

**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
SCHOOL OF LAW**

**THE NEED FOR AN INDEPENDENT NATIONAL HUMAN  
RIGHTS INSTITUTION FOR CHILDREN IN ETHIOPIA**

**BY: FIKREAB GINTAMO**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT FOR  
THE REQUIREMENTS OF THE DEGREE OF MASTER OF  
LAW (LLM) IN HUMAN RIGHTS LAW.**

**ADDIS ABABA UNIVERSITY, SCHOOL OF LAW**

**JANUARY, 2010**

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APPROVAL SHEET**

**THE NEED FOR AN INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTION FOR CHILDREN IN ETHIOPIA**

**BY: FIKREAB GINTAMO**

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## **List of Acronyms**

<b>ACPF</b>	The African Child Policy Forum
<b>ACWRC</b>	African Charter on the Rights and Welfare of the Child
<b>ANPPCAN</b>	African Network for Prevention and Protection against Child Abuse and Neglect
<b>BOLSA</b>	Bureau of Labour and Social Affairs
<b>CRC</b>	Convention on the Rights of the Child
<b>CRDA</b>	Christian Relief and Development Association
<b>CYFAO</b>	Children, Youth and Family Affairs Organization
<b>FSCE</b>	Forum for Street Children Ethiopia
<b>GO</b>	Government Organization
<b>IMCI</b>	Integrated Management of Childhood Illnesses
<b>MOA</b>	Ministry of Agriculture
<b>MOE</b>	Ministry of Education
<b>MOH</b>	Ministry of Health
<b>MOLSA</b>	Ministry of Labour and Social Affairs
<b>MOWA</b>	Ministry of Women's Affairs
<b>NGO</b>	Non Governmental Organizations
<b>NHRI</b>	National Human Rights Institutions
<b>NPA</b>	National Plan of Action
<b>UNICEF</b>	United Nations Children's Fund
<b>ICCPR</b>	International Covenant for Civil and Political Rights
<b>ICESCR</b>	International Covenant for Economic, Social and Cultural Rights

## Declaration

I FIKREAB GINTAMO GICHAMO, do hereby declare that this research is my own original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, submitted to any other University for Degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

This Dissertation has been submitted for examination with my approval as University Supervisor.

Signed: \_\_\_\_\_

Yared Legesse (LLB, LLM, S.J.D candidate (CEU))

Addis Ababa University, School of Law

Date: \_\_\_\_\_

# Chapter One

## Introduction

### 1.1. Background of the study

In the past two decades, we have witnessed the creation of numerous national human rights institutions (NHRIs). The significance of NHRIs for the promotion, protection and enforcement of human rights and fundamental freedoms has been recognized both at the international and national levels. Efforts for establishing clear objectives and international standards and improving the effectiveness of national institutions have been ongoing. Huge work has also been continuing into developing normative standards and bringing a consensus on the most desirable constitutional and legal foundations for such institutions.

The question of NHRIs was first raised and brought in to focus by the **Economic and Social Council** in 1946; since then a number of conferences, symposiums and international meetings were held to reach at an accord on the importance of having national human right institutions. It was eventually in 1991, that a set of guidelines were endorsed in Paris, France, in a workshop called by the **UN** Commission on Human Rights. These guidelines are the ones we call today “The Principles Relating to the Status of National Human Right Institutions” or “The Paris Principles.” The Paris principles are thus, the legal foundation of national human right institutions in general.

With regard to NHRIs for children, the Convention on the Rights of Children also has a say on how these institutions should be established. Article 4 of the CRC states that governments must “undertake all appropriate legislative, administrative and other measures for the implementation of the rights acknowledged in the present Convention.” In other words, it places a proactive obligation on governments to introduce measures including institutional, needed to turn the principles of the CRC into practical realities. The CRC also requires governments to provide regular reports to the ‘Committee on the Rights of the Child’, the international body established to monitor the progress of governments in implementing the CRC. In its scrutiny of these reports, the Committee has stressed the need for changes in government structures and certain mechanisms allowing consistent consideration for children’s rights: such concerns as the ones on the compatibility of legislations, national strategies for children rooted in the CRC, analysis

of the impact of proposed policies on children, budgetary analysis, and public awareness of children's rights, are but just a few to name. While the CRC does not explicitly require governments to create human rights institutions for Children, the Committee has time and again argued that such institutions have pivotal roles to play in monitoring, promoting and protecting children's rights, and has pressed for their establishment. The Committee's guidelines to governments for preparing periodic reports ask for information on "*any independent body established to promote and protect the rights of the child, such as children's Ombudsman or Commissioner*". This has been avowed by the Committee on the CRC's General Comment No 2(2002); the role of independent national human rights institutions in the promotion and protection of the rights of the child.<sup>1</sup>

The history of Ethiopia with regard to institutions engaged in the Protection and welfare of children can be traced to the *Dergue* regime. Before the demise of the *Dergue* regime, Ethiopia had not ratified the CRC; but there existed Children Commission a fully fledged autonomous body that facilitated care and support for orphans and vulnerable children.<sup>2</sup>

One of the first measures taken by the new government of Ethiopia after the fall of the *Dergue* regime was the ratification of the CRC. On December 9 1991, the government of Ethiopia endorsed and ratified the Convention on the Rights of the Child (CRC). Ethiopia made various CRC related policies and formed Child Right Committees from the national level to regional level. These measures are actively progressing ever since.

Shortly after, the interest of children in the structure of the government lost its importance and were put aside giving way to a number of other issues considered priorities. Then, a restructuring from an autonomous 'Organization of Child, Youth and Family Affairs' to 'a Department(of Children, youth and Family Affairs) level in the Ministry of Labor and Social Affairs(MOLSA), took place with very limited human and financial resources. This restructuring has to a great extent impeded the implementation of the CRC and has greatly affected children which make up 50% of the population in the country.

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<sup>1</sup> Note that, General Comments (GCs) produced by various UN treaty bodies provide authoritative guidance on the nature, scope, implementation and monitoring of various international human rights instruments.

<sup>2</sup> For more details see, Proclamation No. 208 of 1981: Establishment of National Children's Commission Proclamation.

In the year 2005, the mandate of implementing CRC was shifted from the Ministry of Labor and Social Affairs to the Ministry of Women's Affairs. Unfortunately, this shift did not result in the formation of a separate department responsible for "children's affairs". The official Proclamation (Proclamation No 47/2005: definition of powers and duties of the Executive Organs of the Federal democratic republic of Ethiopia) that established Ministry of Women's Affairs remains silent concerning the special arrangement for children. Then, 'Department for Mother's and Children's Affairs', was formed within the Ministry. Was this organ better than its predecessor or has it even deteriorated is a question to be addressed.

The Ethiopian Human Rights Commission and the Institution of Ombudsman, which have operational experience of half a decade, have been structured in such a way that they could be able to pay special attentions to the rights of children, women and other vulnerable groups. Hence, the organizational structures of these organs contain a unit that deals with the human rights of women and children. Whether these organs are functioning effectively or efficiently; or whether sufficient attention has been given to institutions engaged in the protection and welfare of children, are among the issues to be discussed in the paper.

## **1.2 Statement of Problem**

In our country the significance of specialized institutions doesn't seem to be bothering the policy and law makers. In Proclamation No.471/2005; a proclamation providing for the definition of powers and duties of the executive organs of the Federal Democratic Republic of Ethiopia, the mandate of the Ministry of Women's Affairs is given. Accordingly, Article 29 defines the powers and duties of the Ministry of Women's Affairs. Out of the 12 sub-articles under article 29 defining the powers and functions of the Ministry, only two articles: article 8 and article 11, make a mention of children; while all the rest are dedicated to women's rights only. This fact can be cited as a good example for explaining the extent of the significance given to children's rights issue in the Ministry.

The National Child Rights Committee at the Federal level which is comprised of various Ministries, Commissions and NGOs has a mandate to: mainstream the CRC, work on the inclusion of CRC issues in laws and legislations, evaluate each of the organizational

members' plan of implementation, and also participate and facilitate the reporting of the CRC implementation from the regional and zonal level to the UNCRC. However, the National Child Rights Committee is unable to achieve its objectives due to various hindrances. Some of these hindrances are the lack of commitment and problems on prioritization as well as lack of coordination. Very little attention is given to budgeting and human resource allocation by the coordinating body. Due attention is still lacking to the issue of child rights and mainstreaming is underemphasized within member ministries since there is no monitoring and follow up at the higher echelon. The preparation of reports from grass root level to the federal level was the responsibility of the National Child Rights Committee. However, in recent years, reports are not being properly followed up and the country's CRC implementation reports to the UNCRC, Geneva, were not participatory. The five-year government report was entirely prepared by the government without the active role of the National Child Rights Committee members.

The fundamental issue raised in this paper is whether there is a need for an independent NHRI for children or the current approach by the government is effective enough to implement the CRC in Ethiopia. There has been a heated debate in a number of countries and in the UN over how to go about setting up such an institution: promoting a stand alone children rights institution like a children's ombudsman or a commissioner; or building the promotion of children's rights into existing or new general human rights commissions or general ombudsman offices. In other words, the question becomes whether we should have 'a separate' or 'integrated' human rights institutions for children. Certainly, existing institutions would, tend to defend their own structure. The other point is that there is no means as yet of comparing the effectiveness, in defending children's rights, of institutions established "separately" and of those with an "integrated" focal point.

In a complex modern world an array of factors work independently and in competition towards results. This study posits that while it is pretty difficult to argue a direct and distinct cause-effect relationship between the existence of national human rights institutions for the promotion and protection of the rights of children and the implementation of the CRC, it is certainly reasonable to attribute partial causality. Moreover, it is imperative to observe and comment on trends which are likely to contribute to the effective implementation of the convention for the Rights of the child.

### **1.3 Objectives of the study**

This study attempts to investigate the problems that add to poor and ineffective protection and enforcement of children's rights. It tries to assess the existing status and functioning of institutions involved in the promotion and protection of children's rights in order to have a clear picture of the present situation. In doing so, it has drawn a lot from the wide knowledge of the 'Committee on the Rights of the Child', that came from the experience of evaluating countries' performances in implementing the CRC.

The research tries to show that the main task of such institutions should be to narrow the gap between the rhetoric of the "rights" and the realities of children's lives and to try to ensure that rights are translated into law, policy, and practice. It will further enlighten us that today there are more separate children's rights institutions than institutions subsumed under more general human rights offices. This probably resulted from the concern, expressed by the Committee and by other independent researchers that traditionally, children's rights have not been given distinctive and appropriate attention within a "general" institution. Simultaneously, the research addresses the expressed concern that separation may lead to marginalization rather than mainstreaming with respect to the overall promotion of human rights.

This paper, in line with the Child Rights Committees, advocates for the establishment of an institution, whatever its form, should be able to independently and effectively monitor, promote and protect children's rights. It is the desire of the writer of this paper to see an independent body established for promoting and protecting the rights of the child, such as Ombudsman for Children or Children's Commissioner. Finally the paper tries to recommend that Children's Commission should be established again with a comprehensive mandate and an independent structure. Under this kind of structure, the National Child Rights Committee will function well.

### **1.4 Significance of the Study**

As to the knowledge of this writer not much research has been made that deals on institutional framework for the implementation of the rights of children in Ethiopia. It is a question not much researchers dared to make it a point of formal discussion although

doing so would have colossal impact on the rights of children. Other researchers working on the rights of children have often tried to dodge the issue of dealing with institutional framework for the rights of children, and yet have not addressed this issue separately with the focus it deserves. Therefore, this thesis will try to show the significance of specialized or independent child right institutions for the effective implementation of the CRC. As has been outlined by the CRC Committee such human rights institutions for children have crucial roles to play in monitoring, promoting and protecting children's rights. Hence, this thesis tries to push the government into establishing it. Upon its establishment it is important that this organ has the necessary independence and power to undertake its tasks and seek to realize the same with international assistance.

### **1.5 Research Methodology**

The study has been informed by existing studies. Literature review, by way of referring books, legal materials, articles in scholarly journals, laws and other official and unpublished documents have been employed. The research has also been enriched by personal interviews with lay individuals, experts and individuals working on children's rights in the Ministry of Women's Affairs, the National CRC Committee members, the Ethiopian Human Rights Commission and Institution of Ombudsman, NGOs and the like. In addition online/internet resources have also been employed.

### **1.6 Scope of the study**

There are several factors that compounded the ineffectiveness of the implementation of the CRC. Poverty; high population growth rate; drought and related disasters; ineffective administrative and institutional measures are some of the factors worthy of mentioning. This research limits its scope to the duty of the state to take administrative/institutional measures necessary for installing a mechanism for the implementation of the Convention. Even where the institutional framework is put in place, the nature of the problem associated with this process and the issues it involves are very wide-ranging. Nonetheless, this study focuses only on the roles of autonomous independent organs tasked with the aim of implementing and coordinating child rights activities vis-à-vis the existing institutional framework. Even though the main focus is on the national level, it also makes some recommendations for regional states for establishing similar organizational setup that spreads down to lowest administrative units.

Although there are different other governmental institutions that can be regarded as child right actors the scope of this study is limited to major governmental institutions involved in the promotion and protection of children's rights. Indeed, it is a well known fact, that every action or inaction of the government affects children, directly or indirectly. However it would be impossible to try to asses every governmental organ operating in the country. Governmental institutions and committees which are the main focus of this study are the Ministry of Women's Affairs, Ethiopian Human Rights Commission, Institution of Ombudsman and last but not least the Coordinating Mechanism of the National Child Right Committee at the National level. In addition to the above the NGO sector has also been identified as a major child rights actor since it plays substantial roles for the promotion and protection of children's rights. Choosing these institutions should not mean that others have done less. Rather their mandates and their direct involvement with children have been found stronger by the author. In fact it would be almost an offence to fail to acknowledge and appreciate achievements of governmental organs like the Ministry of Education, the Ministry of Health and others directly benefiting children.

### **1.7 Limitations of the Study**

The principal challenge faced by the writer of this research is the inadequacy of materials/information on the role of independent institutions for the protection and promotion of the rights of children. The fact that not much study, has been made with regard to this issue in relation to our country makes it even more challenging. To date, no study has been made that assesses the performance of the main child right actors of the country. There were some attempts; they are not comprehensive and updated. It has been difficult getting satisfactory reference or source materials. What's more, some officials of governmental institutions were not cooperative or available to make interviews.

### **1.8 Organization of the thesis**

The thesis has four chapters. The first chapter serves as an introductory section for the study. It explains: the statement of the problem; the aim and significance of the study; the scope of the study; the research methodology applied and the limitations faced. The second chapter gives us a general introduction on the meaning and type of independent national (human rights) institutions for children and the role they can play. Furthermore,

it tries to make a glance at the legal and historical background of institutions engaged on the protection and welfare of children in Ethiopia. In the third chapter an attempt is made to look into the current trends of institutions including those human rights institutions engaged in the promotion and protection of children's rights in Ethiopia. In doing so it tries to figure out their roles and weaknesses. The fourth chapter discusses the need for an independent national institution for children in Ethiopia and its potential roles and responsibilities. The last part serves as a conclusion for summing up the ideas that have been discussed and tries to forward some points in the form of recommendation.

## Chapter Two

### Meaning and Historical Background of Independent Child Rights Institutions

#### 2.1 Historical Background:

Upon ratification of the CRC, states undertake international obligations to ensure its implementation and the realization of human rights for all children under their jurisdiction. Article 4 of the CRC requires states parties to take “all appropriate legislative, administrative and other measures” for the realization of the rights of the child. Ensuring that all domestic legislations are fully compatible with the CRC and that the CRCs’ principles and provisions are effectively enforced is a fundamental step. But much more is requisite beyond legislative measures: the setting up of institutions and coordinating mechanisms devoted to the protection of children’s rights; awareness raising and information campaigns; training initiatives on the rights of the child and other activities, in government, parliament and the judiciary, and at all levels are all necessary measures to mention some. What is more, all parts of the society, including children themselves, have to be involved in making the rights of children a reality.

Over the last 15 years there has been a rapid proliferation of independent national institutions for children’s rights.<sup>3</sup> This can be viewed as a mark of state parties’ commitments toward effectively discharging their obligation in the implementation of the CRC.<sup>4</sup>

The first model of an independent institution for children’s right was Children’s Ombudsperson developed by a non-governmental organization Radda Barnen (Save the Children Sweden) which was promoted during the international year of the child (1979).<sup>5</sup> However, Norway (1981) became the first country to establish through legislation an ombudsperson for children.<sup>6</sup> In the year 2004, more than 60 individual independent human rights institutions for children exist in at least 38 states around the world.<sup>7</sup> These

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<sup>3</sup> For more information see, *Study on the Impact of Implementation of the Convention on the Rights of Child: Summary Report*, UNICEF, Innocent research center, 2004, p. 9

<sup>4</sup> Ibid

<sup>5</sup> Lansdown Gerison, *Independent Institutions Protecting Children’s Rights*, Innocenti Digest, No.8 –( Florence, Italy June 2001), p.3 <<http://www.unicef.at/fileadmin/pdf/independent-inst-prot-children-s-rights.pdf>>, last visited July 23, 2009

<sup>6</sup> Study on the Impact of Implementation of the Convention on the Rights of Child, cited at note 3, p. 9

<sup>7</sup> Ibid

institutions have become highly popular and point to many examples of actions such as on advocacy of rights and others favoring the rights of children to which they have contributed substantially.<sup>8</sup>

In Africa the first separate children's ombudsperson office was established in Mauritius in the year 2003.<sup>9</sup> An expert commissioner for children's rights within South Africa's Human Rights Commission can also be taken as another independent child right institution.<sup>10</sup> Lesotho's Children's Commission empowered to solicit for its own funding and reporting directly to the parliament on implementation of CRC can also be cited as another independent monitoring mechanism.<sup>11</sup>

The important and constructive role played by national institutions for the promotion and protection of human rights has been highlighted in the World Conference on Human Rights held in 1993 (the Vienna Declaration and Programmes of Action). In the same year, the General Assembly (through the initiation of the Commission on Human Rights in 1992<sup>12</sup>) adopted a set of "Principles Relating to the Status of National Institutions for the Protection and Promotion of Human Rights," also known as the "Paris Principles".<sup>13</sup>

With the growing acceptance of the CRC, receiving almost a universal ratification and displaying special attention to the promotion and safeguarding of children's rights, heads of states and governments agreed at the special session on implementing a plan of action through considerations of such measures as establishing or strengthening national bodies like, inter alia, Independent Ombudspersons for Children, Child Rights Commissioners and focal points within national human rights institutions where appropriate, or other institutions for the promotion and protection of the rights of the child.<sup>14</sup>

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<sup>8</sup> Ibid

<sup>9</sup> On the African report on Child Wellbeing, 2008, Mauritius stood first in African countries for her commitment to children's rights. Perhaps this can be mentioned as a point that shows the significance of Independent Institution for Children is the best approach for the implementation of the CRC. For further detail see; *How child-friendly are African governments? The African Report on Wellbeing (2008)*, The African Child Policy Forum

<sup>10</sup> Study on the Impact of Implementation of the Convention on the Rights of Child, Cited at note 3, P. 10

<sup>11</sup> Jaap Doek (Professor); *In the Best Interest of the Child: Harmonizing Laws in Eastern and Southern Africa*, African Child Policy forum.(2007), p.23

<sup>12</sup> Commission on Human rights Resolution 1992/54 of March 1992, annex.

<sup>13</sup> General Assembly Resolution No 48/134 of December 1993 annexes: "Principles Relating to the Status of National Institutions for the Protection and Promotion of Human Rights," also known as the "Paris Principles."

<sup>14</sup> For more information see Lansdown Gerison, cited at note 5.

Recognizing the important process and guided by its experience in monitoring the situation across nations, the Committee on the Rights of the Child, issued General Comment No 2 (2002), entitled “The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child”. One purpose of the General Comment as enshrined in Article 2 is: “*to encourage state parties to establish an Independent Institution for the Promotion and Monitoring of the Implementation of the Convention and to support them in this regard by elaborating the essential elements of such Institutions and the activities which should be carried out by them*”.

The Committee believes NHRIs are important mechanisms to promote and ensure the implementation of the Convention and considers the establishment of such bodies to fall within the commitment of states parties upon ratification of the CRC.<sup>15</sup>

The Committee’s guideline to governments preparing their periodic reports asks for information on “any Independent Body established to promote and protect the rights of the child...”<sup>16</sup> The main objective of an independent human rights institution for children is obviously to monitor, promote and protect their human rights. Parallel to that, individual institutions in different countries unavoidably vary in their mandates and priorities depending on the existing structures, and institutions promoting human rights, the country’s historical context, the country’s particular political situation, and the situation of children in the country.<sup>17</sup>

## **2.2 Meaning of Independent Human Rights Institutions for Children**

There is no universal or agreed term to describe institutions established to protect and promote the human rights of children. As in the adults field, independent institutions established to promote children’s rights have a variety of names: Children’s Ombudsperson, Children’s Rights Commissioners, Defenser de los Derechos de la Ninez. Like their names their legislative powers and roles vary widely.<sup>18</sup> There are also human rights commissions and ombudspersons that are mandated to protect children’s rights alongside their work with other groups. Independent child rights institution as a generic

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<sup>15</sup> The committee’s believe is obviously drawn from art. 4 of the CRC, which obliges states parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention.

<sup>16</sup> See General guidelines Regarding the Form and contents of periodic reports to be submitted by states parties under article 44, paragraph 1(b), of the Convention(CRC/c/58), para,18.

<sup>17</sup> See also Lansdown Gerison, cited at note 5, p. 4

18 Ibid

term is generally used to describe any legal office that has legislated mandates to promote children's rights with a definite focus. The criteria set by European Network of Ombudspersons for such offices stipulates that independent national or regional offices must be created by legislation specific to promoting children's rights, and must have a definite focus on children.<sup>19</sup>

The purpose of independent institutions, which are broadly consistent with the Paris Principles, can be translated into four key functions: influencing policy makers and practitioners to take greater account of the human rights of children; promoting respect for the views of children; raising awareness of child rights among children and adults; and ensuring that children have effective means of redress when their rights are violated.<sup>20</sup>

In recent years, there are more separate children's rights institutions than institutions subsumed under a more general human rights office. This can be attributed, from the concern expressed by the Committee and by other independent commentators, to the fact that traditionally children's rights have not been given distinctive and proper attention within a 'general' institution.<sup>21</sup> There have also been other expressed concerns that separation may lead to marginalization rather than mainstreaming within the overall promotion of human rights.<sup>22</sup>

The ultimate authority of an independent human rights institution for children is exhibited by its capacity in acting independently, in producing well-researched information, in keeping a credible and respected public profile and in responding effectively to important issues affecting children.<sup>23</sup> The CRC Committee's Guidelines for periodic reports ask in particular for information on existing or planned mechanisms at national or local level for coordinating policies relating to children and for monitoring the implementation of the Convention.<sup>24</sup>

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<sup>19</sup> Ibid, p. 2

<sup>20</sup> For more details see, pp. 4-7 Ibid

<sup>21</sup> See *Study on the Impact of Implementation of the Convention on the Rights of Child*, Cited at note 3, p.10

<sup>22</sup> Ibid

<sup>23</sup> Lansdown Gerison, cited at note 5, p. 7

<sup>24</sup> General guidelines Regarding the Form and contents of periodic reports to be submitted by states parties under article 44, cited at note 15 , Para 18

The Committee often questions the degree of independence of monitoring bodies. It proposes that when institutions include complaint procedures for use by children, they must make the procedures child friendly in design, accessible and well publicized to children.<sup>25</sup> The Committee has repeatedly expressed its concern that every state needs an independent human rights institution with responsibility for promoting and protecting children's rights.

The Committee's principal concern is that any institution, whatever its form should be able independently and effectively monitor, promote and protect children's rights.<sup>26</sup> Furthermore, the Committee highlights the importance of ensuring that the promotion of children's rights is "mainstreamed and that all human rights institutions existing in a country work closely to this end".<sup>27</sup>

Accordingly, the Committee believes, "where resources are limited, considerations must be made to ensure that available resources are used most effectively for the promotion and protection of everyone's human rights including children's rights and in this context the development of a broad based NHRIs that includes a specific focus on children is likely to constitute the best approach."<sup>28</sup> The Committee further points, "*A broad based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or specific section or division responsible for children's rights.*"

A legislated mandate gives these independent NHRIs their authority and legitimacy, besides adding transparency and visibility to their mandate. The CRC Committee's view is that their mandate should include as broad scope as possible for promoting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments, thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights.<sup>29</sup> According to General Comment No.2 of CRC, the legislation should also contain provisions putting forth specific functions, powers and duties that are linked to the Convention on the Rights of the Child and its Optional Protocols.

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25 Rachel Hodgkin and Peter Newell, **Implementation Handbook for the convention on the Rights of the Child**, Fully revised Edition, UNICEF 2002, p. 78

<sup>26</sup> See Para. 7 of CRC, General Comment No 2(2002); The role of independent national human rights institution for the promotion and protection of rights of the child

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> See Para. 8, Ibid

Legislation is very important in securing independence of actions and resources. Independence is inevitably a relative concept, but it gains a critical relevance once these institutions are given the legitimacy, resources and powers to promote the realization of children's rights. Independence further gains relevance when institutions act as watchdogs on the actions of public authorities and when these institutions assess their own impact on children, and when they voice children's concerns and when they recommend needed changes in law, policy and practice.<sup>30</sup> Some go to the extent of saying that institutions funded through the government or parliament are not wholly independent. On some occasions children's rights NGOs or coalitions have asserted that, since their establishments draw their funding entirely outside of the government, they have greater independence than the Children's Ombudsman.

Legislations establishing institutions vary both in length and detail. Recently, mostly separate institutions have been established with much more detailed legislation, in accordance with the minimum standards of the Paris Principles and adding powers and duties specifically related to the promotion and safeguarding of children's rights. NHRIs and general offices of ombudspersons that include a section or focal point on children's rights seldom have separate legislations defining the functions of the special section or focal point on children's rights.<sup>31</sup> However, there are some exceptions. In Greece, the 2003 enactment establishing the National Ombudsperson acknowledges that the Ombudsman "also has the mission of defending and promoting the rights of children" and that one of the five Deputy Ombudsman shall be Deputy Ombudsman for children.<sup>32</sup> This law further includes particular powers and duties related to safeguarding and promoting children's rights.

When an institution has been established, the Committee often recommends that it should have an appropriate resource, and should establish a direct contact with children. Thus, institutions already established before the coming to existence of the Convention, and those established without expressly incorporating a special section or other necessary arrangements for children, should enact or amend legislations, so as to ensure the conformity of these institutions' mandates with the principles and provisions of the Convention.

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<sup>30</sup> *Study on the Impact of Implementation of the Convention on the Rights of Child*, cited at note 3, p. 11

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*

Furthermore, the General Comment recommends that certain powers are necessary in enabling them discharge their mandates effectively. These include the power of hearing any person and obtaining any information and document necessary for assessing situations falling within their competence. These powers also include the promotion and protection of the rights of all children under the jurisdiction of the state party in relation not only to the state but to all relevant public and private entities. The analysis of concluding observations adopted in the Committee's recommendations also include the establishment of a child friendly complaints procedure and, where necessary, stronger legislation as well as more safeguards to ensure institutional independence.<sup>33</sup>

As the European Network of Ombudspersons for Children has recognized in the preface to its standards; "...institutions that are designed only with adults in mind are most unlikely to serve children effectively".<sup>34</sup>

The Committee has underlined that institutions have key roles in promoting respect for the views of children by government and by the society at large in all matters affecting them. But this general principle also needs to apply "to the establishment, organization and activities of national human rights institutions. Institutions must make sure that they have direct contact with children and that children are appropriately involved and consulted."<sup>35</sup>

Speaking of the establishment process it should be consultative, inclusive and transparent. By the terms consultative and inclusive it is to mean respectively that the process should be both initiated and supported by the highest level government officials and that it should include all relevant elements of the state, the lawmaking body and the civil society. In order to ensure their independence and effective functioning, these institutions must have adequate infrastructure, specific funding for children's rights, staff, premises, and freedom from any form of financial control that might affect their independence.

With regard to the allocation of resources the Committee acknowledges that this is a very sensitive issue and that states parties' function with varying levels of economic resources,

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<sup>33</sup> Ibid

<sup>34</sup> Ibid

<sup>35</sup> Ibid

the Committee believes that it is the duty of every state to make reasonable financial provisions for the operation of NHRI in light of Article 4 of the Convention.

These institutions should ensure pluralistic representation of various elements of civil society involved in the promotion and protection of human rights. They should seek to involve human rights institutions, and non-governmental organizations (NGOs) involved on children's rights including child and Youth led Organizations, trade union, social and professional organizations (of Doctors, Lawyers, Journalists, Scientists, etc), universities and experts, including children's rights experts. They should also have appropriate and transparent appointment procedures, including an open and competitive selection process. Government departments should only be tasked with in advisory capacity only.

Independent institutions vis-à-vis the Committees General Comment should have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. And to effectively carry out such investigations, they must have the power to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty of ensuring that children have effective remedies, of giving independent advice, of providing advocacy, and of teaching children complaint procedures for any breaches of their rights. In addition, where appropriate, they also should have power to undertake the mediation of complaints and conciliation of disputes concerning children; to support children taking cases to court, including the power to take cases concerning children's issues; and to intervene in court cases in order to inform courts about human (children's) rights issues involved in the case.

Independent institutions for children should be geographically and physically accessible to all children and play a role in promoting respect for the views of children in all matters affecting them. They must also have the right to report directly, independently and separately, on the state of children's right to the public and to Parliamentary bodies.

The General Comment No.2 of the CRC on the role of independent NHRIs contains other detail, recommended activities in its article 19, annexed at the end of the paper.

## 2.3 National Coordinating Mechanisms

It is absolutely clear that coordination is crucial in the workings of relevant organs pertaining to children. The CRC Committee has allegedly urged state parties to better coordinate their efforts, to establish coordinating mechanisms of using resources in both human and financial terms.<sup>36</sup>

Accordingly one evident response to the CRC has been the development in many countries, of new bodies or mechanisms for children near or at the very heart of government. The purpose of these bodies varies from country to country. They are usually engaged in ensuring coordination of relevant activities, making children visible in government action, monitoring progress, and promoting a comprehensive and integrated agenda for the realization of children's rights.

The existence of such coordinating bodies can be seen as an indication of the political priority given to children. Coordination is an essential part in the workings of government for children, because invariably many departments provide services for children and have an impact on the realization of children's rights. As the General Comment of the Committee stresses, coordination needs to be inter-departmental, multi disciplinary, promoted between central and sub-national authorities and in collaboration with civil society and the private sector.<sup>37</sup>

There are many formal and informal ways of achieving effective coordination. In some countries an inter-ministerial and inter-departmental committee for children is established. In others, coordination is overseen by a unit that is invested with high level authority and which has overarching responsibilities for children and for the implementation of the CRC.<sup>38</sup>

The CRC Committee recognizes that it is not usually possible to bring all matters covered by the CRC under one government agency, because the actions of almost all government agencies have an impact upon children's lives. Past experiences have given visibility to the dangers of the marginalization which might result from giving responsibility for

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<sup>36</sup> Ibid, p. 19

<sup>37</sup> For more details see Para 37 of CRC General Comment No.5(2003) on the general measures of implementation of the CRC

<sup>38</sup> *Study on the Impact of Implementation of the Convention on the Rights of Child*: cited at note 3, p. 15

children's policy to a single unit, particularly if not given high status and authority in government.<sup>39</sup>

There are also disadvantages of the unit being placed in a government agency whose minister is not represented in cabinet, whose executive head has low status with in government, or whose resources are clearly insufficient for promoting the effective implementation of the CRC.<sup>40</sup>

Locating separate children's unit in one of the large government service delivery agencies (e.g. health, education or welfare) may also cause difficulties, as the unit may be overwhelmed by the service delivery obligations of that department. Having such a unit may create inter-departmental tensions and it may become marginalized.<sup>41</sup> It may also be counterproductive to place the separate unit in a specialized department (such as a justice department or attorney general's office), since such departments may be remote from the center of power.<sup>42</sup>

#### **2.4 Legal and Historical Foundation of Institutions Engaged in the Protection and Promotion of Rights of Children in Ethiopia**

Before the 1974 Revolution and the coming to power of the *Dergue*, the need for a national institution working for the interest of children has been much overlooked. This Revolution and the International Year of the Child Day can be cited as important landmarks in the establishment of an independent national institution for children in Ethiopia. The commemoration of the International Year of the Child Day throughout the world through the initiative of the United Nations together with a socialist-Dergue principle asserting "priority to the children"<sup>43</sup>, led to the establishment of a Commissioner for Children. In the year 1981 a proclamation to provide for the "*Establishment of National Children's Commission*" was promulgated. This need for an institution is stated in its preamble clear and simple: "*Identification of the basic needs of Ethiopian children and the promotion of their well being required the establishment of an*

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<sup>39</sup> Ibid

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid

<sup>43</sup> Interview with Ato Ayalew W/semait; Former employee of National Children's commission of the 1981(currently Director of ANNPCAN), on August 19, 2009

*organization which would centrally coordinate and supervise the efforts to be made thereto.”*

The proclamation addressed, among other things, the commitment of the country to improve the undesirable conditions of children by fulfilling their basic needs and thereby bringing about their sound physical, mental and emotional development. It also recognized the fact that both government authorities and the mass must be made aware of the existing problems concerning children.

The objectives of the Commission as provided in its establishing Proclamation also include creating awareness among government institutions and the society at large regarding the special needs of children, encouraging, coordinating and supervising- through the follow-up of children’s well being- all efforts made for the attainment of an all round physical, mental and emotional development of children.<sup>44</sup>

Going through the mandates given to it easily reveals that the Commission has had great powers and comprehensive mandate. Among its duties and powers was conducting or facilitating studies pertaining to education, health, culture, social, economic and legal conditions of children in order to identify the problems thereof in cooperation with the concerned government offices.<sup>45</sup> It can also submit to the government an overall policy proposal concerning children; propose to the government the issuance of laws safeguarding fundamental rights of children; and follow up the implementation and enforcement of the laws.<sup>46</sup> Furthermore, the commission had a mandate to enforce government approved international treaties pertaining to children and represent government in matters pertaining to children.<sup>47</sup>

The organization of the Commission consists of a Congress, a Council, a Commissioner and a Deputy Commissioner and other staff members.<sup>48</sup> Members of the Congress include other members from ministries like Ministry of Education, Health, Labour and Social Affairs, Agriculture, and individuals like the Chairman of Ethiopian Red Cross, the Chairman of All Ethiopian Peasants’ Associations and representatives of the various

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<sup>44</sup> See art. 5 of Proclamation No. 208 of 1981; Establishment of National Children’s Commission proclamation

<sup>45</sup> Ibid, Art. 6(1)

<sup>46</sup> Ibid, Art. 6(2)

<sup>47</sup> Ibid, Art. 6(2) and(12)

<sup>48</sup> Interview with Ato Ayalew W/semait, cited at note 43.

religious organizations.<sup>49</sup> The Council consists of members from seven ministry offices and a member from Relief and Rehabilitation Commission. Both the Congress and the council were chaired by the Commissioner of the Commission.

The Commissioner had a supreme power in matters of children. He is the chief executive of the Commission and follows up the implementation of the powers and duties of the Commission as well as the directives to be given by the Congress and the Council.<sup>50</sup> It was also the duty of the Commissioner to pass decisions of the Congress and the Council to the concerned organs and to ensure their implementation; prepare and present to the government the annual budget of the secretariat after consultation with the Council; and to administer the same upon approval.<sup>51</sup>

Government offices and mass organizations had the duty to cooperate with the Commission in the implementation of its functions.<sup>52</sup> The Commission further had the authority to obtain financial and material aid from national and international sources directly and to allocate and coordinate the same with a view to implement plans and programs approved by the Council.<sup>53</sup>

At the time of its operation, there was a duplication of mandates among the Children's Commission and Ministry of Labour and Social Affairs.<sup>54</sup> However, on the basis of the canon of legal interpretation, that says "the recent law prevails over the older law," the Commission took over the responsibility in matters of children.<sup>55</sup>

Other African countries that learned the powers and duties of the Commission had come to Ethiopia to take lessons.<sup>56</sup> A good example for this is Ghana which later established Children's Commissioner based on lessons taken from Ethiopia.<sup>57</sup>

The Children's Commission along with the Commissioner had also had traveled to socialist countries of Russia, Hungary, Cheque Republic, East Germany, and Bulgaria to

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<sup>49</sup> See art. 8 Proclamation No 298/1981, cited at note 44

<sup>50</sup> Ibid, art. 15(1)

<sup>51</sup> Ibid, art. 15(1)(6)(5)

<sup>52</sup> Ibid, art. 18

<sup>53</sup> Ibid, arts. 7 and 19

<sup>54</sup> Interview with Ato Ayalew W/semait, cited at note 43

<sup>55</sup> Ibid

<sup>56</sup> Interview with Dr. Bulti Gutema; Former Head of Children and Family Affairs Department under Ministry of Labour and Social Affairs and Head of Children's Unit under Ministry of Women's Affairs, department of Mothers and Children, on December 17, 2009

<sup>57</sup> Interview with Ato Ayalew w/semait, cited at note 43

gather experience on the treatment of children in the respective countries.<sup>58</sup> However, the Commission did not pursue what it began. The Commissioner was withdrawn before the experiential visit was completed.<sup>59</sup> The next Commissioner did not pursue or follow what the first commissioner started. He too left his office immediately and became Ambassador of Ethiopia to India.<sup>60</sup> The Commission thereafter did not have a commissioner; it was led by the Deputy Commissioner for quite some time.<sup>61</sup>

According to National Children's Commission report made on its functioning, problems and recommended solutions made in December 1987, during its operation in seven years it has encountered many problems. One of them was the fact that the Commission did not have the status of an executive organ. It usually asked for cooperation of actors who worked on child welfare.<sup>62</sup> The main problem inherent to the Commission was that its mandates did not match the level of financial and human resources at its disposal.<sup>63</sup> However, the Children's Commissioner had a strong relation to and funding from UNICEF.<sup>64</sup> The Commission also admitted that the mandates of other agencies of the government which should work under the auspices and cooperation of the Commission, were duplicated and vague, adding to the ineffectiveness of the commission.<sup>65</sup> There were other governmental institutions that share some of the duties and responsibilities of the Commission.

The Commission later was dissolved and was transformed into 'Children, Youth and Family Affairs Organization' (CYFAO); accountable to the Ministry of Labor and Social Affairs through a proclamation that decides the powers and duties of Ministries.<sup>66</sup> Children Youth and Family Affairs Department has provided in-service trainings to staffs at Federal and Sub-National levels. Numerous "kebeles" in urban and rural areas were involved in improving the situation of the young child.<sup>67</sup> Most of their activities were focused on the promotion of day care centers, assessing health enhancement potentials

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<sup>58</sup> *National Children's Commission, report on its functioning, problems and recommended Solutions*, (December 1987. Addis Ababa), p .9 (Authors translation)

<sup>59</sup> Interview with Ato Ayalew W/semait, cited at 43.

<sup>60</sup> Ibid

<sup>61</sup> Ibid

<sup>62</sup> National Children's Commission, report, cited at note 58, p. 27

<sup>63</sup> Ibid

<sup>64</sup> Interview with Ato Ayalew W/semait, cited at note 43

<sup>65</sup> Ibid

<sup>66</sup> For further detail see; Proclamation No 208/1989; Proclamation Defining the Powers and Duties of the Executive Organs.

<sup>67</sup> Plan of Operations , services for children and Women in Ethiopia (1983-1988), UNICEF, Addis Ababa, December 1982, p 249

and promoting nutrition supplementation programs.<sup>68</sup> Both in rural and urban areas, peasant associations as well as urban dwellers associations contributed towards promotion of daycare centers via training instructors and building the centers.<sup>69</sup>

Children Youth and Family Affairs Organization was later dissolved and its duties and responsibilities were transferred to Children, Youth and Family Affairs Department established under Ministry of Labor and Social Affairs.<sup>70</sup> When the CRC was ratified in 1991, the Ministry of Labor and Social Affairs was given the task of implementing it.<sup>71</sup> The Department had to contend with child rights issues with few personnel and inadequate budget. During the 2004/2005 budget year, for example, the budget allocated to the Department is Birr 647,000.00 out of the Ministry's total recurrent budget of Birr 6, 831,000.00 i.e. less than 10% of the total budget for the Ministry. Apparently, this budget (467,000.00) was shared among Children, Youth and Family Affairs department.<sup>72</sup> Obviously, this amount could not cover expenses beyond remuneration expenses and administrative expenses in the Department.

In accordance with Article 20(15) of Proclamation No.8/1995, one of the duties and responsibilities of the Ministry of Labor and Social Affairs is the advancement of the welfare of children. According to the wordings of the Proclamation, "*the Ministry in cooperation with the appropriate government organs is mandated to study and upon approval ensure the implementation of ways and means for the proper up-bringing of children and youth.*"

Within this broad framework, the Ministry has rendered various welfare services including the coordination of programs related to the protection of children and the making of policies targeting the rendering of planned and efficient services that do away with duplicating efforts.<sup>73</sup> To achieve this, the Ministry has undertaken various research schemes that were directly and indirectly related to securing some of the rights of

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<sup>68</sup> Ibid

<sup>69</sup> Ibid

<sup>70</sup> See *Assessment of the Performance of the Relevant Ministries in discharging their Duties and Responsibilities in Child Rights Promotion*, Italian Development Cooperation (Addis Ababa, March 16, 2009 unpublished), p. 4

<sup>71</sup> For more information see, Proclamation NO 10/1991; A Proclamation to Define the Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia

<sup>72</sup> *Assessment of Performance of Relevant Ministries*, cited at note 70, p. 5

<sup>73</sup> Proceedings of the first Coordination Meeting on Children's Affairs: organized by the National Children's Commission. (Addis Ababa, February 24, 1989), p. 3

children.<sup>74</sup> Some of these services were offered at head office levels. However, most of the services were rendered through the Ministry's regional offices and social welfare agencies that are under the auspices of the Ministry such as the Rehabilitation Agency for the Disabled, the Remand Home, the Ethiopian Children Amba and the Family Development project.<sup>75</sup>

However, the Ministry of Labor and Social Affairs, akin to its predecessors, namely the Children's Commission, and the Children, Youth and Family Organization, suffered serious capacity constraints and its mandates too did not match the level of financial and human resources at its disposal.<sup>76</sup> It was understaffed and its workforce often lacked specialized training relating to children's rights. This fact severely limited the ability of MOLSA in fulfilling key areas of its mandate such as identifying the need for protection, maintenance and replication of advances promoting children's rights to a special protection and the need for cross-board coordination, monitoring and evaluation of child protection interventions.

Regional Labour and Social Affairs Bureaus, which have responsibilities for the actual implementation of programmes for children with special protection needs, also suffer from incapability. In a study made in 1997, the regional bureaus found out that inadequacy of appropriate policy guidelines, budgetary constraints and lack of skilled manpower were the three most significant factors adversely affecting their functioning. Furthermore, the bureaus identified their most important training needs: Project planning designs; monitoring and evaluation; community development programs; guidance and counseling; corrections and rehabilitations; income generating activities; family planning and sex education; women and development; child care management; and social research methods. However, the Ministry of Labor and Social Affairs was unable to respond to the needs identified by regional bureaus.

In order to implement its mandates under the CRC and the ACWRC, MOLSA had from the experiences of other countries, established Inter-Ministerial Committees with the responsibilities of mainstreaming implementation of CRC; consisting of members from various Ministry offices and other governmental organs under its chairmanship. This

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<sup>74</sup> Ibid, p. 4

<sup>75</sup> Ibid, p. 3

<sup>76</sup> See *Report and Findings on the Needs Assessment of all Regional Labour and Social Affairs Bureaus*, Unicef 2002 Child and Women, Ministry of Labour and Social Affairs and Disaster Prevention and Preparedness Bureau, (Addis Ababa February 1997), p. 91

mandate was given to MOLSA through a Directive; that was not a legally binding instrument.<sup>77</sup> With the absence of commitment and effective coordination from the member organs, its objectives were not achieved. Child Right Committees established under Regional, Zonal and Kebele levels were active at the start, but later on were weakened with the changes of official members, following elections.

In 2005, the responsibility for the implementation of international treaties for children was transferred from MOLSA to the newly established Ministry of Women's Affairs (MOWA) under a proclamation that defined the powers and functions of the executive organs. The change in structure was abrupt even for officials from Children, Youth and Family Affairs Department of the Ministry of Labor and Social Affairs.<sup>78</sup> The new Ministry was empowered to undertake studies promoting the well being of mothers and children, and to implement the same in cooperation with the concerned organs.<sup>79</sup>

The government's budget Proclamation allocates budget for the Ministry of Women's Affairs administration and general services, while no mention is made about the amount of share going to the unit within the Ministry working on children's welfare.

There is still some controversy going on concerning mandates between MOLSA and MOWA as the law appears to be unclear on some points. With regard to the Worst Forms of Child Labour Convention of 182, International Labor Organization works with MOLSA, while MOWA is claiming it as its mandate.<sup>80</sup> Some of the reasons for such controversies are traceable to the substantial amount of funds received from international organizations and fringe benefits for officials and staff members including benefits through attending meetings in Geneva.<sup>81</sup>

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<sup>77</sup> For further information see the Directive for the Establishment of Child Rights Executive Committee (1994).

<sup>78</sup> Interview with Dr. Bulti Gutema, cited at note 56.

<sup>79</sup> For more detail see arts. 29 (8) and (11) of Proclamation No 47/2005: Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation.

<sup>80</sup> Interview with Ato Ayalew W/semait, cited at note 43

<sup>81</sup> Ibid

## Chapter Three

### Status of Institutions Engaged in the Protection of Children's Rights in Ethiopia: Roles and Weaknesses

#### 3.1 Introduction

Though the primary duty bearer for the realization of human rights including children's rights is the government, achieving this broad goal requires the concerted efforts of other actors. Besides governmental organizations other child right actors or duty bearers include parents, the family, the community, civil society organizations and the media.

An updated and comprehensive assessment of child rights actors in Ethiopia is not available. The specific objective of this chapter is to take an enquiry of main organizations engaged in the protection and promotion of children's rights and describe the features of these organizations experience and identify the major institutional challenges faced in implementing children's rights.

Taking into account, the nature of their formation and mandate, child right actors in Ethiopia can be classified into three major categories: Governmental Agencies, Non Governmental Organizations that dominate the Civil Society sector and, UN and other Inter-Governmental Organizations.<sup>82</sup> This chapter gives an overview of, three Governmental Organizations, the National Child Rights Committee, and CSO/NGOs as key figures in child rights issues.

At present, the governmental agency responsible for implementing the CRC is the Ministry of Women's Affairs. In addition to this, coordinating the activities of all children's rights in Ethiopia rests on the shoulders of Child Rights Committees established at various levels of the government (Federal government, State governments, Zonal and District Administrative units and the Kebeles). The Ethiopian Human Rights Commission and the Institution of Ombudsman are other governmental agencies responsible for the realization of human rights. These institutions are projected to play significant role in the realization of children's rights. The role of NGOs has also been considerable in the promotion and protection of rights of children.

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<sup>82</sup> For more information see; *Assessment of Actors Working in the Field of Children's Rights in Ethiopia*, (Save the children Sweden, January 2006), p. 8

There are also other governmental and inter-governmental agencies which are directly or indirectly involved in the realization of the rights of children. MOLSA still works on child labor. There has been a vigorous effort being made by the Ministry of Education and Regional Bureaus to realize the rights of the child to education. The same is true for Ministry of Health and its counterpart regional bureaus in securing right to health. However, these organizations have been omitted from the discussions of this chapter since they have not been identified as major actors on children's rights.

### **3.2 The Ministry of Women's Affairs (MOWA)**

Before the establishment of the Ministry of Women's Affairs, the unit handling issues of women's rights was under the Prime Ministers' Office of Women's Affairs. The Ministry of Women's Affairs was established in the year 2005, under a proclamation that defined the powers and duties of the executive organs of the Federal Democratic Republic of Ethiopia.<sup>83</sup> With the help of this proclamation the responsibilities of looking after children's issues were shifted from the Ministry of Labor and Social Affairs<sup>84</sup> to the Ministry of Women's Affairs and the Ministry received mandate "to follow up the implementation of treaties concerning women and children and to submit periodical reports to the concerned organs" (Article 29(8)). Furthermore, it is empowered "to undertake studies to promote the well being of mothers and children and implement the same through cooperation of the concerned organs" (Article 29(11)).

On the Proclamation that defines the powers and duties of the Ministry of Women's Affairs, only two articles from twelve articles, are dedicated for children. For instance, article 28(10) of the establishment proclamation stipulates that the Ministry is authorized to sponsor studies and formulate and implement programs and projects contributing to the improvement in the living conditions of needy women, and give the necessary backing to organizations operating for achieving the aforementioned objectives. However, nothing has been said in the proclamation on whether the Ministry could do the same for children.

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<sup>83</sup> See Proclamation No. 471/2005; Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia

<sup>84</sup> Ministry of Labor and Social Affairs was formerly responsible with the task of proper upbringing of children and implementation of the CRC through proclamation 4/1995.

This invokes the impression that those children's issues were not considered equal with women's.<sup>85</sup>

Within the organizational structure of the Ministry of Women's Affairs the body operating on child rights issues until recently was, 'The Mothers and Children's Affairs Department'. With the recent tryout application of Business Process Reengineering (BPR) starting November 2009, the department's name has been changed to "Children's Directorate".<sup>86</sup> The Mother's and Children's Affairs Department has had four teams the names of which are: Children's Rights Protection and Welfare Team, Protection of Children under difficult Circumstances Team, Orphan and Vulnerable Children's Team, and Mother's Affairs Team.

Children's Rights Protection and Welfare Team was the strongest of all teams which engaged itself in integrating government programs, receiving reports from other sections of the government and other stake holders, follow up implementation of the activities of the Child Rights Committees (established at the National Level and regional level) and preparing national report to the Convention on the Rights of the Child.<sup>87</sup>

Protection of Children under Difficult Circumstances Team was responsible for organizing country wide programs and services for children under difficult circumstances and monitoring the implementation of the same. However the team was preoccupied with its own responsibilities having to do with the adoption of children and therefore did very little towards other programs for being short of human and financial resources.<sup>88</sup>

The Orphan and Vulnerable team, though it had a National Plan of Action, a National Committee and regional taskforces have done not much at the national level.<sup>89</sup>

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<sup>85</sup> In a research entitled "Assessment of Performance the Relevant Ministries in the Discharge of Their Duties and Responsibilities in Child Rights Promotion" (March 16, 2009) the Author shares the same impression as is mentioned above. The author stipulates that 'as can be understood from this is only by way of sideline issues is the protection and wellbeing of children included as a responsibility of the Ministry.'

<sup>86</sup> Interview with Ato Mulugeta Bekele, Protection, Support and Care Team expert under Children's Directorate of MOWA, on November 15, 2009

<sup>87</sup> Interview with Ato Yitna Kebede, former Children's Rights Protection and Welfare Team Leader, in MOWA, on July 20, 2009

<sup>88</sup> Ibid

<sup>89</sup> Interview with W/o Mahider Bitew, formerly team leader of the unit for Children Under Difficult Circumstances, currently working within the research team of MOWA, on July 20, 2009

Children's Directorate that replaced the Mother and Children's Affairs Team has now two units: Children's Rights Promotion and Advocacy team and Protection Support and Care Team.<sup>90</sup>

The Ministry through its "mothers and Children's Affairs Department" has undertaken a number of constructive measures towards the promotion of Children's Rights. Shortly after the third periodic report of the country to the CRC Committee, the Ministry in collaboration with MOLSA, has given awareness raising trainings, to regional and local staffs, aimed at promoting adoption and guaranteeing an effective means of follow up of the situation of adopted children.<sup>91</sup>

The Ministry has also been involved in reviewing domestic legislations. Additionally the Ministry is preparing a comprehensive Children's Code and Children's Fund Guidelines.<sup>92</sup> It has also been engaged on the publishing, translating (to a local language) and the distributing, versions of the CRC for use.<sup>93</sup>

The Ministry, in collaboration with the Ethiopian Human Rights Commission and the Ministry of Justice, is also facilitating the approval of a proposal for the development of a directive on birth registration by the House of Peoples Representatives.<sup>94</sup> Revision of an Alternative Childcare Guideline on, community based childcare, reunification and reintegration program, foster care, adoption and institutional care service is a recent success by the Ministry. Implementation of a National Plan of Action, to counter-traffic children, and to develop child friendly rehabilitation treatment guidelines to orient the services rendered to children victims by the different partners such as the Police, the Court and Health Centers, are also part of the activities being undertaken.<sup>95</sup>

The preparation of guidelines for the use of orphans and vulnerable children; guidelines for positive child discipline; guidelines for birth registration; the establishment of task forces and bodies like the National Steering Committee for Sexual Abuse and

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<sup>90</sup> Interview with Ato Mulugeta Bekele, cited at note 86.

<sup>91</sup> Assessment of Performance the Relevant Ministries, cited at note , p. 70

<sup>92</sup> Interview with Ato Mulugeta Bekele, cited at note 86.

<sup>93</sup> Ibid

<sup>94</sup> Ibid

<sup>95</sup> Assessment of Performance of Relevant Ministries, cited at note 70, p. 78

Exploitation, and similar other task forces that implement and mobilize guidelines are also contributions of the Ministry.<sup>96</sup>

Though there are ongoing activities taking place within the framework of the National Plan of Action for children, a lot remains to be done to promote and mainstream child rights to comply fully with the international commitment of the country. The current status of the implementation of the National Plan of Action is rather wobbly. It has yet not been translated into local languages nor has it been properly disseminated amongst the authorities responsible for its implementation.<sup>97</sup>

Mothers and Children's Affairs Department (now Children's Directorate) within the Ministry, is regrettably, understaffed to carry out its duties and responsibilities given to it. The Directorate has 8 staff members who are authorities in a number of fields.<sup>98</sup> If the Ministry is to discharge its mandates fully a lot more number of experts from various fields (such as lawyers who campaign after rights and who advise other experts on legal matters, policy makers who prepare guidelines and directives, economists who make feasibility studies, psychologists, sociologists, etc) will be needed.<sup>99</sup> What is worse is that there is a high staff turn-over, as salary is based on civil servants scale, which is not attractive.<sup>100</sup> There is a need to increase man power and also an incentive to drain the verve out of them.

The Committee on the Rights of the Child in its concluding observations to the third periodic report of Ethiopia has expressed its concern that the Ministry lacks sufficient resources and the ability to bring about coordination at the regional, Zonal and Woreda levels. It was also the recommendation of the Committee that the Ministry be provided with the adequate human and financial resources, that enables it to coordinate and monitor implementation at the Federal, Regional, Zonal and Woreda levels. The same was the Committee on the Rights of the Child's concluding observation, following the country's second periodic report, in February 2001.<sup>101</sup> The Committee noted the absence of governmental body with the capacity and profile for coordinating and developing state

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<sup>96</sup> Interview with Dr Bulti Gutema, cited at note 56.

<sup>97</sup> See Concluding Observations of Committee on the Rights of the Child, CRC/C/ETH/CO/3 September 29, 2006

<sup>98</sup> Interview with Ato Mulugeta Bekele: cited at note 86.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> See Concluding Observation of Committee on the rights of the child to the report on February 2001, (CRC/C/15/AD.144: p 3)

policies on children's rights. In Particular, the Committee noted that the then department for Children, Youth and Family Affairs, within MOLSA, has scarce financial and human resources to accomplish its tasks. It then recommended the state party to strengthen its institutional capacity to coordinate and implement children's rights policies effectively in particular at the national level mechanism with the responsibility for coordination and implementation of children's rights. The Committee further recommended that Children's Rights Committees at the Regional, Zonal and Woreda levels be strengthened.

As further pointed out by the Committees' Concluding Observations the Ministry is without the resources to establish its reach outside the circles of the Federal Government. At regional and lower administrative levels, the role of the Ministry of Women's Affairs is carried through Bureaus of Labor and Social Affairs in most regional states, while it is run by Bureaus of Women's Affairs in Oromia, Addis Ababa and DireDawa Administrations.<sup>102</sup> There is no consistency since each region has the autonomy to give the responsibility of children's issues to the convenient governmental structure.<sup>103</sup>

To put it in a nut shell in relation to institutional and administrative infrastructures for the implementation of the CRC, not much seems to have been accomplished in the direction of building the capacity of MOWA in terms of human resources. The level of commitment on part of the government to address the children's rights has been fairly minimal.

### **3.3 Child Rights Committees**

The Committee on the Rights of the Child has been encouraging coordination of governmental organs: coordination among central government departments, among different provinces and regions, between central and other levels of governments and between government and civil societies, to ensure effective implementation of the CRC. Coordination ensures obligations inherent in ratification of or accession to the Convention are not only recognized by those large departments which have a substantial impact on children, but right across government, including for example departments concerned with finance, planning and defense, and at all levels.

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<sup>102</sup> Interview with Ato Mulugeta Bekele, cited at note 86.

<sup>103</sup> Ibid

To address the above concern, in the year 1994, a Directive for Child Rights Committee, officially designated as “the Directive on the responsibilities and functions of Executive Committees of the Convention on the Rights of the Child” was issued by the Ministry of Labor and Social Affairs. The Directive provided for the establishment of Child Rights Committees at the levels of Federal governments, State governments, Zonal and District Administrative units and the Kebeles.

As specified in section II of the Directive, the main purposes for the establishment of the Committee are:

- “1. to widely disseminate the principles of the convention among members of the Public,*
- 2. to assist, coordinate, follow up and evaluate works that are being undertaken by governmental and Non-governmental organizations working on areas that are covered by the convention,*
- 3. to formulate strategies that ensure observance of the implementation of the convention and create the conducive environment for governmental and non-governmental organizations working in areas of child-rights and welfare; to follow up , review and solicit reports on the same and*
- 4. To create favorable climate for the conduction of studies, seminars and workshops on child right issues.”*

In short the objective of the Directive was to establish a committee that works on the mainstreaming of the CRC and following up of the implementation of the CRC by member organizations. Following the issuance of the Directive, Child Rights Committees were formed at the national level (National Inter-Ministerial Committee), Regional, and lower administrative levels to monitor and guide CRC implementation.<sup>104</sup>

The National Child Rights Committee at the National level, consisted of representative members from the Ministry of Labor and Social Affairs, Ministry of Health, Ministry of Education, Ministry of Information, Ministry of Culture and Sports, Ministry of Justice, Ministry of Finance and Economic Development, the Police Commission, the Women’s Affairs Department from the Prime Minister’s office (which later became the MOWA),

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<sup>104</sup> For more details see; *A situation Analysis of Ethiopian Children and Women: A Right based approach* , FDRE and UNICEF, Addis Ababa, January 2002, pp. 20-21

UNICEF, CRDA, and Save the Children Alliance.<sup>105</sup> The Committee was at the beginning chaired by the Ministry of labor and social Affairs (MOLSA), and the Children, Youth and Family Affairs Department within MOLSA was the Committee's Secretariat.<sup>106</sup> MOWA later (2005) took the chairmanship from MOLSA upon being mandated on children's issues. According to the April 2005 Country Report to the UNCRC, Geneva, 396 local level Child Right Committees were formed from 2002-2004.<sup>107</sup>

The mandate of the National Child Rights Committee according to the Directive of the Child Rights Committee is to:

- Design strategies for the implementation and follow up of the CRC at Federal, Regional, Zonal and Woreda Levels.*
- Evaluate each of the organizations' member plan of implementation and mainstreaming of the CRC.*
- Evaluate the implementation of the CRC by Committees at Regional level, and Confirm children's participation in planning for actions related to the CRC.*
- provide child focused organizations with technical advice and support.*
- Monitor activities on CRC and include child focused programs as part of the national program of the government.*
- work on the inclusion of CRC issues to the government laws and legislations.*
- participate and facilitate the reporting of the CRC implementation from the regional and Zonal level to the UNCRC.*
- Support the distribution of CRC documents to regional bureaus of administration.*
- Support efforts to implement the CRC.*

Some of the major works, by the initiative of National Inter-Ministerial Committee, among others include, training Regional Child Rights Committees, organizing School Communities and Child Rights Clubs, giving training on prevention and treatment of

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<sup>105</sup> UNICEF and Save the Children Alliance joined the Committee later since both organizations were among the major organizations and Agencies mandated on the rights and protection of children.

<sup>106</sup> A situation Analysis of Ethiopian Children and Women: cited at note 104, p. 21

<sup>107</sup> Ibid

child abuse to professionals (on psychological treatment of children at high risk), all organized through the assistance of UNICEF.<sup>108</sup>

Furthermore, promotion of students' participation by forming Student's Councils, various trainings given to teachers and school communities on the issue of banning corporal punishment, fight against early marriage and harmful traditional practices in rural communities through Student Clubs, are some of the achievements initiated through CRC Committees.<sup>109</sup>

The mandates given to the Committee, if followed with strict sense of commitment, would enable to address the objectives it was established to achieve. Each member of the Committee has the duty: to ensure that child right issues are mainstreamed and incorporated into work programs of the organization represented, in line with its official responsibilities; evaluate its implementation; take up problems that occur in relation thereto within the jurisdiction of the organization, and report the same to the Government. Other responsibilities of the National Committee include devising strategies for the implementation of the convention; contributing to the effort on harmonization of principles of the Convention with the different laws of the country and participating in the preparation of Periodic Reports to be made pursuant to article 44 of the convention. However no deliberations are made over the country's periodic reports and hence such agenda has never been tabled for consideration, although individual concerns are seldom raised.<sup>110</sup> Neither were the child rights issues mainstreamed along with the official responsibilities of the member organizations. The law that defines the power and duties of the Executive organs of the Federal government (proclamation 47/2005) is silent on the duties and responsibilities of the above mentioned member Ministries, regarding the mainstreaming of child rights.

The Committee conducts regular meetings every two months<sup>111</sup>, agendas are forwarded to members prior to the dates of meetings and attendance at the meeting is satisfactory.<sup>112</sup> At meetings members usually exchange information on tasks performed by their

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<sup>108</sup> Assessment of performance of the relevant Ministries, cited at note 70 , p. 11

<sup>109</sup> Ibid, p 17

<sup>110</sup> Interview with Ato Alemayehu Weldekirkos; Senior Expert in Special Needs Education Program in Ethiopia, under Ministry of Education, and also member of National CRC Committee, on November 14, 2009

<sup>111</sup> Interview with Selamawit Girmaye; Head of Child Justice Project office, under the Federal Supreme Court , on November 30, 2009

<sup>112</sup> Assessment of Performance of Relevant Ministries, cited at note 70, p. 73

respective organizations in addressing child rights issues and the mainstreaming of the same.<sup>113</sup> However, no appropriate follow up of what their representatives are doing, is made by higher officials in the organizations who are members of the Committee.<sup>114</sup> The capacity and commitment of the chairing organization, MOWA has been discouraging.<sup>115</sup> With the human resource constraints it faces it has not and could not give due emphasis to the coordination of the Child Rights Committee. Committee members are not also accountable for their actions, since there is no legal mandate of mainstreaming in the respective member organization. Higher officials at times have been seen having trouble in responding to inquiries on the roles of their respective organizations in the National Committee.<sup>116</sup>

Bringing together the various sector ministries to work for children's wellbeing is not an easy task. Yet one of the major problems with regard to the coordination of the Committee's programs is the absence of the desired commitment by the chairing organization, MOWA.<sup>117</sup> It has not been able to take the leading role in giving effect to the coordination of members of the Committees.<sup>118</sup> Furthermore, Ministries with responsibilities for children are commonly short of resources and lack the capacity or standing to engage in big policy issues.<sup>119</sup>

At the regional level, the Child Rights Committees were established and run under the chairmanship of the Bureaus of labour and Social Affairs and Bureaus of Women's Affairs. The Committees consist of representatives from the Bureaus of Information, Education, Health, Youth and Culture, justice, Finance and Economic Development, Police Commission, and Women's Affairs. The responsibilities of these Committees are similar to the National level Committees. As given in section IV (2) of the Directive, the responsibilities of members of the committee are:

*-Formulating programmes for the implementation of the various aspects of the convention having due regard for the economic and social realities of the regions concerned*

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<sup>113</sup> Ibid

<sup>114</sup> Interview with Ato Alemayehu Weldekirkos, cited at note 110

<sup>115</sup> Ibid

<sup>116</sup> Assessment of Performance of Relevant Ministries, cited at note 70, p. 74

<sup>117</sup> Interview with Ato Alemayehu Weldekirkos, cited at note 110

<sup>118</sup> Interview with Dr Bulti Gutema, cited at note 56

<sup>119</sup> Resources for the rights of the Child- Responsibility of States: Available resources and their allocation to children , Submitted by Save the Children Sweden in Ethiopia to UN Committee on the Rights of the Child, p. 6

*-causing the practicing of the provisions of the convention in the economic, social and cultural activities of the region.*

*-Ensuring that measures taken by government organs, private social welfare organizations, courts of law, and administrative and legislative authorities, give supreme attention for the best interests of children above anything else*

*- Causing integration of principles of the convention relating to children's education, health, right to justice and social welfare, into all regional activities.*

The structure, duties and responsibilities of child right Committees to be established at Zonal, District and Kebele levels are almost identical to those at regional levels, with slight changes on membership.

Assessing the operations of these Committees is quite difficult. It is often hard to tell how many committees there are (even for the authorities in MOWA). Furthermore, it is even harder to be sure of the existence of these Committees in some regions. It has been found that no Child Rights Committees were operating in some regions such as Afar, Benishangul Gumuz and Somali.<sup>120</sup> Scaling down to the district and Kebele levels, the practical existence of some organizations mentioned as committee members is often dubious<sup>121</sup>.

The same with the National Inter-Ministerial Executive Committee, there is no legal mandate on members of the regional Committee; no single public official (member of the committee) is bound by sense of duty to mainstream or even to take a part in programs for the right and welfare of children. Nevertheless, some activities are being undertaken by Bureaus of Labor and Social Affairs, Education and Health sectors of Regional states and their subordinates at Zonal, District and Kebele levels even though their areas of operation are limited.<sup>122</sup>

The High Mobility of officials and civil servants, particularly in regions, has negatively impacted the Committees activism.<sup>123</sup> Since these public officials have other concurrent

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<sup>120</sup> For more information see, Assessment of performance of the Relevant Ministries, 2009, cited at note 70, p. 74

<sup>121</sup> Ibid

<sup>122</sup> Ibid, p.13

<sup>123</sup> Interview with Dr. Bulti Gutema, cited at note 56

responsibilities it is presumably difficult for them to give priority to the task of the committee, even if they have the willingness.

The establishment of the Child Rights Committees at various levels has been regarded as a handy shortcut for meeting the rights and needs of children. Nevertheless, their efforts were hampered for causes attributable to difficulties arising from low level of awareness, scarcity of human resources, inconvenient administrative structure and weak leadership from the chairing organs.<sup>124</sup>

There is a communication gap between members of the Inter-Ministerial Committee and senior official and decision makers in the respective organizations, which has hampered the effective implementation of its purpose.<sup>125</sup> Voluntarism, not obligation, has been the proceeding among the Committee members.<sup>126</sup> The Directive had better be replaced by a legally binding proclamation with the appointment of strong organ that can take committed leadership in the coordination of activities by member organization.

### **3.4 Human Rights Commission and Institution of Ombudsman**

#### **3.4.1 Introduction**

Institutions for Human Rights as we understand them today are a novelty in the Ethiopian political and legal arena. Not only were such institutions previously unheard of in their modern functional and institutional sense, but also attempts at their creation were usually met with rather various challenges, largely emanating from socio-cultural, institutional and political difficulties, most of which were handed down from the past.<sup>127</sup> Authoritarian value systems ingrained in the social institutions (families, schools, religious institutions) and government institutions have been producing obstacles.<sup>128</sup> This led to convolutions, thanks to the lack of adequate public awareness for the values and practices of the rule of law, democracy and human rights.

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<sup>124</sup> Ibid

<sup>125</sup> Ibid

<sup>126</sup> For more details see; Mekdes G/Tensay and Tsegaye Kassa: *Actual Status, Functioning, and Capacity of the National CRC Committee in the Promoting the Convention on the Rights of the Child in Ethiopia*; (Addis Ababa Ethiopia. March 2006). P 26

<sup>127</sup> For more information see, Kamal Hossain, et. al (EDS.): *Human Right Commission and Ombudsman offices, National Experiences throughout the World*, Kluwer Law International, Dordrecht, the Netherlands, 2000 , P. 8

<sup>128</sup> Ibid

The Federal Democratic Republic of Ethiopian Constitution (1994) prescribes that the House of Peoples Representatives shall establish the Ethiopian Human Rights Commission and the Institute of Ombudsperson respectively.<sup>129</sup> Accordingly, the House of Peoples Representatives endorsed bills establishing a Human Rights Commission and an Institution of Ombudsman in July 2000. The two offices were meant to be mutually independent and to operate in accordance with the Paris principles. Although the initial draft bills did not include specific mentions of Women's and Children's rights, in subsequent public hearings and consultations children's and women's rights were added to the mandates of the two offices.<sup>130</sup> While the establishing proclamation for EHRC provides for the appointment of a Commissioner for women and children, the establishing proclamation of Institution of Ombudsman provides for the assignment of Ombudsman for women and children.

These two organs have commenced their operation in the year 2005 and have ever since made their reports to the House of People's Representatives on a regular basis.<sup>131</sup> Positive developments have been observed from the performances of these organizations; especially their willingness to work closely with non-governmental organizations has been a major improvement.<sup>132</sup>

### **3.4.2 Human Rights Commission**

The Ethiopian Human Rights Commission although legally established nine years back, it became operational only recently. With the appointment of the Deputy Chief Commissioner and the Commissioner for Children's and Women's Affairs,<sup>133</sup> the Council of Human Rights Commission was eventually formed giving the Commission its sought-after legal function (2005).<sup>134</sup> The Commission has been structured in such a way that its machinery was capable of paying a special attention to the rights of children,

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<sup>129</sup> For more information see arts. 55(4) and 55(15) of the FDRE Constitution

<sup>130</sup> Kamal Hossain and, et. al (Ed), Cited at note 127, p. 8

<sup>131</sup> Assessment of the Performance of the Relevant Ministries, Cited at note 10, p. 74

<sup>132</sup> Ibid

<sup>133</sup> The two Commissioners (Deputy Commissioner and children and Women's Affairs Commissioner) were sworn in on July 13, 2005. <[WWW.law.ualberta.ca/centeres/io/docs/sept05\\_e.pdf](http://WWW.law.ualberta.ca/centeres/io/docs/sept05_e.pdf)>, last visited on 14/11/09

<sup>134</sup> Human Rights, Maiden Magazine produced by the Ethiopian Human Rights Commission, Vol. 1 No. 1, August 2009, p. 30

women and other vulnerable groups. Thus, the organizational structure of the Commission has a unit dealing with human rights of women and children.<sup>135</sup>

Since the Commission commenced its official functioning, its major preoccupations have been building the Commission's institutional capacity; from preparations and implementations of rules, regulations and directives to reinforcing its staff with skilled manpower and office procurements.<sup>136</sup> It is still, undertaking additional procedures for recruiting more persons and retaining staff members.<sup>137</sup> Short term trainings both, here in Ethiopia and abroad, have also been provided for staff members, that included trainings on concepts of fundamental human rights, on children and women's rights, on civil service reform program, on strategies and skills to monitor and protect human rights, on treaty reporting, on negotiations as well as mediation skills in the context of human rights disputes.<sup>138</sup> In order to make the most of its personnel discharge effectively its set of responsibilities, the Commission has also been engaged in organizing several training programs on investigation and report preparation techniques as well as exposure visits for its staff members to several countries reputed for their exemplary performance in the promotion and protection of human rights.<sup>139</sup> It is the belief of the Commissioner of Children's and Women's Affairs that policy, administrative and institutional measures have been taken which provided so far for what is more than satisfactory.<sup>140</sup>

There are instances whereby the Commission undertook consultation forums with members of the legislature, as well as other concerned GO and NGOs on addressing gaps in the legal, policy and enforcement of rights of vulnerable groups.<sup>141</sup> So far it has made consultation on: violence against women and children; alternative support programs for orphaned and vulnerable children; and labour exploitation of children.<sup>142</sup>

It has also been active in the process of providing instructions and recommendations, based on its observations on the situations of women prisoners and their kids during its

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<sup>135</sup> See, art. 8(2) (c) of the Proclamation 210/2000: the Ethiopian Human Rights Commission Establishment Proclamation.

<sup>136</sup> Human Rights, Maiden Magazine, cited at note 134, p. 27

<sup>137</sup> Ibid

<sup>138</sup> Ibid p. 42

<sup>139</sup> Ibid p. 27

<sup>140</sup> Moreover, according to the message from the Commissioner of Children's and Women's Affairs, the Commission has been "Vigorously promoting the rights of women, children, people with disability and the elderly through seminars, training programs and the mass media". Message from W/o Yeshihareg Damte, Commissioner for Children's and Women's Affairs of Ethiopian Human Rights Commission, Ibid, p. 28.

<sup>141</sup> Ibid

<sup>142</sup> Ibid

working visits to prisons and police stations as well as children's orphanages.<sup>143</sup> After evaluating and assessing the level of care therein, it gave recommendations and opinion to the concerned governmental institutions.<sup>144</sup>

It is also the strategy of the Commission to promote the children's rights by raising awareness through the coordination of workshops, symposiums, conferences and trainings involving among others, parliamentarians, the media and school children.<sup>145</sup> Using this, the Commission strives to make all the stake holders able to be aware of the issues of human rights in general and the human rights of children in particular. As an illustration for the above condition, a pilot project, namely, 'promoting schools as zones of realizing human rights' can be cited.<sup>146</sup> This project is believed to be one of the successful accomplishments of the Commission; it identified promotion of human rights in schools is in its infancy. The Commission, to address the above concern has undertaken training and awareness raising activities promoting human rights of children within school communities, especially for teachers.<sup>147</sup>

The Commission is also involved in the coordination of activities by creating a network of links with other stakeholders, especially the UN organs and NGOs. It has established close working relations with two local NGOs: APAP (Action Professional Associations for the people) and ACPF (African Child Policy Forum).<sup>148</sup> The Commission has also provided financial assistance to: APAP (for the purpose of moot court competitions), Peace and Development Centre, Tigria Disabled Association and Women Journalist Association.<sup>149</sup> The Commission has also a close link with UNICEF, which supported the Commission's work in translating international instruments into the official working languages of the country. Though the Commission does not have any working relations with treaty bodies, there was instances were by the Chief Commissioner has taken part at the UNCRC Committee session as an observer, when the government report was presented to CRC Committee.<sup>150</sup>

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<sup>143</sup> Ibid

<sup>144</sup> Interview with W/o Roman Tesfaye, cited at note 144

<sup>145</sup> Ibid

<sup>146</sup> Ibid

<sup>147</sup> Ibid

<sup>148</sup> Aron Degol, *The Role of the Ethiopian Human Rights Commission in the Protection of the Rights of Vulnerable Groups, The Case of Children, Women and Persons with disabilities*, (unpublished LLM thesis March 2009), p. 98

<sup>149</sup> Interview with Abraham Ayalew, Program Officer of Ethiopian Human Rights Commission, on December 10, 2009.

<sup>150</sup> Ibid

The CRC Committee in its Concluding Observations to the third periodic report of the country had shown an interest to receive additional reports directly from the commission.<sup>151</sup> However the Commission claims it is not mandated to report to treaty bodies, as it is not statutorily empowered<sup>152</sup>.

Furthermore, the Committee in its General Comment number 2 of 2002, strongly recommended that national human rights institutions should take legal proceedings to vindicate children's rights in the state, provide legal assistance to children and should provide expertise in children's rights to the courts, in suitable cases as *amicus curiae* or inventor.<sup>153</sup> However in Ethiopia's case in instances where the Commission was invited by the plaintiff to intervene on a human rights case it has refused to do so.<sup>154</sup> The Commission is reluctant to participate in legal suits involving human rights; rather it tries to engage in influencing the policy and legal framework of the system in general.<sup>155</sup> Among the functions of the Commission in its establishment proclamation is to undertake investigations on alleged human rights violations with or without complaint.<sup>156</sup> There are very few instances where the commission entertained cases involving the protection of children's rights brought to it through complaints.

Shortage of human resource, especially professional human rights experts has been the major problem faced by the Commission. The government's salary scale in place has not been able to attract experts. There are only three experts who work under the Commissioner for Children's and Women's Affairs.<sup>157</sup> Those available professionals can not be considered as efficient experts as they did not have more than short term training at different occasions.<sup>158</sup> The commission tries to fill the gap in human resources through UN volunteers. However this will not be a sustainable solution as their terms will expire within two years.<sup>159</sup>

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<sup>151</sup> CRC/C/ETH/CO/3, November 2006, Consideration of reports submitted by state parties under article 44 of the Convention, Concluding observation: Ethiopia, p. 4

<sup>152</sup> Interview with W/o Roman Tesfaye, cited at note 144

<sup>153</sup> For more information see, UNCRC Committee GC/2002/2 p. 10

<sup>154</sup> Aron Degol, cited at note 148, pp. 99-100

<sup>155</sup> *Ibid*, p. 100

<sup>156</sup> See article 6(4) of the Proclamation 210/2000; The Ethiopian Human Rights Commission Establishment Proclamation

<sup>157</sup> Interview with W/o Roman, cited at note 144

<sup>158</sup> Aron Degol, cited at note 148, p. 100

<sup>159</sup> Interview with Ato Getahun Kassa, Former Executive Director of the Ethiopian Human Rights Commission, on December 15 2009

In terms of accessibility, the Commission has its office only in Addis Ababa. Though the establishment proclamation stipulates the Commission may have branch offices at any place determined by the House of Peoples representatives it has not yet established any. Nevertheless, the Commission has finalized a study to open branch offices in regional states, and has submitted the same to the House.<sup>160</sup>

The most significant weakness of the Commission is that it has not been able to issue and publish a national report about the overall human rights situation in the country and the human rights situation of children in particular. It only makes annual reports to the Parliament on the performance of the Commission. It should be able to issue and publish reports to the general public and further ascertain the accessibility of these reports to the public. Nevertheless, currently the Commission has initiated study to assess the overall human rights situation of the country.

Taking its infancy level, the Commission can be described as been engaged in the promotion and protection of child rights. Though it has a special structure for women and children, its functioning and arrangement deviates from what is expected of an independent national human rights institution for children.

### **3.4.3 The Institution of Ombudsman**

There was an initiation to establish an institution of Ombudsman in Ethiopia during the Emperor's regime (before 1974). The attempt succeeded only to the level of preparing a draft document for the office.<sup>161</sup>

The current Institution of Ombudsman, as enshrined in the 1995 FDRE Constitution, was established through legislation passed in 2000.<sup>162</sup> The legal framework of the office creates an institution appointed by and accountable to the legislature. The Institution commenced its operation on July 14, 2005, with the appointment of a Deputy Ombudsman and Children and Women's Ombudsman by the House of Peoples'

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<sup>160</sup> Interview with W/o Roman Tesfaye, cited at note 144.

<sup>161</sup> Interview with Getachew Gedo: Children Affairs Research, Counseling and Complaint Handling team leader, and also a member of National CRC Committee representing the office of Ombudsman. Held on November 5, 2009

<sup>162</sup> For more detail see Proclamation No.211/2000; Institute of Ombudsman Establishment Proclamation. See also the FDRE Constitution, 1995

Representative's.<sup>163</sup> Since the Institution commenced its official operation (2005), its major preoccupations have been building the Commission's institutional capacity starting from the preparations and implementations of rules, regulations and directives and reinforcing its staff with skilled manpower and office procurements.<sup>164</sup>

As stipulated in the preamble of its establishing proclamation, the objective of the Institution among others is to rectify or prevent the unjust decisions and orders of executive organs and officials, and facilitate easy access of remedies to those who have suffered maladministration. In pursuing its purpose, the institution has given awareness training on human rights for different institutions among are federal and regional parliamentarians, judges, public prosecutors, police and other governmental institutions.<sup>165</sup>

A special arrangement within the structure of the Institution consists of a team for Children, under the Ombudsperson for Children and Women. The function of Children's Team incorporates: awareness creation, investigation, and promoting children's participation through children's parliament.<sup>166</sup> The unit is mandated to conduct studies, give counseling and investigate complaints. However no study has been made so far.

The same with the EHRC, the Institution of Ombudsman has not been able to issue and publish a national report about the overall human rights situation in the country, nor the human rights situation of children in particular; with the exception of annual report submitted to the Parliament. The Institute can not be regarded as accessible to the mass as it only operates in Addis Ababa. However, a study to establish regional branch offices has been completed and submitted to the parliament.<sup>167</sup>

Although it happens in a very limited occasion, there are reports made through families and representatives to the Institution, concerning maladministration on children.<sup>168</sup> Some

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<sup>163</sup> Human rights institution, <[WWW.law.ualberta.ca/centeres/loi/does/setember05-e.pdf](http://WWW.law.ualberta.ca/centeres/loi/does/setember05-e.pdf)>November 14, 2009, cited at note

<sup>164</sup> Interview with Ahmed Mohamed, head of Department of Children and women's Affairs in the institution of ombudsman, on November 5, 2009

<sup>165</sup> Ibid

<sup>166</sup> Interview with Getachew Gedo: cited at note 162

<sup>167</sup> Interview with W/o Bisrat Gashaw, Deputy Ombudsman in the Institution of Ombudsman, December 20, 2009

<sup>168</sup> Interview with Getachew Gedo, cited at note 161

of the cases include: unfair dismissal from school, denial of medical evidence to victims of violence, and neglect by police officers in handling cases of children.<sup>169</sup>

Since the reports of maladministration on children are rare, the institute decided to reach out to and also promote their participation through Children's Parliament.<sup>170</sup> Accordingly a Children's Parliament was established in Konso Woreda, Karat town on October 2006. Currently, Children's Parliaments have been established in all regional states, so that each state will take the lessons and pursue establishing them in each Woreda.

In the Model Parliaments children are thought about the international human rights instruments and national instruments on children's rights. They will also been given the opportunity to express their views. In Konso Woreda, Karat town, children knew where to go to lodge complaints, and their rights to express their views, and other basic rights even though their knowledge was limited in most cases. Those who were older were found more aware of their rights. All in all the establishment of the children's parliament has positively impacted the protection and welfare of children in Konso Woreda.

Shortage of human resource, especially professional human right experts has been the major problem faced by the Institution. There are only four experts who work under the Ombudsman for Children's and Women's Affairs. Those available professionals can not be considered as efficient experts as they did not have more than short term training at different occasions.

The same with the EHRC, Committee on the Rights of the Child in its concluding observations to the third periodic report of the Country had shown an interest to receive additional reports directly from the Office of Ombudsman. However, the Office has not engaged itself with such a mandate and believes it is not mandated with such a task.<sup>171</sup> When asked what would be the specific (future) plan of the institution, with regard to the special structure for children within the institution, the deputy ombudsman, answered 'we plan to dissolve the existing special structure and incorporate and handle children's issues within the general system or structure.'<sup>172</sup>

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<sup>169</sup> Ibid

<sup>170</sup> Ibid

<sup>171</sup> Interview with W/o Bisrat Gashaw, cited at note 167.

<sup>172</sup> Ibid

A lot needs to be done to make the impact of the institution felt within the public, which is not yet the case. Though the institution is playing supervisory role on the executive organs on behalf of the Parliament it is still under infancy level. With the exception of its engagement in the establishment and strengthening of Model Children's Parliament, the institution can not be considered as an actor in the protection and promotion of children's rights.

### **3.5 Non Governmental Organizations (NGOs)<sup>173</sup>**

The emergence of modern types of Civil Societies, particularly the presence of NGOs that dominate the present Civil Society landscape is a recent phenomenon in Ethiopia's history. Prior to the 1970s, only a few NGOs operated in the country. More NGOs, mainly international NGOs, entered the Ethiopian Civil Societies scene in two waves, during the famines of 1974 and 1984/85 to provide relief services and stayed on and expanded to engage in relief and rehabilitation services for victims of cyclic famines and natural disasters.<sup>174</sup> Another turning point for NGOs in Ethiopia occurred immediately after the change of government in 1991 where the sector demonstrated substantial increase in size and in impact.<sup>175</sup> A recent initiative by the African Child Policy Forum registered more than 200 CSOs working on child rights issues in Ethiopia.<sup>176</sup> The activities undertaken by Civil Society Organizations in relation to children's rights cover 10%, compared to 26% and 22% for HIV/AIDS and women's rights respectively.<sup>177</sup>

One of the defining features of Non-Governmental Organizations in Ethiopia is that substantial majority of them are engaged in traditional relief and development activities while a very limited number are engaged in advocacy work.<sup>178</sup> Nevertheless, until the promulgation of the New Civil Societies and Charities Proclamation, a number of advocacy networking and capacity building efforts were underway by NGOs towards the adoption of right based approach.

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<sup>173</sup> The term Civil Society Organizations and NGO has been used interchangeably herein after. The reason is that although NGOs are one sector of Civil Society Organizations, they dominate the sector.

<sup>174</sup>For more information see, Maximizing Local CSOs Civil Engagement's Potential in Ethiopia. (Organization for Social Justice in Ethiopia, 2007), p. 7

<sup>175</sup> Ibid

<sup>176</sup>Assessment of Actors Working in the Field of Children's Rights in Ethiopia: (Save the Children Sweden, January 2006) p. 11

<sup>177</sup> Maximizing Local CSOs, cited at note 174, p.52

<sup>178</sup> Assessment of Performance of Relevant Ministries, cited at note 70

NGOs use different approaches and focuses on different groups of children. Among activities of these organizations include design and maintenance of data base, public awareness creation program, conducting surveys and studies, capacity building activities focusing on community based institution and or government structures, promotion of child participation, provision of rehabilitative services to child victims and their families, advocacy of child rights and providing assistance to victims in accessing and utilizing the legal system.

To sight some of the activities by NGOs: in cooperation with UNICEF, Save the Children Alliance had played significant role on child rights programs in partnership with the local NGOs and Government Organizations. The Italian Development Cooperation has shown its involvement on building government capacities. Others intervention by NGOs: establishment of Children's Legal Protection Center by African Child Policy Forum;<sup>179</sup> and hotline for reporting cases of abuse operated by ANNPCAN are worth mentioning. Forum for street children Ethiopia (FSCE) has been assisting the police force; through its program of creating awareness regarding the issues of child offenders and street children.<sup>180</sup>

CRDA has played an important role not only towards the creation of forums, but also in supporting and facilitating their agenda. One of such forums is the Children and Youth Forum of NGOs, which has 59 CSOs members. After engaging in building its internal capacity, the forum was involved the National OVC Task Force Committee, the preparation of the National Youth Development Program, and coordination of the Third Complementary Report on the Convention on the Rights of the Child (CRC), and in the preparation of the National Plan of Action for Children.<sup>181</sup>

NGOs have been involved in translating the convention into local languages and in the distribution of the same to the public. They have also conducted numerous workshops and weekly radio programs on the convention. Furthermore, issuing newsletters, magazines, posters, and leaflets on child rights issues can be some of the advocacy activities by NGOs. However, there is little or no information on the degree of

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<sup>179</sup> Getnet Tadele (Dr.) and Woldekidan Kifle, Existing Situation and Best Practices in the Area of Information Management related to Children Living in Vulnerable Circumstances in Ethiopia: March 2006, Italian Cooperation Program in Support of Children and Adolescents in Vulnerable Circumstances, p.31

<sup>180</sup> Justice for children, Good Practices and remaining challenges in the area of "Justice for Children" in Ethiopia: Unicef Assessment report. Dec, 2005, p. 29

<sup>181</sup> Ibid

effectiveness and reaction of the disseminate translation to the recipients.<sup>182</sup> Furthermore, their involvement can also be traced in the establishment and operation of on various committees and task forces such as: CRC Committees in the National Level as well as in the smallest Administration level; National Committee on Child abuse and Sexual exploitation; and National task force on Orphans and Vulnerable children (OVC).

In spite of all the above, NGOs have limited capacity even by African standards forcing them to concentrate in and around urban areas.<sup>183</sup> Even in Addis Ababa, intervention activities are undertaken on a limited scale reaching only a small fraction of the population. Areas such as the Afar, Gambella, and Benishangul regions are particularly underserved by NGOs.<sup>184</sup>

Civil Society Sectors are not often well placed to lobby for macro, or sector-wide, policy changes. Some of them are effective contractors for donor projects; some have little experience in policy engagement and are often faced with lack of funding sources for policy work.<sup>185</sup> Others are more focused on particular groups of marginalized children, often failing to engage with the bigger picture or link up with broader coalitions. Most NGOs are formed by one or few charismatic leaders; they are not predominantly the outcome of an internal (popular base) growth.<sup>186</sup> As a result, a great majority of them are not constituted in communities; they do not usually involve the very community they claim to serve in decision making.

This weak and underdeveloped situation of NGOs is attributed to a number of factors. The major challenges of the sector explained by representatives of some NGOs include very limited constituency, lack of skilled human resource, lack of strong and viable networks and coordination mechanisms, unreliable donated funding, limited access to government decision making process, and problems in their relation with the government.<sup>187</sup> Absence of an enabling environment and capacity limitations are the strategic constraints facing CSOs in Ethiopia.<sup>188</sup>

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<sup>182</sup> Assessment report, Actual status, functioning, cited at note , bid, p. 5

<sup>183</sup> Assessment of Actors, cited at note , p 10

<sup>184</sup> Maximizing Local CSOs, cited at note , p 174

<sup>185</sup> Resources for the rights of the Child- Responsibility of States: Available resources and their allocation to children , Submitted by Save the Children Sweden in Ethiopia to UN Committee on the Rights of the Child: p 7

<sup>186</sup> Maximizing Local NGOs, cited at note, pp. 42-43

<sup>187</sup> Assessment of Actors, cited at note , p 10

<sup>188</sup> A Kalpan and S Davidoff, *A commissioned study into the relationship between NGOs and Civil Society in Ethiopia: with specific reference to CRDA an umbrella body.* (March 2004) Cited from Assessment of

NGOs have recognized the need for coordinated efforts to promote the implementation of the convention. NGOs Complementary Report on the Implementation of the UN Convention on the Rights of the Child was made possible through such understanding. NGOs in cooperation with the Government have conducted a substantial number of workshops and seminars to enhance the implementation of the Convention. In many cases, the workshops have brought together the staff of the government agencies and those of NGOs, which helps strengthen understanding of their respective programs.

However, rooms exist for the improving coordination between government organizations and NGOs in terms of information exchange and facilitation of each others activities in the service of children. The exchange of information, sharing of experiences, and collaborative activities among NGOs are also limited. Regular consultation between donors, government and civil society can bring fruitful cross-fertilization of experiences, policies and expertise. Strong network of NGOs at the national level to advance the goals of the Convention and to strengthen their service as a whole is badly needed.

The sector currently struggles for definition, operating space, and enhanced institutional capacity.<sup>189</sup> Of a special concern of CSOs is the Charities and Societies Proclamation enacted in February, 2009. Although enacted with highly appreciable aim of ensuring transparency and accountability of CSOs, this law threatens the existence of CSOs working on human rights advocacy, as it stipulates that those CSOs cannot obtain more than 10% of their funds from foreign sources. This restriction will force development CSOs to abandon their rights based approach and to focus only on relief and social service delivery.<sup>190</sup>

The NGO sector is a development partners to the government whatever the various attitudes to the contrary. Despite their weaknesses, Ethiopian CSOs are involved in various activities benefiting the Society. The state may be ready to share the development

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Actors Working in the Field of Children's Rights in Ethiopia: Save the Children Sweden, January 2006, p 10

<sup>189</sup> Maximizing Local CSOs , cited at note 174 , p. 43

<sup>190</sup> Other provisions which inhibit the operation of CSOs include; the requirement that national CSOs should open offices and /or have membership in at least five regions; the broad definition of administrative costs to include operational expenses for goods and services and the stipulation that CSOs may not use more than 30% of their budget for such expenses; severe penalties for non-compliance with administrative and reporting requirements; and denial of effective judicial remedy/right of appeal against decisions of the charities and societies agency not to register , suspend or dissolve foreign charities and Ethiopian CSOs that obtain more than 10% of their funds from foreign sources.

burdens with such associations, but it reacts negatively if the latter begins to speak in terms of rights to the public goods.<sup>191</sup> This infers that CSOs in Ethiopia are left to address relief and development than issues of community empowerment; on the contrary more burden on the side of the government on proactive implementation of CRC.

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<sup>191</sup> Maximizing Local CSOs, cited at note , p.54

## Chapter Four

### The Need for an Independent National Child Rights Institution and Its Role

#### 4.1 Justifications for special focus on children

There are various justifications for a special focus on children and for designing distinct national institutions to promote and protect human rights of children.

The cost of failing to protect children is huge.<sup>192</sup> Children's survival, healthy development, and active participation are crucial to the healthy future of any society. Thus, if problems pertaining to children are not tackled effectively, the hopes and aspirations of a nation cannot and will not be fulfilled. Research conforms that what happens to children in the early years and even before birth has a significant impact on their future growth and development. This in turn, determines their cost or contribution to the society spread over the rest of their lives.

The state of children is a very sensitive '*barometer*' to measure the effect of social and economic conditions and changes.<sup>193</sup> Children are more affected by the action or inaction of government than any other group. Almost every area of government policy affects children to some degree, either directly or indirectly. Children are among the heaviest users of public services, such as education, health and other services. And their dependence and development state make them disproportionately vulnerable. Thus, they need independent watchdog to monitor their relationship with the government.

Children have no vote and no access to the powerful lobbies that influence government agendas. Children have little if any access to media. With regard to Children's Participation principle, there may be beginnings of laws and policies to promote the involvement of children in decision making, to encourage us to listen to children, in the family, schools, local communities and other services. However, these initiatives are still in their infancy level.

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<sup>192</sup> Lansdown Gerison: Cited at note 5 , p. 3

<sup>193</sup> Kamal Hossain, *et .al*, cited at note 127, p. 136

Children have particular difficulty in finding and using legal remedies when their rights are breached. Responding to children's concerns and remedying violations of their rights requires special arrangements. The mechanisms that are employed by adults to exercise their rights are largely unavailable to children and may, in any case, be unsuitable. It is not enough that children should be able to lodge complaints through parents or legal guardians. The hidden nature of many child rights violations occurs within the home or within the institution in which they live.

Children are more vulnerable to exploitation and abuse because of their physical, emotional and psychological immaturity and their consequent dependency on adults.

The reason why we have Convention for the Rights of the Child is because other basic international human rights instruments like UDHR, ICCPR and ICESCR proved inadequate to protect children's human rights; because traditional attitudes within the family and institutions tend to confirm a lesser status for children who are seldom regarded as holders of right, more often as possessions or objects of concern. The drafting and adoption of Convention on the Rights of the Child and the commitment made by world leaders at the World Summit for children were recognition by the international community that children's human rights demand special attention and priority. This recognition and respect for their rights has to be reflected in arrangements at the national level.

## **4.2 Current Status of Children in Ethiopia**

The Ethiopian government has ratified the Convention on the Rights of the Child and the African Convention on the Rights and Welfare of the Child. It has fulfilled its reporting obligation, by submitting three reports to the CRC Committee. It has adopted a Constitution which requires that all international agreements ratified by Ethiopia become an integral part of the law of the Country (article 9(4)). And it has included within the Constitution a special section (article 36) upholding the rights of the child. It has and is in the process of ensuring its domestic laws are consistent with the convention on the right of the child, and have established special coordinating structures to try to ensure that government at all levels works effectively for children. Establishment of Child Protection Units (CPUs) and Child Friendly Benches should also be mentioned. The case for setting up national human rights institutions is already accepted and part of the Constitution.

Some special arrangements for children have also been advocated by the Government when establishing its national human rights institutions. This may be to address the concluding observation of the Committee on the Rights of the Child made on the first report from Ethiopia; that recommended for the establishment of an independent national institution for the protection and promotion of children's rights.

However, we must understand that the state of human rights of our children is still in many instances desperate. Acknowledging the true state of children's lives, as measures against internationally accepted principles and standards, is the first essential step towards action. The governments own report under the convention on the rights of the child is, in comparison with many such reports quite open in describing the grave, desperate state of children, and acknowledging 'the lack of adequate and effective implementation mechanisms'. Reports from UNICEF, from other UN agencies, and NGOs concerned with children add further detail.

The most basic of human rights; the right to life, is upheld for every one in the International Bill of Human Rights and expanded for children in Article 6 of the Convention on the Rights of the Child; that cover the right to survival and development to the maximum extent possible. Yet, millions of Ethiopian children's right to survival and development is limited by the daily realities of poverty and despair. Though there has been progress, infant mortality rate is still among the highest in the world. According to 'The State of the World's Children 2009 (report)', about 119 of every 1000 Ethiopian children are not living beyond the age of five; 47% of under five's are severely wasted and 11% are stunted; desperate poverty affects millions; access to adequate food and shelter is denied to a majority of children; only 42% have access to clean water.<sup>194</sup> Basic health services are available to only a small proportion of children; immunization coverage is improving steadily but remains low. There are 720,000 children orphaned by HIV/AIDS and many of them are living in very hard conditions, with low access to health, education and other basic rights. One of the fundamental rights in the CRC and African Charter on the Rights and Welfare of Children is the right to a name, nationality and immediate birth registration. If a child does not have an official birth date, with a name and nationality, it is difficult for any legal system to protect the child effectively. Children who have no formal proof of age are at risk of not benefiting from protective minimum ages and compulsory enlistment, among other issues. Yet, in Ethiopia, there is

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<sup>194</sup> For more details see; *Maternal and New born Health*, The State of World's Children 2009, Unicef pp. 118-126

no formal birth registration system except pilot projects (model birth registration programs) that are underway in two regions.<sup>195</sup> In 2005, Ethiopia was a home to an estimated 77,000 unaccompanied child-headed households; one of the highest numbers in Sub-Saharan Africa, second only to Zimbabwe.<sup>196</sup> A large number of children suffer from different types of inhuman abuses and exploitation as a result of trafficking, and their number is growing.<sup>197</sup> Though there is a specific legislation prohibiting the practice of harmful traditional practices like female genital cutting (FGM) and early marriage, the practice is still prevalent. More than 84 percent of girls had suffered one or more types of physical violence during their childhood.<sup>198</sup> The labour proclamation prohibits the employment of persons under the age of fourteen and regulates the working conditions of young persons between the age of fourteen and eighteen. However, not much has been done to curb child labor. The poverty and ignorance that pervades the society is nowhere more overtly observed than in the conditions of children in the country. There is a serious lack of awareness about implementation of CRC. All in all, while children are valued, their needs and rights do not seem to be given the appropriate attention.

While it is the government that takes on obligations under international law, other groups must be mobilized to work with government in support of human rights. This includes Civil Societies (NGOs), religious groups, and advocates of children—particularly their families, other care givers and teachers. In addition, the active participation of children and young people themselves must be engaged.<sup>199</sup> And of course, limitations of human rights on the scale of those affecting Ethiopia's children must be on the conscience of the international community too. The Convention on the Rights of the Child requires international cooperation should be called on when needed. In Ethiopia's case, assistance to children has been available from UN organs like UNICEF and UNDP through various programs. However, governmental agencies absorbing capacity has been limited. The country has not been able to use effectively the available assistance from the international community.

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<sup>195</sup> For more information see; Jaap Doek, cited at note , p 42

<sup>196</sup> Revised Roles and Stressed Souls: Child Headed Households in Ethiopia, African Child Policy Forum, 2008, p. 13

<sup>197</sup> Yoseph Endeshaw, et. al, *Assessment of Trafficking in Women and Children in and From Ethiopia. IOM International Organization for Migration*, November 2006 p 24

<sup>198</sup> Joanna Stavropoulos: *Second International Policy Conference on the African Child Violence Against Girls in Africa: a Retrospective survey in Ethiopia, Kenya and Uganda*, African Child Policy Forum 2006, p. 41

<sup>199</sup> Kamal Hossain and et. al, cited at note 127, p 135

We should not let the sheer volume of the problem discourage us. Instead, we should use it as a motivating factor that pushes us to create effective mechanisms for designing, implementing, monitoring, and evaluating programs that aim to make a difference in the lives of children. It is the task of independent human rights institutions to ensure first that such breaches of human rights are visible and then that the energies of all those with any power to change things are focused effectively on the task of remedying them.

### **4.3 The Need for an Independent Human Rights Institution for Children in Ethiopia**

Human rights institutions cannot solve children's problems, by themselves. In a democracy such bodies cannot overrule the decision of democratically elected representatives, cannot fix budgets or provide more money or basic services.<sup>200</sup> They cannot directly alleviate hunger or illness or get children clean water or into schools. But they can, if given appropriate independence, powers and duties and adequate resources, make a big difference. They can force populations and politicians to accept the reality of children's lives; they can make proposals for change and they can encourage, cajole and, when required, embrace governments and others into shifting priorities, into necessary action.<sup>201</sup>

There are both separate human rights institutions for children, and a focal point or unit (for children) within NHRIs or general ombudsman offices. European experience suggests that both integrated and separate models can work well for children. Whatever the model chosen, to function properly the independent institution for children requires legislation defining precisely its mandate and competences. With such a clear text, the institution can then establish necessary good relations and co-operation with the pre-existing general institution.

As stated previously there is a possibility of establishing an independent institution for children's rights inside the office of the General Ombudsman or Human Rights Commission. Such model already proved working inter-alia in some countries whereby existing general offices have an established legitimacy, visibility and effectiveness; these could be carried over to cover children's rights, while the costs and risks of setting up a

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<sup>200</sup> Ibid

<sup>201</sup> Ibid

new institution are also avoided. Certainly the experience in those countries where they have been established has been that they can be cost-effective in promoting laws, policies and practice that improve children's lives.<sup>202</sup> On the other hand, establishing a new body requires time, investment and is resource-intensive.

It is also important to acknowledge, problems with the functioning or reputation of the general human rights institution are likely to also damage the children's institution within them. In such cases the costs of establishing a human rights institution for children would be tiny compared to the costs of failing to protect children.

As discussed previously, the Ethiopian government has made special arrangements in its human right institutions. We should evaluate whether these special arrangements have fulfilled the requirements of legitimacy, effectiveness, and visibility; and whether these arrangements can be regarded as an independent national human rights institution for Children.

The EHRC and the Institution of Ombudsman do not have a clear guide or mandate on how to engage in the protection or promotion of children's rights. And, they have not identified priorities to engage on the promotion and protection of rights of children. They have not informed themselves or drawn up a baseline of the realities of children in Ethiopia. They have not even made a national assessment of the overall human rights situation in the country. Without informing themselves or others like the legislature, policy makers, academicians or experts, the media and the public they could not be able to engage in the protection and promotion of children's rights. Both the EHRC and Institution of Ombudsman lack financial and human resources. Though their budget is showing progress it is still very low. They have not insured available resources are at their disposal. They are under planned; trying to cope with the budget they receive they make limited annual plans.<sup>203</sup> Furthermore, they do not have financial independence as financial dismemberment is under the Ministry of Finance. Though these institutions have tried to fill the gap on human resources using UN Volunteers, such solution is not sustainable. For example, the terms of UN volunteers within the EHRC will end within two years.<sup>204</sup> The Governments can not plead lack of resources as a justification for failing to implement the CRC, as it has not undertaken systematic analyses of budgets to

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<sup>202</sup> For more details see; Lansdown Gerison, cited at note 5, p. 12

<sup>203</sup> Interview with W/o Roman Tesfaye, cited at note 144

<sup>204</sup> Interview with Ato Getahun Kassa, cited at note 159

assess the proportion of expenditure directed at children. Yet, assistance has been available from international Community.

The process of implementation of CRC is permanent and endless. It needs integrating several moves and decisions on continuous basis. Mainstreaming children's issues into the activities of relevant Ministries is important. Without a coordinating mechanism within the government system, effective protection and promotion of children's rights will not be achieved. Coordinating different government programmes has to be supported by sufficient data and child impact analysis, which will in turn allow the government to be effective in its decision making, including on budget.

When we take a closer look at the mandates of the Ethiopian Human Rights Commission, the Institution of Ombudsman, and Ministry of Women's Affairs, it is easy to see their overlapping mandate. The duplication of mandate has brought up duplication on their operation too. For example, the Police Force has been trained with introductory concepts of human rights by both the Human Rights Commission and the Institution of Ombudsman. These institutions have never worked in an integrated manner.<sup>205</sup> They have not set up a mechanism to deal with discord and dissatisfaction promptly or share contributions, risks and rewards. This has and will bring negative impact on government resource. We should not be willing to wait for results while a new partnership takes several years to develop the trust, teamwork skills and capacity necessary for effectiveness.

There is a lack of awareness of the implications of the CRC and changes it necessities.<sup>206</sup> The special arrangements provided do not at all fulfill the requirement of an independent institution protecting rights of children. The government though seems willing it is unable to effectively address children's rights. No one doubts the desperate situation of Ethiopian children, and the need to address it with more efforts. What is needed now is a strong and consistent action. If the government of goodwill peruses the goal of developing institutions, administrative structures and laws which give real recognition to the human rights of its children, it will be in the vanguard of progress.

What this paper is doing is not to divide up human rights and children's right. Indeed human rights are universal and the promotion and protection of children's human rights

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<sup>205</sup> Ibid

<sup>206</sup> Interview with Dr. Bulti Gutema , cited at note 56.

needs to be fully integrated with the promotion and protection of adults or women's human rights. But interrogation must not mean invisibility. What this paper asserts is, the current low status of children and their rights in our country, and the particular, dependant state of children requires special focus; distinct powers and activities than what exists. Thus, we need an independent human rights institution with the responsibility of promoting and protecting children's rights. The same is also the view of the Committee on the Rights of the Child in its general comment.

Among the potential advantages of this separate specialized institution is that it can focus on a single mission and establish a clear identity that makes it easier to reach out to children. It can determine its own policies and agendas. Being seen as fully independent of bodies can also be an asset and children may feel more comfortable about communicating with such institution.

#### **4.4 What kind of Independent Institution for Children? Its Features and Possible Roles**

The principal concern should be the institution whatever its form, should be able, independently and effectively, monitor, promote and protect children's rights. It is essential that promotion and protection of children's right is mainstreamed and that all institutions, especially human rights institutions existing in a country work closely together to this end. Furthermore, a distinction should be made between independent monitoring and self-monitoring.

The roles of independent institutions may vary in their mandates. A majority have both reactive mandates; handling complaints from children and their representatives and proactive work; promoting and safeguarding the rights of children as a group and of particular groups of children. Some institutions handle complaints and issues only in relation to public authorities; others may be able to look into private entities or family law disputes.

There are also various experiences of countries we could consider. We could even look back to Children's Commissioner established in our country in 1981, during the *Dergue* regime. It has incorporated various characters which can categorize it as an independent institution for children.

An independent monitoring mechanism within the legislation itself, as the Lesotho Children's welfare bill proposes is, a monitoring mechanism envisioned as an independent commission empowered to solicit its own funding, and that reports directly to parliament on the implementation of the CRC and other relevant children's rights instruments.<sup>207</sup> Its mandate include: monitor the general wellbeing of children as well as promoting and protecting their rights; investigating national and individual issues pertaining to violations of children's rights and make appropriate referrals following investigation; monitor national compliance with international and regional treaty; coordinate awareness-raising activities with regard to children's rights.<sup>208</sup>

In Ethiopia's case Children's Commissioner that reports to the Parliament could serve such a purpose. Its main function will be to support Parliament in its accountability and scrutiny functions, as well as carrying out other tasks of independent institutions protecting children's rights. The Commission could undertake many of the same tasks as Ministry of Women's Affairs; such as monitoring, advocacy and making policy recommendations, without facing the political constraints of a Minister of State. However the two need not be mutually exclusive; the appointment of a Commissioner for Children could complement Minister of Women's Affairs. While the Ministry could be responsible for implementing the government's agenda for children, a Commissioner could in turn monitor the governments' effectiveness and serve as an advocate for children. Children's Commissioner would also act as an ombudsman; conducting investigations into systematic issues and broad policies regarding children as well as advocating and raising awareness on behalf of the needs and interests of children. Shirin Aumeerruddy Cziffra, the Children's Ombudsman for Mauritius when asked how her job is different from that of social workers, children's ministry officials, or NGOs, told IRIN her office can issue summons for investigations, gather evidence, access top government officials, influence policymaking, and command respect as the government appoints the children's ombudsman.<sup>209</sup>

The creation of such a high profile federal position helps to coordinate national initiatives for children. The institution could also be responsible for ensuring policy coherence and

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<sup>207</sup> Jaap Doek (Professor), cited at note 11, p. 23

<sup>208</sup> Ibid, p 24

<sup>209</sup> For more detail see; *A watch dog for children*: <<http://www.africafiles.org/article.asp?ID=21258>> Last visited on June 22, 2009

coordination and also providing federal leadership in promoting intergovernmental cooperation on children's issues. Establishment of such an institution not only makes implementation of CRC effective but it is also a commitment to our children which in turn is to our future. It forms part of the general measures of implementation as provided in CRC General Comment No. 5 and particularly General Comment No. 2.

Finally, when establishing such institution it should be in accordance with the Paris principles, which defines certain essential characteristics of independent institutions, namely independence, transparent system for appointments or designation, sufficient resources for discharge of all responsibilities allocated to the institution, and accessibility.

Detailed possible roles and responsibilities of Children's Commissioners as an Officer of Parliament have been outlined in section 19 of General Comment No.2 of CRC; the role of independent national human rights institution in the promotion and protection of the rights of the child:

***“Recommended activities***

*1. The following is an indicative, but not exhaustive, list of the types of activities which NHRIs should carry out in relation to the implementation of children's rights in light of the general principles of the Convention. It should :*

*(a) Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate;*

*(b) Conduct inquiries on matters relating to children's rights;*

*(c) Prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights;*

*(d) Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights;*

*(e) Promote harmonization of national legislation, regulations and practices with the Convention on the Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention;*

*(f) Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans;*

*(g) Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize children's rights;*

*(h) Encourage ratification of or accession to any relevant international human rights instruments;*

*(i) In accordance with article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond;*

*(j) In light of article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights;*

*(k) Advocate for and facilitate meaningful participation by children's rights NGOs, including organizations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children;*

*(l) Promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field;*

*(m) In accordance with article 42 of the Convention which obligates State parties to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike", sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;*

*(n) Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;*

*(o) Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);*

*(p) Take legal proceedings to vindicate children's rights in the State or provide legal assistance to children;*

*(q) Engage in mediation or conciliation processes before taking cases to court, where appropriate;*

*(r) Provide expertise in children's rights to the courts, in suitable cases as amicus curiae or intervenor;*

*(s) In accordance with article 3 of the Convention which obliges States parties to "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”, undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement;*

*(t) Undertake such other activities as are incidental to the above.”*

## **Conclusion and Recommendations**

### **Conclusion**

Studies made with primary focus on what makes national institutions effective reveal it would be partly in the legal basis of the institution as well as in its composition. In addition different studies have identified various other considerations that needed to be included into account: the relation of the national institution with other bodies, including non-governmental human rights organizations; the accessibility of the institution to the most vulnerable sectors of society; and the capacity of the institution to enforce its rulings, among other factors.

In the past two decades, we have witnessed the creation of numerous national human rights institutions (NHRIs). As their number increases national institutions are becoming more prominent actors in the national, regional and international human rights arena. Efforts have been made to establish clear objectives and international standards, and to improve the effectiveness of existing national institutions. Substantial work has also been done to develop normative standards and agree on the most desirable constitutional and legal foundations of such institutions. A set of guidelines ‘the Paris Principles’ was developed following an international workshop on national institutions for the promotion and protection of human rights held in Paris, October 1991.

In line with the Paris Principle when a country ratifies the CRC it is obliged as per article 4 of the CRC “to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention.” In response to the above, there has also been a rapid proliferation of independent human rights institutions for children with in the past 15 years. The Committee on the Rights of the Child; the treaty body that monitors the implementation of CRC considers the establishment of such bodies to fall within the commitment made by states parties upon ratification to ensure the

implementation of the convention and advance the universal realization of children's rights. The Committee has consistently argued that governments should create human right institution for children that will have an enormous role in monitoring, promoting and protecting children's rights. The CRC Committee guidelines to governments preparing their periodic reports ask for "any information on any independent body's established to promote and protect the rights of the child, such as Ombudsman or Commissioner."

The Committee, further emphasizing the importance of establishment of such institutions, has drawn up General Comment No. 2(2002): the Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child. The same concern has been expressed by the CRC Committee on its General Comment No. 5(2003): General Measures of Implementation of the Convention on the Rights of the Child (arts, 4, 42 and 44 Para 6).

The role of national human rights institutions is to monitor independently the states compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it shouldn't lead to the government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set up their own agenda and determine their own activities.

When tracing Ethiopia's national institutions engaged in the protection and welfare of children, the country had had Children's Commissioner, established in the year 1981. This organ was a full fledged autonomous body with a comprehensive mandate on children's affairs. Other governmental offices had the duty to cooperate with the commission in the implementation of its functions. It had the authority to obtain financial and material aid from national and international sources directly and to allocate and coordinate the same to implement its plans. It had a character which could arguably be considered as an independent institution for protection of children's rights.

The Commission was later dissolved and the mandate on protection and welfare of children was given to Children, Youth and Family Affairs Organization. This organization was later transformed into a department, under MOLSA. In the year 2005, a

proclamation to define the powers and duties of the executive organs of the FDRE, gave away the responsibility for protection and welfare of children to the newly established ministry, Ministry of Women's Affairs. The proclamation was silent on how the ministry should include children's issue under its structure. Later on a Department for children and Mothers was established. The above evolutionary history on children's institution at the national level shows the institutional framework set for children have been downsized in the past two decades. However, currently there is an activity to change the Ministry of Women's Affairs into Ministry of Children's and Women's Affairs. The draft document has been submitted to the legislature; the House of Peoples Representatives for ratification.

The Ministry of Women's Affairs has been involved in the preparation and revision of guidelines, revisions of legislations, establishment of task forces, and giving awareness trainings. The responsible structure for children within the Ministry; Children's and Mothers department which currently changed into Children's Directorate is understaffed, with high turnover of staff. Not much seem to be performed to build the capacity of the department. CRC Committees concluding observations to all the country's periodic reports have repeatedly addressed the same concern. Lack of adequate human and financial resources enabling it to coordinate and monitor implementation of CRC at the federal, regional, zonal and Woreda level by the organs responsible to implement CRC have been repeatedly alleged by the Committee. Though there are a number of activities undertaken by the MOWAs in implementing the CRC, it is invisible comparing it with what ought to be done for children.

Realizing the importance of mainstreaming children's issues into the activities of relevant ministries, a Directive on the Responsibilities and Functions of Executive Committees of the Convention on the Rights of the Child was issued in the year 1994. As per the directive, Child Right Committees were formed with the objective of mainstreaming the Convention on the Rights of the Child, and follow up its implementation at the national (federal), regional and lower levels. The National CRC committee (Inter-ministerial Committee on the rights of the Child) consisted of various federal ministry offices, other governmental offices at the level of Commission and some NGOs. The counter parts of the same governmental offices in regional states and lower administration have also established Child Rights Committees in there respective regions.

The establishment of Child Rights Committees is strength by itself. These Committees have undertaken some activities like training on children's rights, organizing school communities and Child Right Clubs. However, since the Committees are established through a directive there is no legal mandate of mainstreaming children's issue in the respective member organizations and thus no accountability. Member organizations have not been able to mainstream and incorporate into their work programs the lines of its official responsibilities, or evaluate its implementation. No proper follow up of what their representatives are doing in the Committee is made by official members of governmental organizations. Nor is there an efficient leadership by the responsible organ (MOWAs) in coordinating the National Inter-Ministerial Executive Committee. Furthermore, the existence of Child Rights Committees in some regional offices is doubtful.

As prescribed by the FDRE Constitution (1994), the House of Peoples Representative established the Ethiopian Human Rights Commission and Institution of Ombudsman in the year 2000. These institutions commenced operation in the year 2005. Their major occupations since then have been building their capacity. The establishment legislation of these institutions is structured to pay special attention to children and women.

As per the establishment proclamation for Ethiopian Human Rights Commission, a Commissioner for Children and Women has been appointed. However the section of the commission for Children and Women's Affairs is under resourced and under staffed. Because of its low budget the institution is under planned consisting of only three experts. A pilot project in 100 schools; "promoting Schools as zones of realizing human rights" which brought about awareness raising activities to school communities and, visits to evaluate and assess prisons and children's orphanages, followed by opinions and recommendation to the concerned institutions, are the only activities of the Commission which have visible bearing on children.

The same has been true in the Institution of Ombudsman. Though there is an Ombudsman for children and women, the special unit for children has only four experts. The establishment of Model Children's parliament in each regional state is the only visible achievement of the institution made for the protection of children's rights.

There are very few occasions whereby these institutions entertained cases involving the protection of children's rights being brought through complaint. Both institutions are not

accessible to children, as they operate only in Addis. They do not have a special mechanism to reach out to children. They have-not made a national report or a study over the human rights situation of children or the general mass at all, other than the annual report they make to the parliament. The budget allocated by the government is very low. Both institutions believe that they are not mandated to implement the CRC nor is there an obligation on their side to report to CRC Committee. They have not been seen monitoring the activities of major child rights actors, governmental or non-governmental organizations in implementing the CRC. All in all their special arraignments within the institutions and their activities are invisible.

NGOs have made different approaches and activities on children. Some of them are public awareness creation program, capacity building programs for the government and community based institutions, provision of various services; rehabilitation services for victims, and legal aid, and also advocacy of children's rights. Their involvement is also visible on national-inter ministerial Committee of the Rights of the Child, and other national as well as subordinate committees and task forces. However, NGOs have limited capacity and their intervention activities are reaching only a small fraction of the population in urban areas. Other challenges of the NGO sector include limited constituency, lack of adequate skill and resource, lack of viable networks and coordination mechanisms. There is no strong coordination among themselves or with the government. In addition to limitations on their institutional capacity they also face absence of an enabling environment. Of special concern of NGOs is the Charities and Societies Proclamation enacted recently. Though enacted to ensure accountability, it has threatened right based development programs of NGOs as it stipulates that those CSOs engaged on human rights advocacy can not receive more than 10% of their funding from foreign sources. Because of it some have changed their status to a relief and social service delivery programs. Indeed this brings more burdens on the side of the government on promotion of human rights and children's rights in our context.

The full realization of children's rights is difficult to attain, and its implementation is permanent and endless which will need integrating several moves and decisions on continuous basis. Mainstreaming children's issues into the activities of relevant ministries will be important. And unless there is a coordinating mechanism within the government system, ensuring the protection of children's rights under the activities of the different ministries will not be possible.

Coordinating different government programs which has to be supported by sufficient data and child impact analysis will make a government effective in decision making, including budget. There should be a binding legislation which would enable the above. And most of all there should be a strong leadership through an organ responsible to chair the coordination. Thus we have to agree that an independent national organ with particular standards designed for entertaining children's issues which is different from adult's agenda is very important for implementing child rights effectively.

The current government has made a number of useful measures towards the fulfillment of the rights of the child. The question we should ask ourselves is, are the measures taken so far in balance with the disparate and thrilling realities of children in Ethiopia. The assessment of activities undertaken by the major child right actors vis a vis the existing realities of children would help in giving answer to the question. The answer obviously is that they have not been designed to effectively protect violations of children's rights or promote the same. It is the task of independent human rights institution for children to ensure that desperate situation of children are visible, and work with effective focus towards remedying them.

The importance of special focus for children has been justified with various grounds. Children are vulnerable to abuse and exploitation and are more affected by the actions and inaction of government than any other group. Yet children's survival, healthy development and active participation are crucial to the healthy future of our society.

All in all they need an independent watch dog to monitor their rights are fulfilled.

These institutions can force populations and politician to accept the realities of children's lives; they can lead and encourage others in shifting priorities and embrace the government to take action.

Though the government has made special arrangements in its human rights institutions, the special arrangement can not be regarded as an independent human rights institution for children. They lack resources, both human and financial. They are not accessible as they operate only in Addis. Nor have these institutions made any special arrangements to reach out children or be reached at by children. Furthermore, the special arrangements are not dedicated to children alone but together with women and disabled persons.

The existing general offices have not been able to establish visibility and effectiveness, on the overall protection and promotion of human rights and particularly children's rights. They have not been able to focus on children's rights.

In asserting the above it does not mean Ministry of Women's Affairs should not be strengthened. Yet, it would be very useful for children's rights as well as the future of our society if the ministry was able to run CRC effectively. But again MOWA is an executive organ, whereas independent human rights institution is independent of the executive organ and should be able to monitor the decisions of the executive as well as the legislature and serve as advocate for children.

The purpose of independent institutions, which are broadly consistent with the Paris Principles, can be translated into four key functions: influencing policy makers and practitioners to take greater account of the human rights of children, promoting respect for the views of children, raising awareness of child rights among children and adults, and finally insuring that children have effective means of redress when their rights are violated.

## **Recommendations**

The following are useful recommendations for the short term:

- Human rights institutions should make reports annually.
- The government should allocate adequate resources to the general human rights institutions.
- There should be assistance and support for the EHRC and Institution of Ombudsman to develop capacity for monitoring implementation of child welfare and development programs.
- There should be assistance for Children's Directorate (formerly Mothers and Children's Affairs Department) of MOWA in its endeavors of reinvigorating and making operational the Inter-Ministerial Committee on the rights of the Child.
- There should be support for national institutions to further improve their documentation, and communication capacity with regional and national actors on the rights of the child.

-There should be support to MOWA to regularly and systematically organize joint planning and review sessions with the regional focal child rights coordination bodies, and encourage and attract the regional focal coordination bureaus to work with (like exchange visits, training and exposure opportunities, joint assessments, and creating access to useful information).

However, on the basis of more concrete evidences of challenges associated with the current institutional arrangements, an autonomous high profile agency for effective implementation and coordination of CRC which in turn proves to be a major commitment to the future of the country should come to reality. Therefore:

1. There should be an Independent Human Rights Institution for children in Ethiopia.
2. The institution should be established with a legislation defining precisely its mandates and competencies.
3. This independent human rights institution for children should be conferred with ability to act independently, produce well-researched information, and exhibit a credible and respected public presence and to respond effectively to important children's issues affecting children.
4. A legislated mandate should give this national independent institution its authority and legitimacy, adding transparency and visibility to its mandate. As per the CRC Committee's view its mandate should include as broad scope as possible for promoting human rights of children, incorporated on the CRC and other human rights instruments. As per General Comment No.2 of CRC, the legislation should also contain provisions setting out specific functions, powers and duties relating to children having to do with the CRC and its optional protocols. Furthermore, the establishing legislation for the institution should allow it to determine its own policies.
5. The establishment, organization and activities of the institution must ensure a direct contact with children and should be consultative of all relevant sectors including children.
6. It should be appropriately resourced, and should make arrangements to reach out to children. For example it should establish strong contact with Child Rights Clubs. It must have adequate infrastructure, funding, staff, premises, and freedom from forms of financial control that might affect its independence.

7. It shall have appropriate and transparent appointment procedures, including an open and competitive selection process. It should also ensure pluralistic representation of various elements of civil society involved in the promotion and protection of human rights, and other institutions involved on children's rights, including professional organizations, and experts, especially children's rights experts
8. It should be geographically and physically accessible to all children. It must play a role in promoting respect for the views of children in all matters affecting them, and must also have the right to report directly, independently and separately on the state of children's right to the public and to Parliamentary bodies.
9. It must have powers as are necessary to enable it discharge its mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within its competence. Its powers shall include the promotion and protection of the rights of all children under the jurisdiction of the state party in relation not only to the state but to all relevant public and private entities. In addition, where appropriate, it should have power to undertake mediation and conciliation of complaints and support children taking cases to court, including the power to take cases concerning children's issues and to intervene in court cases to inform courts about human (children's) rights issues involved in the case.
10. The complaint procedure within the institution must be child friendly in design. It shall be accessible and well publicized to children, and include complaints procedures for use by children.
11. The establishing legislation should be given the authority to coordinate and head all undertakings pertaining to children's rights. It shall have the mandate to coordinate Child Right Committees at the National level.

**Children determine the courses of the nations they will represent as adults. It is the next generation that can continue and improve works begun by all of us. Therefore, investing in their future, we can say with no exaggeration, determines the future of the country.**

**We should renew our commitment and remain ...waveringly steadfast at the long and difficult road ahead of us towards creating a brighter future for each and every Ethiopian children.**

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## Annex I

UNITED  
NATIONS

**CRC**



**Convention on the  
Rights of the Child**

Distr.  
GENERAL

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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-second session

13-31 January 2003

**GENERAL COMMENT No. 2 (2002)**

**The role of independent national human rights institutions in the promotion and protection of the rights of the child**

1. Article 4 of the Convention on the Rights of the Child obliges States parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention”. Independent national human rights institutions (NHRIs) are an important mechanism to promote and ensure the implementation of the Convention, and the Committee on the Rights of the Child considers the establishment of such bodies to fall within the commitment made by States parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children’s rights. In this regard, the Committee has welcomed the establishment of NHRIs and children’s ombudspersons/children’s commissioners and similar independent bodies for the promotion and monitoring of the implementation of the Convention in a number of States parties.

2. The Committee issues this general comment in order to encourage States parties to establish an independent institution for the promotion and monitoring of implementation of the Convention and to support them in this regard by elaborating the essential elements of such institutions and the activities which should be carried out by them. Where such institutions have already been established, the Committee calls upon States to review their status and effectiveness for promoting and protecting children’s rights, as enshrined in the Convention on the Rights of the Child and other relevant international instruments.

3. The World Conference on Human Rights, held in 1993, in the Vienna Declaration and Programme of Action reaffirmed "... the important and constructive role played by national institutions for the promotion and protection of human rights", and encouraged "... the establishment and strengthening of national institutions". The General Assembly and the Commission on Human Rights have repeatedly called for the establishment of national human rights institutions, underlining the important role NHRIs play in promoting and protecting human rights and enhancing public awareness of those rights. In its general guidelines for periodic reports, the Committee requires that States parties furnish information on "any independent body established to promote and protect the rights of the child ...",<sup>i</sup> hence, it consistently addresses this issue during its dialogue with States parties.

4. NHRIs should be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (The "Paris Principles") adopted by the General Assembly in 1993<sup>ii</sup> transmitted by the Commission on Human Rights in 1992.<sup>iii</sup> These minimum standards provide guidance for the establishment, competence, responsibilities, composition, including pluralism, independence, methods of operation, and quasi-judicial activities of such national bodies.

5. While adults and children alike need independent NHRIs to protect their human rights, additional justifications exist for ensuring that children's human rights are given special attention. These include the facts that children's developmental state makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments' response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children's access to organizations that may protect their rights is generally limited.

6. Specialist independent human rights institutions for children, ombudspersons or commissioners for children's rights have been established in a growing number of States parties. Where resources are limited, consideration must be given to ensuring that the available resources are used most effectively for the promotion and protection of everyone's human rights, including children's, and in this context development of a broad-based NHRI that includes a specific focus on children is likely to constitute the best approach. A broad-based NHRI should include within its structure either an identifiable commissioner specifically responsible for children's rights, or a specific section or division responsible for children's rights.

7. It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights. It is essential that promotion and protection of children's rights is "mainstreamed" and that all human rights institutions existing in a country work closely together to this end.

### **Mandate and powers**

8. NHRIs should, if possible, be constitutionally entrenched and must at least be legislatively mandated. It is the view of the Committee that their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the Convention on the Rights of the Child, its Optional Protocols and other relevant international human rights instruments - thus effectively covering children's human rights, in particular their civil, political, economic, social and cultural rights. The legislation should include provisions setting out specific functions, powers and duties relating to children linked to the Convention on the Rights of the Child and its Optional Protocols. If the NHRI was established before the existence of the Convention, or without expressly incorporating it, necessary arrangements, including the enactment or amendment of legislation, should be put in place so as to ensure conformity of the institution's mandate with the principles and provisions of the Convention.

9. NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competence. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities.

### **Establishment process**

10. The NHRI establishment process should be consultative, inclusive and transparent, initiated and supported at the highest levels of Government and inclusive of all relevant elements of the State, the legislature and civil society. In order to ensure their independence and effective functioning, NHRIs must have adequate infrastructure, funding (including specifically for children's rights, within broad-based institutions), staff, premises, and freedom from forms of financial control that might affect their independence.

## **Resources**

11. While the Committee acknowledges that this is a very sensitive issue and that State parties function with varying levels of economic resources, the Committee believes that it is the duty of States to make reasonable financial provision for the operation of national human rights institutions in light of article 4 of the Convention. The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers.

## **Pluralistic representation**

12. NHRIs should ensure that their composition includes pluralistic representation of the various elements of civil society involved in the promotion and protection of human rights. They should seek to involve, among others, the following: human rights, anti-discrimination and children's rights non-governmental organizations (NGOs), including child- and youth-led organizations; trade unions; social and professional organizations (of doctors, lawyers, journalists, scientists, etc.); universities and experts, including children's rights experts. Government departments should be involved in an advisory capacity only. NHRIs should have appropriate and transparent appointment procedures, including an open and competitive selection process.

## **Providing remedies for breaches of children's rights**

13. NHRIs must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children. In order to be able to effectively carry out such investigations, they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They also have a duty to seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints.

14. NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children's issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.

## **Accessibility and participation**

15. NHRI should be geographically and physically accessible to all children. In the spirit of article 2 of the Convention, they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged, such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children.

16. NHRI have a key role to play in promoting respect for the views of children in all matters affecting them, as articulated in article 12 of the Convention, by Government and throughout society. This general principle should be applied to the establishment, organization and activities of national human rights institutions. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. Children's councils, for example, could be created as advisory bodies for NHRI to facilitate the participation of children in matters of concern to them.

17. NHRI should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established.

18. NHRI must have the right to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. In this respect, States parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children's rights and the State's compliance with the Convention.

## **Recommended activities**

19. The following is an indicative, but not exhaustive, list of the types of activities which NHRI should carry out in relation to the implementation of children's rights in light of the general principles of the Convention. They should:

(a) Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate;

(b) Conduct inquiries on matters relating to children's rights;

(c) Prepare and publicize opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights;

(d) Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights;

(e) Promote harmonization of national legislation, regulations and practices with the Convention on the Rights of the Child, its Optional Protocols and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention;

(f) Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans;

(g) Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis in order to determine what must be done to realize children's rights;

(h) Encourage ratification of or accession to any relevant international human rights instruments;

(i) In accordance with article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond;

(j) In light of article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights;

(k) Advocate for and facilitate meaningful participation by children's rights NGOs, including organizations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children;

(l) Promote public understanding and awareness of the importance of children's rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field;

(m) In accordance with article 42 of the Convention which obligates State parties to "make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike", sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard;

(n) Assist in the formulation of programmes for the teaching of, research into and integration of children's rights in the curricula of schools and universities and in professional circles;

(o) Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children's rights);

(p) Take legal proceedings to vindicate children's rights in the State or provide legal assistance to children;

(q) Engage in mediation or conciliation processes before taking cases to court, where appropriate;

(r) Provide expertise in children's rights to the courts, in suitable cases as *amicus curiae* or *intervenor*;

(s) In accordance with article 3 of the Convention which obliges States parties to "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", undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and to make recommendations for improvement;

(t) Undertake such other activities as are incidental to the above.

## **Reporting to the Committee on the Rights of the Child and cooperation between NHRIs and United Nations agencies and human rights mechanisms**

20. NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights, including through dialogue with the Committee on the Rights of the Child at its pre-sessional working group and with other relevant treaty bodies.

21. The Committee requests that States parties include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee.

22. NHRIs should also cooperate with the special procedures of the Commission on Human Rights, including country and thematic mechanisms, in particular the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General for Children and Armed Conflict.

23. The United Nations has a long-standing programme of assistance for the establishment and strengthening of national human rights institutions. This programme, which is based in the Office of the High Commissioner for Human Rights (OHCHR), provides technical assistance and facilitates regional and global cooperation and exchanges among national human rights institutions. States parties should avail themselves of this assistance where necessary. The United Nations Children's Fund (UNICEF) also offers expertise and technical cooperation in this area.

24. As articulated in article 45 of the Convention, the Committee may also transmit, as it considers appropriate, to any specialized United Nations agency, OHCHR and any other competent body any reports from States parties that contain a request or indicate a need for technical advice or assistance in the establishment of NHRIs.

### **NHRIs and States parties**

25. The State ratifies the Convention on the Rights of the Child and takes on obligations to implement it fully. The role of NHRIs is to monitor independently the State's compliance and progress towards implementation and to do all it can to ensure full respect for children's rights. While this may require the institution to develop projects to enhance the promotion and protection of children's rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities.

### **NHRIs and NGOs**

26. Non-governmental organizations play a vital role in promoting human rights and children's rights. The role of NHRIs, with their legislative base and specific powers, is complementary. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs.

### **Regional and international cooperation**

27. Regional and international processes and mechanisms can strengthen and consolidate NHRIs through shared experience and skills, as NHRIs share common problems in the promotion and protection of human rights in their respective countries.

28. In this respect, NHRIs should consult and cooperate with relevant national, regional and international bodies and institutions on children's rights issues.

29. Children's human rights issues are not constrained by national borders and it has become increasingly necessary to devise appropriate regional and international responses to a variety of child rights issues (including, but not limited to, the trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children, etc.). International and regional mechanisms and exchanges are encouraged, as they provide NHRIs with an opportunity to learn from each other's experience, collectively strengthen each other's positions and contribute to resolving human rights problems affecting both countries and regions.

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<sup>i</sup> General guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention (CRC/C/58), para.18.

<sup>ii</sup> Principles relating to the status of national institutions for the promotion and protection of human rights (The “Paris Principles”), General Assembly resolution 48/134 of 20 December 1993, annex.

<sup>iii</sup> Commission on Human Rights resolution 1992/54 of 3 March 1992, annex.

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