



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

THE RIGHTS OF THE GIRL-CHILD IN ETHIOPIA: CHALLENGES AND
PROSPECTS

By

ASRAT ADUGNA JIMMA

NOVEMBER, 2013

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

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Approved by Board of Examiners

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Advisor	Signature	Date
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Examiner	Signature	Date
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Examiner	Signature	Date

DECLARATION

I, the undersigned, hereby declare that this thesis is my original work, has not been presented for a degree in any other university or institution and that all sources of materials used for the thesis have been duly acknowledged.

Declared by

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I, PROFESSOR CHARLOTTE PHILLIPS, have read this thesis and approved it for examination.

Advisor: PROFESSOR CHARLOTTE PHILLIPS

Signature: _____

Date: _____

DEDICATION

I dedicate this work to Anna (*Docho*), my one and only 8 years old niece, and the likes of her.

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ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DPSP	Directive Principles of State Policy
FDRE	Federal Democratic Republic of Ethiopia
FDRE Constitution	Constitution of the Federal Democratic Republic of Ethiopia
FGM/C	Female Genital Mutilation/Cutting
HTPs	Harmful Traditional Practices
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
NGOs	Non-Governmental Organizations
NPPO	National Policy Principles and Objectives
OAU	Organization of African Unity
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund

I. CHAPTER ONE

1. INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The Federal Democratic Republic of Ethiopia has a population of around 74 million people half of which are believed to be children or persons below the age of 18 years. Among this half young population, again half of it is female population.¹ However, this female population has not been given a due consideration as it should be for the main reason of attitudinal problems on gender based perceptions. In Ethiopia, gender egalitarianism has been one of the challenging issues as it is throughout the world. The dominancy of male over female has been the principle over centuries in many cultures throughout the world.² This issue has also been a major challenge for the realization of the rights of a child for the gender based discrimination on children makes the life of the girl-child worse. Gender based discrimination, violence and abuse against the girl-child has been a devastating but highly ignored issue throughout the world. The international community now acknowledges that gender based discrimination, violence and abuse against girl-children is a serious problem and cause for concern.³ These problems have been one of the strains that make the realization of the rights of the girl-child more distracted in Ethiopia too. In Ethiopia, the girl-children, similar to many other countries, are the most marginalized and discriminated groups of the society. As elsewhere, girl-children are particularly vulnerable due to the influence of traditional beliefs and lenience towards the act of discrimination, violence and abuse. Gender based discrimination and physical, psychological and sexual violence against girl-children is an especially pernicious problem in Ethiopia.

Girl-children in many parts of the country are victims of, *inter alia*, rape, abduction, early/child marriage, Female Genital Mutilation/ Cutting (hereinafter FGM/C), maltreatment, and trafficking. In many regions, for instance, many girl-children are being raped, abducted and forced into early/child marriage. Early/Child marriage puts Ethiopian girl-children at risk of facing *fistula* and other sexually transmitted diseases, since most men are older and sexually experienced than the girl-children. In Ethiopia, early/child marriage is one of the Harmful Traditional Practices (hereinafter HTPs) that affect girl-children's lives, choices and opportunities. According to the 2011 Demographic and Health Survey, 63 per cent of women are married by age 18.⁴

¹ See, Central Statistical Agency of Ethiopia, Population and Housing Census of Ethiopia (2007), (<http://www.csa.gov.et/index.php/2013-02-20-14-51-51/2013-04-01-11-53-00/census-2007>) last visited on September 20, 2013.

² J. Lindgren et al, The Law of Sex Discrimination (3rd ed., 2005), p. 1.

³ See, UN General Assembly, The Girl-Child, UNGA Doc A/64/315, 64th Sess, 21 August 2009.

⁴ Central Statistical Agency of Ethiopia, Ethiopia Demographic and Health Survey (2012), p. 64.

Furthermore, a study by Ye Ethiopia Goji Limadawi Dirgitoch Aswogaj Mahiber (hereinafter the EGLDAM), indicates that the prevalence rate of early/child marriage at the national level is 54.5%.⁵ While a survey by the same organization in 1997 showed FGM/C prevalence at 73 percent, a follow-up survey published in February 2008 indicated that rates plummeted to an impressive 56 percent.⁶ Ethiopian girl-children also are victims of psychological distress as a consequence of abduction, rape, FGM/C, early/child marriage, mistreatment and trafficking. These HTPs are causes as well as consequences of violence against girl-children. In many instances, the HTPs cause others to carry out physical and psychological violence against girl-children. Ethiopian girl-children are further exposed to violence and abuse on their ways to school and back home, since physical, psychological and sexual violence and abuse against girl-children is more and more considered as a matter of an individual girl victim rather than the concern of the public at large.

The discrimination, violence and abuse experienced by girl-children at home, in schools and communities reflects the attitude of the society towards girl-children. A study conducted by the African Child Policy Forum disclosed the widespread practice of physical, psychological, and sexual violence by neighbors, teachers, and even by family members.⁷ Various other reports indicate that girl-children in Ethiopia commonly drop out of school to avoid harassment by male students and teachers. In some areas of Ethiopia, girl-children are often abducted, on their ways to school or back home, for marriage when they are no more than eight years. In this regard, the UN Committee on the Rights of the Child expressed its concerns over the high number of girl-child victims of sexual exploitation and sexual abuse in the nation, and that the majority of cases remain in impunity.⁸

In contrast to these entire scenarios, it is said more frequently as international catchphrase that children are our future and hence need better protection. However, the reality is very disappointing in many countries, including Ethiopia. The case of the girl-child in Ethiopia is also not different, rather it is worse for they are highly vulnerable to violence and abuse and hence, need better protection by the family, the community and the state. Furthermore, the promotion and protection of the rights of the girl-child is not even only human rights issue but also an issue of development. Yet, this has not been a subject area for inquiries and study unlike other vulnerable groups.

⁵ Ye Ethiopia Goji Limadawi Dirgitoch Aswegag Mahber, Early marriage prevalence rate by region comparing 1997 baseline and 2007 follow up survey, (http://www.egldamfgm.net/include/EM_prevalence_1997_2007_opt.pdf) last visited on September 20, 2013.

⁶ Ye Ethiopia Goji Limadawi Dirgitoch Aswegag Mahber, FGM prevalence rate by region comparing 1997 baseline and 2007 follow up survey, (<http://www.egldam-fgm.net/fgm.html>) last visited on September 20, 2013.

⁷ African Child Policy Forum, Violence Against Girls in Africa: A Retrospective Survey in Ethiopia, Kenya and Uganda (2006), p. 40-63.

⁸ The UN Committee on the Rights of the Child, Concluding Observations on the third Periodic Report of Ethiopia, CRC/C/ETH/CO/3, (2006), Para. 73.

Taking all the above circumstances as a bench mark, the study tries to show how the international, regional and national legal instruments are applicable at national level in Ethiopia to alleviate the problems and tries to examine the measures that the FDRE government is taking by emphasizing on the challenges and prospects.

1.2 STATEMENT OF RESEARCH PROBLEM

Ethiopia is one of the countries where masculine dominance is accepted as it is in most, if not in all, countries in Africa. The patriarchal societal system has been a huge problem for girl-children in Ethiopia to realize and enjoy their rights in equal manner with boys. The problem often conventionally entrenched in the nation's social, cultural, economic, political and traditional schemes. Moreover, the traditional practices and customs of various ethnic groups in the nation are other challenging factors that hinder the full realization of the rights of the girl-child. As much as these various traditional practices and customs can be a source of strength and pride for many ethnic groups, they can also be a serious problem. For instance, the African Commission on Human and Peoples' Rights expressed its concern over the persistence of certain traditional practices and customs, prevailing particularly in rural areas which hamper the effective implementation of the provisions of the African Charter, especially with regard to the girl-child.⁹ In like manner, the UN Committee on the Rights of the Child also revealed its apprehension that such traditional practices and customs like FGM/C and forced and early/child marriages of the girl-child through abduction are still widely practiced and that a comprehensive strategy to counteract these HTPs has not been developed by the country.¹⁰ Furthermore, poverty and illiteracy are other reasons that worsen the woes of the girl-child in Ethiopia.

Many reports by UN treaty committees and other studies claim that the girl-child's status and situation in Ethiopia is still among the worst in the world. For instance, many research reports that conducted a close study on HTPs in Ethiopia, lists many forms of traditional practices and customs which are harmful to the girl-child. These findings put the justification in religion, cultures and traditions. Concerns such as FGM/C, early/child marriage, marriage by abduction and so forth, mostly impact negatively on the girl-child.¹¹ The kind of violations takes many forms, ranging from sexual exploitation and abuse, to economic exploitation, maltreatment, psychological forms of deliberate discrimination, exclusion, terrorization, subjugation, subjection, and subordination. Such practices are traditionally intertwined in the nation's daily lives and in most cases they are not realized or recognized as violations. Whatever is considered part of the ancient traditional practices and customs, including various forms of gender based

⁹ The African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations on the Initial, 1st, 2nd, 3rd and 4th Periodic Report of the Federal Democratic Republic of Ethiopia, (2010), Para. 45.

¹⁰ The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 59.

¹¹ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations on the combined sixth to seventh Periodic Report of Ethiopia, CEDAW/C/ETH/6-7, (2011), Para. 20.

discriminations, violations and abuses of their rights often passionately defended by the perpetrators. This explains how the rights of the girl-child are often used as possessions to be compromised and used at will by the patriarchy whenever appropriate.

The ratification of the Convention on the Rights of the Child (hereinafter the CRC), the African Charter on the Rights and Welfare of the Child (hereinafter the ACRWC) and the enactment of the Federal Democratic Republic of Ethiopia Constitution (hereinafter the FDRE constitution), the FDRE criminal code, the Revised Family code (hereinafter the RFC), and other relevant laws is a step forward to the protection of children rights in general and the rights of the girl-child in particular in Ethiopia.¹² However, even though these legislative developments are made so far by the nation, to alleviate these problems, there is still a lot remain to be done regarding implementation. For instance, only 38% of the population knows the availability of the legal limit for minimum marriageable age which is 18 years.¹³ And also there are widespread traditional practices and customs that are very harmful for the girl-child and contrary to the international, regional and national laws. Accordingly, without having half of the population it is almost unthinkable to achieve the intended development, for its today's girl-children who could bring the better tomorrow where gender equality is assured. No country prefers to leave behind half of its population and the starting point is at the grass roots level for it is universally acknowledge that when girl-children have equal opportunity to be treated with boys the society as a whole benefits.

1.3 HYPOTHESIS

There is a need for responsiveness through enabling capacity to eradicate multifarious age and gender based discriminatory treatments, violence and abuse that highly affect the rights of the girl-child, though there are some progresses with regard to legislation. Accordingly, there still remain lots of things to be done for the full realization of the rights of the girl-child and the main problems challenging girl-children have still not been resolved.

1.4 OBJECTIVES OF THE STUDY AND RESEARCH QUESTIONS

The general objective of the study is to examine the status of the girl-child in Ethiopia through evaluating all the rights endowed to her. It will also assess the extent of the traditional beliefs existing with-in the country that built on gender based discriminations and harm girl-children. In

¹² For instance, in the area of gender equality and child rights, various legislative measures and policies appear to be modernized into symbolic instruments and considered as an immense progress. However, there is no much effort to affirm their putting into practice as advanced. Moreover, policy makers and legislators themselves are not committed in promoting such accomplishments.

¹³ (<http://www.unwomen.org/2012/10/five-questions-for-muluken-arefaine-on-addressing-childmarriage-in-ethiopia/>) last visited on September 23, 2013.

order to achieve the objectives set above, the study tries to answer the following research questions.

- The questions this study anticipates to respond to include:

Primary question

What are the measures the FDRE government is taking to improve the *status quo* of the girl-child in line with international, regional and national instruments as a measure to respect, protect, promote and fulfill the inherent rights of the girl-child?

Sub-questions

Chapter two

Which international, regional and national legal instruments give better protection to the girl-child in most credible way?

What supplementary protections are guaranteed to the girl-child from age and sex perspectives?

What specific instruments has the country adopted and what is the ratification and reporting status of the FDRE of international and regional instruments on the rights of the girl-child?

Chapter three

What is the general *status quo* regarding the girl-child in Ethiopia?

What are the main causes that affect the realization of the rights of the girl-child in Ethiopia?

Chapter four

What are the substantive rights available for the girl-child in the nation?

To what extent is the gender based discrimination, violence and abuse affecting the substantive rights of the girl-child in Ethiopia?

What are the main problems facing the effective implementation of the rights of the girl-child in Ethiopia?

What are the most appropriate ways and available best practices to ensure the effective implementation of those rights?

Chapter five

How the FDRE has been responding the already long existing gender based discrimination against the girl-child with-in the country?

What measures are taken so far by the government to cope-up with the international and regional instruments that the country adopted?

What measures should be taken in order to alleviate all the existing problems discussed throughout the study?

And more other related questions will be addressed throughout the paper and the study tries to find out the full answers to the set questions and makes conclusions providing some way outs for the problems identified.

1.5 SIGNIFICANCE OF THE RESEARCH

The study hoped to make a good contribution with regard to the rights of the girl-child in Ethiopia. Moreover, it seeks to make a contribution to the non-existence of the knowledge of the rights of the girl-child specifically. In addition to its contribution to efforts in promoting for better protection of the rights of the girl-child from discrimination, violence and abuse, the study intends to serve as a national contribution to the global study on violence against girl-children. The study also will have a paramount significance for other researchers on same or related topic. And it will help the legislative and law enforcing organs to formulate better laws and policies, by suggesting the way, to alleviate the problem.

1.6 LITERATURE SURVEY

Even though, many literatures are available with regard to children rights, there are limited or few works regarding the rights of the girl-child in Africa in general and in Ethiopia in particular. Besides, most works focus on women rights and gender equality, without making any distinct appreciation towards girl-children. The issue has not been a subject of study unlike other group of individual rights. As a result, there is a room for a study that is more focused on the rights of the girl-child.

In this regard, some materials that have relevance to the subject at hand are written and are available, including B. Rodgers,¹⁴ Berihun M. Mekonnen and H. Aspen,¹⁵ Bogalech Alemu,¹⁶

¹⁴ B. Rodgers, "Child marriage in Ethiopia and its associated human rights violations," UW Bothell Policy Journal, (2012), p. 11-19.

¹⁵ Berihun M. Mekonnen and H. Aspen, "Early Marriage and the Campaign against It in Ethiopia", in S. Ege, H. Aspen, Birhanu Teferra and Shiferaw Bekele (ed.), Proceedings of the 16th International Conference of Ethiopian Studies, (2009), p. 1001-1012.

¹⁶ Bogalech Alemu, Early marriage in Ethiopia: Causes and health consequences (2008), (<http://www.icrw.org/docs/2007-childmarriagepolicy.pdf>) last visited on September 21, 2013.

Nigist Shiferaw,¹⁷ African Child Policy Forum (2006a),¹⁸ Save the Children Denmark et al,¹⁹ African Child Policy Forum (2006b),²⁰ and African Child Policy Forum (2006c).²¹

B. Rodgers undertook an analysis on the prevalence of early/child marriage in Ethiopia and the associated human rights violations with it. Accordingly, the implications of early/child marriage is discussed well and indicate that it has far reaching consequences. It violates significantly many human rights of the girl-child as enshrined by a number of international, regional and even national human rights instruments and hinders the achievement of MDGs by the year 2015. Furthermore, it sets up structural conditions for poverty, domestic violence, infant and maternal mortality, the spread of disease, and gross gender inequality.

Berihun M. Mekonnen and H. Aspen also raise the same topic of early/child marriage and the campaign against it in Ethiopia. This paper has discussed how widespread the practice of this harmful tradition is in Ethiopia and how the new laws and campaign that endorsed to combat it is perceived especially in rural areas of the country. It also explores how the meeting between the forces of modernization and tradition, and state and peasantry, unfolded in the northern part of the country, particularly Amhara region and how it was perceived and experienced by state officials on the one hand and local peasants on the other.

Bogalech Alemu added on her part concerning early/child marriage in Ethiopia assessing its causes and health consequences. She discusses that early/child marriage is one of the most harmful practices as it usually denies girl-children educational opportunities, leads to poverty and economic insecurity and has a serious negative impact on their health and decision-making capacities. She also indicates that it is rampant in Ethiopia, although the prevalence varies from one region to another which reinforces other forms of gender-based violence and problems.

Nigist Shiferaw confirms that the negative impact of early/child marriage on the girl-child in Ethiopia is significant and far-reaching, beyond what the society assumed. She explores the damage early/child marriage brings to the girl-child, including the challenge in personal freedom, inhibits the development of a full sense of selfhood including education, damages psychosocial and emotional well-being, while threatening reproductive health. It also prepares a ground for increased poverty, no decision making power, psychosocial disadvantages, violence and abandonment, poor reproductive health and teen pregnancy, fistula, exposed to HIV and AIDS and lack of education. She added that the reason for this practice is that marriages are a family affair in which the views of the family members always take priority over those of the couple

¹⁷ Nigist Shiferaw, "The Negative Impact of Early Marriage on Girls in Ethiopia", in World Vision, Creating an Enabling Environment for the Advancement of Women and Girls, (2006), p. 24-27.

¹⁸ The African Child Policy Forum, Born to High Risk: Violence Against Girls in Africa (2006).

¹⁹ Save the Children Denmark, Ministry of Education and Ministry of Women's Affairs, A Study on Violence against Girls in Primary Schools and Its Impacts on Girls' Education in Ethiopia (2008).

²⁰ The African Child Policy Forum, cited above at note 7, p. 40-63.

²¹ The African Child Policy Forum, Sticks, Stones and Brutal Words: The Violence against Children in Ethiopia (2006).

who are to be married. Parents' choices override children's, and men's override women's, and all take over authority over the law.

African Child Policy Forum (2006a), synthesizes the particular vulnerability of the girl-child in Africa, it particularly discusses the widespread practice of violence and abuse in the family, school, and community throughout the nation. It explains that girl-children in Ethiopia experience health and behavioral problems as a result of the pervasive violent practices and may go on to perpetuate a cycle of abuse. Further, it briefly describes the significant impact of violence against girl-children and concludes that the practice is particularly dangerous for both individual girl-child and for the society.

Furthermore, the study by Save the Children Denmark, Ministry of Education and Ministry of Women's Affairs, identifies and analyzes the types, prevalence, major causes and effects of violence against girl-children in and around schools. According to the findings of the study, verbal assault represents the most prevalent type of abuse against girl-children in the school. Students, parents and teachers indicate that verbal insult and beating are the most common types of violence against girl-children on the way to and from school. In contrast to teachers and students who believed that sexual harassment is more prevalent parents believed humiliation and name-calling are more prevalent. Parents and students tended to perceive physical attack to be more common than name-calling and humiliation whereas teachers appeared to perceive this form of violence to be much less common than the students and the parents. Girl-children are also physically attacked for non-punishment purposes i.e. as an expression of harassment, degrading and attempts at sexual relationship. The perpetrators of this are mainly older boys both in-school and out-of-school and it primarily take place on the way to and from school. Teachers were reported by school girl-children to humiliate them in front of their classmates if, for instance, they give wrong answer to a question. The findings indicate that the severity of verbal abuses by teachers tends to increase with beautiful and attractive girl-children. In severe scenarios, the study indicates that the teachers also abuse girl-children in time of request permissions to leave the class for reasons to do with menstruation. The study also assesses the availability and effectiveness of policies, rules and regulations and forwards ways to reduce and eliminate violence against school girl-children.

According to African Child Policy Forum (2006b) survey on 600 young women aged 18 to 24 years old, it is found that exploitation and HTPs, physical, psychological, and sexual violence against girl-children is very widespread throughout the nation. It studies the prevalence, frequency, the most vulnerable age group, where the violence more frequently happens and its effects and impacts. The survey concludes that in an average group of ten girl-children, nine will be physically abused, seven sexually abused and all will be made to feel inferior having suffered repeated psychological abuse. Furthermore, it indicates that most physical and psychological violence against these girl-children is perpetrated with-in their own homes. While in the majority of cases it is their mothers who abuse them physically or psychologically, as the girl-children grow up, many are sexually abused, usually by male friends or acquaintances. Disturbingly,

however, in 35 per cent of the reported cases of rape, young girl-children say it was committed by one of their own male relatives, including either their father or brother. According to the survey results, three out of 10 girl-children in Ethiopia will be raped at least once before they are 18 years old.

Another study i.e. African Child Policy Forum (2006c) was made by the same organ, aimed to generate information on violence against children on five selected regions in Ethiopia, namely, Addis Ababa, Oromia, Amhara, Tigray and SNNPRS. This particular study focuses on physical, psychological and sexual violence against children at home, in schools and in the community. It attempts to examine the type, prevalence, magnitude, the type of perpetrators, causes and effects of violence against children; the public's perception and children's perceptions of violence against them; and existing mechanisms that prevent violence against Ethiopian children provide them with rehabilitation and to reintegrate them into the society. This study in particular:

- categorize the nature, extent and effects of violence against children;
- pinpoint the public's and children's views, experiences and perceptions of violence committed against them;
- analysis the adequacy and applicability of policies and legal provisions in relation to violence against children; and
- analysis program interventions so as to identify challenges and prospects with regard to violence against children.

1.7 METHODOLOGY

The study is based principally on library research through a critical engagement with existing literature on the subject. It is predominantly an academic exploration of the girl-child's status with in the nation.

1.8 LIMITATIONS OF THE STUDY

It is obvious that conducting a research needs, among other things, adequate time, enough budget, availability of abundance materials, better study conditions, the support of stakeholders concerned are the basic ones. For this reason, some of these problems might affect the quality and extent of the study. The main limitations of the study are time constraints for the time available to accomplish might not be enough to put in and explore the full potential. And to some extent the availability of resources with regard to the topic is problematic to conduct deep and fully qualitative research. Lack of previously conducted research that can help to measure fitness by comparing the research is also another additional problem.

Other problems like lack of input materials, financial supports etc. are there to challenge the study. However, as much as possible great efforts are made in order to conduct and accomplish the study effectively.

1.9 OVERVIEW OF CHAPTERS

I opt to divide the paper in to five chapters including the introduction (background and justification) and conclusions and recommendations. Accordingly, the study discusses the intended issues as follows chapter by chapter.

Chapter one: this chapter for being an introductory chapter deals with the general background and the elucidation of the study. This will include, among other things, the general background of the study, statement of the research problem, the hypothesis, significance of the study, the objective of the study and research questions, literature survey, the methodology of the study, and limitations of the study.

Chapter two: intends to give an insight on the international, regional and national instruments that promote and protect the rights of the girl-child.

Chapter three: is about general concepts on the *status quo* of the rights of the girl-child in Ethiopia.

Chapter four: briefly discusses about the eminence of the substantive rights of the girl-child under different international, regional and domestic instruments including the FDRE Constitution, the FDRE criminal Code, the Revised Family Code (RFC), and national Policies, etc.

Chapter five: this last chapter will conclude the study providing some relevant recommendations to the problems that are viable options and good practices in the protection and promotion of girl-child's rights.

II. CHAPTER TWO

2. THE RIGHTS OF THE GIRL-CHILD UNDER INTERNATIONAL, REGIONAL AND NATIONAL INSTRUMENTS

INTRODUCTION

All children in the world had been considered as mere ‘objects’ and ‘mini human beings holding mini rights’, rather than the full right holders for many centuries.²² As a result of this long standing perception, they remained and perhaps continue to remain for sometime to come in the future as beings who should be seen but not heard. However, the introduction of different international, regional and national human rights instruments on the rights of the child brought about a paradigm shift to the way children were counted and treated by their family, community and states.²³ The fundamental principles of these instruments are that all the children are the bearers of individual rights without making any discrimination among them. This is, of course, as a result of these instruments’ fundamental requirements for the implementation of the instruments with the recognition of the child as a full human being and respect for all the affiliated rights they hold.²⁴ In implementing the rights, the instruments urge States Parties to promote and protect all those children rights that are incorporated in those international, regional and national child right instruments without any distinction of whatsoever. However, the discriminatory treatment of children based on sex is a persistent practice throughout the world in implementing these instruments as a result of which the girl-child receives the least of the reactions for the promotion and protection of her human rights.

The protection of the rights of the child generally and the rights of the girl-child in particular by these various international, regional and national instruments in it itself does not guarantee the implementation of those rights and hence need to be taken in to practice by all states concerned. The best protections, that emanates from international, regional and national instruments, for all children is expected from the parents or the legal guardians principally, however, it also extends to the community and of course from the state. Nevertheless, this protection shall be extended to both sexes alike without any discrimination. In reality it has been the girl-children who receive the most worst of all the children in any given scenarios with in most community in the world. It is especially worse in many poorest countries in the world, including in Ethiopia. Many instruments, both international and local, stipulate equal rights to both sexes for protection and

²² Benyam D. Mezmur, “The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero-sum game?,” *SA Publiekreg/Public Law*, Vol. 23, Issue 1, (2008), p. 1.

²³ Ibid

²⁴ Ibid

promotion. However, the reality is always the reverse, in many occasions girl-children are less concerned when it come to the rights of children. They always receive less response from the social actors and face, more often than not, gender based discrimination. The discrimination starts at the childhood and continues actually in the adolescence periods as a result of the reasons, perhaps the main ones include, HTPs and customs. As a result of all these scenarios, girl-children are the most marginalized group of most societies in the world and Ethiopia is not an exception for that matter.

The rights of the girl-child mainly address the issue of equality with boys. In this regard, all the policies and the laws should concern and make sure that the actions of any organ of the government should base on gender equality and address the equal beneficiaries of the girl-children without any discrimination based on sex. Furthermore, the laws and policies should also make sure that it guarantees well that the girl-children rights are best protected including the equal access for education, health, social security, rights pertaining to the preservation of identity, right not to be separated from their parents, the right to privacy, rights in adoption, rights against child labor, violence, child abuse, sexual exploitation, abduction, sale and trafficking and so on.

The child rights instruments such as the CRC and the ACRWC, which almost all African countries including Ethiopia have ratified, provide a range of entitlements to every child including the right to an adequate standard of living and the highest attainable standard of health and education, regardless of gender, race, color, language, religion, opinions, origins, wealth, birth status or ability. Even though, the girl-child is provided as ample rights as the boys under different international, regional and national instruments, the means of implementation of these instruments most of the time balances towards favoring boys. The orientation to claim all the above mentioned rights of the girl-child is found in various international regional and national human right instruments, in general and in child specific instruments in particular. It also can be found in national laws and principles that are generally the result of the implementation of international declarations, covenants and guiding principles.

With regard to the international instruments, the first international human rights instrument to address the rights of children in general was, of course, the 1924 Geneva Declaration of the Rights of the Child (hereinafter the 1924 Geneva Declaration) which was adopted by the League of Nations in 1924.²⁵ This Declaration mainly focuses on the welfare of children in broad-spectrum and for that purpose it encompasses a total of five stipulations. It also provides more concern to orphans and homeless children that they have to be protected and supported as a result of the atrocities of First World War on the lives of many children. However, the drawbacks of these stipulations are that they are not formulated as rights in strict sense; instead they are framed as a duty of adults towards the child, where it hoped for the betterment of the lives of the child

²⁵ Geneva Declaration of the Rights of the Child, (1924).

by bringing some common understanding on certain basic principles concerning the well-being of the child.

Moreover, this Declaration did not recognize the existence of the different treatment of children based on sex, rather it only mention of race, nationality and creed.²⁶ Therefore, in this regard, the need to ensure equality of girl-children and boys has been recognized at the international level about 1940s. It was The United Nations Charter in its preamble that provides for equality of rights of female and male as one basic principle of the United Nations (hereinafter the UN).²⁷ The Charter also states that one of the main objectives of the UN is promoting and encouraging respect for all human rights without distinction, inter alia, on the bases of sex.²⁸ Accordingly, one of the duties of the UN is to promote universal respect for all human beings without distinction on the ground of sex. Since then the UN has been promoting and encouraging respect for human rights and fundamental freedoms without any discrimination on the grounds of sex, race, language, religion or other grounds.

The other international instrument that deals with the gender based discrimination is the Universal Declaration of Human Rights (hereinafter the UDHR) which was adopted 3 years later in 1948.²⁹ The UDHR similarly states that the rights and freedoms it prescribes are to be enjoyed by all without any distinction on grounds of sex.³⁰ Both the UN Charter and the UDHR, hence, laid down the essential perception of equality and a platform for further elucidation of the human rights of girl-children to equality and non-discrimination.

Subsequent to the UDHR, the most applauded human rights instrument, UN General Assembly adopted an instrument for the establishment of the United Nations Children's Emergency Fund (hereinafter UNICEF) in 1949. UNICEF was founded with the intention of making it a provisional support of the UN, meant that it may well help all children that are the victims of the second world war in emergency situations, mainly in relation to the deficiencies of food and other conveyances. Nonetheless, UNICEF latter became a permanent organ of the UN, with a mandate of fighting worldwide poverty and the under-development of children.³¹

Thenceforth, the demand for a separate human rights instrument that provides detailed protection for children was caught international attention once again. And then the 1924 Geneva Declaration was to serve as bedrock for this new document. At that moment following this international interest, in 1959, the UN General Assembly adopted the Declaration of the Rights of the Child (hereinafter the 1959 Declaration), which contain a Preamble and ten Principles.³² It

²⁶ Ibid

²⁷ The UN Charter, (1945), preamble Para. 2.

²⁸ Id, Article 1(3)

²⁹ Universal Declaration of Human Rights, (1948).

³⁰ Id, Article 2

³¹ P. Veerman, *The Rights of the Child and the Changing Image of Childhood*, cited in C. Philips, *Child-headed households: a feasible way forward, or an infringement of children's right to alternative care?*, (2011), p. 25.

³² Declaration of the Rights of the Child, (1959).

marked the first major international consensus on the fundamental principles of children's rights. This document unlike its predecessor, the 1924 Geneva Declaration, however, contains many interesting concepts including its incorporation of the non-discrimination clause where it stipulate that all children shall enjoy all the rights set forth in the Declaration without distinction or discrimination on account of sex, race, color, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of her/himself or of her/his family.³³ Moreover, it framed its principles as children's rights, unlike the 1924 Geneva Declaration which stipulates as aims and duties for adults. However, this declaration is just a non-binding document, like the 1924 Geneva Declaration, that marked it as one disadvantage side which depends on the good will of the states.

Taking the aspiration on the UDHR's basic principles of equality and non-discrimination in a specific and binding manner, the International Covenant on Civil and Political Rights³⁴ (hereinafter the ICCPR) and the International Covenant on Economic, Social, and Cultural Rights³⁵ (hereinafter the ICESCR) require States Parties to ensure the enjoyment and exercise of human rights by all persons without distinction on the basis of sex among other things. Particularly, the ICCPR provides that everyone is entitled to the equal protection of the law and prohibits discrimination on various grounds, including sex.³⁶ The Covenants also provide for the equal rights in different situations as well as for equal social conditions for female and male.³⁷

The ICCPR as well as the ICESCR incorporate a number of provisions that are very much accommodating for the rights of the girl-child. For instance, ICCPR stipulates that every child has the right to protection, the registration of birth, a name and nationality.³⁸ Furthermore, it identifies the family as the "natural and fundamental group unit of society".³⁹ The ICESCR also oblige states to provide special protection and assistance to the child and the family.⁴⁰ More importantly, both these conventions do specify that the rights specified with-in are to be applied for male and female alike, meaning that both instruments recognize not only children rights but also implementing them in equal manner without any discrimination of whatsoever including discrimination based on sex.

Regionally, in Africa, the principle of promoting gender equality can be found well enshrined in the Constitutive Act of the African Union (hereinafter the AU) as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African States to ensure the full participation of African women and girl-children as equal partners in Africa's development. Moreover, the African Charter on Human

³³ Id, principle 1

³⁴ International Covenant on Civil and Political Rights, (1966).

³⁵ International Covenant on Economic, Social, and Cultural Rights, (1966).

³⁶ The ICCPR, Article 26

³⁷ See, the ICCPR, Article 23 and the ICESCR, Article 7

³⁸ The ICCPR, Article 24

³⁹ Id, Article 23

⁴⁰ The ICESCR, Article 10

and Peoples' Rights (hereinafter the ACHPR) also encompasses provisions that may have some relevance in relation to girl's rights to equality and non-discrimination. For instance, the ACHPR requires States Parties to ensure the elimination of any discrimination directed against girl-children and to ensure their human rights.⁴¹ Similarly, it provides that the rights and freedoms contained in the ACHPR shall be enjoyed by all, irrespective of other sex issues.⁴² Furthermore, it provides that everyone shall be equal before the law and shall be entitled to the equal protection of the law.⁴³ Nonetheless, the ACHPR received critics for not addressing specific issues affecting rights of girl-children particularly in the African context such as FGM/C, forced marriage and wife inheritance.⁴⁴

On the other hand the main instruments that entirely dealt with children rights in general and the rights of the girl-child in particular are the following. All the ample substantive rights incorporated in the following instruments will be discussed in detail, under chapter four. In this chapter the history and development of children's rights that provide equal protection with boys and girl-children alike will be discussed, by the following international, regional and domestic instruments:

- Declaration of the Rights of the Child (1959)
- The UN Convention on the Rights of the Child (1989)
- The UN Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Declaration on the Rights and Welfare of the African Child (1979)
- African Charter on the Rights and Welfare of the Child (1990)
- The African Union Protocol on the Rights of Women (2003)
- FDRE Constitution (1994)
- FDRE Revised Family law (2000)
- FDRE Criminal law (2004)
- FDRE General Guidelines and national policies
- Ratification status: Ethiopia
- UN Concluding Observations: Ethiopia

Furthermore, the main appeal of the international human rights instruments and standards indicated above, are their features of imposing some kinds of obligations on the States Parties. These international, regional and national human rights instruments and standards inflict a number of duties on the States Parties concerned. In this regard, the instruments' obligation to the States Parties includes the duty to protect, promote, respect and also fulfill those human rights incorporated with-in the instruments. They are required to provide the policy and legal framework for the protection and promotion of the rights including the inclusion of the principle

⁴¹ The African Charter on Human and Peoples' Rights, (1990), Article 18(3)

⁴² Id, Article 2

⁴³ Id, Article 3

⁴⁴ Fikremarkos Merso, Women & Girls and HIV/AIDS in Ethiopia (2008), p. 30.

of equality in national laws and national plan of action, and to protect their human rights. In addition to providing the policy and legal framework to protect and promote the rights of girl-children, States Parties have also the responsibility to prevent, investigate, and prosecute all forms of human rights violations and to hold perpetrators accountable.⁴⁵

2.1 DECLARATION OF THE RIGHTS OF THE CHILD (1959)

As mentioned above there have been efforts to bring an international instrument that entirely deal with the rights of the child that make provision for a catalogue of children's rights or entitlements at the international level. However, the first successful move may be traced back to 1924 when the 5th Assembly of the League of Nations adopted the 1924 Geneva Declaration. The 1924 Geneva Declaration, which was also known as the Declaration of Geneva, proclaimed a fundamental assertion where it was recognized that 'mankind owes to the child the best it has to give'.⁴⁶ This assertion latter incorporated and emphasized in the 1959 Declaration, in the CRC as well as in the ACRWC. In particular, the 1924 Geneva Declaration set out five principles aimed at fulfilling the rights of children. The 1924 Geneva Declaration, however, was never intended to create binding obligations on states and corresponding legal rights for children. Although it was termed a Declaration of the Rights of the Child, the instrument emphasized the duties that mankind gave children the best it had got to give. In other words, children were regarded as recipients of welfare rather than holders of specific rights.⁴⁷

Another very important instrument which is a further significant step in the protection and promotion of the rights and welfare of the child was taken when the General Assembly of the United Nations adopted the 1959 Declaration.⁴⁸ The Declaration is a longer document compared to its predecessor consisting of a Preamble and ten principles. The Preamble to the 1959 Declaration, which makes a reference to the UN Charter and the UDHR, calls upon governments to implement its provisions through legislative and other measures. The Preamble also reaffirms the 1924 Geneva Declaration's pledge that 'mankind owes to the child the best it has to give' and goes on to place unequivocal duties on local authorities and voluntary organizations to work towards the observance of the rights of all children.⁴⁹

Furthermore, in other ways the 1959 Declaration also has some praise worthy fundamental principles compared to its predecessor one. For instance, it incorporated the principle of non-discrimination and best interest of the child.⁵⁰ In doing so, the 1959 Declaration under its

⁴⁵ See, UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on Violence against women, U.N. Doc. A/47/38, (1992), Para. 24.

⁴⁶ See, Geneva Declaration of the Rights of the Child, (1924), preamble

⁴⁷ T. Kaime, The African Charter on the Rights and Welfare of the Child, A socio-legal perspective (2009), p. 12.

⁴⁸ See, Declaration of the Rights of the Child, (1959).

⁴⁹ Kaime, cited above at note 47, p. 13.

⁵⁰ See, The 1959 Declaration, principle 1 and 2

principle number one specifically provides for the equal protection of both girl-children and boys alike.

For that reason, the 1959 Declaration recognizes the unequal status of the girl-child, emphasizing on practices of neglect, cruelty and exploitation like early/child marriage and FGM/C, refugee and internally displaced children, disabled children and child trafficking.⁵¹

Generally, this Declaration can be said that it is the first to consider children as right holders in contrast to the 1924 Geneva Declaration that, the principles are formulated as children's rights, rather than as aims and duties for adults. Furthermore, it recognized the gender based differentiations between boys and girl-children in the society. Despite the fact that this Declaration goes deeper than its predecessor and was a further significant step on the way to the universal recognition of children's rights, it was still merely a statement of intent, incorporated in a declaration, a non-legally binding document.

2.2 THE UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC 1989)

After the adoption of the two declarations (the 1924 Geneva Declaration and the 1959 Declaration), the concern for another more binding international document on the rights of the child was still pleading for a great response from the international communities. Following the increasing demand for that apprehension, the international community once again came up with more advanced instrument in 1989. The convention was a result of a historical negotiation for a period of ten years and many amendments of the first draft prepared by the Polish, where the text of the CRC was adopted by the UN General Assembly on 20 November 1989.⁵²

In view of that, the adoption of the CRC by the UN General Assembly signaled the commencement of a new epoch of tangible efforts by nations of the modern world to give legal recognition and protection to the rights of children, even if the subject had been on the international concern since shortly after the First World War.⁵³ The adoption of this instrument received a warm welcome by the international communities, being the first internationally binding instrument concerning the child rights as a whole. Because of its acceptance and recognition by the states the most important international treaty, concerning all aspects of children's rights, it was just only after a year it became effective where 20 countries had ratified the Convention in September 1990. Currently it is almost a universally ratified document where every country in the world is a party to the document except for United States and Somalia.⁵⁴

⁵¹ Id, principle 5 and 9

⁵² UN Convention on the Rights of the Child, (1989).

⁵³ 'D. Olowu, "Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child," *The International Journal of Children's Rights*, vol. 10 (2002), p. 127.

⁵⁴ (http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en) last visited on September 21, 2013.

The CRC has followed a traditional way of framing, having a broad preamble and 54 articles that cover expansive areas of subjects. The CRC is the most advanced instrument regarding the rights of the child that incorporated all the major international human rights instruments by way of reference including the two predecessor declarations on the rights of the child. Moreover, the Convention incorporated almost all possible constituents regarding children rights with in its provisions. Another important part of the Convention is its incorporation of both civil and political rights as well as economic, social and cultural rights in one document which adds praise for the Convention and makes it a unique document. In this regard, the CRC represents a very comprehensive compilation of child specific rights that covers both the traditionally classified civil and political rights on the one hand, and economic, social and cultural rights on the other. The CRC obliges states that they should ensure procedures for non-compliance with these rights to be redressed and effective remedies for violations thereof should be established, whether the rights are considered as civil, political, economic, social or cultural, all rights must be regarded as justiciable.⁵⁵

The CRC also brought a dramatic shift in worldwide attitude towards children where all children are no longer treated as objects of rights, instead as human beings who have the full rights like all other adults. It considered children as the full owners of the rights as well as the subject of rights. In this regard, the Convention is considered as a treaty in which the international progression of human rights and children's rights are brought together. Furthermore, of all the provisions of the CRC stand out a little more eminent than the rest, reflecting the fundamental basis for children's rights. These provisions include the principle of non-discrimination⁵⁶, principle of best interest of the child⁵⁷, principle of the right to life⁵⁸ and principle of respect for the views of the child.⁵⁹ These particular provisions believed to be strengthened and thought to embody the whole philosophy behind the Convention, which mainly centers on the thinking that children are right bearers just as adults. This philosophy, as mentioned above, brought a huge attitudinal change towards children and the principles are thought to give a broad direction to the implementation of the rest of the Convention's provisions in such manner.⁶⁰

More significantly to this paper the CRC confines States Parties to ensure that children with-in their jurisdiction receive the rights in the CRC without any discrimination based on sex and other grounds.⁶¹ It requires states to take all appropriate measures to ensure that the girl-child is protected from discrimination. The CRC provides for non-discrimination of children on the basis of sex, race, religion, language etc. and requires that best interest of the children should be the

⁵⁵ The CRC, Article 4

⁵⁶ Id, Article 2

⁵⁷ Id, Article 3

⁵⁸ Id, Article 6

⁵⁹ Id, Article 12

⁶⁰ The UN Committee on the Rights of the Child, General Comment No. 5 on General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, (2005).

⁶¹ The CRC, Article 2 (1)

overarching consideration in making decisions affecting them.⁶² The child's best interests has also been explicitly referred in many other articles, including article 9, separation from parents; article 10, family reunification; article 18, parental responsibilities; article 20, deprivation of family environment and alternative care; article 21, adoption; article 37(c), separation from adults in detention; article 40 paragraph 2 (b) (iii), procedural guarantees, including presence of parents at court hearings for criminal matters involving children in conflict with the law.⁶³

In addition, the CRC spells out the basic human rights that all children everywhere have including the right to survival and develop to the fullest,⁶⁴ to protection from harmful influences abuse and exploitation,⁶⁵ and to participate fully in family, cultural and social life.⁶⁶ For instance, it urges governments to protect girl-children from all forms of sexual exploitation and abuse and take all measures possible to ensure that they are not abducted, sold or trafficked.⁶⁷ The CRC requires governments to recognize the right of girl-children to the enjoyment of the highest attainable standards of health and to facilitate for the treatment of illnesses and rehabilitation of health.⁶⁸ It also obliges them to take appropriate measures to protect girl-children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, exploitation, including sexual abuse.⁶⁹ It further requires States Parties to undertake to protect them from all forms of sexual exploitation and abuse in particular inducement or coercion to engage in any unlawful sexual activity and exploitative use in prostitution or other unlawful sexual practice.⁷⁰ Furthermore, it call for states to take all appropriate measures at the national, bilateral and multilateral levels to prevent the abduction, sale of or trafficking of girl-children for any purpose and in any form.

Afterward, in the view of strengthening the protection and promotion of the children rights in line with the CRC, in 2000 the UN General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography⁷¹ which focus largely on attention to the criminalization of these serious violations of children's rights and emphasizes the importance of promotion increased public awareness and international cooperation in efforts to combat the Sale of Children, Child Prostitution and Child Pornography. This Optional Protocol supplements the CRC by providing States with detailed requirements to end the sexual exploitation and abuse of children, particularly girl-children. It also protects children from being sold for non-sexual

⁶² Id, Article 3 Para. 1.

⁶³ The UN Committee on the Rights of the Child, General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, (2013), Para. 3.

⁶⁴ The CRC, Article 27

⁶⁵ Id, Article 34

⁶⁶ Id, Article 29

⁶⁷ Id, Article 34 and 35

⁶⁸ Id, Article 24

⁶⁹ Id, Article 19

⁷⁰ Id, Article 34

⁷¹ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, (2000).

purposes such as other forms of forced labor, illegal adoption and organ donation.⁷² The Protocol requires states to prescribe penalties not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labor, but also for anyone accepting the child for these activities.⁷³ The UN also adopted another optional protocol to protect children in time of armed conflict in 2000.⁷⁴ In addition, it adopted the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in 2011.⁷⁵ This third Optional Protocol provides an answer for the long existing critics over the CRC's loophole concerning the full recognition of children as a full right holder by providing a means for both children and their legal representatives the right to submit communications concerning violation of children's rights by a States Parties.⁷⁶

Furthermore, not only these optional protocols were the supplements of the CRC but a number of stipulations from the CRC have been expanded on by means of General Comments issued by the UN Committee on the Rights of the Child. So far there are about seventeen UN Committee on the Rights of the Child's General Comments with regard to various children issues, though there is no separate General Comment by the UN Committee on the Rights of the Child on the girl-child.⁷⁷

Consequently, the ratification of the Convention *in unison* indicates a basic acceptance of the premise that the welfare of all children may be best achieved by the promotion and protection of their rights without differentiation of treatments based on any ground. In this regard, the most important provisions of the convention are the provisions that imposed obligations on the States Parties where it obliged all parties to respect and ensure the rights set forth in the CRC without discrimination of any kind, including sex, with-in their jurisdiction by taking all necessary measures, including legislative, administrative and other similar actions.

2.3 THE UN CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979)

Even though there are a number of international, regional and national instruments that protect and promote the human rights of all human beings, the discrimination of persons based on sex has been increasing as a result of which the need for a separate instrument that addresses the issue in a well-organized manner arose. Accordingly, in order to address the issue, the

⁷² Id, Article 3

⁷³ Id, Article 4

⁷⁴ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, (2000).

⁷⁵ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, (2011).

⁷⁶ See, C. Phillips, "Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure," *International Association of Youth and Family Judges and Magistrates*, (2013).

⁷⁷ (<http://www2.ohchr.org/english/bodies/crc/comments.htm>) last visited on September 26, 2013.

Convention on the Elimination of all forms of Discrimination Against Women (hereinafter the CEDAW) was adopted in 1979 by the UN General Assembly,⁷⁸ which is the most comprehensive legally binding instrument dealing exclusively with human rights of women and girl-children to equality and non-discrimination. As a matter of fact, the CEDAW does not create a new package of human rights for women and girl-children rather it restates the human rights of women and girl-children to equality and not to be discriminated against on the basis of sex, where the rights have already been enshrined in the major human rights instruments discussed above. For that reason, it provides for women and girl-children rights to non-discrimination on the basis of sex and affirms equality in all circumstances between males and females.

The CEDAW, among others, provides a clear and complete definition for discrimination. Accordingly, it defines discrimination as "*[a]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*"⁷⁹ The remarkable part of the CEDAW is that it obliges States Parties not only to issue laws that outlaw discrimination but also to take measures to ensure elimination of discrimination and equality of women and men and boys and girl-children.⁸⁰ This instrument legally binds all States Parties that sign and ratify the Convention to fulfill, protect and respect women's and girl-children's human rights. It also provides for the realization of equality between women and men and boys and girl-children by ensuring women's and girl-children's equal access to all economic and social as well as education, health, and other opportunities. It requires States Parties to take all appropriate measures including legislative, to modify or abolish existing discriminatory laws, regulations, customs and practices which constitute discrimination against women and girl-children.⁸¹ The CEDAW also calls for the elimination of prejudices which are based on the idea of the inferiority of either of the sexes or on stereotyped rules for women and men and boys and girl-children.⁸² It specifically calls for actions to protect women and girl-children against violence of any kind occurring with-in the family, in the community, at school or in any other area of social life.

To supplement the CEDAW, optional protocol was also adopted in 1999.⁸³ The Optional Protocol to the CEDAW provides for two procedures: a communication procedure that aims to redress specific grievances and an inquiry procedure that aims to identify broad human rights violations affecting a large population. But States Parties to the CEDAW should first ratify or accede to the protocol for the committee to have competence to receive and consider individual

⁷⁸ Convention on the Elimination of all forms of Discrimination Against Women, (1979).

⁷⁹ Id, Article 1

⁸⁰ Id, Article 2

⁸¹ Id, Article 2 (f)

⁸² Id, Article 5

⁸³ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, (1999).

complaints or undertake inquiry.⁸⁴ Unfortunately, Ethiopia is not a party to this protocol, and hence, it is unfortunate to be bound by it.

Furthermore, to strengthen the protection of women and girl-children the UN General Assembly adopted the Declaration on the Elimination of Violence Against Women in 1993.⁸⁵ This Declaration affirms that violence against women and girl-children constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. It also recognizes that violence against women and girl-children is a manifestation of historically unequal power relations between men and women and boys and girl-children, which have led to domination over and discrimination against females, and calls for States Parties to condemn violence against women and not invoke any custom, tradition or religious considerations to avoid their obligation with respect to its elimination. For that reason, the States Parties should pursue a policy of eliminating violence against women and girl-children by all appropriate means.⁸⁶

2.4 DECLARATION ON THE RIGHTS AND WELFARE OF THE AFRICAN CHILD (1979)

Apart from the international system, regionally the African states also adopted the Declaration on the Rights and Welfare of the African Child (hereinafter the African Children's Declaration) at the 16th ordinary session of the Assembly of Heads of States and Governments of the Organization of African Unity (hereinafter the OAU) in Liberia.⁸⁷ In 1979, the OAU adopted the African Children's Declaration, underlining the importance of children's rights on the African continent. Even though, this Declaration, like any other Declaration, is not a legally binding document, it incorporated very important child rights.

Further to that, the African Children's Declaration took unambiguous cognizance and gave support to the processes in the UN General Assembly with respect to the rights of the child. In particular, it mentioned UN General Assembly Resolution 1/31/169 which proclaimed 1979 as the International Year of the Child (IYC).⁸⁸ In this regard, the African Children's Declaration called on the then all OAU Member States, including Ethiopia, to form permanent commissions or machineries bequeathed with the necessary legal powers to assist in implementing the IYC.⁸⁹ The African Children's Declaration has formulated into 12 articles that promote and protect the rights and welfare of the child particularly with regard to, medical care, nutrition, education and

⁸⁴ Id, Article 3

⁸⁵ Declaration on the Elimination of Violence Against Women, (1993).

⁸⁶ Id, Article 4

⁸⁷ Declaration on the Rights and Welfare of the African Child, (1979).

⁸⁸ Id, Preamble Para. 2.

⁸⁹ Id, Article 1

other basic services and child labor.⁹⁰ Most importantly, it obliges Member States to take legal and educational measures to abolish and thoroughly examine cultural legacies and practice that are harmful to normal growth and development of the girl-child such as early/child marriage and FGM/C.⁹¹ It also urge Member States to formulate and implement programs in the field of health, nutrition and education as part of national development plans with a view to making these services universally accessible to all children.⁹² Furthermore, it encourages Member States of the then OAU (currently AU) to paying particular attention and provide priority to the most deprived and vulnerable children, like the girl-child, in the expansion of essential services.⁹³ In doing so, it explicitly recognized the 1959 Declaration by declaring that Member States of the OAU should undertake or continue efforts to renew the laws relating to the rights of girl-children, particularly by taking into account the unequal status of the girl-child.⁹⁴

2.5 AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD (ACRWC 1990)

Having some strong reasons on the need to have its own binding instrument on the rights of the child, the Assembly of Heads of State and Government of the OAU adopted the ACRWC in July 1990, which entered into force on Nov. 29, 1999.⁹⁵ One of the reasons for the emergence of this Charter perhaps is that the African States felt that, the CRC neglected or not incorporated important socio-cultural and economic realities of the African empathetic.⁹⁶ As a result of that, they thought that there is a need to have a child right instrument that take in to consideration the virtues of African cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child.⁹⁷ For that reason, currently the ACRWC is considered as one and the only most important instrument for the promotion and protection of the rights of all children in Africa.

Even though, the ACRWC has its own unique features, it has also strong similarity with the CRC as far as the two instruments provisions are concerned. However, compared to the CRC, the ACRWC provides the African child with a better protection of its human rights.⁹⁸ It incorporated exactly 48 articles with a comprehensive Preamble where most provisions appeared to be made in addition of or modification to the CRC.⁹⁹ The ACRWC makes elaborate provisions on the

⁹⁰ Id, Article 6,7 and 9

⁹¹ Id, Article 3

⁹² Id, Article 6 (a)

⁹³ Id, Article 6 (b)

⁹⁴ Id, Article 2

⁹⁵ The African Charter on the Rights and Welfare of the Child, (1990).

⁹⁶ Olowu, cited above at note 53, p. 128.

⁹⁷ See, the ACRWC, Preamble Para. 7.

⁹⁸ Benyam D. Memzur, cited above at note 22, p. 7-14.

⁹⁹ Olowu, cited above at note 53, p. 129.

CRC for the protection and promotion of the rights and welfare of all children in Africa. It also establishes certain rights that are part of either customary law rules or general principles of international law. It must, however, be mentioned that both instruments are not opposed to each other; rather they appear to be complementary.¹⁰⁰

Another point worth to mention is that in same fashion with the CRC, the ACRWC is founded on four fundamental principles which are meant to help with the interpretation of the ACRWC's provisions as a whole and thereby guide national programs of implementation. These principles are non-discrimination; best interests of the child; the views of the child; and right to life, survival and development.¹⁰¹ In this regard, the non-discrimination clause under article 3 is paramount for the improvement of the equal rights of the girl-child where it guarantees the equality of opportunity for children of both sexes without any discrimination.

Moreover, the ACRWC oblige States to discourage any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the Charter to the extent of such inconsistency.¹⁰² In this regard, it took a strong stand in protecting the girl-child from the traditional social practices that have very harmful effect to her well-being. This is a breakthrough move to protect girl-children from HTPs where many discriminatory and dangerous practices emanate from custom and heritage.¹⁰³ The ACRWC also provide another useful provision to the girl-child by specifically setting the uniform age for the duration of childhood where it stipulates that "a child means every person below the age of eighteen years".¹⁰⁴ In doing so, unlike the CRC which provides States Parties with the possibility of setting a younger age of majority, it provide the African child with guaranteed protection where childhood shall extend to the age of 18 without any possible exception of reducing it. Moreover, the ACRWC urge States Parties individually and collectively to accord the highest priority to the special needs of children living under discriminatory regimes and obliges them to offer, material assistance to such children and direct efforts to the elimination of all forms of discrimination.¹⁰⁵ These explicit provisions have a vital importance, as they do not dilute the importance of non-discriminatory practices and directly confront some of the most relevant issues affecting the girl-child in Africa.¹⁰⁶

Unfortunately, though it has many provisions that are believed to be African, the ACRWC has not praised for attracting the support of many African countries. For instance, it had waited about nine years just to get only 15 countries to ratify and bring it in to effect.¹⁰⁷ It was not only from

¹⁰⁰ Id, p. 127.

¹⁰¹ See, The ACRWC, Article 3, 4, 4 (2), and 5 respectively

¹⁰² Id, Article 1 (3)

¹⁰³ A. Lloyd, "The African regional system for the protection of children's rights", in J. Sloth- Nielsen (ed.), Children's rights in Africa: A legal perspective, (2008), p. 39.

¹⁰⁴ The ACRWC, Article 2

¹⁰⁵ Id, Article 26 (2 and 3)

¹⁰⁶ Lloyd, cited above at note 103, p. 36.

¹⁰⁷ Benyam D. Memzur, cited above at note 22, p. 6.

African states, but also from scholars that the Charter was given less attention and only few academic publications are devoted to discussing the ACRWC. As a result of the widened information gap, it seems that the ACRWC and the Africans fall apart.¹⁰⁸

Apart from this loophole, feasibly the most progressive part in the ACRWC is in the framework of its implementation mechanism. African Committee of Experts on the Rights and Welfare of the Child, the treaty body endowed with the supervision and monitoring of the implementation of the ACRWC provisions has broad interpretative and promotional mandates. It has also a power to promote and protect the rights and welfare of the child and formulate principles and rules aimed at the promotion of the rights of the child in Africa.¹⁰⁹ This has been identified as a comprehensive power that would allow the Committee to draft a checklist of fundamental principles on the rights of the child which could become useful tools in positively influence the formulation of national legislation and policies.¹¹⁰

Nevertheless, the main challenge of the Committee is its monitoring task through reporting procedure, where the Committee has not received often a report from the States Parties, even it makes it worse for majority of countries have not yet submitted their initial report and Ethiopian is not an exception in this regard. The main reason for the failures of the countries, conceivably, is the shorter period of intervals between the makings of reports.¹¹¹ The providential part of this, however, is most countries party to the ACRWC, including Ethiopia, have incorporated similar sometimes a direct copy of the same provisions of the ACRWC with in their national laws.

As provided above it was in order to give the CRC specific application with-in the African context that the ACRWC, the first binding regional treaty on the human rights of the child, was adopted. And hence, for the better implementation of the ACRWC, States have to take all appropriate measures including marking the official status of the ACRWC through progressive legislation, ensuring awareness among government officials and staff at all levels, particularly school education is instrumental in raising awareness among children themselves.¹¹² In this regard, Ethiopian is also expected to commit it-self for taking these measures, where awareness among the government officials is very low and the use of school education is also very minimal.

2.6 THE AFRICAN UNION PROTOCOL ON THE RIGHTS OF WOMEN (2003)

Despite the ratification of major international and regional human rights instruments that promote and protect the rights of the girl-child by the majority of States in Africa, and their

¹⁰⁸ Id, p. 7

¹⁰⁹ The ACRWC, Article 32 cum 42

¹¹⁰ R. Adegbola, Children's Rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare of the Child (2007), p. 13.

¹¹¹ The ACRWC, Article 43

¹¹² Olowu, cited above at note 53, p. 134.

solemn commitment to eliminate all forms of discrimination and HTPs against women and girl-children, women and girl-children in Africa still continue to be victims of discrimination and harmful practices and customs. With the intention of remedying the weaknesses by the major African States in addressing the most persistent problems of the African Women and girl-children, the second Ordinary Session of the Assembly of the AU at the Maputo Summit held in Mozambique, adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (hereinafter the African Women's Protocol) July 2003.¹¹³ Categorically, the coming in to force of the African Women's protocol on 25 November, 2005, was a result of many years of consciousness raising by African women's rights advocates, for a strong demand on a document which would promote and protect the human rights of the African women and girl-children.¹¹⁴

The adoption of this Protocol by Africans has enormous significance for the girl-child in many perspectives. First, it reinforces the status of women's and girl-children's rights that have been established and elaborated in other international and regional instruments. Second, it is the first instrument in international law to call for the legal prohibition of FGM/C and third, it is the first instrument of its kind developed by Africans, for Africans.¹¹⁵

The African Women's Protocol has 32 articles, addressing the social, cultural, economic, legal, and political concerns of women and girl-children in Africa. The Protocol defines, among other things, Discrimination against women, Harmful Practices, Violence against women, and also more importantly it defines 'women' as persons of female gender, including girl-children.¹¹⁶ It also extensively deals, inter alia, with women's and girl-children's rights to dignity; the rights to life, integrity and security; access to justice and equal protection before the law; right to education and training; economic and social welfare; and also the rights to health.¹¹⁷ Furthermore, it addresses violence against women and girl-children, practices harmful to women and girl-children, sexual harassment and provides provisions relating to the rights of women and girl-children not to be discriminated against. Not only this protocol provides these rights, but it urges States Parties to combat all forms of discrimination against women and girl-children through appropriate legislative, institutional and other measures.¹¹⁸ In this regard, the African Women's Protocol is perhaps the only binding legal instrument in the continent to address specifically women's and girl-children's rights in sufficiently and detailed manner. This Protocol

¹¹³ Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa, (2003).

¹¹⁴ F. Banda, "Blazing A Trail: The African Protocol on Women's Rights Comes Into Force," *Journal of African Law*, Vol. 50, Issue 01, (2006), p. 72.

¹¹⁵ R. Gaway and R. Mukasa, "The African Women's Protocol: A New Dimension for Women's Rights in Africa," *Gender and Development*, Vol. 13, No. 3, (2005), p. 42.

¹¹⁶ The African Women's Protocol, Article 1

¹¹⁷ Id, Article 3, 4, 8, 12, 13 and 14 respectively

¹¹⁸ Id, Article 2

also imposes the duty on Member States to protect the girl-child from practices and situations that increase their vulnerability towards early/child marriage, sexual violence and FGM/C.¹¹⁹

In addition to the ACRWC, as discussed above, the African Women's Protocol also covers a broad range of issues and advances human rights for African women and girl-children through creative, substantive and detailed language. For instance, it addresses the right to education and training for women and girl-children and obligates States Parties to eliminate all forms of discrimination against women and girl-children and guarantee equal opportunity and access in the sphere of education and training.¹²⁰ Furthermore, it urges States Parties to protect women especially the girl-child from all forms of abuse including sexual harassment in schools and other educational institutions and provide for sanctions against perpetrators of such practices.¹²¹

The development of this protocol has a paramount effect on its implementation by Africans for they consider it as a home-grown instrument and their own. For instance, it avoids the negative perception on the CEDAW by many African Women rights Activists, where they consider it as a western legal instrument.¹²²

The most advancement of this protocol regarding the girl-child is that it banishes HTPs such as FGM/C, and early/child marriages. It also guarantees the right of African women and girl-children to live in a positive cultural context and their right to enhanced participation in the determination of cultural policies.¹²³ Furthermore, it permits medical abortion for pregnant girl-child where it is a result of rape, sexual assault, and incest and endangers her health or life.¹²⁴ In this regard, it can be said that this is very helpful for many girl-children who became pregnant as a result of being victims of rape.

Overall, the African Women's Protocol is the first comprehensive legal framework for protection and promotion of women's and girl-children's rights in Africa. It is a governing tool to improve the status of women and girl-children by bringing about gender equality and eradicating gender based discrimination and violence. So far, 38 out of the 54 Member States of the AU have signed the Protocol. Of these, eleven countries had ratified the Protocol at the time of writing.¹²⁵ Unfortunately, Ethiopia is not a party to this document, though it has signed, as a result of which women and girl-children still facing serious social crisis and continue to be the main targets of violence, and discrimination. Thus, an urgent need for the ratification of this instrument is

¹¹⁹ Id, Article 5 and 6

¹²⁰ Id, Article 12 (1 (a))

¹²¹ Id, Article 12 (1 (c))

¹²² Gaway and Mukasa, cited above at note 115, P. 44.

¹²³ The African Women's Protocol, Article 17

¹²⁴ Id, Article 14

¹²⁵ (<http://www.africanunion.org/root/au/Documents/Treaties/List/Protocol%20on%20the%20Rights%20of%20Women.pdf>) last visited on September 26, 2013.

required, though most of the issues addressed in this protocol are also found in many domestic laws of the nation.

2.7 FDRE CONSTITUTION (1994)

The Federal Democratic Republic of Ethiopia does not have a comprehensive child law in the form of a children's code (child rights act) or an all-inclusive child rights Proclamation, rather it is the FDRE constitution, the RFC, the FDRE criminal code and other laws, like the Labor Proclamation No. 377/2003, that are addressing issues affecting children's rights in the present Ethiopia. Accordingly, although not sufficiently, it is these laws which provide a series of substantive laws regarding child rights and also establishes some pertinent institutional framework indispensable for the full implementation and realization of children's rights in Ethiopia.

The FDRE constitution, which is the supreme law of the land,¹²⁶ is the foremost and mother of all laws of the nation, that provide ample protection and promotion to every human rights in general and for children rights in particular.¹²⁷ The FDRE constitution besides of allotting about one third of its provisions to the protection and promotion of human rights under chapter three, it has also received praise for its incorporations of both specific and general provisions on the rights of women and girl-children, and children.¹²⁸ In addition to being the mother of all laws of the nation, as mentioned above, the FDRE constitution has an inherent mechanism of incorporating international human rights covenants that are ratified by Ethiopia into the national legal framework and hence makes it part of the law of the land.¹²⁹ As a result of that, International human rights agreements ratified by Ethiopia, including CRC, ACRWC, CEDAW and other instruments, are now considered part and parcel of the law of the land.

Moreover, the constitution also provides that the fundamental rights and freedoms specified under chapter three shall be interpreted in a manner conforming to the principles of the UDHR, International Covenants on Human Rights and international instruments that Ethiopia adopted.¹³⁰ This specific provision provides standards for the interpretation of the constitution in matters related to fundamental human rights, for international human rights instruments, such as the CRC, ACRWC, and CEDAW etc. In line with this reason, it obliges all the Federal and State legislative, executive and judiciary organs at all levels to have the responsibility and duty to respect and enforce the fundamental rights and freedoms provided thereof.¹³¹ The aspiration of

¹²⁶ The Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art. 9 (1), Proc. No 1, Neg. Gaz. Year 1, no. 1. (hereinafter cited as The FDRE constitution).

¹²⁷ Id, Article 14-44

¹²⁸ Id, Article 35 and 36 respectively

¹²⁹ Id, Article 9 (4)

¹³⁰ Id, Article 13 (2)

¹³¹ Id, Article 13 (1)

this provision, however, is essentially limited to the substance of the rights for it failed to address the mechanisms for implementation, and hence, if not handled through appropriate constitutional interpretation or amendment processes, persisting breaches in constitutional alignment would constitute a critical challenge to execute child rights in Ethiopia.¹³² Accordingly, to minimize such critical challenge, whenever Ethiopia ratify international treaties like CRC and ACRWC, it is required to carry out a comprehensive review of all national legislation and related administrative measures to ensure full compliance with the obligations of the instruments.¹³³

Ethiopia has ratified a number of human rights instruments; inter alia, the ICCPR, ICESCR, CEDAW, CRC, ACRWC, ACHPR, and the Convention Against Torture (CAT). As just mentioned above, the FDRE Constitution provides that all international treaties ratified by Ethiopia are the integral parts of the law of the land as a result of which it oblige all organs of the government to interpret the human rights provisions under chapter three of the constitution in a manner conforming to these international instruments. These stipulations are very much paramount, if appropriately used, for it arrange significant opportunity to interpret the rights in light of these international treaties which have been extensively interpreted and benefit from a large body of jurisprudence that has been built-up over many years. Nonetheless, this has not been the case as the judiciary has been contending with technical issues as to when and how the international and regional treaties ratified by the country, could be used by courts to make decisions.¹³⁴ Moreover, although the FDRE constitution provides as mentioned above, it seems unusual for courts and litigating parties to a suit to cite the provisions of the international and regional human rights instruments while making decisions and presenting argument. As a result of this, the more valued and elucidating rights that are guaranteed by the FDRE constitution will be forced to play a subordinate than supreme role.

The provisions of the FDRE constitution have served as a template for other and more specific laws issued in the country subsequently. The human rights and freedoms enshrined in the FDRE constitution have relevance in the context of the girl-child. The rights to non-discrimination and equality before the law, access to social services including health and education, participation, the right to privacy, to an adequate standard of living, to social security are certainly rights with significant implications to the rights of the girl-child in the country.

The FDRE constitution provides for the right to equality which entitles girl-children to benefit from the catalogue of rights it prescribes.¹³⁵ In doing so it recognizes, under article 25, the principles of non-discrimination and equality before the law as one of the fundamental rights and freedoms. Specifically, Article 35 of the FDRE constitution is devoted to the rights of women and contains several provisions covering important rights of women and girl-children. These

¹³² The African Child Policy Forum, *Harmonization of Children's Laws in Eastern and Southern Africa* (2012), p. 52.

¹³³ See, The CRC, Article 4 and the ACRWC, Article 1

¹³⁴ See, Ibrahim Idris, "The Place of International Human Rights Covenants in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution," *Journal of Ethiopian Law*, vol. 20 (2000), p. 113-137.

¹³⁵ The FDRE constitution, Article 25, 35 (1, 3, 4), 36

include equal protection of the law, entitlement to affirmative measures, protection from HTPs, the right to consultation, and access to basic social benefits and services. Furthermore, it recognizes the effects of past discrimination against women and girl-children and entitles them to affirmative measures, the purpose of which is to provide special attention to women and girl-children, so as to enable them to compete and participate, on the basis of equality, with men and boys in social and economic life as well as in public and private institutions.¹³⁶ More importantly, it further extends its protection for the girl-child from HTPs by providing specific provisions for the right to protection against bodily harm and prohibits laws, customs and practices that oppress and cause bodily or mental harm obliging the states to enforce the right of women and girl-children to eliminate the influences of harmful customs.¹³⁷

One of the reasons that calls for praise with regard to child rights in the FDRE constitution is its phrasing in addressing ‘the principle of the best interest of the child’ where unlike the CRC, it used ‘*the primary consideration*’ than ‘*a primary consideration*’. The FDRE constitution provides that ‘*[i]n all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child*’.¹³⁸ Such phrasing is fundamental interpretative legal principle where if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen.¹³⁹ In this regard, the use of ‘*the*’ rather than ‘*a*’ is worth mentioning for it indicates that not only the best interests of the child should be taken into consideration in actions concerning children, but that competing interests such as conflicting human rights issues shall be taken in to consideration.

Furthermore, as will be discussed in detail under chapter four of this study, there are a number of human rights provisions in the FDRE constitution that are applicable to all children in general and for the girl-child in particular which are enshrined as fundamental in both the CRC and ACRWC. In this respect, the FDRE constitution provides specifically rights to the girl-child, namely the rights to life, name and nationality, to know and be cared for by her parents or legal guardians, to be protected from exploitative practices and not to be forced to undertake work that may harmful to her education, health and well-being, to be free from corporal punishment or cruel and inhumane treatment in schools and other institutions, and so forth.¹⁴⁰

Taking a good look in to those child rights provisions with in the FDRE constitution, one can affirm that the constitution has very well incorporated both the CRC and ACRWC in a firm manner. This is perhaps because it was drafted and adopted after Ethiopia ratified the CRC,

¹³⁶ Id, Article 35 (4)

¹³⁷ Id, Article 16 and 35 (4)

¹³⁸ Id, Article 36 (2)

¹³⁹ The UN Committee on the Rights of the Child, General Comment No. 14, cited above at note 63, Para. 40.

¹⁴⁰ The FDRE constitution, Article 36

which consequently may have influenced the drafters to embody some of the parts in the text of the FDRE constitution itself as it is found in the instruments thereof.¹⁴¹

As mentioned above, the Federal and regional state *legislative, executive and judicial* organs at all levels shall have the responsibility and duty to respect and enforce the provisions of the FDRE constitution in conformity with the international human rights agreements ratified by the country that has been made part of itself. However, despite the ratification of many international and regional human rights instruments concerning women and children by Ethiopia, its implementation in reality remains inadequate. This originates mainly from two basic problems for the internal application of ratified human rights conventions in Ethiopia. The first is the confusion regarding the methods of incorporation of international agreements into Ethiopian law. The second has to do with the absence of meaningful implementing legislation for their enforcement.¹⁴²

It is widely recognized that States follow either the *monist* or *dualist* approaches to the incorporation of international agreements into the national system. The former is based on the principle that international and domestic laws have identical sources, subjects and substantive contents. Hence, domestic courts can directly invoke and apply international agreements without the need for an enabling legislation from the domestic legislature. The dualist approach on the other hand asserts that international law and municipal laws have different subjects and operate on different planes, thus requiring at all times a domestic version of the treaty, which is carried out by either annexing the treaty to an enabling legislation or rewriting it again.¹⁴³

The Ethiopian scenario with regard to incorporation of international instruments does not appear to have a theoretical foundation. The practice, however, seems to suggest the *monist* method is followed even though that is not at all convinced.¹⁴⁴ International agreements are incorporated into Ethiopian law by a single act of ratification without reproducing the text of the treaty. The treaty making practice of the country shows that it is only the OAU Establishment Charter that was reproduced in the Negarit Gazeta.¹⁴⁵ In all other cases, statement of ratification is the only information that is published in the Negarit Gazeta after the legislative body decides to ratify a treaty. Arguably, this in effect means that a treaty in the original version automatically becomes the law of the land, and hence binding, the moment of its ratification is published. Though the theoretical framework is somewhat as described above, the lack of court decisions on disputes arising from treaties makes the assertion exposed to an extensive uncertainty.

¹⁴¹ Seyoum Yohannes and Aman Assefa, *Harmonization of laws relating to children: Ethiopia* (2006), p.7.

¹⁴² Ibrahim Idris, cited above at note 134, p. 122.

¹⁴³ Takele Soboka Bulto, "The Monist-Dualist Divide and the Supremacy Clause: Revising the Status of Human Rights Treaties in Ethiopia," *Journal of Ethiopian Law*, vol. 23 (2009), p. 135.

¹⁴⁴ *Id.*, p. 155

¹⁴⁵ The Charter of the OAU Approval Proclamation, 1992, Proc. No. 202, Neg. Gaz. Year 22, no. 16.

The immense challenge, in this regard is that, when a treaty is ratified in this way, the courts are left without a clue as to its contents. To begin with, obtaining the text of the treaty is difficult and will not be available in the languages in which the courts run their function. It is quite proper at this juncture to recall that courts in Ethiopia are required by law to take as law only those instruments that appear in the official Negarit Gazettes.¹⁴⁶ This worsens the misperception and uncertainty since only the statement of ratification is published. As a result, courts may hesitate to apply human rights treaties, even if it wish to apply international human rights treaties including the CRC and ACRWC, the lack of implementing legislation, or some means of making official versions of treaties available, will pose a serious problem unless the legislature makes the necessary intervention.

Consequently, the absence of such implementing legislation, which so far has been the case in Ethiopia, is contrary to the obligations of Ethiopia under many international instruments like the CRC and ACRWC. Generally, many agree that there are three possible main methods that are available for the enforcement of international human rights instruments in Ethiopian domestic law. First it is possible to apply directly the human rights provisions recognized in the bill of rights in domestic legal order. Second, it is also possible to cite different legislative in the civil, criminal and administrative laws to give effect to the different rights recognized in human rights instruments or the bill of rights and thirdly, it is still possible to impose directly the provisions of the international human rights instruments that are ratified by FDRE as they are.

In this regard, it is the decision of the Federal Supreme Court, Cassation Division which took the stance to clarify the uncertainty by ruling a milestone decision concerning the rights of the child.¹⁴⁷ The supreme court passed this important decision based its decision on assertions on the fundamental principle of the best interest of the child, as it is recognized under article 3 (1) of the CRC and article 4 (1) of the ACRWC where it reverse the ruling of the lower court on the case disputed over child custody. In doing so, it made clear that in the cases concerning the child the fundamental principles incorporated under international child rights instruments shall be considered. The important part of this decision is that it used as a precedent to all other similar cases as well as other cases that demand the reference of those international human rights instruments Ethiopia has adopted.¹⁴⁸

2.8 FDRE REVISED FAMILY LAW (2000)

As noted above, the FDRE constitution declares that all children without any distinction on grounds of **sex**, race, nation, nationality, or other social origin, color, language, religion, political

¹⁴⁶ Federal Negarit Gazeta Establishment Proclamation, 1995, Art. 2 (3), Proc. No.3, Neg. Gaz. Year 1, no. 3.

¹⁴⁷ See, Tseale Demesa v Kefla Demesa, (Federal Supreme Court Cassation Division, October 18, 2008), Federal Supreme Court Cassation Division, vol. 5, p. 188-191. and Etsegenet Eshetu v Selamawit Neguse, (Federal Supreme Court Cassation Division, December 8, 2009), Federal Supreme Court Cassation Division, vol. 8, p. 243-247.

¹⁴⁸ Girmachew Alemu and Yonas Birmeta, Handbook on the Rights of the Child in Ethiopia (2012), p. 45.

or other opinion, property, birth or other status have the right to equal protection of the law.¹⁴⁹ In line with this basic principle, many other laws were enacted to extend and elucidate it in different laws of the nation including the RFC.

The main reason for the amendment of the pre-existing family law and the enactment of the RFC was that to give priority to the well-being, upbringing and protection of children in accordance with the FDRE constitution and international instruments which Ethiopia has ratified.¹⁵⁰ This code encompasses a number of important provisions with regard to children rights. In this regard, the code provides many pertinent provisions concerning the rights of the girl-child. Among other things, it further prescribes the minimum marriageable age for both sexes to be 18, in doing so it is playing paramount role in fighting against early/child marriage.¹⁵¹ These provisions on marriageable age can be said are very much advanced compared to the 1960 Civil Code of Ethiopia which were founded on the understanding that male and female were unequal. With that respect the RFC has brought what may be considered a revolutionary change to the parts of the Civil Code dealing with marriage and has abolished most of the discriminatory provisions of the Civil Code in many respects like in relation to early/child marriage. It amended the discriminatory marriageable age for boys and girl-children and prescribes the age of eighteen as the marriageable age for both sexes. It thus, provides that marriage should be based on certain criteria where the girl-child would not be dragged any longer to early/child marriage.

An important feature of the RFC is that it denies legal recognition to marriage by abduction and early/child marriage at the pain of dissolution of such marriages.¹⁵² Nonetheless, the application of the RFC is limited only at the federal level as regional states have been empowered to enact their own family laws by the FDRE constitution.¹⁵³ Thus, its application is currently to the city administration of Addis Ababa and Dire Dawa. For this reason, several regions have already promulgated their own family laws and have abolished the most inequitable provisions to the girl-child. They have founded their bases on the principle of equality, prevention of early/child marriage, and other harmful practices to the girl-child in pursuance to the provisions of FDRE constitution and the RFC. To date, while some regions are at different stages of drafting family laws, some others like the Amhara, Tigray and Oromia Regional States have already adopted their family laws in conformity to the FDRE constitution and the RFC. One concern is that the regions that have not yet adopted their family laws may apply the old discriminatory Civil Code provisions, pending the approval of the family laws. In line with this, the UN Committee on the Elimination of Discrimination against Women has expressed its concern that the RFC is not yet applicable in all regions, and most regions have not yet put into effect modified regional family

¹⁴⁹ The FDRE constitution, Article 25

¹⁵⁰ The Revised Family Code Proclamation, 2000, Preamble Para. 3, Proc. No. 213, Neg. Gaz. Extra Ordinary issue, Year 6, No. 1. (hereinafter cited as The RFC).

¹⁵¹ Id, Article 7 and 31

¹⁵² Id, Article 6 and 7

¹⁵³ The FDRE constitution, Article 52

laws, the rights of girl-children is still in danger in those regions.¹⁵⁴ However, legally speaking, family laws or practices that are inconsistent with the provisions of the FDRE constitution are simply having no effect.¹⁵⁵

Generally, the RFC contains various provisions concerning the girl-child, including issues such as marriageable age, affiliation and maintenance, and adoption where it set the grounds for the better regulation of adoption. However, it does not have any specific provision concerning the girl-child; it also does not define the term ‘child’ *per se*, but uses the related concept of ‘minor’.

2.9 FDRE CRIMINAL LAW (2004)

The FDRE constitution replicates many of the basic principles found in major international human rights instruments. Some of the basic human rights that are given ample protection by the FDRE constitution and the international human rights instruments include the right to protection against bodily harm, not to be subject to exploitative practices, to be free of corporal punishment or cruel and inhumane treatment and so forth. In line with this, under current laws of the nation FGM/C, early/child marriage, child prostitution, and other HTPs are prescribed as violations of human rights. In this regard, the coming in to force of the FDRE criminal code in May 2005, replacing the 1957 Penal Code, has restructured in criminalizing these HTPs which cause serious injuries and suffering to the girl-child.¹⁵⁶

The FDRE criminal code has come up with new and revised provisions relevant to the protection of girl-children’s human rights in general, and in the context of fighting HTPs in particular. This code criminalizes many HTPs that are very dangerous to the well-being of the girl-child in Ethiopia. For instance, abduction is classified as a crime under the code, marriage of a girl-child is considered a punishable act, and detailed provisions have also been included on FGM/C, and HTPs performed on the girl-child. For that reason, the FDRE criminal code addresses violence against girl-children in different forms, either by elaborating the pre-existing vague provision or by introducing new offences. Furthermore, the FDRE criminal code has redefined the elements of some existing offences, added aggravating circumstances and revised the penalties applicable in cases of violation. It criminalizes most forms of violence against girl-children including rape,¹⁵⁷ and prostitution of the girl-child for gain.¹⁵⁸ The criminalization also extends to HTPs in general, with specific provisions on FGM/C, abduction, and early/child marriage.¹⁵⁹

¹⁵⁴ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 13.

¹⁵⁵ The FDRE constitution, Article 9 (1)

¹⁵⁶ See, The Proclamation of the Criminal Code of the Federal Democratic Republic of Ethiopia, 2004. Articles 565, 566, 567 and 569, Proc. No. 414, Neg. Gaz. (hereinafter cited as The FDRE criminal code).

¹⁵⁷ Id, Article 620-628

¹⁵⁸ Id, Article 634

¹⁵⁹ Id, Article 565 and 566, 589, and 649 respectively

Moreover, it criminalizes trafficking women and children,¹⁶⁰ which has been also a growing concern about Ethiopian girl-children who have been trafficked to different destinations and forced to work under inhuman and degrading situations, including sex work. A number of reports show that tens of thousands of Ethiopian rural girl-children are illegally trafficked to different destinations with unconfirmed document that indicate their age, especially to the Middle East where they are exposed to all sorts of abuse.¹⁶¹ Generally, though attempts at enforcement have been weak, having a law that criminalizes HTPs and violations against girl-children is a step forward.

2.10 FDRE GENERAL GUIDELINES AND POLICIES

The FDRE government has been formulating and implementing various Guidelines and policies concerning the rights of women and girl-children, and children since 1993. In doing so, it formulated various policies on population, health and poverty on girl-children's issues that has direct relevance towards the betterment of the life of the girl-child in the nation. In this regard, The National Policy on Ethiopian Women (NPEW) was adopted in 1993 by the Transitional Government of Ethiopia (TGE) as the first policy document that attempts to promote and protect the rights of women and girl-children and to domesticate the international commitment entered into by the government. For this reason, it has established structures in government offices and institutions at federal and state levels that would introduce and implement gender-sensitive public policies.¹⁶²

Another very important policy document is The Education and Training Policy (ETP) that has come in to effect in 1994 having an objective of addressing the existing gender issues in education and training with-in the nation. One of the objectives of the policy is to gear education towards reorienting society's attitude and value pertaining to the role and contribution of women and girl-children in development. The policy aims to give priority to female students and financial assistance to female students with a view to raise their participation in education. Further, with a view to translate the objectives into policy action, the Education Sector Development Program (ESDP) was adopted in 1997. The ESDP envisages, among other things, to increase girl-children's enrolment share in primary schools, to reform the curricula to make it relevant and gender sensitive, and to reduce the dropout and repetition rate of girl-children.

In addition, with the view of discouraging the existing wide HTPs with-in the nation The Cultural Policy of Ethiopia (CPE) was also put in place in 1997. The policy having the objectives of abolishing HTPs, addresses some of the issues on women and girl-children with a particular focus on fighting those practices affecting girl-children.

¹⁶⁰ Id, Article 597 and 635

¹⁶¹ (<http://www.state.gov/j/tip/rls/tiprpt/2013/210549.htm>) last visited on September 28, 2013.

¹⁶² Taye Assefa (ed.), Digest of Ethiopia's National Policies, Strategies and Programs (2008), p. 94.

Among the few national policy documents, The National Population Policy of Ethiopia (NPPE) of 1993 is also relevant to the rights of the girl-child. The policy extensively deal with the issue by recognizing the low level of women and girl-children in the economic, social and political life of the society and calls for measures to be taken to empower women and enhance their participation in it. The NPPE attributes the high prevalence of infant and child ill health and mortality problems to the low status of women and girl-children, among other things. Ethiopia also has taken steps forward to implement the 2002 UN resolution regarding "A World Fit for Children" (WFC) that pledge member countries to adopt National Plan of Action. Thus, the Ministry of Labor and Social Affairs (MOLSA) prepared, Ethiopian National Plan of Action for Children (NPA) 2003-2010 and beyond.¹⁶³ The main rationale for the preparation of the NPA was to fulfill the goals, targets and strategies of WFC and policies and laws of Ethiopia.

In addition to the above ones there are a number of plans and policies that are relevant to the realization of rights of the girl-child in Ethiopia. For instance, some other key structures established for the purpose of coordinating and monitoring the implementation of the rights of the child include the children's rights committees and structures stipulated with-in the national action plans, especially the NPA for children. And also coordination and monitoring structures have also been provided for in the NPA on sexual abuse and exploitation of children.

The alternative education program was approved at the 13th National Education Conference and launched in the year 2002 at 42 stations in the Somali, Afar, Oromia and SNNP regions, becoming suitable for students in the pastoralist and agro-pastoralist areas. This complementary approach to primary schooling designed to reach students who never entered or who dropped out of school is being implemented in Ethiopia. As a result, a number of children including girl-children in pastoralist and agro-pastoralist areas have become beneficiaries of the alternative basic education program.¹⁶⁴ This program, improves the implementing capacity at regional level, in compromising the rigid calendar schedule of the formal school system that is inconvenient to school-age children in pastoralist and disadvantaged areas of Ethiopia.¹⁶⁵

Ethiopia has also launched the National Action Plan for Gender Equality (*NAP-GE-2006-2010*), the key strategy document for achieving gender equality. The Ministry of Women, children and youth affairs (hereinafter the MoWCYA) is the core executive body mandated for the rights of women and children. Moreover, MoWCYA is the lead agency for implementing the major policies framework and national plan of actions on women's and children's issues. Currently, another draft on National Child Policy that dealt entirely with children is underwnt by the same

¹⁶³ See, Ministry of Labour and Social Affairs, Ethiopia's National Plan of Action for Children: (2003-2010 and Beyond) (2005).

¹⁶⁴ See, Combined 4th and 5th Periodic Reports of the Federal Democratic Republic of Ethiopia to the UN Committee on the Rights of the Child (2006 – 2011), (2012), p. 39.

¹⁶⁵ J. Sloth-Nielsen and Benyam D. Mezmur, Free Education Is a Right for Me: A Report on Free and Compulsory Primary Education (2007), p. 36.

organ which believed to be an additional key instrument for the promotion and protection of children rights in general and the rights of the girl-child in particular.¹⁶⁶

2.11 RATIFICATION STATUS: ETHIOPIA

Ethiopia's ratification status concerning the international human rights instruments on the right of the child stands firm. Ethiopia is a party to the two major international human rights instruments on the rights of the child. It is a party to both the CRC and the ACRWC. It has ratified the CRC on 14 May 1991 without any reservation and it was proclaimed by Parliament on 19 January 1992. Following the ratification the statement of accession was published in 1992 in the *Negarit Gazeta*, which was the official law gazette of the then existing Government, and made its first initial report in 1995, and the second report 1998, and the third in 2005, and its latest and combined 4th and 5th Periodic report in April 2012. Ethiopia also became a party to the ACRWC, after it acceded it on 2 October 2002.

Among others, the Ethiopian government has also ratified other conventions that have relevance to the rights of the girl-child including CEDAW, ICCPR, ICESCR, ACHPR, the convention on the rights of Persons with Disabilities (the CRPD), ILO conventions No. 182 on the elimination of the Worst forms of child Labour, and No.138 on Minimum age of employment. Ethiopia has also made recently some important progress towards international instruments that are relevant to children in general. For instance, Ethiopia has signed the Optional Protocol on the Involvement of Children in Armed Conflict on 28th September 2010. In this regard, Ethiopia has made some progress not only regarding the ratification of international human rights instruments but also in incorporating the instruments with in the nation's laws. However, not only ratifying and copying the text into the national laws is a guarantee rather needs to be transformed into practical implementation mechanism.

¹⁶⁶ See, Ministry of Women, Children and Youth Affairs, Draft Federal Democratic Republic of Ethiopia National Child Policy (2011).

Table 2.1 Showing ratification and reporting status of Ethiopia.

International/ regional treaty	ratification status	initial report	second report	third report	Fourth report	Fifth report	sixth to seventh report
CRC	14/05/1991	1995	1998	2005	2012 (combined fourth and fifth)		-
CEDAW	10/09/1981	1996 ,(combined initial, second and third)			2004, (combined fourth and fifth)		2011
ACRWC	02/10/2002	-	-	-	-	-	-
African Women's Protocol	Only signed (01/06/2004)	Not applicable	Not applicable	Not applicable	Not applicable	-	-

2.12 UN CONCLUDING OBSERVATIONS: ETHIOPIA

Whenever a state becomes party to any international instruments, it also has an obligation to act accordingly. In the same fashion, Ethiopia when it ratifies the international human rights instruments, it takes on obligations under international law to implement it and has to take actions to ensure the realization of all rights in the Conventions in its jurisdiction. For instance, under the CRC States Parties agree the duty to submit regular reports to the UN Committee on the Rights of the Child on the steps they have taken to put the Convention into effect and on progress in the enjoyment of children's rights on their territories.¹⁶⁷ On the same speaking, the ACRWC stipulates that States are obliged to submit to the Committee of Experts reports on the measures they have adopted which give effect to the provisions of the ACRWC and on the progress made in the enjoyment of these rights the initial report with-in two years of the entry into force of it and thereafter, every three years.¹⁶⁸

Although in theory each State Party is obliged to submit the aforementioned reports after ratification of the CRC, various States Parties have failed to present their reports to the UN Committee on the Rights of the Child when due including Ethiopia. So far Ethiopia has submitted its first and initial, second, third and combined fourth and fifth report on CRC. Based on this reports the UN Committee on the Rights of the Child forwarded its concluding observations on each reports. For instance, the UN Committee on the Rights of the Child in 2006 on its concluding observation on the third periodic report, forwarded extensive recommendations on various issues including on the status of the girl-child in Ethiopia. In addition to the UN

¹⁶⁷ The CRC, Article 44

¹⁶⁸ The ACRWC, Article 43

Committee on the Rights of the Child, other UN treaty committees, such as the UN Committee on the Elimination of Discrimination against Women and UN Committee on Economic, Social and Cultural Rights, also disclose their findings and recommendations by means of concluding observations based on the report that Ethiopia submitted to the concerned committees.

The UN Committee on the Rights of the Child, in November 2006, provided its observations based on Ethiopia's third periodic report. The Committee welcomes a number of positive developments made by Ethiopia concerning the girl-child, inter alia, the criminalization of HTPs and most forms of human trafficking by the FDRE criminal code, the setting of minimum marriageable age for both sexes by the RFC which is 18 years of age for marriage for both girl-children and boys, and the adoption of a National Plan of Action for Children (2003-2010).¹⁶⁹ However, it also provides its concern regarding the insufficient resources allocation and follow-up on, inter alia, HTPs, birth registration, child labour, refugee children and juvenile justice.¹⁷⁰

The UN Committee on the Rights of the Child recommends that the State Party take measures to combat discrimination against girl-children a national priority, design programs which enable the girl-child to access her rights without discrimination and raise awareness of the value of the girl-child among all stakeholders. Furthermore, in relation to other forms of discrimination, the UN Committee on the Rights of the Child urges the State Party to take adequate measures to ensure the practical application of the provisions guaranteeing the principle of non-discrimination and full compliance with article 2 of the CRC, and to adopt a comprehensive strategy to eliminate discrimination on any grounds against the girl-child.¹⁷¹

As mentioned above, the UN Committee on the Rights of the Child recognizes the criminalization of HTPs in the FDRE criminal code, and notes with gratitude the efforts undertaken by the National Committee on Harmful Traditional Practices in Ethiopia to document and combat the practice of FGM/C. Nevertheless, the UN Committee on the Rights of the Child remains concerned that FGM/C and forced and early/child marriages of girl-children through abduction are still persistent and that a comprehensive strategy to counteract HTPs has not been put in place.¹⁷² For this reason, the Committee recommends that the State Party adopt a comprehensive strategy to prevent and combat those practices and ensure resources for its implementation, in particular in rural areas. The Committee is specifically concerned over the situation of girl-children due to the high percentage of early/child marriages and early pregnancies, as these have a negative impact on their health. Awareness-raising campaigns on the negative effects on the health of children, especially girl-children, should be conducted for the general public as well as community, traditional and religious leaders. The legislation prohibiting HTPs and forced and early/child marriages should be strictly enforced. The

¹⁶⁹ The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 2.

¹⁷⁰ *Id.*, Para. 5.

¹⁷¹ *Id.*, Para. 19.

¹⁷² *Id.*, Para. 56.

Committee further recommends that the State Party provide retraining, where appropriate, for practitioners of FGM/C and support them to find alternative sources of income.¹⁷³

The Committee also expresses its concern at the actual discrimination against girl-children where the considerable challenges remain in order to overcome inequalities based on sex, which impact on the girl-child access to education.¹⁷⁴ Increase public expenditure on education, in particular pre-primary, primary and secondary education with specific attention to improving access and addressing sex disparities in the enjoyment of the right to education. Furthermore, the UN Committee on the Rights of the Child welcomes the initiatives by the State Party to combat sexual exploitation of children, including provisions for stricter penalties in the FDRE criminal code and the establishment of a national plan of action against sexual exploitation of children. Nevertheless, the UN Committee on the Rights of the Child is concerned that a high number, especially girl-children, are victims of sexual exploitation and sexual abuse, and that the majority of cases remain in impunity.¹⁷⁵

Similarly, UN Committee on the Elimination of Discrimination against Women also takes in to consideration Ethiopia's combined sixth to seventh periodic report and provides its concluding observations in July 2011. In doing so, like the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women welcome the adoption of the FDRE criminal code which criminalizes different forms of violence against women and girl-children, including domestic violence and rape, HTPs such as FGM/C, early/child marriage and marriage by abduction, and trafficking in women and children. The Committee notes with appreciation the various policies and strategies adopted by the State Party to promote gender equality and protect women's and girl-children's rights, including the National Plan for Gender Equality (2005-2010), the Plan for Accelerated and Sustainable Development to Eradicate Poverty (2005-2010) which included "unleashing the potential of Ethiopian women" among its eight strategic elements, the Development and Change Package for Ethiopian Women seeking to promote the economic and political participation of women and to eradicate HTPs, and the joint UN/Government of Ethiopia flagship programs on gender equality and maternal health.¹⁷⁶ The Committee also recognizes the measures made by Ethiopia to promote girl-children's access to education, in particular in rural and pastoralist areas, such as the introduction of girl-children's scholarship programs and the supply to girl-children of education materials and uniforms, with the support of NGOs, the introduction of girl-friendly schools as well as the construction of separate toilets for girl-children and boys in schools and providing incentives to parents in pastoralist areas who send their daughters to school.¹⁷⁷

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ Ibid

¹⁷⁶ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 5.

¹⁷⁷ Ibid

However, it remains concerned about regional disparities and low enrolment rates of girl-children in primary education in rural and pastoralist areas and in secondary and higher education, as well as in traditionally male dominated fields of technical and vocational education. Further, the high drop-out and low retention and completion rates of girl-children, in particular at the primary level, which seriously impact enrolment at the secondary level is another problem. The limited access of poor girl-children, girl-children in pastoralist areas, and girl-children with disabilities to education due to economic and socio-cultural barriers such as indirect costs of schooling, unfavorable attitudes by male students and teaching staff, verbal and physical abuse and harassment, and long distances to schools and the low female literacy rate especially in rural areas need to be considered by the state. The Committee calls on the State Party to take measures in order to correct all the above gaps.¹⁷⁸

Another relevant concluding observation is also made by UN Committee on Economic, Social and Cultural Rights which considered the combined initial, second and third periodic reports of Ethiopia on the implementation of the ICESCR in May 2012. UN Committee on Economic, Social and Cultural Rights notes with appreciation efforts made by the State Party in promoting the implementation of economic, social and cultural rights. UN Committee on Economic, Social and Cultural Rights welcomes in particular the establishment of a National Steering Committee against Sexual Exploitation of Children and the formulation of an Action Plan on Sexual Abuse and Exploitation of Children (2006-2010) and the criminalization under national legislation of the practice of FGM/C and trafficking in persons.¹⁷⁹

UN Committee on Economic, Social and Cultural Rights notes with concern that, in spite of the criminalization of the practice of FGM/C, it remains highly prevalent in rural areas and it recommends that the State Party ensure effective enforcement of the FDRE criminal code provisions criminalizing FGM/C and domestic violence. It is also expressed its concern that despite intensive efforts by the State Party to address internal trafficking and sexual exploitation of children, the problem remains widely rampant. In this regard, it recommends that the State Party intensify its efforts to prevent and combat the trafficking and sexual exploitation of children, including through the adoption of a new national plan of action to combat these problems.¹⁸⁰

¹⁷⁸ Ibid

¹⁷⁹ UN Committee on Economic, Social and Cultural Rights, Concluding Observations on the combined initial, second and third periodic reports of Ethiopia, E/C.12/ETH/CO/1-3, (2012), Para. 3.

¹⁸⁰ Id, Para. 22.

CONCLUSIONS

Under this chapter, international, regional and national legal instruments has been discussed in brief, particularly the human rights instruments that have more relevance to the rights of the girl-child is given due consideration. Extensive discussion is provided with specific reference to the instruments that are ratified by Ethiopia, to the promotion and protection of the rights of the girl-child. Furthermore, the national laws and policies of the country also are given particular emphasis on their capability to provide a better protection to the rights of the girl-child. The ratification and reporting status of the country and the corresponding concluding observations of the different UN committees are also illustrated under this chapter.

It was the 1924 Geneva Declaration, which opened the chapter for the gratitude of the universal concern for the children's human rights, though it did not recognize the differential treatment of children based on sex. This declaration was followed by the 1959 Declaration, which provides all the children with ample rights; particularly it urges States to the recognition of the equal treatment of children of both sexes. However, it is the 1989 the CRC that provides extensive rights to all children alike. In particular the CRC urges States Parties under article 2 to respect and ensure the rights set forth with-in it to each child with-in their jurisdiction without discrimination of any kind, including sex. This Convention, because of its all-inclusiveness and advancement, praised by the world states and blessed with universal acceptance and ratification. Today almost all countries ratified the Convention save for Somalia and the United States of America. Ethiopia is a party to this Convention since 1991, and so far made its fourth periodic report under its obligation.

Regionally, the African states also have their own child right convention, ACRWC which was adopted in 1990 by the OAU. Like the CRC, the ACRWC is predicated on four cardinal principles which are meant to help with the interpretation of its provisions as a whole and thereby guide national programs of implementation. These principles are non-discrimination; best interests of the child; right to life, survival and development; and the views of the child. The rational for the adoption of this instrument was with the view that it provides for African children with African needs. However, unlike the CRC, it is not given a warm reception from the African states and also from scholars. In later years, the AU also adopted the African women's protocol in 2003 with the intention of supplementing other human rights instruments that promote and protect the rights of women and girl-children and to bless the African women and girl-children with other additional rights.

Nevertheless, it is needless to mention that the protection an promotion of the rights of the child generally and the rights of the girl-child in particular by many international, regional and/or national instruments, as mentioned above, in itself does not guarantee the implementation of those rights and hence need to be taken in to run through by all states concerned. First of all, all the states concerned need to ratify the human rights instruments and also makes themselves bound by the obligations under the conventions. One of the ways to cross-check the

implementation of the rights by the States Parties is through periodic reports. Based on the reports the specific committees provide their concluding observations. However, the main challenge to this mechanism is that neither of the committees possesses judicial powers, and hence the concluding observations do not contain legal obligations.

Even though, all these and other human rights instruments provide with variety of rights concerning the girl-child, the problem is still persistent throughout the world, including in Ethiopia. For this reason, the need for a perfect to the point legal framework for the better protection and promotion of the rights of the girl-child is indisputable.

Ethiopia is a party to most international human rights instruments that promote and protect the rights of the girl-child. Ethiopia adopted the CRC, CEDAW, and also ACRWC in 1991, 1981 and 2002 respectively. Even though the country has ratified most of these international human rights instruments that promote and protect the rights of girl-children, it has not yet ratified the optional protocols to the different treaties which provide even stronger protections to the rights of the girl-child. Moreover, the country is not fully committed to its obligations under the instruments. As the different UN committees concluding observations indicate, the status of the girl-child in the nation is very poor though there has been a tremendous effort in reforming the legal framework in a particularly child sensitive manner.

In this regard, the country made various measures to improve the worst status of the girl-child by legislating national laws and adopting various national plan of actions. For instance, it enacted the RFC in July 2000 and the FDRE criminal code in May 2004. However, due to the constitutional division of powers, the RFC is implemented only in the cities of Addis Ababa and Dire Dawa, which are the federally administered areas in the country, while the FDRE criminal code is implemented all over the country. These new laws have brought significant changes in the legal framework in terms of protecting children's rights in general and the rights of the girl-child in particular that are enshrined in the child rights treaties and the FDRE constitution.

However, without an effective and efficient enforcement and implementation mechanisms the potential of laws remains unfulfilled. The enforcement of these particular laws require, inter alia, developing national policy programs and strategies to create public awareness regarding the rights and building the capacity of law enforcement officials, prosecutors and judges. This in turn, requires formulating a wide-ranging legal, policy and other measures at the national level, with the involvement of several stakeholders including all branches of governments at the federal, state and local levels, and also the civil society. However, in Ethiopia, enforcement of the available legal provisions that promote and protect the human rights of the girl-child has remained to be a significant challenge. As a result, the implementation program is still in a very critical stage. Moreover, the draft Federal Democratic Republic of Ethiopia National Child Policy of 2011 does not contain specific provision for the better protection of the rights of the girl-child. Accordingly, the policy needs to be re-examined in a way that it fit the current needs of the issue. For these reasons, all the measures that are provided by different UN concluding

observations on the states periodic report shall be taken in to consideration and the country needs to take additional measures to better implement those instruments to bring the current worse status of the girl-child into a better and higher-level.

III. CHAPTER THREE

3. GENERAL PERSPECTIVES ON THE *STATUS QUO* OF THE GIRL-CHILD IN ETHIOPIA

INTRODUCTION

A girl-child, certainly identified from the rest of individuals due to her age (i.e. being below the full age of eighteen years), and particularly she could also be identified due to her sex (i.e. being a biological female offspring). In this regard, defining the girl-child essentially involve two important characteristics, her age and sex. The former, certainly, relates to her age where 18 years is set as the maximum limit, the latter also related to which gender she belongs to. Therefore, at this juncture it is reasonably essential to have a working definition for the '*girl-child*', for the discussions made under the entire paper depends, inter alia, on the definition provided thereof. Unfortunately, one could not find the definition for the girl-child in any of the instruments discussed above, under chapter two, nor in any other binding instruments. For that reason, for this particular purpose, the definition provided for a 'child' generally shall be taken in to consideration to classify the girl-child into, at least, certain age group on the basis of the international, regional and national legislation.

In line with this, for the purpose of its implementation many international, regional and national instruments provide various definitions to a 'child'. Accordingly, below a consideration is made to the definition provided by the CRC, ACRWC, and also by the national laws of Ethiopia. This definition helps in identifying a child from the rest of the societal groups in terms of age and other grounds. This is important for the recognition and enforcement of the rights of the child in general and the rights of the girl-child in particular.

This chapter is devoted to discuss the definitions provided for the child by different international, regional and national instruments and tries to find out the definition for the girl-child, which is the main concern of the paper. Further, in order to well understand the substantive right of the girl-child, the grim realities on the ground have to be generally elucidated. This chapter, therefore, also discusses the vulnerability of girl-children; particularly their vulnerability to various forms of abuses, violence and discrimination and examines the catalyst factors including customary practices (FGM/C, Early/Child marriage, and Abduction), poverty and illiteracy, discrimination and also other factors. Furthermore, it assesses the national policies, principles and objectives of the country that have relevance to the rights of the girl-child. Finally, a conclusion is being made on the discussed issues, under this chapter.

3.1 THE GIRL-CHILD DEFINED

Providing a definition for the girl-child is considerably important in order to specifically address what rights are endowed to her. However, the definition for the girl-child is provided in neither of the instruments discussed above. Moreover, as mentioned in chapter two the country has no an all-inclusive child law, a kind, of a wide-ranging code dealing with all the issues of children, which is commonly known as children code or child act. As a result, in Ethiopia, no definition for the girl-child is found in any of the FDRE legal provisions, rather the issue appears here and there in several laws that do have different purposes. Accordingly, since a definition for the girl-child is not found in any of the instruments, it is appropriate and pertinent to consider the definition provided by different instruments for a ‘child’ in general. In this regard, it is worthwhile to mention that the definition provided for a child is equally applicable for the girl-child and hence the following discussion is made on such definition.

The definition for a child can be found in the international and regional instruments that Ethiopia adopted, (i.e. CRC and ACRWC) and also in different national laws that have different purposes. The determination of who the child is, under the instruments is very significant for the reason that the application of all the rights recognized in all these child rights instruments does depend on the definition provided thereto. The CRC defines the child as “[a] child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹⁸¹ The ACRWC also in flawless and humble terms defines the child as “[a] child means every human being below the age of 18 years.”¹⁸² In doing so, both the CRC and ACRWC laid the groundwork for the application of the two treaties. Except for the CRC which allows States Parties to determine a means of earlier attainment of majority, these both articles consider every human being below the age of eighteen years as a child, and hence, every human being below that age would be entitled, without any differentiation for whatsoever reason to all the protection guaranteed by the treaties. While the CRC and also ACRWC provide the definition for a child the African women’s protocol, in this regard, also has something in relation to the girl-child where it go into detail when providing the definition of women. Accordingly, it states that “Women” mean persons of female gender, including girls.¹⁸³

Taking a good look in to the FDRE national legal provisions, even though it is not conceivable to find one wholly applicable definition of the term child in clear and sufficient manner, it is possible to find similar definition with the CRC and ACRWC in different laws of the nation. In view of that, in Ethiopia, the term similar to child could be found in the nation’s various laws that are enacted to serve different purposes. Accordingly, at the outset it would understandably be essential to examine the different laws of the nation to see whether or not their incorporation of the term child is in compliance with the CRC’s and ACRWC’s definition of the term child. In

¹⁸¹ The CRC, Article 1

¹⁸² The ACRWC, Article 2

¹⁸³ The African women’s protocol, Article 1 (k)

this regard, the most relevant laws within the nation are the RFC, the FDRE Criminal Code, and the Labour Proclamation No. 377/2003.

In Ethiopia, though it does not define the term child as it appears in the CRC or ACWRC, the principal law for the definition of child appears to be the definition provided by the RFC. The RFC provides the definition for a “minor” instead of a “child”, where it is still possible to assimilate the definition for a minor equivalently to mean a child, for the reason that similar definition is provided for the two terms. Accordingly, it defines a minor as: “[a] person of either sex who has not attained the full age of eighteen years.”¹⁸⁴ However, these 18 years of upper limitation could be lowered or minimized by the possibility of early attainment of majority through the act of emancipation.¹⁸⁵

The definitions provided by the CRC and ACRWC clearly laid the maximum age limit where a person above which is no longer a child. However, unlike the ACRWC, the CRC still has a possibility of decreasing this maximum threshold through the notion of early attainment of early majority under national laws. The CRC followed such trend in order to give a room for the existence of various national considerations and compromise these various national laws which the State Parties may prefer to apply, in accordance to the nation’s civil, criminal, or extra features of attainment of majority.¹⁸⁶

In line with this, under the RFC, attainment of 18 years is the general principle where a minor becomes an adult or attained majority. However, as just mentioned above, this general principle is not absolute for it could be subject to some exceptions in accordance to some laws. One instance of this is when a minor being emancipated, meaning that when a person attain majority through the act of emancipation. The act of emancipation comes about either through marriage¹⁸⁷ or upon the approval of the court.¹⁸⁸ Nevertheless, it has to be noticed here that, whenever the girl-child emancipated through either of the reasons just mentioned, she will no longer enjoys the rights guaranteed under the above discussed instruments. This is because an emancipated child shall be deemed under the law to have attained majority.¹⁸⁹

In general, an emancipated girl-child, as just mentioned above, is considered by the law as an adult person. Hence, in accordance to the RFC provision, based on the concept of emancipation, a girl-child under 18 years of age may or may not be treated as a child. Therefore, in the same manner under the CRC where it is possible to minimize the age of the child below 18, the upper age limit of being a child under the RFC is dependent on the case stipulated. However, the approval for emancipation by the appropriate organs shall be done in great caution. More

¹⁸⁴ The RFC, Article 215

¹⁸⁵ Id, Article 7(2) and 311

¹⁸⁶ N. Thomas, Children's rights: policy into practice (2011), p. 9.

¹⁸⁷ The RFC, Article 311

¹⁸⁸ Id, Article 312

¹⁸⁹ Id, Article 313

importantly the application for emancipation by the girl-child to the Ministry of Justice in case of marriage shall be taken in serious consideration. Definitely this could not be on her best interest and it does not serve her best interest rather it is particularly dangerous for girl-children to allow the possibility of minimizing the age of a girl below 18 years.¹⁹⁰

The other national law which is worth to discuss is the FDRE criminal law, where it sets different standards to consider a person as a child. The FDRE criminal code classifies children into three age groups using ages 9 and 15 as thresholds for criminal responsibility that appears to be an important milestone in the classification. In the FDRE criminal code there is different concept of being a child and attainment of majority, to be treated as a fully criminal responsible person. As far as individual criminal responsibility is concerned, while infants who have not attained the age of nine years shall not be deemed to be criminally responsible at all,¹⁹¹ persons between nine and fifteen years of age is considered as “young offenders”¹⁹² where the penalties and measures to be imposed by the courts shall be only those special measures or treatments specified by the code.¹⁹³ Accordingly, a person is only considered as attained criminal majority, if the individual is above the age of 15 years. This can be inferred from the criminal code provision according to which the criminal responsibility and guilty of a person between the age of 15 and 18 is determined as though a minor were an adult. The FDRE criminal code states that where at the time of the commission of the crime the criminal was over fifteen but below eighteen years of age, she/he shall be tried under the ordinary provisions though the court may, in assessing the sentence, take into consideration the age of the person.¹⁹⁴ To sum up, as specified under the international and the regional instruments, like the CRC article 1 and ACRWC article 2, the accepted perception that ‘a child means every human being below the age of 18 years’ is not the governing principle, for criminal majority is attained at the age of 15 years under the FDRE criminal code.

Further, the law that could be taken into consideration regarding the age of the child is the Ethiopian labour law, according to which the labour proclamation No. 377/2003, stipulates for the child two parameters. It classifies children as minors who are under 14 years of age and young workers who are persons attained the age of 14 but are not over 18 years of age.¹⁹⁵ The first groups of minors are not allowed to engage themselves in to the employment relation and are completely barred from making contract of employment. While the second category of minors, however, can directly undertake employment as a young workers only in certain categories of jobs.¹⁹⁶ Consequently, they are not considered under the labour law as adult workers rather young workers who are still children employed under certain kind of special

¹⁹⁰ See, The UN Committee on the Rights of the Child, General Comment No. 14, cited above at note 63.

¹⁹¹ The FDRE criminal code, Article 52

¹⁹² Id, Article 53

¹⁹³ Id, Article 157-168

¹⁹⁴ Id, Article 56

¹⁹⁵ Labour Proclamation, 2003, Art. 89, Proc. No. 377, Neg. Gaz. Year 10, no. 12.

¹⁹⁶ Ibid

treatment because of their age. In this regard, 14 years of age girl-children could be taken in to some categories of jobs which finally have a great impact to their education it particularly expose girl-children for economic exploitation. Consequently, this consideration particularly affects the girl-child and it has to be taken in to consideration. However, the general principle is that majority is attained at the age of 18 years under the Ethiopian labour proclamation No. 377/2003.

As has been discussed above to this point, the instruments only made the maximum age limit where the definitions provide the eighteen years as a threshold to attain majority. Nevertheless, providing a clear and agreeable definition to a child may also require providing the lower age limit, which ultimately is controversial and highly dependent on the individual states civil, political and socio-cultural arrangements. The CRC does not provide any limitation for the lower age limit, so does the ACRWC. Perhaps both instruments followed this trend due to the controversies that might arise in the implementation process of the instruments over the unborn child and the legality of abortion.¹⁹⁷

As discussed above, neither the CRC nor the ACRWC explicitly indicate when the child is starting being considered as the holder of the rights. Even though it is not an operational paragraph of the convention there is an incorporated phrase *...before as well as after birth...* under paragraph nine of the preamble. In doing so, it seems that the CRC preferred to leave the issue to be addressed by each individual States Parties to the CRC in accordance to their national determinations.¹⁹⁸

The critics to all instruments in same degree are perhaps its undisclosed and the continuous argument of the beginning of the time for the consideration of a child being born. Nevertheless, it could also be argued that the CRC does refer to the issue of protection of unborn child in Article 6 where it states that every child has an inherent right to life. However, this question is kept uncluttered with-in certain limits, permitting each state party to choose for itself how it has to approach the issue of protection of the unborn child with-in the context of its own culture, tradition and religion.¹⁹⁹

In line with this, in Ethiopia, different laws provide a possibility of an extension of the consideration of the beginning of child being considered as the holder of the rights to the conception period. For instance, although the Ethiopian civil code stipulates that ‘the human person is the subject of rights from its birth to its death,’²⁰⁰ this presumption could be extended beyond the moment of birth under certain exceptional circumstances.²⁰¹ The civil code provision

¹⁹⁷ L. Blanchfield, *The United Nations Convention on the Rights of the Child* (2013), p. 12.

¹⁹⁸ S. Detrick (ed.), *The United Nations Convention on the Rights of the Child: A Guide to the ‘Travaux Préparatoires’* (1992), p.2.

¹⁹⁹ C. George, *A Brief History of the UNCRC*, (<http://www.childrensrightsindia.org/pdf/Brief%20History%20of%20UNCRC.pdf>) last visited on September 29, 2013.

²⁰⁰ The Civil Code of the Empire of Ethiopia Proclamation, 1960, Art 1, Proc. No. 165, Neg. Gaz. Year 19, no. 2.

²⁰¹ Id, Article 3

allows for such extension of the rights of a child to the period of conception where under the fulfillment of certain conditions, when the interest of the conceived child so demands and provided that it is born alive and viable. Hence, this personality is only endowed to the conceived child under exceptional situations where the interests of the conceived are at stake. One instance of such scenario is where a succession is opened in its favor or when it is necessary for the sake of assuming a donation.²⁰² Other than the case mentioned above, the conceived child is not entitled to be considered as a person having all the rights until the moment of birth. Therefore, as per the law a conceived child could be considered as a child having all the rights as far as it has some interests to be affected unless the lower age limit extends to the conception period.

Moreover, the FDRE criminal code recognizes the offence of abortion under book V, title I entitled Crimes against Life, Person and Health, included from article 545-552. Accordingly, the FDRE criminal code intended to protect the conceived child rights, particularly the right to life by criminalizing the act of abortion or any act that is dangerous to the fetus. Hence, the act of abortion is an offence unless the act is executed in order to protect the life or health of the pregnant mother under the approval of medical practitioners.²⁰³ In this regard, it could be considered that under the FDRE criminal law the right to life of the girl-child is extended to the conception period. Nevertheless, regardless of what has been discussed, the assertion that the conceived child has recognized full rights still remained uncertain since the determination of the lower age limit of the commencement of the rights of the child is reliant on the fulfillment of certain preconditions.

This notion is very important for the reason that girl-children suffer from a preference for sons even before they are born. In many instances the strong preference for male children has led to female infanticide and selective abortion of female fetuses. This is applicable because of the advancement of technology, where parents could know in advance the sex of their fetus who may tend to abort for the prevalence of sex preference. Hence, the protection of the girl-child shall extend to the pregnancy period, at least until the attitudinal change on sex preferences downed to zero. Generally, inline with the above discussion, it is possible to conclude that, under Ethiopian law, a child is a person of either sex who has not attained the full age of eighteen years with the possibility of early attainment of majority under certain circumstances.

Based on the above discussion on the definition of the child under different instruments, it is possible to provide a working definition for the girl-child. The main issues taken in to consideration in defining the girl-child are being female and being under the age of 18 years.

Accordingly, for the purpose of this paper the author provides the following definition for the girl-child. *“The girl-child is a biological female human offspring below eighteen (18) years of age.”*

²⁰² J. Vanderlinden, Commentaries Upon Ethiopian Law of Physical Persons (1969), p. 15.

²⁰³ The FDRE criminal code, Article 545

3.2 VULNERABILITY OF THE GIRL-CHILD: THE CHALLENGE OF DOUBLE VICTIMIZATION

"In today's world, to be born female is to be born high risk. Every girl grows up under the threat of violence." (Carol Bellamy, Executive Director of the United Nations Children's Fund (From 1995-2005))

Girl-children throughout the world *en masse* and in developing countries in particular are highly vulnerable to various forms of HTPs, gender based discrimination, violence and abuse.²⁰⁴ They, due to their gender, age, and societal perceptions towards these distinctive identities, remain as one of the most vulnerable groups of human populations. They face the challenge of double victimization only as a result of their sex and age. Similar to many nations in the world, being female is the major challenge that every girl in Ethiopia faces in her day-to-day life. Obviously, the other challenge which is similarly confrontational in the nation is being a child. These two factors make the ordinary life of the girl-child a heavy burden to be faced the double victimization. Girl-children, in Ethiopia, as a result of these scenarios constitute one of the most vulnerable groups of human population in the nation. They are easily exposed to violence, abuse, and discrimination because of their sex, age, physical and mental situation. They are, thus, among the first victims of violence, abuse, discrimination and other catastrophes that could easily affect their physical, mental and emotional developments. They are among the most unprivileged in the nation and their *status quo* is very worse even in comparison with the other group of people living in most awful conditions. As a general glance, the majority of such acts against girl-children in the nation combine physical, sexual and psychological abuse and violence.

Girl-children generally experience violence, abuse and discrimination at home, in the schools, and in the community, in all circumstances in general and are special targets of violence in times of difficult circumstances in particular. In their communities, girl-children face physical, sexual and psychological violence, and are harmed through inequalities and discrimination in accessing to available resources.²⁰⁵ Moreover, they are particularly vulnerable to various forms of violence and abuses both by virtue of their gender and because of their age as a result of the socio-economic and cultural settings prevailing in their communities. In most instances, like in most African nations, girl-children in Ethiopia generally attract less attention or even receive negligence from their own family. In the reverse, whenever they are not neglected, they are often overburdened with domestic and care-giving tasks. They are expected to learn in their early age household responsibilities, and they move towards their traditional domestic role, including

²⁰⁴ World report on violence and health: summary, (2000).

(http://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf) last visited on September 30, 2013.

²⁰⁵ The African Child Policy Forum (2006b), cited above at note 7, p. 40-63.

caring for their family members, cooking, grinding, washing, and most commonly collecting firewood and fetching water.²⁰⁶

Girl-children of all ages and in all circumstances could face abuse and violence, where they become victims of unprecedented assaults and mistreatments even in some exceptional circumstances.²⁰⁷ For instance, a study conducted in 2006 by the African Child Policy Forum in Ethiopia, found that all girl-children surveyed had been a victim of certain kind of violence. According to the survey, in an average group of ten girl-children, nine will be physically abused, seven sexually abused and every girl had been made to feel inferior having suffered repeated psychological abuse.²⁰⁸ Girl-children throughout the nation experience physical, psychological and sexual violence in many forms and in various settings even in the very places where they should receive the very best treatments. Abuse and violence is a common phenomenon in their homes and communities where they are raped by their own close relatives at home and slapped and hit by their own teachers at school. For instance, while 23.1 per cent of surveyed girl-children who had been a victim of rape case indicated that a male relative was responsible,²⁰⁹ 60.8 per cent had been hit with a stick and 72 per cent of respondents also had been slapped while they were at school.²¹⁰ More often, girl-children who are hired as domestic workers and girl-children staying with relatives other than their parents are more vulnerable to sexual violence at home.²¹¹ Moreover, as the studies show that parents, peers and close relatives are the major perpetrators of psychological and physical abuse on girl-children from insulting and discrimination to beating. The General public perceives certain forms of physical and psychological punishment as generally acceptable ways of disciplining a child as long as the discipline is not excessive.²¹² Even surprisingly physical violence in the form of beating is predominantly perpetrated by their own mothers where they think that beating up girl-children is totally acceptable.²¹³ In the majority of Ethiopian communities, due to such attitudes, parents and the community believe that they have every right to do whatsoever they like with their children.

In many instances male teachers are also responsible for certain kind of sexual violence where they used their positions of authority to influence girl students into having sexual affairs with them. This includes rape, sexual abuse, and sexualized touching or emotional abuse in the form of threats of violence. However, not only teachers who are the main perpetrators of such violence on girl-children at schools, rather male students and neighborhood adolescent boys who used different means, including threatening the security of the girl-children.²¹⁴

²⁰⁶ The African Child Policy Forum (2006a), cited above at note 18, p. 31.

²⁰⁷ *Id.*, p. 8

²⁰⁸ The African Child Policy Forum (2006b), cited above at note 7, p. 40.

²⁰⁹ *Id.*, p. 59

²¹⁰ The African Child Policy Forum (2006c), cited above at note 21, p. 31.

²¹¹ *Id.*, p. 43

²¹² *Id.*, p. 3

²¹³ The African Child Policy Forum (2006b), cited above at note 7, p. 17.

²¹⁴ The African Child Policy Forum (2006c), cited above at note 21, p. 59.

Further, what makes the situation much worse is that, whenever the girl-child has been a victim of physical, psychological or sexual abuse, especially by the very people who should protect her, the response from the family or a community is unwillingness or ashamed to speak out. Many of these acts go unreported because of the stigma and trouble associated with them and the lack of sympathetic treatment from legal systems.²¹⁵ Even girl-children who are the victims of violence and abuse themselves only rarely do report their cases to the police as a result of which, the perpetrators are seldom prosecuted. This kind of societal attitude towards violence against girl-children contributes for the development of impunity. Moreover, because of the societal perception towards girl-children who become pregnant before marriage as a result of sexual abuse or rape, they can also be more vulnerable to discrimination. In most regions in Ethiopia, pregnancy before marriage is viewed as a transgression of societal value and pregnant girl-children forced to leave home and face the challenge of societal discrimination.²¹⁶

Though physical, psychological or sexual abuse and violence is prevalent in many situations, child labour particularly place girl-children in situations where they are more vulnerable to violence and abuse. The main factor for child labour is the existence of a large scale of trafficking of girl-children from rural areas to urban areas where a large proportion of those who are victims of trafficking work as domestic servants. In addition to being highly vulnerable to abuse and violence, as most of these domestic servants come from remote rural areas, they are left with no other choice than to tolerate different forms of violence inflicted by their employers.²¹⁷ Almost all domestic servants in big urban dwellings are girl-children who are denied of an education and other rights and face high levels of physical, sexual and psychological abuse. For instance, a study in Addis Ababa revealed that a huge proportion of girl-children who are employed as domestic servants/ child domestics were sexually harassed mostly by sons of the employers, and by others, including neighbors' sons.²¹⁸

As a result of all these, the girl-child in Ethiopia forced to face humiliating physical, psychological or sexual abuse at home, in school and in the community at large. She sustains painful and harmful acts against her, mainly by people who should take care of her including parents, family members, relatives, neighbors, schoolteachers and peers. The girl-children face violence in all shapes and forms including rape, sexual harassment, stalking, beatings, bullying, verbal abuse, abduction, early/child marriage, FGM/C, child labour, and trafficking. Some recent reports show that stalking, sexual harassment and rape are more widespread than other types of sexual violence though only some of such acts are increasingly reported to the police and the alleged wrongdoers are being tried in court. Nevertheless, perhaps due to increased public awareness, and the attention the government gives to the issue, the prevalence of sexual violence is on the decrease compared to that of the previous years. However, though there are some

²¹⁵ The African Child Policy Forum (2006a), cited above at note 18, p. 18.

²¹⁶ Id, p. 17

²¹⁷ Abiy Kifle, *Ethiopia – Child Domestic Workers in Addis Ababa: A Rapid Assessment* (2002), p. 39.

²¹⁸ Id, p. 45

variation between urban and rural settings as well as between different cultures and traditions, still these widespread practices remain a pervasive, but largely ignored issue throughout the country.

The main reasons for all these ignorance, high vulnerability and double victimization of the girl-child's *status quo* in the country is the people's patriarchal values and shaped mentalities, institutions such as the family, the religious organizations and the education systems that help to foster relations of domination and violence. This is due to societal cultural and traditional clear demarcation for each gender where individuals are habituated in accordance to the existing socio-economic context that seems advantageous to abuse, violence and discrimination against girl-children.²¹⁹ Discrimination, abuse and violence against girl-children are so much a part of society that those girl-children who experience it sometimes feel that it is their own fault. Similarly many perpetrators of violence feel that their actions are justified by strong societal messages, which suggest that stalking, beating, sexual harassment, verbal insulting and abuse, rape, and other forms of violence are acceptable. Such attitudes make girl-children more vulnerable to violence, and mean that they are less protected by society's structures and support systems.²²⁰ In many cases, it is precisely these structures and support systems that make them more vulnerable. In addition to all the above discussed ones girl-children in Ethiopia are also vulnerable to the epidemic of HIV/AIDS where acting independently or concurrently biological, social, cultural, economic, and other factors make girl-children a particularly vulnerable group to such disease. The HIV/AIDS epidemic has been cited as one reason for the increase in demand for girl-children in prostitution, as a result of the general belief among sex-seeking adults that sexual intercourse with the girl-children as the best means to avoid infection. As a result, girl-children constitute the first group of people at high risk of infection.²²¹ Moreover, the general public attitude that do not value the views, best interests and dignity of children and lack of awareness of children's rights and alternative ways of disciplining contributes in large for such vulnerability. Poverty, with its complementary variables such as a high rate of illiteracy, the spread of HIV/AIDS, unemployment and the inability of parents to meet the basic needs of their children, limited law enforcement; irresponsible parenting; parental death or divorce, resulting in single-parenting and orphaning also plays its own part.

All these factors together contribute to the severe physical and psychological violence against the girl-child has far-reaching effects include: permanent bodily injury; emotional distress such as unhappiness, humiliation, low self-esteem, and hopelessness; dropping out of school, lack of interest in their studies, low memory retention and low educational achievement, street-living and prostitution; unwanted pregnancies; sexually transmitted diseases including HIV/AIDS; and immediate and permanent health problems such as *fistula*.

²¹⁹ The African Child Policy Forum (2006c), cited above at note 21, p. 18.

²²⁰ *Id.*, p. 16

²²¹ Fikremarkos Merso, cited above at note 44, p. 37.

All these acts happen in girl-children's day-to-day life, even though there is twofold protection for their rights, as being female human being, and being a child. Many international, regional and national laws provide with various protective provisions for the rights of the girl-child. For instance, the ACRWC specify that any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained with-in it shall, to the extent of such inconsistency, be discouraged.²²² The CEDAW also provides with such similar extensive protective rights.²²³ Nationally, the FDRE constitution states that any customary practices that are inconsistent with itself shall be of no effect,²²⁴ the FDRE criminal code also criminalize many of such acts under its provisions.²²⁵

Moreover, both the CRC and ACRWC, urge States to take all appropriate measures, including legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.²²⁶ Accordingly, as will be discussed in the next chapter in details, under the national laws Ethiopia enacted different laws to protect the rights of the girl-child including under the FDRE constitution, the RFC and the FDRE criminal law.

Generally, discrimination, abuse and violence against girl-children are a fundamental violation of human rights and should not be viewed as justifiable in any circumstance and it is preventable crime.²²⁷ It is also important that societies acknowledge that certain forms of discrimination, abuse and violence are perpetrated only against girl-children. This is very important as a result of which the impact of discrimination, abuse and violence against girl-children is immense for both individual girl-children and for the society at large. As a result of these, discrimination, abuse and violence, girl-children in the nation experience many life threatening problems including health and behavioral problems which exposes them for more perpetuate cycle of vulnerability. For that reason, all these situations shall come to an end to protect their basic human rights and minimize the expensive cost the rest of the society encounters in providing various social services in taking preventing and recovering actions.

3.3 CUSTOMARY PRACTICES

Ethiopia is the home of various customs and traditions, as a result of which it is sometimes referred as a 'museum of traditions'. As though there are various customary practices which Ethiopians are proud of, there are also customs that are very harmful and dangerous to the rights

²²² The ACRWC, Article 1 (3)

²²³ The CEDAW, Article 1

²²⁴ The FDRE constitution, Article 9 (1)

²²⁵ The FDRE criminal code, Article 565-570, 586-589

²²⁶ See, the CRC, Article 19 and the ACRWC, Article 16

²²⁷ The UN Committee on the Rights of the Child, General Comment No. 13 on the right of the child to freedom from all forms of violence, CRC/C/GC/13, (2011), Para. 3.

of the girl-child. These harmful and dangerous traditional practices and customs of different nations, nationalities and peoples with-in the country remain as major worst enemies of the girl-child. These are very much intertwined with the daily life of the society and they better recognized as HTPs. As a result, the ability and responsibility to enforce international conventions, laws, and human rights oversight is at great risk of dilution due to these HTPs that entrench with-in the social customs. Among these practices the most prevalent ones in Ethiopia are FGM/C, early/child marriage and abduction. These HTPs such as abduction, FGM/C and early/child marriage, however, seemed to affect rural girl-children and girl-children of specific regions more than others counterparts.

Despite the many international, regional and national protection measures of girl-children from these practices, these traditions are still continuing with-in the nation. The CRC provides wide protection for girl-children from such harmful practices. The ACRWC also specifically prohibits any custom, tradition or practice which is dangerous to the welfare of children as a whole. It states that “*States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child.*”²²⁸ In this regard, the African Committee of Experts which is responsible for monitoring the implementation of the ACRWC highlights the obligation of States Parties to eliminate harmful practices. In exercising its promotional mandate, this Committee has selected the theme ‘elimination of harmful practices’ for the Day of the African Child in 2013.²²⁹ Furthermore, under its national laws, Ethiopia has provided an extensive protection from these HTPs. Many provisions particularly the two articles in FDRE constitution, article 16 and 35, specifically protect girl-children from bodily harm and from harmful customs, laws and practice; the FDRE criminal code also extends and criminalizes such acts. However, the practice of FGM/C, early/child marriage and abduction are the most prevalent practices with-in the nation. This assertion is supported by the high rate of these traditional practices occurring in the country, which are 54.5 percent for early/child marriage and 72.7 percent for FGM/C.

3.3.1 FEMALE GENITAL MUTILATIONS/CUTTING (FGM/C)

FGM/C refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.²³⁰ FGM/C is one of the most dangerous HTPs that highly affect the well-being and normal growth of the girl-child in Ethiopia. It is widely recognized as a harmful practice and a violation of the human rights of the girl-child. The practice, in most of the cases, is performed without a primary intention of causing grave pain on girl-children rather for the traditional belief of the society. The practice reflects

²²⁸ The ACRWC, Article 21 (1)

²²⁹ (www.acerwc.org/achievements/) last visited on August 26, 2013.

²³⁰ WHO, Fact sheet N°241, February 2013, (<http://www.who.int/mediacentre/factsheets/fs241/en/>) last visited on August 26, 2013.

deep and rooted discrimination against girl-children which is profoundly entrenched in social, economic and political structures.

FGM/C can cause serious damage, exposing girl-children to high health risks, psychological pain and seriously affecting the quality of their entire life. Most of the time, the medical complications resulting from FGM/C is very much severe and long lasting. However, despite the severe harm FGM/C inflicts on girl-children, the practice continues in most regions due to the strong beliefs with-in communities about the role of females. There is a perceived need to restrain girl-children's sexuality and many men in these cultures will not marry girl-children who have not undergone the procedure as they view them as unclean and sexually permissive. In some communities, the practice is linked to the girl's conduct where some communities believe that a girl who does not go through the practice will not be faithful to her husband.²³¹

As mentioned above, FGM/C has numerous health related risks; the immediate risks of FGM/C include hemorrhaging of the clitoral artery, acute pain and urine retention.²³² As the procedure is often carried out in poor sanitary conditions, infections are common and may even result in death. The long-term effects can include obstructed labour, painful intercourse, psychological complications, chronic urinary tract infections, repeated reproductive tract infections, back and menstrual pain, keloids (scar tissue that continues to grow), and the ability to experience sexual pleasure is effectively destroyed.²³³ Undergoing FGM/C also increases girl-children's vulnerability to HIV infection during intercourse: the vulva frequently is scarred as a result of the procedure and easily can be torn. Yet, the most common health problems identified by victims of FGM/C are extreme pain during sexual intercourse, vaginal infections, loss of sexual interest, problems during delivery where it reportedly affects more than one quarter (27.4 per cent) of Ethiopian girl-children.²³⁴

There are several types of FGM/C though the most extreme form is infibulation. It involves removing the clitoris and both labia, and sewing the two sides of the vulva together, leaving only a small opening to allow passage of urine and menstrual blood. Infibulation also involves extensive cutting and stitching and poses a significant risk of hemorrhages and infection.²³⁵ Other forms include clitoridectomy where all or part of the clitoris is removed, or excision where the clitoris and inner lips are removed. In Ethiopia, five ethnic groups, namely Somali, Afar, Harari, Oromo living in close proximity with these groups, and, to some degree, the Berta Jebelawi in Benishangul-Gumuz region practice infibulation yet, it is not practiced in SNNPR, Tigray and Amhara regional states. There is also evidence to suggest that the predominant type of FGM/C countrywide is clitoridectomy (62 percent) followed by excision (19 percent) and infibulation (3 percent). This HTP affects about 73% Ethiopian girl-children where more than

²³¹ The African Child Policy Forum (2006a), cited above at note 18, p. 34.

²³² (<http://www.who.int/mediacentre/factsheets/fs241/en/>) last visited on August 23, 2013.

²³³ Ibid

²³⁴ The African Child Policy Forum (2006b), cited above at note 7, p. 63.

²³⁵ (<http://www.who.int/mediacentre/factsheets/fs241/en/>) last visited on August 23, 2013.

22.1 % of the practice occurs before a girl's tenth birthday.²³⁶ Accordingly, in Ethiopia, the age at which FGM/C takes place varies according to regions. In the Amhara and Tigray regions for example, it is done with-in 10 days after the birth of a child. In the Afar, Somali and Oromia regions, girl-children typically undergo FGM/C between the ages of 7 and 9 or, if not then, just before marriage, normally between the ages of 15 and 17. Similarly, the type of procedure varies according to the regions. There are, however, variations among regions in the days of circumcision.²³⁷

In same fashion in all regions in Ethiopia, it is the traditional birth attendants or other traditional practitioners who perform FGM/C under unhygienic condition involving the use of a razor blade, a knife, or other sharp objects. In many instances, the practice is done at the girl's home, but sometimes if it entails a ritual whereby many girl-children are involved like in Afar regional state, a separate place is allocated for the occasion.²³⁸

FGM/C is highly prevalent throughout Ethiopia where Afar (94.5 %), Harari (81.2 %), and Amhara (81.1 %), are regions the practice is most prevalent. Moreover, it is not unexpected that in all the regions but the Southern region and to some degree in Oromia, the practice of FGM/C is more prevalent in the rural areas than urban areas.²³⁹ While a survey by the EGLDAM in 1997 showed FGM/C prevalence at 73%, a follow-up survey published in February 2008 by the same organization indicated that rates plummeted to an impressive 56%.²⁴⁰ FGM/C has often caused several problems to girl-children. Some of the major problems associated with it include physical pain and permanent damage, psychological disruption and distortion of social relationship, and vulnerability to HIV/AIDS, all of which are threats to the public and negatively affect the development of society.²⁴¹ FGM/C, as a rite of passage, disrupts school girl-children education leading to dropout even before they complete primary education. Girl-children who undergo FGM/C are likely to grow up with lower levels of education attainment. The perception that once a girl undergoes the operation, becomes a "woman" and is ready for wifely duties negatively affects girl-children education in addition to leaving negative health implications.²⁴²

Justifications for practicing FGM/C are numerous and based on deeply embedded socially constructed gender roles and values ascribed to women which serve to uphold FGM/C as a social norm. Cultural norms include the belief that the practice regulates a woman's sex drive, calms her personality, maintains her chastity and virginity before marriage and ensures fidelity during marriage. Religious leaders often publically support the practice in the name of religion, although there is no basis for this support in sacred texts, while parents support it to protect their

²³⁶ (<http://www.egldam-fgm.net/fgm.html>) last visited September 22, 2013.

²³⁷ Ibid

²³⁸ UNFPA, *Female Genital Mutilation/Cutting in the Afar region of Ethiopia*, (<http://www.safehands.org/>) last visited on September 18, 2013

²³⁹ (<http://www.egldam-fgm.net/fgm.html>) last visited September 22, 2013.

²⁴⁰ (http://www.egldam-fgm.net/include/EM_prevalence_1997_2007_opt.pdf) last visited September 22, 2013.

²⁴¹ Roman Assefa, *Factors Affecting the Practice of Female Genital Mutilation of Ethiopian Women* (2011), p. 6.

²⁴² Ibid

daughters from suffering social consequences such as derision, marginalization and loss of status. Some of the most common justifications for FGM/C, however, include: Establishing femaleness; Enhancing fertility of a woman; Maintaining purity or cleanliness; and Securing marriage since a man will not marry a girl unless she is excised.²⁴³

There are extended legal protection for girl-children against FGM/C, in addition to the international instruments that Ethiopia adopted; there are many national legal provisions that guarantee such protection. The FDRE constitution stipulates that everyone has the right to protection against bodily harm.²⁴⁴ Moreover, the FDRE criminal code criminalizes the act of FGM/C in all forms and kinds that causes a great danger to the life and welfare of the girl-child.²⁴⁵

Currently, the strategy being supported in Ethiopia to influence social change towards abandonment of FGM/C is a systematic process of community dialogue. Facilitators drawn from youth and women associations, kebele administrations or the health extension worker cadre are trained to facilitate community capacity enhancement through community conversations.²⁴⁶ This is one step in a process of cultural change but clearly there is still a long way to go.

In this regard, UN Committee on the Elimination of Discrimination against Women, in 2011 appreciated these efforts to combat FGM/C by revising its criminal law, establishing special investigation and prosecution units and victim-friendly benches in the federal court system, and providing some legal aid and assistance to girl-children who are the victim of such act. However, it stressed its concerns over the prevalence of the act in high numbers in rural and pastoralist areas, though the trend is declining among girl-children in most urban areas. It also made it concern over the penalties for FGM/C stipulated in Articles 561-563, 567 and 569-570 of the Criminal Code which UN Committee on the Elimination of Discrimination against Women concludes are too lenient.²⁴⁷ In the same manner, UN Committee on Economic, Social and Cultural Rights also expressed its concern over the high prevalence of the practice of FGM/C particularly in rural areas.²⁴⁸

The MoWCYA is now in the process of evaluating the extent to which FGM/C has truly been abandoned as a further milestone and the police are considering enforcing the law systematically.

²⁴³ Save the Children Denmark, Ministry of Education and Ministry of Women's Affairs, cited above at note 19, p. 13-14.

²⁴⁴ The FDRE constitution, Article 16

²⁴⁵ The FDRE criminal code, Article 561, 565-570

²⁴⁶ (<http://www.egldam-fgm.net/index.php>) last visited on August, 25, 2013.

²⁴⁷ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 25.

²⁴⁸ UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ethiopia, cited above at note 179, Para. 23.

It is also putting in place an assessment of progress made in preparation for a national plan of action against FGM/C elimination that should led to better coordination.²⁴⁹

Table 3.1 Trends in abandonment of FGM/C by region in %

Regions	Years		Decrease in %
	1997	2007	
Somali	69.7	70.7	-1.4
Afar	94.5	87.4	7.5
Dire Dawa	-	78.2	-
Harari	81.2	67.2	17.2
Oromiya	79.8	58.5	26.7
Addis Ababa	70.2	52.2	25.6
Amhara	81.1	62.9	22.4
Benishangul Gumze	52.9	43.3	18.7
SNNPR	46.3	30.8	33.5
Gambella	0.0	0.0	-
Tigray	48.1	21.2	53.4
National Average	60.6	45.8	24.4

Source: (http://www.egldam-fgm.net/include/EM_prevalence_1997_2007_opt.pdf)

3.3.2 EARLY/CHILD MARRIAGE

Early/Child marriage is another very dangerous HTP in Ethiopia. The practice is very much persistent with in the nation's socio-cultural life though it varies in degree from region to region. Early/Child marriage may be defined as any marriage which takes place between persons who

²⁴⁹ Ministry of Finance and Economic Development, Investing In Boys and Girls in Ethiopia: Past, Present and Future (2012), p. 25.

are below the age of eighteen years.²⁵⁰ Although early/child marriage happens to either boys or girl-children under the age of eighteen years, yet girl-children, more often than not, feel the adverse consequences. This HTP has multifarious harmful impacts on the life of the girl-child for it takes place before the girl-child is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.²⁵¹ Early/Child marriage is one of the violation of the girl-child's basic human rights where it denies the girl-child of her childhood, disrupting her education, limiting her opportunities, increasing her risk of violence and abuse, and jeopardizing her health.

Numerous international, regional and national instruments have been put in place for the specific protection of the girl-child from the hazardous consequences of early/child marriage. These instruments establishes the age at which a person is still considered a child as well as the legal minimum marriageable age. As defined above, in principle every human being below the age of eighteen years is considered to be a child and enjoys all the rights and protections provided by the instruments thereof. In this regard, the UDHR stipulates that marriage should be between persons of full age and shall be entered only with the free and full consent of the intending spouses.²⁵² The ICCPR also indorses the statements of the UDHR by specifically stating that “[n]o marriage shall be entered into without the free and full consent of the intending spouses.”²⁵³ The ICESCR, with same fashion stipulates that “[m]arriage must be entered into with the free consent of the intending spouses.”²⁵⁴ Furthermore, the CEDAW specifically outlaws child marriage, and stipulates eighteen years as the minimum age for marriage for males and females. It also urges States Parties to take all appropriate measures and ensures that all persons freely choose a spouse and enter into marriage only with their free and full consent. More importantly it outlaws the practice of betrothal and early/child marriage and it urges States to take all necessary action, including legislation, to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.²⁵⁵

Regionally, the ACRWC in strong terms stipulates that “[c]hild marriage and the betrothal of girl-children and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.”²⁵⁶ Nationally, various laws forbid early/child marriage and specified the minimum marriageable age and the necessity of consent in order to marry. Accordingly, the FDRE constitution states that marriage shall be entered in-to only with the free and full consent of the intending spouses who have attained the required marriageable

²⁵⁰ (<http://www.unicef.org/search/search.php?q=Child%20marriage&type=Main>) last visited on August 24, 2013.

²⁵¹ Rodgers, cited above at note 14, p. 1.

²⁵² The UDHR, Article 16 (1 and 2)

²⁵³ The ICCPR, Article 23 (3)

²⁵⁴ The ICESCR, Article 10 (1)

²⁵⁵ The CEDAW, Article 16 (1 (b)), (2)

²⁵⁶ The ACRWC, Article 21 (2)

age as defined by law.²⁵⁷ The RFC also clearly stipulates that consent and age are among the basic essential conditions of marriage. It specifies that valid marriage shall take place only between persons who attained the full age of eighteen years and when they have given their free and full consent.²⁵⁸ Furthermore, the FDRE criminal code criminalizes the act of early/child marriage where it sets rigorous imprisonment not exceeding three years, when the age of the victim is thirteen years or above and rigorous imprisonment not exceeding seven years, when the age of the victim is below thirteen years.²⁵⁹

Nevertheless, with the existence of all these legal prohibition and protection by the international, regional and national laws, the practice is still happening almost in all areas of Ethiopia. Though there are no accurate data on the prevalence as well as the current trend in early/child marriage in Ethiopia, available sources show that the practice is evident throughout Ethiopia and it is most common almost in all regions with little range. As a result, Ethiopia has one of the highest early/child marriage prevalence rates in the world.²⁶⁰ Study shows that for women, marriage takes place relatively early in Ethiopia where the median age at first marriage among women age 25-49 is 16.5 years and 63 per cent of them are already married by the age of 18 years.²⁶¹ The median age at first marriage among women age 25-49 in the regional states shows that the practice is dominant in all areas with little varies where it is 14.7 in Amhara, and 16.9 in Oromiya, the figure for the rest regions are Tigray 16.6, Afar 16.5, Somali 17.6, Benishangul Gumuz 15.7, SNNP 17.9, Gambella 17.1, Harari 17.7, Addis Ababa 21.4, and Dire Dawa 18.9.²⁶² According to EGLDAM, the prevalence rate of early/child marriage at the national level is 54.5%. However, early/child marriage is practiced widely in Amhara (82%), Tigray (79%), Benishangul-Gumuz and Gambella (64%).²⁶³

Early/Child marriage is deeply embedded in the social, cultural and religious customs of the nation. The practice of early/child marriage is rooted in religious and cultural traditions based around protecting a girl's honor, since sex before marriage is seen as an extremely shameful act. A girl's worth, therefore, is based on her virginity and her role of being a wife and mother. The practice of bride wealth, in which the girl's family receives a payment from the groom's family for her hand in marriage, is still conventional. Thus, there is a short-term economic gain for the parents of a girl being married.²⁶⁴

In a society where virginity before marriage is valued, many Ethiopians believe early/child marriage is one way to ensure that girl-children will be safely protected from premarital sex and

²⁵⁷ The FDRE constitution, Article 34 (1 and 2)

²⁵⁸ The FRC, Article 6 and 7

²⁵⁹ The FDRE criminal code, Article 648 (a and b)

²⁶⁰ Child Marriage Facts and Figures, (<http://www.icrw.org/child-marriage-facts-and-figures>) last visited on September 18, 2013.

²⁶¹ Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 62-63.

²⁶² Id, p. 64

²⁶³ (http://www.egldam-fgm.net/include/EM_prevalence_1997_2007_opt.pdf) last visited on September 22, 2013.

²⁶⁴ (<http://girlsglobe.org/2013/04/15/child-marriage-a-global-issue/>) last visited on September 23, 2013.

rape by being placed firmly under the umbrella of marriage. Fear of sexual abuse and the need to ensure the daughters' virginity may be another trigger for early/child marriage.²⁶⁵ For instance, the Agew community strongly believes that marriage is the only way to protect girl-children from losing their virginity before marriage that could bring shame for the family and out of wedlock children. In West Gojjam and Awi Zone parents started to conduct early/child marriage in a very hidden and systematic ways and in the disguise of social gatherings. When two mothers are pregnant the parents may promise each other their children in marriage, in order to strengthen the relationships between the two families. In their tradition the idea that marriage ensures strong bonds between communities as significant factors in family decisions about when their daughters should marry.²⁶⁶

Early/Child marriage and early pregnancy can have very serious effects on the health of young girl-children. In addition, girl-children in this age group have increased risks including premature labour, complications during delivery, delivering a baby with low birth-weight, and the death of their infant. Prolonged and obstructed labour also could result in obstetric fistula.²⁶⁷ This condition leaves girl-children continually leaking urine and/or feces and frequently leads to abandonment by their spouses, friends, family and community. Given their lack of access to healthcare, most girl-children with this condition are unlikely to receive proper treatment. In the worst cases, many are divorced or abandoned and become social outcasts. In Ethiopia, more than 25% of fistula patients had become pregnant before the age of 15 and more than 50% before the age of 18.²⁶⁸ Accordingly, the majority of fistula victims are young girl-children who married during their school years and are first-time mothers. In such cases sexual relations are dictated, and in many cases, forcible, demanded by husbands. Young married girl-children often lack agency with-in their marriages and society, making them more likely to experience domestic violence, marital rape which under Ethiopian law is not an offence²⁶⁹ and other sexual abuse, and be isolated from family, friends and their community.

In Ethiopia, where the HIV/AIDS epidemic is selective of young females, early/child marriage may be a significant risk factor for adolescent girl-children. In most instances married girl-children may not be in a position to negotiate the use of condom or other contraceptive methods and safeguard their health as a result of which they could expose themselves to higher risk of contracting HIV or other sexually transmitted diseases.²⁷⁰

²⁶⁵ Haile-Gabriel Dagne, *Early Marriage in Northern Ethiopia*, (<http://www.jstor.org/stable/3774886?seq=1>) last visited on September 26, 2013.

²⁶⁶ Save the Children Denmark, Ministry of Education and Ministry of Women's Affairs, cited above at note 19, p. 39.

²⁶⁷ See, Tseganesh Gudeta, "The Silent Shame: Obstetric Fistulae in Ethiopia", *Private Decisions, Public Debate*, (1994), p. 96-106.

²⁶⁸ (<http://www.who.int/bulletin/volumes/87/6/09-020609/en/>) last visited on September 26, 2013.

²⁶⁹ See, the FDRE criminal code, Article 620 and the RFC Article 53

²⁷⁰ S. Clark, "Early Marriage and HIV Risks in Sub-Saharan Africa" *Studies in Family Planning*, vol. 35, Issue 3, (2004), p. 150.

On 11 October 2012, the International Day of the Girl Child was commemorated, as the first-ever International Day of the Girl-Child throughout the world and also in Ethiopia. The date was designated by the UN General Assembly as the International Day of the Girl Child to be observed every year beginning in 2012.²⁷¹ The theme of this first year commemoration of the International Day of the Girl Child was ‘*Ending Child Marriage*’, which is a fundamental human rights violation impacting all aspects of a girl-child’s life. According to the reports released on this day concerning early/child marriage warning nations that if the current trends continue, the number of girl-child marriages will increase dramatically over the next 10 years.²⁷² The report warns that 142 million girl-children could be married before they reach 18 in the next decade. The report also finds that, despite laws to prevent its practice, early/child marriage has remained mostly constant in developing countries including Ethiopia over the past decade.²⁷³

However, recently things are changing due to growing awareness and education of the harm early/child marriage causes to girl-children. Reporting systems and the involvement of local law enforcement organs is also playing a paramount role streamlined in order to rapidly respond to violations of these laws. The Orthodox Church and the Islamic leadership in Ethiopia publicly oppose early/child marriage though getting the message out to local communities is time-taking. Reports indicate that Ethiopia is one of the developing countries where progress has been made in reducing the incidence of early/child marriage. In the past five years, child marriage has shown a slight decline where the median age of marriage has risen from 16.1 to 16.5 years.²⁷⁴ The proportion of women married by age 15 has also declined over time, from 39 percent among women currently age 45-49 to 8 percent among women currently age 15-19.²⁷⁵

As discussed above, in Ethiopia, the legal age of marriage is 18 years. Nonetheless, it is highly prevalent and deeply entrenched practice with in the nation and numerous measures are being put by the government and other stakeholders to end early/child marriage. The measures, that need to be put in place has to be strengthened through a more coordinated framework in order to end early/child marriage. In this regard, many kebele councils have collaborated with the UN Committee on the Rights of the Child in terms of awareness creation and community based interventions to eliminate child marriage in Ethiopia.²⁷⁶ Moreover, the FDRE government together with stakeholders including the UN in Ethiopia has put in place constitutional provision, legal instruments and policy measures as well as strategies for ending early/child marriage and realizing girl-children’s empowerment to bring about change in social and cultural norms.

²⁷¹ (http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/170) last visited on September 30, 2013.

²⁷² (http://www.who.int/pmnch/media/news/2012/20121011_day_of_girl/en/index2.html) last visited on September 29, 2013.

²⁷³ (http://www.who.int/mediacentre/news/releases/2013/child_marriage_20130307/en/) last visited on September 29, 2013.

²⁷⁴ (http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/ChildMarriage_4_chapter3.pdf) last visited on September 29, 2013.

²⁷⁵ Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 62-63.

²⁷⁶ (http://ethiopia.unfpa.org/2012/10/11/5710/international_day_of_the_girl_child_commemorated/) last visited on September 22, 2013.

Preventing early/child marriage will protect the rights of the girl-child and help reduce their risks of violence, school dropout, early pregnancy, HIV infection, and maternal death and disability, including obstetric fistula. When girl-children are protected from early/child marriage and able to stay in school, they can build a foundation for a better life for themselves, their families and to the nation as a whole.

3.3.3 ABDUCTION

Abduction, which locally also known as '*telefa*' for its Amharic term, implies the taking of females, usually the girl-child, without her free and full consent for the sake of making her a wife. By and large, in many parts of Ethiopia, abduction is taken as normal and as one form of marriage. This kind of Marriage, which is also called marriage by kidnapping or by capture, occurs to a varying degree all over Ethiopia. As a result of this, abduction is the most prevalence illegal way of marriage. For instance, the practice is as high as 80 percent in Oromia region and as high as 92 percent in SNNPR with a national average of 69 percent.²⁷⁷ In these regions where the practice is widespread, the response from the parents and the community towards the perpetrators is one of praise. What is most interesting is that when such practices happen, most of the time ends up with mediation and consultations by elders for marriage which consequently remain unreported and the perpetrators remain unprosecuted.

Abduction has far reaching serious harmful consequences for the life and health as well as for her normal welfare of the girl-child. In most scenarios in the very attempt of the abduction the girl-children receive worse mistreatment, especially in times of resistance and cry for help, the abductors use excessive force including beating and causes bodily injury to the extreme even permanent bodily injury. Moreover, following the process of abduction the girl-child also could face immediate sexual intercourse which amounts to rape. What is more painful for the abductee is that, after all these various physical and psychological sufferings, she will be forced to live the rest of her life with her persecutor. All her previous carriers, school, friends and other accomplishments will end up with the abduction where she is expected to take care of all the job of a house-wife. In these circumstances, it is easy to imagine that most of these girl-children lead an unhappy life and some are even forced to commit suicide. Some others take desperate measures to escape their persecutor where they end up in some worsen condition like prostitution.²⁷⁸

Subsequently, after all the forceful taken away, the attacks and the rape, often it concludes with a compensation of small amount of value either in money or kind to the girl-child's parents in order to make them accept the abduction as a marriage concluded between their daughter and the abductor. The parents mostly adhere to accepting the compensation for the mere societal value,

²⁷⁷ (<http://www.egldam-fgm.net/fgm.html>) last visited September 22, 2013.

²⁷⁸ M. Freeman, International Child Abduction (2006), p. 27.

for the abducted girl-child is no more considered as an attractive girl presumably for the possibility of rape by her abductor. These arrangements are made most of the time with the involvement of the community elders who acknowledges the compensation as the formalization of the marriage.²⁷⁹

Because of its consequence and brutal way marriage by abduction is different from early/child marriage in the sense that in most of the cases the girl-child's family do not give their prior consent to the marriage, neither does the girl-child. The causes and features of abduction are various and complex and differs in accordance of the various cultures exists with-in the nation. The main reasons for the existing of abduction in many regions are mainly socio-cultural influences. In many cultures in the nation the payment of bride price is common and the economic aspect plays a paramount role in this regard. Where the abductor family is not in a position to pay such price marriage by abduction appears to be an alternative to be considered. In such cases the abductor's family gives a green light for the act of abduction for the reason that they cannot afford to pay the bride-price. Parents disregarded this due to culture and tradition, particularly in rural communities. Additional factor includes the rejection of the request of men for marriage by the girl's family or the girl herself. In such cases the boys want to get the girl-children they are exactly wanted to marry.

The economic status of the country also plays its role for the prevalence of abduction. In some regions where the infrastructure is extremely impoverished where many girl-children are forced to go on foot long miles for attending schools their vulnerability for abduction is very high. This long distance that girl-children often have to travel to get to school exposes them to the risk of abduction where sometimes they also should go through the harsh topography and existence of dense forests in many rural areas.

The FDRE criminal code addresses the issue in extensive details where it amends the previous 1957 penal code provisions in many ways and sets more stringent penalties for the act of abduction.²⁸⁰ In this regard, UN Committee on the Elimination of Discrimination against Women appreciates that the State Party's efforts of revising its criminal code to combat such violent acts and establishing special investigation and prosecution units and victim-friendly benches in the federal court system, and providing some legal aid and assistance to women and children victims of violence. It also expresses its concern that violence against women are under-reported due to cultural taboos and victims' lack of trust in the legal system, and that criminal law provisions are not consistently enforced because of insufficient allocation of funds, lack of coordination among the relevant actors, low awareness of existing laws and policies on the part of law enforcement officials, lack of capacity to apply the law in a gender-sensitive manner, and discriminatory societal attitudes. Moreover, the Committee also concerned about the delay in adopting a

²⁷⁹ Save the Children Denmark, Ministry of Education and Ministry of Women's Affairs, cited above at note 19, p. 39.

²⁸⁰ The FDRE criminal code, Article 586-589

national strategy to combat violence against women, lack of victim assistance and rehabilitation services, and the absence of disaggregated data on prosecution and conviction rates in relation to violence against women.²⁸¹

Nevertheless, recently as a result of wide-ranging awareness raising efforts and the introduction of stringent penalties for such act by the FDRE criminal law since 2005, the practice of marriage through abduction appears to be is on the decline, especially in some regions of Ethiopia. Although it needs to be verified through focused research, it appears that currently marriage through abduction is manifesting an alarming decline especially in some parts of Oromia region and in SNNPR. However, still there are lots to be done with regard to implementation gaps. The law enforcement organs and the court have to do all the more in order to eliminate the practice.

3.4 POVERTY AND ILLITERACY

With an area of 114 million sq. km, Ethiopia is the ninth largest and the second most populous nation in Africa. About half of the population is under the age of eighteen years i.e. children. It is one of the poorest economies in the world with 44 percent of its population living below the poverty line. The Ethiopian economy relies heavily on the agriculture sector which contributes to about 46.9 percent of the GDP, 85 percent of export and 80 percent of total employment. The nation general poverty rate is 29.6% with little vary in urban and rural areas, 25.7 % and 33.6% respectively. Literacy rate varies from rural to urban areas, where 78% of the population are literate in urban areas it is only 39.5% of the population are literate in rural areas.²⁸² Accounting for about half of the population and with their low status in the social, economic and political life of the nation, children and women in Ethiopia are obviously among those groups of the population that are bound to feel the impact of poverty and illiteracy in a particularly adverse way. In this regard, the girl-child forced to face the burden of poverty and illiteracy from two directions as a result of being a child and female. As it will be discussed under, the main efforts of the government is to achieve the MDGs that have relevance to eradicate this extreme poverty and illiteracy.

In Ethiopia, poverty and illiteracy are the major challenges facing the nation as a whole and the most vulnerable groups in particular. It is one of the most challenging factors that make the life of the girl-child difficult. Girl-children in families with poverty and illiteracy, child mortality rates rises the school dropout increases, and school enrolment drops, child labour and other forms of hazardous work, including sex work also persists. As a result of this, poverty reduction

²⁸¹ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 25.

²⁸² See, UNDP Report (2013), (<http://www.undp.org/content/ethiopia/en/home/countryinfo/>) last visited on September 30, 2013.

and increasing literacy rate have, of course, been taken as the all-embracing development agenda and has informed the major policies and strategies of the country.

Nevertheless, the issue of poverty never has been addressed in a way of benefiting the girl-child. Most of the development goals, policies and targets of poverty reduction do not incorporate this issue as important variables. Although, the country produced a strategy paper known as the Plan for Accelerated and Sustained Development to end Poverty (PASDEP) for the years 2005/6-2009/10, that has been put in to consideration gender dimension of development which takes in to consideration the girl-children, there is a need for a multi-dimensional approach, analysis of the linkages among the various dimensions of poverty and disaggregated analysis.

The problem of poverty is also one of the factors for girl-children to engage themselves in the various worst forms of activities including child labour. In Ethiopia, one important reflection of poverty is child labour, among others things, girl-children often involve in dangerous works and expose themselves for various forms of violence and abuse in order to support their poor families and themselves. These scenarios expose them to remain in more violent, abusive and harmful positions unless these exploitative practices are taken in to consideration. The prevalence of child labour is persistent, as UN Committee on Economic, Social and Cultural Rights notes there are large percentage of children under the age of 14 who are engaged in economic activity and do not attend school.²⁸³

In poor families, they have to work extensively to support their families or to feed themselves. In particular, girl-children with economic difficulties are vulnerable to trafficking and are ultimately forced to work in homes, in private businesses such as shops, restaurants, and in other small businesses. Many girl-children also may become involved in the sex industry because they need to generate income for their family.

Poverty hits girl-children the hardest, threatening their survival and development, their right to health, adequate food and nutrition, and education. It also has a negative impact on their right to participation, and to protection from violence, harm and exploitation. The economic crises have firmer impact on the already existing poverty on the lives of the girl-child who are highly vulnerable to their negative effects.²⁸⁴ More recently as a result of the global economic crises, in many parts of the nation the life of girl-children is under the shadow of danger for the reason that the Ethiopian economy and the poor in Ethiopia are extremely vulnerable to external shocks and the global price of exports and imports. In such situations studies show that girl-children are particularly vulnerable. These situations desperately have left girl-children and their families with fewer resources, lower incomes and less access to basic services, including social safety nets. As a result, girl-children's fundamental human rights to survival, development including

²⁸³ UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ethiopia, cited above at note 179, Para. 25.

²⁸⁴ UN General Assembly, The Girl-Child, cited above at note 3, Para. 11.

education and employment, protection from violence, neglect and abuse and participation in decisions that affect their lives are increasingly under threat.²⁸⁵

According to some reports, Ethiopia has witnessed steady social and economic development together with rapid increase of family income in this past two decades. For instance, absolute poverty reduced from 39% in 2004/05 to 29% in 2010/11, with the sharpest decline in rural areas.²⁸⁶ In line with this, following the implementation of the comprehensive poverty reduction strategy, the five year Growth and Transformation Plan 2010/11-14/15 indicates that Ethiopia would achieve halving poverty by 2015 and projects that both income and food poverty reach 22.2% and 21.22% in 2014/15 from 29.2% and 28.2% in 2009/10, respectively.²⁸⁷

In addition, the current construction boom supported by significant push in private sector investment expansion and increased public investment in infrastructure like roads, rural development and food security including the productive safety net program, telecom, power, and irrigation, etc. has helped enhance income earning capacity of both the rural and urban families. Nevertheless, it should be noted that despite these encouraging developments, it is important to also recognize that poverty reduction policies may not automatically address girl-children's poverty in its entirety. In order to tackle poverty in a holistic and child-sensitive manner, it is important to consider the potentially differential impact of economic growth and poverty reduction policies with-in the household both on adults and children, males and females. Hence, to bring to the end, or at least to minimize, all these vulnerability of girl-children to various forms of abuse and violence the issue of poverty has to be addressed properly. The first possible way out is perhaps identifying the best way of operational categories of budgets for children that are consistent with the pillar principles of the CRC and ACRWC including budget for the education, social protection, health and for child development.

In this regard, Ethiopia is one of the countries that performed fairly in allocating resources in sectors that benefit children in general. The country is making progress in allocating a higher percentage of its available resources to eradicate extreme poverty as compared to most African countries.²⁸⁸

The other major challenge as mentioned above is illiteracy, where most Ethiopian parents in Ethiopia are illiterate perpetuates the prevalence of the community's appalling attitude towards girl-children. The illiteracy rate is very high particularly among rural women and girl-children.²⁸⁹

²⁸⁵ M. Stavropoulou and N. Jones, Off the balance sheet: the impact of the economic crisis on girls and young women (2013), p.7.

²⁸⁶ The Global Campaign for the Health Millennium Development Goals – Report (2013).

²⁸⁷ Ethiopia: MDGs Report, trends and prospects for Meeting MDGs by 2015 (2010), p.5.

²⁸⁸ The African Report on Child Wellbeing-2011: Budgeting for Children (2011), p.1.

²⁸⁹ UN Committee on Economic, Social and Cultural Rights, Concluding Observation: Ethiopia, cited above at note 179, Para. 44.

According to the new Ethiopian DHS only 38 percent of women are literate, an increase from 29 percent in 2005 survey. Literacy among women varies greatly by age, increasing sharply from 13 percent among women age 45-49 to 64 percent among women age 15-19. Literacy is much higher in urban areas than rural areas. About seven urban women in every ten (69 percent) are literate compared with about three rural women in every ten (29 percent).²⁹⁰ Regional differences in literacy are also marked, with literacy levels highest among women in predominantly urban Addis Ababa (80 percent) and lowest in the predominantly rural Somali and Afar regions (both 20 percent). There is also a marked difference in literacy by women's wealth, ranging from 18 percent among women in the lowest wealth quintile to 70 percent in the highest wealth quintile.²⁹¹

With the efforts as discussed above to tackle poverty and illiteracy, other recent government activities, however, are inhibiting the speeding up of reduction of poverty and illiteracy. The new NGOs law, Charities and Societies Proclamation, which the Ethiopian government enacted in the beginning of 2009, has negative impact on the fight against poverty and illiteracy.²⁹² The law bans all NGOs which are working on issues related to the human rights, good governance, and conflict resolution, if they receive more than ten percent of their funding from foreign sources.²⁹³ This effectively bans all foreign NGOs and foreign-supported domestic NGOs in Ethiopia working on human rights issues and poverty reduction. At a minimum, organizations have to have scaled down their activities, narrowed their focus, or entirely shut down. The impact of this law explicitly prevents the campaigning for gender equality, children's rights, and disabled persons' rights.²⁹⁴ In this regard, UN Committee on Economic, Social and Cultural Rights expressed its concern in strong terms that certain provisions of this law have had a profound obstructive effect on the operation of NGOs. It is also concerned that the law forces this organizations to limit their activities by closing regional offices or suspending some of their services. The Committee, accordingly, recommends that the State Party amend the Proclamation No.621/2009, with a view to omitting provisions restricting the work of human rights organizations and lifting the funding restrictions, and unblock all the assets of local human rights NGOs.²⁹⁵ Moreover, the African Commission on Human and Peoples' Rights also similarly expressed its concern on this law that the provision that requires NGOs not to raise more than ten percent of their funding outside of Ethiopia has a negative impact.²⁹⁶

²⁹⁰ Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 39.

²⁹¹ *Id.*, p. 40

²⁹² (<http://www.hrw.org/news/2009/01/08/ethiopia-new-law-ratchets-repression>) last visited on September 30, 2013.

²⁹³ Charities and Societies Proclamation, 2009, Art. 2 (3) & 14, proc. No 621, Neg. Gaz. Year 15, no. 25.

²⁹⁴ See. Defenders Center For International Human Rights, Sounding The Horn: Ethiopia's Civil Society Law Threatens Human Rights, (2009).

²⁹⁵ UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ethiopia, cited above at note 179, Para. 6.

²⁹⁶ The African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations: Ethiopia, cited above at note 9, Para. 56.

Understanding and highlighting the ways poverty prevents girl-children from realizing their full potential and participating as equal members of the community is a key step towards reducing it. Girl-children living in poverty face deprivations of many of their rights for survival, health and nutrition, education, participation, and protection from harm, exploitation and discrimination. These deprivations cause suffering in the short-term and hinder development in the long term. The issue of eradicating poverty and illiteracy is beyond the ensuring the human rights of the girl-child, rather it yield high economic and societal returns. Hence, the commitment of the nation to enhance social protection, will build a foundation for equitable growth and sustained progress towards the MDGs.²⁹⁷

3.4.1 THE MILLENNIUM DEVELOPMENT GOALS (MDGS)

The Millennium Development Goals (MDGs) is a solemn promise which was signed in 2000 by 189 countries with the aim of improving the life of people by freeing them from extreme poverty.²⁹⁸ This promise of the MDGs has eight targeted Goals to be achieved by the signatory states by the year 2015. Accordingly, all these eight Goals directly or indirectly have something to do with the well-being, normal growth and development of the girl-child. Ethiopia is one of the states that signed the promise and is working steadily to achieve these Goals by the year 2015.

The first Goal which directed in eradicating extreme poverty and hunger, oblige states to work in decreasing by half the proportion of people whose income is less than one U.S. dollar a day and also the proportion of people who suffer from hunger, i.e., being underweight and feeling physical consequence of lack of food. As discussed above, poverty is one of the main threats to the well-being, normal growth and development of the girl-child, where with poverty they are forced to drop school, get married early, and drive in to sex and other dangerous form of child labour in order to earn many for them and their family. According to government reports, in Ethiopia, during the past seven years, progress towards achieving Goal 1, as measured by macroeconomic parameters and strong growth averaging over 11% per annum, has been registered.²⁹⁹ As a result of this progress, in accordance to the government prediction maintaining the strong growth and following the broad-based and pro-poor path will lead to the possibility of decreasing poverty up to 22.2% by 2015.³⁰⁰

The second Goal is aimed at achieving universal primary education where the goal seeks in ensuring opportunities for all children to complete their primary education. This Goal is very important for girl-children especially in Ethiopia where the enrolment of girl-children is lower

²⁹⁷ UN General Assembly, The Girl-Child, cited above at note 3, Para. 17.

²⁹⁸ UN General Assembly, United Nations Millennium Declaration,

(<http://www.undp.org/content/undp/en/home/mdgoverview/>) last visited on September 28, 2013.

²⁹⁹ Ethiopia: MDGs Report, trends and prospects for Meeting MDGs by 2015, cited above at note 287, p.3.

³⁰⁰ Id, p. 10

than boys. The country, in this regard, showed considerable progress in increasing the enrolment of girl-children though still there is a need towards achieving the Goal to 100 percent. Accordingly, during 2009/10 the Gross Enrolment Rate (GER) for primary school (grades 1-8) reached 95.9 per cent (93. per cent for female and 98.7 per cent for male). During the same year (2009/10) the Net Enrolment Rate (NER) stood at 89.3 per cent (87.9 for male and 86.5 percent for female). There has been a steady improvement in the participation of girl-children at primary level as expressed by the Gender Parity Index (GPI) which shows a progressive trend over the years. GPI in the first cycle (grades 1-4) increased to 0.93 in 2009/10 from 0.87 in 2004/05. At upper primary level (grade 5-8), GPI has substantially improved as well to 0.97 in 2009/10 from 0.69 in 2004/05. In general, the GPI improved from 0.87 during 2004/05 to 0.93 during 2009/10. Likewise, for the same years under consideration, GPI increased in the first years of secondary level (grades 9 and 10) to 0.80 from 0.57.³⁰¹

The third Goal is about promoting gender equality and empowering women. As a result of the societal attitude on the role of females, this Goal has been one of the major challenges to be achieved by 2015 in the nation. The gender disparity, with some degree of differentiation in rural and urban areas, in all sectors indicates that women and girl-children are deprived of their right of equality. Education, health, adequate standard of living conditions and other areas of concern are measures of inequalities that are pervasive in the nation. Lack of all these opportunities in adequate percentage excludes girl-children from developing their participation and effectiveness in their communities. Though compared to earlier times much progress has been made, addressing gender equality and empowering women remain the most challenging concern in the nation. In this regard, one area of progress, as just mentioned above, is the education sector where eliminating gender disparity in primary and secondary education showing many developments. Although gender parity is not achieved in all levels, Ethiopia appears to be on track to achieve the primary school enrolment by 2015 as indicated in Goal two.³⁰² However, the Goal three remains still challenging because of the deep-rooted nature of the challenge, which depends not only on the actions of government, but also on changing attitudes and cultural values of the society at large in sending girl-children to school.

The fourth Goal intended to reduce child mortality by two-thirds, the under-five years of age mortality rate. In Ethiopia the main reason for child mortality is early/child marriage where premature and underweight babies born from under-aged mothers. Currently evidences show that under-five and infant mortality rates are in continuous declining. Under-five mortality decreased from 166 deaths per 1,000 live births in the 2000 to 88 in 2011, and infant mortality also in like manner decreased from 97 deaths per 1,000 live births in the 2000 to 59 in the 2011. On the other hand, even though neonatal mortality rate decreased from 49 deaths per 1,000 live births in 2000 to 39 deaths per 1,000 live births in 2005, it has since remained stable at 37 deaths per 1,000, in the 2011. Infant mortality declined by 39 percent over the 15-year period between

³⁰¹ Id, p. 4

³⁰² Id, p. 19

2000 and 2011, from 97 deaths per 1,000 live births to 59 deaths per 1,000 live births.³⁰³ In order to achieve this Goal additional efforts has to be put in place, including promoting for all deliveries of babies to be happened by skilled health personnel only in health centers and hospitals and increasing the human resources required to meet the minimum staffing pattern, for scaling up basic and emergency obstetrics and newborn care services in health centers and hospitals. Generally speaking, the country is doing its best to achieve the goal of reducing child mortality by two-thirds by the end of 2015.³⁰⁴

The fifth Goal also has relevance to improve maternal health. It aimed to reduce maternal mortality ratio by three-quarters and provide universal access to reproductive health. As discussed above, the main challenge in this regard is early/child marriage where it has huge effect on the young mothers during pregnancy, birth and after birth. In Ethiopia, study shows that early/child marriage has highly contributed to maternal mortality rate where, 9 percent of women age 25-49 have already given birth exact at the age of 15 years, and 38 percent have given birth by exact age of 18 years.³⁰⁵ Early/Child marriage is also the main reason for teen girl-children early pregnancy especially in rural areas, where teenagers in rural areas are much more likely to have started childbearing than their urban counterparts (15 percent and 4 percent, respectively). For instance, among regions the percentage of women age 15-19 who have begun childbearing ranges from 3 percent in Addis Ababa to 21 percent in Gambella.³⁰⁶

Moreover, girl-children who start childbearing early has less education, awareness and agency for seeking out health care services, even it is worse taking into consideration the number of all women who deliver by skilled health personnel in health centers and hospitals. In Ethiopia, nine women in every ten deliver at home and only 10 percent of births are assisted by a skilled provider, 4 percent by a doctor and only 7 percent by a nurse or midwife. While, only less than 1 percent of births are assisted by a Health Extension Workers, and 57 percent of births are assisted by a relative, or some other person, 28 percent of births are assisted by a traditional birth attendant, and 4 percent of births are unattended. However, skilled assistance at delivery increased from 6 percent to 10 percent in the past six years.³⁰⁷ The percentage of births delivered in health facility ranges show that still this Goal is a challenge to achieve the MDGs, where the percentage of births delivered in health facility is less than 10 percent in SNNP, Afar, Oromia, Somalia, and Benishangul-Gumuz regions to 82 percent in Addis Ababa.³⁰⁸ Therefore, by ending the prevalence of early/child marriage, and deploying health extension workers in rural villages, it is possible to improve maternal health as it is set by the MDG. According to the government report, currently, the total number of health extension workers trained and deployed has reached 30,193 accounting for 98.07% of the total national requirement of 30,786. By and large, the

³⁰³ Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 110.

³⁰⁴ Ethiopia: MDGs Report, trends and prospects for Meeting MDGs by 2015, cited above at note 287, p. 26.

³⁰⁵ Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 78.

³⁰⁶ *Id.*, p. 80

³⁰⁷ *Id.*, p. 127

³⁰⁸ *Id.*, p. 126

efforts in ending early/child marriage and the combined and wide-ranging interventions in the health sector could have a significantly positive impact in improving the maternal health and achieving the goal of reducing maternal mortality by three quarters by the year 2015.³⁰⁹

The sixth Goal relates to combating HIV/AIDS, malaria and other diseases. This goal pursues to end and reverse the spread of HIV/AIDS, malaria and other diseases. Because of their biological predisposition girl-children are naturally highly vulnerable to HIV and other diseases. In addition, they also lack the means to protect themselves like healthcare services and assistance, education, and awareness. In particular, girl-children in Ethiopia are highly vulnerable to the risk of HIV where in urban areas especially near schools they are exposed to wealthy guys known as “sugar daddy” who prefer to have sex with girl-children than older women in a belief that teenage girl-children are more likely had less sexual experiences than older girl-children and hence, are presumably are HIV negative. In this regard, recent study indicates that this trend is pervasive where about 21 percent of women age 15-19 who had sexual intercourse in the year 2010 had sex with a man ten or more years older than they were.³¹⁰ They are also less exposed to HIV/AIDS related knowledge including transmission and prevention methods and a standard health care and services as a result of which they are highly visible to such diseases. For instance, a study shows that only about one-fourth of women (24 percent) age 15-24 have comprehensive knowledge about AIDS.³¹¹ Generally, the national response to HIV/AIDS has been re-oriented in the context of this MDG towards achieving a universal access focusing on three instrumental strategic approaches: the Health Extension Program, Health Facility Expansion, and Capacity Development. While the progress on HIV/AIDS and malaria is commendable and it is highly probable that the targets for this goal will be met, other such diseases like TB need to be taken in to consideration if the set targets are to be met.³¹²

The seventh Goal though seems has no direct relevance to girl-children, it anyway entails ensuring environmental sustainability. Sustainable development involves safeguarding environmental sustainability to meet the needs of the present generations without endangering the needs of upcoming generations, in such a way offering improved quality of life for everyone including girl-children. In this regard, the government is working its best by making environmental friendly policies and laws. As a result, the quality of life of both the rural and urban dwellers is improving. For example, the share of the population with access to clean water has increased dramatically since 1994/95 and access to safe drinking water also increased from 19% in 1990 to 68.5% in 2009/10.³¹³ With this current trends, Ethiopia seems to be on track to reach this MDG target of halving the population without access to clean water by 2015 though some of the most important challenges that need to be addressed to realize this goal have to be

³⁰⁹ Ethiopia: MDGs Report, trends and prospects for Meeting MDGs by 2015, cited above at note 287, p. 30.

³¹⁰ Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 216.

³¹¹ Id, p. 215

³¹² Ethiopia: MDGs Report, trends and prospects for Meeting MDGs by 2015, cited above at note 287, p. 36.

³¹³ Id, p. 39

addressed in proper way including capacity building and protection of biodiversity through legislation.³¹⁴

The last and the eighth Goal advocates for developing global partnership for development, though this Goal also has no direct connection to the right of the girl-child. This Goal is concentrated on developing non-discriminatory trading and financial systems in a belief that trade policy, trade liberalization and progressive integration into the global economy are important drivers of growth. In order to realize this Goal, with the aim of subordinating developing countries, developed countries are doing their best to remove barriers to trade. In this regard, the country has been benefiting from this trade liberalization though not in its maximum capacity. For instance, as mentioned above, the banning of the NGOs, by the Charities and Societies Proclamation, has its impact on the success of this Goal.

Generally, the country is doing its best to achieve these eight Goals by the set time in 2015. Though some of the Goals are in good progress that they could be achieved by the set time, some are still in big difficult for time is running out to achieve them by the year 2015. Therefore, more must be done to achieve these goals.³¹⁵

3.5 DISCRIMINATIONS

One of the basic notions in any democratic society is the principle of equality. One of the basic characteristics that make the principle a progressive universal moral and legal principle is that the well-recognized repercussion exists between equality and discrimination. The value of equality has been described as a simple concept rather than relating and assessing its role in promoting the rights of the most discriminated groups. The word discrimination generally refers to the different treatment of an individual or a group of individuals based on certain grounds like sex, race, colour of skin etc., which results in denying rights and opportunities. Instances of discrimination as unequal treatment against girl-children can be wide-ranging from violence to the systematic exclusion from the benefit of many available opportunities.

In this regard, children in general and the girl-child in particular are the first most vulnerable groups to discrimination in any society and in all circumstances, as a result of their sex and age. This kind of discrimination exists as unequal treatment has defined the human experience throughout history and across regions of the world. Today, virtually all people live in a cultural and social environment formed by past, current and emerging forms of discrimination.³¹⁶

³¹⁴ Id, p. 42

³¹⁵ (<http://www.undp.org/content/ethiopia/en/home/presscenter/articles/2013/03/15/human-development-report-2013-puts-ethiopia-as-third-top-movers/>) last visited on September 30, 2013.

³¹⁶ (<http://www.equalrightstrust.org/ertdocumentbank/The%20Ideas%20of%20Equality%20and%20Non-discrimination,%20Formal%20and%20Substantive%20Equality.pdf>) last visited on September 30, 2013.

Accordingly, the equal rights of male and female to the enjoyment of all human rights are one of the fundamental principles recognized under international law and enshrined in the main international human rights instruments. In this regard, one of the most important documents is the UN Charter which recognizes it as one of its purpose in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.³¹⁷ The UDHR also entitled everyone to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.³¹⁸ The ICESCR protects human rights that are fundamental to the dignity of every person. In particular, the Covenant provides for the equal right of male and female to the enjoyment of all the rights it articulates.³¹⁹ Furthermore, in its General Comment No. 16 on the equal rights of male and female to the enjoyment of all economic, social, and cultural rights, UN Committee on Economic, Social and Cultural Rights recognized that gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality, and called on States Parties to take appropriate measures to eliminate violence against female and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.³²⁰ In same manner, the Committee in its 2009 General Comment No. 20 on non-discrimination in economic, social and cultural rights, specifically refer to the girl-child with respect to obligations for States Parties to ensure non-discrimination both formally and substantively in the context of enjoyment of rights under the Covenant.³²¹

In the same way with the ICESCR, the ICCPR, which was drafted at the same time, also provides that the States Parties shall ensure the equal enjoyment of all the civil and political rights set forth in the Covenant on the basis of equality of both men and women.³²² Moreover, particularly, the CEDAW provides with extensive provisions for the protection of the girl-child from such practices of discrimination. It defines ‘discrimination against women’ as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women.³²³ This kind of discrimination against women violates, inter alia, the principles of equality of rights and respect for human rights and fundamental freedoms in the political, economic, social, cultural, and civil or any other field. Moreover, in its General Recommendation No. 19, the UN Committee on the Elimination of Discrimination against Women noted that gender-based violence impairs or

³¹⁷ The UN Charter, Article 1, Para. 3.

³¹⁸ The UDHR, Article 2

³¹⁹ The ICESCR, Article 3

³²⁰ The UN Committee on Economic, Social and Cultural Rights, General Comment No. 16, on the equal right of men and women to the enjoyment of all economic, social and cultural rights, E/C.12/2005/4, (2005), Para. 27.

³²¹ The UN Committee on Economic, Social and Cultural Rights, General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20, (2009), Para. 8 (b).

³²² The ICCPR, Article 3

³²³ The CEDAW, Article 1

nullifies the enjoyment by women and girl-children of their human rights and fundamental freedoms under international law or human rights treaties and is a form of discrimination.³²⁴ The ACHPR similar to the above mentioned instruments, guarantee the right to non-discrimination of the girl-child.³²⁵ More importantly, the CRC and ACRWC incorporated the principle of non-discrimination as one of their basic principles.³²⁶

In addition to these international legally binding instruments ratified by States, Member States have also made far-reaching commitments to eliminate discrimination against woman and the girl-child in the context of world conferences and other international forums. In this regard, it was The UN Fourth World Conference on Women held in Beijing that included a specific segment on the girl-child with a specific chapter in its subsequent Platform for Action the first time in 1995.³²⁷ This included strategic objectives on issues, such as the elimination of all forms of discrimination against the girl-child and negative cultural attitudes and practices against girl-children, the promotion and protection of the rights of the girl-child, including those related to education, health and nutrition, child labour, violence and participation in social, economic and political life.³²⁸

In accordance to these international instruments and different platforms, in Ethiopia, there are also some efforts to provide with same protection. Accordingly, the first worth mentioning instrument is the FDRE constitution, which ensures the equality of girl-children with boys and protects the former from various forms of discriminatory activities. The constitution guarantees the equality of the girl-child in any circumstances. It states that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, colour, sex, language, religion, political or other opinion, property, birth or other status.”³²⁹ Moreover, it particularly stresses that “[w]omen shall; in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.”³³⁰ The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them compete and participate on the basis of equality with men in political, social and economic life as well as in public and private

³²⁴ The UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, cited above at note 45, Para. 7.

³²⁵ See, the ACHPR, preamble Para. 8, Article 2 and 3

³²⁶ The CRC, Article 2 and the ACRWC, Article 3

³²⁷ (<http://www.un.org/geninfo/bp/women.html>) last visited on September 30, 2013.

³²⁸ UN General Assembly, The Girl-Child, cited above at note 3, Para. 8.

³²⁹ The FDRE constitution, Article 25

³³⁰ Id, Article 35 (1)

institutions.³³¹ In addition to the constitutional provisions many other laws, including the regional constitutions³³² and many other laws of the country follows the drift of the constitution.

Despite all these protections the fact on the ground, in Ethiopia, is very astonishing where treating the girl-child unequally with boys and other group of individual considered being normal. A girl-child in Ethiopia suffers from the discriminatory treatments from their own families, communities and the state. They are considered to be inferiors to boys and in many instances receive less favorable treatment than boys as a result of their gender. The discrimination actually begins in some parts of the country from early at the moment of birth where the traditional midwife and the family ululate about 12 times if it is a boy and only 7 times if it is a girl. This indicates how the society prevails in having a son than a daughter for the preference of sex. This strong partiality for boys over girl-children by parents and communities, which often results in the neglect of basic rights of girl-children, including their health, nutrition and education has far reaching consequences. On a more extreme level, son preference may lead to pre-natal sex selection and the abortion of female fetuses, as well as female infanticide, or feticide, which may occur deliberately or through forms of neglect, such as starvation.

In many extreme situations the discrimination against girl-children within the nation could sometimes be taken to life-threatening extremes. For instance, in many rural areas girl-children are neglected and even denied many opportunities, including medical, education, and other benefits. Some areas of concern only are exclusively for males and girl-children are not expected to take part in. In many regions, for example, some community believes that educating girl-children is a waste of money and they are unwilling to send their daughters into school. Consequently, girl-children are denied of the right to education. All these scenarios are interrelated in Ethiopia though as the UN Committee on the Rights of the Child has noted that the lack of sex disaggregated data on several issues makes it difficult to identify problems and disparities, and design appropriate policies for the implementation of the CRC.³³³ Those customs and practices discriminatory to the girl-child on the grounds of sex or other status shall be eradicated through public awareness and better implementing policies for the best reason that the practice of these multiple discrimination is one of the major reasons for the current worst *status quo* of the girl-child in Ethiopia.

³³¹ Id, Article 35 (3)

³³² In this regard, almost all regional constitutions, including the regional constitutions of Oromia, Amhara, SNNP, are the direct copy of the Federal constitution, where they specified the same protection (under same article 36) as that of the federal one. See, Tsegaye Regassa, State Constitutions in Federal Ethiopia: A Preliminary observation, (2004).

³³³ The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 23.

3.6 NATIONAL POLICY, PRINCIPLES AND OBJECTIVES

As discussed above there are many policy documents which the country adopted in various times that have relevance to children in general and the girl-child in particular. In this regard, the policy documents such as the National Education Policy, the Social Affairs Policy, and the Policy on Women, and the Developmental Social Welfare Policy of Ethiopia enacted in 1996 have extensively dealt with concerns of children. In addition, Ethiopia's National Plan of Action for Children for the period 2003 – 2010 and beyond, was issued in June 2004, which aimed in protecting children from abuse, exploitation and violence. There is also the new Draft Federal Democratic Republic of Ethiopia National Child Policy by MoWCYA though it does not address the rights of the girl-child in particular.

In addition to these policies the National Children's Commission was established in Ethiopia in earlier period by Proclamation No. 208/ 1981. The Commission was given extensive power in relation to children's affairs. Over two decades have elapsed since the Commission was established, and over those years, some of its powers have been taken away from it and were given to various executive institutions. For instance, while some of its powers were, given to the Ministry of Labour and Social Affairs, some of other powers also have been given to the Ministry of Women, Children and Youth Affairs. Matters relating to children's affairs are not put under one competent executive institution and that itself is a problem that deserves to be tackled.³³⁴ While implementing all the above mentioned policies these organs which are endowed the power of implementing the above mentioned policies, the constitution requires them to look over the National Policy Principles and Objectives under chapter ten of the constitution. The constitution states that any organ of government shall, in the implementation of the constitution, other laws and public policies, be guided by the principles and objectives specified under Chapter ten.³³⁵

The important issue perhaps to remark at this juncture is the applicability and the argument of the economic and social rights in Ethiopia. The realization of the socio-economic rights of the girl-child is directly related to how these rights are perceived in Ethiopia. In this regard, there are, generally, three principal modes of alternatives for the constitutionalization of the socio-economic rights. The first one is the entire exclusion of socio-economic rights from the constitution, where the rights are not included with in the constitution or an exclusionary clause is made with in the constitution. The second one is the inclusion of socio-economic rights as directive principles of state policy (DPSP), and the last one is explicit incorporation in the substantive part of the constitution.³³⁶ Under the Ethiopian system the socio-economic rights found both in the substantive part and in the National Policy, Principles and Objectives (NPPO)

³³⁴ Save the Children Denmark, Ministry of Education and Ministry of Women's Affairs, cited above at note 19, p. 68.

³³⁵ The FDRE constitution, Article 85 (1)

³³⁶ Amare Tesfaye, Justiciability of Socio-Economic Rights in the Federal Democratic Republic of Ethiopia (2010), p.58.

part of the constitution.³³⁷ Accordingly, the constitution followed both the incorporation and inclusion as DPSP. This shows that the modes of constitutionalizing socio-economic rights followed by the FDRE constitution is of two kinds: inclusion in the substantive part of the constitution, and inclusion as NPPO.

In doing so the FDRE constitution has explicitly included socio-economic rights both in its substantive part as well as under the NPPO. The constitution has incorporated certain provisions concerning socio-economic rights, the right to property; economic, social and cultural rights; labour rights, and the right to development in its substantive part under the heading of “Fundamental Rights and Freedoms”, which also contains a bulk of civil and political rights. In addition to the provision of socio-economic rights found in the substantive part of the constitution, there are also other provisions dealing with socio-economic rights though they are not included under the heading of ‘Fundamental Rights and Freedoms’ rather under chapter ten, the NPPO part. The socio-economic rights included under this part are health, welfare and living standard, education, clean water, housing, food and social security. The inclusion of these rights under the NPPO part gives rise to question on their justiciability. Nevertheless, though their incorporation in the substantive part of the constitution has given them equal status with that of the civil and political rights and resulted for their direct justiciability, at least normatively, however, the inclusion of them as NPPO create doubt as to their actual legal status and justiciability.³³⁸

Unlike the first model, the second one allows for the incorporation of socio-economic rights in the constitution though it is not in the substantive part. Most of the time, this form of constitutionalizing socio-economic rights is adopted by countries that want to oust the jurisdiction of the judiciary. Normally provisions contained in the DPSP are considered as guidelines by which the organs of the state have performed their function, and are not legally enforceable before court of law.³³⁹ That is, DPSP cannot be enforced by court action or at an individual instigation. Thus, they do not provide a basis of legal action if programs have not been undertaken in line with the DPSP. However, this does not mean that they are not important because they provide a framework for understanding the intention of the legislature and can be used in the interpretation of legislation or the substantive parts of the constitution and many consider them as minimum level of protection. Generally, DPSP have two characteristics: first, they are not enforceable before court of law and, therefore, should they have been ignored or infringed, the aggrieved have no legal remedy to compel positive state action. Second, the principles are fundamental to the governance of the country and oblige any government organ to act in accordance with them. The NPPO are guidelines for the functioning of the government in the making of policies, laws as well as in the drawing of programs. Furthermore, the court has no

³³⁷ The FDRE constitution, Articles 40, 41, 42, 43 and 85-92

³³⁸ Sisay Bogale Kibret, Competence of Ethiopian Courts to Entertain Socio-Economic Rights: Practical Appraisals on Challenges and Prospects (2011), p. 61.

³³⁹ *Id.*, p.29

power to consider them as they fall out of the realm of its jurisdiction. Accordingly, it is perceived as mere aspirations that only direct the government in the implementation of the constitution and are not enforceable before court of law. However, the dominant view is that the mere fact of the incorporation of socio-economic rights as NPPO does not affect their judicial enforceability.

To begin with, though the FDRE constitution incorporates socio-economic rights under the crudely-formulated provision of Article 41, the usage of general terms and the incorporation of some indicative lists help for the inclusion of unlisted rights. Besides, the cross-referring provision of the FDRE constitution in the interpretation of the fundamental rights and freedoms provides flexibility for their inclusion. In this regard, Article 13 (2) of the FDRE constitution is of crucial relevance to the implicit socio- economic rights which are with-in the purview of the constitution but lack express protection.³⁴⁰

All human rights, either civil and political or socio-economic, are most securely guaranteed where they are ingrained as fundamental norms of a supreme constitution through a comprehensive bill of rights with strict amendment requirements and where they are enforceable by courts of law.³⁴¹ Therefore, the socio-economic rights incorporated in the NPPO of the FDRE constitution cannot be directly enforced before the judiciary. However, this does not mean that they are totally beyond the reach of the court and non-justiciable since there is possibility for the judiciary to consider them in the implementation of the constitution.³⁴² Therefore, the discussions so far made indicates the existence of strong level of protection accorded to socio-economic rights if it has been put into practice effectively with the exception of some draw backs attributable to the form of incorporation of the rights.³⁴³ First, in countries that adopt DPSP as a model for constitutionalizing socio-economic rights, there is a clear constitutional provision ousting the jurisdiction of the court with regard to the provisions found in the DPSP of their constitution. However, there is no similar provision in the FDRE constitution that affects the jurisdiction of the court in relation to the NPPO. Second, the constitution itself imposes an obligation on the court to consider the principles and objectives while implementing the constitution. So, the problem is not their place in the constitution rather the attitude of the judiciary as well as the approaches followed by the claimants. If both of them are followed creative approach, the NPPO are not out of the ambit of the judiciary.³⁴⁴ In such cases, the court can consider the case since there is no controversy as to the justiciability of the equality guarantee under Article 25 and should consider the relevant provision of the constitution found in the NPPO as per Article 85 (1). The NPPO also enumerated some civil and political rights thereto, so if they are justiciable why not the socio-economic ones. Thus, though the NPPO do

³⁴⁰ Amare Tesfaye, cited above at note 336, p.89.

³⁴¹ Sisay Alemahu Yeshanew, "The justiciability of human rights in the Federal Democratic Republic of Ethiopia," *African Human Rights Law Journal*, vol. 8, No 2 (2008), p.275.

³⁴² Amare Tesfaye, cited above at note 336, p.99-100.

³⁴³ *Id.*, p. 61

³⁴⁴ *Id.*, p. 100

not create any subjective rights, they can be indirectly enforced by the court through the application of them cumulative with the fundamental rights and freedoms.

CONCLUSIONS

Discussing the general situation of the girl-child in the nation could increase better understanding of the individual rights of the girl-child. Therefore, this chapter provides the general overview on the *status quo* of the girl-child in Ethiopia. In order to examine the general situation, however, first need to be defines the term ‘girl-child’ itself. The definition for the girl-child is not provided in any of the major international human rights instruments neither in the nation’s national laws. Nevertheless, as it is in the CRC and ACRWC, the definition for the child is provided under the RFC. Though the meaning provided for the two terms is nearly the same, the definition provided in the RFC is for the term ‘minor’ rather than of ‘child’. Accordingly, it is the RFC that seems provide the governing definition for the child, of course, other national laws like the FDRE criminal code and the labour proclamation No. 377/2003 also stipulates their related concept of the term child for their specific purposes. Based on these various available definitions for a child and adding some characters the author provides a definition for the girl-child as “[a] biological female human offspring below eighteen (18) years of age.”

The girl-child, as a result of her age, sex, physical and mental situation is particularly vulnerable to various abusive, violent and discriminatory treatments. She faces the danger of double victimization mainly because of the lesser societal values for the females and children. She is, thus, among the first victims of violence, abuse, discrimination and other calamities that could easily distract her physical, mental and emotional developments and general well-being. The girl-child generally experience violence, abuse and discrimination at home, in the schools, and in the community, in all circumstances. Many studies show that, girl-children throughout the nation experience physical, psychological and sexual violence in many forms and in various settings even in the very places where they should feel safer. This situation, which is repeated in more frequent bases, has a deeply disturbing effect on those girl-children who experience it. The girl-children face this violence and abuse in all shapes and forms including rape, sexual harassment, stalking, beatings, bullying, verbal abuse, abduction, early/child marriage, FGM/C, child labour, and trafficking. Currently, perhaps due to the special focus it received from the government and increased public awareness the prevalence of all these practices are on the decline in comparison to the previous trends. Nevertheless, it remains a pervasive, but largely ignored issue throughout the country, even though variations observed in some degree between urban and rural settings as well as between different cultures and traditions. Numerous international, regional and national laws provide with various protective provisions form such practices for the rights of girl-child. For instance, the CRC, ACRWC, CEDAW and also national laws including the FDRE constitution and other laws provides extensive protections from such practices. Though

nationally, there are some legal protection is available for most of the above mentioned violent and abusive acts, stalking is not considered as an offence under the criminal law.

Moreover, the HTPs that are entangled with the day-to-day life of the society are the major factors for the vulnerability of the girl-child in Ethiopia. These HTPs such as FGM/C, early/child marriage and abduction, however, seemed to affect rural girl-children of specific regions more than others. Notwithstanding, the many international, regional and national protections of girl-children from these practices, these practices are still major problems to be tackled in the nation. The CRC provides wide protection for girl-children from such harmful practices. The ACRWC also explicitly outlaws any custom, tradition or practice which is dangerous to the welfare of children as a whole. Furthermore, under its national laws, Ethiopia has particularly specified an extensive protection from these HTPs. For instance, many provisions particularly article 16 and 35 of the FDRE constitution, specifically protect girl-children from bodily harm and from harmful customs, laws and practice; the FDRE criminal code also extends and criminalizes such acts. However, the existence of high rate of these traditional practices occurring in the country, which are 54.5 percent for early/child marriage and 72.7 percent for FGM/C, indicates that the practice of FGM/C, early/child marriage and abduction are still the most prevalent practices with-in the nation. The practice of FGM/C causes serious impairments, exposing young girl-children to high health risks, psychological pain and seriously affecting the quality of their entire life. Most of the time, the medical complications resulting from FGM/C is very much severe and long lasting. Nonetheless, despite the severe harm FGM/C inflicts on girl-children, the practice continues in most regions mainly as a result of societal attitudes towards such practices. In Ethiopia, therefor, the measures to eradicate such practice require a well understanding of the main societal perceptions and beliefs that cause its perpetuation. As a result, FGM/C could only disappear quickly or at least minimize if community-led quick social change that are consistent with the societal understanding are put in place.

Early/Child marriage is the other challenging dangerous HTP that is equally devastating for the girl-child with in the nation. Like the FGM/C, the practice is very much persistent with in the nation's socio-cultural life though it varies in degree from region to region. Numerous international, regional and national instruments have been put in place to protect the girl-child from the hazardous consequences of early/child marriage. Most of such instruments specifically outlaw early/child marriage, and strongly advice that marriage must be entered into with the free consent of the intending spouses stipulating eighteen years as the minimum marriageable age. Accordingly, the FDRE constitution under art 34 states that marriage shall be entered into only with the free and full consent of the intending spouses who have attained the required marriageable age as defined by law. The RFC also clearly stipulates that consent and age are among the basic essential conditions of marriage, specifying that valid marriage shall only take place only between persons who attained the full age of eighteen years and given their free and full consent. Nevertheless, with the existence of all these legal prohibition and protection by the international, regional and national laws, the practice is still happening in most regional states of

Ethiopia. As a result, Ethiopia has one of the highest early/child marriage prevalence rates in the world. Early/Child marriage have very serious effects on the health of girl-children. In addition, girl-children in this age group have increased risks including premature labour, complications during delivery, delivering a baby with low birth-weight, and the death of their infant. Prolonged and obstructed labour can result in obstetric fistula. However, recently things are rapidly changing due to growing awareness and education of the harm early/child marriage causes to girl-children.

In addition to the above mentioned practices, abduction, the kind of marriage, also called marriage by kidnapping or by capture, take place to a varying degree all over Ethiopia. In many cultures and traditions, abduction is considered as a one way by which marriage takes place. Like the above practices, abduction has far reaching serious harmful consequences for the life and health as well as for her normal welfare of the girl-child. In the process of the abduction the girl-children receive violent and abusive actions, especially in times of resistance and cry for help, the abductors use force and causes bodily injury to the extreme even end up in permanent disability. In worse scenarios the abducted girl would be raped by the abductor in order to ensure that she will no longer escape.

The FDRE criminal code addresses the issue in extensive details from Article 586-589 and sets more stringent penalties for the act of abduction compared to the previous penal code. Nevertheless, recently as a result of wide-ranging awareness raising efforts and the introduction of these stringent penalties for such act by the FDRE criminal law since 2005, the practice of marriage through abduction appears to be is on the decline, especially in some regions of Ethiopia. Generally, study shows that early/child marriage and abduction seldom produce successful marriages rather most of these married girl-children run far away from their husbands with hope to start a new and happier life elsewhere, as a result, such relationships are short-lived. By and large, these harmful traditional practice sets up structural conditions for poverty, domestic violence, infant and maternal mortality, the spread of disease, and gross gender inequality. Therefore, a collaboration of political, economic and social action is needed to stimulate and sustain a wide change of traditional beliefs by raising the awareness of parents, community leaders, and policymakers about the health and human rights implications of the girl-child by enforcing the international, regional and national law.

Other than these HTPs, girl-children in Ethiopia, as a result of the existence of extreme poverty, are noticeably among those groups of the population that are bound to feel the impact of poverty and illiteracy in a particularly adverse way. In this regard, the girl-child forced to face the burden of poverty and illiteracy from two directions as a result of being a child and female. In Ethiopia, poverty and illiteracy are the major challenges facing the nation as a whole and the most vulnerable groups in particular. It is one of the most challenging factors that make the life of the girl-child difficult. Girl-children in families with poverty and illiteracy, child mortality rates rises the school dropout increases, and school enrolment drops, child labour and other forms of hazardous work, including sex work also persists.

As a result of this, poverty reduction and increasing literacy rate have, of course, been taken as the all-embracing development agenda and has guided the major policies and strategies of the country. Nevertheless, the issue of poverty never has been given special dimension in separation from the general poverty. The problem of poverty is also one of the factors for girl-children to engage themselves in the various worst forms of activities including child labour. In countries like Ethiopia, one important reflection of poverty is child labour, among others things, girl-children often involve in dangerous works and expose themselves for various forms of violence and abuse in order to support their poor families and themselves. In the past two decades, Ethiopia has witnessed steady social and economic development together with rapid expansion of rural health services. Absolute poverty reduced from 39% in 2004/05 to 29% in 2010/11, with the sharpest decline in rural areas. Nevertheless, it should be noted that despite these encouraging developments, it is important to also recognize that poverty reduction policies with a general focus on the poor may not automatically address childhood poverty in its entirety. In order to tackle poverty in a holistic and child-sensitive manner, it is important to consider the potentially differential impact of economic growth and poverty reduction policies with-in the household.

To bring to the end, or at least to minimize, all these vulnerability of girl-children to various forms of abuse and violence the issue of poverty has to be addressed properly. The new NGOs law, Charities and Societies Proclamation, which the Ethiopian government enacted in the beginning of 2009, has negative impact on the fight against poverty and illiteracy. In this regard, the UN Committee on Economic, Social and Cultural Rights and the African Commission on Human and Peoples' Rights expressed their concern in strong terms that certain provisions of this law have had a profound obstructive effect on the operation of NGOs. It is also concerned that the law forces this organizations to limit their activities by closing regional offices or suspending some of their services. The Committee and the Commission, accordingly, recommends that the State Party amend the Proclamation No.621/2009, with a view to omitting provisions restricting the work of human rights organizations and lifting the funding restrictions, and unblock all the assets of local human rights NGOs. The issue of reduction of extreme poverty is important because for girl-children growing up poor means being disadvantaged from all opportunities; it means shorter lives; it racks up social and economic costs for societies; and it wastes precious human potential. All this adds up to a hugely credible moral case for tackling child poverty. At the same time, social and economic changes challenge Ethiopian societies to improve living standards for girl-children, whilst ensuring that inequality does not lock poorer girl-children out of opportunities.

Moreover, with the intention to meet the eight MDGs that the world nations agreed up on to be achieved by the year 2015, the country is doing its best to achieve these eight Goals by the set time in 2015. Reports show that Ethiopia is one of the three best movers in Africa to achieve the Goals by the year 2015; though some of the Goals are still in far behind to be achieved by the set year. Though some of the Goals are in good progress that they could be achieved by the set time,

some are still in big demanding for time is running out to achieve them by the year 2015. Therefore, more must be done to achieve these goals.

Generally the girl-children in particular are the first most vulnerable groups to violence, abuse and discrimination in the society and in all circumstances, as a result of their sex and age. The effect of this combined violence, abuse and discrimination against girl-children may lead to a society full of emotionally and physically damaged citizens and has huge future impact on the country. Discrimination, abuse and violence may also affect girl-children in their carriers at home, in schools, and communities adversely affecting their futures as productive citizens. The negative impact of discrimination, abuse and violence against the girl-child on the future of Ethiopia is thus easily discernible. Acceptance of these forms of discrimination, abuse and violence against girl-children and the corresponding lack of accountability and impunity reflect discriminatory norms that strengthen the lower status of girl-children in the society. The rights of the girl-child are an inalienable, integral and indivisible part of universal human rights and the eradication of all forms of abuse, violence and discrimination on grounds of sex and age should be the priority objectives of parents, communities and the state. States organs particularly shall take all appropriate measures to prevent and protect all girl-children from all such practices and also promote physical and psychological recovery and social reintegration of a girl-child victim of any form of such discrimination, abuse and violence. Therefore, all these practices need to be eliminated by addressing the value of girl-children and uplifting their status with-in these broader developmental issues. In this regard, the family, communities and the state has the ability to play a pivotal role in improving the *status quo* of the girl-child in Ethiopia.

IV. CHAPTER FOUR

4. THE SUBSTANTIVE RIGHTS OF THE GIRL-CHILD UNDER ETHIOPIAN LAWS

INTRODUCTION

The ratification of the CRC on 14 May 1991 and the ACRWC on 2 October 2002 was the major historical move that Ethiopia made towards the legal protection of the rights of all children in general and the rights of the girl-child in particular. Recently, Ethiopia has made some important progress towards ratification of international instruments that are relevant to the girl-child. The country also adopted the CEDAW earlier in 1981, which has various important provisions in protecting the rights of the girl-child. However, the ratification of these international instruments alone is not a success and guarantee by itself unless they are domesticated in-to the national legal system and turned into practical implementation by the government. In this regard, the country has incorporated the fundamental principles that are found in these instruments with-in various national laws. Moreover, these instruments as a result of article 9 (4) of the FDRE constitution considered as an integral part of the law of the land. The CRC, ACRWC, CEDAW and other instruments that Ethiopia adopted are not an isolated body of law, rather it pervades on all parts of domestic laws. In other words, once the country adopted these instruments Ethiopia is under a strict obligation to bring all the national law into conformity with the ratified instruments to facilitate its application.

The FDRE constitution, particularly under chapter three, incorporated a wide range of important rights, with-in this chapter it also specifically endowed a special place for children and women. Article 35 and 36 provides extensive rights to women and children respectively. Moreover, the RFC that was enacted in 2000 has much relevance with regard to the rights of the girl-child. The FDRE criminal code of 2004 and the labour law, proclamation No. 377/2003 also have important provisions relating to the rights of the girl-child.

The ratification of the above mentioned instruments and the enactment of the national laws in accordance to these major instruments regarding the rights of the girl-child indicate that the country has now achieved good success in protecting, at least in law, the rights of the girl-child in an equal manner and even in some cases much enhanced than other groups of individuals.

The main issues discussed under this chapter are relating to the substantive rights of the girl-child as it is enshrined under the international and regional instruments that the country adopted and in the national laws as well and tries to analyze the application of these rights enshrined in these instruments. Under this chapter discussion is made to indulge with these laws from the

angle of the requirements of the instruments. It also assesses the application of these rights in conformity with the corresponding provisions in other parts of Ethiopian laws concerning the girl-child.

To deal with the extensive individual rights of the girl-child, this chapter focuses first on the rights of identity. The right of identity is a basic right in order to establish all the claims as rights under the national laws. The subject matter of this chapter also is to set out the instruments' provisions on physical integrity, such as the right to life, privacy, freedom of expression and family integrity under which the rights of the girl-child in the relation with the families are discussed. Economic and Social Welfare Rights of the girl-child have also been dealt with under this chapter including the right to education, the right to health, the right to an adequate standard of living, the right to social security and the right to rest, leisure and recreational activities.

Finally, the girl-child's right to be protected from all forms of sexual exploitation and abuse, economic exploitation, physical or mental maltreatment and their protection and enforcement in the Ethiopia national laws and also the rights of the girl-child under extreme vulnerability will be analyzed under this chapter.

4.1 THE RIGHT TO IDENTITY

As discussed above the girl-child is identified from the rest of the societal group of individuals by certain unique characters including, age and sex. Moreover, each individual girl-child could also be identified from other girl-children by certain unique characters of their own identity including name and nationality.

The right to identity, including the right to a name and nationality are among the basic rights of the girl-child that are incorporated in most of the international, regional and national human rights instruments.³⁴⁵ For instance, the CRC strongly urges States Parties to take measures in order to respect the rights of every child to preserve her or his identity, including nationality, name and family relations as recognized by law without unlawful interference.³⁴⁶ Moreover, it obliges States Parties to provide appropriate assistance and protection where this right is illegally deprived.³⁴⁷ The instruments not only oblige States to guarantee girl-children these rights but also urge these special identification of individual characters has to be registered in official documents. The right to nationality is very important for the enforcement of other rights, mostly, depends on the law of the very country to which the girl-child belongs. The right to a name is also equally important to identify her from her counterparts. Under this section discussion is made on these rights which are identifying factors of the girl-child and her full legal entitlements

³⁴⁵ See, P. McCarthy, "Making the Most of International Law on the Right to Identity: An Analysis of Article 8 of the United Nations Convention on the Rights of the Child", *University College Cork Law Review*, vol. 3 (2004).

³⁴⁶ The CRC, Article 8 (1)

³⁴⁷ Id, Article 8 (2)

to these rights. It also discusses the application of the rights to identity in the instruments and with the corresponding provisions in other parts of the national laws concerning the same matter.

4.1.1 THE RIGHT TO NATIONALITY

The right to nationality could be considered as a means to claim and enjoy the rights that are guaranteed under any legal instrument with-in particular country. This right particularly ensures that every child with-in any given nation, which the child acquires or assumes this right, receives the best protection and treatment of its rights. The main aim of this right is intended in ensuring the implementation of all the rights guaranteed with their national law and to the best of option establishing speedily the identity of a child and prevent the occurrence of statelessness.³⁴⁸

Though, as mentioned above, while the main purpose of protecting this right is to prevent every child from being afforded less protection by society and the state because of statelessness, it does not necessarily oblige a State to confer its nationality on every child born on its territory. In this connection, no discrimination with regard to nationality may be made under the law as between legitimate children and children born out of wedlock or of stateless parents, or based on the nationality status of one or both of the parents. However, a state is required to adopt every appropriate measure, both internally and in co-operation with other states, to ensure that every child acquires a nationality at birth.³⁴⁹

Nevertheless, the main challenge is with regard to the various systems and principles adopted by States to guarantee the national application of the right to nationality. Most commonly the principles that are followed by different states in their domestic jurisprudence is either *jus soli*, where the right to nationality of a child is acquired as a mere fact of being born with-in the territory and jurisdiction of any given state, or *jus sanguine*, where the right to nationality is acquired in line with the blood line and following the nationality of both or one of parents. Countries that follow the former trend, allows every child to acquire that right as long as it is born with-in the territory and jurisdiction of that particular state. However, countries that follow the latter trend only guarantee the right based on the nationality of both or one of parents.³⁵⁰

Many international instruments recognize the right to nationality; the UDHR provides to everyone the right to nationality and forbids the arbitrary deprivation thereof.³⁵¹ The other

³⁴⁸ Id, Article 7 (2)

³⁴⁹ The UN Human Rights Committee, General Comment No. 17 on Rights of the Child (Article 24), CCPR/ 07/04/89, (1989), Para. 7.

³⁵⁰ (http://www.childinfo.org/files/birthregistration_Digestenglish.pdf) last visited on September 28, 2013

³⁵¹ The UDHR, Article 15.

important human rights instrument, the ICCPR also specifically bequeaths every child with the right to acquire a nationality.³⁵²

Most importantly, the CRC provides the right to nationality to every child,³⁵³ and obliges all States Parties to ensure the implementation of the right in accordance with the national law of the state and the obligations under the relevant international instruments.³⁵⁴ In like manner, the ACRWC endows the girl-child to acquire a nationality.³⁵⁵ It also obliges States Parties to take measures to ensure that their constitutional legislation recognizes the principles according to which every child shall acquire the nationality of the state on the territory of which the child has been born if, at the time of the child's birth, the child is not granted nationality by any other state in accordance with its laws.³⁵⁶ Moreover, from gender perspective the CEDAW also urges States to grant the right to nationality without discrimination for both females and males alike.³⁵⁷

In this regard, it appears that these instruments in adopting the right to nationality neither follow the principle of *jus soli*, nor *jus sanguine*, but rather followed a neutral approach in order to prevent any misinterpretation and reservations by States Parties with regard to that particular right during ratification. Accordingly, the above mentioned instruments seem to follow a flexible approach permitting individual States Parties to adopt any of the approaches guaranteeing the right under its national legislation as long as it serves the very purpose of the right.

The Ethiopian nationality law seems adopt the principle of *jus sanguine* that follows the right to nationality based on the blood. This is true since the citizenship of the individuals is based on the nationality of its parents other than the place of birth. As long as the girl-child is born from either of her Ethiopian parents, she will be an Ethiopian. Furthermore, she will acquire the nationality of Ethiopia, whether she is born with-in or without the lawful marriage of one of the parents.³⁵⁸

The FDRE constitution bestows Ethiopian nationality on anyone born of an Ethiopian parent, i.e. where both or one parent is an Ethiopian national.³⁵⁹ The naturalization of foreign nationals has also been anticipated by the constitution, subject to the provisions of substantive laws to be promulgated as per its provisions.³⁶⁰ Furthermore, it extends the protection of the right by providing the legal guarantee not to be deprived the right and for the full enjoyment of all rights, protection and benefits derived from Ethiopian nationality.³⁶¹

³⁵² The ICCPR, Article 24 (3)

³⁵³ The CRC, Article 7 (1)

³⁵⁴ Id, Article 7(2)

³⁵⁵ The ACRWC, Article 6 (3)

³⁵⁶ Id, Article 6 (4)

³⁵⁷ The CEDAW, Article 9

³⁵⁸ The FDRE constitution, Article 36 (4)

³⁵⁹ Id, Article 6 (1)

³⁶⁰ Id, Article 6 (1 and 2)

³⁶¹ Id, Article 33 (1 and 2)

In conformity with the international instruments and the FDRE constitution, the nation enacted the nationality law in 2003.³⁶² This law enunciates what the FDRE constitution endorsed, and hence, it provides that any person shall be an Ethiopian national by descent where both or either of his parents is Ethiopian.³⁶³ Moreover, an infant who is found abandoned in Ethiopia shall, unless proved to have a foreign nationality, be deemed to have been born to an Ethiopian parent and shall acquire Ethiopian nationality.³⁶⁴ The law also provides for conditions under which a child adopted by an Ethiopian parent,³⁶⁵ or a child born to a naturalized citizen³⁶⁶ could acquire Ethiopian nationality depending on the fulfillment of certain conditions. Once nationality has been established, all Ethiopian nationals have equal rights and obligations of citizenship regardless of the manner in which nationality is obtained.³⁶⁷ Moreover, the law also protects the right from any act of deprivation by the decision of any government authority except in certain specified conditions in accordance to the law.³⁶⁸

Generally, the right to nationality of the girl-child is, guaranteed under the FDRE legal system. However, the overall approach does not address the situation of statelessness of children born from parents of foreign nationality. Perhaps to mention an ambiguity in Ethiopian nationality law, in this regard, is that a girl-child born in Ethiopia from foreign parents whose country follows the *jus soli* principle ends up stateless.

4.1.2 THE RIGHT TO HAVE A NAME AND BIRTH REGISTRATION

a) NAME

As a long standing practice among the human population, giving a child a name is one of the oldest traditions in almost all societies in the world. As a result of this long standing practice, the right to a name is a fundamental right that helps every human being to be identified both personally and legally by the specific name. Accordingly, every child has a right to have a name starting from its birth. This notion should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child's legal personality. Providing for the right to have a name is of special importance in the case of children born out of wedlock.³⁶⁹ Names have the purpose of identifying individual physical persons which are among the attributes of physical personality.

³⁶² The Ethiopian Nationality Proclamation, 2003, Proc. No. 378, Neg. Gaz. Year 10, no. 13.

³⁶³ Id, Article 3 (1)

³⁶⁴ Id, Article 3 (2)

³⁶⁵ Id, Article 7

³⁶⁶ Id, Article 9

³⁶⁷ Id, Article 18

³⁶⁸ Id, Article 17

³⁶⁹ N. Jayawickrama, The Judicial Application of Human Rights Law (2002), p. 787.

Because of the very important nature of names, international instruments have been given due consideration to this right. In this regard, the ICCPR has recognized the right of every child to have a name.³⁷⁰ Moreover, both the CRC and ACRWC have given equal weight to the right of every child to have a name. The CRC obliges States Parties to undertake to respect the right of every child to preserve its name.³⁷¹ The ACRWC also, in like manner, provides every child the right to have a name.³⁷²

The FDRE constitution, also considers the right to have a name as every child's right.³⁷³ However, the governing laws that deal extensively with the right to a name of every individual are Articles 32 to 46 and Articles 3358 to 3360 of the Ethiopian Civil Code. In this regard, the Ethiopian civil code contains elaborative provisions on naming. According to Article 32, every individual has a family name, one or more first names and a patronymic and it shall designate in such respective order in administrative documents.³⁷⁴ In view of achieving to preserve the identity of origin or family group of the child, the civil code requires that the family name of the father should remain the family name of the child. If the father does not have a family name, the child shall take his father's first name (patronymic) as his family name.³⁷⁵ However, a child whose father is unknown or a disowned child shall have the family name of her/his mother, if she/he has one, but if she/he has none, her/his patronymic. The same rule applies where paternity of the child is judicially declared.³⁷⁶ In accordance to the civil code, whenever the father and the mother are not known, the officer of civil status is required to give a family name to the girl-child and in doing so that name shall be chosen among those which are common in that particular area.³⁷⁷ Similarly, if the child is adopted, the family name will be replaced by the family name of the adopter.³⁷⁸

Consequently, the right to naming is given a satisfactorily consideration under the civil code, where it covered as many as various situations to ensure that every child remain without a name. However, traditionally the naming of a child in Ethiopia is not as it is stated under the civil code, and hence it is totally not applicable in current practices. For instance, though family names indicate members of a common male-line descent, thereby reducing identity of names, family names have not yet been introduced after more than five decades since the promulgation of the civil code. The provisions of the civil code on family names have not been able to alter the Ethiopian tradition of using first names followed by the father's first name (patronymic), a

³⁷⁰ The ICCPR, Article 24 (2)

³⁷¹ The CRC, Article 7 (1)

³⁷² The ACRWC, Article 6(1)

³⁷³ The FDRE constitution, Article 36 (1(b))

³⁷⁴ The Civil Code of the Empire of Ethiopia Proclamation, cited above at note 200, Article 32

³⁷⁵ Id, Articles 33 (1), 36, 3359 (2)

³⁷⁶ Id, Article 33(2 and 3)

³⁷⁷ Id, Article 39 (1and 2)

³⁷⁸ Id, Article 41

practice that is apparently susceptible to identity of names taking into consideration particularly the population growth the country has at this point.

b) BIRTH REGISTRATION

As discussed above, the girl-child is defined taking in to consideration her specific distinguishing features including age and sex. Yet, these specific distinguishing features have to be proved in order to ascertain them. Hence, registration of every girl-child's birth, in this regard, has paramount importance in proving her identity. The main purpose of the obligation to register every child after birth is to reduce the danger of early/child marriage, abduction, sale of or traffic in children or of other types of treatment that are incompatible with the enjoyment of the rights recognized in the child right instruments.³⁷⁹ The ICCPR urges States Parties to register every child immediately after birth.³⁸⁰ The CRC makes it an obligation that a child should be registered immediately after birth.³⁸¹ The ACRWC contains the same requirement for the immediate registration of every child after birth.³⁸²

In Ethiopia, it was the 1960 Ethiopian civil code that had contained quite substantial provisions, which regulate registration of births, marriage and deaths. The civil code contained detailed provisions for the establishment, mandates and operation of an office of civil status to keep records pertaining to civil status including the birth of a child. In this regard, it was required that the birth of every child shall be notified to the officer of civil status with-in ninety days. However, the provision has not been implemented for more than four decades. Thus, birth registration as understood with-in the international child rights framework, i.e. an official and permanent record of a child's existence established at the time of birth did not exist in Ethiopia. Instead, various modalities of formal and informal record and registration systems existed during the entire period of the civil code to fill the administrative lacuna. The non-existence of institutional structures and adequate legal framework to ensure birth registration has been a concern of the UN Committee on the Rights of the Child for a very large number of children are neither registered at birth nor at a later stage.³⁸³

Nevertheless, it was in 2000, that the new RFC came up with the new stringent provision that incorporated provisions recognizing "certificates of birth, marriage, and other relevant certificates issued or to be issued by an appropriate authority" in lieu of a record of civil status

³⁷⁹ The UN Human Rights Committee, General Comment 17, cited above at not 349, Para. 7.

³⁸⁰ The ICCPR, Article 24 (2)

³⁸¹ The CRC, Article 7 (1)

³⁸² The ACRWC, Article 6 (2)

³⁸³ The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 30.

pending the establishment of a comprehensive system of office of civil status.³⁸⁴ However, the problem with the civil code persists despite this provision of the RFC, the absence of a comprehensive and effective birth registration system is among the most critical gaps in the girl-child rights legislative framework. Currently, the only meaningful legal regime for birth registration is the practice of issuing birth certificates by municipalities which has been given recognition by article 321(2) of the RFC as a transitory measure until the government establishes with-in six months institutional arrangements for civil registration.³⁸⁵

In 2012, with the view of filling the long and persistent gap regarding the lack of formal registration of vital events with-in the nation, the country enacted the vital events registration proclamation No 760/2012.³⁸⁶ The law repealed the entire civil code book I, Title I, chapter 3 provisions from article 47 to 153, which dealt with proof of civil status.³⁸⁷ This law aimed in making the justice administration expedient and effective, to create an accessible, comprehensive and compulsory registration system on the basis of which citizens can effect proper and timely registration of vital events.³⁸⁸ Any vital event shall be registered with the necessary detailed information that can be used for legal, administrative and statistical purposes.³⁸⁹ It particularly states that every birth shall be registered with-in 90 days following the date of its occurrence unless there is serious cause for delay.³⁹⁰ The law also specifies all the detailed information that should be registered on the record document during birth registration inclusive of the abandoned child.³⁹¹

The law also places an obligation to declare birth on parents and guardians or any person who cares about the child. In case of an abandoned child, the person who found the child or the police officer who received such information is responsible to declare the birth.³⁹² The officer of civil status is also given a duty to make sure that the child's name is registered and in the case where the child is not given a name yet the officer has to give a name to the child.³⁹³ The child shall be registered in the nearest administrative office to the principal residence of the parents and in the case of an abandoned child it shall be carried out in the nearest administrative office where the child is found.³⁹⁴

³⁸⁴ The RFC, Article 321(2)

³⁸⁵ Id, Article 321(1)

³⁸⁶ The Registration of Vital Events and National Identity Card Proclamation, 2012, Proc. No 760, Neg. Gaz. Year 18, no. 58.

³⁸⁷ Id, Article 68

³⁸⁸ Id, preamble, Para. 1 and 2.

³⁸⁹ Id, Article 17 (1)

³⁹⁰ Id, Article 18 (2)

³⁹¹ Id, Article 24 and 25

³⁹² Id, Article 26

³⁹³ Id, Article 27

³⁹⁴ Id, Article 28 (1 and 2)

Furthermore, the law provides some stringent penalty measures in case of failure to fulfillment of the duty to declare the birth of the child and registration.³⁹⁵ The same criminal responsibility is incorporated earlier in the 2004 FDRE criminal code where failure to perform the obligation of registering the birth of a child entails a penalty for omission to register the birth of an infant or to report its abandonment.³⁹⁶ Although the criminal code makes it mandatory for parents and guardians to have the birth of a child registered, the provision cannot be applied due to the absence of a record of civil status or an officer responsible for keeping such a record.

Moreover, though the above laws stipulate many specific provisions regarding the registration of every child's birth, some of its stipulations are not in compliance with the international standards. For instance, the ICCPR, CRC and ACRWC require that every child shall be registered 'immediately'. However, under the Ethiopian law the requirement is 'with-in nineteen days' which clearly is not immediate.

The other problem with the laws on registration of births is the fact that pursuant to article 68 of the proclamation No 760/2012 provisions on registration of vital events shall not come into force until the establishment of such authorities with-in two years which is not feasible. Because of this provision it remained to be one of the non-existent practice and administrative lacunas which have still not been put into place.

As a result, the laws that require the registration of birth are not implemented and the challenge of the ascertainment of the identity of girl-children is still persistent for the mere reason that Ethiopia lacks a functional national or regional system for the registration and certification of births, deaths, marriages, and divorces. Those without a birth certificate are left without recourse for preventing or protesting against forced marriage. Without proof of age, government and community officials can easily overlook enforcement of legal age to marriage. It also can impact negatively on the girl-child's sense of personal identity and it may be denied her entitlements to basic health, education and social welfare.³⁹⁷ Therefore, the immediate implementation of a registration system that tracks all records of births, deaths and marriages has to be put in place. Otherwise it remains entirely an attempt of patching the old cloth with the new one. Accordingly, in Addis Ababa for instance there is an office in every woreda which is established with the duty to register main events including birth, death and marriage. However, in vast areas of the country where 85 percent of the population is living the requirement of birth registration is almost a non-applicable one.

³⁹⁵ Id, Article 66

³⁹⁶ The FDRE criminal code, Article 656

³⁹⁷ The UN Committee on the Rights of the Child, General Comment No. 7 on Implementing child rights in early childhood, CRC/C/GC/7/Rev., (2006).

4.2. THE RIGHT TO LIFE, PRIVACY, FREEDOM OF EXPRESSION AND FAMILY INTEGRITY

In the above section discussion was made on the rights of identity, including the right to nationality, the right to have a name and birth registration. Under this section a brief discussion is made on the girl-child's physical, mental, moral rights and her right to know and be cared for by parents and not to be separated from them. Accordingly, in order to ascertain whether sufficient legislation is in place to protect these rights, this section focuses on the implementation of the stipulations on the CRC and the ACRWC and reviews relevant national legislation concerning the above mentioned rights that includes the right to life, privacy, expression, the right to know and be cared for by parents and not to be separated from them.

4.2.1. THE RIGHT TO LIFE

The right to life is the supreme right of every human being.³⁹⁸ It is perhaps the most fundamental right from which all other rights flow, and is therefore basic to all other human rights. It is one of the rights which constitute the irreducible core of human rights. It is, therefore, non-derogable even in time of public emergency which threatens the peace and security of the nation.³⁹⁹ The right to life connotes many philosophical issues and incorporates many other related concepts beyond the mere existence of the life of an individual. Particularly, when it comes to children in general and the girl-child in particular the right to life could often mean the right to survival, where states are expected to meet the basic needs of the child in terms of nutrition, health, food, shelter and other basic necessities to enable her survival. As a result, this fundamental right has been given wide protection by different international, regional as well as national legal instruments.

Accordingly, the inherent right to life of every individual girl is protected from any arbitrary deprivation by the international bill of rights.⁴⁰⁰ The ACHPR also recognizes the right to life of every individual.⁴⁰¹ The CRC, particularly, states that States Parties recognize that every child has the inherent right to life and obliges them to ensure to the maximum extent possible the survival and development of the child.⁴⁰² The ACRWC guarantees the right to life in the same manner stating that every child has an inherent right to life and States shall ensure, to the maximum extent possible, the survival, protection and development of the child and prohibits the death sentence pronouncement on children.⁴⁰³

³⁹⁸ The UN Human Rights Committee, General Comment No. 6 on Right to Life, HRI/GEN/1/Rev.1, (1982), Para. 1.

³⁹⁹ Ibid

⁴⁰⁰ The UDHR, Article 3 and the ICCPR, Article 6

⁴⁰¹ The ACHPR, Article 4

⁴⁰² The CRC, Article 6

⁴⁰³ The ACRWC, Article 5

The FDRE constitution, in line with these instruments also provides in various provisions the right to life. In addition to, its protection under article 15 which provides every person the right to life, it particularly guarantees the right to life of the child under article 36.⁴⁰⁴ Moreover, under the FDRE criminal law it is strictly prohibited to impose death sentences on persons below the age of eighteen and also on pregnant women.⁴⁰⁵ In doing so, by stipulating these legal provisions the state guarantee the girl-child's right to life.

Nevertheless, recognizing the right to life of the girl-child is not only limited to the legislative measures that the state taken. It further require the State to take other measures including providing basic necessities to all those girl-children in terms of nutrition, health, food, shelter and other supplies in order to enable them survive.

As just mentioned above, the right to life is not only about being alive but also having a means to ensure to the maximum extent possible the healthy survival and development and have an adequate standard of living. In accordance with this notion the state is duty bound to make available for all children without discrimination all the means to ensure survival and development of the girl-child as guaranteed under article 6 (2) of the CRC and article 5 (2) of the ACRWC.

Furthermore, as discussed in chapter three, though it is imprecise as to the extension of the right to life to fetuses under the CRC and ACRWC, the FDRE criminal law made it clear that the act of abortion or other actions that affects the fetus is a crime, except under the medical practitioner's permission.⁴⁰⁶ In doing so, it extends the legal protection and safeguards the right to life of the fetus. In this regard, this extended legal protection has paramount importance in protecting the right to life of the girl-child, in a way of preventing sex selective practices of abortion.

The girl-child's right to survival and development is enshrined in the FDRE constitution in terms of access to public health and education, clean water, housing, food and other social services and security.⁴⁰⁷ The constitution also stipulates that the child must be protected from harm, abuse and exploitation.⁴⁰⁸ In addition, articles 219 and 220 of the RFC provide that both parents have the responsibility for the proper upbringing of their children. The provisions of the criminal code enforcing these family code provisions are also relevant.⁴⁰⁹ All these protection measures have

⁴⁰⁴ The FDRE constitution, Article 15, 36 (1(a))

⁴⁰⁵ The FDRE criminal code, Articles 117, 176 and 119

⁴⁰⁶ Id, Article 545-552

⁴⁰⁷ The FDRE constitution, Article 41 (4) cum 90 (1)

⁴⁰⁸ Id, Article 36 (1) (d and e)

⁴⁰⁹ The FDRE criminal code, Article 658 and 659

direct relevance in protecting the right to life of the girl-child by reducing the long existing high percentage of child mortality rate in the country.⁴¹⁰

In terms of reducing the child mortality rate, although Ethiopia is on the right track to achieve MDG 4 and; further accelerations in reducing it shall be endured. In the effort to achieve it, the government targets on, Ethiopia's five-year Growth and Transformation Plan and Health Sector Development Program IV, have prioritized maternal, newborn and child health issues. According to the plan Ethiopia is committed to reducing the Under Five Mortality Rate (U5MR) to less than 20/1000 live births by 2035, by scaling up all the currently known health, nutrition and WASH (water, sanitation and hygiene) interventions to 95% by 2025. Moreover, the plan is aimed at scaling up family planning access for all women, and utilization by approximately 65% by 2015, to avert some 73,000 under-five deaths a year.⁴¹¹

In this regard, recent reports show that Ethiopia achieves the development target on reducing child mortality. It has achieved the MDG to cut the mortality rate for children under the age of five ahead of the 2015 deadline. The statistics, contained in a 2013 progress report, committing to child survival: a promise renewed, compiled by the UN children's fund UNICEF, the World Health Organization, and the World Bank Group, shows that Ethiopia has reduced child deaths by more than two thirds over the past 20 years. In 1990, an estimated 204 children of every 1,000 in Ethiopia died before the age of five. However, the latest data shows that by 2012 the rate had dropped to 68, a massive 67% fall in the under-five mortality rate⁴¹²

Generally, Ethiopia's national laws have conveyed satisfactory provisions protecting the right to life of the girl-child. However, besides this legal protection of the right, other adequate implementation measures have to be taken in to consideration in order to meet all the requirements of the right as it is stated under the CRC and ACRWC.

4.2.2. THE RIGHT TO PRIVACY

The right to privacy of the girl-child is recognized under the international instruments without any unlawful restriction. She has the right to protection from arbitrary and unlawful interference

⁴¹⁰ For the five years preceding the DHS survey conducted in 2011, the infant mortality rate was 59 per 1,000 live births, the child mortality rate was 31 per 1,000 children surviving to age 1 year, and the under-five mortality rate was 88 per 1,000 live births. This implies that one in 17 Ethiopian children dies before the first birthday and one in 11 Ethiopian children die before the fifth birthday. During the same five-year period, neonatal mortality was 37 deaths per 1,000 live births, and post neonatal mortality was 22 deaths per 1,000 live births. See, Central Statistical Agency of Ethiopia, Demographic and Health Survey, cited above at note 4, p. 111.

⁴¹¹ The Global Campaign for the Health Millennium Development Goals – Report 2013, Accelerating progress in saving the lives of Women and Children (2013), p. 9.

⁴¹² Levels & Trends in Child Mortality, Report 2013 Estimates Developed by the UN Inter-agency Group for Child Mortality Estimation, (http://www.childmortality.org/files_v14/download/UNICEF%202013%20IGME%20child%20mortality%20Report_Final.pdf) last visited on September 27, 2013.

with her privacy, family, home, or correspondence and to protection from unlawful attacks on her honor and reputations.

The UDHR which is the first instrument to recognize this right provides that no one shall be subjected to arbitrary interference with privacy, family, home or correspondence, nor to attacks upon honour and reputation.⁴¹³ The ICCPR also protects privacy, family, home, and correspondence from arbitrary or unlawful interference, and recognizes that everyone has the right to the protection of the law against such interference or attack.⁴¹⁴ These provisions require the State to adopt legislative and other measures not only to protect this right, but also to prohibit any interference or attack, whether emanating from state authorities or from natural or legal persons. The establishment of competent organs to authorize interference to the extent permitted by law, as well as other organs to ensure that any interference is strictly with-in the law, and complaint procedures for persons aggrieved by the application of such laws.⁴¹⁵

This right to privacy of the girl-child is also given emphasis in the CRC, in similar manner as it is recognized in the above mentioned instruments, where it prohibits arbitrary or unlawful interference with her privacy, family, home or correspondence, nor to unlawful attacks on her honour and reputation.⁴¹⁶ In the same manner the ACRWC, protects the girl-child's right to privacy where it only restrict it in cases of reasonable supervision over the conduct by her parents or legal guardians.⁴¹⁷

The FDRE constitution also recognizes the right to privacy of everyone, including the right not to be subjected to searches of home, person or property, or the seizure of any property under personal possession.⁴¹⁸

It, however, shall be noted that the close reading of the provision indicate that what is prohibited is arbitrary and unlawful interference with the girl-child's privacy. Therefore, on condition that does not amount to arbitrary and unlawful interference, parents and legal guardians can interfere on matters that are very important for the socio-cultural development any general well-being of their daughters. As a result, the legal recognized relationship between the parents and children will not be affected while enforcing the right of privacy of the girl-child.

The RFC obliges parents or legal guardians to commit themselves in educating and controlling the social correspondence of their girl-children.⁴¹⁹ Among the rights and obligations parents and legal guardians assume is to educate and guide their daughters properly. Nevertheless, since the

⁴¹³ The UDHR, Article 12

⁴¹⁴ The ICCPR, Article 17

⁴¹⁵ The UN Human Rights Committee, General Comment No. 16 on The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, (1988), Para. 11.

⁴¹⁶ The CRC, Article 16 (1)

⁴¹⁷ The ACRWC, Article 10

⁴¹⁸ The FDRE constitution, Article 26

⁴¹⁹ The RFC, Article 219 cum 259

right to privacy is safeguarded under the above mentioned instruments, parents and legal guardians have to comply with the limits of the legal provisions in order to not interfere arbitrarily with the girl-child's right to privacy. The most arguable situation, in this regard, is the possible private decision of adolescent girl-children like in the case of undergoing abortion. The phrase "no child shall be subjected to arbitrary or unlawful interference with his or her privacy..." could ultimately allow children to choose to have abortions without notifying or receiving guidance from their parents.⁴²⁰

This right of the girl-child might have repercussions on the rights and obligations of parents to guide and educate her and consequently, have effects on the family, as the basis of society. As a result, the bottom-line is that, while abide by their responsibility parents and guardian should not jeopardize the relationship between the parents or guardians and the girl-children. However, under the guise of guiding and educating her most parents want to know every move and action of their daughter and hence, this right is in most cases violated by parents and guardians, even most of them do not even consider it a right at all. Yet, the issue has to be taken in to consideration in conforming to strike a balance between the abuse of the right by parents, or guardians and also the girl-children themselves; otherwise under the guise of privacy adolescent girl-children could be in danger of abuse and violence taking private measures.

4.2.3. THE RIGHT TO FREEDOM OF EXPRESSION

There is no doubt that the right to freedom of expression is significantly important both for individuals personally and for a democratic society at large. The girl-child has the right and freedom not only to express her own thoughts, but also to seek, receive and impart information and ideas of all kinds in similar manner with other group of individuals. The right to freedom of expression, which is guaranteed under international and regional instruments like the UDHR, ICCPR, and the ACHPR,⁴²¹ is similarly recognized to the girl-child under the CRC and ACRWC. In its social dimension, the right to freedom of expression is a means for the interchange of ideas and information among human beings and for mass communications in providing the girl-child a voice, and a means to express her feelings regarding issues that matter to her. The CRC and the ACRWC guarantee the girl-child who is capable of forming her own views the right to express those views freely in all matters affecting her interests and to have the opportunity to be heard in any judicial and administrative proceedings.⁴²² This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers,

⁴²⁰ Blanchfield, cited above at note 197, p. 13.

⁴²¹ The UDHR, Article 19, the ICCPR, Article 19 and the ACHPR, Article 9

⁴²² The CRC, Article 12 and the ACRWC, Article 4(2)

either orally, in writing or in print, in the form of art, or through any other media of her choice and shall only be limited in accordance with the law in certain circumstances.⁴²³

In this regard, the UN Committee on the Rights of the Child in its General Comment No.12 explicitly recalls the inherent right to non-discrimination as guaranteed by all human rights instruments, assures every child the right to freely express her or his views and to have those views duly taken into account without discrimination on grounds of sex among others and urges States Parties to pay special attention to the right of the girl-child to be heard, to receive support, if needed, to voice her view and her view be given due weight, as gender stereotypes and patriarchal values undermine and place severe limitations on girl-children in the enjoyment of the right set forth in article 12 of the CRC.⁴²⁴ Consequently, compelling a girl-child to keep silent at home or school in way that discourages her to express her views and opinions would clearly be an a violation of her tight to freedom of expression. She should be encouraged to exercise her right individually and in groups. Activities which necessarily presuppose respect for intellectual freedoms, such as freedom of thought, freedom of conscience, freedom of opinion and expression are sometimes manifested collectively through meetings and assembly. In this regard, the CRC and ACRWC also recognize the girl-child's right to association and assembly.⁴²⁵

The FDRE constitution recognizes the right to freedom of expression and enshrines the right of every citizen to freedom of expression and access to information.⁴²⁶ The RFC also recognizes the principle of child participation in relation to some key issues and processes. For instance, on the inquiry of adoption the code guarantees the girl-child to be consulted by the court and the opinion and views she made on the issue be taken into consideration.⁴²⁷ Similarly, the court may decide a case of disputed child custody between divorced couples after hearing the opinion of the girl-child where such girl is aged ten or above.⁴²⁸ Moreover, the RFC directs the court to hear the opinion of the girl-child to establish what is in her best interest before reaching a decision on the appointment or removal of a person as guardian or tutor.⁴²⁹ The tutor is also required to consult the girl-child before making any decision in relation to serious matters affecting her property if she is at least 15 years of age.

However, as the UN Committee on the Rights of the Child noted, though the perception on children's participation, respect for children's views with-in the family, school, communities and institutions generally is increased, the long-standing practices and attitudes continue to impede the equitable participation of girl-children.⁴³⁰ The same problem is challenging the girl-child's

⁴²³ The CRC, Article 13 and the ACRWC, Article 7

⁴²⁴ The UN Committee on the Rights of the Child, General Comment No. 12 on the right of the child to be heard, CRC/C/GC/7/Rev.1, (2006) Para. 77.

⁴²⁵ The CRC, Article 15 and the ACRWC, Article 8

⁴²⁶ The FDRE constitution, Article 29

⁴²⁷ The RFC, Article 194 (3 (a))

⁴²⁸ Id, Article 191 (3)

⁴²⁹ Id, Article 249 (2)

⁴³⁰ The UN Committee on the Rights of the Child, General Comment No. 12, cited above at note 424, Para. 77.

right to freedom of expression in Ethiopia, mainly due to the persistent negative patriarchal attitudes and behaviors and rigid forms of gender socialization.⁴³¹

In most cases, girl-children are discouraged from expressing themselves, as they are often perceived as not having a voice, in many families a girl-child who speaks out could be considered as offensive. As a result, many parents do not consider it a right for girl-children to say what they feel; rather they see it as their own right to decide and speak for their daughters. Therefore, girl-children should be informed about their rights and they should be provided with the opportunity to exercise this right and be guided in the exercise by their parents or guardians.

4.2.4. THE RIGHT TO KNOW, BE CARED FOR BY PARENTS AND NOT TO BE SEPARATED FROM THEM

As mentioned above parents have the right and responsibility of bringing up their children, in like manner all children have the right to know and be cared for by her parents including the right not to be separated from them. The main motive of this right is maintaining their identity and at the same time safeguarding that all children receive all the necessities for their survival and development from their parents which has immense importance to their general well-being. The assertion is quite important to the girl-child in order to assure her physical, mental and emotional development in family environment situations. The obvious reason for the recognition of this right is that, those children, particularly the girl-children, are exceptionally prone to dangers when they are far from their parents. As discussed under chapter three, the vulnerability of the girl-children increases whenever they are far from their own parents. They will be better protected and feel safe whenever they are living with their own parents, as a result of which protecting this right is vitally important to safeguard her from abuse, violence and discriminatory practices.

The CRC recognizes this right of the girl-child in an unequivocal manner where it guarantees every girl-child the right to know and be cared for by her parents.⁴³² Moreover, it obliges States Parties to ensure that girl-children shall not be separated from her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for their best interests.⁴³³ It also demands States to combat the illicit transfer and non-return of them abroad⁴³⁴ and States must use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of their child.⁴³⁵ The ACRWC also

⁴³¹ The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 28.

⁴³² The CRC, Article 7 (1)

⁴³³ Id, Article 9 (1)

⁴³⁴ Id, Article 11 (1)

⁴³⁵ Id, Article 18 (1)

recognizes this right of the girl-child to be entitled to the enjoyment of parental care and protection including the right to reside with her parents. It also guarantee her right not to be separated from parents against her will, except when a judicial authority determines in accordance with the appropriate law that such separation is in line with the best interest principle.⁴³⁶ It further places a duty on parents to take primary responsibility of the upbringing and development.⁴³⁷

Under the FDRE legal system, the right to know and be cared for by parents has been given constitutional credit where the FDRE constitution stipulates that the child enjoys the right to know and be cared for by its parents and legal guardians.⁴³⁸ In line with the constitution, the RFC also recognizes this right by adopting various mechanisms in which all children could claim their rights emanating from parenthood. In doing so, it dedicated chapter ten for such mechanisms of ascertainment of paternity and maternity.⁴³⁹ These ascertainment mechanisms are advantageous, for the reason that, the ascertained parent has an obligation to care for and bring up her/his child in the form of the obligation to supply maintenance. Parents are bound to supply their children with food, lodging and clothing, and to care for its health in an adequate manner. In this regard, the FDRE criminal code stipulates that gross negligence and abandonment of children by a parent or other person exercising the authority of guardian or tutor is punishable. If such person refuses or omits to provide maintenance and fails to meet the financial obligations he/she has incurred, will be punished with simple imprisonment or a fine.⁴⁴⁰

Under the RFC parents are the first responsible persons to bring-up and provide every proper care services to their minor children. The RFC states that “the father and the mother are, during their marriage, jointly guardians and tutors of their minor children.”⁴⁴¹ It further asserts that in the case of default of one parent, as a result of death, disability, unworthiness or removal of one of the parents the one who remains shall exercise such necessary functions alone.⁴⁴² Accordingly, as the guardian of the minor, parents are given a wide range of authorities over the minor including determination of its residence, supervision of its health, upbringing, its social contacts, and education.⁴⁴³

This right is limited only on the basis of the best interest principle of the girl-child where a parent may be declared by the court unworthy of exercising the functions of guardian or tutor, where, he is sentenced for a criminal offence to a punishment restrictive of personal liberty or to capital punishment. The court also may remove the guardian of a minor where the minor does not receive the care which her/his condition requires, a morally sound education or an instruction

⁴³⁶ The ACRWC, Article 19

⁴³⁷ Id, Article 20

⁴³⁸ The FDRE constitution, Article 36 (1(c))

⁴³⁹ The RFC, Article 123-179

⁴⁴⁰ The FDRE criminal code, Article 658 and 659

⁴⁴¹ The RFC, Article 219

⁴⁴² Id, Article 220

⁴⁴³ Id, Article 256-260

which accords with her/his disposition. It may also remove the tutor where it appears that she/he administers badly the property of the minor. Nevertheless, the law obliges the court that, whenever taking the above measures, the court shall declare only with extreme caution the removal of the mother or of the father or of the other ascendants as guardians or tutors of their children.⁴⁴⁴

The main challenge that threatens the right of the girl-child to know, be cared for and not to be separated from parents includes HIV/AIDS and the existence of extreme family poverty in the nation. Parents, especially in rural areas, may be forced to abandon their daughters to relatives who live in urban areas as a result of the inability of finding the means to take care of them. As a result, sending girl-children to cities for domestic servant purposes is persistent within the nation. In order to ensure the respect for the girl-child's right to know and be cared for by parents and not to be separated from her parents, the state is obliged to assist such parents in the best possible way and also to raise awareness on family planning and on the dangers of denial of such rights. The state is also obliged to take measures to combat illicit transfer of girl-children from rural to urban centers for the above mentioned reasons.

4.3. ECONOMIC AND SOCIAL WELFARE RIGHTS

The girl-child, because of her physical and mental conditions, is dependent on other individuals and the State for her general welfare and existence. Economic and social welfare rights, therefore, guarantees her to have basic needs that are very important for survival and personal development from the family, community or the state at large. For that reason, many legal provisions under the international, regional and national instruments recognize these rights for the girl-children. The need to claim these rights is directly linked with human dignity, for there are values of equality and liberty alongside the right to economic and social welfare rights. Accordingly, in this section discussion the following economic and social welfare rights will be discussed: the right to education, the right to health, the right to social security including social insurance, the right to the standard of living adequate for the girl-child's physical, mental, spiritual, moral and social development, and the right to rest, leisure and recreational activities.

4.3.1. THE RIGHT TO EDUCATION

"There is no tool for development more effective than the education of girls" (Kofi Annan, former United Nations secretary-General, 15 Jan. 2004)

As the African saying goes "If we educate a boy, we educate one person, If we educate a girl, we educate a family – and a whole nation," the right to education of the girl-child has far reaching

⁴⁴⁴ Id, Article 244-247

advantages besides to the girl-child herself to the whole nation. Through sending girl-children to school, the overwhelming impact and benefits derived extend far beyond the families, in-to communities and future generations. The education of girl-children has a durable impact on future sustainable human development by improving literacy, numeracy and skills. It creates access to opportunities and can increase productivity by increasing a girl's performance and capacity to participate.⁴⁴⁵ Hence, investing in a girl-child's education is critical in many respects, both for individual girl-children and the society at large. For instance, girl-children's education plays a central role in enabling them to develop to their full potential as well as equips them with the skills necessary to lead a healthy and productive life.⁴⁴⁶

Education is both a human right in itself and an indispensable means of realizing other human rights.⁴⁴⁷ As an empowerment right, education is the primary vehicle by which economically and socially girl-children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education also has a vital role in safeguarding girl-children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments that a state can make. But the importance of education is not just practical; a well-educated, enlightened and active mind, able to wander freely and widely, are one of the joys and rewards of human existence.⁴⁴⁸

The UDHR recognizes the right to education of all human beings, and demands that it shall be free and compulsory.⁴⁴⁹ The ICESCR and ACHPR likewise recognize the importance of education.⁴⁵⁰ In a more pertinent way the CRC and ACRWC also make a declaration to States Parties on the importance of the education of the girl-child.

The CRC recognizes the right of the girl-child to education. It stipulates that the education of the child shall be directed particularly to the development of the child's personality, talents and mental and physical abilities to their fullest potential.⁴⁵¹ It also reminds States that education must prepare a child to develop respect for human rights and fundamental freedoms, respect for the parents, its own cultural identity, language, national values of the country in which it lives, and for civilization, enable the child to be prepared for a responsible life in a free society, in the

⁴⁴⁵ See, The UN Committee on the Rights of the Child, General Comment No. 1 on The Aim of Education, CRC/GC/2001/1, (2001).

⁴⁴⁶ Department for International Development, *Girls' education: towards a better future for all* (2005), (<http://www2.ohchr.org/english/issues/development/docs/girlseducation.pdf>) last visited on September 26, 2013.

⁴⁴⁷ (<http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/right-to-education/>) last visited on September 26, 2013.

⁴⁴⁸ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13 on The Right to Education, UN Doc. E/C.12/1999/10, (1999).

⁴⁴⁹ The UDHR, Article 26

⁴⁵⁰ See, the ICESCR, Article 13 and 14, the ACHPR, Art 17 (1)

⁴⁵¹ The CRC, Article 29 (1 (a))

spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.⁴⁵²

Furthermore, the CRC urge States Parties to recognize the right of the child to education with a view to achieving this right progressively and on the basis of equal opportunity, in particular, by making primary education compulsory and available free to all.⁴⁵³ State Parties are also have a duty to encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance.⁴⁵⁴ Further, the States are required to take measures to encourage regular attendance at schools and prevent of drop-outs.⁴⁵⁵ States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity so as to prevent degrading and cruel methods of disciplinary measures and corporal punishments in school.⁴⁵⁶

The ACRWC also recognizes the right to education of the girl-child in the same manner. Besides enunciating what is already incorporated in the CRC, it particularly, takes in-to consideration the real situation in relation to young girl-children who become pregnant while in school. In this regard, it urges States to have all appropriate measures in order to ensure that girl-children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.⁴⁵⁷ Moreover, the CEDAW obliges States to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women and the reduction of female students drop-out rates and the organization of programs for girl-children who have left school prematurely.⁴⁵⁸

Nevertheless, unlike the above instruments, the FDRE constitution does not exclusively and exhaustively provide for the right to compulsory primary education. The Constitution rather provides that every child has the right “neither to be required nor permitted to perform work which may be hazardous to his or her education”.⁴⁵⁹ Although there is a provision for free primary education, it is not compulsory and the constitution obliges the state to allocate resources and permit policies to provide all Ethiopians access to education.⁴⁶⁰ The RFC also obliges the guardian to ensure that the minor be given general education or professional training

⁴⁵² Id, Article 29

⁴⁵³ Id, Articles 28 (1 (a))

⁴⁵⁴ Id, Article 28 (1 (b))

⁴⁵⁵ Id, Article 28 (1 (e))

⁴⁵⁶ Id, Article 28 (2)

⁴⁵⁷ The ACRWC, Article 11 (6)

⁴⁵⁸ The CEDAW, Article 10 (f)

⁴⁵⁹ The FDRE constitution, Article 36 (1 (d))

⁴⁶⁰ Id, Article 41(4) and 90

commensurate with the age and ability.⁴⁶¹ Accordingly, in Ethiopia the education of girl-children is not given as equal treatment as it does in the CRC, and ACRWC.⁴⁶² Generally, the basic education system currently is in good progress, though lots remain to be done with regard to the immense challenge of bringing all girl-children of school-going age to school and improving the quality of education for those who already joined.

Though highly criticized for its gender insensitiveness, Ethiopia has a long tradition of education whether provided by religious institutions or by a formal government system. The Ethiopian government has accepted the Dakar Framework “Education for All” (2000) as well as pledged to meet the MDGs as the framework for the national education system and goals educational achievements. Ethiopia also framed various national educational strategies in order to promote and support General Enrollment Rate in education.

In this regard, the National Girl-children’s Education Strategy document of August 2010 aims to increase girl-children’s enrollment rate, particularly to rural and disadvantage girl-children. The strategy document analyses the girl-children’s education in Ethiopia, and indicates the major obstacles to low enrollment and achievement level of girl-children’s education and forwards strategic directions for promoting girl-children’s education.⁴⁶³

According to a recent report by the Ethiopian Ministry of Education, though there is a relative decline of the disparity between boys and girl-children over the past five years, the enrollment rate of girl-children is still lower than boys for all levels of education. The report indicates that, 8,779,088 boys and only 7,939,023 of girl-children enrolled for primary level; 976,822 boys and 773,312 girl-children enrolled for secondary level; 197,463 boys and 169,150 girl-children for TVET; and 344,137 boys and 123,706 girl-children for Higher education in the year 2010/2011.⁴⁶⁴

The 2010/2011 primary Gross Enrollment Ratio (GER) in primary schools nationally stands 96.4%, which shows an increase in GER from the previous year’s 93.4%, where the rate for boys is 99.5% and the rate for girl-children is 93.2%. In the same period the average Net Enrollment Rate (NER) was 85.3% out of which the rate for boys is 87.0% and the rate for girl-children is 83.5%. The report shows that the national variation in gender gap in primary schools is narrowed compared to the previous years. Yet, although it remains less for Tigray, Amhara, and Addis Ababa, it is still higher in Benishangul-Gumuz, Harari, Gambella, SNNP, and Oromiya 30, 16, and 14, 13, and 11 percentage points respectively. In the previous years, the survival rate of boys in primary schools was much better than that of girl-children. However, currently, it can be

⁴⁶¹ The RFC, Article 260

⁴⁶² UN Committee on Economic, Social and Cultural Rights, Concluding Observation: Ethiopia, cited above at note 179, Para. 44.

⁴⁶³ The FDRE Ministry of Education, National Girls’ Education Strategy (2010), (<http://info.moe.gov.et/gendocs/MOEGE.pdf>) last visited on September 26, 2013.

⁴⁶⁴ The FDRE Ministry of Education, Education Statistics Annual Abstract 2003 E.C. (2010/2011 G.C) (2012), (<http://info.moe.gov.et/emdocs/esaa03.pdf>) last visited on September 26, 2013.

observed that the survival rate of girl-children at primary level has shown a substantial increase while the drop-out rate has declined.⁴⁶⁵

In 2010/2011, the GER at secondary first cycle education (Grades 9-10) has grown to 38.4% out of which the share for boys is 41.8 % and that of girl-children is 34.9%. In this same year the GER at preparatory program second cycle (Grades 11-12) increased to 8.1% out of which the share for boys is 9.4% and that of girl-children is 6.7 %. In addition, the total enrollment of the higher education institutions in government and non-government institutions of female students has always been much lower than male students.⁴⁶⁶

As indicated by the above data, the number of girl-children that are attending schools is very lower than boys at all education levels. The existent of this gender disparity is almost similar throughout the country with little variation from region to region and the number is higher in rural areas than urban centers. A number of factors contribute for the existence of such disparity including extreme family poverty, HTPs, parents and societal negative perception towards girl's education, limited implementation capacity of institutions and government budget etc.⁴⁶⁷

The presence of extreme family poverty forced parents to keep girl-children away from schools. Those parents with lower income do not afford to cover for stationery materials and other school related fees and hence, they are reluctant to send their daughters to school. Even those parents, who are in a position to cover some of the costs, have to make a choice of educating either a girl or a boy child. Yet, they often give priority school enrolment opportunity for boys over the girl-children. Moreover, girl-children in such families are forced to engage themselves in various income generating activities to support themselves and their family rather than attending classes.⁴⁶⁸ Because of the existence of extreme family poverty girl-children's education should be made affordable through eliminating all school related fees and providing scholarships in order to achieve equal access to education.

HTPs that persisted in the nation are other factors for the low education enrollment rate of girl-children. Such practices like early/child marriage, abduction and FGM/C have significant effects on the enrollment of the girl-child in the nation. For instance, while early/child marriage results in early pregnancies, leading to household confinements, abduction and FGM/C bring psychological stress, which in turn, result in drop-outs.

Furthermore, the long-standing cultural misconception of parents and the community over the role of girl's education prevents girl-children from enjoying her right. Some parents justify the denial of girl-children of their right to education to prevent them from bringing shame to the

⁴⁶⁵ Ibid

⁴⁶⁶ Ibid

⁴⁶⁷ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 43.

⁴⁶⁸ The FDRE Ministry of Education, National Girls' Education Strategy, cited above at note 463, p.5.

family through early pregnancy.⁴⁶⁹ In rural areas, pursuing secondary school education often means that girl-children must leave their homes to live in urban areas, far from their villages. Parents fear their daughters may be exposed to the temptation of premarital sex, so they force them to drop out of school and marry. Accordingly, many families anticipate that the girl-child will eventually leave them to join her husbands' families and therefore, the girl-children's families are hesitant to 'invest' in their education and many others believe that sending girl-children to school considered as waste of money and time. For many rural families and communities, therefore, tending cattle and fetching water and collecting fire wood are more important than attending schools.

The limited implementation capacity of institutions and government budget also plays its part in keeping more girl-children out of school. In this regard, inadequate numbers of schools, teachers, textbooks, and other education inputs; low-level of awareness on the special support for girl-children, lack of curriculum design for promoting gender equality, sexual harassment in school, on the way to and from school, housing problems at secondary level in particular and lower educational budgets continue to hamper the National enrollment of girl-children in education.⁴⁷⁰ For instance, according to the UNESCO report Ethiopia stood 126 out of 127 countries listed in achieving the Dakar commitment.⁴⁷¹

The government now is working to address all the above discussed factors, in order to bring more girl-children to school. In this regard, getting all school aged girl-children to school and assuring their stay has vital importance for the government to meet the MDGs (particularly MDG 2 and MDG 5), in reducing poverty, improving maternal and child health, halting the spread of deadly diseases, and empowering women. Moreover, girl's education has important preventive advantages in fighting against violence, exploitation, abuse, discrimination and HTPs.

Therefore, getting girl-children to school on time and to keeping them in school through the secondary level has to be given a primary consideration. The government has to develop social and economic programs for out-of-school girl-children, including non-formal education programs and incentives for high-performing students. Building more accessible and girl-friendly schools with community involvement and flexible schedules could help in increasing the enrollment of girl-children and avoid gender disparities in all levels.

4.3.2. THE RIGHT TO HEALTH

As a matter of fact, girl-children are the future mothers of our society, and their well-being is vital for the nation as a whole. As a result, the right to health of the girl-child is as important as other basic human rights, in order to safeguard her well-being. The right to health can be

⁴⁶⁹ Plan International, "Because I am a Girl: Learning for Life," (2012).

⁴⁷⁰ See, The FDRE Ministry of Education, National Girls' Education Strategy, cited above at note 463.

⁴⁷¹ UNESCO, Global Monitoring Report, (2011).

considered as one of her most basic and essential asset. The non-fulfillment of this right has direct implications in preventing or minimizing her ability to exercise fully her other rights. For instance, the girl-who is not fully healthy, could not be expected to attend schools, fully participate in social interactions, play and recreational activities.⁴⁷²

Though the right to health is given ample recognition in many international or regional instruments, none of them have provided the definition of health as contained in the preamble to the constitution of the World Health Organization (WHO), which conceptualizes health as ‘a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity’.⁴⁷³ The realization of this right depends, among other things, on the fulfillment of the conditions for health, mental as well as physical. Hence, the right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as abolishing HTPs, access to safe and clean water and adequate sanitation, an adequate supply of food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.⁴⁷⁴

By nature girl-children are in general prone to specific health issues. The prevalence of the practice of FGM/C, early/child marriage and abduction throughout the country also expose them for more vulnerable situations. Accordingly, girl-children certainly have the right to health as it is recognized in various international human rights instruments in general and child right instruments in particular. The UDHR, the ICESCR and the ACHPR recognize this right of every person to have the enjoyment of the highest attainable standard of physical and mental health including food, clothing, housing and medical care and necessary social services.⁴⁷⁵ Moreover, the ICESCR, oblige States to take steps for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.⁴⁷⁶

Furthermore, the CRC and ACRWC enunciate what has been incorporated in the above mentioned instruments regarding this right. Both instruments urge States to recognize the right of every child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health, to diminish infant and child mortality, to ensure primary health care, to provide safe drinking water and combat malnutrition and disease, and to abolishing traditional practices prejudicial to the health of children.⁴⁷⁷ The CEDAW also urge

⁴⁷² See, The UN Committee on the Rights of the Child, General Comment No. 4 on Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, (2003) and The UN Committee on the Rights of the Child, General Comment No. 15 on The right of the child to the enjoyment of the highest attainable standard of health (Article. 24), CRC/C/GC/15, (2013)

⁴⁷³ Preamble to the Constitution of the World Health Organization (WHO), (1946).

⁴⁷⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 on The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4, (2000).

⁴⁷⁵ The UDHR, Article 25 (1), the ICESCR, Article 12 (1) and the ACHPR, Article 16

⁴⁷⁶ The ICESCR, Article 12 (2 (a))

⁴⁷⁷ The CRC, Article 24, and the ACRWC, Article 14

States to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services.⁴⁷⁸

Accordingly, the fulfillment of these conditions should be ensured by the state through taking concrete measures to abolish HTPs and diminish infant and child mortality and ensuring medical assistance applying and using readily available technology providing adequate nutritious food, providing clean drinking water, developing preventive health care and providing access to health care services, developing guidance for parents and family planning education, and abolishing traditional practices prejudicial to the health of the girl-child.⁴⁷⁹ The State is also obliged to take appropriate measures to raise the awareness of the community regarding child health and nutrition, the advantage of breast feeding, the environmental sanitation and prevention of accidents. After depicting the measure to be taken to ensure that children's right to health are materialized, the provisions remains conscious of the financial capacity of states to an immediate and full realization of this right. Hence, it calls for the promotion of international cooperation with a view to achieving the full implementation of the right to health.⁴⁸⁰

The right to health also has been given emphasis under the FDRE legal system. The FDRE constitution protects the girl-child's health by prohibiting any kind of work which may be hazardous or harmful to her health or well-being,⁴⁸¹ and the State has the obligation to allocate ever increasing resources to provide to the public health and other social services,⁴⁸² to the extent the country's resources permit, policies shall aim to provide all Ethiopians access to public health, clean water, housing, food and social security.⁴⁸³ Moreover, the RFC oblige the guardian to watch over the health of the minor and take the necessary measures for full recovery in case of sickness.⁴⁸⁴

The National Health Policy of the country focuses in general on reproductive health of women though lacks specificity towards girl-children, who are also the very prone to specific health issues regarding early/child marriage and fistula. Nevertheless, it does not mean it totally ignored the girl-children for it has given specific consideration towards the health needs of the family as stipulated under the instruments.⁴⁸⁵

The burden of disease, in Ethiopia, indicates that girl-children bear a significant proportion. The burden of disease is dominated by pre-natal and maternal conditions and by Acute Respiratory Infection (ARI), followed by malaria, nutritional deficiency, diarrhea and AIDS. Such diseases,

⁴⁷⁸ The CEDAW, Article 12 (1)

⁴⁷⁹ The UN Committee on the Rights of the Child, General Comment No. 15, cited above at note 472, Para. 41-50.

⁴⁸⁰ Id, Para. 58-61.

⁴⁸¹ The FDRE constitution, Article 36 (1 (d))

⁴⁸² Id, Article 41 (4)

⁴⁸³ Id, Article 90 (1)

⁴⁸⁴ The RFC, Article 257

⁴⁸⁵ (<http://www.moh.gov.et/English/Information/Pages/Policies%20and%20Strategies.aspx>) last visited on September 25, 2013.

that affect children under the age of 5 years, are the major causes of deaths that account for 33 percent of deaths.⁴⁸⁶

Moreover, Ethiopia's overall level of health service coverage for the individual programs is very low. The main causes for the poor coverage of health services include the limited physical access of the population to health facilities and staff where there is very low number of qualified health-care professionals per capita in certain regions and critical shortages at health centers, both in medical equipment and staff.⁴⁸⁷

Currently, health facilities for a population of some 74 million people comprise 89 hospitals, 191 health centers, 1,175 health posts and 2,515 health stations. Even these poorly available health services qualities has been compromised by inadequate and poorly maintained infrastructure and equipment, scarcity of trained health personnel, and the unavailability of drugs and pharmaceutical supplies. The government health expenditure has also been another factor for the low level of health coverage in the country. Although, it has been increasing recently, the government health expenditure is still significantly lower than the Sub-Saharan African average health expenditure. The Health expenditure as per cent of total government spending in Ethiopia has been fluctuating between 2004 and 2008. The country spent 9.1 in 2008, which is still below the Abuja commitment of 15 per cent.⁴⁸⁸

A key determinant of the health status of the girl-child is gender inequality and discrimination, which influences her access to nutrition and health care from a very early age and is at the root of harmful practices, such as early/child marriage, FGM/C and adolescent pregnancy, linked to complications that impact the health and well-being of the girl-child throughout the life cycle.

Progress has been made by the government that include advocacy for gender mainstreaming in health programming, support for the abandonment of HTPs (including early/child marriage, FGM/C, and abduction) and initiatives for the prevention and treatment of obstetric fistula, HIV prevention in adolescents and the prevention of mother-to child transmission of HIV.

In this regard, more emphasis has to be given for girl-children in improving equal access to adequate nutrition, safe environments, and physical and mental health services. Furthermore, continuous measures have to be taken in order to abolish HTPs including early/child marriage, FGM/C, abduction, and discriminatory feeding and care against girl-children.⁴⁸⁹

⁴⁸⁶ Ibid

⁴⁸⁷ UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ethiopia, cited above at note 179, Para. 42.

⁴⁸⁸ The African Report on Child Wellbeing-2011: cited above at note 288, p. 1.

⁴⁸⁹ The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 47.

4.3.3. THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

As discussed above, the realization of the right to health of the girl-child is highly related with the realization of the right to an adequate standard of living and its continuous expansion to all individual girl-children. Therefore, in order to fully implement the right to health of every individual girl-child, the right to an adequate standard of living has to be guaranteed. The UDHR and ICESCR accords everyone the right to a standard of living adequate for the health and well-being of oneself and of one's family, including food, clothing, housing and medical care and necessary social services, and the continuous improvement of living conditions.⁴⁹⁰

The CRC obliges States Parties to recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. It puts the primary responsibility of securing the conditions of living necessary for the child's development on parents. It also urges states to take appropriate measures to assist parents and others responsible for the child to implement this right, particularly with regard to nutrition, clothing and housing.⁴⁹¹

The most challenging causes for lack of the adequate standard of living of the girl-child in the nation are water, sanitation and hygiene which are factors that affect girl-children in many aspects of their lives. Girl-children, especially in rural areas are the main carriers of water and are therefore most affected when there is lack of access. Time spent fetching water is time away from school, play, rest, relaxation and a fulfilling childhood. Carrying heavy loads of water over long distances can also cause problems to physical development over time. Furthermore, the personal security of girl-children is put at risk when walking far from home to fetch water. The UN Committee on the Elimination of Discrimination against Women noted that the absence of access to safe drinking water and adequate sanitation, mostly in majority of the rural population is forcing many girl-children to walk long distances to collect water, exposing them to an increased risk of sexual violence, and preventing girl-children from attending school.⁴⁹²

In recent country report to the UN Committee on the Elimination of Discrimination against Women indicates that access to safe drinking water and sanitation underlined that the disproportionate impact on girl-children of lack of access to sanitation includes: increased school drop-out rates for girl-children when their menstruation begins, due to frequent lack of appropriate school sanitation facilities; girl-children, with-in defined gender roles, often being

⁴⁹⁰ The UDHR, Article 25 and the ICESCR, Article 11

⁴⁹¹ The CRC, Article 27

⁴⁹² The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 47.

the ones to stay home and care for relatives with sanitation-related diseases.⁴⁹³ For instance, only 71.5% of secondary schools have reported that they have water facilities.⁴⁹⁴

In relation to this, the lack of access to safe and private toilets is particularly problematic for girl-children, resulting in their having to go to unsafe places at night to avoid being seen. The difficulties faced by girl-children due to poor access to water supply and sanitation are exacerbated during emergencies, when access can become even more of a challenge, health is at greater risk and personal security for girl-children is highly compromised. The state of the water supply and sanitation facilities at schools has a significant impact on the overall well-being of girl-children. Many schools do not have separate toilets for girl-children and boys, which can lead to girl-children feeling unsafe and being harassed or sexually abused, and girl-children who miss one week a month during menstruation may drop out permanently.⁴⁹⁵

Accordingly, in order to improve and protect the standard of living of the girl-child, the government has to take appropriate measures as much as the available resource of the country permits and through international assistance and corporation. In this regard, improving the general public, particularly girl-children, awareness and understanding on hygiene issues, advancing water and sanitation facilities projects in homes, communities and schools have vital importance in the attempt to improve the standard of living of the girl-child.

Implementing all the above mentioned social protection measures supplement the efficiency of investments in other sectors such as health and education. Investment in social protection also supports progress in MDGs and contributes to reducing girl-children's vulnerability to economic shocks and price surge in food items. According to available data, Ethiopia is among the countries in Africa that have apportioned some of their available resources to social protection. Ethiopia spent about 6.5 per cent of its GDP for social protection, which is indeed better than many African countries, yet not sufficient enough.⁴⁹⁶

4.3.4. THE RIGHT TO SOCIAL SECURITY

The right to social security is a right that provides a social guarantee for those groups of people who cannot generate income for themselves as a result of age, disability or dependency status. This rights, generally, provides a social mechanism by which all dependent children could benefit a comprehensive social services including free medical care. Further, the right also

⁴⁹³ See, Ethiopia's combined sixth and seventh periodic reports to UN Committee on the Elimination of Discrimination against Women, (2011).

⁴⁹⁴ See, The FDRE Ministry of Education, Education Statistics Annual Abstract 2003 E.C. (2010/2011 G.C.), cited above at note 464.

⁴⁹⁵ UN General Assembly, The Girl-Child, cited above at note 3, Para. 46.

⁴⁹⁶ The African Report on Child Wellbeing-2011: cited above at note 288, p.1.

extends to situations where parents may also be a beneficiary of social security system in cases if their inability of generating income also indirectly affects their children.

The right to social security, including social insurance, is provided in various instruments. The UDHR empowers everyone, as a member of society, the right to social security and it entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for dignity and the free development of personality.⁴⁹⁷ The ICESCR also oblige States Parties to recognize the right of everyone to social security, including social insurance.⁴⁹⁸ Similarly Article 11 and 14 of the CEDAW also recognizes the same right.⁴⁹⁹

The CRC, states that States shall recognize for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.⁵⁰⁰

Accordingly, the right to social security includes the duty of the state to guarantee minimum conditions of subsistence. The right to social security presupposes the establishment and maintenance of a social security system. At present there is no well-organized social security scheme in Ethiopia. However, recently the government is arranging the National Social Protection Strategy document that addresses a number of cross cutting areas that not only establish social security scheme in Ethiopia but also contribute to effective implementation of the right to social security. This plan intended to supplement the social services that are currently provided by various groups of the community. This right as mentioned above is interconnected to the realization of other rights including the right to life, health and adequate standard of living. Therefore, establishing a social security system is so vital in order to promote the realization of other inherent rights of the girl-child. The same right is provided in the FDRE constitution, though it does not specifically mention the right, it states that every Ethiopian citizen shall have the right to equal access to social services run with state funds.⁵⁰¹ For this reason, it stipulates that State shall allocate progressively increasing funds for the purposes of promoting the people's access to health, education and other social services. The State shall, with-in the limits permitted by the economic capability of the country, care for and rehabilitate the physically and

⁴⁹⁷ The UDHR, Article 22

⁴⁹⁸ The ICESCR, Article 9

⁴⁹⁹ The CEDAW, Article 11 and 14

⁵⁰⁰ The CRC, Article 26

⁵⁰¹ The FDRE constitution, Article 41(3)

mentally handicapped, the aged, and children deprived of their parents or guardians. The State shall devise policies designed to create employment of the poor and unemployed.⁵⁰²

However, the reality on the ground is very far from what is provided in the instruments, for the girl-children in vast lack this right of social security rather they are more prone to dangers in such circumstances.

4.3.5. THE RIGHT TO REST, LEISURE AND RECREATIONAL ACTIVITIES

It is widely recognized that rest, leisure and recreational activities are so important during early childhood and hence, all children shall take part in various activities of plays and recreational activities. It is also commonly understood that rest, leisure and recreational activities significantly determine the general social well-being of all children and promote the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills.⁵⁰³ Further, such activities are considerably imperative in facilitating the all features of basic education especially in early period of childhood.⁵⁰⁴

Accordingly, the vital importance of rest, leisure and recreational activities for the girl-child's healthy physical, emotional and psychological development is not questionable, hence, this right has to be recognized and States has to take measures to secure it. In order to realize it, however, States are expected to take appropriate measures, inter alia, improve the opportunity to have fields and play grounds, disseminating the broadcasting of entertaining programs, and facilitate the development of socio-cultural and artistic activities. Nevertheless, this right has not been given a due consideration as it should have deserved by the states as it is demanded by the CRC and other instruments.⁵⁰⁵

The CRC and the ACRWC in same wording recognize this right where they oblige States Parties to recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child. The instruments guarantee the girl-child right to participate freely in cultural life and the arts and respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.⁵⁰⁶ Moreover, CEDAW

⁵⁰² Id, Article 90

⁵⁰³ The UN Committee on the Rights of the Child, General Comment No. 17 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), CRC/C/GC/17, (2013), Paras. 8-10.

⁵⁰⁴ UNESCO, Education for the twenty-first century: issues and prospects, (1998).

⁵⁰⁵ The UN Committee on the Rights of the Child, General Comment No. 17, cited above at note 503, Para. 2.

⁵⁰⁶ The CRC, Article 31 and the ACRWC, Article 12

demands States to guarantee this right to participate in recreational activities, sports and all aspects of cultural life on the basis of equality without any discrimination.⁵⁰⁷

However, this right has been one of the areas which are difficult to meet with the demands of the instruments. In many cultures in Ethiopia, girl-children are expected to be more involved in domestic work than boys, often to the extent that they are effectively domestic slaves. Girl-children are made to do all of the work in the home while boys are left to play. Roles in the home are often unfairly allocated and generally designed to the disadvantage of girl-children. Girl-children in the rural areas are often engaged in herding cattle, weeding, harvesting, cooking, fetching water and collecting firewood, and caring for siblings. In like manner, girl-children in urban centers, engaged in cleaning dwellings, cooking, washing clothes, street vending, messenger services, shop and market sales, manufacturing, and other daily labours. Where a disproportionately heavy burden is placed on girl-children in this way although the intention of burdening girl-children with domestic and care-giving tasks may not be to deny this right, these are often the effects of such practices.⁵⁰⁸

The prospective measures that are currently taken to bring more girl-children to school has vital importance in creating ample opportunities to play with their school mates in break times. Nevertheless, the full realization of this right is improbable, except the long-aged negative attitudes towards the role of girl-children at home, school and other places are alleviated.

4.4. THE RIGHT TO BE PROTECTED FROM SEXUAL ABUSE, ECONOMIC EXPLOITATION AND MALTREATMENT

Under this section discussion is made on the protective rights, including those rights which protect the girl-child from all forms of sexual exploitation and abuse, economic exploitation, physical or mental maltreatment, and all other forms of practices which are detrimental to the general well-being of the girl-child.

In order to protect the girl-child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, the State is expected to take administrative, social and educational measures by enacting legislation as its primary duty. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the girl-child and for those who have the care, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.⁵⁰⁹

⁵⁰⁷ The CEDAW, Article 13

⁵⁰⁸ The African Child Policy Forum (2006a), cited above at note 18, p. 16.

⁵⁰⁹ The CRC, Article 19

4.4.1. SEXUAL EXPLOITATION AND ABUSE

The girl-child is susceptible for sexual exploitation and abuse in all places and in all circumstances. She faces such teething troubles in her day-to-day life at home, school, and in the community. In Ethiopia, studies show that nine among ten girl-children face at least one kind of sexual abuse that accounts about 68.5%.⁵¹⁰ Hence, the challenge is still persistent all over the nation though there is evidence that show it is in the decline in some areas of the country.⁵¹¹

The right to be protected from such exploitation and abuse is provided in various instruments that the country adopted and even in the national laws. Yet, for many Ethiopian girl-children, sexual abuse is part of their frequent experience. For instance, as discussed under chapter three, all girl-children are under a threat of sexual abuse at least once before they attain majority. They are under such threat in all circumstances whether at home, in schools or any other place. They are particularly vulnerable to sexual exploitation and abuse in situation where they are apart from their family. In this regard, girl-child domestic workers are the main victims of sexual abuse by their employers or by family members of their employers.⁵¹²

The girl-child's right to be protected from sexual abuse in the family, abuse by those having care, is stated under the CRC.⁵¹³ Furthermore, the CRC provides wider protection by obliging States Parties to undertake to protect the girl-child from all forms of sexual exploitation and sexual abuse. It oblige States Parties in particular to take all appropriate national, bilateral and multilateral measures to prevent: the inducement or coercion of a girl-child to engage in any unlawful sexual activity, the exploitative use in prostitution or other unlawful sexual practices and the exploitative use in pornographic performances and materials.⁵¹⁴ The ACRWC also urges States Parties to take specific legislative, administrative, social and educational measures to protect the girl-child from all forms of maltreatment including sexual abuse.⁵¹⁵ Moreover, it obliges States to take measures to protect the girl-child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent from engage in any sexual activity, prostitution or other sexual practices, pornographic activities, performances and materials.⁵¹⁶ Similarly the CEDAW urges States Parties to take all appropriate measures, including legislation, to suppress all forms of traffic in girls and exploitation of prostitution of girls.⁵¹⁷

⁵¹⁰ The African Child Policy Forum (2006b), cited above at note 7, p. 8.

⁵¹¹ The African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations: Ethiopia, cited above at note 9, Para. 63.

⁵¹² The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 45.

⁵¹³ The CRC, Article 19

⁵¹⁴ Id, Article 34

⁵¹⁵ The ACRWC, Article 16

⁵¹⁶ Id, Article 27

⁵¹⁷ The CEDAW, Article 6

In the UN Committee on the Rights of the Child General Comment No. 13 on the right of the child to freedom from all forms of violence framed by Article 19, the UN Committee on the Rights of the Child recognized that legislative measures shall comprise national, provincial and municipal laws and all relevant regulations, which define frameworks, systems, mechanisms and the roles and responsibilities of concerned agencies and competent officers.⁵¹⁸

Accordingly, the FDRE criminal code has provided adequate provisions protecting girl-children against various forms of sexual exploitation. There are specific provisions under the criminal code to protect the girl-children from sexual outrages. The code states that whoever performs sexual intercourse with a minor of the opposite sex, who is between the ages of thirteen and eighteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from three years to fifteen years. In similar manner, it also stipulates that the performance of such act on a minor of the opposite sex, who is under the age of thirteen years, is punishable with more stringent punishment.⁵¹⁹ Moreover, whenever the perpetrator performs such act on the victim using his authority, in the case where the victim is the pupil, apprentice, domestic servant or ward of the criminal, or a child entrusted to his custody or care or in any other way directly dependent upon or subordinate to him, the punishment is also more stringent. The code also criminalizes the act of rape, where it extends the punishment up to rigorous imprisonment from five years to twenty years.⁵²⁰ However, the main challenge in bringing the perpetrators to justice and prosecute them is highly problematic, in most cases, for lack of strong evidence.

Studies confirm that girl-children who experience sexual abuse and sexual coercion suffer psychological effects that persist into adulthood.⁵²¹ This psychological trauma is often manifested in physical problems such as pelvic pain, headaches, asthma, and gynecological problems. These girl-children also endure long-term damage to their self-esteem and their sense of autonomy and, in some cases, serious depression. Consequently, they do not always make the best sexual and reproductive health decisions for themselves, and often are unable as adults to negotiate safe sex, or enjoy intimacy and relationships. Many accept victimization as an inevitable aspect of being female.

Abused girl-children face a host of physical injuries, including chronic complaints such as headaches, abdominal pains, muscle aches, and sleeping or eating disorders. Sexually abused girl-children are more likely to experience persistent miscarriages and recurrent vaginal infections. They are likely to experience unwanted pregnancies and resort to illegal, unsafe abortions.⁵²²

⁵¹⁸ The UN Committee on the Rights of the Child, General Comment No. 13, cited above at note 227, Para. 40.

⁵¹⁹ The FDRE criminal code, Article 626 and 627

⁵²⁰ *Id.*, Article 620

⁵²¹ The African Child Policy Forum (2006b), cited above at note 7, p. 8.

⁵²² The African Child Policy Forum (2006a), cited above at note 18, p. 21.

In 2006, the Ministry formulated a National Action Plan on Sexual Abuse and Exploitation of Children (2006-2010) with the overall goal of reducing the impact of commercial sex work on girl-children. The Plan identified four levels of intervention: prevention, protection, rehabilitation and reintegration, to be coordinated and monitored during implementation.⁵²³

4.4.2. ECONOMIC EXPLOITATION

In developing countries, including Ethiopia, as a result of pervasive extreme family poverty children in general and the girl-child in particular are exposed to various economic exploitations. These exploitative practices are hazardous or harmful to her education, health and general well-being. In order to safeguard the girl-child from such activities, States are required to provide some protections by enacting various national laws to fix the minimum age for admission to the employment and follow its effective implementation.

Accordingly, the ICESCR provides protection for girl-children from economic and social exploitation, and their employment in work that is harmful to their morals or health or dangerous to life or likely to hamper their normal development in cases of the permitted set age limits.⁵²⁴ The CRC also recognizes the right of the girl-child to be protected from economic exploitation and performing any work that is hazardous, interferes with her education, or is harmful to her health or physical, mental, spiritual, moral, or social development. It calls on countries to establish a minimum age for admission to employment and to appropriately regulate work hours of children. To this end, and having regard to the relevant provisions of other international instruments, states parties shall in particular: provide for a minimum age or minimum age for admission to employment; provide for appropriate regulation of the hours and conditions of employment; and provide for appropriate penalties or other sanctions to ensure the effective enforcement of the right.⁵²⁵

In like manner the ACRWC provides a strong protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the girl-child's physical, mental, spiritual, moral, or social development.⁵²⁶ Moreover, it urges States Parties to take appropriate measures to prevent the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child, and more importantly the use of children in all forms of begging.⁵²⁷ Nevertheless, the ACRWC also incorporated a unique kind of provision that put responsibility on girl-children to work for their

⁵²³ Ministry of Labour and Social Affairs, cited above at note 163.

⁵²⁴ The ICESCR, Article 10 (3)

⁵²⁵ The CRC, Article 32

⁵²⁶ The ACRWC, Article 15

⁵²⁷ The ACRWC, Article 29

parents and community subject to their age and ability.⁵²⁸ Yet, this has to be interpreted in very narrow manner, otherwise will endanger this right of the girl-child.

The FDRE constitution, in like manner, prohibits the involvement of the girl-child in to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to her education, health or well-being.⁵²⁹ The labour proclamation also prohibits the hiring of girl-child who is under the age of 14 in any kind of employment contract.⁵³⁰ Accordingly, in order to protect the girl-child from economic exploitation, the labour law incorporated some important provisions. Nevertheless, those girl-children who are between 14-18 years are classified as young workers who are able to work but prohibited to be engaged in hazardous place of work with limited maximum working hours including prohibition of overtime work.⁵³¹ These young workers are allowed to enter into a contract of apprenticeship in view of acquiring skills in particular area of profession. It must be noted that, however, the employer is also prohibited not to engage young workers on night work between 10 p.m. and 6 a.m., overtime work, weekly rest days, public holidays and the normal hours of work for young workers shall not exceed seven hours a day.⁵³² In this regard, the RFC, permits the engagement of the girl-child where she is above fourteen years of age, and receive the income derived from her work. However, she can only freely dispose of such income in accordance with law, after making contribution to her own maintenance.⁵³³

Child work which contributes to acquiring life skills and to supplement family income is not usually considered illegal. However, child labour, which is exploitative and dangerous and undermines the girl-child's physical and psychosocial health and development, and which deprives her education is illegal. Child work becomes child labour when children work too young, work too long hours, work for too little pay, work in hazardous conditions or work under slave-like conditions.

The engagement of girl-children in certain kind of work exposes them not only for economic exploitation but for many other abuses. A small study in Ethiopia revealed that nearly two-thirds of the girl-child domestic laborers interviewed reported to have been victims of physical violence, and more than two-thirds of those reported experiencing physical violence on a regular basis.⁵³⁴

The main challenge regarding girl-child domestic laborers is lack of recognition of it as one kind of child labour. In this regard, the ILOs Convention 182 which prohibits, and calls for immediate action to eliminate, the worst forms of child labor does not explicitly define domestic work as

⁵²⁸ Id, Article 31

⁵²⁹ The FDRE constitution, Article 36 (1(d))

⁵³⁰ Labour Proclamation 377/2003, cited above at note 195, Article 89

⁵³¹ Ibid

⁵³² Ibid

⁵³³ The RFC, Article 263

⁵³⁴ The African Child Policy Forum, Violence against Girls at Work in Africa (2006).

one of the worst forms of child labor. It is rather the circumstances under which children carry out such work and their consequent exposure to abuse that can render domestic work as a contemporary form of slavery or hazardous labor and thus a one of the worst forms of child labor.⁵³⁵

The above discussed laws have provided adequate protection to the girl-child against economic exploitation. Yet, in reality the widespread extreme family poverty existing throughout the country is still mitigating the realization of the legal provisions. In order to feed themselves and ensure their families' survival and development girl-children often engage themselves in worst conditions of work. As a result, rural girl-children are very much prone to flee in to cities in order to join urban households as a domestic servant, or to engage themselves in some other exploitative works. Considerable number of rural girl-children are still imported to towns and compelled to work in an exploitative and unsafe conditions.⁵³⁶ Using very young girl-children for begging as a source of profits is also other exploitative practices in the nation. In many cities in the nation, it is common to see girl-children begging on the streets, in public squares or at traffic lights. Most of these girl-children are begging due to poverty and further used by adults to earn money. For all the reasons mentioned above, in line with the set legislative standards, all the available measures has to be taken to protect the girl-child from such exploitative circumstances.

4.4.3. MALTREATMENT

As discussed under chapter three, girl-children are more vulnerable to different forms of maltreatments. There are instruments that aimed to protect girl-children from such kinds of practices of maltreatments. Maltreatment practices incorporate those practices that harm or cause predictable harm through assault, neglect, or failure to provide basic necessities by a parent, guardian or other person responsible for the welfare of a girl-child. States are expected to provide a protection mechanism by which the girl-child is protected from such practices and it also is expected to prosecute the perpetrators of such practices.⁵³⁷

The UDHR protects everyone from any kind of maltreatment or degrading treatment or punishment.⁵³⁸ The ICCPR and the ACHPR also endow same protection to every human being.⁵³⁹ The CRC obliges States Parties to take all appropriate measures including legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,

⁵³⁵ The African Child Policy Forum (2006a), cited above at note 18.

⁵³⁶ The African Commission on Human and Peoples' Rights, Concluding Observations and Recommendations: Ethiopia, cited above at note 9, Para. 55.

⁵³⁷ See, The UN Committee on the Rights of the Child, General Comment No. 8 on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, CRC/C/GC/8, (2007).

⁵³⁸ The UDHR, Article 5

⁵³⁹ The ICCPR, Article 7 and the ACHPR, Article 5

including sexual abuse.⁵⁴⁰ Furthermore, the ACRWC demands States parties to take appropriate measures in order to eliminate social and cultural practices affecting the welfare, dignity, normal growth and development of the girl-child. It particularly, prohibits those customs and practices prejudicial to the health or life, discriminatory to the girl-child on the grounds of sex or other status, and betrothal and early/child marriage.⁵⁴¹

The FDRE constitution, in its part, under article 18 provides everyone the right to protection against cruel, inhuman or degrading treatment or punishment.⁵⁴² Moreover, Article 36 provides girl-children not to be subject to exploitative practices, neither to be required nor permitted to perform work which may be hazardous or harmful to her education, health or well-being and to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.⁵⁴³ To strengthen the protection, the FDRE criminal code has criminalized all the acts of ill-treatments and gross neglect by parents, guardians or other individuals. In doing so, it provides a protection to the girl-child from psychologically, physical and moral destitution.⁵⁴⁴ Likewise, as discussed above, it also recognizes the act of failure to supply maintenance as another form of maltreatment.⁵⁴⁵

Nevertheless, the protection given by the national laws of Ethiopia under the FDRE constitution and the FDRE criminal code is not compatible with the CRC and ACRWC. Inconsistently, both laws do not provide a better protection in all circumstances for the girl-child as the instruments demanded. In this regard, the UN Committee on the Rights of the Child and UN Committees on Economic, Social and Cultural Rights expressed their respective concerns over the legal provisions that not specifically prohibit corporal punishments in all places.⁵⁴⁶

The FDRE constitution itself is indifference and underperforms when it comes to protecting girl-children from violence. Corporal punishments and cruel and inhumane treatments are explicitly prohibited only with regard to schools and similar institutions.⁵⁴⁷ This provision even failed to clearly prohibit cruel and inhumane treatment of the girl-child in all circumstances. Hence, it exposes her to corporal punishment by her parents or guardians at home.

The FDRE criminal code, also provides that the taking, by parents or other persons having similar responsibilities, of a “disciplinary measure” that does not contravene the law, for purposes of proper upbringing, is not subject to punishment.⁵⁴⁸ This provision only prohibits

⁵⁴⁰ The CRC, Article 19

⁵⁴¹ The ACRWC, Article 21

⁵⁴² The FDRE constitution, Article 18

⁵⁴³ The FDRE constitution, Article 18 (d) and 36 (1 (e))

⁵⁴⁴ The FDRE criminal code, Article 659

⁵⁴⁵ *Id.*, Article 658

⁵⁴⁶ See, The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 33. and UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ethiopia, cited above at note 179, Para. 30.

⁵⁴⁷ The FDRE constitution, Article 36 (1 (e))

⁵⁴⁸ The FDRE criminal code, Article 576 (3)

maltreatment of minors other than disciplinary measure that is taken for purposes of proper upbringing. Moreover, the RFC gives the license for abuse where it allows the guardian to take the necessary disciplinary measures for the purpose of ensuring proper upbringing.⁵⁴⁹ There are other articles, in the RFC, that explicitly state that the minor needs the authorization of the guardian to leave the residence, and ‘if the minor goes away from the residence without authorization, the guardian may compel the minor to return thereto.’ Moreover, the guardian may even prohibit the minor from seeing the ascendants or from corresponding with them, as far as it is for good cause.⁵⁵⁰

In this regard, the FDRE constitution, the FDRE criminal code and the RFC are very reluctant in protecting the girl-child from all kinds of maltreatment in all circumstances and places. The absolute prevention in schools and other similar instructions and the permit in other places like home under the guise of ensuring proper upbringing infringe all the purposes.

Though an otherwise progressive law and a land-mark change regarding the old discriminatory laws, it permits the abuse of a minor, in the disguise of ‘disciplinary measure’. And, the license is not confined to the biological parents of the child, rather to anyone who provides food and shelter to the girl-child. Though children are expected to be raised by their biological parents, they often end up in the hands of others for a wide range of reasons, including the death or poverty of parents. This is worse where in the customs where it is quite common for girl-children to be sent to cities under the guise of better life. Almost all Ethiopians saw girl-children forced to spend years with another family, with distant or no kinship, needing a residence proximate to school. Moreover, if the parents die, relatives of the girl-child including ascendants, or brothers or sisters, or uncle or aunt may assume authority automatically.⁵⁵¹ Even any other person may assume the role without seeking court approval, as long as objection is filed to court. Therefore, any of these people can assume the responsibility and have the power to take the necessary disciplinary measures to ensuring proper upbringing.

Nonetheless, this situation is very dangerous to the girl-child taking in to account the nations custom where corporal punishment is widely used to discipline children at home, in schools, and in the community whenever they are alleged to have committed any fault.

Adults inflicted different types of corporal punishment on children depending on the gravity of the offence as perceived by the adults. Among others, beating is the most common type of punishment for which they used such instruments as sticks, belts, plastic hoses, rope, electric wire and even things like the hot iron. Physical assaults using the hands and feet, such as pinching, slapping, boxing, head-punching, and kicking in the back, are also prevalent. Of those children experiencing violence in the community, 52.1 percent said they had experienced someone kicking them. Some forms of corporal punishment followed different elaborate

⁵⁴⁹ The RFC, Article 258

⁵⁵⁰ Id, Article 259

⁵⁵¹ Abiy Kifle, cited above at note 217, p. 39.

procedures that temporarily incapacitated children from reacting against the punishment and that aimed at teaching the child an unforgettable lesson. Adults generally practiced these types of punishments at home and they included constraining and flogging; burning different parts of the child's body with iron rods; forcing the child to inhale the smoke of burning chili pepper; and denying the child food.⁵⁵²

Taking disciplinary measures in such a way that bring pain to the girl-children is seen as a successful mode of teaching them how to behave. Many parents believe that beating and shouting at them sends a clearer message as to what is expected of them. The dominant perception at home and in schools about the role of corporal punishment is now on the decline. Until recently, corporal punishment in schools was not even questioned, and was formerly taken for granted.⁵⁵³ Although no accurate figures exist, education bureau officials expressed their concerns that corporal punishment might be one of the main reasons for children dropping out of school.⁵⁵⁴

While the above discussed documents state what needs to be done to protect girl-children, the unsuccessful implementation of policy and legal codes indicates that considerable work is still required to protect girl-children from maltreatment. The laws authorizing the administration of “necessary disciplinary measures” or “light bodily punishment” by parents or guardians of a minor are in direct conflict with Article 19 (1) of the CRC and article 21 of the ACRWC.

4.5. THE RIGHTS OF THE GIRL-CHILD UNDER EXTREME VULNERABILITY

This is a situation where girl-children face vicious circle of dangers which drags them into a position of extreme vulnerability. The FDRE legal regime, in line with international and regional instruments on the rights of the child and other relevant conventions, stresses the responsibility of the state to provide special protection for different categories of such girl-children.

These girl-children include those who are very prone to discrimination, violence, abuse, trafficking, child labour and HTPs such as FGM/C, early/child marriage and abduction. This group encompasses girl-children living with disabilities, in conflict with the law, girl-children working and living on the street, or living apart to their own families. This section discusses the protection provided for such girl-children particularizing on girl-children who are deprived of their families, disabled, refugee/displaced girl-children, girl-child offenders, and street girl-children.

⁵⁵² The African Child Policy Forum (2006c), cited above at note 21, p. 4.

⁵⁵³ *Id.*, p.25

⁵⁵⁴ *Id.*, p.53

4.5.1. GIRL-CHILDREN DEPRIVED OF THEIR FAMILIES

It is certainly in the best interest of the girl-child if she brought up by her own parents in completely family environment in an atmosphere of happiness, love and understanding, yet, this is not always possible. As a result of various factors girl-children might be forced to be deprived this opportunity. The rights of girl-children who are deprived of their families are another significant aspect of contemplation. In this regard, various instruments articulate the state's obligation to afford special safeguard for girl-children deprived of their families. States are expected to establish mechanisms under national law in order to ensure alternative care for such children in accordance with article 22 of the CRC, and shall also cover unaccompanied or separated children outside their country of origin.⁵⁵⁵

In view of that, States are obliged to provide such alternative care services to the girl-children who are deprived of their families. However, to provide such alternative care services to all children by the government of any States, especially by developing States like Ethiopia, is challenging, if not impossible. In this regard, the CRC and ACRWC seem understand the reality on the ground where the provisions of the instruments allow the States Parties to guarantee in their laws alternative care services like adoption, foster placement, kafalah of Islamic law or if necessary placement in suitable institutions for the care of children.⁵⁵⁶ In line with this the instruments also demand that such alternative care services should be authorized only by the competent authorities who determine in accordance with the applicable law and procedures that the alternative care is acceptable.⁵⁵⁷ Further, the instruments oblige States to recognize inter-country adoption as one of alternative care services, if such service by no means is possible to be provided with-in the State Party.

The FDRE constitution, states that the State shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare and education.⁵⁵⁸ It also states that the State shall, with-in available means, allocate resources to provide rehabilitation and assistance to children who are left without parents or guardian.⁵⁵⁹

In line with the FDRE constitution, the RFC states that where the court is convinced that it is essential for the proper growing of such girl-child, it has the alternative to entrust the function of a guardian and tutor to an institution of assistance. Similarly, the RFC recognized the institution of adoption to afford such girl-child to create with a certain person a bond of filiation through adoption in accordance to the fulfillment of the requirements of the law.⁵⁶⁰ Accordingly, the

⁵⁵⁵ See, The UN Committee on the Rights of the Child, General Comment No. 6 on Treatment of Unaccompanied and Separated Children outside their Country of Origin, CRC/GC/2005/6, (2005).

⁵⁵⁶ The CRC, Article 20 and the ACRWC, Article 24

⁵⁵⁷ The CRC, Article 21 and ACRWC, Article 24 and 25

⁵⁵⁸ The FDRE constitution, Article 36 (5)

⁵⁵⁹ Id, Article 41 (5)

⁵⁶⁰ The RFC, Article 180-196

court may approve the adoption whenever the court convinced that it is for the best interest of the adopted girl-child.⁵⁶¹ However, such adoption may also be revoked if the adopted child, a government organ authorized to follow up the wellbeing of children, or any other interested person, petitions to the court for revoking the adoption where the girl-child is not receive the proper care by the adopter.⁵⁶²

Currently, it is estimated that about five million single- or double-orphans are living in Ethiopia. Some are taken in by remaining family members, but most are placed with-in childcare institutions where they will stay for many years, usually until they are too old to continue receiving support.⁵⁶³

HIV/AIDS, natural disasters, extreme poverty, internal migration and other factors, as well as the breakdown of family structures, have caused a rise in the number of children in need of alternative care. In the absence of a formal system of family-based alternatives, many such children find themselves in child care institutions. In 2010, two assessments of institutional child care were conducted by the Ministry of Justice, together with the MoWCYA, the Charities and Societies Agency and the six regional bureaus of justice, and Regional Police Commissions. The study assessed 149 child care institutions in Amhara, Oromia, SNNPR, Dire Dawa City Administration and Harar. Almost two thirds of these assessed child care institutions lack a database on children in need of alternative care. The study found that 45 per cent of the child care centers had no operating license or their license had expired.⁵⁶⁴

In order to tackle the problem alternative care services are put in place including adoption, both domestic and inter-country adoption. However, as a result of lack of strong follow up mechanisms towards inter-country adoption it is defeating the main purpose. Children who are adopted by foreigners are currently facing a life threatening dangers as a result of lack of such strong follow up. The recent catastrophe happened in USA on a girl-child named Hanna Williams, who was adopted by US citizens from Ethiopia, is a pertinent instance of such scenario.⁵⁶⁵

4.5.2. GIRL-CHILDREN WITH DISABILITY

Disability is another factor that worsens the already existing vulnerability of the girl-child. Girl-children who are physically or mentally disabled are more prone to vulnerability. Such girl-children need a better and special protection in order to protect them from multi directional

⁵⁶¹ Id, Article 194

⁵⁶² Id, Article 196

⁵⁶³ N. Bailey, C. Loehrke, and Shelby, The Transitions Initiative: Youth Aging Out of Alternative Care (2012), p. 1.

⁵⁶⁴ Ministry of Finance and Economic Development, cited above at note 249, p. 31.

⁵⁶⁵ (<http://www.nydailynews.com/news/national/couple-guilty-death-adopted-daughter-article-1.1450744>) last visited on September 23, 2013.

abuse, violence and discrimination. Accordingly, States are requested to pay particular attention to girl-children with disabilities by taking the necessary measures, and when needed extra measures, in order to ensure that they are well protected, have access to all services and are fully included in the society.⁵⁶⁶ In this regard, both the CRC and ACRWC, guarantees such girl-children equal treatment and the enjoyment of all the rights incorporated in the instruments without any discriminatory based on their disability.⁵⁶⁷

Moreover, under these instruments States Parties are obliged to recognize the right of mentally or physically disabled girl-children to a full enjoyment of their rights in equal manner with other group of individuals. In doing so, both instruments oblige States to provide certain necessary services to such girl-children free of charge, taking into account the financial circumstances of the parents, such as effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including cultural and spiritual development.⁵⁶⁸

The Convention on the Rights of Persons with Disabilities which Ethiopia recently adopted, recognizes that girl-children with disabilities are often at greater risk, both with-in and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, and expresses concern about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination. It includes specific language not only with respect to children in general in article 7, but to the girl-child in particular. In its article 6, the Convention provides that “States Parties recognize that girl-children with disabilities are subject to multiple discriminations, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms”.⁵⁶⁹

The FDRE constitution also urges the state to provide rehabilitation and assistance to the physically and mentally disabled girl-children with-in available means, allocate resources.⁵⁷⁰ Nevertheless, as a result of the economic status of the country providing all the above mentioned free of charge services for these girl-children is still huge problem. In this regard, to alleviate such challenges the CRC, requires that with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas, they shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled

⁵⁶⁶ The UN Committee on the Rights of the Child, General Comment No. 9 on The Rights of Children with Disabilities, CRC/C/GC/9, (2007), Para. 10.

⁵⁶⁷ The CRC, Article 2 and the ACRWC, Article 3

⁵⁶⁸ The CRC, Article 23 and the ACRWC, Article 13

⁵⁶⁹ Convention on the Rights of Persons with Disabilities, Article 6

⁵⁷⁰ The FDRE constitution, Article 41(5)

children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services.⁵⁷¹

In addition to the economic challenge, the general public's perception towards girl-children with disabilities and the persistent de facto discrimination followed is the other main persistent challenge to be addressed in the nation.⁵⁷² According to one study, children with disabilities are seen to be most at risk from psychological violence, which accounted for 50% of the total. In comparison, sexual violence accounted for 30% of the violent episodes reported and physical violence accounted for the remaining 20%.⁵⁷³

The psychological violence in the form of insults, verbal abuse, and threats is widespread and utilized by family members, teachers and other education officials, and people in the community and the harm inflicted on disabled girl-children is more degrading than that inflicted on any other group of children.⁵⁷⁴

Girl-children with disability receive more discriminatory treatment than others in the community. In most instances many of their peers and community members insult them and regard them as inferiors. It is common for instance to hear from these children that whenever a guest comes to their house they are covered up or ordered by their parents to stay hidden in another room until the guest leaves. They are considered an embarrassment to the family. Moreover, as confirmed by teachers, many are not encouraged to pursue an education. The parents in most cases prefer to keep them at home and, perhaps, out of view of the community.⁵⁷⁵ As a consequence, they are at particular risk of violence that remains hidden and is committed with almost total impunity. Some of this violence is a result of HTPs that view a child with any form of disability as a bearer of shame and bad luck to the family and thus allows a designated individual from the community to kill such a child. In some cultures, disability is envisaged as the result of witchcraft and evil spirits inhabiting the child; in an attempt to liberate the child, severe measures are accepted including starvation, exposure to extreme heat or cold and harsh beatings. These practices cause serious injury and psychological harm and may lead to death.⁵⁷⁶

4.5.3. REFUGEE/DISPLACED GIRL-CHILDREN

The other group of girl-children under extreme vulnerability that deserves special emphasis is refugee/displaced girl-children. This group of girl-children, in similar manner with other

⁵⁷¹ The CRC, Article 23 (4)

⁵⁷² The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para.

51.

⁵⁷³ The African Child Policy Forum, Violence against Children with Disabilities in Ethiopia (2010).

⁵⁷⁴ The African Child Policy Forum (2006c), cited above at note 21, p. 4.

⁵⁷⁵ *Id.*, p. 42

⁵⁷⁶ The UN Committee on the Rights of the Child, General Comment No 9, cited above at note 566, Para. 31.

refugees, encounters several discriminations, violations and abuses of their human rights. However, obviously girl-children receive a heavy punch of the situation more than others.⁵⁷⁷ Accordingly, the State which received or has with-in its territory such girl-children has the obligation to provide protection and assistance with the required degree.

Ethiopia hosts a high number of refugees from neighboring countries, for instance, it receives a vast number of refugees from Somalia, Eritrea, South Sudan, Sudan and other neighbors. Accordingly, it has an international obligation to take all the appropriate measures to meet the demands of the refugee girl-children. It has also the same obligation towards girl-children who are internally displaced.

These obligations derived from the CRC, the ACRWC and other national and international laws and norms. The CRC and ACRWC, provides a protection to the girl-child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by her/his parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the conventions and in other international human rights or humanitarian instruments to which the said states are parties.⁵⁷⁸ The ACRWC also gave recognition to the problem of internal displacements in Africa by extending its provisions on refugee children to cover internally displaced children.⁵⁷⁹ In this regard, it recognizes the African reality, where internally displaced families for different reasons including drought and poverty may take their daughters while moving and confronted with discrimination, violence and abuse.

In order to comply with its responsibility, the State that has such situations with in its territory is required to co-operate with the UN, inter-governmental and non-governmental organizations. However, Ethiopia receives condemnation for not taking measures to combat internal trafficking of girl-children which is the main reason for internal displacement and the lack of protection of refugee and internally displaced girl-children vulnerable to become victims of trafficking. Further, for not providing ready access to safe drinking water and sanitation, for refugees living with-in its territory, where with over half of the households forced to make a long journey to fetch drinking water.⁵⁸⁰

⁵⁷⁷ UNHCR, UNHCR's Strategy and Activities concerning Refugee Children (2005), p. 5.

⁵⁷⁸ The CRC, Article 22 and the ACRWC, Article 23

⁵⁷⁹ The ACRWC, Article 23

⁵⁸⁰ See, The UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 36. and UN Committee on Economic, Social and Cultural Rights, Concluding Observations: Ethiopia, cited above at note 179, Para. 38.

4.5.4. GIRL-CHILD OFFENDERS

Girl-children are in most cases victims of offences rather than offenders. Girl-children as an ordinary human being certainly commit offences, yet the punishment and treatment has to be in conformity to the minimum standards stipulated under the international instruments.⁵⁸¹ For instance, the CRC provides minimum standards to be taken in to consideration by State Parties while prosecuting young offenders.⁵⁸² Accordingly, the FDRE criminal code adopted certain rules in compliance to the requirement of the CRC, for the prosecution of girl-child offenders.

The CRC and ACRWC, demands that States should establish a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law. The instruments also demand that the arrest, detention or imprisonment of girl-child offenders should be made in compliance with the law. Moreover, the CRC and the ACRWC necessitated that every girl-child offender accused or found guilty of having infringed criminal law shall have the right to special treatment in a manner consistent with its sense of dignity and worth and which reinforces the respect for human rights and fundamental freedoms of others.⁵⁸³

More importantly the instruments demand that girl-children in place of detention or imprisonment should be kept separately from adults.⁵⁸⁴ In conformity with this requirement the FDRE constitution demands the juvenile offenders admitted to corrective or rehabilitative institutions and juveniles who become wards of the state shall be kept separately from adults.⁵⁸⁵

However, unlike the requirements under the CRC and the ACRWC, the FDRE criminal scheme miscarried to establish special institutions to deal with girl-child offenders. As a result, in Ethiopia it is the ordinary criminal courts which has jurisdiction to entertain all criminal cases irrespective of the age of the offenders. Hence, under the criminal procedure code there is no juvenile court that aimed to entertain the case of girl-child offenders, rather it is the same court that has ordinary jurisdiction over adult offenders and child offenders.

This scenario, which contradicts with the requirement of the instruments obviously negatively affect the best interests of such girl-children for such judge entertaining such cases may not have the required training and experience. Currently there is one bench in every Federal First Instance Courts in Addis Ababa which entertains the case of juveniles (young offenders) once a week though the judges are not specifically trained for this particular purpose. For instance, in Arada Federal First Instance Court, it is every Thursday that such cases are entertained.

⁵⁸¹ See, The UN Committee on the Rights of the Child, General Comment No. 10 on Children's rights in juvenile justice, CRC/C/GC/10, (2007).

⁵⁸² The CRC, Article 40 (3)

⁵⁸³ The CRC, Article 40 and the ACRWC, Article 17

⁵⁸⁴ The CRC, Article 37 and the ACRWC, Article 17

⁵⁸⁵ The FDRE constitution, Article 36 (3)

Nevertheless, though there is no institutional framework to the separate court for juveniles, the criminal procedure code provides special procedure where young persons are to be handled in accordance with articles 172-180 of the criminal procedure code.

In general, as the CRC demands girl-child offenders has to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.⁵⁸⁶ Nevertheless, under the FDRE criminal law, an offender between 15-18 years of age, the criminal liability is determined in similar manner with an adult offender, except the court is prohibited to impose death penalty on offender who has not attained the full age of eighteen.⁵⁸⁷ Moreover, the state is also oblige to protect girl-child offenders not to be in contact with adult prisoners and shall not be kept in custody with adult offenders.⁵⁸⁸

However, the practice is far from what the law is demanding. Currently, the Addis Ababa Rehabilitation Centre is the only institution in the country that caters for the needs of children in conflict and contact with the law. Two other specialized rehabilitation and reintegration centers were built in Hawassa and Bahir Dar, but other departments are now using them. The Addis Ababa center is capable of hosting only 150 children. Initially established to accommodate boys, it started admitting girl-children in 2000, even though it was not built to meet their special needs. In March 2010, 76 male and 20 female children had been placed in the center. The center suffers from acute shortages of human and financial resources. The supervision and inspection of the center that is envisaged by Article 3(3) of the CRC is inadequate. The services available are far from ensuring the right of girl-children to an adequate standard of living.⁵⁸⁹

4.5.5. STREET GIRL-CHILDREN

The term 'street children' refers to both children on the street and children of the street. The phrase children on the street are employed to describe those children who work on the streets to earn money for themselves or their families. On the other hand, children of the street are those children who are homeless and live on the streets.⁵⁹⁰

The number of street children including girl-children, in Ethiopia is alarmingly increasing which is currently a determined problem that requires an urgent response. The UN Committee on the Rights of the Child expressed its concern at the increasing number of street children, in particular in the urban centers, who are also victims of drug abuse, sexual exploitation, harassment and

⁵⁸⁶ The CRC, Article 40 (1)

⁵⁸⁷ The FDRE criminal code, Articles 117 and 176

⁵⁸⁸ Id, Article 53 and 173 (1)

⁵⁸⁹ Ministry of Finance and Economic Development, cited above at note 249, p. 31.

⁵⁹⁰ UNESCO, *A Street Child*, (www.unesco.org) last visited on September 26, 2013.

victimization by members of the police force.⁵⁹¹ Similarly, the UN Committee on the Elimination of Discrimination against Women and UN Committee on Economic, Social and Cultural Rights made their concern on the increasing number of street children including girls in Ethiopia. The Committees recommend that the State Party intensify its efforts to address the root causes of the issue of street children, with the aim of their protection, rehabilitation and social integration, and to ensure that they have access to education, shelter and health care.⁵⁹² The issue is more challenging when it comes in to the girl-child who is dwelling on the street. The girl-child in streets is exceptionally vulnerable to abuse, violence and discrimination to the extreme.

Study shows that street children are more at risk of violence. For example, street children were 20 percent more likely to be hit with a stick than school children. Girl-children frequently experienced beatings, insults and various forms of harassment. The police, for various reasons, also inflicted physical violence against children. They frequently abused children who engaged in informal street trading. Many street girl-children experience beating by the police for begging and sleeping on the sidewalks.⁵⁹³

There are many causes for girl-children to end up on the street, but the main causes are physical and psychological punishment, when parents or guardians becomes intolerable, it may lead to the child running away from home. A number of them started living on the street due to experiences of physical and psychological violence at home. For instance, a study on street children in major towns found that family conflict is the main reason for street dwelling. Street girl-children in most cases tend to become prostitutes when they stay long on the street.⁵⁹⁴

The FDRE constitution under Article 36(5) obliges the state to accord special protection to orphans and encourage the establishment of institutions which ensure and promote their adoption and advance their welfare and education. In 2007, the Ministry of Labour and Social Affairs in a study supported by UNICEF estimated the overall number of children on or off the street at around 150,000 with about 60,000 living in the capital. In 2003, the Forum on Street Children in Ethiopia conducted a study on the situation of street children in eight towns Addis Ababa, Shashemenie, Hawassa, Bahir Dar, Dessie, Diredawa, Mekelle and Nazareth. The study revealed that poverty, family disintegration, neglect and violence at home, lack of educational opportunities, the death of parents and sexual abuse were among the factors that pushed girl-children onto the street. There was also evidence that children venture into street life as early as four years of age. The same study found that the interventions of government and civil society organizations have not significantly reduced the magnitude of the problem. In late 2010 and

⁵⁹¹ The UN Committee on the Rights of the Child, Concluding Observations: Ethiopia, cited above at note 8, Para. 69.

⁵⁹² UN Committee on the Elimination of Discrimination against Women, Concluding Observations: Ethiopia, cited above at note 11, Para. 45. and UN Committee on Economic, Social and Cultural Rights, Concluding Observations, cited above at note 179, Para. 29.

⁵⁹³ The African Child Policy Forum (2006c), cited above at note 21, p. 48.

⁵⁹⁴ *Id.*, p. 53

early 2011 further surveys indicated that there are an estimated 12,000 street children in Addis Ababa and nearly 4,000 in Adama; the children identified in these studies are highly mobile. To help them leave the street they are being targeted for involvement in vocational training programs.⁵⁹⁵

CONCLUSIONS

In Ethiopia, the general attempt to give legal protection to the human rights of the girl-child is highly related to the entire child rights protection system where a significant step was taken with the ratification of child rights instruments. Yet, though it has been two decades passed since the ratification of the CRC and more than a decade since ACRWC, the girl-child still receives lesser attention from the family, the community and the state.

The ratification of these instruments helped the country to make some important legislative measures that aimed in improving the general well-being of the girl-child. The country, however, encountered multifarious challenges in incorporation and implementation of the above mentioned instruments. Many factors contributed for the poor implementation of the provisions of the child right instruments including lack of capacity of law enforcing organs and the judiciary, societal attitude towards girl-children, traditional practices and customs and so on.

The capacity of the judiciary and law enforcement organs at all federal and state level to implement the provisions of the instruments is crucially limiting their achievements. This in turn makes very difficult the full realization of each individual rights recognized by the instruments. Hence, in order to remedy the challenge and enable the full realization of individual rights of the girl-child recognized under the instruments, the government has to take appropriate measures to build the capacity of the judiciary and the law enforcement organs.

The full realization of the rights, as they are guaranteed under the international and regional instruments, is also hindered as a result of the discrepancy of some provisions of the national laws or because the national laws provide inadequate protections or in other instances the national laws fail to incorporate similar provisions at all to such laws that facilitate the implementation of the rights cherished with-in the instruments.

As discussed, although the country has recognized the right to identity of the girl-child in line with the instruments, the nationality law of the nation, for instance, does not fully comply with the international standards to protect all children their right to nationality and prevent in all circumstances statelessness. Furthermore, the long existing problem regarding birth registration is also persisting throughout the country where the non-existence of the required institutional mechanisms hugely affects the right of the girl-child to be registered immediately after birth. The

⁵⁹⁵ Ministry of Finance and Economic Development, cited above at note 249, p.29.

problem seems to continue affecting such right for the vital events proclamation provisions on the registration of birth have not been put in place, except recent sub-city offices in Addis Ababa that provide the service of registration of birth at small scale.

The non-existence of well-organized and systematized social security scheme at federal and state level in the country also hinders the realization of many rights of the girl-child. The right to social security, as discussed, is closely related to the right to life, health and other rights. Therefore, the full realization of these rights demands a strong and systematized social security system which in turn is non-existent in Ethiopia, as a result of which the right is impossible to be exercised.

The right to education also has not been given due recognition under the FDRE legal system as it should have deserved. In contrast to the international standards, the state has not recognized education a separate independent right and primary education compulsory. As a result, the enrolment rate of school age girl-children is very low compared to that of boys at all levels. Moreover, the FDRE criminal code provides different punishments to the offence of maltreatment and sexual offences where it provides more stringent penalties for the offence committed against girl-children below the age of 15 years of age than girl-children between 15-18 years of age. However, though it is made to protect the infants who are unable to defend themselves at all than the adolescent ones, this is a needless differentiation for both group of individual are equally vulnerable for such offences and left a room for perpetrator to mitigate such gaps. Further, the country's legal system lacks a separate court for juveniles, in contradiction to the requirement of the international standards girl-child offenders are charged and tried in the same court with the adult offenders.

The above mentioned and other implementation problems, including the widespread existence of HTPs, extreme poverty and negative attitudes over the role of girl-children in their family and community, hinders the full realization of the rights of the girl-child as it is recognized under international, regional as well as in the national legal instruments. Accordingly, the government has to meet with its obligations under various instruments in order to fully realize the rights of the girl-child.

The government, among other things, is expected to take legislative, administrative, judicial as well as educational, social, economic and policy measures regarding the full implementation of each right discussed above. It also expected to consult and involve all stake holders while enforcing the rights including all government and non-governmental organizations, federal and state officials, religious and community leaders, and the family.

Generally, though still lots remain to be done by the government side, as prospective implementing measures, quite recently, the state has taken steps to reform policy and legal instruments for the protection of girl-children and guidelines have also been developed to meet all the requirements under the CRC, ACRWC and other international instruments. For instance,

the government has launched in 2009, The National Coordinating Body for Multi-Sectorial and Integrated Response to Violence against Women and Children, which aimed in addressing juvenile justice and violence against girl-children and women. Moreover, The Ministry of Justice established special divisions in Justice Bureaus to investigate and prosecute crimes committed against children and women in Dire Dawa and Addis Ababa. In line with this, in the nation's capital and in some regional state capitals special child friendly benches are established with-in the courts deal with offences committed against children and women. In this regard, the best advanced one is The Federal First Instance Court which implemented the child victim protection system using closed-circuit television monitors that prevents the victim from facing the perpetrator and public at the time of testimony. Moreover, the MoWCYA is currently preparing another new National Child Policy which aimed to coordinate initiatives by families, the community, governmental and non-governmental charity organizations, regional and international organizations in the protection of the rights and welfare of all children. The policy, in this regard, has three main goals, ensuring the development and growth of children, prevention and protection of children from socio-economic and political problems as well as providing rehabilitation, care and support for children living under especially difficult circumstances.

V. CHAPTER FIVE

5. CONCLUSION AND RECOMMENDATIONS

INTRODUCTION

This thesis analysis the *status quo* of the girl-child, through making special emphasis to the challenges and prospects with regard to the realization of her human rights in Ethiopia. This last chapter of the study, accordingly, provides the conclusion of what has been discussed throughout the study and forwards some feasible way-out for the problems identified in the study by way of recommendations. The chapter provides an insight on the main challenges and prospects of realizing the rights of the girl-child on the basis of the international and regional instruments that the country ratified as well as on the relevant national laws of Ethiopia. In doing so, it provides a conclusion on main issues that are discussed in the previous chapters. In line with that, recommendations are also made on a general and specific notes based on the viable options proposed in the preceding chapters. These recommendations give an indication as to how best to address some of the problems and setbacks mentioned in this thesis to mitigate the FDRE government weaknesses. This ensures that the promotion and protection of girl-children's rights are treated with the kind of responsiveness it deserves. The recommendations provided hereunder include the need of awareness creations, legislative measures, better budget and funding, international co-operation and assistance, and on the need of advanced policy and strategies as well as capacity building and further research.

5.1. CONCLUSION

As it has been discussed throughout the paper, the *status quo* of the girl-child, without any question, is in the worst condition which demands a strong responsiveness from the family, the community and the state. The girl-children throughout the nation have always been at a disadvantaged position and denied every opportunity to enjoy their human rights in equal manner with other group of individuals.

As a result of the patriarchal societal system and the conventionally entrenched attitude over the role of the girl-children in the nation's social, cultural, economic, political and traditional schemes, they have been a victim of discrimination, violence and abuse which hampered in many ways and in all circumstances to enjoy their human rights as recognized in various international, regional and national instruments. Therefore, unless girl-children are helped to break the chains of discrimination, violence and abuse that they have been carrying it is not possible that their rights will be fully recognized as human rights.

Although, recently the country has made a remarkable legislative measures in order to up-grade this most alarming status of the girl-child, in terms of implementation it is still in very infant stage. In this regard, the government ratified the CEDAW, the CRC, the ACRWC and other relevant international and regional human rights instruments. However, the ratification of these instruments by it-self cannot be a panacea, because the imprecision of the incorporation process has shadowed in its proper implementation nationally. The absence of official translation of the international and regional human rights instruments also has a negative impact on its implementation. Further, the requirement of the promulgation of these documents on the official Negarit Gazzeta impacts its observance by the judiciary and law enforcement organs. Yet, because of the recognitions to the recent Federal Supreme Court Cassation Bench Division milestone decision in the cases *Tsedale Demesa v Kefla Demesa* and *Etsegenet Eshetu v Selamawit Neguse*, this problem seems resolved, though its wider practical application is still under scrutiny.

Moreover, the enactment of the new and advanced national laws contributed positively towards protecting and promoting the rights of the girl-child. The first important document worth mentioning is the FDRE constitution which receives praise for its incorporation of the basic rights and principles found in the major international human rights instruments. The FDRE constitution also emphasizes the rights of women and children by dedicating special provisions with-in chapter three. Other laws including the RFC, the FDRE Criminal Code as well as the labour proclamation No 377/2003 plays important role in the promotion and protection of the rights of the girl-child. In this regard, the country has made significant steps in terms of legislation where it protected in adequate manner the rights of the girl-child, at least in law, in much better way than other group of individuals.

Nevertheless, on the basis of the above details, though in terms of legislative measures the country has made a progress, when it comes to the implementation process, it may be concluded that Ethiopian does not fully comply with the CEDAW, the CRC and the ACRWC. Hence, regardless of all these progressive legislative measures that the country has taken, the implementation of all the provisions incorporated with-in the laws are still a tough challenge. As mentioned above, the long-existing traditional perceptions on the role of girl-children with-in the society highly prevents the general application of all the laws. As a result of these long-standing and widespread attitudes throughout the nation, the vulnerability of the girl-children to discrimination, violence and abuse has highly increased. Moreover, these conventional attitudinal perceptions over the role of the girl-children affect the realization of their rights and threaten the human rights of every individual girl-child. Girl-children in the rural areas are often engaged in herding cattle, weeding, harvesting, cooking, fetching water and collecting firewood, and caring for siblings. In like manner, girl-children in urban centers, engaged in cleaning dwellings, cooking, washing clothes, street vending, messenger services, shop and market sales, manufacturing, and other daily labours. For instance, owing to these several socio-cultural factors the proportion of school aged girl-children enrolled in primary schools is still lower than

that of boys. In this regard, the socialization of girl-children needs to be reviewed from the societal angle, not only with-in the family. If the social system is still pushing girl-children into domesticity, household responsibilities, and they move towards their traditional domestic role, including cooking, grinding, washing, caring for their siblings, and most commonly collecting firewood and fetching water there will be no improvements.

Furthermore, disparagements regarding, *inter alia*, resources allocation, HTPs such as FGM/C, early/child marriage, abduction; age and sex based discriminations, lack of birth registration; child labour; refugee children and juvenile justice have not been given sufficient follow-up by the state. As indicated in the study, it is a serious of factors that contribute for the problem of lack of full implementation of the laws.

Nevertheless, the main constraints also include lack of adequate awareness, lack of commitment and capacity by the judiciary and law enforcement organs, traditional and cultural reasons, and low prosecution rates of violations. The lack of adequate awareness about the existing laws protecting the rights of the girl-child on the part of the general public severely affects the full realization of the rights of the girl-child. The lack of commitment and capacity by the judiciary and law enforcement organs also negatively affects the full realization. The availability of insufficient material/financial resources to the judiciary and law enforcement organs to enforce such right at federal and state level is other factor which ultimately affects the commitment of the individual workforces to use their maximum effort. In addition to the above factors, the traditional and cultural reasons that discourage victim girls to report perpetrated violations and abuses contribute its part for the low level of implementation of the rights. The non-existence of separate child friendly prosecution offices in most law enforcement organs in the nation is also another significant factor of the hesitation for reporting. As a result of the above mentioned reasons, the prosecution rates for violations and abuses of the rights are very minimal which ultimately affects the implementation of the rights.

Accordingly, on the basis of the above particulars, it may be concluded that though all instruments demand the application of all the provisions therein in equal manner without any discrimination based on sex and age, the reality on the ground is the reverse. The country is not fully committed to its obligations under the instruments to protect and promote the rights of the girl-child. Ethiopia is not performing its best as obliged under the CRC, the ACRWC, the CEDAW and other instruments when it comes to the implementation of the rights of the girl-child as it is recognized thereof. Central to this work is the firm contention that the ratification of the above mentioned instruments is premised primarily on ensuring that girl-children have equal rights with other human beings as exemplified in these general and specific human rights documents. However, several factors have militated against the full achievement of the provisions of the instruments as either a contributory factor or a catalyst. As a result, as the extensive discussions with-in the thesis indicate, the status of the girl-child in the nation is very poor though there has been a remarkable effort in reforming the legal framework in a particularly child sensitive manner.

This thesis has revealed that the FDRE has not achieved optimally its mandate towards the full realizations of the rights of the girl-child as provided in the CEDAW, the CRC and ACRWC. The existence of the widespread HTPs such as FGM/C, early/child marriage, and abduction are the major illegal practices that are hindering the full implementation of the rights of the girl-child. As various reports on the situation of girl-children in the nation reveals that they are still systematically subjected to practices such as FGM/C, early/child marriage, abduction in the name of traditional practices and custom. These widespread HTPs existed almost in all parts of the country in similar extent and worsen the woes of the life of the girl-children.

These HTPs practices, beyond threatening the mere existence and well-being of the girl-child in the nation, violates many of her internationally and nationally recognized rights including, among other things, her right to life; health; education; right to an adequate standard of living; the right to rest, leisure and recreational activities; the right to be protected from sexual abuses, exploitative practices and ill-treatments; and many other important rights. Nevertheless, despite the gravity of the problem and the urgency the issue deserves, it still has not received sufficient attention from the government.

This study has shown that, though the state has attempted to taken some progressive steps in ensuring the promotion and protection of the rights of girl-children in the country, more needs to be done to strengthen the combat of eradication of these HTPs. Strengthening the efforts and the positive measures to abolish the practices will ensure that girl-children's rights are not totally ignored. Failure to ensure that the mandate of the instruments is fulfilled, in any of the reasons mentioned above, will continue to constitute a denial of the girl-children's rights under the CEDAW, the CRC the ACRWC and consequently other treaties on the promotion and protection of children's rights in general.

All gender and age based discriminations, violence and abuses that are happening now against the girl-children is just the extension of the impunity developed throughout the society. For change to begin, the attitude of the society over the perception that girl-children are passive recipients, must be changed and it has to start at the grass roots level where it could be initiated and implemented in the day-to-day life of the society, because those are the most effective.

Significant paces have to be made at federal and state level through a combination of various approaches, including strong national leadership and political will, the development of comprehensive national children policies and plans and through effective mobilization of resources. Notwithstanding the criticisms of the minimum allocation of resources to children well-being, and the operational problems identified in this thesis, it is undeniable that the current economic development will have a positive impact on the life of the nation's population, so it does on a potentially powerful tool for enhancing the lives of millions of girl-children. Nevertheless, if the imbalanced allocation of budgeting is to stand out in the realization of the rights as expected, it does not overcome the inherent deficiencies observed.

Without ensuring the full implementation of the rights of the girl-child, in Ethiopia, it is unquestionably impossible to bring gender equality in the nation and achieve the MDGs. If Ethiopia has failed in its duty to protect girl-children, and able to combat and stop the discrimination, violence and abuse at the grass roots level, the wide gender disparity will remain persistent. For no country prefers to leave behind half of its population, the starting point is at the grass roots level. So, in order to bridge such gap and enhance the implementation of international, regional as well as national laws, the future depends in what the country does to its girl-children at present. In short the gates must be opened even wider to ensure that girl-children shall enjoy and exercise their recognized human rights, otherwise their worst *status quo* will remain the same. Hence, all institutions and organizations of the government have responsibilities for ensuring gender equality and the participation of girl-children at all levels.

It also has to be recognized that girls are the future mothers of the society; hence, the state shall care for their general well-being and improve the current *status quo* of the girl-children in the nation. When girl-children have the opportunity to be treated in equal manner with other group of individuals the society as a whole benefits. Government support helps girl-children in reaching their potential and growing into productive citizens who will create a new future for their families, communities, country and to the world.

Generally, by attempting to discuss all the issues raised throughout the chapters, the study has achieved its aims and objectives and successfully answers all the research questions posed in the initial chapter of this thesis. Thus, it is possible to conclude that the FDRE government can achieve its obligation but must be strategically react to ensure its duty of respect, protect, promote and fulfill the girl-children's rights in Ethiopia. In addition, the study has confirmed the hypothesis that there is an urgent need for urgent responsiveness, beyond the ratification of instruments and enactment of laws to fully realize the rights of the girl-child.

5.2. RECOMMENDATIONS

5.2.1 GENERAL

There is an urgent need in capacity building, in order to enable the law enforcement organs implementing capacity of all the relevant policies and laws in the nation. The FDRE government shall take and conduct an in-depth study on the issue of the rights of the girl-child for there is no as such research is conducted on the issue profoundly. Consideration should also be given to starting up a telephone hotline where violence and abuse against girl-children can be reported immediately. The revision of the family law in the remaining regions that have yet to do so, and analyses the new capacities needed in each region to implement the law well, and support actions to build new capacities as discussed well in the thesis is also important. Moreover, the various legal provisions are not consistently enforced because of insufficient allocation of budget and

funds, lack of coordination among the relevant actors, low awareness of existing laws and policies on the part of law enforcement officials, lack of capacity to apply the law. Hence, the effective implementation of the CRC, the ACRWC, the CEDAW and other international and regional instruments on children's rights must take on an interdisciplinary approach in dealing with girl-children's rights, involving stakeholders in the supply and demand side of the justice system.

5.2.2 PROMOTIONAL MEASURES

Although discrimination, violence and abuse against girl-children are common and widespread in the country, there is a shortage of information and analysis into its causes, manifestations, magnitude, and recommended measures to address the problem. Hence, the need for promotional measures especially regarding the effect of the HTPs on the rights of the girl-children and on the nation at large, the benefits of girl-children education, and other related issues is so vital. Moreover, lack of adequate awareness about the existing laws protecting girl-children's rights being one important factor for the weak enforcement of the law, hence, creating extensive community awareness programs to take measures, including awareness-raising and training, to sensitize the population and to enable public officials to effectively enforce the laws that provide the rights becomes important.

Taking measures to publish the CEDAW, the CRC and ACRWC and other relevant human rights instruments in the Official Negarit Gazette is also important as it would facilitate awareness and access among professionals working with the administration of justice.

The FDRE government also should assist the work of the NGOs that are working in awareness creation on the rights contained in the CEDAW, the CRC and ACRWC and conducting community education on the instruments content through awareness campaigns.

Provide training on the rights of the girl-child to politicians, decision-makers and other stakeholders, especially men, to enhance their understanding on the benefit of investing on girl-children to the betterment of society at large and for the full implementation of the rights of the girl-child.

Moreover, to motivate girl-child students of an outstanding achievements at all levels of education and initiate others performance by these potential role models, awareness shall be created to the wider community using accessible approaches. In line with this, providing incentives to parents in pastoralist areas who send their school aged girl-children to school is an important step to fully realize the right of education. Celebrating the International Day of the Girl at national level every year also has an immense relevance in creating wider awareness on the rights of the girl-child. Similarly, celebrating national girl-children's education week once a year possibly every September at the beginning of the school calendar, at federal and state, school and

higher education level simultaneously to create mobilization with-in communities is so vital. In particular, strengthen opportunities to acknowledge and motivate teachers, leaders, individuals, youth associations, women associations, other organizations and institutions in promoting good practices on girl-children's education; and giving a wider recognition makes the struggle for the realization of the rights of the girl-child feasible.

5.2.3 LEGISLATIVE MEASURES

As discussed in the thesis, there are various laws that provide adequate protection to the rights of the girl-child, yet, there are also some legislative gaps that the country should make.

The FDRE criminal code provision regarding FGM/C and HTPs, as it stands now, is inadequate and lacks comprehensiveness and coherence in addressing the issue. This could be remedied by issuing specific single legislation dealing with FGM/C and HTPs where the issue of the vulnerability of girl-children is adequately addressed. The laws on corporal punishment shall also be amended including article 258 of the RFC, article 36 (1, e) of the FDRE constitution in line with the CRC and ACRWC and other instruments in a way of prohibiting the act in every place and all circumstances. To that end, the FDRE Ministry of justice should actively involve all stakeholders in the drafting process of the enactment and amendment of the intended laws.

Moreover, not all regional states have adopted their own respective regional family laws in conformity with the international, regional instruments, and the FDRE constitution. Hence, all regional states have to enact their respective family laws as an urgent priority.

The governments must also pass legislation that makes the education of girl-children mandatory, at least, for primary school and then enforce these laws stringently both in the rural and urban communities. There should be legal penalty for parents and guardians for not taking their girl-children into school. The ratification of the African women's protocol and other optional protocols to the already adopted instruments is also equally urgent task that demand an urgent response from the state.

5.2.4 BUDGET AND FUNDING

It is noted that the law enforcement organs face financial constraints, in implementing the laws; hence, the need of allocating firm budget and funding to assist the work of implementation in the nation is the prior responsibility of the FDRE government. The lack of adequate budget and funding inhibits the proper implementation of the legal provisions in various laws. As a result, law enforcement organs lack sufficient means and the ability to establish co-ordination at the federal and state levels throughout the country.

As revealed in the study, the budget allocation of the state is not in line with many standards. For instance, the educational budget is lower than the Dakar agreement, and similarly the health budget is lower than many sub-Saharan African countries. Investing in girl-children is a solution for ending the widespread extreme family poverty, illiteracy and many other related problems, for better budgeting and funding on girls could enable them to participate in their full capacity.

In order to improve the implementation of the rights of the girl-child throughout the country, and in particular, to pay particular attention to the protection of the rights of girl-children in demanding situations the government shall increase the allocations of budgets for children at both federal and state levels.

5.2.5 INTERNATIONAL AND REGIONAL CO-OPERATION

Many of the government tasks, because of the constraints of resources and other problems, should be done with the assistance of the international and regional governmental and non-governmental organizations, so as to improve the capacity and efficiency of the government efforts to comply with its obligations.

This should be done with financial and capacity building support and partnership with foreign development aid directly or indirectly to the government or the non-government organizations with transparent reporting mechanisms. Yet, with the government passing the Charities and Societies Proclamation, which the international communities strongly condemn, the above ideal environment cannot exist. Thus, the first strong recommendation would be for the revision of the law that hinders the full function of the NGOs and prepare the fertile ground for better international and regional co-operation. This is important for it is imperative for the nation to have a fully functioning, independent civil society that acts as a complimentary entity to the government efforts to provided services and also acts as effective partner and contributor for the effective performance of the government.

5.2.6 INTRODUCING BETTER POLICIES AND GUIDELINES

The best tool to assist better implementation of the rights of the girl-child is, producing better policies and guidelines in each and every sector. However, the policies and guidelines should be child friendly in general and girl-child friendly in particular and need to be implemented effectively and efficiently.

Currently, there are a number of areas that need better policies and guidelines for the full implementation of the laws. For instance, for the immediate implementation of a registration system that tracks all records of births, deaths and marriages. Ethiopia lacks a functional national or regional system for the registration and certification of births, deaths, marriages, and divorces.

This is important for safeguarding the basic human rights of the girl-children in all circumstances, enforcing the country's laws, and reinforcing relevant international instruments that the country has recognized. For instance, those without a birth certificate are left without recourse for preventing or protesting against early/child marriage, abduction and other threats. Moreover, without proof of age, government and community officials can easily overlook enforcement of legal age to marry.

With regard to, the full realization of the right to education of the girl-child, parallel to the efforts to bring more girl-children to schools, there shall be alternative basic education program for out of school or drop-out girl-children so as to enable them continue their education. There shall also be additional implementation and enforcement of institutional codes of conduct to ensure girl-children's safety with-in and around the school compound.

So as to combat the widespread HTPs that are particularly affecting the girl-children, there shall be comprehensive strategy to support the community programs already in place and building up comprehensive local activism involving all available civic, religious, educational, political, media and social organizations. Accordingly, the government must bring into the policy, immediately, to eradicate these HTPs that are affecting the rights of the girl-child in accordance to the CRC, the ACRWC and the FDRE constitution. These measures has to incorporate all stake holders, including civil societies, girl-children themselves and government officials at the federal and state levels, and should involve community and religious leaders in their respective areas and traditions. The efforts to combat these HTPs, such as early/child marriage, and abduction needs a better and stronger implementation policy that expand the public awareness on the devastating effect it has on the girl-children and the society at large and by effectively enforcing the prohibition of such practices, in particular in areas where the practice presides. In this regard, the government should draw up better national policies and guidelines to protect girl-children and give them free and fair access to legal redress.

5.2.7 CAPACITY BUILDING AND FURTHER RESEARCH

Capacity building is very important to and for the work of all law enforcement organs in Ethiopia especially for the particular implementation of the rights of the girl-child. Hence, more resources shall be spent on capacity building to combat effectively the existing complicated and vicious discrimination and violence against girls. The capacity building must reflect all the interdisciplinary approaches on international child protection standards.

Both the judicial system and the institutions of law enforcement organs in Ethiopia have been characterized by lack of human resources and essential facilities which in turn hamper the enforcement of the laws. As reflected in the study, capacity limitation of law enforcement and judicial organs is one of the key factors for the weak enforcement of the laws on the rights of the girl-children. Hence, the judges, police and public prosecutors must get special training to build

their institutional and personal capacity with knowledge and skills for handling cases of violence against girl-children.

In that light, building the capacity of the law enforcement organs could alleviate the problem. Extensive gender sensitive trainings could enhance capacity and mitigate the attitudinal problems on the part of law enforcement bodies. Such training should also involve the girl-children themselves for they are not fully aware of their rights.

Finally, it should also be noted, that there is no comprehensive study covering all types of gender and age based discriminations, violence and abuses against girl-children in Ethiopia with the girl-children's full participation. Hence, the government should study the root causes of discriminations, violence, abuses as well as the HTPs affecting the girl-child.

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Appendix I

Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal

Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

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

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or

other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or

neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social program to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

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

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

- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information

concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support program, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing 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.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum wages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.
5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall

expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually.

The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent

bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Appendix II

African Charter on the Rights and Welfare of the Child

OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

PREAMBLE

The African Member States of the Organization of African Unity, Parties to the present Charter entitled 'African Charter on the Rights and Welfare of the Child',

CONSIDERING that the Charter of the Organization of African Unity recognizes the paramountcy of Human Rights and the African Charter on Human and People's Rights proclaimed and agreed that everyone is entitled to all the rights and freedoms recognized and

guaranteed therein, without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status,

RECALLING the Declaration on the Rights and Welfare of the African Child (AHG/ST.4 Rev.1) adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its Sixteenth Ordinary Session in Monrovia, Liberia, from 17 to 20 July 1979, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African Child,

NOTING WITH CONCERN that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

RECOGNIZING that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality the child should grow up in a family environment in an atmosphere of happiness, love and understanding,

RECOGNIZING that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development, and requires legal protection in conditions of freedom, dignity and security,

TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child,

CONSIDERING that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone,

REAFFIRMING ADHERENCE to the principles of the rights and welfare of the child contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child; and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.

HAVE AGREED AS FOLLOWS:

PART 1: RIGHTS AND DUTIES

CHAPTER ONE: RIGHTS AND WELFARE OF THE CHILD

Article 1: Obligation of States Parties

1. Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the

present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

2. Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

3. Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 2: Definition of a Child

For the purposes of this Charter, a child means every human being below the age of 18 years.

Article 3: Non-Discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Article 4: Best Interests of the Child

1. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.

2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

Article 5: Survival and Development

1. Every child has an inherent right to life. This right shall be protected by law.

2. States Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.

3. Death sentence shall not be pronounced for crimes committed by children.

Article 6: Name and Nationality

1. Every child shall have the right from his birth to a name.

2. Every child shall be registered immediately after birth.

3. Every child has the right to acquire a nationality.

4. States Parties to the present Charter shall undertake to ensure that their Constitutional legislation recognize the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.

Article 7: Freedom of Expression

Every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.

Article 8: Freedom of Association

Every child shall have the right to free association and freedom of peaceful assembly in conformity with the law.

Article 9: Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought conscience and religion.
2. Parents and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.
3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 10: Protection of Privacy

No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks.

Article 11: Education

1. Every child shall have the right to an education.
2. The education of the child shall be directed to:
 - (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;
 - (c) the preservation and strengthening of positive African morals, traditional values and cultures;
 - (d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
 - (e) the preservation of national independence and territorial integrity;
 - (f) the promotion and achievements of African Unity and Solidarity;
 - (g) the development of respect for the environment and natural resources;
 - (h) the promotion of the child's understanding of primary health care.
3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular:
 - (a) provide free and compulsory basic education;
 - (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all;
 - (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means;
 - (d) take measures to encourage regular attendance at schools and the reduction of drop-out rates;
 - (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

6. States Parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

7. No part of this Article shall be construed as to interfere with the liberty of individuals and bodies to establish and direct educational institutions subject to the observance of the principles set out in paragraph I of this Article and the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the States.

Article 12: Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to fully participate in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 13: Handicapped Children

1. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the community.

2. States Parties to the present Charter shall ensure, subject to available resources, to a disabled child and to those responsible for his care, of assistance for which application is made and which is appropriate to the child's condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development.

3. The States Parties to the present Charter shall use their available resources with a view to achieving progressively the full convenience of the mentally and physically disabled person to movement and access to public highway buildings and other places to which the disabled may legitimately want to have access to.

Article 14: Health and Health Services

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.

2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:

(a) to reduce infant and child mortality rate;

- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) to ensure the provision of adequate nutrition and safe drinking water;
- (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
- (e) to ensure appropriate health care for expectant and nursing mothers;
- (f) to develop preventive health care and family life education and provision of service;
- (g) to integrate basic health service programs in national development plans;
- (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
- (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
- (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Article 15: Child Labour

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter take all appropriate legislative and administrative measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the International Labour Organization's instruments relating to children, States Parties shall in particular:
 - (a) provide through legislation, minimum wages for admission to every employment;
 - (b) provide for appropriate regulation of hours and conditions of employment;
 - (c) provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
 - (d) promote the dissemination of information on the hazards of child labour to all sectors of the community.

Article 16: Protection Against Child Abuse and Torture

1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

Article 17: Administration of Juvenile Justice

1. Every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth and which reinforces the child's respect for human rights and fundamental freedoms of others.
2. States Parties to the present Charter shall in particular:
 - (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
 - (b) ensure that children are separated from adults in their place of detention or imprisonment;
 - (c) ensure that every child accused in infringing the penal law:
 - (i) shall be presumed innocent until duly recognized guilty;
 - (ii) shall be informed promptly in a language that he understands and in detail of the charge against him, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
 - (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
 - (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
 - (d) prohibit the press and the public from trial.
3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

Article 18: Protection of the Family

1. The family shall be the natural unit and basis of society. It shall enjoy the protection and support of the State for its establishment and development.
2. States Parties to the present Charter shall take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution. In case of the dissolution, provision shall be made for the necessary protection of the child.
3. No child shall be deprived of maintenance by reference to the parents' marital status.

Article 19: Parent Care and Protection

1. Every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to reside with his or her parents. No child shall be separated from his parents against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.
2. Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.
3. Where separation results from the action of a State Party, the State Party shall provide the child, or if appropriate, another member of the family with essential information concerning the whereabouts of the absent member or members of the family. States Parties shall also ensure that the submission of such a request shall not entail any adverse consequences for the person or persons in whose respect it is made.
4. Where a child is apprehended by a State Party, his parents or guardians shall, as soon as possible, be notified of such apprehension by that State Party.

Article 20: Parental Responsibilities

1. Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and shall have the duty:

- (a) to ensure that the best interests of the child are their basic concern at all times;
- (b) to secure, within their abilities and financial capacities, conditions of living necessary to the child's development; and
- (c) to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child.

2. States Parties to the present Charter shall in accordance with their means and national conditions the all appropriate measures;

- (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programs particularly with regard to nutrition, health, education, clothing and housing;
- (b) to assist parents and others responsible for the child in the performance of child-rearing and ensure the development of institutions responsible for providing care of children; and
- (c) to ensure that the children of working parents are provided with care services and facilities.

Article 21: Protection against Harmful Social and Cultural Practices

1. States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child; and
- (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

Article 22: Armed Conflicts

1. States Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.

2. States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.

3. States Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

Article 23: Refugee Children

1. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the States are Parties.

2. States Parties shall undertake to cooperate with existing international organizations which protect and assist refugees in their efforts to protect and assist such a child and to trace the parents or other close relatives or an unaccompanied refugee child in order to obtain information necessary for reunification with the family.

3. Where no parents, legal guardians or close relatives can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his family environment for any reason.

4. The provisions of this Article apply *mutatis mutandis* to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, break down of economic and social order or howsoever caused.

Article 24: Adoption

States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

(a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counseling;

(b) recognize that inter-country adoption in those States who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

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

(d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;

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

(f) establish a machinery to monitor the well-being of the adopted child.

Article 25: Separation from Parents

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;

2. States Parties to the present Charter:

(a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination

1. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under Apartheid and in States subject to military destabilization by the Apartheid regime.

2. States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practicing racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

3. States Parties shall undertake to provide whenever possible, material assistance to such children and to direct their efforts towards the elimination of all forms of discrimination and Apartheid on the African Continent.

Article 27: Sexual Exploitation

1. States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- (b) the use of children in prostitution or other sexual practices;
- (c) the use of children in pornographic activities, performances and materials.

Article 28: Drug Abuse

States Parties to the present Charter shall take all appropriate measures to protect the child from the use of narcotics and illicit use of psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the production and trafficking of such substances.

Article 29: Sale, Trafficking and Abduction

States Parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b) the use of children in all forms of begging.

Article 30: Children of Imprisoned Mothers

1. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:

- (a) ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
- (b) establish and promote measures alternative to institutional confinement for the treatment of such mothers;
- (c) establish special alternative institutions for holding such mothers;
- (d) ensure that a mother shall not be imprisoned with her child;
- (e) ensure that a death sentence shall not be imposed on such mothers;

(f) the essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.

Article 31: Responsibility of the Child

Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

(a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;

(b) to serve his national community by placing his physical and intellectual abilities at its service;

(c) to preserve and strengthen social and national solidarity;

(d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;

(e) to preserve and strengthen the independence and the integrity of his country;

(f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.

PART 11

CHAPTER TWO: ESTABLISHMENT AND ORGANIZATION OF THE COMMITTEE ON THE RIGHTS AND WELFARE OF THE CHILD

Article 32: The Committee

An African Committee of Experts on the Rights and Welfare of the Child hereinafter called 'the Committee' shall be established within the Organization of African Unity to promote and protect the rights and welfare of the child.

Article 33: Composition

1. The Committee shall consist of 11 members of high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child.

2. The members of the Committee shall serve in their personal capacity.

3. The Committee shall not include more than one national of the same State.

Article 34: Election

As soon as this Charter shall enter into force the members of the Committee shall be elected by secret ballot by the Assembly of Heads of State and Government from a list of persons nominated by the States Parties to the present Charter.

Article 35: Candidates

Each State Party to the present Charter may nominate not more than two candidates. The candidates must have one of the nationalities of the States Parties to the present Charter. When two candidates are nominated by a State, one of them shall not be a national of that State.

Article 36

1. The Secretary-General of the Organization of African Unity shall invite States Parties to the present Charter to nominate candidates at least six months before the elections.
2. The Secretary-General of the Organization of African Unity shall draw up in alphabetical order; lists of persons nominated and communicate it to the Heads of State and Government at least two months before the elections.

Article 37: Term of Office

1. The members of the Committee shall be elected for a term of five years and may not be re-elected, however the term of four of the members elected at the first election shall expire after two years and the term of six others, after four years.
2. Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to determine the names of those members referred to in sub-paragraph 1 of this Article.
3. The Secretary-General of the Organization of African Unity shall convene the first meeting of Committee at the Headquarters of the Organization within six months of the election of the members of the Committee, and thereafter the Committee shall be convened by its Chairman whenever necessary, at least once a year.

Article 38: Bureau

1. The Committee shall establish its own Rules of Procedure.
2. The Committee shall elect its officers for a period of two years.
3. Seven Committee members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The working languages of the Committee shall be the official languages of the OAU.

Article 39: Vacancy

If a member of the Committee vacates his office for any reason other than the normal expiration of a term, the State which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term - subject to the approval of the Assembly.

Article 40: Secretariat

The Secretary-General of the Organization of African Unity shall appoint a Secretary for the Committee.

Article 41: Privileges and Immunities

In discharging their duties, members of the Committee shall enjoy the privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

CHAPTER THREE: MANDATE AND PROCEDURE OF THE COMMITTEE

Article 42: Mandate

The functions of the Committee shall be:

- (a) To promote and protect the rights enshrined in this Charter and in particular to:
 - (i) collect and document information, commission inter-disciplinary assessment of situations on African problems in the fields of the rights and welfare of the child, organize meetings,

encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to Governments;

- (ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;
- (iii) cooperate with other African, international and regional Institutions and organizations concerned with the promotion and protection of the rights and welfare of the child.

(b) To monitor the implementation and ensure protection of the rights enshrined in this Charter.

(c) To interpret the provisions of the present Charter at the request of a State Party, an Institution of the Organization of African Unity or any other person or Institution recognized by the Organization of African Unity, or any State Party.

(d) Perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.

Article 43: Reporting Procedure

1. Every State Party to the present Charter shall undertake to submit to the Committee through the Secretary-General of the Organization of African Unity, reports on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights:

- (a) within two years of the entry into force of the Charter for the State Party concerned; and
- (b) and thereafter, *every three years*.

2. Every report made under this Article shall:

- (a) contain sufficient information on the implementation of the present Charter to provide the Committee with comprehensive understanding of the implementation of the Charter in the relevant country; and
- (b) shall indicate factors and difficulties, if any, affecting the fulfillment of the obligations contained in the Charter.

3. A State Party which has submitted a comprehensive first report to the Committee need not, in its subsequent reports submitted in accordance with paragraph I (a) of this Article, repeat the basic information previously provided.

Article 44: Communications

1. The Committee may receive communication, from any person, group or nongovernmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter.

2. Every communication to the Committee shall contain the name and address of the author and shall be treated in confidence.

Article 45: Investigations by the Committee

1. The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter, request from the States Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter.

2. The Committee shall submit to each Ordinary Session of the Assembly of

Heads of State and Government every two years, a report on its activities and on any communication made under Article [44] of this Charter.

3. The Committee shall publish its report after it has been considered by the Assembly of Heads of State and Government.

4. States Parties shall make the Committee's reports widely available to the public in their own countries.

CHAPTER FOUR: MISCELLANEOUS PROVISIONS

Article 46: Sources of Inspiration

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organization of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

Article 47: Signature, Ratification or Adherence

1. The present Charter shall be open to signature by all the Member States of the Organization of African Unity.

2. The present Charter shall be subject to ratification or adherence by Member States of the Organization of African Unity. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.

3. The present Charter shall come into force 30 days after the reception by the Secretary-General of the Organization of African Unity of the instruments of ratification or adherence of 15 Member States of the Organization of African Unity.

Article 48: Amendment and Revision of the Charter

1. The present Charter may be amended or revised if any State Party makes a written request to that effect to the Secretary-General of the Organization of African Unity, provided that the proposed amendment is not submitted to the Assembly of Heads of State and Government for consideration until all the States Parties have been duly notified of it and the Committee has given its opinion on the amendment.

2. An amendment shall be approved by a simple majority of the States Parties.

Appendix III

FDRE Constitution Article 35 and 36

Article 35

Rights of Women

1. Women shall; in the enjoyment of rights and protections provided for by this Constitution, have equal right with men.

2. Women have equal rights with men in marriage as prescribed by this Constitution.

3. The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them

compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions.

4. The State shall enforce the right of women to eliminate the influences of harmful customs. Laws, customs and practices that oppress or cause bodily or mental harm to women are prohibited.

(a) Women have the right to maternity leave with full pay. The duration of maternity leave shall be determined bylaw taking into account the nature of the work, the health of the mother and the wellbeing of the child and family.

(b) Maternity leave may, in accordance with the provisions of law, include prenatal leave with full pay. Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women.

7. Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property.

8. Women shall have a right to equality in employment, promotion, pay, and the transfer of pension entitlements.

9. To prevent harm arising from pregnancy and childbirth and in order to safeguard their health, women have the right of access to family planning education, information and capacity.

Article 36

Rights of Children

1. Every child has the right:

(a) To life;

(b) To a name and nationality;

(c) To know and be cared for by his or her parents or legal guardians;

(d) 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;

(e) To be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.

2. In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.

3. Juvenile offenders admitted to corrective or rehabilitative institutions, and juveniles who become wards of the State or who are placed in public or private orphanages, shall be kept separately from adults.

4. Children born out of wedlock shall have the same rights as children born of wedlock..

5. The State shall accord special protection to orphans and shall encourage the establishment of institutions which ensure and promote their adoption and advance their welfare, and education...
