

**RESISTANCE TO VAW GLOBAL NORMS:
THE CONTROVERSY SURROUNDING
MARITAL RAPE IN ETHIOPIA**

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Meron Zeleke

Associate Professor, Addis Ababa University, and Researcher for GLOW Project
eressokiyya@gmail.com

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DIIS · Danish Institute for International Studies
Østbanegade 117, DK-2100 Copenhagen, Denmark

Tel: +45 32 69 87 87

E-mail: diis@diis.dk

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Meron Zeleke

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BACKGROUND: DEBATING SPOUSAL IMMUNITY

The global trend to transition from providing immunity for marital rape to criminalising it is a long and unfolding process. Marital rape is one of various forms of violence against women (VAW) that are perpetrated within households. Different terms are used as alternatives to marital rape, ranging from marital sexual aggression, forced marital intercourse and marital sexual assault to forced sexual activity in marriage. In some contexts, the phrase 'wife rape' is used to stress the gender-specific character of the act, which disproportionately affects married women around the world. Marital rape is widely considered both a product and a contributing factor to women's inequality. Accordingly, it is recognised as a form of VAW in international human rights instruments. However, several countries around the world, including Ethiopia, have not yet criminalised marital rape.¹

The global controversy surrounding the criminalisation of marital rape has been raging for a long time. Proponents of exemptions for marital rape or spousal immunity make various arguments. Wada (2012; 216) notes, 'The reasons for maintaining this exception were premised on different theories that reflect the moral values of different societies, which are undoubtedly discriminatory against women.' The theory of implied consent, or the so-called 'Hale Doctrine' dating back to the seventeenth century, emphasised the view that through marriage a woman commits herself to irrevocable sexual consent (Finkelhor and Yllo 1987). Another school of thought, the so-called 'unities theory' or the 'theory of the unity of the person', states that upon marriage the couple become one person, thus making marital rape inconceivable. If anything, this would be comparable to 'self-rape' (Fus 2006). The theory of property argues that the wife's legal existence is suspended during marriage, as she is viewed as the 'property' or 'chattel' of her husband (Russel 1982). The protection of marriage as an institution is another argument forwarded by some proponents of marital rape exemptions. According to this fourth line of argument, criminalising marital rape will cause damage to the institution of marriage and hinder reconciliation between the spouses (Mahoney and Linda 1998). Yet others defend the exemption on the basis that the degree of harm inflicted by spouses is lower compared to the physical and psychological impacts caused by rape by a stranger (Bennice and Resik 2003).

Such underlying assumptions in favor of making marital rape an exception long informed western legal philosophy until they were challenged by the feminist movement in the 1970s, mainly, that is, during the second wave of feminism. Women's movements, feminists and other rights activists have contributed significantly to changing events by challenging these arguments and pushing for the criminalisation of marital rape. Too much focus on the sexual aspect of marital

¹ For an updated list, see https://en.wikipedia.org/wiki/Talk:Marital_rape/Country_lists

rape is said to take the focus away from recognising women's inherent individuality and independence (Randall 2008). Hence, advocates of the criminalisation of marital rape point to the fundamental human rights that are infringed by marital rape, such as the right to human dignity² and the right not to be subjected to cruel, inhuman or degrading treatment. Accordingly, marital rape is described as violating women's right to self-determination in matters pertaining to their own bodies, and therefore also as violating the right to bodily integrity (Koenig et al 2003). Preacher (2008) contends that marital rape violates the victim's bodily integrity and the right to exert control over whom she shares her body with.

Others argue that the marital rape exemption sets double standards and makes an illogical distinction between the protection of married and single women, and the principle of the equality of all human beings that is stipulated in international human rights instruments (Robin 1990). Accordingly, extending the protection of the law to women raped by strangers is criticised for setting a double standard in denying equal protection of the law to women who are raped by their partners, thus contradicting the fundamental protection guaranteed to all women under international human rights law. Others challenge the exemption of marital rape on the ground that such an exemption promotes a culture of impunity, thus reinforcing existing gender inequalities and gender stereotypes. Moreover, the very categorisation of marital rape is itself debatable, some of its critics raising the question of whether it should be considered a form of domestic violence or recognised as a separate offence (Bergen 1999).

Ethiopia has ratified a number of international and regional agreements, and passed legal and policy provisions that promote the rights of women and girls under the Federal Constitution and various laws, including the 2000 Revised Family Code and the 2005 Revised Criminal Code. However, the presence of an exemption for marital rape in Ethiopia's various national legal frameworks is one of the key elements displaying ambiguities in the domestication of some global VAW norms, elements that have raised concerns among different international entities, which have questioned Ethiopia's commitment to the protection of women and girls from various forms of violence. This short note examines the status of marital rape under Ethiopian law in light of major international and regional human rights instruments. It reflects on the trifling efforts made to criminalise marital rape in Ethiopia by identifying the competing arguments in play and outlining the rationales for the country's marital rape exemption.

² The Vienna Declaration and Programme for Actions clearly stipulates that an act of gender-based violence violates the rights of dignity and the worth of individuals. See Vienna Declaration and Programme of Action, para 18.

THE PREVALENCE OF MARITAL RAPE IN ETHIOPIA

Finding a reliable and up-to-date source of data on the prevalence of marital rape is challenging in a context where the act itself is not recognised as a distinct form of VAW and is still not outlawed. Hence, one has to draw on available but fragmented sources of data and reports on Intimate Partner Violence (IPV) that occasionally touch upon the theme of marital rape but do not address it specifically. The latest Ethiopian Demographic and Health Survey (EDHS) states that 69 percent of married women between the ages of 15 and 49 have experienced sexual violence from their own husbands (CSA 2016). The EDHS also mentioned that in most cases the perpetrators of sexual violence are spouses or partners (Central Statistical Agency 2016). Another study found that about 33 percent of women in Ethiopia experience marital rape in the course of their lives (Berhane 2004).

A multi-country study entitled *Women's Health and Domestic Violence Against Women*, conducted by the WHO, found that 'nearly one third of Ethiopian women reported being physically forced by a partner to have sex against their will within the past 12 months' (WHO 2005: 279). One of the leading local institutions working to promote the legal, economic, social and political rights of Ethiopian women is the Ethiopian Women Lawyers Association (EWLA), a civil-society organisation. Based on a study it conducted in 2008, it found that 31 of the 208 women it surveyed had been raped by their own husbands. Of these, one in every ten faced verbal abuse for refusing to have sex with their husbands (EWLA 2008). The EWLA stressed that a significant amount of domestic and sexual violence takes place within marriage and in the form of rape. The level of severity of the violence is best reflected in the profiles of the EWLA's clients who have received free legal aid from the association, for example, in the case of a victim who was repeatedly subjected to marital rape while undergoing treatment for ovarian cancer (Mesay 2019).

Furthermore, the findings of CARE Ethiopia following research it conducted in four districts located in different regions of Ethiopia, including a district within the Addis Ababa City Administration, revealed that 76.6 percent of women consulted during the course of the study mentioned having experienced sexual violence from their partners or husbands (CARE 2008). Likewise, a study conducted in the northwest of the country, specifically in Gondar, found that more than half of the women interviewed had experienced sexual abuse from their partners (Yigzaw et al. 2004). A similar study conducted in southwest Ethiopia found that half of the women surveyed had faced physical and sexual violence in their lives at the hands of their husbands or partners (Kebede et al. 2012). A systematic analysis and review of academic work published between 2000 and 2014 on this subject and two consecutive national demographic and health surveys (2005 and 2011) stated that the overall trend in the life-time prevalence of offences of sexual violence against women (SVAW) that women face from their husbands or intimate partners ranged from 19.2% to 59%, though with differences observed across research sites (Augamissie and Bezatu 2015).

The interplay of various factors can be invoked to explain the prevalence of marital rape in Ethiopia. The national DHS finds that there are inverse correlations between intimate partner violence, level of education and social class. Educated women and women from wealthy backgrounds are said to be less likely ever to have experienced IPV (DHS, 2016). The patriarchal nature of social organisation is often cited as the leading factor in structural gender inequalities, gendered power relations and related male supremacy in Ethiopia (Tsion 2016). The patriarchal system engrains a gendered hierarchy in the society, partly by normalising various acts of VAW, including marital rape. One study indicated that 88 percent of rural and 69 percent of urban women accept that their husbands are entitled to beat them (Augmassie and Bezatu 2015). A similar study conducted by the EWLA showed one in two women in Addis Ababa believing that a husband is justified in beating his wife if she refuses to have sex with him (Original et al. 2004). In such cultural settings, married women often express their strong conviction that husbands ought not to seek the consent of their wives for sexual intercourse, as they are free to have sex whenever they feel like it. The other factor contributing positively to the prevalence of marital rape is the practice of early marriage, whereby young girls who have been forced into arranged and early marriages tend to have low or limited autonomy when making decisions on sexual matters (Haverish 2011). A UNICEF study also showed that physical, sexual or emotional violence caused by intimate partners is common among young girls who were married at an early age (UNICEF 2018). Another key factor accounting for marital rape in Ethiopia is women's financial dependence on their husbands or partners (Gelaw 2012).

Despite the widespread prevalence of the practice in most parts of the country, marital rape often goes under- or unreported. One study found that, of its respondents who had experienced marital rape, 57.15 percent failed to report it (ibid.). An interplay of different factors accounts for the underreporting of marital rape in Ethiopia, ranging from socio-cultural factors to legal barriers (Fekadu 2008). A key sociocultural factor is the underlying belief in society generally that a husband is justified in disciplining a disobedient wife who refuses to have sex with him from fear of her social ostracism (Hiwot 2014). Furthermore, the low turnout of reporting is also related to the gap in legal remedies and the underlying cultural bias and stereotypes associated with reporting such crimes (Fekadu 2008). The gap in the Criminal Code has been criticised for discouraging the police from conducting investigations and taking action (Tsion 2016). Despite such appalling statistics and rampant offences, marital rape has still not been categorised as a punishable offence in Ethiopia.

OVERVIEW OF GLOBAL AND REGIONAL NORMS RELATED TO MARITAL RAPE

This section presents an overview of global and regional norms relating to VAW, and especially marital rape. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is one of the relevant United Nations human rights instruments in this context. CEDAW does not have a specific provision focusing on violence against women and domestic violence. However, the broader definition of discrimination against women stipulated in Article 1 of CEDAW subtly implies that VAW and marital rape both fall under the provisions against gender discrimination, defined as follows:

‘Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’.

According to General Recommendation No. 19 of the CEDAW Committee on Violence against Women, moreover, gender-based violence against women constitutes discrimination against women.³ The same general recommendation further states that violence within the family is one of the most common forms of violence women face.⁴ Furthermore, CEDAW stipulates that state parties are duty bound to take all necessary and appropriate measures to ensure equality between women and men *in marriage and family relations*. CEDAW further specifies that married men and women should be entitled to equal rights both during the marriage and upon its dissolution. The CEDAW Committee strongly pushes state parties to adopt laws protecting women against rape, sexual assault and other forms of gender-based violence, both in and beyond the domestic sphere. The Committee argues that any move to make the legal protection of women from gender-based violence effective should include the incorporation of legislation in those parts of both the criminal- and civil-law frameworks that focus on domestic violence.

The other relevant global norm is the Declaration on the Elimination of Violence Against Women (DEVAW), an international human rights instrument that explicitly recognises marital rape as a violation of the rights of women. Even though DEVAW is a soft law lacking a legally binding status, Article 4 obliges states to condemn all forms of violence against women, including marital rape. DEVAW defines violence against women broadly as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’⁵ The very

³ See, General Recommendation No. 19 (11th session, 1992), Violence Against Women, Paragraph 6.

⁴ Ibid., Paragraph 23.

⁵ DEVAW, Article 1.

preamble of DEVAW states that violence against women involves the violation of women's basic human rights and fundamental freedoms. As stated by the Special Rapporteur for VAW, marital rape is the most common manifestation of domestic violence.⁶ Like CEDAW, DEVAW requires state parties to take all the necessary measures to prevent, investigate and punish acts of violence against women. State parties are also obliged to pass national legislation with penal sanctions to combat VAW. DEVAW also specified that states cannot and should not rely on customs, traditions or religious views as a way of avoiding their obligations under international human rights law.

The Beijing Declaration and Platform for Action 1995 is another international framework of relevance here. The Declaration defines VAW broadly as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.'⁷ The Declaration further states explicitly that violence against women includes marital rape.⁸ Furthermore, the Declaration requires states to carry out a periodical review and analysis of their legislation in order to ensure the continuing effectiveness of legislation to prevent and eradicate violence against women.⁹

An important relevant regional instrument is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. This is a legally binding instrument supplementing the African Charter on Human and Peoples' Rights. It is often referred to informally as the AU Women's Protocol or the Maputo Protocol. Violence against women is defined in the Protocol as 'acts against women that could cause them physical, psychological and sexual harm'¹⁰. Like CEDAW and DEVAW, the Protocol requires state parties to adopt and effectively implement the necessary measures to protect women from different forms of violence, including sexual violence. It implicitly obliges state parties to criminalise marital rape while referring to forced sex committed within the private sphere (Viljoen, 2009). Article 2 of the Protocol requires state parties to fight discrimination against women using different measures, including legislative and administrative measures. Article 3 requires state parties to 'adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal violence'. Article 4 obliges states to 'enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence take place in private or public'. Article 5 of the Protocol also contains comprehensive provisions on the elimination of 'harmful traditional practices' (HTPs). Hence, the Protocol provides the legal basis for

⁶ For more on this, see the Report of the Special Rapporteur on Violence Against Women, UN Doc.E/CN.4/1996/53.

⁷ See Beijing Declaration and Platform for Action, adopted at the 16th plenary meeting, 1995, Para. 113.

⁸ Ibid., Para. 113. (a).

⁹ Ibid., Para. 124, C.

¹⁰ See, African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 11 July 2003 Article 1.

comprehensively addressing all forms of violence and exploitation against women and girls.

Ethiopia is one of the countries on the African continent that delayed ratifying the Maputo Protocol, only doing so in July 2018, fifteen years after it had been introduced. Upon ratification, Ethiopia incorporated the protocol into its national law through a 'ratification proclamation', i.e. the Proclamation to Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Proclamation No.1082/2018 (hereinafter referred to as the ratification proclamation 1082/2018). However, in the course of the ratification process the country expressed its reservations regarding several provisions and entered declarations on a number of the articles in the Protocol.¹¹ During ratification, Ethiopia has entered declarations concerning some key provisions, including: state parties having an obligation to take effective measures to eradicate violence occurring in the private as well as public domains (Article 4 (2)); fixing the minimum age at marriage at 18 (Article 6 (b)); women's rights to acquire personal property during marriage and to an equitable share of it after marriage (Articles 6 (j) and 7 (d)); responsibility of the private sector to bring up children (Article 13 (j)); and women's right to decide whether to have children, and if so how many (Article 14 (b)).

Regarding marital rape, Ethiopia entered a declaration specifically in relation to Article 4(2) (a) of the Protocol, prohibiting violence against women *in private as well as in public* (Ratification Proclamation 1082/2018, Article 3(2)). Ethiopia has also declared that Article 4(2)(a) of the Maputo Protocol shall be applicable in line with Article 620 of the Criminal Code of Ethiopia, which defines rape as an act occurring out of wedlock. Ethiopia's declaration thus undermines the wider and more comprehensive protection against VAW extended by the Maputo Protocol, as its declaration limits the Protocol's reach to the private sphere. Hence in reality Ethiopia has rejected some of the key elements of the Maputo Protocol as the latter relates to IPV, despite the fact that it has signed and ratified the Protocol.

THE AMBIGUITY OF CRIMINALISATION OF MARITAL RAPE IN ETHIOPIA: HISTORY AND PROCESS OF RAPE LAW REFORM

The constitution of the Federal Democratic Republic of Ethiopia stipulates that all international instruments ratified by Ethiopia are an integral part of the law of the land.¹² Furthermore, the constitution states that fundamental rights incorporated into the FDRE Constitution are to be interpreted in light of the Universal

¹¹ During the ratification process, Ethiopia has expressed its reservations towards the following provisions: a widow's right to inherit her deceased husband's property (Article 21(1)); protection of women in polygamous relationships (Article 6(c)); legal registration of every marriage (Article 6(d)) separation of spouses to be decided by judicial organs (Article 7(a)); and state parties providing more expenditure for women's development and promotion by reducing military expenditure (Article 10(3)), etc.

¹² FDRE Constitution Article 9(4).

Declaration of Human Rights and the international human rights instruments the country has adopted.¹³ Even though Ethiopia consented to international human rights instruments condemning violence against women, there has been an observable delay in criminalising marital rape.¹⁴ As a state party to the CEDAW and the DEVAW, Ethiopia is obliged to modify its laws in line with the requirements of these and more international and regional legal instruments protecting the rights of women. There is an observable gap in the lack of clear definitions of VAW in the FDRE Constitution, the Revised Family Code of Ethiopia (RFC) and the Ethiopian Criminal Code. Furthermore, Ethiopia has no single, consolidated law on GBV in general, nor on VAWG in particular.

The laws governing rape in Ethiopia have their roots in the first codified law, the Fetha Negest, which influenced the 1930 Penal Code. In the 1930 Code, rape committed against under-age girls and married women was criminalised by Articles 387 and 395 respectively. Furthermore, Article 398 criminalised sexual intercourse between a teacher and his student or a man with his ward. The 1930 penal code was later replaced by the 1957 Penal Code, which, like its predecessor, did not criminalise marital rape. Article 589 of the 1957(1) Penal Code stated:

‘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 not exceeding ten years. Rigorous imprisonment shall not exceed fifteen years where the rape is committed’.

Under the 1957 Penal Code, a rape committed ‘outside wedlock’ is the only punishable form of rape. This provision of the 1957 Penal Code used the term ‘rape’ for the first time. Furthermore, the 1957 Penal Code was progressive in defining sexual offences under the heading of ‘Sexual Outrages’. One major step forward in the 1957 Penal Code was the abolition of the different punishments imposed on victims or offenders in accordance with social class and the introduction instead of a uniform penalty regardless of class. The other progressive element in the 1957 Penal Code was to address the relationship between the victim’s physical or mental disability and lack of consent. The 1957 Penal Code clearly stipulated the age of consent and stated that having sex with someone under the age of fifteen was an offence. Moreover, the 1957 Penal Code addressed the need to pay attention to situations in which force was used, suggesting a lack of consent, such as an abuse of power. Article 599 of the 1957 Penal Code, however, provided that a rapist would be exempt from a penalty on the condition that he married the girl he had raped: ‘Where the victim of rape, indecent assault or seduction, or abuse of her state of distress or dependence upon

¹³ Ibid., Article 13(2).

¹⁴ United Nations Treaty Collections, ‘Convention on the Elimination of Discrimination Against Women’, available on: <https://treaties.un.org>; accessed 11 November 2020.

another, freely contracts a marriage with the offender, and where such marriage is not declared null and void, no prosecution shall follow’.

The current and active criminal law governing rape in Ethiopia forms part of the Revised Criminal Code (RCC), which was enacted on 9th May 2005. The Criminal Code is praised for the progressive steps it makes regarding protection of the rights of women on issues pertaining to different forms of VAW, such as abduction, child marriage, female genital mutilation, sexual harassment and women trafficking. However, the RCC did not in any way change the underlying definition of rape stipulated in the 1957 Penal Code. Article 620 of the revised Criminal Code states:

‘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.’¹⁵

Aspects of sexual offences listed in the RCC are described as ‘verbatim copies’ of the 1957 Penal Code (Wada 2012; 16). According to Article 620, an act would only be considered rape if it involved compulsion and an underlying intention to engage in sexual intercourse. Hence, under Ethiopia’s criminal law, the legal requirements involve both proof of compulsion and proof of resistance. The different types of compulsion might include the use of violence, grave intimidation, the victim being unconscious and the victim’s inability to resist. This requirement in Ethiopian law contradicts the predominant global trend observed in countries where rape is defined on the basis of a lack of consent instead of proof of compulsion and resistance.

One of the criticisms pertaining to the revised rape law in Ethiopia relates to the underlying gender bias. In accordance with the definition offered in Article 620 above, even though the word ‘whoever’ has a gender-neutral connotation, implying the possibility of a female being the perpetrator, use of the word ‘her’ in the same Article assumes that the victim is female. The other ambiguity surrounding the criminalisation of marital rape in Ethiopia relates to the double standards that exist in the RCC, which in Article 621 indirectly criminalises marital rape committed by women: ‘A woman who compels a man to [have] sexual intercourse with herself punishable with rigorous imprisonment not exceeding five years.’ Unlike Article 620, this type of sexual offence, which deals with a woman compelling a man to have sexual intercourse, did not specify the domain. This implies that the law takes no account of the marital tie between the offender and the victim in circumstances when it is a woman who commits the rape.

The marital rape exemption in a de jure marriage, contrasted with its criminalisation in an ‘irregular union’, is another aspect indicating the law’s

¹⁵ See, The Criminal Code of the Federal Republic of Ethiopia, Proclamation no. 414/2004, article 620

failings in this respect. This relates to the provision criminalising forcible rape committed by a man against his partner who is in a de facto marriage or irregular union. Such irregular unions are recognised in the Revised Family Code (RFC) as a factual institution, a de jure marriage. Article 98 of the RFC states: 'An irregular union is the state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage.' Article 103 of the RCC also states that an irregular union that has existed for three years will have the same status as a de jure marriage, including the same retrospective effects on the property of the spouses. The ambiguity and double standard in respect of the marital rape exemption are demonstrated by the underlying logic that a man cohabiting with a woman in a de facto marriage, unlike a man in wedlock or in a de jure marriage, cannot rape his partner.

During the process of amending the Criminal Code, one of the leading civil-society organisations, the EWLA (see above), called for the definition of rape to be broadened to include marital rape. This was interpreted as being part of a broader human rights discourse of protecting the rights of women and emphasising the point that forced sexual intercourse in marriage is as unlawful as such an act committed outside marriage. However, this call by the EWLA was rigorously rejected by the legislature. One of the issues raised by lawyers calling for the criminalisation of marital rape include the prevalence of the practice, to which was added a health-related argument on medical grounds emphasising how forced rape, whether in or outside marriage, exposes women to various sexually transmitted diseases, including HIV/AIDS, and to unwanted pregnancies (Mesay 2020). Different stakeholders have come together to make joint arguments within a broader human rights discourse to which health considerations are attached, in an effort to make a compelling case against marital rape. Meaza Ashenafi, the founder and director of the EWLA and the current president of the Supreme Court of Ethiopia, also cited reproductive autonomy as being central to the issue of women's equality and full participation in society. She further noted that this is 'key to women's ability to exercise all other fundamental rights' (Meaza 2004: 80). Thus, criminalising marital rape is described as an important first step in protecting women's reproductive autonomy and rights.

The call, mentioned above, for marital rape to be criminalised was rejected on several grounds. One of the arguments made in favour of an exemption for marital rape cited the right to privacy and the fact that criminalising marital rape would entail invading the private sphere by interfering in the personal affairs of a married couple (Fekadu 2008). The other line of argument defending the marital rape exemption was to undermine the need for criminalisation of the practice by questioning its very existence (Mesay 2020). Gelaw 2012 describes how many question the very existence of marital rape due to the argument that, by virtue of their marriage, a couple consents to engage in sexual intercourse (Gelaw 2012). This line of argument resonates with the tenets of the Hale doctrine, discussed in Section I above.

Professor Wada, who was a member of the RCC drafting committee, attended a number of workshops organised to sound out public opinion on a revision of the 1957 Penal Code and had an opportunity to read and compile the recommendations submitted by different bodies, such as NGOs advocating women's rights. Wada later reflected critically on the entire process, suggesting that civil-society organisations were not passionate enough to stimulate public support or to push the agenda of marital rape as they did with other crimes such as abortion (Wada 2012).

Reflecting on the different workshops, Wada further noted that the general mood of the workshop participants inclined towards the feeling that removing the marital rape exemption would contradict the national culture in general, posing a further threat to disrupt the bond between the spouses. The link between rape and culture is often made in a patriarchal culture like Ethiopia's, where masculine control over women is accepted and engrained in gendered patterns of socialisation. Reflecting on the exemption for marital rape in the country, Esegent (2016; 72) notes: 'traditional values, cultures, norms and beliefs played a significant role for the continual existence of gender-based stereotypes.' The violations of women's rights that often occur in the private domain in Ethiopia are described as being reinforced by traditional norms and cultural values (ACPF and Plan International 2019: 27).

The Reports of the CEDAW Committee express concerns about the failure of some state parties to introduce domestic legislation in line with the international obligations they have entered into and for failing to introduce legal provisions to deal with domestic violence and marital rape. The Committee has urged state parties to adopt comprehensive legislation and to revise their Penal Codes to criminalise marital rape. Likewise, the CEDAW Committee expresses its reservations concerning Ethiopia's failure to criminalise marital rape and in 2019 urged the country to adopt a national strategy for limiting violence against women. The CEDAW Committee's reports from 2011 and 2019 revealed the Committee's concerns about the absence of any law addressing all forms of gender-based violence, such as marital rape and domestic violence (CEDAW Committee 2019). In February 2019 the Ethiopian delegation to the CEDAW review committee explained these reservations to the Maputo Protocol, and specifically to the criminalisation of marital rape, by invoking culture and stating that criminalisation would be a violation of the strong traditional norms and the notion of the sanctity of the family, and that marital rape would also be hard to prove. The cultural reasoning in defence of the exemption for marital rape explains well how conflicts over rights are played out in the Ethiopian constitutional order and practices with regard to issues of culture and women's rights. In some circumstances the cultural rights – that is, the human rights – that guarantee the enjoyment of culture and its components in conditions of equality, human dignity and non-discrimination conflict with women's rights, such as the right to live free from violence and discrimination (Dereje 2020).

The early draft of the revised family law put forward for public discussion and debate recognised marital rape as a crime (Mandefrot 2016). However, as in the case of the Criminal Code, during the ensuing debates one of the key arguments put forward against criminalising marital rape was that it would create animosity between the spouses and would ultimately affect marital harmony. Furthermore, procedural and evidentiary concerns pertaining to potential difficulties in producing and collecting evidence in cases of marital rape were raised as another potential obstacle. In its concluding observations on Ethiopia, the CEDAW committee has again noted the major gaps in Ethiopia's Family Code. Hence, even though marital rape is not yet criminalised in Ethiopia, some tentative efforts to do so were made during the revision of the country's Family Law and Criminal Code.

CONCLUSION

To sum up, the Revised Criminal Code of the FDRE, like its predecessors, by and large retains the existing classification of sexual offences. In addition to maintaining the exemption for forcible marital rape, the major shortcomings of the RCC that relate to rape include its failure to define rape in a gender-neutral manner, and its failure to define forcible rape and sexual assault as non-consensual sexual conduct. According to the global and regional norms of the VAW, the Ethiopian government is obliged to develop national legislation and penal sanctions to redress the challenges women face in relation to marital rape. As well as falling short of its international commitments, Ethiopia's failure to criminalise marital rape is self-defeating, as it contradicts the essence of women's equality with men in marriage, as enshrined in Article 35 of the national Constitution.¹⁶ A meaningful and comprehensive reform of the rape laws should include omitting force and resistance from being important defining elements of rape cases, ending the marital rape exemption, and introducing a broader redefinition of rape that treats it as any non-consensual sexual offence.

The constraining environment resulting from the draconian Charities and Societies Proclamation of 2009, that restricted the activities of NGOs, has long prevented any meaningful effort on the part of civil-society organisations to advocate the criminalisation of marital rape and the filling of other gaps that have been observed in Ethiopian legislation dealing with VAW. The revision of the Civil Society Proclamation in 2019 as part of a broader political reform initiated by the

¹⁶ Article 35 of the FDRE Constitution reads as follows:

1. Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.
2. Women have equal rights with men in marriage as prescribed by this Constitution.
3. The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.
4. The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.

new political administration is seen as potentially an important breakthrough for civil-society organisations advocating for human rights. The new administration has also been praised for the significant improvements it has made to women's political representation in the upper echelons of power, as the rule to have fifty-percent of women cabinet members indicates. It remains to be seen, however, how far these progressive measures will be translated into policy changes, including the recognition of marital rape as a form of VAW, thus ensuring its criminalisation.

REFERENCES

- ACPF and Plan International. 2019. *Getting Girls Equal: The African Report on Girls and the Law*. African Child Policy Forum (ACPF) and Plan International.
- Agumasie Semahegn and Bezatu Mengistie. 2015. 'Domestic Violence against Women and Associated Factors in Ethiopia; Systematic Review', *Reproductive Health*;12: 78. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4553009/> last visited on July 12, 2020.
- Allen, Mary and Muireann Ni Raghallaigh, 2013. 'Domestic Violence in a Developing context: the perspectives of women in Northern Ethiopia', *Affilia: Journal of Women and Social Work* (2013).
- Bennice, Jennifer and Reisick, Patricia. 2003. 'Marital Rape: History, Research, and Practice'. *Trauma, Violence & Abuse* Vol. 4, No. 3 (July 2003), pp. 228-246.
- Bergen RK.1999. Marital Rape. VAW net Applied Research Forum. Available online at: <http://www.hawaii.edu/hivandaids/Marital%20Rape.pdf>. Last visited on November 12,2020.
- Berhane, Yemane.2004. 'Ending Domestic Violence against Women in Ethiopia.' *Ethiopian Journal of Health Development* 18(3): 131-132.
- CARE Ethiopia. 2008.*The Status of Gender Based Violence and Related Services in Four Woredas (Woredas surrounding Bahir Dar town, Burayu woreda, Bako woreda and Gulele Sub-city of Addis Ababa)*, CARE Ethiopia.
- CSA (Central Statistics Agency). 2016. *Ethiopia Demographic and Health Survey (EDHS)*. Central Statistical Agency; Addis Ababa.
- Fekadu Sinidu. 2008. *An Assessment of Causes of Rape and its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa*. MA thesis. AAU.
- Finkelhor D. and Yllo K. 1987. *License to Rape: Sexual Abuse of Wives*. Simon and Schuster.
- Fite MD. 2014.'The Ethiopia's Legal Framework on Domestic Violence against Women: A Critical Perspective'. *International Journal of Gender and Women's Studies*. 2014: 2(1): 49-60.
- Fus, Theresa. 2006. 'Criminalizing Marital Rape: A Comparison of Judicial and Legislative Approaches,' *Vanderbilt Journal of Transnational Law*, Vol. 39 (2006).
- Gelaw, Kebkab. 2012. *Marital rape as a human rights violation of women in Ethiopia: A case study of Alumni association of the faculty of law of Addis Ababa University and Ethiopian Women Lawyers Association EWLA*. MA Thesis. AAU.

- Hailu Tigist. 2000. 'Formal and Informal Responses to the Recurring Forms of Violence Against Women in Ethiopia' 2000(2) Reflections, Heinrich BÄ Foundation.
- Hiwot Demissew. 2014. Analysis of Marital Rape in Ethiopia in the Context of International Human Rights. Masters of Laws; University of South Africa.
- Kebede Deriba et al. 2012. 'Magnitudes and Correlates of Intimate Partner Violence against Women and its Outcome in Southwest Ethiopia', PLoS ONE 7(4).
- Koenig MA, Lutalo T, Zhao F, Nalugoda F, Wabwire-Mangen F, Kiwanuka N, Gray R. 2003. 'Domestic Violence in Rural Uganda: Evidence from a Community-based Study. Bulletin of the World Health Organization. 2003; 81(1): 53–60.
- Mahoney P. and Williams L.M. 1998. 'Sexual assault in marriage: Prevalence, consequences, and treatment of wife rape'. In J. L. Jasinski & L. M. Williams (eds.), Partner violence: A comprehensive review of 20 years of research (pp. 113–162). Sage Publications, Inc.
- Mandefrot Belay. 2016. 'Notes on Legislative Intent: Public Consultation toward Ethiopia's Family Law Reform and the Revised Code's Response', Mizan Law Review 10(1), pp. 244-264, pp. 262-263.
- Meaza Ashenafi .2004. 'Advocacy for Legal Reform for Safe Abortion', African Journal of Reproductive Health/La Revue Africaine de la Santé Reproductive 8(1), pp. 79-84.
- Original Welde Ghiorgis, Emebet Kebede, and Melesse Damte. 2004. 'Violence Against Women in Addis Ababa', Berchi, The Annual Journal of Ethiopian Women Lawyers Association, 2004.
- Parcesepe A., Stark L., Roberts L., Boothby N. 2016. 'Measuring Physical Violence and Rape Against Somali Women Using the Neighbourhood Method'. Violence Against Women. 2016; 22(7): 798-816. doi:[10.1177/1077801215613852](https://doi.org/10.1177/1077801215613852)
- Randall, Melanie, 2008. 'Sexual Assault in Spousal Relationships, 'Continuous Consent', and the Law: Honest but Mistaken Judicial Beliefs' (February 25, 2010). University of Manitoba Law Journal, Vol. 32, No. 1, 2008.
- Robin West. 1990. Equality Theory, Marital Rape, and the Promise of the Promise of the Fourteenth Amendment. Georgetown Public Law and Legal Theory Research Paper No. 11-65.
- Russell Diana. 1983. Rape in Marriage. New York: Macmillan.
- Tadiwos S.2001. 'Rape in Ethiopia' Excerpt from Reflections: Documentation of the Forum on Gender, Number 5, July 2001, Panos Ethiopia available online at: <http://www.preventgbvafrica.org/sites/default/files/resources/panosreflect5.excerpts.pdf> [accessed on 01 July 2020].

Tsion Hagos. 2016. Human Rights of Women and the Phenomenon of Marital Rape in Ethiopia: A Critical Analysis. HRDA, The Master's Programme in Human Rights and Democratization in Africa.

UNICEF. 2018. Ending Child Marriage: A Profile Progress in Ethiopia, UNICEF, New York 2018.

Viljoen F. 'An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 WASH. & LEE J.C.R. & SOC. JUST. 11.

World Health Organization. 2005. WHO Multi-Country Study on Women's Health and Domestic Violence against Women: Summary Report of Initial Results on Prevalence, Health Outcomes and Women's Responses. Geneva, World Health Organization, 2005.

Yigzaw T, Yibrie A, Kebede Y. 2004. 'Domestic violence around Gondar in Northwest Ethiopia'. Ethiopian Journal of Health Development. 2004:18(3): 133–139.