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PROPERTY GRABBING AND INHERITANCE RIGHTS OF CHILDREN IN ETHIOPIA

**BY
BEZAWIT TAMIRAT**

**COLLAGE OF LAW AND GOVERNANCE
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PROPERTY GRABBING AND INHERITANCE RIGHTS OF CHILDREN IN ETHIOPIA

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By

Bezawit Tamirat

Advisor

Yonas Birmeta (LL.B, LL.M)

School Of Law and Governance

Addis Ababa University

May, 2016

Addis Ababa
University

(Since 1950)



The Thesis Titled “*Property Grabbing and Inheritance Rights of Children in Ethiopia*” By Bezawit Tamirat is Approved for the Degree of Master of Laws (LLM) in Human Rights

Board of Examiners

	Name	Signature
Advisor	_____	_____
Examiner	_____	_____
Examiner	_____	_____

Date: May, 2016 _____

DECLARATION

I Bezawit Tamirat, hereby declare that this research paper is original and result of my personal effort and has never been presented in any other institution to the best of my knowledge and belief. Where any sources primary or secondary have been consulted or used has been duly acknowledged.

Signature_____

Bezawit Tamirat

May, 2016

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ACRONYMS

ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Right and Welfare of Child
ACPF	African Child Policy Forum
AIDS	Acquired Immune Deficiency Syndrome
Art.	Article
Arts.	Articles
AU	African Union
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Woman
CERD	Convention for the Elimination of Racial Discrimination
CFC	Child Friendly Courts
CHH	Child Headed Household
Civ.Code	Civil Code
CJPO	Child justice Project Office
CLPC	Children's Legal Protection Center
CPP	Child Protection Policy
CPU	Child Protection Units
CRC	Convention on the Right of the Child
CSO	Civil Society Organizations
Cum	Cumulative
Ed.	Editor
FDRE	Federal Democratic Republic of Ethiopia
FSCE	Forum for Sustainable Child Empowerment
GOs	Government Organizations
HIV	Human Immune Syndrome
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
ILO	International Labour Organization

NGO	Non-Governmental Organization
No.	Number
P.	Page
Para.	Paragraph
Paras.	Paragraphs
RFC	Revised Family Code
SNNP	Southern Nations Nationalities and Peoples
UDHR	United Nations Declaration on Human Rights
UN	United Nations
UNICEF	United Nations International Children's Emergency Fund
UN.Doc.	United Nations Documents
Vol.	Volume

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ABSTRACT

In many African Countries, which Ethiopia is no different, inheritance is one of the most common means by which physical property is transferred from one generation to another. The Ethiopian legal system has an extensive law on inheritance and child rights. However, grabbing the properties of children is practiced now and then in every parts of the country. This research has looked into and examined the different series (both national and international) of laws in the country as well as institutions that have involvement in the improvements of children's lives. The study briefly examines the seriousness of property grabbing in Ethiopia alongside the experiences of some African Countries. The findings of the study show how paternal and/or maternal orphans are affected by the result of property grabbing and observe the national and international responses and its validity to deal with the problem, and further examines the lessons that can be learned from civil society models, frameworks and actions. Even though the civil society models and frameworks are not exactly aimed at tackling the problem of property grabbing, their works in one or another way has helped the lives of the children to get out of the absolute poverty and get some of the things they lost as a result of losing their parents and their rightful properties. Children are affected not only because they lost their parents but also loss of property through grabbing which has an immense effect on the growth and wellbeing of the children. The study find out that property grabbing from children downgrade the orphans into extreme poverty, lack of education, ill health situation, child labour, child abuse, and the overall wellbeing of the children. And finally has made a recommendation to be done in different aspects both by the side of the government and the stakeholders involved with the works of improvement of the lives of children in the country.

CHAPTER ONE

INTRODUCTION AND OVERVIEW OF THE STUDY

1. INTRODUCTION

Among the Ethiopian population, about 55% is below the age of 18.¹ This is a very large (more than half of the population) number of children which needs the special attention of every stakeholder in the country. Having this number of children, Ethiopia is one of the least developed countries despite the encouraging economic growth recorded annually this past few years. For children of Ethiopia making sure their inheritance rights are protected is vital for their survival and wellbeing. And of course this is their only chance for better development and growth of their childhood since they have lost their major protection when their parent/s dies. Following the loss of their original protectors, the children will be left out to the unknown universe to no-one till someone takes responsibility for their well-being. Therefore when children's inheritance is taken away it means losing valuable economic resources so that anybody will lack interest in taking care of them. The problem is even bigger when children are taken away by relatives and persons that are close to them for the interest of the property they are holding and for the protection of the children themselves. This leaves children with no power on their own inheritance and any property they have grabbed /taken away/ by those said to be guardians and protectors.* This results in the further vulnerability of children for abuse and exploitation, lack of education and health protections. Property grabbing directly affects the livelihood/growth of children and it violates one of the basic principles of the United Nations Convention on the Rights of the Child stipulated under Art.6 /the right to survival and development/ of the convention². As to the knowledge of this researcher there hasn't been any investigation on the issue of property grabbing and inheritance rights of children in Ethiopia. Therefore the aim of this study is to reveal the presence, magnitude and impact of grabbing property of children at the time of loss of parents in the name of care and support by those close relatives of children.

¹ Central Statistical Agency, 2015

*Here it should be noted that the law legitimately allow these people to administer the properties of the children in the name of incapacity.

²Article 6 of the UNCRC

1.1. BACKGROUND OF THE STUDY

Ethiopia has ratified or acceded to several global and regional treaties relating to property and inheritance rights for children, including the International Covenant on Civil and Political Rights (“ICCPR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) and its Optional Protocol, the Banjul Charter, the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention on the Rights of the Child (“CRC”). Not to mention it has ratified the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). Other than these international protections domestic laws of the country like the FDRE Constitution, the Revised Federal Family Law and the 1965 Civil Code are the major sources of laws in order to protect the property and inheritance rights of children in Ethiopia.

Ethiopia enjoys a well elaborated inheritance law. Deprivation of children property rights by those closest to them is one of the major early challenges orphans face in the country. Even though protection measures in Ethiopia, both in the policy and legal frame works, are extensive, there is a serious application challenge. Some of these challenges include, delayed or obstructed justice (because of the inability of the court to verify evidences and to establish the relationship of the deceased parent and heir-at-law due to lack of certificates, documents of either birth or property registration), communities awareness of the recent development of laws in the protection of orphans in matters of inheritance and cultural practices that illegally hinder orphans not to enjoy their legal rights of inheritance that mostly falls on girl orphans.³

From a human rights perspective, the definition of a child is put clearly. Article 1 of the UN Convention on the Rights of the Child states that, “a child means every human being below the age of 18 years [...]”.⁴ However, the social and cultural understanding of what defines a child in any given community is more complex than the issue of legal majority

³Zewdneh B. Haile, Review of the Legal and Policy Frameworks Protecting the Rights of Vulnerable Children in the federal Democratic Republic of Ethiopia, Save the Children UK, Addis Ababa Ethiopia, 2008, pp.6

⁴Art.1, The United Nations Convention on the Rights of the Child

alone. A previous study undertaken by Save the Children⁵ found that criteria based upon biological, cultural and behavioural characteristics are in fact far more relevant to communities' understanding of what defines "a child" than physical age alone. Children's access to their inheritance is therefore unlikely to be linked to their legal coming-of-age.

Children may lose both their father and their mother, often within a short space of time. Property grabbing affects paternal orphans⁶ when their mother is denied her right to inheritance. But it also affects children directly when both their parents die and the assets that belonged to them are seized by family members. This may occur in a relatively open way (broad day light) when, following the death of the surviving parent, relatives divide the items belonging to the household among themselves, including the house and the land if there is any. Alternatively, it may be done in a more covert way by assuming guardianship of the orphans and, under the pretext of administering their assets until they reach adulthood, disposing of the property and using the benefits for personal gain.⁷

Children's inheritance rights are often considered to be realizable only when they reach adulthood. They would then directly own and decide over the property left to them by their deceased parents. Until this time, the family members that would assume care for them would also manage their assets.⁸

From the rights perspective, orphans are also denied of the property belonging to their deceased parents by others including their relatives. They are not in a position to obtain legal aid and are left to multifarious forms of difficulties during their tender age.⁹

OVC problems in Ethiopia are multi-faceted. The data from the Central Statistics Agency in 2015 shows that among the overall population of the country that estimate

⁵ Save the Children UK, 2007c.

⁶ Paternal orphan is understood as a child who lost a father but not the mother.

⁷ Supra Note.2 pp.7

⁸ Rivika Van Deijk, Children and Women's Rights to Property and Inheritance in Mozambique: Elements for an Effective Intervention Strategy, pub. Save the Children, 2009.< <http://www.fao.org/docrep/012/al131e/al131e00.htm>> accessed at 16/03/2016, 2:20 pm

⁹ Amakelew Cherkose, Yonas Birmeta and Kassa Kere, Will Writing, Knowledge, Practice and Attitude in Yeka and Kirkos Sub-Cities of Addis Ababa, Ethiopian catholic Church, Social and Development Coordination of Addis Ababa, (ACS-SDCO) and Organization for Social Services for AIDS (OSSA), 2007 Addis Ababa.

counted 90,074,000 children, aged from 0-15 counts 36,336,880 and children aged from 14-19 are estimated 10,090,110.¹⁰To know the exact number of orphans in Ethiopia is immensely difficult because the regional states do not keep such records. The Central Statistics Authority is the only one that keeps records of orphans. It is surprisingly amazing that a number of this much population is set aside to be involved in their own affairs. One of the cardinal principles of the Child Rights Convention spells out the right to participation of children in their own affairs stands diametrically opposed to the overall conception of children held by many Ethiopians. This is mainly the result of considering children as “ignorant”, ‘incapable’ the deeply apprehended traditional and cultural beliefs, attitudes, and practices of parents and society. This has deliberately and inadvertently caused children’s oppression, exploitation, abuse and harmful traditional practices. This overall disregard of children has resulted malnutrition, poor hygiene, lack or shortage of proper clothing, essential social services (such as health, education, and recreation). To make the situation worse, Ethiopia has no OVC policy so far. From an interview held through a phone call with the communication Directorate of the Ministry of Women and Children Affairs the researcher has gathered that there is an on-going draft children policy on the overall situation of children in the country and he further asserted that a policy is not to be made on a specific group of children i.e. OVC. There is actually, a National Plan of Action for Children which is the continuation of the preceding program of action for children (1996-2000). It comprises of four major themes, namely: promotion of healthy lives, provision of quality education, protecting children against abuse, exploitation and evidence, and combating HIV/AIDS. The undeniable poverty of the country coupled with the pressure that is put on OVC makes it difficult for them to require care and protection from anyone. Orphan children assume the responsibility of their own household management supporting each other. However they do not have the ability of avoiding the pressure of others coming onto them in the name of care and protection ending up with the snatching of their own properties.

¹⁰ Central Statistics Authority, 2015

1.2. STATEMENT OF THE PROBLEM

The number of orphans in Ethiopia is growing alarmingly¹¹. Following loss of parents /one or both/, children lose their major protection and fall into the hands of people that are close to them. Whatever right they have falls on the will of their seemingly guardians/tutors, here is where the problem of property grabbing rises. Even though Ethiopia has a well-illustrated inheritance law, snatching the property rights of orphaned children especially by those who are close to them is one major challenge that orphans face every now and then in the country. In addition to the Federal Family Code /the Federal Family Code is the major source of law in relation to children who lost their parents by appointing tutors and guardians so that children will not be left out of protection/ and the 1960 Civil Code which are the major sources of inheritance and property laws in the Country, Ethiopia is party to many international and regional human rights instruments protecting children including the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of Children. However, these international, regional and local laws have not been able to cover the issue of property grabbing from children by their relatives or any other person close to them following the death of their parents. And on the other hand , even though there are protection measures of laws and policy frameworks there is a serious challenge in the application of those legal and policy frameworks. Adding to the above discussed difficulties in protecting the property rights of children, a delayed and hampered justice because of many related reasons like lack of evidence to show the relationship between the heir-at-law and the deceased, lack of ability /both in money and legal knowledge wise/ hinders children to claim their property rights.

Having this in mind the research will try to answer the following questions;

- What are the legal and institutional protections of children's property and inheritance rights in Ethiopia?
- How much is the magnitude of the existence of property grabbing and problems related with inheritance rights of children in Ethiopia?
- What is the impact of property grabbing on orphaned children in Ethiopia?
- Are there national and/or international responses with the seriousness of the problem of property grabbing?

¹¹ Supra at 1

1.3. OBJECTIVE OF THE STUDY

In the Ethiopian legal system, rights of children are protected by three strong laws i.e. FDRE Constitution Art.36, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. These being the major laws, there are also other laws applicable to children in relation to protecting their property and inheritance rights like, the Revised Family Code, the 1960 Civil Code and the criminal code. However, any of these laws do not address the issue of property grabbing other than making sure that children are not left without the protection of legal guardian/tutor. The problem of property grabbing stems from the law itself, meaning, the people who snatch the property of children are the ones chosen and authorised by the law, whereas this has an adverse effect on the proprietary interests of the child. Therefore, this research attempts to identify the problem of property grabbing following the death of one/both of the parents of the child, fill in the gap shown in the laws, policies and institutional frameworks.

The following are some of specific objectives of the study;

- To review the existing legal and institutional frameworks on the protection of children's inheritance rights in Ethiopia as well as international law.
- To examine the magnitude of the problem of property grabbing in Ethiopia.
- To review the consequential effect of property grabbing on children.
- To increase the understanding of the cultural norms, values and practices that guide family's behaviour on property and inheritance issues in relation to children.
- Assess real cases on the issue of inheritance rights of children emphasizing on the issue of property grabbing.
- To make recommendations based on the findings of the research.

1.4. SCOPE OF THE STUDY

This study covers the untold problem of property grabbing and inheritance rights of children in Ethiopia. The study briefly examines the seriousness of property grabbing in Ethiopia and provides an in-depth analysis of property and inheritance violations on orphans in the country. Reference is also made to the jurisprudence of other countries with similar problems. The study is limited to stating the existence, showing the magnitude of property grabbing and the gaps of the law. In order to achieve these, international and regional treaties as ratified by Ethiopia, the FDRE constitution,

succession and property laws, the family law, criminal law and the decisions of the cassation division of the Federal Supreme Court are employed. The national and international responses of the country are included under the study. The study does not deal with regional family laws.

1.5. RESEARCH METHODOLOGY

For the purpose of this study, legal and practical case analysis is the major focus. Both primary and secondary sources are employed. Specific consideration is given to international human rights instruments as ratified by Ethiopia, general comments/concluding observations, books, analysis of available research and journal articles on the issue of children's inheritance rights and the related problem of property grabbing. Furthermore, focus is made on domestic laws applicable to children. In addition to these legal analyses, jurisprudential practices of other countries in relation to the protection of children's property and inheritance rights are dealt. For further and better analysis of the issue different reliable internet source are used. To assess the practical situation of property grabbing and inheritance rights of children in Ethiopia, case law analysis, document analysis, and interviews with key informants (ten in number), case study, observation, and the concerning stakeholders with NGOs and GOs is conducted.

1.6. SIGNIFICANCE OF THE STUDY

The study will have multidimensional significance on the legal, academic and social arena. In addition to the existing legal frameworks of the country the research will clique a point to the legislative body to review the existing laws and/or manage to came up with enforcement mechanisms so that the laws would be children friendly in relation to property an inheritance rights of children or even came up with new laws with better protection of children's property and inheritance rights. It will serve as an interpretative guideline to courts. Academically the study will open to other further researches the un-talked problem of property grabbing in Ethiopia, it serves as a guide to students and academicians of law. Besides the legal and academic importance of the study, it has an important social importance. The research will open opportunities to reveal the prevalence and impact of property grabbing and contribute to the better protection of children's inheritance rights. In addition, it gives an opportunity for individuals, civil

society organizations and international organizations to open their eyes and work on the problem.

1.7. OPERATIONAL UNDERSTANDING OF TERMS

- **Child:** is understood as defined under Article 1 of the UNCRC “a child is every human being below the age of 18...” The RFC defines a minor as “a person of either sex who has not attained the full age of 18. For the purpose of this study both definitions are employed and terms “minor” and “child” are used interchangeably.
- **Orphan/Double Orphan:** is a child who has lost both his mother and his father.
- **Maternal Orphan:** is a child who has lost his mother only.
- **Paternal Orphan:** is a child who has lost his father only.
- **Inheritance Rights:** is children’s’ right that is given by the succession law of the country to inherit the property of their parents.
- **Property Grabbing:** is the dispossession property of orphans by relatives and others.

1.8. LIMITATION OF THE STUDY

Just like most humanly work, this thesis has faced challenges in order to have its current content and structure. Though the concept of property grabbing is a well-established term in many jurisdictions, contextualizing it in Ethiopia, was a major social problem, almost no legal and paralegals have taken note of it. This is mainly because of the pre-assumption of denial of property rights of children. Another biggest constraint is lack of relevant literature materials since the area is hardly studied both under the Ethiopian legal system and the international arena. Therefore, the researcher made an attempt to look into the legal systems of different countries and try to put them alongside the national laws and international commitments ratified by the country with the subject matter at hand. Besides, the absence of full-fledged internet access for conducting the research is also a major obstacle to the study. The lack of cooperation in among NGOs and individuals to conduct interviews which actually was the major source and very decisive to look into the practical situation for the study has affected the research hugely. Moreover, the perception of considering childhood as a life’s waiting room to exercise

their born rights has caused underdevelopment of the study area. This attributes to the infantile jurisprudence of courts relating to children's rights.

1.9. ORGANIZATION OF THE STUDY

This research paper is organized into four chapters. Accordingly, the first chapter provides the general introduction and overview of the research, which includes introduction, background of the study, statement of the problem, objective of the study, significance of the study, scope of the study and limitation of the study.

The second chapter of the thesis is devoted to lay the ground rules that govern the area of property and inheritance rights of children in the Ethiopia. Both the international commitments entered by the country and the local legal frameworks are dealt in depth under this chapter. In order to address the issue special emphasis is given to the UNCRC and the RFC that have direct involvement on children. The powers, functions and terminations of powers of organs that are dedicated to the protection of children, like the tutor, guardian are discussed under the third chapter. Parental guidance, children's evolving capacity and the need for emancipation from minority are concepts included under this chapter.

The third chapter is exclusively dedicated to the concept of property grabbing and its impacts. Under this chapter property grabbing is defined and dealt in relation to the basics of land rights. Furthermore, when it is said to be that property and inheritance rights are violated is dealt under this chapter. Experiences of other jurisdictions i.e. the Kenyan, Mozambican and Ugandan experiences are shared under the third chapter of the thesis. This chapter also discusses the lessons that can be learned from CSOs, NGOs and other stakeholders that have involvements on children protection.

The fourth and the final chapter includes the general conclusions driven from the study and recommendations that would serve as a bridge to the existing legal gaps, policies and government strategies on the issue of property grabbing inheritance rights of children.

CHAPTER TWO

THE CONCEPT OF PROPERTY GRABBING

2. INTRODUCTION

For children living in poverty, a house and/or small patch of land provides a vital source of shelter, food and the necessary income for everyday livelihood. property grabbing is a common phrase used to describe the set of crimes through which vulnerable people /mostly widows and children/ are driven from or loose in any other means their rightful property through physical force, forgery, fraud, threats, intimidation, property destruction and/or any other means that puts pressure on the holder of the legitimate owner of the questioned property.

In Ethiopia, orphans are among the most vulnerable groups regarding property grabbing. Following the death of their parents who are basically the head of households, it is common for relatives and community members or any other opportunist to loot the property that belonged to the deceased parents of the children and which by law is rightfully belong to the surviving child/children. In a country like Ethiopia where more than 80% of the population is situated on the rural area basing its livelihood on the land, owning a plot of land is considered as having the biggest fortune and insurance of life. Moreover the lost property may not only be the acquired land it may also include/also there is a possibility that there may be no land acquisition at all/ other properties that help them in their day to day life. When orphans are evicted out of this possession it won't be hard to imagine to their survival is put in danger and forecast what their future would be in life. As a result they may become homeless, malnourished, uneducated, driven further into poverty and vulnerable to further exploitation and abuse.

This being the act the Ethiopian legal system kept its hand out on such matter as if it is not the biggest question to be asked on the current situation of the country. However this does not mean that there is no legal coverage at all on the issue of property grabbing from children. Starting from the constitution, the Revised Family Code and the Civil Code are among the major laws that discuss the issue of children's inheritance and property rights. This part of the paper discusses the concept of property grabbing and the

magnitude of its existence in the country and the discussion on the legal frame work and the effectiveness of the justice system have been discussed under Chapter-Two.

2.1. WHAT IS PROPERTY GRABBING?

“Property grabbing” is the common phrase used to describe the set of crimes through which vulnerable people are driven from, or otherwise lose access to, their rightful property through physical force, forgery, fraud, threats, intimidation, property destruction and/or collective pressures.¹² Children are very vulnerable when none of the parent is left to give any form of support and protection. In Ethiopia, orphans are among the most vulnerable group of people to property grabbing. Following the death of their parent who are their primary protectors and care givers, it is common to relatives to snatch the inherited property of children. This looting may vary from taking away a land, a house and its surrounding to the tiny small object that was legitimately to be the property of the children. For children living in poverty a house and a small plot of land provides a vital source of shelter, food and income. More importantly land security is essential to livelihood security for most Ethiopians residing in the rural area as well as the urban ones. When orphans become victims of property grabbing, they lose not only their homes, but their sources of food and income, and personal possessions. They become homeless, uneducated, malnourished, and vulnerable to further abuse and exploitation.

Relatives, family members, seize property in the mask of protecting property from theft or being taken away by someone who is bad for the children. When taking property, they promise to provide care and support to the orphans but this does not always happen or only last for a short period of time in some cases. Property grabbing issues are mostly hampered by those who have the toughest arm in the situation, the grabbers, and did not reach the eye of the court or any legal service at all. In many cases children banned from reaching the formal legal system and are mostly left out in the hands of elders of their relatives. In a traditional society like Ethiopia, children are not considered as owners of their own property even while their parents are alive, but users of the property that their parents own. This secondary position towards their own property gets even worse when they lose one (mostly the father) or both of their parents. Their usufructary rights will

¹²International Justice Mission, *Property Grabbing from Ugandan Widows and the Justice System, A Mixed-Methods Assessment in Mukono County, Uganda*,

cease with the death of their parents and their inheritances go to their said to be protectors and care givers. This study found out that guardians (whether legally appointed or not) misuse property and fail to provide for the basic needs of orphans or redirected income/proceeds to support their own children.

Children witness the property of their parents being owned, used and sold by relatives or people in the name of care and protection. These grabbers do not hold official committeemen or registration to care and support the orphans after obtaining their parent's inherited property. The unavoidable, difference of power relationship, the age intimidation, shock, powerlessness of these vulnerable children keeps them passive and toothless. Some of the orphans of the informants had said that questioning about the property had the risk of being abandoned (see the story of Tigistu, Hirut and Eleni below).

Most orphans are forced to drop out of school and take up domestic works in relatives homes mostly as a servant or a shepherd that require them more than they can handle (almost all the stories tell that the first thing the children face is dropping out of school). Even for those who had the chance to go to school there seems to be a notable absence of attendance, because they lack the basics of school materials and because they lack time study they face failure to pass from one grade to another with low school results that demotivate them. Girl children are more vulnerable because they are exposed to sexual abuse and may face unwanted pregnancy and unhealthy abortion that may even take away their life. Or may be forced to marry to reduce cost. And others have the worst chance of going out on the streets to survive on the garbage's of the country, where they would be risked to drug and other abuses. Interviews with street children had revealed that mostly they try to work whatever they gain but people habitually don't give them any work because they don't trust them, and sometimes they may pick pockets, the terrors of the street lives always with them.

2.2. INHERITANCE AND LAND RIGHTS

Land rights are increasingly complex issue in countries like Ethiopia, a country where small holder agriculture provides livelihoods for millions, especially as the number of population continues to grow alarmingly and land value became untouchably high. Examining land rights on the issue of inheritance and property rights of children is

important since land serves as the basics for other livelihood needs within a society like Ethiopia. And in fact land inheritance is an important and sometimes the only way children acquire land. The importance of land ownership in developing countries cannot be underestimated. Owning land contributes greatly to household welfare and consumption.

The major mode of land acquisition in most sub-Saharan African countries is inheritance. Land has long been recognized as a primary source of wealth, social status and power, providing the basis for shelter, food and economic activities. Access to resources such as water and to services like sanitation and electricity as well as the ability to make long term investments in land and housing are often conditioned by access to rights in land.¹³ Rights to land are considered as crucial factors in households' and individuals' economic livelihood and security as well as for communities' and nations' broader economic development. Therefore, inherited land rights are a ticket for an Ethiopian child for his/her furtherance of life, especially in the context of rural areas of the country. Now that the child has something important to offer, everybody wants to take care of him/her. However the main target is sticking to the inherited land rights of the child in the name of care and protection and at the end of the day protection and care was just a cover and the child is found losing all his/her rights he/she had on the land and even more exposed to abuse and exploitation.

There are a great number of children in Ethiopia that have been denied of their inheritance and property rights and have been evicted from their homes and land. Rather than supporting the orphans relatives have often confiscate the property and assets that legally belonged to them including land, housing, bank savings, and pension.

¹³ Elizabeth Cooper, *Inheritance and Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations*, Chronic Poverty Research Centre, Working Paper, May 2010, No.159

2.3. VIOLATION OF PROPERTY AND INHERITANCE RIGHTS OF CHILDREN

It is argued that children's property and inheritance rights are violated when people deny them the possibility to benefit either in the present or in the future from the property of their parents or from the property that they have acquired through their own labors¹⁴. Those people who deny children their property and inheritance rights commonly argue that customary law supports their own rights to inherit and/or use the property of the children's parents. They maintain that the rules of customary inheritance stipulate that the property of deceased adults should be distributed within the extended family, or they maintain that the rules of customary inheritance require that adult guardians of children decide how inherited property should be distributed or earned property should be used.

In any case, it is not always easy to ascertain when children's property and inheritance rights have been violated because the members of extended families usually have rights to the property of their deceased relatives, as stipulated by the laws of the different countries within the region, and because the guardians of orphans have the right to determine how the property that the orphans inherited from their parents should be used to provide for their needs, including for clothing, food, housing, and education. The problem, as the desk study revealed through an analysis of various laws from selected countries within the region as well as through illustrative case studies, is that many members of extended families confiscate the property of deceased relatives to which they are not entitled by either customary or statutory law and that many guardians/estate executors use for their own benefit the property of deceased relatives which should be used for the benefit of the orphaned children. The consequence of these property confiscations and abuses, which are essentially "violations" of orphans' human rights, is that thousands of orphans become destitute and vulnerable to mistreatment, including forced labor and prostitution¹⁵.

¹⁴Laurel L. Rose, *Children's Property and Inheritance Rights and Their Livelihoods: The Context of HIV and AIDS in Southern and East Africa*, Food and Agriculture Organization of the United Nations Livelihood Support Programme (LSP), 2006. <https://www.researchgate.net/publication/>, accessed at, 26/03/2016, 3:30pm

¹⁵ Id, pp.9

The laws of several countries in Southern and East Africa contain provisions that aim to protect children's property and inheritance rights, the reality is that many children are not able to protest violations of their rights due to inadequacies of the laws (mostly the laws fail to specify fully children's rights or the means to enforce their rights), to unresponsive authorities, and to ineffective courts. In general, children are not in a good position to use either customary law or statutory law to their advantage because of barriers which they commonly encounter: information (they are not fully aware of their rights), time (they are unable to pursue their property claims before their deceased parents' property is permanently alienated), status (they are of lower status and power than their competitors—often their own guardians), youth (they are not permitted by law to pursue their property claims on their own), and cost (they are unable to meet the logistical and legal costs of pursuing their property claims).

2.4. IMPACT OF PROPERTY GRABBING IN ETHIOPIA

*Child Headed Households:-*In one or another way property grabbing has affected the lives of the orphans heavily. One of its outcomes is creating child headed households. Child headed households are special group even with in the category of orphan and vulnerable children, with their own unique needs and challenges. Due to their limited physical and emotional maturity, child household heads find it hard to earn a satisfactory living with little or no support from extended family members. Child headed households and their siblings face extreme and tremendous emotional and psychological challenges as they live with the constant memory of their deceased parents. One of the informants (who is a victim of property grabbing) has said *I was the one responsible to raise all four of us. To make it worse I was the only girl three of my brothers looked into me like a mother when we lost both of our parent. I never had the chance to learn anything but I was able to give an education to my two youngest brothers. Our only question was to find a food to eat for the four of us. I was 13 years old myself therefore it was almost impossible to afford food to the four of us with the income I gain from. (Helen: 35, now married and have two kids, lives in a very slum area in an extreme poverty with no education atall)*

All the child household heads and their siblings lived in object poverty. Economic insecurity is the prime concern for them that they have to be resolved since they have

survived on irregular casual work, insignificant support from NGOs and the kindness of neighbors. These children experience severe difficulties acquiring sufficient food, gaining access to education and health care and often times having problems of obtaining shelter.

Tigistu, 15 years old, and his sisters Hirut and Eleni (names are changed for the sake of privacy):- I lost my mom when I was 8 and my sisters Hirut and Eleni 6 and 5 respectively. Three years later our father died. After the funeral when people came to mourn with us our aunt (my father's sister) was telling everyone that there will be no problem that she would take care of us and we would also stay in school. Soon she took all the assets that belonged to our parents (a house and all the properties in it like TV set, sofa, cupboard, our beds and everything). Then after, she sold the house in the name of cost of raising, feeding, clothing and school expenses for us. Soon the money started to run out and we began to be considered as a burden (a second citizen in the house). And I and my sister Hirut drop out of school because she said she no more can afford our expenses. Eleni had never got the chance to go to school from the beginning since she was only 8. Then she made us work hard from early in the morning to late at night. No one came to help us because for start, we are three in number, and everybody knows we are in the hands of our gratuitous aunt remembering her words at the mourning time saying "I will raise them like they were my own children".

Eleni keeps asking me why we are suffering this much, missing meals in a day whereas other children are washed clean and happy and go to school every day. And I don't know what to say to her. Some of her questions are also mine. I don't even dare to ask our aunt because I know what we will be the consequences. No one even asks her if she throw us out of her house, we will end up in the street. Sometimes I even wish that I was dead like my parents instead of seeing my sisters like this and knowing that I can do nothing about it. I was supposed to protect them since I'm the oldest but we are living in a hell losing my (our) childhood.

TigistuAlemayehu (15 years old), HirutAlemayehu (13 years old) and

EleniAlemayehu (12 years old)

Addis Ababa,

Henok, 16 years old (name is changed for the sake of privacy):- my dad died when I was 11 in 2004 (E.C.). In our locality it was a tradition in our culture that when the husband dies his brother marries the deceased's wife mainly because the paternal families do not want their property merged with other people, they want to keep what they have to themselves in their own family circle. Therefore we were merged with the family of my uncle and he took all the properties that belonged to us (my father). He wasn't to be questioned for doing that because it is tradition the one hand and it was supposed to be the best outcome (care) for us in the eyes of outsiders on the other hand. Soon I drop out of school and started to work hard jobs. My mom was also the victim since he already had his own family she became servant of the house. He made us sleep with other servants of the house. Ever since then our life had become a living hell. But now I'm 16 and came to the city I'm not worried that much, I'm working hard (whatever I get) to get money so that I could afford to bring my mother to the city and we live together with no burden and harsh treatment of other people.

Henok 16 years old, lives in Addis Ababa

Konjit 13 and her brother Amen 15(names are changed for the sake of privacy):- has lost their mother due to car crash ten years ago, when she was only 3 and her brother 5. Soon they were taken to their grandparents (families of their mother), since their father who is a priest could not afford to raise them. "Our father ended up living in a monastery living us with our grandparents and wanting nothing to do with us. It was our best of luck that we were taken to our grandparents, had it not been for them we would have ended up on the street by now. Families and relatives of our father took all the property we had and even the compensation given as a result of court decision by the man who caused the death of our mother. We don't even know it was a possibility to ask what is ours. The house was sold and we haven't seen a penny. And our grandparents did not want anything to do with all the money and the properties.

Konjit Ayele 13(years old) and Amen Ayele 15(years old)

Addis Ababa

Selam, 28:- I never knew my father since childhood. Our mother never talks about him. I remember she used to be very angry when we asked about him and made us swear to never raise that question again. I, my brother and our mother were the only member of the family. We lived in a small house with a plot of land. One day people start to come into our house shouting and crying. I didn't know what was happening. Soon I realized that our mother has died (I thought she was only sleeping). Few days later the number of people starts to decrease. For a few weeks, maybe a month or two our neighbors brought food to us but that also stopped later. One day a man came into our house and told us that he is our mother's brother, we were really happy to have someone like that at the time since our mother never mentioned anyone and we have got nothing to eat. And even more he told us that he came to take care of us. But for that he said he need to hold on to the house and the land then we could go to the city (Addis Ababa) to live in his house with him. He brought us to Addis Ababa and put both of us in a house. We didn't go to school. We lived like that for three years both of us working in the house and I learned to prepare food for the three of us. After three years, he told me that he couldn't afford to keep us all together with single income and I should start working in people's house as a maid told me that he even founded a place for me. I started working as a maid there. I wasn't allowed to go anywhere, and even if I wanted to I don't have anywhere to go. I didn't know my uncle's address. Ever since then I never got the chance to go to school, or see my brother, and I'm still working as a maid. When I ask about the house and the land, people told me that he sold it as soon as he took us from there and he hasn't come back after that.

Selam Kebede 32 years old, lives in Addis Ababa

Marta 17:- I was an only child to my parents. I hardly know my father because he died when I was three years old. My father was the only bread winner of our house therefore when he dies my mother couldn't afford to raise me by herself. The only thing that was left for us was a two room house with 500 square meters land. Two years later my mom sold more than half of our land (300 square meters) but that only buy us some time and soon we have gone back to the poverty. This happens for some times when my mom thinks she no more can afford the cost of the two of us she gave me up to her parents, my grandparents. However my mother became sick she was at the hospital every now and

then with the help of her neighbors. She became worse in the following three years and finally died home alone. My uncle (my mother's brother) told me that I'm going to live with my grandparents forever now and I shouldn't worry about anything so that he will take care of everything. But I heard he already sold the house while he told me he had rented it for some people to save money for me and open a bank account in my name. But when I grow up now and understand everything I know that my parent's house was not mine anymore and there was no bank account opened in my name and there was no money saved at all.

Marta Gelaye, 17 years old, lives in Addis Ababa

2.5. EXPERIENCES IN SOME OTHER COUNTRIES

2.5.1. Case of Kenya:-Kenya is mostly patriarchal with exception of a few tribes who are matriarchal or practice dual system¹⁶. The two are normally incompatible with the latter being undermined. The Kenyan National AIDS/STD control Programme projected an increase of orphans from 1 million to 1.5 million by 2002, whilst WHO estimated 890,000 in 2001 in the country.¹⁷

Traditionally the Kenyan customary law was not meant to threaten orphans livelihood. Patriarchal family members were or had an obligation to foster children in times of crisis. Children who lost their parents were incorporated into a relative's family and it was the responsibility of the kinsmen to ensure the well-being of orphan.

With regard to the legal protection of inheritance and property rights of children the Kenyan law has both international and national protections. Kenya is party to the most powerful, universal and recent convention on the rights of the child is the United Nations Convention on the rights of the child (CRC), which came into force in 1990 and received overwhelming number of signatures than any other convention. Property and inheritance rights are implicitly inferred in the following articles. Article (2) section 2 states that "state parties shall take all appropriate measures to ensure that the child is

¹⁶Id. p.10

¹⁷Francisca Akwanalo Mate, *Children's Property And Inheritance Rights Experience Of Orphans Affected By HIV/AIDS And Other Vulnerable Orphans In Kenya*, The London School of Economics and Political Science (LSE), Sept. 2005, p. 6, <[www, streetchildrenresources.org/resources/](http://www.streetchildrenresources.org/resources/)> accessed at 14/04/2016, 10:00 Am.

protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or *beliefs of the child parents, legal guardians or family members*"; article (3) states that "the best interest of the child should be a primary consideration; article (9) prohibits separation of the child from parents; article (27) calls for adequate standards of living of the child, which include shelter, clothing and nutrition; article (28) calls the right of every child to education and article (12) recognizes the right of every child to participate in matters that affect them, with their views being given due weight in accordance with the age and maturity of the child. However the CRC has no specific principles governing property inheritance for orphans. On the other hand the ACRWC similarly restates the same but adding more vulnerability to the child by adding more responsibility of respecting elders.

The violation of property rights for widows and orphans by relatives or others in the community is widespread in Kenya. The statutory law in the country does not protect children and surviving widows to inherit property whereas on the other hand the customary law takes control of the situation which makes children more vulnerable than they already are. The statutory system is not enforced and is easily corrupted to relegate women and orphans property violation at the mercy of the customary law and deceased relatives (HRW, 2001).

Kenya statutory law of succession Act of 1981 applies to both testate and intestate succession. It outlines the need to ensure trusteeship of property of a surviving child until he or she reaches the age of 18 years where the trustee should be "appointed by a court of competent jurisdiction. The law makes no distinction between male and female children and does not discriminate in matters of inheritance. For any disposition of the deceased estate that is deemed unreasonable by the court, the court has authority to order reasonable provision for any dependant left out of the deceased 's estate." The dependant includes wife or wives or former wife or wives and all children of the deceased and extended family members who depended on the deceased prior to his death (section 29).

Despite the existence of international law, succession act, criminal courts National policies property grabbing from orphans is widespread in Kenya. A research made by Francisca Akwanalo Mate in 2005 shows that for every 10 cases of orphans interviewed,

at least 8 had experienced property grabbing.¹⁸ Among the type of properties grabbed, the study show that loss of house was experienced or being experienced by 100% of those interviewed by the researcher. The study has also find out that 85% had been stripped off death certificates, 75% land and trees; 70% household goods; 90% livestock/cash crop; 37% farming-tools; 14% rental-plots; 14% vehicle/bicycle; 11% wills and title deeds and less 11% others were stripped off bank documentsand deceased pay slips.¹⁹ The study finds out that properties are grabbed mostly by the close family members of the deceased father.

In Kenya property grabbing disputes are commonly resolved by clan elders to upper levels of localadministration, very few are taken to court.In many cases, village elders or chief are blood-related to the clan and more often protects clan interests and hence favor the deceased relatives or customary law than statutory succession Act. Chiefs and clan leaders are mostly bribed and consequently make cases taken to them even worse for the children.

Secondly, the court process takes along time and by the time the case is concluded and judgment ismade; most property will either have been misused or sold by the grabbers all together. And to add to the tragedy, the cost of handling property grabbing disputes emerged to overwhelm most poor widows and orphans children. The hostility and the insecurity discourage orphan children from reporting property grabbing incidences. Even if they have the courage to take the case to court it is not safe and almost impossible to live near to those taken to the court.

Ant thirdly, lack or little knowledge of legal education helped to the reinforcement of property grabbing. Most of the victims of property grabbing had not had any awareness to report their property rights violation even to the village elders.²⁰

Response of the Kenyan Government

- The Kenya government enacted the children's Act in 2001 to provide a frame work for children's rights and domesticate the United Nations Children Rights Convention

¹⁸ Ibid, p.13

¹⁹ Id, p.13

²⁰ Id,p.16

(CRC)²¹. However the Act, 2001 is passive about orphans and indeterminate them under children in need of care and protection. It excludes paternal orphans and does not provide a mechanism that can track property grabbing for orphans. Neither does it provide severe punishment to grabbers. However the current growth of orphans accelerated by HIV/AIDS and scale of property grabbing require further policies that are proactive and inclusive with harsh punishment to violators of those rights. The absence of such pertinent components in the children's act highlights the need for Kenya to have an OVC policy with legislation²².

- The succession act and children's act has put in place trusteeship policy to mitigate where there no one able or willing to administer the estate of the deceased person. This needs to be reviewed to capture all property, revise age of double orphans to inherit property to 16 years and register all guardians at family level and draw new policy that focus on protection of property without court appointed administrator. Currently often administrators are locally self-appointed or by clan or by deceased. The current age of 18 years delays double orphans to make official financial transaction and access ownership and administration of property.
- The most known approach through which the government is addressing AIDS OVC specialized needs are the 47 District HIV/AIDS control committees and the constituency AIDS control committee that fund HIV/AIDS activities at community level (Features group, 2004) but intriguingly, these committees' budgets have no specific line item on orphans/OVC. Similarly Kenya financial budget 2005/2006 has no line item on OVC. There is an assumption that these funds are trickling down to orphans, this may not be the realism, out of the 72 individual interviews with orphans, none had benefited from HIV/AIDS control committee and constituency fund. There is need to create specific budgets to leverage and track orphans activities, including property grabbing. Whereas, most of Kenya national laws and policies generally enshrine children's rights to life, freedom, protection from abuse and discrimination, participation, health and medical care, education, food and shelter little has been put in practice, except notably free primary education.
- The other efforts include production of draft national OVC policy in 2005, appointment of OVC committee, national programme guidelines on OVC (2003)

²¹ African Network for The prevention and Protection of Child Abuse and Neglect, <ANAPPCAN: <http://www.anappcankenya.co.ke>>, accessed at, 08/04/2016, 9:30 Am.

²² Supra note.3, p.25

among other documents. But still these policy documents have no or diminutive focus on orphans property grabbing and well-being.

Therefore, the Kenyan government has looked into the practice of the civil society. According to the Kenya OVC desk review report, out of the current 1.8 million orphans in Kenya, about 433,000 are receiving some sort of care and support services from NGO's and networks reach less than a third of vulnerable orphans²³. At the international level civil society steered global framework for protection, care and support of orphans and vulnerable children living with HIV/AIDS. The frameworks and initiatives adopted from civil society are translated into six models:- prevention and care, Protection, Education and sponsorship, Socio economic support, Succession planning, Information and networking.

2.5.2. Case of Mozambique:-The 1966 Civil Code defines minors as “persons of either sex under the age of 21”²⁴. Children have the right to be registered immediately after their birth and also have the rights to their own name and to use the surname of their parents’ family (Family Law, art. 205). The Family Law makes no distinction between legitimate and illegitimate children: “children have the same rights and are liable for the same duties, irrespective of the origin of their birth” (Family Law, art. 204). Registration services are performed by the Civil Registration services. The newly-enacted Civil Registry Code expanded the period of free birth registration from 30 to 120 days after the child’s birth, to encourage registration.

The Family Law contains extensive protections for children. For example, parents must support their children financially until the children complete their education and can maintain their own means of living. Parents may not waive parental rights, except where the child is adopted or given to a foster family (Family Law, arts. 285, 288). If either parent dies, the other parent (whether male or female) remains entitled to exercise parental rights (arts. 309, 312). Relatives such as grandparents, siblings, uncles, aunts and cousins have a duty to care for younger relatives who are orphans or abandoned by their parents (arts. 280, 281). Generally, parents may dispose of or otherwise manage the

²³ Features group (2004) Rapid country response analysis: Kenya policy project: <<http://www.futuregroup.com/OVC/DRAFT>> , accessed at 20/04/2016, 2:25 Pm.

²⁴ Article 122 of the 1966 Civil Code of Mozambique, <landwise.resourceequity.org/record/881>, accessed at, 20/04/2016, 1: 00 pm

assets of a child's estate only if they have specific judicial authorization to do so. Actions taken without judicial authorization may be voided by the courts. To the extent that the child is mature enough to evaluate and opine on financial matters, the court must consult the child and take the child's opinion into account before issuing the authorization (arts. 296, 300-302). The child's wealth must be delivered to the child upon his or her coming of age or emancipation (arts. 304, 305, 308).

In relation to orphans or other vulnerable children, an unfortunately prevalent issue in Mozambique, Mozambican law provides for three options, depending on the age and circumstances of the child. First, the court may appoint a guardian (*tutor*) to care for and manage the child's estate and interests, at the request of the public attorney's office. The guardian is supervised by the Family Council, a board formed of two relatives of the child and a representative of the *Ministério Público* (arts. 337-341, 346-348, 353, 362-64). Second, the child may be placed with a foster family, which is the most common option for orphaned children in Mozambique²⁵, although foster children are sometimes represented as biological children in surveys, particularly if the child was orphaned at a young age²⁶. The foster child may have inheritance rights in case of intestacy of a foster parent, if the intestate does not have descendants, ascendants, siblings, descendants of siblings or a living spouse. Any inheritance rights of the foster child expire when he or she turns 18 years old.²⁷ Third, the child may be adopted in certain circumstances as stated under Art. 395. The adoptee loses any family bonds with his or her natural family and becomes legally tied to the family of the adopting parents (Family Law, sec. 400). The Family law also obliges court decisions in relation to guardianships, foster families or adoption, along with court decisions on the regulation of parental power, must take into account the child's point of view (arts. 396, 399).

On the other hand, Bills on Child Protection and on Legal Assistance for Minors that would protect children's rights, *inter alia*, to equal protection, to have a family and to health and education were introduced in 2007.

²⁵NhateVirgulino, *Orphans and Discrimination in Mozambique: An Outlay Equivalence Analysis*. Better Care Network Child Care, Policy/Country Reports, Available at www.crin.org/bcn/details.asp?id=9522&themeID=1001&topicID=1006, p.3, Accessed at, 26/03/2016/ 9:40pm

²⁶Grassly, Nicholas C. and Ian M. Timaeus. *Orphans and AIDS in Sub-Saharan Africa. Workshop on HIV/AIDS and Adult Mortality in Developing Countries*. UN/POP/MORT/2003/9, p.3.

²⁷ Family Law, articles. 381, 384-386

The Mozambican inheritance and succession law is governed under Chapter V of the 1966 civil code (Arts. 2024-2174). The succession law is supplemented by other laws like, the 2007 Tax and Succession and Gifts law, the 1997 Land Law and the 2004 Family Law. Succession and inheritance are also known in Mozambique as descent and distribution. Mozambique law provides for both testate and intestate succession; the latter is particularly important in Mozambique, because wills are not commonly prepared, as a result of high rates of illiteracy and customary law practices and cultural taboos regarding will-writing.²⁸ There are three ways to establish succession under Mozambican law (Art. 2026 of the civil code):- by statute, by will, and/or by separate agreement between the interested parties. Until the distribution of the asset of the deceased by any of the three ways the “head of the household” is responsible for managing the estate.

In practice, there are two primary legal systems in Mozambique: the statutory system and the local customary laws and practices.²⁹ Customary laws and practices are also applied by traditional leaders or chieftains, who are recognized as community authorities.

However all these statutory protections have not completely protected children from property grabbing and denying their legitimate inheritance rights. Children may lose both their father and their mother, often within a short space of time. Property grabbing affects paternal orphans when their mother is denied her right to inheritance. But it also affects children directly when both their parents die and the assets that belonged to them are seized by family members. This may occur in a relatively open way when, following the death of the surviving parent, relatives divide the items belonging to the household among themselves, including the house and the land. Alternatively, it may be done in a more covert way by assuming guardianship of the orphans and, under the pretext of administering their assets until they reach adulthood, disposing of the property and using the benefits for personal gain. The Mozambican family law establishes a framework for the appointment of legal guardians.

Traditionally, orphans would be taken in and raised by individuals from their extended family, usually their grandparents or aunts and uncles. In matrilineal communities in the

²⁸Peter W. Schroth, IRCG LLC and Lawyers Without Borders, USA, Lucy Martinez, Freshfields Bruckhaus Deringer US LLP, USA, *The Law on Property Grabbing 3: Property and Inheritance Rights of HIV/AIDS Widows and Orphans – The Law of Mozambique and the Standards of International Law*, Proceeding of the 10th Annual Conference © 2009 IAABD.

²⁹ Id, p.6

north of the country, children, upon dissolution of their parents' marriage either through divorce or death, are expected to be taken care of by their maternal family. In patrilineal communities, through the act of *lobolo* (bridewealth), the couple's children in principle belong to the parental family. Where *lobolo* had not been paid, both paternal and maternal relatives would demand their 'share' of the offspring and children would be divided between the two families³⁰. Then after, children who use to be seen as a blessing became a burden on the relatives and the community. This seems to be especially true for paternal relatives, showing a tendency towards increased responsibilities of the maternal family when it comes to the care of orphans who have lost one or both of their parents. Even when their father is still alive, maternal orphans are often 'returned' to their deceased mother's family. This is also the case in patrilineal communities.

Problems arise when paternal relatives (in patrilineal systems) evoke their traditional right to administer assets left by the deceased, but are unwilling to accept the duties that traditionally come with it. This is leading to a situation where paternal relatives take control over property while children are raised by maternal relatives, without benefiting from the property left by their deceased parents and with little chance of accessing it when they reach adulthood³¹.

This tendency also means that the family from the maternal side who have taken in the children often do not have access to the additional means of livelihood that the inheritance could have provided, and as a result they may find it difficult to cope financially. In addition, if these families were already having difficulties providing for their own children, this could make them more likely to perceive the orphaned children as a burden to the household and could lead to discrimination. For instance, it is common for orphaned children to be made to work harder or given less to eat because the family may be struggling to cope. Ensuring that the management of children's inheritance stays in the hands of those relatives responsible for their upbringing, as traditional norms prescribe, would therefore be a step towards guaranteeing children's inheritance rights.³² However, where relatives who agree to take care of orphaned children are also responsible for administering their inheritance, they often appear to abuse their position

³⁰ *Supra at 35, P. 18*

³¹ *Id*, p.9

³² *Ibid*, p.9

by selling part of the assets or obtaining benefit from their management i.e. by renting house or leasing the land.

Response of the Government of Mozambique

A legal and policy framework designed to protect children and women's property and inheritance rights is an important foundation for the creation of a protective environment. Mozambique is currently going through a period of **extensive legal reform** including the revision of the succession law. This allows child rights organizations to be more active on advocacy of succession law.

- Another option taken by the government of Mozambique is, **improving capacity to implement and enforce existing legislation**. Whatever protective legal and policy frameworks are in place, their effectiveness will depend on the knowledge and capacities of those individuals responsible for their interpretation and implementation: judges, court officials, police officers and officials of the Attorney General's Office, among others.
- **Building the capacity of the judiciary**; The level of training of judges and court officials in Mozambique is low and this means that even if adequate legislation to protect children and women's rights existed, they might not always be able to claim those rights through the judicial process. The Ministry of Justice's Centre for Legal and Judicial Training (CFJJ) is the main formal institute that provides training for members of the judiciary. In collaboration with the UN's Food and Agriculture Organization (FAO), one of the centre's priority subjects is rights to land and natural resources. District judges across the country have been trained on this issue in recent years.
- **Influencing customary legal culture**: The co-existence of formal and customary law systems in Mozambique means that training those involved in the formal system alone will not be enough to create an environment in which women and children can claim their rights to property and inheritance. Although the state recognizes only written law as legally binding, it does recognize the use of customary law outside formal courts, as long as it does not go against the principles of the Constitution. At the local level, especially but not only in rural areas, formal legal institutions are poorly represented and a long-standing tradition of community conflict resolution is prevalent.

Community courts in Mozambique are formalized by law but rule independently from the formal system of town, district, provincial and supreme courts. The community courts are expected to pass judgement based on “common sense and reconciliation”³³ instead of formal law. The decisions made by community leaders or judges in community courts, shaped by their personal interpretations of right and wrong, are therefore extremely important for children and women.

- **Working with local community leaders, judges, religious leaders and traditional healers:** In fact, Mozambican traditional leaders and judges are often more inclined to think in terms of women and children’s duties rather than their rights. Nonetheless, local systems of conflict resolution are generally recognized as providing better options for women to seek justice because of their low cost, accessibility, familiarity and social acceptance. These community leaders are not bound by existing legislation therefore they are able to rule in a far more progressive way that the law would permit formal judges. Religious leaders usually have a prominent position and are well respected not only within their congregation but often in the wider community as well. Also, as with secular community leaders, they live and work in or close to the communities they serve, many of which are in remote areas, often beyond the reach of services provided by government institutions or NGOs. Traditional healers are very important in the community not only because their knowledge of traditional medicine but also for their ability to communicate with the community.

2.5.3. Case of Uganda:- In Uganda, according to Uganda women Lawyers Association, 40 % of the cases they saw in 1995 were related to property grabbing by male relatives of the diseased husband.

Uganda has seen the proportion of its children that are orphaned increase from an estimated 10 percent in 1990 to 14 percent in 2003 mainly because of the rapid spread of HIV/AIDS. By 2010 the percentage of orphaned Ugandan children is predicted to decline to 11 percent.³⁴ The absolute number of orphans is expected to stay constant at around 2

³³ Ibid, p. 21

³⁴ The Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Children's Fund (UNICEF), & the United States Agency for International Development (USAID), *Children on the Brink 2004: A Joint Report of New Orphan Estimates and a Framework for Action*, www.data.unaids.org, Accessed at 16/04/2016/, 10:45 Pm.

million between now and 2010³⁵ in a country with a population of 25 million in 2002.³⁶ Household competition for land is a serious problem in Uganda, as soil fertility has been dropping along with farm productivity, while poverty and food insecurity have risen.³⁷

It appears that formal Ugandan law offers some protection to orphans and widows from the risk of dispossession of property. Section 31(2) of the Ugandan Constitution requires Parliament to make “appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.” Furthermore, section 34(4) indicates that “children are entitled to be protected from social or economic exploitation...”³⁸ Unfortunately, statutory legislation appears to set the level of protection for women and children’s rights considerably below the bar established by sections.31 and 34 of the Constitution.

The overwhelming majority of Ugandans die intestate.³⁹ The Succession Act of 1972 appears to uphold the rights of widows and children to inherit property with or without a written will.⁴⁰ These entitlements are limited to usufructary rights only, which expire when the wife remarries or when the children marry or reach the age of majority. Moreover, the Act allows conveying of land, the central asset for most households in Uganda, to be predominantly (and lawfully according to section. 237(3) of the Constitution⁴¹) regulated under customary tenure systems.⁴²

³⁵*Ibid.*

³⁶United Nations Children's Fund(UNICEF), *Africa’s Orphaned Generation*, *supra* at 50.

³⁷ John Pender, et. al., “*Development Pathways and Land Management in Uganda*”, (2004) 32 *World Development* 767, as cited in Duncan McPherson, *Property Grabbing and Africa’s Orphaned Generation: A Legal Analysis of the Implications of the HIV/AIDS Pandemic for Inheritance by Orphaned Children in Uganda, Kenya, Zambia and Malawi*.

³⁸The Constitution of the Republic of Uganda, 1995, /<: www.parliament.go.ug/Constitute.htm.> ,Accessed at, 14/04/2016, 8:40 Pm.

³⁹Horizons, Makerere University Department of Sociology, Plan/Uganda.*Succession Planning in Uganda: Early Outreach for AIDS-affected Children and their Families* (Washington, DC: Population Council, 2004) at 23, which found that 9 in 10 adults in two study districts of Uganda had no written wills. See also, Sophie Witter, *Breaking the Silence: Memory Books and Succession Planning—The Experience of NACWOLA and Save the Children UK in Uganda* (London: Save the Children, 2004).

⁴⁰Laelia Zoe Gilborn,*Making a Difference for Children Affected by AIDS:Baseline Findings from Operations Research in Uganda*(Washington, DC: Population Council, 2001),<www.eldis.org/document/> , Accessed at 14/04/2016, 3:25 Pm.

⁴¹ *Supra* note. 14.

⁴²Richard S. Strickland, *To Have and To Hold: Women’s Property and Inheritance Rights in the Context of HIV-AIDS in Sub-Saharan Africa* (Washington D.C.: International Centre for Research on Women, 2004) at 66.

Systems of customary law vary from community to community, but their overall thrust with respect to inheritance is patrilineal descent, particularly in rural areas, with land being passed on to (especially eldest) sons but not daughters, on the belief that girl children will marry and be provided for by their husbands. In practice, customary norms regarding land often trump the high standards of protection for women's and children's rights suggested by the Constitution.⁴³

Evidence exists that outright grabbing of property from orphans and widows is a serious problem in Uganda. In 2001, Gilborn et al. conducted a baseline survey of a large number of AIDS-affected households, including potential guardians for orphans, in the Luwero and Tororo districts of Uganda. They found that almost all HIV-positive parents (91.5 percent) expressed worries about their children's future. The risk of children's property being grabbed after parental death was the third most frequently mentioned among parental concerns. The only concerns that were mentioned more frequently were worries about children's access to education, followed by the availability of food and basic necessities of life. Almost half of adult respondents reported property grabbing as a problem in their communities, with women and orphans particularly vulnerable. Paternal relatives were believed by respondents to be the most likely to steal inherited property, but fears were also expressed that other community members and maternal relatives would also attempt to grab property.⁴⁴ Among the orphans selected, 21 percent of older orphans (n = 105, ages 13-18 years) reported that they had experienced property grabbing.⁴⁵

Several other studies have identified property grabbing as a threat to the wellbeing of orphans. Single orphans predominate in Uganda, with most orphans living with a surviving (generally female) parent after the first parent dies.⁴⁶ Of the widowed parents surveyed, 75 percent found it "very difficult" to support their families and 22 percent of female widows reported experiences of property grabbing or mismanagement of their

⁴³ *Ibid.* at 9.

⁴⁴ Duncan McPherson, *Property Grabbing and Africa's Orphaned Generation: A Legal Analysis of the Implications of the HIV/AIDS Pandemic for Inheritance by Orphaned Children in Uganda, Kenya, Zambia and Malawi*.

⁴⁵ Stephen Lewis, comment at University of Toronto Faculty of Law, 19 January 2005.

⁴⁶ Angela Wakhweya, et al. *Situation Analysis of Orphans in Uganda: Orphans and Their Households—Caring for the Future, Today* (Kampala: Government of Uganda Ministry of Gender, Labour, and Social Development & the Uganda AIDS Commission, 2002).

property by relatives after their spouse had died.⁴⁷ Given the existence and wide abuse of property grabbing in the country, the Ugandan government has adopted mainly three protective factors in order to combat the problem:- land ownership documentation, existence of a will for the deceased husband, marriage formalization. However these protective measures seem to set aside protection for children and focusing mainly on widows.

2.6. THE ROLE OF CIVIL SOCIETY ORGANIZATIONS AND OTHER STAKEHOLDERS ON PROPERTY GRABBING

2.6.1. CHILD JUSTICE PROJECT OFFICE; CHILDREN JUSTICE PROTECTION CENTER AND THE AFRICAN CHILD POLICY FORUM

The Child Justice Project Office is actually not an NGO but it gains much support from different CSOs both local and international. The Children's Legal Protection Center /CLPC/ is established in September 2012 through the collaboration between the Federal Supreme Court and the African Child Policy Forum and operates under the auspices of the Child Justice Project Office. The African Child policy Forum is an independent, non-profit, pan African institution of policy research and dialogue on the African Child. It aims to:

- Contribute to improved knowledge on children in Africa
- Monitor and report progress
- Identify policy options
- Provide a platform for dialogue
- Collaborate with governments, intergovernmental organisations and civil society in the development and implementation of effective pro-child policies and programmes
- Promote a common voice for children in and out of Africa.

The ACPF is guided by three strategic areas;

- I. Monitoring government performance and child well-being,
- II. Promoting legal justice and access to children and

⁴⁷ Ibid

III. Strengthening the family and social protection mechanisms.

The CLPC aims to strengthen government's effort to enhance child justice administration and creating a sustainable child protection structure in the justice system. Through its three branch offices provided by the three tiers of the federal judiciary, Supreme, High and First Instance Courts, the CLPC is providing comprehensive and effective services to children coming into contact with the justice system. Unlike other institutions that work on access to justice, the activities of CLPC go beyond providing just legal aid and encompass other psychosocial services and capacity building endeavours. Accordingly, the CLPC is attempting to ensure the protection of children's best interest through legal aid service provision. The pro-bono lawyers' scheme of the CLPC is making the costly legal professional services and the complex adversarial proceedings accessible to children and their care providers. The CLPC provides legal aid to children in its legal aid centres as well as on courts handling cases of children by representing them when they appear before any federal court as offenders and whenever there is a complicated civil case affecting the best interest of the child. Apart from its legal aid services, the CLPC's mediation service, paternity establishment through DNA testing as well as provision of other psychosocial services are helping to remove barriers children face in accessing justice and ensuring their rights and wellbeing are protected. As reiterated in the UN Guideline on Justice in Matters involving Child Victims and Witnesses of Crime, children coming into contact with the justice system should have access to assistance provided by professionals who have received relevant training. Hence, CLPC is attempting to equip justice and non-justice sector professionals working closely with children with the required knowledge and skill to handle cases of children in a way that ensures their best interests. Since its establishment, several important achievements were registered by the CLPC. The major ones are:- Establishing a referral system involving 37 governmental and non-governmental organizations with the aim of improving the administration of justice for children and ensuring the protection of the best interest of children involved in the justice system. Preparing standard guideline for child friendly administration of justice in the judiciary which sets forth uniform child friendly implementation parameters, courtroom set-ups, referral systems, capacity building strategies as well as data management system that should be applied by courts across the country. This guideline was endorsed on the National Experience Sharing Workshop

conducted in May 2014 without any reservation by the presidents of all Regional and Federal Supreme Courts who pledged to put it into use in their respective regions. Supported the establishment of national legal aid network among legal aid service providers across the country to help to improve the quality of legal aid service and widen the accessibility of legal aid services to children and other indigent groups of the society. Established pro-bono lawyers' scheme through which 60 lawyers of competence as well as paralegals of Addis Ababa University Centre for Human Rights were mobilized to provide free legal aid services for children. Standardized its mode of operation and service delivery by developing various guidelines such as the pro-bono lawyers' guideline, legal counselling guideline, court representation guideline, case follow up guideline, referral service guideline and mediation service guideline, Improved children's access to justice by providing legal aid to more than 12,000 children coming into contact with the justice system, Provided psychosocial services to about 2000 vulnerable children through the referral mechanism and the victim's fund established by the CLPC, Conducted DNA examination for about 100 children out of which paternity is established for about 90% , Enhanced the capacity of more than 1000 law enforcement personnel and other professionals working closely with children involved with the justice system through training, Created awareness, about the rights of children and available avenues for protection of their rights, among the general public using print and electronic media such as through publication of fliers and implementation handbooks for judges, police and other duty bearers as well as production and broadcasting of radio and TV programs, Conducted a feasibility study to rollout the CLPC and the referral system to three regions – Amhara, Oromiya and SNNPR and Memorandum of Understanding was signed with the respective regions that spells out the respective duties of the parties. One unique feature of the CLPC is the fact that it is owned by government and works closely and in partnership with local and international partners. This particular feature of the CLPC is the major leverage that made its operations more effective by facilitating the referral system smoothly, speeding up children's court cases and ensuring better enforcement of the legal counseling services of the CLPC. Federal courts also provided working spaces and covered some of the CLPC's admin costs on top of their effort to sustain the center and increase their support. The CLPC gets support from different international partners such as Plan International through the Girl Power Programme, Save the Children International, French Embassy and UNICEF. There are also local

partners, NGOs providing legal and psychosocial services to children, 3 working closely with the CLPC to enhance the administration of justice for children.

2.6.2. FORUM FOR SUSTAINABLE CHILD EMPOWERMENT

Forum on Sustainable Child Empowerment (FSCE) was established in 1989 by a group of social development professionals who worked in child-focused organisations. Its establishment was a response to the increased number of orphaned and abandoned children in Addis Ababa caused by the drought and famine of 1984/85. FSCE's vision is to see the wellbeing and protection needs of children fulfilled. FSCE as one of the youngest charitable organizations in Ethiopia have served urban disadvantaged children and families for more than 20 years.

In the absence of a national child policy in the country, in 2007 FSCE felt the inevitability of developing institutional child protection policy and developed its own "Child Protection Policy". This measure is a fundamental stride towards building consensus on the overall direction of the organization and setting minimum standard in service provision for children. As part of facilitating the work of police stations, the second effective collaboration has been established with the Ethiopian police college of developing training manual On Child Right and Child Protection by the then "Forum on street children in Ethiopia" in collaboration with Save the Children-Sweden and Ethiopia Police College with the objective of enabling the police force to be trained on the wellbeing and protection needs and other related issues pertaining to children. Save the Children Sweden (SCS) and Forum on Street Children-Ethiopia (FSCE) are the pioneering supporters of the police child protection units (CPUs), and child friendly courts (CFC) in the country.

FSCE area based multi-stakeholder child protection interventions expanded its foundation and proved to be an effective way of addressing the problems of children and at the same time strengthen the establishment of Multi-stakeholder Child Protection Councils. Currently the multi-stakeholder child protection council based interventions are rolled out in all area programme offices of FSCE

Following the issuance of new Civil Society Organizations (CSOs) legislation issued in 2009, FSCE has redefined its Vision, Mission and program and reregistered as Forum on Sustainable Child Empowerment under the registration number 0064. The mission

statement and FSCE programs is again rectified and revised during the evaluation of its fifth strategic plan (2010-2014) at its mid-term and the organizational development study conducted in 2013.

Currently, we offer a continuum of child focused development works in five area program offices (Addis Ababa, Dire Dawa, Bahirdar, Dessie and Adama) located in two cities namely Addis Ababa and Diredewa, and two regional states Amhara and Oromiya respectively. Their core programs generally focus on two concepts:-

- **Supporting Children without Parental Care**

The Director has said that the ultimate objective of supporting children without parental care is to prevent them from neglect, abuse, and exploitation in collaboration with the community committee organized by the program offices. In this regard, 592 children who have no parental care have got direct financial support monthly from FSCE through its four area program offices to enable them to satisfy some of their basic needs such as food and education. Some of the payment (birr 30.00 out of 200.00) is saved in a block account to be used for rehabilitation purposes when they get discharged, i.e., at the age of 18.

Another aspect of providing support to children with no parental care has to do with building the capacity of community-based organizations ('Iddir' coalitions) that are engaged in supporting children who have no parental care. 143 have received support through Iddir coalitions in the reporting period. Therefore, FSCE's interventions in this regard have protected the children from labor exploitation, street life, etc. and assisted them to live with their families/guardians. Awareness raising work for parents and/or guardians of children with no parental care in the target areas on parenting of children, focusing on protection and the types of support needed for the target children, was successfully undertaken in all APOs.

- **Investing in Social Protection and Family Strengthening**

Lack of care affects children's emotional, physical and cognitive development and can even be life-threatening. The future prospects of children growing up without adequate care are often severely limited. As adults, they are often less able to access employment, more likely to experience poverty and more likely to be dependent on the state.

We promote the provision of beneficial interventions for families in very difficult circumstances to support them to live together; the development of community-based provisions for children with disabilities; support for children being placed in extended family care rather than state care when appropriate and the development of quality foster care.

Specifically they aim to achieve five goals;

- I. Enabling children to grow up in permanent, safe and caring families,
- II. Ensuring a range of high quality, appropriate alternative care choices for children, taking steps to prevent children from having to live outside of any adult care, without the care of families or other carer, and in the interim, protecting these boys and girls,
- III. Promoting better and more participatory decision making about children's care.
- IV. Building strong child protection systems which strengthen families and promote quality care for children.

CHAPTER THREE

PROTECTION OF PROPERTY AND INHERITANCE RIGHTS OF CHILDREN IN ETHIOPIA

3. INTRODUCTION

Property and inheritance rights include: the right to own, acquire (through purchase, gift, or inheritance), and dispose of tangible and intangible property, including land, housing, money, livestock, and crops. Property rights are in-rem, in the sense that it creates an obligation on all other persons to refrain from any act of interference in the use and enjoyment of a thing one owns or possesses. It also entitles a possessor/owner of a thing to pursue such thing in the hands of any other person into whose possession the thing might have come. It is important to note here that private property is guaranteed and protected not only against interference by the government and its agencies but also by individuals and other persons. In the Ethiopian context inheritance is almost the only way for children to acquire property⁴⁸.

Children may lose either or both their father and mother, often within a short period of time in countries like Ethiopia where life expectancy is low. Property grabbing affects paternal orphans when their mother is denied her right to inheritance. But it also affects children directly when both their parents die and the assets that belonged to them are seized by family members. This may occur in a relatively open way when, following the death of the surviving parent, relatives divide the items belonging to the household among themselves, including the house and the land. Alternatively, it may be done in a more covert way by assuming guardianship of the orphans and, under the pretext of administering their assets until they reach adulthood, disposing of the property and using the benefits for personal gain.

This chapter contains the overall commitment of the country (both national and international) towards the protection of children's property and inheritance rights through the law. The Ethiopian legal system has an extensive laws on inheritance and property

⁴⁸ Civil Code of the Empire of Ethiopia, 1960, *Negarit Gazetta, Extra Ordinary Issue*, Proc. No. 165, Art. 1206, 1148 and 1149.

rights protection, starting from the Constitution and International Human Rights Instruments (mostly the CRC and its' Committee's General Comments) that are applicable in the country and other laws like the Civil Code (succession law, property law), the Revised Family Code), decisions of the Cassation Bench of the Federal Supreme Court and the Criminal Code.

3.1. THE LEGAL REGIME ON PROPERTY AND INHERITANCE RIGHTS OF CHILDREN IN ETHIOPIA

Protection of property and inheritance rights of children is extensively covered by the Ethiopian legal system in different parts of the laws of the country; the FDRE Constitution, International Human Rights Instruments that are Ratified by Ethiopia, the Revised Federal Family Law, the Succession Law, Property Law, Criminal Law, decisions given by the Cassation division of the federal Supreme Court and the Land Law.

3.1.1. INTERNATIONAL LAW

From a human rights perspective, the definition of the child is stated clearly. Article.1 of the UNCRC states that, “a child is every human being below the age of eighteen years...”⁴⁹. This implies that every child has the right to enjoy human rights protections assured by not only by the CRC and ACRWC but also by other international human rights instruments. The term ‘every human being’ shows that child focused international human rights instruments like the CRC are just an extra protections for children and children are entitled to the protections affirmed by other international human rights instruments made for every human being, like the ICCPR, ICESCR, UDHR,...etc.

Children are recognized as the first in line to inherit their parent's inheritance under both customary and formal laws. The main difference is that the formal law always calls children first to the inheritance and the customary law is mostly subject to abuse especially in patriarchal society like Ethiopia.

Children's inheritance rights are often considered realizable only when they reach adulthood. They would only then directly own and decide over the property left to them

⁴⁹ United Nations Charter on the Rights of the Child, Adopted by the General Assembly of the United Nations, Nov.20.1989

by their deceased parents. Until this time, the family members that would assume care and protection for the orphans would also manage their assets.

UDHR:-The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly in December 1948. The UDHR was the “first comprehensive human rights instrument to be proclaimed by a global international organization. The document can be categorized into two broad categories of rights, namely, civil and political rights and social and cultural rights, where both are to be applicable to children.

CRC and ACRWC:-Ethiopia is party to several children focused global and regional human rights instruments including the Convention on the Rights of the Child (CRC), the African Charter on the Rights Welfare of the Child (ACRWC), Universal Declaration on Human Rights (UDHR), the International Convention on Civil and Political Rights (ICCPR), the International Convention on Economic Social and Cultural Rights (ICESCR), to mention some. Although the CRC and the ACRWC are the major documents one should mention in order to study children’s rights protection the above listed documents are also useful in one or another way in the protection of children’s rights. However the CRC has no specific principles governing property inheritance for orphans. The general assembly special session on children in June 2001 focused on orphans but gives with no/less priority on the subject of orphan’s inheritance rights.

Article 1 of the Convention on the Rights of the Child is dedicated to the definition of a child, “a child for the purpose of the convention is defined as every human being below the age of 18”. The Committee⁵⁰ has emphasised that when states define minimum ages in legislation, they must do so in the context of the basic principles with in the convention, in particular, principle of non-discrimination (Art.2), principle of best interest (Art.3), principle of the right to life and survival development (Art.6).⁵¹ There must be respect for the child’s evolving capacities (Art.5). In General Comment No.7 “Implementing child rights in early childhood”, the Committee on the Rights of the Child underlines that “young children are holders of all the rights enshrined in the Convention.

⁵⁰The United Nations Committee on the Rights of the Child.

⁵¹*Implementation Handbook for the Convention on the Rights of the Child*, Fully Revised Edition, United Nations Children’s Fund 2007, UNICEF Regional Office for Europe, Geneva 10. Switzerland.

They are entitled to special protection measures and, in accordance with their evolving capacities, the progressive exercise of their rights”.⁵²

Another helpful provision of the CRC on the property right of children is Article 3 that states, “The best interest of the child shall be the primary consideration in all actions concerning children”, as one of the general principles of the CRC alongside with Articles 2, 6 and 12. The concept of best interest of the child applies significantly in situations where other more specific provisions of the Convention do not apply. Article 3(1) emphasizes that governments and public and private bodies must ascertain the impact on children of their actions, in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies. Within the Convention, the concept is also evident in other articles, providing obligations to consider the best interests of individual children in particular situations in relation to:- Parental responsibilities: Both parents have primary responsibility for the upbringing of their child and “the best interests of the child will be their basic concern” (article 18(1)); Deprivation of family environment: Children temporarily or permanently deprived of their family environment “or in whose own best interests cannot be allowed to remain in that environment”, are entitled to special protection and assistance (article 20).⁵³ Sub article (2) and (3) are also of great significance by outlining an overall obligation on the state to ensure the necessary protection and care for children, and requiring to establish standards by competent bodies for all institutions, services and facilities for children.

Article 6 is one of the articles designated by the Committee on the Rights of the Child as a general principle, guaranteeing the child the fundamental right to life, upheld as a universal human rights principle in other instruments, and to survival and development to the maximum extent possible. The concept of “survival and development” to the maximum extent possible is crucial to the implementation of the whole Convention. As with the other articles identified as including general principles (articles 2, 3, and 12), the Committee on the Rights of the Child has proposed that article 6 should be reflected in domestic legislation.⁵⁴ Article 24 of the convention builds on and develops the right to

⁵² Committee on the Rights of the Child, General Comment No.7 , Rev.1, para.3.

⁵³ Supra at. 17, p. 36

⁵⁴ Id, p.83

life survival and development to the maximum extent possible. Deprivation of this right is one of the overall impacts of property grabbing. Children victims of property grabbing mostly are subjected to ill health situation. They almost never have the access to health care services. Article 26 concerns financial support for children provided by the State. Children are usually economically dependent upon adults. However, when the adults with responsibility for children are unable or unwilling to provide for them, either because they are unable to find gainful employment or because their circumstances (illness, disability, child bearing, old age, death and so on) prevent them from working, then the State has an obligation to ensure that the child has some form of financial support, either paid directly to the child or via a responsible adult. However the implementation of this provision is subject to Art.4 "...with regard to economic, social, and cultural rights, state parties shall undertake such measures to the maximum extent of their available resources, and where needed, within the framework of international cooperation. The ILO Social Security (Minimum Standards) of social security, which includes medical care.

Article 27 provides children with the right to an adequate standard of living for their full development. Parents have primary responsibility for securing this right; States must if necessary assist parents in doing so and in cases of need must provide material supports to the child, such as food, clothing and housing. Article 27 links two essential principles of the Convention on the Rights of the Child, also found in other articles. The first, set out in paragraph (1) of article 27, is the right of each child to "development", which, as the Convention elsewhere makes clear, must be to "the maximum extent" (Art.6) or to the child's "fullest potential" (Art. 29). The second, set out in paragraphs (2) and (4) of article 27, is that parents have primary responsibility for securing this development, with the assistance of the State. This principle is also asserted in articles 5, 7 and 18. Article 27 recognizes that the child's development cannot be departed from his or her conditions of living. By listing the different components of full development; physical, mental, spiritual, moral and social; article 27 makes clear that an adequate standard of living is not just limited to the basics of food, clothing and housing, important though these are.⁵⁵The Universal Declaration of Human Rights provides that:(Article 25)⁵⁶ "Everyone has the right to a standard of living adequate for the health and well-being of himself and

⁵⁵ Supra at 17, p.394

⁵⁶ United Nations Declaration on Human Rights, Article 25

of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” The Convention on Economic, Social and Cultural Rights further develops this notion; (Article 11(1)) “the state parties to the present the ICESCR recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement to living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent. [Here it should be noted that the progressive realization statement given by the Committee on Social, Economic and Cultural Rights is to be taken into consideration]”. “... the Committee [on Social, Economic and Cultural Rights] is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or even of the most basic forms of education is, *prima facie*, failing to discharge its obligations under the Covenant...”⁵⁷ the Committee on the Rights of the Child when examining states reports sometimes expresses support for particular findings of the Committee on Economic, Social and Cultural Rights, recognizing its particular expertise in analysing levels of poverty and imbalances in the distribution of resources.⁵⁸ All in all the provision of the CRC all contribute to the development of children’s social, moral, mental and spiritual development, and the violation of one of these rights directly affects the protection of other rights.⁵⁹ Children out of the protection of their parents fall into the detrimental hand of other people. Another impact of property grabbing is deprivation of education for children in the hands of the grabbers. Article 28 of the Convention on the Rights of the Child establishes the child’s right to education. This must be achieved “on the basis of equal opportunity”, reflecting the fact that huge numbers of children suffer discrimination in access to education. It also violates the 1948 Universal Declaration of

⁵⁷ Committee on Economic, Social and Cultural Rights, General Comment , No. 3, 1990, HRI/ GEN/1/Rev.8, para. 10, p. 17)

⁵⁸ Supra at 17, p. 394

⁵⁹ Id, p.395

Human Rights states: (Article 26); “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages”.

The impact of property grabbing extends to violation of their “right to rest, leisure, play and recreational activities...” (Article 31) and “the right to the child to be protected from economic exploitation and any work that is likely to be hazardous, or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” (Article 32); stated under of the CRC. The implementation handbook had given an understanding of these rights; the words “rest”, “leisure”, “play” and “recreational activities” appear on one level to be synonymous, because they are all about not working. But although not working is a unifying factor, the four words contain important differences. “Rest” includes the basic necessities of physical or mental relaxation and sleep, “leisure” is a wider term implying having the time and freedom to do as one pleases, “recreational activities” embrace the whole range of activities undertaken by choice for the purposes of pleasure (including a number which can simultaneously be termed work, such as sports, arts, crafts and scientific or agricultural pursuits) and “play” is arguably the most interesting in terms of childhood, in that it includes children’s activities which are not controlled by adults and which do not necessarily conform to any rules. Children’s right to play is sometimes referred to as the “forgotten right”, perhaps because it appears to the adult world as a luxury rather than a necessity of life, and because children always find ways and means of playing, even in the most dire circumstances. But play is an essential part of development: children who are unable to play, for whatever reason, may lack important social and personal skills. Children’s cultural rights include both their right of access to cultural and artistic events, and their right to undertake such activities themselves – both to join with adults in appropriate cultural and artistic pursuits and to enjoy their own. (The word “culture” in the rest of the Convention is used to refer to traditions and customs; in article 31 the word “cultural” appears to be used in its artistic sense.⁶⁰ Article 32 requires state parties to take legislative, administrative, social and educational measures to ensure the implementation of the provision.

The United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child recognize children as rights-bearers and further

⁶⁰ Supra at 17, p. 469

define their rights, although they do not mention proprietary and inheritance rights. Those African countries that have signed on to the convention have accepted their obligations to protect children who are deprived of family care (Article 20) and to protect children who experience violence, neglect, or exploitation on the part of a parent, guardian, or other caregiver (Article 19).⁶¹ The ACRWC seems the restatement of the CRC mostly however the ACRWC adds more obligations on the child by making the child responsible to “respect his elders at all times”.⁶²

The Protocol on the African Charter on Human and Peoples’ Rights, on the Rights of Women in Africa, gives to men and women, including girls, the right to inherit in equal shares parental property (Article 21).

This is only to state some of the basic rights accorded by the CRC and the ACRWC. However the universality nature of human rights applies throughout both conventions. And violating only one of the rights also affects the overall application of the conventions. Property grabbing by far affects the rights of children in every way possible since it makes them armless in the hands of those who take away their property in the name of care and protection. Their voices are drowned into the people that take away their properties and the children in most cases are not even aware of the existence of these legal protections, they couldn’t demand them.

3.1.2. NATIONAL LAWS

THE CONSTITUTION:- the right to property is one of the fundamental rights accorded by the Constitution. The FDRE Constitution has a specific provision on the right to property under Art.40.⁶³ The constitution allows every Ethiopian citizen the right to the ownership of private property.”⁶⁴ Even if this provision is not explicitly addressed for children the term ‘Every Ethiopian Citizen’ by definition implies children are included in the provision. The CRC under its definition of a child starts with the term “ any person

⁶¹ Laurel. Rose, *Children’s property and inheritance rights and their livelihoods: The context of HIV and AIDS in Southern and East Africa*, LSP Working Paper 39, Access to Natural Resource Sub-Programme, 2006. <<https://www.researchgate.net/publication/>>, accessed at, 26/03/2016, 3:30pm

⁶² Lloyd, Amanda (2002) A 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*. Vol. 2 (1) African human Rights Lawjournal 11-33

⁶³ Constitution of the Federal Democratic Republic of Ethiopia, *Federal Negarit Gazetta*, 1st Year, Proclamation NO.1/1995, Art. 40.

⁶⁴ Id, Art.40(1)

under the age of eighteen...". Therefore, a child can enjoy all the rights and freedoms stated under the FDRE Constitution. Article 36 of the constitution is totally dedicated to rights of children, including their right to life, ... be cared for by his/her guardian,...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-being.⁶⁵ The notion of "best interest of the child" is also mentioned by the constitution (Art. 36(2)).

SUCCESSION LAW:-the Ethiopian law of succession is enshrined under the 1960 Civil Code Book II titled as '*Title V, Family and Succession*' with 300 articles divided into four major chapters, namely, devolution of successions, liquidation of successions, partitions of successions and conventions relating to inheritance⁶⁶. Under this part of the law it details inheritance and property rights of children with or without a surviving parent. The law calls children of the deceased first for the succession and that every child has the right to receive an equal portion of the succession (Art.842 (1 and 2) of the Civil Code). The Civil Code also holds the property law⁶⁷ of the country however the civil code is not a right's law rather it administer the management of one's property with single or multi possession.

FAMILY LAW:-the Family Law has a wide ranging protection for children. Chapter Three of the Revised Family Code is fully about minors. The Revised Family Law of Ethiopia⁶⁸ defines a minor (a child) as" a minor is a person of either sex who has not attained the full age of eighteen years (Art.215). And in matters concerning his/her pecuniary interests i.e. the administration of his/her property, a minor shall be represented by his tutor (Art.216 (2)) and furthermore it states that the minor shall not perform juridical acts except in the cases provided by law (Art.216 (3)). Any competent authority that passes decision on cases about children based on the Family law should take appropriate consideration to the proper care and well-being of children (Art.218).

In relation to administration of the property of children, the Family Law has an embracing coverage starting from Article 269-298. The law requires a minor to be

⁶⁵ Id, Art. 36(1)

⁶⁶ Supra at, 12

⁶⁷ Id, Art. 1126-1674

⁶⁸ *The Revised Family Code, Federal Negarit Gazetta 6th Year Extraordinary Issue, Proclamation No.1, Addis Ababa, 2000*

represented by his/her tutor concerning his/her property and pecuniary interests and acts performed by the tutor in such authority are considered as though made by the minor, whereas the tutor is supposed to take utmost care in doing so (Arts.269 & 305) otherwise he/she will be liable for a damage that may cause by the mismanagement of the property of the minor (Art.309). The tutor shall make an inventory of the value of the property of the minor in the presence of witnesses however the property is gained by succession or any other way(Arts.270&271) and in any way possible the tutor shall take the necessary caution not to mix the property of the minor with that of his (Art.272(1)). The family law allows the tutor who is not the mother or the father of the minor to accept a succession or a donation under Articles 285 and 286. Where the tutor is not the mother or the father of the child the family law has provided that an instruction could be given to the tutor by the brother or sister of the minor who has attained majority or by the court as to the management of the property of the minor (Art.274), this instruction may also be given where the minor gains property by succession or by donation (Art.275). The tutor in the act of administering the property of the minor can alienate corporeal chattels, shares and securities belonging to the minor (Art.277(1)), and in performing this the court may on the application of any interested person give an order to the tutor an instruction concerning such sale, or prohibit the tutor from selling (Art. 277(2)). Here the court seems to keep a distance between the acts of the tutor and the property of the minor, but in most cases this protection seems to be ineffective because once a child lost his/her parents there is almost no possibility for anyone to come and stop the tutor from doing such acts. The tutor who is not the mother or the father of the minor may pay the debts of the minor from the property due to the minor in the act of managing the property of the minor (Art.279). The Revised Family Code allows the tutor to give income generated from the property of the minor or sell part of the property of the minor to the guardian of the minor for his/her education and maintenance (283(1)). The tutor may not enter into a contract with the minor to buy or lease or enter into a contract with a third person to loan on behalf of the minor the property of the minor except by the authorization of the court (Arts. 289 & 290). On the other hand the law allows the tutor to consult the minor child in acts that are important where the minor is not less than the age of twelve years old, however the permission of the minor does not relieve the tutor from his liability (Art.291). though the tutor is expected to do all the management of the property of the minor gratuitously, the law allows him to be refunded his/her expenses incurred due to

the management of the property of the minor (Art.296). Article 297 of the Revised Family Law further requests the tutor throughout performing its tasks the tutor should prepare a report about the management of the property and the accounts of the minor as requested by the ascendants or siblings of the minor.

CASSATION DECISION: “TsedaleDemisse Case”⁶⁹:-With this regard the Cassation Bench of the Federal Supreme Court has passed a land mark decision. Basically the case is about the request of appointment of tutor/guardianship of a child. The case is brought before the cassation bench as an appeal of the decision given by the supreme court of the SNNP. The Respondent under the cassation bench has made an application for the appointment of tutor/guardian of the child under the BongaWoreda Court, appealing that he is the biological parent of the child. Accordingly the court has appointed him. The Applicant under the Cassation Bench (who is the aunt of the child whom was in place to raise and protect the child for twelve years since his mother’s death) opposed the decision of the court by appealing that the father of the child only comes now because the child has inherited the properties of his mother when she dies and he wants to take all the properties of the child. The applicant further added that his father had never supported, seen, or even visited him for the past twelve years and I’m the one who have been taking care of him and raising him in all those years. However, the court dropped the request of the aunt of the child by reasoning that authority of tutorship/guardianship could not given to another person while the biological parent of the child is present and available.

The Keffa Higher Court that received the case on an appeal from the woreda court by the aunt of the child has confirmed the decision of the lower court based on Art.235 (1) of the Regional Family code that provides “when one of the parents of a child dies, the surviving one is appointed as the tutor/guardian of the child”. The court further noted that “it is hard to imagine that the father of the child only comes for the need of the property attached to the child. No one is expected to give care and support more to the child than his parents”. The regional Supreme Court has also confirmed the decision of the lower courts by mentioning there is no error of law.

⁶⁹ Federal Supreme Court Decisions of the Cassation Division, No.5, 2001, C/F/No.23632 (የኢትዮጵያ ፌዴራላዊ ሪፐብሊክ ፌዴራል ጠቅላይ ፍርድ ቤት፣ የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት ውሳኔዎች፣ ቅፅ 5፣ የሰበር መዘገብ ቁጥር 23632፣ ኦገስት 2001)

The case is further brought to the Federal Supreme Court Cassation Bench on July.06.1998 by the application of the aunt of the child. The Cassation Bench has looked into the case and mentioned Art.36 of the FDRE Constitution that stipulates the rights of children and sub-article 2, which say that whenever actions, decisions are taken concerning children anyone, should take into consideration the best interest of the child. In addition to this the court Article 3(1) of the CRC which stipulates the same, "best interest of the child" should be given due consideration when making decision by anyone and any organ.

It is a known fact that parents are the primary care givers and no one could be given a greater priority than them. And it is the practice of many countries including ours that when one of the parents of the child dies the other one assumes the tutor/guardian job. This is included in federal and regional laws of the country. However, this stipulation may only work as long as it is favourable to the child's best interest. In other words, it is almost impossible that the rights of the child are violated by the default right of tutor/guardianship, and by any means the protection of the child comes first.

In the case at hand, the father has not had supported or raised the child and he only came now after 12 years and requested to be the tutor/guardian of the child. The court found out that there is an error of law, that the lower courts did not give emphasis to the words of the constitution and the international commitments that Ethiopia has entered into. The Cassation Bench decided that the authority of the tutor/guardianship should be given to the aunt of the child who has been taking care of him for 12 years.

Despite the apparent protections afforded by the country's succession and family laws, it's a widely seen fact that these protections are frequently disregarded and that property is grabbed, primarily because the laws contain provisions that are resented as contrary to custom. To complicate matters, many children do not have the knowledge of the laws and their rights, or even when they do know about the laws and their rights, they are unwilling or unable to pursue their rights.

CRIMINAL LAW:-the criminal law is one of the country's pillars of protection of children. Art. 574 punishes whoever, having the custody or charge, on no matter what grounds, of a person incapable of protecting himself, whether on account of his health,

his age, his situation or any other circumstance, intentionally exposes him, thereby putting him in imminent danger of life or health; or abandons him when in like situation. The criminal code extends its punishment to whoever having the custody or charges of a minor, ill-treats, neglects, over tasks or beats him for any reason or in any manner.⁷⁰ These two provisions are like a general statement in relation to the protection of children in the hands of people that are responsible to them. The criminal code has a further protection against property; (Article 662), “any interference with property and economic rights or rights capable of being calculated in money forming a part of the property of another shall be punished in accordance with the criminal code”. Private property is protected along with state and public property. The criminal code extends the meaning of crime constituting damage to rights in property by any injury or prejudice⁷¹. Whoever, with intent to obtain for himself or to procure for a third person an unjustifiable enrichment, appropriates, or procures for another, takes or causes to be taken, misappropriates, uses to his own benefit or that of a third person, or disposes of for any similar act, in whole or in part, a thing or a sum of money which is the property of another and which has been delivered to him in trust or for a specific purpose, is punishable under Art.675(1) of the criminal law. Taking the property of children whom someone is responsible for is a complete breach of trust under the criminal law. Grabbing the property of children “to enrich oneself or... remove a thing from the property of the children or...defrauding to make temporary use thereof for one’s own benefit...” is also made punishable up on complaint by the criminal code under Art.678. When it comes to immovable properties, Art.686 states that whoever unlawfully, with the intent to procure a profit or a benefit, encroaches on or occupies land or buildings, the possession of another or in any other manner, interferes with the quiet possession of another is punishable by the criminal law. Finally, the criminal code has made punishable those who with the intent of obtaining gain take the advantage of the carelessness, confidence or inexperience of the minor (Art.705 (1)).

⁷⁰ *The Criminal Code of the Federal Democratic Republic of Ethiopia*, Proclamation No.414/2004, May.2005, Art.576

⁷¹ *Id.*, Art. 662(2, para.2)

3.2. ORGANS OF PROTECTION

Under the Ethiopian legal system the organs embodied in the Civil Code and the Revised Family code, in order to protect, represent and care for minors are the guardian, tutor, co-tutor, tutor ad-hoc, family council and the assistant tutor. Courts also play a significant role as an organ of protection. The Revised Family Law has an extensive protection when one or both of parents of a child die. Primarily, their parents are obliged to provide care and protection to them. However these protections may be lost following the loss of their parents and they became with no sufficient means and ability to take care of themselves. Children denied of adequate parental care as well as those facing chronic poverty and violence in their communities are most likely to become destitute and in need of the care and protection of others, especially people familiar to them like relatives or any other possible person to be assigned by the court as the guardian/tutor of such child. Since guardianships intended to be a permanent placement, a guardianship study also shall determine whether,⁷²

- The child has been in a stable placement with the caregiver for a period of time.
- The child is unwilling to be adopted.
- Parental rights cannot be terminated.
- The child continues to benefit from the relationship with the birth family.
- The caregiver is able and willing to provide a permanent home for the child but is unwilling or unable to adopt the child⁷³.

3.2.1. TUTOR/GUARDIANSHIP

All children in Ethiopia have a legal disability based solely on the condition of their age. The law assumes that children have neither the maturity nor the experience to care for themselves or manage their own affairs, others must obtain this responsibility for them. For most children in most circumstances, the parent or parents fulfil this role as being the natural guardian/tutor of the child. However, when the natural parent/s of the child fail or unable to be the guardian/tutor of the child either through death, disability or any other reason another person can be appointed as the legal guardian/tutor of the child.

⁷² *Kinship Guardianship as a Permanent Option*, <https://www.childwelfare.gov>, accessed at. 23/04/2016/, 11:10 AM

⁷³ *Ibid*, p.2

Depending on the nature of the appointment the guardian/tutor assumes a wide range of authority over the person and the property of the minor, having the responsibility of keeping the best interest of the child in any case. The appointed guardian gains no monetary gain from the responsibility he acquires. A guardian is granted permanent care, custody, and control of the child he assumes the responsibility that would normally reside on the biological parents of the child. Duties include providing the child with a safe, stable, and appropriate home; adequate food and clothing; education; and basic health and mental health, child protection extends to the protection of children from violence, exploitation, abuse and neglect. The guardian is expected to fulfil all these protections for the child and the guardianship is intended to be permanent until the child attains majority, adopted, or dies or is revoked by the court.

Art.219 of the Revised Federal Family Law puts an obligation on the father and the mother of the minor child to be joint guardian and tutors during the lifetime if their marriage. In case, either of the parents of the child is deceased, disabled or unworthy or removed one of the parents the one who remains shall alone exercise such functions⁷⁴. However this is the scenario when only the child is in the advantageous position of the presence of one or both of his/her parents. The case we are dealing with is at the time when the child is left with none of his/her original parent to care and protect him/her and the responsibility is shifted to other people.

The guardian is entrusted to take proper care of the person of the minor, and the tutor represents the minor 'in matters concerning pecuniary interests and administration of property' (Art.216, RFC). The guardian shall determine the residence of the minor (Art.256, RFC), watch over the health of the minor (Art.257, RFC), and direct and supervise the minor's upbringing and social contacts (Arts.258, 259, RFC). The guardian shall also ensure that the minor be given education (Art.260, RFC and administers a certain income necessary for the minor's care (Arts. 261, 262 -RFC)).

Under the RFC the person to whom the care of the person of the minor (the guardian) has been entrusted is at the same time be the tutor of the child. The tutor is in charge of the pecuniary interests of the minor (Arts. 269 to 298, RFC), the judicially interdicted or the

⁷⁴Family Code, Art.220(1)

legally interdicted person, and administers the incapacitated person's property with due prudence and honesty (Arts. 319- 327, 358, 366, 367, 383 and 384 of the Civil Code).

The guardian of the minor is at the same time the tutor (Arts.231 (1), RFC). The exceptions to this rule of joint responsibility are: appointment of a tutor by a parent retaining guardianship (Art.232, RFC), appointment that indicates a separate function (Arts.233, 231(2), RFC) and separation of the functions (Art.226, RFC).

The minor's guardians and tutors are his parents (Art.219, RFC). One of the parents shall exercise these functions in case of death, incapacity or unworthiness of the other parent (Art.220 (1), RFC).

In addition to guardian and tutor there may also be a *co-tutor* appointed by court. By virtue of Articles 234, 235 of the RFC, a *tutor ad hoc* shall be appointed by court where there is conflict of interests between the tutor and the incapacitated person, or if there is conflict of interests between several minors represented by the same tutor (235, RFC). Article 308 of the RFC states that the provisions of the RFC that apply to a tutor are also applicable to the tutor *ad-hoc*.

3.2.2. FAMILY COUNCIL AND ASSISTANT TUTOR

With regard to minors, the Revised Family Code has given the functions of the family council to courts. This also applies to minors in jurisdictions where the Civil Code is still applicable. The family council is concerned with the overall wellbeing of the incapacitated person. It may be convened by the guardian, tutor, assistant tutor, court or any member of the family council. It is normally active under various circumstances such as death, incapacity or unworthiness of parents. Where significant pecuniary issues are involved in particular, the family council is entitled to direct and supervise the activities of the tutor.

In regions where the Revised Family Code has not yet been adopted, the family council of a minor is normally comprised of the direct ascendants, brothers and sisters (of age) of the minor (Art.241, Civ.Code). If the council doesn't comprise four members or in case of divorce, the family council is constituted pursuant to Articles 242 to 246 of the Civ.code.

One of the members of the family council or a third party may be appointed as an assistant tutor. The assistant tutor represents the council in receiving the accounts of the tutor, assists the tutor “in the performance of the acts specified by the family council,” convenes the family council, and replaces the tutor (at the latter’s request) when a particular act involves the tutor’s conflicting interest.

3.2.3. TERMINATION OF FUNCTIONS OF ORGANS OF PROTECTION

The functions of organs of protection terminate (Art.245, RFC; removal of guardian) under the following circumstances: where the minor does not receive the care which his condition requires, a morally sound education or an instruction which accords with his disposition. Regard shall be had to the environment in which the guardian lives and all the circumstances of the case (Art. 245(2), RFC).

A tutor may be removed by the court where it appears that he administers badly the property of the minor, or where he does not comply with the directions validly given to him by the person or authority who entrusted him with such functions, or where insolvency has been judicially established (Art. 246, RFC). An application for the removal of the guardian or the tutor can be made by any interested person, or by the public prosecutor (Art.248 (1), RFC)

3.3. PARENTAL GUIDANCE AND CHILDREN’S EVOLVING CAPACITY; *CHILDHOOD IS NOT LIFE’S WAITING ROOM*

The nature of rights of children has been open to discussion, disagreement and debate since long ago. At the UNCRC Committee hearings of state reports the state of Slovakia in its initial report has noted that “...at the international level it has been repeatedly emphasized that childhood should not be ‘life’s waiting room’ it should be ‘a life itself’.”⁷⁵ That is why legal situation, in which the child on the eve of his or her eighteenth birthday is almost ‘rightless’ and the next day with full rights, cannot be accepted any longer. It is therefore necessary to create conditions for differentiated and gradual emancipation of children in all areas of the day to day life. If however, society’s

⁷⁵ Initial Report, Slovakia, para.240

understanding of the status of the child does not change towards viewing the child as the entity of law, the legislative changes might not help.⁷⁶

The Committee has frequently expressed concern where countries do not appear to have fully accepted the concept of the child as an active subject of rights, relating to Art.5 and Arts 12-16.

- “...the committee notes that an understanding of children as a subject of rights does not appear to be fully reflected in legislative and other measures in the state party...” (Nicaragua IRCO, Add.36, para.).
- “...the committee wishes to emphasize that the convention provides for the protection and care of children and in particular for the subject of his/her own rights...” (Iceland IRCO, Add.50, para.13).
- “...it is important that awareness be developed of the child as a subject of rights and not only as a recipient of protection...” (China IRCO, Add.56, para.33).

At the end of the General Discussion the Committee reached some preliminary conclusions: “Traditionally the child has been seen as a dependent, invisible and passive family member...” the committee affirmed that the convention is the most appropriate framework in which to consider, and to ensure respect for the fundamental rights of all family members and their individuality. Children’s rights will gain autonomy, but they will be especially meaningful in the context of the family to be recognized, to be promoted...”

The Manual on Human Rights Reporting, 1997, further stress the point: “ the family is also particularly well placed to be the first democratic reality the child experiences- a reality shaped by the values of tolerance, understanding, mutual respect and solidarity, which strengthens the child’s capacity for informed participation in the decision making process.”

⁷⁶ Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Right of the Child*, Fully Revised edition, Prepared for UNICEF, 2002, pp.89

3.3.1. EVOLVING CAPACITY OF THE CHILD

Neither the 1924 nor the 1959 Declaration of the Rights of the Child defined the beginning or end of childhood. But the Convention's Preamble draws attention to the statement in the Preamble to the 1959 Declaration "that the child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth".⁷⁷

The Convention on the Right of The Child defines child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier" (Art.1)⁷⁸. Consequently children are holders of rights enshrined in the convention. They are entitled to special protection measures and in accordance with their evolving capacities, the progressive exercise of their rights. The Committee⁷⁹ is concerned that in implementing their obligations under the convention, state parties have not given sufficient attention to young children as right holders and to the laws, policies and programmes required to realize their rights during this distinct phase of their childhood. The committee reaffirms early childhood, taking account of the principle of the universality, indivisibility and interdependence of all human rights.⁸⁰

Using the concept of "evolving capacities" has avoided the need for the convention to set arbitrary age limits or definitions of maturity tied to particular issues. In its reporting guidelines, the Committee asks States Parties for information on the definition of the child in domestic legislation and to specify any differences between boys and girls. In comments, it has encouraged States to review their definition of childhood and to raise the protective minimum ages, in particular those for sexual consent, admission to employment and criminal responsibility. The "evolving capacities" of the child is one of the convention's key concepts as an acknowledgement that the children's development towards independent adulthood must be respected and promoted throughout childhood. It is linked to Art.12's requirement that the views of the children should be given "due weight in accordance with the age and maturity of the child". The concept is repeated in Art.14: parents and legal guardians may provide direction to the child, in relation to the

⁷⁷ Supra at 17, p. 2

⁷⁸ Article.1 of the UN Convention on the Rights of the Child,

⁷⁹ The CRC Committee

⁸⁰ General Comment No.7, #.3

child's right to freedom of thought, conscience, and religion, in a manner consistent with his/her evolving capacities.

The committee under General Comment No.7 has stated a link between one of the basic principles of the convention with the concept of "evolving capacity of children": Best interest of the child, by virtue of their relative immaturity, young children are reliant on responsible authorities to assess and represent their rights and best interest in relation to decision and actions that affect their wellbeing, while taking account of their views and evolving capacities. The principle of best interest of the child applies to all actions concerning children and requires active measures to protect their survival, growth, and wellbeing, as well as measure to support and assist parents and others who have the day-to-day responsibility for realizing children's rights.⁸¹

3.3.2. EMANCIPATION FROM MINORITY

Emancipation is the act by which a minor who had limited legal rights and additional legal privileges, gains all the rights and responsibilities of an adult. It is a legal proceeding that frees children from the custody and control of their parents or guardians before they reach the age of majority. Emancipation is usually permanent i.e. one must take the utmost care before deciding to be emancipated from minority. Traditionally, any person (even under the age of 18) who has married or entered the military service was considered as emancipated from childhood. An emancipated minor has the legal capacity to act as an adult. This means the minor is no longer treated as differently under the law and is free of any legal control attached to custody of anyone. On the other hand an emancipated minor is no longer entitled to the benefits of the law as being a minor. Among others, having the status of an adult will make the minor to exercise the following rights;

- Live wherever he chooses,
- Sign binding contracts,
- Keep and/spend one's own earnings,
- Get a work permit without a parent's/legal guardian's supervision and consent,
- Sue and be sued in one's own name,

⁸¹ General Comment No.7, #.13

- Give consent to one's own medical care, etc. The minor will be able to do all actions of an adult within the auspices of the law.

The Revised Family Code allows the cessation of minority under two circumstances only⁸²;

- I. When the minor attains majority (attains age of eighteen) or
- II. When the minor is emancipated.

Article 311 cum Art.7(2) of the RFC conditionally allows for the possibility of emancipation; where a minor is married at the age of sixteen on the application of the spouses, or parents or guardians of one of them, for serious cause. Under the Ethiopian law emancipation in anyway cannot be attained before the age of fourteen. An application for emancipation of a minor could be applied to the court where the minor has attained the age of fourteen by his guardian (Art.312, RFC) and only in the best interest of the minor. Art.313, RFC provides that an emancipated minor is to be treated as is he has attained majority under the law.

At the time the minor is emancipated the guardian/tutor is availed of his responsibility by virtue of Arts.315-318 of the RFC. "Where the functions of the tutor terminate, he shall render an account of his administration to his ex-ward or to the heirs of the minor, and handover any property which belonged to the minor..."⁸³ In the process of handing over properties that are due to the minor, if the tutor has failed to have an inventory when he assumed function, the minor may prove by any means of which the property his estate or succession or donation consists.

⁸² Art. 310, RFC

⁸³ Art. 315, RFC

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. CONCLUSION

Property grabbing is widespread to orphans in Ethiopia. The existence of extensive law does not prevent property grabbing from happening every here and there throughout the country. This study finds that for many children in Ethiopia, property grabbing is unavoidable to orphans. It occurs at the time of death of the parents of the children who were the heads of the household. In many situations the orphans are forced to leave and be evicted from their legal holdings. Threats may vary from verbal, physical, fraud, to destruction of property or even sexual abuses. Property grabbing is a key element that affects orphan's entitlement deepening their poverty and increasing their vulnerability. The impact of property grabbing is very wide, it does not stop when the property of the children is taken away, but affects the lives of the children in every possible way starting from dropping out of schools, ill health conditions, exposure to hard labour or employment in some cases, exposure to sexual abuses especially in relation to girl child, forced to go out and live on the street, to mention some.

The problem property grabbing is aggravated because the UNCRC does not have an explicit provision on inheritance and property rights of children. Even if the issue was mentioned in the General Assembly special session on children, in June 2001 but the issue was not given sufficient priority attention.

The existing social structure and power relations already put children in a very vulnerable place. Heightening this vulnerability is the fact that orphans do not benefit from the potential protective powers of the justice system. This disadvantage comes due to lack of willingness /this lack of willingness comes from lack of trust on the justice system that cases like are mostly to end up with the one who has stronger financial position/ and ability of children to access the justice system. Even more the criminal justice system of the country is fails to apprehend or convict those liable to the crime to property grabbing perpetrators, living victims reasonably reluctant to engage the justice system. This is further added by the widespread lack of the country's legal system and understanding of the laws of the land on the issue of property grabbing, succession and

inheritance rights of children. In some cases the victims have the awareness and the access to the law however, knowledge of rights and reporting violation to the concerned authorities are not sufficient on their own to address the complexity of the problem of property grabbing, it has to be accompanied by law enforcement, in a child friendly manner.

The involvements of NGOs and Agencies has reached to improve the situations of the children's affected by property grabbing by adopting different frameworks and through these missions. However the actions of these stakeholders did not go to the root cause of the problem of property grabbing, their jobs are reached to the children in the aftermath of property grabbing.

4.2. RECOMMENDATIONS

- **Reduce Poverty:** to remind that there are no quick fixes to poverty in Africa is unoriginal, but sadly it seems, unavoidable. To the extent that property grabbing cannot be easily stopped where poverty abounds. The arms of poverty are over-reaching; they get into the lives of people in many ways.
- **Law makers should expand the concept of guardianship and tutorship:** so that it will result in the betterment of the protection of the rights of children in relation to their proprietary interest. The law seems to give protection for children in appointing guardians/tutors however mostly the problem arises from the law itself. Therefore lawmakers should re-define the concept and/or functions of tutor/guardianship including the administration of properties of children in the name of care and protection.
- **Rule of Law Reform:** The case studies above suggest that inaccessibility and bias in courts render it very difficult for orphans to vindicate rights to property that they have at law. Further evidence suggests that other branches of the legal system are also failing; in Kenya, for example, widows generally see no point going to the police unless their children are physically threatened to stop abuses by property grabbers, because of police indifference to their plight and corruption.⁸⁴ Therefore, the laws covering those areas throughout the legal system need to be revisited so that they will be children friendly and easily accessible and understandable.

⁸⁴Human Rights Watch, *Double Standards: Women's Property Rights Violations In Kenya*, *supra* at 36-37.

- **Help Orphans get to School:**staying in school offers orphaned children the best chance of escaping extreme poverty and its associated risks. It will also give them the opportunity to be aware of their legitimate rights. The government has the responsibility to take every child to school. These children have no one to watch them or no one knows their existence even because they are mostly covered in the name of protections of relatives.
- Courts should be empowered to grant “**active legal capacity**” to minors on the basis of their mental maturity, their expressed need to be independent and their immediate interest in asserting proprietary rights. Childhood should not be a lives waiting room so that children will enjoy their rights when only they became adults. As cases may require and according to their evolving capacities, the court should be able to give emancipation to children so that they would have the chance to manage their own properties and stand for their rights by themselves. Law makers should consider the requirement that orphans must obtain 'consent' in order to be legally emancipated from their guardians and that they should consider new methods for extending 'protection' to orphans, such as by assessing advocates to orphans.
- **Child Headed Households:**Due to their vulnerability to property grabbing and sexual and physical abuse, child headed households have to be given special legal and police protection. In such way they can defend their rights and access legal and police services, such as free judicial representation. There is a need for a legal recognition of child headed households so that adequate supervisors and support can be insured through entities and approved by an official body and directly and indirectly accountable to them. Legal recognition is critically important for formalizing support from the government. It can also prevent such children from being dispossessed of their houses, land and property.
- Orphaned children should be guaranteed the right to legal protection of their property and inheritance rights to participate in and be informed about all decisions and dispositions regarding their parents' property, and to receive legal aid and the assistance of an advocate in order that they might claim their property and inheritance right or otherwise protest violations of these rights,
- Agencies, NGOs, government bodies and any other stakeholder providing support to orphans should take practical steps to discourage property grabbing

- **Encourage Succession Planning:** Several NGOs, notably in Uganda, have begun programs assisting HIV-positive parents in Africa plan for their eventual passing. Programs tend to emphasize the preparation of Memory Books, a document of the family's history to be kept by children as a token of their parents, as well as the writing of wills. Counseling parents in succession planning is not easy; as noted in all the case studies, will-writing is extremely rare in eastern and southern Africa because it is widely considered an alien practice that invites death. Allocation decisions regarding property are traditionally made by clan leaders or influential relatives (sometimes long) after the deceased's funeral.
- **Will Writing:** it is inevitable that making a will is very essential to protect proprietary rights of children, because the deceased parent allocates its properties accordingly. With a legal will at hand the children will have a stronger position in fighting for their rights at court.
- **Statutory Reform versus Swaying Local Leaders:** In each of the countries studied above, it emerged that statutory laws that *prima facie* offered a measure of protection to orphans' property upon succession, were largely undermined by exemptions for property held under customary tenure. It is tempting, therefore, to recommend a comprehensive renovation of laws to ensure direct inheritance of all categories of property by a deceased's surviving spouse or children.
- **Educate Orphans on their Rights at Law:** Statutory reform should be accompanied by renewed efforts to inform orphans (assuming they are old enough to comprehend) of their rights to inheritance. Many NGOs are engaged in such activities across sub-Saharan African, but judging by the extent of continued ignorance as to these rights, it appears there is a need for scaled-up efforts. However NGOs in Ethiopia seems to have engaged in the post grabbing effects. In cases where customary norms are relatively benign, it may also be helpful to assist orphans understand the protections they enjoy under local traditions, since their first line of defense against property grabbers will likely be community-based conflict-resolution mechanisms. As a foundational matter, members of the society should be educated on the fact that the Ethiopian law governs succession and inheritance related matters and in matters where the local traditional norms are overridden by the formal application of the law.

- **Documentation of Land Rights:** the Ugandan experience shows that documentation of land rights was found to be protective factor against property grabbing. Here it should be noted that only the best method of documentation will be effective otherwise it will open a legal way out for those who want to abuse the loopholes of the law and legalize the snatched property in the name of the grabbers.
- **Pursue High Profile Litigation:** strategic litigation should be pursued by activists to challenge statutory laws that encourage property grabbing. A particularly ripe vein for litigation appears to be the inconsistencies within the constitutions of the countries studied, which formally prohibit discrimination against women and children, but allow this to persist by recognizing customary legal norms that are a curse to the basic property entitlements of widows and orphans. Ideally, court action could address this dissonance by requiring governments to extend minimum protections to women and children under customary rules, commensurate with the values of non-discrimination enshrined in the constitutions.
- **Criminal Prosecution:** property grabbing is mostly not perceived as criminal act misled by the weak criminal justice system where the victims accede to the demands/acts of the perpetrators. Believing that the criminal justice system provides them with no protection many fail to report such acts. Though the reporting experience on the issue of property grabbing shows a very low rate, because of the mistrust or lack of knowledge of the criminal justice system, the government should support efforts to lawfully restrain perpetrators and provide victims of property grabbing with the necessary accompaniment. Providing legal assistance could help victims navigate the relationship with the various actors in the legal system, avoid being coerced into abandoning their rights and stand up to requests for bribes. By this way the legal system could eliminate potential crimes of property grabbing having a deterrent effect on the future.

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