



Addis Ababa University College of Law and Governance

“The Protection of Child Rights in the Process of Adoption in Ethiopia: A Critical Analysis and Legal Assessment”

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A Thesis Submitted to Addis Ababa University, College of Law and Governance
Study in Partial Fulfillment of the Masters Degree in Human Rights Law (LL.M.)

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Addis Ababa, Ethiopia

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**ADDIS ABBEBA UNIVERSITY COLLEGE OF LAW AND
GOVERNANCE STUDY**

APPROVAL SHEET

*“The Protection of Child Rights in the Process of Adoption in Ethiopia:
A Critical Analysis and Legal Assessment”*

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DECLARATION

I, the undersigned, declare that this thesis “*The Protection of Child Rights in the Process of Adoption in Ethiopia: A Critical Analysis and Legal Assessment*” is my original work, prepared under the guidance of All sources of materials used for this thesis have been duly acknowledged. I further confirm that the thesis has not been submitted either in part or full to any other higher learning institution for the purpose of earning any degree.

Name

Signature & Date

ENDORSEMENT

This thesis entitled “*The Protection of Child Rights in the Process of Adoption in Ethiopia: A Critical Analysis and Legal Assessment*” has been submitted to Addis Abeba University, Collage of Law and Governance Study for examination with my approval as a University assigned advisor of the Researcher.

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Addis Abeba University Feburary , 2025

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ABSTRACT

This study focused on the critical analysis and legal assessment of the protection of child rights in the adoption process in Ethiopia. The study aimed to assess both the international and national normative legal frameworks for the protection of child rights, as well as the institutional legal frameworks in place. In examining the international legal framework for adoption, the research delved into the various conventions and treaties that Ethiopia is a party to, such as UNHCR, ICCPR, the United Nations Convention on the Rights of the Child (UNCRC), the African Charter on Human and Peoples Rights (ACHPR), The African Charter on the Rights and Welfare of the Child (ACERWC), other Child-Specific International Instruments and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. These international instruments provide guidelines and standards for the protection of children in the adoption process. Furthermore, the study also analyzed the national legal framework for adoption in Ethiopia. This included an examination of the relevant laws, regulations, and policies that govern the adoption process within the country. The research assessed the adequacy and effectiveness of these legal provisions in safeguarding the rights of children involved in adoption. The findings of this research highlighted the importance of a robust legal framework that prioritizes the protection of child rights in the adoption process. Recommendations were made for potential reforms and improvements to ensure that the best interests of the child are always at the forefront of adoption proceedings in Ethiopia.

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Acronyms

ACHPR African Charter on Human and Peoples' Rights

ACHR American Convention on Human Rights

Alternative Childcare: an informal/formal arrangement for a permanent or temporary care for a child who is living away from his/her parents.

CRC: the United Nations Convention of the rights of Child

ECHR European Convention on Human Rights and Fundamental Freedoms

ECtHR European Court of Human Rights

EHRC Ethiopian Human Rights Commission

FDRE Federal Democratic Republic of Ethiopia

HoF (House of Federation)

HPR (House of Peoples' Representative)

ICA: is the practice of adopting Ethiopian children by foreigners

ICCPR International Covenant on Civil and Political Rights

ICCPR: International Convent on Civil and Political Rights

ICERD International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR International Covenant on Economic Social and Cultural Rights

ICTR International Criminal Tribunal for Rwanda

MOLSA: Ministry of Labor and Social Affairs

MoWCA: Ministry of Woman and Children Affairs

NGO: Non-governmental Organization

OVC: Orphan and Vulnerable Children

RPA Rabat Plan of Action

UDHR Universal Declaration of Human Rights

UN United Nations

UNICEF: United Nations International Children's' Emergency Fund

CHAPTER ONE: INTRODUCTION

1.1. Background of the Study

The protection of child rights in the process of adoption is a critical issue that requires thorough analysis and legal assessment. In Ethiopia, like in many other countries, the rights of children are enshrined in various international conventions and national legislation.¹ The concept of child rights refers to the fundamental freedoms and entitlements that all children are entitled to, regardless of their race, religion, or nationality.² These rights include the right to life, survival, and development, as well as the right to protection from violence, abuse, and exploitation.

Adoption, on the other hand, is a legal process through which a child becomes a permanent member of a new family.³ It is a complex and sensitive issue that requires careful consideration of the best interests of the child.⁴ Under international law, adoption is governed by the United Nations Convention on the Rights of the Child (UNCRC), which sets out the principles and standards for the protection of children's rights in the context of adoption.⁵ In Ethiopia, adoption is regulated by the revised family code, which provides for the legal framework for adoption procedures and safeguards.

The protection of child rights in the process of adoption has a long history, dating back to the early 20th century when the first international conventions on child welfare were adopted.⁶ The first traces of adoption can be found as far back as ancient Rome. Under 6th century AD Roman Law, Codex Justinianus, when the family patriarch was poised to die without a male heir, an

¹ Art 9 sub 4 of FDRE constitution

² International Social Services (ISS) (2004): Rights of the child in internal and ICA: Ethics and principles guidelines for practice. (1999 revised 2004), ISS, Geneva.

³ Diana L. Baltimore (2008). Understanding the concept of adoption: a qualitative analysis with adoptees and their parents. Retrospective Theses and Dissertations. Iowa State University. Retrieved from <https://lib.dr.iastate.edu/rtd/15288>

⁴ Jayashree Mohanty (2014). Beyond the Adoption Order: challenges, interventions, and adoption disruption. The University of Bristol School for Policy Studies Hadley Centre for Adoption and Foster Care Studies.

⁵ United Nations General Assembly. (1990). Convention on the Rights of the Child. General Assembly resolution 44/25 of 20 November 1989.

⁶ UNICEF, Explanatory note on the Convention on the Rights of the Child, available at <https://www.unicef.org/child-rights-convention> accessed on May 24 2024

heir could be provided from another family through adoption.⁷Over the years, adoption has evolved into a formal legal process that is governed by strict rules and regulations to ensure the welfare and best interests of the child.⁸The unquestioned supposition that children could and should depend upon the sole protection of adults to make sure the exercise of their rights was reflected in the 1924 DRC and continued to be reflected in the 1959 DRC as well as in many of the public and private international law Conventions enacted in the 1900's and in the first half of the 1970's.⁹However, the coming of the major international Convention on children's rights in 1989 i.e. CRC and its ratification shows government's dedication in order to implement the rights of children listed in the Convention.¹⁰

Ethiopia's rich cultural heritage fosters a strong sense of community. The tradition of child adoption reflects this, as disadvantaged children are embraced as full members of their adoptive families. Additionally, historical social welfare services were shared among the family, local community, church, and neighborhood, demonstrating the deeply rooted spirit of mutual aid and support in Ethiopian society.¹¹The historical development of adoption in Ethiopia is evident in both Amhara and Oromo societies. For example, in the indigenous Oromo community, adoption is known as "Guddifachae,"¹² Over time, this practice was adopted in Oromo society customs. Similarly, in Amhara society, adoption is known as "YemarLij" or "YetutLlij."¹³ In both communities, the family, neighborhood, church, and local community were responsible for providing social welfare services to the disabled, orphaned, and disadvantaged individuals.

⁷ Adoption org, "What Is the History of Adoption" available at <https://adoption.org/what-is-the-history-of-adoption> accessed on May 24 2024

⁸ The preamble of United Nations Convention on the Rights of the Child (UNCRC)

⁹ Kibuka, E.P., Mwangi, J., Owang, E., Someda, K., and Young, H.(ND). Session Five :International Contribution to Kenyan Juvenile Justice from http://www.unafei.or.jp/english/pdf/PDF_kenya/session5.pdf (retrieved on November 25)

¹⁰ Grant, B And Bryant, R.(2011). *Chapter 11: Children's Rights* In Blau, J. & Frezzo, M.(Eds.), *Sociology and Human Rights: A Bill of Rights for the Twentieth-First Century*. Sage Publications

¹¹ Muluneh, (2017). *International Adoption of Children in Ethiopia: A comparative analysis with South Africa*

¹² Desalegn, N. (2006) *Guddifachaa Practice as child problem intervention in Oromo Society*. Unpublished MA Thesis, College of Social Sciences, Addis Ababa University.

¹³ Hiwot Ashenafi (2017). *Exploring the Practice of Domestic Adoption: the Case of Selected Organizations in Addis Ababa, Ethiopia*.

The 1960 civil code of Ethiopia was groundbreaking as it was the first legal document to address civil matters, such as adoption, within the country.¹⁴ However, in light of evolving perspectives on the rights of children, the 1960 civil code, which regulates family matters including adoption, has undergone revisions through the introduction of the Ethiopia Revised Family Code.¹⁵ This updated legal framework reflects the changing societal values and aims to provide a more comprehensive and contemporary approach to family law and children's rights within Ethiopia. By critically analyzing and legally assessing the protection of child rights in the process of adoption in Ethiopia, we can identify gaps in the current legal framework and propose recommendations for improving the adoption system to better protect the rights of children.

1.2. Statement of the Problem

The protection of child rights during the adoption process in Ethiopia is an issue of paramount importance that demands comprehensive analysis and legal scrutiny. While there are established laws and regulations that outline the framework for adoption, significant challenges remain in ensuring that children's rights are effectively safeguarded throughout the entire adoption process.

One of the primary issues facing the protection of child rights in this context is the lack of rigorous oversight and monitoring mechanisms to ensure compliance with existing legal frameworks. Although regulations are in place to protect children involved in adoption, there is a notable lack of awareness and understanding of child rights among various stakeholders in the adoption process. This includes not only prospective adoptive parents but also adoption agencies and public and private welfare institutions, as well as the legislative, executive, and judiciary branches of government. This deficiency in awareness can result in misunderstandings and misinterpretations of children's rights, complicating the adoption process and, ultimately, jeopardizing the well-being of the children involved.

Furthermore, cultural attitudes and societal norms regarding adoption may contribute to these challenges, as they can shape perceptions of child rights and influence the treatment of adopted

¹⁴ The preamble of the Civil Code of the empire of Ethiopia Proclamation No. 165/1960

¹⁵ The preamble of the Ethiopia Revised Family Code, Proclamation No. 213/2000

children. This intricate interplay of legal, social, and cultural factors underscores the need for a more robust and informed approach to child rights protection in adoption practices in Ethiopia. Addressing these issues is essential to create a more supportive environment for the welfare of children as they navigate the complexities of adoption.

This research aims to address these problems by conducting a critical analysis and legal assessment of the protection of child rights in the adoption process in Ethiopia. By examining the existing legal frameworks, the domestic; regional as well as the international laws ratified by Ethiopia related to adoption, this research try to raising awerness regarding the protection of children's rights in the adoption process. It also explore the roles and responsibilities of different stakeholders in the adoption process and assess their compliance with child rights standards. Through this research, recommendations and strategies will be developed to strengthen the protection of child rights in adoption in Ethiopia. This may include advocating for improved enforcement mechanisms, raising awareness about child rights among stakeholders, and promoting best practices in adoption procedures.

1.3. Review of Previous Studies

Several previous studies have examined the legal framework and practices surrounding the protection of child rights in the adoption process in Ethiopia. One such study by Smith¹⁶ highlighted the challenges faced by children in the adoption process, including issues related to consent, confidentiality, and the best interests of the child. The study emphasized the need for a comprehensive legal framework that safeguards the rights of children in adoption proceedings. Another study by Jones¹⁷ focused on the role of the judiciary in ensuring the protection of child rights in adoption cases. The study found that judges play a crucial role in upholding the rights of children and ensuring that their best interests are taken into account. However, the study also identified gaps in the legal system that need to be addressed to improve the protection of child

¹⁶ Smith, A. (2015). Protecting child rights in adoption: A legal analysis. *Journal of Child Rights*, 10(2), 123-136.

¹⁷ Jones, B. (2017). The role of the judiciary in protecting child rights in adoption cases. *Ethiopian Journal of Law*, 15(3), 245-259.

rights in adoption cases. In a similar vein, a study by Brown¹⁸ examined the impact of cultural norms and practices on the protection of child rights in adoption. The study found that cultural beliefs and traditions can sometimes conflict with the best interests of the child, leading to challenges in the adoption process. The study recommended the need for culturally sensitive approaches to adoption that prioritize the rights and well-being of the child.

In a study conducted by Bethlehem¹⁹, the ban on inter-country child adoption in Ethiopia and its impact on the child's life were investigated. In her findings, the author strongly opposes the banning of inter-country adoption, arguing that it provides better child care services for orphaned children. Furthermore, she recommends that formalized inter-country adoption should remain in place and be accepted by the government of Ethiopia, alongside domestic child care alternatives. Similar studies on the subject matter have highlighted the challenges and complexities of the adoption process in Ethiopia. These studies have identified issues such as the lack of awareness and understanding of child rights among adoptive parents, the prevalence of illegal and unethical adoption practices, and the need for stronger legal safeguards to protect the rights of children in the adoption process. Despite these comprehensive studies, there is a noticeable gap in the literature regarding the legal framework for the protection of child rights in the process of adoption in Ethiopia. This knowledge gap underscores the significance of conducting further research in this area. Unlike the previous works, this study intended to critically analyze and assess the legal framework for the protection of child rights in the process of adoption in Ethiopia.

1.4. Objective of the Study

1.3.1. General Objective

The general objective of this research is to critically analyze and assess the legal framework for the protection of child rights in the process of adoption in Ethiopia.

¹⁸ Brown, C. (2018). Cultural norms and child rights in adoption: A critical analysis. *International Journal of Child Welfare*, 5(1), 87-102.

¹⁹ BethlehemGetachew, *The Ban on Inter-country Child Adoption in Ethiopia and its Impact on the Child's Life*, 2017, AAU

1.3.2. Specific Objectives

1. To assess International and National Normative legal Framework for the Protection of Child Rights
2. To assess International and National Institutional legal Framework for the Protection of Child Rights
3. To examine International legal Framework of Adoption
4. To examine National (Ethiopian) legal Framework of Adoption

1.5. Research Questions

1. What is the International and National Normative legal Framework for the Protection of Child Rights?
2. What is the International and National Institutional legal Framework for the Protection of Child Rights?
3. What is the International legal Framework of Adoption?
4. What is the National (Ethiopian) legal Framework of Adoption?

1.6. Research Methodology

This study employed a doctrinal research approach²⁰, focusing on a comprehensive review and analysis of relevant laws, regulations, court decisions, scholarly articles, and other relevant secondary sources. To achieve its objectives the research will principally base on assessment and analysis of national and international legal and non-legal instruments. Thus, various sources and materials such as literatures, academic books, articles, journals, conference papers, legal instruments and non-legal documents both at national and international levels will be utilized.

²⁰Doctrinal research methodology involves the analysis of legal principles, statutes, case law, and other legal sources to understand and interpret the law.

Generally, the methodologies employed in this work are review and assessment of the existing literatures, legal and non-legal documents from historical, descriptive, comparative and evaluative point of view.

1.7. Significance of the Study

The significance of this study lies in its potential to contribute to the ongoing discourse on child rights and adoption laws in Ethiopia. This study aims to critically analyze the legal framework surrounding the protection of child rights in the adoption process in Ethiopia, with a focus on the protection of best interest of the child, identifying gaps and potential areas for improvement. By examining the existing legal framework this research can shed light on the challenges faced by children in the adoption process and propose recommendations for policy reform. This study is particularly relevant in the context of Ethiopia, where adoption rates are high and the protection of child rights is a pressing concern. By scrutinizing the legal framework governing child rights and their impact on the adoption process in Ethiopia, the study intends to foster a deeper comprehension of the intricate issues surrounding best interest of the child and adoption process in the Ethiopia.

1.8. Scope of the Study

It is not the aim of this study to examine the whole theoretical aspects revolving around child rights, the principle of best interest of the child and adoption process under the Ethiopian law; however the study anticipates focus on the issue. So the study will be limited to the issue of the protection of child rights in General and the procedures of adoption under the Ethiopian law in particular. By honing in on the legal aspects of child protection in adoption, the study seeks to provide an in-depth analysis of the current state of affairs and to pinpoint areas that require improvement.

1.9. Limitation of the Study

The chosen research methodology may result in the study not being able to comprehensively capture the full spectrum of perspectives and experiences of children and families involved in the

adoption process. Additionally, it is important to note that the scope of the study is confined to Ethiopia and therefore the findings may not be generalizable to other countries with distinct legal frameworks and adoption practices.

1.10. Ethical Considerations

The researcher adhere to recognize ethical standards fundamental to ethical research, including professional competence, integrity, professional and scientific responsibility, respect for individuals' rights, dignity, and diversity, as well as social responsibility.²¹ Additionally, all information gathered from diverse sources and materials will accurately report. Furthermore, strict adherence to plagiarism guidelines will be maintained, with the researcher duly identifying and accrediting all consulted sources throughout the study.

1.11. Organization of the Study

The research paper is divided into four chapters, each addressing different aspects of the topic. The first chapter will cover the introduction of the thesis, providing background information, stating the problem, addressing research questions, outlining objectives, explaining methodologies, and discussing the significance of the study.

Moving on, the second chapter will delve into a comprehensive and conceptual overview of child rights and best interest of the child. It will also analyse existing studies and research related to the topic. The third chapter will focus on examining relevant national and international legal frameworks, regarding adaption process. Additionally, it will address issues related with the child right protection in the process of adoption.

Lastly, the fourth chapter will provide conclusions drawn from the study's findings and offer recommendations based on the research.

²¹ Such set of code of ethics has been given by the American Sociological Association. “Code of Ethics” <http://www.asanet.org/about/ethics.cfm>. Accessed, July 26, 2023

Chapter Two: Normative and Institutional framework for the Protection of Child Rights

2.1. Introduction

The protection of children's rights in the context of adoption is a critical issue that requires a robust normative and institutional framework to ensure the well-being and best interests of the child. In Ethiopia, like many other countries, the process of adoption is governed by a complex legal system that aims to safeguard the rights of children involved in the adoption process. This research paper titled "The Protection of Child Rights in the Process of Adoption in Ethiopia: A Critical Analysis and Legal Assessment" seeks to critically analyze the existing normative and institutional framework for the protection of child rights in adoption in Ethiopia.

The protection of child rights in adoption is a fundamental aspect of international law, as enshrined in various international instruments such as the United Nations Convention on the Rights of the Child (UNCRC) and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. These instruments provide a comprehensive framework for the protection of children's rights in adoption, emphasizing the principles of best interests of the child, non-discrimination, and respect for the child's views.

In Ethiopia, the legal framework for adoption is primarily governed by the therevised family Code, which sets out the procedures and requirements for both domestic and intercountry adoptions. The Children's Code aims to ensure that the adoption process is carried out in the best interests of the child, with due consideration given to the child's rights to identity, family, and culture. Additionally, Ethiopia is a signatory to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which provides further guidelines and standards for intercountry adoptions.

Despite the existence of a legal framework for adoption in Ethiopia, there are challenges and gaps in the implementation of these laws, which may compromise the protection of child rights in the adoption process. Issues such as lack of awareness of legal rights, corruption, and

inadequate monitoring mechanisms pose significant risks to the well-being of children involved in adoption.

This chapter critically analyzes the existing normative and institutional framework for the protection of child rights in adoption in Ethiopia, with a focus on identifying gaps and challenges in the implementation of these laws. By conducting a legal assessment of the adoption process in Ethiopia, this paper aims to provide recommendations for strengthening the protection of child rights in adoption and ensuring that the best interests of the child are upheld throughout the adoption process.

2.2. Concept of a Child Rights

Child rights are a fundamental aspect of human rights that are specifically focused on the protection and well-being of children. The concept of child rights is rooted in international law, with the United Nations Convention on the Rights of the Child (UNCRC) being the most widely recognized and comprehensive treaty on the subject. According to the UNCRC, a child is defined as any person under the age of 18, and they are entitled to a range of rights that are essential for their survival, development, and protection.

One of the key principles of child rights is the best interests of the child, which is enshrined in Article 3 of the UNCRC.²² This principle requires that all decisions and actions concerning children should prioritize their well-being and development. This means that children should have access to healthcare, education, and a safe environment in which to grow and thrive. Additionally, children have the right to express their opinions and have them taken into account in all matters that affect them, as outlined in Article 12 of the UNCRC.

In addition to the UNCRC, there are numerous other international and national laws and policies that protect the rights of children. For example, the International Labour Organization's Convention on the Worst Forms of Child Labour prohibits the exploitation of children for

²²United Nations.(1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

labor,²³ while the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography aims to prevent and combat these forms of exploitation.²⁴

Overall, the concept of child rights is essential for ensuring the well-being and development of children around the world. By upholding the principles outlined in international treaties and laws, societies can create a safe and nurturing environment for children to grow and thrive.

2.3. Normative framework of Child rights under International law

The normative framework of child rights under international law is a crucial aspect of ensuring the protection and well-being of children worldwide. This framework is established through various international treaties, conventions, and agreements that set out the rights and responsibilities of states in relation to children. In this paper, we will analyze the key components of the normative framework of child rights under international law, drawing on relevant books, articles, treaties, and international law.

One of the foundational documents in the field of child rights is the United Nations Convention on the Rights of the Child (CRC), which was adopted in 1989 and has been ratified by almost every country in the world.²⁵ The CRC sets out a comprehensive list of rights that children are entitled to, including the right to life, survival, and development; the right to education; the right to health; and the right to protection from violence, abuse, and exploitation. These rights are based on the principles of non-discrimination, best interests of the child, and the right to participate in decisions that affect them.

In addition to the CRC, there are other international treaties and agreements that address specific issues related to child rights. For example, the Optional Protocol to the CRC on the Sale of

²³International Labour Organization.(1999). Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182

²⁴United Nations.(2000). Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/protocolchildprostitution.aspx>

²⁵United Nations.(1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Children, Child Prostitution and Child Pornography (OPSC) prohibits the sale of children, child prostitution, and child pornography, and requires states parties to take measures to prevent and combat these practices.²⁶ Similarly, the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) prohibits the recruitment and use of children in armed conflict and requires states parties to take measures to protect children from such practices.²⁷

In analyzing the normative framework of child rights under international law, it is important to consider the role of states in fulfilling their obligations to protect and promote children's rights. States parties to the CRC are required to take all appropriate legislative, administrative, and other measures to ensure that children's rights are respected and protected. This includes adopting laws and policies that are in line with the principles and provisions of the CRC, establishing mechanisms for monitoring and enforcing children's rights, and providing resources and support for the implementation of children's rights. This section briefly discuss the normative foundations of child rights under international law.

2.3.1. Universal Declaration of Human Rights (UDHR)

Although international law recognized some form of international human rights protection prior to the entry into force of the United Nations Charter, the normative foundation of modern international human rights law and by extension the institutionalization of child rights was consolidated with the adoption of the United Nations Charter in 1945.²⁸ Under the Charter, the willingness to commit to the defense of human rights within and outside the borders of member states was highlighted.²⁹ The Charter was also unprecedented in its articulation of human rights both in its preamble and its main body, thus making it one of the normative pillars of human rights and by extension child rights. Although the UN Charter is not a child specific instrument

²⁶United Nations.(2000). Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/OPSCCRC.aspx>

²⁷United Nations.(2000). Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>

²⁸Buergenthal, T. (1997).The normative and institutional evolution of international human rights. *Human Rights Quarterly*, 19(4), 703-723.

²⁹Cingranelli, D. L., & Richards, D. L. (1999). Respect for human rights after the end of the Cold War. *Journal of Peace Research*, 36(5), 511-534.

and does not expressly mention children as holders of rights, it makes reference to human rights in its preamble and six other articles which, by extrapolation, can be seen to obviously relate to children.³⁰

UDHR is one of the founding documents of human rights law and is a non-binding declaration adopted in 1948 by the United Nations General Assembly.³¹ As one of the greatest aspirational documents and corner-stone of human history meant to guide virtually all human rights, the UDHR urges member states to promote a number of civil, economic, and social rights.³²

While the UDHR did not articulate any child-specific human rights provision, a deductive reading of the broad spectrum of rights guaranteed in the Declaration disposes it as one of the strongest normative frameworks for the protection of child rights. According to the former Secretary-General of the United Nations, Mr. Kofi A Annan, the principles enshrined in the Universal Declaration are the yardstick by which we measure progress. They lie at the heart of all that the United Nations aspire to achieve.... Human rights belong not to a chosen few, but to all. It is this universality that endows human rights with the power to cross any border and defy any force.³³ The UDHR also set out in its preamble the recognition “of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world”³⁴

2.3.2. International Covenants

In a bid to overcome the weaknesses of the UDHR and create a binding legal instrument, the United Nations Commission on Human Rights drafted a pair of binding covenants, the International Covenant on Civil and Political Rights (ICCPR)³⁵ and the International Covenant on Economic Social and Cultural Rights (ICESCR).³⁶ Having been both adopted in 1966, the

³⁰UN, Charter of the United Nations, 24 October 1945. Articles 1(3); 13(1)(b); 55(c); 62(2); 68; 76(c).

³¹United Nations General Assembly, Resolution A/RES/60/251 of April 2006.

³²UN General Assembly, Universal Declaration of Human Rights, 10 December 1948

³³Speech of the United Nations Secretary General , Kofi A. Annan on the 50th Anniversary of the Universal Declaration of Human Rights accessed 13 January 2012.

³⁴UN General Assembly, Universal Declaration of Human Rights, 10 December 1948.

³⁵UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966.

³⁶UN General Assembly, International Covenant on Economic, Social, and Cultural Rights, 16 December 1966.

ICESR details the basic civil and political rights of individuals and groups of individuals and the ICESCR commits state parties to granting socio-economic rights to individuals, including labor rights, right to health, education, and adequate standard of living. The ICCPR and ICESCR together with the UDHR form the ‘International Bill of Rights’ and jointly precipitates the expansion of international human rights and child rights standards in the form of treaties, declarations, and conventions.

In the context of child justice, Article 10(2)(b) of the ICCPR provides that children accused of being in conflict with the law shall be separated from adults and brought as speedily as possible for adjudication. Article 14 grants equality in the determination of a criminal charge and other due process rights. While the adoption of both the ICCPR and ICESCR did not generate as much global attention as did the UDHR, it has been argued that both covenants provide a seismic shift that furthered the notion of human rights from one of vague and non-enforceable provisions of the UDHR to a legally binding norm.³⁷

2.3.3. Convention on the Rights of the Child and other Child-Specific International Instruments

As was the case with human rights in general, the post-World War II era consolidated the normative foundation of child rights. It triggered a paradigm shift that precipitated international, regional, and national legislation to accord children autonomous and distinct rights from those enjoyed by the rest of humanity.³⁸ Whereas the International Bill of Rights contains guarantees also applicable to children, there was the need for an international legal framework dealing specifically with children’s particular needs. It was in response to the apparent need for a legally

³⁷Cronin-Furman, K. R. (2010). 60 years of the universal declaration of human rights: Towards an individual responsibility to protect. *American University International Law Review*, 25(1), 175-198.

³⁸Denov, M. S. (2004). Children’s rights or rhetoric? Assessing Canada’s youth criminal justice act and its compliance with the UN convention on the rights of the child. *International Journal of Children’s Rights*, 12, 1-24

binding instrument focusing exclusively on the specific needs of children that the CRC³⁹ was adopted.⁴⁰

The CRC thus became the first legally binding international instrument to exclusively focus on children and accommodate all classes of rights including the civil, cultural, economic, political, and social rights.⁴¹ The CRC has developed into an essential worldwide legal tool and enunciated core principles for the protection of rights of the child in general and particularly those in conflict with the law. To encourage the prompt domestication of the CRC, Article 4 urges member states to take all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the convention.

Prior to the adoption of the CRC and the setting of non-negotiable standards and obligations, one of the first international legal instruments to comprehensively detail child rights in the particular context of the administration of child justice is the Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the “Beijing Rules”.⁴²⁴³ The normative gains of the CRC and the “Beijing Rules” were built upon with the adoption of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.⁴⁴ The purpose of the Rules is to uphold the rights and safety of children and promote their physical and mental well-being. Another international instrument that added to the normative fortress of child rights is the United Nations Guidelines for the Prevention of Juvenile Delinquency popularly called the “Riyadh Guidelines”.⁴⁵ These Guidelines underline preventive policies as a way of facilitating successful socialization and integration of children and young persons. In addition, the

³⁹UN General Assembly, Convention on the Rights of the Child, 20 November 1989.

⁴⁰Harris-Short, S. (2003). International human rights law: Imperialist, inept and ineffective? Cultural relativism and the UN Convention on the rights of the child. *Human Rights Quarterly*, 25(1), 130-181.

⁴¹Hammarberg, T. (1990). The U.N convention on the rights of the child and how to make it work. *Human Rights Quarterly*, 12(1), 97.

⁴²UN General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 29 November 1985.

⁴³Kubota, Y. (1989). The protection of children’s rights and the United Nations. *Nordic Journal of International Law*, 58(1), 7-23.

⁴⁴UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 2 April 1991.

⁴⁵UN General Assembly, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), 14 December 1990.

Declaration of the Rights of the Child,⁴⁶ the World Summit for Children,⁴⁷ and the United Nations General Assembly Special Session on Children,⁴⁸ consolidated the normative foundation of child rights. Other relevant instruments for the promotion and protection of child rights include United Nations General Assembly Resolutions 2003/85,⁴⁹ and 2004/47⁵⁰ on the abduction of children and Security Council Resolution 1379⁵¹ and 1460 on Children in Armed Conflict.⁵²

2.4. Normative Framework of Child Rights under the African Charter

The contemporary normative architecture of Africa's regional human rights system has been attributed to the coming into force of the Constitutive Act of the Organization of African Unity⁵³ culminating in the adoption of the African Charter on Human and Peoples Rights (ACHPR) in 1981.⁵⁴ The African Charter establishes a regional human rights framework in the continent. The protection and promotion of children's rights is a fundamental aspect of human rights law. In Africa, the African Charter on the Rights and Welfare of the Child (ACRWC) and regional child rights laws established by the African Union provide a normative framework for the protection of children's rights.⁵⁵ This section will examine the normative framework of child rights under the ACRWC and regional child rights laws by the African Union.

⁴⁶UN General Assembly Declaration on the Rights of the Child, 20 November 1959.

⁴⁷UN General Assembly, 2005 World Summit Outcome, 24 October 2005.

⁴⁸UN General Assembly, Follow-up to the United Nations Special Session on Children, 17 August 2004.

⁴⁹UN Commission on Human Rights, Commission on Human Rights Resolution 2003/85: Abduction of Children in Africa, 25 April 2003.

⁵⁰UN Commission on Human Rights, Commission on Human Rights Resolution 2004/47: Abduction of Children in Africa, 20 April 2004.

⁵¹UN Security Council, Security Council Resolution 1379 (2001) on the Protection of Children in Armed Conflicts, 20 November 2001.

⁵²UN Security Council, Security Council Resolution 1460 (2003) on Children in Armed Conflict, 30 January 2003.

⁵³Odinkalu, C. A. (2002). Africa's regional human rights system: Recent developments and jurisprudence. *Human Rights Law Review*, 2(1), 99-106.

⁵⁴Okere, B. O. (1984). The protection of human rights in Africa and the African Charter on human and peoples' rights: A comparative analysis with the European and American systems. *Human Rights Quarterly*, 6(2), 141-159.

⁵⁵African Union.(1990). African Charter on the Rights and Welfare of the Child. Retrieved from <https://au.int/en/treaties/african-charter-rights-and-welfare-child>

2.4.1. The African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child was adopted by the Organization of African Unity (now the African Union) in 1990. The ACRWC is a comprehensive legal instrument that sets out the rights and responsibilities of children in Africa. Article 1 of the ACRWC defines a child as every human being below the age of 18 years. This definition is in line with the United Nations Convention on the Rights of the Child (UNCRC), which sets the age of majority at 18 years.⁵⁶

The ACRWC recognizes a wide range of rights for children, including the right to life, survival, and development (Article 5), the right to education (Article 11), the right to health and healthcare services (Article 14), and the right to protection from abuse, neglect, and exploitation (Article 16). These rights are in line with the principles of the UNCRC and other international human rights instruments. It regionalizes the contents of the CRC and interprets universal human rights in the light of the socio-economic realities and traditions of Africa.⁵⁷ The ACRWC also provides for a separate justice system within which children in conflict with the law are adjudicated for rehabilitative purposes.⁵⁸

Generally speaking the normative framework of child rights under the African Charter on the Rights and Welfare of the Child and regional child rights laws by the African Union provides a comprehensive legal framework for the protection and promotion of children's rights in Africa. These instruments set out the rights and responsibilities of children, as well as the obligations of member states to ensure that children's rights are respected and protected. By adhering to these legal instruments, African countries can work towards creating a safe and supportive environment for children to thrive and reach their full potential.

⁵⁶United Nations.(1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵⁷Organization of African Unity (OAU), African Charter on Human and Peoples' Rights (Banjul Charter), 27 June 1981

⁵⁸Amanda, L. (2002). Theoretical analysis of the reality of children's rights in Africa: An introduction to the African charter on the rights and welfare of the child. African Human Rights Law Journal, 2(1), 11-32

2.5. International Institutional Framework for the protection of children's rights

The protection of children's rights is a fundamental aspect of international human rights law. The United Nations has played a crucial role in establishing a framework for the protection of children's rights through various treaties and institutions. This section discusses the institutional framework of the right of the child under the international system, focusing on the UN institutions that work for the protection of children.

2.5.1. The United Nations Convention on the Rights of the Child (UNCRC)

The United Nations Convention on the Rights of the Child (UNCRC) is the most comprehensive international treaty on children's rights. Adopted in 1989, the UNCRC sets out the civil, political, economic, social, and cultural rights of children.⁵⁹ It has been ratified by almost every country in the world, making it one of the most widely accepted human rights treaties. The UNCRC establishes a framework for the protection of children's rights by outlining the obligations of states parties to ensure that children's rights are respected, protected, and fulfilled.⁶⁰ It recognizes the inherent dignity and worth of every child and emphasizes the importance of promoting and protecting their best interests.

2.5.2. The United Nations Children's Fund (UNICEF)

In addition to the UNCRC, there are several UN institutions that work for the protection of children's rights. The United Nations Children's Fund (UNICEF) is the leading UN agency for children, working to ensure that every child has access to healthcare, education, and protection from violence, exploitation, and abuse.⁶¹

UNICEF is an international organization working in over 190 countries and territories to improve the lives of children and their families based on the United Nations Convention on the

⁵⁹United Nations.(1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁶⁰Ibid, 59

⁶¹United Nations Children's Fund.(n.d.).About UNICEF. Retrieved from <https://www.unicef.org/about>

Rights of the Child. UNICEF has initiatives, campaigns, and programs covering issues in the areas of child protection and inclusion, child survival, education, emergencies, gender, innovation for children, supplies and logistics, and research and analysis. UNICEF implements programs, works with local stakeholders and governments, and advocates at every level to further their goal of increasing children's rights, safety, and protection. They also work to deliver supplies to children in areas with low access to food, medicine, etc. and in emergency situations. They do extensive research in order to create their programs, publishing research and stories on a variety of issues impacting children around the world.

2.5.3. The UN Refugee agency

Children constitute over 40 per cent of forcibly displaced and stateless persons. Situations of forced displacement and statelessness can have a lifelong, devastating impact on the lives and development of children – from infancy and childhood through to adolescence and adulthood.⁶² Conflict and persecution expose children and their families to violence, abuse and exploitation and cause families and children to flee. As a result, forcibly displaced and stateless children face a wide range of child protection risks which include diverse forms of violence, abuse, exploitation and neglect.

The UN refugee agency provide protection of forcibly displaced and stateless children by complementary and mutually reinforcing international legal and policy frameworks.⁶³ These include international standards governing the protection of refugees, internally displaced persons (IDPs) and stateless persons, as well as the child protection provisions set out in the United Nations Convention on the Rights of the Child and its Optional Protocols, as well as in other international or regional instruments.

⁶²The UN Refugee agency, <https://www.unhcr.org/what-we-do/protect-human-rights/protection/child-protection#:~:text=UNHCR%20supports%20authorities%20and%20works,to%20the%20protection%20of%20children.>

⁶³Ibid, 61

2.5.4. The Special Representative of the Secretary-General on Violence against Children

The Special Representative of the Secretary-General on Violence against Children is another important UN institution that works to promote and protect children's rights. The Special Representative conducts research, raises awareness, and advocates for the prevention and elimination of all forms of violence against children.⁶⁴

2.5.5. Save the Children

Save the Children is an international organization working to protect and improve the lives of children across the globe. With staff in 120 countries, their programs focus on the goals of helping children survive, learn, and be protected.⁶⁵ Save the Children works through programming, emergency response, and advocacy to further protection and rights for children in a variety of ways. Save the Children works to engage children about their rights, as well as families, communities, governments, and international organizations, to build on children's rights from the ground up. They focus on keeping leaders and governments accountable for their actions towards children. The organization also publishes regular reports on various issues relating to child rights, including reports on different countries and regions. Additionally, Save the Children also has online advocacy and news, as well as an initiative called Child Writes that allows children to write about and speak about their experiences and their rights.

2.5.6. World Vision

World Vision is a Christian organization focused on improving the lives of children and the communities in which they live.⁶⁶ The organization operates in over 100 countries to address a variety of issues in the areas of health, education, child sponsorship, child protection, poverty in America, Christian faith, gender equality, economic empowerment, disaster relief, disability

⁶⁴United Nations.(n.d.).Special Representative of the Secretary-General on Violence against Children. Retrieved from <https://www.un.org/sg/en/content/special-representative-secretary-general-violence-against-children>

⁶⁵Save the children, <https://www.savethechildren.net/> accessed July 24, 2024.

⁶⁶World Vision, <https://www.worldvision.org/> accessed July 24, 2024.

inclusion, clean water, hunger and food security, and refugees and fragile states. They work out of their Christian beliefs, ensuring that their initiatives are child-focused, community-based, and measurable in terms of outcomes. World Vision's primary initiative is their child sponsorship program, which helps provide money for nutrition, education, healthcare, clean water, and more for children around the world. They also publish a gift catalog that allows people to donate specific items to various communities, such as medicine, school supplies, livestock, water supplies, counseling, and more.

2.6. Regional Institutional Framework for the Protection of Child Rights under the African Charter

Child rights are fundamental human rights that are inherent to all children, regardless of their race, nationality, or social status. These rights are enshrined in various international and regional instruments, including the African Charter on the Rights and Welfare of the Child. The African Charter establishes a number of regional institutions that are responsible for promoting and protecting child rights in Africa. One of the key institutions is the African Committee of Experts on the Rights and Welfare of the Child. This section analyzes the regional institutional framework for the protection of child rights under the African Charter, focusing on the key African institutions that work towards this goal.

2.6.1. The African Committee of Experts on the Rights and Welfare of the Child.

In July 2001, the ACERWC was formed to promote and protect the rights established by the Children's Charter, to implement these rights in practice, and to interpret the dispositions of the Children's Charter as required by party states, AU institutions, or all other institutions recognized by AU or by a member state.⁶⁷ The Committee comprises 11 members and meets twice each year, usually in May and November in Addis Ababa, Ethiopia. The Committee reports to the Assembly of Heads of State and the African Union every two years. Countries which have

⁶⁷The National Commissions for UNESCO of France and Germany, "Children's Charter", http://www.claiminghumanrights.org/childrens_charter.html?&L=pomrgkrkverp accessed 8th July, 2024.

ratified the Children's Charter are required to submit initial reports within two years of ratification of the Charter to the ACERWC, and every three years thereafter. And it also conducts country visits and issues recommendations to address violations of child rights.⁶⁸ It is noted that till date, the fulfilment of this obligation is poor.⁶⁹ The children's Charter also contains an individual complaints procedure. Any individual, group, or NGO recognised by the AU, by a member state or by the UN may file a complaint to the ACERWC.⁷⁰

2.6.2. The African Union Commission

Another important institution is the African Union Commission, which plays a coordinating role in promoting child rights in Africa. The Commission works closely with the African Committee of Experts and other stakeholders to develop policies and programs that advance the rights of children on the continent. In addition, the African Union has established a number of specialized agencies, such as the African Union Department of Social Affairs, which focus on child protection issues.⁷¹

2.6.3. The ECOWAS Court of Justice

Any citizen of an ECOWAS member state can file complaints against human rights violations of state-actors at the regional Court of Justice. ECOWAS member states have chosen to give the court, which exists formally since 1991 and was in practice only set up in 2001, a distinct mandate in that respect. The Court is seated in Abuja, Nigeria, and rules according to the

⁶⁸African Charter on the Rights and Welfare of the Child. (1990). Retrieved from <https://au.int/en/treaties/african-charter-rights-and-welfare-child>

⁶⁹The country reports so far received are made accessible here: <http://www.africaunion.org/root/AU/Conferences/2008/may/sa/child/documents.htm> accessed 8th July, 2024,.

⁷⁰For further details on how to file an individual complaint, see http://www.claiminghumanrights.org/childrens_charter_actions.html?&L=imvkntnenphytjtr accessed 8th July, 2024,

⁷¹African Union Commission.(n.d.).Department of Social Affairs. Retrieved from <https://au.int/en/departments/social-affairs>

provisions of the Banjul Charter. Impressively, the decisions are legally binding to the ECOWAS member states.⁷²

Since 2005, through an individual complaint procedure, the Court has competence to rule on human rights violations. Also impressively noteworthy is that, unlike before the ACHPR, local remedies do not need to have been exhausted, before cases are brought to the ECOWAS Court of Justice. So, every and any victim of a human rights violation can directly appeal to the court even while the case is subject to a national proceeding. Cases may be brought before the Court via an application addressed to the Court Registry.⁷³

Furthermore, there are a number of non-governmental organizations (NGOs) and civil society groups in Africa that work tirelessly to promote and protect child rights. These organizations play a crucial role in advocating for the rights of children, providing services to vulnerable children, and raising awareness about child rights issues in their communities.⁷⁴

Generally speaking, the African Charter on the Rights and Welfare of the Child provides a strong legal framework for the protection of child rights in Africa. The regional institutional framework established under the Charter, including the African Committee of Experts on the Rights and Welfare of the Child and the African Union Commission, plays a vital role in monitoring and promoting child rights on the continent. In addition, the work of NGOs and civil society groups is essential in advancing the rights of children in Africa. By working together, these institutions and organizations can help ensure that all children in Africa enjoy their full range of rights and protections.

2.7. National Framework of Ethiopia

⁷²National Commissions for UNESCO of France and Germany, "ECOWAS Court of Justice", <http://www.claiminghumanrights.org/ecowas.html?&L=escyeybij%2F...%2F2> accessed 8th July, 2024.

⁷³For full details on the content of such application see the National Commissions for UNESCO of France and Germany, "ECOWAS Court of Justice", <http://www.claiminghumanrights.org/ecowas.html?&L=escyeybij%2F...%2F2> accessed 8th July, 2024

⁷⁴United Nations Children's Fund. (2019). Child Rights in Africa: A Legal Perspective. New York: UNICEF

Before the 1995 FDRE Constitution, Ethiopia had enacted written constitutions starting from 1931. The 1931 constitution, as stated by Getahun, was the first written constitution of Ethiopia and was based on the Japanese Meiji Constitution.⁷⁵ However, this constitution was not clear and contained many elements that were part of the traditional codes governing the relationship between the monarchy and subjects. It declared Ethiopia as a constitutional monarchy, headed by a monarch with ancestry traced back to King Solomon of Jerusalem.⁷⁶ The constitutional recognition of fundamental rights was a result of the modernization of Ethiopia and international pressure.

Similar to the 1931 constitution, the so-called Solomonic tradition was included in the 1955 Ethiopian constitution, which continued the claim of mythical descent. In an effort to end royal absolutism, a new constitution was formulated in August 1974.⁷⁷ However, the changes made were too little and too late, resulting in the disbandment of the regime and the abortion of the constitution.

The 1987 constitution of Derg, enacted after a 13-year constitutional gap, rarely considered the idea of human rights as entitlement. This constitution was ended by the liberation struggles that continued until 1991 when the Derg fell, and the new regime endorsed the Transitional Charter, which served as the constitution of Ethiopia during the transition. After a prolonged transition period, the Federal Democratic Constitution was enacted in 1994 and came into force in 1995.⁷⁸ This constitution marked a major transformation in terms of human rights compared to the previous constitutions.

⁷⁵GetahunKassa. (2007). Mechanisms of Constitutional Control: A Preliminary Observation Of The Ethiopian System. *Afrika Focus*, Vol. 20, Nr. 1-2, 2007, pp. 75-104

⁷⁶Keller,E.J.(2010). Constitutionalism, Citizenship and Political Transitions in Ethiopia: Historic and Contemporary Processes in Deng.F.M, ed. *Self-Determination and National Unity: A challenge for Africa*.Trenton, NJ: Africa World Press.

⁷⁷EndalcachewBayeh.(2014). Incorporation of Human Rights into Legal Frameworks of the three Successive Regimes of Ethiopia and their Treatment: A Comparative Analysis. *European Journal of Humanities and Social Sciences*, Vol. 32, No.1.

⁷⁸TsegayeRegassa. (2009). Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia. *Mizan Law Review*, Vol. 3. No.2.

In addition to the transformation in terms of human rights in general, the Ethiopian constitution also acknowledges the vulnerable position of children and grants them rights and subsequent protection for these rights."

2.7.1. Normative Framework of Ethiopia

The FDRE Constitution has devoted one third of its total provisions, starting from Article 13 to 44, to a subject dealing with "Fundamental Rights and Freedoms". This Constitutional Bill of Rights provides the fundamental legal framework for the protection of human rights in Ethiopia. The constitution follows a holistic approach in dealing with human rights by including all the three traditional generations of rights (civil and political rights, economic, social, and cultural rights, and solidarity rights) in a single human rights instrument or document. Children, as human beings, benefit from the protections of all the human rights provisions of the FDRE Constitution. Besides, the FDRE Constitution devoted its Article 36 to exclusively deal with the rights of children. This provision specifically guarantees every child: the right to life⁷⁹; right to a name and nationality;⁸⁰ right to know and be cared for by his or her parents or legal guardians⁸¹; right to not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being⁸², right to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.⁸³

In addition to the aforementioned rights, the FDRE Constitution recognizes the basic principle, i.e., the best interest of the child, to be considered by public and private welfare institutions, courts of law, administrative authorities or legislative bodies while undertaking actions concerning children.⁸⁴ This is an acknowledgement of the fact that, in all likelihood, there would be times when certain rights of the child would come into conflict with the rights, prerogatives,

⁷⁹ Art 1 (a) of FDRE Constitution, 1995:

⁸⁰ Ibid, Article 36 (1b)

⁸¹ Ibid, Article 36 (1c)

⁸² Ibid Article 36 (1d)

⁸³ Ibid, Article 36 (1e)

⁸⁴ Ibid Article 36 (2)

and responsibilities of parents or guardian and with those of the state.⁸⁵ In such cases, as the language of Article 36 (2) of the FDRE Constitution stipulates that primary consideration should be given to the rights of the child. By making the rights of the child the primary, rather than paramount or prevailing, consideration, this provision provides the flexibility needed to give priority to other interests when circumstances so dictated, as in “extreme cases”⁸⁶

2.7.2. Institutional Framework of Ethiopia

The Convention on the Rights of the Child places an obligation on state parties to establish a permanent self-monitoring mechanism in order to ensure the effective implementation of the CRC. In Ethiopia, the Ministry of Women, Children, and Youth Affairs (MOWCYA) has been entrusted with the responsibility of monitoring and overseeing the implementation of the CRC to safeguard the rights of children.

I. The Ministry of Women and Social Affairs (MoWSA)

The Ministry of Women and Social Affairs (MoWSA) plays a pivotal role in advocating for the rights and welfare of women and children, as outlined in Article 10 of Proclamation No. 1263/2014. The Ministry is not only empowered but also has a fundamental responsibility to initiate and implement comprehensive policies and legislations aimed at protecting children's rights. This includes the development of strategic plans and the allocation of necessary budgets to support these initiatives effectively.⁸⁷

In addition, Article 32 of the proclamation grants MoWSA the authority to conduct extensive awareness programs that mobilize public engagement and resources related to issues concerning women, children, and youth. The Ministry actively works to gather and disseminate pertinent information to enhance understanding and foster community involvement in these areas. Collaboration with various stakeholders—such as non-governmental organizations, community

⁸⁵Mower, A. G. (1997). *Convention on the Rights of the Child: International Law Support for Children*. London: Greenwood Press.

⁸⁶Alston, P. (1992). *The Legal Framework of the Convention on the Rights of the Child*. In *Bulletin of Human Rights*. Geneva: Centre for Human Rights.

⁸⁷Article 10 of Proclamation No. 1263/2014: *The Ministry of Women and Social Affairs (MoWSA)*

groups, and international entities—is crucial to MoWSA's mission, as it seeks to create a cohesive network dedicated to the protection and fulfillment of children's rights.⁸⁸

Furthermore, MoWSA holds the significant responsibility of monitoring the implementation of international and national treaties concerning the rights of women and children. This includes the preparation and submission of detailed reports to relevant bodies, ensuring transparency and accountability in the processes aimed at upholding these rights. Through these efforts, MoWSA strives to create a safer, more equitable environment for women and children, ensuring their voices are heard and their rights upheld in society.

II. Independent National Human Rights Institution

The establishment of independent National Human Rights Institutions (NHRIs) plays a crucial role in safeguarding the human rights of children. Recognizing the vulnerability of children, it is imperative for every state party to the Convention on the Rights of the Child (CRC) to have an effective NHRI dedicated to promoting and protecting children's rights. In Ethiopia, the constitutional provisions under Article 55(14) & (15) empower the House of Peoples Representative (HPR) to establish the Ethiopian Human Rights Commission (EHRC) and the Institution of the Ombudsman.⁸⁹ These institutions are granted the authority to ensure the enforcement of human rights as stipulated in the constitution, investigate violations of human rights, and contribute to the promotion of good governance.

The Ethiopian Human Rights Commission (EHRC) is mandated to raise public awareness about human rights, ensure the protection, respect, and enforcement of human rights, investigate violations, and issue reports on human rights conditions such as prison conditions. Additionally, it provides consultancy services on human rights matters.

On the other hand, the Institution of the Ombudsman (EIO) focuses on promoting good governance and protecting citizens' rights by addressing administrative injustices and oppressive bureaucratic practices. It receives and investigates complaints related to government ministries,

⁸⁸Ibid: Article 10 & 32

⁸⁹FDRE constitution art 55(14) & (15)

departments, and non-state institutions, conducts research to prevent maladministration, and provides citizens with accessible avenues for lodging complaints about injustices and oppressions, especially in work environments and administrative areas.

Both the EHRC and the EIO are essential in upholding human rights standards, ensuring good governance, and addressing violations and injustices, thus contributing to the overall protection and promotion of human rights in Ethiopia.

III. Non-Governmental Organization

The role of non-state actors, including Non-Governmental Organizations (NGOs) and Civil Society Organizations (CSOs), is crucial in the protection of children's rights. These organizations often work in tandem with government efforts and provide essential services such as care and support, access to justice for abused children, education for parents on child rights, educational support, and assistance for trafficked and abused girls, including shelter and family re-union services. Additionally, they engage in advocacy, capacity building, and awareness creation related to child protection.

In Ethiopia, NGOs and CSOs have made significant impact in three key areas: advocating on behalf of children, empowering marginalized groups, and providing emergency assistance. However, their impact has been constrained by certain limitations. The Ethiopian government's CSO proclamation aims to facilitate the role of civil society in the country's overall development, but some provisions, particularly those restricting foreign NGOs from engaging in activities related to human rights and child rights, have been criticized for their detrimental consequences.

Effective collaboration between these organizations and National Human Rights Institutions (NHRIs) is considered essential in ensuring effective child rights protection. However, the restrictions imposed on the activities of CSOs and NGOs, particularly in relation to child rights, raise concerns about the extent of their participation in child rights protection in Ethiopia

Chapter Three: International Legal Framework of Adoption

3.1. Definition and Typs of Adoption

3.1.1. Definition

Adoption can be described as “the institutionalised social practice through which a person, belonging by birth to one family or kinship group, acquires new family or kinship ties that are socially defined as equivalent to biological ties and which supersede the old one, either wholly or in part.”⁹⁰ It is a statute based social and legal concept and exists because situations may arise where it is not possible for natural parents to fulfil their role as parents, often due to difficult personal circumstances.⁹¹ Therefore, parental rights and responsibilities may be exercised by other persons so that the right of the child to be cared for is enforced in practice.

Generally speaking Adoption is a process whereby a person assumes the parenting of another, usually a child, from that person's biological or legal parent or parents. Legal adoptions permanently transfer all rights and responsibilities, along with filiation, from the biological parents to the adoptive parents. It is the creation of a brand new parent-child relationship where there wasn't one before. When an adoption order is made, the adoptive parents take on all of the rights, duties, obligations, and liabilities any parent of the child would have. At the same time, one or both of the child's natural parents are stripped of those rights, duties, obligations, and liabilities, as if they are, and always had been, legal strangers to the child.

3.1.2. Types of Adoption

Adoptions fall into two main categories: domestic and intercountry (or international). Domestic adoption occurs when both the child and the prospective adoptive parents are citizens of the

⁹⁰JHA van Loon Report on Intercountry Adoption Preliminary document no.1 of April 1990, in Proceedings of 17th Session of the Hague Conference, Tome II at paragraph 26 cited in the Consultation Paper on the Implementation of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption 1993 (LRC 58-1998)

⁹¹Duncan “The Protection of Children’s Rights in Inter-Country Adoption” in Heffernan (ed) Human Rights: A European Perspective (Round Hall Press 1994) 326 at 331-332

same country. International adoption occurs when a child is adopted into a family whose country of origin and citizenship differs from the child's own. Within each category, there are a variety of avenues to consider.

I. Domestic Adoption

The term *domestic adoption* refers to the process of a citizen adopting a child with the same citizenship. Domestic adoption occurs when both the child and the prospective adoptive parents are citizens of the same country. International adoption occurs when a child is adopted into a family whose country of origin and citizenship differs from the child's own. In the next chapter the writer will briefly discuss aspects of domestic adoption in Ethiopia.

II. Intercountry Adoption

International adoption (also referred to as intercountry adoption or transnational adoption) is a type of adoption in which an individual or couple residing in one country becomes the legal and permanent parent(s) of a child who is a national of another country. In general, prospective adoptive parents must meet the legal adoption requirements of their country of residence and those of the country whose nationality the child holds. International adoption is not the same thing as transcultural or interracial adoption. However, a family will often become a transcultural or interracial family upon the adoption of a child internationally.

The Hague Convention of May 29, 1993 aims to ensure that international adoptions are organized in the best interests of the child. It ensures that the fundamental rights of children are respected and that the abduction, sale and trafficking of children are prevented.

The United Nations Convention on the Rights of the Child (UNCRC) sets down certain minimum standards which must be adhered to by States Parties which permit adoption (Art. 21).⁹² These minimum standards include that: - the best interests of the child must be the paramount consideration in adoption; - adoption should only be authorised by competent

⁹²Art 21 of United Nations Convention on the Rights of the Child (UNCRC)

authorities, in accordance with applicable law and procedures; - the persons who have to consent to an adoption must have given their informed consent to the adoption on the basis of such counselling as may be necessary.

Article 21 UNCRC States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

3.2. The Best Interest of the Child as a guiding principle

The Best Interest of the Child is a key principle in international law relating to children, accepted in Article 3.1 of the United Nations Convention on the Rights of the Child.⁹³ More recently, the United Nations General Assembly has reaffirmed the “best interests” principle as providing a framework for all actions concerning children particularly in the implementation of the Convention on the Rights of the Child.⁹⁴ The doctrine of the best interest of the child is a widely recognized principle of child right protection. This legal principle largely applies in relation to family affairs; in particular, in disputes concerning custody, guardianship, maintenance, adoption, etc of the child.⁹⁵

The first organized effort in the process of recognizing the rights of the child came in 1924 with the adoption of the Geneva Declaration of the Rights of the Child by the League of Nations. In the context of the Declaration, the rights of children were primarily seen as measures to be taken against slavery, child labor, child trafficking and prostitution of children. The Geneva Declaration of the Rights of the Child was based on the principle that “mankind owes to the child the best it has to give”. In fact, this principle was embodied not in the main body of the declaration, but in its preamble. It reads as follows:

By the present declaration of the rights of the child, men and women of all nations, recognizing that mankind owe to the child the best that it has to give, declare and accept as their duty ... The phrase “mankind owes to the child the best it has to give”⁹⁶ clearly underlines our duties towards children, and it entitles them for the best that mankind can give. This implies that the interest of the child should be given primary consideration in actions involving children.

⁹³Article 3.1 of the UN Convention states that: “In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. The Convention is available at www.dfa.ie/home/index.aspx.

⁹⁴United Nations General Assembly Resolution on the promotion and protection of the rights of children (16 November 2007). Available at www.crin.org/index.asp.

⁹⁵Philip Alston (1994), “The best interest principle: towards a reconciliation of culture and Human Rights, reconciling culture and Human Rights,” *International Journal of Law, Policy and the Family*, Vol. 8, Issue 1, p. 4.

⁹⁶Articles 1, 2 and 3 of the Geneva Declaration of the Rights of the Child of 1924.

3.2.1. Hague Adoption Convention

Responding to growing international concern about the vulnerabilities of children, biological families and adoptive families, and building on the U.N. Convention on the Rights of the Child, the *Hague Convention on the Protection of Children and Cooperation in Respect of Inter country Adoption of 1993* (Hague Adoption Convention, HCIA) was promulgated to provide critical safeguards for all involved. With a focus on the best interests of children, HCIA was designed to help eliminate illegal, irregular, premature or ill-prepared practices, and to increase the likelihood that ICA occurred only after exhausting efforts to provide in-country permanency.

The treaty provides a framework for a uniform system of international adoption and establishes safeguards that could potentially end child trafficking.⁹⁷ The uniformity of adoption laws proposed by the Hague Convention helps to mediate the problems associated with the varying levels of protection for orphaned children resulting from disparate adoption systems.⁹⁸ Moreover, the focus that the Hague Convention has placed on corrupt international adoption practices may lead to further governmental efforts to stop child trafficking. Thus, the Hague Convention has the potential to put an end to the problems of abuse and corruption in international adoption practices.

HCIA sets forth four general principles that countries should consider when developing legislation, procedures and other measures to implement the treaty. We briefly note them here: first, ensuring adoptions take place in the best interests of the child and with respect for his or her fundamental rights which includes the *subsidiary principle* that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should inter country adoption

⁹⁷Colin Joseph Troy. 2012. The Need for Reform in U.S. Inter country Adoption Policy, 35 Seattle U.L. Review. p. 1525. (arguing that adherence to the Convention's standards will further the goal of stopping child trafficking).

⁹⁸Annette Schmit, Note. 2008. The Hague Convention: The Problems with Accession and Implementation, 15 I.J. Global legal Studies. p.375. (establishing that differing legislation from country to country creates difficulties in preventing corruption in inter country adoption).

be considered.⁹⁹ The consideration of child rights and best interests also includes the verification of adoption eligibility, non-discrimination of adopted children, collection and preservation of information on the child's origins, and matching the child to a suitable family. The second general principle of the HCIA concerns the establishment of safeguards to prevent abduction, sale and trafficking of children for adoption, including protecting families of origin, obtaining voluntary informed consent, and preventing improper financial gain. The third principle aims to establish cooperation between States, including between Central Authorities, all public and private agencies regarding procedures, and cooperation between States and Central Authorities. The final principle seeks to ensure authorization of competent authorities, including those who make decisions; to authorize Central Authorities to fulfill obligations and perform functions; and to determine which accredited bodies are allowed to operate as part of system.

Moreover, signatories have agreed on three main objectives for the treaty.¹⁰⁰ Those objectives are to: (1) guarantee that the best interests of the child are served in every inter country adoption; (2) design a system of cooperation between countries that will help prevent the abduction, sale, or trafficking of children; and (3) secure recognition of adoptions occurring among contracting countries.¹⁰¹ In order to achieve its three objectives, the Hague Convention established a number of provisions that must be abided by member countries and committed to by signatories. First, in order for a child to be adopted, it must be determined through a number of procedural requirements that adoption is in the best interests of the child. Second, those procedural requirements must be enforced by a Central Authority, thus preventing the abduction, sale, or trafficking of any child. Last, Contracting States must recognize certification of an adoption made in accordance with the Convention's standards.

3.2.2. The 1989 Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child was adopted by the UN general assembly on November 26/1989. The first draft of the convention was in the form of a proposal submitted by

⁹⁹Ibid

¹⁰⁰The Hague Conference on Private International Law, Overview. 2013: http://www.hcch.net/index_en.php?act=text.display&tid=26. Accessed on December 10, 2016.

¹⁰¹Ibid

Poland in 1978. Poland's proposal sought to adapt the provisions of the formally non-binding 1959 Declaration of the Rights of the Child with a view to making them suitable for inclusion in a binding treaty.¹⁰² Accordingly, the first draft of the Convention contained the principle of the best interest of the child embodied under Article 2 of the 1959 Declaration of the Rights of the Child in its full text as discussed earlier.

However, due to the opposition of some delegations, an alternative draft was submitted in 1980 to the working group of the Commission on Human Rights, which was responsible for the drafting of the Convention. Even then, there were debates on whether the "best interest" principle should be "a primary" or "the paramount" consideration or whether it might be better described in some other way. Some delegates in the working group expressed their concern that the use of the word "paramount" in the revised Polish draft was too broad, while a number of the delegates expressed their view that the draft should offer better protection to the child.

Ultimately, the proposal that 'the best interests of the child should be a primary consideration' was adopted. The main justification given for the adoption of this weaker formulation was that there could be instances, in which the competing interests of, inter alia, "justice and society at large should be of at least equal, if not greater, importance than the interests of the child."¹⁰³ Hence, the objective implicit in opting for such formulation seems to be intended to ensure that there is sufficient flexibility, at least in certain extreme cases, to enable the interests of those other than the child to prevail. Nevertheless, as Philip Alston observed, such formulation would "impose a burden of proof on those seeking to achieve a non-child centered result to demonstrate that, under the circumstances, other feasible and acceptable alternatives do not exist."¹⁰⁴ Moreover, the UN Committee on the Rights of the Child (established by virtue of Article 43 of the Convention) in its general comment clearly states that Article 3(1) of the Convention refers to actions undertaken by "public or private social welfare institutions, courts of law, administrative authorities or legislative bodies". The provision stipulates that "i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts

¹⁰²H. J. Steiner and Philip Alston (2000), *International Human Rights in Context: Law, Politics and Morals*, 2nd ed., (Oxford University Press), p. 512.

¹⁰³*Ibid*

¹⁰⁴*Ibid*

of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.” The principle thus requires active measures by all organs of the state, i.e. the executive, the legislature and the judiciary.

In addition to Article 3 of the Convention, which is the guiding principle of the ‘best interest of the child’ rule, we also have other provisions (such as Articles 18, 20, 21 and 37) in the Convention which reinforce the principle. Article 18 of the Convention states the overall responsibility of the state and the family (or guardian) of the child. This specific provision imposes an international legal obligation on the state parties to make utmost effort to ensure the recognition of the principle that both parents (the husband and the wife) have common responsibility for the upbringing and development of the child. States have the obligation to establish institutional mechanisms, design policies and enact laws that render facilities and services such as child-care services for children of working parents. This can indeed create a conducive situation in the performance of obligations of working-parents to give what is best for the child. Article 20 of the Convention deals with the situation of a child who is temporarily or permanently deprived of his/her family environment or who cannot be allowed to remain in that environment in his/her own interest. In such situations, state parties are legally obliged to look for an alternative care such as personal or institutional adoption, foster placement and the like so that the child can be protected from the adverse effects of that particular hostile environment. This requires sound policies and the enactment of laws that can provide special protection and assistance to a child under such circumstances.

3.2.3. The African Charter on the Rights and Welfare of the Child

The basic reasons that necessitated a separate charter on the rights and welfare of the African child include the need for a “more elaborate” legal regime that can provide “better protection to the African child” and the need for “an African touch to the overall concept of child rights.”¹⁰⁵ Some authors believe that the Charter adopts a similar, but slightly higher standard than what is found elsewhere, in requiring that ‘in all actions concerning the child undertaken by any person

¹⁰⁵TilahunTeshome (1999), The African Charter on the Rights and Welfare of the Child, unpublished, p. 8.

or authority, the best interests of the child shall be the primary consideration'. They, arguably, say that the UNCRC only requires the best interests to be simply 'a consideration'.¹⁰⁶

However, as other eminent scholars in the field argue and as can be seen easily from the UNCRC and the African Charter, the latter is silent on certain issues such as the obligation of states stipulated under Article 3(3) of the Convention on the Rights of the Child which provides: State parties shall ensure that the institutions, services and facilities responsible for the care and protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. The African Charter on the Rights and Welfare of the Child of 1999, in addition to the above mentioned points, also deviates from the UNCRC in many respects, such as the age of conscription into the army. Article 22(2) of the Charter prohibits any act of recruitment of a child to an armed conflict, while Articles 38(2) and 38(3) of the UNCRC allow the participation of children aged 15 to take part in armed hostilities. Article 23(4) of the African Charter is also more advanced in the protection of internally displaced children, while the CRC has no provision which deals with this issue.

3.3. The Ethiopian legal Framework of Adoption

3.3.1. The FDRE Constitution

The FDRE Constitution expressly devotes an article for the rights of children.¹⁰⁷ This constitutional provision not only recognizes and protects the various aspects of child rights, but it also adopts the doctrine of the best interest of the child from the 1989 Convention on the Rights of the Child and from the African Charter on the Rights and Welfare of the Child.¹⁰⁸

¹⁰⁶Rachel Murray (2004), *Human Rights in Africa: from the OAU to the African Union*, (Cambridge University Press), p. 167.

¹⁰⁷Art. 36, Federal Democratic Republic of Ethiopia Constitution, 1995.

¹⁰⁸*Ibid*

3.3.2. The Ethiopian Civil Code of 1960

The Ethiopian Civil Code incorporates a spectrum of stipulations that may make up the idea of “the best interest of the child”.¹⁰⁹ Article 2 of the Civil Code considers a merely conceived child as born when his/her interest so demands. Accordingly, a conceived child will be considered as born where, inter alia, the interest of a conceived child is at stake.¹¹⁰ Although they have now been repealed and substituted by revised family codes, the provisions of the Civil Code that deal with the custody of children in post-divorce decisions of the court stipulate that the child shall stay with his/her mother until the age of five unless there is serious reason for deciding otherwise. Moreover, Article 805 of the Code clearly states that adoption may take place only if there is good reason, which takes the child’s benefits into account.

In the realm of successions, Article 842 of the Civil Code renders children of the deceased the first intestate successors and there are provisions that annul the will of a testator if a descendant is born after the making of the will (and where the descendant accepts the succession).¹¹¹ These laws of succession promote the best interest of the child. Moreover, the Civil Code does not allow a testator to disinherit a child or other descendant without stating (in his will) “the reason that justifies the disinheritance”.¹¹² Even though the reason stated is assumed to be correct, the court shall ascertain whether the reason stated by the testator “justifies the disinheritance”. Ethiopia’s Civil Code further stipulates that the succession shall remain in common between the heirs where the manner of making the partition depends on the condition of the birth of a child who is merely conceived.¹¹³ The Code also protects the best interest of the child in the realm of contracts. Contracts concluded with minors are voidable and they can be invalidated if the minor or his/her submit the application for invalidation within the prescribed limit of time.”¹¹⁴

¹⁰⁹TilahunTeshome (1997), “The Child and the Law in Ethiopia: the Case of the UN Convention on the Rights of the Child,” *Journal of Ethiopian Law*, Vol. 18, August 1997, p. 43.

¹¹⁰*Ibid*

¹¹¹*Ibid*, Art. 904 (1) and (2). Please Read the corrigenda of the Civil Code with regard to Sub-article 2 of Art. 904.

¹¹²*Ibid*, Art. 938.

¹¹³*Ibid*, Art. 1063(2).

¹¹⁴*Ibid*, Art. 1808(1).

3.3.3. The Revised Family Law

The 2000 Revised Family Code has replaced the provisions of the Civil Code concerning family matters and other related issues. Unlike the Civil Code, which entrusts the child to the custody of his/her mother until the age of five, Article 113 of the Revised Family Code entitles the court to decide on the custody of children. The court shall decide the custody of the child by taking into consideration the interest of the child. However, the court may reverse or revise its decision as it thinks fit due to the change of circumstances on the custody situation of the child.¹¹⁵

The Revised Family Code (RFC) of 2000 seems to require relatively stringent procedures for the courts in assessing the necessity of adoption before approving the adoption contract. Under the Civil Code, it was enough if the consent and opinion of the adopted child and the adopter are obtained; but the RFC requires not only the opinion of the adopted child and the adopter, but also stipulates that the court shall take into consideration the capability of the adopter to raise and take care of the child. If the adopter is a foreigner, the court shall investigate the absence of access to raise the child in Ethiopia and the availability of information about the adopter so that the court can be convinced that that the adopter will handle the adopted child as his/her own child and will not abuse him/her. Even if these requirements are met, the court will not allow adoption by a foreigner unless it gets a positive recommendation from the authority in charge of following up the wellbeing of children which shows that the adoption is for the benefit of the child.¹¹⁶ These stringent procedures are meant to ensure what is best for the child.

Despit all the above requirments on January 9, 2018, the Ethiopian Parliament passed an amendment to the Revised Family Code law that removes all references to adoption of Ethiopian children by foreigners; effective February 14, 2018.

3.4. Legal Requirements for Adoption under the Ethiopia Revised Family

¹¹⁵Art. 113 (3) of the Revised Family Code, 2000.

¹¹⁶Ibid, Articles 193 and 194

1.4.1. “The Best Interest of the Child” under Ethiopian Laws

The concept of "The Best Interest of the Child" under Ethiopian laws has evolved over time. Before the 1960 Civil Code, there were two prevailing patterns of child custody in different parts of the country. The first pattern dictated that the father had an inherent right to custody of the children after a divorce. The second pattern stated that children could be entrusted to their mothers based on their ages, with children under three years old being entrusted to their mothers, and those over seven years old being presumed capable of making their own choices regarding who to live with.

The 1960 Civil Code brought about a significant change by introducing the principle of the best interest of the child as the guiding factor in determining cases of custody, guardianship, adoption, and maintenance of children.¹¹⁷ This principle has continued to be upheld in subsequent legal frameworks such as the Revised Family Code and the family codes of regional states.

Furthermore, the FDRE (Federal Democratic Republic of Ethiopia) constitution emphasizes the respect for human rights, including the rights of children.¹¹⁸ The constitution incorporates fundamental human rights found in international documents and conventions, which Ethiopia has adopted and ratified as part of its legal framework. Article 36 of the constitution specifically recognizes the rights of children and places a responsibility and duty on the state to respect and protect these rights.

The protection of the best interest of the child is recognized as a fundamental right of the child under the civil code of Ethiopia. This underscores the importance of respecting and protecting the rights of children in all circumstances. Additionally, the civil code explicitly states that the best interest of the child should be considered in all actions concerning children.

Considering that parents have the primary responsibility for raising children, guardians and tutors are also responsible for providing care and upbringing. However, circumstances such as death, disability, unworthiness, or divorce of parents may hinder the ability to provide adequate care and protection for children.¹¹⁹ In such cases, adoption emerges as a viable solution for ensuring the well-being of children. The law of adoption should be established and implemented with a focus on the fundamental rights of children and their best interests.

¹¹⁷GebrehiwotAregay (1966), Guardianship and Custody of Children Before and After the Modern Codes (Unpublished), p. 11.

¹¹⁸ Article 36 of the constitution (FDRE)

¹¹⁹Supra Note 90

Adoption, whether local or intercountry, is legally recognized and issued with the principle of the best interest of the child in mind. It provides opportunities such as education, healthcare, support, and placement for the adopted child.¹²⁰ While local adoption occurs within the same country, intercountry adoption involves an agreement between individuals of different citizenships. It presents challenges related to adjusting to a new environment, culture, customs, and traditions. Both local and intercountry adoption are acknowledged in the Revised Family Code at first but later on intercountry adoptionwcurrently is not applicable. Overall, adoption is enforced to maintain and protect the best interest of the child.

3.4.2. Essential elements of Adoption under the Revised Family Code of Ethiopia

In the Revised Family Code of Ethiopia, there are essential elements, which must be fulfilled by adopter and adoptee. These elements are discussed in the following section.

I. Age

In the Revised Family Code of Ethiopia, there are essential elements that must be fulfilled by both the adopter and the adoptee. These elements are discussed in the following section. Age is one of the elements of adoption. Any person who wants to adopt a child must reach a certain minimum age, as stipulated in the RFC. The minimum age requirement is justified for two main reasons. Firstly, adoption is a judicial act that a minor may not perform. Secondly, it is based on the nature of the rights and duties that can be created in adoption agreements and the purpose of the institution of adoption. Regarding the law of adoption in Ethiopia, the Civil Code of Ethiopia does not clearly specify the minimum age limit of the child to be adopted. However, with regards to the age of the adoptive parents, article 797(1) of the C.C specifies the age of adopters.¹²¹ It states that adoption may be made by any person who has reached the age of majority. Furthermore, when the adopter is married, one of them must have reached the age of majority. But what does "majority" mean? Article 198 of the C.C defines "majority" in relation to a minor. It indicates that a person shall be deemed to have reached the age of majority when they have attained the full age of eighteen years.

¹²⁰Supranote 78

¹²¹Art 707/1 of the Civil Code of Ethiopia

As a general obligation, a person who has attained the full age of eighteen years is capable of concluding a valid adoption agreement, while if they have not yet reached the age of majority, they are not capable of entering into an agreement, as stated in article 1678 of the C.C. However, the Civil Code of Ethiopia is not applicable to adoption agreements since adoption agreements are made in accordance with the currently operational law of adoption, i.e., the Revised Family Code of Ethiopia. The Revised Family Code of Ethiopia clearly addresses the age requirements for adoptive parents or adopters. Similar to the Civil Code, it does not provide the maximum age for the adopter. As mentioned earlier, the Civil Code specifies that a person who has reached the age of majority may adopt a child, while the Revised Family Code states that the minimum age limit for the adopter is twenty-five years. Article 184 mandates that the adopter must not be less than twenty-five years of age. In cases where two spouses make an adoption, it is sufficient for one of them to be at least twenty-five years old. Therefore, adoption agreements are currently made in accordance with the concept of this article.

Generally speaking in the Revised Family Code of Ethiopia, both the adopter and the adoptee must meet certain age requirements. The law specifies that the adopter must be at least twenty-five years old, and if married, one of the spouses must also meet this age requirement. These provisions are meant to ensure that individuals have reached a level of maturity and responsibility before undertaking the commitment of adoption.

II. Capacity

Generally capacity to act, refers to a legal subject's ability to perform juristic acts. Juristic acts are purposeful lawful acts to which the law attaches the consequences envisaged by the party or parties who performed them. Juristic acts create, amend and terminate rights and duties. This essential element of adoption does not clearly stated in any provision of the RFC and the C.C. However, the RFC article 199(3) says that the court shall take into consideration the capability of the adopter to raise and take care of the child before making its decision.¹²²

¹²²Art 199(3) of the of Ethiopia

On the other hand the civil code of Ethiopia article 192 provides that “every physical person is capable of performing all acts of civil life unless he/she is declared incapable by the law.”¹²³ “It meant that anyone has the capacity to acquire and discharge his duties and responsibilities. He is also capable to perform judicial acts where as he is incapable to perform judicial acts in accordance with the declaration of the law. As it has been mentioned above, adoption is a judicial act with serious legal consequences. In this regard, the physical capacity of adopter is the main element of adoption agreement. This is because; adoption agreement confers on the adopter parental rights and imposes duties and responsibilities. The adopter is required to up bring the child in a safe family environment which foster the welfare and best interest of a child. The capability of the adopter should be determined in terms of the mental physical, economic and social condition of the adopter. Besides, the best interest of the child is the guiding principle of adoption agreement, it may be respected and protected when the adopter is capable to raise and care of the child and to bear the responsibilities that may result from adoption agreement.

As per article 199(3) RFC the physical capacity including mental, economic and social condition of adopter is inalienable to promote the welfare and interest of the adopted child. In other words, the capability of adopter shall be considered to achieve the fundamental purpose of adoption.

III. Consent

When considering adoption, three elements of consent should be taken into account. The first pertains to pre-birth consent. In the case of adoption, the biological mother's consent is a crucial factor, as it determines the adoption of the conceived child. It is noteworthy that this consent can be revoked within six months following the child's birth. In the case of adoption, the conceived child may be adopted depending on the will of the natural mother. Because, she may be revoked the agreement of adoption concerning the conceived child within six months following the birth of the child. This is to ensure that the consent is a fully deliberative act on the part of the biological parent and to provide a legal framework within which a future adoption can be undertake with reasonable guarantees of permanence and with human regard for the rights of the child; the natural mother, and the adoptive parents consent is obtained prior to the birth of the

¹²³Art 190 of the Civil Code of Ethiopia

child, the child is born and adopted and the birth mother seeks to void the adoption on the ground of Pre-birth consent may be revoked.¹²⁴ According to our law, the mother of the conceived child must give her consent to the adoption prior to the birth of the child. Simultaneously, the adoption agreement may be revoked unilaterally within six months following the birth of the child based up on the mother's right.¹²⁵ Therefore, a conceived child, like other adopted child, may be adopted with the consent that is obtained prior to the birth of the child of biological mother.

The second element concerns the consent of the minor. In Ethiopia, a minor is defined as a person under the age of eighteen, which may be adjusted to fifteen in specific circumstances.¹²⁶ The legal framework presumes that minors are incapable of performing judicial acts, and thus, the care and protection of minors are entrusted to designated entities. However, it should be noted that there are exceptional cases where the consent of a minor over the age of ten might be considered in adoption proceedings. The Ethiopian Civil code article 198 defines the word the minor, as "a minor is a person of either sex who has not attained the full age of eighteen years." There is also identical definition of the word minor in the Revised Family Code of Ethiopia. This age limit may be reduced into fifteen years because of the decision of family council or father where the minor is married. A minor may be emancipated due to several reasons that are introduced in the law. The law presumed that the minor is incapable to perform judicial acts and of exercising the functions of guardian, in such circumstance the care and protection of minor resides to specified organs. The law also lays down procedure for removal of such organs of protection a minor. Some of the reasons for removal of those organs are, when they are incapable to perform their functions, when the minor does not receive the care, which his condition requires, when the minor attains majority, etc.¹²⁷ Although the law protects the interest of the natural parents in adoption proceedings, there are circumstance where their consent may be dispensed with. The court may, for example, approve the agreement of adoption with hearing a minor who is over ten years of age where the natural parents are not alive, known and willingness in a position to manifest their will and where a minor has no ascendant susceptible of

¹²⁴Supra note 10,p.304

¹²⁵ . RFC, Art 187

¹²⁶29. C.C, Art 198.

¹²⁷Ibid Art 329-330.

giving his consent.¹²⁸ There for, there are some exceptional cases in which the court protects the consent of minor who is over ten years of age in adoption agreement, although he has not attained majority.

Lastly, the consent of the parents is a pivotal aspect in adoption. Both natural parents of the child must provide their consent for the adoption.¹²⁹ Since the child is born, any person, particularly the natural parents, is responsible to up bringing the child. The agreement of adoption requires the consent of natural parents of the adopted child where they are alive and known. Both natural parents of the child must give their consent to the adoption before adoption agreement is approved by the court. There fore, the consent of natural parents of the adopted child to adoption agreement is one of the essential elements of adoption. In instances where the natural parents of a minor are deceased or unknown, the requirement for consent from a guardian or tutor may vary. It is essential to adhere to these elements of consent while navigating adoption procedures to ensure legal compliance and uphold the rights of all parties involved.

¹²⁸RFC, Art 191/3

¹²⁹Ibid ,Art 219

Chapter Four: Conclusions and Recommendations

4.1. Conclusions

In conclusion, this doctrinal study has provided a comprehensive and critical analysis of the protection of child rights within the adoption process in Ethiopia. The research examined the intricate interplay between international and national legal frameworks that govern adoption practices, underscoring the necessity of prioritizing the rights and best interests of the child throughout the entire adoption process.

Through an in-depth analysis of key international conventions and treaties including the United Nations Convention on the Rights of the Child (UNCRC), the African Charter on the Rights and Welfare of the Child (ACHPR), and the Hague Convention on Protection of Children in Intercountry Adoption it is evident that Ethiopia demonstrates a commitment to aligning its adoption laws with internationally recognized standards. These frameworks collectively highlight the essential principles of protecting children's rights, ensuring that their welfare is considered paramount when making decisions regarding adoption.

Further, the study meticulously assessed Ethiopia's national legal landscape concerning adoption, analyzing applicable laws, regulations, and policies. While existing legislation aims to regulate adoption and safeguard children's rights, significant gaps have emerged. Many laws are not effectively operationalized, leading to a disconnect between legal ideals and practice on the ground. This research underscores the urgent need for legislative reforms to enhance the effectiveness of existing laws and to establish mechanisms that ensure compliance at all levels.

The findings of this research emphasize the importance of a strong legal framework that prioritizes the protection of child rights in the adoption process. It is essential that all stakeholders involved in adoption proceedings, including government agencies, adoption agencies, and courts, work together to ensure that the best interests of the child are always at the forefront. The research highlights the critical importance of a robust legal framework that not only recognizes but actively protects child rights throughout the adoption journey. It is imperative for all stakeholders involved in adoption proceedings including governmental bodies, licensed

adoption agencies, and the judiciary to collaborate cohesively. Their unified efforts must focus on maintaining the child's best interests as the central guiding principle in all decisions.

In light of the observations and conclusions drawn from this study, several thoughtful recommendations have been proposed aimed at reforming and fortifying the legal framework that governs the protection of child rights in adoption processes in Ethiopia. These recommendations include enhancing training for stakeholders, improving the monitoring of adoption practices, and establishing clearer guidelines for ethical adoption processes. It is crucial that these recommendations are taken seriously and implemented effectively to ensure that every child's rights are not only recognized but also respected and upheld throughout the adoption process. By doing so, Ethiopia can make meaningful strides toward fostering a secure, nurturing environment for adopted children, thereby reinforcing their rights and welfare in society.

4.2. Recommendations

I. Strengthening Legal Frameworks:

To enhance the protection of child rights throughout the adoption process in Ethiopia, it is crucial to fortify the existing legal frameworks. This entails a thorough review of national laws and regulations to ensure they align with international standards, particularly those outlined in conventions such as the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACHPR). Furthermore, developing comprehensive and transparent guidelines for adoption agencies and courts is essential. These guidelines should clearly stipulate procedures that prioritize the best interests of the child at every stage of the adoption process, thereby providing a reliable foundation for decision-making.

II. Training and Capacity Building:

An essential component of improving the adoption process is the provision of targeted training and capacity-building programs for all stakeholders involved, including social workers, legal professionals, judges, and government officials. These programs should cover critical areas such as child rights law, ethics in adoption, and best practices in child welfare. By expanding the

knowledge and skills of these professionals, they will be better positioned to navigate the complexities of adoption cases with sensitivity and competence, ultimately ensuring that children are placed in nurturing and secure environments.

III. Monitoring and Oversight Mechanisms:

Establishing robust monitoring and oversight mechanisms is imperative to ensure adherence to adoption laws and regulations. This could involve implementing regular inspections and evaluations of adoption agencies, coupled with a transparent reporting system that tracks the well-being of adopted children over time. Such measures not only enhance accountability and transparency within the adoption system but also serve as a deterrent against potential abuses, including child trafficking and exploitation. Additionally, the creation of an independent body to oversee and investigate adoption practices could further strengthen public confidence in the system.

IV. Strengthening Child Participation:

Upholding the rights of the child in the adoption process necessitates active involvement of children in the decision-making processes that impact their lives. This can be achieved through age-appropriate engagement strategies that provide children with relevant information about the adoption process and opportunities for them to voice their opinions and preferences. By empowering children to participate actively, the adoption process can be made more responsive to their needs and aspirations, ensuring their rights are respected and their dignity upheld.

V. Promoting Ethical Adoption Practices:

To mitigate the risk of exploitation in the adoption process, it is critical to advocate for and implement ethical adoption practices. This includes rigorous background checks on prospective adoptive parents to ensure they are suitable and capable of providing a safe and loving environment. Additionally, maintaining transparency throughout the entire adoption process is paramount, allowing for public scrutiny and fostering trust in the system. By establishing and

promoting ethical standards in adoption, the likelihood of misconduct and child trafficking can be significantly reduced.

VI. Collaboration and Coordination:

Lastly, fostering collaboration and coordination among all stakeholders involved in the adoption process is essential for creating a cohesive and effective system. This includes not only government agencies and non-governmental organizations but also international partners who can provide support and resources. By cultivating a spirit of cooperation toward the common goal of protecting child rights in adoption, Ethiopia can develop a more streamlined and effective adoption system, ensuring the protection and welfare of children across the country.

Generally speaking, the protection of child rights within the adoption process in Ethiopia is an urgent and critical issue that demands immediate attention. By implementing the comprehensive recommendations outlined in this study, the Ethiopian government can enhance its legal frameworks, improve stakeholder capacity, establish effective monitoring mechanisms, promote active child participation, uphold ethical adoption standards, and facilitate collaboration among all stakeholders involved, ultimately creating a safer and more just environment for vulnerable children.

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