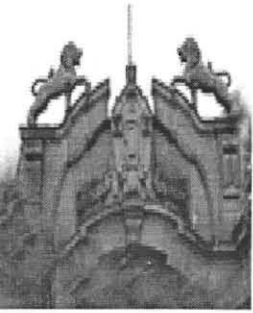
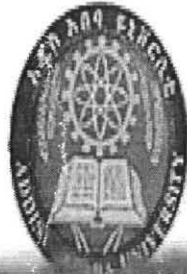


Addis Ababa
University

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**The Rights of Child Victims and Witnesses vs. the
Rights of the Accused to a Fair Trial: *The Case of
Ethiopia***

By: - Damene Tunea Tulle

Under the Supervision of Dr. Benyam Dawit Mezmur

November 2011

Addis Ababa

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Rights of the Accused to a Fair Trial: *The Case of
Ethiopia***

**A Thesis Submitted to the School of Law, Addis Ababa University (AAU),
in Partial Fulfillment of the Requirements for the Degree of Masters of Law**

BY

Damene Tunea Tulle

Under the Supervision of

Dr. Benyam Dawit Mezmur

November 2011

Declaration

I, student Damene Tunea Tulle, hereby declare that this thesis is an original and has never been presented before in any other university.

I also declare that the material/information presented in this thesis, to the best of my knowledge, has been duly acknowledged.

Student- Damene Tunea Tulle

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Date 22 Dec 2011

Supervisor - Dr. Benyam Dawit Mezmur

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Date 22 / Dec / 2011

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Date 26 Dec 2011

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Date Benyam T. 22/Dec/2011

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Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDCs	Children in Especially Difficult Circumstances
CJPO	Child Justice Project Office
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
DRC	Democratic Republic of Congo
FDRE	Federal Democratic Republic of Ethiopia
FFIC	Federal First Instance Court
GC	General Comment
ICC	International Criminal Court -
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JJPO	Juvenile Justice Project Office
MOLSA	Ministry of Labor and Social affairs
NGO	Non - Governmental Organization
SNNPRS	Southern Nations, Nationalities and Peoples' Regional State
UDHR	Universal Declaration of Human Rights
UNCATOC	United Nations Convention Against Transnational Organized Crime
UNESC	United Nations Economic and Social Council
UNICEF	United Nations Children's Fund
UN	United Nations
UNGC	United Nations General Assembly
UNODC	United Nations Office on Drugs AND Crime

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Abstract

Child victims and witnesses are vulnerable and hence need special protection and support services that are appropriate to their age and level of maturity. Special protection need to be given with a view to prevent child victims and witnesses from further hardship and trauma that may result due to their participation during criminal proceedings.

Accordingly, this thesis, first, explores the current normative responses in Ethiopia to protect the rights of child victims and witnesses of crime, in the context of criminal proceedings. It then discusses findings of the study in relation to legal and policy gaps in the current framework(s), violations to the child victims' and witnesses' right to privacy, low responses to their best interests, inadequate legal and psycho-social support services, inadequate procedures to seek redress for the harm they have suffered. Using semi-structured interviews with the judiciary and prosecution offices, and analyzing judicial decisions, the thesis further discusses key challenges that face child victims and witnesses in criminal proceedings.

The thesis argues that, child victim-witness sensitive criminal proceedings provide more effective means of respect for the rights of child victims and witnesses. Child victim-witness friendly procedures also serve as an instrument to bring the offender before the justice for the crimes committed against children.

The thesis concludes that, in Ethiopia, the existing normative framework(s) to protect the rights of child victims and witnesses needs legal and policy reforms with a view to better address the problems of child victims and witnesses during criminal proceedings. In specific terms, comprehensive legal schemes must be adopted by the Government to better address problems of child victims and witnesses.

Chapter One

General Background

1.1 Introduction

Despite the fact that both the international and national human rights instruments provide the minimum standards to protect individual rights and freedoms, millions of children continue to suffer harm as a result of crime all over the world. The crime is sometimes committed against children by people whom they know, their family members, relatives, caregivers or friends.¹ In addition to the harm they suffer as the result of crime, child victims also suffer harms during the criminal justice process. The United Nations General Assembly has fully recognized that children suffer additional hardships during criminal justice process.²

These days, according to UNICEF estimates, between 500 million and 1.5 billion children are subject to violence throughout the world each year, and of these, more than 275 million children affirmed that they suffer domestic violence.³

The international and regional instruments on the rights of the child provide that, in all actions concerning children, the best interests of the child shall be given a primary consideration.⁴ As has been stated above, however, children suffer harm during criminal proceedings due to their age sensitivity and immaturity, participating as child victims and witnesses. Under the international and regional conventions on the rights of the child, a State Party is duty bound to take all appropriate measures and actions to promote physical and psychological recovery as well

¹The UN, Twelfth United Nations Congress on Crime Prevention and Criminal Justice Children, youth and crime; Working paper prepared by the Secretariat, Salvador, Brazil, 12-19 April 2010 (15 February) 2010 A/CONF.213/4

²Ibid, p.15; The UN General Assembly fully recognized that many national justice systems are not designed to take into account the special needs of children, particularly, vulnerable children. Millions of children throughout the world suffered harm as a result of crime and abuse of power. The rights of child victims and witnesses had not been adequately recognized at national level, and they suffer additional hardship when assisting in the justice process.

³ Ibid

⁴See Article 3 of the Convention on the Rights of the Child (hereinafter referred as the CRC), UN General Assembly Document A/RES/44/25 (12 December 1989); See also Articles 4 and 9(2) of the African Charter on the Rights and Welfare of the Child (hereinafter referred as the ACRWC); OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999. With regard to the child's best interest, both the CRC and ACRWC lay down a principle that in all actions concerning children, whether such action is undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be taken as a primary consideration.

as social reintegration of children, including child victims and witnesses.⁵ But, when the facts observed on the ground, the situation is different from what the legal instruments say. In this regard, it has been rightly stated that ill-treats and violence against rights of child victims and witnesses, and problems related to child-sensitive procedures in criminal justice process require immediate and far-reaching law reforms at national level so as to realize children's rights in a concrete manner.⁶

Likewise, there are international, regional and national human rights instruments that regulate the rights of the accused to a fair trial during criminal trial process. To state in a specific terms, the accused has the right to fair trial; to mention a few, the right to confront prosecution witnesses face to face, to cross-examine them and to secure the attendance of defense witnesses in the same conditions with the prosecutor.⁷ At this point, an important issue need to be raised is that can the accused absolutely exercise his or her fair trial rights without restrictions.

The ICCPR clearly stipulates that some of the rights of the accused to a fair trial can be restricted with a view to balance the competing rights and interests of others.⁸ Where the rights and interests of others are at stake, fair trial rights of the accused can be restricted to the reasonable

⁵Ibid, see the preamble, Articles 12(2) and 39 of the CRC, see also the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography, adopted in 2000; see also n. 4 above, the preamble, and Articles 1 (1), 16 (1), 27 of the ACRWC

⁶ Julia, S. Nielsen, *Children's Rights In Africa*; (200) A Legal Perspective, p.114

⁷See Article 14(1) of the International Covenant on Civil and Political Rights ((hereinafter referred as the ICCPR), Adopted by the UN General Assembly in resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976; See also Human Rights for the Administration of Justice: A manual on Human Rights for Judges, prosecutors and lawyers, the Right to a Fair Trial: Part II - from Trial to Final Judgment, p. 253; the fair trial rights of the accused includes the right to be tried by a competent, independent and impartial tribunal established by law, the right to a fair hearing including access to a court or tribunal, the right to equality of arms and adversarial proceedings; the right to a public hearing, the right to be tried without undue delay or within a reasonable time, the right to defend oneself in person or through a lawyer of one's own choice which also includes the right to effective legal assistance in grave criminal cases, the right to free legal aid, the right to privileged communications with one's lawyer; the right to be present in person at one's trial, the right not to be compelled to testify against oneself or to confess guilt including prohibition on the use of evidence obtained through unlawful means or treatment, the right to call, examine, or have examined, witnesses, the right to free assistance of an interpreter, the right to a reasoned judgment, freedom from ex post facto laws, prohibition of double jeopardy, <<http://www.ohchr.org/Documents/Publications/training9chapter7enpdf>>; (Accessed on 2011)

⁸Ibid, see Article 14 (1) of ICCPR

extent. So, the accused's right to a fair trial is a fundamental right but is not treated as an absolute right.⁹

In order to assist the implementation of rights of child victim and witness at national level, the United Nations Economic and Social Council (UNESCO) has adopted common standards and guidelines¹⁰ to the criminal justice system of a State Party. These guidelines, as special legal tools, assist a State Party to implement the rights of children that are contained in the CRC in general, and to protect rights of the child victims and witnesses in particular. To state differently, rights of the accused to a fair trial should not undermine rights and interests of the child victims and witnesses. Hence, criminal proceedings have to balance the special circumstances of child victims and witnesses and the fair trial rights of the accused.¹¹

Accordingly, this study assesses and explores the existing legal and policy safeguards put in place in Ethiopia, at a Federal Government level, to protect the rights of child victims and witnesses during criminal proceedings. More importantly, it analyzes the legal loopholes and practical challenges to the full enforcement of rights of the child victim and witness. In short, the study explores and analyzes the possible areas of tension that exists between the rights of child victims and witnesses and the accused's right to confrontation during criminal proceedings. The study proposes the appropriateness of enhanced protection to the specific needs and rights of child victims and witnesses during the criminal proceedings, to meet the special rights of these children.

⁹Law Commission of India; 198th Report of the Law Commission on 'Witness Identity Protection and Witness Protection Programme', (August, 2006), <<http://lawcommissionofindia.nic.in/reports/rep198.pdf>> (Accessed on 10 December 2011)

¹⁰United Nations (UN); Resolution 2005/20, Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime; the Economic and Social Council, 36th plenary meeting 22 July 2005 <<http://www.un.org/docs/ecosoc/documents/2005/resolutions/Resolution%202005-20.pdf>>(Accessed on 24 November 2011); see the preamble of the which states that, the Guidelines are developed with a view to protect rights of children who are victims and witnesses of crime particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs in order to prevent further hardship and trauma that may result from their participation in the criminal justice process, to prevent the serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, in particular in cases involving sexual exploitation and to promote the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions.

¹¹United Nations, United Nations Office on Drugs and Crime Justice in Matters Involving Child Victims and Witnesses of Crime; Model Law and Related Commentary (New York, 2009) <http://www.unodc.org/pdf/criminal_justice/GuidelinesE.pdf> (Accessed on 20 November 2010)

1.2 Statement of Problem

Under the Ethiopian human rights system, the fundamental rights and freedoms specified in the Constitution, whenever it is required, shall be interpreted in a manner conforming to the principles of international human rights instruments that the country has ratified.¹²

With specific reference to children's rights, the FDRE Constitution,¹³ under the fundamental rights and freedoms Chapter, provides legal protections to children's rights and interests. In addition to all basic rights and freedoms that are enshrined in the Constitution, children are also accorded special protection due to their unique needs and situations. In this regard, Article 36 (2) of the Constitution states "In all action concerning children undertaken by public and private institutions of social welfare, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child."

Despite the concerted and organized efforts done to implement the rights of children through different legislations and policies in Ethiopia, the rights of child victims and witnesses are infringed in the criminal justice process while they participate in such process as victims and witnesses. Stated specifically, during criminal proceedings, inappropriate child victim-witness friendly courtroom environment, failure to consider and apply the relevant international and regional child rights instruments that are related to rights of child victims and witnesses, lack of comprehensive legal and policy document to protect and promote the child victim's right to privacy, inadequate legal, psycho-social support services during the criminal proceeding, inadequate remedial procedures for the child victim's right to claim compensation and restitution from the offender, absence of legal aid and counseling services for the child victims are some of the key problems against the full realization of rights of these children.

¹²See Article 13 (20 of the Constitution of the Federal Democratic Republic of Ethiopia (hereinafter referred as the FDRE), Proclamation No. 1/1995. 1st Year No.1 Addis Ababa – 21st August, 1995; See also Ibrahim Idris, "The Structure of the Human rights Regime of the 1994 Federal Democratic Republic of Ethiopia Constitution: Fundamental Rights and Freedoms" (2000) *Proceedings of the Symposium on the Role Courts in the Enforcement of the Constitution*, pp.54-55

¹³ Ibid, See Article 36 of the FDRE Constitution;

1.3 Research Questions

Based on the objectives, the research questions, this study try to answer include;

1. What are the specific legal and policy frameworks in Ethiopia, at the Federal Government level, to secure the full participation of child victims and witnesses during criminal proceedings?
2. Are these normative frameworks consistent with the international child rights instruments and standards?
3. What are the specific procedures applied by the Judiciary to protect the rights of child victims and witnesses? How these procedures balance the rights of the child victims and witnesses, and the accused's right to confrontation in the context of criminal proceedings?
4. What possible legal, policy and implementation devices can be recommended to address the issues of rights of child victims and witnesses?

1.4 Research Methodology

As has been stated, the study explores and analyzes the tension that exists between the legal protections granted to the specific rights of child victims and witnesses of crime, and the right of the accused to a fair criminal justice process.

Hence, the research design adopted to undertake the study is a qualitative one because it enables to provide an interpretive measurement in the protection and enforcement of the rights and interests of child victims and witnesses vis-à-vis the rights of the accused to fair trial.

The study also gives focus on case study, as strategies of qualitative inquiry. Accordingly, there would be case and content analysis of relevant legal and policy documents, court decisions, activities, schemes and processes of the issue at hand.

The methods of collecting data include examining relevant legal and policy documents, Court-case decision analysis and personal observations, and structured interview questions. In doing so, informed consent from the key respondents and target institutions shall be secured.

1.5 Literature Review

The issue of legal protection to the rights of child victims and witnesses during criminal proceedings has evoked a considerable amount of attention at international arena. Many have

written on the special protection need to be granted to child victims and witness. So far, only a few studies have discussed the Ethiopian approach of implementing the rights of the child victims.

The study conducted by Tadelu deals with the rights of the child to be protected from sexual exploitation, focusing on the law and practice in Ethiopia.¹⁴ She discusses that, children particularly girl children are subject to sexual exploitation, targeted to prostitution and accordingly they become vulnerable to undesirable pregnancy.¹⁵ Her study further discusses the basic factors and circumstances that causes for the child exploitation in the country.¹⁶ Tadelu concludes that there have been gaps in the current policies, plans and laws that govern the child protection in relation to protection to the child from the sexual exploitation. From her observation, Tadelu suggests that there has to be specific legal instruments to protect the rights of the children exposed to sexual exploitation, child protection units and child friendly courts.

Zebene Fikru's research discusses the Convention on the rights of the child with particular emphasis on the civil and political rights of international norms are considered when implemented.¹⁷ In his discussion, Zebene identifies implementation and decision of the public organs/officials does not conform to the principle of the best interests of the child.¹⁸ Apart from the implementation problems of the child rights, his study further touches up on the problems related with child victims, and concludes that child victims are ill-treated by law enforcement agencies, medical, courts and social workers.¹⁹

In relation to the principle of the best interests of the child, an important research conducted by W/ro Zenaye Tadesse can be mentioned here. W/ro Zenaye's study deals with the role of the Federal Government of Ethiopia, specifically, the role of the Legislative and Executive

¹⁴Tadelu Takele, 'The Rights of Child to be Protected from Sexual Exploitation: The Study of the Law and Practice in Ethiopia,' Addis Ababa University, School of Law, LBB Thesis,2008, Unpublished), AAU

¹⁵ Ibid, p.42

¹⁶ Ibid,P.46

¹⁷Zebene Fikiru, 'Implementation of the Convention on the Rights of the Child; With Particular Reference to Civil and Political Rights in Ethiopia,' Addis Ababa University, School of Law, (LMM Thesis, 2008, Unpublished), AAU

¹⁸ Ibid, p.10

¹⁹ Ibid, pp.186-187

Government of the Federal Government of Ethiopia in implementing the principle of the best interest principle of the child.²⁰ According to Zenaye, there are gaps in the law regarding the implementation of the principle of the best interests of the child in specific situations.

On the issue of protection to the rights of child victims and witnesses, Waterhouse's study is concerned with the need for improved protection, access to quality and increased support and counseling services for child victims in criminal justice process. But, this study mainly gives focus to the criminal justice system problems that undermine the effective prosecution of child sexual abuse in South Africa.²¹

The Kippenberg's article, similarly, examines challenges posed by about 200,000 women and girls victims of sexual violence, who are victims of sexual violence crimes in Democratic Republic of Congo (DRC). The study argues that, legal protection to the child victim's well-being in the context of criminal justice process is legal imperative and the task of providing protection and support to child victims seeking legal redress is more complex issue that needs to be focused.²²

There is also another major work related to the need for psychological support for child victim and witness. It analyzes psychosocial support as an essential tool for protection of the rights of children participating in transitional justice mechanisms. It also argues that the availability of psychosocial support in combination with effective protection strategies allow children to participate safely, improve the quality of their testimony and protect them against potential harm caused by their participation.²³

²⁰ Zenaye Tadesse Zeleke, 'The Role of Federal Government Organs in the Protection of the Best interests of the Child in Ethiopia,' Addis Ababa University, School of Law, (LLM- Thesis, 2008, Unpublished) AAU

²¹ Waterhouse, Samantha the Impact of Changing Criminal Justice Responses to Child Victims of Sexual Abuse, Open Society Foundation for South Africa, 2008, <http://www.osf.org.za/File_Uploads/docs/CJI_Occasional_Paper_4.pdf>, (Accessed on 25 June 2011)

²² Kippenberg, Juliane, Protecting Child Victims in Sexual Violence Trials in the DR Congo: Suggestions for the way forward, Article Submitted to the European Union Program for the Restoration of Justice in Eastern Congo' 24 November 2009; <<http://www.hrw.org/news/2009/11/24/protecting-child-victims-sexual-violence-trials-dr-congo-suggestions-way-forward>> (Accessed on 18 July 2011) Further, the study proposes that the Enhanced support and protection for child victims and their parents, wishing to seek legal redress is urgently required. Protection of victims means a strategy and set of measures aimed to ensure the safety, physical and psychological well-being, dignity, and privacy of victims, who are appearing as witnesses in criminal proceedings or otherwise seeking legal redress.

²³ Michels, An 'Psychosocial Support for Children: Protecting the rights of child victims and witnesses in transitional justice processes' (2009), Innocenti Working Paper No. 2010-14, Florence, UNICEF Innocenti Research Centre, <<http://www.unicef-irc.org>> (Accessed on 21 February 2011)

In Uganda, the Center*for Justice Studies and Innovation examined the country's child witness protection programs, and concluded that child witnesses are vulnerable during justice process. It's critical findings of the Center is, all processes, bearing in mind that whatever decision or process is taken at any levels, should be handled in line with the child's best interest so as to ensure that justice is done in all ways.²⁴

1.6 Objectives of the Study

This study is aimed at exploring and analyzing legal protections given to the rights of child victims and witnesses, and the accused's right to confrontation in the context of criminal proceedings, the duty of the Court and Public Prosecutors to protect the rights of child victims and witnesses during criminal proceedings.

The specific objectives of the study are:-

- To identify the legal and policy constraints in balancing the rights of child victims and witnesses with the accused's right to confrontation during criminal proceedings;
- To examine specific legal, policy and operational procedures that secure in obtaining evidences from child victims and witnesses in criminal trials;
- To distinguish the legal and policy frameworks that protects the specific rights of child victims and witnesses;
- To explore tensions that exist in implementing the rights of child victims and witnesses, and the rights of the accused to a fair trial during criminal proceedings; and
- To forward possible recommendations that aimed at the legal and practical solutions in alleviating the problems at hand.

1.7 Significance of the Study

Regardless of the constitutional guarantee to the rights of children in Ethiopia, this study contributes a lot by exploring and analyzing the protection yielded to the rights of child victims and witnesses during criminal proceedings. By analyzing the legal and policy loopholes,

²⁴The Center for Justice Studies & Innovations, Judicial Colloquium on Witness Protection; Protection and Participation of Child Witnesses: Law and Practice in Uganda, August 1-3, 2011, <<http://www.jlos.go.ug/uploads/Protection%20and%20Participation%20of%20Child%20Witnesses-%20CJSI.pdf>> (Accessed on 24 August 2011)

challenges of the enforcing laws and policies, and the possible sources of such challenges, this study, in the first place," tries to identify legal and policy gaps in the protection of child rights and witnesses. Secondly, the study analyzes the enforcement of the specific rights of child victims and witnesses, and the associated challenges of implementation in the context of criminal justice process. Hence, the study will serve as an important instrument for the judiciary and justice administration systems, in understanding and applying the specific rights of child victims and witnesses during criminal proceedings.

Finally, findings of the study suggest deeper understanding and proper enforcement of the rights and interest of child victims and witnesses in judicial proceedings, and accordingly, try to balance the child rights Vis-a Vis the rights of the accused to a fair trial. So, the study benefits both the academic, and the practical fields of the profession.

1.8 Scope of the Study

Different age groups of children might be exposed to different vulnerability situations, and accordingly require different responses from adults and private welfare as well as governmental institutions.

The Judiciary is one of the government organs having responsibility to protect children's rights. Hence, this study is particularly concerned with the legal protections granted to the rights of child victims and witnesses of crime in the context of criminal proceedings. It explores legal loopholes in the current normative and policy frameworks in Ethiopia, at Federal government level. The study then discusses key roles of the Federal Judiciary and Prosecution Offices of Ethiopia in protecting the rights of child victims and witnesses during criminal proceedings. In addition, regardless of the type and nature of crimes that committed against children, this study is, as has been stated above, mainly focused on; firstly, it identifies and analyzes gaps in the legal and policy frameworks, and assesses existing domestic legal safeguards so as to protect rights of child victims and witnesses during criminal proceedings, in light of international child rights and standards. Secondly, it explores key challenges faced the Judiciary and Justice Administration Offices while enforcing children's rights. Finally, the study provides strategies and practical

measures that must be taken to protect and promote rights of child victims and witnesses during criminal proceedings.

However, the geographical scope of the study is limited to the Federal Government of Ethiopia. It is particularly limited to the Federal Judiciary and Prosecution Offices due to resource and time constraints. Besides, the study does not provide comprehensively identifies and discusses challenges that faced the target institutions in protecting rights of child victims and witnesses during criminal proceedings due to lack of sufficient data from the institutions.

1.9 Overview of Chapters of the Study

The study is composed of five chapters. The first chapter provides the general background and presents the structures of the study. The second chapter deals with international and regional definitions, nature, principles and normative grounds of the accused's right to a fair trial, particularly, the accused's right to confrontation in criminal proceedings.

Chapter three mainly deals with international and regional normative frameworks for the protection of rights of child victims and witnesses during criminal justice process. It further discusses specific rights of child victims and witnesses under the international child rights instruments. During criminal proceedings, the major duties of the judiciary and prosecution offices are also carefully analyzed and examined in this chapter.

The fourth chapter is specifically devoted to analyzing the existing normative and policy frameworks of rights of child rights and witnesses in Ethiopia, at the Federal Government level. It identifies the possible legal gaps in current normative grounds. More importantly, it discusses problems of the Judiciary and Prosecution Offices of Ethiopia to enforce the specific rights of child victims and witnesses in the context of criminal proceedings.

The last chapter provides conclusions drawn out of the key findings of the study and put forward recommendations to crystallize the problems as well.

Chapter Two

The Rights of the Accused to a Fair Trial

2.1 Introduction

The right to a fair trial is one of the recognized and widely accepted principles of basic human rights, both at the national and international arena. The principle of fair trial has been considered as a fundamental value and it indisputably belongs to the category of customary norms of international law.¹ The principle is basically designed to protect individuals from arbitrary restriction or deprivation of their fundamental human rights and freedoms in criminal proceedings, particularly, the right to life and liberty.²

The accused's right to a fair trial has been duly acknowledged for long period in a human history. In the words of Lark, it has stated as follows:

*[T]he origin of the concept of fair trial is uncertain and have been conceived varyingly over years. However, the reason for its embodiment in the Constitutions is clear; to prevent such use of the courts for religious or political persecution as occurred during the ancient regimes. There has been universal agreement that the accused's right to confrontation was not intended by its drafters to be absolute and complete, but was meant to be qualified by certain limitations serving the necessities of proof.*³

It has been also stated that, though the UDHR is a non-binding international human rights instrument, it contains fair trial rights of the accused, and hence legal provisions that it contained

¹ Cassese, Antonio, *International Criminal Law* (2008, 2nd ed) p. 385; See also Jegede, Segun on the issue of the Right to a fair trial in international criminal law. Available at, <<http://www.nigerianlawguru.com/articles/international%20law/right%20to%20a%20fair%20trial%20in%20international%20criminal%20law.pdf>> It states that persons accused of committing a crime are entitled to certain minimum basic fair trial guarantees was embraced by some nations several hundred years ago. Some of the early instruments enacted to guarantee the rights of the accused in countries such as England, France and the United States of America were genuine precursors to modern human rights documents. The early instruments such as the Magna Charta of 1215, the Habeas Corpus passed by the English Parliament in 1879, the English Bill of Rights of 1689, the Virginia Bill of Rights of 1776, the Declaration of Independence of the United States of America 1776, the Constitution of the United States of America of 1787 and its First Ten Amendments ratified in 1791, and the French Declaration of Rights of Man and the Citizen of 1789, clearly demonstrate that the concept of justice is based on respect for the basic rights of every individual in society.

² Tiwari, Neeraj, 'Fair Trial vis-à-vis Criminal Justice Administration: A Critical Study of Indian Criminal Justice System; *Journal of Law and Conflict Resolution* Vol. 2(4), p. 66, (April 2010) <<http://www.academicjournals.org/jcr/PDF/pdf%202010/Apr/Tiwari.pdf>> Indian Law Institute, New Delhi, India. (Accessed on 23 February 2011)

³ Larkin, A. Murl, the Right of Confrontation: What Next? *Texas Tech Law review* Vol. 1:67, 1970, p. 66; See also the Columbia Law Review Association, the Accused's Right to a Public Trial, *Columbia Law Review*, Vol. 49, No. 1 (Jan., 1949), p. 115, <<http://www.jstor.org/stable/1118433>> .(Accessed on 23 March 2011)

have been served as authoritative interpretation of subsequent UN human rights instruments. So, UDHR has given the status of customary international law and the legal values as well as the rights therein are not mere declarations.⁴

From this it follows that, the principle of fair trial, as a fundamental value of human rights during all the stages of criminal justice process, is a valuable safeguard for the accused against the dangers of false conviction. Based on this understanding, the right to fair trial is a legal protection granted to the accused to be protected from any infringement of his or her rights in criminal justice process. The idea of fair trial, in criminal justice process, extends to cover the right to effective defense by applying the standards of the "equality of arms" for both parties in the proceeding.⁵ On account of this, the rule of fair trial rights is vital because it gives equal opportunity to the accused to confront and cross-examine the prosecution witnesses in a fair and just manner. In short, the rule of fair trial gives, to the accused and the prosecution, the right to be stand equally before courts of law, which gives them an opportunity to them to access the court and to present their cases accordingly.

In its scope of application, the accused's right to fair trial applies not only to the procedural matters of the case but also the substantive fairness of criminal proceedings,⁶ which, in turn, plays a vital role in determining the legitimacy of outcome of the case. So, the judiciary has to respect the fairness of the whole stages of the trial process. In order to meet international standards of fairness, fair trial rights of the accused need to constitute certain basic elements.⁷

⁴Khatriwada, P. Ishwor, Ensuring Fair Trial in Cases of Children in Conflict With the Laws, Nepalese perspectives, 22 June, 2005, pp 76-77

⁵See Article 14 (3) (d) (e) of the International Covenant on Civil and Political Rights (ICCPR), Adopted by the UN General Assembly in resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976; See also Zhang Jixi, 'Fair Trial Rights in ICCPR,' *Journal of Politics and Law*, Vol. 2, No. 4 (December 2009) p. 41, Southwest University of Political Science and Law, China, <<http://www.ccsenet.Org/journal.html>>; (Accessed on 21 March 2011)

⁶ Ibid, Zhang p. 39

⁷These basic and minimum standards include: the right to be presumed innocent until proven guilty; to be informed of charges promptly in detail and in one's own language; the privilege against self-incrimination, to remain silent, the right to the free assistance of an interpreter, to have a legal counsel of one's choice, the right to adequate time and facilities to prepare for trial, to equal access and equality before the law and the courts, the right to be tried without undue delay (speedy trial), the right to be present physically at one's trial, the right to a public hearing, the right to present own witnesses, the right to examine adverse witnesses, the right to be tried before a competent, independent and impartial tribunal established by law, the right not to be held guilty for an act or omission not constituting a criminal offence and the right against second trial for the same offence.

Where one or more of the elements of international minimum standards are not respected during the criminal justice process, then the trial process cannot be regarded as fair to the accused.

Thus, within the domestic jurisdiction of the Member States, criminal trial procedures need to ensure and protect the accused's right to fair trial in conformity with those rules and minimum standards provided under the international human rights instruments. If not, the legitimacy and moral authority of the court's decision would be easily eroded and the violations of the rights of the accused may have occurred.⁸

2.2 Legal Protections of Rights of the Accused to a Fair Trial Under International and African Human Rights Systems

2.2.1 Legal protections of Rights of the Accused to a fair Trial Under International Human Rights Instruments

As stated earlier, the accused's right to a fair trial is one of the most important principles recognized under the international human rights instruments. These instruments set out some basic rules and minimum guarantees of fair trial rights. So, international human rights treaties, upon ratification or accession, it sets out standards and creates legal obligations for State Parties since it contains binding commitments. Hence, under UN human rights system, a State Party that ratified or acceded a given human rights instrument is strongly recommended to make its domestic human rights system in conformity with the former.⁹ In relation to this, the UN Human Rights Committee, in the decision on *the case of Mr. Lenido Lumanog and Mr. Augusto Santos Vs. Philippines (State Party)*,¹⁰ the Committee held that, the Philippines, the government violated Article 14, paragraph 3 (c) of the ICCPR for unduly delaying the conclusion of the accused's appellate review. Hence, as State party to the ICCPR, it should provide "an effective and enforceable remedy in case a violation has been established."

⁸ D. A. Donovan "Leveling the Playing Field: The Judicial Duty to Protect and Enforce the Constitutional Rights of the Accused Persons Unrepresented by Counsel" *Ethiopian Law Review*, Vol. 1 No. 1 (August 2002) No.1, Ethiopian Civil Service College pp. 60-61

⁹ Jacob and et al, *International Human Rights Monitoring Mechanisms*, (2nd Revised Edition, 2009), Vol. 35, pp.4-10

¹⁰ UN, Human Rights Committee Views, Communication No. 1466/2006, Ninety-second session, CCPR, CCPR/C/92/D/1466/2006, 2008, 20 March 2008, <<http://www.humanrights.asia/news/ahrc-news/ALRC-STM-007-2008>>; The authors of the communication are Mr. Lenido Lumanog and Mr. Augusto Santos, Filipino nationals who, at the time of the submission of the communication, were on death row. They claim to be victims of a violation by the Philippines of articles 6, paragraph 1; 9, paragraph 1; 14, paragraphs 1, 3 (c) and 5; and 26 of the ICCPR.

There are numerous international human rights instruments, which contain the specific legal protections to the fair trial rights of the accused. The Universal Declaration of Human Rights (UDHR) states as "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of any criminal charge against him."¹¹

In addition to the protection provided in the UDHR, the accused's right to a fair trial has also been recognized and elaborated in subsequent legally binding international human rights instruments. The principle of fair trial rights of the accused has been broadly reaffirmed under the International Covenant on Civil and Political Rights (ICCPR). The ICCPR specifies the right of individuals to a fair trial and public hearing by a competent, independent and impartial tribunal that is established by law.¹² Here, the Covenant deals with the basic elements of fair trial rights, as a minimum guarantees, that realized by Member State Parties in their domestic criminal justice process. Having considered it, Article 14 (1) of the ICCPR is the most important provision in protecting the accused during the justice process. It recognizes the accused's right to fair trial in more comprehensively,¹³ which specifically includes the right to confront adverse witnesses, to order the appearance of defense witnesses to testify in his or her favor, to be presumed innocent until proved guilty, to be tried without undue delay.

Bearing in mind the relevance of fair trial principles to the situation of armed conflicts, the Geneva Conventions and the Additional Protocols also regulate the accused's right to a fair trial during times of international and non-international armed conflicts.¹⁴ The Third Geneva

¹¹See Article 10 of the Universal Declaration of Human Rights (UDHR), adopted 10 December 1948, G.A. Res 217A, UN, 3rd sess., at 71, UN Doc A/810 (1948)

¹²Supra note 3, see Article 14 (1) Paragraph 1 of the ICCPR

¹³ Supra not 5, see Articles 14 (1-7) of the ICCPR; It comprehensively provides standards of fair trial rights of individuals charged with a criminal offence which include; right to a fair and public hearing by a competent, independent and impartial tribunal established by law, the right to be presumed innocent until proven guilty according to law of the State, the right to be informed promptly and in a detailed, the right to have adequate time and facilities for the preparation of his defense, the right to be tried without undue delay, the right to represent to present in person or to have legal assistance assigned if he or she cannot afford legal assistance and in the interest of justice, the right to free assistance of an interpreter, the right appeal (to have his conviction and sentence reviewed by a higher tribunal according to law)

¹⁴See the Common Article 3 of the Four Geneva Conventions of 12 August 1949, The United Nations, Treaty Series, vol. 1125, No. 17512, for the Protection of War Victims and Article 6 of Additional Protocol II of 1977; see also Articles 54, 64-74 and 117-26 of the Fourth Geneva Convention contain provisions relating to the right to fair trial in occupied territories. Additional Protocol I, Article 75 extends fair trial guarantees in an international armed conflict to all persons, including those arrested for actions relating to the conflict; See also Articles 96 and 99-108 of

Convention also recognizes the fair trial rights of prisoners of war. The Fourth Geneva Convention contains provisions relating to the right to fair trial in occupied territories. The Additional Protocol I also guarantee the fair trial rights during international armed conflicts to all persons, including those arrested for actions relating to the conflict. So, it can be pointed out correctly here that, the four Geneva Conventions and the two Additional Protocols guarantee the accused's right to a fair trial during times of international and internal armed conflict.

Further, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides legal protections to fair trial rights of the accused. It basically states "Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings."¹⁵

Interestingly enough, the Convention on the Rights of the Child (CRC), considering the child offender's specific situations, also grants legal protections to a fair trial rights of children. It specifically states that no child shall be deprived of his or her liberty unlawfully or arbitrarily.¹⁶ Furthermore, Article 37 (d) provides "Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."¹⁷

In an effort to ensure the fair trial rights of the accused, the statute of International Criminal Court (ICC) also provides that the accused shall be present during the trial except in special

the Third Geneva Convention. The Geneva Conventions and the two Additional Protocols assure the right to a fair trial even during periods of armed conflict. See also n. 10 above, in case of undue delay in proceedings.

¹⁵ See Article 7(3) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN general assembly in resolution 39/46 of 10 December 1984 at New York; entered into force on 26 June 1987

¹⁶ Article 37 (b) of the Convention on the Rights of the Child (CRC), adopted 20 November 1989, entered into force 2 September 1990) GA Res. 44/25 (1989), UN Doc. A/RES/44/25 (1989)

¹⁷ Ibid, see Article 37 (d), Article 40 (1) (2) of the CRC; See also Committee on the Rights of the Child General Comment No. 10 (2007); Children's rights in juvenile justice; CRC/C/GC/10, 25 April 2007 Geneva, 15 January-2 February 2007, Forty-fourth session paragraphs 40-67 provide fair trial rights of the child offender in a comprehensive way.

circumstances.¹⁸ Moreover, in determining the functions and powers of the Chamber, the Statute further states "The trial shall be held in public." The Trial Chamber may, however, determine that special circumstances require that certain proceedings be in closed session for the purposes set forth in article 68, or to protect confidential or sensitive information to be given in evidence."¹⁹ It basically states that in the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to "the following minimum guarantees, in full equality"²⁰ Thus, it can be said that the ICC Statute incorporates the best evolved, most comprehensive basic rules and standards that essentially constitutes fair trial rights of the accused.

By way conclusion, based on the aforementioned international human rights instruments and minimum standards provided therein, the accused has the right to fair trial in domestic criminal justice process. Accordingly, States Parties are required to realize these basic rules and minimum guarantees in their domestic legal systems so as to make the criminal trial fair to the accused.

¹⁸Article 63 (1) of the Rome Statute of the International Criminal Court (ICC), Adopted in Rome on 17 July 1998 and opened for signature and ratification entered into force on 1 July 2002; See Sub Article 2 of Article 63 provides the special circumstances stating that; If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.

¹⁹ Article 64 of the ICC, See all the reasons provided under Article 68 of the ICC

²⁰Article 67 (1) (a-g) of the ICC, the minimum guarantees provided to the accused includes; To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks; to have adequate time and facilities for the preparation of the defense and to communicate freely with counsel of the accused's choosing in confidence; to be tried without undue delay; Subject to article 63, paragraph 2, to be present at the trial, to conduct the defense in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it; to examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her; to raise defenses and to present other evidence admissible under this Statute; To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks; Not to be compelled to testify or to confess guilt.

2.2.2 Legal Protections to the Accused's Fair trial Rights Under African Human Rights Instruments

The African [Banjul] Charter on Human and Peoples' Rights (ACHPR) contains provisions related to the right of the accused to a fair trial.²¹ The African Charter recognizes the accused's right to fair trial by stating that:

*[E]very individual shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; the right to be presumed innocent until proved guilty by a competent court or tribunal; the right to defense, including the right to be defended by counsel of his choice; the right to be tried within a reasonable time by an impartial court or tribunal.*²²

It is obvious that, the above provision of the African Charter clearly defines the right to a fair trial and sets out the procedural guarantees. The promotion of the fair trial rights enshrined in the African Charter is also guided by the general principles stated as "State parties to the present Charter shall have the duty to guarantee the independence of the Courts, and shall allow the establishment, and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter."²³ In this case, the African Charter calls up on all Member States to adopt effective legislative and other measures so as to ensure the realization of the obligations provided in the Charter.²⁴

In order to elaborate the accused's fair trial rights that recognized under Article 7 (1) of the Charter, the African Commission on Human and Peoples' Rights has adopted a Resolution on the Right to Recourse Procedure and Fair Trial.²⁵ The Resolution provides the general principles which are essential requirements for the fair trial rights of the accused, particularly, fair and

²¹ Articles 3, 7 and 26 of the African Charter on Human and Peoples' Rights (ACHPR), adopted 27 June 1981 (entered into force 21 October 2001), OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

²² Ibid, see Article 7 (1)

²³ Ibid, see Article 1 of the African (Banjul) Charter

²⁴ Ibid, see the preamble of the Charter

²⁵ The African Commission on Human and Peoples' Rights; Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa /Doc No ACHPR/COMM/FIN (XI)/Annex VII, 9 March 1992; <<http://www.achpr.org>> (Accessed on 25 March 2011); the Resolution further elaborates Article 7 (1) of the Charter and guarantees additional rights of the accused, including: notification of charges, appearance before a judicial officer, right to release pending trial, presumption of innocence, adequate preparation of the defense, speedy trial, examination of witnesses and the right to an interpreter.

public hearings and impartial tribunal applicable to all legal proceedings. Specifically, it states "In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body."²⁶ It is worth to mention here that one of the peculiar natures of the African Charter is that, it does not contain a provision allowing Member States to derogate their obligations. Hence, under the African Charter, the accused's right to fair trial is even stronger than Article 14 (1) of the ICCPR, which cannot be derogated by the Member States in the former case.

In addition to the ACHPR, the African Charter on the Rights and Welfare of the Child (ACRWC), under Article 17 (1), provides set of fair trial rights to children. The ACRWC imposes obligation on State Parties to ensure that, every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth, and which reinforces respect for human rights and fundamental freedoms of others. Hence, it bounds a State Party to ensure every child accused in infringing the penal law shall be afforded legal and other appropriate assistance in preparation and presentation of his or her defense.²⁷ It also provides that States parties shall ensure that every child accused in infringing the penal law shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal.²⁸

2.2 Fair Trial Rights of the Accused in Ethiopia

The Constitution of the Federal Democratic Republic of Ethiopia (FDRE)²⁹ provides legal protections to safeguard the rights of accused in a criminal trial. Article 20 of the FDRE Constitution provides the rights of the accused during the criminal justice process.

²⁶Ibid, AU Principles and Guidelines on the Right to a Fair trial and Legal Assistance in Africa; See the General Principles under Articles 1, 2, 3 and 4.

²⁷See Article 17 (2) (c) of the ACRWC, which also provides that; every child accused in infringing the penal law shall be presumed innocent until duly recognized guilty, informed promptly in a language that he understands and in detail of the charge against him, entitled to the assistance of an interpreter if he or she cannot understand the language used, and be afforded legal and other appropriate assistance in the preparation and presentation of his defense.

²⁸ Ibid, See Article 17(2) (iv)

²⁹The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. 1st Year No.1 Addis Ababa – 21st August, 1995

Under the Constitution, one of the recognized rights of the accused is to be informed sufficiently about the contents and details of the alleged crime. The accused, where charged for criminal offence, shall be entitled to be informed promptly about the particulars of the charge in detail, where necessary, in a language that he or she understands.³⁰

Moreover, the accused has a constitutional right to fair hearing. It specifically states that:

*"Accused persons have the right to full access to any evidence presented against them, to examine witnesses testifying against them, to adduce or to have evidence produced in their own defense, and to obtain the attendance and examination of witnesses on their behalf before the court."*³¹

Based on the above Constitutional provision, the accused is entitled to call a witness in his favour and to cross-examine the prosecution witnesses either by himself or through his legal counsel. Besides, the accused person is also entitled to have the assistance of an interpreter without payment if he cannot understand the language used at the trial for the offence. The competency of the interpreter to interpret the language of proceedings is key issue that needs to be considered in the context of the Ethiopian criminal justice process. Presumption of innocence is also a fair trial right, which the accused is entitled.³² In this case, until the accused's guilt is established by courts of law, the accused is presumed to be innocent.

The FDRE Constitution, however, does not clearly provide that the accused is entitled to be given adequate time and facilities³³ to prepare for his or her defence. According to the practice of the Courts of Ethiopia, the accused has given an adjournment in order to secure the services of a defence counsel or the attendance of witnesses in his defence.

2.3 The Right of the Accused to Confront Adverse witnesses: Is it an absolute Right?

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that "....in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the

³⁰ Ibid, see Article 20 Sub Articles (2) and (7) of the FDRE Constitution

³¹ Ibid, see Article 20 (3)

³² Ibid, see Article 20 (3)

³³ Mike Redmayne, 'Confronting Confrontation,' LSE Law, Society and Economy Working Papers 10/2010, p.2, London School of Economics and Political Science, Law Department <http://www.lse.ac.uk/collections/law/wps/WPS2010-10_Redmayne.pdf> (Accessed on 14 April 2011)

witnesses against him."³⁴ Based on this, the right to confrontation is a right to have a face-to-face confrontation with adverse witnesses, who are offering testimonial evidence against the accused. In order to exercise this right, the accused has to physically present during stages of trial process since it enables him or her to attend the testimony offered by prosecution witnesses, and accordingly to consult with legal counsel.³⁵

In light of the above concept, as has been mentioned, the ICCPR states that the accused has a right to examine, to have examined the witnesses against him or her, and to obtain the attendance and examination of defense witnesses under the same condition as opponent witnesses.³⁶ Simply put, the right to confront the prosecution witnesses is the key aspect within the scope of standards of fair trial rights.

The most important aspects of the accused's right to confrontation include; first, the right to cross-examine prosecution witnesses. The accused's right to cross examine the prosecution witnesses is absolutely necessary to detect and expose any falsehood or inaccuracy of testimony offered by prosecution witnesses.³⁷ Secondly, the accused has a right to physically present in the courtroom and to confront prosecution witnesses at the time of testimony offered. However, this right of the accused can be excepted where the trial involves some special circumstances, for instance, where the prosecution witnesses are children. Hence, procedures allowing child witnesses to testify by video link could be constitutional.³⁸ Thirdly, the accused has the right to know the identity of prosecution witnesses, which may also be necessary to the defense and cross-examining witness for possible impeachment.³⁹ All these aspects of the accused's right to confront the prosecution witnesses make the criminal justice process fair and equitable to both parties in the proceeding. This opportunity creates a chance to the accused to test the credibility

³⁴ Ibid, p. 2

³⁵ Lesnie, Vanessa, What is a Fair Trial? A Basic Guide to Legal Standards and Practice March 2000 the Lawyers Committee for Human Rights p.18, <http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf> (Accessed on 12 April 2011)

³⁶ Supra note 8, see Paragraph 3 (e) of Article 14 (3) (e) of the ICCPR

³⁷ Supra note 1, Cassese, p. 386

³⁸ Ibid, p. 385; See also n.33 above, pp. 6-7; According to Clark, the accused's right to confrontation involves the relevant witness testifying in his or her presence at trial, being able to put questions to prosecution witnesses. But, departure from this generally accepted perspective of right to confrontation may be permissible and constitutional. In this regard, in the case of *Crawford Maryland v Craig*, 497 US 836 (1990), a 5-4 majority decision, the United States Supreme Court ruled that procedures allowing child witnesses to testify by video link could be constitutional.

³⁹ Ibid

and reliability of testimonial evidences offered by the prosecution witnesses, and to expose any underlying prejudices and biases therein.

In relation to the above concept, however, one may question that, can the accused enjoy the right to confront face to face, and cross examine prosecution witnesses without any restrictions? The answer to this question compels to look for the available theoretical and normative grounds as well as practices both at international and national levels, if any. The test laid down by the international human rights instruments is that, the accused's right to a fair trial can be restricted to a reasonable extent, with a view to ensure the rights of victims and witnesses of crime.⁴⁰ As it will be indicated below, the law seeks to balance those rights of the accused in one hand and the specific rights of victims and witnesses on the other hand. However, it does not mean that such right of the accused can be enjoyed without restrictions.

With regard to the accused's right to cross examine the prosecution witnesses, Mr. Ian stated it as follows:

[t]he right to confrontation is subject to numerous limitations and exceptions. It frequently loses the priority that might be suggested by its apparent status. The pressure for modification of the right to confrontation has continued to increase. It is shrinking right. Many jurisdictions have introduced a range of special measures to ease the task faced by vulnerable and intimidated witnesses in giving evidences. Again the Scope of these measures is expanding. Orders for witness anonymity and legislations to these effects have made in a number of jurisdictions. All these developments cut back, in various ways, the scope of a right to confrontation. Such right may have been established in the common law but, any idea that it has some unique or permanent would seem to be myth. Hence, based on this theoretical grounds, the accused may have the right to cross examine a witness against him but no right to confront in a physical sense, as in a case of special measures for vulnerable witnesses.⁴¹

⁴⁰Supra note 34, see Article 14 of the ICCPR

⁴¹Dennis, Ian 'The Right to Confront Witnesses: Meanings, Myths and Human Rights,' *Criminal Law and Human Rights Review, Faculty of Law, UCL*, (2010) pp 265-268, <<http://agc-wopac.agc.gov.my/e-docs/Journal/0000016534.pdf>> (Accessed on 05/07/2011)

In justifying the restriction on the accused's full enjoyment of rights to confront the prosecution witnesses, the ICCPR, as a normative ground, provides as follows:

*"..... The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice....."*⁴²

For reasons given hereinabove and considering the special situation of children, at international level, there has been a pressing legislative need to intervene and to provide legal protections to child victims and witnesses in criminal justice process. The legal protections accorded to child victims and witnesses are desirable because it heavily contributes to promote and protect the rights of children contained under the CRC.

In addition to the international human rights instruments that impose restrictions on the accused's right to fair trial, the right to confront prosecution witnesses, particularly, child victims and witnesses has also been considered in the criminal proceedings. In this regard, the experience of Judiciary in India shows that, the accused's right to a fair trial is treated not as an absolute right. For instance, in a case, *Kartar Singh v. State of Punjab* (1994) 3 SCC 569, the Indian Supreme Court upheld the validity of keeping the identity and address of a witness secret upon certain contingencies, and to withhold the names and addresses of witnesses. The court held stating "the right of the accused to cross-examine prosecution witnesses was not absolute but was subject to exceptions."⁴³ In another case, in a case, *Sakshi v. Union of India* (2004) 6 scale 15, the Supreme Court of India, laid down that "Certain procedural safeguards had to be followed to protect the victim of child in sexual abuse during the conduct of the trial."⁴⁴

⁴² Ibid, Article 14 (1) of the ICCPR; See also the Statute of the ICC

⁴³ Law Commission of India's Consultation Paper on Witness Protection, 13 August, 2004, Available at <<http://lawcommissionofindia.nic.in/Summary%20of%20the%20Consultation%20paper%20on%20Witness%20protection%20AND%20Questionnaire.pdf>>; see case *Kartar Singh v. State of Punjab* (1994) 3 SCC 569 the Supreme Court decision

⁴⁴ Ibid, See the case, *Sakshi v. Union of India* (2004) 6 Scale 15 the Supreme Court referred to the 172nd Report of the Law Commission

It has been argued that, where child victims and witnesses are allowed to give shielded testimony in the courtrooms, there is high possibility of prejudice to the accused resulting from such shielded child witnesses, and children's memories, thoughts, and statements can easily be influenced by adults regardless of their truthfulness.⁴⁵ Accordingly, they also argue that such procedures unjustly compromises the constitutional rights of the accused with those rights of the child victims and witnesses, and diminishes the presumption of innocence guaranteed to the accused in criminal proceedings.⁴⁶

However, during the criminal proceedings, the specific legal rights of child victims and witnesses, possibly, conflict with fair trial rights of the accused in many circumstances. For instance, where the accused personally joins the child victims and witnesses face-to-face in courtrooms, the child can be exposed to psychological and emotional abuses such as mental distress, feelings of emotional distress, isolation and confinement to home.

With regard to roles need to be played by the judiciary to protect the rights of women and children, it has stated that:

*[t]he Judiciary can strongly reinforce the message that violence on women and children is a serious criminal matter for which the abuser will be held accountable. The judge sets the tone in the courtroom and makes the most critical decisions affecting the lives of the victims of women and children. Therefore, be sensitive to the dynamics of domestic violence in order to pass equitable verdicts. Sensitization of the judiciary to issues of women and children is critical.*⁴⁷

Having considered the child victim's exceptional circumstances, and on the basis of Article 14 of the ICCPR that allows reasonable restrictions to the enjoyment of the accused's right to fair trial, the Court can impose reasonable restrictions on the exercise of fair trial rights of the accused. In specific terms, the Court can prevent the accused from raising any kind of cross-examination questions, which are irrelevant to the facts or confusing, repetitive, and prejudicial questions, or

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Coomaraswamy, Radhika Combating Domestic Violence: Obligations of the State, (June 2000), Innocenti Digest, <http://www.unicef-irc.org/publications/pdf/iwp_2010_13.pdf> (Accessed on 11 August 2011)

that may harass the child victims and witnesses.⁴⁸ In these regards, the accused may be prevented from directly putting cross-examinations questions on child victims and witnesses. So, the right of the accused to an open, fair and public trial is fundamental but it is not treated as an absolute right that he can enjoy without restrictions.

In conclusion, the accused may be prevented from confronting adverse witnesses face-to-face with a view to balance the child victims' and witnesses' rights. Special protection for rights and best interests of the child victims and witnesses is paramount importance in promoting their best attainable standard of development.⁴⁹

2.4 Conclusion

This chapter discussed that, the accused has a right to a fair trial during the criminal trial process. It is the fundamental right of the accused under the international, regional and national human rights systems. The accused's right to a fair trial is a set of bundle of related but separated rights⁵⁰ which enables him or her to equally confront the prosecution during the criminal justice process. As it is clearly stated under the ICCPR, the accused's right to a fair trial is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary suppression of basic rights and freedoms.⁵¹

However, despite its fundamental importance to the accused during the criminal trial process, the right to fair trial is subject to numerous limitations. It is not the right which the accused enjoys without restrictions. Legitimate restrictions could be imposed on the accused's right to a fair trial. These restrictions could be imposed as a special measures intended to protect the vulnerable and intimidated groups, for instance, child victims and witnesses, to enable them to give better evidence in a friendly courtroom environment.

⁴⁸Gershman, Bennett L., 'Child Witnesses and Procedural Fairness' (2001) p. 594, *American Journal of Trial Advocacy* Vol. 24-585; Paper 127 <http://digitalcommons.pace.edu/law_faculty/127> (Accessed on 23 February 2011)

⁴⁹United Nations (UN), United Nations Office on Drugs and Crime (UNODC); Handbook for Professionals and Policymakers on Justice Matters involving Child Victims and Witnesses of Crime Criminal Justice Handbook Series (2009) <http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf> (Accessed on 21 January 2011)

⁵⁰ Supra note 41, Dennis, Ian p. 270

⁵¹ Supra note 5, see Article 14 of the ICCPR

Chapter Three

Legal Protections of the Rights of Child Victims and Witnesses

3.1 Introduction

The previous chapter discussed accused's rights to a fair trial under the international and regional human rights frameworks. It dealt with the normative basis of the fair trial rights of the accused in the context of criminal justice process.

In recent years, much attention has been given to the child's protection from physical assaults, emotional distress or neglect which may cause the children's victimization. So, the specific rights child victims and witnesses of crime have accorded legal protections under international and regional child rights instruments, standards and Guidelines. At present, the normative safeguards are put in place so as to address the problems and victimization that resulted due to the child's involvement in the criminal justice process. In order to implement the specific rights of children, the judiciary and other law enforcement agencies of the government should carefully consider and enforce¹ the international legal protections at national level. On top of that, effective legislative, administrative and other appropriate measures should be taken by the State Party to realize the rights of children.²

However, lack of effective legal protections and support mechanism make the incidence of crime harder for children to deal with their worries and emotional impact of abuse.³ Hence, this Chapter, in the following parts, presents the legal protections provided by international and regional child rights instruments to the rights of child victims and witnesses during the criminal justice process, in light of fair trial rights of the accused. It point out and analyze the existing legal safeguards which benefits to enforce rights of child victim and witness vis-à-vis the accused's fair trial rights. The chapter, first, discusses specific rights, needs and situation of child

¹ Lansdowne, Geri son, *Children's Rights, A Second Chance: Save the Children* (September, 2000) p. 59 According to Lansdowne, all actions, policies and practices should be carefully considered and assessed to ensure the that they take full account of the best interest of children. London, UK

²Committee on the Rights of the Child, General Comment No.5 (2003) General measures of implementation of the Convention on the Rights of the Child; Thirty-fourth session 19 September-3 October 2003 CRC/GC/2003/5 27, 2003; See paragraphs 17-18, 26-27

³Richman, Naomi, *Communicating with Children: Helping Children in Distress: Save the Children* (2000) p.69

victims and witnesses, and then highlights the possible areas of tension that exists between the protection granted to the children victims and witnesses, and the accused's right to a fair trial during the criminal justice process.

3.2 Legal Regimes in the Protection of the Rights of Child Victims and Witnesses

In criminal justice process, child victims are usually called to appear before proceedings as witness of the alleged crime. When coming into contact with the criminal justice system, they may be exposed to physical, psychological and social harms due to their age and immaturity.⁴ The vulnerabilities of child victims and witnesses in the criminal justice process, unless special measures taken and protections granted, will continue as a secondary victimization while they participate in the trial process.⁵ During their participation, particularly, when they appear to offer testimonial evidences in courtroom proceedings, they are intimidated, confused and exposed to additional victimization due to child-unfriendly environments therein. To state in specific terms, in assisting the justice process for finding the truth and making justice, it has been observed that victims and witnesses show distress and are very frightened when they appear before courts.⁶

Similarly, questions of examination and cross-examination posed by the prosecutor, the accused and/or defense lawyer, where not well controlled, causes mental distress on child victim and witness, they feel shame and sense of guilt while giving testimonial evidences.⁷ In this case, it can be said that, the courtroom environment is disturbingly provocative to child victims and witnesses. Considering its impact on children, the judicial criminal proceedings are required to provide the specific rules of procedures that regulate the child's participation. Hence, at national

⁴An Michels, 'Psychosocial Support for Children: Protecting the rights of child victims and witnesses in transitional justice processes' (2010), Innocenti Working Paper No. 2010-14, Florence, UNICEF, Innocenti Research Centre, pp. 19-20, <http://www.unicef-irc.org/publications/pdf/iwp_2010_14.pdf> (Accessed on 21 February 2011); According to this study, children's involvement in the justice process is not only necessary to provide evidence of the alleged crimes, but also it creates an important opportunity to have the children's voices heard in the process. Due to their age, however, child witnesses are particularly vulnerable to violation of their rights and to be psychological harm by the judicial process.

⁵United Nations Office on Drugs and Crime, Cross-Cutting Issues, Juvenile Justice, Criminal Justice Assessment Toolkit (New York, 2006), p.21 <http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/2_Juvenile_Justice.pdf> (Accessed on 24 February 2011)

⁶Apreotesei Ioana-Alina, the Victims of the Crimes under the Jurisdiction of the International Criminal Court – Some Aspects of Legal Responsibility, *Miskolc Journal of International Law Vol. 4., 2007, No. 1. P. 97*, <<http://epa.oszk.hu/00200/00294/00009/pdf/20071apreotesei1.pdf>> (Accessed on 12 January 2011)

⁷Supra note 1, Michaels, p.8

level, special protection and recovery schemes need to be arranged for the child victim and witness during criminal justice process, in conformity with their specific rights and needs accorded under the CRC.⁸

On top of that, it can be fully understood from the experiences of the South Africa's Criminal Procedure Act,⁹ the prosecution of crimes committed against children cannot succeed without proper support and protection mechanisms for the child victims and witnesses. During the criminal justice process, the judiciary and law enforcement agencies may fail to understand specific rights and interests of child victims and witnesses that provided under international, regional and national child rights instruments.

The practical significance of the participation of child victims and witness in the justice process can be ascertained from two different angles. First, it heavily contributes to produce crucial evidences of the prosecution of the case. Secondly, it creates opportunity for children to have their voices heard in judicial criminal proceedings.¹⁰

With these ends in view, the UN, Economic and Social Council has recently focused on increased attention on the position of child victims and witnesses of crime, and hence adopted "the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime."¹¹ Though the guidelines are not binding legal instruments, it provides clarifications on principles and standards contained in the CRC, and suggest specific protection mechanisms that

⁸ See Article 39 of the Convention on the Rights of the Child, General Assembly resolution 44/25 of November 20, 1989 Entry into force September 2, 1990

⁹ Mahony, Chris The justice sector after thought: Institute of Security Studies (2010) Witness protection in Africa; See the South Africa's Witness Protection Unit: Africa's first domestic protection mechanism, pp.95 107, <<http://www.iss.co.za/siteimages/WitnessProt.pdf> 9> (Accessed on 20 March 2011); The South African Criminal Procedure Act, Witness Protection Act 1998, under section 7, governs in-court protective measures. It provides for a closed hearings, anonymity, testimony via closed-circuit television, and testimony without fear of self-incrimination. Children are also allowed with intermediaries but it has no provision for psychosocial accompaniment for psychologically vulnerable witnesses exists.

¹⁰ Supra note 4; See also Article 12 of the CRC, Articles 4(2) and 7 of the ACRWC, which provides the child's right to participate in the judicial proceedings. Besides, see the Committee on the Rights of the Child, General Comment No. 12, the Right of the Child to be Heard, Fifty-First Session, Geneva, CRC/C/GC/12/ 20 July 2009, paragraph 64 which states, the right of the child victim and witness to be heard is also linked to the right to be informed about issues such as availability of health, psychological and social services, the role of a child victim and/or witness in the process, the ways in which "questioning" is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation, and the provisions for appeal.

¹¹ The UN, the Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (hereinafter referred as the Guidelines), Resolution 2005/20, 36th Plenary Meeting 22 July 2005

required by State Parties in the protection of rights of child victims and witnesses during the criminal justice processes.¹²

In addition, legal protection granted to the rights of child victims and witnesses are provided under several international and regional human rights instruments such as the UDHR,¹³ ICCPR,¹⁴ ICESCR,¹⁵ CRC,¹⁶ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor,¹⁷ the Optional Protocol to the Convention on the Rights of the Child on the Sale of children, Child Prostitution and Child Pornography,¹⁸ the United Nations Convention against Transnational Organized Crime,¹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,²⁰ the African Charter on Human and Peoples' Rights (ACHPR),²¹ African Charter on the Rights and Welfare of the Child (ACRWC),²² The African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.²³

Further, there are non-binding international declarations and standards provided to protect child victims and witnesses.²⁴ The Economic and Social Council passed resolutions with a view to

¹²Ibid, see the key objectives; see paragraph 3 (a) of the Guidelines; it states that the guidelines provide a practical framework to assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child, by parties to that Convention.

¹³The Universal Declaration of Human Rights (General Assembly resolution 217 A (III));¹³

¹⁴International Covenant on Civil and Political Rights (ICCPR), 1966, the General Assembly resolution 2200A (XXI); ICCPR, under Article 24(1), provides that every child shall have, without any discrimination as to race, color, language, race, religion, social origin, property or birth, the right to such measures of protection as are required by his status, as a minor, on the part of his family, society and the state.

¹⁵The ICESCR, 1966, under Article 10, states that special measures and assistance should be taken on behalf of all children and young person without any discrimination for reasons of parentage or other conditions.

¹⁶The United Nations, Treaty Series, vol. 1577, No. 27531

¹⁷The United Nations, Treaty Series, vol. 2133, No. 37245

¹⁸The United Nations, Treaty Series, vol. 2171, No. 27531

¹⁹The United Nations, Treaty Series, vol. 2225, No. 39574

²⁰The United Nations, Treaty Series, vol. 2237, No. 39574

²¹The African Charter on the Rights and Welfare of the Child; OAU Doc. CAB/LEG/24.9/49 July 1990 Entry into force November 29, 1999; the OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

²²The OAU Doc. CAB/LEG/ 24.9/49 (1990);

²³The ACHPR Doc No ACHPR/COMM/FIN (XI)/Annex VII, 9 March 1992

²⁴The non-binding instruments includes; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex); the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex); Guidelines for Action on Children in the Criminal Justice System (Economic and Social Council resolution 1997/30, annex); Recommendation concerning the Prohibition and

assist domestic laws, procedures, and practices so that the rights of child victims and witnesses fully realized in particular, and the Convention on the Rights of the Child in general.²⁵ These non-binding instruments provide some basic standards, norms, principles and guidelines to assist the domestic criminal justice process at large.

3.3 Specific Rights of Child Victims and Witnesses Under the International and African Human Rights Instruments

3.3.1 The Best Interests of the Child Victims and Witnesses

The principle of the best interests of the child is the most important standard of the CRC, which applies to all matters, particularly, matters of guardianship, and custody as well as access rights of the child.²⁶ State Parties are bound to ensure implementation of the best interests of children as a primary consideration in all matters affecting them. In this regard, the CRC states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."²⁷ The African Charter on the Rights and Welfare of the Child (ACRWC) also provides closely similar obligation to its Member States. Since the best interest of the child is linked with other rights of the child, for instance, with the child's right to freedom of thought, conscience and religion, the ACRWC imposes obligation on parents and legal guardians of the child, to provide guidance and direction in the child's exercise of these rights, considering the best interest and evolving capacities of the child. The CRC, however, imposes obligation on Member States to respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community, to provide appropriate direction and guidance to the child in the exercise of the rights recognized in the present Convention.²⁸

Immediate Action for the Elimination of the Worst Forms of Child Labor, 1999 (Recommendation No. 190); General comment No. 10: Children's rights in juvenile justice, 44th session, (2007) HRI/GEN/1/Rev.9 (Vol. II)

²⁵The Guidelines for Action on Children in the Criminal Justice System, annexed to Economic and Social Council resolution 1997/30, on Administration of juvenile justice.

²⁶ Alston, Philip, *The best Interests of the Child* (1994) p.27

²⁷Supra note 5, see Article 3 of the CRC.

²⁸Supra note 18, the ACRWC; Article 9(2) of the ACRWC; it states that parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of the child's right to freedom of thought, conscience and religion, having regard to the evolving capacities, and best interests of the child. See also Article 5 of the CRC, which provides, States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving

As it is mentioned above, any decision taken by either the government authority or private institutions concerning children must actively consider and involve the principle of the best interest of the child. A comprehensive approach shall be adopted so as to assess and balance the needs, and interests of the child. The principle of the best interest protects the child from any forms of abuse and neglect, particularly, protection as to the psychological, legal, social and economic interests as well as physical well-being of the child.²⁹ In this vein, protections accorded to the best interests of child victims and witnesses during the criminal justice process must include protections from physical, psychological, mental, emotional harms or from any other forms of hardship.³⁰ This implies that, while protecting fair trial rights of the accused, the best interests of child victims and witnesses must not be disregarded. Even though tensions exist between the best interests of the child and the best interest of the case, the importance of the child victims' and witnesses' participation in process of finding the truth, and justifying the loss as well as healing the wounds of terrible crimes must not be forgotten, which need to take in to account the child's best interests.³¹

In considering the child's best interest, and the accused's right to a fair trial, the obligation of a State party needs to be considered from two aspects. In the first place, where the accused is a child offender, then the treatment need to be given to both the child victims and the child offender may create a situation of difficulty. Here, the child offender has also the special guarantees for a fair trial. It obliges a State Party to ensure that every child alleged as or accused of having infringed the penal law receives fair treatment and trial.³² Besides, the child offender

capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

²⁹Bueren, Van Geraldine, *The International Law of the Rights of the Child*, (1998) pp 46-49

³⁰See Paragraph 8 (c) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, chapter III, Principles

³¹Gerard J. Mekjian and Mathew C. Varughese, Hearing the Victim's Voice: Analysis of Victims' Advocate Participation in the Trial Proceeding of the International Criminal Court, 17 *Pace Int'l L. Rev.* 1 (2005) p. 43 <<http://digitalcommons.pace.edu/pilr/vol17/iss1/1>> (Accessed 11 on March 2011); See also note 4 above, Michaels, An, p. 21; the fact that the participation of child victims and witnesses in the criminal justice process is necessary for effective prosecutions. However, it has been argued that sometimes there is tension between the best interests of the child and the best interests of a case. The value of the evidence a child can bring forward is a key factor in deciding whether or not a child should testify, especially in judicial mechanisms. However, given understanding of the needs and vulnerabilities of child witnesses and a good working relationship between the prosecutor and the support staff, it should be possible to reconcile the interests of the case with the interest of the child. A good prosecutor knows that justice benefits when the child on the stand is sufficiently supported and feels comfortable.

³²See Article 40 (1) (2) of the CRC State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's

has also the right that his or her best interest of the child to be primarily considered in all actions including government's actions.

Hence, both the child victim's best interest and the best interest of the child offender is equally competing each other. Thus, the special protections need to be granted to the best interests of the child victims and the best interests of the child offender may face enforcement problems. So, the judiciary and prosecution office shall critically consider case by case the competing interests of the child offender and the child victim case by case, before taking any actions.

From the above legal principles and standards, it is abundantly clear that, the judicial and law enforcement officials of the Member States, in all their actions, must prioritize and take considerations of the best interest of the child. Put specifically, the national criminal justice process should give careful thought to the physical, mental, spiritual, moral and social protections to the child victim and witnesses. To substantiate this idea, for instance, where the child victim has been traumatized as consequences of crimes committed against him/her, or feels distress in courtrooms while offering testimonial evidences, adequate protective measures and steps should be taken so as to ensure the child's to harmonious participation.

With regard to the guidelines, it suggests that there has to be a balance between the rights of the child victims and witnesses, and the fair trial rights of the accused.³³ Thus, it can be pointed out here that, the best interests of the child victims and witnesses should be balanced with the competing interest of the rights of the accused to a fair trial. Here, it has to be noted that the

sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming constructive role in society. See also Committee on the Rights of the Child General Comment No. 10 (2007); Children's rights in juvenile justice; CRC/C/GC/10, 25 April 2007 Geneva, 15 January-2 February 2007, Forty-fourth session; See paragraph 44, which states that, it is obvious that for a child alleged as, accused of, or recognized as having infringed the penal law, the implementation of the CRC and the specific general principles as well as provisions such as Articles 2, 3, 4, 6, 12, 37 and 40 of CRC are fundamental for a fair trial. See also paragraph 10, same General Comment 10, which also states the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

³³ Supra note 30, see Paragraph 7 (j) of the Guidelines, it recalls that justice for child victims and witnesses of crime must be assured while safeguarding the rights of accused and convicted offenders.

Guidelines intends to protect the best interests of the child not only from the point of direct and consequential effects of the crime,³⁴ but also it views to advance the role and capacity of the child in contributing to the criminal justice system.³⁵ To achieve these ends, the National Criminal trial proceedings must be conducive to the participation of the child and to fully reflect the children's right to be heard and express views as per Article 12 of the CRC.³⁶ Hence, the national criminal justice process must consider that the best interest of the child is not an independent right that exists separately, rather it is strongly linked with all other rights of the child such as the child's right to express views freely in all matters affecting the child, the Member State's obligation to undertake all appropriate legislative, administrative measures, and in all the actions of the implementing the rights of child.³⁷

Therefore, considering the basic principles and standards of the Guidelines and other instruments, States Parties of the CRC are expected to take all appropriate legislative and administrative reforms to ensure the best interest of child victims and witnesses, as a primary consideration in their domestic criminal justice process.

3.3.2 The Right to be Treated with Dignity and Compassion

Child victims and witnesses shall be treated with due care, sensitivity, fairness and respect at all stages of the criminal trial process with special attention for the child's personal situation, wellbeing and special needs, particularly, respect for physical and psychological integrity.³⁸

³⁴The United Nations, Office for Drug Control and Crime Prevention, Handbook on Justice for Victims: on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (New York, 1999), p.9 Here, the direct and consequential effects of crime refers to direct victimization and hardships that occur as a direct result of the criminal act; But the consequential impacts that results from the response of institutions and individuals to the victim, which commonly referred as re-victimization of the child.

³⁵ Ibid

³⁶The African Child Policy Forum, Harmonizing Laws in the Eastern and Southern Africa; In the Best Interests of the Child(2007) p.45; See also Rule 14 (2) of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) General Assembly resolution 40/33 of November 29, 1985

³⁷See Articles 3 (1), 4, 12, of the CRC; Articles 1(1), 4 (1) and 7 of the ACRWC, which all refer to actions undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. It requires active measures throughout Government, parliament and the judiciary. Every legislative, administrative and judicial body or institution is required to apply the best interests principle by systematically considering how children's rights and interests are or will be affected by their decisions and actions, for example, a proposed or existing law or policy or administrative action or court decision, including those which are not directly concerned with children, but indirectly affect children; See also note 7 above, General Comment 12, paragraph 71, which states that the best interests of the child, established in consultation with the child, is not the only factor to be considered in the actions of institutions, authorities and administration. It is, however, of crucial importance, as are the views of the child; See also n. 3 above, Committee on the Rights of the Child, General Comment No. 5 (2003)

³⁸Supra note 27, See Paragraph 8 (a) of the Guidelines; see also n. 32 above, pp. 34-35

In relation to this, the CRC states:

*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*³⁹

Similarly, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography the CRC imposes obligations on States Parties to take appropriate measures and adapting procedures to protect the rights and interests of child victims and witnesses at all stages of the criminal justice process.⁴⁰

As already stated above, it is the essence of the law that any kind of treatment caused to the Child victims and witnesses should be with dignity and compassion, depending the child's age and level of maturity. So, child victim's and witness's feelings, needs, beliefs, communicative styles and other individual experiences should be considered in providing treatments during trial criminal process. This is because, it enables the child to be listened, respected and granted autonomy in the exercise of other rights.⁴¹ Thus, children's right to be treated with dignity and compassion involves that there shall be sensitive treatment during their involvement in the

³⁹ Supra note 27, see Article 39 of the CRC

⁴⁰ Article 8 (1) (a) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, General Assembly resolution 54/263 of May 25, 2000 Entry into force January 18, 2002 (2000/2002); See also note 18 above, Article 1(1) of the ACRWC which provides the obligation of States Parties to recognize the rights, freedoms and duties enshrined in the Charter, and to undertake the necessary steps, in accordance with their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter; See also n, 33 above, General Comment 5, which provides that in the development of a children's rights perspective, the government, parliament and the judiciary is required for effective implementation of the whole Convention and, in particular, in the light of Article 2 of the CRC, the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind.

⁴¹ Supra note 29, Van Geraldine, p.51; see also note 33 above, General Comment 12 on the child's right to be heard, paragraph 68-88, which states that the children's right to be heard, as a general principle, is linked to the other general principles of the CRC such as Article 2, the right to non-discrimination; Article 6, the right to life, survival and development; and it is closely interdependent with article 3, primary consideration of the best interests of the child. It is also closely linked with the articles related to civil rights and freedoms, particularly Article 13, the right to freedom of expression; Article 17, the right to information. Furthermore, it is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.

criminal justice process.⁴² It fosters the role of child victims and witnesses in the justice process depending on their evolving capacities of the child.

The Guidelines specifically provide that in order to reduce additional hardships of child victims and witnesses in the criminal justice process, any form of interviews and examinations posed to the child should be conducted by trained professionals.⁴³ To this effect, State Parties shall adopt specific domestic policy directions to address the existing situations of child victims and witnesses.⁴⁴ The scope of such protection should also include the inviolability of the physical, psychological and moral integrity of the child, access to the mechanisms of justice and to prompt redress for the harm that they have suffered as well as provision of a safe and appropriate environment for the restorative process.⁴⁵

Therefore, in the judicial criminal proceedings, child victims and witnesses should be protected from any kind of treatment which is inhuman, violent, coerce with threats, annoying or displeasing.

3.3.3 The Right to be Protected from Discrimination

The principle of non-discrimination is available in a number of international and regional human rights instruments, addressing the broader protection of human rights and freedoms. However, these instruments do not specifically address to the issues of child victims and witnesses of crime.

The right of children to be protected from all forms of discrimination is contained in both the CRC and ACRWC.⁴⁶ These child rights instruments provide that, State Parties shall take all

⁴² Supra note 36, see Paragraphs 8 (a) and 10 of the Guidelines

⁴³ Ibid, see paragraph 13 of the Guidelines

⁴⁴ The UN, Twelfth United Nations Congress on Crime Prevention and Criminal Justice; Children, youth and crime Working paper prepared by the Secretariat (15 February 2010) V.10-51035 (E) . P.20, V (d), <http://www.juvenilejusticepanel.org/resource/items/U/N/UN12thCongressCrimeChildrenYouthCrimeFeb10_EN.pdf> (Accessed on 23 February 20110)

⁴⁵ Supra note 35, Basic Principles of Justice for Victims of Crime and Abuse of Power General, Assembly resolution 40/34 of November 29, 1985

⁴⁶ Supra note 37, see Article 2 (1) of the CRC; The list of prohibited discriminatory grounds such as race, ethnicity, color, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability and

appropriate measures to ensure the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or religious and political beliefs or grounds of the child's parents, legal guardians, or family members or any other status.⁴⁷ Here, the word, "other status" can be interpreted to include the status of the child as victim or witness of crime.

As well, the Optional Protocol to the CRC clearly articulates States Parties shall ensure that all child victims of the offences described in the Present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.⁴⁸ The principle of non-discrimination is also applicable to child's competency to offer testimonial evidences in criminal trials. The child young age cannot solely be an adequate ground to ignore his or her testimony.

The Guidelines, in this regard, basically states:

*Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids and other assistance.*⁴⁹

Likewise, the ACRWC states "Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his-her parents' or legal guardians' race, ethnic group, color, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status."⁵⁰ The Banjul Charter also provides "The State shall ensure the elimination of any discrimination against women, and

birth. See also Article 3 of the ACRWC which provides the non-discrimination of every child in the enjoyment of the rights and freedoms recognized and guaranteed in the Charter.

⁴⁷ Ibid, See Article 2(2) of the CRC,

⁴⁸ Supra note 36, see Article 9 (4) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

⁴⁹ Supra note 41, see paragraph 18 of the Guidelines

⁵⁰ Supra at note 42, see Article 3 of the ACRWC

also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."⁵¹

Here, to point out that where the child victim or witness appears to offer testimonial evidences in criminal process, the question of admissibility and reliability of child's testimony should be examined in a due consideration. As it is correctly stated under the Guidelines, the child's age should not be a barrier to participate fully in the justice process, and hence every child should be treated as a capable witness. But this does not mean that the child victim and witness testimony is not subject to the weight the judge properly attaches to it.

In this instance, Gershman rightly stated as follows:

*There are no rigid rules that address the competency of young children to give testimony. Competency of the child is determined on a case-by-case basis, and courts possess extremely broad discretion in making the determination. A child is presumed to be a competent witness unless the court finds otherwise, and there is no minimum age below which a child is presumed to be incapable of testifying.*⁵²

Thus, the principle of non-discrimination requires the establishment of equality both in fact and formal law. That is to mean that, equality in law precludes any kind of discrimination where as equality in fact involves the necessity of different treatments so as to attain and to establish equilibrium between different conditions.⁵³ Based on the principle of non-discrimination, it can be said that every child victim and witness, irrespective of his or her age, shall be treated as equally capable witness as adult witness. However, the child's enjoyment of the right to be equally treated as capable witness depends on certain conditions such as age and maturity of the children, which allow giving of intelligible testimony.⁵⁴ In this case, the Committee on the

⁵¹Article 18 (3) African [Banjul] Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3 rev. 5 of June 27, 1981 Entry into force October 21, 1986

⁵²Gershman, Bennett L., 'Child Witnesses and Procedural Fairness' *American Journal of Trial Advocacy*, Vol 24: 585, (2001), p. 588, *Pace Law Faculty Publications*, Paper 127 <http://digitalcommons.pace.edu/law_faculty/127> (Accessed on 17 March 2011)

⁵³Shaw, N. Malcolm, *International Law* (2003, 5th ed) pp.268-269

⁵⁴Supra note 48, above. According to Gershman, even though every child has the right to be treated as a capable witness during the criminal trial process, the child's testimony, to be presumed valid and credible at criminal trial process so long as it satisfies the stated requirements; See also General Comment 12, n. 33 above, paragraphs 62-63 which provide that, the child victim and witness of a crime must be given an opportunity to fully exercise the

Rights of the Child recommends State Parties, that due concern must be given to child's involvement in the judicial proceedings, with a view not to affect the best interests of the child.⁵⁵

3.3.4 The Right to be Informed

According to CRC and ACRWC, children have the right to be informed and access to information.⁵⁶ These rights, where properly enjoyed by the children, it highly advances the effective realization of the right to express their views in all matters affecting them. Moreover, States Parties are duty bound to inform child victims and witnesses about their rights, roles in the criminal justice process, progress of the proceedings and the disposition of cases so as to protect their rights and interests.⁵⁷

In connection to the victim's right to be informed, the Rules of Procedures and Evidence of the ICC also provide that, victims and witnesses of crime who are at risk on account of testimony given by such witnesses shall be informed about their rights under the Statute.⁵⁸

On the same grounds, the Guidelines provide the link between the child's right to be informed and access to information during the criminal proceedings as "child victims' and witnesses' the right to be informed about the assistance they are entitled to, the way legal proceedings are

rights to in accordance with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. But, to this effect, every effort has to be made to ensure that child victim or/and witness is consulted on the relevant matters with regard to the child's involvement in the case under scrutiny (emphasis added).

⁵⁵ Ibid, see paragraphs 71 and 74, the participation of the child in the judicial proceedings must give respect to his or her best interest. The principle of the best interests of the child is similar to a procedural right that obliges States parties to introduce steps into the action process to ensure it is taken into consideration. In the judicial proceedings, where the child's participation is properly considered and examined in close scrutiny, then there is no tension between the best interest of the child and his or her participation. These two principles are complementary and reinforce each other, one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing. If the components of the child's right to be heard are not respected, then there can also be no correct application of the best interest of the child.

⁵⁶ Supra note 43, see Articles 13 (1) 12 and 17 of the CRC, the child shall have the right to freedom of expression, which also include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice, access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health; See also Article 7 of the ACRWC, every child has a right to expression.

⁵⁷ Supra note 44, see Article 8 (1) (b) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

⁵⁸ Rule 16 (2) (a) (b) of the Rules of Procedures and Evidence of the International Criminal Court Adopted by the assembly of states, first session New York, September 3-10 2002 ICC-ASP/1/3 Entry into force 2002

conducted, the role they can play in the criminal proceedings, about the progress of the case and the status of the offender."⁵⁹

Therefore, to state in practical terms, judicial and administrative procedures must be established and strengthened to enable child victim's and witness's right to be informed and access to information, as how they can be redressed, for instance, child victim's access to free legal aid or formal procedures which are expeditious, fair, inexpensive and accessible.⁶⁰

3.3.5 The Right to be Heard and Express their Views and concerns

The child's right to be heard and to express views is one of the basic principles under the international child rights instruments. The CRC states "The child shall be given an opportunity to be heard in any judicial and administrative proceedings affecting him or her, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."⁶¹ The ACRWC also provides the rights of the child to be heard and express views in a more expanded way. It states that, in all judicial or administrative proceeding, a child who is capable of communicating his/her views, and opportunity shall be given for the views of the child to be heard either directly or through an impartial representative during the proceedings. Besides, such views of the child shall also be taken in to consideration by the relevant authority, in accordance with the provisions of national law.⁶²

The above two Conventions similarly guarantee the mechanisms by which children can express their views by saying "...either directly, or through a representative or an appropriate body..." So, the children' right to be heard can be enforced where the child, directly or physically present in the courtrooms, or can be represented by a State agency or court-appointed guardian.

⁵⁹Supra note 45, see paragraphs 19-20 of the Guidelines; See also Jaffe, G. Peter and et al, *Child Custody & Domestic Violence; A Call for Safety and Accountability* (2003) pp. 142-143

⁶⁰ Supra note 30,

⁶¹Supra note 52, see Article 12 of the CRC; See also General Comment 12, n. 50 above; the Committee on the Rights of the Child, under Article 12, considers that the child's right to be heard and taken seriously constitutes one of the fundamental values of the CRC. It is a unique provision in a human rights treaty since it addresses the legal and social status of all children, who lack the full autonomy of adults on one hand, and are also subjects of rights on the other hand.

⁶²Supra note 52, see Articles 4 (2) and 7 of the ACRWC

More importantly, the CRC and ACRWC provide that every child who is capable of communicating his or her own views shall be assured the rights to express his opinions freely in all matters, and to disseminate his or her opinion, subject to such restrictions as are prescribed by laws.⁶³ On the bases of these normative frameworks, child victim who is capable of forming views has the right to be heard freely in judicial criminal proceedings.⁶⁴ Accordingly, the testimony offered by the child victim shall also be given due weight depending his or her age and maturity.

The United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that, States Parties, in a manner consistent with the procedural rules of national law and justice administration, should give an opportunity to children to participate in the trial process, particularly, the right to be heard and allowed to give information about their status in any proceedings.⁶⁵

According to Article 8 (1) (c) the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the views, needs and concerns of child victims, in all matters that affect their interests, should be presented and considered in judicial proceedings in a manner consistent with the procedural rules of national law, and such may not be prejudicial to the rights of the accused.⁶⁶ So, the child victims have the right to be heard, as a witness, in criminal proceedings in a manner not prejudicial to the rights of the accused to a fair trial.

Likewise, the Guidelines clearly states:

"[E]very child, subject to national procedural law, has the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the

⁶³ Supra note 57, see Article 13 (1) (2) of the CRC

⁶⁴ Ibid, Article 12(1) of the CRC; Article 4(2) of the ACRWC; See also Marta Santos Pais, Child Participation; Evaluation, Policy and Planning Division, (UNICEF), New York, <www.gddc.pt/active-dadeeditorial/pdfpublicacoes/8182MartaPais.pdf> (Accessed on 10 March 2011)

⁶⁵ Article 8 of the Resolutions adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders Cairo, April 29 - May 8, 1995 U.N.Doc. A/CONF.169/16 May 12, 1995

⁶⁶ Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography General Assembly resolution 54/263 of May 25, 2000 Entry into force January 18, 2002; See also Article 25 of the Convention Against Transnational Organized Crime General Assembly resolution 55/25 of November 15, 2000, Entry into force September 29, 2003; See also n. 43, Article 16 of the Basic Principles of Justice for Victims of Crime and Abuse of Power General Assembly resolution 40/34 of November 29, 1985

decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.⁶⁷

Thus, children victims should be asked about what is important to them, and their beliefs as well as attitudes need to be explored so as to determine the direction and content of the matter.⁶⁸ This is the best kind of advocacy and campaign, which enable child victims to define their problems, and being helped to put their case. It also helps to inform and educate policy makers to bring changes, which will improve the children's lives.⁶⁹

By way of conclusion, the child victims and witnesses have the right to say anything they think on their matters, they have to be given an opportunity to be heard and to fully express their views during the criminal trial process as victims and witnesses. Where the child has not been given an opportunity to be heard in the justice process and their views are not given due concern, such denial of the child's right aggravates the abuse of child in the home environment and in the community.⁷⁰

3.3.6 The Right to Effective Assistance

Victimization causes serious effects on children's development, which can be observed from two aspects. Firstly, child victims suffer emotional distress as a result of their victimization. Secondly, children are also more likely than adult victims to suffer substantial distress as a result of testifying in the physical presence of the accused in courtrooms.⁷¹ So, there should be a proper and effective assistance to child victims and witnesses during whole stages of the criminal proceedings to reduce the consequences of crime on children, which otherwise affects the child's harmonious development.

⁶⁷Supra note 55, see paragraphs 8 (d) and 21 (c) of the Guidelines,

⁶⁸Susan Goldstein, and et al, Soul Buddyz: A Children's Rights Mass Media Campaign in South Africa, *The Harvard College Health and Human Rights Vol. 5 No. 2*, 2001, p. 172 <<http://www.hhrjournal.org/archives-pdf/4065370.pdf.banned.pdf>> (Accessed on 14 March 2011)

⁶⁹Ennew, Judith, *Street and Working Children: A Guide to Planning*; Save the Children (2000), p.149

⁷⁰Shimelis Tsegaye, Governance and Child Wellbeing in Africa: A Review, (2009); African Child Policy forum, p.55

⁷¹Goodman S. Gail and et al, 'Child Witnesses and the Confrontation Clause': The American Psychological Association Brief in *Maryland v. Craig*, *Law and Human Behavior, Vol. 15, No. 1* (Feb., 1991), pp. 19-20; <<http://www.jstor.org/stable/1394048>> (Accessed on 08/05/2011)

Hence, in the first place, the State parties have responsibility to protect children from all forms of maltreatment such as sexual, physical and emotional abuse, neglect or any kind of exploitation. Secondly, where ever the abuse occurs, States are also duty bound to establish effective procedures to provide support for the child.

Bases on the above obligation of a State Party, child victims and witnesses shall have access to assistance and support services such as legal aid, physical, health, and social as well as psychological recovery services. In these instances, Article 27 (1) of the CRC recognizes that, every child has the right to harmonious development and standard of living adequate, necessary for his/her physical, mental, spiritual, moral and social growth.⁷²

Besides, the Optional Protocol provides that appropriate support services such as full social reintegration, physical and psychological recovery to child victims throughout the legal process.⁷³ Similarly, Article 10 (3) of the ICESCR obliges States Parties shall take special measures of protection and assistance.⁷⁴ Here, it refers to the provision of indiscriminate assistances to the physical, material, psychological and social recovery of all child victims and witnesses.

Thus, considering the child victim's extent of harm, age, maturity and specific individual needs as well as availability of resources, health, and social as well as free legal support services should be provided for the child's rehabilitation and reintegration of child victims.⁷⁵ The State Party is

⁷²Supra note 59, Article 3(2) of the CRC and n.58 above, Article 5(2) of the ACRWC; See also n. 1 above, Michels, An, p.1; With regard to the States' obligation to take protective measures and to establish procedures to provide support to children, See also Article 19 (2) of the CRC and Article 16 (2) of the ACRWC, provide that protective measures violence against children should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatments described and, as appropriate, for judicial involvement; See also Committee on the Rights of the Child, General Comment No. 8 (2006), CRC/C/GC/82 March 2007 Geneva, 15 May-2 June 2006, Forty-second session; The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (Arts. 19; 28, paragraph 2; and 37)

⁷³Articles 8 (1) and 9(3) of the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

⁷⁴International Covenant on Economic, Social and Cultural Rights General Assembly resolution 2200A (XXI) of December 16, 1966 Entry into force on January 3, 1976; See also Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime General Assembly resolution 55/25, of November 15 2000 of November 15, 2000 Entry into force December 25, 2003

⁷⁵ Supra note 63, see Paragraph 22 of the Guidelines

also expected to assure such support and protection through effective legislative and remedial procedures to child victims.

3.3.7 The Right to Privacy

The privacy of child victims and witnesses, who have been involved in judicial criminal process, must be fully protected. Any information may not be released or published which could reveal directly or indirectly the disclosure of the child's identity.

The international human rights instruments provide that no one shall be subject to arbitrary interferences with his/her privacy, family, home or correspondence, or to unlawful attacks on his or her honor and reputation.⁷⁶ Here, the law purposes to accord protection to everyone from any unlawful interference or attack against his or her privacy right. In light of this, every child has the right to be protected from attack or interference against his or her privacy rights.

In addition, the CRC states no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honor and reputation. Here, the child's right to privacy is also linked with his or her freedom of expression, with reasonable restrictions.⁷⁷ In the same way, the Optional Protocol obliges the State Parties to adopt measures necessary to protect the dissemination of information of the privacy of child victims, during stages of criminal proceedings, which leads to the identification of the child victims.⁷⁸ Children, who are victims of trafficking, have also the right to be protected from any attack against their privacy. The State Parties shall also protect the privacy and identity of victims of trafficking including children.⁷⁹ In order to protect the child's right to privacy, the

⁷⁶ Supra note 11, see Articles 14 (1) and 17 (1) (2) of the ICCPR

⁷⁷ Supra note 60, see Article 16 (1) (2) of the CRC; See also the child's freedom of expression under Article 13 (1) and (2) of the CRC, and Article 7 of the ACRWC, which provide that the child's freedom of expression. It states that the child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

⁷⁸ Supra note 69, see Article 8 (1) (e) of the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

⁷⁹ Article 6 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime General Assembly resolution 55/25 of November 15, 2000 Entry into force December 25, 2003; See also n. at Article 6 of the Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

also ACRWC recognizes the right to be protected from arbitrary interferences against in his or her privacy, family home, correspondences, and attacks upon his honor or reputation.⁸⁰ But, the ACRWC, as an exception, gives room to parents or legal guardians the right to exercise reasonable supervision as to the privacy of the child.⁸¹ Here, the reasonable supervision against the child's right to privacy is on one hand, to the protection of the child's over all harmonious development, and to protect the rights of others on the other hand.

The law gives protection to the child's right to privacy because any release of information may cause intense shame and humiliation on children, their relationships with family, peers and community. For instance, in case of sexual abuse and violence, release of any information may lead the child to be victims of stigmatization, aggravates secondary victimization of child victim.⁸² Thus, appropriate measures shall be implemented to protect the privacy and identity of child victims, from undue exposure of the child victim from the public, and to prohibit the inappropriate dissemination of information.⁸³ Similarly, the Guidelines protect the child victims' right to privacy by maintaining confidentiality and restricting disclosure of information in the criminal justice process.⁸⁴

In relation to the child victim's right to privacy, an important issue need to be raised is the public's right to access to know or get information, the role of media professionals in disseminating information as to the activities of child victim's involvement in the judicial criminal process.

In this regard, Mr. McIntyre stated it rightly as:

[T]he issue of identity is at the heart of journalistic endeavor. It is in the nature of journalism, to provide facts, including personal details about whoever is involved in a story.

⁸⁰Supra note 58, see Articles 7 and 10 of the ACRWC

⁸¹ Ibid

⁸²The United Nations Children's Fund (UNICEF), the Guidelines on the Protection of Child Victims of Trafficking, (September 2006); <http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelinesen.pdf> (Accessed on 16 February 2011)

⁸³ Supra note 74, see Article 8 (e) of the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

⁸⁴ supra note 69, see Paragraph 27 of the Guidelines

*The decision to suppress information has to be carefully considered, but a journalist should always respect, above all, the rights of the child. Journalists, possibly, need to depict children in a way that maintains their dignity, and avoid exploitation and victimization. There has to be balance against other important rights of the child, most notably the rights of the child to freedom from fear and exploitation.*⁸⁵

Hence, considering this, journalists need to play a leading role in the protection child victims while releasing any direct or indirect information related that to the child's involvement in the judicial process and the outcomes of the proceeding or the case.

Therefore, given the special situation of child victims and witness, there shall be restricted not only as to the disclosure of any direct or indirect information as to child victim's but also the attendance of the public in judicial criminal proceedings must also be restricted with a view to protect the child victims' right to privacy.

3.3.8 The Right to be Protected from Hardship during the Justice Process

During the prosecution process, there are instances that the best interests and dignity of child victims and witnesses can be affected. To address these problems, appropriate measures shall be taken to protect the rights and interests of child victims at all stages of the criminal justice process. To this end, particularly, the vulnerability of child victims shall be considered and hence adapting procedures must be applied to protect the rights and special needs of the victim as witness.⁸⁶ The rights of the child victims and witnesses to be protected from any hardships during prosecution process are also contained in various international human rights instruments.⁸⁷

⁸⁵ McIntyre, Peter, Child Rights and the Media; Putting Children in the Right Guidelines for Journalists and Media Professionals, International Federation of Journalists, (2002) <<http://www.ifj.org/assets/docs/247/254/cf73bf7-c75e9fe.pdf>> (Accessed on 11 August 2011)

⁸⁶ Supra note 79, see Article 8 (1) (a) of the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

⁸⁷ See Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; See also Articles 67, 68, 72, 87, 88 of the Rules of Procedures and Evidence of the International Criminal Court Adopted by the assembly of states, first session New York, September 3-10 2002 ICC-ASP/1/3 Entry into force: 2002

Taken collectively, the above mentioned international human rights instruments impose legal obligations on State Parties to take measures to prevent hardships during criminal proceedings in order to protect the best interests and dignity of the child victims and witnesses. In other words, appropriate support must be provided to the child victim and witness throughout his or her involvement in the proceedings. The judiciary need to use child-sensitive procedures, interdisciplinary services, modified courtroom environments to the child victims and witnesses, direct and unnecessary contacts of the child victims with the accused must be avoided; for instance, for cross-examination questions that raised by the accused or defense lawyer, special procedures need to applied to collect evidence from the child, limited number of questions shall also be raised to the child, and all such measures should be controlled by the Judge to eliminate any hardships during the proceedings.⁸⁸

In relation to what has been said above, the Guidelines provide that judges, prosecutors, lawyers and other professionals are responsible to make the child's participation easier and less harmful in the criminal proceedings.⁸⁹ The purpose of Guidelines, in this case, is to reduce any secondary victimization that may be caused on the child, and to advance the child's participation in the justice process. Where the criminal proceeding is not child victims-sensitive, it can cause mental and emotional distress, fear of not being believed and feelings of self-blame to the child. Hence, such the child's mental or emotional sufferings during the criminal trial proceedings can also considered as the act of neglect or abuse, which violates the child victim's right to be protected from "all forms of abuse" as it is clearly indicated under Article 19 of the CRC.⁹⁰

Hence, State parties need to make legal reforms and harmonization of the international child law standards and principles so as to make the justice process conducive to child victims and

⁸⁸Hutcheson, D. Graeme, and et al, 'Child Witness Statement Quality: Question Type and Errors of Omission, *Law and Human Behavior*, Vol. 19, No.6 (Dec., 1995), pp. 640-646 <<http://www.jstor.org/stable/1394247>> (Accessed: 10/05/2011)

⁸⁹ Supra note 79, see Paragraphs 29, 30 and 31 of the Guidelines

⁹⁰It must be noted here that, Article 19 (1) of the CRC provides the right of all children to be protected from all forms of physical and mental abuse of the child, if any while he or she is during the parental, legal guardians or institutional care; See Article 19 (1) of the CRC and Article 16 of the ACRWC provides obligation of a State Party take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. See also Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors, P.68

witnesses. In order to achieve the very purpose of the rules of the CRC, ACRWC and other child-rights related legal instruments, the national legislations and justice systems are strongly required to provide protections to the rights and interests of child victims and witnesses, with a view to reduce any hardships during the criminal trial process.

In sum, creating child victim-sensitive procedures in the criminal justice process make the situation of the proceedings too easier to the child victims and witnesses, as it has been provided under the Guidelines and any interviewing as well as questioning process with the child victims and witnesses need to be taken place in an environment that looks familiar to them.⁹¹

3.3.9 The Right to Safety

It has been recognized that States Parties shall adopt appropriate measures to protect the safety of child victims and witnesses during the whole stages of the criminal proceedings.⁹² In order to protect the rights and interests of victims and witnesses of crime, the ICC states as follows:

*[T]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children..... These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*⁹³

In addition, the State shall take necessary measures within the limits of resources and means, to provide effective protection from potential retaliation or intimidation of witnesses in criminal proceedings.⁹⁴

⁹¹ Supra note 89, see paragraphs 29,30 and 31 of the Guidelines

⁹² Supra note 41, see Article 6 (d) of the Basic Principles of Justice for Victims of Crime and Abuse of Power ; see also n. 79 above, Article 8 (1) (f) of the Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

⁹³ Article 68 (1) of the Rome Statute of the International Criminal Court Doc A/CONF.183/9 July 17, 1998 Entry into force July 1, 2002

⁹⁴ Article 24 (1) of the United Nations Convention Against Transnational Organized Crime General Assembly resolution 55/25 of November 15, 2000 Entry into force September 29, 2003

It, then, follows from the above legal protective regimes that, where the safety of the child victims and witnesses are at risk, appropriate measures should be taken to protect the child from such risk during the prosecution process. Among others, for instance, the use of pretrial detention and other restraining measures against the accused can be taken to ensure the safety of child victims and witnesses whenever it is appropriate.⁹⁵ However, it must be here noted that, these measures may not jeopardize the rights of the accused to a fair trial.⁹⁶ At this point, the Guidelines illustratively provide⁹⁷ a set of protective measures that may be taken to protect the rights of child victims and witnesses by the judiciary and law enforcement authorities of Member States.

3.3.10 The Right to Reparation

The UDHR, under Article 8, provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights that granted under the law. Similarly, Article 2 (3) of the ICCPR provides that State Parties undertake to ensure that any person whose rights or freedoms as recognized under the Covenant are violated shall have an effective remedy that determined by the judicial, administrative or legislative authorities provided for by the legal systems.⁹⁸ On the basis of these legal frameworks, an individual, whose rights or freedoms have been violated, has the right to seek redress.⁹⁹

From these it follows then that, States Parties are required to take all appropriate legislative and practical measures to recover the psychological and social reintegration of a child victims within an environment which fosters their health, self-respect and dignity of the child.¹⁰⁰ Under the Optional Protocol of the CRC, the State Parties shall also take all appropriate assistances to child victims such as their full social reintegration, physical and psychological recovery as well as

⁹⁵ Supra note 85, see paragraph 34 of the Guidelines

⁹⁶ Supra note 87, see Article 68 (5) of the ICC

⁹⁷ See Article 33 and 34 of the Guidelines; it provides safeguard measures such as; Avoiding direct contact between child victims and witnesses and the alleged perpetrators at any point in the justice process; using court-ordered restraining orders supported by a registry system; ordering pre-trial detention of the accused and setting special "no contact" bail conditions; placing the accused under house arrest; wherever possible and appropriate, giving child victims and witnesses protection by the police or other relevant agencies and safeguarding their whereabouts from disclosure.

⁹⁸ Supra note 72, see also Article 2 (3) of the ICCPR

⁹⁹ Shelton, Dinah, *Remedies in International Human Rights Law*, (1999) p.183

¹⁰⁰ Supra note 72, see Article 39 of the CRC; See also Article 1 (1), 16 (2) of the ACRWC

legal procedures of compensation for damages to be paid from those legally responsible to the acts committed.¹⁰¹

Further support for this approach is found in the recommendations that forwarded by the UN General Assembly that, there should be informal dispute mechanisms such as mediation, arbitration and customary justice or indigenous practices to redress child victims.¹⁰² Such all procedures and mechanisms, particularly, shall consider the return of property or payment for the harm or loss suffered by the child, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.¹⁰³

Therefore, child victims should receive compensation for any loss he or she has incurred as a result of the crime, under the readily accessible and child-sensitive procedures of the national legal systems.¹⁰⁴

3.4 Conclusion

Child victims and witnesses have accorded specific legal protections and measures under the international and regional child rights instruments, norms and standards to address their problems during the criminal justice process. The legal frameworks, which discussed in this chapter, clearly indicate the availability of these protections and measures for child victims and witnesses. But, where seen the practice in the Member States of the CRC, child victims and witnesses have not been enjoying their specific rights that provided under the instruments.

The legal and policy frameworks currently available to the rights of child victims and witnesses, at national level, are not in a place to fully enforce the rights of child victims and witnesses.

¹⁰¹Supra note 88, see Articles 8 (1), 9 (3) (4) and 10 of the Optional protocol; See also n.74 above Article 6 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

¹⁰²See Article 12 of the Resolutions adopted by the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, April 29 - May 8, 1995 U.N. Doc. A/CONF.169/16 May 12, 1995

¹⁰³Supra note 75, see Principles 7, 8 and 9

¹⁰⁴Supra note 91, see paragraphs 35-36 of the Guidelines, which states that child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive. The proceedings are also child-sensitive and respect these Guidelines, combined criminal and reparations proceedings should be encouraged, together with informal and community justice procedures such as restorative justice; See also n. 94 above, principle 8

Hence, the domestic criminal justice process of a State Party need to have a Comprehensive legal and policy frameworks.to enforce the CRC.

Based on the theoretical and legal frameworks as well as the expected practical implementation of the child victims and witnesses rights discussed in the preceding chapter, the next chapter analyzes and explores the existing legal and policy loopholes, challenges to enforce the rights of child victims and witnesses, and highlights the way forwards on addressing the problems in Ethiopia, during the criminal trial process.

Chapter Four

The Accused's Right to Fair Public Trial Vs the Rights of Child Victims and Witnesses of Crime in Ethiopia: An Analysis of the Legal and Policy Frameworks

4.1 Introduction

The main purpose of the preceding chapter was to discuss the various aspects of legal protections accorded to child victims and witnesses vis-à-vis the rights of the accused to a fair trial, both under international and regional human rights instruments. As it was highlighted, these instruments provide standards and guarantees to safeguard the rights of child victims and witnesses, and the accused's right to a fair public trial. But, in order for effective implementation of the international and regional human rights including rights of the children and the accused's right to a fair trial, the UN human rights organs recommend that due attention need to be given to the domestic practices of State Parties.¹

Based on key principles of the Convention on the Rights of the Child (CRC), the Economic and Social Council has adopted a non-binding instrument,² which supports as a guideline for effective implementation of rights contained in the CRC in general, and rights of child victims and witnesses in particular. Hence, by taking into account the special situation of child victims and witnesses, harmonizing international and regional child rights instruments, norms and standards in-to domestic human rights system is vital to protect children's rights. Thus, harmonizing international child rights standards in to domestic human rights system is one of the

¹ United Nations (hereinafter referred as UN), Economic and Social Council, Commission on Human Rights, the Administration of Justice and Human Rights of Detainees, the right to a fair trial, E/CN.4/Sub.2/1994/24 3 June 1994, p.16 <<http://www.unhcr.org/refworld/pdf/id/3b00f3fe4.pdf>> (Accessed 24 July 2011)

² UN, Economic and Social Council, the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (hereinafter referred as the Guidelines), Resolution 2005/20, 36th Plenary Meeting 22 July 2005. The Guidelines, as general remark, recognize cross-cutting principles of the rights of child victims and witnesses such as the right to dignity, non-discrimination, recognition of the best interests of children, right to participation including right to express views and to contribute in decisions that affect their life, and such views should also be considered in any judicial processes. With a specific reference to child victims and witnesses, the Guidelines intend to achieve child victim- witness friendly procedures that can be achieved through legal reforms, rules of procedure and evidence, the right to effective assistance, attitudes and training of professionals who are working with child victims and witnesses, if any.

essential duties and steps of a State Party to protect and promote the rights of children at national level.³

With these views in mind, the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) domesticates some of the international and regional human rights instruments that the country has ratified.⁴ Hence, the rights of the accused to a fair trial provided under the International Covenant on Civil and Political Rights (ICCPR)⁵ and the African Charter on Human and Peoples' Rights (ACHPR)⁶ are duly recognized and protected under the Ethiopian human rights system. In addition, more importantly, the Convention on the Rights of the Child (CRC)⁷ and the African Charter on the Rights and Welfare of the Child (ACRWC)⁸ are also part and parcel of the law of Ethiopia.⁹ Based on these normative frameworks, the minimum standards, guarantees, and guidelines provided under international and regional child rights instruments are, as possible as, need to be enforced effectively in Ethiopia. Put simply, in

³ UN Committee on the Rights of the Child, General Comment No.5, General Measures of Implementation of Convention on the Rights of the Child, thirty-fourth session 19, CRC/GC /2003/5 27 (November 2003), see paragraph 2. It provides that, the State Party that takes an obligation to implement rights of the child that contained under the CRC. Making reality of the human rights of children is primarily an obligation of a State Party and needs to engage all sectors of society as well as children themselves.

⁴ See Article 9(4) of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE), Proclamation No. 1/1995, 1st Year No.1 21st August, 1995; Addis Ababa. The Constitution domesticates all international instruments that Ethiopia has ratified. Some of the international instruments ratified by Ethiopia are the ICCPR, ICESCR, ACHPR, CRC, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ILO Convention on the minimum age for admission to employment and work, Convention on the worst forms of Child Labor, the ACRWC and other international human rights instruments, and made it part of the law of the land. However, Ethiopia has not yet ratified the optional protocols such as Optional Protocol on the sale of children, Child Prostitution and Child Pornography; and Optional Protocol on the Involvement of Children in Armed Conflict.

⁵The International Covenant on Civil and Political Rights (ICCPR), Adopted by the UN General Assembly in resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976;

⁶ The African [Banjul] Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3 rev. 5 of June 27, 1981 Entry into force October 21, 1986

⁷ The Convention on the Rights of the Child (CRC), GA Res. 44/25 (1989), UN Doc, A/RES/44/25 (1989) adopted 20 November 1989, entered into force 2 September 1990

⁸ The African Charter on the Rights and Welfare of the Child (ACRWC); OAU Doc, CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999

⁹ Supra note 4, Article 9(4) of the FDRE Constitution; See also Proclamation No.10/1992, which is the Proclamation to ratify the CRC. One of the advantageous of making the CRC part of the domestic law is that, as per Article 51 (2) of the CRC, at the time of ratifying, a State Party cannot be permitted to exclude or modify the legal effect of certain provisions of the CRC in domestic application which is incompatible with the object and purpose of the CRC. See also Proclamation No.283/2002, A Proclamation to Ratify the African Charter on the Rights and Welfare of the Child, 8th year No. 31, Addis Ababa, 4th July, 2002. According to the Proclamation No. 691/2010, a Proclamation which provides for the Definition of Powers and Duties of Executive Organs of the Federal Democratic Republic of Ethiopia, currently, the Ministry of Women, Youth and Children has empowered to undertake all actions related to children's rights.

Ethiopia, the minimum international standards and guarantees of children's rights shall be considered during judicial criminal proceedings.

This chapter, in the following sections, analyzes the trends on observance of the international child rights instruments guaranteeing the rights of child victims and witnesses in Ethiopia, in the context of judicial criminal proceeding. The chapter examines and analyzes in depth the current normative safeguards available to protect the rights of child victims and witnesses, and then critically outlines the possible legal and policy gaps in the frameworks, and proposes some potential solutions on the way forward. From the practical perspective, the chapter also briefly explores how the Ethiopian Judiciary and Prosecution Offices treat and protect specific rights of child victims and witnesses during criminal proceedings. The chapter concludes with an overview of a number of difficulties that child victims and witnesses encounter during criminal proceedings.

4.2 Legal Protections of Rights of the Child Victims and Witnesses in Ethiopia

4.2.1 The Federal Democratic Republic of Ethiopia (FDRE) Constitution

According to the international child rights instruments, a State Party shall undertake all appropriate measures to effectively implement and give life to the provisions of the CRC within domestic jurisdiction.¹⁰ In relation to this, the Ethiopian Government has taken necessary measures¹¹ to realize the rights of children. Above all, the FDRE Constitution provides fundamental legal basis¹² for the protection and promotion of the rights of children. Similarly,

¹⁰ Supra note 7, see Article 4 of the CRC, which imposes obligation on a State Party to undertake all appropriate legislative, administrative and other measures for the effective implementation of rights recognized in the Convention. See also n.3 above, General Comment No.5. In this Comment, the Committee recommended that ensuring all domestic legislations fully compatible with provisions and principles of the CRC, its direct application and appropriate enforcement of rights contained in the CRC are fundamental to realize the rights of children.

¹¹ Leuelesellase Liben, Head of the Child Justice Project Office (CJPO), Federal Supreme Court of Ethiopia. (Interview conducted on 21 July 2011). According to the interviewee, measures taken by the Ethiopian Government include; the ratification of international and regional child rights instruments such as the CRC and the ACRWC, review of previous national legislations and regulations that are inconsistent with the FDRE Constitution, and negatively affect the realization of children's rights in Ethiopia, in particular, penal law reforms, reforms of judicial systems, adoption of new legislations and policies which rectifies the existing situation of children as well as to reflect the interlinked nature of the rights of children guaranteed by the CRC.

¹² Supra note 9, see Article 9(1) of the FDRE Constitution. It states that, the Constitution is the supreme law of the land and hence any law, customary practice or decision of an organ of state or public official, which contravenes the

the Constitution guarantees and protects the fundamental human rights and freedoms for every person,¹³ which also includes children. To this effect, the FDRE Constitution obliges all organs of the State and Officials to give respect and enforce fundamental human rights and freedoms provided under the Constitution.

It specifically states as follows:

*All Federal and State legislative, executive and judicial organs, at all levels, shall have the responsibility and duty to respect and enforce the provisions of fundamental rights and freedoms contained under chapter three of the constitution.*¹⁴

By considering the special needs and situation of children, furthermore, the Constitution accords specific constitutional safeguards to the rights of children. As a benchmark for the protection of children's rights that are contained under the CRC and ACRWC, the FDRE Constitution, under Article 36 (2), provides that;

"In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child."

Hence, on the basis of the above constitutional provision, all actions and programs of Government concerning children must be guided by the fundamental principles of the best interest of the child. With regard to the principle of the best interest of the child, it is worth to mention here that, the legal framework of ACRWC provides a wider scope of application to the principle of the best interest of the child in African context than the CRC.¹⁵ Where Article 36 (2)

provisions of the constitution, shall be of null and void. In this context, international instruments that Ethiopia has ratified are part of the law of the land as per Article 9(4) of the Constitution the rights of children provided in the CRC and ACRWC are equally enforceable in Ethiopia. Hence, based on these two constitutional provisions, where any practice or action of State officials violates the rights of children, it shall be of no effect.

¹³Ibid, see Article 10 (1) of the FDRE Constitution which provides that, human rights and freedoms, emanating from the nature of mankind are inviolable and inalienable.

¹⁴ Ibid, see Article 13 (1) of the FDRE Constitution; See also Article 36(2), which is provided under the fundamental human rights and freedoms section. Thus, all organs of the State, Federal or Local, shall be bound to respect and to protect the fundamental human rights and freedoms contained under chapter three of the FDRE Constitution.

¹⁵Benyam Dawit Mezmur, 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) SAPR/PL, pp. 7-9. With respect to the principle of the best interest of the child, the use of the phrase 'a' primary consideration, under Article 3(1) of the CRC, allows for other principles and considerations to be taken into account. On the other hand, the use of the phrase 'the' primary consideration, under Article 4 (1) of the

of the FDRE Constitution is seen in light of the CRC and ACRWC, the phrase 'the' is inserted under the Constitution. So, the principle of the best interest of the child that contained under the FDRE Constitution is in line with the ACRWC than the CRC. Accordingly, in Ethiopia, public institutions such as the judiciary (courts of law at any level), justice administration system, administrative authorities and/or legislative bodies are duty bound to primarily consider and analyze the principle of the best interest of the child in all their actions concerning children. Thus, judicial and prosecution office must take all possible steps to minimize the risk of harm to the child victims and witnesses that come in contact with judicial proceeding, and ensure that their rights are fully respected. The FDRE Constitution, however, does not expressly make any mention of the specific protection to the rights of child victims and witnesses of crime.

But, in the context of protecting the rights of child victims and witnesses, the Constitutional provisions such as the right to prohibition against inhuman treatment,¹⁶ equality before the law,¹⁷ privacy rights,¹⁸ honor and reputation,¹⁹ right of thought, opinion and expression,²⁰ right of access to justice,²¹ economic, social and cultural rights,²² the national policy principles and objective section of the Constitution²³ are significantly relevant. Having considered these normative grounds, the legal protection accorded to the rights of child victims and witnesses in

ACRWC, maximizes the influence of the principle and hence all other principles in the instrument should be analyzed in light of the child's best interest.

¹⁶Supra note 14, see Article 18 of the FDRE Constitution. It provides that, everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.

¹⁷Ibid, see Article 25 of the Constitution, which states that, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law guarantees equal and effective protection without discrimination on grounds of race, nation, nationality, or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.

¹⁸Ibid, see Article 26 (1) of the Constitution, which provides the right to privacy.

¹⁹Ibid, see Article 24 (1) and (3) of the Constitution, states, everyone has the right to be respected for his/her human dignity, reputation and honor, and the right to recognized everywhere as a person.

²⁰Ibid, see Article 29 (2) which states that everyone's right to freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds.

²¹Ibid, see Article 37 (1) of the Constitution, which states that everyone's right to bring a justiceable matter to, and to obtain decision or judgment by a court of law or any other competent body with judicial power.

²²Ibid, see Article 41 (4) of the Constitution, which also states that, the State has obligation to allocate ever increasing resources to provide to the public health, education and other social services.

²³Ibid, see Chapter 10 of the FDRE Constitution. It provides a yardstick for evaluating the government's actions. See also Article 89 (1) of the Constitution that states, the Government shall have a duty to formulate policies that ensure all Ethiopians can benefit from the country's legacy of intellectual and material resources. See also Article 90(1) which also provides the social objectives of the country, and states that, to the extent the country's resources permit, government policies shall aim to provide all Ethiopians access to public health and education, clean water, housing, food and social security.

domestic legal framework of Ethiopia is by and large compatible with the corresponding minimum international standards.²⁴ Thus, it can be said that, from the point of domesticating the international and regional child rights standards, the Ethiopian Government is meeting some of its obligation provided under Article 4 of the CRC and Article 1 (1) of the ACRWC respectively.

This, however, does not lead to conclude that appropriate legislative measures and actions have been comprehensively and specifically taken to address the problems of child victims and witnesses during criminal justice process. Since the FDRE Constitution domesticates the ICCPR, CRC and ACRWC, enforcing the relevant international child rights standards and guidelines is expected so as to protect the rights of child victims and witnesses of crime during criminal proceedings.

The importance of legal reforms is unquestionable to protect rights of children. But, Ethiopia does not have comprehensive legislative code in the form of a Children's Act or Statute, which deals, amongst other issues, with the national legal framework for children who are victims of all kinds of crime, except a Plan of Action to protect only the rights commercial sexual abuse and exploitation of children.²⁵ Where it is seen in light of the Ethiopia's obligation under the CRC and ACRWC, there is lack of an effective child victim-witness sensitive procedure and inadequate attention is given to provide national strategy to protect the specific rights of child victims and witnesses of all kinds of crime during criminal proceeding.

²⁴ The Committee on the Rights of the Child, Concluding Observations of the Committee on the Initial Reports of Ethiopia, CRC/C/8/Add.27, at its 349th to 351st meetings (CRC/C/SR.349351) January 1997 See paragraphs 10-21, the non-compatibility of domestic provisions of law with certain provisions of the CRC. See also paragraph 224 of the Initial State report of Ethiopia to the Committee due in 1993, which states that the existing domestic laws of Ethiopia are by and large compatible with Article 19 of the CRC. See also Concluding observations of the Committee on the Rights of the Child, the 2nd periodic report of Ethiopia (CRC/C/70/Add.7), received on 28 September 1998, and adopted January 2001, paragraph 14 which states that, the domestic law is not yet fully compatible with the provisions and principles of the Convention. It states that the process of drafting and adopting new domestic legislation is slow. See also concluding observations of the Committee on the 3rd periodic report of Ethiopia (CRC/C/129/Add.8) that adopted November 2006. The Committee concluded that, though some progress has been made in the effort to bring domestic laws into compliance with the CRC i.e. criminalizing harmful traditional practices and child trafficking, there are lack of systematic legislative reviews and adoption of a comprehensive Children's Code.

²⁵ The FDRE, Ministry of Labor and Social Affairs (MOLSA); National Plan of Action against Commercial Sexual Abuse and Exploitation of Children in Ethiopia, 2005, This Plan of Action provides only the situation of children, who are victims of sexual abuse and exploitation in Ethiopia, analyzes the applicable legal and policy frameworks, and indicates the future intervention plan of action needed to address problems of sexual abuse and exploitation of children during the period 2006-2010.

As has been recommended by the Committee on the Rights of the Child, in order to protect the rights of child victims and witnesses during criminal proceedings, adequate attention must also be given to policy and practice guidelines.²⁶ In addition, studies have found that, as the experience of the judiciary shows in Ethiopia, courts and lawyers are reluctant to refer the relevant international human rights laws and standards while entertaining cases.²⁷ Besides, in Ethiopia, enforcing the international human rights instruments has encountered some problems. Among others, lack of awareness of law enforcement officials towards the international child rights standards, inadequate budget allocation and lack of skilled man power are some of the problems to enforce international and regional child rights instruments that Ethiopia has ratified.²⁸ Thus, the fundamental principles of child rights, norms and standards provided under the CRC, ACRWC and FDRE Constitution must be considered as reference points against which decisions and actions of the Judiciary and the Prosecution Office in Ethiopia are made.

4.2.2. The 2004 Criminal Code of Ethiopia

With regard to protection accorded to the rights of children against criminal actions, the 2004 Federal Criminal Code of Ethiopia²⁹ has greatly improved on the 1957 Criminal Code of Ethiopia and ensured some compatibility with the provisions of the CRC and ACRWC. It has taken some steps to harmonize national criminal laws with the international and regional child

²⁶ Supra note 10, General Comment 5, see paragraphs 28-30. In order to promote and respect the rights of the child, the State Party needs to work on the basis of a unifying, comprehensive and rights-based national strategy rooted in the CRC. In this instance, the Committee recommends that, the development of a comprehensive national strategy or national plan of action for children, built on the framework of the CRC is highly required. In doing so, particular attention need to be given to identifying and giving priority to marginalized and disadvantaged groups of children.

²⁷ Ibrahim Idris, 'The Structure of the Human rights Regime of the 1994 Federal Democratic Republic of Ethiopia Constitution: Fundamental Rights and Freedoms,' *Proceedings of the Symposium on the Role Courts in the Enforcement of the Constitution* (ECSC), (2000) Addis Ababa, Ethiopia) pp 54-55

²⁸ Adiham Duri, Ethiopian Human Rights Commission (EHRC), Women and Children's Commission's office, Expert (Interview conducted on 27 July 2011). According to interviewee, there is lack of proper understanding of the international child rights instruments and standards in the judiciary and justice administration system. See also Getachew Assefa, 'Problems of Implementing International Human Rights Laws by Ethiopian Courts,' *Proceedings of Symposium on the Role of Courts in the Enforcement of the Constitution*, (ECSC), (2000) Addis Ababa, Ethiopia) V.1 p. 88

²⁹ The 2004 Criminal Code of the Federal Democratic Republic of Ethiopia, a Proclamation No. 414/2004, 9th of May, 2005, Addis Ababa

rights instruments. For instance, it incorporated new provisions and contained aggravating circumstances³⁰ for some of the crimes that are committed against children.

In order to safeguard the rights of child victims and witnesses, the 2004 Criminal Code provides some specific legal provisions on criminalizing violence against children. It provides five groups of child victims of crime³¹ such as child victims of physical and psychological violence, child victims of sexual violence or abuse, child victims of harmful traditional practices, child victims of trafficking, and child victims of economic exploitation. Thus, the 2004 Criminal Code of Ethiopia contains specific provisions relevant to the protection of children's rights.

4.2.3 The 1960 Civil Code of Ethiopia

The 1960 Civil Code of Ethiopia³² has provisions relevant to the protection of rights of the child victims. According to the provisions of the Civil Code, victims of crime have a civil remedy for redress in the form of compensation for the property, personal, body, life or health damages that the child has suffered from the wrong doer.³³ This normative ground can also equally apply to child victims and witnesses of crime, where they seek to claim compensation or restitution from the offender before courts of law, for the civil harm the child suffered due to the crime.

³⁰Ibid, with regard to crimes committed against children, the 2004 Criminal Code provides provisions containing aggravating circumstances such as Article 620(2) for the crime of rape; Article 628 provides aggravating circumstances in all cases of rape and sexual outrage; Article 630 (1) (2) (3) and (4) provide aggravating circumstances that are relevant to homosexual acts with children; Articles 634, 635 and 636 provide aggravating circumstances for crime of trafficking in women and minors; Article 626 which punishes consensual sexual intercourse with children between the age of 13 and 18. More importantly, the 2004 Criminal Code makes distinction among the sexual crimes against children on the basis of age of the victim. Where the child victim is below an age of 13, any sexual intercourse entails criminal punishment under Article 627 of the 2004 Criminal Code irrespective of the consent of the child.

³¹Ibid, there are also specific provisions under the 2004 Criminal Code which criminalizes acts considered as a crime against children; failure to bring up the child, maltreatment of minors and corporal punishment (Articles 576 and 659); crimes committed against children through harmful traditional practices i.e. female genital mutilation (Articles 561-566), early marriage (Articles 648-649) and abduction (Articles 587-590), child victims of trafficking (Articles 597 and 635), and economic exploitation of children such as enslavement (Articles 596 and 598)

³² The Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, *Negarit Gazeta, Gazette Extraordinary*, 5th May 1960, Addis Ababa

³³ Ibid, see Article 2113 of the 1960 Civil Code of Ethiopia, which provides that fair compensation may be awarded by way of redress to the victim of bodily injuries or, in the event of his death in consequence thereof to his family. See also Article 2114 of the same Code that states, indecent assault where a person has been sentenced by a criminal court for rape or indecent assault, the court may award the victim fair compensation by way of redress.

According to the Civil Procedure Code of Ethiopia,³⁴ however, child victims cannot personally appear and follow up cases before a court of law by their own. They have to exercise such rights through legal representatives, either tutors or guardians, which may be their parents. In the absence of parents, any of the close relatives, can represent the child victim on the basis of the order of such authority as it is rightly provided under the law.³⁵ Thus, child victims, through their legal guardians or representative may claim compensation from the offender based on the provisions of the Civil Code of Ethiopia that deals with extra contractual liability.

But a key issue may be raised in relation to the child victim's right to compensation for harms suffered due to a crime. What if the child victim has no guardian or tutor as per Article 227 of the Revised Family Code? In this regard, Article 228 of the Revised Family Code says that the court shall appoint, as far as possible, as guardian or tutor a near relative of the minor, by consanguinity or affinity, fit to perform such functions and willing to perform them. This, however, for practical reasons, is impossible. As mentioned above, the Civil Procedure Code does not fully ensure the child victim's right to adequate redress, and complaint procedures in cases of abuse, neglect or ill treatment by their family members. To take another instance, child victims who are living on streets may lack close relatives, and hence are not in a position to claim before a Court of law for redress because they cannot do so without having legal representation. In this case, the domestic legal scheme of Ethiopia does not effectively provide comprehensive procedures of civil redress for child victims, who lack legal representation due to their vulnerable situation. Where the crime is committed against the child or the injury is caused by the child's family, the problem of child victims' representation still continues to exist. In short, there are no available domestic remedial procedures that allow child victims to exercise the right to reparation or any other legal remedies for the harm that child has suffered due to the act of the

³⁴See Article 34 (1) of the Civil Procedure Code of the Empire of Ethiopia; *Negarit Gazeta*, Extraordinary Issue No. 3 of 1965, Addis Ababa, Ethiopia. It states that children, since they do not have legal capacity, cannot follow up on cases in the civil proceedings by their own. In order to do so, according to Article 219-225 of the Revised Family Code, they must have legal representatives such as tutors or guardians, which can be primarily as the parents, and in their default, any ascendants or siblings of the child who have attained majority. In their default, the aunt or uncle of the child can legally represent the child. Where there are no guardians or tutors as per the law, Article 227 of the Revised Family Code empowers the court to appoint a tutor or guardian to the minor.

³⁵See Article 219 and 225 of the Revised Family Code, Proclamation No.213/2000, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 6th Year Extra Ordinary Issue No. I, 4th Day of July, 2000 Addis Ababa

crime. In this regard, there are gaps in the law with respect to the remedial procedures on how child victims can seek redress for the harm they suffer due to the act of a crime.

In addition, data has revealed in this study that, lack of adequate child victim-witness sensitive procedure, provision of legal aid services and representation procedures for child victims make the situation severe, to these group of children. Moreover, there is no systematic procedure in the judiciary or justice administration systems that indicate how and by whom submission of claim for appointment of legal tutor or guardian has to be made for the child victims. The existing legal procedure is too burdensome and inadequately provides protective measures and supports for child victims and witnesses. In spite of legislative review and adoption of some specific children's policy, the legal procedures available for child victims to obtain redress for the civil harm they suffered remain inadequate and poor in Ethiopia. Thus, the Government has an obligation to make just and effective civil remedies available for child victims and witness.

4.2.4 A Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offence

Witnesses and whistleblowers of criminal offences have legal protection under the Proclamation No.699/2010.³⁶ The Proclamation accords legal protection to witnesses and whistleblowers of criminal offence. The purpose of the Proclamation is to provide for protection system that needs to be put in operation to protect witnesses and whistleblowers of criminal offence from direct and indirect danger, and attack that they may face as a consequence of being witness or whistleblower.³⁷ The Proclamation is applicable with respect to testimonies or information given or investigation undertaken on a suspect punishable with ten or more years or with death without having regard to the minimum period of the rigorous imprisonment.³⁸ In addition, to grant legal protection, there must be threats of serious danger against the life, physical security, and freedom of property of the witness, whistleblowers or family member of the witness or the whistleblower.

³⁶ Proclamation No.699/2010, a Proclamation to provide for the Protection of Witnesses and Whistleblowers of Criminal Offences; *Federal Negarit Gazeta*, 17th Year No.16, Addis Ababa

³⁷ Ibid, see the Preamble of the Proclamation.

³⁸ Ibid, see Article 3 of the Proclamation. Here, the Proclamation accords legal protection to whistleblower and witness only where the offence may not be revealed or established by otherwise means than the testimony of such whistleblower and witness.

According to Article 2 (1) of the Proclamation, the meaning of "Whistleblower or Witness" is, a person who has given or agrees to give information or has acted or agrees to act as a witness in the investigation or trial of an offence.

The Proclamation, under Article 9, addresses special protection measures to child witnesses. It provides special protection agreement between the Ministry of Justice and the child witness. In order to enjoy legal protection as a witness or whistleblower, the protection agreement shall be concluded between the parents or guardian of the child and the Ministry as per Article 8 (2) of the proclamation. However, the Proclamation provides exceptional circumstances that the special protection agreement can be concluded between the minor child and the Ministry.³⁹ As a legal requirement, Article 9 (2) of the Proclamation also states that, the special protection agreement concluded between the child witness and the Ministry shall be approved by the Federal High Court, within ten days from the date of signature. In this regard, the legal protection provided under the Proclamation, to some extent, reduces the level of fear and anxiety that might be experienced by child victims and witnesses during criminal proceedings. Here, child witnesses have legal protections under the proclamation not only for crimes against themselves but also any serious crimes that committed against the citizens, the public or the State.

However, the Proclamation so far actively considers the problems of child victims and witness during criminal proceedings only with regard to serious offences.⁴⁰ It does not provide legal protection schemes for all ordinary crimes that are committed against the child violating the provisions of the 2004 Criminal Code of Ethiopia, or any other relevant law. In addition, the child victims and witnesses of crime shall enter into a special agreement with the Ministry of Justice so as to enjoy legal protections under the Proclamation. To state in other words, no legal protections can be accorded to child witness and whistleblower under the Proclamation unless he

³⁹Ibid, the Proclamation, under Article 9 (1), provides some requirements for the validity of the agreement that reached between the Ministry and the child witness. The specific requirements are; where the minor is giving testimony against his or her parent or guardian; where the minor has no parent or guardian, or his or her parent/guardian could not be found notwithstanding reasonable efforts to find them, or where parent or guardian unreasonably withholding his/her consent or unable to give consent for any reason, the Ministry may enter into special protection agreement with the minor. Such special protection agreement shall also be presented before the Federal High Court within ten days from the date of signature for approval.

⁴⁰ Supra note 38, see Article 3 of the Proclamation

or she has entered into special agreement with the Ministry of Justice. However, it must be noted that, the special agreement entered between the child and the Ministry need to balance the overall purpose of the Proclamation, and the child's individual needs and views.

To sum up, having considered the above stated issues, it can be concluded that, the Proclamation does not provide adequate legal protections for the rights of child victims and witnesses of all kinds of crime as it provided under the international child rights standards.

4.2.5 National Policy Framework(s) to Protect the Rights of Child Victims and Witnesses in Ethiopia

Encouraging efforts have been made by the Government of Ethiopia to protect the rights of children as whole and vulnerable children in particular. In this regard, in addition to the inclusion of provisions with stringent penalties for crimes against children in the 2004 Revised Criminal Code, there have been efforts towards the adoption of various national policies and plan of actions to promote and protect rights of children.⁴¹ These policies provide issues of children's rights protection, access to education and health care, and implementation mechanisms for the objectives they set out. However, none of these national policies and plan of action provide comprehensive policy that specifically focuses on issues related to child victims and witnesses of crime, except the National Action Plan on Commercial Sexual Abuse and Exploitation of Children in Ethiopia.⁴²

The Developmental and Social Welfare Policy, which is one of the major child policies in the country, gives focus to implement the international and regional as well as national child rights instruments.⁴³ Though the general objective of this policy is to create a social condition conducive to a healthy life and sustainable development that will benefit all members of the

⁴¹See the Developmental and Social Welfare Policy, FDRE, Ministry of Labor and Social Affairs, 1996; National Plan of Action Against Commercial Sexual Abuse and Exploitation of Children in Ethiopia, 2005, MOLSA; Ethiopia's National Plan of Action for Children, 2003-2010, PHCCO (Population and Housing Census Commission Office) (2003); National Plan of Action for the Establishment and Development of Civil Registration and Vital Statistics System in Ethiopia; FDRE (Federal Democratic Republic of Ethiopia) National Plan of Action of Orphans and Vulnerable Children, 2004-2006.

⁴²See the National Plan of Action Against Commercial Sexual Abuse and Exploitation of Children in Ethiopia, 2006-2010; It provides that legal protections to victims of sexually abused and exploited children such as support, rehabilitation and reintegration of these children, 2005, pp 17-20

⁴³ FDRE, the Ministry of Labor and Social Affairs (MOLSA), the Developmental and Social Welfare Policy (November 1996), p. 67

society, it gives a special attention to vulnerable groups of the society identified as children, women, the youth, the elderly, and persons with physical and mental impairment.⁴⁴

There is also a National Plan of Action (NPA) for the Child that tries to analyze the situation and special needs of children in Ethiopia.⁴⁵ With regard to protecting children from abuse, exploitation and violence, the National Plan of Action gives special emphasis to children who are victims of violence and other harmful traditional practices, and accordingly intends to provide all protective measures, provision of some assistance to these children. To achieve these ends of the NPA, the specific strategies, among others, are raising the public awareness on the contents of CRC and the FDRE Constitution, on the consequences of early marriage, abduction, physical punishment, sexual exploitation, promoting the participation and expression of children in families, schools, the community and the judicial proceedings.⁴⁶

Currently, a review of National Child Policy⁴⁷ is in progress with a view to accommodate the recent development situations and circumstances, and to address issues related to the protection, treatment and care as well as support mechanisms for children in Ethiopia. Under this policy review, the issues of child victims have been briefly mentioned. It states that "Conducive environment shall be created to provide rehabilitation services for children who are victims of sexual, physical and psychological abuses (Translation mine)."⁴⁸ A glance of the draft National Child Policy document indicates that it does not provide for explicit special protections to child victims and witnesses of crime during criminal justice proceedings. The document refers only to the rehabilitation services that need to be given for child victims of abuses. Hence, the review of

⁴⁴Ibid, see policy objectives of the document, pp. 65-66. The policy exerts efforts to implement all international standards, eliminate harmful traditional practices with regard to child welfare and rearing, extends the necessary support, incentives and initiatives for the welfare and development of the child, and creates fertile ground for children in specially difficult circumstances such as orphans, abandoned children, children with mental and physical disabilities to get the necessary assistance.

⁴⁵ FDRE, Ministry of Labor and Social Affairs (MOLSA), the National Action Plan for Children from 2003-2010, June 2004, Addis Ababa, Ethiopia. The major elements of this NPA include; protecting the child against abuse, exploitation, violence and improving situation of children in Especially Difficult Circumstances (CEDCs), providing quality education, combating HIV/AIDS and assisting orphans and other vulnerable children. According to this NPA, the protection of children against abuse, exploitation and violence involves registration of children at birth, revision of laws, raising awareness about harmful traditional practices, and the improvement of juvenile justice system, provision of assistance for children in especially difficult circumstance and the reduction of child labor.

⁴⁶ Ibid, pp 88-90

⁴⁷ Federal Democratic Republic of Ethiopia (FDRE), Ministry of Women, Children and Youth Affairs, the Draft National Child Policy Final Document, May, 2011, Addis Ababa

⁴⁸ Ibid, p.20

National Child Policy needs to consider the legal protections and practical measures that must be given, which is based on the special needs and situation of child victims and witnesses of crime. Some of the areas of policy, particularly relating to the management of children's evidence in courtrooms and access to adequate psycho-social supports have been neglected.

The major National Child Policies that are identified above recognize, in a limited manner, the need for the implementation of the rights of children that are contained under international, regional and national child rights instruments. But, the existing national child policies do not adequately ensure protection of all aspects of the rights of child victims and witnesses of crime. Moreover, the existing procedures to provide psychological, legal and social supports for child victims and witnesses remain poor and inadequate. The critical role of Civil Society Organizations (CSOs) to participate in the protection of rights and provision of support services for child victims and witnesses of crime is not also fully addressed in existing National Child Policies. So, in order to fully protect the rights of child victims and witnesses of crime, there has to be comprehensive child policy document, which involves the participation of professionals and the CSOs in the development of policy document, as the experience of some countries⁴⁹ shows. Besides, the National Child Policies must also fairly provide an opportunity for the CSOs to address the existing problems in the implementation of child rights instruments, and inconsistencies in the protection of rights of child victims and witnesses of crime.

Thus, in Ethiopia, the existing situation needs to have a comprehensive national child policy document that specifically deals with problems related to the rights of child victims and witnesses, as it is clearly recommended by the Economic and Social Council.⁵⁰ The national child policy framework needs to ensure the link between the judicial criminal proceedings, and

⁴⁹ Samantha Waterhouse, 'the Impact of Changing Criminal Justice Responses to Child Victims of Sexual Abuse,' Open Society Foundation for South Africa (2008), <http://www.osf.org.za/Fileuploads/docs/CJI_Occasional_Paper_4.pdf> (Accessed on 25 June 2011) In South Africa, the National Policy Guidelines for Victims of Sexual Offences were developed by an inter-sect oral task team in 1998 under the Head of the Department of Justice. The adoption of such policy involved different professionals from the justice administration system. These Guidelines were developed for the South African Police Service, the Department of Health, the Department of Welfare, and appropriate NGOs, Prosecutors at the Department of Justice, and the Department of Correctional Services.

⁵⁰ Supra note 2, see the Preamble of the Guidelines. In relation to this, the Guidelines states that, for full realization of the rights of child victims and witnesses of crime, Member States shall incorporate international minimum child rights standards and protections in their domestic legal systems, strengthen national structures, institutions and organs as it is provided in the guidelines; See also n.10 above, General Comment 5, paragraph 30, which also states that, particular attention shall be given to identifying and giving priority to marginalized and disadvantaged group of children.

the specific rights of child victims and witnesses of crime. Besides, the review of the national policy document does adequately provide improved mechanisms to deliver adequate support services for child victims and witnesses during the criminal proceeding.

4.3 Assessment of the Compatibility of Legal Protections Accorded to Rights of Child Victims and Witnesses in Ethiopia with the International Child Rights Standards

As mentioned above, international and regional child rights instruments provide that, a State Party shall take all appropriate and necessary measures to promote and protect the rights and interests of child victims and witnesses of crime.⁵¹ Since the CRC and ACRWC recognize a wide range of children's rights, both require a State Party to protect and put protective measures in place in order to ensure full realization of rights of children. To this effect, in Ethiopia, the rights of children provided in the domestic laws of Ethiopia shall be assessed on the basis of the rights of children contained under the international and regional child rights instruments.

In the first place, the compatibility of legal protections accorded to the rights of children in Ethiopia, where it is analyzed in light of the international child rights instruments, in many instances, it is harmonious with the minimum international and regional child rights standards. This, however, does not mean that, the legal protection specifically granted to child victims and witnesses is well designed and effectively implemented.

In this regard, an informant responded that;

.... [T]he Government has taken legislative and some appropriate measures to protect the rights of children in Ethiopia. In order to meet problems of child victims and witnesses of crime during criminal proceeding, the Government has reviewed the 1957 Penal code to make it in line with the 1995 FDRE Constitution. Specific protective measures have also taken by the judiciary to safeguard the rights of child victims and witnesses during criminal proceeding. For instance, child victims and witnesses offer

⁵¹Supra note 10, see Article 39 of the CRC; See also n.8 above, Article 1(1) of the ACRWC. These international and regional normative grounds for child rights provide that, the State Party has an obligation to take all appropriate measures to promote physical, psychological recovery and social reintegration of child victims. See also Article 16 (2) of the ACRWC which provides, children have the right to be protected against abuse and torture. Besides, protective measures shall also include effective procedures for the establishment of special monitoring units to provide necessary support for the child; See also n.50 above, the Guidelines, paragraphs 22-25 which provides the child victims' and witnesses' right to effective assistance.

testimony by the aid of intermediary, there is also a separate child waiting room that linked with the courtroom proceeding through closed-circuit television, and hence the child cannot hear or see the accused. However, the rights of child victims and witnesses are not fully protected during criminal proceeding due to absence of a comprehensive child victim-witness sensitive procedure. The existing Criminal Procedure Code has a number of legal gaps, and contains inadequate rules of procedure to deliver legal aid, psycho-social support services for child victims and witnesses (Translation mine).⁵²

Secondly, the compatibility of legal protection accorded to the rights of child victims and witnesses in Ethiopia can also be assessed with respect to subordinate legislations. As it has been stated under the CRC and ACRWC, children have the right to be protected from 'all forms' of physical or mental violence or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.⁵³ Similarly, the FDRE Constitution provides the children's rights to be protected from corporal punishment or cruel and inhumane treatments in schools, and other institutions responsible for the care of children.⁵⁴ In relation to the children's right to protected from corporal punishment, however, where Articles 68 and 576 (3) of the 2004 Criminal Code as well as the Revised Family Code (RFC)⁵⁵ are seen together, parents or any other legally responsible guardian of the child may take abusive act conducted as a form of minor disciplinary measure. Accordingly, such act is not treated as a crime under the 2004 Criminal Code. It allows parents and/or guardian to inflict bodily punishment on the minor as a form of disciplinary measures. As stated above, the FDRE Constitution legally prohibits imposition of any form of corporal punishment in schools and care giving institutions. But, the Constitution is silent about corporal punishment that is imposed against the child at home. Plainly, Articles 68, 576 (3) of the 2004 Criminal Code of Ethiopia and Article 258 (2) of the Revised Family Code allow parents or guardians to take minor disciplinary measure against the child. In this regard, where

⁵² Wosenyelesh Admasu, the Federal Democratic Republic of Ethiopia (FDRE), Ministry of Justice, Federal Public Prosecutor; Head of the Department of Women's and Children's Criminal cases, Lideta Bench, (Interview conducted on 21 July 2011)

⁵³ Supra note 51, see Article 19 (1) of the CRC and Article 16 (1) of the ACRWC.

⁵⁴ Supra note 23, see Article 36 Sub Article (1) (e) of the FDRE Constitution. It states that every child has the right to be free of corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for the care of children.

⁵⁵ Supra note 35, see Article 258 (2) of the Revised Family Code. It states that the guardian may take the necessary disciplinary measures for the purpose of ensuring the child's upbringing.

seen in light of the provisions of the CRC and ACRWC, which provide the child's right to be protected from 'all forms' of physical or mental violence or abuse, neglect or maltreatment including sexual abuse while in the care of the child, the Ethiopian domestic law is incompatible with the international child rights standards.

However, for stronger reasons, this study argues that the, practical implementation of the above cited domestic laws of Ethiopia remain questionable when it is considered in light of Articles 9 (1), (4), 13 (2) and 36 (1) (e) of the FDRE Constitution.⁵⁶ According to Article 36 (1) (e) of the FDRE Constitution, children have the right to be protected from corporal punishment in schools and/or any other institution responsible for their care. Moreover, the international and regional child rights instruments provide that children have the right to be protected from 'all forms' of physical or mental violence or abuse, neglect or maltreatment during their care.⁵⁷ In these legal contexts, the phrases 'other institutions responsible for the care of children,' under Article 36 (1) (e) of the FDRE Constitution, shall mean to include family or other legally responsible parents or guardian of the child. On this note, the UN Committee on the Rights of the Child, also considered the Ethiopia's domestic protections accorded to the child's right to be protected from corporal punishment. The Committee, in its concluding observations of 2006, stated that "reasonable chastisement is permitted according to the 2004 Criminal Code and that corporal punishment is still widely practiced at home, in schools and in other settings."⁵⁸

⁵⁶ To justify this argument, it is better to consider the some of the provisions of the FDRE constitution. Article 36(1) (e) of the FDRE Constitution realizes the right of the child to be protected from corporal punishment, cruel or inhumane treatment in schools and other institutions responsible for his or her care. According to Article 9(1) of the Constitution, the Constitution is the supreme law of the land, and any law, customary practice, acts of government or officials that contravene the Constitution is null and void. Article 13 (2) of the Constitution also provides the manner how the provisions of the Constitution dealing with the fundamental human rights and freedoms, shall be interpreted where there is need to do so. Having considered these provisions of the Constitution together, children have the right to be protected from corporal punishment within home since family (parents or guardian) can be taken as one of the institutions which gives care for the child. In order to give legal effect to the provisions of the 2004 Criminal Code and RFC, alternative disciplinary measures need to be sought than corporal punishment.

⁵⁷ Supra note 53, the CRC and ACRWC

⁵⁸ Supra note 24, see Concluding Observation of the Committee on the Rights of the Child, the Third Periodic Report of Ethiopia, and due in 2003, 28 October 2005, CRC/C/129/Add.8, CRC/C/ETH /CO /3 September 2006, paragraphs 33-34, 38-39. In this regard, the Committee recommends that the State party explicitly prohibit corporal punishment within the home, enforce the prohibition in all settings including within family, schools and alternative child care. So, corporal punishment must be permanently prohibited in the context of both in the school and family. The Committee further recommends, the State party shall conduct awareness-raising campaigns to ensure the use of alternative forms of discipline in a manner consistent with the child's human dignity and in conformity with the

Thirdly, the compatibility of the legal protections granted to child victims and witnesses during criminal proceeding shall also be assessed in terms of obligation of the Government. Subject to the availability of resources in a country, ratification of the CRC and ACRWC by a given State Party brings an international and regional obligation to the State Party to implement rights of children therein. In the same vein, Ethiopia, as a State party to the CRC and ACRWC, is under strict obligation to ensure all appropriate legislative procedures to provide support services and other protective measures for the rights of child victims and witnesses during criminal proceeding.⁵⁹ In this regard, an informant responded as follows;

[W]here a child appears before the court either as victim or witnesses of crime, all types questions put to the child victims and witnesses on the presence of intermediaries. Though it is inadequate and poor, psycho-social support services are also given to them. However, there is no procedure to provide such support services. The Non-Governmental Organizations (NGO's) which are working on the protection of rights of child victims and witnesses provide a limited support services to the child victims and witnesses during criminal proceeding (Translation mine).⁶⁰

For obvious reasons, child victims and witnesses need special protection and assistance during criminal proceeding. But, such special protection and measure, for its effective and sustainable implementation, must be provided at the earliest possible time and on the basis of framework of law and policy. As data in this study showed, the existing support services delivered to the child victims and witnesses are inadequate to fully address the problems. The role of the Government and CSOs in the child's protection, rehabilitation and

CRC, especially Article 28, paragraph 2, while taking due account of General Comment No. 8 of the Committee on the Right of the Child, protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment

⁵⁹Supra note 57, see Article 39 of the CRC. According to the wording of this provision, a State Party shall take all appropriate measures to fully implement the rights of child victims of crime. Hence, it does not allow a permissible difference and discretion to the Ethiopian Government to enforce the specific rights of child victims and witnesses during criminal proceeding. See also n.50 above, General Comment 5, paragraph 24, which states that, effective remedies must be available to redress violations. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, and advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39

⁶⁰ Supra note 11, Child Justice Project Office (CJPO) of the Federal Supreme Court of Ethiopia

reintegration services must also be clearly specified. On top of that, efforts and roles played by the Judiciary and the Prosecution Office, in the protection and promotion of the rights of child victims and witnesses during criminal proceeding, must consider the minimum international and regional child rights standards. With regard to these issues, an informant from the Office of the Child Justice Project responded that;

... [T]here have been some progresses in the protection of rights of child victims and witnesses. In order to protect their rights during criminal proceeding, specific protective measures have been taken by the Judiciary and the Prosecution Office. Adequate on-job training is not provided for the judicial personnel, who are working with these children. In addition, there are also shortage of trained professionals and Social workers and resource constraints (Translation mine).⁶¹

In relation to the State Party's obligation to take adequate measures to protect the rights of children, however, the Committee on the Rights of the Child, under the General Comment 13 emphasized that, resource constraint cannot be a justification for a State Party's failure to take further adequate measures to protect the rights of children.⁶² In this context, a States Party to the CRC and ACRWC, is obliged to protect and promote the rights of child victims and witnesses that contained under the these instruments to the extent resources are

⁶¹ Ibid, Child Justice Project Office (CJPO) of the Federal Supreme Court of Ethiopia. According to the respondent, the CJPO was established in 1999 under the Federal Supreme Court. Since its date of establishment, there have been some achievements in protecting rights of the child victims and witnesses during criminal proceeding. To mention, child victim-witness sensitive courtroom environment was set up in Addis Ababa (Federal First Instance Court, Lideta 7th Criminal Bench), SNNPR (Hawassa, Arbaminch and Wolayta Sodo), Tigray and Oromia Regional States. In order to protect the specific rights of child victims and witnesses during criminal proceeding, measures taken by the Judiciary include; the child victims and witnesses offer testimony through closed circuit television system. The child responds through the aid of an intermediary to the questions raised by the prosecution, defense lawyer and the judge. During the whole stages of the proceeding, the intermediary assists the child victim and witnesses. Where questions put by the parties are not clear to the child, an intermediary make a modification to the questions in a language the child understands. In addition, the child victim and witness are considered as competent witness so long as the child's age and maturity allows. Hence, every child victim and witness has the right to be treated as a capable witness, and the testimony offered is presumed valid during the trial unless proven otherwise by the accused's evidence. There is also waiting room for child until the commencement of the proceeding. So, there is no direct contact between the child and the accused.

⁶² The Committee on the Rights of the Child, General Comment No. 13 (2011), Fifty-sixth Session Geneva, 17 January-4 February 2011, see paragraph 66. It states that resource constraints cannot provide a justification for a State Party's failure to take any or enough, of the measures that are required for the protection of rights of the child under Articles 4 and 19 of the CRC. Thus, a States Party is urged to adopt comprehensive, strategic and time bounded co-coordinating legal and policy frameworks to protect the rights of the child. See also Article 39 paragraph 2 of the CRC which provides that States Parties shall undertake such measures to the maximum extent of their available resources, and where needed, within framework of international co-operation.

available. It is undeniable that qualified and well-trained judicial personnel play an important role in protection of the rights of child victims and witnesses during criminal proceeding. Hence, the Government of Ethiopia needs to prioritize and increase budgetary allocations for children in the criminal justice process in order to improve the implementation of their rights. In particular, the Government needs to pay attention for the training of judicial and prosecution personnel with a view to develop their capacity. Providing on job-training for the judicial and prosecution personnel enable them to receive the child's testimony, to communicate and to conduct the whole proceeding in a child-sensitive manner that respects the privacy of the child victim and witness.

On the basis of the above findings, therefore, it can be said that, the Ethiopian domestic legal and policy frameworks that is in place to protect the specific rights of child victims and witnesses of crime remain inadequate. Hence, the Government should undertake all appropriate legislative, administrative and policy measures for the proper implementation of the rights of child victims and witnesses, as it is rightly recognized under the international and regional child rights standards.⁶³

4.4 Enforcement of the Specific Rights of Child Victims and Witnesses During Criminal Proceedings: Key Challenges

4.4.1 Low Emphasis Given to the Principle of the Best Interests of Child

The principle of the best interest of the child⁶⁴ requires that, active measures shall be undertaken at all levels of Government, including the judiciary. The Judiciary is required to apply the child's

⁶³ Supra note 57, see Articles 4, 19 (1) and 39 of the CRC; Articles 1(1) and 16 (2) of the ACRWC. Both instruments provide that, a State Party shall take all appropriate and necessary legislative measures to protect, and to give effect to the child rights contained under the instruments. See also n.59 above, General Comment No. 5, paragraph 18. It states that a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the CRC is an obligation of the State Party; See also n. 62 above, General Comment No. 13, paragraph 38. In this case, the legislative measures refer to, legislations that are in place so as to protect rights of the children, including the budget, implementing and enforcing measures. It comprises all national laws and relevant regulations, which define frameworks, systems, mechanisms and the roles as well as responsibilities of concerned agencies and competent officers. Hence, the State Party is duty bound to ensure the protection of child victims and witnesses, and effective access to redress and reparation.

⁶⁴ Ibid, see Article 3(1) of the CRC, and Article 4 (1) of the ACRWC. See also n.63 above, General Comment 5, paragraph 12. See also Child Welfare Information Gateway, Determining the Best Interests of the Child: Summary of State Laws (March 2010), USA; although there is no standard definition of "best interests of the child," the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. Hence, "Best interests" determinations are generally made by considering a number of factors related to the circumstances of the child and the circumstances

best interest principle by systematically considering how children's rights and interests are affected by their decisions and actions.

The FDRE Constitution states that the best interest of the child should be given primary consideration in all actions of Government.⁶⁵ So, whenever the child comes in contact with judicial proceeding, the principle of best interest of the child must be primarily taken into account. The Judicial must take all necessary steps, at least to minimize, the possible risks to the child victims and witnesses during criminal proceeding. Because of this very fact, the Judiciary and Prosecution Office are duty bound to primarily consider the best interest of the child victims and witnesses while taking any actions. Here, the respective duties of the judicial and prosecution office to primarily consider the child's best interest during criminal proceeding refers that, it must pay due attention to the child victim's and witness's best interest while interpreting and applying laws.

In the context of judicial criminal proceedings, however, it does not mean that the best interest of child victims and witnesses shall often prevail over the rights of the accused whenever conflict arises between the two categories of rights. Rather, it does mean that the best interest of the child victims and witnesses should be primarily considered, and accordingly balanced⁶⁶ with the competing rights of the accused. During criminal proceedings, giving due emphasis to the children's best interest and taking into account their special needs are of paramount importance to protect the rights of child victims and witnesses.⁶⁷ Thus, where child victims and witnesses participate in judicial criminal proceedings, necessary-measures should be taken to ensure that, the proceedings are conducted in a way that does not negatively affect on the child's physical or

and capacity of the child's potential caregiver(s), with the child's ultimate safety and well-being as the paramount concern.

⁶⁵Supra note 54, see Article 36 (3) of the FDRE Constitution. See also n. 63 above, Article 3 (1) of the CRC and Article 4 (1) of the ACRWC.

⁶⁶Supra note 50, see paragraph 8(c) of the Guidelines. It states that, while protecting the rights of accused, every child victim and witness has the right to have his or her best interest given primary consideration. This includes the right to protection and to a chance for harmonious development. See also Article 4 and 9(2) of the ACRWC, which states that because of their special situations and needs, children need extra protection and guidance from parents (adults) for their full and harmonious development on the bases of their evolving capacities and best interests.

⁶⁷Supra note 65, see Article 3 of the CRC; Article 4 of the ACRWC. Where these international standards considered together, having taken the special circumstances of child victims and witnesses of crime, the best interest these children should be given a primary consideration in all actions during the criminal proceeding while safeguarding the rights of the accused.

mental health, self-respect or dignity. It is indisputable that the best interest of child victim and witness may conflict with the rights of the accused during criminal proceeding. But, in delivering decisions, the judiciary must be aware of the competing interests so as to properly evaluate the best interests of the child with the accused's rights.

In practice of the Judiciary, however, often the best interest of the child is not given due consideration. In specific terms, judicial procedures and practices are not based on the best interest of child victims and witnesses of crime. For instance, in a case *the Federal Public Prosecutor vs. the accused 'A.Z.'*⁶⁸ the accused, in the first count, is charged under Article 620 (2) (b) of the 2004 Criminal Code, for committing aggravated rape against girl child, aged 13, and in the second count, charged under Article 654, for committing incest. During the time of the proceeding of the case, however, the girl/child victim was exposed to the inappropriate forms of direct examination questions that employed by the prosecution (See Annex page 3). It must be noted here that, questions put to the child victims must often be phrased and put forward differently from questions put to adult victims, both in content and length. Putting inappropriate questions⁶⁹ to the child victim and witness may cause re-victimization to the child or subject the child to further trauma. A child victim and witness shall be treated in a caring and sensitive manner i.e. is respectful of his or her dignity throughout the legal proceeding, taking into account his or her personal situation, immediate and special needs, age, gender, level of maturity. Questioning the child victim and witness must also be undertaken by the strict supervision of the Judge, who will have the duty to prevent the asking of any question that may expose the child to intimidation, hardship or undue distress.

In addition, the assigning a pseudonym or a number to a child or anonymity of child victims in the interest of the right to privacy need to practiced to shield them from unnecessary harm. The

⁶⁸ Federal Public Prosecutor vs. the accused 'A.Z.' (Letter name used for the purpose of this study), Federal First Instant Court, Lideta 7th Criminal Bench, 2002 E.C, Criminal Case No. 183695/02) (Unpublished)

⁶⁹ United Nations Office on Drugs and Crime (UNODC), Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime (2009) criminal justice handbook series, pp. 76-79, <<http://www.unodc.org/pdf/criminal-justice/Guidelines-E.pdf>> (Accessed on 01 January 2011) Inappropriate questions refers to, using words that do not match the age and abilities of child victim and witnesses, and questions that are asked in a way that creates difficulty to the child to understand and respond accordingly. In other words, inappropriate questioning refers to, interview and assessment techniques that increases distress or trauma to the child. Hence, questions put to the child victim and witness must be in a sensitive, understanding, constructive and in a reassuring manner.

criminal proceeding must avoid disclosing the full names and addresses of the child victims, particularly, in cases of rape and sexual outrages that committed against children, to save them from further embarrassment. However, as the practice in the Judiciary shows, during the proceeding, the use of assigning a pseudonym or a number to a child is not practiced. In this case, the use of special measures is not practiced to conceal the identity of the child victims during criminal proceeding. As an informant rightly responded, "Full name's and address's of child victims are registered in the charges framed by the prosecution, during time of offering testimony in the courtroom and in the writings of judicial decisions (translation mine)."⁷⁰ Though the right to a fair trial dictates that, accused persons have the right to full access to any evidence presented against them, child victims should never be unduly exposed to the public.

4.4.2 Child Victim-Witness Sensitive Courtroom Environment

According to the Guidelines on Matters involving Justice on Child Victims and Witnesses, the child victims and witnesses have the right to be protected from any hardships during the criminal proceeding. For obvious reasons, the experience of crime itself causes a significant amount of stress and trauma to the child. Because of their age and immaturity, child victims and witnesses often find themselves in difficulty with the procedural requirements of the judicial criminal proceeding. In specific terms, intimidation in the courtroom environment, lack of legal and procedural knowledge,*confrontation with the accused, direct and cross-examination questioning are some of the difficulties that child victims and witnesses face during criminal proceedings. Considering these, however, child victims and witnesses must be protected from potential re-victimization that can be caused due to their involvement in the criminal proceeding. Hence, the Judiciary and Prosecution Office have the greatest responsibility to make the child's participation in the process easier and less harmful. The court is obliged to protect the child victim and witness against feeling of re-trauma. If so, it increases the child's capacity to participate in the criminal proceeding,⁷¹ and helps to advance the child's ability to remember the details of the criminal event.

⁷⁰W/ro Tsehay Menker T/Michael, Judge, Federal First Instance Court, Lideta 7th Criminal Bench (Interview Conducted on 28 July 2011)

⁷¹ Supra note 66, see paragraph 29 of the Guidelines

So, in the judiciary, there has to be separate rooms that are designed to conduct interviews and to avoid unnecessary contacts with the accused, and intermediary services need to be provided for child victims.⁷² The child victim has a right to be reasonably protected from the accused. Hence, the judiciary shall make use of child victim-witness sensitive courtroom procedures during criminal proceeding, without affecting the accused's right to fair trial in the criminal proceeding.

With regard child victim-witness friendly courtroom environment, key informant responded that:

... [T]here is a separate child victim-witness sensitive criminal benches were established at the Federal First Instant Court, Mekelle, Adama, Hawassa, and Arbaminch. For instance, at the Federal First Instant Court, Lideta criminal bench, the child victim and witness offer testimony from a separate room through closed circuit television link. There is no direct contact or view between the child and the accused during the whole process. The accused and the public in the courtroom observe the child victim and witness through the TV screen. However, there is absence of formal questioning procedures during the criminal trial process. In addition, there are insufficient courtroom facilities to protect the child's identity, lack of communication aid equipments and inadequate support and counseling services for the child. The child victims and witnesses are often asked to answer humiliating details of the crime by Parties of the proceeding. So, the problems of child victims and witnesses are not fully addressed during criminal proceeding (Translation mine).⁷³

From the above response, it can be understood that key problems of implementation include lack of formal courtroom procedures that specifically deals with child victim witness-sensitive environment, inadequate budget allocation for child communication aid equipments which in turn results in limited institutional capacity to implement their specific rights, and causing the child's re-victimization by asking humiliating details of the crime. So, adequate legal protection for child victims and witnesses is crucial to address the problems of the child and for an efficient

⁷²Ibid, see paragraphs 29 and 30 of the Guidelines. In this respect, child-victim sensitive approach refers to an approach that gives primary consideration to a child victim's right to protection and that takes into account his or her special needs, situations and views of the child.

⁷³Supra note 61, Child Justice Project Office (CJPO)

prosecution of perpetrators. There must be a full range of physical protection and psychosocial support to child witnesses and victims, which create an enabling environment to ensure access to justice and fair trials.

Moreover, the judicial personnel, who conduct interview with child victims and witnesses, need to be given adequate on the job-training. There has to be continuous training for judges and prosecutors on laws and specific child victim-witness friendly procedures, training for judicial staffs and social workers on psychological and medical assistance so that they can easily deliver support services. Such training also helps the judicial personnel to consider the child victims special needs and feelings. So, the Ethiopian Government should provide sufficient budget to undertake a wide range of measures to respond for all forms of protections need to be granted during criminal proceeding, including the provision of child-friendly legal, medical and psychosocial services.

The international child rights instruments and standards provide that,⁷⁴ professionals and other court personnel should be given adequate on job-training so as enable them to be aware of the special needs of the child victims and witnesses. They shall be given trainings on specific child rights issues, age-related linguistic factors, social and gender related issues, appropriate adult-child communication skills, care, assistance, feelings and attention, additional skills to deal with child victims and witnesses in a sensitive, understanding and constructive manner.⁷⁵ Considering these issues, in Ethiopia, professionals and judicial personnel should be given on the job-training. Particularly, adequate on-job training must be given on specific rights of children, physical and psychological consequences of crimes against children, appropriate adult-child communication

⁷⁴ Supra note 63, see General Comment 5, paragraph 54. The Committee recommends that, the State Party has an obligation to develop training and capacity-building for all those involved in the implementation process; government officials, parliamentarians and members of the judiciary and for all those working with and for children. Such training should also include community and religious leaders, teachers, social workers and other professionals, including those working with children in institutions and places of detention, the police. Training needs to be systematic and ongoing - initial training and re-training.

⁷⁵ Supra note 72, see paragraphs 40-42 of the Guidelines; Adequate training, education and information should be made available to professionals, working with child victims and witnesses with a view to improve specialized methods, approaches and attitudes so as to protect the child victims and witnesses rights effectively and sensitively. The training should include relevant human rights norms, standards and principles, including the rights of the child.

skills, and methods to present evidence as well as to question child victims and witnesses during criminal proceedings.

4.4.3 Advancing the Right of the Child Victim and Witness to Express Views Freely and to be Heard

As it is stated under the international child rights instruments, children have the right to express views in all matters affecting their interests. Such views must also be sought and given due weight in accordance with the child's age and maturity.⁷⁶ Hence, the child victims must be encouraged to present their views and concerns during the criminal proceedings, without prejudice to the accused's right.

Accordingly, in Ethiopia, the judiciary is required to ensure that child victims' and witness' right to express their views freely, and the manner in which they prefer to offer testimony during criminal proceedings. Due weight must also be given to the views and concerns of the child.

In this regard, interview with a Judge of Federal First Instance Court (FFIC), Lideta 7th Criminal Bench, has revealed that:

... [D]uring the criminal proceeding, communications and interviews with the child victim and witness are conducted by the use of an intermediary. The intermediary assists the child to express his or her views freely throughout the proceeding. Though there is lack of special procedure, child victims and witnesses offer testimonies during the proceeding on the basis of existing Criminal Code. Hence, in some instances, the child victims and witnesses are exposed to embarrassing and repetitive questions posed by the prosecution, the accused or legal counsel (Translation mine).⁷⁷

⁷⁶ Supra note 67, see Article 12 of the CRC, and Article 7 of the ACRWC. According to these provisions, children have the right to express their views freely in all matters affecting them, and those views shall also be given due weight. Here, the principle of the child's right to be heard highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her own rights. It applies equally to all measures adopted by States to implement the Convention. See also n.74 above, General Comment No. 5, paragraph 12

⁷⁷ Supra note 70, interview with W/ro Tsehay Menker T/Michael, Judge, Federal First Instance Court, Lideta 7th Criminal Bench (Interview Conducted on 28 July 2011). According to the interviewee, the Criminal Bench is established to see and consider criminal cases involving crimes committed against women, children and witnesses.

As can be easily understood from what has been stated above, the efforts done by the judiciary to ensure the children's right to express their views is encouraging. As stated earlier, however, absence of special rules of procedures to receive the testimony of the child, and lack of adequate training to persons working with child victims and witnesses are crucial issues need to be given emphasis. In the first place, putting special rules of procedures in place to register the testimony of child victims and witnesses, without affecting the accused's right to fair trial during criminal proceeding, is so essential. A safe environment must be created in which child victim and witness can feel and encouraged to testify. Secondly, as it is provided under the international child rights instruments, lack of special training to the professionals and staffs who are working with the child victims,⁷⁸ poses a threat to the rights and special needs of the child. Particularly, this can restrict the child's right to express his or her views, opinions and beliefs freely in his or her own words, where the intermediary lacked the required knowledge and skill to communicate with the child. Moreover, it minimizes the child's roles and contributions to the criminal justice process. It is also important to build the capacity of judicial staffs to create child friendly mechanism for consultations, follow up mechanism.

With regard to the manner how child victims and witnesses offer testimonies during criminal trial process, the data obtained reveals that there is a good practice in the judiciary. Here, an informant responded that;

[D]uring the criminal proceedings, child victims and witnesses are often allowed to offer testimony in a narrative way. Where questions are posed by the Judge, the Prosecution and/or the Accused/legal Counsel, the intermediary facilitates the child's ability to recount the facts of the case, provide a new structure for the question and forward it to the child. During the whole process, the Presiding Judge closely monitors

⁷⁸ The Child Rights Information Network (CRIN), UNOCD-UNICEF, Model Law on Justice in Matters involving Child Victims and Witnesses of Crime; the Model Law states that, professionals, who are working with child victims and witnesses, shall undergo appropriate training on issues related to child victims and witnesses of crime. Where appropriate, the concerned authority shall develop and publish training curricula for the professionals. Accordingly, the training should cover, among others, relevant human rights norms, standards and principles of the rights of the child, and ethical duties related to the performance of their functions. Besides, signs and symptoms that are indicative of crimes against children, crisis assessment skills and techniques for making referrals with an emphasis placed on the need for confidentiality. The dynamics and nature of violence against children, impact and consequences of the violence including negative physical and psychological effects of crimes against children should also be emphasized.

*the way Parties posed questions to the child and ensure the language is used appropriately (Translation mine).*⁷⁹

More importantly, the child's right to be heard is closely linked with other rights such as the right to freedom of expression and access to information.⁸⁰ In this regard, the right of the child victim and witness is linked to the right to be informed about issues such as availability of health, psychological and social support services, the availability of protective measures and the procedures of receiving reparation.⁸¹ However, in this regard, an informant responded that "The child victims have not given necessary and available legal counseling, information as to health, psychological and social services" (Translation mine).⁸²

Another instance shows that, the child victim's and witness's right to be heard and the right to participation during criminal proceeding have not given due consideration, and the special needs and experiences of the child victim has not taken into account. In this regard, practices of Federal Courts show that due consideration has not given to the child victim's special needs and situations.

⁷⁹ Supra note 77, interview with the judge of the FFIC. In this regard, the practice at the FFIC is to some extent in line with the Guidelines. See also n.75 above, paragraphs 8(d) and 21 of the Guidelines. According to the Guidelines, every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity.

⁸⁰ The Committee on the Rights of the Child, General Comment No. 12, the right of the child to be heard, 51st session, Geneva, CRC/C/GC/12/ 20 July 2009, paragraphs 62-63. It states that, the child victim and witness of a crime must be given an opportunity to fully exercise the right to freely express their views in accordance with the United Nations Economic and Social Council Resolution Guidelines. In particular, every effort has to be made to ensure that, child victim and witness is consulted on the relevant matters with regard to his or her involvement in the case under scrutiny, enabled to express freely, and in her or his own manner, views and concerns regarding the child victim's and witness's involvement in the judicial process. See n.76 above, Articles 13 and 7 of the CRC, which provide that, the children's right to freedom of expression and access to information respectively. These rights are crucial prerequisites for the effective exercise of the child's right to be heard. See also n.76 above, Article 8 of the ACRWC which provides the child's freedom of expression.

⁸¹ Ibid, General Comment No. 12, see paragraph 64. Here, the Committee recommends that , the right of the child victim and witness is also linked with the right to be informed about issues such as availability of health, psychological and social support services, the role of a child victim and/or witness, the ways in which questioning is conducted, existing support mechanisms in place for the child when submitting a complaint and participating in investigations and court proceedings, the specific places and times of hearings, the availability of protective measures, the possibilities of receiving reparation.

⁸² Supra note 52, interview with the Ministry of Justice

In a case *Federal Public prosecutor vs. the Accused 'E.Z'*,⁸³ the accused was charged for sexual outrages against a girl child aged 14 years, in violation of Article 626 (1) of the 2004 Criminal Code. At the trial stage, the accused entered a plea that, he had performed sexual intercourse with the girl child, but argued that, the age of the girl child is 18, not 14. Following the accused's denial of the child's age, the trial court ordered that, the child's age be examined by the health center. Accordingly, the court ordered the Bole Sub City Police to accompany the girl child to the Hospital, for age determination/examination. But, the girl child refused to execute the Court's order of age examination for the second time, relying on the prior medical certificate that she had produced from Zewuditu Hospital. The prior medical certificate produced from Zewditu Hospital shows that, the age of the girl child victim is 14. The Court acquitted the accused from the charge, giving reasons that, the Prosecution has failed to produce evidence that proves the age of the girl child victim is below 18.

Having considered the above findings of the Court, it can be argued that, the decision of the court is not based on the sound reasoning. The Court need to consider that, the girl child might be in any danger as a witness, for instance, she might be at a risk of intimidation and suffer from stress and worry having to appear before the medical center for the second time. The Court, as it is provided under the UN Guidelines, should have been taken such steps as are necessary⁸⁴ to understand the possible reasons for the girl's refusal for medical examination. In such instance, the Victim Support worker or social worker must be available to provide positive support for the girl child, rather than the Police. Thus, whatever the offence may be, the judicial decisions must be delivered considering the special needs and experiences of the child victims.

4.4.4 The Child Victim's and Witness's Right to Privacy

The child's right to privacy is an essential element to protect rights of the child victims and witnesses. The child victim's and witness's right to be protected from any attack against their

⁸³The Federal Public Prosecutor vs. the Accused 'E.Z' (Letter name substituted for the purpose of this study) (Federal First Instant Court, 7th Criminal Bench, 03/06/2003 E.C, Criminal Case No. 183704/03) (Unpublished)

⁸⁴ Supra note 79, see paragraphs 7-8 of the Guidelines. It States that, children who are victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs to prevent further hardship and trauma that may result from their participation in the criminal justice process. In particular, serious physical, psychological and emotional consequences of crime and victimization for child victims and witnesses, in particular in cases involving sexual exploitation must also be considered

privacy, honor and reputation is guaranteed⁸⁵ under the international and regional child rights instruments.⁸⁵ So, protective measures must be in place to protect the child's right to privacy before, during and even after the disposition of the case. The child victim and witness have the right to get equal protection and benefit of the law from any illegal inference or attacks against his or her privacy.

But, in practical terms, the child victim's and witness's right to privacy are often violated in two instances. In the first instance, the media may publish the victim's name or other information that allows the public to identify who is the victim. As it has been stated above, any information⁸⁶ relating to child victim's and witness's involvement during the criminal proceeding should be given adequate protection and guarantee. In other words, to correct any illegal interference against the child's right to privacy during criminal proceeding, maintaining confidentiality and restricting disclosure of information that directly or indirectly refer to the child victim and witness is a primary importance. Hence, protecting the privacy rights of child victims is to mean restricting any direct or indirect disclosure of information about the identity and whereabouts of the child victims and witnesses. So, there has to be a judicial measure not to reveal the address and residence of the child victims so as to protect their privacy rights.

However, in Ethiopia, child victims and witnesses right to privacy is frequently violated by the media, particularly, in the context of, children who are victims of sexual abuse or exploitation. For instance, in a case *Federal Public Prosecutor Vs. the accused*,⁸⁷ the accused, who is father of the girl child victim, raped and impregnated her. The Public Prosecutor charged the accused

⁸⁵Supra note 80, see article 16 of the CRC, and Article 10 of the ACRWC; See also n.84 above, paragraph 28 of the Guidelines. In this case, the Court may order appropriate protective measures, particularly in relation to sexual and violent crimes, to protect the privacy and the physical and mental well-being of a child and to prevent undue distress and secondary victimization of a child. Two essential ways of protecting the privacy of child victims and witnesses may be used by the Court i.e. restricting the disclosure of information on child victims and witnesses and the attendance of the general public or non-essential persons in courtrooms.

⁸⁶Ibid, see paragraph 27 of the Guidelines. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child, who is a victim or witness in the justice process. See also the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography provides that States should protect the privacy and identity of child victims and take measures to avoid the inappropriate dissemination of information that could lead to the identification of child victims.

⁸⁷ The Federal Public prosecutor vs. the Accused 'G.M' (Federal First Instant Court, 7th Criminal Bench, 22/10/2003 E.C, Criminal Case No. 176656/03) (Unpublished)

under three concurrent counts; Article 620 (2) (a) for rape, Article 628 (a) for aggravated rape, and Article 654 for incest, of the Criminal code. The Court found the accused guilty of all three crimes, and sentenced him in to 44 years rigorous imprisonment, but reduced the penalty as per Article 108 (1) of the Code, to 25 years rigorous imprisonment. However, such decision of the Court was published in one of weekly news magazines of the City of Addis Ababa.⁸⁸ The publication on the magazine provides the name of the child's father, resident and address of the accused, where the crime was committed.

An important issue that needs to be considered with regard to the above stated instance is that, any information, which directly or indirectly leads to the identification of the child victims, must be protected from the public before, during and even after the conclusion of the case. Where the decision of the Court has sought to be used as some kind of lesson to other potential offenders, then it is beneficial to use the anonymity of both the child victims and the accused. In doing so, the court can direct that no report of the proceedings shall reveal the name, address or school, or include any particulars likely to lead to the identification of the child concerned in the proceeding. In deciding whether to make an order, a court will weigh up the risks to the welfare of the child against the public interest in permitting publication. Prosecutors should be prepared to make representations on the point. This can avoid any indirect reference to the identification of child victim by the public. Instead of using the real name of the child victim and the accused in the publication, the media should be restricted to disclose of any direct or indirect information that leads to the identification of the child victim.

Save in exceptional circumstances, to protect the child's right to privacy, appropriate measures and care should be taken by the trial court to exclude the public and/or the media before the commencement, during or after the conclusion of the proceedings. The publication of judicial decisions that could give direct reference to the identification and situation of the child victim in media, for obvious reasons, causes negative impacts on the well-being and development of the child. Failing to take such protective measures, stigmatizes the child victim in schools, among friends or in other social relations. In addition, it increases secondary victimization⁸⁹ of the child

⁸⁸The Reporter, 01 August 2011, Column 2. Similar publication of other rape cases of child victims and witnesses were also published on the same news magazine; see the Reporter 10 August 2011, Sunday, P.3, Column 3

⁸⁹See the United Nations, Office for Drug Control and Crime Prevention (UNODCCP); Handbook on Justice for Victims: on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and

victims and witnesses. The judiciary needs to consider the circumstances of the case and requirements of the publication of judicial decisions in mass Media that stated under Article 155 of the 2004 Criminal Code of Ethiopia.⁹⁰

Moreover, in this study, data obtained from the Federal First Instance Court (FFIC), Lideta Criminal Bench abundantly reveals that, the child victim's and witness's name, address, location are registered. Besides, where the child victim or witness is a relative or stepchild of the alleged perpetrator, the relationship between the child and the alleged perpetrator is directly indicated in the decision of the court. In all rape cases that are submitted before the FFIC, the actual name of child victims is not shielded. To put this in the words of an informant, "The anonymity of child victims and witnesses has not been used during the criminal proceedings. The Court registers the actual name and address of the child victims and witnesses in all cases including sexual abuse cases."⁹¹

In order to protect the privacy and identity of the child victims of crime, particularly victims of rape and other sexual assaults, appropriate measures and steps shall be taken by the judiciary. The release of information to the public identifying child victims and witnesses of sexual assault may subject these children to unwanted public scrutiny and embarrassment. It may also lead to the unwillingness of child victims and witnesses to report crimes committed against them and to cooperate with the prosecution of the crime. The judiciary should assure the child's privacy and their families. The identities and locations of child victims and witnesses must be confidential. Thus, to protect the child victim's privacy, appropriate measures and care should be taken by the judiciary. Such measures and care must be taken not only during the child's involvement but also after the conclusion of the proceeding.

Abuse of Power (New York, 1999), p.9 Here the child victims and witnesses "Secondary victimization" refers to the victimization that occurs against the child not as a direct result of the criminal act but through the response of institutions and individuals to the child victim and witness.

⁹⁰Supra note 29, see Article 155 (2) of the 2004 Criminal Code of Ethiopia, which provides that the publication of the Judicial judgment. According to this provision, whenever the general interest or that of the accused or of the injured person so requires the Court shall order the publication of the judgment or parts thereof. Such publication shall be ordered as a matter of course when it serves the public interest; it shall be affected only on a written request by the interested party when it serves private interests. The second Sub article provides that the Court shall determine the conditions under which the publications shall take place and their number, according to usage, the circumstances of the case and expediency.

⁹¹Supra note 79, interview with W/ro Tsehay Menker T/Michael, Judge, FFFIC, Lideta 7th Criminal Bench

4.4.5 Legal, Medical and Social Support Services Provided for the Child Victims and witnesses

Crime causes serious physical, psychological, moral and social negative impacts on the development of victim children. Where the child appears before the court as either victim or witness, appropriate assistance shall be provided throughout the criminal proceedings since they are unfamiliar to such process. According to the international human rights instruments,⁹² child victims have the right to get support and effective remedy for the harm they assumed. The primary purpose of providing assistance for the child victims and witness is to protect them from the possible risks of secondary victimization in the criminal justice process.

Hence, access to appropriate legal aid services, medical and psychological support services are indispensable elements for the recovery and rehabilitation of child victims and witnesses. In this regard, legislative frameworks and criminal justice process shall provide support procedures to child victims and witnesses with a view to protect their rights during the criminal trial process.

Child victims shall always have access to legal aid services or aid, medical as well as psychological support. Support procedures must be explicitly provided in the domestic legislative frameworks and adequate resources must be allocated so as to achieve these ends. According to the Child Justice Project Office of the FDRE Supreme Court,⁹³ previously established legal aid and defense programs and activities were terminated their legal services to the poor and the disadvantaged following the adoption of the new Charities and Societies Proclamation, which limits some of the activities to only Ethiopian Charities and Societies.⁹⁴

⁹²Supra note 5, see Article 2(3) of the ICCPR. See also n.86 above, the Guidelines. Though the CRC does not explicitly provide the child's right to an effective remedy, possibly, it can be interpreted and applied with reference to Articles 19(2), 32(2) and 39 of the CRC since it obliges a State Party to take appropriate measures to promote physical, psychological recovery, and social rehabilitation and reintegration of the child. See also General Comment 5, n. 76 above, paragraph 24.

⁹³ Supra note 61, CJPO, the Federal Supreme Court of Ethiopia

⁹⁴ Proclamation No. 621/2009, A Proclamation to Provide for the Registration and Regulation of Charities and Societies, *Federal Negarit Gazeta*, 15th Year No.25 Addis Ababa, 13th February, 2009. The Proclamation, under Article 14 (5), states that, those who can take part in activities that fall under Sub-article 2 (j), (k), (l), (m) and (n) of this Article shall be only Ethiopian Charities and societies. The activities, specified under Article 14(2), are the advancement of human and democratic rights (j); the promotion of equality of nations, nationalities and peoples and that of gender and religion (k); the promotion of the rights of the disabled and children's rights (l); the promotion of conflict resolution or reconciliation (m); and the promotion of the efficiency of the justice and law enforcement services (n), shall be carried out only by Ethiopian Charities and societies. Hence, these days, the legal aid centers, which provide services to child victims, in some organizations such as the African Child Policy Forum legal aid

In this regard, the Child Justice Project Office has stated as follows:

....before the coming into force of the new Charities and Societies Proclamation, organizations such as African Child Policy Forum and Action Professionals for the people (APAP) and others provide legal aid services to the disadvantaged group of the society, including child victims and their families. They also provide financial and technical assistance in accessing justice to these groups society. But, currently, such activities of the Civil Society Organizations (CSOs) have been restricted by the new Charities' law issued in 2009 (Translation mine).⁹⁵

In Ethiopia, the CSOs provide support services for children, with the aim of ensuring realization of children's rights and to fulfill their economic, social, and cultural rights. The CSOs, in particular, have been participating in the protection and promotion of the rights of child victims of crime; victims of physical and psychological abuses, victims of sexual exploitation and harmful traditional practices.

However, the new Charities legislation, under Article 14 (2) (1), provides that, CSOs that are not of Ethiopian origin, cannot participate in the promotion of the rights of the disabled and children's rights. But, the CSOs, which are of Ethiopian origin,⁹⁶ are allowed to participate in the promotion of rights of children by generating income from Ethiopia, or make no use of exceeding 10% of their funds that are received from foreign sources. Thus, by considering Article 14 (2) of the Proclamation which provides "Charitable Purposes" of the CSOs, it can be argued that, in the protection and promotion of children's rights, some of the core responsibilities and services of the CSOs are restricted under the Proclamation.

centers and the Action Professionals' Association for the People (APAP) as well as those engaged on similar activities, but not of Ethiopian origin, were suspended their legal aid services to the poor and disadvantaged people.

⁹⁵Supra at note 93, CJPO, the Federal Supreme Court of Ethiopia. For instance, the Ethiopian Women Lawyers Association (EWLA) provides support services for women and children, whose rights are violated with a view to give them legal protection. Similarly, Action Professionals Association for the People (APAP) also provides similar support services. These CSOs provide legal aid service to the disadvantaged, including children

⁹⁶Supra note 94, see Article 2(2) of the Proclamation, which defines that, "Ethiopian Charities" or "Ethiopian Societies" shall mean, those Charities or Societies that are formed under the laws of Ethiopia, all of whose members are Ethiopians, generate income from Ethiopia and wholly controlled by Ethiopians. However, they may be deemed as Ethiopian Charities or Ethiopian Societies if they use not more than ten percent of their funds which is received from foreign sources.

Besides, the Ministry of Justice is also duty bound under the law to provide free legal services and submit claims on behalf of those who are needy.⁹⁷ In this study, a key informant responded that "Though the law obliges Ministry of Justice to provide legal aid services to the poor at Federal government level, yet, no legal aid services practically delivered to child victims."⁹⁸ But, such legal aid services are so essential to the child victims and their families. Hence, the criminal justice process needs to consider the child victim's right to redress by way of restitution or compensation for the harm they suffered due to the crime. An informant has also added "Though the government's commitment and efforts to change the situation is encouraging, there is still inadequate medical and psychological support provided to the child victims and witnesses of crime."⁹⁹

Therefore, the child victims and witnesses of crime must have given legal support so as to fully exercise his or her rights in accordance with United Nations Economic and Social Council resolution Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

4.4.6 The Child Victims Right to Seek Reparation and Remedial Procedures

The UN Guidelines provide that child victims and witnesses should receive reparation to achieve full reintegration and recovery. To this end, procedures for obtaining and enforcing the child's right to reparation should be readily accessible and child-victim sensitive in domestic legal system.

In Ethiopia, everyone has the right to bring a justiceable matter to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power.¹⁰⁰ To this effect, domestic legal instruments and procedures must set out legal procedures to submit claims and

⁹⁷See Proclamation No.691/2010, A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia; Federal Negarit Gazeta, 17th Year No.1, Addis Ababa, October, 2010. The proclamation, under Article 16 (11), states that, the Ministry of Justice has power and duty to support victims of crimes or violations of human rights in civil proceedings to claim damages, where such victims are unable to institute claims for compensation and to follow up the proceedings on their own.

⁹⁸Supra note 82, interview with FDRE, Ministry of Justice

⁹⁹Ibid

¹⁰⁰Supra note 65, see Article 37 (1) of the FDRE Constitution.

obtain judicial awards.¹⁰¹ With regard to this issue, in Ethiopia, the Civil Procedure Code of Ethiopia¹⁰² provides procedures on the child's right to reparation.

The 2004 Criminal Code of Ethiopia also provides procedures that victims of crime can institute a civil claim and join it with the criminal proceeding with a view to obtain compensation from the perpetrator.¹⁰³ Similarly, based on Article 101 and 102 of the 2004 Criminal Code, child victims, through their legal tutor, can institute a civil action and merge it with the criminal proceeding so as to obtain compensation from the accused. However, the practices in the Judiciary shows, the legal representatives of child victims do not institute civil action against the accused during the criminal proceeding.

In this regard, an informant responded as follows:

According to Article 101 of the 2004 Criminal Code of Ethiopia, victims of crime can institute civil action against the accused for compensation, and join it with the criminal proceeding. It is, however, not yet practiced in the judiciary; first, lack of legal knowledge on the side of representatives of child victims, and secondly, there is no clear mandate assigned to a specific department in the Ministry of Justice to institute civil action for compensation on behalf of the poor (Translation mine).¹⁰⁴

However, this study strongly believes that where the Ministry of Justice provides legal aid services in a clear and proper way, the Judiciary would then allocate compensation based on the

damage and economic losses suffered by the child victim. Since the Criminal bench has a better knowledge about the facts of the criminal case, merging civil action with the criminal proceeding

¹⁰¹Supra note 92, see paragraph 35 of the Guidelines. It states that child victims should, wherever possible, receive reparation in order to achieve full redress, reintegration and recovery. To this end, procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive.

¹⁰² Supra note 34, see Articles 32 (1) (2), 57 and 58 (a) of the Civil Procedure Code. According to the Civil Procedure Code, the right of child victims, to get compensation for the harm they have suffered due to the crime, can be exercised by the child's legal representative or any another person designated by the law may exercise such rights on the child victim's behalf.

¹⁰³Supra note 90, see Articles 101 and 102 of the 2004 Criminal Code, which provides the restitution of property, compensation for damages and costs and compensation to the injured party respectively. Accordingly, where the injured person sustained a considerable damage to or to those having rights from him, the injured person or the persons having rights from him shall be entitled to claim that the criminal be ordered to make good the damage or to make restitution or to pay damages by way of compensation. To this end, they may join their civil claim with the criminal suit. Where it appears that compensation will not be paid by the criminal or those liable on his behalf on account of the circumstances of the case or their situation, the Court may order that the proceeds or part of the proceeds of the sale of the articles distrained, or the sum guaranteed as surety, or a part of the fine or of the yield of the conversion into work, or confiscated property be paid to the injured party. See also Article 154 of the Criminal Procedure Code of Ethiopia, Proclamation No.185, *Negarit Gazeta*, and Extraordinary Issue No. I of 1961, November, 1961, Addis Ababa

¹⁰⁴Supra note 98, interview with the FDRE, Ministry of Justice.

so as to obtain compensation is much easier for the child victim to get judicial awards for the harm he or she has suffered than the ordinary proceedings¹⁰⁵ of the civil action.

In relation to the right to reparation, child victims have the right to be informed about the available services and supports during the judicial proceedings in a manner appropriate to their age and maturity. Particularly, they must be informed about existing necessary services, including legal representations, and procedures to obtain compensation for the harm they suffered. However, as the data obtained in this study revealed, the child victim's right to reparation is hampered by lack of adequate legal procedures that deals with the provision of sufficient support services for child victims.

Therefore, considering the above points, the Ethiopian Government is expected to intervene through providing specific legal procedures and aid services to child victims of crime so as to enable them to get sufficient assistance and effective legal remedy for the harm they suffered due to the crime.

4.4.7 Conclusion

Given the growing serious impacts on the rights of child victims and witnesses during criminal proceedings, it is important to consider whether the existing domestic laws and policies of Ethiopia are carefully understood by the judiciary and law enforcement agencies while performing their activities.

With regard to rights of victims of crime, the Criminal Justice Administration Policy provides that "Any victim of a criminal activity shall have, at any of the organs of justice, the right to participate in the criminal investigation, in the process of charging and conduct of the trial, to follow up and be notified about the progress of and the decision on the case."¹⁰⁶

¹⁰⁵It can be noted here that, the legal representatives of the child victims have a right to bring separate civil actions against the offender to obtain compensation in accordance with the Civil Procedure Code. In addition to the satisfaction that derived from the criminal punishment of the perpetrator of the crime, the child victim is entitled to civil redress on the basis of the Law of Extra Contractual Liability of Ethiopia.

¹⁰⁶ See the Draft Criminal Justice Administration Policy of Ethiopia (2009), Section Four, The Policy states that victims of crime have the rights to participation in the administration of criminal justice process. In specific terms, the victims of a crime shall be handled with respect and kindnesses taking into account the gravity of the harm done

The FDRE Constitution and other subsidiary legislations give legal basis and chance to the judiciary and law enforcement agencies of the government to interpret and apply international child rights instruments and standards. Though absence of specific legal and policy safeguards to the rights of child victims and witnesses remained a concern, the more serious issue is lack of proper understanding of the international child rights instruments and standards in the judiciary and justice administration system.

In protecting the rights of child victims and witnesses of crime, in the first place, a comprehensive legal and policy safeguards must be put in place. To address problems related with rights of child victims and witnesses, the importance of comprehensive legal and policy framework has never been disputed. Such a framework can be used as an instrument to reduce physical, psychological and social problems faced against the children during criminal trial process.

The Government, and in particular the Ministry of Women, Children and Youth Affairs should critically reconsider the existing national child policies and accordingly should provide new policy frameworks, which specifically defines the powers and obligations the Judiciary, Criminal Prosecution Office and the roles of other key stakeholders. It is, thus, high time to think of comprehensive legislative and policy framework so as to address the problems of children victims and witnesses, taking into account the special needs and situations.

According to international and regional children's rights instruments and standards, States Parties, shall take all appropriate measures to promote physical, psychological recovery and social reintegration of child victims of any form of neglect, exploitation, or abuse.¹⁰⁷ Thus, without making criminal proceedings just and fair not only to the accused but also to the child victims and witnesses of crime, it is difficult to fully promote and protect the specific rights of children victims and witness.

to them, their age, sex and social basis. In addition, they have the right to obtain information about the progress of and any decision given on their case. They have also the right to be consulted about their rights.

¹⁰⁷ Supra note 85, see Article 39 of the CRC and Article 16 of the ACRWC

Chapter Five

Conclusion and Recommendations

5.1 Introduction

After setting the scene, this study, first, discussed the international legal framework relevant for the issue of child victims and witnesses. It further highlighted the problems associated with the rights of child victims and witnesses of crime in Ethiopia, and then analyzed the effectiveness of the existing legal and policy framework in protecting the specific rights of these children in the context of criminal proceedings. Hence, it set out an understanding of the judicial criminal proceedings that underpin the use of special protective measures to protect the rights of child victims and witnesses.

The main goal of this study has been identifying the normative and policy frameworks put in place to protect the rights of child victims and witnesses during criminal proceedings. Besides, the study has also analyzed some of the main factors that influence the Judiciary and Prosecution Offices while protecting the rights of child victims and witnesses during criminal proceeding. An assertion that could be drawn from the findings of this study was the legal and policy frameworks available to protect the specific rights of child victims and witnesses are inadequate and poor. Accordingly, on the basis of the findings of the study, this chapter provides conclusion and recommendations of the study below.

5.2 Conclusion

It has been a matter of common concern that the Ethiopian criminal justice system must evolve in accordance with international and regional legal frameworks. At the national level, the existing legal protections accorded to the rights of children in Ethiopia, by and large, is compatible with international child rights standards.¹ In other words, the Constitutional and other domestic normative frameworks of Ethiopia, in many instances, are in line with the international human rights and child rights instruments that are ratified by the country.

¹The Committee on the Rights of the Child, Concluding Observations of the Committee on the Initial Reports of Ethiopia, CRC/C/8/Add.27, at its 349th to 351st meetings (CRC/C/SR.349351) January 1997 See paragraphs 10-21, the non-compatibility of domestic provisions of law with certain provisions of the CRC. See also paragraph 224 of the Initial State report of Ethiopia to the Committee due in 1993, which states that the existing domestic laws of Ethiopia are by and large compatible with Article 19 of the CRC

During criminal proceedings, the accused has a right to fair and public trial.² Such right of the accused has been guaranteed both under the international and regional human rights instruments.³ Accordingly, the FDRE Constitution domesticates international human rights instruments that the country has ratified, and hence the right of the accused to a fair trial is acquired the Constitutional protection under the Ethiopian human rights system.⁴ The accused's right to a fair trial is, however, not considered as an absolute right, which cannot be restricted. As it has been pointed out earlier, lawful restrictions can be imposed on the accused's right to a fair trial with a view to protect competing interests of others from harm.⁵

Needless to say, a modern prosecution process need not give focus on bringing only the offenders to justice and punish them.⁶ It is the interest of justice that, the criminal justice process must also provide protective measures for others who take part in such process like child victims and witnesses of crime. Hence, during criminal proceedings, the Judiciary and Prosecution Office need to give due concern for the protection of the child victims and witnesses. Judges and Prosecutors as well as other Judicial Personnel, in protecting the specific rights of child victims and witnesses, must exercise their duties in such a way that goes beyond the ordinary purpose of criminal justice process.

²The accused's fair trial rights include; the right to be presumed innocent until proven guilty, to be promptly informed of charges in detail, and one's own language, the privilege against self-incrimination, to remain silent, the right to the free assistance of an interpreter, to have a legal counsel of one's choice, the right to adequate time and facilities to prepare for trial, to equal access and equality before the law and the courts, the right to be tried without undue delay (speedy trial), the right to be present physically at one's trial, the right to a public hearing, the right to present own witnesses, the right to examine adverse witnesses, the right to be tried before competent, independent and impartial tribunal established by law, the right not to be held guilty for an act or omission not constituting a criminal offence, and the right against second trial for the same offence.

³See Article 14 of the International Covenant on Civil and Political Rights (ICCPR), Adopted by the UN General Assembly, resolution 2200 A (XXI) of 16 December 1966, entered into force on 23 March 1976; See also Article 7 of the African [Banjul] Charter on Human and Peoples' Rights (ACHPR), OAU Doc.CAB/LEG/67/3 rev.5 of June 27, 1981 Entry into force October 21, 1986

⁴See Articles 9(4) and 20 of the FDRE Constitution, Proclamation No. 1/1995, 1st Year No.1 Addis Ababa, 21st August, 1995

⁵Dennis, Ian 'The Right to Confront Witnesses: Meanings, Myths and Human Rights,' *Criminal Law and Human Rights Review*, Faculty of Law, UCL, (2010) pp 265-268, <<http://agc-wopac.agc.gov.my/e-docs/Journal/0000016534.pdf>> (Accessed on 05/07/2011)

⁶David Finkelhor and et al, *Juvenile Crime Victims in the Justice System*, hand Book of Youth and Justice, White Kluwer, New York, 2001 <<http://www.unh.edu/ccrc/pdf/Chap2.pdf>> (Accessed on 21 July 2011)

According to the Guidelines for Matters Involving Justice for Child Victims and Witnesses of crime,⁷ child victims and witnesses have the rights to obtain appropriate psycho-social support services. Child victims and witnesses also have other specific rights, among others, the right to have their best interest to be taken as a primary consideration in all actions of government or private institutions, respect for their right to privacy, the right to express views freely and having such views considered with due weight, the right to be protected from direct confrontation with the accused, the right to pursue civil remedies through legislative and administrative procedures, and the right to get appropriate legal, psychological and social support services during criminal proceedings.⁸

Given the challenges faced by child victims and witnesses during criminal proceedings, the study has investigated how the Ethiopian domestic normative frameworks and practices address the inherent tension that exists between the protection of rights and interests of these children and aspects of fair trial rights of the accused as a key concern under this study.

Considering the rights and special needs of children, the FDRE Constitution enumerates some of the rights of children as a benchmark for the protection of the rights of children.⁹ It, among others, guarantees the right of children not to be subject to physical, psychological harms and other exploitative practices. The FDRE Constitution guarantees children the right to be free from corporal punishment or cruel and inhumane treatment in schools and other institutions responsible for their care. It also calls upon public and private welfare institutions, courts of law, administrative authorities or legislative bodies to take the principle of the best interests of the child as a primary consideration in all their decisions and actions. Moreover, international agreements on child rights such the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child are also part and parcel of the law of Ethiopia.¹⁰ Accordingly, the Ethiopian Government has shown, to some extent, commitments to protect the

⁷UN, the Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime Resolution 2005/20, 36th Plenary Meeting 22 July 2005

⁸ Ibid

⁹ See Article 36 of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, 1st Year No.1 Addis Ababa, 21st August, 1995

¹⁰ Ibid, see Articles 9 (4) of the Constitution

rights of children, particularly, in developing legislation and National Plan and Policy frameworks to protect and promote the rights of vulnerable children.

The 2004 Criminal Code of Ethiopia¹¹ also provides protections to the rights of child victims and witnesses. It protects children from ill treatments, neglects, and abuses for any reason in any manner, which may cause injury to the child's health, well-being, education or physical or psychological development. In addition, the 1960 Civil Code of Ethiopia¹² and Civil Procedure Code¹³, briefly, provide legal protections to the rights of child victims and witnesses as contained under the international and regional human rights instruments. The Proclamation No.699/2010 too, which accords legal protection to witnesses and whistleblowers of heinous criminal offences, although in a restricted manner, provide legal protections for the rights of child victims and witnesses of crime.

Currently, following judicial reforms in Ethiopia, some practical protective measures for child victims and witnesses are being provided during criminal proceedings; there is waiting room for child victims and witnesses, recording of child testimonies by way of closed circuit television, and preventing re-victimization caused by confronting the accused are some of the main examples.

However, the existing domestic legal and policy safeguards accorded to protect rights to child victims and witnesses in Ethiopia has failed to provide adequate legal schemes to protect the specific rights of victims and witnesses during criminal proceedings. As the findings of this study reveal, in Ethiopia, there is a lack of specific and detailed legal procedures which deal with the specific rights of child victims and witnesses, including the absence of adequate remedial procedures to exercise the right to restitution and compensation, particularly, to those who lacked parents or legal tutors; the consideration of, the principle that the child victims' and witnesses' best interests be as a paramount importance and the respect, and the child's right to privacy is not

¹¹ The 2004 Criminal Code of the Federal Democratic Republic of Ethiopia, a Proclamation No. 414/2004, 9th of May, 2005, Addis Ababa

¹² The Civil Code of the Empire of Ethiopia, Proclamation No. 165 of 1960, *Negarit Gazeta, Gazette Extraordinary*, 5th May 1960, Addis Ababa

¹³ See Article 34 (1) of the Civil Procedure Code of the Empire of Ethiopia; *Negarit Gazeta, Extraordinary Issue No. 3 of 1965*, Addis Ababa, Ethiopia.

fairly taken in to account during criminal proceedings. Moreover, child victims and witnesses are being asked indecent and inappropriate as well as non-child friendly questions during the examination of witnesses. They are also exposed to re-victimization due to the publication of judicial decisions in public media. With regard to rehabilitation, there are also inadequate legal, psychological and social supports services provided for child victims and witnesses during criminal proceedings. More importantly, the role and responsibilities of CSOs in protecting and promoting the rights of child victims and witnesses, as it is regulated under the Proclamation 621/2009, is too narrow and inadequate. This in turn unduly restricts the core responsibilities of the CSOs in the protection of the rights of child victims and witnesses. From the point view of implementing the specific rights of child victims and witnesses during criminal proceeding, international and regional child rights standards are unfortunately also poorly understood by the judiciary and prosecution offices.

As has already been stated, the accused has a legally guaranteed fair trial rights during the criminal justice process. But, such fair trial rights of the accused should not harm the rights and special needs of child victims and witnesses during the proceedings. The existing legal procedures of the domestic criminal justice process should provide balanced protective measures that address both the rights of child victims and witnesses as well as the fair trial rights of the accused. Thus, a comprehensive legislative and policy protections for the specific rights of child victims and witnesses should receive primary consideration.

Finally, this study takes the understanding that, children's human rights principles, norms and relevant guidelines in international and regional instruments must be used as standards of test and provide for the realization of the rights of child victims and witnesses in Ethiopia. Developing awareness of special rights and needs of child victims and witnesses as well as adequate protection against re-victimization and support for child victims and witnesses should be an imperative in order to promote and protect the rights of child victims and witnesses in Ethiopia.

5.3 Recommendations

The analysis of this study, on issues of the legal and policy frameworks in the protection of the rights of child victims and witnesses, has identified some gaps and practical problems in the enforcement of rights of these children. Based on this, the study offers the following recommendations as the way forward to realize the rights of child victims and witnesses in Ethiopia.

1. There is inadequate legal and policy framework that is put in place to protect the specific rights of child victims and witnesses during criminal proceedings. The existing rules for the protection of child victims and witnesses are fragmented in substantive and procedural laws of the country. It does not also cover a broad and comprehensive range of issues related to child victims and witnesses in the context of criminal proceedings. Hence, the adoption of a comprehensive law and policy that deals with the specific rights and issues of child victims and witnesses of crime during criminal justice process should be an immediate concern of the Government.
 2. The rights of child victims to claim restitution or compensation from the offender before courts of law is not adequately put in place under the existing legal framework. Hence, more accessible and child victim-witness sensitive remedial procedures should also be provided to give full effect to the rights of these children. There should also be improved procedure that provides for legal and psycho-social support services for child victims and witness during criminal proceedings.
 3. The existing National Child Policies have their own shortcomings, and do not adequately ensure the protection of all aspects of the rights of child victims and witnesses of crime. As a result, the ongoing review of National Child Policy/policies should include improved access to physical, psychological and medical support services for child victims and witnesses of crime during the criminal proceedings.
- ❖ According to Articles 9 (1) (4) and 13 (1) of the FDRE Constitution, Judges and Law Enforcement Officials are constitutionally duty bound to enforce and give respect to fundamental human rights and freedoms provided under chapter three of the

Constitution, international and regional child rights instruments that Ethiopia has ratified. Hence, for the purpose of enforcement of specific rights of child victims and witnesses during criminal proceedings, Judges and Prosecutors should be alert and fully informed of international, regional and national laws that are related to the rights of child victims and witnesses.

- ❖ Since the General Comments of the Committee on the Rights of the Child, international child rights standards and Guidelines are authoritative interpretations of the rights of children contained in the CRC, the Judiciary and Prosecution Office should consider these international child rights standards. Besides, they should also take into international child rights standards and Guidelines whenever the rights of child victims and witnesses are at stake.

4. There should also be adequate awareness creation about the international and regional child rights standards as well as guidelines that regulate the specific rights of the child victims and witnesses. To achieve these ends, there must be continued on-job trainings for the Judiciary, Prosecution Offices and other Court Personnel, who are working with child victims and witnesses. If so, it helps them to get the required skills to treat and communicate with child victims and witnesses, and to provide necessary supports in a manner comfortable to the special needs and rights of child victims and witnesses.

- ❖ Furthermore, the Judiciary and Prosecution Office should not forget that, the child's ability to offer testimony in a courtroom depends on the evolving capacity of the child and ability to express views as to the facts of the case. Hence, criminal proceedings should not be a place that increases fear or any other harm and re-victimization on the child.
- ❖ Questions that are put to child victims and witnesses must also be undertaken with strict supervision of the Presiding Judge, who will have the duty to prevent any question that may expose the child to intimidation, hardship or undue distress being asked to the child victim or witness.

- ❖ The Judiciary must treat child victims and witnesses in a caring and sensitive manner i.e. is the child's dignity must be respected throughout the whole proceeding, taking into account his or her personal situation, immediate and special needs, age, gender and level of maturity. To this end, special support systems and measures must be designed to meet the needs of children participating in the proceedings.
5. With regard to anonymity, the use of assigning a pseudonym or a number to a child victims and witnesses from unnecessary harms. The criminal proceeding should avoid disclosing the full names of child victims, particularly, in cases of a sexual that are committed against the child.
 6. The accused's right to fair trial is equally important in the context of specific of the rights of child victims and witnesses. However, specific procedures such as matters of offering testimony, judicial orders to produce medical documents that show age and extent of harms suffered by the child victim, must consider the special situation of child victims and witnesses during criminal proceedings. Such Judicial orders must be sought for the sole purpose of proving the innocence or guilt of the accused, and must be conducted without affecting the child victim's best interests.
 7. The Judiciary and/or the Prosecution Office should consider the special situation of the girl child and accordingly should seek appropriate alternatives that are in line with the child's needs and special circumstances. For instance, appropriate support person(s) should be designated to provide assistance to the child and such support person needs to accompany the child victim or witness throughout her participation in the court proceedings in order to reduce anxiety or stress that are peculiar to the girl child.
 8. The cooperation of child victims and witnesses of crime is an essential element to the successful prosecution of crimes committed against the child. The publication of judicial decisions through public media, releasing information which indirectly refers to the identification of child, and subjects child victims and witnesses to unwanted public scrutiny and embarrassment should be avoided. When this is not avoided, it in turn may cause unwillingness of child victims and witnesses as well as their families to cooperate with the

prosecution of the crime. Thus, any judicial process at any stage, and especially the publication of judicial decisions must not contain any information that gives direct or indirect reference to the child victim or witness.

9. Finally, as the findings of this study reveal, the role and participation of CSOs in the protection of the rights of child victims and witnesses, is inadequate and unduly restricted. Apart from the efforts made by the Federal Government of Ethiopia, the CSOs play a significant role in enhancing the capacity of judiciary, prosecution offices, social workers and other justice actors in promoting the rights of child victims and witnesses during criminal proceedings.

Admittedly, the Courts' and Prosecution Offices' appreciation of the rights of child victims and witnesses during criminal proceedings is invaluable. To this effect, providing adequate training and specialization on child victims' and witnesses' rights-related issues is crucial in strengthening the capacity of the judiciary and prosecution offices with a view to promote the rights of these children.

Hence, the CSOs should give adequate training and specialization for the judiciary and prosecution offices on child victims' and witnesses' rights-related issues. Besides, there should be increased collaboration among the judiciary, prosecution offices and the CSOs. A comprehensive funding plan must also be developed by the government and the CSOs jointly so as to ensure the child victims and witnesses access to support services.

As it is recommended by the Committee on the Rights of the Child, implementing children's rights contained in the CRC is an obligation of a States Party, which needs to engage all sectors of society including CSOs. Thus, Ethiopia, as a States Party to the CRC and ACRWC, should create conducive environment that facilitates the work of CSOs towards the rights of child victims and witnesses.

Bibliography

A. National Laws

- The Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995. 1st Year No.1 Addis Ababa – 21st August, 1995
- The Proclamation No.213/2000, Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, 6th Year Extra Ordinary Issue No, I, Addis Ababa 4th Day of July, 2000
- The Proclamation No. 414/2004, the Criminal Code of the Federal Democratic Republic of Ethiopia, 9th of May, 2005, Addis Ababa
- The Civil Code of the Empire of Ethiopia Proclamation No. 165 of 1960, *Negarit Gazeta, Gazette Extraordinary* 5th May 1960, Addis Ababa
- The Civil Procedure Code of the Empire of Ethiopia; Negarit Gazeta, Extraordinary Issue No. 3 of 1965, Addis Ababa Ethiopia
- The Criminal Procedure Code of Ethiopia, Proclamation No. 185, Negarit Gazeta, Extraordinary Issue No. I of 1961, November, 1961, Addis Ababa
- Proclamation No.210/2000 Ethiopian Human Rights Commission Establishment, Federal Negarit Gazeta, Addis Ababa
- Proclamation No. 211/2000, a Proclamation to Provide for establishment Institution of the Ombudsman Establishment, Federal Negarit Gazeta, Addis Ababa
- Regulation No.12/2009, Regulation for Registration and Regulation of Charities and Societies, Federal Negarit Gazeta, Addis Ababa
- Proclamation No. 699/2010, a Proclamation to Provide for the Protection of Witnesses and Whistleblowers of Criminal Offences, Federal Negarit Gazeta, 17th Year No.16, Addis Ababa
- Proclamation No. 621/2009, A Proclamation to Provide for the Registration and Regulation of Charities and Societies, Federal Negarit Gazeta, 15th Year No.25 Addis Ababa 13th February, 2009
- Proclamation No. 283/2002, A Proclamation to Ratify the African Charter on the Rights and Welfare of the Child, 8th year No. 31, Addis Ababa, 4th July, 2002
- Proclamation No. 691/2010, A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia; Federal Negarit Gazeta, 17th Year No.1, Addis Ababa, October, 2010

B. National Policy Documents:

- The Federal Democratic Republic of Ethiopia; The Ministry of Labor and Social affairs (MOLSA), The Developmental and Social Welfare Policy (November 1996), Addis Ababa
- National Plan of Action Against Commercial Sexual Abuse and Exploitation of Children in Ethiopia, 2005; MOLSA
- The Federal Democratic Republic of Ethiopia; The Ministry of Labor and Social affairs (MOLSA), Ethiopia's National Plan of Action for Children 2003-2010, (June 2004) Addis Ababa
- National Plan of Action for the Establishment and Development of Civil Registration and Vital Statistics Systems in Ethiopia
- The Draft Criminal Justice Administration Policy of Ethiopia (2009)
- Federal Democratic Republic of Ethiopia (FDRE); National Plan of Action of Orphans and Vulnerable Children, 2004-2006.
- Federal Democratic Republic of Ethiopia (FDRE), Ministry of Women, Children and Youth Affairs, the National Child Policy Final Draft Document, May,2011, Addis Ababa

C. International and Regional Human Rights Instruments

I. United Nations (UN) Human Rights Instruments and Publications

- The Universal Declaration of Human Rights (UDHR), adopted 10 December 1948, G.A. Res 217A, UN, 3rd sess, at 71, UN Doc A/810 (1948)
- The International Covenant on Civil and Political Rights (ICCPR), the UN General Assembly, resolution 2200 A (XXI), 16 December 1966, entered into force on 23 March 1976
- The Convention on the Rights of the Child (CRC), the United Nations General Assembly resolution 44/25, annex, of 20 November 1989
- International Covenant on Civil and Political Rights (ICCPR), 1966, the General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), General Assembly resolution 2200A (XXI) of December 16, 1966, Entry into force on January 3, 1976;
- The United Nations Convention Against Transnational Organized Crime, General Assembly resolution 55/25 of November 15, 2000, Entry into force September 29, 2003

- The Rules of Procedures and Evidence of the International Criminal Court, the Assembly of States, first session New York, September 3-10 2002 ICC-ASP/1/3 Entry into force 2002
- The Rome Statute of the International Criminal Court, Doc A/CONF.183/9 July 17, 1998 Entry into force July 1, 2002
- The Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985; United Nations General Assembly resolution 40/34, annex, of 20 November 1985.
- The UN, The Economic and Social Council, Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Resolution 2005/20, 36th Plenary Meeting, 22 July 2005
- The Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Cairo, April 29 - May 8, 1995 U.N. Doc. A/CONF.169/16 May 12, 1995
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in resolution 39/46, 10 December 1984, New York; entered into force on 26 June 1987
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, General Assembly resolution 55/25, November 2000, Entry into force December 2003
- United Nations Office on Drugs and Crime (UNODC), Cross-Cutting Issues, Juvenile Justice, Criminal Justice Assessment Toolkit (New York, 2006) <http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/2_Juvenile_Justice.pdf> (Accessed on 24 February 2011)
- United Nations Office on Drugs and Crime (UNODC), Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime (2009) criminal justice handbook series, <<http://www.unodc.org/pdf/criminal-justice/Guidelines-E.pdf>> (Accessed on 01 January 2011)
- The UN, Twelfth United Nations Congress on Crime Prevention and Criminal Justice; Children, youth and crime working paper prepared by the Secretariat (15 February 2010) V.10-51035(E) <http://www.juvenilejusticepanel.org/resource/items/U/N/ UN 12th Congress Crime ChildrenYouthCrimeFeb10_En.pdf> (Accessed on 23 February 2011)
- The UN, Economic and Social Council Commission on Human Rights; the Administration of Justice and the Human Rights of Detainees; The right to a fair trial; E/CN.4/Sub.2/1994/24 3

June 1994, <<http://www.unhcr.org/refworld/pdfid/3b00f3fe4.pdf>> (Accessed on 21 February 2011)

- United Nations, Office for Drug Control and Crime Prevention, Handbook on Justice for Victims: on the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (New York, 1999)
- The United Nations Children's Fund (UNICEF), the Guidelines on the Protection of Child Victims of Trafficking, (September 2006) <http://www.unicef.org/ceecis/0610-unicef-Victims_Guidelinesen.pdf> (Accessed on 16 February 2011)
- The UN Committee on the Rights of the Child, the Initial Reports of States Parties due in 1993 Ethiopia 09/12/1995, CRC/C/8/Add.27, 12 September 1995

II. Committee on the Rights of the Child; General Recommendations

- Committee on the Rights of the Child, General Comment No. 5 (2003) General Measures of Implementation of the Convention on the Rights of the Child; Thirty-fourth session 19 September-3 October 2003 CRC/GC/2003/5 27, 2003
- Committee on the Rights of the Child, General Comment No. 8, the Rights of the Child to be Protected from Corporal Punishment and Other Cruel or Degrading Forms of Punishment, HRI/GEN/1/Rev.8/Add.1 (2007)
- Committee on the Rights of the Child General Comment No. 10 (2007); Children's rights in Juvenile Justice; CRC/C/GC/10, 25 April 2007 Geneva, Forty-fourth session.
- Committee on the Rights of the Child, General Comment No. 12, the Right of the Child to be Heard, Fifty-First Session, Geneva, CRC/C/GC/12/ 20 July 2009
- Committee on the Rights of the Child, General Comment No. 13, the Right of the Child to Freedom from All forms of Violence, Fifty-sixth Session, Geneva, 17 January - 4 February 2011
- Committee on the Rights of the Child, Concluding Observations of the Committee on the Initial Reports of Ethiopia, CRC/C/8/Add.27, at its 349th to 351st meeting (CRC/C/SR.349351) held on 9 and 10 January 1997
- The Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child, the 2nd periodic report of Ethiopia (CRC/C/70/Add.7), received on 28 September 1998, and adopted January 2001

- The Committee on the Rights of the Child, Concluding Observations of the Committee on the 3rd periodic report of Ethiopia (CRC/C/129/Add.8), adopted November 2006

D. African Human Rights Instruments

- The African [Banjul] Charter on Human and Peoples' Rights OAU Doc. CAB/LEG/67/3 rev. 5 of June 27, 1981 Entry into force October 21, 1986
- The African Commission on Human and Peoples' Rights; Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa, Doc. No ACHPR/COMM/FIN (XI)/Annex VII, 9 March 1992, <<http://www.achpr.org>>
- The African Charter on the Rights and Welfare of the Child (hereinafter referred as the ACRWC); OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999

E. Books

- Antonio Cassese, *International Criminal Law* (2008 , 2nd ed) Oxford University Press, New York
- Dinah Shelton *Remedies in International Human Rights Law*, (1999) Oxford University Press, New York, USA
- Geraldine, Van Bueren, *The International Law of the Rights of the Child*, (1998), Mrtinus Nijhoff Publishers, the Hague, Netherlands
- Jacob Th. Muller and et al, *International Human Rights Monitoring Mechanisms*, (2nd Revised Edition, 2009), VOLUME 35, Mrtinus Nijhoff Publishers, Boston
- Jaffe, G. Peter and et al, *Child Custody & Domestic Violence; A Call for Safety and Accountability* (2003), SAGE Publications Inc, London, United Kingdom
- Judith Ennew, *Street and Working Children: A Guide to Planning*; Save the Children (2000), London, UK
- Lansdowne, Geri son, *Children's Rights, A Second Chance*: Save the Children (September, 2000) London, UK
- Malcolm N. Shaw, *International Law* (2003, 5th Ed), Cambridge University Press, London, UK
- Philip Alston, *The Best Interests of the Child: Reconciling Culture and Human Rights*,_ (1994) Oxford University Press , New York

- Richman, Naomi, *Communicating with Children: Helping Children in Distress: Save the Children* (2000) , London, UK
- Shimelis Tsegaye, *Governance and Child Wellbeing in Africa: A Review*, (2009), African Child Policy Forum ▪

F. Articles

- An Michels 'Psychosocial Support for Children: Protecting the rights of child victims and witnesses in transitional justice processes' (2009), *Innocenti Working Paper No. 2010-14*, Florence, UNICEF Innocenti Research Centre, <<http://www.unicef-irc.org>> (Accessed on 21 February 2011)
- Apreotesei Ioana-Alina; the Victims of the Crimes under the Jurisdiction of the International Criminal Court–Some Aspects of Legal Responsibility, (2007) *Miskolc Journal of International Law Volume 4 No.1* <<http://epa.oszk.hu/00200/00294/00009/pdf/20071apreotesei1.pdf>> (Accessed on 12 January 2011)
- Bennett L, Gershman, 'Child Witnesses and Procedural Fairness' (2001) *American Journal of Trial Advocacy Vol.24-585*, Pace Law Faculty Publications, paper 127 <http://digitalcommons.pace.edu/law_faculty/127> (Accessed 14 January 2011)
- Benyam Dawit Mezmur, 'The African Children's Charter versus the UN Convention on the Rights of the Child: A zero-sum game?' (2008) *23 SAPR/PL*
- Cynthia Conward, The Juvenile Justice System: Not Necessarily in the Best Interests of Children, (1999) *New England Law Review Vol. 33:1* <http://www.nesl.edu/user_files/file/law_review/vol33/1/Conward.pdf> (Accessed on 23 July 2011)
- David Finkelhor and et al, Juvenile crime Victims in the Justice System, (2001) *Hand Book of Youth and Justice*, White Kluwer, New York, <<http://www.unh.edu/ccrc/pdf/Chap2.pdf>> (Accessed on 21 July 2011)
- Dolores A. Donovan "Leveling the Playing Field: The Judicial Duty to Protect and Enforce the Constitutional Rights of the Accused Persons Unrepresented by Counsel" (August, 2002) *Ethiopian Law Review, Vol. 1 No. 1*, Ethiopian Civil Service College
- Gail S. Goodman and et al, Child Witnesses and the Confrontation Clause: The American Psychological Association Brief in Maryland v. Craig, (February 1991), *Law and Human*

- Behavior*, Vol. 15, No. 1 Plenum Publishing Corporation, <<http://www.jstor.org/stable/1394048>> (Accessed on 08/05/2011)
- Gerard J. Mekjian and Mathew C. Varughese, Hearing the Victim's Voice: Analysis of Victims' Advocate Participation in the Trial Proceeding of the International Criminal Court, (2005) 17 *Pace Int'l Law Review*1 <<http://digitalcommons.pace.edu/pilr/vol17/iss1/1>> (Accessed on 11 March 2011)
 - Gershman, Bennett L., "Child Witnesses and Procedural Fairness" (2001), *American Journal of Trial Advocacy* Vol 24: 585, *Pace Law Faculty Publications*, <http://digitalcommons.pace.edu/law_faculty/127> (Accessed on 17 March 2011)
 - Getachew Assefa, 'Problems of Implementing International Human Rights Laws by Ethiopian Courts, *Proceedings of Symposium on the Role of Courts in the Enforcement of the Constitution* Ethiopian Civil Service College (ECSC), (2000) V.1, Addis Ababa, Ethiopia)
 - Graeme D. Hutcheson, and et al, 'Child Witness Statement Quality: Question Type and Errors of Omission, (December 1995) *Law and Human Behavior*, Vol. 19, No.6 <<http://www.jstor.org/stable/1394247>> (Accessed: 10/05/2011)
 - Ian, Dennis, The Right to Confront Witnesses: Meanings, Myths and Human Rights, (2010) *Criminal Law Review, Faculty of Law, UCL*, Thomson Reuters (Legal) Limited
 - Ibrahim Idris, "The Structure of the Human rights Regime of the 1994 Federal Democratic Republic of Ethiopia Constitution: Fundamental Rights and Freedoms *Proceedings of the Symposium on the Role Courts in the Enforcement of the Constitution* (2000) (ECSC), Vol.1 Addis Ababa, Ethiopia)
 - Jixi Zhang Fair Trial Rights in ICCPR (December 2009) *Journal of Politics and Law* Vol. 2, No. 4 <<http://www.ccsenet.org/journal.html>> Southwest University of Political Science and Law, Chongqing, 401120, China (Accessed on 2011)
 - Juliane Kippenberg, Protecting Child Victims in Sexual Violence Trials in the DR Congo: Suggestions for the way forward, Article submitted to the European Union Program for the Restoration of Justice in Eastern Congo (November 2009), (REJUSCO); <<http://www.hrw.org/news/2009/11/24/protecting-child-victims-sexual-violence-trials-dr-congo-suggestions-way-forward>> (Accessed on 18 July 2011)

- Mahony Chris, The Justice Sector After Thought: (2010), *Institute of Security Studies* the South Africa's Witness Protection Unit, <<http://www.iss.co.za/siteimages/Witness Prot.pdf>> (Accessed on 20 March 2011)
- Mike Redmayne, 'Confronting Confrontation,' (2010), *LSE Law, Society and Economy Working Papers*, London School of Economics and Political Science, Law Department, <http://www.lse.ac.uk/collections/law/wps/WPS2010-10_Redmayne.pdf> (Accessed on 14 April 2011)
- Murl A Larkin, the Right of Confrontation: What Next? (1969) *Texas Tech Law Review* [vol. 1:67<<http://mytechlaw.law.ttu.edu/library/faculty/faculty%20scholarship%20files/larkin2.pdf>> (Accessed on 23 march 2011)
- Neeraj Tiwari, Fair trial vis-à-vis criminal justice administration: A critical study of Indian criminal justice system; (April 2010) *Journal of Law and Conflict Resolution Vol. 2:4*, Law Institute, New Delhi, India, <<http://www.academicjournals.org/jlcr/pdf%202010/Apr/Tiwari.pdf>>; Indian (Accessed on 22 March 2011)
- Peter McIntyre, Child Rights and the Media; Putting Children in the Right Guidelines for Journalists and Media Professionals, (2002) *International Federation of Journalists*, <<http://www.ifj.org/assets/docs/247/254/cf73bf7-c75e9fe.pdf>> (Accessed on 11 August 2011)
- Radhika Coomaraswamy, Combating Domestic Violence: Obligations of the State, (June 2000) *Innocenti Digest*, <http://www.unicef-irc.org/publications/pdf/iwp_2010_13.pdf> (Accessed on 11 August 2011)
- Samantha Waterhouse, The impact of Changing Criminal Justice Responses to Child Victims of Sexual Abuse, (2008) *Open Society Foundation for South Africa*, <http://www.osf.org.za/File_Uploads/docs/CJI_Occasional_Paper_4.pdf>, (Accessed on 25 June 2011)
- Segun Jegede, On the Issue of the Right to a Fair Trial in International Criminal Law, <<http://www.nigerianlawguru.com/articles/international%20law/right%20to%20a%20fair%20trial%20in%20international%20criminal%20law.pdf>> (Accessed on 12 March 2011)
- Susan Goldstein and et al, A Children's Rights Mass Media Campaign in South Africa (2001) *The Harvard College Health and Human Rights Vol. 5 No.2* <<http://www.hhrjournal.org/archives-pdf/4065370.pdf.bannered.pdf>> (Accessed on 14 March 2011)

- The Columbia Law Review Association, the Accused's Right to a Public Trial, (January 1949) *Columbia Law Review*, Vol.49, No.1 <<http://www.jstor.org/stable/1118433>> (Accessed on 10 January 2011),
- Vanessa Lesnie, What is a Fair Trial? A Basic Guide to Legal Standards and Practice March (2000) *The Lawyers Committee for Human Rights* <http://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf> (Accessed on 2011)

G. Cases

- Federal Public Prosecutor vs. the Accused T.W (Federal First Instant Court 7th Criminal Bench, 2002 E.C, Criminal Case No. 168904/2002) (Unpublished)
- Federal Public Prosecutor vs. the Accused E.Z (Federal First Instant Court, 7th Criminal Bench, 03/06/2003 E.C, Criminal Case No. 183704/2003) (Unpublished)
- Federal Public prosecutor vs. the Accused (Federal First Instant Court, 7th Criminal Bench, 03/06/2003 E.C, Criminal Case No. 183761/2003) (Unpublished)
- Federal Public prosecutor vs. the Accused 'GM' (Federal First Instant Court, 7th Criminal Bench, 22/10/2003 E.C, Criminal Case No. 176656/2003) (Unpublished)
- UN, Human Rights Committee Views, Communication No. 1466/2006, Ninety-second session, CCPR, CCPR/C/92/D/1466/2006, 2008, 20 March 2008, <<http://www.humanrights.asia/news/ahrc-news/ALRC-STM-007-2008;>> (Accessed on 14 August 2011)
- Law Commission of India's Consultation Paper on Witness Protection, 13 August 2004, See case *Kartar, Singh v. State of Punjab* (1994) 3 SCC 569 the Supreme Court decision, *Sakshi v. Union of India* (2004) 6 Scale 15 the Supreme Court referred to the 172nd Report of the Law Commission <<http://lawcommissionofindia.nic.in/Summary%20of%20the%20Consultation%20paper%20on%20Witness%20protection%20and%20Questionnaire.pdf>> (Accessed on 14 August 2011)



በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC
OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር _____
No. _____

ቀን፡ _____
Date 200 _____
አዲስ አበባ/Addis Ababa

የክ/መ/ቁ/183704

ቀን 3/6/2003

ዳኛ ሩታ ፲/፱፻፳፭

ከሣሽ ዐ/ሕግ አልቀረቡም

ተከሣሽ እንዳለ ዘውዴ ቀረቡ

መዝገቡ ተመርምሮ የሚከተለው ብይን ተሰጠ።

ብይን

ዐ/ሕግ በ20/4/03 ዓ.ም የተፃፈ የክስ ማመልከቻ አቅርቦ ተከሣሽ ህዳር 30 ቀን 2003 ዓ.ም በግምት 1:00 ሰአት ሲሆን በቦሌ ክ/ከተማ ቀበሌ 14/15 የ14 አመት ህፃን አለም አልታየወርቅ አስረቤን ብርሃኑ ሆቴል ከተባለ ቦታ በመውሰድ የግብረ ስጋ ግንኙነት ለመፈጸም የወ/ሕ/ቁ 626/1/ን ተላልፈዋል በማለት ክሱን አቅርቧል።

ተከሣሽ የክስ ማመልከቻው ደርሷቸው እና ተነባላቸው ከግል ተበዳይ ጋር የግብረ ስጋ ግንኙነት መፈጸማቸውን ሆኖም የግል ተበዳይ እድሜ 18 አመት ነው በማለት በ22/4/03 ዓ.ም በዋለው ችሎት ገልፀዋል።

ፍ/ቤቱም የግል ተበዳይ እድሜ ተመርምሮ እንዲቀርብ ባዘዘው መሰረት የግል ተበዳይ እድሜዋን ለመመርመር ፈቃደኛ አለመሆኗን የቦሌ ክ/ከተማ ፖሊስ መምሪያ በ19/5/03 ዓ.ም በተፃፈ መልስ ሰጥቷል። በመሆኑም የግል ተበዳይ እድሜ 18 አመት በታች-መሆኑን የቀረበ ማስረጃ የሌለ በመሆኑ ተከሣሽ በነፃ እንዲሰናበቱ ፍ/ቤቱ ወስኗል።

Am



ኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC
OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር _____
No. _____

ቀን _____
Date 200 _____
አዲስ አበባ/Addis Ababa

ት እ ዛ ዝ

1. በብይኑ ላይ ቅሬታ ያለው ወገን ይግባኝ ማለት ይችላል።
2. ማ/ቤት ከሣሽን ይፍታ። መዝገቡ ተዘግቷል።

የዳኛ ፊርማ ሩታ ገ/ገድቅ

/ፃለ

07/06/03

፳፻፶፭

የትርጉም ጽሕፈት ቤት
مكتب الترجمة
ÜBERSETZUNGSBÜRO



TRANSLATION OFFICE
BUREAU DE TRADUCTION
UFFICIO TRADUZIONI

Yeshimebet Tesfaye & Family P.L. Share Co.
Addis Ababa, Ethiopia
Stadium Building No.7
Tel. (011) 515-7104, (011) 552-6312
P.O.Box 6127

የትርጉም ተሰጥቶ የተሰጡ ኃይተ.የሽርክና ማ.
አዲስ አበባ - ኢትዮጵያ
አስተዳደሩም ሕንፃ ቁጥር 7
ስልክ (011) 515-7104, (011) 552-6312
ፖ.ሣ.ቁ. 6127

ዘውዲቱ ሆስፒታል

የካርድ ቁ. 052729
ቁ. 02411

ለሚመለከተው ሁሉ
ክፍል

የተመላላሽ ታካሚዎች የሕክምና የምስክር ወረቀት

አቶ/ወይ: አለም አልታየወርቅ እድሜ: 14

የተመረመሩበት ወይም የታከሙበት ቀን: 4/4/03 — 11/4/03

የምርመራው ውጤት: ድንገልናዋ በእንድ ሰዓት የሰዓት ጠቋሚ ምልክት አንፃር ተቀዷል። (ከተርጓሚው - በእንግሊዝኛ ሰነዱ ላይ በክብ ውስጥ በሰረዘ በተመለከተው አቅጣጫ አንፃር)

የሐኪሙ ትዕዛዝ: ሺዲአርኤል/የአባላዘር በሽታ ምርመራ/ - ኔጋቲቭ፤ ሄፓታይተስ ቢ ሰርቪስ እቲጂን - ኔጋቲቭ፤ የሽንት ምርመራ - ጤናማ - የሚንቀሳቀሱ ስፐርም ሴሎች/የወንድ ፈላሽ ሴሎች/የሉም፤ ኤችአይቪ - ኔጋቲቭ።

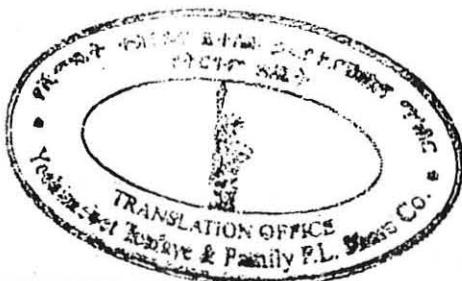
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መስራት ይችላሉ

የሐኪሙ ፊርማ እና ማህተም
ፊርማ አለበት

ማህተም

የኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የአዲስ አበባ ከተማ አስተዳደር ጤና ቢሮ
ዘውዲቱ መታሰቢያ ሆስፒታል



Yoshi Besufekad
General Manager

H.Zewditu J



በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC
OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር
No.

ቀን

Date 200

አዲስ አበባ/Addis Ababa

የክ/መ/ቁ/183761

ቀን 03/06/2003

ዳኛ ሩታ ገ/የድቅ

ከሣሽ ዐ/ሕግ

ተከሣሽ ነጅመድን የሱፍ

መዝገቡ ተመርምሮ የሚከተለው ብይን ተሰጠ፡፡

ብይን

ዐ/ሕግ በ5/5/03 ዓ.ም የተሳፈ የክስ ማመልከቻ አቅርቦ ተከሣሽ ታህሳስ 9 ቀን 2003 ዓ.ም በከ/ቀ/ክ/ከተማ ቀበሌ 14 ክልል ልዩ ቦታው ለሜ ሜዳ አካባቢ የ15 አመት እድሜ ያላትን ነጂባ ሱልጣን ጋር የግብረ ስጋ ግንኙነት በመፈጸም የወ/ሀ/ቁ 626/1/ን ተላልፈዋል በማለት ክስን አቅርቧል፡፡

ተከሣሽ የክሱ ማመልከቻው ደርሷቸው እና ተነበላቸው ከግል ተበዳይ ጋር የግብረ ስጋ ግንኙነት መፈጸማቸውን ሆኖም እድሜዋ 18 ነው በማለት በ6/5/03 ዓ.ም በዋለው ችሎት ክደዋል፡፡

ፍ/ቤቱም ጉዳዩን መርምሯል፡፡ በወ/ሀ/ቁ 626/1/ ወንጀል የሚሆነው እድሜዋ 18 አመት ካልሞላት ህገን ጋር የግብረ ስጋ ግንኙነት መፈጸም ሲሆን ዐ/ሕግ የተበዳይ እድሜ ከ18 አመት በታች መሆኑን በበቂ ሁኔታ ሊያስረዳ ይገባል፡፡ ዐ/ሕግ በማስረጃነት ያቀረበው ከጥቁር አንባሳ ስፔሻላይዝድ ሆስፒታል የተሰጠው የእድሜ ምርመራ ውጤት የግል ተበዳይ እድሜ በ16 እና



በኢትዮጵያ ፌዴራላዊ ዲሞክራሲያዊ ሪፐብሊክ
የፌዴራል መጀመሪያ ደረጃ ፍርድ ቤት
THE FEDERAL DEMOCRATIC REPUBLIC
OF ETHIOPIA
FEDERAL FIRST INSTANCE COURT

ቁጥር _____

No. _____

ቀን _____

Date 200 _____

አዲስ አበባ/Addis Ababa

በ18 አመት መካከል መሆኑን የሚገልፅ ነው። ይህም የግል ተበዳይ እድሜ 18 አመት ሊሞላ የሚችል መሆኑን የሚያስገነዝብ ነው። በመሆኑም ዐ/ሕግ ተከሣሽ ላይ ያቀረበውን ክስ በቂ በሆነ መልኩ ያሳስረዳ በመሆኑ ተከሣሽ በነፃ እንዲሰናበቱ ፍ/ቤቱ ወስኗል።

ትእዛዝ

1. በብይኑ ላይ ቅሬታ ያለው ወገን ይግባኝ ማለት ይችላል።
2. ማ/ቤት ተከሣሽን እንዲፈታ ታዟል። መዝገቡ ተዘግቷል።

የዳኛ ፊርማ ሩታ 7/9ድቅ

19ሰ

07/06/03

Handwritten signature



የመ/ቁጥር 176656
ሰኔ 22 ቀን 2003 ዓ.ም.

ዳኛ ፀሐይ መንክር

ዐቃቤ ሕግ እመቤት ሀይሌ
ተከሣሽ ጌቱ መንዲዳ ማሪ ከማረሚያ ቤት ቀርቧል፡፡

መዝገቡ ለዛሬ የተቀጠረው መርምሮ ቅጣት ለመወሰን ስለሆነ የሚከተለው ቅጣት ተወስኗል፡፡

ቅጣት

ፍ/ቤቱ የግራ ቀጥን የቅጣት አስተያየት ከሕግ ጋር በማገናዘብ ተመልክቷል፡፡ ተከሣሽ እስሜዋ 18 ዓመት ያልሞላት የራሱ ቤት ልጅ ላይ የአስገድዶ መድፈር ወንጀል በመፈፀሙ እና በሌላ ቀን በድጋሚ አስገድዶ ደፍሮ ተበዳይ እንድታረግዝ ያደረገ በመሆኑ እንዲሁም በዘመዳሞች መሀከል በሚፈፀም የግብረሰጋ ግንኙነት መፈፀም ወንጀል ጥፋተኛ የተባለ ሲሆን ተከሣሽ ጥፋተኛ የተባለበት የወ/ሕ/አ/620/2/ሀ/ የሚያስቀጣው ከ5 እስከ 25 ዓመት ዕድሜው እስራት ሲሆን የወ/ሕ/አ/628/ሀ/ እንዲሁ ከ5 እስከ 25 ዓመት ዕድሜው እስራት የሚያስቀጣ ነው፡፡ እንዲሁም የወ/ሕ/አ/654 ከቤተዘመድ መብቶቹ መሻፋት እንደተጠበቀ ሆኖ ከ3 ወር በማያንስ ቀላል እስራት ወይም ከ3 ዓመት በማይበልጥ ዕድሜ እስራት ያስቀጣል፡፡

የቅጣት አላማው አጥፊውን ሌላ ጥፋት እንዳይፈጽም ማረምና ማስተማር ሲሆን ሕብረተሰቡም ከቅጣት እንዲማርና እንዲጠነቀቅ ማድረግ እንዲሁም የዜጎችን እና የመንግሥትን ሰላም እና ደህንነት ማረጋገጥ ጭምር ነው፡፡

ተከሣሽ ጥፋተኛ የተባለባቸው የሕግ አንቀጾች በቅጣት መመሪያ ቁጥር 1/2002ዓ.ም. የወንጀል ደረጃ እና እርከን ያልወጣለት ስለሆነ የወንጀል ደረጃው የሚወሰነው የወንጀሉን አፈፃፀም በመመልከት ይሆናል፡፡ ዐቃቤ ሕግ የወንጀል ደረጃውን ፍ/ቤቱ ሲወስን ተከሣሽ 1ኛ ክስ ላይ ወንጀሉን ሲፈጽም የግል ተበላሽን እየደበደበ እና አፏን አፍኖ ወንጀሉን የፈፀመ በመሆኑ እንዲሁም በመጀመሪያ ግንኙነቱ የክብረንዕህናዋን የገሰሰ በመሆኑ፡፡ በ2ኛ ክስ ላይ ተከሣሽ ወላጅ አባቷ ሆኖ የገዛ ልጁን አሰረገዘ የተገኘ ስለሆነ አፈፃፀሙ ከባድ በሚል ይወሰናል፡፡ ፍ/ቤቱም የተከሣሽ የወንጀል አፈፃፀም ለሕግና ለሞራል ተቃራኒ የሆነ በየትኛውም ሀይማኖትም ሆነ ባሕል የማይፈቀድ ለሕሊና ከባድ የሆነ ወንጀል የፈፀመ ስለሆነ አፈፃፀሙ ከባድ በሚልበቃቱም ክሶች ላይ ወስኖታል፡፡

የወንጀል ደረጃው ከባድ በሚል የተወሰነ ስለሆነ በ1ኛ ክስ የቅጣት መነሻው ሊወድቅ የሚችለው ከ15 ዓመት እስከ 20 ዓመት ዕድሜው እስራት ስር ሲሆን 2ኛ ክስም በተመሳሳይ ከ15 ዓመት እስከ 20 ዓመት ዕድሜው እስራት ስር በሚያስቀጣው ይሸፈናል፡፡ 3ኛ ክስ መነሻው የሚሆነው ከ1 ዓመት ከ6 ወር እስከ 2 ዓመት ከ3 ወር በሚያስቀጣው ስር ይሸፈናል፡፡ ፍ/ቤቱም በ1ኛ ክስ ለቅጣት መነሻ 19 ዓመት

ዕኑ እስራትን ይዟል ይህም በእርከን 36 ስር ይሸፈናል። በ2ኛ ክስም በተመገገደ 19 ዓመት ዕኑ እስራትን ይዟል ይህም በእርከን 36 ስር ይሸፈናል። እንዲሁም በ3ኛ ክስ 2 ዓመት ከ6 ወር ዕኑ እስራትን ይዟል ይህም እርከን 13 ስር ይሸፈናል።

ዐቃቤ ሕግ የቅጣት ማክበጃ ምክንያት ሲያስመዘግቡ ተከሣሽ ወንጀሉን የፈፀመው በወራዳነት እና መጥፎ አመል ያለበት መሆኑን ስለሚያሳይ በወ/ሕ/አ/84/1/ሀ/መሠረት፡ ተከሣሽ ወንጀሉን የሚፈፀመው ሁል ጊዜ በሌሊት ስለሆነና ሰው እንዳይደርስላት በማድረግ ስለሆነ በወ/ሕ/አ/84/1/ሀ/መሠረት ቅጣቱ ከብዶ ይወሰንልን ሲሉ ያመለከቱትን ፍ/ቤቱ የተቀበለው ስለሆነ ተከሣሽ ተደራራቢ ወንጀሎችን የፈፀመ በመሆኑ በወ/ሕ/አ/85 መሠረት ቅጣቱ እንዲከብድ የሚያደርገው ሆኖ በመገኘቱ እርከኑ በዕስት እርከን የሚጨምር ስለሆነ በ1ኛ እና 2ኛ ክስ እርከኑ ወደ እርከን 39 ከፍ ብሏል። 3ኛ ክስ ወደ እርከን 16 ከፍ ብሏል።

ተከሣሽም ወንጀል መፈፀሙን በችሎት ቀርቦ ማመኑ እና መፀወቱን የገለፀ ቢሆንም ፍ/ቤቱ ግን ከተከሣሽ የተመለከተው መፀወትን ማይሆን የግል ተበዳይ ቀን ቀን የትም ስትዞር ውላ ነው የምትመጣው በማለት እሱ ወንጀሉን መፈፀሙ ምንም እንዳልሆነ በችሎት ሲገልፅ የተረዳ ስለሆነ መፀወቱን በተግባር ያልገለፀ ስለሆነ አልተቀበለውም። ሆኖም ከዚህ በፊት ወንጀል ፈጽሞ ተቀጥቶ የማያውቅ መሆኑ ያልተማረና በእውቀት ያልበሰለ መሆኑ በወ/ሕ/አ/82/1/ሀ/መሠረት ቅጣትን የሚያቀልልት ስለሆነ አንድ ማቅለያ ተመዝግቦለታል። ጥፋቱኛ የተባለበት የሕግ አንቀጽም በ1ኛ እና በ2ኛ ክስ እስከ 25 ዓመት ዕኑ እስራት የሚያስቀጣ በመሆኑ አንድ ማቅለያ እንደ 3 የሚቆጠር ስለሆነ በ3 እርከን ከ1ኛ እና 2ኛ ክስ እንዲቀንስ ተደርጓል። በ3ኛ ክስ አንድ እርከን ስለሚቀንስ እርከኑ ወደ እርከን 15 ወርዷል።

ፍ/ቤቱም ተከሣሽ ላጠፋው ጥፋት ያርመዋል ያስተምረዋል በሚል በ1ኛ ክስ በእርከን 36 ስር በ21 ዓመት ዕኑ እስራት ፡ እንዲሁም በ2ኛ ክስ በእርከን 36 ስር በ21 ዓመት ዕኑ እስራት እንዲሁም በ3ኛ ክስ በእርከን 15 ስር በመነሻው በ2 ዓመት ከ9 ወር ዕኑ እስራት በጠቅላላው ተደምሮ 44 ዓመት ከ9 ወር ዕኑ እስራት /በእርባ አራት ዓመት ከዘጠኝ ወር ዕኑ እስራት/ እንዲቀጣ የተወሰነ ሲሆን የኢትዮጵያ የወንጀል ሕግ የእስራት ጣራ መጨረሻ አድርጎ ያስቀመጠው 25 ዓመት ዕኑ እስራትን ብቻ በመሆኑ ከዚህ አልፎ መቅጣት ስለማይቻል ተከሣሽ በ25 ዓመት ዕኑ እስራት እንዲቀጣ በጣራው ቀን ፍ/ቤቱ ወስኗል።

ትዕዛዝ

የአ/አ/ማረሚያ ቤት የቅጣቱን ጊዜ ተከሣሽ በዚህ ጉዳይ እጁ ከተያዘበት ቀን ጀምሮ በሚታሰብ የተጣለበትን ቅጣቱን ተከታትሎ ያስፈጽም።

ተከሣሽ በአስገድዶ መድፈር ወንጀል ጥፋተኛ የተባለ ስለሆነ ሕዝብ አስተዳዳሪ ከመሆን መብቱ ከቤተሰብ አስተዳዳሪ ከመሆን የወላጅነት ሥልጣን ከመያዝ

ከሞግዚትና አግዳጊ ከመሆን መብቱ ሊሻር የሚገባው ስለሆነ እስራቱን ጨርሶ
ከወጣ በኋላ ለ5 ዓመት ያህል በወ/ሕ/አ/123/ሀ/ለ/መመረት ተሽራል፡፡

የፍ/ቤቱ የትግት ውግኔን ያስፈጽም ዘንድ ለአቃቂ ቃሊቱ ከፍለ ከተማ ተበላ በ9
ፍ/ቤት ይተላለፍ፡፡

{ የተከማሽ የወንጀል አፈፃፀም ሕብረተሰቡን ሊያስተምር እና ሊያስጠነቅቅ
የሚገባው ሆኖ ፍ/ቤቱ ስላገኘው በኢትዮጵያ ቱሊቪዥን እና ቱዲዮ ፕሮግራም
እንዲሁም በፖሊስ ፕሮግራም እንዲተላለፍ ትግት ውግኔው ለፕሮግራሙ አዘጋጅ
ክፍል ይድረስ፡፡

የይግባኝ መብት የተጠበቀ ነው፡፡

①

የመ/ቁጥር 183695

የካቲት 14 ቀን 2003 ዓ.ም.

ዳኛ ሩታ ገ/ገደቅ

ከሳሽ ዐ/ሕግ ራሔል ለገሰ ቀርበዋል

ተከሳሽ አብነት ዘለቀ ቀርበዋል

መዝገቡ ቁሬ የተቀጠረው የዐ/ህግ ምስክሮችን ለመስማት ነው የዐ/ህግ ምስክሮች ሁሉም ቀርበው በደንቡ መሰረት ምለዋል።

ዐ/ህግ ክስን ይክፈት?፣ ክስ-ር ፍ/ቤት ተከሳሽ የወንጀል ህግ አንቀጽ 620/2/ላ ላይ የተመለከተውን በመተላለፍ ከእሱ ጋር ተቃራኒ ጾታ ካላት እና እድሜዋ 13 የሆናትን ልጅ በ24/6/2002 ዓ/ም ከሌሊቱ በግምት 9:30 ሰዓት ሲሆን በጉለሌ ክ/ከተማ ቀበሌ 07/17 ክልል ልዩ ቦታው 8 ቁጥር ማዞሪያ ተብሎ ከሚጠራው አካባቢ ከእሱ ጋር በጥገኝነት ቤት ውስጥ የምትኖርን የባለቤቱን እህት የሆነችውን የግል ተበዳይ ወ/ት መሰረት ግርማ የተባለችውን ግለሰብ ያለፍቃድዋ ቢላዋ ይዞ በማስፈራራት በተደጋጋሚ የግብረ ስጋ ግንኙነት የፈጸመባት እና ክብረ ንፁህናዋን የገረሰሰ በመሆኑ ብለን ክስ መስርተናል 2ኛ ክሳችን በ1996 ዓ/ም የወጣውን የወንጀል ህግ 654 ላይ የተመለከተውን በመተላለፍ ተከሳሽ የግብረ ስጋ ግንኙነት ለመፈጸም በማሰብ ከላይ በ1ኛ ክስ በተጠቀሰው ቀንና ሰዓትና ቦታ ከእሱ ጋር የጋብቻ ዝምድና ካላት እህ የሀጋዊ ባለቤቱ እህት የሆነችውን የግል ተበዳይ ወ/ት መሰረት ግርማን እሷ ሳትፈልግ የግብረ ስጋ ግንኙነት እንድትፈጽም በማድረግ ግንኙነት የፈጸመ በመሆኑ

በዘመናዊች መካከል የሚፈጸም የግብር ስጋ ግንኙነት በደል ፈጽመዋል ብለን ነው ክስ የመሰረትነው ለዚህም ማስረጃ የሚሆን የሰው አራት የሰው ምስክሮችን አቅርበናል 1ኛ ወ/ት መሰረት ግርማ የግል ተበዳይ ሲሆኑ ድርጊቱ መቼ እና እንዴት እንደተፈጸመባቸው ያስረዳል ወ/ሮ አልሚቱ ግርማ ህፃንዋ ከጊዜ ቆይታ በገላ ሆዴን አመመኝ ስትላቸው ሆስፒታል ሲወሰዷቸው እርግዝና መኖሩንና ከማን አረገሽ ሲሏት ከተከላሽ መሆኑን የነገረቻቸው እና ለአክስታቸው ለተከላሽ አክስት ሄደው 4ኛ ምስክር ወ/ሮ ኮከቤ ሰማ ሄደው የተናገሩና ወ/ሮ ኮከቤ ሰማ ደሞ ለወ/ሮ አረጋሽ ተናግረው የጠየቁ በመሆኑ ይሄንን ያስረዱልናል እንዲሁም የሰነድ ያቀረብነው ተከላሽ የወንጀል ድርጊቱን አምኖ በወንጀለኛ መቅጫ ሥ/ሥ/ሀ/ቁ 27/2 እና 35 መሰረት ያመነበትን የእምነት ቃል አያይዘናል እንዲሁም የህክምና ማስረጃ 1 ገጽ አያይዘናል ስለሆነም ክቡር ፍ/ቤት ተከላሾች እንደ ክላችን አቀራረብ ያስረዱልናል፤

1ኛ የዐ/ህግ ምስክር

ስም? መሰረት ግርማ? እድሜ? አላውቅም፤ አድራሻዎ የት ነው? ቀጨኔ መድሃኒአለም፤ ምን ክ/ከተማ ይባላል? እኔ እንጃ፤ ቀበሌውንስ ያውቁታል? እኔ አላውቅም፤ የቤ/ቁጥር? አላውቅም፤ አቶ አብነት ዘለቀን ያውቋቸዋል? አዎ፤ ፀብ አላችሁ ከእሳቸው ጋር? አዎ፤ ዝምድናስ አላችሁ? የእህቴ ባል ነው፤ ዛሬ ለምን እንደተጠሩ አውቀዋል? አዎ፤ ለምንድን ነው? ስለደፈረኝ፤ የተጠሩት የምስክርነት ቃልዎን እንዲሰጡ ነው፤

የዐ/ህግ ዋና ጥያቄ የምስክር ምላሽ

መሰረት እስኪ እርስዎ አቶ አብነት ደፍረውኛል ብለዋል? አዎ፤ መቼ ነው ይሄን ድርጊት የፈጸሙበዎት ጊዜውን ያስታውሳሉ? አላስታውስም፤ አንድ አመት ይሆነዋል ወይስ ሁለት አመት ይሆነዋል

በዚህ መግመት አይችልም? አልችልም፡ ስንት ጊዜ ይሆነዋል? ምንድን
 ነው እስከ ደፈረኝ ሲሉ እንዴት ነው ድርጊቱን የፈጸሙበት? ሌሊት 9
 ሰዓት እንጀራ ጋገራ ስትሄድ እሷ፡ ማን እሷ የሚሉት ማንን ነው? እህቴ፡
 እህትዎት ስማቸው ማን ነው? አለሚቱ፡ እንጀራ ጋገራ ስትሄድ ሌሊት
 ቢላ አነሳና 9 ሰዓት መጥቶ እሷ እንጀራ ልትጋገር ስትሄድ ሸኝቷት
 ብትናገረ ብትጮሃ በዚህ ነው አርጄሽ የምጠፋ ብሎኝ አደረገኝ፡ በዚህ
 አርጄ ነው የምጠፋው ብለውኛል ብለዋል? አዎ፡ ከዚያ እስከ ምን
 አደረገብዎት? ከዚያ ጅንስ ሰራ ጨርቅ ሰራ ነበረ ያጠለኩት አወለቀኝና
 ደፈረኝ፡ ደፈረኝ ሲሉ በምናቸው ነው የደፈሩዎት ምንዎትን ነው
የደፈረዎት? ደፈረኝ ብለዋል አይደለ? አዎ፡ መድፈር ማለት ምን
 እንደሆነ ያውቃለሁ? አዎ፡ ምን ማለት ነው? እምስ ማለት፤ አሰገድደው
ደፍረውኛል ብለዋል? አዎ፡ እስከ በምናቸው ደፈሩዎት እርስዎን
 በምናቸው ደፈሩዎት ምንዎንስ ደፈሩዎት? በቁላቸው፤ የእርስዎን
 ምንዎትን ነው የደፈረዎት? እምስ፤ በወቅቱ ሲደፍርዎት ምን አዩ እስከ?
ደም፤ ደም አዩ? አዎ፤ በደንብ ወደ ውስጥ ምናምን አሰገብቶ ነበረ እንዴ?
 አዎ፤ ከዚያ ምን አደረጉ እስከ? ከዚያ አመመኝ ለእህቴም አልነገርኩም
 እሷንም አርዳታለሁ ስለአለኝ ፀጥ አልኩት፤ ምን አሉ ጮክ በሉ እስከ
 በደንብ? ጥዎት ታጠብኩ ምንም አላልኩም እሷን አርዳታለሁ ስለአለኝ
 ፈርቼ ፀጥ አልኩት፤ ቤት ውስጥ የዚያን ወቅት ሰው አልነበረም እንዴ?
 ሌሊት ነው፤ እኮ ሌሊት እህትዎትን ሸኝተው ሲመለሱ ነው አይደለ? አዎ፤
 ሰው አልነበረም ቤት ውስጥ? ሁለቱ ልጆች ብቻ ናቸው ህፃናቹ ትንንሾች
 እነሱ ተኝተዋል፤ አልሰሙም ነበረ? አዎ፤ ከዚያስ እስከ እንዴት
 ሊነግሯቸው ቻሉ ለእህትዎት እንዴት ሊነግሩ ቻሉ? ሐኪም ቤት ወስዳኝ፤
 መቼ ነው የወሰደዎት? እኔ አላውቅም ቀኑ ሀሮብ ቀን ነው፤ ከዚያ ምን
 ተባለ? ተመረመርኩ ከዚያ አወቀኝ ፍ/ቤት ሄድን፤ አወቀኝ ሲሉ ምንድን

አትፈለስምም ግን ይሄን በይ ይሄን ካላልሽ ይሄ ሊሆን አይችልም የሚለውን ነገር ነው እንጂ እኔ ልጅቷንም አስገድጄ አይደለም ይሄ የክርስቲያኑ አምላክ ነው የሚመሰክርብኝ ልጅቷ እሁቴ ነች ለእሷ እሁት የሆነች ልጆቼን ያሳደገች ያለምንም ደመወዝ ቤቴ ውስጥ የምታሳድግልኝ ሶስት አመት ሙሉ 3ኛቸውን ጨርሰው 4ኛቸው ነው ልጆቼ መንታ ልጆች አሉ እና እነሱን ያሳደገች ጌታ እኔ እሁቴን ማድረግ የሌለብኝን አደረኩ ቢላ ምናምን አብዬ እያለች ቀና ብላም አታየኝም እላዬ ላይ ስትፈነዎ ምንም እያለች እየገፋፋችኝ እንደአደርጋት ፈለገችና እዚያ ውስጥ ገባሁ እንጂ እኔ የወደኩበትንም አላውቅ ሁሉን ነገር ያገኘሁትን ቆሻሻ ነው ደህና ነው ሳልል ጭቃውንም ምኑንም ሰርቼ የምገባ ለቤት ከራይ ለልጆቼ? ምንድን ነው ጥያቄው? ቢላ የሚባለው ነገር ሐሰት ነው፤ አይደለም ብለው ተጠይቀው ቢላ በመያዝ አስፈራርተውኛል ብለዋል ሌላ ጥያቄ ካለ? ቢላ ብቻ አልያዝኩም እኔ ምን ጥያቄ አለኝ እኔ ሌላ ልጆቼን፤ ስለዚህ ጥያቄ ከሌለዎት የለኝም ይበሉ? ልጆቼን አሳድግ ከሆነ የሚሉኝ ክቡር ፍ/ቤት አሳድጋለሁ እስር ከሆነ ጨርሰ ካላችሁኝ እኔ ምንም እኔ ምንም የምለው ነገር የለም በቃ እኔ ለመድኃኒለም ጥያቄ ምንም የለኝም፤ ስለዚህ ጥያቄ አለዎት ወይስ የለዎትም ለእሳቸው? ምን አይነት ጥያቄ ይኖረኛል? አሁን በተናገሩት ላይ ጥያቄ ካለዎት? የለኝም፤ ዐ/ህግ ድጋሚ ጥያቄ? የለኝም፤

የፍ/ቤቴ የሚጣሪያ ጥያቄ የምስክሯ ምላሽ

እርስዎ 9ኛ ወር ከሆነ በሃላ ነው የታወቀው ብለዋል? አዎ፤ ለእህትዎ እልነገሯቸውም ነበረ ከዚያ በፊት? እሷ ናት ሐኪም ቤት ይዛኝ የሰማችው፤ ከዚያ በፊት ለምን ለእህትዎ እልነገሯቸውም? እሷንም አር ጄ እንቺንም አርጄ እጠፋለሁ ስለአሉኝ ፈርቼ ነው፤ ለእሁቴ የነገርኳቸውን ሐኪም ቤት ከሄድኩ በሃላ እርግዝና መኖሩን ስለታወቀ ነው ብለዋል?

አዎ፡ እሁትዎ ከማን ነው ያረዝቡት ሲሉ ከተከላከሉ መሆኑን ገልጪላቸዋልሁ ብለዋል? አዎ፡ በምን መልኩ ድርጊቱ እንደተፈጸመ ነግረዋቸው ነበረ? አዎ፡ ፍቃደኛ ሆኜ ነበረ ብለው አልተናገሩም? ነግረያታልሁ፡ ምን ብለው ነው የነገሯቸው? በቢላ አርድሻለሁ ብሎኝ አደረገኝ አልኳት፡ ጨርስዋል እናመሰግናለን።

2ኛ የዐ/ህግ ምስክር

ስም? አለሚቱ ግርማ? እድሜ? 25፡ ሰራ አለዎት? የለኝም ሰው ቤት ነው የምሰራው፤ አድራሻዎ የት ነው? ቀጨኔ፡ ምን ክ/ከተማ ይባላል? 14፡ ቀበሌ? አላውቅም፡ የቤ/ቁጥር? አዎ ይዘርያለሁ ግን መታወቂያ ላይ አለ፤ አቶ አብነት ዘለቀን ያውቋቸዋል? አዎ፡ ዑብ አላችሁ ከእሳቸው ጋር? አዎ፡ ዑብ አላችሁ? ዑብ የለኝም ባለቤቴ ነው፤ አሁን ለምን እንደተጠሩ አውቀዋል? አዎ፡ ለምንድን ነው? ያው እሁቴ ነበረች ልጆቼን ልትይዝልኝ ከገጠር አምጥቼ ነበረ፤ አሁን የመጡት የሚያውቁትን እንዲያስረዱ ነው ዐ/ህግ ሲጠይቁ ይመልሳሉ?፤

የዐ/ህግ ዋና ጥያቄ የምስክሯ ምላሽ

ወ/ሮ አለሚቱ? አቤት፤ እሁቴ ነበረች ያሉት ማንን ነው? መሰረት ግርማ፤ ተከላከሉ አቶ አብነት ምንድን ነው እስኪ ያደረጉት? ያደረጉት እኔ እሁቴ ናት ከገጠር አምጥቼ ልጆቼን ልታሳድግ እኔ ይሄን አላውቅም ያው እኔ ሰው ቤት ነው የምሰራው እንጀራ እጋግራለሁ ልብስ አጥባለሁ እና ይሄን አላውቅም እኔ አመመኝ ስትለኝ ምንሽን ነው ስላት እራሴንም ሆዴንም አለችኝ ቆይ እስኪ እንግዲህ ሐኪም ቤት ልውሰድ እና ልመርምርሽ አልኳት ሐኪም ቤት ሂጄ ወረፋ ያዝኩላት ሐኪም ሲያይ ነፍስ ጡር ናት እንዴ እንዴት ነፍስ ጡር ትሆኛለሽ እንደዚህ ሁለት ልጅ ይገፍ ስንከራተት አንቺ ይሄን ታደርጊያለሽ ብዬ ስናገራት እኔ እኮ አንቺን ፈርቼሽ ነው እንጂ እንደዚህ የአንቺ ባል ነው እንደዚህ ያደረገኝ ስትለኝ

እንዴት ስላት እኔ አንቺንም እገልጻለሁ እሷንም እገላታለሁ ስለአለ ፈርቼሽ
ነው ብላኝ እዚያ ሐኪም ቤት ነው የተናገረችው፡ አንቺንም እሷንም
ብለዋል እገልጻለሁ? ስለአለኝ ፈርቼሽ ነው እና እናቱ ጋ ውስጧችን ስትለኝ
እናትሽማ አልወሰድሽም አልኳትና፡ አንቺንም እኔንም እሷንም እገላታለሁ
ብለውኛል ብለዋል? አዎ፡ የዚያን ቀን ድርጊቱን ሲፈጽሙ እንዴት
አድርገው ፈጸሙብዎት ፍቃደኛ ነበሩ ወይ ብለው እርስዎ አልጠየቁም? ጠ
ይቂያለሁ፡ እስኪ ምን አለችዎት? ~~ምንም~~ ፍቃደኛ አይደለሁም አለች ያው
ለሊት 9 ሰዓት ነው አንቺን እንጀራ ጋገራ ሸኝቶሽ ከመጣሁ ወዲህ ነው
እና እንዲህ ስለአደረገኝ ፈርቼሽ ነው እንጂ እናቱ ጋ ውስጧችን አለች እሷ፤
እንዲህ ስለአደረገኝ ሲሉ እንዴት አድርጎ እንዲህ የሚለውን ነገር እስኪ
ያብራሩት ምንድን ነው ያደረጓቸው? ለምንድን ነው እንዲህ ያደረገሽ
እንዴት ሆኖ ነው ለምን አንቺ ያን ጊዜ እራሱ አትነግሪኝም ስላት አንቺም
ትቆጣልሽ እሱም ቢሆን ይገለጻል ብትናገረ ለእሷ ብትናገረ እገልጻለሁ
ስለአለኝ ነው በቢላ አስፈራርቶኝ አርድሻለሁ ስለአለ ፈርቼ ነው አለችኝ፤
ቢላ ይዘው ነበረ ወይ ብለው አልጠየቁም? እሷንም ጠይቂያታለሁ አዎ
አለችኝ፤ በወቅቱ እንዲህ ስለአደረጉኝ ነው ያሉት ነገር እንዲህ የሚለው
ነገር ምንድን ነው እስኪ ያደረጓቸውን ነገር ዘርዝረው ይግለጹ? ያው እሱ
እንደዚህ አድርጎኝ ደፈረኝ፤ እንደዚህ የሚለውን ነገር ዘርዝረው እስኪ
ይግለጹልን ደፈረኝ ብለዋል አሁን ለምሳሌ እንደዚህ ደፈረኝ እንዴት
አድርጎ ደፈሯቸው? በምናቸው ደፈሯቸው? እሳቸውስ በምናቸው ነው
ምናቸውንስ ነው የተደፈሩት? ያው ደፈረኝ እንዲህ አድርጎ ደፈረኝ እኔ
ይሄን አንቺ ያን ጊዜ ብትነግሪኝ ይሄ ሁሉ ችግር አይመጣም ለምን ብዬ
ተቆጣጃት እሷን፤ ደፈረኝ ስለአሉዎት ነው እንጂ በምናቸው
እንደደፈሯቸው ምንናቸውን እንደደፈረ አልጠየቁም ነበረ? ጠይቂያለሁ፤
ምን አሉዎት? ያው እሱ ልብሱን ምናምን አወለቀ ደፈረኝ ነው ያለችኝ፤

ሲደፍሩዎት ለምን አልጮሁም ብለው አልጠየቋቸውም? ለምን አልጮህሽም
 አልኳት ቢላ አናቱ ላይ አድርጉ ነው አለች በቢላ ነው አለችኝ ቢላ አናቱ
 ላይ አድርጉ ነው ይሄን ያደረገኝ ስሜ ብዬ ስናገር ብትሮሙሂ ብሎ
 ሱሬዬን የጨርቅ ሱሪ ነበረ ሱሪውን ሲያወልቅ እሮሃለሁ ብዬ ስል
 በእርግጫ ስለአለኝ አልጮህኩም በዚያ ላይ እራሴ ላይ እዚህ ላይ ግንባራ
 ላይ አድርጉ ነው አለች ይሄን የፈጸመው፣ በወቅቱ ሲደፍሩዎት ምን አዩ
 አዲስ ነገር ምን አዩ ብለው ነበረ ጠይቀዋቸው ነበረ? እሷን አዎ
 ጠይቂያታለሁ ስትለኝ ደም ምናምን ፈሶኛል አለች እኔ ሌላ ነገር በእርግጥ
 ያን ጊዜ ያልጠረጠርኳት ሆኜ ነው እንጂ እሱንም እሁቴንም ያልጠረጠርኩ
 ሆኜ ነው እንጂ ሳምንት ሙሉ ተኝታለች ታማ፣ መቼ ነበረ እስኪ ይሄ
 ድርጊት የሆነው ያስታውሳሉ? እኔ ቀኑን አላስታውስም ለምን? አመተ
 ምህረቱስ? እኮ ቀኑን አላስታውስም በጾም ውስጥ ነው ቀኑን አሁን
 ትምህርት የለኝም ላስታውስ፣ በጾም ውስጥ ነው 2002 ዓ/ም ነው 2001
 ዓ/ም ዘንድሮ ነው የሆነው? እሱን አላውቅም፣ ዘንድሮ ስንት አመተ
 ምህረት ላይ ነው የለነው? እኔ እንጂ እኔ ቀን ትምህርት ስለሌለኝ ቀን
 አላውቅም፣ ቀን አይደለም ያልኩዎት? ዐ/ህግ ዘንድሮ ነው ብለዋል ሌላ
 ጥያቄ? በወቅቱ የት ነበረ እስኪ ድርጊቱ የተፈጸመው? እኔ ጋ ናት፣ እኔ
 ጋ ማለት? ቤት ማለት እኔ ጋ ነው ልጆቼን የምትይዘው እኔ ጋ ናት፣ ሌላ
 ሰው አልሰማም ነበረ? ማንም አልሰማም፣ ከዚያ እርስዎ ምን አደረጉ? እኔ
 ይሄን ጠየኳት አስመረመርኳት ካወኩ ወዲህ ወደ ፍ/ቤት ሂድኩኝ ሴቶች
መብት ጠየኳቸው እርግጠኛ ነሽ ወይ ሲለኝ አዎ አርግጠኛ ነኝ እና እንዲህ
እንዲህ ሐኪም ቤት ወሰድኩት እሷንም እኔ ብነግርሽ አንቺንም ከሚገልሽ
እኔም ከምሞት እናቱ ጋ ውሰጂኝ እናቱ ጋ አልወስዳትም እሱ እናንተ
እንደአደረጋችሁ አድርጉ ለህግ ሂጄ እዚያ ተናገርኳቸው፣ ጨርሻለሁ፣
መስቀለኛ ጥያቄ? ምንም መስቀለኛ የለም፣ ጨርሰዋል እናመሰግናለን።

3ኛ የዐ/ህግ ምስክር

ስም? አረጋሽ ገዢዎች? እድሜ? 27: ስራ አለዎት? የቀን ስራ: አድራሻዎ የት ነው? ናዝሬት: ምን ቀበሌ ነው? 08: የቤ/ቁጥር? 187.01: አቶ አብነት ዘለቀን ያውቋቸዋል? አዎ: ፀብ አላችሁ ከእሳቸው ጋር? የለንም: ዝምድና አላችሁ? አዎ ወንድሜ ነው: አሁን ለምን እንደመጡ አውቀዋል? አዎ ያው በእሱ ጉዳይ ነው ተጠርቼ የመጣሁት:

የዐ/ህግ ዋና ጥያቄ የምስክር ምላሽ

ወ/ሮ አረጋሽ ተከላሽ ወንድሜ ናቸው ብለዋል? አዎ: እስኪ ተከላሽ ምንድን ነው ያደረጉት? እኔ ምንም ያደረገውን ነገር ያው አላየሁም የጠራችን አክሲታችን ነች ደውላ ከናዝሬት ማለት ነው እና ኑ ወንድማችሁ ችግር አድርጏል አለችን? ምንድን ነው ችግሩ? ምንድን ነው ምንሆናችሁ ብለን ስንላት ኑ እንፈልጋችኋለን አለችን ከዚያ በሃላ እሺ ብለን እኛ ችግር አለ ስለአለችን ደንግጠን በጨለማ ነው በደወለችልን ሰዓት ነው የመጣነው ወደ እዚህ ከዚያ ማታ ስንገባ ሁሉም እነሱም ተኝተዋል ዝም ብለን እኛም ገብተን አደርን በማግስቱ ምንድን ነው ብለን አክሲታችንን ሰንጠይቃት እንደዚህ አይነት ችግር አድርጏል ልጅቷ እንደዚህ ተደፍራ ያው አርግዛለች ምናምን አለች? የትዋ ልጅ? የእሱ የባለቤቱ እህት? ማን ናቸው ስማቸው? መሰረት? ከዚያ በሃላስ ምን ሆነ? ከዚያ በሃላ ይሄ እንዴት ሊሆን ይችላል ብለን ከዚያ ተሰባስብንና እስኪ እንጠይቀው እሱን ብለን ጠየቅነው ጠርተን ስንጠየቀው እንደዚህ አድርጎቻል ብላ ትላለች ልጅቷ አንተ እንደዚህ አድርገሃል ወይ ብለን ስንለው እኔ አላደረሁም ብሎ ካደን ለእኛ ከዚያ በሃላ እስኪ ልጅቷን እንጥራትና በፊትህ እንጠቃት ብለን አልነው ከዚያ ጠራናት እና ጠየቅን ስንጠይቅ እሷ እሱንም ሁላችንም የአክሲቱም ልጆች ሆነን ተሰባስበን ስንጠይቀው ዝም አለ በቃ እሷ ባለችበት አንቺ ማን ነው እንደዚህ ያደረገሽ

ብለን ስንላት እሱ ነው እንደዚህ ያደረገኝ አለች ማን እሱ ነው ብላ አለች ቢቃ ዑለቱ ከዚያ እሱ ምንም የሰጠን መልስ የለም ዝም አለ ከዚያ ቢቃ ግራ ገባን እሷም ምን እናድርግ ስንል እናመልክት ምናምን ብለን እዚያው ወደ ቅርባቸው ወደ አለ ፖሊስ ጣቢያ ሄደን ያው አመለካከትን ያው አብረን ሄደን፤

ስቲ እሱ ነው ብላለች ብለዋል? አዎ፤ እሱ ብላ የገለጸችው ማንን ነው? አብነትን፤ ተከላሽም ባለብት ነው የጠየቅናት ብለዋል? አዎ፤ ተከላሽም እያሉ ነው የጠየቃችኋት? አዎ ዑለቱም ባለብት፤ እንዴት ነው የተፈጸመው ብለው ጠይቀዋት ነበረ? አዎ ስንጠይቃት እህቱ ሌሊት እንጀራ ጋገራ ስትሄድ በቢላ አስፈራርቶኝ ነው የደፈረኝ እንደዚህ እንዳትናገራ ለማንም ሰው ብሎኝ ነው ለምን ይሄን ያህል ጊዜ ዝም ብለሽ ተቀመጥሽ እስከምትደርሻ ድረስ ብለን ስንላት ስለአስፈራራኝ ይገለጃል ብዬ ነው አለች፤ ይሄንን የተናገረችው ተከላሽ ባለብት ነው? አዎ፤ ይቀጥሉ?

ድርጊቱን ሲፈጽምባቸው በወቅቱ ማለት ነው ሲጠይቋቸው ለምን አልጮህሽም ብለዋቸው አልጠየቃችሁም ነበረ? አስፈራርቶኝ ነው አለች፤ በምን አስፈራራኝ አሏት? ቢላ ይዞ አስፈራራኝ እንዳትናገራ ለማንም ሰው ስለአለኝ ፈርቼ ነው ዝም ያልኩት አለች፤ ይሄን የሰማችሁት መቼ ነው እናንተ? እኛ ይሄንን ታህሳስ 3 አካባቢ ነው፤ የትኛው አመተ ምህረት ማለት ነው? አሁን 2003 ዓ/ም፤ ከዚያ ምን ተፈጠረ እስኪ በአስገድዶ መድፈሩ ምን ተፈጠረ? ያው ልጅቷ ነፍሰ ጡር ነበረች በወቅቱ ሌላ ነገር ያው የምናቀው ነገር የለም ቢቃ እኛ አስመዝግበን ፖሊስ በፈለግናችሁ ጊዜ ትቀርባላችሁ ሲለን እሷ ብለን እኛ ናዝሬት ነው ሐገራችን ወደ ናዝሬት ሄድን፤ ነፍሰ ጡር ነበረች ብለዋል? አዎ፤ ህፃን ተወልዶል ወይስ? አሁን ወልዳለች፤ ጨርሻለሁ ክቡር ፍ/ቤት?

የተከላሽ መስቀለኛ ጥያቄ የምስክሯ ምላሽ

እኔ ቢላ የሚባለውም አስፈራርቼ /ግልጽ ያልሆነ/ እራስዋ በፍቅርም እንካ ብትለኝ ኖሮ ማድረግ የሌለብኝን አድርጊያለሁ እንጂ በእራስዋ ፍላጎት ነው ያደረኩት? ጥያቄ ለእሳቸው ምንድን ነው? ምንም ጥያቄ የለም ያው የሰጠኝትን ቃል ነው እንደዚህ እንደዚህ ተባለ እንደዚህ አለች ያለችውም የተናገረችኝ እኔም ያገኘ ያላደረኩትን ነው አደረኩ እንጂ ድርጊቱን ሌሎች ማስፈራሪያዎች ዑሉ ነገር አላደረኩም? ጥያቄ ካለዎት? እኔ ቢቃ ልጆቼን ካጣኝቸው ያው መታሰር እና መውጣት ነው ሌላ ምን አለ ልጆቼንም እዚህ አላገኛቸውም ስፈታ? ስለዚህ ጥያቄ የለዎትም ማለት ነው? አዎ፤

የፍ/ቤቱ የማጣሪያ ጥያቄ የምስክሩ ምላሽ

ከተከላሽ ጋር እርስዎ ምንድን ነው ግንኙነትዎ ከአቶ አብነት ጋር? ያው ወንድማዊ ግንኙነት ነው፤ ተከላሽ ወንድምዎ ናቸው? አዎ፤ ተበዳይ ተከላሽ ባለብት ነው አስገድደው የግብረ ስጋ ግንኙነቱን የፈጸሙብኝ ብላኛለች ብለዋል? ተከላሽን በወቅቱ ያንን እንደዚያ ከተናገረች በሃላ የግል ተበዳይ ተከላሽ ምን አለ? ምንም የተናገረው ነገር የለም ዝም ነው ያለው፤ አስገድጄ አይደለም አልፈጸምኩም አላለም? መጀመሪያ ስንጠይቀው ዝም አለ እሷ ባለችበት ስንጠይቀው ግን ዝም አለ አላደረኩም አለ መጀመሪያ ለእኛ ማለት ነው ከዚያ በሃላ እስኪ በፈትህ እሷን አምጥተን እንጠይቃት ብለን ልጅቷን ደግ ጠራናት እና ማን ነው እንደዚህ ያደረገሽ ብለን በእሱ ፊት ስንጠይቃት እሱ አብነት ነው እንደዚህ ያደረገኝ አለች፤ እናመሰግናለን።

እሱ የሚሉት ማንን ነው? አብነት፡ ምን ብላችሁ ነው የጠየቃችሁት? እንደዚህ አድርገዋል ወይ እንደዚህ አይነት ጥፋት እንዴት ታጠፋለህ፡ እንደዚህ አድርገዋል ያሉት ምንድን ነው ያላችሁት? ደፍረገታል ወይ ልጅቷን አልነው አንድ ላይ ተሰብስበን አልነው እንዴት እንዲህ አደርጋለሁ አላደረኩም አለ ልጅቷ ትምጣ ተባለ ልጅቷ ብትጠየቅ አዎ፤ ልጅቷ ማለት ማን ናት? መሰረት፡ ከዚያስ? ያው አንተ ነህ ያደረከኝ እኔ ሌላ ሰው አላደረገኝም አለች እኔም ተለያየን ከዚያ በሃላ፤

በወቅቱ መሰረት አንተ ነህ ያደረከኝ ብላ ለአቶ አብነት ብላለች ብለዋል አቶ አብነትስ የሰጡት መልስ ነበረ በወቅቱ? የዚያን ጊዜ እኔ መልስ አልሰጠም መልስ ሲሰጥ አልሰማሁም፤ እስኪ ድርጊቱን የሰማሁት በ29 አሟታል ተብሎ በነጋታው ነው ከሐኪም ቤት ሲመጡ? እሷ ናት መጥታ ከሐኪም ቤት እንደዚህ ሆኖ ኖራል እኮ በሽታዋ አለችኝ እኔ ታይፎይድ ይሆናል ቶሎ አሰመርምሪያት ነው ያልኳት፤ በወቅቱ እስኪ ተመርምራ ስትመጣ ተነግሮዎት ነበረ አይደለ ምንድን ነው ውጤቱ የተባለው የስንት ወር ነው ተብላ ነበረ ህፃንዋ? የስንት ወር ነው የስንት ወር ነው አላለችኝም ይሄንን እኔም አልተመራመረኩም፤ መቼ ማለት ነው እርስዎ ህዳር 29 ማለት የትኛው አመተ ምህረት ነው ማለት ነው የሰሙት? 2003 ዓ/ም፤ ድርጊቱ ሲፈጠር በወቅቱ ነግራናለች ልጅቷ መሰረት ነግራናለች ብለዋል አንድ ላይ መሰረት እሱ ነው የደፈረኝ ብላ እላቸውን ሲጠሯቸው አቶ አብነትን ሲጠሯቸው እሱ ነው የደፈረኝ ብላ ነበረ ተናግራ ነበረ አይደለ ለምን አልጮህሽም ብላችሁ አልጠየቃችኋትም? ጠይቀናታል፤ ምን አለቻችሁ? ቢላዋ ይዞ ስሬ አስፈራራኝ ፈራሁ አለች፤ ቢላ ይዞ ነበረ አለች? አለች እንጂ እንግዲህ ይሄንን ውስጡን ያው ተጠጋግቶ የሚያቀው ነገር የለም እኔም አላውቅም እሷ ያለችውን ነው፤

ጨርሻለሁ ከቡር ፍ/ቤት፡ መስተለኛ ጥያቄ ካለ? ምንም የለኝም፡ እናመስግናለን መሄድ ይችላሉ፡፡

/የሚያስማ/ ታዲያ ዐ/ህግ እንደ ክሱ አቀራረብ በቂ በሆነ መልኩ ያስረዳ በመሆኑ ተከላሽ የመከላከያ ማስረጃቸውን እንዲያቀርቡ ታዘዋል ነው የተባለው የመከላከያ ማስረጃ ከዚህ በፊት በቀረቡ ጊዜ ማስረጃ የለኝም ብለው ነው የገለጹት የነበረው ማስረጃ ማቅረብ ይችላሉ ወይስ አይችሉም? እችላለሁ፤ ምንድን ነው የሚያቀርቡት ማስረጃ? ያው ልጆቼ እንዳይበተኑ ነው እንዳላጣቸው እና እንዳላድግ ነው፡ ማስረጃ እንዲያቀርቡ የሚጠበቅብዎት ድርጊቱን እንዳልፈጸሙ ነው ከዚህ በፊት በሰጡት ቃል የግብረ ስጋ ግንኙነቱን ከተበዳይ ጋር ፈጽሞያለሁ የፈጸምኩት ግን በፍቃደኝነት ነው ማስረጃ የለኝም ብለዋል ፍ/ቤቱ ግን በፍቃደኝነት ሳይሆን በሃይል ነው የግብረ ስጋ ግንኙነቱን የፈጸሙት የሚለውን ዐ/ህግ ባስረዳው መሰረት ባቀረበው ክስ መሰረት አስረድቷል ብለዋል ስለዚህ እርስዎ በፍቃደኝነት ነው የፈጸምኩት የሚሉ ከሆነ ያንን ማስረጃት ይጠበቅብዎታል? በፍቃደኝነት ነው፤ ማስረጃ አለዎት በፍቃደኝነት መሆኑን? በፍቃደኝነት እንዴት ያለ መድሃኒክም ማንም የለም እኛ የሁለት አመት ልጆች የሶስት አመት ልጆች ናቸው አጠገባችን ያሉት ምን ማስረጃ እንዴት አመጣለሁ፤ ስለዚህ ማስረጃ ይኖርዎታል ወይስ የለዎትም? የለኝም ለእሷም እኮ ማስረጃዎች እኮ እንደዚሁ የተባለውን ነው እሷ ያለችውን እንጂ ያየን እኮ የለም ያለመድሃኒክም እኮ አልኩ፤ አለዎት ማስረጃ? ምን ላለማድረጌ ነው፤ አዎ ላለመፈጸም ማለት ድርጊቱን የፈጸሙት በሃይል አለመሆኑን የሚያስረዳ ማስረጃ አለዎት ወይ? የለም፤

ተከላሽ የመከላከያ ማስረጃ ለታህሳስ 22 ቀን 2003 ዓ/ም በዋለው ችሎት መከላከያ ማስረጃ የሌላቸው መሆኑን የገለጹና ዛሬም የዐ/ህግ

ማስረጃ ከተሰማ በግላ የመከላከያ ማስረጃ እንደላቸው ተጠይቀው የመከላከያ ማስረጃ የሌላቸው መሆኑን የገለጹ በመሆኑ የተከላከለ የመከላከያ ማስረጃ የማቅረብ መብታቸው ታልፏል።

ዐ/ህግ ክስ-ን ይዝጋ? ክቡር ፍ/ቤት ተከላከለ የወንጀል ህግ 620/2/ለ እና 654ን በመተላለፍ በጋብቻ ዝምድና ካላቸው ከባለቤታቸው እህት ጋር የግብረ ስጋ ግንኙነት በመፈጸም ልጅ እንዲፈጠር አድርገዋል ይሄውም 620/2/ለ እና 654ን መተላለፋቸውን በመግለጽ ዛሬ በዋለው ችሎት የዐ/ህግ ምስክሮቻችንን አቅርበን አስምተናል ይሄውም ካቀረብናቸው አራት ምስክሮች 1ኛ የግል ተበዳይ ናቸው የግል ተበዳይ ቀኑን የማያስታውሱ እና በወቅቱ እህታቸው እንጂራ ሊጋግሩ በሄዱበት ወቅት ተመልሰው ሸኝተው ተመልሰው መጥተው በቢላ አስፈራርተው ግብረ ስጋ ግንኙነት የፈጸሙባቸውና በወቅቱ እርግዝና እንዲፈጠር ያደረጉ መሆኑን እዚህ ልክቡር ፍ/ቤቱ አስረድተዋል ከ2 እስከ 4 ያሉት ምስክሮቻችንም ከግል ተበዳይ እንደሰሙትና በተለይ 2ኛ ምስክር ወ/ሮ አለሚቱ ግርማ የግል ተበዳይ እህት ልክ እርግዝናው ከገፋ በግላ እህታቸው እራሴንና ሆዴን አመመኝ በማለታቸው ሆስፒታል ወስደው ሲያስመረምሯቸው እርግዝና መኖሩን ሲገልጽ ማን ነው ይሄንን ያደረገሽ ብለው ሲጠይቋቸው ተከላከለ መሆናቸውን የገለጹ እና ይሄውም ለ3ኛ እና ለ4ኛ ምስክር ተናግረው ተከላከለና የግል ተበዳይን የጠየቁ መሆኑን ለፍ/ቤቱ አስረድተዋል በተጨማሪም ተከላከለ በ35 መስረት በችሎተ ለጊዜ ቀጠሮ ቀርበው የእምነት ክህደት ቃላቸውን ሲሰጡ ድርጊቱን ፈጽሟልሁ ግን ስፈጽም ስለምትታገለኝ ነው እና እኔ ስለገፋፋችኝ ነው የግል ተበዳይ ስለምትገፋፋኝ ነው በማለት ቃላቸውን አምነው ቃላቸውን ሰጠዋል ሆኖም ግን ድርጊቱ በሃይል አስፈራርቶ አለመፈጸማቸውን ክቡር ፍ/ቤት እንደገለጸው ታህሳስ 22 ቀን 2003 ዓ/ም እና ዛሬ በዋለው ችሎት በሃይል ድርጊት

ጸምዎትን አስረዱ ሲባሉ ማስረጃ የለኝም በማለታቸው የማስረጃት
ቸው ታላቁ ስለሆነም ክቡር ፍ/ቤት ተከላሽ እራሳቸውም
ን መፈጸማቸውን በሃይል መፈጸማቸውን ደሞ ባቀረብናቸው
ች በማስረጃታችን የጥፋተኝነት ውሳኔ እንዲሰጥልን ስንል ክቡር
ን እንጠይቃለን?

የመዝጊያ ንግግርዎን? እኔ ያው እንደ ስራዬ መጠን እንደ ጥፋቱ
ም እንደአደርጋት እየገፋፋችኝ ቢቃ ዑሉን ነገር እንደአደርጋትም
ቸውም እሷ ናች ብትፈልግም ማድረግ የለብኝም አድርጌለሁ ጥፋት
እንግዲህ፤ ጨርሰዋል? አዎ፤

ታመርምሮ ፍርድ ተሰጥቶበታል።

ፍ ር ድ

ዐ/ህግ በ18/4/2003 ዓ/ም የተባራ የክስ ማመልከቻ አቅርቦ 1ኛ ክስ
በ1996 ዓ/ም የወጣውን የወንጀል ህግ ቁጥር 620/2/ለን በመተላለፍ
ው ጋር ተቃራኒ ጾታ ካላት እና እድሜዋ 13 አመት የሆናትን ልጅ
/2002 ዓ/ም ከሌሊቱ በግምት 9:30 ሲሆን በጉለሌ ክ/ከተማ ቀበሌ
ክልል ልዩ ቦታው 8 ቁጥር ማዞሪያ ተብሎ ከሚጠራው አካባቢ
ው ጋር በጥገኝነት ቤት ውስጥ የምትኖረውን የባለቤታቸው እህት
ውን የግል ተበዳይ ወ/ት መሰረት ግርማ የተባለችውን ግለሰብ
ቃድዋ ቢላዋ ይዘው በማስፈራራት በተደጋጋሚ የግብረ ስጋ ግንኙነት
ቃባትና ክብረ ንፁህናዋን የገሰሱ በመሆኑ በፈጸሙት የአስገድዶ
ር ወንጀል ተከሰዋል ብሏል 2ኛው ክስ ተከላሽ በ1996 ዓ/ም
ውን የወንጀል ህግ ቁጥር 654ን በመተላለፍ የግብረ ስጋ ግንኙነት
ጸም በማስብ ከላይ በ1ኛ ክስ በተጠቀሰው ቀን ሰዓትና ቦታ ከእሳቸው
ጋብቻ ዝምድና ካላትና የህጋዊ ባለቤታቸው እህት የሆነችውን የግል
ይ ወ/ት መሰረት ግርማን እሷ ሳትፈልግ የግብረ ስጋ ግንኙነት