

Reflections on Ethiopia's Reservations and Interpretive Declarations to the Maputo Protocol

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Abstract

Ethiopia has ratified the Maputo Protocol with several reservations and interpretive declarations. It has entered reservations regarding polygamy, registration of marriage, the right of a married woman to retain and use her maiden name along with her husband's surname or separately, the requirement of judicial order for separation, reduction of military budget significantly in favor of promoting women's rights, the right of a widow to inherit her deceased husband, and the interpretive mandate of the African Court on Human and Peoples' Rights. It has also made interpretive declarations in relation to the prohibition of unwanted sex occurring in the public or private spheres, minimum marriageable age, the right of a married woman to acquire and administer property during marriage, equitable sharing of common property during divorce, the secondary responsibility of private sector for the upbringing of children, and the right of a married woman to decide whether to have children. This Article is thus intended to explore Ethiopia's reservations and declarations, and analyze their implications on women's rights guaranteed in the Maputo Protocol.

Key words: Ethiopia, Maputo Protocol, women's rights, reservations, declaration, limitation, derogation.

Introduction

Ethiopia is a party to the major global human rights treaties including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Rights of Children (CRC), and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).¹ It has also ratified regional human rights instruments such as the

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¹ United Nations Office of High Commissioner for Human Rights, Treaty Body Database, Ratification Status for Ethiopia, available at:

African Charter on Human and Peoples' Rights (African Charter), the African Charter on Rights and Welfare of Children, and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol).²

With regard to the Maputo Protocol, Ethiopia made unprecedentedly several reservations and interpretive declarations upon ratification. It entered reservations on seven provisions of the Protocol dealing with monogamy as a preferred form of marriage (Article 6(c)), the validity requirement of marriage registration (Article 6(d)), the right of a married woman to retain and use her maiden name along with her husband's surname (Article 6(f)), the requirement of judicial order for separation of spouses (Article 7(a)), the reduction of military expenditure in favor of promoting women's rights (Article 10(3)), the right of a widow to inherit her deceased husband (Article 21(1)), and the interpretive mandate of the African Court on Human and Peoples' Rights (Article 27).³

Similarly, it entered interpretive declarations on six provisions of the Protocol that deal with the prohibition of all forms of violence including unwanted sex (Article 4(2) (a)), a minimum marriageable age (Article 6(b)), the right of a woman to acquire and administer personal property during marriage (Article 6(j)), the right to equitable share of common property during divorce (Article 7(d)), the secondary responsibility of private sector for the upbringing of children (Article 13(l)), and the right of a married woman to decide whether to have children (Article 14(1) (b)).⁴

The aim of this Article is to explore the implications of Ethiopia's reservations and interpretive declarations to the Maputo Protocol on the implementation of the rights contained therein. In order to meet this objective, this Article first (in Section 1) highlights the Maputo Protocol. Section 2 is devoted to discuss how States can lawfully restrict their human rights obligations. Section 3 analyzes Ethiopia's reservations and interpretive declarations and explores their implications on the protection of women's rights in Ethiopia. The final section draws the conclusion.

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN, (Last accessed on 8 February 2019).

² OAU/AU Treaties, Conventions, Protocols and Charters, available at: <https://au.int/treaties>, (accessed on 8 February 2019).

³ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa Ratification Proclamation No. 1082/2018, *Federal Negarit Gezeta*, 2018, Article 3 (1) (a-g), [hereinafter Proclamation No. 1082/2018].

⁴ *Ibid.*, Article 3(2) (a-f).

1. The Maputo Protocol: An Overview

The main normative instrument for the protection and promotion of human rights in Africa is the African Charter. Unlike any other human rights instruments, the African Charter introduced an integrated approach to human rights by combining all types of rights in one document.⁵ Specifically, the African Charter guarantees both individuals and peoples a broad range of rights: civil and political rights, socio-economic and cultural rights, the right to development, and the right to a generally satisfactory environment.⁶

Although the African Charter contains a wide range of rights, it has been criticized for giving inadequate attention to women and not considering the issue of gender seriously.⁷ With regard to women's rights, the flaws of the African Charter are its failure to explicitly define discrimination against women; its lack of guarantees to the rights to consent to marriage and equality in marriage; and its emphasis on traditional values and practices that have long impeded the advancement of women's rights in Africa.⁸ Apart from the general provisions regarding non-discrimination⁹ and the right to equality,¹⁰ the African Charter devotes only one specific provision referring to women. This provision of the African Charter proclaims that States parties should ensure the protection of the rights of the woman and the elimination of discrimination against women as stipulated in international declarations and conventions.¹¹ It is thus submitted that the African Charter does not grant a comprehensive protection to the rights of women.

In response to the failure of the African Charter to provide comprehensive protection to women's rights, an additional protocol to the African Charter was drafted in

⁵ RHONA SMITH, *TEXTBOOK ON INTERNATIONAL HUMAN RIGHTS* 139 (Oxford University Press, 6th ed., 2014).

⁶ Stéphanie Vig, *Indigenous Women's Rights and the African Human Rights System: A Toolkit on Mechanisms* 1, (Forest Peoples Programme, Moreton-in-Marsh, 2011).

⁷ FAREDA BANDA, *WOMEN, LAW AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE* 66 (Hart Publishing, 2005).

⁸ Center for Reproductive Rights, *The Protocol on the Rights of Women in Africa: An Instrument for Advancing Reproductive and Sexual Rights* 3, BRIEFING PAPER (2006).

⁹ The African Charter on Human and Peoples' Rights under Article 2 provides that the rights and freedoms enshrined in the Charter shall be enjoyed by all, irrespective of race, ethnic group, color, sex, language, national and social origin, economic status, birth or other status.

¹⁰ The African Charter on Human and Peoples' Rights under Article 3 states that every individual shall be equal before the law and shall be entitled to equal protection of the law.

¹¹ African Charter on Human and Peoples' Rights, OAU Doc. CM/1149 (XXXVII) (Annex II) (1981), Article 18(3), available at: <https://au.int/en/treaties/african-charter-human-and-peoples-rights>, (accessed on 17 February 2019).

accordance with the Charter itself.¹² In the end, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in Maputo, Mozambique, in 2003 and entered into force in 2005.¹³ Suggesting to its place of adoption, it is referred as Maputo Protocol.¹⁴

The Maputo Protocol seeks to address the omissions of the African Charter with regard to women's special circumstance and complements the rights envisaged therein. It is a supplementary instrument to the foundational document, i.e., the African Charter. Different reasons were submitted for having a separate legally binding women's protocol in Africa. The reasons for having the Maputo Protocol were to address women's rights compressively, consolidate the existing human rights standards, and introduce a strong enforcement mechanism for the existing obligations of States with respect to women's rights.¹⁵

In relation to women's rights, the Maputo Protocol is praised as the most comprehensive and progressive human rights instruments in the world.¹⁶ In terms of content, it recognizes a wide spectrum of women's civil and political rights as well as economic, social and cultural rights.¹⁷ It goes even beyond the existing international human rights instruments in order to address the unique human rights challenges faced by women and girls in the African context.¹⁸ It contains several innovative provisions to curb violations of women's rights. For instance, it is the first treaty to provide for the right to a medical abortion, the right to be protected against sexually transmitted

¹² The African Charter on Human and Peoples' Rights under Article 66 proclaims that Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

¹³ Assembly/AU/Dec.19 (II), Decision on the Draft Protocol to the African Charter on Human and Peoples' Rights Relating to the Rights of Women, available at: https://au.int/sites/default/files/decisions/9548-assembly_en_10_12_july_2003_auc_the_second_ordinary_session_0.pdf, (accessed on 17 February 2019). See also Smith, *supra* note 5, at 142.

¹⁴ Frans Viljoen, *An Introduction to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 16(11) WASHINGTON AND LEE JOURNAL OF CIVIL RIGHTS AND SOCIAL JUSTICE 12 (2009), available at: <https://scholarlycommons.law.wlu.edu/crsj/vol16/iss1/4/>, (accessed on 8 February 2019).

¹⁵ Mizanie Abate Tadesse, *The African Women Protocol as Supplemental to the African Charter and Other Human Rights Instruments: A Brief Analysis*, 5 BAHIR DAR UNIVERSITY JOURNAL OF LAW 10 (2014).

¹⁶ Lesley Amede Obiora and Crystal Whalen, *What is Right with Africa: The Promise of the Protocol on Women's Rights in Africa*, 2 THE TRANSNATIONAL HUMAN RIGHTS REVIEW 153 (2015).

¹⁷ Anthony Kuria Njoroge, *The Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights (The Maputo Protocol)*, (A paper Presented at Thematic Session II during the Sub Regional Conference on Female Genital Mutilation (FGM) held in Djibouti between 2nd-3rd February, 2005) p. 2.

¹⁸ RACHEL MURRAY, HUMAN RIGHTS IN AFRICA: FROM THE OAU TO THE AFRICAN UNION 151 (Cambridge University Press, 2004).

diseases including HIV/AIDS, and the right to be protected from harmful practices including female genital mutilation.¹⁹

The Maputo Protocol has a preamble and 32 Articles which specifically focus on the protection of women. The preamble proclaims that the Maputo Protocol is adopted in order to “ensure that the rights of women are promoted, realized and protected in order to enable them to enjoy fully all their human rights.”²⁰ The preamble also reaffirms the universality, indivisibility and interdependence of all internationally recognized human rights of women.²¹ The preamble further stipulates that State parties are “firmly convinced that any practice that hinders or endangers the normal growth and affects the physical and psychological development of women and girls should be condemned and eliminated.”²²

The Maputo Protocol starts with the definition of some terminologies, including discrimination against women, harmful practices, and violence against women.²³ The Protocol under Article 1(f) defines the term ‘discrimination against women’ as “any distinction, exclusion or restriction or any differential 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.” The Protocol under Article 1(g) further defines the expression “harmful practices” as “all behavior, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education, and physical integrity.” Article 1(j) of the Protocol also defines the term ‘violence against women’ as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.”

As mentioned above, the Maputo Protocol guarantees a wide range of rights. These include: prohibition against discrimination (Article 2), the right to dignity (Article 3), the right to life, integrity and security of the person (Article 4), protection from harmful

¹⁹ Viljoen, *supra* note 14, at 22.

²⁰ African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003, preamble para. 14, available at: <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>, (accessed on 26 February 2019), (hereinafter the Maputo Protocol).

²¹ *Ibid.*, preamble para.5.

²² *Ibid.*, preamble paragraph 13.

²³ *Ibid.*, Article 1(f), (g) and (j).

traditional practices (Article 5), rights relating to marriage and divorce (Articles 6 and 7), access to justice and equal protection before the law (Article 8), right to participation in the political and decision making process (Article 9), the right to a peaceful existence and to security (Article 10), the right to education (Article 12), the right to equal conditions of work (Article 13), the right to health and reproductive rights (Article 14), the right to food security (Article 15), the right to adequate housing (Article 16), the right to participate in cultural life (Article 17), the right to a safe and sustainable environment (Article 18), the right to sustainable development (Article 19), and the right to inheritance (Article 21). Furthermore, it gives special protection to vulnerable women such as women in armed conflict (Article 11), widows (Article 20), elderly women (Article 22), women with disabilities (Article 23), and women in distress (Article 24).

In relation to its implementation, the Protocol obliges States Parties to ensure the enforcement of the rights at national level and adopt all necessary measures including providing the necessary resources.²⁴ As a monitoring mechanism, Article 26 of the Protocol requires States Parties to submit periodic reports to the African Commission on Human and Peoples' Rights (African Commission) in accordance with Article 62 of the African Charter, and periodic reports should indicate the legislative and other measures undertaken for the full realization of the rights enumerated therein. Besides, the Protocol has mandated the African Court on Human and Peoples' Rights (African Court) with matters of interpretation arising from its application and implementation.²⁵

In the event of breach of rights, victims of human rights violations can be remedied through regional and national judicial and quasi-judicial decisions. In this regard, Article 25 of the Maputo Protocol requires States Parties to provide appropriate remedies, through competent judicial or other authority provided for by law, to any woman whose rights have been violated. After remedies for women's rights violations are exhausted at national level, the Protocol, as a supplemental treaty to African Charter, will have a final recourse to the African Commission and the African Court.²⁶

In sum, human rights contained in the Maputo Protocol are far-reaching. In addition to embodying numerous women's rights, the Protocol has set out in detail the duties of States in various areas specific to women. However, these duties are subject to the reservations and interpretive declarations entered by States parties to the Protocol. By

²⁴ *Ibid.*, Article 26 (1) and (2).

²⁵ *Ibid.*, Article 27.

²⁶ Njoroge, *supra* note 17, at 5.

October 16, 2019, only 42 countries out of a total of 54 African countries have ratified the Protocol²⁷ even if the AU members States pledged in the AU Gender Policy to achieve the full ratification and enforcement of the Maputo Protocol by 2015 and its domestication by 2020.²⁸ Of which, a few countries ratified the Maputo Protocol with reservations, implying that reserving States restrict the scope of its obligations towards the Protocol.²⁹ In the next section, the different instances where States can lawfully restrict human rights obligations are discussed.

2. When States May Restrict their Human Rights Obligations?

According to international human rights law, human rights are the primary responsibility of States. By becoming parties to international and regional human rights treaties, States assume three obligations: the duty to respect, the duty to protect and the duty to fulfill.³⁰ However, States can lawfully restrict the scope of their obligations towards human rights through different ways. The ways by which States may restrict the scope of their obligations can be expressed in terms of express limitations to the rights, derogations from the rights, reservations to treaties, and declarations.³¹ States may use any of these mechanisms to strike a balance between the rights of individuals and other competing interests, or concerns. Whilst the focus of this Article is on reservations and interpretive declarations, a brief discussion will be incidentally made on each mechanism by which States may restrict the enjoyment of human rights for justifiable reasons.

²⁷ List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, available at: <https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf>, (accessed on 8 February 2019).

²⁸ Justice Lucy Asuagbor, *Status of Implementation of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa* (Special Rapporteur on the Rights of Women in Africa, 60th Meeting Commission on the Status of Women, 18 March 2016), p. 2.

²⁹ *Ibid.*

³⁰ HUMAN RIGHTS: A HANDBOOK FOR PARLIAMENTARIANS 31 (The Inter-Parliamentary Union and the Office of the High Commissioner for Human Rights, 2016), p.31.

³¹ *Ibid.*, at 47.

2.1 Limitations

Human rights with few exceptions, such as the prohibition of torture and slavery, are not absolute under international human rights law.³² In fact, rights and freedoms of individuals contained under human rights treaties are often subject to limitation clauses. The rationale for limiting human rights is to balance rights of individual with the rights of other individual, and with the reasonable demands of a society.³³ Sometime, a right of an individual may conflict with a right of other individual, or individual rights may hugely impinge upon public interests.³⁴ In such a case, there is a necessity for harmonizing conflicting interests. This can be attained through express limitation clauses embodied in international and regional human rights treaties.

Different international and regional human rights treaties provide for limitation of rights in certain ways. Some human rights treaties take the form of general limitation clauses that can be applicable to all rights therein. The general limitation clauses are contained in separate provisions of human rights treaties. The rights guaranteed by human rights treaties may then be subject to limitations in accordance with the general limitation clauses. The inclusion of a general limitation clause implies that there may be limitations on any right recognized in a particular instrument so long as the prerequisite caveats are fulfilled.³⁵ For instance, the Universal Declaration of Human Rights (UDHR) contains a general limitation clause in a separate provision which reads:

*In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*³⁶

Similarly, the ICESCR under Article 4 provides:

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the

³² ALEX CONTE AND RICHARD BURCHILL, *DEFINING CIVIL AND POLITICAL RIGHTS: THE JURISPRUDENCE OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE* 40 (Ashgate Publishing Company, 2nd ed, 2009).

³³ Mohamed Elewa Badar, *Basic Principles Governing Limitations on Individual Rights and Freedoms in Human Rights Treaties*, 47(3) *THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS* 63 (2003).

³⁴ LOUIS HENKIN *et al.*, *HUMAN RIGHTS, UNIVERSITY CASEBOOK SERIES* 324 (Foundation Press, 1999).

³⁵ Adem Kassie Abebe, *Limiting Limitations of Human Rights under the FDRE and Regional Constitutions*, 4 *ETHIOPIAN CONSTITUTIONAL LAW SERIES* 85 (2011).

³⁶ Universal Declaration of Human Rights, UNGA Res. 217 A (III), 1948, Article 29(2).

State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Some other human rights treaties take the form of built-in-limitation clause into a provision that contains a right. A provision that recognizes rights may also contain a respective specific limitation clause. This form of limitations makes permissible limitations explicit only in relation to particular rights. For instance, the ICCPR principally allows State Parties to accommodate competing interests, or rights through limitation clauses of individual rights, as articulated within each provision of the Covenant.

A limitation clause is clearly an exception to the general rule.³⁷ The general rule is the protection of the right whereas the exception is its restriction.³⁸ As exceptions should be understood restrictively, limitation clauses are subject to rigorous scrutiny for their validity and acceptance.³⁹ In this regard, the jurisprudence of major human rights bodies has introduced three requirements for legitimate limitation of rights. The first is that any interference must be prescribed by the law, and the law authorizing the restriction of the right must be clear, reasonable and accessible to everyone.⁴⁰ The second requirement pertains to the presence of legitimate aims to override the rights, and any interference must serve a certain pressing social need.⁴¹ The last requirement pertains to the necessity of interference in furtherance of specified overriding legitimate aims, and the interference must be appropriate to achieve the legitimate aim.⁴² States may thus restrict rights proportionally for certain legitimate aim in accordance with the law.

2.2 Derogation

Derogation from human rights is described as “the act of a State suspending the application and enjoyment of certain human rights upon its declaration of a state of

³⁷ NIHAL JAYAWICKRAMA, *THE JUDICIAL APPLICATION OF HUMAN RIGHTS LAW: NATIONAL, REGIONAL AND INTERNATIONAL JURISPRUDENCE* 184 (Cambridge University Press, 2002).

³⁸ *Ibid.*

³⁹ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4, 1984, para.2-3.

⁴⁰ *Ibid.*, para.16-17.

⁴¹ Conte and Burchill, *supra* note 32, at 48.

⁴² *Ibid.*

public emergency affecting the life of a whole nation.⁷⁴³ Put differently, derogation refers to a temporary moratorium of the rights and freedoms of individuals during emergency situations.⁴⁴ In time of public emergency threatening the life of the nation, some human rights treaties allow States to take measures derogating from their obligations.⁴⁵ According to the view of the Human Rights Committee, derogating measures must be of an exceptional and temporary nature.⁴⁶

The rationale for derogation provisions is to strike a balance between the sovereign right of a government to maintain peace and order during public emergencies, and the protection of the rights of the individual from abuse by the state.⁴⁷ As emergency refers to a situation beyond the normal course of event, the purpose of derogation is to restore normalcy.⁴⁸ In order to restore normalcy, States are thus allowed to take temporarily and exceptionally derogating measures without facing accusation of violating human rights.

Yet, there are rights and freedoms that may not be subject to derogation even in times of public emergency which threatens the life of the nation.⁴⁹ These rights are usually dubbed as non-derogable rights. Even in relation to rights and freedoms that are subject to derogation, States are expected to comply with conditions against any abuse of derogation. The conditions for States to derogate from their obligations comprise: (a) there must be war, natural disasters or other public emergencies threatening the life of state, (b) state of emergency must be declared, (c) the measures must not go beyond the extent strictly required by the situation, (d) measures must not be inconsistent with

⁴³ H. VICTOR CONDÉ, *A HANDBOOK OF INTERNATIONAL HUMAN RIGHTS TERMINOLOGY* 64 (University of Nebraska Press, 2nd ed., 2004).

⁴⁴ Abdi Jibril Ali, *Distinguishing Limitation on Constitutional Rights from their Suspension: A Comment on the CUD Case*, 1(2) HARAMAYA LAW REVIEW 1, 12 (2012).

⁴⁵ Smith, *supra* note 5, at 184. See also Article 4(1) of International Covenant on Civil and Political Rights; Article 15 of European Convention on the Protection of Human Rights and Fundamental Freedoms; and Article 27 of American Convention on Human Rights.

⁴⁶ General Comment 5, in Report of the Human Rights Committee, UN Human Rights Committee, 36th Session, Annex VII, UN Doc. A/36/40, 1981, para.110.

⁴⁷ Icelandic Human Rights Centre, *Alteration of Human Rights Treaty Obligations*, available at <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/part-i-the-concept-of-human-rights/alteration-of-human-rights-treaty-obligations>, (accessed on 8 February 2019).

⁴⁸ Belay Frenesh Tessema, *A Critical Analysis of Non-Derogable Rights in a State of Emergency under the African System: The Case of Ethiopia and Mozambique* 12 (Master's Thesis, Center for Human Rights, Faculty of Law, University of Pretoria, 2005).

⁴⁹ See also Article 4(1) of International Covenant on Civil and Political Rights, Article 15 of European Convention on the Protection of Human Rights and Fundamental Freedoms, and Article 27 of American Convention on Human Rights.

other obligations under international law, and (e) measures should not be discriminatory solely on grounds of race, color, sex, language.⁵⁰

2.3 Reservation

The Vienna Convention on the Law of Treaties (VCLT) defines the term reservation as “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”⁵¹ It is clear from the above definition that the ‘unilateral statement’ may be termed a declaration, interpretive statement or something else, but it still amounts to reservation as long as its purported effect is to exclude or to modify the legal effect of certain provisions of the convention in their application to that State.⁵² It is the content not the form of the statement which is important. At the time of becoming a party to human rights treaties, a State may exclude or modify the legal effect of certain provisions of the convention in their application to that State. Reservation is thus another way by which States may narrow down the scope of their obligations towards human rights.

Nevertheless, reservation to treaties is not without any condition. In this regard, the VCLT proclaims that a State may make a reservation when signing, ratifying or acceding to a convention if: (a) it is not prohibited by the treaty, or (b) the treaty provides that only specified reservations may be made, and (c) the reservation is not incompatible with the object and purpose of the treaty.⁵³ A State wishing to formulate a reservation to a human right treaty should first make sure that the treaty does not expressly stipulate to the contrary. The State should also ensure that the intended reservation should fall within the ambit of the specified reservations that the treaty provides. Finally, that State should ensure that the intended reservation is not incompatible with the object and purpose of the treaty. The compatibility test is also decisive to resolve whether or not a reservation is permitted. However, determining the

⁵⁰ International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171, (entered into force 23 March, 1976), Article 4.

⁵¹ The Vienna Convention on the Law of Treaties, 1969, Article 2(1) (d). *See also* Article 2(1) (d) of the Vienna Convention on the Law of Treaties between States and International Organizations of 1986, which provides a very similar definition of the term “reservation”.

⁵² MAX DU PLESSIS AND STEPHEN PETÉ, HANDBOOK ON RATIFICATION OF HUMAN RIGHTS TREATIES 37 (Commonwealth Secretariat, 2006).

⁵³ According to Article 19 of the Vienna Convention on the Law of Treaties 1969, not all multilateral treaties permit reservation. In fact, some hold a provision that prohibits any reservation to them, and some others allow reservations only to certain of their provisions.

compatibility or otherwise of a reservation with the object and purpose of a treaty is a daunting task since the VCLT does not give a workable definition to the term ‘object and purpose of the treaty.’

States may sometimes face a problem of approach-avoidance conflict when signing, ratifying, or acceding human rights treaties. They may wish to become a party to a human rights treaty, but at the same time may wish to exclude the legal effect of certain provisions that are deemed to be against their interests, or inconsistent with a national law, or with a certain tradition or religious belief, or cultural practice.⁵⁴ In such a case, subject to important conditions discussed above, they can enter reservations to certain provisions of the treaty. In short, if a state accepts most of the provisions of a treaty, but objects to other provisions of that treaty for various reasons, it can make a reservation.⁵⁵ A reservation may thus enable a State to participate in a multilateral treaty that it would otherwise be unable or unwilling to become a party.⁵⁶ The rationale for reservation to human rights treaties is to include the greater number of States in the treaties. After all, it might be better to have a State ratifying a treaty with reservation than a State not ratifying the treaty at all.

In respect of human rights treaties, different actors have viewed reservations differently. For instance, whilst States consider reservations as an extension of State sovereignty and an instrument to comply with international law without essentially altering national law, human rights advocates view reservations as threat to the protection of human right, the effectiveness of the treaty in question and the universality of human rights in general.⁵⁷ For the potential victim of a violation, reservation can also mean the act of removing a right that the treaty purports to protect.⁵⁸

2.4 Declaration

Declaration could be either interpretive declaration, or optional declaration. Although, the VCLT is mute about interpretive declaration, the Guide to Practice on Reservations to Treaties defines ‘interpretative declaration’ as a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State

⁵⁴ Richard W. Edwards Jr., *Reservations to Treaties*, 10 MICHIGAN JOURNAL OF INTERNATIONAL LAW 362, 363 (1989), available at: <https://repository.law.umich.edu/mjil/vol10/iss2/3>, (accessed on 10 January 2019)

⁵⁵ Niina Anderson, *Reservations and Objections to Multilateral Treaties on Human Rights* 13 (Master's thesis, Faculty of Law, University of Lund, 2001).

⁵⁶ Plessis and Peté, *supra* note 52, at 57.

⁵⁷ Smith, *supra* note 5, at 186.

⁵⁸ *Ibid.*

or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.⁵⁹ In other words, interpretive declaration means “a declaration of a State as to its understanding of some matter covered by a convention or its interpretation of a particular provision.”⁶⁰

As the name suggests declaration is essentially interpretive in nature. States may formulate a statement as to its understanding about the scope, meaning and application of a particular right.⁶¹ The statement simply clarifies the position of a State as to the meaning or scope of the treaty provisions. This is to say that an interpretive declaration, as opposed to reservation, does not purport to exclude or modify the legal effect of any provision of the treaty concerned. Thus, a declaration of a State relating to understanding of the interpretation to be attached to a specific provision in a treaty, or a specific aspect of a treaty must be distinguished from reservations.⁶² Yet, an interpretive declaration may be another way for States to restrict the scope of their human rights obligations.

Some human rights treaties provide for States to make optional declarations that are legally binding upon them.⁶³ An optional declaration is binding upon a State that makes it. In most cases, optional declaration relates to the competence of human rights commissions or committees.⁶⁴ Unlike interpretive declaration, optional declaration concerns with expanding, instead of restricting the scope of human rights obligations of States.

3. Ethiopia's Reservations and Declarations to the Maputo Protocol

Ethiopia signed the Maputo Protocol on June 1, 2004,⁶⁵ but had to wait for the passage of nearly 15 years to ratify it. The Constitution of the Federal Democratic Republic of

⁵⁹ Guide to Practice on Reservations to Treaties, adopted by UNILC at its sixty-third session, 2011, Guideline 1.2.

⁶⁰ Plessis and Peté, *supra* note 52, at 40.

⁶¹ Smith, *supra* note 5, at 188.

⁶² GM Ferreira and MP Ferreira-Snyman, *The Impact of Treaty Reservations on the Establishment of an International Human Rights Regime*, 38(2) THE COMPARATIVE AND INTERNATIONAL LAW JOURNAL OF SOUTHERN AFRICA 151 (2005).

⁶³ Plessis and Peté, *supra* note 52, at 40.

⁶⁴ For example, Article 41 of the ICCPR provides that “A State Party to the present Covenant may at any time declare under this Article that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.”

⁶⁵ Proclamation No.1082/2018, *supra* note 3, Preamble para.2.

Ethiopia (FDRE Constitution) entrusted the House of People's Representative (HoPR) to ratify international agreements.⁶⁶ Accordingly, in 2018, the HoPR promulgated a Proclamation that provides for the ratification of the Maputo Protocol.⁶⁷ Pursuant to the FDRE Constitution, the Maputo Protocol has, upon ratification, become "an integral part of the law of the land."⁶⁸ However, the Protocol is made subject to a number of reservations and interpretive declarations to narrow down the scope of the country's obligations to the Protocol. The following subsections present specifics of the reservations and declarations and analyze their implications on women's rights.

3.1 Reservations to the Maputo Protocol

As discussed under Section 2.3, a State may make a reservation as long as a reservation is not prohibited by the treaty or falls within the specified categories, and is not incompatible with the object and purpose of the treaty. The Maputo Protocol does not expressly prohibit entering reservations during signature, or ratification/accession. Nor does it provide a catalogue of provisions allowed for reservation. We can thus argue that reservation to the Protocol is admissible subject to relevant international rules in this regard. This being so, Ethiopia has made 7 reservations. These reservations relate to form of marriage, registration of marriage, a married woman's right to assert her surname, judicial order for separation of marriage, widow's right to inheritance, reduction of military budget and jurisdiction.

3.1.1 Marriage related reservations

In its first reservation, Ethiopia states that it does not consider itself to be bound by Article 6(c) of the Maputo Protocol.⁶⁹ Article 6(c) of the Maputo Protocol requires States Parties to take legislative measures to guarantee that "monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships, are promoted and protected." Article 6(c) of the Protocol expressly recognizes monogamy as a preferred form of marriage. Yet, the provision does not reject the practice of polygamy outright. In fact, one can argue that polygamy is impliedly endorsed in the Protocol as a least preferred form of marriage. It is submitted that the provision is the outcome of a compromise between a

⁶⁶ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, *Federal Negarit Gezeta*, 1995, Article 55 (2) (12), [hereinafter Proclamation No. 1/1995].

⁶⁷ Proclamation No.1082/2018, *supra* note 3, Preamble para.3 and Article 5.

⁶⁸ Proclamation No.1/1995, *supra* note 66, Article 9(4).

⁶⁹ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (a).

group supporting the practice of polygamy and others denouncing it.⁷⁰ The compromise permits the Protocol to recognize women's rights and embrace culture through implicit endorsement of polygamy.

Nevertheless, the provision becomes a source of some problems. First, there is a growing concern that polygamous marriage makes women socialize into subservient roles that inhibit their full and meaningful participation in family and public life.⁷¹ Human rights advocates view cultural practices such as levirate, sororate marriages and polygamy as considerable forms of gender inequalities, stereotypes and prejudices.⁷² In this regard, the UN Human Rights Committee noted that polygamy should be abolished as it violates the dignity of women and is inadmissible discrimination against women.⁷³ In similar terms, the Committee on the Elimination of Discrimination against Women stated that polygamous marriage ought to be discouraged and prohibited, for it contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependents.⁷⁴ It also contends that polygamy has significant ramifications for the economic well-being of women and their children.⁷⁵ Thus, the tacit endorsement of polygamy under Article 6(c) of the Protocol is in a direct conflict with the very object and purpose of the instrument, which is to eradicate discrimination against women and promote equality between sexes.⁷⁶ Secondly, the provision has also suffered from an internal conflict with Article 8(f) of the Protocol, which enjoins States to "reform of existing discriminatory laws and practices in order to promote and protect the rights of women."⁷⁷ Moreover, the provision could contradict with Article 14(1) (d) of the Protocol guaranteeing the right to be protected against sexually transmitted infections, including HIV/AIDS, as the

⁷⁰ Obonye Jonas, *The Practice of Polygamy under the Scheme of the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa: A Critical Appraisal*, 4(5) JOURNAL OF AFRICAN STUDIES AND DEVELOPMENT 144 (2012).

⁷¹ Rebecca Cook and Lisa Kelly, *Polygyny and Canada's Obligations under International Human Rights Law 2* (Family, Children and Youth Section Research Report, Department of Justice of Canada, 2006).

⁷² Obonye Jonas, *supra* note 70, at 144.

⁷³ UN HRC General Comment 28: Article 3 (The Equality of Rights between Men and Women), 68th sess., CCPR/C/21/Rev.1/Add.10, 29 March 2000, para. 24.

⁷⁴ UN CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 13th sess., A/49/38, 1994, para. 14.

⁷⁵ UN CEDAW General Recommendation No. 29: Article 16 of the Convention (Economic Consequences of Marriage, Family Relations and their Dissolution), CEDAW/C/GC/29, 2013, para. 27.

⁷⁶ Fareda Banda, *supra* note 7, at 117.

⁷⁷ *Ibid.*

practice of polygamy may expose women to the risk of contracting sexually transmitted diseases.⁷⁸

With regard to marital and family rights, the FDRE Constitution proclaims that men and women have equal rights at time of entering into marriage, during marriage and at the time of divorce.⁷⁹ Once formed in accordance with the FDRE Constitution, family is protected by the society and the State, as it is the natural and fundamental unit of society.⁸⁰ The FDRE Constitution under Article 35(4) has also prohibited laws, customs and practices that oppress, or cause bodily or mental harm to women. Other than these general provisions, the FDRE Constitution does not clearly address the practice of polygamous marriage.⁸¹ As a result, the legal regime governing polygamy falls within ambit of subsidiary laws: family laws and criminal law.

The FDRE Constitution has created federal system of government in which both the federal government and regional states have the legislative, executive and judicial powers.⁸² In accordance with such allocation of power, the federal government promulgated the Federal Revised Family Code for the federally administered cities of Addis Ababa and Dire Dawa.⁸³ All regional states except Afar and Somali also enacted their respective family laws applicable within their own jurisdiction.⁸⁴ The Federal Revised Family Code enunciates that one cannot conclude marriage as long as s/he is bound by bonds of a preceding marriage.⁸⁵ The prohibition of polygamy is one of essential conditions of marriage. Non-observance of this essential condition of marriage results in the dissolution of marriage.⁸⁶ In relation to polygamy, the regional

⁷⁸ UN CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 20th sess., A/54/38/Rev.1, 1999, para.18.

⁷⁹ Proclamation No.1/1995, *supra* note 66, Article 34(1) and Article 35(2).

⁸⁰ *Ibid.*, Article 34(3).

⁸¹ The conclusion of a polygamous marriage is a long-standing practice and quite common in various regions of Ethiopia. According to the 2016 Ethiopia Demographic and Health Survey (EDHS) Report, 11% of Ethiopian women age 15-49 are in a polygamous union.

⁸² Proclamation No.1/1995, *supra* note 66, Article 50(1) & (2).

⁸³ The Revised Family Code, Proclamation No. 213/2000, *Federal Negarit Gezeta*, 2000, [hereinafter Proclamation No. 213/2000].

⁸⁴ Amhara Regional State Family Code, Proclamation No.79/2003, Benishangul Gumuz Regional State Revised Family Law, Proclamation No.63/2006, Gambella Regional State's Family Law, Proclamation No.68/2008, Harari Regional State Family Code, Proclamation No. 80/2008, Oromia Regional State Family Code, Proclamation No. 83/2004, Southern Nations, Nationalities and Peoples Regional State Family Law, Proclamation No.75/2004, and Tigray Regional State Revised Family Law, Proclamation No.116/2007. At the time of writing this piece the author found out that Afar and Somali regional states have developed their own draft family laws.

⁸⁵ The Revised Family Code, Proclamation No. 213/2000, *supra* note 83, Article 11.

⁸⁶ *Ibid.*, Article 33 and Article 75(b).

states family codes have taken similar positions except the Harari Regional State Family Code.⁸⁷ As a rule, the Harari Family Code prohibits polygamy, but the prohibition may not be applicable to the conclusion of marriage as permitted by religion.⁸⁸

In addition to the federal and regional states family laws, the criminal law is pertinent to the issue of polygamy. In this regard, the Criminal Code of Ethiopia states that any person, being tied by the bond of a valid marriage, intentionally concludes a contract of marriage before the first union was dissolved will be held criminally liable.⁸⁹ The Criminal Code has also set out a criminal sanction on any unmarried person who marries another, knowing that latter is tied by the bond of an existing marriage.⁹⁰ However, as an exception to this rule, Article 651 of the Criminal Code proclaims that criminal sanctions cannot be applicable if bigamy⁹¹ is committed in conformity with religious or traditional practices recognized by law.

Both the Criminal Code and the Harari Regional State Family Code are cautious in recognizing bigamous marriage. Perusal of relevant provisions of these laws reveals that polygamy is permitted exceptionally on the grounds of religious or customary practice, the operation of which is subject to explicit recognition by the relevant family law.⁹² In sum, in Ethiopia polygamy is a crime punishable under the Criminal Code unless permitted on religious or cultural grounds by the relevant family laws.⁹³ Right now, polygamous marriage is exceptionally permitted only in Harari Regional State.

By reservation, Ethiopia avoided the legal effect of Article 6(c) of the Maputo Protocol that encourages monogamy as a preferred form of marriage, but fails to expressly recognize polygamy. The reservation implies that Ethiopia would not be obliged to uphold monogamous marriage as a preferred form marriage. This in turn allows the country to maintain its national law that expressly acknowledges polygamy to some

⁸⁷ Dureti Abate Fulas, *The Legal Framework Regulating Polygamy in Ethiopia: An Assessment in Light of Liberal Feminist Legal Theory and International Human Rights Law* 56 (Master's Thesis, Lund University, 2018).

⁸⁸ Harari Regional State Family Code, Proclamation No. 80/2008, *Harar Negari Gezeta*, 2008, Article 11.

⁸⁹ The Criminal Code of the Federal Democratic Republic of Ethiopia Proclamation No.414/2004, *Federal Negarit Gazeta*, 2004, Article 650 (1), [hereinafter Proclamation No.414/2004].

⁹⁰ *Ibid.*, Article 650 (2).

⁹¹ For the purpose of this Article, regardless of their technical differences, bigamy could also mean polygamy in which a man has more than one woman as spouse.

⁹² Sileshi Bedasie Hirko, *The Disputed Constitutionality of the Precedential Practice of the Federal Supreme Court and Its Implications for Oromia Family Law: The Case of Bigamous Marriage in Ethiopia*, 63(2) *JOURNAL OF AFRICAN LAW* 198 (2019).

⁹³ Jetu E. Chewaka, *Bigamous Marriage and the Division of Common Property under the Ethiopian Law: Regulatory Challenges and Options*, 13(1) *OROMIA LAW JOURNAL* 98 (2013).

extent. Therefore, the reservation is made to ensure consistency with the Criminal Code and the Harari Regional State Family Code that explicitly permit polygamous marriage in order to accommodate cultural and religious diversity.

What does this imply for women's rights? As pointed out earlier, polygamy contravenes women's right to be free from all forms of discrimination and right to be protected against sexually transmitted diseases, including HIV/AIDS. As discussed above, the seeming reluctance of the Protocol to prohibit polygamy has been viewed as a threat to women's rights in marriage and family life, let alone the express recognition of polygamous marriage. Thus, it is difficult to ensure the equality between sexes as guaranteed under the FDRE Constitution and human rights instruments while explicitly endorsing polygamous marriage. In short, the reservation to Article 6(c) of the Maputo Protocol that encourages monogamy would undermine a range of women's rights.⁹⁴

In its other reservation, Ethiopia declared that it does not consider itself to be bound by marriage registration as legally recognized by Article 6(d) of the Protocol.⁹⁵ According to the FDRE Constitution and the Federal Revised Family Code, marriage may be concluded under the systems of civil, religious or customary rules.⁹⁶ The Federal Revised Family Code provides for essential conditions for the conclusion of a valid marriage.⁹⁷ These essential conditions pertain to attaining the marriageable age, consent sustainable in law, prohibition of bigamy, observing period of widowhood, and absence of relationship by consanguinity or affinity between the would be couple. All kinds of marriage (civil, customary or religious marriage) are required to meet these essential conditions.⁹⁸ The non-observance of one of the essential conditions except the condition of period of widowhood could cause the dissolution of marriage.⁹⁹

Concomitantly, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Ethiopia is a party, makes registration of marriage compulsory.¹⁰⁰ Similarly, the Federal Revised Family Code requires all kinds of

⁹⁴ Gebremeskel Hailu Tesfay, *Note on the Adverse Effects of Polygamy on the Rights of Women: A Case Study in Gedeo and Sidama Zones*, 6 HARAMAYA LAW REVIEW 104-108 (2017).

⁹⁵ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (c).

⁹⁶ Proclamation No.1/1995, *supra* note 66, Article 34(4), and Proclamation No.213/2000, *supra* note 83, Article 1.

⁹⁷ Proclamation No. 213/2000, *supra* note 83, Articles 6 - 9, 11, 15 and 16.

⁹⁸ *Ibid.*, Article 26(2), Article 27(2).

⁹⁹ *Ibid.*, Articles 31 - 37.

¹⁰⁰ Convention on the Elimination of All Forms of Discrimination against Women, UNGA Res.34/180, 18 December 1979, Article 16(2).

marriage to be registered by a competent officer of civil status.¹⁰¹ The Registration of Vital Events Proclamation also stipulates that marriage should be registered with necessary details.¹⁰² It is thus clear that registration of marriage is mandatory, but not a validity requirement for marriage. This is precisely because Article 28(3) of the Federal Revised Family Code declares that “any marriage shall have effect from the date of its conclusion.” This suggests that the effect of marriage begins at the time of its conclusion, not at the time of its registration. The Federal Revised Family Code under Article 30 requires the record of marriage to show the full names, dates and places of birth, and addresses of each of the spouses and their witnesses, form of the marriage, date of its conclusion and date of its registration. The particulars of the record of marriage suggest that the purposes of marriage registration are to control the fulfillment of essential conditions, prove the existence of marriage (evidentiary purpose), and protect the institution of family.

Conversely, Article 6(d) of the Protocol obliges States parties to guarantee that every marriage is registered in accordance with national laws in order to be legally recognized. According to the Protocol, marriage cannot legally exist unless registered. No registration means absence of legally recognized marriage. Ethiopia entered reservation on this provision for the possible reason that the provision is inconsistent with the national law and the reality on the ground. In a country where most of its population lives in a rural area and most marriages conclude under customary or religious systems without the practice of registration, it does not seem feasible at least for now to make the registration of marriage a validity requirement. The reservation reflects a pragmatic decision of the Ethiopian government to protect the interests of women married under customary or religious rules.

The requirement of registration for validity of marriage may disadvantage women themselves, for women who concluded their marriage in accordance with religious or customary rules cannot prove their marriage due to lack of marriage certificate.¹⁰³ By this reservation, Ethiopia avoids the risks of dissolution of unregistered marriage on the ground of non-registration. Consequently, by making marriage registration compulsory, it would forestall problems such as early marriage. It is thus clear that the position taken in relation to marriage registration would protect women's rights. In sum, the domestic legal system accords better protection to women. This is permissible under Article 31 of the Maputo Protocol declaring that the provisions of the Protocol

¹⁰¹ Proclamation No. 213/2000, *supra* note 83, Article 28.

¹⁰² Registration of Vital Events and National Identity Card Proclamation No. 760/2012, Federal *Negarit Gezeta*, 2012, Articles 17 and 31.

¹⁰³ Mizanie Abate Tadesse, *supra* note 15, at 26.

cannot affect more favorable protections envisaged in the national legislation of State Parties for the realization of women's rights.

Ethiopia has also made a reservation on Article 6(f) of the Maputo Protocol.¹⁰⁴ Article 6(f) of the Protocol imposes an obligation on States Parties to guarantee a married woman's right to retain her maiden name, to use it as she pleases, jointly or separately with her husband's surname. In this connection, the Civil Code of Ethiopia stipulates that a married woman should normally retain her own family name.¹⁰⁵ However, she may apply to the court for the change of her family name into the name of her husband for duration of her marriage.¹⁰⁶ According to the Civil Code, there is a possibility for a married woman to use her husband's name in lieu of her own family name. For many feminists, a law which requires wives but not husbands to adopt a surname other than that given at birth may be violating the principle of equal protection.¹⁰⁷ The requirement to adopt the surname of their husbands is "a shackle which symbolizes ownership and dependence."¹⁰⁸

Nonetheless, the practice of changing a wife's family name in marriage is not common in Ethiopia. In fact, the practice suggests that a married woman has no name other than that of her first name, patronymic and grandfather's name. The possibility for a wife to acquire her husband's name upon her marriage is a foreign concept that the Civil Code has attempted to introduce without taking the Ethiopian traditions into account. Considering the objective reality, Ethiopia excluded the legal effect of Article 6(f) of the Protocol. A name of a person is an integral part of his/her identity. In this respect, the Committee on the Elimination of Discrimination against Women stated that each spouse has the right to choose her/his name in order to preserve individuality and identity in the community.¹⁰⁹ This being so, Ethiopia's reservation represents the recognition of married women's right to assert their own surnames at all times, and is thus important as a symbolic statement of equality of rights under the law.

¹⁰⁴ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (c).

¹⁰⁵ Civil Code of the Empire of Ethiopia Proclamation No. 165/1960, *Negarit Gezeta*, 1960, Article 40(1)

¹⁰⁶ *Ibid.*, Article 40(2) and Article 42.

¹⁰⁷ Roslyn G. Daum, *The Right of Married Women to Assert Their Own Surnames*, 8 UNIVERSITY OF MICHIGAN JOURNAL OF LAW 63, 66 (1974).

¹⁰⁸ *Ibid.*

¹⁰⁹ UN CEDAW General Recommendation No. 21, *supra* note 74, para. 24.

3.1.2 Judicial separation of marriage

According to the Federal Revised Family Code, a conclusion of marriage produces effects on personal and pecuniary relation of the spouses. While personal effects of the marriage pertains to the personal relationship between the spouses, pecuniary effects have to do with the property belonging to each spouse privately and to both of them in common.¹¹⁰ The personal effects of marriage consist of the duty of mutual respect, support and assistance; joint management of the family; joint determination of common residence; the duty of cohabitation; and the duty of fidelity.¹¹¹ The spouses should observe these obligations resulting from their status.

Cohabitation is one of the fundamental obligations of spouses, which involves the duty to live together and to have normal sexual relations with one another.¹¹² In this regard, Article 53(1) of the Federal Revised Family Code stipulates that the spouses are bound to live together in order to establish and lead life in common. However, under exceptional circumstances, the spouses can agree to live separately for a definite or indefinite period of time.¹¹³ An agreement to live separately allows spouses to live apart without juridical effect while the marriage still subsists. Nevertheless, the Federal Revised Family Code does not provide for specific rules governing living separately by agreement.

In relation to separation of marriage, the Maputo Protocol under Article 7(a) obliges State Parties to ensure that separation, divorce or annulment of a marriage should be effected by judicial order. Against this stipulation, Ethiopia entered a reservation on Article 7(a) of the Protocol that specifically requires separation of spouses to be decided by judicial organs.¹¹⁴ The reservation implies that a decision of the judiciary is not necessary for separation of spouses. A couple, who chooses to live apart, can agree to that effect without seeking judicial order. As indicated above, the Federal Revised Family Code does not contemplate judicial separation; rather it enables the parties to live separately by agreement. Therefore, the reservation was made to maintain the national law that permits spouses to live separate by agreement. As long as spouses enter into an agreement for separation without any vitiation of consent, the reservation

¹¹⁰ William Buhagiar, *Marriage under the Civil Code of Ethiopia*, 1(1) JOURNAL OF ETHIOPIAN LAW 82 (1964).

¹¹¹ Proclamation No.213/2000, *supra* note 83, Articles 49 – 56.

¹¹² *Ibid.*, Article 53(1) & (2).

¹¹³ *Ibid.*, Article 55(1).

¹¹⁴ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (d).

would not undermine women's rights. In fact, such an agreement avoids the trouble of seeking judicial order for spouses who choose to live separately.

3.1.3 The Right of widows to inheritance

The FDRE Constitution under Article 35(7) provides for women's right to enjoy equal treatment in the inheritance of property. According to the Civil Code of Ethiopia, succession of the deceased may be either intestate or testate, or both.¹¹⁵ If a person dies without valid will, the property of the deceased will devolve upon the deceased's heirs by the operation of the law. The Ethiopian rules of intestate succession are based on the existence of consanguineal relationship between the heir(s) and the deceased.¹¹⁶ As there is no consanguinity between spouses, there is no heirship between spouses unless there is testamentary will by the deceased in favor of the surviving spouse. In the absence of relatives by blood, the inheritance of the deceased would devolve upon the State.¹¹⁷ This means that the surviving spouse would not be considered even where there are no personas having consanguineal relationship with the deceased. The surviving spouse is entitled only to payment of pension, as pension cannot form part of the inheritance of the deceased.¹¹⁸ According to the Ethiopian pension law, if an employee dies, the widow or widower would be entitled to receive 50% of the pension to which the deceased was or would have been entitled.¹¹⁹ The purpose is to support a widow or widower who was maintained by the pensioner during his/her life time.

In relation to inheritance, Article 21(1) of the Maputo Protocol stipulates that a widow should have the right to an equitable share in the inheritance of the property of her husband. Conversely, spouses cannot inherit each other under the Ethiopian law of succession unless s/he is designated as a legatee by a will. Owing to this, Ethiopia entered a reservation on Article 21(1) of the Protocol.¹²⁰ By this reservation, Ethiopia attempts to meet the requirement of its law of succession. As discussed above, the Ethiopian law of succession accords the same rights to widows and widowers. But, it can be argued that widows could be more gravely disadvantaged than widowers in cases

¹¹⁵ Proclamation No. 165/1960, *supra* note 105, Article 829.

¹¹⁶ *Ibid.*, Article 842 – 856.

¹¹⁷ *Ibid.*, Article 852.

¹¹⁸ *Ibid.*, Article 828.

¹¹⁹ Public Servants' Pension Proclamation No.714/201, *Federal Negarit Gezeta*, Article 40(3) (a) and Article 41(1), and Private Organization Employees' Pension Proclamation No. 715/201, *Federal Negarit Gezeta*, Article 39(3) (a) and Article 40(1).

¹²⁰ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (f).

of intestacy.¹²¹ In this regard, the Committee on the Elimination Discrimination against women highlighted that many women usually experience a substantial decline in household income after divorce while men experience smaller income losses.¹²² This being so, the Committee requires States Parties to ensure that disinheritance of the surviving spouse is prohibited.¹²³ By the same token, although Ethiopian law of succession treats widows and widowers equally, its application may affect women's interests disproportionately. As a result, the reservation that maintains the rules governing intestate succession would certainly undermine widows' rights.

3.1.4 Reduction of military expenditure

The Maputo Protocol under Article 10(3) imposes an obligation on States Parties to "take the necessary measures to reduce military expenditure significantly in favor of spending on social development in general, and the promotion of women in particular." According to the provision, States Parties undertake to reduce military expenditure significantly in order to promote women's rights. Instead of investing in military, States Parties should reorient their budget priorities towards socio-economic development and promotion of women. This provision has introduced an essential point of departure of the Protocol from the existing human rights treaties.¹²⁴

Depending on its available resources, a State Party is duty bound to provide sufficient budgetary resources to realize women's rights.¹²⁵ For fear of being bound by the provision which obliges States Parties to reduce military expenditure significantly, Ethiopia entered a reservation on Article 10(3) of the Protocol.¹²⁶ Given the geopolitics of the Horn of Africa and the protracted negotiation among riparian States regarding the Grand Ethiopian Renaissance Dam on the Nile River, Ethiopia would be compelled to strengthen and modernize its defence forces in the years to come. The situation

¹²¹ This could be an indirect discrimination that occurs when an apparently neutral practice or condition has a disproportionate and negative effect on one of the groups against whom it is unlawful to discriminate, and the practice or condition cannot be justified objectively. See also, David M. Dzidzornu, *Human Rights and the Widow's Material Security: The Case of the Intestate Ghanaian Widow*, 28(4) LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA 494 (1995).

¹²² UN CEDAW General Recommendation No. 29, *supra* note 75, para. 4.

¹²³ *Ibid.*, para.53.

¹²⁴ Ashwanee Budoo, *Gender Budgeting as a Means to Implement the Maputo Protocol's Obligations to Provide Budgetary Resources to Realize Women's Human Rights in Africa*, 9 AFRICAN JOURNAL OF LEGAL STUDIES 206 (2016).

¹²⁵ The Maputo Protocol, *supra* note 20, Preamble para.5. See also Article 2(1) of the International Covenant on Economic, Social and Cultural Rights.

¹²⁶ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (e).

would not allow the country to make a significant reduction of military budget. Ethiopia made this reservation in order to maintain its national interests. However, entering reservation for indefinite period may allow the country to invest on defence forces and consume the limited resources that would serve other prioritized purposes including promoting gender equality. This concern is genuine if it is viewed along with the building up of militia and special forces by regional states in Ethiopia. In the long run, the reservation would undermine the enforcement of women's rights unless it is withdrawn.¹²⁷

3.1.5 Jurisdiction

Regarding enforcement mechanism, the Maputo Protocol does not establish a separate monitoring body. It rather extends the substantive basis of the existing regional human rights institutions: the African Commission and the African Court. Article 26 of the Maputo Protocol requires States parties to ensure the implementation of the Protocol at national level through the submission of periodic reports in accordance with Article 62 of the African Charter. Accordingly, the African Commission would inspect the observance of States parties to the Protocol. Article 27 of the Maputo Protocol also entrusts the African Court with matters of interpretation arising from the application and implementation of the Protocol.

The African Court on Human and Peoples' Rights was established to complement and reinforce the functions of the African Commission on Human and Peoples' Rights.¹²⁸ The African Court has assumed jurisdiction over all cases and disputes concerning the interpretation and application of the African Charter and other related human rights instruments.¹²⁹ The following entities are entitled to file and submit applications to the Court: the African Commission, African Inter-governmental Organizations, States Parties to the Protocol, individuals, and NGOs with observer status before the Commission.¹³⁰ In stark contrast to the African Commission, the African Court is bestowed to offer remedies to victims of human rights violations and to seek

¹²⁷ Articles 22 and 23 of the Vienna Convention on the Law of Treaties, 1969: Unless the convention provides otherwise, a State is entitled to withdraw its reservation or objection to a reservation completely or partially at any stage.

¹²⁸ Practical Guide, The African Court on Human and Peoples' Rights: Towards the African Court of Justice and Human Rights, International Federation For Human Rights, 2010, P. 49-53.

¹²⁹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, OAU, 1998, Article 3.

¹³⁰ *Ibid.*, Article 5.

enforcement of its judgments against States.¹³¹ The judgment of the Court is legally binding upon member States which are parties to the case.¹³² The AU Council of Ministers is required to monitor the execution of judgments.¹³³

Ethiopia's final reservation to the Maputo Protocol relates to the interpretive mandate of the African Court.¹³⁴ As noted above, Article 27 of the Protocol provides that the African Court is tasked with interpretation of the application and implementation of the protocol. Ethiopia has signed, but not ratified the Protocol to the African Charter on Human and Peoples' rights on the Establishment of an African Court on Human and Peoples' Rights.¹³⁵ As a non-party to the Protocol to the African Court, it is not surprising that Ethiopia entered a reservation to Article 27 of the Maputo Protocol. Whilst the promotional, protective and interpretive mandates of the African Commission remain effective in respect of the enforcement of the Maputo Protocol,¹³⁶ the reservation excludes the jurisdiction of the Court. The reservation would obviously undermine the enforcement of women's rights.

At this juncture, one may wonder if the reservation that evades the interpretive mandate of the African Court is compatible with the Maputo Protocol's object and purpose. In relation to compatibility test, the International Law Commission (ILC) argued that a reservation is contrary to the object and purpose of the treaty if the reservation affects the essential element of the treaty that is necessary for its general tenor.¹³⁷ The ILC further noted that a reservation to a treaty provision concerning the monitoring mechanism of the treaty is not, in itself, contrary to the object and purpose of the treaty unless it purports to exclude or modify the legal effect of a provision of the treaty essential to its *raison d'être*.¹³⁸ The Maputo Protocol has made reference to the African Court since the Protocol establishing the African Court, which had been adopted before the Maputo Protocol, does not explicitly include the Maputo Protocol as part of the Court's substantive jurisdiction.¹³⁹ This suggests that the Maputo Protocol

¹³¹ *Ibid.*, Article 27.

¹³² *Ibid.*, Articles 28 and 30.

¹³³ *Ibid.*, Articles 29(2).

¹³⁴ Proclamation No.1082/2018, *supra* note 3, Article 3(1) (g).

¹³⁵ List of Countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, available at: https://au.int/sites/default/files/treaties/36393-sl_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf, (accessed on 24 February 2019).

¹³⁶ African Charter on Human and Peoples' Rights, *supra* note 11, Article 45.

¹³⁷ Guide to Practice on Reservations to Treaties, *supra* note 59, Guideline 3.1.5.

¹³⁸ *Ibid.*, Guideline 3.1.5.7.

¹³⁹ Frans Viljeon, *supra* note 14, at 40.

attempts to clarify that the Court has jurisdiction over complaints arising from the Protocol.¹⁴⁰ It can thus be argued that the reservation does not appear contrary to the object and purpose of the Protocol.

3.2 Interpretive Declarations to the Maputo Protocol

As pointed out earlier, States may formulate a unilateral statement to clarify meaning or scope of application of specific provision/s of a multilateral treaty. Accordingly, Ethiopia has made interpretive declarations relating to its understanding of the interpretation of some specific provisions of the Maputo Protocol. These interpretive declarations are discussed below.

In its first declaration, Ethiopia states that Article 4(2) (a) of the Protocol should be understood and applicable in conformity with Article 620 of the Criminal Code of Ethiopia.¹⁴¹ Article 4(2) (a) of the Protocol requires States Parties “to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public.” By this provision, the Protocol attempts to address all forms of violence including sexual violence. Besides, the provision implies that unwanted or forced sex, be it committed in marriage or outside marriage, should be prohibited. By doing so, the Protocol implicitly requires States to criminalize marital rape committed in the private sphere.¹⁴²

To the contrary, the Criminal Code of Ethiopia defines rape as an act of compelling a woman to submit to sexual intercourse outside wedlock by the use of violence or grave intimidation or after having rendered her unconscious or incapable of resistance.¹⁴³ According to this definition, unwanted or forced sex can be labeled as rape only if it is committed outside wedlock. This suggests that unwanted or forced sex occurring within wedlock cannot be considered as a crime. The Criminal Code has thus excluded marital rape from criminal responsibility.¹⁴⁴ Ethiopia’s understanding of Article 4(2) (a) of the Protocol is declared to be in accordance with Article 620 of the Criminal Code: defining rape as a forced sexual intercourse occurring outside wedlock. As a result, the problem of marital rape remains unresolved in Ethiopia. Recognizing this, the UN

¹⁴⁰ *Ibid.*

¹⁴¹ Proclamation No.1082/2018, *supra* note 3, Article 3(2) (a).

¹⁴² Frans Viljeon, *supra* note 14, at 22.

¹⁴³ Proclamation No.414/2004, *supra* note 89, Article 620(1).

¹⁴⁴ Hiwot Demissew Meshesha, *Analysis of Marital Rape in Ethiopia in the Context of International Human Rights* 40 (Master’s Thesis, University of South Africa, 2014).

Human Rights Council recommended Ethiopia to criminalize marital rape.¹⁴⁵ However, Ethiopia noted the recommendation, but did not accept it.¹⁴⁶ Hence, the declaration would undermine the protection of women against sexual violence in marital relation.

Ethiopia's second interpretive declaration pertains to the minimum marriageable age. According to Article 6(b) of the Maputo Protocol, the minimum age of marriage for women should be 18 years. The Maputo Protocol prohibits any exception below the minimum age of marriage with a view to accord better protection to women. In this connection, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, in their joint General Comment, recommended that whilst a minimum legal age of marriage is 18 years, the absolute minimum age should not be below 16 years.¹⁴⁷ In similar terms, the Revised Family Code of Ethiopia envisages that the minimum marriageable age for both sexes is 18 years.¹⁴⁸ However, upon the application of the future spouses or parents or guardian of one of them, the Federal General Attorney may exceptionally grant a dispensation of not more than two years where there exists serious cause justifying the dispensation.¹⁴⁹ If there is dispensation for serious cause, the minimum marriageable age could be lowered up to 16 years. In order to maintain this exception, Ethiopia declared that Article 6(b) of the Protocol should be applicable in accordance with its family law that allows dispensation from the minimum marriageable age, i.e., 18 years.¹⁵⁰ By allowing an exception below the minimum age of marriage, Ethiopia's declaration would thus reduce the degree of protection accorded to women by the Maputo Protocol.

The third Ethiopia's declaration pertains to the acquisition and administration of property during marriage. In most African customs, women could not acquire any property in their name since they are regarded as having no separate identity from their husband.¹⁵¹ To address this, Article 6(j) of the Maputo Protocol obliges States to ensure

¹⁴⁵ UN Human Rights Council: Report of the Working Group on the Universal Periodic Review of Ethiopia, 42nd sess., A/HRC/42/14, 9 – 27 September, 2019, para. 163.82 and 163.84.

¹⁴⁶ *Ibid.*, addendum 1.

¹⁴⁷ Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, CEDAW/C/GC/31-CRC/C/GC/18, 2014, para. 20.

¹⁴⁸ Proclamation No. 213/2000, *supra* note 83, Article 7(1). See also Meskerem Geset Techane, *The Impact of the African Charter and the Maputo Protocol in Ethiopia*, in *THE IMPACT OF THE AFRICAN CHARTER AND THE MAPUTO PROTOCOL IN SELECTED AFRICAN STATES* (Victor Oluwasina Ayen ed., Pretoria University Law Press (PULP), 2016).

¹⁴⁹ *Ibid.*, Article 7(2).

¹⁵⁰ Proclamation No.1082/2018, *supra* note 3, Article 3(2) (b).

¹⁵¹ Kaniye S.A. Ebeku, *A New Hope for African Women: Overview of Africa's Protocol on Women's Rights*, 13(3) *NORDIC JOURNAL OF AFRICAN STUDIES* 267 (2004).

that a woman has, during her marriage, the right to acquire her own property and to administer and manage it freely.

According to the FDRE Constitution, women have the right to acquire, administer, control, use and transfer property.¹⁵² Properties acquired on the date of marriage, or after marriage through succession or donation remain her personal property.¹⁵³ However, after the formation of marriage, any income derived from the personal efforts of the spouses and their common or personal property should be common property.¹⁵⁴ Irrespective of its source, any income should become common property over which the spouses have equal administrative rights.¹⁵⁵ A common property must be administered jointly unless they agreed otherwise.¹⁵⁶ This being so, Ethiopia entered a clarifying statement saying that Article 6(j) should be applicable in accordance with its family law that considers income acquired during marriage as common property of spouses and to be administered by their common decision.¹⁵⁷ The declaration is in conformity with the principle of equality in marriage and family life.

The fourth declaration concerns with the partition of common property. Article 7(d) of the Maputo Protocol requires States “to ensure that in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage.” Some argue that the ambiguous nature of the term ‘equitable share’ may disfavor women during partition of common property on dissolution of marriage.¹⁵⁸ This is mainly because the term equitable is very subjective and does not necessarily imply equal shares in property partition on dissolution of marriage.¹⁵⁹ In this regard, the Revised Family Code of Ethiopia guarantees a robust protection of women’s rights, for it envisages that common property must be divided equally between spouses.¹⁶⁰ As a result, Ethiopia entered a declaration to interpret the term ‘equitable share’ as ‘equal share’ of common property

¹⁵² Proclamation No.1/1995, *supra* note 66, Article 35(7).

¹⁵³ Proclamation No. 213/2000, *supra* note 83, Article 57.

¹⁵⁴ *Ibid.*, Article 62(1).

¹⁵⁵ Michal Girma Yimer, *Women’s Rights in Ethiopia: A Review of National Policies and Laws, in PROTECTION OF WOMEN’S RIGHTS IN THE JUSTICE SYSTEMS OF ETHIOPIA* 14 (Kjetil Tronvoll ed., International Law and Policy Institute, 2016).

¹⁵⁶ Proclamation No. 213/2000, *supra* note 83, Article 66(2).

¹⁵⁷ Proclamation No.1082/2018, *supra* note 3, Article 3(2) (c).

¹⁵⁸ Mizanie Abate Tadesse, *supra* note 15, at 24.

¹⁵⁹ Fareda Banda, *Protocol to the African Charter on the Rights of Women in Africa, in THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS: THE SYSTEM IN PRACTICE 1986 -2006* 463 (Malcolm and Rachel Murray eds., Cambridge University Press, 2nd edition, 2008).

¹⁶⁰ Proclamation No. 213/2000, *supra* note 83, Article 90

in light of its family law.¹⁶¹ This interpretive declaration has addressed the shortcoming of the Protocol.

The fifth declaration has to do with the secondary responsibility of private sector for the upbringing of children. Article 13(l) of the Maputo Protocol obliges States “to recognize that both parents bear the primary responsibility for the upbringing and development of children and that this is a social function for which the State and the private sector have secondary responsibility.” This provision makes upbringing and development of children the primary responsibility of parents. It also imposes a sort of secondary responsibility upon the State and private sector. In connection with primary responsibility, the Revised Family Code states that the spouses should “in all cases cooperate to protect the security and interests of the family to bring up and ensure the good behavior and education of their children to make them responsible citizens.”¹⁶² With regard to secondary responsibility, Ethiopia declared that the contribution of private sector to the upbringing and development of children should be applicable in accordance with its domestic law.¹⁶³ But, there is no clear law holding private sectors responsible for the upbringing of children. The legal provisions dealing with obligation to supply maintenance allowance does not even make private sectors responsible for the upbringing of children.¹⁶⁴

Ethiopia's final interpretive declaration has to do with the right of a married woman to decide whether to have children, which is defined as one of the health and reproductive rights of women. According to Article 14 of the Maputo Protocol, women's rights to sexual and reproductive health include: the right to control their fertility; the right to decide whether to have children, number of children and the spacing of children; the right to choose any method of contraception; and the right to have family planning education. In its General Comment No. 2, the African Commission noted that Article 14 of the Protocol must be read and interpreted in light of other provisions of the Protocol on cross-cutting issues of women's rights, including the right to dignity, the right to integrity and security.¹⁶⁵ This suggests that women's rights to sexual reproductive health involve women's rights to dignity, integrity and privacy.

¹⁶¹ Proclamation No.1082/2018, *supra* note 3, Article 3(2) (d).

¹⁶² Proclamation No.213/2000, *supra* note 83, article 50(2).

¹⁶³ Proclamation No.1082/2018, *supra* note 3, Article 3(2) (e).

¹⁶⁴ Proclamation No.213/2000, *supra* note 83, Articles 197-214.

¹⁶⁵ The African Commission on Human and Peoples' Rights: General Comment No.2 on Article 14.1 (a), (b), (c) and (f), and Article 14 (2) (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 55th sess., 2014, para. 11.

Article 14(1) (b) of the Maputo Protocol requires States to ensure that women's right to decide whether to have children, the number of children and the spacing of children is respected and promoted. In its interpretive declaration to Article 14(1) (b) of the Protocol, Ethiopia declared that choice of whether to have a child, regarding married women, should be decided in accordance with the agreement of spouses.¹⁶⁶ Although women bear the major cost of having children, including the physical cost of pregnancy, it can be argued that woman cannot unilaterally decide on whether or not to have children. Rather, it should be the right of the couple to decide freely and responsibly whether to have a child or not. The declaration upholds the principle of equality of spouses in family life.

In closing, it is important to note that some of the interpretive declarations appear to modify the legal effects of the respective provisions in their application. These include the declarations on the minimum age of marriage, the prohibition of unwanted or forced sexual intercourses, and women's right to decide whether or not to have children. It is not always easy to make a distinction between reservation and interpretive declaration. It is, however, worth noting that any declaration purporting to exclude or modify the legal effect of a provision in its application to the State constitutes a reservation and should be treated as such. As discussed earlier, interpretive declaration merely offers a State's understanding of a provision. Therefore, regardless of its name or title in Proclamation No. 1082/2018, an interpretive declaration excluding or modifying the legal effect of a provision in its application should be treated as a reservation.

Conclusion

Ethiopia has restricted the scope of its obligations towards the Maputo Protocol through reservations and interpretive declarations. Based on their possible implications for the protection of women's rights, Ethiopia's reservations to the Protocol could be expressed in terms of three categories: a) reservations having positive implications on women's rights, b) reservation with no adverse implications, and c) reservations undermining the promotion of women's rights.

In the first category, we can mention reservations regarding registration of marriage for legal recognition and right of a married woman to retain and use her maiden name jointly with her husband's surname. By excluding the legal effect of Article 6(d) of the Protocol that requires every marriage to be registered in order to be legally recognized,

¹⁶⁶ Proclamation No.1082/2018, *supra* note 3, Article 3(2) (f).

Ethiopia attempts to protect women's rights. If marriage is dissolved on the ground of lack of registration, this would be detrimental to women themselves, as most marriages are concluded in accordance with customs, or religion. Similarly, by excluding the legal effect of Article 6(f) of the Protocol that guarantees the right of married woman to retain her maiden name and use it jointly with her husband's surname, Ethiopia avoids the possibility of the use of a married woman's maiden name jointly with her husband's surname. This in turn allows women to assert their own identity.

The second category covers reservation regarding the requirement of judicial decision for separation of marriage. Ethiopia entered reservation on Article 7(a) of the Protocol that requires separation of marriage to be decided by courts. This is mainly because the domestic law permits spouses to agree to live apart. Thus, spouses who choose to live separately can enter into an agreement to that effect. Non-judicial separation would not undermine the promotion of women's rights.

In the last category, we can raise reservations pertaining to polygamy, widow's right to inheritance, reduction of military expenditure to increase resource allocation for the protection of women's rights and the interpretive mandate of the African Court. By excluding the legal effect of Article 6(c) of the protocol that encourages monogamous marriage, Ethiopia maintains polygamy as one form of marriage. This position would allow the adverse effects of polygamy on women's rights to subsist. The reservation on the right of a widow to inherit her deceased husband guaranteed under Article 21(1) of the Protocol could also be unfair and viewed as indirect discrimination against widows. Similarly, the reservation on the obligation of States to reduce military expenditure envisaged under Article 10(3) of the Protocol may in the long run compromise the promotion of women's rights. The competition of regional states in building up special forces would worsen the situation. Furthermore, Ethiopia's reservation to exclude the mandate of the African Court would undermine the enforcement of women's rights. In relation to the Maputo Protocol, the core mandate of the Court is to act as an enforcement mechanism for the rights. It complements and reinforces the functions of the African Commission.¹⁶⁷ Hence, the author recommends that the reservations under this category should be withdrawn for the effective implementation of women's rights.

By the same fashion, we need to test the interpretive declarations for their effect on women's rights. In one of its interpretive declaration, Ethiopia understood the term 'equitable share' of common property in the Protocol to mean 'equal share' during

¹⁶⁷ Scholastica Omondi, Esther Waweru, and Divya Srinivasan, *BREATHING LIFE INTO THE MAPUTO PROTOCOL: JURISPRUDENCE ON THE RIGHTS OF WOMEN AND GIRLS IN AFRICA, A CASE DIGEST 10* (2018).

partition of common property. This declaration provides a better protection for women since it avoids the very subjective term i.e., equitable share. Conversely, Ethiopia's interpretive declaration made regarding sexual violence may arguably expose woman to sexual abuse in the private sphere, as it disregards marital rape from being characterized as a crime. The interpretive declaration on the minimum marriageable age could also make girls less protected. In sum, the Maputo Protocol accords better protection to women and girls in relation to sexual violence and minimum age of marriage. Thus, the author suggests that interpretive declarations concerning sexual violence and minimum age of marriage should be withdrawn for advancement of women's rights.

The other interpretive declarations cover declarations regarding the right of a married woman to decide whether to have children, the right of a married woman to acquire property during marriage, and the responsibility of private sector for the upbringing of children. The first two declarations are meant to meet the principle of equality of men and women in marriage and family life. These declarations would not thus undermine the protection of women's rights.

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