

**ADDISABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES  
INSTITUTE OF HUMAN RIGHTS**

**POST DIVORCE EFFECTS ON THE RIGHTS OF CHILDREN:  
A CASE STUDY OF FEDERAL FIRST INSTANCE COURT LIDETA BENCH AND  
ETHIOPIAN WOMEN LAWYERS ASSOCIATION (EWLA)**

**BY  
ETMET ASSEFA**

June, 2012

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**ADDISABABA UNIVERSITY  
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**Approved by Board of Examiners**

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Examiner	Signature	Date

## Declaration

I Etmet Assefa Asamrie, here by declare that this thesis entitled Post divorce effects on the rights of children: A case study of Federal first instance court Lideta bench and Ethiopian women lawyers association is original and not conducted in any institution to the best of my knowledge. I also declare that any information provided is duly acknowledged.

June 2012

Etmet Assefa Asamrie

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This thesis has been submitted for examination with my approval

Advisor

Dr Emezat Mengesha

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## **Acronyms**

CRC	Convention on the Rights of Child
EWLA	Ethiopian Women lawyers association
FDRE	Federal Democratic Republic of Ethiopia
ICCPR	International covenant on Civil and political rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
RFC	Revised Family Code
UDHR	Universal Declaration of Human Rights
USA	united States of America

## **Abstract**

*The natural relationship between parents and children is an essential contribution to the development of Children. Parents play an important role on the Child's wellbeing. As primary guardians of child-wellbeing, the views, perceptions, and practices of families determine the way children are treated and cared.*

*The main purpose of this study is to show the effects of divorce on the rights of Children. In doing so, the study tries to investigate gaps in the legal system with regard to custody, maintenance, marital home and the child's right to participation, examine the problems that hamper the enforcement of maintenance, examine the absence of divorced parents in the lives of their children constitutes a violation of the child's right to maintain personal relations and direct contact with both parents, right to health, right to life survival and development and right to education and examine the need for the establishment of institutions that give advice about parental arrangements after divorce.*

*To this purpose, the researcher distributed questioners for divorced parents, Conducted interview with President of Federal first instance Court, one Judge, Social workers of Federal first instance court, officer of the Ministry of Women Children and Youth affairs and officer in the Bureau of Addis Ababa Women, Children and Youth affairs. The researcher also conducted interview with some children and tried to study some selected cases.*

*The finding of the study shows that previously, Children do not express their views especially when there is agreement on custody, maintenance and visitation right. But recently, the Federal first instance Court established office of social workers to facilitate child participation even though there is no controlling mechanism to check every case is referred to the office. More over, the finding shows there is no binding guideline for decision of maintenance and decision of maintenance is not enforced especially when there is no secured income. It also shows that there are no institutions that give advice about parental arrangements and most non custodial parents are absent in the lives of their Children.*

*Based on the above findings the researcher recommended that binding guideline should be enacted, laws with regard to custody, maintenance and marital home should be amended, institutions that give advice about parental arrangements should be established, and there should be some controlling mechanism to check every case is referred to the office of social workers and special family execution Courts with expert execution judges should be established.*

## CHAPTER ONE

### 1.1 Introduction

Divorce is an absolute court decree which brings the legal status of marriage to an end.<sup>1</sup> Marriage can be dissolved in the death of one of the spouses, or declaration of absence, by the court, of one of the spouses; when one of the essential conditions of marriage is violated and by divorce<sup>2</sup> which makes the focus of this particular thesis.

The revised Federal family code specifies that application for divorce can be made by a petition of one or both of the spouses or by mutual consent of both the spouses.<sup>3</sup>

Divorce represents changes in social life, changes in parenting patterns, changes in financial status and changes in home life.<sup>4</sup>

It is obvious that family is the major determining factor for a person's happiness and successful life. Parents should consider the impacts of divorce on their children before getting divorce.<sup>5</sup> Children are not the one getting divorce. No matter how bad the divorced parent is, children still love their parents and deserve to have that parent-child relationship.<sup>6</sup>

In many child custody cases, children often become the pawns of divorced parents who want to get back at each other, thus forcing the courts to enter and decide what is in the children's best interests.<sup>7</sup>

It is clear that parental child relationship creates intimacy and love. This relationship should be given special consideration since it promotes the social goal of providing safety and nurturing environment for children.<sup>8</sup> Parents are one of the first line actors who provide protection for the child and ensure the well-being of the child.<sup>9</sup> Divorce often results in the lose of important part of

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<sup>1</sup> S.M Cretny and J,M Masson, *principles of family law*,(1990) p 81

<sup>2</sup> *Federal revised family code*, (2000) article 75

<sup>3</sup> *ibid* articles 77 and 81

<sup>4</sup> Margaret.Diccanio, *The encyclopedia of marriage, divorce and the family* (1989) p172

<sup>5</sup> David H. Olson and John Defrain, *Marriage and the family diversity and strengths*,(2000) p 494

<sup>6</sup> Ronald Sharp, *Wining the divorce war*, (1998) P 125

<sup>7</sup> *supra* note 4

<sup>8</sup> *supra* note 4 p 352

<sup>9</sup> The African child policy forum, *The African report on child well-being* (2008) p 1

relationship and human development that provides a loving and nurturing environment.<sup>10</sup>

## 1.2. Statement of the problem

Divorce ends the legal status of marriage which existed between the parties.<sup>11</sup>The divorce court has extensive powers to make financial and other orders on divorce.<sup>12</sup>

When spouses and parents decide to terminate their relationship, this affects them not only emotionally but also financially. The resources which previously financed one home now have to sustain two separate households and assets shared during the course of the relationship must be divided between the couple.<sup>13</sup>

The most crucial and disputing matters in divorce are financial aspects and children arrangements with regard to child support, custody and visitation right.<sup>14</sup>The FDRE constitution provides that courts should consider the best interest of the Child in cases where Children are involved.<sup>15</sup>The Revised Family Code provides conditions for divorce.<sup>16</sup> But in cases of divorce, children are not recognized as indispensable party.

Where disagreements arise on issues of custody, the court which decides the divorce also decide to which party the custody of the children will be given.<sup>17</sup>Recent practice of Federal courts shows that, before deciding custody and related issues, Courts should refer the case to the office of social workers<sup>18</sup> which is established in the Court to assist children psychologically. To this effect, the social workers ask the children and the parents to get information about the love and personal attachment between the parties involved and the child, the moral values of the parents, the economic capacity of the parents to provide the child with food, clothing and other necessary

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<sup>10</sup> Nadiaa 27, *Divorce and children*, (2011), available at <http://soeyberty.com/relashinships/divorce-and-children>

<sup>11</sup> S.M Cretny and J.m Masson, *Principles of family law*, (1990) p 81

<sup>12</sup> Ibid

<sup>13</sup> Lillian Edwards and Anne Grifts, *Family Law*, (2006) p 448

<sup>14</sup> Ibid p 449

<sup>15</sup> *The constitution of Federal Democratic Republic of Ethiopia*,(1995) article 36:-2

<sup>16</sup> *Federal revised family code*, article 77

<sup>17</sup> Supra note 15, article 221:-2

<sup>18</sup> The office of social workers is an office established in Federal first instance court to give professional opinion about the custody maintenance and visitation right of the child in cases of divorce. Courts use the opinions given by the social workers because they are made in a way that can ensure the best interests of the child.

needs. And finally they give their professional opinion about the custody and visitation right of the child.<sup>19</sup>Based on the professional opinions, the court decides custody, maintenance and visitation right.<sup>20</sup>

The law provides that, which so ever got or denied the custody of the child, has responsibility to provide the child with the necessary needs. But reality shows that non-custodial parents are absent in maintaining and visiting their children. Many parents neglect their duties to protect the rights of their children and concentrate on their personal misunderstandings, give much attention about properties and they forget their responsibilities to protect their children.

Lose of the family unit causes the children to grieve because no child wants to grow up with just one parent. Children are really affected by divorce when they are at the age to actually understand what is going on.<sup>21</sup> The rights of children to quality of education, life, a healthy environment where they can grow up to be fruitful citizens are denied in the post-divorce living conditions.

Most parents are ignorant about their post-divorce relations, and minimize consequences of divorce that affect the right of the child. The legal system does not have a mechanism in which divorced parents can be given guidance to precede their relations to the best interest of the child. The social workers that give opinions on the custody of the child do not have additional role to guide and advice the divorced parents on post-divorce consequences. Besides, there is no institutional mechanism that can encourage parents to think about parenting arrangements after divorce.

There is no data that shows how many children are not visited by their non-custodial parent. But the researcher's personal observation and the practice of Federal courts of Ethiopia shows that most non-custodial parents do not visit their children. The Federal revised Family code does not have an obligatory provision which is imposed on divorced parents to visit their children. The experience of other states also shows that Custodial parent feels as though he/she has to abuse right of the non-custodial parent for failure of payment of child support or other reasons which led to the divorce.<sup>22</sup>

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<sup>19</sup>From an interview with the social workers of Federal First instance court Lideta Bench

<sup>20</sup> ibid

<sup>21</sup> Nadia 27, *Divorce and children*, (2011), available at <http://socyberty.com/relashinships/divorce- and -children>

<sup>22</sup> Ronald Sharp, *Wining the divorce war*, (1998) P.38

The absence of neutral environment to facilitate visitation right aggravates the problem. And as a result many children are denied from maintaining personal relations and direct contact with both parents.

Disputes of maintenance are also very controversial. The Ethiopian legal system does not have binding guide line for decision of maintenance. As a result, courts decide insufficient and inconsistent amount of maintenance for similar cases. Moreover, it is difficult to enforce maintenance from unsecured source of income. And most parents did not give maintenance on proper time even though the court gives decision of maintenance.

Both the Federal revised Family Code and the International Covenant on the rights of the child provide that parents have primary responsibilities for the upbringing and development of the child. But reality shows that many post divorced parents are absent in the lives of their children.

The Universal declaration of Human rights is universally applicable to all members of the human family. Ethiopia is a party to the International covenant on civil and political rights, International covenant on economic social and cultural rights, Convention on the rights of the Child, the African charter on Human and people's right, and the African charter on the rights and welfare of the child. The international human rights instruments provide that the rights in the documents are universally applicable to all members of human family without discrimination of any kind. The CRC is a special document which essentially recognizes the rights of the child.

The gaps of the legal system and the absence of parents in the lives of their children have an adverse impact on the child's right to participation, right to maintain personal relations and direct contact with both parents, right to health, right to life survival and development and right to education, which is the particular focus of this paper.

### **1.3. Objective of the research**

This research has general objective of examining the violations of the rights of the children in post-divorce due to inadequacy of the law. It has also the following specific objectives.

- Investigating gaps in the legal system with regard to right to participation and representation of the child, custody, maintenance and its enforcement and division of marital home when children are concerned
- Examining the problems that hamper the enforcement of maintenance

- Examining that the absence of divorced parents in the lives of their children constitutes a violation of the child's right to maintain personal relations and direct contact with both parents, right to health, right to life survival and development and right to education.
- Examining the need for establishment of institutions that advise parents about parental arrangements after divorce in relation to the rights of children.

#### **1.4. Research questions**

1. What are the gaps in the legal system with regard to right to participation and representation of the child, custody, maintenance and its enforcement and division of marital home when children are concerned?
2. What are the problems that hamper the enforcement of maintenance?
3. Does the absence of divorced parents in the lives of their children constitutes a violation of the child's right to maintain personal relations and direct contact with both parents, right to health, right to life survival and development and right to education?
4. Is the establishment of institutions that advise parents about parental arrangement after divorce necessary to protect the rights of the children?

#### **1.5. Research methodology**

This research follows qualitative method of study. In conducting this research, primary sources like the International conventions of human rights and Regional human rights instruments and relevant national laws were taken as source. Moreover, Scholarly books, published and unpublished documents, official reports, journals and articles were reviewed.

The researcher also used secondary sources. To this purpose, key informant interview using interview checklist prepared by the researcher was conducted with president of Federal first instance court and one judge who has experience in family disputes to know the practice of the legal system, with professionals of the social workers in Federal first instance court Lideta bench to know how they are working to ensure the best interest of the child, with one officer in the bureau of Women Children and Youth affairs of Addis Ababa and with an officer in the ministry of Women, Children and Youth affairs to know what steps are taken to ensure the rights of children with regard to divorce. Child friendly discussion with children who can

express their views was conducted with the consent of their parents and the children. The discussion with Children was conducted with each child individually by respecting ethical considerations. More over, questionnaires were distributed to divorced parents. Purposeful sampling method was conducted with custodial parents to get in-depth information about the children. To this purpose, the researcher went to Federal first instance court Lideta bench and Ethiopian women lawyers association. Federal first instance court Lideta bench was chosen because it has long time since its establishment and it has three family benches so that variety of cases are available. EWLA is chosen because cases related to divorce and can not get remedy from courts are available since it is established to promote the economic political, social and legal rights of women. A case study was also conducted from both institutions. In addition the researcher's personal observation was employed. More over website information was employed. The researcher also tried to see experience of some countries.

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

It is obvious that post-divorce effects on the rights of children are many and complicated. However this study focuses on post-divorce effects on the child's right to participation, right to maintain personal relations and direct contact with both parents, right to health, right to life survival and development and right to education. Effects of divorce on the child's psychological and emotional development and other rights of the child which are specifically recognized in the convention of the child are not part of the research.

## **1.7. Ethical consideration**

All respondents of this study participated with their consent. Any information of the respondents was kept confidentially and was only be used for the purpose of this study. The discussion with children was conducted with the consent of both the children and their parents. Before discussing with the children, the researcher tried to get advice from social workers how discussion with children is going to be conducted. The researcher also used easy words that can be understood by children.

## **1.8. Significance of the study**

The study shows about the adverse effects of divorce on the rights of children. It also shows the gaps in the legal system regarding the rights of children in divorce proceedings. It further shows how the absence of parents in the lives of their children affects the enjoyment of the internationally recognized rights of children which are specified in this paper. There are some researches in the area. But they give more focus on the psychological impact of divorce on children. So this research gives information and can be taken as a source for other researches.

## **1.9. Organization of the study**

The paper has five chapters. The first chapter has introduction of the study, statement of the problem, objective of the study, research questions, research methodology, scope of the study, ethical consideration, and significance of the study, organization of the study and limitation of the study.

The second chapter reflects the historical back ground and definition of divorce, effects of divorce on personal relations and property and financial adjustment of the parties. In this chapter, the role of parents on the lives of their children, the effects of divorce on children with regard to custody, maintenance and visitation right is discussed. Definition of maintenance, child support guideline and child support enforcement agencies is also shown. The effects of divorce on the enjoyment of the human rights of children and experience of some countries are part of this chapter.

The third chapter gives special emphasis to the International human rights conventions, regional human right instruments and national laws with respect to the right of child. In this chapter the effects of divorce and its stipulations on the enjoyment of these rights is also discussed. This chapter also tries to investigate the gaps in the national laws.

The fourth chapter focuses on the presentation analysis and interpretation of data and case study.

The last chapter will deal with summary conclusion and recommendations.

## **1.10 Limitation of the study**

Lack of credible sources and time limited the scope and depth of this study.

## CHAPTER TWO

### GENERAL OVERVIEW OF DIVORCE AND ITS EFFECTS

#### 2.1 Historical Background

The Catholic church's view of marriage was that those whom God had joined together were not to be put a sunder by any human act and marriage could not be dissolved.<sup>1</sup> Courts had no jurisdiction to grant decrees of divorce until the mid-nineteenth century.<sup>2</sup> It was the ecclesiastical courts that had the power to annul marriages and to grant a limited sort of divorce called divorce a mensa et thero, which did not terminate the marriage but relieved the spouses of the legal obligation to live together.<sup>3</sup> Divorce a mensa et thero is divorce from bed and board which did not terminate the marital tie and the parties remained husband and wife.<sup>4</sup> Terminating marriage was impossible because of the Christian idea of marriage as an indissoluble lifelong union prevailed.<sup>5</sup> Hence the church, through its ecclesiastical courts and canon law, gained control over marriage and divorce.<sup>6</sup> However a theory that one could obtain a permanent divorce emerged during the sixteenth –century protestant reformation.<sup>7</sup> And it states that :-

Marriage was not a sacrament in the Roman sense; rather, it was a natural and social institution, therefore marriage fell under the natural and civil law, not under church law.<sup>8</sup>

Therefore a theory that parliament could dissolve marriages became a fact by the seventeenth century in England.<sup>9</sup> However parliamentary divorce was rare and available to England's great families for special cases.<sup>10</sup> It was after this theory that the matrimonial causes Act 1857 was passed permitting judicial divorce in order to minimize the lengthy and expensive procedure

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<sup>1</sup> Stephen Cretney, *Family law in the twentieth century*, (2003) p 16

<sup>2</sup> Kate Standeley, *Family Law*, (2008) p 135

<sup>3</sup> ibid

<sup>4</sup> Robert E, Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 54

<sup>5</sup> Supra note 2

<sup>6</sup> supra note 4

<sup>7</sup> id p 55

<sup>8</sup> ibid

<sup>9</sup> supra note 4 p 55

<sup>10</sup> ibid

of the Act of parliament procedure.<sup>11</sup>Hence divorce by decree of the civil courts was introduced.<sup>12</sup>

## 2.2 Defining Divorce

The Federal revised family code does not define divorce. Divorce can be defined as an absolute decree of court which ends the legal status of marriage.<sup>13</sup>It deals with legal status ,legal rights and duties of the parties.<sup>14</sup>The dictionary definition of divorce is a legal separation of man and wife affected by the judgment or decree of court.<sup>15</sup>Another definition of divorce is a termination of marriage which results in change in social life, changes in parenting patterns ,changes in financial status and changes in home life.<sup>16</sup>The parties to a divorce are called the petitioner and the respondent.<sup>17</sup>

## 2.3GENERAL EFFECTS OF DIVORCE ON THE PARTIES

Divorce has a legal consequence on the personal relationship of the parties' and on the financial provision and the division of marital property adjustment orders of the parties.<sup>18</sup>The resources which previously financed one home will be shared to sustain two separate houses.<sup>19</sup>

In cases where there are children, maintenance and custody arrangements are the most disputed matters.<sup>20</sup>Eventhough the marital relationship ends, couples with children will continue to deal with each other as parents.<sup>21</sup>

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<sup>11</sup> Kate Standeley, *Family Law* (2008) p 135

<sup>12</sup> Stephen Cretney, *Family law in the twentieth century*, (2003) p 16

<sup>13</sup> S.M Cretny and J.m Masson, *Principles of family law*, (1990) p 81

<sup>14</sup> *ibid*

<sup>15</sup> Brayan A, Garner, *Blacks Law Dictionary*, p 515

<sup>16</sup> Margaret Dicanio, *The encyclopedia of Marriage, Divorce and the Family* (1989) p 172

<sup>17</sup> *supra* note, p 142

<sup>18</sup> *id* p152

<sup>19</sup> *Ibid*

<sup>20</sup> Lilian Edwards and Anne Griffiths, *Family Law*, (2006) p 449

<sup>21</sup> Robert E, Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations* (2004) p 98

### **2.3.1 Effects of divorce on Personal relationship**

Once a decree absolute has been granted, the marriage is dissolved and each party is free to remarry.<sup>22</sup> Divorce brings the parties personal relationship to an end.<sup>23</sup> Even though divorce ends the personal relationship between the spouses, the personal relationship between the parent and the child persists.<sup>24</sup> The relationship between the parents and child is given special consideration since it promotes the social goal of providing safety and nurture for children.<sup>25</sup> Disputes on custody and maintenance affect post-divorce parenting. Despite the fact that parents are the primary guardians of children, in cases of disagreement on post-divorce arrangement of the children courts decide:

Which parent shall have the child living with them, and any, issue of contact on the basis that the welfare of the child is paramount but having regard to the views of the child.<sup>26</sup>

### **2.3.2 Effects of divorce on property and financial adjustment**

Divorce has a legal consequence on the parties in distributing and reallocating their property and financial assets.<sup>27</sup> The marital home is one of the major issues in dividing property.<sup>28</sup> The marital home is very important not because of its financial value but it provides accommodation for the family.<sup>29</sup> The provision of accommodation and the provision of a home for any children are the primary consideration of a court.<sup>30</sup> In USA, as far as minor children are concerned, judges like to give possession of the marital home to the custodial parent until the children are of legal age.<sup>31</sup> The non-custodial parent will get his/her share against the property payable on the sale of

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<sup>22</sup> Kate Standeley, *Family Law* (2008) p 152

<sup>23</sup> S.M Cretny and J.m Masson, *Principles of family law*, (1990) p 81

<sup>24</sup> Lilian Edwards and Anne Griffiths, *Family Law* ,(2006) p 450

<sup>25</sup> Margaret Dicanio, *The encyclopedia of Marriage, Divorce and the Family* ,(1989) p 352

<sup>26</sup> Supra note 24, p 121

<sup>27</sup> Supra note 22, p 152

<sup>28</sup> Ronald Sharp, *Wining the divorce war*,(1998) p 48

<sup>29</sup> Supra note 22, p 189

<sup>30</sup> ibid

<sup>31</sup> Ronald Sharp, *Wining the divorce war*,(1998) p 48

the property or upon the youngest child reaches the age of majority.<sup>32</sup>

Division of property between the parties can be sorted in to three basic types.<sup>33</sup> These are: title based distribution, pure equitable distribution and marital property distribution.

#### **2.3.2.1. Title based distribution**

Under this type of distribution, property is awarded to the spouses as they owned it during the marriage. And courts have little or no discretion over property division for the governing principle is that the property in divorce case goes to whom so ever name it is titled in.<sup>34</sup>

#### **2.3.2.2. Pure equitable distribution**

Courts has discretion under this type of distribution to divide all the property of both spouses as just and proper.<sup>35</sup>

#### **2.3.2.3. Marital property distribution**

This type of property division is the most commonly used system. Under this system courts have less discretion than the equitable distribution system since they have the power to decide on the marital properties only.<sup>36</sup>

Divorce can be hazardous to the financial property of the parties.<sup>37</sup> Social security and pension rights and taxation can be affected and the parties may lose rights under certain matrimonial legislation.<sup>38</sup>

Division of property and financial adjustment has an adverse effect on the economic capacity of the divorced parties.

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<sup>32</sup> ibid

<sup>33</sup> Leslie J, Harris, Lee E. Teitelbaum, Carol A. Weisbrod, *Family Law* (1996) p 329

<sup>34</sup> ibid

<sup>35</sup> ibid

<sup>36</sup> ibid

<sup>37</sup> Ronald Sharp, *Wining the divorce war*, (1998) p20

<sup>38</sup> Kate Standley, *Family Law*, (2008) p 152

## **2.4 The role of Parents on the lives of their children**

The biological definition of being a parent is simply contributing a set of chromosomes to a fertilized egg.<sup>39</sup> It is a long term commitment to nurturing an infant in to a child, adolescent and then in to adult life.<sup>40</sup> The natural relationship between parents and children is an essential contribution to the development of the children.<sup>41</sup>

Apart from the natural relationship, a child's first legal relationship is with his parents.<sup>42</sup> As primary guardians of child well-being, the views ,perceptions and practices of families determine the way children are treated and cared.<sup>43</sup> Parents play a vital role on the child's wellbeing.<sup>44</sup>

The specific qualities of relationships between parents and their children are commonly held to account for both positive and negative outcomes of the development of personality through the life span.<sup>45</sup>

Families provide an intimate and comprehensive caring environment for their children.<sup>46</sup>

Parents can affect their children for good or ill. Hence parent child relationship should be given special consideration because it promotes the social goal of providing safety and nurture for children.<sup>47</sup>

## **2.5 General Effects of Divorce on Children**

Once a decree absolute has been granted, a divorce court has jurisdiction to give order on the settlement of disputes in respect of any child in the marriage.<sup>48</sup> Post divorce children arrangement is the most crucial and disputed matter both in and out of courts.<sup>49</sup> When parents disagree on

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<sup>39</sup> Sharon Ding and Karen Littleton, *Childrens personal and social development*,(2005) p13

<sup>40</sup> id p 13-14

<sup>41</sup> id p 15

<sup>42</sup> Lilian Edwards and Anne Griffiths, *Family Law*,(2006) p 72

<sup>43</sup> African Child policy forums, *The African Report on child well-being*, (2008) p 1

<sup>44</sup> ibid

<sup>45</sup> supra note 38 p 13

<sup>46</sup> David Cheal, *Sociology of Family life*,(2002) p 94

<sup>47</sup> Margaret Dicanio, *The encyclopedia of Marriage, Divorce and the Family* ,(1989) p 352

<sup>48</sup> Kate Standley, *Family Law*, (2008) p 152

<sup>49</sup> Supra note 42,p 449

post-divorce arrangements for children, the court will decide which parent shall have the child living with him/her and any issue of contact on the basis of welfare of the child.<sup>50</sup>

Children's adjustment to divorce is directly related to the level of conflict between the parents.<sup>51</sup>

Parental separation affects many children and their families. Where the process of separation is handled well, the adverse impact on children is minimized. Where separation goes badly and, in particular where children are drawn in parental conflict, then the effects can be profoundly damaging for children.<sup>52</sup>

Children whose parents exhibit a high degree of conflict after divorce experience more difficulty adjusting than children whose parents has a better relationship.<sup>53</sup> Disputes related to custody, visitation right and maintenance are some of the effects of divorce with respect to children.

### **2.5.1 Custody**

Custody is guardianship of the children determined by court when a family breaks up.<sup>54</sup> Historically; there were no custody disputes in divorce case.<sup>55</sup>

*Children were considered "chattels" that is, property that belonged to the father, just like the cows, goats and pigs.*<sup>56</sup>

However a variety of custody arrangements have emerged due to changing sex roles and an increased understanding of the importance of both parents in child development.<sup>57</sup> In cases of custody disputes courts are often confronted with daunting act of allocating rights and responsibilities between two generally fit and incompatible parents.<sup>58</sup> Custody fights are adversarial and each parent tries to present the most evidence to support his/her claim.<sup>59</sup>

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<sup>50</sup> id p 121

<sup>51</sup> Robert E. Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 98

<sup>52</sup> Supra note 47 p 290

<sup>53</sup> Supra note 50

<sup>54</sup> Margaret Dicanio, *The encyclopedia of Marriage, Divorce and the Family*, (1989) p 144

<sup>55</sup> Ronald Sharp, *Winning the divorce war*, (1998) p27

<sup>56</sup> ibid

<sup>57</sup> supra note 51, p 183

<sup>58</sup> J.Shoshana Ehrlich, *Family Law paralegals*, (2002) p 183

<sup>59</sup> Supra note 55

Even though the presumption of the law is a child's parents are generally best suited to safeguard his/her interests, this can be subject to dispute where disagreement arises between the parties.<sup>60</sup>

Recently, most states use the best "interest of the child" as a standard to resolve custody disputes between parents. The "interest of the child" requires special focus and analysis of a Child's needs and an assessment of which of the two parents can best meet those needs.<sup>61</sup>To address those concerns states use promulgating statutory enactment or judicial decisions or guide lines that enumerate specific factors a judge must consider in making a custody decisions.<sup>62</sup>Michigan and number of other states used the following factors before deciding custody.<sup>63</sup>

The love affection and other emotionality's existing between the parties involved and the child, the capacity and disposition of the parties involved to give the child love, affection, guide lines and continuation of the education and raising of the child in his or her religion and creed, if any the capacity and disposition of the parties involved to provide the child with food, clothing and medical care or other remedial care recognized and permitted under the laws of the state in place of medical care and other material needs, the length of time a child has lived in a stable, satisfactory environment and the desirability of maintaining continuity, the permanence as a family unit of the existing or proposed custodial home, the reasonable preference of the child if the court finds the child to be of sufficient age and maturity to express preference, the willingness and ability of each of the parents to facilitate and encourage a close and continuing relationship between the child and the other parent.

Based on the above standards, courts decide different custody arrangements. These are legal custody, physical custody and joint legal and physical custody.

### **2.5.1.1 Legal custody**

Legal custody is a parent's authority to make major decisions on behalf of the child. These decisions include decisions to the Child's religion, education and medical treatment. And this

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<sup>60</sup> Joseph Goldstein, Anna Freud, Albert J.Solnit, *Beyond the best interests of the child*, (1979) p 66

<sup>61</sup> J.Shoshana Ehrlich, *Family Law paralegals*, (2002) p 186

<sup>62</sup> *ibid*

<sup>63</sup> Ronald Sharp, *Wining the divorce war*,(1998) p28

type of custody can be awarded to one parent or it can be shared by both parents.<sup>64</sup>When parents share legal custody, without participating the other parent, neither parent is supposed to make a majority decision affecting the child.<sup>65</sup>

### **2.5.1.2 Physical custody**

Physical custody is a parent's right to have the child resides with him/her and the parent's obligation to provide the routine daily care and control of the child.<sup>66</sup> This type of custody can also be awarded to one parent or it can be shared by both parents.<sup>67</sup>Physical custody does not require fifty-fifty time sharing for the day to day care of the child. Both parents are responsible and to this effect they can make different arrangements.<sup>68</sup>

Each parent would maintain a home for the child who would in effect have two principal places of residence. A child might have one primary residence but spend a significant amount of time with the other parent who would remain much more directly and consistently involved in the child's life than the traditional visiting parent.<sup>69</sup>

### **2.5.1.3 Joint Legal and physical custody**

Joint custody began to be discussed as a way of enabling children to maintain an ongoing relationship with both parents following divorce.<sup>70</sup> Joint custody is co-parenting and the practice is neither parent can make a major decision without consulting the other parent.<sup>71</sup>

The primary consideration in approving joint custody is the ability of the parents to cooperate in making important decisions affecting the child.<sup>72</sup>

Joint custody encompasses a wide variety of parenting arrangement. Some parents share joint

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<sup>64</sup> Robert E. Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 99

<sup>65</sup> J. Shoshana Ehrlich, *Family Law paralegals*, (2002) p 201

<sup>66</sup> Supra note 64

<sup>67</sup> ibid

<sup>68</sup> supra note 65

<sup>69</sup> ibid

<sup>70</sup> Supra note 65

<sup>71</sup> Margaret Dicano, *The encyclopedia of Marriage, Divorce and the Family* ,(1989) p 144

<sup>72</sup> Ronald Sharp, *Wining the divorce war*, (1998) p39

legal custody even though one of the parents is sole physical custodian or both parents share both joint legal and physical custody.<sup>73</sup>

### **2.5.2 Visitation Right**

Custody laws recognize the importance of child's relationship with both parents after divorce.<sup>74</sup> Denying custody does not sever the parent child relationship. A parent who does not have either legal or physical custody of the child is still that child's parent.<sup>75</sup> To this effect, the non-custodial parent is awarded visitation right.<sup>76</sup> Unless it is harmful to the best interests of the child, visitation rights should be reasonable.<sup>77</sup> Visitation rights permit the non-custodial parent maintaining his/her relationship with the child.<sup>78</sup>

Because of the reason that the non-custodial parent plays a less significant role in the life of the child than the custodial parent, courts generally use a lower standard for deciding about visitation than they do for deciding about custody.<sup>79</sup> Some of these standards are frequency, length and location of visitation and whether someone else beside the non-custodial parent must be present at the time of visitation.<sup>80</sup>

It is the parents that divorce not the kids, but some custodial parents use visitation as reward or punishment for paying or not paying support by the non-custodial parent.<sup>81</sup> Similar to the custody issues bitter fights may occur around visitation. The non-custodial parent may assert that the custodial parent refuses to let him/her see the child while the custodial parent may assert that

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<sup>73</sup> Robert E. Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 99

<sup>74</sup> Ronald Sharp, *Wining the divorce war*, (1998) p37

<sup>75</sup> J.Shoshana Ehrlich, *Family Law paralegals*, (2002) p 205

<sup>76</sup> Samuel M.Davis, Elizaneths.Scott, Walter Wadlington, Charles H.White bread, *Children in the legal system*, (2004) p86-87

<sup>77</sup> *ibid*

<sup>78</sup> Margaret Dicano, *The encyclopedia of Marriage, Divorce and the Family*, (1989) p 144

<sup>79</sup> *Supra* note 75, p 206

<sup>80</sup> *Supra* note 76

<sup>81</sup> *Supra* note 74, p38

he/she always gets the child ready and the other parent never shows up<sup>82</sup> Custodial determinations are not permanent. The non-custodial parent who is granted visitation right may seek to modify the existing arrangement and acquire custodial rights at some point in the future.<sup>83</sup>

Custodial parents are advised not to withhold visitation rights, even if the non-custodial parent is not paying support because the custodial parent is expected to try to maintain a relationship between the children and the non-custodial parent.<sup>84</sup>

### **2.5.3 Maintenance/child support**

Maintenance/child support is commonly defined as payments by one parent to the other parent for the support of their common child.<sup>85</sup> Parents are obliged to maintain their minor children.

The fact that a custodial parent is able to support a child without financial assistance from the non-custodial parent does not necessarily shield the non-custodial parent from making support payment.<sup>86</sup>

The amount of contribution of maintenance to children by parents depends on their resource capability.<sup>87</sup> The question of maintenance of the child arises only if the parents are separated or divorced.<sup>88</sup> In this regard parents may agree on the amount of maintenance. If not courts decide on it.<sup>89</sup> If financial property provision is sought in the courts, it may take the form of maintenance which the court orders in the form of lump sum rate or a regular contribution to the upkeep of the child.<sup>90</sup>

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<sup>82</sup> J. Shoshana Ehrlich, *Family Law paralegals*, (2002) p 205

<sup>83</sup> *ibid*

<sup>84</sup> Margaret Dicano, *The encyclopedia of Marriage, Divorce and the Family*, (1989) p 146

<sup>85</sup> Robert E. Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 163

<sup>86</sup> *ibid*

<sup>87</sup> *The International survey of family Law*, (2003) p 453

<sup>88</sup> *ibid*

<sup>89</sup> *ibid*

<sup>90</sup> Kate Standley, *Family Law*, (2008) p 318

The court can give orders of periodical payments or lump sum order. Periodical payments can be secured or unsecured. Payments can be made from unsecured income using the capital asset or other property as security for payments or it can be made from secured income.<sup>91</sup> where as the lump sum order can be made in instalments. The advantage of the lump sum order is that it can be used to affect a clean break between the parties.<sup>92</sup>

### **2.5.3.1 Maintenance/Child support Guide line**

In United states of America, because of the variety factors considered and the considerable extent of judicial discretion, child support awards have lacked uniformity with in individual state as well as between states.<sup>93</sup> These results insufficiency in child support amounts and inconsistent treatment of similar situated parties.<sup>94</sup> To avoid this, the congress enacted a legislation to require all states to develop guideline for determining child support.<sup>95</sup> In response of this, states have adopted a variety of child support guide line models. The income share model and the percentage of income are some of the models. The income share model states that a child involved in a divorce or paternity determination should receive the same proportion of parental income as if they have lived together as a family.<sup>96</sup>

The percentage of income states that one takes obligors net income and deducts those items allowed by the statute like taxes medical insurance, social security and reasonable pension payment.<sup>97</sup>

### **2.5.3.2 Child support enforcement agencies**

As far as Child maintenance disputes are concerned, cases are dealt with by the child support agency although courts have some limited jurisdiction to make orders for child maintenance.<sup>98</sup>

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<sup>91</sup> id 164

<sup>92</sup> ibid

<sup>93</sup> John De Witt Gregory, Peter N. Swisher L. Wolf, *Understanding family law*, (2001) p317

<sup>94</sup> ibid

<sup>95</sup> Robert E. Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 167

<sup>96</sup> id p 168

<sup>97</sup> Supra note 95, p 168

<sup>98</sup> Kate Standley, *Family Law*, (2008) p 318

However it is the courts not the agency can only make orders for capital sums.<sup>99</sup>The child support agency has powers and duties under the child support act and regulation to calculate and review child maintenance and to collect and enforce payment.<sup>100</sup>

Where a parent is unwilling to pay child maintenance or sufficient child maintenance, an application can be made to the child support agency. However parents are under no obligation to apply to the agency.<sup>101</sup>

## **2.6 General effects of divorce on the enjoyment of human rights of children**

Divorce has a significant impact on the lives of children. Custody, maintenance and visitation right arrangements are the most crucial effects in the post-divorce life of children. More over the absence of the non-custodial parent, the adjustment of the custodial parent, the conflict between the parents, the economic hardship and the stressful life changes are very influential.<sup>102</sup>

### **2.6.1 Effects of divorce on the right to participation**

Childhood is often seen as passive and dependent, a time in which children make no contribution to the outcomes that make difference on their development.<sup>103</sup>In divorce disputes parents try to force the courts to enter and decide what is in the children's best interests.<sup>104</sup>Adults do not always act in children's best interests and they may not necessarily know what in fact is in the Childs best interests at all.<sup>105</sup>

Whether the overall guide line to child placement is in terms of best interest on least detrimental alternative. The court cannot do complete justice unless the child is recognized as a necessary, indeed, indispensable party to the proceeding.<sup>106</sup>

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<sup>99</sup> ibid

<sup>100</sup> ibid

<sup>101</sup> ibid

<sup>102</sup> Robert E. Oliphant and Nancy Ver Steegh, *Family Law Examples and explanations*, (2004) p 98

<sup>103</sup> Save the children, *Children's Rights*, (2001) p71

<sup>104</sup> David H. Olson and John DeFrain *Marriage and the Family*, (2000) p 494

<sup>105</sup> ibid

<sup>106</sup> Joseph Goldstein, Anna Freud, Albert J. Solnit, *Beyond the best interests of the child*, (1979) p 65

In decisions of custody and visitation right, courts listen to the views of the child if they found that the child is of sufficient age and express his/her views.<sup>107</sup>

If children are not given the chance to give their perspectives, any action or intervention on the part of adults will be based on what will often be inaccurate assumptions on what is happening to children.<sup>108</sup>

### **2.6.2 Effects of divorce on the right of the child to maintain personal relations and direct contact with both parents**

Decisions of custody usually affect the right of the child to preserve direct contact and personal relations with both parents. Courts award visitation rights for the non-custodial parent.<sup>109</sup> And the right of the child to preserve personal relations with both parents depends on the decision of the courts and on the willingness of the non-custodial and custodial parent. Custodial parents may deny the visitation right of the non-custodial parent. To exercise his/her right, the non-custodial parent may make a compliant And at the contrary the non-custodial parent may not visit the children.<sup>110</sup> More over due to changing circumstances a petition for change of custody can be filed by the non-custodial parent.<sup>111</sup> This disputing issues between the divorced parents have an adverse effect on the right of the child to maintain personal relations and direct contact with both parents.

### **2.6.3 Effects of divorce on the right to health**

Divorce creates economic hardship on parents because of the division of economic resources between the parties. Families choices about housing, healthcare and food care is influenced by economic forces.<sup>112</sup> Divorced parents may neglect their children to provide adequate care for the

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<sup>107</sup> Ronald Sharp, *Wining the divorce war*, (1998) p38

<sup>108</sup> Save the children, *Children's Rights*, (2001) p71

<sup>109</sup> J.Shoshana Ehrlich, *Family Law paralegals*, (2002) p 206

<sup>110</sup> Supra note 107

<sup>111</sup> id p 118

<sup>112</sup> Jan Hrwath, *Child Neglect*, (2007) p 20

child.<sup>113</sup>Health may be affected through lack of shelter, nutrition and not getting timely medical care.<sup>114</sup>

Children face particular health challenges related to the stage of their physical and mental development.<sup>115</sup>Children in divorced families may not get proper care for their health because the effectiveness of parents to provide their children with the necessary needs depend on their ability and capacity.<sup>116</sup>

#### **2.6.4 Effects of Divorce on the right to life survival and development**

Financial arrangements have an impact on the economic well-being of the family members in post-divorce situations.<sup>117</sup>The significance of money in understanding the impact on children of divorced families is crucial.<sup>118</sup>

The right to life survival and development is related to a number of factors.<sup>119</sup>It can be interpreted to the developmental process that all children undergo in the passage to adulthood.<sup>120</sup>To ensure this right, children need adequate standard of living,shelter,nutrition and access to medical services.<sup>121</sup>

Children are vulnerable to a lack of adequate food as they need nutritious and safe food to grow physically and mentally.<sup>122</sup>

Child support payers may refuse to pay child support or change jobs or become unemployed.<sup>123</sup>Disputes related to maintenance and its enforcement may continue to enforce maintenance.<sup>124</sup> In the meantime children will be deprived of the enjoyment of their rights.

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<sup>113</sup> id p 14

<sup>114</sup> id p 24

<sup>115</sup> Office of the united Nations High Commissioner for Human Rights, *The Right to health* , Fact sheet No 31p14

<sup>116</sup> African Child policy Forum, *The African Report on Child Well being*, (2008) p 1

<sup>117</sup> *The well being of children following parental separation and divorce research Consortium* ,p 9

Available at [www-med.monash.edu.au/children well being rc/](http://www-med.monash.edu.au/children_well_being_rc/) Child well being

<sup>118</sup> ibid

<sup>119</sup> *The International Journal of children's Rights*, volume 6, (2008) p10

<sup>120</sup> ibid

<sup>121</sup> ibid

<sup>122</sup> Supra note 115,p16

<sup>123</sup> Ronald Sharp, *Wining the divorce war*, (1998) p121

<sup>124</sup> ibid

### 2.6.5 Effects of Divorce on the right to Education

The burden of parents to be on the front line in insisting on education for their children is a global reality.<sup>125</sup> Divorce has an adverse impact on the economic capabilities of parents to provide the necessary needs. Education may be affected by inattention to general and special educational needs, lack of proper nutrition, lack of books, failure to enroll in school or pre-school.<sup>126</sup>

Research has shown that:-

Preschool nutritional status has a great performance on the performance of children in primary education. Under nourished children have compromised cognitive functioning, and have poorer psychomotor development, lower activity levels, a lower level of interaction with the environment and lower learning abilities and skills.<sup>127</sup>

In disputes of divorce, children are not legally represented as independent party to the disputes. The economic hardships of divorced parents make them unable to provide their children with the necessary needs. Hence; divorce has an adverse impact on the enjoyment of the human rights of children indirectly.

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<sup>125</sup> African Child policy Forum, *Educating children with disabilities in Africa*, (2011) p69

<sup>126</sup> Jan Hrwath, *Child Neglect*, (2007) p 24

<sup>127</sup>urban Jonsson, *The Economic significance of investing in children*, (2010) p33

## 2.7 Experience of some Countries

In Texas, the court in the jurisdiction where the custodial parent lives, issued child support orders. The Texas Attorney General Office ensures the enforcement of the payment arrangements are kept during the child's youth. For the guaranty of the enforcement of child support, Texas law requires all payments to be garnished directly from the non-custodial parent's paycheck.<sup>128</sup>

In Australia, Child Support is handled by the Child support enforcement agency in the event of divorce.<sup>128</sup> The [Child Support Agency](#) can arrange regular payments to the Child Support Agency or salary deductions for the paying parent. If the debtor fails to pay, the Child Support Agency may take the debtor to court for enforcement of payment. If the other parent does not put in tax returns for a number of years, the Child Support Agency will inspect those periods and may show that the noncustodial parent should have to pay the custodial parent child support for those years.<sup>130</sup>

New Mexico courts, apply child support guidelines in calculating child support. Before deciding amount of maintenance, courts first calculate the total parental income by adding each parent's monthly income and then apply that amount to the child support guidelines based on the number of children. Finally they determine the amount of money contributed by each parent monthly. In situations where the noncustodial parent exerts great effort to avoid payment, Mexico child support law provides different technique to enforce payment of maintenance. Some of this techniques are revoking the noncustodial parent's driver's license and/or professional license and arresting a noncustodial parent and intercepting a noncustodial parent's tax refund for failure of payment of maintenance.<sup>131</sup>

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<sup>128</sup> [file:///F:/Child%20Support%20Law%20%20How%20To%20Information%20\\_%20eHow.com.htm](file:///F:/Child%20Support%20Law%20%20How%20To%20Information%20_%20eHow.com.htm)

<sup>129</sup> *ibid*

<sup>130</sup> <file:///F:/Collection-and-enforcement-of-child-support.aspx.htm>

<sup>131</sup> [file:///F:/list\\_6631085\\_new-state-child-support-laws.html](file:///F:/list_6631085_new-state-child-support-laws.html)

In Virginia, Child support is determined by the combined gross income of both parents, according to Divorce. The department of social services is responsible for enforcing child support laws and bringing action on those who fail to pay maintenance.<sup>132</sup>

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<sup>132</sup> [file:///F:/Child%20Support%20Law%20%20How%20To%20Information%20\\_%20eHow.com.htm](file:///F:/Child%20Support%20Law%20%20How%20To%20Information%20_%20eHow.com.htm)

## CHAPTER THREE

### INTERNATIONAL REGIONAL AND NATIONAL INSTRUMENTS RELATED TO CHILDRENS RIGHT

#### 3.1 International Human rights instruments

##### 3.1.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights is an international Human rights instrument which is applicable to all human beings without any distinction. The declaration deeply recognizes the inherent dignity and of the equal and inalienable rights of all members of human family as the foundation of freedom, justice and peace in the world.<sup>1</sup>UDHR recognizes that all human beings are born free and equal in dignity and right.<sup>2</sup>It also states that everyone has the right to life, liberty and the security of person.<sup>3</sup>

UDHR also recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.<sup>4</sup>The declaration clearly specified that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing<sup>1</sup>, housing and medical care and necessary social services.<sup>5</sup>And the right for mothers and children to special care and assistance is also recognized.<sup>6</sup>

All Human rights are universal, indivisible and interdependent.<sup>7</sup>The absence of one right affects the other right. For example, the right to food is inseparably linked to the dignity of human rights and is therefore essential for the enjoyment and fulfillment of such other rights to health and the right to life.<sup>8</sup>

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<sup>1</sup>*Universal Declaration of Human Rights*, preamble ,(1948)

<sup>2</sup> id,article 1

<sup>3</sup> id,article 3

<sup>4</sup> id,article 16:-3

<sup>5</sup> id article 25:-1

<sup>6</sup> id,article 25:-2

<sup>7</sup> J.Oloka-Onyango,*Reinforcing Marginalized Rights in an age of Globalization: International mechanisms,Non state actors and the struggle for peoples*,(2003)

<sup>8</sup> ibid

Children face particular health challenges related to the stage of their physical and mental development, which makes them especially vulnerable to malnutrition and infectious diseases and when reach adolescence to sexual reproductive and mental health problems.<sup>9</sup>

Most child hood deaths can be attributed to a few major causes- acute respiratory infections, diarrhea, measles and malnutrition.<sup>10</sup> Around half the deaths of children under the five years of age are caused by under nutrition .<sup>11</sup> Children are especially vulnerable to a lack of adequate food which enables them to grow physically and mentally.<sup>12</sup> The loss of economic power of divorced parents has its own effect on providing the child with adequate food and protecting the child's health.

Divorce represents changes in social life, changes in parenting patterns, changes in financial status and changes in home life and makes the children to miss having two parents.<sup>13</sup>

Children are dependent on their families or care givers for food, health and any protection for their physical and mental development.<sup>14</sup> The loss of economic capacity of families and care givers to provide adequate food, protect their health and nurture the children due to divorce has a significant impact on the enjoyment of these rights.

### **3.1.2 The International Covenant on Civil and Political rights**

In line with the UDHR, the ICCPR recognizes that the inherent dignity and of the equal and inalienable rights of all the members of the human family is the foundation of freedom, justice and peace.<sup>15</sup> In the same manner to article 3 of the UDHR, ICCPR recognizes the inherent right to life.<sup>16</sup> It also recognizes that family is the natural and fundamental group unit of society.<sup>17</sup> And the

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<sup>9</sup> Office of the united Nations High Commissioner for Human Rights, *The Right to Health*, Fact Sheet

No 31 p 14

<sup>10</sup> ibid

<sup>11</sup> id p 16

<sup>12</sup> Ibid

<sup>13</sup> Margaret Dicanio, *The Encyclopedia of Marriage, Divorce and the Family*, (1989) p172

<sup>14</sup> Supra note 7 p 16

<sup>15</sup> *The International Convention on Civil and Political Rights*, Preamble, (1966)

<sup>16</sup> id article 6:-1

<sup>17</sup> id article 23:-1

obligation of states to take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage ,during marriage and its dissolution is also recognized. And it provides that in the case of dissolution, provisions shall be made for the necessary protection of every children.<sup>18</sup>

Families are one of the actors that provide first line protection to the child.<sup>19</sup>Divorce breaks the family bond. It also affects the resources which were previously financed for one home, now to sustain two separate homes.<sup>20</sup>Growing up in a single parent family or step family is associated with a lower level of well-being and poorer life outcomes than living with two biological parents.<sup>21</sup>

The effects of divorce have a significant impact on the right of child to family bond and the responsibility of the parents to protect the rights of their children.

### **3.1.3The International Covenant on Economic, Social and Cultural Rights**

Similar to the UDHR and ICCPR,the International covenant on economic ,social and cultural rights recognizes that the widest possible protection and assistance should be accorded to the family ,which is the natural and fundamental group of society, particularly for its establishment and while it is responsible for the care and education of dependent children.<sup>22</sup>It is also stated that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions.<sup>23</sup>

More over ICSECR provides that the rights of every one to an adequate standard of living for himself and his family, including adequate food clothing and to the continuous improvement of

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<sup>18</sup> id article 23:-4

<sup>19</sup> African child policy forum, African report on child well being, *How child friendly are African Governments*, (2008) p 1

<sup>20</sup> Lillian Edwards and Anne Griffiths, *Family Law*, (2006) p 448

<sup>21</sup> Andrew J.Cherlin, Going to Extremes, *Family structure, Children's well being and Social Science*, (1999) p 4

<sup>22</sup> *The International Convention on Economic Social and Cultural Rights*, article 10:-1,(1966)

<sup>23</sup> id article 10:-3

living conditions.<sup>24</sup>The right of every one to the enjoyment of highest attainable standard of physical and mental health,<sup>25</sup>the right to education<sup>26</sup>are also recognized.

As discussed in section 3.1 of this chapter, because of the changes of social life, parenting, financial status and home life due to divorce, parents face different problems to provide their Children with the necessary needs for their well-being. As a result children will be affected from getting adequate standard of living.

### **3.1.4 Convention on the right of child**

The convention on the right of child was mainly adopted to deal with the right of the child. It states that child hood is entitled to special care and assistance.<sup>27</sup>CRC stipulates that:-

the family ,as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community .<sup>28</sup>

The main question for parents when considering divorce is what impact the divorce will have on their children.<sup>29</sup>As primary guardians of child well-being, the views, perceptions and practices of families determine the way children are treated and cared.<sup>30</sup>

CRC defines the term child to mean every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.<sup>31</sup>

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<sup>24</sup> id article 11:-1

<sup>25</sup> id article 12:-

<sup>26</sup> id article 13

<sup>27</sup> *Convention of the Right of Child*, (1989), preamble

<sup>28</sup> Ibid

<sup>29</sup> David H.Olson and John Defrain, *Marriage and the Family*, (2000) p494

<sup>30</sup> African Child policy forum, *African report on child well being*, (2008) p 1

<sup>31</sup> *Supra note 27*, article 1

The convention essentially recognizes that:

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities of legislative bodies ,the best interest of the child shall be a primary consideration.<sup>32</sup>

CRC prescribes that the state parties to the convention must undertake the appropriate legislative and administrative measures to ensure the protection and care of the child for his or her well-being ,taking in to accounts the rights and duties of his or her parents, legal guardians or other individuals legally responsible for the child.<sup>33</sup>It further states that state parties shall undertake all legislative,administrative,and other measures for the implementation of the rights recognized in the present convention.<sup>34</sup>

The convention recognizes that every child has the inherent right to life and state parties shall ensure to the maximum extent possible to survival and development of the child.<sup>35</sup>The right to life, survival and development relates to life expectancy, child mortality, immunization, malnutrition, preventable diseases and other related issues.<sup>36</sup>Survival right covers a child's right to life and the needs that are most basic to a child's existence which include adequate living standards ,shelter, nutrition and access to medical services.<sup>37</sup>

The convention essentially provides that a child shall not be separated from his or her parents against their will, except when competent Authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.<sup>38</sup>And in any proceeding regarding this right state parties shall ensure all interested parties shall be given an opportunity to participate in the proceedings and make their

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<sup>32</sup> id article 3:-131

<sup>33</sup> id article 3:-2

<sup>34</sup> id article 4

<sup>35</sup> id article 6

<sup>36</sup> African child policy forum, *In the best interests of the child*, (2007) p 36

<sup>37</sup> ibid

<sup>38</sup> *Convention on the right of Child*, article 9:-1, (1989)

views known.<sup>39</sup> More over state parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.<sup>40</sup>

CRC states that state parties shall assure to the child which is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.<sup>41</sup> One of the most innovative features of the CRC is the recognition of the child's right to participate and be heard at all levels.<sup>42</sup> The CRC committee advises that states amend (their) legislation to fully reflect article 12 of the convention so that any child who is capable of forming his/her view can express those views freely including in all administrative and judicial proceedings affecting them.<sup>43</sup>

The right to participation is mainly realized specifically in regard to civil proceedings, like child custody and divorce.<sup>44</sup> In Ethiopia, in cases of adoption, children over ten years can express their view and have them considered.<sup>45</sup> But the CRC does not set a minimum age limit for participation of children and the age restriction is arguably against the CRC.<sup>46</sup>

More over the convention states that state parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.<sup>47</sup> The right to health, right to a standard of living adequate for the child's physical mental, spiritual, moral and social development and right to education are also recognized.<sup>48</sup>

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<sup>39</sup> id article 9:-2

<sup>40</sup> id article 9;-3

<sup>41</sup> id article 12

<sup>42</sup> African child policy forum, *In the best interests of the child*, (2007) p 44

<sup>43</sup> id p 45

<sup>44</sup> ibid

<sup>45</sup> *Federal Revised Family code*, article 191:-3, (2000)

<sup>46</sup> ibid

<sup>47</sup> *Convention on the right of Child*, article 18, (1989)

<sup>48</sup> id articles 24 27 28 consecutively

The obligation to ensure the highest attainable standard of health for children builds on and develops to right to life and to survival and development.<sup>49</sup>

CRC provides the right of the child to legal and other assistance.<sup>50</sup> Recent legislation on children in Africa countries points this right is required to be respected not only in criminal proceedings but in civil ones also.<sup>51</sup> Ato Desalegn Berhe president of Federal first instance courts stated that in cases where children are not parties to the dispute, there are parties who make disputes on behalf of them. Adoption, custody and maintenance cases are some of the examples. Where the dispute is about children, it is not fair to decide on the lives of children by hearing the disputes of others where there is no party represented only for the right of children.<sup>52</sup>

In many Divorce cases, children often become pawns of divorcing parents who want to get back at each other.<sup>53</sup> The absence of the non-custodial parent and the conflict between the parents have a great impact on children's adjustment to divorce.<sup>54</sup> The economic hardship on the custodial parent to provide the child with the necessary needs has an influence on the enjoyment of the child's rights. Rights are interdependent. The absence of one right affects the other right.

The right to education has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also in many ways a civil right and a political right, since it is central to the full effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.<sup>55</sup>

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<sup>49</sup> African child policy forum, *In the best interests of the child*, (2007) p 48

<sup>50</sup> *Convention on the Right of Child*, article 40:2:b, (1989)

<sup>51</sup> The African child policy forum, *child friendly laws in Africa* (2009) p 51

<sup>52</sup>

(2000), translation mine

<sup>53</sup> David H. Olson and John DeFrain, *Marriage and the Family*, (2000) p 494

<sup>54</sup> Robert E. Olipant, Nancy Ver Steegh, *Family law Examples and Explanations*, (2004) p 98

<sup>55</sup> United Nations Economic and Social Council committee UN Economic, Social and Cultural Rights, General comment No 11 (1999) p 9

The burden of families particularly parents to be on the front line in insisting their children is a globally reality.<sup>56</sup> Divorce has an impact on the economic capacity of parents. It has also an influence on children when parents are preoccupied with their own adjustment to carry out their responsibilities adequately after divorce.<sup>57</sup> The effectiveness of families towards their children depends on their ability and capacity to provide for their children's physical, intellectual and material needs.<sup>58</sup>

### **3.2 Regional human rights instruments related to the rights of the child**

#### **3.2.1 The African charter on Humans and people's rights**

The African charter on humans and people's rights is a regional document. The charter recognizes the right to life, right to health and right to education.<sup>59</sup> It provides that the family shall be the natural unit and basis of society. And it shall be protected by the state which shall take care of its physical health and moral. It further states that the state shall ensure the protection of the right of the woman and the child as it is stipulated in the international declarations and conventions.<sup>60</sup>

The African charter recognizes individual duties by stating that every individual shall have duties towards his family and society, the state and other legally recognized communities and the international community.<sup>61</sup> More over it provides that every individual has the duty to preserve the harmonious development of the family and to

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<sup>56</sup> African child policy Forum, *Educating Children with Disabilities*, (2011) p 69

<sup>57</sup> *The well being of children following parental separation and divorce research Consortium* p 2-3

Available at [www-med.monash.edu.au/children\\_well\\_being/rc/Child\\_well\\_being](http://www-med.monash.edu.au/children_well_being/rc/Child_well_being)

<sup>58</sup> African child policy forum, *Africa on child well being*, (2008) p 1

<sup>59</sup> *African charter on Human and peoples Rights* article 4, 16, and 17 consecutively,(1981)

<sup>60</sup> id articles 18:1 and 18:2

<sup>61</sup> id article 27:1

work for the cohesion and respect of the family, to respect his parents, to maintain them in case of need.<sup>62</sup>

Though governments ratify international human right treaties, other actors must also take responsibilities and be accountable for the consequences of their actions on children from multinational companies to families and communities.<sup>63</sup>

Like stated above in the case of international human rights instruments, the same is true here regarding the effects of divorce on the right of children.

### **3.2.2The African charter on the Rights and welfare of the child**

The African charter on the Rights and welfare of child is a regional document which essentially recognizes the right of the child. The charter recognizes that the child occupies a unique and privileged position in the African society. And to this effect the child should grow up in a family environment in an atmosphere of happiness, love and understanding.<sup>64</sup> And it states that the child needs a special care with regard to health physical, mental and moral development and legal protection.<sup>65</sup>

The charter essentially recognizes that in all actions concerning the child undertaken by any person or authority the best interest of the child should be a primary consideration.<sup>66</sup> It further recognizes that:-

in all judicial or administrative proceedings affecting the child who is capable of communicating his/her own views, and opportunities shall be provided for the views of the child to be heard either directly or through and impartial representative as a party to the proceedings and those views shall be taken in to consideration by the relevant authority in accordance with the provisions of appropriate law.<sup>67</sup>

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<sup>62</sup> id article 29:-1

<sup>63</sup> Save the children, *Children's Right*, (2001) p 53

<sup>64</sup> *The African charter on the Rights and welfare of the child*, preamble

<sup>65</sup> ibid

<sup>66</sup> id article 4:-1

<sup>67</sup> id article 4:-2

The right to life, survival and development, right to freedom of expression, right to education, and right to health are also recognized.<sup>68</sup>

The charter provides that a state party to the charter should take necessary steps to protect the right of the child during marriage and its dissolution.<sup>69</sup>

The charter provides that every child shall be entitled to enjoyment of parental care and protection. And no child shall be separated from his parent against his will, except when a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child.<sup>70</sup> It also provides that every child who is separated from one or both parents shall have the right to maintain personal relations and contact with both parents on a regular basis.<sup>71</sup>

### **3.3 National Laws related to the rights of the child**

#### **3.3.1 The Constitution of Federal Democratic Republic of Ethiopia**

The FDRE constitution recognizes list of human rights. Chapter three of the constitution is all about fundamental rights and freedoms. It provides that these rights and freedoms shall be interpreted in a manner confirming to the principles of universal declaration of human Rights, International covenants on Human Rights and International instruments adopted in Ethiopia.<sup>72</sup> It recognizes the right to life.<sup>73</sup> It also provides the supremacy of the constitution<sup>74</sup> and states that any law customary practice or a decision of an organ of state or a public official which contravenes this constitution shall be of no effect.<sup>75</sup>

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<sup>68</sup> id articles 5, 7, 11, 14 consecutively

<sup>69</sup> id article 18:-2

<sup>70</sup> id article 19:-1

<sup>71</sup> id article 19:-2

<sup>72</sup> *The constitution of Federal Democratic Republic of Ethiopia*, (1995) article 13:-2

<sup>73</sup> id article 15

<sup>74</sup> id article 9

<sup>75</sup> id article 9:-1

The constitution provides that the family is the natural and fundamental unit of society and is entitled to protection by society and the state.<sup>76</sup> It also deals with the rights of children.<sup>77</sup> And recognizes every child has the right to life and the right to know and be cared for by his or her parent or legal guardians.<sup>78</sup> It further states that in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interests of the child.<sup>79</sup> Any decision and order of court which does not consider the constitutionally guaranteed rights of the child is unconstitutional. And any practice and neglect of post divorced parents which is against the recognized rights of the child is also unconstitutional.

### **3.3.2 The Federal Revised Family Code 2000**

The Federal revised Family code is enacted to make the existing Ethiopian Family law in accordance with the socio economic development of the society and above all with the constitution of the country to provide the legal basis which guaranties the equality of the spouses during conclusion, duration and dissolution of marriage. And to amend the existing law in such a way that it gives priority to the well-being, upbringing and protection of children in accordance with constitution and international instruments which Ethiopia has ratified.<sup>80</sup> The code is applicable in Addis Ababa and DireDawa which are the Federal Governments cities

#### **3.3.2.1 Causes and effects of dissolution of marriage**

The Federal Revised Family Code provides that the causes and effects of dissolution of marriage shall be the same whichever the form of celebration of the marriage.<sup>81</sup> It further states that divorce is one of the causes of dissolution of marriage.<sup>82</sup>

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<sup>76</sup> id article 34:-3

<sup>77</sup> id article 36

<sup>78</sup> id articles 36:-1a and 36:-1c consecutively

<sup>79</sup> id article 36:-2

<sup>80</sup> *Federal Revised Family code*, preamble, (2000)

<sup>81</sup> id article 74:-1

<sup>82</sup> id article 75:-c

### 3.3.2.2 Conditions of decision for divorce

RFC states that marriage shall dissolve by divorce where the spouses have agreed to divorce by mutual consent and such agreement is accepted by the court or the spouses or one of them made a petition for divorce to the court.<sup>83</sup>

RFC provides that where the spouses have agreed to divorce by mutual consent, their agreement which regulates the consequences of divorce, shall be submitted in writing to the court for approval.<sup>84</sup> According to this provision; spouses can make an agreement about their property and financial adjustment and custody, maintenance and visitation right in cases where children are concerned. It further states that after taking the necessary steps to renounce the intention of the spouses to divorce, the court shall approve the divorce agreement only when it believes that the agreement is the true expression of the intention and free consent of the spouses and is not contrary to law and morality.<sup>85</sup> It also states that the court shall also approve the conditions of the divorce agreed between the spouses together with the divorce agreement.<sup>86</sup> In cases where the agreement of the spouses on the conditions of divorce does not sufficiently protect the interest and well-being of their children, or, where it adversely affects the interests of one of the spouses, the court may approve only the divorce agreement to correct the defects on the conditions of divorce.<sup>87</sup> Even though the code states that the court can evaluate the agreement of the spouses whether it affects the interest of the child or not, the practice of the courts shows that courts approve agreements of spouses without evaluating it. Moreover, no provisions of the code state that how and by whom the child is represented to protect his/her best-interests.

RFC states that a petition for divorce may be made to the court either by the two spouses conjointly or by one of them.<sup>88</sup> In this regard, the court shall pronounce divorce after taking the necessary steps to persuade the spouses to renounce the petition for divorce and solve their dispute amicably or to direct the spouses to settle their disputes through arbitrators of their own

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<sup>83</sup> id article 76:-a & b

<sup>84</sup> article 77;-1

<sup>85</sup> id articles 78, 79 and 80 respectively

<sup>86</sup> id article 80:-2

<sup>87</sup> id article 80:-3

<sup>88</sup> id article 81:1

choise.<sup>89</sup> It also states that from the time the petition for divorce is brought before it, the court shall forthwith give appropriate order regarding the maintenance of the spouses, the custody, maintenance of their children and the management of their property.<sup>90</sup> More over, it states that where marriage is dissolved by petition for divorce, the court shall require the spouses to agree on the conditions of divorce.<sup>91</sup> where the spouses are not willing to agree or have failed to agree on the conditions of divorce the court, shall by itself, or through arbitrators, or experts appointed by it, or by any other means it thinks appropriate, decide on the conditions of divorce.<sup>92</sup>

### **3.3.2.3 Effects of divorce on pecuniary relations**

RFC provides that where marriage is dissolved by divorce, the pecuniary relation between spouses shall be liquidated in accordance with the agreement entered in to by the spouses or the contract of their marriage.<sup>93</sup> And in default of a contract of marriage or an agreement, each spouse has the right to retake his personal property and common property shall be divided equally between the spouses.<sup>94</sup>

In this regard RFC is silent about the marital home to which party will be given where minor children are concerned.

### **3.3.2.4 Custody of children**

The issue of child custody is one of the important issues following the pronouncement of divorce. RFC states that when deciding the dissolution of marriage, the court shall also decide as to which parent shall have custody of the children, care of their education, health, maintenance and the rights of the parents and the children to visit each other.<sup>95</sup> It also states that upon giving

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<sup>89</sup> id articles 82:-1, 82:2, 82:-4

<sup>90</sup> id article 82:5

<sup>91</sup> id article 83:-1

<sup>92</sup> id article 83:-2

<sup>93</sup> id article 85:-1

<sup>94</sup> id article 86, 90 see also articles 57-63 of the Federal Revised Family code

<sup>95</sup> id article 113:-1

decisions on custody, maintenance and visitation right, the court shall take in to account the income, age, health, and condition of living of the spouses as well as the age and interests of the children.<sup>96</sup>It further state that decisions of custody and maintenance can be revised or changed taking in to account the change of circumstances.<sup>97</sup>

RFC provides that the parents of the child are guardians and tutors of their minor child jointly during marriage.<sup>98</sup>Moreover; it provides that, in cases of divorce by mutual consent, the court which decides the divorce shall also decide the tutor and guardian of children if the parties fail to decide it by agreement.<sup>99</sup>

Even though RFC states that joint custody is allowed during marriage, it does not state anything about joint custody during divorce. Regarding this issues one can say that unless the law excludes joint custody it is possible to claim it. But the practice of the legal system shows that it does not follow the application of joint custody. Moreover, laws should clearly be enacted and be known by the people as much as possible.

RFC is also silent on the enforcement of maintenance. It has no provisions that state whether maintenance is enforced in the court which handles the divorce case, in the execution court or in special agencies that facilitate child support enforcement.

### **3.3 The criminal code of Ethiopia 2005**

The criminal code of Federal Democratic Republic of Ethiopia recognizes that failure to maintain as crime. It states that:-

Whoever without good cause refuses or omits to provide maintenance which he owes, by virtue of law, to entitled persons, even to a spouse who brought action for divorce, until such divorce is pronounced is punishable upon compliant with fine, or with simple imprisonment not exceeding six months.<sup>100</sup>

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<sup>96</sup> id article 113:-2

<sup>97</sup> id article 113:-3

<sup>98</sup> id article 219

<sup>99</sup> id article 221

<sup>100</sup> *The criminal code of Ethiopia*, (2004) article 658

## Chapter Four

### Results analysis and case study

#### 4.1 Characteristics of Respondents

All respondents are legally divorced and had children. They are also custodial parents. There is no gender based selection of respondents. Respondents were categorized from age 18-60. Majority of the respondents had lower income. Respondents level of education ranges from illiterate to first degree. Respondents were selected on equal proportion from Federal first instance court Lideta bench and Ethiopian women Lawyers association.

Respondents were told to ask any question if there is any ambiguity in the questioner. All respondents were informed the information they provide would strictly be confidential and would only be used for the purpose of this research.

#### 4.2 Gaps in the legal system

##### 4.2.1 Divorce and the right to participation and representation of the child

35 %( 21 out of 60) of the respondents stated that the court tries to see the views of the children. 65 %( 39 out of 60) stated that the court did not try to see the views of the children.

With this regard in an interview with Ato Desalegn Berhie president of Federal first instance courts, it was discussed that courts have an obligation to give priority to the best interest of the child. To this effect, the Federal first instance Court make innovative changes in collaboration with governmental and non-governmental organizations. He stated that one of these changes is making the courts child friendly and establishing office of social workers that facilitate child participation in the court.

**Table 1. Listening to the views of children**

	<b>Yes</b>	<b>No</b>
<b>Listening to the views of children</b>	<b>%(100</b>	<b>%(100)</b>
The court tries to see the views of children before deciding maintenance, custody and visitation right.	35%	65%

Out of the 39 respondents who stated that the court did not try to see the views of the child, 35.7% stated that the court did not see the views of the children because they are not of sufficient age to express their feelings. 43.6% stated that because there is agreement between the parties and 20.5% stated that the court did not see the views of the children even if the children are of sufficient age to express their feelings.

In an interview with W/t Firehiwot Tessema, a social worker assigned as a guidance counselor for Children in Federal first instance court Lideta bench, it was discussed that, previously courts refer the case to the office if there is disagreement between the parties on custody and related issues. In cases of agreements, there was no practice of referring the case to the office. But it was found that some agreements made by parents are against the best interest of the child. To avoid such things awareness creation and training was given to judges. Since then every case of divorce which involves children irrespective of the child's age and agreement of the parents is referred to the office. She stated that they are not sure that all cases are referred to the office because it depends on the judge that handles the case. More over there is no controlling mechanism that checks whether every case is referred to the office or not. She further stated that unless the court refers the case to the office, they cannot get the chance to give opinions on the best interests of the child to the court.

W/t Firehiwot Tessema pointed out that, to facilitate the child's participation and give opinion on custody and related issues, the office is trying its best to assist children psychologically. To this effect, they have questioner to parents, they conducted interview with parents, and they also conducted child friendly interview with children, they have surprise visit of homes, they tried to observe the personal attachment of the child and the parents and they tried to get information from neighbors. She pointed out that, without interviewing the child; they can give professional opinions about the best interests of the child by using these techniques even for a child who cannot express his/her views. She also pointed out that there is no age limit to decide in which age the child is sufficient to express his/her views. Some children can express their views very well at the age of 3-5, some of them at the age of 5 and above and some of them cannot express their views even at the age of 10 and above. According to her, the sufficient age of the child to express his/her views depends on the child's mental development. The CRC does not put age limit of the child to express his/her views. It simply states that the views of the child being given due wait in accordance with the age and maturity of the child.<sup>1</sup>The social workers assist the child

psychologically and facilitate the child's participation. In doing so, they can inspect the best interests of the child.

**Table 2 Reasons for not listening to the views of the child**

	<b>%(100)</b>
the children are not of sufficient age	35.7%
divorced parents agreed on the custody, maintenance and visitation right of the child	43.6%
the court did not need to listen to the views of the children even if the children are of sufficient age	20.5%

100 % of the respondents' stated that there is no legal representative for the child in the court. Where children are party to the dispute directly or indirectly, efforts should be made to know their participation. This can be done by representing the child by legal representative like other legal systems or establishing suitable conditions that facilitate Children's participation in any case affecting their matter.<sup>2</sup>With this regard Ato Desalegne Berhe stated that the child friendly benches and the social workers of the court are working to facilitate the participation of the child by expressing his/her views. He also pointed out that in cases of divorce where children are concerned, whether there is agreement or disagreement between the parties and irrespective of the of the child's age, any case is referred to the social workers to get professional opinion about custody and visitation right of the child. To this effect continuous training was given to judges. In spite of all these innovative changes of the court, the finding shows that there are cases in which children did not express their views.<sup>3</sup> The right of the child to express his/her views is one of the basic principles of the CRC.

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<sup>1</sup> Convention on the Right of Child, article 12:-1,(1989)

<sup>2</sup> Desaleng Berhe, *Arranging child friendly benches*, (2001E.C) p 19, translation mine

<sup>3</sup> See case No 158116,160709,0417/03,1670/2000 on this thesis

Denying children to express their view is a clear violation of the child’s right to participate and express his/her views freely in all matters affecting his/her matter.

**Table 3 Legal representative of the child in the court**

	<b>Yes %(100)</b>	<b>No %(100)</b>
The child has legal representative in the court	0%	100%

**4.2.2 Custody**

100 % of the respondents stated that they did not claim joint custody.

**Table 4 Claim for joint custody**

	<b>Yes%(100)</b>	<b>No%(100)</b>
Did you claim joint Custody	0%	100%

5 %(3 out of 60) of the respondents stated that their reason for not claiming joint custody is they do not know joint custody is allowed.95%(57 out of 60) of the respondents stated that they did not want to claim joint custody.

In the discussion made with the child respondents, six of the respondents stated that they need the parent child relationship with the non-custodial parent.

With regard to this issue in an interview with Ato Philipos Aynalem who was a judge for 1 year and eight months in Federal first instance court and for five years in federal high court Lideta bench, stated that, even though the Federal revised family code does not clearly state about joint

custody in cases of divorce, it does not mean that it prohibits joint custody. He further stated that he never entertained a case where joint custody was claimed.

However, a law should clearly be enacted in order to be known by the people and have a binding effect. We can not necessarily conclude that, if the law is silent on one specific issue, it allows that specific issue. Judges cannot decide a case unless there is a provision or precedent that supports the case. Joint custody can be taken as a remedy to maintain the child’s right to maintain personal relations and direct contact with both parents. To this effect parents can take the custody of their children jointly. For example, by sharing the day to day care of the child jointly, by taking the administration of the child on the issues of education, medical expense, food and clothing jointly.

**Table 5 Reason for not claiming joint custody**

	<b>%(100)</b>
do not know joint custody is allowed	5%
Do not want to ask joint custody	95%

### **4.2.3 Maintenance and its enforcement**

#### **4.2.3.1 Amount of maintenance**

Regarding decisions of maintenance 88.3 %( 53 out of 60) of the respondents stated that the court decided maintenance for the children. And 11.7% (7 out of 60) of the respondents stated that the court did not decide maintenance for the children. This shows that in majority of the cases courts decide maintenance.

**Table 6 Decision of maintenance**

	<b>Yes %(100)</b>	<b>No %(100)</b>
The court decide maintenance for children	88.3%	11.7%

Coming to the amount of maintenance, out of 53 respondents who stated that the court decided maintenance, 30.2% stated that the court decided 101-300 birr for 1-2 children, 32.1% stated that the court decide 301-500 birr for 1-3 children. 17% stated that the court decided 501-700 birr for (1-3) children. 13.2% stated that the court decided 701-1000 birr (1-4) children. 5.6% stated that the court decided 1001-1500 birr for (1-4) children. 1.9% stated that the court decided 1501-2000 birr for 4 children. This shows that amount of maintenance decided by Courts is inconsistent and insufficient.<sup>4</sup> Unless sufficient amount of maintenance is decided the custodial parent cannot maintain the child in the same standard of living before his/her parents are divorced.

**Table 7 Decision of maintenance**

<b>Amount of maintenance</b>	<b>%</b>	<b>No of children</b>
100 birr	0%	1-2
101-300 birr	30.2%	1-3
301-500 birr	32.1%	1-3
501-700 birr	17%	1-3
701-1000 birr	13.2%	1-4
1001-1500 birr	5.6%	1-4
1501-2000 birr	1.9%	4
Above 2000 birr	0%	

<sup>4</sup> See case No 158116, 160709, 0417/03, 1670/2000 on this thesis

#### **4.2.3.2 Factors considered for the decision of maintenance**

Out of the 53 respondents who stated that the court decided maintenance, 41.5% of them stated that the court considered the income of the parties before deciding maintenance, 22.6% of the respondents stated that the court considered the age and interest of children, 16.9% of the respondents stated that the court considered the amount of the child's school fee. 18.9% of the respondents stated that the court did not consider any thing. The study shows that there is no uniformity in decision of maintenance.

With this regard in an interview with Ato Desalegne Berhe, he stated that there is no binding guide line enacted by an organ that has power to enact it. But there is one document prepared by the court. This document can give some indications about what factors should consider before giving decision of maintenance but it is not binding. He also pointed out that, the guiding principle should be to maintain the child in the same standard of living before his/her parents are divorced. To this effect each judge should observe the interests of the child before his /her parents are divorced. He also pointed out that there are some positive changes in decision of maintenance.

One of the main impacts of divorce on the lives of children is its impact on the economic power of parents. The standard of living regarding the child's right to health, right to life survival and development and right to education depends on the amount of maintenance. Decision of insufficient amount of maintenance has an effect on the enjoyment of these rights. Unless Courts decide sufficient amount of maintenance, the child cannot have the same standard of living compared with the life before his/her parents are divorced. The child's right to education, health, survival and development cannot be ensured without sufficient amount of maintenance. The FDRE constitution provides that state organs should respect the international documents ratified by Ethiopia. The CRC where Ethiopia is a party provides that Courts have an obligation of prioritizing the best interests of the child and state parties should ensure the protection of this right. Unless there is binding guide line, Courts cannot decide sufficient amount of maintenance. The judiciary and the legislature are state organs which have an obligation to respect and protect

the international human rights instruments. Legistating binding Guideline by a proper organ<sup>5</sup> for decision of maintenance is a solution for the problem.

**Table 8 Factors considered for decision of maintenance**

	%
Income of parties	41.5%
Age and interest of children	22.6%
Children's school fee	16.9%
Nothing considered	18.9%

**4.2.3.3 Source of maintenance**

79.2%(42 out 53)of the respondents stated that the court decided maintenance from secured source and 20.7% ( 11 out of 53)of the respondents stated that the court decided maintenance from unsecured source. One of the respondents on her additional comment in the questioner stated that

? Which means that what is the use of

decision of maintenance unless it is enforced?

The study also shows that non-custodial parents who do not have secured source of income cannot be easily traced to enforce maintenance. Parents have a primary obligation to provide their children

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<sup>5</sup> See Constitution of Federal Democratic Republic of Ethiopia, article 55:-1,(1995)The House of peoples Representatives is a proper Organ to Legislate laws

See also Federal Courts Proclamation No 25/1996 article 33, the Plenum of Federal Supreme Courts can also be a proper organ because it has power to examine and approve directives and decisions that help improve the judicial practices of Federal Courts, to submit proposals to the house of peoples Representatives for the enactment of new laws or the amendment of existing ones.

See also file No 43781 a decision of Federal Supreme cassation Court which states that Legislations enacted by House of Peoples Representatives' are primary legislations and for the purpose of implementation of the primary laws the legislature can give power to different organs to enact directives and these directives are subsidiary legislations and have a binding effect.Dessisions of Federal supreme court are precedents and are applicable on other similar cases.

with all the necessary needs. The absence of secured income is the main problem of enforcement of maintenance. Monthly salary should not be considered as the only source of income to enforce maintenance. Courts should take strong position on the non-custodial parent that he/she must maintain the child whether there is secured or unsecured income. To this effect courts should use different techniques to inspect any source of income to enforce maintenance. For example, giving orders to inspect the income of the non-custodial parent, penalizing the non-custodial parent for failure of payment of maintenance.

**Table 9 Source of maintenance**

Source of maintenance	%
Secured source	79.2%
Unsecured source	20.7%

**4.2.3.4 Enforcement of maintenance from the personal or share of common money or property of the non-custodial parent**

37.7 % ( 20 out of 53) respondents stated that Court decided the personal or share of common money or property of the non-custodial parent to be for the enforcement of maintenance. 62.3 % ( 33 out of 53) stated that the court did not decide the personal or share of common money or property of the non-custodial parent to be for the enforcement of maintenance.

**Table 10 Enforcement of maintenance and the personal or share of common money or property of the non-custodial parent**

	Yes %(100)	No %(100)
Court decided the personal or share of common money or property of the non-custodial parent to be for the enforcement of maintenance	37.7%	62.3%

85 %( 17 out of 20) of the respondents stated that the court orders the maintenance should be enforced from the personal or shared money of the non-custodial parent. 15 %( 3 out of 20) of the respondents stated that the court decided the shared common property or personal property of the non-custodial parent should be changed to money as a security for the payment of maintenance. The study shows that the Federal Supreme cassation court gives a decision which states property of a non-custodial parent can be secured for payment of maintenance.<sup>6</sup>Decisions of Federal supreme cassation court have a binding effect on other similar cases and can be taken as precedent on all similar cases. In this regard Ato Philipos Aynalem stated that maintenance should not follow only money, courts should give orders for payment of maintenance even from the shared or personal property of the non-custodial parent if he/she fails to pay maintenance. He also stated that maintenance should not be only for the purpose of decision. It should be enforced to ensure the best interests of the child.

**Table 11 Conditions for deciding the share of the personal or common money or property of the non-custodial parent for maintenance**

	<b>%(100)</b>
Court orders the maintenance should be enforced from the personal or shared money of the non-custodial parent	85%
Court orders the shared common property or personal property of the non-custodial parent should be changed to money as a security for the payment of maintenance.	15%

#### **4.2.3.5 Time of payment of maintenance**

99 %( 52 out of 53) of the respondents stated that the court decides maintenance to be paid monthly.1 %( 1 out of 53) of the respondents stated that the court decides maintenance to be paid in installments. Regarding this issue, Ato Philipos Aynalem stated that it is better if maintenance

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<sup>6</sup> See file No 45819 of Federal Supreme Cassation Court,vol 10,p 51

is paid monthly but the problem is what will be done if the non-custodial parent fails to pay maintenance monthly? He further stated that it would have been better if there was penalty imposed on the non-custodial parent for failure of payment of maintenance on time. He also pointed out that if there is secured money or property and if the non-custodial parent fails to pay maintenance, it is better to give order that secures the payment of maintenance for a certain period of time.

**Table 12 Time of payment of maintenance**

Time of payment of maintenance	<b>%(100)</b>
Monthly	99%
In installments	1%

#### **4.2.4 Decision of the court on the marital home**

63.3 %( 38 out of 60) of the respondents stated that they have marital home.36.7% of the respondents stated that they do not have common marital home.

**Table 13. The marital home**

	<b>Yes</b>	<b>No</b>
<b>Respondents</b>	<b>%(100)</b>	<b>%(100)</b>
Have common marital home	63.3%	36.7%

89.5 %( 34 out of 38) of the respondents stated that the court decided the marital home to be shared between the parties equally.10.5% (4 out of 38) of the respondents stated that the court approved their agreement made on the settlement of the marital home. In this regard, it was found that the revised Federal family code does not have any provision that states marital home could be given for the custodial parent until the child attains majority. In an interview with Ato Philipos Aynalem,he stated that in principle, giving the marital home to the custodial parent affect the right of the non-custodial parent. But if the non-custodial parent fails to pay

maintenance measures should be taken on the marital home. On this regard, giving order to sale the property and deposit the money as security can solve the problem.

The marital home has a vital role on the child’s development and social contact. Divorce increase the risk of residential move.<sup>7</sup>The decision of the court on the marital home may force the custodial parent to change residential place. As a result children will be forced to find new peer groups and adjust themselves to new schools.<sup>8</sup>This in turn has an impact on the child’s right to education.

**Table 14 Decision on the marital home**

Decision of the court on marital home	%(100
Decided to be shared equally between the parties	89.5 %
Decide for the custodial parent, until the child attains majority	0%
Court approved their agreement on the settlement of the marital home	10.5%

### **4.3 Problems that hamper the enforcement of maintenance**

#### **4.3.1 Payment of maintenance according the decision of the court**

Only 13.2 % (7 out of 53) of the respondents stated that the non-custodial parent gives maintenance according the decision of the court.28.3 %( 15 out of 53) stated that the non-custodial parent pay maintenance not regularly but upon his/her interest. 58.5 %( 31 out of 53) stated that the non-custodial parent did not pay maintenance.74.2 %( 23 out of 31) of the respondents stated that the non-custodial parent did not pay maintenance because of unwillingness to give maintenance.25.8 %( 8 out of 31) stated that because of misunderstanding of the non-custodial parent as if the maintenance is for the favor of the custodial parent.

<sup>7</sup> Andrew J.Cherlin, *Going to extremes: Family structure, Childrens well-being and Social Science*

<sup>8</sup> *ibid*

The finding of the study shows that custodial parents face serious problem in providing their children with necessary needs due to the lack of payment of maintenance in proper time. The absence of maintenance has an impact in providing the child with the necessary needs for his/her well-being.

**Table 15 Payment of maintenance according the decision of the court**

<b>Payment of maintenance according the decision of the court</b>	<b>100%</b>
give maintenance according the decision of the court	13.2 %
give maintenance not regularly but upon his/her interest	28.3%
did not pay	58.5%

#### **4.3.2 Enforcement of maintenance**

100% (31 out of 31) of the respondents stated that they go to the execution court to enforce maintenance. 45.2%(14 out of 31) of the respondents stated that the court did not enforce maintenance in short period of time because it is the only court that has power to execute all civil matters. 35.5%(11 out of 31) stated that because the non-custodial parent did not have secured income. 19.3%(6 out of 31) stated that because the non-custodial parent loses his/her previous job. This shows that unless there is secured income, courts cannot enforce maintenance.

With this regard, in an interview with Ato Desalegne Berhe, he stated that enforcing maintenance in the regular execution court did not have any problem. Rather it facilitates and makes effective enforcement of maintenance. He also pointed out that an execution court needs special skill and knowledge of execution and the judges in the execution court have this special knowledge and skill. But the problem is following case flow management system. He also stated that judges have trained to follow case flow management system and prioritize the interests of the child. In spite of this, the study shows that there are cases in which maintenance is not enforced in short period of time.

**Table 16 Reason for not enforcing maintenance in short period of time**

<b>Reason for not enforcing maintenance in short period of time</b>	<b>%(100</b>
the court is the only one for the execution of all matters other than maintenance	45.2%
because the non-custodial parent did not have secured income	35.5%
because the non-custodial parent loses his/her previous job.	19.3%

#### **4.4 The absence of divorced parents in the lives of their children a violation of children's right**

##### **4.4.1 Impact of divorce on the child's right to maintain personal relations and direct contact with both parents**

86.7% (52 out of 60) of the respondents stated that the court granted visitation right for the non-custodial parent.13.3% (8 out of 60) of the respondents stated that the court did not grant visitation right. In an interview with Ato Philipos Aynalem,he pointed out that in majority of the cases, visitation right is not decided as mandatory, rather it is decided as the right of the non-custodial parent. The cases show that decisions of visitation right are not decided in a manner that can impose obligation on the non-custodial parent. This shows that visitation right is given as an award for the non-custodial parent but not as the right of the child. The CRC provides that a child has a right to maintain personal relations and direct contact with both parents. Courts have an obligation to prioritize the best interests of the Child. To this effect, they should at least

recognize this right in their decision. Failing to do this is a violation of the child’s right which is recognized in the constitution and in the CRC.

**Table 17 Decision of visitation right**

<b>Visitation right</b>	<b>Yes %(100)</b>	<b>No %(100)</b>
court awards visitation right for the non-custodial parent	86.7%	13.3%

44.2% (23 out of 52) of the respondents stated that the non-custodial parent visits his/her children according the decision of the court.55.8%(29 out of 52) of the respondents stated that the non-custodial parent did not visit his/her children. In the discussion made with the child respondents, six of them stated that the non-custodial parent did not visit them. They also stated that they need to maintain personal relations and direct contact with the non-custodial parent. This shows that failing to visit children is a violation to the child’s right to maintain personal relations and direct contact with both parents.

**Table 18 visitation by the non-custodial parent**

	<b>Yes %(100)</b>	<b>No %(100)</b>
the non-custodial parent visit his/her children	44.2%	55.8%

Out of the 29 respondents who stated that the non-custodial parent did not visit his/her children, 79.3%(23 out of 29) of them stated that the non-custodial parent did not visit his/her children because he/she is unwilling to visit.20.6%(6 out of 29) stated that because of he/she did not want to see the custodial parent upon visiting the child.

**Table 19 Reason for not visiting children**

<b>Reason for not visiting children</b>	<b>%(100</b>
unwilling to visit the children	79.3%
did not want to see me upon visiting his/her children	20.6%

The study shows that no one of the respondents go to court to enforce visitation right. This shows that there are parents who are not aware that the child has a right to maintain personal relations and direct contact with both parents.

**Table 20 Enforcement of visitation right**

	<b>Yes</b>	<b>No</b>
Go to court to enforce visitation right	0%	100%

#### **4.4.2 Impact of divorce on the child's right to health**

56.7 %( 34 out of 60) of the respondents stated that divorce has an adverse impact on the child's right to health. Out of the 34 respondents, 88.2% stated that they cannot provide their child adequate food/nutrition due to the economic hardship after divorce.32.4% stated that their child cannot get timely medical care when necessary due to the economic hardship after divorce.55.9% stated that the non-custodial parent is absent in giving necessary care for the child. The discussion made with the children shows that six of them live in less standard of living compared with their life before their parents are divorced.

Regarding this issue, in an interview with Ato Tilahun Gebretsadik team Coordinator of Child mainstreaming and partnership in Ministry of Women, Children and Youth affairs, he stated that there is no data which shows the prevalence of the effects of divorce on the rights of Children. But they are doing their best to promote the rights of children generally. To this effect they are trying to help vulnerable children by resource mobilization and other means to ensure their rights

to health, education and life survival and development. He also stated that the guide line prepared to help vulnerable children does not mention children from divorced parents but it does not explicitly state vulnerable children.<sup>9</sup>He also pointed out that their main focus is to ensure the best interests of the child. For this purpose, they have comprehensive manual which includes all the rights of children, they are giving training and support for different organs which focuses on Child mainstreaming and they are examining gaps of existing laws that are related to children.

Ato Tilahun Gebretsadik also pointed out that even though it does not specifically mention about effects of divorce, the Ministry recently made National child policy and submitted it to the Council of ministers for approval.<sup>10</sup>He also stated that they are not on the position of studying problems case by case but they are on the way to study problems case by case.

Problems of children existing from divorce are complicated and should be given special attention. Many of the negative consequences of divorce for children are derived because of the economic fallout from divorce.<sup>11</sup> Lack of economic power make parents unable to provide the child with the necessary needs for his/her well-being. A child who cannot get proper Support from his/her parent will be vulnerable to different problems. As a result the child’s right to health will be affected.

**Table 21 Divorce and the right to health**

	yes	No
Divorce has an adverse impact on the child’s right to health	56.7%	43.3%

<sup>9</sup> See Standard service delivery Guidelines for Orphans and Vulnerable Children’s care and Support programs, according to this guideline Vulnerable Child is; a Child who lost one or both parents, a Child Whose parents are terminally ill and can not longer Support the child, Children on/off the streets, a Child exposed to different forms of abuse, violence and /or exploitation, a child in conflict with the law, a Child who is sexually exploited, a Child with disabilities, unaccompanied Children due to displacement

<sup>10</sup> The policy is not approved; Ministry of Women, Children and Youth affairs is waiting for its approval

<sup>11</sup> *The well being of children following parental separation and divorce research Consortium 9*  
Available at [www-med.monash.edu.au/children\\_well\\_being\\_rc/ Child\\_well\\_being](http://www-med.monash.edu.au/children_well_being_rc/Child_well_being)

**Table 22 Impacts of divorce on the right of health**

	<b>%(100</b>
cannot provide the child adequate food/nutrition due to the economic hardship after divorce	88.2%
the child cannot get timely medical care when necessary due to the economic hardship after divorce	32.4%
The non-custodial parent did not give necessary care for the child	55.9%

#### **4.4.3 Impact of divorce on the child's right to life survival and development**

56.7 %( 34 out of 60) of the respondents stated that divorce has an adverse impact on the child's right to life survival and development. Out of the 34 respondents, 88.2% stated that they cannot provide their child adequate food/nutrition due to the economic hardship after divorce.32.4% stated that their child cannot get timely medical care when necessary due to the economic hardship after divorce.55.9% stated that stated that the non-custodial parent is absent in giving necessary care for the child. The discussion made with children shows that six of them live in less level of standard of living compared with their life before their parents are divorced.

In an interview with W/t Hirut Wodajo legal officer in the Bureau of Addis Ababa Women, Children and Youth affairs, she stated that there is no data that shows about the magnitude of the effects of divorce on the rights of Children. But the office is trying its best in promoting and ensuring children's right. To this effect, they are trying to assist Children by promoting their rights and by helping vulnerable children.

Lack of economic power make parents unable to provide the child with the necessary needs for his/her well-being. As a result the child's right to life, survival and development will be affected. Unless there is data which shows the magnitude of the effects of divorce on the rights of children it cannot be arrived to a sound decision to take measures to solve the problem

**Table 23 Divorce and the right to life survival and development**

	yes	No
Divorce has an adverse impact on the child's right to life survival and development	56.7%	43.3%

**Table 24 Impacts of divorce on the right to life survival and development**

<b>Impacts of divorce on the right to life, survival and development</b>	<b>%(100</b>
cannot provide your child adequate food/nutrition due to the economic hardship after divorce	88.2%
your child can not get timely medical care when necessary due to the economic hardship after divorce	32.4%
the non-custodial parents absent in giving necessary care for the child	55.9%

#### **4.4.4 Impact of divorce on the child's right to education**

65 %( 39 out of 60) of the respondents stated that divorce has an adverse impact on the Child's right to education. Out of the 34 respondents, 82.1% stated that they cannot provide their Child

necessary educational material due to the economic hardship after divorce.64.1% stated that they cannot pay the school fee of their children after divorce.76.9% stated that they cannot provide adequate food/nutrition due to the economic hardship after divorce.7.7% stated that they fail to pay tutor fee. In the discussion made with the child respondents, four of them stated that their school fee is not paid on time. Six of them stated that they cannot get necessary educational materials and good quality of food after their parents are divorced. The problems existed due to insufficient amount of maintenance and its enforcement make the custodial parent unable to provide the child with all the necessary needs. Similar to the above stated rights, divorce has an adverse impact on the child’s right to education.

**Table 25 Divorce and the right to education**

	<b>yes</b>	<b>No</b>
divorce has an adverse impact on the child’s right to education	65%	35%

**Table 26 Impact of divorce on the right to education**

<b>Impacts of divorce on the right to education</b>	<b>%(100</b>
cannot provide the child necessary educational materials due to the economic hardship after divorce	82.1%
cannot pay the school fee of the child after divorce	64.1%
lack of adequate food/nutrition due to the economic hardship after divorce	76.9%
failure to pay tutor fee due to the economic hardship after divorce	7.7%

## **4.5 The need for the establishment of institutions that give advice for parents about parental arrangements after divorce**

### **Pre divorce preparation**

80 %( 48 out of 60) of the respondents stated that they did not go to institutions for advice about parental arrangements after divorce because they could not get any institution for this purpose.8.3%( 5 out of 60) stated that they go to Women and Children affairs at wereda level and the institution helped them to prepare petition for divorce.11.7%( 7 out of 60) stated that they go to non-governmental organizations working on women's right and the institution helped them to prepare petition for divorce.

With this regard in an interview conducted with W/t Betelihem Berhanu head of the office of social workers in Federal first instance court, she stated that the office is also trying to give advice for the divorced parents on how they are going to handle custody and visitation issues after courts refer the case to the office. She also pointed out that the office of social workers is established to assist children psychologically, and it would have been better that if there is special institution established for giving advice about parental arrangements because of the number of divorce cases.

**Table 27 Institutions for parental arrangements after divorce**

<b>Institutions for parental arrangements after divorce</b>	<b>%(100)</b>
Did not get any institution that give advice and information about parental arrangement	80%
Go to women and children affairs at wereda level and the institution helped them to prepare petition for divorce.	8.3%
Go to non-governmental organizations working on women's right and the institution helped them to prepare petition for divorce.	11.7%

## Case study

### Case one

This is case No 0417/03 of EWLA. The file shows that the applicant came to the institution to get legal aid. The history of the applicant shows that she concluded marriage and has two children/twins of age of 7 years old. It also shows that she needs the institution to prepare her petition for divorce. Before preparing the petition, the institution asked her to give summon for her husband and try to reconcile them. But the file shows that she refused because her husband cannot make any change on his behavior. Based on her interest, the institution prepared petition for divorce and give her legal advice on how she can handle the court proceeding.

After filing petition in the court, the court declares divorce. The decision of the court which was attached in the file does not show that whether the court tries to see the views of the children or not. The decision shows that the custody of the children was given to their mother but it does not show that what factors are considered before deciding the custody. It also shows that the non-custodial parent was granted visitation right. The court had also decided 1500 birr (one thousand five hundred birr) for maintenance of the children to be paid monthly. But it does not show that what factors are taken before deciding the amount of maintenance. And it does not show from what source the maintenance should be paid.

The file shows that the non-custodial parent did not pay maintenance according to the decision of the court. And because of this the custodial parent faces serious problem even to feed her children. As a result the institution helped her to prepare petition for the execution of maintenance. But the execution court adjourned the case and told her to come after four months for response of the non-custodial parent. After this the applicant came to EWLA and said where shall I go then? How can I wait for four months without feeding my kids? What is the advantage of the decision of the court if it is not enforced in short period of time? EWLA prepared a compliant for the court to see her case urgently. But the applicant did not come again to EWLA.

### **Case two**

This is case No 158116 in Federal First Instance court Lideta Bench. The petitioner filed petition for divorce stating that she has a child of age 2 years and 8 months from the respondent. The file shows that the applicant stated she cannot live in marriage with the respondent and demanding divorce. She also asked for a judgment of maintenance for her child and decision of common property.

The file shows that the court gives the parties cooling period to renounce the petition for divorce. But the file shows that the court declares divorce because there is no change of mind in the parties.

The file shows that the decision of the court is written in a form prepared for that purpose. It also shows that the custody of the child is given to her mother and the court decided that the non-custodial parent should pay 800 Birr (eight hundred birr) per month for maintenance of the child. The decision shows that the maintenance should be enforced from the salary of the non-custodial parent. It also shows that the court ordered the employer of the non-custodial parent so that to deduct the 800 Birr (eight hundred birr) from his salary and give it to the custodial parent per month. But the file did not show what factors are considered before deciding the amount of maintenance

The file shows the court did not grant visitation right for the non-custodial parent. It also shows that claim for visitation right is not raised by the non-custodial parent and the court was silent regarding this issue.

The file did not show anything about the views of the child. It is the parents of the child who make disputes on behalf of the child. The court did not refer the case to the office of social workers to know about the best interests of the Child. The decision of the court stated that, the custody of the child is given to her mother because both parties are agreed to do so.

### **Case three**

This is case No 160709 in Federal First Instance court Lideta Bench. The applicant applies for decision of divorce stating that she has a child of age 8 years old from the respondent. She asked a judgment for divorce and partition of common property. The file shows that the respondent claimed for the custody of the child because he has good relationship with her. Based on the agreement of the parties, the court gives the custody of the child to her father because the

applicant agreed to this effect. The court also grants visitation right for the non-custodial parent whenever she needs to see her child.

Even though the child's age is 8 years old and can express her views, the court did not ask the child to express her views and even did not refer the case to the office of social workers to know about the best interest of the child.

#### **Case four**

This is a case No 1670/2000 filed in EWLA. The client came to the institution looking for legal advice on issues of divorce. The file shows that the spouses have a child of age 2 years and 9 months. The institution helped her by preparing petition for divorce. The decision of the court is attached in the file. The decision of the court shows that the court declared divorce and decided maintenance. The amount of maintenance decided by the court is 150 birr. The decision of the court did not state what factors are considered before deciding maintenance except the salary of the parent who is obliged to pay maintenance. Even though the applicant claimed the custody for the custody of the child, the decision of the court did not mention any thing about the custody of the child and visitation right. The court did not refer the case to the office of social workers to know about the best interests of the child. The court also approved the agreement made by the parties regarding the partition of their common property. The file shows that the institution prepared two complaints for the applicant after the decision of the court. The first complaint is regarding the amount of maintenance and the court improved the amount of maintenance to 300 birr by stating the salary of the father is improved. Regarding the second complaint which asks the court for the execution of the condominium house (common property) of the spouses, the court rejected the complaint by stating that the proclamation of condominium house states that ownership of condominium houses cannot be transferred before five years. The file also shows that the house is under the control of the non-custodial parent.

#### **Case five**

This is a case No 0013/2004 filed in EWLA. The applicant came to the institution for legal advice on issues of divorce. The file shows that the applicant has two children of age 13 and 10 years old. The institution prepared her petition for divorce and advises her on the legal proceeding. The decision of the court is attached in the file. The court declares divorce and gives the custody

of the children to their mother because both parents are agreed to do so. The court granted visitation right for the non-custodial parent per week on Sunday 9.00am-4.00p.m. The court decided 600 birr for maintenance of the children to be paid by the non-custodial parent monthly. The decision of the court did not show what factors are considered before deciding maintenance. Even though the children are of sufficient age to express their views, the court did not try to see the views of the children. Moreover, it did not refer the case to the office of social workers to know about the best interests of the child.

### **Case six**

This is case No 188742 filed in Federal First Instance court Lideta Bench recently. The applicants have agreed to divorce by mutual consent. They made an agreement about the consequences of divorce between them and regarding the custody, maintenance and visitation right of the children. The file shows that they have two children of age 13 and 10. The agreement made by the spouses shows that they agreed the custody of the child to be given for the mother because their mother has good income compared with the income of their father and because their father lives alone and no body lives there to follow the children. Before approving their agreement the court referred the case to the office of social workers to get professional advice whether the agreement made by the spouses ensures the best interest of the children.

Based on the order of the court, the social workers conducted interview with both the parents and the children. They also tried to get in-depth information from the parents through questioners. They also tried to see the personal attachment of the children and the parents.

After making all the necessary steps, they found that the children have good personal relationship with their father; their father is responsible to follow the children by giving his time and following their education, their mother spend most of her time in her work and does not have enough time for her children, the place where the children live at this time has extended family and this has an effect on the children to take their parents as role model, the children did not know their parents are divorced.

By considering the above factors the social workers give professional opinion to the court which states that it is better if the custody of the children is given to their father and their mother given visitation right. The opinion stated that the mother of the children pays 8000 (eight thousand birr) in each term. So that the court should consider this before deciding maintenance.

More over they stated that the children do not know their parents are divorced and it will be better that if the court delays the decision of custody and informs the parents to tell their children they are divorced.

Based on the professional opinions the court informed the applicants that, they have to tell their children about the divorce and come for the decision of custody. The case shows that the file was closed temporarily until the applicants inform the children about the divorce.

### **Case seven**

This is a case No 185144 filed in Federal First Instance court Lideta Bench recently. The applicant was the father. The file shows the spouses have two daughters of age 10 and 8. The spouses agreed the custody of the children to be given for their father because the mother did not have income. Before approving their agreement the court referred the case to the office of social workers to get professional advice.

Based on the order of the court, the social workers conducted interview with both the parents and the children. They also tried to get in-depth information from the parents through questioners. They also tried to see the personal attachment of the children and the parents.

After making all the necessary steps, they found that the children have good personal relationship with their mother. Their father spent most of his time out of cities and do not have time to follow the children. In the discussion made with the parents it was mentioned that their brother born from other lady tried to force the children to make sex with him. Their mother agreed on the custody of the child because she does not have income.

By considering the above factors the social workers give professional opinion to the court which states that it is better if the custody of the children is given to their mother and their father given visitation right. It also stated that the mother will be forced to rent house if the custody is given to her. So it will be better if the decision of maintenance is given considering the house fee.

## **Chapter five**

### **Summary of findings conclusion and recommendations**

#### **Summary of findings**

According to the research methodology, different methods were employed to answer the research questions of this study. Cases of respondents were deeply seen to identify the problems. The researcher tried to analyze the results with International human rights instruments, relevant national laws, the researcher's personal observation and the practice of the legal system. To this effect, the main findings of this study are the following.

- The study shows that some of the respondents stated the court tried to listen to the views of the child. Majority of the respondents stated that the court did not try to listen to the views of the child. Out of the respondents who stated that the court did not listen the views of the children, they stated that the reason of the court for not trying to listen to the views of the children is because the children are not of sufficient age to express their views and because of the agreement made between the parties. Some of them stated that even if the children are of sufficient age to express their views the court did not try to listen to the views of the child. All of the respondents stated that there is no representative for the child in the court preceding but they make disputes on behalf of their children. In the discussion made with children, majority of the child respondents stated that they did not express their feeling in the court because no one asks them to express their feeling. The study also shows that the practice of courts to see the views of the child is, if there is disagreement on custody and visitation right between the parties and in some of the cases if the child is of sufficient age to express his/her views. The selected cases of the study shows that the court did not try to listen to the views of the child even the child is of sufficient age to express his/her views. It also shows that in cases of agreements, in most cases, courts did not try to see the views of the child. The study also shows that in majority of the cases the child is not recognized as indispensable party to the proceeding. The right of the child to express his/her views in all matters

affecting his/her right is one of the guiding principles of the CRC which Ethiopia is a party. This right is also recognized in the EFDRE constitution. The CRC does not have age limit for children to express their views. Denying children from expressing their views is a clear violation of this right.

- All of the respondents stated that they did not claim joint custody. Majority of the respondents stated that they did not want to ask joint custody and some of them stated that they do not know joint custody is possible. The study also shows that the Federal revised family code does not have clear provision which allows joint custody in cases of divorce. The findings show that joint custody can minimize the routine conflicts between divorced parents so that the child can have direct contact and personal relations with both parents.
- Majority of the respondents stated that the court decided maintenance. Regarding the amount of maintenance, the study shows that there is no uniformity in deciding maintenance. Some of the respondents stated that the court decided small amount of maintenance though the non-custodial parent has good income. And some of them stated that the court decide good amount of maintenance compared with the income of the non-custodial parent. The child's right to education, health, survival and development cannot be ensured without sufficient amount of maintenance. The CRC where Ethiopia is a party provides that Courts have an obligation of prioritizing the best interests of the child and state parties should ensure the protection of this right. The FDRE constitution provides that state organs should respect the international documents ratified by Ethiopia. The judiciary is one of the state organs. Deciding insufficient amount of maintenance is against the best interest of the child.
- The study shows there is no binding guideline that indicates what factors should be considered before giving decision of maintenance. Some of the respondents stated the court considered nothing before deciding maintenance. Some of them stated the court considered the income of the parties before deciding maintenance. Some of them stated

that the court considered the amount of school fee before deciding maintenance and some stated the court considered the age and interest of the child.

- The study shows maintenance can be decided from secured and unsecured source of income. Majority of the respondents stated the court decided maintenance from secured source of income. Some of them stated the court decided maintenance from unsecured source of income. The absence of secured income is one of the problems that hamper the enforcement of maintenance. The enforcement of maintenance from unsecured source of income is difficult. To ensure the best interests of the child there should be some mechanisms that force the non-custodial parent to pay maintenance.
- Only 20 out of the 53 respondents stated that the court ordered the shared or personal property or money of the non-custodial parent to be for the enforcement of maintenance. Out of these respondents, majority of them stated that the court ordered the maintenance to be paid from the personal or shared money of the non-custodial parent. Some of them stated the court ordered the shared or individual property of the non-custodial parent to be changed as security for payment of maintenance. Children are very sensitive. If the non-custodial parent has any property and do not pay maintenance, the property should be changed as a security for payment of maintenance.
- Almost all of the respondents stated that the court decided maintenance to be paid monthly and only one of them stated the court decided maintenance to be paid in installments. Payment of maintenance in installments can solve the routine conflicts between the parties regarding enforcement of maintenance.
- Some of the respondents stated that they have common marital home. Out of these respondents majority of them stated the court decided the marital home to be shared equally between the parties. Four of them stated the court approved their agreement made on the settlement of the marital home. The revised family law does not allow the marital law to be given for the custodial parent until the child attains majority

unless the parties to the dispute agreed to do so. The marital home is very essential for the child's development. Allowing this home for the custodial parent until the child attains majority ensures the best interests of the child.

- Some of the respondents stated that the non custodial parent did not pay maintenance according the decision of the court. Some of them stated that the non custodial parent pay maintenance according the decision of the court and some of them stated the non custodial parent pay maintenance not regularly but upon his/her interest. Out of the respondents who stated that the non custodial parent did not pay maintenance according the decision of the court all of them go to the execution court to enforce maintenance. Out of these respondents some stated that the court did not enforce maintenance in short period of time because it is the only court that has power to execute all civil matters. Some of them stated that the court did not enforce maintenance because the non custodial parent does not have secured income and some of them stated the court did not enforce maintenance because the non custodial parent loses his previous job. The study also shows that the only way courts can enforce maintenance is, if they are informed there is property or money of the non custodial parent for the enforcement of maintenance. It also shows that there are no child support enforcement agencies.
- Only 8 of the respondents stated that the court did not decide visitation right. Majority of the respondents stated that the court granted visitation right. Out of these respondents some stated that the non custodial parent visits his/her children according the decision of the court and some of them stated the non custodial parent did not visit his/her children.
- Out of the respondents who stated the court decided visitation right, majority of them stated the non custodial parent did not visit the children because he/she is unwilling to visit. Some of them stated that because he/she did not want to see the custodial parent upon visiting the children. The study also shows that in cases of divorce by agreement, there are cases in which the court approved the agreement made by the parties which does not state any thing about visitation right. The study also shows that

courts decide visitation right as a grant for the non custodial parent. The cases show that decisions of visitation right are not stated in a way that can impose obligation on the non custodial parent. In the discussion made with the children 6 of them stated that the non custodial parent did not visit them. The CRC provides that a child has a right to maintain personal relations and direct contact with both parents. Denying children from enjoying this right is a violation of the right of the child which is recognized in the CRC.

- Regarding the adverse impact of divorce on the right to health, majority of the respondents stated that divorce has an adverse impact on the child's right to health. Out of these respondents, some of them stated that they can not provide their child adequate food/nutrition due to the economic hardship after divorce. Some of them stated that their child can not get timely medical care when necessary due to the economic hardship after divorce. Some of them stated that the non custodial parent is absent in giving necessary care for the child. The discussion made with the children shows that six of the children live in less standard of living compared with their living standard before their parents divorced. Divorce makes parents economically weak. The absence of enough amount of maintenance has an effect in providing the child with the necessary needs.
- Majority of the respondents stated that divorce has an adverse impact on the child's right to life, survival and development. Out of these respondents some of them stated that they can not provide their child adequate food/nutrition due to the economic hardship after divorce. Some stated their child can not get timely medical care when necessary due to the economic hardship after divorce and some of them stated the non custodial parent is absent in giving necessary care for the child. Six of the child respondents stated that they live in fewer living standards compared with their living standard before their parents divorced. Divorce makes parents economically weak. The absence of enough amount of maintenance has an effect in providing the child with the necessary needs.

- Majority of the respondents stated that divorce has an adverse impact on the child's right to education. Out of these respondents some of them stated they can not provide their child with the necessary educational materials due to the economic hardship after divorce. Some of them stated they can not afford the school fee of their child after divorce. Some of the respondents stated they can not provide adequate food/nutrition due to the economic hardship after divorce and some of them stated they fail to pay tutor fee due to the economic hardship after divorce. In the discussion made with child respondents, four of them stated that their school fee is not paid on time. Six of them stated that they can not get necessary educational materials. Six of them stated that they get less quality of food after their parents are divorced. Divorce makes parents economically weak. The absence of enough amount of maintenance has an effect in providing the child with the necessary needs.
- Majority of the respondents stated that they did not get any institution that give advice and information about parental arrangements before filing petition for divorce. Five of them stated that they go to women and children affairs at wereda level and the institution helped them to prepare petition for divorce. Seven of them stated that they go to non governmental organizations working on women's right and the institution helped them to prepare petition for divorce. The study shows that there is no institution established for this purpose. Unless divorced parents are aware about how they are going to handle divorce proceedings, they can affect the rights of their children. Establishing institutions that give advice and information about parental arrangements can create awareness and minimize the routine conflicts between divorced parents regarding custody maintenance and visitation right.

## Conclusions

The finding of the study shows that in practice, children are not recognized as indispensable party in divorce proceedings especially when there is agreement between parents on custody and related issues. It also shows that children are not legally represented. However the Federal first instance court had taken innovative changes in making the courts child friendly, establishing office of social workers to assist children psychologically and give professional opinions about the custody and visitation right of children by way of interviewing the parents and the children and other means when the court referred the case to the office. But there is no controlling mechanism that checks each case is referred to the office or not.

The study shows that most custody denied parents do not visit their children. It also shows that visitation right is given not in a mandatory way but as an award for the non custodial parent.

The finding also shows that there is no binding guideline for decision of maintenance. The amount of maintenance decided by courts is not sufficient to maintain the child. More over enforcement of maintenance especially from unsecured source of income is not easy. It also shows that it is the court that handles execution of other civil cases enforces maintenance. It also shows that there is no child support enforcement agency with the mandate of inspecting the incomes of the non custodial parent and assisting the court by calculating, collecting and enforcing maintenance.

Regarding custody and division of marital home, the law does not have clear provisions which allow joint custody in cases of divorce. And it does not allow the marital home to be given to the custodial parent until children attain majority unless the parties to the dispute agreed to do so.

The study shows that divorce changes the economic capacity of parents. As a result it has an adverse impact on children in providing the child with the necessary needs for his/her well being.

The study shows that most parents do not know how they are going to handle their divorce proceedings with out affecting the rights of their children. Moreover there is no institution that advises and gives information about parental arrangements.

The study shows there is no data which shows about the magnitude of the effects of divorce on the rights of children.

## **Recommendations**

- The office of social workers established in Federal first instance court is playing an important role in assisting children psychologically and facilitating child participation. The professionals of the office are child friendly and can give professional opinions about the best interest of the child. This office can be taken as a best remedy that can ensure children's participation whether they are of sufficient age to express their views or not. Referring every case that involves children to this office ensures children's participation. To this effect the Federal first instance court should establish controlling mechanism to check every case is referred to the office. Building the capacity of this office both in the number of professionals and awareness creating mechanism is also necessary.
- A child has a right to maintain direct contact and personal relations with both parents. To this effect by citing the CRC and the national laws courts should give obligatory decisions of visitation right by a way of indicating the child's right to be visited by the non custodial parent in the decision of the court.
- In all actions concerning children courts of law, administrative authorities or legislative bodies, the best interest of the child should be the primary consideration. States are under duty to protect their citizens by appropriate legislation. The House of Peoples Representatives' or the Plenum of Federal Supreme Court Should legislate a binding guideline for the purpose of decision of maintenance.
- The only way courts can enforce maintenance is if they are informed about the income and property of the non custodial parent. If there is no secured income courts will face difficulties in enforcing maintenance. Establishing child support enforcement agencies with a mandate of inspecting and collecting any income of the non custodial parent will solve the problem
- Enforcement of maintenance is handled in the execution court that also handles other civil cases. This delays the enforcement of maintenance due to the number of cases. More

over judges may not follow case flow management system. Establishing special family cases execution courts and assigning judges who have experience in execution court in these courts can solve the problem.

- The revised family law does not have clear provisions which allow joint custody during divorce. Joint custody can be taken as a remedy for the right of the child to maintain direct contact and personal relations with both parents. The marital home is vital for accommodation of children but the code do not allow the marital home to be given for the custodial parent until the child attains majority unless the parties agreed to do so. Amending the family law with regard to joint custody and the marital home has a vital role in decreasing related problems.
- Courts should apply provisions of related International human rights instruments which Ethiopia is a party. They should also site related decisions (precedents) of Federal Supreme Cassation Court when ever necessary.
- Most parents do not know how they are going to handle their divorce proceedings with out affecting the rights of their children. Establishing institutions with a mandate of giving advice and information about parental arrangements. Incorporating the idea in school curriculums, using the media in creating awareness mechanism about the rights of children especially during divorce can raise awareness.
- The Ministry of Women, Children and Youth affairs should collect data which shows the magnitude of the effects of divorce on the rights of children, to take proper measure to solve the problem.

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Addis Ababa University School of Graduate Studies  
Institute of Human Rights

**Questioner designed for the survey of post divorce effects**

Dear participants I am Graduate student of the MA program in Addis Ababa University Institute of Human Rights. Currently, I am doing a research on a topic Post divorce effects on the rights of children: A case study of Federal first instance court Lideta Bench and Ethiopian women lawyers association. The objective of the research is examining the gaps in in the legal system, examining the problems that hamper the enforcement of maintenance, examining that the absence of divorced parents in the lives of their children constitutes a violation of the child's right to personal relations and direct contact with both parents, right to health, right to life survival and development and right to education, and examining the need for establishment of institutions that advise parents about parental arrangements after divorce in relation to the rights of children. To this effect the researcher needs your contributions and you are kindly invited to the study. Any information you provide is relevant and will absolutely be kept confidentially and only be used for the purpose of this study. You are kindly requested to give genuine information.

Thank you in advance for your contribution

Etmnet Assefa Asamrie



12. If yes, how much is his/her salary?

- A less than 500                      B 501-1000                      C 1001-1500                      D 1501-2000  
E 2001-2500    F 2501-3000                      G 3001-3500    H 3501-4000    I more than 4000

13. Did your X spouse have another source of income?

- A. yes                                      B. no

14. If yes, how much did he/she get from other source of income?

- A less than 500                      B 501-1000                      C 1001-1500                      D 1501-2000  
E 2001-2500    F 2501-3000                      G 3001-3500    H 3501-4000    I more than 4000

### **Pre divorce preparation**

15 Do you get any institution that gives advice and information about parental arrangements before filing petition for divorce?

- A. yes                                      B. no

16 If your answer to the above question is yes, where do you go?

- A Women and children affairs at wereda level    B Non governmental organizations working on women's right  
C governmental institutions working on children's right  
D If other, please specify .....

17 If you go to one of the institutions in the above question, what did they advise you?

- A advised you only to file petition for divorce    B advised you and your spouse about parental arrangements after divorce  
C Do not do anything  
D If any, please specify .....

### **Court proceeding**

18. Are you legally divorced?

- A yes                                      B no

19 If your answer to the above question is yes, are you the custodial parent?

- A Yes                                      B No                                      C if other please specify.....

20 Did you claim for joint custody?

- A yes                                      B no

21 If your answer to the above question is yes, did the court decide joint custody?

- A yes                                      B no

22 If your answer to question twenty is no, why not?

A You do not have information whether joint custody is allowed

B you do not want to ask

C If other please specify.....

23 Did the court decide maintenance for child/children?

A yes

B no

24 If the court decides maintenance, how much is it (in birr)

A 100

B 101-300

C 301-500

D 501-700

E 701-1000

F 1001-1500

G 1501-2000

H more than 2000

25 For how many children is the maintenance decided?

A. 1

B. 2

C. 3

D. 4

E. 5

F. 6

G. 7

H. above 7

26 What are the factors that the court considers for deciding maintenance?

A The income of you and your x-spouse

B the age and interest of the

Children C The amount of School fee of the children D Did not consider any thing

E If other, please specify.....

27 From what source did the court ordered maintenance?

A From secured source

B From unsecured source

C If other, please state.....

.....

28 Did the court ordered any shared or individual property or money of the non custodial parent to be for the purpose of maintenance?

A yes

B no

29 If your answer for the above question is yes, on what conditions?

A The court orders the maintenance to be paid from the individual or shared money of the non custodial parent

B The court orders the shared or individual property of the non custodial parent to be changed as security for payment of maintenance

C If other, please specify.....

30 Did the court ordered maintenance to be paid monthly or in installments?

A Monthly

B In installments

C If other, please mention .....

31 Did the court give visitation right for the non custodial parent?

A yes

B no

32 If your answer to the above question is yes , what are the conditions?

A visiting the children on week ends in specified time in a place where the non custodial Parent chooses

B visiting the children on week ends in specified time in the presence of other third party

C visiting the children on week ends in specified time in the home of the non custodial Parent D If other, please specify.....

33 Do you have common marital home with your x-spouse?

A yes

B no

34 If your answer to the above question is yes, what is the decision of the court on the marital home?

A Decided to be shared equally between you and your x-spouse

B Decide for the custodial parent, until the child attains majority

C If other, please specify.....

35 Did the court pay attention to the views of the child before deciding custody maintenance and visitation rights?

A. yes

B.no

C If other, please specify.....

36.If your answer to the above question is no, what is the reason?

A.the children are not of sufficient age

B.divorced parents agree to the custody, maintenance and visitation right of the child

C the court does not need to listen to the views of the children even if the children can express their views

D.If other, please specify.....

37 Is there any representative for the child in the court preceding?

A yes

B no

38 If your answer to the above question is yes, who represents the child?

A Both or one of his/her parents

B legal representative at states cost

C If other, please specify.....



- A the court gives an obligatory order for the non custodial parent to visit the children
- B the court did not give any order
- C if other, please specify.....

**Post divorce living conditions of children**

49 Do you believe that divorce has an adverse impact on your child's health?

- A Yes
- B No

50 If your answer for the above question is yes, what is it?

- A you can not provide your child adequate food/nutrition due to the economic hardship after divorce
- B your child can not get timely medical care when necessary due to the economic hardship after divorce
- C You do not have home or money for house rent after divorce
- D the absence of the non custodial parent in giving necessary care for the child
- E if any, please specify.....

51 Do you believe that divorce has an adverse impact on your child's right to life, survival and development ?

- A Yes
- B No

52 If your answer for the above question is yes, what is it ?

- A you can not provide your child adequate food/nutrition due to the economic hardship after divorce
- B your child can not get timely medical care when necessary due to the economic hardship after divorce
- C You do not have home or money for house rent after divorce
- D the absence of the non custodial parent in giving necessary care for the child
- E if any, please specify.....

53 Do you believe that divorce has an adverse impact on your child's right to education?

- A Yes
- B No

54 If your answer for the above question is yes, what is it ?

- A You can not provide your child the necessary educational materials due to

the economic hardship after divorce

B You can not afford the school fee of your child after divorce

C lack of adequate food/nutrition due to the economic hardship after divorce

D failure to pay tutor fee due to the economic hardship after divorce

E if any, please specify.....

If there is any information you believe relevant, please do not hesitate to specify in the space below.

.....  
.....  
.....  
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## **Interview check list of Ato Desalegn Berhe president of Federal first instance court**

1. What factors are considered before giving decision of maintenance?

- Regarding the above question is there any binding guideline?
- Do you believe that the amount of maintenance decided by courts can maintain the child as the child's life standard before the parents are divorced?
- What are the problems regarding the enforcement of maintenance?
- There are some people that state that the enforcement of maintenance in the execution court that handles other civil cases delays its enforcement in short period of time. What is your belief in this issue?
- Is there a practice of securing the money or property of the non custodial parent for the purpose of maintenance until the children attain majority? Do you believe that this will solve the routine conflicts of maintenance?

2. The child's right to express his/her personal views is provided in the International convention of children where Ethiopia is a party. With this regard, did courts give chance for the child to express his/her views?

- Especially when the child is of sufficient age to express his/her views?
- What about if the child is not of sufficient age to express his/her?
- Why don't the courts try to see the views of the child when there is agreement between the spouses on custody and related issues?
- Children are not considered as indispensable party in divorce proceedings. Rather they are represented by their parents. Do you believe that children should have legal representative at states cost?

3. Most of the time visitation right is given as an award for the non custodial parent. And because of this, decision of visitation right does not indicate the obligation of the non custodial parent to visit the children. What is your suggestion regarding this issue?

4. What is the reason of the establishment of social workers in the court? What is the mandate of the social workers?

- Did the courts refer the case to the office of social workers if the child is not of sufficient age to express his/her views? Did the social workers give professional opinion about a child who is not of sufficient age to express his/her views?

- Apart from giving opinions about the child, did the social worker have a mandate of giving advice about parental arrangement for parents?

5. There are countries which allow the marital home to be given for the non custodial parent until the children attain majority because they believe that the marital home is vital to ensure the rights of the child. What is your suggestion with this regard?

6. Is there any awareness creation mechanism for judges about the international human rights documents where Ethiopia is a party?

Thank you for your time

### **Interview check list of Ato Philipos Aynalem former Judge and lawyer**

1. The Federal Revised Family code does not have clear provision which allows joint custody in cases of divorce. What is your suggestion regarding this issue?
2. Is there any binding guideline for the purpose of decision of maintenance?
3. What is the practice of courts in giving decision of maintenance?
  - Did they have a practice of giving order of maintenance from the personal or share of property or money of the non custodial parent?
  - Did they have practice of giving decision of maintenance to be paid in installments?
  - What are the problems that hamper the enforcement of maintenance?
  - Do you believe that establishing special family execution courts or enforcing maintenance in the court that gives decision of divorce will make enforcement of maintenance in short period of time?
4. The Revised Family code does not allow the marital home to be given for the custodial parent until the child attains majority unless the parties agreed to do so. Do you believe that giving the marital home for the custodial parent until the child attain majority will ensure the rights of the child?
5. Do you believe that a child should be represented by a legal representative in divorce proceedings?
6. Have you ever entertained a case in which one of the divorced parents came to enforce the visitation right of the child by the non custodial parent?
7. Do you know any institution that gives advice and information for parents about parental arrangements?

Thank you for your time

## Interview checklist of social workers of Federal first instance court

1. When is the office of Social workers established? What is its mandate?
2. If courts did not refer the case to the office, did the office give professional opinion about custody and visitation right on its initiative?
3. Did courts refer every cases of divorce in which children are involved to the office?
4. Is there any controlling mechanism to check every case is referred to the office?
5. Can the Social workers give professional opinion about a child who can not express his/her views?
6. What are the techniques of the social workers to identify issues and know problems so that to give an opinion about the best interest of the child?
7. Apart from giving professional opinion about the best interest of the child, did the office give advice for parents about parental arrangements?

Tank you for your time

## Discussion check list of children

1. How old are you?
2. With whom are you living?
3. Did your parent who does not live with you visit you?
4. Have you ever go to courts or other place to express your views when your parents are divorced?
5. Did you live in the same life standard before your parents are divorced?
6. Did your parent who lives with you have enough money to provide your needs?
7. Did your monthly school fee paid on time? If not why?
8. Did you get materials for your education properly? If not why?
9. Did you eat proper food? If not why?
10. Did you go to clinics or hospitals when you face health problem? If not why?

Interview Checklist of Officers of Ministry of Women, Children and Youth Affairs  
and Bureau of Addis Ababa Women, Children and Youth Affairs

1. Is there any data prepared by the office which shows the prevalence of effects of divorce on the rights of Children?
2. What are the measures taken to ensure the rights of Children with regard to divorce?
3. Is there any policy made focusing on Children's right with regard to divorce?
  - With regard to court proceedings
  - With regard to the responsibilities of parents on their lives of Children