

‘Real Rape Myth’ and Legal Process: Knowledge and Perception of Criminal Justice Actors’ in South Ethiopia Region

Kidus Meskele Ashine* and Wondemagegn Tadesse Goshu**

Abstract

In Ethiopia, cross-sectional studies show a high prevalence of rape among women and girls. Though numerous policy improvements have been implemented, including a rape legislation reform, it is still unclear to what extent these changes have helped shift the focus of rape case processing from the victim's behaviour to that of the offender criminal behaviour in the legal system. This study therefore intended to identify how these knowledge and perception affect rape prosecutions in South Ethiopia Region. To accomplish this, the study used a socio-legal methodology. A socio-legal method of conducting empirical research that combined three methods: questionnaires, interviews, and court document analysis was used. 230 key actors, including judges, prosecutors, defence lawyers, and investigating police, responded to a self-administered questionnaire. Forty interviews were conducted with participants, and 316 prosecution and court files were analysed. Regarding the knowledge and perception of the criminal justice actors, 86.1% defined rape as a forced penile-vaginal penetration. The majority of the respondents have rated their attitude on the two-item scale above the average of 52.25%. This suggests that many of the key actors in the legal process have a propensity to believe rape myths and have been swayed by rape victims' actions during rape when addressing rape cases. Besides, data from interviews, as well as case review analysis, revealed that victims' actions during rape have a significant influence on the legal process. The findings in this study indicate the tendency of Criminal Justice Actors to hold false beliefs about the characteristics and behaviour of a "genuine" rape victim and to focus on these, rather than on the defendants' actions, as one of the major factors that produce unfair processes in rape cases.

Keywords: Real Rape’ Myths, Knowledge, Perception, Legal Process, Ethiopia

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1. Introduction

Rape is an everyday occurrence that girls and women face in all cultures and societies.¹ Rape violates several rights, including the right to life, the right to equal protection under the law, the right to equality in the family, the right to health, and the right to just and favourable working conditions.² The denial of fundamental human rights and freedoms to women is perhaps the most serious consequence of rape.³ Rape is thought to be discriminatory because the threat of rape reduces women's autonomy by altering their lifestyles and restricting certain choices for women, such as freedom of movement, to reduce the risk of being raped.⁴

The term rape is used about only one gender-specific sexual offence in the Ethiopian Criminal Code (2004), namely, sexual intercourse (penile-vaginal penetration) of a man with a woman outside of marriage, by violence (physical force), by threat of force (grave intimidation), or by rendering the victim incapable of offering resistance or unconscious. Other sexual offences have been treated separately, with different headings and severity of penalties. However, in the current study, the term "rape" refers to only one gender-specific sexual offence that has been criminalised under the Ethiopian Criminal Code (2004).⁵ The Ethiopian Criminal Code (2004) defines rape as follows:

"Whoever compels a woman to submit to sexual intercourse outside wedlock, whether through violence or grave intimidation, or after rendering her unconscious or incapable of resistance, is punishable..."⁶

¹R. Barry Ruback and Neil A. Weiner, *Interpersonal violent behaviours: social and cultural aspects*, ((eds.), Springer Publishing, New York, 1995), p. 63-87.

²*ibid*

³UNICEF, *Domestic Violence against Women and Girls, Innocenti Digest, No. 6, 2000*, <https://www.unicef.org/malaysia/ID_2000_Domestic_Violence_Women_Girls_6e.pdf> accessed on Oct 7, 2023.

⁴Brandt Stelling, 'The Public Harm of Private Violence: Rape, Sex Discrimination and Citizenship, Harvard Civil Rights-Civil Liberties Law Review', Vol.28, No. 1, 1993, P. 187.

⁵ Criminal Code of Ethiopia, 2004, Art. 620, Proc. No. 414/2004, 9th May, 2005.

⁶ Criminal Code Proc. No. 414/2004, Art. 620(1).

According to Tsehai Wada, the act must involve compulsion and be performed with the intent of having sexual intercourse with the victim to be punishable under Article 620 of the 2004 Criminal Code.⁷ Furthermore, the provision specifies that, while the perpetrator can be either a man or a woman, the victim must be female.⁸ Tsehai Wada went on to interpret the provision as referring to forced sexual intercourse committed outside of marriage, implying that marital rape is not a crime under the Criminal Code.⁹ Tsehai Wada contended that compulsion methods include the use of violence, severe intimidation, and rendering the victim unconscious or incapable of resistance.¹⁰

In Ethiopia, according to a national study conducted by the Ministry of Women, Children, and Youth Affairs, the prevalence of sexual violence, with rape being a significant factor in the workplace, was 37% in the public sector and 33% in the private sector.¹¹ The prevalence rate in secondary schools was 20.7%, while it was found to be much higher in higher education institutions, which is 39%.¹² Similarly, according to the 2016 Demographic and Health Survey, 10% of women aged 15 to 49 had experienced sexual violence at some point in their lives, and 7% had experienced sexual violence in the year preceding the survey.¹³ According to the survey, 5% of women had experienced sexual violence by the age of 18 and 2% by

⁷Tsehai Wada, 'Rethinking the Ethiopian Rape Law, Journal of Ethiopian Law', Vol.25, No.2, 2012, P.191-253. According to Tsehai, there are several factors that distinguish sexual assault from rape: Sexual assault is defined as "an act corresponding to the sexual act, or any other indecent act," whereas rape is defined as "sexual intercourse" (penile-vaginal penetration). Another distinction is that sexual assault has a broader scope than rape because it can be committed by a woman against a man or vice versa, whereas rape is a crime committed only by a man against a woman. In addition, marital rape is not excluded from sexual assault but from rape. In terms of gravity, sexual assault and rape can be distinguished because the former is punishable by a simple imprisonment of not less than one year or a rigorous imprisonment of not more than ten years, whereas the latter is punishable by a rigorous imprisonment of five to fifteen years. *Emphasis added.*

⁸*ibid*

⁹*ibid*

¹⁰*ibid*

¹¹Ministry of Women, Children and Youth Affairs, *Assessment of Conditions of Violence Against Women in Ethiopia* (Final Report November 2013) Addis Ababa Ethiopia 60-64.

¹²*ibid*

¹³Central Statistical Agency, *Ethiopia Demographic and Health Survey* (2016) Addis Ababa, Ethiopia, and Rockville, Maryland, USA: CSA and ICF 292.

the age of 15. However, due to complex sociocultural and institutional factors, a large number of rape crimes go unreported to authorities. Even when reported, the likelihood of charges and conviction is lower.¹⁴ According to a 2016 Demographic and Health Survey report, only 8% of sexual violence victims seek police assistance.¹⁵ Only 2 - 3% of women have ever sought assistance from other service providers such as lawyers, doctors, and social workers.¹⁶

Rape law reform and various policy measures have been implemented in Ethiopia over the last two decades to address the problem of rape against women. Nonetheless, important questions remain about the extent to which the reforms have produced meaningful results in terms of improving the legal process for rape and rape victim treatment. It also discovered that the reforms have not resulted in a shift in the focus of rape case-processing from the victim's character, reputation, and behavior to the criminal conduct of the offender.¹⁷

Feminist scholars' research in several Western countries since the 1970s has revealed fundamental issues in rape prevention. First, unreported rapes continue to be common, resulting in many rapists going unpunished.¹⁸ Second, rape case attrition rates are high in many jurisdictions.¹⁹ Rape complaints are routinely dropped at all stages of the criminal justice system, from police to prosecution to courts, resulting in low conviction rates. Third, in many countries, rape victims have been humiliated by the criminal justice system during the legal process.²⁰

¹⁴Lynda Lytle Holmstrom and Ann Wolbert Burgess, *The victim of rape: Institutional reactions*, (Wiley & Sons, New York, 1978), p. 223.

¹⁵*Supra* note 13, p. 297.

¹⁶*ibid*

¹⁷Mesay Hagos, 'Effects and Limitations of Rape Law and Policy Reforms in Ethiopia' (PhD Thesis, Addis Ababa University, 2020).

¹⁸ Jennifer Temkin, 'And always keep a hold of nurse, for fear of finding something worse: Challenging rape myths in the courtroom, *New Criminal Law Review*', Vol.13, No.4, 2010, P. 710-734.

¹⁹*ibid*, P. 711.

²⁰*ibid*, P. 712.

Some feminists have referred to the negative experiences of many complainants during both the investigation and trial processes as "judicial rape," owing to mistreatment of victim-witnesses during cross-examination.²¹ These issues highlight a "justice gap" in the successful prosecution of sexual violence, though it should be noted that some jurisdictions have made progress.²²

According to feminist research, the "justice gap" in rape cases is at least partly due to the influence of rape myths.²³ A myth is defined as "a widely held but false belief."²⁴ Rape myths are "prejudiced, stereotypical, and false beliefs about rape, rape victims, and rapists."²⁵ They are "generally false but widely and persistently held attitudes and beliefs that serve to deny and justify male sexual aggression against women."²⁶ They frequently blame the victim while excusing the perpetrator.²⁷ The public and criminal justice practitioners' denial of rape is at the heart of rape myths.²⁸ Similarly, Martha Burt defines rape myths as "prejudiced, stereotyped, or false beliefs about rape, rape victims, and rapists [...] creating a climate hostile to rape victims [...] a pervasive ideology that [...] supports or excuses sexual assault".²⁹ Rape myths, according to Lonsway and Fitzgerald, are "generally false but widely and persistently held attitudes and beliefs that serve to deny and

²¹Sue Lees, 'Judicial rape, Women's Studies International Forum', Vol.16, No.1, 1993, P. 11-36.

²²Olivia Smith and Tina Skinner, 'How rape myths are used and challenged in rape and sexual assault trials, Social and Legal Studies', Vol.26, No.4, 2017; Jennifer Temkin, *Rape and the Legal Process*, (2nd ed., Oxford University Press, Oxford, 2002).

²³Jennifer Temkin, Jacqueline M.Gray and Jastine Barrett, 'Different functions of rape myths use in court: Findings from a trial observation study, Feminist Criminology', Vol.13, No.2, 2018, P. 205-226; Friederike Eyssel and Gerd Bohner, 'Schema effects of rape myth acceptance on judgments of guilt and blame in rape cases: The role of perceived entitlement to judge, Journal of Interpersonal Violence', Vol.26, No.8, 2011; *Supra note 22*; Susan Estrich, *Real Rape*, (Harvard University Press, 1987); Sue Lees, *Carnal Knowledge: Rape on Trial*, (Hamish Hamilton, London, 1996), p. 31.

²⁴ Cambridge Dictionary <<https://dictionary.cambridge.org>> accessed on Jan 25, 2023.

²⁵*Supra note 18*, P. 714.

²⁶ Kimberly A. Lonsway and Louise F. Fitzgerald, 'Rape myths, Psychology of Women Quarterly', Vol.18, 1994, P. 134.

²⁷Friederike Eyssel and Gerd Bohner, 'Schema effects of rape myth acceptance on judgments of guilt and blame in rape cases: The role of perceived entitlement to judge, Journal of Interpersonal Violence', Vol.26, No.8, 2011, P. 1580.

²⁸ *ibid*

²⁹ Martha Burt, 'Cultural Myths and Supports for Rape, Journal of Personality and Social Psychology', Vol.38, No.2, 1980, P. 217-230.

justify male sexual aggression against women." They contended that rape myths serve a specific function in society by justifying sexual violence against women and maintaining social norms based on gender inequality.³⁰ Rape myths are widespread assumptions about rape that "affect subjective definitions of what constitutes a 'typical rape,' contain problematic assumptions about the likely behavior of perpetrators and victims, and paint a distorted picture of rape's antecedents and consequences."³¹

The "real rape" myth is an example of a rape myth. This refers to a limited understanding of rape, which envisions a genuine rape victim as a respectable woman who is attacked by a stranger in a remote location, resists the assault, suffers significant injuries as a result of the abuse, and promptly reports the incident to the police, expressing distress.³² Because of this belief, other types of rapes that do not conform to this stereotype may not be considered "real" and may be attributed to victim characteristics or behaviors such as dress, speech, or other situational conduct.³³ As a result of such beliefs, the victim may be (partially) blamed for their victimisation rather than the offender.³⁴ Rapes that do not result in significant physical injuries and rapes committed by a person known to the victim are two examples of rapes that are frequently dismissed as not being "real".³⁵ The literature reveals other types of rape myths, which are interconnected with "real rape" myth, for instance, rape does not exist except in the most extreme cases, because a woman

³⁰*Supra note 26*

³¹Gerd Bohner, Friederike Eyssel, Siebler Afroditi Pina, Frank Siebler and Vikj G. Tendayi, 'Rape Myth Acceptance: Cognitive, Affective and Behavioural Effects of Beliefs that Blame the Victim and Exonerate the Perpetrator', in Miranda A H Horvath and Jennefir Brown, *Rape: Challenging Contemporary Thinking*, ((eds), Willan, Cullompton, 2009) pp. 17–45.

³² Susan Estrich, *Real Rape*, (Harvard University Press, 1987).

³³ Jericho M Hockett and Donald A Saucier, 'A systematic literature review of 'rape victims' versus 'rape survivors': Implications for theory, research, and practice, *Aggression and Violent Behaviour*', Vol.25, 2015, P. 1-14.

³⁴*ibid*

³⁵*ibid*

is capable of preventing rape by fighting off her attacker if she truly does not want sexual intercourse.³⁶

Hence, rape myths have the potential to undermine justice in rape cases. If such myths exist in Ethiopia's criminal justice system, they are likely to be a major impediment to the country's commitment to deliver justice for rape victims. However, the extent to which such myths exist in Ethiopia's criminal justice system is unknown. As a result, the goal of this article is to identify the presence of rape myths in the legal process for rape in the study area to provide knowledge that can help improve the criminal justice system's response to rape.

2. Approach, Materials and Methods

2.1 Study Area, Methods of Data Collection and Sampling Techniques

The South Ethiopia Region, which is in Ethiopia's southern region, is where the study was carried out. Kenya borders it on the south, the South West Ethiopia Region on the southwest, the Sidama and Oromia Region on the east, and the South Central Ethiopia Region on the north. About 31 indigenous ethnic groups comprise the region, each with a distinctive geographic setting, language, culture, and social identities. It combines the principal homelands of many nationalities. Five zones and three administrative towns were selected at random to make up the area, which consisted of twelve zones.

Answering the question of whether rape myths influence the criminal justice system necessitates an approach that goes beyond doctrinal legal research because the issue goes beyond a simple analysis of the relevant laws. It entails investigating key actors in the criminal justice system's beliefs, practices, and decisions. This necessitates the use of a socio-legal methodology, which allows the researchers to reach out to the people involved in the field and investigate their attitudes and actions.³⁷

³⁶*Supra* note 18

³⁷ Fiona Cownie and Anthony Bradney, *Socio-legal studies: A Challenge to the doctrinal approach*, (1st ed, Routledge, 2013) p. 14.

Legal researchers use research approaches from other disciplines to collect empirical data in socio-legal research, and thus, the design can be qualitative, quantitative, or mixed.³⁸ This research task was completed using a mixed-methods research design, which Creswell defines as a procedure for collecting, analysing, and "mixing" both quantitative and qualitative methods in a single study or series of studies to better understand a research problem.³⁹ As a result, the mixed method was chosen because it allows us to supplement the data gathered by the qualitative method with quantitative data, completing the study and providing comprehensive answers to the various research questions posed in this study. Furthermore, it may aid us in qualitatively explaining the findings of the supporting quantitative data.⁴⁰

To maximise the validity of the research findings, the researchers used triangulation methods, which involve multiple methods rather than just one.⁴¹ It is a combination of different methods for investigating the same subject to increase credibility.⁴² It is "simple but powerful",⁴³ producing the best of each method while limiting specific deficiencies, as the weaknesses of one method are frequently the strengths of another.⁴⁴ In this study, three methods were combined. These are the following: questionnaire, interviews and document analysis.

The study adopted a quantitative approach. A cross-culturally validated scale named the Attitudes toward Rape Victims Scale was used. It is intended to evaluate attitudes toward rape victims. The 2-item questionnaire deals with areas of credibility and

³⁸ Ashish Kumar Singhal and Ikramuddin Malik, 'Doctrinal and socio-legal methods of research: merits and demerits, Educational Research Journal', Vol. 2, 2012, P. 254.

³⁹ John W. Creswell, *Educational research: Planning, conducting, and evaluating quantitative and qualitative research*, (4th ed., MA Pearson, Boston, 2012) p. 535.

⁴⁰ Louise Doyle, Anne-Marie Brady and Gobnait Byrne, 'An overview of mixed methods research, Journal of Research in Nursing', Vol.14, 2009, P. 178-179.

⁴¹ Norman K. Denzin, *The Research Act*, (3rd ed., Englewood Cliffs NJ, Prentice Hall 1989).

⁴² *ibid*, P. 297.

⁴³ Ellen S. Mitchell, 'Multiple triangulation: A methodology for nursing science, Advances in Nursing Science', Vol.8, No.3, 1986, P. 17.

⁴⁴ *Supra note 41*, p. 308.

victim blame. Items are scored using a 5-point Likert scale, and the total score ranging from 0 to 100 was employed to determine how much victim's resistance during rape affected the criminal justice system in specifically chosen research locations. Therefore, a survey was undertaken to measure knowledge and perception concerning rape victims to examine the influence of victim's resistance during rape among investigative officers, defense lawyers, prosecutors, and judges. A purposive sampling technique was employed to select key actors. As a result, judges, prosecutors, defence lawyers, and investigative police officers who have handled and made decisions on rape cases in their respective capacities were carefully identified as respondents. From a total population of 542 key actors in the study area, a sample of 230 key actors was selected for study purposes and completed a self-administered questionnaire based on Yamane Taro's⁴⁵ Simplified formula for sample size determination.

2.2. The Process of Data Collection, Integration of Ethical Concerns and Analysis

Before filling out the questionnaire, each study participant was given a clear explanation of the study's goals. The respondents of the questionnaire were also told that, if they so choose, they may skip questions or even refuse to fill it out at all. Additionally, they were informed that their answers would be kept confidential and analysed collectively. Finally, respondents gave their consent for the research findings to be published and disseminated.

To guarantee the consistency and validity of the items, the questionnaire was first piloted with a small sample of randomly chosen participants. Ten questionnaires were consequently issued. The feedback from the pilot test was used to modify the questionnaire. The questionnaire was altered to provide respondents the opportunity to omit the open-ended questions if they so choose, considering that the majority of participants dislike completing them. The necessary number of copies was then made

⁴⁵ Taro Yamane, *Statistics: An Introductory Analysis*, (2nd Ed, Harper and Row, New York, 1967).

in duplicate and distributed to the participants, leaving room for any potential missing or insufficient responses. To assess their knowledge and perception regarding victim's resistance during rape when processing and making decisions on rape cases, the key actors filled out a 2-item questionnaire with a cross-culturally validated scale. The data collection period lasted three months, beginning in October 2021.⁴⁶

After deciding on interviewing as one of the data collection methods, it was critical to select the right people who could provide the information needed to answer the research questions.⁴⁷ The most relevant individuals were among the Criminal Justice key actors, as they have direct experience with the legal process: judges, prosecutors, investigative police, defense lawyers, as well as defendants and rape victims. These categories, however, play different roles in the process, and some of them have competing interests. As a result, their perspectives are likely to differ. Hence, triangulating these divergent groups was the sampling strategy for obtaining the most reliable data from the interviews.⁴⁸ Judges, prosecutors, investigative police, defense lawyers, and rape victims were chosen to be triangulated. Defendants were not included in the study because their role in the legal process is largely assumed by their lawyers. In total, forty people were interviewed from the five categories listed above, including ten judges, ten prosecutors, six investigative police, six defense lawyers, and eight rape victims. The sampling of prosecutors and judges had to account for the representation of the various structures and departments that make up the prosecution service and the judiciary. Rape cases are heard in two levels of

⁴⁶ This article is based on data obtained for a PhD thesis. This fact should be considered when analyzing the study area, quantity of respondents and court cases. To protect the anonymity of the key informants, they will be referred to as follows in this study: JUDGE [number] for the ten judges, PROSEC [number] for the ten prosecutors, INVESTIGATIVE POLICE [number] for the six investigative police, DEFENSE LAWYER [number] for the six defense lawyers, and RAPE VICTIM [number] for the eight victims.

⁴⁷ Alan Bryman, *Social Research Methods*, (5th ed., OUP, Oxford, 2016), p. 407.

⁴⁸ *Supra* note 41.

courts within ordinary courts: first instance courts and the High Court. There are two levels of prosecution as well: Town/Woreda (District) and Zone. This representation was critical in the case of diverse practices across departments.

Key informant interviews were conducted using semi-structured interview guides. The prepared questions were open-ended, allowing interviewees to make detailed comments and express their opinions in a freeway manner.⁴⁹ To make things even easier, the interviews were conducted in Amharic (the working language of the region). The questions were translated into Amharic and then translated back to ensure consistency. Because most interviewees did not want to be recorded, the researchers took handwritten notes during the conversations. The preparation and conduct of the interviews differed depending on the type of participant. Interviews with legal professionals were mostly conducted in their offices, as they preferred.

Whereas the interviews with rape victims were conducted by considering its special nature and specific ethical issues involved. The researchers took necessary preparations and measures during interviews with rape victimse, identifying ad focusing on three potential ethical issues.⁵⁰ The first issue was the survivors' safety risk,⁵¹ which was managed and reduced by holding a participatory approach with the victim in determining a secure interview location. The victims were consulted about the venue, though the majority of the participants left the decision to the researchers to determine an appropriate location. In addition, the researchers also adhere to the principle of prior notice to the local police office by informing this location as a precaution. Before interviews, the researchers ensured that the locations did not raise any obvious suspicions for both the victim and third parties. Consequently, during all of these interviews, no incidents of safety risks occurred.

⁴⁹Martyn Denscombe, *The Good Research Guide for Small-scale Social Research Projects*, (2nd ed., Open University Press, Philadelphia, 2003), p. 165.

⁵⁰Mary Ellsberg and Lori Heise, *Researching Violence Against Women: A Practical Guide for Researchers and Activists*, (World Health Organization PATH, Washington DC, United States, 2005).

⁵¹*ibid*

Secondly, distress caused by reliving the traumatic experience was the issue that the interview with rape victims had considered and mitigated by the researchers.⁵² This possibility was mitigated by letting the focus of the interview and rape victims on their experiences with the criminal justice system rather than the assault itself. Besides, the researchers noted the need to be prepared in case a problem arose, and took precautionary mechanisms before the interviews, such as informing the interviewees in the beginning to stop or end the interview at any time if they were not comfortable. In the process, the interviewees were found to be emotional; fortunately, the emotional reaction of all of them was manageable to the researchers, and none of them asked to stop or withdraw from the interview process. Thirdly, the third issue was the risk of inadvertently shocking the interviewees through probing or inappropriate language.⁵³ To avoid this, great care was taken while crafting the interview questions and selecting the words used during the interviews. The questions were carefully crafted, as were the words used during the interviews. The interviews with eight rape victims and the thirty-two key actors in the criminal justice system were concluded without incident.

To increase the credibility of the research findings, the collection of prosecution and court documents was conducted in addition to the questionnaire and interviews. This aspect was critical to the study because it was necessary to examine prosecutors' and judges' decisions to determine whether they were influenced by rape myths. The most detailed explanations of these decisions can be found in the case files. As a result, the researchers collected a total of 316 files that went through the legal process to judgment based on Yamane Taro's⁵⁴ suggested simplified formula for sample size determination. It was deliberate to collect the files with all of their contents rather than just the final decisions. This enabled these decisions to be critically evaluated

⁵²*ibid*

⁵³*ibid*

⁵⁴*Supra note 45*

in terms of whether they accurately reflected the evidence available to the decision-maker. Only cases handled between September 2016 and February 2020 were gathered, however. This was done to ensure consistency in their interpretation.⁵⁵

The qualitative data analysis followed a thematic organisation of transcribed data manually to address the research objectives. By following the qualitative data analysis procedures, the data were systematically organised into related themes and categories based on the study's main objectives, from which analyses and interpretations were made. The quantitative data collected through document analysis and a cross-sectional survey, on the other hand, were entered into a template in Microsoft Excel and exported to SPSS #20 for cleaning and analysis. The recorded information from court documents was analysed using descriptive statistics, cross-tabulation with the chi-square statistic, and binary logistic regression. Using SPSS, simple descriptive statistics were used to analyse data collected via questionnaires, and Chi-square tests were used to determine statistical significance. Throughout the process, efforts were made to triangulate data from various sources. Finally, complete interpretations of the data from all sources, inferences, and conclusions were made.

3. 'Real Rape' Myth and its Implications for the Legal Process

3.1 Demographic Characteristics of Respondents

As Table 1 indicates, female respondents make up only 21.3%. Besides, 81.3 % of the respondents were degree certified. The vast majority of them have studied law. Among the participants, a large number them are judges and public prosecutors.

⁵⁵*Supra note 46*

Table 1: Demographic Characteristics of Respondents

Variables		Frequency	%
Sex	Male	175	76.1
	Female	46	21.3
Education level	9-12	5	2.2
	Diploma	21	9.1
	Degree	187	81.3
	Masters	15	6.5
Field of study	Law	113	49.1
	Accounting or management	16	7.0
	Others	96	41.7
Occupation	Investigative Police	36	15.7
	Public prosecutor	71	30.9
	Judge	99	43.0
	Defense Lawyer	20	8.7

3.2 Criminal Justice Actors' Knowledge and Perception of Rape

As Table 2 indicates, it was observed that majority of the participants (86.1%) who were asked to define rape, defined the term as forced penetration of penile-vaginal. A few considered penile-anal and penile-oral penetration as rape (22.2% and 33.5% respectively). Thus, the majority of justice actors understood rape as forced penetration of female genital organ by male genital organ. This understanding will likely affect the whole process of rape litigation. Hence, the crucial question that has to be raised at this juncture is whether such understanding follows the Ethiopian Law against rape. To answer this question, we should look at the criminal code of Ethiopia which is the most prominent law that deals with rape. According to Article 620, "[w]hoever compels a woman to submit to sexual intercourse outside wedlock, whether by use of violence or grave intimidation, or after having rendered her unconscious or incapable of resistance, is punishable..."⁵⁶

Even though "having sexual intercourse" makes up the *actus reas* requirement of the crime, the provision does not say anything about whether other forms of sexual

⁵⁶ Criminal Code Proc. No. 414/2004, Art. 620(1). *Emphasis added.*

intercourse, such as penile-anal and penile-oral forms, can be taken into account. Some argued that the latter forms of sexual intercourse are punishable under article 622 rather than article 620(1).⁵⁷ Article 622 is about “sexual outrages accompanied by violence”, which reads as follows:

“Whoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, to perform or to submit to an act corresponding to the sexual act, or any other indecent act.”

According to this interpretation of the law, forced penile-anal and penile-oral penetration does not fall under the crime of rape, hence, not punishable under article 620 of the criminal code. However, one should bear in mind that the trauma that follows from other forms of rape is equally or even more disastrous than rape committed through genital organs. Nevertheless, the justice actors have to be conscious of reacting to new developments within social phenomena. Thus, they should play a pivotal role in interpreting the law to accommodate changes.

The study has also indicated that majority of the respondents tend to reject the case of the complainant, if the suspect is the husband of the victim, i.e. marital rape. This appears to be in line with the Ethiopian law which does not criminalize marital rape.⁵⁸ According to the law, rape is a crime which can be committed out of wedlock, thus, a woman cannot claim that she is raped by her husband. In addition to this, the large numbers of the respondents believe that rape committed upon girl child (83.9%) and young women (69.1%) must be taken seriously than rape committed against adult women and boys. The possible explanation for this is that the law’s fixation on the female victims has contributed to that kind of understanding. Originally, laws prohibiting rape were concerned primarily with the rape of virgins. Thus, rape was only considered to have occurred where there had been full penile-

⁵⁷ *Supra* note 7

⁵⁸ *Supra* note 56

vaginal penetration and emission of semen. This requirement was abolished in most jurisdictions in the nineteenth century, although that way of understanding of the law still appears to be persistent. Nonetheless, one should bear in mind that sexual crimes by and large are made gender-neutral in the revised criminal code of 2004. Hence, the researchers venture to suggest that the Criminal Justice Actors should be aware of this, so that they should treat victims of both sexes equally.

Table 2: Respondents' Knowledge and Perception of Rape

Variables	Category	Yes		No	
		Frequency	%	Frequency	%
Conditions of rape	When forced penetration of penile-vaginal is made	198	86.1	32	13.9
	When forced penetration of penile-anal is made	51	22.2	179	77.8
	When forced penetration of penile-oral is made	77	33.5	153	66.5
Categorization of rape victims	When wife or husband complains that she or he has been forced to make sex without consent	43	18.7	187	81.3
	When a girl has been forced to make sex without consent	193	83.9	37	16.1
	When a boy has been forced to make sex without consent	154	66.9	76	33.1
	When adult women have been forced to make sex without consent	159	69.1	71	21.9
	When adult men have been forced to make sex without consent	105	45.7	125	54.3
Type of rape justice actors must take it seriously	Rape committed by marriage partner	21	9.1	209	90.9
	Rape committed against child girls and young women	197	85.7	33	14.3
	Rape committed against child boys and young men	58	25.2	172	74.8
	Rape committed against adult women	127	55.2	103	44.8
	Rape committed against adult men	9	3.9	221	96.1

3.3 The Resistance Requirement in the Prosecution of Rape

This study revealed that the resistance requirement is still used in Ethiopian judicial practice. This finding is based on a review of questionnaires with key actors in the Criminal Justice System. Table 3 lists the elements that could lead decision-makers to accuse the victim or cast doubt on her veracity. The majority of the respondents have rated their attitude on the 2-item scale above the average, i.e., 52.25%. For a straightforward descriptive study, these variables have been categorized as the victim's resistance during rape. For example, the majority of respondents (37.8%) used to assign credibility and blame and stated unequivocally that victim resistance during the assault is the most important factor in determining whether or not a rape occurred. Correspondingly, the majority of respondents (42.2%) believe that a healthy woman can successfully resist a rapist if she tries hard enough.

Table 3: Respondents' Acceptance of Rape Myths on Victim's Behavior During Rape

Categorization	Variables	Frequency		Percent
Victim's resistance during rape	The extent of the woman's resistance should be the major factor in determining if a rape has occurred	SD	39	17.0
		D	53	23.0
		N	20	8.7
		A	87	37.8
		SA	28	12.2
	A healthy woman can successfully resist a rapist if she really tries	SD	20	8.7
		D	50	21.7
		N	33	14.3
		A	97	42.2
		SA	27	11.7

One significant drawback of the 2004 rape law reforms in Ethiopia is their failure to address the question of consent in circumstances of forced rape. The Criminal Code

of Ethiopia has not defined either forcible rape or rape without consent. Instead, the Criminal Code presumes absence of consent only when the offender uses violence or threatens to use violence against their victim.⁵⁹ Expressions like "without the woman's consent" or "against her will" or other equivalent terminologies have not been used in the provision for forcible rape cases. As a result, a man can only be charged with forcible rape if he used violence or "grave intimidation" against his victim, or if he rendered his victim unconscious or incapable of resistance.

Victims of forcible rape are presumed to have consented under the law if they do not physically resist the offender. The Ethiopian Revised Criminal Code requires evidence of resistance, as implied by the phrase "after rendering [her] incapable of resistance" in the definitions of forcible rape.⁶⁰ Furthermore, the requirement for physical resistance is subtly implied in other elements of forcible rape, such as the use of violence or force or the threat of violence, because it is assumed that the offender would not automatically resort to or threaten to use violence. Typically, the use of violence, or the threat of using violence, assumes that the victim will resist the offender's initial sexual encounter. As a result, the violence component of forcible rape necessitates women physically resisting and fighting back against the offender to produce evidence of the use of violence or force. A statutory requirement of this nature is unjust. According to Katharine K. Baker and Michelle Oberman, the law requires women to "engage in a physical battle that they were almost certain to lose" to obtain legal protection.⁶¹

The victim was required to demonstrate "utmost resistance" before being sexually assaulted.⁶² She is required to resist until she is overpowered and unable to offer any further resistance. This requirement establishes a model of behaviour against which

⁵⁹ Criminal Code Proc. No. 414/2004, Art. 620.

⁶⁰ *ibid*

⁶¹ Katharine Baker and Michelle Oberman, 'Women's Sexual Agency and the Law of Rape in the 21st Century, Studies in Law, Politics and Society', Vol.69, 2016, P. 69.

⁶² *Supra note 32*

the court must evaluate women's actions to resolve two issues: a lack of consent and the use of violence or force.⁶³ As a result, the prosecutor must prove beyond a reasonable doubt that the woman resisted the offender to the best of her physical ability to establish that the sexual encounter was a forcible rape. A woman was not raped if she did not resist the offender to the best of her ability.⁶⁴

Scholars and practitioners appeared to agree on the level of resistance. For instance, Tsehai Wada, a legal scholar, noted that "the law demands a high level of intimidation, but not the ordinary one, for it is required that the degree of intimidation has to be 'grave', and the victim should be made unconscious, or incapable of resistance. As a result, any threat other than this may lead to the conclusion that the victim could have resisted the intimidating force and thus the actor cannot be held liable."⁶⁵ This means that a forcible rape involving "ordinary" intimidation is legally considered consensual. The courts have been tasked with determining whether the intimidation was ordinary or grave, which is presumably judged against the preconceived model behaviour. Previous research discovered that it was used in decision making and to determine credibility and blame attributions.⁶⁶ For example, Amy Rose Grubb and Julie Harrower discovered in a review of numerous studies that people were more blaming of victims who had not physically resisted the offender and more believing of victims who had physically resisted the offender.⁶⁷

⁶³Michelle J. Anderson, 'Diminishing the Legal Impact of Negative Social Attitudes toward Acquaintance Rape Victims, *New Criminal Law Review*', Vol.13, No.4, 2010, P. 653.

⁶⁴*ibid*

⁶⁵*Supra note 7*

⁶⁶ Beverly A. Kopper, 'Gender, Gender Identity, Rape Myth Acceptance, and Time of Initial Resistance on the Perception of Acquaintance Rape Blame and Avoidability, Sex Roles', Vol.34, No.(1-2), 1996, P. 81–93; R. Lance Shotland and Lynne Goodstein, 'Just Because She Doesn't Want to Doesn't Mean It's Rape: An Experimentally Based Causal Model of the Perception of Rape in a Dating Situation, *Social Psychology Quarterly*', Vol.46, No.3, 1983, P. 220–232; and Karen Yescavage, 'Teaching Women a Lesson: Sexually Aggressive and Sexually Non aggressive men's Perceptions of Acquaintance and Date Rape, Violence Against Women', Vol.5, No.7, 1999, P. 796–812.

⁶⁷ Amy Rose Grubb and Julie Harrower, 'Attribution of Blame in Cases of Rape: An Analysis of Participant Gender, Type of Rape and Perceived Similarity to the Victim, Aggression and Violent Behavior', Vol.13, 2008, P. 396–405.

According to a study in Ethiopia, the victim's failure to physically resist the offender resulted in case attrition during the investigation or prosecution stages.⁶⁸

Because it is a constituent element of forcible rape under the Criminal Code of Ethiopia, the variable of resistance may not necessarily be an extra-legal factor to be attributed to the key actors' attitudes and subjective assessment of rape cases in Ethiopia. The way the key actors treated the victim who had failed to resist the offender, on the other hand, demonstrates that the law rather reinforces their biased assumptions. JUDGE4 stated flatly that “without victim resistance, [they] do not consider rape.” Many others simply claimed that the lack of resistance indicated victim consent. PROSEC7, for example, stated: “When the complainant is an adult and does not resist, we immediately assume that she consented and that the accusation of rape was made due to some other misunderstanding.” Likewise, PROSEC6 stated: “in particular, where the victims are over the age of 18, the law requires offenders to render their victims incapable of resisting. If the victims were not rendered incapable of resisting, their case cannot be classified as rape.” Other Criminal justice actors claimed similarly, for instance, DEFENSE LAWYER4 noted: “in cases where the complainant did not resist, she is considered to have consented, especially if she is an adult.” INVESTIGATIVE POLICE5 also noted: “If a victim is physically and mentally fit to resist her rapist, she can resist if she wants to.” One victim participant RAPE SURVIVOR6 also recalls the trial judge's comments about how she resisted the accused during the rape. “I told the court that I fought him with my arms, but after he strangled me, I didn't have any air left, so I couldn't fight back; I was then asked why I couldn't have fought back with my legs.”

An examination of prosecutorial and court documents revealed that in the absence of victim resistance, prosecutors and judges tended to conclude that the rape did not

⁶⁸ Blain Worku, ‘Criminal Justice System’s Response to Acquaintance Rape Cases in Ethiopia: The Women’s Right Perspective’ (MA Thesis, Addis Ababa University, 2011).

occur. Table 4 below, for instance, shows a chi-square analysis of each factor, as well as the extent to which each factor was considered in rape-case decision making. For example, as shown in Table 4, reported injury, level of injury, and presence of exhibit collected, presence of eye witness, and presence of medical proof have all been found to influence decision making in the prosecution process.

Table 4: Chi-square and Logistic Regression Results on Factors Associated with Decision Making in the Prosecution Process

Variables	Category	Decision (0=rejected, 1= proved guilty and sentenced)			
		Chi-square	P-value	Odds Ratio	95% CI
Type of rape reported	0= Attempted 1= Completed	8.83	0.003	3.168	1.45, 6.92
Reported injury	0= No 1= Yes	9.147	0.002	0.371	0.194, 0.711
Level of injury	0= Minor 1= Very serious	3.132	0.002	0.371	0.121, 1.135
Presence of exhibit collected	0= No 1= Yes	6.762	0.009	0.152	0.03, 0.756
Presence of eye witness	0= Yes 1= No	22.145	0.000	0.000	
Presence of medical proof	0= No 1= Yes	31.744	0.000	0.128	0.06, 0.275

The law simply reflects, endorses, and reinforces this belief by making the victim's resistance an element of forcible rape. However, this study identified another related but distinct variable included in the current study's interview, namely, verbal resistance, as a factor determining case outcome. This key informant was also asked if verbal resistance is sufficient to indicate a lack of consent on the victim's part. According to PROSEC10, "if a woman says 'no' verbally but her actions show otherwise, a man should not be held criminally liable." Thus, demonstrating verbal opposition, saying "No", is insufficient to demonstrate a lack of consent.⁶⁹ Neither offering some minor physical resistance (such as turning away from a kiss) is

⁶⁹*Supra note 7*

sufficient to demonstrate a lack of consent. A previous study conducted in Addis Ababa revealed that if a rape victim fails to offer maximum physical resistance, the police do not consider the encounter to be rape and the case is dropped during the investigation stage.⁷⁰ The prosecutor declined to file a charge based on "the victim's failure to scream or shout for help knowing that someone was nearby to help her," according to Blain.⁷¹ Although not a legal component of forcible rape, verbal resistance is not only associated with decision making, but it is also used to determine the victim's credibility.

The victims were expected to resist the assault indefinitely, according to this understanding. This interpretation of non-consent does not correspond to rape reality, as it has been established that not all rape victims physically resist the attack. Furthermore, there is no evidence that those who do fight to prevent rape fight relentlessly from the start to the end of the assault. On the contrary, empirical evidence indicates that victims may resist but eventually succumb due to exhaustion or discouragement.⁷² These examples also demonstrate a failure to recognize that a rape victim may be in a state of powerlessness or inhibition, which may prevent her from physically resisting. Furthermore, they reveal the failure to recognise that a woman may express non-consent in ways other than physical resistance.

Various other studies have revealed that the lack of physical or verbal resistance may be due to uncontrollable factors or may be deliberate. A victim may purposefully refrain from resisting despite being unwilling to have sexual intercourse for a variety of reasons, including fear of death or injury.⁷³ In the legal literature, such a victim's response is commonly referred to as submission. Despite its appearance, submission is not consent, as has been widely emphasised. A victim may also "freeze" and

⁷⁰*Supra* note 68

⁷¹*ibid*

⁷² Ann J. Cahill, 'In defense of self-defense, Philosophical Papers', Vol.38, No.3, 2009, P. 363-380.

⁷³*Supra* note 23

become unable to resist. Psychologists have attempted to explain victim “freezing-up” by referring to the concept of “tonic immobility” as experienced by some animals under intense attack. Fear and restraint cause tonic immobility, which is defined as an uncontrolled freezing or deep motor inhibition. It is characterised by a motionless position, insensitivity to pain, loss of vocal ability, unfocused gaze, and shaking and implies inescapability.⁷⁴

It has been argued that rape laws were primarily intended to protect men's interests over their daughters and wives.⁷⁵ The requirement of 'physical resistance' in establishing the criminal nature of forcible rape cases is a typical example of how rape laws protect male interests.⁷⁶ According to the law, a victim of forcible rape must physically resist the offender as evidence that she did not consent to the sexual encounter. Such a requirement reflects the belief that a woman should protect her chastity even if it means putting her own life in danger.⁷⁷

Furthermore, the consent standard for forcible rape is based on the 'real rape' myth, which Helen Reece defines as “a very violent attack in a dark alleyway by an armed stranger on a woman who physically resists and is physically injured.”⁷⁸ This popular image of “real rape” typically includes a knife-wielding stranger offender, a public attack location, the use of violence, and a display of physical resistance.⁷⁹ If the offender fits the description of a “real rape”, the public generally condemns the crime and sympathizes with the victim.⁸⁰ The Ethiopian rape law, which is framed around

⁷⁴Michelle J Bovin, Shari Jager-Hyman, Deka Purnama Sari, Brian P Marx, ‘Tonic immobility mediates the influence of peritraumatic fear and perceived inescapability on posttraumatic stress symptom severity among sexual assault survivors, *Journal of Traumatic Stress*’, Vol. 21, No. 4, 2008, P. 402.

⁷⁵ Joan McGregor, ‘The Legal Heritage of the Crime of Rape’ in Brown JM and Walklate SL, *Handbook on Sexual Violence*, ((eds), Chapter 3, Abingdon, Routledge, 2011) p. 73.

⁷⁶*ibid*

⁷⁷ *ibid*

⁷⁸ Helen Reece, ‘Rape Myths: Is Elite Opinion Right and Popular Opinion Wrong?’, *Oxford Journal of Legal Studies*’, Vol.33, No.3, 2013, P. 445–473.

⁷⁹ Samuel H. Pillsbury, ‘Crimes Against the Heart: Recognizing the Wrongs of Forced Sex, *Loyola of Los Angeles Law Review*’, Vol.35, 2002, P. 845, 865.

⁸⁰ Susan Estrich, ‘Palm Beach Stories, *Law and Philosophy*’, Vol.11, No.1-2, 1992, P. 13-14.

the myth of “real rape,” fails to prohibit less violent rape. This kind of formulation, as MacKinnon pointed out, simply “assumes the sadomasochistic definition of rape: [sexual] intercourse with force or coercion can be or become consensual.”⁸¹

The inclusion of phrases like “to submit to a sexual intercourse” and “use of violence or grave intimidation” in the Criminal Code's definition of forcible rape demonstrates how the law views and characterizes female victims as submissive and male offenders as aggressive. As a result, according to Susan, Ethiopian rape law simply reflects, legitimizes, and enforces a view of sex and women that glorifies male aggression while punishing female passivity.⁸² Furthermore, the requirement for resistance was based on a mistrust of women.⁸³ Previously, such fear was prevalent in rape laws across jurisdictions. Rape victims, for example, were required not only to physically resist their assailant to the best of their ability and to report the incident to the police as soon as possible, but also to substantiate their testimony through corroboration and good reputation.⁸⁴ All of these requirements were based on the myths that women lie about being raped. The resistance requirement, in particular, represents one of the institutionalized incredulities toward rape victims, with the assumption that women who fail to make physical resistance against the offender cause their victimisation, leading victims to believe they were somehow responsible for what had happened and thus preventing them from seeking legal redress.⁸⁵ It also leads to victimisation if she does nothing to discourage her attacker.⁸⁶

⁸¹ Catharine MacKinnon, ‘Rape: On Coercion and Consent’ in Lori Gruen and George E. Panichas, *Sex, Morality and the Law* ((eds), Routledge, London, 1997b).

⁸² Susan Estrich, ‘Rape, The Yale Law Journal’, Vol.95, No.6, 1986, P. 1092.

⁸³ *Supra* note 79, P. 11.

⁸⁴ Jocelynne A. Scutt, ‘The Incredible Woman: A Recurring Character in Criminal Law, Women’s Studies International Forum’, Vol.15, No.4, 1992, P. 442.

⁸⁵ Sinidu Fekadu, ‘An Assessment of Causes of Rape and Its Socio-Health Effects: The Case of Female Victims in Kirkos Sub-City, Addis Ababa’ (MA Thesis, Addis Ababa University, 2008).

⁸⁶ Lani Anne Remick, ‘Read Her Lips: An Argument for a Verbal Consent Standard in Rape, University of Pennsylvania Law Review’, Vol.141, No.3, 1993, P. 1112.

Furthermore, under the Criminal Code of Ethiopia, making a verbal resistance, such as saying “No”, is insufficient to establish the victim's lack of consent. Thus, saying “No” to a sexual encounter is essentially interpreted as saying “Yes” and is taken to mean the inverse of its usual meaning in other human interactions. This approach is based on the assumptions that women say “No” but do not truly mean it, that women are ambivalent about consenting to sex, and that women have conflicting emotions and are unable to express their sexual desires directly.⁸⁷ In general, the approach to consent for forcible rape cases under the law and within the Criminal Justice System lends credence to the concept of justifiable rape. “If the notion that rape can be justifiable is ever to be dispelled and adequate protection from rape is ever to be provided,” Lani Anne Remick suggested, “the law must declare that proof of a lack of consent satisfies the non-consent element.”⁸⁸ According to Christian Diesen and Eva F. Diesen, “if the law requires resistance, it implies that a woman is sexually available until she physically resists, resulting in an attitude that a woman reporting rape without injuries should be mistrusted.”⁸⁹ “This mistrust of the victim and the victim's attendant feelings of self-blame,” they further note, “aggravate the victim's trauma. A modern rape law based on a lack of consent, on the other hand, sends the message that a woman is not available until she has given her consent, resulting in a different starting point for the investigation.”⁹⁰

4. Conclusion

Like many other jurisdictions, Ethiopian criminal justice actors still have preconceived notions about how a rape victim should behave during a sexual assault for the accusation of rape to be considered genuine. During an assault, victims are expected to physically resist to demonstrate their refusal to consent. It was clarified that preconceived notions about “genuine” victims' behavior are mostly

⁸⁷*Supra* note 72, p. 77.

⁸⁸*Supra* note 85

⁸⁹Christian Diesen and Eva F. Diesen, ‘Sex Crime Legislation: Proactive and Anti-Therapeutic Effects, International Journal of Law and Psychiatry’, Vol.33, 2010, P. 329.

⁹⁰*ibid*

misconceptions based on the “real rape” myth. Thus, justice actor’s failure to play pivotal roles in addressing multifarious issues that arise in the rape litigation and the tendency to base rape case evaluations on flawed assumptions about victim behavior harmed victims. It leads to the unjust dismissal of many complaints and the release of many accused. Hence, this study suggests that since the problem is one of attitudes toward women, rape victims, and rape, a long-term plan should be established to change Criminal Justice Actors’ attitudes toward rape victims; and a particular training course for Justice Actors should be created to counteract the influence of rape myths.

Legislation can be employed to limit the biased prosecution and judicial procedures highlighted in the article, including the requirement for resistance. In light of this, the following changes to substantive rape law should be made: First, it is time to eliminate the definition of rape that necessitates the use of force, threat of force, or physical resistance by the victim. Instead, the definition of rape ought to be revised to reflect whether consent was provided or not. Second, the categorisation of sexual activities into “sexual intercourse” and “acts pertaining to sexual acts or indecent acts” using a binary system must be discarded. Penile-oral and penile-anal contact, as well as sexual assault on any part of the body, should all be regarded as equally serious sexual offences, just like any other form of sexual penetration or act (sexual intercourse).

Conflict of Interest

The authors declare no conflict of interest.