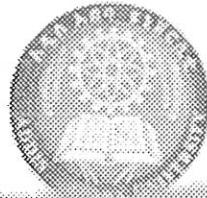


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**THE “RIGHT TO LIFE” OF THE UNBORN CHILD AND
THE PRACTICE OF ABORTION FOR RAPE AND INCEST
VICTIMS IN ADDIS ABABA**

BY
Seyum Mulugeta

June, 2011
Addis Ababa, Ethiopia

ADDIS ABABA UNIVERSITY
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Approved By Board of Examiners

Advisor Beryem Dawit *Beryem Dawit*



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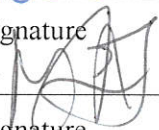
Examiners

1. Blen Asemerie *Blen Asemerie*

2. Meseret Asefer *Meseret Asefer*



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Seyum Mulugeta

Advisor

Benyam Dawit Mezmur (LL.B, LL.M, LL.D)

**A Thesis Submitted to the School of Graduate Studies of Addis
Ababa University in Partial Fulfillment of the Requirements for the
Masters of Law (LL.M) in Human Rights Law**

DECLARATION

Seyum Mulugeta, hereby declare that this research paper is original and has never been presented in any other institution. To the best of my knowledge and belief, I also declare that any information used has been duly acknowledged.

Name: Seyum Mulugeta

Signature:

This dissertation has been submitted for examination with my approval as University advisor:

Advisor: Benyam Dawit Mezmur (LL.B, LL.M, LL.D)

Signature:

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACHR	American Convention Human Rights
CRC	Convention on the Rights of Child
DRC	Declaration of the Rights of the Child
ECHR	European Convention on Human Rights
FDRE	Federal Democratic Republic of Ethiopia
FMWCYA	Federal Ministry of Women, Children and Youth Affaires
FMoH	Federal Ministry of Health
GA	General Assembly of United Nations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
LNMP	Last Normal Menstrual Period
NGOs	Non-Governmental Organizations
UDHR	Universal Declaration of Human Rights
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization
MCH	Maternal and Child Health

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ABSTRACT

Despite recent efforts by some scholars, there is one group of children who remain under-theorized and under-studied, and that is the unborn child. Most importantly, there is very limited discussion about whether protection for the life of the unborn child begins at birth, some time before or at conception. The situation in Ethiopia is no exception in this regard. Therefore, this study looks at the extent in which protection for the life of the unborn child is provided under international human rights law. It also examines the protections available for the life of the unborn child under Ethiopia's law. In principle abortion is a crime under Ethiopian law. It is only based on the exceptionally stipulated grounds of the law that legal abortion can be procured. One such exception of the law is pregnancy because of the criminal act of rape and incest. To procure legal abortion on the basis of this particular ground, the mere statement by the women that she is a victim of rape or incest is adequate. In practice, many women in Addis Ababa resort to legal abortion by mentioning this exception of the law simply to do away with unwanted pregnancies. Thus, this research aims at examining and critically analyzing the abuse of abortion laws by many women's in Addis Ababa. Hence, the protections available for the life of the unborn child and its enforcements under the FDRE Constitution and ordinary legislations of the country will be analyzed from the practice of legal abortion for rape and incest victims in Addis Ababa. Accordingly, the writer argues that both international human rights law and Ethiopian law provide some level of protection for the life of the unborn child. There is also a duty on part of the government of Ethiopia to enforce such protections available for the life of the unborn child. But, the abuse of the law by several womens in Addis Ababa is violating the protections guaranteed for the life of the unborn child in Ethiopia. Therefore, the concerned authorities in Ethiopia have to take measures that will ensure compliance of the practice of abortion with the law and provide better protection for the life of the unborn child in Ethiopia.

Key Words: Right to life; unborn child; legal abortion; rape and incest victims; some level of protection

CHAPTER ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1.1. Introduction¹

Human rights are those rights which should be available to every individual without any discrimination of any kind. Recognition of the inherent dignity and of the equal and inalienable rights of all members of human family is the foundation of freedom. The most important of all the rights available for mankind is the right to life.² This is because almost all rights will not give sense without the respect of this 'golden right'. It is inalienable and primordial right which inspires and informs all other rights.

Both domestic and international laws have given due recognition and protection to the right to life. Protection for the right to life is found under international and regional human right instruments. Article 3 of the Universal Declaration of Human Rights (hereinafter 'UDHR'), Article 6 of the International Convention on Civil and Political Rights (hereinafter 'ICCPR'), Article 2 of the European Convention on Human Rights (hereinafter 'ECHR'), Article 4 of the American Convention on Human Rights (hereinafter 'ACHR') and Article 4 of the African Charter on Human and Peoples' Rights (hereinafter 'ACHPR') clearly guaranteed the right to life of every individual.

The 1994 Federal Democratic Republic of Ethiopian (hereinafter 'FDRE') Constitution³ clearly provides legal protection to the right to life. Article 15 states that "Every person has the right to

¹ The idea of writing on the topic "the 'Right to life' of the unborn child and the practice of abortion for rape and incest victims" first came to this writer's mind when he attend a forum organized by Addis Ababa University Law faculty in cooperation with the Law Students Union of the faculty. During the Forum, a paper is presented both by pro life and pro choice scholars and he came to understand the controversies involved in the legal protections available for the life of the unborn child both at the international and domestic level. Furthermore, friends this writer has from the health profession explained to him the practical problems encountered in procuring legal abortions and the procedures they are using to deliver the service. Ethiopian law on abortion is clearly provides some level of protection for the life of the unborn child. But the writer found the exceptions provided under Article 551 of the Criminal Code and their implementations problematic. Adding to the problem, the writer also comes to understand that there is no research that was done on the protections available for the life of the unborn child in Ethiopia legal system. Thus, the writer was inspired to conduct this research.

² Note that the right to life is an essential right that emanates from the protection of human dignity and all other rights derive from it; if a person is deprived of his right to life, all other human rights will be meaningless.

³ The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/95.

life.....” According to this Article the only exception that a person might lose his/her life is because of punishments provided for serious criminal offences. The protection of the right to life is also found within the 2004 Revised Criminal Code of Ethiopia.⁴

Though legal protection of the right to life is available both at domestic and international level, there is no consensus as to the subjects of protection of the right to life both internationally and domestically. The protection of the right to life is established for: people as a whole, particular group of people and an individual.⁵ A very controversial issue is the problem where protection of the right to life begins: from the moment of conception, from the moment of birth or somewhere in between the two. Legal scholars try to argue on such matters using various reasoning's.⁶ The issue of whether a fetus should deserve some sort of protection under the law is found to be another issue of contention.

Some laws of states and regional instruments seek to protect or otherwise recognize the life of the fetus or unborn child. The ACHR states that human beings have rights starting from the moment of conception.⁷ The Unborn Victims of Violence Act in USA defines violent assault committed against pregnant women as being a crime committed against two victims: the women and the fetus she carries.⁸ Legislative measures sometimes seek to establish the right to life of the fetus from the moment of fertilization.⁹ Such laws regard the fetus as a person whose legal status is on par with persons after birth.

The issue thus usually involves the competing arguments in favor of the “right” of the fetus to be brought into life (i.e. *personhood*) vis-à-vis the right of the mother to abortion based on her

⁴ The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.

⁵ B.G. Ramcharan, 'the Right to Life in International Law', *Martinus Nijhoff Publishers*, 1985, p. 197.

⁶ Francis Loeber and Dean R. Dowling, 'the Abortion Debate-the Case for Legal Abortion', Australia 2009. Available at <http://www.atheistfoundation.org.au/articles/abortion-debate-case-legal-abortion> last accessed on March 21, 2011.

⁷ The 1978 American Convention on Human Rights states in Art 4.1. "Every person has the right to have his life respected. This right shall be protected by law, and in general, from the moment of conception."

⁸ See Colleen Jolicoeur-Wonnacott, 'the Unborn Victims of Violence Act: Friend or Foe to the Unborn?', *Thomas M. Cooley Law Review*, 2000.

⁹ In 1983, the eighth amendment of the Constitution of Ireland recognized the right to life of the unborn child. For further discussion on Ireland law of abortion, see Cathleen M. Colvin, 'Society for the protection of unborn children (Ireland) ltd. v. Grogan: Irish abortion law and the free movement of services in the European community', Sixth Annual Issue on European Community Law Comment, *Fordham International Law Journal*, 1992.

interests and choice.¹⁰ Some scholars like Rita Joseph and Francis J. Beckwith argue for the right to life of the fetus sighting the travaux préparatoires and provisions of some international human right instruments.¹¹ Other scholars like Philip Alston, Glanville Williams and Jakob Pichon argue against the life of the fetus and conclude as if the protection of the right to life begins with birth.¹² The above scholars try to assert their own reasoning so as to entitle or deny the protection of the right to life to the unborn child respectively.

R. Joseph argued that the right to life of a fetus or unborn child is duly recognized in main international human right instruments. She used the Preamble of the 1959 Declaration of the Rights of a Child (hereinafter 'DRC') and the Preamble of the 1989 Convention on the Rights of the Child (hereinafter 'CRC') to argue that the right to life guarantees enshrined under the International Bill of Rights (UDHR, ICCPR, and ICESCR) is also applicable for the life of the child before birth as well. According to R. Joseph, research on the historical context reveals that the concept of "the child" as understood at the time of the International Bill of Rights included the child before as well as after birth-starting from 1924 unbroken conceptual continuity can be established on this issue of inclusion.¹³ Thus, international law guarantees the right to life of the unborn child and any liberal abortion law is against the right to life of the unborn child.¹⁴

On the contrary, J. Pichon argues that the international human right law does not make any indication that the right to life guarantee extends to the life before birth as well.¹⁵ Scholars who supported Pichon argument tried to defuse the arguments of the other block, pro-life advocates, by saying that "only in the Preamble" that protection before birth is guaranteed under the CRC. If the international community aimed at guaranteeing right to life before birth as well, a specific provision to that effect have been inserted within the substantive part of the Convention.

¹⁰ Tsehai Wada, 'Abortion Law in Ethiopia, A Comparative Perspective', *Mizan Law Review*, Vol. 2 No.1, January, 2008, p. 1.

¹¹ See Rita Joseph, 'Human Rights and the Unborn Child', *Martinus Nijhoff Publishers*, 2009, and see also Francis J. Beckwith, 'Defending Life: a Moral and Legal case Against Abortion', *Cambridge University Press*, 2007.

¹² See Philip Alston, 'The Unborn Child and Abortion under the Draft Convention on the Rights of the Child', *Human Rights Quarterly*, 1990; Jakob Pichon, 'Does the Unborn Child have the Right to Life. the Insufficient Answer of the European Court of Human Rights in Judgment Vo v-France', and see also Glanville Williams, 'The Fetus and the Right to Life', *Cambridge law journal*, 1994.

¹³ R. Joseph, note 11 above, p. 3-6.

¹⁴ *Ibid.*

¹⁵ J. Pichon, note 12 above, p. 12.

Generally, there is still an ongoing debate between the two groups of scholars on the issue of the right to life of the fetus and criminalization or decriminalization of the act of abortion.

In the famous case of *Vo v. France*,¹⁶ the European Court of Human Rights dealt with the question of whether the fetus enjoys the protection of the right to life provided by Article 2 of the ECHR. The Court concluded that 'it is neither desirable, nor even possible as matters stand, to answer in abstract the question whether the unborn child is a person for purposes of the article of the convention.'¹⁷ In its desire to avoid making a morally contentious ruling on the scope of the fetus right to life, the Court adopted a 'neutral stance' and developed the determination of any such right to national authorities, by way of margin of appreciation. So, the right to life of the fetus is still a hot agenda in Europe without a consensus among member states.

If one accepts the premise that human life begins from the moment of conception, the fetus will possess a right to life (including a right to be born), and a state is obliged to protect the fetus against the mother who wishes to terminate her pregnancy. Where as if one recognizes that life begins with birth, the fetus will not have a right to life and a mother will have the freedom to terminate her pregnancy as she wishes. Thus, the issue of life of unborn child and the subject of protection of the right to life is as such a debatable issue under international human rights law and consensus on such agenda is difficult to come with.

The FDRE Constitution has nothing to say about the right to life of the fetus. Thus, it is not clear whether the protection of the right to life under the Ethiopian Constitution protects the life of the fetus. The 2004 FDRE Revised Criminal Code¹⁸ makes criminal act any intervention committed against the life of unborn child in principle. Exceptionally, intrusion on the life of the unborn child is permitted.¹⁹ The life of the unborn child visibly has protection under the Criminal Code. Ratified international human rights instruments also provide some sort of protection for the unborn child. The ICCPR under Article 6 (5) grant protection to the life of unborn child, indirectly, when it prohibits sentence of death on a pregnant women.

¹⁶ European Court of Human Rights, *Vo v France*, judgment of July 2004, no.53924, not yet published. Available at: <http://hudoc.echr.coe.int>. last accessed on November 20, 2010.

¹⁷ *Ibid*, para. 22.

¹⁸ *Supra* note 4, Article 544.

¹⁹ *Ibid*, Article 551.

The existence of protection for the life of the unborn child within the state legislation indicates a strict abortion law that criminalizes abortion in principle. The Black's Law Dictionary defines abortion as "an artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus."²⁰ For the last three or four decades, there has been a hot debate between pro-life activists and pro-choice activists as to the issue of morality and legality of an abortion choice. Such debate continues in the present world as well. At least, as a matter of law, such debate is not an issue here in Ethiopia. As mentioned above, the 2004 Ethiopian Criminal Code as a matter of principle criminalizes the practice of abortion. But in exceptional circumstances, abortion is permitted. So, the Ethiopian law seems to hold a mid way position of pro-life and pro-choice arguments.²¹

Thus, the FDRE Constitution says nothing as to whether the unborn child has the right to life or not. But, using the provisions of ratified international human right instruments and the wording of the Revised Criminal Code, there is an argument for and against the protection of the life of the fetus/unborn child. Therefore, the focuses of this study are laws protecting the life of the unborn child vis-à-vis the practice of abortion for rape and incest victims under Ethiopia laws.

1.2. Statement of the Problem

Today, the issue of the 'right to life' of the unborn child and the practice of abortion have grown to be one of the most sensitive issues in the world and, a growing number of commentators and organizations recognize that the problems require a genuine response. Whether the protection of the right to life of a person enshrined under Article 15 of the FDRE Constitution protects the unborn child or only a child after birth is not clear in the Ethiopian context. However, the fact that Ethiopia's Criminal Code criminalizes the practice of abortion shows that the life of the unborn child do have protections in Ethiopian law. Even the title in the Ethiopian Criminal Code which reads 'crimes against life unborn; abortion' shows that abortion is a crime committed against the life of the unborn child. Generally, there is no conclusive agreement on the issue of the protection of the life of the unborn child in Ethiopia legal system.

²⁰ See Bryan A. Garner, *Black Law Dictionary*, 9th edition, *West Publishing Co*, 2009, p. 6.

²¹ *Supra* note 4, Articles 545 -552.

The most frequently used argument against the recognition and protection of the 'right to life' of the unborn child in Ethiopia is based on the Civil Code provision which states that a person acquires rights with birth (Article 1 of the Civil Code). However, the legal argument that the 'recent prevails over the past' and the 'special prevails over the general' can be invoked to disprove the argument that the clam of 'right to life' of the unborn child in Ethiopia is not in line with Article 1 of the Civil Code.

Ethiopia's Criminal Code allows legal abortion only in exceptional circumstances that are enlisted in Article 551 of the Code. One of such exception is in case where a woman is pregnant because of rape or incest. In this specific instance, the mere statement by the women that she is a victim of rape or incest is adequate to prove that her pregnancy is the result of rape or incest.²² So, any medical institution can perform an abortion for a certain women if she simply states to the physician that her pregnancy is caused by rape or incest. No further information is necessary except her statement that she is a victim of rape or incest. The existence of this provision of the Criminal Code paves the way for many women to resort to induced abortion by abusing the above legal provision. Thus, the life of the unborn child which is protected by the principle of Ethiopia's abortion law is in grave danger because of the exceptions, specifically abortions permitted for rape and incest victims. The practice of abortion in Addis Ababa shows that the principle is becoming an exception and the exception becomes the principle.

Therefore, this study attempts to ascertain whether legal abortions procured for rape and incest victims violates the principle that the act of abortion is punishable except performed on permissive grounds. In order to address this issue, this research attempts to answer the following questions:

- What kind of protection is available for the life of the unborn child under international human rights law?
- Is there any international obligation on the part of the government of Ethiopia to provide protection for the life of the unborn child?
- What kind of protection is there for the life of the unborn child under Ethiopian legal system?

²² Supra note 4. Article 552 (2).

- How can the truth of a women's statement that she is a victim of rape or incest can be ascertained?
- Does Article 552(2) of a Revised Criminal Code encourage pro-choice abortion law as the practice shows?

1.3. Objectives of the Study

The main objective of the study is to determine the scope of protection accorded to the unborn child under Ethiopia law and to examine whether the practice of abortion for rape and incest victims is really in line with the law. There are relevant and binding international instruments that give recognition to the rights of the unborn child and provide some protection to these rights. Academic commentators and other authorities have attempted to define the scope of protection accorded to the unborn child under national law and international instruments. But, as far as this writer could ascertain, none of them came up with arguments that have the backup of the 'hard law', especially in the context of Ethiopia. So, this study is an attempt to search the legal bases for the protection of the life of the unborn child under Ethiopia's legal system.

Hence, the aim of this study is examining and critically analyzing the protections available for the life of the unborn child in Ethiopia and the practice of legal abortion for rape and incest victims. In particular it seeks:

- To examine and discuss the controversies involved in the protections available for the life of the unborn child under international human right instruments;
- To investigate the level of protection provided for the life of unborn child in Ethiopia and the extent to which such a protection is in line with what international law dictates;
- To critically investigate the practice of abortion for rape and incest victims in Addis Ababa and evaluate the legal implications of the practices; and
- To recommend some measures that should be taken by the government, duty bearers as well as other human rights activists to ensure the better enforcement of laws that provide protection for the life of the unborn child.

1.4. Research Methodology

In order to achieve its objectives, this study places emphasis on an analysis of the relevant available literature on the subject and relies on primary/practical source of research. In relation to literature, it specifically relies on examining international human rights instruments, books, research studies, journals and academic articles, and domestic laws that have some relevance to the study. In addition, various internet sites will be consulted for relevant data and information.

As far as the practical source is concerned, this study uses interview conducted with nurses to examine the practice of abortion in Addis Ababa. The approaches that have been followed in conducting the interview with the participants are semi-structured and non-directional in order to allow the writer to further investigate by introducing additional questions not anticipated at the start of the interview and to explore subjective interpretations participants attach to the issues.

1.5. Significance of the Study

The study will have both legal and social significance. Its legal significance relates to its role in clarifying the controversies involving the available protections for the life of the unborn child in Ethiopia and in showing the problems associated with the practice of abortion for rape and incest victims. The Revised Criminal Code clearly provides protection for the rights of the unborn child. That is the reason why abortion is a crime in principle under Ethiopia law. It is only in exceptional circumstances that the Criminal Code allows the practice of abortion. In its findings, the research will establish the extent of the rights of unborn children under Ethiopia law. The research will also show the practical problems encountered when the exception to abortion restriction are implemented.

The social significance, on the other hand, is related to its contribution in the promotion of the rights of the unborn child and the resulting benefit that the right holders will get. It will provide individuals and civil society organizations with necessary knowledge about the life of the unborn child and enables them to properly implement the laws dealing with unborn children and to lodge complaints in cases where there is a violation of these rights.

In sum, this research will have the following significance:

- It is hoped that this research will serve as an interpretative guide for the judiciary and any concerned person or institution and as an advocacy tool for civil society organizations as to the protections given for the life of the unborn child in Ethiopia.
- It will create awareness to the public about the practice of unregulated legal abortion for rape and incest victims and its impact on the principle of abortion law in Ethiopia.
- It will be used by the legislature and the executive branch of the government as reference material in the making or remaking policies of dealing with the unborn child. That is, it will awaken these two organs to give due consideration for the enforcement of protections provided for the unborn child in the Criminal Code as well as ratified international agreements.
- It will provoke more research on the subject matter and will be used as research material for future researchers and as secondary source for students.

1.6. Scope and Limitation of the Study

The study covers the protection available for the unborn child in the FDRE Constitution, Revised Criminal Code, Civil Code and international agreements ratified by Ethiopia. Thus, reference to wider debate and jurisprudence in respect of the life of the unborn child is limited to the extent that they clarify and consolidate the status of the unborn child in these normative frameworks under the Ethiopian legal system. It also covers the practice of legal abortion for rape and incest victims in Addis Ababa. The study does not deal with the practice of legal abortion made for permissive grounds other than rape and incest. The role of the judiciary in giving effect to laws protecting the life of the unborn child is not discussed in this study.²³ This research does not discuss policy frameworks of the Government of Ethiopia on the issue of abortion. Moreover, the study does not intend to recommend the best abortion laws that will suit Ethiopia's situation. It is limited to discussing the current abortion laws of Ethiopia and the practical problems encountered in giving effect to the provisions.

²³ The writer excludes discussing the role of the judiciary in promoting the rights of the unborn child under this study. This is because of lack of assistance from the judiciary in providing the information and cases necessary for the study. Informal discussion with the officers in the registrar of the courts indicates that their supervisors forbid any cases related to abortion to be made public, even for educational purpose.

The first and undeniable limitation of the study is the title of the study itself. The title “The ‘Right to Life’ of the Unborn Child and the Practice of Abortion for Rape and Incest Victims in Addis Ababa” might create the unintended impression on the reader that the writer concluded as if the unborn child has the right to life under Ethiopian legal system from the start. But, as discussed in this study, this is not the right message the writer wants to communicate to the reader. The writer opted for this title because of difficulty to find another title that expresses the issues discussed in this study better.

The other constraint that encountered this study is lack of relevant materials on the subject matter under the Ethiopian legal system. However, the research made an attempt to remedy this problem to a lesser extent by resorting to materials written in other legal systems. Besides, the absence of internet access for conducting the research is also another limitation of the study. The lack of cooperation among the government hospitals as well as private medical institutions to conduct interview, which is very decisive for viewing the practice, has been a big challenge. The short time table provided to conduct this research is also another hindrance. Last but not least, financial limitation has been a challenge in conducting this research.

1.7. Organization of the Study

The study is organized in five chapters. Accordingly, the first chapter provides general introduction and overview of the study, which includes introduction, statement of the problem, objective of the study, research methodology, significance of the study, scope and limitation of the study and organization of the study.

The second chapter is devoted to discuss the concepts and controversies involved in the ‘right to life’²⁴ of the unborn child and the issue of abortion. To address this issue, discussion of international standards on the right to life by specifically analyzing the right to life provisions of some international and regional human right instruments is provided. The life of the unborn child and their status under international law and the abortion debates that exists among scholars is also examined here. The issue of reproductive rights and its connection with abortion debate is also discussed within this chapter.

²⁴ Note that whenever the writer uses the phrase ‘right to life of the unborn child’ under this study it does not mean the writer concluded as if the unborn child has the right to life protection.

The protection of the life of the unborn child in Ethiopia is examined under the third chapter. Thus, the normative framework for the rights of the unborn child in the Ethiopian legal system, the legal status and level of protection given for the life of the unborn child in Ethiopia are scrutinized in this chapter. Ethiopia's abortion law before and after 2004 are also discussed under this chapter. The exceptionally permitted ground of legal abortion, especially abortion procured for rape and incest victims, is also discussed in this chapter.

The fourth chapter is exclusively devoted to discuss the practice of legal abortion for victims of rape and incest within the selected governmental and private medical institutions. Accordingly, the formal and procedural requirements to procure legal abortion for rape and incest victims are discussed under this chapter. The place where abortion is being performed and the practice of legal abortion for rape and incest victims vis-à-vis the principle of Ethiopia's abortion law will be analyzed under this chapter. The compatibility of the practice with the principle of abortion law of Ethiopia is also discussed in this chapter.

The last chapter includes general conclusions and some recommendations that make possible the better enforcement of protections provided for the life of the unborn child in Ethiopia and create regulated and manageable practice of legal abortion for rape and incest victims in Ethiopia.

CHAPTER TWO

CONCEPTS AND CONTROVERSIES INVOLVING THE “RIGHT TO LIFE” OF THE UNBORN CHILD AND THE ISSUE OF ABORTION

2.1. Introduction

Though the recognition of the sanctity of human life is not debatable, the issue of the life of the unborn child remains the cause of firm debate among scholars from time in memorial. There is a limited discussion about whether or not the unborn are in fact children and whether childhood begins at birth, some time before, or even some afterwards.²⁵ As the issue of the life of the unborn child touches upon the sensitive ideals of the society, consensus on the matter is hard to reach. The extent of protection of the life of the unborn child and the framing of such protection has a direct effect on the issue of abortion and reproductive rights of women. Whether the unborn child is the subject of protection of the right to life provisions of international human right law is also a contested topic under international law. The above and related issues will be discussed in this chapter of the study.

To logically address the issue at hand, the chapter is divided into five major sections. Accordingly, the first section tries to introduce the issue and indicate the contents of the chapter. The second section addresses the discussion of international standards on the right to life by specifically analyzing the right to life provisions of some of the international and regional human rights instruments. The life of the unborn child and its status under international law will be discussed in the third section. Discussions made on the issue of the life of the unborn child in the drafting stages of some of the international human rights instruments will be presented in this part of the chapter. The issue of reproductive rights and its connection with abortion debates will be also highlighted in this section of the chapter. The fourth section will be devoted in discussing the abortion debates that existed among scholars and the types of state abortion laws. Finally, the chapter ends with a conclusion.

2.2. International Standards on the Right to Life

²⁵ Marc Cornock and Heather Montgomery, 'Children's Rights In and Out of the Womb', *International Journal of Children's Rights*, 2011, p. 4.

The origin of the right to life in its modern meaning started at the end of the 17th and the beginning of the 18th century.²⁶ At that time the human right concept was established, based on the law of nature, which stated that man has certain inalienable rights, among others, the right to life. It is the Second World War which gave rise to detailed regulations of human rights by way of international instruments. At the very beginning the United Nations (UN) Charter and the UDHR, and latter the ICCPR as well as the ICESCR provide protection for the right to life of every person. All these international instruments give manifold possibilities for the implementation of efficient system for the protection of the right to life. Currently, the right to life is often said to be the most basic and fundamental primordial right which inspires and informs all other rights.²⁷

The international legal situation in the sphere of human rights is very complex and sometimes even ambiguous. It is an undeniable fact that the right to life is not free from such complexities and ambiguities. The nature of the UN as a political organization has a very important significance in avoiding or in minimizing the complexities and ambiguities surrounding the right to life. Currently, there are a number of international and regional human right instruments which give manifold possibilities for the implementation of efficient systems for the protection of the right to life. However, up to now, a serious gap has existed among the theoretical foundations, legal provisions as well as political proclamations. As H. G. Espiell has pointed out clearly “the reality of the world is a situation in which basic human rights are denied or ignored with tremendous intensity and frequency.”²⁸

Basic international standards on the right to life are contained in Article 3 of the UDHR, Article 6 of the ICCPR, Article 2 of the ECHR, Article 4 of the ACHR, and Article 4 of the ACHPR. A detailed examination of these provisions shows that the statement of the right is framed in the UDHR, the ICCPR and the ECHR in terms of ‘right to life’. The ACHR refers to the ‘right to respect for life’ while the ACHPR refers to ‘respect for life’.

²⁶ B.G. Ramcharan, note 5 above, p. 182.

²⁷ Ibid, p. 2.

²⁸ See B. G. Ramcharan, ‘Human Rights: Thirty Years after the Universal Declaration’. (The Hague-Boston-London 1979). p. 47. as cited in Ramcharan (note 5 above).

These universal and regional standards of protection of the right to life contain the fundamental principle: “This right shall be protected by law”²⁹, or “Every human being shall be entitled to respect for his life”³⁰. This principle is reinforced by the next one: “No one shall be arbitrarily deprived of his life” (the ICCPR and the ACHR), or “of this right” (the ACHPR), “No one shall be deprived of his life intentionally” (the ECHR). This principle reinforces the principle that international provisions protect life, not the right to life (excluding the ACHPR).³¹ Thus, those scholars that hold the opinion that the protection of the right to life begin with birth should take cognizant of such fact. These two principles denominate the maximum standard of the protection of the right to life by law. According to B. G. Ramcharan, the best protection of this right by law occurs as long as the law does not create the legal deprivation of human life in the form of punishment, or to protect other interests and effectively prevents arbitrary deprivation of life.³²

The ICCPR and the ACHR deal with the issue of death penalty and also provide for amnesties, commutations or pardons from sentences involving the death penalty.³³ Article 4 of the ICCPR makes the right to life a non-derogable one together with other six rights. The Second Optional Protocol to the ICCPR which is adopted in 1989 urges states to take all necessary measures to abolish the death penalty and stipulates that no reservation is allowed except for the application of the death penalty for most serious crimes of military nature committed during war times. It is generally considered that, based on international practice, the provisions of national constitutions and various international instruments, the ‘right to life’ is a norm of international customary law or a general principle of international law which transcends particular statements of the right in specific international instruments or national legislation.³⁴

In dealing with standards of the right to life, as part of general international law, therefore, one is not necessarily limited by the provisions of particular international conventions or declarations, but must have recourse to the totality of the evidence and the practice available within the international community as well.³⁵

²⁹ See Article 6 of the ICCPR, Article 4 of the ACHR, and Article 2 of the ECHR.

³⁰ See Article 4 of the ACPHR.

³¹ B. G. Ramcharan, note 5 above, p. 204.

³² Ibid.

³³ See Article 6 (4) of the ICCPR and Article 4 (6) of the ACHR.

³⁴ B. G. Ramcharan, note 5 above, p. 3.

³⁵ Ibid.

2.3. The Life of the Unborn Child under International Law

2.3.1. General

The decisive criterion in distinguishing the kind of subjects protected by the right to life is the goal of protection in a particular situation.³⁶ The protection of the right to life is established for: people as whole, particular groups of people, and an individual.³⁷ A very controversial question as to the protection of an individual is the problem of when the right to life begins: from moment of conception, from moment of birth, or somewhere in between. The question of whether the unborn child is protected by the right to life guarantee is not something which does have an international consensus.³⁸ There has been very less work around the issue of when childhood begins and much greater reluctance to examine the question in terms of the CRC.³⁹ The rights of the unborn child were discussed in the drafting stages of the UDHR (1948) as well as in the drafting stages of the CRC. The matter is also referred to in the ICCPR (1966).

In the decade following the UDHR, the General Assembly (hereinafter 'GA') of the UN examined the protection of the rights of the child promised in the UDHR and drew up a list of ten agreed principles which they then proclaimed in the 1959 Declaration of the Rights of the Child (hereinafter 'DRC'). These principles formed the preliminary outline of fundamental human rights to be codified eventually in the CRC (1989). In the preamble to the DRC (1959), there is a well-known and often cited paragraph of significance to the unborn child:

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth(para of the DRC)

R. Joseph argued that "the inclusion of this phrase actually reflects the determination of the international community in 1959 not to rely on a silent assumption of the rights of the unborn

³⁶ Ibid, p.197.

³⁷ Ibid.

³⁸ Note that the legal status of the unborn child is a very controversial issue in many countries of the world. For instance for discussion on the legal status of the unborn child's rights in United Kingdom (UK), see M. Cornock and H. Montgomery, note 25 above, p. 4-10. And also for discussion on legal status of the unborn child under US law, see Jeffrey A. Parness, 'the Legal Status of the Unborn after Webster', *Dickinson Law Review*, 1990, p. 3-8.

³⁹ Supra note 25, p. 10.

child but to actually give explicit emphasis to those rights.”⁴⁰ She further noted that “though the 1959 DRC may not be legally binding in itself, nevertheless its legal force lies in the formal and irrefutable evidence it provides that as at 20th November 1959 the whole international community understood and agreed that the UDHR (legally binding today as customary law) had for that first decade of its jurisdiction already recognized the legal status of the child before birth and his entitlement to human rights protection.”⁴¹ Thus, universal recognition of the child before birth as a juridical personality entitled to legal protection had been established and accepted in the very foundation instrument of modern international human rights law.⁴²

However, other scholars like Abby F. Janoff and P. Alston do not agree with the above conclusion of R. Joseph.⁴³ These scholars argue that a treaty's preamble is not binding law for the states parties. P. Alston further stated that, a Convention's "preamble 'does not possess any obligatory force' of its own."⁴⁴ The preambular text only provides context as a basis of Convention interpretation. Therefore, neither the definition of "child" implicit in preambular paragraph 9 of CRC nor the text's call for legal protection before birth could be relied upon by itself to assert the right to life of a fetus.⁴⁵

The CRC, adopted by the GA of the UN on November 20, 1989, reiterates the positions taken by the UDHR, on the "equal and inalienable rights of all members of the human family" as the "foundation of freedom, justice and peace in the world", and that the "United Nations has proclaimed that childhood is entitled to special care and assistance".⁴⁶ In particular the CRC asserts: "States Parties recognize that every child has the inherent right to life"⁴⁷ and that "States Parties shall ensure to the maximum extent possible the survival and development of the child."⁴⁸

Regarding the unborn child, the CRC stated in its Preamble that:

⁴⁰ R. Joseph, note 11 above, p. 1.

⁴¹ Ibid, p. 3.

⁴² Ibid.

⁴³ See Abby F. Janoff, 'Rights of the Pregnant Child vs. Rights of the Unborn under the Convention on the Rights of the Child', 22 *B.U. Int'l L.J.* 163, 2004 and P. Alston, note 12 above.

⁴⁴ Supra note 12 above, p. 12.

⁴⁵ Supra note 43, p. 4.

⁴⁶ See 9th Preamble of the CRC.

⁴⁷ See Article 6 (1) of the CRC.

⁴⁸ See Article 6 (2) of the CRC.

bearing in mind that, "as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'".⁴⁹

However, with regard to legal protection for children before birth, abortion advocates have tried to defuse the powerful truth to be read in the Preamble to the CRC and DRC by claiming it is "only in the preamble" or that the DRC is "only a Declaration".⁵⁰ To mention one it is argued that:

No operative provisions of the CRC, however, refer to the rights of unborn children. Preambular paragraphs do not entail legally binding obligations on State Parties. Therefore, there are no binding legal obligations for a State Party to the CRC to protect unborn children.⁵¹

Nevertheless, this argument is in direct contradiction to Article 31, General rule of interpretation of the Vienna Convention on the Law of Treaties (hereinafter 'VCLT') (1969):

- 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
- 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text ... its preamble...⁵²*

As far as the preamble-based objection is concerned, the first and most obvious rebuttal that needs to be made is that what is stated in a preamble is by way of foundation and motivation for the substantive content of the relevant document.⁵³ As R. Joseph rightly stated, "the CRC and such documents derive their compulsive force precisely from what is stated in the preamble, as a building rests on its foundations or as a mathematical theory rests on its underlying set of axioms."⁵⁴ The operative provisions within the CRC (i.e., in the text) shall be interpreted in good

⁴⁹ Supra note 46.

⁵⁰ See Joyce Arthur, 'Personhood: Is a Fetus a Human Being', 2001. Available at <http://www.abortionaccess.info/fetusperson.htm> last visited on January 20, 2011

⁵¹ Advisory opinion solicited by Australian Senator Gary Humphries on CRC, December 8, 2004.

⁵² See Article 31 of the VCLT.

⁵³ This does not mean all the provisions of VCLT already get the status of international customary law. But they do have an interpretative value whenever the wording of the law is not clear.

⁵⁴ R. Joseph, note 11 above, p. 3.

faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context (i.e., in the context of its Preamble in addition to the text).

Clearly, the operative provisions must be read consistently with the perambular paragraphs, which set out the themes and rationale of the Convention.⁵⁵ Furthermore, they must be read consistently with the International Bill of Rights.⁵⁶ The inescapable conclusion here is that the child before as well as after birth is to be protected by the CRC, if that Convention is interpreted in good faith [without discrimination against the child before birth] in accordance with the ordinary meaning to be given to the terms of the treaty in their context [both text and preamble] and in the light of its object and purpose [recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, and that human rights should be protected by the rule of law].⁵⁷

In relation to the objection based on the status of the Declaration, pro-abortion advocates have discounted the DRC as only a Declaration, carrying some moral weight but not legally binding. This cannot be said, however, of the UDHR, which even pro-abortion advocates such as the New York-based Center for Reproductive Rights describe as the foundation document of modern international human rights law.⁵⁸ Nor can it be said of the ICCPR or the ICESCR, which are the codification in law of the UDHR. These Covenants are legally binding and both contain formal recognition on their very first pages that they are to be “in accordance with the Universal Declaration of Human Rights”. The term “declaration” has been officially defined by the U.N. Secretariat as “a formal and solemn instrument, suitable for rare occasions when principles of great and lasting significance are being enunciated”, and although not legally binding, a declaration “may by custom become recognized as laying down rules binding upon States.”⁵⁹ The 1959 DRC reaffirms a recognition of the rights of the child before birth which was already agreed in the 1948 UDHR now itself having become, over time, both legally binding and an accepted part of customary law.⁶⁰

⁵⁵ Ibid.

⁵⁶ The International Bill of Rights comprises the UDHR, the ICCPR and the ICESCR.

⁵⁷ R. Joseph, note 11 above, p. 6.

⁵⁸ See, for example, Center for Reproductive Rights, “Bringing Rights to Bear: An Analysis of the Work of U.N. treaty Monitoring Bodies on Reproductive and Sexual Rights”, 2002, Table of Abbreviations and Glossary, p. 9.

⁵⁹ See U.N. Doc. E/CN.4/L.610, 1962, as cited in R. Joseph (note 11 above).

⁶⁰ R. Joseph, note 11 above, p. 4.

In support of the recognition of the unborn child in the UDHR, it may be argued that the general term 'the child' was understood to include the child before as well as after birth, which such an understanding was in accordance with common usage at the time.⁶¹ Historically, there had been a long common law tradition of protecting the child before birth from abortion. Historically also, the medical profession formally took the Hippocratic Oath, and continued through the 1940s to take this oath at graduation and profession.⁶² The Hippocratic Oath recognized that mother and unborn child as patients were owed a duty of care that precluded the deliberate harm to either patient:

*...and to the law of medicine the regimen I adopt shall be for the benefit of my patients according to my judgment, and not for their hurt or for any wrong I will deny deadly drug to any though it be asked of me. Nor will I counsel such, and especially I will not aid a woman to procure abortion...*⁶³

This same condemnation of abortion was reaffirmed in June 1947 when the Council of the British Medical Association submitted a statement to the World Medical Association:

*Although there have been many changes in Medicine, the spirit of the Hippocratic Oath cannot change and can be reaffirmed by the profession. It enjoins: ...The motive of service for the good of patients. The duty of curing... the greatest crime being co-operation in the destruction of life by murder, suicide and abortion.*⁶⁴

Furthermore the *International Code of Medical Ethics* (1949) adopted by the World Medical Association stipulated:

A doctor must always bear in mind the importance of preserving human life from the time of conception until death.

This principle was reaffirmed without change at the 1968 World Medical Association General Assembly. Here is concrete evidence that from the time of the UDHR till at least two years after

⁶¹ Ibid, p. 8.

⁶² Ibid, p. 7.

⁶³ Ibid.

⁶⁴ Statement by the Council of the British Medical Association to the World Medical Association, June 1947, re-issued by the Medical Education Trust, and reproduced. Available at: <http://www.donoharm.org.uk/leaflets/war.htm> last visited on March 12, 2011.

the Covenants of 1966, the international medical community understood very clearly that there is a duty to preserve human life from the time of conception.⁶⁵ Doctors recognized a duty of care towards the child before birth, and that duty pertained from the time of conception. Dr. Paul Cibrie, chairman of the committee appointed to prepare the International Code of Medical Ethics, affirmed that “abortionists” were implicitly condemned in the Declaration of Geneva.⁶⁶ Though the above documents are not binding by themselves, they do have an interpretative value and provide a context through which the right to life provisions of international human rights instruments shall be interpreted.

During the very first session of the Drafting Committee of the Commission on Human Rights, the concept of human rights protection for “any person, from the moment of conception” was recognized. The term “from the moment of conception” was used in this original text for Article 1 of the Draft International Covenant on Human Rights:

*It shall be unlawful to deprive any person, from the moment of conception, of his life or bodily integrity, save in the execution of the sentence of a court following on his conviction of a crime for which this penalty is provided by law.*⁶⁷

This text became the basis of Article 6 of the Draft ICCPR when subsequently it was decided that two Covenants would need to be drafted—the ICCPR and the ICESCR. During the drafting of the ICCPR, an amendment to article 6, submitted by Belgium, Brazil, El Salvador, Mexico and Morocco⁶⁸ led to a discussion as to whether the right to life should be protected by law “from the moment of conception”. “Those supporting the amendment maintained that it was only logical to guarantee the right to life from the moment life began.”⁶⁹ The amendment was rejected.⁷⁰ It was pointed out that the legislation of many countries accorded protection to the unborn child. On the other hand, the amendment was opposed on the grounds that it was impossible for the State to determine the moment of conception and hence, to undertake to protect life from that moment. Moreover, the proposed clause would involve the question of the

⁶⁵ R. Joseph, note 11 above, p. 20.

⁶⁶ Thomas W. and Horan, Denis J., ‘*Abortion and Social Justice*’, New York, Sheed and Ward, 1972, p. 317. R. Joseph, note 11 above.

⁶⁷ Marc J. Bossuyt, ‘Guide to the *travaux préparatoires* of the International Covenant on Civil and Political Rights’, *Martinus Nijhoff Publishers*, 1987, p. 113.

⁶⁸ *Ibid.*, p. 132.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*, 30 votes against the amendment, 20 for and 17 abstentions: see UN Doc. §119 A/3764.

rights and duties of the medical profession. Legislation on the subject was based on different principles in different countries and it was, therefore, inappropriate to include such a provision in an international instrument.⁷¹ Therefore, the toleration of abortion played no part in the rejection of the amendment.

During the 5th Session (1949), 6th Session (1950), and 8th Session (1952) of the UN Commission on Human Rights, the *travaux préparatoires* for the ICCPR refer specifically to the intention to save the life of the unborn child in recognition of the human rights principle that protection should be extended to all unborn children.⁷² The provisions of paragraph 4(5) of the draft article aimed at the protection of the life of the unborn child whose mother was sentenced to death; that protection should be extended to all unborn children.⁷³ Again in the 12th Session (1957) of the Third Committee, the right to life of “an innocent unborn child” is recognized:

*The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was to save the life of an innocent unborn child’.*⁷⁴

It is important to understand here that this intention was not just a fleeting one-off expression of concern for the right to life of the unborn child. According to R. Joseph, it was in fact the culmination of a long constant and consistent concern and commitment to protecting the unborn child, a concern arising out of the Nuremberg judgments, finding expression in all the Geneva Conventions and impacting on the very earliest drafting sessions of the ICCPR, specifically in the Draft Committee’s 1st Session (1947).⁷⁵ Moreover, the ICCPR, Article 6(5) asserts:

Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

Joining together in the one sentence of concern to protect the right to life of “persons below eighteen years of age” with the protection of “pregnant women” signifies that the child before

⁷¹ See note 67 above.

⁷² R. Joseph, note 11 above, p. 26.

⁷³ M. Bossuyt, note 67 above, p. 121.

⁷⁴ See UN Doc. A/C.3/SR.819, para. 17 and 33.

⁷⁵ Supra note 65.

birth is entitled to the rights of "persons below eighteen years of age".⁷⁶ It signifies that a pregnant woman does indeed carry within her womb another human being, a new member of the human family who is entitled, by reason of the child's physical and mental immaturity (an immaturity that distinguishes every person below eighteen years of age) to special protection from the death sentence. Articles prohibiting execution of pregnant women acknowledge that the child, from the State's first knowledge of that child's existence, is to be protected. R. Joseph argued that, this article focuses powerfully on the child and in it every child is recognized to have a right to life. Every child, i.e. every child before birth, every child after birth, every person below the age of 18 years, has a right to State protection from capital punishment: "sentence of death... shall not be carried out on pregnant women".⁷⁷

When state delegates were debating the unborn child aspect of the Preamble of the CRC, some delegations supported it precisely because it offered protection to the unborn child.⁷⁸ Other delegations opposed "what in their view amounted to re-opening the debate on this controversial matter [abortion] which, as they indicated, had been extensively discussed at earlier sessions of the Working Group with no consensus achieved."⁷⁹ It was also pointed out by some delegations that an unborn child is not literally a person whose rights could already be protected, and that the main thrust of the Convention was deemed to promulgate the rights and freedoms of every human being after his birth and to the age of 18 years."⁸⁰ As a consequence of the debate they amended the Preamble such that the text would no longer say "Recognizing that . . .", but "Bearing in mind that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". Further, the following statement was, by agreement, placed in the travaux préparatoires: "In adopting this preambular paragraph, the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention by States Parties."⁸¹

⁷⁶ R. Joseph, note 11 above, p. 26.

⁷⁷ Ibid.

⁷⁸ See For example, Malta, Senegal, Ecuador, and the Holy See.

⁷⁹ See For example, Australia and United Kingdom.

⁸⁰ Sharon Detrick, "The United Nations Convention on the Rights of the Child, A Guide to the "Travaux Préparatoires", 1992, as cited in R. Joseph (note 11 above), p. 109.

⁸¹ Ibid, p. 110.

In his account of the abortion debate, in the context of the CRC, P. Alston claims that the acceptance of a preambular paragraph recognizing that "the child . . . needs special safeguards and care, including appropriate legal protection, before as well as after birth" cannot be interpreted as an indirect reversal of that explicit rejection [of proposals to recognize the right to life of the unborn]. To do so would be to attribute to the Preamble an importance considerably in excess of that which may reasonably be accorded to such broad policy pronouncements.⁸² P. Alston believes that the CRC leaves the matter of abortion as an open question such that those States that wish to prohibit abortion and those that wish to approve it are on an equal footing. He believes that existing international human rights law does not provide for the status of the unborn child, and that the CRC is in conformity with that position. But P. Alston overlooks the fact that a reference in the Preamble is part of the treaty itself, whereas the *travaux préparatoires* is a supplementary means of interpretation to be used in limited circumstances.⁸³

J. Arthur argued against what P. Alston concluded by stating that "the fact is that with a minor change in words ("Recognizing that" was changed to "Bearing in mind that") these contentious words were included in the Preamble of the CRC. That clearly means the abortion issue was left on the table as both those who opposed its inclusion and those who favored its inclusion have testified. In order to gain the maximum number of ratifications, such a contentious issue was always likely to be deliberately obscured in the drafting process.⁸⁴ In any case, since the CRC has to be interpreted in the light of and consistently with the UDHR and the ICCPR then the question of the rights of the unborn child have to be resolved against a broader landscape than the CRC seen in isolation."⁸⁵ Till now, the CRC Committee does not give interpretation on the issue of whether the unborn child can be a subject of the protection of right to life.

On inclusion of the unborn child in human rights protection, it is only prudent to assume that the ECHR was in complete agreement with the UDHR—in fact, the detailed history of the negotiations actually records that there was no discussion whatsoever about excluding the child

⁸² P. Alston, note 12 above, pp. 156 and 177.

⁸³ See Article 2(1) (a), 31(2) and 32 of VCLT.

⁸⁴ *Supra* note 24, p. 11.

⁸⁵ J. Arthur, note 50 above, p. 10.

before birth from the right to life or from human rights protection.⁸⁶ Indeed, for the high contracting parties to exclude the child before birth from their jurisdiction cannot make sense in the light of the fact that these same Council of Europe member governments subsequently agreed in 1959 that the need for legal protection for the child before as well as after birth was recognized “in the UDHR and in the statutes of specialized agencies and international organizations concerned with the welfare of children.”⁸⁷ If the Council of Europe had indeed excluded the child before birth from its human rights jurisdiction in the 1950 Convention, why did their member governments recognize the need for legal protection for the child before birth in 1959?

State practice in Europe on this issue varies extremely.⁸⁸ In the ECHR “Right to Life” Article 2, absolutely no statement was made for intentionally depriving the child before birth of the right to life. The conditions⁸⁹ laid down for lawful deprivation of life are clearly not applicable—for the child before birth, there has been no crime, and no sentence of a court following his conviction. The child before birth is utterly incapable of offering any person unlawful violence or of participating in a riot or insurrection. Finally, John P. Humphrey, the Canadian Professor of International Law who was appointed by the UN to oversee the drafting of all the foundational human rights instruments, has reminded us of the real source for the drafting of the ECHR:

*...the European Convention for the Protection of Human Rights and Fundamental Freedoms was modeled on the draft of the Covenant on Civil and Political Rights as it existed in 1950.*⁹⁰

So what did the Covenant on Civil and Political Rights “as it existed in 1950” have to say on the right to life? The UN Commission on Human Rights at the 6th Session (1950) had agreed on the following text for the Draft ICCPR:

⁸⁶ Committee on Legal and Administrative Questions Report, Section 1, para.6, September 5, 1949, in *Collected edition of the ‘Travaux Préparatoires’ of the European Convention on Human Rights*, Vol. III, The Hague: *Martinus Nijhoff Publishers*, 1975-85, p. 194, as cited in R. Joseph (note 11 above).

⁸⁷ R. Joseph, note 11 above, p. 22.

⁸⁸ For instance Ireland law recognizes the right to life of the unborn child, note 8 above. On the other hand UK’s law does not recognize the right to life of the unborn child, note 25 above.

⁸⁹ The exemptions listed in the *European Convention* are borrowed from the very first list of exemptions submitted to the Human Rights Commission by the UN’s International Covenant Drafting Committee. Of the 12 items listed, none were related to abortion. See E/CN.4/AC.1/SR.29, as cited in R. Joseph (note 11 above).

⁹⁰ John P. Humphrey’s Preface to M. Bossuyt, note 67 above, p. xv.

*Every human being from the moment of conception has the inherent right to life.*⁹¹

Therefore it is reasonable to conclude that the ECHR has almost similar position on the issue of unborn child with the ICCPR.

In 1959, the Inter-American Council of Jurists wrote the first draft of the American Convention on Human Rights. The Inter-American Year-book (1968) of the Organization of American States (hereinafter 'OAS') affirms that this draft developed and codified the principles of the American Declaration (1948) and "was influenced also by other sources, including the work in course at the United Nations".⁹² Certainly, the right-to-life article written by the Inter-American Council of Jurists in 1959 was very much in agreement with the "before as well as after birth" human rights language of the original rights of the child as recognized in the UDHR.⁹³ The ACHR (1969) acknowledges that every person "in general from the moment of conception" has the right to have his life respected. Article 1(2) says: "For the purposes of this Convention, "person" means every human being." And Article 4(1) states:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Together, these provide for protection by the law for every human being "in general, from the moment of conception". However, in the 1980 *Baby Boy case*⁹⁴, the Inter-American Commission on Human Rights has nevertheless tried to find a way around this provision by a very shoddy reading of the *travaux préparatoires* regarding the alleged meaning of the phrase "in general".⁹⁵ In assessing the negotiations surrounding the phrase "from the moment of conception" in the ACHR, the majority resolution gives inordinate weight to two paragraphs in the Yearbook (1968) summary:

To accommodate the views that insisted on the concept "from the moment of conception" with the objection raised, since the Bogota Conference, based on the legislation of

⁹¹ See E/CN.4/L.365, as cited in R. Joseph (note 11 above), P. 24.

⁹² Organization of American States (OAS), *Inter-American Year-book, 1968*, Washington: 1973, pp. 67 and 237, as cited in R. Joseph (note 11 above).

⁹³ R. Joseph, note 11 above, p. 25.

⁹⁴ Inter-American Commission on Human Rights in resolution No 23/81, *Babe boy case*, Case 2141 (United States).

⁹⁵ R. Joseph, note 11 above, p. 28.

American States that permitted abortion, inter alia, to save the mother's life, and in case of rape, the IACHR, redrafting article 2 (Right to life), decided, by majority vote, to introduce the words "in general." This compromise was the origin of the new text of article 2 "1. Every person has the right to have his life respected. This right shall be protected by law, in general, from the moment of conception".⁹⁶

The rapporteur of the Opinion proposed, at this second opportunity for discussion of the definition of the right of life, to delete the entire final phrase "...in general, from the moment of conception". He repeated the reasoning of his dissenting opinion in the Commission; based on the abortion laws in force in the majority of the American States, with an addition: "to avoid any possibility of conflict with article 6, paragraph 1, of the United Nations Covenant on Civil and Political Rights, which states this right in a general way only".⁹⁷

In fact, there was no possibility of conflict with Article 6 of the ICCPR, which goes on in paragraph 5 to be quite specific about protecting the unborn child from losing his/her "life" as a result of a death sentence.⁹⁸ This article prohibiting execution of pregnant women acknowledges that the child, from the State's first knowledge of that child's existence, is to be protected. This fits exactly with the phrase 'in general from the moment of conception'.⁹⁹ Recall that the *travaux préparatoires* for the ICCPR refers specifically to the intention to save the life of the unborn child.¹⁰⁰

The principal reason for providing in paragraph 4 [now Article 6(5)] of the original text that the death sentence should not be carried out on pregnant women was "to save the life of an unborn child".

Given this principal reason, R. Joseph would suggest that the phrase "in general, from the moment of conception" under the ACHR is eminently suited to and consistent with the purpose and intent of Article 6 of the ICCPR.¹⁰¹ As Dr. Luis Demetrio Tinoco Castro of the Inter-

⁹⁶ Inter-American Year-book, note 92 above, p. 321

⁹⁷ Ibid, p. 97

⁹⁸ R. Joseph, note 11 above, p. 29.

⁹⁹ Ibid.

¹⁰⁰ Supra note 67, p. 133.

¹⁰¹ Ibid.

American Commission on Human Rights points out in his dissenting opinion in the *Baby Boy* case:

*The draft prepared by the Inter-American Juridical Committee, as well as the United Nations Declaration of the Rights of the Child (Resolution 1386/XIV), ... expressly recognized that the human being exists, and has rights, and needs protection, including legal protection, in the period preceding his birth.*¹⁰²

2.3.2. Procured Abortion not within the Recognized Exceptions to the Right to Life

Once it is concluded that there is some level of protection for the life of the unborn child provided by the ICCPR (Article 6(5)), it is also important to bear in mind that procured abortion is not recognized as exception to such protection of every person. The only recorded attempt to introduce abortion as an exception to the right to life Article 4 (now Article 6) of the ICCPR draft occurred in the Working Group's 2nd Session (1947):

*It shall be unlawful to procure abortion except in a case in which it is permitted by law and is done in good faith in order to preserve the life of the woman, or on medical advice to prevent the birth of a child of unsound mind to parents suffering from mental disease, or in a case when the pregnancy is the result of rape.*¹⁰³

It was put to a vote in the Commission on Human Rights and was resoundingly defeated. A principle was adopted in which the only exception to the unlawfulness of deprivation of life was to be as follows:

*It shall be unlawful to deprive any person of his life save in the execution of the sentence of a court following on his conviction of a crime for which the penalty is provided by law.*¹⁰⁴

As it papered today the only exception ICCPR recognized to the right to life guarantee is the deprivation of life as a punishment for most serious crimes (Article 6(2)). And also no international or regional human right instrument provides procured abortion as an exception to

¹⁰² See note 94 above.

¹⁰³ See E/CN.4/SR.35, p. 16, as cited in R. Joseph (note 11 above).

¹⁰⁴ Ibid.

the right to life of a person.¹⁰⁵ Thus, the *travaux préparatoires* of international human right instruments confirms that procured abortion cannot be provided as an exception to the right to life of any person or the unborn child. As R. Joseph and F. Beckwith stated clearly the argument that procured abortion can be considered as an exception to the right to life is not substantiated by international human right instruments.¹⁰⁶

2.3.3. The Life of the Unborn under European Court of Human rights

In the case of *Vo v. France*¹⁰⁷ the European Court of Human Rights (hereinafter ‘the European Court’) attempts to address the issue of the life of the unborn child. The complaint had been brought before the Court by Mrs. Vo who alleged, in particular, a violation of Article 2 of the *ECHR* on the grounds that the conduct of a doctor who was responsible for the death of her child *in utero* was not classified as unintentional homicide in French law. Mrs. Vo, when visiting a hospital to see her doctor for a medical examination scheduled during the sixth month of pregnancy, by mischance was mistaken for a namesake who attended the hospital on the same day to have a coil removed. The doctor noticed that Mrs. Vo had difficulty in understanding French, consulted the medical file and, without examining her beforehand, sought to remove the coil. In doing so, he pierced the amniotic sac which caused the loss of a substantial amount of amniotic fluid. When, a week later, this fluid had not been replaced it became clear that the pregnancy could not continue further, and therefore it was terminated on health grounds.

Mrs. Vo and her partner lodged a criminal complaint and applied to be joined as civil parties to the proceedings in which they alleged unintentional injury to Mrs. Vo (entailing total unfitness for work for a certain period) and unintentional homicide of her child. The doctor was committed to stand trial on counts of unintentionally causing injuries, the prosecution of which turned out to be statute barred, and unintentional homicide. However, the French Court of Cassation ruled that the events which led to the death of the fetus could not be qualified as homicide. Thereupon Mrs. Vo lodged her complaint before the European Court. The Court, however, held by fourteen votes to three that no violation of Article 2 had been constituted. The Court did not answer the question as to whether the unborn child is a person for the purposes of Article 2, but assuming it was there

¹⁰⁵ See Article 4 of the UDHR, Article 6 of ICCPR, Article 2 of ECHR, Article 4 of ACHR, and Article 4 of ACHPR.

¹⁰⁶ See R. Joseph, note 11 above, p. 27 and F J. Beckwith, note 11 above, p. 68.

¹⁰⁷ See *Vo v. France*, application no. 53924/00; judgment 8 July 2004, 2 FCR 577 (Grand Chamber).

had been no violation of the requirements of Article 2. French law, so the Court held, did offer the mother sufficient legal remedies.

The majority judgment Court noted that Article 2 gives no temporal limitations of the right to life and in particular does not define “everyone” whose “life” is protected. The issue of the ‘beginning’ of ‘everyone’s right to life’ has been raised in connection with abortion laws, but has not been clearly answered yet.¹⁰⁸ In the present case, however, the issue was – so the Court stated – whether harming a fetus should be treated as a criminal offence in the light of Article 2, with a view to protecting the fetus under that Article. The Court does not intervene in the debate as to who is a person and when life begins. In existing case-law consideration has been given to the diversity of views on these points and the State has been left with considerable discretion in the matter. It follows that the issue of when the right to life begins comes within the margin of appreciation which the Court generally considers that States should enjoy in this sphere, notwithstanding an evaluative interpretation of the Convention, a ‘living instrument’ which must be interpreted in the light of present-day conditions.

The Court’s reasons for that conclusion are that the issue has not been resolved within the majority of the Contracting States, including France,¹⁰⁹ and that there is no European consensus on the scientific and legal definition of the beginning of life.¹¹⁰ ‘At best it may be regarded as common ground between States that the embryo/fetus belongs to the human race. The potentiality of that being and its capacity to become a person ... require protection in the name of human dignity, without making it a “person” with the “right to life” for the purposes of Article 2.’ The Court is convinced that it is neither desirable, nor even possible as matters stand, to

¹⁰⁸ Relevant Commission decisions are in particular the cases of *Brüggemann and Scheuten v. the Federal Republic of Germany* (1977), *X. v. United Kingdom* (1980), *H. v. Norway* (1992) and recently *Boso v. Italy* (2000).

¹⁰⁹ The European Court observed that in France, for instance, the Court of Cassation’s approach, that conflicts with that of several Courts of Appeal, was interpreted as an invitation to the legislature to fill a vacuum, but that the legislature’s recent attempts to create an offence of involuntary termination of pregnancy (‘Garraud amendment’) have failed. Besides, the 1994 bio-ethics laws are currently being revised in order to take into account subsequent scientific and medical progress and new issues with which society is confronted.

¹¹⁰ At a European level the Court observes that the Convention on Human Rights and Biomedicine is careful not to give a definition of the term ‘everyone’ and allows domestic law to provide clarifications. It also observes that the Additional Protocol on Cloning Human Beings as well as the draft Additional Protocol on Biomedical Research does not define the concept of ‘human being’. So the Court observes that there is no consensus on the nature and status of the embryo and/or fetus, although they are beginning to receive some protection in the light of scientific progress and the potential consequences of research into genetic engineering, medically assisted procreation or embryo experimentation.

answer in the abstract the question whether the unborn child is a person for the purposes of Article 2.

One minority opinion holds the position that the direct applicability of Article 2 is possible in this particular case. Ress in his dissenting opinion takes the position that the answer to the question of whether the unborn child is a person for the purposes of Article 2 should be 'yes', mainly because of the ordinary meaning of the wording, which is – historically, among lawyers – that 'everyone' includes the human being before birth and 'life' covers all human life commencing with conception. Besides, Ress argues that the Commission and the Court in the context of abortion have developed a concept of implied limitations and of a fair balance between the interests of society and those of the mother of the unborn child. He holds that this structure proves that both institutions were inclined to adopt the ordinary meaning of 'human life' and 'everyone', rather than the other meaning. Ress states that there can be no margin of appreciation as to the applicability of Article 2, though it may exist to determine the measures that should be taken to protect such life. Article 2 should, Ress pleads, evolve in accordance with these developments and constraints and confront the real dangers now facing human life.

Costa would have preferred the Court to hold that Article 2 was applicable, even if such a conclusion is not self-evident, because such a decision would have been clearer with only minimal inconvenience as regards the scope of the judgment. He sees no good legal reason or decisive policy consideration for not applying Article 2 in the present case. He believes that there is life before birth, within the meaning of Article 2, that the law must therefore protect such life, and if a national legislature considers that such protection cannot be absolute, and then it should only derogate from it.

In the Rozakis opinion (which is the largest minority opinion), it is stated that the Court has correctly stated that both in France and at a European level the nature and status of the embryo and/or the fetus are currently not defined, but has failed to draw the relevant conclusion that the right to life of the unborn child has yet to be secured. Even if one accepts that human life begins before birth, this does not automatically and unconditionally confer on this form of human life a right equivalent to the corresponding right of a child after its birth. This does not mean that the unborn child does not enjoy any protection by human society, since the unborn life is already considered to be worthy of protection, but this protection is distinct from that given to a child

after birth and far narrower in scope. Rozakis further argued that 'it consequently transpires from the present stage of development of the law and morals in Europe that the life of the unborn child, although protected in some of its attributes, cannot be equated to post-natal life, and, therefore, does not enjoy a right in the sense of "a right to life", as protected by Article 2 of the Convention.

Thus, it appears that very different opinions exist as to the protection Article 2 may offer to an embryo or a fetus under the European Court. One reason for such disparity is that the difference between legal rules one wishes to come into existence and existing legal rules is not always maintained.¹¹¹

The writer of this study holds a position that it is clear that some sort of protection for the life of the unborn is there under international human rights law. But, the provisions of international human rights law is not clear on the issue whether the available protection can be framed in the sense of the "right to life" or not. Thus, the extent and framing of such protection should be left to the domestic law of states till consensus is reached internationally.

2.3.4 Reproductive Rights of Women

Reproductive rights are legal rights and freedoms relating to reproduction and reproductive health.¹¹² The World Health Organization (herein after 'WHO') defines reproductive rights as follows:

Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence.¹¹³

¹¹¹ Trees A.M. TE Braake. Does a Fetus have a Right to Life? The Case of *Vo v.*, *European Journal of Health Law*, 2004, p. 8.

¹¹² Rebecca J. Cook and Mahmoud F. Fathalla. "Advancing Reproductive Rights Beyond Cairo and Beijing". 1996. *International Family Planning Perspectives*, Vol. 22, No. 3, pp. 115–121.

¹¹³ See "WHO: Unsafe Abortion - The Preventable Pandemic". Available at http://www.who.int/reproductivehealth/publications/unsafe_abortion/ua_paper/en/index.html accessed on April 10, 2011.

Reproductive rights began to appear as a subset of human rights in the 1968 Proclamation of Teheran, which states: "Parents have a basic right to decide freely and responsibly on the number and spacing of their children and a right to adequate education and information in this respect".¹¹⁴ The twenty year "Cairo Programme of Action"¹¹⁵(hereinafter the 'Cairo Programme') was adopted in 1994 at the International Conference on Population and Development (ICPD) in Cairo. The non binding Programme of Action asserted that governments have a responsibility to meet individuals' reproductive needs, rather than demographic targets. It recommended that family planning services be provided in the context of other reproductive health services, including services for healthy and safe childbirth, care for sexually transmitted infections, and post-abortion care. The Cairo Programme is the first international policy document to define reproductive health, stating:

*Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed [about] and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.*¹¹⁶

The Cairo Programme of Action was adopted by 184 UN member states. Nevertheless, many Latin American and Islamic States made formal reservations to the programme, in particular, to its concept of reproductive rights and sexual freedom, to its treatment of abortion, and to its

¹¹⁴ "Proclamation of Teheran", International Conference on Human Rights, 1968. Available at http://web.archive.org/web/20071017025912/http://www.unhcr.ch/html/menu3/b/b_tehern.htm last accessed on may 9, 2011.

¹¹⁵ Report of the International Conference on Population and Development, U.N. Doc. A/ Conf.171/13, 1994, hereinafter the 'Cairo Programme'.

¹¹⁶ See Cairo Programme, para. 72.

potential incompatibility with Islamic Law.¹¹⁷ The 1995 Fourth World Conference on Women in Beijing, in its non-binding Declaration and Platform for Action (hereinafter 'Beijing platform'), supported the Cairo Programme's definition of reproductive health,¹¹⁸ but established a broader context of reproductive rights:

*The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.*¹¹⁹

The Beijing Platform framed women's reproductive rights as "indivisible, universal and inalienable human rights." The concept of reproductive health encompasses men's rights as well. Men's reproductive rights have been claimed by various organizations, both for issues of reproductive health, and other rights related to sexual reproduction. Three international issues in men's reproductive health are sexually transmitted diseases, cancer and exposure to toxins.¹²⁰ Thus it is not proper to coin reproductive rights as if only enjoyed by women's.

During and after the ICPD, some interested parties¹²¹ attempted to interpret the term 'reproductive health' in the sense that it implies abortion as a means of family planning or, indeed, a right to abortion. These interpretations, however, do not reflect the consensus reached at the Conference. The Cairo Programme emphasizes that:

In no case should abortion be promoted as a method of family planning. All governments and relevant intergovernmental and non-governmental organizations are urged to

¹¹⁷ See United Nations, Report of the Fourth International Conference on Population and Development, Cairo, September 5-13, 1994.

¹¹⁸ Fourth World Conference on Women: Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action, UN. Doc. A/Conf. 177/20, (1995), (hereinafter the Beijing Platform).

¹¹⁹ Beijing Platform, para. 94.

¹²⁰ See Best Kim, "Men's Reproductive Health Risks: Threats to men's fertility and reproductive health include disease, cancer and exposure to toxins", Family Health International, available at http://www.fhi.org/en/RH/Pubs/Network/v18_3/NW183ch2.htm last accessed on may 1, 2011.

¹²¹ Supra note 112. See also Lisa Smyth, 'Abortion and Nation, the Politics of Reproduction in Contemporary Ireland', *Athenaeum Press Ltd*, 2005.

*strengthen their commitment to women's health . . . to reduce the recourse to abortion through expanded and improved family-planning services. Prevention of unwanted pregnancies must always be given the highest priority and every attempt should be made to eliminate the need for abortion.*¹²²

Thus, it is clear that respect for reproductive rights of women also needs expanding access to family planning services. The European Commission, in response to a question from a member of the European Parliament, clarified this issue in such a way that:

The term 'reproductive health' was defined by the United Nations (UN) in 1994 at the Cairo International Conference on Population and Development. All Member States of the Union endorsed the Programme of Action adopted at Cairo. The Union has never adopted an alternative definition of 'reproductive health' to that given in the Programme of Action, which makes no reference to abortion (emphasis added).¹²³

Meanwhile, however the European Court settled the question through a landmark judgment (Case of A. B. and C. v. Ireland)¹²⁴, in which it is stated that the ECHR does not contain a right to abortion. When negotiating the Cairo Programme of Action at the ICPD (1994), the issue was so contentious that delegates eventually decided to omit any recommendation to legalize abortion, instead advising governments to provide proper post-abortion care and to invest in programs that will decrease the number of unwanted pregnancies.¹²⁵ Therefore, the proposition of some interested groups which states that “the reproductive right guarantees stipulated in the Cairo programme or Beijing Platform recognizes right to abortion” is not in line with the comprehensive reproductive health framework envisaged in both Cairo and Beijing conferences.

Therefore, it should not be interpreted that respect for reproductive rights of women entitle them an absolute right to abortion.

2.4. Abortion Debate

¹²² See Cairo Programme, note 115 above, para 8.

¹²³ See European Parliament, 24 October 2002: Question no 86 by Dana Scallon (H-0670/02).

¹²⁴ Laura Knudsen, *Reproductive Rights in a Global Context*, Vanderbilt University Press, 2006 p. 6. Available at <http://books.google.com/?id=b3thCcdyScsC&dq=reproductive+rights> last accessed on may 1, 2011. The real name of the parties in the above case is concealed to protect the right of privacy of the parties.

¹²⁵ *Ibid.* p. 5.

The Black's Law Dictionary defines abortion as "an artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus."¹²⁶ An estimated 46 million women around the world have abortions each year—26 million in countries with liberal abortion laws and 20 million where abortion is restricted or prohibited by law.¹²⁷ Eastern Europe has the highest abortion rate of any region, and Western Europe has the lowest; the disparity exists despite little difference in the legal status of abortion throughout Europe, and may be attributable to differences in availability and use of effective contraceptives.¹²⁸ Evidence from a limited number of countries indicates that soon after the easing of a restrictive law, resort to abortion is likely to increase somewhat, but levels typically decline in the long term.¹²⁹ The issue of abortion and its controversy surrounding the legality or criminalization of abortion has been and still is an important public agenda in any part of the world. Legal scholars have been giving arguments for and against abortion for the last century¹³⁰ and various state laws on abortion reflect such arguments.

Pro abortion advocates argued that the unborn child is not a human being until implantation because it is at that time that it establishes its presence by transmitting hormonal signals to its mother.¹³¹ They further argued that the concept of personhood is different from the concept of human life.¹³² In reply to this preposition anti abortionists argue that the standard embryology texts indicate that in the case of ordinary sexual reproduction the life of an individual human being begins with complete fertilization, which yields a genetically and functionally distinct organism, possessing the resources and active disposition for internally directed development toward human maturity.¹³³ So, a human embryo (or fetus) is not something distinct from a human being; he or she is not an individual of any non-human or intermediate species. Rather, "an embryo (and fetus) is a human being at a certain (early) stage of development – the

¹²⁶ Supra note 20.

¹²⁷ The Alan Guttmacher Institute, 'Sharing Responsibility: Women, Society and Abortion World Wide', Annual Report, 2008, p. 25.

¹²⁸ Ibid.

¹²⁹ Ibid, p. 26.

¹³⁰ Linda Lowen, *Abortion Pros and Cons, and Main Points of the Debate*, 2011. Available at <http://womensissues.about.com/od/reproductiverights/a/AbortionArgumen.htm> last accessed in may, 10, 2011.

¹³¹ F. Beckwith, note 11 above, p. 74. See also Rebecca J. Cook and Bernard M. Dickens, the Human Rights Dynamics of Abortion Law Reforms, *Human Rights Quarterly*, 2003, p. 8.

¹³² L. Lowen, note 72 above, p. 3.

¹³³ For an overview of the different points of view, see Dianne Nutwell Irving, 'Philosophical and Scientific Analysis of the Nature of the Early Embryo', *Human Rights Quarterly*, 1991.

embryonic (or fetal) stage. In abortion, what is killed is a human being, a whole living member of the species *homo sapiens*, the same *kind* of entity as you or I, only at an earlier stage of development.”¹³⁴

Some “pro-choice” scholars have attempted to justify abortion by denying that all abortions are intentional killing (abortion is justified as non intentional killing). They have granted (at least for the sake of argument) that an unborn human being has a right to life but have then argued that this right does not entail that the child *in utero* is morally entitled to the use of the mother’s body for life support.¹³⁵ In effect, their argument is that, at least in many cases, abortion is not a case of intentionally killing of the child, but a choice not to provide the child with assistance, that is, a choice to expel (or “evict”) the child from the womb, despite the likelihood or certainty that expulsion (or “eviction”) will result in his or her death.¹³⁶ In reply to this argument anti abortionist’s state that in the vast majority of cases that the death of the child *in utero* is precisely the object of the abortion.¹³⁷ In most cases the end sought is to avoid being a parent; but abortion brings that about only by bringing it out that the child dies. Indeed, the attempted abortion would be considered by the woman requesting it and the abortionist performing it to have been unsuccessful if the child survives. Thus, in most cases abortion *is* intentional killing.¹³⁸

Legal scholars involved in debating the abortion issue often assume that the arguments they provide can offer decisive resolution.¹³⁹ As abortion issue is so intermingled with the question of morality, it is very difficult to reach at consensus among scholars.¹⁴⁰ This fact is also reinforced

¹³⁴ Patrick Lee and Robert P. George, the Wrong of Abortion, *Fordham International Law Journal*. 747, 1997, p. 15.

¹³⁵ *Ibid.* p. 20.

¹³⁶ See also Little, Margaret Olivia, ‘Abortion, intimacy, and the duty to gestate’, 1999, *Ethical Theory and Moral Practice*, 2: pp. 295–312.

¹³⁷ *Supra* note 134, p. 20.

¹³⁸ *Ibid.*

¹³⁹ See F. Beckwith, note 11 above, pp. 131 and 175. Among those opposed to abortion, F. Beckwith claims that his position on the moral status of the fetus is “the correct one” and that the abortion debate “is an issue whose resolution depends on which metaphysical view of the human being is correct”. Don Marquis claims that the “thesis of this essay is that the problem of the ethics of abortion . . . is solvable”. Among those supporting abortion rights, David Boonin claim to have arguments that resolve the abortion debate by appealing to considerations that even abortion opponents would accept.

¹⁴⁰ For further discussion on the link between abortion and the issue of morality, see John T. Noonan, ‘the Morality of Abortion. Legal and Historical Perspectives’, *Harvard University Press*, 1972.

in various state abortion laws. Generally, state abortion laws can be classified into three groups: restrictive (also known as strict), moderate, and liberal.¹⁴¹

Restrictive abortion laws are those state laws which ban abortion for any case or permit's only for exceptional grounds. These laws criminalize the practice of abortion. Such countries banning abortion as a principle nevertheless allow a few exceptions. For example, pregnancy termination may be permitted in these countries if the woman has been a victim of rape or incest, or if it can be shown that her child will be born with serious defects. Brazil, Mexico, Panama, Ethiopia and Sudan, which have highly restrictive laws, allow abortions following a rape¹⁴². And the Democratic Republic of Congo, Ethiopia and Panama permit the procedure when the fetus is impaired.¹⁴³ As to the enforcement of such exceptions, practical problems do encounter. For instance, some state laws allow abortion for rape or incest victim. How can the executive assert the truthfulness of the women's statement that she is a victim of rape or incest?

Moderate abortion laws are those state laws which allow abortion till the first trimester of pregnancy and only for particular grounds. Such state laws criminalize abortion if it is procured after the first trimester is passed or if the prelisted ground is fulfilled. After the first trimester, only for exceptional grounds that abortion is permitted in these countries. For example Belgium, USA, France and Great Britain have gestational limits on most abortions but permit the procedure at any time to protect a woman's life or health or because of fetal impairment.¹⁴⁴

Liberal abortion laws are those state laws which permit abortion on broad grounds. Such states decriminalize the practice of abortion. In this state's abortion is permitted at any time during pregnancy save some exceptions. Thus, in principle abortion is permitted and only in exceptional situations that it is prohibited. However, even in countries with liberal abortion laws, there are usually some restrictions. In the liberal countries where abortion is permitted on broad grounds or for socioeconomic reasons, the law usually stipulates some conditions.¹⁴⁵ Such conditions include gestational limits, facilities and practitioners, consent requirement and counseling and

¹⁴¹ Some scholars classify state abortion laws into two: restrictive and liberal and made the moderate abortion law part of the liberal abortion laws. See Nanette J. Davis, 'From Crime to Choice, the Transformation of Abortion in America', *Greenwood Press*, 1985, pp. 3-17.

¹⁴² *Supra* note 134, p. 21.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*, p. 20.

waiting period requirement. Canada, China, North Korea, Vietnam and Zambia are some of the countries which do have liberal abortion laws.¹⁴⁶

In state laws that permit abortion on particular grounds, the definition of these grounds may be wide-ranging. For example, a woman seeking an abortion on socioeconomic grounds must assert or demonstrate that her financial situation, marital status, age or family size makes it difficult or impossible for her to contemplate having a child or another child. Countries that permit abortion on socioeconomic grounds usually interpret these laws quite liberally. In Great Britain, Taiwan and Zambia, for instance, the law takes into consideration the effect that a continued pregnancy might have on the children a woman already has.¹⁴⁷ Especially in countries where restrictive abortion law exists, the fact of interpreting the exceptions broadly will not go in line with the object and purpose of the law. Thus, the enforcement of state abortion laws needs to be seen in line with avoiding such wide-ranging interpretations of the exceptions to the principle.

Article 2 of the CRC ensures rights to every child, without discrimination of any kind. According to this article young children in general must not be discriminated against on any grounds, for example where laws fail to offer equal protection against violence for all children, including young children. It is also stated that particular groups of young children must not be discriminated against. General Comment No. 7 of the CRC Committee¹⁴⁸ provides that:

*Discrimination against girl children is a serious violation of rights, affecting their survival and all areas of their young lives as well as restricting their capacity to contribute positively to society. They may be victims of **selective abortion**, genital mutilation, neglect and infanticide, including through inadequate feeding in infancy¹⁴⁹.*
(Emphasis added)

According to this comment of the CRC Committee, state legislations that allow selective abortion is in contravention of their obligation under CRC. This is because selective abortion is a clear manifestation of discrimination based on gender. In its concluding observation on India's

¹⁴⁶ Ibid.

¹⁴⁷ Ibid, p. 22.

¹⁴⁸ Convention on the Rights of the Child, Committee on the Rights of the Child, General Comment No. 7, 'Implementing Child Rights in Early Childhood', Geneva, September 12-30, 2005.

¹⁴⁹ Ibid, para. 11 (b) (i).

initial report, the CRC Committee¹⁵⁰ has noted that abortion as a method of family planning, specifically selective abortion, is against the right to non-discrimination which is guaranteed under Article 2 of the Convention.¹⁵¹ Though states has the margin of appreciation to legislate their abortion laws, liberal abortion laws that allow selective abortion is not in line with the protection of right to non-discrimination enshrined under the CRC.

Ethiopia's abortion law falls under the classification of restrictive abortion laws. The law criminalizes any induced abortion save the exceptions provided there. Thus, in principle abortion is prohibited and exceptionally it is permitted for illustrated reasons.¹⁵² Discussion on this issue will be made in chapters three and four of this study.

2.5. Conclusion

It has been argued and traditionally accepted that the right to life protection starts from birth not from conception. And the right to life provisions of major international and regional human rights instruments does not clearly provide whether such protection starts from birth, conception or between the two. The proponents of both birth and conception theory provide various arguments to prove and legitimize their position. However, the writer of this paper contends that, the deeper scrutiny of the historical documents which serve as a preparatory material for major international human right instruments, which includes the UDHR, ICCPR, ACHR, ECHR and CRC, shows that the life of the unborn child do have some level of protections under such instruments. But the issue of whether the right to life provisions of these human rights instruments protects the life of the unborn child as subjects of the right is left to the domestic law of states. As the *travaux préparatoires* of such instruments shows the delegate of states avoided the insertion the phrase 'from birth or conception' from right to life provisions for the mere reason of not jeopardizing the ratification of the instruments by the member states.

¹⁵⁰ The CRC Committee is a committee established to monitor the implementation of the rights and duties enshrined within the convention by member states. It receives state reports and gives concluding observations incorporating the things that need to be improved so as to make children's life better in the future.

¹⁵¹ Committee on the Rights of the Child, Concluding observation of the Committee on the Rights of the Child: India. Twenty-third session, CRC/C/15/Add.115, February 23, 2000, para. 32. Available at <http://www.unhcr.org/refworld/category/COI/CRC..IND.3ae6afc44.0.html> last accessed on May 30, 2011.

¹⁵² Supra note 4, Articles 545-552.

As consensus on this contested matter is difficult to reach internationally, the protection of the right to life of every person from conception or birth left open by various human rights instruments. That is the main reason why we did not find a right to life provision with birth or conception phrase in the human rights instruments except in the ACHR. But exceptionally the ICCPR under Article 6(5) indirectly clearly protects the life of the unborn child. Therefore, the writer contends that, though it is clear that some level of protection is there, it is not apparent whether the right to life provisions of human rights instruments does give protection to the right to life of the unborn child. Some scholars contend that reproductive rights of women entitled them the right to abortion. The writer argued that this assertion by no way represents the correct understanding of reproductive rights. Both the 'Beijing platform' and the 'Cairo Programme' do not define reproductive rights as an absolute right to abortion. State delegates in both Cairo and Beijing conferences affirmed that abortion should not serve as a method of family planning.

The abortion law of states, which are state parties to these human rights instruments, ranges from the extreme strict laws which criminalize abortion to liberal laws which permitted the practice of abortion at any stage during pregnancy. Thus, states have the margin of appreciation to criminalize or liberalize abortion. But, as discussed in this study, though the CRC says nothing about when childhood begins, the CRC Committee stipulated that those state laws that allow selective abortion is in contravention to Article 2 of the CRC.

The next chapter will deal with the legal frame works available for the protection of the life of the unborn child under the Ethiopia legal system. The historical development of abortion law in Ethiopia and the provisions of the 2004 Revised Criminal Code dealing with the issue of abortion will also discussed in detail under this chapter.

CHAPTER THREE

THE “RIGHT TO LIFE” OF THE UNBORN CHILD UNDER ETHIOPIA’S LAW

3.1. Introduction

The protection given for the life of the unborn child is directly related to the abortion law of states. A state that has strict abortion laws provides ample protection for the life of the unborn child. Whereas those states that have liberal abortion laws provide lesser protection for the life of unborn child under their laws. As a legal issue, abortion is usually discussed in light of the principles of criminal law. Depending on circumstances, however, abortion can also be discussed from the standpoint of constitutional law. From the criminal law point of view, the matter usually takes the form of criminalizing or decriminalizing the act, while in the latter, the issue becomes whether the fetus has constitutional protection or whether a pregnant woman has a constitutional right to terminate her pregnancy. As mentioned before, protection for the life of the unborn child might be found within state constitutions, criminal laws and international instruments ratified by states.

The protection given for the life of the unborn child under Ethiopia’s legal system is not clear. The Constitution is silent on the issue of life of the unborn child. However, protection for the life of the unborn child is clearly found in other laws of the country. The Revised Criminal Code provides protection for the life of the unborn child in uncontested way. Some sort of protection for the life of the unborn child is there under the Ethiopia legal system. However, the question is that can the existence of such protection is enough to assert the ‘right to life’ of the unborn child. The issue of whether the unborn child has the ‘right to life’ under Ethiopia’s law is still debatable among scholars like anywhere else in the world. Views on such matters are often influenced by once religious outlooks. But what matters most are the clear meanings of the law. It is important to note that literature on this controversial matter is very scarce from the Ethiopian context. Thus, this chapter will try to deal with the above issues briefly.

To accurately address the issue at hand, the chapter is therefore divided in to six major sections including the introduction and conclusion. Accordingly, while the first section introduces the chapter, legal protections for the life of the unborn child under Ethiopia’s legal system will be

discussed within the second section of the chapter. The third section tries to depict Ethiopia's law on abortion before 2004. The fourth section will be devoted for discussing the new 2004 abortion law. The fifth section will specifically deal with legal abortions made for rape or incest victims. Some concluding notes wrap-up the chapter.

3.2. Legal Protection of the Life of the Unborn Child

As discussed above, the question of whether the unborn child can enjoy the 'right to life' guarantee of every person is a controversial issue both for international human rights law and domestic law of states. Generally such controversy revolves around two points. First, the issue of whether the unborn child can be the subject of the 'right to life' guarantee of every person. Second, the issue revolves around what kind of protection the unborn child has under international and domestic law. These two issues are very controversial and debatable among scholars till now. The position of international human rights law on this issue has been discussed in chapter two. In the subsequent section, Ethiopia's law on the issue at hand will be examined.

3.2.1. The FDRE Constitution

Article 15 of the FDRE Constitution states that: 'Every person has the right to life. No person may be deprived of his life except as a punishment for a serious criminal offence determined by Law.' Unlike the provisions of the ICCPR, the ECHR and the ACHR, Article 15 of the Constitution does not contain a phrase which requires the right to be 'protected by law'. It simply states that every person has a right to life and arbitrary deprivation of life is prohibited. However, a close reading of Article 13(1) of the Constitution together with Article 15 of the Constitution will bring on board the duty of the government to protect life by law. For the FDRE Constitution, the only justifiable deprivation of life is the punishment for a serious criminal offence. What about a life deprived because of necessity and legitimate defense? The Constitution is silent on this issue. However, the 2004 Revised Criminal Code of Ethiopia permits deprivation of life because of necessity (Article 75) and legitimate defense (Article 78).¹⁵³

The Constitution under Article 36(1) (a) also states that "the child has the right to life." However the Constitution does not define or give a clue as to what 'every person' or what "a child"

¹⁵³ Note that the European Convention provides necessity and legitimate defense as if they are justifiable and lawful deprivation of the right to life.

means. Whether or not the unborn child enjoys a right to life is one of the most fiercely contested of all human rights questions, requiring examination of what constitutes a human being and how to balance the right to life of fetus and the mother.¹⁵⁴ The position of Ethiopia's Constitution on this issue is not clear.¹⁵⁵

Though our law clearly stipulates that a person under the age of 18 is considered as a child¹⁵⁶, it does not indicate the starting point for childhood. This problem is aggravated by the fact that Ethiopia does not have a separate children's act which deal with the rights and duties of children's. There is no also consensus among medical professionals on the issue of where does childhood starts. Some argued that life starts with conception, and others claim that the fetus is not a person worth of protection till birth. Some still argued that life starts somewhere between the two.

Thus, like the main international human rights instruments, the question of who is included within the phrase "every person" under Article 15 and does 'the child' under Article 36 of the Constitution includes the unborn child are still not clearly addressed under the Ethiopian Constitution. With all ambiguities and controversies involving the unborn child, it is safe to conclude that the Constitution says nothing about what kind of protection is available for the life of the unborn child under Ethiopia's law. Therefore, if any explicit protection is available for the life of the unborn child in Ethiopia, it will be in the ratified human right instruments and ordinary laws of the country other than the Constitution.

Based on Article 9(4) of the Constitution, international agreements ratified by Ethiopia are an integral part of the law of the land. Though the status of such international human right Conventions ratified by Ethiopia is a controversial topic and remains unresolved till today, they do have interpretative supremacy over the human right chapter of the Constitution.¹⁵⁷ So, in

¹⁵⁴ R. Clayton and H. Tomlinson, 'The law of Human Rights', *Martinus Nijhoff Publishers*, 2000, P. 343. For more discussion on these contentious issue of balancing the right to life of the fetus and the rights of the mother, see Louise B. Wright, 'Fetus vs. Mother: Criminal Liability for Maternal Substance Abuse during Pregnancy', *36 Wayne Law Review*. 1285, 1990.

¹⁵⁵ Note that relevant domestic literatures on the provisions of the FDRE Constitution is silent on the issue whether the protection of the right to life enshrined under Article 15 of the Constitution starts from birth, conception or somewhere between. See for instance Fasil Nahum, 'Constitution for a Nation of Nations, the Ethiopian Prospect', *the Red Sea Press, inc.*, 1997, p. 112-113.

¹⁵⁶ The Revised Family Code, Proclamation No. 213/2000, Article 215.

¹⁵⁷ See Article 13(2) of the FDRE Constitution, note 4 above.

dealing with the legal regime available for right to life of every person in general and the life of the unborn child in particular in Ethiopia, one should not forget the provisions of international human rights instruments in which Ethiopia ratified.

Ethiopia acceded to the CRC without any reservation on the 14th of May 1991. The statement of accession was published in 1992 in the *Negarit Gazeta*, which was the official law gazette of the then existing Government.¹⁵⁸ It also acceded to the African Charter on the Rights and Welfare of the Child (hereinafter 'ACRWC').¹⁵⁹ But nowhere in the African Charter protection for the child before birth is mentioned. So the ACRWC as such does not have much help in asserting protection for the unborn child. Moreover, Ethiopia acceded to the ICCPR and ICESCR in 1993, without reservations.

Though the cumulative reading of Articles 9(4) and 13(2) of the Constitution made the provisions of this human rights instruments integral part the law of the land¹⁶⁰ and serve as an authoritative guideline for interpreting human right chapter of the Constitution, the provisions of such human rights instruments also do not made the unborn child subject of the right to life protection. As it has been discussed in chapter two of this study, both the CRC and the ICCPR does not clearly provide that the unborn child has a right to life. But, there is some level of protection provided for the life of the unborn child under these instruments.

The CRC provides protection for the life of the unborn child only in its Preamble. No substantive provision in the CRC provides protection for the life of the unborn child. Because the protection is only in the Preamble consensus among scholars is very difficult to reach on the issue of

¹⁵⁸ See Proclamation No. 10/1992.

¹⁵⁹ See Proclamation No. 283/2000.

¹⁶⁰ Note that the place of international agreements in the hierarchy of Ethiopian laws is not clear. Such issue is not a question, which can readily be answered. But, the question becomes easier to answer when it comes to international human rights covenants. This is due to Article 13(2) of the Constitution, which binds anyone applying the constitutional human rights provisions, to interpret them '*in a manner conforming to*' existing international human rights instrument to which Ethiopia is a party. This solution allows us to elevate international human rights agreements binding Ethiopia to a status equal to the Constitution. But, one might rightly argue that resorting to the international sphere is allowed only when the constitutional sphere is found to be ambiguous. It is only then that interpretation is justified. See Seyoum Yohannes & Aman Assefa, 'Harmonization of laws relating to children, Ethiopia', *African Child Policy Forum*, 2008, p. 6.

whether the CRC protects the right to life of the unborn child or not. The ICCPR also does not clearly provide protection for the right to life of the unborn child. However, Article 6(5) of the ICCPR protects the life of the unborn child indirectly when it declares that capital punishment shall not be performed against a pregnant woman. Thus, according to this provision a child before birth is entitled to the protections given to “persons below eighteen years of age”. This provision clearly recognizes the need to provide some level of protection for the life of the unborn child under the ICCPR.

Even if international consensus on the protection of the life of the unborn child under these human rights instrument is not yet achieved, there will be definitely some lessons that the Ethiopian legal system needs to grasp from such international instruments. First, it is clear that some level of protection is available for the unborn child under international law. And such protection is given because the unborn child is a human being. Second, like the Constitution, most international human rights instruments do not clearly address the issue of the right to life of the unborn child. Still now it is not clear whether the CRC or the ICCPR protects the life of a person from conception or from birth. As Ethiopia is acceded to all this instruments, the above facts should equally be applicable for the Ethiopia’s legal system as well.

Therefore, both the executive and the legislator in Ethiopia need to take cognizant of these facts and the laws dealing with the unborn child (i.e. abortion law) should mainstream such standards. For instance the criminalization of abortion in Ethiopia should not as such attach with the morality of the society or the influence of the major religions on the countries law making process. As a state party to the above instruments, the government of Ethiopian has the obligation, emanating from international treaties, to provide some level of protection for the child before birth.

3.2.2. Ordinary Legislations

Besides the Constitution and international human right instruments ratified by Ethiopia, the other place where one may possibly search protection for the life of the unborn child is within the ordinary legislations of the country. The most important legislation that exists in the country to protect the life of the unborn child is the 2004 Revised Criminal Code. The Revised Criminal Code under Book V, Title I, Chapter I and Section II provides in an equivocal manner protection

for the life of the unborn child.¹⁶¹ Even the title “crimes against life unborn: abortion” shows that this section is provided so as to give protection for the life of the unborn child. The protection is extended in such a way that any intentional termination of the life of the unborn child is a crime in principle. Thus, the life of the unborn child should be valued by any person including the pregnant women. However, the protection rendered by the Criminal Code is not absolute one. Based on the exceptional grounds provided by the same law the protection provided for the life of the unborn child might be violated.¹⁶² Such exceptions are exhaustively illustrated within the law.

Therefore, it is an irrefutable fact that the Ethiopia Criminal Code provides protection for the life of the unborn child. But the rationale behind for providing such protections cannot be justified in the form of recognition of the right to life of the unborn child under Ethiopian law. Thus, the protections provided under the Ethiopian Revised Criminal Code should be understood as if some level of protection is there for the life of the unborn child. The writer, therefore, contends that the protections provided for the life of the unborn child under the Revised Criminal Code should not be considered as if the right to life of the unborn child is recognized under Ethiopia legal system. But it is obvious that some level of protection is given for the life of the unborn child under the Ethiopian legal system.

The other legislation where one may endeavor to find protection for the life of the unborn child is the 1960 Civil Code of Ethiopia.¹⁶³ The Civil Code under Article 1 states that: “*The human person is the subject of rights from its birth to its death.*” From the literal understanding of this provision of the Code one may conclude that a child merely conceived cannot be the subject of rights and therefore the right to life of the unborn child is futile to think about. However, the writer contends that this argument is not strong enough to reject the quest for the right to life of the unborn child.

This is because international human rights instruments ratified by Ethiopia (i.e. see Preamble of the CRC and Article 6(5) of the ICCPR) recognize as if some level of protection is there for the life of the unborn child. And such instruments have an elevated status than the Civil Code.

¹⁶¹ Articles 545-552 of the Revised Criminal Code, note 4 above.

¹⁶² Ibid. Article 551.

¹⁶³ Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960.

Moreover, legal interpretation techniques which states that the ‘recent prevails over the past’ and the ‘special prevails over the general’ will disprove the argument that the unborn child does not have the right to life in Ethiopia.

Therefore, the writer here concludes that even if the Civil Code seems to hold the position that the life of the unborn child is not worthy of protection, the above mentioned reasons makes the provisions of the Code too weak to reject the quest for protection for the unborn child in Ethiopia.

Soon after the enactment of the 2004 Revised Criminal Code, the Federal Ministry of Health (hereinafter ‘FMOH’) issued “*Technical and Procedural Guidelines for Safe Abortion in Ethiopia*” in June 2006.¹⁶⁴ This Technical Guideline is a working document on the techniques and procedures that must be observed in providing safe termination of pregnancy services as permitted by the recently Revised Criminal Code (Article 551). According to these Technical Guideline “abortion is the termination of pregnancy before fetal viability, which is conventionally taken to be less than 28 weeks from the last normal menstrual period (hereinafter ‘LNMP’). If the LNMP is not known, a birth weight of 1000gm is considered as abortion.”¹⁶⁵ The Technical Guideline stated that even for the exceptional grounds abortion is permitted only for pregnancy duration of below 28 weeks or for those the duration of the pregnancy is not known birth weight of 1000gm and below.¹⁶⁶

The Technical Guideline does recognize the protection provided to the life of the unborn child by the Criminal Code. And the guideline is only there so as to give effect to the exceptions provided by the law. Therefore, the Technical Guideline by clearly prohibiting abortion for any women save the exceptions strengthens the assertion that the life of the unborn child does have protection under the Ethiopian legal system.

3.3. Ethiopia’s Laws on Abortion Before 2004

Before dealing with the current Ethiopia’s abortion law, it will be logical to discuss the abortion laws that precede it so as to understand the development of abortion laws in Ethiopia.

¹⁶⁴ Federal Democratic Republic of Ethiopia Ministry of Health, *Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia*, June 2006.

¹⁶⁵ *Ibid.*, p. 5.

¹⁶⁶ *Ibid.*

Christianity, Judaism, Islam as well as other religions were practiced in Ethiopia before the 15th Century. Moreover, as a country of multiple nations, nationalities and peoples, there are a number of customary laws that can serve as basis of laws and may have a bearing on abortion.¹⁶⁷ However, due to dearth of materials pertaining to the subject at hand, it cannot be ascertained with certainty that abortion was a proscribed act before this period.¹⁶⁸ Before the 1930 Penal Code it was *Feteha Negest*¹⁶⁹ which serves as a Penal Code of the country. The part of the *Feteha Negest* which dealt with abortion provided the following:¹⁷⁰

“If a woman conceives and wants to abort the unborn child in her womb, she shall be beaten and exiled.”

Chapter XLVIII, Corporal and Spiritual Punishment for Fornication; VII- 72

“If a man makes a woman abort with poison and lies with her, he must remain outside the church for the rest of his life or in danger (if he is not on the verge of death) must he be deemed worthy of receiving the Holy mysteries, because he has committed the three greatest sins: fornication, homicide, and sorcery. As for women who commit carnal sins and kill their children afterwards and hide their death, first it was provided, with reference to them that they be expelled (from the community) until the day of their death, but because of the great mercy of God towards us the penalty shall be for ten years, as it has been commanded.”

Chapter XLVII, Homicide and its Corporal and Spiritual Punishment as Contained in its Canons) [End of Part XII] – on Spiritual Punishment.

The following section will deal with the abortion provisions of the 1930 and 1957 Penal Code so as to show the clear picture of the development of abortion laws in Ethiopia.

3.3.1. The 1930 Penal Code

¹⁶⁷ T. Wada, note 10 above, p. 20.

¹⁶⁸ Ibid.

¹⁶⁹ Note that the *Feteha Negest* was not penal law in the strict sense, and it embodied provisions of penal law, family law, and successions. Most of its contents dealt with religious affairs. Moreover, it was not binding on non-Christians.

¹⁷⁰ Supra note 167.

The 1930 Penal Code absolutely prohibited abortion with no exception. Six provisions of the Penal Code deal with the crime of abortion.¹⁷¹ According to Article 381, abortion or consent to abortion was punishable by imprisonment from one up to three years and/or a fine ranging from 10 up to 50 Birr. And, performing an abortion upon the consent of the woman was punishable by imprisonment from one month up to one year and a fine ranging from 50 up to 200 Birr (Article 382). The punishment for a middle man who brought together the abortionist and the pregnant woman was the same punishment provided for physicians and midwives plus one-third, when the abortion is accomplished (Article 383).

Abortion escorted by violence or other means was made punishable by imprisonment from 15 up to 20 years if the offender was aware of the pregnancy of the woman (Article 384). And, according to Article 385, a person who carried out abortion was liable to imprisonment from three up to seven years and/or a fine ranging from 3,000 up to 7,000 Birr if the abortion was accomplished. Therefore, Ethiopia's abortion law has been characterized as absolutely strict during the period before the 1957 Penal Code. This might be because of the influence of *Feteha Negest* on the making of the 1930 Penal Code or because of the strong link between state and religion at that time.

3.3.2. The 1957 Penal Code

Book V, Section 2, Chapter I of the 1957 Penal Code is entitled "*Offences against Life Unborn Abortion*".¹⁷² The Code has nine provisions that specifically dealt with abortion.¹⁷³ The general principle that governed the crime of abortion and its punishments, as well as the exceptional grounds under which abortions may be performed legally is stated under Article 528. According to Article 529, self-abortion was punishable with simple imprisonment from three months to five years, and procuring means or aiding are punishable with simple imprisonment from one to five years. And, abortion procured by another (upon consent) entailed rigorous imprisonment not exceeding five years (Article 530).

Where the woman was incapable of giving her consent, or where such consent was extorted by threats, coercion, or deceit, or where she was incapable of realizing the significance of her

¹⁷¹ The 1930 Penal Code, see Articles 380-385.

¹⁷² Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957.

¹⁷³ *Ibid.*, Articles 528-537.

actions, or where the intervention was made against her will, the punishment was rigorous imprisonment from three to ten years. According to Article 531 abortion performed for gain, or where the offender habitually made it a profession, he was liable to an additional penalty of fine. Nevertheless, abortion made on account of an exceptionally grave state of physical or mental distress, especially following rape or incest, or because of extreme poverty, entitled the offender to free mitigation of sentences (Article 533).

The only exception where abortion was not punishable was provided under Article 534 and Article 536 of the Code. This is when it was made to save the pregnant woman from grave and permanent danger to life or health which was impossible to avert in any other way, and in the case of grave and imminent danger which can be averted only by an immediate intervention. Article 534 provides that abortion was not punishable where “it is done to save the pregnant woman from grave and permanent danger to life or health which is impossible to avert in any other way.” According to T. Wada the term “health” in Article 534 does not seem to include “mental health”.¹⁷⁴ Thus, the only two grounds that abortion was permitted under the 1957 Criminal Code were to save the life and physical health of the women.

Therefore, it is clear that the 1957 Penal Code was less stringent than the 1930 Penal Code in recognizing some exceptions to the principle. But, Ethiopia still held strict abortion law during this period.

3.4. The 2004 Revised Criminal Code

The Revised Criminal Code has maintained most of the provisions of the former Ethiopian Penal Code. The Code has eight articles dealing with the crime of abortion. Like the previous penal codes abortion is made a crime in principle. This law has, however, introduced new features as well. One such new development is that it has broadened the grounds of legal abortion. Next discussion on the principle and exceptions of Ethiopia’s abortion law introduced in the 2004 Revised Criminal Code is provided.

3.4.1. The Principle

¹⁷⁴ T. Wada, note 10 above, p. 22.

The intentional termination of a pregnancy, at whatever stage or however effected, is punishable in principle and the nature and extent of such punishment shall be determined according to whether it is performed by the pregnant women herself or by another, with or without her consent (Article 545). Thus, it is only intentional abortion, not abortion made negligently which is punishable under the law. For instance, a pregnant woman does not perform a crime of abortion if she brings the death or injury of the fetus by a car accident caused by her negligent driving. This is because termination of pregnancy in this particular case is not intentional.¹⁷⁵ Self abortion is made punishable with simple imprisonment and any person who procured the means or aids the women in the abortion shall be punishable as a principal criminal or as an accomplice with simple imprisonment (Article 546).

According to Article 547, whosoever contrary to the law performs an abortion on another, or assists in the commission of the crime will be punished with simple imprisonment. Rigorous imprisonment of three to ten years will be the punishment where the intervention is made against the will of the women, or when she is incapable of giving her consent, or when such consent is obtained by threat, coercion or deceit or when she was incapable of realizing the significance of her actions (Article 547). Pregnant women who consented to an act of abortion contrary to the law will be punished by simple imprisonment (Article 547(3)).

Whenever abortion is performed apart from the circumstances provided by law (Article 551) the punishment shall be aggravated (Article 548). Where abortion was performed for gain, or where the offender has made a profession of abortion (Article 92), the person is liable to an additional penalty of fine. Where an abortion is made by a person who has no proper medical profession, the punishment shall be simple imprisonment for not less than one year, and fine. Note that the previous law did not provide for a special punishment for those persons who perform abortions without having proper medical profession. Where a crime of abortion is committed by a professional in particular by a doctor, pharmacist, midwife, or nurse practicing his profession, the Court shall, in addition to simple imprisonment and fine, order prohibition of practice, either for a limited period, or, where the crime is repeatedly committed for life (Article 123).

¹⁷⁵ For discussion on the experience of US law on this particular case of liability of the mother for the injuries she caused negligently to the fetus, see Kristen Barrett, 'Prosecuting Pregnant Addicts for Dealing to the unborn', 33 *Arizona Law Review*. 221, 1991.

The general provisions relating to crimes impossible of completion (Article 29) shall apply in case of attempt to procure abortion on women wrongly supposed to be pregnant (Article 549). The court shall mitigate the punishment (Article 180) for crime of abortion where it is found that the pregnancy is terminated on account of extreme poverty (Article 550). It is important to note that for the 1957 Penal Code grave state of physical health or mental distress, if caused by rape or incest or as a result of extreme poverty, can entitle the accused to free mitigation, while the latter factors (i.e. rape, incest or extreme poverty) do not on their own suffice as grounds of free mitigation unless they in addition bring about grave state of physical health or mental distress. However, for the 2004 Revised Criminal Code pregnancy because of rape or incest goes beyond free mitigation, serves as a defense for legal abortion.

3.4.2. Exceptions to the Rule

The major departure from the previous law is reflected under Article 551 of the revised law which deals with “Cases where terminating pregnancy is not punishable”.¹⁷⁶ The previous Penal Code declares abortion unpunishabel only if “it is done to save the pregnant woman from grave and permanent danger to life or health which is impossible to avert in any other way.”¹⁷⁷ However, Article 551 (1) of the Revised Criminal Code declares the act of abortion unpunishabel when it is procured for the following grounds:

- i. Termination of pregnancy is the result of rape or incest (Article 551 (1) (a)),
- ii. The child has an incurable and serious deformity (Article 551 (1) (c)),
- iii. The pregnant women, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child (Article 551 (1) (d)),
- iv. When the continuance of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother (Article 551 (1) (b)).

Indeed the new law has broadened the grounds of legal abortion in Ethiopia. Furthermore the law avoided the medical formalities required to perform legal abortion and which have been stipulated within the previous Penal Code. Violation of the ‘Technical Guideline’ issued by

¹⁷⁶ T. Wada, note 10 above, p. 26.

¹⁷⁷ See Article 534 of the 1957 Penal Code, note 172 above.

FMoH is made punishable by fine not exceeding one thousand Birr, or simple imprisonment not exceeding three months (Article 552(2)).

3.4.3. Legal Abortion for Rape and Incest victims

Legal abortion procured for the reason other than pregnancy resulting from rape and incest is beyond the scope of this study. Discussion on those factors is made only incidental to discussing the main focus of this writing, which is abortion procured for rape and incest victims. Next the legal basis, if any, available in Ethiopia for procuring abortion for rape and incest will be discussed.

It is Article 551(1) (a) of the 2004 Revised Criminal Code which introduced legal abortion for rape and incest victims to Ethiopia's legal system. For the previous law such status (if it brings *exceptionally grave state of physical and mental distress*) only serves as grounds of mitigation. But now it serves as one ground of legal abortion. Thus, any woman who is pregnant because of the criminal act of rape or incest can demand and get abortion service from any recognized medical institution. The provision of the Revised Criminal Code that stipulates the necessary procedures for terminating pregnancy resulting from the criminal act of rape and incest is causing a problem in giving effect to the laws providing protection for the life of the unborn child. The Revised Criminal Code under Article 552 (2) provides that the mere statement of the women that she is a victim of rape or incest is adequate to prove that her pregnancy is the result of rape or incest.

Moreover, the FMoH Technical Guideline, which is an official interpretation of the law on safe abortion services across the country, provided in its implementation guide for Article 551 (1) (a) of the Revised Criminal Code that:

“Termination of pregnancy shall be carried out based on the request and the disclosure of the women that the pregnancy is the result of rape or incest. This fact will be noted in the medical record of the women. Women who request termination of pregnancy after rape and incest are not required to submit evidence of rape or incest and/or identify the offender in order to obtain an abortion services.”¹⁷⁸

¹⁷⁸ See ‘Technical Guideline’, note 164 above, p. 9.

There is no device envisaged by the law to check the implementation of legal abortions made for rape or incest victims. The FMOH Technical Guideline for safe abortion in providing implementation manual for performing legal abortion for rape or incest victims simply repeats what has been stated in the Revised Criminal Code. It seems both the executive and the legislator forgets what the principle and what the exception is. Thus, the exceptions to the principle of abortion law in Ethiopia need to be interpreted strictly.

If the law provides a governing principle on a certain issue and attached with it a number of exceptions, it is clear that the principle will be eroded by the exceptions in a great deal. This is what is happening in the abortion law of Ethiopia. In principle abortion is a criminal act under Ethiopian law. But the broad and unmanaged interpretation of laws dealing with the practice of abortion for rape and incest victims is helping women's to violate the principle of criminalization of abortion in great deal. Thus, the legislator's intention of accommodating the interests of pro life and pro choice groups in the abortion law of Ethiopia is not working. As will be discussed in the next chapter, the practice seems to favor the interest of pro choice groups. In the next chapter of this study the practice of legal abortion for rape and incest victims in some medical institutions in Addis Ababa will be discussed.

3.5. Conclusion

The life of the unborn child has some level of protection under Ethiopia's law. The FDRE Constitution is not explicit on the life of the unborn child. There is no conclusive evidence that the unborn child is subject of the protection of the right to life under Ethiopia's Constitution. There is no indication under Article 15 of the Constitution that whether the right is protected starting from birth, conception or somewhere between. Thus, the writer concludes that the Constitutional provision of Article 15 does not lend much help for supporting or disproving the assertion that the unborn child has the right to life under Ethiopia's legal system.

Nevertheless, as discussed in the study, some level of protection for the life of the unborn child is found on those international human right instruments ratified by Ethiopia. And according to Article 9 (4) of the Constitution, international human right instruments ratified by Ethiopia are integral part of the law of the land. Ethiopia has acceded to both the CRC and ICCPR and these instruments provide some level of protections for the life of the unborn child. The writer,

therefore, argues that the government of Ethiopia has a duty to provide some level of protection under its laws for the life the unborn child.

However, unlike the FDRE Constitution, protection for the life of the unborn child is clearly provided in the ordinary legislations of the country. The 2004 Revised Criminal Code provides protection for the life of the unborn child in uncontested manner. And such protection is reaffirmed in the FMoH 'Technical Guideline' for safe abortion. Thus, it can be concluded that the life of the unborn child do have some level of protections under Ethiopia's law. But there is no clear provision under Ethiopia's law to frame such protection in the sense of protection of the right to life of the unborn child.

Before 2004 Ethiopia's abortion law has been leveled as a strict one. Currently, Ethiopia still has a strict abortion law. As mentioned in the previous Chapter, the law in principle prohibits abortion and made it a criminal act. But a number of exceptional circumstances are provided by the law for legal abortions. One of such permissive ground is legal abortion procured for rape and incest victims. Article 552(2) of the Revised Criminal Code provides that the mere statement by the women that she is a victim of rape or incest is adequate to procure legal abortion. The FMoH 'Technical Guideline' also affirmed such fact. This provision of the Revised Criminal Code will create problem in giving effect to the principle of abortion law. There is no any mechanism envisaged to avoid abuse of the law by those pregnant women's who are in desperate to get rid of their babes. So, the failure of the law to envisage a mechanism which will strictly control the practice of legal abortion, particularly abortions made for rape or incest victims, is creating a problem in giving effect to the principle of Ethiopia's abortion law.

The next chapter will deal with the practice legal abortion for rape and incest victims in Addis Ababa. The procedural requirements to procure legal abortion for such victims and the compatibility or incompatibility of the practice with the law will be discussed in detail.

CHAPTER FOUR

THE PRACTICE OF ABORTION FOR RAPE AND INCEST VICTIMS IN ADDIS ABABA

4.1. Introduction

As discussed in the previous chapter, Ethiopia does not have a separate Abortion Act. So, the act of abortion in Ethiopia is regulated by the provisions of the Revised Criminal Code. In principle the Revised Criminal Code criminalizes the act of abortion. If it is made because of one of the exceptional grounds, abortion is legal in Ethiopia. Generally, Ethiopia's abortion law allows for the women to procure an act of abortion for five grounds which is provided under Article 551(1) of the Revised Criminal Code.

One of such grounds is pregnancy because of rape and incest. The Revised Criminal Code of Ethiopia stipulated that the FMOH will issue a directive containing the requirements and the procedures necessary to terminate pregnancy under the exceptional circumstance (Article 552(1)). But, unlike the case of other grounds, the Revised Criminal Code itself provided the requirements necessary to procure legal abortion for rape and incest victims. The mere statement of the women that she is a victim of rape or incest is sufficient to deliver the service to the women. The requirements and procedures necessary to procure legal abortion for the reasons other than rape or incest are stipulated within the 'Technical Guideline' issued by the FMOH.

This chapter is devoted for discussing the practice of legal abortion for rape and incest victims in Addis Ababa. To accurately address the issue at hand, the chapter is divided into five sections including the introduction and conclusion. Accordingly, while the first section introduces the chapter, the general practice of legal abortion after the enactment of the 2004 Revised Criminal Code will be discussed within the second section of the chapter. The third section will analyze and discuss the practice of legal abortion for rape and incest victims in Addis Ababa. In this part, analysis of the interviews conducted by the writer with the physician's providing legal abortion for victims of rape or incest in Addis Ababa will be presented. Attitude of the physician's towards the abortion law is also discussed within this section. The fourth section will be devoted to discussing the incompatibility of the practice of legal abortion for rape and incest victims in

Addis Ababa to the law, as well as the extent to which such a practice would not be in compliance with Ethiopia's obligations under international human rights law. Some concluding notes wrap-up the chapter.

4.2. The Practice of Legal Abortion after 2004

In 2004, Ethiopia expanded its abortion law, which had previously allowed the procedure only to save the life of a woman or protect her physical health.¹⁷⁹ As outlined in previous chapters, abortion is now legal in Ethiopia in cases of rape, incest or fetal impairment (Article 551(1) (a)). In addition, a woman can legally terminate a pregnancy if her life or her child's life is in danger, or if continuing the pregnancy or giving birth endangers her life (Article 551(2) (b)). A woman may also terminate a pregnancy if she is unable to bring up the child, owing to her status as a minor or to a physical or mental infirmity (Article 551(1) (c) & (d)).

To give effect to this new law and based on its authorization by Article 552 (1) of the Revised Criminal Code, the FMOH issued a directive titled 'Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia' in 2006. This instrument serves as a guideline for implementing Article 551(1) of the Revised Criminal Code and any legal abortion across the country will be made in line with what is stated within this directive. All health professionals across the country are duty bound to observe the provisions of this guideline in providing the service of legal abortion.

Starting from the entry into force of the law, the number of induced abortions¹⁸⁰ procured each year has grown enormously. In 2008 only, an estimated 382,500 induced abortions were performed in Ethiopia, for an annual rate of 23 abortions per 1,000 women aged 15–44.¹⁸¹ According to this report, the abortion rate is considerably higher than the national average in urban areas: 49 per 1,000 in Addis Ababa and 184 per 1,000 in the smaller urban regions of Dire Dawa and Harari. The high abortion rates in these urban areas are likely the result of many factors, including that the availability of private health care providers in these commercial

¹⁷⁹ See Articles 544- 552 of the FDRE Revised Criminal Code, note 4 above.

¹⁸⁰ Induced or legal abortion for the purpose of this study refers to abortions procured because of one of the grounds illustrated under Article 551(1) of the Revised Criminal Code, note 4 above.

¹⁸¹ See 'Facts on Unintended pregnancy and Abortion in Ethiopia', Guttmacher Institute, *IPAS Ethiopia*, p. 2. Available at http://www.ipas.org/Publications/asset_upload_file440_5002.pdf last accessed on May, 28, 2011.

centers draws women from surrounding areas.¹⁸² Thus, the practice of legal abortion in medical institutions has grown in very large number in today's Ethiopia.

As to the place where legal abortion is conducted, according to Article 551 of the Revised Criminal Code, it is in any recognized medical institutions that legal abortion will be procured in Ethiopia. So any medical institution which has the necessary authorization from FMOH can perform legal abortion in Ethiopia. This has to do in expanding access to legal abortion for those women that legally and truly deserve the service. But at the same time it is creating problem of illegal abortion. Illegal abortion under Ethiopian law is abortion procured contrary to the law i.e. abortion made on the ground of economical or social reasons or available on request. As the number of private medical institutions providing the service of abortion increases, the supervision power of the government to check their conformity to the law will decrease. Some private medical institutions in Addis Ababa provide the service of abortion on request, contrary to the law, for profits.¹⁸³ Therefore, the concerned governmental authority has to supervise the day to day activities of these private medical institutions and make them accountable for their misdeeds and there services conform to the law.

The Revised Criminal Code does not provide the specific period of gestation in which legal abortion is allowed under Ethiopian law. The Code simply states that it is '*within the period permitted by the profession*' that legal abortion will be procured (Article 551). However, the 'Technical Guideline' of FMOH provides that it is only for a maximum of 28 weeks of gestation that legal abortion is procured. This is because there is a consensus among the medical professionals that it is only after 28 weeks of gestation that the fetus becomes viable.¹⁸⁴ Thus, induced abortion in Ethiopia can be legally procured not only if one of the five permissive grounds are fulfilled but also if the life span of the pregnancy does not exceed 28 weeks of gestation.

¹⁸² Ibid.

¹⁸³ Interview with Sister Fanaye Muluneh, nurse at Marie Stops International Ethiopia arada branch, from 10:00 AM-10:30 AM of may 23, 2011 (according to her statement private medical institution that she has been worked in the past does not observe the grounds illustrated in the law and simply procure abortion for any women on request as they are profit orientated institutions). This latter view is similarly adhered by Tadele Mekkonen, interview with Nurse Tadele Mekkonen, nurse at Shiro Meda Health Center, from 11:15 AM-11:45 AM of May 20, 2011.

¹⁸⁴ See 'Technical Guideline', note 164 above, p. 6. Note that in UK as well abortion on demand is allowed only up to 28 weeks of gestational period.

Therefore, the 'Technical Guideline' seems to imply a position that life begins not with conception or with birth. Rather it begins some times after conception, but definitely before birth, which is specifically around 28 weeks of gestation. This is because the 'Technical Guideline' specifically states that the life of the fetus becomes viable only after the passage of 28 weeks of gestation. But the guideline does not frame the prohibition of legal abortion after 28 weeks period of gestation in the form of protecting the life of the unborn child.

Private clinics at all levels and governmental health centers do not procure legal abortion if the pregnancy passes the first trimester (a period of 12 weeks after conception).¹⁸⁵ This is because such medical institutions do not have the necessary medical equipments and medical expertise necessary to deliver the service. Legal abortion for the second trimester will be procured only in Zonal Hospitals, Referral Hospitals and Maternal and Child Health (MCH) Centers and Hospitals.¹⁸⁶ All these health institutions that are given the authorization from the concerned authority, which is FMOH, shall procure the service of legal abortion either medically (Medical Abortion) or surgically (Surgical Abortion).¹⁸⁷

4.3. The Practice of Legal Abortion for Rape and Incest Victims

4.3.1. General

Pregnancy because of rape and incest is one of the five permissive grounds in which abortion is permitted under Ethiopia's law (Article 551(1) (a)). This is one of the new features introduced by the 2004 Revised Criminal Code. Thus, any woman who is a victim of rape and incest and becomes pregnant because of such acts can demand induced abortion and get it from one of the recognized medical institutions in Ethiopia. Furthermore, Article 552(2) of the Revised Criminal Code declares that in case where termination of pregnancy is requested for the reasons of rape and incest, the mere statement by the women is adequate to prove that her pregnancy is the result of rape and incest. Such fact is repeated in the 'Technical Guideline' issued by FMOH to provide safe legal abortion services to those women's who deserve it legally. It is in accordance with the

¹⁸⁵ Medical Abortion involves taking hormones in order to pass the pregnancy vaginally- this treatment is available up to the ninth weeks of pregnancy. Surgical Abortion is involves the pregnancy being removed by an experienced doctor. See the 'Technical Guideline', note 164 above, p. 28.

¹⁸⁶ Ibid, p. 29.

¹⁸⁷ Ibid, pp. 16-19.

above two instruments that legal abortion for victims of rape and incest is provided across the country in Ethiopia.¹⁸⁸

4.3.2. Procedural Requirements to Deliver Abortion Service

Once a woman appears before a recognized medical institution and request the service of legal abortion, there are some procedural requirements that need to be fulfilled before the act of legal abortion is procured. First, the physician/nurse will check whether the woman is pregnant and tries to ascertain the period of gestation. Second, the physician will ask why the women opted for abortion and make sure her reasoning falls in one of the permissive grounds of legal abortion in Ethiopia. Once the physician knows the legality of her request, he/she will write such fact within the women's medical record. There is also a 'Consent Form'¹⁸⁹ prepared by FMOH to be filled by the women for this specific purpose. Third, the physician or the nurse will give counseling to the women on the available options other than abortion. Such counseling includes; explaining the health risks that may face the women because of abortion, advising the option of continuing with the pregnancy and giving the child for adoption after birth if the women does not want the child and also raising women's awareness as to the methods of family planning.

It is only after such formal procedural processes are completed that the actual abortion will be procured. The above formality requirements are observed for any legal abortion. But the focus of this study is the practice of abortion for rape and incest victims only. There are no special procedural requirements to be fulfilled in order to procure legal abortion for rape and incest victims. Simply the statement of the woman that her pregnancy is the result of rape and/or incest will be recorded and no other inquires will be made by the physician to prove whether her

¹⁸⁸ The scope of this study limits itself to the practice of legal abortion for rape and incest victims in Addis Ababa. For further discussion on the practice of abortion in Ethiopia, see Saba Kidamariam, 'Medical Abortion in Ethiopia: Policy and Practice', Africa Regional Meeting on Medical Abortion, Johannesburg, South Africa, March 11-13, 2009. Available at www.medicalabortionconsortium.org/.../Saba%20Kidamariam.ppt last accessed on June 7, 2011; Janie Benson, Tibebu Alemayehu, Karen Otesa & Joan Healy, 'Monitoring Safe Abortion Service in Ethiopia: Testing a Model to Improve Service Availability, Use and Quality', Conference of the International Union for the Scientific Study of Population (IUSSP), Marrakech, Morocco, September 2009. Available at <http://iussp2009.princeton.edu/download.aspx?submissionId=92902> last accessed on June 7, 2011. and see also Fasika Ferede, 'Minors Awareness about the New Abortion Law and Minors Access to Safe Abortion Services in Ethiopia: the Case of Marie Stops International Ethiopia Centers in Addis Ababa', Amsterdam, 2010. Available at http://amma.socsci.uva.nl/theses/alemu_fasika.pdf last accessed on June 7, 2011.

¹⁸⁹ The 'Technical Guideline' of FMOH provides the format of the Consent Form to be used by all medical institutions in Ethiopia, see appendix I of the Technical Guideline annexed in this study.

statement is true or not. This is because both the Revised Criminal Code and the 'Technical Guideline' of FMoH specifically state that the womans' statement is adequate enough to provide the service of safe abortion for the woman.

4.3.3. The Presumed Rape and Incest Victims

Based on the information gathered from physicians procuring legal abortion in main governmental and private medical institutions in Addis Ababa, most pregnant women's requesting the service of legal abortion provides the justifications of rape and incest as the cause of their pregnancy.¹⁹⁰ As mentioned above, the only evidence required by the physician to provide the service is the statement of the women that she is a victim of rape or incest. Once the physicians secured such statement of the woman, the women will be provided with a 'Consent Form' to write her names and sign on it. Once such form is filled by the women by stating that the cause of her pregnancy is rape or incest the law holds a presumption of truth on the statement of the women. The law forbids the physician from requiring evidence that supports the statement of the woman.¹⁹¹ Even the physician is not allowed to make in-depth interview with the woman so as to prove the truth of the stated fact using his/her subjective view of the case.¹⁹² Thus, as the practice shows, there is no mechanism to control the improper and illegal use of this ground of abortion by those women who know the gap in the law well.

The rationale of the Revised Criminal Code (Article 552(2)) in stating that the mere statement of the women that she is a victim of rape and/or incest is adequate to procure legal abortion is the social stigma prevalent in Ethiopia that hinders women from reporting violent acts made against

¹⁹⁰ Interview with Nurse Lemi Kebede, nurse at Shiro Meda Health Center, from 10:30 AM-11:00 AM of May 20, 2011, interview with Nurse Tadele Mekonen (note 183 above), interview with Nurse Fanaye Muluneh (note 183 above), interview with Sister Alemnesh Yehulaeshet, nurse at Marie Stopes International Ethiopia arada branch, from 10:45 AM-11:30 AM of May 23, 2011, interview with Sister Asenakech Darsema, nurse at Gandhi Hospital, from 03:05 PM-03:30 PM of May 20, 2011, interview with Nurse Mekonen Zewde, nurse at Gandhi Hospital, from 04:10 PM-04:50 PM of May 20, 2011, interview with Sister Bettelheim Debebe, nurse at Yekatit 12 Hospital, from 02:20 PM-02:50 PM of May 21, 2011, interview with Sister Meseret Ashenafi, nurse at Yekatit 12 Hospital, from 03:10 PM-03:45 PM of May 21, 2011, interview with Sister Jalenne Tafesse, nurse at Zewodito Hospital, from 03:30 AM-04:10 AM of May 22, 2011. Note that all these nurses took a training organized by FMoH so as to acquire nurses with skills necessary to perform safe abortion services in Ethiopia and currently they are engaged in providing safe legal abortion services in their respective medical institutions.

¹⁹¹ Specifically, Article 552/2 of the 2004 Revised Criminal Code and the provisions of the 'Technical Guideline' created to give effect to the provisions of the Code.

¹⁹² *Supra* note 190. Most of the physicians procured abortion service in Addis Ababa believed that a woman who is actually a victim of rape or incest can be identified subjectively. There are some psychological and physical signs that will be exhibited by such women's.

them.¹⁹³ The other rationale of the law seems to be the difficulty of proving whether the cause of the pregnancy is rape or incest. Discussion on these rationales of the law will be made on the next section of this study. In practice, such connotation of the law creates a good opportunity for women's to resort to legal abortion stating the pretext of rape or incest as the cause of their pregnancy. Nurses working on both private and governmental medical institutions in Addis Ababa believe that more than 50% of the women stating the grounds of rape or incest as the cause of their pregnancy are not telling the truth.¹⁹⁴ This does not mean that there are no genuine women' who are truly the victim of rape or incest and get the service of legal abortion stating such facts. Rather, the writer is arguing that the practice shows that a significant number of women' in Addis Ababa are abusing Article 552(2) of the Revised Criminal Code so as to get legal abortion on request.

For instance 'arada branch' Marie Stops International Ethiopia¹⁹⁵ provides legal abortions service for minimum of thirty women' within a day.¹⁹⁶ And more than twenty of these women provide the justification of rape or incest as the cause of their pregnancy.¹⁹⁷ But it will not be a logical conclusion that the criminal act of rape or incest are committed in such high incidence in Addis Ababa and leading to such amount of unwanted pregnancies. Thus, it is clear that the permissive ground of rape and incest are being used as a pretext for getting safe abortion service in Addis Ababa. In such a way abuse of the law is prevalent in Addis Ababa. Most physicians procuring safe legal abortion services in main medical institutions in Addis Ababa agree with

¹⁹³ See Minutes of the Justice System Reform Program Coordinating Committee (Sene 14, 1995 Eth. Cal., June 21, 2003).

¹⁹⁴ Note that all nurses interviewed by the author (note 190 above) stated that most of the woman's who provided the reason of rape or incest as the cause of their pregnancy are not actually raped or became the victim of incest. They are simply using the gap of the law to get away with the problem of unwanted pregnancy. Once the service of legal abortion is procured, some women's privately confess to the nurses the actual reason of their act of abortion, which is most of the time unplanned pregnancy.

¹⁹⁵ According to Human Life International Mission Report Marie Stops International Ethiopia only performs ten thousand abortions every year. Marie Stops International has twenty abortion clinics in Ethiopia, about half of them in Addis Ababa. For more discussion on the intolerable work of Marie Stops International Ethiopia on the issue of abortion, see 'Human Life International Mission Report', Missionary tripe to Ethiopia, reported by Email Hagamu and Brain Clowes. June, 2011. Available at <http://www.hli.org/index.php/mission-field/english-speaking-africa/972-mission-report-ethiopia-june-2011> last accessed on June 24, 2011.

¹⁹⁶ Interview made with Sister Fanaye Muluneh (note 183 above) and Sister Alemnesh Yehulaeshet (note 190 above).

¹⁹⁷ Ibid.

this conclusion.¹⁹⁸ Thus, the writer here concludes that the practice and the law in abortion issue are not going on the same track.¹⁹⁹

The trend and incidence of legal abortion in Addis Ababa shows that abortion is used as method of family planning by many women's. That is the reason why some of physician's procuring legal abortion in Addis Ababa come across with a number of women's requesting abortion service for the second or third times.²⁰⁰ However, the practice of abortion as a method of family planning is not in line with Ethiopia's obligation under the CRC. In its concluding observation on India's initial report, the CRC Committee²⁰¹ has noted that abortion as a method of family planning, specifically selective abortion, is against the right to non-discrimination which is guaranteed under Article 2 of the Convention.²⁰² Furthermore, in its General Comment No. 7, entitled *implementing child rights in early childhood*, the CRC Committee condemns selective abortion as discrimination against children and as a serious violation of their rights, affecting their survival. Such practice of abortion is also in violation to the Cairo Programme of Action that declares that "In no case should abortion be promoted as a method of family planning..."²⁰³

Therefore, the practice of legal abortion in Addis Ababa is not in line with the obligation of the government of Ethiopia under CRC. The practice encourages selective abortion to be procured. And laws' that encourages the practice of selective abortion is clearly in contravention to protection of the right to non-discrimination guaranteed under Article 2 of the CRC. Thus, the concerned authority has to take a certain measure to bring compliance of the practice of legal abortion to obligations under CRC.

¹⁹⁸ See supra note 190. The interview made by the writer to physician's working in three governmental hospitals, one health centers and in Marie Stops International Ethiopia branch shows such fact. Surprisingly enough all are explaining the fact that the principle of Ethiopian abortion law which criminalizes the practice of abortion on demand is not working in practice. The practice shows as if abortion is legal and Ethiopia has liberal abortion law.

¹⁹⁹ Though the scope of this study is limited to the practice of legal abortion for rape and incest victims, informal discussion with the participants of this research reveals that the abuse of the law is not limited to the legal abortion procured for rape and incest victims. For instance, the provision of the law that allows legal abortion because of minority is also abused in practice by many womens'. Since the statement of the pregnant women that she is a minor is enough to procure legal abortion, many womens' whose actual age is obviously above 18 requested and obtain the service of legal abortion mentioning the above ground of the law, note 190 above.

²⁰⁰ Interview made with Nurse Tadele and Sister Meseret, note 190 above.

²⁰¹ Note that the government of Ethiopia has submitted three periodic reports to the Committee till now. The third periodic report and the concluding observation of the CRC Committee do say nothing about the issue of abortion. Available at http://www.unhcr.org/refworld/country_CRC_ETH_45c30bd60.0.html last accessed on May 31, 2011.

²⁰² See supra note 151.

²⁰³ Cairo Programme, note 115 above, chapter two, para. 62.

The executive organ of the government, specifically the Federal Ministry of Women, Children and Youth Affairs (hereinafter 'FMWCYA') and FMOH, are not playing their respective roles in supervising the strict implementation of abortion laws. It is hard to imagine that the above organs do not have the information on the actual abuse of the law in practice. If that is the case, what is the reason for not taking measures which will avoid or minimize the problem of abuse of the law in practice? Or are they encouraging a liberal abortion law which is observed in practice because of the abuse of the law by many pregnant women. The writer has the opinion that the executive branch of the government has left the practice of abortion unregulated because of its tacit need to liberalize abortion law of Ethiopia. Physicians procuring legal abortion in Addis Ababa stated that they have been reporting the abuse of the law by the women's to their immediate supervisors.²⁰⁴ But, no practical measure has been taken by both the Children Directorate of FMWCY and FMOH to deal with the problem of abuse of the law till now.

4.3.4. Attitude of Physician-s on the Abortion Law of Ethiopia

Minutes of the Justice System Reform Program Coordinating Committee indicate that a Policy Committee which consists of high ranking government officials and legal experts had decided by majority, in favor of decriminalizing abortion in 2003.²⁰⁵ But, since the law could not be enacted - as expected - at the end of the parliamentary year, it appears that the pro-life group seized this opportunity to push its views and the new law could not go beyond the broadening the grounds in which abortion is legal.²⁰⁶ Whatever the deliberation it might be before the coming into effect of the law, currently the act of abortion is in principle a crime.

Surprisingly enough all physicians procuring abortion service in Addis Ababa have the awareness about the provisions of the Revised Criminal Code dealing with the crime of abortion.²⁰⁷ So the problem encountered in practice is not related to lack of knowledge of the law on the part of the physicians. Rather the problem is associated with the wording of the law (Article 552(2) of the Revised Criminal Code) itself and the ignorance of the executive branch of

²⁰⁴ Supra note 190.

²⁰⁵ Supra note 193, pp. 3 & 4.

²⁰⁶ Ibid.

²⁰⁷ Note that an interview made with nurses procuring legal abortion in Addis Ababa reveals the fact that all physicians have the awareness about the Ethiopian abortion law. Even some of them know the exact provisions of the Revised Criminal Code in detail, Supra note 190.

the government in managing the practice of legal abortion and make sure the provisions of the law interpreted in good faith keeping in mind the object and purpose of the law.

Most medical professionals support the current abortion laws of Ethiopia.²⁰⁸ They stated that the current status of Ethiopia's law is moderate enough to balance the interest of pro life and pro choice groups. The majority of this professionals view the matter from the perspective of safeguarding maternal health of women and reducing the rate of maternal mortality in Ethiopia. They argue that if abortion is strictly forbidden in Ethiopia, women will resort to traditional method of abortion and this will increase maternal mortality. On the other hand, if abortion is permitted on demand, women will try to use abortion as a method of family planning. And this is both undesirable and unmanageable considering the economical capacity of the country.

In countries like Ethiopia where there is still shortage of medical professionals that provide basic health service to the people, diverting a number of physicians for providing safe abortion service will not be a sound policy decision. Moreover the easy way to deal with the problem of unwanted pregnancy is not increasing women's access to safe abortion service. Rather it is raising the women awareness about methods of family planning that will have a long and sustainable impact on the women's life. To decrease maternal mortality during giving birth, training of basic midwife skills should be given at community level for any volunteer womens. Thus, the abortion law of Ethiopia is very moderate enough that takes in to account the social, religious and economic situation of the country.

Some medical professionals have the opinion that Ethiopia's abortion law should be liberalized more in a way which permits abortion on demand or on the grounds of socio-economic factors.²⁰⁹ The Revised Criminal Code considers 'extreme poverty' as a mitigating factor, but not as a ground of legal abortion (Article 550). These groups of physicians argue that if the women do not want the child the law should not force her to give birth for her child. They used the privacy and body integrity argument of western scholars to support their positions.²¹⁰ But, even

²⁰⁸ Interview made with Nurse Tadele, Nurse Mekonen, Sister Bethlehem, and Sister Alemnesh (note 190 above).

²⁰⁹ Interview made with Sister Jalenne and Sister Asenakech (note 190 above). Note that this view is also supported by some known legal scholars in Ethiopia like T. Wada, see supra note 10 above, p. 32.

²¹⁰ For further discussion on the issue of Woman's Right of Privacy vs. the rights of the unborn child in Abortion Context, see Louise B. Wright, 'Fetus vs. Mother: Criminal Liability for Maternal Substance Abuse during Pregnancy', 36 *Wayne law Review*. 1285, 1990, p. 2-6.

these groups of nurses agree that the practice of legal abortion in the name of rape and incest victims is a common trend in most of the medical institutions in Addis Ababa.

4.4. Incompatibility of the Practice with the Law

Ethiopia's law of abortion is very clear on the issue of legal abortion for rape and incest victims. It specifically declares as if the mere statement of the women that she is a victim of rape or incest is adequate enough to deliver the service of legal abortion. But there is abuse of such law when it comes to implementation. It is not only those pregnant girls who are actually raped or become victim of incest that are invoking the provisions of the law to get the service of legal abortion.²¹¹ Even though the physician knows that the woman is dishonest, they cannot do anything to prevent the legal abortion from happening if the woman once stated in the medical record that she is a victim of rape or incest. Thus, there is clear abuse of the law by those women who are not legally entitled to get the service of legal abortion. And as the practice shows, such abuse of laws permitting legal abortion for rape and incest victims is eroding the principle of Ethiopia's abortion law in great deal.

Why does not the law attach certain requirements to be fulfilled by a woman claimed to be a victim of rape or incest to obtain legal abortion? One of the rationales of the law in declaring the women's mere statement is enough to procure legal abortion seems that it is very difficult to prove the existence of the situation of rape or incest. The other rationale of the law is the social and cultural reality of the country that most of the women who are the victim of rape or incest do not report the situation to the police.²¹² It is very difficult to prove medically that whether the pregnancy is the result of rape or incest unless it is made short time after the act. Thus, the first rationale of the law is both sound and logical. But, the second rationale of the law discourages the women from reporting to the police the crimes of rape or incest committed against them. By doing so, it helps the perpetrators of the crimes go unpunished. Thus, the writer contends that the second rationale of the law is not a tenable one and has its own harmful impacts.

²¹¹ Interview made with Nurse Tadele, Sister Fanaye, Nurse Mekonen, Sister Meseret, and Sister Jalenne (note 190 above). The practice of legal abortion in Addis Ababa shows such fact. College students and urban girls simply state the fact of 'being a victim of rape or incest', because they know the law well. Even some of the girls come with their boyfriends and provide the above reasons without any worry for the physicians. But in the informal discussion they have with nurses, they usually revile the true reason of their decision to resolute to the act abortion, which is most of the time unwanted pregnancy.

²¹² See supra note 193.

Therefore, to stop the abuse of the law a certain requirement should be attached with Article 552(2) of the Revised Criminal Code. The physician procuring abortion service in Addis Ababa has the opinion that, besides the women's statement that she is a victim of rape and incest, the physicians should have the discretion to decide whether legal abortion shall be procured or not.²¹³ According to this group of physicians, in-depth interview of the women by the physician will disclose whether the women's statement is dishonest or not. They argued further that a woman who is actually a victim of rape or incest shows undeniable psychological trauma and a physician can identify such fact easily.²¹⁴ The writer has the opinion that allowing the physician to conduct such in-depth interview with the women so as to reveal the truth will definitely reduce the problem. But it does not avoid the problem of abuse of the law in full.

At this juncture, the writer finds it relevant to discuss the experience of other countries on the issue at hand. Abortion law in Mexico is more or less similar with Ethiopia's abortion law. In all states and federal districts of Mexico legal abortion to terminate a pregnancy resulting from rape is not punishable.²¹⁵ In all states, legal abortion requires women to provide official proof that they meet the eligibility criteria for rape prescribed in state law.²¹⁶ An official claim must be filed with the Ministry of Health immediately after the rape occurs. To have a claim recognized, women are advised not to shower and to bring their soiled underwear as biological evidence of the rape.²¹⁷ A medical exam is done to gather samples and examine injuries. Then the claim, known as a "denuncio," is filed with the Ministry of Health agent on duty, who collects information on the details of the reported rape.²¹⁸

The steps of this process are intrusive, and a woman must be able to act promptly and bear the strain of the process immediately after the trauma of a rape in order to access their legal right to

²¹³ Interview made with Nurse Tadele and Sister Meseret (note 190 above).

²¹⁴ Ibid.

²¹⁵ Shoshanna Handel, 'Access to Legal Abortion for Sexual Violence Survivors: Providers Knowledge, Attitudes and Practices in Guerrero, Mexico,' the University of North Carolina at Chapel Hill, *University Center for International Studies*, 2005, p. 12, available at http://cgi.unc.edu/uploads/media_items/access-to-legal-abortion-for-sexual-violence-survivors-providers-knowledge-attitudes-and-practices-in-guerrero-mexico.original.pdf last accessed on May 30, 2011.

²¹⁶ Ibid, p. 13, note that the legal procedure that women who have been raped must follow in order to get authorization for a legal abortion in Mexico is modeled after procedures in the United States and Canada, which are often known as "rape kit" procedures.

²¹⁷ Ibid.

²¹⁸ Ibid, p. 14

the option of abortion.²¹⁹ As Shoshanna Handel rightly said ‘it is easy to imagine that some women who have been raped may not feel able to go through the required procedure, and therefore would forgo their legal access to abortion or prosecution of the rapist.’²²⁰ However, such procedure of the law clearly avoids or hinders abuse of the law by those desperate women’s who are decided to terminate their pregnancy by any means available. Thus, in countries like Mexico, Canada, and USA, women who are pregnant because of rape can only get legal abortion if the crime is reported to the police (reported rape).²²¹

For the case of Ethiopia as well, the writer sees no substantial harm in introducing the requirement of ‘reported rape or incest’ in order to procure legal abortion for victims of rape and incest. The introduction of such requirement to the Ethiopia legal system will have two main advantages. First, it will terminate the abuse of the law that allows legal abortion for rape and incest victims. In such a way it avoids the deviation of the practice of abortion from the principle of Ethiopia’s abortion law. Second, it helps to encourage women’s to develop a habit of reporting to the police any sexual assault/violence committed on them. In doing so it also makes possible prosecution of the rapist. At least for urban areas, the situation of lack of access for reporting will not be the problem in introducing such requirement to the Ethiopia legal system.

The clear risk of such introduction is that only very small number of women, who are the victims of rape, or incest, might go to the police and report the situation because of the social stigma attached to them when they take the case to the public. One important fact to keep in mind is that most of the women who are abusing the law to get safe abortion service are urban girls. So the problem of social stigma and fear of the women to take the case to the police can be easily avoided through various ways including awareness creation programs within the society. To deal with such problem, secret reporting system can be introduced by the police in order to encourage women to claim legal redress for the crime committed on them. It is only in such a way that women in Ethiopia will develop the courage to report any crime committed on them and makes the criminals liable for their crimes. The government should always enforce an abortion policy that discourages women from using an act of abortion as a primary way to get away with

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

unwanted pregnancy. It should be done only if there is no other option (for instance adoption) for the victim to go away with their pregnancy that the service of abortion shall be procured.

Thus, introducing 'reported rape or incest' requirement to the Ethiopian legal system will definitely avoid the abuse of the law and create conformity of the practice of legal abortion for rape and incest victims with the law. Such requirement does not need to be a stringent one. It is enough for the women to bring the evidence of her complain from the police station. Once the physician receives such evidence from the woman the service of legal abortion will be procured.

Alternative to such 'reported rape or incest' requirement, the law should entitle the physicians the right to make in-depth interview with the alleged victims to disclose the truth, in case they suspect the dishonest of the women's statement. Furthermore, a central data base system that will register the identity of womens' obtaining abortion service across the country should be established. The establishment of such system will have the following advantages. First, it will enable the government to have accurate data on the number of womens obtaining legal abortion services in the country. And such data will be used as input in framing and improving policies related to the life of the unborn child and method of family planning's. Second, womens' who are abusing laws permitting legal abortion for rape and incest victims habitually can identified easily. So, the concerned authority in Ethiopia should establish such data base system.

4.5. Conclusion

The practice of legal abortion for rape and incest victims in Ethiopia is governed by Article 552 (2) of the Revised Criminal Code and by the principles enshrined within the 'Technical Guideline' of FMoH. The cumulative reading of these instruments shows that the mere statement of the women that she is a victim of rape or incest is adequate enough to procure legal abortion. This statement of the law has created a good opportunity for many pregnant women in Addis Ababa to abuse the law and get safe abortion service illegally. The interview conducted by the writer with a number of physicians working in various medical institutions in Addis Ababa reveal the fact that many women use the permissive ground of rape or incest simply to get legal abortion service. Such abuse of the law is very widespread in Addis Ababa.

Though the legislators might have their own rationales in declaring the mere statement of the women is adequate to provide the service of legal abortion in case of rape or incest, the practice shows that it is not only the actual victims of rape or incest who are using such provision of the law to get safe legal abortion. Such practice of legal abortion has creating a problem in giving effect to protections provided for the life of the unborn child under Ethiopia's law. The principle of Ethiopia's abortion law is being violated because of the dishonest of the statement of many women. In short, the practice of abortion is liberal in Addis Ababa. This is because any women can get the service of abortion by simply stating that the cause of her pregnancy is rape or incest. The failure of the FMoH to supervise medical institutions procuring abortion service in Addis Ababa intensified the problem more and more.

The executive branch has to stop its passive approach on the issue of abortion and take certain measures which will avoid or minimize the abuse of the law. One of the solutions to do away with the abuse of the law is introducing the requirement of 'reported rape or incest' for the woman who alleges that the cause of her pregnancy is rape or incest. Thus, a woman who comes to medical institutions requesting an abortion service should also present evidence of her accusation to the police. In such a way women who are abusing the law to get safe abortion service will be discouraged. The other means to minimize the abuse of the law is entitling the physicians the right to make in-depth interview with the women before procuring the service in order to prove the truth of the women statement using their subjective view. Establishing a central data base system that will register the identity of women's requesting the service of legal abortion across the country will also help in minimizing the abuse of the law.

In the next chapter concluding remarks and major findings of the writer will be presented. Furthermore, recommendation that might help to reduce the problems identified in the practice of legal abortion in Addis Ababa for the alleged rape and incest victims will be provided.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1. Conclusion

It has been said and traditionally accepted that the right to life protection starts from birth and not from conception. There is also an argument which states that the right to life protection starts somewhere between conception and birth. As it has been discussed in this study, the right to life provisions of most international and regional human rights instruments do not clearly provide whether such protection starts from birth, conception or somewhere in between. The proponents of both birth and conception theory provide various arguments to prove and legitimize their respective positions. However, as discussed in this study, the in-depth analysis of the historical documents which serve as a preparatory material for some of the international human rights instruments, which includes the UDHR, ICCPR, ACHR, ECHR and CRC, shows that the life of the unborn child does enjoy some level of protection under such instruments.

Especially, the ICCPR and the CRC clearly provides some level of protection for the life of the unborn child. The CRC, in its Preamble, expressly provides the need for protecting the child before birth. Some scholars contested this statement of the CRC and argue that it is not sufficient enough to demand right to life guarantee for the unborn child under the CRC. But, in the view of this writer, it is legally sufficient to demand some level of protection for the life of the unborn child under CRC. The ICCPR provides, under Article 6(5), some level of protection for the life of the unborn child indirectly when it prohibits capital punishment for pregnant women. Under this sub article the life of the unborn child is granted protection similar to persons below the age of eighteen. Thus, the life of unborn child has protection also under the ICCPR and state parties are duty bound to provide such protection under their national legislations.

Nevertheless the issue of whether the right to life provisions of these human rights instruments protects the unborn child as subjects of the right to life guarantee is left unsettled under international law. This is because international consensus on this contested matter is very difficult to reach. It seems that international law leaves such issue to be settled by the domestic law of states. As the *travaux préparatoires* of some of the international human rights documents

show the delegates that were involved in the negotiation of these instruments avoided the insertion of the phrase 'starting from birth or conception' from the right to life provisions of the above instruments for the mere reason of not jeopardizing the ratification of the instruments by the member states. Therefore, the intention of refusing protection for the life of the unborn child played no part in the absence of 'starting from conception' phrase within the provisions of the above human rights instruments.

This as a backdrop, the abortion laws of states, which are state parties to these human rights instruments, ranges from the extremely strict laws which criminalize abortion to liberal laws which permit the practice of abortion until some stage of gestation. Thus, states have the margin of appreciation to criminalize or liberalize abortion. The fact that a certain state has a liberal abortion law means that the level of protection given for the life of the unborn child under that state's legislation is very low. Furthermore, the CRC Committee declares that the practice of selective abortion (especially in those states that have liberal abortion laws) is against protection of the right to non-discrimination guaranteed under Article 2 of the CRC. Thus, it is argued under this study that those state parties to CRC (and possibly ICCPR too) that have absolutely liberal abortion laws are in contravention of their obligations under these instruments to provide some level of protection for the life of the unborn child. This is because ICCPR and CRC clearly guaranteed some level of protection for the life of the unborn child.

Apart from selective abortions, the practice of using abortion as a family planning method is also considered to be in violation of the obligation of States under the CRC. As argued above, this is confirmed by the concluding observation of the CRC Committee on India. This indeed has far reaching implications for those states parties to the CRC that not only have a law that seems to promote abortion as a family planning method, but also those with strict laws but very liberal practice that allows abortion as a family planning method.

It has also been argued, albeit briefly, that a reproductive right of women does not entitle woman an absolute right to abortion. As discussed under this study, the argument of some scholars that the protections of reproductive right entitle every woman the right to abortion is not in line with the provisions of international human rights instruments. And this assertion by no way represents the correct understanding of reproductive rights. As highlighted above, both the 'Beijing

platform' and the 'Cairo Programme' do not define reproductive rights as a right to abortion. State delegates in both Cairo and Beijing Conferences affirmed that abortion should not serve as a method of family planning. Thus, providing protection for the reproductive rights of women do not affect the protections available for the life of the unborn child under international law, as reproductive right does not necessarily imply an absolute right to abortion.

Therefore, it is concluded under this study that the right to life provisions of international human right instruments do not provide in an absolute way whether the unborn child is a subject of the right to life or not. This does not, however, mean that the unborn child does not enjoy any protection, since the unborn life is already considered to be worthy of protection under international human rights law. But such protection is not yet framed in the sense of "a right to life" of the unborn child and has not yet received international consensus.

In Ethiopia, the law provides protection for the life of the unborn child. The right to life provision of the FDRE Constitution is silent on protection of the life of the unborn child. As discussed in this study, there is no indication under Article 15 of the Constitution that whether the right to life of 'every person' is protected starting from birth, conception or somewhere in between. Thus, it is concluded under this study that the right to life provisions of the FDRE Constitution do not lend much help for supporting or disproving the assertion that the unborn child has the 'right to life' under the Ethiopia legal system.

Nevertheless, it has been found worth of remembering that some level of protection for the life of the unborn child is found in some of the international human rights instruments ratified by Ethiopia. According to Article 9 (4) of the Constitution, international human rights instruments ratified by Ethiopia are integral part of the law of the land. Ethiopia has acceded to both the CRC and ICCPR, and as discussed in this study, these instruments provide some level of protections for the life of the unborn child. Thus, there is a duty, emanating from the provisions of CRC and ICCPR, on the part of the government of Ethiopia to provide some level of protection under its laws for the life of the unborn child. The protection of the life of the unborn child is also clearly provided within the ordinary legislations of the country. As demonstrated above, some level of protection for the life of the unborn child is given in uncontested manner under the Revised Criminal Code. The FMoH 'Technical Guideline' for safe abortion also reaffirmed such

protection of the Code. According to the 'Technical Guideline' of FMoH, life begins not with conception or birth, but somewhere in between (i.e. around 28 weeks of gestation).

Therefore, the normative framework for the protection of the life of the unborn child in Ethiopia derives from the provisions of international human rights instruments ratified by Ethiopia and ordinary legislations. But, such protections cannot be framed in the sense of the 'right to life' of the unborn child in Ethiopia. Therefore, the protection of the life of the unborn child under the Criminal Code should not be considered as if the right to life of the unborn child is recognized under the Ethiopia legal system.

Though the 2004 Revised Criminal Code broadened the permissive grounds in which abortion is legal, it does not decriminalize the act of abortion and Ethiopia still has a strict abortion law. The law in principle prohibits abortion and made it a criminal act. But a number of exceptional circumstances are provided for legal abortions. Article 551 (1) of the Revised Criminal Code provides five broad permissive grounds for the performance of legal abortion in Ethiopia. These grounds are abortion procured: - to save the life of the women, to preserve physical health, to preserve mental health, for pregnancy caused by rape or incest, and pregnancy with fetus impairment.

Therefore, it is concluded under this study that there is some level of protections for the life of the unborn child under Ethiopia legal system. But, the protection of the 'right to life' of the unborn child is not recognized under Ethiopia's law.

This as a background, the study has looked at the practice of abortion which is increasing in a day to day basis in Ethiopia. Pregnancy caused by the criminal act of rape and incest is one of the permissive grounds in which legal abortion is procured under Ethiopian law. The practice of legal abortion for rape and incest victims in Ethiopia is governed by Article 552 (2) of the Criminal Code and the principles enshrined in the 'Technical Guideline' of FMoH, issued to provide safe abortion service in Ethiopia. The principles enshrined in the Revised Criminal Code and 'Technical Guideline' explicitly provide that the mere statement of the women that she is a victim of rape or incest is adequate enough to procure legal abortion. This principle of Ethiopia's abortion law has created an ample opportunity for many pregnant women in Addis Ababa to abuse the law and get safe abortion service illegally. As discussed in this study, the interviews

conducted with the physician-s working in various medical institutions in Addis Ababa shows the fact that several women-s use the permissive ground of rape or incest simply to get legal abortion service. The abuse of the above principle of abortion law is very common in Addis Ababa.

Even though the legislators might have their own rationales in declaring at least impliedly as if the mere statement of the women is adequate to provide the service of legal abortion in case of rape or incest, the practice shows that it is not only the actual victims of rape or incest that are using this principle of the law to get safe legal abortion service. The principle of Ethiopia's abortion law that criminalizes the act of abortion is violated in great deal because of the deceit of the womens' statement. The intense regularity of the practice of abortion in Addis Ababa might even give the impression that Ethiopia has a liberal abortion law. Thus, the practice of legal abortion for rape and incest victims is creating a problem in giving effect to laws that provide some level of protection for the life of the unborn child in Ethiopia, which, as argued above could also be construed to emanate from the international law obligations Ethiopia has under the CRC (and also the ICCPR).

The failure of the concerned authorities of the government to supervise the actual practice of legal abortion within the authorized medical institutions intensified the problem of abuse of the law even further. Moreover, the medical institutions procuring abortion services in Addis Ababa are increasing in a very large number and that makes regulation and supervision unmanageable. In this regarded, the executive branch has to stop its passive approach on the issue of abortion and take certain measures which will avoid or minimize the abuse of the law.

As it has been discussed in this study, one way to deal with the abuse of the principle of abortion law and to stop the violations being made to the laws protecting the life of the of the unborn child is introducing the 'reported rape or incest' requirement for those women that allege the cause of their pregnancy being rape or incest. Thus, a woman who comes to a medical institution requesting an abortion service should also be required to present evidence of her allegation to the police. In such a way women who are abusing the law to get safe abortion service will be discouraged. The other alternative to minimize the abuse of the law is to entitle physicians the right to make in-depth interview with the women before procuring the service in order to prove

the truth of the womens' statement using their own subjective view of the overall circumstances of the case. Establishing a central data base system that will register the identity of womens' that requested the service of legal abortion (by invoking incest and rape as a ground) across the country will also minimize the problem of abuse of the law since it would be possible to identify 'habitual' abusers of the law.

Therefore, it is argued in this study that, unless the above mechanisms are envisaged within the abortion law of Ethiopia, conformity of the practice of abortion with the domestic and international law cannot be achieved.

5.2. Recommendations

Despite the normative possibility for protection of the life of the unborn child, the actual protection accorded for the life of the unborn child is under developed in Ethiopia. Thus, there is a gap between the legal possibility and the practice on the protection of the life of the unborn child in the country. So, in order to bridge such gap and enhance the actual protection of the life of the unborn child in Ethiopia, the writer, based on the discussions so far, recommends the following measures by the legislative and executive branches of the government as well as other human rights activists. Taking these measures will hopefully ensure the better protection of the life of the unborn child by any entity in Ethiopia. At the outset, it is important to mention that these recommendations are provided with no order of priority.

5.2.1. Promotional Measures

The dominant perception among members of academia, the executive especially among medical professionals, as well as the beneficiaries of legal abortion is that the life of the unborn child is not given any level of protection under Ethiopian law. As the interviews conducted with the participants of this research indicated, this perception emanates from the wrong understanding that in Ethiopia abortion is prohibited not for the sole reason of providing protection for the life of the unborn child. Rather it is because of the influence of the views of major religions on the law making process of the abortion law of country. This shows the absence of adequate knowledge about the realities of the legal protection of the life of the unborn child in Ethiopia.

Therefore, the writer recommends to the government to train members of the executive concerning the legal protection of the life of the unborn child available in Ethiopia. This awareness creation about the protections available for the life of the unborn child should also be extended to young women that are the victims of illegal abortion and at the same time the violators of the protections accorded for the life of the unborn child in Ethiopia. Age appropriate sexual education should be envisaged within the school curriculum too. In such a way young women in schools would grow knowing the methods of family planning services available for them and learn to prevent unwanted pregnancies. Furthermore, the minimum age for access to contraceptives should be stipulated by the government, in order to understand who can access what kinds of family planning methods. The government should also work hard on the prevention of unwanted pregnancies by spreading family planning services to any section of the society.

Policies and action planes of the government aimed at safeguarding maternal health of women's (some of them within the framework of the Millennium Development Goals) should be designed in such a way that takes in to account the protections available for the life of the unborn child under Ethiopia's law. These policies and programs should follow a right based (as opposed to a needs based) approach to attain their goals. Moreover, NGOs should work in the awareness creation regarding protection of the life of the unborn child among members of the executive as well as to the general public. They should also promote family planning services, especially on the poor section of the society.

5.2.2. Legislative Measures

There is some legislation in Ethiopia that contains some level of protection for the life of the unborn child. The abortion provisions of the Revised Criminal Code and the principles enshrined in the 'Technical Guideline' of the FMOH are the pillars that provide some level of protection for the life of the unborn child in Ethiopia. But, as discussed in this study, the available laws and principles in Ethiopia have proved to be insufficient for safeguarding and giving effect for the legal protections of the life of the unborn child. The practice of abortion in Addis Ababa is not sufficiently regulated and it is often performed contrary to the principles and spirit of abortion law of Ethiopia. As public image on the practice of abortion (especially religious opinion) would

definitely have an impact on the future (relaxation) of abortion laws in Ethiopia, proper regulation of the abortion issue is essential. In other words, if law reform efforts in the future in relation to relaxing the abortion law of Ethiopia are to garner the confidence and support of stakeholders, especially religious leaders and groups, the current abuse of the exceptions provided for in the Revised Criminal Code need to be addressed urgently. Thus, legislative measure is indispensable to bring conformity of the practice of abortion to the law and to provide better protection for the life of the unborn child.

Ethiopia does not have a 'Comprehensive Children's Code or Act' that contains the rights and duties of the child in a single document. The rights of children in Ethiopia are still provided in various legislations of the country. There is no systematic legislative review of laws that deal with children's rights. The CRC Committee in its Concluding Observation for the first three reports of the government of Ethiopia also recommended this need to legislate a separate Children's Act in Ethiopia. Thus, a 'Children Act' that defines what a child means under Ethiopian legal system, that incorporate fundamental rights of the child and specify- the concerned authorities responsible for children's care is necessary in Ethiopia. Such 'Children's Act' should be designed in a way that gives due consideration to the obligations of Ethiopia that emanates from the international human rights instruments the country has ratified. Moreover, in order to give better protection for the life of the unborn child a separate Abortion Act need to be created.

The principle enshrined in the Revised Criminal Code and the 'Technical Guideline' which states that 'the women's mere statement that she is a victim of rape or incest is adequate to provide legal abortion for her' needs to be amended. As discussed in this study, this principle of the law is creating a problem in giving effect to the protections available for the life of the unborn child in Ethiopia. Abuse of such provisions of the law is prevalent in Addis Ababa. Since the governing law is one and the same, the practices of abortion in other parts of Ethiopia are expected to be similar with the case of Addis Ababa. Thus, the writer recommends that to stop the abuse of the law by pregnant women the 'reported rape or incest' requirement should be introduced into the abortion law of Ethiopia.

Alternatively, the abortion law in Ethiopia should be amended in such a way that entitle physicians the 'right to make in-depth interview with the women' requesting abortion service for the reasons of rape and incest in order to prove the truth of the women's statement using their own subjective view of the overall circumstances of the case. This amendment will definitely minimize the problem of abuse of the abortion law in Ethiopia.

5.2.3. Institutional Measures

The practice of legal abortion in Addis Ababa and interviews made with the participants of this research indicated that there is no institution or department/ organ of the government that controls the compliance of the practice of legal abortion with the law. Once the FMOH or its sub departments authorize certain medical institutions (both private and governmental institutions) to provide legal abortion, there is no concrete mechanism envisaged by the law to control the conformity of their service with the law. As discussed in the study, this situation created a good opportunity for a number of medical institutions to procure legal abortion even contrary to the law. Thus, the executive branch of the government, specifically the FMOH, should establish a sub department with a task of assessing the practice of legal abortion in the authorized medical institutions periodically, control their compliance to the abortion law of the country, and take measures in case non-conformity is found.

Furthermore, to stop the abuse of the law, a central data base system that will register the identity of women (but also respect privacy rights) procuring legal abortion service across the country need to be established by the concerned governmental authority. In such a way, those women who are requesting an abortion service 'habitually' or more than once will be deterred from their abuses.

Therefore, the writer genuinely believes that the above measures, if implemented, will ensure a better protection of the life of the unborn child in Ethiopia and brings the practice of abortion for rape and incest victims in compliance with the protections provided for the life of the unborn child under the Ethiopian legal system.

BIBLIOGRAPHY

1. Books

- B. G. Ramcharan, (eds.), *the Right to Life in International Law*, (Dordrecht, *Martinus Nijhoff Publishers*, 1985).
- B. G. Ramcharan, (eds.) *Human Rights: Thirty Years after the Universal Declaration*, (The Hague-Boston-London, *Martinus Nijhoff Publishers*, 1979).
- Fasil Nahum, (eds.) *Constitution for a Nation of Nations, the Ethiopian Prospect*, (USA, *the Red See Press, inc.*, 1997).
- Francis J. Beckwith (eds.), *Defending Life, a Moral and Legal Case against the Choice of Abortion*, (Baylor University, *Cambridge University Press*, 2007).
- John T. Noonan (eds.), *the Morality of Abortion, Legal and Historical Perspectives*, (Cambridge, Massachusetts, *Harvard University Press*, 1970).
- Lisa Smyth (eds.), *Abortion and Nation, the Politics of Reproduction in Contemporary Ireland*, (Great Britain, *Athenaeum Press Ltd*, 2005)
- Nanette J. Davis (eds.), *From Crime to Choice, the Transformation of Abortion in America*, (Westport, *Greenwood Press*, 1985).
- R. Clayton and H. Tomlinson, *The law of Human Rights*, (Netherlands, *Martinus Nijhoff Publishers*, 2000).
- Rita Joseph (eds.), *Human Rights and the Unborn Child*, (Boston, *Martinus Nijhoff Publishers*, 2009).

2. Journals and Articles

- Abby F. Janoff, "Rights of the Pregnant Child vs. Rights of the Unborn under the Convention on the Rights of the Child", *22 B.U. International Law Journal*. 163, 2004.

- Best Kim, "Men's Reproductive Health Risks: Threats to men's fertility and reproductive health include disease, cancer and exposure to toxins", *Family Health International*, 2007. It is also available at http://www.fhi.org/en/RH/Pubs/Network/v18_3/NW183ch2.htm last accessed on May 1, 2011.
- Cathleen M. Colvin, "Society for the Protection of Unborn Children (Ireland) Ltd. v. Grogan: Irish Abortion Law and the Free Movement of Services in the European Community, Sixth Annual Issue on European Community Law Comment", *15 Fordham International Law Journal*. 476, 1992.
- Colleen Jolicoeur-Wonnacott, "the Unborn Victims of Violence Act: Friend or Foe to the Unborn?", *17 Thomas M. Cooley Law Review*. 562, 2000.
- Dianne Nutwell Irving, "Philosophical and Scientific Analysis of the Nature of the Early Embryo", *Human Rights Quarterly*, 1991.
- Glanville Williams, "The Fetus and the Right to Life", *Cambridge law journal*, 1994.
- Jakob Pichon, "Does the Unborn Child have the Right to Life, the Insufficient Answer of the European Court of Human Rights in Judgment Vo v-France", *Human Rights Quarterly*, 2004.
- Jeffrey A. Parness, "the Legal Status of the Unborn after Webster", *Dickinson Law Review*, 1990.
- Kristen Barrett, "Prosecuting Pregnant Addicts for Dealing to the Unborn", *33 Arizona Law Review*. 221, 1991.
- Laura Knudsen, "Reproductive Rights in a Global Context", *Vanderbilt University Press*, 2006. Available at <http://books.google.com/?id=b3thCcdyScsC&dq=reproductive+rights> last accessed on May 1, 2011.
- Little Margaret Olivia, "Abortion, intimacy, and the Duty to Gestate", *Ethical Theory and Moral Practice*, 1999.

- Louise B. Wright, "Fetus vs. Mother: Criminal Liability for Maternal Substance Abuse during Pregnancy", *36 Wayne Law Review*. 1285, 1990.
- Marc Cornock and Heather Montgomery, "Children's rights in and out of the womb", *International Journal of Children's Rights*, 2011.
- Marc J. Bossuyt, "Guide to the *travaux préparatoires* of the International Covenant on Civil and Political Rights", *Martinus Nijhoff Publishers*, 1987.
- Patrick Lee and Robert P. George, "the Wrong of Abortion", *Fordham International Law Journal*. 747, 1997.
- Philip Alston, "The Unborn Child and Abortion under the Draft Convention on the Rights of the Child", *Human Rights Quarterly*, 1990.
- Rebecca J. Cook and Bernard M. Dickens, "the Human Rights Dynamics of Abortion Law Reforms", *Human Rights Quarterly*, 2003.
- Rebecca J. Cook and Mahmoud F. Fathalla, "Advancing Reproductive Rights Beyond Cairo and Beijing", *International Family Planning Perspectives*, Vol. 22, No. 3, 1996.
- Seyoum Yohannes & Aman Assefa, "Harmonization of laws relating to children, Ethiopia", *African Child Policy Forum*, 2008.
- Sharon Detrick, "The United Nations Convention on the Rights of the Child, A Guide to the 'Travaux Préparatoires'", *Boston University Public Interest Law Journal*, 1992.
- Shoshanna Handel, "Access to Legal Abortion for Sexual Violence Survivors: Providers Knowledge, Attitudes and Practices in Guerrero, Mexico," the University of North Carolina, *University Center for International Studies*, 2005. Available at http://cgi.unc.edu/uploads/media_items/access-to-legal-abortion-for-sexual-violence-survivors-providers-knowledge-attitudes-and-practices-in-guerrero-mexico.original.pdf last accessed on May 30, 2011.

Trees A.M. TE Braake, "Does a Fetus have a Right to Life? The Case of *Vo v.*", *European Journal of Health Law*, 2004.

Tsehai Wada, "Abortion Law in Ethiopia, A Comparative Perspective", *Mizan Law Review*, Vol. 2 No.1, 2008.

3. Other Sources

3.1. Internet Sources

_____'Statement by the Council of the British Medical Association to the World Medical Association', 1947, Re-issued by the Medical Education Trust, and reproduced. Available at: <http://www.donoharm.org.uk/leaflets/war.htm> last accessed March 12, 2011.

_____"WHO: *Unsafe Abortion - The Preventable Pandemic*". Available at http://www.who.int/reproductivehealth/publications/unsafe_abortion/ua_paper/en/index.html last accessed on April 10, 2011.

Fasika Ferede, "'Minors' Awareness about the New Abortion Law and Minors Access to Safe Abortion Services in Ethiopia: the Case of Marie Stops International Ethiopia Centers in Addis Ababa", Amsterdam, 2010. Available at http://amma.socsci.uva.nl/theses/alemu_fasika.pdf last accessed on June 7, 2011.

Francis Loeber and Dean R. Dowling, *the Abortion Debate, the Case for Legal Abortion*, Australia, (2009). Available at <http://www.atheistfoundation.org.au/articles/abortion-debate-case-legal-abortion> last accessed on March 21, 2011.

Janie Benson, Tibebe Alemayehu, Karen Otesa & Joan Healy, "Monitoring Safe Abortion Service in Ethiopia: Testing a Model to Improve Service Availability, Use and Quality," Conference of the International Union for the Scientific Study of Population (IUSSP), Marrakech, Morocco, September, 2009. Available at <http://iussp2009.princeton.edu/download.aspx?submissionId=92902> last accessed on June 7, 2011.

Joyce Arthur, '*Personhood: Is a Fetus a Human Being*', 2001. Available at <http://www.abortionaccess.info/fetusperson.htm> last accessed on January 20, 2011.

Linda Lowen, "*Abortion Pros and Cons, and Main Points of the Debate*", 2011. Available at <http://womensissues.about.com/od/reproductiverights/a/AbortionArgumen.htm> last accessed on May, 10, 2011.

Saba Kidamariam, "*Medical Abortion in Ethiopia: Policy and Practice*", *Africa Regional Meeting on Medical Abortion, Johannesburg, South Africa*, March, 2009. Available at www.medicalabortionconsortium.org/.../Saba%20Kidamariam.ppt last accessed on June 7, 2011.

3.2. Other materials

____ Committee on the Rights of the Child, Concluding observation of the Committee on the Rights of the Child: India, Twenty-third session, CRC/C/15/Add.115, February 23, 2000. Available at <http://www.unhcr.org/refworld/category,COI,CRC,,IND,3ae6afc44,0.html> last accessed on May 30, 2011.

____ Committee on the Rights of the Child, Concluding observation of the Committee on the Rights of the Child: Ethiopia, Forty-third session, CRC/C/ETH/CO/3, November 1, 2006. Available at <http://www.unhcr.org/refworld/country,,CRC,,ETH,45c30bd60,0.html> last accessed on May 31, 2011.

____ Convention on the Rights of the Child, Committee on the Rights of the Child, General Comment No. 7, 'Implementing Child Rights in Early Childhood', Geneva, September, 2005.

____ Fourth World Conference on Women: Action for Equality, Development, and Peace, Beijing Declaration and Platform for Action, UN. Doc. A/Conf. 177/20, (1995), also known as 'the Beijing Platform'.

____ Human Life International Mission Report', Missionary tripe to Ethiopia, reported by Email Hagamu and Brain Clowes, June, 2011. Available at

<http://www.hli.org/index.php/mission-field/english-speaking-africa/972-mission-report-ethiopia-june-2011>.

_____ Report of the International Conference on Population and Development, U.N. Doc. A/ Conf.171/13, 1994, also known as the 'Cairo Programme of action'.

_____ "Proclamation of Teheran", International Conference on Human Rights, 1968. Available at http://web.archive.org/web/20071017025912/http://www.unhchr.ch/html/menu3/b/b_tehern.htm last accessed on may 9, 2011.

_____ The Alan Guttmacher Institute, "Sharing Responsibility: Women, Society and Abortion World Wide", Annual Report, 2008.

_____ The Alan Guttmacher Institute, "Facts on Unintended pregnancy and Abortion in Ethiopia: *IPAS* Ethiopia. http://www.ipas.org/Publications/asset_upload_file440_5002.pdf last accessed on May, 28, 2011.

4. Laws

4.1. Ethiopia Laws:

Civil Code of the Empire of Ethiopia, Proclamation No. 165/1960.

Federal Democratic Republic of Ethiopia Constitution, 1995, Proclamation No. 1, Negarit Gazeta, 1st Year, No. 1.

Federal Democratic Republic of Ethiopia Ministry of Health, Technical and Procedural Guidelines for Safe Abortion Services in Ethiopia, June 2006.

The Criminal Code of the Federal Democratic Republic of Ethiopia, Proclamation No. 414/2004.

The Revised Family Code of Ethiopia, Proclamation. No. 213/2000.

The 1930 Penal Code of the Empire of Ethiopia.

The Penal Code of the Empire of Ethiopia, Proclamation No. 158/1957.

4.2. International and Regional Instruments and Documents:

International Instruments:

Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly Resolution No. 44/25 of 20 November 1989 and entered into force on 2 September 1990.

International Covenant on Civil and Political Rights, Adopted on 19 December 1966 and entered in to force on 23 March 1976.

Universal Declaration of Human Rights, 1948.

Vienna Convention on the Law of Treaties, 1969.

Regional instruments:

Africa (Banjul) Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), adopted on 27 June 1981 and entered into force on 21 October 1986.

African Charter on the Rights and Welfare of the Child, OAU Doc. Cab/Leg/24.9/49 (1990), entered Into Force Nov. 29, 1999.

European Convention for the Protection of Human Rights and Fundamental Freedoms adopted on Nov.4, 1950 and entered into force on September 3, 1953.

Inter American Convention on Human Rights, 1969.

Interviews:

Interview with Sister Fanaye Muluneh, nurse at Marie Stops International Ethiopia arada branch, on May 23, 2011.

Interview with Sister Alemnesh Yehulaeshet, nurse at Marie Stops International Ethiopia arada branch, on May 23, 2011.

Interview with Nurse Tadele Mekkonen, nurse at Shiro Meda Health Center, on May 20, 2011.

Interview with Nurse Lemi Kebede, nurse at Shiro Meda Health Center, on May 20, 2011.

Interview with Sister Asenakech Darsema, nurse at Gandhi Hospital, on May 20, 2011.

Interview with Nurse Mekonen Zewde, nurse at Gandhi Hospital, on May 20, 2011.

Interview with Sister Bettelheim Debebe, nurse at Yekatit 12 Hospital, on May 21, 2011.

Interview with Sister Meseret Ashenafi, nurse at Yekatit 12 Hospital, on May 21, 2011.

Interview with Sister Jalenne Tafesse, nurse at Zewodito Hospital, on May 22, 2011.

**Technical and
Procedural Guidelines for
Safe Abortion Services
in Ethiopia**

**June 2006
Addis Ababa**

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Foreword

Ethiopian women carry a disproportionately high morbidity and mortality as compared to their counterparts in other parts of the world. Evidences show that women in developing countries like Ethiopia have one-two hundred fold increased lifetime risk of death from causes related to pregnancy and childbirth. Although we are witnessing a slow but steady change in the reproductive health status of women as indicated with the results of the recent DHS, improvement in the status of women desires much more focused attention investments, political commitment, and intersectoral collaborations

Pursuant to its national and global commitments to improve the well being of its citizens and changing social and gender dynamics, the Government of Ethiopia had taken several policy and legal measures over the last decade. The revision of the Criminal Code of the Ethiopia that came after more than five decades is among such notable measures. As an instrument for change and a tool for the security of the individual and the society, the Criminal Code would undoubtedly contribute to the overall development intentions of the nation.

The Criminal Code of 2005 addresses a variety of issues that negatively affect the reproductive lives of women including harmful traditional practices such as early marriage and female genital cutting, rape, abortion, gender-based violence. The 1955 Law that restricted abortion to women whose lives are at risk had been reformed to include women with particular risks whose continuation of the pregnancy might endanger their well being and lives. This Guideline translates the Law into actionable measures and envisages to inform women, health professionals, law enforcement agencies and all sectors of the

society who care for well-being of women and their families. It is worthy of note here that this Guideline follows the launch of the National Reproductive Health Strategy that provides the framework for all our RH services and programs.

Health care providers at all levels are expected to not only have a good grasp of this Guideline, but also prepared to discharge their professional responsibilities as outlined in the document. The FMOH provides unreserved support and guidance to the implementation of the Guideline as an essential component of the strategy to reduce maternal morbidity and mortality.

It goes without saying that we have to act in synergy with key stakeholders in the UN family, bilateral agencies, professional associations, international and local NGOs to ensure access to safe abortion services to Ethiopian women. I would therefore call upon all concerned parties to work in unison to meet this end.



Tesfanesh Belay, MD, MPH
Head of Family Health department
Federal Democratic Republic of Ethiopia
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Members of the Task Force that developed this guideline under the leadership of the FMOH, whose names and affiliations appear on the last page of this document, deserve special thanks for their contributions.

Family Health department
Federal Democratic Republic of Ethiopia

List of Abbreviations

CBRHA:	Community-Based Reproductive Health Agent
CHA:	Community Health Agent
DACA:	Drug Administration and Control Authority
FDRE:	Federal Democratic Republic of Ethiopia
FMOH:	Federal Ministry of Health
FP:	Family Planning
GBV:	Gender-Based Violence
GMP:	General Medical Practitioner
ICPD:	International Conference on Population and Development
IPPF:	International Planned Parenthood Federation
IUCD:	Intrauterine Contraceptive Device
LNMP:	Last Normal Menstrual Period
MVA:	Manual Vacuum Aspiration
PHCU:	Primary Health-Care Unit
PO:	Per Os
RH:	Reproductive Health
SMC:	Sharp Metallic Curettage
STDs:	Sexually Transmitted Diseases
TBA:	Traditional Birth Attendant
VCT:	Voluntary Counseling and Testing
VIA:	Visual Inspection of Cervix Using Aceto-Acetic Acid

I. Introduction

Abortion is more than a medical issue, or an ethical issue, or a legal issue. It is, above all, a human issue, involving women and men as individuals, as couples, and as members of societies (Tietze, 1978).

Statistical returns from health facilities across the country and from hospital-based studies show that unsafe abortion is one of the top 10 causes of hospital admissions among women. Unsafe abortion accounts for nearly 60% of all gynecologic admissions and almost 30% of all obstetric and gynecologic admissions. Due to the clandestine nature of unsafe abortion services, however, these figures represent only the tip of the iceberg and not the full magnitude of the problem.

It is estimated that there are 3.27 million pregnancies in Ethiopia every year, of which approximately 500,000 end in either spontaneous or unsafely induced abortion. The maternal mortality rate in Ethiopia is 1.68 per 1,000 women aged 15 to 49 years. According to the REDUCE model, unsafe abortion is the most common cause of maternal mortality, accounting for up to 32% of all maternal deaths in the country. For each woman that dies from complications of unsafe abortion, many more sustain short- and long-term morbidities, including infertility.

Institution-based studies have shown that the cost of care to the health system for abortion complications is enormous. In addition, the loss of productivity due to absence from work by the patient and her attending family members can affect the overall economy.

Ethiopia has ratified international human rights conventions and treaties that are legally binding and that form international law. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which provides the foundation for reproductive rights, is one such notable convention. The Tehran Proclamation, the International Conference on Population and Development (ICPD), the Fourth World Congress on Women, and the 2000 United Nations (UN) Summit are some of the major forums at which national governments have expressed their commitment to improve the status of women in the society. These and other international initiatives have yielded wider recognition of individuals' rights to lead safe and responsible reproductive lives and have underscored the responsibility of governments to not only respect those rights but also to create the legal and policy environment for their realization.

In reference to abortion, the international community has pledged commitment to reducing the need for abortion through expanding and improving family planning (FP) services and, where the laws of the land allow, providing women with high-quality abortion care. Furthermore, at the five-year review of the ICPD, there were calls for governments to consider reviewing laws that contain punitive measures against women who undergo illegal abortions. Governments have also agreed that, in circumstances where abortion is not against the law, health systems should train and equip providers and take measures to ensure that abortion services are safe and accessible. Additional measures to safeguard women's health are also required.

At the UN summit in 2000, governments of the world ratified the Millennium Development Goals (MDGs) as an

international tool for reducing poverty and improving the standard of living in the developing world. One of the eight MDGs is to reduce the maternal mortality rate by 75% (from 1990 levels) by the year 2015. Preventing unsafe abortion is one of the five strategies for reducing maternal mortality that was endorsed by the World Health Organization (WHO) in 2004.

In response to these developments at the global level and changes in social and gender relations within the country, the government of the Federal Democratic Republic of Ethiopia (FDRE) has reviewed its laws and policies within the last decade.

Articles 14, 15, and 16 under Section I (Human Rights) of the Constitution refer to the rights to life, liberty, and security of the person. Article 35 refers to women's equality with men and their rights to information and the capacity to be protected from the dangers of pregnancy and childbirth.

The Women's Policy recognizes the low status accorded to women in Ethiopia and elaborates on the unacceptably high level of maternal mortality, high fertility rates, low use of contraceptives, harmful traditional practices such as female genital cutting and early marriage, and disproportionately high illiteracy rates. It also describes how the laws of the land negatively affect women's status in the society. The strategies for improving women's status outlined in the policy include informing and educating the community on harmful traditional practices and ensuring women's access to basic health care and information on FP methods. The policy also states that "...conditions whereby women can have effective legal protection of their rights shall be facilitated."

The Health Policy of the Transitional Government of Ethiopia (1993) states that the health needs of women and children require particular attention. The policy recommends decentralizing services and “enriching the concept and intensifying the practice of family planning for optimal family health and planned population dynamics.” The policy also discusses the need for “adequate maternal health care including care for high-risk pregnancies” and, in reference to health-related laws, recommends “developing new rules and regulations to help in the implementation of the current policy and addressing new health issues.”

Cognizant of the extent of the problem of unsafe abortion, and with due recognition of the need for an integrated approach to reducing maternal morbidity and mortality, the FMOH has issued this guideline for health workers across the country. The guideline was developed by the FMOH on the basis of the authority vested in it by the House of Representatives of the FDRE per Article 552 sub-article 1 of the Penal Code of Ethiopia (promulgated in May 2005).

Aim of the guideline

This guideline is a working document on the techniques and procedures that must be observed in providing safe termination of pregnancy services as permitted by the recently revised law (May 9, 2005). In developing the guideline, members of the Working Group reviewed and analyzed relevant knowledge, evidence, and experience. New, locally applicable, and appropriate procedures had been included based on national, regional, and international studies. Clinical guidelines are defined as systematically developed statements that assist clinicians in making decisions about appropriate treatment for specific conditions.

In the process of developing this guideline, due consideration has been given to the knowledge and skills acquired in basic education by all cadres of health providers. This guideline is for health managers, program coordinators, and all categories of health-care providers practicing in Ethiopia. Instructors from teaching institutions and reproductive health care trainers may also find the guideline useful.

This guideline will be implemented in all health institutions recognized by the FMOH as specified under "Section X: Abortion Services by Level of Care". The guideline is meant to ensure that all women obtain standard, consistent, and safe termination of pregnancy services as permitted by law.

II. TYPES OF ABORTION SERVICES

Abortion is the termination of pregnancy before fetal viability, which is conventionally taken to be less than 28 weeks from the last normal menstrual period (LNMP). If the LNMP is not known, a birth weight of less than 1000gm is considered as abortion.

There are two types of care related to termination of pregnancy: woman-centered abortion care and postabortion care.

Woman-centered abortion care is a comprehensive approach to providing abortion services that takes into account the various factors that influence a woman's individual mental and physical health needs, her personal circumstances, and her ability to access services. This care includes a range of medical and related health services that support women in exercising their sexual and reproductive rights.

Woman-centered abortion services have three key elements. These are:

- **Choice:** which includes the right to determine if and when to become pregnant, to continue or terminate a pregnancy, to select between options, and to have complete and accurate information.
- **Access:** which includes having access to termination of pregnancy services that are provided by trained and competent providers with up-to-date clinical technologies and that are easy-to-reach, affordable, and non-discriminatory.
- **Quality:** which refers to respectful, confidential services that are tailored to each woman's needs using accepted standards and appropriate referral procedures.

Postabortion care is a comprehensive service for treating women that present to health-care facilities after abortion has occurred spontaneously or after an attempted termination. Postabortion care has five essential elements, which are:

- **Community-service provider partnerships** involving the local community and informal health workers (CHAs, CBRHAs, TBAs) in addition to formal health personnel. These partnerships are designed to increase recognition of the signs and symptoms of pregnancy complications, to mobilize resources, and to address social and economic issues at the community level.
- **Counseling**, whereby women are provided with accurate and complete information on reproductive health issues including FP, voluntary counseling and testing (VCT), and gender-based violence (GBV).

- **Emergency treatment** of incomplete abortion and its complications.
- **FP services** based on free and informed choice and the availability of methods.
- **Linkage** of the above services with other reproductive health services including the diagnosis and treatment of sexually transmitted diseases (STDs); information on breast feeding, child nutrition, and immunization; screening of reproductive tract cancers; and so on.

Several methods of termination of pregnancy are available. The best method for a woman depends on the duration of pregnancy, the general health status of the woman, the availability of each method, the distance from a referral center, the knowledge and skill of the provider, and the level of care.

III. LEGAL PROVISIONS FOR SAFE ABORTION SERVICES

Health workers involved in the care of women should be well aware of the provisions of this guideline, which is an official interpretation of the law on safe abortion services as outlined below. Knowledge of the law is essential so that providers not only know what is expected of them but also can also inform and educate women and the community at large.

Article 551 of the Penal Code of the FDRE allows termination of pregnancy under the following conditions:

1. Termination of pregnancy by a recognized medical institution within the period permitted by the profession is not punishable where:

- a. The pregnancy is a result of rape or incest; or
 - b. The continuation of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother; or
 - c. The fetus has an incurable and serious deformity; or
 - d. The pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child.
2. In the case of grave and imminent danger which can be averted only by an immediate intervention, an act of terminating pregnancy in accordance with the provisions of Article 75 of this Code is not punishable.

Timing and place for terminating pregnancy

1. Termination of pregnancy as permitted by the law can be conducted in a public or private facility that fulfills the pre-set criteria.
2. A woman who is eligible for pregnancy termination should obtain the service within three working days. This time is used for counseling and diagnostic measures necessary for the procedure.
3. All health facilities that have the skilled personnel, equipment and supplies as specified under "Section X: Abortion Services by Level of Care" can perform termination of pregnancy as permitted by Article 551 for pregnancies less than 12 weeks of gestation from the first day of the LNMP.

4. Termination of pregnancy between 13 and 28 weeks of gestation should be done in a secondary or tertiary level of care.
5. Women who are eligible for pregnancy termination should have the necessary information to seek abortion care as early in pregnancy as possible.

IV. IMPLEMENTATION GUIDE FOR SAFE ABORTION SERVICES

1. Implementation guide for Article 551 sub-article 1A

⇒ *Where the pregnancy is a result of rape or incest*

- Termination of pregnancy shall be carried out based on the request and the disclosure of the woman that the pregnancy is the result of rape or incest. This fact will be noted in the medical record of the woman.
- Women who request termination of pregnancy after rape and incest are not required to submit evidence of rape and incest and/or identify the offender in order to obtain an abortion services.

2. Implementation guide for Article 551 sub-article 1B

⇒ *Where the continuation of the pregnancy endangers the life of the mother or the child or the health of the mother or where the birth of the child is a risk to the life or health of the mother*

- The provider should, in all good faith, follow the knowledge of standard medical indications that necessitate termination of pregnancy to save the life or health of the mother.
- The woman should not necessarily be in a state of ill health at the time of requesting safe abortion services. It is therefore the responsibility of the health provider in charge to assess the woman's conditions and determine in good faith that the continuation of the pregnancy or the birth of the fetus poses a threat to her health or life.

3. Implementation guide for Article 551 sub-article 1C

⇒ *Where the fetus has an incurable and serious deformity*

- If the physician after conducting the necessary tests makes the diagnosis of a physical or genetic abnormality that is incurable and/or serious, termination of pregnancy can be conducted.

4. Implementation guide for Article 551 sub-article 1D

⇒ *Where the pregnant woman, owing to a physical or mental deficiency she suffers from or her minority, is physically as well as mentally unfit to bring up the child*

- The provider will use the stated age on the medical record for age determination to determine whether the person is under 18 or not. No additional proof of age is required.

- A disabled person is one who has a condition called disability that interferes with his or her ability to perform one or more activities of everyday living. Disability can be broadly categorized as mental or physical.
- It is therefore the responsibility of the health provider in charge to assess the woman's conditions and determine in good faith that the woman is disabled either mentally or physically.
- Termination of pregnancy under Article 551 sub-article 1D will be done after proper counseling and informed consent.

5. Implementation guide for Article 551 sub-article 2

⇒ *In the case of grave and imminent danger, which can be averted only by an immediate intervention, an act of terminating pregnancy in accordance with the provisions of Article 75 of this Code is not punishable*

- Health providers responsible for the provision of comprehensive abortion care services are authorized to perform abortion procedures on women whose medical conditions warrant the immediate termination of pregnancy.

Applicable for all sub-articles:

- The provider has to secure an informed consent for the procedure using a standard consent form, which is annexed to this guideline (Appendix I).

- The provider shall not be prosecuted if the information provided by the woman is subsequently found to be incorrect.
- Minors and mentally disabled women should not be required to sign a consent form to obtain an abortion procedure.

PRE-PROCEDURE CARE

The first steps in providing abortion care are to establish that the woman is pregnant and, if she is, to estimate the duration of the pregnancy. Taking the woman's history, performing a manual pelvic examination, conducting the required laboratory investigations, counseling the client to help her decide between alternative options, and obtaining her consent are all part of the pre-procedure care.

I. Counseling and informed decision-making

a. Counseling

- Provide sufficient and accurate information on the comparative risks of continuing the pregnancy to term or terminating the pregnancy and on the potential risks associated with the method of pregnancy termination.
- The information and counseling provided to women requesting safe termination of pregnancy must include a minimum of the following:
 - Options counseling: continuing or terminating the pregnancy

- Available methods of pregnancy termination and pain control medications (including the advantages and disadvantages of each)
- What will be done during and after the procedure
- Possible short- and long-term risks associated with the method of termination of pregnancy

- When to expect resumption of menses
- Follow-up care

- The information should be clear, objective, and non-coercive, and should be provided in a language understandable to the woman. The information should be supplemented with written materials whenever possible.

b. Informed decision making

- All women undergoing pregnancy termination should, after receiving objective counseling, consent to the procedure of termination in writing.

- The health-care institution and the health worker who provides the service has an ethical obligation not to disclose the information provided by the woman unless permitted by the woman or ordered by a court of law.

2. Diagnosis of pregnancy

Before any procedure to terminate a pregnancy, a detailed medical history and confirmation of the pregnancy and gestational duration must be documented.

The medical history. Ask and document the following:

- Age
- Reproductive history (number of pregnancies, deliveries, abortions)
- First day of LNMP
- Gestational age based on LNMP (note that lactating women may not report a missed period)
- History of drug allergy
- Any medical or surgical illness (Note: assessment of life-threatening illnesses as indication for termination and known medical and surgical illnesses that may need special care shall be given due emphasis)

b. Physical examination. Undertake the following:

- General physical examination to establish the general health of the woman
- Bimanual pelvic examination to establish:
 - Uterine size and position
 - The presence of other uterine pathology, such as fibroids

c. Laboratory investigation. Do the following laboratory tests if available (the absence of such tests should not be reason to prevent safe abortion services):

- Blood group and RH factors
- Urine analysis
- Pregnancy test
- VDRL
- Smear and Gram's stain of vaginal discharge as appropriate
- Cervical cancer screening
- Ultrasound and genetic tests as appropriate

3. Exclude extra-uterine pregnancy

Suspect ectopic pregnancy if:

- A woman presents with amenorrhea, severe lower abdominal pain and tenderness, and vaginal bleeding; and/or
- Uterus is smaller than expected for gestational duration, and there is an adnexal mass discovered upon bimanual pelvic examination; and/or
- A woman with a positive pregnancy test above six weeks of gestational duration has no intrauterine gestational sac or is found to have an extra-uterine gestational sac on trans-abdominal ultrasonography.

If ectopic pregnancy is suspected, make sure the woman is evaluated by the most senior health provider around or refer her to the next level of care.

4. Assessment of gestational age

Assess gestational duration based on:

- The first day of the LNMP
- Physical findings (abdominal and pelvic examination)
- Ultrasound (optional)

5. Cervical preparation

The following groups of women need cervical preparation regimens:

- Nulliparous women and those aged 18 or below with gestational duration of more than nine weeks
- All pregnant women at gestations more than 12 weeks

Depending on their availability, administer either of the following drugs in the recommended dosages:

- Misoprostol 400 micrograms (μg) vaginally or orally three to four hours before the procedure; or
- Mifepristone 200 milligrams (mg) orally 36 hours before the procedure.

VI. PROCEDURES DURING TERMINATION

All health institutions that are given the authority should provide termination of pregnancy by one of the recommended methods, depending on the gestational duration.

1. Medical abortion

Administer the following combination of drugs in the specified dosage:

- Up to nine completed weeks since the LNMP:
 - Mifepristone 200mg orally, followed 36 to 48 hours later by
 - Misoprostol 800 μg vaginally (insert misoprostol deep into the vagina or instruct the woman to do so herself). For gestations up to seven completed weeks, you may administer misoprostol 400 μg orally.
- Unless clinical evidence of incomplete abortion is present, routine surgical evacuation is not necessary.
- Depending on the need for pain control, non-narcotic analgesics should be prescribed during and after medical abortion.

Contraindications:

- Mifepristone
 - Suspected ectopic pregnancy or undiagnosed adnexal mass
 - IUD in place (remove before administering medication)
 - Chronic adrenal failure
 - Concurrent long-term corticosteroid therapy
 - History of allergy to mifepristone
 - Hemorrhagic disorders or concurrent anticoagulant therapy
 - Inherited porphyrias

- Misoprostol
 - History of allergy to prostaglandins, including misoprostol

Rule out the above clinical conditions before administering either of the two drugs.

After administering mifepristone, advise women to come back 36 to 48 hours later to take misoprostol. Also, inform women to expect bleeding and possible expulsion of the products of conception, and tell them whom to contact in case complications arise.

Once misoprostol has been administered during the second visit, observe women for four hours, during which time up to 90% of them will expel the products of conception. If abortion does not occur during the observation period, women should be advised to come back to the health facility about two weeks later to confirm that the abortion has been completed. In cases of severe bleeding or other complications, women should be

advised to report to the health facility immediately. If by the end of the two-week follow-up period the abortion has failed, use surgical methods to complete the process.

2. Surgical methods.

For pregnancies 12 weeks of gestation or less from the first day of the LNMP, the preferred surgical method of termination is manual or electric vacuum aspiration. Dilatation and curettage should be used only where vacuum aspiration or medical methods are not available. All efforts should be made to replace dilatation and curettage and sharp metallic curettage (SMC) with vacuum aspiration at all levels of care.

a. Vacuum aspiration. Vacuum aspiration is an alternative, safe method of terminating an otherwise uncomplicated pregnancy up to 12 completed weeks' gestation from the first day of the LNMP. Considerations include:

- The procedure should be done as an outpatient procedure.
- Ensure that an assistant is present.
- Communication, reassurance, and respect are important for building confidence and improving the quality of care.
- Administer prophylactic antibiotics for women considered at high risk for reproductive tract infections.
- Follow steps for cervical preparation as in Section V.5 above.

- Make sure the vacuum aspiration instrument is functioning properly. Inspect the instrument for optimal use.
- Observe steps to ensure that the products of conception are evacuated completely.
- Inspect the evacuated tissue for floating villi to confirm that it is the products of conception.
- Staff should protect themselves and clients by applying universal precautions routinely (see Appendix II).
- Staff should follow recommended steps for instrument processing (per Appendix III).
- Safely handle and dispose blood, blood-soaked materials, sharps, and products of conception as per the guideline for infection prevention.

b. Sharp metallic curettage. Where vacuum aspiration is available, dilatation and curettage and SMC are not recommended. If SMC is to be used for termination of pregnancy, it should be done by a trained health officer, medical doctor, or gynecologist. While all general recommendations for vacuum aspiration should be practiced, these specific procedures should also be followed:

- SMC procedure should be done in a procedure room equipped for providing general anesthesia.
- Local or general anesthesia should be administered irrespective of the gestational period.
- Dilate cervix using dilators of gradually increasing size. Exercise caution while using metallic dilators and curettes in order to minimize the risk of cervical injury and uterine perforation.

- Following the procedure, observe the woman until her vital signs are stable and she is able to walk unassisted.

VII. POST-PROCEDURE CARE

Post-procedure care is as essential as care during the procedure in ensuring the best outcome in abortion services.

- Monitor vital signs; look for pallor; do an abdominal examination for tenderness and fluid accumulation; perform a pelvic examination if there is excessive vaginal bleeding.
- Identify, manage, and refer for complications as appropriate.
- Give discharge instructions (using simple language that is sequential and appropriate for the level of understanding of the woman) on symptoms and signs that indicate complications and the availability of 24-hour care for any condition.
- Give post-procedure counseling, as appropriate, on STDs, VCT, GBV, contraception, and other issues.
- Provide the chosen method of contraception immediately after abortion, following the WHO eligibility criteria.
- Administer TT for all eligible women before discharging.
- Do Papanicolau smear or VIA for all women, whenever available.
- Provide STD screening, partner tracing, and sexual health counseling.

- In the absence of complications, the woman can be discharged as soon as she feel able and her vital signs are stable.
- Give a follow-up appointment seven to 10 days after the procedure.

Special considerations: Anti-D Ig G 250 iu should be given IM for all non-sensitized RhD negative women after termination of pregnancy by any method.

VIII. REFERRAL ARRANGEMENTS

A well-functioning referral system is vital to providing safe and high-quality abortion services. All health personnel involved in the care of the woman have an ethical responsibility to direct her to appropriate services at any time. Referral arrangements enable women to access routine care and prompt treatment for complications.

- Refer a woman if the type of care that she needs is beyond the capacity of your institution.
- Clearly state her condition at the time of referral, what was done, and the reason for referral on the referral paper.
- Alert the receiving health facility, particularly if the woman is suffering from complications and needs immediate care; transportation; care during transport, including accompanying health personnel; and/or free services, as appropriate.
- A referral should only be made by the most senior health professional on duty.
- The referral center should provide feedback to the referring center on the type of complication

- ascertained, the care provided, the outcome of the treatment, and the plan for subsequent care.
- If VCT services are not provided in your health facility, refer the woman to the nearest center.
 - Inform victims of rape about legal and psychological support and refer as needed.
 - All women referred to the next level are entitled to care without any precondition.
 - Referral arrangements for social support and care are an integral part of overall abortion care.

IX. PROVIDERS' SKILLS AND PERFORMANCE

In order to effectively discharge their responsibilities, providers should acquire basic knowledge and skills during their pre-service training and get periodic updates through on-the-job training. Training content should address both technical and clinical skills as well as the attitudes and beliefs of service providers. Values clarification exercises that help providers distinguish between their own values and their clients' right to safe reproductive health services are an essential component of all training programs. The selection of training sites should take into consideration the volume of patients, so that providers will get the opportunity to acquire adequate skills in managing abortion and its complications.

In order to make safe abortion services as permitted by law accessible to all eligible women, the role of midlevel providers such as nurses and midwives should be expanded to include providing comprehensive abortion services, including uterine evacuation using MVA and medical abortion. Pre-service and

in-service training for midlevel providers should reflect this expanded role.

The following table illustrates the tasks that are required to provide comprehensive abortion care and the role of certain categories of reproductive health providers, namely general medical practitioners (GMPs), health officers, midwives, clinical nurses, and public health nurses.

Table 1: Abortion care tasks by provider category

Task	GMPs	Health officers	Midwives	Clinical nurses
Patient assessment				
History taking	✓	✓	✓	✓
Physical examination	✓	✓	✓	✓
Bimanual pelvic exam	✓	✓	✓	✓
Dating gestation	✓	✓	✓	✓
Counseling	+	+	✓	✓
Uterine evacuation				
MVA	✓	✓	✓	✓
SMC	✓	✓	X	X
Medical abortion	✓	✓	✓	✓
Pain medications				
Analgesics	✓	✓	✓	✓
Narcotics/sedatives	✓	✓	✓	X
Paracervical block	✓	✓	✓	X
Treatment of complications				
Identification	✓	✓	✓	✓
Antibiotics	✓	✓	✓	✓
IV fluids	✓	✓	✓	✓
Blood transfusions ¹	✓	✓	X	X
Maintain airways	✓	✓	✓	✓
Repair of minor injuries	✓	✓	✓	X
Abdominal surgery	✓	✓		
Post-procedure care	✓	✓	✓	✓
Follow-up care	✓	✓	✓	✓
Universal precautions	✓	✓	✓	✓
Postabortion contraception	✓	✓	✓	✓

¹ While the decision to transfuse blood shall be made by a senior clinician, all categories of nurses can administer and monitor blood transfusions.

Task	GMPs	Health officers	Midwives	Clinical nurses
Information	✓	✓	✓	✓
Counseling	+	+	✓	✓
Method choice	✓	✓	✓	✓
Informed choice/referral	✓	✓	✓	✓
Linkages with other RH services				
Counseling	✓	✓	✓	✓
Screening	✓	✓	+	+
Treatment	✓	✓	✓	✓
Referral	✓	✓	✓	✓
Instrument processing	✓	✓	✓	✓
Education on:				
The dangers of unsafe abortion	✓	✓	✓	✓
Prevention of unwanted pregnancy	✓	✓	✓	✓
Legal provisions for abortion	✓	✓	✓	✓
Training junior health professionals and community health workers	✓	✓	✓	✓
Maintain records and submit reports	✓	✓	✓	✓

Key:

✓ = Roles expected from that category of professionals

X = Roles not expected of that category of professionals

+ = Members of that category may initiate and/or partly perform the task

Training curricula on abortion care should enable health providers to competently perform the tasks described in the above table. The following health workers are authorized to perform abortion procedures for first-trimester pregnancy using medical abortion and/or MVA:

- Clinical nurses
- Midwives
- Health officers
- GMPs and above

GMPs and health officers with additional training on the specific skills needed for second-trimester abortion and specialists in obstetrics and gynecology are authorized to perform second-trimester abortion procedures.

X. ABORTION SERVICES BY LEVEL OF CARE

In organizing abortion care services, program planners and facility managers should take into consideration:

- Emergency abortion services that provide life-saving procedures on a 24-hour basis.
- Elective abortion services that are performed at the request of the woman or on the recommendation of the health-care provider.

The following table summarizes the elements of abortion services and staffing patterns at different levels of care.

Table 2: Abortion services by level of care

Level of care	Type of health personnel available	Abortion services
Community	<ul style="list-style-type: none"> • Traditional birth attendants (TBAs), community health workers (CHAs), community-based reproductive health agents (CBRHAs) 	<ul style="list-style-type: none"> • Recognize signs and symptoms of pregnancy • Recognize signs and symptoms of abortion and its complications • Provide RH education, including FP and the risks of unsafe abortion • Distribute appropriate contraceptives, including emergency contraceptives • Inform communities and women on the legal provisions for safe abortion • Refer women to postabortion and safe abortion services
Health posts/stations	<ul style="list-style-type: none"> • Frontline health workers (health extension workers) 	The above activities plus: <ul style="list-style-type: none"> • Check vital signs • Provide pain medication
Health centers	<ul style="list-style-type: none"> • Health officers, midwives, clinical nurses, public health nurses, laboratory technicians 	The above activities plus: <ul style="list-style-type: none"> • Counseling • General physical and pelvic examination • Vacuum aspiration up to 12 completed weeks of pregnancy • Medical abortion up to nine completed weeks of pregnancy • Administer antibiotics and IV fluids • Train community-level

Level of care	Type of health personnel available	Abortion services
		workers and junior health professionals in abortion service provision
District/zonal hospitals	<ul style="list-style-type: none"> • Same as above, plus GMPs. with or without an obstetrician-gynecologist 	<p>The above activities plus:</p> <ul style="list-style-type: none"> • Uterine evacuation for second-trimester abortion • Treatment of most complications • Blood cross-matching and transfusion • Local and general anesthesia • Laparotomy and indicated surgery • Diagnosis and referral for serious complications such as peritonitis and renal failure • Train all cadres of health professionals (pre- and in-service)
Referral hospitals	<ul style="list-style-type: none"> • Same as above plus obstetrician-gynecologists 	<p>The above activities plus:</p> <ul style="list-style-type: none"> • Treatment of severe complications (including bowel injury, tetanus, renal failure, gas gangrene, severe sepsis) • Treatment of coagulopathy
Private facilities:		
Lower clinics	<ul style="list-style-type: none"> • Staffed by nurses and assistants 	<ul style="list-style-type: none"> • Perform functions described under health posts/stations
Medium clinics	<ul style="list-style-type: none"> • Staffed by a health officer or GMP and a team of other health workers 	<ul style="list-style-type: none"> • Perform functions described under health centers

Level of care	Type of health personnel available	Abortion services
Higher clinics	<ul style="list-style-type: none"> Staffed by a specialist or a GMP and a team of other health workers 	<ul style="list-style-type: none"> Perform functions described under health centers
MCH centers and hospitals	<ul style="list-style-type: none"> Staffed by specialists (obstetricians/gynecologists), a GMP, and a team of other health workers 	<ul style="list-style-type: none"> Perform functions described under district and referral hospitals

XI. ESSENTIAL EQUIPMENT AND SUPPLIES

Health facilities providing safe abortion services should be equipped with basic equipment, instruments, and consumables that have to be replenished regularly, such as pain medications, antibiotics, IV fluids, disinfectants, and so on. Following is a list of these basic supplies that should always be available in sufficient amounts in all health facilities rendering services. Program managers, facility directors, and other responsible persons should include these items in the routine budgeting, procurement, and distribution systems.

1. Basic supplies:

- IV fluids with give sets
- Syringes and needles
- Sterile gloves of different sizes
- Cotton balls or gauze sponges
- Antiseptic solutions
- Antibiotics
- Pain medications
- Long needle holders
- Equipment and supplies for instrument processing

2. Instruments and equipment for first-trimester uterine evacuation:
 - a. Basic uterine evacuation
 - Sponge forceps or uterine packing forceps
 - Malleable metal sound
 - Pratt or Denniston dilators: sizes 13-27 French
 - Medium self-retaining speculum
 - 50ml container for local anesthesia
 - 500ml container for antiseptics
 - Plastic strainer
 - Clear glass dish for tissue inspection
 - Long sponge forceps
 - Container for cleansing solution
 - Single tooth tenaculum forceps
 - b. Vacuum aspiration with electric pump
 - Basic uterine evacuation supplies
 - Vacuum pump with extra glass bottles
 - Connecting tubing
 - Cannulae (any of the following)
 - Flexible: 4,5,6,7,8,9,10,12mm
 - Curved rigid: 7,8,9,10,12,14mm
 - Straight rigid: 7,8,9,10,12mm
 - c. Manual vacuum aspiration
 - Basic uterine evacuation supplies
 - Vacuum aspirators
 - Adapters
 - Flexible or semi-rigid cannulae, sizes 4-12mm

- d. Twelve-weeks plus
 - Basic uterine evacuation supplies
 - Pratt or Denniston dilators: sizes 29-43
 - Curette: size 1 or 2

3. Drugs for medical abortion:

- Mifepristone 200mg
- Misoprostol 200 μ g

XII. MONITORING AND EVALUATION

Health facilities and clinical providers should maintain data on abortion services through regular recording systems such as logbooks, clinical records, and daily activity records. The logbook for registering clients receiving abortion services that is shown in Appendix IV should be used by all health facilities providing abortion services. Data from the logbook should be regularly reported through the health management and information system, following the reporting format attached as Appendix V.

Program managers should monitor services to assess whether they are being provided up to standard, so that they can take corrective measures as appropriate. Among others, monitoring abortion services should include:

- Analyzing patterns or problems using service statistics
- Documenting the proportion of women seeking repeat abortions
- Observing counseling and clinical services
- Ensuring regular and continuous supply of equipment and supplies
- Aggregating data from the health facility upwards
- Reviewing measures to improve services

Evaluation of abortion services should provide data on the extent to which those services have contributed to reducing maternal mortality from unsafe abortion. However, the gathering of such data, which requires a vital events registration system or the study of a very large population, may not be feasible in the Ethiopian setting. Instead, as many maternal mortality reduction programs do, it is imperative to focus on process or output indicators. The following indicators can be used when evaluating abortion services:

- The number, type, and percentage of facilities providing abortion services by geographic area (by woreda, zone, or region, or countrywide)
- The increase in the use of legal abortion services (access)
- Changes in patterns and rates of hospital admissions for abortion complications
- The number and categories of providers trained in abortion care
- An assessment of the quality of training
- The number and percentage of eligible providers performing abortion by level of facility and geographic distribution
- Costs of abortion services and treating abortion complications
- Providers' KAP, needs, and ideas for improving services
- Deaths from unsafe abortion

Table 3: Aspects of abortion care services to be included in monitoring plans

Type of services to be monitored	Indicators for measuring activities	Sources of information	Types of questions to ask
Infection prevention	<ul style="list-style-type: none"> Percentage of cases in which infection prevention practices were adhered to fully 	<ul style="list-style-type: none"> Observe services using checklist 	<ul style="list-style-type: none"> Was no-touch technique used? Were MVA instruments properly processed?
Management and organization of services	<ul style="list-style-type: none"> Average amount of time abortion care clients spend in the facility Average amount of time from arrival to procedure Hours during which service are available 	<ul style="list-style-type: none"> Observe and evaluate patient flow Review client records and conduct interviews with staff 	<ul style="list-style-type: none"> During which time(s) of the day does the client waiting time increase?
Counseling	<ul style="list-style-type: none"> Number and percentage of clients receiving counseling 	<ul style="list-style-type: none"> Observe counseling sessions using performance checklist Review cases from logbook 	<ul style="list-style-type: none"> Were women with special needs given referrals?
Contraceptive counseling and services	<ul style="list-style-type: none"> Number and type of contraceptives dispensed on site Number and percentage of women who 	<ul style="list-style-type: none"> Observe counseling Conduct exit interviews Review logbooks 	<ul style="list-style-type: none"> How well were women counseled about available contraceptive methods?

Type of services to be monitored	Indicators for measuring activities	Sources of information	Types of questions to ask
	<ul style="list-style-type: none"> received contraceptive counseling • Number and percentage of women desiring contraception who received a method 		<ul style="list-style-type: none"> • Did women leave with a desired method or information? • Did women have to go to another facility to receive a contraceptive method?
Client satisfaction	<ul style="list-style-type: none"> • Percentage of women who indicate that they received respectful care • Percentage of women who agree that services fees are reasonable 	<ul style="list-style-type: none"> • Conduct exit interview • Review service fee charges 	<ul style="list-style-type: none"> • Did women feel that they were treated respectfully? • Did women think the amount that they had to pay for services was reasonable?

The table above could serve as a useful tool for monitoring quality of care at the facility level. Facility directors and program managers are encouraged to develop and apply such tools as part of their monitoring plans.

Appendix I: Consent Form

Consent Form for Uterine Evacuation

After having consulted with my health service provider about my health condition, I, (name of client), hereby consent to a procedure for safe termination of pregnancy. I have been counseled and informed about the alternative methods and about the possible side effects and outcomes of the procedure.

In the event of complications arising during the procedure, I request and authorize the responsible health service provider to do whatever is necessary to protect my health and wellbeing.

I confirm that the information that I provided to my health service provider is accurate.

Signature _____

Date _____

Appendix II: Universal Precautions

Health-care workers involved in providing abortion services should follow these universal precaution measures in order to prevent the transmission of infection from providers to patients, from patients to providers, and to the community:

- Wash hands thoroughly with soap and water immediately before and after contact with each patient.
- Use high-level disinfected or sterile gloves, replacing them between patients and procedures.
- Never use gloved hands to open and close doors or to process instruments.
- Wear clean gowns, aprons, goggles, and masks.
- Clean floors, beds, toilets, walls, and rubber draw sheets with detergents and hot water. If they are soaked with blood or body fluids, use a 0.5% chlorine solution.
- Wear heavy-duty gloves when cleaning surfaces and washing bed sheets spilled with blood and body fluids and when processing equipment for reuse.
- Dispose of waste contaminated with blood, body fluids, laboratory specimens, or body tissues safely, following facility protocols.
- Avoid recapping needles whenever possible. If necessary, use the scoop method.
- Dispose of sharps in puncture-resistant containers and bury or incinerate them.
- All reusable instruments should be soaked in a 0.5% chlorine solution and cleaned with soap and water immediately after use and sterilized or high-level disinfected.

Appendix III: Instrument Processing

Follow specific instructions for processing medical instruments, as appropriate. For instruments and equipment that can be reprocessed through high-level disinfection, follow the steps described below:

- Decontamination: Soak instruments in a 0.5% chlorine solution for 10 minutes.
- Cleaning: Clean instruments with warm water and detergent; do not use soap. Wear masks and heavy-duty gloves during cleaning. Disassemble the instrument and make sure all the parts are cleaned thoroughly.
- High-level disinfection:
 - Soak in a 0.5% chlorine solution for 20 minutes; or
 - Boil for 20 minutes.

Note: Rinse with sterile water after processing with chemicals and dry with a sterile towel.

- Store or use immediately: After instruments are processed, they should be kept in a dry, sterile or high-level disinfected container, protected from dust and other contaminants. Instruments processed with boiling or solutions should be reprocessed every two days until used.
- Metallic instruments such as tenaculum, speculum, and curettes should be sterilized using steam autoclave at a temperature of 121°C at a pressure of 106 KPa for 20 minutes (following the instructions of the autoclave being used).

**Members of the Working Group that developed the
*Technical and Procedural Guideline for Safe Abortion
Services in Ethiopia***

<i>Name</i>	<i>Organization</i>
Tesfanesh Belay, MD, MPH	FMOH, Family Health Department
Kiros Kebede, Nurse Midwife	Ethiopian Nurse Midwives Association
Amare Bedada, MA	Family Guidance Association of Ethiopia
Kidane G/Kidan. MD, Obstetrician-Gynecologist	FMOH/UNFPA
Fantu Asfaw, LLB	FMOH/Medico Legal Services
Misganaw Fantahun, MD, MPH	AAU-Medical Faculty, Community Health Department
Hiwot Mengistu, BSC, MPH	FMOH
Saba Kidanemariam, BA	Ipas
Original G/Giorgis, LLB	Ipas, Legal Advisor
Ayele Debebe, MD, Obstetrician-Gynecologist	FMOH/WHO
Solomon Kumbi, MD, Obstetrician-Gynecologist	Ethiopian Society of Obstetricians and Gynecologists
Yirgu G/Hiwt, MD, Obstetrician-Gynecologist	AAU-Medical Faculty, Obstetrician-Gynecologist
Takele Geressu, MD, MPH	Ipas

Appendix V: Quarterly/Monthly Reporting Format for Abortion Services

Region: _____
Name of Health Facility: _____
Zone: _____

	Total	Safe Abortion	Postabortion
Number of women who received abortion care			
Completed gestation (weeks)			
Less than 8 weeks			
8 to 12 weeks			
Greater than 12 weeks			
Type of procedure/method			
MVA			
SMC			
Medical abortion			
Other (specify _____)			
Women who expressed desire to delay further pregnancy			
Women who received a contraceptive method			
Women referred for a contraceptive method			
Women referred to another facility for abortion care (by reason)			
Women with major complications			
Women who died from complications of abortion			

Prepared by: _____

Approved by: _____

ቃለ ምልልስ ለማድረግ የተሰጠ የፍቃደኝነት መግለጫ ፎርም

በአዲስ አበባ ዩኒቨርሲቲ የህግ ትምህርት ቤት ውስጥ በድህረ ምረቃ ክፍል ለሚማረው ስዩም ሙሉ-ጌታ፣ ለሚሰራው ጥናት በፈቃደኝነት ተሳታፊ ሆኛለሁ። ተሳታፊ ስሆንም የቃለ ምልልስ አላማ ስለ ኢትዮጵያ የውርጃ ህግ አፈፃፀም እና ለተደፈሩ እና ከዘመድ ላረገዙ ሴቶች ስለሚጠው የውርጃ አገልግሎት ያሠራር ሂደት ላይ መረጃ ለመሰብሰብ መሆኑን በሚገባ ተረድቼ ነው። በተጨማሪም ቃለ ምልልስ ከሚያደርጉ ሰዎች ማካከል አንዱ መሆኔን አውቄአለሁ።

1. ተሳትፎዬ በፍቃደኝነት ላይ የተመሰረተ ነው።
2. ቃለ ምልልስ በማድረግ የሚከፈለኝ ገንዘብ አለመኖሩን ተረድቻለሁ።
3. ያለማንም ጣልቃ ገብነት እና አስገዳጅነት ጥያቄዎችን መመለስ ወይም አለመመለስ እንደምችል ተረድቻለሁ።
4. ቃለ ምልልሱን ለማድረግ ከ 25 እስከ 30 ደቂቃ ሊወስድ እንደሚችል ተረድቻለሁ።
5. ለጥያቄዎች የምሰጠው መልስም ስሜ ተገልጾ በጥናት ጽሑፉ ውስጥ ጥቅም ላይ ሊውል እንደሚችል ተረድቻለሁ።
6. ስለቃለ ምልልሱ የተሰጡ መግለጫዎችን ተረድቼ፣ ላነሳኝቸው ጥያቄዎች አጥጋቢ መልስ አግኝቼ በፍቃደኝነት ተሳታፊ ለመሆን ተስማምቻለሁ።
7. የዚህ የፍቃደኝነት መግለጫ ፎርም አንድ ቅጂ እንደሚሰጠኝ አውቄአለሁ።
8. ከዚህ በታች የማስቀምጠው ፊርማዬ በጥናቱ ውስጥ ለመሳተፍ ፍቃደኛ መሆኔን ማረጋገጫ እንደሚሆን አውቄአለሁ።

ቀን

የተሳታፊ ፊርማ፣

የጠያቂ ፊርማ

የቃለ መጠይቅ ጥያቄዎች /Interview Questions/

1. ስለ ኢትዮጵያ የውርጃ ህግ ምን ያህል ያውቃሉ?
2. ለማስወረድ የሚመጡ ሴቶች ለማስወረዳቸው በብዛት የሚያስቀምጡት ምክንያት ምንድን ነው?
3. ተደፈርን ወይም ከዘመድ አዝማድ አረገዝን ለሚሉ ሴቶች ብቻ የምትጠቀሙት የተለየ የውርጃ የህክምና ሂደት አላችሁ?
4. በእርስዎ አስተያየት እና ያለፈ የሙያ ህይወትዎ ተደፈርን ወይም ከዘመድ አረገዝን የሚሉ ሴቶች እውነታውን የተናገሩ ይመስለዎታል?
5. እውነታቸውን አይደለም ካሉ ምን በደረግ ይሻላል ይላሉ?

ANNEXES