



## **Safeguarding Legal Rights of Citizens: The Case of Ethiopia**

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### **Introduction**

The family law section of the 1960 Ethiopian Civil Code was revised and promulgated in July 2000 in Addis Ababa to amend its gender discriminatory clauses. The Ethiopian Civil Code of 1960 was adopted from European countries (David, 1967; Krzeczunowicz, 1969; Beckstrom, 1973), and the provisions of the family law were similar in content with the traditional laws of Europe and the United States. As the traditional laws of Europe and the United States were gender biased and discriminatory (Coltrane, 1996; Stetson, 1996; Spain, 2003), so was the previous family law in Addis Ababa. For instance, article 635 stipulated that the husband is the head of the family while article 646 stated that the wife would work as a servant if the husband could not hire one.

The provisions also involved tedious court proceedings for women seeking legal resolution of marital litigations (Shiferaw 1998; W/Giorgis 1997). It was common for family law court hearings to involve a series of adjourned appointments, which had negative impacts on women and children. Since husbands are generally the breadwinners, wives and children in marital conflict would suffer from starvation and various ailments because of lack of income during the delays caused by the adjournments. The information posted on the website of the (U.S.) Library of Congress concerning the role of Ethiopian women states: "Ethiopian women traditionally have suffered sociocultural and economic discrimination and have had fewer opportunities than men for personal growth, education, and employment. Even the civil code affirmed the woman's inferior position..." (Last visited on June 12, 2009).

This condition would deprive women of the power to bargain, for instance, with their married partners and it created a disadvantageous situation for women within the court system, thus creating a situation of gender inequality, which is the central concern of feminist theory. As gender refers to social roles and behaviours, which men and women are expected to adhere to in society, feminism entails the advocacy for gender equality—equality before the law and equal access to resources for both sexes (Anderson and Taylor, 2006; Macionis, 2006). Anderson and Herr state that: "Feminism is the theory that women should have political, economic, and social rights equal to those men; it is also the movement to win such rights of women" (2007, 554). In Ethiopia, preserving the rights of women would be difficult, because men generally possess more power than women do in the decision-making process both at the household level and in the public sphere in Ethiopia (Messeret, 2001; Medhin 2000). This, in turn, limits their capacity to participate in the process of social development, and to advocate for their rights and gender equality.

The contemporary motto of gender equality, which has been advanced by the United Nations, urged many countries, including Ethiopia, to design gender sensitive policies and to revise gender biased



legislation to safeguard the rights of women. This is evidenced by U.N. monitored international conferences conducted in different places such as in Beijing in September 1995 (Beneria, 2003; Hurrell and Woods, 1999; Chinkin, 1999). The international conferences convened in Addis Ababa in November 1999 (UN Economic Commission for Africa website (last visited on June 10, 2009), and in New York in June 2000 (United Nations, Economic and Social Council, 2000) made explicit references to the importance of reviewing social policies and macroeconomic objectives in a manner that would address gender issues and women's rights. According to the reports of many delegations, policy directions have become gender mainstreamed and laws have been revised to promote gender equality and to concur with international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As the United Nations posted it on its website (last visited May 28, 2009), article 16 of CEDAW states that every state is obliged to take appropriate means to eliminate discrimination arising from marriage and family relations.

Ethiopia, as a member state of the United Nations, is compelled to adhere to the United Nations principles and conventions to safeguard the rights of its citizens. In this connection, Connell states that "[t]he principle of equal rights for women and men is now embedded in international law (e.g., in the United Nations Convention on the Elimination of Discrimination against Women (CEDAW) and in common administrative practices... (2006, 837)." Member states' delegations to the Beijing World conference on gender issues in 1995 and the signatories of CEDAW have been convinced of the importance of allocating sufficient government funding for policies and programs pertinent to gender concerns (Rubin and Bartle, 2005; Momsen, 2004; Gutierrez, 2003).

It has been anticipated that the revised family code in Addis Ababa would create an atmosphere that could mitigate gender biased judgment. It has also been anticipated that the revised code would be part of the human rights protection movement, which would bring about narrowing the gender inequality gap and the disparities of opportunities and resources accessible to men and women in that country. The goal is not merely to have legislation on paper, but to translate legislation into practice to safeguard the legal rights of women. Hence, as stipulated in the constitution of 1995 of Ethiopia, articles 34 and 35, and due to the international situation mentioned above, the government of Ethiopia was urged to revise the discriminatory provisions found in the 1960 Civil Code of the country. This article presents the consequences of the implementation of the revised family code. It can help verify whether or not the revised family code has been implemented by the courts to safeguard the rights of women.

## **METHODOLOGY**

The study was conducted in line with a qualitative research design, and the data was collected on the basis of interviews. The interviews were conducted through telephone conversations both on weekends and weekdays according to the preference of study participants from April 15 to May 7, 2007. This research approach also facilitated the process of obtaining first-hand data. Hence, the analysis of the study has been carried out generally in line with an inductive approach. Patton elucidates that: "Inductive



analysis begins with specific observations [data collection] and builds toward general patterns (2002, 56).” Purposive sampling technique was employed for this study in order to collect information in the area of inquiry. Lewis-Beck et al state: “Purposive sampling in qualitative inquiry is the deliberate seeking out of participants with particular characteristics... (2004, 884).” The participants for the study were four family court judges, four attorneys and six gender advocates. The questions posed to the three groups of interviewees helped in capturing diverse views. The information obtained facilitated in deriving the knowledge of the existence of both the positive aspects, and the impediments to the implementation process of the code. Identified as participants of the first group, four family court judges were interviewed. The rest of the two groups of information-rich participants (four attorneys and six knowledgeable individuals who were affiliated with gender advocacy institutions) were selected on the basis of their experience. The selection process of the participants in the study involved consultation with persons who could identify individuals who had significant roles in the judicial implementation of the code to be willing and become interviewees. In this respect, the investigator was able to approach the three family court judges with the cooperation of the head judge, the President of the primary courts, which are known as “first instance” courts. The investigator was also able to recruit a person who was the deputy head judge as a participant because this person had the required information not only as a family court judge but also as a prominent figure who played a key role in the restoration of the family courts. The participants of the study were found to be information-rich because they were knowledgeable concerning the implementation process of the revised code.

## **DISCUSSION**

After refining the collected information through coding procedures, the investigator was able to identify themes and categories to furnish discussion and analysis. Commensurate to research ethics, to assure anonymity, a pseudonym has been assigned to each participant in order to make the narration clear. According to the responses of the participants, there have been changes observed in judicial procedures having both favorable and unfavorable effects.

### **Favorable Effects**

With regard to positive effects of changes, all participants concurred in that under the previous law, to get divorced, petitioners (usually women) were required to forward an application to the court stipulating that their case be referred to a tribunal of family arbitrators. An example of a positive development is that currently women do not have to endure the protracted and tedious procedures of the previous family law in order to resolve a marital conflict. They can now obtain divorce without grounds being given, as the current code clearly indicates that marriage is a matter of individual choice. Thus, an individual has the right to divorce merely by filing a petition, and without being incurring legal or financial liability.

According to participants of the judges’ group, the application of the revised family code provides benefits for women since couples in marital conflict now have the right to get their conflicts resolved



through the assistance of family arbitrators, and can present their grievances to the court if they are not satisfied with the decision of the arbitrators. The court may refer cases to family arbitrators, but the role of the arbitrators is limited to preparing a thorough report on arbitration attempts.

The views of participants of the judges' group are converged in that women filing for divorce, for example, for spousal abuse, need not provide detailed justification to the court. The previously problematic conditions regarding the function of a tribunal of family arbitrators are non-existent now. This is a major achievement in alleviating the plight of women living in continued irreconcilable marital conflicts. Participants of the gender advocates' group invariably noted that women in marital litigation or separation are now able to receive an immediate solution to their marital conflict marking the beginning of an era in which women's rights are protected by the legal system of Ethiopia.

Unlike the views of participants of the judges' group who indicated that it is the culpable party (either the husband or the wife) who should leave the house until a marital conflict is resolved, participant two (Mr. Mekonnen) and participant three (Mr. Berihun) of the attorneys' group observed that in practice under the current law, it is the husband who leaves the house when a severe marital conflict arises. Since it may be difficult for the court to identify the economically more secure party, women who have the option of residing with their financially stable parents may remain at home while men will be forced to leave. All of the participants in the gender advocates' group indicated that the proper application of the law would constrain the culpable party to leave the house. As indicated by participants of the attorneys' group, it is usually women who exercise the option to remain at home during marital conflicts. Any property acquired in a marriage is considered conjugal common property whether or not registered in the name of only one of the partners. In the past, property would be registered in the name of the husband and upon divorce women were deprived of their divided share due to not being considered a legal proprietor.

All of the participants indicated that property division involves persistent failure and prolongation in reaching decisions, and that the revised code gives women equal access to common property division. Participant three of the gender advocates' group (Mr. Mebratu) states that in the past, the proprietor could liquidate properties usually registered solely in the name of the husband, in order to deprive women of their share. Currently, that is not possible because concerned agencies, for instance, the Road and Transport Authority, Ministry of Works, inquire whether or not both of the spouses would agree to liquidate a particular property, for example, a car or a house. This allows women to benefit from properties which may not be registered in their names. This is a general trend. Nevertheless, it appears that there is still a loophole. Ms. Tsedale (participant five of the gender advocates' group) pointed out that some men, upon marital conflict, could get properties registered in the name of their close relatives, for example, their mothers, to deny their wives a property claim. Furthermore, it stipulates that parties to an irregular union of more than three years duration have equal rights in a pecuniary relationship over common property. Therefore women in irregular unions, whose period of cohabitation has been for the duration of three or more years, are legally entitled to a share from property division.

#### **Unfavourable Effects**



Concerning adverse effects of changes in judicial proceedings, all of the participants indicated that there is no tribunal of family arbitrators institutionalized as under the previous law. Couples themselves seek out family arbitrators. However, as opposed to the positive views of participants of the judges' group, participants in the gender advocates' group argue that the economically more secure party (usually the men) may not agree to use arbitration. Following the grievances of the disadvantaged party (usually the woman), the court tends to assign arbitrators. These arbitrators may be unknown to the litigating couple, and may demand payment for arbitration as was done under the previous code. Judge Tesfanesh (participant three of the judges' group) observed that litigating couples, who were dissatisfied with the decision of family arbitrators, are unlikely to report to the court. She also mentioned that the court has a limited mandate to handle marital conflicts prior to receiving a petition for divorce. She noted that it is common for women in marital conflict to report domestic violence and to file for child support or household provisions in order to generate action from the court. However, courts tend not to investigate marital conflicts, since pre-divorce matters fall under the jurisdiction of arbitrators. This inconveniences couples in marital conflict, particularly women, who are the primary victims of family litigations. According to this participant, the lack of clarity within article 118 as to how arbitrators should conduct marital conflicts, and how litigants should present their cases to arbitrators, precludes clear understanding of the issue on the part of the public. This renders women more vulnerable to anomalies in the law; and particularly since women are often preoccupied with household duties, they generally have less access to information as compared to men, and thus may have no clear understanding of a particular provision.

Participants of the judges' group view the inability of judges to rule on conjugal property division upon divorce as a weakness of the revised code. One of the litigating parties, usually the woman, is further required to file for property division. This creates an inconvenient time lag for women who face financial hardship until they receive their divided property share. Likewise, the court may be unable to decide on child maintenance and household provisions before granting divorce, most women, especially at the lower social stratum, would be compelled to divorce. However, they invariably undergo considerable economic distress during life as a divorcée, their original desire being financial relief not divorce. The judges tended to attenuate the significance of certain provisions, which became threats to policy intent, and they would make judgments in certain cases to attain the statutory objectives—to safeguard the rights of women and children.

The application of the provision that allows no-fault divorce could place women at a disadvantage. That is because men generally control property and are able to dispose of jointly owned property without conferring with their wives. Likewise, women are liable to be automatically deprived of their half (or share) of jointly owned property or money, for instance, in a joint account. As women are economically dependent on men, they could face financial hardship. Mr. Berihun (participant three of the attorneys' group) points out that when the court finds out that a particular house was owned by the husband before the marriage, and when the ruling would confirm that the wife was not entitled to any share of the property, upon divorce, the woman would be evicted and would suffer from the lack of a



place of residence. This is even more critical for women who have been married, for say, 30 years, without having common property, and then get divorced. Opportunities for such women to remarry would be minimal, and they would experience difficulty in subsequently leading stable lives. He states: "Once, I have even encountered a judge, who could not find any supporting evidence or a loophole to rule in favor of a female litigant, going out of his way to implore a man in such a situation to give some portion of the properties to a non-proprietor woman."

The fact that a divorce petition is ruled upon within three months time has encouraged the increased incidence of divorce from which women suffer more than men because of their pre-existing economic dependence. Ms. Tsigereda (participant two of the gender advocates' group) discussed the disadvantages that the application of the code caused women in that properties are divided between litigating couples upon divorce without giving a greater share of property to the parent granted child custody. According to her, the fact that the court would give child custody to the parent whom children prefer to live with, and since children usually prefer to live with their mother, they would suffer a disadvantage. This is because, sooner or later, the share that a woman gets from property division will be depleted due to the expenses required to raise her custodial children. Concerning irregular union, the application of the code is also disadvantageous for women in irregular unions in two ways. First, it does not acknowledge property division unless cohabitating partners have lived together for more than three years, and upon the dissolution the union women (the usual non-proprietors) would be denied access to property division. Property relationships in an irregular union (of less than three years), preceding marriage, is not legally recognized. This creates a disadvantage for women wherein they are denied access to properties acquired within cohabitation prior to marriage.

### **CONCLUSION**

In general, the code is being implemented in accordance with the policy intent to safeguard the legal rights of women. To some degree, its objectives have been realized. For instance, the party petitioning for divorce is no longer subject to a fine, as was invariably the case under the previous code. Such parties, usually women, no longer incur the penalty historically imposed upon those disposed to forward grievances and divorce requests to the court. So, women subject to intolerable suffering in a marital relationship can easily obtain a divorce without being penalized and within a relatively short period of time, due to the fact that *no-fault divorce* has now been codified. Nonetheless, all the participants by and large concluded that as men are usually economically at an advantage, and marriage being a source of income for women, the application of the law has made acquiring a divorce a relatively simple matter; and divorced women would suffer more from financial hardship. All the participants indicated that the code, like the previous one, is devoid of alimony or a post divorce maintenance provision for divorced women. This worsens the already economically disadvantageous position of women after divorce.

The lack of remuneration for arbitration services to which the public is still unaccustomed tends to discourage the willingness of family arbitrators to resolve marital conflicts. Yet, this arbitration fee can create a problem especially for women who would be unable to afford the payment, which is one of the



major reasons for the revision of the previous family law. In fact, the court has the duty to persuade litigating couples to reconcile, which concurs with article 82 of the revised code. Such interventions have created a heavy burden on the part of the judges, who are already overloaded by handling a large and growing daily caseload, which in turn leaves family court judges with insufficient time to investigate family litigation cases; this is an impediment to the realization of the statutory objectives of the code. The investigator has noticed that there is confusion between arbitration and conciliation. The law prohibits arbitrators from making decisions; their function is to mediate between conflicting spouses to resolve their differences. However, the very term arbitration implies decision-making. Yet, the law states that there is arbitration after divorce to present a report to the court concerning certain issues such as property division and child custody. This cannot be considered arbitration; it is more appropriately recognized as the duty of conciliators. Even though the operation of the tribunal of arbitrators under the previous law was problematic, it had its benefits in that it could reconcile disputing spouses by identifying underlying problems. As Shiferaw (1998) notes under the previous code, there were repeated postponements of appointments of the tribunal of family arbitrators. Yet, under the current code if an arbitrator is absent there is no provision for the court to appoint another. Although the time limit to resolve a marital conflict is restricted to three months, marital conflicts often cannot be resolved within such a short period of time due to the fact that arbitrators were liable to decline to appear on appointed days. Hence, it can be argued that the problem of reconciling marital conflicts through family arbitration still persists.

Furthermore, some of the participants, for example one of the judges suggested, family arbitrators could assist the court by ascertaining the wishes of children as to their desire to live with their mother or father. The fact that the code dictates that a marital conflict be resolved within three months creates a situation where many litigating couples are not afforded the opportunity to properly exercise the option of reconciliation. The short period of time is often insufficient for resolving a marital conflict. Further, the fact that family arbitrators are by custom exclusively men can predispose the results of marital conflict arbitration to fail in the task of reflecting the viewpoints of women. This is associated with the fact that societal values favor men. Societal values also rendered Ethiopian women economically disadvantaged, most being economically dependent upon their husbands. According to the Ethiopian Government Action Plan on Gender and Development posted on UN Division for the Advancement of Women's website (last visited May 14, 2009), due to societal values, which promote male supremacy, women are discouraged from acquiring control over resources, and have limited access to opportunities such as education. The action plan also explains that there is the active promotion of the importance of education. However, women are still culturally expected to occupy themselves with household chores, or to get married early, which inevitably result in the suspension or termination of academic pursuits for most women desiring an education or career. This is a reflection of the fact that men and women occupy different places in the social and economic stratification. This makes the codification of *no-fault divorce* ahead of its time, i.e. a mechanism empowering women socially before addressing female economic



emancipation. It may be plausible to grant divorce after legally separating an irreconcilable couple for some time,

Notwithstanding the importance of asserting one's rights in any preferred way, institutionalizing *no-fault divorce* in Ethiopia might be appropriate when women are empowered both socially and economically, which concurs with feminist theory. Thus, the U.N. has been urging member states to reassess their policy objectives to mainstream gender issues in their social and economic policies to improve the social and legal status of women and assessing the global conditions affecting women with regard to these issues. Since Ethiopia participated in several of the UN convened conferences and presented its progress reports, which included the legal status of women, the implementation of the revised family code is a part and consequence of this global gender advocacy movement. Nonetheless, the revised code has limitations for which stakeholders such as gender advocates and judges are seeking further revisions to be made to rectify the inadequacy of the code and mitigate the noticeable weaknesses of its identified provisions. To redress the problem, all concerned parties, whether public or private, should exert concerted efforts towards safeguarding the legal rights of women. The issue should not be relegated to women alone; men should also actively be engaged in this global and national advocacy enterprise. When women benefit, men also benefit, and so does the society at large.

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