



David Cohen
Kyra Jasper
Melodie Liu
Alisha Zhao

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AND ETHIOPIA'S
LEGAL FRAMEWORK:
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David Cohen

Kyra Jasper

Melodie Liu

Alisha Zhao

Center for Human Rights and International Justice
at Stanford University

Executive Summary

This report identifies numerous challenges that persist in achieving gender equality in Ethiopia. These challenges were recognized by the Ethiopian government in the 2019 Universal Periodic Review, in engagement with the United Nations Committees for the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Covenant on Civil and Political Rights (ICCPR), and across many projects, programs, reports, and roadmaps. The past two decades of international and government programs demonstrate the difficulty of effectuating change against a backdrop of legal roadblocks, entrenched social practices, and local authority structures that continually reproduce systemic gender inequality. This report explores the landscape of continuing efforts for reform in the face of systemic obstacles within Ethiopia's legal framework and makes recommendations on the kinds of systemic changes that are likely to be necessary to achieve the Ethiopian government's goals on gender equality and women's economic empowerment.

Effective operation of Ethiopia's legal system is indispensable to achieving women's empowerment and to addressing human rights issues such as early marriage, human trafficking, female genital mutilation and land rights. The basic legal framework for upholding women's rights is provided in the federal Constitution and the federal statutory framework through the Family Law Code, the Criminal Code, and other statutes, proclamations, and legislation, all of which have the force of law. Most of the formal legal framework represents international standards as a framework for achieving gender equality and women's economic empowerment. The challenge lies in implementing this framework.

Our review of the existing literature suggests that actual legal practice tends to deviate from the federal statutory framework, due to the view that states' rights, local authorities, and religious courts need not follow national policy, international obligations, or the federal Constitution. This situation is further complicated by the fact that there is no judicial body that is designated to rule on the constitutionality of judicial decisions and state laws. Such structural issues are compounded by more general problems such as a long-recognized need for capacity building in the judicial sector to ensure that legislation is being interpreted in ways that correctly uphold women's constitutionally guaranteed rights in legal disputes. This study describes how impediments in the legal system impact important issue areas, all of which interlock in obstructing progress on women's empowerment and gender equality. We also highlight the conflicting interpretations by Ethiopian legal scholars and elements of the judicial sector on the Constitution, interpretive conflicts in practice between federal and state courts, Federal vs. Sharia courts, and other issues, which weaken the effectiveness of federal and state courts, laws, and international commitments.

Section I contextualizes previous federal efforts to achieve gender equality, as well as the various federal legislative frameworks and international human rights obligations to which Ethiopia is party to. The section concludes by exploring how the ongoing conflict in Tigray, inter-communal fighting in the western Benishangul-Gumuz region, and COVID-19 have exacerbated the gender equality issues described in this report.

Section II details how the authority of Ethiopia's federalist system is undermined by weak law enforcement, the lack of legitimacy of state law and courts, and its complex legal pluralist system. It notes the challenges of standardizing a gender equality approach across religious courts and custom dispute resolution mechanisms because of the sensitivity of challenging the authority of traditional forums, as well as several other systemic problems, including the lack of codified law that conforms to constitutional standards, male-dominated composition of these institutions, and the fact that social pressure and male-dominated local authority structures play a large role in preventing women from choosing formal courts.

Section III of the report focuses on four "case studies" — child marriage, female genital mutilation/cutting, human trafficking, and property rights — which demonstrate the importance of approaching systematic features of gender inequality in view of the cross-cutting nature of these issues. We adopt this approach rather than addressing issues in silos, as has been the case in much of the past government

and international programming. Effective solutions to gender inequality require a holistic view of the ways in which these issues' consequences intertwine and are exacerbated by the inconsistent application of national policy and federal law at the state and local levels.

We conclude by highlighting the gap between human rights guarantees of the federal and state constitutions in actual legal practice and the lives of Ethiopian women. We note the need for capacity building among elements of the judiciary on the rights of women as guaranteed by the federal and state constitutions, the federal Revised Family Code, and international human rights obligations. We also call attention to the fact that there is a general dearth of research and accurate data on gender issues in their contemporary form in Ethiopia, especially at the state and local levels. We recognize the challenges that Ethiopia's vast ethnic, religious, and linguistic diversity represents, but systematic empirical research and robust data collection and analysis are vital both for understanding the scope of the problems and for assessing the effectiveness of initiatives and policies. Our review of the past 10 years of UN and international donor programming shows how project reports and assessments repeatedly note the lack of strong data collection and of evidence-based project management. Filling this research gap is imperative in order to engage with stakeholders at all levels for effective policy implementation. Ultimately, change must come from within Ethiopia, although observations from without can help to focus attention on critical, systemic roadblocks that must be overcome in order for Ethiopia to deliver on its promise to uphold gender equality as a fundamental, constitutional right.

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Abbreviations Used

CCI	Council of Constitutional Inquiry
CDR	customary dispute resolution
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Committee on the Rights of the Child
CRVS	civil registration and vital statistics
CSOs	civil society organizations
EDHS	Ethiopian Demographic Health Survey
EPRDF	Ethiopian People’s Revolutionary Democratic Front
EWLA	Ethiopian Women Lawyers’ Association
FGM/C	female genital mutilation/cutting
GBV	gender-based violence
GDP	gross domestic product
GTP	growth and transformational plan
HoF	House of Federation
HPR	House of People’s Representatives
HTP	harmful traditional practices
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IOs	international organizations
IOM	International Organization for Migration
LACs	Land Administration Committees
LIFT	Land Investment for Transformation Programme
MOLSA	Ministry of Labor and Social Affairs
NCM	National Coordination Mechanism
SNNPR	Southern Nations, Nationalities and People’s Region
SDGs	Sustainable Development Goals
SDOs	Social Development Officers
STIs	sexually transmitted infections
TIP	Trafficking in Persons
TPLF	Tigray People’s Liberation Front
TVPA	Trafficking Victims Protection Act of 2000
UN	United Nations
UPR	Universal Periodic Review

Introduction



This research on Ethiopia's legal framework focuses on several key issues, all of which have a direct impact on the opportunities and challenges in promoting gender equality in Ethiopia through empowering women to participate more fully in civil society, the economy, politics, and governance. These challenges have been recognized by the Ethiopian government in many contexts: in the 2019 Universal Periodic Review (UPR); the interaction with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Committee on the Rights of the Child (CRC), and International Covenant on Civil and Political Rights (ICCPR) Committees; and in innumerable projects, programs, reports, roadmaps, and national initiatives.

The basic legal framework for achieving women's empowerment and gender equality is provided in the federal Constitution and significantly embodied in the federal statutory framework through the Family Law Code, the Criminal Code, and other statutes, proclamations, and legislation, all of which have the force of law. The challenge, as will be seen in this report, is to implement this framework and to enforce these rights in an effective manner. There are a number of systemic and structural impediments in doing so, most of which have been clearly recognized in United Nations (UN) and government documents, as well as in the robust legal literature of Ethiopian law professors and legal scholars. The fact that the remaining challenges and shortcomings are so daunting, despite the progress achieved through two decades of international and government programs, reflects the underlying difficulty in effectuating societal change in deeply entrenched values, practices, customs, norms, and authority structures that collectively produce and reproduce systemic gender inequality and discrimination.

The federal Constitution directly incorporates Ethiopia's international and regional human rights obligations into the law of the land. Ethiopian legal scholars have noted, however, that although Ethiopia has been slow to fulfill its obligation to implement legislation, the constitutional mandate itself provides grounds for direct implementation of these international norms.¹ It is also important to note that although the federal Constitution is the supreme authority as the law of the land, the manner in which this legal supremacy is implemented, particularly as it pertains to women and children, has been challenged by some Ethiopian scholars as a matter of constitutional interpretation or social policy. The Constitution has also been challenged in state practice, which is marked by an apparent disregard for the

1 See, e.g., Asrat Adugna Jimma, *The Rights of the Girl-child in Ethiopia: Challenges and Prospects* (Lambert 2014): 32.

constitutional mandates and other federal legislation such as the federal Family Code. This problem is exacerbated by the lack of a judicial body, such as a constitutional court or a supreme court vested with the power of judicial review, that is designated to rule on the constitutionality of federal or state laws and judicial decisions.

This report aims to elucidate challenges within the Ethiopian legal framework that impede a fuller realization of gender equality in Ethiopia. We also locate case studies of particular discriminatory and harmful practices within the broader context of crosscutting social, economic, and political factors that give rise to and reinforce such practices. We argue that an analysis of the formal legal framework and its implementation, as well as the local, customary, and religious practices of dispute resolution and regulation of marital and family relations, must be incorporated into future efforts for gender equality in Ethiopia. Failure to comprehensively address the multi-faceted impact of the full spectrum of structural, systemic, and localized judicial practices that violate the Ethiopian Constitution, federal and state laws, and international human rights obligations has created certain shortcomings in the approach thus far of various international and national stakeholders.

Our inability over the past year to work directly in Ethiopia and engage in close cooperation with leading Ethiopian scholars, experts, and civil society organizations has posed a limitation which no amount of pure desk research can compensate for. While this report has not engaged in the fieldwork and in-depth empirical research required to provide a truly authoritative analysis, it hopes to demonstrate the gaps, challenges, and failings in existing legal frameworks and practices, as well as to point the way towards remedial measures and the kind of research that could provide a more definitive account.

Section I offers an introduction to the aspects of Ethiopia's history and politics that are most pertinent for understanding the legal framework. It also illustrates the ways in which recent international and federal efforts have failed to ensure proper implementation of the complex, multi-sectoral reforms that are needed in order to properly address the cross-cutting nature of impediments to women's empowerment. The section highlights how recent political and global events, including the fighting in Tigray and the COVID-19 pandemic, heighten the vulnerability of women and children and exacerbate conditions that lead to their exploitation and discrimination.

Section II addresses the gaps left by previous UN and federal efforts by analyzing the Ethiopian legal framework in a way that elucidates its intersection with the broader landscape of gender relations in Ethiopia. It reveals a number of important gaps between providing for women's rights on paper and upholding them in practice.

Section III extends the analysis of Section II by analyzing several gender issues as case studies that examine the interlocking connections between the challenges of the legal system and the larger nexus of sociopolitical issues and norms that entrench gender inequality. It points to the consequences that can result from tolerating legal and political ambiguities surrounding the enforcement of women's rights.

Although we have sought to make use of all available English-language resources, a general dearth of research and sufficient accurate data on gender issues in their contemporary form in Ethiopia poses considerable limitations to our understanding of gender relations on the local level in each of the ethnically, religiously, and linguistically diverse communities of which Ethiopia is composed. As noted above, our opportunity to conduct field research in Ethiopia and collaborate with Ethiopian scholars has been stalled by the COVID-19 pandemic. Therefore, rather than positing a static picture of gender in Ethiopia, we have instead endeavored to raise salient questions about the ambiguities and conflicts that arise from a combined look at various relevant studies, from anthropological research to notable legal cases. Such scholarship offers a valuable understanding of the legal, social, economic and political structures of Ethiopian society that will continue to be relevant to any work in gender issues. In raising numerous open questions, we hope to point to the need for future funding and development of research initiatives that can eventually present a more precise look into the contemporary interplay between law, society, economy, and gender in Ethiopia.

CHAPTER I

Context



This section gives an overview of the historical and political backdrop of gender inequality in Ethiopia, in addition to the recent commitments that the Ethiopian government has made toward achieving gender equality. Although the government has acknowledged these obligations, it has not yet implemented legislation in ways that mandate the judiciary to apply international human rights standards as part of domestic law.

Much of Ethiopian society, politics, and law must be understood in the context of successive twentieth century political transitions. Ethiopia was ruled by an absolute monarch until the 1974 socialist revolution deposed on Emperor Haile Selassie.¹ Under the Derg regime that followed (1974-1991), Ethiopians experienced and witnessed gross human rights violations of which pseudo-legal mechanisms played a role, from arbitrary detention to extra-judicial execution. A combination of different forces, led by a desire for an ethno-democratic system of governance, overthrew the Derg in 1991. The transitional government designed the Constitution of the Federal Democratic Republic of Ethiopia, which came into force in 1995² and was created by Meles Zenawi, a founding member of the Tigray People's Liberation Front (TPLF).³

The current political system was designed to accommodate the desire for self-rule and self-determination among each of the ethnically, linguistically, and religiously diverse communities in Ethiopia. There are over 80 ethnic groups, each with their own language, and large populations of Orthodox Christians, Muslims, and Protestant Christians. The 1995 Constitution emphasizes state's rights and accordingly does not establish any administrative units beyond the state level, leaving the task of internal organization to each of the state governments, which are supposed to create units in such a way as to respect the self-rule of each of the constituent ethnic groups.⁴

The Constitution guarantees women's fundamental rights, and subsequent legislative revisions, initiated largely by civil society organizations such as the Ethiopian Women's Associations, have added more legal protections. However, due to weaknesses in the legal system as detailed in Section II of this report, it seems that

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- 1 Michael Cohen, Samuel Gebre, and Simon Marks, "Why Ethiopia's Nobel Peace Prize Winner Is Waging War," *Bloomberg*, November 5, 2020, <https://www.bloomberg.com/news/articles/2020-11-05/why-ethiopia-s-internal-tensions-risk-boiling-over-quicktake?sref=am1wYMj6>.
 - 2 K. I. Vibhute, "Right to Access to Justice in Ethiopia: An Illusory Fundamental Right?" *Journal of the Indian Law Institute* 54, No. 1 (January-March 2012): 67, <https://www.jstor.org/stable/43953526>.
 - 3 David Pilling, "Constitutional question at the heart of Ethiopia's fight in Tigray," *Financial Times*, November 26, 2020, <https://www.ft.com/content/7b8c9fa8-af29-48ba-be94-46d3f9fd6c29>; Gabriel Negatu, Cameron Hudson, "Experts react: Understanding the conflict in Tigray," *Atlantic Council*, November 11, 2020, <https://www.atlanticcouncil.org/blogs/africasource/experts-react-understanding-the-conflict-in-tigray/>.
 - 4 Aroney & Kincaid, *Courts in Federal Countries: Federalists or Unitarists* (Toronto; Buffalo; London: University of Toronto Press, 2017): 165.

many of these protections are weak in practice. The constitutional affirmation of legal pluralism complicates attempts to implement national gender equality policies due to the challenge of resolving conflicts between national policy and local practice.

1.1 Federal Efforts to Achieve Gender Equality

The challenges in promoting gender equality and reducing, or eliminating, those social practices and customs which limit opportunities for girls and women to achieve their potential are well-known from many contexts. The fatal combination of extreme rural poverty; lack of, and resistance to, education for girls; patriarchal norms, customs, and values; widespread lack of capacity in key governmental institutions to address gender-based issues; and weak rule of law, undermines efforts to eliminate abuses and empower women economically, politically, and socially. In the case of Ethiopia, these well-known factors operate together with a form of federalism and legal pluralism that enhances the challenges in promoting gender equality as a reality rather than an aspiration. That is not to say that the past 20 years of UN and government-led projects and initiatives have been met with no success. Data, to the extent that it is accurate and reliable, does indicate significant declines in some egregious practices and violations of women's rights. The impact of such successes, however, varies widely among Ethiopia's states and diverse ethnic and religious groups. Over the past 15 years, there has been significant attention paid to and improvement in the number of girls attending secondary education. According to the World Bank, about 34% of girls of secondary school age were attending secondary school in 2015, compared to almost 19% of girls in 2005.⁵ However, the rate between girls enrolled in lower secondary school and upper secondary school were significant: while 41% of girls were enrolled in lower secondary, only 17% of girls were enrolled in upper secondary.⁶ While these results are a promising reminder of the progress that can be achieved through multilateral cooperation between the Ethiopian government, international organizations, and local communities, this data overlooks the discrepancy between the number of girls enrolled in secondary education in rural areas compared to urban areas, and statistics do not exist for semi-nomadic groups.⁷ In addition, there is a relatively low secondary education graduation rate for girls as compared to the average for low-income countries (34.7%) and countries in Sub-Saharan Africa (40.4%),

5 The World Bank, "School enrollment, secondary, female (% gross) - Ethiopia," September 2020, <https://data.worldbank.org/indicator/SE.SEC.ENRR.FE?locations=ET>

6 Education Policy and Data Center, "Ethiopia: National Education Profile 2018 Update," 2 (figure 6), https://www.epdc.org/sites/default/files/documents/EPDC_NEP_2018_Ethiopia.pdf

7 64% of children in urban areas were enrolled in secondary school, while only 45% of children in rural areas were enrolled in schools. The percent of girls in urban and rural areas likely vary considerably. *Ibid.*, 1 (figure 5).

despite the larger number of girls enrolled in secondary education. In 2015, about 29% of girls graduated from secondary school.⁸ Although this rate is significantly higher than in 2005, in which less than 14% of girls graduated secondary school, the high unemployment rate for high school and university graduates provides little incentive for students to stay in school. Lastly, the discrepancies in data sources on education (girls, secondary) illustrates a lack of consistency across criteria used to quantify the progress for girl's education.⁹ That this shortcoming cannot be addressed, for example, simply by building more schools and hiring more teachers, is indicated by reports showing that many secondary schools are grossly underutilized because of a widespread conviction that further education does not result in sufficiently increased economic opportunities. This example points to the cross-cutting nature of the many factors that impact gender inequality and circumscribe the life choices of women. The challenges that Ethiopia faces in and across key areas will be explored below in our discussion of the legal framework and the track record of previous programs, and is also illustrated in the case studies considered in Section III.

The first case study that our report focuses on in Section III is child marriage. The deleterious impact of child marriage on life opportunities for women has been well-documented globally. In Ethiopia, the aggregate data indicates that 54% of girls in Ethiopia are married before the age of 18 and 14% are married before 15.¹⁰ Those figures are, however, considerably higher in some parts of the country and in certain communities. Yet even taking the aggregate number as a starting point for addressing these challenges is daunting: Ethiopia has the 15th highest prevalence rate of child marriage in the world. Refugee girls make up a disproportionate percentage of child brides.¹¹ As in other contexts where prevalence is high, child marriage is motivated by a variety of social, economic, political, and cultural considerations. It is often seen

8 TheWorldBank, "Lowersecondarycompletionrate,female(%ofrelevantagegroup)-Ethiopia," September 2020, <https://data.worldbank.org/indicator/SE.SEC.CMPT.LO.FE.ZS?end=2015&locations=ET&start=1987&view=chart>. The most recent graduation rates are from 2015. The lack of recent data on this topic underscores a significant roadblock that the government will need to overcome in order to maximize girls' opportunity to receive a full secondary education.

9 Statistics from the EDHS 2016 dataset show that only 30% of 15-24 year olds have completed primary education in Ethiopia, which is significantly lower than World Bank data. Education Policy and Data Center, "Ethiopia," 1 (figure 3), https://www.epdc.org/sites/default/files/documents/EPDC_NEP_2018_Ethiopia.pdf. The most recent data is from 2015-2016, which makes understanding the scope of the issue and the necessary next steps to increasing secondary school enrollment rates challenging.

10 There are several discrepancies in the data in regard to rates of child marriage, FGM/C, etc. between official sources. For example, the EDHS 2016 data states that 58% of women age 25-49 marry before their 18th birthday, while the National Roadmap to End Child Marriage and FGM/C cites different figures. A more thorough discussion of the gaps in accurate data on these topics will be discussed in Section III.

11 See note above. Leah Rodriguez, "How This Brave Ethiopian Teen Stopped Her Own Child Marriage," *Global Citizen*, March 11, 2019, <https://www.globalcitizen.org/en/content/12-year-old-stops-child-marriage-ethiopia-video/>.

as a way of ensuring a girl's, and a family's, social status and security.¹² To complicate matters in enforcing Ethiopia's law on child marriage, there are three main types of child marriage in Ethiopia: arranged marriage, marriage by abduction, and marriage by choice. The ways in which these marriage types are practiced and the degree of community support for tradition vary widely among groups. Additionally, though increasingly uncommon, child betrothal and marriage by abduction still occur in some regions and communities.¹³

Our second case study focuses on female genital mutilation/cutting (FGM/C), which, although criminalized in 2005, is still commonly practiced in Ethiopia, especially in the eastern states. Rates of FGM/C vary greatly across Ethiopia, making detailed and accurate data of FGM/C rates at the local level more important as the government tries to end the practice nationwide. The 2016 Ethiopia Demographic and Health Survey reported that 65% of women the age of 15 to 49 have been circumcised in Ethiopia.¹⁴ The reasons that families have their daughters undergo FGM/C, and the time and type of FGM/C that is done, vary widely between communities, but are often a combination of religion, marriageability, and tradition.

Similar issues are considered in our third case study on human trafficking. Women and girls are especially vulnerable to human trafficking, and Ethiopia remains a source country for both internal and international trafficking. In Ethiopia, domestic servitude and migrant trafficking are particularly high-priority trafficking conditions, in which human traffickers exploit both domestic victims and victims from Ethiopia abroad. Sociocultural factors such as child marriage, gender-based violence, and family discord, which disproportionately impact women and girls, contribute to this widespread problem. Inadequate resources and welfare in rural Ethiopia force families to send their children to urban areas in search of economic opportunities, making girls from rural areas particularly vulnerable to trafficking. The 2020 Trafficking in Persons Report placed Ethiopia in "Tier 2," and the third case study identifies some of the ongoing challenges and limitations Ethiopia faces in addressing trafficking.¹⁵

12 "Ethiopia," OECD Development Centre, <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/ET.pdf>.

13 Ibid.

14 Central Statistical Agency (CSA) [Ethiopia] and ICF, Ethiopia Demographic and Health Survey 2016 (Addis Ababa, Ethiopia and Rockville, Maryland, USA: CSA and ICF, 2016): 317.

15 The U.S. Secretary of State is required to rank countries on one of four tiers, which indicates the severity of the human trafficking problem in each country as assessed by criteria outlined in the the Trafficking Victims Protection Act of 2000 (TVPA). Countries who are making significant efforts to comply with the criteria outlined in the TVPA, but have not fully satisfied the minimum standards, are designated as "Tier 2." See Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, "Report to Congress on 2021 Trafficking in Persons Interim Assessment Pursuant to the Trafficking Victims Protection Act," January 7, 2021, <https://www.state.gov/report-to-congress-on-2021-trafficking-in-persons-interim-assessment-pursuant-to-the>

A fourth case study considers a range of issues and practices related to property rights. In Ethiopia, inheritance typically follows patrilineal norms, despite inheritance laws that on paper guarantee equality. For example, widows' land is often taken by the deceased husband's family, directly contravening the federal law. Similarly, the CEDAW committee noted in 2011 that women often lose their property upon divorce, despite the legal framework that in principle protects them.¹⁶ Women are estimated to provide 40-60% of all agricultural labor in Ethiopia, yet their economic contribution to their families and communities is not reflected in land ownership.¹⁷ Land ownership practice, and women's access to ownership, varies across the country due to differences in culture and religion. Typically, however, men own land and cattle whereas women own household goods and small animals. Some communities welcome more participation among women in farming and cultivation. In other regions, such as the northern Tigray and Amhara, women are not allowed to use land. In Oromia and Southern Nations and Nationalities People's Regions, women can only access land through marriage. The difficulty of securing land ownership impedes women's ability to obtain credit, contributes to a gender divide in financial literacy, and, ultimately, reinforces structural inequalities.¹⁸

Gender-based violence can be underreported due to lack of trust in the legal system and effective management and coordination between different actors.¹⁹ One of the problems, reinforced by patriarchal structures and social practices, is that family life is often seen as a realm into which the government should not intrude. This view can perpetrate a culture of gender-based violence and deter legal institutions from intervening.²⁰

1.2 Ethiopia's Legislative Framework and International Human Rights Obligations

Ethiopia has ratified the major international human rights instruments, including those that bear most directly on gender equality, such as CEDAW, CRC, and ICESCR. Ethiopia also substantively participates in the UN Committee process and

trafficking-victims-protection-act/.

16 "Ethiopia," OECD Development Centre, <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/ET.pdf>.

17 Birtukan Atinkut Asmare, "Rural women's access to and control over land in East Gojjam during the Derg and EPRDF," *Environmental Systems Research* 5, No. 2 (2016), <https://link.springer.com/content/pdf/10.1186/s40068-016-0062-5.pdf>.

18 "Ethiopia," OECD Development Centre, <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/ET.pdf>.

19 Ibid.

20 Megersa Dugasa Fite, "The Ethiopia's Legal Framework on Domestic Violence against Women: a Critical Perspective," *International Journal of Gender and Women's Studies* 2, No. 1 (March 2014), http://ijgws.com/journals/ijgws/Vol_2_No_1_March_2014/3.pdf.

the UPR, acknowledging many of the criticisms that have been leveled in regard to its gender equality issues. A brief review of a few of Ethiopia's interactions with such UN bodies may provide a snapshot, both of the problems as well as the nature of the government's response to critiques and plans to address them. We begin with the CEDAW Committee because it is the most pertinent to gender equality and related issues. While other UN human rights committees have also commented on related issues, we address them through the review of the 2019 UPR below in order to avoid repetition.

1.2.i. CEDAW Recommendations and UNICEF Child Marriage Report 2016

While the CEDAW Committee notes the Ethiopian government's ratification of international human rights treaties, it has expressed concern that "*the efforts made to promote equality and combat various forms of discrimination against women often involve strategies and action plans that are not supported by a specific legal framework.*" This observation underpins the attention given in our article to the complex constitutional, statutory, and institutional framework that informs Ethiopia's legal pluralism. In line with Articles 1 and 2 of the Convention, the CEDAW Committee recommends that the State party:

(a) Review and strengthen its legislative framework to ensure that it covers all forms of discrimination against women, and ensure its effective implementation, monitoring and assessment;

[...]

(c) Revise the Criminal Code of 2005 in order to include all forms of discrimination against women.²¹

Other remarks of the Committee also point to the challenges posed by a federal system that provides little effective authority to ensure that states fulfill their legislative obligations to enact laws that implement constitutional provisions and the Revised Federal Family Law. Thus, the CEDAW Committee:

[...] reiterates its concern that the Afar and Somali regions have not yet enacted family laws in conformity with the revised Family Code[...]It recalls its previous recommendation (CEDAW/C/ETH/CO/6-7, para. 15) and calls upon the State party to ensure that the Afar and Somali regions adopt family laws in conformity with the Family Code and the Convention and *take measures, including awareness-*

21 CEDAW Concluding Observations on the Eighth Periodic Report of Ethiopia, 7 (Para 24(B)), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/ETH/CO/8&Lang=En: "amend the Criminal Code of 2005 with a view to increasing the penalties for female genital mutilation set out in articles 561, 562, 567, 569 and 570, repealing article 563, criminalizing marital rape and excluding the applicability in domestic violence cases of the extenuating circumstances set out in article..."

*raising and training initiatives, to raise the awareness of the population and enable public officials to enforce the revised Family Code effectively.*²²

The highlighted portion of this quotation underscores the need for a multisectoral approach for addressing the concerns highlighted by the CEDAW committee. It also points to the crucial issue of whether laws and the Constitution are being effectively implemented at the state level. As will be seen below, the federal government has limited ability to ensure that rights guaranteed by laws and the Constitution are effectively implemented to protect women and girls and enhance their political and economic opportunities. The underlying political struggle in Ethiopia over the limits of central political authority render this vital issue even more difficult to address.

Access to justice is an important component of effective implementation of laws and the protection of human rights. Without real access to justice, women whose rights are violated or denied have limited or no opportunity for redress. Access to justice is a broader societal problem in Ethiopia, but its impact especially manifests itself with issues such as FGM/C, child marriage, and property rights. The CEDAW Committee has voiced its concern that, “the national free legal aid strategy developed in 2015 has not been adopted yet, that *women are not fully aware of their rights regarding access to legal aid and that training programmes for judges on gender issues and women’s rights do not sufficiently take into account the need for training to be adapted to the specificities of Islamic and customary courts.*”²³ It recommends that the State party:

(c) Intensify efforts to encourage and enable women to gain access to justice *by increasing their awareness of their right to legal aid;*

(d) *Provide appropriate training on women’s rights and gender equality, specifically adapted to the needs of Islamic and customary courts.*

[...]

(a) Strengthen the existing national machinery at all levels by providing it with adequate human, technical and financial resources to increase its effectiveness, including in coordinating and overseeing the preparation and implementation of legislation and policy measures in the field of gender equality and in mainstreaming gender perspectives in all laws and policies, and ensure its coverage of the entire territory;

(b) Ensure effective coordination and collaboration in the implementation of the Convention among the various partners involved in combating discrimination against women in the State Party, including the Federal Attorney General’s Office, in particular public prosecutors at all levels of government, the Ethiopian Human Rights

22 Ibid., 15 (Para 57-58). Emphasis added.

23 Ibid., 3-4 (Para 11).

Commission, civil society organizations and universities.²⁴

These CEDAW committee recommendations highlight the importance of the need not only for a multisectoral approach, but also for systematic capacity building, education, and greater access to legal aid. These requirements are especially pertinent for the Sharia and customary courts, whose operations will be discussed in Section II.

The CEDAW Committee has also raised concerns about the effectiveness of the national plans developed by the Ethiopian government to eliminate “harmful traditional practices” such as FGM/C and child marriage. To some extent, these concerns have been addressed in the more recent 2020-2024 National Roadmap for the Elimination of Child Marriage and Female Genital Mutilation for the elimination of such practices (examined below). In regard to previous efforts, the Committee notes that, “*the national strategy and action plan on harmful traditional practices against women and children, adopted in 2013 to combat female genital mutilation, child marriage and abduction, remains subject to a lack of proper implementation, monitoring and evaluation* and that the increased penalties envisaged for female genital mutilation under the Criminal Code of 2005²⁵ (Articles 561, 562, 567, 569 and 570) have not been implemented.” It recommends the State Party:

(a) to amend the Criminal Code of 2005 [...] *criminalizing marital rape and excluding the applicability in domestic violence cases of the extenuating circumstances set out in article 557(1)*

[...]

(d) Accelerate and improve the implementation of the strategic plan for an integrated and multisectoral response to violence against women and children and child justice in Ethiopia, and regularly monitor and review the measures implemented under it;

(e) Further provide members of the judiciary, prosecutors, police officers and other law enforcement officials with adequate training on women’s rights and on gender-sensitive investigation and interrogation procedures in cases of gender-based violence against women;

(f) Collect data on gender-based violence against women, disaggregated by age, ethnicity, race, geographical location and disability, including on the number of cases of violence against women and complaints lodged, the sanctions imposed on perpetrators, the number of women who are victims of violence who have been provided with legal assistance and relevant support services, and the number of

24 CEDAW Concluding Observations on the Eighth Periodic Report of Ethiopia, 4 (Para 12 and 14). Emphasis added.

25 Criminal Code of Ethiopia, No. 414/2004, <https://www.wipo.int/edocs/lexdocs/laws/en/et/et011en.pdf>. Emphasis added.

women who are victims of violence who have received compensation.

[...]

(b) Effectively implement the national strategy and action plan on harmful traditional practices against women and children and assess its impact in order to identify shortcomings and make improvements accordingly;

(c) Adopt a comprehensive and inclusive strategy to eliminate discriminatory gender stereotypes concerning the roles and responsibilities of women and men in the family and in society, and regularly monitor and assess the measures taken to eliminate discriminatory gender stereotypes and harmful practices;

[...]

(a) Adopt a comprehensive and inclusive law on gender-based violence, addressing all forms of violence against women, including acid attacks, domestic violence, rape, marital rape, gang rape and other forms of sexual violence.²⁶

The 2013 national strategy plan has now been superseded by the 2020-2024 National Roadmap. Further analysis is required to determine which of the concerns articulated by the CEDAW Committee are still pertinent for implementing the new National Roadmap.

Pertaining to the rights of rural women, the Committee recommends that the State party:

(a) Ensure that the proposed revision of the law on land ownership addresses discrimination against women, including rural women, in conformity with the Convention;

(b) Intensify efforts to ensure that rural women effectively have access to health care, education, employment, housing, safe water, adequate sanitation and family planning services, especially in pastoralist areas;

(c) Continue to strengthen and ensure the effective implementation of existing policies and programmes for the economic empowerment of rural women, including by further promoting their ownership of land and enhancing the security of their land tenure, and ensure that rural women are involved in the development and implementation of agricultural policies, including in regard to decisions on land use.²⁷

The minimum age of marriage is another crucial issue. The CEDAW Committee takes cognizance of existing protections of women's rights in regard to marriage in

²⁶ CEDAW Concluding Observations on the Eighth Periodic Report of Ethiopia, 5-6 (Para 21-24). Emphasis added.

²⁷ Ibid., 12 (Para 44). Emphasis added.

the Constitution and federal Family Code. However, the Committee identifies a key shortcoming in Ethiopian marriage law, in that it effectively condones child marriage while also calling for its elimination: “**Article 7 of the revised Family Code still contains an exception to the minimum age of marriage of 18 years of age and that legal provisions on bigamous and polygamous marriage have not been harmonized at the federal level.**”²⁸ The Committee recommends that the State party:

- (a) **remove the exception to the minimum age for child marriage;**
- (b) harmonize the legal provisions on bigamous and polygamous marriage at the federal level; and
- (c) remove its reservations to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa regarding marital rape and polygamy.²⁹

Published in 2016, the UNICEF Child Marriage Report provides data supporting many of the findings and recommendations from the 2019 CEDAW report discussed above. The Child Marriage Report confirms the way in which child marriage results from a variety of factors—economic, social, cultural, ideological, religious, strategic—each of which play different roles across different settings. The common denominator across all of these situations, given the patriarchal culture shaping most Ethiopian communities, is the view that a child is an asset and a potential liability to be disposed of in ways that most benefit a family or clan. Because of the nature of the cross-cutting factors that influence decisions about the marriage of a child, child marriage, depending on the context, may also be closely related to FGM/C, discrimination in women’s property rights, lack of access to justice, denial of educational opportunities, human trafficking, and domestic and sexual violence. These cross-cutting dynamics will be further explored in Section III of our report. Some of them are highlighted in the UNICEF Child Marriage report:

Low educational attainment, with its long-term consequences for employment possibilities, is consolidated by child marriage, a phenomenon faced almost exclusively by girls (63% of women in Ethiopia are married by age 18 compared with 14% of men, according to the 2011 DHS; CSA and ICF International, 2012).

[...]

Of children aged 12-14 years, for example, 12.5% of boys but 17.2% of girls are living with neither parent—reflecting not only the greater likelihood of girls’ marriage but

28 Ibid., 15 (Para 57). Emphasis added.

29 Ibid., 15 (Para 58). Emphasis added.

also their higher migration rates, often for domestic work opportunities. ***Reflecting a lack of access to assets and rural employment, girls with no education are especially likely to migrate. Of those aged 12-24 years, 30% have migrated compared with less than 11% of boys.***

[...]

Most parents continue to arrange their daughters' marriages (Erulkar and Muthengi, 2009; Erulkar et al., 2010b). This can be done at any time during childhood. Indeed, in the case of promissory marriages, matrimony can be arranged even before birth to cement the ties between families (or within families in the case of the Afari custom of *absuma*, in which girls marry their maternal cousins). While arranged marriages have, in the past few years, become less common (Jones et al., 2014a), in a national sample of married girls aged 12-24 years, 70% were in arranged marriages (Erulkar et al., 2010b). Nearly all of the girls married before the age of 15 had had their husbands selected by their parents (*ibid*). ***Rates of arranged marriage vary regionally and with religion. In Amhara, for example, nearly 95% of married girls were in arranged marriages and Orthodox girls were more likely than their Muslim peers to have their marriages arranged (81% versus 62%)*** (Erulkar et al., 2010b; *see also* Muthengi-Karei and Erulkar, 2012)

[...]

Of young women who were married before the age of 15, 50% did not want their first sex, over 32% were forced and over 60% had their first sex before their first periods (Erulkar et al., 2010a; *see also* Erulkar and Muthengi-Karei, 2012).³⁰

Pertaining to the latter point, an issue neglected in Ethiopian laws and much of scholarly literature is the relation of such data to statutory rape, marital rape, and sexual and domestic violence more generally. Clearly, a girl “married ***before*** the age of 15” is incapable of legal consent and is per se subjected to nonconsensual intercourse, i.e. rape. Further, the “marriage” cannot provide a putative consent, among other reasons, because the marriage is illegal under Ethiopian and international law. Finally, even under the minimal standards of the Ethiopian criminal law defining sexual relations with minors, sex in the context of such marriages is a prosecutable offense.

30 UNICEF, “Child marriage in Ethiopia,” March 2016, 12, <https://www.unicef.org/ethiopia/media/1516/file/Child%20marriage%20in%20Ethiopia%20.pdf>. As previously stated in a footnote in Section 1.1, Section III will provide a more in-depth discussion on the discrepancies between data as cited by various official sources. The percentages cited in this section are outdated; however, they still acutely illustrate the extent of the inequality between women and men in regard to access to opportunity and rates of child marriage.

1.2.ii. Universal Periodic Review Compilation March 2019 and the National Roadmap 2020-2025

In Ethiopia's most recent UPR in 2019, many of the same issues that had arisen in other committees' reviews were addressed. We note that in the UPR process, the Ethiopian government readily acknowledged these issues and detailed the manner in which it had responded and would continue to do so in the future. There is thus no question that from the standpoint of national policy there is a willingness to address such issues. Documents such as the 2020 National Roadmap make that clear. The salient issue, as always, is effective implementation. While the Roadmap acknowledges the challenges in implementation and outlines a strategy for achieving its goals, the question remains as to how effective such strategies can be in light of structural and systemic impediments embodied in Ethiopian federalism, legal pluralism, and state and local resistance to national policy mandates. This section presents the issues raised by the UPR Compilation (particularly aspects not raised above); the government's response in the UPR; and the challenges, policies, and measures proposed in the National Roadmap to more fully address these issues.

Ethiopia's February 2019 submission to the UPR responded to the issue of sexual violence, acknowledging the gravity of the problem:

In Ethiopia, violence against women and girls continues to be a major challenge and a threat to women's empowerment. Women and girls face physical, emotional, and sexual abuses that undermine their health and ability to earn a living, disrupt their social systems, their childhood and education. As the Ethiopian Demographic Health Survey (EDHS) conducted in 2016 indicates, *among women aged 15–49, 23% have experienced physical violence and 10% have experienced sexual violence in their lifetime.*

[...]

“The Government recognizes gender based violence as violation of basic human rights Specific legal measures and actions are being taken to address violence, including the Revised Family Law of 2000 and the Revised Criminal Code in 2005. The Government has also put in place the requisite institutional mechanisms at federal and regional levels, including the establishment of Federal and Regional Women, Children and Youth Affairs Offices, Special Child and Women Protection Units within the police and prosecution offices and special benches for violence against women cases within the federal and numerous regional courts.”³¹

31 United Nations, General Assembly, Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ethiopia*, A/HRC/WG.6/33/ETH/1 (6-17 May 2019): 17 (Para 119-120), https://www.ecoi.net/en/file/local/2007141/a_hrc_wg_6_33_eth_2_E.pdf. Emphasis added.

Referring to the relevant supported recommendation from the previous review, UNHCR stated that harmful traditional practices were being carried out in both refugee and Ethiopian communities, *with early and forced marriage and female genital mutilation being the most prevalent forms of violence in refugee communities*.³² On female genital mutilation, the Committee on the Rights of the Child:

[...] expressed concern that *the relevant legal provisions prohibiting and criminalizing harmful traditional practices were not adequately enforced, as shown by the very high number of children, particularly girls, subjected to female genital mutilation and cutting in all its forms (cliteridectomy, excision, infibulation, cauterization or scraping), as well as forced, early and promissory marriages and marriage by abduction. It was concerned about the lack of criminal proceedings against those performing those practices*.³³

The Ethiopian government's input on this issue raised by the UPR acknowledges the problem, notes progress that has been made, and affirms its commitment to eliminating these practices:

Harmful traditional practices such as Female Genital Mutilation or Cutting (FGM/C) and early marriage are still widely practiced and remain a major challenge. Ethiopia is committed to eliminating harmful practices through strategic and programmatic measures. These include putting in place a National Harmful Traditional Practices (HTPs) Strategy founded on the three-pillar approach: prevention, provision, and protection. This targeted approach guides the national effort and helps to galvanize the support of stakeholders to end the practice as well as mitigate the impact of FGM/C [...] *Moreover, the Government refreshed its commitment to end FGM/C and child marriage by 2025* at the London Global Girls' Summit held in July 2014. The commitment, which employs an integrated and comprehensive strategy, puts girls at the center and targets girls themselves, families and communities, service providers, and policy makers. As part of the commitment, the following key areas have been identified: *improving availability of data; strengthening coordination; putting in place accountability to enhance enforcement of the existing law*; and increasing the budget by 10% for the effort to end the practice altogether or decrease it to the minimum.³⁴

The National Roadmap referenced above aims to completely eliminate child marriage and FGM/C by 2025. It thus represents the concrete policy initiative to implement the commitment articulated by the government in the UPR. The Roadmap provides statistical data indicating progress in regard to the prevalence of

32 Ibid., 3 (Para 24).

33 Ibid., 3 (Para 25).

34 Ibid., 17 (Para 123-124).

child marriage:

The most recent Ethiopia Demographic and Health Survey (EDHS) 2016 shows that of young women aged 20–24 years, 40.3 percent were married before the legal age of 18 and 14.1 percent were married before the age of 15. A trend analysis of child marriage across age cohorts and previous EDHS data indicate that the practice is declining. There are, however, variations across and within regions in the prevalence of child marriage as well as in the progress made towards eliminating child marriage.

The Roadmap indicates that FGM/C numbers also appear to be declining, with 47% of women in the age group 15-19 as opposed to 65% in age group 15-49. These numbers, however, are aggregated and do not reflect the very significant regional variation, particularly in those states and regions where prevalence remains high. Given the challenge of accessing and accurately collecting data in some areas, and particularly from pastoral communities, further inquiry may be required into the scope and methodologies that generated these figures.

There are factors beyond economic considerations that influence child marriage. Note the quotation marks around the comment that increasing numbers of girls are “choosing” marriage, in the ensuing quotation:

It is also imperative to keep in mind that while recent trends show adolescent girls are ‘choosing’ to get married for different reasons, girls’ beliefs and decisions are shaped by social norms and the limited options they may have, including for completing a full cycle of education and going onto employment. The low value placed on girls’ education and lack of alternatives for girls who have dropped out of school exacerbate the practice of child marriage. ***Limited law enforcement is also a contributing factor.***³⁵

The Roadmap clearly articulates the reasons for prioritizing child marriage because of the broad range of impacts the practice has on virtually every aspect of a woman’s life. In other words, it recognizes the ways in which child marriage may determine a woman’s future life course in ways that will negate or undermine her potential for participation in the economic and political life of her community and Ethiopian society. The broad consequences of child marriage are that these practices:

play a part in reinforcing stereotypical gender norms and gender inequality, and have multifaceted effects on the health, well-being, productivity and economic independence of women and girls. ***These implications follow girls and women throughout their lives, from childhood through adolescence and into adulthood, and***

35 UNICEF and the Federal Democratic Republic of Ethiopia Ministry of Women, Children and Youth, “National Costed Roadmap to End Child Marriage and FGM/C by 2020–2024,” August 2019, 13, <https://www.unicef.org/ethiopia/media/1781/file/National%20Roadmap%20to%20End%20Child%20Marriage%20and%20FGM.pdf>. Emphasis added.

into the next generation through their children [...] For many girls who are married off at a young age, it is the end of their education. Child brides are at increased risk of gender-based violence (GBV) and are also often socially isolated, with limited opportunity to participate in the development of their communities because of domestic workloads and restrictions on their mobility.

[...]

“Higher levels of girls’ education are protective factors against child marriage and FGM/C. Similarly, child marriage and FGM/C are interrelated with low enrolment of girls in education. FGM/C can hinder a girl’s education due to the health complications endured by girls following the practice, which can cause girls to be less focused in school or absent and consequently perform poorly and drop out of school. Child marriage has a negative effect on educational attainment for girls and can result in the end of a girl’s schooling for numerous reasons – girls may become preoccupied with the role of a wife and lose interest in school or may continue and drop out once they become pregnant; child marriage is cited as the reason for dropping out of secondary school for more than 1 in 10 girls in Ethiopia. Out-of-school girls are more vulnerable to child marriage: 90 percent of girls aged 15 to 17 years who are married or in a union are out of school, compared to 27 percent of girls who are never-married. Data from the 2000 EDHS further shows the gravity of the situation. Among 4,469 ever-married women, 25 percent attended school before marriage; 74 percent of those discontinued school after they got married.”³⁶

The consequences of child marriage also increase girls’ vulnerability to labor or sex trafficking.

The relationship between child marriage and sexual violence and abuse, particularly of children, has been noted above. The seriousness of this problem has been repeatedly noted and the Ethiopian federal government has adopted policies and initiatives to respond to these concerns. The UPR Compilation reflects that the Committee on the Rights of the Child:

[...] expressed concern about the high levels of child sexual abuse and the absence of information on specific strategies and initiatives to target children at particular risk of becoming victims of sexual abuse. It was concerned about the ***large proportion of girls who experienced forced sexual initiation, particularly within the context of early marriage and sexual harassment. It regretted the significantly low reporting rates of child abuse, including sexual abuse, the absence of mechanisms to assess and monitor the extent of such violations, the lack of prosecution of alleged perpetrators and the lack of adequate rehabilitation and reintegration services for victims.***³⁷

36 UNICEF, “National Costed Roadmap,” 13-14, 41. Emphasis added.

37 United Nations, *National report submitted in accordance with paragraph 5, 8 (Para 61)*.

Significantly, the Roadmap concludes that in order to achieve its goals, collaboration and leadership throughout the government will be required:

Mainstreaming action to eliminate child marriage and FGM/C across all relevant sectors (including education, health, justice and other sectors) is vital. Efforts on prevention, protection and response require collaboration and effective leadership, commitment and coordination of the Government, alongside trusted partners including from civil society, donors, international organizations, the private sector, communities, families and girls and boys themselves.

1.2.iii. Conclusions

The new National Roadmap occupies a strategic place in the Ethiopian government's efforts to promote gender equality and women's empowerment. The Roadmap³⁸ replaces its predecessors noted in some of the UN reviews discussed above and goes beyond them in its scope and the depth of the interventions it seeks to promote. The preface acknowledges the multidimensional impact of child marriage and FGM/C as the most serious of the harmful traditional practices. The government, through this Roadmap, is committed to eliminating these practices by 2025 and references, among other things, the fulfillment of the relevant sustainable development goals (SDGs).³⁹ The inclusion of the SDGs indicates the understanding that these issues, like every other aspect of gender inequality, cannot be addressed in silos, but rather through their root causes and drivers. This roadmap is ambitious, and the government recognizes the gravity of the challenges facing the achievement of its goals. Clearly acknowledging the need for a multisectoral federal policy and implementation framework, the foreword states:

The National Roadmap offers a timely opportunity to accelerate efforts to meet the 2025 timeline for the elimination of child marriage and FGM/C. *It recognizes the need to implement a comprehensive set of strategies which combine empowering girls and families; engaging the community; strengthening systems, accountability and services; ensuring an enabling environment is in place; and enhancing the generation, use and dissemination of data and evidence for informed policy and programmatic engagement [...]* The purpose of the National Roadmap is to clearly stipulate the key strategies, approaches and evidence-based interventions which will be employed to achieve the national target to eliminate child marriage and FGM/C by 2025. It also embodies Ethiopia's efforts

38 See UNICEF, "National Costed Roadmap."

39 The 17 SDGs are part of the 2030 Agenda for Sustainable Development, which was adopted by all United Nations Member States in 2015 to support ending some of the world's most dire problems to achieve a more sustainable and better future for all. See: <https://sdgs.un.org/goals>.

to achieve SDG 5 Target 5.3 ‘eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.’⁴⁰

The roadmap articulates a theory of change and makes clear the multi-sectoral approach, including capacity building, promotion of accountability, education, and other measures, that is necessary to address issues so deeply embedded in values, traditions, and patriarchal patterns of power and authority. We draw particular attention to Outcome 4:

“Enhanced enabling environment that protects the rights of girls and supports national efforts to end child marriage and FGM/C.” While legal and policy frameworks are in place, there is a need for increased enforcement with intensive coordinated efforts invested in legal awareness raising, and violations of the law prosecuted and punished to serve as a deterrent for child marriage and FGM/C. Afar and Somali regions are expected to adopt the revised family law which set 18 years as the minimum age of marriage. ***Ensure availability of comprehensive legal and policy frameworks to address gender inequality and enhanced implementation at all levels of government structures which ultimately will contribute to improved access to protection and response services by women and girls.*** Strengthened civil registration and vital statistics (CRVS) systems for birth and marriage will help protect girls from child marriage. Mechanisms are needed to support anonymous reporting of (planned and actual) child marriages, with response systems put in place. Officials need to prioritize efforts to raise awareness of the law in all communities and step in and prosecute child marriages and FGM/C, regardless of whether they are ‘free choice’, and where possible prosecute both sets of parents, elders and religious leaders involved in sanctioning any such union so as to serve as a deterrent. ***Effective federal, regional, zonal, woreda and kebele level multi-sectoral coordination mechanisms will be operational with measurable accountability mechanisms. Increased budget allocation, diversified funding sources and enhanced expenditure tracking systems will be in place for preventing child marriage and FGM/C.***⁴¹

What the outcomes projected in the passages quoted immediately above makes abundantly clear is that neither national policy statements nor an appropriate legal framework are enough to ensure the achievement of the ambitious goals articulated by the Roadmap. Section II examines the legal framework that in principle guarantees gender equality and the termination of practices that violate the rights and well-being of women and girls. This examination will also consider the ways in which other aspects of the Ethiopian legal framework and judicial and legislative systems operate to cast roadblocks in the path of implementing law and societal reform.

40 Ibid.

41 UNICEF, “National Costed Roadmap,” 46. Emphasis added.

1.3 Contemporary Political Context

Although the Ethiopian government has made ambitious commitments to end child marriage, FGM/C, and other issues facing women through the National Roadmap and other legal measures, current political tensions will shape the government's approach in handling gender-based issues. Traditional restrictive norms and practices, weak rule of law and law enforcement mechanisms, and lack of education and opportunities for women exacerbate the economic, social, and political factors that increase women's risk of suffering from gender-based discrimination and violence and of being excluded from economic self-empowerment. A confluence of more recent challenges, including climate change, the COVID-19 pandemic, and the current violent conflict in Tigray and other states, have further exacerbated these factors. These challenges are likely to have immediate deleterious consequences for girls and women and are compounded by preexisting structural difficulties that have generated major political crises and the long-term manifestations of gender inequality described above.⁴²

The civil war that erupted in Tigray in November 2020 is the culmination of several years of political tension between the federal government of Ethiopia and the Tigrayan army. Until 2018, Ethiopia was ruled by the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of four ethnic parties that had held power after the fall of the monarch in 1990. The TPLF held the majority of power in the EPRDF, despite Tigrayans only comprising 6 percent of Ethiopia's population.⁴³ After the former Prime Minister Hailemariam Desalegn resigned,⁴⁴ Abiy Ahmed succeeded him in 2018 and the EPRDF dissolved its coalition to create the Prosperity Party, which was intentionally not organized along ethnic lines unlike the EPRDF. After failing to reclaim power, the TPLF has maintained a tense relationship with the federal government.⁴⁵

Abiy was embraced by the international community because of his commitment to democratic reforms, but his actions in Tigray since early November have shocked the

42 Although there have been many more developments in the civil war in Tigray since this report was authored in March 2021, this section of the report aims to demonstrate the multiplicity of the ways in which the conflict in Tigray, the COVID-19 pandemic, and other recent political, environmental, and social issues in Ethiopia have exacerbated issues facing women and children.

43 Eyder Peralta, "What To Know About Ethiopia's Tigray Conflict," *NPR*, November 13, 2020, <https://www.npr.org/2020/11/13/934241830/what-to-know-about-ethiopia-tigray-conflict>.

44 Cohen, Gebre, and Marks, "Why Ethiopia's Nobel Peace Prize Winner Is Waging War," <https://www.bloomberg.com/news/articles/2020-11-05/why-ethiopia-s-internal-tensions-risk-boiling-over-quicktake?sref=am1wYMj6>.

45 Negatu and Hudson, "Experts react," <https://www.atlanticcouncil.org/blogs/africasource/experts-react-understanding-the-conflict-in-tigray/>.

international community for how starkly they contrast with his previous reputation. The government ordered the military to invade Tigray after accusing the TPLF of attacking a federal military base and attempting to steal artillery and other military equipment,⁴⁶ claims that the TPLF denies.⁴⁷ On November 8, 2020, Abiy justified the military operation by stating that it was necessary in order to “save the country” after months of “provocation and incitement” by the TPLF. On November 22, 2020, the Ethiopian military warned the 500,000 citizens in Mekelle, the capital of Tigray, to “free themselves” from rebel leaders or face “no mercy” after giving the Tigrayan regional forces 72 hours to surrender before a military offensive. Four days later, the army was ordered to move into Tigray.⁴⁸ Both sides refuse to resolve the conflict through diplomacy.⁴⁹ As of March 2, at least 16 journalists and translators have been arrested since November 2020 for covering the events in Tigray, despite obtaining visas to do so.⁵⁰ Although some of the journalists and translators have been released, press freedom groups warn that these arrests will likely lead to self-censorship by other journalists and residents in Tigray.⁵¹ These arrests and their consequences, as well as other factors, limit access in ways that make it difficult to accurately document the scale of what is clearly a significant increase in the vulnerability of women and children.

While multiple factors led to the eruption of violence between the TPLF and central government, of more immediate concern in this report are the ways in which existing structural and cultural gendered inequalities and vulnerabilities have been exacerbated as well as the immediate and longer-term consequences. What is worth noting, however, is that all of these factors are at least in part informed by the tensions inherent in Ethiopian federalism, legal pluralism, and resistance to what is perceived as attempts by the federal government to increase its centralized authority.

46 Ermias Tasfaye Daba and Lesley Wroughton, “Ethiopia sends troops into renegade northern province as long-simmering tensions explode,” *The Washington Post*, November 4, 2020, https://www.washingtonpost.com/world/africa/ethiopia-tigray-military-tplf/2020/11/04/3cd0f4a8-1e90-11eb-ad53-4c1fda49907d_story.html.

47 Kate Hodal and Jason Burke, “Ethiopia fighting could drive 200,000 to Sudan in coming months, says UN,” *The Guardian*, November 20, 2020, <https://www.theguardian.com/world/2020/nov/20/ethiopia-fighting-could-drive-200000-flee-sudan-coming-month-un>.

48 Cara Anna, “Ethiopian PM says troops ordered to move on Tigray Capital,” *AP News*, November 26, 2020, <https://apnews.com/article/international-news-eritrea-ethiopia-united-nations-kenya-51f5e6f148f3593654520312acd1631b>.

49 Jason Burke, “Ethiopian prime minister gives Tigrayan rebels 72 hours to surrender,” *The Guardian*, November 22, 2020, <https://www.theguardian.com/world/2020/nov/22/ethiopian-military-warns-mekelle-civilians-ahead-of-assault-on-city>.

50 “Three workers for foreign media arrested in Ethiopia's Tigray region,” *Reuters*, March 2, 2021, <https://www.reuters.com/article/us-ethiopia-conflict-journalists/three-workers-for-foreign-media-arrested-in-ethiopia-tigray-region-idUSKCN2AU163>.

51 “Ethiopia Releases BBC Journalist, Others Detained in Tigray,” *VOA News*, March 3, 2021, <https://www.voanews.com/press-freedom/ethiopia-releases-bbc-journalist-others-detained-tigray>.

After the military launched their insurgency in Tigray, federal authorities shut off the internet and phone lines under the directorate of a six-month state of emergency, blocked roads, and took down electricity lines. Banking services were halted, leading to a lack of cash. Limited internet access and ability for mobility delayed humanitarian access to these areas.⁵² Humanitarian organizations assisting refugee camps have noted that they have run short of or completely out of essential supplies as an increasing number of civilians flee Tigray. These measures have heightened the humanitarian crisis already produced by the conflict itself, including sexual violence.

From November 2020 to March 2021, there had been over 500 reported instances of rape in Tigray – likely a gross underestimation of the actual number of rape cases, as most cases of sexual assault go unreported because of social stigma associated with rape and sexual violence and the lack of functioning health facilities to attend to and report victims of sexual violence.⁵³ Many Tigrayan women from western Tigray have said they were raped by Amhara forces who told them to leave their Tigrinya status or Amharize themselves to “cleanse the bloodline,” potential evidence of genocidal intent against the Tigray ethnic group.⁵⁴ Eritrean troops have also been responsible for committing sexual violence.⁵⁵ Letay Tesfay of the Tigray Women’s Association said that “rape is being used as a weapon of war.”⁵⁶ The lack of functioning health facilities has gravely limited women’s access to abortions, emergency contraception, and medical treatment for sexually transmitted infections (STIs), including HIV, as the need for these services and treatments have soared.⁵⁷ Medical supplies and equipment have been spoiled, such as expensive drugs that need special cooling systems, as a

52 Hodal and Burke, “Ethiopia fighting could drive 200,000 to Sudan,” <https://www.theguardian.com/world/2020/nov/20/ethiopia-fighting-could-drive-200000-flee-sudan-coming-month-un>.

53 Women have been gang raped, raped in front of family members, and raped by family members who were coerced into raping their family members under threat of violence. Girls as young as 8 and as old as 60 have been victims. See Bethlehem Feleke, Eliza Mackintosh, Gianluca Mezzofiore, Katie Polglase, Nima Elbagir, Barbara Arvanitidis and Alex Platt, “Practically this has been a genocide” *CNN*, March 22, 2021 <https://edition.cnn.com/2021/03/19/africa/ethiopia-tigray-rape-investigation-cmd-intl/index.html>; Declan Walsh, “They Told Us Not to Resist’: Sexual Violence Pervades Ethiopia’s War,” *The New York Times*, April 1, 2021, <https://www.nytimes.com/2021/04/01/world/africa/ethiopia-tigray-sexual-assault.html>.

54 Feleke et al., “Practically this has been a genocide,” <https://edition.cnn.com/2021/03/19/africa/ethiopia-tigray-rape-investigation-cmd-intl/index.html>.

55 Declan Walsh, “Eritrea Agrees to Withdraw Troops from Tigray, Ethiopia Says,” *The New York Times*, March 26, 2021 <https://www.nytimes.com/2021/03/26/world/africa/eritrea-troops-tigray-ethiopia.html>.

56 Walsh, “They Told Us Not to Resist,” <https://www.nytimes.com/2021/04/01/world/africa/ethiopia-tigray-sexual-assault.html>.

57 *Ibid.* CNN reported in March 2021 that less than 1 in 10 medical facilities were still operating in Tigray, and 1 in 5 had been or were currently being used by armed soldiers. See Bethlehem Feleke et al., “Practically this has been a genocide,” <https://edition.cnn.com/2021/03/19/africa/ethiopia-tigray-rape-investigation-cmd-intl/index.html>.

result of looting and cut electricity.⁵⁸ Women have reportedly died during childbirth because they were unable to get to a hospital due to the lack of ambulances, night-time curfew, and the danger of being on the road. The lack of medical services has also left most children unvaccinated, which raises the risk of future outbreaks of infectious diseases, and victims of sexual violence without access to medical and psychological care.⁵⁹

Information regarding the full extent of the conflict remains largely unknown because of the internet outage and the government's repressive measures to limit the amount of information shared about Tigray. Civilians reported fear of honestly communicating with their family members over the phone because of concerns that their phones are being monitored. Journalists have been arrested in connection with covering the events in Tigray, without formal charges.⁶⁰ The lack of internet connection, as well as the disjointed issuance of access by the local and federal governments, has made it difficult for journalists, humanitarian aid organizations, and the international community to understand the extent of the violence on the ground.⁶¹ Secretary General of the Norwegian Refugee Council Jan Egeland stated that Tigray has become one of the most restricted conflict areas for aid workers that he has seen.⁶² Only 20 percent of the region can be reached by aid groups as a result of government-imposed restrictions.⁶³

In addition to the more than 7,000 recorded civilian casualties since November⁶⁴, hundreds of thousands of civilians have been internally displaced and forced to seek

58 Ethiopian Human Rights Commission, "Current Situation of Residents in Tigray Region: Brief Monitoring Report," February 2021: 4, <https://drive.google.com/file/d/1oqUi-artYwDyAv4Z0I3Ox7C0ipk3RyG/view>.

59 "People left with few healthcare options in Tigray as facilities looted, destroyed," *Medecins Sans Frontieres*, March 15, 2021, <https://www.msf.org/health-facilities-targeted-tigray-region-ethiopia>.

60 "Ethiopia," *Internal Displacement Monitoring Centre*, <https://www.internal-displacement.org/countries/ethiopia>; Cara Anna, "As Ethiopia's conflict rages, ethnic targeting turns deadly," *Associated Press*, November 13, 2020, <https://apnews.com/article/race-and-ethnicity-united-nations-abyi-ahmed-ethiopia-war-crimes-b33880834d7cb67b9de3c4f460cb2b9c>.

61 Center for Strategic and International Studies Africa Program, "Restoring Humanitarian Access in Ethiopia," March 2, 2021, <https://www.csis.org/analysis/restoring-humanitarian-access-ethiopia>.

62 Norwegian Refugee Council, "Statement by Secretary General Jan Egeland: Aid still not reaching Tigray," February 1, 2021, <https://www.nrc.no/news/2021/february/statement-on-tigray/>.

63 Declan Walsh, "Ethiopia's War Leads to Ethnic Cleansing in Tigray Region, U.S. Report Says," *The New York Times*, February 26, 2021, <https://www.nytimes.com/2021/02/26/world/middleeast/ethiopia-tigray-ethnic-cleansing.html>.

64 The number of casualties is likely a grave underestimate, given the lack of access to most areas in Tigray. Some sources believe the number of civilian casualties to be as high as 50,000. See Sofie Annys et al., "Tigray: Atlas of the Humanitarian Situation," *Journals of Maps, preprint* (March 31, 2021): 26, http://aigaforum.com/documents/Tigray-Atlasofthehumanitariansituation_31032021.pdf; Dylan Moore, "Is Ethiopia at Risk of Genocide?" *International Policy Digest*, April 12, 2021, <https://intpolicydigest.org/is-ethiopia-at-risk-of-genocide/>.

refugee in neighboring Sudan and Eritrea.⁶⁵ Since November, there have been over 150 massacres⁶⁶ and as many as 2 million Tigrayans have been displaced.⁶⁷ While 950,000 people were already in need of aid before November 2020, an additional 1.3 million people needed humanitarian aid as a result of the conflict in March 2021.⁶⁸ Humanitarian workers note that the camps in Sudan are overcrowded, unsanitary, and face shortages of food and water. There have also been reports of refugees being beaten by Eritrean soldiers in camps.⁶⁹ The disproportionate increase in the vulnerability of women in such situations is well known.

The UN warned that the continuation of ethnic profiling against Tigrayans, as well as groups in Amhara, Somali, and the Oromo, could escalate to atrocity crimes such as genocide.⁷⁰ Statements made by Prime Minister Abiy Ahmed also raise the issue of genocidal intent as defined in the 1948 Genocide Convention.⁷¹ Many Tigrayans' houses have been raided and Tigrayans have been arrested because of their ethnic identity,⁷² including Medihane Ekubamichael, an editor at *Addis Standard*, in early November.⁷³ Militants are likely targeting Tigrayan women to prevent the birth of

65 More than 60,000 refugees have fled to Sudan. *Ibid.*, 32.

66 Alex DeWaal, "The World Bank should not fund Ethiopia's war in Tigray," *Financial Times*, April 12, 2021, <https://www.ft.com/content/60ea0fbd-688e-4224-8219-c4c996d94513>.

67 Annys et al., "Tigray," 32. The exact number of Tigrayan refugees and IDPs is currently unknown given the difficulty in recording this number and limited access to most parts of Tigray. At the publication of this report, between 660,000 to 2 million people are estimated to be displaced in Ethiopia and surrounding countries, with Sudan (300,000 refugees) and Djibouti (5,000 refugees) receiving the most significant number of refugees. See International Federation of Red Cross and Red Crescent Societies, "Tigray Crisis: Population Movement Complex Emergency - FW Emergency Plan of Action," April 13, 2021, <https://reliefweb.int/report/ethiopia/tigray-crisis-population-movement-complex-emergency-fw-emergency-plan-action-epoa-n>.

68 *Ibid.*

69 Declan Walsh and Simon Marks, "Refugees Come Under Fire as Old Foes Fight in Concert in Ethiopia," *The New York Times*, December 28, 2020, <https://www.nytimes.com/2020/12/28/world/africa/Ethiopia-Eritrea-Tigray.html>.

70 United Nations, Department of Public Information, *UN High-level Officials Express Deep Concern Over Escalating Ethnic Tensions in Ethiopia*, 12 November 2020, <https://www.un.org/en/genocideprevention/documents/Statement%20on%20Ethiopia%2012%20November%202020.pdf>.

71 In a speech delivered on April 3, 2021, Abiy stated that, "The junta [TPLF] which we had eliminated within three weeks has now turned itself into a guerrilla force, mingled with farmers and started moving from place to place [...] eliminating an enemy which is visible and eliminating an enemy which is in hiding and operates by assimilating itself with others is not one and the same. It is very difficult and tiresome." His statements calling for the *elimination* of the TPLF, in addition to the rampant and indiscriminate sexual violence towards women and murder of civilians, raise concerns of an "intent to destroy, in whole or in part, a national, ethnical, racial or religious group," as per the 1948 Genocide Convention. See Jason Burke, "Ethiopia is fighting 'difficult and tiresome' guerrilla war in Tigray, says PM," *The Guardian*, April 4, 2021, <https://www.theguardian.com/world/2021/apr/04/ethiopia-pm-says-military-fighting-difficult-and-tiresome-guerilla-war>.

72 Simon Marks and Abdi Latif Dahir, "As War Goes On in Ethiopia, Ethnic Harassment Is on the Rise," *The New York Times*, December 12, 2020, <https://www.nytimes.com/2020/12/12/world/africa/Ethiopia-Tigray-ethnic.html>.

73 "Ethiopian authorities arrest Addis Standard editor Medihane Ekubamichael," *Committee to Protect Journalists*, November 13, 2020, <https://cpj.org/2020/11/ethiopian-authorities-arrest-addis-standard-editor-medihane-ekubamichael/>.

more Tigrayan people.⁷⁴

The Ethiopian and Eritrean armies as well as the Amhara militia have been accused of using starvation as a weapon of war.⁷⁵ The World Food Programme noted that the outbreak of conflict in Tigray last November coincided with the peak harvest period, which disrupted markets, caused food prices to spike, severely cut wages as access to cash and food became limited, and has left more than 4.5 million people in urgent need of food aid.⁷⁶ Continuation of the war in Tigray and below-average rainfall may lead to another failed harvest next season and continue to force many Tigrayans into hunger and poverty.⁷⁷

COVID-19 and the conflict in Tigray have already had a significant impact on Ethiopia's economy. Over the past 10 years, Ethiopia's \$107 billion economy has expanded more than 9 percent every year. The International Monetary Fund has predicted the growth rate for 2020 to fall to 1.9 percent.⁷⁸ More broadly, the open conflict could exacerbate tensions and inspire further secessionist sentiment in other parts of Ethiopia.⁷⁹ Unrest will compound if families of the deceased seek revenge.⁸⁰

These challenges are likely to exacerbate current issues facing women in Ethiopia. Poverty and the negative economic consequences that have resulted from the forced displacement of Ethiopians, as well as the familial instability that the conflict has caused, are likely to drive up rates of child marriage, human trafficking, and the violation of property rights. There may also be an increase in the practice of FGM/C in order to increase the desirability of girls for marriage during these times of instability.

Accordingly, it is a critical time to consider the structural, legal, and political issues

74 Lucy Kassa, "'A Tigrayan womb should never give birth': Rape in Tigray," *Al Jazeera*, April 21, 2021, <https://www.aljazeera.com/news/2021/4/21/a-tigrayan-womb-should-never-give-birth-rape-in-ethiopia-tigray>; Walsh, "'They Told Us Not to Resist,'" <https://www.nytimes.com/2021/04/01/world/africa/ethiopia-tigray-sexual-assault.html>.

75 DeWaal, "The World Bank should not fund Ethiopia's war in Tigray," <https://www.ft.com/content/60ea0fbd-688e-4224-8219-c4c996d94513>.

76 Office of the Spokesperson for the UN Secretary-General, "Highlights of the noon briefing by Farhan Haq, Deputy Spokesman for Secretary-General Antonio Guterres," March 24, 2021, <https://www.un.org/sg/en/content/noon-briefing-highlight?date%5Bvalue%5D%5Bdate%5D=24%20March%202021>.

77 Sofie Annys et al., "Tigray: Atlas of the Humanitarian Situation," *Journals of Maps, preprint* (March 31, 2021); "IFRC warns humanitarian situation in Ethiopia can worsen with COVID-19, below-average rainfall," *Xinhua News*, April 13, 2021, http://www.xinhuanet.com/english/2021-04/13/c_139878228.htm.

78 "The Federal Democratic Republic of Ethiopia and the IMF," International Monetary Fund, <https://www.imf.org/en/Countries/ETH>.

79 Jason Burke, "Fighting reported in Ethiopia after PM responds to 'attack' by regional ruling party," *The Guardian*, November 4, 2020, <https://www.theguardian.com/world/2020/nov/04/ethiopia-on-brink-as-pm-orders-military-response-to-attack>.

80 "Ethiopia PM Gives Tigray Forces 72-Hour Ultimatum to Surrender Regional Capital," *US News*, November 22, 2020, <https://www.usnews.com/news/world/articles/2020-11-22/ethiopia-pm-gives-tigray-forces-72-hour-ultimatum-to-surrender-regional-capital>.

that should be addressed in order to achieve the Ethiopian government's goals and commitments to gender equality and the prevention of violence against, and the exploitation of women. The complexity of Ethiopia's legal system is due to the nature of Ethiopia's federal system and the fact that its legal pluralism acknowledges multiple sources of law. Ethiopia's legal pluralism is by no means unique. However, inherent to the particular form of federalism adopted in the current Constitution, adjudicating cases involving conflicting legal norms has proven to be a serious challenge to the implementation of constitutional guarantees of gender equality and women's rights as well as the international human rights framework which the Ethiopian Constitution has incorporated into its domestic law. As the National Roadmap discussed in Section 1.2 has made clear, there are difficult challenges involved in implementation that will require a reexamination of operations at the level of state institutions and local communities. While the Ethiopian Human Rights Commission noted that engaging the justice sector is important for guaranteeing civilian security, supporting victims, and bringing perpetrators to justice,⁸¹ such engagement still inevitably confronts the justice sector's limitations and impacts the ability to more effectively address the consequences of the Tigray conflict, including allegations of systematic sexual violence. Ultimately, the impacts that the confluence of emerging challenges will have on gender inequities are mediated and magnified by Ethiopia's pluralistic legal framework, as illustrated in the sections that follow.

81 Ethiopian Human Rights Commission, "Current Situation," 8-9, <https://drive.google.com/file/d/1oqIUi-artYwDyAv4Z0I3Ox7C0ipk3RyG/view>.

CHAPTER II

The Legal Framework and Ethiopian Legal Pluralism



2.1 Federalism and Legal Pluralism

Ethiopia's federalist system involves a parallel structure of federal and state governments, constitutions, and laws. At the federal level, there is a two-house parliamentary system comprised of the House of People's Representatives (HPR) and the House of Federations (HoF), the latter of which consists of representatives from each officially recognized ethno-national group. The HoF does not have lawmaking power. Aided by the Council of Constitutional Inquiry (CCI), the HoF serves to decide on constitutional issues such as the rights of states to self-determination, including secession, disputes between states, division of federal-state revenues, and federal subsidies for states. Article 52 of the Constitution gives states the power to govern independently, execute their own state constitutions and other laws, administer and enforce federal laws, and more. Much of the substance of the state constitutions, however, was taken directly from the federal Constitution, such as the fundamental principles (Chapter 2 of the Federal and all state constitutions), human rights chapter (Chapter 3), and statements of policy objectives and directive principles. The state constitutions have adopted a parliamentary-style government and the delegation of a non-judicial body for constitutional interpretation.¹

The federal and state constitutions provide valuable safeguards for women's and children's rights, but implementation remains a challenge due to the way the federal Constitutional and legal framework have been interpreted in practice. As Ethiopian scholars and UN Committees have noted, there is a basic lack of knowledge regarding the federal and state constitutions as well as the nationally applicable codes and even state law by judicial actors.² Legal pluralism, as implemented through the federal Constitution, recognizes religious and customary laws and courts on family issues. In practice, the religious and customary courts/adjudication mechanisms often exceed their jurisdictional authority in terms of the range of cases they decide.³ While the Constitution clearly states in Article 9 that it is the supreme law of the land and supersedes all traditional and religious laws, it does not, however, provide a clear standard as to the mechanisms for resolving potential conflicts between constitutional principles and federal law on the one hand, and the practice in religious and customary laws on the other. Ethiopian legal scholars who favor a form of extreme legal pluralism, in which certain areas of law and practice remain outside of the

1 Tsegaye Regassa, "Sub-national constitutions in Ethiopia," *Mizan Law Review* 3, no. 1 (March 2009): 51.

2 See e.g., Jimma's discussion at pp. 66-67, 118-20.

3 We add the term "j mechanisms" to avoid confusion, because customary law in some communities is administered by ad hoc means that are neither formal institutions nor "courts" as understood in the Ethiopian state or federal systems. The consequences of resorting to whatever means a local patriarchal community has traditionally employed to resolve disputes and conflicts will be discussed below.

constitutional penumbra, argue that an alleged ambiguity in Article 9 implies that Sharia or other traditional courts can operate without taking account of constitutional and federal guarantees protecting women's rights.⁴ This has led to sharp divisions within the Ethiopian legal community, divisions which have ultimately reinforced practices that negatively impact gender equality.

2.1.i. Federal vs. State Authority

The federal Revised Family Code is a landmark piece of legislation that includes a number of important protections for women's and children's rights. However, controversies remain over its status in relation to state legislation regarding the family. For example, upon the federal Family Code's promulgation, the Prime Minister's office submitted a petition asking whether the HoPR may enact a federal Family Code applicable nationwide. Despite the fact that a federal Family Code now exists and incorporates constitutional human rights provisions, the CCI advised that enacting a family code is a state power and should not be intruded upon. While only briefly noting that Article 9 of the Constitution allows safeguards in case states enact family laws that ignore minimum standards on the rights of women and children, the CCI avoids interpretation and application of what appears to be the clear mandate of Article 9 for the federal system.⁵ Article 9, as noted above, establishes the supremacy of the Constitution over all other domestic sources of law. Article 9.1 provides: **"The Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect."** Remarkably, the interpretation of this provision in regard to the authority of the Constitution over state laws and the laws and practices of religious and customary courts remains controversial. The issues underlying these controversies, however, are political and reflect different positions on federal vs. state power and on the issue of whether religious courts and customary dispute resolution mechanisms should be allowed to conduct their business with legal autonomy and impunity.

All states except Somali have ratified their own family codes based mostly on the federal Revised Family Code, though, as noted above, the status of these codes in relation to potential conflicts with the federal Constitution or federal Family Code has apparently not been fully clarified.⁶ Indeed, a variety of practices at the state and

4 Mohammed Abdo, "Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia," *Mizan Law Review* 5, no.1 (March 2011).

5 Nigussie Afesha, "Major Differences Between the Revised 'Federal' and SNNP Regional State Family Codes" *Mizan Law Review* 11, no.2 (March 2018): 412.

6 It is unclear as to whether Afar has adopted the revised family code. The National Roadmap for the Elimination of Child Marriage and FGM/C states that as of the Roadmap's publication in August 2019, both Afar and

local levels, as well as a general lack of capacity and knowledge of the federal and state codes and constitutions, creates a situation in which legal pluralism sometimes appears to be, in reality, legal chaos. The ensuing analysis will provide examples of a situation which has also not been well-documented because of the lack of accurate data collection in different state, local, religious, and customary courts. As numerous UN evaluations have noted, data collection remains a serious challenge across most sectors and contexts related to the gender equality issues discussed in this report. A far fuller analysis of relevant cases and judicial practices is required to provide a more solid basis for a comprehensive assessment of state and local realities. While generalizations based upon observation of particular rural communities may inform points of engagement and indicators for fuller studies, they are not a substitute. Many UN assessments of gender-related programming note the lack of results-based management, while also indicating that the lack of accurate and systematic data collection underlies the failure to effectively assess results and impacts.

Theoretically, state autonomy would not be so problematic if the state family codes were followed in practice and were consistent with constitutional provisions. Because they are, for the most part, based upon the federal Family Code, the state legal framework in fact provides fairly broad formal protection of the rights of women pertaining to bodily integrity, property rights, economic and political equality, and marriage. The problem, as always, is in the implementation of the law on the books. Local communities, for example, sometimes do not respect state authority and laws governing family matters and punish individuals who access the formal justice system to defend their rights. Local police and judicial actors may permit or be complicit in such practices which illegally deny access to justice guaranteed by law, as discussed in Section 2.2.

These problems are compounded by the fact that, in practice, state institutions, including the judiciary, appear to reference the federal Constitution rather than the Constitution of their state.⁷ Indeed, the legal scholarly literature often represents state

Somali had yet to adopt the revised family law. See “National Costed Roadmap to End Child Marriage and FGM/C 2020–2024,” 46.

7 Tsegaye Regassa, “State constitutions in federal Ethiopia: A Preliminary Observation,” *A Summary for the Bellagio Conference* (2004): 8. “The constitutions enjoy supremacy in the hierarchy of laws in the states. Their relation vis-à-vis ordinary federal law (issued by the federal parliament) is not clear yet because of the fact that the principle of federal supremacy is not spelt out. Nevertheless, because not many people were aware of their being in operation, it wasn’t usual to see legal arguments framed on the basis of their texts. Consequently, for the large part, state constitutions have been documents invoked rather ceremonially to conduct the rituals of state politics such as nomination and appointment of state officials, inauguration of the state parliaments’ annual “business”, etc, etc. . . . None of the civic education books of grade schools make reference to the state constitutions, for instance.”

constitutions as “invisible.”⁸ For example, few, if any, classes appear to be taught on state constitutions at university law faculties. This is attributed partly to the fact that state governments have done little to disseminate their constitutions or integrate them into the public sphere. It has been suggested that this could be because of how similar the state constitutions are to the federal Constitution, since much of the language is almost identical, or a broader issue of a lack of respect for the state system.⁹ Of concern is that differences in exact wording between federal and state constitutions, as between state and federal family codes, have yet to be systematically analyzed. Seemingly small differences in wording, or omissions from the federal Constitution, could have significant impacts on case outcomes, particularly where prosecutors and judges may not be well equipped to deal with statutory and constitutional interpretation and analysis. Further, as will be seen in the case studies in Section III, state courts at times appear to ignore both federal and state constitutional and/or family law provisions when upholding discriminatory decisions of local, religious, and customary courts. As the National Roadmap itself reveals, state prosecutors are often reluctant to apply the law in regard to traditional discriminatory and harmful practices that violate constitutional rights of women and children.¹⁰ Finally, state constitutions and proclamations are promulgated only in Amharic and not translated and effectively disseminated to other linguistic groups, which hinders their application in practice and undermines the predictability and certainty that are foundational to rule of law.¹¹

Some Ethiopian legal scholars express skepticism about the effectiveness of the state constitutions in regulating state behaviors. In fact, most states lack a mechanism for authoritative interpretation of their state constitution. Most of the state constitutions authorize the creation of a State Constitutional Inquiry Council and a Constitutional Interpretation Commission to interpret the constitution. In only some regions, such as Southern Nations, Nationalities and People’s Region (SNNPR) and Oromia, have these Councils been legally established. Even where the Councils have been established, however, they have not become operational. This fact is revealing of the gap between the idea of fully-functioning state institutions to deal with constitutional matters and the apparent lack of interest by the states in seeing such institutions carry out their important mandate.¹² What this means in practice is that disputes about the applicability of key constitutional protections for gender equality are denied an

8 Regassa, “Sub-National Constitutions in Ethiopia,” 65.

9 Regassa, “State constitutions,” 8.

10 UNICEF, “National Costed Roadmap,” 46.

11 Regassa, “Sub-National Constitutions in Ethiopia,” 67.

12 *Ibid.*, 41-62.

authoritative disposition, adding to the confusion over judicial outcomes and fueling controversy over the reach of federal and state authority. In an extreme form of federalism such as that embodied in the federal Constitution, it is easy to see how such controversies are implicated in the more fundamental tension between states and the federal government over the proper reach of federal authority.

In sum, despite the intention of promoting state autonomy vis-a-vis federal authority, important issues remain as to how state constitutions should be interpreted and implemented in relation to the overarching authority of the federal Constitution. Such issues include: 1) state constitutions are not widely known amongst their citizens or taught in legal education; 2) state constitutions are not seen as legitimate; 3) the interpretative bodies for state constitutions, as provided for in the constitutions, are not legally established in all states, or, if they are established, then they are not functional; 4) lack of institutional capacity to interpret the state constitutions; and 5) failure to provide effective and time-efficient resolution to pending constitutional issues.¹³

2.1.ii. Cassation

There is disagreement among Ethiopian legal scholars and within the government over issues as fundamental as whether the federal courts have cassation authority over state court decisions and whether their decisions are binding in other cases brought before state and federal courts. Cassation authority is a key element of the rule of law, and its absence enables misapplications of law to go unnoticed and uncorrected. In addition, the general lack of capacity for statutory interpretation and case analysis noted above manifests itself in the process of appeals through the state court hierarchy.

Several Ethiopian scholars have argued that the proper interpretation of the Constitution and the 1996 Proclamation Law is that the Federal Supreme Court has no cassation power over the state courts. This requires some legal gymnastics in interpreting key clauses of the Constitution that would appear to clearly provide that the Federal Supreme Court does in fact have cassation powers over both federal and state courts where there has occurred a "basic error of law." Tecele Hagos Bahta, an Associate Professor of Law at Mekelle University, School of Law, for example, argues that while it is perfectly proper for the Federal Supreme Court to use its cassation power to promote legal uniformity and consistency in the interpretation and application of the law at the federal level, this is not the case for state courts:

13 Ibid., 66. Page 39: "Although state constitutions provide for a list of rights of citizens, they tend to ignore or neglect the rights of minorities. In principle, states are expected to provide for a better protection of rights by adhering to and expanding the federal "minimum standard" for rights."

Nevertheless, the federal judges sitting at the cosmopolitan capital city to tell the state-appointed judges and their appointing sovereign State Councils as to how to interpret their own localized and socio-culturally driven laws seems to manifest the strong centripetal pull often present in existing federal systems, or perhaps prolong *‘the-center-knows-it-all’ dogma that has prevailed in Ethiopia during the previous unitary government systems.*¹⁴

The highlighted passages reflect the political tension mentioned above concerning the nature of the Ethiopian federal system and the relative balance of state and federal power under the Constitution. The phrase “localized and socio-culturally driven laws” reveals the desire to allow states and local communities to carry on their affairs as they always have, regardless of whether local norms, values, and practices conflict with the federal Constitution or Ethiopia’s international legal obligations under human rights treaties it has incorporated into the law of the land. It does not require a leap of the imagination to see how such a restriction on the reach of federal judicial authority can be used to legitimate practices such as child marriage, FGM/C, and discrimination in regard to property rights and other matters involving inheritance, marriage, divorce, etc. Bahta recommends that rather than allowing the Federal Supreme Court to “tamper with [...] local laws,” the matter should be left for the HoF to unify civil laws under Article 62(8) of the federal Constitution.¹⁵ Such argumentation reflects a clear disdain for federal judicial and constitutional authority. What remains to be seen, however, is how representative Bahta’s views are of the different stakeholders at the various local, state, and federal levels of the justice system.¹⁶

In fact, it appears that there are few professional ties between the state level and federal level judiciaries. For example, there are no professional judicial associations, and there is a clear divide and rivalry between the federal judiciary and state court judges. Reportedly, this is because of the perception that the federal courts act “superior.”¹⁷ An emblematic illustration of this tension appears in Addis Ababa: although the Oromo Supreme Court is located across the street from the Federal Supreme Court, there are no ties or contact between the institutions.¹⁸ Part of the issue may be the lack of consistency between the working languages of the national,

14 Tecele Hagos Bahta, “Federal and State Legislative Powers in Civil and Commercial Matters in Ethiopia” in Brems and Van der Beken, *Federalism and the Protection of Human Rights in Ethiopia* (2008), 83. Emphasis added.

15 Ibid., 85.

16 Amha Tesfaye, “The Cassation Powers of the Federal Supreme Court of the Federal Democratic Republic of Ethiopia” in Brems and Van der Beken, *Federalism and the Protection of Human Rights in Ethiopia* (2008): 59-69; Tecele Hagos Bahta, “Federal and State Legislative Powers in Civil and Commercial Matters in Ethiopia.”

17 The World Bank, “Ethiopia Legal and Judicial Sector Assessment,” 2004, 15, <https://www.lawethiopia.com/images/studies/EthiopiaSA.pdf>.

18 Ibid.

state, and local levels, which makes it difficult for different levels of the federal system to communicate and collaborate.¹⁹ Other factors could concern the nature of appointments to state judicial bodies and underlying political and cultural tensions.²⁰

2.1.iii. Constitutional Review

Should a judicial body, such as a constitutional court found in many civil law systems, have the ultimate authority to interpret the Constitution and the constitutionality of specific laws, or should that power be invested in a legislative body? This is a political question that involves the fundamental principles on which a constitutional government is based. Its need for resolution and implementation informs broader issues of Ethiopian federalism and, more specifically, the protection of the rights of women and children. In the Ethiopian context, there are also other pressing questions that need to be resolved regardless of the form that constitutional government takes. Ethiopian legal scholars have debated these issues, beginning with the issue of constitutional interpretation itself and including, among others, the lack of clarity on how to interpret and resolve jurisdictional conflicts or how to reconcile conflicts between the federal law and Constitution and religious or customary laws. There is also a lack of clarity on how Ethiopia's obligations under international human rights conventions, which the federal and state constitutions recognize as binding, are to be implemented by the courts. Needless to say, the lack of clear resolution of these and other questions represents a serious impediment to promoting gender equality and making constitutional human rights protections a reality.

As per Proclamation No. 251/2001, and Article 83(1) of the Constitution, the HoF is empowered to interpret the Constitution through engaging the CCI.²¹ However, neither the HoF nor CCI have developed principles for constitutional interpretation. The CCI has established rules for procedural issues such as case admission, but not methods for interpretation. The CCI supports the HoF by investigating the case and either submitting recommendations to the HoF or rejecting the case if it finds that there is no need for constitutional interpretation.²² Government bodies, private

19 Southern Nations, Nationalities, and Peoples National State Constitution, 2001, <https://chilot.me/wp-content/uploads/2012/02/southern-nations-nationalities-and-peoples-national-state-constitution-eng.pdf>. For example, Article 5 of the Southern Nations, Nationalities, and People's National State Constitution states that, "(1) All languages in the Region shall enjoy equal state recognition. (2) Amharic shall be the working language of the Regional State. (3) Zones and Special Woredas may determine their respective working languages in their own councils."

20 The World Bank, "Ethiopia Legal and Judicial Sector Assessment," 16-18.

21 The HoF is assisted by the Council of Constitutional Inquiry (CCI), which has 11 members: the Federal Supreme Court chief justice and deputy, 6 legal experts, and 3 HoF members, as promulgated in Article 84 of the Constitution and Articles 14 and 15 of the Council of Constitutional Inquiry Proclamation No. 798/2013.

22 This decision was made for two main reasons. First, because the HoF represents a diversity of nationalities, and

parties, or judges may initiate a CCI inquiry. Most cases are submitted by private parties and, given its limited capacity, the CCI has suffered from a case overload. From its inception until April 2019, it has reviewed 2,225 out of 4,267 (52%) cases submitted for review and of these 2,152 (96.7%) were rejected by the CCI. As of April 2019, only 72 cases resulted in a final decision by the CCI and 2,042 cases were still pending review. The public tends to believe mistakenly that the CCI and HoF are appellate bodies from the Cassation division of the Federal Supreme Court, and that many cases are rejected because they do not require constitutional interpretation. Yet only six out of the 72 cases reviewed were in fact referred by courts as of April 2019. Adding to the challenges facing the CCI, parties do not need to frame their submissions within issues of constitutional interpretation. Notably for present purposes, most of the 37 cases revealed by the CCI in their 2018 journal publication are concerned with women and children's rights and/or property rights. Systematic analysis of this body of cases would cast light on the way in which the CCI and the HoF are interpreting and applying the constitutional provisions for gender equality and the rights of women.²³

A minority of Ethiopian legal scholars argue that it is impossible for the federal and state courts to carry out their judicial functions without engaging in constitutional interpretation (as opposed to judicial review, which holds state laws as unconstitutional and void).²⁴ These scholars maintain that the courts regularly and necessarily engage in constitutional interpretation because resolution of the cases at hand requires the application of constitutional principles. Since there is no authoritative interpretation to rely on, so their arguments goes, it is left to the courts to interpret the Constitution as they see fit.²⁵

Although Ethiopia operates under a civil law system that, as is typical of civil law, does not formally embody precedent as authoritative, Proclamation 251/2001 on the House of Federation establishes what could function as a system of precedent because it provides that decisions on constitutional matters shall “[remain applicable

decisions made on the federal level can be conceived as the unification of nationalities, then the HoF should hold this responsibility. Second, the framers believed that judges would have a bias—or incorporate “judicial activism”—to further their own policy inclinations. This is partly because of Ethiopia’s history of having the judiciary and executive merged in function.

23 Anchinesh Shiferaw Mulu, “The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia,” *Mizan Law Review* 13, no. 3 (2019): 419-441.

24 Chi Mgbako, Sarah Braasch, Aron Degol, Melisa Morgan, Felice Segura, Teramed Tezera, “Silencing the Ethiopian Courts: Non-Judicial Constitutional Review and its Impact on Human Rights,” *Fordham International Law Journal* 32, No. 1 (2008): 277, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2193&context=ilj>.

25 Getahun Kassa, “Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System,” *Afrika Focus* 20, no. 1-2, (2007): 102-104.

to] similar constitutional matters that may arise in the future.”²⁶ How, as a matter of practice, this proclamation could operate throughout the federal and state systems is, however, far from clear. Despite this reservation of authority to the HoF, some Ethiopian legal scholars plausibly maintain that proper exercise of the judicial function necessitates constitutional interpretation:

Through the exercise of its judicial function the judiciary doesn't end up merely resolving disputes between [...] parties, but also plays a key role in deterring arbitrary exercise of governmental power. [...] In its daily practice the judiciary is the primary institution where the Constitution is to be under constant consideration.²⁷

As noted above, it thus appears that the courts “tend to avoid blanket referral of all claims of constitutionality or constitutional interpretation to the Council of Constitutional Inquiry.”²⁸ On the other hand, this does not seem to apply to all types of cases because it has also been noted that the courts seem eager to refer cases that are politically sensitive to the CCI. For example, in the Coalition for Unity and Democracy case involving the Prime Minister's banning of demonstration and assembly in 2005, the court referred the case to CCI against the applicant's objection.²⁹ Overall: “it is difficult to imagine a court case that doesn't involve consideration of the constitution. This seems also to be what is going on in practice as not many cases are being referred by the courts to the Council.”³⁰

As noted above, there is a lack of effective or even institutionalized constitutional review at the state level as well. *Even if State Constitutional Councils become operational, they will face barriers such as the lack of adequate skilled Commissioners, a lack of a clear procedure for handling/processing complaints and petitions, investigating disputes, conducting hearings, gathering evidence or hearing witnesses, writing judgements, sending orders, and a lack of financial and infrastructural resources.*³¹ Combined with the resistance to the federal bodies resolving constitutional issues, this failure at the state level creates an impasse for the resolution of constitutional issues which, as we will see, has a major impact on the lives and opportunities of women.³²

26 Proclamation No. 251/2001, *Federal Negarit Gazeta* No. 41 (July 6, 2001): 1609 (Para 11(1)), <https://chilot.me/wp-content/uploads/2011/01/proc-no-251-2001-consolidation-of-the-house-of-the-federat.pdf>.

27 Kassa, “Mechanisms of Constitutional Control,” in *Brems*, 103.

28 *Ibid.*, 103-104.

29 Anchinesh Shiferaw Mulu, “The Jurisprudence and Approaches of Constitutional Interpretation by the House of Federation in Ethiopia,” *Mizan Law Review* 13, no. 3 (2019): 419-441.

30 Kassa, “Mechanisms of Constitutional Control,” 106.

31 Regassa, “Sub-National Constitutions in Ethiopia,” 57.

32 Tsegaye Regassa recommends: “it is important that state institutions, especially those that are designed to serve as custodians of the constitutions, are strengthened, empowered, and allowed to operate competently, impartially, and independently. (For this, constitutional re-engineering may be necessary in order for them to

Finally, the system of legal pluralism itself poses significant challenges to resolving these questions of constitutionality. Getahun Kassa, Lecturer and PhD Program Coordinator at the Center for Human Rights at Addis Ababa University, notes that it is an open-ended question as to whether the CCI needs to “consider the rules of these organs in executing its task of interpreting the Constitution or determining issues of constitutionality.” Unlike in states with Islam as the state religion and Sharia law as the law of the land, no mechanism or clear precedent has been developed in Ethiopia to deal with such issues.³³ However, according to the Amhara Proclamation on the Establishment of the State Courts (169/2010), it can be deduced that the Sharia courts should not supersede laws or constitutional provisions. This was, of course, already apparent from the clear language of Article 9 of the federal Constitution and thus it is puzzling, yet revealing, that the issue of constitutional supremacy even continues to be discussed.

The Amhara Proclamation states in Article 2.A.1: “The Amhara National Regional State Courts’ shall have first instance and appellate jurisdiction pursuant to the powers vested to them in the civil, criminal, procedural and other laws.” However, there is no provision in this law for Sharia or customary courts, which are still governed by the state Constitution and previous proclamations. The issue is to what extent this jurisdiction is exclusive in regard to any or all of the areas mentioned. Article 2.A.2. provides that the courts shall exercise their powers as provided in Articles 62 and 63 of the state constitution. Articles 34 and 35 of Amhara’s State Constitution deal with marriage and rights of women, respectively. Article 34 established the principle of “free and full consent” to marriage (34.2) but 34.4 authorizes a law which needs to be enacted to give “recognition to marriages concluded under religious or customary laws.” It does not specifically address potential conflicts between that law and Article 34.2, but it would be natural to conclude that the state Constitution takes precedence as does the federal Constitution. Article 35 calls this into question by stating: “This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.” However, since Article 35 only relates to the “adjudication of disputes,” it should not supersede laws or constitutional provisions regarding consent (34.2) or age of marriage. Finally, under the explicit language of Article 9 of the Constitution, any such adjudication,

curb some flaws of design.) More specifically, it is essential that the state constitutional texts specify the human rights chapter add a clear set of clauses on their application, interpretation, limitation, and remedies (when and if they are violated). It is essential that the texts extend explicit guarantee for the protection of minority rights within the states.”

33 Kassa, “Mechanisms of Constitutional Control,” 104.

regardless of the consent of the parties, has no legal effect to the extent that it conflicts with constitutional provisions on gender equality or related matters. The conflict here between the federal Constitution and state law and practice could not be clearer.

2.2 Courts and Non-Judicial Forums

2.2.i. Preliminary Frameworks

In addition to the considerable challenges of strengthening the formal legal system and reconciling federal and state authority, Ethiopia's legal pluralism also provides serious challenges to standardizing a gender equality approach in the judiciary. Article 34 of the Constitution allows for issues of personal and family law to be adjudicated according to religious or customary laws, of course within the parameters provided for in Article 9. This article has enabled two alternative forums to the state courts for seeking justice: (1) religious courts and (2) customary dispute resolution (CDR). In practice, "religious courts" refers to Sharia courts, which are the only federally constituted religious courts to date. This section evaluates the different challenges to standardizing gender equality across these different justice forums. These challenges, it must be underscored, can only be addressed through leadership at the national level that includes all of the multisectoral stakeholder institutions at the local, state, and federal levels.

Initially, one must question the extent to which all of these informal courts meet the requirements of the ICCPR and the federal Constitution as to fundamental fair trial rights, particularly in cases involving women's rights. As a baseline, we may note that Ethiopia's binding international obligations involving fair trial rights, as incorporated by the Constitution into its domestic law, include the foundational principle of the rule of law: "... everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law."³⁴ Each of these elements, including "established by law," is problematic for the customary and Sharia courts, but also for the social courts and other formal courts.

In specific regard to religious and customary courts, one may question their competency, impartiality, and independence, given their embeddedness in the social, cultural, and political fabric of their communities. The gender composition of the religious courts and the CDR is itself revealing of a structural lack of impartiality in enforcing what is essentially a patriarchal and inherently discriminatory set of norms that are at sharp variance with constitutional guarantees. Indeed, one may question the extent to which these institutions, so deeply embedded in the cultural, political, social, and religious structures of local power, authority, and tradition could, as a

34 ICCPR 14.1.

matter of principle, meet standards of impartiality, independence, and competence. The lack of written laws that are consistently and predictably applied raises additional problems for the rule of law, which requires that laws be clear and available to all members of the public. The ad hoc determinations of “councils of elders” (all male), so typical of Ethiopian CDR, are also unlikely to meet these criteria.

Beyond such systemic characteristics, the religious courts and CDR tend to exceed their jurisdiction, encroaching for example on criminal matters such as homicide. Where murders are resolved through blood money payment as determined by whatever CDR mechanism a community happens to have, these mechanisms are not only operating extra-judicially and exceeding their jurisdiction, but also denying individuals access to justice as guaranteed by the Constitution. Where state officials are complicit in allowing communities to operate outside of the criminal law, the rule of law has lost its authority and given way to local power dynamics, clan politics, and, in some cases, corruption. Even within the formal justice system, similar problems may arise. The system of social court, that constitutes the lowest rung of the formal judicial system, exhibits the same kinds of shortcomings, including that of exceeding their jurisdiction as established by the Constitution and laws of their state. The general lack of capacity of both formal and informal courts has been repeatedly noted in the literature, the various UN committee processes, and in numerous UN and other justice sector and gender programs. Even when women do enter formal courts, some well-known cases indicate that those courts are also unequipped or unwilling to deal with cases affecting the rights of women in an impartial, independent, and competent manner.

Standardizing a gender equality approach across religious courts and CDR will entail serious challenges. Apart from the fact that challenging these traditional forums has been characterized as a very “sensitive” issue, there are systemic problems, such as the lack of codified law that conforms to constitutional standards, male-dominated composition of these institutions, and the fact that social pressure and male-dominated local authority structures play a large role in preventing women from choosing formal courts. The consensus among Ethiopian legal scholars seems to be that the federal government must promote women’s rights by working with actors in CDR and religious courts to find common ground in regard to women’s rights—as opposed to applying secular norms from the federal Constitution, state constitutions, or federal and state codes of family, criminal, or civil law. What this means in practice, as will be explained below, is that women’s rights and well-being are subjugated to concerns of preserving social harmony and peace. “Social harmony” in such usage of course operates as a euphemism for a repressive patriarchal social order that systematically discriminates against women. For example, an argument that has been made by Mohammed Abdo in favor of allowing Sharia courts to depart from state law is that

forcing state law over religious law “forces women[...] to choose between individual rights vis-a-vis spiritual or social cohesion, and they usually prefer the latter.”³⁵ The premise of such arguments over the impunity of Sharia courts and CDR operating without regard for constitutional and international human rights protections is that by “consenting” to Sharia courts and CDR, a woman loses all of her fundamental rights under the international core human rights instruments to which Ethiopia has acceded and repeatedly recognized in its interaction with the relevant UN committees as universally applicable in its territory. The phrase in the ICCPR article quoted above, that “*everyone* is entitled” to these fundamental fair trial rights, is unequivocal in its meaning and reach.³⁶ Further, women who do “consent” to adjudication before these alternative courts are unaware that in so doing, they have just been stripped of all of their fundamental rights relevant to the judicial process. It appears that the “sensitivity” of such issues, to which many legal scholars refer, has impeded the direct and effective redress of these issues, thus impeding the protection of the women and children who are subjected to such adjudication.

While acknowledging the need to change the social order so as to realize the rights enshrined in the federal and state constitutions, the federal government has recognized that accomplishing this within the existing constitutional framework will require a long-term engagement of education and social change at the local level as well as capacity building in the judiciary and other governmental institutions. This is where the challenges of policy formulation and implementation become acute: striking the balance between working from within to effectuate changes in values and social norms, while working from without to strengthen, implement, and eventually enforce the constitutional and legal order. The word “eventually” draws attention to the fact that the longer this process takes, the more women will continue to suffer from existing discrimination, violence, and inequities, and lack the opportunity to develop their human potential and participate fully in civil society, the economy, and government. How can one aspire to the development of women’s equality, economic empowerment, and leadership potential without enabling women to have the education, health care, social and economic opportunities that alone will allow them to develop and actualize that potential? The following parts of this section of the report will provide illustrative examples and more detailed clarification of the application of the claims made above to specific sectors of the Ethiopian justice system.

2.2.ii. Federal Courts

Ethiopia has a parallel court structure between federal and state courts. The

35 Mohammed Abdo, “Legal Pluralism, Sharia Courts, and Constitutional Issues in Ethiopia,” *Mizan Law Review* 5, no. 1 (Spring 2011), 98, <https://core.ac.uk/download/pdf/43539029.pdf>.

36 ICCPR 14.1. Emphasis added.

Federal Supreme Court has national jurisdiction and is located in Addis Ababa. In five States, a Federal High Court operates with a civil, criminal, and labour division with one presiding judge and two other judges in each division.³⁷ Historically, the judicial and executive branches had a merged function. The judiciary was thus never an independent institution and was subjected to pressures from all other branches.³⁸ As a result of this legacy, administrators at the state level believe that they can pressure judges, or close their benches at the lower level of administration. For example, in Somali, Oromia, and Afar, state-level officials intervene at the Woreda/District level courts. Further, some Ethiopian legal experts claim that the judiciary was never envisioned to act as a third branch of government, as in a “checks and balances” system.³⁹ Each regime created the judiciary to fulfill its own political mission, which dramatically eroded the legitimacy of the judiciary in the eyes of Ethiopian citizens.

Judges and members of the judiciary are burdened with low salaries, inadequate training, few resources, political pressure, and, in some cases, an apparent lack of commitment by the judges themselves. In addition, the relationship between the executive branch and the judicial branch has been characterized as tense because of their historical legacy and skepticism about the functionality of the other. This tension has been said to have led the executive branch to not honor its commitments to the judicial system, despite the constitutional provisions outlining the roles, responsibilities, and necessary resources for each branch.⁴⁰

In one case that exemplifies the problem of misapplication of laws in federal courts, Negussie Lemeneh claimed to be infatuated with Hermela Wossenyeleh and severely harassed her and her family over eight years because they refused to permit his proposal for marriage. He physically assaulted her and seriously injured two of Hermela’s sisters. Negussie was arrested several times for his violent attacks but was never sentenced to more than a few months in jail. After many failed attempts by the Ethiopian Women Lawyers’ Association (EWLA) to encourage law enforcement officials to more effectively implement the law and protect Hermela and her family, EWLA urged Hermela to tell her story publicly on national television and newspapers. EWLA was temporarily suspended out of anger from the Ministry of Justice after the case garnered widespread public outcry. However, EWLA was later

37 The World Bank, “Ethiopia Legal and Judicial Assessment,” 11, <https://www.lawethiopia.com/images/studies/EthiopiaSA.pdf>.

38 Ibid., 19.

39 Ibid.

40 Frances Olsen, “Critical Evaluation of Human Rights Strategies A Case Study of CEDAW and Women’s NGOs in Ethiopia,” *Proceedings of the 16th International Conference of Ethiopian Studies* 3 (2009): 1070, <https://zethio.files.wordpress.com/2014/04/ethiopian-studies-volume-3.pdf>.

reinstated and resumed its work with the approval of the Ethiopian government.⁴¹ This case represents a failure of all of the relevant justice sector institutions — police, prosecutors, and courts — to apply the criminal law and the relevant provisions of the Constitution that should serve to protect women from such violence and ensure meaningful access to justice and a fair trial. Section III will provide more examples of misapplication of law by federal courts, as well as the important role that EWLA has played in some of these instances.

2.2.iii Social Courts

In community practice, disputes are handled through CDR, which entails a separate set of issues that is discussed in the section below. However, many disputes also pass through the vast number of *kebele* (social) courts, which make up the lowest rung of the formal judiciary. Social courts are generally authorized in each state. However, only some states define their procedural and substantive rules via official legislation. State constitutions typically address the creation and jurisdiction of the social courts with vague phrases such as “particulars to be determined by law,” but those laws are often not enacted.⁴² *Kebele* courts are not explicitly provided for in the Constitution, but they are officially legislated in five states: Amhara, Oromia, Tigray, SNNPR, and Harar. There are many social courts across Ethiopia, but the total number is unknown and accurate comprehensive data about their performance is scant.⁴³

In general, the state proclamations that do officially establish social courts define their jurisdiction quite narrowly, confining it to a range of civil matters where the dispute involves less than a certain sum of money. Criminal jurisdiction is thus excluded as are all other matters. The limits of social court jurisdiction are exemplified in Oromia State’s Proclamation 128/2007 (Proclamation for Re-establishment and Determination of the Powers of the Social Court). In Part 3, “Civil Jurisdiction of Social Courts,” the Jurisdiction of the Social Courts is limited to a narrow range of civil matters typical of rural courts that adjudicate the property and use rights in conflicts over land, boundaries, water, etc.⁴⁴ This is typical of the rural agricultural

41 Ibid., 1069.

42 In the absence of such implementing laws, one may question whether such courts have been “established by law” as required by ICCPR 14.1 and the federal Constitution.

43 Abrham Yohannes, “Structure, Organization, Administration of Courts Under the FDRE Constitution,” 2010, *Ethiopian Law-Info*, <https://ethiopianlaw.weebly.com/blog/first-post#:~:text=Social%20courts%20exist%20as%20part,in%20rural%20and%20urban%20areas>.

44 The dispute must arise over immovable property found in Oromia or on its borders. The value of the property cannot exceed 1500 Birr. Disputes over which there is jurisdiction are specified: Article 16 Roots and Branches; Article 17 Repairing a Fence or a House; Article 18 Lost Property; Article 19 Disputes over water pipes and electric lines; Article 20 Right of Way; Article 21 Abuse of Ownership Right; Article 22 Rain Water; Article 23 Running Water. Article 31 provides that the Social Court shall dismiss any case when it becomes aware that it

courts or small claims courts found in many countries. In practice, however, Ethiopian social courts tend to ignore the limits of their jurisdiction and hear cases over which they have no authority. From a legal standpoint, their resolution of cases over which they lack jurisdiction lack authority and should have no legal effect. This practice of exceeding their jurisdiction also highlights the weakness of the state's commitment to the rule of law by allowing such well-known extralegal adjudication to continue. Needless to say, in such a context, women are denied proper access to justice and the protection of constitutional human rights regarding women and gender equality.

Another issue with social courts is women's lack of meaningful access and representation. The Oromia Social Court Proclamation gestures toward gender equality with the provision that every social court must have one female judge.⁴⁵ It is unclear whether this is followed in practice; moreover, every social court must have three judges, which means the female judge may typically be outnumbered. Another example is Amhara, where the implementation of several aggressive land administration policies since 2000 (the regional Land Administration and Land Use Policy, regional Land Administration Proclamation, and the regional Environmental Protection, Land Administration and Use Authority Proclamation) was left to *kebele* committees populated mostly by men. Despite encouragement from regional authorities to elect women into *kebele* courts, it is still very rare to see a female representative. The *kebele* courts also suffer from a lack of staffing and intensive training for implementing land policy. CDR is the default choice for dispute resolution in Amhara, and even if the women bring their case to the *kebele* court, the court consists of men who may be ignorant of, unwilling, or incompetent to accurately interpret the law.⁴⁶ As is evident in the case studies provided in Section III, misapplication of law occurs even at the higher rungs of the judiciary, and even the appeals process has repeatedly demonstrated a lack of capacity or will to enforce the laws that in principle protect the rights of women.

In general, social courts prove to be a poor resource for women in their current state. For example, Montgomery Wray Witten, the former Dean of the Mekelle University Law Faculty, conducted a study of CDR in rural Tigray, concluding that CDR is "sometimes biased in favor of men or the powerful[...]local forums may also be subject more generally to local community pressures, political pressure, abuse

has no jurisdiction over it.

45 Proclamation No. 128/2007: A Proclamation to Revise Proclamation for Re-establishment and Determination of the Powers of the Social Court No. 66/2003, *Megeleta Oromia* (July 24, 2007): 3 (Para 9(2)).

46 Askale Teklu, "Research Report 4 Land Registration and Women's Land Rights in Amhara Region, Ethiopia," *Securing Land Rights in Africa* (Nottingham: Russell Press, 2005), 13, <https://assets.publishing.service.gov.uk/media/57a08c9ded915d3cfd0014d0/FinalReportSecuringLandRightsinAfrica4.pdf>.

of power, and corruption.” Witten argues: “It is this which makes the availability of appeal from the Social Court to the Woreda (District) Court, away from village forces, very important.”⁴⁷ However, the appeal process is still insufficient because of the extra costs involved. Overall, enforcement of land rights through social courts is “costly and uncertain for the poorest.” Witten also noted that there is “anecdotal evidence in Tigray that women’s land rights are attacked more frequently than men’s because women have fewer resources available for defending.”⁴⁸ For these reasons, CDR continues to be the operative forum in most rural communities.

One valuable case study of the intertwining between local authorities and CDR is in Afar, where local authorities functionally act as part of CDR rather than as separate entities. It is standard practice in Afar’s customary “ADDA” system that homicide cases are not brought to the police for investigation and criminal prosecution but are decided by a blood money payment to the family of the deceased. Many sources state that reconciliation is an effective means of resolving inter-clan homicides.⁴⁹ However, even if the clan swears an oath not to retaliate, it may or may not be honored depending on the relative strengths of the clans. In the case of a great disparity in the relative strengths of the clans, the fact that the weaker clan “cannot take revenge” could mean that a second crime might not be prevented.⁵⁰ Liability is collective to the clan rather than the individual criminal liability on which the national Criminal Code is based. The local ADDA elders inform the local justice officials, police, prosecutors, and judges of the disputes’ outcomes. The formal justice system at the woreda level thus exists alongside the traditional mechanism, though they opine that most people prefer to resort to the ADDA. The role of the police is complementary to the ADDA process and is largely confined “to controlling inter-clan or inter-community clashes

47 Montgomery Wray Witten, “The Protection of Land Rights in Ethiopia,” *Afrika Focus* 20, no. 1-2 (2007): 177.

48 Ibid.

49 See Alula Pankhurst and Getachew Assefa, “Understanding Customary Dispute Resolution in Ethiopia,” *Grassroots Justice in Ethiopia*, <https://books.openedition.org/ctee/479?lang=en>. See also Yayneset Tesfay and Kelemework Tafere, “Indigenous Rangeland resources and Conflict Management by the North Afar Pastoral Groups in Ethiopia,” A Pastoral Forum Organized by the Drylands Coordination Group (DCG) in Ethiopia, June 27-28, 2003, Mekelle, Ethiopia (November 2004): 39-40, <https://www.utviklingsfondet.no/dcg/assets/documents/Report31.pdf>: “Virtually all cases of inter-clan homicide end up in reconciliation. In some cases, relatives of victim may decline to offer forgiveness at the inception of procedures, refuse mediation and threaten to take revenge. Upon such intransigence, some members of the murderer's clan may assemble to exercise further begging (Dubarti). The clan leader would then normally seek to exert pressure to influence the person(s) threatening to take revenge. A person who resorts to retaliation in spite of all these cultural procedures is doomed to denial of clan membership and recognition. He would simply be an outcast. This ostracisation is reflected in many social and economic activities.”

50 Hailu, Kassa, and Balehegn, “Traditional Governance Systems and their Operational Linkage with Formal Governing Structures in Aba’ala Woreda, North Afar,” *Federalism and the Protection of Human Rights in Ethiopia* (2008): 228.

that could become fierce and difficult to manage by local mechanisms.”⁵¹

Such examples of de facto approval of extra-judicial dispute resolution, and indifference to the formal law and Constitution, imply that crimes and other wrongs which affect women’s lives may be resolved in ways that neither respect the human rights of the affected women nor are in their interests. Furthermore, women may have no real choice as to how and by whom disputes that involve their interests are settled. The practices of forced marriage of a rape victim to the rapist, “honor” killings, or the failure to prosecute marriage by abduction and rape, as occur too often in Ethiopia, exemplify the problem. Furthermore, there have been instances in which the formal and informal courts processed similar cases, which may even result in conflicting decisions, either creating negative feelings towards the formal institutions or resulting in the release of the defendant without the adequate application of the law. For example, two homicide cases in Afar in which one defendant had pleaded guilty, and the other defendant had been found guilty on appeal, were processed under CDR after the elders petitioned the State Council to transfer the case to their courts. The Council instructed the Regional Justice Bureau (Prosecution Office) to drop the charges, citing Article 42(1) of the Criminal Procedural Code.⁵² CDR in Afar will be discussed in greater detail in Section 2.2.v. That such processes do not meet even the minimum fundamental rule of law and fair trial rights provided for in the ICCPR and the federal Constitution is clear.

In general, social courts, local law enforcement, and other formal personnel on the local level seem to believe that they either lack authority to assert federal law or are not required to do so. If federal policies for gender equality are to be realized, one challenge that must be addressed at the federal policy level is the unwillingness or inability of local authorities to apply and enforce applicable federal and state laws that in theory implement the Constitution’s framework of rights.

2.2.iv. Religious Courts

As mentioned above, Article 34 of the Constitution allows for adjudication of personal and family law issues according to religious or customary laws, but within the strictures provided for in Article 9 that subordinate such laws to the supreme

51 Ibid., 224.

52 See Hailu, Kassa, and Balehegn, Traditional Governance Systems and their Operational Linkage with Formal Governing Structures in Aba’ala Woreda, North Afar,” Federalism and the Protection of Human Rights in Ethiopia (2008). See also Tsehai Wada Wourji, “Coexistence between the Formal and Informal Justice Systems in Ethiopia: Challenges and Prospects,” *African Journal of Legal Studies* 5, No. 3 (January 2012): 269-293—in Somali, “the government army may be incapable of ensuring peace and order [. . .]. [As a result of which], government officials unconditionally enforce decisions of the elders, even when the latter contradict the law.”

law of the land.⁵³ The authority of the state over religious practices is complicated by Article 11 of the Constitution, which states both that: “State and religion are separated from each other” and that “the State shall not interfere with religious activities and religion shall not interfere with state affairs.” On the other hand, as noted above, Article 9 of the Constitution provides that it alone is the supreme law of the land and that it takes precedence over any state or customary legal norms, which necessarily includes Sharia courts. As we will see, reconciling varying interpretations of the relationship between Article 9 and Article 11 have posed significant problems both for the Ethiopian legal scholarly community and for judicial practice.

To date, Sharia courts are the only officially recognized federal religious courts and the only religious courts that have been officially established in states, districts, and municipal districts. Sharia courts receive their budgets from the Federal Judicial Administration Commission. Sharia courts only apply Islamic laws and have their own appellate system, but are required, theoretically, to follow the procedural rules of ordinary courts. A major shortcoming from the standpoint of the rule of law, however, is that there is no standardized codified body of law or procedural rules in Sharia law. This would appear to pose a serious challenge in appeals proceedings before the higher levels of the Sharia court system. Sharia court judges, assuming full independence under Article 34 of the Constitution, may feel empowered to rule in ways that do not uphold constitutional guarantees of gender equality, for example on marriage or inheritance disputes. Well-known cases indicate that this is not merely a theoretical possibility. Therefore, benefactors of unequal inheritance are incentivized to choose Sharia courts and, as will be seen, women are at a systemic disadvantage in regard to the choice of forum. Moreover, as in the social courts and CDR, Sharia courts are reported to have tended to exceed their legal jurisdiction.

The issue of women’s access to justice and choice of adjudication before a Sharia or secular court hinges, under Ethiopian law, on the issue of consent. The requirement of consent to Sharia jurisdiction entails a certain set of issues that has significant impact on the rights of women. Article 34 of the Constitution and Article 4 of the Federal Courts of Sharia Proclamation⁵⁴ establish that consent must be obtained from **both** parties of a dispute in order to enter a Sharia court. Such consent, of course, must be free and unconstrained. However, under Ethiopian Sharia law, a woman

53 Article 34(5): “This Constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.”

54 Article 4(1A): “Any question regarding marriage, divorce, maintenance, guardianship of minors and family relationships; provided that the marriage to which the question relates was concluded, or the parties have consented to be adjudicated in accordance with Islamic law.”

cannot directly give her consent and must rely on a male guardian to represent her in court and give consent for her. Apart from the other obvious issues in not requiring (nor allowing) a woman to consent for herself, it is in the very nature of family law cases concerning marriage, property, inheritance, child custody, and divorce that the woman's interests may be in conflict with those of her family or whomever is her legal male guardian. Without the woman's right to herself articulate her consent before the court, which may also present challenges of constraint, consent under Sharia may operate as little more than a legal fiction that enables men to determine the fate of women subordinated by law to them.

Even though the Revised Family Code states that representation is not allowed,⁵⁵ it nonetheless allows by way of exception, or "serious cause," for the conclusion of marriage through representation. It is unclear what is considered to be "serious cause." Moreover, Sharia law allows girls to get married once they reach puberty, contradicting the Revised Family Code's provision against child marriage.⁵⁶ Notably, "serious cause" is used in the Amhara Family Code to grant "dispensation of not more than two years" for marriage under 18 years old through an application by either the future spouses or the parents or guardian of one of them.

There is therefore an unclear definition of, and system for free and informed consent in the religious courts. The guidance as to when and how the consent of parties must be expressed is ambiguous. More broadly, the issue of consent may be disguised by social or familial pressure and other forms of coercion. Women may give their consent only to avoid social stigma and accusations of being impious if they demonstrate opposition to the jurisdiction of Sharia courts. Further, if consent is conveyed indirectly to the court via a male guardian or parent, it is unresolved as to how the court is able to ascertain "free and full consent" as required by the Federal Family law and international and regional human rights instruments to which Ethiopia has acceded. One might well argue that the very structure of the rules on consent are inherently discriminatory in that they apply differently in regard to gender and clearly put the women in a structural disadvantage before the court – a court composed of male judges applying a body of law shaped by patriarchal tradition. As noted above, an overarching question is whether a court structured in such a way, and in light of its practice and composition, should be regarded as meeting the fundamental right to a fair, impartial, independent, and competent adjudication of one's case. In the Ethiopian context, the other fundamental issue is why such

55 Article 12(1): "Each of the future spouses shall personally be present and consent to the marriage at the time and place of its celebration."

56 Berihun Adugna Gebeye, "Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State," *Women in Society* (October 2013): 28.

practices are allowed to continue despite the clear constitutional mandate of Article 9 and the constitutional and federal laws that are designed to protect women from such discriminatory practices.

In the cases of “consent” to Sharia jurisdiction, the legislation itself creates room for coercively derived consent. Needless to say, these factors can operate to negate any substantive meaning of the requirement for “free and full consent.” This is well-illustrated by the practice through which tacit consent is the *default* presumption and can be legally held to have been given when one or both parties *do not* come to the religious court when summons have been duly served. That is, strikingly, consent may be presumed from non-appearance even though the Sharia court has not yet acquired the jurisdiction through which appearance can be compelled. In other words, when parties intend to indicate their lack of consent by ignoring a summons from a court which has no jurisdiction over them, the court assumes jurisdiction over their case because they express non-consent through refusing to recognize the authority of the court, which they are legally entitled to do. An additional restriction on access to justice that structurally favors the Sharia courts is that parties are not allowed to transfer their case to a federal court once they have begun hearings in the religious courts. Why this in itself is not a fundamental denial of access to justice is also a salient question.

Beyond these legislative problems, Sharia courts have demonstrated leniency towards the interpretation of consent that again undermines the legal requirements in a manner that can easily operate to discriminate against women. In fact, there have been incidents in which religious courts have proceeded with hearings against the blatant objection of a party. In *Abdurahman Ali et al. v. Haji Kassim Mohamed and Zenit Ali*, a Sharia court judge concluded a marriage in the presence of two witnesses without the consent of Zenit’s parents and relatives. Significantly, the spouses themselves did not appear and express their consent in court. Zenit’s relatives objected to the marriage and argued that Sharia law provides that the parents and relatives of a woman must consent to her marriage. The First Instance Court annulled the marriage, assuming tacit consent for its jurisdiction because the spouses failed to appear before the court. Both the High Sharia Court and Supreme Sharia Court upheld the lower court’s decision. ***While the federal Constitution has embraced universal human rights in its language, its provision for consent appears to provide a loophole for loose or arbitrary applications of religious norms to override women’s rights.***

2.2.v. Customary Dispute Resolution (CDR)

Like religious law, customary law is briefly recognized by Article 34 of the

Constitution. Although reliable data is not available, it appears that for much of rural Ethiopia, customary law has a far more immediate impact on people's lives than the formal legal system. In this context, it is again important to recall that Article 9 of the Constitution specifically references both law and customary practice as falling under the supreme authority of the federal Constitution. Additionally, Article 78 of the Constitution requires religious and customary laws to be recognized by the HPR or State Councils in order to legitimately function. Federal Sharia courts are officially recognized, whereas it can be argued, as one Ethiopian scholar has, that there are no formal laws that recognize customary law, making CDR unconstitutional.⁵⁷ Leaving aside the question of constitutionality, the vague legislation regarding CDR means that, beyond the requirement of "consent" in Article 34, there are no guidelines with which to regulate CDR. This is a major concern because it seems that most disputes in rural areas appear to be handled through CDR. Ali Hussen, Head of the Civil and Criminal Affairs Department in the Justice Bureau of the Afar Regional State, estimated that 90% of disputes in Afar are handled through CDR.⁵⁸ A different estimate places the number at 95%.⁵⁹ CDR is seen as an inexpensive, efficient way of resolving disputes, especially in rural communities that would otherwise have limited access to formal justice mechanisms. Nevertheless, it is exceedingly important to ensure that women's rights are being upheld in these forums.

Although CDR is a highly varied practice across Ethiopia, a survey of the literature reveals that CDR promotes patrilineal power and enables the continuity of gender inequality in many forms. The very structure of such courts and their rootedness in community traditions and hierarchies is what on the one hand makes them effective for purposes of localized informal dispute resolution, but on the other hand enables them to operate in potentially arbitrary and discriminatory ways, completely unchecked by fair trial rights and other constitutional and international human rights requirements. This is, of course, typical of CDR mechanisms in many countries where the local adjudicative body lacks formal legal training and often serves as a means for reproducing community norms and buttressing social control.⁶⁰ For

57 Gebeye, "Women's Rights and Legal Pluralism," 10.

58 Getachew Talachew and Shimelis Habtewold, "Customary Dispute Resolution in Afar Society," in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Addis Ababa: Centre français des études éthiopiennes, 2008), <https://books.openedition.org/cfee/485?lang=en#authors>.

59 Muauz Gidey Alemu, "The Mada'a and Mablo of the Afar: Customary System of Conflict Transformation," *Wollo University Annual Research Proceeding* (2013): 27, https://www.researchgate.net/publication/318673162_THE_MADA'A_AND_MABLO_OF_THE_AFAR_CUSTOMARY_SYSTEM_OF_CONFLICT_TRANSFORMATION.

60 See, e.g. the study of such a body applying its community's customary family "law" in, Lidwina Nurtjahyo, "Women, Customary Law, and Rights to Participate in Decision Making Process: Stories from the Customary Council in Rote and Labuan Bajo" in D. Cohen, K. Tan, and A. Nababan, eds., *Human Rights and ASEAN* (World

example, according to custom in Amhara, a state populated mostly by Christians, women can only inherit property if they have no brothers or parents; they cannot plow the land, and they have to rent out their land and only take 30% of the profits.⁶¹ Typically, CDR follows an oral body of law and is implemented by male clan elders, who interpret their traditions as they see fit and are often unaware of federal or state laws and of constitutional principles and the international human rights treaties that Ethiopia has ratified. Because the authority of these forums derives from patriarchal tradition and local custom, it follows that there is little incentive to embrace federal laws that promote gender equality or protect women from violence and exploitation.

As with Sharia courts, although there is the legal requirement for free and full consent, community pressure prevents women from seeking the protection of federal or state courts.⁶² Social ostracism can even be wielded purposefully as punishment. For example, in Shinasha society, an ethnic group of Benishangul Gumuz, disobeying the findings of the *falla* (the most senior elder within the CDR hierarchy) will incur *tsala*, a formalized mode of social ostracism inflicted on the offender and their entire family. In Berta society, another ethnic group of Benishangul Gumuz, elders' dispute resolution is called *shiyabe* and follows the Quran. Social ostracism is threatened to ensure implementation of a judgment.⁶³

Similar as well to Sharia courts is the fact that CDR forums tend to exceed their legal jurisdiction. In Afar, the "rules" of the ADDA system "describe the only way of litigation and ways of compensation." The crimes included in the rules are the basic forms of violence and conflict that one finds in traditional societies, comprising only three categories: murder, physical injuries (qualified according to the type of weapon), and "animal killings," (qualified according to the type of animal). Murder is compensated by blood money to the family, paid in camels and cash. The parties swear not to retaliate, a typical mechanism in feuding societies.⁶⁴ Another example is Somali state, where CDR is known as *xeer* and follows an oral body of legal norms

Scientific Publishing, 2021).

- 61 Food and Agricultural Organization of the United Nations, "Customary Law: Gender and Land Rights Database: Ethiopia," http://www.fao.org/gender-landrights-database/country-profiles/countries-list/customary-law/en/?country_iso3=ETH.
- 62 Alula Pankhurst and Getachew Assefa, "Understanding Customary Dispute Resolution in Ethiopia," in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Addis Ababa: Centre français des études éthiopiennes, 2008), <https://books.openedition.org/cfee/479?lang=en>.
- 63 Besie, Bayisa and Lemessa Demie, "Customary Dispute Resolution in Beni-Shangul Gumuz with Emphasis on Shinasha Society," in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution*, <https://books.openedition.org/cfee/491>.
- 64 See Hailu, Kassa, and Balehegn, "Traditional Governance Systems and their Operational Linkage with Formal Governing Structures in Aba'ala Woreda, North Afar," in *Federalism and the Protection of Human Rights in Ethiopia*, eds, Eva Brems and Christophe Van der Beken (LIT Verlag, 2008).

that prescribes approaches to issues not only relating to personal and family disputes but also homicide and other acts, over which CDR does not have jurisdiction. Under *xeer*, families have the right to choose whom women and girls will marry. Girls may be married as soon as they reach puberty, and unmarried women who are raped must marry their rapist. Homicide is settled by payment of blood money.⁶⁵ Similarly, in south Wello, one of the zones in Amhara, the *Abbegar*, customary religious leaders, play a large role in resolving homicide disputes.⁶⁶ Among the Berta people of Benishangul Gumuz, homicide would be reconciled by the elders bringing the parties together: the relatives of the offender would bring a goat or ox, and the elders would slaughter it and have the victims' relatives promise not to take revenge.⁶⁷ Traditional institutions in Oromo also settle disputes involving murder and physical assault. The *Gedeo* of SNNPR settle disputes for both civil and criminal cases. The *Gurage* of Ethiopia is a customary judicial system that handles disputes of kinship, economic and social rights, and obligations independent of the state. Moreover, even when verdicts are issued by formal courts, people still resort to CDR for reconciliation in order to avoid revenge by the victim or their relatives.⁶⁸ This all occurs regularly, ***despite the fact that jurisdiction of CDR is legally limited to personal and family disputes***. In other words, in such communities, the most serious crimes, such as rape and murder are resolved extrajudicially and allowed to do so by a formal justice system that references “social harmony” – which typically disadvantages women – as the justification for failure to apply its legal mandate in the face of community non-compliance. While the merits of such a system are debated by Ethiopian legal scholars, what is not open to debate is that the customary law system functions in a way that ignores the Constitution and laws that are supposed to guarantee and protect the rights of women.

As with Sharia courts, women's access to justice and ability to participate in litigation that impacts their lives is restricted by CDR. In Afar CDR, and likely elsewhere too, women are not allowed to serve as elders.⁶⁹ Women also may not participate in

65 Berihun Gebeye, “Women's Rights and Legal Pluralism: A Case Study of the Ethiopian Somali Regional State,” *Women in Society* 6 (October 2013): 13. “[Within *xeer* courts] there are *xeer beegti* (judges), *xeer boggeyaal* (jurists), *guurtiyaal* (detectives), *garxaijyaal* (attorneys), *murkhaatiyal* (witnesses), and *waranle* (police officers).”

66 Pankhurst, Alula and Assefa, Getachew, “Understanding Customary Dispute Resolution in Ethiopia,” in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Addis Ababa: Centre français des études éthiopiennes, 2008), <https://books.openedition.org/cfee/479#tocto2n5>.

67 Bayisa Besie and Lemessa Demie, “Customary Dispute Resolution in Beni-Shangul Gumuz with Emphasis on Shinasha Society,” in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Addis Ababa: Centre français des études éthiopiennes, 2008), <https://books.openedition.org/cfee/491>.

68 Endalew Lijalem Enyew, “Ethiopian Customary Dispute Resolution Mechanisms: Forms of Restorative Justice?” “Women's Rights and Legal Pluralism,” *African Journal on Conflict Resolution* 14 No. 1 (September 2019): 139.

69 Ka Gebre-Egziabher, “Dispute resolution mechanisms among the Afar People of Ethiopia and their

proceedings because they are seen as being too “emotional,” and therefore male relatives must advocate on their behalf, following Islamic customs, especially in cases of sexual violence.⁷⁰ In general, whereas men are able to give their consent directly, women and children must rely on their male guardian or representative to represent their interests. Since women cannot appear on their own to state their wishes, the whole idea of consent is essentially nugatory. Voluntary participation also includes the freedom of either party to withdraw consent at any point of the process, enabling social pressure to play a role both before and during CDR processes. Needless to say, the refusal to allow women to provide consent or to participate and directly represent themselves in their own legal processes is a denial of access to justice and every fundamental fair trial right. In the case of sexual violence or domestic abuse, the potential for promoting “social harmony” over the interests of the woman subjected to such violence is clear.

CDR can also perpetuate and directly legitimize child marriage. The most common decision in CDR resolution of inter-familial or inter-clan disputes is the payment of compensation. In Benishangul Gumuz, payment includes bride compensation. To end hostilities, a girl may be given as a chattel without her consent to a relative of the other party.⁷¹ From a legal standpoint, this would appear to violate the provision of the Criminal Code prohibiting enslavement as well as other crimes. It most certainly is not based upon “full and free” consent and in the cases where the girl is under 18 it also violates the law on child marriage. Nonetheless, such practices are tolerated by state officials, again in the name of promoting social harmony.

Among the *Shinasha* of Benishangul Gumuz, one of the five types of recognized marriage is *biqaa* (abduction of the girl). Typical justifications for *biqaa* are: the girl's family is unreasonably delaying the marriage date, another person is trying to take the girl, or the girl or her parents are refusing the marriage. Sometimes the bridegroom's family will send elders to the girl's family to resolve the dispute; in other cases, the reconciliation process is initiated by people from other clans. The abductor will pay a large monetary penalty and cover part of the wedding costs. Both sets of parents will select elders, no less than seven on each side. The degree of compensation depends on whether the abduction was “consensual” or not. The abductor's payment will be

contribution to the Development Process,” *TD The Journal for Transdisciplinary Research in Southern Africa* 10, no. 3 (December 2014): 152-164, <https://core.ac.uk/download/pdf/206801973.pdf>.

70 See Alemu, “The Mada'a and Mablo of the Afar: Customary,” Section 3.1.

71 Endalew Lijalem Enyew, “Ethiopian customary dispute resolution mechanisms,” *African Journal on Conflict Resolution* 14, no. 1 (2014), <https://www.accord.org.za/ajcr-issues/ethiopian-customary-dispute-resolution-mechanisms/#:~:text=The%20customary%20dispute%20resolution%20mechanisms%20are%20run%20by%20elders%3B%20involve,restoring%20the%20previous%20peaceful%20relationship.>

returned to the bride and bridegroom as marriage donations.⁷² As will be seen below, marriage by abduction — often, if not typically, accomplished through violence and rape — is practiced to varying degrees in most Ethiopian states. In some, although accurate data is lacking, it may be the norm rather than the exception.

However one views CDR from a societal or political perspective, the issues it raises from a legal standpoint and, more particularly from the standpoint of women’s legal rights and gender equality, are clear. Despite such legal issues, CDR is defended by some Ethiopian legal scholars, and especially those who favor weakening the authority of the Constitution in favor of strengthening legal pluralism and state and local autonomy. Some Ethiopian scholars state that people submit disputes to CDR courts when they do not have adequate evidence to support their case in an official court. This misses the point as it should be the job of a competent police and prosecutorial function to investigate and gather evidence.⁷³ The broader appeal of maintaining CDR has been formulated as such:

CDR systems are culturally relevant and often viewed as the most legitimate source of justice to the participants. The systems, it is said, reflect widely held beliefs, norms and values of the community. They are generally appropriate to local contexts, particularly in close-knit rural communities where people need to cooperate on a daily basis.⁷⁴

This is why CDR is trusted in traditional communities and formal justice is not. Formal justice is seen as distant from community traditions, norms, and social control; it is seen as an alien imposition on the way things have always been done. Of course, this is exacerbated by perceptions of corruption, incompetence, cultural hegemony of particular groups, capital regions, or elites. One can look at the issue of trust from the standpoint of the defects in the national justice system or from the standpoint of why a local traditional community would likely distrust any variation from both their “traditions” as, following Bourdieu, variously, strategically, and “flexibly” interpreted to suit the interests of the parties with the balance of power.⁷⁵

As a response to such defenses of the manifest legal inadequacy of Ethiopian CDR,

72 Bayisa Besie and Lemessa Demie, “Customary Dispute Resolution in Beni-Shangul Gumuz with Emphasis on Shinasha Society,” in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Addis Ababa: Centre français des études éthiopiennes, 2008), <https://books.openedition.org/cfee/491>.

73 The World Bank, “Ethiopia Legal and Judicial Assessment,” 13, <https://www.lawethiopia.com/images/studies/EthiopiaSA.pdf>.

74 Getachew Assefa and Alula Pankhurst, “Facing the Challenges of Customary Dispute Resolution: Conclusion and Recommendations,” in *Grassroots Justice in Ethiopia: The Contribution of Customary Dispute Resolution* (Addis Ababa: Centre français des études éthiopiennes, 2008): 260.

75 The classical and seminal discussion in the extensive literature is Bourdieu’s *Outline of Theory of Practice*, reflecting his extensive fieldwork among North African pastoralist Kabyle communities. The original French version, *Esquisse d’une théorie de la pratique* (1972) contains extensive ethnographic material not included in the abridged English version published by Cambridge University Press (1977).

one must ask *who benefits* from the preservation of traditional mechanisms and norms? In whose interest does such a system operate that ultimately merely functions as an instrument of social control that is only limited by the perceived interests of the community as a collective entity or by the elites, elders, and/or hereditary leaders who dominate CDR? To what extent local legal norms should be regarded as legal, or even as rules, is one of the more vexed issues in legal anthropology. Bourdieu, Commaroff, and others show how far these “norms” are at the operational level from laws or the rule of law as reflected in a functioning justice system. In the “community cohesion” that CDR supports, the losers of such cohesion are women, children, all marginalized groups, “outsiders,” and minorities. It is taken to “benefit” the community because the interests of the community are taken as identical to the interests and values of the dominant clans or families and the patriarchal hierarchy they enforce. Their view of what is “good for women” provides the rationale for the system they enforce, which benefits those in power.

Further, CDR may not even serve its basic function of efficient peacemaking. It has been suggested that, “In the absence of CDR, systems of feuding or revenge may prevail.”⁷⁶ On the other hand, the anthropology of feud shows that CDR does not necessarily prevent blood feud, revenge killings, honor killings, or rape, but rather in the best case provides a mechanism for “preserving social harmony” at the cost of victims.⁷⁷ In the worst case, the “resolution” soon fails because of community power dynamics or only provides a pause until the next round as the cycle of conflict, violence, and killing continues. Thus, CDR may assist in ending feud, at least temporarily, through blood money or other forms of restorative compensation, but these may not be based upon attributions of responsibility as much as the social and political relations within a (patriarchal) community.⁷⁸

Resolution of the structural conflict between the practices of the customary courts and the Ethiopian constitutional framework will not be accomplished through legislation alone. It is insufficient to simply promote formal courts in hope of diverting cases away from CDR. As previously discussed, formal authorities in Afar defer to CDR and even “encourage disputants to settle their disputes outside the regular court

76 Assefa and Pankhurst, “Facing the Challenges of Customary Dispute Resolution,” <https://books.openedition.org/cfee/516?lang=en>.

77 Hailu, Kassa, and Balehegn, “Traditional Governance Systems and their Operational Linkage with Formal Governing Structures in Aba’ala Woreda, North Afar,” in *Federalism and the Protection of Human Rights in Ethiopia*, eds. Eva Brems and Christophe Van der Beken (LIT Verlag, 2008), 211-232, 222-230. In addition, see the classic study of feud by S. Wilson, *Feuding, Conflict and Banditry in nineteenth century Corsica* (CUP 1988).

78 In addition to Bourdieu, on feuding, see, for example, the classic study of feud by S. Wilson, *Feuding, Conflict and Banditry in nineteenth century Corsica* (Cambridge: Cambridge University Press, 1988).

system.”⁷⁹ In such communities, where the formal judiciary is either subordinated to CDR or heavily socially stigmatized, it will be ineffective to simply divert more resources into the formal system or instruct women on the benefits of seeking formal courts. An Afar, for example, may be *sued* or otherwise sanctioned for resorting to the formal courts without community authorization; this offense is called “Cafruna, which means ‘he accused me in the Christian court’ and some of [the authors’] interviewees mentioned that there is a fine (165 *birr*) for that.”⁸⁰

Also instructive is what occurs when there is murder involving Afar and Christians/non-Afar. The joint tradition of these communities is to resort to dispute resolution by the traditional Gereb. This “contradicts the criminal law principle that obliges the responsible state organ to ensure prosecution of a criminal offense on behalf of the public.” The Afar do not recognize punishments from the formal justice system as resolving the dispute. Even after someone has served a 20-year sentence, there must be resort to the ADDA.⁸¹ If not, retaliation may occur, even decades later, as is the norm in societies that engage in blood feud.⁸² The clan elders serve as a substitute for the prosecutorial institution. Sharia courts function in Afar alongside the ADDA system, though their jurisdiction does not include criminal matters and is confined to “marriage, divorce, and succession among Muslims.” Yet, Sharia courts often overlap with the ADDA, “sometimes claiming jurisdiction over particular cases that arise in the regular courts.”⁸³ Promoting gender equality and creating opportunities for women to participate even as equals, let alone leaders in their communities and beyond, may require subordinating CDR practices to federal gender laws, whether by working with CDR authorities to uphold gender equality or by formally establishing CDR so that it is enveloped by state laws and oversight.

For all of the reasons above, CDR has persisted as the primary dispute reconciliation forum in many rural communities, and especially among pastoralists whose connection to state institutions may be more tenuous than communities in some northern states. As multiple government initiatives, UN projects, and documents such as the 2020-

79 Hailu, Kassa, and Balehegn, 223-229.

80 *Ibid.*, 222.

81 *See, e.g.,* Michael Herzfeld, *The Poetics of Manhood* (Princeton: Princeton University Press, 1985): 79-82, on how even a substantial prison sentence does not erase the need for blood vengeance.

82 Wilson and Bourdieu, cited above, provide numerous examples of the way that vengeance may be deferred and play out over years or decades.

83 Hailu, Kassa, and Balehegn. There are no officially established social courts in Afar, but in nine kebele in the woreda in Tigray bordering the Afar area, the social courts disposed of 233 cases in a six month period, consisting of “small-scale civil matters and petty contraventions.” The authors mention gender issues in only one sentence. In making recommendations for a transitional period of integrating the ADDA into the formal system by making them like social courts, they note that one of the things a reformed ADDA should do, unlike the existing ones, is to, “discourage gender discrimination.”

2024 Roadmap indicate, there will be a number of difficulties involved in promoting the formal judicial system if it is to be held as exemplary for protecting women's rights. The formal system is under scrutiny from citizens and government officials for its slowness, unpredictability, corruption, and lack of capacity at the state and federal levels.⁸⁴ These shortcomings reflect a need to cultivate an environment for economic development that is predictable and stable; in other words, a justice system that instantiates the rule of law. In criminal law, the systemic shortcomings result in the kinds of decisions involving women's rights that have tarnished the reputation of the judiciary, such as in the notorious Woineshet Zebene Negash case (discussed in Section 3.1.ii.) where the African Commission on Human and People's Rights

84 Abebe Bezabh, "Approach to Integrate Indigenous Dispute Resolution Mechanisms as Restorative Justice in Ethiopian Criminal Justice System", *Sociology and Anthropology* 7, no. 7 (2019): 313-326. "One of the member of Aweramba community told that, the victim of crime who reports a case to the criminal justice system has to patiently wait for long processes of investigation, prosecution, court adjudication, and final judgment. The number of criminal cases adjudicated in the formal justice system is the smallest in proportion to the total number of criminal disputes in the community. The study informants concerned that, the cases brought to criminal justice system encountered with serious procedural delay, the mistake of fact, false accusation, false witnesses, the corrupt practice of criminal justice officials', and wrongful conviction. These problems have caused the community to be uncertain on the criminal justice system, and highly interested to use those customary dispute resolution methods. For example, [an] interview with Zumera who is founder and father of the Aweramba Community, shows that justice shall be served by considering the indigenous solutions. According to Zumera, the social structure of Aweramba community is peaceful and dignified. Some interview respondent has also proved Aweramba community is relatively crime free society. The community has a self-administered justice process by the indigenous resolution. ... Court Judges and public prosecutors concerned the circumstances of criminal dispute resolution which has been inundated with complicated legal and practical challenges. First, the community including victim preferred practice IDRM, even for serious public matters. Second, criminal justice has lacuna to organize coherent legal frameworks and responsible organs to accommodate such community interest. Third, there is a lack of legal experts in the field of indigenous laws. The prosecutors argued that there is 'legal deficiency' in the field of IDRM. Ethiopian criminal laws are reluctant to include flexible provision of restorative nature. Prosecutors and Judges admitted the undeniable contribution towards the accessibility and fairness, as well as complementing the efficiency of the justice sectors. To exercise the IDRM fruitfully the court Judges suggested the enactment of substantive and procedural laws. But, the indigenous resolution has not supported in other specific areas that are different one locality to the other. For example in Aweramba community crimes of homicide between families solved by their indigenous mechanisms whereas, such a solution may not work in somewhere in other parts of the country. So, the criminal justice system shall be flexible in considering the IDRM based on each community's interest as far as the solution is a predictable peaceful feature in the society. Contemporarily, no matter the crime and criminal behavior the criminal justice system was unsuccessful to stop the community from using IDRM. As discussed above, there are many examples in the Amhara region; Aweramba in Fogera worda, 'Ydem-Erke' in Lalomama meder Woreda and Amare in Wogdiworeda. The interviewed informants in these areas confirmed that the communities considerably using IDRM even for serious crimes like that of homicide and rape. The way of applying is inconsistent and without acknowledgment of the criminal justice system. ***The formal retributive criminal justice system inundated with continuing challenges that related to victims participation, community interest, and lesser concern to the harms of victims and restoration of the damage. In addition, the criminal justice system has criticized by high cost, delay, ineffectiveness, increasing number of the prison population, and inefficient deterrence effects. Even more, serious problems of crime sin investigation which is more dependent on the oral witnesses have obsessed the legal personals to corrupt and mistaken decisions.***"

found that the Ethiopian courts at both the highest state and federal levels had failed to apply the relevant laws and constitutional provisions regarding a woman's fundamental rights.

We may conclude from the review of CDR as it is practiced in Ethiopia that it does so in a manner inconsistent with the Constitution, Ethiopia's international human rights obligations, and the national Criminal Code. What this means is that every decision in customary adjudication that exceeds the jurisdiction of CDR is necessarily extrajudicial and the sanctions imposed are illegal. This underscores the fact that for individuals and communities subjected to such traditional practices in denial of their fundamental human and constitutional rights, the rule of law in Ethiopia simply does not exist.

2.3 Main Challenges

Effective implementation of Constitutional principles so as to achieve gender equality will require a joint effort by the executive, legislative, judicial, and law enforcement branches of government as well as the participation of civil society. The protection of women's rights requires not only a constitutional guarantee, but also an adequate legislative framework, judicial application in the face of violation, and implementation by officials from law enforcement, the judiciary, and other relevant government entities. Equally importantly, it requires a set of cross-sectoral government policies that can address the social, educational, economic, and other challenges that will present obstacles to even the best institutionalized legal framework on gender equality. This requirement has been repeatedly recognized by the Ethiopian government in numerous national initiatives and, most recently in regard to key components in achieving gender equality in the National Roadmap for the Elimination of Child Marriage and FGM 2020-2024. Federal policies will have to effectively engage with the realities of local practices and traditions as well as the resistance of state officials in the judicial branch and other branches of state government, as well as stakeholders in the *kebele*-level, Sharia and CDR court systems. As an Ethiopian legal scholar stated: "While it is clear that a pluralist legal system exists in Ethiopia, current reform efforts appear to have little understanding of or engagement with the traditional systems in current reform efforts."⁸⁵

Apart from these challenges, there will be a requirement for investment in judicial and educational infrastructure by the federal government. As Ethiopian scholars have argued, many individuals that live in more rural and pastoral communities also

85 The World Bank, "Ethiopia Legal and Judicial Sector Assessment," 13, <https://www.lawethiopia.com/images/studies/EthiopiaSA.pdf>.

lack knowledge of or access to formal justice institutions.⁸⁶ If such communities are to be incorporated into the constitutional legal order that protects women's rights, this will require far more than infrastructural expansion and improvements. Among other issues than those already noted, legal aid will have to be dramatically expanded. The accomplishments of EWLA, from passing the Revised Family Code to helping women in appealing their cases, demonstrate what such commitments to representing underserved women can accomplish. Providing genuine access to justice for all Ethiopian women will necessitate not only the expansion of such legal services, but also a dedicated program of building trust within communities. Other reports and scholarly literature have noted other systemic problems relating to the competency, selection and appointment, and remuneration of judges and prosecutors. Finally, as noted, women often subscribe to the authority of the Sharia courts and CDR out of fear of social exclusion and loss of social security from their kinship, or from other forms of overt or implicit coercion.

In addition to the systemic issues already discussed, there is the overarching problem of how to deal with the commitment to the extreme form of legal pluralism that Ethiopia has embraced. One way in which some legal systems, like that of Kenya for example, have dealt with such challenges is to, on the one hand, recognize the diversity of customs and traditions among its citizens while, on the other hand, making certain fundamental human rights norms universally applicable, such as 18 as the minimum age of marriage. While there are provisions of Ethiopia's federal Constitution and laws that appear to do that, they are not enforced and are also constructed with ambiguities or gaps that have led to needless debates about the supremacy of the Constitution or federal law in relation to law and practice in the states. For example, the Somali Family Code is replete with contradictions between the FDRE, Somali state Constitution, and Ethiopia's international human rights obligations in ways that compromise women's rights. As one commentator notes, such contradictions are accepted, with the result that, "in order to "protect the pluralistic features of the Ethiopian society [...] the principle of legal pluralism has the potential of eroding the constitutional guarantees given to women."⁸⁷

Other non-legal barriers have been discussed above that prevent people, and especially women, from having access to the formal justice system. Lack of awareness, illiteracy, patriarchal control, and cultural and social impediments are important reasons why rural and pastoral women do not use the formal justice system. Additionally, in some regions, such as the agro-pastoral communities that live in the

86 Ibid., 29-35.

87 Adem Kassie Abebe, "Human Rights Under the Ethiopian Constitution: A Descriptive Overview," *Journal of Mizan Law Review* 5, no.1 (2011): 45.

Somali region, social organization is constructed on a web of different affiliations and identities, like clan and class. These relationships are closely related to customary and religious laws and are mutually reinforcing. If we ask again why it is frequently said that Ethiopians do not trust their justice system, rather than just accepting the fact that there are many systemic inadequacies, we should inquire further. Who is it exactly that doesn't trust formal law and why? Apart from the inadequacies often cited, it is also the case that CDR serves the interests of power holders in local communities. Customary and Sharia law reinforce and support patriarchy, gender inequality, and systematic discrimination against women in every aspect of their lives. Why should women trust a formal justice system, especially at the state level, about which they know little because of lack of access to relevant education and which has produced so many infamously bad decisions that violate the guarantees of the very laws on which the formal justice system is founded? How to address these systemic issues is a key challenge for any national policy initiative that seeks to enable women, especially in rural areas, to participate equally in the life of their community, state, and nation.

One example of civil society's dissatisfaction with the formal justice system is an article published by Addis Fortune in 2017:

It is not, in any way, to indicate that the absence of judicial infrastructure, lack of professionalism, an insufficient number of justices and judges, lack of commitment, rent-seeking mentality are not contributors to the intolerably sluggish, inefficient, unpredictable, and costly judicial system in the country. Indeed they are, including the many cultural legacies and practices that are allergies to justice. However, in the absence of interest to look into the root of the problem, which is a lack of judicial independence, it would be impossible to improve the effectiveness and the level of impartiality of justice, put in place an efficient system of justice, and advance efficient law enforcement.

The author's identification of the "root problem" is the lack of judicial independence. How is that problem perceived and understood in local traditional communities? Likely not as "judicial independence," but as corruption, slowness, and law not well understood and alien to local traditions. At the same time, it is of the very nature of CDR that there is no notion or even possibility of independence and impartiality because it is a community-based collective decision. In CDR, competency of the elders is socially assumed, and it should be acknowledged that local justice is also rife with "corruption" and elite influence.⁸⁸

⁸⁸ Addis Fortune, "Ethiopian Justice System Must Win Over Public Trust, Confidence," Vol 17 No. 890, 20 May 2017, <https://addisfortune.net/columns/ethiopian-judicial-system-must-win-over-public-trust-confidence/>. "Of course, the government and authorities in the judicial system have never denied that there exists a problem

Stepping back and viewing the challenges outlined above from a broader and long-term perspective, it would seem that Ethiopia faces a choice, to put it perhaps too simply, between legal pluralism and the rule of law. To frame it another way, it must decide between continuing to allow essentially self-governing local communities to enforce a patriarchal social order, or upholding its Constitution's promise to the women, children and minorities of the country.

except that they are always disingenuous in figuring out where exactly the primary institutional bottlenecks lie and do not give a lasting solution[...]Even though the essence of judicial independence is founded on the premise that decisions should be impartial and not be subjected to influence from other branches of government or political interests, the interventionist behaviours of the successive governments of Ethiopia could not institutionalise an independent judiciary, that all citizens could trust and feel confident about. Putting the past regimes aside for now, it would not be simple for us to imagine that the current EPRDF government wants to see an independent judiciary. It all emanates from its ideological conviction. The EPRDFites are interventionists. The type of developmental state they run is all about intervening in the political economy. It is hard to be convinced that the behaviour of playing vanguard and the long hand of the government could suddenly hold itself back from the gates of the judicial system. It is a stand and most of all a behaviour of the government that not only applies to the institutions that may need routine political guidance but it also overflows to those institutions that are supposed to work only by the rule of law. With the intention of making the concept of a developmental state and revolutionary democracy a hegemonic public belief, the ruling party has scratched multipartyism and diversity of political views from its mind and is desperately demanding everyone to conform to its ideals. The coalition does not like to see any obstacle coming from anyone against its ideological conviction. Neither is the judicial system left out from the list, albeit in a systematic way. The process of nominating judges is not transparent in practice. EPRDF works tirelessly in selecting and indoctrinating university students in preparing its future leaders. The process of indoctrination includes law school students who become the future judges. It has been witnessed that many among the appointed leadership of the judicial system were previously public prosecutors or part of the executive body of the government, who may want to be more catholic than the pope in defending their ideology instead of working to maintain the rule of law. The tribunals under the many executive branches of the government are where the government influences decisions or, if not, do not create the impression of an independent judiciary among the public. Add up to this the broad laws that the law-making body of the government produces. Proclamations that give a chance for wider interpretation are opportunities for the executive body to manipulate and use the gap to its advantage. Above everything else, there is not a strong parliamentary check on the accountability of the process in particular and the judicial establishment in general due to the fact that the parliament itself is troubled for its gross partisanship to the ruling party. All these make the judicial system not act independently. Without independence, it cannot get massive support from the public, and gain its trust and confidence. In the end, unless the system genuinely investigates to understand its institutional problems and try to transform itself accordingly, trying to achieve good governance, human security, and sustainable development in the country will be in vain[...]"

CHAPTER III

Case Studies



This section takes four key issues of gender equality as case studies that exemplify challenges in the judiciary that must be tackled in order to take multisectoral federal action to advance gender equality: child marriage, FGM/C, human trafficking, and property rights. The challenges in the legal system described in Section II prevent progress from being made on each of these key issues. It follows, therefore, that addressing these key issues will necessarily confront such systemic challenges. The Ethiopian government has recognized the importance of the problems represented by these case studies, all of which are the subject of various national initiatives, roadmaps, or action plans. How effective such initiatives will prove to be depends in significant part on whether the challenges identified in the following case studies are addressed and changes are made in the judiciary system to enable multisectoral action at national, state and local levels.

3.1 Child Marriage

In general, girls in urban areas have had a significantly higher rate of making independent marriage decisions as compared to girls in rural areas. There are several reasons that parents want their daughters to marry early, including parents' fears of their daughters losing their virginity and potentially becoming pregnant before marriage, prevailing patriarchal norms regarding daughters, and the elevated social status of the bride and groom's families and additional wealth that is gained through bride price. Apart from familial and societal pressures, young girls may also be receptive towards child marriage for several reasons. First, given the social prestige often associated with being a married woman, many "choose" to marry to avoid being classified as immature. Second, girls may want to seek independence from their parents' control and imagine they will achieve that through marriage. Third, many girls may not believe that marriage before the age of 18 is early if they live in communities where child marriage is a norm. Fourth, girls often lack access to educational and other opportunities. Even if girls are able to attend school, which has been cited as an avenue for reducing child marriage rates, the high youth unemployment rate in Ethiopia often inhibits the future prospects of well-educated girls.¹ Finally, where child betrothal or marriage by abduction are practiced, as in the case in various regions of Ethiopia, girls and young women may literally have no choice, apart from the radical step of flight from their family and community.

Some external factors have exacerbated child marriage rates in recent years. An increase in natural disasters associated with climate change have forced families

1 Nicola Jones et al., "Surprising trends in child marriage in Ethiopia," March 2016, 3 and 7, <https://www.unicef.org/ethiopia/media/1506/file/Surprising%20trends%20in%20child%20marriage%20in%20Ethiopia.pdf>.

into poverty and internal displacement within Ethiopia. The 2018 drought affected 8.5 million people and left 5 million children vulnerable to child marriage, as their parents lost money — especially those who worked in the agricultural industry, where 71% of employed men and 37% of employed women work² — and were forced to give their girls away as brides.³ For the women working in the agricultural sector, most are currently married, living in rural areas, have no education, have five or more children, and are in the lowest wealth quintile. Similarly, after a 2015 El Nino weather phenomenon, many families gave girls away to marry earlier so families could receive a bride price, in addition to ensuring that the girls could be taken care of by wealthier husbands.⁴

Ethiopia has made several pledges to end child marriage. For instance, they have signed the UN Global Development Goals to End Child Marriage by 2030, and have co-sponsored Human Rights Council resolutions on Child, Early, and Forced Marriage in 2013, 2015, and 2017.⁵ As reflected in the UPR Ethiopia National Report of February 2019, the government recognizes the long road ahead to achieve the overarching goals of its gender equality policy framework. The National Report states some of the measures already taken:

Ethiopia is committed to taking all the necessary measures to ensure the protection of the family. *The Constitution guarantees women equal rights as men during and after marriage. The Family Code enacted by the Federal Government and family laws of the regional states provide for the equal rights of women to communal property during the dissolution of marriage. Special family benches have been designated in federal court structures to entertain all family matter cases.* These courts are equipped with trained judges and social workers to ensure best interest of the family members throughout the litigation process. Moreover, free legal aid service on cases of family matters are offered by the Ethiopian Human Rights Commission, MOWCYA, the federal and regional offices of the Attorney General, Regional Justice Bureaus as well as CSOs.⁶

Ethiopia's second Growth and Transformational Plan (GTP II) has, for the first time, included ending violence against women as a priority. *During the period of*

2 Central Statistical Agency (CSA) [Ethiopia] and ICF, *Ethiopia Demographic and Health Survey 2016* (Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF, 2016), 37, <https://dhsprogram.com/pubs/pdf/FR328/FR328.pdf>.

3 "As Ethiopia faces catastrophic drought, more girls are forced into early marriages," World Vision, January 19, 2018, <https://www.worldvision.org.uk/news-and-views/latest-news/2018/january/ethiopia-faces-catastrophic-drought-more-girls-are-forced-early/>.

4 Katy Migiro, "More child marriage in drought-hit Ethiopia with risk of 'full-blown disaster,'" Humanitarian Response, December 15, 2015, <https://www.humanitarianresponse.info/en/operations/ethiopia/article/more-child-marriage-drought-hit-ethiopia-risk-full-blown-disaster>.

5 "Atlas," *Girls Not Brides*, <https://www.girlsnotbrides.org/where-does-it-happen/atlas/ethiopia/>.

6 UPR Ethiopia National Report, 10 (Para 65-66).

implementation, Ethiopia will establish hotlines for women and children experiencing violence, set up 11 new One-Stop Centers and rehabilitation centers, and also strengthen existing ones. In line with this plan, currently, there are 9 One Stop Centers and 16 safe houses throughout the country. The establishment of free hotline service on cases of GBV is expected to undertake before 2020.

[...]

The new National Women's Development and Change Strategy and the revised package for the realization of the strategy have put in place a clear direction on protection, prevention, and provision of services for women survivors of violence. *Furthermore, the MOWCYA is committed to ending violence against women by including indicators on violence reduction in its 5-year sectoral plan (2016–2020).*⁷

While these measures in the judicial branch are important steps, the National Roadmap on Child Marriage and FGM/C 2020-2024 indicates that more measures will be required to address the social and cultural values, norms, and practices that produce and reproduce the structural gender inequality which results in the violation of women's and children's fundamental rights.

3.1.i. Legal Framework

Several international treaties and protocols that Ethiopia is party to also have clear language outlawing child marriage. The African Charter on the Rights of the Child and the Maputo Protocol specify 18 as the minimum age of marriage. The Charter also requires registration of all marriages. Other international human rights instruments such as CEDAW and CRC, which the Ethiopian Constitution incorporates into its domestic law, provide similar and further protections. Apart from its international human rights obligations, the Ethiopian government has deployed a robust legal framework for protecting the rights of women and children. Though there may be some gaps, including the issue of consent and the absence of a provision in the Criminal Code on marital rape, the framework is nonetheless fairly comprehensive. It is within this larger constitutional and legal framework that a discussion of child marriage must be framed.

Numerous articles within the federal Constitution articulate protections of the rights of women. Article 35 of the Constitution commits the government to affirmative actions acknowledging the disadvantaged position of women.⁸ Article 34 protects equal rights for women and men in marriage. Article 27 gives women the

⁷ Ibid., 17-18 (Para 119-122).

⁸ Megersa Dugasa Fite, "The Ethiopia's Legal Framework on Domestic Violence against Women: a Critical Perspective."

same rights to legal guardianship of their children in marriage and informal unions. Article 32 provides women with the same right as men to choose where to live. Within the Criminal Code, Article 648 provides for three years imprisonment of whoever conducts marriage with a minor when the minor is over 13 years of age, and seven years imprisonment if the minor is under 13 years. Article 587 provides for 3 to 10 years imprisonment for marriage by abduction.⁹ As noted above, marriage at 16 requires ministerial approval under the Family Code, though, as a matter of practice, such approval is rarely sought. Apart from such exceptional circumstances, 18 is the absolute minimum legal age of marriage. One may wonder why the criminal law doesn't reflect this age requirement. The Criminal Code should follow the legal requirement for marriage and provide punishment for marriage below 18 (subject to an exception for cases where ministerial approval has been obtained) and more severe penalties for marriage below 16, rather than below 13.

The Revised Family Code (Proclamation No. 213/2000) outlines the laws surrounding marriage, divorce, and pecuniary relations across five chapters. The preamble commits the state to protecting free consent and equality between the spouses, prioritizing the protection of children in accordance with the Constitution as well as international commitments, and settling family disputes efficiently and fairly.¹⁰ Article 12 models Article 34 of the Constitution. Article 6 protects free and full consent to marriage. Article 9 protects widows from harmful practices (e.g. forcing her to marry her deceased spouse's sibling).

Articles 1, 3, and 4 of the Revised Family Code recognize three forms of marriage: civil, religious, and customary. Article 40 ensures that all three forms receive the same legal treatment. Informal or de-facto marriages are not regulated by law. Article 7 places the legal age of marriage at 18 but allows the Ministry of Justice to allow women and men to marry under 18 for serious cause. Article 9 prohibits child marriage.¹¹ Articles 40 and 50 ensure that both women and men have the right to be recognized as the head of the household. Article 50 provides women with the same rights and responsibilities to children as men in marriage. Article 54 echoes Article 32 of the Constitution. Article 76 ensures that women have the same right as men to initiate divorce. Article 81 ensures that women and men have the same requirements for formalizing annulment.¹²

9 OECD, Gender Index: Ethiopia, 2019, <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/ET.pdf>.

10 Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, "The Revised Family Code of Ethiopia," (July 2000): 1, [http://hrlibrary.umn.edu/research/family%20code%20\(English\).pdf](http://hrlibrary.umn.edu/research/family%20code%20(English).pdf).

11 OECD, Gender Index: Ethiopia, 2019.

12 Sofie Kjærli-Wijnen, "The Revised Family Code of 2000's Impact on norms and education in Ethiopia," Masters thesis, (University of Oslo, May 2013), <https://www.duo.uio.no/bitstream/handle/10852/38011/>

The legal framework on child marriage adumbrated above is clear and broad. No person under 18 years old may enter marriage, subject to the one exception of ministerial approval for children aged 16-18. Yet, child marriage is entrenched in society. As Tewedaj Kebede wrote:

The problem lays on the fact that rape and abduction are not considered as a problem in Ethiopia., Particularly in the rural parts of the country, it is considered as normal and must mainly because it is deeply rooted within the norms, traditions and culture of the society. *Southern parts of the country could be the typical example in this regard where more than 80 percent of marriages are the result of abduction. The problem goes to the extent of forcing the abducted and raped girl to stay with the abductor and live with him as a wife without her consent.*¹³

From a legal standpoint, not only should the rape accompanying the abduction be prosecuted as a criminal act, but every further sexual act after the abduction constitutes rape. That is, while Ethiopian criminal law does not penalize *marital rape*, in the case of abduction there has been no legal marriage and, hence, further sexual relations constitute continuing rape. Needless to say, such prosecutions have not been forthcoming.

We noted above the various programs undertaken by the government to improve its record on child marriage. In regard to progress that has been made, Asrat Adugna Jimma provides statistics on the relative decline in early marriage in some states as well as statistics on changes in prevalence of FGM/C. Despite the relative decline, Jimma's discussion of marriage by abduction indicates that it is still practiced throughout the country as an accepted, traditional form of marriage, though with variation among the states as to its prevalence. The overall figures on child marriage are striking: "the practice is as high as 80 percent in Oromia region and as high as 92 percent in SNNPR with a national average of 69 percent."¹⁴ He echoes the concerns of the CEDAW Committee, which recommends several measures including special investigation units and judicial benches, as well as provision for legal aid and other services. The Committee, he notes, expresses its concern that:

Kjernerli-Wijnenxmaster.pdf?isAllowed=y&sequence=1.

13 Tewedaj Kebede, "The plight of women-A call for a change," *The Reporter* (Addis Ababa), December 8, 1999, <http://www.hartford-hwp.com/archives/33/083.html>.

14 As the African Commission on Human and People's Rights has also noted, in *Equality Now and EWLA v. Federal Republic of Ethiopia* (2007): "[...]the practice of marriage by abduction and rape still exists despite the commendable on-going legal and institutional reforms reported by the Respondent State. This entails that beyond Ms Negash, other girls and women are under a continuing risk of being abducted, raped and forcibly married. As noted above, the Respondent State is under the obligation to adopted escalated and targeted measures to ensure that this practice ceases completely, and in that regard it has a margin of appreciation bearing in mind its knowledge of the peculiar national realities."

criminal law provisions are not consistently enforced because of insufficient allocation of funds, lack of coordination among the relevant actors, *low awareness of existing laws and policies on the part of law enforcement officials, lack of capacity to apply the law in a gender-sensitive manner, and discriminatory attitudes.*

Jimma notes that victims may not report such crimes because of social taboos and lack of trust in the legal system. Given the deficiencies in the legal system, it is not surprising that there would be a lack of trust even if social pressure was not so great.¹⁵

Moreover, some studies have indicated important regional variations, both in prevalence and in practices:

Even though the practice is common in many parts of the country, studies shows that the situation is worse in the northern parts of the country where the minimum marriageable age of a girl goes down as lowest as the age of eight or nine. Sometimes parents promise to give their daughter to a man as soon as they gave birth to a baby girl. The highest percentage of early marriage is recorded in Amhara and Tigray region where it [reaches] up to 82 and 79 percent, respectively. The prevalence rate is also quiet high in Benishangul, Gambella, and Afar regions of the country where more than 50 percent of marriage is concluded at early age. A study conducted by population Council in two [woredas] with in the Amhara region indicated that 14 percent of women were married before they attain the age of 10 and 39 percent of them were married before they attain the age of 15. And more than 50 percent of them were married before the age of 18.¹⁶

3.1.ii. Gaps in the Legal Framework

For the reasons enumerated in Section II, aspects of the judicial system and legislation continue to enable the practice of child marriage in its various forms. In addition to structural and constitutional issues, the federal and state codes and proclamations (laws) pose additional challenges for achieving gender equality and women's empowerment. To take one key example: the legislation around child marriage is clear on the point that children under age 18 may not marry. However, the Revised Family Code provides that a child may marry at 16 with ministerial approval. In fact, such approval is rarely if ever sought, and courts nonetheless regard 16 as a legitimate age for marriage. Sharia and customary courts routinely

15 See Jimma, *The Rights of the Girl-child in Ethiopia*. This is the most comprehensive study of the framework, implementation, and challenges regarding the rights of female children. Jimma analyzes the domestic legal framework, the government initiatives and policies, and the interaction of Ethiopia with the various UN committees as well as the international human rights framework. The treatment of the various age thresholds for attaining majority or legal responsibility in different legal codes is important as well as the detailed discussion of child marriage related to issues of age of consent.

16 Pathfinder International/Ethiopia, "Report on causes and consequences of early marriage in the Amhara region'," Addis Ababa, Ethiopia, July (2006), 2.

approve marriages of children much younger even though this clearly violates the law. Although the average age of marriage for girls has been increasing, the majority of Ethiopian women still marry before the age of 18 and a substantial number before 16. This is in addition to the practice of child betrothal, which can involve infants.¹⁷

There are also other legal provisions that undermine the implementation and enforcement of the standard of 18 as the minimum age of marriage. For example, dissolution of child marriage relies on application to the federal courts. Yet the law also requires that the objecting party lodge the claim for dissolution *before* she reaches the age of 18. Article 31 of the federal Family Code says that applications for dissolution of child marriage are no longer valid when the applicant has reached the legal age of marriage. Quite clearly, victims of child marriage are unlikely to have the knowledge and support necessary to apply for dissolution of marriage before age 18. Nor, as a female minor, can they appear before the court. In other words, this provision is a Catch-22 unless the guardian of the victim applies for her before she reaches the age of 18. This would only happen when the parents or guardians are not the ones who have arranged or consented to the marriage in the first place, which is normally the case with the vast majority of marriages that are arranged by the families. Under the Kenyan marriage law – which recognizes five forms of marriage including religious, traditional, and civil, regardless of the traditions according to religious or traditional custom – a marriage where a party is under 18 is simply void *ab initio*. Under this provision, the marriage doesn't need to be dissolved, because it was never a marriage to begin with.¹⁸ In Ethiopia, however, a marriage that is illegal either because of lack of consent or failure to attain the minimum age of marriage is de facto validated when the objecting party reaches the age of 18.

This brief overview indicates that the formal legal framework encompasses most of the essential requirements for the protection of women's rights in marriage. Nonetheless, as pointed out by CEDAW and UPR recommendations, significant policy reforms are needed to address remaining concerns in combatting child marriage:

- (1) eliminate or greatly restrict the provision for exceptions that permit marriage with a minimum age of 16 (article 7(2) of revised family code).
- (2) require compulsory registration of all marriages regardless of under which rubric they are carried out

17 Aschalew Ashagrie Ashagrie and Martha Belete, "Family Code Teaching Material," (2009), 35, https://www.lawethiopia.com/images/teaching_materials/family-law-teaching-material.pdf.

18 Kenya Gazette Supplement of the Republic of Kenya, "The Marriage Act," (May 2014), 40-42 (Para 11-12), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf.

- (3) require in-person consent rather than consent conveyed in writing or by guardians, etc. The code requires a “free and full consent” of both parties, but this is meaningless if not in-person under non-coercive circumstances and if one of the parties is not of an age to meaningfully and legally consent. Further, the code provides that the parents of the proposed future spouses may apply for the exception, thus making consent nugatory. This is especially the case because the intended spouses may not contest the application by their parents.
- (4) The family code provides that the marriage is *voidable* upon application of “an interested person or the public prosecutor.” One possible reform would be to provide that marriage is *void* and never legally occurred.
- (5) The family code also provides that the marriage cannot be dissolved if by the time of the application for invalidation the minimum age has been met. This should be eliminated. If the reform suggested in (4) were to be adopted, an application for dissolution would not be required because there was never a valid marriage to begin with.
- (6) The criminal code distinguishes for sentencing purposes between marriage with a minor under 13 (7 year maximum) and above 13 (3 year maximum). Since the statutory minimum age even with the permission of the Minister of Justice is 16, this distinction makes little sense. The categories should reflect where it is illegal per se, i.e. below 16 and 16-18 without the permission required. The age categories should reflect the law on statutory rape and the age from which a female can give legal consent in general.

These suggestions follow the CEDAW Committee’s recommendations as to how both the Revised Family Code and the state family laws and the laws governing the religious and traditional courts should be amended to conform to constitutional and international requirements.

The following well-known case exemplifies the depth of the challenges involved in resorting to the existing legal system in cases of child marriage. In addition to the policy reforms recommended above, it will be necessary to invest in capacity building so as to ensure correct application of all laws protecting children in regard to child marriage.

At 13 years old, Woineshet Zebene Negash was kidnapped and raped by Aberew Jemma Negussie and several of his accomplices. The police rescued her and arrested Aberew. Evidence of Woineshet’s rape was clearly documented in a medical report. Aberew, freed on bail, kidnapped Woineshet again and forced her to sign a marriage contract. Woineshet escaped. For the crimes of rape and abduction, Aberew was sentenced in 2003 to 10 years’ imprisonment without parole; his five accomplices were also convicted and sentenced.

Aberew and the accomplices appealed the case to the Arsi High Court. Because the Zonal Prosecutor had not informed Woineshet of the appeal, Woineshet did not have the opportunity to provide evidence of her second abduction and forced marriage. Relying on the medical report of the initial assault, the Arsi High Court judge interpreted that Woineshet's status as a virgin was inconclusive and then quashed the medical evidence on the basis of purported evidence of "consent." In the absence of any supporting evidence, the judge presumed that "Woineshet was most likely in love [with her abductor] and ready for marriage," and later stated that the rape allegation was "only out of revenge."¹⁹ Apparently, the legally irrelevant and factually unsubstantiated conclusion as to whether or not Woineshet was a virgin influenced his judgment. His assumption that the act had been consensual suggests that he believed that only virgins can suffer rape. Needless to say, this holding clearly violates the Criminal Code, which does not hold virginity as part of the definition of rape. The judge's ruling was encouraged by the Zonal Prosecutor, who suggested that the initial conviction resulted from an excess of "emotion." The Public Prosecutor appealed the case to the Cassation division of the Oromia Supreme Court in 2005, which, astonishingly, held that there was no fundamental error of law. The case was then appealed to the Federal Supreme Court, which, equally astonishingly, held the same.

Equality Now and EWLA filed a complaint at the African Commission on Human and People's Rights on behalf of Woineshet, on the basis of violations of the African Charter. The Ethiopian government argued that it had provided "adequate and effective remedies" for Woineshet. In addition to providing a job and house for her, the government had dismissed the Arsi High Court judge. In a scathing critique of both the judicial decisions and the failures of the Ethiopian state, the African Commission ruled that the Ethiopian state failed to conduct a thorough investigation and respond appropriately through the judicial system. It instructed the state to make further payments to Woineshet and commit to further systemic action against rape and child marriage. The Commission stated:

In the present case, the Commission considers that the decisions of the Arsi high court, the Oromo Supreme Court and the Federal Supreme Court (Cassation Bench) are manifestly arbitrary and affront the most elementary conception of the judicial function. The rulings are barely reasoned. In the relevant parts, both rulings merely state that there was no error of law to warrant a review on appeal. The judgments embody the Respondent State's breach of its duty to offer a decent system of justice for each victim of crime

19 Center for Women, Peace, and Security at the London School of Economics, "Equality Now and EWLA v. Ethiopia," <https://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/makeda/>.

such as Ms Negash. In this regard, the courts' refusal to re-examine the matter in respect of the two key offenders constitutes a denial of justice to Ms Negash and amounts to violation of the right to have one's cause heard as guaranteed under Article 7(1) (a) of the Charter. The courts' decisions also constitute breach of the obligation to give effect to the rights by responding to violations with criminal sanctions as was clearly necessary for the abduction and rape of Ms Negash.²⁰

The decision of the African Commission is important in ways that go beyond the particulars of the case involving Ms. Negash. The Commission clearly states that it is the obligation of the Ethiopian state, not merely to provide adequate redress for the particular victim, but to take *preventative* measures to eliminate the illegal and harmful traditional practices which state institutions tolerate and, in her instance, support. In so holding, the commission affirms the duty of the state to protect the rights of such individuals even where the perpetrators of the relevant crimes were not state actors:

Thus whereas the Respondent State was not directly responsible for the violations primarily committed by private individuals, *these failures to respond to the violations attract the international responsibility of the Respondent State* in respect of the rights that were violated. It is in this regard that the Respondent State is internationally responsible for violations of Ms Negash's rights to: integrity of her person (Art. 4), dignity (Art. 5), liberty and security of her person (Art. 6), and protection from inhuman and degrading treatment (Art. 5).¹³ The failures also amount to the State's direct violations of Ms Negash's rights to have her cause heard (Art. 7(l)(a)), and the right to protection of the law (Art. 3).²¹

The holding of the Commission quoted immediately above draws attention to the way in which international and regional human rights obligations do not just exist on paper, but impose duties on the state to actively implement those obligations. In the case of Ethiopia, it has been widely noted in the legal literature and UN projects and processes that judges and prosecutors appear to be unaware of the applicability of international and regional human rights norms in the cases that come before them. In regard to child marriage, this points out the necessity of the kind of capacity building, oversight, and accountability that will be necessary to ensure that cases like that of Ms. Negash do not occur again. In its decision, the Commission emphasized that when a state is aware of practices such as marriage by abduction, it has a duty to intervene through action, not just through legislation:

In the present case, the Respondent State was aware or must be deemed to have been

20 African Commission on Human and People's Rights, Communication 341/2007, "Equality Now and Ethiopian Women Lawyers Association (EWLA) vs. Federal Republic of Ethiopia," (2007): 29 (Para 137) https://www.escri-net.org/sites/default/files/caselaw/equality_now_ethiopian_w_omen_lawyers_association_decision_2007_0.pdf.

21 Ibid., 30 (Para 139).

aware of the prevalence of marriage by abduction and rape, which meant that girls were under the continuing threat of being abducted, raped and forcibly married in the area where the practice was rampant, and where Ms Negash lived. ***This required escalated measures beyond the criminalisation of abduction and rape under the criminal law that existed at the time.***²²

3.1.iii. Gaps in Data

Reducing the rate of child marriage in Ethiopia cannot be adequately addressed without accurate and robust data on its prevalence, specifically at the local level. There is no official data for the rates of child marriage at the zone or woreda levels, which makes it difficult to understand the severity of the issue across Ethiopia because the rate of child marriage and the average age of girls when they are first married varies widely by region.²³ The latest official national data was published in 2016 and sometimes conflicts with numbers and analysis reported by the Ethiopian government.

Ethiopia has the 5th highest total number of child brides and is among the twenty countries with the highest rates of child marriage in the world.²⁴ While the legal age to marry is 18, the median age of marriage is 17.1 years, though child marriage rates vary across Ethiopia.²⁵ According to EDHS 2016 data, 58% of women and 9% of men aged 25-49 were married before their 18th birthday. Although 54.4% of girls in Ethiopia had married by age 18 according to EDHS 2016 data, only 5% of boys had married by age 18.²⁶ There is also significant variance between states regarding the percent of girls who made independent marriage decisions. Less than 20% of girls in Tigray, Afar, and Amhara states made marriage decisions by themselves according to

22 Ibid., 26-27 (Para 126).

23 "National Costed Roadmap to End Child Marriage and FGM/C 2020-2024," 23.

24 Dartunorro Clark, "Child marriage is a global scourge. Here's how Ethiopia is fighting it," December 14, 2019, <https://www.nbcnews.com/politics/politics-news/child-marriage-global-scourge-here-s-how-ethiopia-fighting-it-n1084041>.

25 Jones et al., "Surprising trends in child marriage in Ethiopia," 6.

26 *Ethiopia Demographic and Health Survey 2016*. These numbers, however, vary slightly from the numbers reported by the Ethiopian government in the National Roadmap to End Child Marriage and FGM/C. On Page 57, Figure 1 of the National Roadmap, the government claims that roughly 54.4% of girls and 5% of boys in Ethiopia had married by age 18, which varies slightly from the findings in the EDHS 2016 report on page 67. Data variance is also evident amongst Ethiopia's ranking for its Child Marriage rate. According to the National Roadmap, Ethiopia is no longer in the top 20 countries with the highest rates of child marriage. However, data from the UN State of the World's Children 2017 report, from which the National Roadmap cites this statistic, and the 2019 report, show that Ethiopia still ranks in the top 20 highest rates of child marriage. The discrepancy between the government's claims and other data sources likely stems from the fact that most of these data are estimates, rather than hard data. More robust data collection and analysis would be required to resolve these tensions and have a more illustrative and accurate understanding of the child marriage rate in Ethiopia and its variance amongst the states, especially at the local level.

EDHS 2016 data, whereas 68%, 76%, and 77% of girls in Somali, Harari, and Addis Ababa, respectively, had the autonomy to make marriage decisions independently.²⁷

The Ethiopian government has already explicitly stated its commitment for eliminating child marriage through international and domestic laws, the National Roadmap, and other regional and international treaties. The benefits to Ethiopia for supporting education and the elimination of harmful traditional practices have long been recognized. In regard to the economic benefits of eliminating child marriage:

Ending child marriage would increase earnings for the country as a whole by 1.5 percent, and if every girl delayed pregnancy until she was an adult, the Ethiopian economy would gain 15 per cent gross domestic product (GDP) over her lifetime.

[...]

Girls' education boosts income later in life: an extra year of primary school increases girls' future wages by an estimated 10–20 percent and an extra year of secondary education increases future wages by 15–25 percent. If every Ethiopian girl completed secondary school, it would add up to \$646 million to the economy every year. If she delayed pregnancy until she was an adult, the Ethiopian economy would gain 15 percent GDP over her lifetime. In Ethiopia, the value of the additional wages that women would have earned in 2015 if they had not married early is estimated at \$1.6 billion in purchasing power parity.

[...]

By 2030, Ethiopia's population would be reduced by 1 percent if child marriage and early childbirths were ended today. This would have significant impacts on national budgets and welfare. If child marriage and early childbearing had ended in 2014, the estimated annual benefit in the subsequent year (2015) would have been equivalent to \$117 million, increasing to \$4.9 billion by 2030. The rapid increase stems from the fact that each year the gains become larger because the cumulative reduction in population growth keeps growing from one year to the next. In addition, as standards of living (GDP per capita) improve, the valuations also become larger.²⁸

3.2 FGM/C

The challenges posed by FGM/C to the health and development of girls has been repeatedly recognized by the government of Ethiopia and addressed in its interactions with the CEDAW and CRC Committees as well as other UN bodies. It has also been the subject of numerous initiatives by the government, often in collaboration with UN agencies such as UN Women or UNICEF operating in Ethiopia. While it should be acknowledged that progress has been made in reducing the prevalence of FGM/C, it nonetheless continues and is particularly prevalent in certain parts of the country.

27 "National Costed Roadmap to End Child Marriage and FGM/C 2020–2024," 61 (Figure 12).

28 Federal Democratic Republic of Ethiopia Ministry of Women, Children and Youth, "SUMMARY: National Costed Roadmap to End Child Marriage and FGM/C," 5.

According to the 2016 EDHS, 65% of women between the ages of 15 and 49 have been circumcised, down from 80% in 2000. However, the DHS Program report notes that this decline could be in part to underreporting after FGM/C became criminalized in 2005.²⁹ The National Roadmap to End Child Marriage and FGM/C states that sixty-five percent of girls aged 15-19 who had been cut have had flesh removed.³⁰ The prevalence of FGM/C varies considerably from region to region, and there is considerable variability of FGM/C rates among religious groups regarding the age at which women are circumcised, the knowledge of FGM/C as a practice, and the type of circumcision. The highest prevalence rates of FGM/C are in the eastern states where FGM/C is usually done by traditional practitioners. The highest rate of FGM/C is in Somali state at 99%, while the lowest rate of FGM/C is in Tigray state at 23%.³¹

A survey conducted by the DHS in 2016 showed that 72% of women and 77% of men believed that FGM/C was not required by their religion, and 79% of women and 87% of men believed that FGM/C should not be continued.³² However, 74.6% of respondents from Afar region believe the FGM/C is required by their religion.³³ Although the rate of Muslim women who have been circumcised (at 82.2%) and believe FGM/C is required by their religion is higher than women of other faiths, still only 41% of Muslim women believe that it is required and 72% believe that the practice should not be continued. In addition, the rates of girls under age 15 who have been cut is higher amongst Orthodox and Protestants than amongst Muslim girls, the latter of which are usually cut in late adolescence.³⁴ The percentage of women who believe the practice should not be continued has increased by more than 10% since 2005.³⁵ The clearest deviations of opinion regarding the continued practice of FGM/C is amongst women in rural and urban areas; twice as many women in rural areas (21%) believe that FGM/C should be continued while 7% of urban women believe the practice should be continued.

There is a high correlation between women with education and the prevalence of FGM/C. Women who have completed secondary education are less likely to

29 *Ethiopia Demographic and Health Survey 2016*, 315 and 317.

30 "National Costed Roadmap to End Child Marriage and FGM/C 2020–2024," 20.

31 *Ethiopia Demographic and Health Survey 2016*, 315.

32 These numbers differ from numbers cited from the National Roadmap to End Child Marriage and FGM/C, which states on page 24 that: "More people believe that FGM/C is required by religion than believe it should continue." The discrepancy between the data sets and its subsequent analysis is largely due to the fact that not enough data has been collected on FGM/C, nor has the data been comprehensive enough to note the local level variations in rate, type of practice, and most important drivers for FGM/C.

33 *Ethiopia Demographic and Health Survey 2016*, 326.

34 "National Costed Roadmap to End Child Marriage and FGM/C 2020–2024," 26.

35 *Ethiopia Demographic and Health Survey 2016*, 319.

have a daughter who has undergone FGM/C (18.7%), compared to the daughters of women who have received no education (41.3%).³⁶ This trend likely derives in part from the fact that women who have undergone FGM/C will likely have their daughters undergo FGM/C as well. FGM/C is also often seen as a prerequisite to marriage, although the relationship between marriageability and FGM/C differs between states. For example, in the southern states, FGM/C is conducted during adolescence and has a strong link with marriageability, whereas in northern Ethiopia, FGM/C is done right after birth and has a weaker correlation with marriageability of a woman.

Among women aged 20-49, the median age at first sexual intercourse for rural areas was 16.6 years old and 19.3 years old in urban areas. In Tigray, Afar, Amhara, Benishangul-Gumuz, Gambela, and Oromia regions, the median age of first sexual intercourse was 17 years old or less. For women in all wealth quintiles except the highest wealth quintile, the median age of sexual intercourse was less than 17 years old.³⁷ These early median ages of first sexual intercourse likely indicate a strong correlation with child marriage and, in communities who see FGM/C as a requisite for marriage, a motivating factor for conducting FGM/C on their daughters at a young age.

As indicated above, the Ethiopian government has responded to the prevalence of FGM/C both through criminalization as well as multi-sectoral engagement at the federal, state, and local levels. The most recent and comprehensive governmental engagement on this issue is embodied in the National Roadmap for the Elimination of Child Marriage and FGM/C 2020-2024. This ambitious undertaking clearly indicates the scope of the challenges involved in achieving its stated goals. While noting the significant progress that has been made in combating FGM/C in parts of the country, the Roadmap also acknowledges the tremendous increase in the rate of change that will be required to achieve elimination of such practices by 2025:

Accordingly, compared to the last ten years, progress would need to be six times faster to eliminate child marriage by 2030, and 10 times faster for elimination by 2025. For FGM/C, progress needs to be a little over seven times faster than progress over the past ten years (looking at the average rate of reduction amongst girls and women aged 15 to 19 years) to eliminate the practice by 2030.³⁸

As an indication of the breadth and depth of engagement that will be required, the

36 28 Too Many, “Country Profile: FGM in Ethiopia,” October 2013, 49, [https://www.28toomany.org/static/media/uploads/Country%20Research%20and%20Resources/Ethiopia/ethiopia_country_profile_v1_\(october_2013\).pdf](https://www.28toomany.org/static/media/uploads/Country%20Research%20and%20Resources/Ethiopia/ethiopia_country_profile_v1_(october_2013).pdf).

37 *Ethiopia Demographic and Health Survey 2016*, 74.

38 “National Costed Roadmap to End Child Marriage and FGM/C 2020–2024,” 13.

Roadmap articulates five pillars for reducing FGM/C in Ethiopia over the next four years: 1) Empowering adolescent girls and their families; 2) Community engagement (including faith and traditional leaders); 3) Enhancing systems, accountability and services across sectors; 4) Creating and strengthening an enabling environment; and 5) Increasing data and evidence generation, and use.

The broad scope of these five pillars is indicative of the different kinds of multisectoral interventions that are required to address practices so deeply embedded in local cultural, social, and religious traditions. To address these five pillars, effective and responsive policymaking in the executive branch will clearly be necessary to effectuate the kinds of multi-sectoral engagements required with other branches of the government, relevant institutions in each of the states, and, perhaps most importantly, in the communities where these practices are instantiated. The discussion in Section II of distrust in the national legal system is highly relevant in this context. Two issues, already highlighted in Section II, deserve mention here. First, it is notable that the Roadmap makes no explicit reference to the justice sector and the need for promoting the rule of law, capacity building and accountability at every level. Second, pillar 5 draws attention to the problem of the lack of accurate and comprehensive data. UN assessments of gender programming over the past 15 years also repeatedly recommended much needed improvement in data collection and results-based management. Without robust data collection and analysis, it will not be possible to accurately gauge the impact of specific programs carried out under the framework of the Roadmap. But in addition to better data collection, better analysis of achievements and shortcomings will be necessary to ground the evidence-based advocacy required to promote reform and systematic change.

3.2.i. Legal Framework

FGM/C practices are covered in a fairly comprehensive manner in several articles in the Criminal Code, differentiating penalties according to different contexts. The Criminal Code provides that FGM/C is a criminal offense and punishable for three months to three years imprisonment, or, if resulting in injury of body or health, then five to ten years imprisonment (Articles 565 and 566). Articles 565, 566, and 569 specify penalties for medical practitioners, parents, and other FGM/C practitioners. Articles 101 and 154 entitle victims to legal reparations.³⁹

While the Constitution does not explicitly prohibit FGM/C by name, it does outlaw harmful practices, which, in the Ethiopian context and government programming, have been understood to encompass both FGM/C and child marriage. Article 16

39 OECD, Gender Index: Ethiopia.

protects citizens against bodily harm; Article 35(4) states that women should be protected against the influences of harmful customs and prohibits laws, customs, and practices that oppress or cause bodily or mental harm to women; and Article 36 states that all actions should be done in the best interest of the child.⁴⁰ Although each state has its own constitution, almost all state constitutions are identical to the national Constitution in most respects.

Many cases of FGM/C occur across the border in neighboring countries. While Ethiopian law does not directly address cross-border FGM/C, Articles 11-22 of the Criminal Code apply to foreigners and nationals who commit crimes in Ethiopia, or against an Ethiopian national outside of Ethiopia.

3.2.ii. Gaps in the Legal Framework

No national laws clearly define FGM/C nor criminalize the failure to report FGM/C in its planning or completed operation. Additionally, although Article 443 does criminalize the failure to report certain crimes, there are no laws that protect uncut women and families from verbal abuse or exclusion from society.⁴¹ Articles 561 and 562 criminalize traditional practices scientifically determined to endanger someone's life, or cause bodily injury or mental impairment of a pregnant woman or a newborn child.

The contrast between the formal law and community practice is glaring. The CEDAW Committee in its most recent review found that the prevalence of FGM/C is 97% in Somali state and 91.6% in Afar.⁴² The Committee recommended, among other things, that the penalties in the Criminal Code be increased in severity. The fines have not been adjusted to account for inflation, which trivializes their punitive role. For example, Article 565 only fines an individual performing FGM/C on a woman \$18. Article 569 will only fine a parent or other person who participates in arranging FGM/C a maximum of \$18.⁴³

More recent prevalence data may be found in the annexes of the National Roadmap for the Elimination of Child Marriage and FGM/C. It should be noted, however, that the Roadmap itself acknowledges the need for improvements in data collection and analysis.

It is not clear to what extent prosecutions under the Criminal Code cited above

40 28TooMany, "Ethiopia: The Law and FGM," July 2018, 3-4, [https://www.28toomany.org/static/media/uploads/Law%20Reports/ethiopia_law_report_\(july_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/ethiopia_law_report_(july_2018).pdf).

41 Ibid., 3.

42 Concluding Observations of CEDAW Committee, Note 299.

43 28TooMany, "Ethiopia: The Law and FGM, 4-5.

take place nor the degree of their success in obtaining convictions. Without accurate data on numbers of prosecutions and case outcomes, the deterrent effect of criminalization is impossible to assess. Anecdotally, it appears likely that few cases are investigated or prosecuted for a variety of reasons. Not the least of these is that the subject of FGM/C is a child who is unable to litigate on her own behalf. Since such practices are typically carried out within or with the participation of the family, this represents yet another barrier to the criminal law serving as an effective preventative or accountability mechanism. Finally, as already noted in the discussion of CDR in Section II, there are social impediments to seeking justice outside the community through police investigation and subsequent prosecution. Accordingly, the strategy of the Roadmap to reduce prevalence through community engagement and education, as well as through related policies to engage other stakeholders, is more likely to be effective than the increase in penalties recommended by the CEDAW Committee. It would be useful, however, to have accurate data on the extent to which FGM/C has come within the compass of the formal criminal justice system in each of the states.

3.3 Human Trafficking

Ethiopia is a source country for human trafficking. Domestic servitude and migrant trafficking are particularly high-priority trafficking conditions in Ethiopia, in which human traffickers exploit both domestic victims and victims from Ethiopia abroad.

Poverty and lack of opportunity are leading causes of human trafficking in Ethiopia. Ethiopia is one of Africa's fastest-growing economies, yet a third of its 99 million citizens survive on less than \$1.90 a day, which is the World Bank's measure of extreme poverty.⁴⁴ Moreover, there is a persisting urban-rural divide. Even though 84 percent of Ethiopians live in rural areas,⁴⁵ Ethiopia's economy is mainly concentrated in its urban areas like Addis Ababa.⁴⁶ Wages in cities can be as much as double the wages in rural areas. Moreover, there is a lack of infrastructure and basic social welfare like healthcare and education in rural parts of Ethiopia. Thus, poverty and the lack of educational and economic opportunities in rural areas force families to

44 Tom Gardner, "Trafficked into slavery: The dark side of Addis Ababa's growth," May 16, 2017, <https://www.reuters.com/article/us-ethiopia-trafficking-economy/trafficked-into-slavery-the-dark-side-of-addis-ababas-growth-idUSKCN18C0O1>.

45 Bina Fernandez, "Traffickers, Brokers, Employment Agents, and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East," *International Migration Review* 47, no. 4 (2013):814-843, <https://journals.sagepub.com/doi/10.1111/imre.12049>. Asayeberhan Kastro and Karen Dullea, "Community-based prevention of child trafficking in Southern Ethiopia," *International Social Work* 63, no. 2 (2018): 1-14, https://www.researchgate.net/publication/327758543_Community-based_prevention_of_child_trafficking_in_Southern_Ethiopia.

46 Gardner, "Trafficked into slavery." Addis Ababa's population is now thought to be close to 4 million, and growing at a rate of nearly 4 percent per year.

send their children to urban areas to earn wages. Each year, over 20,000 Ethiopian children, some as young as 10, are sold by their parents.⁴⁷ The demand for economic opportunities in cities leave migrants vulnerable to trafficking, in which “children are lured with the promise of a better education in Addis.”⁴⁸ The inadequate resources, education, social services and welfare in rural Ethiopia make people more vulnerable to being trafficked.

Women and girls are disproportionately impacted by trafficking. Although women from all parts of Ethiopia are vulnerable, girls in Ethiopia’s rural areas are particularly vulnerable to involuntary domestic servitude and, somewhat less frequently, commercial sexual exploitation (though domestic labor often involves sexual violence in addition to forced labor). Additionally, Ethiopian migrant women are vulnerable to trafficking throughout the Middle East, particularly the Gulf, as well as Sudan, while migrating to labor destinations. Many individuals from other African countries also go through Ethiopia en route to countries in the Middle East.⁴⁹ Sociocultural factors such as early child marriage, lack of access to social services in rural areas, limited access to education (especially for girls), limited parental education, family discord, dissatisfaction with traditional ways of life, the attraction of paid work to support natal families, pregnancy outside of marriage and associated stigma, leaving school at an early age, and large family size have all been identified as factors leaving women and children vulnerable to trafficking.

The 2020 Trafficking in Persons (TIP) Report placed Ethiopia in “Tier 2.”⁵⁰ The TIP Report states that the government demonstrated increasing efforts to combat human trafficking, yet failed to meet the minimum standards in several key areas.⁵¹ Some Ethiopian legal scholars have described sex trafficking as “rampant,” suggesting that the TIP classification may partly be based on political considerations regarding

47 Ibid.

48 Ibid. Under Ethiopian law, it is illegal for a child below the age of 14 years to be engaged in wage labor, but laws against child labor, especially domestic service, are rarely enforced.

49 Ethiopian News Agency, “IOM Set to Expand Flow Monitoring Activities to Avert Human Trafficking,” March 21, 2020, <https://www.ena.et/en/?p=13365>.

50 Tier 2 refers to, “Countries and territories whose governments do not fully comply with the [minimum standards of the Trafficking Victims Protection Act of 2000] but are making significant efforts to bring themselves into compliance with those standards.” See “Report to Congress on 2021 Trafficking in Persons Interim Assessment Pursuant to the Trafficking Victims Protection Act” <https://www.state.gov/report-to-congress-on-2021-trafficking-in-persons-interim-assessment-pursuant-to-the-trafficking-victims-protection-act/>.

51 United States Department of State, “2018 Trafficking in Persons Report: Ethiopia,” June 28, 2018, <https://www.refworld.org/docid/5b3e0b454.html>. “The government did not sufficiently address internal trafficking, including child sex trafficking, and lacked standard procedures for front-line responders to proactively identify trafficking victims among vulnerable migrants. Protective provisions for male victims remained inadequate, and for the second consecutive year, Ethiopian officials did not allocate funding for the implementation of its national action plan.” The Palermo Protocol only covers international trafficking rather than internal.

a strategically important country.

3.3.i. Legal Framework

Article 18(2) of the Constitution prohibits human trafficking.⁵² The Criminal Code includes provisions criminalizing human trafficking, including Articles 596, 597, and 635. Article 596 outlaws slavery and prescribes punishment of five to 20 years; Article 597 outlaws labor trafficking in women and children and prescribes punishments of five to 20 years imprisonment; and Article 635 criminalizes sex trafficking and prescribes punishment not exceeding five years imprisonment. The strongest penalties are for trafficking women and minors.

In 2012, the government acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Palermo Protocol to the Convention on Transnational Crime). To institutionalize the provisions of the UN Trafficking Protocol⁵³, the government adopted the Prevention and Suppression of Trafficking in Persons and Smuggling of Migrants Proclamation, or Proclamation No. 909/2015 (Trafficking and Smuggling Proclamation). The Trafficking and Smuggling Proclamation extends prevention and protection to trafficking victims, including protection from prosecution and the creation of a Victim Fund. The law also includes stricter provisions to criminalize trafficking and prosecute human traffickers, including extending the definition of trafficking to include all forms of exploitation and stiffening penalties.

The Trafficking and Smuggling Proclamation also calls for the establishment of an Anti-Human Trafficking and Smuggling of Migrants Task Force to be led by the Office of the Attorney General, which is mandated to execute and oversee the implementation of the proclamation.⁵⁴ Ethiopia had previously established a National Council against Human Trafficking and Smuggling in 2012, but until 2015, any legal efforts to combat migrant smuggling or human trafficking were carried out within the framework of constitutional provisions on human trafficking and slavery. The task force is established at different administrative levels (the federal level and in most

52 Article 18(2): “No one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited.”

53 “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,” November 15, 2000, https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.pdf. The UN Trafficking Protocol, which was signed in 2000, established the first uniform definition of Human Trafficking. In addition, it was designed to “standardize terminology, laws and practices of countries in this area of the law.”

54 Expertise France et al., “Ethiopia Country Statement: Addressing Migrant Smuggling and Human Trafficking in East Africa,” September 2017, 16, <https://www.expertisefrance.fr/documents/20182/234347/AMMi+-+Country+Report+-+Ethiopia+copie.pdf/b9121722-aa7e-47e0-b359-065673391226>.

regional states) and consists of several ministries,⁵⁵ Regional States, the Ethiopian Federal Police Commission, National Security and Intelligence Service, other governmental organizations, religious institutions, charities and societies, various structures and other respective organizations.⁵⁶ The task force developed a five-year National Plan of Action against Trafficking in Persons and Smuggling of Migrants, yet it is no longer in use. Moreover, the task force has faced coordination challenges in executing its mandate because its members are drawn from various ministries and regional bureaus.⁵⁷ In light of recent political developments and a declared state of emergency, government attention, especially among law enforcement agencies, has increasingly been directed to developing responses to anti-government protests throughout the country.

The U.S. Department of State includes observations on the task force in its 2020 TIP Report. The observations do not inspire confidence that the government had made the effectiveness of its anti-trafficking efforts a priority. Indeed, the TIP summary suggests that relatively little, if any, reliable documentation is available on the extent, duration, and scope of the Task Force's actual interventions or the extent and results of its collaboration with external partners:

The Anti-Trafficking and Smuggling Task Force met at least once during the reporting period and continued to collaborate with NGOs, international organizations, and donors. The task force organized itself into four subgroups: prevention, protection, prosecution, and partnerships. Officials did not have a current anti-trafficking national action plan. The task force - led by the Attorney General's Office and the Ministry of Labor and Social Affairs (MOLSA) - continued to raise awareness of trafficking risks in rural communities. Officials did not report whether previously established "community dialogue" sessions continued during the reporting period.⁵⁸

In 2020, a new law was enacted to increase the severity of penalties for traffickers and agents. As was seen in other areas, the crucial problem in Ethiopia is not the law on paper or the severity of penalties but rather the effectiveness with which the law is implemented. Indeed, the resultant deterrent effect, if any, typically depends far more on perceptions of the probabilities regarding how often convictions are obtained

55 Ministry of Justice, Ministry of Foreign Affairs, Ministry of Federal Affairs, Ministry of Labour and Social Affairs, Ministry of Women, Children and Youth Affairs, Ministry of Education.

56 Expertise France et al., "Ethiopia Country Statement: Addressing Migrant Smuggling and Human Trafficking in East Africa," 16.

57 UN assessments of gender related programming in Ethiopia frequently call attention to the lack of coordination between government ministries and agencies as well as between those entities and UN programs. Expertise France et al., "Ethiopia Country Statement," 21.

58 United States Department of State, "2020 Trafficking in Persons Report: Ethiopia," <https://www.state.gov/reports/2020-trafficking-in-persons-report/ethiopia/>.

rather than the duration of the statutory punishment. Again, without accurate data it will not be possible to assess the impact of this law or other measures. There is little question that the potential penalties are severe, for the new law allows for people to receive life sentences in prison for smuggling in and trafficking migrants. This new law also provides, “agents that seize passports or withhold pay, operate without a license or send migrants to nations that do not have an agreement with Ethiopia face up to 12 years in jail.”¹⁸¹

3.3.ii. Gaps in the Legal Framework

In regard to the comprehensiveness of Ethiopia's anti-trafficking legislation, the Committee on the Rights of the Child has criticized the gaps in coverage regarding children. The highlighted portions of the following excerpt also call attention to the variety of factors and contexts that produce the vulnerabilities that lead to the trafficking of children. The Committee:

[...] regrets that the “sale of children” is neither defined, nor criminalized in the State party's Criminal Code and Criminal Procedure Code, and that the relevant trafficking provisions of the Criminal Code do not comply with the international standards as set by the Protocol to Prevent, Suppress and Punish Trafficking, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

[...] The Committee urges the State party to: (a) Revise all relevant provisions of the Criminal Code and Criminal Procedures Code in order to explicitly prohibit and criminalize the sale of children and to align these provisions with the international standards, including the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; **(b) *Develop and implement strategies and policies to eliminate domestic rural-urban and international flows of trafficking, by paying particular attention to vulnerable children, including girls, children living in poverty, out-of-school children, children who have dropped out of school, migrant, refugee and internally displaced, unaccompanied and separated children***[...].⁵⁹

Legal scholars and experts have also highlighted a few limitations of the Trafficking and Smuggling Proclamation. Experts state that the wording of the law is problematic due to its Amharic terminology and does not clearly differentiate smuggling and trafficking as crimes.⁶⁰ As a result, it has been challenging for prosecutors to prove

59 UN Committee on the Rights of the Child (CRC), Concluding observations on the combined fourth and fifth periodic reports of Ethiopia, June 3, 2015, CRC/C/ETH/CO/4-5: 18 (Para 69-70(b)), <https://www.refworld.org/docid/566fc30b4.html>.

60 Under the UN Convention on Transnational Crimes, people smuggling and trafficking constitute two distinct categories of organized criminal activity and are treated in separate protocols.

a case of trafficking in court. In addition, unlike the UN Trafficking Protocol, the provisions for prevention are implicit and unclear; specifically, Part Three (Prevention, Investigation and other Procedural Provisions) fails to discuss prevention methods.

Even though the Trafficking and Smuggling Proclamation acknowledges the importance of civil society in prevention, which is also clearly stipulated in the UN Trafficking Protocol, legal frameworks do not currently enable civil society to play a significant role in the prevention of trafficking.⁶¹ Specifically, the “few organizations that deal directly or indirectly with issues of migrant smuggling and human trafficking issues assert that they suffer from lack of adequate funding, skepticism on the part of the Ethiopian government, and lack of coordination.”⁶² This has been a persistent general problem with civil society engagement, though recently there has been some improvement. The Ministry of Labour and Social Affairs and the Ministry of Women and Children’s Affairs are the key institutions working to identify and prevent trafficking in Ethiopia, but community-based organizations need to also play a key role in protecting children and helping families because top-down approaches often lack community knowledge. It is all too common in trafficking contexts that vital roles, especially in the provision of shelter, education, and psycho-social services are left by governments for NGOs to fill.

Legal frameworks also display gaps in addressing commercial trafficking, in which the law fails to penalize commercial carriers, owners, or any transport operators who recklessly facilitate the transportation of trafficking victims. Moreover, the law fails to require all transport operators to ensure every passenger is in possession of the travel documents required for entry into the receiving state, a key provision to protect migrants from trafficking.

The coordination mechanisms for the Anti-Trafficking and Smuggling Task Force are inadequate, particularly at zonal and woreda levels. The ineffectiveness of existing coordination mechanisms is partly due to a lack of human and financial resources, as well as proper training needed for coordinating stakeholders. Given their current nomenclature and coordination, the task force has given unbalanced attention to

61 Zelalem Shiferaw Woldemichael, “Prevention of Human Trafficking in Ethiopia: Assessing The Legal Framework,” *Hasanuddin Law Review* 3, no. 3 (December 2017): 208-217, https://www.researchgate.net/publication/322516053_Prevention_of_Human_Trafficking_in_Ethiopia_Assessing_The_Legal_Framework/link/5a5d5465aca272d4a3dd95ff6/download. “This might be the result of the Charities and Societies Proclamation adopted in 2009, which prevents civil society organizations earning more than 10% of their budget from foreign sources from operating on human and democratic rights.”

62 “Ethiopia Country Statement: Addressing Migrant Smuggling and Human Trafficking in East Africa”; Emeline Wuilbercq, “New Ethiopia law to give life sentences to crooked labour brokers,” Reuters, February 20, 2020, <https://www.reuters.com/article/us-ethiopia-trafficking-law-trfn/new-ethiopia-law-to-give-life-sentences-to-crooked-labour-brokers-idUSKBN20E2CV>.

different areas of its migration work. For example, they currently give due attention to law enforcement while other areas such as labor and victim and returnee assistance have received inadequate consideration. It is a classic shortcoming of many anti-trafficking programs that government officials consider trafficking to be primarily a law enforcement problem to be handled by police and immigration officials. Such attitudes can exacerbate problems of coordination and civil society engagement. In Ethiopia, although vertical coordination between regional and zonal as well as zonal and woreda-level task forces seem to vary among regions, it remains weak overall.

It has increasingly been recognized by experts that the boundaries between child marriage and trafficking are often blurred. The reasons for this are clear when one considers the way in which giving daughters in exchange for financial benefit or directly selling them may fulfill the requirements of an anti-trafficking law's definition. In the case of child marriage, the definition found in the Palermo Protocol, if applied to children trafficked within their own country, might well seem to be applicable.⁶³ It has thus increasingly become the view of experts that child marriage should be considered as a form of trafficking and they have argued that laws against child marriage must be more strictly enforced to decrease the risk for trafficking as a result of illegal child marriage.⁶⁴

3.3.iii. Ethiopian Government Response to Legal Framework Gaps

Addressing the absence of regulatory frameworks for Ethiopian migrants in foreign countries to protect them against migrant trafficking, the government adopted Ethiopia's Overseas Employment Proclamation, or Proclamation No. 923/2016 (Overseas Employment Proclamation). The Overseas Employment Proclamation requires employers to use legally registered private agencies or the Ministry of Labor and Social Affairs of Ethiopia to hire Ethiopian nationals. However, the law only operates on the basis of cooperation agreements with foreign countries and won't be effective if such agreements are not made.

In January 2020, the parliament approved a new anti-trafficking and smuggling law, which became effective soon after.⁶⁵ The law seeks to strengthen protections for migrants, creating harsher fines and sentences for complicit or exploitative job agents

63 The Palermo Protocol, as a protocol to the UN Convention on Transnational Crime, requires a transnational element and leaves it to national jurisdictions to adopt language that covers both international and internal trafficking.

64 Dana C. Beck et al., "Human Trafficking in Ethiopia: A Scoping Review to Identify Gaps in Service Delivery, Research, and Policy," *Trauma Violence & Abuse* 18, no. 5 (March 2016): 8, https://www.researchgate.net/publication/299541161_Human_Trafficking_in_Ethiopia_A_Scoping_Review_to_Identify_Gaps_in_Service_Delivery_Research_and_Policy.

65 Wuilbercq, "New Ethiopia law to give life sentences to crooked labour brokers."

abroad. It also includes harsher sentences for sex traffickers, including the threat of the death penalty, and a rescue and rehabilitation plan for trafficking victims. The law is largely intended to address the limitations of the Trafficking and Smuggling Proclamation, particularly the legal difficulties prosecutors have faced in proving a case in court and the way the Amharic version of the law has been written. Campaigners, however, cite a lack of protection and shelter for victims and witnesses as a barrier to implementing the law and enforcing prosecutions.⁶⁶

Ethiopia has signed bilateral labor agreements over the past few years with countries in the Middle East, including the United Arab Emirates, Qatar, Jordan, and Saudi Arabia, in an attempt to lessen the number of workers that are sent to those countries from Ethiopia. Although the Government of Ethiopia has done more to address trafficking than in years past, it continues to prioritize transnational labor trafficking more than internal sex trafficking and forced labor cases. **However, it is estimated that there are more internal trafficking victims than external victims, especially for children, who are often forced to work as commercial sex workers or as domestic servants. Apart from other factors, girls and young women seeking to escape forced marriage, abduction, sexual violence, or FGM/C become vulnerable to exploitation when they flee their communities.**

In 2018, federal and state justice officials investigated 535 ongoing cases, convicting 1,028 and sentencing 240 traffickers to prison. This is an increase from 2017, when the government convicted 182 traffickers.⁶⁷ However, of the traffickers sentenced to prison, there were not any that were charged for exploiting Ethiopian nationals in Ethiopia. The 2019 TIP report notes that a lack of resources restricted the amount of data that could be collected by state police. For example, there is no information on the number of victims who assisted in the investigation and prosecution process against their traffickers, and whether the government provided victims assistance in doing so; whether trafficking victims had been deported without screening or penalized for unlawful acts that their traffickers forced them to commit; and whether all victims had been identified by law enforcement. In addition, poor communication and coordination between state and federal governments limited the effectiveness of law enforcement. Despite the legal infrastructure prohibiting trafficking, the government has still struggled to implement a standardized procedure to identify and refer trafficking victims; thus, many trafficking victims likely did not receive the necessary care. As in many other areas of law enforcement involving the exploitation

66 Ibid.

67 United States Department of State, "2019 Trafficking in Persons Report: Ethiopia," June 14, 2019, <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/ethiopia/>.

of, or violence against, women, specialized capacity building for police, prosecutors, and judges is necessary but not by itself sufficient. Further, as the TIP report itself has acknowledged, data on the number of cases, prosecutions, and convictions is not adequate for reaching conclusions about overall prevalence.

The Ethiopian government has worked with international organizations (IOs) mainly to combat trafficking. Currently, there are two migration response centers located in Afar and Metema that are operated jointly by international organizations and the Ethiopian government, as well as child protection units in Addis Ababa and other cities with the goal of intercepting and assisting trafficking victims as they are being trafficked from rural to urban areas. Police and civil service transport workers are largely responsible for intercepting victims and referring them to care shelters.

In June 2020, the International Organization for Migration (IOM) and Ethiopia's Attorney General developed a final draft of the National Coordination Mechanism (NCM) Regulation.⁶⁸ Once fully operationalized, the NCM will ensure a whole-of-government and society approach towards migrant trafficking in Ethiopia, working to strengthen all Member States inter-ministerial coordination on labor migration, increase comprehensive dialogue on all dimensions of labor migration at the national and sub-national level, and involve civil society organizations (CSOs), social partners, academia, and IOs. Notably, it has partnered with the Anti-Human Trafficking and Smuggling of Migrants Task Force to address broader migration issues.

Some of the government's initiatives to implement preventative measures for trafficking have been successful. For example, state and local governments worked with international organizations to host hundreds of community dialogue sessions in order to raise awareness about trafficking. However, a lack of funding limited the success and implementation of other prevention projects, despite these projects having been approved several years prior. In addition, not all projects were able to reach the most rural areas of Ethiopia. The IOM and the National Anti-Trafficking and Smuggling Taskforce have also hosted workshops, including a review of the National Plan of Action against Trafficking in Persons in 2016.⁶⁹ There have been many joint efforts between the Government of Ethiopia and IOM to enhance the multi-stakeholder coordination in migration management and counter-trafficking

68 "IOM Monthly Programmatic Highlights Ethiopia," June 25, 2020, <https://reliefweb.int/report/ethiopia/iom-monthly-programmatic-highlights-ethiopia-may-2020>.

69 International Organization for Migration, "National Anti-Trafficking and Smuggling Taskforce steps up coordination efforts in managing migration in Ethiopia," April 6, 2016, <https://ethiopia.iom.int/national-anti-trafficking-and-smuggling-taskforce-steps-coordination-efforts-managing-migration>. In the review workshop, participants also discussed the harmonization of the Anti-TIP Taskforce structure down to the regional levels in order to ensure coherence and effectiveness of anti-TIP initiatives throughout the country.

initiatives in Ethiopia.

The ability to accurately obtain the age, identity, and place of residence of trafficking victims is essential for effective provision of services to them. In countries where many births are not registered and, hence, individuals never receive a government ID, this presents a number of challenges. In Ethiopia, the government has attempted to implement an employment proclamation and law requiring the registration of all births nationwide. However, the implementation of these laws was met with numerous challenges. For example, although a law was passed in 2012 to require the registration of births nationwide, the lack of a uniform system led to district-level identity cards being used, which were often subject to fraud. Registration of births and universal distribution of identity documents is a prerequisite for protecting the rights of children and women across the range of potential abuses and violations.

In sum, while there is a legal framework in place to combat trafficking in Ethiopia, its implementation falls short in successfully addressing and preventing both internal and external trafficking. In addition, as noted, there are also gaps in the legal framework itself as well as in the system for data collection on which effective trafficking policy formulation depends. Our report seeks to identify the leading drivers and vulnerabilities that coerce women and girls into leaving their communities in order to assist in the development of preventive strategies. Without effective government and civil society coordination in developing such prevention methods to combat trafficking, as well as increasing the capability to hold traffickers and those who assist them accountable, women and girls will continue to be vulnerable to exploitation within their communities and while seeking opportunities beyond.

3.4 Property Rights

This case study considers the impediments to the realization of women's property rights in Ethiopia as well as the ways in which the formal state and federal systems perpetuate these challenges. Given the predominance of agriculturalism, the discussion here mostly concerns landowning and inheritance. The issue of property rights is important in the context of women's empowerment because (1) upholding women's property rights has an enormous potential for enabling them to improve their social, economic, and political standing in relation to men and (2) the issue succinctly reveals the multifaceted hurdles and patterns of discrimination that characterize the broader network of enforcement and judicial mechanisms which also prevent progress from being made on the issues examined above.

The neglect of protecting and enforcing their property rights creates an expansive nexus of barriers to women's civic and socioeconomic advancement. Despite the legal promulgation of equal rights to landholding and inheritance, women are culturally discouraged from exercising equal ownership over property, household finances,

and farming technologies. That discouragement finds institutional expression in custom, tradition, and the reproduction of discriminatory practices through the legal and quasi-legal mechanisms described in preceding sections. Safeguarding of women's property rights thus must entail robust enforcement of, and clarity as to, the jurisdiction of Sharia courts, social courts, and CDR, and the procedural and substantive rules being followed in them. It also requires capacity building within the formal judiciary and related government agencies. As seen in Section II, such safeguarding also requires definitive acceptance of the federal Constitution as it applies to the rights of women.

3.4.i. Legal Framework

The Ethiopian government has committed to upholding women's property rights through domestic legislation and international obligations. Women's property rights are articulated particularly in Articles 35 and 40 of the Constitution. The Revised Family Code guarantees women's equal right to manage the family and their personal property, in marriage as well as upon dissolution of marriage. Article 63 of the Revised Family Code provides a safeguard to women in declaring the default assumption as: "All property shall be deemed to be common property even if registered in the name of one of the spouses unless such spouse proves that he is the sole owner thereof."⁷⁰ This provision places the burden of proof on the man in court if he were to deny the woman's equal ownership. The Civil Code protects women's equal right to inheritance. The 1997 Federal Rural Land Administration Proclamation emphasizes the equal rights of women to using, administering, and controlling land. The 2005 Federal Rural Land Administration Proclamation recognizes states' ultimate authority in land matters; however, state legislation cannot contradict the Constitution. The 2005 Proclamation established physical holding certificates, which describe the size and type of the land, as well as the holder's rights and obligations. Regional land legislation includes SNNPR Rural Land Administration and Use Proclamation No.110/2007 and the Oromia Region Proclamation No. 130/2007 (amending proclamation No 56/2002, 70/2003, 103/2005 of Oromia Rural Land Use Administration).

The Rural Land Administration Proclamation No.89/1997 promotes equal rights of women in land ownership and deploys measures that respond to traditional, informal ways in which such ownership has been denied.⁷¹ This law created a system

70 Federal Negarit Gazette, "The Revised Family Code of Ethiopia," 19.

71 Federal Negarit Gazeta of the Federal Democratic Republic of Ethiopia, "Proclamation No. 89/1997 Rural Land Administration Proclamation of the Federal Government of Ethiopia," July 1997, <https://www.refworld.org/pdfid/5a268a774.pdf>.

of holding certificates to increase ownership titles for women.⁷² Like the other legal measures enumerated in the preceding paragraphs, the Rural Land Proclamation is part of a number of landowning reforms that the Ethiopian government has initiated. As always, however, the salient question is whether the implementation of the law has been effective. In the case of landholding, as elsewhere, progress in the form of official statistics may be misleading. A case in point is East Gojjam in Amhara, where a land certificate program was introduced in 2003. The certificate lists the names of both husband and wife, the list of land plots, and the list of family members' names. The certificate also specifies women's landholding rights, loan borrowing rights, and right to an equal share of land in times of divorce. Following the proclamation, land disputes brought to court have decreased in Amhara overall from 40 cases per week to 2 cases per week, partially helped by the clear listing of land plots. However, in practice, the deceased husband's family typically takes all land ownership and the widow will rarely initiate a dispute in court. The impressive decline in the number of cases may thus reflect the effectiveness of social pressures and other forms of coercion rather than the success of the legal reform. As in so many other areas, more in-depth research and data collection are required. What would be more accurate than tallying the number of cases would be reliable data on how property has been distributed and what ownership has actually been exercised by the women legally entitled to do so.

The land policy also does not help women who are in polygamous marriages, since husbands typically only register one wife on the certificates. Other customary practices reflect, reinforce, and reproduce discriminatory traditions. For example, women continue to be limited by cultural taboos. For example, plowing with oxen is considered a male-only activity; if they own land, they must hire male labor. They may also become obligated to hire sharecroppers.⁷³ As previously described, the implementation of regional landowning policies in Amhara was left to local committees (kebele), populated mostly by men and elected by men.

3.4.ii. Gaps in the Legal Framework

The Kedija Beshir case illustrates the difficulties of upholding women's property rights due to issues discussed in Section II regarding Ethiopia's legal pluralism. In this case, the relatives of a deceased husband opened a dispute in a Sharia court to take ownership of the house from the wife, and won. The woman expressly objected to entering a Sharia court, on the basis of Article 34 of the Constitution which requires

72 OECD Gender Index for Ethiopia, 2019.

73 Birtukan Atinkut Asmare, "Rural women's access to and control over land in East Gojjam during the Derg and EPRDF," *Asmare Environmental Systems Research* 5, No. 12 (2016), <https://link.springer.com/content/pdf/10.1186/s40068-016-0062-5.pdf>.

full and free consent for the Sharia court to assume jurisdiction. However, the Sharia court ruled that because she did not come to court after the summons to explain her objection in person, she had automatically consented. There was no legal basis for this alleged requirement. The woman appealed the case to the High Sharia Court and Supreme Sharia Court, and both upheld the initial decision. How a court that has no legal basis for jurisdiction without expressed consent can, *because of* the refusal to acknowledge the authority of the court by appearing, nonetheless interpret that refusal as meeting the legal requirement of full and free consent, and then assume such jurisdiction remains unanswered. The High Sharia Court specifically argued that her case had been filed before the promulgation of the Federal Courts of Sharia Proclamation, which outlined the rules of consent, meaning that those rules of consent were inapplicable. The respondents argued in vain that under existing law before the Sharia promulgation, only the consent of one party is needed.⁷⁴ The woman appealed to the Cassation Division of the Federal Supreme Court, which, also without a clear legal basis, ruled that there “was no fundamental error of flaw in the decisions made by all the Sharia Courts” that would allow for their review of the case. In 2003, EWLAW helped the woman in her appeal to the House of Federation. With advice from the CCI, the HoF ruled that the decisions of federal and state courts at all levels were unconstitutional because of the woman’s lack of consent.

This case reveals how religious courts can create room for loopholes in the legislation promoting women’s equal rights in property and inheritance. Despite a clear legal requirement for consent, both the full hierarchy of Sharia courts as well as the Cassation Division of the Federal Supreme Court managed to uphold the jurisdiction of the Sharia courts when there was no legal basis for doing so. In this case, the Sharia court assumed the woman’s consent, which she had clearly not given, and, indeed, had expressed her unwillingness to do so by deliberately ignoring the summons of a court that had no right to compel her appearance. The case also exemplifies the confusion around whether Sharia courts are subject to or separate from the rest of the federal courts, whether they must follow the federal or state constitutions, and whether their decisions are subject to reversal on constitutional grounds. While some legal nuances may have been ambiguously expressed or not clarified, the language of Article 9 of the Constitution is unambiguous in stating that it alone is the supreme law of the land and supersedes any other legal or customary norms. In this case, although the law is vague as to whether the Sharia courts are

74 Girmachew Alemu Aneme, “The Coupling of State and Sharia Justice Systems in a Secular State: The Case of Ethiopia,” SFB-Governance Working Paper Series, No. 75 (April 2018), https://www.researchgate.net/publication/324950802_The_coupling_of_State_and_Sharia_Justice_Systems_in_a_Secular_State_The_Case_of_Ethiopia.

subject to review by federal courts, the HoF asserted its jurisdiction in this particular case and chose to uphold the requirement of consent. Given the legislative nature of the HoF, other cases involving more political complications or nuanced disputes may have different results.

The HoF has also reviewed two cases of particular interest in regard to women's landowning rights. Comparing the two cases makes evident the issues of inconsistent constitutional interpretation by the HoF. In *W/ro Kassaye Eshete v. W/ro Askale Zemedkun*, the CCI stated that the wife who has contributed to developing a land during marriage should benefit from the equal division of the land upon divorce, recognizing the woman's lack of access to land, despite the fact that the man had acquired the land before marriage. The HoF decided, to the contrary, that because the man had acquired the land before marriage, the wife is not entitled to equal division of the land. In *W/ro Halima Mohamed v. Ato Adem Abdi*, the CCI and HoF both stated that a husband who inherited his deceased brother's wife should not get equal division of the land that the wife had jointly acquired during her previous marriage. CCI argued that allotting equal land division to the husband would promote widow inheritance and deprive the children born of the previous marriage of their property rights. The HoF agreed that this was an issue of women's access to land. Together, these two cases reveal a lack of uniformity in how the HoF upholds women's property rights.⁷⁵ One may also note that the marriage of the widow to the brother of the deceased, though apparently still widely practiced, is illegal under Article 9 of the Revised Family Code.⁷⁶

The social pressure created by tradition can prevent women from seeking justice in a court of law upon property disputes. Even if women enter the courts, customary practice presents additional complications. For example, bigamy is illegal and punishable by the Criminal Code, but polygamous marriages still occur and some argue that it is nonetheless acceptable as a customary practice. Polygamous marriage creates complications in the legal system regarding property inheritance.⁷⁷ Bigamy creates challenges for the senior wife, whose husband may prefer his younger wives, or for younger wives if the senior wife's children choose to evict the widowed younger wives.⁷⁸ The complications created by bigamy led SNNPRS and Oromia to modify

75 Nigussie Afesha, "Major Differences Between the Revised 'Federal' and SNNP Regional State Family Codes," *Mizan Law Review* 11, no. 2 (2017): 410-423, <https://www.ajol.info/index.php/mlr/issue/view/16729>.

76 Federal Negarit Gazettea, "The Revised Family Code of Ethiopia," 5.

77 Food and Agriculture Organization of the United Nations (FAO), "Gender and Land Rights Database: Ethiopia," http://www.fao.org/gender-landrights-database/country-profiles/countries-list/general-introduction/en/?country_iso3=ETH.

78 Workwoha Mekonen et al., "Protecting Land Tenure Security of Women in Ethiopia: Evidence from the Land Investment for Transformation Program," Research Consortium 2019 (November 2019): 20.

their legislation to allow husbands to include multiple wives' names on their holding certificates.⁷⁹ These provisions for *legal recognition of illegal polygamous marriages* reflects the ongoing confusion over the requirements of, and challenges to, the rule of law more generally.

Overall, despite the clarity of the formal law, the question remains as to whether consent as required by the Constitution is given effect as the supreme law of the land regardless of whether adjudication of women's rights take place in federal, state, religious, or customary courts. The issue of consent, as we have seen, runs through the laws on marriage, rape and abduction, property disputes, and any case brought to a Sharia court. The current legal framework involving implied consent in the Sharia courts negates the substantive meaning of the requirement for consent to be "full and free" or, to put it more bluntly, to be real consent rather than presumed.

3.4.iii. Ethiopian Government Response

The Ethiopian government first began to reform landholding from 1998 to 2004, in what is known as First Level Land Certification, which covered 20 million land parcels belonging to more than 6 million households in the four regions of Tigray, SNNPR (2004), Amhara (2003), and Oromia (2004). User (landowning) rights are guaranteed for life, except in cases of long periods of absence. User rights may also be mortgaged.⁸⁰ Buying and selling of user rights can occur informally without title deeds. Renting land and sharecropping are common in rural areas, especially where women are culturally disallowed from plowing land.⁸¹ A complicating factor of this initiative, however, is that land was issued to households rather than to individuals, which created confusion when multiple people of a household owned different parcels.⁸² Needless to say, this presented challenges for women to be aware of and assert their rights.

As a baseline, in order for women to feel confident in protecting their property rights, it is necessary to address the general problems of the legal system as outlined above and, more specifically, enhance enforcement and judicial mechanisms on the local level so that land and inheritance laws are given real effect. On the whole, safeguarding women's property rights necessitates coordination between multiple federal departments as well as local and state judicial actors. For example, the federal Ministry of Agricultural and Rural Development is responsible for enacting land laws

79 FAO, "Gender and Land Rights Database: Ethiopia."

80 Mekonen et al., "Protecting Land Tenure," 16.

81 FAO, "Gender and Land Rights Database: Ethiopia."

82 Mekonen et al., "Protecting Land Tenure," 16.

and coordinating work at the federal and regional levels.⁸³ The Ethiopian Women's Development Fund, which reports to the Prime Minister and was established in 2001, was intended to promote women's property rights and effect wider changes in society in regard to women's rights.

Land certification to date has encountered certain problems. Land Administration Committees (LACs) have been formed at the local level in each of the four regions that have enacted land legislation. LACs are supposed to include at minimum one female member, but in practice this is rare.⁸⁴ Even with land certification, there is the problem of boundary encroachment, in which offenders can, for example, falsify land certifications or plant some crops on the land to support the assertion that the land is theirs. These situations are dangerous if the landowner is a woman without male protection. The woman would also be unlikely to go to court because of the lack of necessary knowledge and financial resources. In instances of inheritance after the death of a male household head, the widow may be asked to marry one of the deceased's male relatives in order to keep the land. If the widow refuses, she is likely to be evicted from the land. Inheritance issues also afflict the children of the deceased, especially female children, who may be prevented from taking their share of the property or may be evicted.⁸⁵

The next round of land certification sought to remedy these issues. LIFT⁸⁶ (Land Investment for Transformation Programme) ran from 2014 to 2020 under the management of the Ethiopian Ministry of Agriculture in addition to other partners, funded by the United Kingdom Department for International Development. LIFT was active in the four regions with land reform legislation and aimed to achieve demarcation of 14 million parcels across 140 woredas with 70% owned by women or under joint ownership. LIFT also created a dataset through which the correlation between land certification and economic growth could be further studied. The 2019 report was written with data collected from 7.1 million parcels. Under LIFT, elders and female representatives at the local level work with authorities to resolve land disputes. The project also included collaboration with local courts and the woreda administrations, as well as the appointment of Social Development Officers (SDOs) that aimed specifically to support women. After the tenure of an SDO elapsed, the issue would be referred to a woreda administrator. SDOs also worked to coordinate with local justice authorities.

83 FAO, "Gender and Land Rights Database: Ethiopia."

84 Ibid.

85 Mekonen et al., "Protecting Land Tenure," 20.

86 Lift Ethiopia, <https://liftethiopia.com/about-lift/>.

There were several problems encountered in the process of securing land certificates fairly and equitably. LIFT surveys discovered that male household heads used a number of ways to deceive their wives from participating in the joint certification, for example by misrepresenting the LIFT program to their wives or hiring a woman to impersonate their wives for the certification process. There was also evidence of bribery of local authorities. Moreover, there are a number of issues that extend beyond the initial securing of land certification. For example, it has been reported in Oromia and SNNPR that some widows successfully protected their land rights in courts, remarried, and then faced opposition from the deceased husband's family, because they felt that their relative's land had been accessed by someone outside of the clan.⁸⁷ Anecdotes such as these serve as a reminder that the challenges that women face in upholding their property rights extend beyond acquiring land certification or protecting their ownership in a singular court case.⁸⁸ It would be helpful to gather more data on whether the women with single or joint ownership of land in the LIFT program manage to adequately maintain their land, and whether they bring disputes to court and what the success rate of these cases is. However, the LIFT program does not currently include the observation of how land rights change over time, and will

87 Mekonen et al., "Protecting Land Tenure," 22.

88 The following are case studies from Mekonen's article:

"Case Story 2: Azeneg is a 45-year-old landholder from Amhara regional state. She has nine children and has become the sole household earner since her husband's mental health declined. She rented out one of her plots to a neighbor under a sharecropping arrangement. However, upon completing the agreement, the tenant annexed her land and then gifted it to his children. He was able to produce the first level book of holding for this illegally held parcel. When she claimed that her land was unlawfully taken from her, the tenant refused her claim and intimidated and threatened her life.

Despite filing a lawsuit against the tenant, he continued to farm the land unlawfully. In early September 2018, LIFT commenced SLLC in her woreda. Azeneg took this opportunity to lodge her complaint to the field demarcation team and explained the situation to them. The field team members immediately informed LIFT's Woreda SDO. Upon receiving the information, the SDO collaborated WLAO and Elders Committee to investigate and substantiate Azeneg's claim. The land, which she had been denied for the past eight years, was demarcated in her name and she received her SLLC Certificate."

"Case Story 3: Lakech is a 60-year-old woman who resides in Basona Worana Woreda, Amhara. After her spouse developed a health problem, she rented out some land parcels under a sharecropping arrangement. Three years after her spouse passed away, one of the tenants claimed he was the heir of the land he had been renting while a second tenant claimed rights to the land he had been renting. The first claimant refused to share the produce from the land under the pretext that he incurred unsettled costs for covering the funeral of Lakech's late husband. After being intimidated and physically abused, Lakech fled from her six parcels with her 13-year-old niece. Struggling to survive, she resorted to begging and renting a shelter at the kebele center. One of the tenants conspired with members of the KLAC to remove the FLLC book of holding that LIFT's FT collect as part of the SLLC process. A member of the community divulged this when experts from the RLAUD and LIFT visited the kebele to undertake regular monitoring activities. LIFT's SDO liaised with the woreda offices to investigate the case and a photocopy of the registration under Lakech's name was produced. With legal evidence in hand, a task force comprising of representatives from the Women's Affairs and Justice Office held a complaints-hearing. The woreda administration office filed charges against the offenders and brought the culprits to the Court of Justice. The court ruled that both the land was to be returned to Lakech and monetary compensation had to be made. She returned to her place of residence and was also granted legal protection against any retaliation."

not gather future transaction data.

In addition to the challenges of ensuring that land certification is adequately bolstering women's property rights, as well as the need to enact land reforms in the states that have yet to do so, there are the broader previously mentioned challenges of addressing the community pressures and norms that prevent women from fully utilizing their land once they have secured it. If women are encouraged to own land yet pressured to sharecrop or defer to male relatives in making financial decisions, then their economic livelihoods are significantly hampered. The personal and financial freedom of women depends on whether or not they can make the most of their rightful possessions.

CHAPTER IV

Conclusion



This review of the Ethiopian legal framework is by no means comprehensive in its depth. As noted, more research and systematic data collection and analysis are needed in order to draw accurate conclusions about the ways in which the legal system succeeds or fails to protect the rights of women across different parts of Ethiopia on key issues of gender equality. It may be sufficient, however, to identify some of the main features in the legal system that support or exacerbate gender inequality and perpetuate practices that deny women their fundamental rights and limit their opportunities:

1. Gaps between the human rights guarantees of the federal and state constitutions and (1) actual legal practice, and (2) the lives of Ethiopian women and children.
2. Resistance to federal authority and lack of trust in the formal judiciary.
3. Lack of capacity and knowledge among elements of the judiciary, and society more broadly, regarding the rights of women as guaranteed by the federal and state constitutions, the federal Revised Family Code, and international human rights obligations.
4. An interpretation of legal pluralism that leads religious courts and CDR forums to disregard the Constitution and federal legislation promoting gender equality. The ways in which the requirement of “consent” is interpreted and applied in a variety of contexts provides one such example.
5. Lack of clarity as to how to reconcile interpretive conflicts in practice between federal vs. state courts, federal vs. Sharia courts, etc.
6. De facto acquiescence of state actors and institutions in favor of traditional values, customs, or practices that violate legal norms and the rights of women.
7. Complicity of justice sector actors and institutions in actions and decisions of customary and religious courts that exceed their statutory jurisdiction and order extra-legal measures that violate the rights of litigants and particularly women and children.
8. Systemic failure to uphold the rule of law as it pertains to marriage, property rights, FGM/C, and the rights of women and children more generally. This relates to the patriarchal social structures and traditions that inform the ways in which laws are interpreted and applied, as well as the underlying imbalance of power along gender lines that is deeply ingrained in tradition and social norms and practices.

9. Lack of coordination among primary institutions, ministries, and other agencies to address cross-cutting issues and collectively engage root causes and drivers of factors that result in various forms of bias, exploitation, discrimination, and denial of gender equality.
10. Lack of robust support for and engagement with civil society.
11. Lack of adequately skilled Commissioners, financial and infrastructural resources, and clear procedures for handling and processing complaints and petitions, investigating disputes, conducting hearings, gathering evidence of hearing witnesses.
12. Lack of accurate data collection and analysis on key issues that impairs the ability to meaningfully evaluate programs and initiatives and also presents an obstacle for evidence-based advocacy and effective results-based management.

Clearly, a realistic national strategy encompassing the cluster of related issues that undermine any real opportunity for gender equality, education, and economic empowerment of women needs to encompass criminal law reform, civil law reform, constitutional reform, and limitations on state and local practice in spheres outside the formal justice system.¹ As discussed in Section 1.3, addressing such needs is even more timely in the wake of COVID-19 and the ongoing armed conflicts around the country. If the federal government is to mobilize the national legal framework for the protection of women and children, policy recommendations for such a task may include the following measures, which have also been recommended by the World Bank²:

1. Capacity building for the formal judiciary to promote the rule of law and enforce the correct application of the federal and state constitutions, the Revised Family Code, the Criminal Code, and Code of Criminal Procedure.
2. Promoting the above legislation among actors within religious courts and CDR. Ethiopian legal scholars have offered a variety of recommendations as to how to integrate the religious courts and CDR with the formal justice system. These issues have also been addressed with recommendations in various UN projects, as well as in Ethiopia's participation in formal UN review processes. Systematic assessment of the various proposals for such integration is required in order to

1 Concluding Observations of CEDAW Committee, Note 299.

2 The World Bank, "Ethiopia Legal and Judicial Sector Assessment," 51-54, <https://www.lawethiopia.com/images/studies/EthiopiaSA.pdf>.

arrive at effective policies that will address current concerns rather than reinforce existing discriminatory practices.

3. Building infrastructure and investing in developing areas, without which capacity building for the judiciary will be impossible.
4. To address the issues raised in (2) above, in-depth research of traditional systems should be undertaken in conjunction with more practical efforts to create links between traditional systems and the formal judiciary. The extent to which traditional justice can be incorporated or harmonized with more formal dispute resolution mechanisms or systems is another important area for future exploration and dialogue.

Additionally, the following reforms as mentioned in the National Roadmap to End Child Marriage and FGM/C call for holistic federal action:

1. The general objective of the M&E framework for the National Costed Roadmap to End Child Marriage and FGM/C is to provide space for a dialogue and decision making on the general status of the implementation of the National Roadmap, based on evidence-based data collected from programme interventions. ***M&E of the National Roadmap will ensure effective and efficient implementation of the priority actions and interventions at all levels.*** The specific objective is to inform whether changes need to be made to strategic areas of interventions and their respective activities.
2. ***For these objectives to be achieved, the existing monitoring systems of each ministry responsible for the implementation of the National Roadmap needs to be strengthened and aligned with regional strategic plans and monitoring, including harmonization with sectoral M&E frameworks.*** Outcome five of the National Roadmap (increased generation and use of a robust data and evidence base on girls for advocacy, programming, learning and tracking progress) provides a specific goal for strengthening the generation and use of data.³

Ongoing research engagement will be necessary in order to monitor the successes and challenges of implementing the reforms as detailed above.

3 “National Costed Roadmap to End Child Marriage and FGM/C by 2020–2024,” 51.

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