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Judicial Implementation of the Revised Family Code in Addis Ababa

Tassew Shiferaw Gizaw
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Judicial Implementation of the Revised Family Code in Addis Ababa

by

Tassew Shiferaw Gizaw

**A Dissertation Submitted in Partial Fulfillment
of the Requirements for the Doctor of Philosophy Degree
in Public Administration and Urban policy**

**Department of Urban Studies and Public Administration
College of Business and Public Administration**

**Old Dominion University
Norfolk, Virginia
December 2007**

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ABSTARCT

JUDICIAL IMPLEMENTATION OF THE REVISED FAMILY CODE IN ADDIS ABABA

Tassew Shiferaw Gizaw
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This study is concerned with the judicial implementation of the revised family code in Addis Ababa, Ethiopia. The revised family code pertains to the family courts of Addis Ababa which are situated at the lower level of government structure. These courts have a public mandate and are the legitimate public forums wherein to authorize the implementation of the provisions of the code. Open-ended interviews were conducted with judges, attorneys and people affiliated with gender advocacy institutions. The results show that the revised family code contains both strengths and weaknesses. The strengths include the observation that the application of the revised family code protects the rights of women to have access to an expedited divorce process without being required to present grounds for divorce i.e., no-fault divorce. On the other hand, as this provision would tend to encourage divorce, it could also be considered as one of the weaknesses of the code; since women who have been dependent upon the income of their husbands invariably face financial hardship after divorce has taken place. This is exacerbated by the fact that the code does not contain a provision which addresses issues related to alimony or post divorce maintenance.

Further, the process of property division is lengthy and places women in a disadvantageous position, as men customarily have more access and control over available resources. Feminist and modernization theories address this concern. In the

implementation process of the revised family code, family courts have been restored, but there has not been any significant change in staff placement to execute the stipulated provisions. There has not been a uniformity of judgments rendered by the courts for similar cases. This is because a particular judge may adhere strictly to the provisions of the code, while another may reinterpret the provisions of the code to take into account the interests of women and children. The advocacy campaign promoted to safeguard the rights of women by stakeholders such as the Ethiopian Women Lawyers' Association and the Addis Ababa Democratic Women's Association has created pressure that the judges would accommodate the needs of women and children in the administration of justice. This fact characterizes the implementation process of the revised family code as *co-optation*, i.e., accommodation of the interests of stakeholders to mitigate the resistance of potential adversaries.

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CHAPTER ONE

I. Introduction

1.1. Background

The family law section of the 1960 Ethiopian Civil Code was revised and promulgated in July 2000 in Addis Ababa to amend its gender biased expressions and discriminatory provisions. The Ethiopian Civil Code of 1960 was adopted from European countries (David, 1967; Krzeczunowicz, 1969; Beckstrom, 1973), and the provisions of the family law were similar in content with the traditional laws of Europe and the United States. As the traditional laws of Europe and the United States were gender biased and discriminatory (Weistman, 1985; Zanden, 1990; Coltrane, 1996; Stetson, 1996; Collins 2000; Stamps, 2002; Spain, 2003), so was the previous family law in Addis Ababa. It had gender discriminatory, vague and ambiguous provisions, and was supported by the system of patriarchy. McCann and Kim (2003) define patriarchy as follows: “We can usefully define patriarchy as a set of societal relations between men, which have a material base, and which, though hierarchical, establish or create interdependence and solidarity among men that enable them to dominate women” (p. 211). The most discriminatory and problematic provisions of the previous family law in Addis Ababa were those related to marital litigation and property division upon divorce (National Report of the Women’s Affairs Sector of the Prime Minister’s Office of Ethiopia, 2000). Discrimination stemmed from gender biased traditional practices and societal norms of assigning women to household duties which restricted them from enjoying their full rights both in and out of the domestic sphere.

The term gender refers to the cultural attributes and opportunities associated with men and women in society (Anderson and Taylor, 2006; Macionis 2006; Kornblum, 2005). Men and women have socially defined roles, which have traditionally given women less access and control over resources and less participation in decision-making as compared to men. As a result of such gender-biased conditions, the provisions of previous family law of Ethiopia were gender discriminatory. For instance, article 635 stipulated that the husband is the head of the family. Article 646 stated that the wife would work as a servant if the husband could not hire one¹.

The provisions also involved tedious court procedures for women seeking legal resolution of marital litigations. It was common for family law court hearings to involve a series of adjourned appointments. Continued adjournments had negative impacts on women and children. Since husbands are generally the breadwinners, wives and children in marital conflict would suffer from starvation and various ailments because of lack of income during the delays caused by the adjournments. The information posted on the website of the (U.S.) Library of Congress concerning the role of Ethiopian women states:

Ethiopian women traditionally have suffered sociocultural and economic discrimination and have had fewer opportunities than men for personal growth, education, and employment. Even the civil code affirmed the woman's inferior position...(Retrieved on December 21, 2006).

This condition would deprive women of the power to bargain, for instance, with their married partners and it created a disadvantageous situation for women in the court system, thus creating a situation of gender inequality.

¹ Such gender discriminatory provisions of the 1960 Civil Code of Ethiopia will be discussed later in the subsequent pages.

As gender is a socially constructed phenomenon, as opposed to the biological differences between men and women, gender inequality is the result of socio-cultural conditions of the society. Tolleso-Rinehart and Josephson (2005) elucidate that: "...social scientists began to distinguish between 'sex' and 'gender.' According to this distinction, sex is the characteristic of the biological being; gender is the socially constructed aspect of the self" (p.4). Throughout its history and present condition, Ethiopia has been a traditionally patriarchal country where women are considered dependent and inferior. As a result, men would control the public arena, and women would be relegated to the domestic sphere where they would be obliged to undertake multiple duties such as child rearing, cooking and other household chores. The following information posted on the website of the (U.S.) Library of Congress concurs:

...many observers have commented on the physical hardship that Ethiopian women experience throughout their lives. Such hardship involves carrying loads over long distances, grinding corn manually, working in the homestead, raising children, and cooking. (Retrieved on December 21, 2006).

As the society underestimates the role and contribution of women, men generally have more power than women do in the decision-making process both at the household level and in the public sphere in Ethiopia (Messeret, 2001; Medhin 2000; Pankhurst, 1992). This condition of gender inequality is overtly or covertly reflected in many places. Virtually all available material and nonmaterial opportunities favor men in that country. Women are underrepresented in public offices and they also hold lower positions in government.

For example, Tadeletch (2000) reports that the representation of women in the Ethiopian parliament is 2%. Their participation at the regional council is 5.4%, and at the lowest (local) administration level is 7.15% (p.77). Out of the 14 ministerial positions, there is only one female minister. Tadeletch, referring to the work of Mahtsente, also notes that there were 303,590 civil servants in Ethiopia, and the number of female civil servants was 86,756 (28%) in the year 2000. Out of the 86,756 female civil servants, 98.21% of them hold low paying jobs such as secretarial, clerical and custodial positions. The proportion of women who held professional positions was only 1.79%. As a result, female civil servants of Ethiopia who occupy rank and file positions would earn less than their male counterparts. "... [I]n factories, for instance, women make up 30% of the labour force, whereas their share of total salaries paid is only 21%" (National Policy on Ethiopian women, 1993, pp.12-13).

According to the Ethiopian Civil Service Commission Personnel Statistics (2004, p.xiv), out of the total 389,563 civil servants, the number of female workers was 125,939 (32.33%) in the year 2003. Similarly, out of the total of 45,514 employees of the federal government, the number of female employees was 19,046 (41.85%). Even out of the 9,545 employees who were assigned at rank and file level, or low salary group, the proportion of female employees was 25.25% (p.14). When moving from the rank and file to the higher paying job categories, the proportion of female employees declines. The lower representation of Ethiopian women in the civil service indicates that women would not earn incomes equal to their male counterparts, which would limit their power. It also indicates their low participation in the public sphere.

The Ethiopian female civil servant's educational level is also very low. As the World Bank reported on its website, (under the sub-heading, *Ethiopia: Summary Gender Profile*, retrieved on April 20, 2006), female primary school enrollment rate was 31 percent, whereas the male enrolment was 55 percent in 1996. The same source indicates that in the year 2000 female adult illiteracy rate was 67 percent, while it was 56 percent for males. Hence, the under-representation of women indicates the lack of participation of women in the public arena in that country. This, in turn, would limit their capacity to advocate for their rights and gender equality, to participate in the process of social development, and to help themselves and the society at large.

1.2. Problem Statement

The contemporary motto of gender equality, which has been advanced by the United Nations, urged many countries, including Ethiopia, to design gender sensitive policies and to revise gender biased legislation. This is evidenced by the World Conference on women held in Beijing (China) in September 1995, which made explicit references to the importance of reviewing social policies and macroeconomic objectives in a manner that would help women benefit from available resources like their male counterparts (Beneria, 2003; Hurrel and Woods, 1999).

In corollary with international agreements, such as the Beijing resolution, African countries presented national progress reports during the Sixth African Regional Conference on Women, which was held in Addis Ababa from November 22 - 26, 1999. According to the synthesis of the national progress reports, which is also posted on the UN Economic Commission for Africa website (retrieved on July 17, 2007), many

countries, including Ethiopia, have modified existing laws and proclaimed new ones to protect the rights of women. This synthesis, which is identified as:

E/ECA/ACW/RC.VI/99/3, Rev. November 1999, states:

A number of countries have promulgated new laws or modified the existing ones in order to address the issue of violence against women...In Ethiopia and Seychelles among others, the Penal and Civil Codes were revised to exclude discriminatory clauses and to add protective measures for women. They also revised the Penal Code to make provisions for specific kinds of violence including sexual harassment (p. 2).

To assess the global condition, as a continuation of regional progress, the United Nations organized the 23rd special session, which is commonly known as the General Assembly Special Session (UNGASS or Beijing +5) in New York from June 5-9, 2000². Each member state presented its national progress report with regard to the achievements made since the 4th World Conference on Women held in Beijing in 1995. It was observed that each United Nations member country was concerned with gender issues and women's rights. According to the reports of many delegations, policy directions have become gender mainstreamed and laws have been revised to promote gender equality and to concur with international conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As the United Nations posted it on its website, article 16 of CEDAW states that every state is obliged to take appropriate

² The writer was a member of the Ethiopian National Delegation concerning gender issues that took part at the United Nations General Assembly Special Session convened in New York in June 2000. He was also the National Focal Point to co-ordinate the Sixth African Regional Conference on gender issues and advancement of women, which took place at the United Nations Conference Center in Addis Ababa from November 22 to 26, 1999. The writer accomplished this task, for which Ethiopia was a host country, by representing the Women's Affairs Sector of the Prime Minister's Office of Ethiopia—the highest public office of the country.

means to eliminate discrimination that would arise out of marriage and family relations (accessed on January 22, 2006). Similarly, according to the United Nations Economic and Social Council, Commission on the Status of Women's Report of December 2004 presented to the 49th session, which was held from February 28 to March 11, 2005, member states have persistently been implementing gender sensitive policies. This report (identification number: E/CN.6/2005/2) elucidates:

Governments provided information on the major achievements in implementation over the past decade, highlighting legislative change, policy reforms and institutional and programme development and identifying remaining key gaps and challenges. The vast majority of countries noted the importance or continuing relevance of the Beijing Platform for Action and the outcome of the twenty-third special session and stated that they remained committed to their full implementation. Several Governments stressed that the review process in 2000 had accelerated national action for gender equality and the empowerment of women (p.14).

It has been anticipated that the revised family code in Addis Ababa would create an atmosphere that would mitigate gender-biased judgment. It has also been anticipated that the revised code would be part of the human rights protection movement, which would bring about narrowing the gender inequality gap and the disparities of opportunities and resources accessible to men and women in that country. The goal is not to merely have legislation on paper, but to translate legislation into practice to bring about gender equality. The revised family code was promulgated based on clearly defined statutory objectives. These are: 1) to safeguard the rights of women on an equal footing with their male counterparts, and 2) to protect the well being of children and the family. The code in its preamble states that:

WHEREAS, it has become essential to make the existing Ethiopian family law in accordance with the socio-economic development of the society and above all, with the Constitution of the country, and in particular, realizing that marriage shall be based on the free consent of the spouses, and that it is necessary to provide the legal basis which guarantees the equality of the spouses during the conclusion, duration, and dissolution of marriage; (p.1).

Hence, the intent of the revised code is to mitigate the previously discriminatory conditions of the family law, and to safeguard the rights of women pertinent to family matters. The objective of this study, therefore, is to examine how the revised provisions have been implemented in tandem with the preceding statutory objectives of the revised family code in Addis Ababa.

1.3. Purpose and Significance of the Study

The purpose of this study is to examine the judicial implementation of the revised family code in Addis Ababa, Ethiopia, within the context of policy reforms and revisions of legislation related to gender equality. The amended provisions of the revised family code require judicial implementation in order to reflect the impartiality of statutory authority. The courts have the public mandate to translate the provisions of the revised family code. In other words, the courts are the acceptable forums of legitimacy whose authority as an arbiter of final decree is acknowledged.

Sources of information on which the study is based include the experiences of family court judges, attorneys, gender advocates, and relevant case materials in the context of marital court litigations. The rationale of the study is to generate relevant

empirical data as to whether or not women have benefited from the revised family code subsequent to its promulgation and execution.

Qualitative research is the method of inquiry utilized in this study. The conceptual framework of the study is based on the theories of modernization, feminism, and implementation. The knowledge claim is based on the advocacy or emancipation perspective. Interviews and court documents have been used to collect the required data. The study focuses on the family courts in Addis Ababa.

It has been quite some time since the antiquated and gender biased provisions found in the legislation of Ethiopia were deemed to need revision and were subsequently amended. Ethiopia, as a member state of the United Nations, is compelled to adhere to the United Nations principles and conventions to safeguard the rights of its citizens. In this connection, Connell (2006) states that “[t]he principle of equal rights for women and men is now embedded in international law (e.g., in the United Nations Convention on the Elimination of Discrimination against Women (CEDAW) and in common administrative practices...” (p.837). Member states’ delegations to the Beijing World conference on gender issues in 1995 and the signatories of CEDAW have been convinced of the importance of allocating sufficient government funding for policies and programs pertinent to gender concerns (Rubin and Bartle, 2005; Momsen, 2004; Gutierrez, 2003).

Hence, as it is stipulated in the constitution of 1995 of Ethiopia, articles 34 and 35, and due to the international situation mentioned above, the government of Ethiopia was urged to revise the discriminatory provisions found in the 1960 Civil Code of the country. This study can help verify whether or not the revised family code has been implemented by the courts to establish women on an equal footing with men. The study

may also help identify and facilitate the provision of badly needed urban and social services, which could benefit prospective couples, married partners, and children distressed by court litigation. The study highlights information related to how international conventions and agreements impact the safeguarding of the rights of women in developing countries such as Ethiopia where democracy is still in its infancy and gender issues have not been historically a public concern.

1.4. Delimitation and Limitation of the Study

1.4.1. Delimitation of the Study

This study focuses on the implementation of the revised family code in Addis Ababa, the capital city of Ethiopia. Compared to the rest of the country, Addis Ababa is modernized and thus capable to provide the necessary facilities to host embassies of many countries, the United Nations specialized regional agencies, and other international organizations. It has also been named as the diplomatic capital city of Africa. The city is administered by a city council and has its own administrative autonomy. The research, as a case study, draws upon the recent situation concerning family litigations in Addis Ababa relative to the revised family code. In other words, the study focuses on the application of the revised provisions in the family courts of the city.

Apart from Addis Ababa, the rest of the regional states in Ethiopia have the mandate to develop their own independent family law according to their local conditions. The Ethiopian Parliament website (retrieved on December 13, 2006) shows that Ethiopia has nine regional states, and two city councils for the cities of Addis Ababa and Dire Dawa. This study can provide a basis for future study in other locations.

1.4.2. Limitation of the Study

Even though field observation would help follow family court cases being tried to draw illustrations concerning the processes involved in family litigations, it was not a feasible part of this study. To observe a single-family litigation can take a prolonged time perhaps more than a year, especially when it involves appellant processes to resolve a case through the decision of the highest court. Instead, the study examines ten prominent family litigation cases, which have been posted on the website of the Supreme Court of Ethiopia. These family litigation cases show judicial procedures and issues involved in family court proceedings, and they are utilized to undertake the analysis. Telephone interviewing is the major source of information for this study, which is based on the views of participants, thereby generating “grounded theory,” discussed later in the methodology section.

1.5. Definition of Terms

To maintain consistent meaning throughout the study the following terms have been so defined:

1.5.1. *Judicial implementation*: The implementation process of the revised family code to attain the statutory objectives through the execution or application of its provisions in the family courts of Addis Ababa.

1.5.2. *Statutory objectives*: The objectives of the revised family code, which are: 1) to safeguard the rights of women on an equal footing with their male counterparts, and 2) to protect the well being of children and the family.

1.5.3. *Gender*: The term that refers to social roles, which the society associates with being male or female.

1.5.4. *Gender equality*: The state of having equal access to resources, and equality before the law for both men and women.

1.5.5. *Gender inequality*: The existence of gender-based discrimination and the absence of equal access to resources, and equality before the law for both men and women.

1.5.6. *Mutual Adaptation*: The term in this study refers to a successful implementation through the modification of policy to entertain the interests of stakeholders. The description of the term also reflects upon the interaction of key policy actors relative to the attainment of the statutory objectives in the implementation process.

1.5.7. *Co-optation*: Schultz (2004) defines the term as follows: “Co-optation is a mechanism that organizations use to deal with potential adversaries in their environments” (p. 86). Thus, the operational definition of the term refers to policy reinterpretation (reinterpretation of some of the provisions of the revised code) to accommodate or to meet the interest of stakeholders, such as women, women’s associations, and others concerned. Co-optation could also serve to maintain the status-quo with little or no change.

1.5.8. *Non-implementation*: This term is adapted from McLaughlin’s concept of non-implementation explained in chapter two. The term refers to the failure of the implementation process of the revised family code, and lack of reflectivity of the intent of the policy reform—policy breakdown to attain the statutory objectives.

1.6.1. Research Question

The focus of this study is anchored on changes related to the judicial process as it affects the implementation of the revised family code in Addis Ababa. The overarching research question is: How have the provisions of the revised family code been implemented and what have been the consequences of its implementation? The research addresses the following sub-questions:

1. What features of the revised family code are generally recognized as its strengths and or its weaknesses as perceived by participants?
2. Have provisions and judicial procedures changed in handling family arbitration, divorce and property division?
3. Have changes in provisions and judicial procedures had an effect on women and children in court proceedings?
4. Have traditional values and practices had an impact on the implementation process of the revised family code?
5. How can the implementation process be described: Mutual adaptation, co-optation, or non-implementation?

CHAPTER TWO

II. Literature Review

2.1 Theoretical Framework

2.1.1. Modernization Theory

A basic interest in this study is to examine the linkage of the concept of gender equality with the movement toward modernization in developing societies, particularly in Addis Ababa, Ethiopia.

Marshall (1985) writes that modernization is a process of the diffusion of Western technology and political thought to developing nations. This process impacts the traditional structure of developing countries, including women under conditions of patriarchy and gender-ascribed chores. Indicating the importance of a universal norm for gender equality, Marshall underscores the significance of democracy, educational achievement and employment to improve the status of women in developing nations. Elaborating on this, Reyes, undated, (as posted on the website, retrieved on September 10, 2006) indicates that in the process of modernization, traditional values would be replaced by modern values which are based on safeguarding human rights and equality. According to Reyes, the ethos of modernization belongs to America and Europe and it would influence developing nations to the extent that the latter would come into contact with the former. Similarly, Inglehart and Baker (2000) contend that societies in the non-western world would be modernized at a consistent rate in which their traditional values would be assimilated through the technology of the Western World. These authors explain that modernization would bring about economic development, culture change and

convergence in gender roles, the expansion of educational opportunities and the encouragement of political participation. This would transform and update traditional values and thus promote women's rights. In societies where traditional values prevail, the status of women is not likely to change.

The World Bank Policy Research Report of 2001 indicates that economic development would bring about changes and convergence in gender roles to reduce the hardships that women traditionally encounter, and thereby act as a preservative with regard to women's rights, especially in developing nations. According to Macionis, "gender roles (sex roles) [are] attitudes and activities that a society links to each sex (p.651)." As a society undergoes modernization, economic development would lighten the household chores of women. For example, the creation of modern household equipment and processed food would enable women to undertake domestic tasks within a shorter period of time. As a result, they would have leisure time to acquire education, become economically empowered and to participate in the public sphere like their male counterparts. The main tenet is that through economic development, women might be freed from patriarchy or male domination.

Bunch and Carrilo (1990) also write that modernization and global feminism have been instruments to improve the lives of women under the auspices of the United Nations especially in developing countries. According to the writers, this "feminization" of development was promoted through the motto "the U.N. Decade for Women 1976-85," which had been adopted in 1975 in Mexico City. Inglehart and Norris (2003) indicate that the motto of the decade of women continued until 1995. The Vienna global conference, which was organized in 1993, had a theme: "Women's rights are human rights." The

agenda item of the international conference organized in Cairo in 1994 focused on “women’s empowerment and health.” Similarly, the world conference held in Beijing capitalized on the fact that women should have the fundamental liberty to enjoy human rights. Inglehart and Norris further state:

... the United Nations and European Union turned their attention increasingly toward the role of the state in reinforcing or alienating institutional barriers to women’s progress, and toward the need to establish political, social and economic rights in order to secure gender equality through legal reform and the courts (p.6).

Concomitant with this, the United Nations through its specialized agencies such as the United Nations Development fund (UNDP) and United Nations Development Fund for Women (UNIFEM) have been assisting women of developing countries to improve their lives and to safeguard their rights (Staudt, 1988; Jain, 2005).

Inglehart et al. (2002) associate the course of modernization with democratization and the increase of participation by women in the public sphere. Their study of 66 countries showed that economic development would induce cultural change and also bring about change in gender roles. Modernization erodes male supremacy and encourages democracy and gender equality. As a result, the political participation of women in public life would be higher. Inglehart et al (2002) illustrates:

A few authoritarian societies such as China have large numbers of women in parliament while Japan, Ireland, France and U.S. have high levels of democracy and relatively few women in parliament. But despite these exceptions, the overall relationship is strong... In democratic societies, women tend to be relatively well represented in parliament (P.325).

According to Inglehart et al, the increase in the participation of women in the public arena would bring about changes in gender roles discouraging male superiority, and encouraging democracy. Nonetheless, it has to be understood that the functional notion of modernization and its discourse of envisaging progress and gender equality would not prevail in a uniform manner across societies. Citing writers such as Blau (1979), Marshall indicates that feminist advocates criticize the idea that gender equality could be achieved through modernization. The contention revolves around the idea that despite educational opportunities and the increased participation of women in the labour force, women even in the developed nations are still forced to undertake low paying jobs such as clerical and occupations in the service industry.

Chinkin (1999) asserts that women still face inequality throughout the world and their participation is very low in policy and decision-making both in national and international bodies; and whatever their situation is at a national level, this would be reflected at an international level. She also states:

Politically, adult women have not yet achieved the right to vote in all countries. Only 24 women have ever been elected heads of state, although the ten women heads of state that were in office at the end of 1994 is the highest in history (p.96).

The United Nations press release of July 2005 (posted on its website and retrieved on February 10, 2006) concerning the ten years of progress achieved after the 1995 Beijing World Conference on women indicates that although significant efforts have been exerted towards gender equality, impediments against the advancement of women continued to prevail. The World Bank Policy Research Report of 2001 concurs with the preceding fact released by the United

Nations. According to the report, though there have been improvements, women in developing nations face inequalities which could affect their legal rights. This World Bank report suggests that gender disparities are higher in poor countries as compared to rich ones. As Ethiopia is a poor country, it is not an exception. According to the Ethiopian Ministry of Finance and Economic Development Report of 2002, Ethiopia relies on foreign assistance to alleviate its poverty. The report also indicates that there is an association between poverty and gender inequality in Ethiopia for which the government has designed projects to help women become self-sufficient citizens.

As an example, the report cites the Women's Development Initiative Project, which is providing economic support to deserving poor women to make them self-supportive citizens. The report also mentions that, despite the attempts made thus far to improve the right of women through changes in the family code and policy directions in public offices, gender disparity exists in Ethiopia. The report explains: "... overtime it has been observed that the progress in women's lives is not proportionate to the progress made in the policy and legal environment. This calls for expediting the socio-economic development process within the required gender sensitivity (p. viii)." In general, there has been a worldwide campaign to combat the subordination of women and gender inequality, which is a construct addressed in feminist theory.

2.1.2. Feminist Theory

According to feminist theory, gender differences lead to gender inequality, which is socially constructed on the basis of gender-biased values that sustain male dominance. Gender inequality is linked to the private and public sphere of social activity pertinent to sexual division of labour. Gender inequality and power imbalances between men and women in society are part of a pervasive ideology that perpetuates male supremacy. Men control the public arena and enjoy the rewards available such as money, social status and power. Women, as subordinates to men, are virtually relegated to the private domestic sphere with less or no power, handling undervalued jobs and roles including fulfilling the sexual desires of men.

As gender refers to social roles and behaviours, which men and women are expected to adhere to in society, feminism entails the advocacy for gender equality—equality before the law and equal access to resources for both sexes (Anderson and Taylor, 2006; Macionis, 2006; Kornblum, 2005; Ritzer and Goodman, 2004). Ritzer and Goodman (2004) explain feminist theory by asking the question “what about the women?” Women may be absent in some places, not because they are not interested or lack the capacity but because they are deliberately excluded. Notwithstanding the negative stereotypes attached to them, women play crucial roles in society. They are present in many public places, but society does not acknowledge their contribution. Their contribution is underrated and they are forced to be subordinate to men. There are also two questions, the first of which is: “And what about the women?” It is related to the description of the social world. The second question is: “Why is all this as it is?” It entails the explanation of the social world. Feminists’ third question is: “How can we

change and improve the social world to make it a more just place for women and for all people?” It suggests the need for intervention. Ritzer and Goodman also note the fourth feminist question:

“And what about the differences among women?” The answer to this question lead to a general conclusion that the invisibility, inequality, and role differences in relation to men which generally characterize women’s lives are in their particularities profoundly affected by a woman’s social location—that is, by her class, race, age, affectional preference, marital status, religion, ethnicity, and global location (p.438).

The authors present a variety of themes within feminist theory. The first theme emphasizes gender differences, and indicates that men and women have different positions and experiences. As a result, men are more privileged to enjoy power, social status and material resources than women do, and hence most situations make women unequal to that of men. The second one is referred to as cultural feminism. It is concerned with issues related to the differences of men and women as a result of patriarchy. Patriarchy signifies the view that women are inferior to men. Cultural feminism refutes this claim. Ritzer and Goodman note:

In its broadest implications for social change, cultural feminism suggests that women’s ways of being and knowing may be a healthier template for producing a just society than are the traditional preferences of an andocentric culture for male ways of knowing and being (p. 444).

The third variant of feminist theory is about institutional roles. It indicates that gender differences are the result of different roles played by men and women in different institutions. The differences are related to the division of labor. That is, women play

certain functions, for instance, as wife and mother, who handle household tasks. This would limit their role to be confined within the family and domestic sphere, which impedes their experience to be able to participate in the public arena as that of their male counterparts.

The next premise focuses on certain themes, which underlie inequality. The first theme stresses the unequal situation of men and women. That is, women have less access to resources, and they have a lower social status. The second theme of inequality, disregarding the biological difference that exists between the two sexes as a reason for their differences, associates the issue of inequality with the situation that prevails in the organization of society. The third theme emphasizes that although there are human differences in certain potentials and traits, there are no glaring variations that differentiate men and women. The fourth theme entails that both men and women seek out egalitarian society and to hold better status in the social structure. Hence, advocates against gender inequality are optimists in that they view that the unequal world can be changed to an egalitarian society.

Gender inequality, as presented by liberal feminists, is linked to the private and the public sphere of social activity pertinent to sexual division of labor. Men control the public arena, whereas women are relegated to the private sphere. Men gain rewards such as money, social status and power available in the public sphere. On the other hand, women handle undervalued roles such as housekeeping, child rearing and fulfilling the sexual desires of men. Liberal feminist theorists tend to relate the discriminatory practices against women with racism and sexism. Through the socialization process,

from childhood to adulthood, females are considered dependent and constrained by the requirements of specified gender roles.

Ritzer and Goodman also indicate that gender oppression theorists are interested in the power relationship that exists between men and women according to the stratification and their location in society. Men have the desire to control, subjugate and oppress women, which involves domination. Domination refers to the relationship in which the subordinate (women) is the sole instrument to fulfill the will of the dominant; i.e. men. Another variant of gender oppression feminist theory is called radical feminism. It posits that women are devalued globally, and women, as a result of patriarchy, are under violent oppression everywhere.

Notwithstanding these peculiar features of feminist variants, feminism, as a school of thought, rejects gender inequality and promotes the general idea and need for equality between men and women—equality before the law and equal access to resources for both of the sexes. Akin to this, Macionis (2005) notes:

Feminism views the personal experiences of women and men through the lens of gender. How we think of ourselves (gender identity), how we act (gender roles), and our sex's social standing (gender stratification) are all rooted in the oppression of society (p. 345).

Following the general idea of feminism, Ritzer and Goodman paraphrase the idea of Bernard, which shows that inequality is exhibited in the institution of marriage. According to the latter, the role of husband is empowered within marriage. This condition helps him to consolidate power out of the domestic sphere. It makes the husband

powerful, authoritative and independent. In contrast, it forces the wife to be dependent, or to be concerned just about household chores. Ritzer and Goodman state:

Institutionally, marriage empowers the role of husband with authority and with the freedom, indeed, the obligation, to move beyond setting; it meshes the idea of male authority with sexual prowess and male power; and it mandates that wives be complaint, dependent, self-emptying, and essentially centred on activities and chores of the isolated domestic household (p. 447).

Bernard posits that two marriages exist in the institution of marriage. The first is the marriage of the husband in which the societal norms approve his authority and independence. The second is the marriage of the wife, in which she is culturally forced to adhere to domesticity and provide sexual service to her husband. So, marriage is positive for men and negative for women resulting in inequality in the family, which would also be reflected in the society at large. To ameliorate the inequality within the family and gender inequality in general, feminists have been advocating the situation to be improved through policy and legislative reform. As has been discussed in the previous section, a lot of countries expressed their commitment, and revised and implemented policies to safeguard women's rights unreservedly. The government of Ethiopia has also revised discriminatory family provisions, and implemented the revised family code in Addis Ababa since July 2000.

2.1.3. Implementation Theory

Edwards III (1980) points out that implementation scholarship holds a significant place in the field of public administration and policy. The prominent classical authors of

implementation, Pressman and Wildavsky³ (1984) note that implementation is the succeeding accomplishment of policy. These authors state that: “A verb like ‘implement’ must have an object like ‘policy’ (p.xxi). Several writers (for instance, Anderson, 1979; Dunn, 1981; Hajer, 2003; Dye, 2002; Parsons, 1995) note that public policy is a guideline through which a government would realize its intent. Simply put, public policy is what a government prefers to accomplish; and implementation is about the execution of government policies and programs. Shafritz (2004) defines implementation as:

The process of putting a government program into effect; it is the total process of translating a legal mandate, whether an executive order or an enacted statute, into appropriate program directives and structures that provide services or create goods. Implementation, the doing part of public administration, is an inherently political process (p.150).

According to Sabatier and Mazmanian (1980), implementation is pertinent to a statute, which facilitates carrying out a basic policy decision. The policy decision would help identify problems to be addressed, set forth objectives to be attained, and structure the implementation process. Several writers, for instance, O’Toole (1984); Hjern (1982); Hanf (1982); Calista (1994); Matland (1995); Lane (2000); Hill and Hupe (2002); Barret (2004); O’Toole (2004); Long and Franklin (2004); Schofield (2005), and Stillman II (2005) indicate that there are basically two ways of approaching the study of implementation. They are known as top-down and bottom-up models. According to Calista (1994), the top-down model presupposes that implementation stems from statutes

³ As to how the pioneering writing on implementation came into being, Wildavsky (1979) states that: “When Jeff Pressman told me that a program designed to create minority employment there was credited with stopping riots, I asked him to investigate...As simple as the project appeared, it had run into numerous detours, delays, and blind alleys. To discover why something that seemed simple actually was so convoluted, we wrote a book on *Implementation...*” (p.4).

or mandates, which would clearly be delineated. This model presumes a normative idea, which signifies that statutes would incorporate policy intentions. As a matter of fact, the latter precedes implementation.

The top-down model entails six assumptions about the process of implementation. The first assumption indicates that effective implementation would depend upon the definitiveness of a statute and how it would structure implementation. It entails a causal theory for defining how policy intentions would affect the capacity of a law to enhance implementation. The second assumption is about the causal theory being explicit and the legislation facilitating proper jurisdiction to sufficiently avail resources and tools necessary to act on the underlying causes of a policy. The third assumption makes legal constraints important for client groups and implementers to comply with set procedures and to prevent them from resetting other priorities. Another point is that the legal environment should be in favour of the implementation endeavour. The fourth assumption is about the behaviour of implementers. Despite their skills and commitment, implementers can act in their own self-interests. Then comes the importance of giving incentives to implementers to obtain their cooperation. The sixth assumption indicates that socio-economic changes would affect implementation. Likewise, Mazmanian and Sabatier (1981) also assert that the tractability of the problem, a statute's capacity to structure implementation and variables, which have no statutory basis, would determine successful implementation. Essentially, the top-down perspective emphasizes implementation variables to be controlled at the central level.

Calista discusses the bottom-up model. This, unlike the top-down model, emphasizes the importance of negotiation over policy intentions through bottom-up

participation. Since the implementation of policy affects people at the micro level, it would be important to encourage the participation of target groups. Calista (1994) makes mention of three findings in relation to bottom-up perspective and he notes:

(1) the domination of bureaucratic influence over policy in the distributional context ...; (2) the validation of multi-organizational relationships that transform intentions into outcomes ...; and (3) the contribution of implementation bargaining to create desirable intention ... (p.134).

According to the proponents of the bottom-up model, people at the macro-implementation level design public plans, and those at the micro-implementation level should be given the liberty to react to those plans and to make and implement their own programs. In other words, for successful implementation local level participation is imperative. Planners at the macro level would be able to fairly and indirectly manipulate factors, which would exist at a local level. Referring to the works of Porter (1976) and Berman (1978), O'Toole (1993) indicates that proponents of the bottom-up approach affirm that local forces would have a dominant role over central authorities for translating policy intentions into practice.

From the bottom up perspective, McLaughlin (1976) posits that the concept of implementation is one of mutual adaptation. McLaughlin is concerned with willingness or lack of willingness of implementers to welcome policy change. She explains that in the implementation process, "the amount of interest, commitment, and support evidenced by the principal actors had a major influence on the prospects for success" (p.170).

According to McLaughlin, policy makers and implementers interact in three different conditions. These are: mutual adaptation, co-optation and non-implementation. Mutual

adaptation delineates a successful implementation of a policy. It involves the modification of policy and alterations of institutional arrangements and staff while implementation meets policy desires. Co-optation entails accepting policy without changing personnel or altering institutional arrangements. Implementation with co-optation would engross the modification of policy strategies to accommodate traditional practices, which would be replaced by innovation. This would help avoid possible opposition to the innovation. McLaughlin explains that non-implementation is where a policy would break down during implementation or for which attention would not be given by policy actors. Nakamura and Smallwood (1980) indicate that McLaughlin's concept emphasizes the idea that policy implementers play a very important role in the process of policy, and they note:

Under conditions of "mutual adaptation" they [implementers] can be influenced to accept, and cooperate in, program implementation. Under other circumstances, however, they may either "take the money or run" (co-optation) or resist to a point at which the entire implementation process breaks down (p.15).

Hence, McLaughlin's concept emphasizes the fact that the role of policy implementers is crucial.

In light of the foregoing theoretical framework, the writer has investigated whether or not the judicial implementation of the revised family code has safeguarded the rights of women on an equal footing with men, as based on mutual adaptation or co-optation; or if some form of non-implementation has taken place; i.e. whether or not there has been a failure for the code to be implemented as intended to safeguard the rights of women.

2.2. Gender Inequality and Traditional Family Laws

The subordination of women and inequality between women and men has been reflected in family and marriage laws, which depict marriage and the family as highly interrelated socio-legal institutions. They are social since they do not merely stand for the husband-wife relationship. Neither do they solely reflect the relationship of family members. That is, marriage and family are institutions that exist within the larger society, both of which influence each other. Brook (2000) asserts that marriage has a political nature since it is a matter of government because public policies and legislation regulate and govern conjugality. In this connection, Jackson (1997) notes:

Marriage ...is regarded as the most intimate and private of all relationships, but the fact that it is controlled by the state indicates that it is not just a personal relationship: it is of a wider social and political significance. The state does not merely regulate family life; it helps to constitute it by defining what counts as family (p. 339).

Several writers, for instance, Coltrane (1996); Stetson (1985); Weitzman (1985); Renzetti (1995) note that marriage is a legal contract which involves not only rights and privileges, but also duties and responsibilities enjoyed and discharged by the concerned parties. Leach in Barnard (1994) argues that marriage refers to “a bundle of rights”. He states:

In any specific society these rights may include: legal fatherhood, legal motherhood, a monopoly of sexual access between married partners, rights to domestic services and other forms of labour, rights over property accruing to one's spouse, rights to a joint fund of property for the benefit of the children of the marriage, and recognized relations of affinity such as that between brothers-in-law (p. 798).

Leach notes the application of these rights may differ from society to society. Basically, marriage defines the relationship of married partners, their duties and responsibilities with regard to their children and themselves depending on the societal norms of a particular society.

To show the development of family law, Coltrane (1996) asserts that the American system of law was written on the basis of the English system, and the latter based on the legal traditions of the Roman Empire. The term family was derived from the Latin having another meaning than we often imagine as consanguine or kinship relations. It rather signifies the meaning of household property. He states:

... the ancient Romans used *familia* to refer to household property -the fields, house, money, and slaves owned by a man. The Latin word *famulus* means "servant." In Rome, the *plebian* form of marriage consisted of a man buying his wife, and she became recognized by the law as part of his property, his *familia* (p.36).

Coltrane also relates this to the legal system of Western societies. The fact that the head of a household is the husband in defining the family and the condition of laws considering women as inferior to men confirms the adoption of the original conception of the family. The custom of naming a wife after her husband's name and a father "giving" his daughter in a marriage ceremony reflects this inequality. Robinson (1988) associates this custom with the patriarchal nature of the Roman society where the agnatic family (*paterfamilias*) was dominant. That is, the male line was used for the transmission of family and thereby dictated the name of a senior male ascendant to be a surname for his descendants.

Coltrane says that the custom of naming a wife after her husband's name shows the assumption of the court considering the needs of the latter as that of the family. In the U.S. Supreme Court in 1906, judges argued that wives should not be permitted to sue their husbands for battering offenses, as it would affect the "harmony" of the marriage. He asserts:

As late as 1850, marriage laws in almost every American State recognized a husband's right to physically punish his wife, though the courts generally discourage beatings. One vestige of these laws is the so called "rule of thumb" that allowed the husband to beat his wife if she did not fulfill her wifely duties, provided he used a rod or branch no thicker than his thumb (p.36).

Even though contemporary laws do not approve the offense, there are still some American states that deny wives the right to sue their husband for rape [marital rape]. The reasoning is that it is considered a wifely duty for a woman to please her husband with sex to bear and rear children. Such ideas were part of the English and European traditional law or *common law marriage*, which stipulates the condition that wives, should serve their husbands. Garner (2004) defines the *common-law marriage* as:

A marriage that takes legal effect, without license or ceremony, when two people capable of marrying live together as husband and wife, intend to be married and hold themselves out to others as a married couple. The common-law marriage traces its roots to the English ecclesiastical courts, which until 1753 recognized a kind of informal marriage known as *sponsalia per verba de prasenti*, which was entered into without ceremony (p.992)."

Coltrane notes four traditional provisions of marriage in America:

1. The husband is the head and master of the household
2. The husband is responsible for financial support
3. The wife is responsible for domestic services
4. The wife is responsible for bearing and raising children. (p.39).

He further argues that we should not regard such traditional provisions as archaic or distant past phenomena. Wives, including their possessions, were considered the property of their husbands up until the 1970s in liberal states of America. Zanden (1990) also writes that until 1930 in Maryland, a man could divorce his wife and sue her for her pre-marital sexual experience. Nowadays, according to Coltrane, though some states still deny wives the right to own property or to sign contracts, many marriage laws serve both partners almost to an equal extent.

Before 1957 (under the common law), a woman was legally considered to be subject to her husband's authority in England (Stetson 1985; Foster, 1986). She was considered as his child and property. The husband had the right to restrain his wife if she left him, and the law could force her to return. A wife was obliged to be chaste, while adultery committed by a husband was regarded as normal practice. If his wife committed adultery, she could be penalized and he also had the right to sue her lover claiming compensation as though he possessed damaged property (sexual property). According to Stetson, a wife was neither entitled to property ownership nor had she the right to use it. She was also denied the right of child custody. It was her husband who had to take responsibility for her acts and wrongs including liabilities. Similarly, common law did not permit civil divorce since religious courts treated family matters. The court would allow divorce when a husband became cruel to his wife and when she committed

adultery. The couple was not allowed to remarry; and thus called a divorce “from bed to board.” Legally, it is referred to as separation.

As to the causes for divorce in the Roman Empire, Robinson (1998) explains that there was no tradition for making grounds for divorce before the introduction of Christianity in the Empire. According to the imperial Constitution of the Empire, causes of marital conflict such as adultery, sorcery and procuring could be sufficient grounds for divorce. To indicate how the Constitution was gender biased Robinson states:

It is our pleasure that no woman, on account of her own depraved desires, shall be permitted to send a notice of divorce to her husband on tramped up grounds, as, for instance, that he is a drunkard or a gambler or a philanderer nor indeed shall a husband be permitted to divorce his wife on every sort of pretext. But when a woman sends a notice of divorce, the following criminal charges only shall be investigated, that is, if she should prove that her husband is a homicide [a murderer], a sorcerer, or a destroyer of tombs, so that the wife may thus earn commendation and at length recover her entire dowry. For if she should send a notice of divorce to her husband's home and, as punishment for her supreme self-confidence, she shall be deported to an island. (p.49).

Foster (1985:28) notes that, under the common law, a woman could not testify against her husband no matter what distressing complaint she might have had. It was her husband who had the right to claim for her injury including the services he was deprived of due to the harm. In the contemporary conception, under common law, a wife was treated almost as a slave. Referring to Blackstone, Foster says that the notion of considering a husband and wife as one body deprived the legal rights of the wife implying that her husband had the authority to incorporate her existence. This is “....

Called by French Law a *feme covert*, or under the protection of her husband, her baron or lord, and her condition during marriage is one of *coverture*” (p. 29).

Weitzman (1985) notes that after a 1970's California statute and new legislation that the Western world began to change family law provisions. As opposed to the traditional law, women started to enjoy “equal” rights with men. The new legislation heralded that a woman could file for divorce without the consent of her husband. It also laid the foundation that alimony and marital property related issues should be handled in favour of both of the spouses. “The new law permitted either party to divorce when irreconcilable differences caused the breakdown of their marriage. With this seemingly simple move, California pioneered sweeping reforms that quickly spread to other states” (Weitzman, 1985: p.10). Weitzman's explanation correlates with that of Stetson's discussion of law reform in England. In the family law of England, changes began to be introduced in the 19th century. The idea that marriage is a shared relationship, rather than a separate relationship became part of policy issues during the 1970's. Stetson also indicates that there was much advocacy and lobbying work by gender activists until concerned authorities stood in favour of gender sensitive legislation, and she states:

Through the decades of agitation for reform, feminists have used a variety of tactics and resources to influence Parliament. Prominent women have worked through personal friendship and in some cases family relationships to persuade top government officials. Single-issue feminist interest groups have concentrated their efforts with petitions, deputations, and private member bills. Large women's rights organizations have campaigned to improve women's legal rights, status, and opportunities (p.12).

Stetson (1985) states that recently marriage has been recognized as a common experience erasing the idea of gender-biased vestiges from family law. Binchy (1976)

indicates that the family law of 1976 introduced reforms in Ireland on gender-neutrality. For instance, the matter related to maintenance obligations, which would include household property, earnings, and the exclusion of a violent spouse from the family home reflected gender-neutral expression. According to Dewar (1998), the 1975 Australian Family Law reform also introduced gender-neutral expression concerning parental rights over the custody of children upon divorce.

Vogel (1998), and Jorgensen and Bird (1997) associate the need for timely marriage laws with the changing trends of women's participation in the labor force, opportunities of education and political pressure. Their participation in the labor force and the benefits of education have enabled women to be empowered economically and thus to fight for their rights. Lenski (1982) relates the increasing participation of women in the labor force with the increasing needs of industrialized societies. That is, the expansion of public and business establishments to meet the ever-increasing demands gave opportunities for women to get occupational training. This in turn helped them to be absorbed in the labour force—a phenomenon that gave impetus for married women to play other roles outside the household similar to those of their husbands. Referring to the works of Breach and Bielby, Sweeney (2002) states that: “Perhaps not surprisingly, gender role attitudes in the United States also have changed since the 1960s, with an increasing proportion of the population holding egalitarian sex role attitudes” (p.134). In line with the preceding points, Nock (2000) discusses the result of a national survey conducted in 1996 concerning the attitude of 1354 adult Americans regarding the need for both husband and wife to contribute to a household budget. About two-thirds (67.7%)

of the participants agreed that both parties should be obliged to do so. Such gender norms may have a direct bearing for enacting timely legislation.

Similarly, Spain (2003) also notes family law guidelines have been changed in the United States to safeguard the rights of mothers and children, particularly to mitigate past legal practices such as recognizing women as the dependent and weaker sex, and children as property of their fathers. With regard to family matters, the legislatures of some states, including Virginia, codified gender neutrality into statutes. As a result, mothers have now the right to defend themselves and to decide on issues concerning the welfare of their children, especially upon divorce. Likewise, Stamps (2002) indicates that currently all states in America have gender-neutral child custody provisions. Nonetheless, she argues that as mothers are the principal caretakers, child custody preference should be given to them. She affirms:

...state judges in Alabama, Louisiana, Mississippi, and Tennessee were surveyed by mail with regard to their beliefs dealing with issues to maternal preference in child custody decisions.... Usable data was provided by 149 judges. The result of the study showed that the judges exhibited continuing indications of maternal preference (p.1).

Collins (2000) argues that legislation concerning child custody should not be gender-neutral, because women are already the primary legal caretakers of their children. It would also impose no obligation on men to take responsibilities for supporting their illegitimate children. According to the information presented above, these days there is no subjugation principle in America, which would put women under the control of men.

2.3. The Ethiopian Condition

2.3.1 The Development of Family Law in Ethiopia

In Ethiopia, the provisions found in the Civil Code of 1960 were apparently similar in content with those traditional laws of the United States and Europe described above with the exception of the custom which dictates a woman to take the name of her husband. This is attributed to the fact that the Civil Code of Ethiopia was adopted from European countries and proclaimed during the reign of Emperor Haile Selassie I, who had strong political attachment with the Western world, especially with that of England and the United States for more than three decades.

The development of the family law or Civil Code of Ethiopia was associated with the idea of modernization and change promoted within the country, particularly in Addis Ababa. According to Zewde (2001), Addis Ababa became the capital of the nation around 1892 as settled life became possible instead of the preceding era of constant campaigning and movement of Ethiopian emperors. The establishment of Emperor Menilek's palace encouraged the formation of permanent settlement, which formed the basis for the emergence of the town and urban life (Assen, 1987; Zewde, 2001). The construction of permanent residences by the natives and the advent and gradual settlement of foreigners began to speed the rise in the town's population. In addition to the victory at the battle of Adwa, which caused the influx of foreign nationals and natives, the famine that occurred between 1889 and 1892 resulted in high immigration, which ultimately led to an increase in the city's population. Persistent immigration and the demand for urban facilities gave rise to the new era of modernization necessitating the establishment of municipal administration around 1909. Emperor Menilek's efforts at

modernizing the country have been documented in several places (Pankhurst, R., 1967; Marcus 2002). The first modern school, hospital, telecommunications, and other services were introduced into the country during this early history of Addis Ababa. Zewde writes that the introduction of modern education contributed to the development of ideas for change with some of those who had benefited from the limited educational opportunity, advocating several reforms. He states:

The reforms they recommend included the introduction of fixed tax; religious freedom; updating the traditional code, the *Fetha Nagast* (the Law of Kings); rationalization of Amharic alphabet, which has about 300 characters based on seven forms to which diacritic marks are added; institution of centralized and uniform customs administration; and military and currency reforms (p.110).

Zewde also indicates that intellectuals wished to transform the country, taking Japan as their model, since it had a similar backward feudal history, but which was able to transform itself into an industrialized nation within a short period of time. The thinking was that if Ethiopia could introduce a series of changes similar to those undertaken in Japan, it could achieve the same results. Apparently, some of their suggestions must have been heeded by those in power though not with the speed they would have liked. The 1931 constitution of Ethiopia, which was drafted by one of these intellectuals, seems to have been inspired and developed on the basis of the 1889 Japanese Constitution. In the context of this foreign European influence, Beckstrom (1973) also indicates that codes such as the penal, civil, commercial, and marine codes were enacted in the 1950's and 60's in Ethiopia. Capitalizing on the wish for modernism, Beckstrom states that: "Those responsible for the new codes who have recorded their views, however, were professedly

most concerned with giving Ethiopia a set of laws that would serve to draw the country into the modern world” (p. 560).

Hence, the Civil Code of 1960 was the result of the modernization process that had been initiated by Emperor Menilek and further developed by Emperor Haile Sellassie after him. The Code came about by declaring, *inter alia*, that conjugal matters were to be treated according to the categorically identified provisions, and civil marriage was to be the legal marriage performed in the Municipality marking the accession of urban services relative to family matters in Addis Ababa. The principal drafter of the civil code, David (1967) notes that until Emperor Menilek II came to the power, the country was not able to live under the proper law deemed necessary for a modern nation. Before the reign of

Before the reign of Emperor Menilek, the country was under customary law, which was based on community cohesion and principle of equity to maintain peace and harmony. As local chiefs or notables carried out this customary system, it would not be possible to escape arbitrary decisions and the failure to enforce strict law. David, in fact, points out the existence of the traditional law (*Fetha Nagast*), which was not popular outside of the church influence. According to Krzeczunowicz (1967), as this church law was written in ancient Ethiopian language (*Gheez*), which was only popular in the Ethiopian Orthodox Church, it would not be easy for ordinary people or even for lower level clergy to comprehend it as a “law.”

Beckstrom indicates that the drafters of the Civil Code incorporated certain customary practices related to some sensitive issues concerning marriage and divorce. For instance, the traditional marital conflict resolution mechanism became part of the modern code in a modified form to reconcile marital conflict. Further, the categorization

of “serious” and “non-serious” cause for divorce is an importation from the West. It would delimit family arbitrators to reconcile marital disputes caused by “non-serious” factors for divorce according to appropriate provisions of the code. It is, therefore, clear that “...the internal structure of the codes generally follows that of European civil and common law models” (p.562). In other words, the European family provisions were transplanted to Ethiopian conditions through the motto of modernization advanced by Emperor Haile Selassie, who venerated and expanded Emperor Menilik’s modernization agenda. In line with this, Krzczunowicz (1967) quotes the following statement from one of the speeches of Emperor Haile Selasie as follows:

The Civil Code has been promulgated by Us at a time when the progress achieved by Ethiopia requires the modernization of the legal framework of Our Empire’s social structure so as to keep pace with changing circumstances of the world today... (p.146).

Hence, the civil code was adopted from western traditional family laws with all gender biases that still prevail in Ethiopia.

2.3.2. The Need for a Revised Family Law

As time passed, the civil code, which had been acclaimed as a product of modernization in the 1960s, was denounced as antiquated and discriminatory by gender advocates in the mid 1990s. Since the civil code was gender biased, the provisions of the previous family law would negatively affect gender relations, and thus revisions were deemed necessary. The former Minister in Charge of Women’s Affairs of Ethiopia⁴

⁴ The investigator interviewed the former Minister in Charge of Women’s Affairs over the telephone on April 11, 2006.

explained that the idea of the revision of the discriminatory provisions came about when the Women's Affairs Sector⁵ was established in 1991. The establishment of the sector in the Prime Minister's Office (the highest office of the country) heralded an era in which a mandated government body became viable to oversee gender issues for the first time in the history of Ethiopia.

Hired as an expert in October 1991 and appointed as a Minister from June 1992 to May 2001, the former Minister in Charge of Women's Affairs recalled that the revision of the family law provisions of the civil code was one of the top priorities of her office; particularly because the discriminatory provisions were the primary tools for the violation of women's rights in the country. Her office received information regarding how women were suffering from severe violence, such as being battered and forced to flee the abuse perpetrated against them by their husbands. Family courts in Ethiopia, especially in Addis Ababa, were places that dealt with the plight of women. Since husbands were the primary breadwinners and would customarily own most property, wives suffered from financial hardship. In particular, those in marital conflict might not even obtain food for themselves to eat and to feed their children. Very essential decisions, such as those related to household budget and child custody cases were resolved with a much-delayed process. Her office was thus motivated to devise a means to deter this situation and to speed up the promulgation of a new family code.

However, due to the fact that the government was concerned first with revising the previous patriarchal and monarchical constitution, she and her colleagues had to be patient until the country's constitution was revised. She said that the Women's Affairs

⁵ The Women's Affairs Sector of the Prime Minister's Office has been restructured, and it has become the Ministry of Women's Affairs since late 2005.

Sector had played a significant role for the rights of women to be enshrined in the revised constitution of the country. With the promulgation of the revised constitution in 1995, the vision to revise the discriminatory family provisions of the 1960 civil code gained momentum. Yet there was another problem, which delayed the realization of the vision of her office. There was an argument advanced by some senior government officials that enacting a progressive family law would be impractical and also anarchical, as most people live in the rural areas. As gender advocacy work intensified both locally and internationally, the Prime Minister's Office decided that each regional state could revise its family code according to the societal norms of each region and local conditions. After this decision, it was possible to begin the revision process in 1998.

The former Minister in Charge of Women's Affairs also explained that a committee, which could coordinate the revision work was established comprising representatives from concerned government organizations. Her office was also represented to serve in this committee. She noted after representing Ethiopia at the World Conference held in Beijing, China in 1995, gender advocacy work was highly intensified at the international level, which caught the attention of United Nations member countries. She reiterated that she had consistent contact with the United Nations Division for the Advancement of Women to inform her Government what would be required by Ethiopia to adhere to international resolutions and conventions related to gender issues. Ethiopia as a member state and as a signatory of international treaties has also been duty-bound to revise discriminatory provisions and clauses of discriminatory laws such as that of the family law according to ratified treaties. International treaties accepted by Ethiopia include the Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW). This treaty retrieved from the U.N. website on April 12, 2006 with regard to marriage and family relations article 16 reads as follows:

States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: a) The same right to enter into marriage; b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; c) The same rights and responsibilities during marriage and its dissolution;...

Gender biased and in contravention to international treaties quoted above, the civil code of 1960 regarded the wife as subordinate to her husband. For instance, it was even codified that a wife had the obligation to serve as a maid when the husband could not hire one. "Where the husband is not in a position to provide his wife with servants, she is bound to attend to the household duties herself (Article 646)". The provisions of the civil code categorically state that the husband is superior to his wife. Since he is the head of the family, she, as a subordinate, ought to obey his orders. In this connection, the civil code states: "Head of the Family. (1) The husband is the head of the family. (2) Unless otherwise expressly provided by this Code, the wife owes him obedience in all lawful things, which he orders" (Article 635). For instance, the husband has a lawful right to order his wife to have sexual intercourse against her consent. Article 637(1) gives the husband the right to guide the moral and material aspect of the household including child upbringing. Article 641 (1) stipulates that the husband has the right to choose a place of residence; and it would be difficult for the wife to complain. As a reflection of the

subordinate position of the wife, article 644 shows that the husband has the right to protect his wife, to watch over her relations, and to guide her conduct.

Husband to give protection: (1) The husband owes protection to his wife. (2) He may watch over her relations and guide her in her conduct, provided this is in the interest of the household, without being arbitrary and without vexatious or other abuses (Art. 644).

Regarding property related issues, according to article 656 (1), the husband has the right to administer common property of the family. Surprisingly, according to article 34(1), a child takes the name chosen by his father. This article also states that the wife may choose a second name for her child. This is meaningless, because in Ethiopia a person has one name. In contrast, the current code in line with article 35 of the Constitution, states that married partners have equal rights with regard to their private, social and property relationship.

According to the report of the Women's Affair Sector of the Prime Minister's Office, which was presented to the United Nations General Assembly Special Session in July 2000, a number of successive workshops were organized to collect public opinions generated from discussions, which involved representatives of governmental and non-governmental organizations, religious institutions, gender advocates, professional associations, women groups and the like. The discussions were based on topics selected from the draft code, which was prepared by the Ministry of Justice. This report states that:

The main areas of focus during the revision and eventual amendment of the family law were the discriminatory provisions in relation to marriage and family relations such as marriageable age, conditions for concluding marriage, relationship of spouses and their roles in home management as well as choosing place of residence, ownership of property, upbringing of children, divorce, family arbitration, and the like (p.43).

2.3.3. Major Issues Discussed in the Revision of the Family Code

The investigator would like to note the major issues addressed in these successive workshops based on the progress report presented by the Justice and Legal Institute of the Prime Minister's Office during the fifth workshop, which was organized from June 28 to July 2, 1999 in Addis Ababa. As the discussions were aimed at collecting public opinions of different cross-sections of the society, it was not meant that whatever was suggested would be part of the law. Legislators identified for this task by the Justice and Legal Institute of the Prime Minister's Office eventually made the final decision by weighing the advantages and disadvantages of opinions.

The first workshop was held at the Debrezeit Management Institute (at the outskirts of Addis Ababa). The main discussion issues were concerned with marital conflict resolution and divorce, betrothal, irregular union and its effects. The workshop participants discussed the problem of marital conflict resolution and divorce proceedings. It was particularly noted that the tribunal of family arbitrators or adjudicators who were legally entrusted to handle marital conflict and divorce proceedings, would usually favor men, and put women in disadvantaged positions. The participants in the workshop also suggested that since marital disputes arise because of questions related to individual's rights and since they would be personal matters, the court should fully handle marital

conflict and divorce proceedings by avoiding the interference of family arbitrators. There were two views concerning betrothal, which entails an engagement arranged by parents for children who had not reached the age of puberty. The first one supported betrothal to be part of the new code, because it has been part of the Ethiopian culture and it would not cause any harm. The contending view, however, vehemently rejected the idea of betrothal because it would be against the will of the would-be spouses. Besides, it would be against article 34, number 2 of the constitution of the country, which stipulates that: "Marriage shall be entered into only with the free and full consent of the intending spouses" (p.92).

In relation to this, Redae (undated), by referring to article 560, points out that the previous law codified that betrothal could be made much earlier than the actual marriage performance, if the parents of the future spouses wished. The code categorically described this situation: "A contract of betrothal is a contract whereby two members of two families agree that a marriage shall take place between two persons, the fiancé and the fiancée, belonging to these two families" (Art. 560, 1). This condition would jeopardize the right of the persons, as children and prospective adults, who would be forced to accept an arranged marriage. In the revised code betrothal is codified as a personal matter. Concerning marriageable age, the previous law discriminatorily declared that the minimum age for marriage would be 18 for men and 15 for women. Under the current law, the minimum age for both sexes is limited to 18 years of age. The justification to upgrade the minimum marriageable age of 15 to 18 years of age for women is related to the concern of biological maturity of women and the preservation of their right to decide for themselves an appropriate age for marriage.

Concerning irregular union (cohabitation) wherein a man and a woman live together without having a marriage contract, there were two contending views in the first workshop. The first one stressed that legalizing irregular unions would debase the value of conventional marriage. On the other hand, the opposing view argued that irregular unions should be acknowledged as they emerged with urban life and with the increase in costs of marriage celebration. Poor women, for the sake of economic security would join this union. Since it would not be against the constitution, it should get an appropriate place in the revised code as a way to safeguard the rights of those women in this relationship and for the sake of children resulting from this union.

It has been observed that many couples had inadequate information as to the legal nature of marriage, such as considering irregular union or cohabitation as a marriage before they divulged their marital dispute to the court. In Ethiopia, it is just a custom to regard a union of a man and a woman with a number of children to be considered as a married couple. However, in the eyes of the law, such a custom may not be regarded as a legal (customary) form of marriage, rather as an irregular union, or cohabitation, even if it lasted for a protracted span of time; say for 20 years. The actual problem of misunderstanding would come forth when dispute arose between partners and when one of them, usually the woman who was economically dependent on her husband, would sue in court. The court might reject the accusation, since it could only acknowledge those unions recognized as legal marriages. A union would be considered as a marriage when it could be authenticated by a document, otherwise it would be publicly known as a common law marriage (customary marriage). Damte (undated) notes that under the previous law, the court required four persons as witnesses to decide on a dispute that

would arise over the existence of a marriage. According to his explanation (posted on the website of the Supreme Court of Ethiopia), it would be difficult to identify between irregular union and customary marriage. He states:

Remember how much it is difficult, especially for non-lawyers, to differentiate between marriage and irregular union in the process of proving them by possession of status. Hence, to solve this problem we should better apply Art. 96 and 98 [the Revised Code] cumulative whenever there is a question of proof of marriage or irregular union by possession of status (Retrieved on January 24, 2006).

The revised family code (article 102) acknowledges irregular union or cohabitation, if such a relationship lasts for at least three years. Citing this same article and associating the prevalence of irregular union with the existence of independence that men and women would attain through modern life conditions, Redae writes that the revised code should regulate irregular union in a favourable manner. He states:

“Accordingly the present law introduced a community of property, in the absence of any agreement to the contrary, for irregular unionists who lived together in such a status for three or more years” (p.6). According to Redae’s suggestion, there could be an association between irregular union and that of independence, which could exist among employed urbanite women and men. However, the report of the Justice and Legal Institute shows that many urbanites live together for the sake of its convenience, for instance not to be worried about marriage ceremonies, which would customarily incur high cost. The most notable facet of irregular union is that poor women would use it as an immediate option for survival to live with relatively well-to-do men. In this regard, the policy intent is also particularly related to protect the rights of women who would

cohabit for protracted time, to have rights over private and conjugal (common) property with their partner. It also serves to uphold the welfare of children resulting from this type of irregular union.

The second workshop was conducted from February 1 to 5, 1999 at the conference centre of the United Nations Economic Commission for Africa. Issues raised during the first workshops were discussed again. The progress report of the Justice and Legal Institute also indicates that the hottest debate conducted during this workshop was whether or not the tribunal of family arbitrators should be included in the revised family code. Some of the participants of the workshops argued that the tribunal of family arbitrators had been an extension of the traditional conflict resolution mechanism, and it would, therefore, be part of the revised code. Others strongly contended that this tribunal would exacerbate marital conflict and it would create a strained situation in which women in divorce proceedings would suffer. Redae notes family arbitrators, which he refers to as adjudicators, made the process of marital conflict resolution or divorce that disputing couples were required to follow to get divorced very tedious. That is, under the previous law, family arbitrators had the right to propose divorce and the role of the court was simply to endorse the proposal (Articles 725 to 736).

Workshop participants also reiterated the fact that the non-existence of impartial adjudication of the tribunal of family arbitrators intensified the plight of women and children in marital conflict. Some were even bold enough to argue that the arbitrators would take money in the form of bribes to favor one of the disputants. Since the arbitrators had the legal right to demand arbitration money, which was not limited in amount, the problem was compounded when some of them would demand high

payments. This is attributed to what was codified in the Civil Procedure Code, Article 318 (5): “Where the fee to be paid to the arbitrator has not been fixed, a reasonable fee shall be fixed by the arbitrator in his award.” Since women in Ethiopia would be economically dependent on their partners, it would not be feasible for them to pay a large sum of money that would interest the arbitrators to take their sides, and hence they were suffering from such practices. It also takes a substantial amount of time for arbitrators to resolve a marital conflict. Shiferaw (1998) illustrates a case of a marital conflict case, which was resolved through divorce only after 15 years of repeated adjournments and the establishment of five councils of family arbitrators [tribunals of family arbitrators]. According to his informant, Shiferaw indicates that the quarrelling couple were living by partitioning their house until divorce was granted.

The third workshop was held from March 30 to April 5, 1999 in the conference hall of the City Council of Addis Ababa. The major discussion topics focused on the importance of vital statistics, and the importance of the establishment of an office which would be in charge of registration of marriage and divorce. Registration of marriage and divorce has not been given due consideration and an office, which could handle this duty, has not been in existence in Ethiopia.

The report of the Justice and Legal Institute also indicates that the fourth workshop was conducted from April 26 to 30, 1999. Here, a new idea was proposed to replace the institution of the tribunal of family arbitrators with marriage counseling services, which has not been common in Ethiopia. Some workshop participants suggested a government agency should be established to provide marriage-counseling services. It was also suggested that the government should encourage the establishment of private

marriage counseling services. The idea is that marriage counseling agencies could help couples in marital conflict resolve their differences in due time and protect them from possible inconveniences that they might encounter in the tedious process of the tribunal of family arbitrators.

Redea indicates that the current law limits the role of family adjudicators to reconcile the spouses. Hence, under the current law the court does not need the proposal of adjudicators; it can directly grant divorce. This is in conformity with the principle that marriage should be performed through the consent and free will of married partners. Since marital disputes arise as a result of questions related to individual rights, it would be reasonable for the court to directly grant divorce as per appropriate provisions. For instance, according to H/Gebriel (undated), currently the court can grant divorce when a couple would forward a petition of mutual request for divorce (accessed on line on February 5, 2006 from the website of the Supreme Court of Ethiopia). The petitioners would not be required to state their reason for forwarding a divorce request. "Spouses who petition for divorce by mutual consent are not obliged to state the reason thereof" (Article 77, 3). This would avoid the possible favoritism perpetrated by family arbitrators.

It is also known that in the process of marital conflict the health and education of the children could be neglected. Shiferaw indicates a shocking case in which a sick child who had not been given medical attention passed away as his poor mother was in court suing her husband for not being a good provider. In line with international legislation such as Convention on the Rights of the Child for which Ethiopia is a signatory, the

current family law also affirms that the rights of children are to be protected. The following provision of the revised family code can illustrate the claim:

- 1) Where the spouses decide to divorce by mutual consent in accordance with Article 77 of this Code, they shall decide by agreement regarding the tutor and guardians of their children.
- 2) Where, in any case of divorce, the spouses did not agree on the tutorial and guardianship of their children, the court, which decides the divorce, shall also decide the tutor and guardian of children. (Article 221).

The fifth workshop was conducted from June 28 to July 3, 1999 at the United Nations Conference Centre in Addis Ababa. This was a wrap-up session on issues that were discussed in the previous workshops. The sixth workshop was a half-day symposium, and the writer, as a committee member, recalls that it was conducted at the beginning of September 1999. Here, government officials were invited to mark the time for the completion of the revision work of the family law. For the sake of public awareness, the discussions conducted in each workshop were televised and broadcasted through the Ethiopian Television and Radio Service.

As has been discussed, under the auspices of the United Nations, member states are required to amend discriminatory legislation. The translation of legislation into practice is only possible when member states show their commitment through the allocation of adequate budget, placement of trained personnel, and support of gender sensitive programs. The influence of feminist movements and the contemporary push for gender equality have now urged many countries to revise their laws. In this connection, Danner (1994) states: "The feminist revolution in society and the academy is about making women visible, interrogating and deconstructing the manner in which women do appear, and calling for progressive action to benefit women" (p. 216). Since it is

stipulated in the Ethiopian constitution, article 34 and 35, and due to the international situation mentioned in chapter one, the Government of Ethiopia was also urged to revise the discriminatory family law provisions found in the civil code of the country to rectify gender biased legal practices relative to family matters.

Chapter Three

III. Research Methods

3.1. Context and Setting

The basic interest here is to examine the implementation of the revised family code in Ethiopia, as related to the issue of gender equality pertinent to family matters. The study was conducted in Addis Ababa, the capital of Ethiopia. More specifically, the study focuses on the judicial implementation of the revised family code in the family courts of the city of Addis Ababa. The information gathered reflects the viewpoints of the three groups of participants; i.e. judges, attorneys, and gender advocates.

A human subject research review application was submitted to the Institutional Review Board of the College of Business and Public Administration of Old Dominion University. The Institutional Review Board (IRB) approved the research proposal, which facilitated the completion of the study within the planned time frame. The IRB approval can be found in appendix IV.

3.2. The Research Approach

3.2.1. Philosophical Orientation of the Study

When beginning a study, it is important to make use of a philosophical approach to properly undertake a research. A relevant philosophical approach shapes the methodological preference of a research endeavour (Schutt, 2001; Creswell, 2003). A research study also needs to reflect the underlying paradigm and knowledge claim. This helps answer the research question through appropriate research techniques (Neuman, 2006; Engel and Schutt, 2005).

Advocacy is the relevant knowledge claim for this study because the area of inquiry is concerned with political or policy issues. Indicating the fact that postpositivist⁶ [positivist] assumptions do not properly address the concerns of social justice and marginalized people, Creswell (2003) specifies that the focus of advocacy research is on issues related to an emancipation discourse. He states that:

...specific issues needed to be addressed that speak to important social issues of the day, issues such as empowerment, inequality, oppression, domination, suppression, and alienation. The advocacy researcher often begins with one of these issues as the focal point of research (p.10).

As the study focuses mainly on a policy measure to mitigate the disadvantaged situation of women and to bring about gender equality through the implementation of the revised family code, a feminist perspective is the specific stance, together with the theories of modernization and implementation as applied to the goal of gender equality. The ideas reflected in feminist theory as well as critical theory are both concerned with the emancipation and empowerment of disadvantaged people. The stated knowledge claim based on the notion of emancipation, together with the nature of the problem of the study, impacts the strategy of inquiry and the specific method of data collection required for the study. Creswell asserts that "...stating a knowledge claim means that researchers start a project with certain assumptions about how they will learn and what they will learn during their inquiry" (p.6).

⁶ According to Creswell: "Traditionally, the postpositivist assumptions have governed claims about what warrants knowledge. This position is sometimes called the "scientific method" or doing "science" research. It is also called quantitative research, positivist/postpositivist research, empirical science, and postpositivism (pp. 6-7).

The fact that the information collected reflects the views of the participants signifies that the research approach is related to the perspective of grounded theory. Nevertheless, it has to be noted that there is a difference between the ideal grounded theory and the practical rooted in the literature. The ideal grounded theory is about a fully emergent design, while the practical is rooted in the literature from which the research questions were derived. Given the limitations in time and resources, the investigator preferred to follow the practical theory in order to answer the research questions. Hence, the literature allowed the investigator to obtain the information more quickly, as it provided him with the guidance to collect the information and to develop themes. The themes fit naturally into the research questions. Had not the investigator found this fit he was prepared to refine the research questions. Issues related to the coding procedures and emergence of themes will be discussed later on in the data analysis section and at the beginning of chapter four.

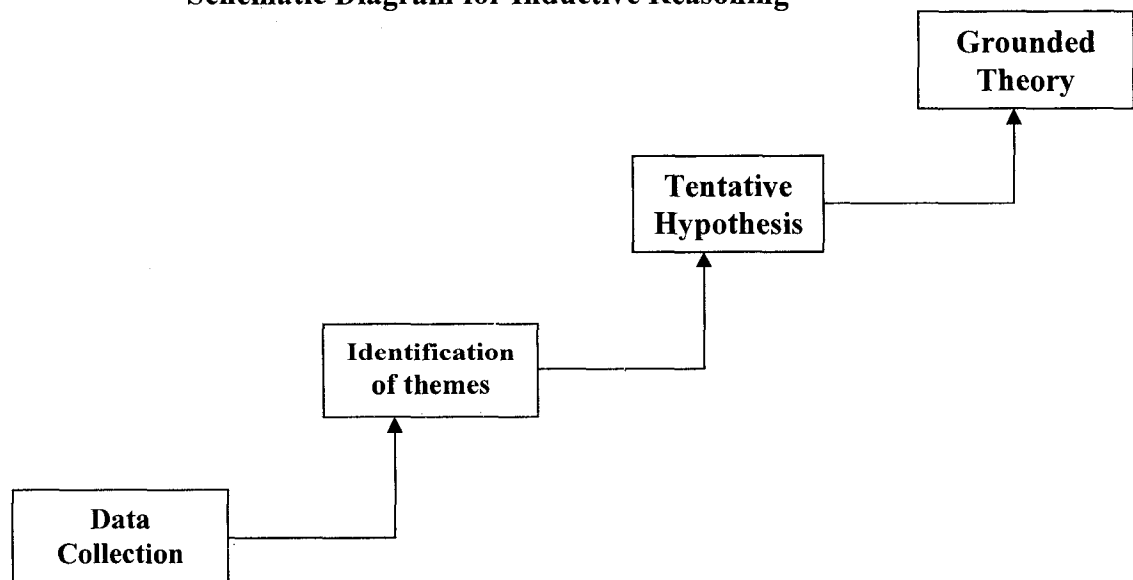
3.2.2. Strategy of Inquiry

The method of data collection utilized for this study was based on a qualitative research design, which utilized interviews as well as secondary sources posted on the website of the Supreme Court of Ethiopia. According to Patton (1990 and 2002), qualitative research involves a naturalistic approach such as open-ended interviews, which capture a wide range of information based on the perceptions of participants. Qualitative research design involves an inductive approach through which the researcher would generate ideas from the data to be collected (Creswell, 2003). In utilizing an inductive approach, it is necessary to collect the required data, identify themes and

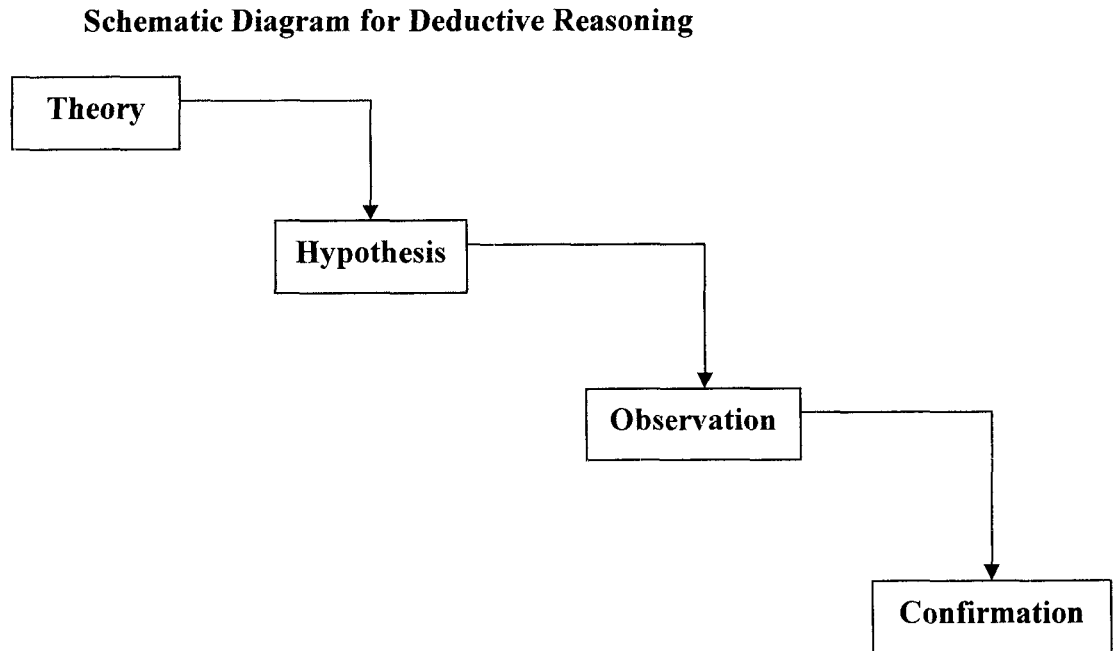
inferences to draw generalizations. In this study, the necessary data has been gathered by interviewing participants, whose characteristics will be discussed in the subsequent pages, as well as utilizing family court case materials.

This research approach also facilitates the process of obtaining first-hand data. Hence, the analysis of the study has been carried out generally in line with a grounded theory perspective through an inductive approach as shown in the schematic diagram below. Patton (2002) elucidates that: “Inductive analysis begins with specific observations [data collection] and builds toward general patterns (p.56).” Ideally, inductive analysis uses a bottom-up approach to generate grounded theory, based on the perspectives of participants. Deductive reasoning, in contrast, is a premise to confirm an already existing theory. To show the difference between an inductive and deductive reasoning, schematic diagrams are depicted below. The diagrams are adapted from Trochim (2006), which was accessed online on December 12, 2006 from the website of the Web Centre for Social Science Research Methods.

Schematic Diagram for Inductive Reasoning



In order to provide an illustration and compare the inductive with the deductive approach, a schematic diagram for deductive reasoning which is adopted from Torchim (cited above) is depicted below:



3.3.Participants and Sampling

3.3.1. Sampling

Purposive sampling technique was employed for this study in order to collect information in the area of inquiry. Lewis-Beck et al (2004) state: “Purposive sampling in qualitative inquiry is the deliberate seeking out of participants with particular characteristics... (p.884).” This sampling technique helped to select information-rich participants and to obtain adequate data on the implementation of the revised family code.

The participants for the study were four family court judges, four attorneys and six gender advocates. The questions posed to the three groups of interviewees helped in capturing diverse views; the information obtained facilitated in deriving the knowledge of the existence of both the positive aspects, and the impediments to the implementation process of the code. Identified as participants of the first group, four family court judges were interviewed. The rest of the two groups of information-rich participants were selected on the basis of their experience, which will be discussed in the subsequent pages.

3.3.2. The Selection Process for the Study Participants

The selection process of the participants of the study involved consultation with persons who could identify and convince individuals who had significant roles in the judicial implementation of the code to be willing and become interviewees. In this respect, the investigator was able to approach the three family court judges through the cooperation of the head judge, the President of the primary courts, which are known as “first instance” courts. Please see appendix III for the structural arrangement of the courts. The judges who have had the authority to preside in each of their respective courts were selected not only because they were willing to be interviewed but also because their key positions as judges enabled them to have the information required for the study. The investigator was also able to recruit a person who was the deputy head judge as a participant because this person had the required information not only as a family court judge but also as a prominent figure who played a key role in the restoration of the family courts.

By identifying experienced attorneys through the Marefia Children's Centre (MCC)—a family welfare agency located in Addis Ababa-- the investigator was able to select four knowledgeable attorneys as participants of the second group. The three attorney participants were selected based on the fact that each had the experience of handling family litigations in each of the three family courts. The fourth attorney participant was selected because of her unique experience as a family court judge under the old family law and who recently became an attorney. She also represented clients in the court through the legal aid service provided to women by the Ethiopian Women's Lawyer's Association. Participants of the gender advocate group were selected because they have had the required information concomitant to their responsibilities in their respective institutions (elaborated later) in following the implementation of the code.

The selection of the interviewees was done three weeks before the actual interview was conducted. The consent of the interviewees was secured two weeks before the interview itself. The participants of the study were found to be information-rich because they were knowledgeable concerning the implementation process of the revised code. The characteristics of each group of participants reflected the degree of experience on which the information was based.

3.3.3. Characteristics of the Study Participants

Participants of the Judges' Group

The first group of participants (interviewees) for this study were four family court judges. As the judges heard different cases, they were able to describe what they encountered in their day-to-day activities. The information obtained from the judges

included descriptions of the judicial environment, as well as their experiences with legal decisions for women in litigation with men in family court cases involving such issues as cohabitation, child custody, conjugal property division and family arbitration. The participants of this group were also found to be good sources of information as to the strengths and weaknesses of the revised family code.

Participants of the Attorneys' Group

The second group of interviewees were four information-rich family court attorneys. Their characteristics are listed in the table below. This group of interviewees provided information from what they observed while trying cases in family courts, and by comparing the previous and the current family codes. They were at liberty to give comments and to put forward opinions. They were a good source of information for describing the factors involved in the implementation process from what they observed in the courtroom, as well as outside. They were informative about what has been facilitative or obstructive in the courtroom in relation to the procedures and rendering of judgments. This group of participants (attorneys) were selected based on the following characteristics depicted in Table 1 below.

Table 1

Category No.	Characteristics of Participants (the Attorneys' Group)
1.	Those attorneys who know both the malpractices under the previous family law as well as the current situation under the revised family code.
2.	Those attorneys who participated in the conferences organized to revise the previous family law, or those who otherwise know the objectives of the revised code through other means such as the mass media or any types of orientations.
3	Those attorneys who have more experience in handling issues related to family litigation in the court system.

Participants Affiliated with Gender Advocacy Institutions

The third group of interviewees consisted of six persons knowledgeable with regard to the implementation of the revised code. They have had the relevant exposure and experience with regard to the previous family law and the new revised family code. Their characteristics are indicated in Table 3. Each of the participants has had an affiliation with one of the six gender advocacy institutions indicated below:

1. The Ministry of Women's Affairs (formerly known as the Women's Affairs Sector of the Prime Minister). This is the national coordinating office for gender issues in Ethiopia. It has the mandate and the responsibility to follow the implementation process of the code.
2. The Ministry of Justice, Women's Affairs Department.
This is a public department specifically entrusted to deal with any legal issues related to women. This department was involved in the committee to

coordinate the revision work of the code and also has a mandate to follow the implementation process of the revised code.

3. The Legal and Justice Research Institute

This office, as a government research institute on legal matters, was instrumental in the advocacy work that was convened to convince the higher government officials to revise the code. In fact this office prepared the final draft code that was presented for public discussion. It has also the mandate to follow whether or not the revised provisions have been implemented in line with the letter and spirit of the code.

4. The Women Parliamentarian Caucus in the Ethiopian Parliament

This is a parliamentary body that oversees whether or not the rights of women have been protected in the country. This office played a leading role in the revision work of the code. It is concerned with whether or not the revised code has been implemented as intended.

5. The Ethiopian Women's Lawyers Association

This is a professional association that advocates for the (legal) rights of women. It has been critical of the government for not doing much to safeguard the rights of women. The participation of this association has been significant in the revision work of the code, and it is also one of the major stakeholders in the implementation process.

6. The Addis Ababa Women's Association.

This association, which advocates for the rights of women in the city, is one of the major stakeholders in the implementation process. This association

demonstrated its deep concerns about the disadvantaged position of women and the urgent need for the code to be revised. It also participated in the successive workshops organized to survey public opinion on the draft code. Like the other institutions mentioned above, it is a major stakeholder in the implementation process of the code.

The investigator selected information-rich participants who have the following characteristics depicted in Table 2 below.

Table 2

Category No.	Characteristics of participants who have been affiliated with gender advocacy institutions
1	A person who has the role of following the conditions of women's rights with respect to family matters.
2	A person who has the knowledge concerning the revision work of the previous family law, as well as one who knows the current situation under the revised family code.
3	A person who specifically has followed the implementation process of the family code.

As the original goals of the revised family code were to safeguard the rights of women, gender advocate interviewees have been in a position to observe the changes that have been occurring in the family courts with respect to women's rights.

As reported by the participants of the study, their demographic data are depicted in the following table (Table 1).

Table 3: Demographic Data of Participants in the Study

The Judges' Group			
Participant No.	Age	Gender	Educational Level
Participant 1	52	Male	L.L.B. Degree
Participant 2	45	Male	L.L.B. Degree
Participant 3	39	Female	L.L.B. Degree
Participant 4	32	Male	L.L.B. Degree
The Attorneys' Group			
Participant No.	Age	Gender	Educational Level
Participant 1	45	Female	L.L.M. Degree
Participant 2	36	Male	Diploma in Law
Participant 3	31	Male	L.L.M. Degree
Participant 4	48	Male	L.L.B. Degree
The Gender Advocates' Group			
Participant No.	Age	Gender	Educational Level
Participant 1	32	Female	L.L.M. Degree
Participant 2	42	Female	B.A. Degree
Participant 3	48	Male	L.L.M. Degree
Participant 4	51	Female	M.A. Degree
Participant 5	54	Female	M.A. Degree
Participant 6	37	Female	I.L.B. Degree

3.3.4. The Interviewing Instrument and Strategy

The interviewing strategy was to establish a rapport with each interviewee, to secure their willingness, and arrange an appointment with each of the participants. The role of the interviewer was to interview each participant based on a semi-structured interview questions. In line with the idea of Putnam (2000), this interview instrument helped the interviewer (the investigator) ask the listed questions sequentially without variation in the order of questions. Additionally, the semi-structured interview guide facilitated the comparison of the responses, and allowed for more efficient use of the

interview time. Hence, the instrument helped provide a framework to obtain responses for specific questions. The interviewer posed a similar series of questions in the same manner to all participants in each of the three groups. It was important to make sure that each of the participants was ready to be interviewed according to the arranged schedule. All the interview questions were semi-structured in order to enlist adequate information based on the views of the participants. The fact that the information is collected according to the perspective of the participants would be related to the grounded theory perspective (the practical rooted in the literature) to answer the research questions.

Concerning the mode of interviewing, the participants were interviewed according to their preferred time and place. Two of the judges were interviewed after court sessions in their respective offices. The rest of the participants were interviewed in their homes. In other words, the interviews were conducted both on weekdays and weekends according to the preference of the participants from April 15 to May 7, 2007. Sufficient time was allotted to interview the participants by providing flexibility to work around the interviewees' schedules. At the beginning of the interview, the interviewer briefly explained to each interviewee that the purpose of the research was entirely an academic exercise. This helped assure the cooperation in answering the questions. The duration of each interview depended upon how each participant responded to the interview question, and lasted approximately from 1.25 to 2.0 hours.

In order to collect the required information adequately, the interviews were tape-recorded with the consent of the interviewees, and the interviews were transcribed. Since the interviews were conducted through telephone conversations, the investigator had to make sure that the recording devices worked adequately prior to the interviewing time.

The justification as to the significance of telephone interviewing technique, and the steps involved to conduct the interviews are elaborated in the subsequent sections.

3.4 . Data Collection Technique

The primary data required for this study was collected on the basis of interviews conducted over the telephone. The investigator posed a series of questions and for which each of the interviewees gave corresponding responses. A number of authors, including Creswell (1998), Sturges and Hanrahan (2004), Horton and Duncan (1978), Mitchell and Rogers (1958), Burke and Miller (2001), Ibsen and Ballweg (1974), Quinn et al (1980), Miller and Whicker (1999), and Gubrium and Holstein (2002), explain that telephone interviewing is an appropriate data gathering method when a researcher is physically distant from identified respondents. These authors posit that telephone interviewing has advantages in reducing biases, which would emanate from face-to-face interviewer-respondent interaction. Creswell asserts that: “A telephone interview provides the best source of information when the researcher does not have direct access to individuals” (p.124). Creswell notes that telephone interviewing has limitations in that a researcher cannot see the unscripted response of participants. On the other hand, scholars such as Sturge and Hanrahan, and Horton and Duncan criticize the idea that phone interviewing would deny observation of the nonverbal reaction of interviewees. These authors write that if nonverbal features are important for a particular interview, they can be compensated through verbal signals such as hesitation or sighs. Capitalizing on their experience, Sturges and Hanrahan (2004) state:

Respondents provide verbal cues—hesitation, sighs, for example—that can indicate that a follow-up question or probe is in order...Also, when conducting telephone interviews, the interviewer was able to take notes without distracting interviews. The interviewer could then probe the interviewee about a specific topic at a later time in the interview. Thus,..., telephone interviewing made it possible for the interviewer to stay more focused on the interviewee's responses. (Pp. 114-115).

Horton and Duncan (1978) consider that nonverbal expressions would affect a particular research because the participant's attention and subsequent responses could be affected by the appearances and reactions of the interviewer, which might then have a negative impact upon the reliability of the information provided. They further explain why they prefer telephone interviewing over personal interviewing:

In personal interview situations, people are not only responding to the verbal cues of the interviewer, but also to the nonverbal cues of the interviewer's image, age, sex, personal mannerisms, attractiveness, and so on. The telephone interview limits the interaction to verbal cues only, removing much of the effects of extraneous interviewer bias. (p. 265).

In line with the idea of Horton and Duncan, Sturges and Hanrahan assert that telephone interviewing helps an interviewer take notes by avoiding the possible distraction of the attention of the participants that could be caused during personal or field interviewing. Quinn et al (1980) also indicate that face-to-face interviewing incurs more costs as compared to telephone interviewing. Based on their study of telephone interviewing and face-to-face interviewing, they assert that telephone interviewing is a preferable data collection technique as compared to personal interviewing. Quinn et al explain:

A review of 25 empirical evaluations of telephone interviewing indicated that the method compares favourably with face-to-face interviewing in terms of the range of subject matters that can be covered, length of interview, response rates, quality of data, most conspicuously cost. (p. 127).

As explained by Horton and Duncan, telephone interviewing, which is a sound and focused technique to gather information for the study avoids travel cost, minimizes subjective human factors such as distraction, which would have been caused from taking notes in front of interviewees, and speeded up the availability of raw data for immediate analysis. The development of doctoral dissertations based on this data collection technique in various universities is also a matter of academic record (ODU's database retrieved on February 24 and 25, 2007), which shows the significant importance of this data collection technique.

In line with the points discussed, the purpose of the telephone interviewing was to collect information from participants, who are knowledgeable concerning the conditions relative to judicial family matters under the previous family law and who also know the current situation under the revised family code in Addis Ababa. To collect the required data the investigator posed a series of semi- structured interview questions to all of the participants. This helped obtain information by probing relevant issues.

Following the suggestions and recommendations of Burke and Miller concerning data collection using phone interviewing, the writer broke the data collection into three phases as described below:

Phase I: Pre-interview Phase

Before utilizing the interview protocol for the purpose of the interview, its adequacy as a research instrument was checked through a pilot-test procedure. Miller and Whicker (1999) note:

Pre-tests [pilot test] allow the researcher to weed out any uncertainties and ambiguities that were not apparent prior to the pre-test [pilot test]. Pre-testing [pilot testing] is a way to increase and to reinforce the reliability and the validity of the questions [prepared for data collection] (p.97).

In this study, a pilot-test or a pre-test refers to receiving the comments from experienced lawyers and gender advocates concerning the adequacy of questions included in the interview protocol. Two lawyers and two gender advocates have critically evaluated the adequacy of the interview questions before conducting the actual interviews. Hence, an attempt was made to refine the content of the questions included in the interview protocol, based on appropriate feedback provided by the lawyers and gender advocates.

Conveying the Interview Questions to the Interviewees

The investigator sent the interview questions to the participants before the interviewing time to prepare them for the interview. Even though the questions were related to their experience and expertise, the participants were better prepared to answer the questions because they knew the questions in advance and formulated prepared answers to them. In fact they were asked to do so. This technique was developed by adopting the experience of Burke and Miler, as they state:

We found it useful to communicate our interview questions to participants, along with a general introductory letter about our study. This would be especially relevant if you are researching a topic that is abstract, such as intuitive decision making. Participants need time to reflect and think about their responses, and we found that this padding of time ultimately yielded more thick [thicker], rich descriptive data from participants. (Burke & Miller, 2001, Pre-interview Phase, ¶ 7).

Hence, in line with the experience of Burke and Miller, the investigator sent the interview questions to the participants in advance so that they were predisposed to answer them comprehensively.

Scheduling the Interviews and Coordination of Data Collection

An institution concerned with the welfare of the family, Marefia Children Centre (MCC), which is located in Addis Ababa, assisted the investigator in coordinating the interviewing procedures. With the assistance of MCC, an appointment for the telephone interviews was arranged with each respondent.

Phase II: The Interview Phase

After checking that the tape recorder was functioning properly in connection with the telephone, the investigator was ready to begin interviewing. He took notes and tape-recorded the interviews with the consent of the respondents.

Before posing the interview questions, the investigator read a statement, which described the purpose of the study. This helped provide an introductory transition to proceed with the interview questions (the interview protocol can be found in appendix II). The investigator posed the interview questions in a manner that would not disrupt the

normal speaking pace of the participants during periods when they were answering the questions. This is in line with interviewing ethics, which Burke and Miller explain:

During the phone interview, it is important to get the interviewee to talk as much as possible. Probe any vague and general answers by saying things like “That is interesting...could you explain that a little more” or “Let’s see, you said ...just how do you mean that?” This type of rejoinder entices the participant to expand upon his/her thoughts, without biasing him/her as to what you think of the information provided thus far. (Burke & Miller 2001, During the Interview Phase, ¶ 20).

To obtain information according to the view of the respondents, the investigator was instructed to conceal approval or surprise during the conversation. Rather, he spoke only to guide the conversation in order to obtain adequate information.

Phase III: Post-Interview Phase

After the collection of the information, the interviews were transcribed and the investigator organized the data in preparation for its analysis. The information collected from the interviews was categorized by clustering similar items based on relevant subject matter, which helped compare the views of the three groups of participants. This helped develop themes and converge the views of the participants across the three groups, which allowed for comparisons between the three groups and to address the research questions. The process of coding for developing categories and themes will be discussed in the following sections.

To obtain additional clarification on certain issues, through a member check procedure, the researcher did additional telephone conversations and conducted further interviews with the identified participants. Guba and Lincoln (1989) state: “Member checks can be formal and informal, and with individuals (for instance, after interviews, in order to verify that what was written down is what was intended to be communicated) ...” (p.239).

3.5 Data Analysis and the Coding Procedures

There is not a standardized style or one agreed upon approach to analyzing qualitative data. Creswell (1998) notes: “Undoubtedly, no consensus exists for the analysis of the forms of qualitative data” (p.140). Nevertheless, it is plausible to use categories and themes in presenting and analyzing information gathered through qualitative methods. Neuman (2006) points out that: “Qualitative researchers often use general ideas, themes, or concepts as tools for making generalizations” (p.459). In order to present the information in a form of narration, according to relevant subject matter, the investigator had to cluster the collected information under relevant topics or categories through coding. Coding is “a systematic way in which to condense extensive data sets into smaller analysable units through the creation of categories and concepts derived from the data” (Lewis-Beck et al, 2004:137).

Creswell (1998) also notes that it is desirable to develop categories to present collected data, and he indicates the importance of three coding procedures known as open coding, axial coding, and selective coding. Open coding is the first stage of breaking the information into phrases or words to identify initial categories (sub-categories). Axial

coding is about interconnecting subcategories, while selective coding is the refining stage of categories to narrate the information using major topics. Strauss and Corbin (1998) explain these coding procedures:

In open coding, the analyst is concerned with generating categories and their properties and then seeks to determine how categories vary dimensionally. In axial coding, categories are systematically developed and linked with subcategories...Selective coding is the process of integrating and refining categories (p.143).

Hence, following these coding procedures, the data collected from the interviews was categorized by clustering similar items on the basis of relevant subject matter. Out of the seven interview questions, the first one (which had seven sub-questions) took the longest interviewing time (about 35 minutes on average) and the information drawn from this question was extensive. Most of the time, the investigator had to call some of the interviewees for further clarifications on certain issues related to this question. To transcribe the tape-recorded interview and to come up with categories or themes from this interview question was time consuming, and also tiresome. The least time (about five minutes on average) was needed for the final interview question (the optional question). Therefore, forming a theme or concept from this interview question was simple as the interviewees simply stated that further revision is important to amend the inadequate provisions of the code.

At the initial stage (open coding), the following list of items (shown in table 4) were identified, and depicted corresponding to each interview question⁷.

⁷ The interview questions are depicted in appendix II.

Table 4: List of Items/Concepts Identified at the First stage (Open Coding)

Items/ Concepts	Items/Concepts
<u>Interview Question One</u> betrothal benefit for women and children rights of women fines no ground for divorce family arbitrators marital conflict irregular union avoiding prolongation of litigation mutual consent child support filiations household provisions property division separation irregular union variation in translation workshops computerization restoration of family courts better awareness retaining past practices inability to rule complaints workload on part of the judges lack of clarity of the code underestimating compensation gender relations traditional/ past practices religion/ bigamy economic dependence of women No impact of traditional values No modifications of provisions No major changes <u>Interview Question Two</u> culpable person equal right no ground for divorce irregular union	lack of economic options increase in number of divorce commercial sex the best interest of the child paternity/filiations child custody depriving child support children of single parents lack of provision for DNA <u>Interview Question Three</u> assisting the court court monitored arbitration reconciliation three months for arbitration prerogative of spouses traditional values <u>Interview Question Four</u> private/common property arbitrators/court appointed professionals free service/payment <u>Interview Question Five</u> property division pecuniary relationship child custody high awareness & assertiveness most are unaware about their rights <u>Interview Question Six</u> dragging of cases (by most attorneys) prodding couples to divorce non-cooperative cooperative no working relationship <u>Interview Question Seven</u> seeking further revision

Then, categories were identified through the development of major topics with respect to the information obtained from the participants to prepare narrations to answer

the research questions. At this second stage (axial coding), the following categories were identified, and listed according to the sequence of the research questions.

Table 5: List of Categories and Themes Identified at the Second Stage (Axial Coding)

<p>1. General features of the revised code</p> <p>Strengths</p> <p>Establishing equal rights Expediting justice No-ground for divorce (Preserves rights)</p> <p>Weaknesses</p> <p>Lack of clarity No-ground for divorce (proliferates divorce) Inadequacy of the code</p>	<p>3. Positive and negative Effects</p> <p>Positive effect on women Positive effect on children Negative effect on women Negative effect on children</p> <p>4. Impacts of traditional values/ Impediments</p> <p>Looking down upon women Traditional Practices</p>
<p>2. Changes of provisions/ judicial procedures</p> <p>No-fault divorce (no-fine) Family arbitrators Property division</p>	<p>5. Interaction</p> <p>Working relationship Co-optation</p>

As the investigator started the preparation of narrations, he recognized that the concept, *no-ground for divorce (preserves rights)*, indicated in the first quadrant of the above table (table 5) as a redundant. That is because it would carry the same message similar to the concept of *expediting justice* indicated in the same table; and it was thus deleted. Likewise, the four items placed under the concept of *positive and negative effects* indicated in the above table (second quadrant) were eventually reported under one general topic (category). Nevertheless, during the narration, each item was again utilized

to maintain a good flow of the narration. This refinement and modification making step can be referred to as selective coding, as defined earlier citing Strauss and Corbin.

Hence, the coding procedure helped to develop themes from the views of the participants and to draw narrations to answer the research questions. The final categories are depicted at the beginning of chapter four (Table 6).

3.6 Strategies for Enhancing Credibility and Validity of Findings

The required data for the study were collected through interviews and secondary data sources. This triangulation helps to improve the quality of the study. Lewis-Back et al (2004) states: “Triangulation refers to the use of more than one approach to the investigation of a research question [research questions] in order to enhance confidence in the ensuing findings” (p.1142).

Through the interviews, it was possible to gather primary data about the implementation of the revised family code. This primary data provides first-hand information according to the perspectives of the participants. The canons for judging quantitative research would not be appropriate to assess the quality of a qualitative research. Canons should be utilized according to the nature of the research undertaken to investigate a social phenomenon. Strauss and Corbin elucidate: “The dangers derived from adherence to the more positivistic interpretations of these canons must be guarded against by qualitative researchers.” (p.266). Patton explains that qualitative approach furnishes in-depth information based on a purposefully selected sample. He states:

Qualitative inquiry typically focuses in depth on relatively small samples, even single cases (N=1), selected purposefully. Quantitative methods typically depend on larger samples selected randomly. Not only are the techniques for sampling different, but the very logic of each approach is unique because the purpose of each strategy is different. (p.230).

As has been described in the previous sections, the investigator selected four judges, four attorneys and six persons affiliated with gender advocacy institutions to be participants of the study, and they were found to be information-rich. The consultations he made with influential personalities such as the president of the primary courts, the former Minister in Charge of Women's Affairs, and the General Manager of the Marefia Children's Centre helped him to make optimum decisions during the selection process.

In fact, the willingness of the participants to respond to the interview questions was significant in collecting the required information to answer the research questions adequately. It transpired that a high degree of professionalism was brought to the research by the study participants who expressed the desire to make a contribution, through their participation, to the preservation of the rights of women and children. In general, the participants' characteristics described earlier also served to furnish the credibility and the quality of the information collected. Hence, the interviewing methodology employed for this study helped gather focused and in-depth information to address the research questions.

3.7. Secondary Data Sources

In order to inform the analysis, secondary data sources such as family litigation cases and government reports have also been utilized to provide comparisons and

elucidate the analysis, and thus to enhance the validity of the study. "...[S]econdary data are obtained from publicly available data archives, from another researcher, or even from one's own previous projects, which were designed to address some other research question" (Engel and Schutt, 2005: p.266). Hence, to back up the analysis, all of the ten publicly available family court cases (archival materials) which were subject to the judgments of the Supreme Court through appellant procedures were utilized. The case materials provided information related to the judicial system as to handling issues such as arbitration concerning women in litigation, divorce, child maintenance, and child custody. The case materials facilitated the collection of information concerning the procedures involved in marital litigation court hearings and appellant procedures. They also shed light upon the statutory objectives of the revised family code, which are aimed at safeguarding the rights of women. Since the revised family code, as a policy document, is translated into action in the family courts, the information obtained from the case materials provides useful illustrations as to how judicial procedures impact the parties involved, such as women and children. Further, relevant government reports have been referenced to elucidate the study.

CHAPTER FOUR

FINDINGS AND DISCUSSION

As has been explained in chapter three, the data for this study was gathered through an interview protocol, which contained six major interview questions and one general optional question. The investigator conducted telephone interviews which were tape-recorded with the consent of the participants. In line with the approval of Old Dominion University's Institutional Review Board (College of Business and Public Administration) and its requirements, the anonymity of the participants has been maintained. Adhering to the requirements, as suggested by the Chair of the Review Board, a fictitious name has been assigned to each participant in order to make the narration clear as to who emphasized the major issues.

As has been indicated in the section (chapter three), which addresses the mode of data analysis, in order to be able to analyze the collected information, the investigator has adopted a coding strategy. "Most qualitative researchers code. Coding generates new ideas and gathers materials by topic" (Richardson, 2005: 85). Hence, to analyze the collected information pertinent categories and themes have emerged from the responses given to the interview questions in two ways. First, the investigator attempted to break and compare the tape-recorded and transcribed information following catching phrases and concepts, cataloguing similarities and dissimilarities, and writing on a chart using color-coding technique (using different colors of highlighters). This helped to cluster similar items on the basis of relevant subject matter, which concurs with open coding. "In open coding, the researcher forms initial categories of information about the phenomenon being studied by segmenting information" (Creswell, 1998:57). At this stage, based on

the information obtained corresponding to the interview questions, sixty-seven items, (indicated in Table 4) were identified.

After the open coding, the investigator was able to identify related and unrelated concepts relative to the respective message and significance of their connotations. Then, he merged concepts conveying similar messages, a stage which can be referred to *axial coding*. This “axial coding puts the data back together through making connections between the categories [sub-categories] identified after open coding...” (Lewis-Beck et al, 2004). As indicated in the data analysis section, while the investigator was trying to arrange the identified concepts to narrate the collected information, he noticed two similar concepts. The first one is *no ground for divorce (proliferates divorce)*, and it is indicated in table 5 (first quadrant). The second concept is *no-fault divorce (no fine)*, which is indicated in table 5 (third quadrant). These concepts convey two different pieces of information. He also encountered one redundant concept, *no-ground for divorce (preserves rights)*. In order to convey the different information adequately, he retained the two concepts and modified them by adding a word in a bracket corresponding to each of them for identification purposes. To avoid information fragmentation, he deleted the redundant concept. Likewise, to clearly denote the term, the investigator added the concept *impediments* to the concept (*impact of traditional values*). This refinement stage can be related to *selective coding*. “Selective coding denotes...the integration of concepts around core category and the filling in of categories in need of further development and refinement” (Straus and Corbin, 1998: 236-237).

The coding strategy helped create categories through the development of major topics thereby facilitating the emergence of themes in order to answer the research

questions. The structure provided by the literature, from which the research questions developed, allowed a more timely analysis than using a fully emergent design. In addition, the emerged themes found good fit with the stated research questions. The investigator has adopted this qualitative coding strategy because of its practical significance, and based on the training he received at Old Dominion University. The investigator would like to give some illustrations as to how the themes emerged. For instance, related to the category, *establishing equal rights*, participant five of the gender advocates' group said: "A person is now able to make a decision [to get married] independently when he or she reaches physical and psychological maturity, and to understand what a right is all about and to preserve or fight for it." Similarly, related to the theme, *expediting justice*, participant one of the judges' group stated: "A late verdict is considered like a verdict that is not given." These are some instances, and the discussion utilizes a lot of quotations to elucidate the information collected. The final emerged categories and themes (depicted in table 6) have been employed as rubrics to present and discuss the information collected.

Table 6: The Final Emerged Themes Corresponding to Each Sub Research Question

No.	Categories/Themes	Sub Research Questions
1	<p>General features of the revised code</p> <p>Strengths:</p> <ul style="list-style-type: none"> ▪ Establishing equal rights ▪ Expediting justice <p>Weaknesses:</p> <ul style="list-style-type: none"> ▪ Lack of clarity ▪ No-ground for divorce (Proliferates divorce) ▪ Inadequacy of the code 	What features of the revised family code are generally recognized as its strengths and or its weaknesses as perceived by participants?
2	<p>Changes of provisions/ judicial procedures</p> <ul style="list-style-type: none"> ▪ No-Fault divorce (no fine) ▪ Family arbitrators ▪ Property division 	Have provisions and judicial procedures changed in handling family arbitration, divorce and property division?
3	Positive and negative effects on women and children	Have changes in provisions and judicial procedures had an effect on women and children in court proceedings?
4	<p>Impact of traditional practices/Impediments</p> <ul style="list-style-type: none"> ▪ Looking down upon women ▪ Traditional Practices 	Have traditional values and practices had an impact on the implementation process of the revised family code?
5	<p>Interaction (relations)</p> <ul style="list-style-type: none"> ▪ Working relationship ▪ Co-optation 	How can the implementation process be described: Mutual adaptation, co-optation, or non-implementation?

In this chapter, the research findings are described in a manner to answer the overarching question and the sub-research questions. By utilizing the categories or themes identified from the collected and transcribed information, the sub-questions are first addressed. The general idea emerging from responses given to the sub-questions

answers the overarching research question. Hence, each of the sub-questions is addressed as follows.

4.1. Research Sub-question One: What features of the revised family code are generally recognized as its strengths or its weaknesses?

The most relevant information in answer to the question is pertinent to items developed from the first interview question (sub-question 1-2). In this section, general information as to the strengths and weaknesses of the code has been obtained.

4.1.1 Strengths of the Revised Family Code

The participants generally had similar opinions concerning the strengths of the revised family code with regard to keeping with the intent of the policy direction. In answering research sub-question one, the views of the three groups of participants can be discussed according to the issues they emphasized and in relation to the category and themes developed.

Strengths:

- Establishing equal rights
- Expediting justice

ESTABLISHING EQUAL RIGHTS

The Views of the Gender Advocates' Group

Participants of the gender advocates' group emphasized that the strength of the revised code is that it establishes equal rights. In accordance with the rights of citizens in general and the rights of women in particular, enshrined in the constitution of Ethiopia, the code protects the legal rights of women. The previous family law, which was included

in the Civil Code of the country, had provisions that favored men. It stipulated men as the administrators of the family, and that, *inter alia*, the husband should decide the place of residence. However, one of the current code's strengths is that it recognizes gender equality. The code establishes equal rights for both the husband and wife to administer the family together. It stipulates that both the husband and wife choose their residential place together, and authorizes that both the husband and wife jointly administer conjugal property. On the principle that a person should get married when he or she reaches physical and psychological maturity, the current code has the strength in that it prohibits teen-age marriages and it stipulates the minimum age for both men and women to be eligible for marriage is 18.

Ms. Asnaku (participant four of this group) noted that the stipulation of this age limit which is intended to foster maturity would reinforce the idea that marriage should be performed based on the mutual consent of partners. Ms. Tsedale (participant five) states that the revised code deters early marriages. She explains:

The fact that now the minimum marriageable age for both men and women has become the age of 18 protects the rights of women as compared to the previous law, which determined the minimum marriageable age for women to be the age of 15. A person is now able to make a decision independently when he or she reaches physical and psychological maturity, and to understand what a right is all about and to preserve or fight for it.

Likewise, Ms. Messelech (participant one) of this group also pointed out the fact that the code prohibits early marriage and reduces the incidence of teenage motherhood. Mr. Mebratu (participant three) also noted that limiting the minimum age of marriage to 18 years of age protects the rights of children. The participants of this group also

mentioned that the revised code stresses the welfare of children during child custody and adoption. Ms. Menbere (participant six) asserted: “The father, being a breadwinner, has to pay a considerable amount of money for the child’s health and educational expenses. He would not just give small amount of child support and leave.” In general, participants of the gender advocates group recognized the establishment of equal rights under the code for women, and for the protection of children’s welfare thereby reflecting the intent of the code.

EXPEDITING JUSTICE

The Views of Participants of the Attorneys’ Group

Participants of the attorneys’ group mentioned technicalities to explain the strengths of the code. They emphasized that the revised family code expedited justice. It protects equal rights to married couples during divorce proceedings by facilitating family litigations through the application of the law to serve citizens, especially women who are at risk of continued suffering in an unhappy marriage. For instance, it allows granting a divorce within a relatively short time without justifying reasons for divorce. The absence of justifying the grounds for divorce is legally referred to as *no-fault divorce*, which Garner defines as: “A divorce in which the parties are not required to prove fault or grounds beyond a showing of irretrievable breakdown of the marriage or irreconcilable differences (p 516).”

The participants of this group emphasized that under the previous law, whether or not conflicting married partners were reconciled or divorced would depend upon a tribunal of family arbitrators. The authority of the arbitrators extends only as far as to

reconcile litigating married partners, and divorce is the decision of the court. In other words, the current code disbanded the tribunal of family arbitrators including its decision-making authority concerning divorce, and it stipulated that the court should determine divorce and its legal effects. This avoided the incidences of malpractices by family arbitrators. Ms. Hamere elaborates:

Now, women obtain a divorce without being required to explain the cause of their marital conflict, and without being forced to see family arbitrators. The current code clearly indicates that marriage is a matter of individual choice, and thus an individual has the right to divorce without being found innocent or guilty, by virtue of filing that she or he wishes to divorce.

In other words, the application of the revised code, contrary to the previous family law, has the strength of more quickly reaching decisions in the case of women requesting divorce.

The Views of Participants of the Judges' Group

The views of participants in the judges' group have similarities in addressing the strengths of the code. They indicated that women requesting a divorce due to the burden of severe economic circumstances file most applications. Participants of this group indicated that the code helps distressed married persons who would not otherwise be able to present evidence but who would like to seek divorce. Nevertheless, such litigants can request the court to dissolve their marriages.

Similar to the attorneys, participants of this group stated that the current code facilitates the process of serving justice expeditiously. Participant one of the judges'

group (Judge Woldemariam) remarked that the prolongation in reaching a decision on a certain case highlights the saying, “A late verdict is considered like a verdict that is not given.” That is, the current family law, as compared to the previous law, has curtailed the duration of family litigations. Similarly, participant two (Judge Gobeze) explains: “As opposed to the previous family law, the current code avoided the requirement of justifying the seriousness of the reason for divorce, as well as the penalty against the one who initiated the divorce.”

Another strength of the revised family code, as emphasized by the judges, is that the code focuses on the welfare of and benefits for children. For instance, the previous code stipulated that when a child is less than five years old, custody would be granted to the mother. Even though it is still not very well clarified, the current code provides discretionary grounds for the judge to grant child custody based on the best interests of the child without focusing solely on a child’s age. Likewise, they stressed the fact that the revised family code acknowledges irregular unions in order to protect the rights of women and children in this kind of relationship, which is also a strength.

Judge Woldemariam (participant one) pointed out an idea the other participants did not mention. That is, the code eliminated what is called betrothal, which was part of the previous code. The promise-making event or ring-exchanging ceremony between prospective spouses can now be avoided. Thus, the current code helps prospective spouses to perform a marriage without a betrothal, and hence avoided pre-wedding costs.

Essentially, all of the participants of the three groups related the strength of the revised code to the fact that it focuses on the benefits of the historically disadvantaged groups of women and children. Hence, the current code facilitates handling family court

cases in a more rapid manner thus easing the burden placed on women. This will be discussed further in later sections.

4.1.2 Weaknesses of the Revised Family Code

To present the views of the three groups of participants concerning the weaknesses of the code, the following category and themes have been developed:

Weaknesses:

- No-ground for divorce (Proliferates divorce)
- Lack of clarity
- Inadequacy of the code

NO-GROUND FOR DIVORCE (Proliferates divorce)

The Views of Participants of the Gender Advocates' group

Participants of the gender advocates group emphasized that, as compared to the previous law, the current code encourages divorce. They all reiterated the fact that there is no legal restraint, which obligates a petitioner of divorce to justify a divorce request; and divorcing has become easy, because of no-ground for divorce. Ms. Messelech (participant one of this group) gives the example that one can get divorced easily on the grounds that one's partner practices poor hygiene. Mr. Mebratu (participant two) pointed out that marriage is a source of income for women, and the fact that the current code encourages divorce would result in depriving women of that income source. Ms. Menbere (participant six) noted that to reduce the incidence of divorce, her office has organized a number of workshops to raise the awareness of the public in general, and women in particular concerning the negative consequences of divorce. She also suggested that there is advocacy work being undertaken to amend the inadequate provisions of the code.

Ms. Messelch explained that the revised family code has a weakness in that all three types of marriages (civil, customary and religious) should be registered with an office of the public notary. However, the code does not explicitly indicate that the already existing customary and religious marriages are legally invalid, because there is no office of public notary or a civil status office established to register them, especially customary and religious marriages. According to Article 22 of the revised code, civil marriage is a form of marriage contracted before the Officer of the Civil Status. Notwithstanding the absence of the office of the civil status, civil marriage has been contracted in the City Council of Addis Ababa since the previous code was promulgated. Concerning religious marriage, Article 26 (1) stipulates: “The conclusion of religious marriage and formalities thereof shall be prescribed by the religion concerned.” Similarly, with regard to customary marriage, Article 27 (1) of the revised code describes: “The conclusion of customary marriage and the formalities thereof shall be as prescribed by the custom of the community concerned.” The revised code also has a weakness in that while it prohibits bigamy, the office of the prosecutor does not take any measure against its perpetrators, who allegedly argue that their religious background allows them to practice bigamy. It has therefore, created a complicated situation in this regard.

The Views of Participants of the Attorneys’ Group

Participants of the attorneys’ group also emphasized what they earlier noted: that the strength of the code is also its weakness; the fact that the code abolished the requirement of presenting reasons or grounds for divorce, which could cause a marital conflict to end in divorce due to a trivial reason. Based on his experience, participant two of this group states that:

The code made divorce the end of an ordinary contractual agreement; and divorce has become as simple as buying cigarettes and chewing gum from a shop. The procedure is currently so lenient that the court easily grants divorce for those who seek it. This creates a situation whereby a disputing couple, who could, given time, perhaps resolve their differences, would be divorced even for reasons which could be resolved.

In other words, the absence of justifying the grounds for divorce has encouraged divorce.

LACK OF CLARITY

Participants of the attorneys' group, as they have dealt with the technicalities of the code on a daily basis, asserted that the revised family code lacks clarity. This group of participants noted that the judges and the attorneys' opinions reflect different understandings of some of the provisions. Ms. Hamere (participant one) suggested that many of the provisions are not clear. She explains: "The weakness of the revised family code is that many of its provisions are not clear, and there is a problem with regard to the interpretations of the provisions. The attorneys may understand some provisions differently compared to the judges." Ms. Temesgen (participant four) notes that the code is secular; nonetheless it mentions the conditions of religious marriages in article 3 and 16 of the code, which acknowledge the religious marriage ceremony. For instance, article 3 stipulates: "Religious marriage shall take place when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by their religion of the one of them." The code (article 11) prohibits bigamy. However, due to the fact that

such a provision lacks clarity there is a tendency of considering bigamy legal, because individuals of a particular religious tradition adhere to it.

Participant two of this group (Mr. Mekonnen) considered a weakness what participants of the gender advocates' group considered a strength of the code with regard to equal rights concerning property administration. According to this participant, the provisions which stipulate that both the husband and wife have equal rights in the administration of family and property can create disagreement and lead to a marital conflict. One person should be in charge of the administration of family and property to prevent possible family disputes. This is against the view of gender advocates' group that emphasized that the strength of the code to provide equal rights in family and conjugal property matters. Participant three of this group (Mr. Berihun) noted that the code is not clear as to how the court should decide on issues of child support and other marital conflicts before divorce. He also indicated that provisions concerning filiations (paternity) are not clear. This will be explained in later sections. Hence, participants of the attorneys' group expressed their opinions based on what they encountered when they represented their clients in the court.

INADEQUACY OF THE CODE

The Views of Participants of the Judges' Group

From their experience, as the leading implementers of the code, participants of the judges' group, with some variations in their explanations, commonly identify the inadequacy of the code as follows:

1. It prohibits the right to file for mutual consent for divorce from a marriage of less than six months duration, while allowing divorce if one of the partners wishes to. Participant two of this group (Judge Gobeze) remarked that the six-month duration is mentioned because of the concern of whether or not the woman has conceived a baby during that period. The court is obligated to consider this situation when it makes its decision.
2. The revised code fails to indicate the minimum duration of a marriage in which an individual is required to remain before filing for divorce.
3. It neglects to stipulate child support for a pregnant woman and child support for a conceived fetus. Judge Gobeze again remarked that regarding a conceived fetus, there is still a disagreement as to whether it should be considered as a baby.
4. The revised code fails to acknowledge that partners in an irregular union can have a pecuniary relationship in which possession of common property can develop within a short time. Thus, it erroneously levies a three-year time period (a prolonged duration) for a cohabiting couple to have the right to divide common properties upon separation.
5. It fails to ban the marriage of relatives of partners in an irregular union. An irregular union differs from a marriage in that it is not performed by means of a celebration. However, children liable to be produced in a cohabiting relationship would expand the kin relationship that creates the prohibition of marriage between close relatives of cohabiting partners. Judge Gobeze stresses this, as compared to other judges.
6. The revised code is devoid of the provisions, which should refer to the existence and continuation of marriage after separation. It states that a husband and wife can live separately for a maximum of two years. However, it does not indicate whether the court recognizes a prolonged separation as a justifiable cause for granting divorce, if such a

separated couple files for divorce. It does not make clear how to determine their benefits concerning common property division. The fact that marriage entails a relationship in which a couple lives together and possesses property in common makes it difficult for the court to decide on a divorce request of an individual who has undergone a long separation from his/her spouse, for example one of 30 years. If the court grants divorce, then there would follow, as a matter of course, a litigation concerning property division since the properties acquired by a couple would be considered commonly owned because the couple is separated, not divorced. It leaves wide discretion for a judge to decide what he or she considers appropriate. Participant three of the judges' group (Judge Tesfanesh), reiterated her court experience:

The code does not address the issue of separation. This has caused some individuals to claim marriage and file for divorce after a prolonged separation, for example after 20 years. This leads to litigation over property division. It is not considered appropriate for an individual to file for property division after being separated for a long period of time as it is unlikely there would be circumstances to justify the existence of common property after such a separation.

7. The code does not provide legal grounds for the court to decide property division for a married couple who were in an irregular union, for example, for one year and then subsequently got married. Upon divorce it would be difficult for the court to determine whether the properties to be divided should be those acquired when the irregular union was initiated until the dissolution of the marriage or only from the time when the legal marriage was contracted. A judge can consider the maturation duration of an irregular union subject to common property division to be three years. Another judge may argue that the marriage be considered as a continuation of the irregular union, and thus property

division should include the time when the irregular union began. Therefore, the provisions are subject to the interpretations of a particular judge. Even for a proper marriage, the law does not clarify how to deal with property division when a litigating couple cannot present a list of properties acquired after or before a marriage. Hence, the court would be obliged to divide property on the basis of equity (not equally dividing alleged conjugal property).

Judge Tesfanesh indicated that the code gives arbitrators the authority to decide with respect to family litigations. However, the law does not indicate the manner in which arbitrators should handle a family litigation and how the litigants should present their marital conflict to arbitrators. Therefore, the public does not have a clear understanding concerning this issue.

Participant four of the judges' group (Judge Demsew) emphasized that the code has a weakness in that it is not clear how to determine the marriage status of partners who do not have a marriage document, but conduct themselves as a married couple. There have been inconsistent decisions made from the lower to the appellate courts. Participant one of the judges' group (Judge Woldemariam) emphasized the fact that the code has a weakness in that it does not address child custody issues prior to the granting of divorce. However, Judge Gobeze commented that child custody can be granted even before divorce. This indicates that there is a difference of interpretation concerning some of the provisions of the code among the judges. This will be explained in later sections.

In general, in response to the questions concerning the strengths and weaknesses of the revised family code, participants of the gender advocate group expressed their views in broad terms underscoring legal rights. Participants of the attorneys group

explained some legal technicalities, while the judges explained in a more detailed and specific manner by citing relevant articles of the revised code.

4.2 Research Sub-question Two: Have provisions and judicial procedures changed in handling family arbitration, divorce and property division?

To answer this question, the following category and themes have been identified:

Changes of provisions/judicial procedures

- No-fault divorce (no-fine)
- Family arbitrators
- Property division

NO-FAULT DIVORCE (no-fine)

The Views of Participants in the Attorneys' Group

Even though all of the participants had similar responses to question two, participants in the attorneys' group stressed that the current code stipulates *no-fault divorce* and thus it voided the obligation to provide serious grounds for divorce, and avoided stipulating fines against the initiating party filing for divorce. The previous law imposed a penalty upon the person who filed for divorce. Participant three (Mr. Berihun) explains:

Under the previous law, the party who filed for divorce was penalized 2/3 of the conjugal divided property. Some men, by deliberately creating intolerable marital conditions with respect to their wives practically compel them to forward a petition for divorce, and, as a result, women are invariably penalized for initiating the divorce. However, since a penalty is no longer imposed, attaining a divorce has become comparatively easier.

Hence, under the previous law, for fear of such aforementioned penalty and of being considered as the culpable party, many spouses remained in unhappy marriages. The current code removed this apprehension, and the court grants divorce if one of the parties expresses no desire to remain within the marriage. Even though nullifying the fear may encourage divorce that alone may prove insufficient to create pressure on either the husband or wife to leave the home without the court's decision. According to the participants, under the previous code women were forced to leave the home by their husbands. Mr. Temsigen (participant four) noted that currently in most cases it is the husband who would be found responsible for the breakdown; therefore the law stipulates that it is he who would be obligated to leave the house when a severe marital conflict arises. He explains: "Even women who have the alternative of residing with their financially stable parents have the option to remain at home, while the men are compelled to leave until the marital conflict is resolved." This shows that there is a change in judicial procedure to protect the rights of the innocent party, as opposed to the prevailing conditions under the previous family law whereby there existed no mechanism to legally compel the allegedly guilty party to leave the house until the marital conflict had been resolved.

FAMILY ARBITRATORS

Participants in the attorneys' group also mentioned that under the revised code women in marital conflict or separation are able to receive an immediate solution to their marital situation because the court immediately reaches a decision. Under the previous

code, a conflicting couple was required to explain the cause of their request for divorce to family arbitrators, and it would take a very long time to resolve a particular marital litigation. The previously problematic conditions regarding the function of the tribunal of family arbitrators are non-existent now. At times the court refers some cases to family arbitrators but the role of the arbitrators is just to prepare a report on the particular type of marital conflicts, which need thorough investigation. It is up to the court to make a decision regarding a particular conflict.

Participants of this group also expressed their worry that the three months time allotted for marital conflict resolution is insufficient, and hampered the operation of a tribunal of family arbitrators like under the previous code. Participant three of the attorneys' group (Mr. Berihun) states:

Had there been the operation of tribunals of family arbitration as under the previous law, everything would be identified and solutions to arising conflicts could have been provided. Now, the current code benefits attorneys because they are now earning more without necessarily attempting sincerely to reconcile conflicting couples.

According to participants in the attorneys' group, presently the court cannot always identify the root cause of marital conflicts because of the tendency of couples to shy away from discussing personal affairs in court, a phenomenon which hinders the possibility of reconciling marital conflicts. The aim is to protect women's rights throughout the processes of marriage and divorce, as well as in the proper handling of conjugal property division. The code neither acknowledges the tribunal of family arbitrators nor authorizes the existence of another institutional body to handle arbitration. Since the current code does not allow the court to investigate marital conflicts prior to

divorce, conflicts related to the withholding of the household budget on the part of the husband for example, are handled by individual arbitrators. However, one of the disputing parties may not be satisfied with the decision of the individual arbitrators, and may go to the court to report his or her dissatisfaction. Then, the court may assist them in finding other more competent and more objective arbitrators. Nonetheless, finding such arbitrators is a difficult task. Such instances tend to discourage conflicting couples from reconciling and act in favour of divorce.

The Views of Participants in the Judges' Group

Similarly, participants in the judges' group expounded on the facts related to family arbitrators. They indicated that there is not a functioning tribunal of family arbitrators as there was under the previous law. Now, instead of the tribunal, a litigating couple may select family arbitrators whose role is to assist the court in complicated cases, for instance, in determining the amount of income to determine child support, household provisions, and the like. Both the income of individuals who work in government and those employed by non-government organizations can easily be ascertained through their employers. However, it can still be very difficult to ascertain the correct income of individuals such as merchants or other self-employed individuals. Family arbitrators are a major help in identifying the income of a litigating couple.

The selection of family arbitrators has become a non-mandatory option as opposed to the state of affairs under the previous law. It is now the prerogative of the spouses to select the arbitrators. The role of the family arbitrators is to voluntarily help a conflicting couple reconcile their differences. Unlike under the old code, it is the court which reaches a decision about a particular marital litigation. Family arbitrators are

required to reconcile marital conflicts, if such is at all possible, within three months.

After that time, failing such a resolution by the family arbitrators, the court undertakes to reach a decision. Participant one of the judges' group (Judge Woldemariam) clarifies:

At times, some conflicting couples ask the court to select arbitrators. However, it may be argued that, the involvement of the court in selecting arbitrators leaves the court vulnerable to criticism. I advise couples to resolve their conflicts through negotiation.

All the participants in this group recalled that to resolve a family litigation under the previous code could take a great deal of time. However, under the current code, as explained by participants in the three groups (with the exception of participant three of the gender advocates' group) there is a change introduced concerning the maximum time allotted for arbitration to produce results. The maximum time legally allotted to resolve a marital conflict through arbitration is three months. Participants in the judges' group commented on the mechanism by which arbitration takes place. Judge Tesfanesh (participant three of the judges' group) mentioned that the maximum time for arbitration is three months; but there could be a slight variation in that she might add one extra month. Based on her experience, she elucidates:

The litigating spouses provide the names of the arbitrators to the court, and the latter gives guidelines on how they should handle the matter. The guidelines underscore the arbitrators' duty to consider religious, cultural and traditional values in reconciling the litigating couple and to report the result to the court. The arbitrators are given three months, or, if there is a valid reason, a maximum of four months to reconcile disputants.

Participant two of the judges' group (Judge Gobeze) observed that there are individuals who no longer consider family arbitrators as part of the current legal process. This is an erroneous belief. Family arbitrators still resolve conflicts and they can also function with regard to conjugal property division. The court now has the authority to supervise the operations of family arbitrators requiring the latter to submit reports on their operations on a regular basis, unlike under the previous code. Judge Gobeze mentions two instances. First, some plaintiffs would like the court to warn the culpable partner, for example, an alcoholic husband. Second, others describe to the court every possible means attempted to resolve the conflict and which were not successful. Therefore, they demanded a divorce. He indicates his preference of a litigating couple of the first category to be seen by family arbitrators because reconciliation is usually effective. The participants in the judges' group emphasized the fact that the role of family arbitrators is to reconcile disputing couples, and it is carried out upon the prerogative of the spouses. If a litigating couple refuses to reconcile, it is up to the court to decide upon divorce. The participants pointed out that there is now no required number of family arbitrators for a given case. Under the previous code, the tribunal of family arbitrators was composed of five people (two representing the husband and two representing the wife, and a chair). Currently, as long as the disputing couple agrees, a single arbitrator may be considered sufficient. Hence, the role and structure of the family arbitrators is now quite different from that of the past.

For the various problems explained in the previous section, the participants of the judges' group like that of participants of the other two groups denounced the functions of a tribunal of family arbitrators which was acknowledged as a legal entity under the

previous family law. Yet, they are of the view that the time limit (three months) stipulated by the current code is not plausible for family arbitration to be effective at achieving reconciliation. Three months is too short a time to identify the major cause of the conflict, and to come up with reconciling ideas, and for the disputing spouses to possibly resolve their conflicts.

Participants in the judges' group have a similar idea concerning the significance of the establishment of the tribunal of family arbitrators (or any other body) to help litigating couples resolve their differences. Participant one of the judges' group (Judge Woldemariam) agrees with the idea of the participants in the attorneys' group, especially with Mr. Berihun who, as an attorney, emphasized the importance of the establishment of a tribunal of family arbitrators as under the previous law. That is because it would serve as a prerequisite procedure to reaching a decision, especially on divorce, which should extend for a longer period of time, for example one year. However, the new law stipulates that divorce should be granted within three months. So, those who file a petition of divorce are able to receive an expedited solution, which could be considered advantageous. Nevertheless, Judge Woldemariam, given his experience, observed three types of problems. First, one of the litigants may decline to consider the importance of arbitration because he or she prefers divorce. Often, such a person would report to the court that he or she could not find a suitable person to act as an arbitrator on his or her behalf. Second, since couples in marital conflict may not be able to cooperate and select arbitrators within a short time, they may be compelled to be divorced as the three-month limit imposed to resolve their dispute may not be sufficient for arbitration purposes. Third, even if both partners would succeed in selecting arbitrators, the latter may not

appear as requested on the days designated. As the time given for arbitration is not more than three months, some litigants would be unable to resolve their conflicts because of problems with scheduling time with the arbitrators.

Judge Tesfanesh (participant three of the judges' group) also made the observation that the code under article 118 codified that arbitrators have the authority to decide on family litigations. Article 118 of the revised code stipulates: "Without prejudice to the provisions of Article 11, dispute arising out of marriage shall be decided by arbitrators chosen by the spouses." However, the code does not indicate the manner in which arbitrators should handle a marital litigation and how the litigants should present their marital conflict to arbitrators. Therefore, the public does not have a clear understanding concerning this issue. As a result, litigating couples that are not satisfied with the decision of family arbitrators are not likely to report to the court. On the other hand, it is common for individuals, especially women in marital conflict, to report domestic violence and to file for child support in order that the court provides them with a solution. The court has a tendency not to investigate marital conflicts because handling pre-divorce situations falls under the jurisdiction of the arbitrators. Nevertheless, the court remains interested that reconciliation be effected. Judge Gobeze (participant two of the judges' group) relates that in his experience each judge exemplifies a personal approach in assisting spouses in resolving their marital conflicts. On his part, he consults with religious elders such as the father confessor (a priest) of disputing spouses to look into the conflict in more detail and to seek a solution and then report the result to the court. This judge, in concert with the preceding ideas of the other two participants is not happy with the current method of arbitration. He takes the view that marital conflict is

considered as an ordinary problem and that family matters are not given due respect as a national concern; and he criticizes the government and states:

Family matters should be reviewed very carefully and appropriately in depth. The fact that the revised law has been enacted does not necessarily imply that the government is focusing on family. Even for labor relations conflicts there is a labor dispute reconciliation board to bring about healthy industrial relations. Why then doesn't the government establish a similar board to resolve the problems pertinent to family matters? A judge examines a large number of files per day, which in fact hampers the efficient administration of justice due to time constraints. There is no conducive environment for litigants to relate confidential matters with respect to marital conflicts to the court.

Essentially, family arbitrators are expected to have a close relationship with the disputing couple, and to help the couple reconcile. This spirit of reconciliation is to redress problems such as the high cost of arbitration and the postponement of appointments (which would also result in increasing the expense of the process), problems that were common and persistent under the previous law. According to the revised code, family arbitrators would not be allowed to receive payments for their service.

The Views of Participants in the Gender Advocates' Group

With regard to the issue of family arbitrators, participants in the gender advocates' group recalled the drawbacks of the practices of family arbitrators under the previous code and reiterated how greatly women suffered, which has been described herein. However, they suggested that the function of family arbitrators is still important especially to ameliorate the emotions of conflicting partners and induce fair arbitration.

Ms. Tsigereda (participant two) who as a gender advocate plays a key role in an association of women in the city of Addis Ababa, associates the banning of payment for arbitration as one of the reasons why some litigants are unable to secure arbitrators or that arbitrators exhibit absenteeism. Some individuals, therefore, lead arbitrators to believe that they will receive payments for their services. However, when arbitrators subsequently realize that the law does not permit the receiving of payments, they tend to decline to be involved in the reconciliation process. This participant points out that although it is difficult to substantiate evidence of the fact, some arbitrators may apply pressure to a disputing couple to pay for arbitration, which was allowable under the previous code.

Ms. Messelech (participant one of the gender advocates' group) remarked that it would be difficult for women to access the service of family arbitration. That is because all depends upon the evaluation of the judge whether or not a particular marital conflict can be resolved or not. That is, the court would only refer a particular family to litigation when it observes that the conflict of a litigating couple is reconcilable, and when they agree to the court's reconciliation proposal. Another drawback observed is the time limit (three months) within which a marital conflict should be resolved. Otherwise, the arbitrators are obliged to return the case to the court. Once a case is returned to the court without being resolved, it would be doubtful that the conflicting parties agree to further arbitration. Ms. Tsedale (participant five) repeated the same idea and further commented that it would, therefore, be very likely for a particular conflict to end in divorce. In fact, the participants identified the short time limit as a factor that created the increase in divorce. All of the participants, notwithstanding different idea of participant three of the

gender advocates' group (Mr. Mebratu) mentioned that the maximum time for arbitration is three months.

Mr. Mebratu, as one of the draftsmen of the code, reflects the intent of the legislators was to reconcile a litigating couple without a time limit. However, if the arbitration is sought after petitioning divorce, the time limit for arbitration is three months. With the exception of Mr. Mebratu, the investigator has not obtained any indication that the rest of the thirteen participants are aware that there is no time limit for reconciling conflicting spouses before petitioning for divorce. In addition, Mr. Mebratu emphasized that the operation of family arbitrators should be as court-supervised family arbitration, which implies that the court would follow the operations of arbitrators.

In general, participants in the three groups explained the changes in judicial procedures introduced with respect to family arbitrators, and they commented that three months time is insufficient to explore personal issues and to resolve marital conflicts. The judges reflected that they have more discretion to deal with family arbitration, and they indicated that court-appointed arbitrators are a vulnerability of the court system. The attorneys noted that the process of divorce has been expedited because of no-fault divorce. Nevertheless, the lack of institutionalized arbitration creates difficulties for the disputing parties to resolve their conflicts. By and large, the gender advocates take a historical perspective on the plight of women and advocate for a better arbitration system, for example, court supervised arbitration system with sufficient time to effect marital conflict resolution.

PROPERTY DIVISION

The Views of Participants in the Gender Advocates' Group

Participants in this group emphasized the persistent failure and prolongation in reaching a decision concerning property division. After getting divorced, a litigating couple is again required to file for property division. The court refers a particular property litigation case to arbitrators selected by the couples themselves or assigned by the court. Participants in this group noted that property division involves tedious procedures. First, the court causes delays in assigning persons capable of dealing with property division. Second, making an appointment suitable for both of the litigating partners is itself a difficult task. Persons assigned by the court to divide the conjugal properties would approach the litigating parties make an appointment to attempt a resolution. However, oftentimes the arrangement of appointment would be successful only after a repeated failure. Ms. Menbere (participant six in this group) explains:

There would be repeated failure of making appointments because one of the parties would like the appointment time to be early and another one demand the time to be pushed further ahead. Then, after both of the parties agree to meet at a fixed time and place, one of them might not appear. Then, another appointment has to be scheduled. The persons assigned to divide the properties themselves might fail to appear. A repeated appointment would be arranged because oftentimes the person that controls the property (usually men) would not come at the appointed time and place. This is typically true when a particular litigation involves a property that generates revenue, and the party that controls it tries to earn as much money as possible before the property is liquidated through the anticipated division.

After making the appointment and after the litigating parties as well as those persons responsible for the property division present themselves, then comes the third step, the issue of deliberating on the type of properties. Identifying the amount of

properties that the litigating parties commonly own can be an enervating task. That is because often times the contending parties would not agree as to which is a conjugal or private property. A fourth step may involve the appearance of witnesses at another forum so designated to elicit testimony concerning the ownership of disputed properties, i.e. whether or not they are conjugally owned or not. The persons assigned to deal with property division might return the case to the court if they are unable to divide the property. Again, the court will give the opportunity to the contending parties to select the arbitrators who will handle their dispute or allow the court assign other individuals to restart property division procedure. This demonstrates how property division can become a tedious process.

Ms. Asnakech (participant four) said this prolonged processes of conjugal property division is caused because property is controlled by men, and there are men who selfishly appropriate the earnings from particular properties while ignoring the interest of their wives and children, who do not earn their own income and who would therefore be unable to provide their own income. Ms. Tsigereda (participant two of this group) emphasized the fact that persons who would be selected by the litigating parties or assigned by the court to handle property division are invariably men, and male litigants could influence the selected persons towards masculine solidarity on the issue. Women who are unhappy about this state of affairs report their disaffection to the court and request other persons be charged with their case. Such incidences tend to also prolong the duration of property division.

Participant three of this group (Mr. Mebratu), explains the procedures by which property division is carried out within a relatively short time. He remarks that if the

couple has legal documents, which show the amount of property, that would help with the division. Properties acquired during marriage are considered common and divided equally. Sometimes it is difficult to divide properties. In such a case, one partner makes a financial settlement to the other; or some properties may be sold and the money divided equally. Some items can be awarded to one of the partners according to their utility to a man or a woman. In general, all participants of this group indicated the prolongation of property division because of numerous arbitration appointments.

The Views of Participants in the Attorneys' Group

The ideas of participants in the attorneys' group are similar in that they expressed that there is a prolonged process involved in handling property division. Nonetheless, two participants of this group (Ms. Hamere, participant one; and Mr. Berihun, participant three) comparing the property division under the previous law with the status under the current one noted that currently the duration of property division is relatively shorter. Ms. Hamere explains:

To divide property between a litigating couple under the current code still takes time. However, the condition under the previous family law was even worse. The previous law did not have clear provisions to deal with property division. For instance, it did not indicate how to effect a resolution if both litigating partners would like to own a particular item identified as a conjugal property. It was contentious to resolve such litigation. Most of the time the woman had to disown a particular property deemed to be contentious because of the consideration that the husband could make the particular property available or not. The current code has provisions that help to more judiciously resolve such an impasse.

In line with Ms. Menbere's idea, the current code has nine articles (from article 85 to 93) and 17 provisions, which specifically deal with property division issues. Hence,

according to participant one and three of the attorneys' group, though there are still procedures to be observed by the parties involved in a particular property division, now the provisions of the revised code make clear the steps involved to divide conjugal properties. The previous family law did not only make property division a prolonged process, but it also made it complex because the provisions regarding the steps in handling a particular property division case were not clear enough to address such private interests in a fair and equitable manner.

Participants of the attorneys' group went into explaining the selection criteria of persons to handle property division. They emphasized that those individuals who are assigned by the court to handle conjugal property division are those able to act as arbitrators or others assigned solely for this purpose. The litigating parties would pay them for services provided in connection with property division. Those who handle the duty of property division are paid for their service based on the valuation of properties to be divided. If a litigating couple had an agreement concerning property upon the contracting of their marriage, conjugal property division would be relatively straightforward since there would be evidence; otherwise, it would be complex.

Participant two of this group (Mr. Mekonnen) remarked that the duration of a particular property division process depends upon the amount of properties a litigating couple happens to possess. The amount of property also impacts the duration of the division process with more time required for larger amounts of property.

The Views of Participants in the Judges' Group

Participants in the judges' group mentioned that the current code has clear provisions as compared to the previous family law. Making ample use of varied judicial terminologies, they made similar elaborations on how to conduct property division. First, each of the partners should claim their own individual possessions. Then, the remaining property is divided and each partner receives his or her share of the division. However, property should be required to be divided with respect to appropriate utility. Judge Dmsew (participant four) points out that if one partner is an engineer, items related to engineering should be given to the engineer. Even clothes are considered as common properties, but male attire, for example, should be given to the husband while the wife should receive identifiably female clothing such as dresses. If it is not possible to divide a common property, it should be sold and the proceeds divided equally. This is in line with the partition provision (article 92), which stipulates:

1) If there is a certain property, which is difficult or impossible to be divided and if the spouses do not agree as to who shall have that property as his [his or her] portion, such property shall be sold and the proceeds thereof shall be divided between them. 2) If the spouses do not agree on the condition of sale and, if one of them so requires, the sale shall be made by auction.

Judge Woldemariam points out that conjugal property is handled after the divorce is enacted. The law gives a discretionary power to the judge either to divide conjugal properties based on the judge's own decision or to select arbitrators capable of apportioning properties between a litigating couple. When the court finds a particular litigation over property to be complex, it assists the litigating couple in selecting one or

two elders each, and one person who would act as a chair, to apportion their properties.

Mr. Woldemariam, as a judge, relates his experience:

At the time when the court finds, for example, a litigating couple nevertheless desires to live in the same house, the court assigns its engineer to provide a practical solution to the litigants by remodelling the house as a convenient residential dwelling for two households.

Judge Demsew points out that subject to the approval of the court, arbitrators can facilitate the division of property between spouses amicably. At times, when the court finds out that a particular property division is not equitable, the court may refer the case to other arbitrators. His observation is that such a practice can incur further delay. Judge Gobeze stressed the problem he faced as a judge: The fact that there is no tradition of keeping documentary records regarding the purchase of properties in Ethiopia makes it difficult for the court to refer a property division case to arbitrators selected by the litigants. If the ex-partners are unable to provide arbitrators to divide their common property, the court can appoint professionals experienced in the field, such as accountants, or lawyers to divide the conjugal property fairly and equitably and present a report to the court. These professionals or the arbitrators would be in a better position to make a valuation and to identify private and conjugal properties, and also to make a decision concerning the division.

Participants of the judges' group pointed out that those who reconcile litigating couples are not paid. However, they indicated that those who handle the duty of property division are paid for their service based on the valuation of the properties to be divided. Judge Woldemariam from his experience elucidates that when the couples themselves

choose arbitrators from among relatives and friends no payment is involved. However, when the court assigns persons to deal with property division the ex-partners would pay the assignees a certain amount depending upon the valuation of the property. Judge Demsew affirms:

When the spouses themselves select arbitrators to divide conjugal property, the arbitrators do not receive any payment. However, if the court assigns individuals to be responsible for property division the ex-spouses are required to pay for the service rendered. Those who render the service of property division may be professionals, such as lawyers or accountants, especially when the disputing spouses have businesses and other valuable common properties.

Hence, the foregoing information suggests that one of the ways for conjugal property division is to be handled is through the agreement of the couple. Another is that the court itself handles the case when a couple presents evidence concerning property ownership to the court. When there is no evidence, the court refers a particular property litigation case to arbitrators, or it appoints property valuation professionals to divide the properties between the divorced persons. The court should, of course, approve the decision of the arbitrators or appointees. In general, as explained by the participants, property division involves a prolonged process as it did under the previous law. The gender advocates group mentioned factors that would cause the adjournment of appointments for property division, and thereby prolong the process. Participants in the attorneys' group emphasized the steps involved to conduct property division, and they mentioned that the current code has specific provisions to be employed as guidance. Participants in the attorneys' group also noted that property division invariably takes a long time. Nonetheless, they indicated that as compared to the previous law, it is more

rapidly expedited, and the current code has clearly categorized provisions that address property division.

The foregoing discussion elucidates that the provisions and judicial procedures have changed in handling family arbitration, divorce and property division.

4.3. Research Sub-Question Three: Have changes in provisions and judicial procedures had an effect on women and children in court proceedings?

According to the responses of the participants to question two, it is possible to give an affirmative answer to this research question, because their views indicate that there have been changes observed in judicial procedures, which have a positive as well as negative effect on women and children—the category of this section. The themes for this category are the sub-topics that follow.

4.3.1. POSITIVE EFFECT OF CHANGES IN JUDICIAL PROCEDURES ON WOMEN

All of the participants explained that under the previous law women were required to forward an application of divorce to the court by mentioning that their case be referred to a tribunal of family arbitrators. Hence, as a positive development, women currently do not have to undergo the protracted and tedious procedures observed under the previous family law to resolve a marital conflict. Women can now get divorced without being required to explain the cause of their marital conflict as the current code clearly indicates that marriage is a matter of individual choice, and thus an individual has the right to divorce without being found innocent or guilty merely by filing for divorce.

According to participants of the judges' group, the application of the revised family code provides benefits for women due to the fact that couples in marital conflict now have the right to get their conflicts resolved through the assistance of family arbitrators, and can present their grievances to the court if they are not satisfied with the decision of the arbitrators. At times the court refers some cases to family arbitrators, but the role of the arbitrators is limited to preparing a report on arbitration attempts, which need a thorough investigation. It is up to the court to make a decision regarding a particular family litigation. Women also benefit through the application of the code because now litigations over such matters as child support and child custody are resolved without delay though each case might be handled separately. When the court, for the sake of seeking a solution, requires one of the partners in a marital conflict to leave the home, women are usually given the option to remain at home. This is in contrast to the situation under the previous code where women were forced by their husbands to leave their homes and they would not be in a position to utilize their common property for a prolonged time pending the resolution of the conflict.

The views of participants of the judges' group are similar in that women could file for divorce in the case of spousal abuse without the necessity of providing detailed justification to the court. The previously problematic conditions regarding the function of a tribunal of family arbitrators are non-existent now. This is a major achievement to alleviate the plight of women from living in continued sufferings in irreconcilable marital conflicts.

Participants of the gender advocates' group invariably explained that the fact that women in marital litigation or separation are now able to receive an immediate solution

to their marital conflict marks the beginning of an era when women's rights are now being protected by the legal system of Ethiopia. Ms. Menbere (participant six of the gender advocates' group) states:

The maximum time allowed for marital conflict to prevail is three months, which avoided the prolonged and gender blind operation of the institution of family arbitrators. Under the previous law, some women were constrained to live in unhappy marriages because of the fear of being found culpable and therefore losing 1/3 of their divided property as a penalty for being a petitioner for divorce. Some men by mistreating their wives and creating unbearable conditions drove their wives to divorce; as a result the latter would prefer to file for divorce rather than continuing the marriage. However, now no penalty is imposed, so divorcing has become relatively easy, and those women in a painful marriage can easily get divorced.

Unlike the views of participants of the judges' group who indicated that it is the culpable party (either the husband or the wife) who should leave the house until a marital conflict is resolved either in reconciliation or divorce, participant two (Mr. Mekonnen) and participant three (Mr. Berihun) of the attorneys' group observed that under the current law, it is the husband who leaves the house in practice when a severe marital conflict arises. Since it could be difficult for the court to identify the economically better off partner, even those women who have the option of residing with their financially stable parents may remain at home while men will be forced to leave. On the other hand, all of the participants of the gender advocates' group indicated that the proper application of the law enforces the decision that the culpable party of a marital conflict should leave the house. As indicated by participants of the attorneys' group, most of the time it is women who would get the chance to stay at home during marital conflicts. Any property acquired in a marriage is considered conjugal common property whether or not registered

in the name of only one of the partners. In the past, property would be registered in the name of the husband and upon divorce women would be deprived of their divided share because they would not be considered a proprietor.

Even though all of the participants indicated that property division involves a persistent failure and prolongation in reaching a decision, they indicated that the revised code gives women equal access to common property division. Participant three of the gender advocates' group (Mr. Mebratu) elucidates that in the past, the proprietor could liquidate properties, which would usually be registered in the name of the husband, in order to deprive women of their share. Currently, that is not possible because concerned agencies, such as the Road and Transport Authority or the Ministry of Works inquires from a property owner whether or not both of the spouses would agree to liquidate a particular property, for example, a car or a house. This allows women to benefit from properties which may not be registered in their names. Nevertheless, it appears that there is still a loophole. Ms. Tsedale (participant five of the gender advocates' group) pointed out that some men, upon a marital conflict, could get properties registered under the name of their close relatives, for example, their mothers, to deny their wives a property claim. Furthermore, it stipulates that partners who stay in an irregular union for more than three years have equal rights in a pecuniary relationship over common property. Women in irregular unions, whose cohabitation lasts for three years, would have the right to a share from property division.

As participant two of the gender advocates group (Ms. Tsigereda) indicated, women now have an equal right with their husbands to determine the number of children

they should have. This helps women to maintain reproductive health, and aids in family planning.

4.3.2. NEGATIVE EFFECT OF CHNGES IN JUDICIAL PROCEDURES ON WOMEN

All of the participants indicated that there is no tribunal of family arbitrators institutionalized as under the previous law. The couples themselves seek out family arbitrators. However, as opposed to the positive views of participants of the judges' group concerning the current operation of family arbitrators to reconcile disputing couples within a short time, participants in the gender advocates' group argue that the economically strong partner (usually a man) may not agree to use arbitration. Upon the grievances of the disadvantaged party (usually women), the court tends to assign arbitrators. These arbitrators may not be known to the litigating couple, and may demand payment for arbitration as was in the case under the previous code. This cannot solve the conflict. In fact, Judge Tesfanesh (participant three of the judges' group) observed that litigating couples, who are not satisfied with the decision of family arbitrators, are not likely to report to the court. She also mentioned that the court has a limited mandate to handle marital conflicts before receiving a petition for divorce. She noted that it is common for couples, especially women in marital conflict, to report domestic violence and to file for child support or household provisions in order that the court provide them with a solution. However, the court has the tendency not to investigate marital conflicts because handling pre-divorce situations falls under the jurisdiction of arbitrators. This is causing inconvenience to couples in marital conflict, especially to women, who are the

primary victims of family litigations. Based on the information given by this participant concerning the lack of clarity of article 118 as to how arbitrators should handle marital conflicts and how the litigants should present their marital grievances to arbitrators, the public cannot have clear understanding of the issue. This makes women more susceptible to any inconvenience that could be created because of this irregularity; and particularly due to the fact that women are preoccupied with household chores, they generally have less access to information as compared to men, and thus may have no clear understanding of a particular provision.

Another observation made by participants of the attorneys' group and the gender advocates' group is that the current law requires the culpable party to pay compensation to the other party. Even though there are a lot of improvements, there is a problem of the underestimating of compensation for women upon divorce. Ms. Hamere, participant one of the attorneys' group reiterates:

I know a case in which the cause of the divorce was spousal abuse, which resulted in the woman losing one of her eyes. I argued that such a violent act was an example of extreme cruelty on the part of the husband. Since the woman was a typist, I argued that she could learn and acquire a computer word processing skill and could get a better paying job and improve her livelihood. The court only penalized the man with a fine of 1,000 Birr [Ethiopian currency]. This was nevertheless better compensation as compared to other cases, which I encountered where penalties concerning compensation would be so lenient as to not seriously safeguard the rights of women.

Based on their experience, participants of the judges' group believe that there are still problems facing women in relation to property division. That is, the code has a weakness or negative implication that the judges cannot rule on

conjugal property division when they make decisions concerning divorce. One of the litigating parties, usually the woman, is further required to file for property division. This creates an inconvenient time lag for women who face financial hardship until they receive their divided property share. Judge Woldemariam (participant one of the judges' group) elucidates:

I encountered a lot of women complaining that their intention was to receive household income, not to get divorced. These women cried and shouted at the court claiming that they were misled. So, the interval created between reaching the decision to grant divorce and investigating the property division case, because the latter is handled through another petition places women in a disadvantageous situation.

Judge Woldemariam also mentions that men often mistreat women by withholding money required for household provisions. A woman would face a disadvantageous situation in filing with the court, petitioning that although her husband stopped providing for the household, she would still need him to pay child support or household provisions. Since it is not possible for the court to reach a decision on such a request before granting divorce, most women especially at a lower social stratum, would be forced to divorce. However, they would subsequently undergo considerable distress when it became clear that they could not afford life as a divorcée, when the original desire was solely to get money from their ex-husbands. He also states:

That is why some people argue that the previous operations of a tribunal of family arbitrators be reinstated. Their argument is that as a tribunal of family arbitrators would proceed slowly with marital conflicts, the litigating couples would have an increased opportunity to reconcile. After the divorce, however, the realities of their economic status having worsened rather than improved, many women have become severely emotionally distressed. On several occasions, I have suggested to the legislators that the pertinent provisions should be amended to rectify this problem.

The ideas of Judge Demsew concur with the preceding explanation made by Judge Woldemariam of the same group. Yet, the other two participants of same group (Judge Gobeze and Judge Tesfanesh) contradict those of the rest of the group. In fact, Judge Gobeze and Judge Tesfanesh suggested that the application of the code has enabled litigations over such matters as child support and child custody to be resolved without delay. Judge Gobeze put it as follows:

I have already mentioned the benefits that women enjoyed from the application of the revised code under the first question... Optimally, until a marital conflict gets resolved, the more financially secure partner (usually the husband) would pay child support and household provisions relatively promptly, as opposed to the conditions that prevailed under the previous family law.

On the other hand, Mr. Berihun, based on his experience as an attorney, also notes that the law is not clear as to how the court should decide on issues of child support before divorce. None of the other participants mentioned any disadvantages that women face in connection with child support if their husbands are indeed delinquent providers. The contradicting ideas of the participants of the judges' group seem to have emerged from a predisposition to interpret certain provisions of the code differently, which would

have resulted from the fact that judges (the key policy implementers) would reinterpret certain provisions. The judges would tend to attenuate the significance of certain provisions, which became threats to policy intent, and they would render judgments regarding certain family cases to attain the statutory objectives—to safeguard the rights of women and children.

Concerning the practice of different interpretation, Judge Gobeze provides an example of variations in rulings concerning child custody. If a child received a weekend recreation benefit to the value of 1500 Birr while a marriage was in effect, a judge could rule that that practice continue, even after divorce. However, another judge might decide that the child was receiving that benefit when his/her parents were together; upon divorce they could no longer afford that expense because of the increased living costs that a single person would now incur. As a result, a judge might rule to cancel that benefit, which reflects upon the unclear nature of pertinent provisions.

The application of the provision that allows divorce when one of the partners would request divorce could place women in a disadvantaged position. That is because men generally control property, and are, therefore, able to dispose of jointly owned property without conferring with their wives. In this way, women are automatically deprived of their half (or part) of jointly owned property or money. The following case illustrates this circumstance.

CASE TYPE: Property division involving joint ownership of an account
CASE CITATION: The Federal Supreme Court, Case No 8977

The case involves around a very wealthy couple that were litigating over conjugal common properties found in Ethiopia and an unidentified foreign country. The appellant forwarded his application to the Supreme Court stating that the high court made its decision without taking into consideration among other things, expensive items, which it was alleged that the defendant had possession of in an unidentified place. The appellant also stated that the high court also overlooked the fact that the pension income, which was accumulated in the bank in the name of the defendant, should be regarded as common property. He further argued that the money on deposit in the Bank in his name, which was a joint account with another person, was being utilized for the auditing purposes of the business he ran. Therefore, he argued the high court ought not to have considered this as a common property. The defendant centered that the appellant's claims were baseless. She, for instance, replied that the high court did not consider the appellant's dispute over pension, because it did not have jurisdiction over pension rights, and neither could the Supreme Court make such a decision concerning pensions. The Supreme Court criticized the high court for having failed to determine whether or not the pension would be considered as conjugal common income. It also ruled that if the couple jointly held money on deposit in the bank, then they had to divide it equally between the two. However, this would be difficult to be realized into practice without knowing the full amount involved. The Supreme Court eventually referred the case to the high court to make a decision by identifying the common properties and money of the litigating couple through distinguishable legal evidence.

As women are economically dependent on men, they could face financial hardship. Participant two of the judges' group (Judge Gobeze) is of the opinion that:

Since many women are liable to arbitrary divorce by their husbands at any time, and since a residential house is, in most cases, owned or rented by husbands before the marriage, such women would face the prospect of homelessness. They would also lack economic options, having been economically dependent on their husbands, in addition to the moral crisis they would face as a result of divorce. Those who could not maintain themselves economically have sometimes resorted to commercial sex, and they would be vulnerable to H.I.V. infection.

Likewise, Mr. Berihun, participant three of the attorneys' group points out that when the court finds out that a particular house was owned by the husband before the establishment of the marriage and when the ruling would confirm that the wife was not entitled to any share of the property, upon divorce the woman would be evicted and would suffer from the lack of a place of residence. This is even more critical for non-proprietor women who are in an established marriage, of say 30 years, without having common property and get divorced. The opportunities for such women to remarry would be minimal and they would experience difficulty in leading stable lives subsequently. He states: "Once, I have even encountered a judge, who could not find any supporting evidence or a loop hole to rule in favor of a female litigant, going out of his way to implore a man in such a situation to give some portion of the properties to a non-proprietor woman."

Hence, the fact that a divorce petition is ruled upon within three months time has encouraged the increased incidence of divorce from which women suffer more than men because of their pre-existing economic dependence on men. Ms. Tsigereda (participant two of the gender advocates' group) discussed the disadvantages that the application of the code caused to women in that properties are divided between litigating couples upon divorce without giving a greater share of property to the parent granted child custody. According to her, the fact that the court would give child custody to the parent whom children prefer to live with and since children usually prefer to live with their mother, they would suffer a disadvantage. This is because sooner or later the share that a woman gets from property division will be depleted due to the expenses required to raise her

custodial children. As a leader of a women's association, she observed what happened among members of her association concerning property division, and clarifies:

I am aware of a situation in which a disputing couple received 50,000 Birr each after their house was sold in order to effect property division. The court decided that four of the children remain under the custody of their mother, but there was no greater financial share given to the mother. The mother soon exhausted her financial settlement on spending for the needs of the children. On the other hand, the man bought a mini-bus for a transportation business with his share from the property division. Since he is generating income from the mini-bus, he is leading a comfortable life financially, while the mother is suffering hardship in the raising of the children.

Based on the information mentioned herein concerning irregular union, the application of the code is also disadvantageous for women in irregular union in two ways. First, it does not acknowledge property division until cohabitating partners live together for more than three years and upon dissolution the union, women (the usual non-proprietors) would be denied access to property division. The law still does not acknowledge the existence of a property relationship within an irregular union that lasts for less than three years and which might evolve into a marriage. This creates a disadvantageous situation for women wherein they are denied access to properties acquired within cohabitation prior to the marriage.

Since men are economically at an advantage and marriage is a source of income for women, divorced women would suffer more from economic hardship. All of the participants indicated that the code, like the previous one, is devoid of alimony or a post divorce maintenance provision for divorced women. This worsens the already economically disadvantageous position of women after divorce.

4.3.3. POSITIVE EFFECT OF CHANGES IN JUDICIAL PROCEDURES ON CHILDREN

Similar to the information obtained in answer to the first research sub-question, as to the strengths of the revised code, the responses of the participants were similar, and indicate that under the previous law, children were under the authority of their fathers. They were considered legally incapable of expressing themselves and their parents would decide on matters such as their education and their marriage. Their father would supervise their relationship with others. Corporal punishment was also legal, and absolute parental control was the rule. The current law increases freedom for children, and marriage is a matter of free consent between individuals who reach 18 years of age. As stated in the constitution and as well as in the revised code, the best interest of the child is the governing principle.

All of the participants indicated that the application of the current code focuses on the best interests of the child, stressing the welfare of children during custody disputes. Under the previous law, unless the mother was found incapable or deviant, child custody (especially for children under the age of five) would be given to the mother. Even for children above the age of five there was a tendency to grant child custody preferably to the mother. Currently, the most important consideration for child custody determination is made upon the capacity of the parent best prepared to fulfill the proper moral upbringing, health and educational requirements of the child. The life style of the parents, including their relations with others in community, is assessed. The emotional attachment of the child to one of his/her parents would also be taken into consideration. Judge

Gobeze (participant two of the judges' group) mentioned that: "We are also very careful not to grant child custody for a parent whose basic interest would be to receive child support, i.e. to utilize the money for other reasons."

All of participants of the judges' group indicated that the application of the current code gives more discretionary power to the judge in making a decision concerning children born out of wedlock. Now the court can investigate through hearing witnesses, developing presumptions concerning children born out of wedlock and in irregular unions, to decide on paternity, child support, child custody, inheritance and other matters. The application of the revised code also provides advantages for both children born within and outside wedlock to have equal rights, because it gives equal acknowledgement to both. The previous code only recognized children produced within wedlock. The revised family code provides benefits especially to the children produced in an irregular union. The previous law acknowledged only children produced within wedlock. Men are obligated to pay child support for both children resulting from a proper marriage or from an irregular union until they reach the age of 18.

Judge Woldemariam (participant one of the judges group) seems more optimistic than other participants of the same group (for example, compared to the idea forwarded by Judge Demsew of same group indicated below), in explaining that the revised family code provides benefits for children involved in paternity denial, the court immediately reaches a decision that the alleged father should pay child custody until conclusive evidence appears that he is not the father of the child in question. When the court makes a decision concerning child custody, it would determine the amount of child support proportionally to the income of the parents; most of the time, the calculation is based on

the monthly income of the father. The court reaches a decision as soon as possible. The court renders its judgment in such a manner as to provide a timely solution with respect to the interests of the child since the revised code emphasizes the principle of the best interests of the child, until the age of 18.

4.3.4. NEGATIVE EFFECT OF CHANGES IN JUDICIAL PROCEDURES ON CHILDREN

All of the participants note that the application of the revised family code does not discourage divorce; it gives greater freedom, as opposed to the previous law. It tends to perpetuate broken families, and will probably result in an increased number of dissolved marriages, which would dispose children to grow up in a single parent family. That is, this condition is liable to create a situation wherein children would be raised in a dysfunctional family, which would negatively impact on their socialization and proper upbringing, which in turn would affect them psychologically and materially as they grow up in a single parent family. For instance, a child may be more attached to his/ her mother, and the mother would thus be granted custody because of the mother-child bond of affection. However, in the long run, the mother might not be able to economically support the child, which circumstance would then affect the child's upbringing. The child might also be deprived of the love and affection of his father in this scenario. Similarly, when custody is granted to the father, the child might be deprived of the love and affection of the mother.

Since the participants of the judges' group dealt with the code on a daily basis, they identified the weaknesses of the code that negatively affect children. Judge Demsew

of this group says that the code does not deal with child support during marital conflict before divorce. When women do not want divorce but do need child support, it is not clear how to address this issue. As the court could not render a timely decision, the children's education and health conditions can be affected. Judge Demsew also notes that even though the current code provides wide latitude for a judge to act to determine the child's father, the provisions concerning filiations are not clear enough. He states:

There is no clear provision to ascertain paternity through medical means (D.N.A.). There is one medical centre, which can handle this, but there are no clear legal grounds to order paternity tests though some say it would be possible through implied legal translation of some of the provisions.

In this connection, Judge Tesfanesh explains that under the previous law the father of a child born out of wedlock was only recognized if a man acknowledged his fatherhood, or if the mother sued a man for rape, which resulted in pregnancy. Under the current code, there are a number of conditions for ascertaining the father, which Article 143 states:

Where, ... the father of the child is not ascertained, a judicial declaration of paternity may be obtained under the following conditions;
(a) in the case where the mother has been the victim of abduction or rape at the time of conception of the child;(b) in the case where, at the time of conception of the child, the mother has been the victim of seduction accompanied by abuse of authority, promise of marriage, or any other similar act of intentional deception;(c) in the case where there exist letters or other documents written by the claimed father which unequivocally prove paternity; (d) in the case where the claimed father and the mother of the child have lived together in continuous sexual relation, without having a legally recognized relation, in the period regarded by law as the period of pregnancy.(e) in the case where the person claimed to be the father of the child has participated in the maintenance, care and , education of the child in the capacity of a father.

Judge Woldemariam from his experience, explained the situation under which children's livelihood is affected through lack of child support. Often times, to secure child support mothers would file for divorce. However, in certain cases, some fathers would stop paying child support. This is most often the practice of fathers who work as daily laborers, for example, in construction work. They would stop working and thereby generating income, as a protest against paying child support. They would then argue their unemployed status as a defense as to their lack of monetary contribution to the maintenance of their children. Some would even disappear. As a result, children would suffer, for instance, from malnutrition, or deprived medical treatment due to lack of money. Mr. Berihun (participant three of the attorneys' group) pointed out that the application of the code is disadvantageous for children because at times, the judges reached decisions on child support as a temporary measure until the conflict was resolved, which is contrary to the code. Some men even deny that they had married. The court then faces a problem of identifying whether or not a plaintiff did marry the defendant, and it requires considerable time for the court to come to a decision concerning paternity. According to this participant, the current code allows for a father to disown a child through medical examination; yet, it denies a chance of proving the paternity of a child through the same means.

The forerunning problems have been identified as factors resulting in a negative impact on children as a consequence of the application of the revised code.

4.4. Research Sub-Question Four: Have traditional values and practices had an impact on the implementation process of the revised code?

The following category and themes have been identified in the answer to this research question.

Impact of traditional values/Impediments:

- Looking down upon women
- Traditional Practices

LOOKING DOWN UPON WOMEN

All of the participants pointed out that there is still a tradition to look down upon women or considering women as inferior to men in the city of Addis Ababa. This has thus impeded the implementation process of the revised family code. Participants of the gender advocates' group even indicated that the judiciary (the judges, prosecutors and the police) are not gender sensitive enough in executing the code to protect the rights of women. Ms. Asnaku (participant four of the gender advocates' group) who has been affiliated with Women Parliamentarian Caucus notes that she encountered a lot of complaints that the police would overlook spousal abuse, such as wife beating, and the judges would misinterpret the code and render unfair rulings against the interest of women. The participants of the gender advocates' group also claim that women have the tendency to conform to the tradition of viewing women as inferior to men. Hence, by and large, women themselves are not seeking equal treatment. Particularly, there is a tendency of accepting that men should administer the family and property. There is a

propensity to venerate such traditions by considering them to be part of patriarchal and inviolable societal values. Ms. Tsedale, who was recruited from the Ministry of Women's Affairs as participant five of the gender advocates' group notes societal norms give greater respect to men, and as a result women shy away from going to the court. Those who file petition for divorce are those who have faced unbearable conditions created by their husbands. Most women still feel that suing their husbands would subject them to a certain degree of social ostracism although there are some improvements in societal outlook on this issue as compared to the past. Ms. Asnaku (participants four of the gender advocates' group) recounts:

Traditional values predispose women to be reluctant to sue their husbands. For instance, they tend to consider being beaten as a common and acceptable practice. Even the police consider wife beating as normal practice. When men commit adultery women also tolerate it and do not report it to the court.

In line with the preceding view, Judge Gobeze (participant two of the judges' group) comments that:

Women are reluctant to come to the court to file their grievances because of the remnants of behavioural modes inherited from the feudal era. They would simply remain in an unhappy marriage using traditional reconciliation methods, which have been formulated in the interest of men. Eventually, they tend to come to the court after suffering through unbearably traumatic situations, the severity of which could have been alleviated by court processes had they appeared before the court sooner.

Thus, there is an observation that women may shy away from suing their husbands in court because they have to conform to the societal norms that give greater value to men. The failure of women to report their grievances to the court can also be

attributed to the fact that they are unaware of their legal rights because of lack of information.

As to the dissemination of information to mitigate the tradition of looking down upon women, to promote gender equality issues and legal rights, there are differences of opinion concerning the activities of the mass media. All participants of the judges' group regard the awareness-raising efforts of the mass media as commendable. Mr. Berihun (participant three of the attorneys' group) completely dismissed the contribution of the mass media, in that women, the primary target audience, either do not have access to the information channels such as radio, T. V. and newspapers or do not have the leisure time to follow and absorb the information, as they are often preoccupied with household tasks. Even though all of the participants of the gender advocates' group share some of the viewpoints of this participant, they acknowledge the contribution of the mass media and the efforts of non-government agencies, in organizing seminars to raise the awareness of the public in the area of gender issues and legal rights. In this connection, Ms. Tsedale (participant five of the gender advocates' group) reiterates:

The mass media such as T.V. and. Radio, in collaboration with the Ministry of Justice and our Ministry [Ministry of Women's Affairs], have been broadcasting on gender equality issues including the family law. However, there is not yet sufficiently appropriate coverage to bring about attitudinal change concerning gender equality and legal rights. The mass media broadcast is merely a spotlight. To have wide spread media coverage requires a huge amount of money. There is no budget allocated for this purpose. The other question is, how many women watch T.V. and listen to the radio and read newspapers? Even those of us who work in the government do not pay full attention to such media, because women are traditionally obliged to manage the household and much of our time is devoted to domestic tasks. Nevertheless, this is the general trend, and some women may acquire the opportunity to follow the mass media broadcasts.

Hence, although the mass media has contributed to some individuals gaining knowledge of their rights and duties related to family matters, attitudinal changes in this regard have not been brought to the level desired, because the initiative is not a continuing effort.

TRADITIONAL PRACTICES

Apart from the impact of societal norms that traditionally have contributed to women having denigrated rather than appreciated, as mentioned above, Mr. Mekonnen (participant two of the attorneys' group) says that the current code is not commensurate with societal values because it allows marriage between close kin. Under the previous law, marriage was prohibited among individuals possessing a blood relationship of up to seven generations. However, the current law allows the marriage of close relatives such as cousins. He explains:

A woman is only prohibited from marrying her brother and her uncle. Similarly, a man is only prohibited from marrying his sister and aunt. This is completely against our societal values. Our custom, for instance, considers cousins as brothers or sisters. This is especially in contradiction to Christian values; most residents of Addis Ababa are Christians⁸. I do not even know whether marriage among cousins is fully accepted among Muslims; perhaps some Muslims practice that. I am not saying that the law is not applicable to Muslims, though Muslims use their own marriage system known as *Nika*, and they solve their marital problems within this religiously based way. Nonetheless, the fact that the current code allowing the marriage between cousins [heterosexual] is against societal values and the population would resent that particular provision, and it could be considered as an imposition.

⁸ The information about the composition of religious groups in Addis Ababa posted on the website of the Ethiopian Parliament indicates that the percentage of population of Christians in the city is 86.7, while that of Muslims is 12.7. The website depicts that: "Regarding religion, 82% of the population are Orthodox Christians, 12.7% Muslims, 3.9% Protestants, 0.8% Catholics, and 0.6% followers of other religions (Hindus, Jews, Bauhaus, Jehovah, Agnostics...)"

Another traditional practice is the establishing of what is considered an informal union. Some people consider themselves to be married merely by virtue of their living together. However, in the instances where irreconcilable differences arise, they appear in the court to request divorce, which the court may reject. In fact, participants of the judges' group emphasize that they often handle cases of irregular unions, wherein individuals who have maintained the traditional practice of claiming marriage without having legal documentation, are appearing in the court seeking divorce and essentially wasting the court's time. It may be even more difficult to identify who is the beneficiary of a particular irregular union if two women claim marriage to the same man as the following case illustrates:

CASE TYPE: Two women claiming marriage with the same man

CASE CITATION: The Federal Supreme Court, Case No. 10246

The case was brought before the Supreme Court upon the death of a man with whom two women claimed that a marriage with him had previously existed. First, the primary court ruled in favor of the woman who eventually appealed to the Supreme Court protesting against the decision of the high court, which had subsequently disapproved her marriage claim. The defendant stated that she had lived with the man for 26 years and had had children [the number is not stated] with him within the framework of traditional marriage. She also argued that if the appellant had been married to him, it would obviously be now null, void and be a crime because a person could not legally be married to two persons at the same time. On the other hand, the appellant contended that the defendant merely claimed that she had undergone a traditional marriage but could not indicate when and where the marriage had taken place. Neither could two witnesses verify her claim. Besides, the appellant noted, the document presented by the defendant as a proof of marriage was not in accordance with the provisions of article 95 and 96 of the revised family code.

In line with the appellant's points of argument, the Supreme Court reversed the decision of the high court. The judicial principle was that the high court erred in considering a document unofficially prepared and therefore having no legal weight, as evidence. Referring to Article 96 of the Revised Code, the Supreme Court reversed the judgment of the high court and upheld that of the primary court. It stated that neither the document nor the testimony was of sufficient legal force to prove that the defendant had a legitimate marriage with the deceased. The relationship should rather be considered as having been an irregular union.

This case shows how an irregular union may not easily be identified even within the court system. In other words, this case can be considered as an illustration of the difficulty of distinguishing an irregular union from that of a legal and valid marriage.

The court also cannot grant divorce merely because two people claim that they have been married. Neither does the court acknowledge a particular marriage claim because just one individual requests so. The following case illustrates this condition.

CASE: Litigation over whether or not a particular marriage is valid
CASE CITATION: The Federal Supreme Court, Case No. 8872

The appellants (the daughter and son of a deceased man) were litigating to be the heirs of their deceased father. On the other hand, a woman was disputing by claiming that she also had a contracted marriage with the deceased man. The appellants forwarded their grievance that the high court reversed the decision of the primary court, which decided that the current defendant had contracted no legal marriage with the deceased man. The appellants' point of litigation was that the defendant did not present evidence for having had a legal marriage with the deceased. The defendant was able to convince the high court that she was married to the deceased man and had five children with him. She was able to call upon four witnesses, and to present documents from *kebele* that she had been registered in the same house with him and that he had indicated her name as his wife with the Ethiopian Pension Agency. The high court in rendering its judgment in favor of the woman quoted article 96 of the revised family code, which states: "A man and woman are deemed to have the possession of status of spouses when they mutually consider themselves and live as spouses and when they are considered and treated as such by their family and community." However, the appellants argued that the witnesses, who were called upon by the defendant, did not sufficiently explain to the high court, in accordance with article 96, that residents of the community should consider the defendant as the wife of the husband. Eventually, the Supreme Court reversed the decision of the high court and upheld that of the primary court. The judicial principle involved was that the defendant could not present evidence that she had contracted a legally valid marriage.

The case portrays that living together and producing children in such a relationship may not be sufficient ground for stipulating the existence of a legally valid

marriage. The most commonly and legally accepted evidence for the existence of a marriage is a marriage certificate. Otherwise, the union of a man and a woman who live together without having a legal marriage certificate, despite the duration of their relationship, might not be considered as a marriage. Bigamy is another traditional practice that has negatively affected the implementation of the revised family code. Judge Demsew, participant four of the judges' group, clarifies that there is a problem of bigamy in that some men have a legal marriage in urban areas as well as an irregular union in a rural area, usually with a number of children. In particular, when the court decides on child support, men who have two partners inform the court that they have children from another woman and present that circumstance as a mitigating circumstance so that the court would decide upon a reduced amount of child support. Strangely enough, the investigator has encountered a judgment of the Supreme Court, which acknowledged the marriage of two women to one man after he passed away. The case reasoning seems to be for the sake of giving inheritance rights to the children, who the deceased begot from both of the women (the plaintiff and defendant). Please see Appendix I (Case No. 9437).

Participant four of the attorneys' group (Mr. Temesgen), and participant three of the gender advocates' group (Mr. Mebratu, one of the draftsmen of the code) explain that those who practice bigamy, especially Muslims, argue that their religion allows the marrying of more than one wife. Mr. Mebratu states:

There is a disagreement among Muslim religious leaders in supporting or opposing bigamy. According to some religious leaders, it is possible for a man to get married to up to four women as long as he is able to love all of them equally. Since it is not human to love more than one person equally, bigamy is also a prohibited practice according to the Muslim religion. Some of them argue that a man needs the permission of a *Kadi* (Muslim leader) to marry more than one wife. Nonetheless, bigamy is illegal but the government does not enforce the law in order to avoid a possible clash with the Muslim community.

Couples who were married through the Islamic faith use the traditional way of resolving their conflict by going to religious elders. There are very few women among the adherents of the Muslim religion who appear in court. This obstructs the protection of the rights of Muslim women through the implementation of the revised family code.

According to all of the participants in general-- and as the experiences of participants of the judges' group reveal in particular-- the fact that some of the practices of the previous law are still in existence obstructs the court's operations. For instance, some couples present a divorce decision prepared by family arbitrators for the court's approval. They would explain to the court that they have rescinded their marriage contract in the presence of the elders. In such instances, the court may be hampered in establishing the justice of the matter. To determine whether or not such a couple was married in the first place would require an exorbitant amount of the court's time. Ms. Messelech (participant one of the gender advocates' group) states:

The current law gives a mandate to the judges to grant divorce. However, some elders play the role of arbitrators by deciding on matters of divorce and taking their decision to the court for approval. They also demand payment for their services. The current law has already banned this practice, but the fact that there are still some people who maintain it, I consider as a traditional practice, which should be against the law.

According to Mr. Mebratu, the fact that the office of public notary has not been established would imply that the law is not acknowledging customary and religious marriages. In the strict sense, however, the absence of the office of public notary to register marriages whether they are celebrated customarily or religiously implies that the implementation of the law is impeded. There are many people who are married in religious or customary ways without marriage certificates. The law stipulates that the primary proof for the existence of a particular marriage is a marriage certificate. Since the law, as a second option, allows the court to call upon witnesses to testify to the existence of a particular marriage, the judicially correct implementation of the law would be obstructed if false testimony occurs. There is also a tendency among the public not to regard marriage registration as a positive act; rather one of the partners may consider it as a negative because he or she may suspect his or her spouse of planning to later deny the marriage. According to Mr. Mebratu, men especially consider that since this kind of marriage registration would produce marriage certificates, and it could be a threat to them that their wives would prepare themselves as a proof to file for divorce.

Participants of the gender advocates' group are of the opinion that many women may not sue their husbands due to the ostracism of traditional practices that suing her husbands in public could be a shameful act. From the attorneys' group, Mr. Mekonnen and Mr. Berihun disagree with this view. Their point of disagreement is that Addis Ababa is a metropolitan city, wherein traditional values have no significant impact on women going to the court to sue their husbands. The investigator tried to pose the interview question to the two participants in different ways. However, they did not mention other

factors of traditional values affecting the implementation process of the code. Mr.

Mekonnen explains:

I do not think traditional values have any impact on the implementation of the revised code. Had it been in the rural areas, that may possibly still be the case; but here in Addis I have not observed traditional values affecting individuals going to the courts or the operation of the courts. In the rural areas, there is a custom that the wife would not to accuse her husband in public. But here [in Addis Ababa], the situation is different in that it is a common occurrence for wives to sue their husbands even under the previous law let alone now.

In line with the preceding idea, Judge Woldemariam (participant one of the judges' group) also explained that since Addis Ababa is an urban center, there are few, if any, traditional values preventing women from suing their allegedly culpable husbands, as a phenomenon be viewed to have affected the execution of the revised code. Nonetheless, he points out that one residual traditional practice is that some litigating couples, considering resolving their dispute through arbitration, still insist that the court help them by appointing family arbitrators as it was in the past.

With the exception of the preceding ideas noted by the two participants the foregoing information in general suggests that traditional values or practices have a negative impact in impeding the implementation of the revised family code.

4.5. Research sub-question five: How can the implementation process be described: Mutual adaptation, co-optation, or non-implementation?

In answer to this research sub-question, the following category and themes have been identified:

Interaction (relations):

- Working relationship
- Co-optation.

Based on the information obtained pertinent to the interaction observed among the key actors (family court judges, attorneys and gender advocates), an attempt will be made to characterize the implementation process either as *mutual adaptation*, *co-optation* and *non-implementation*.

The first concept to focus on is *mutual adaptation*: The term signifies a successful implementation through the modification of policy to entertain the interests of stakeholders or policy actors. It also reflects upon the interaction of key policy actors in the implementation process. In other words, it refers to the condition in which the three groups of key actors would interact and co-operate to realize the intent of the revised family code. Therefore, the term in this study is used to characterize the implementation process of the revised family code when cooperation among these three groups exists. The assumption is that the working relationship of the key actors (judges, attorneys and gender advocates) impact the implementation process. For instance, if there would be a constant interaction among the three groups, there would be a possibility for them to work together, identify possible impediments in the implementation process, and commonly seek solution to mitigate barriers, which would affect policy intent.

WORKING RELATIONSHIP

4.5.1. The Views of Participants of the Judges' Group (group one)

All participants of the judges' group pointed out that they do not have a good working relationship with most attorneys. Attorneys are obligated to support the court in a manner to help provide justice within a short time. Many attorneys prolong cases because they can generate higher income through protracted legal proceedings. The court is often in conflict with attorneys due to the fact that they are not conducting themselves in accordance with the expectations of the court. Four of the judges are of the opinion that most attorneys are non-cooperative with regard to the pursuit of justice. Expressing his criticism against most attorneys, Judge Woldemariam (participant of the judges' group) states:

By and large, attorneys are not co-operative with regard to the spirit of the law. They are primarily motivated by money and encourage conflicting couples whom it would be possible to reconcile, to get divorced by considering in advance the fees avaricious attorneys would earn especially when they handle property division. Attorneys need to correct this condition of adverse incentive. In fact there are few attorneys who reconcile conflicting couples before they come to the court. However, a significant number of attorneys display indifference with regard to the protection of family or child welfare. In fact, they benefit financially out of family litigation.

Another participant, Judge Tesfanesh, expresses that she has had a good working relationship with some attorneys and mentioned that they demonstrate cooperation in helping to resolve litigations. For instance, to resolve the litigation of people in irregular unions, some attorneys express their concerns to the court and are committed to helping.

As to the working relationship with gender advocacy institutions such as the Ministry of Women's Affairs and the Addis Ababa Women's Association, all participants of the group indicated that judges do not have any working relationship with gender advocacy institutions except with the Ethiopian Women's Lawyers' Association (E.W.L.A.). All of the participants of the judges' group indicated that the only working relationship that they have with gender advocacy institutions is with E.W.L.A. They express similar views in that E.W.L.A. is very cooperative in assisting the court in rendering justice. That is because the association supports women who desire to divorce, and the judges acknowledge the assistance, even if a particular member of that association who litigates on behalf of a woman, may not be licensed as an attorney. Hence, these participants (judges) consider that is permissible since the association is assisting low-income women. All of the participants of the judges' group also said that they have attended several workshops, which were organized by E.W.L.A. on the rights of women.

4.5.2. The Views of Participants of the Attorneys' Group (group two)

In line with the view of participants of the judges' group, participant two of the attorneys' group (Mr. Mekonnen) says that there are attorneys who mar the good relationship that judges should have with attorneys. The other three participants of the attorney's group express that even though there is no special working relationship between attorneys and judges, the entire relationship is conducted strictly within the framework of the law. An attorney represents a client and appears before the court and litigates on behalf of a particular client. A judge makes a judgment after considering the

facts presented by the litigating parties. The interaction is based on the law. The judge has the freedom to question or reprimand the attorney in the event the latter acts in a manner which is in contravention of the law. Otherwise, there exists a good working relationship between attorneys and judges based on the law. All of the participants of this group indicated that attorneys do not have any working relationship with gender advocacy institutions. That is because there has not been any forum organized to establish a relationship.

4.5.3. The views of participants affiliated with gender advocacy institutions (group three)

Participants of this group are those who have had affiliation with the six gender advocacy organizations described in chapter three. With the exception of the participant recruited from E.W.L.A (Ms. Menebre), all of the participants of group three claimed that they have no working relationship with family court judges or with attorneys.

All of the participants mentioned that they have a good working relationship with E.W.L.A. For instance, Ms. Tsigereda --a participant who has had an affiliation with the Addis Ababa Women's Association-- explains that the association utilizes the support of E.W.L.A. for some legal interventions sought for its members. All of the participants of this group agree that they have a good working relationship with each other. Nonetheless, Ms. Tsedale (a participant who has had an affiliation with the Ministry of Women's Affairs) is of the opinion that although there has been a working relationship among gender advocacy institutions, this relationship is not sufficiently strong for them to fully safeguard the legal rights of women in a manner desired and advocated to bring about

gender equality. That is because each institution has internal problems such as lack of adequate human as well as financial resources required to rally around persistently and create a strong social movement to gain sufficient popular support.

On the basis of the above information, there is either no working relationship (example, no working relationship between family court judges and most gender advocacy institutions) or no cooperative relationship between family court judges and attorneys. Hence, the three groups of key actors (family court judges, attorneys, and gender advocates) do not have the required interaction and co-operation towards the realization of the intent of the revised family code as defined in chapter one. In other words, there is no cooperation among key actors of the three groups, and neither is there any modifications made to the code to entertain their interests. Therefore, the implementation process of the revised family code cannot be characterized as *mutual adaptation*. The lack of cooperation to work together among the three groups of participants has negatively affected these policy key actors not to have a concerted effort to voice their concerns together and put pressure on the government to seek solution to the problems encountered in the implementation process of the revised code as soon as possible. In other words, had there been mutual adaptation, there could be some kind of mechanism developed to maintain the full realization of the statutory objectives of the revised family code. This includes, for example, the immediate revision of the identified inadequate provisions to mitigate impediments.

CO-OPTATION

Co-optation is the second theme or concept to be considered. The term also refers to policy reinterpretation (reinterpretation of some of the provisions of the revised code) to meet the interest of stakeholders, such as women, women's associations, and others concerned. The significance of the term is to effect an accommodation in order to prevent adverse pressure to any particular endeavour. This is accomplished by affording a considerable degree of latitude concerning policy reinterpretation as well as displaying willingness to consider aspects of arising challenges. Co-optation could also serve to maintain the status-quo with little or no change. This refers to the implementation process of the revised family code when the policy document (the revised family code) is adapted and being implemented without introducing significant changes concerning staff placement, or organizational structure.

The implementation process of the revised code could be affected by the operations of the courts. Likewise, the staff arrangement of the court would have a direct bearing upon the operations of the court. What would the staff arrangement of the court look like? Have there been some changes made concerning staff placement in the implementation process?

All of the participants have indicated that there are no significant changes made concerning staff placement, except that family courts have been restored and family matters are now treated separately from other civil matters. That is, before the revised code was put in place, family matters were handled in the civil courts along with other matters such as tax issues and other civil contracts. Currently, although family matters are handled separately in family courts, there are no new elements introduced in the family

courts concerning staff placement. In the courts, there are always judges, clerks, a procedure keeper (a messenger), and a policeman. Mr. Berihun (participant three of the attorneys' group) states: "There is no structural adjustment made except the restoration of family courts, and random assignment of old and married judges to attend to family matters." In fact, Mr. Mebratu (participant three of the gender advocates' group), who was one of the draftsmen of the code, and Ms. Hamere (participant one of the attorneys' group) explain that there was a family court in the 1980's. However over time, family matters were handled with other civil matters, such as inheritance, because of a lack of judges and budgetary constraints. Thus, the existence of the current family courts as a consequence of the revised code should not be considered as a new development.

Mr. Mebratu explains what the other participants have not mentioned in connection with staff placement or structural adjustment. He explains his experience in relation to the non-establishment of the office of public notary. According to him, the law stipulates that the office of public notary be established within six months. This office should have branch offices up to the *kebele* level (the smallest administrative locality) to summon newlyweds (if they fail to report) and register their marriages. However, this institution and its branches have not been established. Nonetheless, the City Council of Addis Ababa registers civil marriages and issues civil marriage certificates upon the application of couples who have celebrated customary and religious marriages. There is no a marriage-counseling agency formally established in Addis Ababa. Instead, E.W.L.A. mediates marriage disputes, provides legal guidance and assigns its members (lawyers) to represent those women who seek its service to represent them in court. As mentioned earlier, the fact that judges, using their discretionary power, allow lawyers (members) of

E.W.L.A. who do not have licenses to act as attorneys, is for the purpose of safeguarding the interests of women, which is concomitant with the intent of the policy (the code).

For the various reasons discussed herein, the current code banned the tribunal of family arbitrators, only acknowledging court-supervised arbitration, in which litigating couples themselves seek out arbitrators. However, as previously indicated, it may be difficult for litigating couples to find trustworthy arbitrators. Those desiring that their marital instability be resolved in reconciliation often insist that the court assign arbitrators. At times, the judges, upon the request of litigants, select arbitrators by way of reinterpretation of pertinent provisions in order to keep a particular marriage intact.

Even though the revised code banned payment for arbitration services, when judges select family arbitrators to reconcile conflicting couples, they instruct the latter to remunerate arbitrators. This is to encourage arbitrators to be fully devoted to identifying the root causes of the conflict and to attempt to effect reconciliation so as to prevent family dissolution, thereby acting in the interest of couples who need the intervention of judges in the selection of arbitration to save their marriages from dissolution. As all of the judges pointed out, the Civil Procedure Code of 1965, which allows the payment of arbitration fees, is still applicable. Even though the current code bans arbitration payments, those judges who, by way of reinterpreting the code, would like to help conflicting couples reconcile, quote the Civil Procedure Code (Articles 315 to 318), and particularly Article 318 (5), which stipulates: “Where the fee to be paid to the arbitrator has not been fixed, a reasonable fee shall be fixed by the arbitrator in his award.” In other words, the provision of the Civil Procedure Code which was identified to place women in a disadvantaged position can still be applied, combined with a particular judge’s

reinterpretation of the revised family code, in the interest of those couples who insist their marital conflicts be resolved through arbitration. This accommodates the interest of those who would like the selection of arbitrators to be part of the court system. In fact, as Mr. Berihun (participant three of the attorneys' group) indicates, there are still some people who prefer the old provision, with regard to family arbitration (the operation of the tribunal of family arbitrators), be reinstated. Even though there is no provision which bans a claim for property division after a long period of separation, some judges, as an act of reinterpretation of the code based on its intent, rule that property division is neither equitable nor feasible, particularly in the aftermath of a long separation. The judicial argument is that it is unlikely there would be any circumstances to justify the existence of common property after a separation for a prolonged period. Case no. 9984 of the Federal Supreme Court, which is found at the appendix I, is an illustration.

It can also be argued that the differences in rendering judgments concerning child maintenance and household provisions are part of the endeavor of reinterpreting the revised family code to safeguard the interest of parties involved in family litigations. Some of the judges (Judge Gobeze and Judge Tesfanesh, for example) are cognizant of their discretionary power and are disinclined to postpone marital litigations which are based on child maintenance and household provisions therefore rendering judgment before divorce has taken place in order to protect the interests of women and children who traditionally lack maintenance income. This consideration, as pointed out by gender advocate participants, is commensurate with the current movement of women's associations such as E.W.L.A. and the Addis Ababa Women's Association towards the amendment of some provisions of the code whose application brought about adverse

effects with respect to women and children. As pointed out by Ms. Menbere of E.W.L.A., their proposal takes account of alimony (post divorce maintenance for women) to be included in the code, and that child custody be provided to mothers as it was under the previous code.

The foregoing information, therefore, characterizes the implementation process to be of *co-optation*. That is because the stated facts illustrate issues of structural adjustment to manage change resulting from the implementation of the code. Moreover, the interests of stakeholders, such as women in court proceedings and women's associations have been accommodated. This helps mitigate the possible occurrence of adversaries in the implementation process of the revised family code.

As has been explained in the previous sections, though the revised family code has a number of weaknesses, it has also some strength as compared to the previous family law in terms of protecting the rights of women. For instance, women have the right to get divorced without justifying grounds for divorce. Women in irregular unions and whose relationships last for three or more years have also the right to property division. Therefore, there is a reflectivity of policy reform, which is also an indication that the revised family code as a policy has been implemented for the last seven years. This fact makes the term *non-implementation*, which signifies policy breakdown (as has been defined in chapter one), not to be applicable in characterizing the implementation process of the code.

CHAPETR FIVE

IMPLICATIONS, CONCLUSIONS AND RECOMMENDATIONS

5.1. IMPLICATIONS

According to the study participants, the code is being implemented generally in accordance with the intent of the policy to bring about gender equality with respect to family matters. To some degree, its objectives have been realized. For instance, the court renders decisions within a short period of time, as compared to the situation under the previous code. The party petitioning for divorce is no longer subject to a fine, as was invariably the case under the previous code. Such parties, who are usually women, no longer incur the penalty historically imposed upon those individuals disposed to forward grievances and divorce requests to the court. In other words, women subject to intolerable suffering in a marital relationship can easily obtain a divorce without being penalized and within a relatively short period of time, due to the fact that *no-fault divorce* has now been codified.

However, divorce also adversely affects the economic interests of women since men retain control of the economy, a fact which implies that marriage is, among other considerations, a source of livelihood for women in Ethiopia. The fact that alimony or post divorce maintenance, which was not part of the previous family law, has not been included in the current code tends to make the economic disadvantage of women even greater. Even though there is apparently a disagreement between the interviewed judges as to whether or not to address grievances concerning child maintenance and household provisions before the court grants divorce, the existence of litigation on such issues, and rulings either in favor or against is inevitable. The instances of non-consideration of child

maintenance before divorce induce economically disadvantaged women to file for divorce to obtain money for child support from their husbands after the divorce. However, the money received for child support would eventually be depleted, as women generally do not have their own source of income. Furthermore, as indicated in chapter four, their ex-husbands may withhold child support on the grounds that they are unemployed and not earning income. As participant one of the judges' group (Judge Woldemariam) emphasized, this compounds the problem in that women often blame themselves for having initiated the divorce.

Apart from this, there are dissimilar rulings concerning the amount of child support awarded as different judges conduct the investigation of particular type of litigation differently, some of them reinterpreting the provisions in the interest of concerned parties, especially women and children. The following case is an illustration.

CASE TYPE: Child Support

CASE CITATION: The Federal Supreme Court, Case No 9953

This case shows that the female appellant forwarded her petition to the Supreme Court concerning child support for two of her children. Upon the defendant's opposing litigation, the high court reduced the amount of child support from 1700 Birr (which was decided by the primary court) to 1400 Birr. Thus, the Supreme Court laid emphasis on the best interests of the child and reversed the decision of the high court, upholding thereby the decision of the primary court.

This case indicates that a final decision is to be expected when it comes to litigation over child support. However, the decision concerning child support may be

affected by other legal considerations. Case no. 8002, which is indicated in Appendix I illustrates the relevance of other legal aspects of the court decision concerning child support.

One may question how *no-fault divorce* (a new clause) would be codified in a society where the economy is male dominated and women barely earn income. *No-fault divorce* would be more fairly utilized when both the husband and the wife are economically viable. Since marriage is an income source for women, divorce means being deprived of that income source. *No-fault divorce* is therefore disadvantageous for women because women are not economically empowered. The investigator was very inquisitive to understand how *no-fault divorce* has been codified in a society where women are economically dependent on men. For instance, as indicated in chapter one, the proportion of Ethiopian women in the workforce who are making a living wage is very low. In other words, would it be difficult for the draftspersons of the code to anticipate the consequences of a major provision such as *no-fault divorce*? Mr. Mebratu (participant three of the gender advocates' group) who was a member of the commission that prepared the draft code states:

When we were drafting the code, we foresaw that this problem would be emerging. However, because of the strong movement of women's associations and the influence of pertinent government officials against restricting divorce, and above all the government's policy direction that restricting divorce is being undemocratic, the requirement to justify grounds for divorce has not become part of the current code.

Apart from this, there are problems with regard to the interpretation of the provisions. According to participants of the judges' group and the attorneys' group, the

attorneys (compared to the translation of the judges) may understand some provisions differently. Interestingly enough, the interview with the judges revealed the fact that the judges themselves make different decisions on similar cases. For instance, two of them suggested that they could handle family disputes concerning child support and the withholding of the household budget (for household provisions) within marital conflict, before divorce. The other two of the judges expressed the opinion that they could not deal with such issues before granting divorce.

In providing an explanation for this disparity, as Mr. Mebratu explained it, since the law is new, there are problems of differing interpretation of the provisions by different judges. That is because appropriate and similar interpretations may only be developed through time and experience. At times, it is because a particular case involves more than one issue, for instance, a case involving children and property division, leading to a procedural clash that could occur resulting in variations of judgments from the lower court to the Supreme Court level. Please see case number 6622 in the appendix.

It can also be argued that the reason for differing interpretations might arise because some of the provisions lack clarity and are, therefore, subject to the discretion of a particular judge. As indicated in chapter four, the code does not provide specific provisions to deal with some family litigations, for instance the property relationship of married people whose irregular union would be transformed into a marriage before their cohabitation had reached a duration of more than three years. Similarly, issues such as filiations or paternity confirmation are not specifically and clearly addressed by any of the provisions of the code. The law is also devoid of provisions, which address child support for pregnant women, alimony (post divorce maintenance), the continuation of

marriage after separation, and the like. Similarly, one can raise a question as to how the court would treat the cases of some individuals who claim marriage and then file for divorce after a long-time separation, for example, after 20 years. This leads to litigation over property division. It may not be considered appropriate for an individual to file for property division after being separated for so long a period of time as it is unlikely there would be circumstances to justify the existence of common property after such a separation. Case no. 9984 of the Federal Supreme Court, which is found in Appendix I, is an illustration.

Property litigation cases could also emerge as a result of the death of one of the ex-partners, as the following case explains:

CASE TYPE: Dispute over the property of third party, after the death of ex-partner

CASE CITATION: Federal Supreme Court, Case No. 10094

The couple was living in a house as married persons, and the house was rented from the *kebele* (the lowest government body) in the name of the wife. Upon their divorce, the man left the house. The woman subsequently died, but not before making her daughter whom she had conceived with another man (other than the defendant) the rent holder of the house. However, upon the death of his ex-wife the defendant started living in the house by claiming that he had the right of use to half of the property. The appellant (who is not the daughter of the defendant) protested that the defendant had no right to live in the house. The primary court reached a decision in favor of the appellant. However, the high court ruled that the house be divided by partitioning between the defendant and the appellant and that both had the right to live in the house. However, the Supreme Court reversed the high court's decision and upheld that of the primary court. The judicial principle was that property of a third party, in contrast to that owned by a couple, could not be considered as conjugal common property. Hence, the defendant had no right to claim a third party's house.

The law still does not acknowledge the existence of a property relationship within an irregular union which lasts for less than three years and which might, in time, be

transformed into a marriage. This is against the intent of the statutory objectives, which enable women to enjoy their rights and to maintain their advantages on an equal footing with their male partners.

Another impeding factor observed in the implementation process of the revised code is linked to the fact that judges cannot rule on conjugal property division when they make decisions concerning divorce. The litigating parties are further required to file for property division. This creates an inconvenient time lag, especially for women who face financial hardship until they receive their divided property share.

Disputes over property division occupy the time of the court as well as that of the disputants. This is particularly exasperating for the judges because, traditionally, couples do not keep records concerning their properties. Case No. 2196 of the Supreme Court (narrated in Appendix I) that was began under the previous code and was brought up to the Supreme Court through appellate procedure under the revised family code is a good example.

This case illustrates the complexity of conjugal property division particularly with regard to isolating the relevant factors necessary to arrive at the appropriate judgment. The primary and high courts simply accepted the decisions of the tribunal of family arbitrators. Even though the Supreme Court identified errors, it was nevertheless unable to pass judgment. Rather, it referred the case back to the first court. This is a typical example of the time-consuming and convoluted procedures involved to resolve litigation over property division. Since the conjugal properties were controlled by the husband, the wife was obliged to suffer inconvenience until the judgment would be made, in order to receive her share. In other words, the revised family code has not remedied the tedious

procedures involved in conjugal property division, and elements and practices of the old family law concerning property division are still in effect.

As participants of the gender advocates' group observed, there is unjust handling of property division in that men invariably receive a larger share, and as participant five of this group (Ms. Tsedale) pointed out, there are complaints that men register their properties in the name of a third party, for example in their mother's name.

Consequently, upon divorce the women could not claim the properties as a common property.

In addition, the revised family code pays insufficient attention to social values related to family arbitration. The advantage of the prior law was that the previously mandatory role of family arbitrators provided sufficient time to reconcile disputing couples. Currently, the court is required to undertake non-judiciary matters to ascertain whether a couple that files for divorce is able to be reconciled. It is difficult for a judge, trained solely in law, to accomplish that. Disputing couples often express to the court their desire to be reconciled only when they reach the stage of property division. This indicates that if they had been afforded sufficient time, or, if there had been in place another mechanism such as the option to live separately for a period of time, perhaps they would have reconsidered keeping their marriage intact. As has been mentioned, the role of family arbitrators (under the previous code) came into contradiction with the societal values, which uphold the practice of reconciling of disputing couples, because it was often aimed at generating income. It was for this malpractice that the current code banned a tribunal of family arbitrators. However, there was no mechanism prepared to replace that institution, except granting the legal right for disputants to select family arbitrators to

deal with their pre-divorce marital conflicts. Despite this, the law requires judges to look into marital conflicts as to whether or not reconciliation can be effected when a couple initially files petition for divorce.

As indicated in chapter four, therefore, the judges are not only dealing with judicial matters, but also with non-judicial matters, which are rightfully the duties of a marriage counselor. That is, the court does not have an adjudicatory body, which includes social workers that could handle marital conflicts. Because of this, the court is not only applying the provision, but it is also playing an additional role, such as trying to reconcile disputing couples including the choice of the place where children should live after the divorce has taken place. Sometimes the court also discusses these concerns with family arbitrators. The court also has the duty to attempt to persuade litigating couples to reconcile, which concurs with article 82, of the code:

1) Where the petition for divorce is made ...[by a couple], the court shall speak to the spouses separately or jointly with a view of persuading them to renounce the petition for divorce and solve their dispute amicably. 2) Where the attempt made under Sub-Article (1) has failed or is likely to fail, the court may direct the spouses to settle their dispute through arbitrators of their own choice.

Such interventions have created a heavy burden on the part of the judges, who are already overloaded by handling a large and growing caseload daily, which in turn leaves family court judges with insufficient time to investigate family litigation cases. This is therefore an impediment to the realization of the statutory objectives of the code. Concerning family arbitration, the investigator has noticed that there is confusion between arbitration and conciliation. The law prohibits arbitrators from making

decisions; their function is to mediate between conflicting spouses to resolve their differences. However, the very term arbitration implies decision-making, which Garner (2004) describes as: “Arbitration: A method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding” (p.112). Yet the law states that there is arbitration after divorce to present a report to the court concerning certain issues such as property division or child custody. This cannot be considered as arbitration; it is more appropriately recognized as the duty of conciliators. Even though the tribunal of arbitrators under the previous law created some problems, it had its own beneficial aspects in that it could reconcile disputing spouses by identifying the real cause of the problems. As Shiferaw notes under the previous code, there were repeated postponements of appointments of the tribunal of family arbitrators. And yet, under the current code if an arbitrator is absent there is no provision for the court to appoint another arbitrator. Even though the time to resolve a marital conflict is limited to three months--due to arbitrators not appearing on appointed days-- marital conflict often cannot be resolved within such a short period of time. It can be argued that the problem of reconciling marital conflicts through family arbitration still persists.

In addition to the answer provided to the five sub-questions, the next section (conclusions), as a summary, addresses the overarching research question, which focuses on the consequences of the implementation process of the revised family code.

5.2. CONCLUSIONS

This part of the dissertation comprises two sections, which summarize the consequences of the implementation process of the revised family code in light of the following theories utilized in the study:

1. Implementation theory and the concepts of mutual adaptation, non-implementation, and co-optation
2. Feminist theory
3. Modernization Theory.

The Implementation Process and Implementation Theory

As defined and explained in the literature review section, implementation is the execution of public policy. Generally, it involves two general approaches—top-down and bottom up—to deal with identified concerns. The top-down approach presumes the coordination of implementation to be addressed at a higher level while the bottom-up approach requires the coordination of implementation at a lower level of government structure. Peters and Pierre (2006) elucidate: “If the bottom-up approach to coordination is emphasized then bargaining over coordination would be done not by ministers [secretaries] and senior civil servants in central agencies but rather by lower level administrators (p.19).” The fact that the family courts are constituted at a lower level of government structure and are subject to the administration of the courts means that the implementation process of the revised family code is carried out through the bottom-up approach. At the lower level-- in the courts-- justice is administered by the judges (who were interviewed). This is in line with the bottom-up perspective of implementation

discussed by Hejrn and Stillman II. For example, Stillman II notes the suggestion of Hejrn that the bottom-up approach fosters: "...to study a policy problem, asking microlevel actors about their goals, activities, problems, and contacts (p.406)." In general, the bottom-up approach to implementation is significant because whatever is executed at the lower level has a more direct impact on the lives of individuals.

The literature describes three basic concepts in order to characterize the implementation process. The first concept is *mutual adaptation*. It refers to a successful implementation of policy by fulfilling the needs of stakeholders. It also reflects on the interaction among stakeholders towards the realization of policy intent. In other words, when the objectives of a particular policy are attained successfully, the implementation process can be characterized as *mutual adaptation*.

Another concept of interest to be employed to characterize the implementation process is *non-implementation*. This is a failure to attain policy objectives, which entails the lack of reflectivity of policy reform. In other words, *non-implementation* means policy breakdown—a complete non-attainment of policy objectives.

Likewise, the third concept of interest to characterize the implementation process is one of *co-optation*. It is about effecting accommodation to overcome pressure exerted from possible interest groups in the implementation process. This is done by accommodating the interests of stakeholders. It also entails the adaptation of policy without significant changes in the already existing staff or organizational arrangement.

To characterize the implementation process of the family code in light of these concepts, it is important to summarize the major findings. The implementation of the revised code has been successful in establishing equal rights for women. It has benefited

women in terms of introducing some favorable conditions which have allowed women to assert individual rights; for instance, it allows divorce without having to present grounds (*no-fault divorce*) and with no penalty incurred. Nevertheless, the implementation process of the revised family code also confronted unfavorable conditions, which adversely affects women and children.

According to the information obtained from the judges, there have been many more files forwarded to the court as compared to the previous law where cases were delayed for 10 to 15 years without being resolved. Apparently, this problem has been addressed through the restoration of family courts, which facilitate the implementation of the revised family code. Family litigations were handled in the civil court system with other civil matters until the revised code was put into place. As opposed to the practices that prevailed under previous conditions, the court system has now been computerized and appointments are expedited. Such factors have facilitated the implementation of the code.

The interviews with stakeholders revealed a lack of uniform application of the code's provisions. There was also the lack of remuneration for arbitration services, which tends to discourage the willingness of family arbitrators to resolve marital conflicts. Yet, this can create a problem especially for women who would be unable to afford the fee, which is one of the major reasons for the revision of the previous family law.

In this study, the participants, for instance Judge Woldemariam (participant one of the judges' group) and Mr. Berihun (participant three from the attorneys' group) are of the opinion that family arbitrators could assist the court by ascertaining the wishes of children as to whether to live with their mother or father. The fact that the code dictates

that a marital conflict be resolved within three months creates a situation where many litigating couples are not afforded the opportunity to properly exercise the option of reconciliation. The short period of time is often insufficient for resolving a marital conflict. Furthermore, the fact that family arbitrators are by custom exclusively men may predispose the results of marital conflict arbitration to reflect the male viewpoint rather than that of women. Further, there was not any forum organized for the key policy actors (family judges, attorneys, and gender advocates) to work together for the full realization of statutory objectives.

Thus, the implementation process cannot be characterized as *mutual adaptation*. It can neither be characterized as *non-implementation* because the stated facts show the existence of some positive developments, which can be considered as policy reflectivity to safeguard the rights of women. For example, women now have the right to divorce without justifying grounds for divorce. Further, the code has been implemented for the last seven years.

According to the findings described in chapter four, the implementation of the revised family code can be characterized as *co-optation* based on the findings that there have not been any significant changes in the staff placement or institutional setting displayed in the court system. This helped mitigate possible resistance to the implementation of the code, which could likely emanate from certain requirements, for example, from the allocation of additional public funding to manage change. There has also been an attempt by judges to reinterpret some of the provisions based on the intent of the policy (the revised family code), in the interests of women and children. There have not been any modifications or amendments made to the code as of the present time.

Nonetheless, concerned parties such as gender advocates and judges are seeking further revisions to be made to rectify the inadequacy of the code and mitigate the noticeable weaknesses of its identified provisions. This could alleviate the negative impacts of the inadequacy of the code upon the parties involved in family litigations, especially women and children; and thus to establish gender equality.

Gender Issues and Traditional Values

A major tenet here is that as societal values are transformed to become modern, traditional values which perpetuate patriarchy or male supremacy would diminish thereby creating conducive environment to promote the equality between men and women. In other words, as societal values change through the process of modernization, there would exist the practice of promoting the rights and benefits of women. In light of this, what has been observed in the implementation of the code?

The fact that a prolonged process of property division is common, women are at a disadvantage since societal values dictate properties to be under the control of men; and women are unable to benefit from the conjugal property until the property division is decided. Moreover, as explained by participants, men often receive a greater share when property division is conducted. That is because, within the Ethiopian cultural tradition, men predominate with respect to ownership of property and so are in a position to receive greater equity share as compared to that of women.

There were seminars organized by E.W.L.A., which invited judges to discuss issues such as the interpretations of the provisions, which vary across judges. For example, there was a tendency to explain the existence of a fourth type of marriage, albeit

beyond the three types which the law has already defined-- customary, religious and civil. Litigating couples unable to produce a document to prove that they are married might be allowed to produce witnesses. The witnesses should be able to testify that they were invited to the wedding ceremony of the couple, or that the latter had lived as husband and wife. Upon such testimony, the court could render a judgment to the effect that such a couple is in fact married. There was an erroneous tendency to consider this as a fourth type of marriage. However, further consideration revealed that such marriages are related to either customary or religious marriage. In other words, when a couple would not follow the traditional route to establishing their relationship could result in misunderstanding to determine that they are legally married.

Societal values have rendered Ethiopian women economically disadvantaged, most being dependent upon their husbands. This is related to the fact that societal values, which promote patriarchy, encourage men to be dominant and to control available resources. According to the Ethiopian Government Action Plan on Gender and Development posted on UN (Division for the Advancement of Women) website, due to societal values, which promote male supremacy, women are discouraged from acquiring control over resources, and have limited access to opportunities such as education. The action plan also explains that there is the active promotion of the importance of education. However, women are still culturally expected to occupy themselves with household chores, or are pressurized to get married early, which frequently result in the suspension or termination of academic pursuits for most women desiring an education or career. The action plan recognizes that gender disparities exist in all sphere of life in Ethiopia since societal values provide advantage for men; and it elaborates:

Seventy-five percent of women are illiterate. Even though primary education is being promoted, early marriage of girls reduces their chance of having access to higher education (75% of Ethiopian girls marry before the age of 17 and approximately 13% between the ages of 17 and 21 years). The rate of girl student dropouts is much higher than boys, and girls are often responsible for many chores which may interfere with their schooling (Retrieved on September 6, 2007).

The above is a reflection of the fact that men and women occupy different places in the social and economic stratification. This makes the codification of *no-fault divorce* ahead of its time, i.e. a mechanism empowering women socially before addressing female economic emancipation. It may be plausible to grant divorce after legally separating an irreconcilable couple for some time, a scenario like that of the divorce law of the State of New York of which Garner (2004) notes:

The system of no-fault divorce has been adopted throughout the United States. By 1974, 45 states had adopted no-fault divorce; by 1988, every state but New York had adopted some form of it. In New York—one of the last bastions of fault grounds for divorce—the closest equivalent is a conversion divorce one year after legal separation or a legal separation agreement (p.516).

Hence, in New York, an industrialized society, where women are economically empowered, divorce is not always granted automatically. Notwithstanding the importance of asserting one's rights in any preferred way, institutionalizing *no-fault divorce* in Ethiopia might be appropriate when women are empowered both socially and economically. However, it is obvious that women in Ethiopia are not socially and economically empowered. Their economic status affects their social status and vice versa. According to the Ethiopian Government Action Plan cited above, Ethiopian women live

in severe poverty. The action plan states that “in Ethiopia approximately 27 million people are living in poverty...women comprise a majority of those living in absolute poverty (Retrieved on September 6, 2007).” Hence, to improve the legal status of Ethiopian women, and to empower them socially and economically, they have to be freed from poverty. To this end, societal values should empower women with equal footing with men. This would occur when there is an attitudinal change in the society and thereby societal norms induce the notion of equality between men and women. This would be attained as social values change through the process of modernization.

5.3. Recommendations

As has been discussed herein, the revised code has a number of weaknesses. As a result, all of the participants, in their answer to question seven, are of the opinion that the code should be revised and further amendments need to be made. Based on the weaknesses or limitations of the code identified by the participants, and in order to be able to mitigate them, the investigator makes the following recommendations:

Since in Ethiopia a married couple generally do not prepare an agreement to live separated for a period of time, it would be advisable for the law to include a provision which would state that partners who undergo, for instance, a separation of several years could not each claim the property of the other unless jointly agreed upon. This is because one of the couple in question may acquire a property privately during the separation. Concerning irregular unions, the law does not acknowledge property division unless cohabitating partners have lived

together for more than three years. To address this shortcoming, and to harmonize it with the intent of the policy direction to protect women in irregular unions, there has to be a provision which states that common properties acquired during an irregular union should continue to be common when cohabitating partners decide to get married formally. Similarly, there has to be compensation given to women who cohabit with and then separate from their partners after less than three years of cohabitation. The fact that the code does not consider this state of affairs until a particular relationship has lasted for more than three years would make the provision concerning irregular unions contradict the intent of the policy direction and the statutory objectives of the code, which focus on gender equality.

In order to rectify the attitude of delinquent parents who shy away from paying child support supplying the reason of unemployment as mitigation, it is advisable to introduce a specific and clearly categorized provision, which guides the decision-making process among judges as to how to render judgment concerning child maintenance. For instance, there should be a provision that compels a particular parent to work regardless of desire for employment, in order to pay child support and this would safeguard the welfare of the children involved. This resembles the system of garnishment in the United States. The World Bank Encyclopaedia (2005) describes: "Garnishment is a legal process by which the credits or property of a debtor, in the hands of a third party, may be held for payment of debts [including child support]. In the United States, garnishment of wages is limited by federal law (p. 45)."

Along with this, a provision should exist, or a separate guideline should be formulated as to how to determine child maintenance by analyzing the income of the parents. Such an unambiguous provision should determine the child support issues to be handled both before and after divorce. Likewise, clear and specific provisions regarding filiations and paternity tests should be codified in order to ascertain parenthood.

The nature of family litigations is too complex to be handled by judges alone because it also involves the non-legal task of supervising arbitration, and this additional responsibility would overburden judges in handling family litigations. It would be advisable, therefore, for a court-annexed body to be established, to assist couples in resolving their disputes and to report to the court. This court-annexed body might be composed of social workers, psychologists, and other professionals who are appropriately trained and specialized in handling marriage disputes. This mechanism can reduce the burden of overload on the part of judges already handling a growing caseload. Such a burden would have a negative impact on the detailed investigation of a particular family litigation. Adopting these changes would serve the interests of justice, and it could reduce the issue of paying fees to arbitrators.

The establishment of the Office of Public Notary is critical to introducing the tradition of registering marriages. It can also avoid the problem of marriages involving under-aged children requesting the latter instead to prove their adult age. Since currently, this is done through the testimony of parents or relatives who would like a particular marriage to take place, inflated declarations of age occur. Hence, had there existed the

Office of Public Notary, this breach of law could have been significantly reduced if not altogether eliminated.

There should be a clearly and specifically categorized provision, which deals with the request for household provisions or child support, which the income-earner parent would be compelled to provide. The fact that the current code only allows the investigation of income related issues, such as child support, subsequent to divorce, results in an incentive for many marriages to be dissolved for the reasons of anticipated economic benefit, and thereby tends to make women (who are poor) the victims of these practices. The introduction of appropriate provisions can reduce divorce requests, which are usually begun in order to receive child support or household budget. The request for property division should also be treated immediately by scheduling the appointment to resolve the issue on the same day the divorce is granted. Forwarding another application for property division subsequent to the divorce is time-consuming and women of low-income status suffer unduly until they obtain their share of the property and financial division. To determine the amount of child support, there should be established criteria based on the income of the litigating partners. This avoids the current practice of arbitrary decision-making based on mere estimation of the income of the major income provider.

To mitigate the complaints that the public is not well aware of the code, and that the judiciary is not gender sensitive, or that the attorneys are not cooperative, it is advisable for the Ministry of Women's Affairs (as the primary responsible body) in cooperation with the Ministry of Justice, E.W.L.A. and other concerned agencies, to design adequate strategies to utilize all available channels or mass media to facilitate the raising of public awareness on gender issues and the legal rights of women. Identifying

the needs of the target audience by employing audience friendly approaches should be carried out on a sustainable basis. The information to be disseminated should not be monotonous, as has been currently observed. Through the introduction of attractive information dissemination on legal rights, there can be an improvement for the public at large, particularly in making women part of the audience pool and helping them assert their rights. The awareness creation endeavor should include specific issues such as record keeping with respect to conjugal properties. This would help resolve litigations of property ownership such as claims over division of houses, which are not registered by the Addis Ababa City Administration.

Furthermore, the public should be given proper awareness concerning family matters such as how to raise children within marriage or during divorce, and how couples should avoid or resolve marital conflict rather than escalating it and dissolving their marriages. Innovative approaches are required to instill the value that marriage as an institution is to be venerated and protected from easy dissolution. This public education can also help eliminate the practice of unknowingly mixing the provisions of the old and current law, thus avoiding the presentation of a particular case with reference to the old code, and to avoid the confusion and delay of the operation of the court thereby created.

The operations of certain institutions such as those mentioned above would not be sufficient to address the issue of the legal rights of women under the application of the revised family code. Therefore, it should be the concern of both the public and private entities. Whether or not we design policies or programs, and whether or not we adopt modernization theory or feminist theory, unless the implementation of a particular public policy fulfills its intent, unless the statutory objectives are realized into practice, and

unless concerned parties work in unison to make a difference, the concern to safeguard legal rights or gender equality will remain only hope and aspiration.

5.4. Contribution of the Study

To be noted, this study contributes to the advocacy work being carried out by the United Nations, and its member states. It particularly underscores how developing nations could be influenced by the global agenda of human rights movements and gender equality discourses. The study also presents a policy implementation experience, which is able to shed light upon other ongoing policy implementations or other programs deemed necessary to be implemented in the city of Addis Ababa or in other parts of Ethiopia.

5.5. Further Research

The revised family code is also being implemented in Dire Dawa, a city administered by a city council, like that of the city of Addis Ababa. It would be desirable to conduct a study in that city as well, to learn whether or not the statutory objectives have been realized. Further, the finding of the study can be compared with that of Addis Ababa. This would help develop an appropriate and sound proposal, which would depict a comprehensive approach towards the adoption of appropriate measures to mitigate the impediments to the implementation process of the revised family code. To learn more as to what is actually happening in the court system, and to ascertain in detail the reaction of parties involved in family litigations, a longitudinal study, based on the participant observation research method, could be conducted. To see if the code has become better

implemented or if any changes have been made thereto, it is feasible to conduct another study in Addis Ababa after an interval of several years has elapsed.

In conclusion, it is imperative to acknowledge that this area of research would remain timely until the legal rights of women in Ethiopia are safeguarded. It would not just be a matter of fairness, but it should be an obligation to encourage a research endeavor, which can contribute towards the preservation of the rights and benefits of half of humanity, i.e. women. When women benefit, men also benefit, and so does the society at large. The biological differences between men and women ought to be viewed as a variety endowed by nature to make life meaningful, but by no means to make women subordinate to men, or vice versa.

References

- Anderson, J. (1979). *Public Policy Making*. New York: Holt, Rinehart and Winston.
- Anderson G. and Herr K. (2007). *Encyclopaedia of Activism and Social Justice*.
Thousand Oaks: Sage Publications.
- Andersen M. & Taylor H. (2006). *Sociology*. Belmont: Thomson Learning Inc.
- Assen E. (1987). *The Growth of Municipal Administration and some Aspects of Daily Life in Addis Ababa. Proceedings of the International Symposium of the Centenary of Addis Ababa*, Addis Ababa.
- Babbie, E. (2001). *The Practice of Social Research*. Belmont: Wadsworth/Thomas Learning.
- Barnard, Alan. 1994. Rules and prohibitions: The form and content of human kinship. In *Companion Encyclopaedia of Anthropology* (pp 783-812) New York: Routledge.
- Barret, S. (2004). Implementation Studies: Time for a Revival? Personal Reflections on 20 years of Implementation Studies. *Public Administration* 82, (2) 249-262
- Beckstrom, J. (1973). Transplantation of Legal Systems: An Early Report on the Reception of Western Laws in Ethiopia.
- Binchy, W. (1976). Family Law Reform in Ireland: Some Comparative Aspects. *The International and Comparative Law Quarterly*, 25 (4) 901-909.
- Boserup, E. 1990. "Economic Change and the Roles of Women." Pp. in *Persistent Inequalities*. edited by Thicker I. New York: Oxford University Press.
- Brook, H. (2002). Rethinking the Politics of marriage. *Feminist Theory*, 3 (1) 45-66.

- Bunch, C & Carrilo, R. (1990). Feminist Perspectives on Women in Development. In Tinker, I. (ed), *Persistent Inequalities: Women and World Development* (pp70-82). New York: Oxford University Press.
- Burke, L. and Miller, M. (2001). Phone Interviewing as a Means of Data Collection: Lessons Learned and Practical Recommendations. *Forum Qualitative Research* 2 (2).
- Calista, D. (1994). Policy Implementation. In *Encyclopedia of Policy Studies* (pp. 177-155. London: Routledge.
- Chan, J. (1991). Power Change, Co-optation, Accommodation: Xinhua and the Press in Transitional Hong Kong. *The China Quarterly* 126, (pp.290-312).
- Chinkin, Christine. 1999. "Gender Inequality and International Human Rights Law." Pp 95-121 in *Inequality, Globalisation, and World Politics*. New York: Oxford University Press.
- Creswell, J.W. (1998). *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*. CA: Thousand Oaks.
- The Civil Code of Ethiopia (1960). Addis Ababa: Berhanena Selam Printing Press.
- The Civil Procedure Code Decree (1965). Addis Ababa: Berhanena Selam Printing Press.
- Collins, K. (2000). When Fathers' Rights Are Mothers' Duties: The Failure of Equal Protection in *Miller Vs. Albright*. *Yale Law Journal*, 109 (7) 1669-1708.
- Coltrane, S. (1996). *Family Man: Fatherhood, Housework and Gender Equity*. Oxford: Oxford University Press.
- Connel, R (2006). Glass ceilings or gendered institutions? Mapping the gender regime of public sector worksites. *Public Administration Review* 66, (6) 837-849.

- The Constitution of the Federal Democratic Republic of Ethiopia, 1995. Addis Ababa.
- Creswell, J (2003). *Research Design: Qualitative, Quantitative, and Mixed Approaches*. Thousand Oaks: SAGE Publications
- Damte, M. (undated). Proof of Marriage. An article accessed online on February 5, 2006 from the website of the Supreme Court of Ethiopia, at <http://www.etcourts.gov.et/Articles/article4.htm> .
- Danner, M. (1998). Three Strikes and It's Women Who Are Out. In Susan M. (ed), *Crime Control and Women: Feminist Implication of Criminal Justice Policy* (Pp. 215-224). Newbury Park, CA: Sage Publications.
- David, R. (1967). Sources of Ethiopian civil code. *Journal of Ethiopian Law* 4, (2) 342-358.
- Dewar, J. (1998). The normal chaos of family law. *The Modern Law Review*, 61 (4) 467-485.
- Dunn, W. (1981). *Public Policy Analysis: An Introduction*. New Jersey: Prentice Hall, Inc.
- Dye, T. (2000). *Understanding Public Policy*. New Jersey: Prentice Hall.
- Edward III, G. (1980). *Implementing Public Policy*. Washington D.C.: Congressional Quarterly Press.
- The Ethiopian Civil Service Personnel Statistics, 1995. Ethiopian Civil Service Commission, Addis Ababa.
- The Ethiopian Parliament website:
<http://www.ethiopar.net/type/English/basinfo/reginfo.htm> (Retrieved on December 13, 2006; and on June 16, 2007).

- Ethiopia: Sustainable Development and Poverty Reduction Program. 2002. Federal Democratic Republic of Ethiopia: Ministry of Finance and Economic Development. Addis Ababa.
- Foster, L., ed. 1986. *The Legal Rights of Women*. Colorado: Fred B. Rothman & Co.
- Garner, B. (ed.). (2004). *Black's Law Dictionary* (7th ed.). St. Paul: Thomson West
- Guba E. & Lincoln Y. (1989). *Fourth Generation Evaluation*. Newbury Park: SAGE Publications.
- Gutierrez M. (2003). *Macro-Economics: Making Gender Matter*. New York: Zed Books
- H/Gebriel, D. (undated). *Divorce Under the Ethiopian Legal System: An overview*. Accessed on line from the website of the Supreme Court of Ethiopia, at <http://www.etcourts.gov.et/Articles/article2.htm>.
- Hanf K. (1982). Regulatory Structures: Enforcement as Implementation. *European Journal of Political Research* 10 (2), 159-172.
- Hill, M. & Hupe, P. (2002). *Implementing Public policy; Governance in Theory and in Practice*. Thousand Oaks: SAGE Publications.
- Hjern, B. (1982). Implementation Research—The Link Gone Missing. *Journal of Public Policy* 2 (3) 301-308.
- Horton, R. and Duncan, D. (1978). A New Look at Telephone Interviewing Methodology. *The Pacific Sociological Review*, 21 (3) 259-273.
- Inglehart, P. and Norris, P. (2003). *Rising Tide: Gender Equality and Cultural Change Around the World*. New York: Cambridge University Press.
- Inglehart, R. and Wayne, B. (2000). Modernization, Cultural Change, and the Persistence of Traditional Values. *American Sociological Review* 65 (1) 19-51.

- Inglehart et al (2002). Gender Equality and Democracy. *Comparative Sociology* 1 (3-4) 320-345.
- Isben, C. and Balweg, J. (1974). Telephone Interview in Social Research: Some Methodological Considerations. *Quality and Quantity* 8, 181-192.
- Jackson, S. (1997). Women, Marriage and Family Relationship. In Robinson D. & Richardosn D. (eds.), *Introducing Women's Studies* (pp.323-348) London: Macmillan Press Ltd.
- Jain, D. (2005). Women development and the U.N. Bloomington: Indiana University Press.
- Jorgensen, N. & Bird, J. (1997). Sociology: An Interactive Approach. London: Harper Collins Publishers Ltd.
- Johnson R. and Onwueguzie (2004). Mixed Methods Research: A Research Paradigm Whose Time Has Come. *Educational Researcher* 33 (7) 14-26.
- Justice and Legal Institute Progress report on the Revision Work of Family Law. Addis Ababa. June 1999.
- Kornblum, W. (2005). Sociology in a Changing World. Belmont: Thomson Learning Inc. Legal Aid Association of California. Accessed on line on April 15, 2006, from the website at: <http://www.pic.org/>.
- Krezeczunowicz, G. (1969). The Present Role of Equity in Ethiopian Civil Law. *Journal of African Law* 13 (3) 145-157.
- Lane, J. (2000). The Public Sector: Concepts, Models and Approaches. Thousand Oaks: SAGE Publications.

- Lenski, Gerhard, ed. 1982. Human societies: An Introduction to Micro Sociology. New York: McGraw-Hill Book Company.
- Lewis-Beck M. et al. 2004. The SAGE Encyclopaedia of Social Science Research Methods. London: Sage Publications.
- Library of (U.S.) Congress Country Studies, *Ethiopia: The Role of Women*,
Accessed on line on December 21, 2006, from the website at:
http://lcweb2.loc.gov/cgi-bin/query/D?cstdy:1:./temp/~frd_uJ1c::
- Long, E., & Franklin A. (2004). The Paradox of Implementing the Government Performance and Results Act: Top-Down Direction for Bottom-Up Implementation. *Public Administration Review*, 64 (3) 309-319
- Lorber, J. (1996). Paradoxes of Gender. In Finterbusch, K. (ed.), *Notable Selections in Sociology* (pp. 206-215). Connecticut: Dushkin Publishing Group.
- Macionis M. (2005). Sociology. New Jersey: Pearson Education Inc.
- Macionis M. (2006). Society. New Jersey: Pearson Education Inc.
- Makamura R. & Smallwood F. (1980). The Politics of Policy implementation. New York: St. Martin's Press.
- Marshall, S. (1985). "Development, Dependence and Gender Inequality in the Third World." *International Studies Quarterly* 29 (2) 217-240.
- Matland, R. (1995). Synthesizing the Implementation Literature: The Ambiguity-Conflict Model of Policy Implementation. *Journal of Public Administration Research and Theory*, 5 (2), 145-174.
- Mazmanian D. & Sabatier P (1981). Effective Policy Implementation. Lexington: D.C. Heath and Company.

- McCann C. & Kim S. (2003). *Feminist Theory Reader*. New York: Routledge.
- McLaughlin, M. (1976). Implementation as Mutual Adaptation: Change in Classroom Organization. In William W. & Elmore R. (eds), *Social Program Implementation* (pp167-189). New York: Academic Press.
- Medhin Z. (2000). Women and Science and Technology. *The Journal of Ethiopian Women Lawyers Association*, 1 (1) 85-108.
- Messeret A (2001). Empowerment of Women in Public Policy Making. A paper Presented on the International Conference on Public Management, Policy and Development organized in Addis Ababa.
- Miller G. & Whicker M. (1999). *Handbook of Research Methods in Public Administration*. New York: Marcel Dekker, Inc.
- Mitchell G. and Rogers E. (1958). Telephone Interviewing. *Journal of Economics*, 40 (3), 743-747.
- Momsen J. (2004). *Gender and Development*. New York: Routledge.
- National Policy on Ethiopian women (1993). Addis Ababa: Berhanena Selam Printing Press.
- National Report of the Women's Affairs Sector of the Prime Minister's Office of Ethiopia, 2000.
- Newman, W. (2006). *Social Research Methods*. Boston: Pearson Education, Inc.
- Nock, S. (2000). Time and Gender in Marriage. *Virginia Law Review* 86 (8), 1971-1987.
- ODU's Dissertation and Theses Database (accessed online on April 24 and 25, 2007) from the World Wide Website at:
<http://www.lib.odu.edu/resources/databases/index.htm>

- O'Sullivan and Rassel (1999). *Research Methods for Public Administrators*. New York: Longman.
- O'Toole, L. (2004). The Theory-Practice Issue in Policy Implementation Research. *Public Administration* 82, (2) 309-329.
- O'Toole, L. (1986). Policy Recommendations for Multi-Actor Implementation: An Assessment of the Field. *Journal of Public Policy* 6, (2) 181-210.
- O'Toole, L. (1993). Interorganizational Policy Studies: Lessons Drawn from Implementation Research. *Journal of Public Administration Research and Theory* 3, (2), 232-251.
- Pankhurst, R. (1967). Menilek and the Utilization of Foreign Skills. *Journal of Ethiopian Studies* 5, (1), 123-131.
- Parsons, W. (1995). *Public Policy: An Introduction to the Theory and Practice of Policy Analysis*. Brookfield: Edward Elgar Publishing Company.
- Patton, M (2002). *Qualitative Research & Evaluation Methods*. Thousand Oaks: Sage Publications Inc.
- Patton, M. (1990). *Qualitative Evaluation and Research Methods*. Newbury Park: SAGE Publications, Inc.
- Peters G. & Pierre J (2006). *Handbook of Public Policy*. Thousand Oaks: SAGE Publications
- Pressman and Wildavsky (1984). *Implementation: How Great Expectations in Washington Are Dashed in Oakland : Or, Why It's Amazing that Federal Programs Work at All, This Being a Saga of the Economic Development Administration as Told by Two Sympathetic Observers Who Seek to Build*

- Morals on a Foundation of Ruined Hopes. Berkeley: University of California Press.
- Quinn, R. et al. (1980). Telephone Interviewing: A Reappraisal and a Field Experiment. *Basic and Applied Social Psychology*, 1 (2), 127-153.
- Redae, M. (undated). Some Points on the Legislative Background of the Revised Family Code. An article accessed online on February 2, 2006 from the web site of the Supreme Court of Ethiopia at: <http://www.etcourts.gov.et/Articles/article5.htm>.
- Renzetti, C. (1995). Women and Men in Society. Boston: Allyn and Bacon.
- The Revised Family Code [for the city of Addis Ababa and Dire Dawa] Proclamation of 2000. Addis Ababa: Berhanena Selam Printing Press.
- Reyes, G., Four Main theories of Development: Modernization, Dependency, World-System, and Globalization, accessed online on September 10, 2006 from the Worldwide Website at:
<http://www.ucm.es/info/nomadas/4/gereyes1.htm>.
- Richardson, L. (2005). Handling Qualitative Data: A Practical Guide. Thousand Oaks: SAGE Publications.
- Ritzer, G. and Goodman D. (2004). Sociological Theory. New York: The McGraw Hill Companies Inc.
- Robinson, O. (1998) The Historical Background. In McLean S. & Burrows N. (eds), The Legal Relevance of Gender (pp.40-79) London: The Macmillan Press.
- Rostow, W. (1971). The Stages of Economic Growth. Cambridge University Press.
- Rubin M., & Bartle J. (2005). Integrating Gender into Government Budgets: A New Perspective. *Public Administration Review* 65 (3) 259-272.

- Sabatier P. & Mazmanian D. (1980). The Implementation of Public Policy: A Framework For Analysis. *Policy studies Journal* 26, (1), 538-560.
- Schofield, J. (2004). A Model of Learned Implementation. *Public Administration* 82, (2), 283-308.
- Schultz, D. (2004). *Encyclopaedia of Public Administration and Public Policy*. New York: Facts On File Inc.
- Schutt, R. (2001). *Investigating The Social World: The process and Practice of Research*. Thousand Oaks: Pine Forge Press.
- Engel R. & Schutt R. (2005). *The Practice of Research in Social Work*. Thousand Oaks: SAGE Publications.
- Shafritz, J. (ed). (2004). *Dictionary of Public Policy and administration*. Boulder: Westvies Press.
- Shiferaw, T. (1998). Marriage and marital Conflict Resolution among Orthodox Christians in Some Selected Areas of Addis Ababa. M.A. Thesis in Social Anthropology, Addis Ababa University.
- Stamps, L. (2002). Maternal Preference in Child Custody Decisions. *Journal of Divorce and Remarriage*, 37, (1), 1-11.
- Staudt, K. (1998). *Policy, Politics & Gender*. West Harford: Kumanian Press.
- Stetson, D. (1982). *A Woman's Issue: The Politics of Family Law Reform in England*. U.S.A: Green Wood Press.
- Stillman II, R. (2005). *Public Administration: Concepts and Cases*. New York: Houghton Mifflin Company.
- Sturges, J. and Hanrahan K. (2004). *Qualitative Research: Comparing Telephone and*

- Face-to Face Qualitative Interviewing: A Research Note. *Qualitative Research* 4 (1), 107-118.
- Sweeney, M. (2002). Two Decades of Family Change: The Shifting Economic Foundations of Marriage. *American Sociological Review* 67 (3), 132-135.
- Somekh B. and Lewin C. (2005). Research Methods in the Social Sciences. Thousand Oaks: SAGE Publications Ltd.
- Tadelech HaileMichael (2000). The Role of Women in Democracy. *The Journal of Ethiopian Women Lawyers Association*, 1 (1) 53-82.
- Tolleson-Rinehart & Josephson (2005). Gender and American Politics: Women, Men, and the Political Process. New York: M.E. Sharpe, Inc.
- Trochim, W. (2006). Deductive and Inductive Reasoning. Accessed online on December 12, 2006 from the Worldwide Website at:
<http://www.socialresearchmethods.net/kb/dedind.htm>.
- United Nations, Convention on the Elimination of All Sources of Discrimination against Women. Retrieved on January 22, 2006 from the World Wide Website of the United Nations, at <http://www.un.org/womenwatch/daw/cedaw/>
- United Nations, Economic and Social Council (Commission on the Status of Women), Review of the Implementation of the Beijing Platform for Action and the Outcome documents of the Special Session of the General Assembly entitled “Women 2000: Gender Equality, Development and Peace.
- United Nations Press Release of July 3, 2005, retrieved online on February 10, 2006 from the World Wide Website at:
<http://www.un.org/News/Press/docs/2005/wom1497.doc.htm>.

United Nations Economic and Social Council (Economic Commission for Africa): Sixth African Regional Conference on Women on the Mid-Term Review of the Dakar and Beijing Platforms for Action. November 22-26, 1999.

United Nations Economic and Social Council (Economic Commission for Africa), Synthesis of the National Progress Reports on the Implementation of the Dakar and Beijing Platforms for Action [Sixth African Regional conference on Women], <http://www.un.org/spanish/events/beijing10/documents/ECASummaryNationalResponses-English.pdf> (Retrieved on July 17, 2007).

Vogel, Ursula. 1998. A Political Theory of gender: Perspectives on the Universal Subject. In Vicky R, & Georgiana W. (eds.), *Gender, Politics and the State* (pp. 29-44). New York: Routledge.

Weitsman, L. (1985). *The Divorce Revolution*. New York: The Free Press.

Werner, Alan (2004). *A Guide to Implementation Research*. Washington: The Urban Institute Press.

Wildavsky, A. (1979). *Speaking Truth to Power: The Art and Craft of Policy Analysis*. Boston: Little, Brown and Company.

W/Giorgis, O. (1979). The Functions of Family Arbitration under the Ethiopian Civil Code. Retrieved on June 1, 2007, from E.W.L.A.'s Website, <http://www.etwla.org/papers/FamilyArbitrators.pdf>

A World Bank Policy Research Report. (2001). *Engendering Development: Through Gender Equality in Rights, Resources, and Voice*. New York: Oxford University Press Inc.

The World Bank Report (Ethiopia, Summary Gender Profile). Retrieved on April 20, 2006, from the World Bank website,

<http://siteresources.worldbank.org/EXTAFRREGTOPGENDER/Resources/ethiopia.pdf>

The World Book Encyclopaedia. (2005). Chicago: World Book, Inc.

Zanden, J. (1990). The Social Experience. New York: McGraw-Hill Publishing Company.

Zewde, B. (2001). A History of Modern Ethiopia. Addis Ababa: Addis Ababa University Press.

APPENDIXES

APPENDIX I: Court Cases

CASE TYPE: Litigation over Inheritance/child support

CASE CITATION: The Federal Supreme Court, **Case No. 8002**

In this case, the appellants, who were nine in number, litigated along with the wife of their deceased father, who produced two children from the defendant. The defendant, who was a plaintiff during the litigation in the primary court, emphasized that she was the custodial guardian of her two sons from her deceased husband. She sued the appellants for having a controlling interest in a hotel, from which they earned a lot of money while depriving her of income to which she was entitled as his widow. Furthermore, two of her children, as legal heirs of the deceased, are also entitled to a share of the property. The litigation revolves around the income generated from a hotel. The defendant argued that upon her marriage in 1983 to her now deceased husband, they had agreed that the hotel be a common conjugal property. However, she noted that since 1983 until her husband died in 1992, she did not receive any income from the hotel, which she estimated generated 400 Birr per month. She claimed 490,553.33 Birr to be payable to herself as arrears owed and 22,727.26 Birr to her two children from her deceased husband.

The appellants contested her appeal by stating that she was making a claim for what in fact she and their father utilized during the marriage and that they were not in control of any such monies or income such as were alleged. The high court based on recorded evidence of the tax office distributed the income of the hotel to all of 11 children of the deceased man. Accordingly, it decided the two children under the custody of the appellant were to receive 12,611.45 Birr. The defendants disputed this sum as being the result of a calculation error. Based on tax records, the Supreme Court decided that the defendants should pay 3433.66 Birr to the children under the custody of the appellant.

The case indicates that even though child custody has been given due attention, the court makes judgments on available evidence. The fact that nine of the appellants were legal heirs of their deceased father, constituted a legal right to share through inheritance. As a result, the amount of child support filed by the defendant was significantly reduced by the court's decision.

CASE TYPE: Reconsidering Past Decision

CASE CITATION: The Federal Supreme Court, **Case No. 6622**

The case centered on the divorce decision made under the previous law in 1989. The primary court reconsidered the case upon the current defendant's request, which stated that the names of her children were not mentioned when the primary court made its judgment concerning the divorce and property division. This made determining her 50% share she should receive from the property division a more complicated and incomplete matter. The primary court made the decision that the names of the children to be stated. It also reconsidered property revaluation, which resulted in alterations in the property division of the litigating couple.

Both the appellant and the defendant were not happy about the decision made by the primary court concerning the revised property division. The major case holding became

that of the point of litigation of the appellant, who argued in the high court that the primary court should not have reconsidered property division other than the clarification of the status and legal entitlement of the children for whom the defendant filed. The high court ruled on reconsideration concerning property division because the appellant agreed that the case could be reexamined in the high court.

However, the Supreme Court noted that the high court erred by revising the property division, which had been previously resolved. When the appellant agreed that the case be reviewed would mean that it had to be investigated according to the law. The high court must have focused only on the defendant's application concerning the children. Hence, the Supreme Court rejected the decision of the high court concerning property division, but it accepted the decision concerning the identification of the litigants' children.

CASE TYPE: Prolonged separation and litigation over property division

CASE CITATION: The Federal Supreme Court, **Case No. 9984**

The case is concerned with a very protracted separation case in which the marriage was dissolved with conjugal property division. The primary court, upon the decision of the tribunal of arbitrators, endorsed a divorce and subsequent conjugal property division. The litigation was initiated as an attempt to reverse the decision whereby the primary court levied a fine of 1/3 of the defendant's current share of property to be given to the defendant as compensation. The primary court gave great weight to the fact that the defendant contracted another marriage without properly dissolving his initial marriage, which was therefore considered as an act of bigamy. However, upon the defendant's appeal to the higher court this second court reversed the decision of the primary court. The high court came to the decision that the defendant ought not to be fined because there were no legal grounds for the defendant to be considered bigamous or adulterous. Hence, the conjugal property should be divided equally between him and the appellant.

Protesting against the decision of the high court the appellant forwarded her grievance to the Supreme Court. The Supreme Court upheld the decision of the high court. The Supreme Court also acknowledged that the marriage must have been legally dissolved. However, the marriage was not maintained or preserved according to the law. Requesting divorce after 30 years separation was not plausible. And petitioning that the husband committed adultery or bigamy after 30 years would not be in line with the spirit of the law of protecting marriage. After the couple discontinued the marriage through their own means, after a protracted time the appellant claimed that the defendant is adulterous or bigamous is not plausible. Therefore, the defendant could not be held legally culpable, and the appellant's litigation has no legal basis. There is no legal reason or advantage in criticizing the decision of the high court.

CASE TYPE: Conjugal Property Division

CASE CITATION: The Federal Supreme Court, **case No. 2196**

This case shows how conjugal property division is complicated and involves tedious procedures. It was concerned with conjugal property division in which the appellant (the husband) disputed the decision made by both the primary court and the high court. The appellant litigated that:

1. The marriage was legally dissolved because of the irreconcilable actions committed by his ex-wife. He emphasized that she also insisted on initiating divorce proceedings for

which she was fined 1000 Birr (Ethiopian currency) payable to the appellant as compensation.

2. The appellant (the husband) litigated that the claim she made concerning household items, as common property was erroneous. The high court did not consider what he (the appellant) presented as evidence.

3. He bought the residential house, which his ex-wife claimed as a common property, through the money he had independently earned by selling his previous house. (He had owned the property before he married the defendant). Therefore, he claimed that the house was his own individual property.

4. The decision made concerning household provisions, to the effect that he was required to pay her 500 Birr, was unfair because her salary was 1000 Birr per month.

5. The claim that the pastry shop had been a conjugal property and the decision to divide it would be inappropriate because it had already been closed.

6. The purchase of the bus resulted in a joint ownership, and there was a debt related to its purchase. The decision of the court (the primary and high courts) ought to have considered this debt, before issuing the ruling considering the bus as a conjugal common property.

The Supreme Court described the case reasoning to pass ruling as follows:

1. The high court fined the defendant 1000 *Birr* for having initiated the divorce; and the decision made that the defendant to pay this sum to the appellant was legally correct.

2. The appellant's litigation, that the house was his own individual property, had no legal basis. As the house was a fixed asset, the appellant could not have a legal basis to litigate that the house was bought independently solely with his money. That is because he did not present documentary proof as evidence in accordance with article 652/2/ of the civil code of 1960. In accordance with this article, the tribunal of family arbitrators should subsequently have approved his claim. Hence, no legal evidence is in existence to support his suit.

3. Concerning commonly owned household properties; the defendant presented a list of items to the tribunal of family arbitrators that she left her home leaving all conjugal property in its status quo. She also requested the properties to be divided to get her share. The list of items and her request was given to the appellant. However, the appellant did not itemize the number of household properties except mentioning that the high court did not consider the evidence presented which was also not specific. Nevertheless, he did not deny the existence of conjugal household properties.

4. With regard to the household provisions, the Supreme Court also did not accept the appellant's grievance concerning household provisions for the reason that the appellant should have objected at the time that particular decision was made. It is also considered legally inappropriate to subject the prior decision to judicial review or dispute at a later time, thereby relating one grievance concerning household provisions another grievance related to property division.

5. The appellant litigated that the pastry shop was closed down. The defendant was therefore obligated to present evidence that the appellant was collecting money from the pastry shop and that he was using such money according to his own individual wishes. She also failed to indicate the amount of income the appellant was generating from the pastry shop on a monthly or yearly basis.

6. With regard to the litigation over the bus, the amount of money generated should clearly be indicated. The share of the defendant should be stated clearly. Likewise, the indebtedness of the appellant about the bus should also clearly be indicated. The Supreme Court specifically noted that the high court erred in accepting the decision of the tribunal of family arbitrators concerning the pastry shop and the bus. For the reasons stated above the Supreme Court granted certiorari in that the case would be referred again to the first (primary) court and passed the following decisions that the primary court should:
1. Investigate whether or not income was generated through the pastry shop when it was under the control of the appellant while the couple was divorced.
 2. Should examine the amount of money generated through the bus and determine the amount based on evidence. Then, the primary court should decide the amount of money that the appellant should pay to the defendant.
 3. The first court should also investigate the litigation over the pastry shop and the bus, and then to render judgment by considering the points identified by the Supreme Court.

CASE TYPE: Dispute over marriage claim and inheritance

CASE CITATION: The Federal Supreme Court, **Case No 9437**

This case involves litigation over a marriage claim of two women and inheritance for children whom each had produced from the same man. The defendant had forwarded an application to the primary court that she had been married the deceased and had had one child with him. She requested that her status as a widow to be acknowledged and the will made by the deceased have legal acceptance so that her child would be ensured of its legitimate inheritance. On the other hand, the appellant contested the defendant's claim and maintained that she was the legal and legitimate wife of the deceased as well as being the mother of his child.

Even though the case document does not show the description of evidence, the primary court acknowledged the widow status of both women and stated that, in any case, their marriages had already been dissolved upon the death of the father of their children. The primary court also accepted the children as the heirs of the deceased, but rejected the will for the reason that it did not describe whether it was read in the presence of witnesses for their testimonial observation. The woman who was a defendant in the primary court was unhappy about the decision of this court and forwarded an application to the high court. The high court partially rejected the primary court's decision. That is, the high court reversed the decision of the first court stating that the will was legally valid, but accepted the primary court's decision concerning the status of the litigants and their children. The appellant brought the case to the Supreme Court by disputing that the will was not prepared in front of witnesses, and that it did not mention the defendant's child as an heir of the deceased. The Supreme Court reversed the judgment of the high court concerning the legality of the will. This, highest court, noted that a will is required to be prepared in writing or orally in the presence of four witnesses and that it should be signed by them immediately. However, there was no any indication in the document that this had been done. Hence, the Supreme Court upheld the decision of the primary court ruling that both the appellant and the defendant were the wives of the deceased and their children legal heirs of the deceased man. This case shows how difficult it may be to reach judgment considering two women claiming to have been the wives of the same man

APPENDIX II

Interview Protocol for all of the participants in the three groups (family court judges, attorneys, and gender advocates)

Stated purpose of the interview (to be read to the interviewee): The purpose of this interview is to obtain information concerning the implementation of the revised family code. The study will be utilized for academic purposes. Your cooperation is highly appreciated.

Interview Questions

1. I would like to talk with you about what you have observed as general features of the implementation process of the revised family code relative to gender equality principles.

- i. Would you please tell us the strengths of the revised family code?
- ii. What do you think are some limitations/or weaknesses of the revised family code?
- iii. What factors have facilitated the implementation of the revised family code according to gender equality principles?
- iv. What factors have impeded the implementation of the revised family code, and obstructed the application of gender equality principles?
- v. Are there traditional values that have affected the implementation of the revised family code? If yes, how? Please explain.
- vi. Have some provisions of the revised family code been modified after it has been implemented? If yes, how and why?
- vii. What changes (if any) have been made relative to restructuring and staff placement in the implementation process of the revised family code?

2. I would like to talk to you about any changes which may have been observed in the implementation process of the revised family code in regards to the handling of marital court litigations for the parties involved in marital instability and marriage dissolution.

- i. What is/are the advantages that the application of the revised family code provides for women during marital conflict, separation and divorce compared to the previous family law?

- ii. In the application of the revised family code, what is/are the disadvantages that women face in marital conflict, separation and divorce as compared to the previous family law?
- iii. What is/are the advantages that the application of the revised family code provides to children during marital conflict, separation and divorce compared to the previous law?
- iv. In the application of the revised family code, what is/are the disadvantages that children face in marital conflict, separation and divorce compared to the previous code?

3. I would like to talk to you about whether the revised family code has affected the practices of family arbitration identified under the previous law.

- i. What are the roles of family arbitrators under the revised family code?
- ii. How is marital conflict handled? –Would it be resolved within short time? If yes, how short? If not, how long?
- iii. How is conjugal property division handled?
- iv. Do arbitrators receive payments for the service they render?

4. How have women who live in irregular union (cohabitation) been affected under the revised family code?

- i. Are the legal rights of women in cohabitation protected in practice? If yes, how? If no, why not?
- ii. How would the court treat these women upon conflict or dissolution of their union?

5. How would you describe the level of awareness and the involvement of some agencies in the implementation process of the revised family code to safeguard the rights of women relative to family matters in Addis Ababa?

- i. Do you think that women in Addis Ababa are more aware now about their rights related to family matters and the revised family code? Why do you think this – what have been your experiences?
- ii. How would you describe the commitment of the judiciary to safeguard the rights of women since the implementation of the revised family code?

- iii. Are there agencies in Addis Ababa that assist women in marital litigation? If yes, please describe how they operate. How well are women assisted?
- iv. What do you think has been the role of the mass media in broadcasting the issues of gender equality related to family matters?

6. Questions on interaction/working relationships to be posed to participants of the three groups:

i. Questions to be posed to the judges:

- a) How would you describe your working relationship with family court attorneys?

I would like to know whether they are: 1) Co-operative 2) Less than co-operative 3) Non-cooperative, or 4) Other; Please explain.

- b) How would you describe your working relationship with gender advocacy institutions such as the Women's Affairs Sector of the Prime Minister's Office, which has recently become the Ministry of Women's Affairs, and the Ethiopian Women Lawyers' Association?

I would like to know whether they are: 1) Co-operative 2) Less than co-operative 3) Non-cooperative, or 4) Other; Please explain.

ii. Questions to be posed to the attorneys:

- a) How would you describe your working relationship with family court judges?

I would like to know whether they are: 1) Co-operative 2) Less than co-operative 3) Non-cooperative, or 4) Other; Please explain.

- b) How would you describe your working relationship with gender advocacy institutions such as the Women's Affairs Sector of the Prime Minister's Office, which has recently become the Ministry of Women's Affairs, and the Ethiopian Women Lawyers' Association?

I would like to know whether they are: 1) Co-operative 2) Less than co-operative 3) Non-cooperative, or 4) Other; Please explain.

iii. Questions to be posed to the gender advocates:

- a) How would you describe your working relationship with family court judges?

I would like to know whether they are: 1) Co-operative 2) Less than co-operative 3) Non-cooperative, or 4) Other; Please explain.

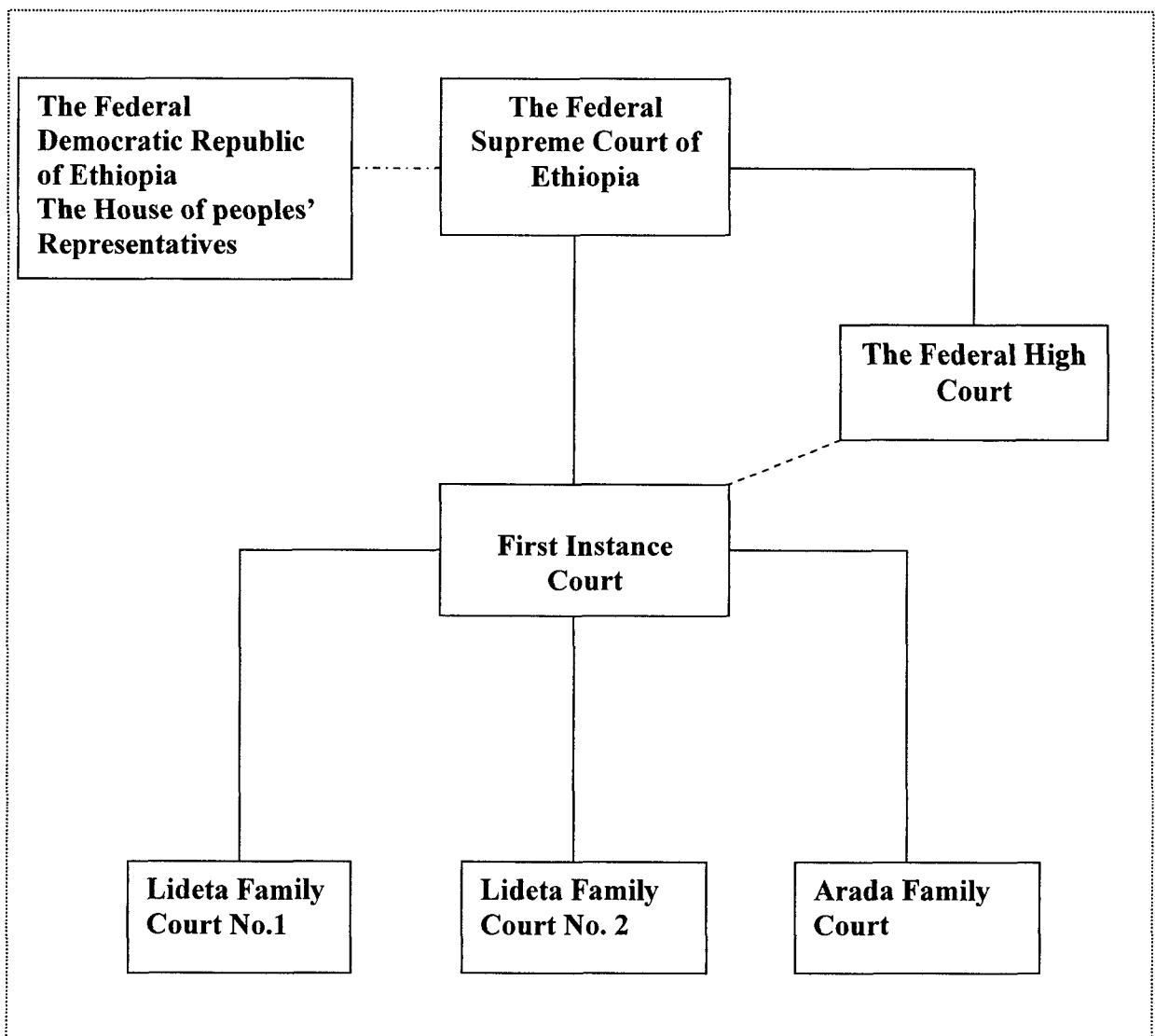
b) How would you describe your working relationship with family court attorneys?

I would like to know whether they are: 1) Co-operative 2) Less than co-operative 3) Non-cooperative, or 4) Other; Please explain.

7. Are there any other comments or feedback you would like to give concerning the implementation of the revised family code?

APPENDIX III

Structural Arrangement of the Family Courts (also called benches)





**APPENDIX IV: Approval of the College of Business and Public
Administration Informant Review Board**

COLLEGE OF BUSINESS AND PUBLIC ADMINISTRATION

Information Technology & Decision Sciences

2072 Constant Hall

Norfolk, VA 23529-0218

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**Letter of Exemption from the College of Business and Public Administration
Committee for Human Subject Research**

Joan E. Mann, Chair
Associate Professor of Information Technology

October 26, 2006

Tassew Shiferaw Gizaw
Department of Urban Studies and Public Administration
College of Business and Public Administration
2084 Constant Hall
Old Dominion University
Norfolk, VA 23529

RE: Human Subjects Review Exemption

Dear Mr. Gizaw:

This letter is to inform you that the College of Business and Public Administration Research, Library and Human Subjects Committee (2006) found your research project entitled "Judicial Implementation of the Revised Family Code in Addis Adaba" to be exempt from University IRB review under VA Code 32.1-162.17.

Your research employs survey or interview procedures that is either anonymous or confidential, does not involve government funding and is unobtrusive. For these reasons there is no need for an informed consent form or review before the University IRB Committee.

Sincerely yours,

Joan Mann, Chairperson

Old Dominion University is an equal opportunity, affirmative action institution

AACSB
INTERNATIONAL

APPENDIX V

CERTIFICATE



Human Participant Protections Education for Research Teams

COMPLETION CERTIFICATE

This is to certify that

Tassew S. Gizaw

has completed the Human Participants Protection Education for Research Teams

online course, sponsored by the National Institutes of Health (NIH), on 04/14/2005.

This course included the following:

- key historical events and current issues that impact guidelines and legislation on human participant protection in research.
- ethical principles and guidelines that should assist in resolving the ethical issues inherent in the conduct of research with human participants.
- the use of key ethical principles and federal regulations to protect human participants at various stages in the research process.
- a description of guidelines for the protection of special populations in research.
- a definition of informed consent and components necessary for a valid consent.
- a description of the role of the IRB in the research process.
- the roles, responsibilities, and interactions of federal agencies, institutions, and researchers in conducting research with human participants.

National Institutes of Health

<http://www.nih.gov>