

FAMILY VIOLENCE AGAINST WOMEN:
HOW DOES ETHIOPIAN LAW
COMPARE WITH INTERNATIONAL DEFINITIONS?

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The family is often equated with a sanctuary - A place where individuals seek love, safety, security and shelter. But the evidence shows that it is also a place that imperils lives and breeds some of the most drastic forms of violence perpetrated against women and girls.

- UNICEF¹

Abstract

With the recognition of family violence by the United Nations as a human rights abuse in the 1990s, the issue of family violence has achieved a much greater profile in terms of law and policy development in many countries. However, unfortunately, in Ethiopia so far no serious steps have been taken in this direction. The evidence of growing incidence of family violence against women in the country is a clear indication that the general Criminal Law provisions are failing to combat this social evil. In this background, this paper discusses the enormity of the problem of FVAW in

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1. UNICEF, INNOCENTI DIGEST, No. 6 June 2000, *Domestic Violence Against women and Girls*, at 3, available at <http://www.unicef-irc.org/publications/pdf/digest6e.pdf> (accessed on November 2, 2011). The INNOCENTI DIGEST is compiled by the UNICEF International Child Development Centre to provide reliable and easily accessed information on a critical children’s rights concern. It is designed as a working tool for executive decision-makers, programme managers and other practitioners in child-related fields.

the Ethiopian society, shows the inadequacy of the relevant legal provisions under the Ethiopian laws in the light of the international legal instruments and special laws of prominent countries, and emphasizes on the immediate need for the enactment of special law to prevent family violence in Ethiopia.

Key words: *Family, definitions, inadequacies, special law, violence, women,*

I. INTRODUCTION

Safety and a sense of security is what everyone expects from a home. But for many women across the world, particularly Ethiopian women, home is actually a dangerous place. The harsh realities of today's families everywhere in the world demonstrate women being abused/killed by their husbands, girls being discriminated by their parents, women and girls being abused by other male members of the family, female fetuses being aborted and female infants being killed.

Family Violence Against Women (FVAW) and Intimate Partner Violence (IPV) are a subset of the larger body of Violence Against Women (VAW).² FVAW includes "threatened and actual use of physical, mental, psychological,"³ emotional and economic abuse against women by her family members or other intimate partners.⁴ Violence in the family is one social issue that is pervasive across all socioeconomic, racial, ethnic, gender, and age boundaries.⁵ Specifically, Ethiopia is not an exception but one of the worst victims of the problem as "Ethiopia has one of the highest

2. *Women & Children Intellectual Enhancement Centre*, available at <http://www.wocianigeria.org/resources-publications.htm>. (accessed on May 12, 2012).

3. *Id.*

4. The United States Department of Justice, Office on Violence Against Women, *Domestic Violence*, available at <http://www.ovw.usdoj.gov/domviolence.htm/> (accessed on Feb. 13, 2013).

5. KARL KURST-SWANGER, JACQUELINE L. PETCOSKY, *VIOLENCE IN THE HOME: MULTIDISCIPLINARY PERSPECTIVES*, at 3 (Oxford University Press 2003).

prevalence rates of both sexual and physical violence by an intimate partner.”⁶

While all types of VAW in and outside a woman’s home are serious violations of her dignity and safety, and even threaten her life, violence she encounters in her own home poses a serious question to her very existence in this world. Home is meant to be the place where one gets protection from all sorts of fear. Every home should be a safe place, every home a shelter. But, ironically, when abuse strikes, there is no home.

The recognition of family violence by the United Nations as a human rights abuse in the 1990s has meant that domestic violence has achieved a much greater profile in terms of law and policy development in many countries.⁷ However, unfortunately, in Ethiopia so far no serious steps have been taken in this direction. Therefore, this paper intends to look into the enormity of the problem of FVAW in the Ethiopian society, shows the inadequacy of the legal protection for victims of FVAW under the Ethiopian laws, and emphasizes on the immediate need for the enactment of special laws to prevent this social evil. Before discussing the Ethiopian socio-legal scenario on the point, at the outset, the paper brings out the multiple dimensions of the problem of FVAW. A presentation of the nature and consequences of the problem and scope of the concept under the international documents as well as some of the national laws is included in the first part of this paper. This helps an understanding of the seriousness of the problem and how effective are the laws of the country to protect the women victims of family violence. Section II, discusses the meaning and scope of different expressions that are in use to denote violence within the family, the scope of FVAW and the effects of FVAW on women’s emotional and physical health. Section III elaborates on the legal

6. Yemane Berhane, *Ending Domestic Violence against Women in Ethiopia*, Editorial, 18 ETH. J. HEALTH DEV.3, at 131 (2004) (citing Gossaye Y, et al., *Butajira Rural Health Program: Women’s life events study in rural Ethiopia*, ETH. J. HEALTH DEV. 2003).

7. CEDAW General Recommendation No. 19: *Violence against Women*, adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women, in 1992 (Contained in Document A/47/38), available at <http://www.unhcr.org/refworld/docid/453882a422.html> (accessed on Feb. 3, 2011). The United Nations Fourth World Conference on Women Beijing, China - September 1995, *Action for Equality, Development and Peace, PLATFORM FOR ACTION Human Rights of Women Diagnosis, Strategic objective I.1*, available at <http://www.un.org/womenwatch/daw/beijing/platform/human.htm> (accessed on Feb. 3, 2011).

definitions of FVAW. Finally, Section IV of the paper discusses the problem of FVAW in Ethiopia, the shortcomings of the existing general legal provisions and the obligation on the part of the State, being a party to the Convention on the Elimination of all Forms of Discrimination against Women, to enact a special law to combat the problem.

II. FAMILY VIOLENCE AGAINST WOMEN: DEFINITIONS, SCOPE, AND CONSEQUENCES

Attacking the evil of family violence starts with a full understanding of the problem, the related terms and concepts, its harmful consequences and the efficacy of the legal protection available.

A. *Definitions: “Domestic,” “Family,” and “Intimate”*

Several expressions are in use worldwide to denote VAW within marital and other intimate relationships. The term “domestic” is a broad and general term and is used in different contexts; the term need not necessarily refer to the institution of family. And the terms like “spousal violence” and “intimate partner violence” are narrow terms referring to the behaviour between the spouses or live-in partners only. In the instances of incest, female genital mutilation and other harmful traditional practices, the perpetrators can be other than spouses. Therefore, the author considers the term “family violence” to be more appropriate to define the abusive behaviour in the institution of family. “Families are essentially about solidarities and these are created and pursued through blood ties, marriage and intimate relationships such as parent, child, grandparent and grandchild.”⁸

The term family violence normally refers “to violence that takes place between immediate family members: husbands, wives, children, and parents.”⁹ However, the cultural and legal definitions of the institution of family are changing to include unions which cannot be strictly brought

8. LIND MCKIE, FAMILIES, VIOLENCE AND SOCIAL CHANGE, in Tim May (ed.), *Issues in Society Series*, at 14 (Open University Press, New York, 2005) (citation omitted).

9. OLA W. BARNETT ET AL., FAMILY VIOLENCE ACROSS THE LIFE SPAN: AN INTRODUCTION, at 22 (SAGE Publications, Inc., 3rd ed. 2011).

under the concept of traditional family.¹⁰ Therefore, the discussion of family violence such as marital rape and wife beating inevitably includes the violence that happens “between unmarried intimates.”¹¹ The term intimate in today’s context refers to “anyone in a very close personal relationship,”¹² usually a sexual relationship including same-sex relationships.

The U.S. Bureau of Justice and the Centers for Disease Control and Prevention currently uses the term ‘intimate partner violence’ to refer to violence between spouses, ex-spouses, or separated spouses; between cohabiters or ex-cohabiters; between boyfriends or ex-boyfriends and girlfriends or ex-girlfriends; and between same-sex partners or ex-partners.¹³ Therefore, though the terms intimate partner violence, wife battering, marital violence, domestic violence and family violence are being used interchangeably to denote a person’s violent or abusive behavior with a partner married or unmarried, heterosexual or same sex, the author prefers to use the expression ‘family violence’ for the reasons explained at the beginning of this section.

B. Scope: Types of Family Violence Against Women

Various kinds of VAW are prevalent within the families all over the world. The type, frequency, and intensity of VAW in the family may differ from time to time, society to society, and family to family but it exists in most of the families. It is manifested in various ways throughout women’s lives: right from the womb to the tomb.¹⁴ During her childhood, a girl is

10. *Id.* at 23.

11. *Id.*

12. *Id.*

13. See National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States*, Atlanta (GA): Centers for Disease Control and Prevention, 2003, available at http://www.cdc.gov/ncipc/pub-res/ipv_cost/ipvbook-final-feb18.pdf (accessed on Aug. 11, 2012).

14. The practice of sex-selective abortions is common in some Asian countries including China and India. But, it is also being practiced in the United States often by people who trace their ancestry to countries that commonly practice sex-selective abortions. See *Ban On Abortions for Sex Selection And Genetic Abnormalities-Model Legislation & Policy Guide For the 2011 Legislative Year*, Americans United For Life, Changing Law to Protect Human Life, State by State, available at <http://www.aul.org/wp-content/>

subjected to enforced malnutrition and deprivation of basic facilities in comparison with her male siblings and other male members of the family. In many cases, she does not get proper education or even adequate medical care. Like in many other countries, girls in Ethiopia are victimized to early marriage, incest, sexual abuse and even prostitution especially during their adolescence. Women in marriage and intimate relationships suffer wife battering and marital rape.

Family violence is a pattern of assaultive and coercive behaviors.¹⁵ The assaultive and coercive behaviors are not restricted to any particular period of a woman's life. Physical, mental, and emotional violence are three major manifestations of family violence.¹⁶ Acts that are directed against the body of the victim such as beating, rape, and murder, amount to physical violence.¹⁷ Acts like destruction of property belonging to the victim, throwing objects around the victim, harming pets of the victim, and abusing her dependants are classed as indirect physical violence.¹⁸

It is quite possible to abuse someone without even touching the person physically. All those behaviors which can disturb a woman emotionally and psychologically, such as, insulting, intimidating, name calling, controlling behaviors, etc., fall under this category. The emotions¹⁹ and psychology of a person are so strongly related to each other that most of the time they are

uploads/2010/12/Sex-Selective-and-Genetic-Abnormality-Ban-2011-LG.pdf (accessed on Sept. 30, 2011).

15. LINDA G. MILLS, *THE HEART OF INTIMATE ABUSE: NEW INTERVENTIONS IN CHILD WELFARE, CRIMINAL JUSTICE AND HEALTH SETTINGS*, in *SPRINGER SERIES ON FAMILY VIOLENCE*, at 10 (Albert R. Roberts ed., Springer Publishing Company, Inc., New York, 1998).

16. Pierce county, *Domestic Violence and its effects*, April 21, 2010, available at <http://www.allbestarticles.com/legal-informations/abuse/domestic-violence-and-its-effects.html> (accessed on Sept. 30, 2011).

17. *Id.*

18. *Id.*

19. There are roughly nine so-called negative emotions: anger, fright, anxiety, guilt, shame, sadness, envy, jealousy, and disgust, each a product of a different set of troubled conditions of living, and each involving different harms or threats. And there are roughly four positive emotions: happiness, pride, relief, and love. To this list, we probably could add three more whose valence is equivocal or mixed: hope, compassion, and gratitude. R. S. Lazarus, *From Psychological Stress to the Emotions: A History of Changing Outlooks*, 44 *ANNU. REV. PSYCHOL.* 1-21(1993), available at <http://www.annualreviews.org/doi/pdf/10.1146/annurev.ps.44.020193.000245> (accessed on Feb. 25, 2012).

used interchangeably.²⁰ Psychological stress should be considered part of a larger topic, the emotions.²¹ When the abuser's behavior triggers the negative emotions like anger, fright, anxiety, guilt, shame and sadness, it is "emotional abuse." Gradually, when such experiences become overwhelming, frightening and beyond the control of the victim, the situation leads to psychological trauma resulting in psychological abuse.²² In short emotional disturbances lead to psychological consequences.

All abuse contains elements of emotional abuse.²³ Physical, sexual or financial abuses inevitably produce great fear, helpless anger and humiliation leading to mental agony, adversely affecting the victim's psychology. Therefore, no abuse can occur without emotional disturbance and psychological consequences.

"Psychological abuse is the systematic perpetration of malicious and explicit nonphysical acts against an intimate partner, child, or dependent adult."²⁴ Threat to the victim's physical health, her loved ones, and controlling her freedom can have the effect of isolating her and destabilizing her in her own home leading to psychological trauma.²⁵ Many researchers in the field of family violence argue that "psychological

20. People have been attempting to understand this phenomenon for thousands of years, and will most likely debate for a thousand more. The mainstream definition of emotion refers to a feeling state involving thoughts, physiological changes, and an outward expression or behavior. For example, before you experience the emotion of 'fear', you hear footsteps behind you and you begin to tremble, your heart beats faster, and your breathing deepens. You notice these physiological changes and interpret them as your body's preparation for a fearful situation. You then experience fear. See Christopher L. Heffner, *Psychology 101, Chapter 7: Motivation and Emotions, Emotions*, (April 1, 2001), available at <http://allpsych.com/psychology101/emotion.html> (accessed on Feb. 25, 2012).

21. R. S. Lazarus, *supra* note 19.

22. Sometimes, the situation leads into complex psychological disorders like Post Traumatic Stress Disorder (PTSD), Royal College of Psychiatrists (RC PSYCH), UK, available at <http://www.rpsych.ac.uk/mentalhealthinfo/problems/ptsd/posttraumaticstressdisorder.aspx> (accessed on Feb. 13, 2013).

23. Source: *National Clearinghouse on Family Violence Information*, provided by the Women's Center Southern Connecticut State University, <http://www.southernct.edu/womenscenter/emotionalabuse/>

24. National Coalition Against Domestic Violence, *Psychological Abuse*, (citations omitted) (hereinafter, NCADV), available at <http://www.ncadv.org/files/PsychologicalAbuse.pdf>.

25. *Id.*

violence may be the underpinning of all forms of domestic violence.”²⁶ Often times, the physical or sexual abuse is preceded or accompanied by psychological abuse.²⁷ Psychological abuse increases the trauma of physical and sexual abuse.²⁸ In addition a number of studies have shown that psychological abuse by itself can cause long-term adverse affects to the victims’ mental health.²⁹ National Coalition Against Domestic Violence study found that “95% of men who physically abuse their intimate partners also psychologically abuse them.”³⁰

In addition, harm caused as a result of practices condoned by the culture, religion or tradition of the victim/perpetrator can be referred to as cultural violence.³¹ These practices include, broadly, female circumcision, rape-marriage, sexual slavery and honor crimes.³² In addition to these, in the context of Ethiopia cultural violence includes endangering the lives of pregnant women and children through harmful traditional practices.³³ Interestingly, the Revised Criminal Code of Ethiopia, 2005 lists violence against a marriage partner or a person cohabiting in an irregular union under the Chapter entitled “Crimes Committed against Life, Person, and

26. Daniel Jay Sonkin, *Defining Psychological Maltreatment in Domestic Violence Perpetrator Treatment Programs: Multiple Perspectives*, 2012, J. EMOTIONAL ABUSE, 2012 (forthcoming), available at <http://www.danielsonkin.com/articles/PsychAb.html>.

27. NCADV, *supra* note 24.

28. *Id.*

29. *Id.*

30. *Id.*

31. Violence Prevention Initiative, *Types of Violence and Abuse*, New Found Land and Labrador, CANADA, May 22, 2012. <http://www.gov.nl.ca/VPI/types/index.html>; Tina de Benedictis et al., *Domestic Violence and Abuse: Types, Signs, Symptoms, Causes, and Effects*, The American Academy of Experts in Traumatic Stress, available at <http://www.aaets.org/article144.htm>.

32. *Id.* “Honor” crimes and “honor” killings are a form of violence against women and girls. It is, according to Oxford Dictionary, the killing of a relative, especially a girl or woman, who is perceived to have brought dishonor on the family. A definition of “honor”-based violence should reflect three basic elements: 1) control over a woman’s behavior; 2) a male’s feeling of shame over his loss of control of the behavior, and; 3) community or familial involvement in augmenting and addressing this shame. See Baker et al., *Family Killing Fields: Honor Rationales in the Murder of Women in VIOLENCE AGAINST WOMEN*, ed., at 5, 1999 (as quoted in “Defining “honor” crimes and “honor” killings”, by ‘endvawnnow.org’), available at <http://www.endvawnnow.org/en/articles/731-defining-honourcrimes-and-honour-killings.html> (accessed on Feb. 13, 2013).

33 THE CRIMINAL CODE OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, Proclamation No. 414/2004, FED. NEGARIT GAZZETE, Year No, May 9, 2005 (hereafter CRIMINAL CODE OF ETHIOPIA), Arts. 561-570.

Health through Harmful Traditional Practices”³⁴ which leads to the understanding that wife beating is considered as cultural behavior.

Family violence is often not recognized by people who are not victims particularly if the violence is the more subtle psychological and emotional abuse. The victim woman herself may not recognize that what is happening is violence. Since, most women experiencing denial of financial freedom and emotional violence do not realize that they are being abused. It is sometimes difficult to identify that abuse is occurring,³⁵ because an abusive person may not always behave that way; sometimes he may be loving and kind. But if the victim often feels afraid of upsetting her partner, and needs to change what she does to avoid being abused, this can be taken as sign that there is abuse.³⁶

C. Consequences: Effects of FVAW on Woman’s Emotional and Physical Health

There are varied consequences of family violence depending on the victims’ age group, the intensity of the violence, and frequency of the torment they are subjected to.³⁷ Living under a constant fear, threat and humiliation are some of the feelings developed in the minds of the victims as a consequence of an atrocious violence.³⁸ Family violence impacts on many people in all kinds of ways. It is not only the victim, but the other family members like children and even the whole community experiences the effects of family violence. Chronic health problems such as headaches and back pains can be the results of injuries, fear, and stress caused by intimate partner violence.³⁹ Fainting and seizures are some of the recurring

34. CRIMINAL CODE OF ETHIOPIA, Book V, Chapter III, Art. 564.

35. The National Council of Single Mothers and their Children Incorporated (NCSMC), *Definition of Domestic Violence*, available at http://www.ncsmc.org.au/wsas/violence_and_abuse/definition_of_domestic_violence.htm.

36. *Id.*

37. Ankur Kumar, *Domestic Violence in India: Causes, Consequences and Remedies*, 2010, available at <http://www.youthkiawaaz.com/2010/02/domestic-violence-in-india-causes-consequences-and-remedies-2>.

38. *Id.*

39. See generally The National Institute of Mental Health, *What Parents Can Do*, available at <http://www.nimh.nih.gov/health/publications/helping-children-and-adolescents->

symptoms of its impact on the central nervous system.⁴⁰ Interpersonal events like physical or sexual assault can lead to what is known as “Post-Traumatic Stress Disorder (PTSD).”⁴¹ It is an anxiety disorder characterized by repeated nightmares of the event, emotional “numbing,” (feeling as though you don’t care about anything), tension, stress, dizziness, headaches, fainting etc.⁴² “Some abused women try using drugs, alcohol, smoking, or overeating to cope, and all these can lead to greater physical and emotional problems.”⁴³ According to a research study conducted in 2009, the physical violence by an intimate partner including emotional violence and spousal control of women are associated with depressive episode among women in rural Ethiopia.⁴⁴

“Abused women experience conflicting emotions such as fear, anger, shame, resentment, sadness and powerlessness.”⁴⁵ They live in constant fear that they may be attacked again. They also suffer from self-blaming.⁴⁶ They try to ignore their bitter experiences, hoping that it will not happen again.⁴⁷

Family violence has huge financial costs too not only on the victims, their families as well as their organizations, if they are working women.⁴⁸

cope-with-violence-and-disasters-parents/helping-children-and-adolescents-cope-with-violence-and-disasters-what-parents-can-do.pdf.

40. Jacquelyn C. Campbell, *Health consequences of intimate partner violence, Violence Against Women II*, available at http://www.nnvawi.org/pdfs/alo/Campbell_1.pdf (accessed on Feb. 28, 2012) (citations omitted).

41. A.D.A.M. Medical Encyclopedia, *Post-traumatic stress disorder*, U.S. National Library of Medicine, Feb. 13, 2012, available at <http://www.ncbi.nlm.nih.gov/pubmed/health/PMH0001923/>.

42. *Id.*

43. Violence Against Women, *Mental health effects of violence*, available at <http://www.womenshealth.gov/violence-against-women/mental-health-effects-of-violence/>.

44. Negussie Deyessa et al., *Intimate partner violence and depression among women in rural Ethiopia: a cross-sectional study*, 5 *CLINICAL PRACTICE & EPIDEMIOLOGY IN MENTAL HEALTH*, 2009, available at <http://www.cpementalhealth.com/content/5/1/8> (accessed on March 11, 2012).

45. *Effects of domestic violence on women*, available at <http://refuge.org.uk/get-help-now/what-is-domestic-violence/effects-of-domestic-violence-on-women/>.

46. *Id.*

47. *Id.*

48. The National Network to End Domestic Violence, *Domestic Violence and Sexual Assault Fact Sheet-Incidence, Prevalence and Severity*, Washington DC, 2009, available at <http://www.nnedv.org/docs/Policy/DVSAFactSheet.pdf>.

Many women have lost their jobs due to family violence.⁴⁹ A victim woman may lose her job, firstly, because her abuser may restrict her freedom to work in order to make her financially dependent on him which gives him an opportunity to show his authority and keep her well under his control. Secondly, being under great fear, stress and mental agony, her performance, naturally, suffers resulting in the possibility of loss of job.

Children, who may be direct witnesses to abuse, stand high risk of suffering harm incidental to the family abuse.⁵⁰ Their lives get disrupted in many ways such as by moving or being separated from parents, by being used by the batterer to manipulate or gain control over the victim, or sometimes they themselves maybe abused.⁵¹

III. LEGAL DEFINITIONS OF FVAW: IMPLICATIONS

In order to develop practicable and effective strategies to combat violence in the family, accurate information on the prevalence and magnitude of FVAW is needed at both community and national levels.⁵² However, measuring the true prevalence of violence is not an easy task because, oftentimes, crime statistics are not reliable.⁵³ First, crimes are under-reported by the victims.⁵⁴ Second, the sources of crime statistics, such as police, women centers and other formal institutions,⁵⁵ do not give an actual picture of the problem.⁵⁶ Accordingly, data from population-based research could give more accurate information provided that the research methodology uses consistent definitions and methods.

49. *Id.*

50. The Stop Violence Against Women, *Effects of Domestic Violence on Children*, April 2010, available at http://www.stopvaw.org/effects_of_domestic_violence_on_children.html.

51. *Id.*

52. World Health Organization (WHO), *Violence against Women Definition and Scope of the Problem*, July 1997, available at <http://www.who.int/gender/violence/v4.pdf>.

53. Eamonn Carrabine et al., *CRIMINOLOGY: A SOCIOLOGICAL INTRODUCTION*, at 39 (Routledge, 2nd ed. 2009); see also Suman Rai, *LAW RELATING TO PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE*, at 235 (Orient Publishing Company, New Delhi, 2008.)

54. *Id.*

55. These include Government Ministries, National Statistical offices, International Agencies, NGOs, and Women Rights Organizations.

56. Suman Rai, *supra* note 53.

Since definitions of what amount to family violence are subjective, the survey questions often ask whether women experience specific acts of violence, during a fixed period of time.⁵⁷ As a result, the scope and content varies widely between studies. Some studies investigate only physical abuse; others may focus on physical, sexual and psychological abuse.⁵⁸ Some may include only women currently in a relationship, while others report on women who have been married at some point in their lives.⁵⁹ Variations are also present between studies in terms of severity of violence. For instance, a study may record all acts of violence irrespective of the nature of injuries caused (i.e., whether physical or psychological), while others may record only the instances of violence that resulted in actual physical injuries.⁶⁰

The nature of relationship between the abuser and the abused is another factor that has a considerable impact on the data collected in the studies on the topic.⁶¹ The traditional definition of family violence included violence in the institution of marriage and more specifically between the spouses and former spouses. However, the sociological definition of family has been changed to include unmarried persons living together.⁶² In line with this change, some countries brought persons in all types⁶³ of intimate relationships under the purview of their domestic violence laws. Children, relatives and former live in partners also have been covered under several such laws further expanding their scope. Nevertheless, there are still some countries which stick to the traditional definitions of family relationships.⁶⁴

Therefore, definitions of FVAW have to be meticulously drafted clearly describing the nature of violence, consequences of violence and relationship between the perpetrators and the victims they purport to cover. Carefully drafted definitions are also important for proper identification of

57. *Id.*

58. *See generally* Suman Rai, *supra* note 53.

59. *Id.*

60. *Id.*

61. *National Center for Victims of Crime, Domestic Violence and the Law*, available at <http://www.victimsofcrime.org/> (accessed on Dec. 15, 2011).

62. *Id.*

63. Types of intimate relationships include unmarried live in partners, homosexual partners, and lesbian partners.

64. NCVC, *supra* note 24.

the acts amounting to violence. This can, hopefully, facilitate considerable accuracy in the measurement of FVAW which in turn helps the designing, revising and strengthening intervention policies from time to time. A careful consideration of definitions of FVAW incorporated by the legal instruments both at international and national level by different countries would be helpful to understand the multi-dimensional nature of the problem and come up with a comprehensive definition for Ethiopia.

A. National and International Examples

Worldwide states have made—and continue to make—efforts to assure adequate legal protection to the victims of family violence by enacting special laws,⁶⁵ in addition to the general criminal laws. This endeavor includes defining whether or not particular behaviors are abusive. The central concerns of the legal debates for this purpose are the inconsistencies in the definitions of terms relating to family violence.⁶⁶ Such inconsistencies occur because of the variations in defining causes, effects, motivations, frequency, and intensity of the abusive behavior.⁶⁷ “Such definitions, which vary in their inclusiveness and differ within and across fields, influence the likelihood that individuals subjected to unwanted behaviors within domestic settings will receive interventions from the legal, medical, and/or social service communities.”⁶⁸

65. General Law: Law that is neither local nor confined in application to particular persons. Even if there is only one person or entity to which a given law applies when enacted, it is general law if it purports to apply to all persons or places of a specified class throughout the jurisdiction. It is also termed as general statute, e.g., CRIMINAL CODE OF ETHIOPIA. Special Law: A law that pertains to and affects a particular case, person, place or thing, as opposed to the general public, e.g., Law Prohibiting Domestic/Family Violence. BLACK’S LAW DICTIONARY 890 (7th ed. 1999).

66. DENISE A. HINES, KATHLEEN MALLEY-MORRISON, FAMILY VIOLENCE IN THE UNITED STATES: DEFINING, UNDERSTANDING, AND COMBATING ABUSE, at 4 (Sage Publication, USA, 2005).

67. *Id.*, at 4-5. Examples of such variables include causes (e.g., people who hurt the ones they love are “sick”); effects (e.g., abusive behaviors are those that cause harm); motivations (e.g., abusive behaviors are intended to hurt rather than discipline); frequency (e.g., slapping is abusive only if it is chronic); and intensity (e.g., hitting is abusive if it is hard enough to cause injury) of the abusive behavior.

68. *Id.*

There is no single nationally or internationally agreed upon definition of FVAW. It is useful to first consider the United Nations' definition of "domestic violence"⁶⁹ because it provides a good standard from which to analyze whether or not the national definitions are up to the desired standards. Following UN definition, some National examples from South Africa, United States, United Kingdom and India also have been discussed for their broader nature that can provide remedy against a wide range of behaviours that amount to FVAW.

1. *United Nations*

According to the INNOCENTI DIGEST⁷⁰ on Domestic Violence against Women and Girls, published by the UNICEF Research Centre,⁷¹ domestic violence includes violence perpetrated by intimate partners and other family members, and manifested through:

Physical abuse includes slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder. It also includes traditional practices harmful to women such as female genital mutilation and wife inheritance (the practice of passing a widow, and her property, to her dead husband's brother).

Sexual abuse includes coerced sex through threats, intimidation or physical violence, forcing unwanted sexual acts or forcing sex with others.

Psychological abuse which includes behavior that is intended to intimidate and persecute, and takes the form of

69. The United Nations prefers to use the term "domestic violence" for "family violence."

70. UNICEF, *supra* note 1, at 2.

71. The UNICEF Innocenti Research Centre is the organization's dedicated research cluster. Established in 1988, the centre has over the past two decades produced studies that have explored neglected areas of child rights and well-being, informing policy and practice in numerous countries around the world. The centre's research aims to advise decision-makers in government, the private sector and civil society, to influence policies and spending priorities for children, and to provide a solid evidence-base to inform UNICEF program interventions in countries across the globe.

threats of abandonment or abuse, confinement to the home, surveillance, threats to take away the custody of children, destruction of objects, isolation, verbal aggression, and constant humiliation.

Economic abuse includes acts such as denial of funds, refusal to contribute financially, denial of food and basic needs, and controlling access to health care, and employment, etc.”

According to the DIGEST, acts of omission, such as discriminating girls and women by denying proper nutrition, education and access to health care, come within this definition as they violate their rights.⁷² The different forms of abuse included in the definition are not mutually exclusive. Any one or two or all of them may exist at the same time.

According to the UN definition, domestic violence includes VAW and girls by an intimate partner including a cohabiting partner, and by other family members. Such violence whether it occurs within or beyond the confines of the home amounts to domestic violence. The definition does not include the violence against domestic workers as this is perpetrated by individuals who are not related.⁷³ Therefore, it follows that the term “domestic” here refers to the types of relationships involved rather than the place where the violent act occurs.

2. *South Africa*

South Africa ratified Convention on Elimination of all forms Discrimination Against Women (CEDAW)⁷⁴ in 1995⁷⁵ and took steps to fulfill its obligation by enacting the Domestic Violence Act of 1998, which

72. UNICEF, *supra* note 1, at 3-4.

73. *Id.*

74. *The Convention on the Elimination of All Forms of Discrimination Against Women* (UN Doc A/RES/34/180) (1980). The Convention was adopted for signature and ratification and accession by the UN General Assembly on Dec. 18, 1979. and entered into force on Sept. 3, 1981.

75. SOUTH AFRICAN LAW COMMISSION, RESEARCH PAPER ON DOMESTIC VIOLENCE, April 1999, at 11, available at <http://www.justice.gov.za/salrc/rpapers/violence.pdf>.

provided the country with its first legal definition of domestic violence.⁷⁶ This definition is broad in its coverage which includes even the new forms of violence like stalking.⁷⁷ Among other things, the definition includes: physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; harassment; damage to property; entry into the victim's home without consent, where the parties do not share the same home; and any other controlling or abusive behavior where such behavior harms, or may cause imminent harm to the safety, health or well-being of the victim.⁷⁸

The merits of the South African Domestic Violence Act are the following:⁷⁹

- a. It gives a broad definition of domestic violence.
- b. It does not restrict the coverage only to married couples but extends to all types of live in partners such as unmarried, same sex and also to relatives by consanguinity, affinity or adoption.
- c. It provides for the police to help the abused woman, including explaining her rights, finding her a safe place to stay and helping her get medical attention if necessary. Failure to comply will lead to disciplinary action.
- d. It gives more powers to arrest the abuser.
- e. It includes provision for the abuser to continue to support the women and children financially.

76. REPUBLIC OF SOUTH AFRICA, GOVERNMENT GAZETTE, DOMESTIC VIOLENCE ACT 116 OF 1998, 1998. Section 1 of the Act defines many concepts including domestic relationship(vii), domestic violence(viii), economic abuse (ix), economic abuse (ix), emotional, verbal and psychological abuse (xi), harassment (xii), intimidation (xiii), physical abuse (xvi), and stalking (xxiii), *available at* <http://www.info.gov.za/view/DownloadFileAction?id=70651>.

77. Stalking will be discussed in Part IV of this article. According to the Act, "stalking" is defined as "repeatedly following, pursuing, or accosting the complainant."

78. SOUL CITY INSTITUTE FOR HEALTH AND DEVELOPMENT COMMUNICATION, VIOLENCE AGAINST WOMEN IN SOUTH AFRICA: A RESOURCE FOR JOURNALISTS, 1999, at 11-12. This booklet was produced by the Soul City Institute for Health and Development Communication in partnership with the National Network on Violence Against Women, the Institute for the Advancement of Journalism, the Commission on Gender Equality and Women's Media Watch, *available at* <http://www.soulcity.org.za/advocacy/campaigns/wawsaarfj.pdf> (accessed on Feb. 28, 2012).

79. *Id.* at 11.

- f. Failure to comply with a Protection Order issued under this Act can lead to a sentence of up to five years in prison.

3. *United States*

The United States definition of domestic violence is put in terms of power and control and applies to opposite-sex and same-sex relationships.⁸⁰ The definition covers intimate partners who are married or living together.⁸¹ The U.S. Office on Violence against Women (OVW)⁸² defines domestic violence as:

[A] pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.⁸³

The expression “any relationship” applies to the violent behavior by “any family member, household member, or intimate partner against

80. U.S. Department of Justice, *supra note* 4. Power control theory is based on the concept that many family conflicts result from an individual’s need to obtain and maintain power control within relationships. The motivation behind the abuser’s behaviour is the power and control that she or he is able to exert over other members of the family. Fathers and husbands being the more powerful members of the family often use the threat or use of force or the threat or use of violence to obtain compliance from less powerful family members like children and wives. See Bostock, D.J., et al., *Family Violence*, American Academy of Family Physicians Home Study Self-Assessment Program (Serial No. 274) 2002; Goode, W.J., *Force and Violence in the Family*, J MARRIAGE & FAM. 33, at 624-636, 1971.

81. *Id.*

82. The Office on Violence Against Women (OVW), a component of the U.S. Department of Justice, is to provide federal leadership in developing the nation’s capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.

83. *Id.* The U.S. definition further adds explanation for Physical Abuse, Sexual Abuse, Emotional Abuse, Economic Abuse and Psychological Abuse.

another.”⁸⁴ Most of the State laws in U.S. dealing with family violence require the relationship of a spouse or former spouse.⁸⁵ In addition, as of 2007, majority of States⁸⁶ provide some level of statutory protection for victims of dating violence.⁸⁷

According to the OVW’s definition, all violence in the family relationships is for the purpose of establishing and maintaining authority over the victim.⁸⁸ This implies that the abusers in the family are neither sick nor deranged. On the other hand, it emphasizes that violent behavior is learnt behavior. Such behavior uses manipulative techniques and behaviors to dominate and control others in the family and get things done by their victims.⁸⁹

4. *United Kingdom*

In UK different definitions of domestic violence were in use by both the government and the public sector.⁹⁰ The UK government introduced a single definition of domestic violence in 2004 by replacing the previous ones.⁹¹ It is not a statutory definition.⁹² The police, the Crown Prosecution

84. *Domestic Violence*, The National Center for Victims of Crime. The National Center for Victims of Crime is a nonprofit organization that advocates for victims' rights, trains professionals who work with victims, and serves as a trusted source of information on victims' issues through collaboration with local, state, and federal partners, <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=32347>.

85. The laws apply to persons currently residing together or those that have lived together within the previous year, or persons who share a common child.

86. Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and Washington. National Conferences of State Legislatures, *available at* <http://www.ncsl.org/issues-research/health/teen-dating-violence.aspx>.

87. U.S. Department of Justice, *supra note 4*.

88. PATRICIA TJADEN & NANCY THOENNES, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, U.S. Department of Justice Office of Justice Programs (2000), *available at* www.ncjrs.gov/pdffiles1/nij/181867.pdf.

89. *Id.*

90. These include the Home Office Definition, Crime Prosecution Service Definition (CPS) and Metropolitan Police Service (MPS) Definition.

91. HOME OFFICE, CROSS-GOVERNMENTAL DEFINITION OF DOMESTIC VIOLENCE: A CONSULTATION, UK December 2011, at 6, *available at* <http://www.homeoffice.gov.uk/>

Service (CPS), and UK Border Agency use the definition to identify domestic violence cases to be referred to the CPS under the Director's Guidance on Charging.⁹³ According to the definition, domestic violence means:

[A]ny incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.⁹⁴

The so called 'honor-crimes', female genital mutilation (FGM) and forced marriage also are recognized by this definition.⁹⁵ It also recognizes that domestic violence may be committed by members of the family including grandparents, members directly related, in-laws or step family.⁹⁶ Further description of domestic violence is provided by the UK government in "Domestic Violence Policy" used in The Children and Family Court Advisory and Support Services. This goes beyond the basic definition and refers to a range of violent and abusive behaviors, as follows:

Any patterns of behavior characterized by the misuse of power and control by one person over another who are or have been in an intimate relationship. It can occur in mixed gender relationships and same gender relationships and has profound consequences for the lives of children, individuals, families and communities. It may be physical, sexual, emotional and/or psychological. The latter may include intimidation, harassment, damage to property, threats and financial abuse.⁹⁷

publications/about-us/consultations/definition-domestic-violence/dv-definition-consultation?view=Binary.

92. In the UK some government agencies and parts of the voluntary sector use slightly different definitions to fit their particular needs.

93. *Id.*

94. The Crown Prosecution Service, Section 2 of CPS GUIDANCE ON PROSECUTING CASES OF DOMESTIC VIOLENCE CASES, available at http://www.cps.gov.uk/publications/prosecution/domestic/domv_guidance.html.

95. NCVC, *supra* note 24.

96. *Id.*

97. CAF/CASS, PUTTING CHILDREN AND YOUNG PEOPLE FIRST: DOMESTIC VIOLENCE ASSESSMENT POLICY, at 2, available at <http://web.archive.org/web/20071130235416/>

Interestingly, the definition promulgated by the government expands the description of the relationship to include other “family members” in addition to “intimate partners.”⁹⁸ There are consultations going on in England and Wales to further broaden the definition of domestic violence to include “coercive control” within the definition.⁹⁹

5. *India*

The Indian definition of domestic violence is given by the Protection of Women from Domestic Violence Act (PWDVA) of 2005.¹⁰⁰ It is a civil law that recognizes a woman’s right to reside in a violence free home and provides emergency remedies in case this right is violated. The law extends its provisions to “live-in relationships,” and to equalize relationships within the home.¹⁰¹ PWDVA can be used in addition to other laws such as criminal provisions on cruelty.¹⁰² Section 3 of the PWDVA provides that any act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered domestic violence.¹⁰³

Under this provision, the law prohibits physical, sexual, emotional, verbal, psychological, and economic abuse or threats of such abuse. Even a single act of commission or omission may constitute domestic violence. In other words, women do not have to suffer a prolonged period of abuse before taking recourse to the law.

<http://www.cafcass.gov.uk/English/Publications/consultation/04DecDV%20Policy.pdf>
(accessed on Feb. 13, 2013).

98. HOME OFFICE, *supra note 91*. The consultation also seeks views on whether the current definition is being applied consistently across government, and if it is understood by practitioners, victims and perpetrators.

99. *Id.*

100. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT (PWDVA) Act No. 43 of 2005 (13th September, 2005 with effect from October 26, 2006).

101. THE INDIAN PENAL CODE, Section 498 A: Cruelty by husband or relatives of husband.

102. *Id.*

103. In addition, Section 3 of PWDVA further defines terms of physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse.

The law says any definition of domestic violence must detail the fact that it is a human rights violation.¹⁰⁴ Further, the law describes in detail the different forms of violence faced by women, and ensures that such interpretations are not left solely to the discretion of the judges.¹⁰⁵

A husband, under this provision, cannot dispose of household effects, cannot alienate her from her assets or any other property of which she has an interest or entitlement by virtue of the domestic relationship.¹⁰⁶ A husband may not sell or use *stridhan* (dowry) and/or any other property jointly or separately held by the wife. Such activities shall amount to economic abuse of the wife.¹⁰⁷

B. Analysis of Definitions of Family Violence

Experience of the international community has shown that it is a near impossibility to find a generally accepted definition for *domestic violence*.¹⁰⁸ Some definitions are basic and general: a pattern of regularly occurring abuse and violence, or the threat of violence, in an intimate (though not necessarily cohabitating) relationship. Other definitions are comprehensive and specific.¹⁰⁹

The broad nature of the UN definition of FVAW has many advantages. First, it benefits the victim women by its broad coverage as it includes the physical, sexual, psychological and economic dimensions of

104. In its "statement of object and reasons," the PWDVA 2005 recognizes domestic violence as human rights issue and a serious deterrent to development.

105. PWDVA, Section 3.

106. *Id.*, Section 3 Explanation I (iv).

107. *Id.*

108. Laurence and Spalter-Roth, *Contemporary Women's Issues Database*, May-July, 1996.

109. John H Manor, *Helping Abusers Out of the Domestic Violence Equation*, MICHIGAN CHRONICLE, Jan. 30, 1996; Brenda Neufield, *SAFE questions: overcoming barriers to the detection of domestic violence*, AMERICAN FAMILY PHYSICIAN, June 1, 1996; ASIAN PAGES, *What is domestic violence?* Nov. 14, 1998; Ivy Josiah, *Education through radio*, CONTEMPORARY WOMEN'S ISSUES DATABASE, Jan. 2, 1998; *Domestic violence: Give us statistics we can work with*, SEATTLE POST-INTELLIGENCER, July 16, 1999; Danis, Fran S., *The criminalization of domestic violence: What social workers need to know*, SOCIAL WORK, April 1, 2003; Robert Verkaik, *One man in six "a victim of domestic violence"*, THE INDEPENDENT, Sept. 24, 2003.

the abuse. Second, as a resolution of the General Assembly, it is part of internationally recognized moral standards and imposes a moral obligation of adherence to its standards on the States adopting it. Finally, it forms a foundation to the making of international law on FVAW.¹¹⁰

Among the national examples, the more comprehensive definitions, although phrased differently, typically possess the following common elements:

- a pattern of abusive behavior (as contrasted to a single event);
- the abusive behavior involves control, coercion, and/or power;
- the abusive behavior may be physical, sexual, emotional, psychological, and/or financial; and
- the victim of the abusive behavior is a cohabitating or non-cohabitating intimate partner or spouse.¹¹¹

The South African definition is quite broad in its coverage including even the new form of violence such as “stalking.” The explanation to US definition is inclusive and incorporates a wide range of conducts that amount to domestic violence. The British government has adopted one of the more expansive descriptions of domestic violence covering all of the above listed elements.¹¹² Yet it cannot be said to be an absolutely comprehensive definition so as to include every act of violence against women in the family. Section 3 of the PWDVA, 2005 of India provides a comprehensive definition of domestic violence in all its forms and describes in detail the wide range of acts that amount to economic violence, which is an invisible dimension of family violence. However, this definition too does not include stalking as an act of family violence.

Unfortunately, there are always new types of violence coming to light which cannot be ignored. Legislations cannot claim any efficacy unless they include broad definitions that can thoroughly cover all possible acts of violence against the women in the family.

110. Eleonora Chikuhwa, *INVISIBLE WOUNDS: A Namibian Case Study of Psychological Abuse*, at 5, Center for Gender Studies (Uppsala University, Master's Thesis, VT 2011), available at http://www.gender.uu.se/digitalAssets/44/44672_EllenChikuwa.pdf (accessed on Dec. 14, 2012).

111. *Id.*

112. Suman Rai, *supra* note 53, at 37.

C. New Dimensions of FVAW

Spiritual violence and stalking are the new forms of family violence.¹¹³ Stalking, which can be a severe threat to the victim, also has only recently been recognized as a form of family violence.¹¹⁴

1. Spiritual Violence

Spiritual violence can be defined as ‘using the religious or spiritual beliefs to manipulate, dominate, or control victim.’¹¹⁵ Examples of such violence include, preventing the partner from practicing their religious or spiritual beliefs, ridiculing the other person’s religious or spiritual beliefs, forcing the children to be reared in a faith that the partner has not agreed to.¹¹⁶

Spiritual violence may encompass tactics such as, criticizing partner’s beliefs, forcing beliefs on partner, and spreading rumors within church or spiritual community (breakdown of a support system), using religion or religious texts as justification for abuse, coercing someone into doing things against their religion, etc. Spiritual violence and emotional violence often go hand in hand. Partners are demeaned and condemned for their behavior.

2. Stalking

Stalking is a type of harassing or threatening behavior such as following a person, appearing at a person’s home or place of work, making

113. Aboriginal and Torres (Strait Islander Social Justice Commissioner), *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander communities Key issues*, June 2006. http://www.humanrights.gov.au/social_justice/familyviolence/family_violence2006.html

114. Forms of Domestic Violence, *Stop Violence Against Women*, available at http://www.stopvaw.org/forms_of_domestic_violence.html.

115. *Types of Violence and Abuse*, Violence Prevention Initiative, available at <http://www.gov.nl.ca/VPI/types/index.html>; see also Tina de Benedictis *et al*, *Domestic Violence and Abuse: Types, Signs, Symptoms, Causes, and Effects*, The American Academy of Experts in Traumatic Stress, available at <http://www.aaets.org/article144.htm>.

116. *Id.*

harassing phone calls, leaving written messages or objects, or vandalizing a person's property.¹¹⁷ When stalkers use the electronic media and internet activity to track their victims through threatening e-mails, it is called "cyber stalking."¹¹⁸

It is not necessary that such acts mean an imminent threat of serious harm. The actions may or may not be followed by an assault or attack on the life of the victim.¹¹⁹ Simply following a person everywhere by itself can scare the person and be harassment "that haunts the person physically or emotionally in a repetitive and devious manner."¹²⁰ "Stalking creates a psychological prison that deprives its victims of basic liberty of movement and security in their homes."¹²¹ The victims of stalking feel out of control, anxious, and depressed and may lose their ability to sleep, eat, and work.¹²²

Stalking of an intimate partner can take place during existence of the relationship or it can take place after a partner or spouse has left the relationship. The stalker may be trying to get his/her partner back, or may wish to harm the partner as punishment for his/her departure.

Unfortunately, the Ethiopian Law does not recognize *the multi-dimensional nature of the evil* of family violence. A brief look at the seriousness of the problem of family violence in Ethiopia and the negligible legal protection the Ethiopian women have against this menace is enough to understand the necessity for immediate action.

117. U.S. Department of Justice, *Stalking and Domestic Violence*, at 5 (The Third Annual Report to Congress under the Violence Against Women Act, Office of Justice Programs, July 1998) (citation omitted).

118. *Id.*, at 1.

119. *Id.*

120. Rosalie Ambrosino *et al.*, *Social Work and Social Welfare: An Introduction*, at 283 (Cengage Learning 2011).

121. U.S. Department of Justice, *Stalking and Domestic Violence*, Report to Congress, at vii, May 2001, National Criminal Justice Reference Service, Violence Against Women Office, available at <https://www.ncjrs.gov/pdffiles1/ojp/186157.pdf> (accessed on Feb. 13, 2013).

122 Violence against Women, *Stalking*, available at <http://www.womenshealth.gov/violence-against-women/types-of-violence/stalking.cfm> (accessed on Feb. 13, 2013).

IV. FVAW IN ETHIOPIA

A. *Magnitude and Prevalence*

Abuse of women in the society continues to be a problem in Ethiopia. Not many studies are conducted on the issue of abuse of women in the country. Although some studies have provided insight into the magnitude of the problem of VAW, these studies lack thoroughness and depth.¹²³ *Cultural violence* is the most widespread manifestation of violence against women in Ethiopia.¹²⁴ Besides marital rape and battery, harmful traditional practices, including female genital mutilation and cutting, child marriage, abduction as a method of forcefully contracting marriage and wife inheritance,¹²⁵ are rampant in Ethiopia.¹²⁶

In 2005, a study by WHO reported that Ethiopian women experienced the highest levels of sexual violence by a partner at 59 percent. Furthermore, 46 percent of women have been reported to be physically forced into having intercourse, and 35 percent of women who have partners experienced some form of severe physical abuse.¹²⁷

A large scale study in Ethiopia, which covered 95 percent of the country and included eleven major ethnic groups in Ethiopia, reveals that wife beating is prevalent among the families of all ethnic and language groups of the country.¹²⁸ The study included both rural and urban Ethiopia

123. Yemane Berhane, *supra* note 4.

124. United Nations Population Fund (UNPF), *Shelter from the Storm: Escaping from Gender Violence in Ethiopia*, Dec. 7, 2009, available at <http://www.unfpa.org/public/cache/offonce/News/pid/4522;jsessionid=06AAEC60C40542878F4232027B3EF74> (accessed on Dec. 10, 2009).

125. In some places, a woman is considered the property of the family into which she marries, and if her partner dies, she is expected to wed a male relative.

126. *See* UNPF, *supra* note 129.

127. Being hit with a fist or something else, kicked, dragged, beaten up, choked, burnt on purpose, threatened with a weapon or had a weapon used against them. *See* World Health Organization (WHO), *WHO Multi-country Study on Women's Health and Domestic Violence Against Women*, Ethiopia, 2005, available at www.who.int/gender/violence/who_multicountry_study/fact_sheets/eth/en/index.html (accessed on Nov. 17, 2009).

128. CERTWID (2004), *Gender and Cross-Cultural Dynamics in Ethiopia*, Research Output of 1997 (as quoted by *Report on the Nationwide Survey on Domestic Violence 20*, Ethiopian Women Lawyers Association in Partnership with Oxfam GB, Oxfam Addis Ababa, 2008) (hereinafter *Nationwide Survey on Domestic Violence*).

with regard to national, regional, and gender issues. The study found that the use of violence in conjugal relations—one of the common elements of domestic violence—existed among all ethnic groups included within the study.¹²⁹ The study further indicated that on an average, every husband beats his wife eight times in the indicated period of six months.¹³⁰

United Nations Fund for Population Activities (UNFPA) 2005 reported that family violence is so rampant in Ethiopia that nine out of ten women think that their husbands are justified in beating them. The report further indicated that the women believed that it is justified to be punished, especially if a wife went out without telling her spouse, neglected the children, or prepared food badly.¹³¹ A national study conducted by Hirut, Habtamu and Yusuf that involved 11 most populous ethnic groups revealed, among other things, wife and child beating are prevalent among these groups.¹³²

“Violence against women has long been shrouded in culture of silence.”¹³³ The prevalence of marital rape in Ethiopia is not documented due to legal, cultural, and religious barriers that are inhibiting the victims from reporting to the police.¹³⁴ Ethiopian women strongly believe that forced sex is normal and do not constitute rape if they are married to or cohabiting with the perpetrator.¹³⁵ This mindset results from the dictates of culture, traditions and religions that operate across most communities in Ethiopia and instills in women the belief that they are subordinate to their

129. *Id.*, at 20.

130. *Id.*

131. UN Office for the Coordination of Humanitarian Affairs (IRIN), *ETHIOPIA: Domestic violence rampant, says UNFPA*, Addis Ababa, 12 October 2005 (IRIN) available at <http://www.irinnews.org/printreport.aspx?reportid=56682> accessed on 13-02-2013. IRIN is a service of the UN Office for the Coordination of Humanitarian Affairs providing humanitarian news and analysis.

132. Habtamu Wondimu, *The Contradictions between the Proclaimed and the Practiced Inhuman Rights in Ethiopia: Blaming Cultures and the Victims for the Violations*, AFRICAN STUDY CENTERS 11 (1997), available at <http://www.ascleiden.nl/pdf/paper260902.pdf>.

133. *Information Report, ETHIOPIA 112*, Jan. 18, 2008, Border and Immigration Agency, Country of Origin Information Service (citation omitted).

134. Sinidu Fekadu, *An Assessment of Causes of Rape And Its Socio-Health Effects: The Case of Female Victims In Kirkos Sub-City, Addis Ababa*, Master's Thesis in Gender Studies, 2008, at 1-2, available at http://etd.aau.edu.et/dspace/bitstream/123456789/2386/1/GENDER_32.pdf (unpublished).

135. OUR VOICE (*DIMITSACHEN*), Ethiopian Women Lawyers Association, 2006.

husbands in the marital relationships.¹³⁶ Lack of legal remedies and the fear of retaliation by the abuser are the other reasons for the reluctance to report marital rape cases.¹³⁷ Therefore, there is a lack of research conducted on this subject in Ethiopia. However, there are some recent studies undertaken by the younger generation that reveal the extent of the abuse of marital rape. The Ethiopian Women Lawyers Association (EWLA) Survey,¹³⁸ in which both illiterate and highly educated women (a total of 208 women) were interviewed, showed that 14.9 percent of women were victims of rape, 10.8 percent were insulted by the husbands for refusing to have sex, 5.4 percent were raped when they refused sex, and 1.4 percent were beaten when they refused sex.

B. Protection from FVAW Under Ethiopian Law

Unfortunately, Ethiopian law offers little legal protection to women who suffer from family violence. Except the constitutional guarantees proscribed within the fundamental rights of Ethiopian Constitution,¹³⁹ and the general criminal law provisions,¹⁴⁰ there are no special legal instruments in Ethiopia that address the problem of FVAW. The great variety of FVAW listed above is perpetrated in different subtle and deliberate forms of violence such as verbal abuse, intimidation, emotional abuse, economic abuse, social abuse, cultural abuse, spiritual abuse, sexual abuse, physical abuse extending up to causing the death of the victim women. Therefore, obviously, the nature, scope and definitions of FVAW under the existing laws, as will be seen from the following section, are inadequate to address the more sensitive and invisible dimensions of this problem.

136. *Id.*

137. *Id.*

138. *The EWLA Survey*, BERCHI, Research Output 11, 2004 (as quoted by Report on the Study, *Nationwide Survey on Domestic Violence*, *supra* note 128, at 55).

139. FDRE CONSTITUTION, Proclamation No 1/1995, FED. NEGARIT GAZETTE, 1st Year No.1, 1995, Arts. 16, 18, 25 & 35(4).

140. CRIMINAL CODE OF ETHIOPIA, Arts. 564, 555-560 and 568.

1. *The Definition of Family/Domestic Violence under Ethiopian Laws*

The Ethiopian government first addressed the problem of *family violence* was with the adoption of the Ethiopian Criminal Code of 2005¹⁴¹ in an article named “Violence against Marriage Partner or a Person Cohabiting in an Irregular Union.”¹⁴² Article 564 of the Criminal Code states:

The relevant provisions of this Code (Arts.555-560)¹⁴³ shall apply to a person who, by doing violence to a marriage partner or a person cohabiting in an irregular union, causes grave or common injury to his/her physical or mental health.

Primarily, the fact that the Article has been inserted under ‘Harmful Traditional Practices’¹⁴⁴ and not under the violence section minimized the response of the criminal justice in that harmful practices entail very light sentences and the response relied more on educating the public rather than punishment.¹⁴⁵ Ms. Tayechalem G. Moges, author of the book *The Legal Response to Domestic Violence in Ethiopia a Comparative Analysis*,¹⁴⁶ while acknowledging that family violence against women, specifically physical violence, has been part of the culture of the Ethiopian society, rightly argues that it is primarily a violation of many interrelated human rights and should be treated accordingly.

Article 564 of the Criminal Code does not mention *domestic violence* by name, yet has recognized partner violence as causing grave or common injury to physical or mental health. Specifically, “violence to a marriage partner” is not defined. The Article makes violence against marriage

141. *Id.*

142. *Nationwide Survey on Domestic Violence, supra* note 128, at 55.

143. *See* CRIMINAL CODE OF ETHIOPIA, Art. 555 Grave Wilful Injury, Art. 556 Common Willful Injury, Art. 557 Extenuating circumstances (of these crimes), Art. 558 Consequences not intended by the Criminal, Art. 559 Injuries caused by Negligence, and Art. 560 Assaults.

144. *See Id.*, Book V, Title I, Chapter II, Articles 561-570 “Crimes Committed Against Life, Person and Health through Harmful Traditional Practices.”

145. TAYECHALEM G. MOGES, *THE LEGAL RESPONSE TO DOMESTIC VIOLENCE IN ETHIOPIA: A COMPARATIVE ANALYSIS*, (VDM Verlag Dr. Müller Publisher, Jan. 31, 2010), at 68.

146. *Id.*, at 66.

partner and irregular union partner punishable by a general statement that “grave or common injury to the physical or mental health” should be the consequence of the violence without giving any further explanation of the key terms. The acts of violence which amount to FVAW need to be specifically defined in order to give proper protection to women against such violence. The example definitions from the international and national laws of different countries discussed above emphasize the need for carefully drafted definitions.

2. Inadequacies in the Ethiopian Criminal Code in Combating FVAW

The way in which Article 564 of the Ethiopian Criminal Code deals with the violence to a marriage partner is too general. The provisions of Article 564 and Articles 555-560 are applied cumulatively to punish physical or mental injuries caused by the marriage partner or a cohabiting partner. These articles do not specifically deal with the psychological, emotional and economic violence that usually happen within the families but often times go unnoticed. Psychological violence could be worse than physical or sexual violence which is rather invisible and needs to be defined in clear terms. Economic violence is one form of family violence. Article 564 has failed to address *economic violence* against marriage partner or irregular union partner. Most of the women in Ethiopia being economically dependent on their husbands they need to have effective legal protection when they are victimized to economic abuse.

Article 564 has also ignored violence occurring between those who are in intimate relationship but do not necessarily live together. By writing a special provision for punishing violence between the marriage partners and cohabiting couples in Article 564, then taking the details and the punishment to the general provisions of the Code (Arts. 555-560) the special and intimate nature of the partner violence is ignored by the law. In addition, Article 564 fails to cover the repeated acts of violence, the special nature of the relationship, and the economic dependency of the partners.

Women in Ethiopia, like their counterparts in other countries, are in need of protection against all forms/types of FVAW. The types of family violence identified in the surveys conducted so far in Ethiopia, confirm the fact that it is manifested through the following forms of abuses:

- a) Physical;

- b) Sexual;
- c) Psychological; and
- d) Economic.¹⁴⁷

Further, the prevalence of wife battering, rape, intimidation, insult and instances of disrespect, denial of food and rest, and forced displacement from home (FDH) proves that family violence is manifested in Ethiopia in all its known global forms. Obviously, the lack of proper definitions of the relevant expressions in Ethiopian laws would certainly limit the scope of effective application of the laws. To say the least Article 564 is certainly inadequate especially in the light of the international instruments Ethiopia has ratified.¹⁴⁸ The evil of family violence deserves a much more complex analysis and a deeper look than a mere mention in one of the provisions of the Criminal Code.

In Ethiopia, the law enforcement agencies are reluctant to start investigations where wives want to prosecute battering partly because “it is husband and wife” issue.¹⁴⁹ As Article 564 has addressed violence against marriage or irregular union partner specifically, this may help in principle to eliminate the reluctance of the law enforcement agencies to handle such cases. However, it will not make much difference for a police force that classifies rape victims as virgins or non-virgins despite mandate of the law to the contrary.¹⁵⁰ Irrespective of high prevalence of marital rape in Ethiopia, police officers tend to think that the issue of marital rape is domestic matter because of the absence of specific provision in the Criminal Code.¹⁵¹

147. *Id.* at 57.

148. The Ethiopian government is a signatory to most international instruments, conventions and declarations, and adopted international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women /CEDAW (1979), the Declaration on the Elimination of Violence Against Women/DEVAW (1993), the Beijing Platform for Action/BPA (1995) including the domestication of the international instruments. Ethiopia ratified and adopted the UN charter on Human Rights and other conventions, in 1981. *See also EWLA Report on Nationwide Survey, supra* note 128, at 56

149. *Id.*

150. *Id.*

151. G. MOGES, *supra* note 145, at 68 (quoting from NGOs Complimentary Report on the Second Combined Report of the Country on the Implementation of the CEDAW, 37 (2003).

Moreover, the Criminal Law of Ethiopia falls short of outlawing marital rape maintaining the institution of marriage as a defense for rape. Hence, the only option women victims of marital rape have in the Criminal Code is if the incident results in sexually transmitted diseases including HIV/AIDS under the Article 568 of the Criminal Code.¹⁵² Ironically, while rape by a man under Article 620¹⁵³ of the Criminal Code requires the act to be outside the wedlock to be punishable, Article 621¹⁵⁴ subjects a woman to punishment for forcing a man into sexual intercourse irrespective of whether or not the act happened during wedlock. Obviously, having regard to the biological realities, the protection against such kind of violence between the spouses should be given to women primarily.

Another drawback is, the Code on Article 564 refers to the general assault articles for the purposes of punishment for violence within the family. This does not give much room for the appreciation of the unique nature of family violence; that it is intertwined with the gender power relations in the family (society). Such definition is not considered as effective since it fails to incorporate ‘power relationship’ and is not ready to capture the unique nature of domestic violence-looking at the whole context. Looking just at the nature of the injury on the body of the woman is not the whole issue in FVAW cases. On the whole, the Criminal Law of Ethiopia failed to come up with comprehensive definition and protection against domestic violence.¹⁵⁵

152. *Id.* See CRIMINAL CODE OF ETHIOPIA, Article 568 stating : “Where the victim has contracted a communicable disease as a result of one of the harmful traditional practices specified in the above provisions, the penalties prescribed in this Code concerning the spread of communicable diseases shall apply concurrently.”

153. *Id.*, Article 620(1) providing: “Whoever compels a woman to submit to sexual intercourse *outside wedlock*, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable with rigorous imprisonment from five years to fifteen years.”

154. *Id.*, under Art. 621 states: “A woman who compels a man to sexual intercourse with herself, is punishable with rigorous imprisonment not exceeding five years.”

155. G. MOGES, *supra* note 145, at 68.

3. *Broader Definitions and Detailed Descriptions are More Helpful*

Limiting the definition of “family violence” means that the number of victims that can get assistance of the law also gets limited. Broad and open ended definitions can be helpful to deal with the unforeseen acts of violence, as and when they happen. Additionally, such comprehensive definitions are helpful to avoid the lengthy procedures of amendments in future.¹⁵⁶ Ethiopia needs to adopt broad open-ended definitions if the country wants to make significant steps in addressing the problem of FVAW.

Any legislation must include detailed definitions that address all the potential forms of violence experienced by Ethiopian women. With the adoption of detailed definitions, the potential for judicial discretion is reduced, thereby protecting women against the influence of patriarchal biases in judicial decision making. Ethiopia should follow the lead of most large countries by including all forms of violence—i.e., psychological, sexual, and economic abuse—within its legal protection. In particular, the inclusion of sexual violence is particularly significant as it rules out any tolerance of rape within marriage. In this connection, it is worth considering the Report prepared for the Committee on African Affairs of the New York City Bar¹⁵⁷ which makes general recommendations for drafting laws preventing family violence. The following general considerations, among other things, that should underlie all drafting initiatives for gender-based violence legislation are helpful:¹⁵⁸

- Legal definitions should be broad to reflect the realities of gender-based violence in Africa. For example, marital rape and intimate partner violence are two categories of gender-based violence that should be incorporated into definitions of rape and domestic violence, respectively. By expanding the definitions and creating

156. Chikuhwa, *supra* note 110.

157. See Elizabeth Barad et al., *Gender-Based Violence Laws in Sub-Saharan Africa, 2007* (a report prepared for the Committee on African Affairs of the New York City Bar as part of a pro bono project coordinated by The Cyrus R. Vance Center for International Justice), available at <http://www.nycbar.org/pdf/report/GBVReportFinal2.pdf> (accessed on Feb. 27, 2012).

158. *Id.*, at 3.

inclusive legislation, sub-Saharan African States can better protect their citizens.

- Legislation should clearly define key elements of gender-based violent crimes to reduce the potential for abuse of judicial discretion. Clear explanations of key concepts, like “consent” and “penetration”, are essential to the uniform application of laws against gender-based violence.

Another important suggestion from the women’s organization called ‘Stop Violence Against Women’ is the inclusion of stalking within the meaning of family violence and protection of women from this dangerous and very frightening crime.

Legislation should define stalking as a pattern of harassing or threatening behaviors. Naming these behaviors "stalking" is useful in a number of ways. First, the stalking itself, and not just the assault which often results, is a form of violence. The batterer is taking specific actions, such as calling or appearing at a place of work, that are designed to intimidate and coerce his former partner. Second, the term "stalking" identifies a pattern of behaviors that often leads to serious or fatal attacks. Identifying the pattern of behaviors can therefore be useful in taking steps to prevent an assault. Third, naming this pattern of behaviors helps to convey the seriousness of these behaviors. Individually, the acts that constitute stalking, such as telephone calls or texting, may appear to be relatively innocent. Taken together, however, they indicate the presence of a severe threat to the victim.¹⁵⁹

“Stalking must be understood as part of the domestic violence continuum and must be addressed forcefully.”¹⁶⁰ Otherwise, this can lead to serious economic and social problems including physical and psychological sickness and loss of employment.¹⁶¹ The level of impact of

159. Stalking, Stop Violence Against Women, available at <http://www1.umn.edu/humanrts/svaw/domestic/link/stalking.htm>.

160. Report to Congress, *supra* note 121.

161. Heather Douglas, *Personal Protection and the Law: Stalking, Domestic Violence and Peace and Good Behavior*, at 2 (citations omitted) available at <http://www qlrc.qld.gov.au/events/personalProtection.pdf>.

stalking has been well researched and the results emphasize the need for legal protection.¹⁶²

It is also a good practice to domesticate the definitions by outlawing specific cultural manifestations of violence. The Ethiopian law punishes early marriage¹⁶³ as a harmful traditional practice, but not a forced marriage, which is a blatant violation of a woman's constitutional rights.

Further, Ethiopian law should include all forms of family relationships. Specifically, the provisions on individuals covered under the law should be supplemented with a definition of a "shared residence" to include all family members within it.

The broader the definitions of family relationships, the higher are the estimates of family violence. The narrowest definitions, generally, restrict family violence to that between people currently living together as couples, and often only as heterosexual couples. Estimates of FVAW can vary on whether the studies classify incidents as "family violence" that occur between people in the early stages of a relationship who do not know each other well, and those where there is no longer an intimate relationship, but there has been at sometime in the past. The term "family violence" can encompass a wide range of experiences. The measures used in research vary considerably as to the type of relationship they count as "family" and the types of experience that are deemed "violence."

4. Lack of Special Laws is Violation of Human Rights and Fundamental Freedoms

The lack of specific legislation to combat domestic violence and sexual harassment constitutes a violation of human rights and fundamental

162. *Id.*

163. *See* CRIMINAL CODE OF ETHIOPIA, Article 648-Early Marriage: Whoever 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.

freedoms, particularly the right to security of person.¹⁶⁴ The Committee on the Elimination of Discrimination against Women has addressed the obligation of States parties to enact, implement and monitor legislation to address VAW in its work under the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women.¹⁶⁵ Further, strengthening implementation and monitoring of the laws for the protection against violence within the family and related criminal law, by acting with due diligence to prevent and respond to such VAW and adequately providing for sanctions for the failure to do so, is the responsibility of the State party to CEDAW.¹⁶⁶

Many countries of the world, including African countries like South Africa, Kenya, Uganda, Rwanda etc., realizing the emergency of the problem, have enacted special legislations to combat FVAW and are training personnel to effectively apply the laws. There are arguments and studies to show that there is a correlation between development and the treatment of women in a society.¹⁶⁷ The recommendation of the UN Women¹⁶⁸ is that domestic violence laws should include in the statement of objectives reference to international treaties and laws, which recognize explicitly that domestic violence constitutes a breach of human rights, particularly the right to equality and the right to life. Further, a

164. The Committee on the Elimination of Discrimination against Women, *A.T. v. Hungary communication No. 2/2003*, views adopted on Jan. 26, 2005, available at http://www2.ohchr.org/english/law/docs/Case2_2003.pdf; see also Department of Economic and Social Affairs Division for the Advancement of Women, *Handbook for Legislation on Violence Against Women*, at 6, available at <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (accessed on Jan. 15, 2013).

165. See *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, entered into Force on Dec. 22, 2000, available at <http://www.un.org/womenwatch/daw/cedaw/protocol/> (accessed on Feb. 13, 2013).

166. *CEDAW Recommendations to the State Parties, Sahide Goekce (deceased) v. Austria, Communication No.5/2005*, views adopted 6 August 2007, available at <http://www.daccessdds.un.org/doc/UNDOC/GEN/N07/495/43/PDF/N0749543.pdf?OpenElement>; See also *Fatma Yildirim (deceased) v. Austria, communication No. 6/2005*, views adopted on 6 August, 2007, available at <http://www.daccessdds.un.org/doc/UNDOC/GEN/N07/495/37/PDF/N0749537.pdf?OpenElement>.

167. See generally, GAIL WARSHOFSKY LAPIDUS, *WOMEN IN SOVIET SOCIETY: EQUALITY, DEVELOPMENT AND SOCIAL CHANGE*, (University of California Press, 1978).

168. See generally, UN Women, *Domestic Violence Legislation and its Implementation: An analysis for ASEAN countries based on international standards and good practices*, XIII, 2011.

comprehensive definition of “domestic violence” will provide a strong basis for the law. This will determine broader prevention and education programs aimed at changing societal attitudes and behavior of individuals, including state and non-state actors.

V. CONCLUSION AND RECOMMENDATIONS

For many Ethiopian women and girls, ‘home’ is where they face a regime of terror and violence at the hands of somebody close to them – somebody they should be able to trust. However, lack of proper legal protection against FVAW makes the situation especially tragic in Ethiopia.

It is therefore imperative that in addition to the substantial financing plans, Ethiopia must reform the law to protect women who are subjected to family violence. Violence in the family incapacitates the victims and is a human rights issue. Enacting laws is not enough to combat FVAW, but having adequate legal provisions is much better than having none or insufficient ones. Obviously, the laws and policies on the ground do not properly address the problem of family violence. Therefore, while working for the application of existing laws, there is a need to have comprehensive legislation to combat family violence, which is hampering the progress of women and girls in every sphere.¹⁶⁹

The lack of sensitivity to women subjected to violence undermines women’s rights to protection under the law. The ineffectiveness of the law has created a dangerous situation for women living in the society and has reduced public faith in law enforcement institutions. Major reforms in law are needed to institute a change in attitudes, promoting equality of opportunity as well as allowing people to rise above their circumstances and become socially participating. To this end, the following specific recommendations are made:

1. To uphold the constitutional intent of ensuring substantive equality and providing a life with dignity to women, special legislation to prevent FVAW needs to be enacted as soon as possible. The special law, among other things, should include the following:

169. *Id.*

- A comprehensive definition of ‘family/domestic violence against women’;
 - Definition of ‘domestic/family relationships,’ which include relationships through marriage, consanguinity and adoption, and the women in the relationship ‘in the nature of marriage’;
 - Provision for shelter homes to protect the women facing violence in the family, her children and other persons connected to her, who could be used by the perpetrator to coerce her;
 - Mandate a coordinated response among protection officers, service providers, shelter homes, counselors, medical officers, the police, and, most importantly courts;
 - Provision to hold the perpetrator accountable for abusive behavior, and to ensure that such violent behavior is put to an immediate end; and,
 - Provision for speedy and effective access to justice to women.
2. The Criminal Code, 2005 must be amended to include specific provisions to define and punish family/domestic violence.
 3. Art. 620 of the Criminal Code, 2005 must be amended to include marital rape as a punishable crime.

Each woman decides for herself the remedy that is in her best interests, given her particular situation. Irrespective of whether she exercises her options, it is undeniable that violence shatters a woman’s life, her economic situation, her relationships, her sense of security, self esteem, and everything she holds dear. She needs time and space to reach her own decision, without her vulnerability being used as a tool for blackmail by the perpetrator.

The purpose of family violence law is, therefore, to prevent a situation where a woman is rendered destitute, and to restore her to a position of equality. The absolute precondition for that is to stop violence immediately. If the law does not serve this function, it serves no function at all.

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