THE STATUS OF ETHIOPIA'S INTERCOUNTRY ADOPTION POLICY IMPLEMENTATION: THE CASE OF KEY STAKEHOLDERS IN INTERCOUNTRY ADOPTION PROCESS

BY

DANIEL GETACHEW

A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE STUDIES OF ADDIS ABABA UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF THE AWARD OF MASTER'S DEGREE IN PUBLIC MAMAGEMENT AND POLICY SPECIALIZED IN PUBLIC POLICY

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Abbreviations/Acronyms

ACPF	African Child Policy Forum
ACRWC	African Child Right Welfare of the Child
ASON	Adoption Service Organization Network
BoWCYA	Bureau of Women Children and Youth Affair
CA	Central Authority
CECDO	Consortium of Ethiopian Child‘s Development Organization
CHSA	Charities and Societies Agency
CRC	Child Right Convention
CRPD	Convention on the Right of persons with Disabilities
FDRE	Federal Democratic Republic Of Ethiopia
FFIC	Federal First Instant Court
HCICA	Hague Convention on Intercountry Adoption
HPR	House of People‘s Representatives
ICA	Intercountry Adoption
IRC	International Reference Centre
ISS	International Social Service
MoLSA	Ministry of Labour and Social Affair
MoWCYA	Ministry of Women, Children and Youth Affair
NGO	Non-Government Organizations
OAU	Organization of Africa Unity
OVC	Orphan and Vulnerable Children
RACCG	Revised Alternative Child Care Guidelines
RFC	Revised Family Code
UN	United Nation
UNICEF	United Nation Child Fund

Abstract

The main objective of the study is to investigate the challenges of intercountry adoption and come up with feasible policy alternatives that can contribute to the implementation of child rights in the country. A qualitative study is used which included both primary and secondary data. In order to achieve the results, purposive sampling is used in identifying and selecting appropriate organizations and respondents in the study. Relevant information was collected through key informant interview from experts of MoWCYA and four nongovernment organizations (2 local and 2 international). Data thematically organized and analysed qualitatively based upon logical and descriptive analysis.

The study was able to find out that the Ethiopian government has adopted different policies and conventions on the right of children. Despite some notable progresses, child fundamental rights have remained major challenges in the country.Legislatives/policies introduced over the past years have not made significant difference to the implementation of alternative child care packages. Systemic inadequacies, illegal financial gains and corruption, child trafficking, buying selling, and abducting and falsification of documents have been recognized as major problems facing in the intercountry policy implementation. Therefore, effective implementation, monitoring and evaluation of pro-children policies/legislative have sought to decrease the prevalence of the problems. Wherever and whenever intercountry adoption is applied as a measure of last resort and before institutional care, it should be carried out based on the principle of the best interest of the child.

CHAPTER ONE

1.1 BACKGROUND OF THE STUDY

International adoption—involving the transfer of children for parenting purposes from one nation to another—presents an extreme form of what is often known as ―stranger" adoption, by contrast to relative adoption (Bartholet, 2005). Relative adoption refers to situations in which a stepparent adopts the child of his or her spouse, or a member of a child's extended biological family adopts the child whose parents have died or become unable or unwilling to parent. Such adoptions are largely noncontroversial: children stay within the traditional biological family network, and the adoptive parents are generally thought of as acting in a generous and caring manner by taking on the responsibility for these children (ACPF, 2012).

By contrast, in international adoption, adoptive parents and children meet across lines of difference involving not just biology, but also socio-economic class, race, ethnic and cultural heritage and nationality (Bartholet 2005). Typically, the adoptive parents are relatively privileged. They are usually people from one of the richer countries of the world, and will be adopting a child born to a desperately poor birth mother belonging to one of the less privileged racial and ethnic groups in one of the poorer countries of the world. International adoption is characterized by controversies. Some see it as an extraordinarily positive form of adoption.[1] It serves the fundamental need for family of some of the world's neediest children. The families formed demonstrate our human capacity to love those who are in many senses ―other" in a world which is regularly torn apart by the hatred of seemingly alien others. But many see international adoption as one of the ultimate forms of human exploitation,[2] with the rich and powerful taking from poor, powerless members of racial and other minority groups.

[1] See, e.g., supra note 1; Sara Dillon, Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption, 21 B.U. INTL L.J. 179 (2003) (taking the position that international adoption should be understood as a fundamental human right for children).

2 See, e.g., Twila L. Perry, Transracial Adoption and Gentrification: An Essay on Race, Power, Family and Community, 26 B.C. THIRD WORLD L.J. 25 (2006); Twila L. Perry, Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory, 10 YALE J.L. & FEMINISM 101 (1998) (arguing that international adoption often results in the transfer of children from the least advantaged families to the most advantaged, while doing nothing to alleviate conditions in the children's birth countries); David M. Smolin, Intercountry Adoption as

On the other hand, the number and pattern of international adoption have changed over the years in response not simply to the objective needs of children for homes and of prospective parents for children, but also to the politics of international adoption and to changing cultural attitudes. The poor countries of the world have long had excess children for whom they cannot adequately care—children doomed to grow up in grossly inadequate orphanages or on the streets. In contrast, the rich countries have long had an excess of infertile adults who want to parent and a relatively limited number of homeless children (Bartholet, 2007b). Yet, there was virtually no matching of these children with these adults until after the First World War, the war which left the predictable deaths and devastation. It made the plight of parentless children in the vanquished countries visible to the world at a time when adoption was beginning to seem like a more viable option to childless adults in more privileged countries who were interested in parenting. Thus the first wave of international adoptions began.

In successive years after the war, different countries made their children available for adoption abroad in response to different political crises and cultural changes. Since World War II, inter-country adoption has become increasingly popular and widespread (Humphrey, 1993 and Cantwell, 1998). Primarily arising as a humanitarian response to wars (World War II, the Korean and Vietnam Wars), inter-country adoption is now growing in response to, inter alia, wealthy countries‘ decline in babies and children available nationally for adoption, low fertility, greater availability of contraception, increased availability of welfare and social acceptability of single mothers and the rise in population and poverty in developing countries (Bojorge, 2002).

At the same time, what are often termed as ―sending countries" have gone through changes over recent decades that have led generally to an increased willingness to send their children abroad for adoption. Similarly, the more privileged countries, often termed as ―receiving countries," have gone through their own cultural changes resulting in an increased willingness on the part of adults interested in parenting to look abroad for children to adopt (Bartholet, 2005). In the United States and elsewhere, such adults found fewer infants available domestically to adopt as the use of birth control and abortion expanded, and as the stigma against single parenthood lessened so

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Child Trafficking, 39 VAL. U.L. REV. 281 (2004) (claiming that international adoption systematically characterized by child selling and exploitation).

that more birth mothers felt comfortable keeping their babies to raise themselves. As stigma against adoption and mixed race families lessened, adults became more comfortable doing international adoption, which so typically involves children who look physically different thus marking the families as adoptive families, and so typically involves the adoption by whites or black and brown children. Adults interested in parenting were thus conditioned to respond to the signals sent from various countries that children were in need of homes and would be made available for adoption abroad(Bartholet, 2005).

Since human rights issues are at the core of the current debate over intercountry adoption (Bartholet, 20007), three instruments made intercountry adoption a subject of international human rights law. These includes the international children's rights laws the Convention on the Rights of the Child (CRC),[3] the African Charter on the Rights and Welfare of the Child (ACRWC),[4] and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention).[5]

The Ethiopian government has also shown interest in this endeavour, among other things, by adopting the Convention on the Rights of the Child (CRC) in 1991. This policy gesticulation was further reinforced by the ratification of the African Charter on the Rights of the Child under Proclamation No. 283//2002 and putting the National Plan of Action for Orphans and Vulnerable Children into operation since 2004. Accordingly, the international and regional conventions adopted by the Federal Democratic Republic of Ethiopia (FDRE) demanded the country to undertake all appropriate administrative, legislative and judicial measures, regardless of its economic circumstances towards the realization of the rights of children. Consequently, some principles of the conventions were somehow incorporated into the FDRE`s constitution and various other provisions of the country's legal systems such as Family Law of Ethiopia and the Penal code and Criminal Procedure Law. However, the number of signatory states to the Hague Convention from Africa still remains too low, not more than 13. Ethiopia is one of the African

[3] UN Convention on the Right of the Child (hereinafter ''CRC''), entered into force 2 September 1990.

[4] African Charter on the Right and Welfare of the Child (hereinafter ''ACRWC''), entered into force 29 November 1999.

[5] The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, entered into force 1 May 1995. It is important to note that the Hague Convention is not a human rights convention per se, but is an agreement on the standards to be observed where intercountry adoption occurs.

countries which did not ratify and implement the Hague Convention. In Ethiopia Child laws have gap and they have a number of direct implications in intercountry adoption processes. In the absence of a sound regulatory framework, the possibility of compromising children's best interests while undertaking intercountry adoption is high. The presence of relatively large sums of money involved in intercountry adoption in Ethiopia has also posed a challenge for the implementation of the subsidiarity principle and policies designed for intercountry adoption..

1.2 STATEMENT OF THE PROBLEM

Core international human rights law makes children's best interests the guiding principle in matters related to children and adoption. The CRC provides that _the best interest of the child shall be a primary consideration' (Art 3 of the CRC, 1990), and in adoption shall be _the paramount consideration' (Art 21 of the CRC, 1990). Similarly, the Hague Convention on Intercountry Adoption (1995) provides that intercountry adoptions take place _in the best interests of the child and with respect for his or her fundamental rights (Art 1 of the Hague convention).
International law makes central the child's human right to grow up in a family. The CRC preamble also describes the family as _the natural environment for the growth and wellbeing of ⋯ children'. Moreover, both the CRC and the Hague Conventions on Intercountry Adoption include in their preambles that _the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding' (Hague Convention). The CRC further demands that member states give children who cannot be raised by their original parents adequate substitute care, and protect them against the conditions characteristic of institutional care. It upholds that an un-parented child _shall be entitled to special protection and assistance', _alternative care' (Art 20 of the CRC) and _such protection and care as is necessary for his or her well-being' (Art 3 of the CRC). To this end, _every child has the inherent right to life' and to _survival and development' (Art 6 of the CRC). The convention also grants children affirmative rights to health, a standard of living adequate for appropriate development, and education (Art 24, 27, 28 of the CRC). It requires of states to _protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation' (Art 19 of the CRC). Consequently, _no child

shall be subjected to torture or other cruel, inhuman or degrading treatment‘, or _deprived of his or her liberty unlawfully or arbitrarily‘ (Art 37 of the CRC).

From the forgoing descriptions, it can be seen that, the core human rights principles give children the right to true family care. In the same view, un-parented children have a right to be placed in international adoption where true families are available, as they have a right to be liberated from the conditions characterizing orphanages, street life and most fostercare (Bartholet, 2010).

Ethiopia has ratified most international legal instruments relating to the protection of children, namely the CRC in 1991, ACRWC in 2002, ILO convention on the minimum Age of employment and the ILO convention on the Worst forms of child labor in 2008. Furthermore, the principle of the best interests of the child has been incorporated in the nation‘s constitution and the revised family code in the year 2000. The latter contains provisions relating to both domestic and intercountry adoption. In addition to these laws, a policy framework focusing on children and youth was developed by the Government of Ethiopia.

Despite of this, in 2011, the population of Ethiopia was estimated more than 82 million people, 55% are children (ACPF conference report, 2012). Approximately, 6 million children are considered _vulnerable‘; these children are deprived of their family, neglected, displaced and living in the streets, abandoned or disabled (Ibid). Structural causes leading to the vulnerability of this vast number of children include extreme poverty, HIV/AIDS and urbanization, while underlying factors of vulnerability are family instability and disintegration, violence in the home, abuse and disability (Ibid). In an attempt to combat children‘s vulnerability, the government has provided for a range of interventions and options, such as community based care, foster care, domestic and international adoption, reunification and reintegration. Community-based care is pursued as the main strategy, while institutional care is regarded as a measure of last resort and is least promoted. In the year 2011, more than 700,000 children received government funded support, primarily within their own family or community, while an estimated 7,000 children lived in an institution. In the same year, approximately 3,000 children left Ethiopia through an intercountry adoption procedure (Ibid).

However, a number of challenges with regard to intercountry adoption could be discerned. First and foremost, the availability of domestic alternative care options is very limited. There is also a lack of accurate and reliable data on children‘s situations and a comprehensive information system is not in place, all of which is further complicated by non-compulsory nature of birth certificates. Other challenges in implementation of intercountry adoption include lack of communication, resources and dispositions or attitudes and bureaucratic structures and the fact that a large part of the population is not familiar with the advantage and limitation of intercountry adoption (ACPF conference report, 2012).

Accordingly, the Government of Ethiopia has announced through the national media that the practice of intercountry adoption has suffered from poor regulation and its implementation is also inadequate. In addition to the existing gaps, the news highlights the legal and policy gaps that expose adopted children to abuses and exploitations (ETV News, 26 December 2013). As a response, the House of the Peoples' Representatives and the Ministry of Women, Children and Youth urged stakeholders and the public at large to undertake integrated response to totally stop adoption of Ethiopian children by foreign families.

Therefore, this study will assess the general environment and situational analysis of laws, policies and practices of intercountry adoption in Ethiopia, with the aim of initiating debate on conceptualizing, developing and implementing policies, laws and programs which can respond to intercountry adoption challenges in Ethiopia. The study attempts to draw the attention of government politicians, policy makers, officials, different stake holders and different child rights advocacy groups operating and making efforts to promote children‘s best interest in the country.

1.3 RESEARCH QUESTIONS

The study will address the following research questions:-

1. Has the affair of intercountry adoption taken forefront consideration in public policy making in Ethiopia?
2. Has the Ministry of Women, Children and Youth Affairs introduced any legislative or policy that influences intercountry adoption?

3. What is the status of implementation and response to the recent change of policy and regulation?
4. How have policy dialogues pertaining to intercountry adoption being made?
5. What efforts have been made by the stakeholders that facilitate the process of intercountry adoption to curb the problem and barriers in the implementation process?
6. Have the state and non-state groups aligned to contribute to the implementation of alternative child care?

1.4 OBJECTIVES OF THE STUDY

1.4.1 GENERAL OBJECTIVE

The cardinal objective of the study is be to investigate the challenges of intercountry adoption and come up with feasible policy alternatives that can contribute to the implementation of child rights in the country.

1.4.2 SPECIFIC OBJECTIVES

The specific objectives of the study include:

1. To examine the practice and impact of intercountry child adoption policy; the implementation process; and investigate into the nature and extent of organizations and sectors influence on intercountry adoption legislative and policy process;
2. To assess the general state of partnership and governing legal framework in the implementation of intercountry adoption;
3. To identify key strategies and techniques for exerting influence on alternative child care legislative and policy process concerning national adoption;
4. To examine efforts made by the child rights advocate groups to promote the protection of children against various forms of abuse and exploitation in the name of intercountry adoption and;
5. To suggest possible policy options in the area.

1.5 THE SCOPE OF THE STUDY

The study is delimited to provide an analysis on laws, policies and practices of intercountry adoption in Ethiopia. It is not the aim of this research to investigate and address all issues related to intercountry adoption. To this end, the cause of the problems and the other alternative solution was not addressed.

The study also is not to attempt to cover all scandals and irregularities concerning child trafficking or illicit activities in the context of intercountry adoption. Furthermore, the study will not cover issues such as child abandonment, relinquishment and giving children for intercountry adoption. The study will not cover the regional practice on the intercountry adoption in Ethiopia. The underlining reason to that is there is no any court bench in the region that approves an intercountry adoption. Moreover, every individual case passes through MOWCYA and it is the accredited body in relation to international adoptions in the country.

1.6 SIGNIFICANCE OF THE STUDY

So far, many studies have been done on issues related to children in the country. However, there is no study done related to an intercountry adoption in the country, in particular, on the laws and policy related practices. Therefore, this study is expected to provide relevant policy recommendations and will help stakeholders who are working on the children gain important insights. Moreover, the study will serve as a foundation for other researchers to conduct further in-depth research in this area.

1.7 LIMITATION OF THE STUDY

Lack of books and previous researches in the area of intercountry adoption was one of the major pitfalls in this research. In addition, lack of finance has been the major limitation of this study which hinders the researcher from an in depth investigation of the issue. The availability of satisfactory information in different stakeholder‘s also hindered the researcher and takes the bigger share of the limitation.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.18 POLICY IMPLEMENTATION: THE BUREAUCRACY

‗‗Policy implementation is the continuation of politics by other means'' (Metter and Vanltorn, 1975). Browne and Wildavsky's (1984, 234) caution that ‗‗implementation is no longer solely about getting what you once wanted but, instead, it is about what you have since learned to prefer until, of course, you change your mind again,'' the definition clearly becomes murky, and too often has been as complex and detailed (and, by natural extension, the most cumbersome) definition has been offered by Mazmanian and Sabatier (1983, 20-21):

> Implementation is the carrying out of a basic policy decision, usually incorporated in a statute but which can also take the form of important executive orders or court decisions. Ideally, that decision identifies the problem(s) to be addressed, stipulates the objective(s) to be pursued, and, in a variety of ways, "structures" the implementation process. The process normally runs through a number of stages beginning with passage of the basic statute, followed by the policy outputs (decisions) of the implementing agencies, the compliance of target groups with those decisions, the actual impacts of agency decisions, and, finally, important revisions (or attempted revisions) in the basic statute.

A more satisfying definition also given by different scholars, Take, for instance, Ferman's (1990) definition of implementation as what happens between policy expectations and perceived policy results. O'Toole (2000, 266) takes a similar tack when he writes that "policy implementation is what develops between the establishment of an apparent intention on the part of government to do something, or to stop doing something, and the ultimate impact in the world of action."

2.19 TOP-DOWN, BOTTOM-UP, AND HYBRID THEORIES OF POLICY IMPLEMENTATION

The three approaches to the study of implementation can be subdivided into three distinct theoretical approaches to the study of implementation:

1. Top-down models put their main emphasis on the ability of decision makers‘ to produce unequivocal policy objectives and on controlling the implementation stage.
2. Bottom-up critiques view local bureaucrats as the main actors in policy delivery and conceive of implementation as negotiation processes within networks of implementers.
3. Hybrid theories try to overcome the divide between the other two approaches by incorporating elements of top-down, bottom-up and other theoretical models.

2.19.1 TOP-DOWN THEORIES

Top-down theories started from the assumption that policy implementation starts with a decision made by central government. Top downers essentially followed a prescriptive approach that interpreted policy as input and implementation as output factors. Due to their emphasis on decisions of central policy makers, deLeon (2001, 2) describes top-down approaches as a ―governing elite phenomenon". Pressman and Wildavsky‘s started from the assumption that policy objectives are set out by central policy makers. In this view, implementation research was left with the task of analyzing the difficulties in achieving these objectives. Hence, they saw implementation as an ―interaction between the setting of goals and actions geared to achieve them" (Pressman and Wildavsky 1973, xv). They underlined the linear relationship between agreed policy goals and their implementation. Implementation therefore implied the establishment of adequate bureaucratic procedures to ensure that policies are executed as accurately as possible. To this end, implementing agencies should have sufficient resources at their disposal, and there needs to be a system of clear responsibilities and hierarchical control to supervise the actions of implementers.

Sabatier and Mazmanian (1979, 1980 and 1983) are among the core authors of the top-down approach. They started their analysis with a policy decision that was made by governmental

representatives. Therefore, they assumed a clear separation of policy formation from policy implementation. Their model lists six criteria for effective implementation: (1) policy objectives are clear and consistent, (2) the program is based on a valid causal theory, (3) the implementation process is structured adequately, (4) implementing officials are committed to the program‘s goals, (5) interest groups and (executive and legislative) sovereigns are supportive, and (6) there are no detrimental changes in the socioeconomic framework conditions. They acknowledged that perfect hierarchical control over the implementation process was hard to achieve in practice and that unfavorable conditions could cause implementation failure, they argued that policy makers could ensure effective implementation through adequate program design and a clever structuralization of the implementation process.

2.19.2 BOTTOM-UP THEORIES

Bottom-up theories emerged as a critical response to the top down school. Several studies showed that political outcomes did not always sufficiently relate to original policy objectives and that the assumed causal link was thus questionable. Theorists suggested studying what was actually happening on the recipient level and analyzing the real causes that influence action on the ground. Studies belonging to this strand of research typically started from the ―bottom" by identifying the networks of actors involved in actual policy delivery. They rejected the idea that policies are defined at the central level and that implementers need to stick to these objectives as neatly as possible. Instead, the availability of discretion at the stage of policy delivery appeared as a beneficial factor as local bureaucrats were seen to be much nearer to the real problems than central policy makers. Studies showed that top-down approaches failed to take into account that a hierarchical chain of command and well-defined policy objectives are not enough to guarantee successful implementation.

Therefore, they suggested that implementation analysis should start with the identifi cation of networks of actors from all relevant agencies collaborating in implementation and then examine the way they try to solve their problems. According to Sabatier (1986a), this approach offers a useful tool to describe the ―implementation structures" (Hjern and Porter 1981) within which policy execution takes place.

Top-down and Bottom-up Theories Compared

	Top-down theories	**Bottom-up theories**
Research strategy	Top-down: from political decisions to administrative execution	Bottom-up: from individual bureaucrats to administrative networks
Goal of analysis	Prediction/policy recommendation	Description/explanation
Model of policy process	Stagiest	Fusionist
Character of implementation process	Hierarchical guidance	Decentralized problem-solving
Underlying model of democracy	Elitist	Participatory

2.19.3 HYBRID THEORIES

The new models presented by Elmore (1985), were combined elements of both sides in order to avoid the conceptual weaknesses of top-down and bottom-up approaches. Taking the top-downers‘ concern with effective policy execution as their starting point, they blended several elements of the bottom-up perspective and of other theories into their models.

They tried to bridge the gap between top-down and bottom-up approaches. Like top-downers, they continued to accept the perspective of a centrally defined policy decision to be implemented by lower-level actors. Their goal of developing a general theory of implementation on the basis of rigorous methods also owes much to the top-down perspective. However, their conception of the implementation process embraced the fact that implementers are political actors in their own right and that the outcome of this endeavour entailed complicated negotiation processes between implementers and central authorities

Scharpf (1978) was one of the earliest writers who tried to reconcile the idea of political steering by central governments with the argument of bottom-up scholars that the transformation of policy goals into action depends upon the interaction of a multitude of actors with separate interests and

strategies. Introducing the concept of policy networks to implementation research, he suggested giving more weight to processes of coordination and collaboration among separate but mutually dependent actors. The concept of policy networks later became a major approach to the study of policy change as a whole (see e.g., Marin and Mayntz 1991).

Ripley and Franklin (1982) distinguish between distributive, regulatory, and redistributive policies, arguing that each of these policy types involves different groups of stakeholders as well as different types and levels of conflict in implementation. Windhoff-Héritier (1980) makes a similar argument. She distinguishes between distributive and redistributive policies. This distinction includes regulatory policy, which can fall into either of the two categories depending on whether or not a regulatory program involves clearly identifiable winners and losers. Her book reveals that distributive policies may be implemented in any implementation structure, while redistributive policies need a hierarchical implementation structure to be executed effectively (Windhoff-Héritier 1980, 90).

In sum, the approaches summarized under the heading of ―hybrid theories" brought two important innovations to implementation theory. First, they tried to overcome the conceptual weaknesses of the polarized debate between bottom-up and top-down scholars. Leaving aside the normative aspects of the controversy, they focused instead on empirical arguments about the proper conceptualization of the implementation processes and pragmatically blended the extreme arguments of both sides into models that embraced both central steering and local autonomy. Second, some of the hybrid theorists pointed to important factors that had hitherto received little attention.

2.20 PROBLEMS OF POLICY IMPLEMENTATION

Implementation problem occurs when the desired result on the target beneficiaries is not achieved. Such problem is not restricted to only the developing nations. Wherever and whenever the basic critical factors that are very crucial to implementing public policy are missing, whether in developing or developed nations, there is bound to be implementation problem. These critical factors are communication, resources, dispositions or attitudes, and bureaucratic structure (Edwards III, 1980). The four factors operate simultaneously and they interact with each other to

aid or hinder policy implementation. By implication, therefore, the implementation of every policy is a dynamic process, which involves the interaction of many variables as would be discussed below.

Communication is an essential ingredient for effective implementation of public policy. Through communication, orders to implement policies are expected to be transmitted to the appropriate personnel in a clear manner while such orders must be accurate and consistent. Inadequate information can lead to a misunderstanding on the part of the implementers who may be confused as to what exactly are required of them. In effect, implementation instructions that are not transmitted, that are distorted in transmission, that are vague, or that are inconsistent may cause serious obstacles to policy implementation. Conversely, directives that are too precise may hinder implementation by stifling creativity and adaptability (Edward III, 1980). Such precise directives do not leave room for implementers to exercise discretion and flexibility where and when the need arises.

Where implementation orders are clear, consistent and accurately transmitted, the absence of adequate resources will result in implementation problems. Resources include both the human and material such as adequate number of staff who are well equipped to carry out the implementation, relevant and adequate information on implementation process, the authority to ensure that policies are carried out as they are intended, and facilities such as land, equipment, buildings, etc. as may be deemed necessary for the successful implementation of the policy. Without sufficient resources it means that laws will not be enforced, services will not be provided and reasonable regulations will not be developed (Makind, 2005).

In addition to communication and resources, disposition or attitude is another key factor that affects policy implementation. Most implementers can exercise considerable discretion in the implementation of policies because of either their independence from their nominal superiors who formulate the policies or as a result of the complexity of the policy itself. The way the implementers exercise their discretion depends, to a large extent, on their disposition toward the policy. Therefore the level of success will depend on how the implementers see the policies as affecting their organizational and personal interests. Where a policy will result in reduction of

pay, low self-esteem, or loss of position to the implementers, the attitude/ disposition will be affected adversely (Ibid).

It is to be noted that the fact that communication, resources, and positive disposition are put in place does not guarantee implementation success. If there is no efficient bureaucratic structure, the problem of implementation can still arise especially when dealing with complex policies. As observed by Edward (1980) where there is organizational fragmentation it may hinder the coordination that is necessary to successfully implement a complex policy especially one that requires the cooperation of many people. It may also result in wastage of scarce resources, inhibit change, create confusion, lead to policies working at cross-purposes and, at the end, result in important functions being overlooked (Ibid).

2.21 DEFINITIONS OF BASIC CONCEPTS

2.21.1 WHO IS A CHILD?

Article 1 of the Convention on the Rights of the Child (CRC) states that ~~"a~~ child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". Cornell University defined child as person, not a sub person, and the parent has absolute interest and possession of the child. Other scholars argue that the term "child" does not necessarily mean minor but can include adult children as well as adult nondependent children (Ben-Arieh & Khoury-Kassabri, 2008). According to these scholars, there are no definitions of other terms used to describe young people such as "adolescents" ,"teenagers," or "youth" in international law, but they recognize that the way children exercise their rights and the limits imposed on the exercise of their rights can and should vary according to the age of the child.

In many international instruments, 18 is used as the age limit for determining when a person loses the right to the special protection to which children are entitled (Atwool, 2006). The various legal documents of Ethiopia also use 18 as defining age to the special protection to which children are

entitled. Key international organizations working with children also use 18 as the defining age for their work.

Therefore, the definition used in this thesis is one stated in Article one of the CRC that is, "A child is any human being bellow the age of eighteen years, unless under the law applicable to the child, majority is attained earlier"(1990,p2)

2.21.2 WHAT IS CHILD RIGHTS?

Children's rights are defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights (See Box-1 below). Consensus on defining children's rights has become clearer in the last fifty years (Barnes, 2007). A 1973 publication by Hillary Clinton (then an attorney) stated that child's rights were a "slogan in need of a definition" (Daiute, 2008). According to some researchers, the notion of children's rights is still not well defined, with at least one proposing that there is no singularly accepted definition or theory of the rights held by children (Daiute, 2008).

Box-1:- Typologies of Child`s Rights

The United Nation Convention on the Rights of Child (CRC) categorizes children's rights into three categories:

- **Provision:** Children have the right to an adequate standard of living, health care, education and services, and to play and recreation. These include a balanced diet, a warm bed to sleep in, and access to schooling.
- **Protection:** Children have the right to protection from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behavior, and acknowledgment of the evolving capacities of children.
- **Participation:** Children have the right to participate in communities and have programs and services for themselves. This includes children's involvement in libraries and community programs, youth voice activities, and involving children as decision-makers.

Source: Respecting children's rights at home, Children and Families in Canada; cited http://en.wikipedia.org/wiki/Children%27s_rights

Some scholars defined Children's rights from legal perspective as the point where the law intersects with a child's life (Campbell, 2008). That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, and effective rehabilitative services; care and protection for children in state care; ensuring education for all

The Child Rights Information Network (CRIN) categorizes child rights into two groups:

- **Economic, social and cultural rights:** This is related to the conditions necessary to meet basic human needs such as food, shelter, education, health care, and gainful employment. Included are rights to education, adequate housing, food, water, the highest attainable standard of health, the right to work and rights at work, as well as the cultural rights of minorities and indigenous peoples.

- **Environmental, cultural and developmental rights:** Which are sometimes called "third generation rights," and including the right to live in safe and healthy environments and that groups of people have the right to cultural, political, and economic development.

Amnesty International categorizes children's rights into four categories:

- ✓ Ending juvenile incarceration without parole,
- ✓ Ending the recruitment of military use of children,
- ✓ Ending the death penalty for people under 21, and
- ✓ Raising awareness of human rights in the classroom

Source: - (Freeman, 2000)

Human Rights Watch: An international advocacy organization, includes child labor, juvenile justice, orphans and abandoned children, refugees, street children and corporal punishment as children`s rights.

Scholarly study: This generally focuses children's rights by identifying individual rights. According to several scholarly studies, the following rights allow children to grow up healthy and free.

- Freedom of speech
- Freedom of thought
- Freedom from fear
- Freedom of choice and the right to make decisions
- Ownership over one's body

Other issues affecting children's rights include the sale of children, child prostitution and child pornography are also the focus of a wide studies concerning children`s wellbeing.

Source: - (Calkins, 1972)

children regardless of their origin, race, gender, disabilities, or abilities, and; health care and advocacy.

Others claim that children`s rights are the human rights of children with particular attention to the rights of special protection and care afforded to the children (Atwool, 2006). Accordingly, these rights include their right to association with biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child.

In general, interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. Other definitions include

the rights to care and nurturing. Therefore, children`s rights tend to be of two general types: those advocating for children as autonomous persons under the law and those placing a claim on society for protection from harms perpetrated on children because of their dependency. These have been labeled as the right of empowerment and as the right to protection (Barnes, 2007).

2.21.3 WHAT IS INTERCOUNTRY ADOPTION

> —...the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (Hague, 1993)[6]

Intercountry adoption (ICA) refers to "the adoption of a [minor] child born in one nation by adults who are citizens of another nation, who will ordinarily raise the child in their own country" (Bartholet, 1988) This activity, known interchangeably as ~~–in~~tercountry adoption" or ~~–in~~ternational adoption", involves ~~–a~~ child living in one country, the prospective adoptive parents living in another country, and the transfer of the child to that country to live there with the adoptive parents" (Jareborg, 1994). Intercountry adoption is similar to domestic adoption. Both consist of the legal transfer of parental rights and responsibilities from a child's birth parent(s) or other guardian to a new parent or parents.

Intercountry adoptions are different from domestic adoptions because of the laws that make it possible to bring the child to live in another nation. Generally speaking, to qualify as an adoption for immigration purposes into the country, the adopted child must have the same status and relationship to the adoptive parents as a child by birth.

Relative adoption refers to situations in which a stepparent adopts the child of his or her spouse, or a member of a child's extended biological family adopts the child whose parents have died or become unable or unwilling to parent. Such adoptions are largely uncontroversial: children stay within the traditional biological family network, and the adoptive parents are generally thought of

[6] Hague Conference on Private International Law: Final Act of the 17th Session, Including the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, Convention No.33, 29 May 1993, 32 I.L.M 1134, extract from preamble.

as acting in a generous, caring manner by taking on the responsibility for these children. (ACPF, 2012)

2.22 INTERCOUNTRY ADOPTION: A BRIEF HISTORY

Most people identify ICA as a post-World War II phenomenon, which is only partially correct. The movement of children into the colonies through slavery and indenture (Woodhouse, 2008), and the so-called "orphan trains" in the late nineteenth century and early twentieth century were a precursor to modem-day ICA (Holt, 1992 and Langsam, 1964).

Notwithstanding this history, ICA as it is commonly conceived of in the United States, began in earnest after World War II (Bartholet, 2007). As Bartholet noted;

> The numbers and pattern of international adoptions have changed over the years ....Yet there was virtually no matching of these children with these adults until after the World War II. That war left the predictable deaths and devastation, and made the plight of parentless children in the vanquished countries visible to the world at a time when adoption was beginning to seem like a more viable option to childless adults in more privileged countries who were interested in parenting. Thus began the first wave of international adoptions.... (159)

In the aftermath of a war, intercountry adoption was viewed as a benevolent humanitarian solution (Selman, 2001). The emergence of this phenomenon opened the door to a surge of adoptions from Korea after the Korean War in 1954 (Bartholet, 2007) and placement of children from Europe following World War II (Selman, 2001).

Because of social upheaval and poverty as a direct consequence of the war (Bergquist, 2004), widespread Korean adoption continued through the 1980s, and, by the mid-1980s, over 6,000

Korean children had been placed in the United States (Ibid). South Korea was the country from which the most people in the United States adopted for a number of years, but it has been surpassed by China and Guatemala (Bartholet, 2007). While there are intercountry adoption programs in many countries around the world, these countries are not as significant as China and Guatemala in terms of the number of children placed in the United States. Ethiopia, for example, has received a surge of recent media attention, due in part to recent celebrity adoptions from the country, but in terms of absolute numbers it does not place among the top countries from which Americans adopt (Gross and Connors, 2007).

Whereas, during World War II, the motivation to adopt children internationally appeared to revolve around an altruistic core, the societal concept of adoption became a slightly more complex phenomenon during the 1960s and 1970s, when the needs of parents took a more prominent place in the collective psyche and adoption became a way to meet parental needs for children. On the coattails of the women's rights movement, couples were having children later (as women increasingly aspired to careers) (Norton, 1982), which was accompanied by a rise in infertility, birth control, abortion (Bergquist, 2004). The societal acceptance of single-parent households meant that there were fewer white infants available for adoption (Bartholet, 2007). Soon, more families were in "need" of children than before. International adoption became a matter of finding children for childless couples. Motivation for adoption had shifted from the altruistic, finding a home for a parentless child, to the supply and demand economics of finding children for childless couples (Bergquist, 2004).

In successive years, different countries made their children available for adoption abroad in response to different political crises and cultural changes. The fall of the ―Iron Curtain" and the dissolution of the former U.S.S.R. has resulted in the opening up of China, Russia, and various new countries that were formerly part of the U.S.S.R. At the same time, China's overpopulation problems combined with its one-child policy designed to address those problems has resulted in the abandonment of many thousands of baby girls, exacerbating the newly felt need to place children for adoption abroad (Van Leeuwen 1999). While many poor countries in Latin America and Africa have had an extended family caretaking tradition which meant that orphaned children or others who could not be cared for by their parents were taken in by relatives, wars and other

crises have created huge numbers of children for whom such family care is unavailable. Economic dislocation has resulted in many parents moving away from their extended families to cities in desperate attempts to find work, and then if the parents fall victim as they often do to the ravages of ongoing poverty the children may be abandoned to the streets or to institutional care. The AIDS crisis has devastated the adult populations in many African countries that thousands of –AIDS orphans," some themselves HIV-positive and others not, have been left without any family care. Impoverished Latin American countries have long been sending some of their children abroad for adoption, and while Africa has to date sent very few children. Above all, the AIDS crisis had created new pressures which have begun to increase the flow (Greene 2002).

However, in the past several years, the world has reversed direction. The numbers of international adoptions have dropped dramatically. Many countries have closed or severely restricted their international adoption programs. After six decades of steadily rising, international adoptions into the US, the world's major receiving country, have been down each year since the 2004 peak of 22,884 (Bartholet, 2007b and US Department of State, 2008). Worldwide, such adoptions are dropping at a similar rate. Several countries with huge orphanage populations and often horrendous orphanage conditions have severely limited international adoption. Russia, with huge numbers of institutionalized children, instituted a requirement that children be held six months prior to placement abroad, despite the limited number of in-country homes. China instituted new rules limiting the eligibility of international adoptive parents, claiming there was no longer much need for foreign adoptive homes, despite the millions of abandoned baby girls (Bartholet, 2007b).

Indeed, it is extremely rare for children under the age of one to be placed. Yet child welfare experts know that keeping infants in institutional care for more than a few months puts them at enormous risk of lifelong damage, even if they are ultimately adopted, with the risk increased proportionately with the length of stay (Bartholet, 2007a). On the other hand, Africa has become the new frontier for intercountry adoption. To this end, between 2003 and 2010, the number of children adopted from Africa increased three fold. Yet Africa seems to be ill-equipped in law, policy and practice, to provide its children with enough safeguards when they are adopted internationally (ACPF, 2012).

2.23 PRINCIPLES OF INTERCOUNTRY ADOPTION

2.23.1 The principle of the Best interest of the child

Article 3 of the UN Convention on the Rights of the Child (1990), states; "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The "best interests" is a controversial principle of interpretation in international law, for "deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself" (Freeman, 2010). Of course, a child's best interest is value-laden and to some extent indeterminate. But it may be argued that there are some givens and that violence against a child may be considered one matter upon which there should be consensus. The best-interests principle can, of course, cloak prejudices: it can act as a smokescreen for a phobia about a particular religion (Ibid).

Intercountry adoptions should take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law (CRC, Art. 1). In achieving the best interests of the child in intercountry adoption, the 1993 Hague Convention also follows the following principles:

i. children should grow up in a family environment;
ii. permanency is preferable to temporary measures;
iii. intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her state of origin (28)

2.23.2 The principle of subsidiarity

The principle of subsidiarity is highlighted in the CRC (1989) in Article 4 (b). It provides that:

> ...an adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin […] have determined, after possibilities for placement of the child within the

> State of origin have been given due consideration, that an intercountry adoption is in the child‘s best interests;..

‘‘Subsidiarity‘‘ means that States have to recognize that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child‘s best interests (CRC, Art. 4(b)). Intercountry adoption serves the child‘s best interests if it provides a loving permanent family for the child in need of a home. Intercountry adoption is one of a range of care options which may be open to children in need of a family (UNICF, 2008).

The subsidiarity principle implies that efforts should be made to assist families in remaining intact or in being reunited, or to ensure that a child has the opportunity to be adopted or cared for nationally. It implies also that intercountry adoption procedures should be set within an integrated child protection and care system, which maintains these priorities (Hague, 1993). However, States should also ensure that efforts to achieve this goal do not unintentionally harm children by delaying unduly a permanent solution through intercountry adoption. States should guarantee permanency planning in the shortest possible time for each child deprived of his / her parents. Governments should work to promote family preservation and national solutions, rather than to hinder intercountry adoption. The principle of subsidiarity should be interpreted in the light of the principle of the best interests of the child (Ibid).

2.23.3 The principle of non-discrimination

The principle of non-discrimination derives from Article 21(c) of the Convention on the Rights of the Child. Article 21(c) requires States to ‘‘ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption.‘‘

Article 2 of the same Convention is a general non-discrimination provision, and requires States to protect the rights of any child in their jurisdiction, without discrimination and irrespective of (inter alia) birth or other status. Therefore, children who are the subjects of national or intercountry adoption should enjoy the same rights and protections as any other child (ISS/IRC, 2005).

In the context of intercountry adoption, the principle of non-discrimination is intended to guarantee equivalent rights and protections for all adopted children. It is also intended to protect the most vulnerable and disadvantaged children and ensures that they have the same possibilities of growing up in a family environment as other children (Hague, 1993).

2.24 THE EVOLUTION OF INTERCOUNTRY ADOPTION REGULATIONS

The governments of both sending and receiving nations set intercountry adoption policies, which have resulted in great variation among countries, despite the principles embodied in international agreements to which many such states have become parties. One reason for this policy variation is that the international treaties, though increasingly specific, lengthy, and authoritative over the years, are still too vague to produce standardized outcomes. In spite of significant progress towards delineating explicit and cognizable procedures for intercountry adoptions, the current international regulations do not provide sufficiently detailed procedures and, even more importantly, do not provide a mechanism for implementing the existing standards. From many regulations we only see three of them and try to enumerate their shortcomings.

1) UN Convention on the Rights of the Child (1989)

The UN Convention on the Rights of the Child of 1989 cites previous international agreements on children‘s rights in recognizing that the Geneva Declaration on the Rights of the Child and the UN Declaration of the Rights of the Child stated ―the need to extend particular care to the child" (CRC, 1989)[7]. As the first Convention relating to intercountry adoption, it presumptively carries more weight than the previous UN instruments which were mere declarations.

[7] Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/44/49 (Nov. 20, 1989).

Article 21(b)-(e) of the UN Convention sets forth several basic guidelines for intercountry adoption. Article 21(b) identifies intercountry adoption as an acceptable form of caring for children, but asserts that it should only be utilized if they cannot be suitably cared for in their birth countries. This is a somewhat negative approach to international adoption because the convention treats it as a last resort, particularly when taken in context with the Article 20(3) requirement that states pay ―due regard" to the ―desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background" (Wechsler, 2010). Moreover, since there is no provision requiring the available options in a particular case to be weighed against one another, a child could end up with much lower-quality care than would have been provided to him outside of his birth country (Ibid). Thus, while continuity in ethnic and cultural environment is important, the presumption in favor of a child's birth nation could result in a child growing up in an institution rather than in a stable family setting, which is a situation that would not best serve the child's interests (Ibid).

Accordingly, this result may violate both the Article 21 preamble, which states that the adoption system ―shall ensure that the best interests of the child shall be the paramount consideration," and the Article 3(1) mandates that all actions concerning children should have ―the best interests of the child" as ―a primary consideration." Furthermore, the UN Convention's preference for national solutions over intercountry adoption burdens sending countries with the heavy task of reforming their domestic adoption and orphanage systems, which is beyond the capabilities of most developing nations (Wechsler, 2010). Even if states are capable of accomplishing this task, they have little incentive to do so in light of cross border adoption's profitability (Ibid).

Article 21(c) underscores the importance of ensuring that the quality of care children receive within foreign families is sufficiently high and aims to protect children against exploitation in the intercountry adoption process. The Article states that a child adopted internationally must be provided with ―safeguards and standards equivalent to those existing in the case of national adoption," which would actually only have a beneficial effect if the standards and protections that apply to domestic adoptions are adequate (Wechsler, 2010). For example, provision 21(c) does not help internationally adopted children from countries with national adoption systems that are common with corruption and inefficiency. A better way for the UN to have ensured that the

intercountry adoption process embodied strong safeguards and high standards for children would be to have articulated precisely what those safeguards and standards should entail, rather than simply linking them to a nation's domestic adoption system (Wechsler, 2010).

Importantly, Article 21(d) addresses the problem of corruption in the intercountry adoption process by maintaining that states must take all appropriate measures to ensure that placing children through intercountry adoption "does not result in improper financial gain" for the parties involved. The convention does not define the types or amounts of financial gain that would be considered "improper." This notion is relevant because even good-faith intercountry adoptions typically implicate large sums for administrative, and legal work, and travel.

The final provision under Article 21 of the above convention is administrative in nature and encourages states to enter into agreements with each other to facilitate compliance with the other sections of the Article. Although far from comprehensive, the Convention does set forth important principles for protecting children in the intercountry adoption process. The instrument was widely adopted, and interestingly, the U.S. and Somalia are the only nations that have not ratified it (Wechsler, 2010).

2) African Charter on the Rights and Welfare of the Child (1990)

In 1990, the Organization of African Unity ("OAU") developed the African Charter on the Rights and Welfare of the Child ("African Charter"), which is a regional instrument that entered into force in 1999.[8] Many of the African nations have ratified the document (Wechsler, 2010). The African Charter takes a somewhat unfavorable approach to intercountry adoption because Article 24 only allows its use as a last resort, specifically, in situations where children cannot be placed in foster or adoptive homes in their birth countries. Although the African Charter also limits intercountry adoptions to nations which have ratified the International Convention on the Rights of the Child or the African Charter, most countries have in fact signed onto the former(CRC). However, the U.S., a major receiving country, is not a party to either instrument, which could deprive African orphans of the opportunity for a loving home that the U.S. would otherwise

[8] African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49.

provide. The African Charter prioritizes the best interests of children (Art. 4). However, as is the case with other international instruments, the African Charter does not define the term ―best interests." Also notable is the requirement that the judicial and administrative proceedings consider views of children who are capable of expressing themselves (Wechsler, 2010). This is a progressive feature of the African Charter because, unlike various other instruments, children are empowered with influence over their own fate.

3) The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993)

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (―Hague Convention") of 1993 is a multilateral treaty that sets a framework for norms and procedures governing intercountry adoptions.[9] Its purpose is to unify the diverse adoption procedures across the globe and safeguard children's fundamental rights, including protection from child abduction, sale, and trafficking (Wechsler, 2010). The Hague Convention also governs all intercountry adoptions between the seventy-six nations that are signatories, regardless of whether public or private agencies or individuals facilitate the adoptions. The agreement promotes international adoption for abandoned children whose domestic placement options have been exhausted. A key feature of the Hague Convention is the requirement that each state designate a Central Authority (CA) to implement the agreement's directives, oversee the aspects of the intercountry adoption process occurring within its borders, and communicate with CA's of other states when facilitating the intercountry adoption process and furthering the treaty's objectives (Art. 6).

The Hague Convention is much more specific and comprehensive in its approach to intercountry adoption than earlier relevant agreements. This signals progress towards guaranteeing all internationally adopted children minimum standards of care and safeguards. For example, the Hague Convention specifies procedural steps in the intercountry adoption process, down to the content of reports that the sending and receiving countries compile and exchange (Art. 15). This

[9] Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption art. 1, May 29, 1993, 1870 U.N.T.S. 167.

procedural framework sets the Hague Convention apart from previous instruments, which simply stated rights or goals without specifying the means by which to accomplish them. The Hague Convention also tackles the problem of corruption in intercountry adoption more comprehensively than previous global instruments. First, the Hague Convention corrects the ambiguity of the term ―improper financial gain" in Article 21(d) of the UN Convention by clarifying that reasonable professional fees and reasonable remuneration to the directors, administrators, and employees of bodies involved in an adoption do not constitute ―improper financial or other gain" (Art. 32). Second, the Hague Convention addresses the problem of corruption associated with consent in the intercountry adoption process (Art. 4).

Article 4 of the above convention states that the consent of the necessary ―persons, institutions and authorities," as well as that of the children (with regard to their ―age and degree of maturity"), shall not be ―induced by payment or compensation of any kind." Another progressive feature of the Hague Convention is that it specifically takes children's preferences into account. The instrument does this in two places, noting the importance of first considering the children's age and maturity in both: in Article 4, concerning consent to the adoption in the first place; and in Article 21, regarding consent to alternative arrangements when a CA determines that the continued placement of children with prospective adoptive parents is not in the children's best interests.

Despite the progress it embodies, the Hague Convention has been the subject of great criticism. One major problem is that its requirements are too costly for poor and developing countries to implement. Specifically, these countries are unable to handle the administrative burdens associated with the Hague Convention's implementation requirements because many lack monetary resources and a functioning government bureaucracy (Wechsler, 2010). This is a serious issue because poor and developing nations tend to have both the highest number of orphans and the greatest amount of corruption (Ibid). The circumstances in these nations also tend to result in one or both of the following consequences: many unregulated adoptions, corruption, and exploitation of children and families for profit; or a great number of children in limbo without families due to the time it takes the small number of officials that a poor country can afford to oversee numerous adoption cases (Ibid). Clearly, neither state of affairs serves the

best interests of children. For example, Guatemala switched from the former situation to the latter in recent years. Prior to governmental regulation, intercountry adoptions amounted to a $100 million-a-year business for Guatemalan notaries, who charged an average of $30,000 per child. Recently, however, Guatemala agreed to abide by the Hague Convention. As a result, the number of intercountry adoptions from Guatemala decreased because the government does not possess the resources to handle the great amount of cases that the notary industry had managed. In addition, the treaty‘s requirements for inspection of each adoption case take time and effort (Ibid). The Guatemalan government only has seven inspectors who not only handle adoption approvals, but also deal with family issues such as domestic violence and child neglect (Wechsler, 2010).

In addition to Guatemala, Ethiopia is an impoverished country that has been popular among Americans seeking to adopt in recent years. Like Guatemala, it has extremely limited resources to monitor intercountry adoptions (Gross & Connors, 2007). The nation‘s Ministry of Women‘s Affairs, which oversees adoptions, expressed its prediction that it does not have the resources to manage the increasing amount of adoption requests (Ibid). As highlighted in the Guatemala and Ethiopian examples, the Hague Convention actually places heavier burdens upon impoverished sending states than upon receiving states, which tend to be wealthier in comparison. The convention requires the former to regulate the process of matching children with adoptive parents, protect the rights of the children and their biological parents, investigate ways for children to remain in their birth countries, and combat illegal adoption practices (Wechsler, 2010). In light of the burden the Hague Convention places upon impoverished nations, financial and institutional barriers make it difficult for the instrument to solve the problems it was developed to address.

A second major criticism of the Hague Convention is the lack of an international supervisory body to ensure the compliance of contracting states (Kleem, 2000). The agreement leaves enforcement to each nation‘s CA, yet each country has the sole authority to accredit its CA (Kleem, 2000). As a result, the system under the Hague Convention allows each country to police its own intercountry adoptions, as was the case prior to the treaty (Kleem, 2000). Therefore, it is

doubtful that the parties to the treaty are fully compliant with the Convention, particularly since the lack of regulation and consequences for violations provide little motivation for them to do so.

A third issue is that the Hague Convention‘s silence and lack of specificity with respect to important aspects of intercountry adoption. For example, the convention does not specify characteristics that potential adopters must possess in order to qualify for intercountry adoption. Furthermore, the convention fails to define criteria for determining the ―best interests of the child,” a phrase that appears numerous times in the treaty (Wechsler, 2010). In light of these criticisms, the Hague Convention is merely a small step towards an intercountry adoption regime that truly protects the best interests of children. As can be seen in the following section, a great deal of reform and infrastructure is needed to address the numerous, complex problems that plague the current system governing intercountry adoptions (Ibid).

2.25 ARGUMENTS IN FAVOR OF AND AGAINST INTERCOUNTRY ADOPTION

Opponents of intercountry adoption focus on cultural concerns, the interests of the sending countries, and the exploitative and unethical practices that tend to accompany the international adoption process. They argue that international adoptees lose their cultural and national identities when raised outside of their birth countries by families who do not share the children‘s ethnicity and heritage (Hollinger, 2004).

On a broader scale, opponents to intercountry adoption often contend that the practice has negative consequences for sending countries. Many political leaders and officials of sending nations argue that international adoption negatively affects their country‘s morale because it connotes a public admission that its government cannot care for its own children (Bartholet, 2002). For example, unfavorable publicity about the large number of South Korean babies ―exported” to families in other countries prompted the South Korean government to phase out its international adoption program due to embarrassment over its inability to care for parentless Korean children (Wechsler, 2010). As a result of this attempt to eliminate foreign adoption, approximately 17,000 children are languishing in public orphanages throughout South Korea (Ibid). In addition to embarrassment or shame, sending countries often view intercountry adoption as a form of imperialism on the part of receiving countries, which tend to be wealthier

and have a long history of exploiting sending countries for natural resources and labor (Kleem, 2000). In a continuation of developed nations‘ exercise of power over developing nations, the latter perceive the former as using international adoption as a means of satisfying its own citizens‘ desires for children while simultaneously confirming sending countries‘ inadequacy and inferiority (Roby, 2004). Also, opponents argue that intercountry adoption is simply used to treat symptoms of social and economic issues in sending countries, and prevents these countries from having to address the underlying problems that result in burgeoning numbers of homeless children (Bartholet, 2002).

Another argument opponents often assert is that international adoption is normally accompanied by illegal practices such as baby-selling, kidnapping, and financial exploitation on the part of adoption –facilitators" (Kleem, 2000). Due to the high prices individuals and couples from developed countries are willing to pay for a child, many are skeptical that even increased regulations can eliminate the thriving black market for babies. This argument against intercountry adoption is flawed for two reasons: first, it does not acknowledge that a dramatic decrease in the supply of children, along with fewer choices for families desperate to adopt, will likely increase the financial incentives of illegal adoptions; second, it overlooks the possibility for creative regulatory solutions to the problem of corruption in intercountry adoption that would allow the adoptive process to thrive without being tainted by unethical and illegal practices (Ibid).

In contrast to opponents of intercountry adoption, supporters of international adoption argue that critics on international adoption are wrong. They raised different points for their argument first, accepted Human Rights Principles require that children‘s best interests govern core international human rights law makes children‘s best interests the guiding principle in matters related to children and adoption. The Convention on the Rights of the Child (CRC) provides generally that _the best interest of the child shall be a primary consideration‘ (Article 3), and in adoption shall be _the paramount consideration‘ (Article 21). The Hague Convention on Intercountry Adoption provides that _intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights‘ (Article 1) (Bartholet, 2010).
Supporters argue that international adoption serves children‘s best interests and most basic human rights because human beings need parental care for a prolonged period to survive

physically and to develop mentally and emotionally. Even the best institutions fail to provide the care that infants and young children need (Bartholet, 2007a).

They also raise an argument that international law makes central that the child's human right to grow up in a family. The CRC preamble describes the family as "the natural environment for the growth and wellbeing of children". The CRC and the Hague Conventions on intercountry adoption include in their preambles that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (Bartholet, 2010).

The CRC also requires that member states give children who cannot be raised by their original parents adequate substitute care, and protect children against the conditions characteristic of institutional care. It says that an un-parented child "shall be entitled to special protection and assistance", "alternative care" (Article 20) and "such protection and care as is necessary for his or her well-being" (Article 3). It says that "every child has the inherent right to life" and to "survival and development" (Article 6). It grants children affirmative rights to health, a standard of living adequate for appropriate development, and education (Articles 24, 27 and 28). It requires states to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation" (Article 19). It provides that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment", or "deprived of his or her liberty unlawfully or arbitrarily" (Article 37).

Accordingly, core human rights principles give children the right to true family care. Un-parented children have a right to be placed in international adoption if that is where true families are available. They have a right to be liberated from the conditions characterizing orphanages, street life and most foster care (Bartholet, 2007b; Dillon, 2003; Wardle, 2005,).

Another argument of support often assert is that international adoption is about placing tens of thousands of infants and young children who need homes with people who want to provide them. There are many millions of children worldwide who need homes because they have been orphaned, abandoned or removed. Almost all are destined to live either in orphanages or on the

streets if they are not adopted internationally. Estimates indicate that there are 143 million orphaned children (Joint UN Programme, 2004), over 8 million living in orphanages (Secretary-General, 2006) and some 100 million street children with no available caregivers (Bartholet, 2007b; Mitchell, 2009).

They also raise the extreme contrast between the homes international adoption offers and orphanage or street life should make unnecessary any debate as to what best serves children. Most orphanages are terrible places, where children learn not to cry because crying brings no response. Studies document how destructive even the better orphanages are, producing lifelong damage even for many of those eventually adopted. Developmental psychologists explain how essential nurturing human interaction is for infants to develop normally. The new science of early brain development demonstrates in dramatic color slides how different the brains of children raised for two years in an orphanage look as compared to the brains of children raised with parents (Bartholet, 2007a). The World Health Organization recommends that even ‗when high-quality institutions are used as an emergency measure the length of stay should be no more than 3 months' (Browne et al., 2004). Street children often die early, and those who live suffer maltreatment, disease, exploitation for sex, labor and child soldiering, and trafficking for these purposes (Wardle, 2005).

Another argument is also the expenses for intercountry adoption are paid by adoptive parents. Neither sending nor receiving countries need divert significant resources to finance such adoption. Sending countries are also relieved of the costs of institutionalization for all those placed, freeing up resources to serve the needs of others. Moreover, international adoption produces significant additional resources for poor countries and their people. Adoptive parents pay fees to agencies and orphanages, some of which go to improve orphanage conditions. China charges an orphanage fee for each adoption of $3,000–5,000. Given the 7,900 children adopted into the US from China in 2005, and assuming the minimum $3,000 fee, this meant $23,700,000 to improve orphanage conditions (Bartholet, 2007b).

International adoption also triggers significant voluntary contributions by individuals and agencies to improve conditions in sending countries. The exposure international adoption brings

creates new consciousness about these countries‘ problems, and thus the potential for a wide range of helpful action by individuals and governments (Bartholet, 2007a).

Supporters also have justification in adoption abuses, they believe by the existence of adoption abuse, as abuses exist in every area. However, their argument is that there is no persuasive evidence that adoption abuses are extensive. Nor is there reason to think they would be extensive (Bartholet, 2010). Critics claim that adoption facilitators wrongfully take babies by paying money to induce birth parents to surrender, and even by kidnapping. Supporters raised that even if some are guilty of such crimes – and these are crimes everywhere – there is no real need to buy or kidnap children, since there are so many millions of desperate, impoverished birth parents incapable of caring for their children, and so many millions of orphaned and abandoned children (Ibid). Law reform designed to facilitate lawful adoption would do much to reduce such abuses as do exist. The Hague Conference Report providing the rationale for the Hague Convention on Intercountry Adoption made this very point, finding that difficulties in accomplishing adoption created pressure for corrupt practices that would not exist in more effective systems facilitating adoption (Hague Conference on Private International Law, 1990).

They also recommend solutions of better enforcement of laws prohibiting adoption abuses and this is the obvious additional answer. When parents violate laws prohibiting child maltreatment, we do not shut down the system that sends newborns home with their parents. We call for better enforcement of laws prohibiting maltreatment (Bartholet, 2010).

International adoption critics argue that it is naive to think adoption laws can be enforced in certain countries, given corruption and limited governance capacities. But supporters say even if adoption abuses occur on more than an occasional basis, and even if eliminating them would be hard, shutting down international adoption is wrong. Zero tolerance for adoption abuses may sound good but it will hurt children. The evils involved in such abuses must be weighed against the far more significant evils involved in denying children homes (Ibid).

Regarding, concepts of nationalism and heritage, international adoption critics treat children as necessarily „belonging‘ to their countries of birth. They defer to national governments as having

important rights at stake, and accord overwhelming significance to the often arbitrary lines separating countries. This translates into policy preferences for virtually all in-country options as compared to out-of-country adoption, and into mandatory holding periods which delay and often entirely deny such adoption ((Bartholet, 2010). However, supporters believe that children‘s fundamental human rights to grow up in a nurturing family should trump nation-state rights to hold on to children (Ibid). Moreover, keeping unparented children in their countries of origin does nothing to actually strengthen the economic and political situation of those countries. It is simply a symbolic way for the powerless to stand up to the powerful, for countries formerly victimized by colonialism to make an anti-colonialist statement (Ibid). And it exploits the least powerful of all, the children of the poorest groups in these countries.

Opponents of International adoption, believes by promoting in-country solutions because this serves children‘s heritage rights. However supporters criticized the idea as it is retrograde thinking which ill-serves children‘s real needs. Children are not defined in some essentialist way by the particular spot where they were born. Science provides no basis for believing that children are better off if raised in their community of origin (Bartholet, 2007a).

2.26 THE INTERNATIONAL LEGAL FRAMEWORK RELATED TO TRAFFICKING OF CHILDREN IN THE CONTEXT OF INTERCOUNTRY ADOPTION

In the context of intercountry adoption, the best interests of the child principle demand that adoptions do not subvert the rights of children through illicit practices such as abducting, selling, and trafficking. It is vital, however, to distinguish systematically between children ~~“tr~~afficked for the purpose of adoption”, and those supposedly ~~“tr~~afficked through adoption for subsequent exploitation” (Mezmur, 2010).

The CRC (1990), ACRWC (1999), Hague Convention (1995), and other instruments cover issues such as adoptability, subsidiarity, improper financial gains, child trafficking and so forth (Bartholet, 2007). In addition, these instruments mandate that intercountry adoption be undertaken only when it is in the best interests of the child. In fact, it is worth noting that

adoption is the only sphere covered by the CRC where the best interests of the child are to be the primary consideration.

The CRC and the ACRWC recognise the potential risk intercountry adoption might pose for children's best interests especially if it is not properly regulated. As a result, according to the CRC, States Parties are obligated to ~~ta~~ke all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it" (Art. 21(d)). The counterpart provision of the ACRWC is more elaborate in that it explicitly mentions ~~tr~~afficking": States Parties shall take ~~…~~…all appropriate measures to ensure that in intercountry adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child" (Art. 24(d)).

The drafting of the Hague Convention was partly promised on the need to address the highly unregulated intercountry adoption system prevailing, which had been characterised by child laundering. As a result, one of the three objectives of the Hague Convention is ~~to~~ establish a system of cooperation amongst contracting states to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children"(Art. 1(b)).

Articles 32-34 of the CRC cover the specific forms of exploitation of children, such as, economic exploitative use of children (in particular child labour), illicit use of narcotic drugs, and the use of children for prostitution and pornography (Muntarbhorn, 2007). What Article 35 of the CRC heralds in is ~~a~~ double protection for children", as it requires blanket action on the abduction, sale or traffic of children (Hodgkin and Newell, 2007). Article 35 stipulates that ~~S~~States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". Article 29(a) of the ACRWC entrenches similar standards by stipulating that:

> States Parties to the present charter shall take appropriate measures to prevent: (a) the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child; …

The phrases –for any purpose" and –in any form" in both the CRC and the ACRWC include illegal adoptions. The explicit inclusion of the phrase –by any person including parents or legal guardians of the child" in the ACRWC echoes the understanding that, with the introduction of the CRC and the ACRWC, the notion of children as their parents' property is contrary to children's rights discourse (Mezmur, 2010)..

In the context of the Hague Convention, too, one of the three objectives of the treaty is to prevent illicit activities, such as, child laundering. It is notable that the Hague Convention does not intend to prevent illicit activities directly (Parra-Aranguren, 1994). Rather, the assumption is that –the observance of the convention's rules will bring about the avoidance of such abuses" (Ibid). The Hague Convention mirrors the view that the decision to place a child for adoption should not be –induced by payment or compensation of any kind" (Art4(c)(3) and 4(d)(4)). Fortunately, often the view of the CRC Committee on this matter is that States Parties should criminalise and prosecute all actors involved in the sale of children for the purpose of adoption (UNICEF innocent Working paper, 2009).

Unfortunately, it is submitted that there seems to be a tendency by States to assume that criminal law provisions on trafficking are sufficient for addressing child buying and selling. However, this is not always the case. While child trafficking and the sale of children might sometimes overlap, the sale of children is not a necessary element of the definition of –child trafficking". By way of example, recruitment of a child can take place using deceit and with no element of sale involved. Therefore, children who are recruited through deceit can be trafficked for, or through, adoption without any element of sale occurring throughout the entire process (Mezmur, 2010). As a result, it is advisable to have legislation that explicitly criminalises child selling and buying, as well as the conduct of other persons who are involved in such a process in different capacities, for example, as intermediaries.

2.27 EFFECTS OF LIVING IN AN ORPHANAGE ON A CHILD'S WELL-BEING

A major justification for the necessity of alternative care including national and intercountry adoption is the extensive research concluding that the institutional environment, particularly with

prolonged exposure, has detrimental effects on children‘s intellectual and socio-emotional development (Landesman, 1990). Perhaps even more worrisome than a failure to fully meet children‘s physical needs is the fact that, many orphanages do not have the resources to address children‘s intellectual, social, and emotional needs. It is common for children living in orphanages, particularly those in sending countries, to lack consistent caregiver contact, emotional involvement from their caregivers, and experiences outside of the institution (Tharp-Taylor, 2003). These conditions, which fail to provide children with the stability, sensitivity, and stimulation necessary for normative development, are key contributors to the developmental delays and deficits that researchers have found among children living in orphanages.

There is a multitude of empirical research asserting the negative effects of orphanages with low quality and/or unstable care upon children‘s development in a variety of areas. The severity of the developmental problems that many children living in orphanages experience is indirectly related to the quality of the social environment (Wechsler, 2010). The developmental deficits found in children who have been institutionalized in orphanages in the developing world can be more readily attributed to the lack of appropriate social interactions than to material or physical deprivation (Ibid).

During the first year of life, the presence or absence of sensitive and responsive caregiving becomes a powerful regulator of emotional behavior and neuroendocrine stress hormone activity in young children (Gunnar and Cheatham, 2003). The fear-anxiety system has a high degree of plasticity, and therefore changes with experience. This system affects almost every organ in the body, including the brain, and is triggered by stressors, which are external threats (Wechsler, 2010). The social environment that exists in orphanages, particularly in those in developing nations, typically contains numerous stressors resulting from competition among children for scarce resources. When stressors activate the fear-anxiety system, bodily resources normally invested in processes supporting long-term survival, such as digestion, growth, and energy storage, are redirected to the immediate problem through the metabolization of fats and proteins in an attempt to increase available energy. Although the activation of the fear anxiety system can be useful in coping with immediate stressors, prolonged suspension of future-oriented functions can have significant consequences, particularly during children‘s development (Gunnar and

Cheatham, 2003). One possible consequence of this extended activation is an increased risk for psychopathology. Research results demonstrate that clinical depression and post-traumatic stress disorder are associated with disturbances in basal and stress activity of the hypothalamic-pituitary-adrenocortical (~~H~~PA") system (Wechsler, 2010) (the core of the mammalian stress system).

Furthermore, research shows institutionalized children was positively correlated with physical and developmental delays (ibid). In addition, growing up in an orphanage has been associated with attachment problems and poor-quality attachment relationships. Attachment disorders are particularly worrisome psychological problems because they are known to prevent affected children from growing into capable and well-adjusted adults. Attachments are patterns of interaction, or bonds, that children have with their primary caregivers. Early attachments between children and caretakers are crucial to normative development and these bonds are often correlated with stable relationships throughout the lifetime (Tharp-Taylor, 2003).

The type of bonds between infants and their caregivers depends upon the degree to which the caregivers are sensitive and responsive to infants' needs and desires. Since children living in orphanages are typically exposed to a number of different caregivers and inconsistent or unresponsive caregiving, it is difficult for them to form secure attachments to one primary caregiver. The results are poor mental health consequences, undesirable behavioral outcomes (Fonagy & Target, 1997), and delays in cognitive and socio-emotional development (Tharp-Taylor, 2003).

In addition to physical and socio-emotional problems, cognitive delays are commonly found among children who experience institutional care (Wechsler, 2010). One research study found that six- and seven-year-old orphans had lower IQ scores, lower levels of empathy, and were more likely to conform to adult opinions under pressure than home-reared controls (Wechsler, 2010). Institutionalized children's IQ scores tend to be both negatively correlated with duration of institutionalization and positively correlated with age at institutionalization (Ibid). One hypothesized reason for these deficits is that orphanages often restrict children's play and exploration in order to avoid injury, since it is difficult for caregivers to supervise multiple

children at once. These restrictions, however, can block children‘s cognitive activity and development (Ibid).

INTERCOUNTRY ADOPTION IN ETHIOPIA

2.28 INTRODUCTION

Ethiopia is estimated to have a population of nearly 84 million inhabitants (CSA 2011 Census extrapolated to 2012) of which more than 52 per cent is under the age of 18. The population is primarily rural with 82 per cent of the country residing in rural areas. The country has extensive levels of poverty and ranks 174th out of 187 in the 2011 Human Development Index (UNICF, 2013). In 2010 the Addis Ababa Bureau of Women, Children and Youth Affair (BOWCYA) worked with Street Invest London to conduct a head count of street children and counted 10,706 children living in Addis Ababa's streets. The majority of these street children (67 per cent) were boys above the age of six (Ibid).

The protection of children is crucial to their survival, health, and wellbeing. Unfortunately, thousands of children are exploited, abused and are victims of violence. Every day, children are forced to work on farms, on the streets, as prostitutes, casual workers or domestic help. Sexual exploitation, abuse and child trafficking are thought to be increasing, but reliable statistics are lacking (Ibid).

Where extended families are unable to absorb children without parental care and in the absence of a formal system of family-based alternative care, an estimated 11,000 children find in child-care institutions all over the country (UNICF, 2013). Institutional care has not only shown to be detrimental to cognitive, emotional and physical development, but the incidences of abuse and neglect are also high. Furthermore, over 3,450 children were placed in intercountry adoption in 2011, which reflects the lowest annual number since 2007. Ethiopia has not ratified the Optional Protocols to the UN CRC or the Hague Convention on Inter country Adoption (1993) and there is a lack of safeguards in the unregulated system.

2.29 GENESIS OF INTERCOUNTRY ADOPTION IN ETHIOPIA

In Ethiopia, the main cause for the start of inter-country adoption as an alternative care for orphaned and abandoned children dates back to the 1974/75 draught and famine that resulted in orphaned and abandoned children. As a result, the then Prime Minister‘s office gave directives to the Ministry of Labour and Social Affairs (MOLSA) to consider and work on inter-country adoption for orphaned and abandoned children in late 1970s. The directive led to the establishment of a committee for facilitation of adoption, as well as to provides the prerequisites for selection of adoptive parents and documents required at that stage (Betru, 1997).

In the last 40-50 years, Ethiopia has become one of the most popular countries for international adoptions. In these years, Ethiopia took the lead in the continent, where more than 4,500 children were placed in inter-country adoption in 2009, and double the number of children in 2006. In 2010, Ethiopia ranked the second top sending country in the world after China. The country was also the second top sending country in 2009 to the USA, Spain and France (ACPF, 2012).

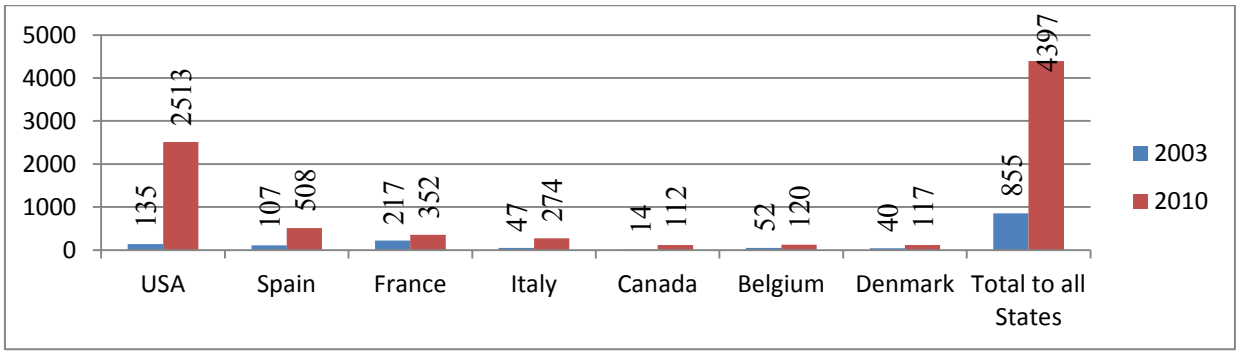

Table 1: Number of adoptions from Ethiopia in the year 2003 and 2010 and the receiving countries (ACPF, 2012, p6)

Ethiopian is increasingly becoming the new frontier for intercountry adoption. Ethiopian children are attracting increased attention from prospective adoptive parents in other parts of the world. This increased attention seems to have been triggered by a number of factors (ACPF, 2012). In the past, prominent sending countries included Guatemala, China and Central and Eastern European countries such as Romania and Ukraine, along with Russia, Vietnam, and South Korea. However, some of these countries have since suspended, shut down, or limited intercountry

adoption. Some of them, like China and Russia, have given several reasons for reducing the number of children adopted from their countries, including the introduction of stringent eligibility criteria and the promotion of domestic adoption (Ibid). This international trend has directed receiving countries to look for adoptable children from Ethiopia.

Table 2. 15 Countries sending most children for Intercountry adoption to the 23 Receiving States between 2003-2011

	2003-11	2003	2004	2005	2006	2007	2008	2009	2010	2011
China	79,577	11,226	13,409	14,493	10,744	8,748	5,975	5,084	5,480	4,418
Russia	51,142	7,743	9,379	7,480	6,765	4,880	4,140	4,033	3,395	3,327
Ethiopia	25,697	858	1,527	1,778	2,172	3,033	3,905	4,564	4,404	3,456
Guatemala	24,138	2,676	3,424	3,872	4,232	4,851	4,186	799	58	40
South Korea	14,652	2,308	2,241	2,121	1,815	1,223	1,392	1,438	1,153	961
Colombia	14,631	1,750	1,734	1,466	1,639	1,635	1,617	1,415	1,798	1,577
Ukraine	13,979	2,052	2,019	1,987	1,046	1,614	1,577	1,517	1,094	1,073
Vietnam	10,927	936	488	1,198	1,370	1,695	1,739	1,518	1,279	704
Haiti	10,457	1,056	1,159	958	1,096	783	1,368	1,241	2,601	195
India	7,708	1,173	1,083	873	847	1,003	759	727	615	628
Kazakhsten	6,145	863	888	843	714	779	732	659	518	149
Philippines	4,588	418	414	503	476	569	600	583	516	509
Brazil	4,106	472	478	473	518	485	490	462	380	348
Thailand	3,613	490	501	465	419	440	384	339	314	261
Poland	3,371	347	406	409	395	381	408	402	325	298
Total sent from all Countries	274,731	34,368	39,150	38,919	34,248	32,119	29,272	24,781	23,930	17,944

Source : Statistics for 23 Receiving Countries (Selman, 2013)

2.30 THE LEGAL AND REGULATORY FRAMEWORKS GOVERNING THE ETHIOPIAN INTERCOUNTRY ADOPTION

Ethiopia, being part of the international community, has put in place laws which have recognized and protected family. The basic principles of family law incorporated under the Ethiopian legal system are the following; FDRE Constitution (1994); Regional State Constitutions; the Revised Family Code (2000) of the FDRE and other regional family laws. The convention on the Rights of the child (CRC, 1991) is an integral part of the Ethiopian law by virtue of Art.9 (4) of the FDRE Constitution since Ethiopia has ratified it. Ethiopia has also undertaken some important

steps towards ratification of some international instruments relevant to children. In an effort to protect and promote the rights of children with disabilities, Ethiopia ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 7 July 2010. Furthermore, Ethiopia signed the Optional Protocol on the Involvement of Children in Armed Conflict on 28th September 2010.

Adoption in Ethiopia, both in country and intercountry, is governed by international laws and conventions to which Ethiopia is a signatory and by its national laws particularly the RFC and regional family laws. Ethiopia is not party to the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention).

The Revised Family Code (RFC) of Ethiopia (2005) provides the framework for governance of both domestic and inter-country adoptions. The RFC captures a number of important issues including: rights and responsibilities of parties in adoption proceedings, role of the court and other government and non-government actors, and guideline principles on the placement of children into domestic or inter-country adoption. However, the Revised Family Code barely addresses forms of alternative child care other than adoption, and even the provisions applicable to adoption are not fully aligned to recognized international and regional standards.

In 2009, the Ministry of Women, Children and Youth Affairs provide a revised alternative child care guidelines with pursuant to the convention on the right of the child, African Charter on the rights and welfare of the child, the laws of the country and in consultation with child care institutions, concerned professionals and children.

The Revised Alternative Child Care Guidelines (2009) among others provide the minimum conditions for services where government, non-governmental, religious and other institutions who are giving alternative childcare should adhere to. It outlines measures and good practices to support, care and protect children without parental care in institution or outside of institution within the economic, social and political context of the country. Accordingly, the revised National Alternative Childcare Guidelines consists of the following services (Community-Based Childcare, Reunification and Reintegration Program, Foster Care, National and Inter-country Adoption and Institutional Care Service) by giving priorities top to down.

The Ethiopian Civil Code of 1960 defines adoption as a bond of filial created artificially by a contract of adoption between the adopter and the adopted child (Art. 796(1) of the Civil). The RFC provides the same thing as the Civil Code (Art. 180of the revised family code). When one closely reads the Ethiopian family laws, it is possible to understand that adoption is possible even if the natural parents are capable of rearing the child. On the other hand, the 1989 Convention on the Rights of the Child permits adoption if the child cannot be reared by his families or other alternative methods. The former cannot take into account the capacity of natural parents to rear the child. The latter takes into account the capacity of natural parents to rear the child. Therefore, there is discrepancy between both laws.

The UN Convention on the Rights of the Child recognized that ―Inter-country adoption may be considered as an alternative means of child care, if the child cannot in any suitable manner be cared for in the child's country of origin" (Convention on the Rights of the child, (1989), Art. 21(c))) and in the revised alternative child care guideline before institutional care services. That means there is a discrepancy again between the laws.

2.31 NATIONAL STRATEGY: THE ALTERNATIVE CHILD CARE

The Revised Alternative Child Care Guideline (2009) is the sole instrument to set minimum standards on alternative child care services. At the heart of the National Alternative Child Care Guideline is a call for government to prevent unnecessary separation of children from their families by strengthening social services and social welfare and alternative care responses within the country. The National Guideline acknowledges that some residential care will be needed for some children. However, the emphasis and priority is on developing and supporting family-based care alternatives. The Guideline particularly addresses the management and operation of alternative child care options including community-based child care, reunification and reintegration programs, foster care, adoption and institutional care. It sets minimum standards pertaining to issues of eligibility, recruitment, placement, assessment, and training, matching, and monitoring and reporting. The Ministry of Women, Children and Youth Affairs (MoWCYA) is entrusted with the responsibility of overseeing the enforcement of the Alternative Child Care

Guideline at national level (Proclamation No. 691/2010). However, the Guideline does not effectively respond to the growing demand for comprehensive guiding standards and tools to ensure quality and standards of alternative care services. As a guideline, it lacks the legal authority to serve as a regulation with force of law to ensure adherence to and accountability of care givers.

Major administrative roles in the alternative child care system are fulfilled by the MoWCYA, the Federal First Instance Court (FFIC), and the Charities and Societies Agency (CHSA); their corresponding regional State government sector bodies; by the civil society other alternative child care service providers such as community groups and parents and child care institutions and adoption services providers of the private sector have also got the stake in it. The MoWCYA system is multi-tiered, ranging from kebele level, to district, zone and regional levels, and finally the federal (national) level. The FFIC is the final adjudicator of adoption cases and examines - based on expert options submitted by the MoWCYA - issues pertaining to a child‘s adoptability as well as the suitability of the adoptive applicants. The CHSA is an independent entity that licenses and monitors non-governmental institutions (charities and societies) managing and/or implementing alternative child care programs including child care institutions and adoption service provides.

The MoWCYA is currently leading efforts to strengthen alternative care in Ethiopia. At the policy level, these include reform measures that are geared towards addressing some of the systemic and institutional loopholes in the practice of ICA, the development of a National Alternative Care Strategy to increase the use of community-based alternative care services for children without adequate parental care, and the development of Alternative Care Regulations and Service Standards to improve accountability of service providers, as well as the quality and effectiveness of alternative child care service provision.

2.32 ALTERNATIVES TO INTERCOUNTRY ADOPTION

I. COMMUNITY-BASED CHILDCARE

Community-based childcare is an alternative that provides care and support to the children in a state of condition that is familiar to the children who used to experience it. The objective of the Community-based Childcare Service is to mobilize the community, its resources and indigenous knowledge with the ultimate goal of addressing the needs and rights of orphans and other vulnerable children (OVC) in a sustainable manner. Practically, community-based childcare is believed to be a better alternative because of the fact that it is by far cost effective and its greater advantage of reaching large number of target children in a given community. This approach encompasses a wide range of preventive, curative and rehabilitative strategies which respond to the needs and best interests of the target children. The underlining rationale behind this approach is that the grassroots community structures and organizations can provide for and fulfil the emotional, social, physiological and spiritual needs of OVC and effectively protect them from abuse and exploitation, without such children being removed from their families or community environment. Thus, organizations engaged in the provision of community-based childcare programs should focus more on building the capacity of the community to care for its orphans and vulnerable children and working with existing structures, institutions and organizations and empowering them to assume responsibilities for providing care and support for OVC (The Revised Alternative Child Care Guideline, 2009).

The overall objective of the community-based childcare program is to mobilize the community and its resources with the ultimate goal of ensuring a sustainable and healthy growth and development of orphans and vulnerable children within a given community.

II. REUNIFICATION AND REINTEGRATION PROGRAMS

Reunifying children separated from their parents/relatives due to natural or manmade catastrophe to their birth families or relatives is a widely recognized practice as a primary alternative against residential care and other out-of-home child welfare services. Undeniably, children can best

develop a feeling of security, physical/mental health and personal identity within their families. Hence, organizations engaged in institutional care have a responsibility to implement reunification/reintegration as an ongoing and integral part of their services. Therefore, returning children as early and safely as possible to their families or communities is strongly recommendable as a means to achieve better outcomes for children, retention of important family connections and avoid their drift into long-term and often problematic pathways in out-of-home care (The Revised Alternative Child Care Guideline, 2009).

The overall objective is:

a) Restore child-family ties by reuniting the child with biological parents or extended family members;
b) Facilitate conditions for the assimilation of children with their parents and members of the extended family and promote their all rounded development;
c) Create opportunities for children in which they can learn familiar and social values and norms living with their parents and/or members of the extended family;
d) Support parents and/or members of extended families to re-assume their responsibility to cater for their children (The Revised Alternative Child Care Guideline, 2009).

III. FOSTER CARE

Foster Care is one component in a continuum of alternative childcare services. It refers to short or long term care within the private house of foster families, mainly addressing those children who are unable to live with their biological parents and families. Providing foster care is often a difficult and demanding job, for both the organization and foster families and, as such, some financial contribution can be and is often paid to the foster family to compensate the additional costs incurred by the foster child. Although foster care is often difficult, it has several advantages over other alternative childcare services, especially over institutional care. First and arguably most important of these benefits, is that Foster Care can provide the child with a high level of attention, nurturing and continuity only possible within a family. Placement in the foster parent‘s family gives the child a better chance of getting acquainted with life in a family environment and facilitates his/her smooth integration into the community at a later stage. Furthermore, as practice

in some organizations has shown, placing children in a foster family has served as a stepping-stone to child-family reunification. In light of this, implementing foster care arrangement needs guidelines that should be adhered by foster care implementing organizations(The Revised Alternative Child Care Guideline, 2009).

The overall objective of foster care service is to secure a substitute and temporary familial environment for orphans and vulnerable children on a temporary basis, till a child is reunified with his/her extended family or placed in other permanent alternative childcare program.

IV. DOMESTIC ADOPTION

The importance and expansion of adoption services as one alternative form of care is necessary as a lot of children are left to fend for themselves owing to the dire poverty and the spread of HIV pandemic in the country. Domestic adoption is one of the alternative care options available for children permanently deprived of their family environment.275 The fact that domestic adoption is a national solution, a permanent placement, and in addition, offers a family environment, puts it ahead of many other alternatives. Furthermore, there is evidence that in countries where domestic adoption is well established, it has a demonstrated high success rate in permanent placement, especially when decisions have been guided by the best interests of the child and children are adopted at a young age.280

The main purpose of domestic adoption service is to cater for the proper care and development of orphans and destitute children by placing them in a substitute and suitable familial environment.

V. INSTITUTIONAL CHILD CARE SERVICE

It is widely accepted that childcare within an institutional setting should be used as a short-term alternative care strategy and only as a last resort when all other types of childcare options have been exhausted. Countries which have traditionally relied on institutional care are now making major transformations to their childcare and social welfare policies, moving towards community care options. Such transformations are rooted in the research-based evidence of the impact of

institutions on children‘s development the vulnerability to abuse within the institutional settings and the high operational costs such institutional care often requires .Both international and local experiences have shown that long periods in an institution make it harder for a child to assimilate back into the community and deny them access to the life-long attachments and community support systems that family relationships and communities can provide. Hence, early intervention is of paramount importance for placing children in other alternative childcare programs, so that they would experience proper personality development. When all options are exhausted, upbringing children in institutions requires acceptable standards that should be adhered for the best interests of the child (The Revised Alternative Child Care Guideline, 2009).

The overall objective of institutional childcare is to contribute towards the improvement of the physical, social, psychological well-being and ensuring self reliance among children in the childcare institutions, by creating access to the fulfilment of their rights for basic and psychosocial services and seeking every other possible alternative placement for permanent upbringing of children.

2.33 CHALLENGES OF THE ETHIOPIAN INTERCOUNTRY ADOPTION

2.33.1 Adoption and child laws

In many African countries child laws and policy are specifically less developed. Ethiopia has a plethora of legislation relating to matters of children. It is Article 4 of the CRC and Article 1 of the ACRWC that provide an obvious basis for assuring that legal reform is a core obligation that State parties agree to undertake. One of the main recommendations of a sub-regional study involving the review of 19 Eastern and Southern African countries is that States need to undertake a holistic, multi-sectoral, and inclusive audit and review of existing legislations on children (ACPF, 2008). Even where comprehensive assessments have been undertaken, the study recommends that there is a need for continuous review and revision of laws (Ibid). In Ethiopia Child laws have gap and they have a number of direct implications in intercountry adoption processes. In the absence of a sound regulatory framework, the possibility of compromising children‘s best interests while undertaking intercountry adoption is high. Besides, the different

conventions and practice of the receiving country also makes the challenge even worse (ACPF, 2008).

For example, in the Revised Family Code of Ethiopia (2000), there is hardly any incorporation of provisions that address child trafficking issues. Furthermore, while the Revised Penal Code of 2004 has generally improved on the provisions of its predecessor, the 1957 Penal Code of Ethiopia, in the context of child trafficking, the relevant provisions also leave much to be desired. Article 597 of the Revised Penal Code, entitled "Trafficking in Women and Children", limits its scope of application to trafficking "for the purpose of forced labour" only. As a result, cases of child laundering for adoption purposes fall outside its ambit. Another relevant provision, Article 596(1) (a) entitled "Enslavement", prohibits anyone who "forcibly enslaves another, sells, alienates, pledges or buys him, or trades or traffics in or exploits him in any manner". While child buying and selling might fall within this provision, the interpretation of the phrase "exploits" could prove controversial. Therefore, it is no surprise that it has proved difficult to come across a single court case where either individuals or organizations were found guilty of child laundering for adoption purposes.

2.33.2 Child trafficking, buying, selling, and abducting for intercountry adoption

In Ethiopia, instances of child laundering for adoption purposes have come to light in recent years. In one instance, traffickers were allegedly caught transporting a group of children from one administrative locality (the authorities of which refused to issue a declaration of abandonment letters) to another administrative locality (Mezmur, 2010). The Federal First Instance Court which deals with intercountry adoption cases has recently traced the letters of declaration of abandonment of 16 children to one police officer (all written at the same time) raising concerns of child laundering(Ibid). Illegal activities such as false documentation included cases where "mothers of the children were still alive, while being listed as deceased" (Ibid). A recent detailed ABC News report has highlighted some of the irregularities that are happening in Ethiopia, arriving at the conclusion that "corruption, fraud and deception are rife" in the adoption system (2009, September 23).

2.33.3 Child trafficking and falsification of documents for intercountry adoption

The falsification of documents that are relevant for intercountry adoption is one of the illicit activities that are associated with the practice. These documents include birth certificates, paternity declarations, passports, identity documents, letters of consent, and letters declaring abandonment of a child. As a result, it can safely be said that in Ethiopia, where record keeping is generally weak and sometimes non-existent, forgery or alteration of documentation is difficult to detect. For instance, the absence of birth registration and a supporting birth certificate in a number of places in Ethiopia may facilitate the production of false papers for illegal intercountry adoption. The notion of ―simulated birth", which involves the fictitious registration of the birth of a child under the name(s) of a person(s) who is (are) not his or her biological parent(s), is also facilitated by a weak or non-existent system of birth registration.

A case in point is the one involving two Ethiopian children who were stolen, sold (allegedly for a 100 USD), and adopted by a family in Austria through the assistance of false documentation that was put under the spotlight in 2007 (Mezmur, 2010). This latter case involved intermediaries, orphanage workers, and relevant government administration personnel working at the Kebele level (which is the lowest administrative level) who helped the production of false documentation and played a role in the ultimate adoption of the children.

2.33.4 Improper financial gains and corruption

Both the CRC and the ACRWC require States to address the problem of deriving improper financial or other gain from intercountry adoption. But in a more elaborate manner, the Hague Convention requires that the ―Central Authorities" who act on behalf of contracting States ―shall take … all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention" (Art, 8). Apart from prohibiting anyone from deriving ―improper financial gain or other gain" from intercountry adoption, (Art, 32(1)) the Hague Convention limits payments to costs, expenses, and ―reasonable professional fees" (Art, 32(2)). It also forbids ―directors, administrators and employees of bodies

involved in adoption" from receiving ~~"r~~emuneration which is unreasonably high" for services rendered (Art, 32(3)).

The aforementioned international law frameworks outlined above highlight that the financial aspects of intercountry adoption are a cause for serious concern. These financial aspects include fees, the costs of certain services or documents, the honorarium for the professionals' services, the donations to institutions, the gifts, the tips, and so forth. It is acknowledged that even legitimate adoptions may also lead to wide-scale profiteering (Mezmur, 2010). When an unwarranted amount of money is involved in intercountry adoption, the possibility that the adoption system might begin to tailor the available children to the stated wishes of the would-be adoptive parents is high (Ibid). Consequently, children who may not deserve intercountry adoption would be pumped into the system in the interest of profiteering from the practice, too. It is also often difficult to make a distinction between what is ~~"p~~roper" and ~~"im~~proper" financial gain in intercountry adoption. Smolin captures this challenge eloquently:

> The law and practice regarding money and adoption turn out to be so mired in legal fictions and regulatory gaps as to make it extraordinarily difficult to distinguish between licit and illicit payments (Smolin, 2004).

According to sources, improper financial gains in connection with intercountry adoption in Ethiopia exist. For instance, allegations of improper financial gain by adoption agencies are becoming increasingly common (Mezmur, 2010). At least on one occasion, it has been reported that adoption agency workers are paid on the basis of commission, which does not constitute good practice. The presence of relatively large sums of money involved in intercountry adoption in Ethiopia has also posed a challenge for the implementation of the subsidiarity principle.

2.34 CONCLUSION

Whether we take resources to the child, or bring the child to a place where there are resources, is a struggle that developing nations will continue to solve their devastating problem of poverty (King, 2009). There is also a question whether it is ever acceptable to take a child out of her/his home because of poverty. In spite of this; intercountry adoption has received a great deal of international attention in recent years, in large part due to the current debate in the global context and the problem of the current system. Despite attempts to create international agreements and regulations for the process, the system continues to be plagued with corruption, inefficiency, and discrimination (Wechsler, 2010). In response to these problems, both sending and receiving nations have implemented hurdles to the international adoption process. From an ethical standpoint, though the answer must not be to halt or hinder intercountry adoptions, but rather reform to the current system and create the infrastructure necessary for the system to function efficiently, transparently, and ethically is quite timely and necessary. On the other hand, irrational decisions on the total barring of intercountry adoption may trigger much serious social economic problem when adoptions are restricted, the millions of children in institutions and on the streets worldwide are deprived of the opportunity to fulfil their basic physical and psychological needs through international families eager to adopt them (Ibid). The numerous problems in the current system have given rise to a great need for the practical solution. There is a need for a new system that would increase efficiency and transparency, eradicate discrimination and corruption, and better protect the rights of adoptees, birth mothers and adoptive parents. Most importantly, the new system should include all alternatives that would give each orphaned and homeless child a chance to grow up in a stable and loving environment, which would truly fulfil the paramount international goal of promoting the ~~b~~best interests of the child."

CHAPTER THREE

3.1 RESEARCH METHODOLOGY

3.1.1 RESEARCH DESIGN

This study employs a descriptive research method that enables the researcher to describe and present the issue under investigation (i.e. description of policies, laws and implementations qualitatively). Hence, it employs a qualitative research method since it helps to understand the context and explain the phenomena under investigation. The research also used both primary and secondary data. The researcher considered primary sources to generate data on the implementation of intercounrty adoption policy by critically assessing the existing process and efforts made by the government and stakeholders to promote the best interest of the child and to protect children against various forms of abuse and exploitation in the name of intercountry adoption. To this end, different policy documents and literatures was reviewed as part of secondary data in order to explore the general state of intercountry adoption policy and its specific situations in the country (Ethiopia).

3.1.2 SAMPLING DESIGN

The researcher used purposive sampling in identifying and selecting relevant organizations and individual respondents for the study. Hence, relevant government bureaus, agencies and international and local non-governmental organizations having stakes in the topic understudy were consulted. The Ministry of Women, Children and Youth Affairs, however, the main focal institution that has the mandate of formulating and executing intercountry adoption policies and laws was the main source of data and consultation to this study.

The population (sample frame) was not considered in this study as non-probability sampling techniques used. Among the non-probability sampling, purposive sampling method was used.

The underlining reason to opt for this type of sampling technique is that it is believed that relevant respondents identified and they can provide more appropriate data to the researcher.

3.1.3 METHOD OF DATA COLLECTION AND INSTRUMENTATION

Both primary and secondary data were collected. Primary data was collected through key informant interviews designed for this purpose. The interview questions were designed in a non-structured form in order to provide both the interviewer and the interviewee to probe and freely interact in order to obtain in-depth information (data) about the subject understudy. To this end, three parts of lead interview questions was used. The first part was to assess the extent to which relevant organizations are involved in the implementation of the intercountry adoption policy, while the second part assessed contents and impact of the legislation/policy on the intercountry adoption. The third part focuses on the general state of collaborative engagement in promoting and protecting children‘s right to which various stakeholders are involved in the legislative or policy development. Key informant interviews were conducted with selected individuals with their full and informed consent.

Similarly, secondary data were collected through a review of publications and literature on intercountry adoption and related subjects. i.e. books, academic articles, journals, website publications, organizational reports, government documents, relevant legislations, administrative rules, policies and procedures.

3.1.4 METHOD OF DATA ANALYSIS

After relevant data were collected, it was analyzed qualitatively. Data summarized and organized thematically; described, analyzed and interpreted to reach a stage of relating empirical findings with theories and principles advanced in the literature review part.

Moreover, relationship was established to address the issues as each theme is discussed by the respondents to provide practical insight into the issue. By understanding the relationships interpretation was followed using an inductive analysis. Relevant literature encompassing laws,

policies, commentaries, and principles related to intercountry adoption were made to guide the analysis.

3.1.5 RESEARCH ETHICAL NORMS

Ethical codes or principles are an expression of how we should behave as individuals and as a society. They are moral judgments that can be applied to particular situations to help us make decisions and guide our behavior. They are guides lines that help the researcher to behave in ways that are morally right. It is also useful in helping the researcher to balance competing values and to handle ethical dilemmas.

Hence, the researcher respected the research environment and followed the ethical norms of the research. The relevant information and data was used only for academic purpose. The researcher also respected the position or the stand of the participants or respondents who are going to give their opinion. In sort, maximum care was made not to affect the career and life of the research subjects who participated in this study, as a result of their voluntary consent to be part of the study. The researcher was also review all the necessary primary and secondary data freely and not siding to one position that helps to avoid the conflict of interest.

CHAPTER FOUR

4.9 DISCUSSION, ANALYSIS AND FINDINGS

4.9.1 INTRODUCTION

The previous chapter provided us with the conceptual framework about intercountry adoption and background information of its implementation in Ethiopia. In this chapter, the study focuses on the discussion and analysis of the Ethiopian intercountry adoption policy implementation which provides evidences gathered through in-depth interviews carried out with relevant stakeholders.

Hence, primary and secondary data collected from different sources have been thoroughly discussed, analyzed and interpreted. Intensive interviews were held with experts of MOWCYA, local non-government child care institutions and international adoption service provider organizations as well as the representative of the two non-governmental network representatives (local child care institutions and international adoption service provider organizations). Data from these sources have been discussed and analyzed in this part of the study. Secondary data, (proclamations, directives, manuals, guideline and organizational reports) have been used to substantiate the findings attained from primary data.

4.9.2 INTERVIEW RESULTS

The researcher has employed a descriptive research method that enables him to describe and present the issue under investigation. He has also employed a qualitative research method since it helps to understand the context and explain the phenomena under investigation. The researcher interviewed different stakeholders from government and non-government offices. In particular, rigorous interviews have been made with the experts in MOWCYA, child care and support department and two local and two international organizations which have stake in the intercountry adoption process. Two experts have volunteered to participate in the interviews from MOWCYA. The role of these two experts as follows: the first one Ato Hiruy Bahiretibeb, an expert in the child care support department and the second one is Ato Mesfin Araya, an expert in

the child care support department. Country representatives of two international organizations who are working in the intercountry adoption as a mediator have volunteered for the interview. These two organizations one from the United States of America the name of the organization is Holt International Children's Services Inc (1964) and the organization Country Representative in Ethiopia is W/ro Genet Abebe. The second one from Denmark, the name of the organization is AC International Child Support (1969), the organization Country Representative in Ethiopia is W/ro Yetnayet Ayele. I also interviewed the 61 international organizations working on mediating intercountry adoption network (2010) director Ato Hadush Halefom (the name of the 61 organizations is annexed). The other interviewee was from the local organizations directors of two child care institutions have volunteered for the interview, the first one is Sele Enat Assocition (2002), the Vice director of the organization is Ato Zelalem Bahiru and the second one is Edget Child Care Association(2007), the director of the organization is Ato Israel Shalom. In addition, I interviewed the local child care organization network director Ato Yared Abdu. The members of this network are above 50 and the name of the organization is annexed.

All of these organizations directors, representatives and experts who work on children and intercountry adoption process have given the researcher the necessary information required for the successful completion of this study.

4.10 STAKEHOLDERS AND THE PROCESS OF IMPLEMENTATION OF INTERCOUNTRY ADOPTION

i. The role of MOWCYA

The Ministry of Women, Children, and Youth's Affairs (MOWCYA) is the front-line intercountry adoption authority in Ethiopia. As per Article 32(10) of the Proclamation that defines the powers and duties of the Federal Executive Organs (Proclamation No. 691/2010) the main Government body in charge of coordinating and implementing child rights in the country. It has responsibility to summit periodic reports on the implementation of CRC to the United Nations Committee on the Rights of the Child.

There is a department under this ministry for the operation of intercountry adoption. Eligibility to adopt a child under the Ethiopian law will be initiated by the Ministry at the time of the best interest review during the court process. Prospective adoptive parents must take or send all of the required documents with their representatives or mediators, certified and authenticated, to the Ethiopian Embassy for additional authentication. The MOWCYA reviews the documents for its completeness and creates a dossier for the adoptive parents. The claim and authentication section of the protocol office at the Ethiopian Ministry of Foreign Affairs in Addis Ababa authenticates the dossier and returns it to the MOWCYA for approval.

The prospective adoptive parent‘s representative will file a dossier with Ethiopia‘s Federal First Instance court (FFIC) to initiate the legal adoption process in Ethiopia. The dossier will include documents related to the child‘s background, such as the life history documents created by the respective government bodies e.g. police abandonment letters, relinquishment papers from local government and regional bureaus of MOWCYA and other necessary documents from different governmental offices related to the case. The signed adoption contracts and information about the adoptive parent‘s suitability to adopt will be checked further. The Federal First Instance Court (FFIC) will forward the case to MOWCYA for its review, and usually sets a specific date by which the review must be completed.

The MOWCYA review the dossier, along with the approved home study, makes a determination on whether the adoption is in the best interest of the child. If it determines that the prospective adoptive parents are eligible under the Ethiopian law and the adoption should move forward, the dossier will be sent back to the FFIC for a hearing. In most cases, if the court approves the adoption, full legal custody is transferred to the adoptive parents on the same day. The court then issues an adoptive decree from the court, which has to be taken back to MOWCYA for certification. Possession of the certified adoption decree permits adoptive parents or their agency‘s representative to begin the process of applying for a new passport and birth certificate for the child.

ii. Role of the court

Ethiopia‘s federal first instance court (FFIC) accepts all petitions for intercountry adoption and forwards the dossier to MOWCYA for the best interest review. The MOWCYA reviews the adoptability of the child, ensures the process at the local level adhered to the Ethiopian law, and makes the final determination on the adoption decree. The FFIC issues the final adoption decree.

iii. Role of international organization in intercountry adoption

The international organizations have to have working license from the Charity association in consultation with MOWCYA and these organizations can facilitate the match of a child at a licensed Ethiopian private child care institutions and the prospective adoptive parents. These organizations act on behalf of the prospective adoptive parents in filing the dossier and petition with the FFIC. The organizations are mainly required to participate in other alternative child care programs and developments works. Participating on these projects is one of the main criteria to work on the intercountry adoption in the country.

iv. Role of local private child care institutions

The local child care institutions have to have license from the Charity association in consultation with MOWCYA. They work in different community developments work in different regions of the country. They also have child care homes in different regions and in their work they have to follow the procedures and guidelines set by MOWCYA, so that they are allowed to receive children who need different types of help as per the documents and referral of government bodies. The children are different in types (abandoned, relinquished and orphan children). From these children the children home can recruit for intercountry adoption with the procedure and laws of the country. These organizations are funded by the adoption service giving international organization for their running costs and project cost. In one or another way, they are dependent on the international organizations because the donation from the country is insignificant.

4.11 RATIFICATION OF INTERNATIONAL INSTRUMENTS, LEGISLATIVE AND POLICY MEASURES IN THE COUNTRY

Ethiopia has ratified most international legal instruments relating to the protection of children, namely the CRC in 1991, ACRWC in 2002, ILO convention on the minimum Age of employment and the ILO convention on the Worst forms of child labor in 2008. Furthermore, the principle of the best interests of the child has been incorporated in the nation‘s constitution and the revised family code in the year 2000. The latter contains provisions relating to both domestic and intercountry adoptions.

In addition, the country has undertaken some important steps towards ratification of some international instruments relevant to children. In an effort to protect and promote the rights of children with disabilities, Ethiopia also ratified the Convention on the Rights of Persons with Disabilities (CRPD) on 2010. Furthermore, Ethiopia signed the Optional Protocol on the Involvement of Children in Armed Conflict in 2010.

Since the adoption of its Constitution in 1995, with a number of provisions relevant for children‘s rights (particularly Article 36), the Federal Democratic Republic of Ethiopia (FDRE) has taken significant administrative, policy and law reform measures aimed at ensuring compatibility of national laws with provisions of international human rights instruments that are relevant to the protection of the rights and welfare of children. A number of legislative and policy measures have been taken until 2014.

Ethiopia has also developed a draft Comprehensive National Child Policy with due consideration of the principles and provisions of the CRC and ACRWC to guide the work of various actors dealing with children and also promote the rights of children. The policy emphasizes on three central strategies (CRC report, 2012): 1) development and growth, 2) prevention and protection, and 3) rehabilitation, care and support. The draft Comprehensive National Child Policy was finalized and presented to the parliament for approval.

All the above ratifications of international instruments and legislative and policy measures in the country respects all the principles of the mother conventions such as the CRC and ACRWC

which incorporate intercountry adoption as one of the alternative package to solve the problem of children in difficult situations. Referring all respondents the affairs of intercountry adoption taken forefront consideration in public policy making in Ethiopia included as one of the option in the alternative child care guideline and it is above institutional care option.

4.12 IMPLEMENTATION AND COORDINATION OF INTERCOUNTRY ADOPTION

The MOWCYA is currently designated as the main authority to nationally coordinate activities on the rights of the child (Proclamation No. 691/2010). Accordingly, based on a Business Process Re-engineering (BPR) study, the Ministry restructured and re-equipped its human and financial resources to effectively execute its mandates (CRC report, 2012).

The Ministry has setup various working strategies to coordinate and monitor the performance of the Federal Ministries and Regional Bureaus in accordance with the principles of CRC and ACRWC. One of the strategies was collecting annual plans and performance reports of Federal Ministries and Regional Bureaus, organizing common platforms for stakeholders to evaluate the overall performance and identifying challenges and solutions on a mid-term and annual basis (CRC report, 2012).

The other strategy is building the capacity of all regional, Zonal and Woreda level Women, Children and Youth‘s Affairs Bureaus to respond to their duties and mandates with regard to the protection of the rights of children. In relation to the financial resource allocation, the Ministry, as well as the Regional Offices are entitled to obtain funds from the Government, the UN and other donor agencies.

The Directive on the Responsibilities and Functions of Executive Committees of the Convention on the Rights of the Child issued by MOLSA in 1995 and amended in 2002 was further revised by the current MOWCYA in 2009/2010. The Directive calls for the establishment of Federal/National, Regional, Zonal, Woreda and Kebele level CRC Executive Committees and an

Inter-Ministerial Committee which has the overall mandate of overseeing the implementation of the CRC by coordinating, monitoring and evaluating efforts at both federal and regional levels. The Committee also provides policy support and mainstreaming CRC in sectoral strategies and development plans. In addition, a taskforce was established to oversee the work of all partners and has branched out to almost all regions and in some Zonal, Woreda and Kebele levels (CRC report, 2012).

As a step to ensure the institutionalization, mainstreaming and coordination of the CRC, various coordinating structures were established and action plans were formulated and adopted. These structures were given the tasks to oversee the coordinated implementation of these national action plans. Some of the committees that collaboratively work to promote and protect the rights of the child include the National CRC Committee, National OVC Task Force, the National Steering Committee against Sexual Abuse and Exploitation of Children, the National Steering Committee on Child Labour, the Inter-Institutional Management Team Working on Gender Based Violence (GBV) and Violence against Women and Children, and the National Committee on Trafficking in Women and Children (Ibid).

Even though the report of the government stated above is positive and effective in building hierarchical integration within and among implementing agencies, all the respondents from the government, local as well as international organizations who responded to the interview questions explained that the implementation is very poor and ineffective due to different factors.

According to Ato Zelalem, the vice director of Sele Enat Association,

> The implementation of intercountry policy in Ethiopia is very poor subjectivity of individual decisions is dominated in the federal as well as in different regions. The variation of policy interpretation in different regions and compatibility with the constitution and guidelines issued by the ministry is very high. This problem has direct reflection on the implementation of child right incorporated in the international and regional conventions.

He also listed down the main reasons for the implementation gaps. The first and main reason is lack of awareness both in the public Federal and Regional bureaus. In addition, high turnover of personnel and bureaucratic problem have affected the implementation of the policy. Another reason was mixture of political interest. This is due to some bad experiences and adoption abuses in the global and national intercountry adoption process. In addition to the above reasons, the respondent pointed out that there is time taking decisions problems of the CRC-committee in the regional bureaus.

Ato Mesfin (an expert from MOWCYA) also responded to the interview questions as follows:

> The implementation of intercountry adoption policy is very week. The reason for this is that there are different individuals in the public offices including politically assigned persons where some of them are supporters of intercountry adoption with genuine and logical manner and others who support the implementation because they have got illegal financial gains from the stakeholders. The other group is against the intercountry adoption idea. Their main reason is bad mentality for the implementers in the public offices and stakeholders and the rest is the knowledge limitation on the conventions and children‘s rights.

In addition, another expert respondent from the MOWCYA, Ato Hiruy, indicated that weaknesses in the intercountry adoption implementation are seen both in government as well local non-government organization. This is due to lack of capacity of the working staffs and financial shortage they have in the sector. In short, the roles of MOWCYA is to coordinate, monitor and evaluate the implementation of intercountry adoption and other alternative child care packages executed by local and international non-government organizations. According to the informant, the above duties have not been successful because of the listed problems.

4.13 RECENT IMPLEMENTATION CHANGES ON INTERCOUNTRY ADOPTION AND STAKEHOLDERS' RESPONSES

According to the Family Code of the federal and regional states, adoption agreement is only effective when the court is convinced that it is in the best interest of the child and also approved. The government encourages national adoption with the aim of creating healthy environment for the upbringing of the child in his/her social context.

Ato Hiruy (an expert from MoWCYA) responded to the interview questions that deal with measures taken as follows:

> Several measures have been undertaken by the Ministry to ensure compliance with the principles and provisions of the CRC and to make sure that adoption procedures are conducted in the best interests of children. Children eligible for intercountry adoption programs are those who have lost both of their parents, are without extended families and unable to be assigned to other forms of alternative care programs. The adoption process proceeds through a series of steps beginning from identification of the child and adoptive parents to the placement of the child in the adoptive family and beyond.

He added that there is also a continuous follow-up on the general situations of the adopted children. Adoption service provider organizations are responsible for preparing and submitting written post-placement reports to MoWCYA. The reports should contain the conditions in which children are brought up in the adoptive families. They are submitted quarterly during the first year and annually starting one year after the adoption takes place.

The MoWCYA report to the UN CRC committee in 2012 stated that domestic adoption in Ethiopia is increasing in different regional states. This increase in domestic adoption indicates that the Government is promoting and supporting domestic adoption as an option to address the challenges orphan children are facing in the country. In line with this, Ato Hiruy, the expert from

MoWCYA, stated that the government is trying to reduce the number of children who are placed for intercountry adoption by using different strategies and putting heavy pressure against intercountry adoption.

Furthermore, Ato Hadush, (director of the international adoption service giving organizations network) and Ato Yared, (the local child care institutions network director) explain some of the reason for the above pressures. According to the informants, the pressure comes both from global and regional child right advocate groups. For instance, the report from the African Child Policy Forum (2012) indicated what that uncontrolled and rapid increase in the intercountry adoption number was observed in Ethiopia. The report further revealed that what was about 500 at the start of the century reached a peak nearly ten times higher (4,565) by 2009. Again, as Ato Mesfin, (an expert from MoWCYA), such types of report created serious concerns and the government authorities reacted by setting limits on the number of intercountry adoption that can be validly processed during a given period.

In addition to the above claim, Ato Mesfin explained the pressure as followed:

> Situation such as these gives rise to legitimate concerns and they beg the question as to how the subsidiary principles could be properly respected. As a result, the government pressured all stakeholders to consider other alternatives for child care options exhaustively before they assign the child to intercountry adoption.

In consequence, the government took some measures; the first and the major one is minimizing the number of children released for intercountry adoption and the decision was more or less implemented in all regional State bureaus. Ato Zelalem, The Vice director of Sele Enat Association explained the impact of the government decision as follows:

> When the government began reducing the number of children who are designated for intercountry adoption, the amount of financial resource began decreasing from the international donor organizations and many child care institutions were forced to close

> the institutional care and other alternative child care programs that they are implementing in different part of the country.

Similar responses have been given by Ato Hadush (the network director of international organizations working on mediating intercountry adoption) for the interview question that deals with impacts of the recent changes:

> In some of the stakeholders‘ view, the decision did not consider other aspects of the sector. The decision limits the number of children to be supported. In connection to this, the capacity to implement the alternative child care options in the country at this time has become low.

According to Ato Hiruy (the expert from MoWCYA) the ministry also places the new procedures for controlling the trafficking of children who are released from different regional state bureaus by demanding the final conformation letter signed by the State regional bureau director or vice director for the release of the child for intercountry adoption. Without having this letter, the federal MoWCYA does not give its review consent to the court for the final approval of the process.

In contrast, Ato Yared (the local child care institutions network director), believed that the above decision was an intentional planned and implemented directly to reduce the number of children for intercountry adoption. He also explained the bureaucratic hurdles of the above decision making processes as follows:

> The regional States BoWCYA delay to give a final conformation letter for the child who acquires a permanent family and has appropriate documentation as well as he/she cannot be placed in other alternative child care programs in the country. The decision did not consider the fundamental and constitutional right of having a family for the child

According to Ato Hadush, the other decision was because of the huge amount of money transaction in the intercountry adoption system the government forced those organizations to participate in other alternative child care packages or development works. It was for this reason that it developed rule and regulation where the ministry has its obligation and mandate to evaluate the performance of these organizations.

4.14 INTERCOUNTRY ADOPTION AS THE ONLY FINANCIAL RESOURCE FOR THE CHILD CARE INSTITUTIONS IN ETHIOPIA

Resource is a crucial component for advancing the survival, protection and development of children. This is particularly the case in situations where the capacity of most families to finance and provide basic needs for their children is limited. As a result, there are huge unmet needs for access to basic services. The enactment of Charities and Societies Proclamation (CSO Proclamation No. 621/2009) has created an adequate legal framework to administer the sector, defined area of intervention of charities and societies, created conducive situations for NGOs to operate and defined their relations with sector bodies. Currently, civil societies play an important role in the care and support of orphan and vulnerable children (OVC) (CRC report. 2012).

The CSOs are working in seven core service areas which are considered critical components of services for vulnerable children. The seven services are 1) shelter and care, 2) economic strengthening, 3) legal protection,4) health care, 5) psychosocial support, 6) education, food and nutrition, and 7) coordinated care linked to all sectors for appropriate mix of services for program beneficiaries(Ibid).

From charity and society organizations, there are local and international organizations which are working in intercountry adoption and implementing other alternative child care options in their program. Ato Hadush, explains the source of donations and relationships with number of children as follows:

> The funding source for the implementation of alternative child care is directly from one source; it is from the international adoptions service giving organizations and all local child care organizations are directly dependent on this source. The amount of money has a direct relationship with the number of children placed in international adoption programs.

In addition to the aforementioned points, the representative of AC International Child Support, Denmark (1969), W/ro Genet Abebe and the representative of Holt International Children's Services Inc, USA (1965), W/ro Yetnayet Ayele(both international organizations working as mediators of intercountry adoption), confirmed the above relationship and added to the point that:

> The direct relationship of the number of children and financial resource creates a lot of limitations to the capacity on both sides of partnership between the local organization and international organizations. They donate resources for the program of those organizations in exchange of recruiting children to intercountry adoption.

In addition, local organizations have no fund from the government and there is no social mobilization work to get financial support for their project work. As to Ato Mesfin, the awareness problem in the community and abject poverty in the country force many of the child care institutions to depend on the donation of adoptive parents' contribution. In connection to this, to work on social mobilization to break this tradition takes time. As a result, for the best interest of the child, Ato Hadush has recommended that the only option at present is to minimize the support and try to get resources from the country of donations. Gradually, however, all financial resources in the name of intercountry adoption should be covered within the country. Otherwise, all stakeholders may close down their alternative child care programs of which the consequences will be violating children's rights in all international and national conventions.

4.15 PROBLEMS AND CHALLENGES OF INTER COUNTRY ADOPTION

4.15.1 Child trafficking

In many African countries, issues related to child laws and policies are specifically less developed. This is the case, for instance, in respect of child trafficking. A study conducted in 2007 found that all of the five states of North Africa have not developed a specific policy, strategy and plan of action to combat child trafficking. In fact, the 2009 UNODC report on trafficking indicates that many African countries still do not have legislation on human trafficking, or they have laws that criminalize only some aspects of human trafficking, such as trafficking for sexual exploitation (Mezmur, 2010).

This policy deficit occurs as a result of the assumption that trafficking of children, particularly for adoption purposes, is not happening within countries‘ respective borders. For instance, out of the 12 State Party Reports submitted to the African Committee of experts on the Rights and Welfare of the Child to date, only a couple of countries could identify trafficking of children for adoption purposes as a problem (Mezmur, 2010).

In the Revised Family Code of Ethiopia (2009), there is hardly any incorporation of provisions that address child trafficking issues. Furthermore, while the Revised Penal Code of 2004 has generally improved the provisions of its predecessor, the 1957 Penal Code of Ethiopia, in the context of child trafficking, the relevant provisions also leave much to be desired. Similarly, Article 597 of the Revised Penal Code, entitled ―Trafficking in Women and Children", limits its scope of application to trafficking ―for the purpose of forced labour" only. As a result, cases of child trafficking for adoption purposes fall outside its ambit.

According to both experts from MoWCYA (Ato Mesfin and Ato Hiruy), there are problems and challenges of intercountry adoption in Ethiopia. Child trafficking or illicit activities of child abduction and child stealing, buying and selling, illegal financial gains and corruption; falsification of documents; and circumventing adoption procedures, for instance, through guardianship orders are some of the challenges.

4.15.2 Money matters

It is well known that financial issues constitute a major obstacle to ensuring intercountry adoptions that are carried out in an unethical manner. In particular, measures need to be taken to ensure that children are not brought into the intercountry adoption process because of the potential financial gain they represent rather than because they truly need adoption abroad.

Both the CRC and the ACRWC require States to address the problem of deriving illegal financial and other gains from intercountry adoptions. Similarly, and in a more elaborate manner, the Hague Convention (1993) requires that the "Central Authorities" who act on behalf of contracting States "shall take … all appropriate measures to prevent illegal financial or other gains in connection with an adoption and to deter all practices contrary to the objects of the Convention" (Art 3).

According to the experts from MoWCYA "the mobilization of vast amounts of money and the lack of transparency in the process of adoption brought illegal financial gains in connection with intercountry adoption in the Ethiopia.'' For instance, in Ethiopia, allegations of illegal financial gains by adoption agencies and child care institutions are becoming increasingly common. In addition, Ato Hadush confirmed that "the presence of relatively large sums of money involved in intercountry adoption has also posed a challenge for the implementation process of the same.''

4.15.3 Disregard for the role of traditional coping mechanisms for children's care

Informal alternative care arrangements are invariably the norm in African countries and in Ethiopia. It has been known by a wide variety of names throughout the continent and with nuances in their organization and effects. These traditional coping mechanisms are often referred collectively to be "customary adoption" and "informal foster care" (ACPF, 2012).Arguments put forward in favour of intercountry adoption – often claims to be based on children's rights or, at the very least, the "best interests" of the child – are frequently grounded on the proposition that, because of its legalized nature, only adoption can provide guarantees of "permanency" for the

child. Therefore, it is argued that, adoption is to be preferred over long term foster care and various informal arrangements.

Families and communities in many African nations have been finding it increasingly difficult in recent years to fulfil their customary responsibilities towards children without parental care. It follows that if –justified", recourse to intercountry adoption (and, indeed, institutional placements) is to be countered in practice. These families and communities must be empowered to play their traditional roles. This means that priority being given – by national and local authorities, civil society organizations, foreign governments and development aid bodies alike – to coordinate their efforts rather than to allowing or promoting –formal" alternatives that are alien to the African context (ACPF, 2012).

According to Ato Mesfin (expert from MOWCYA) and Ato Israel (Director of Edget Child Care Association), the traditional roles of the community is has no guarantee of permanency and it is very informal. It therefore, needs much work in creating awareness in the community and developing systems that can empower the customary adoption with formal structures.

4.15.4 Alternative child cares in private hands

The following are among the ways in which –orphanages" (whether or not in collusion with adoption agencies and the government bureaucrats) in Ethiopia were reportedly infringing the law or otherwise engaging in illicit or questionable practices connected with intercountry adoption(ACPF, 2012):

a) Actively prospecting for babies and young children in vulnerable families in the community
b) Misrepresenting the –adoptable" status of children to prospective adopters
c) Falsely declaring to the competent authorities that a child's parents had died or were untraceable
d) Obtaining consent for adoption by misleading birth parents or other family members as to the consequences of adoption

e) Falsifying or forging documents (e.g. consent forms) and procuring falsified or forged documents (including id) (ACPF, 2012).

Undoubtedly, this has been and still is a more general problem in the country and all respondents agreed and confirmed the prevalence of the above problems.

4.15.5 Systemic inadequacies

In the adoption sphere, as in any other domain of human activity, there are individuals who will seek to circumvent or ignore the law, and clearly there is a need for constant vigilance to prevent and respond effectively to it. However, most of the major problems and violations of standards encountered in the intercountry adoption process are not rooted in illegal acts by isolated persons, but rather concerns of activities that have become quasi generalized – even endemic – because, in particular, of inadequacies of legislation and systems in place. Such systemic gap range from ―loopholes" or absence of regulation to legal or administrative requirements that actually undermine, or even run counter to, international standards. The following are examples of these:

i. Systems where the required process for declaring the adoptability of a child is neither transparent nor thorough
ii. Systems that do not provide for matching a child with prospective adopters but allow the latter and/or their agencies to have direct contact with residential child care facilities and, more or less directly, to ―select" a child
iii. Systems where prospective adopters or agencies are required to make donations to the residential child care facility from which they adopt, or to provide other humanitarian assistance or financial support to the child protection system (ACPF, 2012).

According to Ato Hiruy, an expert from MoWCYA, the principle of intercountry adoption is finding a family for the vulnerable child not finding a child for prospective adoptive parents. Where systems of this nature exist, it is almost inevitable that illicit activities will result because in finding a child for the prospective adoptive family there will be competition.

4.16 STAKEHOLDER‘S CONTRIBUTIONS

4.16.1 Developmental work /alternative child care

Stakeholders are working in seven core service areas which are considered critical components of services for vulnerable children. The seven services are 1) shelter and care, 2) economic strengthening, 3) legal protection,4) health care, 5) psychosocial support, 6) education, food and nutrition, and 7) coordinated care linked to all sectors for appropriate mix of services for program beneficiaries (CRC report,2012).

According to Ato Hadush, stakeholders‘ local and international organizations facilitating intercountry adoption have to engage in community development work in line with intercountry adoption and this is the main evaluation criteria and that helps them to continue on working in international adoption. The experts from MoWCYA also agreed on this point and explained the reasons. In their view, since huge amount of money transaction is made in these organizations, they have to participate in the other alternative child care options. If so, the problem in the community can be reduced and indirectly helps to reduce the number of children that need families through intercountry adoption.

4.16.2 Participation in the policy formulation and new guidelines

Both experts from MoWCYA agreed that there was participation of stakeholders in different ways when the Ministry prepares alternative child care guidelines and other internal guidelines. However, as the child care network director, Ato Yare, believed that interpretation of the existing guideline has not been objectively materialized, it was rather personal. As a result, misunderstandings and confusions have been created that lead to conflicts between the stakeholders and the government officials.

4.16.3 Establishment of the networks

One of the other contributions of stakeholders is establishment of networks. The first network is child care organization network, while the other one is adoption service giving organizations

network. Both are established to work with the government and to facilitate the solution for every problem in group. According to Ato Haddush and Ato Yared, representatives of from each network respectively, agreed that there are progresses in the implementation process after the establishment of both networks. They listed down the following achievements:-

a) Laid strong foundations and institutional linkages to closely work with key relevant government offices (MoWCYA, FFIS, CHSA, BoWCYA in regions and Addis Ababa).
b) In cooperation with MoWCYA and Court equipped members with various relevant policies, guidelines and procedures governing adoption.
c) Facilitate the exchange of information and communication to enable members to better address the needs and rights of disadvantaged children with the aim of providing quality alternative services.
d) Developed a code of conduct to avoid malpractices and promote quality adoption service
e) Mediation of conflicts between the government and stakeholders by organizing meeting

With all these achievements, the above respondents believed that they can reduce illegal trafficking of children in all regional states of the country and contribute to the developments of alternative packages in the future. Finally, all respondents agreed that there is a promising implementation green light in the future, if all work strongly and collaboratively.

CHAPTER FIVE

5.1 SUMMARY OF THE FINDINGS AND RECOMMENDATION

5.1.1 INTRODUCTION

This chapter provides concluding remarks and recommendations on key findings of the status of intercountry adoption policy implementation in Ethiopia.

5.2 SUMMARY OF THE FINDINGS

5.2.1 The findings of this study revealed that the interviewed experts from the MOWCYA and representatives and directors of local and international organizations as well as network directors have appreciated the existence and acceptance of child focused international conventions and approval of policies, legislatives and guidelines by the government of Ethiopia. However all believed that their implementation is very weak both in the Federal and Regional state levels.

5.2.2 Despite the fact that all interviewed persons agreed on the week performance of the policy implementation of intercountry adoption and alternative child care packages, they all confirmed that the affairs of intercountry adoption takes forefront consideration in policy making in Ethiopia. In fact, a number of legislatives and policy measures have been undertaken. In addition, the Ministry developed a draft comprehensive national child policy with due consideration of the principles and provision of the CRC and ACRWC.

5.2.3 It was noted that recent changes and measures taken by the MoWCYA has a negative effect and resulted in closing of many programs of the child care institutions and international organizations. All respondents from the local and international organizations considered it as an ambitious decision on the part of government. They also argue that the decision does not correlate to the capacity of NGO‘s. In addition,

they counted it as if the decision was used for political consumption and interest rather than ensuring children‘s rights. The decision also did not consider the relationship of the level of the donations or the financial resource that comes because of intercountry adoption implementation and the alternative child care programs that run by these same stakeholders.

5.2.4 As to the challenges and barriers of intercountry adoption policy implementation, all interviewed experts, representatives and directors of the stakeholders agreed on the existence of challenges and barriers in the policy under discuss.

5.2.5 On the subject of participating in the drafting of policies and legislatives, the study noted that the stakeholders have no good participation status in the drafting process of legislatives and policies. The study noted that there has been misunderstanding of interpretation of the guidelines between the government officials and non-state actors. It was also noted that the government only has coordination and monitoring role and the implementation responsibility is directly left to the non-state actors that brought conflict and misunderstanding

5.2.6 In assessing the efforts made by the government and stakeholders to promote alternative child care programs to curb the problems in the implementation of intercountry adoption, the study noted that government offices have taken strong measures on the legitimate release of adaptable children documents and to closedown organizations found undertaking guilty activities and underperformance. Although active monitoring and evaluation have been carried out by the federal and regional bureaus, it was also noted that government and stakeholders through their joint network have tried to develop standards to measure performances in objective manner.

Generally, poverty and disease have left millions of children without parental care and many parents have been forced to relinquish their customary child rearing duties. The care and protection of children is primarily the country‘s responsibility in order that children must grow up in their own families. Short of that among their extended families and short of that in their own

larger community. Wherever and whenever it is applied as a measure of last resort and before instructional care, intercountry adoption should be carried out based on the principle of the best interests of the child. Therefore, the time focus on inclusive /deliberative and transformative public policy and better implementation of policies and legislatives to improve children‘s lives is now.

5.3 RECOMMENDATIONS

1. Once the country allows intercountry adoption to take place, government bodies must ensure that the system, at all levels, should be ensuring to find a suitable family for a child who needs intercountry adoption. This also requires ensuring the principle of the best interests of the child to be of paramount consideration. Moreover, when considering alternative family care of the child and the best interest of the child, due regard should be paid to the desirability of continuity in a child‘s upbringing and to the child‘s ethnic, religious or linguistic background.

2. The government should put in place additional safeguards such as limiting the number of authorised adoption agencies operating in the country; strengthen oversight of child-focused bodies and closely regulate all financial aspects related to intercountry adoption. The government and stakeholders have to build the capacity of child care institutions and other stakeholders.

3. Sensitizing all level government officials on their obligations to ensure the best interest of the child through policy briefs and successive trainings on the alternative child care packages should continuously take place. In addition, establishing comprehensive mass awareness and sensitization program on intercountry adoption is also necessary.

4. Promoting dialogues, trust and respect to reduce an element of ‗‗them‘‘ and ‗‗us‘‘ among government and other child focused organizations involving intercountry adoption is quite necessary and timely.

5. There is no need to develop and ratify new policy rather it is recommended to implement the existing policy /legislative in a perfect manner by accommodating and widening the door for child-focused organizations‘ and it should be a frequent government agenda.

6. Further studies in intercountry adoption process is recommended and in addition rules and regulations of the country pertaining to child rights should be supported by research and standards to be developed in implementation of alternative child care packages

Finally, yet importantly, government should be mindful of its actions and decisions on nongovernmental development actors and organizations. It is important to rather widen the scope of cooperation, collaboration and partnership and encourage the active, positive and systematic involvement of local and international NGOs in the implementation of alternative child care.

In summing up, the researcher considers that the research theme on ‗‗The status of Ethiopia‘s Intercountry Adoption Policy implementation: The Case of Key Stakeholders in Intercountry Adoption Process.‘‘ offered an appropriate and timely rationale to looking towards the need to create an inclusive society through implementing the legislatives/policies ratified in the country with due consideration of the principles and provisions of the CRC and ACRWC and also promoting the rights of children.

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APPENDICES

1. KEY INFORMANT INTERVIEW GUIDELINES

Dear Sir/Madam,

I am a graduate student at Addis Ababa University. I am conducting a study entitled __The status of Ethiopia‘s Intercountry Adoption Policy implementation: The Case of Key Stakeholders in Intercountry Adoption Process‘‘, as part of the requirement for the successful completion of the Masters Degree in Public Management and Specialized in Public Policy Studies. To attain this purpose, your honest and genuine participation is very important. I therefore, would like to thank you for sparing your time for the interview.

Part One

This part of the interview is designed with the intention of assessing the perception of interviewees from the Ministry of Women, Children and Youth Affairs and related government bodies who are responsible in the process of drafting and implementation of intercountry adoption legislations. The interviews are lead questions in order to allow free interaction of respondents and probing opportunities for the researcher.

1. What do you know of the general state of intercountry adoption policy implementation in Ethiopia?
2. Who are the stakeholders in this sector?
3. Do you think that there are child trafficking and abuse in the process of intercounty adoption? If _Yes‘ explain them.
4. Which of the factors considered problematic or barriers to the implementation of intercountry adoption in Ethiopia?
5. What types of measures have been taken to stop and minimize the above problems?

6. What do you suggest /command to curb the problem children facing currently in order for children to have a permanent family?
7. Is there a gap that you observed in the implementation process of intercountry adoption?
8. Have you witnessed a promising inter-country adoption implementation?
9. Is there formal system for regular meeting with the nongovernment organization to consult on children‘s issues?
10. Are there improper financial gain or other gains and corruption in the sector? If there are, please explain?
11. Are there effective monitoring mechanism on the implementation of legislation and policy affecting the children in intercountry adoption? Please provide a short description?

Part Two

This part of the interview is designed with the intention of assessing the perception of interviewees from the Local non-government organizations and International organizations who are working on the implementation of intercountry adoption.

1. What do you know of the general state of intercountry adoption policy implementation in Ethiopia?
2. How do you assess the accessibility of financial resources in the implementation process of intercountry adoption from the government, community and other non-government organizations?
3. What are the barriers that currently prevent your organization from doing more on intercountry adoption? Explain their impacts?
4. How do you explain the status of collaboration between government and stakeholders in reducing problems that emanate from intercountry adoption?
5. What do you think is the contribution of the stakeholders and others in intercountry adoption policy implementation?

6. Has the Ministry of Women, Children and Youth Affairs introduced any legislation or policy that influnces intercountry adoption?
7. If your answer is ―Yes" to the above question, was your organization involved in drafting the legislation or policy?
8. In your opinion, do you believe that the recent legislation or policy (the new guideline, alternative child care) introduced recent years made a positive difference to the intercountry adoption?

Thank you for your time.

If you have any question or comments please contact with

Tel: - +25139903883 or

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2. LIST OF ADOPTION SERVICE ORGANIZATIONS NETWORK MEMBERS

1. Accueil ET Partage
2. AC International Child Support
3. Adoption Advocates International
4. Adoption Associates Inc.
5. Adoption Avenues
6. Adoption Center Swedish Society of International Child Welfare
7. Adoption Forum
8. All God‘s International Inc.
9. America World Adoption Association
10. Amici Mission Indiane /AMI/
11. Asociacion behbey
12. Association CIELO 133
13. Association de Ayuda a la Infancia del Mundon
14. Association Feyda
15. Association in Aiuti Umanitari (A.I.A.U)
16. Association Motivacion Familia Recursor Matriminials
17. Association Pro Dereitos Da Infancia Addis-Galicia
18. Association Per A L‘Ajuda A La Infancia Balbalika
19. Bethany Christian Services
20. Buckner Adoption and Maternity Service Inc
21. Canadian Advocate for the Adoption of Children
22. Centro Aiuti Per L‘Etiopia
23. Celebrate Children International Inc.
24. Children,s Home Society and Family Service (CHSFS)
25. Children‘s Hope International
26. Children‘s House International
27. Children of the Queen of Mercy Christian Adoption Association
28. Children of the Sun Association
29. Christian World Adoption
30. CIFA Onlus-Centro Interazional Per L‘linfanzia e La Famigia

31. Dan Adopt
32. Dove Adoption International Inc.
33. Eltern Fur Africa e.v
34. ENZOB
35. Flanders inter Country Adoption Care (FIAC)
36. Foundation Africa/Stichting Afrika
37. Gladney Center for Adoption
38. Holt International Children‘s Services Inc
39. Lllien Adoptions International, inc.
40. In Cammino Per La Famiglia
41. Iniciativa Pro Infancia
42. Interpedia
43. International Adoption Guides Inc. (IAG)
44. Italian Center For Children Aid
45. International Adoption Net.
46. Kids Links International Adoption Agency
47. Les Amis Des Enfants Du Monde
48. Les Enfants Avant Tout
49. Mundi Adopta
50. Nuovi Orizzonti Per Vivere L‘Adozione
51. Paidia Association
52. Piao-Entidad Colaboradora DeAdopcion and Foster Children Placement
53. Pro Etiopia-Infanzia
54. Pro-kind
55. Protestant Association for Adoption and Foster Children Placement
56. Ray of Hope/Children Welfare Adoption Organization
57. Sourires D‘Entants
58. West Sands Adoptions and Counseling
59. Wide Horizons for Children Inc.
60. Wereldkinderen, Child Welfare Association
61. World Association for Children and Parents (WACAP)

3. LIST OF CONSORTIUM OF ETHIOPIAN CHILD‘S DEVELOPMENT ORGANIZATION

1. Abaselama kesatebirhan Teradeo Mahiber
2. Abebech Gobena
3. Abenezer children‘s center
4. Addis Alem Children‘s Relif Association
5. Aderajew
6. A hope Ethiopia
7. Ajuuja children home association
8. Akake Lesprance
9. Almaze Ashene Yehitsanatina Beteseb Merja Mahiber
10. Amanuel Home
11. Angels children‘s home
12. Asefa Kefle
13. Atitegeb worku
14. Beeminet childrens and youth
15. Betesida hitsanat Merja
16. Bethezata childrens home association
17. Bridge of hope
18. Catholic children home center
19. Center of Concern
20. Children‘s Cross Connection
21. Edget Hitsanat Merja
22. EOC child and family affairs organization Debir Kidus child Care Center
23. EOC child and family affairs organization Holito Misrak Child Care Center Harar
24. Gelgella
25. Girma Anto
26. Hanna orphans home
27. Hilawe Foundation
28. Human beings association of brother hood

29. Human capital foundation
30. Kebebetsehay Children‘s Orphanage
31. Kechene Children‘s Home
32. Kes James Gobena Blessing the children orphan center
33. Kids Care
34. Kingdom Vision International
35. Love for all Childrens & elders association
36. MC brothers
37. Medhanialem Histanat Merga
38. Miskay Childrens Welfare Ass
39. My Father‘s house Children‘s care organization
40. Nazareth Children‘s Center & Integrated Development
41. Niyana childrens & Women Association
42. Passage for aid & Development Association
43. Rehoboth Supporting & Development organization
44. Retrak Ethiopia
45. Selam Childrens village
46. Sele Enat Mahiber
47. Siddartha Development Ethiopia
48. SOS children‘s village
49. SOSEE.Harer children home
50. St.France Children Support Center
51. Talita Destitute Girls
52. Tsion Yelimat Teradeo
53. Tuarina wolage Yatu Yembeletochin Yeligoch Bet (T.W.Y.Y.Y.B)
54. Wetat Tifategoch Tehadiso Associatiion
55. Yeingeda Hetsanat Merja
56. Yenat Alem Hitsanat Merja
57. Yenege Tesfa Orphan and street children organization
58. Yezelalem Minch

Declaration

I hereby declare that the thesis entitled as __The status of Ethiopia‘s Intercountry Adoption Policy implementation: The Case of Key Stakeholders in Intercountry Adoption Process‘‘ has been carried out by me under the guidance of Dr. DerejeTerefe as part of Master Degree in Public Management and Policy specialized in Public Policy Studies.

I further declare that this thesis is my original work and has not been submitted to any other University or institution for the award of any degree or diploma and all sources of material used for this thesis have been dully acknowledged.

Daniel Getachew

Signature _____ Date_____

DerejeTerefe (PhD.)

Advisor Signature _____ Date_____

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