

2018-08-16

Fråga-Svar

Etiopien. Vårdnad av barn och äktenskapsbestämmelser.

Fråga

Hur ser vårdnadsbestämmelserna ut i Etiopien för barn födda

- a) utom äktenskap,
- b) i religiösa äktenskap, och
- c) i traditionella äktenskap?

Svar

Vårdnad

OECD Development Centre's Social Institutions & Gender Index (SIGI) skriver i sin landprofil för Etiopien följande:

Regarding **parental authority**, the 2001 Family Code (Articles 49 and 50) grants equal rights to parents.^[51] In the case of **divorce**, custody is generally granted to the mother, and the father is obliged to make financial payments until the child is 18, if necessary.^[6] There are no legal limitations on women (married or single) as heads of households in Ethiopia, and Articles 49 and 50 of the Family Code require that both parents share responsibility for the financial well-being of the household.^[71] The latest DHS, however, indicates that only two-thirds of women stated that they participated in decisions about major household purchases.^[81]¹

Familjerätt i Etiopien styrs av *Revised Family Code* från 2000.² Artiklar som berör vårdnad är urklippta ur lagtexten och återfinns nedan (notera att listan inte nödvändigtvis är uttömmande):

¹ SIGI, *Country Profiles – Ethiopia*, <https://www.genderindex.org/country/ethiopia/> (hämtat 2018-08-15)

² UNSTATS Civil Registration and Vital Statistics Knowledge Center, *Ethiopia: Revised Family Code 2000*,

Article 107. — Other Relations out of Marriage.

Relations established between a man and a woman out of wedlock or out of an irregular union shall have no juridical effect attached to them.

Without prejudice to the provisions of this Code relating to Acknowledgement of paternity or Adoption, children born of such relationships shall have a juridical bond only with their mother. (...)

Article I 13— Custody of Children.

shall, when deciding the dissolution of marriage, also decide as to which spouse shall have custody of the children, care of their education, health, maintenance and the rights of the parents and the children to visit each other.

When giving decision under Sub-Article (1), the court shall take into account the income, age, health, and condition of living of the spouses as well as the age and interests of the children.

The court may, on application and taking into account the change of circumstances, revise or reverse its decision given under this Article regarding the custody and maintenance of the children. (...)

Article 219. — Authority of Parents. The father and the mother are, during their marriage, jointly guardians and tutors of their minor children.

Article 220. — Default of one of the Parents.

In case of death, disability, unworthiness or removal of one of the parents the one who remains shall alone exercise such functions.

The mother shall exercise such functions where the father of the child is unknown.

Article 221. — Divorce of Parents.

Where the spouses decide to divorce by mutual consent in accordance with Article 77 of this Code, they shall decide by agreement regarding the tutor and guardians of their children.

Where, in any case of divorce, the spouses did not agree on the tutorial and guardianship of their children, the court which decides the divorce shall also decide the tutor and guardian of children.

Den etiopiska advokatbyrån *Fikadu Asfaw and Associates Law Office* har på hemsidan HG.org kritiserat lagstiftningen för att vara mycket kortfattad och generell angående vårdnadsfrågor, och därmed läggs mycket börda på de etiopiska domstolarna.³ Angående vårdnad vid skilsmässa skriver byrån:

<https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50881.aspx> (hämtat 2018-08-15)

³ HG.org, *Child Custody under the Ethiopian Legal System*, <https://www.hg.org/legal-articles/child-custody-under-the-ethiopian-legal-system-23983> (hämtat 2018-08-15)

”Custody may be awarded either to the father or the mother, whoever is found more capable. However, concerning children below the age of five, article 681(2) of the repealed family section of the civil code is applicable, customarily, and grants the mother sole custody unless she is found to be grossly incompetent.”

Hela Etiopiens *Civil Code* har publicerats av University of Minnesotas Human Rights Library. Lagtexten som hänvisas till ovan lyder i sin helhet:

Art. 681. - Custody of children, 1. Principle.

(1) The custody and maintenance of children born of the marriage shall be regulated having regard solely to the interest of such children.

(2) Unless there be a serious reason for deciding otherwise, the children shall be entrusted to their mother up to the age of five years.⁴

I svenska UD:s rapport om mänskliga rättigheter i Etiopien 2015-2016 framgår följande:

Det finns diskriminerande lagar gentemot kvinnor, såsom erkännande av mannen som familjeöverhuvud och ensam förmyndare för barn över fem år.⁵

Äktenskap

Etiopiens *Revised Family Code* från 2000 skriver bland annat följande om äktenskap:

Article I. — Various Forms of Marriage.

Marriage may be concluded before an officer of civil status.

Notwithstanding the provisions of Sub-Article (1) of this Article, marriage may be concluded in accordance with the religion or custom of the future spouses. (...)

Article 3. — Religious Marriage. Religious marriage shall take place when a man and a woman have performed such acts or rites as deemed to constitute a valid marriage by their religion or the religion of one of them.

Article 4. — Marriage According to Custom. Marriage according to custom shall take place when a man and a woman have performed such rites as deemed to constitute a valid marriage by the custom of the community in which they live or by the custom of the community to which they belong or to which one of them belongs. (...)

Article 28. — Registration.

⁴ University of Minnesota Human Rights Library, *Civil Code*,

[http://hrlibrary.umn.edu/research/Civil%20Code%20\(English\).pdf](http://hrlibrary.umn.edu/research/Civil%20Code%20(English).pdf) (hämtat 2018-08-15)

⁵ UD, *Mänskliga rättigheter, demokrati och rättsstatens principer i Etiopien 2015-2016*, 2017-04-26, <https://lifos.migrationsverket.se/dokument?documentSummaryId=39482>

Marriage shall be registered by a competent officer of civil status irrespective of the form according to which the marriage is celebrated.

The officer of civil status who recorded the marriage in accordance with Sub-Article (1) of this Article shall issue a certificate of marriage to the spouses.

Any marriage shall have effect from the date of its conclusion.
(...)

Article 40. — Various Forms of Marriage Equivalent.
Marriage produces the same legal effects whatever the form according to which it has been celebrated.

No distinction shall be made as to whether the marriage has been concluded before an officer of civil status or according to the forms prescribed by religion or custom.

Article 50. — Joint Management of Family. (1) General Rule.
The spouses shall have equal rights in the management of the family.

The spouses shall, in all cases, co-operate, to protect the security and interest of the family to bring up and ensure the good behaviour and education of their children in order to make them responsible citizens.

I artikel 98 definieras en *irregular union* som ”the state of fact which is created when a man and a woman live together as husband and wife without having concluded a valid marriage”.

I artikel 102, tredje punkten, framgår vidare “The man and the woman engaged in an irregular union shall be jointly and severally liable for all debts incurred for their maintenance, or for the maintenance of their children born of such union”.

I ett Policy Research Working Paper av Världsbanken skrivs följande om implementeringen av lagstiftningen:

The new Family Code was not initially implemented uniformly across all areas of the country. This is due to the fact that the Ethiopian constitution gives considerable autonomy to regions and chartered cities. Thus the new code took effect in some areas but not in others between 2000 and 2005. The regions and chartered cities that allowed the new family code to take effect during this period are Addis Ababa, Amhara, Dire Dawa, Oromiya and Tigray. The later-implementing areas (as of 2004/2005) are Afar, Benishangul Gumuz, Gambella, Harari and SNNP. Currently, all areas have now implemented the new Family Code.⁶

⁶ Hallward-Driemeier, Mary & Gajigo, Osman, *Strengthening Economic Rights and Women's Occupational Choice: The Impact of Reforming Ethiopia's Family Law*, The World Bank Development Research Group, 2013, <http://documents.worldbank.org/curated/en/259861468021600567/pdf/WPS6695.pdf> (hämtat 2018-08-15)

Etiopiska rättssystemet

Trots att *Revised Family Code* idag enligt källa konsulterad ovan implementerats i samtliga Etiopiens regioner är inte federal lagstiftning den enda rättskällan för etiopisk familjerätt. Även regionala lagar som behandlar frågor om vårdnad finns.⁷ *Law Ethiopia – Ethiopian Law Information Portal* har publicerat ett utbildningsmaterial där bland annat skillnader mellan vissa regioners familjelagstiftning och *Revised Family Code* diskuteras.⁸

Denna sammanställning av information/länkar är baserad på informationssökningar gjorda under en begränsad tid. Den är sammanställd utifrån noggrant utvalda och allmänt tillgängliga informationskällor. Alla använda källor refereras. All information som presenteras, med undantag av obestridda/uppenbara fakta, har dubbelkontrollerats om inget annat anges. Sammanställningen gör inte anspråk på att vara uttömmande och bör inte tillmätas exklusivt bevisvärde i samband med avgörandet av ett enskilt ärende. Informationen i sammanställningen återspeglar inte nödvändigtvis Migrationsverkets officiella ståndpunkt i en viss fråga och det finns ingen avsikt att genom sammanställningen göra politiska ställningstaganden. Refererade dokument bör läsas i sitt sammanhang.

⁷ För en överblick av det etiopiska rättssystemet, se Aneme, Girmachew Alemu, *Introduction to the Ethiopian Legal System and Legal Research*, Globalex, 2010, <http://www.nyulawglobal.org/globalex/Ethiopia.html#sourcesofethiopianlaw> (hämtat 2018-08-15)

⁸ Law Ethiopia – Ethiopian Law Information Portal, Law of Family – Teaching Material, http://www.lawethiopia.com/images/teaching_materials/family-law-teaching-material.pdf (hämtat 2018-08-15)

Källförteckning

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