



**SALALE UNIVERSITY  
SCHOOL OF LAW**

**THE IMPLEMENTATION OF COOLING PERIOD DURING DIVORCE  
TRIAL UNDER OROMIA REVISED FAMILY CODE: THE PRACTICAL  
PROBLEMS AT NORTH SHOA ZONE DISTRICT COURTS**

**BY: - EBSA MAKURI**

**A THESIS SUBMITTED TO SELALE UNIVERSITY, SCHOOL OF LAW,  
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# **APPROVAL SHEET**

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## **Declaration**

I declare that, the Implementation of cooling period During Divorce Trial under Oromia Revised Family Code: The Practical problems at North Shoa zone District Courts. The Case of North Shoa Zone courts of Oromia Regional State is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references. The thesis is original and has not been submitted for the award of any degree or diploma to any university or institutions.

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## **Acronyms and Abbreviations**

Art- Article

ECHR- European Court of Human Rights

FDRE - Federal Democratic Republic Of Ethiopia

ICCPR- International Covenant on Civil and Political Rights

ICESCR- International Covenant on Economic Social and Cultural Rights

## **Abstract**

The goal of Ethiopian family law at federal level and Oromia region is to encourage family integrity by giving protection for marriage. Due to this Oromia Revised Family code specially art. 101/1 states that the intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce. Art.101/2 stated that, if on the other hand, the parties are not willing to renounce the divorce; the court may order a cooling period up to three months. In case of petition for divorce art.105/3 also stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months. That is to say, court is given the discretion to refer case for arbitrators to fix and settle disagreements of the parties.

Regardless of art.105/3 of Oromia Family Code which states, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months.

In practice courts under the study were not seen dismissing the files and re directing for family arbitration. Those North Shoa Courts of Oromia, judges preferred to grant a single phase of cooling period and automatically declare divorce. In all case studies under North Shoa courts of Oromia region courts were seen granting short and uniform days of cooling period for different cases. Unreasonable and short days of cooling period has negative consequences on divorcee, children, society and country in general. Thus the aim of this study is to analyze the Oromia Revised family code on cooling period and to identify practical problems at North Shoa District courts. To achieve this objective the researcher employed non-doctrinal research methodology and used empirical data collected through interview, case study and observation. The thesis identified though it's the discretionary power of the judges to determine the days and durations of cooling period, granting uniform and a single phase cooling period for cases with different back ground has a negative effect on fixation of family issues and achieving the purposes of cooling period and family laws.

**Key Words:** Cooling period, divorce, Marriage, divorce proceeding

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background of the study

The FDRE constitution recognized family as the natural and fundamental unit of society and an important legal and social institution.<sup>1</sup> As a result, it gives it a legal protection. Marriage is the basic and starting point for the existence of a family, and thus intended to stabilize family life, providing for the economic and social needs to the members of the family and reinforces cultural rights/ norms. Family has three recognized sources marriage, Filiations and adaptation.<sup>2</sup> Marriage is an institution which is foundation of family. When a man and woman exchange their respective consents to live together as husbands and wife, they lead in to their new relationship and the presumption is that the marriage will last for life, i.e., they assume their relationship is permanent that nothing will separate them. The goal of this agreement between the spouses, as it is stated is a lasting martial relationship, the union which remains binding throughout the life time of the Spouses.<sup>3</sup> However, sometimes due to state of anger or any such state of like nature couples decided to opt out of marriage.<sup>4</sup> Thus Family dispute is one of the disputes happened between the spouses and this requires special kinds of treatment so as to settle the dispute.<sup>5</sup>

Based on the Oromia Revised Family Code (Herein after RFC) marriage shall be dissolved by divorce where; the spouses have agreed to divorce by mutual consent and such agreement is accepted by the court or the spouses or one of them made a petition for divorce to the court.<sup>6</sup> Divorce is a common phenomenon in today's community, but still represents a major life stressor for the individuals involved, with potentially strong negative consequences for the mental and physical health of all members of the family.<sup>7</sup> Based on this fact, the goal of family law at federal

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<sup>1</sup> Constitution of federal Democratic Republic of Ethiopia, proclamation number 11/1995), 1995, Article 34.

<sup>2</sup> Aschalew Ashagrie and Marta Balete" Ethiopia Family law teaching material", p8.

<sup>3</sup> Tewodros Taddesse " adjudication of disputes arising out of dissolution of marriage under the revised family law of Ethiopia. the law and practice" July 2008, p1.

<sup>4</sup> Nishant Vimal" waiting period in mutual consent divorce", may 2009.

<sup>5</sup> Id. P24.

<sup>6</sup> Revised Family code of Oromia regional national state, proclamation no.69/1995 & proclamation no.83/1996, art.99 and 100.

<sup>7</sup> Mulugeta Deribe" The Effect of Divorce on Families' Life" Journal of Culture, Society and Development, Vol.46, 201.

level and Oromia region is to encourage family integrity by giving protection for marriage. The establishment of a cooling period for divorce in the Federal Democratic Republic Ethiopia (Hereinafter FDRE) RFC and Oromia RFC is an important embodiment of the integration of legislation in family protection it is of great value in preventing rash divorce, maintaining marriage and family stability and building a harmonious and equal marriage and family relationship. Although divorce is couples right to leave the marriage they don't interested in, the law taken divorce as last resort the court shall take when the marriage of spouse is impossible to fix. The law set different procedural mechanisms including cooling period that need to be followed by the court before pronouncement of divorce. Cooling period is procedural mechanism that needs to be observed by the court.<sup>8</sup> The FDRE and Oromia RFC order the courts to provide cooling period up to three months depending up on the cases for purpose of saving couples marriage. Despites, these legislations there is problems in implementation of these provisions of law in district courts in Oromia. Therefore, this area need special attention as divorce has negative consequences on divorcee, children, society and country in general.

## **1.2 Research problem**

Under Oromia Revised family code, the spouses are at freedom to make petition for divorce by mutual consent and the spouses or one of them may also make petition for divorce. Even though the Oromia Revised family code allowed spouses petition for divorce and to dissolve their marriage, the court shall not immediately give decision to divorce before exhausting all the meanness to bring the spouse in to agreement in order to renounce their petition for divorce. The Oromia RFC provides for optional arbitration of family disputes. That is to say, court is given the discretion to refer case for arbitrators. However if the spouse does not agree to settle their dispute through arbitration the court will dismiss the case by giving them cooling period of up to three months.<sup>9</sup> On the basis of aforementioned Oromia RFC provisions which imposed duty on the courts providing cooling period up to three months for the spouses on divorce proceeding before judgment on divorce, it appears however, that the practice in Oromia courts on providing cooling period on divorce proceeding before pronouncement of divorce is not seen. As a result of this fact, many petitions of divorce filed at courts are ending with pronouncement of divorce. Cooling period

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<sup>8</sup> Ethiopia Revised Family Code Proclamation No. 213/2000, Extraordinary Issue No. I of 2000 Federal Negarit Gazeta, July, 4, 2000, art. 78/2 & 82/3, Oromia RFC art. 101/2 & 105/2.

<sup>9</sup> ibid

is procedural mechanism that needs to be observed by the court, which is considered as marriage preservation mechanism.<sup>10</sup> It helps to maintain the stability of marriage and family. Failing to provide cooling period for spouses during divorce proceeding encourages the divorce and accelerate the rate of divorce in the society.<sup>11</sup> Divorce is the most serious problem for the society. It has psychological, social and financial impacts on divorcee couples and negative effects on their living arrangements.<sup>12</sup> And also, divorce should not be seen only from angle of marital partner. Its impact on lives of children should also be looked at since it disintegrates the family unit.<sup>13</sup> It is social leveling itself and major contributing factors for most society such as prostitution, streetsm, juvenile delinquency, drug addiction and other crimes.<sup>14</sup> Providing Cooling period for spouse during divorce proceeding in accordance with provisions of law has great role on changing the intention of spouses to divorce and saving marriage. Therefore, this study particularly aims at assessing practice of North Shoa Zone district courts regarding cooling period during divorce proceeding in line with pertinent provisions of the revised family Code of Oromia.

### **1.3 Research objectives**

#### **1.3.1 General Objective**

- The general objective of this study is to analyze the Oromia Revised family code on cooling period and to show practical problems at North shoa Zone District courts.

#### **1.3.2 Specific objectives**

The study has also the following specific objectives:

- 1) To analyze the legal provisions related to cooling period under Oromia Revised family code.
- 2) To examine gaps in law and practice on cooling period during divorce proceeding at North Shoa district Courts.
- 3) To identify major obstacles on implementation of provisions of Oromia revised family Code on cooling Period at North Shoa District courts.

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<sup>10</sup>

<sup>11</sup>

<sup>12</sup> Mengistu Melak & A. Kirubakaran (2022). The Causes and Consequences of Divorce in Bedele Town: The Case of 02 Kebele, *Anthropo-Indialogs*, 2: 1, pp. 57-69. doi.org/10.47509 / AI.2022.v02i01.05.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

## 1.4 Research questions

The central question that will address under this study is:-

- ◆ What are the existing legal provisions of cooling period under Oromia Revised Family Code?
- ◆ Were those provisions applied as stipulated and demanded under the Oromia family code on the case of Family benches in North Shoa Courts or not?

This study will address the following specific questions:

- ◆ What are the provisions of Oromia Revised Family Code on cooling period?
- ◆ What are visible gaps in law and practice on cooling period during divorce trial at North Shoa district courts?
- ◆ What were major obstacles on applying the Oromia RFC provisions of cooling period during divorce trial at North Shoa zone First Instant Courts?

## 1.5 Literature Review

There are now substantial bodies of researches especially; from across the Eastern jurisdictions that portrays a consistent message; The legislatures shall enact the family law provisions that enables the court to grant cooling period for the spouses on their petition for divorce and, the court handled the case shall provide spouses cooling period during divorce proceeding in accordance with that law. In this study, the attempt is made to review both existing domestic and foreign literatures on the issue under study.

From domestic literatures, Nigussie Afesha who conduct study on the title ‘‘Legal and Practical Aspects of Divorce, Compensation and Liquidation of Pecuniary Relation between Spouses: A Case Study in SNNPRS Courts’’ explained that, the Southern Nation Nationalities and peoples region family code set procedural requirements that, if the attempts to persuade the spouses to withdraw their petition for divorce, or solve their dispute through arbitrators of their choice fail, the court will dismiss them giving a cooling period of not more than three months.<sup>15</sup> But there are courts which go an extra length and give a chance for the spouses to solve their disagreements amicably even after the lapse of the cooling period. He strongly argues that, although there is no procedure requirement that compels courts to give additional chance for the spouses to solve their

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<sup>15</sup> Nigussie Afesha ‘‘Legal and Practical Aspects of Divorce, Compensation and Liquidation of Pecuniary Relation between Spouses: A Case Study in SNNPRS Courts’’ Bahir Dar University Journal of Law Vol.7, No.2 (June 2017), p 152.

disagreements amicably even after the lapse of the cooling period, the courts are doing this pursuant to the constitutional provision that requires the courts to work and protect the family.<sup>16</sup> Pursuant to Nigussie view, cooling period up to three month given for spouses by legislature is not enough to enable them solving their disagreement peacefully, it need additional time greater than three months. I argue with Nigussie that cooling period is procedural requirement that attempted to pursue the spouse to with draw their petition for divorce. But unlike to his argument, in my view the cooling period up three months provided under Federal RFC and regional family laws including Oromia RFC is enough to enable to spouse to change their idea of divorce and no need of granting cooling period more than three month. Since giving extra cooling period may result in delay of justice, the court shall not grant cooling period more than three months and if they do so they clearly violating provision of law.

Some researchers have view that, granting cooling period for spouses during divorce proceeding is not mandatory. Tewodros Tadasse under his study with title 'Adjudication of disputes arising out of Dissolution of marriage under the Revised Family law of Ethiopia: law and practice'' explained that, the Ethiopian RFC has view of saving spouses' marriage by setting some procedural requirement.<sup>17</sup> He stated that, protection seems to be forwarded by the law when we take a close reading of Art 82 of R.F.C. In the first place the court after receiving petition speaks to the spouses jointly or separately. This as we said so far, is to persuade them to renounce their intension. But if the attempt has failed or likely to fail then there seems an additional option to the court to propose that is, it may direct the spouses to settle their dispute through arbitration of their own choice.<sup>18</sup> But if the spouses did not agree on such proposal the court is left with no option rather to dismiss them by giving cooling period.<sup>19</sup>

Pursuant to his study, art. 82/3 of RFC permitted the court to dismiss the parties by giving them cooling period, but from the wording of this article we could see that granting cooling period is not mandatory if both of the parties or one of them show to the court that they have been trying to fix their marriage but failed, and there is no other possibility of them to live together then there is

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<sup>16</sup> Ibid.

<sup>17</sup> Tewodros Taddesse ,” adjudication of disputes arising out of dissolution of marriage under the revised family law of Ethiopia. the law and practice” July, 2008. P,14.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

no need of granting cooling period by the court to the spouses.<sup>20</sup> I shared the view of Tewodros as he argue the Ethiopian Revised family code provided cooling period as the mechanism of saving marriage, to make protection for family institution. But I don't agree with his idea that, granting cooling period is not mandatory if both of the parties or one of them show to the court that they have been trying to fix their marriage but failed, and there is no other possibility of them to live together then there is no need of granting cooling period by the court to the spouses. The main objective of Ethiopia family law is to make protection for the institution of family from integration. The researcher also made review of studies conducted by foreign researchers. Accordingly, the study conducted in China by Yuxin Li revealed that, setting of the divorce cooling period integrates the ideological prerequisite of increasing the autonomy of marriage, the social background of the rising divorce rate, the legislative purpose of preventing reckless divorce, and the provision of institutional support for the judicial practice. Therefore, in order to pursue the value realization of marriage justice, while protecting the freedom of divorce, the marriage law also needs to consider external interests to prevent the imbalance of interests brought about by rash divorce. In the specific application process of the divorce cooling-off period, it is crucial to grasp the balance of interests.<sup>21</sup>

The study conducted by Dainn Wie & Hyoungjong Kim in Korea suggested that, cooling period has no effect on prior filing rates or judicial divorce rates, which confirms that estimates are not driven by administrative delays or demographic trends.<sup>17</sup> Though it is an effective mechanism for increasing the rate of divorce-filing cancellations and decreasing the rate of finalized divorces, implementation of a mandatory cooling-off period should be carefully designed not to disadvantage women with weak bargaining power in their marriages. Restricting access to immediate divorce could have an adverse effect on women with low education or economic empowerment. However, we could not find any evidence to suggest that the cooling-off period has a differential effect according to the social status of women filing for divorce.<sup>22</sup>

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<sup>20</sup> Ibid.

<sup>21</sup> Yuxin Li "Application of the Cooling-off Period for Divorce and Property Relations" Proceedings of the 2022 8th International Conference on Humanities and Social Science Research (ICHSSR 2022), page is not indicated. <sup>17</sup> Dainn Wie & Hyoungjong Kim (2015) *Between Calm and Passion: The Cooling-Off Period and Divorce Decisions in Korea*, Feminist Economics.

<sup>22</sup> Ibid.

## **1.6 Significance of the study**

This research has great importance in showing the problems existing on the area of implementing the provisions of Oromia Revised family code by Oromia First instant courts in general and North Shoa FIC in particular on granting cooling period for spouses during divorce proceedings. Since there is no research specifically done on consequences of failing to provide cooling period in Oromia, this study will have great contribution in showing courts the benefit of granting cooling period for spouses during divorce proceeding.

It also the researcher believes that, the output of this research will serve as an input for the judicial organ, researchers, governmental, NGO's and other legal professionals to carry out a detailed study on the area under investigation. It is expected to create awareness for the society on the legal protection of family and marriage by setting some procedural mechanisms; cooling period that enable the spouse to solve their dispute amicably by enabling them to change their idea of divorce. It will also help to fill significant lacuna in research literatures.

## **1.7 Research Methodology**

For the purpose of this study the researcher employed non- doctrinal research methodology. Because to achieve the objectives under the study and address research questions empirical data was gathered through interview, and case analysis.

### **1.7.1 Research design**

This paper employs descriptive survey and analytical research designs, the research will try to describe the existing situations in the selected area, analyze major issues and put forth sound recommendations. Qualitative research method was used to clarify concepts, characteristics and to demonstrate implications of the issue under consideration. Qualitative research approach was preferred to answer the research questions of the inquiry going directly to the phenomenon under the study. Thus, qualitative methods allow gathering evidences for contingent facts that participants narrate empirically their work experiences in their own ways. It employed to systematically investigate existing laws on cooling period and to undertake in depth examination of the factors that hinder proper implementation of laws at North Shoa District Courts.

### **1.7.2 Types of Data**

For collecting the required data, primary and secondary sources of data have been used with more comprehensive understanding of questions raised on this paper. The primary data has been

gathered through observation, interview, case analysis, codes and legislations. While Books, journal articles, magazines, reports, different international, regional, national instruments and documents retrieved from reliable/trustworthy websites were used as secondary source for this study. Accordingly, the following tools of data collections will be used to obtain the required data.

### **1.7.3. Participants of the study, Sample size and Sampling techniques**

Since Sampling is the process or technique of selecting a suitable sample or out profit representative of the population from which on their convenience on the topic researched. The researcher used purposive sampling technique to draw a sample representation from the existing population. Starting from study area, the researcher purposefully selected district courts found in Oromia region North Shoa Zone believing that it would be a suitable representative for researched topic and it is suitable area for data collection for the researcher. Among the 14 Woreda courts established in North Shoa zone, the study sample size has been selected using purposive sampling method. The selection and inclusion criteria of these district courts in the study based on their higher rate of divorce compared to other districts Courts found in North Shoa zone depending on the preliminary data gathered from the court. In addition, from four selected FICs the researcher is judge at Girar Jarso FIC and has the detail knowledge on issue under study. Selecting the other three Courts for this study was based on their feasibility from time and cost perspective, as they are near to Fiche town which is the researchers' residential town and work place. Purposive sampling is also used to select group of individuals that should be participate on the interviewees based on their merits exclusively to the topic researched.

### **1.7.4 Tools of Data collection**

#### **1.7.4.1 Interview**

An interview is used to collect primary data from judges who are working at North shoa District courts who are working at family bench. For this purpose, the researcher employed a structured interview which helps to generate in-depth information in the issue based on interview guide line from key informants (herein after KI). These KI are purposively selected from District courts which are purposively selected by the researcher. Then based on this merit, the researcher has been purposively selected a total of twelve (12) interviewee from four (4) courts. Thus, interview was effectively conducted with four (4) presidents of courts, four (4) social workers at child and family benches one from each court selected for the study and four (4) judges serving at Family benches.

#### **1.7.4.2 Case analysis**

This method has involved analyzing specific case files collected from four (4) North Shoa Zone district courts; Girar Jarso district court, Libanos district court, Wacalee district court and Dagam district court on Pronouncement of divorce. The researcher purposively selected 4(four) district courts to collect data from case files found in the courts based on their higher rate of divorce compared to other districts Courts found in North Shoa zone depending on the preliminary information gathered from the courts and the researcher believe that data collected from these courts could represent 14(fourteen) district courts of North shoa Zone. The researcher has been used case files of two consecutive years; 2014 and 2015 E.C. These case studies could provide valuable insights into how legal provisions enacted under Oromia revised family codes are implemented practically by the judges at court of law.

#### **1.7.5 Data processing and Analysis**

Internal consistencies of data were checked before the actual analysis work. The researcher critically analyzed the primary and secondary data collected from different areas to achieve the stated objectives and to answer those questions under the study by employing Qualitative data, which was collected through observation, in-depth interview, and case analysis, were analyzed through thematic analysis method.

#### **1.8 Reliability**

To the best of the researcher's knowledge, the research was conducted this study depending up on the information that was gathered from different trustworthy sources.

#### **1.9 Ethical consideration**

Maintaining the code of ethics is during any research is essential. The safety of the research participants is the top priority of the research and the normal operation of data gathering need of study. For the purpose of this study, the institutional ethical clearance was obtained from Salale University, school of law. The researcher treated subjects with due respect in a way that doesn't affect their dignity and safety negatively. They have informed about the purpose of the study, their right to refuse and to withdraw. Informed verbal consent was obtained from each subject before data collection. Confidentiality of the data was also kept by avoiding personal identifier and data is kept by researcher in a safe place.

### **1.10 Scope of the study**

The aim of family law is to give protection for family institution. In protecting family, the law encourages family unit and discourage disintegration of family by providing different procedures during divorce proceeding. Cooling period is one mechanism provided by law to protect marriage and family. Despite this provision of family law which sets legal procedure on divorce proceeding, the courts in Oromia are not implementing this provision of law. The courts pronounce divorce with in short period of time starting from day of petition for divorce without following procedures provided by the law; speaking spouse to renounce their decision to divorce giving spouse the chance to solve their issue by arbitrators, granting cooling period up to three months and etc. This act of courts made the society to believe that courts of law established not to protect marriage but, it is place where disintegration of marriage and divorce is carried out. This area is very sensitive and it needs deep investigation to correct the actions of courts and judges and to change the views of society on courts regarding to divorce. However, for lack of finance, human and material sources the scope of this study geographically limited to examination of practice in North Shoa First instant courts, and it doesn't involve other practical problems related with divorce. The researcher believes that, the study of different problems surrounding divorce need independent investigations and cannot address by this study.

### **1.11. Limitation of the study**

Divorce is very sensitivity issue and it has negative impacts on family, marriage, couples, children, Society and country in general. In order to protect family from disintegration by divorce this area needs oriented, scheduled and deep-rooted investigated research. But due to, resource scarcity & shortage of budget the research may not be able to address the whole genuine gaps; and the whole legal, social, political and economic values.

### **1.12. Organization of the study**

In brief, the study has attempted to examine the provisions of Oromia Revised family code on cooling period at time petition for divorce and assessed the practice of laws at Oromia region North Shoa Zone First instant courts. In addition to this, it examined the impacts of divorce on divorcee, their children and society.

The study has divided in to four chapters, each of which has its own sections and subsections. Chapter one covers proposal part; introduces the background of the study, research problem,

research questions, objective of the study, research methodology, reliability, ethical consideration, significance of the study, scope of study, limitation and organization of the study. Chapter two gives a brief literature review and explanation of the terms and concepts used in the study. It defines terms like divorce, marriage, cooling period and divorce proceeding. It explores the conceptual and legal frame work in general It has introduced the subjects and discusses the concept of cooling period and review historical background, beginning of the notion on legal granting of cooling period during divorce proceeding, its necessity on saving marriage from divorce and the impacts of failing to grant cooling period during divorce proceeding by legislatures and courts of law. The third chapter deals with what the procedures of cooling period under the Oromia Family Code promulgate and how did family benches of North Shoa FIC entertain the issues on proceedings for divorce this chapter also gives due emphasis for background of the respondents; and data analysis and discussion on major finding of the study. The fourth and last chapter summarizes the findings; puts conclusion and implications or recommendation of the study.

## **CHAPTER TWO**

### **CONCEPTUAL, THEORETICAL AND LEGAL FRAMEWORK ON COOLING PERIOD AND DIVORCE**

#### **2.1 Introduction**

This chapter deals with the conceptual frame work, legal frame work and literature review by raising issues that are pertinent to the problem under investigation. It has introduced the subjects and discusses the concept of cooling period and brief review the definition, historical background, beginning of the notion on legal granting of cooling period during divorce proceeding, its necessity on saving marriage and the impacts of failing to grant cooling period during divorce

proceeding by legislatures and courts of law. It has also discussed psychological, social, economic impacts of divorce on divorcees, their children, society and country in general. The legal frameworks on cooling period also discussed by making references to domestic, international and the laws of other countries relevant to the issue.

## **2.2 Definition of terms**

In every research, stating the definitions or meanings of words and phrases before jumping in to using them in explanations has paramount importance, since understanding the meaning of words and phrases is prerequisite to grasp the message of the research in general. For this reason, some definitions are bestowed for relevant words and phrases that are going to be referred and used as a key point throughout this writing.

**Marriage:** -The word marriage has several different meanings. It is used to refer the act of becoming married or to the ceremony in which one becomes married and to the legal contract that makes a man and a woman husband and wife.<sup>23</sup> Or it may be defined as the status or relation of a man, and a woman who have been legally united as husband and wife. It is natural that human society reproduces through marriage. Marriage is unavoidable as far there is society. Society can continue existing when there is reproduction and marriage is natural as well as societal. As natural it is unavoidable and as social it has to be regulated by certain rule of conduct. Thus, it becomes a necessity to arrange marriage in a certain contractual manner in order to give it social respect and legal protection to make it sustainable.<sup>24</sup> Marriage may more particularly be defined as the voluntary union for life of one man and one woman as husband and wife to the exclusion of all others, for the discharge to each other and to the community of the duties legally incumbent on married persons.<sup>25</sup>

Some statutes define it marriage as personal relation arising out of a civil contract to which the consent of the parties is essential. What we understand from the above definitions is that, marriage is concluded between a man and a woman. It is also recognized by the Ethiopian Revised Family Code under Articles 2, 3, and 4 in which marriage takes place between a man and a woman, which can be a civil marriage, religious marriage or customary marriage. It is not possible to celebrate a

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<sup>23</sup> Meron samuel "divorce under the revised family code of federal government: it's impact on women" July, 2008, p2.

<sup>24</sup> Ibid.

<sup>25</sup> ibid

given marriage if, for example, there are two women and one man or one woman and two men at a given time.<sup>26</sup>

**Divorce:** - Divorce has been defined by Planiol as the rupture of a valid marriage during the life of the two spouses.<sup>27</sup> In its common and wider use, the term includes the dissolution of a valid marriage, a formal separation of married persons, and the annulment of a marriage void from the beginning. So, while the term divorce has sometimes been broadly defined or applied to include both decrees of nullity and decrees of dissolution of marriage, especially where the marriage was not void but only voidable at the option of the injured party, this has been declared to be not in accord with modern usage, and generally, the term denotes only dissolution or suspension of a marital relation, and does not include annulment of an invalid marriage.<sup>28</sup>

It is the process of terminating a marriage or marital union. It entails the canceling or reorganizing of the legal duties and responsibilities of marriage, thus dissolving the bonds of matrimony between a married couple under the rule of law of the particular country or state.<sup>26</sup>

Although liberally granted in ancient Athens, divorce was rare in early Roman culture. Hence, ancient Rome laws were extremely liberal. At this period no divorce from Roman through the middle Ages & sincere. The marital behavior of the spouses regulated through social pressure rather the divorce law. As the Roman Empire grew in power and authority; however Roman Civil Law embraced the marriages ought to be free, and either husband or wife.<sup>29</sup>

Divorce is a legal separation of married spouses or ending of marital relationship between husband and wife usually freeing the parties to remarry.

Under Ethiopian family law; Federal and regional family codes, the term divorce is not defined. The FDRE Revised family code simply set divorce as one way of dissolution of marriage. The code classified divorce into divorce by mutual consent and by petition. In both types of divorce, an application has to be made to the court. That is to say, the power of declaring divorce is given only to the court.<sup>30</sup>

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<sup>26</sup> *ibid*

<sup>27</sup> Planiol, 630

<sup>28</sup> Black's Law Dictionary (8th ed. 2004), <sup>26</sup>  
Encyclopedia Britannica, 2018.

<sup>29</sup> *Id.*

<sup>30</sup> Article 117 of the RFC makes the court to be the only competent organ to decide on divorce.

**Cooling period:** - The word cooling period has been defined from different perspectives. In the area of investment, it is called waiting periods and are a feature of Bilateral Investment Treaty or state-investor arbitration, where by parties seeking to initiate arbitration proceedings are required to hold off for a specified period, during which an amicable settlement should be attempted.<sup>31</sup>

Blacks law defined cooling period as time to recover cool blood after severe excitement or provocation; time for the mind to become so calm and sedate as that it is supposed to contemplate, comprehend, and coolly act with reference to the consequences likely to ensue.<sup>32</sup> This transitional period was obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition.<sup>33</sup> The cooling period mandate between divorce filing and a complete change in status has been adopted in many countries to reduce impetuous divorces and encourage reconciliation.<sup>34</sup> Some human right scholars consider cooling period as restriction on freedom of divorce. But this is not always acceptable; the freedom of divorce is like the freedom of marriage. Marriage is always a matter for both husband and wife. For both parties who are determined to divorce, the law cannot become a rope to restrict their freedom of divorce, but for the parties to impulsive divorce, the law provides them with an opportunity to repair and think.<sup>35</sup>

**Divorce proceedings:** Are proceedings in a court in which either or both spouses seek a divorce alone or together with a support order or a custody order or both such orders.<sup>34</sup>

### **2.3 Conceptualization of cooling period**

Conflicts usually generate anger and disappointment, and these visceral factors make couples in disaccord focus their attention on the negative aspects of their marriages. These emotional factors can lead to impulsive decisions that may be regretted later. Psychologist suggested that, people's decision making may be biased because of intertemporal inconsistency: future tastes may differ from current tastes due to such factors as habit formation, day-to-day mood fluctuations,

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<sup>31</sup> Aravind Ganesh "Cooling off period", Max Planck Institute Luxembourg. Department of International Law and Dispute Resolution.

<sup>32</sup> Black's law dictionary 4<sup>th</sup>, ed.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Jiao Hui "The Cooling-Off Period of Divorce to Save Marriage", Journal of Sociology and Ethnology (2021) Clausius Scientific Press, Canada.

environmental change, and individual maturation.<sup>36</sup> George Loewenstein, Ted O’Donoghue, and Matthew Rabin label this tendency projection bias: people tend to exaggerate the degree to which their future tastes will resemble their current tastes, particularly in time of emotional duress. In the context of divorce, projection bias might lead people to make a hasty decision to divorce based on wrong prediction in a fit of rage.<sup>37</sup> According to their view, the predicted marital utility of a person influenced by projection bias lies somewhere between their current utility and their true future utility. Therefore, projection bias can lead people to over- or undervalue their marriage, depending on their emotional state at the time of decision. A couple might choose divorce, for example, when both parties have a low current valuation of marriage or when one party has a low enough valuation to cancel the other’s overvaluation.<sup>38</sup>

#### **2.4 Theoretical frame work on cooling period**

Different writers have explained legal importance of setting cooling period on divorce from different perspectives. Yuxin Li argue that, marriage law should intervene and limit freedom of divorce by setting cooling period during petition for divorce. He stated that, principle of freedom of marriage is the foundation of the Marriage Law and runs through the formulation and implementation of the Marriage Law. As a guiding principle, the protection of marital freedom is also the basis and premise of the sober setting of divorce. However, if the freedom of marriage is not restricted by the law at all, people can go with the flow, which will not only bring overloaded work pressure to the marriage registration authorities, but also bring great damage to the stability of the overall structure of society.<sup>38</sup> It is very likely to cause disorder in the socio-economic order and lead to social problems caused by the instability of the composition of family members. The limited intervention of the law in divorce is the embodiment of the public nature of marriage and the pursuit of the overall welfare of society. Thus, the private and public nature of the areas regulated by the Marriage Act dictates that while insisting on guaranteeing the freedom of marriage, it must limit the rash divorce by putting procedure of cooling period.<sup>39</sup> He also suggested necessity of cooling period from the point of view of justice, pursuant to his view, the right to liberty should not be regarded as an absolute right, since any unrestricted freedom is easily abused

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<sup>36</sup> Dainn Wie and Hyoungjong kim “between calm and passion: the cooling- off period and divorce decisions in Korea 2015 Vol. 21, No. 2, p,187–21.

<sup>37</sup> *ibid*

<sup>38</sup> *Ibid*.

by individuals and groups, and freedom must be restricted for the sake of the overall welfare of society. Unfettered freedom is an assault on justice.<sup>40</sup> He argues that, the cooling period for divorce is set to provide a certain buffer space for the expression of opinions and conditions of vulnerable groups, which is in line with the balance and pursuit of values for freedom and justice.<sup>39</sup> In addition, he stated that restriction of divorce by setting cooling period is essential order to protect the interests of the weaker party in the marital relationship; children. He argues that, marriage does not only involve the relationship between husband and wife, but it is also related to the upbringing of minor children. Therefore, a divorce may lead to social issues, such as juvenile child crimes, left-behind child care, and old-age care.<sup>42</sup> If the law does not restrict the freedom of divorce, it is likely to undermine the rights and interests of stakeholders in a marital relationship and increase the cost and instability of social development. Divorce will break the original optimal division of labor and the advantages of resource integration, which will lead to a decrease in the degree of specialization of the labor market and the inability of social resources to produce the optimal economic scale benefits through the combination of family individuals.<sup>40</sup>

## **2.5 Cooling period under different legal systems**

Faced with a steady increase in the divorce rate and family disorganization, many states have sought means to discourage divorce and to promote family unity.<sup>44</sup> Under this part the experience of different countries (China, Korea and India) regarding providing cooling period during divorce trial was discussed.

### **2.5.1 China**

In China the Marriage and Family Edition of Civil Code of the People's Republic of China officially came into effect in January 2021, and its article 1077 established the divorce cooling period system applicable to registration divorce at the legislative level for the first time: 1<sup>st</sup> Since

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<sup>39</sup> Ibid. <sup>42</sup>

ibid

<sup>40</sup> Dainn Wie and Hyoungjong kim' 'between calm and passion: the cooling-off period and divorce decisions in Korea 2015 Vol. 21, No. 2, p,187–21.

<sup>38</sup>Yuxin Li "Application of the Cooling-off Period for Divorce and Property Relations" Proceedings of the 2022 8th International Conference on Humanities and Social Science Research (ICHSSR 2022), page is not indicated

<sup>39</sup> Ibid.

<sup>40</sup> Ibid

the marriage registration authority receives the divorce registration application, if either party is unwilling to divorce within 30 days, it may withdraw the divorce registration application to the marriage registration authority. 2<sup>nd</sup> Within 30 days after the expiration of the time limit specified in the preceding paragraph, both parties shall apply in person to the marriage registration authority for a divorce certificate. If no application is made, the application for divorce registration shall be deemed to have been withdrawn.<sup>45</sup>

### **2.5.2 Korea**

In Korea, a trial divorce cooling period was first adopted in several jurisdictions in 2005. Each court independently adopted a one-, two-, or three-week cooling-off period to deter the recent increase in divorce. Such cooling-off periods only apply to divorce by mutual agreement, in which couples are required to indicate their agreement in filing for divorce. The recently implemented divorce cooling-off period occurs between the divorce filing and official divorce and does not overlap with any normal judicial process.<sup>41</sup>

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<sup>44</sup> The Four Month Divorce "Cooling Off" Period In Virginia, 15 Wash. & Lee L. Rev. 327 (1958).

Available at: <https://scholarlycommons.law.wlu.edu/wlulr/vol15/iss2/20>.

<sup>45</sup> Zeng Men” Research on China's Divorce Cooling-off Period System’ ’The Frontiers of Society, Science and Technology, Vol. 3, Issue 4: 105-1

### **2.5.3. India**

India is the country with lower rate of divorce in comparison with the rest of the world, owes to society norms and pressure leaning in favor of preservation of marriage.<sup>42</sup> Indian law considers that the marriage to be effective must be based squarely on personal volition of parties, wherein the parties have free consent to enter into marriage and dissolve the marriage.<sup>43</sup> Under Indian laws, Divorce by mutual consent is recognized as a ground of dissolution of marriage under different

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<sup>42</sup> “India has the lowest divorce rate in the world: Countries with lowest and highest divorce rates”, Times of India, Nov 20, 2018, available at: <https://www.indiatoday.in/education-today/gk-current-affairs/story/india-has-the-lowestdivorce-rate-in-the-world-1392407-2018-11-20> (last visited on June 30, 2019)

<sup>43</sup> Kusum Lata bawlia ”law relating to divorce by mutual consent: contemporary developments” Delhi journal of contemporary law (vol.2) p,96.

statutory provisions as the section 13B of Hindu Marriage Act, 1955, section 28 of Special Marriage Act, 1954, section 32B of Paris Marriage and Divorce Act, 1988, section 10A of Indian Divorce Act and Muslim law.<sup>44</sup> These legislations set cooling-off period of six months given to the couple by the court to rethink their decision of getting divorced. Since in our country marriage is considered a sacred bond so the last opportunity known as a cooling period is given to the parties to rethink their decision and explore possibilities of settlement and cohabitation.<sup>45</sup> At the divorce trial the courts in India have the duty to follow different legal procedures before pronouncing separation. In case of petition by mutual consent, First Motion involves the joint filing pronouncement of separation is to be introduced to the family court by the couple on the ground expressing that they cannot live together any further and have commonly consented to break down the marriage or they have been living independently for a time of one year or more. <sup>46</sup>Both the parties have to sign the said petition. Husband & wife to appear before the court to record statements after filing of the petition. Both parties should show up in the family court after the filing of the petition.<sup>52</sup> the parties would introduce their legal counselors who have taken up their matter on their behalf. The Court examines petition, documents, tries reconciliation, and records statements. The court may endeavor to bring Reconciliation between the couples, if this is impossible to achieve then the Court continues for additional subsequent follow-up. After the petition is scrutinized by the court and is satisfied, the court orders the other party's statements to be recorded on oath. The Court passes the order on First Motion for Divorce Once the statements are recorded in the Court; the court passes an order on the First motion for divorce. Cooling-off period of six months given to the couple by the court to rethink their decision of getting divorced.<sup>47</sup> Since Indian marriage is considered as sacred bond so the last opportunity cooling period is given to the parties to rethink their decision and explore possibilities of settlements and cohabitation.

## **2.6 Legal frame works on cooling and divorce period in Ethiopia**

It is clear that family is the fundamental unit and the core of a given society. That is why family has become the concern of different disciplines such as sociology, anthropology, history, law and

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<sup>44</sup> Ibid.

<sup>45</sup> A brief outline on filing a divorce petition in India, the Author name and year of publication is not mentioned.

<sup>46</sup> Ibid. <sup>52</sup>

Ibid.

<sup>47</sup> Ibid.

others.<sup>48</sup> These disciplines give attention to the institution of family as the strength of a society to the largest extent hinges upon the strength of the family it has.<sup>49</sup> It is because of this that we need to give recognition and protection to this unit of society by law. As a result, every country in the world has enacted laws which have recognized and protected the institution of family. In addition to domestic laws, there are international human right conventions which have accorded protection to the institution of family.<sup>50</sup> The Universal declaration of human right recognized family as foundation of freedom, justice, and peace in the world.<sup>51</sup> Ethiopia, being part of the international community, has put in place laws which have recognized and protected family. Accordingly, basic principles of family law incorporated under the Ethiopian legal system; the FDRE Constitution, Regional Constitutions, the Revised Family Code of the FDRE and other regional family laws.

### **2.6.1 Ethiopian Revised Family Code**

The Federal revised family code enacted in the preamble stated the notion of: Family being the natural basis of society shall be protected by the society and the state, and that one of the means of protection is affected by regulating and governing family relation by law.<sup>52</sup> It is found necessary to settle disputes arising in family by a competent organ in a just and efficient manner; The RFC allows parties to seek for divorce by mutual consent and by petition.<sup>53</sup> Considering the freedom of the parties, the law allows the spouses to petition for divorce by agreement. However, it cannot be said that divorce even in cases of mutual consent is automatic. Since the state has the obligation of safeguarding the family, the courts are required to make some interventions. The intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce. The divorce by mutual consent is not necessarily a divorce without a cause. The spouses may have, and in many situations, do have causes for separation. However, under the mutual consent divorce, they are not required to divulge their reasons to the court.<sup>54</sup> The spouses

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<sup>48</sup> Aschalew Ashagrie and Martha Belete' 'Ethiopians Law of Family Teaching Material'' 2009, p2.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Universal Declaration of human rights, Adopted and proclaimed by General assembly resolution 217A (111) of 10 December 1948.

<sup>52</sup> Ethiopian Revised Family Code Proclamation No. 213/2000, Extraordinary Issue No. I of 2000 Federal Negarit Gazette, July, 4, 2000.

<sup>53</sup> Ibid, art. 77 and 81.

<sup>54</sup> Ibid, art.77/3m.

<sup>61</sup> Ibid art.78/2.

are saved the necessity of revealing their reason and of reciprocally covering themselves with hatred and ridicule. If on the other hand, the parties are not willing to renounce the divorce, the court may order a cooling period.<sup>61</sup> Divorce by mutual petition is not available for everyone. Those newlyweds, whose marriage has not lasted for six months may not seek divorce by mutual consent.<sup>55</sup>

In divorce by petition, it may be only one of the spouses who requests for the ending of the union; or alternatively, both the spouses may request the divorce. Here also, the spouses are given the discretion either to state their reason or not.<sup>56</sup> In this type of divorce the court has an obligation to speak to the spouses either separately or jointly, with a view of convincing them to renounce their petition.<sup>57</sup> The RFC also envisages a possibility of referring the case to family arbitrators.

That is to say, the court is given the discretion to refer the case for arbitrators.<sup>65</sup>

However, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months.<sup>66</sup> Hence, as far as arbitration is concerned, the role of the court will be to advise the parties to solve through arbitration. Where the reconciliation process either through the arbitrators or the cooling period fails, the court is duty bound to pronounce divorce within a month from the receipt of the arbitration report or end of the cooling period. From these provisions of RFC in both divorce by mutual consent and divorce by petition the court will grant spouse the cooling period up to three months.

### **2.6.2 Oromia Revised Family code**

FDRE constitution states can enact family law as long as this power (exclusively or concurrent task) is not expressly as the mandate of Federal government or the states. As a result, family law matters are within the domain of regional state powers and it is pursuant to this power that most regional state have enacted their own regional family code.<sup>67</sup>

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<sup>55</sup> Ibid.art.77/2.

<sup>56</sup> Ibid. art.81.

<sup>57</sup> Amato, P. R.” People's reasons for divorcing: Gender, social class, the life course, and adjustment. *Journal of Family Issues*, 24(5), 602–626.2003.

## **2.7 Impacts of divorce on couples, their children and society**

Divorce is believed to have vicious circling and complicated social, economic, psychological, and health impact on divorcing parties and their children.

### **2.7.1 Effect of divorce on divorce**

According to Article 64 Oromia Revised Family Code, spouse owes each other respect, support and assistance. This is the very essence of marriage. The spouses are expected to respect support and assist each other. This rule is a mandatory provision because it prohibits the spouses from making an agreement in violation of this rule. According to Article 66 spouses will have equal rights in the management of their family. Management of the family mean, the administration of their common property, rearing their children in a proper manner, etc. However, we must also note that Article rules that if one of the spouses becomes incapable to perform these activities, that is, one of them, is seriously sick, desert the marital house, or jailed, etc..., the other spouse should perform these activities alone.

At the event of divorce Amato proposed a straightforward model to understand why marital disruption affects most people negatively.<sup>58</sup> According to this model, divorce should be viewed, not as a discrete event, but as a process that unfolds over months and even years. During this time, a variety of stressful life events typically occur. These stressors include a decline in the standard of living, which generally results from splitting one house hold into two and losing economies of scale. Formerly married individuals often move following divorce, and this is a time consuming and stressful experience for many people.<sup>59</sup>

### **2.7.2 Effect of divorce on children**

Divorce affects children's social relationships in several ways. Some children act out their distress about their broken family by acting aggressive and by engaging in intimidation behavior, both of which can negatively affect peer relationships.<sup>69</sup> slow academic achievement is another common way that divorce affects children. The emotional stress of a divorce alone can be enough to lower the child's academic progress, but the lifestyle changes and instability of a broken family can contribute to poor educational outcomes because of instability of the environment at home.<sup>70</sup> The study conducted by Askalemariam and Minwagaw showed that the possible consequence of

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<sup>58</sup> Amato, P. R." People's reasons for divorcing: Gender, social class, the life course, and adjustment. *Journal of Family Issues*, 24(5), 602–626.2003.

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divorces were anti-social behavior, school dropout ,engage in addiction, develop delinquent behavior, theft and immoral acts of conduct can be develop in divorced families.<sup>71</sup>

### **2.7.3 Effect of divorce on society**

A family is not just a collection of individuals who live together; the individuals are related to each other and as a natural social system, it possesses its own characteristics, rules, roles, communication patterns, and power structure.<sup>72</sup> If a problem occurs within a family, one person will not be blamed but all family members as a whole because no behavior can be understood in isolation and all behaviors are considered as part of ongoing, interactive, and recurring events.<sup>73</sup> Marriage and divorce are social issues as well as private concerns. The success and failure of our marriage have consequences beyond our personal lives. Individuals at the crossroads of divorce help not only just themselves and their families but also their neighborhoods, communities, and nation when they are able to repair their relationships and establish a healthy, stable marriage.<sup>60</sup> Divorce has become a serious problem; challenging the establishment of the family in a routine manner and causing severe economic, social, emotional, and mental health impacts on divorcee.<sup>61</sup>

## **2.8 Judicial roles and responsibilities on family law cases**

Judges are now significantly involved in assisting people to reach an agreement (settlement) in a formal judicial dispute resolution process, unlike the approach in the traditional adversary system where formal decisions are made in hearings or trials. In doing so, judges can mediate disputes and often provide non-binding opinions about substantive outcomes, and what a fair and just result would look like.<sup>62</sup> They apply rules and norms to human beings embedded in complex, social situations. To judge justly, they must appreciate the human beings and situations before them, and appreciate the lived reality of the men, women and children who will be affected by their decisions.

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<sup>60</sup> Mulugeta Deribe "The Effect of Divorce on Families' Life" Journal of Culture, Society and Development Vol.46, 2019, p7.

<sup>61</sup> Ibid.

<sup>62</sup> Donna Martinson and Margaret Jackson, "Family Violence and Evolving Judicial Roles: Judges as Equality Guardians in Family Law Cases" (2017) 30:1 Can J Fam L 11.

## **CHAPTER THREE**

### **ANALYSIS OF FINDINGS**

#### **3.1 Introduction**

This chapter presents and analysis the procedures and duration of time granted by North Shoa courts While entertaining in divorce petition relation to cooling period under the Oromia family code and the practice of Implementing the procedure during entertaining divorce petition at family benches of at North Shoa First Instant Courts. So far this has been done on the basis of the frame works clarified earlier on this paper, the main objective of family law, objective of Ethiopian family policy, the principles of FDRE on protection of family, the provisions of Oromia RFC and Ethiopian RFC on cooling period, the obligations imposed on judiciary on protection of family. In addition, the researcher analyzed the practical problems on implementation of Oromia RFC regarding cooling period during divorce proceeding and identified the prospects to ensure implementation of provisions of Oromia RFC on cooling period. This chapter has three parts. The first part consists of the interview of Presidents of four (4) North Shoa FIC's, judges and social workers at North shoa First Instant courts. The second part contains, Cases observed by the researcher. The third part consists of case analysis. Under this part the cases files of two years; 2014 and 2015 collected by the researcher from four North Shoa FICs are mentioned and analyzed by the researcher.

### **3.2 Analysis of data from interview**

In merit of North Shoa zone, to assess the implementation of provisions of Oromia Revised family code on cooling period during divorce and to investigate the effects of pronouncement of divorce without granting reasonable cooling period provided by the law, the researcher interviewed twelve (12) purposively selected individuals from purposively selected North shoa District courts.

#### **3.2.1 Responses made by four presidents from four selected North Shoa District courts**

The proclamation no. 216/2011 (proclamation enacted to redefine the Structure, Powers and Functions of the Oromia Regional State Courts) mentioned the powers of district courts. As provided under article 17 of this proc. the president of district court has the powers; to Administers and represents the court, assigns and administers judges and appointees of the court have ultimate responsibility for monitoring the conducts of the court employee; Prepares and submits plans and reports of the District Court to the high Court; Follows up and administers the activities and resources of the court. Based on this, the researcher interviewed four (4) presidents of selected North shoa District courts; Girar Jarso, Debra Libanos, Wacalee and Dagaam. The responses made by four presidents of Girar Jarso district court, Libanos district court, Wachale district and Dagaam district court on practice of laws regarding cooling period during divorce proceeding was analyzed here under.

As I made interview to president of Girar Jarso district court, he explained, they are not granting cooling period of up to three months as prescribed under article 102 of Oromia Revised family code. He said that, in Girar Jarso district court, in case of both divorce by mutual consent and petition the court is not granting spouse cooling period up to three months as enacted under Oromia RFC and the maximum cooling period they are providing is 7(seven) days.<sup>63</sup> He stated that, granting little days of cooling period has no contribution on rising of divorce rate as many spouses come to court after their marriage is broken at home.

As his view, granting cooling period up to three months will affect the interest of spouse who do not need their marriage and claiming for divorce,<sup>64</sup> it results in delay of justice as many of them came to court for divorce after they unable to solve their dispute by themselves and through

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<sup>63</sup> Response of Interview made to Shawaragaa Isheetu president of Girar Jarso district court on June 24, 2023 at his office, question. No.1.

<sup>64</sup> Ibid, response for question No.2.

arbitration. He further explained, in Girar Jarso Woreda court most of the divorce petition is made by the women, they need to leave their marriage through divorce after they face different kind of abuse from their husbands.<sup>79</sup> In this case Granting long time of cooling period will result in encouraging women abuses and it affect their right to be protected from domestic violence.<sup>80</sup>

Lastly, he raised it is difficult to implement cooling period provided under Oromia revised Family code as there is lack of human resource. Granting cooling period in respective of law may result in case back load and delay of justice. This will affect the constitutional right of spouse right to access to justice which is provided under art.37 of FDRE constitution and the court is at freedom to grant short days of cooling period or will pronounce divorce without giving cooling period if it thinks there is no opportunity of spouses will change their idea of divorce though they give cooling period.<sup>65</sup>

In interview made to president of D/Libanos district court stated that, Libanos FIC the court is not granting cooling period in line with provisions of Oromia RFC.<sup>66</sup> He said, from very beginning cooling period prescribed under RFC is not mandatory provision of law the law give discretion for the court to grant cooling period up to three month if it believes granting cooling period will fix the marriage of spouse. If the judge at court don't think so, granting cooling period is not important. He explained that, at Debre Libanos District court the maximum cooling period the judges giving for spouse during divorce trial is 6 days and there are many divorce case files get judgment of divorce without granting cooling period<sup>67</sup> Additionally, during the cooling period of divorce, because of the suspicion and infighting between the husband and wife, in practice, there may be a situation in which the husband and wife transfer property maliciously for their own private interests.<sup>84</sup> This will affect the economic interest of husband and wife and equal right over common property they have owned within their divorce.

On interview made to him the President of Wachale District court , said at Wachale District court the judges who are entertaining family cases granting cooling period for divorce issue.<sup>68</sup> But we are not giving cooling period more than one weak for every divorce files. The cooling period

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<sup>65</sup> Ibid.

<sup>66</sup> Response of interview made to Tasfayee , the president of Libanos district court on June 20, 2023 at his office, Question NO.1.

<sup>67</sup> .interview made with Mr.Solomon Dagne president at Degem Woreda Court on june 2023 at his office.

<sup>68</sup> Response of interview made to Abadir kebede, the president of Wacalee district court on June 21,2023 at his office, question No.1

provided under Oromia RFC is difficult to apply both for divorce by mutual consent and petition. Specially in case of divorce by mutual consent, granting cooling period with the intention of changing the couple's idea of divorce has no any benefit than wasting the time of divorcees and delaying their right to get out of marriage they are not interested in.<sup>69</sup> He explained that, granting long cooling period like two or three months may result in case backload and delay of justice. And also, it may raise further dispute between husband and wife who insist on idea of divorce. The main procedure the court shall not miss during divorce trial is referring the case to arbitrators as disputants can talk to third party than a person than their opposite side.<sup>70</sup> He raised that, there is high divorce rate at Wachale district court 90% of divorce petition have been ending with divorce decree, I think this high divorce rate has no direct or indirect connection with giving cooling period or not rather it is losing interest on continuity of marriage by men and women as a result of long time dispute at their home before coming to court.<sup>71</sup>

The President of Dagem District court also said that, the judges at court are not granting cooling period in respect to provisions of Oromia Revised family Code. He stated that, in case of cooling period the practice at court is totally different from what provided by the law, as granting cooling period taken as the discretion given for judge by the law.<sup>72</sup> He rose that, giving cooling period up to three month is impossible because in the court of law there is competition among the judges, to be the one who have good performance among others. One parameter used by the courts to measure performance of judges is the number of files they have decided.<sup>73</sup> In order to decide the case with in short period of time the judges weren't give cooling period up to three months for a single divorce case. He said that, cooling period will help the husband/wife to renounce their idea of divorce as they get chance to rethink on their decision to divorce and they may assess the consequence of divorce on their personal life, children, economy, and etc. He added "Among the major obstacles in granting long period and repeated cooling period was competition among judges in clearance of cases at their hand for their efficiencies."<sup>74</sup>

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<sup>69</sup> *ibid.*

<sup>70</sup> *Ibid.* Question.No.2.

<sup>71</sup> *Ibid.*

<sup>72</sup> Interview made to Salamon Dagne President of Dagaam FIC, on June 19 at his office. Question No.1

<sup>73</sup> *ibid.*

<sup>74</sup> .Id

Accordingly responses made by Presidents of four selected North Shewa First District courts, reveals that there was not practical implementation of provisions of Oromia Revised family code regarding cooling period. Oromia RFC art. 101/1 states that the intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce. Art.101/2 stated that, if on the other hand, the parties are not willing to renounce the divorce; the court may order a cooling period up to three months. In case of petition for divorce art.105/3 stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months. That is to say, court is given the discretion to refer case for arbitrators. But in practice of these courts granting a single phase and very short days of cooling period and there was no case referred to family arbitration. Considering the freedom of the parties, the law allows the spouses to petition for divorce by agreement. However, since the government has the obligation to safeguard the family, the courts are required to make some interventions. Accordingly, in both request of divorce by mutual consent and petition the court shall intervene. One way of intervention of court is by giving cooling period. Pursuant to art. 101/1 of Oromia RFC the intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce. Art.101/2 stated that, if on the other hand, the parties are not willing to renounce the divorce; the court may order a cooling period up to three months. In case of petition for divorce art.105/3 stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months.

This does not show giving cooling period is the discretionary power of court. The discretion of court here is deciding the duration of cooling period which enable the husband and wife to renounce their decision to divorce idea. Here the courts have not power to pronounce divorce without granting cooling period. If it does so, it is procedural irregularity committed by the court. Even though the minimum duration of cooling period is not provided by the law, the court could order cooling period not greater than three months. The judge at court is at freedom to grant cooling period up to three months depending up on circumstances. Generally, response of these presidents revealed that, in North Shewa zone District Court the power whether to give cooling period or not for husband and wife during divorce proceeding is fall in the hand of single judge entertaining the case. It also shows due attention is not given to the objective of family law on granting cooling period and the benefit of cooling period in saving marriage.

### 3.2.2 Responses made by four social workers of North Shoa District courts

Social service and justice system are in many ways two distinct spheres and invariably the responsibility of separate ministries, but the occasions and ways in which they could and should interface and cooperate are numerous and important for the implementation of the justice system goal and peoples right.<sup>75</sup> This is because service in the justice system has multiple features and needs of service users cannot be fully covered only by the legal service as most of the cases have social and psychological features.<sup>76</sup> In family bench social work service involvement is cases with custody investigation, in this bench social worker contribution to the court bringing the psychosocial aspect of the case and providing a clear image about family so the court can reach on the right decision.<sup>77</sup>

In addition, if social worker believes that, family should get additional support he/she will send them to referral system for further support. For instant, if economic problem is the cause for disintegration of the family, the social worker will send the family to referral system for economic support. The economic support they can get help in saving family from integration. Based on this fact, the researcher selected and interview four (4) social workers from four purposively selected North Shewa district courts to investigate practical implementation of provisions of RFC on cooling period during divorce proceedings. Under this part of the study, the response made by these social workers are analysed by the researcher.

One of the participant from Girar Jarso Woreda Court and described his idea in this way:

*‘It has been three years since I joined the Girar Jarso Woreda court as a social worker, but I never seen when the judges at court provide cooling period which is adequate to help the divorcee to change their decision to divorce. Both the revised family code and Oromia family code provides a cooling period that reaches up to three months which its duration and frequency will be determined upon the complexity of cases. In this court there were many numbers of spouse opened files for divorce and majority of them ended with divorce. From my experience as social worker here I come across many custody investigations and have been provided psychological service for divorcee and their children. The challenge I have observed in this court is, the judges at court mainly focus on their individual performance by deciding the cases filed before them with in short*

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<sup>75</sup> Biniam Hailu ” Roles and contribution of social work practice in court setting and its support system: The case of G/Jarsoo district court , june 2013 , supra note.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

*period of time than solving dispute among wife and husband by following the Procedure of the law. So, they don't want to grant spouse enough cooling period during divorce; either they give them very few days which not enable spouse to rethink about their decision to divorce but even not able to release them from their frustration on the issue or they pronounce divorce decree without giving any cooling period. This is common especially in divorce by mutual consent. In my opinion the concerned body shall take measure to correct this action of court. ''<sup>78</sup>*

On interview made with the social worker at Wachale District court. He explained that, *“Although I'm not a law professional, from my experience at court, I know the Oromia Family law provided cooling period up to three months during divorce in which the husband and wife could being calm and think repeatedly on their decision to divorce. But in Wachale district court there is no such practice of granting cooling period up to three months. From very beginning there is no commitment among judges to solve dispute among husband and wife force them to petition for divorce. When husband or wife or both made petition of divorce come before court their marriage dissolved on the basis of their request at least within three weeks or one month from the date of petition for divorce. Failing to grant cooling period or giving an inadequate cooling period for spouse during divorce proceeding has great role on accelerating the divorce. The court shall not make divorce automatically as parties request it. It is better if the court give for husband-and-wife certain period of time in which they could review their idea of divorce. As a social worker I have strong interaction with the society in this Woreda especially with those have divorce file in Wachale district court From my experience of this court and society, I understand divorce is series problem in this Woreda; there is high rate of divorce. Divorce has crisis on divorcee, their children and in the community. So, I believe Wachale district court has the potential to reduce rate by solving the dispute among wife and husband seeking divorce if exhaustively use of procedures provided by family law. ''<sup>79</sup>*

On interview made with one of social worker at Debre Libanos Distict court he gave his idea as follows:

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<sup>78</sup> Response of interview made to Biniam Hailu who is social worker at Girar Jarso district court, on June 24, 2023 at Girar Jarso District court.

<sup>79</sup> Response of interview made to Desalegn Tulluu who is social worker at Wachale district court on June 21,2023 at Wachale district court.

*In Debre Libanos Woreda court the court the court the judges have been making different efforts to solve the marital disputes come before court of law in the form of divorce petition which arise from grievances of spouse which they unable to solve by themselves at home. The court at first place talk to husband and wife jointly and separately to renounce them their decision to divorce, most of the time this is not effective and the court refer their case to arbitrators of their choice. When they fail to solve their issue by arbitrators, the judges say to them like'' when you fail to mediate with in coming three or four or five.... (. will be up to one week) your marriage will be dissolved in line with your petition on next trial''. I think this is not giving cooling period; rather it is day of appointment for divorce decree. Cooling period has no applicability in this court.<sup>80</sup>*

The last interviewee from social worker in North Shoa district court with social worker at Degem district court. He explained that:

*“the practice of using coiling period as a means to avoid dissolution of marriage by divorce is no adopted at Degem district court. In this Woreda court there is high numbers of divorce filling and majority of them end with dissolution of marriage. The courts try to solve the spouse issue by encouraging them to reconcile by arbitrators but, when they fail to reconcile the court automatically pronounce divorce judgment. If the court grant spouse reasonable cooling period, it will help them to renounce their idea of divorce and it may increase the cancellation of divorce filings.”<sup>81</sup>*

All above participant of interview (social workers) clarified that, there is high rate of divorce filling in North Shoa Zone district courts and many of them ended with dissolution of marriage/ judicial separation of spouse, as a result of lack of effort made by the court to rebuild their relationship. Their view shows, judges at court rush to divorce decree without giving cooling period for conflicting party. Their response revealed that, the root cause for the absence of sufficient cooling period was competition among judges on clearing files at hand for the matter of efficiency, hotness of the parties at the initial days of litigation, lack of assistance from third parties such as psychiatrists and arbitration.

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<sup>80</sup> Response of interview made to Abraham Dajane, social worker at Libanos District court on June 21, 2023 at Libanos district court.

<sup>81</sup> Response of interview made to Dawit Adugna, social worker at Dagaam District court on June 20, 2023 at Dagaam district court.

### **3.2.3 Responses made by four judges of family bench at North Shoa District court**

The Ethiopian family law empowers family courts with the right to discuss with the spouses separately or jointly and counsel them to renounce their intention to divorce. Further the Federal and regional family laws , the court is entitled to grant a cooling period, not exceeding three months, as a cooling period to the spouses. Under Oromia Revised family code too the spouses are at freedom to make petition for divorce by mutual consent. Though the Oromia Revised family code allowed spouses petition for divorce and to dissolve their marriage, the court shall not immediately give decision to divorce before exhausting all the meanness to bring the spouse in to agreement in order to renounce their petition for divorce. Oromia RFC art. 101/1 states that the intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce. Art.101/2 stated that, if on the other hand, the parties are not willing to renounce the divorce; the court may order a cooling period up to three months. In case of petition for divorce art.105/3 stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months. That is to say, court is given the discretion to refer case for arbitrators. But the practice in North Shoa courts of Oromia is found inconsistent with intention of the law and legislator. in an interview made with judge participants from judges at Girar Jarso and Wachale woreda courts , who were entertaining family case responded in similar way, that though the law provides a cooling period up to three months depending upon the complexities of the cases, there is not clear procedural guidelines which is used as an instrument for determining the complexities of the cases. There is not laws and guidelines that determines minimum days of cooling period and frequencies of cooling period. According to data from an interview in most cases a judge gives only a single and very short days of cooling period. The cooling periods were too short and rushed one. After six months of their marriage spouses can submit a request to the court for divorce together with agreed provision for financial division and child arrangements by agreement or one of the spouse alone may claim for the pronouncements of divorce. Six months after marriage, Divorce and petition for divorce is a democratic right for each of the spouses. But due to many socio legal factors the demands for the implementations of cooling period to save the family.

Accordingly data from Wachale and Girar Jarso Woreda Courts reveals that, the practical implementations of cooling period was very poor .In a most cases a single and a period of less than one week cooling period was granted for the spouses to settle and save their marriages. in

most cases courts were not seen re-directing the issue for family arbitration or grant second chance Full application of provision of Oromia Revised family code that prescribe cooling period during divorce trial at their court.<sup>82</sup> They raised that, the problem regarding implementation of provision of family code is not limited to divorce and cooling period, there is series problem as a whole in entertaining family issue in this court and courts in Oromia in general.<sup>83</sup> They stated that, from very begging the problem on family case at court of law started with problem related with structure of court benches. Basically, to entertain family cases it is better if there is family court and family court judge.<sup>84</sup> data from the interview also reveals that among the main obstacles to practically implement repeated cooling period were lack of clear guidelines and procedures for equal implementations as the complexity of the case requires. Mr. Elamo stated that, short cooling period has multi socio-legal problems on divorcee are spending properties saved over years within, very short period for advocates, litigation, and other purposes. He also presented that, the problem extends on the life's and well beings of their children, Children's should live with both their mother and fathers, but separations of family by divorce hinders to live with their families, and even the society. the provisions of Oromia Family code clearly granted spouse cooling period up to three months during divorce trial, but there is problems in implementation of these provisions of law 9 in those district courts in North Shoa region of Oromia Courts, judges seen to give divorce decree without following procedural mechanism set by law to save marriage; cooling period or they grant only unreasonable time of cooling period. Therefore, this area need special attention as divorce has negative consequences on divorcee, children, society and country in general. Further participant from Girar Jarso has explained, that at their court (work place) they are not granting repeated cooling period which was sufficient to fix marriage. According to the interviewee the main cause of short days cooling period and practical in implementations of sufficient time was due to back load of other Civil and Criminal cases. Though. Family cases by their nature can comprise a significant portion of court's total case load as for many people the only time they come to court is through separation or divorce proceeding.<sup>85</sup> Mr. Tesfayee separately rose that, at Girar Jarso district court the effort is made to establish independent family and child bench in

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<sup>82</sup> Response for interview made to Tasfayee Tayee and Elamoo Abdi judges at Girar Jarso and Wacalee district court respectively on June 15, 2023 at their respective court.

<sup>83</sup> Ibid.

<sup>84</sup> ibid

<sup>85</sup> Ibid.

accordance with article 32/2 of Oromia courts re-establishment proclamation No. 216/2011, but the established child and family bench is symbolic, the judges at called family bench entertain all type of cases filled at the court. As a result of this mess divorce issue does not get due attention. The same is true for cooling period, in which the judges give cooling period only from 2 days to 7 days as they want.<sup>86</sup>

Ayyanoo Tiya who is judge at Libanos district court responded that, The distirc court allows parties to seek for divorce by mutual consent and by petition. Considering the freedom of the parties, the law allows the spouses to petition for divorce by agreement. However, the court should not automatically declare divorce up on every petition. He raised that, giving cooling period during divorce proceeding is discretionary power of court, it is up to the judge before court of law believe either to give cooling period or not. but due to back load of files and competitions among the judges to clear files at hand mostly only short days of cooling period were granted. More he believed that in order to implement up to three months cooling period accompanied and exhausted by and Family arbitration under the revised federal family code the current structures of court shall be changed and the family court must establish independently.<sup>87</sup>

He stated that the state has an obligation of safeguarding the family bond. Though it was the discretionary power of the court to determine the days of cooling period Oromia family law stated that ,,,,, Thus the courts are required to make some interventions to preserve the bond of the family through an instrumentality of cooling period. According to Mr. Ayyanoo in most cases at their court only a single phase of cooling period were granted for spouses to think over their issues and the culture of redirecting the spouses to family arbitration and granting repeated cooling period was not adopted. Mr. Ayyanoo believes that very short days of cooling period has a negative effects on the life, properties and children's of the spouses. According to him entertaining family cases needs special training and experience from one's personal life and cases and adjudicating family issues are not merely interpreting the law, it requires special training and experiences.

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

### 3.2.4 Analysis of data from Case Analysis

**Table 1 Survey of divorce case files decided at four selected North Shoa FICs in the past two years-2014 and 2015 E.C**

No	File No.	FIC Court who saw the case	Date file opened	Divorced by mutual consent	Divorced by petition	Cooling period given	Date of divorce decree
1	55960	Girar Jarso	07/05/2014	√	-----	4 days	11/05/2014
2	54980	Wachale	01/07/2014	-----	√	5 days	06/07/2014
3	55247	Girar Jarso	13/03/2015	-----	√	2 days	15/03/2015
4	52032	Libanos	06/08/2014	-----	√	3 days	09/08/2014
<b>5</b>	<b>54855</b>	<b>Degem</b>	<b>02/10/2014</b>	-----	√	<b>7 days</b>	<b>Ended by agreement on 09/10/2014</b>
6	51580	Wachale	25/06/2015	-----	√	10 days	05/07/2015
7	52852	Girar Jarso	17/08/2014	-----	√	7 days	25/09/2014
8	52147	Libanos	03/10/2015	-----	√	3days	06/10/2015
9	55205	Wachale	19/04/2015	√	-----	4 days	23/04/2015
10	54812	Degem	04/07/2015	√	-----	2 days	06/07/2015
11	55449	Girar Jarso	15/02/2015	√	-----	3 days	18/02/2015
12	55247	Wachale	24/09/2014	-----	√	11 days	06/11/2014
13	55458	Libanos	13/05/2014	-----	√	5 days	21/06/2014
14	55856	Girar Jarso	09/09/2014	-----	√	4 days	11/09/2014
15	54553	Degem	16/10/2014	-----	√	3 days	25/04/2014
16	55284	Wachale	05/09/2014	-----	√	7 days	29/10/2014
<b>17</b>	<b>54430</b>	<b>Girar Jarso</b>	<b>02/06/2015</b>	-----	√	<b>7 days</b>	<b>Ended by Agreemen</b>

							<b>t on 10/07/2015</b>
18	52289	Libanos	22/08/2015	-----	√	3 days	20/08/2015
19	55449	Wachale	30/03/2015	√	-----	4 days	01/04/2015
<b>20</b>	<b>54855</b>	<b>Degem</b>	<b>14/08/2015</b>	-----	√	<b>15 days</b>	<b>21/09/2015</b>
21	44816	Girar Jarso	12/05/2014	√	-----	2 days	10/06/2014
22	52183	Libanos	13/09/2014	-----	√	3 days	02/10/2014
23	55469	Wachale	11/02/2015	-----	√	4 days	17/02/2015
24	54864	Degem	17/09/2014	√	-----	4 days	02/10/2016
25	52315	Girar Jarso	14/06/2015	-----	√	7days	20/07/2015
26	52123	Libanos	09/07/2015	-----	√	3 days	01/08/2015
27	41656	Wachale	01/04/2014	√	-----	2 days	20/04/2014
28	54673	Degem	19/09/2015	√	-----	3 days	23/10/2015
<b>29</b>	<b>55576</b>	<b>Girar Jarso</b>	<b>28/07/2015</b>	√	-----	<b>15 days</b>	<b>Ended by Agreement on 25/08/2015</b>
30	55565	Libanos	08/02/2015	-----	√	5 days	02/03/2015

**Source: The dead files observed at four purposively selected North Shoa district courts on May 20, 2023- June 14, 2023.**

As observed from above table, the cooling period granted for spouse during divorce proceeding at North Shoa Woreda Court was too short. From the observed 30 dead files in 4 cases (13.3%) the spouses are given only cooling period of 2 days. Among those four divorce files granted a cooling periods of Two days the first case file No-55247 was filed at Girar Jarso woreda court. This file was brought by petition from a woman living in marriage relationships for six years. She filed petition on 13/03/2015 in Ethiopian Calender, claiming for decree of divorce, partition of common property and payments of maintenances for their five years old daughter. The court had gave two days cooling period and declared their divorce on 15/03/2015 but, as litigation for petition of common property continued for weeks the parties have submitted a written agreement of reunion on 22/04/2015 stating the denouncements of the divorce and partition of property. While investigating their agreement the researcher founds that interferences of family arbitration and reprimanded by their Holy Father (Nebs Abat) to denounce their divorce and finally the court had merely closed their files without approving their agreements. Thus as we understand from the case at hand ones the court declare divorce it's impossible to approve their agreements to denounce the divorce issues. Had the court gave enough days of cooling period and re directed for family arbitration the issue could be settled without the pronouncements of decree for divorce. an other files investigated by the researcher was file from Degem Woreda file No-54812. This was filed

by a woman on 04/07/2015 in Ethiopian Calender and a decree of divorce was pronounced on 06/07/2015. Evidences in the file reveals the spouses were living separately . The man was lived here in Ethiopia while the woman was lived in Dubai for three years after they concluded marriage, up on her return in Ethiopia the man has started living with another woman in bigamous marriage. The woman filed petition only claiming decree of divorce, and the court declared their divorce two days later. The researcher had also investigated file No-54812 from Wachale woreda court and file No 44816 from Girar Jarso woreda courts in both cases the courts had gave only Two days cooling period. both of the files had the same story with the case at Degem woreda court.

The researcher has investigated 8 files with petition for divorce, among which five files that, file NO-52032,52123,52289,52183 and file No 52147 were from Debre Libanos woreda Courts.in all the above five cases only a single phase of cooling period was rendered. None of the above files were re- directed for family arbitration, among those files file No-52032 and 52147 reveals the petition was filed by women who were lived in marriage for more than 15 years. Both families had huge family and many children's, here the researcher has observed that merely declaring divorce is not seen visible by the researcher. Those families might have constructed strong socio-cultural bond with the society. Thus had the case was re-directed for family arbitration or had repeated and enough days of cooling period was given to settle and fix their marriage. In the other two cases file No-54673 and 54553 from Degem Woreda Courts and one file No-55449 from Girar Jarso woreda court were not rendering a second appointments for cooling period. Though it is the power of the Judge to determine the durations of cooling period from one day to three months based on importance of fixing marriage and the complexity nature of the cases the researcher observed short and the same days were rendered regardless of the differences in back grounds of cases. Hence from the above cases we can conclude that courts are not sufficiently serving with the purposes of cooling period.

The researcher had investigated files which were rendered only four days of cooling period. Two files File No-55960 and 55856 from Girar Jarso and File No-55205, 55449, and 55469 filed at Wachale Woreda Courts and one additional file No-54864 from Degem woreda Court has been investigated and critically analysed. Accordingly all of the above cases has been granted only four days of cooling period in a single phase. in all of the above cases the court didn't seen re directing the spouses to family arbitrations or other stake holders. All the cases at Wachale woreda first instances were entertained by the same judge and granted uniformly four days of cooling period.

Though its discretionary powers of the court to determine duration and days for cooling period, granting uniform days of cooling period didn't seem visible to the researcher.

Those four files with five days cooling period that file No-55565,55576,55458 from Debre Libanos and one file No-54980 from Wachale woreda court were investigated by the researcher. Accordingly except one file at Debre Libanos Woreda Court Which Was ended by agreements of marriage fixation the remaining three cases were ended by divorce. in all the three cases only short days and a single phase of cooling period was granted by the courts. Among those files file No-55576 was exceptionally ended by agreements of the parties to fix their marriage, The petition was filed by a woman who was lived in marriage for 28 years and have 7 children's, together with her husband. In this as spouses fixed their marriage and submitted written agreement to renounce divorce issue, the court had received and closed the file upon the approval of agreement.

Finally the researcher has identified and observed files which a cooling period ranging from one up to Two weeks was granted. Accordingly, the evidences from the file reveals that four files that, File No-54278 which was entertained at Degem woreda court, File No-52315 and 52882 from Girar Jarso and file No-55284 from Wachale courts were granted a cooling period ranging from seven up to fifteen days and ended without fixing marriage. Three files File No-55247 from Wachale woreda courts, file No-54855 from Degem woreda court and another one file No-54430 from Girar Jarso woreda Court was ended by settlements of disputes and fixation of marriage. Compared two those 26 cases ended with declaration of divorce those four cases were granted relatively with enough days to calm down the spouses and enables to think over their family issue. All courts under the study declared dissolutions of the marriage with in time of 2 weeks to one month from the day petition for divorce is filed before court. From total observed dead files in 8 files which amounts (26.6%) of them the court grant cooling period of 3 days for the parties. an other 7(seven) files that amounts 23.3% with four days cooling period and four files i.e. 13.3% by granting only a period of five days cooling period. While the other 7(Seven) which amounts 23.3% of deceased files show cooling period ranging from one up to two weeks intervals. Generally, among The 30(Thirty) observed files by the researcher 26 files which amounts 86.7% were ended with divorce. Thus evidences from case observation of those four courts reveals decrees of North Shoa courts family bench were not followed by repeated re direction to family arbitration or enough days appointment that could make parties to seriously think over the issues.

## **CHAPTER FOUR**

### **CONCLUSION AND RECOMMENDATION**

#### **4.1 Conclusion**

Under this chapter the researcher provided the conclusion and recommendation of the study.

The FDRE Revised Family Code and Oromia RFC is an important embodiment of the integration of legislation in family protection it is of great value in preventing rash divorce, maintaining marriage and family stability and building a harmonious and equal marriage and family relationship. Although divorce is couples right to leave the marriage they don't interested in, the law taken divorce as last resort the court shall take when the marriage of spouse is impossible to fix. The law set different procedural mechanisms including 'cooling period' that need to be followed by the court before pronouncement of divorce. Cooling period is procedural mechanism that needs to be observed by the court, which is considered as marriage preservation mechanism. Despites, these legislations enacted the provisions clearly granted spouse cooling period up to three months during divorce trial, there is problems in implementation of these provisions of law in district courts in Oromia, judges preferred to give divorce decree without following procedural mechanism set by law to save marriage Oromia RFC art. 101/1 states that the intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce. Art.101/2 stated that, if on the other hand, the parties are not willing to renounce the divorce; the court may order a cooling period up to three months. In case of petition for divorce art.105/3 stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months. Accordingly ; The court shall not immediately give decision to divorce before exhausting all the meanness to bring the spouse in to agreement in order to renounce their petition for divorce. Accordingly, results from purposively selected interviewee indicates though the law gives discretionary power to

determine duration of cooling period flexibly, courts were applied the same and short days of cooling period in a single phase. results from data shows that lack of special training on family issues and competition among the judges to clear the cases at hand for the matter of efficiency was the major obstacles to grant repeated phases for cooling and settling disagreement through family arbitration. short days of cooling period was found to have negative effect in fixing and settlement of disputes by agreement. regardless of objectives of cooling period in family law, especially In cases of petition for divorce on art.105/3 which stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months the courts under the study were merely declare divorce and poor implementations of the Cooling period at all the four first instance courts of family benches. The evidence shows that in the entire petition for divorce all the four North Shoa family benches rendered one month and less cooling period. Among those thirty files 26 files which amounts 86.7% of the files were ended with divorce.

Therefore, the cooling period rendered by all the four first instance courts at North Shoa was too short for the couples to re thinking over the negative consequences of divorce and remit their petition for divorce. A single and too short cooling period doesn't have legal support and it's unlike with the intention of the legislator. Thus this area needs special attention as divorce has negative consequences on divorcee, children, society and country in general.

## **4.2 Recommendation**

Since different causes of divorce and their consequences identified among North Shoa courts divorced community, on this basis of its implication, the researcher is recommending that:

### **1. A Flexible “Time Setting” Should Be Set during the Cooling-Off Period for Divorce**

The Federal and Oromia RFC order the courts to provide cooling period up to three months depending up on the cases for purpose of saving couples marriage by giving them chance of repeatedly thinking over their issue and change their intention of divorce. At the same time, the parties are given the right to apply for suspension or extension at any time during the cooling-off period of divorce. Therefore In order to fully protect the interests of divorce parties and teenagers, I recommends the system of cooling-off period for divorce should be set flexibly according to whether there are children in the marriage or family.

### **2. Mandatory Family Arbitration.**

The Oromia RFC provides for optional arbitration of family disputes. That is to say, court is given the discretion to refer case for arbitrators. Although divorce is couples right to leave the marriage they don't interested in, the law taken divorce as last resort the court shall take when the marriage of spouse is impossible to fix. Therefore once the parties could not reach an agreement to fix their marriage the courts should refrain from directly declare decree of divorce and sent for mandatory arbitration for the final time before declaring divorce.

### **3. Cooling Period Supported by court ordered psychological studio.**

The judge is mainly proficient in the law, not familiar with the psychological counseling profession, at the same time, there are many cases cannot carry out effective counseling. If we want to effectively adjust the rising divorce rate, there should be enough time for cooling period corresponded with effective psychology supporting measures. Marriage and family counselors can promote the correct concept of marriage and ethics, and can mediate the parties who have conflicts between husband-and-wife one-on-one to avoid hasty divorce... In this way, we can not only judge whether the relationship between husband and wife is really irreparable from a professional point of view, but also solve the conflicts and contradictions between husband and wife in essence, so as to effectively reduce the divorce rate and promote the harmonious development of society through an effective cooling period.

### **4. Supporting procedural and Guidelines for Cooling-Off Period.**

There are differences among Judges and courts in the practical implementations of Cooling Period. Some Judges are giving only a single and short period appointments while some others repeated appointments before the pronouncements of divorce decree.

The Oromia family law too was not clear in relation to Art. 101/1 which states that the intervention of the court in mutual consent divorce is limited to counseling the spouses separately to renounce their divorce whereas Art.101/2 , states ' the parties are not willing to renounce the divorce; the court may order a cooling period up to three months'. In case of petition for divorce art.105/3 stated, if the spouses do not agree to settle their disputes through arbitration, the court will dismiss the case by giving them a cooling period of up to three months. That is to say, court is given the discretion to refer case for arbitrators. But there are no detailed provisions and procedures and Guidelines for strictly implementing cooling-off period. The absence of supporting procedural measures corresponding to the law. Therefore for practical and effective implementations of the cooling period the researcher recommends for the preparation of a supporting procedural guideline

on how Arbitration and family issues are entertained during the Cooling Period and if which parameters are not fulfilled the judge enters the decree of divorce.

#### **5. Preparations of workshop and Trainings for Family bench Judges.**

Different Studies concerned with healthy family are showing Decisions that affect family relations, such as marriage, Divorce and adoptions are typically needs special care. In order to smoothly and uniformly implementing the family laws, Socio-economic consequences encountered by the divorcee should be taken in consideration before the pronouncements of divorce. Therefore the researcher recommends for the preparations of the workshops and training for family bench judges of North Shoa Courts.

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## **Annex**

### **Annex I Informed consent form**

#### **Dear Respondents,**

First of all, I want to express my deepest appreciation to you for being voluntary to have this interview with me. My Name is Ebsa Mekuri and I'm Masters student, in Salale University, school of law, Department of **Judicial Study**.

Currently, I'm conducting research entitled '*The Implementation of cooling period During Divorce Trail under Oromia Revised Family Code: The Practical problems at North Shoa zone District Courts*' as part of fulfillment for the Maters program in Law. This interview will take only short time. Your cooperation in providing genuine response for the following questions timely is crucial for the accomplishment of this study on time and highly important for the success of this study. This information is to be collected from you only for academic purpose and will therefore not be used for any other purpose.

I would like to assure you that your response will be kept confidential. After finishing the project, the data will be destroyed. Participation in the project is voluntary and therefore you have the right to decline answering any questions, or terminate the interview without giving an explanation.

If you agree to take part in the study by giving information for the interview question, please confirm your agreement by signing here. Your signature below indicates your consent to participate in the study.

Yes \_\_\_\_\_

No \_\_\_\_\_

If yes, you will sign the agreement below.

Signature of the interviewee (participant) \_\_\_\_\_

Signature of the interviewer (researcher) \_\_\_\_\_

Date of the interview \_\_\_\_\_

## **Annex II Interview guide**

Interview guide for judges working at North shoa District Courts :

### **I. Background information of the informants**

- a) Gender \_\_\_\_\_
- b) Educational background: \_\_\_\_\_
- c) Position: \_\_\_\_\_
- d) Work Experience \_\_\_\_\_

### **II. Questions related with the practice of courts on cooling period during divorce proceeding.**

1. Do you think this court is granting cooling period during divorce trial for the spouse pursuant to provisions of Oromia Revised Family Code? If your answer is no what is the reason?
2. Do you think granting short days of cooling period for spouse encourage divorce? Why? Why not?
3. What do you think about cooling period prescribed under art. 101/2 and 105/3 of Oromia RFC? Do you think helps the spouse to renounce their decision to divorce? If yes how? If no explain your reason.
4. Do you think there are challenges on implementing provisions of Oromia RFC regarding cooling period during divorce proceeding at North shoa district courts? If yes what are main challenges?
5. Do you think cooling period provided under Oromia RFC is discretionary power of the court? Or are mandatory provisions of law?
6. Not giving cooling period to conflicting party, does it have any unnecessary consequence?
7. Do you have any suggestions or recommendations for effective implementation of provisions of Oromia RFC laws that grant cooling period for protection of marriage and to protect family from disintegration?