

TACKLING GENDER BASED VIOLENCE IN ETHIOPIA

The Need for Criminalizing Stalking

The Human Rights Infrastructure
Working Group



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Legal and Justice Affairs Advisory Council
Federal Attorney General

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ATTORNEY GENERAL

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Jomo Kenyatta St,
Addis Ababa, Ethiopia,
<http://www.moj.gov.et/>
Phone Number: +251-11-554-18-68
Fax: 0115517775

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Tsega Andualem (Ph.D.) wrote this diagnostic study. The study was meant to have been submitted to the Human Rights Infrastructure Working Group which was slated to review and approve the contents of the study. Members of the Human Rights Infrastructure Working Group are:

Dr. Abdi Jibril, Chair/Coordinator

Dr. Adem Kassie

Amerti Solomon (LLM)

Dr. Girmachew Alemu

Kalkidan Aberra (LLM)

Dr. Mekdes Tadele

Dr. Mizanie Ababe

Samuel Tilahun

Dr. Takele Soboka

Yemserach Legesse

Dr. Zelalem Teferra

Tackling Gender Based Violence in Ethiopia: The Need for Criminalizing Stalking

Abstract

Gender based violence has remained an immense challenge in Ethiopia for so long. Though there have been attempts to use law as an instrument for tackling the problem its degree of success is not that satisfactory. Part of the reason for this is that the existing legal framework does not comprehensively address all forms of violence against women. This has been noted by several studies. Yet, they have largely neglected the absence of a provision in the FDRE criminal code which criminalize Stalking considered in many jurisdictions as a vital mechanism preventing violence in advance. In very simplistic terms, stalking refers to a set of acts committed on a specific person in a repeated manner with the aim of instilling fear and intimidating. These acts may ultimately come into culmination by inflicting a serious bodily injury or killing the victim. Such acts are committed by the perpetrator on most victims of gender-based violence. Accordingly, this study argues that Ethiopia needs to criminalize Stalking in order to prevent the commission of serious forms of violence on women including rape, acid attack and murder. This is based on the assumption that early intervention in such cases is much more beneficial than attempting to mend the irreparable harm subsequently. The author has used a doctrinal method for conducting the study. As such, relevant laws and studies related to the topic are examined.

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I. Introduction

There is no universally accepted definition of what constitutes violence against women. However, for the purpose of this diagnostic study it could be construed as ‘a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.¹ This definition is chosen because of its clear normative stance and comprehensiveness of content. At its very beginning the definition characterizes such forms of violence as a human rights violation. This is vital as it indicates the gravity of the harm and the interest at stake. In addition, such forms of violence are also considered as discriminatory because they are primarily inflicted on women on the basis of their gender. More importantly, the definition covers all types of harms on women which may result from violence both in private and public spheres.

At the African level, there have been several attempts to tackle the problem of violence against women. Human rights treaties in the region also prohibit the act and impose an obligation on the states to take legislative and other measures to tackle the problem. Here, one can mention the Maputo Protocol on the Rights of Women in Africa as a good example.² However, the extent of actual progress in addressing the issue in many jurisdictions is disconcerting. Ethiopia is one of these jurisdictions. According to the report of the Central statistics authority of Ethiopia ‘nearly a third of women aged between 15 and 49 had experienced either physical or sexual violence’.³ This is a shocking figure by any standard. Many factors could explain this state of affairs including the cultural attitudes of the society. The focus of this study is however on examining the possible gaps in the law. As such, it is proper to start the analysis from the Federal Democratic Republic of Ethiopia (FDRE) constitution.

*LL.M, LL.M,SJD, Deputy Head of the Secretariat for Legal and Justice Affairs Advisory Council, tsega.andualem@gmail.com December, 2020

¹ Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) art 3(a)

² Maputo Protocol on the Rights of Women in Africa (2003) art 1(j), 3(4), 4(2) a,b,c

³ Marisa Cordon *et al*, Systematic Literature Review of Gender- Based Violence in Ethiopia Magnitude, Policies, and Interventions, 2018 p.ii

The constitution contains several provisions which proclaim the equality of women with men in various spheres.⁴ Ethiopia has also ratified many international human rights treaties which recognize the rights of women. More specifically, the constitution prohibits violence against women in the following manner ‘the State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited’.⁵ This provision founded of on the assumption that violence on women emanates from customs and practices which regard women as inferior. As such, it is impossible to protect the rights of women without eradicating such practices. Further, it explicitly outlaws those laws and traditions which cause harm to women.

The other important legal regime in Ethiopia which is essential for protecting the right of women is the criminal code. In several jurisdictions, criminal law is a key instrument for preventing violence against women. Historically speaking, the 1957 criminal code of Ethiopia was problematic from the perspective of women’s right. This is because it contains several provisions incompatible with the right of women enshrined in the FDRE constitution and international human rights treaties ratified by Ethiopia. One good example for this is its provision that criminalizes rape. According to this provision a person who commits rape will be exonerated from criminal liability if he marries the women he raped.⁶ This is completely absurd and reflects the improper place given for the rights of women at the time. The Code also did not give sufficient attention in criminalizing acts which amount to violence against women particularly those committed by intimate partner. These defects in the code were the main motivating factors for revising it.

The revised 2005 Criminal Code of Ethiopia attempted to fill the gaps in the previous code to a certain degree. Some of the achievements include incorporation of provisions which criminalize harmful customary practices on women, intimate partner violence and aggravate the penalty for rape.⁷ The revised code also succeeded in making clear some provisions which were considered as ambiguous. Despite these achievements, many authors still criticize the revised code for not

⁴ Federal Democratic Republic of Ethiopia Constitution 1995, art 34(1), 35

⁵ *ibid*, art 35(4)

⁶ Tayechalem G. Moges, Legal Response to domestic Violence in Ethiopia: A Comparative Analysis, (LLM thesis CEU) 2009 p.73-74

⁷ Marisa Cordon (n3) p.16 & 25

satisfactory addressing the problem of violence against women. One of the main criticisms against the criminal code is its failure to criminalize domestic violence as a separate crime.⁸ The approach followed is rather using the other provision of the code such as assault in cases of violence committed on women. This is inadequate because it ignores the unique nature of the crime involved.⁹ Further, the way it addresses intimate partner violence is also problematic. This is because its application is primarily confined to those in marital relationship or that of irregular union.¹⁰ As such, other relationships are outside its ambit. One additional problem mentioned in several studies and concluding observations of different international human rights monitoring bodies is the failure of the code to criminalize marital rape.¹¹

These problems were mentioned in various studies conducted over the years. Yet, the studies have largely neglected the absence of one critical form of violence against women in the Ethiopian criminal code which is known in many jurisdictions as Stalking. This study argues for criminalization of Stalking in Ethiopia as a decisive instrument for preventing violence against women. In order to do this in orderly manner, the next section will attempt to clarify the notion of stalking and its elements. This will be followed by a section that shows the link between stalking and violence against women in Ethiopia. After doing so, the study will briefly discuss the importance of criminalizing stalking in Ethiopia by analyzing some well known cases of violence on women. Lessons will also be drawn from the experience of other jurisdictions. Finally, the study finishes by summarizing the main findings of the study and suggesting the way forward.

II. Understanding Stalking and its Legal Regulation

Many studies conducted on stalking admit that the term is not suited to be defined in a simple and precise manner. Yet, they have provided various kinds of working definitions. According to Patricia and Nancy, ‘stalking generally refers to harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person’s home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person’s property. These actions may or may not be accompanied by a

⁸ Tayechalem (n6),p.59

⁹ *ibid*, 61

¹⁰ *ibid*

¹¹ *ibid*, 62

credible threat of serious harm, and they may or may not be precursors to an assault or murder'.¹² This definition is detailed and contains an illustrative list of acts which may amount to stalking. A similar definition construes stalking as 'those repeated acts, experienced as unpleasantly intrusive, which create apprehension and can be understood by a reasonable fellow citizen (the ordinary man or woman) to be grounds for becoming fearful'.¹³ This definition qualifies the nature of the fear as reasonable.

The above definitions also share some common elements. First, stalking is an intentional act and the stalker does it with the purpose of achieving something. Second, stalking is not a single act or one time incident. Rather, it is repetitive and encompasses a series of acts. It also maintains some degree of regularity. Third, the purpose of the stalker is to threaten and instill fear in the victim. In some cases, the threat may be directed towards the victims' family.¹⁴ The general expectation here is that the acts committed by the stalker need to make a reasonable person threatened. This also helps to differentiate between acts which are and are not stalking.

There are different types of stalking. The most common one is what is called a relational stalking which is usually 'as one-sided attempts to create a close, usually romantic relationship where the two parties were, at the start, either completely unacquainted, or only superficially acquainted'.¹⁵ The stalker engages in a number of acts to demonstrate his interest including making phone calls, sending messages and gifts in repeated manner. This may evolve to a threatening and violent conduct in case of rejection of the proposal by the other side. Stalking may also be committed between exes.¹⁶ The main purpose of the stalker here is to reestablish the terminated relationship due to divorce or separation. In this case as well, the stalker may repeatedly follow, bother and threaten the victim.

In many jurisdictions the act of stalking was not criminalized for so long. This was because such acts were considered as 'normal' behaviors of establishing relationships. Such attitude began to

¹² Patricia Tjaden and Nancy Thoennes, Stalking in America: Findings from the National Violence against Women Survey, April 1998, p.1

¹³ Md. Khalid Rahman, Anti-Stalking Legislation in Bangladesh: A New Frontier in Criminal Law Regime, ELCOP Yearbook of Human Rights 2017, p.105

¹⁴ National Center for Victims of Crime, The Model Stalking Code Revisited Responding to the New Realities of Stalking, January 2007, p.19

¹⁵ Robert M. Emerson, Kerry O. Ferris and Carol Brooks Gardner , 'On Being Stalked' Social Problems , Aug., 1998, Vol. 45, No. 3 (Aug., 1998), pp. 289-314

¹⁶ *ibid*

change in the United States 1980. The main motivating factor for this was the murder of well known TV star by a person who stalked her for two years.¹⁷ Over the years, several studies came up with findings that demonstrate a correlation between stalking and violence against women. For instance, a research conducted in the United States shows that ‘76 percent of femicide victims and 85 percent of attempted femicide victims had been stalked by their intimate partners in the year prior to their murders’.¹⁸ Another study undertaken in Bangladesh also indicates the correlation between acts of stalking, rape and acid attack on women.¹⁹ This shows that the act of stalking goes way beyond creating mere inconvenience on the victim. In some cases it could become life threatening as mentioned above. The devastating impact of the act of the victim is not also difficult to imagine.

The realization this fact led to the adoption of anti-stalking laws in several states of the United States.²⁰ Today many countries in different parts of the world have laws that criminalize stalking in different forms. The major purpose of these laws is succinctly stated in the following manner ‘stalking conduct often becomes increasingly violent over time. The Legislature recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the Legislature enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has serious or lethal consequences’.²¹ The role criminalizing stalking could play in preventing violence against women in advance is also the main motive behind writing this study. In the next section, an attempt will be made to discuss the link between stalking and violence against women by discussing some cases.

III. Stalking and Violence against Women in Ethiopia

The previous section of the study has demonstrated to a certain degree the connection between stalking and violence against women by discussing the experience of other jurisdictions. A similar correlation between stalking and violence could also be established in Ethiopia as well. For this I will discuss three cases of violence on women which attracted significant media

¹⁷ National Center for Victims of Crime (n14) p.10

¹⁸ *ibid* p.13

¹⁹ Md. Khalid Rahman (n13), p.109

²⁰ National Center for Victims of Crime (n14) p.23

²¹ *ibid*

attention. The first is the murder case of Naomi Tilahun who was a 17 years old high school student residing in Addis Ababa.²² Her attacker stabbed her to death in broad day light in a place around Mexico. According to the testimony of her friends, Naomi was stalked by the attacker for nearly a year before the incident. They further noted that the attacker repeatedly ‘was going after her, telling her that he loved her, though she tried to avoid him’.²³ This act purely falls within the category of relational stalking. Unfortunately, the criminal justice system did not intervene early to prevent her death.

Another similar case is that Kamilat Mehedi which involved an acid attack on the victim.²⁴ Testimony of her close relatives indicates that her attacker has been stalking her for four years. He was also repeatedly threatening to harm her and her family besides following her.²⁵ But she did not inform her family for fear that they would be in danger if they get involved as he was threatening to use gun on them. On the night of the incident Kamilat was walking home with her sisters and the attacker splashed sulfuric acid on her face. As a result of the acid attack, her face was completely burnt.²⁶ Her chest also suffered a significant injury. In this case as well, the law responded late after the commission of this heinous act.

The other victim of stalking and violence is Hermela Wossenyeleh.²⁷ She has been stalked by a person called Nigussie Lemeneh for eight years. His motive was to establish a romantic relationship with her. According to reports, ‘the harassment was so severe that he physically abused her several times, shot her in the face, and even attacked her younger sister with an axe cracking her skull open’.²⁸ Her attacker was arrested for these acts but was sentenced for few months only. This forced Ethiopian Women Lawyers Association (EWLA) to take the matter to the media which entailed a significant public outcry.²⁹ The association also lost its license for doing so. Later on as a result of public outcry EWLA’s license was returned and the attacker was

²² A 17-year-old girl stabbed to death by ‘obsessed lover’ in busy street’ <https://ethiopianege.com/archives/2135> March 6, 2017

²³ ibid

²⁴ Amber Henshaw, ‘Acid attack on woman shocks Ethiopia’ <http://news.bbc.co.uk/2/hi/africa/6498641.stm> 28 march 2007

²⁵ ibid

²⁶ ibid

²⁷ Ethiopian Women Lawyers Association (EWLA) <https://www.pambazuka.org/gender-minorities/ethiopian-women-lawyers-association-ewla> September 27, 2001

²⁸ ibid

²⁹ ibid

sentenced to 18 years in jail.³⁰ Here, it is important to note that the cases discussed so far are only those which got media attention. Thousands of women victims of stalking and violence are suffering in silence. Further, the law has so far intervened very late after irreparable harm is inflicted on them. Thus, it is needless to state the importance of a law that criminalize stalking and enable the criminal justice administration system to intervene early.

IV. The Need for Criminalizing Stalking in Ethiopia

The Criminal Code of the FDRE does not contain a provision that expressly prohibits stalking. A provision close to stalking is the one dealing with intimidation which states ‘whoever threatens another with danger or injury so serious as to induce in him a state of alarm or agitation, is punishable, upon complaint, with fine not exceeding five hundred Birr, or with simple imprisonment not exceeding SIX months’.³¹ This provision however cannot be equated with a prohibition on stalking. It is rather intended to prevent intimidation of a general nature which could be committed on women or men. This is materially different from the nature of threat in cases of stalking which primarily targets women and aims at establishing new romantic relationship or resuming an already terminated one. Further, the penalty prescribed for the act is too little and does not reflect the seriousness of stalking.

Accordingly, we need to fill this gap in the criminal law by incorporating stalking as an independent crime in a comprehensive manner. For this, model anti-stalking code for states in the US could serve as a guide.³² The relevant provisions of the code are reproduced below:

SECTION TWO: OFFENSE

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

- (a) fear for his or her safety or the safety of a third person; or*
- (b) suffer other emotional distress is guilty of stalking.*

SECTION THREE: DEFINITIONS

As used in this Model Statute:

³⁰ *ibid*

³¹ Criminal Code of the Federal Democratic Republic of Ethiopia, 2004 art 580

³² National Center for Victims of Crime (n14) p.24-25

(a) “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

(b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) “Reasonable person” means a reasonable person in the victim’s circumstances.

SECTION FOUR: DEFENSES

In any prosecution under this law, it shall not be a defense that:

(a) *the actor was not given actual notice that the course of conduct was unwanted; or*

(b) *the actor did not intend to cause the victim fear or other emotional distress.*

Optional Provisions

SECTION FIVE: CLASSIFICATION

Stalking is a felony.

Aggravating factors.

The following aggravating factors shall increase the penalty for stalking:

(a) *the defendant violated any order prohibiting contact with the victim; or*

(b) *the defendant was convicted of stalking any person within the previous 10 years; or*

(c) *the defendant used force or a weapon or threatened to use force or a weapon; or*

(d) *the victim is a minor.*

There are several issues which could be raised in applying these provisions of the model code. The first is the requirement of proving intent to instill fear.³³ According to the commentary made on the model code the public prosecutor is not expected to prove the specific intent of the stalker to make him criminally liable. Rather it suffices to show that the defendant should have known that his conduct could create fear on the victim.³⁴ It is also important to note that the defendant could not raise the fact that he was not told to stop what he was doing by the victim as a defense. As long as his conduct is considered to be problematic by a reasonable person he will not escape criminal liability. What is important to note here is that the parameter used to assess the level of

³³ *ibid* p.26-52

³⁴ *ibid*

fear is that of a reasonable person standard. This is helpful to differentiate between reasonable complaints and over reactions.³⁵

The other important issue worth exploring is how many actions are needed to categorize a conduct as stalking. According to the commentary, two or more separate actions are sufficient.³⁶ This is important because most stalkers have the assumption that if they persist in their actions the women they are stalking would fall in love with them. If the number of actions required for intervening is too many, it may not meet the intended objective of criminalizing stalking. Finally, one concern raised in relation to stalking is that it may be used to criminalize legitimate acts and prevent the pursuit of ‘normal interaction’.³⁷ In order to address this problem one must look into the purpose behind the conduct. If the conclusion reached is that the conduct does not serve a legitimate purpose it could be considered as stalking. Further, the reasonable standard discussed in the previous paragraph is also critical in determining the acceptability of a certain conduct or not. On these issues, the approach followed by the state of North Carolina in the United States may offer us a valuable lesson.³⁸

V. Conclusion

³⁵ *ibid*

³⁶ *ibid*

³⁷ *ibid*

³⁸ § 14-277.3A. Stalking

(b) Definitions. - The following definitions apply in this section:

(1) Course of conduct. - Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, is in the presence of, or follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) Harasses or harassment. - Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

(3) Reasonable person. - A reasonable person in the victim's circumstances.

(4) Substantial emotional distress. - Significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) Offense. - A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

(1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.

(2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

This study has demonstrated the existence intimate connection between stalking and severe forms of violence against women in Ethiopia. In most of these cases, the women were stalked by the attacker for considerable period of time. Unfortunately, the act of stalking is missing from the list of crime in the Ethiopian criminal code as it stands today. This has prevented the criminal justice system from intervening in a timely manner. Thus, the legislature must recognize the seriousness of the act of stalking, its devastating impact and the possibility that it could escalate in to serious forms of violence against women. Accordingly, it must incorporate the crime of stalking in the criminal code without delay and demonstrate that it takes the rights of women seriously. For this it could draw useful lessons from jurisdictions with advanced anti-stalking laws such as the United States. This would help in protecting the life and safety of so many women in Ethiopia.