

REGISTRATION OF VITAL EVENTS IN ETHIOPIA: GAPS IN THE LAWS ON REGISTRATION OF MARRIAGE AND ITS DISSOLUTION

*Serkalem Eshetie**

ABSTRACT

In any country, a well-established system of registration of vital events plays key roles to bring political, social, and economic developments. To this end, it is indispensable that the system shall be based, inter alia, on well designed laws. Though many countries have very established system of civil registration, the full-fledged practice of registration of vital events and laws are of recent vintage in Ethiopia. Partly attributed to this, there appear some flaws in the laws on vital events registration in Ethiopia. The aim of this article is to highlight the gaps in that part of the laws dealing with registration of marriage and its dissolution. In so doing, it examines the current laws connected with registration of marriage and its dissolution in light of other laws and established practices. In addition, it also attempts to look into Ethiopia's past experiences in relation to registration of civil statuses. It then identifies gaps regarding the persons responsible to declare marriage or divorce for registration, time and place of registration that would have their own impact in the endeavor to build a well-functioning system of registration of vital events across the country. Accordingly, the laws in force shall be considered for further amendment to avoid the defects.

Keywords: *Declarants, Place of Registration, Registration of Marriage, Registration of Divorce, Vital Events*

I. INTRODUCTION

Vital events are events concerning life and death of individuals, as well as their family and civil status.¹ Under the United Nations system, ten (10) events are deemed vital events which shall be considered for registration. These are live birth,

* LL.B (Haramaya University), LL.M (Bahir Dar University); Lecturer at College of Law, Haramaya University. The author could be reached through serkalem.zemom@gmail.com.

¹ United Nation, Principles and Recommendations for a Vital Statistics System (*Statistical Papers, Series M No.19/Rev.3, UN, New York, 2014*), P3 (*herein after UN, Principles and Recommendations*).

death, foetal death, marriage, divorce, annulment of marriage, judicial separation, adoption, legitimation and recognition.² Since it can provide governments with the necessary vital statistics, a well-established system of registration of vital events plays key roles in any country to bring political, social, and economic developments. Civil registration allows policy-makers, programme managers, health service planners or demographers to generate up-to-date information about the population.”³ This system is also pivotal for an individual who needs to exercise a right which is based on proof of the existence of a certain vital event. The individual could meet legal requirements such as “documentary evidence of identity; legal status and resultant rights; proof of age and allowing access to rights based on age; establishing family relationships; enabling the legal transmission of property, inheritance, social insurance and other benefits.”⁴ With this, it is clear that vital events registration eases the process of registering vital events themselves.

Due to the indispensability of civil registration, there exist international agreements that require registration of some vital events. For instance, the Convention on the Right of the Child obliges parties to immediately register birth.⁵ In the same way, the African Charter on the Rights and Welfare of the Child affirms that every child has the right to be registered.⁶ The Convention on the Elimination of All Forms of Discrimination against Women requires states to make the registration of marriages in an official registry compulsory.⁷ There is also a UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage of the 1964. Article 3 of this Convention stipulates that all marriages shall be registered in an appropriate official register by the competent authority.

²Foetal death refers to dead-born foetus” and “stillbirth”. Separation is to mean the disunion of married persons, according to the laws of each country, without conferring on the parties the right to remarry. Legitimation refers to the formal investing of a person with the status and rights of a person born in wedlock, according to the laws of each country. Recognition, on the other hand, is the legal acknowledgement, either voluntarily or compulsorily, of the paternity of a child born out of wedlock. For all these, see *id.*, Pp 3-4.

³ Towards Sustainable Vital Events Registration and Vital Statistics Systems of Ethiopia: Strategy and Action Plan (2013-2018), P.3;*available at* <https://www.google.com/search?Client=firefox-b-d&q=Towards+Sustainable+Vital+Events+Registration+and+Vital+Statistics+Systems+of+Ethiopia+%3A+Strategy+and+Action+Plan> < accessed on March 14, 2019> (*hereinafter, Strategy and Action Plan*)

⁴*Ibid.*

⁵ Convention on the Right of the Child, Art.7 (1).

⁶ African Charter on Right and Welfare of the Child, Art. 6.

⁷ Convention on the Elimination of All Forms of Discrimination against Women, Art. 16 (2).

These international laws seem to be promulgated with a primary purpose of safeguarding the rights of children and women.

Coupled with the various social, economic and political needs of countries, the above legal instruments impose obligation on their members to implement registration of marriage and birth. Besides, states have their own domestic laws to regulate registration of events which they deem vital. The same is true in Ethiopia. In the first place, Ethiopia is a party to the above mentioned conventions. Particularly, with the advent of the 1960 Civil Code, Ethiopia formulated detailed rules for registration system of what were known as ‘Civil Status’.⁸ The Civil Code also ambitiously envisaged for establishment of officers of civil status throughout the country starting from the lower administrative structure. Despite this, Ethiopia was not able to have the office even at major cities. Indeed, the Civil Code itself has suspended the application of several provisions of the Civil Code on registration of civil statuses.⁹ The Order which was expected to be published to trigger the application of the civil registration provisions had never come to existence.¹⁰ Nonetheless, municipalities were issuing certificates of birth, death, marriage, and divorce.¹¹

Though the Revised Family Code of Ethiopia (RFC) has imposed obligation on the federal government to issue registration law and establish the necessary institution within 6 months from the effective date of the code¹², it took the governments more than a decade to issue the said registration law.¹³ Besides, Ethiopia has now

⁸ Civil Code of the Empire of Ethiopia, Proclamation No 165/1960, Negarit Gazeta, 19th Year No. 2, 5th May 1960, Addis Ababa (herein after, Civil Code), Arts. 47 - 153.

⁹*Id.*, According to Article 3361, Arts 48-55, 57-70, 72-77, 79-131 and 133-145 shall not come into force until an Order to be published in the Negarit Gazeta. Until this Order, Article 3361(2) stipulated that proof of birth, marriage and death shall be made by producing acts of notoriety drawn up in accordance with the provisions of Arts.146-153.

¹⁰Strategy and Action Plan, *supra* note 3.

¹¹The World Bank Group, A Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems: Estonia, Ethiopia, Vietnam, and South Korea, P5; Available at, <http://documents.Worldbank.org/curated/en/237491510746694949/A-comparative-analysis-of-laws-on-civil-registration-and-vital-statistics-systems-Estonia-Ethiopia-Vietnam-and-South-Korea> <accessed on February 16, 2019> (herein after, Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems).

¹²Revised Family Code, Proclamation No. 213/2000, Federal Negarit Gazeta, 6th Year, Extraordinary Issue No. 1, Addis Ababa, 4th July 2000 (hereinafter, Revised Family Code), Art. 321. Similar stipulations are made within regional family codes.

¹³ It is in 2012 that Ethiopia enacted the Vital Events Registration Proclamation, Regulation and Directives.

established the Vital Events Registration Agency through a regulation.¹⁴ This Agency establishes offices at each administrative level including at the lowest level of administrative hierarchy in the country.

Some of the reasons to enact the current registration law can be read from the preamble of the proclamation. Accordingly, one of the reasons is to establish a system of registration of vital events since they are important in the development plans of the country. The system is also believed to play key role in the provision of different social and economic services to citizens. Moreover, the registration law is justified because establishing a well functioning registration system of vital events is pivotal in making the justice administration expedient and effective.

On the basis of the aforementioned objectives and general experiences, it appears, however, that the existing vital events registration law of Ethiopia has some defects. Therefore, this Article particularly aims at highlighting the gaps in the law of registration of marriage and its dissolution in Ethiopia. To this end, it explores the relevant laws including the Revised Family Codes, the Vital Events Registration Proclamation and the Civil Code. It also looks into some foreign experiences.

The rest of the Article is organized into three sections. Section two examines as to which tier of government in Ethiopia has the constitutional mandate to enact laws on registration of vital events. It also makes abridged overview on the existing registration laws in Ethiopia. Section three, on the other hand, addresses registration of marriage, its dissolution and the related issues arising thereof. Finally, section four concludes and forwards certain recommendations.

¹⁴ See Vital Events Registration Agency Establishment Council of Ministers Regulation No. 278/2012.

II. VITAL EVENTS REGISTRATION SYSTEM IN ETHIOPIA: GENERAL OVERVIEW

A. POWER TO ENACT VITAL EVENTS REGISTRATION LAW

Regarding legal framework, though not implemented as stated above, it is the Civil Code of 1960 which, for the first time in Ethiopia, has incorporated several rules with a view to regulate registration of what it called 'civil status'. As shown above, the country has also signed some international conventions related to registration of vital events. In addition, the family codes require registration of marriage in the country though they are silent regarding the registration of divorce and other vital events including acknowledgement and judicial declaration of paternity.

Civil registration in Ethiopia is now largely regulated by the Vital Events Registration Proclamation and the related regulations and directives. Before going into the contents of this proclamation, it may be of interest to address as to which level of the government in Ethiopia has the power to enact laws on registration of vital events. Reading the relevant provisions of the federal and regional family laws, it may seem that each levels of the government can enact its own registration law. As shall be discussed shortly, this is not true as the federal government has enacted the Vital Events Registration Proclamation which regulates registration of vital events throughout the country.

Uniform civil registration laws and regulations which establish the basic policies and procedures that must apply in every part of a country are considered essential regardless of whether the administration of civil registration system is centralized or decentralized.¹⁵ This principle is adopted in Ethiopia. Looking at the family codes alone, it is simple to detect that each level of the government has the power to enact registration laws and establish the required enforcement bodies.¹⁶ In spite of this, the vital events registration proclamation tells that enacting registration laws is given to the federal government. In its preamble, the proclamation affirms that the federal lawmaker proclaimed it on the basis of Article 55 (1) and 55 (6) of

¹⁵ UN, Principles and Recommendations, *supra* note 1, Pp 71-72.

¹⁶ Art 321(1) of the RFC states the government shall, within 6 months from its effective date, issue registration law and establish the necessary institutions. There are equivalent provisions in the regional family codes.

the FDRE Constitution. This means that the federal government has invoked the constitutional provision that mandates the federal government to enact civil laws necessary to establish and sustain one economic community.¹⁷ Practically, regional states are also conducting registration of vital events in accordance with this federal law. This could bring uniformity in the law on registration of vital events which is crucial both at regional and federal level.

Given the above fact, we may wonder how the unique interests of the regional states, if any, could be accommodated. In such system of uniform legislations, the extent of compliance with the registration law is apt to vary among different regions or sectors of the population.¹⁸ Accordingly, the Vital Events Registration Proclamation attempts to create rooms for regions to safeguard their interests through registration of vital events in their jurisdiction. In this respect, Article 6 of the proclamation is one. First, it obligates regions to cause assignment of an officer of civil status for each administrative office.¹⁹ Second, the appropriate regional organ may give the officer of civil status functions other than listed in the law. More significantly, regions shall in collaboration with the appropriate federal organ prepare the registers of civil status to be used in their jurisdiction.²⁰ Through these, regions may address their special interests, if any, that the federal laws fail to address. It may be added here that they also have the right to keep one copy of the registration forms for their purposes.²¹

¹⁷ In fact, the reference to Article 55 (6) of the Constitution does not seem to be adequate as it gives power to the House of People Representatives' upon the decision of the House of Federation. As far as the knowledge of the author, there is no such decision from the House of Federation empowering the House of Peoples Representatives to enact nation-wide law on registration of vital events.

¹⁸ UN, Principles and Recommendations, *supra* note 1, P 72.

¹⁹ Art. 2 (8) of the Amendment Proclamation defines 'administrative office' as an office of a region's lowest level of administrative hierarchy or vital event registration structure. It shall be noticed that regions are required to designate an appropriate regional organ to direct, coordinate and support the registration of vital events at regional level and to transfer records of vital events to the appropriate federal organ.

²⁰ This is mentioned under Art.13 (1) of the Proclamation.

²¹ Vital Events Registration and National Identity Card Proclamation (amendment), Proclamation No 1049/2017, Art 2 (13). Certificate of vital events shall be prepared in the working language of the concerned region and in Amharic or may be in English if necessary. This is important as there are cases where individuals need the English versions.

B. VITAL EVENTS FOR REGISTRATION IN ETHIOPIA

To begin with definition of vital events, Article 2 (1) of the proclamation stipulates that “vital event” means birth, marriage, divorce or death, and includes adoption, and acknowledgement and judicial declaration of paternity. Compared to the UN lists, the proclamation requires registration of only seven vital events and whether this exhaustive list is intentionally made by the legislature may be subject to question.²² In fact, the practice also considers only the above events as vital for the purpose of registration. Despite this, however, one may doubt as to why the law does not generally consider dissolution of marriage as vital event. Under the family codes in Ethiopia, marriage may be dissolved due to divorce, court order for non-fulfillment of essential conditions of marriage, death or absence of one of the spouses.²³ It is mentioned above that annulment of marriage is a vital event in the UN system that is suggested to be registered. A fairly detailed discussion is made on such issues in the relevant part of this Article.

Historically speaking, registration of marriage in Ethiopia is said to be started in 1935.²⁴ With regard to legal framework, however, it is the 1960 Civil Code that has incorporated several provisions governing registration of ‘civil status’. The provisions of the Civil Code that run from Article 47 through 153, which are totally abrogated in 2012²⁵, dealt with registration of civil status though many of them have not been implemented.

In respect of meaning of vital event, one can notice important departure between the Civil Code and the current law of registration of vital events. In respect of terminology, the Civil Code used ‘civil status’ instead of ‘vital event’.²⁶ Though the Civil Code and the current law follow similar approach of listing what they consider ‘civil status’ or ‘vital event’, the list now is broadened. In the Civil Code, only birth, death and marriage are civil statuses for registration.²⁷ In particular,

²²Although it is an eventual goal, not every country records are vital events that the UN recommends. Priority is recommended for births, marriages, divorces, and deaths to be recorded. See Comparative Analysis, P 86.

²³Revised Family Code, Art. 73.

²⁴ See በአዲስ አበባ ከተማ መ ስተዳድር ም ክር ቤት ሀዘጋጅነት በተሻሻለው የቤተ ሰብ ህግ ረቂቅ ላይ የተካሄደ ኮንረረንስ ቃለጉባኤ (መ ጋቢት 21-23፣ 1991፣ Hager Gizat Minister), P4.

²⁵Vital Events Registration Proclamation, Art. 68. It does not, however, mean that the whole provisions of the Civil Code were effective until 2012.

²⁶ Civil Code, Art. 47.

²⁷Civil Code, Art 47 and the following articles.

Article 59 of the Civil Code explicitly mentions that the officer of civil status shall ensure that the *births, deaths* and *marriages* taking place within his jurisdiction be entered in the register of civil status. With regard to divorce, though the law did not oblige the officer of civil status to register, there was the practice of divorce registration.²⁸ Currently, vital event refers to birth, death, marriage, divorce, adoption, acknowledgement and judicial declaration of paternity.²⁹ And the list in the proclamation is exhaustive. Other events including declaration of absence, unless death is declared (which may be subsequently cancelled³⁰), and dissolution of marriage owing to a reason other than divorce are not considered as vital events for registration. As shall be seen in the relevant part of this Article, the appropriateness or otherwise of this position of the law should be scrutinized.

Ever since the time of the Civil Code, our registration laws specify the particulars that should be entered into the records of each vital event. Attributable to the nature of each vital events, the Proclamation has also specified corresponding time and place of registration. They also establish responsible institutions at various levels of the government administration.³¹ Furthermore, they have imposed obligations on certain individuals and institutions to declare registration of the vital events.

III. REGISTRATION OF MARRIAGE AND ITS DISSOLUTION:

GAPS IN THE LAW

In establishing a good system of registration of marriage and its dissolution, the registration law should clearly regulate certain crucial matters. It shall, *inter alia*,

²⁸Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* Note 11, P5. See በአዲስ አበባ ከተማ መስተዳድር ምክር ቤት ሀዘጋጅነት በተሻሻለው የቤተ ሰብ ህግ ረቂቅ ላይ የተካሄደ ኮንፈረንስ ቃለ ጉባኤ (መ ጋቢት 21-23፣ 1991፣ Hager Gizat Minister).

²⁹ Vital Events Registration Proclamation, Art 2 (1).

³⁰Vital Events Registration Proclamation, Art 44. This provision does not indicate judicially declared absence shall be registered. According to Art 44(1), copy of the judgment declaring absence shall be presented to the officer of civil status of the nearest administrative office to the last principal residence of the person whose absence or death has been declared. It requires this for registration of death, not of absence. In addition, it can be noted that Article 44 is within the subsection of the proclamation titled as 'Registration of Death'. In the Civil Code, there may be a possibility that a court judgment may be given which declares either absence or death of a person. According to Article 161, the court may deliver a judgment declaring death of the absentee if the evidence collected establishes the absentee is dead. Thus, one may contend that the proclamation envisages this aspect of an absentee.

³¹See Civil Code, Articles 54, 56, 71, 78, 132.

be clear on contents of the record, place of registration, time of registration and persons responsible to declare the occurrence of the vital event.³² As such, the Ethiopian registration law gives attention to these matters. To conveniently discuss the issues related to registration of marriage and its dissolution, this section separately deals with registration and dissolution of marriage.

A. REGISTRATION OF MARRIAGE

In Ethiopia, no marriage is void on any ground as any marriage shall have effect from the date of its conclusion even if it violates essential conditions.³³ The fulfillment of the essential conditions of marriage is also never to give effect for marriage. Likewise, registration of marriage has never been required for the commencement of effects of marriage. Furthermore, both ‘valid’ and ‘invalid’ marriages, irrespective of the form of conclusion of the marriages³⁴, shall be registered by the competent officer of civil status.³⁵ A certificate of registration of marriage shall then be prepared in two copies and be given to each of the spouses.³⁶

Whether or not invalid marriages shall be registered may however become a point of dispute. Having a look at Article 2 (3) of the Vital Events Registration Implementation Directive No.7/2010 E.C³⁷, it may be argued that not all marriages are eligible for registration. This directive gives definitions for the vital events enumerated in the vital events proclamation. At times, the definitions may mislead the officers of civil status since they are not usually legal experts. For instance, Article 2 (3) of the directive stated ‘there is marriage when it is proved that a man and a woman of 18 or above years of age become a husband and wife in accordance with relevant laws’.³⁸ On one hand, this provision may be understood as it does not generally require/allow registration of marriages concluded in violation of the essential conditions of age. In the vital events registration

³² UN, Principles and Recommendations, *supra* note 1.

³³ Revised Family Code, Art. 28(3). This was true in the Civil Code, too.

³⁴ Forms of conclusion of marriage pertain to customary marriage, religious marriage and civil marriage.

³⁵ Revised Family Code, Art. 28 (2)

³⁶ Vital Events Registration Proclamation, Art. 47(2)

³⁷ አክልል ወሳኝ ኩነት መዝጋቢ ተቋማት የተዘጋጀ የወሳኝ ኩነት ምዝገባ አረፃፀም መመሪያ ቁጥር 7/2010 (herein after, Vital Events Registration Directive).

³⁸ Article 60 (5) of the Directive also states that a person who is under 18 years old cannot enter in to marriage.

proclamation and the family codes, however, there is no provision restricting registration only to valid marriage. On the other hand, the directive may be construed as it does not require/allow registration of a valid underage marriage. Despite this, in Ethiopia, there may be a case where underage marriage is considered valid since its conclusion. To this end, the family codes authorize the General Attorney to give a dispensation of up to 2 years for the conclusion of a valid marriage.

Though the family codes or the registration laws in Ethiopia do not attempt to define marriage, they clearly give effect to a marriage even if both or one of the spouses is below the age of 18. Furthermore, they do not stipulate that early marriages should not be registered. Given the fact that the Kebele Managers, who are responsible to register vital events, are not usually legal experts³⁹, such definition in the directive may be misleading. It is also contrary to the higher laws which do not require only marriages which do not violate the requirement of age shall be registered. At least, the definition of marriage in the directive may create confusion on whether or not an 'underage marriage' due to the age dispensation given by the General Attorney is a marriage for the purpose of registration. In fact, Article 60 (6) of the Directive gives recognition to the possibility of the above age dispensation. With this, the attempt by the Directive to define marriage, which is not attempted by the higher laws, may serve no meaningful purpose than creating confusion.

Generally, the relevant rules on registration of marriage are concerned, *inter alia*, with obligation to register marriage, contents of records of marriage, time of registration of marriage and place of registration of marriage. Seen particularly in light of the purposes of having a well established system of registration of vital events, it appears that there are certain gaps in the law that regulate registration of marriage. The following discussion exposes some of the defects.

i. Record of Marriage

When we read the relevant parts of the law on particulars of records of a vital event, it can be understood that the registration records show certain characteristics of the event and of the persons related to the event. The family codes in Ethiopia

³⁹ In this regard, the writer came to know this is true in many Woredas of Oromia Regional State while he was collecting data to conduct a grand research on the implementation of Oromia Family Code.

denote the particulars of the record of marriage. There are certain differences regarding the particulars required under Article 117 of the Civil Code, Article 30 of RFC and Article 30 of Proclamation. All these laws commonly require the record of marriage to show full⁴⁰ names, date and place of births of the spouses and of their witnesses, and date of celebration of the marriage. The RFC further requires the record of marriage to include the form of the marriage and date of its registration.⁴¹ Among the changes the RFC has made, the inclusion of ‘form of the marriage’⁴² is important. Among other things, indication as to the ‘form of the marriage’ provides relievable data to know the common forms of conclusion of marriage and the related problems. This is also significant for researchers.

The Civil Code discriminates between the effects of records that are entered in the registers and those that are not entered in the registers. The records of civil status regularly entered in the registers shall be proof of the statement which they contain.⁴³ It even went further when it stated that evidence to the contrary may not be adduced except where it is authorized by the court.⁴⁴ On the other hand, the Civil Code stated that records not entered in the register shall not have probatory force inherent to records which are registered.⁴⁵ They shall only have a value of mere information.⁴⁶ Though it does not make such express stipulations like the Civil Code, the proclamation recognizes probative value for the records of the register of a civil status.⁴⁷ It also gives the same probative value as the records in the register for the certificate of the registration issued according to the laws.

ii. Obligation to Declare Marriage

To register marriages or any vital event, information about the event is essential. Hence, the law shall clearly designate an informant for each type of vital event who shall be primarily responsible for providing the information required for registration.⁴⁸ Along with this, the law may designate alternative informants and

⁴⁰ The word ‘full’ is missing in the Civil Code.

⁴¹ Revised Family Code, Art. 30.

⁴² This is to refer to the three forms of conclusion of marriage: marriage concluded before officer of civil status, according to custom and religion.

⁴³ Civil Code, Art 97(1). The law further states that evidence contrary to this rule may not be adduced except upon court authorization (See Art 97(2-3)).

⁴⁴ Civil Code, Art 97(2)

⁴⁵ Civil Code, Art 98

⁴⁶ Civil Code, Art 98

⁴⁷ Vital Events Registration Proclamation, Art. 48.

⁴⁸ UN, Principles and Recommendations, *supra* note 1, P 79.

establish the order in which each of them must assume responsibilities.⁴⁹ The importance of the informant lies in the fact that the registrar can legally record a vital event only on the basis of a legally designated informant's declaration.⁵⁰

Given the three forms of conclusions of marriage, the registering organ may not have adequate information about the conclusion of particularly customary and religious marriages. To alleviate such problem, the law obliges certain persons to declare marriage to the officer of civil status. During the Civil Code, the *authority, i.e., religious institutions and customary organs (if any), who have celebrated the marriage, the spouses and their witnesses* were required to declare marriage.⁵¹ In addition, the officer of civil status had been required to draw records of marriage 'ex officio'.⁵² In such case, he shall summon the 'interested persons' to make them sign the record of marriage.⁵³ This is still true in the current registration laws.⁵⁴ Moreover, Article 22 (1) of the Vital Events Proclamation requires the declarants of a vital event to confirm, by signing, the validity of particulars entered in the register of civil status. The officer of civil status shall then finally approve the registration after ascertaining the completeness of the records.⁵⁵

Similar to the Civil Code, the existing family codes oblige the spouses to declare marriage.⁵⁶ They also oblige officers of civil status to draw up the record of marriage of his own motion whenever he becomes aware of the marriage.⁵⁷ Unlike the Civil Code, they do not consider witnesses and an authority that celebrated the marriage as declarant. Indeed, as already stated, the spouses and witnesses can be called to sign on the records of marriage.⁵⁸ In this regard, the Civil Code stated that the officer of civil status shall summon the '*interested persons*' to make them sign the record of marriage.⁵⁹ In this case, the phrase '*interested persons*' might have

⁴⁹*Ibid.*

⁵⁰*Ibid.*

⁵¹ Civil Code, Art. 119.

⁵² Civil Code, Art 120.

⁵³ Civil Code, Art 120(2)

⁵⁴ Revised Family Code, Art 29 (2).

⁵⁵ Vital Events Registration Proclamation, Art 22(2).

⁵⁶ Revised Family Code, Arts. 28 (1) and 29(1).

⁵⁷ Revised Family Code, Art 29 (1). Article 25 (6) also seems to require officer of civil status to register marriage when it is celebrated before such officer.

⁵⁸ Revised Family Code, Art 29 (2).

⁵⁹ Civil Code, Art 120 (2).

created problem to identify the interested persons.⁶⁰ Of course, the case of spouses could be undisputable. Apart from this, we may argue that the authority celebrating the marriage and witnesses are also interested persons as they were obliged to declare marriage.

At present, Article 31 of the Vital Events Registration Proclamation enumerates the persons who have the duty to declare marriage. The Proclamation called these persons ‘declarants’ and defines them, under Article 2 (4), as persons who have the responsibility to declare a vital event for registration. Despite this general definition, only two persons are required to declare marriage. In the first place, Article 31 (1) stipulates that the officer of civil status who observed the marriage ceremony shall immediately register it.⁶¹ This provision does not indeed go with the title of the Article which talks about ‘obligation to declare marriage’. It requires the officer of civil status to register marriage, and not merely to declare marriage for registration. Regarding the responsibility of the officer of civil status, the silence of the Proclamation on whether the officer of civil status shall register marriage *ex officio* where he becomes aware of the marriage may be misleading. At this moment, however, the relevant provision of the family codes which require the officer to draw up the records of marriage of his own motion whenever he becomes aware of the marriage can be invoked.⁶² There could be no ground to assert that the Proclamation repeals this provision. In fact, it may be contended that the officer may not carry out this duty when the spouses want to register their marriage before another officer of civil status. This is because, as will be discussed shortly, the law entitles the spouses to choose the place of registration of their marriage.

The other declarants are the spouses who shall present to an officer of civil status the evidence of religious or customary marriage for registration.⁶³ Under Article 33 of the Proclamation, religious institutions or elders have the duty to immediately provide the couples with ‘evidence of their marriage’ with the particulars indicated

⁶⁰ In general, there is no practical case to understand such and other provisions of the Civil Code because they have not been practically implemented.

⁶¹ This is also confirmed under article 62 (6) which requires the officer of civil status celebrating the marriage to issue the spouses certificate of marriage.

⁶² Revised Family Code, Art 29.

⁶³ Vital Events Registration Proclamation, Art.31(2), See also Art. 29 (1) of the RFC.

in the law.⁶⁴ It shall be noted, here, that this ‘*evidence of marriage*’ is different from ‘*certificate of registration of marriage*’ under Article 47 of the Proclamation. The latter is the certificate issued by the officer following registration of marriage.⁶⁵ The evidence of religious or customary marriage is sufficient to register the marriage and the law does not oblige the religious institution or elders to appear before the officer of civil status even for signature. However, the Directive further requires witnesses or a person who has attended the marriage ceremony to appear before the officer of civil status to put his/her signature.⁶⁶ But, it is not clear if these persons should appear up on their own initiation or summons, or whether their failure to appear attracts any legal liability.

Unlike in the Civil Code, witnesses of the spouses, religious institutions that celebrated religious marriage or elders who celebrated customary marriage are not required to declare marriage. Here, it could be vital to pin down that there are also other persons mentioned in the family codes who have certain roles in the celebration of certain marriage. The General Attorney can be one when it grants dispensation of age as per Article 7 of the RFC or when it allows marriage by representation under Article 12 of the same Code. In addition, parents in case of age, guardian and the court in case of marriage of a judicially interdicted person may have roles in the conclusion of a marriage. Moreover, representative of a spouse would take a role in the conclusion of marriage when the General Attorney allowed marriage by representation.⁶⁷

Despite these, the Vital Events Registration Proclamation imposes obligation on none of the above persons to declare marriage for registration. In this regard, Article 3 (2) of the Directive is interesting. This provision requires the guardian or custodian of an incapable person to whom a vital event is occurred to declare a vital event occurred to the incapable.⁶⁸ If this is the case, one may then wonder regarding who these incapable persons could be for the purpose of registration of marriage. We may think of at least two groups of persons who may remain

⁶⁴ The evidence shall show names, ages and principal residences of the couples; date and place of the marriage; and names and principal residences of the witnesses.

⁶⁵ Even the status of ‘evidence of marriage’ in relation to proof of marriage is not clear as the family codes give recognition to certificate of marriage and possession of status of marriage.

⁶⁶The Vital Events Registration Directive, Art. 61(6).

⁶⁷ It can be seen that the directive is aware that divorce could be made through representation and the representative could be declarants.

⁶⁸ Vital Events Registration Directive, Art.3 (2). It also requires proof of incapacity shall be brought from court.

incapable even after concluding marriage. First, this could be an interdicted person since there is a possibility for such person to conclude marriage with the involvement of the court and the guardian.⁶⁹ Second, minors who have concluded marriage without getting age dispensation remain incapable as they are not automatically emancipated. As indicated, spouses below 18 years of age due to the age dispensation are not incapable. They shall, according to Article 311 of the RFC, rather be emancipated by the sole fact of the marriage. Consequently, they shall be deemed to have attained majority. In fact, Article 312(1) puts the possibility that a minor of 14 years of age or above could be emancipated upon a court decision (explicit emancipation). In effect, this is similar to the automatic emancipation, *i.e.*, the minor is considered to attained majority pursuant to Article 313 of the RFC.

Therefore, at least regarding marriage of judicially interdicted person, it can be said that the Directive adds another group of persons who shall declare the occurrence of a certain marriage. This may, however, be disputable since the higher laws list out the declarants in a seemingly exhaustive manner. In addition, the position of the Directive may be further challenged when it is seen in light of its implication on criminal liability (as discussed below) of these declarants.

Having the fact that the Vital Events Registration Proclamation considers only spouses as declarants in mind, it is now possible to raise some issues that worth further discussion. One among such issues is whether spouses who have concluded invalid marriage have the obligation to declare their marriage to an officer of civil status. To better understand the importance of this issue, it is critical to tell that declarants who fail to declare marriage will be criminally liable. According to Article 66 (1a) of the Vital Events Registration Proclamation, a person who fails to declare marriage shall be punishable with simple imprisonment not exceeding 6 months or with a fine from birr 500 to 5000. In addition, according to Article 66 (1b), a person who falsifies or conceals a fact in declaring a vital event shall be punishable with simple imprisonment from 1 to 5 years. The Ethiopian Criminal Code also criminalizes intentional failures to make a declaration to the competent authority to register marriage within the time limit fixed by law.⁷⁰

⁶⁹ Revised Family Code, Art. 15. A question may arise when the judicially interdicted person concluded 'invalid marriage'. It shall also be stated marriage of an interdicted person may not terminate the interdiction.

⁷⁰ Criminal Code, Art.434 (1).

Therefore, if we contend that all spouses, irrespective of the validity of their marriage, are declarants, it means a person who concludes the marriage in violation of age or consent will be criminally liable for failing to declare the marriage. It also means that a judicially interdicted person shall declare his/her marriage under pain of criminal liability.⁷¹ In this case, it seems that the Directive has taken a better position. As alluded to above, Article 3(2) of the Directive envisages that registration of vital events that occur to incapable persons shall be made through their representatives who are obliged to bring a court decision about the incapacity of the person.

Practically, spouses in bigamous marriage may not declare their bigamous marriage at all as bigamy itself is a crime.⁷² At this time, it is interesting to ask if such spouses are criminally liable for both concluding bigamous marriage and for failing to declare it. What is worst, the law regarding ‘declarants of marriage’ may be construed to impose criminal liability on a spouse (usually women) whose marriage is to be dissolved since it is bigamous. Of course, whether a bigamous marriage could be registered under the registration laws of Ethiopia itself could be subject of dispute. In respect of marriage, the registration law bears monogamy in its mind. This could be justified since bigamous marriage is not permitted in most of the family codes in Ethiopia. Exceptionally, the Family Code of Harari Regional States permits bigamy when it is concluded based on religion.⁷³ On the other hand, it is stated that no vital event can be registered more than once.⁷⁴ With this, the current registration law, given its nationwide application, does not adequately address the practice and the laws of all regions in the country. It is also hardly plausible to argue that the laws allow regions to accommodate such kind of extreme cases.

If the existing law intends to compel the spouses to declare their marriage regardless of its validity, it may therefore amount to be unfair or it may fail to create a good system of civil registration. To mitigate this problem, it is wise to expand the number of persons who shall have the responsibility to declare a certain

⁷¹ Indeed, the criminal liability of such persons including manners will be dealt with in accordance with the rules of Ethiopian criminal law. If they fulfill the conditions, they may be deemed criminally irresponsible. See Article 50 of the Criminal Code of Ethiopia. In this case, however, the directive relieves judicially interdicted persons from such criminal liability as they have no obligation to declare their marriage.

⁷² Criminal Code, Art. 650.

⁷³ Family Code of Harari Regional State.

⁷⁴ Vital Events Registration Proclamation, Art. 17 (2).

marriage for the purpose of its registration. The general recommendation is even to designate an institution as informant when a vital event occurs in the institution.⁷⁵ It is also held that religious officials solemnizing marriages can play a major role in respect of registration of marriage.⁷⁶ Therefore, religious institutions shall be required to transmit copies of their records of the marriage they have solemnized to the registering organ.⁷⁷ Besides, there is an agreement, in India for instance, that the religious organs should also send a certificate that every marriage included in the record was to the best of its knowledge and belief in accordance with the requirement of the marriage law applicable to parties.⁷⁸

In the past, it can be remembered that witnesses and celebrating authorities in Ethiopia were required to declare marriage for registration. At present, what may be of some interest in this regard is Article 61(6) of the Directive. It obliges witnesses or those persons who attended conclusion of customary or religious marriage to appear to sign the record of marriage. As it reads, it is however difficult to extend the meaning of this stipulation to mean that these persons are declarants. But, it could suggest that requiring celebrating institutions to declare marriage for registration cannot be unfair. As indicated above, such obligation is a recommended one to establish a functioning system of registration of vital events. It should also be noticed that religious institutions and elders can be interested parties in registration of marriages.

iii. Place and Time of Registration of Marriage

➤ Place of Registration of Marriage

The registration of a vital event can be by the place of occurrence or by the place of usual residence.⁷⁹ In any case, any vital events registration law shall be clear on the place of registration for all vital events to be registered. In the case of marriages and divorces, place of occurrence is the usual place of residence since

⁷⁵Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* Note 11, P14.

⁷⁶ Law Commission of India, Laws on Registration of Marriage and Divorce –A Proposal for Consolidation and Reform, Report No. 211, 35 (2008), available at <http://www.lawcommissionofindia.nic.in> <accessed on January 11, 2019>

⁷⁷*Id.*, P 36.

⁷⁸*Ibid.*

⁷⁹ UN, Principles and Recommendations, *supra* note 1, P80.

place of previous residence of either or both of the parties is of limited interest.⁸⁰ Place of usual residence for marriages and divorce is also useful in studying geographical differentials in patterns of family formation and dissolution.⁸¹

Regarding place of conclusion of civil marriage, the RFC and other family laws adopt the rule in the Civil Code. The place is where one of the future spouses or one of the ascendants or close relatives of one of them has established residence by continuously living there for not less than six months prior to the date of the marriage.⁸² In fact, the conclusion of marriage in another place than mentioned in here does not affect the validity of the marriage as this can be inferred from Article 38 of the RFC.⁸³ It also makes sense to expect that the records of such marriage shall also be drawn up at the place where the marriage is celebrated. Similarly, Articles 25 (6)⁸⁴ and 28 (2)⁸⁵ of RFC imply that this is the place for registration of the marriage. Particularly for civil marriage, this is not doubtful since the law states that the celebrating officer of civil status 'shall pronounce the spouses united in marriage and *shall issue a certificate of marriage to that effect*'.⁸⁶ This may not, however, be the case under the vital events proclamation.

Based on Article 32 of the Proclamation, the law recognizes more than one place for the registration of a marriage. In respect of conclusion of civil marriage, it is known that the laws do not give the option to select the place of conclusion of marriage. On the other hand, place is not material to conclude customary or religious marriage. What is material in such cases is rather the requirements set by the relevant customs or religions.

Coming to the place of marriage registration, the first place of registration may be the place where the spouses have jointly decided. Second, it may be the place where either of the couples had used to reside. Third, the principal residence of the

⁸⁰*Ibid.*

⁸¹*Id.*, P28.

⁸²Civil Code, Art 597; Revised Family Code, Art 22.

⁸³ The provision reads as: 'The dissolution of marriage may not be ordered solely on the ground of incompetence of the officer of civil status who celebrated the marriage.

⁸⁴Upon fulfillment of the prescribed formalities under Art. 25 of the RFC, the officer of civil status shall pronounce them united in marriage and shall issue a certificate of marriage to that effect.

⁸⁵ The competent officer of civil status who recorded the marriage shall issue a certificate of marriage to the spouses.

⁸⁶ This is also stipulated under Art.62 (6) of the Directive.

parents or close relative⁸⁷ of either of the couples is also another place to register marriage. At this junction, it shall be clear a marriage can be registered only at one place as no vital event may be registered more than once.⁸⁸ Despite this, the law is not clear whether any priority is given to any of the above places. Due to this position of the law on place of registration, it is generally uncertain whether the officer of civil status that celebrated marriage can ‘....issue a certificate of marriage...’as required under the family codes and the Directive.⁸⁹ Likewise, it may be impracticable for an officer of civil status who has the obligation to register marriage on his own motion. Moreover, the number of places of registration of marriage indicated above could offer the declarants to avoid registration of marriage if they like to do that. It also means that the spouses may choose a place, with which they have no connection at all, to register their marriage.

➤ Time of Registration of Marriage

Similar to the place of registration, the time allowed for registration shall be known to the declarants though there is no need to have a same period of time for all vital events as each vital event has its peculiar nature. However, the law shall require a reporting of a vital event as soon as possible to facilitate current and accurate registration.⁹⁰ With regard to time of registration, a marriage shall be registered within 30 days following the date of its occurrence unless there is sufficient cause for delay.⁹¹ The declarant shall produce evidence to justify the delay where the marriage is not registered within the above date.⁹² It is generally stated that a grace period of up to one year after the event has occurred may be allowed if there are extenuating circumstances.⁹³

⁸⁷ What degree of relationship could qualify to ‘close relatives’ itself can be contested.

⁸⁸ Vital Events Registration Proclamation, Art 17.

⁸⁹ Based on Art. 69 of the Directive, one may argue that the Directive gives recognitions to the options regarding place of registration. This article states that the officer of civil status may register the marriage as civil, customary or religious marriage based on the evidence produced by the spouses regarding the form in which they conclude their marriage. It means a Civil Marriage may not necessarily be registered by the officer of civil status who celebrates it.

⁹⁰ UN, Principles and Recommendations, *supra* note 1, P 81.

⁹¹ Vital Events registration Proclamation, Art. 18 (1).

⁹² Vital Events registration Proclamation, Art. 18 (3).

⁹³ UN, Principles and Recommendation, *supra* note 1, P81.

In Ethiopia, there has been no good practice of registering marriage and other vital events. Universal and compulsory civil registration in the country is relatively a recent phenomenon. As such, we may raise the issue of registration of marriages concluded before the current registration laws on the basis of place and time of registration of these marriages. In this regard, both the vital events proclamation and the directive contain important rules. First, the vital events registered and certificates issued on the basis of the existing laws or customary practices shall remain valid.⁹⁴ Second, they attempt to regulate the case of vital events which are not registered at all before the coming into effect of the vital events proclamation. Such vital events can be registered upon application of the interested party who shall bring supporting evidence.⁹⁵ This provision is further clarified under Article 60 (11) of the Directive. The directive is specifically about registration of customary and religious marriage concluded before the coming into effect of the Proclamation.⁹⁶ Accordingly, if the spouses have lost evidence to prove their marriage, they can bring 4 witnesses, 2 for each, to register their marriage. It further indicates that such registration shall be made in the place of their current principal residence.⁹⁷ In terms of proof required for registration of marriage, the law requires either document or witnesses. Since it may be impossible to get both of these, not to register based on personal declarations of the concerned parties may be against the general recommendation in this regard.⁹⁸

The other vital issues to be addressed in the law are late and delayed registration.⁹⁹ It is suggested that late and delayed registration shall be handled separately.¹⁰⁰

⁹⁴Vital Events Registration Proclamation, Art. 67 (2). As indicated, even before the Revised Family Code, there was practice of issuing certificates of birth, marriage and divorce though it was not required by law.

⁹⁵Vital Events Registration Proclamation, Art. 67 (4).

⁹⁶ This disregards the cases of civil marriage that were concluded before municipalities. It is impossible to assume that there could always be documents to prove civil marriage.

⁹⁷ Regarding place of registration of marriage, this provision of the directive follows a different approach. It is discussed that vital events registration proclamation provides 3 competing places for marriage registration. Unlike this, the directive allows the registration of customary or religious marriages concluded before the proclamation to be registered at the '*current principal residence of the parties*'.

⁹⁸Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* note 11, P14. Rather than total rejection, it may be wise to authorize the officer of civil status to determine when registration should be accepted solely on the basis of information supplied by the informant.

⁹⁹ Late registration refers to registration of a vital event after the period required, but within a grace period. They are accepted without penalty. Delayed registration is a registration of vital event after the expiry of the grace period.

Nonetheless, the Ethiopian vital events registration law does not differentiate between the two. Failure to comply with the periods of registration shall also be sanctioned. In this regard, the Civil Code had sanctioned failure to comply with the periods of registration. Accordingly, it gave probatory value of simple information to the records of civil status drawn up after the expiry for the specified periods unless they are entered by virtue of a judgment.¹⁰¹

B. REGISTRATION OF DISSOLUTION OF MARRIAGE

Registration of dissolution of marriage in general and of divorce in particular was not required both under the Civil Code and under RFC. Despite this, issuance of certificates for divorces was provided for without proper registration established in national law.¹⁰² Indeed, a record of dissolution of marriage could be available when marriage dissolves due to court order for violation of essential conditions or divorce as court judgment could be available. But, such a record does not in any case contain all the particulars that a civil register of divorce shall normally contain. The current Vital Events Registration Proclamation has made registration of divorce mandatory and laid down rules in relation, *inter alia*, to time and place of registration of divorce, persons who have obligation to declare divorce, and records of divorce.

If we stick to Articles 34 to 37 and other provisions of the proclamation, only divorce is to be registered. The law does not require registration of dissolution of marriage in general. Causes of dissolution of marriage, except divorce, are not considered vital event. Stated otherwise, it is not a vital event when dissolution of marriage is attributed to either death of one of the spouses, declaration of absence by the court of one of the spouses or court order of dissolution due to violation of essential conditions of marriage.¹⁰³ As is mentioned in the beginning, Article 2 (1) does not consider dissolution of marriage in general, except divorce, as vital event.

Though very arguable, the Strategy and Action Plan (2013-2018) towards sustainable civil registration in Ethiopia provides “international concepts and definitions of important terms used in the document (the Strategy and Action Plan)

¹⁰⁰ UN, Principles and Recommendations, *supra* note 1, P 82, Strategy and Action Plan, *supra* note 3, P16.

¹⁰¹ Civil Code, Art. 63 (1).

¹⁰² Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* note 11.

¹⁰³ Article 75 of the RFC stipulates these and divorce as causes of dissolution of marriage.

related to vital events registration and collection, production and dissemination of vital statistics.”¹⁰⁴ Among others, divorce is defined as “a *final legal dissolution of a marriage*, that is, that separation of husband and wife which confers on the parties the right to remarriage under, religious and/or other provisions.” Since Ethiopian family laws consider court order declaring dissolution of invalid marriage as a ground of ‘legal dissolution of a marriage’, it may tell, on its face, that dissolution of invalid marriage is a vital event. But, this is far from being true as divorce and dissolution of marriage because of non-fulfillment of essential conditions are different. The Directive, which largely guides the officers at grass root level, does not also require registration of dissolution of marriage in general.

Moreover, when a vital event is registered, the Directive requires such registration to be accompanied by the condition of marriage of the person. Whether he is married or unmarried, his marriage is dissolved due to death or divorce, or whether he lives in irregular union or not shall be indicated.¹⁰⁵ Besides, if a person, who wants to register his marriage, had divorced a previous marriage or if his previous marriage is dissolved due to death of his spouse, he shall adduce certificates to this effect.¹⁰⁶ Unlike the consideration for dissolution due to death, the registration laws do not give regard to dissolution of marriage due to non-fulfillment of essential conditions. On the other hand, the family codes do not provide any meaningful difference between the effects of divorce and dissolution of marriage because of a court order to dissolve an invalid marriage.¹⁰⁷ In the pervasive presence of marriages in violation of essential conditions (particularly early marriages and bigamous marriage) and problems thereof in Ethiopia, failure to consider dissolution of invalid marriages as vital events and not to register them could attract valid concerns.

i. Records of Divorce

The Civil Code and the current family codes have nothing to say on the records of divorce as they do not recognize registration of divorce. In practice, it could be noted that a divorce certificate to be issued by the officer of civil status of Addis Ababa City Government contained the name of the spouses, form and registration

¹⁰⁴ Strategy and Action Plan, *supra* note 3, P 4.

¹⁰⁵ Vital Events Registration Directive, Art. 6(12)

¹⁰⁶ Vital Events Registration Directive, Art. 61(3-4). This does not still give regard to the cases of *defacto* divorce.

¹⁰⁷ Oromia Regional State Family Code, Proc. No. 83/2004, Art.123.

number of the marriage, and the court that pronounced the divorce. From the certificate, two things may call attention. One is the fact that the certificate shows that marriage could be ‘dissolved’ in accordance with Article 663 of the Civil Code when the court orders for ‘dissolution’. The second thing is that part of the certificate which reads as “the Addis Ababa City Government has registered the ‘divorce’¹⁰⁸ and issued this certificate to the interested party pursuant to Article 60 (2) of the Civil Code.

The reference to the above provisions does not give us any appreciable meaning. In the first place, Article 663 generally mentions causes of dissolution of marriage which are still maintained in the current family laws. The certificate therefore wrongly equates ‘dissolution of marriage’ with ‘divorce’. Secondly, Article 60 (2) merely requires the officer of civil status to ensure the custody and conservation of civil registers. It does not prove that divorce in particular or dissolution of marriage in general is civil status that shall be registered. Generally, the certificate was poorly drafted. Be this as it may, it however shows us some of the particulars in the records of divorce.

As divorce shall be registered, the vital events registration proclamation and the directive specify the particulars to be entered in the records of divorce. Pursuant to Article 34 of the proclamation, the records shall contain the full name, date and place of birth, principal residence, citizenship, ethnic origin and religion of each divorcing partner. Regarding the vital event, the date and place of conclusion of the marriage, date of divorce, a reference to the decision of the court on the divorce shall be entered. In addition, the appropriate government organ may require inclusion of other information in the record. On the basis of this, the Vital Events Registration Agency requires inclusion of the ‘form of marriage’ in which the divorced marriage was concluded.¹⁰⁹ Finally, like other vital events, the name and signature of the officer of civil status, the seal of the administrative office and date of registration shall be shown in the record.¹¹⁰

¹⁰⁸ The Amharic version says ‘ጠፋረስ’ which is equivalent to dissolution though that is not the intention of the form.

¹⁰⁹ Vital Events Registration Directive, Art 69. In fact, this is not the only additional particular stated in the directive. For instance, Article 80 of the directive indicates that the reason of divorce may be indicated, but if it is stated in the judgment that pronounced the divorce.

¹¹⁰ Vital Events Registration Proclamation, Art 34(4).

ii. Obligation to Declare Divorce

Like registration of marriage, the law requires certain persons to declare divorce. The divorcing partners or one of them shall present the decision of the competent court on divorce to an officer of civil status for the purpose of registration.¹¹¹ This is required at least for two reasons. The major one is to determine that there is divorce. It is obvious that only the court is competent to decide on divorce in Ethiopia.¹¹² The second reason to get the judgment is to take down certain information from the judgment about the divorce.

Regarding declarants of divorce, the proclamation obliges only the divorcing partners or one of them to present the court decision of divorce for registration.¹¹³ The Civil Code is also not as helpful as it is to marriage for it does not require divorce registration. However, the directive states another declarant. Its Article 72(2) states that a 'special divorce representation' shall be presented if the declarant is a representative. But it does not seem to impose obligation on such special representative to declare divorce. It is rather allowing a divorce representative to declare divorce if he could bring the required representation. Indeed, it is necessary for the directive to be clear as there is criminal liability. Besides, the court pronouncing divorce has no obligation to report divorce to the registering authority. Its obligation is only to render the copies of its decision to the 'divorcing partners forthwith.'¹¹⁴ As said elsewhere above, this contradicts with the suggestion that an institution in which a vital event occurs shall be made an informant.¹¹⁵ Practically speaking too, there are jurisdictions that require courts passing a decree of divorce, nullity or dissolution to send a copy of each such decree for registration to the registering authority.¹¹⁶

On declarants, it is also said a person who is guardian or custodian of an incapable person to whom a vital event is required to declare a vital event occurred to the incapable.¹¹⁷ As to declarants for divorce, one example in this regard is stated under Article 370(1) of the Civil Code which stipulates that the consent of the guardian is

¹¹¹ Vital Events Registration Proclamation, Art 35.

¹¹² Revised Family Code, Art 117.

¹¹³ Vital Events Registration Proclamation, Arts.35, 18(1)

¹¹⁴ Vital Events Registration Proclamation, Art. 37.

¹¹⁵Comparative Analysis of Laws on Civil Registration and Vital Statistics Systems, *supra* note11, P14.

¹¹⁶ Law Commission of India, Laws on Registration of Marriage and Divorce, *supra* note 76, P 31.

¹¹⁷Vital Events Registration Directive, Art. 3 (2).

required to request divorce of the judicially interdicted person. Another example could be where the court decides that an emancipated minor (due to marriage) should remain minor following dissolution of his/her marriage.¹¹⁸

iii. Place and Time of Registration of Divorce

The rule regarding place of registration of divorce seems simple. It is the nearest administrative office to the place where the divorce took place.¹¹⁹ Unlike the options in case of place of registration of marriage, the place for registration of divorce is the place of occurrence. In fact, the law seems to allow certain discretion to the declarants when it makes reference to the ‘nearest administrative office to the place where the divorce took place.’ It also seems the law presumes that the place of divorce is usually the competent court room that has pronounced it. And the nearest administrative office refers to officer of civil status at kebele levels.¹²⁰ As such, many kebeles may be considered as nearest administrative offices. The law does not oblige for registration of the divorce at the kebele where the declarants reside.

It is mentioned above that the period of registration of divorce is within 30 days following the date of its occurrence. Another issue that should be raised here is regarding the registration of divorces that happened before current civil registration laws. This matter is better regulated in relation to registration of marriage as the directive has a provision to this effect. Regarding divorce, however, the relevant provision is only Article 67(2) of the Vital Events Registration Proclamation which accepts vital events registered and certificates issued on the basis of the existing laws or customary practices.¹²¹ The law is silent as to the possibility and conditions of registration of divorces pronounced before the coming into effect of the current laws.

¹¹⁸ Revised Family Code, Art. 314 (1).

¹¹⁹ Vital Events Registration Proclamation, Art. 36.

¹²⁰ This is said because the Vital Events Registration and National Identity Card Proclamation (amendment) defines ‘administrative office’ as an office of regions’ lowest level of administrative hierarchy or vital event registration structure. See Art.2 (8).

¹²¹ As indicated, even before the Revised Family Code, there was practice of issuing certificates of birth, marriage and divorce though it was not required by law.

IV. CONCLUSION

This article analyzes the applicable laws on the registration of vital events in Ethiopia with emphasis on registration of marriage and its dissolution. By so doing, it uncovers some of the legal gaps that would detract the process of establishing a well-functioning civil registration system. It is generally identified that an effective legal framework on civil registration is of a recent origin. Though the Civil Code incorporated quite a number of provisions on registration of civil status, they had never come to implementation for the Civil Code itself suspended their application. The current system of civil registration across the country is mainly regulated by the Vital Events Registration Proclamation (and its amendment), Vital Events Registration Regulation and the implementing Directives. All these laws are federal laws denoting the matter of civil registration is left to the federal government. In some cases, these federal laws do not adequately consider the legal pluralism in the country since regions have the power to enact family laws.

This study has identified some specific problems in relation to registration of marriage and its dissolution. The laws do not take clear position on whether marriages in violation of essential conditions and their dissolution upon court order are vital events that shall be registered. It is also not clear if the spouses in relation to these events have an obligation to declare the conclusion or dissolution of these kinds of marriages. Furthermore, the lists of declarants in relation to marriage and divorce are not in line with generally recommended practices. They do not require institution in which the events happen to declare to the officer of civil status. Besides, the approach particularly regarding place of registration of marriage is odd when it is compared with the accepted practices. It would affect desirable level of registration of marriage in the country as it may create favorable environment to evade obligation to declare marriage.

The article further discloses that the Directive contains certain provisions (i.e., that attempt to define marriage, divorce, declarants etc.) that contradict the relevant higher laws. This means that certain actions, which could be carried out based on the directive, in the process of registration of marriage or divorce may be questionable. Indeed, there are significant provisions that fill the gaps in the Vital Events Registration Proclamation. However, it is fair if such important issues, like registration of vital events occurred before the existing laws, are addressed by the higher registration laws than the directive. Generally, it is a must to have a well-

designed legal framework to establish a system of vital events registration that could meet the stated objectives. The current registration laws shall be revisited to fill the gaps identified in this article. It may want to consider requiring institutions in which a vital event occurred as important declarants of conclusion of marriage or divorce. The law should also be revisited with a view to address the issues related to the time and place of registration of marriage and divorce on the basis of accepted practices and the need to have a good system of registration of these events.