

The Response of the Judiciary to Intimate Partner Violence in Addis Ababa City Administration

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Abstract

In Ethiopia, cases of intimate partner violence against women (IPVAW) are frequently adjudicated using the same procedures as ordinary criminal cases, despite their distinct nature. This practice, lacking a human rights-based approach, heightens the risk of secondary victimization. This article assesses how the judiciary responds to IPVAW cases, focusing on the adjudication process, judicial decisions, case timelines, and available protective measures. A qualitative research approach was employed drawing on data from survivors, actors within and outside the legal system, and relevant IPVAW court cases in selected courts in Addis Ababa. The research identified significant challenges to an effective judicial response such as absence of specialized procedures, protracted case resolutions, lenient sentencing, and insufficient measures to ensure the dignity, safety, and privacy of survivors. Based on these findings, the article recommends reforms that prioritize survivors' rights and safety throughout the court process. Key suggestions include providing specialized training for judges and court personnel and implementing targeted strategies to ensure that survivors are protected from further harm.

Keywords: Courts, Ethiopia, Human Rights-Based Approach, Intimate Partner Violence, Women

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Introduction

Intimate partner violence against women is a pervasive global issue that transcends social class, race, ethnicity, and nationality. The repercussions of IPVAW are far-reaching. Victims may endure severe physical injuries, prolonged psychological trauma, compromised reproductive health, and, in extreme cases, fatal outcomes. Beyond individual suffering, IPVAW inflicts profound societal and economic costs by destabilizing families, perpetuating cycles of intergenerational violence, and imposing heavy burdens on healthcare systems, productivity, and social welfare resources (Sophie & Eleni 2019).

As guardians of justice, the judiciary holds the potential to shape legal and social norms. It is expected to protect the vulnerable and deliver justice with fairness and impartiality. The judiciary must adopt a progressive and just stance by condemning all forms of violence and creatively enforcing laws to provide justice for women who suffer abuse (Shalu 2022). By ensuring survivors'²⁶ safety, holding perpetrators accountable, and preventing re-victimization, the judiciary sends a clear message that all forms of VAW, including IPVAW, are taken seriously (Council of Europe 2016).

In Ethiopia, the judiciary constitutes a fundamental branch of the state (Aderajew & Kedir 2009). The FDRE Constitution establishes comprehensive principles governing the organization and responsibilities of the judiciary.²⁷ Like courts worldwide, Ethiopian courts bear the crucial task of delivering justice. They are expected to

²⁶ This article uses the term 'survivor' instead of 'victim' when referring to individuals who have experienced IPVAW. This is because the term 'survivor' emphasizes their strength and agency in overcoming their experiences of violence.

²⁷ The Federal Democratic Republic of Ethiopia, *The Constitution of the Federal Democratic Republic of Ethiopia*, 21 August 1995. Proclamation No. 1/1995. And Article 79(1) and The Federal Democratic Republic of Ethiopia, *Federal Courts Proclamation*, 26 April 2021. Proclamation No 1234/2021. Article 78.

be accessible in financial, physical, and procedural terms and to uphold the human rights of all who appear before them. Moreover, the judiciary must enforce citizens' rights against violations, whether committed by individuals or by the state itself (Tsegaye 2009).

Given the critical role of the judiciary, it is imperative to examine what transpires when an IPV case is brought before a court. This examination requires not only considering substantive and procedural laws but also scrutinizing actual judicial practices. Despite the high prevalence of IPVAW in Ethiopia, adjudication of these cases often faces numerous challenges that significantly impair the judiciary's capacity to respond effectively. Such challenges include a prolonged decision-making process, a lack of specialized handling of cases involving women, and inadequate measures to protect survivors' dignity, safety, and privacy. Additionally, it is claimed that IPVAW cases frequently result in low conviction rates, minimal sentencing, and the secondary victimization of survivors during court proceedings (Immigration and Refugee Board of Canada 2020). Furthermore, the adjudication process of IPVAW cases and the protective measures available to survivors remain under-researched in the study area. Therefore, this article aims to explore the judiciary's response to IPVAW cases and examine its role in meeting survivors' needs by investigating judicial decisions, the promptness of proceedings, and the protective mechanisms available.

Data for this research were collected from five purposively selected first instance courts, five city court divisions, and one high court division in five sub-cities of Addis Ababa City Administration.²⁸ Key actors²⁹ were purposively selected based on their positions and relevant experiences. 72 respondents participated in the research. Data

²⁸ The five sub-cities purposively selected for this research based on the number of VAW cases they have adjudicated were Arada, Bole, Kolfe-Keranio, Lideta, and Nifas-Silk.

²⁹ These consist of judges, prosecutors, police officers, defense attorneys, experts from shelters, one-stop centers, Addis Ababa city administration Bureau of Women, Children, and Social Affairs, Ethiopian Women Lawyers Association (EWLA), as well as community elders and religious leaders.

were collected from 33 female survivors of IPV who navigated the justice system. The survivors were purposively selected considering factors such as age, socio-economic status, the type of violence they had encountered, and the final judgments given on their cases. Furthermore, 97 purposively selected IPVAW closed case files adjudicated by the selected courts were reviewed.³⁰

Semi-structured in-depth interviews, focus group discussions, courtroom observations, and court case analysis were employed for data collection. Interviews continued until data saturation was reached. Additionally, international, regional, and domestic legal frameworks also served as primary sources of data. Furthermore, secondary sources such as literature (both published and unpublished), official reports, and websites were consulted.

This article is organized into six sections. Following the introduction, the second section frames IPVAW as a human rights violation. The third section addresses the unique nature of IPV cases in general, while the fourth examines the adjudication processes in the study area. The fifth section explores the measures the judiciary is in a position to employ to protect IPVAW survivors from further harm and prevent secondary victimization. The final section offers concluding remarks.

2. Intimate Partner Violence as a Human Rights Violation

Depending on its nature, frequency, and severity, IPVAW constitutes a violation of fundamental human rights (Megersa 2014). These include the right to life, liberty, personal security, physical and mental integrity, dignity, the highest attainable standard of health, and freedom from torture or cruel, inhuman, and degrading treatment. Recognizing IPVAW as a human rights violation underscores the obligation of states under international law to uphold, protect, and

³⁰ Data collection was conducted in three rounds: the first from June 1 to November 14, 2022; the second from January 25 to March 24, 2023; and the third from April 8, 2023 to April 6, 2024 (These data were gathered for the purpose of the authors' PhD study).

fulfill individual rights. Even though states are not direct perpetrators of IPVAW, their failure to prosecute offenders or safeguard victims constitutes complicity, subjecting them to international scrutiny (Alda 2002). While individual perpetrators remain criminally liable, states bear the responsibility to enact systemic measures to prevent and redress such violations (Amnesty International 2004).

Early human rights instruments—such as the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)—did not explicitly reference IPVAW or VAW, but their provisions remain applicable. For example, both the UDHR³¹ and the ICCPR³² guarantee the right to life, liberty, and security of a person. Similarly, the ICESCR³³ affirms the right to the highest attainable standard of physical and mental health. These protections are critical in addressing IPVAW, as such violence directly violates women’s rights to bodily integrity, liberty, security, health, and—in extreme cases—their lives.

Further, the UDHR³⁴ and ICCPR³⁵ explicitly prohibit torture or cruel, inhuman, or degrading treatment. The Convention Against Torture (CAT) defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted” for purposes of, for example, obtaining information, punishment, intimidation, coercion, or any reason based on discrimination.³⁶ While such acts are

³¹ UN General Assembly, Resolution 217A (III), *Universal Declaration of Human Rights*, A/RES/217(III), December 10, 1948 Article 3

³² UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966. Articles 6 and 9

³³ UN General Assembly, *International Covenant on Economic, Social, and Cultural Rights*. Treaty Series, vol. 999, p. 171, Dec. 1966. Article 12

³⁴ UDHR. *Supra* note 7, Article 5

³⁵ ICCPR. *Supra* note 8, Article 7

³⁶ Un General Assembly resolution 39/46, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), Article 1

generally committed by public officials, a state may also be held responsible if it acquiesces to such acts.³⁷ The Committee Against Torture has clarified that state inaction against gender-based violence—including rape, domestic violence, female genital mutilation, and trafficking—constitutes a breach of CAT obligations (Committee against Torture, General Comment No. 2). Consequently, IPVAW, which infringes upon multiple rights of women, can be argued as qualifying the definition of torture under international law.

While these broad human rights frameworks provide a basis for addressing IPVAW, scholars and advocates argue that they inadequately conform to the gendered dimension of such violence. Although existing provisions can be interpreted to cover VAW, critics emphasize that general norms lack specificity to address systemic inequalities rooted in women’s biological and social roles (Bonita 2021). This gap underscores the need for tailored legal protections that account for the unique vulnerabilities and structural barriers faced by women.

Accordingly, since the 1980s, sustained advocacy has driven the international community to reframe such violence as a pressing human rights concern (Bonita 2021). This paradigm shift spurred the adoption of critical instruments, including UN resolutions, recommendations by the Committee on the Elimination of Discrimination Against Women, the UN Declaration on the Elimination of Violence Against Women, the Vienna Declaration and Programme of Action, the Beijing Declaration; and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

These frameworks have redefined societal attitudes, transforming violence against women from a private issue shrouded in impunity to a matter of public responsibility. Crucially, they have established the prohibition of violence against women as a cornerstone of

³⁷ *ibid*

international human rights law, mandating systemic efforts to prevent, address, and eradicate such violence (Bonita 2021).

3. The Uniqueness of Intimate Partner Violence Cases

IPV is defined as any act of violence, whether singular or recurrent, occurring within an intimate relationship and perpetrated by a current or former spouse, or cohabiting or non-cohabiting partner. IPV encompasses physical aggression, sexual coercion, psychological abuse, and controlling behaviors that result in physical, sexual, or psychological harm (World Health Organization 2017). It can manifest in various forms such as battering, rape, restrictions on freedom of movement, control over financial resources, intimidation, stalking, and image-based abuse.

In patriarchal societies, IPVAW stands apart from other forms of violence due to its unique and deeply entrenched power dynamics. This type of violence often occurs within the supposed sanctuary of the “home,” a place typically associated with safety and security. A central feature is the perpetrator’s socially sanctioned role as “protector and provider,” which creates a perverse inversion of trust. The victim’s emotional, material, and economic dependence on the abuser further entrenches this inequality, making escape incredibly difficult (Shalu 2022).

IPVAW frequently extends beyond the couple, drawing in other family members and complicating the web of harm. The inherent intimacy, sexuality, and romantic attachment within the relationship magnify the violence, as emotional betrayal deepens the trauma far beyond what is typically seen in other violence. Critically, IPVAW is sustained within an intersecting culture of patriarchy and violence that systematically denies women’s rights while legitimizing male dominance and punishment (ibid).

The adversarial nature of the criminal justice system has traditionally

struggled to address the complexities of family relationships. Criminal proceedings involving family violence can have disruptive consequences for both the survivor and the accused. Families may experience separation, altered living arrangements, restricted communication between partners, limited contact with children, and increased financial burdens (Joseph, Erin & Breese 2012).

Because IPV typically occurs within the home, it often lacks sufficient evidence, making investigation and prosecution difficult. This lack of evidence is a major obstacle faced by women survivors of IPV in their pursuit of justice and the protection of their human rights (UNECA & African Centre for Gender and Social Development 2010). Additionally, since the defendant and survivor share a personal relationship, the defendant and, by extension, the defense attorney often have more intimate knowledge of the survivor compared to cases where the parties are unrelated. This familiarity provides the defense with additional means to discredit the survivor's testimony during the trial (Carol 2024).

Women seeking judicial protection may feel conflicted about having their partners arrested, especially if they rely on them financially to support themselves and their children. Moreover, research shows that one of the main reasons survivors hesitate to seek help is fear of retaliation from the offender. Threats from an intimate partner are more credible, as the offender usually has access to the survivor and may have previously acted on such threats. Furthermore, women often seek legal action after physically separating from their partner, which is when they are at the greatest risk of harm (Carol 2024).

Prosecutors frequently face challenges in IPV cases, as complainants may recant their statements or become uncooperative. This behavior often results from the cycle of violence and intimidation inherent in abusive relationships. Prosecutors must carefully evaluate recantations, distinguishing between genuine ones and those caused by intimidation or coercion. Delays in reporting the abuse can also create obstacles during the trial (Joseph, Erin & Breese 2012).

Therefore, the unique and complex dynamics of the emotional, economic, and sexual relationship between partners, along with the power imbalance and the repetitive and secretive nature of the abuse, make adjudicating these cases particularly difficult.

4. The Adjudication of Intimate Partner Violence Cases in the Study Area

To evaluate the effectiveness of IPVAV case adjudication in the study area, a human rights-based approach (HRBA) is used as the standard. This approach is critical for assessing the judiciary's response to IPVAV cases. It seeks to protect the rights of all parties involved while acknowledging the needs and well-being of survivors who have experienced trauma. This balanced interpretation of the law upholds justice and respects the dignity of all individuals involved in the criminal justice system (Sidra, Muhammad & Usman 2024).

Applying HRBA means treating survivors of IPVAV with respect, dignity, and sensitivity. Communication with survivors should be empowering, helping them in overcoming the trauma of violence and intimidation, providing comprehensive information to facilitate informed decision-making, and supporting them throughout the legal process (Sidra, Muhammad & Usman 2024). In recent years, there has been a growing emphasis on human rights-based judicial processes, supported by international legal standards. The Updated Model Strategies and Practical Measures urge member states to review, evaluate, and update criminal procedures in line with international legal instruments.³⁸ The goal is to ensure that women subjected to violence can testify in criminal proceedings with adequate protections, which include safeguarding their privacy, identity, and dignity,

³⁸ The UN General Assembly, *Strengthening crime prevention and criminal justice responses to violence against women*, March 2011, A/RES/65/228. Annex. Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. paragraph 15(c)

ensuring their safety during legal proceedings, and preventing secondary victimization.³⁹

Similarly, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power highlights the need for judicial and administrative processes to be responsive to survivors' needs by minimizing inconvenience, protecting privacy, and ensuring the safety of survivors, their families, and witnesses from intimidation and retaliation.⁴⁰ These instruments call on states to create a safe and supportive environment for survivors, ensuring they are shielded from further harm during legal proceedings.

Despite the unique characteristics of IPVAW cases, the procedural rules applied to them in the study area often mirror those governing ordinary criminal cases. This approach frequently neglects a human rights-based framework, resulting in a lack of specialized treatment or tailored psychosocial and legal support for survivors.

The legal process is structured as an adversarial proceeding⁴¹ between two parties: the prosecutor and the accused (or his defense counsel), with the survivor typically serving as a witness for the prosecution.⁴²

³⁹ Ibid

⁴⁰UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, resolution / adopted by the General Assembly, 29 November 1985, A/RES/40/34, Article 6(d)

⁴¹ Ethiopia's criminal justice system, governed by the 1961 Criminal Procedure Code, is theoretically a hybrid model. While the system is primarily adversarial, the Code grants judges inquisitorial-style powers to actively guide proceedings. See Gashaw Sisay. "Admissibility of Hearsay in Criminal Trials: An Appraisal of the Ethiopian Legal Framework." *Haramaya Law Review*, Vol. 5, No.1, 2016, PP.116-143. p.127 In practice, however, this authority is rarely used. Judges typically remain passive, placing the responsibility for presenting evidence and examining witnesses on the opposing parties. As a result, the trial process functions as a fundamentally adversarial contest between the prosecution and the defense. See Alemu Meheretu. *Introducing Plea Bargaining in Ethiopia: Concerns and Prospects*. (DPhil thesis), University of Warwick, 2014, P.68

⁴² For more details on the trial process for IPVAW cases in the study area, please see Helen Abelle Melesse. 2024. "Intimate Partner Violence Survivors and the Criminal Justice System: A Case Study of Addis Ababa City Administration."

This use of public, adversarial trials—the same as those for ordinary crimes—is poorly suited to the needs of traumatized survivors and fails to meet international human rights standards. Consequently, the current system lacks a human rights-based approach, which significantly increases the risk of secondary victimization for survivors.

4.1 Nature of Judgements and Sentencing in Intimate Partner Violence Cases

The ultimate goal of criminal prosecution is to render a judgment either convicting or acquitting the accused. A conviction occurs when the evidence convinces the court beyond a reasonable doubt that the accused committed the alleged crime. Conversely, if the defense raises a reasonable doubt regarding the prosecution's evidence, the court must acquit the accused, releasing him from custody if detained. Judges are required to provide clear reasons for their decisions (Aderajew & Kedir 2009). Based on the data obtained from case analysis, 37 cases resulted in convictions, one in acquittal, while the remainder were closed for various reasons, including mediation and the disappearance of witnesses and/or defendants.

Upon conviction, the court moves to sentencing, guided by Article 88(2) of the Criminal Code. In Ethiopia, punishment is determined by considering factors such as the degree of guilt, the offender's background, standard of education, the gravity of the crime, and the circumstances of its commission.⁴³ If the case falls under the Sentencing Guideline No. 2/2013, sentencing is calculated accordingly; otherwise, the court refers to Article 19 of the Guideline to assess the severity of the crime and give appropriate punishment. Aggravating and mitigating factors presented by both the prosecutor and the defendant are also taken into account, with the court retaining

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⁴³ The Federal Democratic Republic of Ethiopia, *The Criminal Code of the Federal Democratic Republic of Ethiopia*, 9 May 2005, Proclamation No. 414/2004. Article 88(2)

discretion to accept or reject them.⁴⁴

Among the cases where conviction occurred, nine resulted in prison sentences ranging from one day to eleven years, sixteen in fines, two in both imprisonment and fines, and ten in suspended penalties. Some informants expressed concern about the effectiveness of certain punishments in achieving the objectives outlined in the Criminal Code. In some of the reviewed cases involving severe violence, such as burning a survivor, repeatedly stabbing a survivor on the head with a screwdriver and biting off her finger, biting off the survivor's ear, and threatening a survivor with a lethal weapon (placing a loaded gun to the survivor's head and threatening to kill her), etc., perpetrators were released on two-year probation after conviction. In a case where a perpetrator struck the survivor in the head with a metal rod, resulting in serious physical injury, the case was closed due to mediation. In another case, despite the Criminal Code stipulating a minimum term of 10 days for simple imprisonment,⁴⁵ a perpetrator convicted under Article 640(1)(a) for distributing pornographic videos of a survivor received a one-day prison sentence and a 500 birr fine.

4.2 Perspectives on Punishments

The judiciary plays a critical role in holding perpetrators accountable, and its judgments reflect societal attitudes towards IPVAW. When offenders are not adequately punished, public faith in the justice system erodes. Perpetrators who perceive leniency, for example, routinely suspending IPVAW sentences, may continue their violent behavior, believing it is tolerated. Being able to avoid punishment reinforces the perpetrator's belief in his right to use violence to establish power and control over his partner, as well as his perception that such violence will not be punished (Council of Europe 2016).

⁴⁴ The Criminal Procedure Code of Ethiopia, 1961, Proc No. 185/1961, *Fed. Neg.Gaz.* 32nd Year. Article 149 (3 & 4)

⁴⁵ The Criminal Code of the Federal Democratic Republic of Ethiopia. *Supra* note 19, Article 106(1)

Despite a significant number of survivors expressing dissatisfaction with court rulings in their cases—often feeling justice was not served—legal professionals emphasize that sentencing in IPVAW cases involves nuanced considerations. One informant noted that while survivors and the public may equate harsher punishments with better justice, courts must weigh multiple factors to ensure proportionality and rehabilitative impact. An effective sentence balances retribution with education, he explained, but severity alone does not guarantee justice or deterrence.⁴⁶

Another informant highlighted the Criminal Code's broader objectives, which extend beyond punishment to include rehabilitation and societal reintegration. She argued that lengthy prison terms do not always foster behavioral change; in some cases, restrictive measures (e.g., suspended civil rights) may prove more transformative.⁴⁷ Another informant also believed that fear of incarceration alone is insufficient, she noted, citing instances where defendants reform after mere indictment—and others who reoffend despite prolonged imprisonment, sometimes even while incarcerated.⁴⁸ The interviewed experts further stressed that public critiques of judicial decisions often overlook the complexities inherent in sentencing. Key factors—such as applicable legal statutes, evidentiary strength, mitigating or aggravating circumstances, and the foundational aim of criminal law—shape rulings.

4.3 Promptness of Proceedings

The duration of a case in a criminal court is typically measured from the date the file is opened to the date of the final decision on all charges. Timely processing is vital in IPV cases due to family dynamics. This is because, after leaving an abuser, survivors face a long and difficult process of rebuilding their lives, often dealing with

⁴⁶ Interview with HJ-12 conducted on 20 October 2022

⁴⁷ Interview with HJ-16 conducted on 27 October 2022

⁴⁸ Interview with HJ-17 conducted on 28 October 2022

post-separation abuse, financial insecurity, and often prolonged civil court proceedings. When the judiciary fails to adjudicate IPV cases swiftly, survivors may remain in dangerous and unstable situations for extended periods of time (OSCE 2024). Cases that are repeatedly adjourned become drawn out, leading to what is often referred to as “justice delayed is justice denied” (Mabel & Oبراori 2021).

The standard for what constitutes a ‘reasonable time’ to handle criminal cases varies depending on the nature of the crime. However, delays in criminal proceedings have a significant detrimental impact on access to justice (Menberetshai 2010). The FDRE Constitution mandates that criminal cases be handled within a reasonable period after the charge,⁴⁹ and under the Federal Courts Proclamation, presidents of federal courts are tasked with supporting victims of gender-based violence through “rapid court decision and professional support”.⁵⁰ Despite these provisions, several factors contribute to delays in the study area. Information from case files indicates common causes that included high caseload, judicial caseload imbalance, judicial non-attendance, frequent reassignments necessitating file reviews, disappearance of accused persons, and uncooperative survivors/witnesses.

During a focus group discussion, participants noted that while civil cases have guidelines on timeline, no such framework exists for criminal cases. They acknowledged that criminal cases are inherently complex, with complications arising from complaints, delayed evidence from institutions, and the need to carefully protect human rights. Additionally, judges working on these cases may experience mental fatigue, burnout, or secondary trauma, sometimes requiring breaks to maintain their resilience and capacity to handle sensitive matters effectively.⁵¹

⁴⁹ The FDRE Constitution. *Supra* note 3, Article 20(1)

⁵⁰ Federal Courts Proclamation. *Supra* note 3, Article 19(1.g)

⁵¹ FGD-3 with judges conducted on 23 March 2023

Regarding the duration of court proceedings in the cases reviewed, the shortest case closed by courts for various reasons (e.g., failure of the accused, witnesses, or prosecutor to appear) lasted eight days, while the longest took over six months. For cases proceeding to trial, the shortest lasted one month, while the longest extended over two years. It is important to note that dissatisfied parties have the right to appeal judgments. Appeals—particularly those escalating to the Supreme Court—can significantly prolong resolution before a final decision is reached.

To address these challenges, the Draft Criminal Law Procedure and Evidence Code of Ethiopia under Article 242 sets a procedural timeframe: minor offenses should be resolved within three months, medium offenses within six months, and grave offenses within twelve months from filing. The court may extend these periods by up to half their length for sufficient cause. However, in any case, grave offenses must be completed within two years. The Federal Supreme Court is tasked with issuing case-flow management rules based on the seriousness and complexity of cases.⁵²

5. The Role of the Judiciary in Protecting Survivors of Intimate Partner Violence from Further Harm

Survivors of IPVAW may face ongoing risks not only from the offender but also from his family and friends. For those who have experienced chronic or repeated violence, security is often a paramount concern. The perception or reality of inadequate protection can deter survivors from reporting such crimes (UNODC 2019). Fear for their own safety, as well as for the well-being of their children and family members, is a common reason survivors withdraw from the criminal justice process (United Nations Office on Drugs and Crime 2014).

⁵² The Federal Democratic Republic of Ethiopia, Draft Criminal Law Procedure and Evidence Code of Ethiopia, 2020, Draft Legislation, Ministry of Justice, Addis Ababa, Article 242

This unique risk dynamic in IPVAW cases places a special responsibility on the judiciary, which is not often shared by other courts handling ordinary criminal matters. Courts adjudicating these cases must prioritize survivor safety and implement measures to prevent future victimization (Monica 2013). Judges and prosecutors are urged to adopt specific safeguards aimed at preventing re-victimization by the perpetrator and minimizing secondary victimization during the legal proceedings. Such safety measures should extend beyond protection from physical violence to include shielding survivors from harassment, threats, hostile encounters, and potential secondary victimization during investigations and trials. These measures may be immediate or part of long-term strategies for managing high-risk cases involving women (Council of Europe 2017). However, judicial responses are often inconsistent and tend to prioritize offender accountability over survivor safety (Monica 2013). In Ethiopia, the Revised Criminal Code⁵³ does not adequately address survivor protection, and the 1961 Criminal Procedure Code provides only limited rights for survivors during adjudication.

Nonetheless, some informants noted that, while explicit legal provisions obligating courts to protect survivors may be lacking, courts—as key institutions mandated to uphold human rights—can act when evidence indicates that survivors, often key witnesses for the prosecution, are in danger either within or outside court premises. They explained that although courts cannot unilaterally initiate protective measures, they can act upon complaints by issuing rulings that document the perpetrator’s conduct, ordering further investigations, and directing prosecutors, police, or community policing units to provide protection. Additionally, they may issue warnings or conduct proceedings in closed benches. Yet, the informants added that the implementation of such measures varies significantly depending on individual judges’ understanding and commitment to survivor safety.⁵⁴

⁵³ The Criminal Code of the Federal Democratic Republic of Ethiopia. *Supra* note 19

⁵⁴ FGD-2 with judges conducted on 10 November 2022

Accordingly, courts have the potential to adopt measures that enhance survivor safety during criminal proceedings without compromising the accused's right to a fair trial. These measures may include pre-trial detention, formal warnings, and the use of specialized benches.

5.1 Pre-Trial Detention

"Everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law."⁵⁵ However, even before trial, courts at the pre-trial stage may order detention or impose stricter conditions for release as strategies to enhance survivor safety. Judges must consider all relevant facts regarding the defendant's potential for violence against the survivor, and any concerns raised by the survivor regarding her safety should be taken into account. Pre-trial detention should be enforced when a judge determines there is a significant risk of violence or doubts about the defendant's compliance with release conditions (Council of Europe 2020).

5.1.1 Bail Requests

Defendants held in custody may request bail, which entails release under conditions, such as attending court or reporting to a police station. Bail may also be granted under terms like requiring a security payment that is forfeited if the accused fails to appear in court, or the involvement of a guarantor (Aderajew & Kedir 2009). While the defendant's right to bail must be protected, it must be balanced against the survivor's right to safety. Prosecutors need clear guidelines for opposing bail in cases of VAW, especially where there is a risk of further harm. They should employ risk assessment standards and rely on research concerning the likelihood of continued violence (United Nations Office on Drugs and Crime 2014).

⁵⁵ ICCPR. *Supra* note 8, Article 14(2)

In Ethiopia, Article 67 of the Criminal Procedure Code grants defendants the right to bail unless they are unlikely to comply with bail conditions, likely to commit further offenses if released, or likely to interfere with witnesses or tamper with evidence. Consequently, anyone charged with a crime⁵⁶ may request bail if they can afford it or present a guarantor. The selection of the guarantor and the amount guaranteed are determined by the court, which must consider the seriousness of the charge, the accused's likelihood of appearing in court, the potential danger to public order, and the resources available to the accused and his guarantors.⁵⁷ An important addition in the draft Criminal Law Procedure and Evidence Code is that where the applicant is suspected of crimes involving brawls, quarrels, or violence against women or children, or similar offenses, courts may require a guarantee of good conduct as a precondition to bail.⁵⁸

Data collected for this study indicates that in some IPVAV cases involving severe physical abuse, judges may deny bail, in accordance with legal provisions, to protect survivors from further attacks. One informant noted that in instances of severe violence, courts often refuse bail requests.⁵⁹ Another informant added that courts may deny bail when there is a legitimate fear that the accused may commit further violence, often considering the accused's criminal history and the nature of the violence.⁶⁰ Additionally, an informant highlighted that prosecutors assess the likelihood of reoffending and present their findings to the court to advocate for bail denial. However, he believes that this assessment can be subjective and is often subject to appeal.⁶¹ On the other hand, some informants indicated that judges typically do

⁵⁶ As long as, in line with Article 63 of the Criminal Procedure Code, the offence with which the accused is charged does not carry the death penalty or rigorous imprisonment for fifteen years or more and where there is no possibility of the person in respect of whom the offence was committed dying.

⁵⁷ The Criminal Procedure Code of Ethiopia. *Supra* note 20, Article 69

⁵⁸ The Draft Criminal Law Procedure and Evidence Code of Ethiopia under, Article 142

⁵⁹ Interview with PP-15 conducted on 24 October 2022

⁶⁰ Interview with HJ-11 conducted on 20 October 2022

⁶¹ Interview with HJ-19 conducted on 31 October 2022

not deny bail unless there is strong evidence demonstrating the suspect's violent nature. They mentioned that bail is rarely refused, even though releasing the accused can have severe consequences for the survivor, especially if they share a residence, increasing the risk of further violence.⁶² One informant expressed that courts often prioritize the rights of suspects regarding bail, frequently dismissing prosecutors' requests for denial, citing insufficient evidence. This trend, she noted, significantly compromises survivor safety.⁶³ In most cases analyzed for this study, bail was granted to the accused, and prosecutors rarely contested this right if the accused had a permanent residence.

It is notable that the Criminal Procedure Code does not explicitly allow bail to be denied solely on the ground of protecting the survivor. Of all the cases assessed for this study, only one instance involved bail denial explicitly to safeguard the survivor.⁶⁴ According to an informant, when bail is granted, courts typically do not impose conditions prohibiting contact or intimidation.⁶⁵

Bail proceedings in the reviewed cases focused primarily on securing the accused's future court appearance rather than prioritizing survivor safety. Informants noted that many accused individuals often lack permanent addresses, making them difficult to locate once released. As a result, judges may require the presentation of a guarantor, expecting the guarantor to assist in locating the accused if he fails to appear on the specific date before the court.⁶⁶

In the cases assessed, the bail amounts requested by courts ranged from 200 to 2000 birr, with exceptional cases setting bail at 10,000 Birr. In approximately 16% of the cases where a bail request was granted, the accused absconded after release. Courts then ordered the police to

⁶² FGD-3. *Supra* note 27

⁶³ Interview with HJ-3 conducted on 19 July 2022

⁶⁴ Public Prosecutor v. Mohammad Fereja, File Number 305080, Lideta Division, Federal High Court, 2024

⁶⁵ Interview with HJ-1 conducted on 21 June 2022

⁶⁶ FGD-3. *Supra* note 27

locate and detain the accused for 24 to 48 hours and bring him before the court. If the accused cannot be found due to a false or unknown address, courts will, after several adjournments, order bond forfeiture and close the file. This action, however, reserves the prosecution's right to reopen the case should the accused be located in the future.

5.2 Judicial Warnings

Judges can positively impact the handling of IPVAW cases by engaging with the parties involved. Research shows that judicial warnings or reprimands to defendants about the severity and inappropriateness of their violent behavior can sometimes lead to improved future conduct (Gail 1986). One informant emphasized the difficulties judges face due to the unique nature of IPVAW cases and the need to issue warnings in some cases. He mentioned that judges frequently issue warnings to defendants and advise survivors to report any further violence to the police immediately.⁶⁷ Another informant observed that, beyond warnings, advice, and admonitions, judges often lack additional measures to effectively protect survivors.⁶⁸

While some informants noted that judges may warn defendants when granting bail or when punishments are reduced to probation, stating that such decisions could be revoked for misconduct, conditions of release in the cases examined do not include specific stipulations such as no contact with the survivor or restrictions on returning to the family home. Judges typically do not provide detailed warnings in such instances. In cases resolved through mediation, final judgments often note that a warning has been given to the defendant not to repeat the offense. However, the specific content of these warnings was not documented in the case files.

⁶⁷ HJ-19 *Supra* note 37

⁶⁸ FGD-3. *Supra* note 27

5.3 The Level of Utilization of Special Benches

While contact between the survivor and the perpetrator should be avoided at all stages of legal proceedings, survivors of IPVAW are often required to participate in criminal cases as witnesses. Some jurisdictions may even compel survivors to testify if it is deemed necessary for the proceedings. In these situations, special measures, such as testifying from a separate room, recording the survivor's testimony, and appearing via videoconference, should be considered. It is important to acknowledge that, even if the court case centers on a single incident, survivors may have endured years of abuse and coercive control, making any contact with the perpetrator highly traumatic (Council of Europe 2016).

The Committee on the Elimination of Discrimination against Women has urged state parties to "ensure that the physical environment and location of judicial and quasi-judicial institutions, as well as other services, are welcoming, secure, and accessible to all women" (CEDAW General Recommendation No. 33). The Committee emphasized the necessity of special measures to "protect women's privacy, safety, and other human rights" and called for the adoption of gender-sensitive court procedures and witness protection measures (CEDAW General Recommendation No. 33 & No. 35).

Specialized courts, such as domestic violence courts, exist in countries like the United States, Brazil, Spain, and Ghana, providing an environment where survivors can testify without the fear of facing an audience or the perpetrator. These courts not only improve the efficiency and outcomes of cases but also minimize re-victimization and ensure the protection and safety of survivors. They offer a private and supportive atmosphere for handling IPVAW and other related cases (UN Women 2010).

Thus, the judiciary's duty to protect survivors goes beyond delivering a sentence that incapacitates, deters, or rehabilitates the defendant if found guilty; it includes preserving their privacy, dignity, and well-being throughout the trial process. Survivors of IPVAW face unique

risks that make privacy a crucial aspect of safety. Unlike others, who may particularly experience embarrassment or humiliation, these survivors may additionally face potential physical harm stemming from their interactions with the judicial system. In these cases, the right to privacy is inextricably linked to the right to personal security (UN Women 2010).

The Ethiopian Criminal Justice Policy mandates the development of legislation for the special treatment of survivors of gender-based violence.⁶⁹ It also supports the establishment of specialized units within the police, prosecutor's office, and courts to aid in crime prevention, investigation, prosecution, and the provision of support services for women, children, and people with disabilities.⁷⁰

The women and children benches established in the study area for adjudicating sexual and other forms of violence against women and children implement case-sensitive procedures. These include the use of closed-circuit television (CCTV) and third-party intermediaries, such as trained social workers, to shield survivors from hostile or intimidating questioning by the defense.

While in practice, this protective procedure is primarily applied in cases involving children, it can be extended to female witnesses over 18 if a judge determines that the case's sensitivity requires it.⁷¹ This approach enables survivors to testify in a more comfortable setting, avoiding direct confrontation with the accused while preserving the defendant's right to cross-examine. This reduces the psychological and emotional stress that survivors experience.

However, only two of the IPVAW cases reviewed in this study (both involving sexual violence) utilized special benches. In one of these cases, the presiding judge noted that "although the case did not

⁶⁹Ministry of Justice. (2011). *The Federal Democratic Republic of Ethiopia Criminal Justice Administration Policy*. Available at: <http://www.ethcriminalawnetwork.com/system/files/FDRE%20Criminal%20Justice%20Policy%20%28Amharic%29.pdf> accessed on 9/9/2024. Section 6.2.1

⁷⁰Id, Section 6.5

⁷¹Interview with I-1conducted on 8 November 2022

typically warrant the use of a special bench”, she deemed it essential as it may contribute to protecting public interest and morality. This case involved the distribution of pornographic videos, requiring explicit testimony from the survivor. This testimony, delivered from a special bench, necessitated the survivor to provide explicit details about the recorded sexual act, including her behavior at the time and her sexual history, to answer the questions raised by the defense and the prosecutor in front of a judge. However, despite the sensitive nature of the case, psychologists or social workers were not involved in the adjudication process. Consequently, in both cases where special benches were used, survivors endured invasive questioning without the benefit of psychological support.

The absence of specific provisions for IPVAW cases has resulted in the underutilization of special benches for such matters, leading to their exclusive application in cases of sexual violence and juvenile offenses. According to an informant, IPVAW cases are treated like any other ordinary criminal case, without special procedures or designated benches.⁷² Another informant noted that the absence of expert involvement, such as psychologists, negatively impacts the adjudication process and may contribute to secondary victimization.⁷³ Furthermore, in Ethiopia, accused individuals are entitled to a public trial by an ordinary court within a reasonable time after having been charged.⁷⁴ However, the Constitution provides for exceptions where cases can be heard in closed sessions to protect privacy rights, public morals, or national security.⁷⁵ Similar grounds for utilizing closed sessions are outlined in Proclamation No. 1234/21 and the Draft Criminal Law Procedure and Evidence Code of Ethiopia.⁷⁶

⁷² Interview with PP-1 conducted on 20 June 2022

⁷³ FGD-3. *Supra* note 27

⁷⁴ The FDRE Constitution. *Supra* note 3, Article 20(1)

⁷⁵ *ibid*

⁷⁶ Federal Courts Proclamation. *Supra* note 3, Article 32(2) similarly, Article 12 of the Draft Criminal Law Procedure and Evidence Code of Ethiopia also states that although “all criminal cases shall be heard in a public trial the proceedings shall be held in camera only with a view to preserve the right to privacy of the accused or the victim, public moral or national security”.

Thus, in cases involving sensitive issues of privacy and public morality, trials may be conducted in closed sessions. In such instances, only the judge, prosecutor, and defense attorney are present. An informant explained that, while the accused has the right to a public trial, this right can be overridden when the case involves embarrassing or immoral details, subject to the prosecutor's request.⁷⁷ Another informant stated that while IPVAW cases are adjudicated in open court, prosecutors occasionally request closed courts depending on the nature of the case, and judges generally cooperate in this regard.⁷⁸ Another informant mentioned that judges are not mandated to use closed benches for these cases, but if they involve public morality, the trial will occur in a closed setting. Conversely, cases involving sexual violence or violence against children are adjudicated using special benches.⁷⁹

The study highlights the necessity of specialized benches for IPVAW cases. Ordinary courts lack the appropriate environment, knowledge, and skills to handle these sensitive cases effectively. One informant noted that the intimidating atmosphere of ordinary courtrooms inhibits survivors from testifying fully and freely, especially if the perpetrator is present, causing significant psychological distress. He added that despite this, trials often proceed in open court, adhering to standard procedures.⁸⁰ Another informant emphasized the privacy concerns associated with open trials, where survivors are forced to reveal personal family matters publicly, potentially harming their reputation and well-being. Yet, judges often feel obligated to conduct these trials openly.⁸¹ One informant highlighted that since IPVAW cases are adjudicated in open court, survivors may lack the confidence to testify openly, fearing public judgment and societal pressure to tolerate abuse.⁸²

⁷⁷ Interview with HJ-6 conducted on 23 July 2022

⁷⁸ Interview with PP-10 conducted on 22 August 2022

⁷⁹ Interview with HJ-4 conducted on 20 July 2022

⁸⁰ Interview with HJ-10 conducted on 20 October 2022

⁸¹ PP-1. *Supra* note 48

⁸² Interview with PP-2 conducted on 20 June 2022

Another informant pointed out the challenges in providing support services, noting that there is often no psycho-social support available throughout the investigation, prosecution, and adjudication process.⁸³ A coordinator from the Social Work department at one of the courts confirmed that they do not handle IPVAW cases, as such cases follow regular procedures.⁸⁴ This was exemplified by an incident during the study when a survivor⁸⁵ in need of psycho-social support regarding her case was denied assistance by the department. According to the department's experts, they exclusively serve child survivors.

6. Conclusion

The Judiciary plays a crucial role in shaping the justice system's response to IPVAW. As the final authority in criminal matters, its decisions profoundly impact survivors, perpetrators, and their families. While Ethiopia's adversarial legal system provides important procedural safeguards to protect the rights of the accused, upholding the defendant's right to a fair trial must not come at the expense of overlooking the rights, safety, and dignity of survivors. Ensuring the fairness of criminal proceedings requires striking a delicate balance between the rights of the defense, the public interest in proper prosecution, and the protection of survivors' rights.

This article has highlighted significant challenges that undermine an effective judicial response to IPVAW cases. These include the absence of specialized handling of such cases, the imposition of minimal or inadequate sentences, and delays in reaching a decision. Moreover, despite the distinct and complex nature of IPVAW, the current legal framework does not provide the necessary procedures to protect survivors from further harm. As a result, existing procedural law lacks clear provisions that empower courts to adopt measures safeguarding the dignity, safety, and privacy of survivors throughout judicial proceedings.

⁸³ FGD-3. *Supra* note 27

⁸⁴ Interview with I-5, conducted on 17 June 2023

⁸⁵ Interview with S-32 conducted on 4 May 2023

Fear of inadequate protection may deter survivors from reporting crimes; therefore, prioritizing their safety and rights during court proceedings is essential. Enhancing the judicial response to IPVAW requires implementing targeted strategies. Such measures could include pre-trial detention of offenders, issuance of warnings, and the use of specialized benches. For instance, specialized benches can protect survivors from additional harm when they provide testimony. For specialized benches to function effectively, personnel must receive appropriate training focused on human rights and gender sensitivity. Such training should build their capacity to address gender-related issues and violence against women.

Additionally, judges and court staff should ensure that all legal and practical measures are taken during trials to prevent further trauma and mitigate intimidation. There is also a need for provisions that explicitly allow the issuance of protection orders and outline related legal remedies.

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