination of all forms of discrimination against women (herein after CEDAW ) in 1979 along with the decisions and recommendations adopted by the CEDAW Committee<sup>8</sup>, the UN declaration on the elimination of violence against women (herein after DEVAW) in 1993<sup>9</sup>, the Inter-American Convention on the prevention, punishment and eradication of violence against women (Belem do Pará Convention) in 1994, the Beijing declaration in 1995, the African charter on humans and people's rights, the Protocol to the African charter on human and peoples' rights on the rights of women in Africa in 2003, Council of Europe recommendation (Rec-2002) of the Committee of Ministers to Member States on the protection of women against violence and other instruments.

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<sup>7</sup>Samia Alhabib , *et al*, 'Domestic Violence Against Women: Systematic Review of Prevalence Studies' (2010) 25 J Fam 369–382

<sup>8</sup> Committee on the elimination of discrimination against women, general Recommendation 19, Violence against women (Eleventh session, 1992), U.N. Doc. A/47/38 at 1 (1993), reprinted in Compilation of general comments and general recommendations adopted by human rights Treaty bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 243 (2003). And committee on the elimination of discrimination against women, General Recommendation No-13, equal remuneration for work of equal value, (Eighth session, 1989), U.N. Doc. A/44/38 at 76 (1990), reprinted in Compilation of general comments and general recommendations adopted by human rights Treaty bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 237 (2003).

<sup>9</sup> The 1993 Declaration on the elimination of violence against women became the first international instrument to address violence against women explicitly and specified the types and forms of violence against women and the contexts in which it occurs.

However, regardless of location or women's education, yet violence against women remains a worldwide problem though the variations between regions are considerable.<sup>10</sup> Although there are different debate about the causes of such domestic violence, it is widely accepted that, different theories attempting to provide the factors that trigger domestic violence.<sup>11</sup> These include psychological theories; social theories-(resource theory, social stress theory, and social learning theory), power and control theories, alcohol and non-alcoholic theory, sex and gender theory. Likewise, domestic violence may take different forms of violence. Mainly including; physical violence, sexual violence, emotional (psychological) violence, and economic violence.<sup>12</sup> And it has great impacts on the well beings of women and community at large.

Bearing in mind its adverse effect, international communities are on the surge of fighting the domestic violence, basing their policy in line with international and regional instruments. Accordingly, many countries have framed their policy and laws in compatible with protection of women's right to overcome such devastating effects of violence. However, in different countries there are different reports of violence against women though the extent, magnitude and prevalence are different depending on their legal context and the commitment of institutions entrusted to prevent and combating this violence against women.

As such, Ethiopia has ratified different international and regional conventions in protection of women against violence which is part and parcel of the law of the land according to FDRE constitution.<sup>13</sup> For instance, Ethiopia has signed and ratified the 1979 UN's Convention on the elimination of all forms of discrimination against women (CEDAW), and other international and regional instruments which recognizes violence against women as a violation of human rights.

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<sup>10</sup>I. Vledder, 'It's in our hands: Stop Violence against Women' in I. Westendorp, Ria Wolleswinkel,(edn), *Violence in the Domestic Sphere* (Intersentia, Antwerpen, 2005) 8.

<sup>11</sup> Boonzaier, *et al.* 'He's a man, and I'm a woman: Cultural constructions of masculinity and femininity in South African women's narratives of violence' (2003) 9 *Vi Ag Women* 1003–1029

<sup>12</sup> *Physical abuse* refers to the intentional use of physical force with the potential for causing injury, harm, disability, or death. For example, hitting, shoving, biting, restraint, kicking, and use of weapon are types of physical violence. *Sexual violence* refers to any situation in which one partner is forced to participate in unwanted, unsafe and degrading sexual activity and abusive sexual contact. *Emotional abuse* includes verbal abuse such as yelling at, name-calling, blaming, humiliating (shaming), controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, and isolating the victims from friends and family. *Economic abuse* refers to the abuser's behaviour of controlling the victim's money and other economic resources.

<sup>13</sup> The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 article 9(4)

Most of the Ethiopian previous laws were claimed up on traditional role of women as wives and mother, and they reinforced the stereotypical domestic house-bondages of Ethiopian women.<sup>14</sup> However, the 1994 of FDRE Constitution established the equality of men and women as foundational constitutional norms and enunciate the substantive equality by employing different affirmative actions<sup>15</sup>. Along with FDRE constitution different laws of Ethiopia outlaw violence against women. For instance, the FDRE criminal code, the revised family code and other some Ethiopian policy tried to stipulate equality of women and men.

However, the reports of domestic violence against women are yet manifested from time to time. In 2005, the world health organization study shows that 71% of ever partner's women in Ethiopia suffered from sexual or physical violence and around one third of these women had experienced severe forms of violence over their life time especially by their husbands.<sup>16</sup> Despite some attempt to eradicate violence against women, women of all ages and backgrounds continue to be subjected to domestic violence in Ethiopia.

It is highly prevalent, especially in rural areas such as Jimma zone districts and widely socially condoned. Although in some extent, the Ethiopian law and law enforcement institutions condemn the violence against women, domestic violence against women remain widely practiced in many parts of (Jimma zone)<sup>17</sup>, south western Ethiopia. Some studies<sup>18</sup> reveal the pervasiveness and prevalence of these problems in the south western Ethiopia which includes Jimma zone. Though, there are different legal safeguards in international or regional instruments which Ethiopia ratified to protect women against violence which possibly may include domestic violence, prevalence of domestic violence against women and pervasiveness of domestic

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<sup>14</sup> Tsehai Berhane sellassie, 'Ethiopian rural women and state' in *African Feminism: the political of survival in sub-Saharan Africa* (edn) Mikell Gwendolyn (university of Pennsylvania press 1998)184

<sup>15</sup> FDRE Constitution (n 13) Article 35

<sup>16</sup> WHO, *Violence Against Women*, <[www.who.int/mediacentre/factsheets/fs239/en/index.html](http://www.who.int/mediacentre/factsheets/fs239/en/index.html)> accessed 20 December 2016

<sup>17</sup> Based on the 2007 Census conducted by the CSA, this Zone has a total population of 2,486,155, an increase of 26.76% over the 1994 census, of whom 1,250,527 are men and 1,235,628 women; with an area of 15,568.58 square kilometers, Jimma has a population density of 159.69. While 137,668 or 11.31% are urban inhabitants, a further 858 or 0.03% are pastoralists. A total of 521,506 households were counted in this Zone, which results in an average of 4.77 persons to a household, and 500,374 housing units. Jimma is located 335 km south west of the Ethiopian capital, Addis Ababa. Currently the town is serving as a political and economic center of the Jimma zone.

<sup>18</sup> Mussie Kassa G/Mehidn, *Intimate partner violence: prevalence, risk factors and attitude of men and women in Jimma Zone, Ethiopia* ( Master Thesis on Epidemiology and public Healthy University of Umea,2006) unpublished

violence in every part of the Zone are high. Such high records of violence pave the way for violation of women's human rights in Jimma zone. So, domestic violence against women has very adverse effect on the protection and upholding women's human rights throughout the Zonal districts. Unless such domestic violence against women would be prevented and women's human rights are ensured, its effect is not only upon women rather upon the community as a whole.

## **1.2. Statement of the problem and Research questions**

Attaining equality between women and men and eliminating all forms of discrimination against women including domestic violence are fundamental human rights and United Nations values.<sup>19</sup> Accordingly, domestic violence against women has been defined and outlawed in different international instruments. In 2004, the UN General Assembly specifically addressed domestic violence in Resolution No 58/147.

In this Resolution, the UNGA recognizing that domestic violence is a human rights issue with serious, immediate and long-term implications. It strongly condemned all forms of domestic violence against women and, called for an elimination of violence in the family. The resolution also recognized that, domestic violence is a violence that occurs within the private sphere, generally between individuals who are related through blood or intimacy. Accordingly, there has been a long history of addressing women's human rights and much progress has been made in securing women's rights across the world in recent decades. However, important gaps remain and women's realities are constantly changing with new manifestations of domestic violence against them regularly emerging.

There are different attempt to overcome the problems of domestic violence though Comprehensive multidisciplinary strategies are necessary to combat violence against women. Governments, non-governmental organizations and women's rights activists all over the world

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<sup>19</sup> UNHROHC, *Women's Rights are Human Rights*, (United Nation Human rights Office of the High commissioner, 2014 , New york & Geneva)20

have used different approaches in dealing with violence against women, with varying degrees of success.<sup>20</sup>

As such there are some start in our country in protection of women rights against any violence and discrimination. However, domestic violence is highly prevalent in Ethiopia till now, especially in rural areas such as Jimma zone woredas and widely socially condoned. A study conducted by the World Bank in July 2005 concluded that 88 percent of rural women and 69 percent of urban women are experienced violence in most parts of Ethiopia, especially by their husbands. Although the Ethiopian law and law enforcement institutions in general condemn the violence against women, specifically domestic violence against women remains widely practiced in many parts of the Jimma zone, south western Ethiopia and seems to be disregarded.

In Jimma zone, there are different reports of domestic violence against women. As I have discussed so far, many studies reveal the prevalence of these problems in the south western Ethiopia which includes Jimma zone. Accordingly, a study conducted on two woredas of Jimma zone<sup>21</sup> indicated that intimate partner violence remains significant public health problem among ever-married women in Southwest Ethiopia. The seriousness of the problem of domestic violence against women in Jimma zone is very high which may not be imagined in this 21 century. Women suffer from sexual, physical and emotional violence without making their voices heard and without getting the proper protection and support they deserve as mothers of citizens. Accordingly, in zonal districts, majority- 64.7% of ever-married women experienced physical or sexual violence, or both, by an intimate partner at some point in their lives.<sup>22</sup> This shows that, the high prevalence of domestic violence against women and pervasiveness of domestic violence in every part of the zonal districts, which in turn paves way for violation of women's human rights in Jimma zone.

Such high prevalence clearly indicates that, the protection of women against domestic violence in the Jimma zone has been not succeeded which manifests the existence of challenges and

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<sup>20</sup>UNDAW, *Good practices in combating and eliminating violence against women*, (United Nations Division for the Advancement of Women 17- 20 May 2005 ,Vienna, Austria)2

<sup>21</sup> Kebede Deribe *et al*, 'Magnitude and Correlates of Intimate Partner Violence against Women and its outcome in Southwest Ethiopia' (2012) 7(4) PLoS ONE :36189.

<sup>22</sup> Ibid

obstacles. This in turn makes me to theorize that, there are something flawed in protection of women against domestic violence; either through process, prosecution, socio-cultural or understanding, reporting, religious or social stigma, power imbalance, legal frame work, the policy and or other which highly hinders the successful protection of women against domestic violence. Therefore, unless, such challenges are identified and take action upon, the women's human rights will continuously to be violated. This leads to devastation of well beings of the Jimma zone community at large.

Hence, in undertaking this piece of research, I will address the following research questions;

- ✓ How much does women report the incidence of domestic violence to the authority (police, prosecutor and or/concerned body/) in Jimma zone?
- ✓ To what extent does the Ethiopian legal and policy framework uphold and being implemented to prosecute acts of domestic violence against women?
- ✓ How much awareness and understanding do the law enforcement agencies and women have regarding the impact of domestic abuse on women and its effects on their human rights in Jimma zone?
- ✓ What protections would be given to the victims of domestic violence in Jimma zone?
- ✓ What are the socio-cultural barriers in protecting women against domestic violence in Jimma zone?

### **1.3. Objectives of the study**

#### **1.3.1. General Objectives of the study**

The general objective of this study is to identify the challenges that hinder the protection of women against domestic violence in Jimma zone and protection of women against domestic violence in the study area.

#### **1.3.2. Specific Objectives of the study**

Bearing in mind the above mentioned general objective, the research has the following specific objectives.



- Identify gap (if any) in dealing with protection of women against domestic violence in practice in lights of women's rights standards by critically analyzing and evaluating the activities of all law enforcements and stakeholders in Jimma zone;
- Evaluate the extent of Ethiopian laws and policy to the protection of WADV
- Evaluate the way in which the law enforcement agencies and stakeholders understand and aware of how to protect women against domestic violence in Jimma zone;
- Evaluate the effectiveness of strategies in zonal areas and identify legislation, plans, policies and other intervention approaches in protection of women against domestic violence.
- Evaluate socio-cultural factors in protection of women against domestic violence specifically in Jimma zone.

#### **1.4. Significance of the study**

As mentioned above, there are high prevalence of domestic violence in Jimma zone which has very adverse effect on the protection and upholding women's human rights throughout the Zonal districts. Therefore, unless such violence would be prevented, its effect is not limited to women rather to the entire community. Accordingly,

- ❖ This study is very significant for protection of women's human rights in the zone through pinpointing the effective protection of women against domestic violence by identifying the challenges.
- ❖ The study will provide significant information for all law enforcement agencies and other stakeholder, so they may be able to successfully combat domestic violence against women.
- ❖ This study will encourage and inspire other researchers to explore and undertake further research/investigation on domestic violence more nationally.

#### **1.5. Scope of the study**

The research basically limits itself to identifying the challenges to protection of women against domestic violence in Jimma Zone. As such the study covers all Jimma zone districts and towns.

##### **1.5.1. Operational definitions**

Domestic violence shall mean -all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.<sup>23</sup>

Physical violence -includes acts of (slapped or had something thrown at her that could hurt her, pushed or shoved, hit with fist or something else that could hurt, kicked, dragged, or beaten up, choked or burnt on purpose, and perpetrator threatened to use or actually used a gun, knife, or other weapon against her.<sup>24</sup>

Sexual violence- includes acts of physically forced to have sexual intercourse when she did not want to because she was afraid of what partner might do and was forced to do something sexual that she found degrading or humiliating.<sup>25</sup>

Psychological/emotional/ abuse - includes behavior that is intended to intimidate and persecute, and takes the form of threats of abuse, confinement to the home, surveillance, destruction of objects, isolation, verbal aggression and humiliation.

Economic abuse- which includes; acts such as the denial of funds, refusal to contribute financially and controlling access to health care, employment etc.<sup>26</sup>

## **1.6. Methodology of the study**

In this study the researcher mainly aimed to identifying the challenges to the protection of women against domestic violence from professional standpoint. Therefore, qualitative methodology was primarily used. Qualitative research methods are the most appropriate means

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<sup>23</sup> The above mentioned operational definition has been taken from the Istanbul conventions of European union members. *See The Council of Europe Convention on preventing and combating violence against women and domestic violence* (Istanbul Convention, 2014), Article 3(b)

<sup>24</sup> The definition has been taken from world health organization report. *See WHO, World Report on Violence and Health.* (WHO, 2002 Geneva)

<sup>25</sup> Ibid

<sup>26</sup> The UN General Assembly Resolution 58/147, entitled “[e]limination of domestic violence against women” (2004).

of exploring professional views of their experiences of women's reality regarding the challenges to protection of women against DV.

Unlike quantitative, qualitative research is rooted in the perspective of participants and their subjective meanings and explanation of the reality. This approach also would enable to explore and explained into the hidden and invisible issues of domestic violence against women from their stand point and stakeholders that addresses the issue intended to research. In addition the qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic, analysis, words, reports detailed views of informants, and conducts the study in a natural settings.

The study was applied to examining individual, situational, practical gap, legal and socio structural risk markers for domestic violence in this study. As such, in terms of source of data, both primary and secondary resources were employed in the study.

#### **1.6.1. Secondary Data sources**

The study has attempted to review and consult relevant literature on the protection of women against domestic violence especially, an academic literature; books, journals, articles, Reports, recommendations, General comments and others were employed as secondary sources.

#### **1.6.2. Primary Data sources**

The primary data sources include semi-structured/unstructured interview, focus groups discussion and legal documents.

#### **1.6.3. Target populations**

As I have already mentioned in the background, Jimma zone has comprises of twenty-one districts/woredas including Jimma town special zone. For this research purpose, among 21 district/woredas/ of Jimma zone; 5 (kersa, seka chokorsa, Mana, Goma and Omo Nada) districts has been taken and Jimma town special zone has been selected purposively because of high population concentrations.

From the selected districts, target population has been selected purposively from the institutions working on DVAW and it includes some NGO's. The institutions working on protection of WADV specifically included in target populations were Justice Office, Courts police stations

and women and child affairs office. As such, the NGO's are from the Jimma town those who are working on the womens and children.

#### **1.6.4. Data gathering mechanism and Tools**

Data has been collected from the selected institutions in the respective selected districts and some NGO's. To this end, the thesis has make used of the following data gathering mechanisms.

##### **1.6.4.1. Documents**

The existing legal documents of the country such as domestic policy, legislation, directives and guidelines has been used to identify and evaluate the existing policy and legal frame work against domestic violence in the country.

##### **1.6.4.2. Interviews and FGD**

The research mainly depends on semi-structured interviews with a list of identified topics to cover and focused group discussions. From the selected districts; FGD and interview has been conducted with selected professional in courts, justice office, police investigation departments, womens and child affairs office in each respective selected woredas/districts and some NGOs.

For the purpose of interview, 10 informants have been selected purposively from the selected professional members of each selected districts and 4 informants of NGOs from Jimma town. Then  $(10 \text{ informants} \times 6 \text{ district}) + 4 \text{ informant} = 64$  informants has been interviewed.

For the purpose of Focused group discussion, one FGD have been conducted from the selected professional in each selected districts. Each FGD contain 6-8 members. The total -  $1 \text{ FGD} \times 6 \text{ district} = 6$  FGD have been conducted.

#### **1.6.5. Data analyzing methods**

The researcher used interpretational analysis approach and descriptive for this study. Each session was followed by preliminary analysis that included verbatim transcription of Oromic translation into English, and continuing the data collection until a point of saturation. The most critical step of interpretational data analysis taken place in this study was developing a set of categories that adequately encompass and summarize the data. Accordingly, the data generated from focus group discussion and in depth interview were divided in to different categories/themes. Categories were formed keeping the objective of the study in mind as much as possible and similar categories were brought together. Accordingly, the major concepts were

interpreted by repeated reading through the categories, notes and memos, summarizing, and then verified.

### **1.7. Literature Review**

I have reviewed different literatures which were written on domestic violence in Ethiopia and somewhere in general and, specifically around the south western Ethiopia which includes Jimma zone to identify whether the issues am going to address were covered by those literature. Accordingly, there are limited number of study has been found conducted on domestic violence against women in Ethiopia. I have tried to see various published papers found in different parts of Ethiopia from international and national journals. The main finding of these studies relied mostly on the prevalence, magnitudes, and patterns of domestic violence, effects and consequence of domestic violence. Though difficult to raise and discuss all of them in this topic, it is better to see and discuss some of their findings and methods of data collection they employed in the following paragraphs.

In 2012, one study has been conducted by Deribe K& Beyene on Kersa and Sokoru districts of Jimma Zone, southwest Ethiopia. The study was aimed to assess the magnitude of intimate partner violence in Southwest Ethiopia in predominantly rural community. The research conducted on 851 married Women (15–49) who selected using Systematic sampling techniques. Their main founding was that, the life time prevalence of sexual or physical violence or both was 64.7%.<sup>27</sup> As we can understands from this study, it is only concerned on magnitudes and prevalence of the problems. It did not address other issues.

The other study was conducted in 2013 by Shanko W, *et al* on domestic violence against women in Kersa, Oromia region, western Ethiopia.<sup>28</sup> The research was intended to assess the knowledge and prevalence of domestic violence among women in Kersa district of Oromia region. The research conducted on 858 women (15–49) who selected by systematic sampling method.

Their main founding was that, only 39.7 % of women reported that they recognized that domestic violence against women was a problem in their area. Ever experience of domestic

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<sup>27</sup> Deribe K (n 21)8

<sup>28</sup>Shanko W *et al.* ‘Domestic violence against women in Kersa, Oromia region, eastern Ethiopia’ (2013) 19(1)East Mediterr Health J 18–23

violence against women was significantly related to Amhara ethnicity and age group 30–49 years. Only 19.9 % women who ever experienced violence reported it to the legal authorities.<sup>29</sup>

In this literature, the author assesses only the knowledge and prevalence of domestic violence among women in Kersa district of Oromia region. Even their sampling was not representative according to empirical rules. Because they took only one district from 21 districts of Jimma zone which is not likely to be representative of Jimma zone rather it represent only one district (kersa).

The other study was conducted in 2007 by Amare Deribew A. on the Magnitude and risk factors of intimate partner violence against women in Agaro town, southwest Ethiopia.<sup>30</sup> The research aimed to assess the magnitude, type and risk factors of intimate partner violence against women in Agaro town, Southwest Ethiopia. It was conducted on 510 women (15–49) who selected by systematic sampling.

Accordingly, their findings were that, the lifetime prevalence of husband/intimate partner violence was 51.8 %. About 32 %, 33 % and 46 % of women had physical, sexual and emotional abuses in their lifetime, respectively. Majority of the physical (80.9 %) and emotional (80.7 %) abuses occurred in the 2006 (last year of the researched year). The finding also shows that, the common acts of physical violence were slapping (68.7 %), pushing (62.0 %) and hitting with fist/stick (27 %). About 28 % of them experienced severe form of physical violence such as hitting with fist, choking and threatening with gun.<sup>31</sup>

In this literature, the author assesses only magnitude, types, risky factor and problems of domestic violence against women. It did not address any other issues including the issues am going to address.

The other study was conducted by Deyessa *et al* on two districts called Meskan and Mareko in Guraghe zone in 2009. The research aimed to examine the relation between IPV and depression in a community-based study in Butajira.<sup>32</sup> It was conducted on a total of 1994 women (15–49)

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<sup>29</sup> Ibid

<sup>30</sup> Amare Deribew A. 'Magnitude and risk factors of intimate partner violence against women in agaro town, southwest Ethiopia' (2007) 17 Ethiopian J Health Sci

<sup>31</sup> Ibid

<sup>32</sup> Deyessa N, Berhane Y, Alem A, Ellsberg M, Emmelin M, Hogberg U, et al. 'Intimate partner violence and depression among women in rural Ethiopia: a cross-sectional study' (2009) 5(8) Clinical Practice Epidemiology Mental Health 1–10

who were selected by simple random sampling. Accordingly their findings were that, the lifetime prevalence of husband/intimate partner violence was high, Lifetime prevalence of intimate partner physical violence was 49.5%. Physical violence, childhood sexual abuse, mild emotional violence, severe emotional violence, and high spousal control of women associated with depressive episode were shown.<sup>33</sup>

In this literature, the study addresses only the relation between IPV and depression in a community-based study in Butajira. It did not address any other issues of domestic violence.

The other study was conducted in 2011 by Abeya *et al* on Nekemte town and 4 rural districts in East Wollega Zone.<sup>34</sup> The research was aimed to investigate the prevalence, patterns and associated factors of intimate partner violence against women in Western Ethiopia. It was conducted on 1540 ever married women who selected systematic random sampling.

Accordingly they found that, Lifetime and past 12 months of the study year prevalence of intimate and intimate/husband violence against women was 76.5 % and 72.5 % respectively. The overlap of psychological, physical, and sexual violence was 56.9 %. Rural residents, literates, female headed households, older women were nearly four times.<sup>35</sup>

The other study was conducted in 2013 by Annabel Erulkar.<sup>36</sup> The survey took place 31 districts from 7 regions aimed to explore the relationship of early marriage, marital relations and intimate Partner Violence in Ethiopia. It was conducted on 1,671 women aged 20–24 who selected using simple random sampling method.

Accordingly he found that, only one in five young women attained some secondary education. About 30 % got married at ages 15–17. Married women (18–19) were more likely than those married before age 15 to have discussed sexual issues [24 %]. who had married before age 15 were less likely to have wanted to experience sexual initiation than who had married at ages 18–19 [49 %], Likewise, the youngest brides had experienced high levels of forced first sex with their husbands (32 %) were more likely than older brides [7 %].

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<sup>33</sup> Ibid

<sup>34</sup> Abeya SG, Fantahun MA, Worku AY. 'Intimate partner violence against women in western Ethiopia: prevalence, patterns, and associated factors' (2011) 25BMC Public Health 913

<sup>35</sup> Ibid

<sup>36</sup> Erulkar A. 'Early marriage, marital relations and intimate partner violence in Ethiopia ' (2013) 39 Int Perspect Sex Reprod Health 1

The other study was conducted in 2012 by Feseha *et al* on Shimelba refugee camp, Northern Ethiopia.<sup>37</sup> The study aimed to assess the magnitude of intimate partner physical violence and associated factors among women in Shimelba refugee camp, Northern Ethiopia. It conducted on 422 refugee women (15–49) who selected by simple random sampling method.

Accordingly, he found that, the prevalence of physical violence in the last 12 months of the study year and lifetime were 25.5 % and 31.0 % respectively. The commonest forms of physical violence reported slapping (61.6 %) and throwing objects (19.5 %). Physical violence associated with being farmer, knowing women in neighborhood whose husband to beat them, being Muslim, and having husband drunk hard. Women whose husband drink alcohol, chew khat or smoke cigarette experience IPV were higher than their counter parts and respectively.<sup>38</sup>

In general, the issues addressed and considered in all above discussed literature were limited to magnitude of the problems, the type of domestic violence against women, the consequence of the problem and the prevalence of the problems of domestic violence against women only. All of them did not cover the issue of challenges to the protecting women against domestic violence.

### **1.8. Limitation of the study**

I have faced some limitation in conducting this research. *Inter alia*, the time constraints, the problem of accessing peoples freely as much as I want to interview, the confidentiality nature of domestic violence against women were limited me in some extent and can be considered as limitation of the study.

### **1.9. Ethical consideration**

Researching violence implies dealing with sensitive issue. If adequate precautions are not taken, the informants may unwilling to interviewed. Therefore, the researcher confirmed the confidentiality of the responses before initiating the interview. Consequently, it has been conducted in a safe manner which has no risk to either on population or institution both in the process of collecting and analyzing data.

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<sup>37</sup> Feseha G, G/mariam A, Gerbaba M. 'Intimate partner physical violence among women in Shimelba refugee camp, northern Ethiopia' (2012) 12 BMC Public Health 125

<sup>38</sup> Ibid



### **1.10. Structure of the Study**

In this thesis, attempt will be made to identify and show the challenges to the protection of women against domestic violence and try to pinpoint the mechanism of successful protection of women in Jimma zone. To this end, the thesis was organized in five chapters.

The First chapter of the paper will introduce the background of the study, statement of the problems, objectives of the study, significance of the study, research methodology and scope of the study, limitation of the study and structure of the study.

The second chapter gives a brief explanation on the nature and concept of domestic violence against women. Under this topic, the notion and concepts of domestic violence against women, patterns/forms of DVAW, causes of DVAW, effects of violence on the country and community at large and, the consequence of domestic violence against women have been assessed.

Chapter three will attempt to overview, Protection of Women against domestic violence in International Human Rights Instruments and its Reflection in the Ethiopian National Legislations. In this chapter, the existing legal frameworks in protection of women against domestic violence has been explained both at international and regional level. As well, endeavoring to elaborate, explain, and evaluate the existing legal frameworks, policies and different women's right plan action in Ethiopia specifically regarding the protection of womens against domestic violence in light of international standards.

The fourth chapter has addressed the challenges in protection of women against domestic violence specifically in Jimma zone. Under this chapter, the practical challenges in zonal districts, socio-cultural barriers, and legal and policy gaps in the country have been assessed and evaluated.

The last chapter was about conclusion and recommendations. In this chapter the possible finding has been concluded and recommendation was issued based on the findings of the research to ensure reliable and effective women rights protections against domestic violence in Jimma zone.

## CHAPTER-TWO

### The Nature and concepts of domestic violence against women

#### Introduction

Domestic violence is the most common form of violence experienced by women around the world which is directed by their intimate partner and other family members, and manifested through; physical, sexual, psychological and economic abuse.<sup>39</sup> According to United Nation's report, it is a global problem, at least one in three women is beaten, coerced into sex, or otherwise abused by an intimate partner in the course of her lifetime.<sup>40</sup> Domestic violence against women exists in countries with varying social, political, economic, and cultural structures, and its pervasiveness signifies that the problem does not originate with the pathology of an individual person.<sup>41</sup> It is a behavior acquired over time through multiple observations and interactions with individuals and institutions.<sup>42</sup> Like other forms of aggression, it is not caused by genetics or illness. People are not born perpetrators and for the most part there is no disease or illness that turns a non-abusive person into an abuser.

However, despite the widespread nature of the problem, it has long been considered a private matter best dealt with in the home, not an issue of public policy and went largely unaddressed within traditional international human rights discourse. In this chapter, I will try to briefly discuss the definitions of violence against women which is provided by different scholars, pattern of domestic violence against women, prevalence of domestic violence against women, causes of domestic violence and consequences of domestic violence respectively.

#### 2.1. Definition of domestic violence against women

There is no single definition for the notion '*domestic violence*'. Different authors, countries and organization provide for different definitions. For example, in the USA, the Office on Violence against Women defines *domestic violence* as a pattern of abusive behaviour in any relationship

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<sup>39</sup> United Nations Dep't of public information (n 1) 23

<sup>40</sup> Ibid

<sup>41</sup> Lee Hasselbacher, 'State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection' (2010) 8 Nw. J. Int'l Hum. Rts. 190

<sup>42</sup> Bandura, A. 'The social learning perspective: Mechanisms of aggression'. In H. Toch (edn.), *Psychology of crime and criminal justice* (New York: Holt, Rinehart & Winston 1979)30

that is used by one partner to gain or maintain power and control over another intimate partner.<sup>43</sup> In UK, *domestic violence* is defined as patterns of behaviour characterized by the misuse of power and control by one person over another who is or has been in intimate relationship.<sup>44</sup> In Spain, it is defined as a violence originating from the position of power of men over women.<sup>45</sup>

On other hand, 'Margi Mc Cue' defines domestic violence as emotional, psychological, physical or sexual abuse perpetrated against the person by the person's spouse, former spouse, partner or former partner or by other parent of minor child.<sup>46</sup> Likewise, the World Health Organization defines domestic violence as the range of sexually, physically, psychologically coercive act used against adult and adolescent women by current or former male intimate partner.<sup>47</sup>

The United Nation definition of gender based violence was first articulated in 1993 when General Assembly passed the declaration on the elimination of all forms violence against women. According to the declaration the term 'violence against women' means any act of gender based violence that result in, is likely to result in; physical, sexual or psychological harm or suffering to women including threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.<sup>48</sup>

United Nations General Assembly (UNGA), in resolution 63/143 defines violence against women as 'violence' that is directed against a woman because she is a woman, or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.<sup>49</sup> On other hand, according to Istanbul convention<sup>50</sup>, domestic violence shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between

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<sup>43</sup> U.S. Dep't of Justice, Office on Violence Against Women, < <http://www.ovw.usdoj.gov/ovw-fs.htm> >accessed 18 March 2017

<sup>44</sup> Hibr, *Domestic violence in England and Wales* (briefing paper 6337, 6 may 2016)

<sup>45</sup> Definition of domestic violence in Spain laws , <<http://www.velascolawyers.com/en/civil-law/143-domestic-violence-in-spain.html> >accessed 12 March 2017

<sup>46</sup> Margi Laird McCue, *Domestic violence : A reference Handbook* ( 2<sup>nd</sup> edn.1995 ABC –CLIO)3

<sup>47</sup> WHO, *Violence against women : Apriority healthy issue*(World health organization, Geneva 1997)

<sup>48</sup> General Assembly resolution 48/104 of 20 December 1993 Article 1

<sup>49</sup> U.N. Resolution adopted by the General Assembly, 61/143.19 th December 2006

<sup>50</sup> The Article 3(b) of Istanbul Convention, on the domestic violence against women, <[www.coe.int/en/web/istanbul-convention/publications](http://www.coe.int/en/web/istanbul-convention/publications)> accessed 18 March 2017

former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

When we see the definition provided above by different organs and scholars, most of them did not distinguish DVAW from other violence against women and they have defined domestic violence broadly. Others have defined strictly in which it may limit the scope of DV to only cohabited partners. But the reality is that, domestic violence has been distinguished from other form of violence against women such as harassment, rape by outsider and other form of violence against women specific to socio-cultural settings as female genital mutilation.<sup>51</sup> However, all definitions are nearly similar regarding the caption and patterns of DV.

In nutshell, it is possible to define that, DVAW is any use of physical or sexual force, actual or threatened, in an intimate relationship which may include a single act of violence, or a number of acts forming a pattern of abuse through the use of assaultive and controlling behaviour. It can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound women by their intimate partner; husbands, boyfriends or other sexual partner either current or former.

## **2.2. Prevalence of domestic violence against women**

International research consistently demonstrates that women are more likely to be assaulted, injured, raped, or killed by a current or former partner than by any other person. These studies<sup>52</sup> indicate that between 10 percent and 60 percent of women who have ever been married or partnered have experienced at least one incident of physical violence from a current or former intimate partner.

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<sup>51</sup>Orly Richardson, 'Bringing down the bedroom walls: emphasizing substances over form in personalized abuse' (2008) 14 *wm & marry. J of women & L* 495

<sup>52</sup>WHO, *Multi-country Study on Women's Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses*, (Geneva, Switzerland, 2005) <<http://www.who.int/gender/violence/en/>> accessed 17 March 2017. The World Health Organization worked with collaborating institutions in 15 sites in ten countries between 1998 and 2004 to implement a multi-country study of domestic violence and women's health. The *WHO Multi-country Study* was the first ever to produce truly comparable data on physical and sexual abuse across settings.

As argued by 'Lee Hasselbacher', this clearly shows that in a global average, at least one in three women is beaten, coerced into sex, or otherwise abused by an intimate partner in the course of her lifetime<sup>53</sup>. And it has dramatically disproportionate impact on women worldwide.<sup>54</sup> Some scholars attribute DVAW to certain region or countries. However, regardless of location or women's education, yet violence against women remains a worldwide problem though the variations between regions or countries are large depending on the extents, magnitude, costs and severity of the violence.

As such domestic violence in Ethiopia is a common phenomenon within its diversity. Therefore, domestic violence against women was relatively high in different parts of Ethiopia. It has direct relationship with socio-demographic characteristics of the victim as well as perpetrator<sup>55</sup> and highly prevalent in Ethiopia till now, especially in rural areas and widely socially condoned.

A nationwide study<sup>56</sup> which employed representative sample from eleven major ethnic groups found out that domestic violence against women (specifically wife beating) is highly prevalent and is an acceptable norm in the country. Wife beating is assumed something as natural and an expression of love or affection. On other hand, the study conducted in Butajira<sup>57</sup> reveal that, nearly one half (49%) of ever-partnered women experienced physical violence by a partner at

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<sup>53</sup> Lee Hasselbacher (n 41)192

<sup>54</sup> U.N. Children's Fund, *Domestic Violence Against Women and Girls*, (2000) 6 Innocent digest 1, 3-5, < <http://www.unicef-irc.org/publications/pdf/digest6e.pdf> >accessed 19 march 2017. This report observed that domestic violence is in most cases violence perpetrated by men against women and violence by women against men accounts for a small percentage of domestic violence. Some relevant statistics include: 29% of women in Canada (a nationally representative sample of 12,300 women) reported being physically assaulted by a current or former partner since the age of 16; 25% of women in the U.K. (a random sample of women from one district) had been punched or slapped by a partner or ex-partner in their lifetime; up to 45% of married men in India acknowledged physically abusing their wives, according to a 1996 survey of 6,902 men; 35% of women in Egypt (a nationally representative sample of women) reported being beaten by their husband at some point in their marriage; 41% of women in Uganda reported being beaten or physically harmed by a partner; 41% of men reported beating their partner (representative sample of women and their partners in two districts); 19% of 6,097 women surveyed in Colombia have been physically assaulted by their partner in their lifetime; 29% of women in Estonia aged 18-24 fear domestic violence, and "the share rises with age, affecting 52% of women 65 or older, according to a 1994 survey of 2,315 women."

<sup>55</sup>Agumasie Semahegn and Bezatu Mengistie, 'Domestic violence against women and associated factors in Ethiopia; systematic review' (2015) 12 *Repro.Health* 78

<sup>56</sup>Habtamu W, '*Gender and cross cultural Dynamics: The case of eleven Ethnic groups*(2004)4

<sup>57</sup>In Ethiopia, the Study was under taken under the auspices of the Butajira Rural Health Program. The research team included member s from the Department of Community Health and the Department of Psychiatry, Addis Ababa University; the Ethiopian Public Health Association; the Women's Lawyer s Association, Addis Ababa; the Department of Public Health and Clinical Medicine, and the Department of Clinical Science, Umeå University, Sweden; and the Program for Appropriate Technology in Health (PATH), United States.

some point in their lives, and 59% of ever-partnered women experienced sexual violence at some point.

On other point, a study conducted in Addis Ababa by Ethiopian women lawyers association (EWLA) in 2004, reported that, most of the interviewees had faced violence at some point in their lives and there were less likely reporting. The majority viewed reporting as pointless or dangerous to their well-beings. A study conducted by the World Bank in July 2005 concluded that 88 percent of rural women and 69 percent of urban women are violence experienced in most parts of Ethiopia, especially by their husbands.

As discussed so far, some researches also reveal the prevalence of these problems in the south western Ethiopia which includes Jimma zone. The study conducted on two woredas of Jimma zone<sup>58</sup> indicated that intimate partner violence remains significant public health problem among ever-married women in Southwest Ethiopia. As argued by *Kebede* majority (64.7%) of ever-married women experienced physical or sexual violence, or both, by an intimate partner at some point in their lives<sup>59</sup>. Women suffer from sexual, physical and emotional violence without making their voices heard and without getting the proper protection and support they deserve as citizens of the country and as mothers of citizens. Hence, these clearly shows that there are high prevalences of domestic violence against women in Ethiopia in general and Jimma zone in particular.

### **2.3. The Patterns of domestic violence against women**

Different scholars characterizes pattern of DVAW with little different or variations. However, domestic violence is neither random nor haphazard. It is a complex pattern of increasingly frequent and harmful physical, sexual, psychological and other abusive behaviors used to control the victim.<sup>60</sup> The abuser's tactics are devised and carried out precisely to control her. Some types are more subtle than others and might never be seen or felt by anyone other than the woman experiencing the abuse. The abuser uses a combination of tactics that work to control the victim.

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<sup>58</sup>KebedeDeribe (n 27)

<sup>59</sup> Ibid

<sup>60</sup> Kaufman, G. Kantor, & Jasinski, J. L, *Dynamics and risk factors in partner violence: A comprehensive review of 20 years of research*. (Thousand Oaks, CA: Sage 1998)30

It is better to see these forms of DVAW one by one in the subsequent sub-topics since it is more helpful to understand the nature of DVAW.

### **2.3.1. Physical abuse**

A physical abuse as one forms of DVAW refers to the intentional use of physical force with the potential for causing injury, harm, disability, or death<sup>61</sup>. It is easier to recognize and understand than other types of abuse. Physical abuse may include; spitting, scratching, biting, grabbing, shaking, shoving, pushing, restraining, throwing, twisting, slapping, punching, choking, burning, and/or use of weapons ( household objects, knives, guns) against the victim.

The physical assaults may cause less or serious injuries. Sometimes seemingly less serious type of physical abuse, such as a shove or push, but can result in the most serious injury. The perpetrator may push the victim against a couch, a wall or down a flight of stairs all of which could result in varying degrees of trauma (bruising, broken bones, and spinal cord injuries).<sup>62</sup> Sometimes the physical abuse does not cause a specific injury but does cause other health problems. For example, one perpetrator frequently abused his partner during meals and late at night. He would push, restrain, and spit at his partner as well as abuse her verbally. While there were no visible injuries, the victim suffered from severe sleep deprivation and poor nutrition, since both her sleep and eating patterns were repeatedly interrupted by her abuser's conduct.

In Ethiopia, physical abuses are the dominant forms of domestic violence as shown by different studies in general and in particular in Jimma zone. The study conducted in 2007 by Amare Deribew on the magnitude and risk factors of intimate partner violence against women in Agaro town, southwest Ethiopia<sup>63</sup> shows that, majority of the domestic violence were physical abuses (80.9 %). The common acts of physical violence were slapping (68.7 %), pushing (62.0 %) and hitting with fist/stick (27 %). About 28 % of them experienced severe form of physical violence such as hitting with fist, choking and threatening with gun. This shows that, the severity and prevalence of physical abuses are high in Ethiopia and specifically in Jimma zone.

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<sup>61</sup>Melissa Platt, *et al*, *A Betrayal Trauma Perspective on Domestic Violence* (March 2009)187

<sup>62</sup> Ibid

<sup>63</sup>Amare Deribew A. 'Magnitude and risk factors of intimate partner violence against women in agaro town, southwest Ethiopia' (2007) 17Ethiopian J Health Sci

### **2.3.2. Sexual abuse**

Sexual violence and abuse is other form of DVAW which can be extraordinarily difficult for victims to talk about, because of the ways in which this type of violence often perpetrated is hidden and considered as shameful act. It consists of a wide range of conduct that may include or any situation in which one partner is forced to sex when the victim does not want sex, coerced sex by manipulation or threat, physically forced sex, or sexual assault accompanied by violence or is forced to participate in unwanted, unsafe and degrading sexual activity and abusive sexual contact.<sup>64</sup>

The perpetrators' message to the victims is that they have no say over their own bodies. Sometimes victims will resist and are then punished, and sometimes they comply in hopes that the sexual abuse will end quickly. For some battered victims this sexual violation is profound and may be difficult to discuss. As argued by scholars, some victims are unsure whether this sexual behavior is really abuse, while others see it as the ultimate betrayal. As such, in Ethiopia, different studies show that, sexual abuses are the common and hidden forms of violence against women. And also as discussed above, its prevalence's are high in most parts of the country including Jimma zone districts.

### **2.3.3. Psychological abuse**

There are different kinds of psychological assault directed against women by their intimate partners. It includes; threat to harm, attack against property, intimidation, emotional attack and act of isolation.<sup>65</sup> It is the abuser's use of physical and sexual force or threats that gives power to his psychologically abusive acts. A research conducted by 'Sosena' in Addis Ababa indicates that 37.3% of respondents claimed that they experienced psychological violence.<sup>66</sup> They had been insulted, humiliated, intimidated /scared and threatened of harm by their current husbands. Psychological abuse becomes an effective weapon in controlling a victim, because she knows through experience that her abuser will at times back up the threats or taunts with physical assaults. Psychological abuse can be indicated when the batterer breaks promises, doesn't follow

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<sup>64</sup>Heise, L *et al*, *Ending violence against women*, (population reports, series L, 11. Baltimore: Johns Hopkins University School of Public Health. 1999)12

<sup>65</sup>Alberta Justice Communications, *A Domestic violence handbook for police services and crown prosecutors in Alberta* (Edmonton, Alberta 2014)100

<sup>66</sup>Sosena Mulatu, *Domestic violence against women: the case study of kolfe keranyo sub-city*, (un published master thesis, Addis Ababa University 2007) 34



through on agreements or doesn't take a fair share of responsibility, verbally attacks and humiliates his partner in private or public.

The study conducted in 2011 by Abeya *et al* on Nekemte town and 4 rural districts in east Wollega zone<sup>67</sup> show that, the psychological abuses are manifested in different stages including in other abuses-and confirm that, the overlap of psychological, physical, and sexual violence was 56.9 %. The abusers attack her vulnerabilities such as; her language abilities, educational level, skills as a parent, religious and cultural beliefs or physical appearance. Abuser also play mind games such as; when he denies requests he has made previously or when he undercuts her sense of reality and or forces her to do degrading things. This clearly manifests that, psychological violence are very dominant and has a great implications on the rights to women as basic social segments.

#### **2.3.4. Economic abuse**

Economic abuses are very dominant in the many countries of the world and specifically harsh in the poor countries especially, where the husbands are breadwinners of the family. Perpetrators control victims by controlling their access to all of the family resources; time, transportation, food, clothing, shelter, insurance, and money.<sup>68</sup> The perpetrator is the one who controls how the finances are spent. He may actively resist the victim becoming financially self-sufficient as a way to maintain power and control. Conversely, he may refuse to work and insist that she support the family. He may expect her to be the family bookkeeper- requiring that she keep all records and write all checks, or he may keep financial information away from her. In all instances he alone makes the decisions.

Victims are put in the position of having to get permission to spend money on basic family needs.<sup>69</sup> When the victim try to leaves the battering relationship, the perpetrator may use economics as a way to maintain control or force her to return, instituting legal procedures costly to the victim, destroying assets in which she has a share, or refusing to work on the books where there would be legal access to his income. All of these tactics may be use regardless of the

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<sup>67</sup>Abeya *et al* (n 34)

<sup>68</sup>Thompson, et al, 'Intimate partner violence: Prevalence, types, and chronicity in adult women' (2006) 30 American Journal of Preventive Medicine 447-457

<sup>69</sup> Parish, et al. 'Intimate partner violence in China: National prevalence, risk factors and associated health problems' (2004)30 Int'l Family Planning Persp 174-181

economic class of the family. Hence, though economic abuse has not get worth attention or concern, it has of devastating impacts on womens and community in general.

#### **2.4. Causes/Factors associated with domestic violence against women**

The causes of intimate partner violence have been a subject of debate for decades and the issue remains to be settled. Different theoretical frameworks drawn by social scientists fail to provide a comprehensive explanation for the occurrence of intimate partner violence.<sup>70</sup> Different scholars argued that, there is no single factor to account for violence perpetrated against women. They suggest different factors.<sup>71</sup> Some factors are related to the experiences of the individual offender. But many are related to the conditions within society and communities that in some ways supports, excuse and encourage domestic violence. Through observing popular culture, families, schools and peer groups, both men and women internalize views on femininity, masculinity and violence.

Increasingly, research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different cultural contexts. Several complex and interconnected institutionalized social and cultural factors have kept women particularly vulnerable to the violence directed at them. All of them are the manifestations of historically unequal power relations between men and women.<sup>72</sup> Factors contributing to these unequal power relations include; socio-economic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males and cultural sanctions that have traditionally denied women and children an independent legal and social status.

Many writers suggest that, domestic violence is a gender-specific behavior which is socially and historically constructed.<sup>73</sup> Men are socialized to take control and to use physical force when

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<sup>70</sup> Logan, *et al*, *Women and victimization: Contributing factors, interventions, and implications*. (Washington, DC: American Psychological Association 2006)24

<sup>71</sup> Ibid

<sup>72</sup>Burgess, R.L. & Draper, P. 'The explanation of family violence: the role of biological, behavioral, and cultural selection'. In L. Ohlin & M. Tonry (Edn.), *Family violence* (1989) 11, 59-116 , Chicago University Press.

<sup>73</sup>Anderson, K.L. 'Gender, status, and domestic violence: an integration of feminist and family violence approaches' (1997) 59 *Chicago Journal of Marriage and the Family* 655-669

necessary to maintain dominance. Male violence against women in intimate relationships is a social problem condoned and supported by the customs and traditions of a particular society.

There is a great deal of discussion about whether gender is the sole factor determining the pattern of abusive control in intimate relationships or one of a cluster of significant variables.<sup>74</sup> Hence, it is worthy to discuss and evaluates the theory provided by scholars which has been associated with possible factors to domestic violence against women in the subsequent sub-topics since it has of impotence to understand and identifies it root causes.

## **2.4.1. Theories of Domestic Violence**

### **2.4.1.1. Psychological theories**

This theory is interchangeably known as, personality theory, psychiatric theory and, or psychological theory. According to this theory domestic violence happens because the abuser has psychological problems such as sudden bursts of anger, poor impulse control and poor self-esteem, mental illness, personality defects, psychopathology, socio-pathology or other intra individual abnormalities to family violence.<sup>75</sup>

However, this theory by itself is not adequate to explain why a great percentage of men are abuser in the domestic violence cases, and even doesn't explain the societal or structural factors and cultural situation where being violence for men in their home is acceptable. As argued by *Struvas*, less than 10% of instances of domestic violence is attributable solely to personality traits, mental illness or psychopathology.<sup>76</sup> This shows that, in contrarily reading 90% of domestic violences are attributed to other than personality traits. Though, this theory focus on the individual than the social, the widespread incidence of domestic violence against women could not reasonably be seen simply as a problem of individuals or of personal interactions.<sup>77</sup> Therefore, it can be challenged as an incomplete since it only associates causes of domestic violence to individual traits which is less likely cause than other theory.

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<sup>74</sup> Miller, S, 'Expanding the boundaries: Toward a more inclusive and integrated study of intimate violence' (1994) 9(2) *Violence and Victims* 183-192

<sup>75</sup> Richard J. Gelles, *Intimate violence in family* (3<sup>rd</sup> ed. Sage publication,1997)127

<sup>76</sup>Srauts, M.A, 'A sociological perspective on the causes of family violence' (edn) in M.R. Green *Violence and the family* (west view press, 1980) 7

<sup>77</sup> Emerson Dobash and Russell P. Dobash, *women violence and social changes*( Routledge publisher 1992)130

#### **2.4.1.2. Social theory**

The social theory has inspired by feminist work. It attributes the cause of men's violence to women through learned helplessness and other victim blaming approach.<sup>78</sup> It has different sub-theories; those are resource theory, social learned theory and social stress theory. Let us discuss them in detail.

##### **A. Resource theory**

According to this theory, women are most dependents on their spouses for economic well-being and they have fewer options and few resources to lash their abuser husband. It is difficult for them to leave their spouses or change their spouse's behaviour.<sup>79</sup> Hence, domestic violence is likely to happen and continue to happen. Lack of economic resources underpins women's vulnerability to violence and their difficulty in extricating themselves from a violent relationship.<sup>80</sup> The link between violence and lack of economic resources and dependence is circular. On the one hand, the threat and fear of violence keeps women from seeking employment, or, at best, compels them to accept low-paid, home-based exploitative labour. And on the other, without economic independence, women have no power to escape from an abusive relationship.<sup>81</sup>

The reverse of this argument also holds true in some countries; that is, women's increasing economic activity and independence is viewed as a threat which leads to increased male violence.<sup>82</sup> In Ethiopia, most of the time women are dependent on their husband and husbands are bread winner for family. In such case even they would not want to struggle the abusive behavior of their husband.

##### **B. Social Stress theory**

According to this theory domestic violence may one of the ways that some people used to respond to stress. For instance, due to different factors such as inadequate finance or other

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<sup>78</sup> Jeff Hearn, *The violence of men: How men talk about and how agencies respond to men's violence to women* (Sage publication, London, 1998)15

<sup>79</sup> David Levinson, *Family violence in cross-cultural perspective* ( Sage publication (1989)16

<sup>80</sup> Allen, M., & Devitt, C. 'Intimate partner violence and belief systems in Liberia' (2012) 27 *Journal of Interpersonal Violence* 3514-3531

<sup>81</sup> Schuler S.R., et al., 'Credit Programs, Patriarchy and Men's Violence against Women in Rural Bangladesh' (1996) 43 *Soc. Sci. Medicine* 1729-1742

<sup>82</sup> ECLAC (Economic Commission for Latin America and the Caribbean), *Domestic Violence against Women in Latin America and the Caribbean* ( Proposals for Discussion, Social Development Division, Santiago, Chile 1992) 21.

similar problems a person's stress or tension may increase.<sup>83</sup> Thus, domestic violence may be used to ease the stress or tension. As *Gelles* describes, social stress theory is situated in the societies and it is considered as the social antecedent. He underlined that, the stress of unemployment, low income as well as cultural norms concerning force and violence in the home causes domestic violence against women.<sup>84</sup> This theory by itself is not beyond criticism. Because, the men's abusive behaviour has been seen and prevalent even in case of normal circumstance social life of the partners.

### **C. Social learning theory**

According to this theory domestic violence is learnt. If a person is brought up in an environment where domestic violence is observable, then it is likely that he will imitate that violent behaviour.<sup>85</sup> This means domestic violence is transmitted from generation to generation. Within the context of violence against women, social learning theory also termed as the intergenerational transmission of violence, believes that violence is learned during socialization within the family, which is the main agent of socialization.<sup>86</sup> Specifically, those experiencing or witnessing violence in their family of origin learn that violence is a way of getting what they want when other methods have not worked.

*Doumas, Margolin & John* discovered that, men exposed to violence in their family of origin were more likely to perpetrate domestic violence, and women who observed violence in their family of origin were more likely to be subjected to their partners' aggression.<sup>87</sup> And also, *Straus* argued that, each generation is conditioned to be violent by participating in a violent family.<sup>88</sup> The family is the training ground for violence, highlighted by the idea that those who hit you are people who love you the most. Empirical evidences or support of this view comes from

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<sup>83</sup> Chan, K, 'Assessing the risk of intimate partner violence in the Chinese population: The Chinese risk assessment tool for perpetrator' (2014) 20 *Viol Ag Women* 500-516.

<sup>84</sup> Gelles and D.R.Loseke, *Current controversies on Family Violence* (eds., Newbury Park, CA: Sage Publications 1993) 28

<sup>85</sup> Whiting, J. *et al*, 'Intergenerational transmission of violence: The influence of self-appraisals, mental disorders and substance abuse' (2009) 24 *Jol of Fam Violence* 639-648

<sup>86</sup> Stuart, G., Temple, J. *et al*, 'The role of drug use in a conceptual model of intimate partner violence in men and women arrested for domestic violence' (2008) 22 *Psych. of Ad. Behaviors* 12-24

<sup>87</sup> Doumas, Margolin, & John, 'The intergenerational transmission of aggression across three generations' (1994) 9 *Jourl of Fam* 15-175.

<sup>88</sup> Straus, M and Gelles, R.J. 'Societal change and change in family violence from 1975 to 1985 as revealed by two national surveys' (1986) 48 *Jourl of mar & Fam* 465-479

evaluation of cognitive behavioral program and researcher demonstrated high rates of family violence perpetrated by men exposed to violence their childhood.

However, social learning in isolation from other theories does not explain why the intergenerational transmission of violence is not universal and, conversely, why some batterers do not report histories of exposure to violence in their families' origin. In recent years, a number of theorists and researchers have pointed out that these traditional explanations of social theory are inadequate because they fail to acknowledge the significance of gender and domestic violence that occurs in all socio economic, racial and class groups.

Accordingly, critics of social learning theory argue that the rate of intergenerational transmission of violence is only 30%. Therefore, 70% of people who witness or experience violence do not perpetrate violence.<sup>89</sup> Social learning theory advocates counter this reasoning by emphasizing that although their theory does not explain all violence, individuals experiencing violence as children are at increased risk of engaging in violent behavior as adults.<sup>90</sup> However, though this theory is criticized and not full-fledged, it has been considered as great factors for domestic violence against women in comparable with other theories especially in context of our country.

#### **2.4.1.3. Power and control theory**

According to this theory, domestic violence happens because some people want power and control over others. The cause behind such need may be low self-esteem, the stress of poverty, hostility and resentment, socio-cultural influences, personality disorder, etc. Traditional values regarding the role of marital partners and gender roles in society usually reflect a patriarchal approach towards conjugal power relation and justify male dominance. Men who believe their power and privileges are being threatened would use violence in order to restore their dominance.<sup>91</sup>

Cross-cultural variation in gender roles and expectation are related to unequal power relationship between husbands and wives. Thus, there is strong research support regarding gender roles and

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<sup>89</sup>Kaufman (n 60)

<sup>90</sup>Straus, M.A. *New theory and old canards about family violence research.* (Social Problems 1991)12

<sup>91</sup>Myunghan, *et al*, *A Hypothesized model of korean women's responses to abuse* ( sage publication, 2004)11

vulnerability of domestic violence. Wife abuse often occurs with changing gender roles expectation. Many women have obligation to perform domestic activities as wives and mothers. It is clear that, those women who endorse the traditional gender roles in the society are more likely to be submissive, less likely to perceive domestic violence and more likely to tolerate abuse.<sup>92</sup> Traditional gender roles assign power to husband and treat wife as essential the husband's property.

#### **2.4.1.4. Alcohol and non-alcohol related theory**

According to this theory heavy alcohol consumption can be the cause of domestic violence.<sup>93</sup> There are also other non-alcohol causes of domestic violence such as mental illness, authoritarianism and the like. Indeed, as suggested by some authors, not only does substance abuse among men significantly predict men's perpetration of DV, but substance abuse by women also significantly predicts their DV victimization.<sup>94</sup>

In addition, studies suggest that alcohol use by women or their male partners increase the likelihood for women to experience more severe domestic violence.<sup>95</sup> In terms of illicit drug use, these studies reveal that although women's drug use increase their risks of experiencing severe DV from their male partners, male partner's drug use is not related to severe DV against women. A study conducted by *Stuart and colleagues*; however, found that male reporting drug use and female reporting male partners' drug use were both linked to male physical and psychological aggression against females among couples arrested for domestic violence.<sup>96</sup>

In Ethiopia, alcoholic and non-alcoholic substances are considered as associated factors as argued by some researchers. For instance, the systematic review of studies conducted by *Agumasie Semahegn & Bezatu Mengistie* to determine the prevalence of domestic violence

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<sup>92</sup>Ibid

<sup>93</sup>Walters, M. *et al*, 'The National intimate partner and sexual violence survey' (2013) 12 NISVS, 2010

<sup>94</sup>García-Moreno, et al, *Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence*. (Geneva, Switzerland, 2013) 23

<sup>95</sup>Cunradi, et al, 'Alcohol-related problems, drug use, and male intimate partner violence severity among US couples' (2002) 26 Clin & Exper Research 493-500

<sup>96</sup>Stuart (n 86)22

against women and associated factors in Ethiopia reveal that, domestic violence significantly associated with substance abuse (alcohol consumption and chat chewing).<sup>97</sup>

#### **2.4.1.5. Sex and gender theory**

According to this theory domestic violence is stereotyped. Men use physical abuse and women use psychological abuse. But the tenability of such assertion is questionable because, for example, men can cause psychological abuse before or together with physical abuse and the vice versa. Cultural ideologies—both in industrialized and developing countries – provide ‘legitimacy’ for violence against women in certain circumstances. Religious and historical traditions in the past have sanctioned the chastising and beating of wives. The physical punishment of wives has been particularly endorsed under the notion of entitlement and ownership of women.

Male control of family wealth inevitably places decision-making authority in male hands, leading to male dominance and proprietary rights over women and girls. Feminist explanations are frequent in the domestic violence literature in Africa including Ethiopia. It is difficult to avoid interpreting domestic violence in the countries in terms of pervasive gender inequality. Al most every traditional Africa society is patriarchal and a women’s place with this schema is subordinate. Unless the systematic inequality between men and women is addressed, the problem of violence will persist.<sup>98</sup>

Therefore, as we have discussed so far, these theories of violence’s are root causes of DV in one way or in other way, as well as fully or partially. Though no self-sufficient and independent theory from each other, all of them have some contributions to the commission of DV at certain extent of percentages and possibly considered as factors.

### **2.5. The consequences of domestic violence against women**

Violence committed by an intimate partner has numerous and sometimes devastating consequences for the victim. Victims of domestic violence experienced both short-term and

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<sup>97</sup> Semahegn and Mengistie, ‘Domestic violence against women and associated factors in Ethiopia; systematic review’ (2015) 12 *Repro Health* 78

<sup>98</sup> Ofei-Aboagye, ‘Altering the strands of the fabric: a preliminary look at domestic violence in Ghana’ (1994) 19 *Jourl of Wom in Cult and Society*, Ankara 924–936



long-lasting health outcomes including; physical and psychological effects. Physical injuries can range from bruises, cuts, and burns to broken bones, stab wounds, miscarriages in women. Partner violence also affects reproductive health and can lead to gynecological disorders, unwanted pregnancy, premature labour and birth, as well as sexually transmitted diseases, depression and suicidal behaviour.<sup>99</sup> On other hand, domestic violence is a problem of immense proportions affecting individuals as well as communities as a whole. For instance, children living in an abusive household are affected by violence, even if they are not directly attacked.

There are also many financial costs of domestic violence that the community must bear in terms of medical care, absenteeism, and the response of the justice system.<sup>100</sup> The cost to the community in lost lives and resources is a constant reminder that domestic violence is not a family affair, nor is it merely a private affair. It is a community affair demanding community responses. One research conducted in America reveal that, domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more.<sup>101</sup> The other different researches also indicate the harshness of social and community effects of DVAW. It is understandable that, the crises is immense, growing and has devastating effects on all community in many countries.

Moreover, there are many ways in which violence perpetuates itself. Violence is sustained by inequality and in turn perpetuates inequality. For example, domestic violence is associated with poverty, but it also perpetuates poverty by reducing women's opportunities for work outside home, their mobility and access to information. It influences women's ability to care for themselves and their children and associated with self-destructive behavior such as alcohol and drug abuse. Moreover, violence determines women's sense of self- worth, their sense of autonomy, their ability to feel and act as independent and capable women.<sup>102</sup>

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<sup>99</sup>WHO, Fact sheet on Intemet partner violence < [http://www.who.int/violence\\_injury\\_prevention](http://www.who.int/violence_injury_prevention) > accessed 11 March 2017

<sup>100</sup>Duvvury N, et al, *Costs of Intimate Partner Violence at the Household and Community Levels: An Operational Framework for developing countries.* (Washington, DC, ICRW, 2004), <[http://www.icrw.org/docs/2004\\_paper\\_costingviolence.pdf](http://www.icrw.org/docs/2004_paper_costingviolence.pdf)> accessed 17 March 2017

<sup>101</sup>Arrie Hobbs, et al, *Domestic Violence Handbook*, (Washington association of prosecutors 2014)12

<sup>102</sup> Garcia-Moreno, C. *Violence Against Women, Gender and Health Equity.* *Harvard Center for Population and Development Studies*, (Working Paper Series 99.15 Cambridge, Massachusetts,1999)

As shown above, domestic violence has far-reaching short and long-term consequences. Among the devastating consequences of violence, complete separation of family breakage, disability and impairment of victims, death in extreme cases of violence. Physical and sexual violence against women carries several negative consequences on women's health.<sup>103</sup>

The study from WHO finds that the greatest risk of HIV infection for many women comes from a regular partners, and is heightened by unequal relationship that makes it difficult, if not possible, to negotiate safe sex. For these women, sex is not a matter of choice.<sup>104</sup> Data from a wide range of countries by WHO also suggest that, partner violence accounts for a significant number of death by murder among women. Studies from; Australia, Canada, Israel, South Africa and USA show that, between 40 and 70% of all female murder victims are killed by husbands or boyfriends frequently in the context of ongoing abusive relationship.<sup>105</sup>

Domestic violence is a hidden obstacle to economic and social development. It saps women's energy, undermines their confidence, compromises their health, and deprives a society. Women could not lend their labor or creative ideas fully if they are burdened with the physical and psychological scars of abuse.<sup>106</sup>

Therefore, DV abuse has a significant economic impact on victims and families, as well as on society as a whole. This is due in part to its impact on the health care, mental health, and criminal justice Systems. Data from the national crime victimization survey between 1992 and 1996 in Canada indicate that costs to women who are victims of non-fatal partner violence can be conservatively estimated to be \$150 million per year. These costs included medical expenses (40 percent), property losses (44 percent), and lost pay. In addition to victim impact, partner violence creates an enormous burden on and cost to the health care system.<sup>107</sup> Research also

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<sup>103</sup>Watts, C, Ndlovu M. *Addressing violence in Zimbabwe: strengthening the health sector response*. In: *Violence against women in Zimbabwe: strategies for action* (Harare, Musasa Project,1997)

<sup>104</sup>UNICEF, *.Domestic Violence against Women and Girls* (Innocent Research Center, Florence,2000)5

<sup>105</sup>Bagshaw, *et al*, *Women, men and domestic violence*. (University of South Australia, Vienna 2000)4

<sup>106</sup>Carrillo, R, *Battered dreams: violence against women as an obstacle to development*. (New York: the free press 1992)21

<sup>107</sup>Bagshaw, *et al* , *Women, men and domestic violence*, (University of South Australia, Vienna 2000)14

reported women victims of domestic violence in Chile lost an estimated US \$56 billion earning in 1996 ,approximately 2% of the countries GNP.<sup>108</sup>

It has become clear that in Ethiopia pervious research showed that domestic violence has negative implication for the stability of marriage, the quality of family life and socialization of children. The woman is offered limited chance for progress and development, which in turn has a profound impact on the development of the society as a whole, as its female members are prevented from exercising their fundamental right and creative potential.<sup>109</sup> Actual and threatened violence creates a pervasive atmosphere of fear that limits the lives of women, restricting their freedom of movement and their ability to participate in public decision making and affecting their standard of living.

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<sup>108</sup>Burgess (n 72)10

<sup>109</sup>WHO (n 52 )17

## CHAPTER -THREE

### **Protection of Women against domestic violence in International Human Rights Instruments and its Reflection in the Ethiopian National Legislation**

#### **Introduction**

In proceeding chapter, I have discussed the nature, pattern, and consequences of DVAW. However, under this chapter, I will try to discuss different international human right instruments in protection of WADV and its reflection in Ethiopian legislation.

According to UN, equality of women and men, which include protection of women against any gender violence and eliminating all forms of discrimination against women are fundamental human rights and values.<sup>110</sup> To this end different international, regional conventions and treaty have been enacted. However, for many years, violence against women more specifically, domestic violence was considered outside the realm of human rights issues because of the notion that, perpetrators were private persons – in many cases husbands, partners, brothers, fathers or sons rather than actors working on behalf of the state.<sup>111</sup> Since the 1990s however, violence against women including domestic violence has received increasing attention by the international communities and subsequently, in international law.

This surge in attention has resulted to the adoption of several crucial international and regional instruments in which States including Ethiopia have clear obligations under international law to enact, implement and monitor legislation addressing all forms of violence against women.<sup>112</sup> Over time, the treaty bodies established to monitor implementation of the international human rights treaties have increasingly taken up States parties' obligations to address violence against women.

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<sup>110</sup> UN, *Women's rights are human rights*, (UN human rights, Office of the high commissioner, New york, Geneva 2014) 1, Furthermore, Article 1 of the Charter stipulates that one of the purposes of the United Nations is to promote respect for human rights and fundamental freedoms "without distinction as to race, sex, language or religion". This prohibition of discrimination based on sex is repeated in its Articles 13 (mandate of the General Assembly) and 55 (promotion of universal human rights).

<sup>111</sup> B.C.Mayers (n 6)

<sup>112</sup>For further information regarding legislation enacted, visit the United Nations Secretary-General's database on violence against women < <http://www.un.org/esa/vawdatabase> >accessed on 14 April 2017.

### **3.1. International human right instruments against Domestic Violence**

Since the past two decades, violence against women has come to be understood as a form of discrimination and a violation of women's human rights. Violence against women, and the obligation to enact laws to address violence against women, is now the subject of a comprehensive legal and policy framework at the international and regional levels. Under the general recommendation No. 19 regarding violence against women, the Committee on the elimination of discrimination against women confirmed that under general international law and specific human rights covenants, States may ... be responsible for private acts if they fail to act with due diligence to prevent violations or to investigate or punish acts of violence, and for providing compensation.<sup>113</sup> This clearly shows that, the international experts and committee along different instruments encourage the liability of state, if they do not give much attention to DV or not do diligently either through their legislation or practical commitments.

The evolving concept of criminality of domestic violence under international laws even leads to state responsibility for individual acts of violence and this subsequent recognition of domestic violence as a violation of human rights is a recent advance in international law which imposed obligation up on states to frame their legal frameworks in line with International human right instruments.

Many treaties and conventions do not specifically mention domestic violence or violence against women; however, they have still been interpreted as relevant to domestic violence. There are different treaty and conventions which may include; the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Social Economic and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture. Though it is difficult to discuss all of them, let us see and discuss some of them in the following sub-topics.

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<sup>113</sup> Committee on the elimination of discrimination against women, general recommendation No. 19 on violence against women, (1992) para. 9

### 3.1.1. Universal Declaration of Human Rights (UDHR)

The human rights movement dating back to the signing of the Universal declaration of human rights and the founding of the United Nations, has placed heavy focus on civil and political violations that occur on the everywhere and at anywhere which may include DV. The issues such as state-sponsored torture, extrajudicial execution, prisoners of conscience, and war crimes have received a high priority in human rights treaties and in the jurisprudence of international tribunals.<sup>114</sup>

Being a declaration, the UDHR was initially only recommendatory and non-binding, except for the provisions that form a part of customary international law.<sup>115</sup> Though few States voted in favour of the declaration and it was not adopted by consensus, other states have subsequently agreed to it. But some of the rights, such as the right to life or the right to be free from torture have become so firmly established in international law that they are now treated as '*jus cogens*' norms and they developed into custom. They consequently bind the States party to the declaration.<sup>116</sup> Therefore, it seems that the mentioned legal provisions can constitute a type of binding basis in terms of advocating against domestic violence and enhancing the role of the State with respect of its obligations.

On the other hand, the UDHR does not have any provision directly related to violence against women in general. However, it sets the tone for principles that might constitute a possible basis for the protection against domestic violence. As such, the provisions on equality, non-discrimination and the fundamental rights to be free from torture can be invoked to combat domestic violence.

Accordingly, article 1 of UDHR stipulates that all human beings are born free and equal in dignity and rights.<sup>117</sup> Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as; race, colour, sex, language, religion,

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<sup>114</sup> Include the International Covenant on Civil and Political Rights, the Convention against Torture, the Geneva Conventions and tribunals established to prosecute war crimes and crimes against humanity, often recognized in the context of conflict.

<sup>115</sup> R. Copelon (n 4 )320

<sup>116</sup> J. Rehman, *International Human Rights Law: a Practical Approach*, (Harlow : Longman, 2003) 61.

<sup>117</sup> *Universal Declaration of Human Rights (UDHR)*, 10 December 1948, <[www.unhcr.org/refworld/docid/3ae6b3712c.html](http://www.unhcr.org/refworld/docid/3ae6b3712c.html)> accessed 12 April 2017

political or other opinion, national or social origin, property, birth or other status.<sup>118</sup> Furthermore, the UDHR states in its Article 7 that all are equal before the law and are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.<sup>119</sup> Likewise, it proclaimed the equal entitlements of women and men to the rights contained in it, “*without distinction of any kind, such as ... sex...*”<sup>120</sup>

In this regard, even though, domestic violence is not directly stated in UDHR, It has countless support in protection of women against violence by voicing against any discriminations and violence which may include domestic violence against women. Furthermore, the UDHR has set guidelines to the enactment of subsequent instruments which directly addresses the violence against women. For instance CEDAW, CRC, DEVAW were enacted up on the basement provided by UDHR.

So, in one way or on other way, UDHR has of great contribution for the protection of women against gender based discrimination and any violence including domestic violence at international level.

### **3.1.2. International Covenant on Civil and Political Rights (ICCPR)**

After the adoption of the Universal declaration, the commission on human rights began drafting two human rights treaties, the International covenant on civil and political rights and the International covenant on economic, social and cultural rights. Together with the Universal declaration, these make up the International bill of human rights.<sup>121</sup> The provisions of the two covenants, as well as other human rights treaties are legally binding on the States that ratify or accede to them. States that ratify these treaties periodically report to bodies of experts which issue recommendations on the steps required to meet the obligations laid out in the treaties.

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<sup>118</sup> Ibid Article 2

<sup>119</sup> UDHR (n 117) Article 7

<sup>120</sup> Johannes Morsink, ‘Women’s rights in the Universal Declaration’ (May 1991)13 Hum R Quarterly 2

<sup>121</sup> Symonides, Janusz (edn.). *The Struggle against Discrimination: A Collection of International Instruments Adopted by the United Nations System*,(1996) 313

These treaty-monitoring bodies also provide authoritative interpretations of the treaties and, if States have agreed, they also consider individual complaints of alleged violations.<sup>122</sup>

The Covenants use the word to prohibit discrimination based on, inter alia, sex<sup>123</sup>, as well as to ensure the equal right of men and women to the enjoyment of all rights contained in them.<sup>124</sup> The ICCPR guarantees, among other rights; the right to life, freedom from torture, freedom from slavery, the right to liberty and security of the person, rights relating to due process in criminal and legal proceedings, equality before the law, freedom of movement, freedom of thought, conscience and religion, freedom of association, rights relating to family life and children, rights relating to citizenship and political participation, and minority groups' rights to their culture, religion and language.<sup>125</sup>

Article 7 of ICCPR<sup>126</sup> prohibits torture and cruel, inhuman or degrading treatment. The problem of domestic violence has brought a new perspective regarding States' obligations with respect of acts of torture and cruel, inhuman or degrading treatment perpetrated by private parties, such as husbands, partners and parents. Besides, it provides that "[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."<sup>127</sup>

Moreover, it guarantees the right to effective legal protections and remedies for all persons.<sup>128</sup> Scholars argued that, States Parties violate this right by impeding domestic violence victims' access to judicial remedies.<sup>129</sup> High standards of proof, strict evidentiary requirements and unresponsiveness on the part of police are obstacles that discourage women victims from

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<sup>122</sup>See OHCHR, *The United Nations Human Rights Treaty System* and OHCHR, (Fact Sheet No. 30, Fact Sheet No. 7: Individual Complaint Procedures under the United Nations Human Rights Treaties)

<sup>123</sup>*International Covenant on Civil and Political Rights* (ICCPR), adopted on 16 December 1966, entered into force 23 March 1976, Article 2

<sup>124</sup> *Ibid* Article 3

<sup>125</sup> *Ibid*

<sup>126</sup>ICCPR(n 123) Article 7: "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. [...]"

<sup>127</sup> *Ibid*

<sup>128</sup>ICCPR (n 123) Article 26 : It says, "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such ...sex ..."

<sup>129</sup> R. Copelon (n 4)321



pressing charges.<sup>130</sup> Such assertion is soundable. Therefore, it is possible to say that, these provisions are the main ones under which domestic violence can fall. Accordingly, all signatory states including Ethiopia have an obligation to protect the women against any violence and discriminations including domestic violence both through their policy and legal frameworks.

### **3.1.3. International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The ICESCR is an international instrument that can be used to protect all human beings which includes women's economic, social and cultural rights.<sup>131</sup> The link of domestic violence to economic, social and cultural rights might not seem to be very clear or obvious. The ICESCR may appear to be a secondary or subsidiary human rights instrument regarding the protection of women against violence. Therefore it does not receive the attention that it deserves. It is true that ICESCR cannot be directly invoked in situations involving violence against women; however, its role in terms of both preventing and remedying domestic violence is crucial.

There are a number of rights that victim women should be able to invoke according to this convention. One of those rights is the right to housing stated in Article 11(1) ICESCR.<sup>132</sup> Very often due to a lack of shelters, women subject to violence have absolutely nowhere to go. Family members or friends offer accommodation but some of the victims are absolutely alone since their husband or partner isolates them from the rest of the world.

In this regard, the State is under the obligation to protect and fulfill the right to housing of any individual that might be violated by any other individual or non-state actor.<sup>133</sup> For instance in its concluding observations for Lithuania in 2004, the UN Committee on economic, social and

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<sup>130</sup> Ibid

<sup>131</sup> *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, adopted on 16 December 1966, ratified on 3 January 1976

<sup>132</sup> [t]he States Parties [...] recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, [...]

<sup>133</sup> S. Leckie, 'The Human Right to Adequate Housing', in A. Eide, *et al.* (edn.), *Economic, Social and Cultural Rights: A Textbook* (Dordrecht ; M. Nijhoff, 2001)157

cultural rights urges the state party to ensure the availability and accessibility of crisis centers where victims of domestic violence can find safe lodging and counseling.<sup>134</sup>

Therefore, women victim of domestic violence should be given proper housing when needed. The right to food (Article 11) may also be invoked, since battered women and their children sometimes do not eat for several days when they are subject to acts of violence. The right to health is another right that may be invoked in the context of domestic violence, as well as another right that could constitute a basis for protection is the right to human rights education based on ICESCR Article 13(1). This targets all women, not only victims, in order to inform them about their human rights in general. On the other hand, when women are deprived of their economic, social and cultural rights, they may not be able to obtain redress for abuses.<sup>135</sup>

Thus, economic dependence and inadequate welfare provision force women to bear continued abuse.<sup>136</sup> Battered women are often desperate in the sense that they have no place to find refuge, no money to look after their children and themselves and no funding to seek legal aid for a possible redress. Therefore, social and economic deprivations accompany ignorance of their legal rights by women.

Accordingly, Ethiopia has an obligation to fulfill the requirement provided by this convention regarding the protection of women against domestic violence, especially by providing shelter, food, medication and other necessary equipment for the battered women/victim. Because, Ethiopia is one of the state parties to this conventions and has legal responsibility to discharge this obligation.

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<sup>134</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *UN Committee on Economic, Social and Cultural Rights: Concluding Observations: Lithuania*, 4 June 2004. E/C.12/1/Add.96, Para. 43, <[www.unhcr.org/refworld/docid/42d26afd4.html](http://www.unhcr.org/refworld/docid/42d26afd4.html)> accessed 25 April 2017

<sup>135</sup> Amnesty International, *Broken Bodies, Shattered Minds: Torture and Ill-Treatment of Women*, <[www.controlarms.org/aidoc/ai.nsf/b8977c306ef6ff0380256ef400540ac5/39cb2f2a6c51b8d8](http://www.controlarms.org/aidoc/ai.nsf/b8977c306ef6ff0380256ef400540ac5/39cb2f2a6c51b8d8)> accessed 22 March 2017

<sup>136</sup> Ibid

### 3.1.4. Convention on the Elimination of Discrimination against Women (CEDAW)

In 1979, the convention on the elimination of discrimination against Women was adopted by the United Nations General Assembly and heralded as the “[i]nternational bill of rights for women,” containing provisions meant to end discrimination toward women.<sup>137</sup> The Convention articulates the nature and meaning of sex-based discrimination, and lays out State obligations to eliminate discrimination and achieve substantive equality. As with all human rights treaties, only States incur obligations through ratification. However, the Convention articulates State obligations to address not only discriminatory laws, but also practices and customs, and discrimination against women by private actors.

The Convention also pays specific attention to particular phenomena such as; trafficking, to certain groups of women- rural women, and to specific matters where there are special risks to women’s full enjoyment of their human rights, for example marriage and the family. The Convention defines discrimination in its article 1 as “... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>138</sup>

The Convention specifies the different ways in which state parties including Ethiopia are to eliminate discrimination, such as through appropriate legislation prohibiting discrimination, ensuring the legal protection of women’s rights, refraining from discriminatory actions, protecting women against discrimination by any person, organization or enterprise, and modifying or abolishing discriminatory legislation, regulations and penal provisions.<sup>139</sup> It foresees that achieving equality may require positive action on the part of the State to improve the status of women. To accelerate women’s actual equality in all spheres of life, States are permitted to use temporary special measures for as long as inequalities continue to exist.

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<sup>137</sup> Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, at pt. 1, art. 1, U.N. GAOR, 34th Sess., 107th plen. mtg., U.N. Doc. A/RES/34/180(Dec. 18, 1979)

<sup>138</sup> Ibid Article 1

<sup>139</sup> CEDAW (n 137)

Importantly, the Convention adds new, substantive provisions to the other instruments which also deal with equality and non-discrimination. Article 5 establishes that, in addition to recognizing women's legal equality and promoting their de facto equality, States should also strive to eliminate the social, cultural and traditional patterns that perpetuate harmful gender stereotypes and to create an overall framework in society that promotes the realization of women's full rights.

As mentioned above, CEDAW is an international treaty which specifically regulates human rights of women in the UN convention. However, the CEDAW Committee expert on human right treaty body established to monitor implementation of CEDAW in General Recommendation No-19<sup>140</sup> opined that, prohibition of discrimination includes; gender based violence, that is violent directed to women, because she is a women or that affects women disproportionately.

It includes act that inflict physical, mental or sexual harm or suffering threat of such act, coercion and other deprivation of liberty.<sup>141</sup> Furthermore, the Committee stated that, full implementation of the Convention required states to take positive measures to eliminate all forms of violence against women.<sup>142</sup> Significantly, it also identified the "due diligence" standard for determining whether states have fulfilled the objectives of the recommendation.<sup>143</sup> For instance in *A.T. v. Hungary* case, the CEDAW Committee found that there was a violation of the CEDAW with respect to: Article 2(a), (b) and (e), 5&16 on the State obligation regarding the elimination of discrimination and domestic violence against women's rights.<sup>144</sup>

This standard suggested that, CEDAW's member states have particular obligations to ensure the elimination of violence against women. Therefore, it asserts that VAW represents discrimination

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<sup>140</sup> UN, Commission on the elimination of discrimination against women, *General Recommendation No. 19: Violence against Women*, 11th Sess., 4, U.N. Doc. A/47/38 (1993)

<<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>>accessed 30 April 2017

<sup>141</sup> Ibid

<sup>142</sup> Rec. No 19(n 140)

<sup>143</sup> Bonita Meyers Feld, 'Domestic Violence, Health, and International Law' (2008) 22 Emory Int'l L.REV 62- 82

<sup>144</sup> *A. T. v. Hungary* case, 26 January 2005, CEDAW, No. 2/2003,

<[www.un.org/womenwatch/daw/cedaw/protocol/decisionsviews/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf](http://www.un.org/womenwatch/daw/cedaw/protocol/decisionsviews/CEDAW%20Decision%20on%20AT%20vs%20Hungary%20English.pdf)>accessed 13 May 2017

against women which was a huge development in regard to the expansion of legal comprehension of VAW in which all state parties obliged to overcome and prevent such problems directed against women because of their sex.

### **3.1.5. Declarations and Platforms for Action**

I have discussed hard laws in proceeding sub-topics, however, under this sub-topic; I will try to discuss some soft laws which are very importance in protection of women against any violence including domestic violence. There are different world conferences, Recommendations, platform for actions and declarations which is very helpful and taken as corner stone to protection of women.<sup>145</sup> The declaration and the conferences themselves are a major political process, engaging governments in discussion with their constituencies and with other governments to forge agreements on priorities and commitments.<sup>146</sup> Though, human rights enforcement is a more legally oriented process based on documents and obligations that have the force of law, these soft laws has of important in brought together; engaging citizens and governments in a dialogue that was political in nature and informed by the legal precepts of the human rights enterprise. Let us see some of them in the following sub-topics.

#### **3.1.5.1. The Declaration on Elimination of Violence against Women (DEVAW)**

The Declaration on elimination of violence against women is a non-binding United Nations Declaration enacted with the aim of curbing violence against women. It constitutes “soft law”, which refers to quasi-legal instruments that carry legal weight, though generally less than hard law legal instruments I have discussed so far. However, it has moral and political force in protection of women.

The DEVAW indicates that violence against women extends to physical, psychological and sexual violence that occurs within the family. In this declaration, it can be seen that all sexual

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<sup>145</sup> World conferences such as Beijing—and Teheran (human rights) in 1968, Nairobi (women) in 1985, Rio de Janeiro (environment) in 1992, Vienna (human rights) in 1993, Cairo (population) in 1994—are political events that mark global recognition of major issues and an attempt to find consensus among governments about approaches to those issues.

<sup>146</sup> Major events of international womens conferences <<http://hrlibrary.umn.edu/iwraw/Freeman-Timothy.html>> accessed 9 April 2017

violences are given specific recognition as one form of abuses against women. The preamble of the DEVAW affirms that violence against women amounts to the violation of the basic human rights and fundamental freedoms of women.<sup>147</sup>

Furthermore, the DEVAW requires state parties to condemn all forms of violence against women. States are further required to follow all the necessary policy and other measures without delay, in order to ensure the elimination of violence against women. Accordingly taking the policy measure in translating and publishing international instruments that condemn violence against women are of paramount importance. Likewise, states are under the obligation to develop national legislation and penal sanctions to rectify the human rights violations suffered by women as a result of violence against women.

### **3.1.5.2. Beijing Declaration and Platform for Action**

The Beijing Declaration and Platform for Action<sup>148</sup> defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”<sup>149</sup>

It further provides that violence against women includes all patterns of violence are considered as abuses directed against women. Accordingly, the Declaration requires governments to condemn violence against women and not to use any custom, tradition or religion as an excuse for their failure to comply with the obligation to punish acts of violence against women.<sup>150</sup> Furthermore, it requires states to enact and enforce domestic legislation that effectively suppresses violence against women. Moreover, states are required to periodically review and analyse their legislation in order to ensure its effectiveness in curbing violence against women.

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<sup>147</sup> See also Article 3 of the declaration reiterates that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms, enumerated in a similar way to the list given in the context of Recommendation No.19.

<sup>148</sup> Beijing Declaration and Platform for Action Adopted at the 16th plenary meeting, on 15 September 1995 para 113.

<sup>149</sup> Beijing plat form of action document <<http://www.un.org/womenwatch/daw/beijing/platform/>> accessed 9 April 2017

<sup>150</sup> Ibid

In addition, under the Beijing platform, states are expected to prevent, investigate and punish all acts of violence against women, whether committed by the state or by individuals. Likewise, states are encouraged to develop national legislation and penal sanctions to correct the human rights violations suffered by women as a result of violence against women.

Ethiopia is a state party to the Beijing platform. Therefore, as a state party to the platform, the Ethiopian government should have developed national legislation and penal sanctions to redress the wrongs suffered by women as a result of gender based abuse, which is one form of violence against women. However, the legislature opts to exempt patterns of domestic abuses from the kind of offence punishable by law. It should be noted that although the Beijing platform is not legally binding on state parties, it stipulates international norms that have been globally recognised as fundamental to fighting violence against women.

### **3. 2.Regional human right instruments against Domestic Violence**

In proceeding sub-topics I have discussed, some international human rights instruments regarding the domestic violence against women. However, under these sub-topics, I will try to see the regional human rights instruments regarding violence against women. Undeniably, the international legal and policy framework outlined above has been accompanied by the adoption of various legal and policy frameworks at the regional level. In addition to international human rights standards, regional human rights treaties too, include crucial provisions aimed at promoting and protecting women's human rights at regional level.

Accordingly there are different treaties and convention at regional level which may include; the Inter-American Convention on the prevention, punishment and eradication of violence against women, protocol to the African Charter on human and peoples' rights on the rights of women in Africa, African Charter on human and peoples' rights, the European Convention of human rights and other treaties. Among these conventions, let us see some of them only which directly have implication on the Ethiopian legislations regarding domestic violence.

#### **3.2.1. African Charter on Human and Peoples Rights (ACHPR)**

The African charter on human and peoples' rights, also known as the 'Banjul Charter' is the regional human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. The Charter was adopted in 1981 by the Organization of

African Unity.<sup>151</sup> This charter has a cornerstone and promised for the protections of African women's right against any discriminations and gender based violence. It prohibits discrimination on any grounds, including sex, in the enjoyment of the rights guaranteed by the Charter.<sup>152</sup>

Moreover, the charter specifically mentions the obligation of African States to ensure the elimination of any discrimination against women and also ensure the protection of the rights of woman and the child as stipulated in international declarations and conventions.<sup>153</sup> Furthermore, the charter recognised regional and international human rights instruments and African practices consistent with international norms on human and peoples' rights as being important reference points for the application and interpretation of the African Charter.<sup>154</sup> As such, Ethiopia is state parties to this convention and has an obligation to protect women against any discriminations and gender-based violence directed against women.

### **3.2.2. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women (PACHPRRW)**

The Protocol to the African charter on human and peoples' rights on the rights of women in Africa<sup>155</sup> addresses violence against women within many of its provisions, and establishes obligations related to legal reform. The Charter's Protocol on the rights of women in Africa (Maputo Protocol) was adopted in 2003. The protocol enacted based on the charter on humans and people's rights to implements the basic rights enshrined in the charter which may include; the principle of non-discrimination on any grounds, obliged all States Parties to eliminate every discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions.

Under the Protocol, States parties are required to enact and enforce laws to prohibit all forms of violence against women, adopt legislative, administrative, social and economic measures to ensure the prevention, punishment and eradication of all forms of violence against women , take

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<sup>151</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted by the OAU, (AU 1981, entered into force October 21, 1986)

<sup>152</sup> Ibid article 2

<sup>153</sup> ACHPR (n 151) Article 18

<sup>154</sup> Ibid Articles 60 and 61

<sup>155</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa done at Maputo Date enacted: 2003-07-11 In force: 2005-11-25. 17. Many countries have not yet ratified the Protocol and these are Algeria, Botswana, Burundi, Central African Republic, Chad, Egypt, Eritrea, Ethiopia, Madagascar, Mauritius, Niger, Sahrawi Arab Democratic Republic, Sao Tome and Principe, Somalia, South Sudan, Sudan and Tunisia.



all necessary legislative and other measures to eliminate harmful practices, and enact national legislative measures to guarantee that no marriage shall take place without the free and full consent of both parties and that the minimum age of marriage for women is 18 years.<sup>156</sup> Furthermore, it encourages States Parties that, they shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.

In this regard they shall include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application; enact and effectively implement appropriate legislative or regulatory measures, including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women. It also insists state parties to integrate a gender perspective in their policy decisions, legislation, development plans, programme, and activities, and in all other spheres of life.

Moreover, it obliged state to take corrective and positive action in those areas where discrimination against women in law and in fact continues to exist and support the local, national, regional and continental initiatives directed at eradicating all forms of discrimination against women.<sup>157</sup> However, Ethiopia has not yet ratified this instrument and hence is not obliged to implement it.

### **3.2.3 General comments of the African Commission on Human and Peoples' Rights**

The African commission on human and peoples' rights (the African Commission) welcomes the ratification of important instrument by the majority of AU Member States. However, the African Commission notes that many countries are yet to undertake the necessary legislative reforms towards domesticating the relevant provisions, including in the area of women's sexual and reproductive rights. As such, in many States Parties, there is still limited access by women of their rights and difficulties faced by women. With the objective of reversing this trend that the African Commission adopted two General comments. The 1<sup>st</sup> General comment was under the protocol and the second General comment was adopted under the charter.

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<sup>156</sup>Ibid Article 4(2), (article 5) and (article 6)

<sup>157</sup> Protocol (n 155) Article 2

The General Comment No.2 was adopted in Luanda, Angola.<sup>158</sup> This General Comment provides interpretive guidance on the overall and specific obligations of States Parties towards promoting the effective domestication and implementation of Article 14 of the Maputo Protocol. It is also aimed to be used when drafting and presenting State periodic reports, to report on the legislative and other measures taken to promote and protect the sexual and reproductive health of women and girls.

The General Comment No. 3 was adopted on the African Charter on Human and Peoples' Rights regarding the right to life protected by article 4 of the Charter.<sup>159</sup> It impose state responsibility under the Charter to develop and implement a legal and practical framework to respect, protect, promote and fulfill this right and to take steps both to prevent arbitrary killings and to conduct prompt, thorough and impartial investigations into any violations that may have occurred. It ensure the responsibility of state for violations by all their organs (executive, legislative and judicial), and other public or governmental authorities, at whatever level (national, regional or local).

It also incur responsibility up on state for the acts of non-State actors if there is a lack of due diligence on the part of the State to prevent the violation or to ensure proper investigation and accountability.<sup>160</sup> Though this general comment does not express the issues of violence against women, it has of paramount importance for the protection of women against any gender based discrimination and violence. Because, protecting the right to life are amounts to protecting other rights; such as the right to bodily integrity, security, liberty, privacy and other which has direct relation with the protection of women.

Recently, in March 2017 the commission enacts one resolution which is directly related to violence against women. The resolution adopted on the Right to a Remedy and Reparation for Women and Girls as victims of sexual violence, by condemning the Perpetrators of Sexual

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<sup>158</sup> Comment No. 2 on Article 14 (1) (a), (b), (c) and (f) and Article 14 (2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa at its 55<sup>th</sup> Ordinary Session held from 28 April – 12 May 2014 in Luanda, Angola.

<sup>159</sup> The Commission is hence pleased to present General Comment No. 3 on the African Charter on Human and Peoples' Rights on the right to life (Article 4), drafted by the working group on the death penalty and extrajudicial, Summary or Arbitrary Killings in Africa.

<sup>160</sup> Ibid General com. no 2

assault and violence against women, expressing its condemnation of all forms of sexual violence in conflict and peace as grave violations of human and peoples' rights.<sup>161</sup> In different cases, the Commission recommended as the State party has to strengthen implementation and monitoring, by acting diligently to prevent and respond to such violence against women and adequately providing for sanctions for the failure to do so.

For instance, In the case of '*Woineshet Zenbe vs Ethiopia*' On 10 March 2016, the Commission found that the lack of specific legislation to combat domestic violence and sexual harassment constituted a violation of human rights and fundamental freedoms, particularly the right to security of women. Hence, it ruled that the Ethiopian government had failed to protect her rights and requiring the Ethiopian government to pay her \$150,000 in reparations and implement laws to prevent future violations like hers.<sup>162</sup>

### **3.3. Ethiopian policy and Legislation regarding DV in light of International standards.**

The adoption and enforcement of national laws to address and punish all forms of violence against women and girls, in line with international human rights standards is one of the five key outcomes which the Secretary-General's campaign to end violence against women aims to achieve in all countries by 2015.<sup>163</sup>

Accordingly, depending on the binding character of the legal instruments, violations of these provisions can have consequences regarding state responsibility. Especially, signatory States are supposed to incorporate the international norms into their national legal system. As such, Ethiopia is one of the state parties to different international and regional human right instruments and ratified different basic instruments.

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<sup>161</sup>The African Commission on Human and Peoples' Rights (the Commission), meeting at its 21<sup>st</sup> Extraordinary Session held from 23 February to 4 March 2017 in Banjul, Republic of The Gambia, Resolution on Developing Guidelines on Combatting Sexual Violence and its Consequences - ACHPR/Res. 365 (EXT.OS/XX1) 2017

<sup>162</sup> See the ruling of the commission in detail <<http://www.bbc.com/news/world-africa-35776887> , <https://www.escri-net.org/node/378030> > accessed 11 May 2017

<sup>163</sup> For further information regarding the Secretary-General's campaign "*Unite to End Violence against Women*" <<http://endviolence.un.org/>>accessed 27 April 2017

The International covenant on civil and political rights, The international covenant on economic, social and cultural rights, the convention of illumination of all forms of violence against women and the convention on the rights of child have been ratified by Ethiopia.<sup>164</sup> However, none of their protocols have been ratified by Ethiopia. For instance, Ethiopia ratified the CEDAW convention, but, not the optional protocol to CEDAW which provide an individual complaint mechanism.

Consequently, in the concluding observation report on Ethiopia, the committee expresses his concerns that, the incidence of violence against women and girls and the insufficiency of measures to eradicate it was another great concern of the CEDAW Committee.<sup>165</sup> This concern was repeated in 2004.<sup>166</sup> The Committee pointed at the lack of specific legislation and systematic data collection, in particular on domestic violence. It noted the incidence of rape and mentioned in addition that the crime of abduction was not systematically prosecuted, but was rather addressed through discriminatory customary laws and practices.

However, in the subsequent sub-topics, we will try to look the reflection of international human right standards in Ethiopian laws and policy. Hence, the Ethiopian national legislations on domestic violence against women will be analyzed regarding the question of compatibility with international standards.

### **3.3.1. Ethiopian Constitutions**

Ethiopia has her own constitution since 1930- ‘the era of Haile Selassie’ and till now though have different context depending on the regime’s policy. Ethiopia came across three consecutive constitutions and one charter; the 1931 constitution, the 1955 revised constitution, the charter of transitional government and the FDRE constitution. The old constitution did not talk much about the Ethiopian people’s human rights in general and womens rights in particular. During these eras, most of the Ethiopian laws and policy were criticized that it has been claimed up on

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<sup>164</sup> It ratified the CEDAW in 1981, but not the 1999 Optional Protocol. In 1991, Ethiopia joined the CRC. In 1993, Ethiopia joined both the ICCPR and the ICESCR. It has not joined the Optional Protocols to the ICCPR on an individual complaint mechanism (1996) and on the abolition of the death penalty (1989). Ethiopia became a party to the CAT in 1994, but did not make the declaration under article 22 that would allow individual complaints, nor did it join the 2002 Optional Protocol establishing a system of regular visits. Finally, Ethiopia has not taken any action with respect to the ICMW. Under the CEDAW, Ethiopia submitted three combined reports in 1993 and two combined reports in 2002. Then after, similar report is due.

<sup>165</sup> UN Doc. A/51/38, paras. 134-163 (CEDAW 1996).

<sup>166</sup> UN Doc. A/59/38 (Part I) paras. 226-273 ( CEDAW 2004)

traditional roles of women as wife and mother, and they reinforced the stereotypical domestic-bondage of Ethiopian women.<sup>167</sup>

Meanwhile, after the down fall of military junta (Dergue regime) the government has brought about some changes in the old laws through the ratification of transitional government charter and subsequent enactment of 1994 FDRE constitution along with other subsequent legislation which aimed to equal protection of women against any discriminations and gender based violence.

Accordingly, the 1994 Ethiopian constitution established the equality of women and men as foundational constitutional norm. It enunciates substantive equality of women and men in the form of equal rights and benefits up on affirmative action measures to redress past and present discrimination.<sup>168</sup> Moreover, the constitution has ascertained the fundamental rights related with domestic violence which includes the security of person<sup>169</sup>, prohibition against inhuman treatment<sup>170</sup>, equality before the law<sup>171</sup>. In addition, the equal right of men and women in marriages that mandate the protection of state and society has been stipulated.

Furthermore, in FDRE Constitution, many international human right instruments ratified by the Ethiopia have been reflected. When we see thoroughly, the spirits of FDRE constitution encourages the interpretation of fundamental right and freedom enshrined in the constitution in line to international human right instruments.<sup>172</sup> International human rights such as ICCPR, UDHR, ICESCR, CEDAW and other has been reflected in different provisions of the constitution directly or and indirectly. According to the FDRE Constitution, the fundamental rights incorporated in the chapter three of the Constitution are to be interpreted in light of the UDHR and international human right instruments adopted by Ethiopia.<sup>173</sup> Furthermore, the Constitution

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<sup>167</sup> Tsehai Berhane sellassie (n 14 )185

<sup>168</sup> FDRE Constitution (n 13) Article 35(1)

<sup>169</sup> FDRE Constitution (n 13) Article 16

<sup>170</sup> FDRE Constitution (n 13) Article 18

<sup>171</sup> FDRE Constitution (n 13) Article 25

<sup>172</sup> FDRE Constitution (n 13) Article 13(2). It reads as “The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.”

<sup>173</sup> FDRE Constitution (n 13) Article 13(2)

stipulates that all international instruments ratified by Ethiopia are an integral part of the law of the land.<sup>174</sup>

However, there are different manifestations of ignorance of international treaties ratified by Ethiopia in the court of law due to the inadequacy of the way of bringing such international human rights instruments into effects. It does not provide for any additional measure that needs to be taken by the legislature which may beg the question of incorporation. Likewise, most of these human rights instruments do not publicized in the federal Negarit Gazeta by translating to the official languages of the country.

### **3.3.2. Ethiopian Criminal laws**

As discussed above, Ethiopia has been federal state since 1991. Accordingly the enactment of law and handling of cases have been divided between federal and states.<sup>175</sup> Each state has their respective state constitutions in line with federal constitution. Therefore, the enactments of criminal law fall under federal government whereas different civil law including the family law has been enacted by both federal and state legislature.

Accordingly, Ethiopia has complied penal laws since the Haile Selassie regime. However, most of the Ethiopian previous penal laws and policy were criticized for based on traditional roles of women as wife and mother, and reinforcing the stereotypical domestic-enslavement of Ethiopian women.<sup>176</sup> For many years, the criminal law response to domestic violence has been a legacy of past perception about the violence against women. It has a result of historical and cultural context in which violence against women in domestic sphere has been considered as prerogative of the man to discipline his intimate partner. Accordingly, the older criminal law (the penal code of Emperor Hailesellassie) had recognised chastisement in some way and thereby legalized the incidence of domestic violence.<sup>177</sup>

This in turn pave ways for different criticism that, the legal codes in Ethiopia used to support male supremacy imposing lesser stringent sanctions on perpetrators of different forms of

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<sup>174</sup> FDRE Constitution (n 13) Article 9(4)

<sup>175</sup> FDRE Constitution (n 13) Article 47 and 50

<sup>176</sup> Tsehai Berhane sellassie (n 14)184

<sup>177</sup> Penal code of the Empire of Ethiopia, Proclamation No. 158 of 1957

violence against women both in the private and public sphere.<sup>178</sup> Meanwhile, up on criticism by different NGOs and Human right activist, the government has brought about a few changes in the criminal justice responses to domestic violence against women.

Consequently, basing on the notion of equality and principles of non-discrimination provided under Article 35 of FDRE Constitution and other human right provisions, the parliaments revised the old penal law of Ethiopia which disregards most of domestic violence offences. Subsequently, the revised criminal law of Ethiopia abolished physical punishment and improve the sentencing for rape and other sexual case even though it fail short of criminalizing domestic violence in comprehensive manner. The FDRE criminal code does not have comprehensive definition of domestic violence.<sup>179</sup> It has mentioned only marriage partner or irregular union by excluding other intimate relationships.<sup>180</sup> Moreover, the code referred to the general article assault article for the purpose of punishment which does not seem to appreciate the unique nature of domestic violence which intertwined with gender power relation in society.

Therefore, though Ethiopia has acceded to international human rights instruments that condemn violence against women, such as the CEDAW, the regulation of the crime of rape has not been changed to include marital rape.<sup>181</sup> And other forms of violence do not have been criminalized contrary of Ethiopian obligation to international human rights. The CEDAW stipulates that member states are required to repeal penal legislations that contribute to discrimination against women.

As such, Ethiopia, as a state party to the CEDAW and other different women's human right instruments which protect women against violence has an obligation to bring its laws in line with the requirements of such instruments. Conversely, as will be discussed in chapter four, under the heading of 'legislative challenges', the Ethiopian Criminal Code has excluded different

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<sup>178</sup> Yemaneh Berhane, 'Ending Domestic Violence against Women in Ethiopia' (January,2004)Ethiopian Journal of Health Development.< <https://www.researchgate.net/publication/242496733> >accessed 20 April 2017

<sup>179</sup>Criminal Code of the Federal Republic of Ethiopia, proclamation no. 414/2004

<sup>180</sup> Intimate relationship may include; ex-husband, ex-boyfriend, current boyfriend a man who live with women for mere sexual pleasure , former sexual mate and the like.

<sup>181</sup>United Nations Treaty Collections "Convention on the Elimination of Discrimination Against Women"  
<<https://treaties.un.org> > accessed 27 April 2017

patterns/forms of domestic violence<sup>182</sup> directed against women based on sex from the punishable offences by law.

This clearly amounts to discrimination against women based on marital status, which violates the provisions of the CEDAW and other different women's human right instruments as Ethiopian government has failed to protect women from different forms of domestic violence directed against women by exempting them from punishable offences which may noticeable some failures regarding protection of women against domestic violence/abuses.

### 3.3.3. Family laws

Ethiopia had used family laws found in civil code of Ethiopia for many years.<sup>183</sup> The captions of the family law found in the civil code were mostly, the legacy of old and scourge discriminatory attitudes towards women. This previous family code of Ethiopia which have been found in Ethiopian civil code, used to state the husband as the head of the family with significant decision making power.<sup>184</sup> Moreover, in direct relation to legalizing the incident of domestic violence, the family code used to authorize the husband to provide protection and to control the wife's conduct.<sup>185</sup> The except of Article 644 read as –

*“He may watch over her relations and guide her in her conduct,*

*Provided this in the interest of the household,*

*without being arbitrary and without vexations or other abuses”<sup>186</sup>*

During that time the international human right instrument ratified were not practically reflected in the Ethiopian legislations including this family law.

However, on the mean while the legislators revised the existing civil laws of family matters which aimed to replace the old and scourge discriminatory nature of law directed against

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<sup>182</sup> The protection of women against rape does not extend to rape committed against them by their spouses. As such, economic abuse, psychological abuses are not getting attentions.

<sup>183</sup> Civil Code of the Empire of Ethiopia, Proclamation No. 165 / 1960

<sup>184</sup> Ibid Article 635

<sup>185</sup> Civil code (n 183) Article 644(2)

<sup>186</sup> Ibid



women.<sup>187</sup> Accordingly, the law try to culminate the older attitude that encourages husband as the head of the family in which the authority to control and follow up his wife's conduct was legalized.<sup>188</sup> This revised family law recognized the equality of men and women in every aspects including in marriage and common property-administration. But, the revised family code by itself is bereaved civil remedy against domestic violence in Ethiopia.

Nevertheless, regarding the violence against women all the civil law and criminal law do not addressed in comprehensive manner in the way that, DVAW would be culminated. Hence, the Ethiopian laws regarding DVAW have been crowds of criticism till now. As such as it stands now, the legal codes in Ethiopia does not imposed stringent sanctions on perpetrators of domestic violence against women and or does not criminalizes different form/patterns of domestic violence committed at the private spheres. On this regard the international human right instruments are not much reflected in subsidiary laws as reflected in FDRE constitution as much as expected. However, subsidiary legislations have of direct effects in protection of women since it has directly enforced by courts at different levels.

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<sup>187</sup>The Revised Family Code of Ethiopia, Proclamation No. 213/2000

<sup>188</sup>civil Code (n183) articles 635, 637 & 644

## CHAPTER-FOUR

### **The challenges to the protection of women against domestic violence in Jimma zone**

#### **Introduction**

The challenges to the protection of women against domestic violence were mainly drawn from in-depth interview and focused group discussion conducted with different participants.<sup>189</sup> Discussion was made that depicts the challenges and obstacle by pinpointing different legal, practical, socio-cultural, religious and socio-economic challenges to the fighting of domestic violence against women. The data obtained from participants shows that, the ways by which the human rights protection of private and family life is sometimes understood are one and the major of the challenges facing women's protection against domestic violence in Jimma zone. The overwhelming majority of physical, sexual, psychological and economic violence takes place within close social confines, at home, and sadly is part of everyday life of many women.

Accordingly, a number of challenges have been highlighted by key informants from the law enforcement bodies as well as professional members and different NGOs working on the women and child that took part in FGDs and different interviews. These challenges may include the legislative gap, giving weak attention to incidence of domestic violence (practical gaps), socio-cultural and socio-economic challenges, religious teachings and misconception about domestic violence on parts of women. I will discuss them briefly in this chapter and analyze them one by one in the subsequent sub-topics.

#### **4.1. Legislative challenges to the protection of women against domestic violence.**

In proceeding chapter, under one sub-topic, we have seen the Ethiopian laws and policy in light of international human rights instruments regarding domestic violence. However, under these sub-topics, I will try to show the way in which our legislation has been considered as the challenges to protection of women against domestic violence in Jimma zone.

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<sup>189</sup> Participants were drawn from professionals of court, justice office, police station, womens and child affairs office at kersa district, omo Nada district, Gomma district, Limmu Sakka districts, Mana district and some NGOs at Jimma town social zone.

Building strong legal frame work is a cornerstone for the protection of women’s rights against any sexual based discrimination and violence. Accordingly, targeting at providing better protection to the rights of women, Ethiopia has attempted to undertaken significant ‘gender-sensitive’ legislative reforms after the down fall of military junta. Foremost among these laws; the 1995 FDRE constitution, the 2003 Revised Family Law<sup>190</sup> and the 2005 Revised Criminal Code<sup>191</sup> are indicative .The principle of equality is enshrined in the Constitution of the country as well as all relevant subsidiary legislation. Further, the Constitution provides that internationally agreed standards ratified by the country as integral part of the Ethiopian law.<sup>192</sup> Accordingly, the international standards adopted in instruments ratified by Ethiopia like CEDAW<sup>193</sup> constitute part of the law of the land.

However, regarding the scope of coverage of laws dealing with VAW, the Ethiopian legal framework cascades dump of the internationally accepted standards. Different forms of violence against women have not be criminalized in the way of understanding the complexity nature of the violence though international standards require States to ensure that forms of violence against women are included in criminal law as criminal acts.

#### **4.1.1. Inadequacy of Legal responses to criminalizes patterns of DVAW and punishment of perpetrators**

Criminalizing offences of gender based violence is considered as major step in the protection of women’s rights against any abusive acts of perpetrators. Because- legal framework is the first measures that needs to have been taken to illegalize or legalize certain acts. Accordingly, Ethiopia has enacted FDRE criminal code.

The Revised Criminal Code of the Federal Democratic Republic of Ethiopia (The Criminal Code, 2004) is the major areas of Ethiopian law that has been revised in conformity with the

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<sup>190</sup> The Revised Family Code (n 187)

<sup>191</sup> FDRE Criminal Code (n 179)

<sup>192</sup> FDRE Constitution (n 13) Article 9(4)

<sup>193</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force on 3 September 1981) United Nations, Treaty Series, vol. 1249, article 1, <<http://www.unhcr.org/refworld/docid/3ae6b3970.html> > accessed 18 April 2017

FDRE constitution and includes different new and revised provisions that are of pertinent to the protection of women from violence by criminalizing different offences. The Code addresses violence against women in different forms. Accordingly, the code criminalizes most forms of violence against women and girls including rape outside wedlock, trafficking of women, prostitution of another for gain, and physical violence within marriage or in an irregular union- to some extent, abduction, Female genital mutilation, and early marriage.<sup>194</sup>

As we understand from the provision of FDRE Criminal code, though, the criminal code criminalizes different forms of violence against women; it doesn't give much attention to the domestic violence against women. However, domestic violence is not simple and forgettable violence since it has consequences of serious healthy, economic and social problems as discussed in chapter two. The majority of participant in FGD raised that, the FDRE criminal code doesn't criminalize many forms of domestic violence against women and DVAW did not have much attention in this criminal code. Undeniably, such kind of assertion is valid as everyone can understand from criminal code.

Therefore, such legal lacuna may be great challenges for our justice system in protection of WADV in general and particularly in Jimma zone. It is better to see and discusses the legal challenges to the patterns of abuses and evaluate the legal responses of our laws to outlaw; the physical, sexual, psychological and economic abuse in the following sub-topics.

#### **4.1.1.1. The Legal responses to Physical violence against women**

Physical abuses are high prevalence in Jimma zone and most of the women are battered by their husband in each single day. Many participant of FGD conducted in six districts of Jimma zone reveal that, the abuse extends from slap to the use of weapons resulting in death. Most of them bore visible scare, bruise and cuts on their bodies. Despite the gravity of the problems, our criminal code doesn't give much attention as such. The code has not put comprehensive

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<sup>194</sup>FDRE Criminal code (n 179) -see provision; trafficking women ( article 597), prostitution of another for gain (article 634), and physical violence within marriage or in an irregular union ( article 564), abduction, ( articles 587, 590), Female Genital Mutilation ( articles 565-6), and early marriage (article 649).

definition and scope of the term violence against women as was done under the CEDAW and/or African Protocol.<sup>195</sup>

Domestic violence is dealt under the provision on violence against a marriage partner or a person cohabiting in an irregular union. The law treats this kind of violence in the same manner as any form of assault committed on any person irrespective of the nature of the crime. However, cases of DVAW have special characteristic features. For example they are committed repeatedly, occur in situations where the woman is under the influence of the man; mainly where she is economically dependent, it is a manifestation of power of men over women. Also the crime of DVAW is committed at behind the closed door in hidden place and complex phenomena, committed in the situation even evidence cannot be obtained to press the criminal charges against the perpetrator. As such, it is sexual oriented violence which occurs up on the relationship between the perpetrator and the victim- in the situation where a victim owes believes to the perpetrator up on their special relationship.

Physical VAW is an act of violence that results in physical harm and/or suffering to women and is perpetrated against women because of their gender. This aspect of the definition is missing from the law as the law deals with cases of DVAW by making cross-reference to cases of assault and willful injury. Article 564 is the single provision with explicit reference to the term domestic violence in the code. The excerpt of this article read as,

*Violence against a Marriage Partner or a Person  
cohabiting in an Irregular Union.*

*The relevant provision of this Code (Arts. 555 - 560) shall apply to a person who, by doing violence to a marriage partner or a person cohabiting in an irregular union, causes grave or common injury to his /her physical or mental health.<sup>196</sup>*

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<sup>195</sup> African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003, UN, Commission on the Elimination of Discrimination Against Women, *General Recommendation No. 19: Violence Against Women*, 11th Sess., 4, U.N. Doc. A/47/38 (1993)

<sup>196</sup> FDRE Criminal Code(n 179) Article 564

The problem is that , this article is not only narrowed the type of domestic relationships to marriage partner and person co-habiting in an irregular union but also refers back to the provisions dealing with crimes against person and health (Articles 555-560) for determination of its criminality and punishments. It seems like simple incidental statement; the code has not as such created an offence of domestic violence in its own right in separate and clear provisions. Rather humbly it assimilates to ordinary assault and battery; grave or willful physical injuries.

As such it fails to recognize a crucial element of DVAW that, it is violence perpetrated against women because they are women. It doesn't consider the special nature of domestic violence, where the victim is usually in a relationship of dependence with the perpetrators. Rather, merely equating cases of DVAW to assault and treating them as such, the law fails to take into account these gendered features.

At this juncture, it is worthy to raise the issue that, does article 564 of FDRE criminal code adds something to protection of women against DV? As mentioned above, it simply refers to Arts. (555-560)<sup>197</sup>. We can understand from this provision that, even when article 564 were not included in FDRE criminal code, the enforceability of Article (555 - 560) is inevitable. This indicates that inclusion and, or exclusion of article 564 has no effects on the enforceability of Article (555 - 560) for all physically abused persons including intimate partner abuse. Hence article 564 has added nothing special to the protection of women against domestic violence.

This in turn shows that, physical abuse against women in domestic sphere does not properly addressed as much as needed in FDRE criminal code. Such legal lacuna has been manifested in practice in most parts of the zone as challenges to protection women against domestic violence.

#### **4.1.1.2. The Legal response to sexual violence against women**

Women's experiences with sexual violence varied along a ranging from battering rape and bullying to threats, verbal humiliation and non-physical forms of pressure that compelled them to engage in sex against their will.<sup>198</sup> In an abusive relationship, sex is just another form of male control in an effort to gain the woman's complete acquiescence. These strategies of control often

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<sup>197</sup> Ibid Article 555-560

<sup>198</sup> Myhill A, et al, *Rape and Sexual Assault of Women: The Extent and Nature of the Problem: Findings from the British Crime Survey* (Home Office Research, Development and Statistics Directorate 2002)42.

focused directly on the female victim's body and sexuality. As data obtained from participants, the forced sexual act becomes one; in which the woman is silenced, controlled and subordinated.

Sexual violence in marriage is clearly an issue of gender inequality, in which a woman is forced to give in to her husband's demands.<sup>199</sup> Women experienced rape or physically forced sex in the context of a battering relationship. The data gathered from FGD show that, Women are not willing to call their experiences as rape, which could be a sign that the concept of marital rape is rather absent in the Ethiopian culture.

Sexual assault including rape and sexual harassment by outsiders are addressed within the criminal law. However, the provision on rape clearly excludes instances of marital rape. The data congregated from participants of FGD in justice office indicate that, the exclusion of marital rape from rape punishable by law under the Ethiopian Criminal Code contributes to the prevalence of marital rape in Jimma zone. Since there are no legal consequences for rape committed within wedlock, men continue to rape their wives, and this has severe physical and psychological repercussions for such victims.

The right to refuse sex in marriage is not accepted and still remains 'unthinkable' for all women and men in zonal districts. This clearly excludes the majority of cases where by hostile working, living and learning environments are created due to the threat caused by demands of sexual favors. In 100 countries across the world, marital rape is a criminal offence and is punishable by law.<sup>200</sup> For instance; in South Korea, Japan, Philippines and Taiwan, marital rape has been criminalized.

In Ethiopia, however, marital rape is not considered to be a crime under the Ethiopian criminal law system. When we see article 620 of FDRE Criminal code, it apparently legalized the wedlock rape. It excerpt read as,

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<sup>199</sup> Pracher M , 'The Marital Rape Exemption: A Violation of a Woman's Right of Privacy' (1981) 11 Golden Gate University L Rev.3

<sup>200</sup> Sharma K , *Behind the Locked Doors: The Evil of Marital Rape*, <<http://www.mightylaws.in/1246/locked-doors-evil-marital-rape> > accessed 4 April 2017.

*(1) Whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.*

On this juncture, the phrase ‘outside wedlock’ clearly indicates, the legality of wedlock rape which has consequences of great healthy and psychological problems on the victim. Although the CEDAW Committee urged Ethiopia to amend its criminal law in order to criminalise marital rape, in its concluding observations on the country in 2011, the legislature still failed to comply with the request of the Committee.<sup>201</sup> It exempts rape committed within wedlock from punishment. As raised by participants of interviews, due to the exemption of marital rape from punishment under the Criminal Code, men have been using their marital status as a license to rape their wives. And law enforcement authorities by themselves have been abstained from interfering into sexual abuse between intimate partners.

For instance, one prosecutor quotes that,

*“most of the time, sexually abused women has been coming to investigation office, however, we could not conduct investigation on this issue since we have no legal support. we simply send back them to home, or order to go to court to seek divorce and hospital to treatment.”<sup>202</sup>*

The fact that the Criminal Code does not recognised marital rape as a crime discourages the police from conducting investigations and taking action. Many data assembled from participants in interview conducted with judges, prosecutors and police reveal that, decriminalization of marital rape is preventing them even from investigation and prosecuting the alleged offender. Other participants pinpoint that, due to the lack of relief after reporting incidents of marital rape, women are discouraged from making further reports when the incident is repeated.

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<sup>201</sup> Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women-Ethiopia Forty-ninth Session, 11-29 July, 2011, para 21.

<sup>202</sup> An interview conducted with prosecutor by researcher on 22 April 2017



#### 4.1.1.3. The Legal response to Psychological violence against women

As the results of the literature and the participants of focused group discussion shown; insults, belittling, verbal aggression and constant humiliation are the common forms of psychological violence directed against women in Jimma zone. The participants of interview conducted with professionals of women and child affairs office often say that the psychological abuses and degradation are even more difficult to bear than physical abuse. Verbal humiliation, such as being called names, sworn at or put down were seen and reported in most parts of the zonal districts. It has been manifested and reported through seeking divorce in civil cases rather than through criminal proceedings. For instance, one Judge quotes that,

*“Psychological abuse is one of the causes of divorce in addition to other abuses. Most of the time, when women faced DV, they do not want to criminal remedies to their abuse rather they seek divorce in the court of law. And DV is the very causes for the increments of divorce.”*<sup>203</sup>

From this we can understand that, the problem of legal gap in criminalization of domestic violence abuses leads to the increments of divorces. And the anger of violence are manifested through divorce. Violence described in terms of emotional or psychological abuse, referring to situations in which a man might constantly insult or undermine a woman. And Women disproportionately suffer from these types of violence because they are women. As data gathered from participants of FGD held with prosecutor shows, it has very adverse effects on women *inter alia*, demoralized women and trapped in abusive relationships, make them perceived as inferior to men cognitively, and make them to be submissive, obedient and respectful of their husband. It hart women’s self-confidence and makes them to be emotionally dependent.

However, the Ethiopian law doesn’t give attention to such humiliating nature of psychological violence against women and treat similar to other ordinary insult, or threat. The law treating these forms of violence irrespective of the sex/gender of the perpetrator and victim as well as the prevailing gender relations fails to capture and address the gendered nature of the violence.

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<sup>203</sup> An interview conducted with the court by researcher on 21 April 2017

When we see the FDRE criminal code thoroughly, there are different ordinary provisions applicable to any person irrespective of sexual relationships, or social status and, or other parameter which aimed to criminalize some psychological harms. For instance article (607-619) of FDRE criminal code talks about Crimes against honours or reputation, defamation and calumny, insults or outrage.<sup>204</sup> On other hand Article (580-585) criminalizes the offence of intimidation, threat to accusation or disgrace, coercion, deprivation of power of decision and illegal restraints.<sup>205</sup> These wordings of provision don't consider any special nature of psychological violence directed against women. It simply stipulates the provision applicable to any person and it did not benefit women because of special nature of domestic violence against women which needs to give more attention in all circumstances of investigation and prosecution.

Accordingly, although the law recognizes psychological harm, the coverage is not adequate for protection of women against domestic violence since it does not take into account the complexity nature and hidden commission of DVAW which in turn needs to promulgate special and separate laws to guide all the process of obtaining evidences and the prosecutions of DV cases. For instance many countries including Latin American countries have enacted specific domestic violence laws that combine criminal offences and civil protections. Most of these laws include psychological violence in the definition of domestic violence.<sup>206</sup>

#### **4.1.1.4. The Legal response to Economic violence against women**

Economic abuse is another form of abuse in which women are the primary victims. Men have traditionally controlled and dominated the financial assets of the family, and have retained the power to make financial decisions within the family. As data gathered from participants of FGD conducted with professionals of womens and child affairs office shows, there are different reports; economic or financial abuse involves the control of the use and availability of money, preventing her participation in money-spending decisions and refusing to give her money for

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<sup>204</sup> FDRE Criminal code (n 179 ) article (607-619)

<sup>205</sup> FDRE Criminal code (n 179 ) Article (580-585)

<sup>206</sup> UNDAW, *Good practices in combating and eliminating violence against women*, United nations division for the advancement of women (17- 20 May 2005 Vienna, Austria) 12

basic household necessities. It involves an act that aimed at disempowering women by denying them access to and control over basic resources. When women fail to comply with their demand, they can punish and threatening them by refusing to give them money and physically assaulting them. Financial domination; like psychological, physical and sexual abuse, has the great negative effects on women's emotional, social and physical well-beings.

However, the issue is that, our laws seem to ignore such old-scourge economic abuses directed against women. The absence of appropriate legal frame work to punish such perpetrator of economic violence leads to validation of such abuse against women. For instance, if a husband refuses to his wife to access health care by denying her resources/money, control of the use and availability of money, preventing her participation in money-spending decisions and refusing to give her money for basic household necessities what is the available legal recourse?

The participants of interview explain their concern regarding the absence of specific legal framework against the economic abuse directed against women. They added that, there are no ways to distinguish the acts that constitutes a domestic violence even to those persons. For instance it has not taken into consideration the different aspects of domestic violence such as the economic abuse. All these clearly show that, the Ethiopian laws don't recognize in preventive manner the forms of domestic violence against women. This in turn makes DVAW as lawful act which has great challenges to the protection of women ADV in Jimma zone.

#### **4.1.2. Absence of protection order for Victims or Survivors (civil remedy)**

In proceeding topics, we have discussed the inefficiency of our laws to criminalizing patters of domestic abuses. But under this topic we try to look whether civil remedies-protection order were not available for victims in our laws. The data gathered from the participants of interviews divulge that, Ethiopian law is deprived of specific civil remedies against domestic violence. There has been no separate domestic violence act or law which provides specific civil remedies for victims/survivors which includes; the right to obtain protection order, actions for damages against the perpetrator, the police or third parties who fail to prevent the violence, governmental victim compensation funds, monetary/compensation relief, custody order, residence order, shelter or medical benefits or more than one such order.

As such protection orders are essential criminal or civil justice measures aimed at preventing further violence from happening and protecting victims. The participants of FGD conducted with judges explain that, such remedy has of paramount importance for victims. It provides victims with time to reflect on what their options are in terms of safety, and to decide about their future. The protection orders serves as a deterrent measure. Because, it send messages to the perpetrators that, their behaviour is not acceptable and that there will be consequences for their actions. Such measures also prevent the perpetrator from approaching or contacting the victim or allow the removal of the perpetrator from the joint dwelling or that of the victim for a specific period of time. The purpose of restraining or protection orders is to offer a fast legal remedy to protect people at risk.

Many participants of interviewed support the necessity of protection order. If there are protection orders, it is better for the victim, even it prevent the double victimization, shorten the process of remedy to victim, give high protection in simple procedure. One informant from professionals of women and child affairs office told me that,

*“Abused women (physical, sexual and psychologically injured) reported to us. We cannot give any protection order to victims, nor court order protection directly rather than stringent procedure through police which is very difficult for abused women . We simply call the abuser and warned. Then we send back both the victim and abuser. But after that, abuser abused victim again. We remembered the circumstance, when abuser chopped the victim in to pieces and kill her after went to home”,<sup>207</sup>*

It is encouraged that both criminal and civil remedies should be made available for the effective prevention and redress in cases of violence against women. In Ethiopia, there is tort law provided in civil code under article 2035<sup>208</sup> regarding for the compensation to the arisen damage. However, it is not adequate and out dated in terms of amount of compensation and coverage. It does not consider the unique nature of domestic violence against women. It has no protection

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<sup>207</sup> Interviews conducted with professional of women and child affairs by the researcher at Jimma town on 12 April 2017

<sup>208</sup> Civil code of Ethiopia (n 183) Article 2035

order in case of domestic violence. On the other hand, the system of a tort action provided in civil code will not address immediate needs of women's reality. Therefore, such problem prays the enactment of complied DV law which may include all possible civil remedy and different protection orders along with criminalization.

Many countries include civil remedies in their domestic violence law.<sup>209</sup> For instance, in the United States, victims of violence can seek civil damages from the perpetrator for infliction of violence, and in some circumstances, from the police or other actors who should have prevented the violence but failed to do so.

#### **4.2. Inadequacy of Law enforcement authorities response to DVAW and absence of victim's protection in Jimma zone**

In proceeding sub-topics, I have discussed the legal lacuna as one challenges regarding the protection of women against domestic violence. However, in this topic we will try to see the practical gaps perceived around the law enforcement authorities those who entrusted to uphold and protect WADV.

It is incontestable that, one of the mechanisms of protecting women against domestic violence is ensuring prosecution and punishment of perpetrators of DVAW and, as well as giving due attention for protection of victims. A number of preconditions need to be fulfilled to undertake prosecution of perpetrators and protection of women against violence. Primary amongst, the establishment of institutional structures of law enforcement as well as empowering them with all logistic and necessary budget, establishing gender sensitive criminal proceedings including; investigation, evidence gathering, prosecution and the like.

However, in Jimma zone, a number of challenges have been highlighted by key informants from the law enforcement bodies as well as professional members that took part in FGDs and different interviews regarding the practical gaps. The low level of prosecution and punishment of perpetrators of DVAW are demonstrated. The data gathered from the informant of professionals of women and child affairs office and NGOs show that, domestic violence case did not investigated and brought to court promptly. Even there are a number of times were the perpetrators of violence go unpunished when brought to prosecutor and, or courts.

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<sup>209</sup> UNDAW (n 206) 23.

Therefore the majority of data reveal that, the many reported cases of violence against women are not prosecuted, with the result that weak attention to DVAW and most of the time women do not achieve justice.<sup>210</sup> Let us discuss some reason in the following sub-topics and subsequent sub-topics.

#### **4.2.1. Giving weak attention to investigation and prosecution of DVAW**

As raised repeatedly by informants, the police roles are crucial and have of paramount importance in protection of women against domestic violence. Participants mentioned various reasons in connection with weak attention to DVAW on the parts of police, prosecutors and courts. Although participants mentioned various reasons to the weakness of investigation and prosecution of domestic violence, the topic will discuss the major ones which were mainly and repeatedly pointed out by the participants. Key informants from NGOs and professionals raised that, many police officials have viewed domestic violence as a private matter and please best left behind closed doors. This has resulted in attitudes and systems that minimize police responses and discourage specialized responses to women who are victims. Officers who do take action to better meet the needs of women victims of violence have sometimes faced recriminations and social isolation, with their efforts being denigrated. One female police officer told me that,

*“Even talking about domestic violence against women as a crime is considered as a shame. I’m working on gender focal person. But I couldn’t help women. Because, most of the time in police station it is disregarded. When I asking something to help the victim, the commander by himself didn’t give attention unless, the violence is by stranger/outsider and or grave physical injury. When I repeatedly talking about abused women how to help in meetings they blamed me and latter even they prevented me from participating some meeting with higher officials”.*<sup>211</sup>

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<sup>210</sup> FGD conducted with different NGOs, professionals of women and child affairs office, Judge and prosecutors by the researcher on 5,12, 10 &11 April 2017 respectively.

<sup>211</sup> Interviews conducted with gender focal person of police officer at Jimma town on 2 April 2017

This reveals that, how much does the issues of domestic abuses were ignored even in the police station. The data shows that, Police have long been under criticism for not doing enough to protect women from domestic violence and for an often apathetic attitude towards the problem. However, Police should have to aware that, they are at the frontline of the criminal justice system. They are often called upon to intervene when an act of violence is in progress or shortly after it has occurred. Police needs to work with victims, offenders, witnesses and various forms of evidence. Their attitude and response to all involved can have a dramatic impact on ensuring developments of justice system; including the prevention of future domestic violent acts and the protection of victims. But, conversely they left behind of their role to protecting women against domestic violence and even victims believe that nothing and no one can assist them as they remain in abusive settings.

The participants unequivocally explain the reason of weak attention to investigation and prosecution of DVAW especially on the parts of police, prosecutors and courts. It may include; the problem of under required quality of staff, lack of commitment, inconvenience of investigation room, inefficiency amount of budget, reluctance to interfere in private affairs and inadequacy of coordination/relationship among legal institutions. I will try to discuss them one by one in the following sub-topics.

#### **4.2.1.1. The Reluctance to Interfere in the Private Sphere**

As we have tried to discuss in proceeding topic, the problem of reluctance have been seen to intervening DVAW. However, such arrogance has of paramount negative effects on protection of WADV. The first reason that the ‘go home’ attitude is inappropriate is that it reinforces institutionalized acceptance of domestic violence acts as private practices beyond the regulation and control of the state. The police seem to consider domestic violence as a private matter that does not require state interference. The police are also reluctant to intervene in domestic disputes and frequently advise women to return to their husbands. Therefore, it is not uncommon even for women themselves to perceive violence in the private sphere as normal. One police officer, stated that,

*“ Unless, it is grave physical injury or homicide, interfering in the families affairs are not important. Because, interfering in the family has resulted to the disturbance*

*of household. If we interfere and brought the husband before court, he will be sentenced to imprisonment. So who can feed wife and child? It is very problematic. So, most of the time, we opt it to leave.’’<sup>212</sup>*

From this it is understandable that, interfering in domestic violence is conceived as disturbing households by law enforcement authorities. They give due attention for household unit than women’s right. Such conception has an adverse effect on the protection of women against domestic violence.

#### **4.2.1.2. The inconvenience of Investigation room for victims and lack of commitments of Police**

As our data divulges that, the inconvenience of investigation room is one of the reasons for weak to DVAW. The inconvenience of investigation room or absences of sensitive criminal proceeding for victims are great problems in zonal districts. Evidence from FGD held in different districts of Jimma zone with prosecutor and Judges displayed that gender sensitive criminal proceeding in particular investigation is not introduced. For instance the setup of police stations and the manner in which police officers interact with complainants of DVAW crimes is not friendly to the victims. One police officer quotes that,

*“Many victims come to report the incidence. But couldn’t talk what happened to them due to inconvenience of the room. All police investigators be seated and investigate in single room. Even to listening someone by itself is very difficult. In such circumstances they are not confidently talk their sexual, or physical problems rather prefer to leave their claim and opt to live in abusive environment.”<sup>213</sup>*

Observations from the police stations visited during the interview reveals the same. A complainant has to report her case in front of all the police officers including other clients. This creates a sense of awkwardness among victims. Further, as professionals of women and child

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<sup>212</sup> Interview conducted with police officer from investigation department on 20 April 2017. Though this idea is quoted as an example many informants interviewed from the police station reveal similar facts on the reluctance of interventions.

<sup>213</sup> Interview conducted with police officer by the researcher on 3 April 2017



affair pinpointed, some police officers are quite brutal and at times violate the rights of complainants by using discouraging assertions. The real victims would be embarrassed to talk about the incident. This may discourage women from reporting and pursuing the case before the law.

Lack of commitment and the problem of rent seeking on the part of Police are raised as another problem by many informants. They raised that, most of the time women blame the Police and Public Prosecutor for being slow, lack of commitment, nepotism and bribery. The key informants and participants of the FGDs expressed that the cases presented to the Police did not get the necessary attention in due time as a result of rent seeking. However, though rent seeking has been raised by informants as problems on the law enforcement authorities, the assertion is not much supported by majority of informants on the part of courts and prosecutor rather than on police investigators.

As the participant of FGD from professionals of women and child affairs office in kersa, Jimma town and Gomma elucidate, if perpetrator is a well-known or has money or has relatives from the office no investigation has been commenced up on him. Whenever the Police wanted to take side with perpetrators, it was simple to drop the case, because he/she just order the victim to furnish each and every evidence required rather than conducting investigation by him/her. But it is very difficult and even impossible for the victim to do this.

The discussions made with many participants reveal that, even in normal circumstance, the police order the victim to bring each and everything of evidences, which is highly impossible to do so with a victim. However, such practice is very difficult. It is not violating womens' right only; it may defeat our justice system. According to the Ethiopian criminal procedure code, victims are not obliged to bring everything and each evidences.<sup>214</sup> The police are empowered to investigate and collect necessary evidence up on the accusations. For instance, Under the South African Domestic Violence Act, the police have an obligation to gather data and report to victims on progress of their cases and explain the legal process to the victim.<sup>215</sup> On other hand, The data obtained from many participant and informant reveal the existence of different set up of gender

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<sup>214</sup> Criminal procedure code of Empire of Ethiopia, Proclamation No. 165 of 1969 Article 11-20

<sup>215</sup> UNDAW (n 206 ) 15

focal person in police station and gender focal person in justice office departments in all Jimma districts. But they are not functional as promised to protect women's ADV rather, it is mere set up.

#### **4.2.1.3. Lack of required Capacity regarding investigation of DV**

The other point worth mentioning here is that, the problems of capacity of authorities. As raised by the informants from the courts and prosecutors, lack of sufficient capacity of institutions entrusted with the enforcement is a major problem which may be causes for inadequate enforcement of law and policies regarding domestic violence against women. Most of the time, both the judiciary and the institutions of law enforcements in Jimma zone have been characterized by lack of human resources and essential facilities. Police and Public Prosecutors must necessarily be given special training with the view to equip them with the technical and legal capacity to investigate and handle cases of domestic violence against women.

The offences of domestic violence against women are not simple and detectable offences through normal mechanism of investigations. It is committed by perpetrator carefully in absence of any witness and other evidences, behind the closed door. It is very complex in nature, committed repeatedly between the persons closely tied with the relationships of consanguinity/affinity. This in turn needs to high capacity of investigative power with modern and sophisticated equipment of different forensic investigation.

Because, one of the most difficult hurdles to overcome lies in a procedural or evidentiary requirement to justify responsibility. As data indicates, battered women are required to obtain medical certificate documenting their injuries before they can proceed in court. However, the categories of assault do not always provide an accurate description of the level of injury. For example, forensic reports do not consider the impact of repeated injuries over a period of time, the appropriate measure of psychological injury, or the possibility that the severity of the injury may not be fully recognizable at the time of the examination.

#### **4.2.1.4. Weak Co-ordination and inefficiency of multi-agency work**

Undeniably, the co-ordination and assistance of different body to the protection of women against domestic violence is very important. In Jimma zone, there are some attempts to ensure

the cooperation of authorities to combat domestic violence and protect women against domestic violence though not effective. There is some endeavour in institutional set-up for joint investigation of different DV offences.

The data obtained from discussions with participants of FGD demonstrate that, there are set ups of joint investigation of police and prosecutors according to BPR (policy).<sup>216</sup> And also women and child affairs office and courts have a role to protection of women. However, they added that, there is no co-ordination and there are different backlogging cases of women among each other. Many participants from professionals of women and child affair office claim that, if the DV cases reported to near police, they simply send back to the office of womens affair. But, the women's affairs office have no police force, have no power of investigation, and have no power of arresting the perpetrator. This impliedly shows weak co-ordination and unwillingness of the case to investigate on the parts of police and prosecutors. One informant in women and child affairs office quotes that,

*“When the women went to police officer or prosecutor to report the abuses committed up on them, these organ don't took the issues as series and not as an obligation to respond. Rather, they simply send them to women and child affairs office. They humbly considering that, the women's matter is the role of our office only. But women's issue is not matter of our office only. It needs cooperation of all stakeholders and law enforcement authorities.”<sup>217</sup>*

Nevertheless, the necessity of inter-agency cooperation and coordination in this field has been unquestionable, as far as the creation of services and support for victims and sanctions for perpetrators requires the interlinking of a number of agencies and services. It has also become apparent that, support to women who often need to cope with a range of practical issues will frequently involve provision of assistance to negotiate many bureaucracies associated with criminal and civil law. In this respect, even advocacy has become one of the core elements in

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<sup>216</sup> Ethiopian Council of Ministers, *The Criminal Justice Administration Policy*, (adopted by the Council of Ministers 2011)

<sup>217</sup> Interview conducted with women's and child affairs office by the researcher on 30 March 2017

response to violence against women, enabling women to access their rights across multiple systems and agency.

#### **4.2.1.5. The absence of exclusive budget allocation for gender focal person**

The other points indicated by many participants of FGD and interviews were the problem of budget which needs to be allocated for the gender focal persons. As we have discussed earlier, there are gender focal persons set up in justice office and police station of Jimma zone districts structurally. Though aim are to work on womens rights and assist womens in every aspects, it is not functional as they are not empowered both legally and financially to do so.

They are not established by law, rather by policy, as such they cannot investigate the abuse committed up on women, they cannot give protection for abused women/victim which may include; facilitating temporary shelter, financial, food and other necessary materials. The participants of interviews conducted with those focal persons specifically indicate that, the problem of budget to assist victim are taken as serious challenges to support abused women. No budget allocated exclusively for those genders focal persons. They solely seeing victim with bare eyes rather than helping them.

#### **4.2.1.6. The Problem of court reluctances regarding Domestic Violence**

Though polices are part of a much larger system, the effective involvement of courts and other stakeholder are required to protect women against domestic violence. However, the participants from police and NGOs raise some problems on behalf of court in entertaining the cases of domestic violence against women. The court criticized that, it did not give attention if the cases of DVAW brought to them. They simply refer to the reconciliation and or highly mitigate the punishment below threshold of the sentencing guideline set by Federal Supreme Court.<sup>218</sup> One judge quotes that,

*“Domestic violence is simple issue and temporary matter. It may arise between any families. Hence unless, the case was serious bodily injury or death, punishing the husband is amounts to punishing all family.*

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<sup>218</sup> Federal supreme court sentencing guideline, Ethiopian sentencing regulation No-1/2002 and revised No-2/2006 <<https://chilot.me/2013/10/16/revised-federal-supreme-court-sentencing-guideline-no-2-2013/>> accessed 22 April 2017

*So most of the time, we refer to reconciliation for the betterments of family unit.”<sup>219</sup>*

This clearly shows us that, there is high reluctance around the courts. They insist on the unity of household than punishing the perpetrator. Undeniably, such arguments are encourages the offences of domestic violence. However, as with all legal professionals, judges also need to be well informed on the dynamics of domestic violence and understand the impact of such violence on the victims and on legal proceedings. Protecting the rights and interests of the victims, including the right to protection and safety should have to remain key during court proceedings. Judges need to bear in mind that domestic violence proceedings are likely to differ from other types of violence cases. Domestic violence suffered by the victim will have an impact on the victim’s testimony and the evidence used is often different from that of other criminal cases. As data obtained from participants of FGD, there are no specialized courts for domestic violence in Jimma zone which entertain the cases of DVAW bearing in mind the nature and complexity of these offences.

Establishing specialized courts or court processes for domestic violence cases is one way to increase the judiciary's responsiveness to domestic violence. Though levels of specialization are vary widely in different jurisdictions, it has of paramount importance in protection of women. Some jurisdictions have created courts that handle only domestic violence cases; others have altered court processes to ensure more effective processing of domestic violence matters; yet others have specialized staff that provide support to victims.<sup>220</sup>

When we see experiences of different states, there are specialized domestic violence courts in different countries. Such arrangements in turn makes victim to be more confident and give their testimony without any fear of court audience or perpetrator. For instance, in South Africa, Ghana,<sup>221</sup> in the United States and other specialized domestic violence courts incorporate services for victims along with criminal prosecution.<sup>222</sup>

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<sup>219</sup> An interview conducted with court by the researcher on 10 April 2017

<sup>220</sup> Specialized court system <[http://www.stopvaw.org/specialized\\_domestic\\_violence\\_court\\_systems](http://www.stopvaw.org/specialized_domestic_violence_court_systems) >accessed 1 May 2017

<sup>221</sup> Specialized court system <<http://www.refworld.org/docid/560b95c54.html> > accessed 1 may 2017

<sup>222</sup> UNDAW (n 206 ) 18

#### **4.2.2. Absence of victim's protection**

In the proceeding topics, I have clearly discussed the problem of investigation, prosecution and punishments towards the violence and the reason associated with that. However, under this sub-topic, I will try to discuss the problems of absence of victim's protection in the different institutions. Undeniably, the victim's protection is the major mechanism for encouraging the victims to report the incidence of domestic violence and ensuring prosecution to the perpetrator of domestic violence.

Therefore, victim protections have double importance; one is to prevent the loss of evidences and the other is to rehabilitate the victims from her harms by giving necessary psychological and physical healthy treatments. Accordingly, ensuring greater access to services such as; shelters, counseling or legal assistance, improved presentation of evidence at trial and application of effective measures to protect victims and witnesses may ensure the protection of WADV. Anyone who is beaten at home needs help. This may first of all involve talking about the different options for protection, such as those offered by special assistance facilities which may include specialist advice centers for women or the nation-wide violence against women support hotline.

The data obtained from interviews of different participants reveal that, the pre-trial period represents a heightened risk of further violence to the victim. As such, the privacy, dignity and autonomy of victims has not be respected and enhanced in the legal process. They added that, Woman reporting a crime against her should be subjected to procedures that are humiliating.

Most of the time defendant does not arrested or if arrested released on simple and minor bails. The released defendants are not supervised as much as needed. Consequently, this puts the victim at risk of retaliation and repeat victimization. Victims may also be intimidated into changing their story. If the victim does not feel safe or that her concerns are not addressed, she is not likely to continue being co-operative and testify.

However, many international and regional instruments encourage the victim's protections as the top prioritized agenda. For instance, Article 31 of the Istanbul Convention requests national legal systems to prioritize the safety of victims and their children over the exercise of any visitation or

custody rights in cases of domestic violence.<sup>223</sup> When the victim is involved in both justice systems, close co-ordination should be ensured between family courts and criminal courts. Some countries, such as Spain, have responded to the need to address both civil and criminal issues in the same court.<sup>224</sup>

The safety and the needs of the victim must come first, and should precede any other considerations. Forcing or influencing a victim to go back to the abusive relationship can have severe consequences, including death. If the perpetrator has not been held accountable for his actions or if the root causes of violence have not been addressed, violence will most likely continue. For instance, in Finland, Sweden and Switzerland have enacted ‘victim support laws’<sup>225</sup> that aim to counteract the weak position of victims resulting from their victimization and the justice system’s prioritization of rights of defendants. Such laws entitle victims to free legal advice and representation, alongside access to other forms of advocacy and support.

Another approach noted by participants regarding to the victim’s protection is domestic violence shelters. All participants nurture that, there is no any shelter provided to the domestic violence victim in Jimma zone. The participant of police officer told me that, they simply send back to their home because of the problem of shelter. They added that they know the problem of sending back the victim, but they have no option.

One female police officer from Jimma town quotes that,

*“There is no shelter for victim in Jimma zone. No budget allocated to them. sometimes if the victim is potentially damaged and or raped by her brother or step father or harmed by fire, I feel personally since iam women. In such circumstance, I took them to my own house to stay for a moment until she rehabilitate from her injury. But no one can help us or do this since they have no capacity to do rather if they think as humanity.”*<sup>226</sup>

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<sup>223</sup> Istanbul convention has been stated in ‘Preventing and Combating Domestic Violence against Women, (A learning resource for training law enforcement and justice officers, Council of Europe; January 2016) < <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent/> > accessed 22 April 2017

<sup>224</sup> UNDAW(n 206 ) 18

<sup>225</sup> Ibid

<sup>226</sup> Interview conducted with police by the researcher on 30 March 2017

However, the issue of shelter for the victim of DV is not a problem in many countries. It exists in many States and often operated either by local government or NGOs, providing safe accommodation for women who have experienced domestic violence and their children. Shelters commonly provide on-site counseling; victim support, legal assistance and other services victims may need either in the initial time of crisis or when a woman first enters a shelter.

The data congregated through different interviews clearly signpost that, due to the absence of victim's protections, women are often reluctant to seek help from the police and or prefer to stay anonymous when reporting. Because they fear that their privacy and confidentiality will not be safeguarded. They are often ashamed or embarrassed by what they have experienced, especially in cases of sexual abuse or rape. Many women also fear that their abusers will find out about the reporting and kill them, or that their families and communities will humiliate them if they find out. Victims of DV need access to support systems like shelters, legal aid, medical and psycho social support.

The policy framework in Ethiopia provides for a multi-sectoral approach whereby various sectors including non-governmental organizations can come together to provide the required package of support. In line with this, the government has tried to take experiences of different countries<sup>227</sup> and established a one stop center in different regions. For instance, it has been established in Addis Ababa.<sup>228</sup> The center was established in April 2012 as a pilot project to help victims of sexual violence, mainly victims of rape by providing all the necessary services such as, medical treatment, legal support, psychological treatment and shelter service in one center. Therefore, it established mainly to provide all the necessary services in one place to victims of violence including victim of domestic violence.

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<sup>227</sup> Hospital-based responses to sexual assault have existed in some European capital cities and across much of Canada for as long as 15 years. A visit by a Malaysian doctor to St Mary's Sexual Assault Referral Centre in the United Kingdom began the process which resulted in the 'One Stop Shop' concept, which is currently promoted as good practice across Asia and beyond.

<sup>228</sup> AWSAD operates a safe house in Addis Ababa for women fleeing domestic violence. The rehabilitation services provided by the organization include counselling, rights awareness, and skills-development training. Since the establishment of the safe house in 2006, AWSAD has reportedly served 513 women and children. Lawyer Semhal Getachew states that, in addition to the AWSAD safe house, there is only one other shelter in the country . It services immigrants who have returned from the Middle East and is also located in Addis Ababa.



However, the data gathered from the participants of FGD at police station and womens affairs office reveal that, there is some move to introduce one stop service in Jimma town in collaboration with Jimma university hospital though not functional yet. They said that, the selected individual from police station, justice office and women's affairs office have took an experience from Adama town last year to introduce the service center. The center is named 'center for integrated treatments and justice.' It insists on prevention and response to violence and crimes against women and children through integrated services and to bring justice for women and children. The center has aimed to provide free legal support services: investigation, pressing charges and prosecution. But, the data shows that, it is not functional till now rather mere ambitious.

### **4.3. The problem of socio-economic, cultural and religious justification for DVAW**

In proceeding focuses, we have seen the problem relating to investigation, prosecution, punishment and absence of victim's protection measures as the main challenges to the protection of womens against domestic violence. However, in this topic, I will try to discuss the problem of socio-economic, socio-cultural and religious justification as challenges to protection of WADV.

The data obtained from participants shows that, women face direct cultural and structural violence through a deeply entrenched system of patriarchy at all tiers of public and private life. The deep rooted attitudes of socio-cultural, socio-economic and religious doctrine have been raised as concern for protection of women against domestic violence in Jimma zone. The idea of participant clearly spectacle that, overcoming this challenge requires a changing of arrogant mindset of the society to recognize women's rights as well as needs to making understand the criminality of domestic violence and reacting to it.

Apart from socio-cultural, economic factors also stood out as one of the main factors causing violent behaviour in the society and considered as a challenges to protection of WADV. All our stakeholders, including key informants and participants of FGD shared that, the lack of economic resources is the root cause of a lot of evils. Poverty is the main reason for sufferings, which stems deprivation of basic needs and thus creates frustration in the society. This frustration is then translated through different violent attitudes. Respondents believed that since women are a

weaker segment of the society, they are naturally at the receiving end of this frustration. As UN women rights reports, Poverty has been linked to increased violence against women including sexual violence and trafficking.<sup>229</sup> Economic deprivation is coupled with social injustice which collectively contributes towards frustration and violence.

On other hand, the religious teachings and religious doctrine has imposed some challenges in protection of women. Let us see the challenges of culture, economic and religious law in protections of WADV in the following sub-topics in detail.

#### **4.3.1. The challenges of status quo/religious laws to the protection of WADV**

According to Ethiopian CSA survey of 2007<sup>230</sup>, the dominant religion of Jimma zone populations are Muslim and Christianity. All of them teach their followers according to the laws of religious scripture; Quran and Bible. The participants of FGD and interviews from different professional explain that, most of the time, these religious instruction ensure and approve the male dominance in the parts of societies. It does not encourage women to reacts against abuses by their husband.

For instance, in Christianity, the most radical commandment uttered by Jesus in the Bible is “Love your enemies,” then the second most radical of his words must be those on forgiveness.<sup>231</sup> The issue of forgiveness often arises for victims of abuse. A friend or family member may pressure the victim to forgive any abused committed against them. If not, the victim feels guilty for not being able to forgive the abuser. Accordingly, they undermine the women not to report the abused committed up on them. In such circumstance, the victims opt to live in abusive environment with her abuser. However, neither forgetting nor pretending is possible. Abuse is never forgotten, it becomes a part of the victim’s history.

On the other hand, most commonly directives on marriage, based on scripture, are given to women by clergy state that, wives must ‘submit’ to their husbands, a directive interpreted to elevate the husband/father as the absolute head of the household whom wife and children must

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<sup>229</sup> UNHCR, *Women’s Rights are Human Rights*, (United Nation Human rights, Office of the High commissioner, New york & Geneva 2014)20

<sup>230</sup> Ethiopian 2007 CSA <<http://catalog.ihnsn.org/index.php/catalog/3583> >accessed 20 April 2017

<sup>231</sup> In the book of Matthew Chapter 18: verse 21, Peter is asking Jesus how many times he should forgive his brother if his brother sinned against him. Peter gave a suggestion implying that seven would be the number of times he should forgive. Jesus’ response to Peter was, “I do not say to you, up to seven times, but up to seventy times seven” (Matthew 18:22 NKJV).

obey without question.<sup>232</sup> Unfortunately, this idea has been misinterpreted to mean that wives and children must submit to abuse from husbands and fathers as well.

In Muslim religion, there are also different instructions which undermine the rights of women against any violence. For instance, A Muslim's belief is to respond to hardships by persevering and by continuing to turn to God for guidance and help. When a person does not lose his/her faith and strives to worship God despite the difficulties, life is presenting. A person who turns away from God in disbelief, or who seeks help from some other deity, will receive punishment in the hereafter. Undeniably, such teaching completely forced women to live with abusive husband without any option. The data gathered from participants of the FGD explain that, in cases of domestic violence, a victim might mistakenly believe that by passively enduring the abuse, she is fulfilling her duty to be patient. As participants of FGD have raised, in the case of domestic violence, abusers often distort or manipulate teachings to rationalize or justify their abusive behavior.

The other point worthy mentioned by many informant is that, the permissibility of polygamous marriages in Muslim religion. Muslim men can marry women up to four (1man-4women ratio). The key informant raise that, many of Muslim men are polygamous. They believe that, polygamous marriages are rights for them and they competes each other to do so. Such religious indoctrination/teaching has great challenges in protecting women against domestic violence. One Judge quotes the polygamous marriages that,

*“Muslim men are competing each other for polygamous marriage without any consideration. They married four women even without having any single ox.*

*So how they live together peacefully? A Person cannot live without food.*

*It is quarrel in each single day between each other's and with their husband.’’,<sup>233</sup>*

So, from these points, undeniably, it is understandable that, the religious indoctrinations have been seen as the challenges to protection of women against domestic violence in Jimma zone.

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<sup>232</sup> This teaching implies sensitivity, “For the husband is the head of the wife as Christ is the head of the Church, his body, and is himself its savior. As the church is subject to Christ, so let wives also be subject in everything to their husbands.” (Ephesians 5:23-24, RSV).

<sup>233</sup> Interview conducted with Judges at Jimma town woreda court on 13 April 2017

#### 4.3.2. The challenges of socio-cultural justification to DVAW

Consistent with prior qualitative research, it is clear that women who endorse the traditional gender roles in many society are more likely to be submissive, less likely to have power relation in relationship and more likely tolerate abuse.<sup>234</sup> At the same time, shame and fear of social stigma often prevent women from reaching out for help. In a patriarchal society, to be a wife and a mother represent key aspects of a woman's identity. The study conducted in Cambodia, pointed out that in developing countries most women cited the stigmatization associated with being unmarried as an additional barrier to leaving abusive relationships.<sup>235</sup>

In Ethiopian most of previous laws, custom and policy were criticized that it has been claimed up on traditional roles of women as wife and mother, and they reinforced the stereotypical domestic-bondage of Ethiopian women.<sup>236</sup> For many years, the criminal law response to domestic violence has been a legacy of past perception about the violence against women. It has a result of historical and cultural context in which violence against women in domestic sphere has been considered as prerogative of the man to discipline his intimate partner.

As such in the south western Ethiopia, men and women articulated various cultural justifications for domestic violence. As participants conceptualize, a few quotations from their idea illustrate common justifications given for wife beating. The quote illustrates how marriage is customarily construed, the wife being considered equivalent to property over which the husband is free to exercise his will especially in rural areas. One police officer, quotes that,

*“She cannot go anywhere without asking her husband’s permission.*

*They believe that he is their owner in all aspects especially in rural.*

*He supports them; their life depends on him, so, believed that, it is right for*

*him to beat them. He is the owner of all of her, and he can do anything he wants.’’,<sup>237</sup>*

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<sup>234</sup> Myunghan, *et al.* ‘A Hypothesized model of Korean women’s responses to abuse’ (2004) 23 Journal of Transcultural Nursing, Korea sage publication.

<sup>235</sup> Zimmerman, K. *Plates in a basket will rattle: domestic violence in Cambodia, a summary* (Phnom Penh, Cambodia, 1995).

<sup>236</sup> Tsehai Berhane sellassie(n 14)184

<sup>237</sup> Interview conducted with police officer from investigation department by the researcher on 13 April 2017

Though the legal framework aimed to reaches minimum standards with respect to gender equality and violence against women, including whether customary laws conflict, or are in harmony, with the convention on the elimination of all forms of discrimination against women, the socio-cultural problems are disproportionately challenging the women right protection in Jimma zone.

However, cultural or religious arguments should have never justified violence against women, and local customary laws should be aligned with other legal remedies. Regarding DVAW, customary law must be in compliance with international human rights standards and the convention on the elimination of all forms of discrimination against women. Wherever such laws are in conflict with human rights norms, in particular those of the convention on the elimination of all forms of discrimination against women, the latter must take precedence and be the benchmark for national law reform and national legislation.

#### **4.3.3. The challenges of Socio-economic problems of women**

The participants frequently mentioned poverty as the main reason for domestic violence and considered as challenges to protection of women. They pointed out that how their dependency on husband's income became worst and vulnerable to violence. This shows the subjugation of women emanates largely from their subordinate economic status. Resources are under the control of men as a result of power imbalance between men and women. This predisposes women to domestic violence and reinforces it.

It was also indicated that, lack of economic resources supports women's susceptibility to violence and their difficulty in get out from a violent relationship. The link between violence and lack of economic resources and dependence is interrelated. On the one hand, the threat and fear of violence keeps women from seeking their own income, or compels them to accept home-based exploitative labor. And on the other hand, without economic independence, women have no power to escape from an abusive relationship. One police officer told me the story of her client that,

*‘‘She is completely depending on her husband’s income.*

*She forced to tolerate her husband aggressiveness.*

*What could she do? If she was report the incident, abuser seeks divorce.*

*But she don't want divorce. If she divorce, she will have nothing... she don't have any place to go with two children. she have to take him for a while, but at least she raised her children at home, not on the streets'.*<sup>238</sup>

If a woman is economically dependent, she cannot leave the violent husband even if she wants to leave. It is a common belief that if a woman has her own income, she mayn't trap in abusive relationship and will not worry about supporting herself in the face of separation.

#### **4.4. Misconception about the problem and criminality of DVAW on parts of women**

As discussed earlier, cultural and social norms are highly influential in shaping individual behaviour, including the use of violence. Norms can protect against violence, but they can also support and encourage the use of violence. The participants of different FGD explain that, Social tolerance of violent behaviour is likely learned in childhood, through the use of corporal punishment, or witnessing violence in the family, in the media, or in other settings.

The data gathered from participants of FGD show that, many women believed that, any violence against them has been considered as legal acts of their husband. Accordingly a man has considered as a right to assert power over a woman and is socially superior. As data obtained from key informant reveal, a man has a right to “correct” or discipline female behaviour. Furthermore, a woman believes that, their freedom should be restricted, Physical violence is an acceptable way to resolve conflicts within a relationship. A woman is responsible for making a marriage work- believing that, sex is a man's right in marriage and girls are responsible for controlling a man's sexual urges.

As discussed so far, domestic violence is not simple issue. Victims of domestic violence have often experienced extreme levels of physical violence, emotional abuse and trauma for months or years before they seek help. However, despite of the fact that, the data obtained from the participants reveal that, given their religious and/or cultural beliefs, victims of domestic violence may believe that abuse is part of every marriage. If the victim has grown up in an environment

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<sup>238</sup> Interview with police officer from investigation department by the researcher on 13 April 2017

where domestic violence was condoned, it is more likely that she will stay in the abusive relationship. Victims tend to report the abuse to the police, womens affairs office or social workers only after they have tried unsuccessfully to resolve their disputes in private. Because, as shown by participants of FGD, abused women are usually stay with abusive husband and kept from easily leaving home.

However, as revealed by participants, there are misconceptions of abuse as it need not be reported on the parts of women. Many women believed that, beating, sexually abused, punching, threatening and other violence by their husband are considered as natural obligation up on women. The results indication that awareness related problems such as women not being aware of their rights, society taking DVAW as a norm and the dominant position given to men in society were some of the main reasons raised for misconceptions. This finding shows that there is a need to work on awareness rising on all fronts so as to contain the problem of DVAW.

Some key informants from public prosecutor explain that, they have a mandate to give awareness creation to community regularly and periodically. But, even though, there are such set up in justice office of all districts, its effectiveness to changing the minds of women remain under question till now. Even, women didn't know to where they go if they seek assistance. FGD participants have highlighted that women do not have adequate information regarding where they should go to/report when faced with DVAW cases. As a result even where VAW is committed there is low level of reporting.

As the data gathered reveals, the reason may include the absence of gender centered awareness creation and inefficiency method and less coverage. So, the Existing practices of awareness nurturing should be re-examined to bring about changes in consciousness. Accordingly, regular, targeted and community friendly approaches should be developed.

A culture of silence and secrecy that prevails in Ethiopia has been having a negative influence on women of Jimma zone and discourages them to report and/or disclose violent acts. The stigma attached to going public and disclosing violence and attacks perpetrated on women has made situations even worse and many women would opt to remain silent victims. According to the key informant from police station, even if victim decides to report, she might do it too late. Late

reporting gives time to a perpetrator to destroy evidences. It was told that it is very difficult for a victim of violence to reach a police station to file a complaint.

Such Orthodox minds think that a woman should keep her domestic issues to her home since she loses her respect when she brings them out in the streets or to police. Hence, the data indicate that, many abused women suffer in silence, endure physical abuse and remain in the abusive relationship. Victim's awareness are less and reluctances to report to the authorities. Most of the time, even they do not want the abuser to be removed from the home, go to jail or have a criminal record.



## **CHAPTER-FIVE**

### **Conclusion and Recommendations**

#### **5.1. Conclusion**

Domestic violence is the most common form of violence experienced by women which has been directed by their intimate partner and other sexual friends, and manifested through; physical, sexual, psychological and economic abuse. Domestic violence against women exists in countries with varying social, political, economic, and cultural structures. According to United Nations report, it is a global problem, at least one in three women is beaten, coerced into sex, or otherwise abused by an intimate partner in the course of her lifetime. People are not born perpetrators and for the most part there is no disease or illness that turns a non-abusive person into an abuser. Patterns of domestic violence against women may include physical violence, sexual violence, economic violence and psychological violence.

However, for many years, violence against women, and more specifically domestic violence was considered outside the realm of human rights issues because, perpetrators were private persons – in many cases husbands, partners, brothers, fathers or sons rather than actors working on behalf of the state and or outsider. Since the 1990s however, violence against women, including domestic violence, has received increasing attention by the international communities.

This surge in attention has resulted in the adoption of several crucial international and regional instruments in which States including Ethiopia have clear obligations under international law to enact, implement and monitor legislation addressing all forms of violence against women. Over time, the treaty bodies established to monitor implementation of the international human rights treaties have increasingly taken up states parties' obligations to address violence against women.

Accordingly, since the past two decades, violence against women has come to be understood as a form of discrimination and a violation of women's human rights. Violence against women, and the obligation to enact laws to address violence against women, is now the subject of a comprehensive legal and policy framework at the international and regional levels. Under the general recommendation No. 19 regarding violence against women, the committee on the elimination of discrimination against women confirmed that, under general international law and

specific human rights covenants, States may ... be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

Furthermore, an important regional instrument which extensively addresses VAW in its different forms is the African protocol on the rights of women requires State Parties to enact and enforce laws to prohibit all forms of violence against women in both the private and public realm; adopt legislative, administrative, social and economic measures to eradicate violence against women, punish the perpetrators of such violence and implement programs to rehabilitate victims. It establishes mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.

However, most of the Ethiopian previous laws and policy were criticized that it has been claimed up on traditional roles of women as wife and mother, and they reinforced the stereotypical domestic-bondage of Ethiopian women. For many years, the criminal law response to domestic violence has been a legacy of past perception about the violence against women. It has a result of historical and cultural context in which violence against women in domestic sphere has been considered as prerogative of the man to discipline his intimate partner.

The older criminal law (the penal code of Emperor Haileselassie) have recognised chastisement in some way and thereby legalized the incidence of domestic violence. On the other hand, the previous family code of Ethiopia which have been found in Ethiopian civil code, used to state the husband as the head of the family with significant decision making power. Moreover, in direct relation to legalizing the incident of domestic violence, the old family code used to authorize the husband to provide protection and to control the wife's conduct. During that time the international human right instrument ratified were not practically reflected in the Ethiopian legislations.

As such there are different challenges in Jimma zone to protect women against domestic violence. These challenges were mainly drawn from in-depth interview and focused group discussion conducted with different participants. Discussion depicts the challenges and obstacle by pinpointing different legal, practical, socio-cultural, religious and socio-economic challenges

to the protection of women and fighting domestic violence against women. Accordingly the challenges of legal lacuna (Legislative challenges), inadequate responses to the DV, socio-cultural, religious and socio-economic problem were depicted.

Regarding the legislative challenges, there are the problems of the scope of coverage of laws dealing with DVAW and extent of punishment. The Ethiopian legal framework falls short of the internationally accepted standards concerning DVAW. Different violence against women does not be criminalized in the way of understanding the complexity nature of the violence, though International standards require States to ensure that forms of violence against women are included in criminal law as criminal acts. The findings show that, FDRE criminal code doesn't criminalize many forms of domestic violence against women which may include; the sexual, psychological and economic abuse. And DVAW did not have much attention in this criminal code. It criminalized physical violence only in some extent. But this by itself did not add something to protection of WADV since it simply refers to the provision of ordinary physical injury. Undeniably such legal lacuna may possibly raised as challenges for our justice system in protection of WADV in general and particularly in Jimma zone.

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

Regarding the practical challenges, different problems were highlighted in the findings. Which may include; absence of victims protection and giving weak attention to investigation and prosecution due to different reason. *Inter alia*, the inconvenience of police office/ investigation room for victims- this creates a sense of awkwardness among victims; the problem of under required quality of staff, inefficiency amount of budget, reluctance to interfere in private affairs and inadequacy of coordination/relationship among legal institutions; the problem of reluctance of courts; the absence of victim protection and the other.

In case of victim protection, it has double importance; one is to prevent the loss of evidences and the other is to rehabilitate the victims from her harms by giving necessary psychological and physical healthy treatment. Ensuring greater access to services such as shelters, counseling and legal assistance, improved presentation of evidence at trial and application of effective measures to protect victims and witnesses may ensure the protection of WADV. Such needs special assistance facilities which may include specialist advice centers for women or the nation-wide Violence against women support hotline. However, as findings reveal such protection has not be seen in Jimma zone districts.

Regarding the problem of socio-economic, cultural and religious justification for DVAW - The finding shows that women face direct cultural and structural violence through a deeply entrenched system of patriarchy at all tiers of public and private life in Jimma zone. The deep rooted attitudes of socio-cultural, socio-economic and religious doctrine have been raised as concern for protection of women against domestic violence in Jimma zone. The idea of participants in my findings clearly spectacle that, Overcoming this challenge requires a shift in the conservative mindset and collective thinking the society to recognize women's rights as well needs to making women to understand the criminality of domestic violence and reacting to it properly.

Apart from socio-cultural, economic factors also stood out as one of the challenges to protection of women in the society. The findings reveal that, the lack of economic resources is the root cause of a lot of evils. Poverty is the main reason for sufferings, which stems deprivation of basic needs and thus creates frustration in the society. This frustration is then translated through different violent attitudes. Economic deprivation is coupled with social injustice which collectively contributes towards frustration and violence.

On other hand, the religious teachings and religious doctrine has imposed some challenges in protection of women-most commonly directives on marriage, based on scripture, are given to women by clergy and state that wives must ,submit to their husbands, a directive interpreted to elevate the husband/father as the absolute head of the household whom wife and children must obey without question. It also permits bigamous/polygamous marriage.

The other points are about the problems of Misconception of criminality of Domestic violence against women –The findings show that, many women believed that, any violence against them has been considered as legal acts of their husband. Accordingly a man has considered as a right to assert power over a woman and is socially superior. It is conceived that, a man has a right to correct or discipline female behaviour. Furthermore, a woman believes that, their freedom should be restricted, physical violence is an acceptable way to resolve conflicts within a relationship.

The results indication that awareness related problems such as women not being aware of their rights, society taking DVAW as a norm and the dominant position given to men in society were some of the main reasons discussed as a challenges to protection of women against domestic violence.

## **5.2. Recommendations**

Based on the findings and conclusions drawn above, the researcher recommends the following actions in order to ensure, the protection of women against domestic violence in Jimma zone.

Firstly, the Current Criminal Code of Ethiopia must be amended to cover all forms of violence against women which may include economic abuse, psychological abuse, sexual abuse and physical abuse properly. And, or enact separate legislation which dealing with domestic violence against women exclusively which contain; procedure of investigation, extents of punishments, ways of prosecution, comprehensive definition of domestic violence, including physical, sexual, psychological and economic violence by legislature. Likewise, the law of civil remedy which helps the victim to loge the claim directly to the civil court to obtain protection order against their abuser should be enacted.

Secondly, to curtail non-implementation of laws on domestic violence against women, the government must continuously be engaged in attempting to convince the legal community responsible for implementing the laws of the criminal nature of DV. Government should give regular and institutionalized gender-sensitivity training and capacity-building on violence against women for public officials. Accordingly, police officers, public prosecutors and judges should be sensitized and given training on the criminal nature of domestic violence and the unique

nature of domestic violence against women. Because, the offences of DV is very complex, committed in hidden place-behind the closed door and needs sophisticated mechanism of investigation, prosecution and punishment with sufficient knowledge.

Thirdly, Jimma zone law enforcement authorities should have to discharge their duties committedly. Accordingly, all authorities should have to give much attention to the incidences of domestic violence against women through proper investigation of the offence, prosecution of the perpetrator of the DV and imposing educative and an exemplary punishment. Refrain from conceiving domestic violence as mere private and family affairs. And have to interfere at any time; during violence, after violence and or on scene of the violence to protect women from such old scourge and devastating nature of violence directed against women.

Fourthly, victims of domestic violence should be encouraged to report the incidence of violence to the police and prosecutor by creating a more welcoming environment among law enforcement agencies and minimize secondary victimization of the complainant/survivor. To do so, The government have to designing and strengthening of specialized police units and specialized prosecutor units on violence against women, and provide adequate funding for their work and that, the complainants/survivors should have to the option of communicating with female police officers or prosecutors. The government needs to make conducive environment of investigation room by isolating the room from any investigation of ordinary crime. Likewise, the government has to provide for the creation of specialized courts or special court proceedings guaranteeing timely and efficient handling of cases of violence against women; and or ensure that officers assigned to specialized courts receive specialized training.

Fifthly, the Legislator should take all the necessary steps to ratify and translate international human right instruments to which Ethiopia has acceded that protect women from domestic violence in the Federal Negarit Gazette of the country. It should translate such treaties into the official language of Ethiopia, in order to make it easier for the general public to understand and exercise their fundamental human rights. Accordingly, Ethiopia should comply with its international and regional human right obligations including the CEDAW and the DEVAW to protect women from domestic violence. Furthermore, the country should take different measures

to enhance the protection of women such as media campaigns to sensitize society with regard to the issue of domestic violence, design action plans and allocate sufficient resources to combating domestic violence.

Sixthly, the state of Oromia should also do its best to abolish discriminatory customs, traditions and practices, which is susceptible to encourage domestic violence and hinder women's ability to exercise their human rights to dignity and equality. Accordingly, the government should address harmful customs and traditional practices through public education programme, and enforce the prohibition of such practices, with a special emphasis on rural areas such as Jimma zone districts. And ensure that no custom, tradition or religious consideration may be invoked to justify violence against women.

Seventhly, education should be designed to make women aware of their human rights, such as the rights to bodily integrity, privacy, human dignity and equality, among others. The educational administration of Ethiopia and academic institutions must incorporate information about domestic violence against women and the consequences that entails. Public education is also instrumental in sensitizing the public and creating awareness about the evils of domestic violence and the human rights that it violates. Hence, the government should properly support and funding for public awareness-raising campaigns on violence against women, including: general campaigns which sensitizing the population about violence against women as a manifestation of inequality and a violation of women's human rights; and Specific awareness-raising campaigns designed to heighten knowledge of laws enacted to address violence against women and the remedies they contain.

Eighthly, the government should introduce victim's protection at one stop service in Jimma zone through "integrated treatment and justice" in collaboration with police, prosecutors, judges, NGO's, the health sector and the education sector. And ensure the standardized forms, for the comprehensive and timely implementation of this service. Accordingly, State have to provide funding for, and/or contribute to establishing comprehensive and integrated support services to assist survivors of violence and the women's children which may include; one shelter/refuge

place for every abuse of domestic violence against women, providing safe emergency accommodation, qualified counseling and assistance in finding long-term accommodation.



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## Annexes

### Questions prepared for Interviews and FGD

#### 1. Interviews for Judges and prosecutors

1. From your experience, Can you identify economic, psychological, physical and emotional violence?
2. How many cases you faced in every year? /
3. Do you ever face the crime of domestic violence? How do you react to DV cases?
4. How do you give attention to the crimes of DVAW in relation to other crime? Regarding investigation and prosecution (for prosecutor), making the perpetrator responsible and impose educative punishment (for judges) / Why? /why not?
5. Do you think that the extents of punishment for the perpetrator of DVAW are sufficient to control DV?
6. How much does DV cases are brought to the court? What do you think the reason for it?
7. How the court does reacting promptly to DV? (for prosecutor)/ How does the prosecutor is reacting promptly to DV?(for judge)
8. How much an Ethiopian law, regarding protection of women against domestic violence does a comprehensive enough to control DV?
9. Is civil remedy is necessary in Ethiopian context for protection of women against domestic violence? / Why?
10. Does ever the court can take action directly upon complaint of victim? /why? /why not?
11. Have you experienced any challenges in the implementation of dv laws? /why? How?
12. Do you think any challenges to protect women against domestic violence? What is it?
13. Do the services/practices cover all of forms of violence against women or specialize on one?
14. Should governments be encouraged to develop policies/strategies/plans of action counter to violence against women or should the issue be mainstreamed across all policy concerns/priorities?
15. Should professionals be specialized, i.e. dedicated police units/stations, specialist prosecutors, domestic/sexual violence courts?
16. Are gender-discriminatory laws still in legal codes? What is it? / are these provisions enforced?

## **2. Interview for the Police**

1. How do you react to the incidence of DVAW?
2. Do you conceive domestic violence against women as a criminal act?
3. To what extent do you give attention to the investigation of DVAW in comparison with to other crimes?
4. How extent does women report the problem of DVAW to your office?
5. How do you think about the conduciveness of investigation room? Does it appropriate for women?
6. Do you think is there any reluctance on behave of women to report the incidence?
7. What do you think about reluctances of women to report this problem?
8. Is there any possible protection which can be given for the victim of DVAW? What is it? / Why not?
9. Do you think that domestic violence is a family matter and police need not be interfered? Why so? /why not? /How?
10. If woman approaches to you with complaints of domestic violence, how you will react to them?
11. Do you prefer to investigate or left to arbitration? Why?
12. Do you think any challenges to protect women against domestic violence? What is it?
13. Do communities conceive the acts of domestic violence as a crime? How/Why not?

## **3. Interview for the local NGO's**

1. How do you understand domestic violence against women? In what way do you help the victims of DV?
2. Where do you take the victim? Did you seek any assistance from other? From where?
3. What was the attitude of police?
4. Do the police react positively or sympathetically to your report?
5. How do you evaluate the reaction given to the victims from the law enforcement authorities? (judge, prosecutor, police and other)
6. How do you see the environment of investigation room? Is it conducive for women to talk their domestic abuses privately/secretly?

7. How do you see the facility needs to be provided to the victim? Is there any victims protection mechanism around the law enforcement authorities?( shelter, medical facility, food, ...)
8. Do you think the socio-cultural and religious teaching regarding DV? Does it have any contribution for the protection of women against DV? How/why not?
9. How do you think about the conception of women about criminality of domestic violence? Why/why not?
10. Do the women opt to report the incidence to the police? Any other authority?
11. If the answer will be yes, to whom do they report? Why/how/ why not?
12. If the victim does not approach to the police, what is the reason for non approachment?
13. Do the court/prosecutor/police entertain your case promptly?
14. Is there any things which do you think as challenges in protecting women against domestic violence in Jimma zone? What is it? How?

#### **4. Interview for professionals of Women and child affairs office**

1. How do you understand domestic violence against women? What is that?
2. Do you believe domestic violence is a criminal act? /how/why?
3. Does the victim come to your office for the need of assistance? / How/Why?
4. How do you assist the victim of DVAW? Do you take them to law enforcement authorities?
5. How much do they react to the incident of DV? Does police properly react to it? / Prosecutor investigates properly? /does court give attention? / How /why not? /why?
6. Do you think socio-cultural factors on the prevalence of DVAW? / What? /How? /Why?
7. How do you evaluate the environment around investigation room? Does it appropriate and conducive for women? Why/why not?
8. Do you notice any challenge in the implementation of dv law? If the answer is yes, what is the challenge?
9. How do you see the socio-cultural and socio-religious of Jimma zone communities in light of protecting women against domestic violence? / Does it mutual supportive or contradictory?
10. Do you think any challenges to protect women against domestic violence? What is it? / How?

**5. For Focused group discussion (for all participants)**

1. How do Jimma zone communities (victim, women, men and law enforcement authority) understand domestic violence against women as the criminal act?
2. How the authority does react to the incidence of domestic violence?  
/investigation/decision/victim assistance/remedies/?
3. Do you think does the socio-cultural and religion have implication in protection of women against domestic violence? /how? / Why?
4. How do you evaluate the Ethiopian law regarding protection of DVAW?
5. Do you think any challenges to protect women against domestic violence? What is it?  
/How?