

Criminalization of Abortion and Its Implications on the Rights of Women in Ethiopia

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Abstract: *This research has been done to assess about criminalization of abortion and its implications on the rights of women in Ethiopia with special reference of the right to; life, health and reproductive self-determination and non-discrimination. The main focus of this research is to evaluate whether making abortion a crime particularly in the first trimester has valid justification or not, whether criminalization of abortion is a pushing factor for women to conduct unsafe abortion or not, whether criminalization of abortion in the current Criminal Code of Ethiopia has implications on the rights of women, and compatibility of the current criminal code of Ethiopia with FDRE Constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of women rights. To realize this proposed objective the study employed qualitative research approach and important data for the study were collected both from primary and secondary sources. Primary data was obtained through interview whereas secondary data was collected from different literatures, dead case, reports and international and national legal documents are reviewed. Interviews were made with key informants from health experts, police, prosecutors, judges and directors from Women Youth and Children Affair Bureau of ANRS with a total of thirteen (13) respondents participated. In this study, purposive sampling has used to select informants from the existing population based on their status and experience. The findings of this study revealed that; criminalization of abortion in the current Criminal Code of Ethiopia in principle particularly in the first trimester has no valid justification. Moreover, this research also discovered that; criminalization of abortion in the current Criminal Code of Ethiopia is a pushing factor for women to conduct unsafe abortion. In addition, this research exposed facts that criminalization of abortion in the current Criminal Code of Ethiopia has irreparable implications on the rights of women and this research also discovered that the current Criminal Code of Ethiopia is not compatible with FDRE Constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of women human rights. Finally, the researcher has made recommendations that could address the existing problems that try to show the way on how abortion should be handled in light of women rights in Ethiopia.*



University of Gondar
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**CRIMINALIZATION OF ABORTION AND ITS IMPLICATIONS ON
THE RIGHTS OF WOMEN IN ETHIOPIA**

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GONDAR, ETHIOPIA

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**A Thesis Submitted to the School of Law, University of Gondar, in
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(Human Rights Law)**



Thesis Approval Page

The thesis titled "**Criminalization of Abortion and its Implications on the Rights of Women in Ethiopia**" by Mr. Fekadie Misganaw is approved for the Degree of Master of Laws (LLM).

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Declaration

This thesis titled "CRIMINALIZATION OF ABORTION AND ITS IMPLICATIONS ON THE RIGHTS OF WOMEN IN ETHIOPIA" is my original work and has not been submitted for an award of a degree in any university and materials that used as a source for the thesis have been duly acknowledged.

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Signature _____ Date _____

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Acronyms

AAU	Addis Ababa University
ACHPR	African Charter on Human and Peoples Rights
ACHR	American Convention on Human Rights
ANRS	Amhara National Regional State
C/r	Commander
CC	Criminal Code
CEDAW	Convention on Elimination of All form of Discrimination against Women
CRC	Convention on the Rights of the Child
E.C	Ethiopian Calendar
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
FDRE	Federal Democratic Republic of Ethiopia
GTP	Growth Transformation Plan
HRC	Human Right Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant for Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
IPPF	International Planned Parenthood Federation
Jan	January
NGOs	Non-Governmental Organizations
MA	Master of Art
MDGs	Millennium Development Goals
MOH	Ministry of Health
MPH	Master of Public Health
Mr.	Mister
No	Number
PC	Penal Code
R/director	Representative Director
UDHR	Universal Declaration of Human Rights

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Abstract

This research has been done to assess about criminalization of abortion and its implications on the rights of women in Ethiopia with special reference of the right to; life, health and reproductive self determination and non-discrimination. The main focus of this research is to evaluate whether making abortion a crime particularly in the first trimester has valid justification or not, whether criminalization of abortion is a pushing factor for women to conduct unsafe abortion or not, whether criminalization of abortion in the current Criminal Code of Ethiopia has implications on the rights of women, and compatibility of the current criminal code of Ethiopia with FDRE Constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of women rights. To realize this proposed objective the study employed qualitative research approach and important data for the study were collected both from primary and secondary sources. Primary data was obtained through interview whereas secondary data was collected from different literatures, dead case, reports and international and national legal documents are reviewed. Interviews were made with key informants from health experts, police, prosecutors, judges and directors from Women Youth and Children Affair Bureau of ANRS with a total of thirteen (13) respondents participated. In this study, purposive sampling has used to select informants from the existing population based on their status and experience. The findings of this study revealed that; criminalization of abortion in the current Criminal Code of Ethiopia in principle particularly in the first trimester has no valid justification. Moreover, this research also discovered that; criminalization of abortion in the current Criminal Code of Ethiopia is a pushing factor for women to conduct unsafe abortion. In addition, this research exposed facts that criminalization of abortion in the current Criminal Code of Ethiopia has irreparable implications on the rights of women and this research also discovered that the current Criminal Code of Ethiopia is not compatible with FDRE Constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of women human rights.

Finally, the researcher has made recommendations that could address the existing problems that try to show the way on how abortion should be handled in light of women rights in Ethiopia.

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CHAPTER ONE: INTRODUCTION

1.1 Background of the Study

Criminalization is an act or conduct which is going to be criminalized to fulfill the protective or retributive ambition of the criminal law if it drives from two premises first an act or conduct may be legitimately be criminalized only if it is wrongful and second an act or conduct is wrongful only if it is appropriately related to an ultimate harm.¹

When one looks to abortion; in primitive tribal societies, it was induced by using poisonous herbs, disrupting the fetus or by sheer pressure on the abdomen until vaginal bleeding occurred due to it was not criminal act for a long period of time.² Even in the modern society, it became the great cause for the death of mothers because of it is declared as a criminal act in many countries of the world and this forced woman to take unsafe abortion.

The estimation shows that 42 million abortions are performed each year, and 20 million of them are considered unsafe because they are performed by unskilled providers and/or in unsanitary conditions.³ The estimation also shows that 529,000 girls and women die from pregnancy-related causes each year, almost all of them in developing countries; 68,000 (13 %) of these deaths are due to unsafe abortion.⁴

The report also shows that this percentage is much higher in some countries which should, however, be noted that all scholars are not in agreement with the assertion that abortion was practiced with impunity by all ancient societies and some have maintained the ancient Persians and Assyrians punished abortion and the Code of Hammurabi (1728 B.C.E.) and the Septuagint version of the Book of Exodus.⁵ However, abortion became the great concern of the world and it was legally restricted in

¹ Andrew Cornford; Preventive Criminalization; New Criminal Law Review, vol. 18.No.1, University of California press (2015) p.10.

² McClelland and Stewart; Truth about abortion in child birth by choice trust, abortion in law, history and religion, Toronto, (1995) p.3.

³ World Health Organization report (2007) unsafe abortion; global and regional estimates of the incidence of unsafe abortion and associated mortality in Geneva

⁴ Id

⁵ Tsehai Wada; Abortion law in Ethiopia a comparative perspective, Mizan Law Review Vol. 2 No.1, AAU press Jan (2008) p.3.

almost every country by the end of the nineteenth century.⁶ Historically, restrictions on abortion were introduced for three main reasons:⁷

The first reason abortion was dangerous for women due to unskilled abortionists were killing lots of women for their traditional way of aborting. Hence, the laws had a public health intention to protect women who nevertheless sought abortions and risked their lives in doing so, as they still do today if they have no other choice. Here one should note that today precluding abortion does not make any public health sense due to there are skilled man power and adequate technology to do it easily.

The second reason justified as abortion was considered a sin or a form of transgression of morality, and the laws were intended to punish and act as a deterrent. In such case, the law serves as means of protecting the religion and morality of the community. Even today, the main religion stand never changed regardless of whether abortion has implications on the rights of women or not.

The last reason abortion was restricted to protect fetal life in some or all circumstances because of some scholars argue that the life of the fetus commences from the union of sperm and egg. However, there is no any law that supports the fetus has life before the birth at least in a certain weeks. Since abortion methods have become safe, laws against abortion make sense only for punitive and deterrent purposes, or to protect fetus life over that of women's lives. While some prosecutions for unsafe abortions that cause injury or death still take place, far more often existing laws are being used against those having and providing safe abortions outside the law today.

Generally, here, one can understand easily that the act of abortion is prohibited for a long period of time in the world regardless of illegal or safe. However, there is a great contention between the idea of the criminalization of abortion on one side and the reproductive and other human rights of women on the other. Therefore, many efforts have been done to reform the abortion laws and practice of the world. However, still major religions still hold a stand that abortion is the deliberate taking away of life and, therefore, not condoned under any circumstance.⁸

On the other side of the spectrum, advocates of women's rights, argue that when the interests of the fetus comes into conflict with the rights of the pregnant woman, the latter should take precedence and it is the woman's decision that should count in the end. Moreover, many scholars argue that

⁶ Marge Berer; Abortion law and policy around the world; in search of decriminalization, Health and Human Rights Journal, vol.19 No.1 June, (2017) p. 16

⁷ Id

⁸ See *supra* note 5 p.1.

permitting abortion is just allowing women the right to make choice when they want to have children, how many children they have in relation to their political commitments, age, financial capacity, education, culture and other reasons. Therefore, currently many countries tried to strike the balance of the above arguments and they set abortion as a principle criminal act but it should be permitted in a certain grounds.

When the researcher looks the extent that limited ground of abortion, one can categorize countries of the world in to three categories. These are; most restrictive countries where; abortion is not permitted or is permitted only to save a woman's life, less restrictive countries where; abortion is allowed to preserve a woman's physical or mental health, in case of rape or incest, or because of fetal impairment, and least restrictive or liberal countries where abortion is allowed; for economic or social reasons or on request.⁹

When one compares states and governments in developing regions were more than four times as likely to have restrictive abortion policies as those in developed regions and in 2013, 82% of governments in developed regions permitted abortion for economic or social reasons, and 71% of governments allowed abortion on request.¹⁰ In contrast, only 20 per cent of governments in developing regions permitted abortion for economic or social reasons, and only 16 % allowed it on request.¹¹

Generally, abortion is permitted for seven mostly known legal grounds in most countries of the world. These are (emphasis added):¹²

- a) Intervention to save the life of the woman (risk of life);
- b) Preservation of the physical health of the women;
- c) Preservation of the mental health of the woman;
- d) Termination of pregnancy resulting from rape or incest or sexual abuse;
- e) Suspicion of fetal impairment on the fetus (deformity); or serious fetal anomaly;
- f) Termination of pregnancy for economic or social reasons;
- g) On the request.

When one looks the world countries at the end of the twentieth century, abortion was legally permitted to save the life of the woman in 98% of the world's countries; to preserve the woman's

⁹ United Nations, Department of Economic and Social Affairs; Population Division, Abortion Policies and reproductive health around the world (United Nations publication, sales No.E.14.XIII.11), (2014) p.5

¹⁰ Ibid p.10

¹¹ Id

¹² See supra note 5 and 9 pp. 17 and 15 respectively.

physical health (63%); to preserve the woman's mental health (62%); in case of rape, sexual abuse, or incest (43%); fetal anomaly or impairment (39%); economic or social reasons (33%); and on request (27%).¹³

When one looks the African countries alone on the above grounds, most of African countries fall on only in the first ground, which is threaten the life of the women. In addition, though the data is not current one legal scholar stated that out of fifty-three African countries, twenty-two of them fall within the first ground in the freedom to abortion (i.e. allow abortion only to save the life of the pregnant woman); and only three African countries (namely Cape Verde, South Africa and Tunisia) have reached on ground seven in the degree of freedom to abortion by allowing abortion upon request with in certain period of time.¹⁴

When one approaches to Ethiopia in the history of it more or less there are four main criminal laws; Feteha Nagast, the 1930 Penal Code, the 1957 Penal Code and finally the 2004 Criminal Code save it has many customary laws before the above laws. When one looks the criminalization of abortion in Ethiopia in the first the above two laws which mean based on Art. Art.381-385 of the 1930 Penal Code of Ethiopia and Chapter XLVII of Feteha Negest abortion is absolutely a criminal act without any exceptions, the 1957 Penal Code paving the way to permit abortion with a few grounds and the Current Criminal Code (CC hereafter) broadened the ground of abortion permitted but not reached in the least restrictive category mean it is still in less restrictive category.

In the current Ethiopian legal system, abortion is a prohibited act in principle though it has exceptions. Therefore, this research has inspired to assess the situation in Ethiopia. Because, criminalization of abortion preclude women to abort in health center except their cases fall on the exceptions that set in CC and this obliged women to opt other means to abort their unwanted pregnancy and their choosing of unsafe abortion has devastating effects on their human rights including their the right to life in our country today. Since the right to life is protected in international human right instruments and domestic legislation like Federal Democratic Republic of Ethiopia(FDRE hereafter) constitution and precluding abortion forced women to opt unsafe abortion which causes for violation of the right to life of women. Due to indivisibility nature of human rights the violation of the right to life is equal amount to the violation of other human rights of women. The researcher believes that conducting

¹³ United Nations population division, abortion policies: a global review; major dimensions of abortion policies (2002), Available at <http://www.un.org/en/development/> accessed on January 28/2020.

¹⁴ See supra note 5 p. 17.

this research has its own contributions to show whether criminalization of abortion is a pushing factor for women to take unsafe abortion and whether criminalization of abortion has its own implications on the rights of women are a crucial issues in Ethiopia today.

1.2 Statement of the Problem

Statistical returns from health facilities across the country of Ethiopia and from hospital-based studies show that unsafe abortion is one of the top 10 causes of hospital admissions among women and it is estimated that there are 3.27 million pregnancies in Ethiopia every year, of which approximately 500,000 end in either spontaneous or unsafely induced abortion.¹⁵

The unsafe abortion is the most common cause of maternal mortality, accounting for up to 32% of all maternal deaths in the country and for each woman that dies from complications of unsafe abortion; many more sustain short- and long-term morbidities, including infertility.¹⁶ Therefore, whether criminalization of abortion is currently a critical human rights issue of the women in Ethiopia or not should be explored through research. Because criminalization of abortion on one or another way highly interconnected with the many basic human rights of women like the right to life, health, non-discrimination, reproductive rights, equality, security of person and liberty, privacy, is free from cruel, inhuman or degrading treatment, decide the number and spacing of children and so on.

In Ethiopia as clearly stipulated in the CC, abortion is in principle a prohibited act at any stage of conception though it has exceptions. Criminalization of abortion in the Ethiopian legal system highly criticized by feminist and any other human rights advocates by saying it has many implications on the reproductive and other human rights of women due to they believe it is the main cause to oblige women to conduct unsafe abortion. Hence, whether criminalization of abortion in the CC of Ethiopia is compatible with FDRE Constitution and international human right instruments that Ethiopia is a party in light of women human rights particularly the right to life, the right to health and reproductive self-determination and the right to non-discrimination; and whether criminalization of abortion in CC of Ethiopia is a pushing factor for women to conduct unsafe abortion, and whether it has implications on women rights or not is the concern of this research.

¹⁵ Technical and Procedural Guidelines for safe abortion services in Ethiopia; Ministry of Health June, (2006) .p5

¹⁶ Id

1.3. Objective of the Study

1.3.1. General Objective

General objective of this study is to explore whether criminalization of abortion has implications on the rights of women in Ethiopia or not.

1.3.2. Specific Objectives

The study attempted to address the following specific objectives:

- To assess the compatibility of our criminal law with international human rights instruments that Ethiopia is a party with regard to criminalization of abortion in light of women rights.
- To assess the compatibility of our criminal law with FDRE Constitution with regard to criminalization of abortion in light of women rights.
- To assess the justifications for criminalization of abortion in the current Ethiopian legal system.

1.4. Research Questions

The researcher tried to address the following questions:

1. In what extent the current Ethiopian criminal law compatible with international human rights instruments that ratified by Ethiopia with regard to criminalization of abortion in light of women rights?
2. How the current Ethiopian criminal law compatible with FDRE constitution with regard to criminalizing abortion in light of women rights?
3. Is there any justification for criminalization of abortion in the Ethiopian legal system?
4. Does criminalization of abortion have implications on women rights in Ethiopia?

1.5. Significance of the Study

This research has much significance. Among these, this study may shed a light on the criminalization effect of abortion on women rights in Ethiopia. Moreover, the study tried to show whether the CC is compatible or not with FDRE constitution and International human rights instruments ratified by Ethiopia with regard to criminalization of abortion in light of women rights. In addition, the study is very help full to know whether criminalization of abortion in Ethiopian legal system particularly in the first trimester has justification or not and it is essential to know whether criminalization of abortion is a pushing factor for women to conduct unsafe abortion in Ethiopia. Finally, after being completed, it will contribute a lot for the protection of women rights in Ethiopia. Moreover, the Policy and Lawmakers

will get motivating inputs from the research with regard to women right protection. In addition, it will also serve as a base line for further study in this area.

1.6. Delimitation and Limitation of the Study

1.6.1 Delimitation of the Study

The research may be best if it covers the status of abortion in the previous Ethiopian legal system (customary laws) in primitive society but due to lack of materials this research focuses only after the country has codified laws. Moreover, even the research may be better to assess the practice of world countries with regard to abortion in detail however, to manage it easily this research exclusively focuses in Ethiopia. In addition, the research may be preferable if it has been done by including empirical data to know the implications of abortion on the rights of women in Ethiopia very well. However, because of it has health implications and to get and discuss with clients is very difficult the researcher conducted this research by interviewing experts through qualitative research design. Finally, the research will be more interesting if it incorporates the linkage between abortions with all human rights of women however, to manage the scope this study only emphasized the linkage between abortions with the right to life, health and reproductive self-determination and non-discrimination rights of women in Ethiopia.

1.6.2 Limitation of the Study

In doing this research, the researcher confronted lack of budget, since the research was done with self- sponsored and the data collecting areas are far from Gondar and the researcher incurred many expenses. Moreover, due to budget constraint the researcher might have compromised quality data to accomplish this research in due time.

1.7 Research design and Methodology of the Study

1.7.1 Methodology of the Study

As we have seen earlier this research mainly want to explore whether criminalization of abortion has implications on the human rights of women in Ethiopia in light of the legal frame work of international, regional particularly African human right instruments that Ethiopia is a party and domestic laws of Ethiopia.

The research needs to have primary and secondary data to accomplish the objective of this research in successful manner. The researcher took secondary data from documents, reports and any other materials. Moreover, the researcher also collected data through interview with below listed thirteen (13) legal, health and other experts with regard to when the life of the fetus/embryo begins in light of

criminalization of abortion in the CC of Ethiopia, implications of criminalization of abortion on the rights of women ,whether criminalization of abortion is a pushing factor for women to conduct unsafe abortion in Ethiopia or not and the compatibility of our CC with FDRE constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of women rights.

The research design that followed in this study is a qualitative one due to the research focus on the laws and its implications. Thus, qualitative research involves collecting empirical materials, case study, personal experience, introspection, life stories and a variety of interviews, observational, historical, interactional and visual texts that describe routine and problematic meaning in individual's lives.¹⁷

When researcher comes up to the method; the researcher applied phenomenological research method which is a strategy of inquiry that the researcher identifies the essence of human experiences about a phenomenon (abortion) described by participants and the procedure involves studying a small number of subjects or informants through extensive and prolonged engagement on the study.¹⁸

1.7.2 Population of the Study

As I have discussed in the above, the main objective of this study is to explore whether criminalization of abortion has implications on the rights of women in Ethiopia or not. To this end, the target populations of the study was different experts in different fields like the legal experts including public prosecutors and judges who are working in Amhara national regional state (ANRS hereafter), Attorney General and Supreme Court respectively, medical experts doctors, nurse or any other type of health professionals who are working in Amhara Regional Health Bureau, Felege-Hiwot Specialized Referral Hospital and Gondar University Specialized Referral Hospital, experts who are working at ANRS Women, Children and Youth Affairs Regional Bureau , Police experts who are working at ANRS Police Commission and association like Family Guidance Association Ethiopia (FGAE hereafter) Gondar reproductive health clinic which has a great concern on the protection and promotion of women rights.

1.7.3 Sampling Techniques and Size

Purposive (judgmental) sampling method was used in this study for identification and selection as it involves identifying and selecting individuals or groups of individuals that are especially

¹⁷ John W.Creswell: research design quantitative, qualitative and mixed approach (3rd edition) SAGE publication (2014) p. 10

¹⁸ Id p.13

knowledgeable about or well experienced with a research area and the specific method of identifying the participant for interviews.¹⁹

1.7.4 Data Collecting Instruments (Tools) and Sources

The researcher collected data by using the following different instruments in the main two sources. These are:

I, Primary sources: in order to collect reliable data the researcher used interview. The researcher used interview, unstructured and semi structured questions were employed on targeted population of the research area. Here the researcher made interview with one expert from ANRS health Bureau and one expert from Specialized Referral Hospital of Felege- Hiwot, two experts from Gondar University Referral Hospital, two experts from ANRS Women, Children and Youth Affair Bureau, two experts from ANRS Attorney General, two experts from ANRS Police Commission, two experts from ANRS Supreme Court and one expert from FGAE Gondar reproductive health clinic. Since the researcher believes that these institutions and experts have many contributions to protect the human rights of women and the problems and solutions to criminalization of abortion and its implications on the rights of women highly interlinked with the above institutions and researcher believes that experts in such institutions are not a strange to the criminalization of abortion and its implications on the rights of women and the solutions of the problems should come from themselves. Since the research wants to have experts' explanations on criminalization of abortion and its implications on the rights of women, in Ethiopia; researcher believes that interviewing experts who are working in one region never affects the nation wideness of the issues.

II Secondary sources: secondary data was collected from unpublished reports (national or regional) and dead files, journals, books national and international reports and publications. Moreover, the researcher consulted international human rights laws, regional human rights laws and national laws as well that are the great connection with criminalization of abortion and its implication on the rights of women.

Generally here the researcher analyzed data which collected in the above tools from the above sources through general qualitative analysis principles that fit for any qualitative approach (reading, describing and classifying approach will be employed).

¹⁹ J. W. Cresswell, & V. L. Plano Clark: designing and conducting mixed method research (2nd edition), thousand Oaks, CA: Sage press (2011) p. 15

1.8 Organization of the Paper

The study comprises in to six chapters including the introductory chapter. The first chapter is the introductory part of the research that focuses on abortion in general in the background of the study. It deals with the background about abortion, the statement of the problem, the objective of the study, the research questions and significance of the study, delimitation and limitation of the study, research methodology with the research, data collecting instruments and sources and population areas.

The second chapter comprises literature review which tries to address different thought, in different writings with related to the topic, the third chapter deals with criminalization of abortion in light of women rights under international and regional, mainly focused in Africa, human right instruments, the fourth chapter deals about criminalization of abortion in light of women rights under Ethiopian legislations ,the fifth chapter deals about presentation and analysis of data on issues of the justification of criminalization of abortion in the first trimester in the CC of Ethiopia, whether criminalization of abortion is a pushing factor for women to conduct unsafe abortion in Ethiopia or not, implications of criminalization of abortion on the rights of women in Ethiopia and the compatibility of the CC with FDRE constitution and international human right instruments that Ethiopia is a party with regard to criminalization of abortion in light of women rights, the last chapter (Chapter six) provides conclusion and recommendations.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Introduction

There are some studies on the rights of women in Ethiopia; however, the researcher believes that studies on the criminalization of abortion and its implications on the rights of women in Ethiopia is new and it has great contributions for the protection of rights of women in Ethiopia, because none of them directly touches the issues in the broader manner.

In this chapter the researcher tried to address definition and history of abortion, debates on abortion, the linkage among criminalization of abortion, unsafe abortion and maternal mortality and factors that instigate women to perform abortion.

2.2 General Overview about Criminalization and Abortion

First the researcher wants to explain about the meaning of criminalization and abortion. Criminalization is a way of indicating a serious condemnation of an activity or an action.²⁰ It also defines the act or an instance of making a previously lawful act criminal, usually by passing the statute through criminal policy (the branch of criminal science concerned with limiting harmful conduct in the society) and it is the process by which a person develops into a criminal.²¹

When I come to abortion, from the very beginning, it has no a single definition. Different scholars define abortion in different manners. The dictionary meaning of abortion is the spottiness or artificially induced expulsion of an embryo or fetus.²² Moreover, it is misdemeanor of causing a miscarriage or premature delivery of a fetus by means of any instrument, medicine, drug, or other means and no more than expulsion of an embryo or fetus before it is capable living.²³ In addition, it is system of miscarriage with respect to human beings; however, it has long been used to refer to an intentionally induced miscarriage as distinguished from one resulting naturally or by accident.²⁴ In addition, abortion is the termination of pregnancy before fetal viability, which is conventionally taken to be less than 28 weeks from the last normal menstrual period (LNMP).²⁵ Moreover, commonly accepted definition revolves

²⁰ S.E. Marshall and R.A. Duff: Criminalization and Sharing Wrongs; Canadian Journal of Law and Jurisprudence Vol. XI, No.1 January (1998) p.7.

²¹ Black's law Dictionary (7th edition) p.381

²² Ibid p.5

²³ Ibid p 6

²⁴ Id

²⁵ See supra note 15 p. 5

around the termination of pregnancy by the removal or expulsion from the uterus of a fetus or embryo before 20 weeks gestation.²⁶

Generally, the researcher understands from the above, criminalization is the act of precluding or permitting a certain act by enacting the law. And abortion is an act of expulsion of the fetus for different reasons artificially before the delivery time reaches. Here I understand that abortion may be legal or illegal based on countries criminal law.

When one approaches the historical part of abortion, it is the oldest and the most commonly used method for controlling fertility and has been used in all societies of the world at all times to terminate an unwanted pregnancy.²⁷ It is provided that in 1803 English Law changed and for the first time made abortion an offence only when undertaken unlawfully and the 1803 legislation was intended to protect women procuring a miscarriage by seeking or self administering any potentially harmful procedure, it made abortion a crime only if when undertaken unlawfully.²⁸ Now it is a criminal act in many of countries in the world and non-prohibited act in finger counted countries of the world based on their own justifications.

Generally here I can easily understand that abortion is the medical, ethical, religion and as a whole human burning issue throughout the world so far. Hence, abortion is, at heart, a critical decision and essential health need for nearly 56 million women, girls, and their families each year in worldwide.²⁹ Moreover, the campaign also stated on; deciding whether and when to have children and having the options and means to act on that decision is a fundamental human right for all people and the ability of a woman or girl to safely decide not to continue through a full pregnancy may be the key that unlocks numerous opportunities in life, including education, employment, financial security and good health.³⁰

2.3 The Two Dominant but Opposing Debates on Abortion

There are two dominant however opposing groups of human right activists (feminists) who have fought each other in the legalization or illegalization of abortion.

²⁶ World Health Organization report: abortion in developing countries (1970) introductory part.

²⁷ Alex, L (lecturer) and Hammarstrom A. (PhD): Women's experiences in connection with induced abortion a feminist perspective; Umea University, department of Nursing Sweden (2003) p.1.

²⁸ Simangele D Mavundla: access to legal abortion by rape victims as a reproductive health right: case study Swaziland and Ethiopia; faculty of law, University of Addis Ababa, Ethiopia (LLM thesis) October, (2009) p.12.

²⁹ International Planned Parenthood federation (IPPF): Her in charge Medical abortion and women's lives a call for action campaign report (2017) p.10.

³⁰ Id

2.3.1 Anti-abortionists (Pro-life):

Some scholars argue by basing their argument in religious and moral grounds, they strongly condemn the legalization of abortion. They argue that abortion is wrong because it kills human life, as they believe that life begins at conception.³¹ They also volubly argue that the “right to life” of a fetus should prevail over the life of the pregnancy woman when there is contradiction between them.³² Based on this group assumption abortion is a deliberate killing of life and it should not be allowed in any ground.

On their religious based arguments, they argue that major religions in the world such as Christianity, Islam, Buddhism and Hinduism have a strong position on the sacredness and sanctity of life of the fetus and based on their views life starts at the conception and abortion is immoral and equivalent to murder.³³ In this regard, their argument is highly insisted with the life of the fetus not for other rights of the fetus but they cannot assert in what stage of gestation the life of the fetus begins.

On the other way, some scholars also argue that liberal abortion law will encourage women and girls to freely indulge in sexual activities leading to the growth in the immorality of women since they suppose sex before marriage is sin and immoral.³⁴ Furthermore, they also argue abortion has the issue of moral status of the fetus since the unborn has to be regarded as human being as does any person has so that they claim that abortion is a way of killing and terminating the human being’s life.³⁵ Therefore, based on this group view abortion is religiously and morally unacceptable and immoral act.

Some scholars also argue legally that the right to life is protected in the bounty of human right instruments. International Civil and Political Right (ICCPR hereafter) Art.6 (1) clearly stated that “every human being has the inherent right to life.” This right shall be protected by law and no one shall be arbitrarily deprived of his life.”Moreover, Art. 6 of the Convention on the Rights of Child (CRC hereafter) provide that “every child has the inherent right to life” and in this sense they argue the right to life should get protection from conception. In addition, the American Convention on Human Rights (ACHR hereafter) stipulates in Art.4 (1) that “every person has the right to have his life respected. This

³¹ Anitehunegn Birhanu: The interface between the live experience of women practicing abortion and attitude of the community towards abortion in socio-cultural context; the case of Woldia town, North Wollo Zone, Amhara regional state, AAU, (MA thesis) in Sociology June, (2017), p.12.

³² Human Rights Watch report: international human rights law and abortion in Latin America July (2005) p.9.

³³ See supra note 31 p.16

³⁴ Sonali Regrni: unsafe abortion; violation of women’s right to reproductive and sexual health a study with reference to Nepal , (LLM thesis), University of Toronto Faculty of Law, University of Toronto press (2001) p.50

³⁵ See supra note 31 p.19

right shall be protected by law and, in general, from the moment of conception.” Besides, the African Convention on Human and Peoples’ Rights (ACHPR hereafter) Art.4 clearly set “human beings are inviolable and every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.” They argue that such protections of the above human right instruments should start at the moment of conception and no one shall be arbitrarily deprived of the fetus life.³⁶ Besides, James Bohan argues that ambiguous language in the CRC can be interpreted as constituting a right to life of the fetus. Hence, Art. 6 of the CRC provide that “every child has the inherent right to life” and Art.1 defines “child” as every human being below the age of 18 years and this should include the life of the fetus. Besides the preamble states that the convention was drafted “bearing in mind” that children need “appropriate legal protection before as well as after birth.” Therefore, he asserts that these provisions establish a legal right to life of a fetus particularly ACHR is a clear enough.³⁷

In Ethiopia the pro-life group (some gynecologists, lawyers, and theologians) strongly argue for criminalization of abortion during the enactment of the current criminal code and they argue abortion is strictly forbidden in the Bible; women who abort suffer from different types of physical as well as psychological diseases, including cancer and are vulnerable to suicide.³⁸ Moreover, they recommended for the law makers that: individuals should abstain from sexual intercourse before marriage and extra marital sexual intercourse, after marriage; women should be encouraged to make use of every variety of contraceptives, except loops, that adversely affect the fetus after conception; women who are faced with pregnancies should accept the situation, but be supported financially and materially, etc.. Any ways abortion should not be allowed even in any grounds.³⁹

Generally, based on this group argument, they strongly raise views that abortion from religious perspective, it is sin, from moral perspective, it is immoral and from legal perspective, it is illegal and strictly forbidden act and it should not be allowed in any grounds with in spite of its implications on the human rights of women.

2.3.2 Pro-abortionists (Pro-choice):

Many scholars advocate the essence and implications of the legalization of abortion because women are the victims of the problem not men in pregnancy so that women should have the right to

³⁶ See supra note 32 p. 7

³⁷ James F. Bohan, *The House of Atreus: abortion as a human rights issue* West port, Conn Praeger press, (1999), p. 65.

³⁸ See supra note 5 p.27

³⁹ Ibid p.28

control their own body and their life fate and goals.⁴⁰ Moreover, they argue that abortion is a private matter, which must be left to the directly affected person, the pregnant woman.⁴¹ There has been scholarly and judicial analysis of three situations: (1) where legal instruments are silent as to when the right to life commences, (2) where there is ambiguous language, and (3) where legal instruments clearly state that the right to life commences from conception and the silence of certain legal instruments concerning the starting point for the right to life has been understood by bodies charged with interpreting them and by human rights scholars to imply that the right to life does not apply before the birth of a human being.⁴² Likewise, the legislative history of the ICCPR also provides some insight into this matter by describing proposals during debates over the ICCPR to add language protecting the right to life from the time of conception were rejected, and scholars say that Art. 6(1) of the ICCPR conferring the right to life on “human beings” is understood to mean human beings after birth.⁴³

On the other, James Bohan argument is countered by legal experts like Professors Rebecca Cook and Bernard Dickens and they strongly argue that when the CRC was being drafted in the 1980s, a similar proposal concerning the right to life from conception to that made during ICCPR negotiations was debated and rejected.⁴⁴ And the CRC’s preamble refers to appropriate legal protection before birth; the operative language defining the term “child” refers to “human beings” below the age of eighteen. Thus, the enforceable provisions of the CRC are widely understood to retain the historical understanding that legally protected status as a human being begins at live birth.⁴⁵

In this regard when one can see court decisions in different countries and ruling of human right commission and similar organizations many of them support the pro-choices argument. For instance, in the 1981 Paton vs. United Kingdom case, the European Commission ruled that for purposes of limitations on the right to life, the term “everyone” in Art.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which protects “everyone’s right to life” did

⁴⁰ Williams, M.E.: abortion opposing viewpoints, Green haven Press, Inc., San Diego, California (2002) p.1.

⁴¹ Kidus Meskele Ashine (LL.B, LLM, assistant Professor of law): an assessment of Ethiopian law of abortion: a human rights approach; Journal of Culture, Society and Development ,ISSN 2422-8400 an international peer-reviewed Journal Vol.27, (2017) p.2

⁴² See supra note 32 pp.10-11.

⁴³ Rebecca J. Cook and Bernard M. Dickens: Human Rights dynamics of abortion law reform, Human Rights Quarterly, vol. 25, the Johns Hopkins press (2003) p. 24.

⁴⁴ See supra note 32 p.11

⁴⁵ Id

not include the unborn.⁴⁶ Likewise, the USA Supreme Court also decided in support of this position on *Roe vs. Wade* case in (1973) and Justice Blackmun claims that abortion is now a relatively safe procedure; there is no longer a reason for its prohibition.⁴⁷ Consequently, he asserts that given the right of privacy, and given the abortion liberty at common law, the Constitution must protect a right to abortion.⁴⁸

In general, the Supreme Court's analysis and conclusion in its decision in this case that, the unborn children are not "persons" within the meaning of the fourteenth amendment of US constitution, and states do not otherwise have a "compelling interest" in protecting their lives by prohibiting abortion.⁴⁹

In the modern human rights dynamics there are big efforts on abortion law reform in many countries of the world. The dynamics of reform have been aided, and occasionally triggered, by richer varieties of pragmatic research in the social and public health sciences, and by the growing influence of feminist theories or explanations, about law, social organization, and politics.⁵⁰ Based on research oriented feminist explanations of the gendered nature of restrictive abortion laws and practices, to expose the devastating impact on women's lives of unsafe and unplanned pregnancy, and denial of access to legal abortion services.⁵¹

When I look at Ethiopia the pro-choices group (many Ethiopian Society of Obstetricians and Gynecologists) strongly argue about the liberalization of abortion during the enactment of the CC of Ethiopia. They argue based on studies, it is proved that abortion is the major cause of maternal mortality and reproductive health rights are indivisible women's human rights; the position of the 1957 Penal Code has contradicted these rights.⁵² Thus, they also recommended that women should be given the opportunity to terminate unwanted pregnancies and abortion should be decriminalized.⁵³

⁴⁶ Paton vs. United Kingdom (1981), E.H.R. R. 408 (European Commission on Human Rights), Application No. 8416/78 May 13, (1980) Para. 17.

⁴⁷ Beckwith, Francis J.: "the Supreme Court, Roe v. Wade, and Abortion Law," Liberty University Law Review: Vol. 1: Issue1, Article 4, (2001) p.44. Available at: http://digitalcommons.liberty.edu/lu_law_review/vol1/iss1/4 accessed on March12/2020.

⁴⁸ Id

⁴⁹ Ibid p.47

⁵⁰ See supra note 43 p.1

⁵¹ Id

⁵² See supra note 5 p. 29

⁵³ Id

In a nutshell, here researcher can easily understand from this argument, criminalization of abortion seems against women human rights and the fetus shall not be considered as a person. Women's demands of abortion are not just about their bodies in the abstract, but rather about their human rights relating to personhood, dignity, and privacy more broadly and decisions on abortion should exclusively left to a pregnant woman alone, without interference by the state or others.⁵⁴ Any restrictions on abortion that unreasonably interfere with a woman's exercise of her full range of human rights should be rejected.⁵⁵

In short, it seems safe and legal abortion is a woman's human rights and governments of every countries of the world should respect a woman's human right to make decisions regarding her reproductive life free from any ones intervention including from state interference.⁵⁶

From the above two arguments the researcher understands that the debate is endless and in this occasion Ethiopia should take and apply lesser evil principle and it should protect the women rights in broader manner and keep the moral and religious affairs in a narrow way with regard to abortion.

2.4 The linkage on Criminalization of Abortion, Unsafe abortion and Maternal Mortality

Unsafe abortion is defines as a procedure for terminating unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking the minimal medical standards, or both.⁵⁷ It is widely acknowledged that in countries, in which abortion is restricted by law, women seek abortions clandestinely, often under conditions that are medically unsafe and therefore life threatening and criminalizing abortion forced women to undergo a life-threatening event which unsafe abortion threatens their right to life and women faced incidental mortality.⁵⁸ Furthermore, where there is no legal restriction, abortion services are likely to be safe and in these settings, the abortion performed in a regulated medical setting that providers are properly trained.⁵⁹ In contrast, where abortion laws are

⁵⁴ See supra note 32 p.21

⁵⁵ Ibid p.22

⁵⁶ See Center for Reproductive Rights: Safe and legal abortion is a woman's human right, briefing paper October, (2011), p.1

⁵⁷ See United Nations Population Division: "World Abortion Policies", New York: Population Division, (1999), p.1

⁵⁸ See supra note 56

⁵⁹ Warriner IK and Shah IH, eds.: Preventing Unsafe Abortion and its Consequences; priorities for research and action, New York; Guttmacher Institute, (2006) p.2

highly restrictive, women turn to clandestine providers with a high risk of incurring a serious or life-threatening complication including loss of life.⁶⁰

In short, from the above explanation, we can easily appreciate that criminalizing abortion; unsafe abortion and maternal mortality have a direct relationship. Because, the direct consequence of criminalizing abortion is the alarming increase in the clandestinely performed unsafe abortions and that lead to high maternal mortality rates at international level.

2.5 Why are Women instigated to Perform Abortion?

Women do not seek abortion unconsciously rather they have various reasons to seek abortion. These include but not limited to widespread desire for smaller families, spacing the birth of children, failure or inconsistent use of contraception, poor access to contraception and family planning services, economic hardships, increase in non-marital sexual activity, increase in adolescent pre-marital sexual activity and pregnancies resulting from rape or incest.⁶¹

Moreover, one scholar also explained that; societal attitudes, religious beliefs, cultural interpretations and socio economic reasons and failure of traditional and modern contraceptives and other reasons as instigating factors for women to perform abortion in Ethiopia.⁶² Therefore, based on the above numbers of factors women can be enforced to terminate their pregnancy unsafely when their country law restricted abortion.

Generally, the related literature parts of this research looks like the above one and when I come to the uniqueness of this research, the researcher believes that this research is unique than researches done before and cited in the above. Because none of the previous researches tries to touch, the implications of criminalization of abortion on the rights of women in line with rights of women that enshrined under FDRE constitution and international human right instruments that Ethiopia is a party as well. Moreover, it is also unique on scope geographically, timely and methodologically as well. For instance, when we see Anitehunegn Birhanu's (MA thesis)⁶³ it focused on practice of abortion in socio-cultural discourse in Woldia Tawon since it is a social study and he used qualitative and quantitative (mixed) research design approach. Hence, this research mainly focuses on legal discourse and it is wider

⁶⁰ Id

⁶¹ See supra note 34 p.13

⁶² See supra note 31 p.32

⁶³ Id

in scope since it is countrywide. In addition, the research design that followed in this research is qualitative one while the above research has been done through mixed approach.

The other one is Simangele D. Mavundla's (LLM thesis)⁶⁴ it focused on access to legal abortion in case of rape as reproductive right in Ethiopia and Swaziland and rape is one of legitimate grounds as exception in our CC. This research focuses on criminalization of abortion and its implications on the rights of women at principally not for the exceptions and the above research considers about two countries but, this research deals about only Ethiopia.

The other is Tsehai Wada's Article;⁶⁵ abortion law in Ethiopia comparative perspective. He tried to address only domestic laws of Ethiopia with comparative overview of the legal regime in some other countries. Whereas this research focuses on criminalization of abortion in light of women rights under international and regional human right instruments and domestic legislations in Ethiopia. Moreover, this research employed qualitative research design and the above article not. Therefore, based on the above differences I can safely conclude this research is unique than the above researches that have been done before.

⁶⁴ See supra note 28

⁶⁵ See supra note 5

CHAPTER THREE

CRIMINALIZATION OF ABORTION IN LIGHT OF WOMEN RIGHTS UNDER INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

3.1 Introduction

In this chapter the researcher tried to look at criminalization of abortion in light of International Human Right Instruments (UN level), European Human Right Instruments, American Human Right Instruments and African Human Right Instruments in detail with special reference of the right to life, the right to health and reproductive self-determination and non- discrimination rights of women.

3.2 Criminalization of Abortion in light of Women Rights under International, European and American Human Right Instruments

There are plenty of international human right instruments that deal about women human rights. In this section, the researcher tries to see some selected human rights of women that have great linkage with criminalization of abortion.

3.2.1 Criminalization of Abortion in light of Women's the Right to Life

As it is known, the right to life is protected by customary international law. It is also recognized in a number of human rights treaties. Let it see in detail:

The ICCPR clearly provides “every human being has the inherent right to life and this right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁶⁶ Based on the common Art 1 of ICCPR and ICESCR women have the right of self-determination by virtue of that right that they should freely determine their political status, their economic, social and cultural development freely without intervention of any one including states. Enacting restrictive abortion law affects the free decision of women and leads to endanger their right to life.

Moreover, the UN Human Rights Committee (HRC hereafter) has explained that the right to life should not be interpreted narrowly, with the concerns on the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity and that states must adopt positive measures to protect this right and

⁶⁶ See Art. 6(1) of International Convention on Civil and Political Rights; adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December, (1966) entry into force 23 March, (1976).

refrain from the intervention on this right.⁶⁷ Moreover, the convention on elimination of all form of discrimination against women (CEDAW hereafter) in its General Recommendation 19 on violence against women has interpreted the words "human rights and fundamental freedoms" in Article 1 of CEDAW to include right to life .⁶⁸ In addition, the Universal Declaration of Human rights (UDHR hereafter) also states as “everyone has the right to life, liberty and security of person.”⁶⁹ Likewise, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR hereafter) also clearly stipulated as “everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”⁷⁰

In the above discussions, I noted that the right to life is given for every one that includes women. Therefore, in such cases no one can be confused in such definition so that the right to life is given for every person and no one can argue by saying this right is given for the fetus. However when one looks the Inter -American region legal instruments on the rights of life; it seems ambiguous. Because, there are two different or contradicting provisions in different two legal instruments: The one declares this right as “every human being has the right to life, liberty and the security of his person.”⁷¹ And the other declares this right as “every person has the right to have his life respected and this right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”⁷²

From the above justification researcher can make a note of that ACHR is the exclusive international human right instrument that contemplates that the right to life can pertain from the moment of conception, while not in absolute terms can apply. However, with regard to abortion is the right of women, in 1981 the body that monitors the implementation of the human rights provisions in the American regional system the Inter-American Commission on human rights was asked to establish

⁶⁷ See UN Human Right Committee General Comment No. 36/2018: on Article 6 of International Convention on Civil and Political Rights, on the right to life, Adopted by the Committee at its 124th session (8 October to 2 November 2018).p.1

⁶⁸ See the General Recommendation *No.19* on CEDAW, Doc. No. A/47/38, (1992), Para.7

⁶⁹ See Art. 3 of UDHR, adopted December 10, (1948) and understand so it was a mere draft but, now it gets customary law status.

⁷⁰ See Art. 2(1) of European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 Nov. (1950), entered into force 3 Sept. (1953)

⁷¹ See Art. 1 of American Declaration of the Rights and Duties of Man; approved by the ninth international conference of American states, Bogota, Colombia, (1948).

⁷² See Art. 4(1) of American Convention on Human Rights ,adopted at the inter-American specialized conference on human rights, San Jose Costa Rica 22 November (1969).

whether or not the right-to-life provisions in these documents are compatible with a woman's right to access safe and legal abortions. The commission concluded that they are compatible and the latter not enacted for the purpose of repel the former.⁷³ Furthermore, the commission also gave more explanation that the wording of the right to life in Art. 4 of ACHR was very deliberate and that the convention's founders specifically intended the "in general" clause to allow for non-restrictive domestic abortion legislation and argue that the petitioners' interpretation of the definition given by the ACHR on the right of life is incorrect.⁷⁴The addition of the phrase "in general, from the moment of conception" does not mean that the drafters of the Convention intended to modify the concept of the right to life that prevailed in Bogotá, when they approved the American Declaration.⁷⁵

The above justification more verified in *Baby Boy vs. US* case; that the Commission's first resolution concerning the unborn child, concluded that the abortion of Baby Boy, a viable male fetus, was permissible under the American Declaration of the Rights and Duties of Man and the Commission also held that the United States' creation of a fundamental rights to abortion through *Roe v. Wade* was compatible with the Declaration or the Convention and that neither regional instrument required member states to ban abortion, supposedly according to the original intent behind them.⁷⁶

Generally, in the above explanation the writer of this paper notes that the right to life of a human being is protected in many international human rights instruments and no doubt, these are applicable to women but, almost all not for the fetus. Hence, based on the above expression it seems abortion is allowed for women in the extended definition of the right to life in the above international human right instruments. Because, as we have seen earlier criminalization of abortion leads women to choice unsafe abortion due to different reasons, women will not have patience at that time to have a child and this will lead them to unsafe abortion that infringes women's right to life. Therefore, when states neglect to provide the means necessary to prevent women from dying of pregnancy-related causes, such as treatment for unsafe abortion or provision of skilled attendance at childbirth, they are failing in their obligation to ensure women's "access to the conditions that guarantee a dignified existence."⁷⁷

⁷³ See supra note 32 p. 11

⁷⁴ Ibid p. 12

⁷⁵ Id

⁷⁶ Jesus M. De Ligia, *Post Baby Boy v. United States Developments in the Inter-American System of Human Rights: Inconsistent Application of the American Convention's Protection of the Right to Life from Conception*, 17 *Law & Bus. Rev. Am.* 435 (2011), p.8, available at <https://scholar.smu.edu/lbra/vol17/iss3/4>, accessed on March 15/2020.

⁷⁷ See supra note 43 p.29

In short, here, researcher can generalize that precluding abortion in all at the law of one's country clearly shows the failure of the government to protect the right to life of the women and this failure extended for the failure of protecting other rights of women since human rights have indivisible nature.

3.2.2 Criminalization of Abortion in light of Women's the Right to Health and Right to Reproductive Self-determination

The rights to health and reproductive self-determination are recognized in a number of international human right instruments. Let's see some of them as the follows:

International covenant on Economic, Social and Cultural Rights (ICESCR hereafter) provides that states must recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."⁷⁸ Moreover, the right to health does not confine to being healthy or not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes rather as it explained on General Comment that; the right to health contains both freedoms and entitlements.⁷⁹ The freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation but, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.⁸⁰

On the other, CEDAW under article 12(1) also clearly stipulates "states parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning." In addition, under Art.14 (2) (b) it provides that states must ensure that women in rural areas "have access to adequate health care facilities, including information, counseling and services in family planning." Likewise, CRC also provides that states must take measures to "ensure appropriate pre and post-natal health care for expectant mothers" as part of the obligation to recognize children's right to the highest attainable standard of health.⁸¹ And similarly, the Additional Protocol to the ACHR

⁷⁸ See Article 12 of the International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January, (1976)

⁷⁹ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), Adopted at the Twenty-second Session of the Committee on CESCR, on Do. E/C.12/2000/4 on 11 ,August , (2000) Para.8

⁸⁰ Id

⁸¹ See Art.24(d) of Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November, (1989)

in the Area of economic, social and cultural rights provides “everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.”⁸²

When we look at the reproductive rights alone it began to appear as a subset of human rights in the 1968 Proclamation of Teheran, which states: "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children".⁸³ Here we should note that reproductive self determination is the rights of both men and women but due to men reproductive right is not the business of this research, research only confined to women rights. And then the Beijing Platform and International Conference on Population and Development (ICPD hereafter) Programme of Action in a similar language declare that; the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence.⁸⁴ Consequently, reproductive rights have also been incorporated into the international development agenda on the adoption of the UN millennium development goals (MDGs hereafter) in 2000, where governments agreed that addressing women’s reproductive health is crucial for promoting development that produced at the 2005 World Summit document.⁸⁵

Generally, from the above discussion the researcher can realize that the right to health has been interpreted by various treaty monitoring bodies to require governments to respond appropriately to ensure that women are not exposed to the risks of unsafe abortion and such measures include removing legal restrictions on abortion and ensuring access to high quality abortion services. Based on the interpretation the right to health should be understood as it is not only to being healthy rather it includes freedom of reproductive rights. And this means no one can determine or interfere on the reproductive rights of women.

In a nutshell, from the above human right instruments and their interpretations one can deduce that when women have children and how many children to have should be exclusively decided by them. Here, we can easily understand that making abortion a crime is a clear intervention on the reproductive

⁸² See Art.10 of Additional protocol to ACHR in the area of Economic, Social and Cultural “Protocol of San Salvador, Adopted in San Salvador on November 17, (1988).

⁸³ See Teheran Proclamation on International Conference for human rights May, (1968)

⁸⁴ See Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action, U.N. Doc. A/CONF. 177/20, (1995) and International Conference on Population and Development Programme of Action, Fourth World Conference on Women, Programme of Action of the International Conference on Population and Development, U.N. Doc. A/CONF.171/13/Rev.1, Cairo, Egypt, 5-13 September, (1995) Para. 8.25

⁸⁵ See United Nations General Assembly, 2005 World Summit Outcome document, U.N. Doc A/Res/60/1 (2005).

self-determination of women and this is a clear violation of women right to health and reproductive self-determination. Because precluding abortion as we have seen before obliged women to prefer unsafe abortion and as it is well known unsafe abortion is high threat for the right to health of the women. Rebecca J. Cook argues that; forcing a woman, by threat of criminal sanction, to carry a fetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus a clear violation of the right to health, reproductive self-determination and security of the women as well since criminalizing abortions without the priority of women rights under the law can lead to situations in which women are obliged to undergo high-risk clandestine abortions.⁸⁶

3.2.3 Criminalization of Abortion in light of Women's Right to Non-discrimination

Gender equality and non-discrimination are fundamental principles of human rights law provided in many international human right instruments. For instance, they are defined as "all human beings are born free and equal in dignity...without distinction of any kind and each State Party to the Covenant undertakes to respect and ensure to all individuals...rights recognized in the Covenant without distinction of any kind, such as race, colour, sex...."⁸⁷ They are the positive and negative expression of similar things. According to CEDAW, "discrimination against women" includes laws that have either the "effect" or the "purpose" of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men.⁸⁸

One can see that laws that ban abortion have effect and purpose to exercise the above rights of women. In addition, restricting abortion has the effect of denying women access to a procedure that may be necessary for realizing their right to health. Denying women access to medical services which enable them to regulate their fertility to access assisted reproduction or to terminate a pregnancy, amount to refusing to provide health care that only women need and this clearly considered as violation of women right to health and discriminating women.⁸⁹ Moreover, the committee on the rights of the child has urged states to "decriminalize abortion to ensure that women have access to safe abortion and post-abortion

⁸⁶ See supra note 43 p.12

⁸⁷ See Art.2 of UDHR, Art 2(1) of ICCPR and Art.2 (2) of ICESCR.

⁸⁸ See Art. 1 CEDAW

⁸⁹ See General Recommendation 24 Committee on the Elimination of Discrimination against Women, 20th Session on Women and Health (1999) Para.1

services” and “ensure access to safe abortion and post-abortion care services, irrespective of whether abortion itself is legal or illegal.”⁹⁰

On the other, the CEDAW Committee has directed states to “ensure that sexual and reproductive health care includes access to safe abortion services,” without qualification as to the legality of abortion and it has also framed abortion as an aspect of women’s autonomy since they have a right to control their bodies without any intervention from the state or any other organs.⁹¹ In addition, the Special Procedures of the UN Human Rights Council have also recognized abortion as a human rights concern and criminalizing abortion as equal amount to discriminating women to exercise their rights. For example, Anand Grover, when he was Special Rapporteur on the right to health, noted that laws criminalizing abortion lead to higher numbers of maternal deaths, and poor mental and physical health outcomes while “infringe women’s dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health.”⁹² Here the researcher remarks that precluding abortion is a clear discrimination and violation of the right to life, health, dignity, body integrity of women.

When I look at Inter-American and European human rights instruments they have similar language with the above international human right instruments. For instance Art.14 of ECHR provides as “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status.” Likewise, the Inter-American Convention on the Eradication of Violence Against Women also states as; “Violence against women shall be understood to include physical, sexual and psychological violence and the right of every woman to be free from violence includes, the right of women to be free from all forms of discrimination.”⁹³

⁹⁰ See the General Comment No. 20 of Committee on the Rights of the Child on Implementation of the Rights of the Child during Adolescence, UN Doc. CRC/C/GC/20 (2016), Para. 60.

⁹¹ See CEDAW Committee Concluding Observations on New Zealand, UN Doc. CEDAW/C/NZL/CO/7 (2012), Para. 35(a) (urging a state permitting abortion where pregnancy poses a risk to the woman’s physical or mental health and in instances of rape or incest to amend its abortion law “to ensure women’s autonomy to choose”); CEDAW Committee, Concluding Observations on Sierra Leone, UN Doc. CEDAW/C/SLE/CO/6 (2014), Para. 32.

⁹² See Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A /66 /254 (2011), Para.21

⁹³ See Art. 2 and 6(a) of Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belem do Para) done in the city of Belen Do Para, Brazil 9 June, (1994).

Generally, from the above discussions the researcher notes that prohibition and criminalizing abortion is a clear contradiction with international human right instruments with exception of the priorities of women rights. Because abortion clearly contradict not only for the above rights but also at the opposite side of women's right to privacy and physical integrity, and to be free from inhuman and degrading treatment and other considerations supported by a number of human rights instruments, which ensure freedom in decision making about private matters which include protection of the right to physical integrity, the right to decide freely and responsibly the number and spacing of one's children, and the right to privacy.⁹⁴ Although many people believe that governments should play no role in making that decision for the women, many governments do, in the form of abortion laws or of one-child or two-child policies.⁹⁵

3.3 Criminalization of Abortion in light of Women Rights (special emphasis on the Right to Life, Health, Reproductive Self-determination and Non-discrimination) under African Human Rights Instruments

Africa ranks alongside Latin America as one of the regions with the world's most restrictive abortion regimes though, it serves well to highlight that the African region is not so much a region where abortion laws have been static since the majority of states have reformed domestic laws to broaden the grounds for abortion.⁹⁶ And many of them yet failed to recognize socio-economic reasons as a legitimate ground and liberalizing abortion in the first trimester (12 weeks gestation) except Cape Verde, South Africa, Tunisia and Zambia are the only countries that explicitly recognize socioeconomic circumstances or mere request as grounds for abortion, there has been an apparent trend towards liberalization of abortion laws in the region.⁹⁷ Hence, Africa as region is well known by containing many developing states and abortion is very restricted in developing countries. Therefore, abortion has a great linkage with African human right instruments and lets' see some:

With regard to gender discrimination there is a clear provision which stipulates that "discrimination against women means any distinction, exclusion or restriction or any differential

⁹⁴ Johanna B. Fine, Katherine Mayall, and Lilian Sepúlveda: the role of international human rights norms in the liberalization of abortion laws globally, health and human right journal June,2, (2017) P. 17

⁹⁵ Id

⁹⁶ Charles Gideon Ngwena : access to safe abortion as a human right in the African region; lessons from Emerging Jurisprudence of UN treaty monitoring bodies Article *in* South African Journal on Human Rights 29 (2):399-428 University of Pretoria press January,(2013) p.408

⁹⁷ Id

treatment based on sex and whose objectives or effects compromise or destroy the recognition, enjoyment or the exercise by women, regardless of their marital status, of human rights and fundamental freedoms in all spheres of life.”⁹⁸ And States Parties shall “combat all forms of discrimination against women through appropriate legislative, institutional and other measures which include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application”.⁹⁹ Moreover, there is also other provision which deals that human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person and every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.¹⁰⁰ Besides, Article 2 of the ACHPR enshrines the principle of nondiscrimination including on the grounds of sex and Article 18(3) “calls on all States Parties to eliminate any discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions.”

On the other Article 60 and 61 of the ACHPR recognize regional and international human rights instruments and African practices consistent with international norms on human and peoples’ rights should apply to protect women rights. Here, one should note international human right instruments and African regional human right instruments as a hole can be applicable through interpretation to protect women rights. And any law that discriminate women or any law that has effect and purpose on the enjoyments of women rights has no place at African level. Hence, as we have seen earlier precluding abortion is equal amount to discrimination and discrimination is forbidden act, so that one can say abortion is a permitted act at African human right instruments.

When researcher focuses on the right to health and reproductive self determination Maputo Protocol explicitly recognizes that the right to choose any method of contraception that; states must ensure women’s right to abortion, at a minimum, in instances of “sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother

⁹⁸ See Art.1(f) of Protocol to the African Charter on Human and Peoples’ Rights on the Right of Women in Africa, Adopted by the 2nd ordinary session of the assembly of the union, Maputo, July 11-August 13, (2003)

⁹⁹ Ibid Art. 2(1)(a)

¹⁰⁰ See Art. 4 and 5 respectively of African [Banjul] Charter on Human and People Rights, adopted June 27, 1981, OAU DOC. CAB/LEG/67/3 REV. 5, 21 I.L.M. 58 (1982), enter into for October 21, (1986).

or the fetus.”¹⁰¹ Besides, the general comment on the ACHPR further recognized that inadequate access to safe abortion and post-abortion care result in violations of the rights to life, privacy, confidentiality, and freedom from discrimination and cruel, inhuman, or degrading treatment.¹⁰² Based on the extended definition of the right to health and reproductive self-determination they require freedom to decide for women out of any intervention from others including states. Hence, though this protocol sets minimum elements of abortion it requires the maximum things that liberalize abortion.

In the other, the right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved to them such as abortion and post-abortion care that also it entails that the health personnel should not fear neither prosecution, nor disciplinary reprisal or others for providing these services, in the cases at least provided in the Protocol.¹⁰³

On the other spectrum one should also aware of that African regional human right instruments Protect women rights including abortion on one way by expressly enacted laws in the region like Maputo protocol and on the other way based on Art 60 and 61 of ACHPR it opened the room for the applications of international human right instruments through interpretation as well.

Generally, from the above discussion the writer of this paper realizes that at international level abortion is one of the human rights of women. And from the earlier discussion I can easily understand that restricting abortion endanger the right to life of the women and other many human rights as well that stipulated in the above international and African regional human right instruments. Hence any state which is the party of the above international and African human right instruments should make their national laws in line enable them to respect their mandate under the above human right instruments. Since criminalizing abortion does not diminish the number of abortions nor does it bring to an end the dangerous practice of clandestine abortions, however, it affects the safety of the procedures; forcing women go subversive to take resort to clandestinely performed unsafe abortion and statistics

¹⁰¹ See supra note 98 Art. 2(1)(c)

¹⁰² African Commission on Human and Peoples' rights General Comment No.2 on Art. 14(1) (a, b, c and f) and Art. 14. 2 (a) and (c) of the Protocol to the ACHPR on the Rights of Women in Africa at its 55th Ordinary Session held in Luanda, Angola, from 28 April – 12 May, (2014) Para.32.

¹⁰³ Ibid Para.37

prove this argument as countries having stringent anti-abortion law have the highest number of abortions.¹⁰⁴

On the other side, everyone should not forget women in Africa are a duty bound to protect the moral of the society since they are a part of them. As clearly stipulated under Article 27(2) of ACHPR “the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.” Here one should infer from this provision that women have an obligation to protect the moral and common interest like a religious value of the society when they exercise their abortion right.

From this, the researcher remarks that the lawmaker should intermediate the right to abortion of women and the moral and religion aspects of the society in Africa. Hence even let alone the right to the fetus and priority to women rights, the moral and religion of the society not allowed women to abort in any stage of the fetus.

Consequently, in what grounds abortion should allow and when is the time and until what stage abortion should be allowed to women and in what stage properly mitt the right to abortion of women and the moral and religion aspect of the society both protected as the same time requires in due care. In short, from this chapter discussion every one can understand easily that based on international and regional human right instruments abortion is one of the fundamental human rights of women and precluding abortion in restrictive laws are pushing factor for women to opt unsafe abortion and precluding abortion becomes a clear violation of the right to life, health reproductive self determination, non-discrimination and so on of women since the violation of the right to life affects all other human rights and no rights can be run off from violation and the right to life starts from birth.

¹⁰⁴ Alan Guttmacher Institute, *Sharing responsibility, Women Society and abortion Worldwide* (New York: The Alan Guttmacher Institute press, (1999) p. 38.

CHAPTER FOUR

CRIMINALIZATION OF ABORTION IN LIGHT OF WOMEN RIGHTS UNDER ETHIOPIAN LEGAL INSTRUMENTS

4.1 Introduction

In this section the researcher tried to see criminalization of abortion in light of the right to life, the right to health and reproductive self-determination and non-discrimination rights of women under FDRE Constitution, Ethiopian Criminal Law (under Feteha Nagast, the 1930 Penal code, the 1959 Penal code and the 2004 Criminal code) and Guidelines for safe abortion services in Ethiopia

4.2 Criminalization of Abortion in light of Women Rights under the FDRE constitution

Constitutionally speaking, the FDRE constitution is the most liberal and well consolidated constitution that one third of it is covered by fundamental rights and freedoms including 3rd generation rights of human beings in the world.¹⁰⁵ Therefore, whether it recognized abortion as women right or not could be answered in the following discussion.

With regard to the right to life FDRE constitution has clear provisions to protect this right. For instance it clearly states as “every person has the inviolable and inalienable right to life, the security of person and liberty.”¹⁰⁶ Moreover, it also stipulates as “every person has the right to life and no person may be deprived of his life except as a punishment for a serious criminal offence determined by law.”¹⁰⁷ Here one should know that the right to life begins at birth since the FDRE constitution in this regard is the direct copy of UDHR and ICCPR.

Moreover, the Ethiopian Federal Supreme Court’s binding decision on file No. 90089 also shows us that hitting by an arm of 8 months’ pregnancy women’s stomach equal amount to attempt to homicide on woman.¹⁰⁸ And in this decision though it is known that the fetus has dead because of hitting of the offender the law and decision of the Supreme Court gave emphasis on the protection of woman right to

¹⁰⁵ See Art. 14-44 of Federal Democratic Republic of Ethiopia (FDRE) Constitution, Proclamation No. 1/1995, Negarit Gazeta, Addis Ababa inter into force as of the on 21 of August, (1995).

¹⁰⁶ See Art. 14

¹⁰⁷ See Art.15

¹⁰⁸ See Zinet Ababu vs. Benishangul - Gumuz National Regional State Public Prosecutor, Ethiopian Federal Supreme Court Cassation Bench binding decision on volume 15 file No. 90089 on October 14, 2006 E.C pp. 384-386

life and never gave recognition about the right to life of the fetus. Here, from these provisions and decision of the Supreme Court one can understand that the constitution and decision of the court give lofty care for the right to life of women and one can aware that the right to life of the women has special place in the FDRE constitution.

When I come to the right to equality and the prohibition of gender based violence and discrimination, the constitution clearly stipulated that “all persons are equal before the law who are entitled without any discrimination to the equal protection of the law and in this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”¹⁰⁹ This is a basket provision that is very crucial on the protection of women rights particularly violence with regard to discrimination. Furthermore, the constitution also holds a provision that specifically deals about women rights. And it states “women shall in the enjoyment of rights and protections provided for by this constitution, have equal right with men and women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.”¹¹⁰

From the above provisions the researcher can argue that the principle of non- discrimination is well articulated and any law that preclude women to exercise their rights like abortion in effect and purpose has no place in our constitution.

When I look at the right to health and the right to reproductive self-determination of women, the constitution tries to address the issues. It states that the laws that oppress or cause bodily or mental harm to women are prohibited.¹¹¹ This means laws that have any influence or causes harm on physical and mental health of the rights of women strictly barred. Moreover, it also provides as “... in order to safeguard their health, women have the right of access to family planning education, information and capacity”.¹¹²

From the above provisions one can argue that the constitution impliedly recognizes abortion as human right of women since laws that preclude abortion have its own influence on the right to physical and mental health and reproductive self- determination of women. Because, when there is a clear law

¹⁰⁹ See supra note 105 Art. 25

¹¹⁰ Ibid Art.35(1 and6)

¹¹¹ See Art. 35(4) of the above

¹¹² Id Art 35(9)

that criminalize the act of abortion, women cannot abort unwanted pregnancy in legally recognized health institutions and this will force them to conduct unsafe abortion and due to this their physical and mental health are affected and this also violates the right of women to determine when they have children and how many children's they have and this is equal amount of the violation of reproductive self determination right of women. In addition, the constitution sets obligation on the state by stating "the State has an obligation to allocate ever increasing resources to provide to the public health, education and other social services."¹¹³ Here I can understand that facilitating safe abortion can rely on the obligation of states, which incorporated in other social services. Hence, one can argue that the constitution gives recognition to abortion as of one of rights of women.

On the other side, Ethiopia is a party on the international (UN level) and African human right instruments that I have discussed earlier. Therefore, based on the constitution the above international (UN level) and African regional human right instruments are part and parcel of the Ethiopian legal system since Ethiopia signed and ratified them and the researcher can dear to say abortion is recognized as one fundamental rights of women as well since the binding international instruments stated in the above section are parts of Ethiopian law.¹¹⁴

On the other side of the spectrum, FDRE constitution sets a means where there is ambiguous language and when there is the gap in human and "democratic right" part of the constitution through interpretation. It clearly states that "the fundamental rights and freedoms specified in chapter three shall be interpreted in a manner conforming to the principles of the UDHR, international covenants on human rights and international instruments adopted by Ethiopia."¹¹⁵ Not only this but also FDRE constitution Art.9 (1) clearly provides that "any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect."Here I can understand that not only interpretation but also enacting of laws should be in conformity of the constitution and international human right instruments. Therefore, Ethiopia is duty bound to enact its laws and act in accordance with those instruments and researcher wants to assess how much abortion laws are in Ethiopia help full to take its responsibility under the constitution and international human right instruments as well with regard to abortion as one fundamental human rights of women will observe in the following:

¹¹³ Id Art 41(4)

¹¹⁴ See supra note 105Art.9(4)

¹¹⁵ Id Art.13(2)

4.3 Abortion in light of Women Rights under the Criminal Law of Ethiopia

Throughout Ethiopian history there are about four written criminal laws though there is a great contention on the abidingness of Feteha Negest for non- Christians communities. These are; the Feteha Negest, the 1930 Penal Code, the 1957 Penal Code and the 2004 Criminal Code. The focus of this research is highly relying on the 2004 Criminal Code. Lets' see some points on above laws with regard to abortion in light of women rights:

4.3.1 Abortion in light of Women Rights under the Feteha Nagast and 1930 Penal Code

The act of abortion in the Ethiopian criminal law system has a long rooted for a long period of time. When one looks at the Feteha Nagast though there is contention it is or is not criminal law one can understand that it has both the secular and religious affair rules and laws. Because, it contained provisions of penal law, family law, and succession though, the majority of its contents dealt with religious affairs. Moreover, it was not binding on non-Christians.¹¹⁶

When I come to my concern matter of abortion, it was absolutely ban action in the Feteha Nagast. It clearly states that “if a woman conceives and wants to abort the unborn child in her womb, she shall be beaten and exiled.” And if a man makes a woman abort with poison and lies with her, he must remain outside the church for the rest of his life or in danger (if he is not on the verge of death) must he be deemed worthy of receiving the Holy mysteries, because he has committed the three greatest sins: fornication, homicide, and sorcery.¹¹⁷ This law also gave a great concern about the life of the fetus and it says when two men fight each other and push the pregnant woman and failed and the conceived child out with life they should punish by death since the price of soul is the soul.¹¹⁸ Here we should understand that this law gave a great place for the life of the fetus and abortion in this law is absolutely forbidden.

When one looks to the Penal Code of 1930, it contained five provisions that dealt with the crime of abortion.¹¹⁹ When one sees Art.381 of this code it clearly says the woman who made an act of abortion or giving consent to abortion was punishable by imprisonment from one up to three years and/or a fine

¹¹⁶ See supra note 5 p.20

¹¹⁷ Feteha Negest Chapter XLVII, Art.47, No. 1703, 1717 and 1718: Homicide and its Corporal and Spiritual Punishment (5th edition), Tinsae book publishing press (1990) E.C pp.414-417 and the translation has taken from supra note 5 p. 20.

¹¹⁸ Id see No.1703

¹¹⁹ See Art.381-385 of the 1930 penal code of Ethiopia, Emperor Haile-Selassie I press, September,(1930) available at <http://WWW.ethcriminallawnetwork.com/accessed> on March 23,(2020)

ranging from 10 up to 50 Birr. According to Art.382 of this code a person who performed an act of abortion upon the consent of the woman was punishable by imprisonment from one month up to one year and a fine ranging from 50 up to 200 Birr.

On the other, based on Art.383 of this code a person who served as a bridge or broker between the abortionist and the pregnant woman confronted the same punishment provided for physicians and midwives plus one-third, when the abortion is consummated. This code also gave greater care to protect the pregnant woman by setting grave punishment on it. According to Art.384 of this code the person who in the aware of the woman is a pregnant, performed abortion by violence or other means was punishable by imprisonment from 15 up to 20 years. Finally, based on Art.385 of this code it provides as “a Physician or pharmacist who added medicine that carried out abortion and when the conceived child disrupted because of his/her act was liable to imprisonment from three up to seven years and/or a fine ranging from 3,000 up to 7,000 Birr.

Generally, like the Feteha Nagast, this code also absolutely barred the act of abortion. Moreover, the things became most awful for women due to defense of necessity was not recognized under this code since every room is closed for the act of abortion.¹²⁰

From the above two laws I can understand that abortion was strictly punishable act with no exceptions since in the above two laws there were no any legal ground to permit abortion. Therefore, in this arena I can easily identify that in Ethiopia the human rights of women including the right to life were at risk.

4.3.2 Abortion in light of Women Rights under the 1957 Penal Code

Under this code, there are nine provisions that deal with regard to abortion. Though abortion as principle is a criminal act, the code is so thank full on paving the way to legalize abortion with certain legitimate grounds. Since the code begins “offences against life unborn abortion” which gives recognition for the life of the fetus.¹²¹Lets’ see some highlights on them:

When researcher looks Art.528 of this code it talks about the principle that provides “the deliberate termination of a pregnancy at whatever stage or how ever effected, is punishable except the case falls in the legitimate grounds of abortion in this code.”The nature and degree of punishment on abortion rely on two fundamental things. These are:

¹²⁰ See Art.145-151 supra note 119

¹²¹ See Art.528 - 536 of the 1957 Penal Code of Ethiopia, 16th Year No.1 Addis Ababa, July 23 ,(1957)

First thing is abortion procured by the pregnant woman; according to Art.529 of this code provides pregnant woman who procures her own abortion is punishable with simple imprisonment from three months to five years. This code surprisingly aggravates or set serious punishment for accomplice or co-offender by stating “any other person who procures for the pregnant woman the means of, or aids her in the abortion shall be punished in accordance with the general provisions of accomplice or co-offender and the punishment is simple imprisonment from one to five years.”¹²²

The second thing is abortion procured by another and in this part whether the pregnant woman gave her consent or not matters. Based on Art.530 of this code it states “whosoever performs an abortion on another, or assists in commission of the offence is punishable with rigorous imprisonment not exceeding five years and imprisonment shall be from three to ten years where the woman was in capable of giving her consent or where such consent was extorted by threat, coercion or deceit, or where she was incapable of realizing the significance of her actions, or where the intervention was effected against her will.”On this part I can easily observe that this code was very serious on the act of abortion and protecting of the life of the fetus even it tried to punish the advertising for contraceptive or abortion means.

Moreover, where the offender has acted for gain or where he has habitually made a profession of abortion punishment in the Art.530 shall apply and a fine shall be imposed in addition and when the professional improperly practice his/her profession the court should decide prohibition of practice for a certain period of time or life when the action repeatedly performed.¹²³ This clearly shows us how much this code is very conservative with regard to abortion.

On the one hand, this law holds issues that can be enough to consider this law as progressive since this law enacted in 1957. Because, this law incorporated some well knew legitimate grounds of abortion and things that are eligible for free mitigating instances for punishment on abortion. When one looks Art.534 of this code termination of pregnancy for medical grounds was not punishable. It clearly provides in this code that “termination of pregnancy is not punishable where it is done to save the pregnant woman from grave and permanent danger to life or health which it is impossible to avert in any other way, provided that it is performed in conformity with the some legal procedures listed in the code and in the case of grave and imminent danger which can be averted only by an immediate intervention” are not punishable.¹²⁴

¹²² See Art 529(2 of) supra note 121

¹²³ See Art.531 (1 and 2) of the supra note 121

¹²⁴ Id See Art.534 and536 respectively.

Here, the researcher can recognize that in accordance of this law to save the woman life, abortion is possible. Moreover, abortion is also legal to save the health of the women though physical or mental health never identified in the code. Besides, the code also incorporated some free mitigating instances for the court when calculating punishment of abortion. It provides that "...the court may mitigate without restriction where the pregnancy has been terminated on account of an exceptionally grave state of physical and mental distress, especially following rape or incest, or because of extreme poverty."¹²⁵

Generally, from this provision the writer of this paper can easily understand that when the pregnancy is the result of rape or incest and when the pregnant woman confronted with extreme poverty are not alone mitigating circumstance except they are the result of grave state of physical and mental distress and it is up to the court to reduce the punishment for the offender without restrictions. And it is very difficult to identify easily physical and mental distress from grave and permanent danger to health since the latter is a legitimate ground for abortion and the formers are only serving for free mitigating circumstances for punishment.

In a nutshell, this code begins section II by saying "offences against life unborn abortion." From this, one can argue that this code recognized life before birth but, worldwide jurisprudence maintains mostly that the fetus is not yet a human person, and therefore has no specific right to life.¹²⁶ However, when I compare this code with the previous two laws it is somehow reformed and gave some protections for human rights of women.

4.3.3 Abortion in light of the Current (2004) Criminal Code of Ethiopia

This Criminal Code has eight provisions with regard to abortion and it has shared most provisions from its predecessor (the 1957 penal code, the PC hereafter) including the section, the topic and the arrangement of provisions with regard to abortion. This law like the PC sets abortion in a principle punishable act.¹²⁷ Like Art.528 of PC Art.545 of CC criminalizes the intentional termination of a pregnancy, at whatever stage or however effected save exceptions. Moreover, like PC principally the nature and degree of punishment on abortion in CC rely on abortion procured by the pregnant woman and abortion procured by another and in this part whether the pregnant woman gave her consent or not matters.¹²⁸

¹²⁵ See Art.533 of supra note 121

¹²⁶ Dr Gill Greer: International Planned Parenthood Federation Access to safe abortion A tool for assessing legal and other obstacles (1996) p.17

¹²⁷ See Art. 545 of FDRE Criminal Code (2004) proclamation No.414/2004

¹²⁸ See Art.545(2) of the above

When I look at abortion procured by the pregnant woman like PC intentional termination of her own abortion is punishable and the accomplice and co-offender of this crime also liable to similar punishment in CC but, the punishment from three to five years simple imprisonment in PC reduced in to simple imprisonment (ten days to three year) in CC.¹²⁹

On the other hand when researcher looks abortion procured by another; like PC the CC use similar wordings by saying “whosoever performs an abortion on another, or assists in commission of the offence is punishable” but, with rigorous imprisonment not exceeding five years in PC reduced in to simple imprisonment in CC. And the PC and CC take similar positions on imprisonment shall be from three to ten years where the woman was in capable of giving her consent or where such consent was extorted by threat, coercion or deceit, or where she was incapable of realizing the significance of her actions, or where the intervention was effected against her will.¹³⁰ Besides, unlike PC the CC based on Art 547(3) giving consent is punishable act by stating “pregnant woman who consents to an act of abortion except as is otherwise permitted by law, is punishable with simple imprisonment” since it was not an illegal act under PC.

When I come to the aggravated cases, according to Art.548 (1 and 3) of CC like PC “ in cases where the criminal has acted for gain, or made a profession of abortion is punishable with fine in addition to the preceding article punishment and in cases where the crime is committed by a professional, in particular, by a doctor, pharmacist, midwife, or nurse practicing his profession, the court shall, in addition to simple imprisonment and fine, order prohibition of practice, either for a limited period, or, where the crime is repeatedly committed, for life.”But, based on Art.548 (2) of CC unlike PC newly declared “in cases where the crime is committed by a person who has no proper medical profession, the punishment shall be simple imprisonment for not less than one year, and fine.” And this provision is very help full to deter unsafe abortionist.

When the researcher looks the legitimate grounds for abortion the paradigm changes observed on CC than PC. As clearly stated in the CC “termination of pregnancy by a recognized medical institution within the period permitted by profession is not punishable where the pregnancy is the result of rape or incest; or the continuance of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother; or where

¹²⁹ See Art.546(1 and2)of the above

¹³⁰ See Art. 547(1 and 2) and Art.530(1 and 2) supra note 121

the child has an incurable and serious deformity; or where the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child and in the case of grave and imminent danger which can be averted only by an immediate intervention, an act of terminating pregnancy in accordance with necessity is not punishable..”¹³¹ Here as I have seen earlier the PC set only to save the life of the woman and health as legitimate ground of abortion however, the CC has broadened the legal grounds that abortion is permitted. In addition to others unlike PC the CC put the pregnancy in the case of rape and incest as legitimate ground for abortion.

In short, in this provision researcher can easily understand that among seven mostly known legal grounds in most countries of the world to conduct abortion legally that I have discussed in the background of this research, the CC fulfills to save the life of the women, to preserve physical health of women, to preserve mental health of women, rape or incest and fetal impairment (deformity). Moreover, the CC also provides extreme poverty is as free mitigating circumstance on abortion.¹³² Here I can see that grounds of economic and social reasons and on request at least in the first trimester are not incorporated on legal grounds of conducting legal abortion in the CC. Therefore Ethiopia based on the extent of limiting abortion can be categorized in less restrictive not least restrictive level and based on level of restricting still Ethiopia holds the similar position on PC even if the CC reformed the legitimate ground of abortion.

4.4 Guidelines for Safe Abortion Services in Ethiopia

Based on Art.552(1) of CC Ministry of Health prepared guide line with the objective of serving as a working document on the techniques and procedures that must be pragmatic in providing safe termination of pregnancy services as permitted by Art.551 of the CC.¹³³ Based on this guideline:

When the case falls in Art.551 (a) of CC when the pregnant is the result of rape or incest the mere request and the disclosure of the pregnant woman is adequate to obtain abortion services but, this fact will be noted in the medical record of the woman and the service provider (physicians) shall not be prosecuted if the information provided by the woman is subsequently found to be incorrect.¹³⁴

¹³¹ See Art. 551(1) (a, b, c, and d) and (2) respectively of supra note 127.

¹³² Ibid Art. 550

¹³³ See supra note 15 p.4

¹³⁴ See Art.552 (2) of supra note 121 and supra note 15 p.9

When the case relies on Art 551(b) of the CC according to this guideline the health provider is responsible to assess the woman's conditions and determine in good faith that the continuation of the pregnancy or the birth of the fetus poses a threat to her health or life though she was not in state of illness at that time.¹³⁵ And when the case falls under Art.551(c) mean where the fetus has an incurable and serious deformity, if the physician after conducting the necessary tests makes the diagnosis of a physical or genetic abnormality that is incurable and/or serious, termination of pregnancy can be conducted.¹³⁶ Here one should understand the physical abnormality and genetic abnormality is much ambiguous and though it is not the business of this research how much it contradicts with the rights of persons with disability. The one who has no legs and hands even can live, work and contribute a lot for this world like the able person work through assistive technology.

Finally, when the case falls under Art.551 (d) and (2) of the CC minors and mentally disabled women should not be required to sign a consent form to obtain an abortion procedure and health providers responsible for the provision of comprehensive abortion care services are authorized to perform abortion procedures on women whose medical conditions warrant the immediate termination of pregnancy.¹³⁷ Here I can understand the guideline tries to explain the detail procedure of abortion that recognizes as exceptional legal grounds of abortion under CC. And the failure of respecting this guideline leads to punishment in accordance with Art.552 (3) of the CC.

Here I can also note that the guideline has a meaning for only how to conduct abortion on the legitimate grounds under CC in Ethiopia and it has no many roles for the promotion and protection of women human rights in a better way than the CC. The one role of it is, it obliged health experts to provide service for post abortion care which is a comprehensive service for treating women that present to health-care facilities after abortion has occurred spontaneously or after an attempted termination or induced abortion regardless of the abortion is legal or illegal.¹³⁸

¹³⁵ Ibid p.10

¹³⁶ Id

¹³⁷ Ibid p. 11

¹³⁸ Ibid p.8

CHAPTER FIVE

PRESENTATION AND ANALYSIS OF DATA

5.1. Introduction to Data Classification and Method of Analysis

With the intention of assessing whether criminalization of abortion has implications on the rights of women in Ethiopia or not the researcher has tried to collect through interview with five health experts; one from ANRS Health Bureau, one from Family Guidance Association Ethiopia Gondar reproductive health clinic, one Obstetrician and Gynecologist from Felege Hiwot referral hospital and two from University of Gondar referral general hospital Michu and Gynecology (Gyne) clinic.

Moreover, the writer of this paper also has interviewed four legal experts; two of them are judges from ANRS Supreme Court and two of them are public prosecutors from ANRS Attorney General. In addition, I have approached two Police experts from ANRS Police Commission and two experts from ANRS Women, Youth and Children Affairs Bureau. The writer of this paper also has consulted dead case, annual reports of different institutions and other different materials to have adequate evidence and explanations on the issues that the researcher want to address in this research.

The researcher applied both comparative and descriptive methods of analysis for the data produced mainly from in-depth interview and secondary data sources since comparative method of analysis is essential to compare different argument of informants and descriptive method of analysis is vital to set some ideas as described by the informants particularly ideas that came from health experts.

The researcher also tried to analysis the collected data by categorizing in to four core issues; when the life of the fetus (embryo) starts in light of the justification of criminalization of abortion in the first trimester in CC of Ethiopia, to identify whether criminalization of abortion is a pushing factor for women to conduct unsafe abortion in Ethiopia, implications of criminalization of abortion on the some human rights of women in Ethiopia and to check the compatibility of CC with FDRE constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of some human rights of women as the following:

5.2 Justification of Criminalization of Abortion in the first trimester in CC of Ethiopia

As everyone can infer from section – II CC that ‘crimes against life unborn’ mean it wants to protect fetus life and it seems give recognition of life before birth. In addition, the CC also has the intent to protect moral and religious value of the community. Because during the enactment of CC some argue from religious perspective that abortion is a contravention of the Devine command and it should be strictly forbidden in any grounds and some also tried to relate the issue with public health intention.¹³⁹

One legal scholar argues that the life of the fetus starts from the union of sperm and egg. But, the justification of criminalization of abortion in CC goes beyond the protection of moral, religious value of the community and life of the fetus. Because based on his argument the main justification of making abortion a crime is to secure the existence of the next generation.¹⁴⁰ He strongly argues that if abortion is allowed in principle, the fate or existence of the next generation will be at risk. He also argues that the ideology of making abortion free comes from western ideology that did not care for the communal value and Ethiopia has its own unique communal culture and moral value and our societies are more conservative and then the western ideology should not have any place and it does not work in Ethiopia.

Similarly, one Obstetrician and Gynecologist also has explained that with regard to when the life of the fetus starts, health scholars argue in two main categories. In the first category some argue that the life of the fetus means a matter of union of female and male chromosomes and in the moment of union of such chromosomes the fetus life starts.¹⁴¹ In the second category of argument that supported by many health scholars; they argue that though the heartbeat of the fetus can be identified through assistive device in the 8th week of gestation through assistive device, but the other body of the fetus formed after 12 weeks and the life of the fetus highly related to the formation of the physical body of the fetus and they conclude that the fetus has no life in the first trimester.¹⁴² He shared the first argument and therefore, based on this argument the criminalization of abortion in the first trimester has valid justification.

On the other side many scholars argue that legally speaking the right to life starts from birth not from conception and interpretation of the right to life cannot be grounded on a religious perception or

¹³⁹ See supra note 5 p. 27

¹⁴⁰ Interview with Tanteyigegn Yemane (LLB and LLM); judge of ANRS Supreme Court at Bair Dar on June 05/2020

¹⁴¹ Interview with Fekadie Getachew (special doctor on obstetrics and Gynecology); Ex- worker at Marie Stopes International Ethiopia, instructor at Bair Dar University and owner of Tsedal Special Obstetrics and Gynecology private clinic at Bair Dar on June 13/200

¹⁴² Id

reverence for the moment of conception.¹⁴³ The argument that the fetus has life in the first trimester has neither legal nor philosophical support and instead one can argue that the women human rights must be maintained through secular reasoning since using their rights will not touch fundamental doctrine of religious and cultural value of the society (emphasis added).¹⁴⁴

Different health scholars strongly argue on the side of the fetus has no life in the first trimester. For instance, the formation of the physical body of the fetus is after 12 weeks particularly after 14 weeks and the fetus has no life in the first trimester.¹⁴⁵ In addition, other health expert also argues that though the starting time of the life of the fetus is not clear enough, but due to the formation of the physical body of the fetus is between the 14-24 weeks and the life of the fetus is unthinkable before the formation of its body and one can argue that the fetus has no life in the first trimester since the doubt that the fetus has life is relied on 14-24 weeks.¹⁴⁶ Moreover, other health experts also argue that “we have no any evidence to say the fetus has life in the first trimester” because of every body of the fetus can be formed after 16 weeks.¹⁴⁷ Finally, one health expert interlinked the life of the fetus with viability and she argues that in medical studies the fetus life starts after 28 weeks that can live out from the mother and in the first trimester the fetus has no anybody instead what it has is only blood.¹⁴⁸

The researcher understands that all health expert informants agreed on that the body of the fetus has not formed in the first trimester what it has is only blood and this blood developed into tissues and the tissues developed in to organ (physical body) after the first trimester.

When the researcher looks at Ethiopian legal scholars’ argument in this regard; one scholar argues that before making one thing is a crime it should fulfill the autonomy principle (the state intervene on freedoms for only protecting public health in case of abortion) of criminal law otherwise it should not be declared as a crime and the criminalization of abortion in any stage of gestation particularly for

¹⁴³ International Humanist and Ethical Union (IHEU); the UN Human Rights Committee’s proposed the General Comment on Art.6 of ICCPR on the right to life preliminary observations from IHEU ahead of the general discussion on the right to life in international law, at 39 Moreland street London, EC1V8BB United Kingdom(1985) available at www.iheu.org accessed on June,28/2020 p. 48

¹⁴⁴ Id

¹⁴⁵ Interview with s/r Atsedie Birhanu (BSC degree); reproductive and health expert on University of Gondar Referral General Hospital Gyne clinic on June 26/2020

¹⁴⁶ Interview with s/r Asiya Taju (BSC degree); reproductive and health expert on University of Gondar Referral Hospital Michu clinic on June 26/2020

¹⁴⁷ Interview with s/r Addis Zemen Chanie (MPH); reproductive health expert at ANRS Health Bureau, on June 11/2020

¹⁴⁸ Interview with S/r Netsanet Tsegaye (BSC degree); reproductive and health service provider at Family Guidance Association Ethiopia Gondar reproductive health clinic, on June 10/2020

the first trimester in Ethiopian CC does not fulfill the necessary principle of the criminal law.¹⁴⁹In addition, in strict legal sense human being is subjected to rights from birth to death.¹⁵⁰ Hence the right to life starts after birth and more different health studies show that the fetus has no life at least in the first trimester and in this sense criminalization of abortion in the first trimester neglects women human rights, but due to the grave violation of women rights in the former criminal law seems the violation of women rights in the CC unobjectionable.¹⁵¹ Moreover, criminalization of abortion in the first trimester to protect the life of the fetus is really unfair and totally in tantamount of in the expense of women human rights.¹⁵² In addition, other legal scholar also argues that since access of health institution is enough to give abortion service, criminalization of abortion in the first trimester has no valid justification and it cannot be fair to preclude women to conduct abortion in health institution in this stage.¹⁵³

Generally, from the above arguments the writer of this paper understands that legally speaking the right to life should be protected after birth not from conception since the right to life should be defined out of religious influences. From health perspective arguments the fetus has no life in the first trimester. The physical body of the fetus starts to form after the first trimester and in this stage what the fetus has is only blood instead of human body. In the first trimester, any health institutions can give abortion service since it can be performed with pills and outdoor patient treatment throughout Ethiopia in any health facilities.¹⁵⁴

In short, I can easily understand that when abortion is performed in the first trimester only blood out and there is no human body out from the mother's womb. In this instance, public moral cannot be affected in the bleeding of women since no human body is out from her womb.

Therefore, the justification of criminalization of abortion to protect the fetus life and public moral in the first trimester in the CC does not hold water. On the other hand, there is also argument that criminalization of abortion in the first trimester has intention to protect the next generation in Ethiopia

¹⁴⁹ Interview with Kidist G/Hiwot (LLB and LLM) Judge of ANRS Supreme Court at Bahir Dar on June 4/2020

¹⁵⁰ See Art.1 of civil code of the Empire of Ethiopia proclamation No.165/ 1960; Berhanna selam printing press of H.I.M. Hail selassie I - 11-9-52- No. 2071-52- 5000 Addis Ababa may 5, 1960

¹⁵¹ See supra note 149

¹⁵² Interview with Menberu Manaye (LLB and LLM); public prosecutor and coordinator of at ANRS Attorney General at Gondar branch on June ,22/2020

¹⁵³ Interview with Tsehaneh Atinaf (LLB and candidate of LLM); R/director of Human rights department at ANRS Attorney General on June, 04/2020

¹⁵⁴ See supra note 46 and 48

but for me women will abort only unwanted child and not wanted one and this cannot be a threat for the existence of the next generation. So, this argument cannot be valid.

On the other, some argue that the one justification of criminalization of abortion in 12 weeks in CC is to protect religious value of the community, but for me this law governs religious followers and non-religious followers. Therefore, it should be secular enough since it does not touch the dogma and system of any religious institutions. Protecting the religious value of the community is good but it should not be in the expense of human rights of women.

In general, the right to life is recognized in FDRE constitution and international human right instruments that Ethiopia is a party after a birth not from conception and even in health studies the fetus has no life and any physical human body in the first trimester what it has is only blood and only bleeding cannot affect the moral of the society and the law should be interpreted secularly mean without intervention of religion. Therefore, the researcher concludes that criminalization of abortion in the first trimester in the CC of Ethiopia has no valid justification.

5.3 Is Criminalization of Abortion a pushing factor for Women to conduct unsafe abortion in Ethiopia?

The magnitude of unsafe abortion in some countries is very high as a result of the country's restrictive abortion laws and different researches in the world show a direct relation between legal restrictions on abortion or criminalization of abortion and high rates of unsafe abortion.¹⁵⁵ Due to criminalization of abortion currently in Ethiopia many Ethiopian women continue to have abortions outside of health facilities, often under unsafe conditions they highly exposed for death and many health problems.¹⁵⁶ So, one can easily understand that criminalization of abortion does not affect its incidence or act, rather it only determines the place of the act conducted and affects its safety.

When the researcher comes to the data one expert argues that women in Ethiopia want to terminate their pregnancy because they want to hide it from the community, when the pregnancy occurred out of marriage, to resolve socio-economic problems, to protect social crisis, to keep their marriage relationship and when the pregnancy is unwanted in general and these things are intolerable to

¹⁵⁵ Beatriz Galli : Negative impacts of abortion criminalization in Brazil; systematic denial of women's reproductive autonomy and human rights,65 U.Miami L.Rev.969 (2011) available at <http://repository.Law.miami.edu/umlr/vol65/iss3/12> accessed on June 29, 2020 p.1

¹⁵⁶ Ethiopia preliminary impacts of Trump's expanded global GAG Rule; champions of global reproductive rights, June, (2018)available at www.pai.org accessed on June29,2020 p.7

women.¹⁵⁷Based on his argument criminalization of abortion precludes women to get abortion service in public health center freely except their cases fall on the exceptions that mentioned in CC and this pushes women to go unnecessary place to conduct clandestine abortion and many women scarified their life and other many others confronted health crisis and making abortion a crime is a pushing factor for women to conduct unsafe abortion.¹⁵⁸ Moreover, the other scholar also argues that public health institutions and private qualified institutions cannot provide abortion service for women in contravene with the CC, so women in Ethiopia that want to abort and their case never fall in the exceptions of the CC obliged to conduct unsafe abortion since abortion is a criminal act.¹⁵⁹ If abortion is not a crime or grounds of abortion are broad in Ethiopia women may not have any reasons to opt unsafe area that has no skilled manpower and inadequate device to conduct abortion. So making it a crime is the main cause to push women to conduct unsafe abortion in Ethiopia.¹⁶⁰

Events	In 2008	In 2014
Number of abortion performed in health facilities in Ethiopia	102,818	326,169
Number of abortion performed outside health facilities in Ethiopia	73%	47%

Table 1 No. of abortion performed in and out of facilities in Ethiopia in 2008 and 2014

On the other, based on the above table, in Ethiopia number of legal abortion performed in facilities increased in 2014 in Ethiopia and number of abortion outside facilities decreased in 2014.¹⁶¹ Here researcher can easily understand that very huge number of abortion is still performed outside the health facilities. In addition, the number of women receiving treatment for complications from induced abortion nearly doubled between 2008 and 2014, from 52,600 to 103,600 in Ethiopia.¹⁶²

When I look different institutions' reports for instance Ministry of Health of the Federal Democratic Republic of Ethiopia (MOH hereafter) in 2011 E.C 96,544 post abortion or emergency

¹⁵⁷ Interview with Mr. Asnakew Leweye(MA); Director of the women's movement and participation promotion directorate at ANRS Women, Youth and Children Bureau at Bahir Dar on June,04/2020

¹⁵⁸ Id

¹⁵⁹ See supra note 141

¹⁶⁰ See supra note 148

¹⁶¹ Et al Ann M. Moore, (8 Authors): Estimated incidence of induced abortion in Ethiopia, 2014 changes in the provision of services since 2008; article in international perspectives on sexual and reproductive health, available at: <https://www.researchgate.net/publication/311095873> September, 2016, accessed on June, 28/2020 p.17

¹⁶² Ibid p.2

service provided for women at the national level annually.¹⁶³ And in the 2012 E.C in the last ten months 90,666 post abortion or emergency care is provided for women at national level.¹⁶⁴ I can also understand that from FGAE report that 443 women got abortion service, 18 women have incomplete abortion and got post abortion services and 57 women cases rejected due to their case not fall in the legitimate grounds of abortion in CC of Ethiopia in 2011 E.C and from 57 women that rejected their cases some came back through bleeding and got post abortion cases.¹⁶⁵

When I look at University of Gondar Referral Hospital post abortion service in different years, in 2010 E.C 843 women got post abortion service and among these 802 or 95.12 % is induced abortion, in 2011 E.C 817 women got post abortion services and among these 796 or 97.43 % is induced abortion and in 2012 E.C last ten months 721 women received post abortion services and among these 689 or 95.56 % of them is induced abortion.¹⁶⁶ Here the researcher can note that the emergency service or post abortion service providing or women who got post abortion service increased and as it is well known the major cause for the increasing of emergency care is unsafe abortion. Hence, unsafe abortion is still a headache for Ethiopian health system and for women as well.

Moreover, criminalization of abortion and unsafe abortion has a direct relation in Ethiopia because due to CC makes the act of abortion is a crime save exceptions and women cannot go in public health institution to get the service and similarly they do not want to have unwanted child and then they obliged to conduct unsafe abortion and they paid a lot of money but, they did not get quality service and due to this they will lose their life or will confront different health problems.¹⁶⁷ Besides, one expert also argues that less control on the illegal abortion has also many roles on unsafe abortion of women in Ethiopia in addition to the CC has decisive factor for pushing women to unsafe abortion.¹⁶⁸ Similarly, other scholar argues that criminalization of abortion in the CC of Ethiopia banned women to get free abortion services from public health institutions in many situations like socioeconomic reasons and on

¹⁶³ See the 2011 E.C annual report of Ministry of Health Federal Democratic Republic of Ethiopia with regard to abortion services,

¹⁶⁴ See the 2012 E.C ten months report of Ministry of Health Federal Democratic Republic of Ethiopia with regard to abortion services.

¹⁶⁵ See 2011 E.C annual report of Family Guidance Association of Ethiopia Gondar reproductive health clinic and supra not 148

¹⁶⁶ See the 2010-2011 E.C annual report and 2012 E.C ten months report of University of Gondar Referral Hospital Gynecology ward visited on June,26/2020

¹⁶⁷ Interview with C/r Meaza Waleign(LLB); head of women and children rights department at ANRS Police commission on June,05/2020

¹⁶⁸ Interview with Mr. Aniteneh Demelash (MA); Director of women inclusiveness and promotion of women rights department at Women, Youth and Children Affairs Bureau at Bair Dar on June, 04/2020

the request at least in the first trimester and this can be great pushing factor for women to opt unsafe abortion and confronted health and other many problems.¹⁶⁹

Generally, from the above discussions the writer of this paper understands that criminalization of abortion in CC of Ethiopia is a pushing factor for women to conduct unsafe abortion and exposed for different health problems including loss of life in the current situation of Ethiopia. So, during the first trimester of pregnancy, the Ethiopian CC shall not bar any woman from obtaining an abortion service from a licensed physician or qualified health institutions since it has no valid justification and should consider socio-economic reasons as legitimate ground for abortion with mentioned reasons of Art.551 of CC.

5.4 Implications of Criminalization of Abortion on the some Human Rights of Women in Current Ethiopia

Criminalization of abortion in the CC of Ethiopia leads women to conduct illegal and unsafe abortion which may endanger their health seriously even may lead them to death and reproductive self determination rights of women to decide on the number, spacing and the timing of children is highly endangered in the current Ethiopia.¹⁷⁰ In addition, in most cases unsafe means of terminating pregnancy lead to maternal mortality and morbidity and affecting the overall reproductive health of women.¹⁷¹

Similarly, forcing women to born unwanted child particularly in the current situation of Ethiopia has irreversible effect on the human rights of women.¹⁷² For instance our criminal code does not set socio-economic reasons as a legitimate ground and if a woman who are contract worker in any organization confronted unwanted pregnancy that not fall on legitimate grounds listed in the CC of Ethiopia cannot have any remedy if she give birth her contract work will be terminated and if she want to abort the law never allowed for her and then she will opt unsafe abortion in order not to lose her work, but the effect may be losing her life or confronting any other diseases including infertility.¹⁷³ In addition, criminalization of abortion in the CC of Ethiopia particularly in the first trimester at least in 8 or 9 weeks has no any role except affecting the right to life, health and reproductive self determination of women.¹⁷⁴

¹⁶⁹ Interview with C/r Ayehu Tadesse (LLB); Ex- head and now expert on women and children rights department at ANRS Police Commission on June,04/2020

¹⁷⁰ See supra note 41 p.4

¹⁷¹ See supra note 34 p.25

¹⁷² See supra note 53

¹⁷³ Id

¹⁷⁴ See supra note 145

Criminalization of abortion particularly in the first trimester and socio-economic reasons in the CC of Ethiopia has effect to prevent women exercising their human rights and it is equal amount to discrimination and has plenty of implications like on the right to life, health, and reproductive self-determination and non-discrimination constitutional human rights of women.¹⁷⁵ Here as I have seen earlier the implications of criminalization of abortion is not only for women rather it is also a great challenge for the cost of public health institution by increasing number of women who are needing post abortion complication care.

The CC at least when it makes abortion is a crime it should consider the failure of contraceptive methods as a legitimate grounds for abortion because the failure of contraceptive methods particularly the failure rate of post pill is nearly 50% and it can be cause for unwanted pregnancy leads women to opt unsafe abortion as well.¹⁷⁶ Moreover, women who have socio-economic reasons in the current situations of Ethiopia cannot tolerate and give birth unwanted child though the CC not allowed in such instances and the majority cases of women wanting abortion relied on socio-economic reasons in the current practice of health facilities.¹⁷⁷

Therefore, here I can understand easily that the Ethiopian CC not allowing abortion on socio-economic reasons have great implications on social and economic rights as well as other human rights of women like the right to life, health, reproductive self -determination and non-discrimination rights of women since human rights are indivisible in nature. In addition, the criminalization of abortion in socio-economic reasons also can be cause for women to commit crime like disowning and killing infant child by their own mother and other related crimes. Because of the CC of Ethiopia not allowed abortion in socio-economic reasons some women start killing their child after birth in their home. For instance, I confronted case of Etenat Tiruneh when I was senior public prosecutor at West Gojjam Zone public prosecutor office.

As she described in her testimony she killed her child because she has no economic capacity not only take care of her child but herself as well. Public prosecutor instituted a charge on her by passing Art 540 of the CC of Ethiopia at West Gojjam zone High Court and the Court after hearing decided eight year and five months rigorous imprisonment on her.¹⁷⁸ Here based on my informants and my observation

¹⁷⁵ See supra note 141,145-149, 152, 157,167-169 and 172

¹⁷⁶ See supra note141

¹⁷⁷ See supra note 141,145 and 146-148

¹⁷⁸ See annex 5, Public prosecutor Vs Etenat Tiruneh case decided by West Gojjam Zone High Court on File No.55687 on March 18, 2010 E.C

as part of the community, not allowing abortion in socio-economic reasons in Ethiopia is a cause for the increasing experience of the community to find disowned infants in around garbage and forest areas and I always consider the presence of fatality women at the back.

On the other, criminalization of abortion has also great implications on job seeking of women in Ethiopia. For instance, to be an employee of a military force the work nature detects (it has physical exercising) that women should come up with the health approval certificate that are free from pregnancy.¹⁷⁹ As one police expert shared me, her aunt's daughter was recruited to take training to be member of Amhara police by fraud though she was a pregnant and she went to unsafe abortion to abort since her case did not fall on the exception of the CC of Ethiopia to continue her training without awareness of the trainer and she confronted high health problem and cannot return back to her training.¹⁸⁰ Here because of not allowing abortion in socio-economic reasons of the CC of Ethiopia women are losing their job and health. Practically some health experts obliged to provide abortion service for women that cases fall on socio-economic reasons in Ethiopia by lying and pushing women to say "I was raped or the result of incest" which fall on the legitimate grounds of CC of Ethiopia without proof as expressed under Art.551/a/ of CC and this is totally unethical and illegal enough and based on the informants some women rejected their advices and insult them and go back to their home without getting the service.¹⁸¹

Here one may raise an argument that the CC setting some legitimate grounds for abortion without proof seems tacitly approve liberal stands on abortion since women can abort by lying health officers. But, for me this argument is out of the intention of the law maker because as clearly explained in the explanation of CC, the law maker wants to avoid the sophisticated and long procedures in corporate under Art.534/2, 3 &4/ and 535 of the PC to get abortion services in case of rape and incest and not to facilitate women to get abortion services by lying health officers.¹⁸²

On the other, when one looks the 2015 FDRE growth and transformation plan (GTP hereafter) towards women the FDRE government sets the goal to increase; women political participation, participation of women in all income generating activities, participation of women in all educational level, providing better health care and combat women related health problems, all in all to create

¹⁷⁹ See annex 6 employee recruitment principles of ANRS Police Commission principle No.13

¹⁸⁰ See supra note169

¹⁸¹ See supra note141,145,146 and 148

¹⁸² See intra note 192 Art,552

conducive environment for women to have active participation in all aspects.¹⁸³ So here the researcher understands that criminalization of abortion particularly in case of socio-economic grounds highly contravene with this government objective and exposed women for many side health problems. Moreover, it can be also a hindering factor for women to use basic rights and the government to discharge its duties to ensure women full and effective participation and equal participation in leadership at all levels of decision making in political, economic, public life, sexual and other reproductive rights in line with Beijing platform and other human right instruments and the 2030 agenda of UN.¹⁸⁴

In general, in countries that legalized abortion, women are out of danger from harsh consequences of illegal abortion while countries that declare abortion as a criminal act, illegal abortion are the major cause of maternal mortality and other serious health problems.¹⁸⁵ Ethiopia declared abortion as a crime in principle and as I have mentioned earlier, criminalization of abortion is a major pushing factor for women to conduct unsafe abortion in Ethiopia and unsafe abortion is one of the top 10 causes of hospital admissions among women. It is also the most common cause of maternal mortality, accounting up to 32% of all maternal deaths in the country and sustains short- and long-term morbidities, including infertility. Therefore, the findings show that criminalization of abortion has irreparable implications on women human rights in Ethiopia specially the right to life, health reproductive self-determination and non-discrimination rights of women highly endangered.

¹⁸³ See the FDRE growth and transformation plan 2010/11-2014/15; Ministry of Finance and Economic Development, Addis Ababa, Ethiopia, September 2010 p. 71

¹⁸⁴ Transforming our world: the 2030 UN agenda for sustainable development goals, New York, A/RES/70/1, September, 2015 p.22

¹⁸⁵ See supra note 5 p.1

5.5 Compatibility of the Current (2004) Criminal Code of Ethiopia with FDRE Constitution and International Human Right Instruments that Ethiopia is a party with regard to Abortion in light of some Human Rights of Women in Ethiopia

To begin with the right to life: the CC starts to express section- II “crimes against life unborn; abortion.” This seems it recognizes and tries to protect life before birth and as I have seen earlier this assumption rejected during the enactment of ICCPR and now the understanding and interpretations of the international human right instruments on the right to life is life after birth. And in this regard the FDRE constitution is the carbon copy of ICCPR and UDHR and when it deals right to life, one should understand that its concern is about the right to life after birth. In addition, according to Art.13 (2) of FDRE constitution the right to life should be interpreted in the way with conformity of the above treaties as a life after birth.

On the other hand, though the CC allowed abortion to save the life of the women which means when there is imminent danger on her life (risk of life) and women’s lives are in danger when they have no access to legal security procedures, which obliges them to resort to unsafe, illegal abortions.¹⁸⁶ Here we can infer that the CC tries to protect the life of the women in the narrowed manner and it is not inconformity with UN HRC definition of the right to life. So, we can conclude that criminalization of abortion in the CC did not protect the right to life of women in the border manner that protected in FDRE constitution and international human right instruments as well. Therefore, the position of CC that does not allow abortion in the first trimester and in socio economic reason endangers the right to life of the women in Ethiopia.¹⁸⁷

When I look at the right to health and reproductive self- determination of women as I have seen earlier in ICESCR General Comment 14, the right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference including the state on the reproductive rights of women. Besides, in the 1968 Proclamation of the Teheran, which states; "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children. More so, FDRE constitution under Art.35 (4) stated that “Laws, customs, and Practices that oppress or cause bodily or

¹⁸⁶ See supra not 102 Paragraph 39.

¹⁸⁷ See supra note 149,152 and 172

mental harm to women are prohibited...”Therefore, in the CC only risk of health is legitimate ground for abortion. So it looks the right to health in very narrow conditions and criminalization of abortion in CC strongly violates the right to one’s body control, determining number and space of children freely without the interference of the state and it is a law that cause bodily and mental harm on women. Moreover, the right to health of women is narrowly protected in CC but reproductive self- determination rights of women totally bared in it since no one shall have power to force women to have unwanted child.¹⁸⁸ Hence, the researcher can note that CC is not compatible with FDRE constitution and international human right instruments as well in this regard.

When I look at the right to non-discrimination, as I have seen earlier CEDAW defines, “discrimination against women” includes laws that have either the “effect” or the “purpose” of preventing a woman from exercising any of her human rights or fundamental freedoms on a basis of equality with men and some informants argue that the CC that ban abortion have effect on exercising of women human rights in Ethiopia.¹⁸⁹ In addition, as explained above according to Maputo protocol; the right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services including abortion and more this right also has protection in Art 25 and 35 of FDRE constitution. Since CC prohibited abortion principally it makes women subjected to persecution and I can bring to a close criminalization of abortion is a clear discrimination and against women rights. Therefore, CC contradicts with FDRE constitution and international human right instruments that Ethiopia is a party as well in this regard.

When I look data in detail, one legal scholar argues that the CC permits abortion when immoral acts are performed on women like rape, incest, etc. and preclude in other instances like in socio-economic reasons and on the request in the first trimester shall not consider the law as not compatible with FDRE constitution and international human right instruments that Ethiopia is a party rather one can understand it has special place for the moral and religious value of the community.¹⁹⁰ In addition, one legal scholar also argues that CC cannot be blamed in incorporating social reasons as a whole since it holds incest as a legitimate ground of abortion.¹⁹¹ But, the revised criminal law explanation clearly

¹⁸⁸ Id

¹⁸⁹ Id

¹⁹⁰ See supra note 140

¹⁹¹ See supra not 141

stipulated the reason of making incest as legitimate ground abortion is that the pregnancy as a result of incest is unwanted pregnancy and even when the child brining up it will confront identity crises.¹⁹² So, the researcher understands that the reason of making incest a legitimate ground of abortion is biological and not social reason. The rest informants argue CC did not protect the right to life, health and reproductive self determination and non-discrimination of women in sufficient manner though it is better reformed laws from the previous one and permitting abortion in socio-economic reasons and on the request in the first trimester can balance the exercising of the above human rights of women on one side and moral of the community on the other.¹⁹³ They also advise to think out of the religious box for better protection of women human rights.¹⁹⁴ And they also suggest decriminalizing abortion totally is also impossible and unthinkable in the current situation of Ethiopia since our community is conservative enough.¹⁹⁵ Based on the above discussions the researcher can conclude that the CC is not compatible with FDRE constitution and international human right instruments with regard to abortion in light of women rights; to life, health and reproductive self- determination and non-discrimination.

In general, for the researcher in the current situation of Ethiopia the legalizing of abortion in the exceptions under Art 551 of CC without recognizing the socio-economic reasons (because they are major cause for women to seek abortion) seems absurd since several Ethiopian young women are jobless and can't afford to have bread for day and forced women in such situation to have unwanted pregnancy and child is the tip of cruelty on them. Therefore, here the researcher can safely conclude that CC is not compatible with FDRE constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of women human rights in the above instances.

¹⁹² See the explanation of the revised criminal law of Ethiopia on Art 550 (translation is mine) available at WWW.abysinialaw.com; accessed on June 29/2020

¹⁹³ See supra note 141,145-149,152,157,167-169 and 172

¹⁹⁴ Id

¹⁹⁵ Id

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

This research aims to assess whether criminalization of abortion has implications on the human rights of women in Ethiopia or not. Abortion is categorized into the spontaneity or artificially induced expulsion of fetus and this research exclusively deals with the latter one. Induced abortion is misdemeanor of causing a miscarriage or premature delivery of a fetus by means of any instrument, medicine, drug, or other means and no more than expulsion of an embryo or fetus before it is capable living. It is the oldest and the most commonly used method for controlling fertility and has been used in all societies of the world at all times to terminate an unwanted pregnancy for a long period of time due to it was not criminal act for a long period of time and it was a great cause for death of lots of mothers. Even in the modern society it became a great cause for the death of mothers because of it is declared as a criminal act in many countries of the world and this forced women to take unsafe abortion.

Abortion is permitted for seven mostly known legal grounds in most countries of the world. These are: intervention to save the life of the woman, preservation of the physical health of the women, preservation of the mental health of the woman, termination of pregnancy resulting from rape or incest or sexual abuse, suspicion of fetal impairment on the fetus (deformity); or serious fetal anomaly, termination of pregnancy for economic or social reasons and on the request. In Ethiopia the CC does not allow termination of pregnancy for socio-economic reasons and on the request and others are incorporated as legitimate ground of abortion.

There are two dominant lines of arguments in the legalization or illegalization of abortion. The one is anti-abortionists (pro-life or anti choice): some strongly condemn the legalization of abortion. The other is pro-abortionists (pro-choice) group: others argue women should have the right to control their own body and their life fate and goals.

With regard to the legal aspect, the researcher tried to address abortion in light of the right to life, health, reproductive self- determination and the right to non-discrimination rights of women under international human right instruments that Ethiopia is a party and domestic laws of Ethiopia. For instance, UN HRC has explained that the right to life should not be interpreted narrowly, with the concerns on the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death and criminalization of abortion can be cause for

unnatural death of women. In addition, according to ICESCR and general comment No.14 on it, the right to health is not confined to being healthy or not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes rather as it explained on above General comment that; the right to health contains both freedoms including sexual and reproductive freedom and entitlements. In addition, based on the 1968 Proclamation of Tehran, parents have a basic human right to determine freely and responsibly the number and the spacing of their children.

With regard to non-discrimination rights; according to CEDAW, “discrimination against women” includes laws that have either the “effect” or the “purpose” of preventing a woman from exercising any of her human rights. In addition, the Special Procedures of the UN Human Rights Council have also recognized abortion as a human rights concern and criminalizing abortion as equal amount to discriminating women to exercise their rights. Moreover, according to the Maputo protocol, the right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved to them such as abortion and post-abortion care. So, criminalization of abortion is a clear discrimination and violation of the right to life, health, dignity, body integrity or reproductive rights women. Therefore, at international level, abortion is human rights of women.

The FDRE constitution, it impliedly and explicitly protects the right to life, health, reproductive self-determination and non-discrimination rights of women. For instance Art.15, 25, 35 and 41 are explicit protection of the above rights of women and Art.13 (2) and 9(1 and 4) implied protection of the above rights of women. Therefore, I can conclude that the constitution indirectly considers abortion as women human rights but, it has limitations for moral and religious value of the community.

In short, this research discovers that a fetus has no life in the first trimester due to the formation of the physical body of the fetus is after 12 weeks and the fetus life is highly interlinked with body formation. In the first trimester, any health institutions can give abortion service since it can be performed with pills and outdoor patient treatment throughout Ethiopia. When abortion is performed in the first trimester only blood can be out and there is no human body out from the mother’s womb. In this instance, public moral cannot be affected in the bleeding of women since no human body is out from her. In addition, legally speaking, the right to life starts from birth not from conception. Therefore, the justification of criminalization of abortion in the first trimester in Ethiopia for the protection of fetus

life and public moral are not valid justifications. In addition, many Ethiopian women continue to have abortions outside of health facilities, often under unsafe conditions highly exposed for death and many health problems because abortion is a criminal act. When the pregnancy occurs out of marriage, to resolve socio-economic problems, to protect social crisis, to keep their marriage relationship and when the pregnancy is unwanted in general and these things are intolerable to women and they are obliged to conduct unsafe abortion. So, based on the data the criminalization of abortion is the main pushing factor for women to opt for unsafe abortion in Ethiopia. In addition, criminalization of abortion particularly in the first trimester and socio-economic reasons in the CC of Ethiopia has great effect to prevent women exercising their human rights and it is equal amount to discrimination and has plenty of implications like on the right to life, health, and reproductive self determination and non-discrimination constitutional human rights of women.

On the other, the criminalization of abortion in socio-economic reasons can also be a cause for women to commit crime like killing infant child by their own mother and other related crimes.

Moreover, criminalization of abortion has also considerable implications on job seeking of women in Ethiopia and it causes loss of life and many health problems. Practically some health experts are obliged to provide abortion service for women whose cases fall under socio-economic reasons in Ethiopia by lying and pushing women to say “I was raped or pregnancy is the result of incest” and this is absolutely unethical and illegal. So, criminalization of abortion particularly in the first trimester and for socio-economic reasons have irreparable implications on women human rights in Ethiopia specially the right to life, health reproductive self determination and non-discrimination rights of women highly endangered.

Generally, based on the findings of this research it is proved that criminalization of abortion in the first trimester in the CC has no valid justification; criminalization of abortion is a pushing factor for women to conduct unsafe abortion in the current satiation of Ethiopia; criminalization of abortion particularly in the first trimester and for socio-economic reasons have severe implications on the above human rights of women in Ethiopia and due to these the CC is not compatible with FDRE constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of the above human rights of women. Therefore it needs urgent solutions.

6.2 Recommendations

Based on the above findings the writer of this paper wants to forward the following recommendations:

- The Policy makers should formulate proper health policies and strategies including abortion as women rights for the better protection of women rights in Ethiopia.
- Ministry of Health of Ethiopia and other related institutions, physicians, and women's rights activists need acknowledge the fact that unsafe abortion affects the women rights and that advancing access to legal abortion can save women's lives and facilitate women's equality.
- The Government should give better protection for women rights with regard to abortion so as to prevent the deaths resulting from unsafe abortions or to minimize maternal mortality and to decrease its medical cost.
- Women's rights group should work on shifting the community attitudes towards understanding of why women seek abortion that seeking abortion is not for the luxury rather as a matter of necessity and should advocate for legalization of abortion for the better protection of women rights.
- Based on the findings the CC highly narrowed women rights. Institutions like Ministry of Women, Youth and Children Affairs and Regional Bureaus' should consider legalization or decriminalization of abortion as the first steps to improve women's access to safely performed abortions by trained medical professionals instead of unskilled abortionists and the Government should take concert steps to improve the current situation of women with regard to abortion related cases.
- Criminalization of abortion in the CC of Ethiopia particularly in the first trimester has no valid justification and for the better protection of the women's right to life, health reproductive self-determination and non-discrimination; Law makers should reconsider Art 545(1) of CC soon and it should be amended as; the intentional termination of pregnancy after the first trimester is punishable according to the following provisions, except as otherwise provided under Art.551
- The CC of Ethiopia highly narrowed down the human rights of women that have broad protection in the FDRE constitution and international human right instruments that Ethiopia is a party with regard to abortion in light of the women's right to life, health reproductive self

determination and non-discrimination and the government should amend the CC in conformity with them.

- International and national NGOs that are working for the better protection of women rights in Ethiopia should lobby the Government to amend the CC of Ethiopia to take more grounds to legalize abortion and to discharge its responsibility as well.
- Criminalization of abortion particularly for socio-economic reasons in the CC is a pushing factor for women to conduct unsafe abortion in Ethiopia that has irreversible implications on the women's right to life, health reproductive self determination and non-discrimination and the Law makers should reconsider Art.551 (1) of CC soon and it should have (e) on socio-economic reasons. Moreover, Art.552(2) of the CC should also be amended in a way; in the case of terminating pregnancy in accordance with sub-article (1) (a) and (e) of Art.551 the mere statement by the woman is adequate to prove that her pregnancy is the result of rape or incest or she seeks abortion based on socio- economic reasons.
- The Federal and Regional ; Attorney Generals, Police Commissions and Judiciary Organs should work intensive awareness creation for the community at large on how abortion affects women's right to life, health, reproductive self determination and non-discrimination and they should also contribute a lot for the amendment of CC with regard to abortion.

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Annex 1

Guiding questions for the interview of health experts

Dear interviewee, the purpose of this interview is to gather data relevant to study to be conducted on the **CRIMINALIZATION OF ABORTION AND ITS IMPLICATIONS ON THE RIGHTS OF WOMEN IN ETHIOPIA**. Your responses are important for the successful completion of the study. Your answers, suggestions and opinions shall be used only for the above mentioned research purposes and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

Interviewee full name-----**Sex**----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**Phone No.**-----

1. Can you tell me about why women want to terminate their pregnancy?
2. Can you tell me about when the life of the fetus begins in your study of medical science?
Is it certainly known? How?
3. Does the fetus have life in the first trimester (in 12 weeks gestation)? How?
4. If your answer for question No.3 is yes, when it starts?
5. If your answer for question No.3 is no, do you believe the Ethiopian current criminal code (CC hereafter) that criminalization of abortion in this season (in the first trimester) is fair and have purpose to achieve? Does it have justifications for criminalization of abortion in the first trimester?
6. In the current CC of Ethiopia, abortion is in principle a criminal act in any stage of gestation. What you observe through your experiences with regard to the implications of criminalization of abortion in any stage in light of women rights? And if you have adventure in this regard please share it for me.

7. How do you balance the criminalization of abortion with women rights in your working experience and your duty on your professional ethics?
8. How do you see your professional ethics to integrate based on humanity and the law and the practice of abortion in Ethiopia?
9. Do you have professional duty to treat a fetus as a person? If it is so in what age it starts? How do you compromise women rights with protecting the fetus? Which should prevail when contradiction happens between women rights and protecting the fetus?
10. Do you believe criminalization of abortion prevent the act of abortion? Why?
11. Different studies show that the rate of unsafe abortion is high in Ethiopia. Why unsafe abortion speeded in Ethiopia and can be cause for death of lots of women? Does criminalization of abortion are a pushing factor for women to opt unsafe abortion in Ethiopia? How?
12. How do you see the relationship among criminalization of abortion, unsafe abortion and maternal mortality in your working experience?
13. Have you confronted cases of women that want to abort because of socio-economic reasons? If you confronted, how did you treat them? And if your answer no, what you feel about women rights? Do you guess what type of measures such like women have taken to terminate their unwanted pregnancy? Could you think the implication of their measure on their human rights including the right to life? If your answer is yes, do you believe your act is in line with our criminal law in this regard? How?
14. Could you think excluding socio-economic reasons from legitimate ground for termination of abortion is fair in light of women rights in the current situation of Ethiopia? How?
15. Do you think our criminal law gets the midpoint to balance women rights on one side and protect moral, religious and life of the fetus on the other with regard to criminalization of abortion? If not what would be solutions? If so how?

Thank you so much for giving your precious working time please!!!

Annex 2

Guiding questions for the interview of legal experts

Dear interviewee, the purpose of this interview is to gather data relevant to study to be conducted on the **CRIMINALIZATION OF ABORTION AND ITS IMPLICATIONS ON THE RIGHTS OF WOMEN IN ETHIOPIA**. Your responses are important for the successful completion of the study. Your answers, suggestions and opinions shall be used only for the above mentioned research purposes and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

Interviewee full name-----**Sex**----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**phone No.**-----

1. Different medical studies show that the fetus has no life at least in the first trimester (in 12 weeks of gestation) but, the current criminal code (CC hereafter) of Ethiopia criminalizing abortion at any stage of gestation. Do you think about the fairness of the CC in this regard in light of women human rights?
2. Does criminalization of abortion at any stage of gestation in Ethiopia have justification and purpose to achieve?
3. Do you think about the implications of criminalization of abortion on the rights of women particularly the right to life, health and reproductive self-determination and non-discrimination of women?
4. How do you see criminalization of abortion on socio-economic reasons and on the request at least in the first trimester in light of the right to life of the women that protect under FDRE constitution and international human right instruments that Ethiopia is a party?
5. Do you think the current Ethiopia CC that criminalize abortion in principle at any stage of gestation and exclude socio-economic reasons as legitimate ground is compatible with the

essence of FDRE constitution and international human right instruments that Ethiopia is a party in light of women rights? If not what type of measures should be taken in light of women rights? If so how?

6. Do you think criminalization of abortion at any stage of gestation in CC violates the right to health and reproductive self -determination of women? How? In such instances does CC complement with FDRE constitution and international human right instruments like ICESCR?
7. Do you think criminalization of abortion in principle at any stage of gestation is equal amount to discrimination of women to exercise their right to health? How?
8. Some legal scholars argue that our criminal code on the stand of abortion, it is a law that has effect and purpose to discriminate women to exercise the human right to health, reproductive self -determination and the right to life of women. Do you support/against this argument? How?
9. If you support argument of question No.7, do you think our CC prevent women to exercise her human rights that are protected under FDRE constitution and international human right conventions? In this regard can we dear to say our CC compatible with FDRE constitution and international human right instruments that Ethiopia is a party? How?
10. How do you see the relationship among criminalization of abortion, unsafe abortion and maternal mortality in the current situation in Ethiopia?
11. Do you think the Ethiopian CC that criminalization of abortion at any stage of gestation in principle and socio-economic reasons as exceptions has implications on the rights of women particularly on the right to life, health ,reproductive self determination and non-discrimination rights of women in the current situations of Ethiopia? How?
12. Do you think permitting abortion on socio-economic reasons in the tone of other exceptions and on the request in the first trimester contradict with moral and religious matters? How?
13. Do you think the current CC of Ethiopia gets midpoint to balance the human rights of women on one way and to protect the moral and religious issues of the community with regard to abortion issue? If not what should be solutions? If so how?

14. What should prevail when there is contradiction between the human rights of women on one side and moral, religious issue of the community and protection of the fetus on the other in the action of abortion? Why?
15. What do you suggest about our CC on the above position with regard to protect women human rights in broader manner particularly the above rights, when and how termination of pregnancy should be permitted in line with the moral and religious issues of the community in Ethiopia?

Thank you so much for giving your precious working time please!!!

Annex 3

Guiding questions for the interview to experts from ANRS Women, Youth and Children Affairs Bureau

Dear interviewee, the purpose of this interview is to gather data relevant to study to be conducted on the **CRIMINALIZATION OF ABORTION AND ITS IMPLICATIONS ON THE RIGHTS OF WOMEN IN ETHIOPIA**. Your responses are important for the successful completion of the study. Your answers, suggestions and opinions shall be used only for the above mentioned research purposes and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

Interviewee full name-----**Sex**-----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**phone No.**-----

1. What you observe through your experiences with regard to the implications of criminalization of abortion in light of women human rights particularly the right to life, health, and reproductive self -determination and non-discrimination rights of them? And if you have adventure in this regard please share it for me.
2. Can you tell me about why women want to terminate their pregnancy?
3. Why unsafe abortion speeded in Ethiopia and a cause for death of lots of women? Does criminalization of abortion are a pushing factor for women to opt unsafe abortion in Ethiopia? How? How do you see the relationship among criminalization of abortion, unsafe abortion and maternal mortality?
4. Could you think excluding socio-economic reasons from legitimate ground for termination of abortion is narrowed the human rights of women particularly the above rights? How? Does it have justification and purpose to achieve?

5. Do you think criminalization of abortion in our CC not compatible with women human rights particularly the right to life, health, and reproductive self determination and non-discrimination rights that are protected under FDRE constitution and international human right instruments that Ethiopia is a party? How?
6. If your answer for question No.5 is positive, what should be solutions to protect women rights? And what is the role of your office to solve such like problem of women? Do you think the implications of criminalization of abortion on the rights of women in Ethiopia? How?
7. Could you think excluding socio-economic reasons from legitimate grounds for termination of abortion is fair in light of women rights in the current situation of Ethiopia? How?
8. Do you think the current CC of Ethiopia gets midpoint to balance the human rights of women on one way and to protect the moral and religious issues of the community with regard to abortion issue? If not, what should be solutions? If so how?
9. What should prevail when there is contradiction between the human rights of women on one side and moral, religious issue of the community and protection of the fetus on the other? How?
10. Do you think permitting abortion in Ethiopia on socio-economic reasons and on the request for the first trimester contradict with moral and religious of our community? How? If your answer is yes, why for other grounds that listed in CC?
11. What do you suggest about our CC on the above position with regard to protect women human rights in broader manner particularly the above rights, when and how termination of pregnancy should be permitted in line with the moral and religious issues of the community in Ethiopia?

Thank you so much for giving your precious working time please!!!

Annex 4

Guiding questions for the interview to experts from ANRS Police Commission

Dear interviewee, the purpose of this interview is to gather data relevant to study to be conducted on the **CRIMINALIZATION OF ABORTION AND ITS IMPLICATIONS ON THE RIGHTS OF WOMEN IN ETHIOPIA**. Your responses are important for the successful completion of the study. Your answers, suggestions and opinions shall be used only for the above mentioned research purposes and strictly maintained confidential.

I would like to express my gratitude in advance for your cooperation!

Interviewee full name-----**Sex**-----

Educational level-----

Working place-----

Status-----

Working experience-----

Marriage status-----**phone No.**-----

1. Have you investigated cases on illegal abortion on your working experiences? If so, how did you treat women that conducted illegal abortion? How do you feel their suffering?
2. Have you arrested them to investigate such like cases? Does it not their human rights?
3. In the current CC of Ethiopian, abortion is in principle a criminal act in any stage of gestation. What you observe through your experiences with regard to the implications of criminalization of abortion in light of women human rights particularly the right to life, health, and reproductive self determination and non-discrimination rights of them? And if you have adventure in this regard please share it for me.
4. Why unsafe abortion speeded in Ethiopia and a cause for death of lots of women? Does criminalization of abortion are a pushing factor for women to opt unsafe abortion in Ethiopia? How? How do see the relationship among criminalization of abortion, unsafe abortion and maternal mortality in the current situation of Ethiopia?
5. Could you think excluding socio-economic reasons from legitimate ground for termination of abortion is narrowed the human rights of women particularly the above rights? How?
6. According to Maputo protocol G.C No.2 the right to be free from discrimination also means that women must not be subjected to criminal proceedings and should not incur any legal sanctions for having benefited from health services that are reserved to them such as

abortion and post-abortion care. Do you think our CC exposed women to be subjected to criminal proceedings when it ban abortion at least in the first trimester and excludes socio-economic grounds from legitimate grounds of abortion in the current situation of Ethiopia? How?

7. Do you think precluding abortion in our CC particularly on socio-economic grounds and on the request at least in the first trimester prevent women to exercise their human rights particularly the right to life, health, reproductive self determination and non- discrimination rights that are protected under FDRE constitution and international human right instruments that Ethiopia is a party?
8. Socio-economic reasons are one of mostly known legitimate legal grounds in most countries of the world but, the current Ethiopian CC exclude socio-economic reasons as the legitimate legal grounds for terminating abortion. Could you think excluding socio-economic reasons from legitimate ground for termination of abortion is fair in light of women rights in the current situation of Ethiopia? How?
9. Do you think permitting abortion in Ethiopia on socio-economic reasons and on the request for the first trimester contradict with moral and religious of our community? How? If your answer is yes, why for other grounds that listed in CC and how to balance with human rights of women?
10. Do you think the current CC of Ethiopia gets midpoint to balance the human rights of women on one way and to protect the moral and religious issues of the community with regard to abortion issue? If not, what should be solutions?
11. Do you think setting socio-economic reasons as a legitimate ground for termination of abortion and permit to terminate abortion on the request at least in the first trimester in Ethiopia are solutions to reduce death of women on unsafe abortion? If you have other suggestions to protect women rights broadly in this regard please share with us.

Thank you so much for giving your precious working time please!!!

Annex 5:

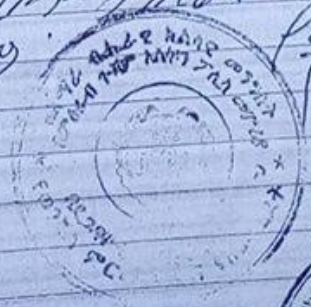
Dead case on Public prosecutor Vs Etenat Tiruneh case decided by West Gojjam Zone High Court on File No.55687 on March 18 2010 E.C

[Handwritten Amharic text on lined paper, including a signature 'Tiruneh' and a circular stamp. The text is dense and appears to be a legal document or court record.]

Handwritten mark, possibly a signature or initials.

Main body of handwritten text in a non-Latin script, likely Georgian, covering most of the page.

Handwritten text at the bottom left, possibly a signature or name.



Handwritten text and a fingerprint on the right side of the page.

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ՄԱՐԻՏԻՄԱՆ ԳՐԱԴԱՐԱՆ

Քաճ - 143/3/3
ժր - 9-1 - 20/09/00

Կարգավիճակի մասին հարցազրույցի
փ/ՄԱԿԿԸ

Կետերի ցուցակի մասին ընդհանուր տեղեկություններ
առաջարկելու նպատակով հարցազրույցի անցումը 2009 թ. 13/09
թվ. հարցազրույցի արձանագրության համաձայն:

- Բնակիչների փոխադրումները 2 _____ 70
- Բնակիչների փոխադրումները 6 _____ 70
- Բնակիչների փոխադրումները 2 _____ 70
- Բնակիչների փոխադրումները 5 _____ 70
- Բնակիչների փոխադրումները 2 _____ 70

Գրքերի 17 70 հարցազրույցի մասին
տեղեկություններ հավաքելու նպատակով հարցազրույցի անցումը
2009 թ. 13/09 թվ. հարցազրույցի արձանագրության համաձայն:

Կարգավիճակի մասին հարցազրույցի
փ/ՄԱԿԿԸ



Քաճ 327
ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ
ՄԱՐԻՏԻՄԱՆ ԳՐԱԴԱՐԱՆ

የምስጋና ደብዳቤ
የምስጋና ደብዳቤ
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ቁጥር 03937

ቀን 24/01/2010

ለምስጋና ደብዳቤ ስፍተኛ ፍቤት

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የምስጋና ደብዳቤ ስፍ/ፍ/ቤት ወ/መ/ቁ- ---
የደንበኞች ወረዳ ፖሊስ ም/መ/ቁ 13/09

ከላይ — የምስጋና ደብዳቤ ዐህግ

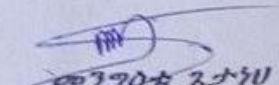
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ወንጀል

በጥቅም 9/9 የወጣውን የኢ.ፌ.ዲ.ሪ የወንጀል ህግ አንቀጽ 540 ላይ የተመለከተውን
ዕውቀት

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መንግስቱ ጌታነህ
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ግብረ

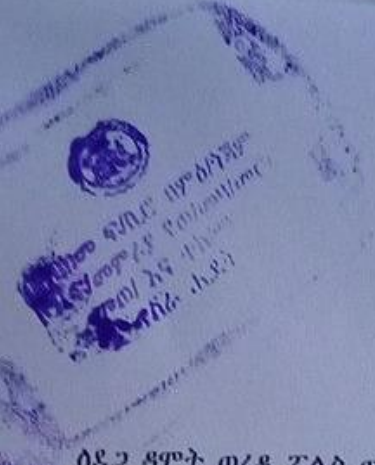
ወ. የሰው

- ✓ 1. ቀስ ደስ ልመን ላይ አድራሻ ደንበኞች ወረዳ ደንበኞች ስፍራ ቀበሌ
- 2. መላክ ጥናት ላይ አድራሻ ደንበኞች ወረዳ ደንበኞች ስፍራ ቀበሌ
- 3. ችግር ዘለቀ ላይ አድራሻ ደንበኞች ወረዳ ደንበኞች ስፍራ ቀበሌ

ለ. የሰነድ

- ተከላካይ ለጀን ከነ ነፍሱ ሸንት ቤት የጣለች መሆን ማረጋገጥ የሰጠችው
የተከላካይነት ቃል 02 ገጽ ተያይዞል።





ቁጥር 03937

ቀን 05/08/2010 ዓ ም

ለደጋ ዳኞች ወረዳ ፖ.ሊ.ስ ወንጀል ምርመራ የስራ ሂደት

ፈረስ ቤት


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የምዕ/ጎ/ህ/ከ/ፍ/ቤት መ/ቁ 55687

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አሉባቤው መክሰን ይታይህ
Establew Mekonnen Yitayih
ዋ/ጎ ወ/ሥግ

Annex 6:

Employee recruitment principles of ANRS Police Commission

