



JIMMA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE
SCHOOL OF LAW

**ENSURING ACCESS TO JUSTICE FOR WOMEN VICTIMS OF
DOMESTIC VIOLENCE IN ETHIOPIA: THE CASE OF JIMMA ZONE**

**A THESIS SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIRMENTS
LL.M. DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW**

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Declaration

‘I declare that this thesis titled **Ensuring Access To Justice For Women Victims Of Domestic Violence In Ethiopia: The Case Of Jimma Zone** is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references’.

KeriyaMadi

Advisor Kibrome Mekonnen

Signature _____

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Acronym

ACRWC	African Charter on the Rights and Welfare of the Child
CAT	Convention against Torture and Other Cruel and Inhumane or Degrading Treatment Or punishment
ICCPR	International Covenant on Civil and Political
ICESCR	Covenant on Economic Social and Cultural Rights
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention Rights of the Child Rights
CSO	Civic Society Organization
EDHS	Ethiopia Demographic Health Survey
FDRE	Federal Democratic Republic of Ethiopia
GBV	Gender Based Violence
GTP	Growth and Transformation Plan
IPV	Intimate Partner Violence
NGO	Non-Governmental Organization
OAS	Organization of American States
SDG	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRC	United Nation Convention on the Rights of Child
VAW	Violence against Women
VAWG	Violence against Women and Girls
W H O	World Health Organization

Abstract

Ensuring the right to access to justice for Jimma zone women victims of domestic violence become easier said than done. This work by presenting the legal responses to the right to access to justice for women victims of domestic violence in Ethiopia, explore the practical challenges women victims of domestic violence are facing in accessing justice and suggested measures to ensure the right to access to justice for women victims of domestic violence in Jimma Zone. Three districts of the Zone are selected as research areas. Interview was conducted with public prosecutors who were focal person on women and children cases, selective judges and police investigators working as focal person on women and children cases from each district and 3 victims of domestic violence from each district were interviewed. The interviewees (victims of domestic violence) were purposefully selected from urban and rural settings of the study area. The analysis followed is qualitative approach. The thesis found out that domestic violence against women in Jimma Zone continued to persist and perpetrators remained unpunished. The thesis tries to show the barriers of the right to access to justice for women victims of domestic violence in Jimma zone. Creation of awareness, sustainable resource allocation to support victims/survivors and effective law enforcement institutions are some of the practical strategies proposed to mitigate the right to access to justice for women victims of domestic violence in Jimma and the incidence of domestic violence against them.

Key words: - Right, Access to Justice, Domestic Violence, Intimate Partner, Ethiopia, Jimma, Women

CHAPTER ONE

1.1. BACKGROUND OF THE STUDY

The right to access to justice is both a fundamental component of the rule of law and a key element in ensuring the realization of all human rights.¹ The right to access to justice commonly guarantees every person the right of access to an independent and impartial process and the opportunity to receive a fair and just trial when that individual's liberty or property is at stake.² However, the concept of Access to justice has broader meaning under the international human rights law. It includes the availability of accessible, affordable, timely and effective means of redress or remedies.³ It also comprises the prohibition of discrimination and the principle of equality before the law and equal protection of the law. In addition to these, the concept of access to justice must be understood in the context of States' obligations under international human rights law to respect, protect and fulfill human rights. The international human rights treaties recognize a set of obligations and rights that clearly require States to ensure access to justice. As noted by the Special Rapporteur on the independence of judges and lawyers, the right of access to justice is both a right in itself, and also includes "the right to effective judicial protection (fair trial or due process), the right to an effective remedy and the right to equality."⁴

Access to justice for all is an inextricable foundation of a fair and just society. It remains to be a formidable challenge that disproportionately affects the most vulnerable in society, including the majority of women and is a daunting barrier for the achievement of women's human rights. Women are faced with obstacles at every stage of the justice process starting from the initial decision to take action, to the investigation, prosecution and litigation of the case through to the issuance of a final verdict and its enforcement.

Although they do not make direct reference to access to justice, some international instruments establish principles and standards for the administration of justice. The international human rights instruments that stipulate guarantee of access to justice are the Convention on the Elimination of Discrimination against Women (CEDAW); the Convention on the Rights of the Child (CRC); International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of Persons with Disabilities, the Convention on the

¹ Committee on the Elimination of Discrimination against Women, *UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 33 on Women's Access to Justice*, 23 July 2015, CEDAW/C/GC/33 1–24 (2015).

² Jamm Master Thesis, *Etsegenet Kedir Major Gaps on the Rights of Women in Ethiopia Supervisor : Prof. Göran Melander* (2016). Lund University Available at <https://lup.lub.lu.se/student-papers/record/8876410>

³ A PRACTITIONER 'S TOOLKIT ON WOMEN 'S ACCESS TO JUSTICE PROGRAMMING, . available at <https://www.unwomen.org/en/digital-library/publications/2018/5/a-practiti>

⁴ *Id.*

Elimination of All forms of Discrimination; the; the Convention against Torture and Other Cruel (CAT), and Inhumane or Degrading Treatment or Punishment. The Convention on the Rights of Persons with Disabilities is the only convention that has a provision specifically referring to the concept of access to justice.⁵ However, the recent international instruments establish principles for the administration of justice employ the term ‘access to justice’ explicitly and extensively.⁶ In addition to these, the content of the right to effective access to justice is to be ascertained through the interpretation and application of other provisions the above mentioned human rights treaties. These provisions related to provisions primarily guaranteeing the right to a fair hearing, equality before the law, the right to liberty and security of the person and in particular the right to challenge the legality of detention, and the right to effective remedy. Moreover, the right to effective access to justice is considered as effective element of economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights.⁷

The international and regional human rights treaties to which Ethiopia is a party recognized Access to Justice.⁸ For instance, articles 7 and 8 of the UDHR and article 14 of the ICCPR state that everyone is equal before the law and has the right to effective remedy against violations of fundamental rights.

Access to justice is also recognized as a right in the FDRE Constitution. At the outset, the rights and standards recognized in these international and regional instruments become part of Ethiopian law upon ratification.⁹ Since Ethiopia has ratified all of the above listed international human rights agreements, the rights recognized therein including access to justice have become part of the domestic law. Moreover, Article 37(1) of the Constitution expressly guarantees access to justice to all citizens. This constitutional provision reads:

“Everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”.

Access to justice is integral to achieving the Sustainable Development Goals (SDGs) and inclusive growth. An estimated four billion people around the world live outside the protection of the law, mostly because they

⁵ KOKEBE JEMANEH, RECONSIDERING ACCESS TO JUSTICE IN ETHIOPIA: TOWARDS A HUMAN RIGHTS BASED APPROACH (2014), https://www.researchgate.net/publication/301956360_Reconsidering_Access_to_Justice_in_Ethiopia_Towards_a_Human_Rights_Based_Approach.

⁶ *Id.*

⁷ Womens_access_to_Justice-a_research_report-2011, . available at <https://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2>

⁸ *Id.*

⁹The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. no. 1/1995, Fed. Neg. Gaz., Year 1, no. 1, article 9(4) (Here after FDRE Constitution)

are poor or marginalized within their societies.¹⁰ They can be easily cheated by employers, driven from their land, preyed upon by the powerful and intimidated by violence, women, who often face multiple forms of discrimination, violence and sexual harassment, are particularly affected by legal exclusion.¹¹ Addressing these legal challenges will be essential to enable the basic protection of human rights, from protection of property to legal identity and freedom from violence.

States have the international obligation to respect, protect and fulfill the human rights of all.¹² The obligation to respect means that all State officials, including government agents and those who act under its instructions, direction or control or through delegation of governmental authority, must not commit human rights violations. It also requires the State to ensure equal treatment in law and in practice and to refrain from any unlawful interference with the enjoyment of human rights. Obligation to protect on the other hand requires State authorities to take all necessary measures to protect individuals from the impairment or nullification of their human rights by third parties, including non-State actors such as business enterprises and private individuals. Finally, the obligation to fulfill human rights means that the State must not only ensure a legal framework in place that gives effect to the human rights obligations by which it is bound, but it must also enable the realization of rights in practice, including by taking effective legislative, judicial, administrative, educative and other appropriate implementation measures to ensure the ability of individuals to enjoy their rights.¹³

In Ethiopia also it is clearly indicated under article 13 (1) of the FDRE Constitution that all Federal and State legislative, executive and judicial organs at all levels have the obligation to respect human rights that are enshrined under chapter three of the constitution. And according to this provision of the constitution the legislative organ is expected to enact laws and pass decisions in a way that will not violate human rights either in terms the content of the law or in terms of its implementation; the executive is expected to abstain from violation of human rights in the process of execution and discharging of its duty; and the judiciary should refrain from violating rights in deciding cases.

Access to justice for individual women is often assumed to reside in a criminal justice response to the perpetrator. However, women may identify other aspirations as their idea of justice for the harm they have

¹⁰ A PRACTITIONER ' S TOOLKIT ON WOMEN ' S ACCESS TO JUSTICE PROGRAMMING, *supra* note 3.

¹¹ *Id.*

¹² M. Cherif Bassiouni, *International recognition of victims' rights*, 6 HUM. RIGHTS LAW REV. 203–279 (2006). Available at <https://academic.oup.com/hrlr/article-abstract/6/2/203/676407>

¹³ Abiyou Girma , *The Police and Human Rights in Ethiopia*, 15 Jun available at <http://www.abysynialaw.com/blog-post/itemlist/user/719-abiyougirmatamirat>

experienced: the ability to seek safety through effective protection orders; physical and mental recovery through good quality and accessible health services; and the opportunity to seek a divorce and a new life free from the violence of a spouse. Often these forms of justice must be in place before a woman subjected to violence feels able to embark on the process of seeking justice through the criminal law. Violence against women 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.

A growing number of international policy and legal instruments, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Beijing Declaration and Platform for Action, UN Security Council Resolutions on Women, Peace and Security, and their related processes, have emphasized that access to justice for women and girls is not only a right in itself, but also an essential factor in the enjoyment of other rights, and a factor in sustaining peace and sustainable development.¹⁴ Agenda 2030 for Sustainable Development highlights the importance of women's access to justice to achieve Goal 5 (gender equality and women's empowerment) and Goal 16 (peace, justice and the rule of law).¹⁵ However, ensuring the realization of women's access to justice is challenging. Discriminatory legal and policy frameworks; Limited Justice Sector Capacities to Deliver Justice for Women and Exclusion and Disempowerment of Women are rapid review of challenges to women's access to justice.¹⁶

The Government of Ethiopia has implemented several measures aiming at ensuring the prosecution and punishment of perpetrators of violence against women, such as child and women protection units in police stations, the Violence against Women Investigation and Prosecution team. The Ministry of Women, Children and Youth Affairs is the dedicated body to gender equality. However, there is no law addressing violence against women, including a comprehensive approach to address violence against women with specific provisions for investigation, prosecution and punishment of the perpetrator and protection and support services for survivors.

Domestic violence which is the most prevalent gender based violence is a criminal offense under article 564 of the FDRE Criminal Code. It stipulates the provisions on grave willful injury (art. 555), common willful injury (art. 556) and assault (art. 560) which are applicable to a person who, doing violence to a marriage partner or a person cohabitating in an irregular union, causes grave or common injury to his/her physical or

¹⁴ IDLO CN - Access to Justice for Women and Girls NO CONTACTS, . available at <https://www.idlo.int/system/files/event-documents/IDLO%20CN%20-%20A>

¹⁵ *Id.*

¹⁶ *Id.*

mental health. However, women in Jimma face several barriers in accessing justice and it is underreported because of cultural taboos, victims' lack of trust in the legal system, lack of knowledge of laws, lack of coordination between different actors and pressure from their families or community elders to settle disputes through traditional justice systems or within the family and fear of retaliation as because police consider it a family issue.

1.2. Statement of the Problem

Recently there has been rapid progress in establishing the right of women to live free of violence in both international and national laws. Unfortunately, protection against violence still now exists on paper, and yet violence remains pervasive and enforcement weak. Very few victims seek help, and most crimes still go unsanctioned and unpunished. Ethiopia has ratified and domesticated major international and regional human rights instruments like CEDAW which was adopted without reservation, DEVAW and AU Solemn Declaration on Gender Equality in Africa which are women specific. Domestic violence against women is a severe and pervasive problem the world over, with devastating effects on the health and well-being of women. This violence is perpetrated by someone the woman knows, not by a stranger. As the act is perpetrated by intimate partner, tend not to be reported to the police immediately. Both the FDRE constitution and FDRE criminal code have prohibited the perpetration of domestic violence against women. Despite that, the right to access to justice for women victims of domestic violence is hardly implemented. Therefore, as an input for the national and local judicial bodies and other concerned government bodies in proper implementation of the right to access to justice for women victims of domestic violence, this study intends to examine the existing legal frameworks concerning the right to access to justice and domestic violence and identify the practical barriers that Jimma Zone women victims of domestic violence are experiencing. The finding of this study may help judicial institutions and government organs who are struggling to ensure the right to access to justice for women victims of gender based violence.

1.3. Objective of the Study

The overall objective of this thesis is to critically examine whether Jimma Zone women victims of domestic violence are facing practical barriers in accessing justice. Besides, this thesis generally point out the solutions to sort out the identified problems.

To this end, the following are the specific objectives of the proposed research:

- To identify specific challenges the Jimma Zone women victims of domestic violence are experiencing in accessing justice.

- To identify the reasons behind the challenges in accessing justice for Jimma Zone women victims of domestic violence.
- To indicate specific route to solve the problems impeding women victims of domestic violence from access justice in Jimma so that it helps to take measures.

1.4. Research Questions

Based on the objectives of the thesis, the thesis aims to address the following basic questions

- What are the practical barriers that the Jimma Zone women victims of domestic violence are facing in the course of seeking justice?
- What are the causes for the challenges that are hindering the Women victims of domestic violence of Jimma Zone in practicing the right to access to justice?
- How could the existing problems be solved to realize the right to access to justice for women victims of domestic violence in Jimma Zone by utilizing the possible and existing institutional and legal frame works of the legal system?

1.6 Significance of the Study

The present thesis will contribute and help by displaying the materially existing problem in realizing the right to access to justice for women victims of domestic violence in Jimma Zone resulting from different factors and indicate the way to improve the socio- economic, institutional and structural problems. In addition, this research may use as input for future works on related issues.

1.5. Research Methodology

To address the research questions listed above, different methods would be used. The approach to be followed in this thesis is qualitative one in which different data collection mechanisms would be used. Critical examination of laws and different articles on the area is one of the methods to be used. Jimma Zone is found in the South Western part of the Federal Democratic Republic of Ethiopia. This zone is one of the 22 zones constituting regional states of Oromia. In terms of population, according to the official 2007 Population and Housing Census of Ethiopia Statistical Report for Oromia Region, this Zone has a total population of 2,486,155 whom 1,250,527 are men and 1,235,628 women.¹⁷ Jimma is bordered on the South by the SNNP Region, on the Northwest by Ilu Aba Bor, on the north by East Welega and on the Northeast by West Shewa. At the time of doing this research, there are 21 administrative districts in the Zone. Among

¹⁷ Central Statistical, *2007 POPULATION and HOUSING CENSUS OF ADMINISTRATIVE* (2012). Available at <http://unstats.un.org/unsd/censuskb20/Attachment489.aspx?AttachmentT>

these, this research focuses on Omo Nada, Tiro Afeta and Sokoru districts. Relatively, these districts cover large number of kebeles and population compared to others. This covers from border of Kersa wereda to Gibe River, the border of Jimma Zone. Interview was conducted with public prosecutors who were focal person on women and children cases, selective judges working on criminal bench and police investigators working as focal person on women and children cases from each wereda and 3 victims of domestic violence from each wereda were interviewed. Moreover, representatives from government bodies (stock holder) like Women, Children and Youth Affairs office were interviewed. The interviewees (victims of domestic violence) were purposefully selected from urban and rural settings of the study area. In addition to few cases and annual reports of different government office related to the right to access to justice and domestic violence were reviewed.

1.8. Limitation of the Study

The fact that the research includes doctrinal analysis of the rules and referring to literatures, the researcher may not face shortages of such sources. However, as the researcher has to conduct the research in addition to the regular work, and should have to meet at least 3weredas of selected women victims of domestic violence, selected professionals and concerned officers for interview, time constraint and shortage of resource could be possible challenges of the study. Even meeting the victims could be a big challenge as they are from remote villages.

1.9. Scope of the Study

It is not possible to discuss the right to access to justice of women victims of all forms and manifestations of violence against women comprehensively in one study. Rather, the present study is limited to analyzing and commenting the existing legal frameworks, socio-economic, institutional and structural factors on the access to justice, in ensuring effective access to justice for women victims of domestic violence by showing the materially existing problems with the denial of the right to access to justice for Jimma Zone women victims of domestic violence.

1.10. Structure of the Thesis

The study is proposed to contain four chapters. The first chapter contains the over view of the whole study. The chapter contains background of the study and general introduction to the key elements of the study, statement of the problem, objective of the study, research question, significance, limitation and scope of the study. The second chapter sets out the broad context of access to justice and domestic violence. The chapter explores the concept of access to justice: from human rights perspective, domestic violence and the barriers of access to justice will be discussed in connection to women victims of domestic violence in doing that the

concept of domestic violence will be clarified. This chapter also reviews international and regional legal frameworks adopted to realize the right to access to justice for women victims of gender based violence in general and women victims of domestic violence in particular. The international and regional norms, standards and the practice are discussed. Under chapter three, the Ethiopian legal frameworks related to the right to access to justice and domestic violence as well as the findings of the study are analyzed. Chapter four contains the conclusion and recommendation part.

CHAPTER TWO

2. THE CONCEPT OF ACCESS TO JUSTICE AND DOMESTIC VIOLENCE AGAINST WOMEN

2.1. The Concept of Access to Justice

The ideal embodied in the notion of access to justice is based on the proposition that each person should have effective means of protecting his rights or entitlements under the law.¹⁸ However, there is no uniform understanding of the concept of access to justice. Although the concept of access to justice is recognized in different international and regional human right instruments there is no document that give specific definition to the concept and no justice system has lived up to the promises encapsulated by the universal ideals of ‘access to justice’ and escaped criticism. Recognition that justice systems have failed to translate people’s rights into reality has recently led to the formulation of a human rights-based approach in international access to justice movement. This is based on the implicit and explicit recognition in a number of international human rights instruments of each and every person’s right to have effective access to justice.¹⁹

The concept of effective access to justice and rule of law are two interrelated preconditions for a functioning democracy. The rule of law mainly refers to the existence of law and rules governing how society should function. One of the most important conditions for the establishment of rule of law is effective access to justice which concerns the ability of ordinary citizens to avail themselves of the instruments of the law in a world system of justice. Access to justice includes civil, criminal and administrative law and is crucial for individuals seeking to benefit from other procedural and substantive rights.

The expression access to justice serves to focus on two basic purposes of the legal system. First of all, access to justice means that the legal system must be equally accessible to all.²⁰ Plaintiffs must be empowered to bring a claim before a court. Therefore, the procedural rules and practicalities shaping the legal system, such as litigation costs, availability of legal aids, or access to legal representation, may allow or restrict the ability of plaintiff, especially the poor and disadvantaged to bring a claim. According to this expression, access to justice cannot be achieved when plaintiff face many obstacles that prevent them from filing a lawsuit.

The right of access to justice used to be understood in a restrict manner, mainly as the aggrieved individual’s formal right to litigate or defend a claim. This understanding has, however, evolved over time and has moved from a mere formal right to access to a more comprehensive right incorporating greater enforcement aspects. The right of access to justice generally guarantees that every person has access to independent and impartial process and the opportunity to receive a fair and just trial when that individual’s liberty or property is at

¹⁸ JEMANEH, *supra* note 5.

¹⁹ *Id.*

²⁰ Topic Overview & Background Information, *Effective Access to Care*, WORLD HEALTH. Available at <https://www.who.int/news-room/fact-sheets/detail/primary-health-care>

stake.²¹ Access to justice is also recognized as encompassing a number of core human rights, or as a right itself under specific international human rights and regional human right instruments by recognizing it as the right to equality before the law and the right to effective remedy against violations of fundamental rights; And the right to fair trial and the right to an effective remedy.²²

Access to justice is also recognized as a right in the FDRE Constitution.²³ In addition to recognizing the right under specific provision, the rights and standards recognized in these international and regional instruments also become part of Ethiopian law upon ratification.²⁴ Since Ethiopia has ratified all of the above listed international human rights agreements, the rights recognized therein including access to justice have become part of the domestic law. Moreover, Article 37(1) of the Constitution expressly guarantees access to justice to all citizens. This constitutional provision reads:

“Everyone has the right to bring a justiciable matter to and to obtain a decision or judgment by, a court of law or any other competent body with judicial power”.

The CEDAW committee GC/33 expresses the right of access to justice as essential and fundamental element in realizing all rights protected under the Convention on the Elimination of All Forms of Discrimination against Women. According to this recommendation the right of access to justice for women is multidimensional and including; independence, impartiality, integrity and credibility of the judiciary, the fight against impunity and corruption, and the equal participation of women in the judiciary and other law implementation mechanisms. It also encompasses justifiability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims.²⁵ According to this general recommendation, the scope of the right of access to justice also includes plural justice systems that coexistence within a State party of State laws, regulations, procedures and decisions on one hand, and of religious, customary, indigenous or community laws and practices on the other hand. It includes multiple sources of law, whether formal or informal State, non-State and mixed that women may encounter when seeking to exercise their right of access to justice. Religious, customary, indigenous and community justice

²¹ NATHY RASS-MASSON & VIRGINIE ROUAS, *DIRECTORATE GENERAL FOR INTERNAL POLICIES POLICY DEPARTMENT C: CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS EFFECTIVE ACCESS TO JUSTICE STUDY*, <http://www.europarl.europa.eu/supporting-analyses>.

²² Mizanie Abate, Alebachew Birhanu & Mihret Alemayehu, *Advancing access to justice for the poor and vulnerable through legal clinics in Ethiopia: constraints and opportunities*, 11 MIZAN LAW REV. 1 (2017). Available at <https://www.ajol.info/index.php/mlr/article/view/161601/151478>

²³ article 37 of the FDRE Constitution

²⁴ Article 9 of the FDRE constitution

²⁵ Committee on the Elimination of Discrimination against Women, *supra* note 1.

systems called traditional justice systems may be formally recognized by the State, operate with the State's acquiescence with or without any explicit status, or function outside of the State's regulatory framework.

Effective access to court requires that, litigants should be able to institute proceedings before a dispute resolution body. When providing that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. In providing effective access to court, three possible challenges may raise. Organization of the national judicial system is the first issue to be considered. This issue may occur as a result of lack of financial, material or human resource of the judiciary affecting its capacity to render a judgment; the second issue is Legal and procedural obstacles raises from restrictive rules on time limits, legal standing or admissibility; strict rules governing the production of evidence and the burden of proof; and excessive procedural formalism; and the third reason is that of Practical obstacles in which insufficient geographical court coverage and logistical issues are at question.

Costs of justice and legal assistance are other factors that may affect effective access to justice. High costs of representation and court fees may discourage citizens from bringing a claim before a court. Costs of justice are related to application fees, costs of representation, testimony costs and disproportionate cost for the nature of the claim or the plaintiff resources. The other issue is related to legal aid and legal assistance which results from unavailability of legal aid for all types of proceeding, insufficient availability of lawyers and other types counsel and quality of representation.

Finally, access to fair trial is a key component of guaranteeing effective access to justice. In this case everyone is entitled to a hearing within a reasonable timeframe. The credibility of effectiveness of justice depends on the administration of justice without delay. In addition to this, delay in enforcement or carrying out of the final judgment also constitutes the obstacle to accessing justice.

2.1.1. Access to Justice from Human Rights Perspective

Access to justice is a right recognized under the major international and regional human right instruments including: the UN charter, Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which is a comprehensive international agreement that affirms principles of fundamental human rights and equality for women around the world, the United Nation Convention on the Rights of Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The two former international human rights instruments recognize the right as everyone has the right to effective remedy against violation of fundamental rights.

The UDHR states that: ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’.

By providing the same rights in more detail, The ICCPR obliges each state party to the covenant:

- a. *To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
- b. *To ensure that any person claiming such a remedy shall have his right thereto determined by competent determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy;*
- c. *To ensure that the competent authorities shall enforce such remedies when granted*

Although it do not contain similar provision article 2/1 of the ICESCR seeks state party to justify its failure to provide any domestic legal remedies for violation of economic, social and cultural rights.

The linkage and relevance of access to justice within the human right instrument may be understood in different ways. First, as access to justice is fundamental human rights recognized for all human being. Specially access to justice play a great role in the enforcement of human rights in general. Access to justice is the only way to realize the recognized human rights in every framework including international, regional and national legal instruments. The relevance of access to justice within the human rights framework is seen in the justifiability of all human rights and access to remedies in cases of violation. As it is the only means to enforce claims arising from the rights, without access to justice recognition of human rights would be meaningless.

2.1.2. The Significance of Women’s Effective Access to Justice

It is now well recognized that empowerment of women is central to building democratic, peaceful and prosperous societies. A society can be neither democratic nor prosperous without the full participation of women, and that no nation can thrive when it fails to tap the potential of half its population. A growing number of international policy and legal instruments, including CEDAW and Beijing Declaration and platform for action, UN Security Council Resolution on Women peace and security, and their related processes have emphasized that access to justice for women and girls is not only a right in itself, but also an essential factor in the enjoyment of other rights and a factor in a sustaining peace and sustainable development.

As women are inherently equal to men, and women’s equality is a universal human right, women’s access to

justice is central to legal development as an end in itself. It is also central to human development as a whole, as improving women's access to justice can have a positive influence on social, political and economic development. As the World Development Report indicates, legal institutions play a key role in the distribution of power and rights. They also underpin the forms and function of other institutions that deliver public service and regulate market forces.²⁶ Further, access to justice for all is an element of the rule of law, itself an ends and means of development. Without fair and equal access to justice for women, no matter how far it has progressed in other crucial aspects of development a country cannot call itself "developed". Therefore, practices and norms of any country that are inconsistent with women's access to justice should be changed or abandoned in order to respect the universal value of women's equality. As development is freedom, this change must happen at a grassroots level the people directly involved in and affected by this change must have the freedom and opportunity to decide what course is to be chosen.

This attainment of access to justice for women has three integrally linked arms: normative protections, the existence of rights and remedies; institutions and mechanisms, having the capacity to provide a remedy; and legal empowerment of all members of society.²⁷ Together, these ensure the genuine capacity to access and utilize the legal system to its full effect, leading to fair remedies for wrongs and the effective realization of rights. Thus, in theory, if any one of the three arms of access to justice is missing, this will have a negative effect on the development of a country.

Access to justice for women for acts of gender based violence (GBV) means that States must implement a range of measures including, where necessary, amending domestic law to ensure that acts of violence against women are properly defined as crimes and ensuring appropriate procedures for investigations, prosecutions and access to effective remedies and reparation.²⁸ If women's human rights are to be realized and States' legal obligations implemented in practice, then justice systems throughout the world will require varying degrees of reform. The international human rights laws have recognized the rights to effective remedies and reparation for persons who suffer violations of their human rights. In addition, to secure relief at the individual level gaining access to justice for acts of violence is also important to promote change at the systemic level in terms of laws and practice.

Women are considered as disadvantaged because their inability to access justice remedies in existing systems increases their vulnerability to poverty, and in turn their poverty hinders them from accessing justice systems

²⁶ JEMANEH, *supra* note 5.

²⁷ Tess Bridgman, *The Relationship between Women's Access to Justice and Development Papua New Guinea: A Case Study to Link Theory with Reality* 74 (2007). Available at <https://www.otago.ac.nz/law/research/journals/otago036262.pdf>

²⁸ WOMEN'S ACCESS TO JUSTICE FOR GENDER-BASED VIOLENCE A PRACTITIONERS' GUIDE, . available at <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-acce>

to assert their rights. Therefore, a justice system that is accessible for the women helps them to enforce their rights which will further enhance their ability to have control over factors that affect their life such as security, livelihood, access to essential resources, and participation in public decision making process.

Access to justice for women have also great significance in creating awareness to the respondent State in the case and other States and key actors, by put on notice that they must act to improve law and practice accordingly where international human rights courts and mechanisms entertainment gender-based violence cases. Moreover, Political and social actors become more aware of some ways in which women's human rights are violated and their obligations in addressing the phenomenon and preventing the reoccurrence of violence.²⁹

2.2. The Concept of Domestic Violence

Domestic violence is not physical violence alone. Domestic violence is any behavior that purposes of which are to gain power and control over a spouse, Partner, girl/boyfriend or intimate family member.³⁰ The United Nations Declaration on the Elimination of Violence against Women defines violence against women as any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Domestic violence includes all acts of physical, sexual, psychological or economic violence that occur with the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.³¹ When the general public thinks about domestic violence, they usually think in terms of physical assault that results in visible injuries to the victim. This is only one type of abuse. There are several categories of abusive behavior, each of which has its own devastating consequences. Lethality involved with physical abuse may place the victim at higher risk, but the long term destruction of personhood that accompanies the other forms of abuse is significant and cannot be minimized.

2.2.1. Types of Abuse

a. Controlling

Controlling behavior is a way for the batterer to maintain dominance over the victim. Controlling behavior, the belief that they are justified in controlling behavior and as a resultant abuse is the core issue in the abuse

²⁹ *Id.*

³⁰ Elizabeth Miller & Brigid McCaw, *Intimate partner violence*, 380 N. ENGL. J. MED. 850–857 (2019).

³¹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, , 25 INTERNATIONAL WOMEN 124–126 (2011).

of people. It is often subtle, almost always insidious, and pervasive.³² This may include: forcing or encouraging their dependency by making the victim believe that they are incapable of surviving or performing simple tasks without the batterer or on their own; invading the victim's privacy by not allowing time and space of their own; not allowing their freedom of choice in terms of styles of social interaction, and living style. This may include live in a way more conservative than they are comfortable; limiting the social and family relation to his own scope; using the children to control the victim by kidnapping or hurting the children; systematically isolating the victims by keeping the victims from seeing who they wants to see, doing what they want to do, controlling how the victim feels and thinks.³³

b. Physical Abuse

Physical abuse is any physical aggressive behavior, withholding of physical needs, indirect physical harmful behavior or threat of physical abuse.³⁴ This may include: hitting, kicking, biting, slapping, shaking, pushing, pulling, punching, choking, beating, scratching, pinching, pulling hair, stabbing, shooting, drowning, burning, hitting with an object, threatening with a weapon or threatening to physical assault; holding the victim hostage; the batterer kicking walls, doors, or other objects during argument, throwing things in anger, destruction of property; withholding of physical needs including interruption of sleep or meals, denying money, food, transportation, or helps if sick or injured, locking victim into or out of the house and refusing to give necessities.³⁵

c. Sexual Abuse

Sexual abuse is using sex in an exploitative fashion or forcing sex on another person. Having consented to sexual activity in the past does not indicate current consent. Sexual abuse may involve both verbal and physical behavior. This may include: exploiting a victim who is unable to make an informed decision about involvement in sexual activity because of being asleep, intoxicated, drugged, disabled, too young, too old, or dependent upon or afraid of the perpetrator; using force, coercion, guilt, not considering the victim's desire to have sex; making contact with the victim in any nonconsensual way; exhibiting excessive jealousy resulting in false accusation of infidelity and controlling behaviors to limit the victim's contact with the outside world.³⁶

d. Emotional Abuse and Intimidation

³² Miller and McCaw, *supra* note 31.

³³ *Id.*

³⁴ South Africa et al., *TYPES OF DOMESTIC VIOLENCE EXPERIENCED BY WOMEN IN Ilze Slabbert , Sulina Green*, 49 234–247 (2013). Available at https://www.researchgate.net/publication/275603573_Types_of_domestic

³⁵ *Id.*

³⁶ *Id.*

Emotional abuse is any behavior that exploits another's vulnerability, insecurity, or character. This include: telling the victim that she is mentally unstable or incomplete; using actions, statements or gestures that attack the victims' self-esteem and self worth with the intention of humiliate; consistently disregarding, ignoring or neglecting the victim's requests and needs; insulting or criticizing to undermine the victim's self-confidence. These kinds of abuse also include verbal abuses like: telling victim they are unattractive or undesirable, calling 'ugly', 'bitch', and 'stupid' etc.³⁷

Different cultural conditions allow and encourage men to abuse women. Objectification of women and the belief that women exist for the 'satisfaction of men's personal, sexual emotional and physical needs; that the use of physical force is acceptable, appropriate, and effective; and social support for his dominance, controlling and assaultive behavior by failing to intervene aggressively against the abuse, the culture condones the violence.

e. Economic Abuse

Financial abuse is a way to control the victim through manipulation of economic resource. This type of domestic violence include: controlling the family income and either not allowing the victim access to money or rigidly limiting their access to any kind funds.³⁸ This is done by keeping financial secrets or hidden accounts, putting the victim on an allowance or allowing the victim no say in how money is spent, or making the victim turn their paycheck over to the abuser; causing the victim to lose a job or preventing them from taking a job by making them late for work, refusing to provide transportation to work by calling victim at work and the like.

2.3. The Adverse Aspects of Domestic Violence to Women

Violence against women has far reaching consequences for women, their children, and society as a whole. Women who experience violence suffer a range of health problems, and their ability to earn a living and to participate in public life is diminished.³⁹ Their children are significantly more at risk of health problems, poor school performance and behavioral disturbances. Violence against women impoverishes women, their families, communities and nations. It lowers economic production, drains resources from public services and employers, and reduces human capital formation. The most common form of violence experienced by women globally is intimate partner violence, sometimes leading to death.⁴⁰

³⁷ *Id.*

³⁸ *Id.*

³⁹ UNITED NATIONS. DIVISION FOR THE ADVANCEMENT OF WOMEN. & JOINT INTERNATIONAL LAW PROGRAM., ENDING VIOLENCE AGAINST WOMEN : FROM WORDS TO ACTION. (2006). Available at

<https://www.unwomen.org/en/digital-library/publications/2006/1/ending>

⁴⁰ *Id.*

Within the broad context of women's subordination, specific causal factors for violence include the use of violence to resolve conflicts, doctrines of privacy and State inaction. Individual or family behavior patterns, including histories of abuse, have also been correlated with an increased risk of violence.⁴¹ Majority of women is subject to violence in their lifetime. Most of the time, the violence against women is committed at her own home and as a result no place is less safe for a woman than her own home. Regional rates of violence inflicted by intimate partners reach as high as 43 percent in South Asia and some national violence studies show that up to 70 percent of women have experienced violence from an intimate partner.⁴² What this shows is that more than one in three women globally has been subject to physical or sexual or both violence and in the vast majority of cases; this is at the hands of their husbands or boyfriends. The total exceeds 700 million women worldwide.⁴³ This challenge is now well recognized at the global level. The Open Working Group for the post 2015 Development Goals, comprising all member governments, has called for the inclusion of combating violence against women as a standalone transformative goal. UN Women has argued that: "concrete actions to eliminate the debilitating fear and loss through experiences of violence must be a centerpiece of any future framework."⁴⁴

Although Protection against violence now exists on paper, in many countries of the world, yet violence remains pervasive and enforcement remains weak. Social norms in many countries condone behaviors that are associated with violence. In this context, very few victims seek help, and most crimes still go unsanctioned and unpunished.⁴⁵ The right of all women to live free of violence needs to be given life and content on the ground, to make a difference to the reality of women's lives. This results from weaknesses of a criminal justice approach to gender based violence.

There are many different forms of violence against women physical, sexual, psychological and economic. Women are subjected to violence in a wide range of settings, including the family, the community, state custody, and armed conflict and its aftermath. The most common form of violence experienced by women globally is intimate partner violence, sometimes leading to death.⁴⁶ Also widespread are harmful traditional practices, including early and forced marriage and female genital mutilation.⁴⁷ Within the community setting,

⁴¹ *Id.*

⁴² Rangita De Silva De Alwis & Jeni Klugman, *Freedom from Violence and the Law: A Global Perspective*, UNIV. PENNSYLVANIA J. INT. LAW 27 (2015), <https://wapp.hks.harvard.edu/files/wapp/files/freedom-from-violence-and-the-law.pdf>.

⁴³ *Id.*

⁴⁴ RANGITA DE SILVA DE ALWIS & JENI KLUGMAN, *Freedom from Violence and the Law: A Global Perspective* (2015), <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2013/10/u>.

⁴⁵ De Silva De Alwis and Klugman, *supra* note 43.

⁴⁶ UNITED NATIONS. DIVISION FOR THE ADVANCEMENT OF WOMEN. AND JOINT INTERNATIONAL LAW PROGRAM., *supra* note 40.

⁴⁷ *Id.*

gender based murder of women; sexual violence, sexual harassment and trafficking in women are receiving increasing attention. Violence perpetrated by the State, through its agents, through omission, or through public policy, spans physical, sexual and psychological violence. It can constitute torture. The high incidence of violence against women in armed conflict, particularly sexual violence including rape, has become progressively clearer.⁴⁸

Violence against women was drawn out of the private domain into public attention and the arena of State accountability largely because of the grass-roots work of women's organizations and movements around the world.⁴⁹ This work drew attention to the fact that violence against women is not the result of random, individual acts of misconduct, but rather is deeply rooted in structural relationships of inequality between women and men. There has been significant progress in elaborating and agreeing on international standards and norms. International and regional legal and policy instruments have clarified the obligations on States to prevent, eradicate and punish violence against women. However, States around the world are failing to meet the requirements of the international legal and policy framework.⁵⁰

2.4. Obstacles of Access to Justice for Women Victims of Domestic Violence

As discussed before, the right of access to justice generally guarantees every person the right to access to an independent and impartial process and the opportunity to receive a fair and just trial when that individual's liberty or property is at stake. However, access to justice does not always involve judicial recourse but the availability of accessible, affordable, timely and effective means of redress or remedies. Though the international and constitutional recognition of the substance of the right is set in the right direction, it does not guarantee the realization of access to justice. Generally, lack of legal identity, ignorance of legal rights, unavailability of legal services, and unjust and unaccountable legal institutions are recognized as obstacle in realization of the right of access to justice.

There are number of obstacles that impede victims of gender based violence in general and women victims of domestic violence in particular from realizing their right of access to justice on a basis of equality. These obstacles occur in a structural context of discrimination and inequality, due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women. All of these obstacles constitute persistent

⁴⁸*Supra note 10*

⁴⁹ 45 UNITED NATIONS, ENDING VIOLENCE AGAINST WOMEN: FROM WORDS TO ACTION (2008).

⁵⁰ *Id.*

violations of women's human rights.⁵¹ The CEDAW Committee has observed that the centralization of courts and quasi judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender insensitive judgments/decisions due to the lack of trainings, delays and excessive length of proceedings, corruption, etc.) all prevent women from accessing justice.⁵²

2.5. The Right to Access to Justice for Women Victims of Domestic Violence under International and Regional Human Rights Laws

Women are often denied equal enjoyment of their rights, in particular by virtue of the lesser status ascribed to them by tradition and custom, or as a result of overt or covert discrimination. The enjoyment of human rights on the basis of equality between men and women must be understood comprehensively. Guarantees of non discrimination and equality in international human rights treaties mandated both de facto and de jure equality.⁵³ De facto (substantive equality and De jure (formal) equality is different but interconnected concepts. Formal equality assumes that equality is achieved if a law or policy treats men and women in a neutral manner. Substantive equality is concerned, in addition, with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate the inherent disadvantage that particular group's experience. International human rights laws impose obligation on states not only to refrain from committing human rights violation but also to prevent and respond to human rights abuses, without discrimination. The international legal interpretations and norms are evolving to define more clearly the positive role and responsibility of States in preventing violations committed by private actors or State agents. According to Committee on Covenant on Economic Social and Cultural Rights, General Comment No. 16, substantive equality for men and women will not be achieved simply through the enactment of laws or the adoption of policies that are, prima facie, gender-neutral. In implementing this equality, state parties should take into account that laws, policies and practice can fail to address or even perpetuate inequality between men and women because they do not take account of existing economic, social and cultural inequalities, particularly those experienced by women. Domestic violence affects the economic, social, and cultural rights of women. This gives rise to cross-cutting state obligations under the ICESCR to eliminate gender discrimination.⁵⁴ The ICCPR, also require States to respect and ensure, among other things, the right to life,

⁵¹ Committee on the Elimination of Discrimination against Women, *supra* note 1.

⁵² *Id.*

⁵³ WomenRightsAreHR(2), . available at <https://www.ohchr.org/documents/events/whrd/womenrightsarehr.pdf>

⁵⁴ *Id.*

the right to be free from torture and cruel inhuman or degrading treatments and security of person. The human rights committee has also stated as the States has the responsibility to investigate, and bring the perpetrators to justice whenever the violation occurs.

The Report of the UN Special Rapporteur on violence against women,⁵⁵ also stated as the States can be held complicit where it fails systematically to provide protection from private actors any person of her/ his human rights. This must be established when the State access or forgive the offensive abuses through widespread non action or sanction the offence reluctantly. States said to be failed to take minimum steps necessary to protect their female citizens' rights to physical integrity and life where they do not actively engage in acts of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners and to avoid such complicity, States must demonstrate due diligence by taking active measures to protect, prosecute and punish such offenders.

The domestic application of these international human rights instruments are made whether by signing/ratifying the relevant international instruments or by customary international law: in which there is general States practice; The State is acting under the belief of a legal obligation to practice such behavior (opinion juries) or A jus cogens norm that is recognized by the international community of States as peremptory or non derogable.⁵⁶ These rules prevail over and invalidate conflicting international agreements. Jus cogens norms include: the right to life; right to be free from torture and other cruel, inhuman and degrading treatment or punishment; the prohibition of genocide and the prohibition of slavery.⁵⁷

The UN Special reppourter's report has compared intimate partner violence to torture in the private sphere that deserves consideration. It stated the argument that domestic violence should be understood and treated as a form of torture and, when less severe, ill- treatment.⁵⁸ It argues that: Firstly, both torture and domestic violence commonly involves some form of physical and/or psychological suffering. Second, both are purposeful behavior which is perpetrated intentionally. Men who beat women partners in other settings and their targets are often limited to their partners or children. Thirdly, both are committed for specific purposes including punishment, intimidation and the diminution of the women's personality. Lastly, both occurs with at least the tacit involvement of the State if the State does not exercise due diligence and equal protection in preventing domestic abuse. This argument asserts that domestic violence may be understood to constitute a

⁵⁵ An Advocacy Manual, *H r & d v* (2010).

<https://web.law.columbia.edu/sites/default/files/microsites/human-rights-i>

⁵⁶ THE THEORY AND PRACTICE OF WOMEN'S ACCESS TO JUSTICE PROGRAMMING, (2018).

⁵⁷ Democratic Rights, *Part Two*, ELYE SAINT-GILLES 58–73 (2017).

⁵⁸ Manual, *supra* note 56.

form of torture. Therefore intimate partner violence/domestic violence shall be applied as *jus cogens norm* domestically.

As discussed in the previous sections, the right to access to justice is the fundament element of the rule of law and good governance. This right encompasses justiciability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims. The right of access to justice for women is essential to the realization of all the rights protected under international human rights laws.

The States parties to those human rights treaties have obligations to ensure that women have the right to access to justice. These obligations encompass the protection of women's rights against all forms of discrimination with a view to empowering them as individuals and as rights holders. Despite the fact that, the International and regional human rights treaties and declarations and most national Constitutions contain guarantees relating to sex and gender equality before the law and impose an obligation on States to ensure that everyone benefits from equal protection of the law, lack of effective jurisdictional protection offered by the States Parties in relation to all dimensions of access to justice; that occur in a structural context of discrimination and inequality, due to factors such as gender stereotyping, discriminatory laws, intersecting or compounded discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women, impede women from realizing their right of access to justice on the basis of equality and constitute persistent violations of women's human rights.⁵⁹

Considering the above mentioned persistent obstacles and tackling factors for women victims of the violence from accessing justice, different measures have been taken by the international community in ensuring and realizing the right to access to justice for women victims of the violence. In this regard, different international and regional human rights instruments expressed domestic violence as human rights violation. This means that the application of international human rights law can have the effect of reinforcing the state's obligations to respect the individual rights of each and every person and thus be held accountable for abuse of those rights by private individuals.⁶⁰ Although the state does not actually commit the abuse, its failure to prosecute the abuse and to guarantee legal protection to women victims amounts to complicity in it. As a result, domestic violence can be a matter subject to scrutiny and review by the international community. To this effect it is found that the laws alone are insufficient to address the deep-rooted problem of violence

⁵⁹ Legal Barriers, *Human Rights Watch Submission to the CEDAW Committee: General Recommendation on Access to Justice Legal and Institutional Barriers to Justice* (2013).

⁶⁰ Alda Maria et al., *DOMESTIC VIOLENCE AGAINST WOMEN AS A* (1991).
<http://documents.worldbank.org/curated/en/489381468740165817/pdf>

against women. The UN Secretary General's 2006 In-depth study on violence against women emphasized both the necessity and insufficiency of a purely legal approach to address the problem. The study stated that whilst laws provide an important framework for addressing the problem in establishing the crime, deterring wrongdoers and providing access to justice and a means of accessing remedies and reparation by victims, these need to be part of a broader public effort, which embraces public policies, education and other services.⁶¹ The Committee of Convention on the Elimination of All Forms of Discrimination against Women, affirmed that States must "conduct and facilitate qualitative studies and critical gender analysis in collaboration with civil society organizations as well as academic institutions of all justice systems in order to highlight practices, procedures and jurisprudence that promote or limit women's full access to justice; and systematically apply the findings of this analysis in order to develop priorities, policies, legislation and procedures to ensure that all components of the justice system are gender-sensitive, user friendly and accountable."⁶²

Most of the time crime of domestic violence is committed by intimate partner at home. This may result in lack of evidence and create difficulty in the process of investigation and prosecution. This problem is the most common practical problem hindering the women victims of domestic violence from accessing justice and realization of their human rights protection.⁶³ In order to avoid this problem, the CEDAW Committee recommends the State Parties to the convention, to Review rules of evidence and their implementation especially in cases of violence against women. Measures must be adopted, having due regard to the fair trial rights of victims and defendants in criminal proceedings, to ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes; and to Improve their criminal justice response to domestic violence, what can be done through recording of emergency calls, taking photographic evidence of destruction of property as well as signs of violence; and reports from doctors or social workers, which can show how violence, even if committed without witnesses, has material effects on the victims' physical, mental and social well-being.

The Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls has been prepared by the United Nations Office on Drugs and Crime (UNODC) to contribute to raising awareness about and to fostering the use and application of relevant international

⁶¹ *Id.*

⁶² WOMEN'S ACCESS TO JUSTICE FOR GENDER-BASED VIOLENCE A PRACTITIONERS' GUIDE, *supra* note 29.

⁶³ UNECA & African Centre for Gender and Social Development, *Violence against women in Africa: A situational analysis* (2010), [http://www1.uneca.org/Portals/awro/Publications/21VAW in Africa-A situational analysis.pdf](http://www1.uneca.org/Portals/awro/Publications/21VAW%20in%20Africa-A%20situational%20analysis.pdf).

standards and norms by the judiciary when dealing with criminal cases involving Gender-based Violence against Women and Girls.⁶⁴ According to this handbook, Criminal laws and procedures should not be interpreted and applied in the abstract. Cases of GBVAWG are often treated differently from other offences, in terms of how the offences are conceptualized, processed, defended and adjudicated. In such cases, for judges, the application of a context-driven analysis can increase their understanding of the phenomenon of gender-based violence; the realities women and girls are facing when seeking justice through criminal proceedings; as well as how harmful gender stereotypes may still be reflected in discriminatory laws and procedures or continue to influence the application of criminal law.

In intimate partner violence cases Victims cite fear for their safety and the safety of their family as among the leading reasons for victims to drop out of the criminal justice process. Regarding this problem the updated Model Strategies and Practical Measures urges Member States to provide the police and courts authority with the power to issue and enforce protection and restraining or barring orders, including removal of the perpetrator from the domicile, prohibiting further contact, issuing child support and custody orders, and to impose penalties for breaches of those orders.⁶⁵ If such powers cannot be granted to the police, there is a need to ensure timely access to corresponding decisions by the court. Such protection measures should not be dependent on the initiation of a criminal case. Provide comprehensive services and protection measures that ensure the safety, privacy and dignity of victims and their families, without prejudice to the victim's ability or willingness to participate in the criminal case. Protect victims from intimidation and retaliation during the criminal justice process, including by establishing comprehensive witness and victim protection programmer. It also Ensure children who witness violence in the family are seen as victims of violence and provided with protection, care and support. Effective and immediate protection of victims can empower women and girls to access justice and enable them to stay safely engaged in the criminal justice process

Regional human rights instruments have elaborated states' obligations to prevent and respond to GBV in general and domestic violence in particular. The Council of Europe (CoE) Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention, 2014) obligates state parties to "take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence that are perpetrated by non-state actors. The Istanbul Convention recognizes a range of acts under the definition of VAW, including physical, sexual, and

⁶⁴ Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls, . https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls

⁶⁵ *Id.*

psychological violence committed by intimate partner. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (The Convention of Belém do Pará, 1994) requires that members of the Organization of American States (OAS) use due diligence to prevent, investigate and impose penalties for violence against women. In the African goals are articulated to prevent and protect against GBV. For example, state parties to the African Charter on Human and Peoples' Rights have committed to enact and enforce laws to prohibit all forms of VAW including unwanted or forced sex whether the violence takes place in private or public. These three regional legal systems case laws concerned by their human right courts are discussed below.

The principles and standards established by Istanbul Convention ⁶⁶adopted by The Committee of Council of Europe constitute a core element of ensuring equal access of women to justice. States Parties are called upon to exercise due diligence to prevent, investigate, and punish perpetrators. In addition to this, member States should introduce, develop and improve where necessary national policies against violence based on maximum safety and protection of victims including against revenge, support and assistance, adjustment of the criminal and civil law, raising of public awareness, training for professionals confronted with violence against women and prevention.⁶⁷ States should also take measures to enable the judiciary to adopt interim measures aimed at protecting victims, to ban the perpetrator from contacting, communicating with or approaching the victim, or residing in or entering defined areas, to penalize all breaches of the measures imposed on the perpetrator and to establish a compulsory protocol for operation by the police, medical and social services.⁶⁸ As good practice, this convention requires State parties to allow for the investigation and prosecution of cases of violence against women to proceed *ex parte* or *ex officio* meaning that they shall not depend on a complaint or report from the victim (Article 55). Such policies help to eliminate the problematic application of prosecutorial discretion. Policies can also be introduced that require prosecutors to provide explanations about why a case has been dropped, which can then be subjected to judicial review. At the same time, when prosecution is pursued without the consent of the victim, it is critical that the victim has access to other legal remedies, such as protective orders. The other good practice under this convention is a practical consideration that should be taken by both prosecutors and judges to ensure safety and reduce risks for women involved in legal processes, especially in criminal cases. At the end of VAW processes where the perpetrator is not in custody, parties should be dismissed with a time lag, allowing the victim to leave the court first and offering a security escort out of the building, if needed. Prosecutors and judges should speak

⁶⁶ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, *supra* note 32.

⁶⁷ *Id.*

⁶⁸ *Id.*

with female litigants, especially victims of violence, about plans for their safety and that of any family members.⁶⁹ Fear of economic dependency; further violence and unsatisfactory judicial response discourage most of the victims of domestic violence from reporting their cases. However, such conventional frameworks by imposing responsibility upon States to take positive measures encourage the victims to report the crimes of domestic violence.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which is the first regional human rights treaty to focus exclusively on gender based violation and to prohibit domestic violence adopted in 1994 (Convention of Belem do Para) also provide guiding principles for a treaty on violence against women.⁷⁰ It affirms that women have a right to be free from violence in both the public and private spheres and holds the State accountable to prevent, punish and eradicate violence against women, incorporating a due diligence standard. The right to judicial guarantees and the right to judicial protection are recognized in Articles 8(1) and article 25 of the American Convention on Human Rights⁷¹ and are basic pillars of the rule of law. These provisions are also reflected in Article 7 of the Convention of Belém do Pará,⁷² which recognizes the critical link between women's access to adequate judicial protection when filing complaints of acts of violence, and the elimination of violence and the discrimination that perpetuates that violence. The Convention of Belém do Pará establishes a set of immediate obligations in cases of violence against women, including the establishment of fair and effective legal procedures for women who have been subjected to violence; the adoption of criminal, civil and administrative laws to prevent, punish and eradicate violence against women; measures to protect women from imminent acts of violence; and measures to modify legal or customary practices that allow violence against women and tolerance of it to persist.⁷³

South American States have established the police units that specialize in gender based violence are another typically often extremely effective mechanism of access to justice for women victims of domestic violence. These specialized police units aim to provide a safe environment for women who report violence and to enhance the police response to violence against women through specialized officers. The domestic violence legislation is enforced by six prosecutor's offices working exclusively with domestic violence cases; six

⁶⁹ Maria et al., *supra* note 61.

⁷⁰ Inter-American Commission on Human Rights, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* (2011). <https://resourcecentre.savethechildren.net/publishers/inter-american-co>

⁷¹ The Case, *The Impact of the Inter- American Human Rights System in the Protection of Women Against Domestic Violence in Brazil* (2017).

<https://www.duo.uio.no/bitstream/handle/10852/60859/9008.pdf?sequenc>

⁷² 3 D. E. SHALALA, WOMEN'S RIGHTS ARE HUMAN RIGHTS. (1998).

⁷³ *Id.*

police squads specifically charged with protecting women from violence; and a magistrate's court and a criminal court dealing exclusively with cases of domestic violence.⁷⁴

One challenge to women those who seek remedy to the breaches of their international human rights is that, how the woman's suit will be perceived depends on the status of a treaty in the national law. A treaty will only be binding upon a state by accession or signature followed by ratification. Furthermore, states might adopt the provisions of human rights instruments within its national legal system either by the incorporation or by the transformation which means that state use the treaty provisions as the basis for enacting appropriate national legislative rules.⁷⁵ The other good practice in South American States is that if a woman wishes to invoke articles of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in a national court or before an administrative tribunal, nothing can impede her of using, in national courts, provisions established in human rights treaties to back up what is actually made up in the Constitution.

Women in Africa like their counterparts the world over, suffer domestic violence irrespective of age, religion, class and social status. Although violence against women has begun to receive more attention globally, as a result of : the predominance of the system of patriarchy across Africa has meant that women are still perceived of and treated as subordinate to men; violence against women is accepted as the cultural norm in many societies and is often condoned by community and sometimes state leaders; the stigma attached to female victims of violence has resulted in very low rates of reporting; and often if women do report violence against them, they are either turned away because the authorities see violence against women as a matter to be dealt with privately or within the family, or they struggle to access justice in a criminal justice system that is not informed by or sensitive to the needs of women, the perpetrators of violence against women in Africa particularly is still largely hidden and the survivors of violence particularly women victims of domestic violence are still denied the right to access to justice.⁷⁶

The Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, has provisions against gender-based violence within the scope of women's rights to life, integrity and security of the person, and dignity. Article 1 defines violence against women as including "all acts perpetrated against women." The protocol impose obligation on States Parties to: enact and enforce laws to prohibit all forms of violence against women and adopt other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women. State

⁷⁴ WOMEN'S ACCESS TO JUSTICE FOR GENDER-BASED VIOLENCE A PRACTITIONERS' GUIDE, *supra* note 29.

⁷⁵ Maria et al., *supra* note 61.

⁷⁶ Manual, *supra* note 56.

Parties have also the responsibility to identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence; punish the perpetrators of violence against women and implement programs for the rehabilitation of women victims and establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.⁷⁷ The protocol also has provisions of the right to access to justice for women victims of domestic violence within the scope of Access to Justice and Equal Protection before the Law. By stating the equality of men and women before the law and the right to equal protection and benefit of the law, impose the responsibility on State's Parties to take all appropriate measures to ensure: effective access by women to judicial and legal services, including legal aid; reform of existing discriminatory laws and practices in order to promote and protect the rights of women.⁷⁸ The Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa has set standards like taking any appropriate measures in realizing the women's access to justice. In this regard South Africa could be taken as good example state in taking measures to ensure the right to access to justice for women victims of domestic violence. The South African Domestic Violence Act of 1998 included a comprehensive definition of domestic violence, covering physical, verbal, emotional, economic, sexual and psychological abuse, damage to property, entry into the victim's residence without her consent, intimidation, stalking or any other abusive behavior, including threatened abuse. The definition of domestic relationship also includes people who are or were married to each other whether they live together or not: same sex partners; any person who is or was in an engagement, dating or customary relationship, including an actual or perceived romantic relationship; intimate or sexual relationships of any duration; parents of a child; and people who share or recently shared the same residence.⁷⁹ South Africa has also adopted a policy on provision of shelters for victims of domestic violence. It provides women with a place to recover from injury, overcome isolation and begin the process of regaining confidence and greater control over their own lives.⁸⁰ In this regard South African Domestic Violence Act made a good progress and could be considered as good practice.

⁷⁷ African Union Commission, *Protocol To the African Charter on Human and Protocol To the African Charter on Human and* (2003). <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-right>

⁷⁸ *Id.*

⁷⁹ Tayechalem G Moges, *LEGAL RESPONSE TO DOMESTIC VIOLENCE IN ETHIOPIA : A COMPARATIVE ANALYSIS* By (2009). Available at http://www.eted.ceu.edu/2010/moges_tayechalem.pdf

⁸⁰ *Id.*

CHAPTER THREE

3. THE RIGHT TO ACCESS TO JUSTICE FOR WOMEN VICTIMS OF DOMESTIC VIOLENCE IN ETHIOPIA: THE CASE OF JIMMA ZONE

3.1. The Right to Access to Justice for women Victims of Domestic Violence under FDRE

Violence against Women and Girls (VAWG) is one of the most systematic and widespread violations of human rights globally.⁸¹ It may occur against any woman or girl regardless of nationality, age or socio-

⁸¹ UN WOMEN, SHELTERS FOR WOMEN AND GIRLS WHO ARE SURVIVORS OF VIOLENCE IN ETHIOPIA (2016), <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2016/shelters-for-survivors-of-violence-ethiopia.pdf?la=en&vs=5120>.

economic status.⁸² The Ethiopian culture is based on patriarchal traditions and beliefs.⁸³ In Ethiopia, violence against women and girls continues to be a major challenge and a threat to women's empowerment. Violence against women is a general problem in Ethiopia, where culturally based abuses, including wife beating and marital rape, are pervasive social problems. While women had recourse via the police and courts, societal norms and limited infrastructure prevented many women from seeking legal redress, particularly in rural areas. The last comprehensive study documenting domestic abuses against women throughout Ethiopia was a 2008 study conducted by the Ethiopian Women Lawyer's Association (EWLA). Among the key findings of this study is the depressing fact that the "police don't consider domestic violence as a serious crime, [and the act] isn't registered as a separate offence...and [it is not] taken as seriously as crimes such as theft." In other words the police have not as much of an account, much less comprehensive data, on the full scale of domestic violence against women in Ethiopia.⁸⁴ The government prosecutes offenders only on a limited scale.⁸⁵ Women and girls face physical, psychological and sexual abuses that undermine their health and ability to earn livelihoods; disrupt their social systems and relationships; and particularly for girls, rob them of their childhood and education.⁸⁶ Domestic violence is also prevalent in Ethiopia and takes various forms of physical, sexual and emotional abuse and 50-60 percent of women experience domestic violence in their lifetime. The community based study shows that in case of domestic violence; sexual violence is more prevalent than physical violence.⁸⁷

According to the 2011 Ethiopia Demographic Health Survey (EDHS), two of every three women (68%) and one of every two men (45%) believe that wife beating is justified under specific circumstance. The Federal Democratic Republic of Ethiopia (FDRE) has put in place appropriate and effective legal and policy provisions to promote the rights of women and girls; and these are enshrined in the Constitution (1995).

Ethiopia has also signed and ratified both the 1979 UN's Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and the 1993 Declaration on the Elimination of Violence Against Women, which recognizes violence against women as a violation of human rights. But CEDAW data on governments behaviour towards women shows that although Ethiopia's law is in agreement with CEDAW provisions, "there is spotty enforcement; the government may or may not signal its interest in challenging

⁸² SHELTERS FOR WOMEN AND GIRLS WHO ARE SURVIVORS, .

<https://www.sdgfund.org/shelters-women-and-girls-who-are-survivors-viol>

⁸³ UNECA and African Centre for Gender and Social Development, *supra* note 64.

⁸⁴ Domestic abuse against women in Ethiopia The price of not knowing her pain - Addis Standard, . available at <https://addisstandard.com/domestic-abuse-against-women-in-ethiopia-the-pric>

⁸⁵ Moges, *supra* note 80.

⁸⁶ UN WOMEN, *supra* note 82.

⁸⁷ UNECA and African Centre for Gender and Social Development, *supra* note 64.

cultural norms against women.”⁸⁸

In addition, the FDRE has established specific legal measures and actions to address VAWG, including, inter alia, the Revised Family Law (2000), and Revised Criminal Code (2005). In this connection, the government has also put in place the requisite institutional mechanisms at federal and regional levels, including; the establishment of Women and Children Affairs Offices; the Child and Women Protection Units within the various police units; a Special Bench for VAW cases within the Federal Criminal Court; Child-friendly courts, and Child crime investigations units within the Ministry and Bureaus of Justice.⁸⁹ In the CEDAW committee’s remarks (CEDAW/C/SR 646 and 657) on the Ethiopia report; the establishment of the national machinery for the advancement of women was welcomed. However, the committee noted that, the machinery suffered from insufficient decision making power and inadequate human and financial resources in order to effectively promote the advancement of women and gender equality.⁹⁰ The absence of civil remedies for survivors is another problem associated with Ethiopian law concerning domestic violence. There has been no separate domestic violence act or law which provides specific civil remedies for victims/survivors such as right to obtain protection order, monetary/compensation relief, custody order, residence order, shelter or medical benefits or more than one such order.⁹¹

Like other States, Ethiopia also implements international and regional standards through national law and policy. The FDRE Constitution ensures gender equality and incorporates the major UN Conventions on human rights and elimination of all forms of discrimination against women. The Constitution acknowledges the duty of the State to protect women from the influence of harmful customary practices, stating that all laws, stereotypes, ideas and customs which oppress women or otherwise adversely affect their physical and mental well-being are prohibited.⁹² The constitution has also recognized the fundamental rights directly related with the right to protection from domestic violence like that of security of persons and prohibition against inhuman treatment. For instance article 18 of the constitution says everyone has the right to protection against cruel, inhuman or degrading treatment or punishment. Everyone has the right to protection against bodily harm and every person has the inviolable and inalienable right to life, the security of person and liberty.⁹³ As discussed in chapter two The UN Special reporter’s report has compared intimate partner

⁸⁸ *Supra note 4*

⁸⁹ UNECA and African Centre for Gender and Social Development, *supra* note 64.

⁹⁰ Anbesie Fura Gurmessa, *The Role of University-Based Legal Aid Centers in Ensuring Access to Justice in Ethiopia* 357–380 (2018).

⁹¹ Megersa Dugasa Fite, *The Ethiopia’s Legal Framework on Domestic Violence against Women: a Critical Perspective*, 2 INT. J. GEND. WOMEN’S STUD. 49–60 (2014).

⁹² FDRE Constitution Article 35

⁹³ FDRE Constitution Article 16 § 14

violence to torture in the private sphere and It argued that domestic violence should be understood and treated as a form of torture and, when less severe, ill- treatment. Therefore domestic violence shall be applied as jus cogens norm domestically. On the other hand State organs at all level have an obligation to respect and enforce the provisions of Chapter three of the constitution and The fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia.⁹⁴

In addition to these, Ethiopia has also signed and ratified regional and international legal instruments including; ICCPR, ICESCR, and CEDAW (signed 1980, ratified 1981), therefore the rights including those in relation to domestic violence should be interpreted in light of the international treaties which have been broadly interpreted.

The revised Family law⁹⁵ also shows progressive change in ensuring the gender equality. This law abolished most of the discriminatory provisions in the civil Code concerning marriage. It provides women with the same rights as men to be recognized as the head of household.⁹⁶ Women are provided with the same rights as men to be the legal guardians of their children during marriage and in informal unions.⁹⁷ It also provides women with the same rights and responsibilities as men with regards to their children during marriage. Women have also the same rights as men to initiate divorce.

The FDRE Criminal Code⁹⁸ is the other major areas of Ethiopian law that includes new and revised provisions that are of pertinent to the protection of women from domestic violence. Despite recent changes to the Criminal Code in 2005 and the Revised Family Code in 2000, legal protections are inadequate. The Criminal Code includes several articles pertaining to harmful traditional practices committed against women, but there are no separate provisions for the different types of VAW or domestic violence. Although the code includes the provisions like physical violence within marriage or in an irregular union, the code has not put comprehensive definition and scope of the term domestic violence. Only Article 564 of the code explicitly reference to the term domestic violence. The problem is that such article not only narrowed the type of domestic relationships to marriage partner and person co-habiting in an irregular union but also refers back to

⁹⁴ FDRE Constitution Article 13

⁹⁵The Revised Family Code, Proclamation No. 213/2000, Federal Negarit Gazetta Extra Ordinary Issue No. 1/2000 (here after Family Code)

⁹⁶ Article 40& 50 of Family Code

⁹⁷ Article 219 of Family Code

⁹⁸ Proclamation No, 414 *THE CRIMINAL CODE OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA* (2004).

the provisions dealing with crimes against person and health (Articles 555-560)⁹⁹ for determination of its criminality and punishments. The provision narrowed the intimate partner to husband and wife relationship in which domestic violence against divorced women and unmarried girls are not concerned. In addition to this other types of domestic violence like Economic Abuse and Sexual Abuse is not covered under this provision.

According to OECD Social Institutions and Gender Index report Legal framework on violence against women is 50% while Prevalence of domestic violence against women (lifetime) is 28% and Proportion of the female population justifying domestic violence is 63%.¹⁰⁰ As the victim is usually in a relationship of dependence with the perpetrator, where the problem associated with domestic violence always persist, it needs special attention from the government in reforming the policies and legal frameworks on the area.

Measures are being taken to improve women's access to justice through free or low-cost legal services as well as legal literacy programs. The Ethiopian Human Rights Commission, Women's Associations and A number of higher educational institutions of the country has established free legal aid centers across the country targeting women that cannot afford legal counsel and hence cannot have fair access to justice. In this regard various innovative measures like circuit courts that travel to different far to reach locations regularly to dispense justice and plasma courts are being taken to ensure women's access to justice.¹⁰¹ However reports show that legal framework on access to justice for GBV is only 25%.¹⁰² This shows as there is no special legal framework to access justice for women victims of domestic violence.

The issue of procedural and evidentiary rules needs to be seen seriously. Most of the time, domestic violence takes place behind closed doors as an unseen crime which victims faces challenges in getting witness to proof the act and in some cases difficult to get documentary and other exhibit evidences. Women and girls who faced violence do not get medical treatment as soon as the violence occurred. Most of the time women or girls who face violence hide their harm for long period of time. For instance, if the girl is raped by her boyfriend she hides what happed to her as the family and society as whole blame her for the act. The family knows only after she gets pregnant and evidence disappeared. Out of 36 domestic violence cases reported to the police in 2012 E.C. only 7 cases get the fine decision of the court. Where cases get final decision because the accused admitted without reservation and the court entered the plea of guilty and convicted the accused while the remaining 2 cases were proved by circumstantial evidences. Most of domestic violence cases

⁹⁹ Africa et al., *supra* note 35.

¹⁰⁰ OECD, *Social Institutions and Gender Index: Ethiopia Country Report* (2019).

¹⁰¹ Michael Atingi-Ego & Masato Miyazaki, *Report Beijing Declaration*, 14 INT. MONET. FUND 1-76 (2014).

¹⁰² OECD, *supra* note 101.

reported to the police were ceased as a result of lack of evidence. Even if there is enough evidence to prove, as most of them are between husband and wife, it is considered as family issue and left off to be seen by arbitration.¹⁰³

On the other hand, in criminal proceedings, the standard of proof stipulates the degree to which the party who has the burden of proof needs to establish the facts constituting the elements of the crime. Although, the Ethiopian legal system didn't clearly state the requisite standard of proof in criminal proceedings, beyond a reasonable doubt standard can be inferred from, the constitutional principle of presumption of innocence and hence courts should apply this rigorous standard in criminal cases. For instance, the Ethiopia's 2004 Criminal Code requires the three elements of the crime, Material, Legal and Moral elements, to be proved for a court in order to render punishment.¹⁰⁴ There are, however, some provisions that presume the existence of one or more of these three ingredients thereby relieving the prosecution from the need to prove them taking into consideration the impossibility of proving them for the prosecutor. Provisions like Article 403 of the code, stipulates that, "Unless evidence is produced to the contrary, where it is proved that the material element (the act) has been committed as defined in a particular Article providing for a crime of corruption perpetrated to obtain or procure undue advantage or to cause injury, such act shall be presumed to have been committed with intent to obtain for oneself or to procure for another an undue advantage or to injure the right or interest of a third person." This provision equates the material element with the criminal act and relieves the prosecutor of the need to prove the mental element of the crime, which is an essential ingredient that needs proof. Another exemplary provision is Article 43 of the code that provides for 'liability for crimes committed through the mass media'. The provision not only relieves the prosecutor from proving, but also forbids the defendant from introducing any evidence to prove its absence.

In addition to different provisions of criminal code proclamations like Anti-Corruption Proclamation contains a provision on the standard of proof that requires the prosecutor to show the existence of some basic facts for the evidential burden to be shifted to the defendant then the accused is expected to rebut the presumption of guilt that stands against him. The criminal procedure of Ethiopia also seems to oblige the prosecutor to prove all ingredients of the crime. Article 141 provides that "When the case for the prosecution is concluded, the court, if it finds that no case against the accused has been made out which, if unrebutted, would warrant a conviction, shall enter an order of acquittal."¹⁰⁵ The draft criminal procedure also uses the concept of "presumption of innocent" as a principle by stating that the prosecution bears the burden to prove and

¹⁰³ The annual reports of Tiro Afeta, Sokoru and Omo Nada weredas, 2019

¹⁰⁴ No, 414 *supra* note 78.

¹⁰⁵ Imperial Ethiopian Government, *Criminal Procedure Code Of Ethiopia* (1961).

ascertain the crimes charged while the accused has the right to defend him.¹⁰⁶ However, the provision exceptionally states that the accused is charged with crimes against the constitutional order, terrorism, corruption or conspiracy, or when the law provides, the burden of proof may shift to the accused upon the prosecution proving the primary facts. Article 380 of the draft code adds that the accused shall bear the burden of proof if he wants to rely on an affirmative defense or to prove alibi. These kinds of provisions are very necessary in fairly entertaining the cases of domestic violence where the prosecutor don't get sufficient witness to prove the charge. It play significant role in improving the challenges women survivors of the domestic violence are facing in the process of accessing justice. For instance in the cases where only the perpetrator and the survivor alone are in the house, if the defendant arises the defense of alibi, the burden of proof should be shift to defendant as it is impossible for the prosecutor to proof it in the absence of the witness.

Moreover, the ways by which the human rights protection of private and family life is sometimes understood are one of the major challenges facing women's protection against domestic violence. Some states tried to classify activity within the families as totally falling within the private sphere rather than as a criminal offense against the personal integrity of a woman, and therefore do not allow governmental intervention.¹⁰⁷ As this restraint the government from intervention in violent and abusive conduct within families and failure violates certain standards provided in international and/or regional treaties, this approach becomes dangerous for victims of domestic violence.

As regards to the legal coverage given for the recognition and protection of women's rights, the current government comes up with a number of laws, policies, programs and plans informed by the issue of gender equality. Laws and policies of the country have mainstreamed gender issue thereby to ensure the enforcement of women's human rights. The Federal Democratic Republic of Ethiopia Constitution also clearly recognized the right. Among others, the right imposes upon States the obligation to set up all appropriate legal and institutional frameworks that address claims of violations of rights. Specifically, States have the obligation to adopt appropriate legislations; put in place competent judicial and quasi-judicial organs; ensure accessibility and effective functioning of those organs; and guarantee fair trial rights in proceedings. As a State party to different international and regional human rights treaties, and to fulfill the Constitutional pledge, Ethiopia has the obligation to ensure that the right to access to justice is fully protected and fulfilled throughout the nation. Although the right of access to justice is guaranteed in Ethiopian laws, it continues to be unavailable to most

¹⁰⁶ ረጉገሊክ የወንጀል ሥነ ሥርዓት ስግ ረቂቅ, .

¹⁰⁷ Kedir Mohammed, *Ethiopian Criminal Procedure Teaching Material Prepared by : Aderajew Teklu* (2009).

citizens particularly to the vulnerable because the different mechanisms designed to ensure access to justice to these groups have not been accorded sufficient legal recognition and are poorly implemented. Factors such as gender stereotyping, discriminatory laws, intersecting discrimination, procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally not accessible to all women victims of violence are obstacles constitute persistent violations of women's human rights and deprived the women to access justice.¹⁰⁸

Women in Ethiopia in general encounter a number of obstacles with respect to access to justice within and outside the legal system, which must be overcome in order for them to effectively access justice which can be divided into two categories: the first one is Legal or Institutional Level which includes ; Discriminatory or insensitive legal frameworks such as: explicitly discriminatory legal provisions; gender blind provisions that do not take into account women's social position and gaps in legislation concerning issues that disproportionately affect women; Problematic interpretation and implementation of the law which discriminates against women; Ineffective or problematic legal procedure such as the lack of gender-sensitive procedures in the legal system; Poor accountability mechanisms ; the second one is Socio-Economic and Cultural Levels which includes: Gender stereotypes and cultural attitudes; Lack of awareness of one's legal rights and legal procedures or of how to access legal aid, which can stem from gender differences in educational levels, access to information; Lack of financial resources, like transportation to judicial institutions, child care. Most women victims of domestic violence gave the following reasons for not reporting violence incidents: fear of further abuse; assumption that it is a common incident to all women; financial dependency on the husband; preserving the family secret; and feeling of embarrassment.¹⁰⁹ The issue of the public/private dichotomy has been also a major setback in dealing with the police treatment of domestic violence against women as a crime, the police and prosecutors at large are very reluctant to pursue such cases. Besides, The Ethiopian law is bereft of civil remedies against domestic violence. Hence, there has been no domestic violence acts as well as specific civil remedies such as protective orders or ordering the abuser out of the common residence. Nor are there any policies or guidelines as to the manner of police intervention and accountability in domestic violence cases.

Since many women stay in a violent relationship because of fear of poverty and place to stay for themselves and their children policy frameworks are needed on the part of the government to provide shelter or any other support services to victims of domestic violence and their children. Moreover, Law cannot be effective as

¹⁰⁸ Thesis, *supra* note 2.

¹⁰⁹ Tayechalem G Moges, *LEGAL RESPONSE TO DOMESTIC VIOLENCE IN ETHIOPIA : A COMPARATIVE ANALYSIS* By, (2009)

long as the agents responsible for its implementation have a limited understanding of the problem of violence in the home. State is accountable to provide protection and remedies in case of violation of rights to its citizens. As well the Ethiopian government has to accept the utmost accountability and responsibility when it comes to the violation of human rights of women in the domestic dome. The government has responsibility not only to respect the rights but also to protect and prevent the violation of those rights. There has been a notion that the society and not the state is accountable for the incidents of domestic violence and that there have been hesitance on the part of the government to intervene in the domestic violence cases. There is a need to set up accountability mechanism in cases of failure to protect women from domestic violence and to secure appropriate justice to victims of domestic violence. Therefore, crucial law reform to respond to the situation of domestic violence should be coupled with creating public awareness; building the capacity and creating awareness regarding their accountability in cases of failure to protect and prevent violence of law enforcement agencies; and also with providing relative support system for victims. Generally, the State as party to different regional and international human rights instruments has the duty to respect, protect and fulfill. For instance, the duty to respect obliged the State to refrain from undermining the enjoyment of the right to seek justice. The obligation to protect entails both a preventative and remedial dimension. A State is thus obliged to enact legislation protecting human rights; to take action to protect individuals when it is aware (or could have been aware) of threats to their human rights; and also to ensure access to impartial legal remedies when human rights violations are alleged. For instance, the right to personal integrity and security obliges States to combat the widespread phenomenon of domestic violence against women and children. States have a responsibility to take positive measures in the form of pertinent criminal, civil, family or administrative laws, police and judiciary training or general awareness rising to reduce the incidence of domestic violence. State has “obligation to fulfill”, in which it is required to take positive action to ensure that human rights can be realized. State should create “the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full. Domestic violence directly affects survivors’ housing. In many instances, survivors of violence have remained in situations where they are vulnerable to abuse due to an inability to find appropriate accommodation. Survivors of violence who are tenants are often evicted from housing and discriminated. In addition to this, survivors of domestic violence incur significant short-term and long-term financial costs related to pain and suffering, reduced employment and productivity, and expenditure on services. It is important that survivors of violence have access to financial assistance. In respect of the right to access to justice for women victims of domestic violence for instance, State must take any appropriate measures to ensure the right to access to justice for women victims

of domestic violence including reforms to legal frameworks, structural and institutional reforms.

3.2. Major Challenges Women are Facing in the Course of Accessing Justice

Women are often subjected to multiple discriminations on the ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedoms. Violence towards women is the result of an imbalance of power between men and women and is leading to serious discrimination against the female sex, both within society and within the family. Ethiopia does not have a systematized method for collecting data about VAW. Many factors make data collection difficult, including the subordinate social positions of women, the use of informal legal systems to resolve family conflicts, underreporting due to cultural attitudes, and state inaction.¹¹⁰

There is no national survey on intimate partner violence (IPV) showing the prevalence rate and its variation from place to place, but available studies indicate that IPV is widely practiced in Ethiopia.¹¹¹ Although there is no compressive data to show the prevalence of the intimate partner violence, a study carried out in Jimma revealed that among the 588 females aged between 15 and 24, 28.4% have experienced physical violence in the form of beating, 17.7% attempted rape, 15.3% completed rape, and 3.6% have gone through forced marriage. About 25% of the female victims had their first experience of sex because of rape. In many of the cases, rape was committed by a person well known by the victim including boyfriends (32.8%), relatives (12.1%) and neighbors (12.1%). Strangers (22.4%) were also among the perpetrators.¹¹² The study shows only 22.4 % of rape is committed by stranger. It can be inferred from this study that how much the act of domestic violence is prevalent in the area. Moreover ,while working as public prosecutor in different districts of this zone, the researcher have observed how much the problem of domestic violence is prevalent in the area and the challenges the women victims of domestic violence facing in securing their rights to access to justice. In addition to legal gaps, data collected shows that Lack of awareness, Economic, and Social factors, Institutional and Structural factors are some of the challenges that impede the right to access to justice for women victims of domestic violence in Jimma zone. As a result, women survivors of the violence use options like, tolerance, temporary separation from their home and children to the extent of leaving their home permanently when the violence reached at maximum level and beyond their level of tolerance and seeking help from people outside home to protect themselves from domestic violence.

Most of the domestic violence crimes committed on women like crime of Common Willful Injury article

¹¹⁰ Tayechalem G Moges, *LEGAL RESPONSE TO DOMESTIC VIOLENCE IN ETHIOPIA : A COMPARATIVE ANALYSIS* By (2009)

¹¹¹ Thesis, *supra* note 2.

¹¹² *Id.*

556(1) of criminal code; crime of Assaults art. 560, crime of Insulting, crime of Behavior and Outrage article 615 crime of Intimidation article 580 and crime of Bigamy which the Federal Supreme Court Cassation Decision decided the crime of Bigamy should be lodged upon complaint are crimes which are punishable upon a formal complaint. According to article 213 of the criminal code crimes which are punishable upon a complaint must be lodged within three months from the day when the injured person knew of the criminal act or the criminal. Upon expiration of this period of time victim shall be deemed to have renounced so doing unless she was materially incapacitated from acting, and the complaint shall no longer be entertained. Women and girls victims of domestic violence have problems in reporting the harm to concerned body on time.

Most of the time, the victims went to the Women, Children and Youth Affairs office to report their cases. Then, we call the perpetrator to our office to mitigate with the survivor. After long adjournment, the perpetrator can't mitigate with the survivor or he may cause further harm to her then we transfer to the police. (Kibralem Nura from Sokoru Women; Children and Youth Affairs Office).

In this whole process the period of limitation of crime upon complaint may lapse and the right to access to justice for women victims of domestic violence is denied. It needs to adopt separate provision for the crime of domestic violence than referring to ordinary crimes as general.

3.2.1. Lack of awareness

Lack of awareness prevails including with regard to the constitution and national policy on women at all. Awareness of laws, their interpretation and application is vital in order to discharge responsibilities effectively. Thus lobbying and advocacy to build pressure and raise awareness of the concept of domestic violence and access to justice and as well as policy and legislations issues is fundamental. *Proclamation to provide for the establishment of the attorney general of Oromia Regional States under article 7 par. 33 states providing training and education on legal issues for continuous development of attitude, knowledge and create awareness to the society as a duty of public prosecutor.*¹¹³

Addressing the legal concepts and creating awareness about their rights and duties to the society at large is principally imposed on the public prosecutor's office. Following this, the public prosecutor office provides training and educations on different legal topics to society of different level. For instance, according to the data from annual report of Sokoru public prosecutor office, legal training and education was provided to

¹¹³ Proc No. 214 , *For The establishment Of Oromiya Attorney General* (2018)

28,460 populations on different topics for both men and women.¹¹⁴ Although the district contains around 42 kebeles, the training was addressed to only 7 Kebeles where most of it was provided to elementary and high school students.¹¹⁵ Topics like: Rural land proclamation and directives; unlawful migration proclamation; ethics of students; evidence rules; women and child rights; and the rule of law are some of the topics selected for training. Although the topics are concerned as sensitive and current legal issues, unfortunately both the issues of domestic violence and the right to access to justice are not contained in the selected training topics. On the other hand, out of 314 GBV reported cases, 208 cases are domestic violence cases in which 184 are perpetrated by husbands and 24 are by boyfriends.¹¹⁶ The victims reports their cases to the women, children and youth affairs offices as they don't have awareness about where do they have to report their cases.¹¹⁷ According to the annual report of Tiro Afeta's public prosecutor office, the annual plan of the office is to address awareness raising trainings and education to 10,000 women. However, out of 10,000 women planned, the training was addressed only to 3,600 women.¹¹⁸ Lack of budget, human resource and infrastructure problems were raised as reasons. The women, children and youth affairs office is also the other institution to work on awareness raining training. Unfortunately, the office is missing its target and devoted to the politics.¹¹⁹ Justice institutions in general and public prosecutor's office in particular have legal duty to create awareness on the rights guaranteed in the laws. However, the public prosecutors present their training and legal education on some stages for selected individuals only to adorn their reports and the law does not attain its purpose and objective. The awareness creation task does not extend to the large society who lives in rural and far areas.

3.2.2. Economic, Social and Cultural Factors

Since women constitute half of the population in Ethiopia, they significantly contribute to the country's economy, mainly in the agriculture. Despite their contribution to the economy and social development, however, they did not enjoy the fruits of development equally as their male counterpart. To this effect, they do not have access to, justice when their rights are at stake. In order to address these problems the FDRE constitution of the 1995 guarantees women the right to acquire, administer, control, use and transfer property including land. The National Policy on Ethiopian Women that aimed at facilitating conditions to the speeding up of equality between men and women in the political, social and economic life of the country is worth mentioning.

¹¹⁴ Sekoru wereda public Prosecutor office's annual report, (June 2020)

¹¹⁵ Id.

¹¹⁶ Sekoru Wereda Women Children and Youths office's Annual Report, June 2020

¹¹⁷ Interview in with Kibralem Nura, Sokorru Weredas Women Children and Youth affair Representative , 26 Jun e, 2010

¹¹⁸ Tiro Afeta wereda public Prosecutor Office's Annual Report, June 2020

¹¹⁹ *Supra note 96*

However, the economic dependency becomes a common challenge for women survivors of domestic violence particularly, for women's in marriage. Women are often dependent on their husbands regardless of where do they live. i.e whether they are rural or urban. Dependence of women on their husbands exposes them to further violence of domestic violence and could not leave their abusive husbands because they did not have their own incomes and had nowhere else to go. The economical dependency of the woman also plays a vital role in decision of women to report about the violence against their partner or husband. Having ones' own financial means plays a vital role on women's choice to report about intimate partner violence. Most of the time house wives are always less likely to report domestic violence than women working outside their home as the former lacks confidence to live independent of their husbands. Out of interviewed women victims of domestic violence 85% of them raised as they faced economic problem in course of seeking justice. As some of the survivors said every common property is under the control of their husband and they can't use anything without the permission of their husbands.

On the other hand, the constitution under article 35 provides women the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property. But the practice is opposite. According to those victims women who conclude divorce may acquire property after the divorce otherwise if she stays in marriage husband do not allow her to administer or control the property together. The State has duty to realize. All Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce all human and democratic rights recognized in the constitution.¹²⁰ Therefore the government organs in all levels are required to take any possible measures in realizing the right to access to justice for women victims domestic violence. Especially it needs to take real action in eliminating barriers that limit women to use, administer and control their common property equally with their husbands.

“Most of the time, I encounter physical and emotional abuse within the house by my husband. However, I don't want to report to judicial institutions or to the police because my whole life depends on my husband I can't move one step forward without good will of my husband. How he allow me to sue him? Even I can't afford transportation for myself and to the witness. In addition I have nowhere to go after reporting to the police. I fear further harm to me and my children.” (28 years Zina A/Gojjam from Sokoru district)

There are so many cases in which the victims are unable to report the case of domestic violence as a result of the fear that emanate from the thought that further violence may occur against her and her children after

¹²⁰ FDRE Constitution Article 13(1)

come back to their home.

Government needs to make concerted effort by empowering rural women through improved access to and control over productive resources and extension services and community interventions to strengthen their economic position for instance, through microfinance schemes and change gender stereotypes and norms. Community intervention is very important as it aim to mobilize entire villages or districts in efforts to eradicate violence against women in addition to change the way individuals think and behave.

Bigamy is another source of domestic violence in Jimma Zone.¹²¹ According to article 651 (3) of the new criminal code of Ethiopia, a man who committed bigamy in conformity with religious or traditional practices recognized by law is not criminal. To this end, under the cover of religion the human rights of many women are abused. Women victims of crime of bigamy afraid to report the violence as it is perceived as offence to the religion.

“I’m Muslim and I’m religious person. My religion allow men to marry more than one woman even up to four women but Islam allow a man to marry more than one woman only if he can administer by affording all her and her children’s needs. In addition to this a man should treat all his wives equally without any discrimination. Islam encourages marrying only one woman but in exceptional circumstances man is allowed to marry more than woman. However, most of bigamous marriages are concluded in the condition where a man couldn’t afford the needs of even a single wife and his children.” (35 years Munira A. Macha from Tiro Afata district).

In this regard, the religious leaders needs to create awareness and make clear to the society how and when bigamy could be performed. Not only this, but judges should also identify whether bigamy is committed in conformity with the referred religion. For instance, in the case public prosecutor vs. Abdo Jamal, the public prosecutor accused of the suspect for the commission of bigamy. However the court decided the defendant not guilty of the charge.¹²² In this regard additional capacity building training and enhancing the skill of judges is needed.

The perception that women are inferior to men is also identified as one of the contributing factors for prevalence of domestic violence. In this biased perception, women are treated differently when she experience violence and put into coercion to receive the violence. The society encourages women to keep quiet about domestic violence because it is believed that it is a way of showing love and respect to their husbands.¹²³ It is also considered as a private family matter so that is inappropriate to speak about it outside

¹²¹ Jimma Zone Women Children and youth Affairs annual Report, June 2019

¹²² *Public prosecutor v. Abdo Jamal Sokoru Wereda Court, File No. 020996*

¹²³ *Interview with K.. Nura, Sokoru wereda Women Children and youth Affair, 26, Jun 2020*

home. Abusers are often well respected in their community, which prevents others from recognizing the violence or encourages them to minimize it. Family and social expectations also create pressure on the victim to return. Halima Kedir, was the victim of domestic violence who faced serious physical harm by her husband many time. She criticizes the local elder for the series injuries she faced. The society beliefs in settling the dispute arises between spouses by arbitration / norm even if this dispute causes a serious harm.¹²⁴ The victim was finally forced to come to judiciary to seek justice after she experienced serious injuries several times. According to the majority of the interviewees, most of women survivors of domestic violence do not report cases of violence caused by their intimate partner primarily due to the fact that they may be stigmatized and ashamed by the community. In some cases, this may result in life of discrimination with consequences like difficulty in remarriage. The State has an obligation to enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are also prohibited.¹²⁵

The tension of women victims of domestic violence in reporting the crime and injuries against them is fear of the revenge. They think the consequence of reporting to the police is severe than what has happened. Therefore, they prefer to keep silent from exposing the perpetrator. The fear of retribution from perpetrators contributes to the underreporting of domestic violence in Jimma. Even women survivors of the violence who reported their cases to the police, sometime forced to dismiss the case for fear of retribution from perpetrators. In the interview with Zina, she stated that, her husband has caused further harm to her child because he testified against him. As a result she was forced to dismiss her case. Therefore, in the context of domestic violence against women, access to justice is not limited to considerations of how the victim is to be remedied for the ill treatment. When incidents of domestic violence are reported to the authorities, this knowledge triggers an obligation to introduce protective measures that are suitable for hindering further harm. Women fear being exposed to even more violence if they leave. The risk of intimate partner violence is increased within the context of a separation, and may be triggered by an actual or even anticipated separation. Women who have children may fear reprisals against their children through harmful practices and killing if they leave their partner. The State has positive obligations to safeguard individuals' rights from the acts of others and obligations to safeguard the survivors of domestic violence from further violation. Therefore, in the absence of effective rehabilitative and psycho-social support, women and girl-survivors of violence have found very little incentive to report the violence and seek justice against the perpetrators. For

¹²⁴ *Interview With H. Kedir, Victim of Domestic Violence from Omo Nada, 16, Oct. 2019*

¹²⁵ *FDRE Constitution Article 35 (4)*

instance, in such cases, establishing rehabilitation and reintegration centers is needed.

There are only 12 shelters in the country, which provide rehabilitation and reintegration services for women and girl survivors of violence. While the majority of available shelters are found in Addis Ababa (five), few other shelters were distributed across the regions, albeit uneven. Regions that witnessed the establishment of shelters include: Benishangul Gumuz (two), Amhara (one), Oromia (two), Dire Dawa (one) and Southern Nations, Nationalities and Peoples Region (SNNP) (one). Out of the 12 shelters identified, only the one in Dire Dawa was managed and fully funded by the government.¹²⁶ Until this research is conducted Jimma Zone women victims of GBV are not beneficiaries of this service. According to Kibralem the absence of shelter and other services for the survivors of domestic violence both at wereda and zone level is becoming a serious problem in reacting to the GBV in general and domestic violence in particular.

According to article 11 of the ICESCR, the right to adequate food, clothing and housing, and the continuous improvement of living conditions as part of the right to an adequate standard of living for oneself and one's family. All these rights are guaranteed under international human rights law, including the right to enjoy these rights on an equal basis with men, without discrimination. State is required to take positive action to ensure that the right to access to justice for victims of domestic violence can be realized. Although the extent of the obligation to fulfill varies according to the State's available resources, State should at least create the legal, institutional and procedural conditions that rights holders need in order to realize and enjoy their rights in full. In respect of the right to access to justice for women victims of domestic violence, the government should at least establish institutions like rehabilitation and reintegration services center at zone level.

3.2.3. Institutional and Structural Factors

The institutional framework for addressing women's rights includes a number of governmental bodies and institutions, both in zone and wereda levels, which have similar mandates and functions. Specially, the so called justice system reform bodies; women, children and youth office, public prosecutor office, police office, court and administration office should work in coordination to ensure women's human rights. However, absence of appropriate institutional collaboration has been recognized as a serious constraint to the implementation of policies and hampered efforts towards access to justice for women victims of domestic violence. The Women, Children and Youth Affairs Office annual report shows as the absence of working in collaboration with those stockholders became obstacle to ensure the right to access to justice for women victims of domestic violence. In the interview conducted with the officers of different institutions they raised allocation of insufficient human resource and budget as obstacle to their work. In this respect the government

¹²⁶ UN WOMEN, *supra* note 82.

needs to allocation adequate financial resources and assign sufficient human resource. However, to convince the concerned government body, particularly the administrative organ which allocate budget, the stockholders needs to come together and work in collaboration. Women victims of domestic violence as every Ethiopian national has the right to equal access to publicly funded social services and the State has the obligation to allocate ever increasing resources to provide to the social services.

The case of domestic violence is repeatedly dropped as it is perceived to be a family matter and did not appear to have considered the motives behind the withdrawal of the complaints; Other than serious offenses causing murder or serious physical injury, the matters of domestic violence are to be considered as minor offences.¹²⁷ Even when women find the courage to report domestic violence, despite the sexual stereotypes they encounter within the society, the police fail to conduct further investigations with regard to their complaints.¹²⁸ The reason that the police provide for their inaction is the private nature of domestic violence. Most of the time, the violence is committed by intimate partner (between family members) who have common life. Due to the lack of relief after reporting incidents of domestic violence, women are discouraged from making further reports when the incident is repeated.¹²⁹ They prefer to tolerate the act or to separate from the partner than coming to seek justice. The same problem exists on side of public prosecutors. They give attention if the offense is serious, causing murder or serious physical injury. Women may not able to receive help from the authorities, including the police, if services are not available, affordable or responsive to their needs. For instance, in the interview with Munira Aba Macha, she was blamed by police for reporting her case. As a result she was forced to report her claim to the women, children and youth office which have no power to investigate and prosecute her case. Moreover, the fact that victims are usually requested to produce evidences is also problematic in the sense that some kinds of violence against women such as sexual violence are most of the time committed in the absence of witness and obtaining written documents about the act is quiet difficult. In cases where producing evidence is difficult for survivors of the victim, non existence of possible effective strategy to collect evidences has its own contribution for evidences produced by police investigators to be weak. In such situation the public prosecutor might decide not to take the cases before a court of law. Even though he or she took it to court, there is a huge probability of losing the case.¹³⁰ Finally, the perpetrators will be left unpunished and the perpetrator may continue their act as legal. The agreement of the parties is appreciated and encouraged for minor offences than investigating and prosecuting the

¹²⁷ *Interview with M. Mecha, victim of Domestic Violence from Tiro Afeta Wereda, 9, Jun 2020*

¹²⁸ *Id*

¹²⁹ *Ibid*

¹³⁰ *Interview with A.Dawo, Representative Public Prosecutor Officer, at Sokoru Wereda, , 18, Oc. 2019*

perpetrator for the purpose of securing the families peace and stability.¹³¹The public prosecutor office arise the problem of lack of human resource to address the legal training and create legal awareness to the whole community.¹³²Women’s rights oriented institutions; the Women’s Children and Youth Affairs Office have suffered from lack of capacity like resource is another institutional challenge that perpetuates barrier of access to justice. This office could help the victims by collaborating with NGO. However, they are not committed to that effect to help women survivors of domestic violence in the course of seeking justice.¹³³

The ways evidentiary rules applied undermine effective criminal investigation and prosecution of crime of domestic violence. The evidentiary rules places the responsibility on the prosecutor to prove that the survivors were a victim of a crime and the survivor and the investigating bodies are forced to gather evidence by themselves.¹³⁴ Legal reforms should be made in this regard. There are situations in which the burden of proof shifts from public prosecutor to the defendants. For instance in case where husband and wife alone live together or live with their little children and the husband raise alibi defense, he should proof that. These kinds of provisions are very necessary in fairly entertaining the cases of domestic violence where the prosecutor don’t get sufficient witness to prove the charge.

Evidentiary challenges include, for example, judges often requiring prosecutor to provide a medical certificate as proof of assault and beat by intimate partner. However, producing medical certificate becomes difficult because of different reasons. For instance, the victims don’t know when to go police office to report the crime and when to go to clinic.¹³⁵ The survivors came to claim against the perpetrators tardily in a situation where it is difficult to get medical evidence.¹³⁶ As domestic violence is unique in its nature and difficult to produce evidence as required, for the sake of justice sometime judges and prosecutors should apply equity principle than regular and strict procedure to render decision.¹³⁷ For example, in the case Ahmed Aba Jabal Vs Police Investigator, the accused was suspected of committing murder against the mother of his two children. She was killed after two months she gave birth to her second child. The police presented medical report from hospital that indicates the trauma on the body of the decease. The circumstantial evidences show as he always nags and hit her. Unfortunately, Jimma zone public prosecutor decided the case based up on article 42(1) of criminal procedure code. In this case lack of commitment and capacity on the

¹³¹ *Interview with Y. Tesema,*

¹³² *Interview with M.Fita, Representative of public prosecutor office at Tiro Afeta Woreda, 12, Jun. 2020*

¹³³ *Supra note at , 109*

¹³⁴ *Supra note 108*

¹³⁵ *Supra note at 95*

¹³⁶ *Interview with Z.Gojjam, Survivor of Domestic violence, From Merera Kebele, Sokoru, 16 May ,2019*

¹³⁷ *Interview with D. Hirko, Judge at Omo Nada wereda court, Criminal bench , Oc. 16, 2019*

part of public prosecutor that implement legal provisions may be identified as one of the factors that perpetuate domestic violence more specifically against women survivors of domestic violence in Jimma zone.

One of the reasons women and girl victims engage with the criminal justice system is to stop the violence and prevent violence from recurring and escalating, as well as to prevent threats of violence, intimidation and harassment. In the interview Dagne Hirko, the judge at Omo Nada wereda, in domestic violence cases victims ask for effective and immediate protection measures that ensure the safety, for them and their families. The victims raise the safety issue among the leading reasons to drop out of the criminal justice process.¹³⁸ The protection needs to be urgent and long-term, as well as situational. Once the victim reports, she may experience specific threats and pressure to drop the case, as well as be exposed to more violence as retaliation for engaging the criminal justice process. Women who experience IPV have complex needs and may need services from many different sectors, including health care, social services, legal entities and law enforcement, and therefore, multi sectoral collaboration is essential for ensuring survivors' access to justice. In the interview with one respondent from sokoru wereda, the remoteness of justice institutions from the place she reside abstain her from filing criminal complaint against her husband who always nag and harm her. According to the respondent, she can't afford the costs of transportation for witnesses. There are so many women facing such kind of challenges in the course of seeking justice.¹³⁹ Most of the time only circuit court is established for civil cases. The circuit criminal benches should also be established to ensure the internationally and nationally recognized right to access to justice of women survivors of domestic violence.

Judicial institutions are required to remove institutional and structural barriers discussed above that undermine the realization of the right to access to justice for women and prevent prosecution of perpetrators. Religious institutions have also the duty to address clear religious education on the issue of bigamy. The society at large is required to change the negative attitude towards women victims of domestic violence and fight for the realization of the right to access to justice for women survivors of domestic violence. To this effect the institutions that have the duty to create awareness to the large society should devote itself to the highly victimized part of the society, to the survivors of domestic violence.

¹³⁸ *Id.*

¹³⁹ *Interview with K. Nura*

CHAPTER FOUR

4. CONCLUSION AND RECOMMENDATION

4.1. Summary and Conclusion

The right of access to justice is both a fundamental component of the rule of law and a key element in ensuring the realization of all human rights. It includes the availability of accessible, affordable, timely and effective means of redress or remedies. In addition to this, the concept of access to justice must be understood in the context of States' obligations under international human rights law to respect, protect and fulfill human rights. Access to justice is recognized under the major international and regional human right instruments including: the UN charter, UDHR, ICCPR, ICESCR, CEDAW, UNCRC and ACRWC. Among them, the two former international human rights instruments recognize the right as everyone has the right to effective remedy against violation of fundamental rights. Ethiopia has also recognized Access to justice as a right under article 37 of the FDRE Constitution. Furthermore, since Ethiopia has ratified all of the above listed international human rights agreements, the rights and standards recognized in these international and regional instruments become part of Ethiopian law. Though the international and constitutional recognition of the substance of the right is set in the right direction, it does not guarantee the effective implementation of the right of access to justice as practical application of provisions do not consider the unique nature of the acts of domestic violence. As a result of lack the of legal identity, ignorance of legal rights, unavailability of judicial institution and economic dependency of vulnerable groups in general and women victims of gender based violence in particular are not favored with right. Women face many different forms of violence; physical, sexual, psychological and economic in a wide range of settings, including the family, the community, and state custody. The most common form of gender based violence women experience is violence by intimate partner or domestic violence which is internationally recognized as a human rights violation. Domestic violence is any behavior that purposes of which are to gain power and control over a spouse, Partner, girl/boyfriend or intimate family member. It constitutes physical, sexual, psychological and economic violence against women. By its nature domestic violence takes place behind closed doors as an unseen crime and difficult to get witness. The matters of domestic violence are to be considered as minor offences and perceived to be a family matter and did not appear to have considered the motives behind the withdrawal of the complaints and discriminatory laws procedural and evidentiary requirements and practices, and a failure to systematically ensure that judicial mechanisms are physically, economically, socially and culturally accessible to all women are obstacles that hamper women victims of domestic violence to access justice.

By taking into considerations material problems existing in realizing the right to access to justice for women

survivors of domestic violence, the international and regional human rights laws classified and treated domestic violence as a human rights concern rather than as a mere domestic criminal concern and impose obligation on States not only to refrain from committing but also to prevent and respond to human rights abuses, without discrimination. States can be held complicit where they failed to take minimum steps necessary to protect their female citizens' rights to physical integrity and life where they do not actively engage in acts of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners. States are expected to demonstrate due diligence by taking active measures to protect, prosecute and punish such offenders of domestic violence.

Violence against women is a general problem in Ethiopia, where culturally based abuses, including wife beating and marital rape, are pervasive social problems. Domestic violence is also prevalent in Ethiopia and takes various forms of physical, sexual and emotional abuse and 50-60 percent of women experience domestic violence in their lifetime. Like other States, Ethiopia also implements international and regional standards through national law and policy. The FDRE Constitution ensures gender equality and incorporates the major UN Conventions on human rights and elimination of all forms of discrimination against women. Constitution acknowledges the duty of the State to protect women from the influence of harmful customary practices, stating that all laws, stereotypes, ideas and customs which oppress women or otherwise adversely affect their physical and mental well-being are prohibited. The constitution also imposes upon States the obligation to set up all appropriate legal and institutional frameworks that address claims of violations of rights. Specifically, States have the obligation to adopt appropriate legislations; put in place competent judicial and quasi-judicial organs; ensure accessibility and effective functioning of those organs; and guarantee fair trial rights in proceedings.

However, Lack of awareness of the community about the rights of women protected by the law and women survivor of the violence about their rights , Economic factors, such as poverty and economic dependency of the women survivors of domestic violence, social factors that place the victim in an inferior position and expose them to repeat domestic violence, related to familial situation, Structural factors including unavailability and distance of judicial institutions, lack of supportive services for victims from the government, and lack of commitment, reluctance and capacity to implement legal and policy provisions on the part of stakeholders that implement legal provisions, put a great challenge to the Jimma Zone women victims of domestic violence are facing problem pertaining to access to justice in addition to the already inadequate coverage of the law.

In fact the laws in action are not sufficient and comprehensive enough to address the sophisticated problems of women victims of domestic violence and hence there is a need to reform laws. There is a need to build

capacity of law enforcement agencies in Jimma zone in order to implement the guidelines at hand on GBV. Police and prosecutors need to look closely and carefully at the cases of domestic violence, as it has a private nature and reporting of it results in the condemnation against the victim. Policy and procedures tell responders what to do. But training helps how to do it. The law enforcement agencies should receive specialized domestic violence trainings of sufficient depth to review dynamics of domestic violence and how they can use local resources and not just provide a review of standards operating procedure. In addition to building the capacity of law enforcement agencies, changing the societal attitude and perception at all levels is the other significant step that should be taken. Sustainable awareness raising campaigns that encompass all communities should be held on the existing laws protecting women's rights by collaboration of all stakeholders.

Another issue that emerged from interviews with women victims of domestic violence and officers of women, children and youth affairs office was the issue of economic dependency of the survivors upon the perpetrators. As a consequence of absence of shelter for the victims and for their children, the victims were invited to extra violence. As a result they prefer to hold all the violence and not to report and seek justice. In order to avoid the challenges connected to economic factors the right to access to justice for women victims of domestic violence, the government should at least establish institutions like rehabilitation and reintegration services center at zone level.

Domestic violence as it is complex by its nature, it needs comprehensive institutional set. The right to access to justice for women victims of domestic violence can't be realized by the effort of one or two bodies it needs the effort and cooperation of multiple stakeholders. To this effect the concerned institutions need to come and work together. For instance, the budget of the government organs is allocated by administration organ; in this case other stakeholders could convince this organ to allocate sufficient resource for this purpose. To this effect they should come together and make persistent discussion. Hand by hand, judicial institutions need to do the same. Structural centralization to the district towns of judicial institutions makes justice system unavailable and inaccessible to women living in rural and remote areas of the weredas. Moreover, the judicial organs perceive the case of domestic violence as family case and refuse to consider as a serious problem of women. This also needs to provide adequate special training to judicial bodies; police investigators, public prosecutors and judges how complex, sensitive and harmful the act of domestic violence is so that they can conduct comprehensive investigation, complete prosecution and full adjudication.

4.2. Recommendation

In light of the above mentioned barriers, the researcher would like to forward the following recommendations.

- ✓ The government needs to ensure the implementation of awareness raising programmer for the general population. All necessary measures should be adopted to reform or eliminate discriminatory cultural practices and stereotypes through awareness raising programmers targeting all classes of the community. All concerned State actors particularly the public prosecutor offices should work on informing women of their rights and legal recourse mechanisms.
- ✓ The judicial institutions in collaboration with religious leads; should create clear and adequate knowledge and awareness to the society about bigamy from the perspective of legal and religious taught.
- ✓ Adequate training is required regarding domestic violence to enhance capacity of police investigators, prosecutors and judges who are assigned to investigate, prosecute and adjudicate gender based violations crimes; The government bodies both on zone and district level are required to take all necessary measures to ensure women's access to justice, particularly by training police and legal personnel and realize effective prosecution and punishment of offenders;
- ✓ It needs to take measures to increase women's access to property, including land and inheritance. The concerned government bodies in all level should work together in providing shelters and establishing rehabilitation and reintegration center for women survivors of domestic violence and their children and the judicial institution should establish circuit criminal benches so that justice institutions will be accessible and available to women from rural and remote areas.
- ✓ Further research should be conducted on the prevalence of domestic violence on the area

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