

## Challenges of the Strength of Evidences Presented to Ethiopian Courts in Rape Cases among Children below 14 Years Old: The Case of West Shoa High Court

Hawi Tarekegn<sup>1\*</sup> and Amare Worku<sup>2</sup>

<sup>1</sup>Justice Reform Program, Oromia Civil Service and Good Governance Bureau, Ethiopia

<sup>2</sup>Addis Continental Institute of Public Health, Ethiopia

### Abstract

Ethiopia is estimated to have one of the highest rates of violence against women in the world. The Criminal Code of Ethiopia provides heavy penalties for rape cases and especial provisions for sexual outrages committed on children. The purpose of this study was to explore the strength of evidences presented to West Shoa High Court in rape cases among children below 14 years old in Ambo town, Oromia region, Ethiopia. A retrospective review of court documents for rape was conducted from February to March 2015 at West Shoa High Court and additional data were collected using a semi-structured interview among judges and public prosecutors. Findings indicated testimony of the victim, eyewitness and medical report as the types of evidences presented to court in rape cases, among them testimony of the victim is the main source of evidence. The challenges in evaluating these evidences were lack of standard of proof and especial procedures for children rape cases, backward investigation methods, the hidden nature of the crime and cultural issues. Consequently, judgments given based on such weak evidences make the justice system unpredictable and unreliable, and the justice not to be served. The proper balanced view of courts to do justice to the society, to the victim and to the perpetrators increases awareness of the community on how to handle the rape cases, and establishing standard of proof for rape cases are recommended.

**Keywords:** Challenges; Child rape; Court; Evidence strength

### Introduction

Rape violates woman's dignity and sexual freedom as someone else takes control of her body and hurts her; and it happens every minute worldwide. Ethiopia is estimated to have one of the highest rates of violence against women in the world [1]. The Criminal Code of Ethiopia provides heavy penalties for rape cases and especial provisions for sexual outrages committed on children below 14 years of age [2].

Most rape cases are not reported to police immediately at the happening of the offence and by the time the report gets to police, the circumstantial evidences will be destroyed. In addition, the experience of the investigators to find technical evidence from the perpetrator is low and the capacity of the Ethiopian police laboratories is not strong in examining physical evidence such as hair, blood, fiber, etc. [3]. On the other hand, due to the government's objective to promote gender equality and to make the courts accessible to women and children, issues related to gender are favored. This makes innocents to be prosecuted with the use of weak and false evidences [4].

### Types of evidences in rape cases

Evidence serves to prove or disprove the existence, by the party alleging it, or non-existence, by the party denying it of an alleged fact. The party alleging is under obligation to prove that someone is guilty or not guilty in criminal cases or liable or not liable in civil cases [5]. The types of evidence needed to prove rape include the following: any debris acquired during the assault, dried secretions such as semen, blood and saliva, fingernail scrapings, hair, skin and fibers, vaginal swabs and smears if vaginal assault occurred [6]. Events associated with a sexual assault frequently result in various kinds of personal evidence including body fluids, hairs and fibers which are deposited on various surfaces and objects [7].

Ethiopia does not have a separate evidence law, however evidentiary rules are found scattered throughout the substantive laws such as the

criminal law, the civil code, commercial code, etc. and adjective laws mainly the criminal procedure and the civil procedure. Internationally accepted principles of evidence and Draft Evidence Rule of 1967 is being used by courts without citation to fill gaps on evidence rules, though the law is not yet ratified by the parliament [5].

### Standard of proof

The standard of proof used in most criminal cases is 'beyond reasonable doubt'. To determine whether guilt has been proved beyond a reasonable doubt, the jury (in Ethiopian context "the court") must begin with the presumption that the defendant is innocent. This takes a "reasonable person's" belief as standard and proves the propositions to the extent that there is no "reasonable doubt" in the mind of a reasonable person that the defendant is guilty [8]. Ethiopian law does not clearly provide the use of "beyond reasonable" as a standard of proof in criminal cases in general and in rape cases in particular. Wada reported issues of procedure and evidence in rape cases are more academic than practical in the present day Ethiopia because of the absence of binding evidence law [9].

The concept of "beyond reasonable doubt" goes in line with the concept of right to innocence. The Federal Democratic Republic of Ethiopia (FDRE) Constitution Article 20 (3) provides for the right

**\*Corresponding author:** Hawi Tarekegn, Justice Reform Program, Oromia Civil Service and Good Governance Bureau, Ethiopia, Tel: + 0115115014; E-mail: [dayobonsa@gmail.com](mailto:dayobonsa@gmail.com)

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to innocent of an accused person and this demands the standard of proof to be beyond reasonable doubt [5]. Therefore, for the evidences presented in rape cases the evidences should be adequate enough to prove the alleged offence beyond reasonable doubt.

### Current study

Conceptual framework of challenges in strength of evidences in rape cases was sorted into three categories: backward investigation techniques, nature of the crime and cultural effect (Figure 1). Most rape cases in Ethiopia are not reported to police immediately at the happening of the offence because of cultural factors and lack of awareness. Therefore, the circumstantial evidences would be destroyed by the time the report gets to police. Even though some cases are reported on time, lack of advanced methods of collecting evidence and forensic laboratories of deoxyribonucleic acid tests and low experience of investigators to find technical evidence from the perpetrator stand to be a challenge [3]. In such cases, oral testimony and medical examination of the victim stand to be the main source of evidence. However, due to the hidden nature of the crime it is difficult to find eyewitnesses and a medical examination which is a standard procedure in such cases is often unreliable. Consequently, the unsatisfactory evidences reduce burden of proof to the testimony of the victim against the defender and make serving justice an unusually a difficult task. To the best of the authors' knowledge, there is no study conducted on the strength of evidences related to rape cases in Ethiopia. The objective of this study was therefore, to explore the strength of evidences produced before courts in rape cases among children and the challenges in serving justice and pinpoint possible solutions.

### Methods

A retrospective review of court documents for children rape was undertaken from February to March 2015 at West Shoa High Court in Ambo town. Ambo town is found in Oromia Regional State and located 115 km west of Addis Ababa, which is the capital city of Ethiopia. The West Shoa High Court was purposefully selected because of its higher

proportion of children rape cases compared to other High Courts found in the region. There are 19 Woreda courts in West Shoa Zone. All records indicating final judgments to children rape cases from July to December 2014 were reviewed.

Additional data were collected using a semi-structured interview among judges and public prosecutors who served the public in the Court at least for six months prior to the study and had exposure to children rape cases. One third of a total judges and public prosecutors found at the Court were purposely selected; 6 judges out of 19 and 3 prosecutors out of 10 were chosen and a total sample size of 9 was included in the study.

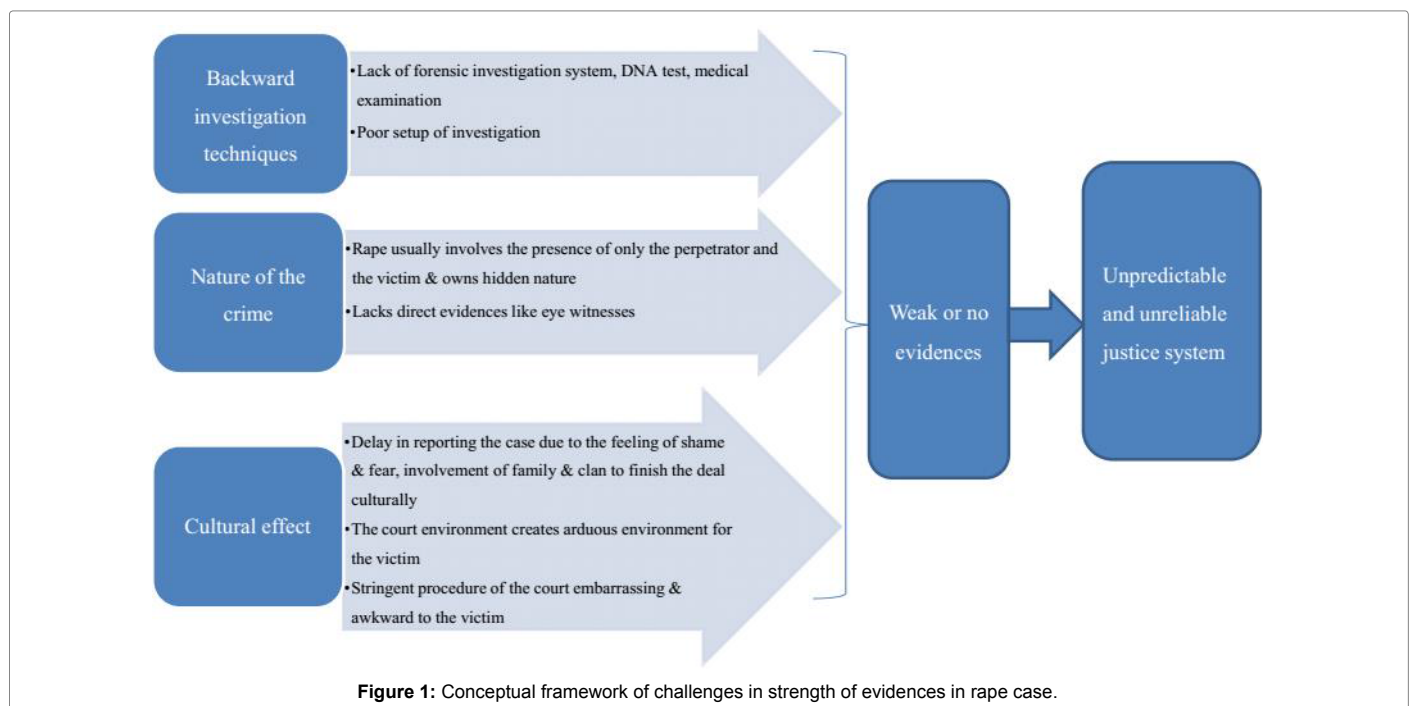
The data were checked for completeness and consistency. Generalizations concerning challenges in strength of evidences in rape cases were made following the analysis based on conceptual framework categories and interpretation of the data. The study was approved by Ethiopian Graduate School of Theology. The purpose of the study was explained to the study participants and verbal consent was obtained prior to data collection.

### Results

#### Results from record review

Out of the fourteen children rape cases presented to West Shoa High Court from July to December 2014, nine cases were closed with verdict while five were on proceeding. Out of the closed nine rape cases, two cases were closed before they reached trial stage (i.e. the cases were not opened for hearing) because of procedural error. The accused pleaded guilty in two cases and judgment was given forthwith. As a result, the study focused on five rape cases (vaginal penetration) and two attempted rape cases which were given final judgment. All victims were female children.

Majority (71.4 %) of the victims were below 10 years old while the rest were within the range of 10-14 years old. Majority (71.4 %) of the



perpetrators were within the range of 15-18 years old, while 14.3% were less than fifteen years old and 14.3% more than 18 years old.

Four of the accused were sentenced to 13 to 15 years of rigorous imprisonment, two were punished with three years of imprisonment and one was pronounced innocent with a defense of alibi. Testimony of the victim, eyewitnesses and medical reports of two types (age estimation and examination report) were kinds of evidences presented in all rape case files. In most cases, the victim was the only source of evidence and the types of evidences presented in rape cases held some kind of predicament to prove beyond reasonable doubt.

### Results from interview

Nine respondents were included in the present work for interview. The mean (range) age of respondents was 34 (30-45) years with two third (66.7%) of them were in the range of 30 to 34 years old. All of the study participants were males. Two third (66.7%) of the respondents were judges while the rest were public prosecutors (Table 1).

Characteristics		Frequency	Percentage
Age	30-34	6	66.7
	35-39	2	22.2
	≥40	1	11.1
	Mean (range)	34 (30-45)	
Gender	Male	9	100
Work division	Judge	6	66.7
	Public prosecutor	3	33.3

**Table 1:** Socio-demographic characteristics of the study participants.

**Evidences presented to the court in rape cases:** All study participants, judges and public prosecutors, reported testimony of the victim, eyewitnesses and medical examination as types of evidences to court of which testimony of the victim as a the major source of evidence though it suffers many challenges. One of the public prosecutors mentioned it further as follows: *“Most victims burst out in tears during trial being afraid of the stringent court procedures. There is no special treatment given to the victims during investigation and court proceedings. In addition, the victims of rape (children under 13 years of age) fail to explain the real happening before court.”*

All respondents revealed eyewitnesses do not witness the act of rape in most cases except provision of circumstantial evidence. They further explained that the hidden nature of the crime of rape makes it imperative for the police and the prosecution to place considerable reliance upon circumstantial evidence in their efforts to judicially establish the guilt of the perpetrator of such an offense.

According to the respondents, the other type of evidence was medical examination results of two kinds: age estimation and examination result of the victim. They reported that medical age estimation is required since most children living in Ethiopia do not have birth certificates. Furthermore, one of the judge respondents described that *“We require the age estimation of the victim to determine jurisdiction of the court and in some cases that of the accused where he or his family claim he is a minor, less than 18 years of age.”* In case of minor suspect less than the age of 18, institution of proceeding should be made only upon the permission from court [10]. They also mentioned that medical certificate consists of chief complaint of the victim, diagnosis of physical injury, status of virginity, vaginal scar formation, HIV test and other sexually communicable diseases.

**Experiences of the judges and prosecutors concerning rape cases:** All study participants claimed they faced challenges in evaluating

presented evidences in rape cases since the standard of proof Ethiopian courts are following in criminal cases is proof beyond reasonable doubt. They illustrated that the evidences do not justify the fact of rape well or the evidences fail to complement each other, which lead to doubt on the occurrence of the crime itself. One of the public prosecutors indicated the challenges as follows: *“We do not expect evidences presented in rape cases to prove beyond reasonable doubt as we do in other crimes. In most cases, victims are the only sources of evidence and evidences presented in rape cases hold some kind of predicament that we evaluate the evidences in favor of the victim”*. One of the judges also shared this idea by stating the testimonies of the victims less than 13 years old are taken as reliable since there are no forensic laboratories and DNA test. The respondents reported that despite the strength of evidences, rape cases are ruled in favor of the victim in order to protect the rights of children and that of public interest, as it is hot agenda among the government bodies. Moreover, one of the judges explained, *“Rape cases are followed by Women Affairs Office and some cases are announced on media before the accused is proven guilty that it created bias and personal fear among the judges”*.

The major causes for inadequacy of evidences participants claimed were backward investigation system, nature of the crime and cultural effects. The investigation techniques are not up to date and conducive working environment is not created for better investigation procedures that could enable investigators present reliable evidences before court. One of the public prosecutors said: *“The investigators are not skilled on the field area and do not take action forthwith on happening of the crime.”*

On the other hand, participants stated that rape usually involves the presence of only the perpetrator and the victim and owns hidden nature; due to this it is difficult to find direct evidences or eyewitnesses. In addition, delay in reporting the occurrence of the crime among family and clan members is one of causes of weak evidence as indicated by all respondents. One of the judges further elaborated the influence of culture on rape cases as follows: *“The society does not feel the pain and lacks awareness on the effect of rape that they prefer reconciliation either out of the feeling of shame and fear or to take compensation money instead of bringing the case to court.”*

**Effects of evidences presented in rape cases:** All respondents claimed that since the evidences mainly depend on the testimony of the victim, the victims are expected to testify at any cost. Throughout the investigation procedure and trial, victims experience embarrassing interrogations and poor treatment. The court environment, the stringent procedures creates arduous environment, appears embarrassing and awkward to the victim. This further endangers the future of the victim socially and culturally in addition to physical injuries that took place during the event. Due to the hidden nature of rape and lack of advanced criminal investigation systems, such as forensic laboratories, though the act of rape took place it is possible that the defendant may go free without proper punishment. As a result, seeing the perpetrator around would affect the victim psychologically and create sense of insecurity to the victim and to the family members.

In contrast, it was reported that the sentencing the issue of false allegation has also been an ongoing concern. One of the judge respondents said: *“I want to see the rape case from the accused side too because it is being used as a tool in the society to accuse each other. The society knows that the rape issue is sensitive and favored and they are using it as a tool for revenge by accusing their foes so that the accused will be punished with long years of imprisonment.”* Another respondent among judges also agreed with the issue of false allegation of rape and



said: “*Though we understand that the witnesses are falsely organized to testify the case we forward and punish the accused person because accused people in most cases fail to defend themselves.*”

## Discussion

In this study, we explored the types of evidences presented to court in rape cases, challenges of evaluating the evidences, and experience of the judges and prosecutors in these areas. Findings revealed testimony of the victim was the main source of evidence to prove a rape case, which is in consistent with the previous work. Aggarwal illustrating the evidence of the victim of sexual offence is entitled to great weight. However, such evidence may suffer challenge in its reliability and in its approach to get the evidence unless additional evidences support the testimony. A previous study shows the testimony of a victim in a rape case is likely to be unreliable [11]. Guilt about involvement in sexual intercourse, revenge against a boyfriend or lover, and rape fantasies are offered as possible reasons for women making false rape charges [12]. A similar study indicates perceptions that women often make false allegations of rape are strongly held by sections of the public, and may affect the way rape complaints are dealt with by police, prosecutors and juries (judges in Ethiopian context) [13].

In two cases of this study, the judges’ called upon additional witnesses to be convinced or remove their doubt on the occurrence of the offence however all interviewed judges claimed they pronounced judgments on most rape cases not fully convinced by the evidences. Although direct and circumstantial evidences presented by the public prosecutor have connection with the occurrence of the crime of rape and are admitted by court, relevance of evidence and the strength of the evidence to prove the alleged fact has to be considered. Since circumstantial evidence proves a certain fact indirectly, the circumstances are relevant as far as they have sufficient connection [5]. Therefore, kinds of evidences presented before court should complement and support each other to prove the occurrence of rape to the extent that it creates no doubt. Since the usual absence of eyewitnesses to the crime of rape makes circumstantial evidence important to judicially establish the guilt of the perpetrator, scientific evidence becomes of paramount importance [14]. On the other hand, judgments given by judges not fully convinced might affect innocent people and promote false allegation of rape among the society. In this study, it was also reported that people use rape case as a tool for revenge by organizing false witnesses to testify to the case. Therefore, the judges must be caution that it is dangerous to convict accused people in the absence of corroboration among the presented evidences. This ignorance might also lead to denial of right to innocence of accused people, the constitutional right and prejudice the justice system in general. Therefore, the need for pretrial discovery and examination of evidences as required by standard of proof in criminal cases is critical.

In one of the reviewed cases in the presented study, the accused answered to the plea of guilty saying he had sexual intercourse with the victim but after his friend had intercourse with her whom he mentioned his name, in cases where the accused pleaded guilty with reservations, Art 133(2) of the Criminal Procedure Code of Ethiopia provides that the court shall enter a plea of not guilty and proceed on with the trial [10]. However, the court convicted the accused as if the accused admitted every element of the charge without reservation. This case shows the judges favored the rape case and took the fact that the accused somehow agreed to the act as enough for punishing the offender. However, it is important to consider the allegations seriously as the offence is punishable with long years of punishment and may also jeopardize the predictability and trustworthiness of the justice system.

The challenge with evidences brought before court in cases of rape starts with the absence of general evidence law and especial procedures for rape cases in Ethiopia. Wada reported evidence provisions scattered in other laws do not help much in addressing the multifarious issues that arise in rape litigations [10]. According to the respondents, the victim children gave their testimonies in an unfriendly environment without the assistance of social workers or psychological experts. When cases of child rape are tried in the same pattern as other criminal cases; judges and public prosecutors in their black gown seated on their respective seats, the accused standing behind the witness chair, questions posed to the victim turn by turn by litigants in trial open for public, the psychological wellbeing of the victim is compromised. The impact of rape on mental health of victims after the sexual rape has more lasting effects than the physical trauma [15]. Therefore, establishment of child court may reduce the problems associated with social and psychological impacts. The issuance of evidence law including the standard of proof expected in rape cases should be established. Evidence collection methods during investigation and court hearing procedures involving children, especially rape victims under the age of 14, should be different from that of normal investigation and court procedures and should be treated in a manner that should not affect the psychological wellbeing of the victim and the victim’s families.

## Conclusion

The findings of the present study revealed types of evidences presented to court in children rape cases: testimony of the victim, eyewitnesses and medical report, among them testimony of the victim is the main source of evidence used to prove rape case. The major challenges in evaluating these evidences were lack of standard of proof and especial investigation methods, and court procedures for children rape cases. In most cases, the victim was the only source of evidence and the types of evidences presented in rape cases hold some kind of predicament to prove beyond reasonable doubt. As a result, courts generally ruled in favor of the victim with the view to protect the rights of children and keep public interest, as it is the hot issue among the government bodies.

The proper balanced view must be considered in child rape cases and the court has to serve justice to the society and to the victim as well as to the perpetrators. Increasing awareness of the community on how to handle the rape case through different media and establishing standard of proof for rape cases are recommended. Establishment of child court may play a critical role in reducing the problems associated with social and psychological consequences of rape victims. Evidence investigation and court hearing procedures involving children should also be assisted by child friendly techniques of investigation and bench.

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