

**ADDIS ABABA UNIVERSITY  
SCHOOL OF GRADUATE STUDIES**

**CHILD RIGHTS PROTECTION IN ETHIOPIA AND KENYA: A  
COMPARATIVE ANALYSIS**

**BY  
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**ADDIS ABABA  
JUNE, 2015**

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RELATIONS**

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## Abbreviations

ACPF	African Child Police Forum
ANNPCAN	African Network for Prevention and Protection of Children against Maltreatment and Neglect
CCRDA	Consortium of Christian Relief and Development Associations
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
DCS	Department of Children's Service
DIP	Democratic Institutions Program
DRC	Declaration of the Rights of the Child
EHRCO	Ethiopian Human Rights Commission
EIO	Institution of the Ombudsman
JOPTC	Justice Organ Professional Training Center
JICA	Japan International Cooperation Agency
FCSE	Forum on Sustainable Child Empowerment
FDRE	Federal Democratic Republic of Ethiopia
JICA	Japan International Cooperation Agency
JIT	Judiciary Training Institution
KLRC	Kenya Law Review Commission
KNHRC	Kenya National Human Rights Commission
LON	League of Nations

MOWCYA	Ministry of Women, Children and Youth Affair
MOGCSD	Ministry of Gender, Children and Social Development
NCCS	National Council for Children’s Service
NGOs	Non Governmental Organizations
NHRIs	National Human Rights Institutions
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNODC	United Nations Organization on Drugs and Crime

## Abstract

*In the four corners of world the notion of protecting the rights of children has got more focus till the ratification of the CRC. So does in Ethiopia and Kenya. Therefore, this research paper comparatively analyzes child rights protection in Ethiopia and Kenya based on the requirements of CRC to which both states are parties. The Main Objective of this study is to explore the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia. Qualitative research approach and also comparative research approach for methodology, both primary and secondary data as a data source, Purposive sampling technique for sampling and interview for data collection, exploratory as well as analytical technique for data analysis and system theory, particularly ecological system theory as a theoretical framework is adopted. On the basis of the data analysis the research has found out as both Ethiopia and Kenya are taking legislative as well as administrative and other measures in order facilitated the implementation of CRC. However, Kenya is taking considerable measure that let the country to go at least a step ahead than Ethiopia in terms of protecting the rights of children effectively. In light of Kenya's experience, the prospects for effective child rights protection in Ethiopia are the very existence of laws as well as their continuous revision and also institutions as well as their efforts like taking part in the law making process via conducting impact assessment and impact evaluation, installing IMS, organizing children parliament and giving training in order to protect the rights of children. There are also certain challenges for effective child rights protection in Ethiopia due to the absence of certain components that create more enabling or protective environment. These are the absence of domestic legislation that entail the mechanism, procedure and remedies for implementing the whole provisions of the Convention, self monitoring mechanism with adequate backing in terms of authority, budget and human resource, CSOs cooperation with independent monitoring mechanisms let alone to function independently in effective manner, continuous assessment of the effectiveness of training in practice, and also the absence of institutions with the necessary services and facilities in order to host children in conflict with law. Thus, in order to protect the rights of children effectively like Kenya among others, legal and institutional measures that solve the challenges should be taken in Ethiopia.*

## **Introduction**

### **1. Background of the study**

Child-saving movement has got birth in the nineteenth century where those legislation that protect the child rights has developed in different parts of the Western world (Rai,ND: 3). Moreover, as a consequences of the II World War an agreement was reached affirming that the protection of rights is an international concern and it was contended that all individuals are allowed to acquire basic human dignity by virtue of their humanity and that certain human rights are universal and fundamental. Thus, they should not and cannot be violated by cultural and religious traditions. This resulted UDHR. However, for the rights of children were implicitly addressed many contended as the special needs of children justified an additional separate document. As a result, on its formation after the II World War the UN accepted the' Declaration of Geneva', which is developed by the International Save the Children Union in 1923 and restructured the declaration in 1959 (Webb, 2014:1).

The unquestioned supposition that children could and should depend upon the sole protection of adults to make sure the exercise of their rights was reflected in the 1924 DRC and continued to be reflected in the1959 DRC as well as in many of the public and private international law Conventions enacted in the 1900's and in the first half of the 1970's (Kibuka etal.,ND: 167).However, the coming of the major international Convention on children's rights in 1989 i.e. CRC and its ratification shows government's dedication in order to implement the rights of children listed in the Convention (Gran and Bryant, 2011:4). The Convention is a comprehensive document consisting 54 Articles of which 42 deals with civil, political, social, economic and cultural rights of children. These articles enhance the protection of children, their participation in the societies in which they live, and provision of services and care. The others (articles 43-54) indicate what states and the UN supposed to do in order to make sure these rights are available to children (Gran and Bryant, 2011: 4 & Webb, 2014:1-2). Thus, the Convention not only outlines the rights of children, but also those who are entrusted for the protection of these rights or implementation of the Convention.

However, states are the primary responsible body for the protection of children. So that, they are expected to set up and implement child protection system that ensure non-discriminatory access to all children under their jurisdiction in line with their international obligations (UNHCR, 2012:12). Accordingly, in order to ensure the existence of more effective and

efficient child protection response number of countries in Sub-Saharan Africa are now actively promoting systems strengthening (Davis et al., 2011:4). Ethiopia and Kenya are not an exception from this reality. Thus, these two countries are strengthening their child protection system and also working to deal with the issues of child protection. In this regard, in its report card on child protection UNICEF indicated the need to build or strengthen child protection system by states as well as the main issue of child protection, namely birth registration, violence against children, child marriage, female genital mutilation/ cutting, child labor, sexual exploitation and abuse of children, child trafficking, migration, children with disabilities, children without parental care, children in justice systems, children in emergencies and landmines, explosive remnants of war and small arms that need to be dealt with (UNICEF, 2009:2-21).

Among other issues in its 2015 country statistical information on states of the world children UNICEF indicated that 7% of children registered while they are born and also as the labor of 27% of children where 24% and 31% are females and males respectively is being exploited in Ethiopia. In addition, with regard to child marriage 16% of children got married by age of 15 and 41% of children got married by age of 18. Beside, children also face female genital mutilation. It accounts for 74% women and 24% girls in Ethiopia. Whereas in Kenya 60% of children registered while they are born and also the labor of 26% of children where 25% and 27% are females and males respectively is being exploited. In addition, with regard to child marriage 6% of children got married by age of 15 and 26% of children got married by age of 18. Beside, children also face female genital mutilation. It accounts for 27% women and 8% girls in Kenya.

The above data suggests that, since protecting the rights of children is not only domestic but also an international issue states needs to take measures in order to protect the rights of children via strengthening their child protection system either dependently or in cooperation with each other. However, Kenya has taken more effort in order to strengthen child protection system than Ethiopia (Conticini et al., 2012:11). Thus, in this research, an attempt will be made to analyze the challenges and prospects of the current practices of child rights protection in Ethiopia in light of Kenya's practice.

## 2. Statement of the Problem

Laws are the bases in order to protect human rights, particularly child rights for they describe individual rights and obligations on the one hand and the nature and limits of state action on the other (ACPF, ND:2). Thus, in order to protect children there has been a significant progress in terms of ratifying and developing legal instruments in Africa. While many countries have matched their national laws with international and regional standards others are in the process of doing so. A total of 35 states have consolidated their laws on children, while six countries have pending bills<sup>1</sup>. Since these laws are of limited use without proper implementation mechanism the other encouraging progress in Africa is the move to ensure (monitor) their implementation. Thus, a coordinating body for children in the form of a government department, or in addition to this, an independent child rights body exists in all African countries. Moreover, almost all African countries have National Human Rights Institutions that also address child rights issues (ACPF, 2013:32-33 and 42&43).

Accordingly, since the ratification of the CRC in 1991 Ethiopia has carried out several activities in terms of strengthening the legal and institutional framework in order to ensure the protection and promotion of the rights and welfare of children (MOLSA, 2005:4-6 & 9). Similarly, since Kenya ratified CRC in 1990 Amiri and Tostesen indicated as Kenya has advance the legal and institutional frameworks in order to protect the rights of children (Amiri and Tostesen, 2011:43). However, the performance score of each government in child protection is based on: its level of ratification of relevant child rights instruments; provisions made in national laws to protect children against abuse and exploitation; existence of a child justice system, and coordinating bodies. Thus, Kenya has more effective child rights protection as compared to Ethiopia (ACPF, 2013:44). Moreover, UNICEF's Eastern and Southern Africa Region and its partners' assessment concerning the child protection system that include legal and institutional in Eastern and South Africa where Ethiopia and other states were subject of the assessment indicated as Kenya is exemplary to all of the states'

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<sup>1</sup> Consolidated children's statutes now exist in Algeria, Benin, Botswana, Congo Brazzaville, Democratic Republic of Congo, Egypt, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, South Sudan, Sudan, Swaziland, Tanzania (and Zanzibar), Togo, Tunisia, Uganda and Zimbabwe. The countries with pending bills are Burkina Faso, Cameroon, Cape Verde, Eritrea, Niger and Zambia.

(Maestral International:2011:32). Thus, this entails as Kenya has effective child rights protection as compared to Ethiopia.

To this end, in light of Kenya's experience the challenges for effective child rights protection in Ethiopia are not comprehensively studied. Besides, the prospects for establishing effective child rights protection in Ethiopia are not also clear. Therefore, this research attempts to fill this gap by drawing on the experience of Kenya and exploring and analyzing the challenges and prospects for effective child rights protection in Ethiopia in a comprehensive manner.

### **3. Core argument**

Kenya has effective child rights protection as compared to Ethiopia due to considerable legal and institutional measures that are being taken. Thus, in Ethiopia among others, there should be legal and institutional measures in order to protect the rights of children effectively like Kenya.

### **4. Objectives of the research**

#### **General objective**

The general objective of this study is to explore the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia.

#### **Specific objectives**

The specific objectives of the study are:-

- To identify the legal and institutional systems for child rights protection in Ethiopia and Kenya;
- To examine how these legal and institutional systems in Ethiopia and Kenya are protecting child rights;
- To analyze the extent to which the legislative, executive and judicial branches of the Ethiopian government are effective as compared to Kenya; and,
- To investigate the role of the Ethiopian national human rights institutions and civil society actors in protecting child rights effectively as compared to Kenya.

## **5. Research questions**

This study will try to answer the following questions:-

- What are the legal and institutional systems for child rights protection in Ethiopia and Kenya?
- How these legal and institutional systems in Ethiopia and Kenya are protecting child rights?
- To what extent the legislative, executive and judicial branches of the Ethiopian government are effective as compared to Kenya?
- What are the roles of the Ethiopian national human rights institutions and civil society actors in protecting child rights effectively as compared to Kenya?

## **6. Methodology and Methods of data collections**

### **Methodology**

The approach adopted to undertake this research is qualitative research approach. The reason behind using this approach is for it enables to explore attitudes and experiences. This is clearly stated in Dawson, who indicated qualitative research approach as an approach which is used to investigate attitudes and experiences using methods like interviews or focus groups (Dawson, 2002: 14). Thus, since the aim of this research is to explore the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia qualitative research approach is the appropriate approach for conducting this research. In addition, the research also adopted comparative research methodology. Because, while drawing the experience of Kenya and analyzing the challenges and prospects for effective child rights protection in Ethiopia there are two countries with comparable elements. Accordingly, both Ethiopia and Kenya are party to the CRC the general obligation of which requires state parties to take legislative, administrative and other measures. Thus, the bases for comparison are these measures that are being taken in Ethiopia and Kenya.

### **Methods of data collections**

This research is based on both primary and secondary sources of data. Accordingly, books, Journal articles magazines, reports, and publications issued by international organizations concerning Ethiopia's and Kenya's child rights protection are consulted as secondary sources of data collection. For further analysis, primary data is collected through unstructured interview

with the primary intent of developing themes from the data. The reason behind using unstructured interview as an instrument of data collection is for it enables the researcher to go further to the extent to which emphasis is placed on the interviewee's thoughts. This is clearly stated in Denscombe , who indicated unstructured interview as an interview which let interviewees to employ their own words and develop their own thoughts. "Allowing interviewees to 'speak their minds' is a better way of discovering things about complex issues" (Denscombe, 2003:167).

### **Sampling Technique**

Among non probability sampling techniques informants are selected based on purposive sampling technique. The primary reason behind using this technique is that as the study will be conducted on child rights protection in Ethiopia and Kenya comparatively it needs specific area from where the data be collected concerning the two countries child rights protection i.e. the samples are usually selected from a place where it is convenience for the researcher to easily get the target population. This is clearly stated in Denscombe as follows, with purposive sampling the sample is 'hand picked' for the research. The term is applied to those situations where the researcher already knows. As a result, they are chosen with a specific purpose in mind or due to their significance to the issue under investigation (Denscombe 2003:15).

Thus, the convenient place to collect the necessary data concerning the protection of the rights of child in Ethiopia is MOWCYA, experts on the desk of Child Rights Promotion and Protection Directorate, EHRC, experts on the desk of Child and Women Human Rights Coordinator Office and EIO experts on the desk of Children, Women and Disability Affairs Directorate for they are the self and independent monitoring mechanisms respectively and also follow the implementation of the CRC in Ethiopia. In order to probe a bit deeply into the issue and supplement the data obtained from these institutions the Child Justice Project as well as Judges Administrative forum of the Federal Supreme Court, Adoption Avenues American Agency and also Academicians are consulted. Beside, since non state actors are the one to protect the rights of children along with state actors in order to ascertain as to how they are contributing for the protection they are also consulted. Among other non state actors that are functioning in Ethiopia CCRDA and Save the Children and are chosen as a convenient place to collect data for CCRD is the largest umbrella CSO with 360 members of which 80 are working on child rights and also for Save the Children is the largest CSO with 57 local

partners. In particular, currently Save the Children has close relationship with MOWCYA, EHRC & EIO. Therefore, the interview with them is also conducted in order to identify the protection of child rights by these state actors as well. With regard to Kenya the convenient place in order to collect the necessary data concerning the protection of the rights of children is AU, Social Affairs Department and also an attempt has made to collect data from Kenya's branch office of child Fund via email. In general, as far as primary sources are concerned 23 personal interviews has conducted.

To this end, since the main objective of the research is to explore the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia, based on the data beyond exploring as to how Kenya is protecting the rights of children in line with the general measures to be taken by state parties to the CRC the study has also analyzed the challenges and prospects for effective child rights protection in Ethiopia children in line with the general measures to be taken by state parties to the CRC and also in light of Kenya's experience.

## **7. Significance of the study**

This study helps to explore the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia. Beyond this, it serves as a source for further studies in the same area.

## **8. Scope and Limitation of the study**

The scope of this study is limited to identify legal and institutional systems for child rights protection in Ethiopia and Kenya and exploring how these legal and institutional systems in Ethiopia and Kenya are protecting child rights. In addition, it focuses on exploring how these legal and institutional systems in Ethiopia are effective as compared to Kenya.

Shortage of resources is the limitation that jeopardized thorough analysis of the issue under consideration. In addition to this, first, the reluctance of informants from Kenya Embassy, ACPF, UNICEF, Child Fund and second, despite the researcher's effort in cooperation with Ethiopian's Save the Children branch office workers, the reluctance of informants from Kenya's branch office of Save the Children were some of the challenges of the study.

## **9. Organization of the paper**

The study is organized in five chapters. Chapter one introduces the subject and discusses the concept of child protection, including a brief review of the development of the concept and the theoretical framework. Chapter two is a disquisition of the conceptual framework and literature review. In so doing, it attempts to shed light on some of the more important historical and factual information about legal and institutional systems for child rights protection in Ethiopia and Kenya in relation to the international human rights law; including the status of CRC in the Ethiopian and Kenyan legal system, constitutional and other laws guarantee to child rights and as well as the availability of institutional protection of them. Chapter three elucidates the way legal and institutional systems in Ethiopia and Kenya are protecting child rights based on the collected empirical data. Chapter four explores the extent to which the legislative, executive and judicial branches of the Ethiopian government are effective as compared to Ethiopia. It also explores the extent to which the national human rights institutions and CSOs are effective in Ethiopia in light of Kenya's experience. Last but not least, the fifth chapter presents the main findings of the research and followed by a brief conclusion and recommendation.

# **Chapter One**

## **Conceptual Framework and Literature Review**

### **Introduction**

This chapter deals with the conceptual framework and literature review by raising issues that are pertinent to the problem under investigation. It will introduce the subject and discuss the concept of child protection, the theoretical framework and brief review of the development of the international child rights protection systems.

### **1.1. The concept of child protection**

The concept child protection is understood in various ways by different organizations. UNICEF defines child protection as preventing and responding to violence, exploitation and abuse against children, including commercial sexual exploitation, trafficking, child labor and harmful traditional practices such as female genital mutilation/cutting and child marriage (UNICEF, 2004 & 2006:1 & 8). Save the Children defines child protection as measures and structures to prevent and respond to abuse, neglect, exploitation and violence affecting children (Save the Children, 2010:4). Thus, the above definition entails as child protection is responding or taking measures in order to make sure that children's rights are not subject to any harm. Moreover, as Oladiji indicated the concept of child protection as taking measure in order to protect the rights of children can be understood from the perspective of the CRC that draws the human rights to be respected and protected for every child under the age of 18 years. Thus, since child rights protection depends on the level of implementation of the convention via taking measures the convention not only recognizes these rights to be protected, but under Article 4 it also draws their appropriate implementation measures so as to protect the rights of children ((Oladiji, 2012:51).

Accordingly, the committee on the rights of child has explained the implementation measures under Article 4 i.e. the legislative, administrative and other measures for implementation of the CRC. In doing so, in its general comment No 5 the committee indicated as the legislative measure entails states the fundamentality of ensuring that all domestic legislation is fully in conformity with the convention. Thus, reviewing proposed as well as existing legislation needs to be sustainable rather than one-off. In addition, though states inclusion of guarantees of rights for "everyone" and also provisions on the rights of child reflecting key principles of

the CRC that highlights as children are holder of human rights along with adults in their Constitution is commendable, the convention entails that in order to give meaning for these right there must be effective remedy to redress violations i.e. the test must be whether these rights in the convention are genuinely implemented for children, can be directly cite (invoke) before the court and also does the Convention prevail when there is a conflict with domestic legislation. Thus, since mere inclusion of guarantee and provisions on the rights of child reflecting key principles of the CRC does not automatically make sure the implementation of these rights, there should be an additional legislative measure via enacting domestic legislation that entails child sensitive (friendly) mechanism, procedures and remedies while implementing the convention (General Comment No 5, 2003 :34-35).

With regard to administrative and other measure the comment indicated as it entails state parties to the Convention in order to establish permanent monitoring mechanism with the aim of making sure that the Convention is on implementation. Moreover, this monitoring mechanism needs to have high-level authority that contributes both to the overall purpose of making children more visible in Government and coordinating the implementation of the Convention hand in hand with other state and non-state actors. Among other, measures to be taken by the monitoring mechanism while coordinating the implementation of the Convention are - first, to conduct consistent process of child impact assessment i.e. forecasting the impact of any proposed law which have an effect on children as well as the enjoyment of their rights and child impact evaluation i.e. evaluating the tangible impact of implementation of law in a give state. Second, to promote training and capacity-building for those who are engaging in the implementation process like government officials, parliamentarians and members of the judiciary and all those working with and for children in order to boost the knowledge as well as understanding of the Convention so as to amplify the status of children as a right holder and promote active respect for all of its provisions. Training and capacity building needs to be systematic and ongoing - initial training and re-training. Beside, in addition to assessing the knowledge of trainees on the Convention and its provisions based on the training given, there should be an assessment of the extent to which it has contributed to build attitudes and practice that actively enhance the enjoyment by children of their rights i.e. there should be a continuous assessment of the effectiveness of training both theoretically as well as practically. Third, to set standard for institutions and their services as well as facilities. Fourth, to collect ample and trustworthy data on children, particularly disaggregated data with the nationally applicable indicators that address all of the

rights guaranteed by the Convention is vital. Beside the monitoring mechanism should make sure that the data collected are examined and used to review progress in implementation, to discover problems and to inform all subsequent development for children rather than only creating effective data collection system. In doing so, state should work together with appropriate research institutes and enable children's themselves as researcher in order to create a comprehensive picture of progress towards implementation with qualitative as well as quantitative studies (Ibid, 2003:35-41).

In addition to self monitoring and evaluation mechanism, in order to ensure the protection of child rights there should be an independent monitoring mechanism by NHRIs and non state actors. The independence of NHRIs calls these institutions to develop their own projects (agendas) like children's parliament in order to enhance the promotion and protection of children's rights. Moreover, NHRI are supposed to ensure the protection of child rights via independent monitoring of state's conformity and progress towards implementation of the CRC. In doing so, NHRIs should be given the necessary mandate that enable them to promote and protect the rights of children effectively i.e. the mandate to raise the awareness of the public concerning human rights in general and child rights in particular, review national laws relating to the protection of children's rights continuously as well as enhance their conformity with the CRC and also follow up the implementation of laws while investigating matter in respect of child rights based on complaint brought or their own initiative (General Comment No2, 2002;8-11).

Particularly, since one way of promoting child rights so as to enhance their protection is giving training for those who are taking part in the implementation process of the CRC, the training should have to be the appropriate one i.e. first, training and capacity building needs to be systematic and ongoing - initial training and re-training. Second, in addition to assessing the knowledge of trainees on the Convention and its provisions based on the training given there should be an assessment on the extent to which it has contributed to build attitudes and practice that actively enhance the enjoyment by children of their rights i.e. there should be a continuous assessment of the effectiveness of training both theoretically as well as practically (General Comment No 5, 2003: 35-40). Also while visiting juvenile homes and release report on the situation in order to make recommendations for improvement, NHRI should make sure that whether the institutions, services and facilities for protection of children match with the standards set by competent authorities or not. Above all- first, in order to ensure their

independence and effective functioning among other NHRI must have adequate funding and also freedom from forms of financial control that might affect their independence. Second, NHRI are supposed to function effectively in cooperation with NGOs for they are the main actors in child rights promotion and protection. Thus, it is essential that institutions work closely with NGOs and that Governments revere the independence of both NHRI and NGOs (Ibid, 2002:8-11).

## **1.2. Theoretical Framework**

This research will be based on the system theory as a theoretical framework. Thus, in this section how the system theory (approach) contributes to child rights protection will be discussed as compared to other unitary theories in order to show how system theory is pertinent for the issue under discussion – child rights protection. Particularly, psychoanalytic theory and stress theory are the focus of discussion among other unitary theories.

Psychoanalytic theory contends that child abuse is a product of psychopathology<sup>2</sup> and it suggests as those parents who abuse children are "ill" so that in order to prevent and cure them there should be professional treatment. However, a particular psychiatric diagnosis does not predict abuse. The theory does not in itself enable to differentiate between parents who do and who do not abuse a child with a given diagnosis. Similarly, stress theory claims that child abuse is a product of poverty and other factors that stress families, including sexual and economic inequality so that sources of stress should be reduced or avoided. However, first, not all poor or stressed families abuse their children. Second, though socioeconomic factors may sometimes result additional stresses on basic personality weakness, these stresses are neither sufficient nor necessary causes of abuse by themselves. Third, this model disregards internal sources of family strength and focuses that render individual families more or less sensitive to external circumstances and events. It does not take in to account qualities of the interaction between and among family members and their advantage to a family's capacity in order to nurture its young, nor does it adequately take in to account for parental dysfunction in seemingly privileged homes (Newberger, 1982:446-447).

Thus, there must be a holistic response to child protection that recognizes the duties of all people at all levels in terms of respecting children's rights to protection and apply to all

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<sup>2</sup> Disorder that affects some bodies mind or behavior

children in all conditions without discrimination. Achieving a world where children's rights to protection are regularly respected needs ensuring that children grow up in an enabling environment or protective environment i.e. environment where every components of it contributes to the protection of children and where every actor does his or her part (UNICEF, 2004:18).Concerning this environment, the ecological systems theory clarifies environment as a context of development i.e. as to how everything (components) in a child's environment contributes to their protection and also how it affects their growth and development. According to the ecological system theory this environment has different levels. These are labeled as the microsystem, the mesosystem, the exosystem and the macrosystem ( Plan India,2008:30-31 ).The Microsystems layer, the smallest of the contexts in which the child is surrounded. The layer consists of the environment where the child lives and moves. The people and institutions the child interacts within that environment result the microsystem. The mesosystem layer associates to the interactions the people in the microsystems have with each other. The exosystem layer is a wider context for it associate with the larger community in which the child lives. For example the exosystem layer consistes of extended family, family networks, mass media, workplaces, neighbors, family friends, community health systems, legal services, social welfare services. The outer layer, called the macrosystem consists the attitudes and ideologies, values, laws and customs of a particular culture or subculture<sup>3</sup>.

Moreover, a systems theory approach suggests that by understanding about each and every other component parts of the system, and by analyzing how these interact or related with each other, an intervention can be applied in one part of the system that will have a considerable effect on another part of the system (Stevens & Cox, 2008:5). Also the main intends of a systems approach are “ to strengthen the protective nature of the situation around children and to strengthen children themselves, in order to ensure their well-being and fulfill their rights to protection from abuse, neglect, exploitation and other forms of violence”. Beside, system approach assert the responsibility of states to guarantee the care and protection of children, through respecting, protecting and fulfilling the rights of children's listed in the CRC and other international human rights instruments (Forbes et al., 2011:2).

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<sup>3</sup> Understanding Children in Context: The Ecological Model of Human Development. Retrieve on December 29, 2014 from <http://fcs.sites.mjc.edu/109EcologicalModelofHumanDevHandout.pdf>

In the past, analysis and programming in child protection have concentrated on a number of issues like abuse, violence, exploitation and neglect, alternative care, justice for children, trafficking, child labor, and child separation. However, though the results of this vertical, issue-focused programming tend to be effective in addressing the specific group of children reached, it has a lot of shortcomings. Concentrating on issues without understanding as to how they associate to the overall system, and to an endless list of risks and assets resulted in ineffective programming, which is neither sustainable nor genuinely capable to address all children who are in need of protection. However, being guided by the CRC, the systems approach deviates from earlier child protection efforts, which have concentrated on single issues in the past (Wulczyn et al., 2010:preface and 1). As a result, governments are employing systems approach in the establishment and strengthening of child protection systems for single issue approaches created in a fragmented and unsustainable child protection response (Davis et al., 2012:6 &14). Strengthening child protection Systems need attention to legislative reform, institutional capacity development, planning, budgeting, monitoring and information systems (UNICEF Child Protection Strategy, 2008:5).

Accordingly, Kenya has taken more effort in order to strengthen child protection system than Ethiopia (Davis et al., 2012:11). Thus, since Kenya has effective child rights protection as compared to Ethiopia due to considerable legal and institutional measures that are being taken, in Ethiopia among others, there should be legal and institutional measures in order to protect the rights of children effectively like Kenya. Due to this fact system theory, that intends to strengthen the protective nature of the environment ( create enabling environment) via intervention or taking measure on a component and also that argue the responsibility of states to guarantee the care and protection of children, through respecting, protecting and fulfilling children's rights outlined in the CRC is chosen as a theoretical framework for comparison of child protection in Ethiopia and Kenya with the main objective of exploring the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia.

### **1.3. The Historical Development of the International Child Rights Protection System**

The impact of Hebrews, Greeks and Romans culture on Western society let children to be taken for granted by their parents and the patriarchal society at large. As a result of this, they

were considered as objects of intervention rather than as legal subjects who has right. However, Child-saving movement has got birth in the nineteenth century where those legislation that protect the child rights has developed in different parts of the Western world (Rai,ND: 1 & 3). Accordingly, the 1904 International Agreement for the Suppression of “White Slave Traffic” is one of the first Conventions that specifically address children as a group. Moreover, with the establishment of League of Nations in 1919 the international protection of children’s rights has got further impetus. Within a decade of its establishment, LON has ratified the International Convention for the Suppression of Traffic in Women and Children 1921, Slavery Convention and also the 1924 DRC, on which the 1959 DRC clearly built upon. However, since the earlier international agreements had only concentrated on particular problems affecting children such as working conditions and slavery the landmark towards the international norms concerning the global protection of children was marked with the coming of 1924 DRC (Hodgson, 2009: 3-4).

Beside, nowadays the coming of UN has resulted considerable success in terms of enacting a comprehensive set of international human rights for children (Hodgson, 2009: 1). Indeed the UN legal framework including the basic human rights instruments has already recognized these rights. For example, the so-called International Bill of Human Rights<sup>4</sup> contains abroad set of human rights also address children, and many of its principles are reflected and validated in children-specific legislation. However, specifically vulnerable groups such as women and children have been granted special protection by the UN legal framework. In this regard the most notable UN manifestation to advance children’s rights is the CRC (Ruppel, ND: 55-57). The Convention has carved out the aspects of children’s rights that are being promoted over the last number of years (Hayes, 2002: 19). Primarily CRC addressed four aspects of children’s rights or “the four ‘P’s””: participation by children in decisions affecting them; protection of children against discrimination and all forms of neglect and exploitation; prevention of harm to them; and provision of assistance to children for their basic needs (Stern,2007:38 & Zeldin,2007:2). However, Children's rights are usually categorized into three aspects that are called "three P's": protection rights, participation rights and provision rights (Brems, 2007:69).

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<sup>4</sup> International bills of human rights are the Universal Declaration of Human Rights(UDHR), International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

### **1.3.1. The League of Nations and Child Rights Protection**

Under the earlier patriarchal model where father's power over his household was like that of a God children were assumed as a property or possession of their father. As a result, children have been people that were to be "seen and not heard." However, in the late nineteenth century children in Europe and North America came to be considered as a special population in need of protection. "Child saving" attracted the attention of many social reformers to the extent of leading the development of child welfare systems, Juvenile courts, and other special arrangements for children (Todres, 2014:266-267).

In the early part of the century NGOs with the specific aim of improving the lives of children came into existence and started to run this process i.e. the "child saving" move or process. Among these was the International Save the Children United Kingdom, founded by Eglantyne Jebb in 1919. Then this Charity Organization Society shifted from raising funds to save homeless and orphaned children to the issue of children's rights. As a result, Ms Jebb drafted a document that affirmed the rights of children and the duty of the international community to put children's rights in the forefront of planning. The draft document presented five points to the League of Nations. Since the league's primary goal as stated in Article 23 is by being Subject to the provisions of existing or coming international conventions to make an effort in order to secure and maintain fair and humane conditions of labor for men, women and children, in fulfilling its goals for children in particular, the League of Nations on September 26, 1924 ratified Ms. Jebb's five point document as the First Declaration of the Rights of the Child or the Declaration of Geneva as it came to be known. This First Declaration on the Rights of the Child contained five basic principles (Oladiji, 2012:17-18).

Recognizing that 'mankind owes to the child the best that it has to give', the five simple principles of the Declaration indicated the ground of child rights in terms of both protection of the weak and vulnerable and promotion of the child's growth. The Declaration also indicated as the care and protection of children was no longer the sole duty of families or communities or even individual countries rather as it is the whole world legitimate interest (Bhakhry, 2006:17). Accordingly, under its five principles it conferred upon men and women of all nations the following obligations: child must be given both material and spiritual means required for its normal development; child that is hungry should be fed; the child that is sick should be helped; delinquent child should be reclaimed; and the orphan and the homeless child should be sheltered; child must be the first to receive relief in times of distress; child

must be protected against every form of exploitation and child must be brought up in the consciousness that its talents are to be used in the services of its fellow men (Declaration of the Rights of the Child, 1924:1). Generally, among other things the Declaration indicated as the child must be given the means required for its normal material and spiritual development and must be protected against any form of exploitation (Hodgson, 2009:4). Thus, though the Declaration of Geneva did not point out any distinction between categories of rights, first and foremost its main tenet was to protect the child from different kinds of exploitation and emphasize the importance of the child's social, economic and psychological needs (Thelander, 2009:16).

However, first, the 1924 Declaration of Geneva only alleged to be a declaration of a set of moral duties i.e. did not entail the supposition of legal obligations by States and it was left to each League Member State to take proper action within its resources and particular circumstances (Hodgson, 2009:5). Thus, the Declaration was brief and only inspirational for it called member states to be guided by its principles without any legal obligation (Oladiji, 2012:17). Second, the 1924 Declaration of Geneva entailed more of the duties of "men and women of all nations," rather than the rights of children, "regarding children more as beneficiaries of child welfare than as subjects of law" (Todres, 2014:267-268). In confirming this, a cursory look at the fourth and fifth principle of the Declaration i.e. "The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation; and fifth- "The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men", suggested as capacity of the child was not particularly taken into account (Oladiji, 2012:17).

Despite these shortcomings, in history it remains the first international Human Rights document that specifically deal with children's rights (Cicculli, 2011/2012:15). Thus, under international treaty law protection of children's rights trace back to the first Declaration of the Rights of the Child adopted by the League of Nations in 1924, which was a brief document consisting of only five principles by which member were called to be guided in the work of child welfare (Ruppel, ND:55).

### **1.3.2. The United Nations and Child Rights Protection**

As a result of the League of Nations in ability to avert another world war the II World War has surrounded the whole planet and caused great suffering for non-combatants, particularly

children. Then in 1945 UN handed over the League of Nations and enacted 1959 DRC on November 20 at the international level. However, before the enactment of the 1959 DRC in 1948 UNGA enacted UDHR (Bhakhry, 2006:18 & 22). As stated in its preamble the UDHR is a “Common standard of achievement for all peoples and all nations”. The Declaration further states that, “All Human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Thus, since it proclaims the inherent dignity and equal and inalienable rights of all human beings as the foundation of freedom, justice and peace in the World it embodies more measures to protect the children, throughout a “common standard” of achievement for all people and all nations .i.e. naturally the standard set forth includes children (UDHR, 1948: preamble).

Though all of the provisions of UDHR address children implicitly, only two of them explicitly address children. First, Article 25 states that “Motherhood and childhood are entitled to special care and assistance”, and adds that “All children, whether born in or out of wedlock, shall enjoy the same social protection”, Second, in Article 26, which deals with the right to education, provision is made to ensure that “Parents have a prior right to choose the kind of education that shall be given to their children” (Ibid, 1948: Article25 & 26). Thus, when the UDHR was ratified, it was understood as children’s rights had been taken care of on the whole.

However, first, UDHR does not clearly show the idea of children as holders of rights but it solely captures attention to their need for special protection (Ofodile, 2010:5-6). Second, even after its ratification children had less power in society and across the globe they were left more disempowered and victimized by human rights violations than the citizen (Oladiji, 2012:20). Thus, the UDHR was not found to be fully ample to deal with the situation of children in the post-Second World War era. Children were accepted as a particularly vulnerable group, who needed specific measures towards their protection or in terms of providing rights that would permit their full and healthy development. It was in this background that the UNGA ratified the 1959 DRC (Bhakhry, 2006:22).

In 1959, DRC ratified unanimously by all 78 Member States of the UNGA in Resolution 1386 (XIV) (Cicculli, 2001/2012:16). In line with its assertion that child due to his physical and mental immaturity needs special safeguards and care, including appropriate legal protection before as well as after birth the UNGA enacted standard of ten principles for the

protection of children based upon the 1924 DRC (Walsh, 2011:223-225). Accordingly, one of the key principles of the DRC is that “special protection against all forms of neglect, cruelty and exploitation in order to enhance the child’s physical, mental and social development. In addition to this, right to equality without discrimination on the ground of race, religion or national origin, the right to name, nationality, adequate nutrition, housing ,medical services, special education and treatment when a child is physically or mentally handicapped, the right to understanding and love by parents and society, recreational activities and free education, be among the first to receive relief in all circumstances and brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood are also the rest principles of the DRC (Declaration of the Rights of the Child, 1959:1). Thus, the 1959 DRC proclaimed numerous rights to children based on the assertion that humanity owed to children the best it could offer them. Moreover, the source of the principle of best interest of a child is this Declaration (Omondi, 2014:52).

In addition, the ratification of DRC by UNGA General Assembly was indeed a very vital step towards the international respect of the right of the child because as Cicculi indicated the 1959 DRC specifically calls upon voluntary organizations and local authorities to struggle for the observance of children rights (Cicculi, 2001/2012:16).Second, it is a serious attempt to provide the detail of what constitutes children’s overriding claims and entitlements. Third, unlike the 1924 DRC for the first time, the ‘it - character’ of the child removed from the language used and was replaced by ‘he’ and ‘his’ i.e. as compared to the wording of 1924, the child was now clearly accepted as a subject of law with specific rights (Oladiji, 2012:21). Finally, Principle 5 of the 1959 Declaration bring into fore the concept of affirmative action for the handicapped child. And also principle 9 added a general proscription on all forms of neglect, cruelty and traffic, as well as calling for a minimum age for employment and a prohibition on any employment which would jeopardize the child’s health, development or education (Hodgson, 2009:6).

The 1959 Declaration marked the move towards making children more visible as a population (Hayes, ND: 16). Thus, the Declaration is considered as landmark in providing a basis for a rights-based protection of children (Munyao, 2010:79). Beyond this, the wide acceptance in 1959 of the rights recognized in the Declarations marked a considerable step towards their legal recognition in the CRC of 1989 after 30 years (Hodgson, 2009:7). However, first, the simple the intent statement of the Declaration let it to have limited direct

impact for it has no legal force that binds (Omondi, 2014:52). Thus, states were supposed to take only note of the principles stated therein for they were universally recognized as being applicable to all children. This led to a general tendency by many nations to remain silent about the inexcusable conditions being suffered by large numbers of children (Oladiji, 2012:20-21). Second, the Declaration did not have any recognition to the autonomy or wishes and feelings of children, nor any approval to their empowerment for it considers them as pure investment (Bhakhry, 2006:22).

Generally, the 1959 Declaration of 1959 fundamentally reaffirmed and expanded the provisions of the 1924 Declaration and realized the provision of UDHR to children in a more specific manner. However, to give legal force to the provisions of the UDHR the UN again ratified two International covenants on Human Rights in 1966, namely ICCPR and ICESCR (Hodgson, 2009:6). Accordingly, the ICCPR and ICESCR implicitly address the rights of children in their several provisions. ICCPR under its several provisions refers to those terms like “juvenile”, “children” or “child”. However, Article 24 is the most comprehensive provision that talks about the rights of children. Article 24 (1) indicates that irrespective of any ground like race, colour, sex, language, religion, national or social origin, property or birth whether as every child shall have the right to the necessary measures of protection due to his/her status of minor. Article 24 (2 &3) also indicates as every child shall be registered right away after birth and shall have a name as well as nationality (ICCPR, 1966: Article 24).

Similarly, ICESCR under Article 10, 12 and 13 talks about the rights of children explicitly. The most comprehensive provision i.e. Article 10(3) suggests that without any discrimination on the basis of parentage and other conditions special measures of protection and assistance should be taken on behalf of children and young people. Moreover, they have to be protected from economic and social exploitation. Therefore, their employment in those works harmful to their moral, health and normal development should be accountable before the law. It also suggests that states should set minimum age below which the paid labor employment of child is punishable by the law. Thus children and young persons are to be protected from economic and social exploitation (ICESCR, 1966: Article 10(3)).

In general, those 1966's twin Covenants that have given legal force to the provision of 1948 UDHR as well as 1959 DRC and also that are being used to children implicitly or explicitly is considered as vital development in international legal protection of children (Hodgson,

2009:8). Though children are endowed to the protection of these international human rights instrument their rights have got formal and explicit acknowledgment recently due to the ratification of CRC in 1989 (Harvey, ND: 11-12). Thus, with the ratification of CRC in 1989 new era in the history of children's rights has began (Lenzer, ND: 215).

### **1.3.2.1. The Convention on the Rights of the Child (CRC)**

In addition to those stated in the above another landmark on the journey towards the CRC was the nomination of 1979 by UN as the International Year of the Child (Hayes, 2002: 16). Accordingly, the possibility of CRC was first elevated by the government of Poland in 1978 when UN member states designed activities and agendas that would take place during the International Year of the Child in 1979 (Blanchfield, 2013:2). Then during the International Year of the Child, the UN Commission on Human Rights taken in to account the Polish proposal and organized a Working Group to review and create a final outline. The Working Group submitted the final draft text to the Commission on Human Rights, and on 20<sup>th</sup> November, thirty years to the day after the endorsement of the 1959 Declaration, the UN General Assembly ratified the CRC and come into force on September 2. The CRC is complete announcement of child rights ever made i.e. it is the first UN Human Rights instrument since the UDHR which brings together as inseparable the full range of civil and political rights, and economic, social and cultural rights. Moreover, as stated in the preamble the Convention asserts the fact that children due to their vulnerability need special care and protection and it also adds as families, states independently or in cooperation are responsible for caring and protecting children. Thus, the Convention is a set of international standards and measures intended to protect and promote the well being of children in society. (Barnardos, 2008:2).

Moreover, the Convention clearly declared the rights of children to the participation in decisions affecting their own destiny; to the protection against discrimination and all form of neglect and exploitation; the prevention of harm and the provision of assistance for their basic needs (Gajurel, 2007:14). Thus, the Convention outlines the rights of children in detail and declares as children do not only need care in peacetime but also from violence during armed conflicts (Harju, 2013:22-23). The CRC outlines not only the rights of children to be protected but as Walsh indicated it also outlines the specific obligations of signatory states in protecting the civil, political, economic and social rights of children (Walsh, 2011:225). Moreover, for the Convention to be more than only rhetoric, its implementation

by the States Parties must have to be monitored (Hayes, 2002: 24). Thus, in addition to their obligation to implement the substantive provisions of the CRC via taking measures, each State party is under an obligation to submit regular reports to the Committee on the rights of child (Oladiji, 2012:27). Accordingly, under Article 44 of the Convention, States Parties are supposed to submit national reports to the Committee on the Rights of child describing as to what measures are being taken in order to implement the Convention (Hayes, 2002: 24).

In addition to the national reports in its evaluation of a country's performance the UN committee also receive reports of relevant NGOs. This enables the committee in order to evaluate governmental reports in the light of information presented by the NGO sector. After evaluating the reports the Committee forwards a 'list of issues' to the concerned government. This list indicates specific issues, under the different articles, where further information is needed. Governments are supposed to replay to this list, in writing, to the Committee one month in advance of the plenary hearing. At the plenary hearing the Committee s reviews the country's national report and, using a question and answer format, analyses the country's progress in implementing the Convention. A statement of the Committee's findings and recommendations for action are then delivered to the country as Concluding Observations (Ibid, 2002: 24-25).

To conclude, the wide acceptance of the rights declared in the DRC during the 1959 marked a considerable step towards their legal recognition 30 years later in the CRC of 1989 (Hodgson, 2009:7). Accordingly, "today the CRC is the most internationally accepted human rights treaty in history, forging an "age of rights" for children" (Todres, 2014:267-268). In general, the Convention declares as children's rights must be promoted as well as protected and also places the responsibility for this with parents and states (Hayes, 2002: 22). Thus, although the 1959 declaration can be consider as a landmark in providing a basis for a rights-based protection of children (Munyao, 2010:79), for the first time they viewed as a right holder and not as an object of adult concern under the CRC, and also States became responsible of modifying national legislation in order to protect and defend child right under the CRC (Cicculli, 2001/2012:19).

To summarize, in this chapter an attempt has been made in order to present the concept of child protection and its development under various regimes. Accordingly, the concept child protection is understood as taking measures i.e. legal as well as administrative and other measures in order to ensure that children's rights are not subject to any harm. With regard to

the theoretical framework for single issue approaches like unitary theory often result in a fragmented and unsustainable child protection response systems theory (approach) is chosen as a theoretical framework for comparison of child protection in Ethiopia and Kenya with the main objective of exploring the experience of Kenya and analyze the challenges and prospects for effective child rights protection in Ethiopia. Finally, the development of the international system of child rights protection showed as the development of the notion of child rights protection has started till League of Nations and triggered with the establishment of UN, particularly after promulgation of the CRC. To this end, the exploration of whether child rights are protected effectively or not depend on the level of the implementation of the CRC based on Article 4 of the CRC, which entails that states parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention. Thus, in the next chapter it is essential to identify the available legal and institutional system and their nature in Ethiopia and Kenya before identifying the practice of child rights protection.

## **Chapter Two**

### **Legal and Institutional Frameworks for Child Rights Protection in Ethiopia and Kenya**

#### **Introduction**

The protection of child rights depends on the level of measures taken in order to implement CRC. Thus, since it is hardly possible for a state to implement the provisions, standards and principles of human rights in general and child rights in particular without establishing the proper legal and institutional frameworks by which the ratified provisions, standards and principles executed, this chapter presents the established legal and institutional frameworks for child right protection in Ethiopia and Kenya. The chapter is composed of two sections where the first section deals with the Ethiopian and Kenyan legal frameworks for child rights protection and second elucidates the institutional frameworks for child right protection in Ethiopia and Kenya.

#### **2.1. Legal Frameworks for Child Rights Protection in Ethiopia and Kenya**

##### **2.1.1. Legal frameworks for Child Right protection in Ethiopia**

Prior to the 1995 FDRE Constitution written constitutions have been successively enacted in Ethiopia since 1931. As Getahun stated the 1931 constitution is the first written constitution of Ethiopia which designed based on the Japanese Meiji Constitution (Getahun, 2007:77). However, the constitution was not clarified and contained many of the elements that were included in the traditional codes governing the relationship between crowns and subject i.e. it declared Ethiopia a constitutional monarchy, headed by a monarchy who has got his ancestry from King Solomon of Jerusalem (Keller, 2010:63). Thus, since citizens were subjects of Emperors the constitutional recognition of fundamental rights of a person was the total result of the formation of a modern Ethiopia and the pressure which the international community put on it (Alemayehu, 2010:40). Similar to that of the 1931 constitution the tradition of claiming the mythical descent, the so-called solomonic tradition was included in the 1955 Ethiopian constitution (Beken, 2007:15). As an effort to end this royal absolutism another version of constitution was formulated in August 1974 (Keller, 2010:70).However, the

changes took place were too little as well as late, as a result, the regime disbanded and the constitution easily aborted (Endalcachew, 2014:2-3). Again in the 1987 constitution of Derg, which is promulgated after 13 year constitutional lacuna the idea of human rights was rarely considered as entitlement. Moreover, the constitution was demised by the liberationist struggles that continued till 1991 i.e. till the fall of the Derg and the new regime endorsed the Transitional Charter which served as constitution of Ethiopia for the time of the transition. Then after a prolonged transition, a Federal Democratic Constitution was enacted in 1994 and came into force in 1995 (Tsegaye, 2009:298-299). The 1995 FDRE constitution shows a major transformation in terms of human rights as compared to its former constitutions (Adem, 2011:42). In addition to the transformation in terms of human rights in general Girmachew and Yonas contended as the Ethiopian constitution also declares the vulnerable position of children in particular and granted them rights as well as the subsequent protection for these rights (Girmachew and Yonas, 2012: 34).

Accordingly, under Article 36 the constitution recognizes the rights of all children to life, to name and nationality, and to know and be cared by their parents, to be protected from exploitative practices. Beyond recognition the Constitution prohibits the infliction of corporal punishment or cruel and inhumane treatment in schools and other institutions entrusted for the care of children as well as the accommodation of children in conflict with the law together with adults. It also gives special protection for orphans. Moreover, Article 36(2) articulates the principle of the best interest of the child as the primary consideration in all matters affecting children (FDRE Constitution, 1995: Article 36). Thus, based on the above notes it can be deduced that as compared to the former constitutions which guaranteed human rights to somehow the FDRE Constitution has guaranteed protection to the rights of children explicitly not for they are only human but also for they are vulnerable or by taking their age into consideration. Though the constitution point out these rights for children, the most debatable issue here is whether or how the CRC can be directly applied or incorporated in the Ethiopian legal system, especially in the court. Indeed as Braasch and his colleagues indicated the issue of incorporating the instruments of human rights within the Ethiopian law is controversial i.e. either only approving of the instruments is enough or it needs publicizing the international human rights instruments through the Ethiopian “Fedreal Negarit Gazeta” – an official magazine by which the government publishes its laws and declarations (Braasch et al, 2008:270).

Accordingly, concerning treaty making process, the FDRE Constitution has indicated as the power to sign international agreements is granted to the executive which after proper deliberation has to direct them to the House of Peoples' Representatives (the legislature) for their ratification (Art.55 (12)). Thus, once they are adopted, all international agreements, including human rights instruments, are integral parts of the law of the land (art.9 (4)) without any additional measure to be taken by the legislature. However, art.2 (2) of the Federal Negarit Gazeta Establishment Proclamation No. 3/1995 states that all laws of the Federal Government shall be published in the Federal Negarit Gazeta, whereas art.2 (3) states that all Federal or Regional legislative, executive and judicial organs as well as any natural or juridical person shall take judicial notice of laws published in the Federal Negarit Gazeta. Given the requirement of these provisions i.e. enacting national legislations in order to execute the provisions of international Conventions at the domestic level, Ethiopia can be considered as dualist (Rakeb, 2002:15).

The FDRE Constitution, according to the opposing claim, holds the existing international Conventions within the Ethiopian law during the approval. Indeed, some argue as international Convention may not get the ground for application till they have been adopted through national legislation during the process of making these treaties known to the masses. However, though the ground for such argument is the requirement of the Negarit Gazeta that entails the juries to take into account the judicial announcement of the international instruments via Federal, attention needs to be paid for the fact that the supreme law of the land – the constitution – that fails to recognize publication as criteria in order to give effect to adopted Conventions. The juries, therefore, can invoke the international human rights law (IHRL) at a time of resolving conflicts (Samrawit, ND: 10 & 13).

Another subject of debate in relation to the status of international human rights law in the Ethiopian legal system is about the hierarchy of international human rights instruments as compared to the Constitution (Braasch et al, 2008:271). Accordingly, there are two-tiered opinions concerning the normative position of ratified Conventions in Ethiopia's hierarchy of laws, which is disclosed based on through evaluation of pertaining literatures on the status of human rights Conventions under the constitution of Ethiopia. At one level, the supremacy clause of Art9 (1) of the constitution, providing any inconsistent 'law, customary practice or a decision of an organ of state or a public official' null and void, has resulted the affirmation

that the constitution is superior to all adopted Conventions. At another level, the affirmation under Art 9(4) of the constitution that duly adopted Conventions are “integral parts of the law of the land” and its requirement under Art 13(2) that the Bill of Rights of the Constitution must be interpreted in compliance with adopted Conventions considered as a partial answer to the question of the hierarchical position of ratified Conventions (Takele, 2009: 132).

In line with the first level of contention, that the constitution is superior to all adopted Conventions Adem argued that, due to the exact reading of Article 9(1) of the Ethiopian constitution, which declares the supremacy of the constitution, international instruments which are made an integral part of the laws of the land by virtue of Article 9(4) upon ratification are subordinate to the constitution (Adem, 2011: 47).

In the same manner, it is obvious that the constitution consists of interpretation clause concerning the chapter that deals with human rights and fundamental freedoms, i.e. Article 13(2). This entails the interpretation of the Bill of Rights based on the guiding principles laid down in the UDHR, International Covenants on Human Rights and based on those international instruments that are adopted by Ethiopia. Thus, instead of the provisions of international instruments which provides the particular rights to direct the interpretation of the principles and standards in the fundamental rights chapter, the interpretation simply requires a very simple adherence to the ‘principles’ – such as principles of universality, indivisibility and interdependency of all human rights, the duty to respect, to protect, and to fulfill. Moreover, being in line with the principles and standards is needed only during the time of interpretation that dismisses the cases where visible differences found between the Constitution and international instruments. Being in line with the principles and standards also needed in those issues of clear constitutional principles and standards that simply wants the practice of the Constitution (Ibid, 2011:46- 48).

Adem claims that the constitution is above the international human rights instruments since the constitution interpretation clause about the chapter that talks about human rights and fundamental freedoms needs compliance to the ‘principles’ instead of the provisions of international instruments that depicts the particular rights to lead the interpretation of the standards and principles in the fundamental rights chapter. However, Alebachew does not accept the claim the supremacy of the international human rights instruments over the Constitution because of the very fact that most of the human rights principles and standards

were came from international human rights instruments. He, therefore, presumes that probably those who frame the constitution would have been included this provision (art, 13(2)) for it is reasonable to provide a cross reference its source as standards or guide for interpretation when there is no clarity. Hence, article 13 (2) of the Constitution provides a cross reference to the international human rights instruments when interpretation rather than putting them as superior to the Constitution (Alebachew, 2008.40).

In countering Adem's and Alebachew's argument Takele correctly suggested that, due to the customary nature of the UDHR whose provisions have make up the constitution's Bill of Rights it is almost impractical to alienate the constitutional Bills of Rights from international treaties adopted by Ethiopia. Thus, it is fair to conclude that treaties share at least the same status as the constitution. Moreover, due to the customary principles of good faith and *pacta sunt servanda*, domestic law cannot sit in judgment of its hierarchical interactions with international law. Thus, any other interpretation let Ethiopia to stand against its international obligations (Takele, 2009:133 & 160). In line with Takele's suggestion Ibrahim also suggested that, by virtue of Article 26 of the Vienna Convention of Treaties state parties to a Convention carry out obligations at a time of adopting a given Convention. Thus, under international law if a state adopts human rights Convention they are supposed to implement it in good faith. Accordingly, this principle calls Ethiopia to give adopted international human rights Conventions a high position in their respective legal systems (Ibrahim, 2000:137).

To conclude, though Article 9(4) clearly asserts as the Constitution is the supreme law of the land, this does not lead to the conclusion that in case of conflict between adopted international human rights Conventions and the Constitution's provisions on fundamental rights and freedoms the latter would triumph over the former. Beyond this, in practical cases, Article 13(2) of the FDRE constitution could be employed to address this controversial issue. As indicated in the provision, the fundamental rights and freedoms of the FDRE Constitution should be interpreted in conformity to the UDHR and norms and principles of international human rights Conventions ratified by Ethiopia. This assures as international human rights Conventions adopted by Ethiopia occupy higher or at least equal position, to the FDRE Constitution (Ibid, 2000:137-138). Seyoum and Aman also argue as international human rights Conventions adopted by Ethiopia have equal status with the constitution (Seyoum and Aman ,ND: 6). Thus, as one of the human rights conventions ratified by Ethiopia the CRC has

place high up in the hierarchy so that it is authoritative guidelines for the interpretation of the rights of children guaranteed by the constitution.

Since Ethiopia does not have comprehensive child law in the form of a Children's Act or Proclamation the Family Code, the Criminal Code & criminal procedure code and the Labor Proclamation are the main instruments, which address child rights (ACPF, ND: 2 & Goel, 2009:144). Accordingly, in its various sections the family law entails about the process, legal basis and effects of child adoption. It also entails about paternity, family relations, describing the rights and duties of minors and their guardians. Similar to that of the family law the criminal law in its various sections criminalizes acts like sexual abuse, trafficking, infanticide, endangering the life of or causing bodily injury to children and failure in upbringing. The criminalization also extends to acts of Harmful traditional practices in general. The criminal procedure code mainly from Article 171 to 180 entails as to how the proceeding concerning young person has to be constructed, continued and concluded. The last but not least is the labor proclamation, which explicitly forbids the employment of children below the age of 14 years and gives special protections for child workers between the ages of 14 and 18 under Article 89. In addition from Article 90-91 the Code also sets the maximum working hours for young workers at seven hours a day and precludes the employment of young workers for night work, overtime work, and work on weekly rest days and on public holidays. Thus, based on the above notes it can be deduced as these laws address child rights in some part of their texts i.e. they are not fully or only designed to entail the procedures, mechanism and remedies for implementing the CRC so as to enhance the protection of child rights.

### **2.1.2. Legal Frameworks for Child Right Protection in Kenya**

After being a colony of England for long the independence constitution of Kenya, which comprised Bill of rights was born at 1963. However, the dominant idea of the Bill of Rights was as rights were not absolute. It has a two-tiered mechanism of limiting the liberties it proclaims. On the one hand is a general limitation clause and on the other internal claw-back clauses in the provisions of the Bill. Section 70 of the constitution, which declares about the enjoyment of individual rights and freedoms to be subject to respect for the rights of others and the public interest without setting parameters of 'public interest', is the general limitation clause. Apart from the protection from slavery, servitude and torture, all other rights are accompanied by a claw-back clause. As a result, under normal circumstances, violation of an obligation to respect the rights protected is permitted for a specified number of reasons.

Moreover, a bill of rights must have to emanate from the people that gave power of governance to the rulers i.e. it must have to emanate in a form of social contract. However, in light of the lack of this the Kenyan bill of rights was dysfunctional (Munene, 2002:140, 144,154 & 158). Similarly the 1969 revised constitution left the Bill of Rights unchanged i.e. the language of these rights is embedded in extremely limiting language to the extent that the Bill of Rights has been considered as the ‘Bill of Exceptions’(Chitere etal, 2006: 34 & 46).

Moreover, since 1991, when the provision proclaiming Kenya a one-party state was abolished from the Constitution the country was conducting successive constitutional reform till the promulgation of the current constitution (2010 constitution), which calm down a long and troubled constitution process (Murray, ND: 1). This Constitution presents a progressive Bill of Rights which is shaped by international human rights standards (Odongo, 2012:116 & Ogolla etal., 2012:6-7). Thus, the Bill of Rights in the 2010 Constitution deviates in a number of dimensions from that of the previous Constitution. Firstly, the 2010 Constitution outlines a wider range of rights than the previous Constitution, which only guaranteed civil and political rights and also only a limited number of those rights as compared to the 2010 Constitution. Secondly, unlike the current constitution general provisions in relation to rights, such as who bears the obligations in relation to the rights, the scope of the rights and corresponding limitations, and the application of the Bill of Rights, amongst other provisions, were not clearly addressed in the previous Constitution. Third, the current Constitution under Part III of the Bill of Rights guaranteed the rights of certain groups of people, such as children, persons with disabilities, youth, minorities and marginalized groups, and older members of society. These groups were not explicitly holder of rights in the previous Constitution (Kaguongo, 2012:11 & 16).Thus, the new Constitution adopted in 2010 has raised the issue of child rights at constitutional level (ACPF, ND: 2).

Accordingly, Article 53 of the Constitution provides every child with the right to a name and nationality, to free and compulsory basic education, to basic nutrition, shelter and health care; to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labor, to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not and not to be detained, except as a measure of last resort, and when detained, to be held for the shortest appropriate period of time, and be separated from adults and in conditions that take account of the child’s sex and

age. Article 53(2) of the Constitution indicates that “a child’s best interests are of paramount importance in every matter concerning the child” (Kenya Constitution, 2010: Article 53). Thus, based on the above notes it can be deduced that, as compared to the former constitutions which guaranteed human rights to somehow the 2010 Kenyan’s constitution has guaranteed child rights protection explicitly not only for they are only human being but also for they are vulnerable or by taking their age into consideration.

Moreover, beyond pointing out these rights for children in the Constitution as one of the human rights Convention adopted by Kenya the CRC is part and parcel of the domestic laws of Kenya. Indeed there is two level of argument concerning the status of treaties including human rights instruments within the Kenyan law. Accordingly, the first level based on section 2(5) that provides the general rules of international law shall form part of the law of Kenya; and also based on section 2(6) that provides any Convention ratified by Kenya shall form part of the law of Kenya Mavedzenge contended as international agreements became authoritative law and part of Kenya’s domestic law while ratification (Mavedzenge, ND: 101).

At another level as Maina contended, though it is argued as Article 2(6) of the Constitution transformed Kenya from dualist into monist state up on ratification and suggested as Convention do not now have to be domesticated for them to have the legal force in Kenya, the provision do not transformed Kenya into a strict monist state for it cannot understood independently from other constitutional provisions. Article 21 (4) of the Constitution indicates that the State shall promulgate and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms. The requirement that the state shall promulgate and implement legislation to fulfill its international obligations is accurate fit into the dualist practice for it calls the practice of domestication. Therefore, the question is whether such requirement for the legislative input of parliament essentially make groundless the automatic incorporation of such international law instruments, as per the requirement under the monist school (Maina, 2013:13).

However in line with the first level of contention and as a justification to Article 21(4), the KNHRC convincingly pointed out that, since distinguishing between provisions that are self-executing, which are able to function automatically within the domestic field without the need for any legislation, and those non-self-executing, which need enabling statutes before they can function inside the country and bind the courts, is challenging Article 21 (4) of the

Constitution tackle this problem by ensuring that there will be no excuse in relation to Conventions containing guarantees of human rights. Thus, first, it entails as the country must take all steps necessary steps in order to make sure their implementation and where the treaty provisions are not self-executing, as the implementing legislation must be promulgated to make them effective (KNHRC, 2011: 12-13).

The other interpretation of Article 21 (4) of the Constitution is essential to determine the law making practice of the different human rights Conventions that the Kenyan government endorsed before the declaration of the supreme law of the state – the constitution – which it had not adopted. In spite of the number of human rights agreements that Kenya has approved for many years only very few of them are affecting the laws of the land. The law making organ should include the agreements into the laws via practicing the parliament unless they become laws by themselves for the agreements were approved by the previous constitutional order where only the executive organ playing a significant role. Thus, for this is a case that will be a direct anti-thesis to the criterion of separation power and that is also unconstitutional the law making body should make sure that the human rights approved Conventions have effecting laws, where it is closing gaps in respect and implementation of rights occurred in that laws (Ibid, 2011:13).

Thus, Kenya's monistic approach to international law means greater uniformity between the country's stance on domestic and international issues and a simplified procedure for invoking international law due to the existence of clear and undisputed grounds for the adoption of the monist approach to treaty practice in Kenya (Mavedzenge, ND: 102). In line with this Mwangi also contended that since the Constitution declares a ratified Conventions as being part of the laws of Kenya, the old framework of transformation, or its various strategies such as "domestication" will no longer be functional treaty practice of the republic (Mwangi, 2011:154).

In addition to the manner of incorporating the CRC in the constitution the other issue, which needs to be raised is the hierarchy of the convention with respect to the constitution. Indeed section 2(5) of Kenya's constitution provides that "the general rules of international law shall form part of the law of Kenya." However, the actual meaning of this provision is yet unclear, i.e. there are two competing schools of thought on how to interpret "general rules." One

school holds that it indicates to the rules of customary international law. The other holds that “general rules” means the general *principals* of international law, which could indicate to customary law, to the general principles of law under Article 38(1) (c) of the Statute of the International Court of Justice, or more generally to any logical proposition that is an extension of preexisting international law and based on judicial reasoning (Asher, 2013:267). Thus, Kenya’s wording under this section does not add any value about the hierarch of the constitution (Mavedzenge, ND: 102). However, based on Article 2(6) Orago clearly discussed concerning the hierarchy of international human rights instruments with respect to the Constitution. In doing so he presented three possibilities of how article 2(6) of the 2010 constitution can be interpreted so as to accord a prominent status to international human rights law in the Kenyan domestic jurisdiction. However, he favored the third interpretation (Orago, 2013:430).

Accordingly, the first interpretation entails as international law has the same status with the constitution due to their constitutional establishment in section 2(6). The second interpretation puts international human rights law norms at an infra- constitutional and infra-legal hierarchical level and entails as these norms has status lower than both the constitution and domestic legislation due to two points. The first is due to the phrase ‘under this constitution’ of section 2(6), which indicates that international treaties should be ‘subordinate’ to and in conformity with the constitution. The second is due to the sovereignty of the people stated in section 1(1&2) of the constitution, which indicates that though executive ratifies international treaties in good faith, these treaties shouldn’t be above domestic legislation enacted by peoples representatives. The third and preferred interpretation puts international human right law norms at infra-constitutional but supra-legal level and entails as these norms has a status slightly lower than the constitutional provisions but superior to domestic legislation due to two points. The first is due to the holistic reading of section 2 and particularly the ‘phrase under this constitution’ stated in Article 2(6), which indicates the need for prior process of analysis of the constitutionality of treaties. As a justification for this he mentioned Treaty-Making and Ratification Act 45 of 2012, which is enacted to give effect to article 2(6) of the Constitution in relation to the procedure for the making and ratification of treaties. In doing so the act envisages the need for prior review of the constitutionality of treaties (Ibid, 2013: 430-437).

Indeed the Act in Part III indicates the need for prior approval by both the cabinet and parliament before a treaty is ratified (Treaty Making and Ratification Act 45, 2012: Article 7-9). The second is due to article 20(2) & 20(3) (b), which indicates for the enjoyment of rights in the Constitution to the greatest extent consistent with the nature of the rights and which indicates for interpretation that most favors the enforcement of rights respectively. Finally, based on these two points Orago concluded as the indication of the third interpretation in relation to the proposal that international human rights law norms be given infra-constitutional status means that for the direct practicability of international human rights law in the Kenyan domestic jurisdiction it must be in conformity with the Constitution, which is the supreme law of the land. In relation to the proposal that international human rights law norms be given a supra-legal status means that international human rights law are superior to these domestic legislations, and at a time of actual gap between them international human rights law norms should be directly applied or triumph i.e. Kenya must implement its international human rights obligations as established in ratified international legal instruments (Orago, 2013:438-440).

Thus, based on the above notes one can be deduced that, though the wording of Article 2(5) isn't clear, Article 2(6) of the constitution indicates as human rights instruments are only slightly lower than the constitution before ratification due to the requirement for prior review of their conformity with the constitution. However, if once they are ratified due to Article 20(2) & 20(3) (b), which requires the application of human rights provision of the constitution as per their nature, they are superior to all domestic legislations. Because the nature of these constitutional provision on human rights depend on from where they are derived i.e. from international human rights instruments which also includes CRC.

Kenya has comprehensive child Act. As Odongo indicated the children's rights regime under the 2001 Children's Act is the first example of a comprehensive enactment in Kenya that gives effect to any international human rights Convention to which the country is signatory and which also remains the primary Kenyan law outlining the legal obligations of all duty bearers like government, parents and civil society to respect, protect and fulfill the rights of children. (Odongo, 2012:114 & 123). In line with him Iskander indicated as the Children Act is domestic legislation containing over 200 sections and six important features of particular interest: first, it formulates a set of children's rights as well as the subsequent duties on the government and on private adult citizens. Second, it presents a uniform legal definition of

“child.” Third, it establishes the National Council for Children’s Services, institution composed of various sectors of government which bears responsibility for the oversight and provision of children’s services. Fourth, the Act sets out detailed provisions concerning the formation, regulation and monitoring of NGO-run children’s institutions. Fifth, it creates a Children’s Court, list out child-focused rules for court proceedings involving children and designating magistrates around the country to run Children’s Courts in local areas. Lastly, it establishes provisions for the guardianship of children who have lost their parents including rules for adoption, foster care, institutionalization, etc. as well as provisions dealing with the disposition of assets inherited by orphaned children (Iskander, ND: 16-17). Thus, the Children’s Act of 201 is Kenya’s domestic legislation that entails the procedures, mechanism and remedies for implementing the CRC.

## **2.2. Institutional Frameworks for Child Rights Protection in Ethiopia and Kenya**

### **2.2.1. Institutional Frameworks for child Rights Protection in Ethiopia**

State parties to the convention are expected to establish permanent self monitoring mechanism in order to follow up the implementation of the CRC (General Comment No 5, 2003:35-41). Accordingly, in Ethiopia the institution that is entrusted to follow up the implementation of CRC so as to protect the right of children in MOWCYA. As per Article 10 of Proclamation No. 691/2010, which defines the common powers and duties of Federal Executive Organs (Ministries) among other MOWCYA has the power and duty to initiate policies and laws, prepare plans and budgets, and upon approval implement same, to ensure the enforcement of the federal government laws, and to undertake study and research; collect, compile and disseminate information. In addition under Article 32 the MOWCYA has also certain powers and duties, which define the power and duty of the MOWCYA alone. Among other the Ministry is entitled to create awareness and movement on the question of women, children and youth, to collect, compile and disseminate to all stakeholders information on the objective realities faced by women, children and youth, to coordinate all stakeholders to protect the rights and well-being of children, and to follow up the implementation of treaties relating to women and children and submit reports to the concerned bodies (FDRE Proclamation No.691/2010: Article 10 &32).

In addition to self-monitoring mechanism Children need independent NHRIs to protect their human rights. Children rights should be given due consideration and special attention because of children's vulnerability. Thus, every state party to the CRC needs an independent and effective human rights institution with responsibility for promoting and protecting children's rights. Moreover, these NHRI should be constitutionally entrenched and must at least be legislatively mandated (General Comment No 2, 2002:8). Accordingly, Ethiopia has provided constitutional base for the establishment of these NHRI via Article 55(14) & (15) of its constitution, which empowers the House of Peoples Representative (HPR) to establish the Human Rights Commission and the institution of the Ombudsman determining their power and function ( FDRE Constitution,1995: Article 55(14) & (15)). The HPR, as a mandate given to it, established these institutions by promulgating two proclamations: "Ethiopian Human Rights Commission Establishment Proclamation No. 210/2000" and "Institution of the Ombudsman Establishment Proclamation No. 211/2000" defining their mandate and powers.

The Establishment Proclamation of the Ethiopian Human Rights Commission (EHRC) states that the Commission is established in order to "educate the public to be aware of human rights, to see that human rights are protected, respected and fully enforced as well as to have the necessary measure taken where they are found to have been violated." It is also established in order to ensure the enforcement of human rights as enshrined in the Constitution by all citizens, organs of a state, political organizations and other associations as well as by their respective officials. Thus, the Commission is empowered to investigate cases of violation of human rights enshrined in the Constitution, in its own initiative or upon a complaint submitted to it, to release reports on different human rights conditions like prison conditions and to "provide consultancy service on matters of human rights"( FDRE proclamation No.210/2000).

The Establishment Proclamation of the Institution of the Ombudsman (EIO) states that the Commission is established to "bring about good governance that is of high quality, efficient and transparent, and are based on the rule of law, by way of ensuring that citizens' rights and benefits provided by law are respected by organs of the executive". It is also established to receive, investigate and supervise action taken by any Ministry or department of Government or any member of such Ministry or department of Government and also non-state institution in order to conduct studies and research on ways of avoiding maladministration. Thus, the

basic function of the Ombudsman is to protect citizens against administrative injustices and bureaucratic oppression and to provide citizens with accessible avenue for complaint when such injustices and oppressions occur. The Institution is much important especially in redressing human rights violations which occur in work places/ administrative areas (FDRE proclamation No.211/2000).

In addition to NHRI, non-state actors play a significant role in child protection. ANNPCAN indicates that non-state actors have a crucial role in child protection often complementing government efforts in key priority areas. Some of the services granted by these organizations include provision of care and support, access to justice for abused children, educating parents on child rights, providing educational support and offering assistance to trafficked and abused girls through provision of shelter and family re-union services. They also conduct advocacy, capacity building and awareness creation concerning child protection. Non-state actors, whether local or international, have assisted countries to make considerable progress in terms of child protection (ANNPCAN, 2011:33).

Accordingly, NGOs and CSOs in Ethiopia have impact in three areas: advocacy on behalf of children, empowerment of marginalized groups, and providing emergency assistance. However, their impact was limited (Haggstrom, 2003:58). Moreover, the government of Ethiopia promulgated CSO proclamation as stated in the preamble with good intention of ensuring “the realization of citizens’ rights to association enshrined in the constitution and to aid and facilitate the role of civil society in the overall development of the Ethiopian people” (FDRE proclamation No 621/2009). Of those provisions of the proclamation, as Hopkins and his colleagues argued, the provision that hinder foreign NGOs from engaging in activities pertaining to human rights in general and child rights in particular has detrimental consequence (Hopkins et al., 2009:4).

Moreover, CSOs are supposed to function effectively in cooperation with NHRIs for they are the main actors in child rights protection (General Comment No.2, 2002:11). However, the shift of these organizations from working on child rights due to the CSO law put this assertion to doubt and it also reduces the participation of non-state actors like CSOs and NGOs in child rights protection in Ethiopia.

### **2.2.2. Institutional Frameworks for Child Rights Protection in Kenya**

State parties to the convention are expected to establish permanent self monitoring mechanism in order to follow up the implementation of the CRC (General Comment No 5, 2003:35-41). Accordingly, in Kenya the institution that is entrusted to follow up the implementation of CRC so as to protect the right of children in MOGCSD. As per the establishment charter, with the vision of creating “A society where women, men, children and persons with disabilities enjoy equal rights, opportunities and a high quality of life” the Ministry firmly considers that women, men, girls and boys are actors in and beneficiaries of development. Currently, it has three semi-autonomous government agencies (SAGA’s): the National Commission on Gender and Development, the National Council for Children Services and the National Council for Persons with Disabilities. The Ministry also comprises of two technical departments namely: Department of Gender and Social Development; and the Department of Children Services (Ministry of Gender, Children and Social development Gender Policy, 2011:6 & 10).

National Council for Children’s Service is one of the semi-autonomous government agencies under MOGCSD, which is entrusted to protect the rights of children. Accordingly under Article 32 of the Children Act, the NCCS is established to “exercise general supervision and control over the planning, financing and coordination of child rights and welfare activities and to advise the Government on all aspects thereof” (Children’s Act, 2001: Article 32). Thus, the core roles and functions of the NCCS include, defining and formulating policies on children’s issues, coordinating and supporting child rights issues, planning, monitoring and evaluating children’s activities, source for and coordinating resources for child welfare activities, advocating for child rights issues: formulating strategies for the creation of public awareness in all matters touching on the rights and welfare of children (The Framework for the National Child Protection System for Kenya, 2011:14).

Department of Children’s service is one of the technical departments under MOGCSD, which is entrusted to protect the rights of children. Accordingly under Article 38 of the Children Act the Department is charged to safeguard the welfare of children and in particular, to assist in the establishment, promotion, co-ordination and supervision of services and facilities designed to advance the well being of children and their families (Children Act 2001,Article:38). Thus, among other the core role of the Department include, establishing promoting, co-coordinating and supervising children services in the country, ensuring full

implementation of all child welfare activities countrywide, maintaining updated records and data on children and services provided and ensuring implementation of decisions made by NCCS. In general, through the Department of Children's Services, the MOGCSD is charged with the responsibility of safeguarding the welfare of children in the country (The Framework for the National Child Protection System for Kenya, 2011:14).

In addition to self-monitoring mechanism Children need independent NHRIs to protect their human rights. Children rights should be given due consideration and special attention because of children's vulnerability. Thus, every state party to the CRC needs an independent and effective human rights institution with responsibility for promoting and protecting children's rights. Moreover, these NHRI should be constitutionally entrenched and must at least be legislatively mandated (General Comment No 2, 2002:8). Accordingly, Kenya as a state party to the CRC has provided constitutional ground for the establishment of these NHRI via Article 59 (1) of its constitution, which states that "there is established National Human Rights and Equality Commission in Kenya" (Constitution of Kenya, 2010: Article 59). In order to make the reestablishment of the National Human Rights and Equity Commission effective the Kenya's parliament promulgated an act in 2011 pursuant to Article 59(4) of the constitution (The KNHRC Act, 2011).

As it is stated both in Article 59 (2) of the Kenyan constitution and section 8 of the Kenyan National Commission on Human Rights Act 2011, the function of the KNCHR is to advance the culture of human rights, gender equality and equity as well as the execution of human rights in public and private institutions through promoting respect for human rights. It is also established to investigate and redress cases of violation of human rights in the republic in its own initiative or upon a complaint submitted to it. Besides, the KNCHR is responsible to release report concerning the observance of human rights, and to perform as principal organ of the state in terms of following compliance with obligations under treaties (Constitution of Kenya, 2010: Article 59 & The KNHRC Act, 2011).

In addition to NHRI, NGOs help in promoting the human rights culture through training, education, and dissemination of information (Tsegaye, 2009:304-305). ANNPCAN also indicated that non-state actors play a significant role in child protection. ANNPCAN indicates that non-state actors have a crucial role in child protection often complementing government efforts in key priority areas. Some of the services granted by these organizations

include provision of care and support, access to justice for abused children, educating parents on child rights, providing educational support and offering assistance to trafficked and abused girls through provision of shelter and family re-union services. They also conduct advocacy, capacity building and awareness creation concerning child protection. Non-state actors, whether local or international, have assisted countries to make considerable progress in terms of child protection (ANNPCAN, 2011:33). Accordingly, in Kenya Civil society organizations, mainly NGOs working on child protection rights are playing considerable monitoring role concerning the implementation of child rights. Particularly, NGOs have crucial role in advocating for the promulgation of laws that protect the rights of children in Kenya (ACPF, ND: 3).

Moreover, CSOs are supposed to function effectively in cooperation with NHRIs for they are the main actors in child rights protection (General Comment No.2, 2002:11). Accordingly, CSOs are working in partnership or cooperation with KNHRC ( KNHRC, 2012:25).

To summarize, in this chapter an attempt is made in order to present the status of human rights law in Ethiopian and Kenyan legal frameworks so as to understand the status of CRC. Also an attempt is made to present institutional frameworks in order to protect the rights of children in Ethiopia and Kenya. To this end, in order to analyze the challenges and prospects for effective child rights protection in Ethiopia as compared to Kenya first it is essential to support what literatures indicated concerning the issue under discussion via primary data, which will be collected from appropriate organs (institutions).

## Chapter Three

### Child Rights Protection in Ethiopia and Kenya

#### Introduction

In the second chapter an attempt has made in order to describe the legal and institutional frameworks that are protecting the rights of children .Based on the imperial data in the first section this chapter attempts to analyze as to how the legislative, executive, and judiciary in Ethiopia is protecting the rights of children as well as the role of Ethiopian national human rights commission and non state actors in protecting the rights of children where as the second section analyze as to how the legislative, executive, and judiciary in Kenya is protecting the rights of children as well as the role of Kenyan human rights commission and non state actors in protecting the rights of children.

#### 3.1. Child Rights Protection in Ethiopia

##### 3.1.1. Legislative protection

The HPR, according to the Ethiopian constitution Article 55 (1) that states as the House of Peoples' Representatives have the power of legislation is entrusted with the main task of making laws (FDRE Constitution, 1995:55(1)). Thus, after the executive signed (concluded) the CRC in 1991 the legislature in Ethiopia has been enacting subsequent legislations that protect the rights of children (has been taking measures in order to implement the CRC and protect the rights of children in the domestic legal order). Accordingly, since 1995 the legislature has given Constitutional protection to the rights of children under Article 25, 36(2), 14 & 29<sup>5</sup> In line with the four core principles of the Convention, namely the principle of the non-discrimination, the best interest of child, the right to life, survival and development and also the right to participation that are stated under Article 2, 3, 6, & 12 of the Convention respectively. Beside, as stated under Article 13 since the fundamental rights and freedoms in the Constitution are interpreted in light of the ratified international instruments i.e. the

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<sup>5</sup> Under Article 25, 36(2), 14 & 29 the FEDR Constitution provides the right to equality and not be discriminated for every person, primacy for the best interest of the child in any action concerning them, right to life for every person and also the right to freedom of expression for every person respectively.

Constitution has also given recognition to the prevalence of the Convention when there is conflict with domestic legislation.<sup>6</sup>

In order to enhance the implementation of the CRC in the domestic legal order the legislature has also revised other prominent legislations that deal with the rights of children in conformity with the provisions of the Convention and enacted these legislations namely, the Family law of 2000, Labor proclamation of 2003 and Criminal code of 2004. For instance, unlike the old family law (Civil code of 1960) where the marriageable age of a girl's was fifteen but that of boy's was eighteen, in conformity with the CRC the revised Family code has made the marriageable age of both boy's and girl's eighteen. Another important development in the revised family code is determination of paternity for children born out of wedlock. In the old family law the grounds for determination of paternity are very limited and a number of children born out of wed lock left without father where as in the revised family code the grounds for determination of paternity became wider and for the determination of paternity marriage is not necessarily required. Similarly the 2004 criminal code added different provisions in conformity with the provisions of CRC i.e. it adds one full chapter in order to criminalize harmful traditional practices.<sup>7</sup> Moreover, first, again gaps are identified in Family law after its revision in 2000 and the Criminal Procedure code of 1961 is being revised in order to make these codes in conformity to the CRC and enhance the implementation of the CRC in Ethiopian domestic legal order. Second, the enactment of Proclamation 454/2005 that declares as the judgment by the Federal cassation bench judges'

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<sup>6</sup> Interview with Fasil Mulatu ( 2015)-Center for Human Rights, Addis Ababa University- Friday-20/03/15, 11-12 am., Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Friday-20/02/15, 2-4:30 am., Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC- Monday-23/02/15, 9-12 am. , Sileshi kebede( 2015)- Adoption Avenues American Agency- Thursday- 07/04/15, 2:30-4 pm. and Abera Hirketa( 2015)-Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 9-10 am.

<sup>7</sup> Interview with Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Tuesday- 17/03/15, 2-3:45 pm., Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate, MOWCYA-Monday- 16/03/15, 2-10 pm., Zaid Hassen (2015) –Children's Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 25/03/15, 8:30- 9:50 am., Azmeraw Belay (2015) - Child Friendly National System and Structure Program Department, Save the Children-Thursday- 17/03/2005, 9:30-11 am. and Amsale Eshetu(4-5)- Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 10-11 am.

carries force of law has enhanced the implementation of some provisions of the CRC due to the precedents given by the Federal Cassation Bench <sup>8</sup>

According to them in practice the legislature has taken measures in order to enhance the current protection of child rights in Ethiopia by giving constitutional recognition to the principles as well the prevalence of CRC over domestic legislation and revising some of the provision of the existing laws in conformity with the Convention so as to facilitate it's the implementation in the domestic legal order. The legislature continuation of the revision of laws as well as the legislative enactment of Proclamation 545/2005 has improved the implementation of the Convention. However, others argue that, though the legislature enactment of proclamation 545 has enhanced the implementation of some provisions of the CRC to somehow, in order to facilitate the implementation of the whole provisions of the convention to the grass root level, especially to the lower tier of judiciary the legislature should enact domestic legislation or proclamation that entail the mechanism, procedures and remedies while implementing the Convention.<sup>9</sup>

### **3.1.2. Executive protection**

As per proclamation No.691/2010 in Ethiopia the main executive body that is mandated with child rights in general as well as the implementation of the CRC in particular is MOWCYA (Proclamation No.691/2010, Article: 9(20) & 32).Accordingly, Ministry is working in order to protect the rights of children independently and also in cooperation with other state and non-state actors. For instance, in order to follow-up the implementation of the CRC from the Federal (national) to kebele level the Ministry is working via inter-ministerial committee, which consists various state and non-state actors.<sup>10</sup> Though the very existence of institution

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<sup>8</sup> Interview with Anonymous (2015) - Child Rights Promotion and Protection Directorate, MOWCYA. - Friday-20/02/15, 2-4:30 am.

<sup>9</sup> Interview with Selamawit Girmaye ( 2015)- Children's Legal Protection Center of Child Justice Project, Federal Supreme Court- Monday- 25/03/15, 2-2:45 pm., and Yona Birmeta( 2015)-school of Law, Addis Ababa University-Friday-20/02/15, 9-10 am.

<sup>10</sup> Interview with Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Note(2), Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Thursday-17/03/2005, 9:30-11 am., Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate,

entrusted with child rights at Ministerial level as well as the measure being taken in order to follow up the implementation of the convention is good, since the Ministry is dedicated with various sections of the society i.e. women, children and youth more of it favor (address) the issue of women than children.<sup>11</sup>

In addition, as per Article 10 of the establishment proclamation the Ministry is entitled to initiate laws for reform or review and follow up the implementation of existing laws (proclamation No. 691/2010: Article 10 (a & B)). Accordingly, in practice MOWCYA is initiating laws for reform or review after assessing the impact of a proposed law as well as conducting the tangible impact of the existing law. For instance, MOWCYA was assessing the impact of Criminal Procedure Code which is under review and also evaluated the tangible impact of the Family code, particularly with regard to adoption.<sup>12</sup> In line with this Abduletif and his colleagues indicated that MOWCYA has identified gaps in the Family code and Criminal Procedure Code (Abduletif et al., 2013:141).

MOWCYA is not only initiating laws but it is also following up the implementation of CRC in those institutions that host children in need of care and protection as well as children in conflict with the law. Accordingly, in practice the implementation of the CRC and the subsequent laws in order to protect child rights is progressive (promising) for those officials who are responsible for the implementation of laws like policies, public prosecutors and

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MOWCYA - Monday- 16/03/2005, 9:30-11 am. and Selamawit Girmaye ( 2015)- Children's Legal Protection Center of Child Justice Project, Federal Supreme Court- Monday- 25/03/15, 2-2:45 pm.

<sup>11</sup> Interview with Abera Hirketa( 2015)-Children, Women and Disability Affairs Directorate, EIO- Note 2, Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Thursday- 17/03/2005, 9:30-11 am., Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Monday- 16/03/2005, 9:30-11 am., and sileshi Kebede (2015) )- Adoption Avenues American Agency- Thursday- 07/04/15, 2:30-4 pm., and Sisay Degene ( 2015)- Child Friendly National System and Structure Program Department, Save the Children-Wednesday-25/03/15, 2:10-3: 30 pm.

<sup>12</sup> Interview with Interview with Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA.- Friday- 20/02/15, 2-4:30 am., Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA--Monday- 16/03/15, 2-10 pm., and Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate, MOWCYA--Monday- 16/03/15, 2-10 pm.

judges are getting appropriate training that broadly incorporated the text of the CRC by the Ministry as well as other state actors. However, first, since there is no fixed time interval in which the training is delivered to them and also continuous follow up in order to ascertain whether the training is goal oriented or not it is not. Second, despite the existence of training and the incorporation of child rights issue in the courses of the police training collage particularly the achievement of the police in terms of protecting the rights of children is not satisfactory due to lack of follow up and subsequent administrative measures to be taken in order to improve their an satisfactory record. In addition, limited number as well as the crowdedness of particularly correctional center being the main drawback for the implementation of the laws yet since the services and also the facilities of the institutions are not as per the standard set for them by MOWCYA <sup>13</sup> In line with this Abduletif and his colleagues indicated as the lack of correctional institutions hindered courts from implementing those subsequent legislations (Abduletif etal., 2013:141 & Fasil & Rakeb, 2014:34).

Under 10(1) (c) & 32(2) Article the proclamation also entitles the Ministry to gather, compile and disseminate data (information) or undertake research (study) (proclamation 691/2010, Article 32:2). In practice, though the Ministry in cooperation with non-state actors is installing Information Management System (IMS) that enables to have disaggregated data, there is no permanent department for undertaking research. Rather the common trend is to organize task force at a time when conducting research is needed. For instance, the task force has undertaken study on correctional centers. Thus, based on the finding of the task force there is a move in order to reduce the crowdedness of the correctional center via building correctional center that is capable of accommodating numerous children.<sup>14</sup>

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<sup>13</sup> Interview with Interview with Anonymous (2015) -Child Protection Department, Save the Children- Friday- 1/04/15, 9-10:30 am., Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA.- Friday- 20/02/15, 2-4:30 am., Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA--Monday- 16/03/15, 2-10 pm., and Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate, MOWCYA--Monday- 16/03/15, 2-10 pm., and Sitiyana bereda( 2015)- Children's Legal Protection Center of the Child Justice Project, Federal Supreme Court- Thursday- 24/03/15, 9-11:30 am.

<sup>14</sup> Interview with Interview with Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA.- Friday- 20/02/15, 2-4:30 am., Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA--Monday- 16/03/15, 2-10 pm., and Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate, MOWCYA--Monday- 16/03/15, 2-10 pm.

### 3.1.3. Judicial protection

A state may witness progress in terms of concluding (signing) international human rights standards like CRC and also adopting these provisions in national legislations in order to protect the rights of children. However, what matters most is the effective implementation of these standards in domestic courts (Bayenew, 2011:75). Thus, since the judiciary is also one branch of state that ensures protection for the rights of children as guaranteed by the CRC, it is supposed to be effective while implementing CRC for it enables children to enjoy their rights as they are entitled by the Convention.

Accordingly, in practice in Ethiopia the judiciary i.e. higher tiers of the judiciary have started to implement the CRC. For instance, there was a case over the administration of the child's inheritance from his deceased mother between a father, who had never cared, protected and provided for his son, and a maternal aunt of the same child, who had brought him up from early childhood for 12 years. Claiming the best interest of the child the aunt appealed for the rejection of the legal guardianship which the father had acquired and used for his own advantage in terms of financial and property gain. Though all three levels of courts of the southern region dismissed her case claiming that the aunt could not have a legitimate ground for legal guardianship while the father is alive, in 2007 based on article 3(1) of the CRC and article 36(2) of the Ethiopian Constitution that entails as the best interest of the child shall be primary consideration in deciding all matters concerning children the cassation bench of the federal supreme court to which the aunt applied on the basis of a fundamental error of law in the decision of the regional courts accepted her argument and appointed her as legal guardian. Moreover, by virtue of Proclamation 454/2005, federal as well as regional courts on all levels are bound by the Cassation Division's decision for it carries force of law. Thus, the lower tier of the judiciary can also implement the convention.<sup>15</sup> However, others argue that practically without any legislation that guide or entail the mechanism, procedure and remedies to the implementation of the CRC lower tier judiciary are not in a position to implement the whole

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<sup>15</sup> Interview with Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA. - Friday- 20/02/15, 2-4:30 am.

provisions of the convention due to the general nature of provision of the CRC <sup>16</sup> In addition, though the general nature of constitutional provisions as compared to specific legislation is a barrier for judges to frequently refer to the constitution, by virtue of Article 62(1) & 83 the ultimate power given to House of Federation in order to interpret the constitution at a time when there is a conflict to somehow has let judges, especially those judges at lower-tier of the judiciary to feel as they have little role in interpreting the constitution. Thus, despite the Constitutional inclusion of guarantee of rights for “everyone” that addresses the four key principles of the Convention the judiciary cannot refer it while adjudicating the cases’ of children for they feel as they have little role in interpreting the Constitution.<sup>17</sup>

In national courts judiciary’s professionalism and technical capacity in order to recognize and deal with violations of human rights is the other essential aspect in order to provide effective remedies (Bayenew, 2011: 81). Thus, Judges needs to enhance their professionalism and technical capacity in order to oversee the breaches of the rights of children. One way of letting this to happen is building the capacity of judges via giving appropriate training that will enhance their knowledge of how to protect the rights of children while dealing with them in courts. Accordingly, Ethiopian judges’ knowledge of how to protect the rights of children while dealing with them in courts has more or less improved for the content of the training that is being given to judges is broadly incorporating the text (provisions) of the CRC. For instance, as a result of the training given at least some of the judges have close contact with ‘friends of the court’ like social workers, public prosecutor and nurses in order to make the justice process child friendly.

However, first, as stated in the above section in Ethiopia there is no assessment in order to ensure the effectiveness of training in practice. At least the inter-court evaluation and experience sharing mechanism was a promising move in order to assess the effectiveness of

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<sup>16</sup> Interview with Selamawit Girmaye ( 2015)- Children’s Legal Protection Center of Child Justice Project, Federal Supreme Court- Monday- 25/03/15, 2-2:45 pm., and Yona Birmeta( 2015)-school of Law, Addis Ababa University-Friday-20/02/15, 9-10 am.

<sup>17</sup> Interview with Solomon Shumeye( 2015 )- Child and Women Human Rights Coordinator Office, EHRC- Wednesday -25/03/15, 10:30- 12:30 am., and WoldeHawariat Leyew( 2015)-Judge’s Administration Forum, Federal Supreme Court-Thursday-12/05/15, 10-11 am.

trainings among judges and also to share experience from those who are a step ahead of other judges but this mechanism has stagnated in 2004 as soon it started. Second, JOPTC is not giving continuous education i.e. the education is being given only before the judges started to serve in the court. Thus, in addition to the weakness of the lower tier judiciaries due to the absence of legislation that guide or entail the detail mechanism, procedure and remedies for implementing the whole provisions of the CRC as well as the due to the feeling of judges as they have little role in interpreting the Constitution due to the ultimate power for interpreting the Constitution at a time of conflict is given for House of Federation, the judiciary at all level is not in a position to implement the whole provision of the CRC due to the absence of assessment that ensure the practical effectiveness of training so as to take the necessary administrative measures.<sup>18</sup>

#### **3.1.4. The Role of Ethiopia Human Rights Commission and Non-state actors (NGOs & CSOs) in Protecting Children's Rights**

As per proclamation No.210/2000 EHRC has the general mandate of promoting and protecting human rights (Proclamation No.210, 2000: Article 5 & 6). Accordingly, in practice the commission is protecting the rights of children since its general mandate to promote and protect human rights let the commission to address the rights of children as well. In doing so, the commission in cooperation with state actors is giving training concerning the rights of children. Since the end goal of the training is to promote child rights so as to enhance their protection the training is being given in organized manner i.e. via organizing human rights soldiers which consist of government wing( representatives of MOWCYA, courts or judges and policies),education wing (teachers as well as students), and also public wing (the society at large).<sup>19</sup>

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<sup>18</sup> Interview with Sitiyana bereda( 2015)- Children's Legal Protection Center of the Child Justice Project, Federal Supreme Court- Thursday- 24/03/15, 9-11:30 am., and WoldeHawariat Leyew( 2015)-Judge's Administration Forum, Federal Supreme Court-Thursday-12/05/15, 10-11 am., and Zaid Hassen (2015) – Children's Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 25/03/15, 8:30- 9:50 am.

<sup>19</sup> Interview with Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC-Monday-23/02/15, 9-12 am., Solomon Shumeye( 2015 )- Child and Women Human Rights Coordinator Office, EHRC-Wednesday -25/03/15, 10:30- 12:30 am., and Tigabu Harege woyine ( 2015) - Child and Women Human Rights Coordinator Office, EHRC-Thursday- 24/03/15, 2-10 am.

In line with this Ethiopia's report concerning the implementation of CRPD indicated as the commission has been undertaking training for government institutions and those organs entrusted with implementing laws, leaders of associations of women, youth, persons with disabilities, organizations working for children and girls right as measures in order to promote and protect child rights (FDRE,2012:21-23). However, despite the promising move of organizing Evaluation and Experience sharing forum, particularly among those who are working in the justice sector in each and every four month, the Commission cannot to continue this due to financial shortage. Indeed the Commission is at least working with UNDP under DIP from where it get fund but given the broad mandate of the commission the fund from the organization is not ample. What makes the issue more worst is the 2009 CSOs proclamation that has devastated the cooperation of the Commission with CSOs from where it can get additional fund. Even those 'Ethiopian charities or CSO', which are allowed to work on human rights does not have ample fund for themselves let alone to work in cooperation with the commission.<sup>20</sup>

In addition, as per Article 6 (2 & 5) & 6(6) of proclamation No.210/2000 & No. 211/2000 respectively EHRC and EIO is entitled to check whether laws are in line with the human rights guaranteed by the constitution and initiate laws for reform as well as review (Proclamation No. 210, 2000: Article 6 (2 &5) & Proclamation No. 211, 2000: 6(6)). In practice, the EHRC's coordination office of Children and women human rights and EIO's Children, women and disability Affairs directorate has been initiating laws for reform or review after assessing the impact of proposed law in cooperation with MOWCYA. For instance, EHRC & EIO was assessing the future impact of Criminal Procedure Code which is under review and giving comment as to how it can be in line with CRC.<sup>21</sup> In this regard, Ethiopia's report concerning the implementation of CRPD indicated as the Commission has been checking whether the existing legislations are in conformity with human rights norms or not (FDRE, 2012:22).

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<sup>20</sup> Ibid

<sup>21</sup> Interview with Abera Hirketa( 2015)-Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 9-10 am., Amsale Eshetu( 2015)- Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 10-11 am., Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC- Monday-23/02/15, 9-12 am., and Solomon Shumeye( 2015 )- Child and Women Human Rights Coordinator Office, EHRC-Wednesday -25/03/15, 10:30- 12:30 am.

In addition, under Article 6(1 &4) of the proclamation the Commission is also entitled to following up the implementation of CRC while investigating matter in respect of child rights and make recommendations to improve the functioning of State organs ( Proclamation No 210/2000, 2011: Article 6(1&4)). Accordingly, what the commission has most frequently investigated is juvenile home (correctional centers) and prisons. The practice entails as the current treatment for children is not improving due to the limited number of children's correctional centers that resulted the crowdedness of the center as well as holding of children in prison with adults especially in the regional states and also due to the treatment of children that are accompanying their mother to prison in Ethiopia is not being improved due to lack of adequate attention by MOWCYA and EHRC.<sup>22</sup> In this regard, in its report the Commission indicated as children are being held with adults' in prison and also lack of cooperation with other actors in order to create options for the treatment of children (EHRC, 2012: 161-162 & 164-165).

As per Article 5 of the EIO establishment proclamation the Institution is established with the objective of bringing good governance (Proclamation No 211/2000, Article: 5). Accordingly, the institution receives complaint cases and seeks remedies if it believes that maladministration has occurred. But, as children are dependent on their families or guardians bringing their complaint cases are dependent on the strength and good will of these bodies and as a result complaint cases of children so far brought to the institution is insignificant. Therefore, the institution has designed 11 model children parliament in the two city administration and all regions as mechanism to directly get children.<sup>23</sup> Then practically the children parliament became a platform where children learn and exercise their democratic and other rights, come together to discuss around their common problems and make their voice heard by the executive organs. In line with purpose of their establishment practically these parliaments has served children's as a platform where children learn and exercise their

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<sup>22</sup> Interview with Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC-Monday- 23/02/15, 9-12 am., Solomon Shumeye( 2015 )- Child and Women Human Rights Coordinator Office, EHRC- Wednesday -25/03/15, 10:30- 12:30 am., and Tigabu Harege woyine ( 2015) - Child and Women Human Rights Coordinator Office, EHRC-Thursday- 24/03/15, 2-10 am.

<sup>23</sup> Interview with Abera Hirketa( 2015)-Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 9-10 am., and Amsale Eshetu( 2015)- Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 10-11 am.

democratic and other rights. For instance, 920 early marriage cases have been reported to the police and as a result the marriage was canceled before they take place. However, these parliaments are facing budget shortage.<sup>24</sup>

In addition to NHRI, non-state actors play as significant role in child rights protection by taking certain measure like provision of emergency assistance, awareness raising campaigns, advocacy on behalf of children and legal aid (public litigation). However, practically in Ethiopia some of these measures that are supposed to be taken by non-state actors is continuing and also some of them are nil (non-existent) due to those restrictive provisions of the 2009 CSO proclamation and government recognition. Since the proclamation does not allow those “Foreign Charities and Ethiopian Residents Charities” which receives more than 10% of their funds from foreign sources to work in the areas of child rights a number of these CSOs has re-registered as Ethiopian Residents Charities not to weaken their financial capacity.<sup>25</sup>

For instance, before the enactment of the CSOs proclamation CCRDA and Save the Children were advocating government in order to give attention to those laws and policies that have impact on the rights of children whereas after the enactment of the proclamation these organizations are playing only two roles prominently i.e. conducting round table discussion (workshop) in order to raise the awareness of the society at large concerning child right and also providing essential services like education, portable water, health services, particularly polio vaccination in cooperation with WHO for those children who are in need.<sup>26</sup> Similarly the local partner of Save the Children who has been giving legal aid and conducting public litigation has ceded to play this role. Thus, despite the importance of non-state actors for

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<sup>24</sup> Interview with Amsale Eshetu( 2015)- Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 10-11 am.

<sup>25</sup> Anonymous (2015) - Child Development and Welfare Forum-, CCRDA-Thursday19/02/15, 8:50-9:30 am and Azmeraw Belay (2015) - Child Friendly National System and Structure Program Department, Save the Children-Thursday- 17/03/2005, 9:30-11 am.

<sup>26</sup> Interview with Anonymous (2015) - Child Development and Welfare Forum-, CCRDA-Thursday19/02/15, 8:50-9:30 am and Anonymous (2015) -Child Protection Department, Save the Children- Friday- 1/04/15, 9-10:30 am.

promoting and enhancing the protection of child rights most of these actors preferred to function on areas other than rights due to the restrictive provisions of the proclamation on funding<sup>27</sup>. In this regard Dupuy and his colleagues also indicated as CSOs has re-registered as Ethiopian Resident Charities due to the restrictive provisions of the proclamation among other ANNPCAN and FCSE are mentionable (Dupuy et al., 2014:25).

What makes the issue more severe is even those “Ethiopian Charities” that are entitled to promote and enhance the protection of child rights has weak financial capacity due to the unwillingness of donors to fund these CSOs that are working in environment of uncertainty and also due to the difficulty of raising funds locally. So that, these organizations are not functioning effectively.<sup>28</sup> In line with this Debebe indicated that as the restriction on foreign funding has affected both the function and existence of almost all CSOs in Ethiopia, particularly advocacy based CSOs. He further indicated as to why the effect is further exacerbated i.e. due to the reluctance of donors to engage in long term project agreements because of uncertainty and constraints of the proclamation and also due to the absence of domestic (indigenous) funding that can replace the loss of resources as a result of the restriction or the difficulty of raising 90% of their income from local sources (Debebe, 2010:20-21). In the same vein EHRCO in its 2009 report also indicated that despite the possibility for Ethiopian CSOs to engage in child rights promotion and enhance their protection, the restriction on foreign funding that is compounded by difficulty of raising funds locally hindered them from engaging in a meaningful way in any activity (EHRCO, 2009: Para 7).

## **3.2. Child Rights Protection in Kenya**

### **3.2.1. Legislative protection**

Till the 1963 Kenyan constitution that has undertaken successive reform the parliament has the power of legislation in Kenya by virtue of Article 30 of the successive constitutions.

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<sup>27</sup> Interview with Anonymous (2015) -Child Protection Department, Save the Children- Friday- 1/04/15, 9-10:30 am.

<sup>28</sup> Interview with Sisay Degene ( 2015)- Child Friendly National System and Structure Program Department, Save the Children-Wednesday-25/03/15, 2:10-3: 30 pm.

Similarly, by virtue of Article 94(1) of the current constitution (2010 constitution) that states as the legislative authority is derived from the people and exercised by parliament the parliament is entrusted with the main task of making laws (Kenyan Constitution, 2010:94(1)). Thus, after the executive signed (concluded) the CRC in 1990 the legislature in Kenya has been enacting subsequent legislations that protect the rights of children. Accordingly, since 2010 the legislature has given Constitutional protection to the rights of children under Article 27, 53(2), 26 & 33<sup>29</sup> in line with the four core principles of the Convention, namely the principle of the non-discrimination, the best interest of child, the right to life, survival and development and also the right to participation that are stated under Article 2, 3, 6, & 12 of the Convention respectively.<sup>30</sup> Beside, as stated under Article 20(2) & 20(3) the fundamental rights and freedoms in the Constitution are interpreted to the greatest extent consistent with the nature of the rights or from where they are derived i.e. from international human rights instruments. Thus, the Constitution has given recognition to the prevalence of the Convention when there is conflict with domestic legislation. In order to facilitate the implementation of the CRC the legislature has also enacted the 2001 children's Act that entails the mechanism, procedures and remedies while implementing the CRC. The Act gives emphasis to promote the well-being of children, implement the provisions of the Convention, promote the welfare of the family, assist parents in the discharge of their parental responsibilities, and care and protection of children unlike the previous legislation of Kenya i.e. the children and young person Act of 1964, which only focused on children in conflict with the law.<sup>31</sup> This is also indicated in the preamble of the act that indicates as it is an act of the parliament to make provision for these points under emphasis. In addition, the Act has also incorporated some provisions of the Guardianship of Infants Act and Adoption Act that deals with guardianship of infants and adoption in compliance with CRC. Thus, while incorporating the CRC and

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<sup>29</sup> Under Article 25, 36(2), 14 & 29 the Kenyan Constitution provides the right to equality and not be discriminated for every person, primacy for the best interest of the child in any action concerning them, right to life for every person and also the right to freedom of expression for every person respectively.

<sup>30</sup> Email Interview Eunice kilundo (2015)-Child protection & Psychosocial Support coordinator, Child Fund Office of Kenya-May 6

<sup>31</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

enacting the Act the legislature (parliament) has played prominent role.<sup>32</sup> In line with its report CRADEL in partnership with Consortium For Street Children also indicated as the parliament was playing prominent role while enacting the Act in order to make it in conformity with the CRC i.e. though the process of drafting the Act was started in 1991 immediately after ratification of the CRC in 1990, the parliament has rejected the first draft among other with the explicit claim that the draft of the act had not included all of the provisions of the CRC and generally lacked effective implementation mechanisms (CSC, 2004:17).

Moreover, for Kenya signed the Hague convention on Inter-country adoption in 2007 the legislature is revising the Children's Act in order to update the provision on adoption that is designed with reference to Article 21 of the CRC. Thus, in practice the legislature has taken measures that enhanced the current protection of child rights in Kenya by giving Constitutional recognition to the principles as well as the prevalence of CRC over domestic legislations and also enacting the children's Act of 2001 that entails the mechanism, procedure and remedies while implementing the Convention. Moreover, the legislature has also continued the revision of the Act in order to facilitate the implementation of the Convention further.<sup>33</sup> In this regard SOS indicated that in addition to the progressive bill of rights of the constitution that has provided a firm base for the protection of child rights due to the children's Act that has incorporated the CRC in the national legal system the legal and institutional framework that protect the rights of children, especially the rights of those child in need of care and support is robust (SOS Children's Village Kenya, 2014:16). Similarly, in its technical assessment report the Department of Children's Service in the Ministry of Gender, Children and Social Development has also indicated as the practice of child protection has improved due to the enactment of the transformative legislation that is inspired by CRC i.e. 2001 children Act (DCS, 2008:12)

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<sup>32</sup> Email Interview Eunice kilundo (2015)-Child protection & Psychosocial Support coordinator, Child Fund Office of Kenya-May 6.

<sup>33</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

### 3.2.2. Executive Protection

As per the establishment charter, in Kenya the main executive body that is mandated with child rights in general as well as the implementation of the CRC in particular is the NCCS and DCS under MOGCSD (Ministry of Gender, Children and Social development Gender Policy, 2011:6). Accordingly, the NCCS and DCS under MOGCSD are working in order to protect the rights of children independently and also in cooperation with other state and non-state actors. For instance, in order to follow-up the implementation of the CRC from National to sub-local area the Ministry is working via inter-ministerial committee, which consists of various state and non-state actors. Thus, the existence of the NCCS and DCS under MOGCSD as well as the measure being taken in order to follow up the implement the convention is promising. Moreover, since NCCS and DCS are institutions only entrusted to protect the rights of children via implementing children act that infused the CRC in the domestic legal order they are effective i.e. from the inception the institutional structure itself enabled the NCCS and DCS to be effective.<sup>34</sup> In this regard ACPF also in its report over the well being of African child, which indicates the progress in terms of institutional frameworks in order to protect child rights in Africa mentioned the Kenyan institution in a form independent child rights body i.e. NCCS as an exemplary (ACPF, 2013:43).

In addition, as per Article 32 (2)(i) & 38(2)(d) of the children Act NCCS & DCS, under the Ministry is entitled to ensure the full implementation of Kenya's international obligation relating children that include initiating laws for reform as well as review and following up their implementation respectively (Children Act, 2001: Article32(2)(i) & 38(2)(d). Accordingly, in practice NCCS & DCS under MOGCSD is initiating laws for reform or review after assessing the impact of a proposed law as well as conducting the tangible impact of the existing law. For instance, NCCS & DCS under MOGCSD was assessing the tangible impact of the Act and now is assessing the future impact of the children's Act, which is under review currently.<sup>35</sup> In this regard the research conducted concerning those children who are accompanying their mother to prisons in Kenya by Breinscope consultants on behalf of

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<sup>34</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

<sup>35</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

NCCS recommended the NCCS to discuss cautiously with the KLRC to make sure that the issue of children's rights in prison is being address seriously in the current process of updating the Children's Act (NCCS, 2013:30). Similarly ACPF indicated as move towards developing proposed amendments to the Act has been led by the Ministry (ACPF, ND:3)

NCCS & DCS under MOGCSD is not only initiating laws but it is also following up the implementation of CRC in those institutions that host children in need of care and protection as well as children in conflict with the law. Accordingly, in practice the implementation of the CRC in order to protect child rights is progressive (promising) for those officials who are responsible for the implementation of laws like policies, public prosecutors and judges are getting continuous and appropriate training that broadly incorporated the text of the CRC continuously by NCCS & DCS under MOGCSD alone as well as in cooperation with other state and non-state actors, prominently with JICA in order to build their capacity. Moreover, first, there is fixed time interval in which the training is delivered to them and also follow up is conducted by external supervisors in order to ascertain whether the training is goal oriented or not (not to make is just as trend or for formality) i.e. in each and every two months for the purpose of certifying the trainees and continue another round of training. Second, most of the time for policies are the first person to have contact with children the incorporation of the issue of child rights in the courses of police training collage as well as the administrative measures taken by NCCS & DCS, like assigning those polices who wear the normal civil clothes rather than police uniform not to make children frustrated while they meet polices and more importantly assigning women polices for women take are better care of children than male has also contributed to the effective protection of the rights of children by polices.<sup>36</sup>In this regard Kiura & Rutere in their investigation indicated that since giving care for children is seen as a female role gender has played a big role. Thus, their gender related finding revealed among those polices involved in handling those children in conflict with the law most of them are female polices for they are seen as the 'best' in working at the CPUs (Kiura & Rutere, 2009:16.). With regard to the institutional framework, though those institutions that host children in need of care and protection as well as children in conflict with the law are not absolute, there are numerous institutions with ample and also with services and facilities as

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<sup>36</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

per the standard set for them DCS. Thus, the institutions cannot be considered as a setback for the implementation of the CRC. Moreover, NCCS & DCS is working for the expansion and improvement the services and facilities of these institutions. In line with this Ottolini indicated as the DCS is reforming those institutions, which host children in order to improve their services and facilities (Ottolini, 2011:12).

Under Article 38(2)(c & e) of the children Act the DCS under the Ministry is also entitled to undertake investigation (research) so as to collect, compile data and formulate proposal to the NCCS in order to eliminate the observed problem that is affecting children(Children’s Act, 2001: Article 38(2)(c&e)). In practice, there is a task force under Field Services Division of the DCS in order to collect, compile and formulate proposal for NCCS. Thus, based on the finding of the task force there was expansion of those correctional center that accommodate females as well as improvement of their services.<sup>37</sup>In this regard, the NCCS indicated as the DCS generates statistical information (data) that is crucial in planning and programming on children’s issue while discharging its mandate of overseeing programs that protect children from child abuse, neglect and exploitation, including sexual exploitation (NCCS, 2010:16). Moreover, the Ministry in cooperation with non-state actors is installing Information Management System (IMS) that enables to have disaggregated data.

### **3.2.3. Judicial Protection**

A state may witness progress in terms of concluding (signing) international human rights standards like CRC and also adopting these provisions in national legislations in order to protect the rights of children. However, what matters most is the effective implementation of these standards in domestic courts (Bayenew, 2011:75). Thus, since the judiciary is also one branch of state that ensures protection for the rights of children as guaranteed by the CRC the existence of effective judiciary that is capable of implementing the whole provisions of the CRC enables children to enjoy their rights as they are entitled by the Convention.

Accordingly, in practice Kenya courts at all level i.e. the superior courts, Higher Court as well as the Subordinate Courts, particularly the Magistrates courts are implementing the CRC

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<sup>37</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU’s Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

that is infused in the domestic legal order by virtue of the children Act of 2001<sup>38</sup>. As a witness for this, even in the early years after enactment of the children's Act ACPF analyzed court cases from 2003 to 2006 and indicated that in a number of cases the Kenyan High Court and subordinate courts were implementing the CRC. For instance, provisions of the CRC that provides the time limits for trials and the pre-trial detention of children in conflict with the law. The result of these decisions was to implement the principle of detention as a last resort and for the shortest period of time for children as provided in the CRC (ACPF, ND: 10 & Odongo, ND: 29). In addition, for the ultimate power to interpret the Constitution is given for courts by virtue of Article 163(4) (a) of the Constitution, if judges need to refer to the Constitution they can do so. Thus, due to the Constitutional inclusion of guarantee of right for "everyone" that addresses the four key principles of the Convention judiciary can refer and interpret it while giving judgment of children's case.<sup>39</sup>

In national courts judiciary's professionalism and technical capacity in order to recognize and deal with violations of human rights is the other essential aspect in order to provide effective remedies (Bayenew, 2011: 81). Moreover, since Children contact the law at a time when they are victims and witness of crime, in civil proceedings and when they are in conflict with law judges must be ready in order to oversee the violations of the rights of children in every direction. Thus, in order to bring this in to reality the capacity of judges via giving appropriate training that will enhance their knowledge of how to protect the rights of children while dealing with them in courts needs to be build. Practically- first, Kenyan judges knowledge of how to protect the rights of children while dealing them in courts has improved even at the lower tier of the judiciary i.e. Magistrates since the content of the training that is being given to judges is broadly incorporating the text (provisions) of the CRC. For instance, as a result of the training given the judges have close contact with 'friends of the court' like policies, public prosecutors and judges in order to make the justice process child friendly. Beside, while the chief justice was expanding child friendly justice system as part of the expansion effort there is fixed time interval in which the training is delivered to judges and

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<sup>38</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

<sup>39</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

also follow up is conducted by external supervisors in order to ascertain whether the training is goal oriented or not (not to make is just as trend or for formality) i.e. in each and every two months for the purpose of certifying the trainees and continue another round of training. After these deliberation for instance judges has got recognition via official Gazzeta announcement.<sup>40</sup> In this regard Kiura & Rutere indicated that as the Chief Justice had assigned 119 children judges throughout the country in order to address children's issues and set rules and regulations on issues relating to the children's courts (Kiura & Rutere, 2009:11). Beside, the government of Kenya also indicated as the staffing of trained and announcement via Gazetta children's judges who are meant to quickly and effectively address those issue related to children is a positive move (Republic of Kenya, 2004:18).

Moreover, in order to assess the effectiveness of the training in practice there is inter-court evaluation and experience sharing forum that enabled judges to have inward looking about what they are doing after being trained and also to draw lesson from those who were performing well. Second, JTI provide continuous education for judges i.e. the education is being give before the judges began to serve in courts as well as while they are serving in order to update and enhance their performance. Thus, Kenyan judiciaries at all levels are implementing the whole provisions of the Convention. " In addition, though it is difficult to say that all judges in Kenya are 100% competent, unlike other Conventions the judiciary is in a position to implement the whole provision of the CRC due to the continuous effort to build their capacity (knowledge of how to protect the rights of children while dealing with them in courts)." <sup>41</sup>

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<sup>40</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

<sup>41</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

### **3.2.4. The Role of Kenya National Human Rights Commission and Non-state actors (NGOs & CSOs) in Protecting Children's Rights**

As per the KNHRC Act of 2011 the commission has general mandate of promoting and protecting human rights (KNHRC Act, 2011: Article 8). Accordingly, in practice the commission is protecting the rights of children since its general mandate to promote and protect human rights let the commission to address the rights of children as well. In doing so, the commission independently and in cooperation with state actors is giving training on child rights as well as working with state non state actors for they raise fund for the activities of the commission. Besides the training is being conduct with subsequent follow up in order to ascertain its effectiveness in practice.<sup>42</sup> This is also stated in its report as the commission is giving training for public servants, judicial officers, police and prisons officers on human rights among other in cooperation with Kenya Magistrates and Judges Association and also planning to entrench the training on human rights. Similarly the commission works in partnership with CSOs on numerous activities including investigations (KNHRC, 2012:25 & 37). Moreover, in its 2014 UNGA indicated as the effective Kenyan Commission specifically stressed the need for taking further measure concerning the training of numerous officers on child rights since training programs are essential to make sure that officers, especially those officers in the children's justice sector are properly equipped to work with these children (UNGA, 2014:6).

In addition, as per Article 8 (f) of the Act the Commission is entitled to ensure the full implementation of Kenya's international obligation under human rights conventions that include checking whether laws are in line with child rights guaranteed by the CRC and initiate laws for reform as well as review (KNHRC Act, 2011: Article 8(f)). In practice on behalf of the commission the commissioner who is responsible for addressing the issue of child rights has been initiating laws for reform or review after assessing the impact of a proposed law in cooperation with MOGCSD. For instance, KNHRC is assessing the future

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<sup>42</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

impact of children's Act and giving comment as to how it can be in line with CRC.<sup>43</sup> In this regard, in its 2012 report the Commission indicated as it has submitted recommendations to parliament on how to make sure human rights contents are addressed effectively after reviewing draft legislations (KNHRC, 2012:37).

Under Article 8(e) of the Act the commission is also entitled to following up the implementation of CRC while investigating matter in respect of child rights and make recommendations to improve the functioning of State organs (KNHRC Act, 2011: Article 8(e)). Accordingly, most frequently the commission investigates juvenile home (correctional centers) and prisons. The practice entails that for there are numerous children's correctional centers they are held alone (not with adults) and also the treatment of children that are accompanying their mother to prison in Kenya is being improved due to the Commission's effort in cooperation with other actors that are working to protect the rights of children. Even the NCCS has contributed for the improvement of the treatment of those children in Juvenile home and correctional centers and prison.<sup>44</sup> In this regard the NCCS's research conducted concerning the treatment of children accompanying their mothers to prison in Kenya indicates indeed as the council is concerned or taking part in the improvement of the prison condition for children (NCCS, 2013:2). Moreover, the commission itself has also pointed out as the changes in correctional approaches( treatment) for in-mates is attributed due to the commission's interaction with state agencies that has direct or indirect contact with human rights (KNHRC, 2012: 36).

In addition to NHRI, non-stat actors like NGOs & CSOs that are working on child rights issues are essential to promote and enhance the protection of child right. Accordingly, in practice these non-state actors in Kenya are vibrant actors that contribute to the protection of the rights of children prominently to the extent of being the right hand of state actors that are

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<sup>43</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

<sup>44</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

entrusted with child rights protection.<sup>45</sup> Like the 1991 NGOs coordination Act both the current NGOs bill of 2012 and public organizations Acts of 2013 doesn't have any provision that restricts the type of activities' to be conducted by both local and international NGOs as well as the amount of income to be received. Moreover, Article 58 of Children's Act that allows the establishment of charitable children's institutions by a person, religious organizations or non-governmental organizations in order to give care, protection and rehabilitation is one impetus that has gave for proliferation of these CSOs that protect child rights. Thus, CSOs are playing prominent role by taking measures like provision of emergency assistance, awareness raising campaigns, advocacy on behalf of children and legal aid and public litigation service.<sup>46</sup> In this regard Halvorsen and his colleague indicated as many domestic NGOs are implementing child- projects in Kenya together with fairly high number of international NGOs in order to achieve multiple objectives via engaging in advocacy, education etc (Halvorsen et al., 2011:44).

For instance as per its mission ANPPCAN Kenya works in order to protect child against abuse and neglect by providing information and technical expertise(capacity), carrying out research on emerging children's issues and by lobbying the government, donors, other NGOs and communities on behalf of children. Similarly, CRADLE is also engaging in advocacy, providing, legal aid and capacity building. Thus, the optimum legal environment and explicit government recognition to their initiatives enabled these non state actors to work extensively in various areas so as to protect the rights of children.<sup>47</sup> Indeed SOS in its assessment report on the alternative care system for children in Kenya has also mention as ANPPCAN and CRADEL has played a prominent role particularly in building the capacity of judicial officers deployed to children courts (SOS, 2014:14). In general, with regard to non state actors the government of Kenya indicated as these non state actors are assisting the government in

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<sup>45</sup> Email Interview Eunice kilundo (2015)-Child protection & Psychosocial Support coordinator, Child Fund Office of Kenya-May 6.

<sup>46</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

<sup>47</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

promoting and protecting child rights i.e. via providing, training several districts in order to come up with child protection teams, working for the enactment of laws and policies that address the rights of children such as Sexual offences Bill, HIV/AIDs Bill, Refugee Protection Bill, organizing school child rights clubs and girls forums, designing training manuals and providing training for law enforcement agencies and the community at large, mainstreaming child rights in the government's programs and constructing mobile clinics to create awareness on child rights, providing legal aid and conducting litigation. Thus, in the absence of specific ombudsman for children CSOs and NGOs that work to promote and protect children's rights undertake a similar role to the ombudsman (Republic of Kenya,ND:43-46).

In addition, CSOs facilitate the promotion of child right so as to enhance their protection i.e. via building the channel between children and the government. This initiative of CSOs has got recognition by the government. For instance, CSOs organizing children parliament that enabled the sound of children to be heard by the government has got recognition.<sup>48</sup> Concerning this the government of Kenya in its report to the un committee on the rights of child indicated as it has recognized the organization of children-led children's parliament and also children's club that discusses on issues and forward recommendations for the necessary government measure on issues that are affecting children (Republic of Kenya, 2005: para.162-164).

To summarize, this chapter has analyzed the data obtained in order to indicate as to how the legislative, executive, and judiciary in Ethiopia and Kenya is protecting the rights of children as well as the role of human rights commission and non state actors in Ethiopia and Kenya in terms of protecting the rights of children in two section (separately). The next chapter also attempts to analyze the data comparatively and attempts to identify the challenges and prospects for effective child rights protection in Ethiopia in light of Kenya's experience.

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<sup>48</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU's Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

## **Chapter Four**

### **Child Rights Protection in Ethiopia and Kenya: A comparative Analysis**

In the preceding chapter an attempt has made in order to analyze as to how the legislative, executive and judiciary institutions are protecting the rights of children and also as to what are the roles of NHRI and non state actors in protecting child rights in Ethiopia and Kenya. However, in this chapter an attempt is made to compare and contrast the way the legislative, executive and judiciary is protecting the rights of children in Ethiopia and Kenya and also the roles of NHRI and non state actors in protecting child rights in Ethiopia and Kenya so as to identify the challenges and prospects for effective child rights protection in Ethiopia. In doing so, the comparison is presented under four sections. The first to the third sections of the chapter analyze comparatively the legislative, executive and judicial protection of child rights in Ethiopia and Kenya where as the last section analyses comparatively the roles of NHRI and non state actors in protecting child rights in Ethiopia and Kenya.

#### **4.1. Comparative Analysis of Legislative Protection of Child Rights in Ethiopia and Kenya**

CRC recognizes the rights of children to be protected. The protection becomes effective at a time when all appropriate implementation measures are put into practice. As per the General comment No 5, in order to protect the rights of children state parties to the CRC are supposed to take legislative measures. Legislative measure entail states the fundamentality of ensuring that all domestic legislation is in full conformity with the convention. Thus, reviewing proposed as well as existing legislation needs to be sustainable rather than one-off. Beside, states constitutional inclusion of guarantees of rights for “everyone” under various provisions reflecting key principles of the CRC namely the principle of non discrimination, the best interest of the child, the right to survival, development and life and also the right to participation indicates as children are holder of human rights along with adults is commendable. However, in order to give meaning for their right first the Convention must prevail when there is a conflict with domestic legislation and second there must be effective implementation of the Convention i.e. effective remedy to redress violations or the Convention must be directly invoke before the court. Thus, since the mere constitutional inclusion of guarantee of rights for “everyone” under various provisions reflecting key principles of the CRC that indicates as children are holder of human rights along with adults

does not automatically ensure the implementation of Convention. There should be additional legislative measures which includes the enactment of domestic legislation that entails mechanism, procedures and remedies while implementing the Convention (General Comment No 5, 2003:34-35)

Accordingly, as it is stated in chapter three both Ethiopian and Kenyan legislatures that are entrusted with the main task of making laws has taken measures in order to ensure as the domestic legislations are in full conformity with the convention. Beside, since reviewing proposed as well as existing legislation is supposed to be sustainable rather than one-off they are also conducting revision as well. Moreover, in line with the commendable step their constitution (supreme law) has included guarantee of rights for “everyone” underling that children are holder of human rights along with adults. This addresses the key principles of the CRC. Since giving meaning for these rights in the Convention also requires the prevalence of the Convention when there is conflict with domestic legislations and the existence of effective remedy to redress violations, as stated in chapter two and three both Ethiopia and Kenya Constitution guarantee the prevalence of the convention over domestic legislation under Article 13 and 20(2) & 20(3) respectively. However, unlike Kenya where the whole provisions of the convention can be invoked before the court due to the domestic legislation providing the mechanisms, procedures and remedies, in Ethiopia the whole provisions Convention couldn’t be invoke before the court due to the absence of domestic legislation that entails the mechanisms, procedures and remedies for the implementation of the Convention. In this regard my informants pointed that though the precedent of the Federal Cassation Bench carries force of law, yet there should be domestic legislation that entails the mechanisms, procedures and remedies for the implementation of the Convention.<sup>49</sup>

Based on the data it can be deduced as the continuous harmonization of laws as well as the Constitutional inclusion of guarantee of rights for “everyone” that underline the key message of the Convention in both countries is promising. However, at a time when states are ratifying international human rights instruments like the CRC they expected to take additional

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<sup>49</sup> Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC-Monday-23/02/15, 9-12 am., Sitiyana bereda( 2015)- Children’s Legal Protection Center of the Child Justice Project, Federal Supreme Court- Thursday- 24/03/15, 9-11:30 am., and Zaid Hassen (2015) –Children’s Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 25/03/15, 8:30- 9:50 am.

legislative measures in order to give more effect to the Convention in the domestic legal order. One way of doing so is adopting domestic legislation that entails the mechanisms, procedures and remedies for implementing the Convention. Thus, in order to implement the whole provisions of the Convention Ethiopia as a state apart to the CRC is expected to adopt domestic legislation the entail the mechanisms, procedures and remedies for implementing the Convention like Kenya i.e. children's Act of 2001. In line with this Abduletif and his colleague also indicated the need for domestic legislation in order to identify mandates, mechanism, procedures and remedies (Abduletif et al., 2013:22).

#### **4.2. Comparative Analysis of Executive Protection of Child Rights in Ethiopia and Kenya**

CRC recognizes the rights of children to be protected. The protection of these rights become effective at a time when administrative and other measures are put into practiced. The administrative and other measure entails state parties to the convention in order to establish permanent monitoring mechanism (self-monitoring mechanism) with the aim of making sure that the Convention is on implementation. Moreover, this monitoring mechanism needs to have high-level authority that contributes both to the overall purpose of making children more visible in Government and to coordinate the implementation of the Convention hand in hand with other state and non-state actors. Among other measures- first, the monitoring mechanism is expected to monitor the implementation of the convention by conducting consistent process of child impact assessment i.e. forecasting the impact of any proposed law which have an effect on children and the enjoyment of their rights and child impact evaluation i.e. evaluating the tangible impact of implementation of law in a give state (General comment No 5, 2003:35-41).

Second, since the monitoring mechanism is entrusted to monitor the implementation of the convention they are expected to promote training and capacity-building for those who are engaging in the implementation process like government officials, parliamentarians and members of the judiciary and all those working with and for children in order to boost the knowledge as well as understanding of the convention so as to amplify the status of children as a right holder and promote active respect for all of its provisions. Thus, first, training and capacity building needs to be systematic and ongoing - initial training and re-training. Second, in addition to assessing the knowledge of trainees on the Convention and its provisions based

on the training given, there should be an assessment of the extent to which it has contributed to build attitudes and practice that actively enhance the enjoyment by children of their rights i.e. there should be a continuous assessment of the effectiveness of training both theoretically as well as practically. Third, the monitoring body in order to protect the rights of children should set standard for institutions and their services as well as facilities. Third, collection of ample and trustworthy data on children is vital part of implementation, particularly disaggregated data with the nationally applicable indicators that address all of the rights guaranteed by the Convention is vital. Beside it is essential to make sure that the data collected are examined and used to review progress in implementation, to discover problems and to inform all subsequent development for children rather than only creating effective data collection system. In doing so, states should work together with appropriate research institutes and use children's themselves as researcher in order to create a comprehensive picture of progress towards implementation with qualitative as well as quantitative studies (Ibid, 2003:35-40)

Accordingly, as stated in chapter two and three both Ethiopia and Kenya has established MOWCYA and NCCS & DCS under MOGCSD respectively with high level authority to the extent of making children visible in Government and in order to monitor (coordinate) the implementation of the convention. Moreover, since the implementation of the convention needs to be carried by all sector of the society both Ministries are working with state and non state actors for their involvement in the process of implementation is essential. However, as stated in chapter two and three since Kenyan NCCS & DCS are the semi-autonomous government agency and technical department of MOGCSD respectively, they are independent institution with ample power to run the function of coordinating the implementation of CRC and make children more visible in government. Thus, from the inception the institutional structure itself enabled the Ministry to function effectively. Eunice also indicated as the NCCS and DCS under MOGCSD indeed has done tremendous job in order to follow up the implement the Convention<sup>50</sup>. whereas in Ethiopia MOWCYA is indeed coordinating the implementation of the convention, but given its entitlement of addressing the issue of the vast section of the society, namely women, children and youth the Ministry more of inclines towards making women more visible and protecting their rights as compared to

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<sup>50</sup> Email Interview Eunice kilundo (2015)-Child protection & Psychosocial Support coordinator, Child Fund Office of Kenya-May 6.

children. Thus, in order to protect the rights of children and make them more visible the Ministry should be restructured.<sup>51</sup> Among my informants in describing as to how the Ministry is women oriented and also in indicating the subsequent need for institutional restructuring Fasil contended that.-

*“Through cursory observation of the Ministries report on what has been done in order to protect the rights of the women, children and youth one can understand as the Ministry is more geared towards addressing the rights of women as compared to that of children. Moreover, since the difference between women and children is that of age there is no any logical connection between the rights of women and children therefore there should be institutional reform in order to create new institutional structure that is capable of protecting the rights of children more effectively.”*<sup>52</sup>

In addition, both MOWCYA and NCCS & DCS under MOGCSD are supposed to initiate laws for reform or review and also follow up the implementation of CRC. In doing so, as stated in chapter three these institutions were conducting consistent child impact assessments i.e. forecasting the impact of any proposed law which have an effect on children and the enjoyment of their rights and also child impact evaluation i.e. evaluating the tangible impact of implementation of law in a give state. Moreover, in due course of coordinating the implementation of the convention the Ministries’ were promoting training and building the capacity of all those working with and for children in order to boost the knowledge as well as understanding of the convention so as to amplify the status of children as a right holder and promote active respect for all of its provisions.

However, as stated in chapter three in Kenya training and the subsequent follow up is conducted in a fixed time interval in order to certify the trainees i.e. in each and every two

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<sup>51</sup> Interview with Sitiyana bereda( 2015)- Children’s Legal Protection Center of the Child Justice Project, Federal Supreme Court- Thursday- 24/03/15, 9-11:30 am., Amsale Eshetu( 2015) - Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 10-11 am., Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Friday- 20/02/15, 2-4:30 am.

<sup>52</sup> Fasil Mulatu ( 2015)-Center for Human Rights, Addis Ababa University- Friday-20/03/15, 11-12 am.

month. Thus, there is continuous assessment in order to ensure the effectiveness of training in practice. Moreover, the administrative measures like assigning those police who wear the normal civil clothes rather than police uniform not to make children frustrated while they meet polices and more importantly assigning women polices for women take better care of children than male has also contributed for good treatment of children by police. In this regard Catherine further contended as training as well as the administrative measure reinforces each other.<sup>53</sup> Whereas, in Ethiopia there is no fixed time interval in which the training is delivered and subsequent follow up is conducted in order to ascertain whether the training is goal oriented or not. Thus, there is no continuous assessment in order to ensure the effectiveness of training practically. In this regard my informant stressed that, despite the training the polices has received concerning how to protect the rights of children in their training college as well as numerous on job trainings as compared to others who are working with and for children they are not fruitful in protecting the rights of children.<sup>54</sup> In supporting this argument other informants also suggested as MOWCYA needs to take administrative measures beside providing trainings.<sup>55</sup>

One can understand the reality stated in the above paragraph through comparing the concluding observation of both states to date. Accordingly, in the initial and the next concluding observation of Kenya the Committee on the Rights of Child indicated the need for reinforcing adequate and systematic training. Whereas unlike the initial and the next concluding observations that indicate the lack of adequate and systematic training in Ethiopia in its third conclusion observation the committee indicated the existence of adequate and systematic training. However, the committee further indicated as the practice of the policies

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<sup>53</sup> Interview with Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU’s Social Affair Departement-Wednesday-18/02/15, 8:45-11 am.

<sup>54</sup> Interview with Fasika Hailu( 2015)- Children’s Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 19/03/15, 10:30-12:15 am., and Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Friday- 20/02/15, 2-4:30 am.

<sup>55</sup> Interview with Azmeraw Belay (2015) - Child Friendly National System and Structure Program Department, Save the Children-Thursday- 17/03/2005, 9:30-11 am., and Zaid Hassen (2015) –Children’s Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 25/03/15, 8:30- 9:50 am.

is despite the training.<sup>56</sup> Thus, unlike Kenya in Ethiopia the implementation of the convention is facing setback due to the absence of assessment that ensure practical effectiveness of training and subsequent administrative measures particularly with regard to policies given their being of the person to have a contact with children.

Beyond promoting training and building the capacity of all those working with and for children as part of its entitlement of coordinating the implementation of the convention these Ministries are also following up the implementation via supervising institutions as per the standard set for their facilities as well as services. Accordingly, in Kenya though they are not absolute, there are ample institutions for both children who are in conflict with the law as well as in need of care and protection with ample space being an asset for the implementation of the laws. The services as well as the facilities of the institutions are as per the standard set for them and also additional effort is being taken for further improvement by NCCS & DCS. Whereas in Ethiopia though the move to build the correctional center with better service and facilities is promising, yet the limited number as well as the crowdedness of particularly correctional center is the main drawback for the implementation of the laws since the services and also the facilities of the institutions are not as per the standard set for them by MOWCYA. In this regard in comparison to the institution for children in conflict with the law my informants indicated as “those institutions for children in need of care and protection are at least good in terms of number for there are also private institutions that receive those children.”<sup>57</sup> In line with this among my informants Fasika in describing as to how the correctional center in particular is setback for the implementation of CRC further narrated as follows-

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<sup>56</sup> See para 21 and 20(c) of the initial and second concluding observations of Kenya respectively i.e. the 2001 and 2007 concluding observations. Also see para 10, 24 and 21 of the initial, second and third concluding observation of Ethiopia i.e. the 1997, 2001 and 2006 concluding observations

<sup>57</sup> Interview with Anonymous (2015) -Child Protection Department, Save the Children- Friday- 1/04/15, 9-10:30 am., and Sileshi kebede( 2015)- Adoption Avenues American Agency- Thursday- 07/04/15, 2:30-4 pm.

*“The reason why children are being sent to correctional institutions is due to two main assumptions. The first assumption is that children are less blamable, children are not deliberate wrong doers like adults whereas the second assumption is that children are easily rehabilitative, if children are treated well they can bring behavioral change easily as compared to adults. However, the correctional institution for juvenile offender in Ethiopia isn’t working in line with these assumptions so that it is not in position i.e. in terms of facilities and also service that enables to implement the CRC.”<sup>58</sup>*

Both MOWCYA and NCCS & DCS under MOGCSD are also supposed to collect, compile data and conduct research. As stated in chapter three though it is at an infant level, both institutions are collecting, compiling and conducting research. However, in addition to the very the very existence of the process the Information Management system(IMS) that enable to have disaggregated data with the nationally applicable indicators that address all of the rights guaranteed by the Convention is being installed in both institution. Thus, for the betterment of these promising moves the collaboration of these institutions with appropriate research institutes and use children’s themselves as researcher in order to create a comprehensive picture of progress towards implementation with qualitative as well as quantitative studies is good. Beside in the long run i.e. at a time when the IMS that is under installation became fully operational, it is essential to make sure that the data collected are examined and used to review progress in implementation, to discover problems and to inform all subsequent development for children rather than only creating effective data collection system.

Based on the data it can be deduced that, the very existence of these monitoring bodies (MOWCYA and NCCS& DCS under MOGCSD), the move for proving training, installing the IMS as well as among other measures the measure they took in order to monitor and ensure the implementation of the convention via child impact assessment and child impact evaluation while initiating laws for reform and review are prospects for effective protection of the rights of children. However, unlike the Kenyan NCCS & DCS under MOGCSD the very nature or institutional structure MOWCYA does not make the children more visible in

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<sup>58</sup> Fasika Hailu ( 2015)- Children’s Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 19/03/15, 10:30-12:15 am.

government and the Ministry geared more of towards protecting the rights of women as compared to children. Moreover, the challenges for the implementation of the convention in Ethiopia unlike Kenya is the training and capacity building move of MOWCYA is not as it is supposed to be i.e. there is no assessment of the effectiveness of training in practice and subsequent administrative measures particularly with regard to policies given their being of the first person who have a contact with children. Beside, institution with weak facility and service is also the other challenge.

### **4.3. Comparative Analysis of Judicial Protection of Child Rights in Ethiopia and Kenya**

The convention entails that in order to give meaning for these right there must be effective remedy to redress violations i.e. the test must be whether these rights in the convention or provisions' of the convention are genuinely implemented for children, can be directly cite (invoke) before the court. Beyond this for effective implementation of the convention states are also required to take measures in all levels of judiciary i.e. build perspective on children's rights (CRC) throughout the judiciary. Thus, since one way of building perspective on children's rights is providing training and building the capacity of judiciaries, it should have to be in line with what the General Comment has pointed out about training and capacity building i.e. first, training and capacity building needs to be systematic and ongoing - initial training and re-training. Second, in addition to assessing the knowledge of trainees on the Convention and its provisions based on the training given there should be an assessment on the extent to which it has contributed to build attitudes and practice that actively enhance the enjoyment by children of their rights i.e. there should be a continuous assessment of the effectiveness of training both theoretically as well as practically (General Comment No 5, 2003:33-35).

Accordingly, as stated in chapter three both Ethiopian and Kenyan are courts are invoking the provisions of CRC and their Constitution while adjudicating cases of children. However, unlike Kenya where the judiciaries at all tier is invoking the provision of the Convention as well as the Constitution in Ethiopia lower tier of the judiciary is not invoking the whole provisions of the Convention and also the Constitution. Indeed, the decision passed by the Cassation Bench of the Federal Supreme Court citing provisions of the CRC (Article 3, the best interest of the child) is a positive precedent by virtue of proclamation No. 454/2005, that

makes interpretation of a law by the Cassation Bench of the Federal Supreme Court binding on federal as well as regional courts (Proclamation No.454/2005). But yet unlike Kenya in Ethiopia lower tier of the judiciary is not invoking the whole force of the Convention due to the absence of domestic legislations that entail the detail mechanism, procedure and remedies while implementing the convention as well as for they feel as they have little role in interpreting the Constitution given the ultimate power for Constitutional interpretation granted for House of Federation. In this regard my informant from EHRC also contended that though the precedent of the Federal Cassation Supreme Court has eroded the ground for claiming the absence of official publication as a justification for failure to apply International human rights instruments like CRC in courts, the absence of domestic legislation that entails the mechanisms, procedures and remedies for implementing the Convention as well as the feeling of judges as they have little role in interpreting the Constitution is a challenge yet.<sup>59</sup>

In addition to this, since states are required to take measure in order to build perspective on children's rights in all tiers of judiciary so as to facilitates the effective implementation of the convention and enhance the protection of the rights drawn in, numerous measures are being taken in both countries-Ethiopia and Kenya. Among other measure for building perspective on children's rights granting continuous training and capacity building for judiciaries is the one. As discussed in chapter three- first, indeed the measure taken in Ethiopia in order to train and build the capacity of judges has enabled some of them to have close contact with 'friends of the court'. In line with this Assefa indicated as not all of the judges are working with 'friends of the court' like social workers except with medical doctors or nurse in order to make the justice process child friendly (sensitive) (Assefa, 2011:28). However, the there is no assessment in order to ensure the effectiveness of the training in practice due to the stagnation of inter-court evaluation and experience sharing forum that would enable to assess the extent to which the training given has contributed to build attitudes and practice that actively enhance the enjoyment by children of their rights as soon as it commencement in 2004. Second, though especial measure that is being taken in order to train and build the capacity of judges in Ethiopia by JOPTC and the subsequent assessment of the knowledge of the Convention and its provisions based on the training granted i.e. assessment of the

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<sup>59</sup> Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC-Monday-23/02/15, 9-12 am.

effectiveness of the training in theory is promising, this is only being done before the judges started to serve in the court.

Whereas as in Kenya- first, the measures taken in order to train and build the capacity of judges has enabled them to have close contact with ‘friends of the court’ and it is also systematic and ongoing - initial training and re-training. In this regard ACPF indicated that as there is commendable practice even in Magistrate courts of Kenya for they embrace services of ‘friends of the court’ like social workers and nurses in order to make the justice process child friendly(sensitive) (ACPF, 2015:33). Moreover, inter-court evaluation and experience sharing forum that enable to assess the extent to which the training has contributed to build the attitudes and practice that actively enhance the enjoyment by children of their rights i.e. practical assessment of the effectiveness of training is continuing in Kenya. Second, especial measure that is being taken in order to train and build the capacity of judges in Kenya by JTI and the subsequent assessment of the knowledge of the Convention and its provisions based on the training granted is commendable for it is being conducted continuously i.e. theoretical assessment of the effectiveness of the training is ongoing before and also after the judges started to serve in courts.

In affirming the need for continuity of education for judiciaries UNODC indicated as continuing education enables to provide judges with a stage where they can talk about legislative development and also associated difficulties of interpreting those amendments as well as complex areas of the existing legislations (UNODC, 2011:15).Moreover in confirming the reality on the ground Akech & Mbote indicated as the Kenyan judiciary is instituting continuous Judicial education with Judiciary Training Institute where an institutionalized judicial education for both induction purposes as well as performance improvement through continuing education is being given (Mbote & Akech ,2011:112).

Based on the data it can be deduced that, both Ethiopia and Kenya has promising practice of giving training and immediate theoretical assessment of judges’ knowledge of the Convention based on the training grant. However, unlike Kenya in Ethiopia the challenge for implementing the Convention in all tiers of the judiciary is not only attributable to the absence of domestic legislation that entail the detail of the mechanism, procedure and remedies while implementing the convention as well as feeling of judges as they have little role in interpreting the Constitution, but also due to capacity gap of the judiciary, which

occurred as a result of the absence of continuous theoretical and practical evaluation of the effectiveness of the training. Thus, despite the promising practices, there is a capacity gap among judiciaries in Ethiopia. In this regard Goel also indicated as the difficulty of implementation of human rights instruments so does CRC occurred due to lack of awareness, skill and also accountability and monitoring mechanism (Goel, 2009:1450).

#### **4.4. Comparative Analysis of Role of National Human Rights Institutions and Non-State Actors Protection of Child Rights in Ethiopia and Kenya**

In addition to self-monitoring and evaluation independent monitoring by independent human rights institutions and non state actors like NGOs and CSOs towards the implementation of the convention is vital. The independence of NHRI calls for the institution to develop their own projects (agendas) like children's parliament in order to enhance the promotion and protection of children's rights. And also NHRI are supposed to ensure the protection of child rights via independent monitoring of state's conformity and progress towards implementation of the CRC. In doing so, NHRIs should be given the necessary mandate that enable them to promote and protect the rights of children effectively i.e. the mandate to raise the awareness of the public concerning human rights in general and child rights in particular, review national laws relating to the protection of children's rights continuously as well as enhance their conformity with the CRC and also follow up the implementation of laws while investigating matter in respect of child rights based on complaint brought or their own initiative (General Comment No2, 2002;8-11).

Particularly, since one way of promoting child rights so as to enhance their protection is giving training for those who are taking part in the implementation process of the CRC, the training should have to be the appropriate one i.e. first, training and capacity building needs to be systematic and ongoing - initial training and re-training. Second, in addition to assessing the knowledge of trainees on the Convention and its provisions based on the training given there should be an assessment on the extent to which it has contributed to build attitudes and practice that actively enhance the enjoyment by children of their rights i.e. there should be a continuous assessment of the effectiveness of training both theoretically as well as practically (General Comment No 5, 2003: 35-40). Also while visiting juvenile homes and release report on the situation in order to make recommendations for improvement, NHRI should make sure that whether the institutions, services and facilities for protection of children match with the

standards set by competent authorities Above all- first, in order to ensure their independence and effective functioning among other NHRI must have adequate funding and also freedom from forms of financial control that might affect their independence. Second, NHRI are supposed to function effectively in cooperation with NGOs for they are the main actors in child rights promotion and protection Thus, it is essential that institutions work closely with NGOs and that Governments revere the independence of both NHRI and NGOs (Ibid, 2002:8-11)

Accordingly, since the independence of NHRI calls for the institution to develop their own projects (agendas) like children's parliament in order to enhance the promotion and protection of children's rights, in this regard unlike KHRC the EIO has achieved a remarkable progress via organizing model parliaments that are serving as a platform where children voices are heard and also where they can learn and exercise their rights effectively. In the same vein, Girmache and Yonas have indicated as the model parliaments are desirable in terms of preventing child rights violation (Girmachew and Yonas, 2012:80). However, in addition to budget shortage the lack of equal attention by all regions is also the other challenge for effective functioning of the parliaments<sup>60</sup>.

Moreover, as stated in chapter two both EHRC and KNHRC has given the mandate that enable the Commissions to promote and protect the rights of children. Therefore, as stated in chapter three the commissions are raising the awareness of those who are involved in the implementation process of the Convention via giving trainings. However, first the KNHRC is conducting assessment that ensures the effectiveness of the training in practice and also working in cooperation with CSOs in various areas including investigation. In this regard ICC in its chart on the status of NHRI has indicated the effectiveness of the commission in terms of promoting and protecting human rights in general because of its high compliance with the Paris principles, which is a guide for the function of all NHRIs (ICC, 2014:3). In addition to this, Halvorsen and his colleagues specifically indicate as the commission is effective in discharging its mandate with regard to child rights both independently and also in

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<sup>60</sup> Abera Hirketa( 2015) - Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 9-10 am., and Fasil Mulatu ( 2015)-Center for Human Rights, Addis Ababa University- Friday-20/03/15, 11-12 am.

cooperation with CSOs to the extent of being considered as a watchdog over the government (Halvorsen et al., 2011:63).

Whereas unlike KNHRC first, the early effort of the EHRC in order to ensure the effectiveness of the training in practice has stagnated due to shortage of fund. What makes the issue more worst is the 2009 CSOs proclamation that has devastated the cooperation of the commission with CSOs from where it can get additional fund. Even those ‘Ethiopian charities or CSO’, which are allowed to work on human rights doesn’t have ample fund for themselves let alone to work in cooperation with the commission. In this regard my informant stressed his worry as follows- “given the time value of money the amount of money that is being allocated for the Commission from the government and also obtained from UNDP under DIP is not ample. Moreover the absence of at least the alternative fund from CSOs has slow down the functioning of the Commission”.<sup>61</sup>

Thus, given it’s the broad mandate indeed the stagnation of the Commissions cooperation with CSOs due to low financial capacity of CSOs has affected the effective functioning of the Commission. In line with this Yemsrach also indicated that despite the importance of NGOs for the effective functioning of the commission through exchange of experience and expertise as well as provision of fund in addition to the budget from the government the restrictive CSOs proclamation has forced some of those NGOs to disbanded and also the rest like Action Aid to shifted their areas of operation from human rights to other areas like environment (Yemsrach, 2010:27-28).

Additionally, as stated in chapter three the commissions are initiating laws for reform as well as review after assessing the future impact of the proposed laws and giving comment as to how it can be in line with CRC. Moreover, the Commissions are investigating the implementation of CRC in juveniles’ home (correctional centers) and prisons. However, unlike Kenya where juveniles are held alone due to adequate number of children’s correctional centers and also the treatment of children that are accompanying their mother to prisons is being improved due to the Commission’s effort in cooperation with other actors

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<sup>61</sup> Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC-Monday-23/02/15, 9-12 am.

that are working to protect the rights of children in Ethiopia the limited number of children's correctional centers resulted the crowdedness of the center as well as the holding of children in prison with adults especially in the regional states and also the treatment of children that are accompanying their mother to prisons is not being improved due to lack of adequate attention by MOWCYA and EHRC. Thus, the facilities and services of the juvenile home (correctional center) and prisons do not match with the standards set by competent authorities.

In addition to NHRI, non-state actors play a significant role in child rights protection by being independent monitor and taking certain measures like provision of emergency assistance, awareness raising campaigns, advocacy on behalf of children and legal aid (public litigation). However, practically in Ethiopia some of these measures that are supposed to be taken by non-state actors is continuing and also some of them are almost nil (non-existent) due to those restrictive provisions of the 2009 CSO proclamation and lack of government recognition of initiatives. Since the proclamation doesn't allow those "Foreign Charities and Ethiopian Residents Charities" which receive more than 10% of their funds from foreign sources to work in the areas of child rights a number of these CSOs has re-registered as Ethiopian Residents Charities not to weaken their financial capacity.

Moreover, even those "Ethiopian Charities" that are entitled to promote and enhance the protection of child rights have weak financial capacity due to the unwillingness of donors to fund these CSOs that are working in an environment of uncertainty and also due to the difficulty of raising funds locally. So that, these organizations are not functioning effectively. In supporting this argument my informants further contended that unlike Kenya in Ethiopia let alone to organize children's parliament and enhance their participation in the issue which address them CSOs are not able to submit shadow reports to the Committee on the Rights of Child.<sup>62</sup> Thus, in Ethiopia CSOs are not functioning as they are supposed to be due to the shift of previous CSOs that were working on child rights protection and also the low financial capacity of these Ethiopian charities. Moreover, those Ethiopian CSOs that are entitled to

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<sup>62</sup> Anonymous (2015) - Child Development and Welfare Forum-, CCRDA-Thursday19/02/15, 8:50-9:30 am., Anonymous (2015) -Child Protection Department, Save the Children- Friday- 1/04/15, 9-10:30 am, and Sisay Degene (2015)- Child Friendly National System and Structure Program Department, Save the Children- Wednesday-25/03/15, 2:10-3:30 pm.

work on child rights let alone to protect the rights of children effectively the survival of them is under question with such weak financial base i.e. 90 % locally generated fund.

In the same vein, Miheret also argued as the funding restriction of the CSOs law forced many CSOs to shift their status as local CSOs as well as their participation in the human rights and democratic process of the country and re-register as Ethiopian residents CSOs or foreign charity. Even the very few CSOs registered as Ethiopian CSOs continue to suffer from shortage of funds so that some of them downsized themselves and where the other also ceased operation (Mihret, 2010:52 & 56). In line with Mihere, Ashagrie and Meskerem contended that even those few Ethiopian CSOs are facing the challenge of raising funds locally given the level of economic development and culture of donation to charitable purposes in the country is nonexistent. Thus, they may not be able to advocate for the rights of children to the level of the need or they are highly limited by the small amount of available funds for rights-based development work in Ethiopia. Moreover, this in turn makes void the main reason for which CSOs are protecting child rights or needed as independent monitor i.e. to hold states accountable and protect citizens from the abuses of the state is restricted (Ashagrie, 2012: 139 & Meskerem, 2009:30).

Whereas in Kenya these non-state actors are vibrant actors that contribute to the protection of the rights of children prominently by being independent monitor and taking certain measures to the extent of serving as ombudsman. In line with this in its report on the assessment of Kenya's child protection system the Government indicated that though there is overlap of services, CSOs in Kenya play a significant role by filling gaps left by the state in provision of child protection services, in particular through residential, educational and health services (Republic of Kenya, 2010:11-13). Among other child right focused NGOs are taking part in representing children in judicial proceedings and creating awareness very actively (Odongo, 2005:438 & Republic of Kenya, 2010:12-13). Beside the role of non state actors in Kenya reinforced not only due to the absence of legal restriction and their entitlement by virtue of Article 58 of the children's Act but also the prominent recognition that has given for their initiatives like children's parliament. In this regard Save the Children analysis base on Kenya's report to the Committee on the Rights of Child indicated that even at time when the children's Act was on process to be enacted CSOs as the initiation of children to forward their comments and also to take part in the collection as well as data discussion that has lead the compilation of Kenya's first and second periodic state reports to the UN Committee on the Rights of the Child has got recognition (Save the Children, 2006:1).

Based on the data it can be inferred that, since giving weight to the views of children is real challenge as compared to simply “listening”, it requires the means via which states conduct their interaction with children and take measure based on their need or rights guaranteed in the convention. Thus, though the children’s parliament needs awareness rising among those regions that are not giving attention to it and also adequate funding, the development of children’s parliament by EIO unlike KHRC as per the calls for the NHRIs to develop their own project (agendas) is fascinating progress that is giving real sense to child rights protection due to their direct participation. Beside, EHRC and KNHRC also has promising practice of giving training that promote the rights of children so as to enhance their protection, checking the conformity of laws in light of the CRC as well as giving subsequent comment on draft legislations and following up the implementation of laws while investigating matter in respect of child rights. However, unlike Kenya the challenge for implementing the convention in Ethiopia is the absence of continuous assessment in order to ensure the effectiveness of training in practice, lack of appropriate facilities and services of the juvenile home (correctional center) as well as prisons, and also the enactment of restrictive CSOs proclamation that jeopardized the role of non state actors let alone to give room for their cooperation with NHRI.

With regard to CSOs proclamation, indeed as stated in the preamble of the proclamation the Government has enacted the proclamation with good intention of ensuring the realization of citizens’ rights to association indicated in the constitution and to assist and promote the role of CSOs in development of the Ethiopian people. However, the proclamation has devastated the work of those rights focused CSOs in general and child rights focused CSOs in particular i.e. first, the law forced many CSOs to shift their operation area from rights issue and reregistered as Foreign or Ethiopian Resident charity .Second, it has also devastated the financial capacity of those Ethiopian CSOs with its stringent requirement on those organization to generate 90% of their income locally where it is impossible given the level of economic development and the infant culture of donation. Beside the subsequent lack of adequate respect and recognition for CSO as independent monitoring institution and their initiative is also a challenge for the effective implementation of the convention. Moreover, unlike the KNHRC that is working closely in cooperation with NGOs in Ethiopia the challenge for effective functioning of the EHRC is the lack of this cooperation.

To summarize, as the analysis of the data revealed that despite the promising moves as there is certain challenge that needs legal and institutional measures in order to protect the rights of children effectively like Kenya. Thus, the next chapter point out the required legal and institutional measures that enhance the promising moves and solve the challenges so as to effectively protect the rights of children in Ethiopia like Kenya.

## Chapter Five

### Conclusion and Recommendation

The notion of protecting the rights of children has got birth and successive development till the 19<sup>th</sup> century. However, the land mark is the ratification of the 1989 CRC that gave further impetus to the development of the notion among states of the world. Ethiopia and Kenya are not an exception from this reality. Thus, the notion of protecting the rights of children has also developed further in Ethiopia and Kenya since their ratification of the Convention in 1991 and 1990 respectively. Due to their ratification both states are supposed to take legislative as well as administrative and other measures in order to implement and subsequently enhance protection of the rights of children. The analysis of the data shows Kenya is taking considerable legislative as well as administrative and other measures. With regard to the legislative measures-first, in line with the four key principle of the Convention Kenya has granted Constitutional protection to the rights of children because of its Constitutional inclusion of guarantee of rights for “everyone”. Moreover, by virtue of Article 163(4) (a) of the Constitution the ultimate power to interpret the Constitution is given for judges so that they can refer it while adjudicating children’s case. Second, Kenya revised the Adoption Act, Guardianship of Infants Act and Children and Young Person Act in compliance with CRC and enacted the 2001 Children’s Act that facilitated the implementation of the Convention for it entails the mechanism, procedure and remedies while implementing the Convention. Moreover, in order to update the Act Kenya is currently revising the Act.

With regard to administrative and other measures Kenya has established self-monitoring mechanism i.e. NCCS &DCS as a semi-autonomous government agency under MOGCSD with a specific mandate of ensuring the implementation of the CRC. This enabled the institution to make children more visible and also follow up the implementation of the Convention effectively hand in hand with state and non-state actors. Kenya has also established KNHRC as independent-monitoring mechanism with a mandate for promoting and protecting human rights that include child rights. Beyond this, since non state actors like NGOs and CSOs are the vibrant actor in protecting the rights of children for there is no legal restriction and also subsequent recognition of their initiatives the Commission is also working closely with them.

Moreover, in order to monitor the implementation of the Convention as per what is supposed to be and in line with its mandate- first, NCCS & DCS as well as KNHRC while initiating law for review or reform is conducting consistent child impact assessment, forecasting the impact of proposed law on child rights and child impact evaluation, evaluating the tangible impact of a law that is being implemented on child rights together with state and non-state actors. Second, NCCS & DCS as well as KNHRC are promoting training and building capacity of those who are engaging in the implementation process in order to boost their understanding of the Convention for this let them to amplify the status of children as a right holder and respect for all of its provisions. Besides the training is systematic and ongoing - initial training and re-training as well as there is continuous assessment of trainings in order to ensure its effectiveness in practice. Third, NCCS & DCS as well as KNHRC are investigating institutions where the issues of children's are being addressed. Among other the investigation of institutions which host those children in need of care and protection as well as those children in conflict with the law shows that, though these institutions are not complete, they are not in condition to be considered as a challenge for the implementation of the Convention. Beside the effort of NCCS & DCS in order to expand and improve their services as well as facilities is commendable. Finally, indeed NCCS's & DCS's move to compile data and conduct research is at an infant stage. However, there is move for installing Information Management system (IMS) that enable to have disaggregated data with the nationally applicable indicators that address all of the rights guaranteed by the Convention. Thus, despite the stated snags, Kenya has taken legal and institutional measures that facilitated the implementation of CRC and this let the country to go at least a step ahead than Ethiopia in terms of protecting the rights of children effectively.

Indeed as the analysis of the data shows Ethiopia is also taking promising legislative as well as administrative and other measures. With regard to the legislative measures-first, in line with the four key principle of the Convention Ethiopia has granted Constitutional protection to the rights of children because of its Constitutional inclusion of guarantee of rights for "everyone". However, by virtue of Article 62 (1) & 83 of the Constitution the ultimate power to interpret the Constitution is given for House of Federation. Thus, judges feel as they have little role in interpreting the Constitution they cannot frequently refer it while adjudicating children's case. Second, Ethiopia has also given protection to the rights of children under the revised the Family Law, Criminal Code and Labor Proclamation in compliance with CRC.

Beside, again gaps are identified in Family law after its revision in 2000, the Criminal Procedure code of 1961 is being revised in order to make these codes in conformity with the CRC and also Proclamation 454/2005 has enacted in order enhance the implementation of the CRC in Ethiopian domestic legal order. However, yet the absence of domestic legislation that entail the mechanism, procedure and remedies while implementing the Convention has hindered the implementation of the whole provisions of the Convention, especially at the lower tier of the judiciary.

With regard to administrative and other measures Ethiopia has established self-monitoring mechanism i.e. MOWCYA with a mandate of ensuring the implementation of CRC. Indeed this has enabled the Ministry to make visible follow up the implementation of the Convention hand in hand with state and non-state actors. However, since the Ministry is entrusted with protecting the rights of broad section of the society namely women, children and youth, the Ministry more addresses the issue of women as compared to that of children. Ethiopia has also established EHRC & EIO as independent-monitoring mechanism with a mandate for promoting and protecting human rights that also include child rights. Beyond this, though non state actors like NGOs and CSOs are actor in protecting the rights of children, the legal restriction due to 2009 CSOs Proclamation and also subsequent lack of attention to their initiatives hampered non state actor's intensive work on rights issue let alone to work in cooperation with the Commission.

Moreover, in order to monitor the implementation of the Convention as per what is supposed to be and in line with its mandate- first, MOWCYA, EHRC & EIO while initiating law for review or reform is conducting consistent child impact assessment, forecasting the impact of proposed law on child rights and child impact evaluation, evaluating the tangible impact of a law that is being implemented on child rights together with state and non-state actors. Second, MOWCYA & EHRC is promoting training and building capacity of those who are engaging in the implementation process in order to boost their understanding of the Convention for this let them to amplify the status of children as a right holder and respect for all of its provisions. However, though the training is continuous and ongoing, there is no continuous assessment of the effectiveness of training in practice. Third, MOWCYA & EHRC is investigating institutions where the issues of children's are being addressed. Among other the investigation of institutions shows unlike those institution that host children in need of care and protection

those institution, which host children in conflict with the law are limited in number as well as crowded. Beside, those children in conflict with the law are held with adults in prison and also those children accompanying their mothers in prison are not being treated properly. Thus, though MOWCYA has started to build correctional center with good facilities and services, due to the lack of proper services and facilities yet the conditions of these institutions are considered as a challenge for the implementation of the Convention. Finally, indeed MOWCYA's move to compile data and conduct research is at an infant stage. However, there is move for installing Information Management system (IMS) that enable to have disaggregated data with the nationally applicable indicators that address all of the rights guaranteed by the Convention. And also EIO's move to organize children's parliament that enabled children to exercise their rights and let their voice be heard is strongly commendable progress.

Thus, in light of Kenya's experience the prospects for effective child rights protection in Ethiopia are the very existence of laws as well as their continuous revision and also institutions as well as their efforts like taking part in the law making process via conducting impact assessment and impact evaluation, installing IMS, organizing children parliament and giving training in order to protect the rights of children. However, there are also challenges for effective child rights protection in Ethiopia due to the absence of certain components that create more enabling or protective environment. These are the absence of domestic legislation that entail the mechanism, procedure and remedies for implementing the whole provisions of the Convention, self monitoring mechanism with adequate backing in terms of authority, budget and human resource, CSOs cooperation with independent monitoring mechanisms let alone to function independently in effective manner, continuous assessment of the effectiveness of training in practice, and also the absence of institutions with the necessary services and facilities in order to host children in conflict with law the necessary.

Since children's today is tomorrow's generation the analysis of the data implies as measures should be taken in order to solve the challenges indicated above and enhance the protection of children's rights in Ethiopia. In view of this, this paper attempts to suggest the following legal and institutional measure to be taken in order to make the protection of effective at least like Kenya.

With regard to legal measures:-

1. Ethiopia should enact domestic legislation that entails mechanism, procedures and remedies in order to implement the whole provisions of the Convention.
2. Ethiopia should have to revise the CSO law at least in manner that boost the financial capacity of those Ethiopian Charities and enable to continue their work on child rights i.e. to revise Article 2 of the Charities and Societies Proclamation No. 621/2009

With regard to institutional measures:-

- MOWCYA should restructure those directorates, which are addressing the rights of children with effective backing in terms of authority, budget and human resource in order to enable those directorates to protect the rights of children effectively given their vulnerability.
- Both MOWCYA and EHRC should have to assess the practical effectiveness of the trainings they are giving.
- MOWCYA should continue its move to build correctional center with good facilities and services in a strong manner in other regions too in addition to Addis Ababa.

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## **Appendixes**

### **Appendix 1**

#### **List of Informants**

Abera Hirketa( 2015) - Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 9-10 am.

Amsale Eshetu( 2015) - Children, Women and Disability Affairs Directorate, EIO- Friday 27/03/15, 10-11 am.

Anonymous (2015) - Child Development and Welfare Forum-, CCRDA-Thursday19/02/15, 8:50-9:30 am.

Anonymous (2015) -Child Protection Department, Save the Children- Friday- 1/04/15, 9-10:30 am.

Anonymous ( 2015) - Child Rights Promotion and Protection Directorate, MOWCYA- Friday- 20/02/15, 2-4:30 am.

Anonymous (2015) - Child and Women Human Rights Coordinator Office, EHRC-Monday- 23/02/15, 9-12 am.

Azmeraw Belay (2015) - Child Friendly National System and Structure Program Department, Save the Children-Thursday- 17/03/2005, 9:30-11 am.

Catherine Wanjiru Maina (2015) – Till the end of 2011 Assistant Director of Department of Children Service of Kenya. Now Senior Social Worker of AU’s Social Affair Departement- Wednesday-18/02/15, 8:45-11 am.

Eunice kilundo (2015)-Child protection & Psychosocial Support coordinator, Child Fund Office of Kenya-May 6-Email Interview.

Fasika Hailu ( 2015)- Children’s Legal Protection Center of Child Justice Project, Federal Supreme Court- Wednesday- 19/03/15, 10:30-12:15 am.

Fasil Mulatu ( 2015)-Center for Human Rights, Addis Ababa University- Friday-20/03/15, 11-12 am.

Anonymous (2015)-Coordinator of Child Development and Welfare Forum, CCRD-  
Thursday- 19/02/15, 8:50-3:30 am.

Meseret Girma (2015) - Child Rights Promotion and Protection Directorate, MOWCYA-  
Tuesday- 17/03/15, 2-3:45 pm.

Miheret Fisha (2015) - Child Rights Promotion and Protection Directorate, MOWCYA-  
Monday- 16/03/15, 2-10 pm.

Selamawit Girmaye ( 2015)- Children's Legal Protection Center of Child Justice Project,  
Federal Supreme Court- Monday- 25/03/15, 2-2:45 pm.

Sileshi kebede( 2015)- Adoption Avenues American Agency- Thursday- 07/04/15, 2:30-4 pm.

Sisay Degene ( 2015)- Child Friendly National System and Structure Program Department,  
Save the Children-Wednesday-25/03/15, 2:10-3: 30 pm.

Sitiyana bereda( 2015)- Children's Legal Protection Center of the Child Justice Project,  
Federal Supreme Court- Thursday- 24/03/15, 9-11:30 am.

Solomon Shumeye ( 2015 )- Child and Women Human Rights Coordinator Office, EHRC-  
Wednesday -25/03/15, 10:30- 12:30 am.

Tigabu Harege woyine ( 2015) - Child and Women Human Rights Coordinator Office,  
EHRC-Thursday- 24/03/15, 2-10 am.

WoldeHawariat Leyew( 2015)-Judge's Administration Forum, Federal Supreme Court-  
Thursday-12/05/15, 10-11 am.

Yona Birmeta( 2015)-school of Law, Addis Ababa University-Friday-20/02/15, 9-10 am.

Zaid Hassen (2015) –Children's Legal Protection Center of Child Justice Project, Federal  
Supreme Court- Wednesday- 25/03/15, 8:30- 9:50 am.

## Appendix 2

### Interview Guide Questions

#### Preliminary Questions for all interview guides

Name \_\_\_\_\_

Position in the organization \_\_\_\_\_

Time of interview \_\_\_\_\_

Date of interview \_\_\_\_\_

#### Interview questions designed for Ethiopian Ministry of Women, Child and Youth Affairs (MOWCYA)

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks.

1. How do you see the current protection of child rights in Ethiopian?
2. What are the challenges and prospects for effective child rights protection in the existing legal and institutional frameworks of Ethiopia?
3. How do you evaluate the successes (effectiveness) of the Ministry of Women Children and Youth Affairs (MOWCYA) in terms of child rights protection?
4. Do laws, which address child rights are reformed, reviewed or amended previously as a result of the Ministry's comment?
5. Beyond providing comment for the improvement of these legal frameworks for child rights protection how far the Ministry is effective in following up the implementation of these laws at police stations, courts and other institution for the effective protection is directly related with the implementation.

6. Is there any permanent department for compiling data and undertake research (study) on the objective realities faced by children? If so what are the findings as well as the recommendation of the studies and how far they are changed into practice?
7. Is there any permanent mechanism for coordinating all stakeholders, which protect the rights and well-being of children in the Ministry?
8. How those children in conflict with the law are being treated in correctional centers and prisons?
9. What are the measures that are being taken in order to improve the protection of child rights in Ethiopia?
10. What do you suggest to enhance the protection of child rights in Ethiopia?

### **Interview questions designed for Ethiopian Human Rights Commission (EHRC)**

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks.

1. How do you see the current protection of child rights in Ethiopian?
2. What are the challenges and prospects for effective child rights protection in the existing legal and institutional frameworks of Ethiopia?
3. How do you evaluate the successes (effectiveness) of the Commission?
4. Does laws, which address child rights are reformed, reviewed or amended previously as a result of the Commission's comment?
5. Beyond providing comment for the improvement of these legal frameworks for child rights protection how far the Ministry is effective in following up the implementation of these laws at police stations, courts and other institution for the effective protection is directly related with the implementation.
6. Is there any permanent cooperation between the commission and non state actors like CSOs, NGOs?
7. How those children in conflict with the law are being treated in correctional centers and prisons?
8. What are the measures that are being taken in order to improve the protection of child rights in Ethiopia?
9. What do you suggest to enhance the protection of child rights in Ethiopia?

### **Interview questions designed for African Union (AU)**

The following questions are designed to collect information concerning child rights protection in Kenya based on the legal and institutional frameworks so as to analyze the challenges and prospects for effective child rights protection in Ethiopia based on the legal and institutional frameworks.

1. How do you see the current protection of child rights in Kenya?
2. Kenya has effective child rights protection. So, what is the reason behind i.e. in terms of legal and institutional frameworks?
3. How do you evaluate the successes (effectiveness) of the Kenyan Ministry of Gender, Children and Social Development (MOGCSD) and also the effectiveness of Kenya National Human Rights Commission (KNHRC) in protecting child rights?
4. Does laws, which address child rights are reformed, reviewed or amended previously as a result of the Ministries and Commission's comment?
5. Beyond providing comment for the improvement of these legal frameworks for child rights protection how far the Ministry and commission is effective in following up the implementation of these laws at police stations, courts and other institution for the effective protection is directly related with the implementation.
6. Is there any permanent department for compiling data and undertake research (study) on the objective realities faced by children? If so what are the findings as well as the recommendation of the studies and how far they are changed into practice?
7. Do the Ministry and commission have permanent cooperation with non state actors like CSOs, NGOs?
8. How those children in conflict with the law are being treated in correctional Centers and prisons?
9. Are there any measures that are being taken in order to improve the protection of child rights in Kenya further?

### **Interview questions designed for Institution of Ombudsman (EIO)**

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks.

1. How do you see the current protection of child rights in Ethiopia in terms of the legal framework? What are the challenges and prospects for effective child rights protection within the existing legal framework?
2. How do you see the current protection of child rights in Ethiopia in terms of the institutional framework? What are the challenges and prospects for effective child rights protection within the existing institutional framework?
3. Do the Children's parliaments are protecting the rights of children effectively in Ethiopia? If not what is the challenge?
4. Do laws, which address child rights are reformed, reviewed or amended previously as a result of the Ministry's comment?
5. What do you suggest to enhance the protection of child rights in Ethiopia?

### **Interview questions designed for Academicians**

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks.

1. How do you see the current protection of child rights in Ethiopia in terms of the legal framework? What are the challenges and prospects for effective child rights protection within the existing legal framework?
2. How do you see the current protection of child rights in Ethiopia in terms of the institutional framework? What are the challenges and prospects for effective child rights protection within the existing institutional framework?
3. What do you suggest to enhance the protection of child rights in Ethiopia?

### **Interview questions designed for Child Justice Project of the Federal Supreme Court**

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks.

1. How do you see the current protection of child rights in Ethiopia in terms of the legal framework? What are the challenges and prospects for effective child rights protection within the existing legal framework?
2. How do you see the current protection of child rights in Ethiopia in terms of the institutional framework? What are the challenges and prospects for effective child rights protection within the existing institutional framework?
3. What are the measures that are being taken in order to improve the protection of child rights in Ethiopia?
4. What do you suggest to enhance the protection of child rights in Ethiopia?

### **Interview questions designed for judge's administration forum**

The following questions are designed to collect additional information concerning the judicial protection of child rights in Ethiopia as well as its challenges and prospects.

1. How do you see the current judicial protection of child rights in Ethiopia?
2. What are the challenges and prospects for effective judicial protection of child rights in Ethiopia?
3. Is there any measure that is being taken in order to improve the judicial protection of child rights?
4. What do you suggest to enhance the judicial protection of child rights in Ethiopia?

### **Interview questions designed Save the Children**

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks in general the contribution (role) of non state actors for child rights protection in Ethiopia in particular. Thus, since Save the Children is the one among those non state actors that are operating in Ethiopia concerning child rights issues the organization is selected in order to achieve the stated purpose.

1. How do you see the current protection of child rights in Ethiopia in terms of the legal framework? What are the challenges and prospects for effective child rights protection within the existing legal framework?

2. How do you see the current protection of child rights in Ethiopia in terms of the institutional framework? What are the challenges and prospects for effective child rights protection within the existing institutional framework?
3. What are the roles that are being played by Save the Children in order to protect the rights of children in Ethiopia?
4. How do you evaluate the success (effectiveness) of Save the Children in Ethiopia in terms of protecting the rights of children?
5. Is there any challenge and also prospect for effective functioning of Save the Children? If so what are the measures taken by the organization to solve the challenges?
6. How Save the Children is functioning till the promulgation of Ethiopian CSO law or is there any change concerning the operation of the organization?
7. What are the measures that are being taken in order to improve the protection of child rights in Ethiopia?
8. What do you suggest to enhance the protection of child rights by state as well as non state actors in general and Save the Children in particular in Ethiopia?

### **Interview questions designed for Christian Relief Development Association (CCRDA)**

The following questions are designed in order to collect information concerning the contribution (role) of non state actors for child rights protection in Ethiopia. Thus, Since CRDA is the one among those non state actors that are operating in Ethiopia concerning child rights issues the organization is selected in order to achieve the stated purpose.

1. What are the roles that are being played by CCRDA concerning child rights in Ethiopia?
2. How do you evaluate the success (effectiveness) of CCRDA in Ethiopia?
3. Is there any challenge and also prospect for effective functioning of CCRDA? If so what are the measures taken by the organization to solve the challenges?
4. How CCRDA is functioning till the promulgation of Ethiopian CSO law or is there any change concerning the operation of the organization?
5. What do you suggest to enhance effective protection of child rights by non state actors in general and CCRDA in particular in Ethiopia?

### **Interview questions designed for Adoption Avenues America**

The following questions are designed to collect information concerning child rights protection in Ethiopia as well as its challenges and prospects based on the existing legal and institutional frameworks.

1. How do you see the current protection of child rights in Ethiopia in terms of the legal framework? What are the challenges and prospects for effective child rights protection within the existing legal framework?
2. How do you see the current protection of child rights in Ethiopia in terms of the institutional framework? What are the challenges and prospects for effective child rights protection within the existing institutional framework?
3. What do you suggest to enhance the protection of child rights in Ethiopia?

## **Declaration**

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

Name: Birhan Teka

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This thesis is submitted for examination with my approval as an advisor of the candidate.

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Dr.Solomon Mebrie

June,2015