

ASSESSING THE JUDICIAL RESPONSE TO GENDER-BASED VIOLENCE IN FEDERAL COURTS

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Abbreviations

CCTV	Closed-Circuit Television
CEDAW	Convention on the Elimination of Discrimination against Women
DHS	Demographic and Health Survey
FDRE	Federal Democratic Republic of Ethiopia
FGM	Female Genital Mutilation
FSC	Federal Supreme Court
GBV	Gender Based Violence

Table of Contents

1. Background	4
1.1 Objectives	4
1.2 Scope	4
2. Methodology	5
2.1 The principle of victim centered approach	5
2.2 Literature review and legal analysis	6
2.3 Process mapping and case analysis	7
2.4 Key informant interviews	8
3. The Meaning, Scope, Causes and Impact of Gender Based Violence	8
3.1 Defining Gender Based Violence.....	8
3.2 Types and Forms of Gender Based Violence	9
3.3 Causes and Impacts of Gender Based Violence	14
4. Overview of Policies and Laws against Gender Based Violence	15
4.1 Treaties and Declarations against Gender Based Violence	15
4.2 FDRE Policies against Gender Based Violence	17
I. The National Policy on Women	17
II. The National Strategy and Action Plan on Harmful Traditional Practices Against Women and Children	17
4.3 FDRE Laws against Gender Based Violence	19

5. The Gaps in FDRE Laws against Gender Based Violence	21
5.1 Absence of definition of gender based violence	21
5.2 Restricted scope of domestic violence	21
5.3 Relegating domestic violence to a common crime	21
5.4 Narrow definition of rape	21
5.5 Reduced punishment against FGM	22
5.6 Contradictory penalty against sexual outrage on minors	22
6. The Prevalence of Gender Based Violence in Addis Ababa	23
7. Investigation of Gender Based Violence Cases	24
7.1 Victim Intake	24
7.2. One Stop Centers	27
7.3 The Ministry of Justice	28
8. Gender Based Violence Cases in Federal Courts	30
8.1 Legislative Responses	30
8.2 Institutional responses	32
8.3 Observations from sample GBV cases	36
9. Conclusions and Recommendations	39
9.1 Conclusions	39
9.1.1 Policy and legislative steps and gaps	39
9.1.2 Institutional steps and gaps	39
9.1.3 Victim centered approach	41
9.2 Recommendations	41
9.2.1 Policy and legislative intervention	41
9.2.2 Capacity building	41
9.2.3 Data collection and publication	41

1. Background

1.1 Objectives

The Lawyers for Human Rights (LHR) is an Ethiopian civil society organization which advocates for the promotion of human rights through policy research, capacity building, and dissemination of information. This assessment report is prepared by the LHR within its policy research and dissemination of information mandate. The report has the following objectives:

- 1) Describing the constituent elements of gender based violence;
- 2) Assessing the national and international policy and legal frameworks on gender based violence relevant in Ethiopia;
- 3) Assessing the drawbacks of the Ethiopian legal framework on gender based violence;
- 4) Identifying the challenges in the investigation and prosecution of gender based violence cases in Addis Ababa; and
- 5) Identifying the challenges in the responses to gender based violence by Federal Courts in Addis Ababa.

1.2 Scope

Federal Courts primarily operate in Addis Ababa and Dire Dawa. However, this report is limited to assessing the investigation and prosecution of gender based violence cases in Addis Ababa. There are eleven sub-city police stations under the Addis Ababa Police Commission which are mandated to investigate gender based violence.¹ Similarly, there are eight women and children benches under the Federal First Instance Court criminal division that adjudicate gender based violence cases.² The Federal High Court and the Federal Supreme Courts have appellate jurisdiction to review the decisions of the Federal First Instance Court decisions on gender based violence cases.

Despite the large number of police, prosecutors, and federal courts involved in the investigation and adjudication of gender based violence, this report is restricted to analyzing gender based violence cases investigated and adjudicated at selected police stations and federal courts in 2013/14 (Ethiopian Calendar) due to limited time and resources.

¹ See section 7.1 below on the Addis Ababa Police Commission.

² See section 8.2 the jurisdiction of Federal Courts in relation to gender based violence cases.

1.3 Structure

The structure of the report by and large follows the order of the list of objectives provided above. The second section explains the data collection and analysis approaches followed

in writing the report. The third section provides an overview of the meaning, scope, causes and impacts of gender based violence. The fourth and fifth sections identify the policy and legislative framework of gender based violence and the gaps in federal laws against gender based violence respectively. Section six provides an overview of the prevalence of gender based violence in Addis Ababa. Section seven and eight explain the investigation and adjudication of gender based violence by the Addis Ababa Police Commission, the Ministry of Justice, and the Federal Courts in Addis Ababa. The last section of the report offers conclusions and recommendations.

2. Methodology

A combination of the following approaches is applied to achieve the objectives of this assessment report.

2.1 The principle of victim centered approach

The principle of victim centered approach is used as a standard of assessment of the efficacy of the federal laws and the process of investigation and adjudication of gender based violence in Addis Ababa. Victim centered approach is defined as ‘the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.’³ The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims of crime as follows:⁴

“Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States.

³ “Human Trafficking Task Force e-guide”, (Office for victims of crime training and technical assistance center, (Office of Justice Program) <<https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/#:~:text=Key%20Term%3A%20The%20Victim%2DCentered,services%20in%20a%20nonjudgmental%20manner.>> accessed 25th April, 2022.

⁴ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, Article 1.

States are obliged to adopt victim centered approach in criminal investigation and prosecution by providing access to justice, restitution, compensation, and medical, psychological and social assistance to victims of gender based violence.⁵

The failure to adopt a victim centered approach by the state justice system may result in secondary victimization. Secondary victimization is defined as the abuse of the victim of crime “that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.”⁶ Secondary victimization may happen because of unfair policies and laws, or unjust process of investigation and adjudication of crimes such as gender based violence.

The implementation of victim centered approach does not mean infringement of due process of law in favor of victims of gender based violence. Rather, the elements of victim centered approach are restatement of the rights of victims that ought to be part and parcel of a national criminal justice system. Due process of law requires the observance of all substantive and procedural requirements of investigation and adjudication under the criminal justice system. As such, the rights of victims and defendants in a criminal justice system ought to be protected on a fair and balanced interpretation of the law.⁷

2.2 Literature review and legal analysis

A desktop review of literature is used to describe the meaning, scope, causes and impacts of gender based violence. Annual reports from the Ministry of Justice and the Addis Ababa Police Commission are reviewed to highlight the prevalence of gender based violence in Addis Ababa.

⁵ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

⁶ Council of Europe (2006), Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims; see also Uli Orth, 'Secondary Victimization of Crime Victims by Criminal Proceedings' (Social Justice Research, Vol. 15, No. 4, December 2002).

⁷ Gregory P. Orvis & John David Reitze, "Balancing Criminal Victims' and Criminal Defendants' Rights", in Laura J. Moriarty (ed.), *Controversies in Victimology* (2nd edition LexisNexis 2003), pp13-14.

The latest DHS data with indicators on gender based violence is used to augment the review on the prevalence of gender based violence in Addis Ababa.⁸ Moreover, human rights reports and studies from international human rights organizations and the US State Department are used as secondary sources to appraise the prevalence of gender based violence in Addis Ababa.

Global and national policies and laws are reviewed to clarify the policy and legislative framework against gender based violence. Legal analysis is employed to identify the gaps in federal laws dealing with gender based violence.

2.3 Process mapping and case analysis

A method of process mapping is applied to identify the institutional processes for the investigation and adjudication of gender based violence. Data on the number of gender based violence cases investigated and adjudicated in 2013/14 (Ethiopian Calendar) is collected from the Ministry of Justice, Federal Courts, and the Addis Ababa Police Commission to explain the types of gender based violence, the identity of victims, and the speed and process of investigation and adjudication.

Federal Supreme Court cassation cases on gender based violence are identified and reviewed as a key judicial response against gender based violence. A sample of gender based violence cases are collected from the Arada Federal First Instance and High Courts and analyzed to show the specific crimes prosecuted, the time used by courts to render decision, and the sentences passed. The Arada Federal Courts are selected because of their relatively organized and accessible case management system.⁹ The main factors used to sample the cases are the recent time of adjudication (2013/14) and the fact that they are subject of appeal.

⁸ Ethiopia Demographic and Health Survey (DHS) 2016, Key indicators Report, Central Statistical Agency, Addis Ababa, Ethiopia, and Rockville, Maryland, USA, July 2017. The latest DHS data with indicators on gender based violence is from 2016.

⁹ There is a pervasive and acute bottleneck against accessing data on gender based violence cases and reports in all justice institutions.

2.4 Key informant interviews

Key informant interviews with police investigators, prosecutors, and judges are conducted to understand aspects of the process of investigation and adjudication of gender based violence cases that are not apparent in the data acquired from the Ministry of Justice, Federal Courts, and the Addis Ababa Police Commission.¹⁰

3. The Meaning, Scope, Causes and Impact of Gender Based Violence

3.1 Defining Gender Based Violence

Masculine and feminine genders are the identities/roles of women and men and the relationships among them which are socially constructed rather than biologically determined.¹¹ Understanding the social construction of gender roles allows us to see violence as a social problem.¹² Violence that affects women and girls, as well as men and boys randomly or in untargeted way is not gender-based.¹³ To be considered gender-based violence, attacks on a person or persons should be motivated or justified in some way by the gender of the victim.¹⁴ GBV includes a broad spectrum of violence and is not limited to intimate partner/domestic violence that happens in a private sphere. For instance, women and girls experience abuse and violence in multiple areas including at work and public spaces.¹⁵

GBV affects both women and men of all ages. Nonetheless, GBV oftentimes is used to refer to the violence against women because of the high rate of crimes committed against women in the context of the political, economic, and cultural fault lines against them in most societies. The 1993 United Nations General Assembly Declaration on the Elimination of Violence against Women states that:

¹⁰ The key informants are listed at the references section of the report. A few key informants are not listed because of their wish to remain anonymous. It is evident that interview with victims of gender based violence could have augmented the findings of this report. Interviews with victims couldn't be done because of the short period allocated to write this report and the relatively long time that takes to get the confidence of victims.

¹¹ Jacqui True, *Violence Against Women: What Everyone Needs to Know*, (Oxford University Press 2021), p. 6.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Kaori Izumi, 'Gender-based violence and property grabbing in Africa: a denial of women's liberty and security' in Geraldine Terry and Joanna Hoare (eds.), *Gender Based Violence*, (Oxfam GB, 2007), p. 14.

¹⁵ True (n 11) p. 3.

*any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life is considered as violence against women and girls.*¹⁶

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation 19 states that GBV affects women and girls disproportionately and/or that it is deliberately used to harm women and girls in particular.¹⁷

GBV doesn't only relate to physical and sexual abuse but also to psychological and emotional harm and pain. Verbal abuse and threats, emotional abuse, such as derogatory comments made in an oppressive and disempowering manner about a woman's worth, body, or emotional state constitute GBV.¹⁸

3.2 Types and Forms of Gender Based Violence

There are several types of GBV perpetrated against women and men. The following is a non-exhaustive but prevalent types of GBV:

I. Rape

Rape is defined differently in various criminal laws. Some are short and general, while others are lengthy and specific.¹⁹ Most definitions of rape have three elements: penetration, the use of force, and the absence of consent.²⁰ Studies have shown that in most cases, rape is premeditated and often involves interaction with the victim beforehand.²¹ Rape conveys a crime of power.²² As such, coercion and consent may be blurred in male dominated societies where the culture is closed for freedom of expression of women.²³

Rape results in numerous physical and mental health problems. The effect of rape on the victim's mental health leads to problems of depression, anxiety, substance abuse, and suicidal behaviors. Furthermore, rape may lead to unwanted or early pregnancy, and infection with sexually transmitted diseases including HIV/AIDS.²⁴ Women are at risk of rape in both public and private spaces, especially when they are young.²⁵

¹⁶ Declaration on the Elimination of Violence against Women (DEVAW), (General Assembly resolution 48/104, 20 December 1993), Article 1.

¹⁷ The Committee on the Elimination of All Forms of Discrimination against Women, General Recommendation 19: Violence against women, 1992, Article 6.

¹⁸ True (n 11) p. 4.

¹⁹ John O. Savino and Brent E. Turvey, MS, 'Defining Rape and Sexual Assault', in John O. Savino and Brent E. Turvey, MS (eds) Rape Investigation Handbook (Academic Press 2004), p. 2.

²⁰ See David L. Richards and Jillienne Haglund, Violence against Women and the Law, (Routledge, 2016) p. 7.

²¹ Patrecia L. Easteal, 'What is Rape?' (Australian Journal of Forensic Sciences, January 2011), <<https://www.researchgate.net/publication/228127629>> Accessed 2nd, March, 2022.

²² Richards and Haglund (n 20) p. 8

²³ Ibid.

²⁴ Ibid, pp. 9-10.

²⁵ Easteal (n 21) p. 15.

II. Sexual Harassment

Sexual Harassment is defined as:

a human rights violation of gender-based discrimination, regardless of sex, in a context of unequal power relations such as a workplace and/or gender hierarchy. It can take the form of various acts including rape, other aggressive touching, forced viewing of pornography, taking and circulation of sexual photographs, as well as verbal sexual conduct.²⁶

Sexual harassment is often rooted in relationships of unequal power but may also occur as a result of advances by coworkers, subordinates, fellow students, or other persons. Sexual harassment has multiple and long term negative effects on the victim's mental and physical health.²⁷ Sexual harassment may happen as a pattern of behavior or a single incident.²⁸

III. Physical and Emotional Violence

Physical violence causes injury, includes but is not limited to "hitting, kicking, slapping, grabbing, punching, choking, burning, beating, pushing/shoving, and throwing dangerous objects."²⁹ Emotional violence includes threatening violence, shouting and yelling, use of degrading, insulting, or humiliating language, stalking, or intentional destruction of property.³⁰ Also, another common psychological/emotional abuse is manipulation and blaming the victim.³¹

IV. Domestic Violence

Domestic violence constitutes "actual or threatened abuse by a spouse, ex-spouse, a current or former boyfriend, intimate partner, and includes violence committed by cohabiting or non-cohabiting partners".³² Societal factors such as health, education, economic and social policies create high level of inequality and thereby contribute to domestic violence. Male control of wealth and decision-making power at home often marginalizes women and contributes to the relatively frequent occurrence of intimate partner violence on women.³³

²⁶ UN Women, 'Towards an end to Sexual Harassment: The Urgency and Nature of Change in the era of # Me Too', New York 2018, p. 8.

²⁷ Richards and Haglund (n 20), p.6.

²⁸ Richards and Haglund (n 20), p. 5.

²⁹ Shelly L. Marmion and Paula K. Lundberg-Love(eds) "Intimate" Violence against Women: When Spouses, Partners, or Lovers Attack, (Praeger Publishers, Westport, 2006) p. 5.

³⁰ Richards and Haglund(n 20) p. 12.

³¹ Marmion and Lundberg-Love (n 29) p.3.

³² Richards and Haglund(n 20).

³³ Richards and Haglund(n 20), p.14.

Some common triggers of violence between partners include affairs, separation, and child custody battles.³⁴ Also, intimate-partner violence usually shows intergenerational patterns. For instance, multiple studies found a connection between childhood physical/sexual abuse and violence between family members and the likelihood of developing abusive behavior in adolescence.³⁵ Victims of domestic violence face various physical and mental health problems. Also, domestic violence results in high household costs, such as increased healthcare expenses, the cost of damaged property, and reduced income for employed women resulting from time off work.³⁶

V. Marital Rape

Rape is oftentimes defined as forced intercourse without the consent of a woman other than a wife. Marital rape is a form of sexual violence where rape occurs in the context of a marriage or an irregular union.³⁷ It refers to violence in which a married woman or a woman in irregular union is physically forced by her spouse or intimate partner to have sexual intercourse against her will. Marital rape results in serious physical, emotional, and mental health consequences for victims such as HIV/AIDS infections and unintended pregnancies.³⁸

VI. Harmful Traditional Practices

Harmful traditional practices are communal violence against women such as female infanticide, prenatal sex selection, early marriage, dowry-related violence, female genital mutilation, and honor crimes against women.³⁹ The most widely practiced harmful tradition is female genital mutilation (FGM). It is estimated that more than 200 million girls and women alive today are estimated to have undergone female genital mutilation with a high prevalence rate in Africa, Asia, and the Middle East.⁴⁰ Harmful traditional practices such as female infanticide, prenatal sex selection, and systematic neglect of girls result in high rate of female infant mortality.⁴¹

³⁴ Marmion and Lundberg-Love (n 29).

³⁵ Richards and Haglund (n 20) p. 13.

³⁶ *Ibid.*, p. 15.

³⁷ Kersti Yllo, "Understanding Marital Rape in Global Context", in Kersti Yllo and M. Gabriela Torres (eds.) *Marital Rape: Consent, Marriage, and Social Change in Global Context* (Oxford University Press 2016), p.1.

³⁸ *Ibid.*

³⁹ UN Secretary General, 'Ending Violence Against Women: From Words to action', (United Nations Publication, 2006) p. 45.

⁴⁰ See [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/female-genital-mutilation/prevalence-of-female-genital-mutilation](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/female-genital-mutilation/prevalence-of-female-genital-mutilation) *ibid.* Accessed 20 April 2022.

⁴¹ UN Secretary General (n 39).

Early marriage is another harmful traditional practice where the girl child younger than 18 years of age is forced into matrimony. The girl child faces physical and emotional abuse when forced to engage in sexual acts or during pregnancy and birth. Consequently, the physical and mental health of the girl child is adversely affected, her education is hindered, and her economic autonomy is restricted.⁴² In addition to the tender age of the victim, forced marriage may involve threatening, abduction, physical violence, rape, and murder.⁴³

VII. Human Trafficking

According to the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, human trafficking is:

*the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*⁴⁴

Reports show that the majority of victims of trafficking are women and children trafficked for purposes of sexual exploitation and forced labor.⁴⁵ Despite a series of local and international legislative efforts, trafficking in women and children continues to grow.⁴⁶ Trafficked women and children face, among other crimes, “sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, and the removal of body organs”.⁴⁷

VIII. Custodial violence

Custodial violence against women occurs in detention centers, prisons, social welfare institutions, and other state and non-state institutions with a mandate over the custody of women for various reasons.⁴⁸ Custodial violence includes physical, emotional violence, and “inappropriate surveillance during showers or undressing, strip searches conducted by or in the presence of men”.⁴⁹ Victims under custody are often times reluctant to complain against the violence they face for a variety of reasons including the fear of retaliation.

42 *Ibid.*

43 *Ibid.*, p. 46.

44 *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, adopted by UN General Assembly Resolution 55/25, 15 November 2000, Article 3.*

45 *UN Secretary General (n 39), p. 50.*

46 *Tatiana A. Denisova, 'Trafficking in Women and Children for Purposes of Sexual Exploitation' (Zaporizhiv State University, Law Department, 2004), p.1.*

47 *UN Secretary General (n 39) p. 51.*

48 *Ibid.*, p. 52.

49 *Ibid.*

IV. Forced sterilization

Forced sterilization is a mechanism of controlling the reproductive ability of a woman against her consent. Sometimes the women's consent is obtained under duress or fraud.⁵⁰ For instance, women may be asked to sign consent forms while in labor or on their way to the operating room.⁵¹ In other cases, they are told or given the impression that their consent is required for another medical procedure.⁵²

V. Violence against women in armed conflict

The deterioration of law and order during an armed conflict and displacement leads to a rise in violence against women.⁵³ Women experience physical, sexual, and psychological violence perpetrated by state and non-state actors during an armed conflict. These include random acts of sexual assault or mass rape as a deliberate strategy of war.⁵⁴

3.3 Causes and Impacts of Gender Based Violence

GBV is caused by many factors that run deep at individual and communal levels. The leading cause of gender based violence is the long standing political, economic, and cultural inequality between men and women.⁵⁵ Patriarchal views supported by political, economic, and cultural processes to legitimize the dominance and superiority of men are the main drivers of gender based violence.⁵⁶

The impacts of the various forms of GBV have been touched upon in the previous section. Gender based violence has severe short and long-term consequences on women's physical, sexual, reproductive, and mental health as well as on their personal and social well-being. The health consequences of violence against women includes injuries, unwanted pregnancy, sexually transmitted diseases including HIV, fistula, pregnancy complications, and chronic conditions. Mental health impacts include Post Traumatic Stress Disorder, depression, anxiety, substance abuse and insomnia.⁵⁷ The health impact may trigger stigma and social alienation of victims.

⁵⁰ Priti Patel, "Forced sterilization of women as discrimination", (*Public Health Review*, Article number: 15, 14 July 2017), <<https://publichealthreviews.biomedcentral.com/articles/10.1186/s40985-017-0060-9>>, Accessed 3rd March, 2022.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ "Violence against Women in situations of armed conflict and displacement", (*World Health Organization*, July 1997), <<https://www.who.int/gender/violence/v7.pdf>>, Accessed 3 March, 2022.

⁵⁴ UN Secretary General (n 39) p. 54.

⁵⁵ UN Secretary General (n 39) p. ii.

⁵⁶ "What causes gender-based violence?" (*Council of Europe*) <<https://www.coe.int/en/web/gender-matters/what-causes-gender-based-violence>>, Accessed 5 March, 2022.

⁵⁷ Gender Based Violence in Health Emergencies, <<https://www.who.int/health-cluster/about/work/task-teams/gender-based-violence/en/#:~:text=Mental%20health%20impacts%20for%20survivors,from%20her%20community%20and%20family.>>, Accessed 5 March, 2022.

4. Overview of Policies and Laws against Gender Based Violence

4.1 Treaties and Declarations against Gender Based Violence

I. Global and regional treaties

The FDRE Constitution provides that all international treaties ratified by Ethiopia are an integral part of the law of the land.⁵⁸ The Constitution requires that its human rights provisions should be interpreted in light of the principles of human rights under the Universal Declaration of Human Rights and international human rights treaties ratified by Ethiopia.⁵⁹

Ethiopia is party to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).⁶⁰ CEDAW stipulates that state parties must refrain from engaging in any act or practice of discrimination against women and obliges them to ensure that public authorities and institutions act in conformity with this obligation,⁶¹ and to take all appropriate measures to eliminate discrimination against women by any person or organization.⁶² State parties to CEDAW are required to report the legislative, judicial, administrative or other measures they have taken for the implementation of the rights of women protected under the convention including the suppression of all forms of trafficking in women and sexual exploitation of women.⁶³

The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime⁶⁴ obliges state parties to prevent trafficking in women and children, assist the victims of human trafficking, and cooperate with each other in combating human trafficking.⁶⁵

The Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) is a regional treaty that requires state parties to adopt and implement appropriate measures to ensure the protection of women from all forms of violence, particularly sexual and verbal violence.⁶⁶ Also, the Maputo Protocol requires state parties to prohibit and eliminate harmful

⁵⁸ Constitution of the Federal Democratic Republic of Ethiopia, (Proclamation no. 1/1995), Article 9 (4).

⁵⁹ *Ibid*, Article 13(2).

⁶⁰ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), General Assembly resolution 34/180, 18 December 1979; Ethiopia ratified CEDAW on September 10th, 1981.

⁶¹ Convention on the Elimination of All Forms of Discrimination against Women, Article 1 (d).

⁶² *Ibid*, Article 1 (e).

⁶³ *Ibid*, Articles 6, 17 and 18.

⁶⁴ Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention Against Transnational Organized Crime, adopted by UN General Assembly Resolution 55/25, 15 November 2000. Ethiopia ratified the Protocol on June 22, 2012. Ethiopia has also ratified the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution and others (September 10, 1981) and the 2000 UN Convention Against Transnational Organized Crime (July 23, 2007).

⁶⁵ *Ibid*, Article 2.

⁶⁶ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), entered into force on 25 November 2005, Article 3. Ethiopia ratified the Maputo Protocol on July 18, 2018.

I traditional practices such as forced marriage and female genital mutilation, to provide legal protection for women against all forms of violence both in public and private sphere.⁶⁷

II. Declarations

The Universal Declaration of Human Rights declares the equal rights of men and women in all aspects of life and in the enjoyment of the rights recognized by the declaration.⁶⁸ Similarly, the Declaration on the Elimination of Violence against Women (DEVAW) urges states to condemn violence against women and not to invoke custom, tradition, or religious considerations to avoid their obligations concerning its elimination. Moreover, under DEVAW, states agreed to pursue by all appropriate means, and without delay, a policy of eliminating violence against women.⁶⁹

The Beijing Declaration and Platform for Action (BDPFA) is another significant international instrument that urges states to develop a holistic and multidisciplinary approach to the challenging task of promoting families, and communities that are free of violence against women.⁷⁰ It proclaims that equality is a partnership between women and men, and educational systems should promote self-respect, mutual respect, and cooperation between women and men.⁷¹ Also, the Beijing Declaration requires state and non-state actors to promote an active and visible policy of mainstreaming a gender perspective in all their policies and programs so that before decisions are taken, an analysis may be made of their effects in addressing violence against women.⁷²

4.2 FDRE Policies against Gender Based Violence

I. The National Policy on Women⁷³

The National Policy on Women acknowledges the historical pervasiveness of discrimination against women and the manifestations of abuse against women in their day to day life as a result of gender bias and harmful traditional practices. The Policy states that existing laws were prejudicial to women and set objectives to facilitate the necessary conditions for the respect of the rights of women and the gradual elimination of customary and other practices that are against the physical and psychological wellbeing of women.

⁶⁷ *Ibid*, Articles 1, 5, 6, and 12.

⁶⁸ Ethiopia is a founding member of the United Nations and a signatory of UDHR on December 10th, 1948. Universal Declaration of Human Rights, 1948, Preamble and Article 2.

⁶⁹ Declaration on the Elimination of Violence against Women (DEVAW), (General Assembly resolution 48/104, 20 December 1993), Article 4.

⁷⁰ Beijing Declaration and Platform for Action, (The Fourth World Conference on Women, 4 to 15 September 1995).

⁷¹ *Ibid*, Para. 119.

⁷² *Ibid* Para. 123.

⁷³ Transitional Government of Ethiopia, 1993.

II. The National Strategy and Action Plan on Harmful Traditional Practices Against Women and Children⁷⁴

The National Strategy on Harmful Traditional Practices against Women and Children was adopted with the objective of institutionalizing mechanisms at the national, regional and grassroots level for the prevention and elimination of all forms of harmful traditional practices.⁷⁵ Also, the Strategy aims at creating a partnership among all stakeholders to mobilize resources and knowledge for the monitoring, and prevention of harmful traditional practices against women and children and ensuring accountability for violations of laws against harmful traditional practices.⁷⁶

III. The Criminal Justice Policy⁷⁷

The Federal Criminal Justice Policy stipulates that criminal cases against women are among crimes that should be given priority in investigation and prosecution by police departments and public prosecutors.⁷⁸ Moreover, the Policy provides that suspects charged with rape and sexual violence against minors that are punishable with the imprisonment of 15 years and above should not be allowed bail.⁷⁹ The most important stipulation of the Federal Criminal Justice Policy is its assertion that there will be special procedure for the prevention, investigation, and prosecution of crimes against vulnerable groups including women and children in justice institutions such as police departments, public prosecution, and courts.⁸⁰

IV. The Draft National Policy for Prevention and Response to Gender Based Violence⁸¹

The draft Policy aims at addressing the challenge of GBV in the country through “multi-sectoral and integrated approaches to prevention and response efforts by various stakeholders, including the government, NGOs, private sector, development partners, and men and women in society.” The draft Policy is based on four strategies: prevention of GBV, response to GBV, coordination of interventions against GBV, and knowledge management on GBV.⁸² Among the measures of response, the draft Policy proclaims the expansion of “one-stop centers, legal aid services, and other viable response mechanisms including setting up survivor-friendly benches, specialized investigation, and prosecution units to GBV survivors in urban and rural areas.”⁸³

⁷⁴ FDRE Ministry of Women, Children and Youth Affairs, *National Strategy and Action Plan on Harmful Traditional Practices against Women and Children* (2013).

⁷⁵ *Ibid*, p. 28.

⁷⁶ *Ibid*, p. 29.

⁷⁷ *The Federal Criminal Justice Policy*, Ministry of Justice, March 2012.

⁷⁸ *Ibid*, Article 3.14.

⁷⁹ *Ibid*, Article 3.21.3

⁸⁰ *Ibid*, Article 6.4.

⁸¹ *National Policy for Prevention and Response to Gender Based Violence (Draft)*, Ministry of Women and Social Affairs, March 2022.

⁸² *Ibid*, Section 3.

⁸³ *Ibid*, Article 4.2.1 (b).

V. The Integrated and Multi-Sectoral Approach to Prevent and Respond to Gender Based Violence

In 2010, the federal government adopted an action plan to establish an Integrated and Multi-Sectoral Approach to Prevent and Respond to Gender Based Violence.⁸⁴ The plan promotes integrated measures that address violence against women and children. The National Coordinating Body for Multi-Sectoral and Integrated Response to Violence against Women and Children was established under the auspices of the action plan. The National Coordinating Body led by the Ministry of Justice has been instrumental in the establishment of the Integrated Care and Justice Centres (also known as one stop centres) for sexually abused women and children in a few selected hospitals in Addis Ababa.⁸⁵

4.3 FDRE Laws against Gender Based Violence

I. FDRE Constitution

The FDRE Constitution recognizes the right to equality and non-discrimination.⁸⁶ The Constitution prohibits discrimination on the basis of sex and recognizes the right of citizens to protection against bodily harm.⁸⁷ Article 35 of the FDRE Constitution states that in the enjoyment of rights and protections provided for by the Constitution, women have equal rights with men.⁸⁸ The provision further stipulates that the state shall enforce the rights of women to eliminate the influences of harmful customs, laws, and practices that oppress women or cause bodily or mental harm to women.⁸⁹ Women also have equality in the exercise of democratic rights including the right to take part in public affairs.⁹⁰

Article 13(2) of the FDRE Constitution requires that the fundamental rights and freedoms specified in its third chapter including the rights of women shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and relevant international instruments adopted by Ethiopia.

⁸⁴ *Action Plan for the Social Sector to Establish an Integrated and Multi-Sectoral Approach to Prevent and Respond to Gender Based Violence, 2010.*

⁸⁵ *See section 7.2 below on one stop centers.*

⁸⁶ *Constitution of the Federal Democratic Republic of Ethiopia, (Proclamation No. 1/1995), Article 25.*

⁸⁷ *Ibid* Articles. 16 and 25.

⁸⁸ *Ibid* Articles 35 (1).

⁸⁹ *Ibid* Articles 35 (2).

⁹⁰ *Ibid* Article 38.

II. The 2004 Criminal Code

The 2004 Criminal Code⁹¹ prohibits abduction of women (article 587); early marriage (article 649), and bigamy (article 650); rape and sexual outrages (articles 620 – 628); trafficking in women (articles 597 and 635); forced prostitution (article 634); physical violence within marriage or in an irregular union (article 564); and child pornography (article 640 (2)(c)). Moreover, the 2004 Criminal Code prohibits different forms of harmful traditional practices under Articles 561–570.

III. The Proclamation for the Prevention and Suppression of Trafficking in Persons⁹²

The Proclamation for the Prevention and Suppression of Trafficking in Persons defines acts of trafficking in persons as “slavery or practices similar to slavery, servitude or debt bondage” ; exploitation of persons “in removing organs” or in “prostitution or other forms of sexual activities of another person” ; engaging another person in “forced labor or service, begging or criminal act, forced marriage, surrogacy” ; and the exploitation of child labor.⁹³ Moreover, the Proclamation prohibits the sexual exploitation of others through prostitution by acts such “pimping out, using or deploying a person for prostitution, or causing a person to engage in immoral acts, especially by exhibiting one’s nakedness or sexual parts for the view of others.”⁹⁴

IV. The Revised Family Code

The Revised Family Code provides for respect, support and assistance and the joint management of family.⁹⁵ The Code stipulates that a valid marriage shall take place only when the spouses have given their free and full consent.⁹⁶ However, the Code provides that neither a man nor a woman who has not attained the full age of eighteen years shall conclude marriage.⁹⁷ Marriage with a minor is a crime that is punishable with rigorous imprisonment.⁹⁸

⁹¹ *The Criminal Code of the Federal Democratic of Ethiopia, Proclamation No 414/2004, May 9, 2005.*

⁹² *Prevention and Suppression of Trafficking in Persons and Smuggling of Persons Proclamation No. 1178/2020.*

⁹³ *Ibid, Article 3.*

⁹⁴ *Ibid, Article 2(4), 7.*

⁹⁵ *The Revised Family Code, (Proclamation No. 213/2000), Article 50 (1) reads: “The spouses shall have equal rights in the management of the family”.*

⁹⁶ *Ibid Article 6.*

⁹⁷ *Ibid, Article 7.*

⁹⁸ *Criminal Code (n 91), Article 648.*

5. The Gaps in FDRE Laws against Gender Based Violence

5.1 Absence of definition of gender based violence

The 2004 Criminal Code (Criminal Code) does not have a definition that shows the scope of the crime of gender based violence. The absence of a comprehensive definition of the crime is a setback in the effective response to cases of gender based violence including compensation and rehabilitation of victims.

5.2 Restricted scope of domestic violence

Article 564 of the Criminal Code refers to domestic violence but limits its scope to marital partners and persons in co-habitation. This definition excludes intimate partners who may not be residing together or ex-partners as well as other family members. What is more, the meaning of domestic violence is limited to physical violence and does not cover other forms of violence including economic, psychological, and verbal abuse.⁹⁹

5.3 Relegating domestic violence to a common crime

Article 564 of the Criminal Code prohibits violence against a marriage partner or a person cohabiting in an irregular union. The provision states that such violence is equated with willful injury provided under Articles 555-560. This is a serious gap that does not take into consideration the complex and far reaching nature of violence in marriage or irregular union. The gap may be used to relegate cases of violence in marriage and irregular union to a regular crime that may not require attentive and speedy investigation and adjudication processes.

5.4 Narrow definition of rape

Article 620 (1)¹⁰⁰ of the Criminal Code defines rape as sexual intercourse outside of wedlock. This provision excludes marital rape. The Beijing Declaration and Platform for Action expressly includes marital rape as part of acts that constitute gender based violence.¹⁰¹

Rape violates one's personal integrity and dignity and can result in both physical and mental distress whether it happens inside or outside marriage.

Also, the provision defines rape very narrowly. The term "sexual intercourse" may wrongly imply that rape in the Criminal Code is limited to penetration of the female sexual organ with the male sexual organ. Penetration using other objects and degrading and perverse sexual acts done on a woman without her express consent are not clearly recognized as acts constituting rape.

⁹⁹See Rangita De Silva de Alwis, 'A Roadmap to Revising Ethiopia's Gender Discriminatory Laws: A Comparative Analysis' (Faculty Scholarship at Penn Law, 2021), pp. 36-37.

¹⁰⁰ Article 620 (1) of the Criminal Code (n 91) reads: "whoever compels a woman to submit to sexual intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance is punishable with rigorous imprisonment from five years to fifteen years."

¹⁰¹ Beijing Declaration and Platform for Action (n 70), Para. 113 (a) reads: "Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation."

5.5 Reduced punishment against FGM

Article 565 of the Criminal Code prohibits FGM.¹⁰² Article 566 (1) of the same states: “whoever infibulates the genitalia of a woman, is punishable with rigorous imprisonment from three years to five years.” A more severe punishment of rigorous imprisonment from five years to ten years is imposed only if FGM results in injury to the body or health. In reality, the very act of FGM has several negative physical and psychological effects on the victims¹⁰³, especially since it is mostly done at a tender age of the girl child. Thus, the imposition of a light punishment on offenders is a gap in the Criminal Code.¹⁰⁴

V.6 Contradictory penalty against sexual outrage on minors

There is a discrepancy between Article 627(3) of the Criminal Code and the Revised Sentencing Guideline on the penalty against sexual offences against minors.¹⁰⁵ The Criminal Code provides a punishment of rigorous imprisonment not exceeding 10 years when a person induces a minor younger than 13 years of age to perform indecent act, performs such act on the minor or deliberately performs such act in the presence of the minor.¹⁰⁶ However, for the same crime, the Revised Sentencing Guideline provides imprisonment ranging between 1 year and one year and ten months.¹⁰⁷ The discrepancy creates significant reduction of penalty against gender based violence cases related to minors.

6. The Prevalence of Gender Based Violence in Addis Ababa

Gender based violence is widespread in Addis Ababa at household level, in schools, work places, and in the day to day life of residents of the city.¹⁰⁸ The types of gender based violence prevalent in Addis Ababa include sexual violence, physical violence, human trafficking, female genital mutilation, early marriage, and other harmful traditional practices.¹⁰⁹ Trafficking in women is also widespread in Addis Ababa. Reports show that traffickers such as brothel owners exploit girls for commercial sex in Addis Ababa while boys are exploited for child labor in traditional weaving, construction and street vending.¹¹⁰

¹⁰² Article 565 of the Criminal Code (n 91) reads: ‘Whoever circumcises a woman of any age, is punishable with simple imprisonment for not less than three months, or fine not less than five hundred Birr.’

¹⁰³ See United Nations Children’s Fund, *A Profile of Female Genital Mutilation in Ethiopia*, UNICEF, New York, 2020, p.5; see also Jo Boyden, Alula Pankhurst and Yisak Tafere, “Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia”(Young Lives 2013).

¹⁰⁴ See also United Nations, Committee on the Elimination of Discrimination against Women, forty-ninth session, 11-29 July 2011, “Concluding observations of the Committee on the Elimination of Discrimination against Women”, paragraph 20 which observed “the penalties for female genital mutilation stipulated in articles 561-563, 567, 569 and 570 of the Criminal Code(2005) are too lenient.”

¹⁰⁵ The Revised Sentencing Guideline Directive No.2/2006, The Federal Supreme Court, Tikemet 1, 2006.

¹⁰⁶ Criminal Code (n 91), Article 627(3) .

¹⁰⁷ The Revised Sentencing Guideline Directive No.2/2006, The Federal Supreme Court, Tikemet 1, 2006, p.82.

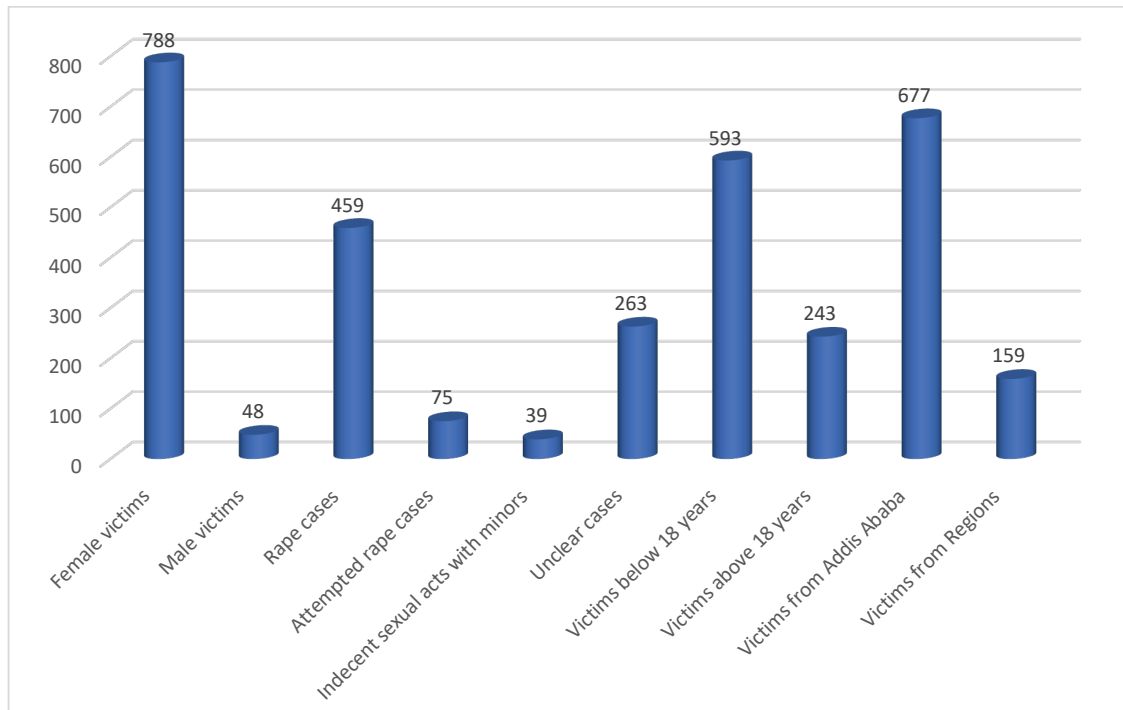
¹⁰⁸ There is no comprehensive and up to date survey/data on the prevalence of gender based violence in Addis Ababa. The latest Demographic and Health Survey on violence against women was conducted in 2016. Also, there are human rights reports and research studies that reflect on different aspects of gender based violence in Addis Ababa.

¹⁰⁹ Ethiopia Demographic and Health Survey (DHS) 2016, Key indicators Report, Central Statistical Agency, Addis Ababa, Ethiopia, and Rockville, Maryland, USA, July 2017; see Fig 1 below for a sample of the DHS survey; On the high prevalence of FGM in Addis Ababa, see United Nations Children’s Fund, *A Profile of Female Genital Mutilation in Ethiopia*, UNICEF, New York, 2020, p.5; see also Jo Boyden, Alula Pankhurst and Yisak Tafere, “Harmful Traditional Practices and Child Protection: Contested Understandings and Practices of Female Child Marriage and Circumcision in Ethiopia”(Young Lives 2013).

¹¹⁰ US Department of State, 2021 Trafficking in Persons Report: Ethiopia;<https://www.state.gov/reports/2021-trafficking-in-persons-report/ethiopia/>; Accessed 23 April 2022.

According to the latest DHS survey, gender based violence such as physical violence, sexual violence, spousal violence against women and FGM are rampant in Addis Ababa.¹¹¹ Despite the pervasiveness of gender based violence in Addis Ababa, Fig. 1 below shows that few cases are reported to justice and health institutions by victims or their families.¹¹²

Fig. 1: Sexual violence cases reported to the one stop centers in Addis Ababa from Sen 2013 up to Tehsas 2014.¹¹³



7. Investigation of Gender Based Violence Cases

7.1 Victim Intake

Victims of gender based violence in Addis Ababa have the opportunity to contact the district police station in their neighborhood or at places accessible to them. The Addis Ababa Police Commission has established women and children units in its 11 sub-city departments in Addis Ababa mandated to investigate gender based violence cases.¹¹⁴ The units are operated by police officers and prosecutors that investigate gender based violence cases.¹¹⁵

¹¹¹ Ethiopia Demographic and Health Survey (DHS) 2016, Key indicators Report, Central Statistical Agency, Addis Ababa, Ethiopia, and Rockville, Maryland, USA, July 2017, pp. 299-321.

¹¹² The United Nations Committee on the Elimination of Discrimination against Women, forty-ninth session, 11-29 July 2011, in its "Concluding observations of the Committee on the Elimination of Discrimination against Women", paragraph 20 observed "female genital mutilation and sexual, domestic and other forms of violence against women are underreported owing to cultural taboos and victims' lack of trust in the legal system".

¹¹³ Federal Attorney General, Women and Children Affairs Directorate, Biannual Report, Tehsas 2014.

¹¹⁴ Reports from the Children and Women Units in the eleven Sub-city Departments of the Addis Ababa Police Commission, prepared by the Children and Women Crimes Investigation and Protection Division, Addis Ababa Police Commission Headquarters, April 20, 2022.

¹¹⁵ Some gender based violence such as human trafficking may need to be investigated by the Federal Police. See the Ethiopian Federal Police Commission Establishment Proclamation No. 720/2011, Article 5.

The women and children units at sub-city police departments receive complaints directly reported to them by victims/third parties, one stop centers, or district police stations. When they receive complaints from victims/third parties directly, police investigators send the victims to the one stop centers described below for medical examination. After the medical examination, the police investigators record the testimony of the victim, gather evidence including the medical certificate from one stop centers, and arrest offenders and bring them to court for a remand.¹¹⁶ Police investigators face challenges in collecting evidence because of the time gap between the commission and reporting of the crime. Moreover, the police are often times unable to carry out critical processes of investigation such as forensics because of lack of skill and logistics.¹¹⁷

In addition to the above steps, the police investigators may contact shelter houses for victims who need protection from perpetrators or who don't have a place to stay. According to a UN report, there are five shelters for victims of gender based violence in Addis Ababa run by non-governmental organizations.¹¹⁸ Victims may stay in the shelters until their case is brought to court. Sometimes the police face challenges when some victims consider shelters as prison and run away from shelters.¹¹⁹ Also, the police face challenges in finding shelter for victims with mental or physical disabilities.¹²⁰ Once a case is brought to court, the police help victims to reunite with their families or move to places that are safe for them. According to the Addis Ababa Police Commission, one hundred forty-eight victims of gender based violence are sent to shelters by the police in the nine months from Sene 2013 up to Megabit 2014.¹²¹

The above process of investigation typically applies to sexual violence cases. For all other gender based violence cases such as physical violence, the process of investigation is identical with the exception of sending victims to ordinary hospitals for examination rather than to one stop centers, which are specifically established for victims of sexual violence. According to informants in the women and children units of Addis Ababa Police departments, police investigators are not trained in the approaches needed for the investigation of gender based

116 Chief Sergeant Zewde Ayele, Investigator at the Women and Children Unit of the Bole Sub-City Police Department, Addis Ababa Police Commission.

117 Sergeant Temesgen Tegegn, Investigator at the Women and Children Unit of the Kolfe Sub-City Police Department, Addis Ababa Police Commission.

118 See UN Women, 'Shelters for Women and Girls who are survivors of violence in Ethiopia', Addis Ababa Ethiopia, 2016, p.15. The report contains extensive analysis of the quality and accessibility of the shelters.

119 Commander Seyoum Assfeha, Head of Ledeta Sub-City Police Department, Addis Ababa Police Commission.

120 Commander Seyoum Assfeha, Head of Ledeta Sub-City Police Department, Addis Ababa Police Commission explains the shelters are oftentimes reluctant to admit GBV survivors with disability citing absence of appropriate facilities to accommodate disabled victims.

121 Reports from the Children and Women Units in the eleven sub-city departments of the Addis Ababa Police Commission, prepared by the Children and Women Crimes Investigation and Protection Division, Addis Ababa Police Commission Headquarters, April 20, 2022.

violence. Moreover, the investigation of gender based violence including the hearing of victim's testimony is done in open and common rooms where other crimes are investigated at police departments.¹²²

An official data collected from police departments in 11 sub-cities of Addis Ababa shows that cases of gender based violence investigated and instituted in federal courts are few in number against the high prevalence of gender based violence in Addis Ababa. Moreover, some prevalent gender based violence cases such as FGM are either not reported or investigated.¹²³

Fig.2: Gender based violence cases investigated and instituted in the Federal First Instance Court in Addis Ababa from Sene 2013 up to Megabit 2014.¹²⁴

GBV against minors		GBV against women older than 18 years
Physical violence	Female victims:87; Male victims: 145	Physical violence: 27
Sexual violence	Female victims: 312; Male victims: 2	Sexual violence: 135
Indecent sexual acts against minors	Male victims: 36	
Child labor	Female victims: 6 ; Male victim: 1	

7.2. One Stop Centers

One stop centres are established to provide multi-sectoral and integrated professional services for victims of sexual violence. One stop centers operate on a basis of a manual developed by the Ministry of Justice and approved by all stake holders including the Ministry of Justice, Ministry of Health, Ministry of Women and Social Affairs, Federal Courts, the Federal Police Commission and the Addis Ababa Police Commission.¹²⁵ Each one stop center has the following professionals to help victims of sexual violence: medical doctor, psychiatrist, police investigator, and prosecutor.¹²⁶ Currently, one stop centers operate at Ghandi, Menlik, Saint Paulos, and Tirunesh Beijing hospitals in Addis Ababa.¹²⁷

¹²² *Sergent Temesgen Tegegn, Investigator at the Women and Children Unit of the Kolfe Sub-City Police Department, Addis Ababa Police Commission. This is also confirmed by police investigators in other 10 sub-city police departments.*

¹²³ *On the high prevalence of FGM in Addis Ababa, see United Nations Children's Fund, A Profile of Female Genital Mutilation in Ethiopia, UNICEF, New York, 2020, p.5.*

¹²⁴ *Report from the Children and Women Units in the eleven sub-city departments of Addis Ababa Police Commission, prepared by the Children and Women Crimes Investigation and Protection Division, Addis Ababa Police Commission Headquarters, April 20, 2022.*

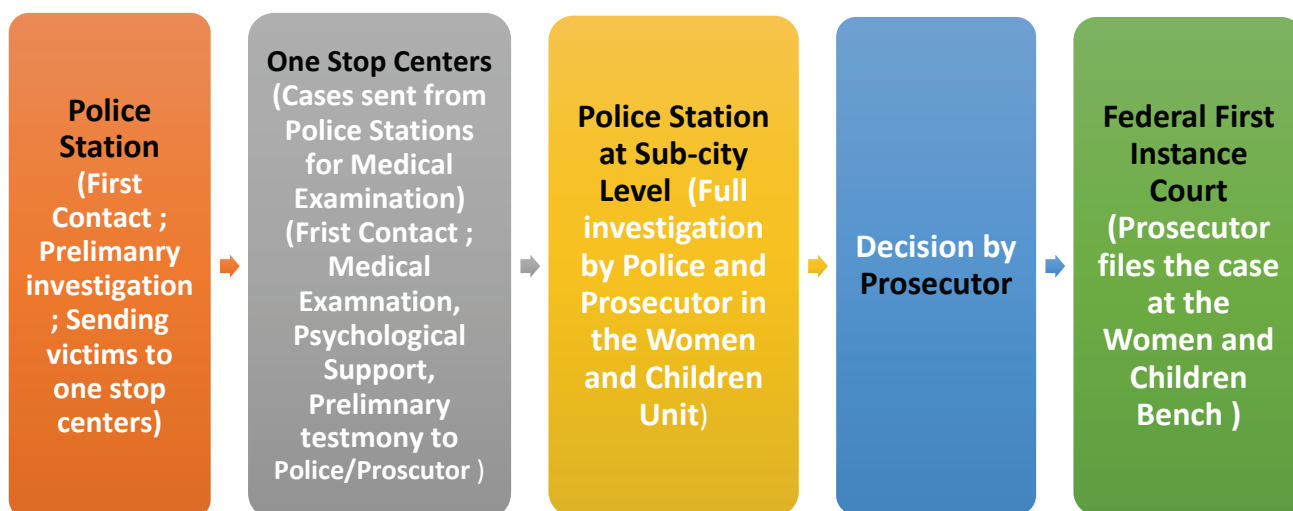
¹²⁵ *See Manual for to the Management of One Stop Centers for the Prevention and Response to Sexual Violence, National Coordinating Organ, Tahsas 2014, sections 3 and 5. The stakeholders cover the budget required to run the one stop centers.*

¹²⁶ *Ibid, Article 3.2 suggests more personnel such as case managers, translators, and specialists in different medical fields.*

¹²⁷ *Ibid.*

When victims of sexual violence arrive at a one stop center, they first undergo medical and psychological examination and treatment. The police and prosecutor at the one stop center conduct a preliminary interview with victims and explain the victims' right to bring the perpetrators to justice.¹²⁸ The police/prosecutor will then send their preliminary report to the women and children unit of the relevant sub-city police department for full investigation by the later if they are convinced that a crime has been committed.

Fig 3: Basic process map of investigation of GBV cases in Addis Ababa



7.3 The Ministry of Justice

The Ministry of Justice is the government agency that oversees the administration of the one stop centers in Addis Ababa.¹²⁹ In a bid to provide better response to GBV, the Ministry of Justice has established a directorate dedicated to the investigation and prosecution of crimes against women and children.¹³⁰ The obligations of the directorate include leading the investigation of gender based violence against women and children, charging and prosecuting the perpetrators of the crime in federal courts, and following up on the implementation of the decision of the courts.¹³¹ Also, the public prosecutor advises victims of gender based violence on their rights under the law throughout the process of investigation and prosecution of GBV cases.

As fig 4 below shows, for the majority of reported cases, victims do not return to pursue their cases. Moreover, there are many cases closed by the prosecutor for lack of evidence. Also, the courts have closed cases including before verdict for reasons such as lack of evidence that establish a prima facie case.

¹²⁸ There are victims who may not choose to pursue a case against perpetrators. In such cases the police and prosecutor will not send their report to sub-city police department for further investigation.

¹²⁹ Manual (n 125), section 3.3.

¹³⁰ FDRE Attorney General, A Study on Organizational Structure, Hamle 2012.

¹³¹ Ibid, Section 3.6.5, pp 108-109.

Fig 4: A Review of GBV cases that are reported and investigated in Addis Ababa from Genbot 2012 up to Genbot 2013 ¹³²

One Stop Center	Sub-city	Number of reported cases	Cases under police investigation	Cases closed by prosecutors	Victims who failed to report back	Cases on trial in court	Cases closed by court decision
Menlik Hospital	Yeka	139	26	22	44	10	22
	Bole	90	6	5	27	20	25
	Gulele	62	2	13	4	23	16
Ghandi Hospital	Yeka	21	7	2	8	0	1
	Bole	90	13	4	37	24	6
	Gulele	21	7	2	8	0	1
	Ledeta	49	9	13	1	3	9
	NefasSilk	129	26	33	8	28	0
	Kirkos	76	32	2	11	16	5
	Total	677	128	96	148	124	85

8. Gender Based Violence Cases in Federal Courts

8.1 Legislative Responses

1. Obligations of Federal Courts

Federal Courts do not have a policy or directive that focuses on the principles and procedures for the disposition of cases on gender based violence. Nonetheless, Federal Courts are obliged to support victims of gender based violence through ‘rapid court decision and professional support’. ¹³³ Also, federal judges are required to be attentive and gentle in hearing the testimony of victims of GBV. ¹³⁴ Furthermore, federal judges are prohibited from engaging in gender discrimination, sexual harassment or any other behavior that amounts to sexual violence against court clients. ¹³⁵

¹³² Federal Attorney General, Women and Children Affairs Directorate, Biannual Report, Tahsas 2014. The difference between the reported cases and the total number of cases for each sub-city is explained in terms of missing cases, cases that are transferred in to another department of crime investigation, and cases of juvenile delinquents.

¹³³ The Federal Courts Proclamation No.1234/2021, Article 19(1) (g).

¹³⁴ Ibid, Article 11(3).

¹³⁵ The Federal Judges Judicial Code of Conduct and Disciplinary Measures Procedure, Regulation No.1/2013, Federal Judicial Commission, Tikmit 2013, Article 8(9).

II. Federal Supreme Court Cassation Decisions

A) The status of cassation decisions

The interpretation of law by the cassation division of the Federal Supreme Court is binding on all federal and regional courts when such decision is presided by five judges.¹³⁶ The following are cases whose ruling are presided by five judges of the Federal Supreme Court cassation division and therefore binding on all similar cases on gender based violence throughout federal and regional courts.

B) Age of defendants accused of sexual violence

The case Harari Region Prosecutor vs Bona Ahmed Amin¹³⁷ was initially instituted at the Harari Regional High Court when the 16 years old defendant was charged with having sexual intercourse with a 15 years old victim by force. In its decision, the Harari High Court dismissed the case after stating that the victim has consented to sexual intercourse. The prosecutor appealed to the Harari Regional Supreme Court, which established the defendant has committed sexual violence against the victim in violation of Article 620 of the Criminal Code. Nonetheless the Harari Regional Supreme Court accepted the dismissal of the case by the lower court stating that Article 620 of the Criminal Code does not say anything about the liability of minors. The Federal Supreme Court cassation division ruled that the fact that the defendant was 16 years old does not exonerate him from criminal responsibility. The Court ruled that the 16 years old defendant should be tried on the basis of Article 56 and Article 626 of the Criminal Code.

C) Age of victims of sexual violence

In two cases¹³⁸ that originated from regional courts, the Federal Supreme Court cassation division rendered decisions that ruled the age of victims of sexual violence should be established through credible and verifiable process. The Court reasoned that the proper application of the various provisions of the Criminal Code against sexual violence presupposes the identification of the age of victims.

D) Sexual violence against infants

In the case Defendant vs Oromia Justice Bureau¹³⁹, the defendant was charged with raping 8 years old minor in violation of 627(1) of the Criminal Code. The First Instance and Appellate Regional Courts of Oromia found the defendant guilty of violating Article 627(1) of the Criminal Code and sentenced him to 16 years of rigorous imprisonment. The defendant appealed to the Federal Supreme Cassation Court alleging error of law by the regional courts. In his application to the Federal Supreme Court, the defendant stated that he should be tried for

¹³⁶ The Federal Courts Proclamation No.1234/2021, Article 26(3).

¹³⁷ FSC Cassation File No. 46412, Tikemt 30, 2003.

¹³⁸ Amanuel Addise vs SNNPR Public Prosecutor, FSC Cassation File No.93762, Yekatiit 28,2006; AdamnehMekonnen vs Amhara National Regional Government Public Prosecutor, FSC Cassation File No. 93775, Meiazia 22, 2006.

¹³⁹ FSC Cassation File No.107166, Tikmet 4, 2006.

an attempted sexual intercourse and be liable to lower punishment since the victim did not lose her virginity. The Federal Supreme Court cassation division ruled that loss of virginity is not a constituent element of Article 627 of the Criminal Code and rejected the application.

E) Decision on human trafficking

In the case Defendant vs Federal Public Prosecutor¹⁴⁰, the Federal High Court found the defendant guilty of sending a woman to Kuwait for work without proper work license in violation of Article 598(2) of the Criminal Code and unlawfully enriched himself in violation of Article 692(1) of the same. The Court sentenced the defendant to 10 years rigorous imprisonment and fine of birr 17 thousand. The defendant's appeal to the Federal Supreme Court appellate division was rejected.

Subsequently the defendant filed an application to the Federal Supreme Court cassation division alleging error of law in the decision of the Federal High Court that found him in violation of Article 598(2). The defendant argued that he should be tried under Article 598 (1) rather than Article 598(2) of the Criminal Code for sending the victim to Kuwait without a license because the victim didn't suffer bodily injury or a threat to her life. The Federal Supreme Court cassation division noted that the victim has been kidnapped and kept in a room for seventy days. The Court confirmed the decision of the lower courts stating that the victim's human rights have been violated and she faced psychological trauma, which are all aggravating circumstances under Article 598 (2) of the Criminal Code.

F) Decision on sentencing rules

In the case Defendant vs Federal Prosecutor¹⁴¹, the defendant was found guilty of committing aggravated homicide in violation of Article 539 (1) (a) of the Criminal Code by the Federal High Court and was sentenced to 14 years of rigorous imprisonment. Both the defendant and the prosecutor filed an appeal to the Federal Supreme Court appellate division. The appellate court rejected the defendant's appeal and accepted the prosecutor's appeal that requested severe punishment commensurate with the crime. In its decision, the Federal Supreme Court appellate division reasoned that the heinous nature of the crime requires severe punishment and improved the sentence to 20 years rigorous imprisonment.

The defendant appealed to the Federal Supreme Court cassation division alleging error of law in the decision of the lower courts and requested to be sentenced under Articles 555 and 540 of the Criminal Code rather than Article 539 of the same. The Federal Supreme Court cassation division found the application admissible on one of the grounds of sentencing by

¹⁴⁰ FSC Cassation File No. 54839, Tikmet 30, 2003.

¹⁴¹ FSC Cassation File No. 80815, Meskerem 24, 2006.

the Federal Supreme Court appellate division.¹⁴²In its decision, the Cassation Court found that the Federal Supreme Court appellate division has properly followed Article 21 of the Federal Supreme Court Sentencing Guideline which allows it to aggravate the penalty on the basis of specific and well-articulated aggravating circumstances and due process of law. The Cassation Court upheld the verdict passed by the Federal High Court and the 20 years rigorous imprisonment passed by the Federal Supreme Court appellate division.

In another case, Defendants (2) vs Oromia Prosecutor¹⁴³, the Federal Supreme Court cassation division upheld the conviction and death penalty passed by lower courts on the defendants who were found guilty of committing aggravated homicide in violation of Article 539(1) (a) of the Criminal Code. The defendants were found guilty of intentionally and cruelly killing a woman who had a relationship with one of the defendants claiming that she was planning to marry another person.

8.2 Institutional responses

I. Judicial reform

Independent judiciary is a fundamental condition for victim centered response to gender based violence. In the last three years, the Federal Supreme Court has implemented reforms that enhanced the independence of federal courts. These include the legislative reforms that established a federal judicial commission with majority of its members from the federal courts¹⁴⁴, guaranteed tenure to federal judges until the age of retirement¹⁴⁵, the judicial code of conduct that requires federal judges to perform their duties free from any influence and intervention¹⁴⁶, the mandate given to federal courts to manage their administrative personnel and seek budget directly from the legislature.¹⁴⁷ Nonetheless, the independence of the judiciary faces challenges from low budget allocation, lack of training for judges, the lack of enough number of judges and judicial clerks,¹⁴⁸ and the low amount of remuneration and benefits for judges.¹⁴⁹

II. Women and children benches

Federal Courts have criminal jurisdiction over cases involved gender based violence that are prohibited under the Criminal Code and that occur in the federal towns of Addis Ababa and Dire Dawa.¹⁵⁰ The Federal First Instance Courts have first instance criminal jurisdiction over sexual violence and other GBV cases.¹⁵¹

142 The Cassation Court found the fact that the crime was committed at night was a constituent element of the crime rather than aggravating circumstance. Nevertheless, the Court found that the error did not have any bearing on the conviction and sentencing of the defendant.

143 FSC Cassation File No. 86883, Meskerem 23,2006.

144 Federal Judicial Administration Proclamation No.1233/2021, Article 6.

145 Federal Judicial Administration Proclamation No.1233/2021, Article 25(1). Age of retirement is 65 years.

146 The Federal Judges Judicial Code of Conduct and Disciplinary Measures Procedure, Regulation No.1/2013, Federal Judicial Commission, Tikmit 2013, Article 6(1).

147 The Federal Courts Proclamation No.1234/2021, Article 36(1), and Article 39(1).

148 Currently the number of Federal judges is 392 out of which 274 are male and 118 are female. See Federal Supreme Court, Reform Update Newsletter, Vol 1, No.2, April, 2022, p.44.

149 For detailed assessment of the factors that affect the independence of federal courts see Federal Supreme Court, Five Years Strategic Plan (2014-2018 E.C.), 2014 (E.C.), pp 12-19.

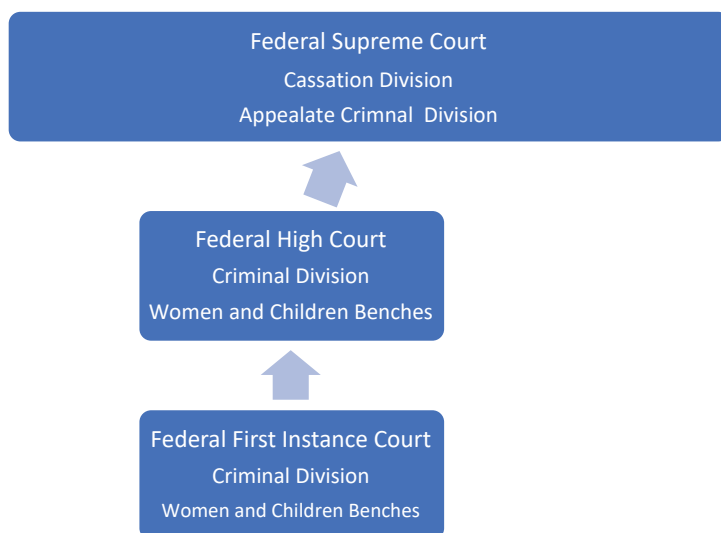
150 The Federal Courts Proclamation No.1234/2021, Article 15 and Legal Notice 17/67, A Regulation to Amend Table 1 of the Criminal Procedure Code.

151 Ibid.

Under the criminal division of the Federal First Instance Court, women and children benches are operational at the Kirkos, Lideta, Arada, Kolfe, Nefas Silk, Bole, Yeka, and Akaki districts.¹⁵² Similar women and children benches were established at the criminal division of the Federal High Court with an appellate jurisdiction of cases coming from the federal first instance court.¹⁵³

Only one judge presides over all the women and children benches of the First Instance Court except in case of human trafficking and other GBV cases that entail penalty of 15 years and above.¹⁵⁴ In the case of the later, three judges preside over the benches.¹⁵⁵ According to a key informant, judges at the Federal First Instance Courts are required to work on a bench for a minimum of one year.¹⁵⁶

Fig 5: Flow chart of Gender Based Violence cases in federal courts



The majority of the GBV cases at the Federal First Instance Court are sexual violence cases, predominantly rape and sexual acts against minors.¹⁵⁷ As seen on Fig 6 below, almost fifty percent of the cases filed at the Federal First Instance Court women and children benches are closed by the Court before verdict. Most of the cases are closed by the Court for lack of evidence including the disappearance of victims.¹⁵⁸

According to police investigators, the nature of the crime of sexual violence, the fact that oftentimes there is a gap between the occurrence of the crime and the gathering of evidence, and the lack of forensics all make it difficult to back cases with solid evidence.¹⁵⁹

¹⁵² See *Federal First Instance Court, Annual Report, Sene 2013, p.88.*

¹⁵³ According to the Registrar of the Federal High Court Arada district, the women and children benches are not currently operational. GBV cases that come to the Court are treated like any criminal case and adjudicated by judges in the criminal benches of the Court.

¹⁵⁴ Federal Supreme Court Directive 009/2013, Directive on Federal High Court and Federal First Instance Court Benches that should be presided by three Judges.

¹⁵⁵ *Ibid.*

¹⁵⁶ Judge Temesgen Shiferaw, *Federal First Instance Court Criminal Division, Ledeta District.*

¹⁵⁷ Judge Temesgen Shiferaw, *Federal First Instance Court Criminal Division, Ledeta District.*

¹⁵⁸ *Ibid.*

¹⁵⁹ Sergeant Temesgen Tegegn, Investigator at the Women and Children Unit of the Kolfe Sub-City Police Department, Addis Ababa Police Commission.

Fig 6: Table of cases at the women and children benches of the Federal First Instance Court Criminal Division involving women and children from Meskerem up to Sene 2013. ¹⁶⁰

Bench	Cases transferred from last year	New cases	Cases transferred from another bench	Total # of cases	Closed cases	Decided cases	Total cases disposed	Adjourned cases
Lideta	277	383	38	698	272	263	535	163
Arada	11	32	1	44	17	25	42	2
NefasSilk	27	121	13	161	55	77	132	29
Kolfe	66	150	22	238	96	82	178	60
Bole	18	149	16	183	68	71	139	44
Akaki	33	72	5	110	30	72	102	8
Yeka	18	93	18	129	42	74	116	13
Total	450	1000	113	1673	580	664	1244	319

III. Protective Court Procedure

The women and children benches at the Federal First Instance Courts invariably follow a separate and case sensitive procedure to hear witnesses who are under 18 years of age. In such cases the courts employ CCTV to hear the protected child witnesses from a separate witness room. The child witnesses are supported by social workers in the process of testifying to the court. According to a key informant, if and when the CCTV fails to operate for technical reasons, the trial is suspended until the equipment is fixed.¹⁶¹

This protective procedure may apply to women witnesses older than 18 years of age if a judge decides that the protection of the witness or the sensitivity of the case warrants the application of the protective procedure. According to a key informant who has worked as a judge in the Federal First Instance Court women and children bench, the courts apply the protective procedure for adult victims and witnesses restrictively because of a competing right of defendants to confront witnesses and the duty of the court to serve justice without discrimination.¹⁶²

8.3 Observations from sample GBV cases

In the sample of GBV cases listed under Fig 7 below, the Federal First Instance and Federal High Courts have passed verdict in an average of six months. The sentence passed in the GBV cases range from one year and 4 months to 25 years.

¹⁶⁰ Federal First Instance Court, Annual Report, Sene 2013, p.88. The cases are mostly crimes that are =includes cases on Juvenile Delinquents

¹⁶¹ Judge Desaglen Fanta, Federal First Instance Court Criminal Division, Ledeta District.

¹⁶² Judge Temesgen Shiferaw, Federal First Instance Court Criminal Division, Ledeta District.

The Federal High Court (appellate court) has upheld the verdict and sentencing passed by the First Instance Court in almost all cases. The Appellate Court reduced the sentence passed by the First Instance Court in only the case of Abraham Deresse vs. Federal Prosecutor from 15 years imprisonment to 2 and half years imprisonment. The reason given by the Appellate Court was the young age of the defendant (15 years old). Interestingly, the First Instance Court has cited the tender age and absence of previous crime record of the defendant when sentencing the defendant to 15 years imprisonment. In another case, the Appellate Court rejected the decision of the First Instance Court that set the defendant free.

In all decisions, there is no reference to rehabilitation or restitution of victims. Also, in all their decisions, the federal courts did not apply relevant international human rights treaties ratified by Ethiopia.¹⁶³

Fig 7: Sample GBV cases from the Federal First Instance and Federal High Court Criminal Divisions

File No.	Appellant	Respondent	Date of Application	Date of Decision	Time in High Court	Time in First Instance Court	Crime	Sentence
005975	Eyob Getachew	Federal Attorney	14/4/13	14/8/13	4 months	4 months	Violation of Art 627(1)	Appeal on Bail rejected
006186	Abraham Deresse	Federal Attorney	12/5/13	23/10/13	5 months	5 months	Violation of Art 627(1)	Appellate court reduced sentence from 15 years to 2 years and 6 months imprisonment
006377	Ibrahim Mohammed	Federal Attorney	4/6/13	21/8/13	2 months	2 months	Violation of Art 627(1)	Lower court sentence 25 years rigorous imprisonment /appeal underway
006544	Dagem Akeberg	Federal Attorney	26/6/13	13/9/13	2 months	2 months	Violation of Art 627(1)	Lower court sentence 5 years rigorous imprisonment confirmed by the appellate court
007008	Ashenafi Kedir	Federal Attorney	9/9/13	18/10/13	1 month	1 month	Violation of Art 627(1)	Lower court sentence 14 years of rigorous imprisonment confirmed

¹⁶³ Judge Desalegn Fanta, Federal First Instance Court Criminal Division, Ledta District explains that Judges do not apply international human rights treaties ratified by Ethiopia mainly because of absence of convenient access to the treaties and the large number of cases they are required to deal with .

007019	Federal Attorney	Worku Bahru	10/9/13	28/7/14	1 months	1 months	Violation of Art 626(4)(a); Violation of Art 654	Lower court decision that set the defendant free rejected. Case referred back to lower court
007454	Paulos Tazeze	Federal Attorney	12/11/13	28/1/14	3 months	3 months	Violation of Art 627(1)	Lower court sentence 5 years of rigorous imprisonment-confirmed
007780	Abraham Adane	Federal Attorney	2/13/13	16/2/14	1 month	1 month	Violation of Art 627(1)	Lower court sentence of 1 year and 6 months suspended imprisonment confirmed
007937	Demie Deriba	Federal Attorney	14/1/2014	14/4/14	3 months	3 months	Violation of Art 631(1)	Lower court sentence of 4 years rigorous imprisonment confirmed
008740	Ministry of Justice	Eyob Berhanu	26/4/14	27/7/14	3 months	3 months	Violation of Art 627(3)	Lower court sentence 1 year and 4 months suspended imprisonment / Appeal under review

9. Conclusions and Recommendations

9.1 Conclusions

9.1.1 Policy and legislative steps and gaps

i) Positive steps

The policy frameworks highlighted in this report such as the integrated and multi-sectoral approach to prevent and respond to gender based violence are positive steps. The draft policy for the prevention and response to gender based violence is a step forward in expanding the policy framework for the normative and institutional response to gender based violence. Also, the ratification of international human rights treaties such as CEDAW and the promulgation of national laws such as the 2004 Criminal Code provisions highlighted in this report and the anti-trafficking proclamation are positive legislative steps that are helpful in responding to gender based violence. The decisions of the

Federal Supreme Court cassation division summarized in this report are also positive steps in expanding the legislative framework against gender based violence.

II) **Gaps**

There is no criminal justice policy that establishes norms enhancing a victim centered approach in the investigation and adjudication of gender based violence cases in the criminal justice system. The lack of a comprehensive law on gender based violence and the absence of a definition of gender based violence in the 2004 Criminal Code are serious gaps that restrict the response to gender based violence by the police, prosecutors, and courts. Also, the restrictive scope of some provisions of the 2004 Criminal Code as well as the lenient and contradictory provisions on penalty identified in the report are legislative gaps in the response against gender based violence.

9.1.2 Institutional steps and gaps

I) **Positive steps**

The establishment of women and children units (Addis Ababa Police departments), women and children affairs directorate and one stop centers (Ministry of Justice), and court benches (Federal Courts) are positive institutional steps in preventing and responding to gender based violence. The adoption of protective procedures for minor victims of gender based violence by the Federal Courts is also a positive step in making the judicial process victim friendly. Moreover, the relatively fewer months that have taken Federal Courts to pass decisions on gender based violence cases is constructive. However, due to the small sample of cases examined in this report, we cannot conclude that there is speedy trial for gender based violence cases throughout Federal Courts.

II) **Gaps**

As the data collected from the Ministry of Justice and the Federal Courts show, several gender based violence cases are closed by prosecutors and courts for lack of evidence. A major cause is the lack of skill and logistics in collecting evidence by the police. The problem is exacerbated by the time sensitive nature of gender based violence cases.

In almost all cases, police investigation of gender based violence cases are carried out in common investigation rooms with other crimes. Despite the existence of women and children units in sub-city police departments in Addis

Ababa, there are no separate investigation rooms for victims of gender based violence.

As the cases reviewed for this report show, international human rights treaties ratified by Ethiopia such as the CEDAW are not applied by courts in the adjudication of gender based violence cases. The application of international human rights treaties helps in a broader recognition and enforcement of the rights of victims.

There is no reliable and comprehensive data on the reporting, investigation, and adjudication of gender based violence cases at the Federal Courts, the Ministry of Justice, and the Addis Ababa Police Commission. The absence of data hinders public awareness and research thereby negatively affecting the prevention and response to gender based violence.

9.1.3 Victim centered approach

The abovementioned gaps show that the criminal justice system has not yet fully adopted and implemented a victim centered approach in the investigation and prosecution of gender based violence. In some cases such as the investigation of gender based violence cases in common investigation rooms with other crimes, secondary victimization is highly likely to happen. The following recommendations can contribute in promulgating and establishing victim friendly laws and institutions.

9.2 Recommendations

9.2.1 Policy and legislative intervention

As indicated above, the draft policy for the prevention and response to gender based violence is an important step in setting the policy framework for legislative and institutional processes against gender based violence. In this regard, it is our recommendation that the policy should be used as a basis for a new legislation on gender based violence. Such legislation would define gender based violence comprehensively and provide victim centered rules and processes against gender based violence.

9.2.2 Capacity building

It is paramount that the police, prosecutors, and judges are trained on a victim centered ap-

proach to gender based violence. The training should be institutionalized in the respective justice institutions. Training centers and colleges under the Addis Ababa and Federal Police Commissions, the Ministry of Justice, and Federal Courts should make it part of their curriculum.

9.2.3 Data collection and publication

There should be an organized data collection and publication system on the reported, investigated, and prosecuted gender based violence cases.

The processes can be implemented by stakeholder public institutions and/or civil society organizations. The data should be accessible to the public.

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