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**HARMEFUL TRADITINAL PRACTICIES
AND THE CRIMINAL LAW**

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**HARMEFULL TRADITIONAL PRACTICIES
AND THE CRIMINAL LAW**

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I here by declare that this paper is my original work and I take full responsibility for any failure to observe the Conventional rules of Citation.

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ACRONYMS

AAPCCID	Addis Ababa Police Commission Crime Investigation Department
EGLDAM	Ye Ethiopia Goji Limadawi Dirgitoch Aswogaj Mahiber
EM	Early Marriage
EWLA	Ethiopian Women Lawyers' Association
FGM	Female Genital Mutilation
HTPs	Harmful Traditional Practices
MBA	Marriage by Abduction
NCTPE	National Committee of Traditional Practices of Ethiopia

General Introduction

According to the 1994 Nation Population and housing census there are 82 ethnic groups in Ethiopia.(NCTPE, Old Beyond Imaginings Ethiopia, Addis Ababa 2003, p.6) The country own languages, religious, history and cultural diversity of nationality. In this country the day of Nation Nationalities and peoples has been celebrated every year since November 2006. On this day various Nation Nationalities and peoples show their dress, dancing, hair-dressing and other cultural features. Their celebration is amazing and nice to look at. Women and girls from every ethnic group sing and dance with broad smiles on their faces. But there is a dark side to the lives of Ethiopian women's and girls. Although Ethiopia has interesting culture, it can not be denied that women and girls suffer a great deal because of deferent Harmful Traditional Practices imposed upon then by the community. As a result of these practices they undergo various kinds of mistreatment which negatively affect their physical, psychological, social will-being, human rights, political and economic development.

Harmful Traditional Practices are forms of violence against women in certain communities and societies for so long that they are consider part or accepted cultural practices.

Ethiopia remains one of Africans most traditional societies, even when it comes to legislation. Most ethnic cultures in Ethiopia are bound up with myths, superstitions and a false conception of humans, including their psychic and sexual lives. (NCTPE, Old Beyond Imaginings Ethiopia, Addis Ababa 2003, p.3)

Girls and women in Ethiopia face many challenges, from birth on word, their life is harder than that of their boys and men .They key decisions: what career to follow, where to live and work who to marry are made for them by men.

Virginity at the time of marriage is demanded for female but not from males to protect virginity and to satisfy the demand of men; all kinds of cruel operation are made of the

sexual organ of women and girls. Early marriage and abduction are practiced on girls and not on boys. But these Harmful Traditional practices should not be allowed to continue in Ethiopia.

This paper, after examining the various types and results of Harmful Traditional practices the legal and practical problems related their to, will attempt the legal and practical means by which Harmful Traditional practices can be gradually eliminated from the society.

In order to address these issues the paper is divided in to fore chapters' the first chapter is dealing with the meaning and extent of Harmful Traditional practices generally in Ethiopia. The second chapter assesses Human Rights and Harmful Traditional Practices under International and National Laws. The third chapter deals with Legal analyses on Criminal Law regarding Harmful Traditional Practices. Chapter four focuses on the features of Harmful Traditional Practices in some selected Sub Cites and bodies interested in the control and eradication of these practices. Finally by way of concluding a remark will be made some general recommendation which may help to the administration of justice and non governmental organizations as a source.

CHAPTER ONE

Harmful Traditional Practices in Ethiopia

The meaning and extent of Harmful Traditional Practices (HTPs) generally in Ethiopia

1.1 Introductory remark

Since the 17th century there was great migration of nationalities and peoples in Ethiopia¹. These migrations resulted to a large extent in the mixing (mingling) of various ethnic groups which developed different traditional practices such as circumcision, Female Genital Mutilation etc. Religious traditions have also their share in negatively affecting traditional practices.² When members of various nationalities or ethnical groups became converts of a certain religion, they had to adhere to harmful practices advocated by that religion for instance when peoples were converted into **Islam**, female were forced to undergo female circumcision but most of the harmful traditional practices have no religious bases.³ However, since the beginning of the twentieth century the influence of science and technology, the spread of modern education and the expansion of town life are beginning to have some impact on attitudes of modern educated persons towards traditional practices.⁴ The educated elite is raising serious questions about the negative effects of some of these practices, particularly in the areas of physical, psychological and social well- being as well as in the human rights of women and children.⁵

Some of governmental such as the National Committee of Traditional Practices of Ethiopia (NCTPE) and non- governmental organization such as Inter African Committee (IAC) and inter governmental organizations UN Children's Fund (UNICEF), World Health organization (WHO) and Un Fund for population Activities (UNFPA) have, in the last few decades, attempted to launch programs to combat some of these harmful traditional practices. In our country, NCTPE, has since its inception in 1987, strived to bring about public awareness of harmful traditional practices through Information, Education and communication activities.⁶

The criminal code of Ethiopia 2004 has also legal provisions which penalize HTPs. But the negative impact of HTPs on women and female children still persists in Ethiopia.

1.2 Meaning of Harmful Traditional Practices

The meaning of HTPs there is no dictionary, book, magazine or article which gives the meaning of the above- mentioned phrase. Different research papers describe the negative effect of various HTPs and specify different types of such practices.

Although no definition of HTPs is given in any dictionary or book, it will be helpful to find out the meaning of the separate words that constitute the phrase. According to the *OXFORD COMPACT THESAURUS* the word "Harmful" means among other things "Damaging, injurious, detrimental, and dangerous."⁷In 1997 the NCTPE "Traditional Practices" were defined as "customary acts transmitted from past generation and likely to be passed to the next". According to a joint WHO/UNICEF/UNFPA statement, "the norms of care and behavior based on age, life stage, gender and social class are often referred to as traditional practices."⁸

From the above meaning of the words "Harmful" and "Traditional Practices", it can be stated that "HTPs" means customs or way's of behavior which have been practiced for a very long time by different nations, nationalities or ethnic groups and which are damaging, injurious or detrimental to the body, health or life of human beings.

This does not mean that the society which practices such traditions concedes them as harmful. On the contrary, it regards them as being very beneficial to the community on the basis of religious or cultural conceptions. Practices that bodily affect the physical, sexual and psychological well-being of women and girls are not advocated only by men but by women as well. In this male dominated world even mothers and other female relative are in favor of the performance of different HTPs on small girls although the result may be detrimental to the girls. Such traditional practices are considered harmful on the basis of facts ascertained by science and the medical profession.

The above conclusion is supported by the recent criminal code of Ethiopian 2004 according to article 567 of the same code the inflection of "bodily injury or mental impairment through HTPs known for its inhumanity and ascertained to be harmful by the

medical profession” is a punishable act. From this article it can be gathered that HTPs are practices which are known’s for their in humanity and ascertained by the medical profession as causes for bodily injury or mental impairment.

HTPs are regarded as harmful not only an account of scientific and medical findings, but also because this practices are against Article 35 of the constitution of the Federal Democratic Republic of Ethiopia and various different international instruments.

1.3 The Main Harmful Tradition Practices

Allover the world there are very many HTPs which adversely affect the body, health and life of women and small girls⁹But only the most well known practices are mentioned here below.

1.3.1 Female Genital Mutilation (FGM)

FGM is the most extensively researched and documented HTPs in Ethiopia¹⁰he origin of FGM Ethiopia are not clear. Many people link FGM with **Islam**¹¹However, the earliest record of the practices of FGM is in Egypt in 2500 B.C, thousands of years before the emergency of Islam.¹²

WHO defines FGM as “all procedures involving partial or total removal of the external female gentile or other injuries to the female gentile organs, weather for cultural or other non therapeutic (non-medical) reasons.”¹³

FGM seriously affects the physical and psychological well-being of women and female child. All types of FGM involve removal or damage to the normal functioning parts of a woman’s sexual organs. During child birth many women and infants die because of complications linked with FGM. The operation scar affects victim physically and emotionally. It deprives her of sexual pleasure for life. FGM is also contributes to the spread of HIV because practitioners use the same razor blade or knife on several women and girls.¹⁴

1.3.1.1 Types of FGM

The WHO has categorized the cutting of female genitals into four types. But the book entitled “Cut Flowers” specifies additional sub divisions of FGM. Under each type and mentioned the different regions of Ethiopia where each kind of practice is carried out.

I. Types one

Excision of the prepuce (hood) with or without excision of the entire clitoris or part of it.¹⁵

- Removal of the clitoral hood. Practiced in many parts of Africa and called “sunna”
- Removal of all or part of the clitoris. Done by Jeberti, Tigrayans and others.
- Removal of part of the labia minora (small lips) without touching the clitoris. Amhara and Agew of Ethiopia.

II. Type Two

Excision of the prepuce and clitoris together with partial or total excision of the labia minora (small lips)¹⁶

- Practiced by Gurage, Tigrayans, Swanlike, the Amhara of Gonder and Oromo.

III. Type Three

Excision of all or part of the external genitalia and stitching / narrowing of the vaginal opening (infibulations).¹⁷

- Practiced by some groups among the Kotu, Affar, Bellen, Tigre, Rashayida, Saho, Benja and Erboore.

IV. Type four

*Unclassified*¹⁸

- Intromission. A very extreme form of mutilation involving the external and internal genital organs.

- Stretching of the clitoris or labia
- Cauterization by burning. The insertion of substances to the vagina to cause bleeding and subsequent narrowing of the vagina.

The process of FGM is carried out mostly by old women; for the services the women will be paid in cash or kind.¹⁹ The practitioners use knife, blades, stones or fingernails as means of cutting. In some instances, where 'sunna' is practiced, the girl is not cut if the hood is not present. In this case it is said that she is "circumcised by the virgin marry the mother of Jesus Christ".²⁰ Force must be used to hold the girl down as the operation is carried out without any form of anesthesia. After the mutilation is over various locally prepared medicines e.g. feto seeds, Embocho, butter and Alcohol are applied to stop the bleeding and help heal the wound.²¹ FGM in many countries is performed as a rite of passage, from childhood to adulthood.

1.3.1.2 Reasons /causes of FGM

There are so many reasons for practicing FGM in different countries, the reasons most frequently mentioned for practicing FGM are.²²

- Avoidance of Shame /ostracization,
- Avoidance/ prevention of sexiness,
- Control of women's reaction /emotion,
- Respect for tradition,
- Religious requirements,
- Avoidance of trouble by husband,
- The demand of custom and tradition,
- Family honor
- The increase of sexual pleasure for the male,
- Hygiene and cleanliness,
- The enhancement of fertility- mistaken reason.

1.3.1.3 Consequences of F.G.M

According to the pamphlet of Lambadena explanation FGM has short term and long term consequences according to the above mentioned pamphlet, the short term of FGM are the following:²³

A. Short term consequences

- Sever pain and shock
- Infection
- Urine retention
- Injury to adjacent tissues
- Immediate fatal hemorrhaging

The long term of FGM is the following:

B. Long –term consequences

- Extensive damage of the external reproductive system
- Uterus, vaginal and pelvic infections
- Cysts (Ulcer, sores, swellings) and neuronal
- Increased risk of vesicovaginal Fistula
- Complications in pregnancy and child birth
- Psychological damage
- Sexual dysfunction
- Difficulties in menstruation.

We should not forget that in addition to these consequences, there are considerable psycho-sexual, Psychological and social consequences of FGM.

1.3.2 Early Marriage

Early marriage is the traditional practices of giving away girls in marriage before they attain Physical and psychosexual maturity.

In many cultures the tradition of marrying off daughters at an early age is common. Ethiopia has one of the lowest ages at first marriage. The consent of the married girls is not necessary in early marriage. It can not easy to define early marriage. “WHO defines adolescence - a period of gradual transition from child hood to adulthood- as ranging

from 10-19 years, with early adolescence from 10-14 years and late adolescence from 15-19 years” On this basis, any marriage before the 15 years will clearly be regarded as marriage.²⁴

Four kinds of early marriage arrangements are identified, namely²⁵

- Promissory marriage (before the birth of the child)
- Child marriage (usually under 10 years of age in a form of *madego*: introduced to wife-hood under the custody of parents-in-law until she reaches puberty age)
- Early adolescent marriage (between 10-14 years in a form of *melees*: the married child may stay with her parents but periodically visits her parents-in-law)
- Late adolescent marriage (15-18 years)

The first three types of early marriage under 15 years are mainly practiced in central and northern Ethiopia.²⁶ Generally, early marriage is defined as a marriage under the legal majority of 18 years when the girl child is not yet physically and emotionally mature enough to bear a child and take the social responsibility of a wife.

1.3.2.1 Reasons for Practicing Early Marriage

In Ethiopia there are so many reasons for early marriage, but only four of them will be presented here

A. Material benefit

Parents do marry off their daughters at early age in order to gain some immediate material benefits. During marriage ceremony they get contribution in kind or cash from relatives. According to the custom of several ethnic groups parents claim dowry for their daughters and even hand some number of domestic animals for themselves in the form of bride price. In the Amhara areas parents feel obliged to arrange weddings as *Reciprocity* for weddings of friends, relatives and neighbors, which they have attended previously.²⁷

B. Fear of Abduction

Abduction is the main form of marriage in some areas of Ethiopia, particularly in the Oromo region and southern Nations nationalities and peoples' Region (SNNPR)²⁸ For

this reason some parents prefer to marry off their daughters at the earliest convenient possibilities.

C. Economic reasons

Improving the economic status of the family is a major reason for marrying off daughters at an early age. Peasant families feel the urgency to utilize their immediate capacity to establish a family for their children. More weight is given to marrying off children when the parents are at their productive age and, as resources are available than to wait until their children reach maturity age. An established tradition in peasant communities compare parents to feel responsible to establish a family for their children as early as possible and secure their future before they get weak, old or die²⁹ They develop the need to marry off their children before the decline of parents' productive capacity and invest in productive household of their children, for future reciprocal assistance.³⁰

D. The other cause of early marriage as many literatures indicate is that parents marry off early to avoid premature sex resulting in loss of virginity³¹ Losing virginity is considered to be a great shame for the family and the daughter. Patriarchal subordination of women and children places high value on the virginity of women.³² Such tradition makes early marriage compulsory mainly for female children. "The demand for virginity and the high responsibility parents feel to protect it, forces them to marry off daughters at an early age."³³

In general forced early marriage of young girls or adolescents can cause lifelong psychological as well as physical problems, especially those resulting from early child bearing.

1.3.2.2 Effects of early marriage

A. Increases the rate of maternal mortality and morbidity. In those communities the practice early marriage, girls are married before they attain their full biological growth. In most cases the girls would be forced to have sexual relationship with

her husband and would not even know what is happening. All she knows is that what her husband is doing is painful and unbearable. Before the girl is physically fully developed, she becomes pregnant. Due to narrow pelvis, the young mother usually develops prolonged and obstructed labor. If the mother survives, she may have sustained obstetric fistula. The Encyclopedia of Britannia defined obstruct fistula as "an abnormal communication leading from the surface of the body to a normal cavity or from one cavity or canal to another" Women suffering from fistula are constantly in pain and are not to control their urine or feces or both.³⁴

- B.** Denial of educational opportunity. It is obvious that when a girl is married at early age she will not be able to attend school. In most cases once the girl is married she loses the opportunity for education. The girl is denied parental care, love attention and grows up in marriage being deprived of proper parental upbringing.³⁵
- C.** Psychological and social problems: The psychological and social problems caused by early marriage are mainly associated with fistula. Fistula is the most distressing disease that causes serious psychological and social problems to its victims.³⁶

1.3.3 Marriage by Abduction /MBA/

MBA, which is also called marriage by kidnapping or by capture, is common in Ethiopia regions. It occurs to a varying degree all over Ethiopia. It is a serious problem in SNNP in almost all ethnic groups. Even in those regions where other HTPs such as early marriage are low. MBA is also serious problem in Oromiya, Afar and Benishangul/Gumuz. It seems to be a relatively lesser problem in Tigray and the Amhara region interestingly; there are indications that it is a more serious concern in the Oromo zone with in the Amhara region and in the more Urban Harari and Addis Abeba.³⁷

1.3.3.1 Reasons for marriage by Abduction

There are different reasons for forced marriages. The principal reasons behind marriage by abduction are³⁸

- When a man feels or knows that a girl's family will not allow him to marry their daughter either due to his ethnicity, class, age or economic status;
- When a girl is abducted in most instances the abductor will violate her. If a daughter is no longer a virgin, parents feel that the only viable option available is to marry her off to her abductor.
- When a man has nothing or does not have enough to pay for the price of dowry.

If a girl rejects a man's attention, he may use other men to abduct her so that he can marry her forcibly. Whatever the reason, forced marriages are not condoned by religion or law (Ethiopian Revised Family law recognizes only marriages in which both man and women give their consent). Even where the practice is common, such as among the Kmembatta and Hadia communities in the south, elders, religious leaders and other community members all oppose the practice.³⁹

1.3.3.2 Effects of marriage by Abduction

The consequences of abduction can be summarized as follows⁴⁰:

- A. In the process of the abduction the girl is assaulted beaten and physically injured she may even die in the struggle;
- B. Serious conflicts can arise between the two families which may develop into inter community or ethnic conflicts;
- C. Since the marriage is formed without the consent of the girl, constant marital conflict may arise making it an unstable marriage;
- D. Having been subjected to degrading treatment and being stuck with a man she does not love, the girl may suffer from psychological stress leading sometimes to suicide;
- E. Once abducted the girl is unable to continue her education at an early age she becomes a housewife and a mother. The opportunity to generate her-own income is limited, and in general her future is badly damaged.

In general most the marriage established through abduction are reportedly loveless, unhappy and unstable.

END NOTES

Chapter One

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CHAPTER TWO

Human Rights and Harmful Traditional Practices under International and National Laws

2.1 Introductory Remark

Practices that underline the well – being of women persist through out the world. Like slavery, they constitute serious violation of basic rights. In many parts of the world, there is a conflict between constitutional principles and ideas enshrined in the various international human rights instruments on the one hand, and customary laws, traditional practices and at times, religious beliefs on the other¹. In this connection, it is possible for the asserted universal norm itself to be challenged². There may also be conflicts between the different kinds of rights recognized by national constitutions and human rights advocated by universal instruments³. The universal or constitutional norm that is required to be observed may be challenged on several grounds. The norm itself may lack universal validity⁴. Sometimes it may conflict with prescribed religious commands. It may like wise be incompatible with long- standing beliefs and cherished values that assure social cohesion and cultural integrity⁵.

The dictionary meaning of harm has much to do with the inflicting physical, moral or material damage by one over the other⁶. But most national laws and international human rights instrument, municipal laws or national polices are not good enough to be able to tell us in precise terms which traditional practices are harmful and which ones are not. Harmful traditional practices may compromise principles of equality between human beings or it may be detrimental to what one believes in the common good⁷. In this chapter we will see some universal and other related laws around harmful Traditional practices.

2.2. Major International Human Rights Instruments Adopted by Ethiopia and existing Policies of the Ethiopian Government on HTPs

As a member of the international community of states, Ethiopia is a party to a good number of international human rights instruments that have been adopted by the United Nations and other regional organizations.⁸ To mention but few are the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against women (CEDAW) or Women's convention, the African Charter on Human and People's Rights (ACHPR) and the African Charter on the Rights and welfare of the Child.

The fundamental right to be free from torture is reflected in the UDHR, ICESCR and the convention on the Rights of the Child. The right to be free from gender discrimination is reflected in the UDHR, ICESCR, ICCPR and the CEDAW.

Health rights are further guaranteed by the UDHR, ICESCR, the convention on the Right of the Child, ACHPR and CEDAW.

The fundamental right to life is guaranteed by the UDHR, ICCPR and the convention on the Rights of the Child.

Since the early nineteen- nineties, the government has also issued several policy instruments that pertain to the struggle against HTPs. Some of these policy documents are the National policy on women of 1993, the health policy of 1993, the October 1997 cultural policy, the 1994 social policy and the 1998 policy on HIV/ AIDS¹⁰. All the key issues dealing with HTPs are enshrined in the various international human Rights.¹¹

2.2.1. FGM

The practice of FGM is a grave violation to the human rights of women and the girl child with in the standards laid in the international human rights instruments.

The convention on the Elimination of all forms of Discrimination against Women has a lot to say about the various rights of women. A major and clear international expression was made in the (CEDAW also known as women's Convention, which was adopted by

the UN general Assembly in 1979. The Convention has come to force in 1981 and ratified by Ethiopia the same year.

Article 2 (7) of the CEDAW provides that the states parties agree to undertake:

“To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women.”

FGM is a practice aimed primarily at controlling women’s sexuality and subordinating their role in society. When a woman undergoes FGM, she is a victim of discrimination based on sex that compromises the recognition and enjoyment of her fundamental rights and liberties.¹²

Article 5 (a) of the above mentioned convention states parties shall take appropriate measures:

“To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”

This article is one of the most important articles which address FGM.

The International Covenant on Civil and Political Rights: The ICCPR elaborates the areas of torture, liberty and security of persons each of which has relevance and applicability to the FGM practice.

Article 7(1) of ICCPR reads as follows:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” It concerns torture violence and inhuman treatment which can be interpreted as different type of violence and FGM.

Article 9 states:

“Every one has the right to liberty and bodily integrity” and of course the security of women and girls is violated by practice of FGM¹³. The right to physical integrity, will often be associated with the right to freedom from torture encompasses a number of broader human rights principles, including the inherent dignity of the person, the right to

liberty and security of the person and the right to privacy¹⁴. Acts of violence that threatens a person's safety, such as FGM, violate a person's right to physical integrity¹⁵. Also implicit in the principle of physical integrity is the right to make independent decisions in matters affecting one's own body¹⁶. An unauthorized invasion of a person's body represents a disregard for fundamental right¹⁷. Violations of the right to physical integrity are most obvious when girls and women are forcibly restrained during the procedure¹⁸. No less compromising of physical integrity is the subjection of non – protesting girls and women to FGM without their informed consent.¹⁹

Article '9' of the International Covenant of Economic, Social and Cultural rights guarantees the right of everyone to social security. In article '12(2)' the health development of the child is mentioned expressly; so Article 9 and 12 have relevance and applicability to the practice of FGM.

Article '4' of the African Charter on Human Rights provides that "every human being shall be entitled to respect for his life and the integrity of his person, no one may be arbitrarily deprived of this right." Article '5' provides that "every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status" so, Article 4 and 5 can be interpreted to address the question of violence against women.

2.2.2. EM

Early marriage denies women the right to control whether, when or who to marry²⁰. Some women's rights activists consider sexual relationship in early and arranged marriages as non – consensual and therefore illegitimate and denial of women's rights to bodily integrity²¹. They argue that marriage should not be a legitimizing ground for child sexual abuse.

A Brochure by a London based non – governmental organization called Change has expressed this position strongly in the following paragraph.²²

‘ It is some times said that girls who marry do not engage in sexual relations until puberty but despite myths, beliefs and hopes, early marriage can often mean precipitous entry in to sexual activity. This in itself can be frightening, painful and traumatic as many girls

experiences show and can cause bruising, lesions and infection. Sex between a young girl and a much older man can also be a situation in which age dominates youth and can there by fashion a relation ship of fear, subservience and servility. These sexual experiences are abusive and where a minimum age for sexual consent is defined amount to statutory rape. Girls who marry and then are coerced in to sexual relationships will rarely discover that their marriage is a partnership of equals, in which her individual rights and needs can be realized.”

On the legal front, Ethiopia is a party to several binding international Conventions, which have laid down the basis for equality up on marriage, during marriage and at divorce²³. They also require that marriage be entered in to with the free consent of men and women of full age.²⁴

To of such conventions adopted by Ethiopia are CEDAW and CRC.

Article 16 (b) of CDDAW reads as follow:

“The same right to women and men in marriage”

“The same right to choose and enter in to marriage on free will and consent.”

The convention on the rights of the child (CRC) adopted in 1989 recognizes very broad rights of children²⁵. Article 1 of this convention defines child as:

“ Every human being below the age of 18” Ethiopia and all states who have ratified the convention have agreed to protect the child fro all the forms of physical or mental violence, injury or abuse (Art 19). Article 24(3) could be broadly interpreted to include all HTPs, a notable absence from CRC is any direct reference to forced marriage or early marriage even though “child” is defied as “below the age of 18.”

The preamble of the Convention on consent to marriage, minimum age of marriage and registration of marriage provides that “..... states should take all appropriate measures with a view to abolishing such customs ancient laws and practices by ensuring, interalia, complete freedom in the choice of spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty establishing appropriate penalties where necessary.....” The convention also provides that no marriage shall be legally entered in to without the full and free consent of both parties²⁶. Further this convention

obliges state parties to take legislative action to specify a minimum age of marriage below which a legally valid marriage can not be contracted. The recommendation of consent to marriage, minimum age of marriage and registration of marriage, which is adopted after the marriage convention, specifically provides for a minimum marriageable age of 15 years²⁷. This recommendation is the first international instrument which specifies marriage age. However it has been criticized for setting the minimum age too low.

The Universal Declaration of Human Rights guarantees that men and women of full age have the right to marry and found a family.

CEDAW also provides that "the betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation shall be taken to specify a minimum age for marriage."

The revised family law of Ethiopia article 7(1) raise the minimum age of marriage for girls from 15 to 18.

2.2.3. MBA

It is common knowledge that MBA amounts to flagrant violation of the consent principle that underlines lawful marriage²⁸. This is a principle recognized by the international human rights instruments that have now become part of the Ethiopia law of the land through ratification and accession²⁹. A victim of abduction is subjected to rape to ensure her submission³⁰. Loss of virginity automatically decreases the marriage ability of victim as a result of which she succumbs to the victim³¹. Further intimidations and duress is used to make her 'agree' to such marriage³². Cleansing the crime of abduction up on conclusion of marriage clearly violates the right of women to enter in to marriage with free and full consent³³. Neither should the abductor be excused from prosecution just because he forced his victim in to marriage.³⁴

2.3. Harmful Traditional Practices in light of Ethiopia National law

Important legal provisions against HTPs have been inserted in the various legislation of Ethiopia; i.e. The FDRE constitution and the criminal code of Ethiopia 2004.

2.3.1 HTPs under the FDRE constitution

The ratification of the FDRE constitution was a land mark in Ethiopia, as regards the protection and promotion of human rights in general and women's rights in particular³⁵. It is the first and only constitution to adequately specify and guarantee all the three generation of right; civil and political rights, economic, social and cultural rights as well as collective rights such as the right to development and the right to self determination³⁶. The fulfillment of the objectives for which the constitution stands “requires full respect of individual and peoples” fundamental freedoms and right to live together on the basis of equality and without any sexual, religious and cultural discrimination.³⁷

2.3.1.1 FGM

Article 16 reads as follows:

“Every one has the right to protection against bodily harm”.

This article directly connected to FGM, because FGM is cutting some part of the women's body. This article protects women against any violence.

Article 35 (4) “ the state shall enforce the right of women to eliminate the influence of harmful customs, lows and practices that oppress or cause bodily or mental harm to women are prohibited.”

While article 16 states about bodily harm in general, article 35(4) specifically harmful customs and practices which causes bodily or mental harm. This clearly refers (among other things) to FGM.

2.3.1.2 EM

Early marriage is obviously prohibited under the FDRE constitution.

Article 34(1) state that “men and women, without any distinction as to race, nation, nationality or religion who have attained marriageable age as defined by law, have the right to marry and found a family”.

From this provision it can be concluded that boys and girls who have not attained marriageable age have no right to get marred according to article 7(1) of the revised

family law marriageable age is 18 years. Boys and girls who get married below the age of 18 are regarded to have performed an early marriage. Such marriage is forbidden by the FDRE constitution and the revised family law. Therefore no public officer, parent or relative can force a girl who not attained the age of 18.

2.3.1.3 MBA

Most abduction is made without the women consent. Abduction is the same to the act of kidnapping³⁸. The constitution prohibits the act of abduction by stating that “marriage shall be entered into only with the free and full consent of the intending spouses.” (Art. 34(2))

The act is performed so suddenly that the woman has hardly any chance of defending herself or escaping from the abductor and his collaborators.

The constitution, on the other hand, lends support for the protection of the peoples, cultural values. The protection is however, accorded when these cultural values are not detrimental to basic human rights and to the dignity of the human person. In relation to this, Article 91(1) of the constitution that specified that cultural objectives of the republic states:

Article 91(1)

“Government shall have the duty to support, on the basis of equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms and ideas and the provisions of the constitution.”

From this discussion under this chapter it states that the international and national laws prohibited against bodily injury and the dignity of humanity as we can see. Now this censer if the societies want growth and create a new world they must be ascertaining the participating of women and men equally. Also this situation will be created when keeping the international human rights and restricted the violation of women this is true many people agreed this idea.

“With out progress in the situation of women, there can be true social development. Human rights are not worthy of the name if they exclude the female half of humanity.

The struggle for women's equality is part of the struggle for a better world for all human beings, and all societies.”

Boutros Boutros Gale Former United Nation's Secretary General.³⁹

2.4. Harmful Traditional practices under the criminal law of Ethiopia.

In this section we will access how the law protects the women and girls against the violation of HTPs in general. The new criminal law has come out with notable provisions that greatly help the cause of women and girls. Detailed provisions have been included on crimes relating to FGM, EM and MBA.

2.4.1 FGM

FGM also results in permanent harm to the body of the victim as it is something that is carried out on one of the vital organs of a human being. Scientific studies are also said to have confirmed the various psychological harm that follow FGM⁴⁰.

Low enforcement organs are however reluctant to regarded FGM as an act that constituted bodily injury⁴¹. It is this social attitude that is the main cause of the problem⁴². As law enforcement personnel themselves are parts of the over all society they constitute, we can not conclude that they are immune from this belief⁴³. Another issue to be taken up is also the absence of mental element which is an important ingredient of criminal⁴⁴. The code looks at the problem from two perspectives, namely female circumcision and infibulations of the female genitalia.

Article 565 states thus:

Whoever circumcises a woman of any age is punishable with simple imprisonment for not less than three mounts, or fine of not less than five hundred Birr.

Article 566

1. Whoever infibulates the genitalia of a women, is punishable with rigorous imprisonment from three years to five years.
2. where injury to body or health had resulted due to the act prescribed in sub – article (1) above, subject to the provision of the criminal code which provides for

a more severe penalty, the punishment shall be rigorous imprisonment from five years to ten years.

The above provisions cover persons who are directly responsible for the crime. But, article 569 also provides that parents, guardians or any other persons under similar capacity are punishable with simple imprisonment not exceeding three months or fine not exceeding Birr 500.00 when they participate in the act of performing FGM on their daughters and female relatives.⁴⁵

2.4.2 EM

Prior to the coming in to force of the revised family code, the marriageable age for boys and girls was 18 and 15 respectively⁴⁶. The civil code provides that marriages concluded with out observing this requirement may be invalidated⁴⁷. It also provides that persons responsible for its conclusion are liable to penalties prescribed in the penal code⁴⁸. The revised Family code has now risen the marriageable age of a girl to 18 years.⁴⁹

Although the provision against early marriage is not placed in the chapter on HTPs in the new criminal code, early marriage is clearly regarded as an act entailing punishment under the law.

Article 648 provides thus:

"Who ever concludes marriage with a minor apart from circumstances permitted by relevant Family code is punishable with.

- a. rigorous imprisonment not exceeding three years, where the age of the victim is thirteen years or above ; or
- b. Rigorous imprisonment not exceeding seven years, where the age of the victim is below thirteen years.

2.4.3 MBA

The new criminal code has, come up with improvements of a paramount significance⁵⁰. Abduction is now a crime not with standing conclusion of marriage following the act⁵¹. In terms of the mental element required for commission of a crime, the intention of the

abductor to conclude marriage with the victim does not have any bearing on his responsibility for the crime⁵². On top of that, where the abduction is followed by forced sex, the abductor is liable to the penalty prescribed for rape in addition to the penalty for the crime of abduction⁵³. This raises the punishment to twenty years rigorous imprisonment (Art.620)⁵⁴. Further more, the victim is entitled to demand compensation for the moral and material damages she sustained on account of the abduction⁵⁵. The penalty prescribed for abduction of an adult woman has also been raised from a maximum term of three years of rigorous imprisonment under the 1957 penal code to the maximum terms of 10 years of rigorous impressments under the new criminal law⁵⁶. The new code is regarded as having an important contribution in the all out effort to combat MBA,⁵⁷ because article 587 of the code reads as follows:

1. Whoever with intent to marry a women abducts her by violence or commits such an act after having obtained her consent by intimidation, threat, trickery or deceit, is punishable with rigorous imprisonment from three years to ten years.
2. Where the act of abduction is accompanied by rape, the perpetrator shall be liable to the punishment prescribed for rape in this code.
3. the conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability
4. Nothing shall affect the right of the victim to claim compensation under civil law for the moral and material damage she may have sustained as a result of the abduction.

END NOTES

Chapter Two

1. UNICEF /Ethiopia ENABLING COMMUNITIES ABANDON HARMFUL TRADITIONAL PRACTICES, (Addis Ababa, April 2004) P.43
2. Id. P.44
3. Ibid
4. Ibid
5. Ibid
6. Ibid
7. Ibid
8. Id. P.45
9. Ibid
10. Ibid
11. Ibid
12. Female Genital Mutilation : A Matter of Human Rights United kingdom(2000) P.13
13. Ibid
14. Ibid
15. Id. P.14
16. Id. P.15
17. Id. P.16
18. Id. P. 17
19. Ibid
20. Meaza Ashenafi, HTPs Affecting The Health and Rights of Women Law Reform Strategy for change A report , (March, 200 Addis Ababa) P.44
21. Ibid
22. Id. P.46
23. Ibid
24. Ibid
25. NCTPE, Old Beyond Imaginings Ethiopia ,(Addis Ababa 2003) P.250
26. Meaza Ashenafi, HTPs Affecting The Health and Rights of Women Law Reform Strategy for change A report , (March, 200 Addis Ababa) P.55
27. Ibid
28. Id. P.65
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33. Ibid
34. Ibid
35. Id. P.75
36. Ibid
37. UNICEF /Ethiopia ENABLING COMMUNITIES ABANDON HARMFUL TRADITIONAL PRACTICES, (Addis Ababa, April 2004) P.50
38. Meaza Ashenafi, HTPs Affecting The Health and Rights of Women Law Reform Strategy for change A report , (March, 200 Addis Ababa) P.77

CHAPTER THREE

Legal Analyses on Criminal Law Regarding HTPs

3.1 Introductory Remark

Generally speaking, the penal code of Ethiopia which came into force in 1957 to April 2004 does not carry any provision that makes reference to HTPs. There are however, rules that prohibit such acts as abduction, rape and marriage against the provisions of the civil code which, among others, prohibits early marriage to a certain extent. About 88 HTPs were said to have been recorded in the country before the NCTPE undertook the 1998 Baseline Survey on HTPs¹. From these practices, of these, 20 were selected and analyzed. But only one HTP, abduction, was clearly defined as an act of crime under the 1957 Penal Code of Ethiopia.²

Now the New Criminal Law of Ethiopia 2004 includes various kinds of HTPs. Among these practices, FGM, EM and MBA have been included in the code. FGM has been clearly defined as crime punishing the dower and the relatives of the victims. Acts that bring about the marriage of girls below the prescribed marriageable age also entail Criminal Prosecutions against the perpetrators. Further more abduction has been classified as a serious crime punishable even if marriage is concluded between the abductor and the abducted. HTPs are now placed under book five that deals with crimes Against Individuals and the family. Book five carries a chapter that exclusively regulates crimes relating to HTPs. In this chapter we will see the differences between the legal provisions of the 1957 penal code, the 2004 criminal law with particular reference to FGM, EM and MBA.

3.2 FGM

The 1957 penal code does not have any specific provision on FGM³. When this kind of crime took place, the courts applied (Art .538 and 539) of the 1957 penal Code. The two provisions read as follows:

Art 538 Grave willful Injury

Whosoever intentionally:

- a) Wounds a person so as to endanger his life or permanently to jeopardize his Physical or mental health; or
- b) Maims his body or one of his essential limbs or organs, or disables them, or gravely and conspicuously disfigures him; or
- c) In any other way inflicts upon another an injury or disease of a serious nature,
- d) Is punishable, according to the to the circumstances and to the gravity of the injury, with rigorous imprisonment not exceeding ten years, or with simple imprisonment for not less than one year.

Article 539 commune willful injury

Whosoever causes another to suffer an injury to body or health other than those specified in the preceding article, is punishable, Upon complaint, With simple imprisonment or fine

Proceedings shall be instituted by the Attorney General, and the punishment shall be simple imprisonment for not less than six months, even where there no serious consequences:

- a. where the offender has used poison, a lethal weapon or any other instrument capable of inflicting injuries; or
- b. Where the offender has inflicted the injuries in breach of a duty, or other, or where the victim is weak, Sick, Infirm or incapable of defending himself.

These provisions may be constructed as in corpora ting often relating to FGM as it is a practice that causes bodily injury on the victims⁴. Grave willful injury under these articles carries a penalty extending to ten years rigorous imprisonment while common willful injury carries sentence of simple imprisonment⁵. The provision on grave willful injury in particular covers both bodily injury and mental harm⁶. FGM also results in permanent

harm to the body of the victim as it is something that is carried out on one of the vital organs of a human being .Scientific studies are also said to have confirmed the various psychological harm that follow FGM.

Law enforcement organs were however reluctant to regard FGM as an act that constitutes a crime under Articles 538 and 539 of the previous code. The intent of causing injury while performing FGM and the intent of causing grave and common willful injury are diametrically opposite to each other. In the case of FGM the act is committed (though out of ignorance) with a view to promote the social well-being of the victims; the insentient is not to cause them permanent or temporarily physical or psychological injury. In the case of latter, however the dower has the will of the desire to inflict grave or common physical or mental injury to the victims. Consequently, most legal professionals did not consider that the act of FGM is clear embodied in Articles 538 and 539 of the former penal code. It was this altitude that precluded FGM from investigated by the police, prosecuted by attorneys and adjudicated as a crime by courts. The cause of the problem is the attitude of the general community. It believes that FGM is a purely innocent act performed to advance the well-being of women and girls and to help them to be socially acceptable .Members of the different law enforcement body being apart and parcel of the community, can hardly entertain an opinion different from the public. Consequently it is no wonder if they are reluctant to regard FGM as a crime.

In had interview made with w/ro Tobiaw the head of the Prosecution Department of the Federal First Instance Courts, she said that:

“On one particular occasion after 2004 criminal law with promulgated, she has a debate with a lawyer who argued that FGM is not a crime. On this base she concluded that let alone the general public even there are same among the professional lawyers, who are not aware that FGM has been criminalized by the new code”

Another issue to be taken up is also the absence of mental element which is an important ingredient of criminal behavior⁷. Those who practice FGM do not carry it out with a view to causing harm on the victim⁸. The act is rather taken for something that is done in the interest of the victim⁹.For this reason the old law was difficult to implement in this regard.¹⁰

The new criminal code looks at the problem from two perspectives, namely female circumcision and infibulations of the female genitalia. It states thus:

Articles 565 Female Circumcision

Whoever circumcises a women of any age, Is punishable with simple imprisonment for not less than three months, or fine of not less than five hundred Birr.

Articles 566 Infibulations of the female Genitalia

Whoever infibulations the genitalia of a women, Is punishable with rigorous imprisonment from three years to five years.

Where injury to body or health has resulted due to the act prescribed in sub-article (1) above, subject to the provision of the Criminal Code which provides for a more severe penalty, the punishment shall be rigorous imprisonment from five year to ten years.

Article 569 also punishes parents, guardians or any persons in other capacities who are accomplices to FGM. It reads as follows:

Articles 569

Participation in Harmful Traditional Practices:

A parent or any other person, who participates in the commission of one of the crimes specified in this chapter, is punishable with simple imprisonment not exceeding three months, or fine not exceeding five hundred Birr.

But the new criminal Code does not draw any distinction between Clitoridectomy, and excision. According to the opinion Ato Tiume-Lissan Lemma

The distinction between two kinds of FGM is not indicated under the provision of the new code because no person or institution suggested for the inclusion of these different acts of FGM but even though no distinction has been made between the two, Article 565 lays down the punishment in such a way that it can accommodate for both kinds. Sine the penalty under the article extends from a minimum of three months simple imprisonment to a maximum of three years of simple

imprisonment, and from fine of 500 Birr to 10,000 Birr, courts can decide the appropriate penalty deserved by the perpetrator, depending on the lightness and seriousness of the harm suffered by the victims. The penalty is not so severe for parents and guardians who are accomplices; simple imprisonment does not exceed Three months, and is from ten birr up to 500.00birr.

There seems to be an error in the drafting of Article 565, because it does not include a sub article which specifies what the result will be if the act of FGM results in a homicide it is true that the existence of such a sub article could have made decisional easier for lawyers. However, absence does not prevent the police, the public prosecutor or the judge from taking the necessary step against homicide ensuring from FGM, on the basis of the general principles of the criminal code governing causation and concurrence.

The Article 106 of the criminal code that specifies the principle applicable to simple imprisonment states that such a measure is to be applied to crimes that are not of a serious nature and that are committed by persons who are not a serious danger to society¹¹. The penalty ranges from ten days to three years¹². When we apply this Article in conjunction with Article 565 that lays down the elements of the crime, we note that one who is convicted of having committed female circumcision is liable to simple imprisonment ranging from three months to three years¹³. When one looks at the other alternative to this penalty i.e. fine, Article 90 states that it ranges from Birr 10 to Birr 10,000.00¹⁴. When we relate this provision to Article 565 we take note of the fact that a person who has committed the crime of female circumcision is liable to a fine of Birr 500.00 to Birr 10,000.00¹⁵. Parents or other persons who cooperate with one who commits the act may also be liable to a penalty not exceeding three months simple imprisonment or fine not exceeding Birr 500.00. On the other hand, the more serious crime of infibulations of the female genitalia entails a penalty ranging from three to ten years imprisonment depending on the gravity of the circumstances.¹⁶

But from the high prevalence rate of FGM the penalty of the participants looks not enough ... A question was put to Ato Tieme- Lessan “why the penalty was very light for parents and other participants.” His answer was as follows:

From a legal point of view, It is true that the punishment is light for parents and other participants in the act of any HTPs including FGM; interims of impressments its from 10 days to 3 month simple imprisonment and in the case of fine it is from 10 Birr to 500.00 Birr (Art .569). The maximum penalty for participants is the minimum prescribed for the perpetrator the drafting of this article can be criticized on a few grounds. In the first place, participants, according to Articles 32-41 are classified as principal actors or criminals, instigators, accomplices, conspirators and assessors after the fact not all this participants are punished equally principal criminals are equally punishable; instigators accomplices may be punished as equally as or less than principal criminals; but assessors are sentenced much less sentence. So, in the light of these different categories of participants, it appears to be incorrect to classify all participants as one group in Article 569. In the second place, to include parents and guardians, who act for the interest of girls, with other participants who carry out HTPs for gain under one article and prescribe the same punishment for all of them is another apparent error.

But from a practical stand point, when drafting Article 569 the question was not whether participants should be punished as much as the dower; it was rather whether parents and others should at all be criminally liable. It is well known that (for thousands years) the performance of FGM has been carried out in many communities all over the world it has been religisoly, culturally or socially considered to be a respected act done in the interest of women and girls. To remain uncircumcised is regarded as a social stigma; no body would merry an uncircumcised women. This opinion is strongly advocated not only by the male section of society but by females as well as. Ander such circumstances it is useless to insert criminal provisions which will be very difficult to enforce. The best

method, it was argued, is to educate the public through the mass media and on various forms, the criminal justice system is an effective means of dealing with the problem.

There was another argument against penalizing parents and others in the act of FGM. If parents and other participants are criminally punishable, there would hardly be any other despite the above seemingly convincing arguments; the legislature thought it person to report the case to the judicial authorities or to willingly give testimony where necessary. In the absence of informants and witness the perpetrators of FGM would remain unpunished.

Despite the above seemingly convincing arguments, the legislature thought it necessary to criminalize the participation of parents as well as the perpetrators of the act, in order to send a clear message to the general public that FGM is an illegal degrading and cruel act prohibited by International Law and denounced by the medical profession. More over the fact that the criminal code specified such acts as crimes and prescribes penalties for them is a clear notice to make the community aware of the illegality of these practices. If any person does not observe this notice another way of teaching the public is by punishing and reforming the perpetrator. This intern would also act as a lesson to prospective perpetrators of FGM and other HTPs. This indicates that Criminal Laws, like the mass middies and other forms have a means of educating the public about the evils of FGM. Consequently it was concede red adequate that parent and other participants should receive light sentence in order to give them a lessen.

3.3. EM

The federal constitution provides that only those individuals who have attained the marriage able age under the law may conclude marriage (Article 34)¹⁷. The old law that specifies the marriage able age for girls as fifteen years (Article 58 of the civil code) has been amended by the Revises Family Code of 2000 (Article 7) to eighteen years¹⁸.

Family laws enacted by other regional states also carry similar provisions¹⁹. However, there was no clear provision in the 1957 penal code that regards EM as an act of crime.

The provision of the 1957 penal code close to the problem of EM was Article 615, which reads:

Whosoever intentionally lends his offices, religious or civil, to the solemnization of a marriage forbidden by law, is punishable or fine.

According to this provision neither the spouse who concluded marriage with a girl who is under the legal age nor the persons (parents or otherwise) who gave their consent face any criminal consequence²⁰. For this reason, it seems that even those who do not subscribe to the practice do not consider it as an act of crime. One can not be bold enough to conclude that even law enforcement organs are immune from this belief.

According to Article 615 only the person solemnizing the marriage, i.e. the officer of civil status (in the case of civil marriages) and the religious officer (in religious marriages) are criminally liable. All other actors are absolved of any criminal responsibility.²¹

Given the reality on the ground, the significance of this provision in assisting communities abandon the practice of EM is highly questionable²². In the first place, almost all Ems are concluded in a customary fashion and not before a civil status officer or a religious cleric²³. Secondly actors in EM are not the ones envisaged by the law²⁴. And on top of that there is virtually no system of civil registration in the country not to mention the absence of attitude on the part of local law enforcement personnel to be of any meaningful help in the process²⁵.

Although early marriage is not placed in the chapter on HTPs in the new criminal code, it is clearly prescribed as an act entailing punishment under the law. There are two legal provisions in the new code concerning EM.

Article 647 provides thus:-

1/ whoever intentionally solemnizes to a marriage forbidden by law, is punishable with simple imprisonment not exceeding three years, or fine not exceeding five thousand Birr.

2/ whoever contracts, permits or becomes a witness to a marriage forbidden bylaw, is punishable under the provisions of sub-article (1) of this Article.

3 / where the crime specified under sub articles (1) and (2) of this Article is committed negligently, the punishment shall be imprisonment not exceeding three months. Or fine.

Article 648 reads as follows:

Whoever concludes Marriage with a minor apart from circumstances permitted by relevant Family Code is punishable with:

rigorous imprisonment not exceeding three Years, where the age of the victim is thirteen years or above; or

rigorous imprisonment not exceeding seven years, where the age of the victim is below thirteen years.

The above provisions do not only punish the civil and religious bodies who solemnizing marriage, but also those who contracts, and permits the marriage and those who give testimony to the marriage.

Ato Tieme Lissan was asked by this writer about the contribution of the new Criminal Code as regards early marriage,

One contribution of the new Code, Ato Tieme Lissan states has already been mentioned above; I.e. unlike the new code the former penal code punishes only those who solemnizing the marriage; the marriage, persons who contract or permit or give the testimony to any marriage were not criminally liable.

More over on the persistent request on the women birth association, a specific legal provision on early marriage (Art.648) was introduced later. The very fact that a single provision addressing early marriage has been embodied in the code helps ornery women and others to find it easily, site the article and argue about their rights. Another advantage is that the man who contracts a marriage with a miner is given a sever penalty which is believed fit a crime. Besides, the penalty is more sever for the criminal who contracts marriage with a miner below the age of 13 than for the one who marries a girl of above the age of 13. The difference of punishment is necessary because a small girl undergoes a more serious physical and mental fortune than a girl above the age of 13. Sometimes life-long injury or death may result from early marriage. Another question that was put to Ato time Lessan was about the contradiction between Article 647 (2) and Art 648 of the new code and about which provision should apply incase of persons marrying minors.

It is true Ato Tiume Lissan stated that there is contradiction between the two provisions as rewards contracting parties. In the absence of the clear provision of Art 648 a man contracting with a miner girl can be charged and punished under Art 647(2) because the clause . “Who ever contracts... a marriage for bidden by law ”, includes a man who marriage a girl below the age of 18. This means that Art 647(2) and Article 648 can be used to punish a man who commits early marriage. As mentioned above, Article 648 was drafted mach letter as the request of persons against early marriage while doing so it was forgotten to delete similar close under 647(2). Nevertheless, prosecutors and judges should have no difficulty in choosing the appropriate provision. One of the principles of interpretation dictates that, when two similar penal provision are present the more explicit legal provision which prescribes a sever penalty is preferred to a general provision.

Then Ato Tiume Lissan was asked by this writer why the penalty under 647 remained light while that of art 648 increased. His answer was that “It perhaps resulted from error rather than out of intention. But it could be argued that marriage officiating authorities and persons who permit or give their testimony to an early marriage should not be punished as severely as man who marry minors.”

Finally Ato Tiume Lissan was asked whether Art 649 applies to Art 648. His answer was that:

The said article applies only to Art 646 and 647; it does not apply to Art 648. This is because Art 649 mentions only the two Articles but not the article on early marriage. On these bases it is only on other marriages forbidden by law that criminal action should be taken only after the dissolution of the illegal marriage. In the case of early marriage this procedure is unnecessary because Art 649 does not include Art 648. Criminal Prosecution on early marriage can and should proceed without prior dissolution of the marriage. In case of early marriage it is wrong for public prosecutors to ask divorce in order to prosecute. The confusion due to the misplacement of article 648, this article should have been inserted after Article 649.

3.4. MBA

It is common knowledge that MBA amounts to flagrant violation of the consent principle that underlies a law full marriage.²⁶

The 1957 penal code had a provision that criminalizes abduction Article 558; it reads as follows:

Whoever carries off a woman by violence, or after having obtained her consent to abduction by intimidation or violence, trickery or deceit, is punishable with rigorous imprisonment not exceeding three years.

Where the woman carried off is responsible and freely contracts in the midst of her abductor a valid marriage, proceedings shall be instituted only where such marriage is subsequently annulled by law.

According to Article 558, the abductor may be punished with rigorous imprisonment not exceeding three years. Article 107 of the same prescribes that rigorous imprisonment shall not be less than one year²⁷. This implies that an abductor may be punished with rigorous imprisonment that ranges from one to three years²⁸. The article covers both abductions made with a view to marriage the victim and those made with another criminal intent²⁹. Art.558 (2)

This provision constituted a serious set back in the struggle for preventing marriage by abduction. In practice too, it has the effect of conferring a legal blessing on marriage by abduction³⁰. In practice too, it has the effect of conferring a legal blessing on marriage by abduction³¹. Especially in a society such as ours, we also need to view the matter in terms of the options available to the girl who is a victim of abduction³². More often than not, the girl does not have any other choice to subscribing to the ensuing marriage offer³³. This is a choice imposed on her not only by her abductor but also by members of her own family most of whom support MBA. Her opportunity to conclude another marriage after the abduction is slim³⁴. All these cumulative reasons lead to the conclusion of marriage with the abductor³⁵. The result absolves the perpetrator of any criminal liability.³⁶

The utility of the law in the move towards enabling communities abandon MBA as a form of HTP is minimal, to say the least³⁷. In fact, the practices of MBA is not regarded as crime by the law since it is stated that criminal prosecution may not be instituted against the abductor if the act of abduction is followed by marriage.

The new criminal code has, in this regard, come up with improvements of a paramount significance. Article 587 the new Criminal Code reads as follows:

Abduction of a Woman

1. Whoever with intent to marry a woman abducts her by violence, or commits such an act after having obtained her consent by intimidation, threat, trickery or deceit. is punishable with rigorous imprisonment from three years to ten years.
2. Where the act of abduction is accompanied by rape, the perpetrator shall be liable to the punishment prescribed for rape in this code.

3. The conclusion of a marriage between the abductor and the abducted subsequent to the abduction shall not preclude criminal liability.
4. Nothing shall affect the right of the victim to claim compensation under civil law for the moral and material damage she may have sustained as a result of the abduction.

Abduction is now a crime not with standing conclusion of marriage following the act³⁸. In terms of the men fall element required for commission of a crime, the intention of the abductor to conclude marriage with the victim does not have any bearing on his responsibility for the crime.³⁹

This writer put questions to Ato Tiume Lessan concerning the changes that have been introduced in the criminal law and concerning the purpose behind the changes Ato Tiume Lessan answer is as follows:

Measure changes has been introduced in the new criminal code in respect of legal provisions on abduction. The element of each kind of abduction have been clearly defined, and the penalties there to have been aggravated so as to fit the crime. Art.558 of the former Code defines Abduction regardless of any purpose behind the crime; but Art 557 (1) of the new code adds that the abduction should be committed for the purpose of marriage. With respect to abduction without any clear purpose several provisions have been introduced by the new code. Abduction of a person withers a man or a woman is punishable severally under a new legal provision (Art 586). Besides, abduction of a child for no clear purpose is punishable under new sub articles carrying a heavy sentence. This sub articles (Art 589) (1) and (2) are drafted along similar lines as Articles 558 and 559 of the former Code.

If abducting a person (Art 586), a woman (Art 588) and a child (Art 589) is committed for any purpose specified under (Art 590), the punishment is much more aggravated than under Art 561 of the 1957 penal code.

The objectives of behind the changes are very obvious. The rights of women and girls guaranteed by international law and by the countries constitutions. As well as by natural law should be insured. It should be known that females are not sex objects created to serve the lust of men.

To allow any man to abduct any girl or women under the cover of marriage would totally ruin the lives of females. When a girl is abducted when she is very small or while getting her education, a part from the horrible physical and psychological consequently against her will being, her future life is fully dependent on the wishes on the man. She has neither the economic nor the educational capability to resist any future mace treatment on the part of the abductor. His agreement to marry her man actually result from fear of criminal liability and punishment. After a while he may drive away this one and run after where girls and women. The life of the former abducted female would be worse than ever before it is for this purpose that the abductor remains criminally liable even if marriage has been concluded according to Art 587 (3) of the new criminal code.

Other improvements on the previous penal code are that an abducted who rape after abduction is concurrently punished and rape (Art 587(2)), and that an abductor to component the abducted girl or women materially and morality (Art 587(4)). The inclusion of these provisions helps judges and prosecutors as well as other interested persons to be a ware of what measures should be taken against the abductor with out the necessity of examining the various legal provisions of the code.

END NOTES

Chapter Three

1. UNICEF /Ethiopia ENABLING COMMUNITIES ABANDON HARMFUL TRADITIONAL PRACTICES,(Addis Ababa, April 2004) P.52
2. Ibid
3. Ethiopian Woman Lawyers' Association, HARMFUL TRADITIONAL PRACTICES UNDER ETHIOPIAN LAWS (Addis Ababa May 2005) P.8
4. Id. P.9
5. Ibid
6. Ibid
7. Ibid
8. Ibid
9. Ibid
10. Ibid
11. Id. P.10
12. Ibid
13. Ibid
14. Ibid
15. Ibid
16. Id. P.11
17. UNICEF /Ethiopia ENABLING COMMUNITIES ABANDON HARMFUL TRADITIONAL PRACTICES,(Addis Ababa, April 2004) P.53
18. Ibid
19. Ibid
20. Ibid
21. Ibid
22. Ibid
23. Ibid
24. Ibid
25. Id.P.54
26. Ibid

27. Ethiopian Woman Lawyers' Association, HARMFUL TRADITIONAL PRACTICES UNDER ETHIOPIAN LAWS (Addis Ababa May 2005) P.12
28. Id. P.13
29. Ibid
30. Ibid
31. Ibid
32. Ibid
33. Ibid
34. Ibid
35. Ibid
36. Ibid
37. UNICEF /Ethiopia ENABLING COMMUNITIES ABANDON HARMFUL TRADITIONAL PRACTICES,(Addis Ababa, April 2004) P.54
38. Ethiopian Woman Lawyers' Association, HARMFUL TRADITIONAL PRACTICES UNDER ETHIOPIAN LAWS (Addis Ababa May 2005) P.13
39. Ibid

CHAPTER FOUR

The feature of HTPs in some selective Sub Cities and Bodies in the control and eradication of these practices

4.1 Introductory remark

According to some research, most of the HTPs are performed in the rural area of Ethiopia. But the problem exist in Addis Ababa, even though HTPs are not carried out in cities to the extent that they are performed in the county side. As in other areas women are the victims of several HTPs in Addis Ababa. These problems affect the physical well-being of females and it may result in their death. Various researches indicate that females are subjected to different tortures solely on the ground of their femininity, and that the persons who inflict such in human treatment include close relatives as well as people who are known to the victims. Some of these HTPs are FGM, EM and MBA. These practices are often performed in the outlying areas of Addis Ababa. Of course they can sometimes at the center of the city.

There are several places in Addis Ababa where FGM, EM and MBA are done. These practices are also performed in most localities in the Akaki Sub City. The performance of HTP is not limited to the above mentioned places and subjective FGM, E.M and MBA are carried out in the Kolfe Sub city particularly in Tiro and Lomi Meda. In places called Hana Mariam and Dertu Mojo which are found with in the locality of Nefase Selk Lafto Sub City.

The purpose of this Chapter is to assess the activities which governmental and non governmental bodies carryout to detect control and prevent the performance of HTPs with in the subjective mentioned above.

4.2. HTPs in Yeka and Gullele Sub Cities

4.2.1 Yeka Sub city

It was necessary to go to Yeka sub city police investigation in order to find out about the existence of HTPs among in Addis Ababa. An interview was made with corporal sergeant Tewedage Wendmu and corporal sergeant Fasika Eshetu the interview release the following facts “abductions is the crime on which many accusation where submitted to the police;”

Two years ago abduction is a serious matter; but since the police set up follow on which they discussed the problem with the residents of the community, the frequency of abduction appears to have decreased. An accusation on early marriage was presented to the police only once with in a period of eight years. As far as FGM is concerned not even a single report has been made to the police in they Yeka sub city.

The corporal sergeants think that no report is made on FGM because the practice does not exist in Addis Ababa. But as regards early marriage parents report on such cases. But since their children that they have reached marriageable age, it is difficult for the police to investigate such matters. But is it possible to conclude that no practices of FGM are performed in Addis Ababa? A questioner was dispersed among 30 women some of whom were workers but mostly students. All of them think that FGM and EM as well as MBA exist in Addis Ababa. Among 27 police man who filled up the questioner, 56% are of the opinion that only abduction is practiced in Addis Ababa, 7% think that FGM, EM and MBA are occasionally performed in Addis Ababa; 37% state with certainty that the three HTPs are carried out in the capital city. The questioner was given to 15 Lawyers 40% whom think that abduction exists; 20% are not sure about the existence of FGM, EM and MBA in the city. 40% are sure that the three HTPs are performed in Addis Ababa.

As indicated above, policemen are not aware of the performance of the three HTPs, while members of the community express with certainty that the practices are carryout in Addis Ababa.

As regards the answer given by Corporal Sergeant Fasika to the question on early marriage, he states that ‘It is difficult investigation in such cases because girls want to marry below the age of eighteen although their parents object to it.’ But this statement contradicts with the legal provisions of the criminal law. Article 648 of the criminal code of Ethiopia 2004 declares that:

“Whoever concludes with” is punishable with rigorous imprisonment. According to this legal provision, it is the male person who is punishable for marrying a girl in her minority contrary to law. In such cases the consent of the girls is null and void; such a marriage is illegal regardless of her consent. Since marrying a minor is illegal, it is not right for the members of Yeka sub city police head office to stop investigation simply because the girls have given their consent to early marriage. Such an opinion is contrary to the legal provision of the criminal code and the head office should give more legal education to its members who conduct investigation on HTPs. The next question put to the police was ‘how successful they have been in investigating and collecting evidence after an accusation has been lodged on HTPs’ According to the answers given:

Many accusations are often longed with respect to abduction; efforts are made to investigate the accusation carefully; but the problem is that the abductors disappear during investigation. Particularly, the informer and the abductor disappear from the police by mutual agreement and express to the police their arbitration on the marriage. This is because the amount of dowry increases heavily when a parent or a close relative does not pursue on accusation after lodging it. But the dowry is small in the absence of any accusation. Accusations are often submitted to the police in such cases because the dowry increases or decrease depending on whether or not on accusation is lodged. The Police states that, after investigating such cases carefully, they send the police files to the public prosecutors. Such action by the police commendable because it is in conformity with the law.

Another question submitted to the police concerns ‘the number of cases sent to the public prosecution for decision, submitted to the courts for trial and those closed by the public prosecution and the judiciary?’ The answer given was that they send on the police files to

the prosecution after careful investigation but that the public prosecutor closed the files or do not institute criminal proceedings because the informers and abductors disappear. But the police do not know the number of cases closed by courts due to lack of information. According the statement given by the police, parents in some instance in rural areas send their daughters to the city for education but they compel their daughter to stop their education and return home in order to get them too marred during minority. The police take action on such an early marriage. One particular case on which the police took action in the following.

The name was the girl was Mestawet she was 11 years old.

She was a 1st grade student in the Heberete Fere elementary

School in Addis Ababa, she was popular with her teachers for her cleverness and hard work. Her father had sent her to her grandparents in Addis Ababa, so that she would get education. But on account of his agreement with another man to give his daughter in marriage to the son of that other person, he came from Fiche to Addis Ababa to take his daughter from her grand parents. When Mestawot heard the information, she told the matter to the director of her school. The director of his part informed the Yeka police head office about the case. After this information the police gave warning To Mestawot's father not to proceed with his plan. The content of the letter written by the police was that Mestawot's father should stop doing such an action, because early marriage is illegal according to the revised family code and the criminal code of Ethiopia, and that criminal action would be taken against him if he insisted on his plan. Mestawot's father became aware that the police were informed of his plan and that a strong warning was written to him, abandoned his idea and returned to Fiche living his daughter with her grand parents.

This praise worthy action by the police is an example what the police could do to fight HTPs and protect the human rights of girls.

In general the answer given by the police of the Yeka sub city to a questioner distributed among them, are indicative of the fact that they strongly object to HTPs

and that would do their at most to control and eliminate the performance of such practices.

4.2.2. Gullele Sub City

Another body was the Gullele sub City police head office, which was asked on HTPS corporal Sergeant Ketema Serna a member of the Gullele sub city office states as follows concerning the number of cases reported around HTPs. “MBA is reported from 10-15 cases in a year, EM from 5-10 cases; while no FGM is reported”. However according to Corporal Sergeant Ketema's statement, there are reported rumors. FGM is performed in the villages of Kechene and SiroMeda with in the locality of the Gullele sub city.

As regards the question to put the Corporal Sergeant Ketema on “what action was taken by the police after accusation and how successful they were in caring out the investigation and collecting evidence on HTPs”. His answer as follows:

HTPs are among the criminal cases that are reported to the police and on which evidences are easily gathered most evidences are produced by the neighbors of the victims after receiving the testimony of such witnesses, the Police send the files to the prosecution office. There are cases in which the close relatives of the victims and perpetrators of the crimes get reconciled and report to the police and their reconciliation. But these are not accepted by the police.

There for the Gullele Sub City Police are of the opinion that, in respect of accusations submitted to them on EM and MBA they are successor evidence and sending the Police files to the Prosecution for decision. On the bases of Corporal Sergeant Kitema's statement, Gullele Sub City Police have, in this writer's opinion, done their duty much more satisfactory than those of the Yeka sub city. As regards FGM, corporal sergeant ketema was asked why such cases are not reported even though the police are aware of rumors that such practices are performed in some places with in the Gulele subcity he thinks that no FGM cases are reported due to lack of coconsciousness. The members of the community believe that FGM is lawful and are not aware that these practices are punishable under the criminal code of Ethiopia.

On the question of the number of cases submitted to the judiciary for trial and those rejected by the prosecution and judiciary, corporal sergeant ketema asserts that, though they send their files to the prosecutors after investigating and collective evidence carefully, they do not know about the number of cases tried by the judiciary or those rejected both by the judiciary and prosecution. This is because there is no exchange of information between the police on the one hand, and the prosecution or the judiciary on the other as long as the police files are not sent back to the police with decisions rejecting the cases due to insufficiency of evidence, the police have no way of finding out what decisions are given.

Although, there should be close link and cooperation among the police, the prosecution and the judiciary according to the criminal procedure code, no such close relationship is noticed among these bodies in actual fact. The fact that they have no close contact with each other on their daily activities is against the legal provisions of the criminal procedure code of Ethiopia on 1961. Among such mutually interdependent bodies, the relationship should be such that the investigating police institutions should be made aware of whether or not final decisions have been taken on the cases investigated by them.

This writer has had the opportunity of looking into a police file relating to abduction. The case was reported to the police on April 18, 2008.

The name of the abducted girl is Enkutatash Mekonnen, who is 16 years old. She is a grade 10 student in the Yekatit 12 secondary school the abductor is Ato Aschalew Ababayehu who is the teacher of abducted girl. It was ATo Mekonnen Desta the father of the victim who reported the case to the police. The report alleges that on Tuesday at 8:00 am on April 8, 2008 the abductor who is about the age of 25 years kidnapped his daughter when she was about to enter through the gate of Yekatit 12 secondary school. The report adds that the abductor had detained for 6 days on his house. After the girl was sent by the police to the family planning institution, the letter written by the institution expresses that after the examination of Enkutatash Mekonnen there was a scratch on

the inner edge of her vagina and that there was brush on her hymen from this fact the medical certificate concludes that sexual intercourse was performed through rubbing of the vagina. The abductor was released on bail on April 23, 2008 after being detained the police for 8 days.

4.3. Institution having interest in the control and Eradication of HTPs

4.3.1. Associations

There are different institutions in Ethiopia which carryout various activities around HTPs, by creating a wariness and exposing the negative effect of these practices and by looking after women and girls that have under gone horrible experience because of these practices. Among these are found Ethiopian Lawyers Association (EWLA) and The Ethiopian Institution set up to eradicate HTPs Ye Ethiopia Goji Limadawi Dirgitoch Aswogaj Mahiber (EGLDAM).

4.3.1.1. Ethiopian Women Lawyers Association (EWLA)

The Ethiopian Women Lawyers Association is a non-profit making woman's advocacy groups founded by few women Lawyers¹. The operation of the Association has begun in 1996 after its registration as a civic association by the ministry of justice on 7th of June 1995². The Association functions with the generous grant from consortium of donors. Currently, it has its head office in Addis Ababa and branch offices in Bahir Dar, Assosa, Awassa, Nazareth, Diredawa and Gambella.³

A questioner was given by this writer to W/ro Shewaye Takele who is the co-ordinate of the legal advice service of the association. The first question concerns the activities by their association around HTPs. Her answer was that:

The association did its at most for the inclusion of HTPs as punishable acts in the criminal code of Ethiopia 2004, through discussions with the highest legislative body of Ethiopia and with its executive bodes. In cooperation with the UNICEF Ethiopia, the association as prepared a Book let under the title, HARME FULL TRADITIONAL PRACTICES

UNDER ETIOPIAN LAWS it has distributed the book let to different Institutions. So that various sectors of the communities can have Opportunity to read it since the booklet was written in both the Amharic and English languages. The general public can get the necessary evidence from the booklet.

W/ro Shewaye was asked “whether FGM practices in Addis Ababa” her replay was that,

Among the HTPs, only abduction and early marriage are done in the capital city. But the number of cases is not large. Early marriage against the concept of the girl is carried out more frequently than abduction. But she thinks that FGM is not practiced in Addis Ababa.

She was asked “if any steps were taken by the association to find out whether or not FGM is performed in Addis Ababa.” She stated that "no research has so far been made to discover if FGM, EM and MBA are practiced within the capital city but preparations to study these practices in the future are been made by the association."

The association began its work in 1996 G.C; this means 12 years have passed since its foundation the fact that no committee has been set up to research these activities within such a long period of time is not to its credit. As regards the branch offices outside Addis Ababa they should not be discredited for lack of research because they were founded a few years ago of all the institutions, the EWLA should have taken the leading role in fighting against HTPs by studying and exposing the performance of these practices, by educating the public of their negative effects on the life of woman's and girl's by giving legal aid to victims under going these tortures.

But the association is not even well aware of the practices of FGM, EM and MBA, where as the police; the prosecutors, the judges and a large part of the public do know that these practices are being carried out with in the locality of Addis Ababa. It can be concluded from these that the EWLA has not done what is expected of it. W/ro Shewaye was asked “what the association has been doing to give solution to the problem.” She stated that:

The association uses two methods. A. To education the community to magazines, mass media etc. B. To bring before court the criminal and his assistants to have them punished according to the criminal code of Ethiopia.

W/ro Shewaye was asked “what legal aid the association gives to victims when they come to their offices after undergoing horrifying experiences physical and metal torture.” Her replay was that “such victims are sent to the police because the acts are crimes under the criminal code.” She was asked whether court judgments given in such cases are satisfactory. She replayed by saying that she is not aware of circumstances in which court gave judgments. She added that “there is no report of any cases brought before the courts. But there are reports of many cases adjudicated by courts with in the administrative region. The problem in the adjudication of crimes relating to HTPs is that public prosecutors' recommended light sentences and courts accept their recommendation. Courts, taking in to account the Social conditions of a criminal, to give light Penalties, where as they should have imposed the penalty deserved by the criminal. This indicates that in just is committed by judicial authorities.”

In general it is clear that the establishment and the objective of the EWLA its to prevent or stop the cruel treatment underground by women and girls. But as indicated in the interview, the association has not done to control widely spread attacks on women and girls. From the tracts distributed by the association it can be realized that, for the purpose of fighting HTPs it receives grants form the Austrian Development corporation, Department for International Development (DFID) , Finland Embassy, NOVIB , Oxfam GB, Royal Norwegian Embassy, Sweden Embassy and Tsion Dessie Memorial Gender Fund (CIDA).

On my repeated interviews with the EWLA I had the opportunity of taking with the women and girls who went there to seek advice. Most of the victims I tacked to had grievances against the association; the association begins to help them but does not go far enough to put on and to their case. The Association, having been founded to relive women and girls form many any human has not done its duties satisfactorily; the future the association should stop being negligent and concentrate on what is expected of it for

women and girls. Since it receives many donations from different NGO's more than any other institution it should do more to guarantee the rights of women and girls.

4.3.1.2. Ye Ethiopia Goji Limadawi Dirgiytoch Aswogaj Mahiber (EGLDAM)

The association was established in 1988G.C, and has been in existence for 20 years⁴. Its reports to the public after studying the various activities concerning HTPs performed both in urban and rural areas.

This writer went to these associations and talked with W/t Kidest Getachew the project coordinator. She was asked why the first name of the association was changed. Her answer was that:

A Committee is temporary body which carries it's activates for a limited time and it was established under the ministry of heath. But the activities of this body are not temporary; so long as HTPs exist this association should fight a permanent basis. This was the reason why the change of name took place.

In her answer to what the association has been doing to fight against FGM, EM and MBA some how the HPTs W/t Kidst stated that:

In a Survey conducted 10 years ago the association a research on five kinds of HTPs. This association draws projects in different areas where different problems are reported the exist. The association establishes clubs in major areas and distributes materials written on HTPs. It achieves the tasks with other related organizations cooperatively. Especially, in Hararie zone there was FGM problems but these days our association has done it's at most minimize this problem. On the other hand the association has set up an operation called committee conversation through such operation the association assist women to discuss these problems. This association set up about 37 cultural centers (houses) and the purpose of these houses are to found cultural centers in order to facilitate discussion among various sectors of the community.

Next was asked whether she thinks that HTPs exist in Addis Ababa. Her answer was that:

In a research made the previous 10 years, 60% of the FGM in Addis Ababa was performed in Akaki and Kotebi sub region. In particular FGM exercised by immigrant who come from the Arab countries. She also added that EM and MBA take place in Addis Ababa. FGM is carried out on immigrants' from Arabic countries. The Firm gathers methodic information by launching baseline survey, preparing questioner and conducting grope discussions. The organization does not carry out such activities by it self alone but in cooperation with students, teachers, other volunteers and supporting organizations.

This association is making substantial contribution by doing a better job than other organizations which seek to diminish HTPs by providing educational programs. Recently in February 2008 it has published a book in titled 'Follow up On National Survey on HTPs in Ethiopia.' In the introductory part of the book we find the following statement: 'In1997the National Committee of Traditional Practices of Ethiopia (NCTPE), now EGLDAM, conducted a national survey (BLS) on HTP in Ethiopia (NCTPE 1998).The survey provided a land mark initiative that laid the ground, the evidence base, for a concerted effort to eliminate HTP in Ethiopia. EGLADM also produced a book based on Baseline Survey (WCTPE).Now NCTPE/EGLADM is 20 years old. The baseline survey is 10 years old. The need to up date the information base for further action was critically felt by all partners.

According to the statistic provided by this book we find the following types of circumcision as currently being practiced in Addis Ababa.

Most Practiced Types of FGM in Addis.

	Clitoridectomy			Excision			Infibulation		
	None	0-4	10>	None	0-4	10>	None	0-4	10>
Age									
Number	-	1	7	2	1	1	-	-	1

This organization NCTPE/EDLADM has brought about noticeable change in the reduction of HTPs by providing educational programs and raising public awareness in Addis Ababa. The following statistic was given to substantiate this fact.

Percent Decrease in Prevalence of FGM, EM and MBA in Addis Ababa

HTP	Baseline	Current	Difference	%Decrease
FGM	70.2	52.2	18	25.6
EM	50.9	32.3	18.6	36.5
MBA	18.4	10.1	8.3	45.1

Attitude of the study population by Addis Ababa (% who support eradication)

FGM		EM		MBA	
Baseline	Current	Baseline	Current	Baseline	Current
65	91.4	90	93.5	89	96.0

The above three charts which EGLDAM has prepared in its research work are indicative of the fact that are indicative of the fact that such practices as FGM, EM and MBA are still being practiced in Addis Ababa although to a lesser extent than the base lime survey

4.4. The implementation of the Law by judicial authorities in relation to HTPs

The HTPs which are so prevalent among the population are causing physical, moral and psychological damage on women and girls. It has been pointed out in the previous chapters that the Ethiopian Constitution, Criminal law, Family law and International Human Rights which Ethiopia has ratified, are all opposed to the practicing of such harmful practices against women. Now the question arises what legal action must be taken when such practices are committed. In

the following passage we will try to see some of the activities of the concerned governmental organizations when legal charges are made against such practices.

4.4.1. Addis Ababa police commission crime Investigation Department

The main duty and responsibility of Addis Ababa police commission crime Investigation Department is to carry out investigations on murder criminal cases. With regard to HTPs the commission takes up the case and conduct the necessary investigation only when the harmful practice causes the death of the victim. UP until now there has not been any such event which had been recorded. Detailed reports of different of kind of crimes committed on children under the age of 18 are sent from the 10 sub cities in Addis to the department of the protection of children founded under the police commission.

For the readers information the following data is given from the department of children's' protection with regard to HTPs for three consecutive years.

No.	Kind of crime	Year		
		1997	1998	1999
1	FGM	-	-	-
2	EM	-	-	-
3	MBA	8	12	7

We can see from this chart that from among all the HTPs committed on under aged children only the cases of abduction girls from 15-17 years of age.

This department of children's protection under Addis Ababa police commission supervises the activities of all children's protection sub departments which are under every sub city police department. It also coordinates all such sub-departments. Apart from this it does not receive charges from individuals unless the case involves death.

In an effort to know if there are any charges made on HTPs perpetrated on children and adult women the central intelligence Department which operates under Addis Ababa police commission has been approached.

According to Sergeant Tadesse Lisanue, who works in this intelligence department, the reports on criminal cases which are sent from the 10 sub cities police departments to A.A.P.C.I.D apart from few cases nearly all are reported in their general form and not in a specific way. For instance if there are any crimes of FGM, EM and MBA are reported along with other social related crimes and petty offences. Certainly there has been the practice of specifically reporting such HTP related criminal cases but four years ago the police abandoned such a practice. It is understandable that reporting in detail every criminal act in a specific manner may be tiresome and a bit uncomfortable for documentation. Nevertheless such a practice makes it difficult for any one to easily acquire the necessary information on a particular type of crime.

“Why are HTPs crimes especially FGM and E.M committed on child and adult women not reported to the police?” Commander Zelalem W/Mariam who has been working for a long time in A.A.P.C.I.D made the following comment:

The reasons why no legal charges are made on such crimes could be, firstly because the victims are often children. Even if they are adults they don't wish to accuse their own parents. Or it could be they might not know that they have such rights. Secondly because the offenders are parents and their close friends there are slim chances of the offence being exposed and for charges to be made on them. Thirdly because the population in the area may accept such offences as normal traditional acts it is unwilling to report it to the police or it may not have the awareness of its damaging effect.

“The NCTPE has made it clear that FGM is still practiced in Addis Ababa. But why is it that such offence are not reported to the police?”

The fact is the police do not conduct criminal investigation on its own or on the evidences provided by the Ethiopian harmful practices eradication committee. For such an investigation be carried out either the victim of the offence or someone else need first to report the case to the police. Because the offenders of such crimes are either the parents of victim or their close allies the case is not reported to the police the moment it occurs. For this reason the

police cannot make any investigation on the matter let alone to penalize the offender.

The public attitude towards FGM is viewed as legally and culturally needful. The parents are of the opinion that if their daughter is not circumcised she will be lacking something and they believe uncircumcision could cause her to make early and untimely Sexual encounter.

4.4.2. HTPs and the Prosecution Office

The prosecution office which has its quarters in Lideta Federal courts makes investigations along with the police when case related to HTPs arise. When the case is a serious one it makes charges in the court of law and conducts litigation for the case. Previously this office was only braining to the court charges brought by the police. This time however it carries investigations in cooperation with the police.

To learn more about the activities being made by this prosecution office with regards to HTPs, I had approached W/ro Tobiyaw Mekonen, the head of the prosecution department of the Federal first instance. Here follows the interview.

Question: From the offences made with regards to HTPs and especially from among FGM, EM and MBA over which one do you think many charges are brought to your office?

Answer: Many of the legal charges brought to our office have to do with abduction. There are almost no charges brought to us concerning FGM. Occasionally however charges over EM are made.

Question: Are there any problems with evidence gathering, investigation process, pressing charges with prosecutive law and court decision making over the court cases and charges brought to your office?

Answer: The problems with regard to evidence gathering have to do with the society. Because the community regards such things as justifiable and harmless witnesses are unwilling to appear in court to give their testimony. There are rather willing to settle the matter by playing a reconciliatory

role. It is also a difficult task for the police to force an unwilling person to come to the court to give their testimony. The main problem with the court of law is the releasing of the accused person from jail in exchange for a bail of a lesser degree. This makes it difficult to get back the accused again. Besides the court decision is much delayed.

Question: From among the cases brought to your office by the police how many are brought to the court of law and how many are closed down?

Answer: The prosecution office closes down only legal cases that do not have enough evidence. When there is enough evidence available we make legal charges over the case. Most of the cases brought to us are also in turn brought to the court. The court investigates the evidence and hears the witnesses presented to it by the prosecution office. When the jury thinks the litigation and the testimony given is not adequate it closes down the accusation according to the Criminal Law procedure Article 141. When the accused person refuse the charge brought against him by the prosecution office and the testimony given against him in a satisfactory manner then the case is closed down according to procedure Article 142.

Finally when asked if there is any data base to show the number of HTPs offences brought to their office annually, she said there is no such data apart from the graph made in 1997 and 1998. While the prosecution office is an influential justice foundation which makes legal charges to the jury over many crimes and offences committed it is indeed regrettable to learn that there is no established data something need to be done about it.

The following is a case of early marriage offence over which a charge was made and a verdict given subsequently.

The accused is a man by the name of Merigeta Haregewoyn Mekonnen. He is a resident of Yeka Subcity Kebele 01/02 house number 187. On January 27, 1999 E.C. he married to a girl named Hanna with the consent of her parents, she was 13. The wedding ceremony was held in the church and conducted in a religious atmosphere. When the case was presented to the prosecution office, it pressed charge over the case to the Federal Instance Court. The accused has

by promising to treat her with dignity and to allow her to pursue her education. He asked the court to be lenient and spare his marriage since his marriage was established by the priestly authority and Eucharistic ceremony. The court has rejected his defense and brought the marriage to an end. The accusation the prosecution office made and the court decision are attached at the end of this paper work.

4.4.3. HTPs and The court

Law courts can play a crucial and decisive role for the keeping of human rights of citizens. They are expected to carefully see the charges made and the evidences presented with respect to the law and give decisions without being influence by the accused.

The legal body entrusted with the responsibility of investigating charges related to HTPs against women, is the criminal court found in Lideta. This time a special court ruling has been established to oversee such cases. Although the case is now being given better consideration than ever before, the fact that the law makes provision for the accused to be bailed out and the subsequent disappearance of the accused is having a negative impact on society according to the police, the prosecution office and other governmental and non- governmental organizations working on the affairs of women. The effects of these are first of all psychological impact if creates on the victim and family. Secondly it fails to curb such practices; this means other offenders are encouraged in stead of being restrained from committing such offences.

In an attempt to seek explanation to the above mentioned problem this writer had made on effort to reach and discuss with a judge who works in the court related to HTPs but without success. Again this writer had tried to discuss the matter with miss Rut Araya assigned and working on the 7th court room however she is so busy all through the week in the court that she had no time for discussion. In order to know the number of HTPs offences which are brought to the court of law, this writer had visited The Federal First Instance court Statistics Department .The method of documentation in this statistics office is however similar to that to A.A.P.C.C.I.D that it is hard to find out the number of offences committed on a particular type of crime. Nevertheless a statistical data on

abduction and raping of women has the following information. This statistical data tells of the number of crimes on abduction and raping through the years 1994-1999.

Year	Passed on from the previous year	New cases made	Closed down	Decision made on	Post pond for the following year
1994	68	33	20	9	69
1995	69	35	29	8	68
1996	68	14	30	38	14
1997	14	69	24	18	42
1998	42	30	46	14	14
1999	14	12	16	7	5

When we look at the above chart in the years 1994-1996 the abduction and raping of women had increased. In the year 1996 while the number of cases passed on from the previous year had increased new cases had correspondingly decreased, what had been postponed for the following year had also decreased. In the year 1997 what had been passed on from the previous year had decreased while the number of cases put off for the following year had increased. In the years 1998-1999 the number of cases put off for the following year had decreased. In 1998 the number of cases closed down has greatly increased.

A case of abduction found in this court house reads as follows:

The accused is Ato Merkebu- Gossa Bireda, aged 21. On September 22, 1998 E.C. around 4 O'clock in the afternoon in Nefas Silk Sub city Kebele 01, in a surrounding known as Ertu Waja, helped by his accomplice has abducted a 16 year old girl by the name of chali – Gutema. Afterwards he raped this helpless and defenseless young lady. This accusation was made on the rapist by the prosecution law. The court after hearing litigations from both the right side and the left side, although the accused had pleaded not guilty the court had sentenced him to 5 years of imprisonment. Since there were enough evidences to verify the fact that he had indeed committed the crime. The accusation made by the prosecution, the right and left side litigations and the court decision is attached at the end of this paper work.

END NOTES

Chapter Four

1. Ethiopian Women Lawyers' Association (Tract)
2. Ibid
3. Ibid
4. EGLDAM Follow up National Survey on HTPs in Ethiopia, (Addis Ababa Feb.2008)

Conclusion

After this paperwork was given a title, it was needful to know how to proceed with the work and make the necessary assessment on its implementation. The writer of this research work had wrongly thought it initially that HTPs related offences were mainly and prevalently cases which occur in rural Ethiopia with few or none occurring in the township. However as we set out to read books on HTPs and especially the publication in 1998 by NCTPE, it soon became clear that HTPs related crimes have their percentage occurrence in Addis Ababa as well according to a base line survey which the organization has conducted in its research over the types of HTPs related offences, their prevalence and places of occurrence. Among these HTPs the main ones are FGM, EM and MBA.

Based on this research work of NCTPE a proposal was prepared on whether or not these three main HTPs do occur in Addis, whether the new criminal law has declared such acts as unlawful and whether it does address the problem sufficiently. As the proposal, which seeks to answer the above questions, was being prepared, were offered to the writer of this research work that the research should focus in some rural areas, since many people were of the opinion that HTPs were rarely practiced in Addis. Although NCTPE has officially confirmed in its research the existence of such practices, it was difficult to tell with confidence the continued existence of the practices to this day because 10 years had already passed since the research was made.

After being sure as to the existence or non-existence of the practices in Addis, if the practice had been abolished (in the case that it doesn't exist nowadays), it was intend to make research on what legal actions the law had taken to uproot, such practices as FGM, EM and MBA.

Interviews made with different sectors of society, questionnaires conducted as well as dates obtained from law courts and other organizations working over related cases have clearly shown the existence of HTPs in Addis beyond any doubt.

Although the research revealed the existence of harmful traditional practices especially FGM, EM and MBA, the most reported case to the police was MBA. Such unlawful practice mostly occurs in sub cities which are located at the suburbs of the city.

Nonetheless even in sub cities such as Kechence and Shiromeda which are relatively close to the center of the city such things are reported to be practiced. Female Genital Mutilation is known to be perpetrated among women who have emigrated from Arab countries and are currently residing in Shiromeda area. Such offences however are not reported to the police primarily because of lack of awareness among the population that first of all such practices are harmful to the victim and to the society as a whole and that they are unlawful. Early marriages are occasionally reported to the police and there are some which have been forced to terminate by court decision.

In the new criminal code, HTPs have got especially attention and treatment; moreover perpetrators of EM and MBA will not go unpunished according to the provision of the new law. It is the belief of the writer that this will greatly contribute in the overall endeavor to reduce and finally eradicate all such harmful practices from the country.

Among the organizations which work on HTPs, there are two non- governmental organizations, EWLA and EGLDAM which are prominent. Especially EGLDAM is currently engaged in a project which could help to substantially reduce the practices. It is an organization with a good prospect for the future.

Recommendation

HTPs are practices which have been handed down from generation to generation and have obtained acceptances by the society. However, the new criminal code has laid down legal provision to eradicate or minimum the misconduct of criminals who are engaged in such activities. But due to lack of awareness on the act of the general public, it is difficult to observe the law. As long as the members of the community are ignorant of the harmfulness of traditional practices, it is useless merely to criminalize such acts. The problem is rampant in the rural parts of Ethiopia and it existence in the sub cities on a smaller scale. This paper focuses on HTPs carried out in sub cities.

The researcher has tried to distribute Questioner which gave concrete information that helped to find out sound solution for the minimization of the problem. Since, this problem is critical all NGOs and work hard with the involvement of the society, in order to find solution for this problem.

The first step to stop the abuse of HTPs is to focus on the rural part of Ethiopia. Since, the government policy has already facilitated all ethnic groups to use their language for education purpose HTPs should be given as a subject for students. Apart from schools, influential people like elders, ethnic and religious leaders, and other members' society should be trained through to discussion forums. Then these persons on their part can teach the broad masses of society concerning the negative effect of HTPs. Health institutions can also make great contribution to minimize HTPs. When patients go to hospitals and clinics for treatment, medical professionals have the opportunity to teach them about the effect of HTP. In addition; it is possible to transmit the messages by showing documentary films and dramas that would create awareness.

Using posters around schools, clinics, market place and public centers are it also a major means of portraying violence on women and girls as well as consequences HTPs. Like EGLDAM that uses the home centers, it is useful to arrange a program for free (open) discussion in order to arrive at solutions.

The people should be taught that practicing such kind of criminal activities may lead to the punishment of fine and imprisonment to create awareness

All members of the society should be through to immediately inform the police about the mater when they see HTPs being carried out.

As regard cities, since many technological means are available we can disseminate information through pamphlet, newspaper, radio, TV etc. we can also use voluntaries who can teach in the school or various institution.

The legal institution especially police should strive in arresting those people who practice HTPs. The prosecutors should institute criminal proceeding immediately after they get the files from the police, and the court should give priority for such kind of crimes so that it helps to avoid or reduce the practice.

To implement the above ideas, it requires financial power on the part of government to abolish or minimize HTPs along side its development and other programs. Moreover NGOs should endeavor to change the mind of back word societies.

We should also learn from the experiences of other countries and societies that have almost obliterated HTPs.

Challenges and Obstacles in the preparation of this paperwork

1. The non-availability of earlier research work in Addis Ababa on harmful traditional practices.
2. The lack of cooperation by some organizations to give HTP related information and to be interviewed. Repeated attempts were made to acquire information from EWLA, and the information finally offered was not satisfactory.
3. In the preparation of this paperwork interviewing people and gathering information was not an easy task. To accomplish this task while still carrying out other daily duties has resulted in lack of time.
4. There was financial restraint to make the research work in a broader scale.

These have been the main Obstacles which the writer had in her research work.

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1. The Criminal Code of Federal Democratic of Ethiopia(2004)
2. The Constitution of the Federal Democratic Republic of Ethiopia(1994)
3. The Revised Family Code(2000)

TABLE OF OTHER MATERIALS

1. International Covenant on Economic, Social and Cultural Rights
2. Universal Declaration of Human Rights(1948)
3. The Convention on the Elimination of all forms of Discrimination Against Women(1979)
4. The International Covenant on Civil and Political Rights
5. The Convention on the Rights of the Child(1989)

EINTERVIWEES

1. Corporal Sergeant Tewedage Wendmu, Yeka sub city Police head office, Jun.1,2008
2. Corporal Sergeant Fasika Eshetu, Yeka Sub city head office, Jun. 1,2008
3. Sergeant Ketema Serna Gullele Sub city Police head office Jun.16,2008
4. W/ro Shewaye Takele, who is the Co-ordinate of legal advise of the EWLA, May 18, 2008
5. W/t Kidest Getachew , the project Coordinator of EGLDAM
6. W/ro Tobiyaw Mekonnen, the head of the prosecution department of the Federal First Instance, May 22, 2008
7. Commander Zelalem W/mariam who has been working in A.A.P.C.I.D, May 29, 2008
8. Ato Tiume-Lissan Lemma, Jun 22,2008

Questionnaire

Age of the person questioned _____

Gender _____

Education _____

Occupation _____

Address (sub city and Kebele _____)

1. Do you believe harmful traditional practices are attacks made on women? Why

Yes

No

If you believe it is so, give your reasons:

2. Have you ever been a victim of HTPs and especially of genital female genital mutilation, early marriage or abduction?

FGM

Abduction

early marriage

none

3. Do you know HTPs are unlawful according to the Criminal Law?

Yes

No

4. What would you do if you were victimized on HTPs by your own family or someone else? _____

5. Do you believe HTPs and especially FGM, EM and MBA are all indeed harmful? Why? _____

6. Do you think all women should undergo FGM? Why?

7. If you have baby daughter in the future, do you intend to circumcise her?

Yes

No

I've no idea

8. Have you ever come across FGM in your living neighborhood or somewhere else?

If so how old was the girl and where was it?

9. If you have some more comments please?

Questioner

Address of the Respondent _____

Educational Qualification _____

Job _____

1. Which one of Harmful traditional practices is reported for police?

FGM EM MBA None

2. Who reported for police?

The society the offender the family others

3. Do police give due attention for Harmful Traditional Practices?

Yes No To some extent

4. After the New Criminal Law considered Harmful Traditional Practices as criminal practice, is there any difference?

Yes No To some extent

If you say no would you explain why?

5. Do you believe Harmful Traditional Practices are practiced in Addis?

Yes No I don't know

6. Do you believe Harmful Traditional Practices like FGM, EM and MBA are practiced in Addis?

Yes No I don't know

7. Do you believe the above activities could bring harm for female?

Yes No

if your answer is Yes or No would you state your reason

8. Do you believe that the 2004 Criminal Law has brought a great significance in reduction of practising the Harmful Traditional Practices?

Yes No To some extent

If you say 'No' would you state your reason? _____

9. Do you believe that the society aware of these Harmful Traditional Practices is criminal activities?

Yes No I don't know

If you say No please state your reason? _____

10. Who are the responsible bodies/ person in such activities?

11. To remove or decrease these crimes, what measure should be taken by the societies? _____

12. If you have additional point would you explain it?
