

## Intimate Partner Violence Survivors and the Criminal Justice System: A Case Study of Addis Ababa City Administration

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### Abstract

*The Ethiopian criminal justice system fails to recognize intimate partner violence against women (IPVAW) survivors as active participants in their cases, treating these crimes solely as offenses against society and neglecting survivors' rights and agency. This oversight and the lack of adequate guidelines for handling IPVAW cases leave actors unsure of how best to support survivors. This article aims to explore the rights and treatments of IPVAW survivors throughout their interaction with the criminal justice system, focusing on their roles, struggles, needs, and concerns. Employing a qualitative research approach, the study utilizes semi-structured in-depth interviews, focus group discussions, courtroom observations, and case analysis. Data was gathered from purposively selected survivors and actors within selected sub-cities of Addis Ababa. The findings reveal that the lack of adequate legal provisions, which require regular updates, leaves many survivors uninformed about their cases and the legal process. Additionally, survivors' input is rarely sought during adjudication or sentencing, further marginalizing their agency within the system. Furthermore, interactions with actors and the courtroom environment, among other factors, significantly shape survivors' experiences. Based on these findings, this article proposes comprehensive recommendations to ensure survivors' meaningful participation and improvement of their treatment throughout the criminal justice process.*

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**Keywords:** Criminal Justice System, Human Rights, Intimate Partner Violence, Survivors, Women

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Note: The author used the following acronyms: HJ: Honourable Judge; IPVAW: Intimate partner violence against women, and PP: Public prosecutor.

## 1. Introduction

Due to socio-cultural, legal, economic, and political factors, the realization of women's human rights has not always been a priority.<sup>1</sup> One of the main challenges obstructing women's full enjoyment of their fundamental human rights and freedoms is violence against women (VAW).<sup>2</sup> While the nature of violence inflicted against women may vary from one society to another due to socio-cultural and religious factors, VAW is a widely prevalent act that emerges in all societies throughout the world.<sup>3</sup> Nearly one-third of women worldwide experience physical and/or sexual violence in their lifetime.<sup>4</sup> Among the various forms of violence endured by women globally, intimate partner violence (IPV) is the most common.<sup>5</sup>

IPV refers to any "behaviour by an intimate partner or ex-partner that causes physical, sexual, or psychological harm, including physical aggression, sexual coercion, psychological abuse, and controlling behaviours."<sup>6</sup> It occurs across all settings and socio-economic, religious, and cultural groups.<sup>7</sup> Globally, around one-third of women who have ever been in intimate relationships reported experiencing physical and/or sexual violence from their partners.<sup>8</sup> Additionally, 38% of global murders of women are committed by their male intimate partners.<sup>9</sup>

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<sup>1</sup> United Nations Human Rights Office of the High Commissioner, *Women's Rights are Human Rights*, (2014). Available at: <https://www.ohchr.org/documents/events/whrd/womenrightsarehr.pdf> Accessed at 7 December 2023

<sup>2</sup> Alfredsson Gudmundur & Tomasevski Katarina, *A Thematic Guide to Documentation on the Human rights of Women; Global and Regional Standards*, (Vol.1, Raoul Wallenberg Institute Human Rights Guides, Netherlands, 1995) p.51

<sup>3</sup> Karen M. Devries et al., 'The global prevalence of intimate partner violence against women', (2013), PubMed. Available at: [https://www.researchgate.net/publication/240310056\\_The\\_Global\\_Prevalence\\_of\\_Intimate\\_Partner\\_Violence\\_Against\\_Women/link/53d1f1300cf2a7fbb2e957cf/download?\\_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19](https://www.researchgate.net/publication/240310056_The_Global_Prevalence_of_Intimate_Partner_Violence_Against_Women/link/53d1f1300cf2a7fbb2e957cf/download?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19) Accessed on 1 December 2023

<sup>4</sup> World Health Organization, *Violence against Women*, (2021), available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women> 15 September 2023

<sup>5</sup> United Nations Office on Drugs and Crime, *Handbook for the Judiciary on Effective Criminal Justice Responses to Gender-based Violence against Women and Girls*, (2019), p. XI, available at: [https://www.unodc.org/pdf/criminal\\_justice/HB\\_for\\_the\\_Judiciary\\_on\\_Effective\\_Criminal\\_Justice\\_Women\\_and\\_Girls\\_E\\_ebook.pdf](https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf) Accessed on 19 November 2023

<sup>6</sup> World Health Organization, *supra* note 4

<sup>7</sup> Karen M. Devries et al., *supra* note 3

<sup>8</sup> World Health Organization, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*, (2013), p.2, available at: [https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625\\_eng.pdf?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1) Accessed on 7 December 2023

<sup>9</sup> *ibid*

Despite the lack of complete data due to underreporting, Ethiopia grapples with a high prevalence of IPVAW.<sup>10</sup> Statistics show that among women aged 15 to 49 who experienced physical violence, 68% reported their husband or partner as the perpetrator, 25% reported a former husband or partner, and 2.5% reported a current or former boyfriend.<sup>11</sup> For sexual violence, 69% reported their current husband or partner, 30% reported their former husband or partner, and 2% reported their current or former boyfriend as the perpetrator.<sup>12</sup> It is important to note that some women identified multiple perpetrators. Moreover, 34% of ever-married women aged 15 to 49 have experienced spousal violence in the form of emotional, physical, and/or sexual abuse by their current or most recent husband/partner.<sup>13</sup>

As with many other legal systems, navigating the criminal justice system in Ethiopia presents substantial challenges for survivors<sup>14</sup> of violence.<sup>15</sup> It often lacks the capacity to address their specific needs and vulnerabilities.<sup>16</sup> The system can be insensitive and unwelcoming, with personnel displaying poor reception and treatment, insensitivity to the issue, and slow responses to reports.<sup>17</sup> Scarce psychosocial, medical, and legal support and poor communication regarding case progress further compound the trauma the survivors face.<sup>18</sup>

Although considerable research has been conducted concerning the rights and roles of survivors in criminal proceedings in Ethiopia, studies assessing the lived experiences of IPVAW survivors are highly limited. Thus, by employing a feminist approach to prioritize the inclusion of women's voices and perspectives, the main objective of this research is to explore the experiences of IPVAW survivors from the initial contact with the police to court proceedings. Accordingly, the study investigates the rights, roles, and treatment of survivors within criminal proceedings.

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<sup>10</sup>Sileshi Garoma, Meseganaw Fantahun, & Alemayehu Worku. 'Intimate partner violence against women in western Ethiopia: a qualitative study on attitudes, woman's response, and suggested measures as perceived by community members, BMC Reproductive Health Journal', Vol. 9, No.14, Aug. 2012, P.1

<sup>11</sup>Central Statistical Agency [Ethiopia] and ICF, *Ethiopia Demographic and Health Survey 2016*. (Addis Ababa, Ethiopia, and Rockville, Maryland, USA, 2016), p. 301

<sup>12</sup>Id, p. 303

<sup>13</sup>Id, p. 294

<sup>14</sup>This article uses the term 'survivor' instead of 'victim' when referring to individuals who have experienced IPVAW. This is because the term 'survivor' emphasizes their strength and agency in overcoming the crime.

<sup>15</sup>WorkuYaze, 'Status and Role of Victims of Crime in the Ethiopian Criminal Justice System, Bahir Dar University Journal of Law', Vol. 2, No.1, 2011, P. 105

<sup>16</sup>Marew Abebe & Alemtsehaye Birhanu. 'The Ethiopian Legal Frameworks for the Protection of Women and Girls from Gender-Based Violence, Journal of Governance and Development' Vol. 2, No. 1, 2021, P.86

<sup>17</sup>Worku, *supra* note 15, P. 124

<sup>18</sup>Id, p.113

To address these objectives, the research utilized both primary and secondary data sources. Primary data included relevant international, regional, and domestic legal frameworks that provide a foundational understanding of the legal frameworks governing IPVAW. It also included information gathered from informants through semi-structured in-depth interviews, focus group discussions, courtroom observations, and court case reviews. Informants included survivors of IPVAW, judges, prosecutors, police officers, defense attorneys, experts from shelters, one-stop centers, Addis Ababa City Administration Bureau of Women, Children, and Social Affairs, Ethiopian Women Lawyers Association (EWLA), as well as family elders and religious leaders.<sup>19</sup> Furthermore, secondary sources such as literature (both published and unpublished), official reports, and websites were consulted. Data analysis involved narration and content analysis techniques.

Purposive sampling was used to select five sub-cities: Arada, Bole, Kolfe-Keranio, Lideta, and Nifas-Silk.<sup>20</sup> This resulted in a sample encompassing five city court divisions, five first-instance court divisions, and one high court. Data was collected from 33 female IPV survivors who had navigated the justice system. Survivors were purposively selected based on factors such as age, socio-economic status, the type of violence they experienced, and the final judgments on their cases. Additionally, key actors were purposively selected based on their positions and experiences (total: 72 participants). Four focus group discussions were conducted, each comprising six participants, including judges, prosecutors, and survivors, facilitated by the author. Furthermore, 97 purposively selected closed IPVAW case files (from 2013 to 2023) adjudicated by the selected courts were reviewed. Data was further enriched through the observation of four court cases (the entire proceeding) involving IPVAW. Since this research employed a qualitative research approach, the sample size was determined by data saturation. The author followed all relevant ethical procedures throughout the study.

This article is divided into three sections. The first section examines how the current legal framework and practices affect survivors' rights to information, to get their voices heard, and to

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<sup>19</sup>Data collection was conducted in two rounds. The first round took place from June 1 to November 14, 2022, and the second round occurred from January 25 to March 24, 2023 (These data were gathered for the purpose of the authors' PhD study).

<sup>20</sup>These sub-cities were purposively selected based on the number of VAW cases adjudicated in 2021.

make informed choices. The second section explores the treatment of survivors in their interaction with the police, prosecutors, and judges. Finally, the third section offers concluding remarks.

## 2. The Rights of Intimate Partner Violence Survivors in Criminal Proceedings

In 1985, the United Nations General Assembly adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The declaration aims to empower survivors of crime by granting them meaningful roles within the criminal justice process. However, this objective often remains unrealized, as survivors are frequently marginalized and reduced to mere tools for prosecution.<sup>21</sup> This marginalization stems from a perception that views crimes solely as transgressions against society and the state, neglecting individual survivors.<sup>22</sup> Within this framework, survivors hold no formal role beyond serving as primary witnesses for the prosecution.<sup>23</sup> They are neither considered clients of the prosecutor nor recognized as parties with a vested interest in the proceedings.<sup>24</sup> As a result, once an incident is reported, the state assumes responsibility for investigating the case, prosecuting the offense if there is sufficient evidence, and punishing the accused if found guilty.<sup>25</sup>

Like in many other legal systems, crime survivors in Ethiopia are explicitly marginalized within the justice system.<sup>26</sup> This marginalization stems, in part, from the failure to incorporate meaningful participatory rights for survivors into the 1961 Criminal Procedure Code.<sup>27</sup> Be that as it may, despite its non-binding nature, the Ethiopian Criminal Justice Policy recognizes survivors' right to participate in the investigation, prosecution, and adjudication of criminal cases, including following the case's progress and receiving updates on the decisions made.<sup>28</sup>

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<sup>21</sup> Worku, *supra* note 15, P.110

<sup>22</sup> Ibid, p. 145

<sup>23</sup> United Nations Office on Drug and Crime Vienna, Handbook on effective prosecution responses to violence against women and girls, (2014), p.47, available at: [https://www.unodc.org/documents/justice-and-prison-reform/Handbook\\_on\\_effective\\_prosecution\\_responses\\_to\\_violence\\_against\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf) Accessed on 19 November 2023

<sup>24</sup> Ibid

<sup>25</sup> Ibid

<sup>26</sup> Biruk Jemal, 'Victims' Rights to Participation in Criminal Proceedings in Ethiopia: Lessons from Germany and the United States of America' (Master's Thesis, Jimma University, 2012). p.5

<sup>27</sup> Ibid

<sup>28</sup> *The Federal Democratic Republic of Ethiopia, Criminal Justice Administration Policy*, available at: <http://www.ethcriminalawnetwork.com/system/files/FDRE%20Criminal%20Justice%20Policy%20%28Amharic%29.pdf> accessed 2 February 2024. Section 6.2.1

Survivors of IPVAW, similar to other survivors of crimes causing physical or mental harm under the Ethiopian Criminal Code, have limited participation in the legal process. The state takes full responsibility for the investigation, prosecution, and adjudication of cases. Informants of the study emphasized the limited role of survivors in criminal proceedings, noting that they are primarily needed to provide testimony as primary witnesses. For instance, PP-2 mentioned that the primary role of survivors in IPVAW proceedings is as witnesses. However, if survivors genuinely wish to see the suspect prosecuted, they may assist the investigative police in gathering evidence or identifying and locating other witnesses.

Survivors may benefit when the state handles the investigation and prosecution, as many burdens and costs are managed by governmental institutions.<sup>29</sup> However, the exclusive recognition of the police, prosecutor, and the suspect as the only parties involved, and the exclusion of survivors from participating in the case, raises concerns about the recognition of survivors' agency and rights. Therefore, this section explores how granting the state complete control over IPVAW cases affects survivors' rights, specifically focusing on three key rights essential for effective participation: the right to be informed, the opportunity to be heard, and the right to make informed choices.

### **2.1. The Right to Be Informed about the Status of the Case**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power emphasizes the significance of keeping survivors well-informed about the developments in their cases.<sup>30</sup> It outlines the need to inform survivors about their rights, their role in formal legal proceedings, the timing and progress of these proceedings, and the disposition of their cases.<sup>31</sup> Additionally, the Updated Model Strategies and Practical Measures call upon member states to guarantee that survivors are notified of the offender's release from detention or imprisonment.<sup>32</sup>

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<sup>29</sup> Worku, *supra* note 15

<sup>30</sup> General Assembly Resolution 40/34 (1985), available at: [https://www.unicef-irc.org/portfolios/documents/472\\_un-declaration-crime.htm#:~:text=The%20Declaration%20of%20Basic%20Principles,Treatment%20of%20Offenders%20\(Milan%2C%2026](https://www.unicef-irc.org/portfolios/documents/472_un-declaration-crime.htm#:~:text=The%20Declaration%20of%20Basic%20Principles,Treatment%20of%20Offenders%20(Milan%2C%2026) (accesses on 2 September 2023). Article 5 and 6(a)

<sup>31</sup> *ibid*

<sup>32</sup> General Assembly Resolution 65/228, (2011), available at: [https://www.unodc.org/documents/commissions/CCPCJ/Crime\\_Resolutions/2010-2019/2010/General\\_Assembly/A-RES-65-228.pdf](https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/2010-2019/2010/General_Assembly/A-RES-65-228.pdf) (accesses on 19 September 2023). Para 17(c)

The right to be informed extends beyond just receiving information.<sup>33</sup> It also encompasses understanding the impact of court decisions on the survivor's well-being.<sup>34</sup> As such, when a survivor reports an incident to the police, it is imperative to ensure that she understands the consequences of her actions and that the criminal justice system's response is predictable, clear, and transparent.<sup>35</sup> Therefore, the right to be informed encompasses a survivor's entitlement to receive information throughout the criminal justice process about her rights, role, the legal process, case progress, and the outcome of criminal proceedings.

In Ethiopia, there is a lack of adequate criminal legal provisions that obligate actors to update survivors about the status of their cases.<sup>36</sup> Only a few provisions within the Criminal Procedure Code, such as Articles 39 and 43, can be considered exceptions to this norm.

According to the Criminal Procedure Code of Ethiopia, upon receiving an investigation report from the police, the public prosecutor decides whether to take action under Article 38<sup>37</sup> or close the case file according to Article 39.<sup>38</sup> If the public prosecutor chooses to close the investigation file, she/he is required to send a copy of her/his decision to the Attorney General, the survivor, if any, and the investigating police officer.<sup>39</sup>

Furthermore, a public prosecutor may also refuse to institute proceedings under specific circumstances.<sup>40</sup> In these cases, such refusal must be in writing, clearly indicating the reasons for the decision.<sup>41</sup> A copy of the decision shall be sent to the investigating police officer, the survivor or her legal representative, or other appropriate persons stated under Article 47 of the Criminal

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<sup>33</sup> Emma E. Forbes, 'Perception and reality: an exploration of domestic abuse victims' experiences of the criminal justice process in Scotland' (PhD Thesis, University of Glasgow, 2019). p. 183

<sup>34</sup> *ibid*

<sup>35</sup> *Id*, p. 181

<sup>36</sup> To address this shortcoming, the draft Criminal Procedure Code mandates that the investigating police, upon request, must inform the complainant about the steps taken and the progress of the investigation, unless such disclosure jeopardizes the safety of individuals or obstructs the investigation process, as stipulated in Article 70.

<sup>37</sup> This encompasses decisions to prosecute the accused, order a preliminary inquiry, request further investigation, or refuse to institute proceedings.

<sup>38</sup> According to Article 39(1. A, b & c) of the Criminal Procedure Code, the justifications for closing an IPVAW police investigation file could be: if the accused is deceased and prosecution is no longer possible, or if the accused enjoys legal immunity under special laws or public international law, the suspect is under nine years of age.

<sup>39</sup> The Criminal Procedure Code of Ethiopia, 1961, Article 39(3), Proc No. 185/1961, *Fed. Neg. Gaz. Year 32<sup>nd</sup>*

<sup>40</sup> As stated under Article 42(1.a, b & c) of the Criminal Procedure Code, these include if she/he believes there is not enough evidence to secure a conviction or if the accused cannot be located and the case cannot be tried in his absence or if "the prosecution is barred by limitation and or the offense has been made the subject of a pardon or amnesty." However, sub-article 1(d) is not incorporated because it has been repealed by Proclamation No. 39/1993

<sup>41</sup> Criminal Procedure Code, *supra* note 39, Article 43

Procedure Code.<sup>42</sup> Although the prosecutors' obligation to provide information about case status to survivors is limited to sending copies of their decisions, this system partly satisfies the information needs of survivors by offering updates without requiring them to expend unnecessary time, energy, or money.<sup>43</sup>

This research explored how survivors of IPVAW accessed information about their cases in the study area. Findings revealed inconsistencies in communication practices. According to PP-13, when a court delivers a final judgment, prosecutors who have survivors' contact information would reach out to inform them of such a decision. PP-15 noted that survivors could independently attend court sessions, but if they fail to do so, prosecutors would provide them with updates about their cases and the final decisions made.

However, PP-2 emphasized that prosecutors are not obligated to proactively update survivors. He argued that prosecutors only require survivors' presence for testimony, but following the case afterward is optional. The informant suggested that survivors then contact the prosecutor handling the case or access archives for updates, if desired. This view was shared by many participants who believe survivors could get information about case progress through court attendance or archives. However, they described direct updates from prosecutors as uncommon and entirely dependent on the individual prosecutor handling the case.

These concerns were mirrored in survivors' experiences. Some reported not being informed about final sentences passed on their cases or the release of perpetrators from detention or prison, highlighting a concerning information gap. S-31 recounted reporting the violence to the police but was puzzled when they released the perpetrator after three days. She mentioned that the actors did not inform her about his release, nor did they explain the reasons behind it or why they ceased the investigation.

S-23 expressed that she had not had the opportunity to properly meet the prosecutor handling her case and felt uninformed about its status. She found out about the perpetrator's release from prison only when he returned home one day, which caught her off guard. S-26 shared a similar story of feeling left in the dark by the actors involved in her case. She stated that she had no idea about the final judgment and only heard rumors about the perpetrator's release. She highlighted that she

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<sup>42</sup> Ibid

<sup>43</sup> Worku. *Supra* note 15, p 110

never received any updates from the prosecutor handling her case. The data suggested that survivors were often not informed about the release of the accused on bail, probation, parole, and amnesty as well as the undertaking of such proceedings.

The research also revealed instances where survivors were made to feel unwelcome and intrusive when seeking information about their cases from actors handling them. Some survivors reported facing ridicule and mistreatment when inquiring about the progress of their cases. S-31 recounted how she repeatedly visited the police station to seek information on whether the perpetrator, who had escaped after committing the crime, had been captured. However, she was met with dismissive and unhelpful responses from the officer, making her feel like a burden and nearly causing her to lose hope. S-24 reported experiencing mistreatment and insults from the police officer handling her case when she inquired about its progress, highlighting the challenges survivors face when seeking information.

Despite the importance of being kept informed about their case, most survivors in the study area reported that they were not adequately informed about the investigation, prosecution, adjudication processes, and final judgment. This lack of information often left them navigating the criminal justice system without fully understanding it.

## **2.2. The Right to Be Heard in Criminal Proceedings**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power requires states to empower survivors of crime to express their views and concerns during relevant stages of proceedings that affect their interests.<sup>44</sup> This right must be balanced with the rights of the accused and operate within the framework of each nation's criminal justice system.<sup>45</sup>

The effectiveness of providing survivors with a voice extends beyond simply acknowledging their right to express their views.<sup>46</sup> Their voices must be given due weight and consideration throughout the proceedings.<sup>47</sup> Thus, it is vital to provide survivors with a timely and meaningful opportunity to speak, ensuring that their voices are genuinely heard.<sup>48</sup> Recognizing survivors' voices in the

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<sup>44</sup> UN General Assembly Declaration A/RES/40/34. *Supra* note 30, Article 6(b)

<sup>45</sup> *ibid*

<sup>46</sup> Kristin L. Anderson, 'Victims' Voices and Victims' Choices in Three IPV Courts, *Violence Against Women Journal*, Vol. 21, No.1, 2014, pp. 105–124. p.108

<sup>47</sup> *Ibid*

<sup>48</sup> *Ibid*

adjudication process can impact case outcomes by validating the harm caused by the crime, enhancing survivor safety, and allowing for some degree of choice in terms of victim-centered and case-specific outcomes.<sup>49</sup>

### **2.2.1. Survivors' Voices at the Pre-Trial Stage**

One instance in which survivors' voices could be heard is when they report the violence they have encountered to the police. According to the Ethiopian Criminal Procedure Code, "any person has the right to report any offense, whether or not he has witnessed the commission of the offense, with a view to criminal proceedings being instituted."<sup>50</sup> As such, like other members of the public and as injured parties, survivors have the right to report the violence they have undergone to the appropriate authorities. Furthermore, regarding crimes punishable upon complaint, only survivors or their legal representatives can file complaints.<sup>51</sup>

The Criminal Procedure Code of Ethiopia grants the police the authority to investigate crimes.<sup>52</sup> During this initial investigation, survivors undergo interviews, and their testimonies are documented. However, the Code does not specify a role for survivors during the investigation stage. Consequently, survivors' voices may only be heard by the investigative police when they provide their testimony as witnesses. As a result, survivors lack the legal right to request or advise investigative officers on specific actions during the investigation.<sup>53</sup> They also cannot inspect the investigation file, be present during interrogations, or examine witnesses.<sup>54</sup>

Once the police investigation is complete, the Criminal Procedure Code grants the public prosecutor the authority to determine the case's fate.<sup>55</sup> The prosecutor can either choose to prosecute the case or decide not to prosecute.

In cases where the prosecutor chooses to proceed with prosecution, the survivor has no formal say in determining the specific charges filed.<sup>56</sup> However, if the prosecutor decides against prosecution for a crime punishable upon accusation, a survivor can file a grievance for administrative review

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<sup>49</sup> Id., p.116

<sup>50</sup> Criminal Procedure Code, *supra* note 39, Article 11(1)

<sup>51</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Article 212, Proc No. 414/2004, *Fed. Neg. Gaz*

<sup>52</sup> Criminal Procedure Code, *supra* note 39, Article 9

<sup>53</sup> Worku, *supra* note 15, P.131

<sup>54</sup> Ibid

<sup>55</sup> Criminal Procedure Code, *supra* note 39. Article 38

<sup>56</sup> Worku, *supra* note 15, P.135

if she disagrees with the decision.<sup>57</sup> Unfortunately, Proclamation No. 39/1993<sup>58</sup> repealed Article 44(2) and Article 45 of the Criminal Procedure Code. This eliminated the survivor's previous right to appeal a prosecutor's refusal to initiate a lawsuit under Article 42(1)(a). Consequently, survivors have significantly less recourse and voice within the criminal justice process.

However, for offenses punishable upon complaint, if the public prosecutor's refusal aligns with Article 42(1)(a), the survivor can pursue private prosecution.<sup>59</sup> The Criminal Justice Policy also allows private prosecution for crimes punishable upon complaint, at the survivor's expense.<sup>60</sup> In such cases, the prosecutor must issue written authorization for the appropriate person mentioned under Article 47 of the Criminal Procedure Code to conduct the private prosecution, and a copy of this authorization shall be sent to the court with jurisdiction.<sup>61</sup>

If the survivor successfully institutes private prosecution, the case shall proceed in accordance with Article 123-149 of the Criminal Procedure Code, with the parties having the same rights and duties as in public proceedings.<sup>62</sup> Essentially, the survivor becomes a party to the case by replacing the public prosecutor, and judgment will be rendered in the same manner as in ordinary cases.<sup>63</sup> However, there are instances in which the court may require the private prosecutor to provide security for costs.<sup>64</sup>

### 2.2.2. Survivors' Voices during Trial

The recognition of the right to be heard when courts make decisions regarding bail and sentencing significantly impacts survivors of IPVAW. Therefore, without compromising the rights of the accused, survivors should be given the opportunity to express their views and concerns on such matters.<sup>65</sup>

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<sup>57</sup> Id, P.136

<sup>58</sup> Office of the Central Attorney General of the Transitional Government of Ethiopia Establishment Proclamation, 1993, Article 24, Proc No. 39/1993, *Fed. Neg. Gaz.*, Year 52<sup>nd</sup>, No. 24

<sup>59</sup> Criminal Procedure Code, *supra* note 39, Article 44(1)

<sup>60</sup> The Ethiopian Criminal Justice Policy, *supra* note 28, Section 3.10

<sup>61</sup> Criminal Procedure Code, *supra* note 39, Article 44(1)

<sup>62</sup> Id, Article 153(1)

<sup>63</sup> Id, Article 153(2)

<sup>64</sup> Id, Article 152

<sup>65</sup> UN General Assembly Declaration A/RES/40/34. *Supra* note 30, Article 6(b)

Generally, arrested individuals have the right to be released on bail.<sup>66</sup> However, in certain exceptional circumstances outlined by law, the court may deny bail or require a sufficient guarantee for the person's conditional release.<sup>67</sup> There are two main scenarios where the right to bail is recognized: when the offense does not carry the death penalty or rigorous imprisonment for fifteen years or more, or when there is no imminent risk of death for the victim.<sup>68</sup> However, bail may be denied if the applicant is unlikely to comply with bail conditions, is a danger to the community and might commit further offenses, or could tamper with evidence or intimidate witnesses.<sup>69</sup> Although the possibility of further offenses is a valid reason to deny bail, survivors cannot directly express their fear of the accused to the court.<sup>70</sup> They must communicate their concerns to the public prosecutor or police, who then decide whether to present these facts and object to the defendant's release.<sup>71</sup>

In most IPVAW cases, the prosecutor or police present objections to bail. However, in a case<sup>72</sup> observed for this research, deviating from the usual practice, the judges directly asked the survivor for her opinion on the request for bail. She informed the court that the defendant continued to harass her from prison by calling, texting, and sending photos. She also presented printouts of the texts and photos as evidence and expressed her fear for her safety and that of her children if the accused were to be released on bail. The court accepted her plea and denied bail.

Once again, the court asked the survivor's opinion regarding bail on the day it was scheduled to rule on whether to open the case for defense. Both the survivor and her children cried in court, demonstrating their fear of the accused and their opposition to his release. Taking this into account, the court again denied bail.

Giving weight to a survivor's voice regarding whether she faces a risk of violence is crucial, particularly in IPVAW cases. This is because the defendant may have easy physical access to the survivor, often sharing a residence. As a result, if he is released on bail, the survivor may be subjected to retaliation or renewed abuse.

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<sup>66</sup> The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Article 19(6), Proc No. 1/1995, *Fed. Neg. Gaz.*, Year 1<sup>st</sup>, No. 1

<sup>67</sup> *ibid*

<sup>68</sup> Criminal Procedure Code, *supra* note 39, Article 63

<sup>69</sup> *Id*, Article 67

<sup>70</sup> Worku, *supra* note 15, P.133

<sup>71</sup> *ibid*

<sup>72</sup> Public Prosecutor v. Mohammad Fereja, Federal High Court, Lideta Division, File Number 305080, 2024

Similar to most bail proceedings, survivors typically have no opportunity to express their views on sentencing. There is also no legal provision that allows them to make statements about the impact of the sentence on their lives.<sup>73</sup> Instead, the court considers aggravating and mitigating circumstances presented by the prosecution and the defense, respectively.

This lack of voice was exemplified in a case<sup>74</sup> observed for this study. After both the prosecutor and the defendant presented aggravating and mitigating circumstances, the survivor requested to be heard in court before sentencing. This request was conveyed to the court through the prosecutor, who argued its benefit to the case. However, the court ultimately denied the request, citing a lack of such a procedure.

HJ-12 echoed this sentiment, stating, “Survivors do not have any role in sentencing in our courts; we do not ask their opinion.” He noted that there is no procedure in place that allows survivors to provide input on sentencing. Instead, the prosecutor presents her/his comments based on the law and may not necessarily seek the survivor’s opinion in this regard. He explained that criminal proceedings are often complex and beyond the understanding of most survivors, making it difficult for them to provide informed comments on sentencing, which requires legal expertise. Nevertheless, he emphasized the value of creating a space for survivors to share their views with the court on some matters, allowing the court to balance public interest with survivors’ rights. The data gathered for this study revealed that none of the survivors interviewed were consulted about the sentences imposed on perpetrators. Additionally, in none of the cases reviewed did the court seek the survivors’ opinions before the final decision.

Furthermore, within the Ethiopian criminal justice system, survivors of crime, unless acting as private prosecutors, lack legal standing to appeal judgment of acquittal, discharge, or sentences deemed inadequate.<sup>75</sup> This means prosecutors are not obligated to consult with or inform survivors about decisions unfavourable to their case. Even in cases with potential legal or factual errors, survivors have no say in the prosecutors’ decision to appeal.<sup>76</sup> As a result, since they lack the legal

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<sup>73</sup> One of the significant improvements made in the draft Criminal Procedure Code is under Article 310(2), this provision allows the court, during the submission on sentence, on its own initiative or upon a request from the prosecutor or the victim, to grant the victim the opportunity to share their views on the extent of the harm they have suffered.

<sup>74</sup> Public Prosecutor v. Mohammad Fereja, *supra* note 72

<sup>75</sup> Biruk, *supra* note 26, p.67

<sup>76</sup> *ibid*

standing to appeal and express their dissatisfaction with the outcome of proceedings or the sentence themselves, their only recourse may be to use administrative channels to pressure public prosecutors to appeal.<sup>77</sup>

The study revealed a limited recognition of survivors' right to be heard in criminal proceedings. While some informants identified situations where survivors might have a voice, these opportunities were rare. For example, PP-13 mentioned that survivors, primarily serving as witnesses, could be called upon to provide additional case-related information, such as details about ongoing violence, potential threats from the defendant's release, or his past criminal history.

HJ-10 stated that if the defendant and the survivor had mediated, and the defense presents the mediation document as evidence for mitigating punishment, the court might call the survivor to confirm that she signed the document willingly. HJ-16 added that survivors may be asked to verify if they have received compensation, if this issue arises. HJ-17 noted that although the prosecutor is the owner of the case in criminal cases, the court may call the survivor when argumentative mitigating circumstances are raised.

However, these scenarios were rare. According to most of the survivors interviewed for this research, their roles were limited to being witnesses, and the court did not seek their input on any matters. As a result, a considerable number of survivors expressed dissatisfaction with the adjudication process and the final judgments given in their cases, as they felt alienated and their concerns ignored.

### **2.2.3. The Right to Join Civil Claims in Criminal Proceedings**

Even though survivors' involvement in criminal cases is considerably restricted, both the Criminal Code and the Criminal Procedure Code entitle survivors to join their civil claims in criminal proceedings. According to Article 101 of the Criminal Code:

Where a crime has caused considerable damage to the injured person or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end, they may join their civil claim with the criminal suit.

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<sup>77</sup> Worku, *supra* note 15, P.141

Accordingly, under the law, survivors have an active role in the adjudication of their civil claims. Survivors may present their application to the court adjudicating the case to grant them an order of compensation for the injury sustained.<sup>78</sup> This claim must be submitted in writing and should clearly state the type and amount of compensation being sought, and in filling such an application, the survivor is not required to pay court fees.<sup>79</sup> If the application is accepted, the survivor shall be granted the right to actively participate in the proceedings and shall enjoy the same evidentiary rights as any other party involved.<sup>80</sup> At the close of the case for the defense, the court shall allow the survivor or her representative to address the court directly or through legal counsel regarding the appropriate compensation amount.<sup>81</sup> If the application is dismissed, the survivor may initiate a civil proceeding in a court having jurisdiction.<sup>82</sup>

However, in the cases analysed for this research, none of the survivors instituted civil claims for the violence they encountered. According to a considerable number of survivors interviewed, they did not institute civil claims because they were unaware of their rights, as no one informed them. Others did not want to engage in another prolonged court proceeding. As a result, the author was unable to assess the adjudication process of cases where survivors joined their civil claims with criminal suits.

### **2.3. The Right to Make Informed Choices**

The concept of informed choice is presumed to empower survivors to participate in decisions about the progression of their case and potential outcomes.<sup>83</sup> However, allowing IPV survivors to make these choices is a subject of controversy.

Some scholars argue that excluding survivors' choice is essential, particularly in IPVAW cases, to protect them from potential blame for having their partners prosecuted and from pressures by their partners to drop charges.<sup>84</sup> Due to the pervasive coercive control within IPV relationships, the survivors' genuine fear of retaliation from their abusive partners, and the economic dependence of

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<sup>78</sup> Criminal Procedure Code, *supra* note 39, Article 154(1)

<sup>79</sup> *Ibid*

<sup>80</sup> *Id*, Article 156(1)

<sup>81</sup> *Id*, Article 156(2)

<sup>82</sup> *Id*, Article 155(3)

<sup>83</sup> Anderson, *supra* note 46, P. 107

<sup>84</sup> *Ibid*

many survivors on their perpetrators, their ability to make a genuine 'choice' is severely constrained.<sup>85</sup>

According to this view, survivors may be unwilling or unable to seek justice for the violence they encountered due to love, fear and shame, economic dependence, etc., resulting in no punishment for the perpetrator.<sup>86</sup> Opponents of survivor choice also express concerns that allowing survivors to choose the outcome of the case could lead to varying treatment of similar crimes based on survivors' wishes, potentially infringing on defendants' rights to equality before the law.<sup>87</sup>

Under the Ethiopian Criminal Procedure Code, a survivor's ability to make informed choices is protected in crimes punishable upon complaint, as the case can only be instituted against the accused if the survivor or her legal representative files a complaint.<sup>88</sup> Accordingly, the survivor has full autonomy to decide whether the case proceeds.

PP-2 affirmed that the current practice for cases punishable upon complaint grants survivors the right to withdraw<sup>89</sup> their claim at any stage before a judgment is delivered. PP-12 added that survivors can present mediation documents to the prosecutor and request the termination of the suit before it reaches the court. She highlighted that survivors can withdraw their complaint at any stage, even after the case has reached the court, as long as a judgment has not been issued. However, for crimes punishable upon accusation, the survivor's consent is less relevant, and her reporting the crime is not a compulsory criterion for the police to initiate investigations.<sup>90</sup>

When it comes to sentencing, the Updated Model Strategies and Practical Measures emphasize that laws, policies, procedures, and practices governing decisions related to the arrest, detention, and terms of any form of release for the perpetrator should prioritize the safety of survivors and others close to them and should strive to prevent further acts of violence.<sup>91</sup> The instrument further stipulates that sentencing should take into account the impact of these decisions on survivors and their families.<sup>92</sup> Moreover, the safety needs of survivors should be considered when making decisions regarding non-custodial or quasi-custodial sentences, granting bail, conditional release,

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<sup>85</sup> Ibid

<sup>86</sup> Ibid

<sup>87</sup> Id, P. 108

<sup>88</sup> Criminal Code, *supra* note 51, Article 212

<sup>89</sup> This practice is in line with Article 221 of the 1957 Penal Code of Ethiopia

<sup>90</sup> Criminal Procedure Code, *supra* note 39, Article 11

<sup>91</sup> UN General Assembly Resolution No. A/RES/65/228, *supra* note 32, para 16(g)

<sup>92</sup> Id, para 17. a.(v)

parole, or probation.<sup>93</sup> Ultimately, achieving this requires recognizing the agency and voice of survivors as they possess the most intimate knowledge of how the decision will impact their lives. In Ethiopia, judges consider various factors when determining appropriate punishment for crimes. However, survivors' perspectives are often missing from these decisions.<sup>94</sup> This exclusion extends to decisions on probation, parole, and amnesty, as survivor input is not considered a prerequisite for these post-trial measures.<sup>95</sup> An exception to this is Proclamation No. 840/2014, which outlines considerations for granting pardon.<sup>96</sup> Article 20(7) specifies that the court should, if possible, consider the survivors' or their family's opinion on a pardon request. However, the proclamation fails to provide detailed provisions guaranteeing the survivor's right to be 'reasonably, accurately, and timely' notified of the proceeding.<sup>97</sup> It also lacks specifics on how survivors can participate and the weight given to their opinions.<sup>98</sup> According to the data collected for this research, in most cases, survivors' inputs are neither consistently sought during criminal proceedings nor considered a precondition for ordering post-trial measures.

Having established the rights and roles of IPVAW survivors in criminal proceedings in the study area, the next section will explore their treatment while navigating the criminal justice system.

### **3. The Treatment of Intimate Partner Violence Survivors in the Criminal Justice System**

Internationally, the concerns of survivors have been recognized and addressed through various human rights instruments and general recommendations. For example, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power guarantees survivors the right to access the criminal justice system, receive prompt redress, and be treated with compassion and respect for their dignity.<sup>99</sup> This declaration emphasizes the importance of providing survivors with appropriate assistance throughout the legal process and avoiding unnecessary delays in case disposition.<sup>100</sup>

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<sup>93</sup> Id, para 15(j)

<sup>94</sup> Worku, *supra* note 15, P.143

<sup>95</sup> Ibid

<sup>96</sup> Procedure of Granting and Executing Pardon Proclamation, 2014, Article 20, Proc No. 840/2014, *Fed. Neg. Gaz.*, Year 20<sup>th</sup>, No. 68

<sup>97</sup> Biruk, *supra* note 26, P.70

<sup>98</sup> Ibid

<sup>99</sup> UN General Assembly Declaration A/RES/40/34. *Supra* note 30, Article 4

<sup>100</sup> Id, Article 6

Furthermore, the UN General Assembly has adopted a resolution<sup>101</sup> specifically crafted to address issues of domestic violence against women. This resolution calls upon states to take measures to protect survivors and prevent domestic violence.<sup>102</sup> These measures include adopting, strengthening, and implementing legislation that prohibits domestic violence, ensuring proper investigation, prosecution, and punishment of perpetrators, and providing legal and social assistance to survivors.<sup>103</sup> Additionally, the resolution emphasizes on protecting survivors from double victimization due to gender-insensitive laws or practices and ensuring proper access to justice and remedies.<sup>104</sup>

Another instrument that could be used as a standard for the treatment of survivors of IPVAV is the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. This instrument calls upon member states to provide proper protection to survivors before, during, and after criminal proceedings.<sup>105</sup> It further emphasizes protecting the privacy, dignity, and safety of survivors to enable them to testify in criminal proceedings and avoid secondary victimization.<sup>106</sup>

While the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) does not have provisions specifically addressing VAW, its General Recommendation No. 35 calls upon states to take various actions for the elimination of gender-based violence against women. These measures encompass prevention, protection, prosecution, punishment, redress, data collection, and monitoring.<sup>107</sup> The recommendation emphasizes a victim-centered approach throughout this process.<sup>108</sup> It also asks states to guarantee the privacy and safety of survivors and witnesses of gender-based violence and ensure their access to financial aid, legal assistance, medical, psychological, and other services.<sup>109</sup>

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<sup>101</sup> General Assembly Resolution 58/147 (2003), available at: <https://documents.un.org/doc/undoc/gen/n03/503/40/pdf/n0350340.pdf?token=V5IIbjbs50cRlSiSxL&fe=true> (accessed on 7 February 2024)

<sup>102</sup> *Id.*, para 5 & 7

<sup>103</sup> *Ibid*

<sup>104</sup> *Ibid*

<sup>105</sup> *Id.*, para 17.i

<sup>106</sup> *Ibid* para 15.c

<sup>107</sup> CEDAW General Recommendation on Gender-Based Violence against Women, updating General Recommendation No. 19, No. 35 (2017), available at: <https://www.vn-vrouwenverdrag.nl/wp-content/uploads/General-Recommendation-35-update-van-19.pdf>, (accessed on 7 February 2024). para 28

<sup>108</sup> *Ibid*

<sup>109</sup> *Id.*, para 40(c)

At the regional level, the Maputo Protocol obligates states to take legislative, administrative, social, and economic measures to prevent, punish, and eradicate VAW.<sup>110</sup> Under this instrument, member states have the obligation to punish perpetrators of VAW and provide “accessible services for effective information, rehabilitation, and reparation for victims.”<sup>111</sup>

Domestically, the Ethiopian Criminal Justice Administration Policy addresses issues related to the treatment of survivors. The policy demands the adoption of legislation that incorporates the special handling of survivors of gender-based violence.<sup>112</sup> It has also guided the establishment of special units within the police, prosecutor's office, and courts to support crime prevention, investigation, prosecution, and the provision of other support services in cases concerning women, children, persons with disabilities, etc.<sup>113</sup> Even though many of the instruments mentioned above are non-binding (except for the Maputo Protocol), they set standards for how states should treat survivors of crime who interact with the justice system.

This section explores the treatment of IPVAV survivors who have navigated the criminal justice system in Addis Ababa City Administration. It assesses their experiences from initial contact with the police to court proceedings, examining their struggles, needs, and concerns throughout their journey.

### **3.1. Reporting to the Police**

The criminal justice process begins when law enforcement receives information about a crime, which can come through various channels, triggering an investigation to gather evidence and build a case.<sup>114</sup> In Ethiopia, Article 9 of the Criminal Procedure Code grants the police the mandate to investigate crimes.

Similar to that of Ethiopia, many legal systems designate the police as the initial point of contact for reporting crimes, making reporting the case to the police a crucial first step for survivors

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<sup>110</sup> Id, Article 4.2(b)

<sup>111</sup> Id, Article 4.2(e, f)

<sup>112</sup>The Ethiopian Criminal Justice Policy, *supra* note 28, Section 6.2.1

<sup>113</sup> Id, Section 6.5

<sup>114</sup> Aderajew Teklu and Kedir Mohammed, ‘Ethiopian Criminal Procedure Teaching Material’ (2009), Justice and Legal System Research Institute available at: [https://www.lawethiopia.com/images/teaching\\_materials/CRIMINAL%20PROCEDURE.pdf](https://www.lawethiopia.com/images/teaching_materials/CRIMINAL%20PROCEDURE.pdf) accessed on 12 February 2024. p.78

seeking justice.<sup>115</sup> Thus, police interventions grounded in empathy, practical support, and appreciation of pivotal moments play a significant role in empowering women to break free from violence and move toward a safer environment.<sup>116</sup> In contrast, police who fail to acknowledge the seriousness of the violence and downplay its severity unintentionally place women's lives at greater risk.<sup>117</sup> Therefore, it is vital for police to take official measures to prevent violence against women and ensure they are not re-victimized due to police inaction and insensitive enforcement practices.<sup>118</sup> However, police officers in Ethiopia currently lack clear guidelines on how to interact with and assist survivors of violence, potentially resulting in variations in the treatment of survivors by different officers.<sup>119</sup>

Many study participants reported negative experiences with the police, describing them as unwelcoming and unhelpful. Several survivors recounted pressure from police to resolve their issues through mediation, even in cases involving severe injuries.

For example, S-4 shared her experience, stating, "When I went to the police, they told me they do not want to get involved because it is a husband-and-wife matter. They told me to go home and apologize to my husband. They did not take my case seriously at all." S-14 shared a similar story: "My partner beat me and kicked me out of the house in the middle of the night. I went to the police to report it, but they sent me away, saying they do not get involved in domestic issues and I should resolve it through mediation."

Several survivors expressed feelings of frustration and hopelessness. S-6 stated that she has given up on getting justice because she believed the system disrespects and abuses women everywhere they turn for help. She felt no one understood her experience and believed the police's inaction made her more vulnerable. She believed that when women encounter violence, the police would stand aside and watch. S-31 echoed this sentiment, criticizing the disparity between how the media portrays police protecting women and the reality of her experience. She stated that despite her

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<sup>115</sup> Yvonne I Crichton-Hill, 'Stories of Resistance: Women Moving Away from Intimate Partner Violence. University of Canterbury.' (PhD Thesis, University of Canterbury, 2016). p.352

<sup>116</sup> Ibid

<sup>117</sup> Ibid

<sup>118</sup> Office of the United Nations High Commissioner for Human Rights, Human Rights Standards and Practice for the Police, (2004), p.42, available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/training5Add3en.pdf> accessed on 21 January 2024.

<sup>119</sup> Abiyou Girma, *The police and human rights in Ethiopia*, available at: <https://www.abyssinialaw.com/blog/the-police-and-human-rights-in-ethiopia> accessed on 12 December 2023.

injuries, the police did not offer her assistance or make any effort to apprehend the perpetrator. They claimed they lacked transportation and required her to hire a taxi for them. Even then, they showed no willingness to investigate the case properly.

Some survivors reported mistreatment and harassment by police officers. S-26 described experiencing secondary victimization, stating, "I went to the police because my ex-partner distributed pornographic videos of me to my colleagues. But some of the officers I met asked me for sexual favours. It was very disappointing. The people who were supposed to protect me were trying to take advantage of me." S-33 claimed some officers demanded payment or sexual favors in exchange for help.

S-4 recounted her experience: "I went to the police to report being beaten and thrown out of my house. The officer did not believe me. She called me an ill-mannered woman and said she felt sorry for my husband because he had a wife like me. She said he is a good man and I am the problem."

Moreover, despite Article 37 of the Criminal Procedure Code mandating that police officers complete investigations promptly and refer cases to the prosecutor without unnecessary delay, many survivors reported excessive delays in their cases. For instance, S-32 stated,

When my partner beat me up, threatened to kill me, and threw me out of the house, I was terrified. So, I went to the police fearing for my life, expecting swift justice. Instead, they just kept giving me long appointments. They made me believe that there is no justice. I did not get the protection I expected from them. Such failure of the police, I believe, is one of the reasons why violence against women is escalating.

S-23 also stated,

Despite witnessing the severity of the violence, the police offered no immediate remedy. They suggested mediation, which I refused, as the situation was not suitable. Then they recommended suing, but the process dragged on with minimal support. Finally, a new investigator took over, finalizing the investigation within a few months. It was pure luck. In her opinion justice depends on getting a good officer, not the merit of the case, and reporting violence does not guarantee justice.

Data for this study was gathered from police stations under the Addis Ababa Police Commission. These stations have special units dedicated to responding to violence against women and children (Women and Child Protection Unit). However, these units do not handle IPVAW cases. Instead, any police officer investigates them like other crimes, and survivors receive no special treatment. Accordingly, the investigation process lacks support from psychologists and social workers.

Furthermore, the interview rooms where survivors of IPVAW were often interviewed were also observed for this study. Survivors were often interviewed within the offices of the investigative officers. These offices were often shared by multiple officers, creating crowded spaces with officers and other clients coming and going. Such an environment raises concerns about the privacy and comfort of survivors during these sensitive interviews.

### **3.2. Survivors' Experience with Public Prosecutors**

One of the key activities in the criminal procedure is prosecution.<sup>120</sup> After completing the investigation, the investigating officer submits a report regarding the results of the investigation to the public prosecutor.<sup>121</sup> Upon receiving the report, the prosecutor decides whether to pursue charges or close the case. In the cases reviewed for this study, if the prosecutor chooses to proceed under Article 38(a), they typically contact survivors, who are often the primary witnesses.

Prosecutors are expected to treat survivors with courtesy, respect, and sensitivity to their trauma.<sup>122</sup> Unfortunately, the prosecution of crimes against women is often hindered by stereotypes that diminish the severity of these offenses.<sup>123</sup> Consequently, certain charging patterns tend to prefer less serious charges and alternative dispute resolution methods, such as mediation.<sup>124</sup> Additionally, the absence of empathy from such professionals increases the risk of survivors being re-victimized throughout the legal process.<sup>125</sup>

Some survivors reported that prosecutors initially advised them to resolve their cases through mediation because the offense was committed by an intimate partner and was considered minor.

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<sup>120</sup> Aderajew Teklu and Kedir Mohammed, *supra* note 114, p. 167

<sup>121</sup> Criminal Procedure Code, *supra* note 39, Article 37(2).

<sup>122</sup> United Nations Office on Drug and Crime Vienna, *supra* note 23, p.50

<sup>123</sup> Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/23/49 (2013), <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/AHRC234English.pdf>, accessed on 12 December 2023, paras. 53-56.

<sup>124</sup> *ibid*

<sup>125</sup> United Nations Office on Drug and Crime Vienna, *supra* note 23, p.60

This sentiment was echoed by some interviewee prosecutors, who cited various reasons for recommending mediation in IPVAW cases. These reasons included a desire to protect the family, lack of evidence, or concerns that survivors might change their minds later.

Survivors also reported limited interaction with prosecutors after their initial meeting. Many only received a few minutes to discuss procedures before trial. This lack of communication left them feeling uninformed about the court process and unable to ask questions. Most of the interviewee survivors expressed that prosecutors did not keep them updated on their cases. S-33 mentioned that the prosecutors handling her case did not provide any information about the process or the status of the case. She revealed that the case had been prolonged for reasons she did not know. Since the prosecutors did not inform her about the progress of the case, she became scared and doubtful of their impartiality and competence. She added that the frequent changes of the prosecutors handling her case also concerned her and made her doubt how well the new prosecutors knew her case.

Some of the prosecutors indicated that IPVAW cases are handled the same way as other crimes, with no special procedures followed or support offered to survivors. Even when survivors express fear of further attacks from perpetrators, prosecutors often fail to offer solutions beyond requesting bail denial (if applicable) due to a lack of shelters. As PP-5 mentioned, survivors are sometimes advised to hide with relatives or friends for temporary safety. This lack of communication and support from prosecutors leaves many survivors feeling frustrated.

### **3.3. Survivors' Experiences throughout the Trial Process**

Testifying at trial can be a daunting and intimidating experience, especially for survivors who are unfamiliar with court procedures. The lack of familiarity can lead to anxiety and fear. Court proceedings are inherently confrontational, placing survivors in a position of limited control and direct exposure to the offender.<sup>126</sup> Survivors are compelled to recount their traumatic experiences in an environment less supportive and safe than a therapy session, having to do so in front of a defense attorney and the defendant whose role is to question their credibility, challenge their memory, and even dispute the truth of their account.<sup>127</sup>

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<sup>126</sup> Carol E. Jordan, 'Intimate Partner Violence and the Justice System: An Examination of the Interface, *Journal of Interpersonal Violence*', Vol. 19, No. 12, 2004, P. 2

<sup>127</sup> *Ibid*

In Ethiopia, there is a lack of established rules or laws governing survivors' treatment and protection during criminal hearings and trials, particularly when they attend cases or appear as witnesses before courts.<sup>128</sup> The only exceptions are cases where in-camera sessions are permitted when the survivor's interests are deemed to be at risk.<sup>129</sup> Therefore, it is crucial to evaluate how survivors perceive the court environment and the trial process by exploring their lived experiences.

### **3.3.1. Courtroom Environment**

The courtroom environment can be intimidating for many survivors of gender-based violence due to its formal and traditional nature, including the attire of legal professionals, seating arrangements, speech, and spectators.<sup>130</sup> This formality, akin to a theatrical performance, may contribute to secondary victimization for survivors, exacerbating their distress.<sup>131</sup>

In the study area, courtrooms typically have two doors: one for judges and other court officers, and another for defendants, survivors, witnesses, other clients, and observers. Survivors testify in close proximity to the accused, just a few feet away. The courtrooms are often filled with judges, prosecutors, and defense attorneys, all dressed in black. Judges usually sit behind an elevated bench at the front and center, overseeing the proceedings. Armed federal police escort prisoners, while uniformed and armed police officers monitor the courts. Other attendees include court facilitators, detainees from various prisons, other clients, observers (such as experts from different institutions, relatives of both survivors and defendants, and other interested parties), and other court staff. Throughout the cases observed for this study, the courtrooms consistently reached full capacity with no available seats.

Survivors were not provided with separate entrances, toilets, or waiting areas. They waited alongside other clients, including friends and relatives of the accused, for their appointments. Security in the courtrooms was stringent, with officers from the Addis Ababa city police and fully armed federal police officers present. However, there were no escorts for survivors from the court, and witnesses waited outside the courtroom until their names were called by a court facilitator.

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<sup>128</sup> Worku, *supra* note 15, P. 143

<sup>129</sup> *Ibid*

<sup>130</sup> United Nations Office on Drug and Crime, *supra* note 5, P. 142

<sup>131</sup> *Ibid*

The impact of this environment on survivors is profound. S-1 mentioned that she was afraid to testify in court and found herself unable to articulate everything she wanted to say. She expressed her disappointment in herself, attributing it to her own fears rather than any restriction from the judge who allowed her to testify freely. She described the courtroom as intimidating, especially since it was her first time testifying. S-26 echoed these sentiments, emphasizing the fear and unfamiliarity associated with her initial court appearance. According to most of the interviewees for this study, the court environment significantly affects survivors, with many finding it intimidating and hindering their ability to express themselves confidently.

### 3.3.2. The Trial Process

Courts apply the same trial process to IPVAW cases as they do to other ordinary crimes. Upon receiving a formally filed charge from the prosecutor, the court with jurisdiction schedules a trial date.<sup>132</sup> Subsequently, based on lists provided by both the accused and the prosecutor, the registrar issues summonses to all relevant parties.<sup>133</sup> On the designated day and time for the hearing, the court convenes, witnesses and the accused are presented, and the case is called.<sup>134</sup>

The trial begins with the presiding judge reading the charges to the accused and addressing any potential objections.<sup>135</sup> After dealing with objections, if the accused pleads not guilty or pleads guilty but the court requires evidence to corroborate the plea, the public prosecutor outlines the charges and intended evidence in a neutral and unbiased manner.<sup>136</sup> The prosecutor then calls witnesses and experts, who are sworn or affirmed before providing their testimony.<sup>137</sup> Each witness undergoes examination by the prosecutor, cross-examination by the accused or their advocate, and re-examination by the prosecutor.<sup>138</sup> Throughout this process, the court reserves the right to pose additional questions to witnesses as necessary for a fair judgment.<sup>139</sup>

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<sup>132</sup> Criminal Procedure Code, *supra* note 39, Article 123

<sup>133</sup> Id, Article 124.1

<sup>134</sup> Id, Article 126.1&3

<sup>135</sup> Id, Article 129

<sup>136</sup> Id, Article 131, 132, 133.1, 134.2, 136.1 & 136.2

<sup>137</sup> Id, Article 136.2

<sup>138</sup> Id, Article 136.3

<sup>139</sup> Id, Article 136.4

### **3.3.2.1. Examination-in-Chief, Cross Examination, and Re-examination**

Survivors called as witnesses have the opportunity to recount their stories in court. However, the examination process is controlled by the involved parties, who frame questions to serve their interests.<sup>140</sup> Witnesses are compelled to answer these questions as presented, often unable to convey their experiences as they would prefer.<sup>141</sup> They frequently face interruptions before fully explaining the harm they have suffered.<sup>142</sup>

While the Criminal Procedure Code of Ethiopia specifies the types of questions permissible in examination-in-chief, cross-examination, and re-examination, it does not provide special procedures for the adjudicating of sensitive cases like IPVAW. As a result, survivors of IPVAW are treated similarly to witnesses in other ordinary crimes.

In the cases observed for this study, cross-examinations were marked by prolonged questioning, repetitive queries demanding precise recollection of minor details, and questions designed to pressure survivors into providing answers favoured by the defense. During cross-examination, prosecutors play a crucial role in shielding survivors from defense attorneys by objecting to irrelevant or inappropriate questions. However, in one of the cases observed for this study, the prosecutor failed to protect the survivor in this manner. Interestingly, the presiding judge did a better job than the prosecutor in curbing repetitive questions and preventing the defense from introducing new issues not raised during the examination-in-chief.<sup>143</sup>

In this case, a survivor of a violent crime testified without psychological support while facing questioning from prosecutors, judges, defense attorneys, and the defendant. She was repeatedly instructed to raise her voice, respond in a specific manner, answer swiftly, etc., which could be traumatic experiences in themselves. Throughout her testimony, she trembled and cried. Afterwards, she informed the author that she had been shaking the whole time and it had taken her a while to adjust. However, she expressed that the judge's rejection of some of the questions posed by the defense made her feel supported and encouraged her to continue.

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<sup>140</sup> Worku, *supra* note 15, P.112

<sup>141</sup> *Id.*, P.113

<sup>142</sup> *Ibid*

<sup>143</sup> Public Prosecutor v. Mohammad Fereja, *supra* note 72

Despite the potential benefits of implementing victim-friendly benches to mitigate the anxiety and trauma survivors often face while testifying in open courts, such benches were not utilized in any of the observed cases or files reviewed in this research, leaving a considerable number of survivors vulnerable.

#### **4. Concluding Remarks**

Survivors of intimate partner violence in Ethiopia play a limited role in criminal proceedings. Their involvement is restricted to reporting the incident, particularly in crimes punishable upon complaint, and serving as witnesses. Since the state assumes complete responsibility for investigating, prosecuting, and adjudicating the case, survivors are often left uninformed, unheard, and without a sense of agency.

One major challenge in this regard is lack of updates on the progress of a case. Many survivors remain uninformed about the adjudication process and the final judgment, leading them to feelings of isolation, frustration, and further victimization. The draft Criminal Procedure Code partially addresses this issue by granting survivors the right to request updates on the investigation, a positive step towards better communication.

Survivor participation should be considered in decisions that affect their safety. This includes the right to express their views and concerns during bail proceedings, probation, parole, and amnesty decisions. However, this right must be balanced with the right of the accused. Thus, legal frameworks that guarantee survivor participation without infringing upon the rights of the accused are essential to achieving this balance.

The Ethiopian criminal justice system lacks clear guidelines for treating survivors, leaving them vulnerable to bias, discrimination, and inadequate support. Deep-rooted patriarchal attitudes further hinder access to justice, manifesting through victim-blaming, disbelief, secondary victimization, and inadequate services.

To address these challenges, clear standards are needed for receiving, treating, and protecting IPVAW survivors throughout the process. Additionally, training is necessary for police officers, prosecutors, judges, and other actors on trauma-informed care, gender sensitivity, and survivor needs. Increasing the use of specialized benches equipped to handle IPVAW cases with sensitivity and establishing referral mechanisms that help survivors access services from trained

professionals offering psychological, medical, legal, and social support are also crucial steps forward.