



Global Campus
Africa

Awarded Theses
2016/2017

Tsion Hagos Woldu

Human Rights of Women and the Phenomenon of Marital Rape in Ethiopia

A Critical Analysis

HRDA, The Master's Programme in Human Rights and
Democratisation in Africa



EIUC

European Inter-University
Centre for Human Rights
and Democratisation

TSION HAGOS WOLDU

HUMAN RIGHTS OF WOMEN AND THE PHENOMENON
OF MARITAL RAPE IN ETHIOPIA: A CRITICAL ANALYSIS

ACKNOWLEDGMENT

I am forever thankful to God for gracing me with his light and letting me achieve my goals.

I am grateful to the Centre for Human Rights for affording me this unique opportunity to obtain so much knowledge in the field I am passionate about and to gain so many new perspectives on life.

My deepest gratitude to Doctor Akinola Akintayo without whose guidance, encouragement and insightful feedback this work would not have been possible. Thank you very much for your profound observations, constructive comments and positive vibe.

Kennedy Kariseb, you truly are a remarkable person. I want to thank you for always being there to assist whenever I asked. To all the wonderful friends I have made on this course, thank you for making my stay even more worthwhile.

To my amazing family and friends, I thank you yet again for your unwavering support.

BIOGRAPHY

Tsion Hagos Woldu was born and raised in Addis Ababa, Ethiopia. She completed her primary and secondary education in Addis. In 2014, she graduated in Law from Dire Dawa University and received her master's degree in Human Rights and Democratisation from the University of Pretoria in 2017.

Tsion is an aspiring humanitarian and a passionate advocate of human rights, particularly drawn to issues revolving around refugee law and women and children rights.

ABSTRACT

Violence against women (VAW) continues to be one of the major human rights violations in Ethiopia. Marital rape, one manifestation of VAW, is not regarded as a crime under the Ethiopian criminal code. The criminal code's provision against rape defines the crime as a non-consensual sex committed outside of wedlock, thereby exempting rape within marriage from the scope of criminal acts. However, the prevalence of marital rape in the country has been affirmed through various studies. This paper presents how the patriarchal social structure of the country and women's economic disempowerment reinforce marital rape in Ethiopia and how the exemption of the act from the Ethiopian Criminal Code exacerbates the matter. It attempts to demonstrate that while criminalising marital rape is a crucial step in battling VAW in Ethiopia, it will not have a full effect unless deeply rooted patriarchal norms are dismantled and a more enabling economic environment is made available to women.

KEYWORDS

Marital rape, economic empowerment, violence against women, patriarchy.

TABLE OF ABBREVIATIONS

ACHPR:	African Charter on Human and Peoples' Rights
ADLI:	Agricultural Development-Led Industrialisation
AU:	African Union
CAT:	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW:	Convention on the Elimination of all forms of Discrimination Against Women
ICESCR:	International Covenant on Economic, Social and Cultural Rights
CSO:	Civil Society Organisation
DEVAW:	Declaration on Elimination of Violence Against Women
DOVVSU:	Domestic Violence and Victim Support Unit
ECA:	Economic Commission for Africa
EWLA:	Ethiopian Women Lawyers' Association
FDRE:	Federal Democratic Republic of Ethiopia
FGM:	Female Genital Mutilation
GBV:	Gender Based Violence
GDVA:	Ghana Domestic Violence Act
HRC:	Human Rights Committee
ICCPR:	International Covenant on Civil and Political Rights
IPV:	Intimate Partner Violence
NGO:	Non-Governmental Organisation
NPEW:	National Policy on Ethiopian Women
PFVA:	Prevention of Family Violence Act
RFC:	Revised Family Code
SADVA:	South African Domestic Violence Act
UNDP:	United Nations Development Programme
UN:	United Nations
USD:	United States Dollars
US:	United States
VAW:	Violence Against Women
WHO:	World Health Organisation

TABLE OF CASES

People v Liberta 474 US 567 (1984) (New York High Court).
State v Gyimah 2 GLR 446 (1963).
S v Ncanywa 1992 2 SA 182 (Ck).
S v Mvamvu 2004 SA 350 (SCA).
S v Modise 2007 73 SA 113 (ZANWHC).
State v Rideout 108 US 866 (1978) (Marion County Court).

TABLE OF STATUTES

Ethiopia

Agricultural Development-Led Industrialisation Strategy of Ethiopia of 1991.
Charities and Societies Proclamation of Ethiopia of 2009.
Constitution of the Federal Democratic Republic of Ethiopia of 1995.
Criminal Code of the Democratic Republic of Ethiopia of 2004.
Development Social Welfare Policy of Ethiopia of 1996.
Federal Courts' Proclamation Re-Amendment Proclamation of 2005.
National Policy on Ethiopian Women of 1993.

Ghana

Constitution of the Republic of Ghana of 1996.
Criminal Code of Ghana of 1960.
Domestic Violence Act of Ghana of 2007.

South Africa

Criminal Law Sentencing Amendment Act of 2007.
Prevention of Family Violence Act of 1993.

TABLE OF INSTRUMENTS

International Instruments

Beijing Declaration and Platform for Action.

Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Convention on Elimination of all forms of Discrimination Against Women.

Declaration on the Elimination of Violence Against Women.

International Covenant on Civil and Political Rights.

International Covenant on Economic, Social and Cultural Rights.

Universal Declaration of Human Rights.

Regional Instruments

African Charter on Human and Peoples' Rights.

African Commission on Human and Peoples' Rights (African Commission) 'Concluding observations and recommendations on the 5th and 6th periodic report of the Federal Democratic Republic of Ethiopia'.

Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) art 1(j).

Solemn Declaration on Gender Equality in Africa (2004) para 4.

TABLE OF CONTENTS

9	1. Introduction
9	1.1 Background and rationale
11	1.2 Problem Statement
13	1.3 Research Questions and Objectives
14	1.4 Methodology
14	1.5 Literature Review
17	1.6 Significance
17	1.7 Scope
17	1.8 Structure
18	1.9 Limitations
19	2. Theoretical framework
19	2.1 Introduction
19	2.2 Social learning theory
22	2.3 Frustration-aggression theory
23	2.4 Disinhibition Theory
24	2.5 Feminist theories on the cause of VAW
29	2.6 Conclusion
31	3. Marital Rape in Ethiopia as Violation of Laws Protecting Fundamental Rights of Women
31	3.1 Introduction
32	3.2 Protection of women under domestic law
32	3.2.1 The FDRE Constitution
34	3.2.2 National policies
35	3.3 Protection of women's rights under international and regional human rights instruments
35	3.3.1 Declaration on the Elimination of Violence Against Women (DEVAW)
36	3.3.2 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
38	3.3.3 International Bill of Human Rights
40	3.3.4 The Beijing Declaration and Platform for Action

42	3.3.5	African Charter on Human and Peoples' Rights (ACHPR)
42	3.3.6	Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)
43	3.3.7	The Solemn Declaration on Gender Equality in Africa
44	3.4	Conclusion
45		4. Criminalising Marital Rape in Ethiopia: Learning Points from Relevant Foreign Law
45	4.1	Introduction
46	4.2	Marital rape in Ghana
52	4.3	Marital rape in South Africa
57	4.4	Marital rape in US
61	4.5	Conclusion
63		5. Conclusions and Recommendations
63	5.1	Synopsis of key findings
64	5.2	Conclusion
65	5.3	Recommendations
65	5.3.1	Government
67	5.3.2	Civil Society Organisations (CSOs)
68		Bibliography

1.

INTRODUCTION

1.1. BACKGROUND AND RATIONALE

The 2004 criminal code of Ethiopia defines rape in the following manner:¹

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.

By limiting the act of rape to conducts occurring only outside of wedlock, this provision excludes rape within marriage from the realm of criminal acts. And although the Federal Democratic Republic of Ethiopia (FDRE) Constitution, the Revised Family Code of Ethiopia (RFC) and a few provisions of the Ethiopian Criminal Code can be regarded as provisions that provide women protection from violence, there is no specific definition of what constitutes violence against women (VAW).

Marital rape is categorised as one form of VAW.² Its prevalence is beyond question as various worldwide and country specific studies reveal. For instance, a study by World Health Organisation (WHO) on sexual violence indicates that intimate partner violence (IPV) – which is a broader category that includes marital rape – is a common

¹ Criminal Code of the Democratic Republic of Ethiopia of 2004 (Criminal Code of Ethiopia) art 620.

² World Health Organisation (WHO) 'World report on violence and health' (2002) 149 to 181.

global occurrence that is not localised to particular regions.³ Studies also conclude that due to the high level occurrence of IPV, being married and cohabiting with a partner are regarded as high risk factors that make women susceptible to sexual violence.⁴ The Special Rapporteur on VAW also identifies marital rape as the most common form of domestic violence.⁵ Hence, the relevance and recommendation of legal measures to battle marital rape, particularly considering that men coerce their wives into sexual intercourse because of their misguided belief that marriage legitimises their act.⁶

In Ethiopia, VAW is one of the top human rights violations experienced in the country.⁷ This implies that women throughout the country experience a wide range of violations to their persons and dignity. Among these, physical and sexual violence are of serious concern, particularly IPV which was recorded to have a rate as high as 54%.⁸ Domestic violence is a socially condoned reality in the country with 88 percent of rural and 69 percent of urban women still believing that their husbands are entitled to beat them.⁹ And while sexual violence prevails in both the public and private sphere, sexual violence by intimate partners has been proven to be very frequent in Ethiopia.¹⁰ In the years 2000 to 2014, the prevalence of sexual violence perpetrated by husbands or intimate partners against women was found to range between 19.2 to 59%.¹¹ Berchi, a study by Ethiopian Women Lawyers

³ As above.

⁴ WHO (no. 2 above) 157.

⁵ United Nations (UN) Economic and Social Council (ECOSOC) Report of the Special Rapporteur on violence against women, its causes and consequences (5 February 1996) E/CN.4/1996/53.

⁶ WHO (no. 2 above) 149.

⁷ Ministry of Women, Children and Youth Affairs (MoWCYA) 'Assessment of conditions of VAW in Ethiopia' (November 2013) <<http://www.mowcya.gov.et/documents/715111/2235425/Assessment+of+Conditions+of+Violence+Against+Women+in+Ethiopia/bf8cdf8d-63d3-42c8-ba81-8f03e7930456?version=1.0>> (accessed: 31 July 2017).

⁸ WHO 'Multi-country study on women's health and domestic violence against women: Initial results on prevalence, health outcomes and women's responses' (2005) <http://www.who.int/gender/violence/who_multicountry_study/summary_report/summary_report_English2.pdf> (accessed 31 July 2017).

⁹ FH Berhane 'Why Ethiopia should ratify the Maputo Protocol' in *Pambazuka News* (25 November 2010) <<https://www.pambazuka.org/governance/why-ethiopia-should-ratify-maputo-protocol>> (accessed: 10 May 2017).

¹⁰ WHO (no. 8 above).

¹¹ A Semahegn & B Mengistie 'Domestic violence against women and associated factors in Ethiopia; systematic review' (2015) <<https://reproductive-health-journal.biomedcentral.com/track/pdf/10.1186/s12978-015-0072-1?site=reproductive-health-journal.biomedcentral.com>> (accessed: 3 June 2017).

Association (EWLA) demonstrates that a substantial amount of domestic and sexual VAW takes place within marriage and in the form of rape.¹² Among the major factors contributing to such a high level of VAW in Ethiopia is women's economic disempowerment.¹³ The state's economic structure deepens gender stratification and exploitation of cheap female labour leaving women to be financially dependent on their husbands¹⁴ and exposing them more to violence perpetrated by their husbands.

This research is motivated by the fact that marital rape exemption in the 2004 criminal code of Ethiopia is an obsolete concept at this time and age, particularly within the context of international human rights norms. In light of this and the progress – however limited – Ethiopia has shown in the past years with regards to protection of women's rights and the international commitments the country has made to ensure human rights protection in general, it would be absurd to continue upholding a law that would legally enable men to rape their wives. Moreover, as a democratic nation, failing to abide by human rights norms would be a contradiction for the country. Accordingly, this study will examine the impact of patriarchy combined with the inferior status of women on the prevalence of marital rape and demonstrate why Ethiopia should comply with its human rights obligations and eradicate it.

1.2. PROBLEM STATEMENT

In Ethiopia, although there have been some attempts by civil societies and those involved in academia to call attention to the gaps existing within the Ethiopian law against rape, these attempts have so far been met with no success. During the amendment of the Ethiopian criminal code, EWLA pushed for the redefinition of rape so as to include

¹² Ya'ityopya yaheg balamuya setoch mahbar 'Berchi' (2008) *Journal of Ethiopian Women Lawyers Association* 45.

¹³ Y Dibaba 'Prevalence of intimate partner physical violence against women and associated factors in Kofale district, Arsi Zone, central Ethiopia' (2008) *Sage Journals* 119 to 129.

¹⁴ M Adamu & S Mekonnen 'Historical perspectives on the legal status of women in Ethiopia' in *Abyssinia Law* (04 September 2012) <<http://www.abysinnialaw.com/study-online/item/938-historical-perspectives-on-the-legal-status-of-women-in-ethiopia>> (accessed: 12 May 2017).

marital rape.¹⁵ The parliament however rejected the motion maintaining the status quo. Since then, the issue has been limited to academic conversation which so far has shown no positive results. Therefore, while the countries that introduced the very concept of marital rape exemption have moved ahead and changed their laws to criminalise it,¹⁶ Ethiopia still maintains its outdated criminal law provision that defines rape with the exclusion of non-consensual sex that takes place within marriage.

Ethiopia is bound by domestic and international human rights laws to ensure women's protection from violence and discrimination. FDRE Constitution devotes a detailed provision that sets the constitutional standard for protection of women's rights.¹⁷ International human rights instruments such as CEDAW, DEVAW, Universal Declaration of Human Rights (Universal Declaration) – which has gained status as customary international law and thus, is binding for Ethiopia – and other instruments to which the country is party also set up the legal framework for the protection of women's rights. The marital rape exemption or spousal immunity to rape is a concept that reflects patriarchal undertones which are deeply entrenched in Ethiopian society and negatively impact women's rights. Married women are also more vulnerable to violence due to their economic disempowerment which is reinforced by the country's economic structure and the effect of globalisation. Left with economic disadvantage and without any legal protection, women are exposed to abusive marriages.

This research examines and analyses the extent to which Ethiopia's market economic system and the onslaught of globalisation added to patriarchy continue to foster marital rape and how the exemption of the

¹⁵ KS Gelaw '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)' Master of Arts Thesis, Addis Ababa University, 2012.

¹⁶ Authors such as Hasday explain how marital rape exemption originated from common law prescriptions that rejected the possibility of a husband rapping his wife (see JE Hasday 'Contest and Consent: A Legal History of Marital Rape' (2000) 88 *California Law Review*). United Kingdom (UK) where common law emanated from criminalized marital rape more than two decades ago. On October 1991, it was declared by a UK Court of Justice in the case *R v C and Another* that the common law is capable of adopting to social changes and cultural advancements hence a husband's immunity from charges of raping his wife can have no place in modern day definition of marriage (see *R v C and Another* (1991) 1 AII ER 758 (Crown Ct. Sheffield)).

¹⁷ Constitution of the Federal Democratic Republic of Ethiopia of 1995 (FDRE Constitution) art 35.

act from the Ethiopian Criminal Code exacerbates the matter. Based on this analysis, the study will then suggest ways of eliminating the practice so as to further the rights and dignity of women in Ethiopia.

1.3. RESEARCH QUESTIONS AND OBJECTIVES

The core question this research will be addressing is: 'how is the economic disempowerment of women fostered by Ethiopia's market economy and the onslaught of globalisation furthering and legitimating marital rape in Ethiopia?' Within this central question, the research will attempt to address the following sub-questions:

1. What are the theoretical foundations or analysis of the phenomenon of VAW?
2. What is the role played by patriarchy and low economic status of women in Ethiopia in advancing marital rape?
3. What is the impact of marital rape on the rights of women in Ethiopia and why is the Ethiopian state obliged to eradicate it?
4. Within the context of the theoretical explanation of marital rape undertaken in this dissertation, what would make criminalising marital rape in Ethiopia effective and what lessons could be taken from the experiences of Ghana, South Africa and the United States (US)?

The first objective of this research is to interrogate the causes of marital rape so as to provide an explanation for its prevalence in Ethiopia. To this end, the study will explore a few theories that expound on the causes of VAW. Based on the theoretical accounts given for the underlying causes of marital rape, the research attempts to identify how in Ethiopia, women's oppression due to patriarchal traditions and economic disempowerment reinforces marital rape. The study is also aimed at illustrating how criminalising marital rape is a legal obligation of Ethiopia under international as well as domestic laws. Finally, the research will demonstrate that criminalisation cannot alone achieve the desired result of eliminating marital rape unless steps are taken to strengthen women's financial independence and eradicate patriarchal norms underlying VAW in general.

1.4. METHODOLOGY

This research is conducted using a mixed approach poised between desktop and library research as well as a case study of marital rape in Ethiopia. International and domestic instruments and relevant literature on the topic are analysed to show that marital rape is a human rights violation. A comparative analysis approach is also employed where appropriate to draw lesson from the different criminalisation approaches taken in jurisdictions like Ghana, South Africa and the US. The same approach is used to observe the challenges with implementation in these jurisdictions and what these challenges are attributable to.

1.5. LITERATURE REVIEW

Throughout legal history, arguments have been made both for and against criminalising marital rape. Blackstone, an 18th century legal scholar who supported and contributed to the development of marital rape exemption in US, rationalises his position by allocating marriage within the scope of ‘private economical relations’.¹⁸ He distinguished the ‘marriage contract’ by adding the element of merger which he explained as:

By marriage, the husband and wife are one person under law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated or consolidated into that of the husband: under whose wing, protection, and cover, she performs everything.

In the seventeenth century, Sir Matthew Hale declared how a man cannot be accused of the rape of his wife for through her mutual consent and contract she has given herself to him.¹⁹ According to him, upon marriage, a woman’s right to consent and her sexual will is automatically transferred to her husband.²⁰ Carol Pateman, a feminist and political theorist, defines marriage as a sexual contract whereby man asserts his

¹⁸ W Blackstone *Commentaries on the laws of England* (1765) 442.

¹⁹ Lord Chief Justice Sir M Hale *The history of the plea of the crown* (1847) 629.

²⁰ As above.

individual freedom.²¹ To her, the sexual contract of marriage, which is basically concerned with subjugation of women and male dominance, is what constitutes freedom and independence for men.²²

While these and other classical theorists looked at marriage from different angles, they all came to the same conclusion; that a woman's consent within marriage is not entirely her own. Even Pateman, who is a proclaimed feminist, seems resigned to the traditional importance of the 'sexual contract' in the very sense with which she has framed it.

The nineteenth century brought to the fore some theorists, particularly feminist theorists, who voiced opposition against the marriage contract theory. Elizabeth Cady Stanton, for instance, insisted that women possessed inherent individuality and independence and she challenged marriage contracts that focused too much on the sexual element by trying to demonstrate how it is unjust to women.²³ Chester Vernier, a legal writer of the 20th century, positioned himself in favour of equalising the rights of spouses and moving away from sexual inequality.²⁴

However, some scholars continue to reject the idea of marital rape by claiming that unlike rape perpetrated by a stranger, non-consensual sex with someone known to the woman causes less mental, social or physical damage.²⁵ Nonetheless, others vehemently disagree. Barrington Brennen, for instance, argues that regardless of a woman having had consensual sex with a man on different occasions, anytime the man forces himself on her, it becomes rape.²⁶ Likewise, anytime a man forces his wife to have sex or anytime he coerces her into it, it is called rape.²⁷

Based on a similar premise to Brennen's, Ethiopian scholars like Gelaw²⁸ and Meshesha²⁹ try to establish how marital rape constitutes violation of women's human rights. The present writer agrees with these

²¹ C Pateman *The sexual contract* (1988) 154 to 189.

²² As above.

²³ EC Stanton *Feminist as thinker* (2007) 155 to 170.

²⁴ RL Piper 'American Family Laws, Vol. III (Husband and Wife), by Chester G. Vernier' (1936) 20 *Marquette Law Review*.

²⁵ See M Pracher 'The Marital Rape Exemption: A Violation of a Woman's Right of Privacy' (1981) 11 *Golden Gate University Law Review*.

²⁶ BH Brennen 'Marital rape myth or reality' (18 November 2004) <<http://www.soencouragement.org/maritalrape1.pdf>> (accessed: 12 June 2017).

²⁷ As above.

²⁸ Gelaw (no. 15 above).

²⁹ HD Meshesha 'Analysis of marital rape in Ethiopia in the context of international human rights' Master's thesis, University of South Africa, 2014.

scholars' view that marital rape constitutes a violation of human rights. However, these authors have not examined the implications and impact of the dominant economic ideology and globalisation on fostering the vulnerability and dependence of women in Ethiopia and how this is furthering the prevalence of marital rape in the country.

A few other researchers also show that marital rape is a reality that needs to be properly addressed under the laws of Ethiopia. A case study conducted by Sinidu Fekadu in Addis Ababa, Ethiopia discloses that reporting marital rape is very rare due to the lack of response by law enforcement bodies.³⁰ As Tigist Hailu explains, this is mainly due to the cultural and religious construct of Ethiopian society that will not allow open reporting.³¹ As these authors explain, domestic and sexual violence in Ethiopia predominantly takes place within marriage because culture and society condone male supremacy.³² The writer also agrees with these researchers that tradition and the patriarchal construct of Ethiopian society play a crucial role in the prevalence of marital rape. Yet, these writers have neglected to interrogate the relevance and important role of the dominant political economic system in creating and fostering the vulnerability and dependence of Ethiopian women, which operates to predispose them to sexual abuse and violence, among other ills.

This study therefore seeks to supplement the works of these scholars by interrogating the role and impact of the dominant economic ideology and the relatively recent onslaught of globalisation on the agency, economic autonomy and equality of women and how these operate to predispose women to abuse and violence. The study will also examine and espouse what lessons there are for Ethiopia from identified foreign laws through a comparative study. This is in order to be able to evolve holistic and more realistic recommendations for crafting a more effective response to the inequality and vulnerability of women which predispose them to abuse and violence, including marital rape in Ethiopia.

³⁰ S Fekadu 'An Assessment of Causes of Rape and its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa' Master of Arts Thesis, Addis Ababa University, 2008 18.

³¹ T Hailu 'Formal and Informal Responses to the Recurring Forms of Violence Against Women in Ethiopia' <http://preventgbv africa.org/wp-content/uploads/2013/11/vawethiopia.hailu_.pdf> (accessed: 15 June 2017).

³² As above.

1.6. SIGNIFICANCE

Marital rape is a world-wide reality which cannot be treated as an isolated crime affecting individual victims rather it is one that threatens all women.³³ Economic inequality is a serious factor that impedes gender equality and facilitates VAW.³⁴ Hence, it is critical to explore the extent to which economic disempowerment of women fostered by the existing economic ideology and globalisation is facilitating marital rape which is one form of VAW. And as pointed out in the literature review above, this is an area of the discourse which appears to have been neglected in literature. The significance of this study therefore lies in drawing the much-needed attention to that most important factor and in elucidating and articulating lessons that can be learned from the mentioned foreign countries' experience. Moreover, since most African countries still allow spousal immunity for rape, this study can also contribute to the efforts and advocacy against marital rape in Africa at large.

1.7. SCOPE

This research focuses on the exclusion of marital rape from the Ethiopian criminal law. It argues that in addition to a human rights violation and a result of patriarchal traditions, marital rape is also a manifestation of an economic ideology which reinforces power relations and leaves women in a vulnerable position. The study is limited to examining the impact of women's economic disempowerment alongside deep-seated patriarchal norms on the prevalence of marital rape in Ethiopia. The research does not concern itself with further details of economic ideologies or attempt to suggest a change of ideology.

1.8. STRUCTURE

This research will consist of five chapters. To respond adequately to the questions raised above, it will commit the first chapter to an

³³ R Coomaraswamy & LM Kois 'Violence against women' in KD Askin and DM Koenig (Eds) *Women and International Human Rights Law* (1999) 1 185.

³⁴ J Lorber *The variety of feminisms and their contribution to gender equality* (1997) 36.

introduction and outline. Chapter two will discuss the theoretical framework underlying the study. Theories explaining causes of VAW – which sexual violence as represented by marital rape is a component part of – will be considered in this chapter. The extent to which Ethiopian patriarchal norms are implicated in fostering and legitimising marital rape will also be considered in this chapter. The chapter will include an overview of the existing economic structure of Ethiopia and examine it in light of the main theories the study will be hinged on. Chapter three will examine the impact of marital rape on the rights of women in Ethiopia and interrogate why the Ethiopian state is obliged to eradicate it. Chapter four will discuss how criminalising marital rape is the first step towards addressing the problem. Then, based on the experience of selected countries, it will explicate why criminalisation in the absence of women’s economic empowerment and further measures against patriarchal traditions will not be impactful. Chapter five will be the final chapter where the study will be concluded with a concise summary of the findings of the study and recommendations.

1.9. LIMITATIONS

Accessing statistical data that is specific to marital rape proves to be quite challenging. This is because even in most countries where it is recognised as a crime, it is not reported and recorded as a separate violation. Rather, the available data records present marital rape as a crime analysed along with IPV and sexual assault. Hence, the study had to depend on such records in some instances.

2.

THEORETICAL FRAMEWORK

2.1. INTRODUCTION

The previous chapter dealt with preliminary matters of this study, laid down its objectives and structure and highlighted the importance of marital rape in Ethiopia as object of the study. In order to have a meaningful discussion about marital rape, it is first important to have some understanding of what the underlying causes of VAW are in general. As mentioned in chapter one, marital rape is one form of VAW.³⁵ Hence, looking into the factors underlying VAW is essential to fully appreciating the nature of marital rape. VAW has been analysed under various theories that seek to explain its root causes. And while no one theory can exhaustively explain the causes of VAW, looking at a few theoretical explanations can assist with shaping the proper response to incidences of VAW.³⁶ This chapter will discuss four theories that attempt to explain the possible causes of VAW. The words ‘aggression’ and ‘violence’ are used interchangeably while discussing these theories.

2.2. SOCIAL LEARNING THEORY

The first theory discussed here is the social learning theory. The social learning theory contends that causes of behaviour do not entirely emanate from within; rather they are mostly results of environmental

³⁵ WHO (no. 2 above)149.

³⁶ H Dalzell ‘Issues in domestic violence: Introduction and theories’ (2016) in *CE4less*<<https://ce4less.com/Tests/Materials/E098BMaterials.pdf>> (accessed: 7 September 2017).

forces.³⁷ Observation and direct experience are regarded to be the main sources of human learning. This theory rejects the idea of instinct as source of human behaviour attributing it instead to stimulus, reinforcement and cognitive control.³⁸

Based on this theory, violence is explained as a learned conduct and not merely a natural characteristic.³⁹ Experiencing and observing aggression within the family is for instance regarded as a source of marital aggression.⁴⁰ It is suggested that what makes violence in family a very common occurrence is that it is first experienced among those who profess to love each other.⁴¹ Social learning theory explains family aggression as the result of either contextual – such as stress and aggressive personality – or situational factors such as substance abuse and financial hardships.⁴² It holds that children who grow up being hit or witnessing hitting between parents will learn at early age that violence is acceptable.⁴³ Childhood violence can be experienced either directly or through witnessing abuse between parents.⁴⁴ Whenever violence is experienced directly by a child, the purpose behind it is mostly to teach and correct the child.⁴⁵ However, the unintended consequences are that the child will learn to associate violence with love and to justify it as the proper course of action under certain circumstances.⁴⁶

It is also noteworthy that it is not necessarily men who will come out as perpetrators and women as victims as a result of witnessing family aggression. However, in most cases, children assimilate the same-sex role which means while boys follow the role of the father, girls follow that of the mother.⁴⁷ And while the possibility of women perpetrating violence against their spouses and men being victimised by it cannot be completely ruled out, studies demonstrate that the most prevalent

³⁷ A Bandura *Social learning theory* (1977).

³⁸ Dalzell (no. 36 above) 8.

³⁹ Bandura (no. 37 above).

⁴⁰ D Kalmuss 'The Intergenerational Transmission of Marital Aggression' (1984) 46 *Journal of Marriage and Family* 11 to 19.

⁴¹ RJ Gelles & MA Straw 'Determinants of violence in the family: Toward a theoretical integration' in Wesley R. Burr et al *Contemporary theories about the family* (1979) 549 to 581.

⁴² Dalzell (no. 36 above) 8.

⁴³ Kalmuss (no. 40 above) 11.

⁴⁴ As above.

⁴⁵ Gelles & Straw (no. 41 above) 551.

⁴⁶ As above.

⁴⁷ Kalmuss (no. 40 above) 12.

type of family aggression is fathers abusing mothers.⁴⁸ Predominantly, being raised in an aggressive family increases the likelihood of men perpetrating violence and women being victimised by it.⁴⁹ In a specific survey that involved 270 participants who experienced parental abuse, 71 percent were found to have witnessed the father abusing and the mother being victimised by aggression.⁵⁰ It has also been found that a childhood that exposes a son to witness his father beating his mother increases chances of future wife abuse by him.⁵¹ In particular relation to marriage, it has been revealed by marital violence researchers that perpetration of violence is largely attributable to husbands.⁵² Hence, male violence against women is clearly more prevalent between married couples. And when it comes to women, the same background is to a greater extent associated with future victimisation, particularly where they have been abused as children.⁵³

In addition to family, social structures and customs can also be regarded as spaces for social learning. Social structures that subordinate women to men are quite common throughout the world.⁵⁴ Moreover social customs regulate sexual activity with the usual intent of restraining female sexuality which can be evidenced by the harsher sanctions against female infidelity than for the same transgression by male counterparts.⁵⁵ There have been researches revealing how marital violence perpetrated against wives is socially justified and accepted in most communities on the grounds of her infidelity.⁵⁶ These structures and customs easily familiarise boys and girls from an early age with violent attitudes. They normalise VAW, especially one that takes place within marriage, as a socially condoned conduct.

⁴⁸ As above, 16.

⁴⁹ As above, 15.

⁵⁰ As above, 16.

⁵¹ As above, 13.

⁵² RL Burgess & P Draper 'The explanation of family violence: The role of biological, behavioral, and cultural selection' (1989) 11 *Crime and Justice* 59 to 116.

⁵³ Kalmuss (no. 40 above) 15.

⁵⁴ Burgess & Draper (no. 52 above).

⁵⁵ As above.

⁵⁶ As above.

2.3. FRUSTRATION-AGGRESSION THEORY

The second theory discussed here is the frustration-aggression theory. This theory suggests that violence in intimate relationships can result from a frustrated state of mind.⁵⁷ It holds that people feel frustrated when they perceive that they are being prevented from achieving certain goals and this frustration likely leads to aggression.⁵⁸ However, later versions of this theory elaborate that the inability to attain desired goals does not always lead to aggressive reaction.⁵⁹ However, regardless of the initial response to frustration, the likelihood of aggression increases as the person's struggle to attain desired goals continues without success.⁶⁰

In explaining violence in marriage, this theory suggests that strongly-felt frustration likely leads to aggressiveness against the source perceived as the reason behind or the agent keeping the person from achieving the desired goal.⁶¹ Where there is fear of punishment for displaying aggression against that agent, the frustrated person will find a substitute target and the form of aggression might also change.⁶² Hence, a man who has been unable to obtain promotion at work because of his boss's reluctance might be too frustrated but unable to confront his boss for fear of being fired. Based on the frustrated-aggression theory, said man may feel inclined to take out his frustration on a different target – say his wife – and the form of aggression might also be different which implies the possibility of sexual violence and rape. And while this theory has been criticised as 'a drive theory, holding that frustrations typically only create a general emotional arousal',⁶³ it is clear that it can explain to an extent the violent nature of men against women in certain circumstances and settings.

⁵⁷ NE Miller 'The frustration-aggression hypothesis' (1939).

⁵⁸ As above.

⁵⁹ L Berkowitz 'Frustration-aggression hypothesis: Examination and reformulation' (1989) 106 *Psychological Bulletin* 59-73.

⁶⁰ As above, 61.

⁶¹ As above.

⁶² As above.

⁶³ As above, 59.

2.4. DISINHIBITION THEORY

The third theory is the disinhibition theory. Aggressive impulses are often held in check due to social norms that advance self-control and based on that premise, it is assumed that the most probable cause for aggressiveness is lack of self-control.⁶⁴ Disinhibition theory holds that alcohol diminishes inhibitions thereby altering judgment.⁶⁵ Deriving support from medical, biological and psychoanalytic explanations, this theory proposes that within the disinhibited state, alcohol causes cognitive disruption and allows release of rage.⁶⁶ It has also been deduced that alcohol has a higher probability of inducing aggressive attitude than any other reaction.⁶⁷

In most societies, it is culturally believed that extreme alcohol consumption is the main factor leading to drunken wife-beating, which is regarded as a 'masculine behaviour'.⁶⁸ Although these assumptions might not be entirely correct, studies based on this theory show that there is a strong connection between alcohol use and wife abuse, with one out of four instances of wife abuse being linked with alcohol drinking.⁶⁹ Disinhibition due to alcohol was also found to lead to VAW in the case of drunken men with lower-class social status⁷⁰ emphasizing the interplay between economic status, alcohol and VAW. Moreover, tolerance of drunken wife beating is also observed among the lower-class socio-economic group.⁷¹ And although there is chance for violence to result from the disinhibition of wives, it is predominantly drinking by husbands that lead to violence.⁷²

⁶⁴ CN DeWall et al 'Violence restrained: Effects of self-regulation and its depletion on aggression' (2007) 43 *Journal of Experimental Social Psychology* 62 to 76.

⁶⁵ GK Kantor & MA Straus 'The 'drunken bum' theory of wife beating' (1987) 34 *Social Problems* 213 to 230.

⁶⁶ As above, 214.

⁶⁷ BJ Bushman & HM Cooper 'Effects of alcohol on human aggression: An integrative research review' (1990) 107 *Psychological Bulletin* 341 to 354.

⁶⁸ Kantor & Straus (n 65 above) 213.

⁶⁹ As above, 224.

⁷⁰ As above, 220.

⁷¹ As above.

⁷² As above, 224.

2.5. FEMINIST THEORIES ON THE CAUSE OF VAW

Waves of feminist movements during the 20th century have greatly contributed to gender equality struggle and added to advocacy against VAW including marital rape. Radical feminism is a theory focused on fighting patriarchy as the main cause of gender inequality and consequently, VAW.⁷³ Radical feminists believe that patriarchy is embedded within the psychology of men and thus difficult to eradicate.⁷⁴ They argue that women's subordination to men is primarily rooted in social norms that promote men's control over women's bodies, particularly where reproduction and sexuality are concerned.⁷⁵ While this theory is quite rigid and focused on placing all blame for VAW on patriarchy, its assertions hold water while considering the causes of VAW in societies like Ethiopia. Ethiopia is perhaps one of the most patriarchal societies in the world where VAW is readily embraced.⁷⁶ Rural Ethiopia in particular, comprising more than 80% of the total population – out of which over 50% are women⁷⁷ – is characterised by traditions that are oppressive to women.⁷⁸ Female genital mutilation (FGM), abduction of young girls, forced child marriage and wife beating are only a few of the rampant Ethiopian traditional practices contrary to women's rights and aimed at giving men superiority.⁷⁹ Abduction of young girls to force them into marriage is a widely practiced tradition in northern Ethiopia⁸⁰ and a good example of how patriarchy plays a vital role in the perpetuation of VAW. Usually, such abduction is followed by rape, aimed at leaving the victim without much option other than marrying the perpetrator.⁸¹ This

⁷³ Lorber (no. 34 above) 12.

⁷⁴ As above, 16.

⁷⁵ AM Jaggat & PS Rothenburg 'Feminist frameworks: Alternative theoretical accounts of the relations between women and men' (1993) 121.

⁷⁶ SG Abeya et al 'IPV against women in west Ethiopia: A qualitative study on attitudes, woman's response, and suggested measures as perceived by community members' (2012) *Reproductive Health Journal* 1.

⁷⁷ Trading Economics 'Ethiopia Population' (2017) <<https://tradingeconomics.com/ethiopia/population/>> (accessed: 28 August 2017).

⁷⁸ Abeya et al (no. 76 above).

⁷⁹ M Misganaw 'Harmful traditional practices in Ethiopia' in *Research Gate* (January 2005) <https://www.researchgate.net/publication/259467300_Harmful_Traditional_Practices_in_Ethiopia> (accessed: 28 August 2017).

⁸⁰ A Erulkar 'Early marriage, marital relations and IPV in Ethiopia' (2013) 39 *International Perspectives on Sexual and Reproductive Health* 6 to13.

⁸¹ Organization for the development of women and children Ethiopia (ODWACE) *Old beyond imaginings: Ethiopia harmful traditional practices* (2008).

practice, commonly referred to as *telefa* is regarded as a means for men to secure marriage to the girl of their choosing because family would give up their daughter to her rapist rather than face the shame of having an unmarriageable daughter whose virginity has been soiled.⁸² The practice of child marriage is in itself tantamount to social legitimisation of the institution of marital rape.⁸³ *Telefa* creates a very fertile ground for marital rape by starting the marriage itself through a forced sexual act. Studies show that a predominant number of girls forced into marriage in rural Ethiopia experience high level of forced sex with their husbands.⁸⁴ This makes *telefa* one among many patriarchal traditional norms in Ethiopia that normalises marital rape. Hence, the value of radical feminism in fighting patriarchal social structures should not be overlooked.

Socialist feminism, on the other hand, is known for attributing oppression and VAW to capitalist economic structures. Unlike radical feminists, socialist feminists do not entirely subscribe to the idea that patriarchy is the primary and overriding root-cause of VAW. Heidi Hartman argues that radical feminists fail to see how capitalism and patriarchy reinforce each other.⁸⁵ She proposes that patriarchy should be understood as men's control over 'women's labour in the private and public spheres'.⁸⁶ Socialist feminists believe that the notion of exploitation extends to all relations wherein some benefit from the labour of others.⁸⁷ And while they subscribe to the broader anti-capitalist discourse of socialism, socialist feminists do not regard capitalism as the sole or primary reason behind VAW.⁸⁸ Their theory holds instead, that through a democratic process, a just economy that would ensure equality and well-being of all would emerge.⁸⁹ In that spirit, socialist feminists regard comparable worth –equal pay for men and women engaged in work that requires comparable skills – as a solution to women's dependence

⁸² As above.

⁸³ M Ouattara et al 'Forced marriage, forced Sex: The perils of childhood for girls' (1998) 6 *Gender and Development* 27-33.

⁸⁴ Erulkar (n 80 above) 10.

⁸⁵ H Hartmann *The unhappy marriage of Marxism and feminism: Towards a more progressive union* (2010).

⁸⁶ As above.

⁸⁷ L Gordon 'Socialist Feminism: The Legacy of the "Second Wave"' (2013) 22 *New Labor Forum* 20-28.

⁸⁸ As above.

⁸⁹ As above, 22.

on men.⁹⁰ They hold that comparable worth would make women less dependent on marriage by making economic resources more accessible to them.⁹¹ And once women are economically empowered, they will not be forced to enter or remain in abusive relationships or marriages.

Another feminist theory which also places the reason for VAW on the economic reality of women is development feminism. Development feminists contend that in societies where women have control over economic resources, there is more chance of them maintaining a higher position in life.⁹² They hold that in patriarchal societies where control over resources is dominated by men, women will remain oppressed.⁹³ Similar to social feminists, development feminists find western concepts of economic independence and individualism as ideas that can reinforce social structures that are oppressive to women.⁹⁴ Yet they note that these western notions at the same time contribute to fighting subordination of women by advocating for human rights and promoting the education of girls.⁹⁵

Socialist feminism and development feminism theories also gain support from some studies conducted on male violence. A study by Lynn Segal that attempts to explain male violence points out that violence is not an inherently male thing.⁹⁶ The study refers to some lesbian relationships wherein women hit and terrorise their partners, demonstrating that both men and women are capable of violence.⁹⁷ Having made that observation, Segal underlines that among the common factors underlying violent relations is the victims' economic dependence on partners.⁹⁸ Anne Campbell also argues that it is counterproductive to regard women only as victims of men while in reality they are victims of an entire economic system and that liberating women cannot make a full sense until the larger economic system is challenged.⁹⁹ The fact that VAW is observed most commonly among the working class where sex-

⁹⁰ Lorber (no. 34 above).

⁹¹ As above, 12.

⁹² As above, 13.

⁹³ As above.

⁹⁴ As above, 14.

⁹⁵ As above.

⁹⁶ L Segal 'Explaining male violence' in J Muncie et al (eds) *Criminological perspectives: A reader* (1996) 187 to 200.

⁹⁷ As above, 194.

⁹⁸ As above.

⁹⁹ A Campbell *Girl Delinquents* (1981) 237.

typed jobs are very common also explains how much economic reality plays a role in fostering VAW.¹⁰⁰ Hence, Segal and other scholars suggest that at the very core of VAW is the state that devises violent structures and creates inequality and poverty in society in order to accomplish its other political objectives.¹⁰¹ According to Segal:¹⁰²

In the area of personal life, it has been women's traditional lack of any access to independent economic resources within the institution of marriage which has been pivotal to the normal functioning of domestic arrangements to suit men's needs. That institution is now changing, and the most significant common characteristic of women who are battered today is not their gender as such, but their lack of resources to escape marriages which are violent.

Women in Ethiopia have very little access to or control over resources, which leaves them in an economically disadvantaged position.¹⁰³ One of the major factors for lack of women's independence in Ethiopia is their lack of economic capacity. As we have observed above, economic dependence on husbands is among the main reasons that forces women to remain within abusive marriages. Capitalism lays a fertile ground for gender hierarchies to continue being embedded in society thereby playing a major role in the increase of VAW.¹⁰⁴ As many feminists have pointed out, capitalist societies have always had the tendency to create a division between commodity production and human reproduction.¹⁰⁵ And men, free from the burden of reproductive responsibilities, have had the advantage of dominating the productive sector while women remained confined within the unpaid labour of their reproductive role.¹⁰⁶ And power control over the so-called productive sphere being in the hands of men, the rare participation of women in that area comes with lower pays.¹⁰⁷

While Ethiopia may not be a capitalist state, its free market economic ideology reinforces the same gender imbalance between men and

¹⁰⁰ Segal (no. 96 above) 196.

¹⁰¹ As above, 200.

¹⁰² As above, 194.

¹⁰³ G Ayferam 'Assessment of the roles and constraints of women in economic development of Ethiopia: The case of Ambo town since 1991' (2015) *Journal of Political Sciences & Public Affairs*.

¹⁰⁴ Segal (n 96 above) 200.

¹⁰⁵ A Joan 'Gender, capitalism and globalization' (2004) 30 *Critical Sociology* 1 to 27.

¹⁰⁶ As above, 7.

¹⁰⁷ As above.

women. It allows everything to be determined by the market and the market is already controlled by investors and companies¹⁰⁸ that embrace gender-stratified working positions and lower pay for women.¹⁰⁹ And although in a free market economy, there would ideally be a free competition that is purely determined by demand and supply and not open to monopoly by private owners,¹¹⁰ this is not the case in Ethiopia. Aided by globalisation, free market economy in Ethiopia opens the gate for exploitative transnational corporations targeting women – who are considered to be docile and amenable to work at low pay – for physical labour at low wages.¹¹¹ And this ultimately contributes to their disempowerment, their subordinate position in household and their vulnerability and exposure to remain within violent marriages. One of the main criticisms against free market economy is the unequal bargaining power it can result in.¹¹² By allowing the market to be predominantly determined through the existing demand and supply chain, it adopts the bargaining model which in turn impacts on women's 'fall-back position' in the household.¹¹³ Having little to no access or control over resources means that women have little choice but to 'be subservient to and accommodate the interest of men in order to save the marriage from breaking down'.¹¹⁴ Records by United Nations Development Programme (UNDP) indicate that in sub-Saharan Africa, only 3 in 10 women within the labour force earn wages.¹¹⁵ The informal sector which revolves around home based production and trade mainly consists of female labour and is characterised by lack of access to information resulting in veiled unemployment and low productivity.¹¹⁶

¹⁰⁸ AT Terefe 'The negative impact of foreign direct investment on people's right to food: Ethiopia's horticulture/floriculture industry' LLM thesis, Central European University 2016.

¹⁰⁹ Adamu & Mekonnen (no. 14 above).

¹¹⁰ S Nickolas 'What is the difference between a capitalist system and a free market system?' in *Investopedia* (17 August 2017) <<http://www.investopedia.com/ask/answers/042215/what-difference-between-capitalist-system-and-free-market-system.asp>> (accessed: 8 September 2017).

¹¹¹ Adamu & Mekonnen (no. 14 above).

¹¹² T Pettinger 'Criticism of free market economy' in *Economics Help* (28 November 2012) <<https://www.economicshelp.org/blog/glossary/criticism-free-market/>> (accessed 3 September 2017).

¹¹³ G Gobezie 'Empowerment of women and gender mainstreaming in rural microfinance' in *UN Women expertgroup meeting* (20September2011)<<http://www.un.org/womenwatch/daw/csw/csw56/egm/Gobezie-RP-2-EGM-RW-Sep2011.pdf>> (accessed: 3 September 2017).

¹¹⁴ As above, 2.

¹¹⁵ CG Bowman & A Kuenyehia *Women and law in sub-Saharan Africa* (2003) 528.

¹¹⁶ As above, 529.

Hence, women in sub-Saharan Africa, among which Ethiopia is a member, are not nearly as empowered as they should be in order to avoid being economically dependent on their spouses.

It is also important here to underline the interplay between economic disempowerment and socialisation in fostering marital rape. As we have observed above, social learning theory explains how VAW can be a learned behaviour. Cultures that teach girls to be submissive to their husbands, to assume domestic roles and accept patriarchal division of labour also teach young boys to live up to the stereotypical ideas of a man which include disciplining and controlling wives while having the upper hand in economic decision making and access to assets.¹¹⁷ In Ethiopia, because economic contribution of women in household is either non-existent – due to their confinement to reproductive roles – or very meagre – given the lower wage jobs that are available to them – it is often believed that there is no need to invest on the education of a young girl who will not be able to financially support her family in the long run.¹¹⁸ This socially learned attitude creates a vicious circle; girls will be regarded as unworthy of education, they will grow up illiterate and hence incompetent for decent paying jobs, then once they are married, they will likely be forced to depend on the income their husbands earn. This in turn means they will readily submit to their husbands and fighting forced sex perpetrated by them will be a luxury women cannot afford. Hence, the fact that marital rape is still not treated as a crime in Ethiopia means that women are left with a twofold risk; no economic leverage and no legal protection. And while legal measures are essential to unlearn the social perception of marital rape as an acceptable act, the full effect of legal measures is unlikely to be felt unless women are in the economic position that would allow them to pursue legal recourse against their husbands on whom their livelihoods depend.

2.6. CONCLUSION

As pointed above, the cause for VAW is most likely the result of

¹¹⁷ As above, 472.

¹¹⁸ E Bayeh 'The role of empowering women and achieving gender equality to the sustainable development of Ethiopia' (2016) 2 *Pacific Science Review B: Humanities and Social Sciences* 37 to 42.

two or more of the factors discussed in these theories and others that the study has not explored. This research is hinged on socialist and development feminist theories, radical feminism and the social learning theory to the extent that they rightly identify Ethiopia's economic system and patriarchal tradition as factors that greatly impact gender relations and function as underlying causes of VAW including marital rape and explain how these become normalised through the social learning process. I have observed, based on these theories, how an underlying economic ideology that strengthens male dominance and female subordination through sexual division of labour might be at the core of VAW,¹¹⁹ specifically marital rape, in Ethiopia. The next chapter will explore the legal obligations of Ethiopia to protect women from marital rape.

¹¹⁹ Segal (no. 96 above).

3.

MARITAL RAPE IN ETHIOPIA AS VIOLATION OF LAWS
PROTECTING FUNDAMENTAL RIGHTS OF WOMEN

3.1. INTRODUCTION

In chapter two, I discussed the different theoretical propositions explaining VAW including marital rape. The basic purpose of chapter two, beyond providing some form of theoretical account for what underlies marital rape, was to lay down the theoretical foundation for the argument presented in this research. Radical feminism and socialist and development feminism theories have been discussed in some detail with the purpose of justifying the suggestion that the prevalence of marital rape in Ethiopia is partly the result of patriarchy reinforced by subordinate and vulnerable economic status of women, which is in turn fostered by the country's market economy and the widespread effect of globalisation. The social learning theory is also briefly overviewed so as to explain how VAW has become a socially learned behaviour readily embraced by society. The other theories addressed in chapter two were aimed at shedding some light as to the multifaceted nature of VAW and highlighting that marital rape can be the result of various factors.

This chapter is aimed at showing the nexus between marital rape and violation of human rights and articulating why Ethiopia is obliged to take legal measures against the former. To that end, relevant international and regional human rights instruments ratified by Ethiopia and domestic instruments protecting women's rights are analysed. The chapter also looks into some of the obligations assumed by Ethiopia to ensure economic empowerment of women so as to emphasise how meeting these obligations can contribute to fighting marital rape in the country.

3.2. PROTECTION OF WOMEN UNDER DOMESTIC LAW

Starting with the FDRE Constitution, Ethiopia has committed to protecting women's rights through various national laws and policies. This sub-section will discuss how the FDRE Constitution and other national policies promulgated by Ethiopia protect women from violence in general and highlight how such protection can be extended to protection against marital rape. The relevant national laws and policies on women's economic equality will also be briefly explored.

3.2.1. *The FDRE Constitution*

Although the right of women is specifically addressed under article 35 of the FDRE Constitution, provisions of other laws and instruments also clearly guarantee the protection of women from discrimination, inequality and violence. Article 35 in itself is a provision guaranteeing a broad spectrum of rights to women. Women's equal rights in marriage¹²⁰ – which includes rights assumed while entering marriage, during marriage and upon divorce¹²¹ – provide a strong constitutional basis for the protection of women against spousal rape. Having equal rights during marriage implies that husband and wife shall have equal say on whether or not to have sex.¹²² Also, as observed in the previous chapter, it is agreed by various scholars and feminists that rape is mostly used as a means of asserting power and dominance.¹²³ Based on this analysis, we can see how marital rape is a serious negation of the constitutional guarantee of women to enjoy equal rights in marriage. It is not possible to enjoy rights equally in a marriage where one is being subjugated through forced sex that is veiled under the guise of conjugal right. Hence, exempting marital rape from criminal prohibition is a clear breach of the state's constitutional obligation to protect equal rights in marriage.

Furthermore, article 35 imposes duty on the state to eliminate all harmful customs oppressive to women that can cause physical or mental

¹²⁰ FDRE Constitution art 35(2).

¹²¹ As above, (art 34(1)).

¹²² Segal (n 96 above) 192.

¹²³ As above, 189.

harm.¹²⁴ Studies reveal that marital rape can have a very traumatic impact on the victim due to the sense of betrayal and mistrust that comes along with it.¹²⁵ Moreover, marital rape has a greater chance of occurring repeatedly and can be more violent than non-marital rape since women are more accustomed to their husbands and more likely to resist them vehemently.¹²⁶ Most African customary cultures on the other hand are regarded as the sources of women's sexual passivity and men's prerogative to choose when and how to have sex.¹²⁷ A woman's refusal to have sex with her husband in such customs would be seen as an affront to tradition.¹²⁸ As observed in the previous chapter, Ethiopia is also among such traditional societies where marital rape is normalised through the patriarchal social structure and learning.¹²⁹ Hence, the state cannot be said to be meeting its constitutional obligation under article 35(4) until such customs that endorse marital rape are addressed.

The economic security of women is also recognised under article 35. Women are granted the right to acquire, transfer inherit, administer and use property equally with men.¹³⁰ In addition, the right of women to equal employment, promotion and pay is recognised.¹³¹ Taking into consideration the historically disadvantaged position of women, the FDRE Constitution also gives recognition to positive discrimination in 'political, social and economic life as well as public and private institutions'.¹³² Nonetheless, studies indicate that women's labour in the country's economic sector is underutilised, while the political sphere is mainly dominated by men and women's impact on social development of the country is minimal due to lack of opportunities and enabling environment.¹³³ Moreover, women are confined to unpaid household and care-giving labour due to the male-dominated economic sector that excludes them.¹³⁴ And as already elaborated, so long as this economic disempowerment continues, women will be forced to accept abuse and

¹²⁴ FDRE Constitution art 35(4).

¹²⁵ LW Siegel 'The marital rape exemption: Evolution to extinction' (1995) 43 *Cleveland Law Review* 352 to 378.

¹²⁶ As above, 359.

¹²⁷ Bowman & Kuenyehia (no. 115 above) 352.

¹²⁸ As above.

¹²⁹ Erulkar (no. 80 above).

¹³⁰ FDRE Constitution art 35(7).

¹³¹ FDRE Constitution art 35(8).

¹³² FDRE Constitution art 35(3).

¹³³ Bayeh (no. 118 above) 38.

¹³⁴ As above, 39.

violence perpetrated by their husbands, including marital rape. Thus, while article 35 of the FDRE Constitution sets the foundation for protection of women's economic rights, it cannot be said to be fully met until women are empowered to resist violence perpetrated against them including marital rape.

Other provisions of the constitution that are relevant to women's protection against marital rape are: the right to equal protection under the law,¹³⁵ the right to security,¹³⁶ protection against inhumane treatment,¹³⁷ and the right to human dignity and honour.¹³⁸ All these are rights that play a role in the fight against VAW generally and marital rape particularly and will be discussed in more detail in upcoming sections.

3.2.2. *National policies*

Various national policies formulated by the FDRE government try to address gender inequality. The National Policy on Ethiopian Women (NPEW) is a policy aimed at facilitating opportunities for gender equality in the country.¹³⁹ It has a particular focus on fighting gender stereotypes that instigate and propagate inequalities between women and men.¹⁴⁰ Stereotyping can be understood as a generalised view of a person that fails to consider personal attributes and bestows roles and destinies based on such generalised characteristics.¹⁴¹ Gender stereotypes are thus generalised perceptions about male and female characteristics.¹⁴² Such stereotypes function as tools of oppression against women by constraining their identities and confining them to particular roles without regard to their personal preferences and abilities.¹⁴³ In Ethiopia, gender stereotypes are among the basic sources of women's subjugation and VAW. Fighting stereotypical attitude towards women is perhaps the first step towards fighting marital rape in Ethiopia. Thus, NPEW would play a considerable role if properly carried out.

¹³⁵ FDRE Constitution art 25.

¹³⁶ FDRE Constitution art 16.

¹³⁷ FDRE Constitution art 18.

¹³⁸ FDRE Constitution art 24.

¹³⁹ National Policy on Ethiopian Women of 1993.

¹⁴⁰ As above, sec 2.

¹⁴¹ RJ Cook & S Cusack *Gender stereotyping: Transnational legal perspectives* (2010) 12.

¹⁴² As above.

¹⁴³ Cook & Cusack (no. 141 above) 13.

Agricultural Development-Led Industrialisation (ADLI)¹⁴⁴ is a strategy developed within the country's national economic policies and relevant to women's empowerment, as it focuses on increasing women's productivity, enhancing their chances of holding decision making power, and encouraging their participation in economic activities.¹⁴⁵ The Development Social Welfare Policy (DSWP) acknowledges the disadvantaged position of women in society and places the economic dependence of women as one of the major causes of social problems in the country.¹⁴⁶ As one can easily note, the proper implementation of these policies would ensure the independence of women and ultimately contribute to the fight against marital rape. Hence, the Ethiopian government needs to be committed to the proper implementation of these policies in addition to taking direct legal measures against marital rape.

3.3. PROTECTION OF WOMEN'S RIGHTS UNDER INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

Ethiopia has ratified various human rights instruments that are essential for the protection of women's rights. The FDRE Constitution provides that international agreements ratified by the country form a fundamental part of Ethiopia's law¹⁴⁷ and human rights guaranteed under the constitution are to be construed in a way conforming to human rights instruments ratified by the country.¹⁴⁸ Accordingly, Ethiopian government is bound to ensure protection of human rights of women in line with the instruments to be discussed in this section.

3.3.1. *Declaration on the Elimination of Violence Against Women (DEVAW)*

As a softlaw, a declaration does not legally bind states to its stipulations. Nonetheless, it holds a persuasive force which emanates

¹⁴⁴ Agricultural Development Led Industrialisation Strategy of Ethiopia of 1991.

¹⁴⁵ As above.

¹⁴⁶ Development Social Welfare Policy of Ethiopia of 1996.

¹⁴⁷ FDRE Constitution art 9(4).

¹⁴⁸ FDRE Constitution art 13(2).

from its expression that states are preferred and not obliged to ‘act or refrain from acting in a particular way’.¹⁴⁹ As such, DEVAW has persuasive value. Ethiopia is a signatory to DEVAW and although its provisions are not legally binding on the country, the instrument is still relevant for women’s rights protection in Ethiopia.

DEVAW defines VAW as an act that occurs either in public or private life, could result in physical, sexual and psychological harm and encompasses, among other acts, marital rape.¹⁵⁰ DEVAW also affirms VAW is a violation of women’s fundamental human rights.¹⁵¹ Accordingly it has been correctly argued that marital rape is one form of VAW that constitutes violation of fundamental human rights.¹⁵² As indicated in DEVAW, VAW is also one form of forcing women into a subordinate position to men.¹⁵³ Therefore, states should revoke any customary, religious and traditional notions that undermine women and alter such oppressive social behaviours.¹⁵⁴ In light of that, state parties to DEVAW are encouraged to punish and redress VAW through penal, civil, labour and administrative processes.¹⁵⁵ Hence, considering that Ethiopia is a signatory to DEVAW, exclusion of spousal rape from the country’s criminal law is a clear contradiction to DEVAW’s recognition of the act as a human rights violation, particularly considering the extent to which Ethiopian traditional norms condone marital rape.

3.3.2. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

VAW is not directly addressed under CEDAW and, unlike DEVAW, there is no provision under this instrument making reference to marital rape. However, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) – an organ established under article 17 of CEDAW to monitor implementation of the instrument by member states – has adopted various recommendations that are essential in the interpretation of the instrument. Among these,

¹⁴⁹ DL Shelton ‘Soft Law’ (2008) *George Washington University Law School* 3.

¹⁵⁰ Declaration on the Elimination of Violence Against Women (DEVAW) art 1 & 2(a).

¹⁵¹ As above, preamble para 5.

¹⁵² Meshesha (no. 29 above).

¹⁵³ DEVAW preamble para 6.

¹⁵⁴ DEVAW art 4(j).

¹⁵⁵ DEVAW art 4(d).

general recommendation 19 highlights how VAW is viewed under the Convention. This recommendation acknowledges that gender-based violence (GBV) is a form of discrimination against women that constrains enjoyment of basic human rights and freedoms.¹⁵⁶ It further stipulates that discrimination, as defined in CEDAW shall extend to GBV that includes infliction of physical, mental or sexual harm¹⁵⁷ in consonance with CEDAW's definition of discrimination as a sex-based exclusion aimed at or with the effect of nullifying fundamental human rights and freedoms without regard to marital status – among other grounds.¹⁵⁸ Rape, whether within marriage or outside, is clearly a violation of one's right to dignity and bodily integrity¹⁵⁹ as will be further discussed in upcoming subsections. Hence, one can safely say that VAW including marital rape is well within the ambit of discrimination against women.

The prohibition of discrimination within marriage is also separately addressed under article 16 which provides that women and men should have equal rights in all matters pertaining to their marriage.¹⁶⁰ As already stated, equal rights within marriage cannot be realised unless both spouses can agree when and how they want to have sex. General recommendation 19 underlines that violence within family relationships is among the common forms of VAW and can be manifested in the form of rape.¹⁶¹ Thus, we can understand that marital rape prohibition finds a place within CEDAW although somewhat indirectly.

Article 3 of CEDAW places obligation on states to take legislative and other appropriate measures to ensure the advancement of women in all fields, including economic, so as to allow them to exercise human rights and freedoms equally with men. Article 11 also imposes on states the obligation to take all necessary measures to ensure equal opportunities to work and equal pay for men and women¹⁶² while article 14 obliges state parties to take particular note of rural women and

¹⁵⁶ UN Committee on Elimination of Discrimination Against Women (CEDAW Committee) General Recommendation 19(January 1992) para 6.

¹⁵⁷ As above.

¹⁵⁸ Convention on Elimination of all forms of Discrimination Against Women (CEDAW) art 1.

¹⁵⁹ I Radacič 'Does International Human Rights Law Adequately Protect the Dignity of Women?' in P Kaufmann et al (eds) *Humiliation, degradation, dehumanization: Human dignity violated* (2011) 122.

¹⁶⁰ CEDAW art 16.

¹⁶¹ CEDAW Committee (no. 156 above) para 23.

¹⁶² CEDAW art 11(1)(b) & (c).

their economic realities.¹⁶³ Majority of the poor population in Ethiopia are rural women.¹⁶⁴ And thanks to the traditional nature of rural life in the country, rural women are the ones predominantly exposed to harmful traditional norms that condone marital rape. As we have already observed, without economic empowerment of women, the fight against marital rape will not be effective. General recommendation 19 also highlights that protection of women from violence should include measures to make employment opportunities available to them.¹⁶⁵

Hence, as a state that has ratified CEDAW, Ethiopia is obliged to address discrimination against women, including marital rape, through direct legal measures against the act as well as economic empowerment of women in order to guarantee the free and full exercise of their human rights.

3.3.3. *International Bill of Human Rights*

Ethiopia has ratified the international bill of human rights – ICCPR, ICESCR and Universal Declaration which is binding as international customary law – and although these instruments do not separately address women’s rights, the fundamental human rights they guarantee are all relevant for the protection of women’s rights. Among these fundamental human rights, we can take note of those that are violated by marital rape.

The right of a person to be free from torture or cruel and inhuman treatment is a right guaranteed under both the Universal Declaration¹⁶⁶ and ICCPR.¹⁶⁷ This right has the purpose of guaranteeing the protection of physical and mental integrity and dignity of individuals.¹⁶⁸ The FDRE constitution also devotes a provision on the prohibition of inhuman treatment¹⁶⁹ and the country has ratified the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which defines torture as any act that intentionally inflicts

¹⁶³ CEDAW art 14.

¹⁶⁴ Erulkar (no. 80 above).

¹⁶⁵ CEDAW Committee (no. 156 above) para 24(p).

¹⁶⁶ Universal Declaration of Human Rights (UDHR) art 5.

¹⁶⁷ International Covenant on Civil and Political Rights (ICCPR) art 7.

¹⁶⁸ UN Human Rights Committee (HRC) General Comment 20(10 March 1992) para 5.

¹⁶⁹ FDRE Constitution art 18.

severe physical or mental pain and suffering.¹⁷⁰ Torture and inhuman treatment as defined in CAT can be suffered by anyone who is a victim of such treatment irrespective of any familial relationship she or he may have with the perpetrator.¹⁷¹ Rape violates one's personal integrity and dignity and can result in both physical and mental distress.¹⁷² Hence, marital rape constitutes an infringement of one's personal integrity and dignity and can be regarded as a breach of the right to freedom from torture and inhuman treatment. And as a state party to CAT, ICCPR and Universal Declaration, and in line with its constitutional obligation, the Ethiopian government is obliged to guarantee that no one's right to freedom from torture is infringed. Exempting marital rape from the realm of criminal law is clearly a denial of this right for married women and as long as it remains, it is a violation of the country's constitution as well as a negation of its international obligation. Moreover, the UN Human Rights Committee (HRC) explicitly stated that states party to the ICCPR are legally obliged to define and criminalise marital rape.¹⁷³

The 'right to the highest attainable standard of mental and physical health' is another right relevant to this discourse that is guaranteed under ICESCR.¹⁷⁴ While the highest attainable standard of health, like most other socio-economic rights, is to be progressively realised, the negative components of the right to health can be immediately realised through legal enforcement.¹⁷⁵ As we have already established, spousal rape gravely impacts mental and physical health in victims. Holding perpetrators of the act criminally responsible – the same as perpetrators of non-marital rape – does not have any significant resource implications on the state and can be immediately realised. Hence, criminalising marital rape has to be regarded as one way of ensuring the mental and physical health of married women who may be at risk of such violation. This also goes in line with the Economic and Social Council's resolution

¹⁷⁰ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) sec I art 1.

¹⁷¹ UN Committee Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against torture) General Comment 3(19 November 2012) CAT/C/GC/3 para 3.

¹⁷² Radacić (no. 159 above).

¹⁷³ HRC Concluding Observations on United Republic of Tanzania (6 August 2009) CCPR/C/TZA/CO/4 para 10.

¹⁷⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR) art 12.

¹⁷⁵ UN Committee on Economic, Social and Cultural Rights (Committee on ESCR) General Comment 14 (11 August 2000) para 1.

of 24 May 1990 which recognises VAW in the family as an issue that ‘cuts across the lines of income, class, and culture and has to be matched by urgent and effective steps to eliminate’.¹⁷⁶

Thus, taking these and other relevant provisions in the international bill of human rights that protect fundamental human rights of women together, it can be argued that Ethiopia is obliged to take legal measures against marital rape which constitutes violation of multiple human rights of women.

3.3.4. *The Beijing Declaration and Platform for Action*

Adopted at the Fourth World Conference on Women, this instrument sets agreed standards which governments should strive to achieve in the protection of women’s rights. In addition to defining VAW as ‘a violation of fundamental human rights’, the Beijing platform for action also identifies marital rape as one form of VAW.¹⁷⁷ Moreover, it recognises the low economic status of women as both a cause and consequence of VAW.¹⁷⁸ Having noted that, the instrument elaborates in detail how the economic reality of women impacts their status in society.¹⁷⁹ It affirms that the economic structure of a country and the policies adopted affect the economic realities of men and women and ultimately determine their equality at the individual, familial and social level.¹⁸⁰ It also acknowledges that due to lack of bargaining power, women are forced to accept low-paying jobs with poor working conditions.¹⁸¹ It underlines how the economic independence of women has been impeded by various obstacles that have hampered their economic autonomy and their ability to earn their own livelihoods.¹⁸² It then highlights how globalisation can exacerbate the economic inequalities between men and women and affirms the need for a closer examination of its impacts on women’s economic status.¹⁸³

As a developmental state with a fast-growing economy, Ethiopia

¹⁷⁶ UN Economic and Social Council Resolution 1990/15 (24 May 1990) 13th plenary meeting.

¹⁷⁷ Beijing Declaration and Platform for Action para 113(a).

¹⁷⁸ As above, para 112.

¹⁷⁹ As above, para 150 to 164.

¹⁸⁰ As above, para 150.

¹⁸¹ As above, para 151.

¹⁸² As above, para 156.

¹⁸³ As above, para 157.

is targeted by multiple domestic private investors and multinational corporations whose primary goal is maximisation of profits.¹⁸⁴ These investors and corporations bring ample employment opportunities for women and they momentarily create a sense of independence for them.¹⁸⁵ It is also undeniable that globalisation leads to a broader cultural and technological exchange¹⁸⁶ which is advantageous to the nation at large. However, it is also a process that tends to benefit entities that can capture new markets by exploiting low-skilled workers who have minimal bargaining power.¹⁸⁷ Moreover, globalisation has been proven to specifically affect women engaged in informal economy.¹⁸⁸ Informal economy pertaining to the unregulated sets of activities and enterprises, it is naturally a sector dominated by the poor who cannot find employment in the formal – regulated – sector.¹⁸⁹ As studies imply, a higher percentage of women than men worldwide work in the informal sector, since women are under-represented in the formal economic sector.¹⁹⁰ And as evidence demonstrates, by introducing shifts in the market, globalisation forces more men to enter the informal sector, which in turn pushes women to the lowest income earning positions within the informal economy.¹⁹¹ Hence, the ultimate impact of globalisation is best described as ‘feminisation of poverty’.¹⁹²

The economic disadvantage of women is closely related to other forms of violence inflicted upon them and it considerably impacts their psychological and material vulnerabilities.¹⁹³ And when a state fails to provide an enabling environment for women’s economic advancement, it is said to commit an economic violence against women.¹⁹⁴ As the Beijing platform for action underlines, the low economic status of women is a cause and consequence of VAW – which includes marital

¹⁸⁴ Terefe (n 108 above).

¹⁸⁵ Adamu & Mekonnen (no. 14 above).

¹⁸⁶ M Carr ‘Globalization and the informal economy: How global trade and investment impact on the working poor’ (2001).

¹⁸⁷ As above, 2.

¹⁸⁸ As above, 3.

¹⁸⁹ As above, 4.

¹⁹⁰ As above.

¹⁹¹ As above.

¹⁹² Adamu & Mekonnen (no. 14 above).

¹⁹³ B Olateru-Olagbegi *Path to women’s development: Thoughts, vision and passion* (2013) 128.

¹⁹⁴ As above.

rape.¹⁹⁵ And as a way of countering the economic disadvantage of women, the Beijing platform for action suggests various actions to be taken by states.¹⁹⁶ Hence, putting these plans of action into practice would also considerably contribute to battling the prevalence of marital rape in Ethiopia.

3.3.5. *African Charter on Human and Peoples' Rights (ACHPR)*

As with all the other human rights instruments observed so far, the first base for protection of women from marital rape under ACHPR emanates from the entitlement to enjoy rights and freedoms under the Charter without any distinction as to gender.¹⁹⁷ The Charter also guarantees the right to equal protection under the law,¹⁹⁸ the right to personal integrity,¹⁹⁹ and the right to dignity.²⁰⁰ And as elaborated above, the realization of these rights is impeded by marital rape. Hence, as a country that has ratified ACHPR, Ethiopia should take measures against marital rape in line with article 1 of the instrument.²⁰¹

3.3.6. *Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol)*

Maputo Protocol enumerates the rights of women which are recognized under ACHPR and it has been commended for incorporating progressive principles such as the right to medical abortion and for looking at issues that are peculiar to African women.²⁰² The definition provided for VAW under this protocol indicates that violence can be experienced either in the private or public sphere.²⁰³ Frans Viljoen therefore rightly points out that by targeting forced sex within the private sphere, the protocol is calling for the criminalization of marital

¹⁹⁵ Beijing Declaration and Platform for Action para 112 & 113(a).

¹⁹⁶ As above, para 165 to 180.

¹⁹⁷ African Charter on Human and Peoples' Rights (ACHPR) art 2.

¹⁹⁸ ACHPR art 3.

¹⁹⁹ ACHPR art 4.

²⁰⁰ ACHPR art 5.

²⁰¹ See article 1 of ACHPR which imposes the duty on states to take legislative and other measures to give effect to the rights enshrined within the charter.

²⁰² F Viljoen *An introduction to the Protocol to the African Charter on Human and Peoples' on the Rights of Women in Africa* (2009).

²⁰³ Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) art 1(j).

rape.²⁰⁴ The protocol also calls on states to guarantee women's economic advancement by implementing legislative and other measures.²⁰⁵ Although Ethiopia signed the Maputo Protocol in 2004, the country has yet to ratify the instrument to be bound by its provisions. In its concluding observations of 21 April to 7 May 2015, the African Commission on Human and Peoples' Rights (African Commission) expressed concern about the continued prevalence of VAW in Ethiopia and recommended that Ethiopia ratifies the Maputo Protocol.²⁰⁶ Ratification of the protocol will be a step forward in fighting marital rape and should be seriously considered by the government of Ethiopia.

3.3.7. *The Solemn Declaration on Gender Equality in Africa*

The Solemn Declaration, adopted by the African Union (AU) Assembly in 2004, is a non-binding agreement signed by AU member states including Ethiopia to ensure gender equality at the national level. One of the focal areas of the declaration is prohibition of wife abuse.²⁰⁷ Under paragraph four of the document, states agree to take domestic legal measures 'to end impunity of crimes committed against women in a manner that will change and positively alter the attitude and behaviour of the African society'.²⁰⁸ Marital rape is such a crime that is being committed with impunity particularly in countries like Ethiopia where it is exempted from provisions that criminalise rape. As already noted, in most African cultures, a married woman's lack of desire is not regarded as a valid reason for her to withhold sex from her husband.²⁰⁹ There is also wide spread misconception that force is part of sexuality within marriage.²¹⁰ In Ethiopia, as already elaborated, tradition would sooner admonish a woman for refusing sex with her husband than condemn him for forcing himself on her. Thus, there is much that needs to be done in the country in terms of changing attitude and behaviour, so as to end crimes committed against women. Criminalising marital rape can hence

²⁰⁴ Viljoen (no. 202 above).

²⁰⁵ Maputo Protocol art 13.

²⁰⁶ African Commission on Human and Peoples' Rights (African Commission) 'Concluding observations and recommendations on the 5th and 6th periodic report of the Federal Democratic Republic of Ethiopia' para 47(3).

²⁰⁷ Viljoen (no. 202 above).

²⁰⁸ Solemn Declaration on Gender Equality in Africa (2004) para 4.

²⁰⁹ Bowman & Kuenyehia (no. 115 above) 352.

²¹⁰ As above.

be regarded as one of the legal measures Ethiopia has agreed to take by committing to end impunity for crimes committed against women. Thus, the Ethiopian government needs to take legal measures against marital rape in line with its agreement under the Solemn Declaration and other human rights instruments examined here.

3.4. CONCLUSION

As has been elaborated in this chapter, marital rape is a human rights violation and the Ethiopian government is bound at national, regional and international level to fight it. Having undertaken the duty to protect human rights and freedoms in general and women's rights in particular, Ethiopia is under the obligation to eradicate any form of VAW and any violation of their human rights including marital rape. In addition to removing the exemption of marital rape from criminal law, Ethiopia is also obliged to ensure that the economic environment is no longer hostile to women so that they are no longer economically dependent on their husbands and empowered to fight marital rape. Moreover, the state should take measures against strong patriarchal norms that are embedded in Ethiopian society as part of its obligation to dismantle traditional norms that are harmful to women. It is then that the fight against VAW in the country will make full sense. The next chapter will briefly review marital rape criminalisation in Ghana and South Africa and compare it to the operation of spousal rape in the US, in order to highlight how legal prohibition of marital rape alone without accompanying economic empowerment of women plays out in practice in developing countries and how legal prohibition combined with relative economic empowerment of women works in more developed jurisdictions. This is in order to predict the likely impact and effectiveness of combining legal prohibition and economic empowerment of women on marital rape eradication in Ethiopia and therefore to underscore what lessons Ethiopia can take from the comparisons of the three jurisdictions.

4.

CRIMINALISING MARITAL RAPE IN ETHIOPIA: LEARNING
POINTS FROM RELEVANT FOREIGN LAW

4.1. INTRODUCTION

As elaborated in the previous chapter, the existing international, regional and domestic legal framework clearly urges Ethiopia to take action to end VAW including marital rape. However, Ethiopia still maintains its outdated law that exempts rape within marriage from the scope of criminal prohibitions. And while most African states are yet to criminalise marital rape, few African countries that have done so are exemplary for the rest of the continent. Since 1993, South Africa has taken a stand against marital rape by explicitly providing that ‘a husband can be convicted for the rape of his wife’.²¹¹ Ghana is another African country that has also criminalised marital rape by repealing the law²¹² that exempted rape of a spouse in 2007. This chapter will briefly explore how the laws in these countries treat marital rape so as to highlight the lessons Ethiopia can learn. Having drawn on the best features and challenges of marital rape criminalisation in these two countries, the chapter will proceed to examine the impact of legal prohibition of marital rape in a more economically developed jurisdiction –US – where women have a relatively higher economic independence, in order to emphasise the relevance of economic empowerment of women in the fight against marital rape.

²¹¹ Prevention of Family Violence Act of 1993 (PFVA) sec 5.

²¹² See Criminal Code of Ghana of 1960 (Ghana Criminal Code) art 42(g)

4.2. MARITAL RAPE IN GHANA

Like the rest of Africa, Ghana has a patriarchal society that uses VAW as a control mechanism and for the oppression of women.²¹³ The prevalence of marital rape in Ghana has been confirmed through research that establishes that one in four women face marital rape.²¹⁴ There is also a widespread misconception about forced sex within marriage. 79 percent of men and 43 percent of women that took part in a study revealed that they could not regard forced sex within marriage as rape.²¹⁵ Particularly, in customary marriages, it is usually believed that marital sex is an obligation a woman can find no excuse to escape from.²¹⁶ As FitnatNaa-Adjeley, a Ghanaian author observes:²¹⁷

The conceptual idea that a wife in a customary marriage can be raped by her husband does not even exist because all sex within a customary marriage is considered “consensual” whether or not the woman consents.

In such customary marriages, there is a culture whereby money is paid by the husband to his wife’s family in the form of *bride price*.²¹⁸ This culture has created a social perception that the husband obtains ownership over his wife by virtue of the money paid to her family.²¹⁹

Prior to the legal reform that led to the new perspective on marital rape, Ghanaian law regarded forced sexual intercourse as part of the marital relationship the spouses have consented to.²²⁰ The Criminal Code of Ghana of 1960 provided under section 42 that use of force against a person is justified upon the person’s consent with the exception of certain conditions. One of the conditions was that use of force may not

²¹³ D Coker-Appiah & K Cusack ‘Breaking the silence & challenging the myths of violence against women and children in Ghana: Report of a national study on violence’ (1999) *Gender Studies & Human Rights Documentation Centre* 3 to 6.

²¹⁴ As above.

²¹⁵ PM Adodo-Samani ‘Criminalisation of marital rape in Ghana: The Perceptions of married men and women in Accra’ Master’s of Art thesis, University of Ghana, 2015.

²¹⁶ As above, 26.

²¹⁷ F Naa-Adjeley ‘Reclaiming the African woman’s individuality: The struggle between women’s reproductive autonomy and African society and culture Conference on the interventional protection of reproductive rights: religious & cultural rights’ (1995) 44 *American University Law Review* 1351-1381.

²¹⁸ As above.

²¹⁹ As above 1.

²²⁰ EA Archampong ‘Marital rape: A women’s equality issue in Ghana’ (2010) <<http://theequalityeffect.org/pdfs/maritalrapeequalityghana.pdf>> (accessed: 5 October 2017).

be justified where consent is revoked; however, consent given at marriage cannot be revoked.²²¹ Section 98 of the same code defines rape as ‘the carnal knowledge of a female of not less than sixteen years without her consent’. And the phrase ‘without her consent’ brings into play section 42 in order to determine when consent can be said to have been given. Accordingly, holding a husband liable for the rape of his wife was made impossible. The Constitution of the Republic of Ghana provides that all persons are equal before the law and prohibits discrimination based on gender.²²² It also provides for the inviolability of the dignity of all persons²²³ and prohibits torture, cruel and inhumane treatment.²²⁴ In light of this, the constitutionality of marital rape exemption came under question within the country’s legal framework and in February 2007 this led to the promulgation of a law against domestic violence that seeks to address marital rape.²²⁵

As a bill, this law was met with a lot of resistance and raised too much controversy for recognising marital rape as one form of domestic violence.²²⁶ However, due to civil society insistence and pressure, the Ghanaian parliament passed the Act which includes a provision stipulating that consent cannot justify violence within the domestic setting.²²⁷ In the same year, the spousal immunity contained in section 42(g) of the 1960 Criminal Code was removed by the Statute Law Commissioner²²⁸ which means currently, consent given at marriage is revocable. Moreover, section 1(b)(ii) of the Domestic Violence Act of Ghana (GDVA) recognises sexual violence as one form of domestic violence whereas section 2(1)(a) of the Act states that ‘a domestic relationship includes a relationship where the complainant is or has been married to the respondent’. Accordingly, Ghana has effectively repealed the law that exempted marital rape from its legal framework with the view of ensuring constitutionality of the country’s subsidiary laws. This is one major learning point for Ethiopia; the supremacy of the FDRE Constitution is challenged as long as laws that are inconsistent

²²¹ Ghana Criminal Code sec 42(g).

²²² The Constitution of the Republic of Ghana of 1996 (Constitution of Ghana) art 17(1).

²²³ Constitution of Ghana art 15(1).

²²⁴ Constitution of Ghana art 15(2).

²²⁵ Archampong (no. 220 above) 10.

²²⁶ F Norton ‘The role of the law in confronting marital rape: A case study of Ghana’ Master’s thesis, University of Ghana, 2009 20.

²²⁷ Domestic Violence Act of Ghana of 2007 (Ghana DV Act) sec 4.

²²⁸ Norton (no. 226 above) 21.

with its provisions remain effective. The law that explicitly exempts marital rape from the definition of rape²²⁹ is clearly inconsistent with the constitution as explained in the previous chapter.

Although Ghana can be said to have taken a progressive step against marital rape, there are many barriers to the implementation of the law. While removal of marital rape exemption from the criminal code and GDVA's definition of 'domestic violence' and 'domestic relation' together provides grounds to prosecute marital rape, there is no law in Ghana explicitly stipulating that marital rape is a crime.²³⁰ In the absence of a clear prohibition under the law, a claim brought before the court on the count of marital rape therefore depends on the complainant's ability to prove that her consent given at marriage has been revoked.²³¹

In *State v Gyimah*,²³² the court's position shows a glimpse of how consent in rape cases can easily be misconstrued. The issue for consideration in this case was whether the complainant gave consent to have sex with the accused who claimed that the former only acted like it was rape when her mother caught them in the act.²³³ Based on the witness account presented by the accused which affirmed that the complainant only started shouting upon arrival of her mother, the court ruled in favour of the accused stating that the complainant failed to establish lack of consent.²³⁴ In another case, *Agbemanya v the State*,²³⁵ the issue of consent was once again a point of contention. In this case, the appellant contested his conviction by the lower court for raping a 17 year-old girl.²³⁶ The appellate court reversed the lower court's decision stating that although the complainant resisted the appellant at

²²⁹ Criminal Code of Ethiopia art 620.

²³⁰ Archampong (no. 220 above) 12.

²³¹ Because section 42(g) and section 98 are still linked together, to establish that one has been raped, it must first be established that there was lack of consent on the part of the claimant. Section 42 deals with the justifiability of use of force against a person who consents to it. While the repeal of section 42(g) opened the way for wives to revoke such consent, it still implies that they give the consent to be forced while entering marriage. This means, the onus is on the wife to prove that she has revoked the consent she gave to have force used against her. And the likelihood of persuading judges in Ghana who still do not fully agree on the possibility of calling forced sex in marriage rape is quite difficult. (See Archampong (no. 220 above)).

²³² *State v Gyimah* 2 GLR 446 (1963).

²³³ As above.

²³⁴ *Gyimah* (n 233 above).

²³⁵ SS Adjei 'In the matter of The State v KwasiKyeiDarkwa' in *GhanaWeb* (5 January 2015) <<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/In-the-Matter-of-The-State-v-Kwasi-Kyei-Darkwa-341339>> (accessed 4 October 2017).

²³⁶ As above.

the beginning, she did not attempt to escape him and eventually yielded to the intercourse.²³⁷ The appellate court judge particularly emphasised whether ‘the struggle which took place was a genuine registration of non-consent’ and found that the lack of ‘genuine’ attempt to leave the room on the girl’s part constitutes a strong probability of consent.²³⁸

Having regard to the way the courts in the above rape cases – and others – easily conclude that consent must have been given by the complainants merely for the lack of audible or manifest resistance, it is argued that the likelihood of convincing courts on revocation of consent for marital rape cases would even be less probable.²³⁹ It can be surmised from this experience in Ghana that it may not be possible to effectively prosecute marital rape in Ghana unless there is an explicit prohibition against it.

Ghana’s experience with criminalising marital rape can also serve as a lesson to emphasise that criminalisation alone may not be sufficient to protect women from that harm. Strong patriarchal systems are at the core of attitudes that condone marital rape and VAW generally. In Ghana, society is characterised by a patriarchal structure that is deeply ingrained starting from family level.²⁴⁰ Historically, practices such as polygamy, widowhood rites and *trokosi*²⁴¹ have disadvantaged women in Ghana, putting them in a subordinate position to men.²⁴² Hence, even after removing the marital rape exemption from the law through statutory amendments, there is still unwillingness on the part of justice administrators to accept and embrace the idea of a man possibly raping his own wife.²⁴³ This implies the need to dismantle patriarchal attitudes through raising awareness and educating society alongside criminalisation of the act.

In a recent report that looks at the progress of marital rape criminalisation in Ghana, it was highlighted that a decade later, there is not yet any case to be reported to the Domestic Violence and Victim’s Support Unit (DOVVSU) of the Ghana Police Service.²⁴⁴ The reason

²³⁷ As above.

²³⁸ As above.

²³⁹ Archampong (no. 220 above) 17.

²⁴⁰ Norton (no. 226 above) 7.

²⁴¹ *Trokosi* is a practice of servitude in Ghana and a few other countries whereby religious shrines take young virgin girls in payment for services or as atonement for bad deeds.

²⁴² Archampong (no. 220 above) 8.

²⁴³ Norton (no. 226 above) 25.

²⁴⁴ PM Adodo-Samani ‘Criminalisation of marital rape: Situation in Ghana after a

behind this can range from the patriarchal nature of society to the lack of awareness among the vast majority of the people. And although it cannot be the only factor crippling the implementation of marital rape criminalisation, the economic status of women in the country also plays a vital role. Most Ghanaian women live in poverty and highly depend on men.²⁴⁵ Studies on poverty in Ghana demonstrate that women experience more poverty than men, utilise productive resources at a lower rate and are far less literate which results in men's greater access to waged work.²⁴⁶ Girls are usually laden with household duties and as a result, they shoulder more burdensome workloads that keep them from actively following up on their education while boys are given more attention by teachers.²⁴⁷ Raised in such manner, women remain confined to household duties, while men dominate the income-generating activities.²⁴⁸ Studies also estimate that women spend about 20 hours per week on household work while men spend no more than 5 hours per week.²⁴⁹ The labour market which confines women to the unpaid informal sector has also been marked as the major factor contributing to women's poverty in Ghana.²⁵⁰ The majority of women in the country are engaged in farming and other informal sectors, with only one percent of the country's economically active women participating in sectors that would allow them to influence policy changes such as public administration.²⁵¹ Moreover, the fact that Ghanaian women cannot inherit land on the same basis as men curtails their decision-making power.²⁵²

Among the basic causes of VAW, particularly IPV, women's dependency on partners due to lack of access to resources is a crucial

decade' in *Graphic Online* (06 March 2017) <<https://www.graphic.com.gh/features/features/criminalisation-of-marital-rape-situation-in-ghana-after-a-decade.html>> (accessed: 28 September 2017).

²⁴⁵ T Manuh 'African Women and Domestic Violence' in *Gender, Sexuality and Social Justice* (26 November 2007) <https://www.opendemocracy.net/article/5050/ghana_domestic_violence> (accessed: 28 September 2017).

²⁴⁶ C Ballantine et al 'Ghana: The Economic and Social Impact of Violence Against Women and Girls (VAWG)' (March 2017).

²⁴⁷ L Haddad 'Gender and Poverty in Ghana: A descriptive analysis of selected outcomes and processes' (1991) 22 *Institute of Development Studies*.

²⁴⁸ As above, 10 to 11.

²⁴⁹ Haddad (no. 247 above) 14.

²⁵⁰ M Awumbila 'Gender equality and poverty in Ghana: implications for poverty reduction strategies' (2006) 67 *GeoJournal* 149 to 161.

²⁵¹ Archampong (no. 220 above) 5.

²⁵² Ballantine et al (no. 246 above) 12.

one.²⁵³ As it has been argued by various scholars, women's financial autonomy and independence serves as leverage against partner abuse.²⁵⁴ Women's access to resources has also been pointed out as a vital means of avoiding men's undue advantage in the domestic realm as it reduces dependency of women.²⁵⁵ In Ghana, studies indicate that low asset levels and unemployment of women correlates to the high level of domestic violence victimisation and the vulnerability they face.²⁵⁶ In addition, it has also been found that in Ghana, a woman's contribution to household expenses increases her role in decision making over conjugal matters.²⁵⁷

Taking these facts into account, and considering the clear prevalence of marital rape in the country,²⁵⁸ it becomes clear that patriarchy and women's disadvantaged economic position are among the factors impeding implementation of the law criminalising marital rape in Ghana. The fact that women are not entirely capable of financially supporting themselves is a big reason for them to refrain from reporting rape perpetrated by their husbands. As demonstrated in previous chapters, patriarchy and the economic position of women in Ethiopia are also the main factors facilitating VAW in the country. Hence, in addition to following Ghana's example and criminalising marital rape, Ethiopia should learn from this experience and adopt measures to protect women from the existing exploitation of female labour force and economic exclusion in order to give practical force to any legal measure the country may take against marital rape.

²⁵³ JR Mann & BK Takyi 'Autonomy, dependence or culture: Examining the impact of resources and socio-cultural processes on attitudes towards IPV in Ghana, Africa' (2009) 24 *Journal of Family Violence* 323 to 335.

²⁵⁴ As above, 323.

²⁵⁵ Mann & Takyi (no. 253 above) 323.

²⁵⁶ Ballantine et al (no. 246 above) 8.

²⁵⁷ H Warren 'The relationship between women's contribution to household expenditures and their participation in conjugal decision making in Ghana' (2009) 98 *Radical Statistics* 50 to 55.

²⁵⁸ A research conducted in the community reveals that marital rape is clearly a problem in Ghana even if sometimes women themselves refuse to call it as such (see Adodo-Samani (no. 215 above)).

4.3. MARITAL RAPE IN SOUTH AFRICA

The prevalence of marital rape in South Africa is backed by studies that indicate that 18.8 percent of women report having been raped by their husbands.²⁵⁹ However, this percentage represents only the amount of women that have reported the incidence, with many more presumably being victimised but not reporting, since sexual violence in relationships is among the least reported crimes in South Africa.²⁶⁰ Other sources also indicate that one in every four women in South Africa is battered by a husband, partner or boyfriend and 41 percent of femicides are perpetrated by spouses.²⁶¹ The seriousness of domestic violence in South Africa is stressed by the Constitutional Court of South Africa in *S v Baloyi*²⁶² where it was underlined that domestic violence ‘is systemic, pervasive and overwhelmingly gender-specific and it reflects and reinforces patriarchal domination in a particularly brutal form’.

The commonly held opinion that forced sex is not rape as long as the perpetrator is one’s husband is embedded in the mentality of South Africans the same way it is in any other patriarchal society.²⁶³ Having been shaped by British common law and Roman-Dutch civil law legal systems, South Africa has for long embraced the legal exemption of marital rape that has been a characteristic of both legal systems.²⁶⁴ Rape culture in the country and its notably high occurrence rate is partly attributable to the apartheid system that deprived women of any legal rights and regarded them as properties of their husbands.²⁶⁵ Until the years 1992 to 1993 when things started to change, a husband had the legal right to rape his wife.²⁶⁶ In 1992, the Supreme Court of South Africa passed a very progressive judgment in *State v Ncanywa*

²⁵⁹ M Ellis ‘The truth about marital rape in South Africa’ (21 July 2014) <<http://news.africa.com/sa/949915.html>> (accessed: 3 October 2017).

²⁶⁰ As above.

²⁶¹ W Amien ‘Recent developments in the area of women’s rights in South Africa: Focus on domestic violence and femicide’ (1998) 3 *Women* 1 to 13.

²⁶² *S v Baloyi* 2000 2 SA 425 (CC).

²⁶³ A Kanengoni ‘Buwa: Sex and health’ (2012) 2 *A Journal on African Women’s Experiences*.

²⁶⁴ NP Swartz ‘Is a husband criminally liable for raping his wife? A comparative analysis’ 3 (2015) *International Journal of Academic Research and Reflection* 8 to 25.

²⁶⁵ G Hancox ‘Marital Rape in South Africa’ in *Open Society Initiative for Southern Africa* (25 October 2012) <<http://www.osisa.org/buwa/south-africa/marital-rape-south-africa>> (accessed: 3 October).

²⁶⁶ Swartz (no. 264 above) 10.

(*Ncanywa*)²⁶⁷ that began the journey towards criminalising marital rape in the country. The judge in this case upheld not only that the idea of irrevocable consent by a wife is fictitious, but also that it is a concept that offends good morals.²⁶⁸ He stated that in modern society where husband and wife have become equal partners in marriage, a marital obligation to have sexual intercourse does not give a husband the legal right to have intercourse with his wife against her will.²⁶⁹ Accordingly, the judge convicted the accused for the rape of his wife. Although the ruling of the court in this case was consistent with England's law which had by that time revoked marital rape exemption, the explicit Roman-Dutch principle that man cannot rape his wife still formed part of South Africa's law.²⁷⁰ Hence, the lower court's conviction was later overturned by an appellate court, which nevertheless stressed that although the law provides for marital rape exemption, the reasons behind its abolition under England's law were valid.²⁷¹ This progressive stand taken by both the lower and appellate courts led to a legislative process aimed at changing the rule that clearly exempted marital rape from the law.

As a result of the legislative process initiated by the Supreme Court's rulings above, the South African Prevention of Family Violence Act (PFVA) was passed in 1993, criminalising marital rape.²⁷² Unlike GDVA that fails to clearly criminalise marital rape, the South African PFVA explicitly stipulated that 'a husband may be convicted for the rape of his wife'.²⁷³ The role of courts in influencing legal reform is extremely vital. Even in countries like Ethiopia where the legal system does not involve judge-made law – with the exception of decisions passed by the cassation bench of the Federal Supreme Court regarding interpretation of laws²⁷⁴ – courts can still influence review of laws by sending a message through their decisions. The decision of the Supreme Court of South Africa in *Ncanywa* eventually led to the promulgation of a law that criminalised marital rape. Thus, the decision of this court is exemplary and Ethiopian courts can take a lesson from it. There shouldn't necessarily be a

²⁶⁷ *S v Ncanywa* 1992 2 SA 182 (Ck).

²⁶⁸ As above.

²⁶⁹ As above.

²⁷⁰ Swartz (no. 264 above) 10.

²⁷¹ *Ncanywa* (no. 267 above).

²⁷² Swartz (no. 264 above) 11.

²⁷³ PFVA sec 5.

²⁷⁴ Federal Courts' Proclamation Re-Amendment Proclamation of 2005.

law criminalising the act for courts to pass the message that rape is a socially condemnable act whether it takes place within or outside of marriage. However, for courts to pass such rulings, it is first important that prosecutors press charges strategically so as to depict the existence of sexual violence perpetrated by husbands instead of pressing charges for physical assault and domestic violence while ignoring the fact that victimised wives have also been raped.

In 1998, PFVA of South Africa was replaced by the Domestic Violence Act of South Africa (SADVA). SADVA addresses the shortcomings of the PFVA by giving a broader definition of domestic violence and extending the remedies available for victims of domestic violence while maintaining the criminalisation of marital rape introduced by the latter.²⁷⁵ Moreover, section 3(a)(iv) of the Criminal Law Sentencing Amendment Act of 2007 provides that any prior relationship between the accused and complainant to a rape case shall not be taken as a mitigating circumstance to impose lesser sentence against the accused. Hence, South Africa has taken a clear stand against marital rape and introduced sufficient legal prescriptions to ensure that perpetrators are penalised. The case of *State v Mvamvu*²⁷⁶ is another example whereby a husband accused of raping his wife on varied occasions was sentenced to 10 years on the count of marital rape. This case was one that demonstrated how deeply rooted the idea of obtaining a wife's irrevocable consent to sex upon marriage is within the society. In the case, the husband was accused of raping his wife who had clearly decided to leave him and run off to stay with her brother.²⁷⁷ Since her parents had yet to return the *lobola* (bride price) he had paid, the husband concluded that he had every right to bring her back.²⁷⁸ And with that in mind, he dragged her back to his home where he kept her locked and raped her on six occasions over a period of four days.²⁷⁹ Though the wife managed to escape on the fourth day to return to her brother's house, the accused went after her and the moment the brother left the house, raped her again twice.²⁸⁰ As gruesome as the details of this case were, the defence presented by the

²⁷⁵ See sec 1(vii)(a) of the Domestic Violence act which includes the relationship between a married couple in its definition of domestic relations.

²⁷⁶ *S v Mvamvu* 2004 SA 350 (SCA)

²⁷⁷ As above.

²⁷⁸ As above.

²⁷⁹ As above.

²⁸⁰ As above.

accused only depicted how much social change is needed to unlearn the notion that once married, a woman becomes her husband's possession.

While there has been progress in South Africa with regards to marital rape, there are also many challenges to proper implementation of the law. First is reluctance of judges to avoid being influenced by the nature of the prior relationship between perpetrator and victim of rape, regardless of the clear stipulation under the law not to take prior relations into account while examining such cases.²⁸¹ For instance, in *State v Modise*,²⁸² the South African High Court found the sentence passed against an appellant who had been convicted of the rape of his wife to be excessive and unfair considering that the woman he had been married to for years had joined him in bed at the time of committing the crime.²⁸³ According to the court, 'the appellant must have been aroused and the desire to make love to his wife must have overwhelmed him'.²⁸⁴ According to the evidence in this case, the married couple had not been living together for over a year when the accused unexpectedly showed up and tried to force his wife to bed.²⁸⁵ And although she managed to escape and tried to hide, he managed to bring her back to their home where he raped her.²⁸⁶ Hence, the court's inclination towards reducing the sentence on the ground that the accused must have been aroused by his wife is one that is clearly influenced by the fact that the two had been married at the time.

In addition to judges' proclivity to be less stringent with perpetrators of marital rape, there is also a lack of reporting by victims. As noted by the UN Economic Commission for Africa (ECA), since VAW in Africa is largely regarded as an acceptable and private matter, its magnitude is still underplayed.²⁸⁷ This is no different in South Africa, particularly with regards to rape cases.²⁸⁸ A research conducted in particular parts of the country implies that women who are subjected to intimate partner

²⁸¹ Criminal Law Sentencing Amendment Act of 2007 sec 3(a)(iv).

²⁸² *S v Modise* 2007 73 SA 113 (ZANWHC).

²⁸³ As above.

²⁸⁴ As above.

²⁸⁵ As above.

²⁸⁶ As above.

²⁸⁷ Economic Commission for Africa (ECA) 'Economic Report on Africa' (2009) <https://www.uneca.org/sites/default/files/PublicationFiles/era2009_eng_full.pdf> (accessed: 5 October 2017).

²⁸⁸ Nonceba 'The shocking truth about rape in South Africa' in *Thursdays in Black* (5 May 2017) <<https://www.thursdaysinblack.co.za/shocking-truth-about-rape-south-africa-1032017>> (accessed: 5 October 2017).

sexual abuse usually refrain from reporting the occurrence or even from telling anyone about it.²⁸⁹ In most parts of the country, wife beating is regarded to be normal and a woman who even attempts to leave her husband is advised by her own family that she will not be able to cope on her own.²⁹⁰ Unfortunately, the few women who do report such abuse are often met with a justice system that is not very conducive. Either their story is not believed or they are told that such a matter is a private issue to be resolved between the couple.²⁹¹ This implies that culture and fear of social humiliation, patriarchal upbringings that socialise women since childhood to abusive relations with men and lack of awareness and education are all factors to consider in identifying causes of low rate of reporting sexual abuse in intimate relations and marriages in South Africa.

The economic condition of South African women is also a factor that cannot be ignored. Female dependency on male income is common in South Africa.²⁹² While there have been improvements in female employment and independence in the country, majority of women are still financially dependent on men, and unable to engage in income-generating activities outside of the household, most women find themselves trapped in abusive marriages.²⁹³ A report on the status of women in South African economy reveals that regardless of educational status, women continue to be employed in low-skilled occupations thereby earning lower wages.²⁹⁴ On average, women also have less access to assets than men do and while poverty has declined in the country since apartheid, women are still more vulnerable than men to living below the poverty line.²⁹⁵ The lack of women's economic strength and independence is not only one of the causes for marital rape²⁹⁶ but also among the major constraints to reporting domestic violence²⁹⁷ which

²⁸⁹ AT Seabi 'Marriage, cohabitation and domestic violence in Mpumalanga' Master's thesis, University of Pretoria, 2009.

²⁹⁰ As above.

²⁹¹ As above, 7.

²⁹² As above, 33.

²⁹³ S Cole 'Seven women speak: Perceptions of economic empowerment opportunities among diverse women in four different Cape Town communities today' (2014) *Independent Study Project (ISP) Collection*.

²⁹⁴ Republic of South Africa Women Department 'The status of Women in the South African Economy' (2015).

²⁹⁵ As above.

²⁹⁶ Beijing Declaration and Platform for Action para 112.

²⁹⁷ Seabi (no. 289 above) 30.

clearly includes marital rape. Hence, it is essential not to discount the importance of women's economic independence in fighting marital rape. In Ethiopia as well, unless the existing power imbalance between men and women particularly within marriage is curbed, criminalising marital rape alone may lose its essence.

4.4. MARITAL RAPE IN US

The US has maintained the common law marital rape exemption for a long time. Abolition of marital exemption to rape laws in US can however be traced back to the 1970s.²⁹⁸ The first state to abolish the spousal immunity under its rape law was Nebraska followed by Oregon.²⁹⁹ In Oregon, the first marital rape case was brought before the court in *State v Rideout*.³⁰⁰ Being the first case against marital rape in the country, this case became an encouragement for those in favour of criminalising spousal rape to continue campaigning against laws with marital rape exemption.³⁰¹ The accused in this case was acquitted and the defence mechanism employed by his counsel was one focused on discrediting the claimant's allegations by focusing on her past sexual life.³⁰² And the jury found that the state had not established beyond reasonable doubt that the defendant was guilty.³⁰³ However, the case became a positive step since it clearly established that a husband can and will be prosecuted under the law for the rape of his wife.

While Oregon and Nebraska effected a statutory abolishment, other states pursued judicial abolishment. In New York, marital rape became a crime following a high court's decision in *People v Liberta*.³⁰⁴ In this case, the defendant was found guilty for the rape of his wife from whom he had separated and had been under a restraining order to remain apart from.³⁰⁵ According to the facts of the case, the defendant, who was allowed under court order to visit their two and a half year- old son

²⁹⁸ Siegel (no.125 above).

²⁹⁹ As above, 364.

³⁰⁰ *State v Rideout* 108 US 866 (1978) (Marion County Court).

³⁰¹ Siegel (no. 125 above) 365.

³⁰² *Rideout* (no. 300 above).

³⁰³ As above.

³⁰⁴ *People v Liberta* 474 US 567 (1984) (New York High Court).

³⁰⁵ As above, para 7.

on weekends, convinced his wife to bring the boy to his hotel room for visitation.³⁰⁶ Having been assured that they would have company, the wife took their son to the hotel but as soon as the company departed, the defendant raped his wife in the presence of their son.³⁰⁷ Considering that New York's rape law at the time allowed spousal immunity, the court deemed the defendant to have been unmarried to the victim at the time since he was under a restraining order to remain apart from her.³⁰⁸ The defendant argued that the rape statute is discriminatory against unmarried men and thus unconstitutional.³⁰⁹ While the court agreed on the unconstitutionality of the New York rape statute, it held that not the law itself was unconstitutional but the spousal immunity it offered.³¹⁰ The court stressed that there was no reasonable ground to treat marital rape and non-marital rape differently.³¹¹ The defendant was convicted in the end but not for marital rape, rather for rape as provided for under the New York state statute since he was deemed to have been unmarried at the time of the incidence. However, the court struck down the marital exemption under the law having upheld that it is unconstitutional and this led to the enactment of a new rape statute by the legislature that omitted spousal immunity from the law.³¹²

As these cases imply, the history of abolishing marital exemption to rape in US was not an overnight achievement. It took time and the different states of the country had their own definitions of what could constitute marital rape and under what circumstances one can be said to have raped a spouse. Some states revoked spousal immunity only where husband and wife had filed for divorce, were living apart, or were legally separated.³¹³ Other states introduced circumstances upon which a spouse could be prosecuted for the rape of the other – such as where force was used or where there was threat to use force.³¹⁴ Others opted to uphold total exemption of marital rape under their laws.³¹⁵ In 1986, the federal government officially made marital rape a crime

³⁰⁶ As above, para 9.

³⁰⁷ As above, para 10 to 11.

³⁰⁸ As above, para 2.

³⁰⁹ As above, para 3.

³¹⁰ As above, para 4.

³¹¹ As above.

³¹² As above, para 1.

³¹³ Siegel (no. 125 above) 367.

³¹⁴ As above, 368.

³¹⁵ As above, 369.

although this rule was applicable only on publicly-owned land.³¹⁶ By the year 1993, all US states had withdrawn spousal immunities from their laws, although in 13 of the states, exceptions are still allowed.³¹⁷ Some of the exceptions in these states depict the extent to which patriarchal perceptions of marriage keep society from fully acknowledging the possibility that a married woman could resist her husband's sexual advances. For instance, in Maryland and Connecticut marital rape can be said to be committed between a legally married couple only where one spouse uses force against another.³¹⁸ Such exception discounts other ways through which rape can be committed such as emotional blackmail and using drugs and other methods to obtain consent, all of which would constitute rape if committed against someone who the perpetrator is not married to.

Although the incidence of IPV is more prevalent in African countries,³¹⁹ there is a higher rate of reporting sexual assault and rape perpetrated by intimate partners in US.³²⁰ Of all rape cases reported in US, 30 percent are committed by husbands of victims; while husbands, boyfriends or partners are the perpetrators of 29 percent of all sexual assaults committed against adult women.³²¹ 37 percent of reported rape cases in US are prosecuted and out of these, 18 percent result in conviction.³²² Moreover, in particular relation to marital rape, about a decade after criminalisation of the act, an 85 percent conviction rate was recorded for marital rape in the country as compared to the two to five percent rate of conviction for stranger rape.³²³ Although this rate is not one that meets desired results, it clearly demonstrates that there is better

³¹⁶ As above.

³¹⁷ BP Byrne 'These 13 states still make exceptions for marital rape' in *Vocativ* (28 July 2017) <<http://www.vocativ.com/215942/these-13-states-still-make-exceptions-for-marital-rape/index.html>> (accessed: 12 October 2017).

³¹⁸ As above.

³¹⁹ UN 'Violence against women: Key findings' (2015) <https://unstats.un.org/unsd/gender/downloads/Ch6_VaW_info.pdf> (accessed: 12 October 2017).

³²⁰ D McPhillips 'The war on women in 5 charts' in *U.S. News* (20 October 2016) <<https://www.usnews.com/news/best-countries/articles/2016-10-20/violence-against-women-in-5-charts>> (accessed: 12 October 2017).

³²¹ Tario and Associates 'Shocking marital rape statistics' <<http://www.tariolaw.com/shocking-marital-rape-statistics/>> (accessed: 12 October 2017).

³²² UK centre for research on violence against women, Research to practice brief (2011) <https://opsvaw.as.uky.edu/sites/default/files/07_Rape_Prosecution.pdf> (accessed: 12 October 2017).

³²³ The New York Times 'New laws recognizing marital rape as a crime' (29 December 1984) <<http://www.nytimes.com/1984/12/29/us/new-laws-recognizing-marital-rape-as-a-crime.html>> (accessed: 4 October 2017).

implementation of laws criminalising marital rape in US than the above-discussed African countries – Ghana and South Africa. Various socio-economic realities can be pointed out as factors contributing to these differences. First of all, marital rape is not a new phenomenon in the US. Removal of spousal immunity from rape laws has been taking place for a longer period in US as compared to the few African countries that only recently started criminalising the act. Moreover, higher level of education and awareness, existence of free space for active women rights movements, and the country's higher development status can all be regarded as factors contributing to the comparatively lower incidence of VAW in general and better implementation of laws against marital rape, in particular, in US. Studies also imply that economic empowerment of women indirectly reduces VAW in the country.³²⁴ Increased economic position in the household was found to give women the sense that they hold a bargaining power.³²⁵ Hence, where women had better access to resources or better financial capacity, they were found to feel that they had more options and were unwilling to tolerate IPV.³²⁶

Even among American women, VAW is experienced differently by different colour and classes of women in the country. Women of colour are more exposed to violence, particularly IPV, than white women.³²⁷ For instance, African American women experience IPV at a rate of 35% higher than white women.³²⁸ As studies imply, strong identification with patriarchal cultural norms is among the factors exposing African American women to a higher rate of IPV.³²⁹ Thus, patriarchy plays a predominant role in victimisation of women in most societies throughout the world, regardless of the country's economic development. Moreover, African American women also earn less income than white American women.³³⁰ In a 40-year career, the overall lifetime wage gap for all

³²⁴ Artisans Thrive 'How economic empowerment can reduce violence against women and girls' (25 November 2014) <<https://www.artisansthrive.com/blogs/news/55188483-how-economic-empowerment-can-reduce-violence-against-women-girls>> (accessed: 12 October 2017).

³²⁵ As above.

³²⁶ As above.

³²⁷ Women of Colour Network Facts & Stats: Domestic Violence in Communities of Colour (2006) <http://www.doj.state.or.us/wpcontent/uploads/2017/08/women_of_color_network_facts_domestic_violence_2006.pdf> (accessed: 12 October 2017).

³²⁸ As above, 2.

³²⁹ As above, 1.

³³⁰ K Holmes & J Frye 'African American women in the US economy' in *Centre for American Progress* (23 August 2016) <<https://www.americanprogress.org/issues/women/>

American women compared to that of American men is USD430,480 whereas for African American women, it is double that amount at USD877,480.³³¹ And because it increases women's bargaining power and their ability to leave violent marriages, economic empowerment of women is said to highly decrease IPV.³³² This explains that the difference in the economic capacity of white and African American women clearly correlates to their experience of IPV. In other words, it attests to the important role of economic empowerment in resisting IPV perpetrated against women.

As already examined in previous sections, both Ghana and South Africa experience challenges in the implementation of their laws against marital rape due to deeply rooted patriarchal norms and women's economic disempowerment. In US, the relatively higher rate of reporting IPV – which includes marital rape – and consequently the greater level of prosecution of perpetrators will appear to be partly due to the better economic advantage of women, especially white women, in US.³³³ Hence, although US might not have a perfect record of implementation of laws against marital rape, the relatively higher implementation can be partly attributable to better economic empowerment of women in the country. In Ethiopia, the impact of globalisation and the country's economic structure put economic empowerment of women at risk. Based on the explanation in this chapter, unless Ethiopian government takes more deliberate action to address economic subordination of women in the country, mere criminalisation of marital rape may not achieve the desired result.

4.5. CONCLUSION

Criminalising marital rape is a major step toward battling VAW and an effective way of unlearning the commonly held understanding that conjugal right can be asserted forcefully. I have tried to demonstrate in

reports/2016/08/23/142815/african-american-women-in-the-u-s-economy> (accessed: 12 October 2017).

³³¹ As above.

³³² Oxfam America 'Women's Economic Empowerment and Domestic Violence' (2015) <https://www.oxfamamerica.org/static/media/files/Womens_Empowerment_and_Domestic_Violence_-_Boris_Hughes_hX7LscW.pdf> (accessed: 12 October 2017).

³³³ Artisans Thrive (no. 324 above).

this chapter the successes and limitations of laws criminalising marital rape in Ghana and South Africa as compared to US, with the aim of demonstrating that criminalisation should be complemented with the economic empowerment of women and dismantling patriarchal concepts. As observed in this chapter, the relatively higher reporting and prosecution rate of IPV including marital rape in US is to an extent the result of better economic position of women. And as already stressed, as long as women are economically disempowered, they will remain victims of VAW including marital rape, regardless of any legal prohibition. The next chapter concludes this research. The chapter provides a brief account of basic findings of the research, concluding remarks and recommendations.

5.

CONCLUSIONS AND RECOMMENDATIONS

5.1. SYNOPSIS OF KEY FINDINGS

Chapter one of this research is the introductory part that provided an overall highlight of the study. Chapter two is focused on laying down the theoretical framework based on which the arguments in this research have been presented. The chapter also gives a brief description of Ethiopian economic ideology and how it interplays with the negative impacts of globalisation to reinforce VAW in general and marital rape in particular. The adverse effects of patriarchal traditions and how they can foster marital rape have also been captured in this chapter.

Chapter three provides a discussion on legal obligations that bind Ethiopia to protect human rights of women. This chapter established the connection between marital rape and other human rights violations so as to emphasise how by failing to take action against marital rape, Ethiopia is failing to meet its obligations to ensure promotion, respect, protection and fulfilment of the multiple human rights of women. The chapter also expounded on Ethiopia's legal obligations to take measures against economic inequality of women and highlighted how implementing these obligations can assist in fighting marital rape in the country.

Chapter four is the comparative analysis of the laws criminalising marital rape in Ghana and South Africa, in order to point out lessons Ethiopia can learn from there. The chapter also identified the challenges facing the reporting and implementation of the relevant laws in both countries and explained how patriarchal attitudes and lack of economic empowerment of women play a major role in the ineffective enforcement of the marital rape laws in both countries. To further validate this, the experience of marital rape criminalisation in the US was overviewed

with a focus on the relatively higher financial independence of women in the country and how it has contributed to the comparatively better implementation of the law. The present chapter is the concluding chapter of the research. Below are the concluding remarks and recommendations derivable from the research.

5.2. CONCLUSION

This research has established that criminalisation, although crucial to fighting marital rape, cannot on its own achieve much. As the experiences in Ghana and South Africa reveal, criminalisation should be complemented with raising social awareness and educating society on the dangers of discriminatory patriarchal concepts. Most importantly, more attention needs to be paid to the economic imbalance between men and women, because as long as women are unable to financially support themselves, they will willingly remain in a marriage where their human rights are violated.

It is however important to note that economic empowerment is neither the only solution, nor one that always produces positive results. Some studies do indicate that in certain circumstances, the more economically empowered a woman is, the more she is exposed to IPV.³³⁴ This is basically because men usually feel insecure and threatened at seeing their spouses or female partners gain a sense of financial independence.³³⁵ While this may be true in some cases, this research has demonstrated the important place and role of economic empowerment in the ability of women – aided by law – to resist and fight gender based violence, including marital rape. Because ultimately, the objective of economic empowerment is to give women the option to leave abusive marriages which they would otherwise remain in for lack of financial independence. Battling patriarchal norms is also central to the discourse of criminalising marital rape. In all jurisdictions discussed in this study, patriarchy plays a major role in the prevalence of marital rape and the challenges in legislating and implementing laws against it. In Ethiopia, the magnitude of the impact that patriarchal traditions and economic

³³⁴ Oxfam America (no. 333 above).

³³⁵ As above.

disempowerment of women have on violation of women's rights is very significant. In order for Ethiopia to ensure protection of women's rights by eradicating marital rape, this research recommends the following.

5.3. RECOMMENDATIONS

5.3.1. *Government*

- Criminalising marital rape will play a major role in unlearning the commonly-held belief that matrimonial sanctity absolves a man from being accused of and held accountable for the rape of his own wife. Taking a clear stand against marital rape through criminalisation will also be one way of fighting harmful patriarchal norms. Most importantly, it will ensure the legal protection of women's rights and affirm that Ethiopia is abiding by its constitutional and international obligations in this regard. As one of the objectives of a criminal law is deterrence, criminalising marital rape will also reduce prevalence of the problem in the country. Hence, the government should amend article 620 of the 2004 Criminal Code of Ethiopia to remove marital exemption to rape. Moreover, based on the experience of Ghana, it should be noted that mere removal of the exemption might not suffice. Thus, a clear statement that a husband can be prosecuted for raping his wife is also necessary.
- Since criminalisation by itself cannot produce sufficient results, the government should work hand in hand with civil societies to raise community awareness. It should exert the needed effort to reach the vast majority of the population through media coverage and awareness campaigns that are aimed at educating community on the adverse effects of patriarchal cultural norms that condone marital rape and reinforce VAW.
- Government should also develop programmes to educate women and girls throughout the country about their constitutional rights and protections provided for women under other laws of the country and how they can enforce them. Ministry of Education needs to incorporate more lessons on VAW, its impact on society and how it is legally treated in its school curriculum.
- Judges, lawyers, prosecutors, investigators and the police force at large should be trained on how marital rape violates human rights of women.

A better understanding of relevant concepts among those in charge of delivering justice will substantially assist with implementation of the law.

- As the findings of this research depict, economic empowerment of women is crucial to eliminating VAW. As one form of IPV, marital rape can be effectively fought only if women are put in a position where they can fight for themselves. And for this to happen, women should be economically independent so that they can hold decision-making power and be able to equally determine household matters with their husbands. If the power imbalance between husband and wife is eliminated, there will be lesser likelihood for the husband to feel entitled to abuse his wife. But more importantly, the wife will be in a position to report a crime her spouse has committed against her. In Ethiopia, women are disproportionately bearing the negative impacts of globalisation and the country's economic structure does not sufficiently regulate businesses in a gender-sensitive manner. Hence, the government needs to take measures to avoid exploitation of cheap female labour by introducing regulations that integrate gender concerns.
- The government needs to allow more space for active engagement of non-governmental organisations (NGOs) that are interested in raising awareness about marital rape and advocating for change.
- In addition, the definition of rape should also be broadened to include other ways by which the offence can be committed in contemporary time, aside from penile penetration. Many modern laws of rape penalise forced oral sex, anal penetration and use of objects as acts of rape. As it currently stands, the Ethiopian law against rape only prohibits forced sexual intercourse outside of wedlock. In the absence of clarity as to what constitutes sexual intercourse, the law might fail to penalise forced sexual contacts that could be carried out in one or more of these ways. To provide a more thorough protection against marital rape – and rape in general – the law should consider giving more clarity on the different ways in which violation can be committed.

5.3.2. Civil Society Organisations (CSOs)

- Local CSOs are mandated to advance human rights in the country.³³⁶ Within that mandate, they should endeavour to contribute to the advocacy against marital rape mainly by raising awareness especially in rural parts of the country. Recording statistical data is also vital to advocate for criminalisation of marital rape, hence local CSOs can also gather further data so as to clearly reveal the prevalence of the problem.
- Foreign NGOs and other CSOs can also strategically address marital rape. For instance, health projects implemented by NGOs can ensure gender integration by delivering trainings to staff and community on the negative health impacts of marital rape.
- CSOs in general can also assist by engaging in projects that are aimed at strengthening the economic empowerment of women.

³³⁶ Charities and Societies Proclamation of Ethiopia (CSP) of 2009 art 14(5).

BIBLIOGRAPHY

BOOKS AND CHAPTERS IN BOOKS

- Bandura, A (1977) *Social learning theory*:Prentice Hall.
- Blackstone,W (1765) *Commentaries on the laws of England*: Callaghan.
- Bowman, CG & Kuenyehia, A (2003) *Women and law in sub-Saharan Africa*: Sedco.
- Campbell, A (1981) *Girl Delinquents*: St. Martin's Press.
- Cook, RJ & Cusack, S (2010) *Gender stereotyping: Transnational legal perspectives*: University of Pennsylvania Press.
- Coomaraswamy, R & Kois, LM 'Violence against women' in Askin, KD & Koenig, DM (eds) (1999) *Women and International Human Rights Law*Philadelphia: University Pennsylvania Press.
- Gelles, RJ& Straw,MA 'Determinants of violence in the family: Toward a theoretical integration' in Burr, WR; Hill, R; Nye, FI & Reiss, IL (eds,) (1979)*Contemporary theories about the family*: New York Free Press.
- Hale, M (1847)*The history of the plea of the crown*:Lincoln's Inn Esq.
- Hartmann, H 'The unhappy marriage of Marxism and feminism: Towards a more progressive union' in JF Sitton (eds) (2010) *Marx Today*: Palgrave Macmillan.
- Lorber, J (1997) *The variety of feminisms and their contribution to gender equality*:Bibliotheks- und Informationssystem der Univ. Oldenburg.
- Olateru-Olagbegi,B (2013)*Path to women's development: Thoughts, vision and passion*: Women's Consortium of Nigeria.
- Pateman, C (1988)*The sexual contract*: Stanford University Press.
- Radacič, I 'Does International Human Rights Law Adequately Protect the Dignity of Women?' in Kaufmann, P; Kuch, H; Neuhäuser, C & Webster, E (eds) (2011) *Humiliation, degradation, dehumanization: Human dignity violated*: Springer Science & Business Media.
- Segal, L 'Explaining male violence' in Muncie, J; McLaughlin, E &Langan, M (eds) (1996) *Criminological perspectives: A reader*: SAGE Publications.
- Stanton, EC(2007) *Feminist as thinker*:New York University Press.

JOURNAL ARTICLES

- Abeya, SG; Afwork, MF & Yalew, AW 'IPV against women in west Ethiopia: A qualitative study on attitudes, woman's response, and suggested measures as perceived by community members' (2012) *Reproductive Health Journal* 1.
- Amien, W 'Recent developments in the area of women's rights in South Africa: Focus on domestic violence and femicide' (1998) 3 *Women* 1.
- Awumbila, M 'Gender equality and poverty in Ghana: implications for poverty reduction strategies' (2006) 67 *GeoJournal* 149.
- Ayferam, G 'Assessment of the roles and constraints of women in economic development of Ethiopia: The case of Ambo town since 1991' (2015) *Journal of Political Sciences & Public Affairs* 1.
- Bayeh, E 'The role of empowering women and achieving gender equality to the sustainable development of Ethiopia' (2016) 2 *Pacific Science Review B: Humanities and Social Sciences* 37.
- Berkowitz, L 'Frustration-aggression hypothesis: Examination and reformulation' (1989) 106 *Psychological Bulletin* 59.
- Burgess, RL & Draper, P 'The explanation of family violence: The role of biological, behavioral, and cultural selection' (1989) 11 *Crime and Justice* 59.
- Bushman, BJ & Cooper, HM 'Effects of alcohol on human aggression: An integrative research review' (1990) 107 *Psychological Bulletin* 341.
- Coker-Appiah, D & Cusack, K 'Breaking the silence & challenging the myths of violence against women and children in Ghana: report of a national study on violence' (1999) *Gender Studies & Human Rights Documentation Centre* 3.
- DeWall, CN; Baumeister, RF; Stillman, TF & Gailliot MT 'Violence restrained: Effects of self-regulation and its depletion on aggression' (2007) 43 *Journal of Experimental Social Psychology* 62.
- Dibaba, Y 'Prevalence of intimate partner physical violence against women and associated factors in Kofale district, Arsi Zone, central Ethiopia' (2008) *Sage Journals* 119.
- Erulkar, A 'Early marriage, marital relations and IPV in Ethiopia' (2013) 39 *International Perspectives on Sexual and Reproductive Health* 6.
- Gordon, L 'Socialist Feminism: The Legacy of the "Second Wave"' (2013) 22 *New Labor Forum* 20.
- Haddad, L 'Gender and Poverty in Ghana: A descriptive analysis of selected outcomes and processes' (1991) 22 *Institute of Development Studies* 5.
- Hasday, JE 'Contest and Consent: A Legal History of Marital Rape' (2000) 88 *California Law Review* 1373.
- Jaggar, AM & Rothenburg, PS '*Feminist frameworks: Alternative theoretical accounts of the relations between women and men*' (1993) 121.
- Joan, A 'Gender, capitalism and globalization' (2004) 30 *Critical Sociology* 1.
- Kalmuss, D 'The Intergenerational Transmission of Marital Aggression' (1984) 46 *Journal of Marriage and Family* 11.
- Kanengoni, A 'Buwa: Sex and health' (2012) 2 *A Journal on African Women's Experiences* 1.
- Kantor, GK & Straus, MA 'The 'drunken bum' theory of wife beating' (1987)

- 34 *Social Problems* 213.
- Piper, RL 'American Family Laws, Vol. III (Husband and Wife), by Chester G. Vernier' (1936) 20 *Marquette law review* 518.
- Mann, JR & Takyi, BK 'Autonomy, dependence or culture: Examining the impact of resources and socio-cultural processes on attitudes towards IPV in Ghana, Africa' (2009) 24 *Journal of Family Violence* 323.
- Naa-Adjeley, F 'Reclaiming the African woman's individuality: The struggle between women's reproductive autonomy and African society and culture Conference on the interventional protection of reproductive rights: religious & cultural rights' (1995) 44 *American University Law Review* 1351.
- Ouattara, M; Sen, P & Thomson, M 'Forced marriage, forced Sex: The perils of childhood for girls' (1998) 6 *Gender and Development* 27.
- Pracher, M 'The Marital Rape Exemption: A Violation of a Woman's Right of Privacy' (1981) 11 *Golden Gate university law review* 717.
- Shelton, DL 'Soft Law' (2008) *George Washington University Law School* 3.
- Siegel, LW 'The marital rape exemption: Evolution to extinction' (1995) 43 *Cleveland Law Review* 352.
- Swartz, NP 'Is a husband criminally liable for raping his wife? A comparative analysis' 3 (2015) *International Journal of Academic Research and Reflection* 8.
- Warren, H 'The relationship between women's contribution to household expenditures and their participation in conjugal decision making in Ghana' (2009) 98 *Radical Statistics* 50.
- Ya'ltyopya yaheg balamuya setoch mahbar 'Berchi' (2008) *Journal of Ethiopian Women Lawyers Association* 45.

DISSERTATIONS

- Adodo-Samani, PM 'Criminalisation of marital rape in Ghana: The Perceptions of married men and women in Accra' Master's of Art thesis, University of Ghana, 2015.
- Fekadu, S 'An Assessment of Causes of Rape and its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa' Master of Arts Thesis, Addis Ababa University, 2008.
- Gelaw, KS '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)' Master of Arts Thesis, Addis Ababa University, 2012.
- Meshesha, HD 'Analysis of marital rape in Ethiopia in the context of international human rights' Master's thesis, University of South Africa, 2014.
- Norton, F 'The role of the law in confronting marital rape: A case study of Ghana' Master's thesis, University of Ghana, 2009.
- Seabi, AT 'Marriage, cohabitation and domestic violence in Mpumalanga' Master's thesis, University of Pretoria, 2009.
- Terefe, AT 'The negative impact of foreign direct investment on people's right

to food: Ethiopia's horticulture/floriculture industry' LLM thesis, Central European University 2016.

UN DOCUMENTS

- UN Committee Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Committee against torture) General Comment 3(19 November 2012)CAT/C/GC/3.
- UN Committee on Economic, Social and Cultural Rights (Committee on ESCR) General Comment 14 (11 August 2000).
- UN Committee on Elimination of Discrimination Against Women (CEDAW Committee) General Recommendation 19(January 1992).
- UN Economic and Social Council (ECOSOC) Report of the Special Rapporteur on violence against women, its causes and consequences (5 February 1996) E/CN.4/1996/53.
- UN Economic and Social Council Resolution 1990/15 (24 May 1990) 13th plenary meeting.
- UN Human Rights Committee (HRC) General Comment 20(10 March 1992).
- UN HRC Concluding Observations on United Republic of Tanzania (6 August 2009)CCPR/C/TZA/CO/4.

PAPERS

- Archampong, EA 'Marital rape: A women's equality issue in Ghana' (2010).
- Ballantine, CFenny, A; Asante, F & Duvvury, N 'Ghana: The Economic and Social Impact of Violence Against Women and Girls (VAWG)' (March 2017).
- Carr, M 'Globalization and the informal economy: How global trade and investment impact on the working poor' (2001).
- Dalzell, H 'Issues in domestic violence: Introduction and theories' (2016).
- Miller, NE 'The frustration-aggression hypothesis' (1939).
- Misganaw, M 'Harmful traditional practices in Ethiopia' in *Research Gate* (January 2005).
- Organization for the development of women and children Ethiopia (ODWACE) *Old beyond imaginings: Ethiopia harmful traditional practices* (2008).
- Oxfam America 'Women's Economic Empowerment and Domestic Violence' (2015).
- Semahegn, A & Mengistie, B 'Domestic violence against women and associated factors in Ethiopia; systematic review' (2015).
- Viljoen, F *An introduction to the Protocol to the African Charter on Human and Peoples' on the Rights of Women in Africa* (2009).

REPORTS

- Cole, S 'Seven women speak: Perceptions of economic empowerment opportunities among diverse women in four different Cape Town communities today' (2014) *Independent Study Project (ISP) Collection*.
 Economic Commission for Africa (ECA) 'Economic Report on Africa' (2009).
 Gobezie, G 'Empowerment of women and gender mainstreaming in rural microfinance' in *UN Women expertgroup meeting* (20September2011).
 Republic of South Africa Women Department 'The status of Women in the South African Economy' (2015).
 UN 'Violence against women: Key findings' (2015).
 Women of Colour Network Facts & Stats: Domestic Violence in Communities of Colour (2006).
 World Health Organisation (WHO) World report on violence and health (2002) 149 to 181.

WEBSITES

- Adamu, M& Mekonnen, S 'Historical perspectives on the legal status of women in Ethiopia' in *Abyssinia Law* (04 September 2012) <<http://www.abysinnialaw.com/study-on-line/item/938-historical-perspectives-on-the-legal-status-of-women-in-ethiopia>> (accessed: 12 May 2017).
 Adjei, SS 'In the matter of The State v KwasiKyeiDarkwa' in *GhanaWeb* (5 January 2015)<<https://www.ghanaweb.com/GhanaHomePage/NewsArchive/In-the-Matter-of-The-State-v-Kwasi-Kyei-Darkwa-341339>> (accessed 4 October 2017).
 Adodo-Samani, PM 'Criminalisation of marital rape: Situation in Ghana after a decade' in *Graphic Online* (06 March 2017)<<https://www.graphic.com.gh/features/features/criminalisation-of-marital-rape-situation-in-ghana-after-a-decade.html>> (accessed: 28 September 2017).
 Artisans Thrive 'How economic empowerment can reduce violence against women and girls' (25 November 2014) <<https://www.artisansthrive.com/blogs/news/55188483-how-economic-empowerment-can-reduce-violence-against-women-girls>> (accessed: 12 October 2017).
 Berhane, FH 'Why Ethiopia should ratify the Maputo Protocol' in *Pambazuka News* (25 November 2010) <<https://www.pambazuka.org/governance/why-ethiopia-should-ratify-maputo-protocol>> (accessed: 10 May 2017).
 Brennan, BH 'Marital rape myth or reality' (18 November 2004) <<http://www.soencouragement.org/maritalrape1.pdf>> (accessed: 12 June 2017).
 Byrne, BP 'These 13 states still make exceptions for marital rape' in *Vocativ* (28 July 2017) <<http://www.vocativ.com/215942/these-13-states-still-make-exceptions-for-marital-rape/index.html>> (accessed: 12 October 2017).
 Ellis, M 'The truth about marital rape in South Africa' (21 July 2014) <<http://news.iafrica.com/sa/949915.html>> (accessed: 3 October 2017).

- Hailu, T 'Formal and Informal Responses to the Recurring Forms of Violence Against Women in Ethiopia' <http://preventgbvafrica.org/wp-content/uploads/2013/11/vawethiopia.hailu_.pdf> (accessed: 15 June 2017).
- Hancox, G 'Marital Rape in South Africa' in *Open Society Initiative for Southern Africa* (25 October 2012) <<http://www.osisa.org/buwa/south-africa/marital-rape-south-africa>> (accessed: 3 October).
- Holmes, K & Frye, J 'African American women in the US economy' in *Centre for American Progress* (23 August 2016) <<https://www.americanprogress.org/issues/women/reports/2016/08/23/142815/african-american-women-in-the-u-s-economy>> (accessed: 12 October 2017).
- Manuh, T 'African Women and Domestic Violence' in *Gender, Sexuality and Social Justice* (26 November 2007) <https://www.opendemocracy.net/article/5050/ghana_domestic_violence> (accessed: 28 September 2017).
- McPhillips, D 'The war on women in 5 charts' in *U.S. News* (20 October 2016) <<https://www.usnews.com/news/best-countries/articles/2016-10-20/violence-against-women-in-5-charts>> (accessed: 12 October 2017).
- Ministry of Women, Children and Youth Affairs (MoWCYA) 'Assessment of conditions of VAW in Ethiopia' (November 2013) <<http://www.mowcya.gov.et/documents/715111/2235425/Assessment+of+Conditions+of+Violence+Against+Women+in+Ethiopia/bf8cdf8d-63d3-42c8-ba81-8f03e7930456?version=1.0>> (accessed: 31 July 2017).
- Nickolas, S 'What is the difference between a capitalist system and a free market system?' in *Investopedia* (17 August 2017) <<http://www.investopedia.com/ask/answers/042215/what-difference-between-capitalist-system-and-free-market-system.asp>> (accessed: 8 September 2017).
- Nonceba 'The shocking truth about rape in South Africa' in *Thursdays in Black* (5 May 2017) <<https://www.thursdaysinblack.co.za/shocking-truth-about-rape-south-africa-1032017>> (accessed: 5 October 2017).
- Pettinger, T 'Criticism of free market economy' in *Economics Help* (28 November 2012) <<https://www.economicshelp.org/blog/glossary/criticism-free-market/>> (accessed 3 September 2017).
- Tario and Associates 'Shocking marital rape statistics' <<http://www.tariolaw.com/shocking-marital-rape-statistics/>> (accessed: 12 October 2017).
- The New York Times 'New laws recognizing marital rape as a crime' (29 December 1984) <<http://www.nytimes.com/1984/12/29/us/new-laws-recognizing-marital-rape-as-a-crime.html>> (accessed: 4 October 2017).
- Trading Economics 'Ethiopia Population' (2017) <<https://tradingeconomics.com/ethiopia/population/>> (accessed: 28 August 2017).
- UK centre for research on violence against women, Research to practice brief (2011) <https://opsvaw.as.uky.edu/sites/default/files/07_Rape_Prosecution.pdf> (accessed: 12 October 2017).
- WHO 'Multi-country study on women's health and domestic violence against women: Initial results on prevalence, health outcomes and women's responses' (2005) <http://www.who.int/gender/violence/who_multicountry_study/summary_report/summary_report_English2.pdf> (accessed 31 July 2017).

Monastery of San Nicolò
Riviera San Nicolò, 26
I-30126 Venice Lido (Italy)

www.eiuc.org

Global Campus of Human Rights

The Global Campus of Human Rights is a unique network of more than one hundred participating universities around the world, seeking to advance human rights and democracy through regional and global cooperation for education and research. This global network is promoted through seven Regional Programmes which are based in Venice for Europe, in Sarajevo/Bologna for South East Europe, in Yerevan for the Caucasus, in Pretoria for Africa, in Bangkok for Asia-Pacific, in Buenos Aires for Latin America and the Caribbean, and in Beirut for the Arab World.

The Global Campus Awarded Theses

Every year each regional master's programmes select the best master thesis of the previous academic year that is published online as part of the GC publications. The selected seven GC master theses cover a range of different international human rights topics and challenges.

The present thesis - *Human Rights of Women and the Phenomenon of Marital Rape in Ethiopia: A Critical Analysis* by Tsion Hagos Woldu, supervised by Akinola Akintayo, University of Lagos - was submitted in partial fulfillment of the requirements for the Master's Programme in Human Rights and Democratisation in Africa (HRDA), coordinated by Centre for Human Rights, University of Pretoria

