

# A Plea for Anti-Stalking Legislation in Ethiopia: A Human Rights Perspective

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## Abstract

*Stalking is a global socio-legal issue that emerged prominently in the 20<sup>th</sup> century, which is often described as ‘a steady step towards homicide or wilful injury’. From a legal viewpoint, stalking can be defined as a wilful, malicious and obsessively repeated act of following or harassing another person in juxtaposition with an intentional threat to cause harm or fear. To curb stalking, countries such as the United States, the United Kingdom, and South Africa, for instance, have introduced anti-stalking laws into their respective legal systems. Yet, Ethiopia lacks a formalised criminal justice response to the issue of stalking, despite alarming trends in gender-based violence more broadly and stalking in particular. This reflects not an absence of the act itself, but rather a lack of developed jurisprudence on the subject within the Ethiopian context. This article, therefore, presents the need for the introduction of anti-stalking legislation into the Ethiopian legal system from a human rights perspective. This approach offers a comprehensive analysis of how anti-stalking laws align with international human rights laws and norms. In undertaking this analysis, the article endeavours to extract pertinent lessons from the jurisdictions of the United States, the United Kingdom, and South Africa.*

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**Keywords:** Ethiopia, Gender-Based Violence, Women's Rights, Sexual Harassment, Stalking

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**DOI:** <https://dx.doi.org/10.4314/hujl.v9i1.4>

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**Accepted:** 10 April 2025

**Published:** 20 June 2025

**Recommended Citation:** Asrat Adugna Jimma, ‘A Plea for Anti-Stalking Legislation in Ethiopia: A Human Rights Perspective’, *Hawassa University Journal of Law*, Vol. 9. (2025), PP. 97-126. DOI: <https://dx.doi.org/10.4314/hujl.v9i1.4>

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The authors would like to thank the anonymous reviewers for their thorough reviews, helpful comments and feedback, which greatly strengthened the overall manuscript.

## 1. Introduction

In Ethiopia, the prevalence of Gender Based Violence (GBV) in general and stalking in particular remains very high.<sup>1</sup> It has become common to witness, on Ethiopian media, cases related to women and girls who have suffered injuries by a person who has been stalking them and wants to establish or re-establish a romantic relationship against their will. The widely recognised and publicised cases of Kamilat Mehedi,<sup>2</sup> Hermela Wosenyeleh,<sup>3</sup> Naomi Tilahun,<sup>4</sup> Aberash Hailay,<sup>5</sup> Atsede Neguse,<sup>6</sup> Tsega Belachew<sup>7</sup> and others can be mentioned, as instances in this regard.

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<sup>1</sup> According to the latest study report, the prevalence of all forms of gender-based violence is 20.2%, with Sidama, Afar, Amhara, and Tigray regional states taking the lead. See, The National Action Research Report on Determining the Status and Priorities of Ethiopian Women. Determining the Ethiopian Women's Status & Priorities, a study report, October 2024, Addis Ababa, Ethiopia. Available at <[https://capacity4dev.europa.eu/media/270850/download/ca030ec4-173d-4047-8450-1332925a39c8\\_en](https://capacity4dev.europa.eu/media/270850/download/ca030ec4-173d-4047-8450-1332925a39c8_en)> accessed on 21 Dec. 2024.; Moreover, according to the United Nations Country Results Report for 2022/2023, 12,834 woman and girl survivors/victims of Sexual and gender-based violence received comprehensive services across 44 of the 74 operational one-stop centers in this specific period. On average, excluding those who did not have access to operational one-stop centers, 291.68 survivors/victims per center or 24.3 survivors/victims per month were reported for receiving the service. This is by large a very alarming number. See, The United Nations Country Results Report for 2022/2023, United Nations Ethiopia Annual Results Report July 2022–June 2023, p. 17, available at <<https://ethiopia.un.org/en/268513-un-ethiopia-annual-results-report-july-2022-june-2023>>, accessed on Sep. 20, 2024; See also <<https://www.afrobarometer.org/wp-content/uploads/2024/09/AD861-Ethiopians-condemn-GBV-but-consider-domestic-violence-a-private-matter-Afrobarometer-20sept24.pdf>>, accessed on 21 Dec. 2024.

<sup>2</sup> Reuters, Acid victim shows many women are at risk, <<https://www.reuters.com/article/us-ethiopia-acid/ethiopia-acid-victim-shows-many-women-are-at-risk-idUSL2331917720070327>> accessed on Sep. 20, 2024.; Amber Henshaw, BBC News, Acid attack on woman shocks Ethiopia, <<http://news.bbc.co.uk/2/hi/africa/6498641.stm>> accessed on Dec. 18, 2024.

<sup>3</sup> UN Economic and Social Council, Report of the Special Rapporteur on violence against women, Commission on Human Rights resolution 2000/49 (2002), <<https://www.awf.or.jp/pdf/h0017.pdf>> (accessed on Dec. 20, 2024).

<sup>4</sup> Arefayne Fantahun, A 17-year-old girl stabbed to death by 'obsessed lover' in busy street, <<https://ethiopianeconomy.com/2017/03/06/a-17-year-old-girl-stabbed-to-death-by-obsessed-lover-in-busy-street/>>, accessed on Dec. 20, 2024.

<sup>5</sup> Court begins hearing witnesses on Aberash Hailay's case, <<https://walmartinfo.com/13969/>>, accessed on Dec. 11, 2024.

<sup>6</sup> Hailu Sahle, Acid attack survivor: 'There are more good people than bad', <<https://www.bbc.com/news/world-africa-51312988>> accessed on Sep. 20, 2024.

<sup>7</sup> Natnael Fite, Uproar after mayor's bodyguard abducts young woman in Hawassa, regional police in pursuit, detain six suspects, <<https://addisstandard.com/news-uproar-after-mayors-bodyguard-abducted-young-woman-in-hawassa-police-in-pursuit-of-abductor-arrest-six-accomplices/>>, accessed on Sep. 20, 2024.

All these cases share similar features that the perpetrators had stalked the survivors/victims for a while before committing the “actual crime”, and the Ethiopian justice system had been unable to intervene before the later crime materialised. The fact of the matter, in most instances, is that the existing laws only intervene in such cases very late after the survivors/victims have suffered a serious bodily and/or emotional harm. From the testimonies of the survivors/victims, it was learnt that before the acts which resulted in serious injuries to them were committed, the perpetrators were committing a “series of acts” aimed at instilling fear in them so that they would accept the demands. It is after such repeated attempts had failed that the perpetrators decide to take serious measures with drastic consequences.<sup>8</sup>

This prompted the author to inquire, ‘what if the law intervenes earlier?’ Would it not prevent, or at least minimise, the occurrence of such incidents? The author’s answer, based on a comparative analysis in this article, is in the affirmative.

Ethiopia has adopted many international and regional conventions and enacted national laws to respect, protect, promote and fulfil the rights of women and girls in general and to fight against GBV in particular.<sup>9</sup> However, the existing legal and institutional frameworks do not adequately address all kinds of GBV, including the unique nature of stalking. This article is poised to investigate whether there is still a need for anti-stalking legislation in the Ethiopian legal system. It also addresses whether the already existing laws are adequate to guarantee the realisation of the rights of women and girls to be free from all forms of GBV. Therefore, the overall objective of this article is to evaluate the efficiency of existing laws in addressing

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<sup>8</sup> Interview with Ato Getu Tadesse, Director, Branch Offices Affairs Monitoring Directorate, FDRE Ministry of Justice, on 18 December 2024.

<sup>9</sup> Ethiopia, among others, has adopted: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD), African Charter on Human and Peoples’ Rights (AfCHPR), and also ratified the Maputo protocol the bill of women’s right in Africa on 30 March 2018. It has also enacted national laws including the FDRE constitution, FDRE criminal code, FDRE family code etc...etc.

the problem of stalking and to assess the need for introducing a comprehensive anti-stalking legislation into the Ethiopian legal system.

Accordingly, this article critically examines the necessity of enacting anti-stalking legislation within the Ethiopian legal framework by using a qualitative research approach. Specifically, based on an analytical doctrinal analysis method, it distils comparative lessons from the selected jurisdictions of the USA, UK and South Africa human rights systems. For this purpose, relevant primary and secondary data were collected from available sources, including reviewing reports, various relevant legal documents and literature, and analysed. The in-depth interviews with key informants also enriched and triangulated the data and analysis.

With this, the article draws a critical evaluation of Ethiopia's legal and institutional framework on GVB in general and stalking, in particular, and comparative lessons to adopt anti-stalking legislation. In the subsequent sections, this article begins by introducing the concept of stalking and the existing legal and normative frameworks in other jurisdictions. Then, it answers the question of why there is a need for anti-stalking legislation in the Ethiopian legal system. In this regard, then, the experiences of the USA, UK and South African human rights systems were also unpacked, which allows the author to draw comparative lessons, by highlighting suggestions on the nature and contents of the would-be anti-stalking legislation of Ethiopia, finally.

## 2. Stalking: Conceptual Underpinning

Stalking has long had the general connotation of “following” someone obsessively.<sup>10</sup> Yet, the terms ‘stalking’ and ‘stalker’ gained prominence in Western media during the 1990s, where they were used to describe individuals who persistently follow or intrude upon others.<sup>11</sup>

Initially, those so described by the mainstream media were pursuers and posteriors of the most famous people or celebrities. In most stalking cases, however, the victim is not a famous or even a well-known individual. Later, the use of the term ceased to be associated only with those who passionately follow the famous and acquired a wider usage, particularly as a label for those who continued to intrude on their former partners whom the victim had rejected.<sup>12</sup>

Available empirical evidence from various jurisdictions consistently demonstrates that stalking is a gendered form of violence, most frequently committed by men against women and girls.<sup>13</sup> The stalking activities include, but not limited to acts, such as following a person, appearing at a person’s home or place of business, vandalizing a person’s property, inappropriate approach, making unwanted telephone calls, unwanted social media activities or e-mails and/or letters, or, unwanted gifts, etc.<sup>14</sup> These acts, however, have not been recognised as a standalone criminal offence.<sup>15</sup> To be considered as such, these acts, rather, have to be coupled

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<sup>10</sup> Emerson, R.M., Ferris, K.O. and Gardner, C.B., ‘On Being Stalked’ *Social Problems*, Vol. 45, No. 3, 1998, p. 289.

<sup>11</sup>Way, R.C., ‘The criminalization of stalking: An exercise in media manipulation and political opportunism’ *McGill Law Journal*, Vol. 39, 1993, P.384.

<sup>12</sup>Lowney, K.S. and Best, J., ‘Stalking Strangers and Lovers: Changing Media Typifications of a New Crime Problem’ in Joel Best (ed.), *Images of Issues: Typifying Contemporary Social Problems*, PP 33-57, (Routledge, New York, 1995).

<sup>13</sup> Purcell, R., Pathé, M. and Mullen, P.E., ‘A Study of Women Who Stalk’ *American Journal of Psychiatry*, Vol. 158 No. 12, 2001, <<https://psychiatryonline.org/doi/10.1176/appi.ajp.158.12.2056>>, accessed on Dec. 11, 2024. ; UN Women. (2011). *Progress of the World’s Women: In Pursuit of Justice*. <<https://www.unwomen.org/en/digital-library/progress-of-the-worlds-women>>, accessed on Dec. 11, 2024.

<sup>14</sup> Mullen, P.E., Pathé, M. and Purcell, R., ‘Stalking: New constructions of human behavior. *Australian & New Zealand Journal of Psychiatry*’, Vol 35, No. 1, 2001, pp.9-16.

<sup>15</sup> Mullen, P.E. and Pathé, M., ‘Stalking’, *Crime and Justice*, Vol.29, 2002, pp.273-318.

with assault, intimidation or wilful injury. These actions, however, may or may not be accompanied by a credible threat of serious harm, and they may or may not be precursors to an assault, wilful injury or homicide.

In the context of a domestic violence and abusive relationship, stalking typically occurs after the woman has attempted to leave the relationship. The ex-husband or ex-lover, unable to accept rejection and unwilling to let the woman walk away, begins to follow, threaten, harass, or assault. In other similar instances, the attempted break-up of a more casual “romantic” or “dating” relationship generates stalking.<sup>16</sup>

Fundamentally, stalking has a predatory nature.<sup>17</sup> Usually, the *stalker*<sup>18</sup> focuses on a single individual, and the activity can last a short time, a few days perhaps, but more commonly will extend over weeks, months or even years. Survivors or victims often find it necessary to change their entire lifestyle, adopting a safe strategy, such as where they work, reside, when they leave for work, return home, where they shop, and so on, to deal with a persistent stalker.

Rationally, the persistence of the stalker's behaviour when coupled with its predatory nature makes stalking a particularly insidious form of activity. In that context, the behavioural notion of stalking relates to a pattern of behaviour directed at a specific person that would cause a reasonable person to feel fear for the person's safety or the safety of others or suffer substantial distress.<sup>19</sup> In a slightly different context other

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<sup>16</sup> Mullen, Paul E., *Stalkers and their victims*, (2<sup>nd</sup> ed. Cambridge University Press, UK, 2000) P.66.

<sup>17</sup> *Id.*, p. 98.

<sup>18</sup> According to the study of stalking by Mullen, Pathé, Purcell and Stuart there are generally five motivational types of stalkers, which includes Rejected Stalker, Intimacy Seeker, Incompetent Suitor, Resentful Stalker and Predatory Stalker. See, Mullen, Paul E., Rosemary Purcell, and Geoffrey W. Stuart. ‘Study of stalkers’ *American Journal of Psychiatry*, Vol. 156, No. 8, 1999, PP. 1244-1249.

<sup>19</sup> Mullen, Paul E., *supra* note 16, P.257.

than behavioural change, the legal notion of stalking has evolved from the dictionary definition of “following” or “pursuing”.<sup>20</sup>

In general, stalking may simply be defined as repeatedly following, pursuing, or accosting a given individual. Though most countries with anti-stalking laws define stalking as the wilful, malicious, and repeated following and harassing of another person, some other countries include in their definition such activities as lying-in-wait, surveillance, non-consensual communication, social media or telephone harassment, and vandalism.<sup>21</sup> In line with that, many agree on the notion that stalking is not only a particular type of harassment, but it is also a form of sex discrimination.<sup>22</sup>

In many countries’ anti-stalking laws, the “intent to harm”, “cause fear” or “wilful conduct” are *the prima facie* elements of stalking.<sup>23</sup> Commonly, in their legal system, a person is said to have committed a stalking offence if the following three conditions are fulfilled: (1) the offender engages in a course of conduct involving doing a concerning act on at least two occasions to another person or other persons; (2) the offender intends that the victim be aware that the course of conduct is directed at the

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<sup>20</sup> Black’s Law Dictionary defines stalking as: “The act or an instance of following another by stealth, the act or an instance of following another by stealth or the offense of following or loitering near another, often surreptitiously, with the purpose of annoying or harassing that person or committing a further crime such as assault or battery”. See, Black’s Law Dictionary (9<sup>th</sup> ed.), p. 1534.

<sup>21</sup> Mullen, Paul E., *supra* note 16, P. 6-14.

<sup>22</sup> See, Van der Aa, Suzan, ‘Stalking as a form of (domestic) violence against women: two of a kind.’ *Rassegnaitaliana di criminologia*, Vol. 3, 2012, P. 179.

<sup>23</sup> The pioneer anti-stalking law of California state, for instance, states that a person is guilty of stalking if any person who:

- (a) purposefully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear bodily injury to himself or herself or a member of his or her immediate family or to fear the death of himself or herself or a member of his or her immediate family;
- (b) has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to himself or herself or a member of his or her immediate family or will be placed in reasonable fear of the death of himself or herself or a member of his or her immediate family; and
- (c) whose acts induce fear in the specific person of bodily injury to himself or herself or a member of his or her immediate family or induce fear in the specific person of the death of himself or herself or a member of his or her immediate family; is guilty of stalking.

victim; and (3) the course of conduct would cause a reasonable person in the victim's circumstances to have serious concern that an offensive act may happen. Accordingly, to say a person has committed an offence of stalking, at least two essential elements of *actus reus* and *mens rea* need to be fulfilled. First, the offender must have engaged in a course of conduct that includes a particular type of action (*actus reus*). Second, the offender must have the necessary state of mind (*mens rea*) when engaged in the course of conduct.

Based on this discussion, therefore, stalking can be defined as a wilful, malicious, and repeated act of following or harassing another person with the intent of causing that person to suffer reasonable fear and substantial emotional or physical harm.

### **3. Legal Framework of Stalking in Selected Jurisdictions: Drawing Comparative Lessons**

In the eyes of the law, the act of stalking has never been considered a stand-alone criminal conduct; to many, it amounted to nothing more than a series of acts which, though annoying and provoking, were perfectly lawful if not quite acceptable.<sup>24</sup> Although stalking has no doubt been present throughout history, anti-stalking laws were introduced relatively recently. Several countries across the globe have now introduced anti-stalking legislation into their legal systems to fight the act of stalking.<sup>25</sup>

The principal objective of anti-stalking legislation is to intervene in a suspected stalking case before the act results in physical or emotional harm or more. In that regard, the two most common immediate and typical interventions for stalking are arrest and restraining or protection orders. The adoption of such legislation has a positive impact on the American, European and some African countries' legal

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<sup>24</sup> Lawson-Cruttenden, Tim, 'Is there a law against stalking? the relevant criminal And Civil Law To Counter This Behaviour', New Law Journal, No. 6736, 1996, pp. 418–420.

<sup>25</sup> Hare, Jordan, 'Stalkers Walk: A Cultural Analysis of the Need for International Stalking Reform', Geo. Wash. Int'l L. Rev. 52, 2020, p. 317.



systems, by offering a deterring effect and protecting the rights of women and girls.<sup>26</sup> Their positive experience justifies reasonable ground and the necessity to adopt anti-stalking legislation in Ethiopia. Particularly, in this regard, the experiences of the United States of America (USA), the United Kingdom (UK) and South Africa (SA) systems provide comparative insights and specific inputs to adopt an anti-stalking legislation in the Ethiopian context. In this section, these three countries' anti-stalking laws and experiences are analysed and discussed.

### 3.1 United States of America

In the USA, the first draft of an anti-stalking legislation was introduced by California State in 1989, in the aftermath of the stalking and murder of actress Rebecca Schaffer<sup>27</sup> which made the act of stalking a criminal act under Section 646.9 (a) of the California Penal Code.<sup>28</sup> The experience of California State has been seen by other states as a positive move towards the full protection of the rights of women and girls. As a result, by September of 1993, 50 states and the District of Columbia adopted anti-stalking laws.<sup>29</sup> This legal reform is justified with the firm belief that the anti-stalking law can provide better protection for women and girls than the previous criminal laws of each state.<sup>30</sup> In this regard, for example, a case entertained

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<sup>26</sup> Although some practical challenges persist, the incidence of stalking has significantly decreased in certain countries following the introduction of such laws. See, <<https://www.met.police.uk/foi-ai/metropolitan-police/d/february-2022/incidents-of-alleged-stalking-from-2017-to-2021/>>, accessed on Dec. 25, 2024.

<sup>27</sup> Frank Wilkins, 'The Stalking Death that Changed the Law', <<http://reelreviews.com/shorttakes/shaeffer/shaeffer.htm>> accessed on Sep. 27, 2024.

<sup>28</sup> See, the California State Penal Code. Section 646.9 (a) which states: "Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison."; Note that, the State of California later amended this law based on the federal anti-stalking law of the US, in 1992, 1993, 1994, 1995, 1998, and also in 2000.

<sup>29</sup> Jeremy Travis, 'Domestic Violence, Stalking, and Anti-stalking Legislation: An Annual Report to Congress under the Violence against Women Act', U.S. Department of Justice, National Institute of Justice. Office of Justice Programs 1996.

<sup>30</sup> The first federal anti-stalking law was enacted later by the US congress in 1996.

in the State of Florida Supreme Court justifies the need for anti-stalking legislation by considering that the then prevailing conditions would not have prohibited stalking.<sup>31</sup>

However, in the USA, the legal definitions for the act of stalking vary from State to State, but commonly all states recognise stalking as a standalone crime distinct from other offences. While most states require that the alleged stalker engage in a course of conduct showing that the crime was not an isolated event, some states specify how many acts (usually two or more) must occur before the conduct can be considered stalking. State anti-stalking laws also vary in their threat and fear requirements, where some states take “a reasonable person” standard of fear while others take into consideration “a victim standard”. Most anti-stalking laws require that the perpetrator, to qualify as a stalker, make a “credible threat” of violence against the victim; others include in their requirements threats against the victim’s immediate family, and still others require only that the alleged stalker’s course of conduct constitute an implied threat.<sup>32</sup>

More importantly, California's anti-stalking legislation took a more comprehensive position, incorporating the element of intent (*mens rea*), in addition to conduct (*actus reus*). It prohibits certain conduct, such as following someone or repeatedly communicating with the intent of causing fear of physical or emotional harm. Further, it also incorporates additional elements of proof to ensure that morally innocent individuals fall outside its provision.

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<sup>31</sup> John L. Pallas, Appellant, V. The State Of Florida, Appellee, District Court of Appeal of Florida, Third District, Jun 14, 1994 <<https://casetext.com/case/pallas-v-state>> , accessed on Dec. 22, 2024.

<sup>32</sup> See, Neal Miller, ‘Stalking laws and implementation practices: A national review for policymakers and practitioners’, Institute for Law and Justice Domestic Violence Working Paper, 2002; Christine B. Gregson, ‘California's Anti-stalking Statute: The Pivotal Role of Intent’, Golden Gate University Law Review, Vol. 28 Issue 2 Women's Law Forum, 1998.

Later, to bring similarity across state jurisdictions and to shun geographical advantage for the perpetrators, the US Congress enacted the first Federal anti-stalking law in 1996.<sup>33</sup> Accordingly, the United States' experience illustrates a more robust legal framework for the protection of women and girls, with stalking recognised and criminalised in all jurisdictions.<sup>34</sup> Drawing from the existing norm from this explanation, legislation on the act of stalking is needed in Ethiopia, bearing in mind the growing stalking trend in the nation, which is also witnessed in many recent incidents.<sup>35</sup>

### 3.2 United Kingdom

Similar to the USA trend, the need for the introduction of anti-stalking legislation in the UK began slowly, with a study of the violence against women and of its effectiveness as a general deterrent factor.<sup>36</sup> In the UK, although laws aiming to prohibit the stalking act existed,<sup>37</sup> the parliament upgraded the penalty for the stalking offence due to the seriousness of the crime by adopting the Protection of Freedoms Act in 2012.<sup>38</sup> The plea for the introduction of such legislation was started

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<sup>33</sup> Tjaden, Patricia G. 'Stalking policies and research in the United States: A twenty year retrospective', *European Journal on Criminal Policy and Research*, Vol. 15, No. 3, 2009, pp. 261-278.

<sup>34</sup> US Department of Justice, Stalking and Harassment Laws (Office on Violence Against Women, 2020) <<https://www.justice.gov/ovw/stalking>>, accessed 28 May 2025; National Center for Victims of Crime, Stalking Laws <<https://victimsofcrime.org/stalking-laws/>> accessed 28 May 2025.

<sup>35</sup> See, Emnet Assefa, Domestic abuse against women in Ethiopia: The price of not knowing her pain. March 27 2013. <<http://addisstandard.com/domestic-abuse-against-women-in-ethiopia-the-price-of-not-knowing-her-pain/>> accessed on Dec. 20, 2024; Rediet Yibekal, Violence Against Women in Ethiopia: The Case of #JusticeForHanna, Nov 27 2014. <<http://cyberethiopia.com/2013/?p=1133>> accessed on Dec. 20, 2024.

<sup>36</sup> Van der Aa, S. and Romkens, R., 'The State of the Art in Stalking Legislation-Reflections on European Developments', *Eur. Crim. L. Rev.*, Vol. 3, 2013, p.232-256

<sup>37</sup> In fact in the UK, before the Protection of Freedoms Act of 2012, there were various laws in place to tackle the problems of stalking directly or indirectly; including the Protection from Harassment Act of the 1997, the Malicious Communications Act of 1988, The Offences Against the Person Act 1861, Criminal Justice & Public Order Act 1994, The Regulation of Investigatory Powers Act 2000, Criminal Justice Act 2003, Communications Act 2003, Wireless Telegraphy Act 2006, and Equality Act of 2010.

<sup>38</sup> Since, the 25<sup>th</sup> of November 2012, stalking became a specific offence in England and Wales, where stalking related cases after this date are dealt with under section 2A and section 4A of the Protection of Freedoms Act 2012. <<http://www.legislation.gov.uk/ukpga/2012/9/section/112/enacted>> accessed on Sep. 27, 2024.

by the Justice Unions' Parliamentary Group, which led to an "Independent Parliamentary Inquiry". As per the report of the group, the survivors/victims of stalking had a profound lack of confidence in the criminal justice system, and recommended that the Protection from Harassment Act (PHA 1997) be amended as part of a package of reforms.<sup>39</sup>

According to the act, which re-established the offence of stalking involving fear of violence or serious alarm or distress, the perpetrator's course of conduct must cause the victim to fear, on at least two occasions, that violence will be used against the victim or cause the victim serious alarm or distress. In addition, the perpetrator must know or ought to know that the course of conduct will cause the victim such alarm or distress.<sup>40</sup> Under the act, the test applied remains an objective one, which is "a reasonable person standard" in possession of the same information who would think that such a course of conduct would cause the victim to fear on that occasion, which has a substantial adverse effect on the victim's usual day-to-day activities.<sup>41</sup>

Before the introduction of this legislation, stalking was not considered a specific or standalone crime, and the police had to wait until stalkers committed another crime, such as harassment or breaching a restraining order, before they acted.<sup>42</sup> Moreover, the Act enabled the Criminal Justice System to catch up with other jurisdictions, such as the USA, particularly in respect of recognising and prosecuting stalking as a specific crime or a standalone offence. In that regard, the amended legislation

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<sup>39</sup>Justice Unions' Parliamentary Group: Independent Parliamentary Inquiry into Stalking Law Reform Main Findings and Recommendations, February 2012, <<https://www.dashriskchecklist.co.uk/wp-content/uploads/2016/09/Stalking-Law-Reform-Findings-Report-2012.pdf>> accessed on Sep. 27, 2024.

<sup>40</sup>See, the Protection of Freedoms Act 2012, part 7 section 111 & 112.

<sup>41</sup>Ibid.

<sup>42</sup>The stalker and the woman who refused to give in, 4 April 2016<<https://www.bbc.com/news/magazine-35941555>>, accessed on Sep. 20, 2024.

received praise for imposing tougher sentences for stalkers.<sup>43</sup> It has also been rolled out in a drive for harsher punishments to reflect the severity of the crime. The government also introduced stalking protection orders, where police will be able to apply to the courts for an order to impose restrictions on perpetrators whenever the survivors/victims seek help.<sup>44</sup>

Later, the government increased the maximum sentence for people found guilty of stalking up to 10 (ten) years. What is more, in the case of racially or religiously aggravated stalking offences, the most severe sanction will double from seven (seven) to 14 (fourteen) years.<sup>45</sup> Further, the Act also incorporated the emerging problem of stalking using computer and internet technology, concerning cyber-stalking, such as sending unwarranted e-mails or messages. In this regard, as seen from the discussion above, the legal effect<sup>46</sup> of the Protection of Freedoms Act is a breakthrough that consolidated the previously existing laws and made the act of stalking a standalone punishable offence. It, therefore, provides a suitable example to be followed by the Ethiopian human rights system.

### 3.3. South African Experience

Compared to the above systems, in Africa, the anti-stalking legislation is a very recent phenomenon; in this regard, though late, South Africa is one of the best examples. The anti-stalking legislation came into effect after a South African Law Reform Commission (SALRC) investigation into stalking acts.<sup>47</sup>

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<sup>43</sup>Stalkers face new maximum sentence of 10 years in jail <<https://www.telegraph.co.uk/news/2017/01/06/stalkers-face-new-maximum-sentence-10-years-jail/>> accessed on Sep. 27, 2024.

<sup>44</sup> The Stalking Protection Orders (SPO) was later introduced by the Stalking Protection Act, in 2019, as a civil order. An application for an interim or full order can, therefore, be made by the police to the magistrate's court to request both prohibitions and/or positive requirements to protect the victim.

<sup>45</sup> Pat Strickland, Stalking: developments in the law, House of Commons library BRIEFING PAPER Number 06261, 21 November 2018.

<sup>46</sup>The Crown Prosecution Service (CPS) Wessex: Successful Stalking Cases April 2024<<https://www.cps.gov.uk/wessex/news/cps-wessex-successful-stalking-cases-april-2024>>, accessed on Sep. 27, 2024.

<sup>47</sup> See, the Preamble to the Protection from Harassment Act 17 of 2011. South African Law Commission Project 130: *Stalking* Discussion Paper 108, 2004.

In SA, stalking, in its current legal notion, was not recognised as a standalone criminal act before 27<sup>th</sup> April 2013.<sup>48</sup> The then-existing criminal law focused primarily on the punishment of specific prohibited acts. It is only where an aspect of stalking constitutes a concurrent criminal act that the criminal law may be invoked to restrain or punish a stalker. Yet, the alarming number of violations of the rights of women and girls prompted the South African Assembly (SAA) to include additional protection.

The Protection from Harassment Act (Act 17 of 2011), which came into effect on 27<sup>th</sup> April 2013, addresses stalking acts in its current notion equating it with a violation of the constitutional rights of privacy and dignity of individuals. The act itself provides three bases for the adoption of anti-stalking law in South Africa. First, it re-cited the fundamental inalienable right of individuals, including personal dignity, that shall be guaranteed by legislation. Second, the introduction of the Act would help to ensure more effective protection for the rights of women and girls. Third, the act of stalking has been criminalised, as a result of which convicting offenders has become easier now than before. The adoption of the anti-stalking legislation was followed by an endorsement by several women's rights advocacy groups, as it affirmed the state's commitment to guaranteeing the obligation of states towards human rights of women and girls.<sup>49</sup>

This act and its initiatives that prioritise victim support, empower law enforcement agencies, and facilitate efficient evidence gathering have yielded positive results in several cases. Despite some legal and implementation challenges,<sup>50</sup> South Africa's

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<sup>48</sup> In SA the Domestic Violence Act, 116 of 1998, defines stalking, albeit it restrictively, for the civil law. It provides recourse to a person who is stalked only if he or she is in a domestic relationship with the stalker.

<sup>49</sup> <<https://brandsouthafrica.com/103285/democracy/anti-harassment-law-comes-into-effect/>>, accessed on Sep. 30, 2024.

<sup>50</sup> Stalking cases in South Africa often face challenges associated with evidence collection to the difficulties of proving intent and persistence. See, <<https://www.linkedin.com/pulse/exploring-south-africas-legal-framework-combating-stalking-brown-etqff>>, accessed on Dec. 12, 2024. See also for

measures demonstrated promising outcomes in the successful prosecution and prevention of stalking incidents. These initiatives and context are not unique to the South African legal system alone. They are also associated with the application of the law in Ethiopia and elsewhere. Hence, as previously noted, South Africa's experience offers a valuable precedent from which the Ethiopian human rights system can draw important lessons.

#### **4. Anti-stalking Legislation in Ethiopia**

The ultimate test for any legal system that purports to deal with the human rights of women and girls is the degree of protection it provides and the difference it makes to their lives. Yet, as discussed below, the existing Ethiopian legal system could not stand that test, for it lacks such a specific legal protection mechanism that addresses all instances of stalking.<sup>51</sup>

Despite the growing global recognition of stalking as a distinct and harmful form of GBV, Ethiopian criminal law does not currently recognise stalking as a standalone offence. The absence of specific legal provisions leaves women and girls without adequate protection or access to justice. This legislative gap is inconsistent with Ethiopia's international obligations, particularly under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), both of which require state parties to enact comprehensive measures to prevent, investigate, and punish all forms of violence against women. Addressing stalking through specific legislation would not only fill a critical gap in the domestic legal framework but also affirm Ethiopia's commitment to upholding international human rights standards.

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legal challenges, South Africa: New "Stalking" Bill Criticized as Potential Danger to Freedom of Expression, <<https://www.loc.gov/item/global-legal-monitor/2009-10-30/south-africa-new-stalking-bill-criticized-as-potential-danger-to-freedom-of-expression/>> accessed on Dec. 12, 2024.

<sup>51</sup>Committee on the Elimination of Discrimination against Women, Concluding observations on the 8th periodic report of Ethiopia, CEDAW/C/ETH/CO/8, para 23 (a).

Yet, in the context of such legal *lacuna*, the rampant trend of stalking over time is likely to continue, as it is evidenced from old and new real cases of stalking against women and girls. The above premise is valid and sound taking into consideration the criminal cases decided by the Federal Courts on wilful injury, homicides and attempted homicide cases committed by men against women where the act of stalking preceded the later crime.<sup>52</sup>

Moreover, according to an assessment made by the one-stop service centre at Menelik-II Comprehensive Specialized Hospital, in 2023/24, 67% of the survivors/victims of rape and sexual assault cases revealed that they knew the perpetrators before the incident and that before they were raped or sexually assaulted, they were stalked.<sup>53</sup> Similarly, from the account of survivors/victims of sexual abuse who received technical support as survivors of sexual trauma at the Ethiopian Women with Disabilities National Association (EWDNA), it could be seen that the majority of women and girls with disabilities were stalked.<sup>54</sup>

The trend of stalking in Ethiopia is even more common among divorced or separated women. A divorced or separated woman who is dependent on her ex-husband for child maintenance would not be in a *status quo* to fight against stalking. Most often, the ex-husbands with child visitation rights under court permission after divorce tend to use their children as a proxy to stalk their ex-wives.<sup>55</sup>

More visibly, the lack of such legislation is felt in the above-mentioned cases of violence from the old case of Kamilat Mehedi to the recent case of Tsega Belachew. The inadequacy of such protection has been a concern of national and international

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<sup>52</sup> Interview with Ato Getu Tadesse, *supra* note 8.

<sup>53</sup> Interview with Dr. Getachew Emeye, General Surgeon, Menelik II Comprehensive Specialized Hospital, One-Stop Service Centre, on 6 December 2024.

<sup>54</sup> Interview with w/ro Lemlem Yehualashet, Senior Project Coordinator, Ethiopian Women with Disabilities National Association (EWDNA), on 16 December 2024.

<sup>55</sup> Interview with Ato Yohannes Fekadu, Senior Project Coordinator, Federal Supreme Court Child Justice Project, on 25 December 2024.



institutions where the CEDAW Committee, for instance, has been repeatedly recommending Ethiopia to adopt a comprehensive and inclusive law on GBV including stalking, addressing all forms of violence against women, including acid attacks, domestic violence, rape, marital rape, gang rape and other forms of sexual violence.<sup>56</sup> To mitigate such scenarios and protect the rights of such women and girls, the adoption of anti-stalking legislation in Ethiopia is an urgent priority.

The following sub-section evaluates the jurisprudential dearth and specific legislation concerning stalking in Ethiopia. along with a reflective analysis of the need for legal reform that embraces anti-stalking law.

#### **4.1 Jurisprudential Dearth of Stalking in Ethiopia**

The FDRE constitution, which is the supreme law of the land,<sup>57</sup> provides protection to the human rights of women and girls in general and, of the right to safety, security and dignity in particular.<sup>58</sup> The constitution, besides allotting about one third of its provisions to the protection and promotion of human rights, incorporated both specific and general provisions on the rights of women and girls that has also received praise.<sup>59</sup> In this regard, it enshrines as many as important human rights, including the right to equality, the right to privacy, the right to dignity, the right to liberty and body integrity, the right to be protected from inhuman and degrading treatment, the right to freedom and security which incorporates the right to be free from all forms of GBV, including, of course, stalking.<sup>60</sup> More importantly, the FDRE constitution has an inherent mechanism of incorporating international human rights instruments that are ratified by Ethiopia into the national legal framework, making it part of the law of the land.<sup>61</sup>

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<sup>56</sup>Concluding observations on the eighth periodic report of Ethiopia, *supra* note 51.

<sup>57</sup> The Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 9 (1), Proc. No 1, Neg. Gaz. Year 1, no. 1.

<sup>58</sup> Id. Art 13-44 and Art 35.

<sup>59</sup> Id. Art 35 & 36.

<sup>60</sup>Id. Art 14, 16, 17, 18, 24, 25, 26 and 32.

<sup>61</sup> Id. Art 9 (4).

Moreover, the constitution also provides that the fundamental rights and freedoms specified under Chapter three (Art 13-44) shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (UDHR), International Covenants on Human Rights and international instruments that Ethiopia adopted.<sup>62</sup> These international instruments oblige state parties, among other things, to enact legislation to enhance the protection of the rights of women and girls. These stipulations are very much paramount, if appropriately used, for they arrange significant opportunity to interpret the rights of women in light of these international treaties which have been extensively interpreted, and benefit from a large body of jurisprudence that has been built-up over many years. Hence, Ethiopia has an international obligation to adopt a legislation both at the federal and regional state levels to protect women from all forms of stalking.

However, despite the ratification of various international and regional human rights instruments concerning women and girls by Ethiopia, their implementation in reality remains inadequate. Women and girls are still victims of various kinds of stalking in their day-to-day life. This originates, among other things, from the absence of anti-stalking legislation. Therefore, the questions that would certainly cross the minds of many is why the need for legislation? Why is the existing legislation not able to protect the rights of women that are guaranteed by various international, regional and national human rights instruments?

As indicated above, it should be noted that the legal basis for the need to introduce anti-stalking legislation in Ethiopia does not only originate from the human rights that women and girls have, but also from the normative frameworks reflected in various human rights instruments the country has adopted. One of the important

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<sup>62</sup> Id. Art 13 (2).

instruments, for instance, the CEDAW provides that women and girls shall be free from any kind of GBV.<sup>63</sup>

Nevertheless, to date, there is a dearth of jurisprudence in Ethiopia on the act of GBV in general and on the interpretation of the acts relating to stalking in particular. At present, the police and public prosecutors at both federal and regional state levels are the primary organs responsible for the investigation and prosecution of any criminal offences under the existing criminal laws. Yet, if the police were presented with a direct challenge to the stalking offence based on the existing legislation, like the FDRE criminal code, then they would be in a position to reject it from a different perspective.<sup>64</sup>

Regarding the question of an application of the existing laws strictly, it might not be feasible at the moment, considering the already failed attempts in the “trial and error” of establishing the act of stalking as a standalone offence. However, it does not mean at all that there have not been a handful of cases that ended up in police stations in the form of accusations but would not bring any exemplary result at all.<sup>65</sup> This could be a problematic route to addressing the question of stalking offences, as the inspired boldness has not been the hallmark of the legislator. Thus far, several prominent women's rights advocacy groups have commented generally on the relative inefficacy of the existing laws.<sup>66</sup>

Therefore, most women and girls remain vulnerable, despite the growing international human rights standards in general, and standards on the protection of

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<sup>63</sup> See, The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), (adopted 18 December 1979 UNGA Res 34/180 (UNCEDAW), Part I (Articles 1–6). In line with CEDAW General Recommendation on Gender-Based Violence against Women, updating General Recommendation No. 19, No. 35 (2017), <<https://www.vn-vrouwenverdrag.nl/wp-content/uploads/General-Recommendation-35-update-van-19.pdf>>, accessed on Dec 18 2024.

<sup>64</sup> Interview with Ato Getu Tadesse, *supra* note 8.

<sup>65</sup> *Ibid.*

<sup>66</sup> See, Ethiopian Women Lawyers Association (EWLA) Annual report for the year 2023 <<https://ewla-et.org/ewla-2023-annual-report/>>; <<https://ewla-et.org/assessment-of-the-existing-legal-procedures-and-mechanisms-on-the-treatment-of-sexual-violence-cases-in-ethiopia/>>, accessed on Dec 18 2024.

the rights of women and girls in particular. Besides, there was no mention of the concern from the perspectives of introducing anti-stalking legislation.<sup>67</sup> Thus, the adoption of anti-stalking legislation would facilitate an interpretation of all other human rights provisions of Ethiopian bill of rights.

Furthermore, an anti-stalking legislation in Ethiopia is particularly desired considering the international human rights developments and trends towards the ending of violence against women and girls.<sup>68</sup> This is even more so considering that for human rights systems to be efficient, they need to be constantly adapted to match the changing conditions where cyber-stalking is now the new threat.<sup>69</sup> One of the means of such adaptation could be through the adoption of legislation to supplement the existing human rights instruments.

Taken very seriously by many, the current setting in Ethiopia does not indicate a trend towards the recognition of the threat of stalking. First, when the FDRE criminal code was adopted in 2004, it was not made clear whether the drafters intentionally omitted a reference to the issue.<sup>70</sup> The code only refers to sexual violence under Part II (Special part), Book V, Title IV, as “Crimes against Morals and the Family”, which excludes stalking. However, in 2016, an incidental trend towards stalking was evidenced with the adoption of the Computer Crime Proclamation.<sup>71</sup> And, though the instrument incidentally places restrictions on the act of stalking on the internet-

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<sup>67</sup> Activities are being carried out by the Ministry of Women and Social Affairs to identify legal gaps regarding prosecuting GBV. Yet, there is no indication for the concern of stalking so far. See, <<https://www.mowsa.gov.et/?p=5620&lang=en>> accessed on Dec 18 2024; See also, Ministry of Justice, draft National Policy and Strategy on GBV Prevention and Response in Ethiopia.

<sup>68</sup> United Nations Assembly, Intensification of efforts to eliminate all forms of violence against women and girls: technology-facilitated violence against women and girls, Seventy-ninth session, Agenda item 27, Advancement of women A/79/500 8 October 2024, <<https://www.unwomen.org/sites/default/files/2024-10/a-79-500-sg-report-ending-violence-against-women-and-girls-2024-en.pdf>>, accessed on Dec 18 2024.

<sup>69</sup> <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/cyberstalking-new-challenge-law-enforcement-and-industry-report>>, accessed on Dec 20 2024.

<sup>70</sup> See, the *Ex post motifs* of the FDRE criminal code of the 2004, pp 273-305.

<sup>71</sup> See, Computer Crime Proclamation, 2016, Art.12 & 13, Proc. No. 958/2016, Fed. Neg. Gaz., Year 22, No. 83.

cyber stalking, it is a highly commendable step towards the fight against stalking. Lastly, legislation on the act of stalking is needed because, in the absence of any other instrument for the cause, the state can retreat from its international obligation.<sup>72</sup> This has been the case in many parts of the world, including Ethiopia. Thus, developing the Ethiopian jurisprudence to extend the protection of the rights of women against stalking is a remaining challenge.

#### **4.2 Assessment of Existing Laws Regarding Stalking**

As already indicated above, Ethiopia has adopted various international, regional and national instruments aimed at protecting women's rights in general. The Ethiopian constitution, as a governing principle, affirms the substantial equality of women with men in any sphere of life. The constitution clearly states that the state shall enforce the rights of women, and laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited. It also guarantees women the benefit of affirmative action as compensation.<sup>73</sup>

Additionally, the FDRE criminal code of 2004 has a number of provisions related to some acts sanctioning behaviour calculated to assault, threaten or intimidate.<sup>74</sup> However, the existing laws have limitations for the provisions are insufficient or inadequate to deal with what is understood to constitute stalking in the broader sense and as legislated for in comparative jurisdictions.

As it stands, the first limitation is that legislation starts from the time when the victim reports the act. When survivors/victims go to the police to report stalking behaviours by former lovers or boyfriends whose actions may qualify to stalking acts but do not amount to any of the criminal laws' provisions, the first step prosecutors and police officers take is to explain that the alleged action is not covered by the Ethiopian

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<sup>72</sup> Concluding observations on the eighth periodic report of Ethiopia, *supra* note 51.

<sup>73</sup> FDRE Constitution, *supra* note 57, Art. 25 & 35 (4).

<sup>74</sup> The Ethiopian Criminal Code of 2004 covers detailed information on assault, intimidation and crimes against personal liberty. See, The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005, Art 560, 580 & 601-606, Proc No. 414/2004, Fed. Neg.Gaz.

criminal law and thus cannot be investigated formally.<sup>75</sup> However, although stalking is not recognised by name as a crime, some of the stalking acts are addressed concurrently by way of a number of existing offences, such as assault, intimidation, trespassing or malicious damage to property.<sup>76</sup> For instance, the criminal codes provision that deals with such threats is the crime of intimidation under Article 580 of the FDRE criminal code which states:

*“Whoever threatens another with danger or injury so serious as to induce in him a state of alarm or agitation, is punishable, upon complaint, with a fine not exceeding five hundred Birr, or with simple imprisonment not exceeding six months”*

In the context of stalking, the first limitation on this provision arises due to interpretation of the provision itself, what amounts to danger and injury as qualified in the law seems to be vague which may have adverse effects on the survivors/victims right since restrictive and narrow interpretations in favour of the accused are expected in criminal law.

The flaw in the application of the criminal code should convince the law enforcement organs that legislation on stalking in Ethiopia is much needed. For example, concerning repetitive offenders of a certain crime that is concurrent with stalking, the failure of the code to punish that in itself is problematic. If a repetitive offender of such a crime is arrested, he can still be released on bail and continue with the stalking act.<sup>77</sup> Moreover, the act and offence and the emotional damage he has done

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<sup>75</sup> Interview with Ato Getu Tadesse, supra note 8.

<sup>76</sup> The Criminal Code of the Federal Democratic Republic of Ethiopia, supra note 74, Art.560, 580, 689.

<sup>77</sup> Public Prosecutor v. Mohammad Fereja, Federal High Court, Lideta Division, File Number 305080, 2024, cited in Helen Abelle, ‘Intimate Partner Violence Survivors and the Criminal Justice System: A Case Study of Addis Ababa City Administration’, Hawassa University Journal of Law (HUJL), Vol. 8, July 2024. P. 12.

against women and girls unlike other acts is uniquely irrevocable. For there is clearly a legal shell to be filled with regard to the efficiency of existing Ethiopian laws, the solution would only be introducing anti-stalking legislation at the federal level.<sup>78</sup>

The second limitation survivors/victims of stalking face with regard to getting their complaints formally investigated is the issue of evidence. The Ethiopian justice system is largely dependent on eye-witness testimonies, and the actions directed against women are usually done in the absence of anybody else in the vicinity. Continuous and repeated phone calls and abusive messages raise a particular challenge to manage, even when they contain elements of the crimes of intimidation, since the accused's identity cannot be proved.<sup>79</sup>

Third, although the modern manifestations of stalking, like cyber-stalking on the internet become common in Ethiopia, incidents of such acts remain unreported to the police. Some of such acts are made from unknown gadgets or sources which make it nearly impossible to identify the perpetrator, but even in the cases where it is known, investigation is rarely commenced for it requires advanced skills. This may be in part due to the lesser attention given to these kinds of incidents and such cases are most likely to result in a 'not guilty' verdict.<sup>80</sup>

Therefore, to effectively protect the survivors/victims of stalking, anti-stalking laws must be broad in scope and have substantial penalties. On the other hand, such laws must be sufficiently narrow that they will not punish legitimate acts of others. Drafting effective anti-stalking legislation that balances both of these interests is a complex task. In some cases, the distinction between lawful activity and stalking activity can be blurry. This is because behaviours or acts such as following someone, and telephoning someone repeatedly can be taken as stalking. Yet, a clear dividing

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<sup>78</sup> Walsh, Keirsten L., 'Safe and Sound at Last-Federalized Anti-Stalking Legislation in the United States and Canada', *Dickinson Journal of International Law*. Vol. 14, 1995, pp. 373-402.

<sup>79</sup> Interview with Ato Getu Tadesse, *supra* note 8.

<sup>80</sup> *Ibid.*

line between stalking and acceptable behaviour, like courtship, has never been easier to distinguish unless the law enforcement received sufficient training.

In other setting, in most jurisdictions, which have anti-stalking laws, defendants have attempted to challenge the validity of such laws in a court of law. Defendants seeking to challenge anti-stalking laws usually argue that these laws are defective because they are void for vagueness or are so overly broad that they infringe constitutionally protected activity and speech.<sup>81</sup> The solution or technique that would help to avoid the potential problem of vagueness in anti-stalking laws is to narrow down the term through judicial interpretations. A good example in this regard is the interpretations of the Supreme Court of Connecticut of the term ‘repeatedly follow’ when the court was reviewing the constitutionality of Connecticut's stalking law.<sup>82</sup>

Lastly, what is more, there has not been significant progress towards ending GBV against women and girls in Ethiopia, following intense lobbying from human rights activists in the nation from the perspective of introducing legislation.

To this end, the author of this article suggests that the best remedy to address the broad range of stalking offences is by enacting new legislation to specifically address stalking as a standalone crime, which has penalties so that survivors/victims can seek protection and perpetrators are held accountable.

#### **4.3 The Need for Introducing Anti-stalking Legislation**

There is no official data available as to how many of the stalking cases are reported, and how many of them resulted in more grave consequences in Ethiopia.<sup>83</sup> Yet, though it is difficult to get data on how many stalkers and survivors/victims are former intimates, how many murdered women were stalked beforehand, or how

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<sup>81</sup> Robert A. Guy, ‘The Nature and Constitutionality of Stalking Laws’. *Vanderbilt Law Review*, Vol. 46, Issue 4, May 1993, p. 1012.

<sup>82</sup> *Id.* P.1020.

<sup>83</sup> Interview with Ato Getu Tadesse, *supra* note 8.



many stalking incidents overlap with other crimes, the prevalence of stalking in Ethiopia is very high.

Neither the Ministry of Justice nor the Ministry of Women and Social Affairs acknowledged having comprehensive data concerning the number of stalking survivors or victims that appear before them. As per the latest study report, rather, the act of stalking is very widespread.<sup>84</sup> The country has waited for long up until much misfortune has happened to women and girls.

The widely publicised or high-profile cases that ended in grievous bodily injury or near death, including Kamilat Mehedi, Hermela Wosenyeleh, Naomi Tilahun, Aberash Hailay, Atsede Nguse, Tsega Belachew and others, would serve as evidence to appreciate the magnitude of the national problem of stalking in Ethiopia. Among these cases, the first high-profile stalking case is that of Kamilat Mehedi, where the perpetrator by the name Demessew Zerihun had obsessively stalked her for over four years. The stalker and later convicted criminal, Demessew, used to follow Kamilat and made continuous phone calls just to cause an intentional fear. His stalking behaviour was just not limited to Kamilat but also extended to her family members. Finally, at one night while *Kamilat* was walking home after dark with her two sisters, a man stepped out of the shadows and threw acid in her face. The acid spread on her eyes, nose, mouth, forehead and chest, splashing onto the faces and backs of her sisters beside her, burning flesh wherever it touched.

Secondly, the case of Hermela Wossenyeleh was a famous stalking case, which was committed by her purported admirer named Negussie Lemeneh, for eight years. Claiming to be infatuated with her, Negussie engaged in a pattern of escalating violence, culminating in a brutal physical assault in which he shot Hermela in the face. He also inflicted severe injuries on her family members, attacking two of her sisters with a machete and fracturing the skull of her younger sister with an axe. The

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<sup>84</sup> See, Determining the Ethiopian Women's Status & Priorities, *supra* note 1.

third grave case of violence against separated or divorced women and stalking in Ethiopia is the case of Aberash Hailay. An Ethiopian Airlines flight attendant whose ex-husband, Fisseha Tadesse, stabbed both her eyes with a knife in Addis Ababa, Ethiopia. Fisseha Tadesse, who is said to have been stalking the victim before committing such a heinous crime, turned himself in to police and was later tried for the crime. Moreover, the latest and highly publicised stalking cases happened against a young accountant named Tsega Belachewe, who was abducted for nine days by the personal bodyguard of the then Hawassa City Mayor. As reported by the close family members of the victim<sup>85</sup> and later revealed by herself,<sup>86</sup> Tsega had been stalked for a while by a proxy-stalker and by the same person, who is now arrested and criminalised, following a social media campaign.

These cases might have been avoided or at least mitigated had there been a well-designed anti-stalking law in Ethiopia. Given the emerging discussion on the issue in Ethiopia, the Ethiopian legal system would be more responsive to the needs of legislation on the subject. This is because the discussion in itself is already an important contribution towards the improvement of the system in affording better protection of human rights in general and the rights of women in particular.

The experiences of other human rights systems guide the drafting process and content of a well-designed anti-stalking law in Ethiopia. Accordingly, based on the lessons learned from the experiences of the USA, UK and South African human rights systems, this article analyses and draws two major lessons, focusing on the drafting process and specific content of anti-stalking legislation. Concerning the drafting process, it is suggested that the drafting process has to adopt a participatory approach, through the involvement of various interested parties that use human rights

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<sup>85</sup><<https://youtu.be/wiLQM0EdUpC?si=dfmr3bSYtd9o1Qwp>> accessed on 21 Dec. 2024.

<sup>86</sup><<https://www.bbc.com/amharic/articles/c2e714vekk1o>> accessed on 21 Dec. 2024.

daily, such as lawyers, non-governmental organisations (NGOs), government officials, academics and civil society.

In terms of the specific content of the anti-stalking legislation, this article highlights several substantive considerations and recommendations. Primarily, the legislation should aim to protect the rights of women and girls from gender-based violence. The author recommends the American legal system approach regarding the application of the legislation, which is expected to prohibit the act of stalking, making it a stand-alone criminal act, allowing law enforcement organs to start of investigation at the time of commission. As was the case in California stalking law, the act shall be interpreted incorporating all the important elements to avoid drawing attention to the vagueness exception.<sup>87</sup> Besides, the priority at the moment is, first of all, to make the act an offence, which could subsequently be consolidated by the complete recognition of the act as a stand-alone criminal act in Ethiopia.

Besides, to achieve this, the legislation shall incorporate all acts of stalking as a stand-alone crime applicable to all states, as a federal matter. The law should not be too narrow or too broad. If it is too narrow, it would exclude important stalking acts. In addition, if it is too broad, it will not survive a vagueness challenge, where it places no limits on the conduct to distinguish innocent and criminal behaviour. Therefore, the law should be sufficiently broad to proscribe stalking acts effectively, yet narrow enough to survive a constitutional challenge. Moreover, the legislative framework should include a clear and effective approach to addressing offender accountability and rehabilitation.<sup>88</sup>

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<sup>87</sup> Robert A. Guy, *supra* note 81, p. 1014

<sup>88</sup> A draft proclamation is already prepared to introduce first ever sexual violence registration system that aims to prevent and respond to sexual violence against women and children, <<https://www.mowsa.gov.et/?p=5620&lang=en>>, accessed on 21 Dec. 2024.

In addition, the legislation should set the type of the crime -stalking categorisation, which shall not be listed as an up-on complaint crime.<sup>89</sup> For example, the crime of intimidation is a crime punishable only upon complaint. Moreover, the punishment for the crime should be a simple imprisonment rather than rigorous, except for aggravated circumstances, or where the act of stalking surges into wilful injury of more. Fourth, generally, since some of the provisions of the legislation would be regarded as additional articles to the criminal code, some clarity should be advocated. Lastly, in drafting the provisions of the legislation, reference shall be sought from the laws of other nations' human rights systems. The experiences of other countries systems exist as references, as they have been successful in implementing anti-stalking law. More specifically, the experience of South Africa, which shares similar social, economic and political problems, is instructive to Ethiopia.

## 5. Concluding Remarks

In Ethiopia, the legal *lacuna* concerning the protection of women and girls from stalking remains evident, and the continued absence of appropriate safeguards against stalking continues to leave them particularly vulnerable. This underscores the urgent need for the Ethiopian legal system to adopt and implement comprehensive anti-stalking legislation.

However, drafting effective anti-stalking legislation that enables the prohibition of certain acts as a stand-alone stalking offence is a complex task. In some cases, the distinction between lawful activity and stalking activity can be blurry. This can be, in part, due to the overlap between accepted courtship acts and stalking. Defendants seeking to challenge anti-stalking laws usually argue that these statutes are constitutionally defective because they are “void for vagueness” under due process

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<sup>89</sup> For more on offences punishable only upon private complaint, See, Graven, Philippe, ‘Prosecuting criminal offences punishable only upon private complaint’, Journal of Ethiopian Law Vol. 2, No. 1, 1965, pp.121-159.

principles or are so overly broad that they infringe upon constitutionally protected speech or activity. Yet, the priority should be striking a balance between the two interests in giving special attention to the issue and affording the maximum protection to the women and girls in danger.

The international and national bills of rights provide for a robust protection of the rights of women and girls, including the right to be free from any sexual harassment, the right to privacy and the right to dignity. In the context of protecting these rights, the FDRE constitution emphasises the special position of the enactment of laws in ensuring the protected rights and reiterates that special measures should be taken to ensure their implementation.

As discussed above, women and girls have a constitutional right to be protected from abuse and harassment. It is inherently illogical and legally indefensible to require them to wait until harm materialises before authorities take action. Such an approach is inconsistent not only with the protective guarantees enshrined in the FDRE Constitution but also with the international human rights conventions to which Ethiopia is a party. These legal frameworks obligate the state to adopt proactive and preventive measures to safeguard individuals from threats to their rights and dignity. Accordingly, in the interest of the protection of the rights of women and girls, the government shall accord urgent priority to the enactment of anti-stalking legislation, which is vital to ensure full protection.

From this, it follows that, if there is a law governing stalking, it would have two main benefits; first, as a crime prevention tool, it would deter potential offenders from being engaged in stalking in fear of punishment. It also has the advantage of placing citizens on notice; the subsidiary laws are meant to advise them in advance of how they can and cannot use their right to be free from stalking. Second, if the offender is punished in a court of law, potential victims would trust the legal system and would be encouraged to report stalking cases by affording survivors/victims of stalking an

effective remedy against such behaviour. Therefore, the solution lies in a plea for the introduction of anti-stalking legislation into the Ethiopian legal system.

## **Conflict of Interest**

The author declares no conflict of interest.