

Jimma University College of Law and Governance
School of Law



The Criminal Justice's Response to Violence against women in Ethiopia: Case study in Hadiya of SNNPR

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

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June, 2018

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Declaration

Elias Getahun, hereby declare that this thesis is my own work and it has not been presented for a degree in any other University. All sources of materials used have been duly acknowledged by proper referencing.

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Acronyms

ACHPR	African Charter on Humans and Peoples Right
ADR	Alternative Dispute Mechanisms
CEDAW	Convention on elimination of discrimination against Women
DEVAW	Declaration on elimination of violence against Women
FDRE	Federal democratic republic of Ethiopia
FGD	Focused Group Discussion
FGM	Female Genital Mutilation
ICCPR	International covenant on civil and political rights
ICESCR	International covenant on Education, social and cultural rights
IPV	Intimate partner violence
Rec	Recommendation
Res	Resolution
STDs	Sexually transmitted diseases
OHCHR	United Nations Human rights office of the high Commissioner
UDHR	Universal declaration of human rights
UN	United Nation
UNGA	United Nation General Assembly
UNGAR	United Nation General Assembly Resolution
UNICEF	United Nations Children's Fund
UNR	United Nation Recommendations
VAW	Violence against women
WHO	World health organization

Abstract

Nowadays violence against women is the most pervasive form of violation of women's human rights. It occurs within family, general community and committed or disregarded by states. It also takes any of sexual, physical and emotional abuses against women. Among other things it negatively affects the economic, social and health aspects of women. Above all it exposes women to various health related issue like susceptibility to HIV/AIDS and other sexually transmitted diseases (STDs); and to reproductive health problems.

Despite international and regional human rights instrument's progress to protect women against all forms of discrimination and ensure equality, the prevalence of various forms of violence persists throughout the world to which Ethiopia is not an exception. The problem is not only limited on the pervasiveness and magnitude of the acts but it extends, inter alia, to implementation weakness of State apparatus. With this respect, particularly it has been noted that the criminal justice plays a critical role on the protection of women against all forms of violence. In this respect its failure to effectively respond to the incidences of violence against women jeopardizes the women's human rights protection. Thus those limitations on the criminal justice's response need to be identified through scientific legal research methodology.

This study, depending on the qualitative legal research methodology and analyzing various relevant legal frameworks, has reached on various findings on Hadiya zone criminal justice's response to VAW. Accordingly, the study has identified the existence of concerns regarding to prevention, investigation and prosecution; and ensuring the accountability of perpetrators of VAW and providing redress to victim. Those concerns are attributable to, inter alia, budget constraints, lack of specialized investigative skill, passive investigation procedures which insists victims to submit evidences and non- proportionate between the case loads and numbers of professionals. In addition to that major challenges that halt the effectiveness of criminal justice's response to the VAW are identified which includes, inter alia, the normative framework gaps, institutional gaps and other challenges like influence of local elder's arbitrations and inadequate multi-sectorial coordination. Finally the study has provided recommendations.

Key Words: violence against women, criminal justice's response, the challenges, legal frameworks, victims

Chapter-One

1) Introductory Matters

1.1) Background of the study

Violence against women (VAW) remains a pervasive form of violation of women's human rights. As fact shows globally one in three of women have experienced either physical and or sexual intimate partner violence or non- intimate sexual violence in their life time.¹ According to the definition of the definition of Declaration on the Elimination of Violence against women (DEVAW), it is '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 in private life'.² In view of that VAW can take different forms such as physical, sexual and psychological harms. Amongst others, it enormously affects the social, economic and health aspects of women and the society at large. Principally, according to the study conducted by World Health Organization (WHO) violence against women adversely affects women's health, *inter alia*, it affects mental health , increases the vulnerability to HIV/AIDS and other sexually transmitted diseases (STDs); causes reproductive and sexual related health problems.³

Violence against women, despite its prevalence, had never won the attention of international community for years. However since 1970s, it has got an attention from core international human rights instruments after enormous awareness creation and campaign about its widespread impact on the human, economic and social life.⁴ At international level apart from bills of international human rights⁵ that recognizes the human rights of everyone; in 1979 United Nation General Assembly has adopted convention on the Elimination of All forms of Discrimination against women (CEDAW).

¹ WHO, 'Violence against women Intimate partner and sexual violence against women' (Fact sheet updated, November 2017) <www.who.int/mediacentre/factsheets/fs239/en/> accessed Feb 9, 2018

² Declaration on the Elimination of Violence against Women (adopted 2o December 1993 UNGA Res 48/104 (DEVAW) art 1

³ WHO, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (WHO Press, 2013) 31

⁴ Andrew Byrnes and Eleanor Bath, 'Violence against Women , the Obligation of Due Diligence , and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against WomençRecent Developments' (2018) 8 Human Rights Law Review 517

⁵ International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) are international bills of human rights protects every one human right.

Nation General Assembly. CEDAW is binding international convention that intensively discusses the prohibition of discrimination against women.

The 1993 Declaration on the Elimination of Violence against Women (DEVAW)⁶ has also recognized the protection of women against violence. This declaration provided for the obligation of states to protect women against all forms of violence and to provide adequate redress for those victims of violence against women. In other way regional human rights instruments including: the Istanbul Convention of the Council of Europe (2012), the African charter on humans and people's rights, the Protocol to the African charter on the rights of women in Africa 2003, and the Inter-American Convention on the prevention, punishment and eradication of violence against women (Belem do Pará Convention) in 1994, can be mentioned as instances that recognize protection of women against all forms of violence. In addition to those instruments, among soft laws the Beijing Declaration and Platform for Action has also recognized violence against women as a human rights violation.⁷

Among others, those above mentioned international and regional human rights standards along with protection of human rights of every person have recognized the right to get adequate remedy when rights are violated. In this regard Article 2 (3) of ICCPR dictates that through competent judicial body everyone has right to effective remedy when their rights are violated. At the same time Article 2(c) of CEDAW obliges State Parties to ensure effective protection of women against any form of discrimination through competent tribunals and institutions. With this respect victims of violence against women have right to get remedy according to international, regional and national human rights standards in competent State machineries including criminal justice.

States obligation to protect women against violence is emanated from the international human rights standards which dictate states bear responsibility to respect, protect and fulfill the human rights of individuals. States are under obligation to adhere and apply basic human rights principles toward realizing the human rights of every person. Among others, the principles of non-discrimination and equality required to be respected and applied by State Parties to

⁶ DEVAW (n 2).

⁷ Beijing Declaration and Platform for Action, adopted by Fourth World Conference on Women, 15 September 1995, A/CONF 177/2o

effectively ensure the protection of women against all forms of discrimination. Here CEDAW clearly obliges State Parties, through taking all appropriate measures, to ensure the realization of women's human rights to be free from any forms of discrimination.⁸ The protection obligation of state parties, *inter alia*, comprises taking measures like enactment of legislations that avoids prejudices toward gender equality and criminalizing the practices of violence against women; and strengthening the enforcing capacity of domestic law enforcement bodies.

Through time regarding responsibility of States, the standard of due diligence principle⁹ has developed as States are held responsible for its failure to protect women against violence perpetrated by non state actors. According to this principle States are mandated to take actions diligently to ensure the effectiveness of prevention, investigation, prosecution, punishment of perpetrators of VAW and providing remedies to victims of violence against women.¹⁰ Accordingly States are under obligation to take every necessary actions to protect and eradicate the practice of violence against women, *inter alia*, through enactment of legislations, polices and national action plans, and more than anything via practically implementing their roles of prevention, investigation, prosecution, punishment and redressing the victims VAW through their law enforcement agencies.

The mandate of enforcing the human rights of women, *inter alia*, through strengthening the criminal justice to effectively prevent, investigate, prosecute and punish the perpetrator of VAW; and providing redress to the victim, are left to the individual country. Here each state is under the mandate of preventing and providing protection for women against any form of violence. Among other things, taking legislative measures, policy measures, enacting plan of actions,

⁸ Convention on the Elimination of All Forms of Discrimination Against Women (adopted on 18 December 1979 UNGA Res 34/180 (CEDAW) art 2

⁹ The principle of due diligence is interpreted by the committee on CEDAW under paragraph 9 of general recommendation no. 19 which dictates that discrimination under the Convention is not restricted to action by or on behalf of Governments and that States may also 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; and jurisprudences like *Velasquez Rodriquez v. Honduras*, 1988 Inter-Am. Ct. H.R. (ser. C) No.4, 172 (July 29, 1988) has supported the due diligence standards.

¹⁰ These obligations of states can be inferred from various international human right conventions CEDAW and its Committees' general recommendation no. 19. Accordingly, even if the term "violence against women" does not appear under the CEDAW, the committee on CEDAW which is responsible for the interpretation of the convention has come up with the interpretation that protection to discrimination under the convention also applies for the violence against women and hence state parties are obliged to protect women against VAW.

strengthening the justice system and working with cooperation with other stake holders, are basic to combat violence against women. In this regard one can't forget the vital role ought to be played by the criminal justice in course of preventing, investigating, prosecuting and ensuring the accountability of perpetrators of VAW; and providing remedy to victims. In this respect the justice apparatus of State is expected to effectively enforce women's human rights according to the international, regional and national human rights standards. However on the ground the implementation is known by its concerns with regard to applying those human rights standards and principles.

Albeit aforementioned international and regional human rights instruments progress, the prevalence of VAW is remained as a global concern in our present day. According to the WHO multi-country study on women's health and domestic violence against women, as one form of violence against women, intimate partner violence is widespread throughout the studied countries.¹¹ In addition to that the study also shows that at world level sexual violence against women accounts about 59 percent and physical violence has reached to 49 percent.¹² In addition to that the CEDAW committee has expressed its concern on the violence against women subsistence as a pervasive problem throughout all party States in high level of impunity.¹³ Here the issues are not only about the pervasiveness of VAW but it goes to the poor implementation record of State toward the protection of women against all forms of violence. Among other reasons, the justice sector's poor responses to the VAW can jeopardize the women's human rights.

Ethiopia with commitment to respect, protect and fulfill the human rights of women, has ratified various human rights instruments including the bills of international human rights¹⁴ and other specific women's right instruments like the 1979 CEDAW.¹⁵ Moreover at national level the Constitution of Federal Democratic Republic of Ethiopia (FDRE) has clearly provided that those

¹¹ García-moren et al, *WHO Multi-Country Study on Women's Health and Domestic Violence against Women : Initial results on prevalence, health outcomes and women's responses* (WHO Press 2005)
<<http://www.who.int/gender/violence/en/>> accessed 4 February 2018

¹² ibid

¹³ Committee on the Elimination of Discrimination against Women General recommendation no. 35 on gender-based violence against women, updating general recommendation no.19, 2017

¹⁴ The two international conventions namely International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social, and Cultural Rights (ICESCR)

¹⁵ Ethiopia has ratified CEDAW in 1981

international and regional human rights instruments which Ethiopia ratified are declared as an integral part of law of the country. Besides this there are further national laws which provide protection of women against violence. Accordingly the 2004 FDRE criminal code of has provisions regarding women's human rights that criminalize various practices of violence against women. In addition to that the Federal Revised Family code along with respective regional state family laws can also be mentioned as part of domestic legislation that recognizes non discrimination and equality of women. In addition to that Ethiopia has also taken various policy reform programs and enacted national plan of actions to better realize the human rights of women.¹⁶

Even if Ethiopia has taken various legislative and policy commitments to protect the human rights of women, as figures shows the magnitude of violence against women are still persists in the country. According to the study conducted by the World Health Organization (WHO), 71 percent of Ethiopian women experienced physical and sexual life time violence by intimate partners.¹⁷ In addition to that study conducted by United Nations Children's Fund (UNICEF) on the practice of Female Genital Mutilation (FGM) indicates that about 80 percent of women in Ethiopia are victims of violence against women.¹⁸ In the Regional State of SNNPR, including in Hadiya Zone, as several studies have indicated acts of VAW is high in its magnitude.¹⁹ The protection of women against violence requires, apart from taking legislative and policy measure, a multi sectorial cooperation and commitment among the law enforcing government agencies and others non-governmental bodies along with the imperative role ought to be played by the criminal justice.

¹⁶ The following national polices and action plans can be considered as measures taken by the FDRE government to protect human rights of women include: - National Women's Policy (1993), FDRE Criminal Justice Policy (2011), FDRE National Human Rights Action Plan 2013-2015, the Strategic Plan of Ministry of Justice and Regional Justice Bureaus (Justice Sectors) Five Years (2010/11-2014/15).

¹⁷ Moren (n 11).

¹⁸ UNICEF, 'Female genital mutilation/Cutting: A statistical exploration' (New York, 2005) <<https://www.popline.org/node/260123>> accessed 9 February 2018

¹⁹ Nigatu Regassa and Gete Tegaye, 'Women's Status among Households in Southern Ethiopia: Survey of Autonomy and Power' (2016) 1 HSS 30

1.2) Statement of the problem

In Ethiopia to address the issues of violence against women various measures have been taken by the State. As response to the protection of human rights of every person Ethiopia has ratified most of the core UN human rights treaties and regional human rights instruments including CEDAW and the African Charter on Humans and People's Rights. At national level Ethiopia has also taken different steps to combat violence against women, *inter alia*, including promulgation of domestic laws,²⁰ formulated National Women Policy and National Human rights Action Plan²¹ concerning protection of women's human rights. However, in Ethiopia, despite those legislative and others measures taken the magnitude and prevalence of various forms of violence against women still subsist. And the prevalence of various forms of violence against women is more sever in the rural part of the country.²²

With reference to State machineries' responsibility to protect and enforce women's human rights, *inter alia*, the criminal justice stands at frontline. In this regard the FDRE constitution as a supreme law of the land obliges State machineries including criminal justice (i.e. Police, public prosecutor and court) to respect and enforce the human rights provisions.²³ Besides that the FDRE Justice Policy and National human rights Action Plan have provided various strategies that criminal justice should work to effectively protect and enforce the fundamental human rights of women which include responding to the incidence VAW. Accordingly the criminal justice are expected to effectively respond to incidences of VAW via discharging its role of prevention, investigation, prosecution and insuring accountability of perpetrators of VAW; and providing remedies to the victims of VAW.

However, the Ethiopia criminal justice suffers from lack of due attention to respond to the incidence of VAW and redress the victims of violence. In this regard, the committee on CEDAW under its concluding observation on Ethiopia has expressed its concern, *inter alia*, on slow

²⁰ As instances of domestic laws the following can be identified: Criminal Code of the Federal Republic of Ethiopia, pro no. 414/2004, and the Revised Family Code of Ethiopia, Proclamation No. 213/200.

²¹ The Federal Democratic Republic of Ethiopia: National Human Rights Action Plan, 2013-2015, Draft Unofficial Translation

²² Negussie Deyessa 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

²³ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995 article 13(1)

implementation of the convention, on prevalence of practices of abduction and rape.²⁴ And in the same concluding observation the committee has urged Ethiopia to ensure that ‘the prosecution and adequate punishment and that victim have immediate means of redress and protection’.²⁵ In addition to that the African Commission on Human and Peoples' Rights under its communication has held Ethiopia responsible for Ethiopian criminal justice failures to adequately investigate and redress victims of violence against women.²⁶

On the other hand, regarding the study area besides the pervasiveness of some forms of VAW, the researcher has encountered with various cases while working as public prosecutor with regard to the violence against women in one of the Hadiya zone criminal justice in which victims were not treated and get remedy according to pertinent human rights standards. It obvious that enforcement concerns of government institutions particularly criminal justice, *inter alia*, impinge women’s human rights to be free from all forms of violence.

The above identified concerns regarding implementation and pervasiveness of violence against women in country and specifically in Hadiya Zone occurred despite Ethiopia has taken various above discussed legislative and policy measures. Particularly, in case where State enforcing bodies fail to enforce their mandate of preventing and protection of women against violence as per pertaining international and domestic laws, it has an adverse effect on the protection of women against violence. In this regard, the implementation experiences and major challenges of criminal justice in the study area need to be identified by scientific research methodology.

1.3) Research questions

The study will answer the following questions:

- 1) What are the legal and policy frameworks on the criminal justice`s response to violence against women?

²⁴ UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women: Ethiopia, Thirtieth session 12- 30 January 2004, CEDAW/C/2004/I/CRP.3/Add.7/Rev.1

²⁵ *ibid* par 256.

²⁶ Equality Now and Ethiopian Women Lawyers Association (EWLA) v The Federal Democratic Republic of Ethiopia, (Communication 341/2007) 58th Ordinary Session of the African Commission on Human and Peoples' Rights, held in Banjul, the Gambia (6-20April 2016)

- 2) What are the forms of violence against women those are prevalent and reported to the criminal justice in the study area?
- 3) How adequate is the criminal justice's response to the VAW from perspectives of discharging its roles to prevent, investigate, prosecute and ensure the accountability of perpetrators of VAW in Hadiya zone?
- 4) Does the criminal justice provide a special attention to the cases involving various forms of VAW?
- 5) How the criminal justice is provides civil remedies (award compensations) to the victims of various forms of VAW in Hadiya zone?
- 6) What are the major challenges faced by criminal justice in discharging its mandate of preventing and protecting violence against women in Hadiya Zone?

1.4) Objectives of the study

4.1) General Objectives of the study

The general objective of the study is to identify the existing legal and policy frameworks pertaining to the criminal justice's response; and to explore the enforcing experiences and main challenges faced by the criminal justice in course of protecting women against violence in Hadiya Zone of SNNPR, Ethiopia.

4.2. Specific Objectives of the study

The study has the following specific objectives:

- 1) To identify the legal and policy frameworks on the criminal justice`s response to violence against women.
- 2) To identify the forms of violence against women those are prevalent and frequently reported to the criminal justice in the study area.
- 3) To appraise the adequacy of the criminal justice's response to the VAW from perspectives of discharging its role to prevent, investigate, prosecute and ensure the accountability of perpetrators of VAW in Hadiya zone?
- 4) To assess how the criminal justice provides a special attention to the cases involving various forms of VAW.
- 5) To identify how the criminal justice is providing civil remedies (awarding compensations) provided to the victims of various forms of VAW in Hadiya zone.

- 6) To identify the main challenges faced by criminal justice that inhibits the effective protection of women against violence in Hadiya zone.

1.5) Significance of the study.

The study will provide a good opportunity for the study area's administration body to work on their weak sides regarding implementation mandate of protecting women against violence. In addition to that the study will provide a better opportunity for crafting a plausible coping strategy to combat violence against women within the criminal justice.

And the study will enable the policy makers to examine and review the effectiveness of existing legislations, policies or action plans of the country relating to protection of women against violence. The study will also provide important information for those interested domestic or international civil societies/charities' operating on the area of women's human rights to work with cooperation to criminal justice. Finally, the study will open a way for researchers to conduct further studies on protection of violence against women in any context.

1.6) Scope of the study

The study is restricted on identifying the existing legal and policy frameworks pertaining to the criminal justice's response; and exploring the enforcement experiences and its impediments faced by Hadiya zone criminal justice in the course of protection of women against violence. This study is limited to those forms of violence against women which are criminalized under Ethiopian criminal laws and frequently reported to the criminal justice at the study area.

1.7) Methodology of the study

The study mainly employed a qualitative legal research methodology. In addition to that the study used a legal scrutiny of various international and regional human rights instruments; and domestic legislative frameworks to make an analysis of collected data. The reason for the selection of qualitative methodology lies on the purpose of the study. That means studies aimed

on the exploration of certain problems based on the outlooks and experiences of study participants would better be identified by applying qualitative research methodology.²⁷

In this regard via qualitative legal research methodology the study has analyzed various issues pertaining to the criminal justice's response based on the data received from key respondents. The study has used both primary and secondary resources as sources of data to achieve the objectives of the study.

1.7.1) Secondary Data sources

Data gathered from the respondents was employed as primary sources of data. Here data are collected from key respondents through in-depth semi-structured interviews and focus group discussions. Data are also collected by observation according to its relevance to subject matter of the study. (See the detail on section 7.4.)

1.7.2) Primary Data sources

The study has used various domestic laws and international human rights instruments ratified by Ethiopia as sources of data. Additionally the study has used different national policy documents and other academic literatures like articles, thesis, books; and general comments and recommendations of various international human rights bodies.

1.7.3) Target populations and sampling

The study area Hadiya zone²⁸ comprises ten administrative districts and one self-administrating city. The study districts are selected based on quota sampling technique with the aim of adequately representing data from all geographical locations of districts. The quota sampling is advantageous as it assure inclusion of study participants who may be less represented by purposeful sampling techniques.²⁹ Accordingly, the study selected four districts: Hosanna town

²⁷ John Creswell, *Qualitative inquiry and research design: Choosing among Five approaches* (2nd end, Thousand Oaks Sage publication, 2007) 40

²⁸ Hadiya Zone found within the regional administration of north western part of SNNPR, Ethiopia. Hadiya zone is found at 230 km south-west of Ethiopia's capital city; Addis Ababa. The zone has 10 districts and 1 self administrating city for the purpose of administration. According to the 2007 Ethiopian National population and housing census it has total population of 1,231,196, among that female count for 619,170 and male 612,026.

²⁹ Mark Luborsky and Robert Rubinstein, 'Sampling in Qualitative Research: Rationale, Issues, and Methods' (2011) 4 NIH 10

from Northern part, Gombora district from Western part, and Shashogo district from Eastern part and Duna district from Southern part of Hadiya zone.

Accordingly from those selected districts the following target populations are identified for the purpose of the study such as Courts, Justice Office and Police Office. Their selection as target study population is based on their role on the protection of women against violence. These governmental institutions, as they constitute criminal justice, are responsible to prevent and protect women against all forms of violence.

On other hand the Women and Child affairs Office and few women victims of various forms of violence are selected as key informants to share their experiences on how the criminal justice in districts are discharging its roles regarding protection of women against violence.

1.7.4) Data gathering mechanism and Tools

1.7.4) In-depth interviews

Under this study in-depth interview tool of data collection is employed because it encourages the informants to express their personal feelings, experiences and opinions on the subject matter.³⁰ Further this tool creates an opportunity for the researcher to collect data on the sensitive subject matters that most of the time people are indisposed to discuss in group.³¹

The study used the Semi-structured interview method to gather information from the key informants. For the purpose of this study semi-structured interview is found to be appropriate as it provide an option for the interviewer to ask flexible questions and encourages interviewee to willingly share their experiences on the subject matter.³²

For the purpose of interview total no. of 24 key respondents were selected via purposive sampling techniques from different bodies (such as Police, Justice Office, Court and Child and women affairs Office) based on their level of responsibilities and to their relative role on response to violence against women in which they represent and elaborate the subject matter.³³

³⁰ Natasha Mack et al, *Qualitative Research Methods: a Data Collector's Field Guide* (2005) 29

³¹ *ibid*

³² Essa Adhabi and Christina Blash, 'Literature Review for the Type of Interview in Qualitative Research' (2017) 9 International Journal of Education 86, 89

³³ Luborsky (n 29) 10.

Accordingly from each selected districts Court the president and one criminal bench judge were participated as key respondents (total of eight). And from Justice Office of selected districts two prosecutors were participated as key respondents (i.e. total of eight). From each selected study districts of Police Office, one crime investigative police is participated (i.e. total no. four). And four key informants were interviewed from districts' Child and Women and affairs Office.

In addition to that from each districts three victims of various forms of violence (total of 12) were selected as key informants. These victims were purposively selected based on their exposure to the services of criminal justice. And they were selected with the cooperation of districts Child and women affairs Office; and Justice Office. Here the purpose of interview with victims is to grasp information on the adequacy of criminal justice's response to VAW and treatment of victims. During the process of interview the researcher has used recording equipment and transcribes the words in to note books so as to easily grasp and analyze the data.

1.7.4.2) Focus Group Discussions

The study also employs Focused Group Discussion (FGD) as a tool for collection of data. Accordingly the study arranged two FGD in two of study districts (i.e. at Duna and Shashogo) each groups involving five to six participants from the Child and Women affairs Office, Prosecutors and Judges. Most of the FGD participants were recruited out of those key informants indicated under section 1.7.4.1. The aim discussion lies on the fact that FGD involve broad range of views that help the researcher to grasp and analyze important information produced from discussion.³⁴

1.7.4.3) Observation

In the course of the study some data relevant to the study were assessed through the mechanism of observation. The observation method permits the researcher to understand issues under the topic of study through looking direct evidences.³⁵ For instances, *inter alia*, data on the convenience of police investigation room and court benches to victims of VAW were gathered through the application of observation technique.

³⁴ Mack (n 30) 51.

³⁵ Martyn Denscombe, *The Good Research Guide for small-scale social research projects* (4th edn, Open University Press 2010) 196

1.7.5) Data analyzing methods

The study employed an interpretational and a descriptive data analysis technique. To give a meaningful interpretation and description to the collected data's the study also used legal analysis of various domestic legislative frameworks and international human rights instruments which Ethiopia has ratified. Information collected from key informants were documented and transcribed from Hadiyissa/Amharic in to English. And those data are categorized in to various themes to make the analysis of data more meaningful.

1.8) Literature Review

I have tried to review different literatures which were written on diverse aspects of violence against women in Ethiopia and in some districts of SNNPR. Most of the literatures were more concerned about the prevalence, magnitudes, causes and effect of various forms of violence against women. In Ethiopia literatures written the area of legal protection of women against violence, with particular emphasis to criminal justice's response to VAW, were found scant. Besides that the following literatures are selected for review purposes based on their relevance to the subject matter of the study. In this regard some literatures, written in Ethiopia and SNNPR to indentify the prevalence and magnitudes of violence against women, have been selected for review. And some legal literatures written in context of protection of women against violence within the law enforcement agencies were also consulted.

One study conducted by Deyessa *et al* in SNNPR of Ethiopia in two districts of Meskan and Mareko in Guraghe zone in 2009, has tried to inspect the relationship between intimate partner violence and depression in the study areas.³⁶ According to the study about 1994 of women were chosen by simple random sampling. The finding of the study indicted the prevalence of high lifetime intimate partner physical violence of about 49.5 percent. The study besides examining the relation between intimate partner violence (IPV) and depression it fails to address other aspects of violence against women like connection with Stake holder's responsibility on the pervasiveness of violence against women.

The other study conducted by Nigatu Regassa in Sidama Zone of SNNPR titled '*Intimate partners' violence in Southern Ethiopia: Examining the prevalence and risk factors in the*

³⁶ Deyessa (n 22).

Sidama zone’ by employing the sample size of 1094 of households based on probability sampling. The study revealed that ‘the prevalence of intimate partners’ violence is high in the study population (ranging from 14.7 to 61.2 percent) with physical violence (beating, causing physical damage and slapping) accounting for the largest share of the overall abusive acts.’³⁷ In addition to that the same study has also identified that women living with alcoholic husbands and food insecure households and women participating in income generating works are more exposed to intimate violence. And the socio- cultural practices and attitudes of the community are identified as the main determinant factors for the occurrences of intimate violence against women. However the problem with study is that it only tried to indentify the prevalence and magnitude of intimate partner violence against women along with its determinant factors. That means it has failed to mention other determinant factors, like the effect of law enforcement agencies implementing strategies, which can be identified as aggravating circumstances for the prevalence of the intimate partners violence.

Study conducted in Hadiya Zone of SNNPR regarding Female Genital Mutilation by Mulugeta Tamire and Mitike Mollatitled in 2013, with title “*Prevalence and belief in the continuation of female genital cutting among high school girls: across - sectional study in Hadiya zone, Southern Ethiopia*” has announced its findings on FGM. The finding of the study shows that among the participants 82.2 percent of them were victims of FGM. The study also identified that the cultural attitude of the community associated with ‘hygiene of female genital and other social factors’³⁸ has contributed its part for continuance of the practice.³⁹ However the research has failed to mention issues regarding to the effect of legal protection or response of law enforcing organs on the sustainability of FGM practices in the district.

The other study conducted by Nigatu Regassa and Gete Tsegaye in 2016, with title “*Women’s Status among Households in Southern Ethiopia: Survey of Autonomy and Power*” has identified large portions of women are victims of various forms of violence’s ranging from insult to serious bodily injury. The study also has revealed that the decision making of women is affected by

³⁷ Regassa (n 19).

³⁸ Mulugeta Tamire and Mitike Molla, ‘Prevalence and Belief in the Continuation of Female Genital Cutting among High School Girls : A Cross - Sectional Study in Hadiya Zone , Southern’ (2013) Bio Med central Public Health, available on < <http://www.biomedcentral.com/1471-2458/13/1120>> accessed on April 3, 2018

³⁹ *ibid*

various factors like wealth status, household size, access to Radio and sex preferences index. The study was conducted on data taken from five randomly selected Zonal districts of SNNPR including Hadiya Zone, Sidama, Gamo Gofa, South Omo, Bench Maji and Hawassa City Administration. The focus area of the study is on the prevalence of violence against women and about the determinant factors of women autonomous decision making power. That means the study fails to examine how women rights are protected within the framework of law enforcing bodies of the government and correlation of their enforcement weakness with the prevalence of violence against women.

The other important literatures available are those written in the areas of protection women against violence in context of challenges faced by law enforcement bodies and other stake holders in discharging their mandate. In this regard unpublished study conducted by Lamessa Gudeta in 2017, titled as *“The challenges to the protection of women against Domestic violence in Jimma zone, south western Ethiopia,”*⁴⁰ can be mentioned as an instance of study that emphasize on the implementation challenges of law enforcement organs of the government and other stake holders in relation to protection of women against domestic violence. The study has employed a qualitative legal research methodology in which interviews and focused group discussions were used as tool for data collection. Among others things, legal gap, practical challenges, socio-cultural, socio-economic and religious factors are distinguished as main challenges to protection of women against domestic violence in the district. However the study only focuses on issues pertaining to domestic violence, other forms of violence against women were left unaddressed.

Generally speaking the above identified literatures on the subject matter suffers from their own limitation. Most of them were concerned about the prevalence and magnitudes of various forms violence against women along with its determinant factors for pervasiveness. The criminal justice response and its challenges pertaining to the protection of women against all forms of violence are not adequately discussed in the study area. Hence this study will add its shares as literature pertaining to protection of women against violence.

⁴⁰ Lamessa Gudeta, ‘The Challenges to the Protection of Women against Domestic Violence in Jimma Zone , South Western Ethiopia’ (LLM thesis, Jimma University 2017)

1.9) Limitation of the study

Through the course of study I have faced with challenges like time and resource constraints. In addition that easily contacting some of the key informants for the purpose of interview is seen as a challenge.

1.10) Ethical consideration

Before the study begins its purposes are clearly presented for the key informants. This has allowed the key informants to willingly participate in the study. In addition to that in course of the study possible precaution were made to keep the confidentiality of information gathered from key informants.

1.11) Structure of the Study

This study is organized in the following sub-sections. The First chapter of the paper has introduced 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 has provided discussions on the meaning and forms of violence against women along with explanation on its pervasiveness and effects on women and community at large.

The third chapter has attempted to discuss the existing international and regional human rights standards and its basic international human rights principles that recognized women's human rights to be free from any forms of discrimination including violence against women. And this section has elaborated the Ethiopian legal frameworks, policies and different women's right plan action which are relevant to the protection of women against violence. The fourth chapter has discussed the enforcement experiences on protection of women against violence specifically with regard to response of criminal justice in Hadiya zone. Under this chapter, the practical challenges in zonal districts and others gaps were discussed. Finally the fifth chapter provides conclusion and recommendations of the study.

Chapter - Two

General Overview on Concept of Violence against Women

Introduction

Violence against women is a violation of women's human rights and inhibits the enjoyment of their human rights to like right to life, right to security of person; and the right to highest attainable standard of physical and mental health and others.⁴¹ And as it's provided under DEVAW violence against women is 'a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women.'⁴² Study conducted by WHO reveals that VAW adversely affect women's health, inter alia, it affects mental health of women, expose women to the vulnerability to HIV/AIDS and other sexually transmitted diseases (STDs), reproductive and reproductive related health problems.⁴³ In other way violence against women halt women from participating in community and economic activities which in turn affects both women and at society at large. In this regard women who were target of violence are less involved in productive works.⁴⁴

In this chapter below I will discuss the meaning of violence against women as it is defined by various human rights instruments. And discussions are also made with regard to various forms of violence against women along with its prevalence's. For the purposes of this study, based on other studies conducted, only commonly known forms of VAW are selected in study area.

2.1) The Meaning of violence against women

Numerous international and regional human rights documents have provided the meaning of violence against women. Among them the definition given by the United Nations General Assembly's Declaration on the Elimination of Violence against Women 1993 allows for the

⁴¹ Moren (n 11).

⁴² DEVAW (n 2) preamble.

⁴³ WHO, *Global and Regional Estimates of Violence against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Sexual Violence* (WHO press, 2013) 31

⁴⁴ Eleanor Lyon 'Welfare and Domestic Violence against Women: Lessons from Research' (Applied Research Forum, National Electronic Network on Violence against Women, August 2002), available at <http://www.vawnet.org/DomesticViolence/Research/VAWnetDocs/AR_Welfare2.Pdf> accessed 12 April 2018

broad understanding of all forms of violence against women. Accordingly the declaration defined 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 in private life’.⁴⁵ In this regard violence against women can take different forms including physical, sexual and psychological violence perpetrated against women. Such acts of violence against women can be committed at different sites, *inter alia*, including violence in the family, community and violence perpetrated or condoned by the state.

The CEDAW committee under its General Recommendation no.19 has addressed on the meaning of violence against women from the perspective of CEDAW. Accordingly the committee state:

The convention in article 1 defines discrimination of against women as violence that is directed against women because she is a woman or acts that disproportionately affect women. It also includes acts that inflict physical, mental or sexual harm, threats of such acts, coercion and other deprivations of liberty. In addition to that it may breach specific provisions of the Convention, regardless of whether those provisions expressly mentioned violence.⁴⁶

This interpretation of the CEDAW Committee on violence against women allows the direct application of CEDAW provisions to the issues of violence against women. To this end violence against women, as it is indicated under Article 1 of CEDAW, is considered as discriminatory acts which has the effect of nullifying the recognition, enjoyment or exercise by women, of human rights and fundamental freedoms.

According to the definitions indicated above violence against women includes, but is not limited to, any act or threat of sexual, physical or emotional violence perpetrated against women. For the purposes of this study, violence against women should be understood as to include all forms of acts or threat perpetrated against women including physical, sexual, or psychological violence which is against the enjoyment of women’s human rights. In next section I will discuss some

⁴⁵ DEVAW (n 2).

⁴⁶ UN Committee on the elimination of discrimination against women, ‘general recommendation 19 on violence against women’ (Eleventh session, 1992), U.N. Doc A/47/38, Par 6

selected forms of violence against women which occurs at family and community spheres along with their pervasiveness based on other social studies conducted on their prevalence in Ethiopia and including at the study area.

2.2) Forms of violence against women and its pervasiveness

As it is identified in the above discussions VAW takes various forms including physical, sexual and psychological violence. Its forms vary depending on the social, economic or cultural settings. And through time new forms of violence against women appears along with emerging advancement in technologies, to this reason one cannot put all lists of violence against women.⁴⁷

The Declaration on the Elimination of Violence against Women (DEVAW) has identified various forms of violence against women according to the sites it occurs.⁴⁸ Accordingly the following main categories were identified: violence against women with in family, violence against women within community, violence against women perpetrated or condoned by the state and violence against women in situation of armed conflict. Both violence against women within family and community are the most prevalent forms of VAW throughout the world.

For the purpose this work I discuss some points on both violence against women occurring within family and community setting as they are pervasive in Ethiopia.

2.2.1) Violence against women within the family

Violence against women within family sphere is violence that may be justified based on religious, customary/societal practices, *inter alia*, including domestic violence, harmful traditional practices.⁴⁹ Commonly distinguished forms of violence against women in the family includes: but not limited to, battering and other forms of intimate partner violence; sexual violence, FGM and other traditional practice harmful to women like forced marriage, early, and other forms of exploitation.⁵⁰

⁴⁷ UN Secretary-General *In-Depth Study on All Forms of Violence against Women* (2006)

⁴⁸ DEVAW (n 2) art 2.

⁴⁹ UN Secretary (n 47).

⁵⁰ OHCHR *women's rights are human rights* (United nation publication, 2013) 76

Globally intimate partner or domestic violence is the most widespread form of violence against women within family sphere.⁵¹ These forms of violence against women comprise physical, sexual and psychological harms perpetrated against women with in home or family and by a current or former intimate partner. In this context physical violence includes using forces to harm women. Sexual violence encompasses making offensive sexual contact against the free will of women. Psychological violence involves insulting and humiliating women.

Globally study conducted by WHO multi-country on domestic or intimate partner violence shows that the lifetime prevalence of physical violence by an intimate partner ranged between 13 per cent and 61 per cent.⁵² And the same study also indicates that the lifetime prevalence of sexual violence by an intimate partner was between 6 per cent and 59 per cent. In addition to that the study indicated that between 20 per cent and 75 per cent of women had experienced one or more emotionally abusive acts.⁵³

In Ethiopia intimate partner or domestic violence against women is widely experienced by women particularly in rural area. In this regard the study conducted by the World Health Organization under the auspices of the Butajira Rural Health Program reveals that 71 percent of women are experienced either or both physical and sexual violence by their intimate partner over their lifetime.⁵⁴ Most acts of intimate or domestic violence against women were left unreported to the government authorities like criminal justice institution. The reason for the non-seeking of help by those victims of violence against women associated with the fear the consequences or had been threatened, and with wrong perception that they consider those violence as normal or not serious.⁵⁵

The following lists, but not limited to, including early marriage, female genital mutilation/cutting, female infanticide, crimes against women committed in the name of honor, are forms of VAW that are considered as harmful traditional practices and may involve both family and community.⁵⁶ Among those harmful traditional practices FGM is the most widely practiced form

⁵¹ Moren (n 11).

⁵² *ibid*

⁵³ *ibid*

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ UN Secretary-General (n 47).

of violence and exists under both family and community settings. Globally, it is anticipated that more than 130 million girls and women alive today have undergone FGM, mainly in Africa and some Middle Eastern countries, and two million girls a year are at risk of mutilation.⁵⁷ Country survey on the practice of female genital mutilation shows its prevalence rate variations with geographical location of the countries ranging from 99 percent in Guinea, 97 percent in Egypt, 80 percent in Ethiopia, 17 percent in Benin, and five percent in Ghana and Niger.⁵⁸

In Ethiopia the practice of FGM is widely practiced under the spheres of family and community. As survey study conducted by United Nations Children's Fund (UNICEF) on the FGM practice indicates about 80 percent of women in Ethiopia are victims of the practice.⁵⁹ And one study conducted on girls of different high schools of the Hadiya Zone shows the pervasiveness of Female Genital Mutilation (FGM) by 82.2 percent.⁶⁰ According to this study cultural belief related to the hygiene of female genitalia and other social factors contribute to sustaining the practice in the district.⁶¹

2.2.2) Violence against women in the community

Within the general community women also suffers from various forms of violence. Forms of VAW in community, *inter alia*, comprises sexual violence including trafficking in women, forced prostitution and sexual harassment.⁶² In community settings like bus stations, roads, schools, work places, collages or hospitals women are exposed to physical, sexual and psychological violence.

Sexual violence by non-partner is a common form of violence against women in the community settings.⁶³ Sexual violence by non- partners refers to violence by a relative, friend, acquaintance, neighbor, work colleague or stranger. This form of violence against women, *inter alia*, includes

⁵⁷ UN Secretary-General (n 47).

⁵⁸ UNICEF, 'Female genital mutilation/Cutting: A statistical exploration' (UNICEF, 2005); UNICEF, 'Changing a harmful social convention: female genital mutilation/cutting' (UNICEF Innocenti Digest, 2005) available at <http://www.unicef-icdc.org/publications/pdf/fgm_gb_-_2005.pdf> accessed on 9 February 2018

⁵⁹ *ibid*

⁶⁰ Tamire (n 38).

⁶¹ *ibid*

⁶² OHCHR (n 50).

⁶³ UN Secretary-General (n 47).

rape and sexual harassments. Sexual harassment against women at school and in the workplace is well known by its pervasiveness.

In Ethiopia sexual violence by non-partners also occurred with diverse prevalence relative to the locations. However, less than 1percent of women have reported the non-partner sexual violence in Ethiopia.⁶⁴ But this does not mean that no acts of sexual violence against women committed by non-partner in Ethiopia.

In the subsequent chapter I will discuss the basic international and regional human rights instruments which offer a protection to women against all forms of violence including to the above discussed forms of VAW. With this respect I will also elaborate various human rights principles that oblige States to take action and protect women against all forms of violence. In addition to that discussions are made on Ethiopian legal frameworks with particular emphasis to criminal justice's response to those VAW prevalent to study area.

⁶⁴ Moren (n 11).

Chapter-Three

International human rights standards and Ethiopian legal framework on protection of women against violence

Introduction

As I have pointed out in the previous chapter, women suffer at high magnitude from various forms of violence throughout the globe including in Ethiopia. Despite the general human rights instruments' ⁶⁵ recognition of human rights of every person including women, for long period of time international community had kept silent on the specific issue of violence against women until the year 1970s shall appear.⁶⁶ In this regard based on their relevance to the protection of women against discrimination including VAW I have identified various international and regional human rights instruments that have been agreed by international community.

In this chapter below I will discuss different international and regional human rights instruments regarding protection of women against VAW. The chapter is sub-divided in to three sections. In first section among the various international and regional human rights instruments, action plans and declarations, I identified relevant provisions which afford protection to women against VAW. Second section provides discussions on the basic principles pertaining to the obligation of state toward protection; prevention and prosecution to the incidences of VAW; and compensation to the victims of violence against women. Finally the third section give an insight to the Ethiopian human rights legislations measures in light to international human rights standard.

3.1) International human rights instruments

Most core international and regional instruments have recognized the equality of women and men and condemned discriminations based on the sex. Universal Declaration on Human rights (UDHR) under article 2 declared that everyone have equal right to enjoy freedoms enshrined under the declaration without any forms of discriminations. Under this declaration women enjoy basic human rights protection including freedom from any forms of violence. In addition to that

⁶⁵ When I say general human right instruments it is to refer UDHR, ICCPR and ICESCR which generally applies to all human beings including women.

⁶⁶ Since 1970s on women specific international al conventions were agreed upon states to better address issues on discrimination against women. For instance the 1979 of CEDWA can be mentioned.

binding international bills of rights such as ICCPR and ICESCR confer protection to women. For instance article 26 of the ICCPR allows all persons to enjoy equal protection before courts and tribunals without any discrimination based on any grounds including sex. This stipulation of ICCPR confers protection to women that allows them to get remedy for the violations of their rights. With regard to ICESCR, the right to get highest attainable standard of health is guaranteed for everyone including to women.⁶⁷ This allows women to get rid of any forms of VAW that inhibits their right to health.

Besides those international agreements, specific convention on the protection of women has condemned all forms of discrimination against women. With this respect the 1979 CEDAW, binding specific binding treaty on the protection of women's human rights, is most comprehensive international convention that deal intensively about prohibition of discrimination against women principally it addressed protection of women against all forms of discrimination in all aspect of life including economic, social and political spheres.⁶⁸ Even if it has failed to mention the phrase 'violence against women' except in the form of trafficking and prostitution, subsequently committee on CEDAW under its recommendation has interpreted that the concept of discrimination against women under CEDAW should also include the prohibition of violence against women.⁶⁹ More importantly the CEDAW committee has indicated that violence against women has the potential to 'impairs or nullifies the enjoyment by women of human rights and fundamental freedoms'.⁷⁰ In this regard the CEDAW Committee, which is responsible for interpreting and monitoring the implementation of CEDAW, has clarified in its General Recommendation No. 19 (1992) that States Parties to the Convention are under an obligation to take all appropriate means to eliminate violence against women.

Declaration on Elimination of Violence against Women (DEVAW), adopted in 1993 by the General Assembly, is a non binding instrument which specifically declares the elimination of violence against women. It condemns the acts of violence against women as a violation of basic

⁶⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered in to force 3 January 1976) UNGA Res 2200A XXI (ICESCR) art 12(1)

⁶⁸ Nafis Sadik, *The State of world population, lives together, world apart, Men and women in a time of change* (United Nations Population Fund, 2000) 48

⁶⁹ CEDAW Committee recommendation (n 46).

⁷⁰ *ibid*

human rights and fundamental freedoms of women.⁷¹ It also calls States to condemn and take all appropriate measures to eradicate all forms of violence against women. Beijing Declaration and Platform for Action⁷² as part of non-binding document on women's right calls States to condemn acts of 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.⁷³

Those international human rights instruments have recognized women's human rights to be protected from any forms of discriminations including VAW and to get remedy when their human rights are violated.

3.2) Regional Human rights instruments

Apart from those international documents, regional human rights instruments have also recognized women's human rights in their respective regions. To begin from Africa, African Charter on the Human and Peoples' Right (ACHPR)⁷⁴ and the Protocol to the African Charter on the Human and Peoples' Right on the Right of Women's in Africa can be mentioned as instances of women's human rights protecting instruments.

Article 2 of ACHPR deals with the issue of discrimination and provides that: 'Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex, language, political or any other opinion (. ...)'⁷⁵ It has further recognized that ever person have right to enjoy equality before the law and equal protection of the law.⁷⁶ These stipulations provide women with protection, *inter alia*, including against all forms of violence. The 2003 Protocol to the African Charter on the Rights of Women in Africa⁷⁷ has also clearly, *inter alia*, guaranteed

⁷¹ DEVAW (n 2) art 3.

⁷² Beijing Declaration and Platform for Action Adopted at the 16th plenary meeting, on 15 September 1995

⁷³ *ibid* para 13.

⁷⁴ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered in to force 21 October 1986) (1982) 21ILM 58 (African Charter) art 2

⁷⁵ *ibid* art 2.

⁷⁶ *ibid* art 3.

⁷⁷ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July – 13 August 2003, entered in to force 25 November 2005) (Protocol to African charter)

equality of women before the law and access to justice,⁷⁸ and prohibited harmful traditional practices including FGM.⁷⁹

3.3) States obligation to protect women against all forms of violence

Under general human rights system states are obliged to respect, protect and fulfill the human rights of individual. This general human rights principle indicates that states are under duty to insure the protection of human rights of individual falls under its jurisdictions. Consequently this duty has various dimensions: *first* states are expected to refrain from violating the rights of individual, *secondly* state are also obliged to make sure that the individual's rights are being respected by other third parties and *thirdly* states have duty to take positive actions to secure the realizations of human rights. Apparently from this we can deduce that states have duty to respect and protect women's human rights from any kind of infringements. As it is discussed above the pervasiveness of various forms of violence against women with impunity throughout the world is a clear violation of human rights of women. Regarding the protection of women's human rights, violence against women is a challenge for states non-compliance to the obligations.⁸⁰

Binding international human rights standards and various soft laws are the main sources of obligation for the states to prevent and protect any forms of violence against women. Under international human system the principle of equality and non-discrimination oblige States to provide protection to the women's human rights from any kind of violations. To this effect there are agreements among the main core international and regional human rights instruments that states' obligation to protect the human rights of women extends, *inter alia*, to prevent violations of rights by any individual or non-state actor; to criminalize and eliminate all acts of violence against women; and to provide access legal remedies when violation occurs in order to prevent further deprivations.

Besides the mandate of domestication of those international and regional human rights of women under countries legislations, the duty calls states to strengthen the domestic law enforcement machineries to effectively protect the women human rights from any kind of violations. Among

⁷⁸ *ibid* art 8.

⁷⁹ *ibid* art 8.

⁸⁰ UN Secretary-General (n 47) 34.

other things, establishing effective criminal justice system is vital for the effective protection of women's human rights from infringements.

Criminal justice, as a main backbone of states enforcement machinery, plays a critical role in preventing and protecting women from any forms of violence. The effective response of criminal justice institution to the victims of violence against women is more important for the effective implementation of women's human rights at national level. In case when women's human rights are being violated, victims are supposed to be effectively redressed, *inter alia*, via criminal justice system. Here one should bear in mind that poor responses of criminal justice to victims of VAW will result on the responsibility of state party for the non-compliance of international and regional human rights commitments.

This part of thesis will discuss the nature of states obligation toward protection of women from all forms of violence against women from the perspective of criminal justice's role in protection of women's human rights according to the international human rights standards. To this end in the section bellow various international human rights principles, soft laws and jurisprudences are discussed in detail on obligation of states and its effect of non compliance.

3.3.1) Basic principles pertaining to the protection of women against violence and its implications on State obligation

Major international and regional human rights instruments have provided various principles that primarily oblige States to comply with it. Those human rights principles have different aspects *inter alia*, which includes affording right to individuals and entailing obligation up on states.

For the purpose of this paper, the principle of non-discrimination and equality and the due diligence standards are identified based on their relevance on the protection of violence against women. In this respect this section focus on the relevance of those identified principles to the protection of women's human rights and its implication up on States are discussed with specific reference to criminal justice role.

3.3.1.1) The principle of Non Discrimination and equality

The principle of non-discrimination and equality are bedrock principles under international human rights system regarding protection of human rights.⁸¹ Major international,⁸² regional human rights instruments⁸³ and declarations⁸⁴ can be identified as sources of these principles. In addition to that some specific conventions addressing prohibited grounds of discrimination like CEDAW and International Convention on the Elimination of All Forms of Racial Discrimination (ICRP) clearly incorporated both principles.

As provided under core international human rights treaties both principles can be understood as equal treatment before the law of every individual without any forms of discrimination. Both principles seem to clash each but as it is described by the Human rights committee on its general comment no 18: all distinctions does not amount to discrimination if it is applied according to the objective and purpose of a particular international convention.⁸⁵ Here it worth to mind that some differential treatment do not constitute a discrimination if it is applied for the legitimate aim like that of affirmative action to solve the historical inequality of women. Both principles go together, the realization of ‘non discrimination principle’ is a base for the existence is of equality and the reverse also holds true.

The non-discrimination and equality principles have paramount importance for those disadvantaged groups of society including to the victims of violence against women. That means these principles entitle women for their protection of human rights according to the pertinent human rights instruments. In the same spoken the principles is base for victims of VAW to claim and get remedy for their human rights violation.

81 UNHRC ‘General Comment No.18 on Non-Discrimination’ (10 November 1989) UN Doc HRI/GEN/1/Rev.6, Para 1

82 Among international conventions the following can be mentioned: Article 2(1) and article 26 of ICCPR; Article 2(2) of ICESCR.

83 Regional human right instruments which are relevant to the principle include: African Charter on Human and Peoples’ Rights (article 2), article 18(3); American Convention on Human Rights article 1; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women article 6(a) and (b); European Convention on Human Rights article 14 and Protocol No. 12 to the European Convention.

84 Includes: the Universal Declaration of Human Rights (Articles 2 and 7) and Article 2(1) of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

85 UNHRC General comment (n 81).

The principles of non-discrimination and equality put obligations on States to be adhered to it. One can ask question that how States ought to apply or implement those basic human rights principles at national level; for instance from the perspective of safeguarding the rights of VAW by its enforcing machineries, *inter alia*, like via response of criminal justice. Indeed, those core international and regional human rights standards clearly oblige States parties to establish effective justice system to ensure protection of rights and to duly redress victims of violence against women. Apparently, strengthening the justice system of the country is crucial in terms of ensuring freedom of women against any forms of discrimination including all forms of violence against women.

Among other things, the principle of non-discrimination and equality can better be implemented by the active involvement of state justice institutions. Professionals with in criminal justice institutions are expected to interpret and apply national, regional and international human rights instruments to the particular cases of violence against women. Criminal justice is one of the main state apparatus that can be placed at front line to implement of those identified human rights principle with regard to delivering remedy to victims of violence against women.

One of most important duty of State, which is also relevant to protection of women against discrimination, is specified under article 26 of ICCPR. As per this provision state parties are under obligation to establish judicial remedies in case of discriminations occurring at public or even in the private sphere. In this regard the Human rights Committee in the case of *Nahlik et al v Austria* has stated that:

The Committee observes that under Articles 2 and 26 of the Covenant the State party is under an obligation to ensure that all individuals within its territory and subject to its jurisdiction are free from discrimination, and consequently the courts of States Parties are under an obligation to protect individuals against discrimination, whether this occurs within the public sphere or among private parties in the quasi-public sector of, for example, employment (. ...).⁸⁶

⁸⁶ *Nahlik et al. v Austria*, Decision on admissibility, Human Rights Committee, Communication No. 608/1995 (1996), par 8.

According to the Human rights Committee courts of state party, as part of domestic justice system, are obliged to protect individuals against discrimination. This observation of the Committee indicates how it is vital role be played by the justice apparatus of State in protecting individuals against discrimination. Among other things, delivering an adequate judicial remedy to the victims of discrimination is one of the obligations of State Parties.

The committee on CEDAW under its recommendations has provided a broad interpretation regarding application of the principle of non-discrimination and equality from the perspective of violence against women.⁸⁷ As it is discussed in the above sections CEDAW under its general recommendation no.19 has interpreted that “discrimination” under Article 1 of CEDAW also includes all forms of violence against women. This puts an obligation on the State Parties to protect women from discriminations including against all forms of violence against women.

The African Charter on Human and people’s right obliges state parties to ensure the elimination of all forms of discrimination against women. Accordingly: ‘The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.’⁸⁸

In the same line the African Charter on Human and people’s right under article 26 orders state parties to guarantee the independence of national courts to enable the protection of the rights and freedom provided by the Charter. This provision of the Charter indicates that State parties are under duty to promote and protect women’s human rights including their freedom against all forms discrimination against women.

3.3.1.2) The Due Diligence standard and obligation of state

The standard of due diligence is recently developed principle that utters States are responsible for their failures to diligently protect women against any forms of violence as per the obligation set forth under international human rights standards.⁸⁹ The standard of due diligence expect states to

⁸⁷ Simone Cusack and Lisa Pusey, ‘CEDAW and the rights to non-discrimination and equality’ (2013) 14 Melbourne Journal of International Law 1

⁸⁸ African Charter (n 74) art 18(3).

⁸⁹ Rashida Manjoo, ‘State Responsibility to Act with Due Diligence in the Elimination of Violence against Women’ (2013) 2 International Human Rights Law Review 240s

refrain from violating human rights of individuals and diligently protect individuals right from violation even by non-state actors.

The principle of due diligence concerning state responsibility for non-state acts was first emerged in *Velasquez Rodriguez v Honduras*, a case by Inter-American Court of Human rights (IACHR) in 1988.⁹⁰ According to this case the court identified that the State party is responsibility for the failure of its apparatus to ensure the free and full exercise of Velasquez Rodriguez's human rights. The decision of the case is also evident that illegal acts which violates individual human rights and which are not directly imputable to states can lead it to international responsibility not because of acts but for its failure to act diligently to prevent violation of human rights.⁹¹ The court also stressed that states are obliged to exercise "due diligence" standards which among others things includes duty to prevent, investigate and punish any violation of rights.⁹²

The principle of due diligence is further developed by the 1993 General Assembly Declaration on the Elimination of Violence against Women. Accordingly DEVAW declared that all U.N member states have a duty to:

Pursue by all appropriate means and without delay a policy of eliminating violence against women, including due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetuated by the State or by private persons.⁹³

This declaration clearly pursues how the problem of violence against women is serious which deserves strong principle that obliges State parties to be held responsible for their failures to act diligently to prevent, investigate and punish acts of violence against women whether it occurs in private or state spheres.

⁹⁰ *Velasquez Rodriguez v. Honduras*, Judgment, Inter-American Court of Human Rights (IACtHR) ser. C No. 4, T 172 (29 July 1988)

⁹¹ *Velasquez* (n 89) para 172.

⁹² *ibid* para 166.

⁹³ DEVAW (n 2).

In addition to that the due diligence obligation of state is interpreted by the CEDAW committee under General recommendation no. 19 in which the committee interpreted that discrimination under the Convention is not restricted to action by or on behalf of governments and that States may also 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.⁹⁴ The standard of due diligence is further developed by the CEDAW committee under its compliant hearing and deciding mandate.

When we come to Africa, the African commission on human and peoples' rights (the African Commission) under its general comments has signified that states should act according to standard of due diligence in case of women's human rights protection. Accordingly it indicated that States are responsible for the acts of non-State actors if they fail to act in due diligence to prevent the human rights infringements and to ensure effective investigation and accountability of the perpetrators.⁹⁵

i. Implication of the due diligence standards on the States obligation

According to the Rashida Manjoo, the due diligence standards expects two basic responsibilities from the states: first responsibility to create a good system and structures to combat and address the root causes and consequences of violence against women; and the responsibility to provide an adequate response to the victims of violence against women in term of effective prevention, protection, punishment and reparation.⁹⁶ According to her this two responsibilities of states are decisive in the course of realizing women's human rights by combating and eradicating the acts of violence against women.

For the purpose of this paper I will give much emphasis on the second basic responsibility of state which should be applied as per the due diligence standard. The obligations of state to prevent, protect, and punish perpetrators of violence against women; and the duty to provide redress for victims of VAW has various connotations on the States. Among other things, this obligation expects States to be effective on practice in realizing the women's human rights by

⁹⁴ CEDAW Committee (n 69) Para 9.

⁹⁵ The African Commission on Human and Peoples' Rights, 'General comment No 3 on the African Charter on Human and Peoples' Rights: The Right to Life ' (4-18 November 2015), 16

⁹⁶ *ibid.*

strengthening its enforcement apparatus.⁹⁷ States entails to exercise due diligence in the following main areas in case of violence against women, *inter alia*, a) duty to prevent acts of VAW, b) duty to investigate and punish incidences of VAW, c) and to provide effective remedies and support to the victims of VAW.

In State responsibility to act with due diligence to address violence against women, state are supposed to build an effective justice administration bodies that provide effective remedy to the victim of VAW. In this case the role of national criminal justice is far important in process of protecting women's human rights against all forms of VAW. In this regard in its suggestion the UN Special Rapporteur on violence against women indicated, *inter alia*, that the criminal justice system should be sensitive to the issues of violence against women and police, prosecutors and judges should handle VAW cases in accordance with the international human rights standards.⁹⁸

On States duty to investigate and prosecute acts of violence against women, the Committee on the Elimination of Discrimination against Women on its optional protocol has ruled out that States have an obligation to act with due diligence toward protection of women against all forms of violence. Here in *Fatma Yildirim v Austria*,⁹⁹ the CEDAW Committee has identified that the police knew or should have known of the extreme danger faced by Fatma Yildirim, and its failure to arrest and detain the suspect constituted a failure of its due diligence obligation to protect her. From this communication we can understand failures of the States Justice Sectors to perform their jobs according to the relevant laws can establish States responsibility for not diligently protecting victims of violence against women by investigating and prosecuting the incidence of violence against women.

The criminal justice apparatus of state can play a decisive role in discharging the standard of due diligence by preventing, investigating, punishing and providing redress to the victims of violence against women. All Sectors of criminal justice including Police, Prosecution and Judiciary should respond to the incidences of violence against women as per international human rights instruments and established principles. In this regard their failures to investigate, prosecute, punish and provide reparation to the victims of violence against women according to the

⁹⁷ *Velasquez* (n 89) para 172.

⁹⁸ UN Doc. E/CN.4/1999/68, (10 March 1999), para 25

⁹⁹ *Fatma Yildirim v. Austria*, Communication No.6/2005 (CEDAW Committee on 6 August 2005)

established standard will jeopardize the women's human rights and this in turn leads States to be responsible for its apparatus's failures to act diligently.

3.4) An overview on Ethiopian Human rights standards and criminal justice

Ethiopia with commitment to respect, protect and fulfill the human rights of women, has ratified various human rights instruments including the bills of international human rights¹⁰⁰ and other specific women's right instruments like the 1979 UN's Convention on the elimination of all forms of discrimination against women (CEDAW).¹⁰¹ In addition to that Ethiopia has also joined African [Banjul] Charter on Human and Peoples Rights.¹⁰² However, Ethiopia has failed to ratify optional protocols like the CEDAW and Protocol to the African Charter on Human and Peoples Rights on the Rights of Women.

Ethiopia, as signatory of those international and regional binding human rights instruments, assume an obligation to prevent, protect, investigate, and punish the incidences of violence against women and to adequately redress the victims of VAW. Ethiopia is also obliged to enforce women's human rights according to the principles of non- discrimination and equality. In addition to that Ethiopia as party to the CEDAW and ACHAL is obliged to act with due diligence to prevent and protect women's human rights infringements. In this respect Ethiopia has the duty to prevent, investigate, prosecute, ensure the accountability of perpetrators of violence against women; and provide remedy to the victims of VAW. Here the African Commission on Human and Peoples' Rights its communication¹⁰³ concerning Ethiopia can be mentioned as an instance by which failures of criminal justice at any level of administration can hold responsible Ethiopia for not diligently responding to the incidences of violence against women.

¹⁰⁰ The two international conventions namely International Convention on Civil and Political Rights (ICCPR) and International Convention on Economic, Social, and Cultural Rights (ICESCR)

¹⁰¹ Ethiopia ratified CEDAW in 1981

¹⁰² African Charter (n 74).

¹⁰³ *Equality Now and Ethiopian Women Lawyers Association (EWLA) v The Federal Democratic Republic of Ethiopia*, Communication 341/2007, African Commission on Human and Peoples' Rights (2007); this communication was made on fact that *Makeda* who was abducted, raped and forced into marriage in Ethiopia at age thirteen. This case was brought to the Commission for Ethiopia's failures to adequately investigate and redress victims of violence against women. Finally, as per the commission decision Ethiopia has breached its obligation to protect the rights of victims of violence against women.

Despite ratification of those international and regional human rights instruments in Ethiopia there are concerns with observance of those international human rights obligations pertaining to the protection of women against violence. In this regard under its concluding observation report the CEDAW committee has expressed its concern on Ethiopian failure to effectively prevent and prosecute to the incidence of rape and crime of abduction.¹⁰⁴

In subsequent sub-topics, some reflections on the Ethiopian national legislations are made in light with international human rights standards. In this respect the FDRE constitution and other domestic laws are explained as to their relevancy to the protection of women against VAW.

2.4.1) FDRE Constitution

The current constitution of Federal Democratic Republic of Ethiopia (FDRE) has recognized fundamental human and people's right. The recognition and incorporation of human rights under the provisions of the constitution has the effect of strengthening its enforceability at national level. Accordingly, as constitution is the supreme law of the country that obliges all individuals and government institutions for its adherences, the incorporation of fundamental human and people's right will afford a strong legal basis for its implementation.¹⁰⁵

Among others, specifically the FDRE constitution guaranteed the substantive equality of women and men in terms of enjoyment of rights and protections provided under the constitution.¹⁰⁶ According to the article 35 (4) of the constitutions provides that laws, customs, and practices that oppress or cause bodily mental harm to women are prohibited. In addition to that some provisions incorporated under the FDRE Constitution have relevancy on the protection of women against violence which includes, *inter alia*, the prohibition against inhuman treatment¹⁰⁷, the right to security of person¹⁰⁸ and equal protection before law.¹⁰⁹ The constitution also allows

¹⁰⁴ CEDAW Committee concluding observation report UN Doc. A/59/38 (Part I) Para 226-273 (CEDAW 2004)

¹⁰⁵ Adem Kassie, 'Human Rights under the Ethiopian Constitution: A Descriptive Overview' (2011) 5 Mizan Law Review 41

¹⁰⁶ FDRE constitution (n 23) art 35 (1).

¹⁰⁷ *ibid* art18.

¹⁰⁸ *ibid* art16.

¹⁰⁹ *ibid* art 25.

everyone including victims of violence against women to access justice and to get redressed for the alleged human rights violations.¹¹⁰

The most important thing about the FDRE constitution is that it provides a firm ground for those international and regional human rights instruments ratified by Ethiopia to be applied as integral part of domestic laws.¹¹¹ In addition to that the FDRE constitution under article 13 has provided for the interpretation of rights specified under the constitution in conformity to the principles universal declaration of human rights, international covenants on human rights and international instruments adopted by Ethiopia. These provisions of the FDRE constitution clearly manifest the higher consideration given by the constitution to the application of international human rights instruments when interpretation requires.

The FDRE Constitution unequivocally obliges the federal and state legislative, executive and judicial organs at all level to respect and enforce the human rights provisions.¹¹² The roles of legislative, executive and judiciary bodies are irreplaceably important for the protection and enforcement of constitutionally guaranteed human rights. It is clear that the legislative organs of state, *inter alia*, have the mandate of promulgating specific laws which are helpful to protect and enforce the constitutionally guaranteed human rights.¹¹³ And the executive organ of the state has the duty to enforce those constitutionally guaranteed rights according to the spirit of the constitution. Particularly in case of violation of women's human rights it is the duty of executive organs, *inter alia*, including Police and Prosecution Office to bring those perpetrators to justice and enable victims to receive with appropriate remedies. And judiciary at all level has obliged to protect the human rights especially in case of its violation.

It is clear that the FDRE constitution put obligation on law enforcing bodies including the criminal justice to respect and protect human rights including the women's right against all forms

¹¹⁰ *ibid* art (n 22) art 37.

¹¹¹ The FDRE constitution under article 9 (4) provides that all international agreements ratified by Ethiopia are an integral part of the law of the land.

¹¹² FDRE Constitution (n 23) art13 (1).

¹¹³The roles of legislative body are identified under the article 55 of the FDRE constitution among others it includes: along with enacting specific laws like penal code, civil law, labour code which can foster the implementation of fundamental human and people's rights, it has also the power to call and ask the executive organs officials.

violence. This shows the State law enforcing bodies including criminal justice have obligation to respect and apply those international and regional human rights agreements ratified by Ethiopia.

2.4.2) The 2005 Criminal Code of Federal Democratic Republic of Ethiopia

Besides the FDRE constitution Ethiopia has enacted various specific laws that are relevant to the protection of women's human rights against any forms of violence. In this regard the current Criminal Code of the Federal Democratic Republic of Ethiopia (FDRE) can be mentioned at front regarding protection of women's human rights. It has incorporated many provisions on the protection of women's human rights against various forms of violence.

The criminal code of Ethiopia criminalized various acts of violence against women including, but not limited to, acts of sexual violence¹¹⁴ such as rape, sexual harassment; physical violence within marriage or in an irregular union,¹¹⁵ and harmful traditional practices with non-exhaustive lists including Female Genital Mutilation,¹¹⁶ abduction¹¹⁷ and early marriage.¹¹⁸

Among others, the criminal justice holds primary responsibilities with regard to the enforcement of those provisions of criminal code. In this regard professional under the criminal justice institutions are expected to respond to the incidences of violence against women in accordance with the spirit of relevant national laws and international human rights instruments.

2.4.3) The Revised Family Code of Ethiopia and SNNPR Family law

The revised family code of Ethiopia, opposed to 1960 Imperial civil code¹¹⁹, has recognized the equality of men and women with regard to all aspects including in marriage and common property-administration.¹²⁰ The SNNPR family code has also recognized the equality of women and men all aspects of life including in administration of mirage and common property.¹²¹ The

¹¹⁴ The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No. 414 of 2004, art 620 - 628

¹¹⁵ *ibid* art 564.

¹¹⁶ *ibid* art 565-566.

¹¹⁷ *ibid* art 587-590.

¹¹⁸ *ibid* art 649.

¹¹⁹ Civil Code of the Empire of Ethiopia Proclamation 165 of 1960; and its provision such as article 635, 637 and 644 are examples how it disregard the equality of women and men.

¹²⁰ The Revised Family Code of Ethiopia, Proclamation 213 of 2000, arts 50-73

¹²¹ South Nations, Nationalities, and Peoples' Regional State Family Code, Proclamation 75 of 2004, art 59

equality of women and men promulgated under the both family laws has a significant contribution for the protection of women against violence. That means, *inter alia*, they protect women against domestic violence perpetrated by intimate partners.

2.4.3) National polices and Human rights Action plans

Generally National polices have an important contribution to the effective implementation of particular subject matters for which they are formulated. In case of women's human rights Ethiopia has prepared women's national policy ¹²² with the motive of fostering and realizing the fundamental human rights of women. The national women policy, *inter alia*, has the objective of eliminating prejudices, customs and practices that are based on male supremacy and enable women enjoy their human rights on equal basis with men. And the policy provided directions on how various organs of government should accomplish their mandates to realize woman's human rights including freedom against any forms of violence against women.

Ethiopia has also formulated National Human rights Action Plans 2005-2015 with the aim to ensure better implementation of fundamental and democratic rights guaranteed under the FDRE constitution to for the benefit all people.¹²³ The National action plans provided a due consideration on the protection of women against violence via putting action plans for the criminal justice to implement women's human rights including their right to be free from all form of violence's. Hence, among others the criminal justice institutions are entrusted with the mandate to follow the human rights action plans for the better respect and protection of women's human rights.

The criminal justice policy ¹²⁴ can be mentioned as instances of domestic measure for the better respect and protection of women's human rights. Among others, generally, it provides directions for the criminal justice institutions to prevent crimes and ensure the accountability of perpetrators of crimes. As to the disadvantaged groups including victims of all forms of

¹²² The Transitional Government of Ethiopia National policy on Ethiopian woman of 2000

¹²³ NHRAP (n 21).

¹²⁴ Ethiopian Council of Ministers, The Criminal Justice Administration Policy, (adopted by the Council of Ministers 2011)

violence's, it orders the justice institution to respect the special interest and needs of those groups.¹²⁵

Finally, the question is: to what extent those legal and policy frameworks at international, regional and national levels, being implemented on the ground? The subsequent chapters of this thesis will provide answers to this question, based on findings of the case study at Hadiya Zone.

¹²⁵ *ibid* 3.

Chapter Four

The Criminal justice's response to Violence against Women and its challenges in Hadiya Zone

Introduction

In this chapter of the study, findings on the criminal justice's response to the violence against women and its challenges are identified based on the research methodology mentioned in chapter one. Under this chapter, findings discussed in relation to the responses of criminal justice are by no account encompasses all forms of violence against women but it is limited to those forms of VAW prevalent to the study area and reported to the criminal justice. Those common forms of VAW are identified through other studies made in Ethiopia and specific to study area i.e. they are highlighted in chapter two of the paper. Thus most frequently reported forms of VAW in the area of the study, *inter alia*, include physical harms, sexual violence like rape; harmful traditional practices including Female Genital Mutilation and abduction. In this regard the discussions are not made on the issues like pervasiveness, causes and impacts of those forms of violence but it is limited on how the criminal justice is responding to violence as per pertinent standards identified under the previous chapter.

Consequently finding from key informants, focus group discussion and observations are presented along with their themes. The findings are categorized in to two themes. The first part of the finding tries to assess the quality of criminal justice's response to the violence against women. The second part has highlighted the major possible challenges of criminal justice's response to the VAW. Under this part, among others the institutional, normative and other gaps were identified as the main challenges of criminal justice's response to VAW.

4.1) The criminal justice's response to violence against women

In this part of the paper I will discuss the main findings relating to the quality of the criminal justice's response to the different forms of violence against women in the study area. The quality of the criminal justice's response can be measured according to the set rules provided under various international, regional and national human rights frameworks. As it's indicated under the

chapter four, States along with their implementing machineries are expected to diligently protect women's human rights. The implementation of those obligations, *inter alia*, resides on the effective responses made by the criminal justice. Among others, conducting effective prevention and investigation on incidences of violence against women; delivery of speedy justice and adequate remedy to the victims; and ensuring the accountability of the perpetrators can be mentioned as minimum standards for the delivery of quality services.

In this regard the findings are supported with information acquired from key respondents including the criminal justice professionals, participants of FGD and interview with victims of various forms of VAW. Accordingly criminal justice's response with regard to prevention, investigation, prosecution; and ensuring the accountability of perpetrators and providing redress to the victims of VAW are discussed herein below.

4.1.1) Prevention, investigation and prosecution roles of Criminal justice

Among the mandates of criminal justice: prevention, investigation and prosecutions of cases involving violence against women can be mentioned. In this regard the key informants have identified their concerns on the criminal justice's response to the violence against women.

The prevention role of criminal justice, *inter alia*, requires creation of awareness to the community on the various aspects of violence against women. In this respect key respondents from the Police and Prosecutors have highlighted that less attention has been given to the prevention issues of VAW. According to them problems lies, *inter alia*, on the fact that few professionals were assigned on awareness creation tasks; constraint of budget which is inadequate as compared to the seriousness of the problem and vastness of the districts. According to that data received from Police, budget constraints made it difficult to strengthen the prevention of the incidences of violence against women through the community policing strategies. Community policing is about working together with the community to prevent crimes including the acts of violence against women which requires adequate financial resources to reach and teach the community. The problem with budget constraint and transport facilities makes the tasks of prevention ineffective. In this regard one key respondent from Police stated that:

In our Zonal districts mainly abduction, rape and harmful traditional practices including FGM are prevalent violence perpetrated against women. To prevent the occurrence of those acts creating awareness and teaching the community is vital. However there are impediments that halt the effective prevention and investigation of VAW like budget constraints. This affects the accessibility of services to all remote districts of the Zone. In this regards we don't have enough transport logistics that facilitates prevention and investigation jobs.¹²⁶

Regarding investigation and prosecution roles the key respondents from public prosecutors have expressed that despite the attempt to jointly conduct investigation with the Police there are still problems with quality of investigation involving cases of violence against women. This results with failures of the cases at the trial stage of the court. According to the respondents the low quality of the investigation can be attributable to the different factors, *inter alia*, including lack of specialized investigative skill particular to cases of violence against women and non-proportionate numbers of professionals with the case loads.

In similar words Mr. Ferew Ayalew coordinator of public prosecution unit at Gombora district has expressed:

There are problems which inhibit the effective investigation and prosecution of the various forms of violence against women occurs in our district. Despite our prosecution office's technical support to the investigation process, reluctance on behalf of Police officers has caused drop of cases under the stage of investigation. By large investigative Police officers are reluctant to investigate cases involving various forms of violence against women. And even most of the time they close the investigative files involving VAW cases. According to my understanding they are easily susceptible to the influence created by local elder's arbitration. These contributed for the low record on the prosecution of the incidences of violence against women.¹²⁷

¹²⁶ Interview with Endalkachew Tamrat, investigative Police officer, Duna district (Anesho, 14 May 2018)

¹²⁷ Interview with Mr. Ferew Ayalew, coordinator of public prosecution unit, Gombora district (Habicho, 16 May 2018)

In addition to that participants of FGD from the office of child and women affairs have stated their concerns with the investigation role of Police. Accordingly Mr. Cakebo Erjabo psychology professional under Duna district of Hadiya zone stated:

On criminal cases containing various forms of violence against women, response on the part of Police is not satisfactory to support the campaign of combating VAW. That means as our office work with cooperation with criminal justice institutions including Police, we have encountered challenges on the behalf of Police in which they are very much reluctant to conduct investigation at due time. They follow sluggish procedures even to take witness testimonies during the Police investigation stage. Even after concluding of investigation they are often unwilling to send the criminal files to the prosecutors timely.¹²⁸

Regarding production of evidences, as data from FGD and victims interviews show the procedure of investigation is highly dependent on victims. That means the investigative police officers often expect victims to produce evidences. They did this despite their duty to investigate and collect necessary evidences during investigation phase as provided under relevant provisions of criminal procedure code.¹²⁹ In this respect according to the responses of victims bringing necessary evidence to Police is challenging due to legal knowledge gaps and shortage income.

Those above identified findings in the study area reveal the existence of two basic concerns with regard to prevention, investigation and prosecution roles of criminal justice. *Firstly*, less special attention has been given to the problems of violence against women in the district. In the study area the insufficient budget allocation to the Police and Prosecutor department is marked as an obstacle to afford the prevention or investigation services to those women residing in the remote areas of the Zone. *Secondly*, the Police investigation unit is not equipped with gender specific special investigative skill and lack of proportional numbers of the professionals with case load are also highlighted as factors that results with poor investigation and prosecution experiences. And their evidence collecting procedures are against the interest of victims that discourage their reliance in formal criminal justice.

¹²⁸ Interview with Mr. Cakebo Erjabo, psychology professional Women and child affairs Office, Duna district(Anesho, 14 May 2018)

¹²⁹ Criminal procedure code of Empire of Ethiopia, Proclamation No. 165 of 1969 arts 11-20

Those concerns are clear indicators of how less attention has been given by the criminal justice on the protection of women against violence. For the effective enforcement of obligations it is appropriate to back the institutional implementing capacity through various measures like allocating adequate budget and increasing the skills of professionals on the subject matter. In relation to those points the CEDAW committee under its general recommendation no 35 remind State parties to provide an affordable and adequate services to ensure protection of women against violence.¹³⁰ In this regard the committee advises state parties to allocate sufficient budgets for the executive branch of the government which includes Police and Prosecution offices.

In addition to that limitations with regard to lack of special skill on gender sensitive cases and their reluctance are also identified as the main impediment or the effective investigation and prosecution of cases involving VAW. In this regard the CEDAW committee urges the States parties to eliminate institutional practices and behaviors of public officials that tolerate such violence against women and which afford a negligent response.¹³¹ This shows that for the effective response to VAW in term of investigation and prosecutions avoiding practical problems of institutions are vital. Here, *inter alia*, providing appropriate training to criminal justice professionals and ensuring accountabilities for their failure to act according to the standards are key for effective investigation and prosecution of VAW.

4.1.2) Ensuring the accountability of the perpetrators and providing remedy to the victims of VAW

In the course of protecting women against all forms of violence ensuring the accountability of perpetrators and providing remedy to the victims of violence are basic mandates of the criminal justice. Findings from key informant interviews and FGD participants indicate the existence of limitations on the accountability of the perpetrators and provisions of remedy to the victims of violence against women. The identified limitations, *inter alia*, include delay in judgments or lengthy adjournments, disappearance of witnesses, lenient punishments to perpetrators,

¹³⁰ Committee on the Elimination of Discrimination against Women General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 2017, p 9

¹³¹ *ibid*

unjustified acquittal of perpetrators, withdrawal of cases and abandoning victims without remedy including compensations.

In this regard one of the FGD participants Mr. Eyasu Osabo has indicated the existing problems with ensuring the accountability of the perpetrators. Accordingly he stated that:

The main problem with ensuring the accountability of perpetrators for committing various forms of violence against women rests on the non appearance of the prosecutors witness at trial stage of the court. Here as to my understanding most of the time victims and their witnesses are not interested to appear and testify because they have encountered with intimidation from the perpetrators and influenced by the local elder arbitrators. Even if the criminal procedure code renders power up on court to order the appearance of witness, they are so reluctant to apply it. Due to those reason most criminal cases involving VAW dismissed without results.¹³²

On the other issues of ensuring the provisions of adequate remedy for women victims of violence. As it is indicated under the previous chapter discussions providing adequate redress which include compensation to the victims of violence is indicated as positive obligation of state. In this regard there is a gap on its applications on the ground. As key informants from court indicated that so far no decisions were provided granting compensations to victims in concurrent to criminal proceedings. And data from interview of selected victims indicate for the existence of difficulty on the provisions redress to the victims. Regarding this topic detail are discussed under section 4.2.5.

4.1.2.1) Selected criminal cases

There are numerous criminal cases decided by the districts' first instance court which have relevance to the issues of ensuring accountabilities of perpetrators of violence against women and providing civil remedies to victims of violence. In this piece of study it is difficult to thoroughly discuss even few of the decided cases. However, for this specific theme discussion I have selected some of the decided criminal cases which I believe it will substantiate the findings.

¹³² Mr. Eyasu Osabo, public prosecutor, Shashogo district of Hadiya Zone, participant of FGDs conducted at Shashogo district (22 May 2018)

Accordingly the identified criminal cases shows for the problem on the production of evidence, inappropriate prosecutions, and lenient punishments and problem of court on examining the weight of evidences.

a) *Birhanu Manamo et al V Hosanna city public prosecutor:* ¹³³

The fact of the case constitute: Defendants were charged for inflicting physical injury against the victim, sufficing the grave willful injury of Article 555 of the Criminal code. The defendants on 20 April 2017 intentionally conspiring together had inflicted bodily injury on the victim. Accordingly as confirmed with medical evidence victim had sustained bone fractions in her forehead and backbone. And defendants on their statements of defense claimed that they didn't commit the alleged acts. The attack is gender based violence sufficing physical violence as per article 1 of DEVAW.

The First Instance Court of Hosanna Town after examining both side evidences has passed verdict. Accordingly the court, by exonerating the prosecutor charge, convicted defendants under the ordinary willful injury falling in Article 556; and punished them with fine of 1000 Ethiopian birr. In its reasoning the court mentioned that the defendants have sufficiently defended the charge. And the court during passing punishment magnified the status of defendants under the community as they don't ground deserve imprisonment or sever penalty. On the other hand the victim is left with any provision of civil remedies like compensation award.

In this case the prosecution charge is adequately presented as it is supported by the medical evidence which clearly indicates the extents of harm inflicted up on the victim. Accordingly the fracture on the bones of victim suffices the element of crime provided under Article 555 of criminal code. Besides that the prosecution witness including victim provided their testimonies about the act. However, in this respect the decision of the court is not based on the evidentiary weight of the case. The evidence provided by the prosecutor is sufficient enough to hold liable the perpetrators as per Article 555 of the criminal code. And the decision didn't explain why the court disregarded the evidentiary value of medical document which shows the extent of harm

¹³³ *Birhanu Manamo et.al V Hosanna town public prosecutor*, Hosanna Town First Instance Court, Criminal file No.06435/ 2009 (2009)

inflicted by the victim. The other concern in the case the victims is neglected without adequate redress .i.e. no compensations were awarded to her. Here the prosecutors were not claimed compensations on the behalf the victim. Accordingly the judgment of the case is more biased to the perpetrators and not sufficiently considered the evidentiary weight of prosecution. Therefore the case is failed to ensure the accountability of the perpetrators and adequately redress the victim.

b) *Tadewos Tadesse v Gombora district public prosecutor:* ¹³⁴

The facts of the case contains: the defendant is charged for crime of rape as per 620 (1) of the criminal code of Ethiopia. On 12 November 2017 during hours of darkness, victim with age of 17 while returning from market to home defendant along with his accomplice forcefully took her to his friends' home and then he enforced the victim to have sexual intercourse with him. During court proceedings the defendant in his statement of defense has argued that he is not accountable according to the prosecutions charge. And further the defendant invoked that he had sex with the full consent of victim.

The court rejected the case for failures of prosecutor to sufficiently proof that the defendant has committed the crime. The reason of the court indicates that the prosecution evidences are not sufficient enough to proof that defendant actually committed the act beyond reasonable doubt. The prosecutions eye witnesses further supported the allegation that victim willingly went to the defendant home. These facts indicate for existence of doubt on allegation that the defendant committed the act.

This case is an example for poor investigation and prosecution. That means the evidences presented by the prosecution were not even clear about the act actually committed by the defendant by coercion. In this respect the eye witnesses were supposed to proof the defendant has committed the act using force. They actually supported defendant by expressing that the victim went to his home by her free will. This is a manifestation of how the Police investigative officers are not well equipped with the special skill on the subject matter. On the other side the problem also rests on the prosecutions decisions to charge the defendant on crime of rape.

¹³⁴ *Tadewos Tadesse v Gombora district public prosecutor*, Gombora district First Instance Court, Criminal File No.04496/2010 (2010)

Perhaps it prosecutor would have decided to prosecute the defendant on the proper provision of the criminal code. In this case the medical evidence presented from the health center shows the age of the victim. In which the age of the victim is labeled as less than 18. In this regard the prosecution would succeed if it would have been prosecuted as per article 626 of the criminal code. This provision doesn't require proofing the force element as it is for the rape crime. The only evidence needs to proof is the age of the victim and the existence of sexual intercourse either the volition or not. Thus the case is an example of poor investigation and prosecution of cases involving violence against women. This opens a door for the perpetrators to go unpunished for the crime.

c) *Ashamo Mekanko v Duna Woreda public Prosecutor*,¹³⁵

The facts of case: the defendant is charged for the committing the act of circumcising a woman in contrary to the Article 565 of the criminal code of Ethiopia. According to the case on 8 October 2017 the defendant went to the victim home and circumcised the victim. And the police red handed the defendant just after the act. Then the defendant admitted the fact that he committed the act as indicated under the charge.

Then the court delivered judgment based on the admission made by the defendant. Accordingly the defendant is convicted on the prosecuted crime and punished with fine of 500 (five hundred) Ethiopian birr. In its reasoning the court has raised various mitigation of circumstances while delivering penalty on the defendant. Since the defendant committed the act with honesty and lack of legal awareness are identified by the court as mitigating grounds for defendant. Besides that the victim is sent to home without being compensated.

Here the concern of the decision lies in the following two grounds. First the penalty is not intended to deter further commission of the act by the same defendant or potential defendants. Here it's apparent that the penalty is lenient. The problem, besides court reluctance to adequately entertain the case, can also be attributable to legal response gap to FGM. (We shall see the detail on this point under section 4.2.1) The second point is that the judgment is more favoring the defendant. Primarily the mitigating grounds identified by the court are in contrary with

¹³⁵ *Ashamo Mekengo v Duna district Public prosecutor*, Duna District First Instance Court, Criminal File No. 09614/ 2010 (2010)

provisions of criminal code. As indicated under Article 82 of the criminal code during the committing of the crime is not listed as extenuating ground. And under the decision of the court no further explanations are indicated to apply the ground of being honest as exonerating as per under Article 86 of the criminal code.

4.2) Challenges of criminal justice's response to violence against women in Hadiya

In this section of the paper I will present the main challenges of the criminal justice's response to violence against women as identified from key informants interviews, FGD, criminal cases and observations. Accordingly the main challenges identified, *inter alia*, include normative gaps, institutional setup gaps, influence of local culture and other challenges.

4.2.1) Gaps in the Legal Framework with regard to selected forms of VAW

a) Gap in legal response to Female Circumcision crime

In Hadiya zone as study shows, despite the attempts to eradicate, the practice of Female Genital Mutilation (FGM) is prevalent form of violence against women under various setting of the community.¹³⁶ The cultural belief related to the hygiene of female genitalia and other social factors contribute to sustaining the practice in the district.¹³⁷

The FGD participants and key informants have indicated that the punishments prescribed under the criminal code of Ethiopia are not proportionate with the seriousness and prevalence of the case. In this regard Mr. Tagesse Zeleke public prosecutors coordinator at Duna district, have stated:

The punishment prescribed for the practices of harmful traditional practices including FGM under the Ethiopian criminal code allows the court to practice its discretionary power to pass the least penalty up on the defendants. In this regard in our district majority of rendered verdicts falls on little fine punishments. So I don't think these judgments met the general deterrence purpose of the punishments.¹³⁸

Similarly one participant of FGD has indicated that:

¹³⁶ Tamire and Molla (n 38).

¹³⁷ *ibid*

¹³⁸ Interview with Mr. Tagesse Zeleke, public prosecution unit coordinator, Duna district (Anesho, 14 May 2018)

The prescription of low punishment under the Ethiopian criminal code practically has encouraged parents to practice the FGM because they knew it the court is about to pass fine punishment or simple imprisonment. This situation will defy the specific and general deterrence purpose of punishments.¹³⁹

In addition to that one of the celebrated cases, *Ashamo Mekanko vs. Duna Woreda public Prosecutor*,¹⁴⁰ is an example for the judgments with lenient penalty regarding FMG crime. In this case the defendant is charged for involving himself on the practice Circumcision. The court after examining the case convicted and punished the defendant with fine of 500 Ethiopian Birr.

With regard to FGM, the punishment provided under the criminal code provides: ‘Whoever circumcises a woman of any age is punishable with simple imprisonment for not less than three months, or fine not less than five hundred Birr.’¹⁴¹ However according the article 566 it is only when the act cause serious health injury against the girl that the punishment goes from 5 years to 10 years of imprisonment. Regarding this CEDAW committee on its concluding observation indicated that “...the penalties for female genital mutilation stipulated in articles 561-563, 567,569 and 570 of the criminal code are too lenient.”¹⁴²

The FDRE constitution on the other hand, under article 35 incorporated the protection of women from harmful traditional practices that has consequences on body and mental harm against women. However the criminal code of Ethiopia which is supposed to stipulate better protection to women against harmful traditional practices including FGM has prescribed a lenient punishment. Among other reasons, this concern on the law can be seen as an inadequate response to the incidences of harmful traditional practices including FGM.

As it is indicated above, among others reasons the lenient punishment stipulated by the criminal code has created limitations on deterring the practice of FGM in the study area. The practice of FGM in Ethiopia including in the study area is deeply rooted in the culture, tradition and custom of the society which deserves a multifaceted strategies to combat it. Among others this also

¹³⁹ FGD participant Mr. Wondemagegn Abebe, public Prosecutor at Duna district (14 May 2018)

¹⁴⁰ *Ashamo* (n 135).

¹⁴¹ Criminal Code (n 114) art 665.

¹⁴² Concluding observations of the committee on the Elimination of Discrimination against women, Ethiopia, Forty ninth session, 11-29 July (2011)

includes strengthening the legislative response to harmful traditional practices including the FGM. In this respect prescription of an adequate penalty to the acts of violence against women would have the positive effect on the specific and general deterrence of the acts.

4.2.2) Gaps in the Institutional setup of Criminal justice on response to VAW

a) Inconvenience of Police investigations rooms

According to the data received from the key informants, FDG participants and observations made the police investigations rooms are not arranged in gender sensitive ways. That means all Police investigation rooms under the study area are confined on one single room in which all criminal cases are investigated including cases involving various forms of VAW. As the most forms of violence against women involve a private matter victims and potential witness are not encouraged to provide their testimonies in front of all investigative police officers. In this regard one of the key informants, Ms. Rahel Tamrat, psychologist working on the issues of child and women has pointed that:

There is no separate investigation room for the criminal case involving acts of violence against women. Most of the time victim women feel uncomfortable to tell what happened to them. The reason is that the room is not friendly to them as it is staffed with male investigative police officers.¹⁴³

In addition to that data collected from the key informants and observation shows that the investigative police staffs are not structured to include female professionals. With exception of Hosanna town Police Station which has only one female investigative officer. Accordingly the rest districts' Police investigation staffs are arranged with four male professionals and no female officers. This is a clear manifestation of how the Police investigation are not arranged in a gender-sensitive manner to encourage women's testimony criminal cases involving violence.

b) Lack of specialized expertise on criminal justice to respond VAW

Criminal case involving various forms of violence against women deserves a special attention from the side of criminal justice professionals which in turn requires them to build their capacity and skills to effectively respond it. To effectively respond violence against women in criminal

¹⁴³ Interview made with Rahel Tamrat , social worker Hosanna Town Justice Office (Hosanna, 23 May 2018)

justice State Parties are encouraged to provide regular training to police officers, prosecutors and judges to provide skill on the sensitive of issues violence against women.¹⁴⁴ The main reason behind increasing specialized knowledge on the area of the violence against women lies on the fact that most forms of violence against women are committed with more complex ways which may cause loss of evidences. To this effect it is advisable for the judges, police officers and prosecutors to have special training to effectively handle cases of violence against women.

In the study area key respondents from criminal justice professionals have highlighted that the existence of limitation on the provision of special training regarding effective response to the violence against women. According to them so far no special trainings were arranged on how to respond and understand all forms of violence against women. Mr. Bezabeh Mulatu has stated that ‘we receive no special training regarding handling criminal cases involving violence against women.’¹⁴⁵ In addition to that one of the police officers stated:

The only training we acquired was the common investigation skill that applies to all types of crimes. We don’t have yet received special training particular to cases of violence against women. I believe that such kind of training will help us to effectively respond the incidence of violence against women.¹⁴⁶

Those concerns have potential negative effect on the protection women’s human rights from all forms of violence. That means in case where those governmental institutions including criminal justice fails to effectively respond to the all incidence of violence against women it can be detrimental to the protection of women’s human rights. This signifies that professionals from police, prosecution and courts need to take special training on the area of handling the cases of violence against women according to the weights given to by the international and regional human rights instruments to the protection of women against violence.

Some jurisdictions have introduced mandatory training for the criminal justice professionals with respect to handling case of violence against women. For instance, in Belgium, Police, the

¹⁴⁴ Resolution adopted by the General Assembly Strengthening crime prevention and criminal justice responses to violence against women(on the report of the Third Committee (A/65/457) 2011

¹⁴⁵ Interview with Mr. Bezabeh Mulatu, president of Court, Gombora district (Habicho, 16 May 2018)

¹⁴⁶ Interview with Temesgen Abebe, investigative police officer, Gombora district (Habicho 16 May 2018)

judiciary and prosecutors are expected to receive mandatory and specialized training on how to handle incidences of physical and sexual violence.¹⁴⁷

4.2.3) Inadequate multi-sectoral coordination

Collaborative works with the governmental and non governmental institutions is vital for the effective response of criminal justice to the violence against women. Primarily the coordination begins among the criminal justice institutions that include the police and prosecution. Apart that the cooperation should also extend to the other institutions like, health sectors, Child and Women affairs and other civil societies.

Data received from the key respondents indicates that the collaboration among the criminal justice institutions and other bodies remain insignificant. According to the key respondents from the Prosecutors and Police officers so far no special coordination agreements are made between criminal justice and other sectors like health centers. To this effect usually there are circumstances in which medical evidences are not early available from health centers. That means within health centers the absence quick special medical treatment to victims and speedy delivery of medical evidence has created an obstruction on the timely responses of criminal justice to victims of VAW. In this point on criminal justice coordination with health centers, there are good practices under the jurisdiction of United States of America and Canada. Accordingly specially trained forensic nurses undertake forensic examinations and provide support to victims of various forms of violence against women like rape which support effectively criminal justice's response to VAW.¹⁴⁸

In other way with regard to coordination of Police office with other body one of the respondents from the Women and Child affairs Office has expressed:

¹⁴⁷ Díaz Aguado and Martínez Arias, 'Good Practice Guide to Mitigate the Effects of and Eradicate Violence against Women' (Madrid , 2002) <<https://www.researchgate.net/publication/275019383>> accessed 12 April 2018

¹⁴⁸ United Nations Division for the Advancement of Women and United Nations Office on Drugs and Crime, 'Good Practices in Combating and Eliminating Violence against Women' (2005) <<http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/FINALREPORT.goodpractices.pdf>> accessed on 10 April 2018

In case when we refer criminal cases of violence against women to Police we often encounter a poor co-ordination. Let alone adequately investigate they are even reluctant to hear our words. Those issues of women require multi- sector coordination.¹⁴⁹

Above all coordination among different State sector and other stake holder is important to facilitate the effectiveness of response to the incidence of VAW and assists women victims who are in need of support. In this regard the UN General Assembly resolution on Strengthening crime prevention and criminal justice responses to violence against women has identified that decisiveness of multi sectorial coordination for the effectiveness of responses to the violence against women. This resolution noted that working with coordination with relevant sectors of government and civil society and other stakeholders is quite important to adequately respond to violence against women and protect violation of women's human rights.¹⁵⁰

4.2.4) Undue influence of the traditional *Shimangelena* (elder) arbitration mechanism on the Criminal justice's response to VAW

All key informants and FGD participants of the study unequivocally have stated that the local culture elder's arbitration practice has tremendously influenced the effective criminal justice's response to the violence against women. The arbitrators are more powerful to put pressures on the Police, Public Prosecutors and Judges. The undue pressures created by the arbitration can cause cases involving violence against women to cease even without reaching to the legal procedures like investigation, prosecution and trial stage of the court.

In relation to this all key respondents' and the FGD participants have clearly identified the adverse influence of local elders' arbitration on the protection of women against all forms of violence. According to them including serious cases involving VAW falls under the arbitration of elders. It is also highlighted that the elders to put victims under pressures not to bring their complaint or accusation to the formal criminal al justice process. They even force those criminal cases to withdraw from every stage of the criminal proceedings ranging from investigation to the trial stage of the court. In this regard Mr. Ayele Dejene, psychology professional at Duna districts' Child and Women affairs Office stated:

¹⁴⁹ Interview made with Mr. Abayeneh Eyako, social worker at child and women affairs, Gombora district (Habicho, 16 May 2018)

¹⁵⁰ Resolution (n 144).

It is usual for local arbitrators to put undue influence on victims, police, prosecutors and judges to entertain those criminal cases involving various forms of violence against women. Most of the time they wait until victims brought their cases to the criminal justice institutions. After victims gone long procedures they start to influence victims and the criminal justice professional to withdraw cases. They coerce both victims and witness by invoking that they going to suspend them from local social security called “Idir”. To this effect victims withdraw their cases from legal proceedings.¹⁵¹

Likewise Mr. Terefe Hasiso, a legal professional under the Gombora districts’ Child and Women affairs stated:

According to the information we have the arbitration in our district are more concerned to protect the defendants. They exclusively work to rescue the defendants from punishments and we don’t have concrete evidence that they benefit the victims of various forms of violence against women.¹⁵²

In addition to the data received from interview made with selected victims of various forms of violence against women shows that the influences from the local elder arbitration is high that is often difficult to resist. In this respect interview made one victim of rape crime stated:

I was blamed by local elder for bringing the case to the formal justice institutions. They even intimidated my family by invoking that they can vanish from social security like local “Idir”. The reason why I didn’t bring my case to local elder is because I don’t have trust on them as they usually favor the defendants.¹⁵³

According to the data received from key informants’ interview the concerns also lies on the criminal justice professionals as they are easily susceptible to the influences of the culture of local arbitration. According to Mr. Eliso Elias there are also attitude problem on the part of criminal justice professional to the local culture:

¹⁵¹ Mr. Ayele Dejene participant of FGD, psychology professional under the Duna district’s child and women affairs (14 May 2018)

¹⁵² Interview with Mr. Terefe Hasiso, a legal professional under Child and Women affairs Office, Gombora district (Habicho, 16 May 2018)

¹⁵³ Interview with one of the victim of rape from one of the districts of Hadiya Zone (30 May 2018)

Apart the influence of arbitration, there are strong sense of belongingness among law professionals to the local culture. Even I have encountered an influence from court sayings don't deviate from the culture. They said ignore what the law says but interpret the laws in conformity with the local culture.¹⁵⁴

As the above mentioned data shows the main challenges to the protection of women against violence pose from the local elder arbitration custom. As identified by key informants and FGD participants the local arbitration practice is powerful to interfere at all stage of criminal proceedings ranging from investigation to trial stage. Besides the arbitrations' influencing power up on the victims and criminal justice, the problem also lies on the implementation of weakness of the criminal justice in the study area. As the criminal justice professionals are easily susceptible to those influences created by the elder.

On issues of alternative dispute resolution mechanism, the FDRE constitution allows the resolution of disputes in the limited grounds. Here article 34 (5) permits adjudication of disputes relating to personal and family cases in accordance with religious or customary laws. This provision of the constitution only applies to civil matters relating to the personal and family. That means serious criminal cases including various forms of violence against women are excluded from the subject of adjudications by the cultural or religious laws which also includes the elder arbitrations cultures.

Even if the alternative dispute mechanisms have advantages in terms of flexibility and cost compared to formal justice system, often as it is based on the traditional out looks of societies usually decisions are detrimental to women's human rights protection.¹⁵⁵ In this respect the CEDAW committee under general recommendation no 33 provides the even if the procedures followed by alternative dispute resolutions mechanisms may proved flexibility and low cost on the discharging cases relating to the personal, land and family matters¹⁵⁶ 'they may also lead to further violations of their rights and impunity for perpetrators due to the fact that these often operate with patriarchal values, thereby having a negative impact on women's access to

¹⁵⁴ Mr. Eliso Elias, public prosecutor at Shashogo district of Hadiya Zone, participant of FGD, May 22, 2018

¹⁵⁵ Kwadwo Appiagyei, 'Alternative dispute resolution and its implications for women's access to justice in Africa case study of Ghana'(2013) 1Frontiers of legal research 36

¹⁵⁶ Committee on the Elimination of Discrimination against Women, 'General recommendation on women's access to justice' CEDAW/C/GC/33, 2015

judicial review and remedies.¹⁵⁷ To this effect the committee recommends state parties to ensure that cases of violence against women are under no circumstances referred to any alternative dispute resolution procedures.¹⁵⁸

In this connection, besides the criminal justice institutions reluctance, the problem rests on the absences of detail laws that adequately regulate the role of local tradition of arbitrations with regard of their influence on the cases involving VAW. Thus those gaps on the practices need to be regulated with the appropriate regulations. In this respect in there are countries that regulated the ADR mechanism under detail laws. For example Ghana has promulgated an ‘Alternative Dispute Resolution Act, 2010 (Act 798)’ which is intended to regulate and recognize the participation of ADR on the specific matters provided under the act.¹⁵⁹ The Act under its section 1 has provided lists matters which are precluded from ADR resolution.

4.2.5) Gaps on provisions of civil remedies and other services to victims of VAW

As I have discussed in chapter 3 of the paper State parties are under obligation, *inter alia*, to provide reparation and protection to the victims of violation of human rights. In this respect obligation to provide protection to women against all forms of violence’s, *inter alia*, deserves the provisions of civil remedies including compensations and others orders. Besides that states are under positive obligation to provide victims with services like shelters, legal and counseling services. In this respect in Hadiya zone findings from the key informants and participants of FGD signify for the existence of limitation on the provisions of civil remedies and other services mentioned above.

Regarding civil remedies key respondents from the judges and prosecutors have stated that courts are reluctant to order provision of civil remedies including compensation for victims. In relation to this as identified by the key respondents from court: so far public prosecutors never claimed compensation on behalf of victims with concurrent to criminal cases. To this effect even there are provisions under criminal law procedure code of Ethiopia¹⁶⁰ that allows the awarding

¹⁵⁷ Committee (n 156) 22.

¹⁵⁸ *ibid*

¹⁵⁹ Kwadwo (n 155) 37.

¹⁶⁰ Criminal procedure (n 129) arts 156 – 159.

of compensations to victims along with criminal proceedings but on the ground not implemented. According to them the problem rests, *inter alia*, on the ambiguity of criminal law procedures to this effect and on lack of sensitivity among the prosecutors to enforce those provisions of laws that allow compensation to victim in parallel to criminal proceedings.

In addition that regarding payments of damages to victims the extra contractual laws provided under article 2035 civil code applies. Accordingly victims are supposed to lodge separate civil complaint to the court to claim damages. Here bringing separate civil complaint to the court costs money and require legal knowledge that is unaffordable for most of victims. This makes the situation much worse and left them uncompensated. One respondent from victims stated:

There is no mechanism under which court can order damages along with the criminal proceedings. We don't have even awareness about the existence of civil remedies including payments of damages. In case when we show interest to lodge complaint we usually suffer from shortage of finance and legal knowledge.¹⁶¹

The above discussion denotes that courts don't follow procedures which allow the courts to order civil remedies including damages with concurrent to criminal proceedings. The absence such procedures are detrimental to those victims with no legal knowledge and money to lodge separate civil complaint. In this regard it is apparent that the free legal aid services help the vulnerable groups like victim of various forms of violence against women with legal advice and even representing them on civil proceedings of court. As data shows so far the Legal Aid Center established under the Wachamo University is not fully operational within the community settings.¹⁶² Those combined problems made victims of VAW to be disregarded without being compensated.

Concerning provision of various services to victims of VAW, key respondents and participant of FGD have revealed that victims of violence against women often suffer from lack of support like supplies of shelters, health services and others. In this regard in Hadiya zone shelters providing centers are not yet established. These limitations create a problem to the effective criminal justice's response to the violence against women.

¹⁶¹ Interview made with one of victims of rape from Hosanna town (30 May 2018)

¹⁶² Interview with Tilahun Lire, law lecturer, Wachamo University (Hosanna , 30 May 2018)

One participant of the FGD puts it in this way:

With regard to the providing supports to the victims of violence against women budgets are not allocated to the authorities including the criminal justice and office of child and women affairs. No single shelters center for the survivors/victims is established at the entire Hadiya zone. Rarely when situations get extremely serious, I personally request my staff members to contribute some of their pocket money. This is not solution which solves the problems of victims.¹⁶³

Regarding obligation of state to affording services and support to the victims of VAW the CEDAW committee under its recommendation states, ‘State parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counseling.’¹⁶⁴ This statement of the committee indicates that State parties are under positive responsibilities to provide support services to the various forms of violence against women. In Ethiopia besides institutions established in few selected towns¹⁶⁵ but in Hadiya zone institution is not yet established. This concern has created difficulties to victims and effectiveness criminal justice’s response.

CHAPTER-FIVE

Conclusion and Recommendations

5.1. Conclusion

Throughout the world, violence against women is a pervasive form of violation of women’s human rights. According to the studies made by the World Health Organization at global level one of three women have experienced either physical or sexual intimate partner and non intimate

¹⁶³ FGD participant Mr. Cakebo Erjabo psychology professional under Duna district (14 May 2018)

¹⁶⁴ CEDAW Committee (n 69) Para 24.

¹⁶⁵ UN Women , ‘Shelters for women and girls who are survivors of violence in Ethiopia: National assessment on the availability, accessibility, quality and demand for rehabilitative and reintegration services’ (2016) ; according to this report 12 shelters were identified in the country, which provide rehabilitation services for women and girl survivors of violence. While the majority of available shelters are found in Addis Ababa (five), the regions include: Benishangul Gumuz (two), Amhara (one), Oromia (two), Dire Dawa (one) and Southern Nations, Nationalities and Peoples Region (SNNP) (one).

partner violence in their life time. As it's defined by the Declaration on the Elimination of Violence against Women, violence against women can take either physical, sexual or psychological harms. And it can be perpetrated against women either in private or public in spheres which includes family, community or by states. It results with negative consequences on the health, social, psychological or sufferings to women and affect community at large.

Violence against women had been ignored attention for years by international community until 1970s. And the 1979 CEDAW has been marked as a comprehensive and specific international agreement which obliges every State party to ensure the non-discrimination of women. Even if the CEDAW has failed to mention the term "violence against women" but the CEDEW committee under its general recommendation no 19 has interpreted that article 1 of the CEDWA also applies to the issues of violence against women hence every obligation of State parties to eradicate discrimination against women also works for the prohibition of violence against women.

Besides the CEDAW various international and regional human rights instruments have recognized protection of women's human rights from violations. In this regard the DVAWA has clearly recognized the protection of women against all forms of violence's. It is the first international non binding international declaration that acknowledged the prohibition of violence against women. In addition there numerous regional human rights instruments that also have relevance with protection of women against all forms of violence against women includes: the Istanbul Convention of the Council of Europe (2012), 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, and the Inter-American Convention on the prevention, punishment and eradication of violence against women (Belem do Pará Convention) in 1994.

Those international and regional human rights instruments have two things in common. First they have recognized the human rights of women to be free from all forms of discriminations including violence against women. Second they put obligations on states to ensure the prohibition of violence against women. As to the rights of women those international and regional human rights instruments provided, *inter alia*, for the protection women against all forms violence's and for the right to get adequate remedy when their rights are violated.

Regarding violence against women the obligation of state emanates from the international human rights standards which dictate states bear responsibility to respect, protect and fulfill the human rights of individuals. With this regard states are expected to refrain from violating the rights of individual, make sure that the individual's rights are being respected by other third parties and take positive actions to secure the realizations of human rights. This obligation denotes that states are also obliged to protect women against all forms of violence against women. With connection to this all international human rights principles ought to be respected and adhered by the states.

Basic international human rights principles, *inter alia*, including non-discrimination and equality; and due diligence standards, expect the state to protect women's human rights from any forms of violence's. In case of protection of women against all forms of violence's states are expected to take actions, *inter alia*, which includes taking legislative measures, policy measures, enacting plan of actions, strengthening the criminal justice. Above all the protection of women against violence allows states to prevent, investigate, and prosecute of acts of violence against women; and providing remedy for the violation of human rights. Those roles of states are implemented by the government machineries which by large involve the active participation of criminal al justice institutions.

Ethiopia has ratified various human rights instruments including the bills of international human rights and other specific women's right instruments like the 1979 UN's Convention on the elimination of all forms of discrimination against women (CEDAW) and the African [Banjul] Charter on Human and Peoples Rights. The FDRE constitution has recognized those ratified international and regional human rights instruments as integral part of domestic laws of the country. Besides those other specific laws including criminal code, family law and other polices, action plans and strategies also have provided protection to women against violence. Above all Ethiopia, as signatory of those international and regional binding human rights instruments, assume an obligation to prevent, protect, investigate, and punish the incidences of violence against women and to adequately redress the victims of VAW.

However besides those international and regional human rights instruments progress acts violence against women still subsists at higher magnitude around the globe. Similar to other countries the Ethiopian women does also suffer from various forms of violence's. Particularly in

Hadiya zone of SNNPR various forms of violence against women are still persists. The problem with protection of women against women is not only confined to the prevalence of the acts of violence's but it also lies on the manner how State's response to such issues. In this respect, among others reasons the implementation gaps with regard to prevention, investigation, prosecution, ensuring the accountability of perpetrators of violence against women; and provisions of redress to the victims are identified as main challenge to protection of women against violence's. The criminal justice as the main apparatus of government plays a critical role on discharging its roles of protecting women against violence. And its poor responses to the incidences of violence against women will jeopardize women's human rights and result state to be held responsible for the violation of human rights.

Recognizing the vital role played by the criminal justice on protection of women's human rights, this study has identified main findings on its responses to violence against women in Hadiya zone. In this study those findings are drawn from key informant' interviews, focus group discussions, observation and some case consultations. Accordingly at first the main findings on the adequacy of the criminal justice's response regarding to its role of prevention, investigation, prosecution, ensuring the accountability of perpetrators of violence against women; and providing remedies to victims of VAW are identified. And then major challenges to the effective criminal justice's response to the violence against women are highlighted.

With regard to the quality of the criminal justice's response to prevention, investigation and prosecution the findings show the existence of concerns. These concerns are expressed in terms of budget constraints which are impediment to the Police and Prosecution department to effectively discharge their prevention mandate throughout the remote areas of the zone. In addition to that the investigation of criminal cases involving of violence against women are identified with limitations, *inter alia*, like lack of specialized investigative skill, passive investigation approach which insists victims to submit evidences , and non- proportionate between the case loads and numbers of professionals.

In the study area poor implementations records are highlighted with regard to ensuring the accountability of perpetrators of violence against women and providing remedies to victims of violence against women. Here the limitations include delay in judgments or lengthy adjournments, lenient punishments to perpetrators, withdrawal of cases as result of non

appearance of witness at court. In addition of it is common for victims to be left behind without being redressed with compensation for the harms they suffered.

The second part of finding has highlighted the major challenges to the criminal justice's response to the violence against women in Hadiya zone. Challenges like normative framework gaps, institutional gaps and other challenges are identified. With regard to the normative frame work as the key respondents' and FGD participants have revealed that the criminal punishments prescribed for the acts of harmful traditional practice like FGM are lenient which has a negative effect on the deterrence of the acts. In other way concerns like lack of specialized investigative skills', non-gender friendly police investigation rooms to cases of violence against women, and inadequate multisectoral coordination were identified as institutional gaps.

In addition to the local ADR (local elder arbitration) practices of the societies are identified as the main challenges that influence the criminal justice's response to the violence against women. Usually the local arbitration elders are more capable to put influences on victims, witness, police officers, prosecutors and court. These often results on the failures of criminal cases involving violence against women at the early investigation stages to the trail phase of court. In this issue beside the influences of the arbitration the weakness of criminal justice to resist those pressures are identified as problematic,

Finally concerns with regard to providing civil remedies including compensation with simultaneous with criminal cases are also highlighted as challenges to the protection of women against violence. Apart that there is no assisting programs are employed for those victims who are in need of supports like shelters, legal aids and others.

5.2) Recommendations

Based on the findings and conclusions made above, I recommend the following points to the concerned government bodies like Hadiya zone justice department and other bodies working on the areas of women human right protection:

- 1) To strengthen the implementation capacity of the criminal justice professionals to effectively discharge their roles of prevention, investigation, prosecution, ensuring the accountability of perpetrators; and providing redress to victims of violence against women. Above all to provide special regular training for the criminal justice professionals at regular

basis on the gender sensitive issues like, *inter alia*, on various forms violence against women, handling of cases of violence against women and on all relevant domestic laws, policies and programmes, as well as international legal instruments.

- 2) Based on the budget capacity to establish special investigation, prosecutions units and specialized courts for handling cases of violence against women.
- 3) To allocate adequate budgets so as to foster the criminal justice's role of prevention, investigation, prosecution, ensuring the accountability of perpetrators; and providing redress to victims of violence against women.
- 4) With regard to the legislative measures to the harmful traditional practices like FGM, the prescribed penalties should be amended and backed with strong penalties for violators.
- 5) The influences of local alternative dispute resolutions mechanisms should be regulated to save victims of violence against women from possible risks coming out of such procedures. In addition to that competent authorities should ensure that the criminal cases involving violence against women should not be referred to alternative dispute resolutions. Besides that detail studies should be made on the potential contribution of Alternative Dispute Mechanism (ADR) on protection of women's human rights.
- 6) To strengthen the multi sectorial cooperation of various governmental and non-governmental stake holders while responding to the violence against women.
- 7) To provide adequate gender budgeting which applies to assist victims of violence with the necessary supports like shelters, legal and psychological counseling.
- 8) Furthermore victim sensitive approaches that allow provisions of civil remedy to the victims of violence against women with simultaneous to criminal proceeding should be backed by detail laws and implemented thereof.

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Annexes

Questions prepared for Interviews and participants of FGD

A) The following questions are arranged for Interviews of Judges and prosecutors

- 1) What are frequently reported forms of violence against women in the districts of criminal justice?
- 2) Do you give special attention to crimes of VAW compared to other criminal cases?
- 3) How do you perceive the effectiveness of criminal justice' response regarding prevention, investigation and prosecution; and ensuring the perpetrator accountable for the crime of VAW?
- 4) How do you see the adequacy of the punishments passed on the perpetrators of various forms of VAW from the perspective of deterring furthers violence's?
- 5) Do you think there are gaps on the legal frameworks, regarding protection of women against various forms violence?
- 6) How do you provide civil remedy to victims of various forms of VAW? Can prosecutors seek civil remedies on the behalf of victims? Do you think there is legal lacuna on allowing civil remedies to victims?
- 7) What are the main challenges you experienced on responding to the incidences of violence against women?
- 8) What do you think about the specialization of criminal justice professional concerning treatment of various forms of violence against women?
- 9) How do you express the significance of establishments of specialized investigation and prosecution units, and specialized courts?

B) Interview for the Police

- 1) What are the most reported forms of violence against women in the districts?
- 2) How do you react to the incidence of various forms of VAW?
- 3) Do you give special attention to the prevention and investigation of incidences of VAW compared to other crime?
- 4) Do you investigate the incidences of violence against women in special rooms? How do you think about conduciveness of Police investigation room?
- 5) What are possible protections given to the victims of various forms of VAW?
- 6) What are various challenges you faced while discharging your role of prevention and investigation of various forms of VAW?

C) Interview for professionals of Women and child affairs office

- 1) How was the response provided by criminal justice for the incidences of VAW? And how do you evaluate police, prosecutor and courts reaction and attention they provided to the acts of VAW?
- 2) How do you see the conduciveness of the investigation room from the perspective encouraging women to report and freely testifies the crime inflicted up on them?
- 3) How do you describe various influences posed on the victims from any sources including from local culture/elder's arbitration?
- 4) What are the main challenges you noted that halt the effectiveness of criminal justice response to the incidences of violence against women?

D) Interview for selected victims of various forms of VAW and

- 1) What are the response of police, prosecutors and judges on the incidences of VAW?
- 2) In your experience how do you evaluate the police, prosecutor and courts attention and responses they provided to the acts of VAW?
- 3) Have you received any kinds of protection or civil remedies including compensations for the crime you sustained? If yes, mention the types of provisions you received? Can prosecutors seek civil remedies on the behalf of victims?
- 4) How do you describe various influences posed on the victims from any sources including from local culture/elder's arbitration?
- 5) What are the main challenges you noted that halt the effectiveness of criminal justice response to the incidences of violence against women?

E) For Focused group discussion (for all participants)

- 1) How do you appraise the attention given to the acts of violence against women compared to the seriousness of the problem?
- 2) How do you assess the criminal justice's response to various forms of violence against women? And what do think about legal gaps on protection of women against all forms of violence's?
- 3) What do you think are the main challenges that halt the realization of the right of women to be protected from various forms of violence?
- 4) How does criminal justice provide civil remedy to victims of various forms of VAW? Do you think there is legal lacuna on allowing civil remedies to victims?